

## **Rafizi to challenge constitutionality of repealed banking law**

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**By V. Anbalagan, Assistant News Editor**

PKR secretary-general Rafizi Ramli, who has been charged for allegedly leaking confidential bank details linked to the National Feedlot Corporation (NFCorp), has filed an application to challenge the constitutionality of the repealed Banking and Financial Institutions Act (Bafia).

The Pandan MP filed his court papers at the Shah Alam lower court registry today to have the matter transferred to a high court.

His lawyer N. Surendran said the challenge was mounted because Bafia was a draconian legislation, similar to the Sedition Act.

"The accused is handicapped because the prosecution need not prove intention of the alleged crime," he told reporters.

Surendran said the charges against Rafizi and former bank officer Johari Mohamad, who is charged with conspiracy, should be dropped because Bafia had been repealed and replaced with the Financial Services Act 2013.

He said there was no reason for the public prosecutor to go ahead with the case because the two accused were whistleblowers who had acted on public interest.

Surendran said the application was filed under Section 30 of the Courts of Judicature Act 1964.

"We will be requesting the Sessions Court judge to refer three constitutional questions to the High Court," he added.

The questions are whether;

\* an accused person could remain silent during investigation to prevent being incriminated.

\* whether an accused person can be charged under Bafia which had been repealed and replaced with another legislation, and

\* whether Bafia is unconstitutional as the prosecution need not prove intention, a key ingredient in a criminal trial.

Surendran said the three questions violated Rafizi's right under Articles 5 and 8 of the supreme law of the land.

On April 6, the Federal Court ordered Rafizi to stand trial (for allegedly leaking confidential bank details linked to the National Feedlot Corporation (NFC) after it

struck out his appeal.

A five-man bench led by Tan Sri Raus Sharif said the appeal could not be heard as the Federal Court lacked jurisdiction to hear the case.

A Sessions Court is scheduled to hear the case on April 27.

Rafizi was charged in August 2012 with revealing four Public Bank customer-profile documents on the balance summaries of the NFC, National Meat and Livestock Sdn Bhd, Agrosience Industries Sdn Bhd and NFC chairman, Datuk Seri Mohamad Salleh Ismail.

He allegedly disclosed the documents to media consultant Yusuf Abdul Alim and to The Star reporter Erle Martin Carvalho, at the PKR headquarters in Petaling Jaya on March 7, 2012.

On September 10, 2012, Rafizi filed an application in the High Court to strike out the charge on grounds that it was against public policy to charge him for revealing alleged abuse of public funds.

He then appealed to the Court of Appeal after his application was dismissed by the High Court on November 23, 2012.

On May 23, 2013, the Court of Appeal dismissed Rafizi's appeal to strike out the charge. – April 20, 2015.

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