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Malaysia's Secular Versus Religious Divide: Mediation Could Be Key

By Saleena Saleem

Synopsis

The uneasy co-existence of civil and Shariah law in Malaysia and the polarising ethnic and religious divides within its population could be ameliorated by establishing an independent mediation committee.

Commentary

IN LATE August this year Prime Minister Najib Razak announced a proposed amendment to Malaysia's Law Reform (Marriage and Divorce) Act 1976. The proposal is an attempt to resolve the recurring problem of highly-publicised custody battles over unilateral conversions of children by spouses who converted to Islam. Several of such court disputes, framed around religious freedom, have been pursued in Malaysia's dual track legal system of civil and *Shariah* (Islamic law) courts in the past decade.

Amid the growing religiosity of the majority ethnic group, the Malays, who increasingly choose to identify themselves by religion and call for wider implementation of Islamic codes, laws that negatively and disproportionately affect non-Muslims serve as ominous harbingers of how secularity is being eroded within the Malaysian polity, especially for non-Muslims.

Growing Secular-Religious Divide

This dynamic not only leads to increased inter-ethnic tension between the Malay Muslim-majority and the non-Muslim minorities, it also creates tension between the religious and the areligious within the ethnic Malay majority. Increasingly, we see

societal tensions in Malaysia being expressed in a polarising socio-political discourse that pits the secular against the religious.

However, Najib's amendments, even if enacted – a similar governmental proposal in 2009 was stymied by the Malaysian Conference of Rulers – will not resolve all the outstanding jurisdictional questions. This is because existing *Shariah* enactments in various states allow for unilateral conversions by one Muslim parent.

Two factors, acting in concert to contribute to the secular-versus-religious divide in Malaysian society today, will make it exceedingly difficult for the problematic *Shariah* enactments to be modified anytime soon.

The first factor is the rise, since the late 1990s, of 'new politics' – an attempt to transcend the ethnic politics of the past, but one that has presented new electoral challenges for the ruling UMNO party. This has been aggravated by an accompanying spread of pro-democracy ideals promoted by opposition political parties and secular-oriented civil society organisations.

The discernible shift of non-Malay voters to opposition parties in the 2008 and 2013 general elections feeds into the perception that the UMNO-led government's political compact with minority ethnic-based political parties, of which *ketuanan Melayu* (Malay dominance) is a central component, is being threatened by the advance of 'new politics'. Najib has warned that failure by Malays to support the dominant UMNO at the next general election would place the country's Malays and Muslims in the hands of a Chinese-dominated opposition coalition that is 'anti-Islam and anti-Malay'. This perpetuates the undercurrent of inter-ethnic (Malay versus non-Malay) tension in society.

Counter-response from Conservative Forces

The second factor is the government's promotion of Islam since the 1970s, which has strengthened the influence of state religious officials, expanded state-led religious administration and given greater autonomy to Islamic courts. However, the increase in contentious court disputes over religious freedoms in the last decade has given rise to the perception among Islamic conservative forces that the position of Malays, and by extension Islam's position, is under threat from the spread of secular-liberal values in society.

This has been reinforced by secular-liberal activists' high-profile responses to *Shariah* court judgments that occurred in tandem with UMNO's electoral struggles. These Islamic conservatives, including state religious officials, religious leaders within UMNO and PAS, and Islamic-oriented civil society organisations, have coalesced to defend the autonomy of the *Shariah* courts from outside interference.

When affected parties in a dispute apply to different court systems to seek redress, they reach out to different systems that function based on their respective secular or religious law. Once the disputes reach this stage, the very nature of the dual legal system positions the dispute as the non-Muslim versus the Muslim.

In the bitter child custody battles, the non-Muslim seeks redress in the secular-based

civil courts, and the Muslim at the religious-based *Shariah* Court. The deliberations and the outcomes of such highly publicised disputes inevitably contribute to increased societal tensions by deepening the secular-versus-religious divide in society.

Improve Polarising Tensions with Mediation

While there is little incentive on the political front to confront such issues in a substantive way, continued inaction will only deepen the polarising division and risk the public sphere being dominated by extreme groups on both sides of the secular-religious divide.

One possible method to mediate a consensus between political, religious and civil society actors could be to explore alternative mechanisms for managing tensions in the body politic caused by jurisdictional conflicts.

An independent mediation committee set up in the Federation's different states might be helpful in this regard. In legal terms, mediation is a voluntary and non-binding process to handle a dispute before it enters the court system. Mediation involves a mediator (or group of mediators) who would help facilitate communication between the disputing parties, with the aim of reaching an amicable settlement.

The main rationale for mediation is to de-escalate disputes that are known to cause societal tensions. The mediators who perform these duties should not have any vested interest in the outcome. The independent mediation committee could ideally comprise a variety of professionals from the secular and religious fields, such as counsellors, lawyers and inter-faith religious scholars.

The mediation process could help provide an educative function for society too. Positive resolutions from such an arrangement could do much to promote a broader mediating socio-political discourse – one that is based on fairness, justice, equality and harmony. This would be a step in the right direction, enabling the state to build on the political and social will generated, to address fundamental conflicts between the two court jurisdictions in a meaningful manner.

Saleena Saleem is an Associate Research Fellow with the Malaysia Programme at the S. Rajaratnam School of International Studies (RSIS), Nanyang Technological University, Singapore. A version of this commentary was jointly published earlier in the Policy Forum and New Mandala, The Australian National University.
