

The Herald Case

| *Court says Church can use Allah word*

The Kuala Lumpur High Court on 31 Dec 2009 granted an **Order of Certiorari** to quash the decision of the Home Minister and the Government to prohibit the Herald - *The Catholic Weekly* - to use the word Allah pending the Court's determination of the matter.

The Court also made *six declarations*:

- 1 The Government's decision not to allow the Herald-The Catholic Weekly- to use the word Allah is **illegal and null and void**.
- 2 Under **Article 3(1)** of the Federal Constitution, the Herald has the **constitutional right** to use the word Allah.
- 3 Article 3(1) states that **Islam is the official religion** but the Government cannot prohibit the Herald from using the word Allah.
- 4 The Herald has the constitutional right to **freedom of speech and expression** to use the word Allah under **Article 10**.
- 5 In the exercise of its rights to **freedom of religion** under Article 11, the Herald has the constitutional right to use the word Allah.
- 6 Under **Article 11 and Article 12**, the Herald has the constitutional right to use the word Allah **for the instruction and education** of the Catholic congregation in the Christian religion.

The Case

The Titular Catholic Archbishop of Kuala Lumpur who is the publisher of Herald – *the Catholic Weekly* - was unhappy that its publication permit for 2009 issued by the Home Affairs Minister and the Government prohibited it from using the word "Allah" in its Bahasa Melayu edition. The Archbishop then applied to the High Court to a judicial review and declaratory reliefs (remedies).

THE JUDGMENT

Justice Datuk Lau Bee Lan in her 59-page judgment (31 Dec 2009) said Senior Federal Counsel's contention that

according to S13a of the Printing Presses and Publications Act 1984, the Minister's decision "**shall be final and shall not be called into question in nay court on any ground whatsoever**" is misconceived.

I am of the view that it does not apply to the imposition of conditions, more so where the conditions impinge on matters of the Constitution. In this regard, I agree with Mr (Porres) Royan, (lead counsel for the Herald), any provision that restricts a constitutional right should be strictly construed. There are numerous authorities which indicate that judicial review is not ousted to correct errors of law by an administrative body or tribunal.

"The Government's decision is illegal, unconstitutional, irrational, unreasonable and null and void"

Illegality

The Herald submits the Minister has failed to take into account one or more of the relevant considerations (produced by the Archbishop) which I have reproduced below as it is pertinent to the issue at hand:

1. The word "Allah" is the correct Bahasa Malaysia word for "God" and in the Bahasa Malaysia translation of the Bible, "**God**" is translated as "**Allah**" and "**Lord**" is translated as "**Tuhan**"
2. For 15 centuries, Christians and Muslims in Arabic-speaking countries have been using the word "Allah" in reference to the One God. The Catholic Church in Malaysia and Indonesia and the greater majority of other Christian denominations hold that "Allah" is the legitimate word for "God" in Bahasa Malaysia

"God" is translated (in the Alkitab) as "Allah" and "Lord" is translated as "Tuhan"

3. The Malay language has been the lingua franca of many Catholic believers for several centuries especially those living in Melaka and Penang and their descendants in Peninsular Malaysia have practised a culture of speaking and praying in the Malay language
4. The word "God" has been translated as "Allah" in the "Istilah Agama Kristian Bahasa Inggeris ke Bahasa Malaysia" first published by the Catholic Bishops Conference of Malaysia in 1989

"This judicial review is not a judicial review of a decision of the Rulers or the Agung as Head of Islam."

5. The Malay-Latin dictionary published in 1631 had translated "Deus" (the Latin word for God) as "Alla" as the Malay translation
6. The Christian usage of the word "Allah" predates Islam being the name of God in the old Arabic Bible as well as in the modern Arabic Bible used by Christians in Egypt, Lebanon, Iraq, Indonesia, Malaysia, Brunei and other places in Asia, Africa, etc;
7. In Bahasa Malaysia and Bahasa Indonesia, the word "Allah" has been used continuously in the printed edition of the Matthew's Gospel in Malaysia in 1629, in the first complete Malay Bible in 1733 and in the second complete Malay Bible in 1879 until today in the Perjanjian Baru and the Alkitab
8. Munshi Abdullah who is considered the father of modern Malay literature had translated the Gospels into Malay in 1852 and he translated the word "God" as "Allah"

"The word "Allah" has been used continuously in the printed edition of the Matthew's Gospel in Malaysia in 1629, in the first complete Malay Bible in 1733 and in the second complete Malay Bible in 1879 until today."

