

Appeal against Anwar's acquittal a fatal mistake
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COMMENT Prime Minister Najib Razak seems to have made a U-turn in his position on the much-lauded acquittal of de facto Pakatan Rakyat leader Anwar Ibrahim from the sodomy charge.

When the totally unexpected acquittal was stunningly announced on Jan 9, Najib together with senior Umno leaders were quick to bask in the compliments that poured in from around the world for finally having done justice to Anwar, despite the preceding perverted process that was seen as plain political persecution.

NONE Najib (right), in particular, seemed proud of this High Court verdict, citing it as proof of the transformation that he had brought to the country.

In an interview published by the influential Wall Street Journal on Jan 13, he told interviewer James Hookway that this verdict "underscores the depth of the reform process".

Najib said he was serious about the political reforms - to the extent of risking his chance of winning in the election.

Najib also expressed relief that the Anwar issue was finally over, and that the nation could henceforth tackle more serious issues such as the economy. He said: "What is important now is that we move forward."

There is no mistaking from this conversation that the prime minister was seizing this much-approved ending to the trial as a positive development that would propel his reform agenda.

In fact, he even told Hookway that, through these changes, he hoped to open up a new chapter with the US as "a partner in promoting democratic politics and free trade across Asia and the Islamic Middle East".

U-turn has damaged Najib

With these words still ringing in the ears, it therefore came as a shock that the attorney-general had filed a notice of appeal against the Anwar acquittal on Jan 20.

Even more shocking was Najib's complete dissociation with this appeal the next day.

The New Straits Times quoted him as saying that the appeal was something strictly between the complainant and the attorney-general, and has nothing to do with his government and Barisan Nasional (BN).

NONE Extending this Najib rationale, it must follow that High Court judge Mohamad Zabidin Mohd Diah's (left) decision to acquit and discharge Anwar should have even less to do with him, BN and the government.

Then on what basis was Najib claiming that judge Zabidin's decision was proof of the extensive political reforms that he claimed he had carried out for the country?

Isn't it obvious that when Najib claimed the verdict as proof of his reforms, he was in fact telling the world that firstly, he had undue control over the investigative and judicial process; secondly, he realised it was wrong for exerting such control for illegitimate political purposes; and thirdly, that he had agreed to cease such interference as a step toward restoration of democracy and rule of law?

In fact, the whole world knew as much that it was political persecution right from the very beginning of Anwar's ordeal three-and-a-half years ago, when he was savagely arrested and subsequently charged without an iota of evidence, save the complainant's obviously dishonest claim.

Otherwise, why should the whole world be shocked by the verdict?

If the police had been fair and prosecutor and judge had conducted themselves aboveboard, shouldn't the world have expected, rather than shocked, by the verdict?

It is high time that Najib and his colleagues move out from their self-induced delusion that the people do not know.

It is for their own good not to misjudge the extent of the people's awareness of the truth in this Internet age of instant information.

If there is any message that we can read from this latest move to appeal against Anwar's acquittal, it is that this appeal is proving for the umpteenth time that Najib's words are not to be trusted; and it also shows up once again that his so-called political reform is more an illusion than reality.

AG fishing in muddy water

Now, let us turn to the attorney-general who seems to me to be trying to fish in muddy water in submitting the notice of appeal. Let me explain.

On the day that the AG's Chambers submitted the notice of appeal on Jan 20, national news agency Bernama released a news bulletin at 1936 hrs, quoting an unnamed official in the AG's Chambers as saying that "the trial judge was required under the Court of Judicature Act 1964 to provide a written judgment to enable either the prosecution or the defence to file the notice of appeal within 14 days".

Bernama then quoted the unnamed official: "After perusing the written judgment, they will decide whether to file the petition of appeal."

However, two hours later, another Bernama news bulletin released at 2151 hrs reported the AG's Chambers making a different statement.

NONEThe news agency stated: "The Attorney-General's Chambers said today that the decision to file an appeal against the High Court's decision to acquit and discharge opposition leader Anwar Ibrahim (standing in photo) was based on evidence and the law.

"It said that in making any decision, the department acts solely on the evidence and in accordance with the law, not influenced by any emotion or parties."

It further quoted the AG's Chambers statement as saying: "The decision to file this notice of appeal will enable this department to obtain the full written judgment of the learned judge and the record of the proceedings from the High Court; and accordingly will be able to appreciate the grounds considered by the learned judge in arriving at that decision."

It is obvious that AG's Chambers realised the mistake in the first statement for having only mentioned its decision to appeal as being dependent on the content of the written judgment, without the ritualistic recital of "fact and law" as its basis.

The second statement was to make up these deficits.

Even with this supplementary statement to add "fact and law" as its rationale for appealing, the AG's Chambers continued to emphasise that what motivated the filing of appeal was to avail itself of the chance to peruse the written judgment.

There is the unmistakable impression that the AG would await the written judgment before making the final decision to appeal.

That begs the question: Shouldn't the AG's Chambers have a stand of its own, being the party which initiated the charge and laboriously built up the prosecution case?

It should be more knowledgeable than anybody else on the strength and weaknesses of its evidence, and there is no reason why it cannot decide whether the verdict is fair or unfair without the full written judgement, unless of course it is waiting for an opportunity to pounce on any possible technical flaw in the written judgement.

Prosecution case terminally flawed

The judge has made it clear that he was discharging Anwar because there was evidence of tampering in the only corroborating evidence of the trial – the DNA.

dr brian mcdonald sodomy II And he was fully justified to make that remark, as it was scientifically impossible for any sperm to have survived more than 100 hours for DNA identification under tropical room temperature as in Anwar's case, as rightly pointed out by the Australian DNA expert Dr Brian McDonald (right).

Does the AG agree or disagree with this view? If he answers in the negative, can he name one authority that would support his opinion? If he answers in the positive, can he tell us why he is appealing?

And what "fact and law" he was talking about when the DNA evidence had already been exposed as fake?

Is it not obvious that by filing the notice of appeal, the AG was in fact reserving his right to appeal in the hope that he might later find some technical loophole in the written judgment to knock out the verdict, hence the repeated emphasis on these documents as essential for its decision-making?

Does such unprincipled conduct that disregards justice befit the chief legal adviser to the King and the cabinet, sworn to uphold the constitution?

Or is such conduct more reflecting that of someone who is faithfully continuing the undertaking to eliminate the chief rival of his political master?

The answer is self-evident from the earlier proceedings and now from the latest move to appeal against the acquittal.

It is indeed a tragedy for Najib and Umno that just as Justice Zabidin's judgment has opened up a small window of opportunity for Najib to make a baby step in his bumbling attempt to bring some reforms, that window is quickly shut with this opportunistic attempt to appeal.

Worse, it has now proven beyond reasonable doubt that Umno is beyond salvation.

And that is fatal for Umno, in the present ambience of people power sweeping away entrenched corrupt regime - a tidal wave of change that has transformed the Middle East, swept across the region, and now already landed on Malaysian shores.