

Headline	Transgender persons used wrong channel in legal challenge, says lawyer		
MediaTitle	The Edge Financial Daily		
Date	14 Aug 2015	Color	Full Color
Section	Home Business	Circulation	15,000
Page No	12	Readership	50,000
Language	English	ArticleSize	276 cm ²
Journalist	N/A	AdValue	RM 3,025
Frequency	Daily	PR Value	RM 9,075



Transgender persons used wrong channel in legal challenge, says lawyer

PUTRAJAYA: Three transgender persons used the wrong legal channel to challenge the Negeri Sembilan state syariah enactment that criminalises cross-dressing by Muslim men, the Federal Court was told yesterday.

The enactment penalises Muslim men who dress or pose as women.

Counsel Tan Sri Muhammad Shafee Abdullah, representing the Negeri Sembilan government, submitted that they should have brought their challenge on the issue of constitutionality of the enactment by way of petition straight to the Federal Court.

He said the transgender persons must first obtain leave from a Federal Court judge to pursue their petition.

However, the trio had filed a judicial review application at the Civil High Court to seek a declaration that Section 66 of the Syariah Criminal (Negeri Sembilan) Enactment 1992, which criminalises Muslim men for cross-dressing, was invalid and unconstitutional.

"Their judicial review at the High Court was premature as there was no decision by the public authority. The High Court and the Court of Appeal should have not entertained their application and appeal," Muhammad Shafee said.

In the judicial review application, he said, there must be a decision to be challenged by the applicant, but in this case there was no decision made by the public authority.

The three transgender persons are Muhamad Juzaili Mohamad Khamis, 26, Syukor Jani, 28, and Wan Fairol Wan Ismail, 30. In their judicial review, the three who are bridal make-up artists claimed that Section 66 did not apply to them as gender identity



Filepic of the three transgender persons who had filed the judicial review.
Photo by The Malaysian Insider

disorder (GID) sufferers.

Muhammad Shafee was submitting before a five-member bench led by Court of Appeal President Tan Sri Md Raus Sharif in the appeal by the Negeri Sembilan government, the Negeri Sembilan Department of Islamic Religious Affairs, its director, the Negeri Sembilan syariah enforcement chief, and its chief prosecutor.

The five are appealing against the Court of Appeal landmark decision declaring invalid the state syariah enactment that criminalises cross-dressing by Muslim men after allowing the trio's appeal.

Counsel Aston Paiva, acting for the three, countered that he had filed the legal action through a judicial review as his clients had sought a declaration and the application was properly filed under Order 53 of the Rules of Courts 2012.

On Oct 11, 2012, the Seremban

High Court dismissed the judicial review application by the three transgender persons and ruled that their rights under the Federal Constitution were to be disregarded as they were by virtue born male and Muslim.

In the application they claimed that they had been arrested and harassed by authorities. The allegedly male-to-female transsexuals claimed a psychiatrist at Hospital Kuala Lumpur had confirmed that they suffer from GID.

On Nov 7, 2014, the Court of Appeal unanimously allowed their appeal to set aside the High Court ruling.

The Federal Court panel, whose other members are Federal Court judges Tan Sri Ahmad Maarop, Tan Sri Hasan Lah, Datuk Azahar Mohamed and Datuk Zaharah Ibrahim, reserved judgement to a date to be fixed. — *Bernama*