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Yong-Future (News Focus)

SECTION 36 OF ELECTION OFFENCES ACT IS TALK OF THE TOWN IN SABAH

By: Newmond Tibin

KOTA KINABALU, July 10 (Bernama) -- Section 36 of the Election Offences Act has become the talk of the town in Sabah particularly among members of the legal fraternity in light of the recent developments pertaining to the Likas state constituency.

Section 36 of the Act states that the decision of the Election Court Judge is final and not appealable and this could prove fatal to those found committing any offence under the Act.

Section 36 has now taken centre stage to the political survival of former Likas assemblyman Datuk Yong Teck Lee.

Election Court Judge Datuk Muhammad Kamil Awang had earlier ruled that Yong had committed corrupt practice under the Act and declared that the result of the 1999 state election for the Likas constituency was null and void, paving the way for a by-election.

The landmark decision has put Yong in a precarious position -- is he eligible to re-contest in the coming Likas by-election or even if he is eligible is his position tenable after the election.

Although Yong received a respite when High Court judge Datuk Richard Malanjum granted his application for stay of execution of the judgment of the Election Court there is an appeal against the order.

Initially, the decision seemed to have cleared the hurdle for Yong to re-contest for the Likas by-election scheduled for July 21, pending the disposal of his appeal in the Court of Appeal.

Alex Decena, counsel for Yong said that he was served a notice today to attend a hearing of an appeal by Datuk Harris Salleh against the High Court's decision to grant the stay order.

The Court of Appeal will sit here tomorrow, the eve of nomination, to consider the appeal.

All eyes will now be focused on the Court of Appeal and its ruling as the outcome will determine Yong's eligibility to contest on a BN ticket for the hot seat.

The whole scenario has generated keen interest among laymen and lawyers alike in Sabah and are eagerly waiting to see the ultimate end to Yong's predicament.

"In my own opinion, there is still a leeway to it through the moulding of relief, notwithstanding the provision of Section 36 which bars appeal," lawyer Salman Nurillah said.

Salman opined that Para 1 of the First Schedule of the Judicature Act 1964 enables the court "to mould relief" in specific circumstances.

However, according to another lawyer Raymond Szetu the provision of Section 36 was applicable unless amended by Parliament.

"But of course, the court has the final say on the matter," Szetu said.

Minister in the Prime Minister's Department Datuk Dr Rais Yatim's statement recently lent credence to Szetu's views.

Dr Rais had said there was a need to amend the Election Offences Act to make it in line with the ordinary court process whereby appeals were possible.

Prime Minister Datuk Seri Dr Mahathir Mohamad had said earlier that Yong could still contest "but whether the move was wise or not" was another matter.

At this juncture, it is hard to say whether Yong will still make the cut but is the BN's first choice candidate.

Yong, who first represented the Likas constituency in 1985 was re-elected to the seat with a majority of 4,962 votes in the last general election beating Parti Bersatu Sabah's Dr Chong Eng Leong, Harris of Bersekutu Party and three others -- Zulkifli Lajah (Setia), Yahya Kassim (PAS) and Saudin Kadis (Independent).

Based on the latest certified electoral roll, there are 26,196 voters in the Likas constituency.

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