

**Bersih panel: Shim placed in awkward position**

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COMMENT One of the members of the independent panel probing Bersih 3.0 chaos is Steve Shim Lip Kiong, former chief judge of Borneo (Sabah and Sarawak).

The panel's final report, which Shim will jointly put up with the other members, will eventually end up in the hands of attorney-general Abdul Gani Patail for some form of decision.

This puts Shim (*left*) in an awkward position, since he had made a decision touching on Gani's conduct in the matter of Zainur Zakaria vs PP [2001] 3 CLJ. as follows:

"In the circumstances, was he (referring to Anwar Ibrahim) not justified, on a prima facie basis, in complaining that AG's (Gani Patail) conduct at the meeting on Oct 2, 1998, was an attempt to get Nalla to fabricate evidence in order to perfect charges against him (Anwar) for other alleged sexual offences?"

Under ordinary circumstances, any other person named to have fabricated or attempted to commit the crime in such a damning decision would have been charged in court. But in the case of Gani, no.

For the record, Gani was appointed AG after the above decision was made.

Since the prime minister and Home Affairs Minister Hishammuddin Hussein have already stamped their confidence in the credibility and independence of the newly-appointed panel, headed by Hanif Omar and including Shim, are they not taking Shim's judicial decision, which touched on the conduct of the AG as cited above, as credible as well?

Is the PM going to say that Shim's decision is unfounded and unsubstantiated or that the former CJ has some agenda of his own?

Or will the PM and Hishammuddin review Shim's position instead, now that they have discovered the former CJ has made a judicial decision in favour of their staunch opponent, Anwar Ibrahim, which will lend credence to his long-standing allegations that Gani, together with a few other persons, had indeed fabricated evidence and framed false charges against him (Anwar) since 1998.

Yet another panel?

The PM should be mindful that besides Shim, another former Federal Court judge, a member of another so-called independent panel tasked to scrutinise a probe by the MACC in 2008, has also found the AG to have been involved in some wrongdoing related to fabricating of evidence during the 1998 black-eye incident, in spite of the investigation being manipulated.

The question now is whether the PM is going to appoint yet another independent panel to scrutinise the findings of the newly-appointed independent panel headed by Haniff, since the AG himself is incapacitated, at least by the judicial decision of Shim?

If the PM is still not convinced with the findings of a former Federal Court judge, coupled with the decision cited above made by Shim with regard to the conduct of Gani (*right*) since 1998, then the PM should state his position clearly and disband the independent panel on Bersih 3.0.

Otherwise the PM should start taking steps to institute action against the AG, which has been long overdue.

Nevertheless, in the event the panel is to continue with the inquiry, which I think would be the case, then S Ambiga, the Bersih co-chairperson, must bear the responsibility to appear before the panel to state her version, regardless who leads the panel and however hostile the situation can be.

Only then can Ambiga claim her right to demand that the PM and Hishammuddin be called before the panel as well to explain the reasons they did not exercise due care when discharging their duties or took steps to prevent the rally from taking place when they had the time, means and power to do so.

This will be a test of sincerity of purpose on both the PM and Hishammuddin. Both of them are aware, as much as I am, that the root cause of the issue can be traced and is somehow connected to the decision made by Shim as cited above.

The Bar Council, on the other hand, may have waived its right to participate in the panel on Bersih 3.0 inquiry after having taken the position to boycott the panel.

Nonetheless, the boycott should not stop the Bar Council from calling another EGM to discuss the "atrocities" of the AG separately instead, based on judicial decisions, findings and evidence recorded by former super senior judges, during RCIs, and in particular the decision made by Shim, which are all at the fingertips of some Bar Council members.

Root cause of the problems

If the Bar Council is bold enough to condemn police brutality to the extent of demanding apologies from the home minister and the IGP, then the Bar Council should also have the courage to condemn, in like manner, the "atrocities" of the AG not only towards several individuals but to our legal system as a whole, as well and to demand the PM to henceforth form a tribunal on the AG himself.

If the president of the Bar Council wants to throw down the gauntlet, then he should pick someone of his size, like the AG, regardless of his standing in the Legal Profession Act itself, and not some lower ranking policemen.

It cannot be denied that the root cause of the problems we are facing now is Gani.

In September 1998, it was the police that was challenged by, among others, the Bar Council itself, to investigate their own chief without fear or favour.

Now, it's the Bar Council's turn to look within its own fold and which the lawyers should have done a long time ago. Still, better late than never.

When in London a few days ago, the PM was reported to have said: "You must operate within

the rules of the law. If you discard the rule of law, there would be anarchy in the country."

We hope the PM will walk the talk when he returns and not discard the decision by Shim and the findings of the other former Federal Court judges with regard to Gani's conduct.

The PM has refused to be a witness in the Sodomy II trial and he is unlikely to accept a subpoena from a French court.

Should he also refuse to appear before the independent panel comprising members handpicked by him, then he should not be talking about subscribing to the Rule of Law.

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