9. There was already a Bible translated into Bahasa Melayu in existence before 1957 which translation was carried out by the British and Foreign Bible Society where the word "Allah" was used
10. There was also already in existence a Prayer Book published in Singapore on 3.1.1905 where the word "Allah" was used

11. There was also a publication entitled "An Abridgment of the Christian Doctrine" published in 1895 where the word "Allah" was used
12. Another publication entitled "Hikajat Elkaniset" published in 1874 also contains the word "Allah"
13. The Bahasa Indonesia and the Bahasa Malaysia translations of the Holy Bible, which is the Holy Scriptures of Christians, have been used by the Christian natives of Peninsular Malaysia, Sabah, and Sarawak for generations
14. The Bahasa Malaysia speaking Christian natives of Peninsular Malaysia, Sarawak and Sabah had always and have continuously the word "Allah" for generations and the word "Allah" is used in the Bahasa Malaysia and Bahasa Indonesian translations of the Bible used throughout Malaysia
15. At least for the last three decades the Bahasa Malaysia congregation of the Catholic Church have been freely using the Alkitab, the Bahasa Indonesia translation of the Holy Bible wherein the word "Allah" appears
16. The Herald is a Catholic weekly as stated on the cover of the weekly and is intended for the dissemination of news and information on the Catholic Church in Malaysia and elsewhere and is not for sale or distribution outside the Church
17. The Herald is not made available to members of the public and in particular to persons professing the religion of Islam
18. The Herald contains nothing which is likely to cause public alarm and/or which touches on the sensitivities of the religion of Islam and in the fourteen years of the publication there has never been any untoward incident arising from the Applicant's use of the word "Allah" in the Herald
19. In any event the word "Allah" has been used by Christians in all countries where the Arabic language is used as well as in Indonesian/Malay language without any problems and/or breach of public order/ and/or sensitivity to persons professing the religion of Islam in these countries
20. Islam and the control and restriction of religious doctrine or belief among Muslims professing the religion of Islam is a state matter and the Federal Government has no jurisdiction over such matters of Islam save in the federal territories

21. The subsequent exemption vide P.U.(A) 134/82 which permits the Alkitab to be used by Christians in churches *ipso facto*(*by virtue of this fact*) permits the use of the word "Allah" in the Herald
22. The Bahasa Malaysia speaking congregation of the Catholic Church uses the word "Allah" for worship and instruction and that the same is permitted in the Al-Kitab

The Herald further submits that none of the factual considerations were ever disputed or challenged by the Minister as factually incorrect. I am inclined to agree with the Herald as the response of the Minister is a feeble denial.

Therefore, I find the Minister in the exercise of his discretion to impose further conditions in the publication permit has not taken into account the relevant matters, hence committing an error of law warranting this Court to interfere and I am of the view the Minister and Government's decision ought to be quashed.

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Unconstitutionality

The Herald's grounds for the legal right to use the word "Allah" in the Herald are based on its constitutional rights to freedom of speech and to practice its religion in peace and harmony, to manage its religious affairs, to instruct and educate the Catholic congregation in the Christian religion as enshrined in Articles 2, 3, 10 11, and 12 of the Federal Constitution.

Any prohibition of the use of this word is a serious violation of its constitutional rights.

"The control of publications are governed by federal law...the Rulers and the Agung have no role whatsoever under the Act."

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Unreasonableness and irrationality

The Herald also said the Minister and Government's action are unreasonable:

"A decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."

"It is utterly irrational and unreasonable on the part of the Minister and Government on the one hand not to prohibit

the congregation of the Catholic Church to use the word 'Allah' for worship and instruction in their faith and in the Al-Kitab and on the other hand to state that the same word cannot be used in the Herald which serves to assist these persons in their worship and provide a medium of instruction and to disseminate news and information."

"It is also utterly irrational and unreasonable to require the Bahasa speaking congregation of the Catholic Church to use another word the Bahasa word for 'God'.

