

APPOINTMENT OF TAN SRI RICHARD MALANJUM AS CHIEF JUSTICE

I am puzzled. Could the Attorney General (AG) or someone in the Prime Minister's Department explain?

It was reported that Tun Md Raus Sharif, the Chief Justice (CJ) has tendered his resignation taking effect on 1st August 2018. Currently he is on leave. Then, on 11 July 2018 at 9.30 pm Tan Sri Richard Malanjum was sworn in as CJ.

The question is, can Tan Sri Richard Malanjum be sworn in as CJ when Tun Raus has not effectively vacated the post?

Even though Tun Raus has tendered his resignation, it will only take effect on 1st August 2018. Even though he is on leave, he is still occupying the post. As Tan Sri Richard Malanjum was sworn in with immediate effect, it means that as from 9.30 pm on 11 July 2018 until 12.00 midnight 31st July 2018, there are two CJs. Is Tan Sri Richard Malanjum's appointment valid?

Someone said that Tan Sri Raus is on "garden leave", meaning that he was instructed to stay away from work during the notice period, while still remaining on the payroll. That could be the practice in the private sector which may even be adopted in the public sector where administrative officers are involved.

I submit that the practice is not applicable to the CJ, whose powers are given by the Constitution and law. No one, not even the PM has the power to remove them from him.

Why was the ceremony done at night which took everybody by surprise? Were the Yang di-Pertuan Agong and the Prime Minister so busy during the day that it had to be done at night? If the Conference of Rulers was consulted at its meeting on 11th July 2018, what was the reason for the hurry to swear him the same night?

When did the Judicial Appointments Commission (JAC) have its meeting and made its recommendation to the PM? Who chaired the meeting? Tan Sri Raus is still CJ whatever one thinks about his appointment. His appointment had not been declared void by any court. By right he should chair the meeting. Even if he is on leave, he should be informed and he should come back to chair the meeting. If he and Tan Sri Zulkefli, the President of Court of Appeal (PCA), for some reasons, could not chair the meeting, the next in line is Tan Sri Ahmad Maarop, Chief Judge (Malaya) (CJ (M)). He is more senior than Tan Sri Richard Malanjum (Chief Judge (Sabah and Sarawak) (CJ S&S) protocol-wise.

Then, the problem that I envisaged ten years ago, when the JAC Bill was tabled in Parliament which point was adopted by a then opposition Member of Parliament (now in PH government) during the debate, becomes a reality.

According to the protocol, CJ (M) is more senior than CJ (S & S). So, he is actually in the forefront in the running for the post of CJ (assuming the PCA is resigning on the

same date as CJ). So, both CJ (M) and CJ (S&S) must disqualify themselves from chairing or sitting in the JAC when it considers the successor to Tun Raus.

Lastly, why was the Judiciary only represented by the Chief Registrar? She is only an administrator, not even a Judge. If Tun Raus (CJ) and Tan Sri Zulkefli (PCA), are on leave, the person next in seniority is CJ (M), Tan Sri Ahmad Maarop and, after him, there are many Federal Court Judges. Certainly, one of them could be there.

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13 July 2018

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