

NST 29/04/24 M/S 3

'Territorial Sea Act valid nationwide unless declared otherwise by court'

KUALA LUMPUR: Law experts say the Territorial Sea Act 2012 (TSA 2012) has legal validity nationwide, leaving all state legislatures no choice but to acknowledge it, unless declared otherwise.

They said despite the recent dispute between the federal and Terengganu governments over the validity of the act, the law would remain valid unless declared otherwise by the courts.

The Terengganu State Legislative Assembly had unanimously rejected the implementation of the TSA 2012, citing its infringement of the state's right to explore resources and generate revenue within its maritime borders.

Terengganu Menteri Besar Datuk Seri Ahmad Samsuri Mokhtar had said the state government opposed the law as it did not adhere to the Constitution's Article 2(b) and Article 38(4).

Constitutional expert Associate Professor Datuk Dr Wan Ahmad

Fauzi Wan Husain said while the act remained legally binding, its enforceability in a state hinged on adherence to constitutional processes outlined in Article 2 and 38 of the Constitution.

"A state must formally accept the provisions of the act to effectively cede and surrender its territorial rights to the federal authority.

"Parliament cannot enact laws within a state's jurisdiction, but it can establish such laws to ensure uniformity among states. These laws must get approval from the state legislature."

He said all parties must respect the rule of law and refer to the legal history of constitutional development before the Federation of Malaya was formed.

National Professors Council's governance, law and management cluster head Professor Dr Nik Ahmad Kamal Nik Mahmood said all issues on territorial and

international law fell under federal jurisdiction.

"States lack authority over federal legislative matters. Terengganu's dissatisfaction over a mere three nautical miles of fishing rights appears valid, yet the law was duly passed and legitimate.

"To challenge it, legal recourse through the courts is necessary. I agree with the Prime Minister's Office's view that only the court can invalidate legislation."

The Prime Minister's Office recently said the act was valid nationwide and was enacted to protect the country's sovereignty and safety.

Constitutional expert Professor Emeritus Datuk Dr Shad Saleem Faruqi said the Terengganu state assembly's rejection of the law had no legal effect as a law was presumed valid until declared otherwise by the courts.

"Federal-state conflicts over jurisdiction are not uncommon.

The state must seek a court declaration as the courts are the final arbiters.

"The government can file a legal bid to seek a court declaration under Article 4(3) (Supreme Law of the Federation), 121 (Judicial Power of the Federation) and 128 (Jurisdiction of Federal Court) of the Constitution.

"The federal government can request an advisory opinion from the Federal Court under Article 130 (Advisory Jurisdiction of Federal Court). These are the best solutions to address the dispute."

Shad Saleem said the government could compel Terengganu to adhere to the TSA under Article 71(3), which grants Parliament the authority to enact measures to ensure compliance and, as a last resort, use Article 150 to declare an emergency in the state and force compliance. **By Hakim Mahari and Rahmat Khairulrijal**