

The Political Judgment in the Judiciary System in Malaysia

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Abstract

The Malaysian judiciary is deeply connected with political influence in reality. Malaysia's democratic system follows upon a government in charge of administration of the country, and has rights to take part in amendments and legislating process of constitutional provisions. Furthermore, the 1988 crisis marked the beginning of the judiciary's darkest path where the Lord President, Tun Salleh Abas was being removed for the sake of the ruling party at that time. In 2008, the Malaysian government under the former Prime Minister Mahathir Muhammad influenced the judicial institution through constitutional amendment. This paper seeks to address the issues arisen through judicial decision making by influence of politics, in ethics, jurisprudence theory and critique on its appropriation to allow political judgement and how Malaysia has overcome the crisis of judicial independence. Our findings conclude that Malaysia has made proper attempts to combat corruption and political influence in the judiciary institution. Although public perception has yet to prevail, in years to come the integrity in the judiciary will increase as the current judicial administration under Yang Amat Arif Tun Tengku Maimun binti Tuan Mat illustrates an honest and fair view of the law for all.

Keywords: Politics, Separation of Power, Democracy, Integrity, Ethics, Judicial, Federal Constitution.

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1. Introduction

Over the course of the nation's history, the Malaysian judiciary system has always been seen as the centre of its evolution, starting from the era of colonies and protectorates until where it has become today, to an independent federal country. The development of the judiciary system is deemed to be necessary in this discussion to provide an insight to the country's legal system that is formerly based on English Common Law (Bagheri and et al,2021). Hence, the discussion then will begin with the history of the court system in the Straits Settlement, the Federated and Unfederated before Malaysia's Independence Day and finally, the developments that have happened in the current Malaysian judiciary system.

1-1. The Judiciary System in Straits Settlement

In 1824, when the British Strait Settlement which comprises of Penang, Malacca and Singapore was legally formed, there was only one court, which is the Court of Judicature for Prince of Wales Island that is also known as the First Charter of Justice Invalid source specified. Consequently, this granted jurisdiction over the Supreme Court towards the settlements of Malacca and Singapore (Dastjerdi and Nasrabad,2021). The court was then divided into two divisions by the Third Charter of 1855, Penang and Malacca were included as one, and Singapore was the other. It may be pertinent to note that when the Supreme Court of the Straits Settlements was founded in 1868, the Judiciary was separated from the Executive. The judicial power was separated from the executive power in Malaysia to ensure an independent and impartial judiciary that can uphold the rule of law and provide a check on the executive branch. This separation was established through constitutional provisions and the creation of a separate judiciary with its own jurisdiction, appointment process, and institutional safeguards to maintain its independence. Furthermore, the judiciary was also developed into a number of subordinate courts, that consists of the Magistrates' and Coroners' Courts. Thus, with the existence of the subordinate courts, a way to appeal to the higher courts such as the Supreme Court and Privy Council is also being made available (Husni, 2021).

1-2. The Supreme Court of the Federated Malay States

The Malay States of Perak, Pahang, Selangor and Negeri Sembilan were incorporated into the Federated Malay States in 1896. Ever since that, the court system has been reformed and led to the establishment of a common court of appeal that is known as the Court of Commissioner to hear appeals

from members of Federated Malay States (Husni,2021). The court system has been reformed once again to the establishment of the Supreme Court of Federated Malay States which included the Court of Appeal and the Court of Judicial Commissioner. The final reformation was done in the year of 1918, where a single federal Supreme Court was introduced to allow the route of appeal for cases involving members of Federated Malay States.

1-3. The Judiciary System in the Unfederated Malay States

Johor was one of the members of the Unfederated Malay States that own their history in respect of the judiciary system. It can be assumed that even in Johor, the judicial system has been undertaken by the Supreme Court under the supervision of the British Advisor who was at that time endowed with equal powers to those of the Residents in the Federated Malay States (Husni, 2021).

In the year of 1921, Johor became the first Unfederated Malay State to include procedures for appeals to the Privy Council's Judicial Committee (Husni,2021). Lower court was introduced to substitute the title of subordinate court, following the formation of the Courts Ordinance in 1946.

1-4. The Evolving Landscape: A Contemporary Analysis of the Malaysian Judiciary System

Following the development of the Malaysian court starting from the establishment of the Supreme Court in the Straits Settlement, Unfederated Malay States and Federated Malay States to the reformation of plenty of lower courts, the appeal route to the Privy Council was still made available even after the reconstitution of the civil law courts after the formation of Federation of Malaya in 1963 (Husni,2021). However, the court system now has changed to the three-tier system in 1994, which consists of the two High Courts, the Court of Appeal and the Federal Court of Malaysia.

