

## **Lawyers: Najib won't lose Pekan MP status despite failed SRC appeal, but cannot contest in elections**

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KUALA LUMPUR, Dec 8 — Former prime minister Datuk Seri Najib Razak will remain as Pekan MP even though the Court of Appeal maintained his conviction for abusing his power and misappropriating RM42 million from SRC International Sdn Bhd, lawyers said today.

Najib would be able to hold on to his parliamentary seat Pekan despite his status as a person convicted for crimes in court, they explained, as he is still appealing this conviction to the highest court in the land, the Federal Court.

Lawyer Muhammad Rafique Rashid Ali explained that Najib would not lose his status as a Pekan MP while his appeal is pending.

“Article 48(4)(b) of the Federal Constitution states that the date where the disqualification for Najib Razak as Pekan Member of Parliament starts to take effect from, is until the highest court makes the final decision (in this case, it is the Federal Court).

“Therefore, he can still attend Dewan Rakyat sessions, debate and vote in any motions and others,” he said when explaining that Najib could still carry out his duties as an MP in the Dewan Rakyat.

In Najib's case, the last court for him to appeal is the Federal Court since his trial was at the High Court. If the trial had been at the Sessions Court, the final court to appeal is at the Court of Appeal.

The Court of Appeal today rejected Najib's appeal, and instead maintained the High Court's July 2020 conviction of the former finance minister as well as concurrent jail terms that would be effectively a maximum 12 years and also a RM210 million fine.

Merely by being convicted would not result in one being disqualified from becoming an MP, as it would also depend on what is the amount of fine or the duration of the jail term decided by the courts.

Under Article 48(1)(e), a person would be disqualified from being an MP in the Dewan Rakyat or from being a lawmaker in Dewan Negara if they were both convicted and sentenced to a fine of not less than RM2,000 or jail term of not less than one year, and has not received a free pardon.

The High Court's July 2020 jail sentence and RM210 million fine is more than enough to trigger Najib's disqualification as MP, but he had managed to maintain his MP status and continue to appear in Parliament previously throughout his appeal at the Court of Appeal.

Today, Najib's lawyers also told the Court of Appeal that they would be appealing to the Federal Court against Najib's conviction and sentencing for the SRC case, and successfully obtained a stay of execution on the fine and jail term until the Federal Court decides on Najib's appeal.

Just like at the Court of Appeal stage, this means Najib can be the Pekan MP until the Federal Court decides on his appeal and rules whether he is guilty or not in the SRC case.

Article 48(4)(a) shows that an MP will be disqualified 14 days from the date he or she was sentenced to not less than RM2,000 in fine or not less than one year jail and has not received a free pardon, but Article 48(4)(b) provides if an MP appeals the conviction or sentence within 14 days, the MP would only be disqualified 14 days from when the court decides on the appeal.

As to whether Najib's Pekan parliamentary seat will have to be vacated and a by-election will have to be called, Rafique said that this will not take place unless the Federal Court maintains Najib's SRC conviction.

"Article 53 of the Federal Constitution states that the Pekan parliamentary seat will not automatically be vacated in the situation where Najib Razak files an appeal to a higher court. It will also be vacated automatically if Najib Razak does not make any appeals to a higher court.

"The seat will only become vacant automatically after the Federal Court as the final forum of the court of law maintains the High Court conviction," said Rafique, who is also Pejuang's federal territories deputy chief.

As for whether Najib can contest for the Pekan seat if the general elections is held before the Federal Court decides on his appeal, Rafique said Najib was immediately disqualified from being an election candidate.

"For the purposes of candidacy for a Dewan Rakyat seat, Article 48(5) states that a conviction is effective with immediate effect. Meaning, the High Court conviction and the Court of Appeal's decision this morning is effective with immediate effect to not qualify Najib to be nominated as Barisan Nasional's candidate for Pekan parliamentary seat.

"In other words, Najib cannot be nominated, meaning he has lost the qualification to be a candidate. If he is nominated, it would clearly be very much in breach of the Constitution and would become nullified," he said when explaining that any attempt to nominate Najib as an election candidate in such a situation would not be successful.

**Won't lose seat yet if pardon bid not yet decided**

When contacted, lawyer New Sin Yew also confirmed that Najib will still be a member of Parliament or MP, but would not be able to defend the seat were an election to be called before his appeal was decided.

“Article 48(1)(e) of the Federal Constitution is clear that if he is convicted, he is disqualified from being a member, so he cannot contest.

“But where he is already a member, the disqualification only kicks in after his appeal process is exhausted and if there is a petition to pardon, after the petition of pardon is disposed of.

“In other words, he doesn’t lose his seat as yet, but he cannot contest,” he told Malay Mail.

Even if an MP fails in his final appeal against conviction and sentencing at the Federal Court or at the Court of Appeal, he may still try to ask for a royal pardon.

Article 48(4)(c) provides for a disqualification of an MP only immediately after a petition for pardon is decided, if the MP had filed such a petition for pardon.

### **It’s a five-year ban for elections**

Previously, Malay Mail had also spoken to lawyers on what would happen if an MP is found guilty of criminal charges and is then disqualified from being an MP under Article 48(1)(e) (which would mean that sentencing of at least RM2,000 in fine or at least one year of imprisonment).

The lawyers had told Malay Mail that such a person would be disqualified from becoming an election candidate for five years from the date they were released from prison or five years from the date that the fine was imposed on the person,

with the contest ban to be five years unless the Yang di-Pertuan Agong grants a pardon on the convicted person.

But as for a person who is acquitted after appealing, one of the lawyers Lim Wei Jiet had previously told Malay Mail they would regain eligibility to be an election candidate, noting: "If they are acquitted, they can be nominated to contest as an MP immediately. Of course if the next general election is far away and he missed the last one, he has to wait."

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