

**PM's duty to ensure independent judiciary, says CJ**  
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KUALA LUMPUR, Nov 19 — Chief Justice Tun Arifin Zakaria reminded Datuk Seri Najib Razak today of his duty as prime minister to uphold judicial independence, urging him to ensure a clear separation of powers between the judiciary and the remaining two arms of government.

The country's top judge pointed out that the Judicial Appointment Commission Act (JACC) stipulates that the prime minister must ensure the judiciary acts independently of the executive and the legislature to ensure fairness and justice.

"Furthermore, he (prime minister) must also defend the need to that independence, ensure the judiciary have the support necessary to enable them to exercise their functions and ensure the needs for public interest to be properly represented to the judiciary, the administration of justice related matters," Arifin was quoted as saying in Malaysiakini today during his speech in the Integrity 2012 lecture here.

"Therefore, it is incumbent on the PM to defend the independence of judiciary. That is not to say that it wasn't so in the past, because it has always been the constitutional duty of the PM to do so," he added.

Arifin also reportedly boasted of improvements in public confidence over the country's rule of law, pointing to the number of judicial review applications between January and October this year.

Explaining, he said that judicial reviews are means of controlling the government's actions as they are directed to protect an individual against any illegal action taken by the administration.

"Between January to October 2012, a total of 220 judicial review applications were filed in Kuala Lumpur alone. If anything, this is clearly a positive indication of the public confidence in the rule of law in this country," Malaysiakini quoted him as saying.

The independence of the Malaysian judiciary has come under criticism following allegations that the institution was being used as a weapon to silence opposition dissent against the government.

Earlier this year, former chief justice Tun Mohd Dzaiddin Abdullah agreed that the judiciary has been subservient to the higher-ups in the government since the late 1980s after former prime minister Tun Dr Mahathir Mohamad clipped its wings with an amendment to Article 121 of the Federal Constitution.

Dzaiddin called the change 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.

Bar Council president Lim Chee Wee later agreed that the 1988 amendment to Article 121 had effectively tampered with the judiciary's independence, forcing the courts to be subservient to the executive arm of government.

He explained that the amendment had removed the words “the judicial power of the Federation shall be vested in two High Courts” from Article 121, effectively deleting the provision that judicial power of the federation is vested in the judiciary.

Instead, he said, it was stipulated that “the High Courts and inferior courts shall have such jurisdiction and powers as may be conferred by or under federal law”.

Lim recalled that when the Bill was being moved through Parliament, Dr Mahathir had stated that its intent was to clarify the separation of powers, namely that the judiciary was to be prevented from interfering with the acts and functions of the executive.

In his defence, Dr Mahathir had denied this, insisting that the amendment had not altered judicial powers but merely gave the Attorney-General the responsibility to choose which court should hear a case.

“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,” he had written in a blog posting in February this year.

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