

People of Malaysia vs Dr Mahathir Mohamad
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COMMENT Suing Dr Mahathir Mohamad is impossible, unthinkable, undesirable, unwise, or difficult? I pose this riddle because I know I do not know the answer to it.

I have been advocating this for quite some time, but I don't seem to get anywhere. Maybe our esteemed Malaysiakini subscribers will put on their usual thinking caps and help me understand this "problem" so that, maybe, we can get to get this man sued in a court of justice (not a court of law).

There is a great difference between a court of law and a court of justice. Justice is a blind bat. Justice OW Holmes of the US Supreme Court once chastised a lawyer, and told him sternly that he, the lawyer, was in a court of law, and not a court of justice.

You see, Justice Holmes was not given to philosophy of the law although he wallowed in it. He was a practical man who knew that the law is "how one could predict how a court would decide." Lofty legal principles in many courts in many countries have been abandoned in the rash search for a political solution. The litigant does not count.

In the Malaysian context, when you walk into a court of law, it is a throw of the dice, especially after August 1988. If the judge is learned in the law, and not given to apple-polishing his or her political masters, the litigant has a shot at real justice. There will be equal justice under the law.

The litigant is no better off when he gets a judge concerned about his or her pension. This is not peculiar in Malaysia only. We have a bunch of loonies assigned to the Bench here in the United States, too. One judge was so obsessed he used a penis pump under his robes when a physically attractive female prosecutor showed up in his court.

Will judges rise to the occasion?

Suing Mahathir will require several thousand Malaysians gathering together a team of pro bono publicus lawyers - lawyers willing to work for free, yours truly included, of course - to unleash a shattering legal tsunami against the former prime minister for corrupt practices, wasting public funds with his warped sense of largesse and bigness, and perversion of justice through his unique cabalistic methods that resulted in the ruination of the country's prospects for equal opportunities for all Malaysians which is still reverberating as a persistent and nagging reminder in the federal constitution (FC) as Article 8.

The man has done more damage than anyone else in Malaysia.

The first and foremost criterion to take into account is whether our Malaysian judges, using

Article 162(6) of FC, would care to dare to bare the truth of the citizens' allegations against a former prime minister, and serve as judicial referees and umpires to a genuine trial that would make truth take centre stage instead of just proof and evidence that our police and the Attorney-General's Chambers are so proud and adept at manufacturing, fabricating, altering, covering up, and delivering as factual reality.

Malaysian judges must take up the slack and deliver judgments that can withstand the after effects of an appeal. After all, the dreadful and dreaded Adorna Properties ruling and decision got overruled by *Tan Ying Hong v Tan Sian San*, which restored deferred indefeasibility of title and offered Section 340 of the National Land Code 1965 a new shine and polish.

Our appellate judges ought to hold up the scales of justice and not be caught cheating with misapplied thumb pressure upon these scales without checking, rechecking and cross-checking all the facts that were submitted by the lawyers. I wonder if our Malaysian judges conduct any independent investigations like our European counterparts on the Bench.

After all, one cannot simply take any lawyer's submissions for the truth, because lawyers are not the only ones entitled to lie in court.

AG the stumbling block

Such a case involving a Muslim prime minister could be initiated in a Syariah Court that would leave the attorney-general (AG) powerless under Article 145(3) FC. But that is exactly what is sorely desired. Malaysians do not relish the idea of the AG agonising on whether or not to proffer charges against his boss.

The AG is a stumbling block. Someday, he ought to be impeached being a federal judge and all. But that may already be happening. The burning question is whether the Syariah Court will be willing to adjudicate *The People of Malaysia v Dr Mahathir Mohamad bin Iskandar*. It ought to, especially if the defendant is a Muslim, as is the case.

At the same time, the native courts ought to file another motion against Mahathir for grabbing their lands during his 22-year watch.

The Orang Asli's motion would be rock solid given the fact that the United Nations Indigenous Peoples Forum's representatives will have to attend these lawsuits as umpires and referees to make sure no plaintiff is forced to flee the lawsuit by the local thuggery enclaves admirably and efficiently run by the Royal Malaysian Police (PDRM).

The Aboriginal Peoples Act of 1954 together with Article 8(5)(c) of the federal constitution would be a powerful combination against Mahathir in all 18 Orang Asli Native Courts as all 18 Orang Asli tribes will be suing the same man in 18 different Native Courts.

While the syariah and native courts effort is under way, lawsuits ought to be filed in the High Court in Kuala Lumpur, Kota Kinabalu and Kuching, at the same time by the natives of

Sabah and Sarawak. An all-out concerted effort to bring this man down ought to be the most pleasurable thing any Malaysian can think or dream about.

I wallow in the fun I may have as a lawyer see true blue justice done to an arrogant man who thinks he is beyond and above the law. Mahathir probably thinks he still wields untold power and pleasure in Malaysia. He may still enjoy a lot of power given the fact that the Ling Liong Sik-Port Klang Free Zone (PKFZ) case fizzled away like a flash in a pan without much fanfare.

Curtain time for Dr M

The task at hand is formidable amassing all the facts, details, data, particulars, proof and evidence to succeed in bringing this puppeteer down.

Subpoena everyone that was associated or affiliated with the man. You can forget about a criminal case being mounted. I am talking about a civil suit for unjust enrichment, violating the public trust, defaming the public thinking we are a bunch of fools, and a host of suitable causes of action, which I am sure we Malaysians will have absolutely no difficulty in marshalling together as a must-do and can-do fun exercise.

Royal commission of inquiries (RCIs) are a waste of time. Waiting for election results is another doleful exercise in patience with a crooked Election Commission to contend with. Writing books, articles, essays, ceramahs, and public debates aside, suing Mahathir is where the rubber meets the road. It's time for action.

Talking about making Mahathir liable is what it will take, and I hope and pray we Malaysians can rally together and bring this suit against Mahathir to fruition. Powerful people in historical annals could not just get away with it. They had to pay. Some with their lives, some with long prison terms.

I believe a well-informed citizenry, like Malaysians today, can make the difference. The leaders of any country cannot get zilch done without the workers putting their effort together. Mahatma Gandhi shut out and shut down the British Empire with the simple "bandh" effort. "Shut it down," he instructed, and every worker, soldier, cook, errand boy, gardener, cleaner, polisher, driver, dhobi, every other menial worker simply shut it down.

So, my fellow Malaysians, expose the man. Let's shut down Mahathir. Let's shut him up in prison. Let's shut down his last show. It's curtain time.

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