

THE ISSUE OF TWO CHIEF JUSTICE

By

Tun Abdul Hamid Mohamad

On 13th July 2018, I wrote:

“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? (Emphasis added).

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?”

On 20th July 2018, Freemalaysiatoday published a report by V Anbalagan dated 19th July 2018, inter alia, as follows:

“PETALING JAYA: Former chief justice Raus Sharif stepped down from office effective July 10 although his resignation letter had stated he would only do so on July 31, sources said.

“He is also deemed to have relinquished his position when he handed over his office to incoming Chief Justice Richard Malanjum on July 12,” a source told FMT.

According to sources, Raus sent a letter stating that he was vacating his office on July 10.

The source was responding to a query by former chief justice Abdul Hamid Mohamad on why Malanjum was appointed even though Raus still occupied the position.

Hamid said that Malaysia had, in effect, two chief justices between July 11 and July 31, when Raus’ term officially ends.”

Unfortunately, instead of clarifying the issue, the report raised more questions. I questioned the validity of the appointment of Tan Sri Richard Malanjum with effect from 11th July 2018 because Tun Raus’ letter of resignation to the Yang di-Pertuan Agong (YDPA) states that he was resigning with effect from 1st August 2018. His last day as Chief Justice (CJ) is 31st July 2018. If that is so, then the new CJ could only be sworn in on 1st August, the earliest.

Let us now analyse this report.

First, the reporter quoted “sources”. Who are they? If anyone, be it the Chief Secretary to the Government, the Chief Registrar, the Chief Secretary (or whatever it is called) of the Judicial Appointments Commission (JAC) wants to make a statement to clarify the issue, why does he not issue an official statement to explain it? Then, we know that it comes from the authority concerned.

The report also says that *“the source was responding to a query”* made by me. If so, why is he hiding himself? It is an official response and not a personal comment.

It appears to me that no such person in authority had issued an official statement to explain the question raised by me. Instead, it is V Anbalagan who goes around collecting some facts and put them together to make a story to show that the appointment was validly made. It looks as if he is the one trying to explain the issue.

Secondly, the report says that Tun Raus has *“stepped down from office effective July 10 although his resignation letter had stated he would only do so on July 31.”* What does he mean by “stepping down”?

Then, the report says, *“He is also deemed to have relinquished his position when he handed over his office to incoming Chief Justice Richard Malanjum on July 12”*. Question: What is the necessity to deem that he has *“relinquished his position”* on 12th July if he had already *“stepped down effective from 10th July”*?

The report went on to say that Tun Raus had *“sent a letter stating that he was vacating his office on July 10.”* Question: The letter was sent whom? Does it say that he was *“vacating his office”*? If he did send the letter saying that he was vacating his office, it is more likely that it was to the Chief Registrar to tell her that he was physically vacating his office on that day.

Note that the reporter uses four terms and they are *“stepped down”*, *“relinquished his position”*, *“handed over his office”* and *“vacating his office”*.

Tun Raus may clear up and remove all his belongings from his office, he may not enter his office after 10th July, he may hand over the “Nota Serah Tugas” on 10th July, but **the point is when is the effective date of Tun Raus’ resignation as stated in his letter to the YDPA which was accepted by YDPA?**

If after Tun Raus had sent his resignation letter which was accepted by the YDPA, he had, before 10th July, sent another letter to YDPA saying he was resigning with effect from 11th July and the YDPA accepted it, why not say so? That would answer my question and put an end to the issue. Tan Sri Richard Malanjum could then take his oath on the 11th July as he did and it is perfectly valid.

I am convinced that no such letter was sent by Tun Raus to the YDPA. As such the effective date of his resignation remains 1st August and the new CJ could not be sworn in earlier than 1st August. **Under the circumstances, I say that Tan Sri Richard Malanjum’s appointment as Chief Justice is unconstitutional and void. He should be sworn in again on 1st August.** If he does that, no one could question the validity of his appointment, but it takes effect from 1st August 2018.

