

## **Judge queries Bersih ban, asks can CPM apply to rally?**

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**By Kow Gah Chie**

A senior federal counsel was “grilled” by a High Court judge today when he couldn’t clearly state the government’s stand on the Coalition for Clean and Fair Elections (Bersih).

Justice Rohana Yusof of the Appellate and Special Powers division appeared confused over the home minister’s order to declare Bersih as an illegal society on July 1, 2011, yet later allowed the Bersih 3.0 sit-in rally on April 28, this year.

Rohana queried why the government had “entertained” Bersih’s request in organising the rally.

The answer offered by federal counsel Azizan Md Arshad was that the government allowed Bersih 3.0, as the Peaceful Assembly Act had come into force.

He said the ban on Bersih has not been lifted, and the scope of the directive issued a year ago included Bersih 2.0, Bersih 3.0 and all its activities.

“I am stuck here... if the home minister bans Bersih, bans all the Bersih (activities), how can a minister recognise this (Bersih 3.0 rally) under another law?” queried the judge, who seemed dissatisfied with the answer.

She further cited the Communist Party of Malaya (CPM) as an example and asked whether could the banned organisation apply to hold a rally under the same act?

“Can (former CPM secretary-general) Chin Peng apply to hold a rally in his personal capacity?” asked Tommy Thomas, the lead counsel acting on behalf of Bersih chairperson Ambiga Sreenevasan and 14 others.

‘Ultra vires action’

Tommy, in his submission, claimed Bersih is an unincorporated association which is recognised by Common Law, and does not fall under the purview of the Societies Act.

“Hence, when the minister used Section 5 of the Societies Act to declare Bersih 2.0 as an illegal society, this is ultra-vires,” he said.

Tommy (left) also said Bersih had been denied the right to be heard before the order was issued, and this was against natural justice.

Azizan rebutted that the Societies Act does not spell out the right to be heard when the minister makes a decision.

He also said the right person to decide on issues pertaining national security and public order is the home minister, and the court could not question the decision.

Azizan claimed the minister's order was not made mala fide, and was done in good faith.

The court set July 24 to deliver its decision after a two-hour submission.

Meanwhile, another High Court has fixed Aug 10 for case management of the civil suit brought by the government against Bersih to seek compensation of RM122,000 for losses occurring during the Bersih 3.0 rally.

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