2. Shaping the Nation: Unravelling the Evolution of Political Judgement in Malaysia

Prior to 1989, the Malaysian judiciary system was severely shaken due to the 1988 Constitutional Crisis. This pivotal event marked a tumultuous period in Malaysian political history, highlighting the tragic fact that the Lord President of the Malaysian Supreme Court, Tun Salleh Abas, and five other Supreme Court judges were suspended from their positions during the administration of the then Prime Minister, Tun Dr Mahathir Mohammad. This unprecedented

action was taken after the Prime Minister sought advice from the former Yang di-Pertuan Agong, Sultan Iskandar Sultan Ismail, on the grounds of alleged misbehaviour (Mail,2015). Delving into the depths of this crisis illuminates the complexities and challenges faced by Malaysia's political judiciary, providing invaluable insights into the development and evolution of political judgement in the nation .

Correspondingly, the judge who chaired for the tribunals against them was being successfully benefited with the post of Lord President after the dismissal of Tun Salleh Abas. During that period of time, many honourable judges from the bench were either being transferred or marginalised outside the capital city of Kuala Lumpur (Haq,2019). Even so, the legal reports produced were biased, extremely in the favour of the Executive, like the one that has been decided in Aliran's case .

In the Aliran's case, the respondent applied for a permit to publish a magazine in Bahasa Malaysia under the name of Seruan Aliran. It should be noted that Aliran was a publisher belonging to the opposition MP, causing the public trusts to be eroded during that period of time due to the failure of the court to stand neutral. The application was then rejected by the Minister of Home Affairs. The appellant then appealed claiming that the minister shall hear and determined their request. The court then ruled that that they cannot question the discretion of the minister unless it has been proven that they exercised the discretion in a wrongful, dishonest and bad faith in accordance with section 12 (2) of the Printing Presses and Publications Act 1984 (Minister of Home Affairs v Persatuan Aliran Kesedaran Negara,1990)

The calamity of political judgement against the judicial decision was further prevailed in the case of Dato Yap Peng (Public Prosecutor v Dato Yap Peng, 1987). The court revoked a statutory provision in this case, further allowing the prosecutor to transfer the case from the session court to the High Court under section 418A of the Criminal Procedure Code. It must be borne in mind that pertaining to article 121 (1) of the Federal Constitution, the transfer of the case was in the exercise of judicial power, not within the power of the public prosecutor. Ever since that, article 121 (1) was amended and enabled the prosecutor to freely transfer any case from lower courts to High Court. The reality behind this case is that the government was in the power to diminish the judicial power through constitutional amendment (Tew,2016).

The starting point of the involvement of political judgement in the judiciary system in Malaysia was due to the dominance of the ruling coalition in the

legislative seat in the parliament. For instance, the Barisan Nasional party ruled Malaysia with a supermajority in parliament from the 1957 independence, up until the 2008 elections (Tew,2016). This is pretty much consistent with constitutional adjudication in the context of legislative supremacy, in which the dominant ruling party has strong power over the administration of the country, specifically towards the legislative and executive body (Yusoff,2022).

Ever since the constitutional amendment was very much dependent on them, the dominant ruling coalition tends to exploit the legislative system. The political party can maintain the power of the federal government, further authorising them to make constitutional amendment even when the proposed bills introduced were deemed to be controversial and, the judgement in certain cases that is not in favour in the hands of government may be the reason to why certain bills were enacted, to satisfy their needs and increase their influence against another (Tew,2016).

Consequently, political judgement has undoubtedly given a heated debate among the citizens in Malaysia. The judiciary in Malaysia tends to be complicit by the political prosecution with the government, causing them to be biased in giving their rulings. It is important to note that the judiciary system should be seen as an independent entity and serve as a tool for check and balance for the public to ensure that justice and fairness even in high political cases are given proportionately.

3. Recent Issue Regarding Political Judgement in the Malaysian Judiciary System

Political power plays a prominent role especially in the case involving high political cases in Malaysia. This is the challenge faced by Malaysia nowadays to combat the politics from influencing judicial decisions, despite the fact that it is also a sign of judicial weakness. There has been evidence to confirm that there exists political meddling in the judiciary system and the abuse of power during the decision-making process. During the year of the appointment of attorney-general Tan Sri Idrus Harun, a lot of political cases involving public interest were released and fully acquitted. For instance, the then Sabah Chief Minister, Tan Sri Musa Aman acquitted from 46 charges of money laundering and corruption, specifically 30 counts of receiving corruption of RM213.5 million from eight logging concessionaires. This is as well has been alleged as an inducement to provide timber concessions towards 16 companies. Apart

from that, the charge of money laundering was related to him receiving money within the amount of US\$37,845,491.60 and US\$2.5 million on the grounds of illegal activities (Karim,2020).

