

## **Lawyers: Possible PM may have broken the law**

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**By Alyaa Azhar**

Several criminal law practitioners agree with former prime minister Dr Mahathir Mohamad that Prime Minister Najib Abdul Razak's conflicting answers on 1Malaysia Development Bhd (1MDB) could be a crime.

Mahathir accused Najib of lying about the whereabouts of 1MDB's US\$1.103 billion (RM3.97 billion) in funds, and as such, had said that this was an offence under Section 218 of the Penal Code.

Criminal lawyer Amer Hamzah Arshad believes what Mahathir said "has some basis" but noted that it could be argued whether Najib, as prime minister, was a public servant or otherwise.

"However, Najib, on his capacity as 1MDB chairperson (of the advisory board) can be investigated under Section 218 of the Penal Code," Amer (photo) told Malaysiakini.

He cited the case of former Selangor menteri besar Dr Mohamad Khir Toyo, who Ameer said was convicted for graft because Khir was also chairperson of the Selangor State Development Corporation (PKNS) during his tenure.

However, Khir's lawyer, Muhammad Shafee Abdullah, argued in Khir's appeal before the Federal Court last year that the graft charge against Khir was defective as he was not a public servant as defined under the Penal Code.

Khir Toyo was charged in his capacity as menteri besar. A menteri besar is not a public servant, as defined under Section 21 of the Penal Code, Shafee had said.

### **'PM not public servant in law?'**

Section 21 of the Penal Code states that a public servant is defined as either a commissioned officer in the Armed Forces, a judge, a court officer, juryman, arbitrator, a person who holds any office and a government officer.

Amer said the position of prime minister, cabinet ministers and chief ministers do not seem to be covered under Section 21 of the Penal Code.

"However, I agree that in layman's terms, the prime minister and cabinet members are servants of the public because they are supposed to serve the people," he said.

On Sunday, Mahathir referred to Najib's parliamentary reply on March 10, where the prime minister said the 1MDB amount had been fully redeemed in the form of cash and was kept at BSI Bank Limited Singapore.

However, last Thursday, Najib, who is also finance minister, changed his reply and stated that there was no cash in BSI Singapore, but merely "assets in US dollars".

This became even more baffling when Finance Minister II Husni Hanadzlah (photo) clarified that the assets were in fact in the form of "units" but refused to explain what he meant by that.

Mahathir described this as a "cover up" and said it was an offence under Section 218 of the Penal Code.

### **Breach of MACC Act?**

However, the Finance Ministry in a statement late on Sunday said its officers amended the written reply "to avoid confusion" and that it was unreasonable to say Najib lied.

Section 218 says it is an offence for any public servant responsible for the preparation of any record to frame it in an incorrect manner, with the intent to cause loss or injury to the public or with the intent to save any person from legal punishment.

Such an offence will result in a jail term of up to three years, a fine, or both.

Another criminal lawyer, Joshua Tay H'ng Foong, said since Mahathir had described Najib's conflicting answers as a "cover-up" of government matters, it would be an offence under Section 23 of the Malaysian Anti-Corruption Commission (MACC) Act instead of Section 218 of the Penal Code.

"Mahathir (photo) could be right, but Section 218 talks about records... what do 'records' here mean?"

"Section 218 of the Penal Code is not really apt. What's glaring is there's allegation of abuse of power."

"Section 23 of the MACC Act is more apt, if Mahathir is talking about abuse of power," Tay added.

### **MACC can act on suspicions of cover-up**

Section 23 of the MACC Act is the offence of using office or position for gratification.

Any officer of a public body who uses his office or position for any gratification, whether for himself, his relatives or associates, commits an offence, states the Act.

Tay added if there were suspicions that there was an act of cover-up, the MACC therefore could start an investigation.

An offence under Section 23 of the MACC Act is more severe, for a convict can be jailed for up to 20 years and fined not less than five times the sum of the gratification.

However, Amer believes that merely giving a false statement cannot come under Section 23 of the MACC Act.

Instead of just Section 23, the lawyer believes that a wider net should be thrown involving other sections of the law, and the matter investigated from all angles and possibilities.

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