

SRC INTERNATIONAL TRIAL

WILL NAJIB BE TOLD TO ENTER HIS DEFENCE?

All eyes will be on Datuk Seri Najib Razak tomorrow. If he is not told to enter his defence, he will be freed

AFTER 58 days, on Aug 27, the prosecution finally rested its case against Datuk Seri Najib Razak.

The former prime minister was charged over one count of abusing his position, three counts of criminal breach of trust, and three counts of money laundering involving SRC International Sdn Bhd's (SRC) funds amounting to RM42 million.

If convicted, he will face up to 125 years in prison, excluding fines just for this case alone.

Najib will know his fate tomorrow when High Court judge Mohd Nazlan Mohd Ghazali, who presided over the trial, makes a decision whether to order him to enter his defence or to acquit him of the charges.

In concluding the case, Attorney-General Tommy Thomas said the prosecution would offer 66 witnesses to the defence if the accused was ordered to enter his defence.

Should the defence be called, Nazlan has fixed 10 days for trial from Dec 3 for Najib to put up his case. The following is a recap of the corruption and fraud charges against him:

ONE charge under Section 23 of the MACC Act 2009 (abuse of position)

Najib was charged with abusing his power to commit bribery involving RM42 million when he participated in a decision on behalf of the Malaysian government to provide government guarantees for loans from the Retirement Fund Incorporated to SRC International amounting to RM4 billion between Aug 17, 2011, and Feb 8, 2012.

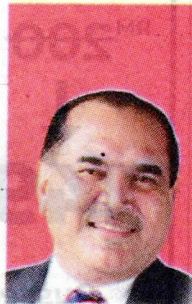
THREE charges under Section 409 of the Penal Code (criminal breach of trust)

Najib, as a public servant, namely prime minister and finance minister, and adviser to SRC, allegedly misappropriated RM27 million, RM5 million and RM10 million of RM4 billion belonging to SRC in 2014 and 2015.

A POWERFUL LEGISLATION

Law expert Professor Datuk Salleh Buang stressed that Section 4(2) of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act (AM-LATFPUAA) 2001 is an extremely powerful provision.

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DATUK SERI AKHBAR SATAR

It states that a person may be convicted of money laundering "irrespective of whether there is a conviction in respect of a serious offence or foreign serious offence or that a prosecution has been initiated for the commission of a serious offence or foreign serious offence".

PENALTY

If convicted, Section 4 of AM-LATFPUAA provides for a punishment of not more than 15 years' imprisonment, and a fine of up to RM5 million or five times the amount that was allegedly misappropriated, whichever is higher, for each charge.

JUSTICE ADMINISTRATION

The criminal justice administration involves law enforcement agencies, the prosecution and the courts.

The law enforcement agency is the Malaysian Anti-Corruption Commission, while the deputy



Datuk Seri Najib Razak at the Kuala Lumpur High Court. PIC BY ZUNNUR AL SHAFIQ

public prosecutors are from the Attorney-General's Chambers, and judges preside over the court cases.

MACC'S INVESTIGATION PAPER

High-quality investigation papers are vital. These contain statements recorded from witnesses and suspects, and documentary evidence collected during the investigative process, which would assist in the court's ruling.

Witnesses are important constituents of the administration of justice and in ensuring a successful prosecution.

PUBLIC PROSECUTORS (PPs)

The role of the PPs is equally important as they are the principal prosecuting authority.

They must possess high integrity and knowledge in conducting prosecutions.

PPs must adduce certain amount of evidence to prove a prima facie case. In a criminal case, the burden of proof is on the prosecutor.

THE TRIAL

In this SRC trial, the prosecutors stated that they had established a prima facie case by producing credible evidence to prove each element of the offence under Section 23 of the MACC Act, Section 409 of the Penal Code or Section 4 (1)(b) of AM-LATFPUAA, which if un rebutted warrants a conviction.

Tan Sri Muhammad Shafee Abdullah, who is leading the defence team, argued that the prosecution had failed to prove a prima facie case against his client.

As for the judge, he will evaluate all direct and circumstantial evidence, testimonies and more

than 770 documents tendered as evidence by the prosecution's 57 witnesses.

In a society governed by the rule of law, judges must come to an independent decision based on the law and an objective assessment of the evidence presented in court.

If the judge orders Najib to enter his defence, he has three options:

KEEP quiet and not answer the charges;

GIVE an unsworn statement from the dock but the accused cannot be cross-examined by the prosecution; or

TESTIFY under oath on the witness stand, with the prosecution liable to cross-examine him.

If Najib is not ordered to enter his defence, he will be acquitted.

UPHOLDING THE RULE OF LAW

Judges must make fair decisions so that justice is determined by the law in a neutral manner, immune to pressure from the media, public opinion and political influences.

If the people perceive a possible interference, the level of trust in our judiciary will be affected.

An important tenet of our justice system is that justice must not only be done, but must also be seen to be done.

Otherwise, there is no meaning to the "rule of law".

To my knowledge, in most of the corruption cases brought by the MACC, the defendants were ordered to enter their defence at the end of the prosecution's case.

The writer holds a professorial chair at HELP University's Institute of Crime and Criminology, and is the president of Malaysia Certified Fraud Examiners



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