

Khusrin's appointment void without MB's acceptance
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COMMENT After 10 days of raging controversy, the federal government's chief secretary Sidek Hassan finally opened his mouth.

And it was as startling as when he let off the bombshell on Dec 27, 2010, with the shocking announcement that the least acceptable candidate - Khusrin Munawi - would be the new state secretary of Selangor. Khusrin was considered by the Pakatan Rakyat state government as hostile and incompetent.

In a statement released on Wednesday evening, Sidek (right) defended the legality of the appointment with the claim that there was no legal requirement to consult or seek approval from the sultan or the Selangor state government.

He further revealed, to the surprise of almost everyone, that the federal Public Services Commission (PSC) did in fact consult the state government prior to the appointment - contradicting the claim of the state government.

Sidek's legal justification

Sidek said Khusrin is a federal civil servant who comes under the jurisdiction of the PSC, and his appointment by the commission complied with both the state and federal constitutions.

He said consultation or approval from the sultan or the state government is not necessary because there is no such stipulation in the state constitution.

While I agree that the sultan plays no role in this appointment constitutionally, the same cannot be said of the menteri besar.

The problem with Sidek is that his interpretation of the constitution is parochial, not seeing the wood for the trees.

Since, by Sidek's own account, this is a case of seconding a federal officer to the state government, why should he have ignored Article 134 of the federal constitution which governs the secondment of officers from one governing body to another?

Article 134 Clause 1 states:

The federation may, at the request of a state, local authority, or statutory authority of any organisation,, second any member of its public services to the service of any state, authority or organisation, as the case may be; and a state may, at the request of the federation, another state, a local authority or a statutory authority or, second any member of its own public service to the service of the federation, other state, authority or organisation, as the case may be."

We observe from this clause that secondment of officers from one governing body to another can take place in a free-flow manner, without restriction, and that it takes place

only when a party requests for it.

In the present case, Selangor is the principal party as well as the employer who needs to fill a vacancy, and it has the option to fill that vacancy from a source it chooses, which need not be a member from the PSC.

Did Selangor ask PSC to second an officer? The answer is no. Then why did PSC second an officer without being asked? Sidek must first answer this question.

The truth is that the state government had already started the process of selection and had narrowed down the candidates to a short-list of three which was sent to the sultan for assent by mid-December.

Menteri Besar Khalid Ibrahim was actually waiting for the palace feedback for him to forward the finalised candidates list to PSC to make the formal appointment when Sidek made the shocking announcement.

So the fact before us is that the Selangor government has decided to source its candidate from the pool of federal officers already serving in the state government, and in due course it would make its request to PSC upon finalising the selection.

Defective interpretation of constitution

Now, the crucial question: Can PSC appoint the new state secretary even before receiving a request from the state government with due consideration to the fact that the appointee is detested as a political threat to the state government?

The answer must be a resounding no! It not only contravenes Article 134 which states that PSC can only act upon request, but it's an abominable act that defies all logic and decent values.

Common sense tells us that such an appointment is an unworkable proposition that will jeopardise the functioning of the entire state government, since the head of the civil service is held with such serious misgivings by the state's political leadership.

No wonder the entire Pakatan leadership has called this appointment an act of unabashed sabotage.

Sidek's contention that no consultation is needed due to the lack of such mention in Article 52 of the Selangor constitution is naïve and defective. Firstly, not all mandatory steps in a legal act are described in a constitution, which by its nature must be brief as it is an outline of fundamental principles.

Secondly, a part of the constitution should not be read in isolation, without regard to the rest, in particular, without regard to the underlying spirit of the entire constitution upon which the law was written. The present legal case presented by Sidek is an excellent example of such immature reading of the law.

With regard to Sidek's surprise claim that PSC did in fact consult and seek approval from the state government in earlier correspondence, the first question that springs up in anyone's mind is: why the hell didn't he say so?

If the menteri besar could react within hours (on Dec 27) that he had no knowledge of such

appointment, why couldn't Sidek do the same?

Sidek could have instantly doused the crisis by simply contacting the MB to work out a solution, which by common sense and by law, could not be anything else other than a candidate who is acceptable to the MB and who could work smoothly with the Selangor government.

Instead, the opposite was done to compound the crisis. The private secretary to the sultan, Munir Bani, suddenly announced on Dec 30 that the new appointee would be sworn-in at the palace on Jan 6.

The dishonourable intention of such a hurried arrangement is obvious when there is no apparent justification to rush through while the issue is still boiling, particularly when the contract with the outgoing state secretary ends only on March 30 (according to the MB's political secretary Faekah Husin).

Even now it is not too late for Sidek to undo the wrong that has been done to the government and people of Selangor, despite the swearing-in of Khusrin at the palace.

All he needs to do is to contact the MB and agree on a candidate that, in the opinion of the reigning Selangor government, best serves the interests of the people.

As for Khusrin, there are plenty of places he can be assigned to without causing distress to the Selangor government.

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