

WARM WELCOME TO OUR NEW VICE CHANCELLOR/PRESIDENT

With great pleasure the Legal Office takes note of the appointment of a distinguished educationist, YBhg Emeritus Professor Dato' Dr Hassan Said who has been appointed the new Vice Chancellor of UiTM, effective 1 February 2016. He takes over from YBhg Tan Sri Dato' Sri Prof Ir Dr Sahol Hamid Abu Bakar whose term as Vice Chancellor of UiTM ended on 31 December 2015.

Prior to his appointment, Emeritus Professor Dato' Dr Hassan Said was the Vice Chancellor and President of Taylor's University, as well as the former Director-General of the Department of Higher Education, Ministry of Higher Education (January 2005 - April 2008). He holds a Bachelor's Degree in Mathematics from the University of Manchester, UK (1979), Master of Science from Brunel University, UK (1981) and a PhD from Brunel University (1984). He specialises in Computer-Aided Geometric Design.

We, at PPUU warmly welcome our new Vice Chancellor to UiTM. We are confident that in view of his excellent leadership record and academic achievements, YBhg Emeritus Professor Dato' Dr Hassan Said will take UiTM to a higher level, both in the richness of education and the quality of its staff.



*"Allah never changes a condition which
He has conferred upon a people until they
change what is in their own selves"*

(Holy Qur'an, Surah 8:53).

UNIVERSITI TEKNOLOGI MARA ACT 1976 (ACT 173): AN INTRODUCTION

by: Shad Saleem Faruqi*

All public universities are statutory bodies created and regulated by several federal Acts of Parliament. These are:

- Akta Universiti dan Kolej Universiti 1976 (Akta 30 or "AUKU"). This statute applies to all public universities (other than UiTM and UIAM). Private universities have their own Private Higher Educational Institutions Act 1966 [Act 555].
- Statutory Bodies (Discipline & Surcharge) Act 2000 (Act 605). This is the current law on staff discipline in all public universities.
- Universiti Teknologi MARA Act 1976 (Akta 173). This is a special law for UiTM.
- National Council on Higher Education Act 1996 [Act 546].
- Perbadanan Tabung Pendidikan Tinggi Nasional Act 1997 [Act 566]
- University of Malaya Act 1961, No. 40 of 1961

UiTM's law: The establishment of the University, its governing institutions, its principal officers, its legal position, its powers, functions and duties are governed by the following laws:

- Universiti Teknologi MARA Act 1976 (Akta 173 – as amended in 1986, 1996, and 1999. This is our "enabling" or "parent law" that created us and conferred on us powers, functions and duties.
- Statutory Bodies (Discipline & Surcharge) Act 2000 (Act 605). This is the law on staff discipline.
- Educational Institutions (Discipline) Act 1976 (Act 174). This is the law on student discipline.

General laws: Besides the above Acts, other general laws of Malaysia like the Audit Act 1957, Statutory Bodies (Accounts and Annual Reports) Act 1980, Employees Provident Fund Act 1991, Employees Social Security Act 1969, Employment Act 1955, Trade Unions Act 1959, Industrial Relations Act 1967, Government Contracts Act 1949, Public Authorities Protection Act 1948, Anti-Corruption Act 1997, Penal Code and the Official Secrets Act 1972 have an indirect bearing on our powers, procedures, duties and immunities.

The Non-Legal Fountains of Authority and Responsibility
Administrative Directives: The formal provisions of the law are supplemented by periodic directives from the Government. It is

noteworthy, however, that directives, circulars, instructions and schemes framed by MOF and JPA are not automatically binding on universities because we are separate statutory bodies and are not part of the "public services of the Federation" as defined by Article 132(1) of the Federal Constitution. Only such directives from the JPA & MOF are applicable as are adopted by our Lembaga Pengarah. However, due to the bureaucratic traditions of the country, the LPU tends to adopt most Government Circulars laid before it.

General Orders not applicable: It is also noteworthy that on staff matters the General Orders of the public services are not applicable to universities. University employees are not "government servants" and are not part of the public services of the Federation as defined by Article 132 of the Federal Constitution. The General Orders of the federal government do not apply to us unless adopted by our Lembaga Pengarah

UiTM'S Act 173

This Act has 47 sections and two Schedules. The Act has been amended thrice – in 1986, 1996 and 1999. Another amendment is ready for tabling.