Regarding the seniority of Tan Sri Richard Malanjum, it depends on how one looks at it. If you are looking at the date he was appointed a Federal Court Judge and Chief Judge (Sabah and Sarawak) (CJ(S&S)), of course he is senior. But, according to protocol, Chief Judge (Malaya) (CJ(M)) is senior to CJ(S&S). (I purposely used the phrase twice in my last article to stress the point, unfortunately it was not understood.) So, at the point of time when the vacancy arose, Tan Sri Ahmad Maarop (CJ(M)) was more senior, according to protocol.

That was all I wanted to point out, because all his supporters, including politicians, had been saying that he was the most senior judge. I did not at any time say that Tan Sri Ahmad Maarop should have been appointed instead of Tan Sri Richard Malanjum. Please do not put words in my mouth.

It is the prerogative of the PM to advise and for the YDPA to appoint any qualified person who may even be a Judge of the Federal Court, Court of Appeal, High Court, indeed even a Judicial and Legal Officer and a practising lawyer to be the CJ. Whether it is a wise thing to do is another matter.

Note that while the retired senior judge quoted by V Ambalagan deemed it fit to comment on the seniority issue and said that I got it wrong again, he did not comment on the more important constitutional issue.

Is it because I am not wrong there and he does not want to be heard making a statement against the interest of Tan Sri Richard Malanjum for whom he had been campaigning and supporting before and after his appointment. On the other hand, he called for Tun Raus to resign with immediate effect and not to be allowed to resign effective on 1st August. That is not being impartial.

Fourthly, to convince us, we are shown a picture of Tun Raus and Tan Sri Richard Malanjum with the caption "*Upacara Penyerahan Nota Serah Tugas Ketua Hakim Negara*" with the words "*12 Julai 2018 and Istana Kehakiman*" below it. Tun Raus is shown to hand over a file to Tan Sri Richard Malanjum.

That picture is clearly not one photograph taken at a ceremony if there was such a ceremony. It is clearly a combination of, at least, two photographs. First, a photograph of Tun Raus handing over the file to Tan Sri Richard Malanjum. The other is the photograph of the wording on the right which must have been taken somewhere else and combined with the first photograph. The wordings are clearly not the backdrop behind the stage facing the audience as in any ceremony.

The date stated is 12th July 2018. That is clearly in response to my query. But, if it is true that there was such a ceremony, why wasn't it reported in the media on 13th July? Why did it only become part of the story written on the 19th and published on 20th July, after my article became viral? Why only V Anbalagan had the photograph and wrote the report and it was only published by Freemalaysiatoday?

In all my years in the Judiciary, I had not come across any such ceremony or such a thing as "Nota Serah Tugas." What does it contain? Under which law or rule that that is required to be done? Had I not raised the issue, would such ceremony be done, if it was done?

Still, my point regarding the sitting of and the recommendation by the JAC has not been answered. In particular, I would like to know whether Tan Sri Ahmad Maarop and Sri Richard Malanjum were present as they were both in the running for the office of the CJ and, therefore, there was a conflict of interest.

Finally, let me repeat that I am not taking sides on the issue of appointment of CJ. Indeed, I am on record for questioning the constitutionality of Tun Raus' appointment when BN was in power and I question the validity of Tan Sri Richard Malanjum's appointment with effect from 11th July when PH is in power but advise that he takes his oath again on 1st August, in which case the appointment will become valid, as from that date.

I am also on record for saying that both the extension of Tun Raus' term as CJ and appointment of Tan Sri Richard Malanjum have been politically motivated by the BN and PH governments, respectively.- See my article Even the Post of CJ has Been Politicised – New Straits Times 19th June 2018. But, never in the Malaysian Legal History had the appointment of Chief Justice been more politicised than as in the case of Tan Sri Richard Malanjum. That is not something that the PH government can be proud of.

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tunabdulhamid@gmail.com
<http://www.tunabdulhamid.my>
<https://tunabdulhamid.me>