In giving the judgement, Tan Sri Idrus Harun concluded the acquittal was consistent with the discretionary power provided for him under article 145 (3) of the Federal Constitution, which allows the prosecutor to discontinue any criminal proceedings in the civil court. Consequently, the Malaysian Bar released a statement at that present time to provide reasonable justification in dropping cases (Singh,2022) in order to uphold the integrity of the judiciary system in Malaysia, further to note that the discretionary power granted under article 145 (3) is not an absolute discretion. It is important (Ali Musa and Rahman,2022) also to acknowledge that high profile cases involving former Penang Chief Minister, Lim Guan Eng on the ground of alleged conversion of state land below market value (Ming,2018) and the charges related to the stepson of the former Prime Minister, Datuk Seri Najib Razak pertaining to the 1MDB scandal have also been grafted during his tenure (Lim,2020).

However, in the recent high-profile case of the former Malaysian Prime Minister, the judiciary system has been shifted to judicial redemption when it is no longer bound to the political master and sufficient to prove that Malaysia is in the year of restoring their independence in the judiciary from political interference (Chai,2022). In this case, the prosecution has successfully proven their case beyond reasonable doubt and it was held by the court that Datuk Seri Najib Razak was found guilty of criminal breach of trust, money laundering and abuse of power linked to 1MDB's fund .

In the process of trial, Datuk Seri Najib Razak has challenged the credibility of the attorney-general thus, demanded a change to the current attorney-general. His request has directly interfered with the judicial process and further disregarded the doctrine of separation of powers existing in Malaysia. It bears reminding that the executive, legislative and judiciary branches in the said doctrine are meant to serve as check and balance to the administration and governance of the nation, not in a position to entertain any unnecessary request made by any person that can put the judiciary's credibility in doubt (Bar,2022).

In analysing this issue, the action of directly intervening the judiciary in an ongoing legal proceeding further attempts to give rise to the public that they are just a tool to serve the government is constituted as undermining the independence of judiciary. People who serve the government must understand

and acknowledge the fact they are accountable in strengthening the rule of law as well as protecting the nation from internal and external pressure. Nevertheless, it can be said that the successful conviction against the former prime minister proved that the Malaysian judiciary system is taking a step ahead to upholding the integrity of the judges without the intrusion of any parties that have hung over since the 1988 crisis

4. Perspective of Jurisprudence

Let's begin with understanding the term jurisprudence and its importance to our discussion today. To begin with, jurisprudence derives from the latin term of *juris prudentia* which means the study, knowledge, the science of law. Jurisprudence is the study of the law, theories brought by philosophers helps individuals to comprehend better the reasoning behind written laws and its purpose to the public. In upholding the law, many criticise on its application and concept, different philosophers have different comprehension towards the moral or ethics of such amendments made to man-made laws .

In analysing political judgements given by the Malaysian judiciary, it is important for us to further dissect on the basis of every court decision. As mentioned above there are few requirements to be fulfilled in order to ensure that the judges have made a good court decision as such justice has prevailed. According to Jean Jacques Rousseau; Man is born good, society corrupts him. It is believed that man-kind are born pure and due to society's influence on one's being, has tainted him. Judiciary is immune and independent from any influence. Given the purpose of the judiciary is to ensure that justice has been served to and for all citizens, and maintain order of the society, however, the judiciary's integrity has been tainted ever since the political scene has substantially influenced judge's decision-making in cases. In consonance with, legal scholar Roscoe Pound; Men are not born with intuitions of the principles by which justice may be attained through the public adjudication of controversies. The administration of justice is not an easy task to which every man is competent, responsibilities given to the judges of the court to defend the law is no easy and ordinary task every individual can performed, to be independent from influence, corruption or coercion addition to ensure fundamental liberties of the constitution is upheld, cracks may appear as soon as one does not reciprocate the same ideas of an honest judiciary body. The courts of law are where people refer to when in dispute and to find justice, therefore if the constitution of the judiciary body does not hold fairness and

equality, hence it will decrease the public's trust in the justice system. The theory behind utilitarianism emphasises on actions that determine from right or wrong, action that fosters happiness and opposes actions that can cause unhappiness. Utilitarianism believes that an ethical choice is the best option to ensure the greatest good for the greatest number. Based on the circumstances above, we believe that the judiciary acts on behalf of an ethical code that aims for the betterment of the society as a whole. Leniency towards inequality if society's welfare achieves its highest possible degree. Utilitarianism does not consider freedom and equality to be the most important, consequently by limiting it, society's welfare may be maximised hence, the concept of utilitarianism provides space for inequality. Utilitarianism considers societies overall welfare to be of more importance than liberty.