- The 1986 amendment dealt with branch campuses and Deputy Directors (now known as Deputy Vice-Chancellors).
- The 1996 amendment conferred on UiTM all the powers of a university except the description of a university.
- The 1999 amendment elevated UiTM's from an institute to that of a full-fledged university.

Act 173's main provisions are as follows:

UiTM has a Special Constitutional Position

This is secured in two ways:

First, Section 1A of Act 173 states that the university is established pursuant to Article 153 of the Federal Constitution. (Article 153 is about the "special position of the 'Malays' and the 'Natives of Sabah & Sarawak'"). Act 173 does not explicitly reserve UiTM for Bumiputeras but that was the clear intention of the amendment in 1999.

Second, Section 3A of Act 173 makes AUKU inapplicable to UiTM. The reason for making AUKU inapplicable to us is because AUKU has a clause to the effect that subject to Article 153, there

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shall be no discrimination in the university on grounds of race or religion. AUKU clashes with UiTM's Bumiputera agenda.

Who is a Bumiputera?

The legal Office is often approached to give an opinion on whether an applicant is a "Bumiputera" for purposes of admission. The legal answer is that the term Bumiputera is a political, not a legal term. The Federal and State Constitutions talk of "Malays" and the "Natives of Sabah and Sarawak".

Malay: A "Malay" is defined in Article 160(2) to refer to a person who –

- i. professes Islam
- ii. habitually speaks Malay
- iii. conforms to Malay custom, and
- iv. was born in Malaya or Singapore before Aug. 31, 1957, or born of parents or grandparents one of whom was born or is domiciled in Malaya or Singapore on Merdeka day.

The definition is unique in that ethnicity is not emphasised. Religion, language, Malay custom and roots in Tanah Melayu/Singapore are critical factors. People of mixed parentage can qualify as Malays provided all four requirements are met. Article 160(2) does not show gender bias but many public servants disregard the mother's race and require descent from a male. This is unconstitutional and may embarrass the university in a court.

Natives of Sabah: Sabah natives are listed out in Article 161A(6)(a) and the Sabah Interpretation (Definition of Native) Ordinance 1952. Thirty-nine ethnic communities are included. A recurring problem is that the law is gender biased. The domicile of the father is regarded as relevant but not of the mother's.

Natives of Sarawak: Sarawak natives (consisting of 28 groups) are listed out in Article 161A(7). A recurring problem is that some applicants from Sarawak have one native and one non-native parent. Under Article 161A(6)(a) they are ineligible to be called 'natives of Sarawak'. This raises the ire of many Sarawak politicians.

In recent months, questions have been raised in Parliament about whether UiTM can regard Siamese students as Bumiputeras; and whether more places can be opened up to orang asli Muslim foreigners to provide ethnic diversity in our campuses.

A Separate Corporate Personality

Section 3 creates the university as a separate statutory body with a corporate status of its own. It has all the powers to own property, enter into contracts, transact business, sue and be sued in its own name, etc. The implication of Section 3 is that UiTM is a separate legal persona distinct from the Federal Government.

Powers of the University

Section 4(1), subsections (a) to (h) confer on UiTM specific powers in a whole range of fields including education, training, finance, administration, welfare and discipline. These powers are in theory independent of the Minister. Among the powers are:

- academic powers to provide courses, confer degrees, confer honours or awards, recognize other degrees, diplomas etc, institute chairs
- research and innovation; patenting and franchising
- human relations matters including power to appoint and promote staff, determine conditions of service
- financial powers including demanding and receiving of fees
- Welfare of staff and students including power to have pension and welfare schemes, granting of loans to staff and students, grant of fellowships, scholarships, bursaries, medals, prizes
- development powers including setting up and managing of libraries, labs, residence of staff and students
- power to enter into contracts

Section 10-12 give general powers to transact business and hire agents.

Section 28 gives power to receive gifts.

In strict law, our LPU is allowed to exercise the above powers under Section 4(1) 10-12 and 28 independently. In actual practice most of the above powers have been extra-legally locked up by the KPT, JPA, and MOF through extra-legal Circulars or practices.

In law, a Pekeliling cannot override an Act of Parliament. In reality, Pekelilings override laws e.g. our right to own land is in practice overridden by the Pekeliling that requires us to transfer land to the Federal Land Commissioner if government aid is to be obtained to develop the land! Dasar Kementerian has become more important than the clear provisions of law.

