

**Bills Inconsistent With Constitutional Guarantees**  
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**By Lim Chee Wee**

The Malaysian Bar is disappointed with the two Bills (collectively referred to as "Bills") - relating to the Universities and University Colleges (Amendment) Act 2012 ("UUCA Bill") and Private Higher Educational Institutions (Amendment) Act 2012 - because their provisions regulating the freedoms of association, speech and expression of students violate the freedoms guaranteed under Article 10 of the Federal Constitution.

Those provisions are antithetical to The Honourable Prime Minister's declaration and assurance to Malaysians on 11 April 2012, that after more than half a century of independence and the practice of democracy, we have reached a high level of maturity, and that it is the Government's duty to guard our Constitutionally-guaranteed rights instead of restricting individual freedoms.[fn1]

The proposed amendments contained in the Bills suggest, however, that others in Government apparently do not consider our university students as deserving of equal protection of individual freedoms and rights, ostensibly because they lack the requisite level of maturity.

Whilst the Bills permit membership in a political party, the rights of association, speech and expression are qualified to such an extent as to render such rights illusory, as the proposed amendments:

- (1) prohibit a student from being involved in political party activities within campus;
- (2) empower the board of directors of a university or the registrar general to determine if the society or organisation that a student intends to join is "unsuitable to the interest and well-being of the students or the university" (although this does not include political parties);
- (3) prohibit a student from standing for election or holding any post in any society or organisation on campus if the student holds any post in a political party; and
- (4) prohibit a student from expressing or doing anything that may be reasonably construed as expressing support for, or sympathy with, or opposition to, any society or organisation that is unlawful, or that the board of directors of a university or the registrar general determines to be "unsuitable for the interests and well-being of the students or the university".

These provisions are unnecessarily restrictive, unreasonable and disproportionate barriers to a student's freedom of association under Article 10(1)(c), and freedoms of speech and expression under Article 10(1)(a), of our Federal Constitution.

The current laws have long prevented local university students of all ages from being actively involved in a significant aspect of the democratic process. It has prevented these Malaysians from expressing their views or doing anything that may reasonably be construed as expressing support for, or sympathy with, or opposition to, political parties. Universities - as with all institutions of higher learning - must, as one of their primary duties, embrace and espouse the development of critical thinking by their students and the encouragement of robust debate. This is vital to ensure a continuous stream of thinking Malaysians who are able to advance and build our nation.

In this regard, the Malaysian Bar fully supports the move by the Barisan Nasional Backbenchers Club, led by Khairy Jamaluddin (Member of Parliament for Rembau), to table a supplementary amendment to the UUCA Bill to remove proposed sections 15(2)(c) and (d). We also urge the removal of subsections 15(2) to (5) altogether.

Consistent with Deputy Higher Education Minister Saifuddin Abdullah's reported comment [fn2] that the Government would lose in moral terms if it appealed against the decision of the Court of Appeal in Muhammad Hilman bin Idham & 3 Others v Kerajaan Malaysia & 2 Others, which declared the current restrictive section 15(5(a) of UUCA unconstitutional, the Government should withdraw its appeal.

By amending the Bills in the manner suggested above and withdrawing the appeal, the Government would be taking a positive and noteworthy step forward in fulfilling its duty to safeguard the constitutional guarantees for all Malaysians.

LIM CHEE WEE is President of Malaysian Bar

[fn1] Speech at the installation of the 14th Yang di-Pertuan Agong on 11 April 2012, available on the website of the Prime Minister's office.

[fn2]

<http://www.themalaysianinsider.com/malaysia/article/umno-deputy-minister-says-putrajaya-will-lose-moral-ground-with-uuca-appeal/>

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