

Judge explains why Tian Chua won't lose seat
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Kuala Lumpur High Court judge Justice Ghazali Cha has stated in his written judgment that the RM2,000 fine imposed on PKR's Tian Chua will not cause his disqualification as Batu MP.

On June 17, he had dismissed Chua's appeal but reduced the sentence, saying he adopted the 1993 Supreme Court decision in Public Prosecutor vs Leong Yin Ming that only a fine of RM2,001 or more would result in automatic disqualification.

In the 18-page document, the judge quoted a passage from Supreme Court judge Justice Gunn Chit Tuan that the phrase "shall not be less than" should mean "more than".

"Based on this Supreme Court decision, it binds the lower court. It is a strong authority which can be adopted by this court," Justice Ghazali said.

"I am confident that the fine will not result in a by-election being called in Batu. My intention and purpose is clear and sincere in giving the judgment. I would also like to warn the accused not to repeat such offences in the near future."

A copy of the written judgment has been placed on blog-site loyarburokcom.

NONEThe RM2,000 fine has become a source of dispute as to whether it is sufficient to disqualify Chua, whose real name is Chua Tian Chang, from remaining an elected representative.

Chua's lawyers have argued, as has Justice Ghazali, that the fine does not warrant the PKR strategic director losing his seat, as based on the Leong Yin Ming case.

Senior lawyer Karpal Singh and former Bar Council chairperson Ambiga Sreenevasan have said, however, that they hold the view the phrase 'not less than RM2,000' includes the amount.

Article 48(1)(e) of the federal constitution stipulates that a member of the Dewan Rakyat can be disqualified if fined an amount 'not less than RM2,000' or sentenced to 'not less than one year' in jail by any Malaysian court.

Fan case 'different'

Justice Ghazali also expressed the view that the finding in the case of DAP's former Menglembu MP - Fan Yew Teng vs Government of Malaysia - is not applicable in Chua's case.

malaysia parliament parlimenHe said Fan's case was different as it was over the constitutional interpretation as to whether or not the Dewan Rakyat has powers under Article 53 of the federal constitution to disqualify a MP.

"Furthermore, the Leong Yin Ming case supercedes the Fan case over the term of 'shall not be less than' and the issue of sentencing was not disputed by Leong's lawyers at that time," the judge wrote.

Based on these reasons, he said, the court is satisfied that the sentence meted out is "just and follows the provisions of the law".

In a related development, Chua's lawyers filed an application today for leave (permission) to lodge an appeal in the Court of Appeal.

Chua was found guilty of biting a police constable while being arrested at a protest outside Parliament House three years ago.

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