

## **Lawyers seek to challenge AG's refusal to prosecute Najib**

**Free Malaysia Today**

**May 2, 2017**

**By V Anbalagan**

**However, the merit of their appeals will only be heard if the apex court finds that the legal and constitutional questions posed are of public importance.**

PETALING JAYA: The Malaysian Bar and two government critics are appealing, separately, to challenge the attorney-general's refusal to prosecute Prime Minister Najib Razak over the RM2.6 billion donation and SRC International money.

However, first the appellants have to file leave applications at the Federal Court within the 30-day deadline, which expires on Thursday.

The apex court will hear the merit of their appeals only after leave has been obtained.

In order to clear the hurdle, they will have to frame legal questions of constitutional or public importance raised for the time as required under Section 96 of the Court of Judicature Act.

Malaysian Bar president George Varugese said he had given the go ahead to their lawyers to file the Bar's appeal.

"But I am unsure if the leave application has been filed," he told FMT.

Lawyer Gopal Sri Ram, who is representing former de facto law minister Zaid Ibrahim, said Zaid's leave was filed last week.

"The questions framed include constitutional issues," he said.

Meanwhile, lawyer Mohamed Haniff Khatri Abdulla, who is appearing for Khairuddin Abu Hassan said his leave application would be filed tomorrow.

"We have framed three questions to obtain leave to appeal," Haniff said.

On April 4, a three-man Court of Appeal bench, led by Umi Khalthum Abdul Majid, said there was no reason to depart from the findings of the High Court.

On Nov 11 last year, justice Hanipah Farikullah dismissed the leave applications to initiate judicial review by the Bar, Zaid and Khairuddin, the former Batu Kawan Umno deputy chief.

The trio had challenged AG Mohamed Apandi Ali's decision to close the case involving allegations that the money had been deposited in Najib's bank accounts.

The AG, who is also public prosecutor, had on Jan 26 last year directed the Malaysian Anti-Corruption Commission (MACC) to close investigations into the cases.

Hanipah, in three separate judgments, said the courts were not the avenue for those unhappy with the decision of the AG not to prosecute any criminal case to seek redress.

Hanipah, in her judgment, also said she was bound by a long line of Federal Court rulings as to why the decision of the AG not to institute criminal proceedings under Article 145(3) of the constitution could not be reviewed by the courts.

That provision states that the AG has the discretion to institute, conduct and discontinue any criminal proceedings.

Hanipah said there was also no conflict of interest when Apani decided not to frame charges against the prime minister on 1MDB and its related issues on Jan 26 last year.

The Yang di-Pertuan Agong, on the advice of Najib, had appointed Apani to replace Abdul Gani Patail on July 27, 2015, on medical grounds.

The Malaysian Bar had applied for the solicitor-general to take over the investigation papers and decide whether Najib should be charged.

Zaid wanted the court to direct Apani to charge Najib for corruption and criminal breach of trust while Khairuddin wanted a royal commission of inquiry to be set up to guide the AG over investigations into the RM2.6 billion and SRC International.

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Source: <http://www.freemalaysiatoday.com/category/nation/2017/05/02/malaysian-bar-two-others-apply-for-leave-to-determine-power-of-ag/>