

Law minister: UUCA 'still law' despite court decision

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by Hazlan Zakaria

Section 15 (5) of the University and University Colleges Act (UUCA) is still a valid law, despite the recent decision of the Court of Appeal to declare it unconstitutional, asserted de-facto law minister Nazri Abdul Aziz.

Insisting the ruling as merely the "opinion of the court", Nazri said: "It is just obiter dictum (an opinion in passing) of the court."

"It does not invalidate the Act. It is still law," insisted Nazri while winding up for the Prime Minister's Department during the committee stage of the 2012 Budget debate.

He also insisted that the law passed is still enforceable and valid.

"This is law, passed by us as lawmakers. There must be separation of powers," he said.

Ultimately, said Nazri, it is up the attorney-general's decision to signal whether the law will be amended to include the recent ruling in striking out the section found to contravene the federal constitution.

"If he appeals, then (that is that) ... But if he doesn't appeal, then it is a signal for us to do the necessary amendments," he added.

'Nazri wrong'

In an immediate reaction, Teluk Intan MP and lawyer M Manogaran said the minister's assertions were wrong.

"When the High Court, Court of Appeals or Federal Court declared that a law is ultra vires the constitution. It is no longer law," the MP told Malaysiakini.

Manogaran (left) rubbished Nazri's claim that the court's decision is just a passing view, and argued that it is instead ratio decidendi (actual judgement) carrying the full legal weight and authority invested in the judiciary.

He argued that the court, which has the authority to interpret law and constitution, has set a legal precedent which the federal government "has no choice but to follow".

"The government of the day, should be compelled to amend the law and delete the section found to be unconstitutional. That is the procedure," he said further.

Disputing Nazri's argument that the courts cannot interfere with legislation, Manogaran posited that this is not the case in the Malaysian context.

Without a constitutional court in our system, the power to interpret law and constitution is vested in the higher courts, contended the Teluk Intan MP.

Bipartisan calls have sounded for the Act to be amended to strike out the offending section and indeed some are calling for it to be repealed in toto, following the recent Appellate Court decision.

UKM 4 hauled up by university

In the case, four students from UKM, popularly dubbed the UKM4, had contested the validity of Section 15 (5) of the UUCA as it contravened the freedom of association guaranteed in the federal constitution.

Picked up during a recent by-election, allegedly on the campaign trail with an opposition party, the four were hauled up by the university under charges using the section which empowered universities to take action against students for displaying political affiliations.

However, the students maintained they were only tagging along as observers at the by-election.

They initially lost their case in the High Court, but the decision was overturned by the Court of Appeal in Putrajaya, with the judges on the bench deciding by a two-to-one majority that the section contravenes the federal constitution and was hence unconstitutional.