

Gov't jumped the gun over ashes, says lawyer

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By Aidila Razak

The government may have "jumped the gun" by deciding that the ashes of Communist Party of Malaya secretary-general Chin Peng cannot be brought into Malaysia.

According to lawyer Leong Cheok Keong, this is because the family had not requested from the government permission to bring the ashes to Sitiawan, where Chin Peng was born.

Met at the wake in Bangkok, Leong said that in any case, he is unaware of any law which can be used to bar human ashes from entering the country.

"Unless there is an obscure law or some statute under the Human Organs Act or Customs Act which I am not aware of," he said.

chin peng wake funeral 220913 leong cheok kengLeong (left), who was part of the team led by Raja Aziz Addruse who represented Chin Peng in his lawsuit to enable him to return to Malaysia in 2005, however stressed that this is his personal view as a lawyer.

"The family has not engaged us, and we had only received instructions from Uncle Chin Peng himself," he said, referring to the deceased fondly.

According to Leong, Chin Peng had in his lawsuit produced an affidavit stating that he was born in Sitiawan and that he had applied to return to Malaysia within a year of the 1989 Hatyai Peace Accord.

Neither of these points, he said, was challenged by the government in court, which by legal standards mean that it stands as fact.

In June 2008, the Appeals Court dismissed the case on a "technicality" as Chin Peng - or his real name Ong Boon Hua - could not produce his birth certificate to show he was born in what is now Malaysia.

'Why not breach highway contract, too?'

Leong said the fact that neither of these was disputed showed that the government

had breached the tripartite 1989 Hatyai Peace Accord, which among others allowed for the return of all Malayan born CPM members as long as they lay down their arms.

"So I would like to caution against sympathisers arguing on the point of humanity as this gives the government discretionary powers. There is no need to beg.

"I prefer to look at it from a legal point of view, and that is it is a breach of contract.

"And yet, the government once said it cannot break the highway concession because it did not want to be known internationally as a government that breached contracts."

He said that the deceased's family does have a case, if it chooses to dispute the barring of the ashes even though the Peace Accord does not stipulate what happens to bodily remains.

"Arguing on the spirit of the agreement, I would say that if the living human was allowed in, then what more his ashes," he said.

He added that ex-CPM fighters who feel defamed by the recent coverage of Chin Peng's death could also file a defamation suit, as the Accord barred further slander of CPM members who have laid down their arms.

Chin Peng's own defamation suit filed by the same team in 2005 was struck out on the first day as the court ruled that the CPM is not a legally-registered entity.

Among witnesses who were due to testify for Chin Peng's side in the case was ex-inspector general of police Rahim Noor.

'Not legal matter'

chin peng wake funeral 220913 yaw wai leong
Meanwhile, his colleague Yaw Wai Leong (right) said that the ashes dispute is "not a legal matter".

"Why should it be? Look at whether or not there is a threat to security to a nation or person. What is the primary reason for any bar?" Yaw asked.

Met separately at Chin Peng's wake, Yaw, who was also part of the Raja Aziz team too stressed that this was his own personal view.

Yesterday, Deputy Home Minister Wan Junaidi Tuanku Jaafar reportedly said that there is no law barring the ashes of Chin Peng from entering Malaysia.

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