

LETTER | What lies ahead for Najib?

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LETTER | After the Federal Court's verdict in dismissing the final appeal of former prime minister Najib Abdul Razak in the SRC International case, the right to appeal ends because of the simple principle of finality in decisions.

Hence, Najib who was sentenced to 12 years in jail and a fine of RM210 million served his first day in jail on Aug 23, when his appeal was dismissed.

On Sept 5, Parliament speaker Azhar Azizan Harun said the former premier has filed a petition seeking a royal pardon for his conviction in the SRC International case.

In a statement, Azhar said Najib filed the petition on Sept 2. This is within 14 days of the Federal Court's reaffirming of his conviction in the case. This means that Najib remains the Pekan MP.

Apparently, Najib has decided to forgo applying for a judicial review. Under Rule

137 of the Rules of the Federal Court 1995, the apex court is granted inherent power to, among others, review previous decisions on grounds of injustice and abuse of process.

The rule specifically states: “For the removal of doubts, it is hereby declared that nothing in these rules shall be deemed to limit or affect the inherent powers of the court to hear any application or to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the court.”

But the judicial review, like an appeal, is not automatic. Najib’s counsel will have to file an application to the court to review his case and prove that there was a breach of natural justice during the legal process.

The Federal Court will only consider reviewing a case if it is satisfied that the applicant has suffered a serious miscarriage of justice. Should it decide in Najib’s favour, the case will then be reheard before a different panel.

However, a review will only be considered in very exceptional cases with history showing that there is a very slim chance of the court even accepting an application.

This could be the reason why Najib has decided to skip applying for a judicial

review.

According to Abdul Rani Kamaruddin, a law lecturer at the International Islamic University Malaysia, in a situation where Najib's counsel does not apply for a judicial review, the next course of action for Najib is to apply for a royal pardon, which is exactly what he did.

Article 48(1)(e) of the constitution stipulates that any MP who is convicted of an offence and sentenced to prison for not less than a year will lose his Parliament membership.

Despite this, his position as an MP remains intact because the petition for pardon was made within 14 days after the apex court had dismissed his appeal. But how long will he still be an MP?

He will remain as an MP behind bars until his petition for a pardon is disposed of based on Article 48(c) of the Federal Constitution that "if within the period specified in paragraph (a) or the period after the disposal of the appeal or other court proceeding specified in paragraph (b) there is filed a petition for a pardon, such disqualification shall take effect immediately upon the petition being disposed of".

According to Rani, the case of a pardon is different from an appeal or judicial review in that the disqualification as an MP is immediate upon the petition being disposed of, whereas in the case of an appeal or judicial review, the disqualification takes place 14 days after the appeal or judicial review is disposed of.

The only similarity with respect to retaining the status of an MP is all these must be applied within 14 days i.e. the application for an appeal to the Court of Appeal must be made within 14 days after conviction if a convicted MP is not to lose his MP-ship.

The same goes for an appeal to the Federal Court, which must be made within 14 days after the Court of Appeal upholds the verdict of the High Court for a convicted MP to retain his status as an MP.

In a similar vein, an MP found guilty and sentenced must apply for a judicial review within 14 days after the Federal Court has dismissed his appeal if he is to retain his status as an MP, and similarly, a petition of pardon in turn must be made within 14 days after the outcome of the judicial review is not in favour of the MP concerned.

“Of course, if the MP concerned does not want to apply for a judicial review, then

he has 14 days to apply for a pardon after the Federal Court has dismissed his appeal if he wants to retain his status as an MP.

“Since Najib has applied for a pardon within the time limit of 14 days after the Federal Court’s reaffirming of his conviction, he retains his MP-ship for as long as the pardon is not disposed of,” added Professor Rani.

What this means is assuming the pardon process takes three years to complete, then for three years, Najib will be an MP while in jail.

But the clincher lies in when the current Parliament will be dissolved. We know that Parliament will automatically dissolve itself on July 16 next year, if it is not dissolved earlier.

So in the current situation, Najib will be an MP for only a maximum period of about less than a year from today or lesser still should Parliament dissolve earlier than July 16 next year.

Can Najib take part in the 15th general election while in jail?

He can’t because by virtue of Article 48(5) of the Federal Constitution, which states that a conviction is enough to disqualify an MP “for the purpose of

nomination, election or appointment of any person to either House of Parliament”, Najib has already been disqualified from taking part in GE15.

But if the petition of pardon is disposed of in Najib’s favour before July 16 next year, and assuming GE15 takes place after the petition of pardon is disposed of, then of course Najib can take part in GE15.

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