

PM on why the need to remove judicial review

KUALA LUMPUR, Fri. — The amendments seeking to remove judicial review under the Internal Security Act are to ensure a clear separation of powers between the executive and the judiciary, Datuk Seri Dr Mahathir Mohamad said today.

With the amendments, the Prime Minister said, detention orders by the Home Minister could no longer be questioned or be disputed in the courts.

However, Dr Mahathir said there was an exception

on matters of procedure where the provisions of the law were not followed.

"The amendments are to clearly define the role and powers of the Home Minister and those of a judge," Dr Mahathir said when tabling the Bill to amend the Internal Security Act 1960 in the Dewan Rakyat.

The amendments seek to remove judicial review of all actions and decisions by the Yang di-Pertuan Agong or the Home Minister in the exercise of their discretionary power under the

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ISA. However, an exception is provided in matters of procedure regarding their action or decision as stipulated by the Act.

In the amendments, the definition of "judicial review" includes proceedings instituted by way of:

● AN application for any of the prerogative orders of *mandamus*, prohibition and *certiorari*;

● AN application for a declaration or an injunction;

● A writ of *habeas corpus*; and

● ANY other suit, action or other legal proceedings relating to or arising out of any act done or decision made by the Yang di-Pertuan Agong or the Home Minister in accordance with the Act/Ordinance.

Dr Mahathir said the amendments were necessary because of late the decision of the Minister to issue detention orders had often been challenged and questioned in court.

"If the courts are allowed to substitute the government's decision with its

own decision, it would be as if the responsibility of ensuring national security was no longer in the hands of the government but in the hands of the courts, which are not an expert in matters of security," he added.

Dr Mahathir said the "interventionist" role of judicial decisions and trends of foreign courts should not be copied because such action was against the concept of separation of powers between the executive and the judiciary that was

upheld in Malaysia.

"If the courts can reverse the executive's decision, it would make it impossible for the executive to make any decision for fear that the courts would intervene. The ruling party would then be immobilised because it would be waiting for the decisions of the court and the result of appeals to higher courts."

Dr Mahathir also said that in most cases it was difficult for the govern-

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ment to defend its detention orders in court because the secrets relating to national security, which could not be revealed in court.

The Government had always been responsible on matters of national peace and security, he said, adding that using the "subjective test," the Government had been effective in dealing with those who posed a threat to the country.

"It is vital that this position is maintained through legislation. This is because it is the Government which is in the best position to consider and study whatever information in its possession to arrive at decisions on whatever preventive action that may be needed," he added.

Malaysians were free to express their views and opinions, Dr Mahathir said, adding that democracy gave all kinds of freedom to individuals and groups to carry out their activities.

It was unfortunate, he

added, that this freedom was often abused by certain individuals and groups for their own interests.

Dr Mahathir said it was difficult to ensure continued peace as there were many threats. Realising this, he added, the Government always gave priority to protecting and maintaining peace and security.

The ISA was structured to cover not only the subversive threat of the communists but also all other forms of threat to national security, he said.

"The Government cannot compromise its responsibilities as security is the basis for the country's continued growth and development."

He also said the Government had often been accused of abusing its powers under the ISA, adding that there had been more frequent criticism of the ISA being no longer relevant.

He said such criticism came easily from those who did not have to bear the responsibility of ensuring the security of a multi-racial country.