

Judiciary now cowed due to Dr M, says ex-CJ
The Malaysian Insider
February 11 , 2012
By Melissa Chi

KUALA LUMPUR, Feb 11 — The courts have become subservient to politicians in the executive arm of government today because of Tun Dr Mahathir Mohamad, former Chief Justice Tun Mohd Dzaiddin Abdullah said today.

The retired judge highlighted the amendment to Article 121 of the Federal Constitution, made during Dr Mahathir's administration in the 1980s, which effectively clipped the judiciary's wings for over two decades.

Mohd Dzaiddin said the judiciary is not a tool to be used by the government for any kind of political expediency. — Picture by Jack Ooi

"As a result of the amendment, the judicial powers of the courts were removed and they have only such judicial powers as Parliament gives," Mohd Dzaiddin said, adding that it meant "Parliament is more superior than what the judiciary was."

The man, who once headed the country's courts, said the amendment was repugnant "because Parliament attempted to dictate to the judiciary that it only has judicial powers which Parliament itself says the judiciary has."

He stressed: "This alters in my view in a very fundamental manner the basic structure of the Federal Constitution, from the concept of the independence of the judiciary to dependence of the judiciary on the executive for its judicial powers."

Malaysia's judiciary is not a tool to be used by the government for any kind of political expediency, Mohd Dzaiddin said.

"The judiciary should be completely independent both of the executive and the legislature," the retired judge said in his keynote speech celebrating Tunku Abdul Rahman's birthday and the Institute of Democracy and Economic Affairs' (IDEAS) second anniversary at the Tunku Abdul Rahman Memorial today.

In 1988, then Lord President Tun Mohamed Salleh Abas was sacked by then-Prime Minister Dr Mahathir.

Mohd Dzaiddin said the incident was due to clashes in opinions between Dr Mahathir and Salleh over the roles of the two arms of government.

Bar Council president Lim Chee Wee also said the incident in 1988 should never be repeated.

"I think there is a recognition now by everybody, we must never go back to the days of '88, we must never allow a prime minister to sack judges just because he made a judicial pronouncement which was unfavourable to the government of the day, that must never ever happen again," he said.

Lim said for commercial cases, Malaysia's judiciary system was credible enough to handle

cases from the region.

"But the ultimate test is of course when it comes to politically sensitive cases or religious cases and how our appellate courts deal with it.

"On that score, I still give them a minus because so far as religious cases go, the conversion cases, there is a fear by our appellate courts in having to make a decision. They keep postponing, the controversial cases just being postponed, then there is of course the Perak crisis," he said.

On Wednesday, a three-man panel of judges in the Court of Appeal ruled that the rights and freedom of speech enshrined in the Federal Constitution are not absolute.

As a result, veteran DAP MP Karpal Singh's statement at a press conference in 2009, that the Sultan of Perak could be sued, had crossed legal lines and amounted to sedition, the judges said.

"To be fair, we have very courageous judges who have awarded substantial damages against the government for wrongful detention. So to be fair there are those, in the words of Tun Dzaiddin, 'silver lining out there'," Lim said.

The Malaysian Insider

Copyright © 2012 The Malaysian Insider

Source: <http://www.themalaysianinsider.com/malaysia/article/judiciary-now-cowed-due-to-d-r-m-says-ex-cj/>