

Peaceful assembly trial postponed pending Federal Court decision
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The trial of Solidariti Anak Muda Malaysia (SAMM) founder Badrul Hisham Shahrin, who was charged under the Peaceful Assembly Act, has been postponed pending a Federal Court decision on a similar charge earlier against Seri Setia assemblyman Nik Nazmi Nik Ahmad.

Badrul, also known as Chegubard, was supposed to continue with his trial today for a charge under Section 9 (5) of the Peaceful Assembly Act 2012.

Badrul's lawyer, Eric Paulsen, today applied to Judge Yasmin Abdul Razak for a discharge, arguing that after Nik Nazmi's case, his client had been slapped with a groundless charge.

On April 25, the Court of Appeal struck out the charge against Nik Nazmi under Section 9 (1) of the PAA, on failure to notify police before a rally.

The three-man Court of Appeal bench led by judge Datuk Mohamad Ariff Md Yusof had said that while the police could impose restriction on peaceful assembly, they could not penalise organisers and participants for non-compliance of the PAA.

The Court of Appeal also ruled that Section 9 (5) of the PAA – which provides for punishment for failure to give a 10-day notice to the authorities before a protest – as unconstitutional.

Yasmin, however, postponed Badrul's case to June 6, as the Federal Court is expected to meet on May 27 to hear Putrajaya's appeal against Nik Nazmi's acquittal.

"In view of the appellate court's decision to declare Section 9 (5) of the PAA to be unconstitutional, I propose an adjournment of the trial to a date beyond May 27.

"It is better for this court to wait for the decision of the Federal Court before making a decision on this issue," DPP Suhaimi Ibrahim told the court.

However, Paulsen rebutted and said that his client was being charged with an offence which did not exist.

"A person is being charged for an offence which is unknown in law as the provision has been declared unconstitutional.

"Unless and until the Federal Court overturns the decision of the appellate court, the right decision at the moment is to discharge in accordance with the law," Paulsen said.

Suhaimi, however, said it was not right in the circumstances of this case to say that the law is no longer there.

"The law is still there until or unless Parliament repeals or amends the provision," Suhaimi said, adding that until that was done, the law was still in existence.

Paulsen shot back that Suhaimi was leading the court into a grave error, by suggesting that the Court of Appeal did not have the power to declare an act or provision unconstitutional.

"We cannot go on the process that every provision must be repealed or amended by Parliament. That is ridiculous!

"We are asking for Badrul to be discharged, not acquitted," Paulsen said.

Later, outside the court, Paulsen told reporters that both the judge and the A-G's Chambers were disregarding the decision of the appellate court.

"To say that the provision is still there until it is amended by Parliament flies in the face of common sense and established law," the lawyer said.

He said the role of the A-G's Chambers was to present their evidence and argument in a fair and just manner, not to convict at all costs. – May 16, 2014.

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