

Threat of prosecution to silence 1MDB critics

MalaysiaKini.com

Sept 10th, 2015

Tommy Thomas

COMMENT Not being content with sacking his deputy prime minister and his attorney-general, disbanding the public accounts committee (PAC) and the special task force, detaining and transferring civil servants, suspending two publications of The Edge group and generally using the might of the state to paralyse any inquiry into the 1MDB scandal and how US\$700 million was credited into his personal bank accounts, the prime minister is now threatening to charge all and sundry with offences which are 'detrimental to parliamentary democracy'.

The Penal Code was amended in 2012 under Najib Abdul Razak's administration to introduce a host of offences in Sections 124B to 124J, most of which relate to the common theme of taking steps that may be 'detrimental to parliamentary democracy'. Let me give one illustration of the new law. Section 124B provides that:

"Whoever, by any means, directly or indirectly, commits an activity detrimental to parliamentary democracy shall be punished with imprisonment for a term which may extend to 20 years."

Because the word 'activity' is not defined, it may mean anything and everything.

The expression 'parliamentary democracy' is also not defined. It must therefore be given its ordinary and plain meaning in the English language, that is, to describe the political system that we have, namely, the Westminster model. No distinction is drawn in the new law between 'violent' activity and 'peaceful' activity. Neither is there a requirement that unlawful means or methods be used for the section to apply.

That the draftsman was aware of the distinction between violent and non-violent action is best demonstrated by the new Section 124 H, which refers to 'incites violence or counsels violent disobedience'. Thus, it is not as if the intended target is against those in favour of the violent overthrow of our political system, like those joining the global IS movement and wishing to engage in beheading and other barbaric acts in Malaysia.

Even for such armed terrorists, there are already sufficient laws on our statute books.

The intimidation of the media with the use of Section 124B is solely occasioned by the prime minister's fear that further disclosures concerning his involvement in 1MDB matters, including the receipt and use of US\$700 million credited into his personal bank accounts, would be damaging to his continuation in power.

Hence, any challenge is personal to the prime minister, and not to his party (Umno) and not to his coalition (Barisan Nasional). It is certainly not a threat to either the public interest or the national interest.

On the contrary, both public interest and national interest demand the truth to be uncovered about 1MDB, especially as billions in taxpayers' money are at stake. Such revelations are never 'detrimental to parliamentary democracy', even if they may be 'detrimental' to Najib personally.

Further, the prime minister is not synonymous with parliamentary democracy. Neither is he synonymous with the nation, or indeed the government. Removing a sitting prime minister, either by his political party or by the passing of a no-confidence motion in Parliament, is not only consistent with parliamentary democracy but accords with political reality.

Indeed, Najib himself was the beneficiary of the effective removal of his predecessor Abdullah Ahmad Badawi in an internal Umno struggle led by Dr Mahathir Mohamad and Muhyiddin Yassin. Although the official record shows that Tunku Abdul Rahman and Hussein Onn resigned as prime ministers, sources inside Umno tell of similar plots to remove them.

The stuff of politics

Thus, the removal of a prime minister is the stuff of politics. It is perfectly healthy, and certainly lawful. Thus Najib cannot cling on to power by using the criminal law of the land. That would clearly be an abuse of power. A cynic may observe that Prime Minister Najib is completely free to remove his deputy as he just did, and such conduct is not detrimental to parliamentary democracy.

The draftsmen of these new dastardly and draconian provisions in the Penal Code apparently forgot the fundamental liberties enshrined in the Federal Constitution, the exercise of which is fundamental to parliamentary democracy - indeed, they provide the content and flesh to such democracy.

Hence, the liberty of individual Malaysians, equality, the right not to be discriminated, freedom of movement, freedom of speech, assembly and association, freedom of religion, right to education, right to vote and right to property, all of which are given special protection under Part II of the constitution, would be rendered meaningless and illusory by a prosecution under any of these new provisions.

The bedrock of any activity pertaining to the practice of parliamentary democracy are these constitutionally protected fundamental liberties. Parliamentary democracy cannot exist without these liberties. Exercising them should not result in a criminal prosecution.

Indeed, a serious case can be made that Section 124B and its allied provisions in the Penal Code are unconstitutional by virtue of Article 4(1) of the Federal Constitution because they are inconsistent with the Part II fundamental liberties under the constitution, which is the supreme law of the land.

What brought down president Richard Nixon in 1974 was not so much his involvement in the burglary of the Democratic Party's office in the Watergate Hotel, but his role in the subsequent cover-up.

Hence, civil servants, whistleblowers, journalists and politicians who are courageous enough to expose the truth in very trying conditions and in a climate of fear must be encouraged to help establish the truth behind 1MDB. Trying to prosecute them by relying on questionable laws would represent the desperate measure of a dying administration.

Copyright © 1999-2012 Mkini Dotcom Sdn. Bhd
Source: <http://www.malysiakini.com/news/311817>