

RESIGNATION OF TUN RAUS AS CHIEF JUSTICE

By
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As early as May 2017, when the BN was still in power, I questioned the constitutionality of the “extension” of the tenure of Tun Raus as Chief Justice (CJ). I even suggested that he resign, which, I argued, if he were to do it then, he could do so honourably and with dignity and he would be remembered for that.

BN lost the GE14 and Tun Dr. Mahathir became the Prime Minister (PM) of the PH government. Then, we heard the disturbing news what Tun Raus went to see Tun Dr. Mahathir. Like anybody else, I assumed that Tun Raus must have been called, asked or summoned to see the PM because, I do not think a CJ would, on his own, do that. In my article dated 12th June 2017, I used the word “asked”. Even then, I argued that, it was not proper for the PM to “ask” Tun Raus to go and see him and that the latter should have declined.

Following that, there was a more disturbing news: Tun Raus went to see Tun Daim, the Chairman of the Council of Eminent Persons, at the latter’s office. Again, I used the word “asked”, arguing that even if it was so, it was still improper for Tun Daim to “ask” Tun Raus to go and see him and for Tun Raus to oblige.

On 13th June 2018, the Chief Registrar of the Federal Court issued a statement. The statement, *inter alia*, says:

“1. On May 15, 2018, the Chief Justice and the President of the Court of Appeal have met with the Honorable Prime Minister and have conveyed their lordships’ desire to resign.

2. However, their lordships had informed the Prime Minister that the resignation will take effect on a reasonable date to enable judicial matters to be resolved.

3. In pursuance thereof, the Chief Justice and the President of the Court of Appeal have sent their resignation letters to His Majesty the Yang di-Pertuan Agong on 7 June 2018 and the resignation will take effect on July 31, 2018.

4. The resignation was approved by His Majesty the Yang di-Pertuan Agong on 8 June 2018 and notified through the letter of the Private Secretary, Bahagian Urusan Diraja, Istana Negara dated 11 June 2018.” (My translation)

Reading the first paragraph, it appears as if the CJ, on his own volition, without being called, asked or summoned to go and see the PM went to see the him to convey his desire to resign. I find this difficult to accept for the following reasons:

1. Why should he do that? A CJ is not a political appointee who should resign if the government during which period he was appointed, is defeated in the general election.

2. Why should he do it barely five days after the election results were known?
3. Why should Tun Raus wait until 13th June to disclose it, after he was pressured by politicians to resign? Would it not be better for him to say so before he was pressured to resign? If he were to do that then, he could be seen to resign with dignity. Now, nobody would believe that he does not resign under pressure.
4. Why did Tun Raus wait until 7th June (three weeks later) to write to the Yang di-Pertuan Agong who approved it on the following day?
5. When the PH politicians, both from the PKR and DAP, including Lim Kit Siang, were publicly demanding the CJ to resign, why didn't Tun Dr Mahathir just say that Tun Raus had seen him and conveyed his desire of resign? That would render the campaign to pressure Tun Raus to resign and Tun Daim's "summoning him and demanding him to resign", unnecessary. Furthermore, it would save the PH government from being seen as pressuring Tun Raus to resign.
6. Indeed, as late as 13th June 2018, when the PM was questioned by reporters in Japan, not only did he defend Tun Daim's action but was also reported to have said:

"Tun Dr Mahathir Mohamad said the council had indicated to the two judges – Chief Justice Tun Md Raus Sharif and Court of Appeal president Tan Sri Zulkefli Ahmad Makinudin – that it would be better if they resigned.

"Otherwise, the Government may take action to remove them because we believe that the extension of their office as senior judges was not right," he said, adding that the opinion was also shared by the Malaysian Bar and prominent lawyers."

It implies that Tun Raus had not conveyed his desire to resign to the PM.

7. If it is true that Tun Raus had conveyed his desire to resign as early as 15th May 2018, Tun Daim should have known and there was no necessity to summon Tun Raus and demand his resignation.

Now that Tun Raus has resigned, the PH government and its supporters from the Bar must be relieved. They may even feel they this is another victory for them: they are in power, nothing could stop them from removing whoever they want to remove.

