

Ngeh: Zaki's admission voids MB vs MB trial
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The Federal Court rulings on cases involving the Perak constitutional crisis should be considered void because of former Chief Justice Zaki Azmi's admission that he had no part in forming the panel which heard them, said Perak DAP.

Perak DAP chairperson Ngeh Khoo Ham said that Zaki's admission that he did not empanel the five-member panel which heard Mohd Nizar Jamaluddin's case was wrong in law.

NONECiting Malaysian Bar vs Tan Sri Dato Abdul Hamid bin Omar [1989] 2 MLJ page 281, he said that the Supreme Court had in 1989 ruled that a Federal Court panel can only be empaneled by the chief justice.

"By virtue of this Supreme Court decision, the highest court in the land, empaneling a Federal Court bench by any other person is not allowed.

"Therefore the Federal Court decisions in regard to the Perak crisis cases are void," Ngeh (right) told Malaysiakini.

Only CJ can constitute panel

In 1989, the case of the Malaysian Bar against former Lord President Abdul Hamid Omar, the Federal Court had ruled that only the lord president alone is entitled to convene and empanel judges to constitute the Supreme Court for any sitting.

"The powers of the lord president or any person acting as lord president under Section 38 and 39 of the (Courts of Judicature Act) are express statutory powers which cannot be exercised by others unless properly exercised under s 9(1) of the Act during illness or absence from Malaysia or owing to any other cause when the lord president is unable to exercise the functions of his office.

"We read the words 'any other cause' in s 9(1) to relate to physical inability in the sense that the lord president is unable to perform his functions," read the judgment.

In an interview with Malaysiakini on Sept 12, Zaki had said he had instructed his deputy, Court of Appeal president Alauddin Md Sheriff, to handle the Perak crisis related cases when it came up to the Federal Court.

Zaki said that he did not want to be involved in the cases as he did not wanted to be accused of conflict of interest as he had once been heavily involved with Umno.

"I did not sit on any cases which were not only political, but had a flavour of politics. I did not even constitute the panel. I told my Number Two: 'You go to constitute (form) the panel. I don't want'," said Zaki.

'New CJ must right wrongs'

Ngeh, who is a senior lawyer, argued that since the decisions of the Federal Court were now void, it was incumbent upon the current Chief Justice Ariffin Zakaria to constitute a new panel to hear Nizar's case.

"Since the Perak cases have not been disposed off, we call upon the present chief justice, to convene a

new panel, to review the decisions that have been made by the earlier unlawfully convened Federal Court hearing," he said.

zaki azmi interview 140911In the same vein, Ngeh said Zaki's (left) revelation in the same interview that a court registrar had arranged for a single Court of Appeal judge to hear Zambry Abdul Kadir's application on May 12, 2009 had also raised questions.

"How can a registrar have the powers to call on a Court of Appeal judge to hear a case?" said Ngeh, explaining that such powers lie with the Court of Appeal president.

On May 11, the Kuala Lumpur High Court ruled in favour of Nizar's application to be declared the legitimate Perak menteri besar.

But in less than a day, Zambry managed to obtain a stay of execution order from the Court of Appeal. His application was heard by a single judge - Justice Ramly Ali - despite there being two three-member panels hearing cases that day.

This fact, along with the swiftness in which the stay was granted, has led Nizar and his counsel to question the court's integrity.

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