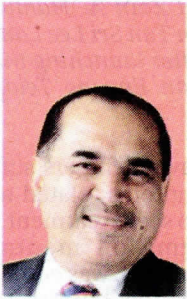


NAJIB'S SRC TRIAL: WHAT'S NEXT?

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Many lawyers believe the case may run until 2021 or 2022

AKHBAR SPEAKS



DATUK SERI AKHBAR SATAR

DATUK Seri Najib Razak was ordered by the High Court to enter his defence and answer all seven charges against him.

He is facing one count of abuse of power, three counts of money laundering and three counts of criminal breach of trust involving more than RM42 million from 1Malaysia Development Bhd's former subsidiary, SRC International Sdn Bhd.

The judge, Mohd Nazlan Mohd Ghazali, said the prosecution had successfully made out a prima facie case by adducing credible evidence to prove each ingredient of the offence against Najib under Section 23 of MACC Act, Section 409 of the Penal Code or and Section 4 (1)(b) of Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001, which if un rebutted warrants a conviction.

The judge said the accused had interest in SRC International, where he had total control, resulting in RM42 million being deposited into his accounts.

He ruled that Najib played a role in the establishment of SRC International and its RM4 billion loan from the Retirement Fund Inc in 2011.

The judge added that as the prime minister, he had wielded enormous influence in SRC International.

TESTIFY UNDER OATH

After Najib's lawyers failed to obtain an acquittal, the judge offered him three options, namely to testify under oath on the witness stand with the prosecution liable to cross-examine him, giving an unsworn statement from the dock without being cross-examined, or to remain silent.

On Facebook, Najib said he would make a sworn statement and be cross-examined by the prosecutors.

Meanwhile, Sarawak Report said even the lousiest team in the world would have urged Najib to stick to the unsworn written statement or zip his lips entirely.

However, a majority of graft-busters say option one is the best for him as it will allow him to state his defence, while options 2 or 3 would make him look like he had something to hide.

THE TRIAL

Nazlan had fixed 10 days beginning Dec 3 for Najib to put up his case.

This trial may go on for months before it reaches the Court of Appeal and the Federal Court, especially due to the preparation of the records of appeal.

Najib's lawyer, Tan Sri Muhammad Shafee Abdullah, said it would stretch beyond the next general election

Many lawyers believe that the trial may run until 2021 or 2022 and either side will appeal to the highest court.



A majority of graft busters say giving evidence under oath is the best option for Datuk Seri Najib Razak. FILE PIC

To expedite the proceedings in public interest cases, all relevant parties should discharge their duties professionally.

Prior to this, Attorney-General Tan Sri Tommy Thomas had produced 57 prosecution witnesses, tendered more than 770 documents as evidence in the prosecutorial stage, and also offered 66 witnesses to the defence.

During the trial, the defence witnesses, when called to give evidence, will be subjected to examination-in-chief by defence lawyers, cross-examined by the public prosecutor and re-examined by the defence.

DEFENCE CASE

Shafee said when the trial starts, Najib will be the first to be called to testify.

He said it could also be a chance for the people to hear the real story from Najib because the former prime minister has his version of what happened in SRC.

A former senior government servant said that after a lengthy prosecution stage, we should be given the opportunity to hear his defence.

Shafee informed the court that he would file applications to obtain names of witnesses that the prosecution had not offered to the defence but who had their

statements recorded.

Shafee will also call a few professional witnesses to testify.

However, the High Court dismissed Najib's application that he be supplied with all the witnesses' statements.

In his ruling, Nazlan said statements taken by the investigation officer under the MACC Act 2008 were privileged because of public policy consideration, and not subject to disclosure at any stage of the trial to prevent witness tampering.

REASONABLE DOUBT

The duty of the defence lawyers is to rebut the evidence that the witness gave — to show it is unworthy of credit, not relevant to the fact in issue — and provide a credible defence that can raise a reasonable doubt in the prosecution's case.

The defence can also raise doubt on the evidence given by witnesses on a balance of probabilities.

The role of the prosecutor at this stage is to ensure the defence witness does not weaken or raise a doubt in the prosecution's case.

This will be done at the cross-examination stage.

THE JUDGES

The judge should decide the case on merit without fear or favour.

About 2,400 years ago, Socrates, a Greek philosopher, described the essential qualities that a judge should have: to hear courteously, to answer wisely, to consider soberly, and to decide impartially.

We must now wait and see the result of this high-profile trial.

The writer holds a professorial chair at HELP University's Institute of Crime and Criminology and a former President of Transparency International Malaysia