

Judiciary in spotlight as Najib heads to court to clear name, say lawyers

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The Malaysian judiciary, already perceived as being subservient to the executive, could be under further strain now that Datuk Seri Najib Razak has filed defamation suits against his political rivals and some media outlets, lawyers said.

Whether the suits were in his personal capacity or not, lawyers said Najib's administration would have to contend with public perception of him going to court for defamation – making him the first sitting Malaysian prime minister to do so.

Najib, as head of the executive arm of government, has a role in the appointment and promotion of judges. The prime minister appoints some members of the Judicial Appointments Commission, which selects judges.

While he still has the right to legal recourse, lawyers said it would be better for the prime minister to reply to criticism by engaging the media and to speak in Parliament to clarify issues.

Lawyer S.N. Nair said Najib's moves to sue has certainly placed the judiciary in state of discomfort.

"There will be a lot of pressure when the suits are heard by junior judges," said Nair whose legal forte is defamation suits for clients both in their capacity as plaintiff and defendants.

He said the judiciary was widely seen as the weakest among the three branches of government.

"The judiciary does not determine who the prime minister is but the prime minister has influence on who sits in the Judicial Appointments Commission to select judges for promotion."

Nair said on this account alone, the prime minister should have been more circumspect in his actions to due to public perception.

Nair said even Tun Dr Mahathir Mohamad, the longest serving prime minister, did not go to court because he was sensitive to public sentiment and the repercussion of filing defamation suits while holding public office.

He said Attorney-General Tan Sri Abdul Gani Patail, the chief legal adviser to the government, should have advised Najib of the perils of turning to the court to clear his reputation.

Najib's legal actions

The lawyer said this in response to a slew of suits filed by Najib against opposition politicians, the media and also threats of civil actions against foreign publications.

Najib last year filed a suit against news portal Malaysiakini over readers' comments following the replacement of former Terengganu menteri besar Datuk Ahmad Said.

He had also filed suits against Petaling Jaya MP Tony Pua over 1Malaysia Development Berhad (1MDB), Pandan MP Rafizi Ramli and the Mediarakyat news portal for remarks at a forum against him and his wife, Datin Seri Rosmah Mansor, over oil subsidies.

Najib has also sued PAS organ Harakahdaily over allegations that 1MDB had financed his stepson's venture in the production of a Hollywood movie.

He and Rosmah have also sued Taiping MP Nga Kor Ming over a photograph posted on Facebook.

In his latest legal action, Najib has sought clarification from The Wall Street Journal (WSJ) over a report which claimed that US\$700 million (RM2.67 billion) were channelled into his private bank accounts.

The letter is meant to get a clarification from WSJ and its publisher, Dow Jones, to state whether they meant that Najib had misappropriated the funds, in order to decide subsequent legal action.

In another recent action, Najib instructed his lawyers to act against Australian papers The Age and the Sydney Morning Herald, both owned by Fairfax Media, for carrying an article alleging that he and former prime minister Tun Abdullah Ahmad Badawi were involved in improper dealings with "two Australian Reserve Bank (RBA) firms over contracts to print polymer bank notes".

Obligated to answer

Lawyer R. Kengadharan said it was unprecedented for Najib to file multiple suits and this had given rise to the belief that he no longer tolerated press freedom.

"This is a worrying trend but I hope it will not be permanent feature in our political landscape," he said.

Kengadharan said Najib's action was bound to invite mixed reactions from the public and hoped judges would decide without fear and favour.

Lawyer Andrew Khoo said judges were expected to be impartial and would remain true to their oath of office.

"Whether the prime minister files the suit in his personal or official capacity, the fact remains that he will have to take the stand and be subjected to cross-examination,"

said Khoo, a member of the Malaysian Bar Council.

A defamation trial presented an "open season" for Najib to be asked any searching question about his reputation, and the prime minister would not be able to avoid it, Khoo added.

"This is why it is undesirable for a sitting prime minister to launch defamation action," he said, adding that Najib could have been poorly advised.

Lawyer Ang Hean Leng said the court had pronounced that those holding public office could not bring an action in their official capacity.

"There is little to divide official and personal capacity like in the case of Najib who is the chief political executive of the government."

The lawyer said the law did not stop Najib from going to court but there would be consequences which followed when a sitting prime minister became a litigant.

Lawyer Fahri Azzat said by going to court, Najib must be supremely confident of proving his case in order to be awarded damages for the injury to his reputation.

He said the prime minister would have to take the stand to prove the published articles were defamatory, and would put his credibility at stake if he chose or refused to answer probing questions on his reputation.

"As lawyer, I would not put my client on the witness stand if he or she is on shaky ground. The client will be subjected to rigorous cross-examination and has to answer relevant questions."

There was still the possibility, however, that the cases Najib has filed could be settled out of court, Fahri said, since they were still at the preliminary stage before trial.

One scenario could see the defendants retract the defamatory articles and make a public apology – the best outcome for the plaintiff.

Another scenario could be Najib's withdrawal of his suits, "but then the allegations against him will stand," Fahri said. – July 22, 2015.

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