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Najib may drop plan to sue if WSJ invokes US law MR - 1/10/2015

A law firm is advising Najib on his plan to sue WSJ over 2 articles concerning 1MDB

by AYU MUSA KAMAL

LAWYERS for Prime Minister (PM) Datuk Seri Mohd Najib Razak said yesterday they may abandon a plan to sue *The Wall Street Journal (WSJ)* for defamation if the newspaper intends to invoke a law that protects the freedom of speech in the US.

Datuk Mohd Hafarizam Harun, of Hafarizam Wan & Aisha Mubarak, said he will ask WSJ whether it will use an American law called the Securing the Protection of Our Enduring and Established Constitutional Heritage (Speech) Act, that protects US journalists and publications against court judgements issued in another country.

The law firm is advising Najib on his plan to sue the US newspaper over two articles

concerning 1Malaysia Development Bhd (1MDB).

Mohd Hafarizam said the Speech Act roughly means that US media companies will be protected against judgements executed outside the US due to defamation until the plaintiff can show that the same freedom of speech is also enjoyed in the other country.

"What it means is, if I sue WSJ in Malaysia and get a court judgement then go to the US and have it registered, the US will say 'show me that the freedom of speech in Malaysia and the courts are like the freedom of speech in the US and its courts'.

"So I asked WSJ, 'If I do sue you and I do get the judgement in Malaysia, will you invoke that particular act to protect you from being executed in the US?'" said Mohd Hafarizam.

Mohd Hafarizam said he does not want to file a case in Malaysia and get a judgement which would not be enforceable in the US if WSJ decides to invoke the Speech Act.

"Why do you want to allow

a foreign institution or judiciary and its media to dictate that your court is not independent. I want to ask WSJ through their lawyer if they are going to use the Act or not.

"If they say no, I will advise my client that it is time to take action against WSJ," Hafarizam told reporters at the Kuala Lumpur Court Complex yesterday.

The lawyer said a letter requesting clarification whether the Speech Act will be invoked has been sent to WSJ's appointed counsel in Singapore who had until Wednesday to reply.

Checks by *The Malaysian Reserve* show the Speech Act mainly addresses concern that US plaintiffs are increasingly using foreign courts to sue US writers, journalists, and academics for works published in the US – so-called "libel tourism".

It requires US state and federal courts to deny recognition or enforcement of foreign defamation judgments unless the foreign jurisdiction pro-

vides at least as much protection of free speech as the US Constitution and the constitution and laws of the state in which the court is located.

On July 2, WSJ published a money trail involving 1MDB's financials implying the involvement of Najib which then led to the premier's lawyers demanding an explanation from its publisher, Dow Jones, who has subsequently said they stand by the articles.

In a related development, Najib will find out today if he can defer filing defence to a suit filed by former Langkawi Wanita Umno leader Anina Saadudin over RM2.6 billion that was deposited into his personal bank accounts.

Mohd Hafarizam and Anina's lawyer Mohamed Haniff Khatri Abdulla presented their submissions in the chambers on the application of Najib to defer filing his defence.

He said the suit should be struck out as Anina had lost her status as an Umno member after she filed the suit on Aug 28.