Sodomy II - an authoritarian fantasy
Malaysiakini.com
August 17, 2010

Judge Mohamed Zabidin Mohd. Diah, the Malaysian judiciary's version of 'Stonewall Jackson', continues to proceed in Sodomy II by the light of his interpretation of the law, no doubt.

Yesterday he rejected, for what must seem the umpteenth time (one loses count), an application by the defence – this one, to strike out the charge on the basis that the integrity of the prosecution has been compromised by an affair between the accused and a prosecution lawyer, an affair not denied by the involved parties.

azlanLike the American Civil War commander who ordered his troops to stand like stones in the face of unremitting enemy fire, Judge Zabidin stands as immovable object against the irresistible force of the defence in the sodomy trial of Anwar Ibrahim.

Thus far in a trial that's turning out to be interminable, the immovable object has not budged an inch.

While Jackson's obduracy saw his first name become a metaphor for the quality his troops famously displayed, it is more likely that what fame (or infamy rather) Judge Zabidin's rejections of applications by the defence would gain would reside in their repudiation in some future rerun of this case.

Given the sequel to Sodomy I, which saw Anwar Ibrahim acquitted after spending six years in jail, no one can say with certainty that such repudiation is not a future possibility.

Legal process not paramount

Judge Zabidin's rulings and their ratiocinative basis have the unfortunate effect of reminding observers of the dark side of the law, as distinct to its fair side which is the law's majesty and its philosophical striving for justice.

This dark side of the law tells us that while the law can begin in principles, it can be traduced by interests and these interests can be disguised as principles. Though the law is not an exact science, it is like science in its adherence to methods by which to arrive at a finding.

palace of justice istana kehakimanJust as in science a finding is said to be scientific if the methods of inquiry have conformed to correct procedure, so in law an outcome is said to be just if the legal process that led up to it has been adhered to.

In the jurisprudence of Judge Zabidin in Sodomy II, legal process is not paramount.

A lax application of the stricture against contempt during trial proceedings, the prosecution's refusal to hand over medical reports and police reports, a material contradiction between the charge of consensual sex and the reported claim of the accused of having been coerced, and a story, not denied, of an affair between the accused and a prosecution attorney – have all been taken as having not compromised the process by which a just finding is to be arrived at.

This is not the modern conception of law. This is something else – an authoritarian fantasy,

perhaps.

Copyright © 1999-2007 Mkini Dotcom Sdn. Bhd.
Source : http://www.malaysiakini.com/news/140269