

Section 114A: BN must take full responsibility

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By Gobind Singh Deo

Barisan Nasional must accept and acknowledge that the amendment to Section 114 of the Evidence Act was a mistake.

Prime Minister Najib Abdul Razak has admitted in a tweet that he has asked the cabinet to discuss Section 114A. He said, "whatever we do, the people must come first".

With respect to the prime minister, while the voice of the people plays a significant role in the matter and must be given due regard and respect, he should also reflect upon why and how, if the people come first, his government allowed this law to be passed in the first place.

The Bill to amend the Evidence Act was debated in Parliament and it was none other than Mohd Nazri Aziz who responded to concerns raised by the parliamentarians.

Nazri is himself a lawyer. He is said to be the de facto law minister.

The concerns over the reversal of burden were raised by me and other MP's squarely to him during the debate. He was made well aware of the problem but chose to do nothing about it.

As BN parliamentary whip, Nazri could have stopped the Bill then but, as in the case of all other Bills, it was pushed through.

And now, when there is public outrage, we see the Mps from BN, including the PM, joining in the call for a review. This is good, but really, and with the greatest of respect to them, it makes a complete mockery of Parliament!

BN's failure to understand issues

What we see is failure on part of the BN to understand and properly acknowledge the issues when debating Bills in Parliament, a failure on part of BN to respect and take seriously the views and concerns of all MPs.

Perhaps we ought to reconsider pushing through Bills in the middle of the night, stopping the clock, and relying on the might of parliamentary majority to pass anything tabled, whatsoever it is.

The attorney-general should advise the cabinet properly this time, and the rationale behind presumptions should be re-evaluated.

It is where facts that need proof, that are within the knowledge of the accused and beyond that of the state, that presumptions are applied.

So where the information is within the personal knowledge of the accused, the presumption will be invoked and it would be upon the accused to provide proof of facts showing he is not guilty of the offence.

This is what we call the reversal of burden as the burden of proof in criminal prosecutions is ordinarily on part of the prosecution.

The state has all the resources and information required to prove those matters sought to be presumed under Section 114A of the Evidence Act.

As such, Section 114A loses its purpose. Therefore, there is really no need to depart from the norm here. There is no need for a reversal of the burden.

The existence of Section 114A, on the other hand, opens very many innocent persons to prosecution.

It is to my mind, unfair and unnecessary and must therefore be repealed as soon as possible.

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