Commercial Powers

Section 4A gives us "additional commercial powers", (generally referred to as "corporate powers") to:

- to enter into business,
- set up companies under the Companies Act
- set up corporations under our own Act 173
- borrow money, securing borrowings
- make investments, hold shares, stocks, debentures and other investments, and
- acquire, hold, rent, mortgage, purchase, take on lease, hire or acquire real and personal estate

The First Schedule gives powers to the university to make rules in respect of a corporation set up under Section 4(a)(1)(c).

These powers are subject to the prior approval of the Ministry of Finance [Section 4A91)].

A minor issue that comes up now and then is that in some cases there is a clash between Section 4 (our independent powers) and Section 4A (our powers with the permission of MOF). For example, the power to take lease is covered by both Section 3(c) and Section 4(A)(1).

Joint Courses with other universities

Twinning courses plus franchise courses are allowed under Section 9 with the permission of the Minister.

Institutions of the University: The Board of Directors

Section 13 provides for the composition of 9-member Board. Except for the VC, the other eight members are outsiders. (PM has instructed the Board to have 14 members).

- Section 14 provides for the powers and functions of the Board.
- Section 15 permits the Board to delegate its powers.
- Section 15 permits the Board to appoint committees & subcommittees of its members.

Any outsiders who are "turut hadir" will have no right to vote. This needs to be amended

- Section 35 permits the Board to make subsidiary legislation which must be gazette in Warta Kerajaan. That will require us to go through the Attorney-General's Chambers. But there will be no need to go through Parliament.

Institutions of the University: The Senate

Section 16A constitutes a Senate with the VC as the Chairman and other statutory members. Unlike at other universities there are no elected members.

At UiTM the Senate is not the highest academic body. It merely has the power to make recommendations to the Board and has a right to be consulted by the Board on academic matters. It can appoint committees and subcommittees of its members. It can co-opt members but co-opted members have no right to vote.

Branch Campuses

These are provided for in Section 7. UiTM has a branch Campus in each State of the Federation. A Branch in turn has one or more campuses affiliated to it. Selangor for example, has eight campuses in the State of Selangor. The existing practice is to have three different nomenclatures for our campuses:

- UNIVERSITI TEKNOLOGI MARA (to refer to the University)
- UNIVERSITI TEKNOLOGI MARA (Kelantan) (or any other State) to refer to the Branch Campus in Kelantan.
- UNIVERSITI TEKNOLOGI MARA (Kelantan)

Kampus Machang (to refer to an affiliate campus)

Rector: Every Branch Campus is headed by a Rector appointed by the Minister. The Rector must act under the direction and control of the Vice-Chancellor.

New thinking about Branch Campuses

In the last two years, a number of proposals have been made relating to our branch campuses:

- Proposal that all Branch campuses should be converted to full-fledged Universities carrying the name of UNIVERSITI TEKNOLOGI MARA KELANTAN etc. Thirteen Malay universities should be established on the foundation of UiTM.

This proposal has significant legal and political implications.

- Proposal that Branch campuses should be given a large measure of administrative, academic, financial and commercial autonomy. This proposal is partially accepted and can be implemented internally without any significant legal change.
- Proposal that for purposes of Myra and Times Highree Education Index evaluations, UiTM should farm out "low-level teaching courses" i.e. Diploma courses to the Branch campuses, to its companies, corporations and their subsidiaries and to affiliate colleges. Post-graduate, graduate and professional courses and most of the research and innovation should be at Shah Alam or in Selangor. Data for Myra should be culled from Selangor. This proposal while utilitarian will retard the development of campuses and their staff.

Schools, Centres, Faculties etc.

These are approved by the Board under Section 8. A School or Centre is headed by a person appointed by the Vice-Chancellor. The Head is responsible to the Vice-Chancellor. The Head need not be from the Faculty or Centre.

Alumni Associations

Subject to the approval of the Board, not less than 30 alumni can establish an association: Section 16B.

Officers and Staff of the University : Chancellor, Pro-Chancellors

Under sections 19A and 19B, the YDPA is the Chancellor. Pro-Chancellors are appointed by the Chancellor on the advice of the Minister. Under our Act, only the Chancellor, pro-Chancellor and the Vice Chancellor can confer degrees at a Convocation. Given our large number of graduates and the move to hold convocations at Branch Campuses, there is the need to increase the number of people who can make the awards at convocations. Perhaps the number of Pro-Chancellors should be increased.

