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Letter to the Editor

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States must not reject amendments to the National Forestry Act 1984

The months of August and September are deeply meaningful for Malaysia - a time when we commemorate the establishment of the nation and the birth of the Federal Constitution. This supreme law of our nation guarantees the rights of every citizen, protects our public interests, upholds justice and regulates governance to ensure the well-being of the general public, members of the federation and individual states.

As such, while the Federal Constitution provides that land and forest matters fall under state jurisdiction, its article 76 also empowers the Parliament to legislate on matters within the jurisdiction of the states under three conditions. One of these conditions is to promote the uniformity of laws.

It was based on this uniformity principle that the National Forestry Act 1984 (NFA 1984) was enacted by the Parliament for its application by the Peninsular states. Subsequently, this federal law was then enacted into individual state enactments and approved at the respective state legislative assemblies.

In 2022, a series of significant amendments to the NFA 1984 were passed in Parliament to introduce several positive new provisions. Among others, sections 7 and 8 of the NFA (Amendment) Act 2022 sought to amend sections 11 and 12 of the NFA 1984, in order to introduce stricter conditions for the degazettement of Permanent Reserve Forests (PRFs).

This new section 11 makes public participation mandatory before any degazettement of a PRF may proceed. Meanwhile, section 12 mandates the simultaneous replacement of a degazetted PRF, with a new PRF area of an equivalent or larger size.

Consequently, the 2022 amendments to NFA 1984 were widely welcomed by many stakeholders, including SAM. They were viewed as an effort to improve and strengthen the management of PRFs and enforcement of forestry laws.

Hence, we are now deeply disappointed to learn from media reports that four state governments, namely Kelantan, Perak, Negeri Sembilan, and most recently Pahang on August 27, have decided not to adopt these two specific sections [sections 11 and 12], while willingly accepting other amendments.

This refusal seems to suggest that the four states are undermining the spirit of uniformity of article 76 of the Federal Constitution and the good intentions behind the said amendments. Obviously, these amendments have stemmed from the recommendations that have been made by various stakeholders over a long period of time. Prior consultations that were held at the level of the National Land Council must have also consumed a significant amount of time and resources.

Therefore, such important and positive legal improvements must not be simply rejected by the states. Such a refusal to follow amounts to a considerable waste of opportunities, public funds, resources and time for all parties involved. In fact, the former Minister of Natural Resources and Environmental Sustainability, Nik Nazmi Nik Ahmad, had also previously urged all states to [support](#) and fully adopt the complete set of amendments.

These two sections are in fact introduced to prevent our forestry resources from being freely exploited, without considering public interest, the rights of communities and the ecological and biological functions of a PRF that has been proposed for de-gazettement. The amendments encourage the public and affected communities to be consulted in order to protect their rights and interests and enhance good governance and transparency in each state.

What is the actual motive behind the refusal of Kelantan, Perak, Negeri Sembilan and Pahang to adopt better PRF management practices that have been initiated by the federal government and actually welcomed by the public?

If there is no hidden agenda, public participation and the protection of the size of their PRFs are not matters that must be feared by the states. In this regard, they owe the public and their citizens a valid justification for their stance.

We cannot have a situation where citizens of the country are treated unequally, where states that refuse the amendments deny their citizens the right to be consulted, while those who have adopted the amendments in its entirety have their rights preserved. This is unfair and unjust. It contravenes article 8 on equality of all citizens and their equal protection of the law of the Federal Constitution.

Pahang has maintained that its [decision](#) was made based on the fact that matters related to land and forests are under state jurisdiction. However, this is not a valid justification. The issue at hand here is not about jurisdiction.

When positive legal improvements promoted by the federal government are flatly rejected by the states, it implies that the states involved are unwilling to promote public participation, good governance, transparency, the protection of the size of their PRFs and the rights and well-being of the people. This rejection will perpetuate outdated practices that ought to be reformed.

We must not remain stuck in the past, still intent on squabbling about jurisdiction when the federal government has made important commitments internationally to climate change and biodiversity conservation and protection. States must help support the implementation of international commitments which are even more important now than ever, given what we are witnessing in terms of climate change impacts with rising temperatures, massive forest fires affecting all of us and the most recent Nepal glacial lake outburst tragedy.

The federal government must therefore utilise more effective mechanisms to ensure state compliance with national objectives. Among others, it must tighten its criteria for the awarding of funds such as the Ecological Fiscal Transfer (EFT), in order to ensure that states do not take any contrarian actions that can jeopardise our forest conservation efforts. This year alone, the EFT allocation to [Pahang](#) reportedly has been increased by RM25 million. States that do not support national efforts should not be given such grants.

We call upon these four states not to be recalcitrant and reverse course and make the right decisions. Honour the spirit of uniformity of article 76 and the equality principle of article 8 of the Federal Constitution. Do not fear the promotion of public participation and efforts to ensure the stricter protection of the PRFs in your respective states. Ultimately, our action to protect the forest is also an action to protect the people.

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