

Federal Court: Power to review own decision 'limited'
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The inherent power of the Federal Court to review its own decision is limited and strictly confined to procedural matters.

This was the majority ruling of a three-men bench led by Federal Court judge Zulkefli Ahmad Makinudin in their grounds of judgment on the issue of the power of the Federal Court to review its own decision.

The matter was argued by parties in Anwar Ibrahim's appeal to obtain documents including the statements of his accuser, Mohd Saiful Bukhari Azlan, to assist him in preparation of his defence in his sodomy trial.

On Feb 25 this year, the quorum had unanimously dismissed Anwar's appeal but notified parties in the appeal that they would supply the grounds for their decision at a later date.

Both Zulkefli and Heliliah Mohd Yusof took the view that the apex court could review its own decision under Rule 137 of the Rules of the Federal Court 1995 but its powers were confined to only procedural matters.

They held that the apex court could not invoke its inherent powers to review its own decision on the merits of the case.

Justice Mohd Ghazali Mohd Yusoff, however, adopted a dissimilar stand, which was that Rule 137 could not be invoked at all by the court to review its own decision.

To deal with injustice or abuse

In his 10-page judgment, which was released to the media today, Zulkefli said it was clear that Anwar had intended to move the court to review the issues on their merits which was outside the purview of Rule 137.

He said the limited inherent powers conferred to the Federal Court under Rule 137 was to maintain the apex court's character as a court of justice and to address injustice or abuse of the court's process.

Rule 137 did not confer a new jurisdiction or a statutory jurisdiction, he added.

Heliliah, in her 72-page judgment, said a certain reserve of powers intrinsically remain with the Federal court to review its own decision because the Federal Court was created by the Federal Constitution as a judicial organ at the apex of the judiciary.

"Hence by virtue of being at the apex, it is only the Federal Court that has to be the organ to deal with injustice or abuse of processes," she said, adding that the object of Rule 137 was not to defeat finality.

Ghazali, in his 64-page judgment, said Rule 137 cannot be construed to mean that it conferred power upon the Federal Court to review, re-open, re-hear or re-visit, to reverse or set aside a judgment given in an appeal which had already been heard and disposed off.

Instead, he was of the view that the Federal Constitution and the Courts of Judicature Act did not confer the Federal Court a power to review its own judgment.

Unfortunate if this court allows

He said Rule 137 was not another tier of appeal, adding that it was of the public interest that there should also be a finality in deciding any dispute.

"I do not think that when the Rules Committee introduced Rule 137 in the Rules (Rules of the Federal Court), it was the intention to allow parties to apply for a review of an earlier decision of this court in the same action by exercising a purported inherent power.

"It would be unfortunate if this court utilises Rule 137 to allow a panel of equal standing to an earlier panel to hear and rule on contentions that the decisions of the earlier panel was wrong or incorrect and that the earlier panel had made an erroneous decision," he said.

Anwar had filed for a review to set aside the Federal Court's own decision on Jan 29 this year to turn down his appeal for the documents.

Apart from the witness statements of Mohd Saiful, he also wants the examination notes of Dr Osman Abdul Hamid from Pusrawi Hospital, statements by condominium owner Hassanuddin Abdul Hamid, and those of the three doctors from Kuala Lumpur Hospital (KLH), a chemist's notes and medical reports and CCTV footage of the condominium at the alleged time.

Anwar, 63, is on trial for allegedly sodomising Mohd Saiful, 24, his former aide, at a condominium in Bukit Damansara, Kuala Lumpur, on June 26, 2008.

The trial is set to resume on July 19.

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