

## **Joint Statement by Civil Society Organisations Inclusive, Open and Rational Debates and Dialogues on Kelantan's Syariah Criminal Code**

With regards to the controversial proposal to enforce Kelantan Syariah Criminal Code II (1993) 2015 [KSCC], we the undersigned organisations call for inclusive, open and rational debates and deliberation involving all stakeholders.

Specifically, we hold the following views:

1. The KSCC has far reaching implications way beyond the Hudud (fixed) punishments for theft, robbery, adultery, sodomy, false accusation of adultery/sodomy, intoxication and heresy. It also covers the Qisas (retaliatory) punishments for homicide and bodily injury which are currently governed by the Penal Code and the Ta'zir (discretionary) punishments when the Hudud and Q isas punishments cannot be imposed, for example because of failure to meet requirement of evidence. Currently, these four categories of offences: theft, robbery, homicide and bodily injury are governed by Penal Code with the evidence requirement laid down by the Criminal Procedure Code (CPC). The KSCC must therefore be read and construed together with the Kelantan Syariah Court Evidence Enactment 2002 (KSCEE) which, by way of sub-section 39(2) of KSCC, imposes its complementary evidence requirements for theft, robbery, homicide and bodily injury. The misleading calls to support or oppose the Hudud punishments therefore dangerously divert the public attention to the full ramifications of the KSCC. Such simplistic positioning must be replaced with honest, comprehensive and detailed scrutiny of the KSCC and KSCEE.
2. While non-Muslims are excluded from the KSCC as the accused party, such exclusion does not apply to them as the victims. Non-Muslims are therefore also legitimate stakeholders. As stipulated in Section 2 of the KSCC, all cases of theft, robbery, homicide and bodily injury involving Muslims as the accused party will be tried under the law. Amongst the implications are
  - a. Non-Muslims, women, under-aged persons and adult male Muslims who are not "just" (namely, who have not abided religious requirements) will not have full testifying competence in Syariah Court. [Section 41 of the Code, and Sections 83 and 86 of KSCEE]
  - b. When the prosecution cannot produce testimonies by two "just" adult male Muslims in murder cases, the court can only impose Ta'zir punishments which exclude death penalty, resulting in great inequality before the law. [Sections 29, 39 of the KSCC]
3. The law will apply to not only Kelantanese but anyone residing in or travelling to Kelantan. Non-Kelantanese are therefore also legitimate stakeholders. This is especially true for Sabahans and Sarawakians whose founding fathers and mothers did not sign up for a Federation of Malaysia with Syariah criminal justice in any of its parts. Amongst the implications are
  - a. All Muslims including Sabahans and Sarawakians who are accused of stealing or robbing will be tried in Syariah Court and if the goods involved reaches or exceeds the value of 4.45 grams of gold (about RM 620 at current price) may face the punishment of amputation. [Sections 6-11 of the KSCC]

- b. All Muslims including Sabahans and Sarawakians who are convicted of adultery or sodomy in Kelantan may face death penalty by way of stoning. [Sections 12-15 of the KSCC]
- c. All Muslims including Sabahans and Sarawakians who are convicted of drinking in Kelantan may face 40 to 80 lashes. [Section 22 of the KSCC]
- d. All Muslims including Sabahans and Sarawakians who are convicted of heresy [irtidad or riddah] may face death penalty and forfeiture of all properties. [Section 23 of the KSCC]

4. As all Malaysians, Muslims or non-Muslims, Kelantanese or non-Kelantanese, are rightful stakeholders in the enforcement of KSCC, no one should be penalised, threatened or ridiculed for having or expressing any opinion on the matter. We solemnly condemn any act or expression of hatred aiming to silence dissidents. All stakeholders – whether supporting or opposing the KSCC – must strive for inclusive, open and rational debates and dialogues to respect differences, foster understanding and seek consensus. It must not be a crime for any Malaysian to disagree with any other.

5. While Malaysians may hold vastly opposing views on the specific mechanisms (wasail) of Syariah law in criminal justice, we can and should strive for convergence in attaining the universal purpose (maqosid) of Syariah Law, justice. Instead of battling pragmatic difficulties, the advocates of Syariah law should consider the alternative of concentrating their efforts on introducing ideas compatible for our plural society from the rich Syariah tradition that may improve quality of justice and at the same time do not cause any discrimination to or unnecessary segregation of citizens on the grounds of religion, ethnicity, gender and lifestyle. The popularity of Islamic banking in winning over the hearts and minds of non-Muslims should be an inspiring example.

6. The implementation of KSCC must not be decided on a winner-takes-all manner, such as a simple majority in Dewan Rakyat which risks tearing the country apart. The inclusive spirit of the Federal Constitution and the 1963 Malaysia Agreement which lay down the secular basis of the Federation of Malaysia must be upheld.

