

AG should charge 1MDB with cheating Bank Negara

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MP SPEAKS In my parliamentary debate on Budget 2016, I asked the finance minister on the legal status of the sum of US\$1.83 billion (RM7.7 billion at the current exchange rate) currently kept by 1MDB in Singapore.

It is in the public knowledge now that 1MDB had sought Bank Negara's approval for permission to transfer that amount of money overseas from 2009 to 2011.

Since Bank Negara had duly revoked three permissions issued for the transfers under the Exchange Control Act 1953 (ECA) it is obvious that, in my view, 1MDB is currently holding an illegal sum of US\$1.83 billion. Hence the money needs to be repatriated to Bank Negara.

At the time of writing this article, the minister has yet to respond to my query.

But the main objective of this article is more than the legality of that sum of money. On the contrary, this article seeks to urge the attorney-general (AG) to review his decision on Oct 8 when he decided that, despite strong and persuasive recommendation by Bank Negara, 1MDB has not committed any offence under ECA, thus no prosecution would be made against 1MDB.

Needless to say, such a decision by the AG shocked the entire nation. Many speculated that there were "invisible hands" behind such a decision. The fact that the AG refused to entertain any questions by the media when such a decision was announced, refuelled the suspicion that 1MDB would be immune from any prosecution.

Out of frustration of such a decision, Bank Negara issued inter alia the following statement on Oct 9 which reads as follows:

"The bank of all times expects full and accurate disclosure of information by applicants in considering any application under the ECA. On its part, the bank concluded that

permissions required under ECA for 1MDB's investments abroad were obtained based on inaccurate or without complete disclosure of material information relevant to the bank's assessment of 1MDB's implications."

As far as I am concerned , the statement by Bank Negara implies deception on the part of 1MDB. The alleged deception took place when 1MDB gave inaccurate and incomplete disclosure leading to permissions illegally granted to 1MDB for the overseas transfers amounting to US\$1.83 billion.

Legally speaking, the pertinent question to establish deception is that would Bank Negara have given the relevant permissions had it known from beginning that the information supplied by 1MDB were inaccurate and incomplete?

Unfortunately all of us are not privy to such inaccurate and incomplete information mentioned by Bank Negara. Nevertheless, given the fact that Bank Negara had revoked the three permissions to 1MDB, it is fair to conclude that such information would be very material and extremely important for the approval to be granted.

If the information required were not really material Bank Negara, I believe, would definitely willing to treat such a non-disclosure as mere triviality hence no revocation.

No specific provision in ECA

To be fair to the AG, as it stands now, there is currently no specific provision in ECA criminalising any inaccurate disclosure of any information to Bank Negara. Be that as it may, when the AG said that 1MDB has not committed any offence, his statement should have been understood within the narrow compass of ECA.

In other words, in his view, no penal offence can be taken against 1MDB for breaching the relevant provisions of ECA. Such a law only provides certain remedies to the Bank Negara, being the sole regulator under ECA, to take remedial action or impose administrative

penalty against the violaters of ECA. The actions may include suspension or revocation of its permission.

Thus it brings us to this question. Was the AG right in not exercising his prosecutorial role to indict 1MDB? Or was he right in saying that 1MDB has not committed any criminal offence for giving inaccurate and incomplete information to Bank Negara ?

With due respect, it is submitted that the AG was only right in saying that 1MDB has not committed any offence in so far ECA is concerned. But that does not mean 1MDB has not perpetrated any crime in the eyes of law.

In my view, 1MDB has plainly committed criminal offence of cheating under the Penal Code thus the AG, with due respect, was wrong in not prosecuting 1MDB. The AG should have prosecuted 1MDB under section 417 or 418 of the Penal Code which provides the offence of cheating and the necessary punishment.

Section 415 (b) of the Penal Code defines the crime of cheating as follows:

“Whoever by deceiving any person whether or not such a deception was the sole or main inducement intentionally induces the person so deceived to do or omit to do anything which he would not do or omit to do if he were not so deceived and which act or omission,causes or is likely to cause damage or harm to any person in body, mind, reputation or property is said to cheat.”

No doubt based on the factual matrix revealed by Bank Negara, the elements of cheating were clearly present in the case of 1MDB.

Be that as it may, it is our hope that AG would not hesitate to review and reconsider his earlier decision and in turn exercise his prosecutorial power under Article 145 (3) of the federal constitution to prefer criminal charges against 1MDB.

When it involves public money the people has every right to put their trust on the agencies such as Bank Negara, auditor-general or attorney-general to take stern actions against any person or body who puts the public fund to high risk or loss.

Yes, the prosecution against 1MDB is not solving all the problems created by such a sovereign fund. It however, at least, gives a bit fresh air to our financial and justice system which have been severely damaged by 1MDB's tsunami.

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