This episode works in their favour because, first, since Tun Raus has resigned, they do not have to wait for the Federal Court to deliver its judgment in the suit by the Advocates Association of Sarawak (AAS). Not only that, they are also spared of the risk that the judgment might not be in their favour.

Secondly, the PH government is spared from taking action to remove Tun Raus, a repeat of Tun Salleh Abas' episode. However, I submit that even without the tribunal,

it is already a repeat of that episode and it is a dent in the image that the PH tried to portray itself to be during their election campaign.

In this respect, I must mention one man who has stood up against his own party's Chairman, the PM from his own coalition party, the Bar and others to voice his opinion that the *"Prime Minister Dr. Mahathir Mohamad's defence of the Council of Eminent Persons (CEP) for summoning the top two judges to demand their resignations, was ill-advised and against the rule of law."*

"When it summons judges and demands their resignations, it will be seen as the government demanding their resignations which is in complete disregard of the principle of separation of powers," he added.

"It is a basic hallmark of any democracy that the executive does not interfere in the affairs of the judiciary."

The lawyer said criticising the appointments of Chief Justice Raus Sharif and Court of Appeal president Zulkefli Ahmad Makinudin was not wrong, but it was "quite another matter to summon them and demand their resignations".

"This is plainly wrong. The Federal Constitution sets out the mode of the removal of judges. This must be adhered to at all times in accordance with the rule of law."

"The CEP has clearly overstepped its boundaries in this case which cannot be condoned."

On June 10, Ramkarpal had said CEP chairman Daim Zainuddin should not interfere in matters where he had no standing to do so.

He was referring to reports that Daim had summoned the two judges to ask for their resignations." (Freemalaysiatoday 13 06 2018).

That man is Ramkarpal Singh, a DAP member of Parliament.

I agree entirely with what he says. I congratulate him for his bravery and honesty. Indeed, if his father were alive, I believe he would have said the same thing.

The other thing that was said, including by the PM is that if Tun Raus does not resign, the government will take action to remove him.

It should be noted that a CJ may be removed by a tribunal constituted under Article 125(3) of the Federal Constitution if it is proved that he has committed a *"breach of any provision of the code of ethics prescribed under Clause (3B) or on the ground of inability, from infirmity of body or mind or any other cause, properly to discharge the functions of his office,.. "*

Even if Tun Raus' extension is unconstitutional, does it fall under the provision quoted above? Is he to be blamed for it? Is the validity of his appointment not a question of law for the court to decide and not for the tribunal? So, the talk about taking him to the tribunal is baseless.

There is also a campaign to appoint Tan Sri Richard Malanjum, Chief Judge (Sabah and Sarawak) to replace Tun Raus. I have expressed my view against politicians and lawyers aligned to the ruling party to do so as it shows that the Judge is their man. If what the previous government did by extending the tenure of Tun Raus was seen as the BN government placing its man as CJ, is what the PH government doing now any difference from it?

I will not argue for or against Tan Sri Richard Malanjum. I prefer to leave it to the Judicial Appointments Commission and the process that follows.

However, to those who speak so highly of Tan Sri Richard Malanjum, I just would like to bring to their attention, a report in the Malay Mail Online 12th June 2018. The title reads: *“Shafie dares Musa to challenge legitimacy of Sabah CM post....”* It was reported:

“Shafie said that he had spoken to the Chief Justice of Sabah and Sarawak Tan Sri Richard Malanjum and he was assured his appointment was constitutional.”

Why should he give a legal advice to Shafie, knowing that the matter might end up in the Federal Court, of which he is a judge? Is he trying to please the Sabah component of the ruling party?

By Tun Raus' resignation, the problem of his removal is resolved without the court having to decide on the issue. The PH government and its supporters get what they want and, may be, more when they succeed to place their man in his place. But, it reminds us of a repeat of Tun Salleh Abas' episode and what the BN government is alleged to have done is now repeated by the PH government. More so, it is sad that it appears that the even the post of the CJ has been politicised.

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(NB. This article applies equally to Tan Sri Zulkefli Ahmad Makinuddin, Chief Judge (Malaya)