

PM cannot reject judicial candidates, ex-judge says after Hishamudin's promotion blocked
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Retired Federal Court judge Datuk Seri Gopal Sri Ram said the prime minister has no right to reject candidates for judicial office. File picture shows Gopal arriving at the Palace of Justice in Putrajaya, November 3, 2014. – Picture by Yusof Mat Isa

KUALA LUMPUR, Sept 21 — The prime minister has no right to reject candidates for judicial office, retired Federal Court judge Datuk Seri Gopal Sri Ram said today after Datuk Seri Najib Razak purportedly blocked Datuk Hishamudin Yunus' promotion as Federal Court judge.

Sri Ram said under Section 27 of the Judicial Appointments Commission (JAC) Act 2009, the PM's only power is to call for two more names in addition to those submitted by the JAC.

"He also has power under Section 26(2) to call for further information on the proposed candidates, but he has no right to reject the candidates given," Sri Ram told *Malay Mail Online* when contacted.

"The failure to appoint Justice Hishamudin to the Federal Court was a loss to that Court and most unfortunate. In other jurisdictions, judges are appointed and promoted according to their ability and not because they give judgments in favour of or against the executive.

"Justice Hishamudin was an independent and able judge and that is a very good reason to have promoted him to the Federal Court as early as possible," added the former judge of the country's apex court.

Hishamudin told local daily *Sunday Star* in an interview published yesterday that the JAC had recommended in 2013 his promotion to the Federal Court, but Najib had rejected the commission's recommendation.

Among the landmark verdicts that Hishamudin delivered was a 2-1 majority Court of Appeal decision in 2011 declaring as unconstitutional Section 15 (5)(a) of the Universities and University Colleges Act (UUCA) 1971 that restricts students from expressing support of, or from opposing, any political party.

Another landmark decision he made was the transgender case, where the Court of Appeal declared last November as invalid and unconstitutional the Negri Sembilan state Shariah enactment that criminalises Muslim men for cross-dressing.

Retired Court of Appeal judge Datuk Mah Weng Kwai and former Malaysian Bar president Datuk Ambiga Sreenevasan, however, differed from Sri Ram and said the prime minister has the final say in appointing judges, but called for the JAC to make the final decision in judicial appointments instead.

Ambiga said it was “totally unfair” that Hishamudin was not elevated to the country’s apex court as the retired Court of Appeal judge was “such a worthy” candidate, describing him as a judge who had upheld his oath of office and was true to the Federal Constitution.

“Most of all, he was fearless,” Ambiga told *Malay Mail Online* when contacted.

“Unfortunately, under our laws, the PM still has the final say despite the JAC. This was one of the issues the Bar was not happy with when the JAC was introduced as it allows the executive the final say. This compromises the separation of powers.

“So I personally do not think the PM should have the final say,” the former Malaysian Bar president added.

Retired Court of Appeal judge Mah said the selection of candidates for judicial office should be left to the JAC in order to preserve the separation of powers between the judiciary and the executive.

“Here, we have a group of people who are in the best position to know who is who, and go purely on merits and capability. So once they decide who they want to appoint, they should have the last say so they’re free from the executive,” Mah told *Malay Mail Online*.

The JAC, which was formed in 2009, recommends to the prime minister candidates for appointment as judges of the High Court, the Court of Appeal and Federal Court as well as judicial commissioners, including the appointments of the Chief Justice, the President of the Court of Appeal, and the Chief Judges of the two High Courts of Malaya and Sabah and Sarawak.

Judicial appointments were previously made by the Chief Justice, which Mah described as a very secretive and closed-door process that was improved subsequently with the establishment of the JAC.

The JAC, however, should ideally be “free of the executive” with the prime minister not having the final say in judicial appointments, said Mah.

The JAC in the UK selects candidates for judicial office and recommends them to the Lord Chancellor, Lord Chief Justice or the Senior President of Tribunals for appointment.

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