

Malaysia no longer practises the rule of law

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COMMENT Laws are made essentially for the safety, good life and well-being of the people. For the laws to do all these, the government must govern according to the laws of the nation. An elected government must do nothing less.

But what we are seeing in Malaysia today is a government which ignores and abuses the laws so that they no longer protect the people or even provide good government.

I list below the abuses of the laws by Najib (Abdul Razak) as prime minister and his government.

While the law permits citizens to criticise and condemn the government, Najib's government acts to stop members of his party, civil servants and the media from criticising his government.

Action is taken to expel them from their post, transfer them, demote them, harass them and their friends and force them to retire early etc.

By law, when a report on criminal acts is made to the police, the police must conduct investigations before submitting their findings to the attorney-general.

Instead, the police subjected the person making the report to questioning, detention and charging him with breach of the Security Offences Act (Special Measures) 2012 (Sosma), leading to a trial.

The police also questioned the complainant's lawyer, detained and charged him also under Sosma and had him tried in a court of law. This is unprecedented and contrary to accepted practice.

When RM2.6 billion was found in Najib's private account, an open, full investigation of the source of the money was not carried out by the police.

The attorney-general denied there was anything incriminating Najib in the reports of Bank Negara, Malaysian Anti-Corruption Commission (MACC) and the auditor-general. Instead,

the reports were made secrets under the Official Secrets Act (OSA). This is against the provision of the Federal Constitution which stipulates that all reports by the auditor-general should be submitted to the Yang di-Pertuan Agong who would then cause it to be laid before Parliament.

Dereliction of duty

In submitting the report to the Public Accounts Committee (PAC) which, in turn, submitted it to the attorney-general who then made it an official secret, the prime minister, who had actually ordered the auditor-general to audit 1MDB, has breached the law.

By assuming that Najib had committed no wrongdoings simply because he, Najib, said so, the attorney-general disregarded due process. A suspect who merely denies that he did anything wrong will not be discharged by the courts.

To be discharged, he needs to show proof in the form of alibi, witnesses, documents, finger-prints etc to convince the presiding judge and later the appeal courts and Federal Court that he is innocent.

Yet, we hear the attorney-general claiming that Najib is innocent because he says he is innocent. If this is adequate, then all who are charged with criminal acts need only say they are innocent and the judge will acquit them.

By saying this, the attorney-general and Najib are actually breaching the processes of the law. The attorney-general is guilty of dereliction of duty.

The police, by not fully investigating the allegations made in the reports, are also guilty of not doing what is required of them when reports are made.

The OSA does not apply to crimes committed while in office. In fact, it is the duty of officers to report on any criminal act committed by anyone while employed by the government. Official secrets refer to government papers, cabinet papers, proposals, agreements yet to be approved etc.

Najib's directive to the attorney-general to put reports on the 1MDB by Bank Negara, the MACC and the auditor-general under the OSA, is in fact a breach of the law on official secrets, because what is being reported is not official secrets but on crimes committed while in office.

Blatant misrepresentation

Then there is the early retirement of Abdul Gani Patail as attorney-general. Najib simply told the Yang di-Pertuan Agong that Gani was sick and had to be retired on medical grounds. This is completely improper.

For a senior servant like the attorney-general who is appointed by the Yang di-Pertuan Agong, retirement must be by the approval of the Agong. If the early retirement is due to ill-health, a medical board has to be set up. The report of the medical board must be presented to the Yang di-Pertuan Agong together with the request for early retirement on medical grounds.

There is no evidence that a medical board was set up. Gani himself claimed that he was well.

Yet Najib simply told the Yang di-Pertuan Agong that Gani had to be retired on medical grounds. This is a blatant misrepresentation by Najib.

Then he proposed Apandi as the new attorney-general. The Yang di-Pertuan Agong was not given any choice. Again this is totally improper.

There are many other cases where Najib ignores the law, rules and regulations in the conduct of government business. In many cases, these irregularities breach the laws of the country.

On 1MDB, as far as we know, no special paper was presented to the cabinet for approval. Because the takeover of the Terengganu Investment Authority failed, 1MDB replaced it and took over the RM5 billion loan. The loan was not approved by the 1MDB board in the usual manner.

There is a conflict of interest in this approval because Najib was the minister of finance and also the principal adviser to 1MDB (effectively the CEO).

There is also a conflict of interest in the sale of government land at RM60 psf because Najib, as finance minister, sold it to Najib as 1MDB sole executive adviser.

The article of association of 1MDB gives sole authority to Najib as adviser to sign all agreements and transactions of 1MDB. But before that, the board must approve.

Frequently, Najib signed before getting the approval of the board. Signing seals the approval.

The joint venture of 1MDB with PetroSaudi was not approved by the board of 1MDB.

Subsequently, the joint venture was dissolved but the US\$1 billion was not returned to 1MDB. It was converted to a loan to PetroSaudi. Again no board approval was made.

And now, with the setting up of the National Security Council, laws have been suspended. This includes the abolition of the inquest over deaths.

Malaysia no longer practises the rule of law. We have become a lawless state.

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