

UKM, gov't get leave to contest UUCA ruling
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The Federal Court has granted leave (permission) to Universiti Kebangsaan Malaysia (UKM), the Higher Education Ministry and the government to challenge a landmark ruling on the Universities and University Colleges Act (UUCA).

The unanimous ruling today will allow the plaintiffs to challenge the Court of Appeal decision, which had declared that Section 15(5)(a) of the UUCA is unconstitutional in that it bars students from participating in politics.

NONThe five-member bench allowed the question posed by the plaintiffs to be decided in their appeal, namely 'whether Section 15(5)(a) of the UUCA is consistent with Article 10(1)(a) of the federal constitution and (is) therefore valid (in) law'.

Lawyer Malik Imtiaz Sarwar (left), representing four former UKM students, argued that the matter is academic as they were cleared during campus disciplinary proceedings and have since graduated.

Malik argued that the government also intends to amend the Act, following the Court of Appeal decision.

It was learnt that the amendment to the UUCA may be tabled in this parliamentary sitting.

"The challenge by the government would put the country in the 'dark ages' of reasonableness, as decided by the the Court of Appeal," said Malik.

Despite the preliminary objection made by the lawyer representing the students, the five-member panel led by Court of Appeal president Md Raus Sharif unanimously allowed the Higher Education Ministry and government's application for leave.

The other judges were Chief Judge of Malaya Zulkefli Ahmad Makinuddin and Federal Court judges Hashim Yusoff, Abdull Hamid Embong and Suriyadi Halim Omar.

Malik imtiaz (right) woon king chai (middle) and muhammad ismail aminuddin bigAt the Federal Court in civil matters, parties have to apply for permission before the court before the appeal proper is allowed to be heard.

The government was represented by Amarjeet Singh, and Muhammad Shafee Abdullah appeared for UKM.

Amarjeet submitted that the matter is not academic as it does not only affect university students, but the (Court of Appeal) decision also affects the public at large.

He said the government is worried over its implications to university students.

Shafee submitted that the universities are not afraid of students participating in politics but are worried if politics was brought into the campus.

Landmark decision

The students - Mohd Hilman Idham, Muhammad Ismail Aminuddin, Azlin Shafina Mohamad Adza and Wong King Chai - had been arrested by police for allegedly taking part in the Hulu Selangor by-election campaign in April 2010.

NONEThey then sought a declaration that the UUCA is unconstitutional, but their application was dismissed in September 2010 by the Kuala Lumpur High Court's Appellate and Special Powers Division.

However, the Court of Appeal overturned the decision last October in a 2-1 majority decision, leading to the appeal.

Malik, in commenting on today's decision, said he was disappointed with it but it allows parties to properly ventilate this vital issue of constitutional importance once and for all at the highest court in the country.

Justice Hishamudin, in his 21-page majority judgment, wrote that freedom of expression is a fundamental right that all individuals should enjoy.

"It is fundamental to the existence of democracy and the respect of human dignity. This basic right is recognised in numerous human rights documents such as Article 19 of the Universal Declaration of Human Rights and Article 19 of the International Covenant on Civil and Political Rights.

"Free speech is accorded preeminent status in the constitutions of many countries."

Hishamudin said he failed to see how the section of the UUCA in question relates to public order or morality.

"I am at a loss to understand in what manner a student who expresses support for, or opposition against a political party, could harm or bring about an adverse effect in public order or public morality," he said.

"Are not political parties legal entities carrying out legitimate political activities? Are not political leaders, including ministers and members of the federal and state legislatures, members of political parties?" he asked.