The Government responded that it was acting within its jurisdiction considering the status of at Islam under the Constitution, the various enactments on control and restrictions is on the propagation of religious doctrine or belief among Muslims, government policy, public security and safety and religious sensitivity.

One would have thought that having permitted, although with the usual restrictions (to) the Catholic Church to use the word "Allah" for worship and in the Al-kitab, it would only be logical and reasonable for the Government to allow the use of the word "Allah" in the Herald. Indeed, I am inclined to agree with the Herald that the Minister and the Government are acting illogically, irrationally and inconsistently and no person similarly circumstanced would have acted in a like manner.

I find there is merit in the Herald's contention that when viewed on its merits, the reasons given by the Home Ministry in the various directives defies all logic and is so unreasonable.

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The Constitutionality of the State Enactments

The government said it has to consider the laws to control and restrict the propagation of religious doctrine or belief among Muslims in various states (as) these laws are valid under Article 11(4) of the Federal Constitution.

If the Home Minister allows the use of the word "Allah", when there are such laws in existence, the decision will be illegal because it is going against them. One of the reasons for its decision is to avoid confusion and misunderstanding among Muslims (as) there is no guarantee that the Herald will be circulated only among Christians and will not fall into the hands of Muslims and it has gone online and is accessible to all.

We are living in a world of technology; information can be easily accessible. Are guaranteed rights to be sacrificed at the altar just because the Herald has gone online and is accessible to all? On must not forget there is the restriction in the publication permit which serves as an additional safeguard which is the word "Terhad" (which) is to be

endorsed on the front page and the Herald is restricted to churches and to followers of Christianity only.

"There has never been any untoward incident arising out of the use of the word Allah in the Herald in the past 14 years."

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Public security and order

Senior Federal Counsel submits that the grounds of public security, public order and religious sensitivity are legal, rational and reasonable of the Court is in no position to question the issue and must accept these reasons.

A mere statement by the Home Minister that the exercise of power was necessary on the ground of national security without adequate supporting evidence is not sufficient in law. The Herald claims that there has never been any untoward incident arising out of the use of the word Allah in the Herald in the past 14 years is to be accepted as it was not rebutted by the Government.

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**Issue of justiciability
(whether the Court has jurisdiction to hear the case)**

I had dismissed the applications of the Majlis Agama Islam Federal Territory, Johore, Selangor, Kedah, Malacca, Terengganu, and the Chinese Muslim Association. Therefore their contention that whether non-Muslims can use the word Allah is at the absolute discretion of the Rulers is

non-justiciable and irrelevant at the hearing of the judicial review application and need not be considered by this Court.

The Federal Constitution and the State Constitutions clearly provide that the Rulers and the Yang di Pertuan Agung as the head of Islam in their states and the Federal Territories have exclusive authority only on Islamic affairs and Malay customs.

The control of publications are governed by federal law. Under this Act, only the Minister can decide what is permitted to be published and in this regard the Rulers and the Agung have no role whatsoever under the scheme of this Act.

The present judicial review is not a judicial review of a decision of the Rulers or the Agung as Head of Islam. It is only a review of the Minister's decision to impose a prohibition on the use of the word Allah by the Herald. Since the Rulers and the Agung cannot make any decision in respect of any publications, the issue of whether the Court has jurisdiction to hear the case, does not arise.

Since the Minister has taken the position that only he has the exclusive power to impose a condition on the Herald's publication permit to prohibit the use of the word Allah, the argument that only the Rulers and the Agung have such powers makes a complete mockery of the Minister's power under the Act.

(This is an unofficial summary with some paraphrasing and emphasis added. The Government has given notice to appeal to the Court of Appeal).

J A H H J A.

FATSAL JANG PERTAMA.

PADA mulanja 'adalah Kalimat, dan Kalimat 'adalah sama 'Allah, dan 'Allah 'adalah Kalimat.

2 'Ija 'ini 'adalah pada mulanja

jang chats sudah tijada menjambot dija.

12 Tetapi barapa p 'awrang sudah menjambot dija, maka pada marik 'itu 'ija sudah memberij kawafa mer djâdi 'anak p 'Allah, 'ija 'itu pad segala 'awrang, jang pertjaja 'aka