

PM: Parliament dissolution valid, Agong wanted polls before monsoon

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Ismail Sabri Yaakob contended that incumbent Klang MP Charles Santiago's legal challenge over the 15th general election is academic as Parliament has already been dissolved.

In an affidavit filed at the High Court in Kuala Lumpur yesterday afternoon, the caretaker prime minister also claimed that the Yang di-Pertuan Agong has already sought for GE15 to be held before the onset of the annual monsoon season this year.

The affidavit by the incumbent Bera MP as well as the government was in support of their application to nullify the DAP lawmaker's legal challenge against the national polls being held this year.

On Tuesday last week, Charles filed the civil action, citing concerns over flood risks to voters if GE15 is held during the monsoon season.

Then, a few days later, around midday last Friday, the three defendants - Ismail Sabri, the government, and the Election Commission (EC) - entered appearance in the lawsuit in order to respond to it.

A few hours later that same day, the trio filed a formal application to strike out the civil action.

According to a copy of the affidavit in support of the nullification bid sighted by Malaysiakini, Ismail Sabri and the government pointed out that the Agong has properly exercised his constitutional power to dissolve Parliament upon request by the caretaker prime minister.

Ismail Sabri and the government referred to a media statement issued on Oct 10 by Istana Negara's Comptroller of the Royal Household which stated the Agong's consent to dissolve the August House.

'Agong exercised his prerogative power'

"Upon perusing the said media statement, I also find that the Agong had exercised his prerogative power under Article 55(2) of the Federal Constitution judiciously by expressing his hope that the 15th general election be held in the near future, before the onset of the monsoon season forecasted for middle of

November 2022.

“This showed the YDPA’s caring nature (sifat keprihatinan dan cakna) and to take into account the factor of the people’s welfare, despite this not being a prerequisite under Article 55(2) as well as Article 44 of the Constitution,” the prime minister and the government contended.

‘Allegations irrelevant to Agong’s discretion’

In the affidavit, the duo claimed that the courts have no jurisdiction to hear the legal action because the issue of the Agong’s power to dissolve Parliament is a matter that is non-justiciable (cannot be challenged in court).

Ismail Sabri and the government also contended that Charles’ allegations in the civil action - that Umno had sought the dissolution of Parliament and various members of the cabinet disagreed with the move - were irrelevant with the Agong’s constitutional power to declare the dissolution of Parliament.

“I will further state on record that this action (by Charles) has collateral and hidden purpose and is clearly an abuse of this honourable court’s process.

“The collateral and hidden purpose in this action is motivated by politics and an

attempt by the plaintiff to prevent the third defendant (EC) to carry out its duty under the Constitution and election law,” the caretaker prime minister and government claimed.

Under Article 55(4) read together with 113(1) of the Federal Constitution, the EC has a duty to hold elections within 60 days from the dissolution of Parliament.

Meanwhile, in a separate affidavit in support filed by the EC yesterday, the commission generally cited similar grounds raised by Ismail Sabri and the government to nullify the legal challenge.

The court document, affirmed by EC chairperson Abdul Ghani Salleh, contended that Charles’ civil suit has no reasonable cause of action, explaining among others that the commission has a constitutional duty to hold the election.

The EC claimed that it also has a duty to ensure the smooth running of the forthcoming election per Articles 55(4) and 113(1) of the Federal Constitution, as well as the provisions of the Elections Act 1958, the Election Offences Act 1954, and other related rules and regulations.

“Therefore, the conduct of elections cannot be questioned (in court) except through an election petition (filed at the election court) provided under Article

118 of the Constitution,” the commission contended.

The originating summons is fixed for hearing on Oct 20. However, following the filing of the striking-out bid, it is now uncertain whether this would still proceed.

Ismail Sabri, the government and the EC are represented by counsel from the law firm Hafarizam Wan & Aisha Mubarak.

Lawyer Surendra Ananth is acting for Charles.

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