**MEDIA STATEMENT**
**HUMAN RIGHTS COMMISSION OF MALAYSIA (SUHAKAM)**

**EDITOR, NEWS DESK** **FOR IMMEDIATE RELEASE**

## SUHAKAM CALLS FOR REVIEW OF LAWS AFFECTING GENDER EXPRESSION IN LINE WITH THE FEDERAL CONSTITUTION

**KUALA LUMPUR (24 NOVEMBER 2026)** - The Human Rights Commission of Malaysia (SUHAKAM) is concerned by the charge against a transgender woman in Kelantan under Section 19(1) of the Syariah Criminal Code (I) Enactment 2019. The provision criminalises a man for wearing women's attire or posing or acting like a woman in a public place, or in a private place that is publicly visible or accessible.

SUHAKAM calls for the charge to be withdrawn and for the Kelantan State Government to repeal Section 19 and suspend its enforcement pending its repeal. The prosecution raises fundamental questions about whether a law that penalises a person's gender expression is consistent with the guarantees of equality, liberty, dignity and freedom of expression under the Federal Constitution.

Article 4(1) establishes the Federal Constitution as the supreme law of the Federation. State laws must therefore be consistent with its provisions, including the fundamental liberties in Part II of the Federal Constitution. Article 5(1) protects life and personal liberty; Article 8 guarantees equality before the law and equal protection of the law; and Article 10(1)(a) protects freedom of speech and expression, subject to the limits set out in the Constitution. These guarantees should be interpreted and applied in a way that protects every person's dignity and allows them to live free from discrimination and arbitrary interference.

The Court of Appeal's 2014 decision in Muhamad Juzaili Mohd Khamis & Ors v State Government of Negeri Sembilan & Ors, delivered by a three-member panel led by Justice Dato' Seri Mohd Hishamudin Yunus offers an important constitutional reference point. The Court held that section 66 of a Negeri Sembilan Shariah Criminal Enactment provision criminalising Muslim men for wearing women's attire or posing as women violated constitutional liberties, including personal liberty, equality, freedom of movement and freedom of expression. The decision recognised that laws affecting gender expression must be assessed against the protections of the Federal Constitution. Article 8(2) of the Federal Constitution prohibits gender-based discrimination, while the rights of transgender women to freedom of expression and reproductive health should be protected in line with Malaysia's commitments under CEDAW since 1995.

Whilst the Federal Court later set aside that ruling in 2015, it did so strictly on procedural grounds regarding how the legal challenge was filed, and not because it disagreed with the Court of Appeal rulings on all the issues on human rights. Even so, a subsequent strong Federal Court panel of 9 judges in the case of Alma Nudo Atenza v Public Prosecutor had ruled that the Federal Court judgment in Muhamad Juzaili that set aside the judgment of the Court of Appeal was per incurium and had erred in law in setting aside the judgment of the Court of Appeal. As a result, the Court of Appeal's rulings on fundamental liberties in Muhamad Juzaili remains directly relevant as a persuasive authority on how laws restricting gender expression are to be measured against fundamental liberties under the Federal Constitution.

SUHAKAM wishes to highlight that Section 20 of the Syariah Criminal Code (I) Enactment 2019 similarly criminalises women who wear men's attire or pose or act like men under comparable circumstances. Similar constitutional law concerns arise here. Furthermore, Kelantan is not the only state with legislation that criminalises such conduct. Similar provisions can also be found in other state enactments, including the Pahang Syariah Criminal Offences Enactment 2013.

SUHAKAM calls on the Kelantan State Government and other State Governments to review provisions that criminalise cross-dressing or adopting the appearance or mannerisms of another gender, to ensure that such laws and their enforcement are consistent with the fundamental liberties guaranteed under the Federal Constitution. SUHAKAM further stresses that every accused person must be treated fairly and with dignity throughout legal proceedings, with due regard for their privacy. Media organisations are also urged to use accurate and respectful language, avoid sensational reporting and refrain from unnecessary disclosure of personal details.

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**Human Rights Commission of Malaysia (SUHAKAM)**
**24 November 2026**

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