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Stage plays, the court and law

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FOR such a politically-agile party, it is puzzling that Pas is talking itself into a corner over the Sauk stand-off issue.

There are just too many factual holes and legal pitfalls in its claim that the arms heist and murders in Perak two years ago were stage-managed by the Government.

Especially since the High Court had already convicted the Al-Ma'unah members of treason, after a lengthy trial which was widely considered to be fair.

There was not one complaint about the way judge Datuk Zulkefli Ahmad Makinudin had run the trial. Not even from the defence lawyers.

And lawyers are not the type to keep silent if they didn't like the way the trial was progressing. Just look at outraged complaints from defence counsel in other recent high-profiled cases.

Lawyer Karpal Singh, who had defended the Al-Ma'unah chief, thinks that the judge had been very fair in his conduct.

"He was possibly the best judge which we could have got under the circumstances," he says.

Yet, Pas is clinging to its sandiwara theory. And with each statement, it comes closer to crossing the boundary of legitimate criticism.

Minister in the Prime Minister's Department Datuk Seri Dr Rais Yatim had already warned Pas that it is on the brink of contempt of court or sedition.

This is not because it had criticised the judgment. Pas is, in fact, in the good company of Umno when it comes to commenting on the judiciary.

Over the last one year, top Umno leaders had quite a lot to say about judicial decisions as they sensed an increasingly confident Bench emerging.

Judicial behaviour and court judgments are, of course, not above criticism.

It is perfectly acceptable, and at times, vital for the public to scrutinise, debate and even censure the judiciary.

Senior lawyer Datuk Muhammad Shafee Abdullah says if for example, the judiciary is perceived to be lacking in integrity or embroiled in corruption, it becomes the duty of all to speak out.

"We can't tolerate such things," says Shafee, a lawyer who has remained pretty much independent-minded despite his close ties with Umno.

Tan Sri Zaki Tun Azmi, a senior lawyer, says it is well-accepted that courts and judgments can be criticised.

"They are criticised all the time, and it's perfectly proper as long as it is done in a manner that does not amount to contempt of court.

"Judges should not live in an ivory tower, they have to be open to the realities of life, and to criticism," says Zaki who is widely regarded as being open-minded.

Indeed, this was recognised by Chief Justice Tan Sri Mohamed Dzaiddin Abdullah who had said judges should not fear criticism which was constructive and without malice.

Rais himself had been quite critical, with happy results. Thanks to far-sighted changes, the judiciary has now regained some of its former lustre.

What's important is the intention behind the criticism, says Shafee.

It should not be mischievously aimed at undermining the court's integrity for political mileage or personal gain.

And as Zaki points out, there must be strong basis to the criticism.

"You must be able to justify what you say," he says.

There is actually quite a lot of room for criticism; the judiciary has often shown itself to be pretty hardy and not overly sensitive.

It takes its example from the British judiciary.

Zaki says there are English cases which accept even outspoken comments, as long as they are without malice and reasonable in their conclusion that certain judicial conduct was contrary to law or public good.

In fact, Shafee says they are even okay if they are mistakenly based on wrong facts, again as long as they are with the bona fide intention of making a constructive criticism.

The Malaysian courts have generally been quite receptive to criticism.

In a case years ago, the then High Court judge Tan Sri Harun Hashim (later a Supreme Court judge) had accepted Prime Minister Datuk Seri Dr Mahathir Mohamad's statement that judges sometimes interpreted laws in a way that was contradictory to parliamentary intentions.

The judge disagreed with Dr Mahathir but dismissed the Opposition's attempt to cite him for contempt as he felt that it was within the bounds of reason. He memorably described it as "Mahathir's Dilemma" with the judiciary.

It is on this score that some differentiate the Government's severe criticism from Pas' sandiwara theory which carries other connotations.

In the last one year, two judgments in particular had got the Government extremely riled up.

They were the Likas election petition where the judge had included side issues in his judgment; and High Court judgment which had called for a review of the Internal Security Act.

The Government had thought the judges were over-stepping their limits. It also obviously did not agree with the decisions but notably, it did not reject the judgments.

Umno Kelantan legal adviser and Bar Council member Mohd Apandi Ali says despite all the annoyance, there was no attack on the judiciary and the comments were within reasonable bounds.

He also points out that the Government refrained from comment on the Zainur Zakaria contempt judgment which had hit out at the conduct of the Attorney-General's Chambers.

It had also not commented on a recent case where DAP lawyer Karpal Singh's detention under the Internal Security Act in 1987 was declared unconstitutional.

But Pas' refusal to relinquish its sandiwara claim, say the lawyers, is altogether a different kettle of fish.

Its supporters insist that there is nothing wrong.

Pas Kelantan's legal adviser and State Youth chief Takiyuddin Hassan says the party is not rejecting the court decision, but it does not accept the scenario as painted by the Government about the Sauk stand-off.

"Politicians read between the lines," says Takiyuddin, a lawyer and State Exco member.

He thinks that there are still unanswered questions over the apparent easy trespass and robbery of the army camp. And by raising these queries, Pas is not questioning the judgment on the charge of treason.

Frankly, it's quite hard to see the fine line that Pas is drawing.

It's manifestly obvious that the Al-Maunah cult members had stolen arms, killed two hostages and tried to start a small revolution.

In fact, most of the accused had admitted it in court but defended themselves on other grounds. The claim of sandiwara was never raised.

Pas is treading on dangerous ground.

"What is the sandiwara? Was it that the incident was staged, or the

evidence was fabricated or hyped up?

"Do they mean that the judge was an actor in the sandiwara or that he was also conned?" asks Shafee.

Are they doubting the integrity of the court and accusing the judge of intellectual dishonesty?

Zaki says the sandiwara claim implies that the court was biased.

"It suggests that the decision was influenced by the Government," he says.

And to suggest this without any strong basis is really asking for trouble.

"They must have mischievous tendencies," says Shafee.

Taking a wider picture, Pas' obstinacy isn't good news for political acceptance of judicial independence and the rule of law, especially at a time when the judiciary is beginning to flourish.

To be fair, the executive also sometimes seems wholly unenthusiastic about judicial independence.

Last year, judges were even told they should refrain from "going overboard to prove a point", not the nicest of things to say.

Shafee says there are some areas in which he wished the Government had not voiced its disapproval, or hint that the judiciary is sympathetic to the Opposition.

"Because you are opening the way for others more irresponsible to come in and make even more serious allegations," he says.

The executive, he thinks, must make it a point to support the judiciary which forms part of the larger system of governance.

But what's more important than moral support is the executive's actions, which speak louder than words.

"It's a slow road to recovery. All, especially the Government, need to put heart and soul into it, not pay lip service.

"The right persons must be appointed to the Bench," Shafee says.

There can be no sandiwara here.

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