

Sub judice rule not an obstacle for Najib, say ex-judge, lawyer
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By V. Anbalagan

Datuk Seri Ahmad Zahid Hamidi made a wrong statement of law for saying that Datuk Seri Najib Razak would have run foul of the sub judice rule if he had answered questions on the RM2.6 billion donation in Parliament this morning, said a retired judge and lawyer.

Nothing stopped the prime minister from enlightening members of parliament in the Dewan Rakyat on the RM2.6 billion donation since investigations were ongoing and no one had had been charged yet, they said.

Both said the rule could not be strictly applied in Malaysia because the jury system in court proceedings had been abolished.

Retired Federal Court judge Datuk Seri Gopal Sri Ram said the rule could only be used in relation to court proceedings as it was connected to the law of contempt.

"The essence is that a person should not make any comment touching on the outcome or integrity of proceedings before the court."

He said this was to prevent the perception that the court was being influenced by extraneous consideration.

Sri Ram, however, said historically the rule was invented by the courts in England to prevent juries from being influenced by extraneous factors, adding that juries need not give a reason for their verdict.

"In Malaysia, the sub judice rule loses its weight because judges give reasons which can be tested on appeal," he said.

Sri Ram said Prime Minister Datuk Seri Najib Razak could have gone to the legislature to answer questions as investigations were ongoing and there were no court proceedings.

"He would have only faced problem if his answers in the Dewan Rakyat contradicted the statement given to the recording officer," he said.

Sri Ram (pic) said this in response to Zahid who said that the sub judice rule and ongoing investigations prevented Najib from revealing details about the donation.

Minister in the Prime Minister's Department Datuk Seri Azalina Othman Said, a lawyer by profession, said Najib was also advised by the Attorney-General from personally answering questions.

Instead, the government issued a ministerial statement.

Lawyer Datuk Bastian Pius Vendargon said he could not recall any court proceeding on the RM2.6 billion donation or directly on the 1Malaysia Development Berhad issue.

"I know the police and the Malaysian Anti-Corruption Commission are still investigating the matter. The prime minister is duty-bound to tell the elected representatives in the legislature," he said.

He said Zahid should have at least explained how the rule stopped Najib from responding to questions in the House.

Vendargon said the sub judice rule came about as juries were finder of facts and they could be influenced.

A High Court ruling, in a contempt suit in 2011, held that the courts must be cautious in applying the sub judice rule.

Datuk Mohamad Ariff Md Yusof, who retired early this year as Court of Appeal judge, said courts must also consider constitutional provisions on the freedom of speech.

Ariff, when rejecting an application (filed by Syarikat Bekalan Air Selangor Sdn Bhd (Syabas) against a Selangor government lawyer and PAS organ Harakah in 2011, stressed that the common law rule on sub judice must be moulded "in the light of fundamental liberties provisions" in the Malaysian constitution.

"The court cannot believe the sensitivities of the average Malaysian can be so different so as to incline the court to adopt a completely different juristic approach which relegates freedom of expression below the sub judice rule," he said.

In the July 2011 case, Syabas cited lawyer Fahda Nur Ahmad Kamar and Harakah chief editor Ahmad Lutfi Othman for contempt over a statement published by Harakah on December 7, 2010, in an article "SAR bantu kempen bantah kenaikan tariff air (Religious schools help in campaign against a hike in tariff rate)".

Syabas relied on the sub judice rule when attempting to prove contempt, saying the published statement amounted to a direct attack on its credibility and could interfere with the course of justice in its ongoing suit filed in 2010.

But Ariff explained that sub judice or contempt of court would be applicable only when discussions outside of court attack the integrity of a judge or cast aspersion on the administration of justice.

He added that it was also unlikely that a professional judge hearing a case would be influenced or bothered about other criticism or debate.

The sub judice rule was previously relied on in 2012 by Dewan Rakyat Speaker Tan Sri Pandikar Amin Mulia to stop debate on an emergency motion by PKR's Zuraida

Kamaruddin to discuss the National Feedlot Corporation scandal.

The speaker then said NFC executive chairman Datuk Seri Mohd Salleh Ismail faced criminal breach of trust charges. – December 3, 2015.

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