

**Lawyer: Convention dictates MB should be consulted first**  
**Malaysiakini.com**  
**Disember 29, 2010**

Although there is no written law requiring consultation with the Selangor menteri besar on the appointment of its new state secretary, convention dictates it should have been done.

Lawyer Derek Fernandez told Malaysiakini the consultative process with the menteri besar is standard practice, not the letter of the law, where it is a formality that should not be taken for granted.

"It is something which should be followed and not discarded in the best interests of Selangor. It would seem unfair if the menteri besar or his state exco members are not consulted," said the Petaling Jaya-based lawyer.

Constitutional convention, the lawyer said, are practices fundamental to the smooth workings of the constitution and ignoring them would lead to difficulties in the administration of good governance.

Fernandez (left) said people have to also understand that as Selangor is a Federated Malay state, the appointments can come from the federal government, and hence those appointed to the post of the Selangor state secretary are seen as federal appointees.

He said unlike the unfederated Malay states, where the person must be sourced from within the state civil service as such states have more say in the appointments.

Fernandez said in Selangor, the officer appointed as state secretary can come from federal level.

**'Must work within constitutional framework'**

However, it must work within the constitutional framework and constitutional law, which by convention dictates consultation among the Public Services Commission (PSC), the chief minister (the Selangor menteri besar) and the exco members of the state, he said.

"This is the problem when you have a two-party system, with different governments at the federal and state levels. So, despite there being a democratically-elected government, the government will not be able to effectively carry out its mandate without federal cooperation," he said

"But the federal government has to respect the wishes of the Selangor people, who have elected their menteri besar and exco from Pakatan Rakyat. In a situation where there is a political divide between federal and state governments, the situation makes it difficult for the state to function," he said.

"Therefore, it is most appropriate for the PSC to consult the menteri besar on the appointment. The civil servant will also have a problem in his allegiance on whether it would be to the state in which he works or the federal authority that pays his wages."

You will see the public suffer when the political masters do not see eye-to-eye, fernandez

said.

Illustrating his point, he said when one goes to government offices in Selangor, whose picture would one see placed higher - the prime minister's or the menteri besar's?

The lawyer was asked to comment on the debacle facing the appointment of the state secretary, in its third day today, and whether the Selangor menteri besar had a say in the appointment under the law.

State Islamic Department director Mohd Khusrin Munawi (right) has been appointed Selangor state secretary in an announcement made on Monday by the chief secretary to the government Mohd Sidek Hassan.

Hours later, the Selangor menteri besar's office issued a statement saying the appointment was not final.

### **Puzzled by appointment process**

Fernandez said there certainly were some puzzling facts related to Mohd Khusrin's appointment, for the Selangor government must have been given some names by the PSC to choose from, which it had narrowed down to three.

However, the lawyer said, it was reported that Mohd Khusrin's name was not among the three shortlisted.

"Hence, this raises the question as to who submitted the fourth name without the knowledge of the menteri besar or the exco members," he said.

Acknowledging it was difficult to comment unless the true facts of the issue surfaced, Fernandez also posed some questions which must be asked to set the record straight.

Among them were, did the PSC approve the list of candidates eligible for the job and notify Selangor? After the Selangor government selected the candidates, were these from the PSC list itself? Was there a deadline set by the palace before the list was sent, and was the deadline exceeded?

Fernandez also asked why the PSC did not consult with the menteri besar, if his office did provide a list; whether it knew that Selangor had recommended three other names previously approved and if anyone had instructed the PSC to recommend another person?

"It will be wrong and unfair to all to take a position unless these facts are made known," he said.

Several newspapers, quoting the private secretary to the Sultan, Mohamad Munir Bani, reported today that the names submitted by the Selangor government arrived late, resulting in Sultan Sharafuddin Idris Shah assenting to Mohd Khusrin's appointment.

Copyright © 1999-2007 Mkini Dotcom Sdn. Bhd.

Source : <http://www.malaysiakini.com/news/151920>

