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Court-Anwar (Judge)

ANWAR'S BID TO DISQUALIFY JUDGE DISMISSED

KUALA LUMPUR, Oct 5 (Bernama) -- Datuk Seri Anwar Ibrahim, who has accused Justice Datuk Arifin Jaka of having once been a business associate of the prime minister's son, today failed in his bid to disqualify the judge from further hearing his sodomy case.

Dismissing the application, Arifin said he had already resigned as a director of Dataprep Holdings Bhd and relinquished his shares in the company before being appointed as a judge seven years ago, so the question of bias did not arise.

"Just because I had associated with Mirzan (Datuk Seri Dr Mahathir Mohamad's son), can it be said in the minds of reasonable person there is a likelihood or suspicions of bias on my part in hearing this case?," he said.

Anwar's counsel Karpal Singh had applied for Arifin to disqualify himself from further hearing the case on the ground that the judge might appear to be biased because of his connection with Mirzan Mahathir.

Karpal had also furnished a list of shareholders in Dataprep taken from a prospectus which showed Arifin as the owner of 87,941 shares and Mirzan holding 381,597 shares, making him the major shareholder.

Anwar, 52, and his adopted brother, Sukma Darmawan Sasmitaat Madja, 38, are charged with sodomising Azizan Abu Bakar, 39, at Sukma's apartment in Tivoli Villa in Bangsar here, at 7.45pm one night between January and March 1993.

Sukma, who is a businessman, also faces another charge of abetting Anwar to sodomise Azizan, the former driver of Anwar's wife at the same time and place.

Arifin said Karpal had contended that he should have disclosed the matter before the commencement of the case or when it was first assigned to him.

"I am of the view it is not obligatory on my part to make such disclosure as I had no more interest in the company. Additionally, the company is not on trial, nor is Mirzan Mahathir," he said.

Karpal also contended that it was significant that Mirzan's father as the prime minister, advised the Yang di-Pertuan Agong on the appointment of judges.

Arifin said the fact that he was appointed by the king on the advice of the prime minister would not alter his position as a judge trying the sodomy case involving Anwar and Sukma.

Arifin said Karpal's contention that Dr Mahathir wanted to get rid of Anwar, who was the deputy prime minister, had no connection with this case.

"Anwar's sacking by the prime minister as a member of the Cabinet and subsequently sacking as a member of Umno are not dependent on this case.

"The prime minister was exercising his prerogative as a prime minister to remove any member of his Cabinet and as regard to the sacking of Anwar from Umno, it was a decision of a party through its Supreme Council.

"On the facts and circumstances of this case, it is my considered view, after hearing submissions from counsel for all parties, that no reasonable person would harbour the perception that there is a likelihood or suspicions of bias, and that Anwar or for that matter Sukma, shall not have a fair trial," he said.

Earlier, when hearing resumed today, Attorney-General Tan Sri Mohtar Abdullah disclosed that Arifin was a former PAS member and if the

prosecution wanted, it could apply to disqualify him on the same ground that was raised by the defence.

At this juncture, Arifin said: "What actually happen is that I did not join PAS earlier because it was part of Barisan Nasional."

The judge said he contested as the PAS candidate against an Umno candidate in Kelantan in the 1978 general election.

"Yang Arif was a PAS candidate, so Yang Arif must be a PAS member and the prosecution could raise an objection and apply to disqualify Yang Arif from hearing this case," said Mohtar.

However, he said the prosecution did not doubt Arifin's fairness in the trial because "there is no connection between this case and the innocent relationship of the judge and PAS in the past".

Mohtar said despite Arifin's association with the opposition party, he was made a judge and this, he said, was the clearest example of an appointment not being confined to the people who are perceived to be in a different camp.

In his reply, Karpal repeated his call for the judge to disqualify himself from further hearing the case in order to avoid the suspicions of the public that he might be biased in his decision.

He also questioned why Arifin, who normally handled civil cases, was appointed to hear this criminal trial instead of any of the senior judges who usually handled criminal cases.

Arifin responded that it was up to Chief Judge of Malaya Datuk Wan Adnan Wan Ismail to use his discretion in the matter.

"You should ask the CJ and not me," he added

-- BERNAMA

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