The Minister

Act 173 permits the Minister to oversee the university on its broad policy and programmes.

- The Board and the VC are appointed and removed by the Minister (Sections 13 and 20). They are responsible to the Minister (Section 29).
- Returns, reports, accounts and information must be submitted to the Minister (Section 30).
- Section 29 gives power to the Minister to issue directions not inconsistent with this Act.
- Section 29A permits the Minister to delegate his powers to the Board.

Vice Chancellor

The VC is appointed or removed by the Minister in his discretion (Section 20(1) and (2)). His powers and functions as VC are prescribed in Section 20(4), (5), (6).

- The VC is the chief executive, administrative and academic

officer of the University. Section 20(4)

- He exercises general supervision over the arrangements for education, instruction, training, finance, administration, welfare and discipline in the University.
- He heads the Senate.
- He is the student discipline officer under Act 174.
- He is the staff discipline officer under Act 605
- TNCs, Rectors, the Registrar, the Bursar, Deans and Heads are answerable to him.
- It is his duty to ensure compliance with all UiTM laws: Section 20(5)

Deputy Vice-Chancellors

TNCs are appointed by the Minister after consultation with the VC. They may or may not belong to the university (Section 20(7) & (8)).

Rectors

Every Branch Campus is headed by a Rector appointed by the Minister. The Rector must act under the direction and control of the Vice-Chancellor.

The Registrar

The Registrar is appointed by the LPU (Section 21). He/she is under the control and direction of the VC.

At UiTM, but not in other public universities, the Registrar's post is a permanent, tenured post and not a short term post.

The Bursar

The Bursar is appointed by the LPU (Section 22). He/she is under the control and direction of the VC. As with the Registrar, the UiTM Bursar enjoys a permanent post.

Deans and Heads

A School or Centre is headed by a person appointed by the Vice-Chancellor. The Head is responsible to the Vice-Chancellor. The Head need not be from the Faculty or centre.

Other Principal Officers

These must be appointed by the Board (Section 22A).

Finances

In any organisation, financial control is, or ought to be, of critical importance.

- Section 24 establishes the UiTM Fund to be controlled by the Board.
- Section 25 establishes the UiTM Reserve Fund to be controlled by the Board.
- Section 26 requires that annual estimates must be laid before the LPU by April and from there to the Minister.
- Supplementary estimates may be applied for (Section 26).
- Auditor General audits UiTM accounts (Section 27(2)).

Liabilities, Immunities, etc.

The University, the Board, the VC and the staff are eligible for special protection under the Public Authorities Protection Act (Section 31).

A member of the Board, the VC, DVC, the Senate and a staff of the University cannot be sued in a personal capacity for (i) acts done in good faith (ii) in the discharge of powers or duties and (iii) in a reasonable belief that the act was necessary for the purpose intended (Section 34A).

For purposes of the Penal Code, the Board, VC and all members of the staff are to be regarded as public servants (Section 32). There is an obligation of secrecy (Section 33). The Second Schedule provides disqualification of members of the Board, and conflict of interest etc.

Miscellaneous

Section 2 is the interpretation clause and provides 24 authoritative definitions.

ACT 173 & AUKU

AUKU is not applicable to UiTM which has its own Act. The reason for the exclusion of UiTM from AUKU is that the First Schedule of AUKU in Section 5 prohibits distinction of race and creed. UiTM's "Malay agenda" is not compatible with AUKU.

However the similarities between AUKU and Act 173 on the powers of the University are very substantial. The main differences are as follows:

AUKU is more detailed

It has 42 sections in the main Act; 63 sections in the First Schedule, and 9 sections in the Second Schedule, totaling about 114 sections. UiTM'S Principal Act (Act 173) has 57 sections; 6 sections in the First Schedule; and 10 sections in the Second Schedule – in total 73 sections.

AUKU has been amended in 1971, 1975, 1983, 1996, 2009 and 2012 to democratise and humanise it and to confer some autonomy on universities. The UiTM Act was last amended in 1999.

Constitution, Rules and Regulations

In addition to the parent law, AUKU permits the "AUKU universities" to have other types of internal laws to be called Constitutions, Rules & Regulations for their institutions, officers, Committees and procedures.

