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Court-Yong

JUDGMENT RESERVED IN YONG'S APPEAL AGAINST ELECTION COURT DECISION

KOTA KINABALU, Feb 6 (Bernama) -- The Court of Appeal today reserved its judgment on former Sabah Chief Minister Datuk Yong Teck Lee's appeal against an election judge's decision that he had committed corrupt practices during the 1999 state election.

Justice Datuk Abdul Hamid Mohamad, who sat with Justices Saari Yusof and Datuk K.C.Vohrah at the hearing here, said they needed more time to peruse the submissions by both sides in view of the complexity of the case.

The submissions were made by queen's counsel Gavan Griffith, representing Yong, and Ansari Abdullah, the lead counsel for first respondent Datuk Harris Salleh.

"Both learned counsel have raised important issues for the first time, and we want deliberate it further before coming up with a written judgment at a later date. It's better to be late than wrong," said Justice Hamid.

In his submission, Ansari said it was never the intention of Parliament to afford unfettered or unlimited jurisdiction to the Court of Appeal to hear appeals as provided for under Article 121 (1B) of the Federal Constitution.

Chong said he would meet them again, either separately or together, after he had studied their written reports.

Dr Jeffrey and Kurup, who were elected presidents of PBRs on Jan 29 and 30, respectively, and five PBRs assemblymen, met Chong yesterday as part of efforts to solve the party's leadership crisis.

Asked what was discussed in the meetings, Chong said: "I've impressed upon them that it is incumbent upon them as leaders to sit down, talk it out and sort out the problems themselves, if possible."

Expressing the hope that the dispute could be resolved before Prime Minister Datuk Seri Dr Mahathir Mohamad returns from his working holiday abroad next month, Chong said: "If they cannot settle this among themselves and if I cannot help to settle it, we'll have to leave it to the normal legal process if all sides are going to be stubborn."

He also said the ongoing dispute would not affect the BN, only that it had to "live temporarily" to the fact that one of its component parties had two presidents.

He said that in holding that the Court of Appeal had such a wide jurisdiction, it would mean opening a floodgate of appeals from anyone dissatisfied with any decision of any High Court irrespective of the subject matter or cause.

"This will create uncertainty in the country and they can even unseat the Prime Minister through this process. Surely our legislature would not have intended such an absurd situation," he said.

Ansari further contended that the absence of the word "all or any" in the wordings of Article 121 (1B) which spelled out the Court of Appeal's jurisdiction pertaining to the issue of appeals rendered it to be a fettered jurisdiction rather than an absolute one.

On the issue of right of appeal from the decision of the an election judge, Ansari said the provision in the Section 36 of the Election Offences Act 1954 clearly stated that the decision of the election judge was final and not appealable.

Citing the Privy Council and Malaysian Federal court authorities, he said all their decisions pointed to the conclusion that that courts had no

jurisdiction to entertain any appeal against the decision of an election judge.

"The law has been there for more than 100 years and as such it is authoritative," he said.

Ansari said Section 36 did not contradict with Article 121 (IB) as the latter afforded no absolute jurisdiction to the Court of Appeal, particularly in respect of an election judge decision.

On June 8, Election Court judge Datuk Muhammad Kamil Awang ruled that Yong had committed corrupt practices, an offence under Section 11 (c) and (d) and Section 32 of the Election Offences Act, during the 1999 state election for the Likas constituency.

The Election Court ruling followed the application by former Parti Bersekutu president Datuk Harris Salleh for a court order to nullify the election result.

In his petition, Harris alleged that during the 1999 election, Yong had used unfair practices by putting up four billboards in the vicinity of the Likas polling station which constituted offences under the Election Offences Act.

Muhammad then ruled that the result of the 1999 state election for the Likas constituency was null and void, paving the way for a by-election.

In the by-election held on July 21, 2000, Yong retained the seat for Barisan Nasional with a majority of 9,758 votes.

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