Endorsed by the following organisations:

1. All Women's Action Society (AWAM)
2. **Angkatan Warga Aman Malaysia (WargaAMAN)** 马来西亚和平力量组织
3. Archdiocesan Human Development Commission (AHDC) Kota Kinabalu, Sabah
4. **Baramkini** 当今峇南
5. Baramkini, Sarawak 当今峇南
6. **Belia Saint Aloysius Limbanak, Sabah**
7. Borneo's Plight in Malaysia Foundation (BoPiM)
8. **Borneo Resources Institute Malaysia, Sarawak (BRIMAS)**
9. Consumer Association And Protection Sabah (CAPS)
10. **Cornerstone Resources Berhad, Sabah**
11. Damn the Dams, Sarawak
12. **ENGAGE** 愿景工程
13. Federation of Malaysian Indian Organisation (PRIMA) 马来西亚印裔组织会
14. **Gerakan Anak Sarawak (GASAK)**
15. Institute for Development of Alternative Living (IDEAL) 拓展他种生活协会
16. **Islamic Renaissance Front (IRF)** 回教复兴前线组织

17. Japan Graduates Association, Malaysia (JAGAM) 马来西亚留日同学会
18. **Jaringan Orang Asal SeMalaysia (JOAS)**
19. Jaringan Tanah Hak Adat Bangsa Asal Sarawak (TAHABAS)
20. **Jawatankuasa Bertindak Kuala Lumpur Tak Nak Insinerator** 吉隆坡不要垃圾焚化炉行动委员会
21. JIHAD for JUSTICE 圣战与正义
22. **Johor persahabatan Semparuthi** 柔佛州大红花之友
23. Kill The Bill 创意集会小组
24. **Komiti Belia Perlaksana Child of Jesus, Sabah**
25. Komiti Belia Perlaksana Minintod, Sabah
26. **Kumpulan Aktivis Mahasiswa Independen (KAMI)** 独立学生份子组织
27. Land, Empowerment, Animal, People (LEAP), Sabah
28. **LLG Cultural Development Centre** 林连玉基金
29. Lingkarn Islam Traditional (LIT)传统回教圈
30. **Malaysia Christian Youth Association (MCYA)** 马来西亚基督教青年协会
31. Malaysia Trade Union Congress (MTUC), Sabah Division
32. **Malaysian Indians Progressive Association (MIPAS)** 马来西亚印裔进步组织
33. Malaysian Indians Transformation Action Team (MITRA) 马来西亚印裔转型行动组织
34. **Malaysian Youth Care Association (PRIHATIN)** 马来西亚青年关怀协会
35. National Indian Rights Action Team (NIAT) 全国印裔权益行动组织
36. **Negeri Sembilan Chinese Assembly Hall (NSCAH)** 森美兰中华大会堂
37. Norther Green Youth, Sarawak
38. **Oriental Hearts and Mind Study Institute (OHMSI)** 东方思想研究中心
39. PACOS Trust, Sabah
40. **Peoples Green Coalition, Sarawak**
41. People Welfare and Rights Organisation (POWER) 人民福利和权利组织
42. **Penang Chinese Town Hall (PCTH)** 槟州华人大会堂
43. Perak Women for Women Society (PWW) 霹雳州妇女于妇女协会
44. **Persatuan Alumni PBTUSM Kuala Lumpur & Selangor** 雪隆理華同學會
45. Persatuan Bekas Siswazah Univesiti dan Kolej di China, Malaysia (LiuHua) 马来西亚留华同学会
46. **Persatuan Kesedaran Komuniti Selangor (EMPOWER)** 雪兰莪社区自强学会
47. Persatuan Komuniti Prihatin Selangor Dan Kuala Lumpur (PRIHATIN) 雪隆关怀社区组织
48. **Persatuan Masyarakat Selangor dan Wilayah Persekutuan (PERMAS)** 雪隆社区协会
49. Persatuan Promosi Hak Asasi Manusia (PROHAM) 人权协会促进组织
50. **Persatuan Rapat Malaysia (RAPAT)** 马来西亚密切协会
51. Projek Dialog (PD) 对话论坛圈
52. **Pusat Komunikasi Masyarakat (KOMAS)** 社区传播中心
53. Pusat Sumber Adat dan Mediasi Kaum Anak Negeri Sabah (PUSAKA)
54. **Rise. Of. Sarawak. Efforts (ROSE)**
55. Sabah Banking Employees' Union

56. **Sabah Environmental Protection Association (SEPA)**
57. Sabah Women's Action Resource Group (SAWO) 沙巴妇女行动资源组织
58. **Saccess Sarawak** 砂拉越通道组织
59. Sahabat Rakyat 人民之友
60. **SALT Movement**
61. Sarawak Dayak Indigenous Association (SADIA)
62. **Sarawak Women for Women Society (SWWS)**
63. SAVE Rivers 拯救河流
64. **SAVE Rivers Sarawak** 砂拉越拯救河流
65. Saya Anak Bangsa Malaysia (SABM) 马来西亚之子组织
66. **Saya Anak Bangsa Malaysia in Australia** 澳洲马来西亚之子组织
67. Selangor and Kuala Lumpur Hokkien Association Youth Section 隆雪福建会馆青年团
68. **Sembang-Sembang Forum, Sarawak**
69. Sisters in Islam (SIS) 回教姐妹
70. **Suara Rakyat Malaysia (SUARAM)** 人民之声
71. St. Marcellinus Church, Minintod, Sabah
72. **St. Theresa Child of Jesus Church, Sabah**
73. Tamil Foundation தமிழ் அறவாரியம் (TF) 淡米尔基金会
74. **Tamilar Action Force (TAF)** 淡米拉行动力量
75. Tenaganita Women's Force 妇女力量
76. **Teoh Beng Hock Trust for Democracy** 赵明福基金会
77. The Kuala Lumpur and Selangor Chinese Assembly Hall 吉隆坡暨雪兰莪中华大会堂
78. **Tim Pelayanan Belia Paroki Penampang, Sabah**
79. United Chinese School Alumni Associations of Malaysia (UCSAAM) 马来西亚华校校友会联合会总会
80. **We Are Malaysians**
81. We Are One Race- Human Race
82. **Women's Centre for Change (WCC) Penang** 妇女醒觉中心
83. Women Development Organisation of Malaysia 大马妇女发展机构