UiTM does not have a Constitution, Rules & Regulations though we can if we wished: Act 173 in s.35 permits the Board to make rules. We have not done so yet. UiTM prefers internal rules like Peraturan Akademik that are easily amendable.

Exemption from the Act

AUKU permits the YDPA to exempt a University from any provisions of AUKU. Many universities like USM have drafted their Constitution in such a way as to depart from provisions of AUKU. UiTM has no power to depart from Act 173.

Appointment of VC and other Senior Officers

Under Section 4A of AUKU there is a Committee to advise the Minister on top university appointments. UiTM has no such provision and the Minister's discretion is very wide. The VC's tenure, terms and removal are at the Minister's pleasure (Section 20 of Act 173).

VC's Term of Service

At USM the VC must be appointed for a minimum of 3 years. At UiTM there is no fixed term and the Minister can revoke the appointment any time (Section 20(2)).

Registrar & Bursar

In AUKU universities, these senior officers are to be appointed for a term of 3 years, renewable by the Board. UiTM has no such time limitation. Registrar, Bursar and other principal officers are appointed by the Board on such terms and conditions as the Board determines (Section 21-22A).

Senate Members on the Board

In all AUKU universities, one Professor from the Senate sits on the Board. At USM 2 Professors elected by the Senate sit on the Board. UiTM does not have Senate representation on the LPU.

Senate

Under AUKU the Senate is very powerful. It is not subordinate to the Board or the VC on academic matters and is the final authority on academic decisions. It has 20 Senators elected by senior academicians. At UiTM the Senate is subordinate to the LPU even on academic matters.

Committees and Boards

AUKU universities have the Studies Committee, Selection Committee, Employee Welfare Committee, Student Welfare Committee, Management Committee of the Campus and Management Committee of the Faculty. At UiTM such committees exist administratively.

Secondment of Staff: Under AUKU, Section 4B, Minister has power to transfer or second a staff to another university. UiTM has no such provision.

Financial Autonomy

At USM, all self-generated income is exempt from external control. Only grants in aid from parliament are subject to MOF's traditional control. Under Section 4A, UiTM is subject to strict control by MOF on financial matters though our law in Sections 3 & 4 gives us autonomy in other areas.

Participatory Processes

- In AUKU universities one academician (two at USM) sit on the Board.
- 20 Senators are elected by the other academicians.
- Staff representatives sit on the Staff Welfare Committee
- Two students elected by the SRC sit on the Student Welfare Committee of the Board
- One Student may sit on the Student Disciplinary Board (USM)
- Management Committee of each Campus exists

- Management Committees of each faculty exists
- Academic Committee of each faculty exists

UiTM has no such democratic provisions.

Student Rights

- Student welfare and student discipline are separated and put in different hands (USM)
- Along with the SRC, there is a Student Parliament at USM
- Student Complaints Committee
- Post-Graduate students are enfranchised (USM)

UiTM has not yet adopted these reforms though our new Bill is ready.

Student Complaints

In AUKU universities, there is a special committee to look into student complaints. This exists at UiTM administratively.

Foreign Campuses

Under AUKU foreign campuses are allowed. UiTM's power in this area was taken away in 1999.

Accountability

Whistle blower's clause exists at USM. Likewise an Ombudsman and an Internal Auditor exist at USM.

Only the last exists at UiTM but not under law but as an administrative measure.

Many of the above provisions need to be incorporated into UiTM's Act 173. However, whether these changes will come through an Act of Parliament or some of them will be adopted administratively remains to be seen.

JUSTICE

“O ye who believe! Be ye staunch in justice, witnesses for Allah, even though it be against yourselves or (your) parents or (your) kindred, whether (the case be of) a rich man or a poor man, for Allah is nearer unto both (than ye are). So follow not passion lest ye lapse (from truth) and if ye lapse or fall away, then lo! Allah is ever informed of what ye do”
(Holy Qur'an, Surah 4:135).

ABHORENCE OF MURDER & TERRORISM
 IN THE HOLY QUR'AN

“If one kills another except as a punishment for murder or if he does so for spreading disorder in the land it shall be as if he has killed all mankind. On the other hand, if one saves the life of a single person it shall be as if he has saved the lives of all mankind”
(Holy Qur'an, Surah 5:32).