

JUDICIARY INTIMIDATED: THE OTHER VIEW

By

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Since Raja Petra published his article "*Shocking Revelation: Najib's Trial Judge Nazlan's Conflict-of-Interest Exposed*" on 14th March 2022 in his blog, Malaysia Today, we only read a one-sided view on the issue, be it from the press release by the Chief Registrar, the Bar Council, Chairman and Deputy Chairman of DAP, the Chief Justice, The Edge Malaysia or Dr. Shad Saleem Faruqi.

In this article, I am giving the opposite view with the sole purpose of giving the public arguments on both sides so that they are in a better position to make up their mind on the issue. I am not saying I am right and they are wrong, nor Raja Petra is right and Judge Mohd Nazlan is wrong, or otherwise.

I refer to the statement by the Bar Council and article in The Edge Malaysia. It is said that Raja Petra and politicians especially Najib's supporters are intimidating the Judiciary. Whether that is true or not, can it not be equally argued that they too are intimidating the MACC from doing its duties? They seem to forget that it was the MACC that investigated Najib leading to his conviction. Now, just because an allegation is made against the judge who had convicted Najib, which conviction they are afraid of being set aside, they jumped to his defence and cast doubts on the credibility of the MACC.

The Bar Council demands equivalent investigations to be carried out by the authorities on the police report lodged by Judge Mohd Nazlan; that there should be no double standards in approaching the matter; that the MACC probe violated the doctrine of separation of powers; that it undermined the judiciary's independence; that it is unconstitutional and that it should be dealt with under Art. 125 of the Constitution.

Question: Had Judge Mohd Nazlan acquitted Najib would the Bar Council issue a similar statement?

It goes without saying that both Judge Mohd Nazlan's police report and the report made against Judge Mohd Nazlan must be given equivalent investigations and I am sure they are being given. But, by demanding "equivalent investigations" on Judge Mohd Nazlan's report but trying to prevent investigation to be carried out on the report against the Judge, is the Bar Council not practicing double standard?

I received a number of WhatsApp and email messages, all from non-lawyers asking the same question: Is it against the doctrine of separation of powers for MACC to investigate

a judge? It shows that even non-lawyers found the opinion of the Bar Council weird. No judge is above the law. Do I have to say more to the President of the Bar Council?

The Bar Council also says that the investigation undermines the judiciary's independence. Madam President, independence of the judiciary does not include freedom to commit a crime and from being investigated for it.

The Bar Council also says that the investigation is unconstitutional. I would like to know under which provision of the Constitution it is unconstitutional? She referred to Art. 125. I urge her to read the article again. That article refers to situations when a Judge *“ought to be removed on the ground of any 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...”* It does not cover commission of criminal offences. On the other hand, the MACC and the Police only have power to investigate criminal offences under their respective jurisdiction and not matters mentioned in Art. 125. (Even though Dr. Shad Saleem Faruqi tries to widen the coverage of Art 125, I do not think he can disagree with my last two sentences.)

I now refer to the two press releases by the Chief Registrar of the Federal Court. For whatever reasons, no such allegations had ever been made against any judge in the last fifty years. So the reaction of the Judiciary by issuing the press releases is also a first. I believe that the Chief Registrar would not have issued such statements unless instructed by the the Chief Justice.

Take note that the allegation is not a general allegation against the Judiciary. It is an allegation against a particular judge. Why should the Judiciary jump to the defence of the Judge?

Even though the allegation has been made by a blogger, if Najib's counsel does not make an application for a retrial or does not use it as a ground of appeal in the Federal Court for the court to set aside the conviction and order a retrial, the matter ends there.

If Najib's counsel chooses to do one of the two things earlier mentioned, if no statement had been issued by the Judiciary, even if the court were to dismiss the application or argument, no criticism on ground of bias could be levelled against the Judiciary.

On the other hand, where the statement has been issued, Najib's counsel could argue that the court is bias as the Judiciary had issued a statement dismissing the allegation. If and when the court dismisses the application or argument, it gives ground for detractors to say that the court is bias. Either way, why give Najib and his supporters a reason to attack the court's decision?

On the issue of *sub judice*, is the statement by the Judiciary not *sub judice*? It should be more so, it coming from the Judiciary before the issue is decided upon, if raised.

We now come to the Chief Justice's speech. I do not disagree with any part of it. I only question the timing of it.

Even though the Chief Justice did not mention it, anybody reading the speech knows that she was referring to the articles written by Raja Petra reported in Malaysia Today that Justice Mohd Nazlan is under investigation by the MACC.

I repeat what I had said regarding the effects of the two press releases issued by the Chief Registrar. Note that an important event had happened after the second press release i.e. the MACC confirmed that it was investigating the Judge.

Question: Is it not better to allow the SPRM to proceed and complete the investigation?

At the end of the investigation, the SPRM may announce either there is no evidence to support the allegation or that there is sufficient evidence to support a charge(s). If it is the former, the judge is cleared. Isn't it better for the Judge that the clearance comes from SPRM after a thorough investigation and no such statement has been issued by the Judiciary? If it is the latter, then the file will be referred to the Public Prosecutor (Attorney General) to decide whether to charge the Judge or not. If, based on the evidence, the Public Prosecutor decides not to, the matter ends there. If he decides otherwise, the trial process begins.

Whether or not the Judge is cleared, no criticism could be levelled against the Chief Justice. She cannot be accused of trying to interfere with the investigation by the MACC.

Lest I am accused of being pro-Najib, let me make it clear that I do not care even if Najib has to spend the rest of his life in prison provided he gets a fair trial. I do not say that Raja Petra's allegation that Najib does not get a fair trial has merits or not. That is for the court to decide. I do not say that Raja Petra's allegation and the reports against Judge Mohd Nazlan that he was involved in the 1MDB financial scandal is true or not, nor whether Judge Mohd Nazlan's report against Raja Petra has merits or not. That will only be known after the MACC has completed its investigations on both the allegation and the reports. Hence, the MACC should be allowed to do its job without any or seemed interference by anyone.

(Note: As soon as I have finished writing this article, I received a message from a friend that two lawyers and an activist have filed a suit in the High Court seeking the following declarations:

- criminal investigation bodies, including MACC are not entitled or are otherwise precluded from investigating serving judges of the superior courts (High Court, Court of Appeal, and Federal Court) unless they are suspended as required under the Federal Constitution;
- the public prosecutor is not empowered to institute or conduct any proceedings for an offence against serving judges of the superior courts.

They have also sought a declaration that the investigation by MACC into Judge Nazlan was unconstitutional.

That news made me decide to publish this article.)

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