

Dr M: Constitutional changes did not alter judicial powers
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By Yow Hong Chieh

KUALA LUMPUR, Feb 17 — Former Prime Minister Tun Dr Mahathir Mohamad said today amendments to Article 121 of the Federal Constitution only gave the Attorney-General responsibility to choose which court should hear a case.

This merely returned responsibility to the A-G to decide on which cases would be tried in the High Court and did not make the judiciary subservient to politicians, he stressed.

Dr Mahathir (picture) said the matter arose in 1987 when the judge in Datuk Yap Peng's criminal breach of trust trial ruled that section 418A(1) of the Criminal Procedure Code (CPC) was unconstitutional after the public prosecutor had applied to transfer the case to the High Court.

Section 418A(1) originally allowed any case tried in a criminal court subordinate to the High Court to be transferred to the High Court.

The Supreme Court then ruled 3-2 in favour of the trial judge's opinion, with Tan Sri Hashim Yeop A. Sani and Tun Salleh Abas opposing.

"Salleh Abas, giving his minority dissenting view, said: 'I cannot see how this power... could be regarded as an encroachment upon judicial power of the court. In my view, it is neither a judicial power nor an encroachment of that power'.

"It was probably to make clear the situation and to restore the right of the A-G that he decided to include the amendment to Article 121(1) when the Constitution was to be amended to clarify the role of the Rulers in law-making," Dr Mahathir said in his blog.

The Umno veteran said he did not seek clarification from the A-G at the time as he did not consider the amendment to Article 121 as altering judicial powers in any way.

"It is normal that whenever a law needs to be amended to facilitate the process of justice, then it would be amended. The Constitution was drafted by mere men and it cannot be perfect," he noted.

"The rights and functions of the judiciary have not been subservient to the politicians or the prime minister before or after the amendment. This is because the amendment involves only the procedure in which the A-G was given back the responsibility to transfer cases. It did not give the prime minister any authority to overrule the courts."

Former Chief Justice Tun Mohd Dzaiddin Abdullah said on Saturday the judiciary became subservient to politicians after Dr Mahathir clipped its wings in the 1980s by amending Article 121 of the Constitution.

Dzaiddin had said the amendment was repugnant because Parliament could now decide what powers the judiciary should be given, altering in a very fundamental way the basic structure of the Federal Constitution.

Dr Mahathir's clashes over the roles of the executive and judiciary with then-Lord President Salleh had led to the latter's sacking in 1988, he also alleged.

Dr Mahathir reiterated today that it was the Yang di-Pertuan Agong, and not he, who had wanted Salleh removed and pointed out that his administration had gone by the book in dismissing the Lord President.

He noted that the Constitution contained a provision to remove a judge following a tribunal and that neither the King nor the prime minister could dismiss a judge themselves.

"All these procedures were followed to the letter. Two foreign judges were on the panel. The panel decided on Salleh's removal and not the prime minister or the government.

"Simply because Salleh was removed in accordance with the Constitution does not mean the judiciary is subservient to the government or the prime minister," he said.

Dr Mahathir added that Dzaidin should provide examples of the former's alleged interference in the courts during his time as chief justice and not just make claims.

"Perhaps Tun Dzaidin might be able to tell more about lobbying for high judicial appointments. Malay adats have a very powerful role in the governance of this country," he said.

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