4-1. Unveiling the Jurisprudential Duality: Exploring Natural Law Theory and Dworkin's Interpretivism

The Aquinian maxim of an unjust law is no law at all is best recognized under Dworkin's theory of natural law. This stands clear that the propositions of law are correct if they follow the principles of justice and fairness in giving the best interpretation in the legal practice. Dworkin in the Law of Empire further explained that the content of any valid law for the purpose of interpretive concepts must fit and justify the past political decisions, especially with regards to the state's use of force (Ching,2022). Fitness can be prescribed as perception that is consistent with general practice, whereas justification refers to the display of the practice that is desirable. Therefore, it may be pertinent to note that the interpretation in adopting any principle must fit both the existing law and the practice, which the principle of morality should be included .

The existence of the judicial power under the doctrine of basic structure of the Malaysian Constitution can be presumed to act as a political principle that safeguard the nation from any excessive power done by any parties especially the government. Hence, in giving rise to this doctrine, the moral standard against any law should be evaluated to reflect Dworkin's notion on the basis of interpretivism. Therefore, in the context of Malaysia, any law which is incompatible with the demands stated under Article 4 (1) of the Federal Constitution should be void (Venugopal and Hassan,2013). This reflected that Malaysian provision is in line with the constitutionalist idea brought by the proponents. The Malaysian Federal Court Justice, Nallini Pathmanathan is in the view that there is an essential need to preserve the judiciary power,

maintain the notion of the separation of powers, and avoid legislative meddling when it comes to amending the Federal Constitution.

Indeed, in embracing the Dworkin's interpretivism to preserve the judiciary power, Malaysia must therefore uphold the doctrine of basic structure by restraining any political influence from interfering with the judiciary system. It should be understood that Malaysia is a country that values the separation of powers, that is to say, executive, legislative and judicial branches to serve as check and balance towards the administration of the country. Therefore, they should be accountable in preventing any act of the political parties that intended to influence the judiciary especially in any ongoing cases. Not only that, condemning any act that interferes with matters related to the lawmaking process is also detrimental. Even though the legislative body is involved in the lawmaking process, one has to ensure that no political interference exists during the process, and that the law is enacted depending on the public interest, not abiding to any ruling party. It is important to note that the political meddling in the legislative branch would disregard the principle of morality that was upheld by the proponents of constitutionalism since the law would be unjust, and lead to the tyranny of administration.

4-2. Theory of Adjudication

Dworkin's concept, as described primarily in Theory of Adjudication, is one of the most well-known approaches to the issue of judicial decision making. For the reason of justice's purpose is to uphold integrity especially in the judiciary system, the descriptive element and normative element in this theory should coexist within each other (Pannick,1980). The existence of both elements assists the judges to give their rulings on each case and ought in deciding cases. Thus, it should be understood that the actual judicial decision-making preserves factual and logical structure to nurture fairness among all (Ali Musa and Rahman,2022).

What we do need to believe pertaining to Dworkin's theory is that it gives an account for proper standard of decision making. In giving the proper standard of decision making, moral principles should be taken into consideration. However, it may be important to note that rules based on logical reasoning could also be relevant. Considering the rules set out based on logical reasoning and moral principles, the most significant part is for the judges to ensure that all individuals are treated with equal respect.

Dworkin's notion in respect of the theory of adjudication is further extended

to a few stages, of which the first stage is delved into the definition. It bears reminding that there exist 2 grounds for the judges to deliver their decisions, that is to say, respectively, the rules and non-rule standard rules. According to Dworkin, rules can be prescribed as the existing law that is enacted by the legislature whereas the non-rule standard consists of the external legal sources that are found within the society .

The second stage is perceived by recognizing its functions. It should be understood that ever since rules include existing laws that are enacted by the legislatures, it is easy for the court to provide the ruling as well as the interpretation by relying on the definite provision that has been stipulated under the act. However, the existence of non-standard rules is merely treated as a tool in assisting the judges in delivering their judgement in order for them to give the exact legal ground behind every judgement and adjudication .

Apart from that, the third stage that should be taken into consideration is pertaining to the principle of easy and hard cases. In accordance with what has been stipulated by Dworkin, in dealing with hard cases of which no clear rule could facilitate the ambiguity, morality should be taken into account to conform with the rules of law (Pannick,1980). For Dworkin, law embraces morality. Hence, the initiative on taking the principle of morality into the rulings may guide the judge to give fair decisions and serve the best interest for the people but also still comply with the existing law provided in the act.

The duty of the judges is the fourth stage that should be taken into account. The judge's duty is to deliver the right judgement and reasoning in each case. Hence, to ensure they are correct in providing the rulings, the duty of the judges must be well-equipped with the institutional as well as constitutional philosophy of law. They must also uphold the principle of judicial integrity grounded in moral and legal standards, to balance rules and non-rules standard, and further safeguard the rights of all parties before them.

Last but not least, the element of judicial approaches. There exist two approaches which give options to judges in deciding cases, that is to say passive and active under Dworkin's theory of adjudication. Passive approaches allow the judges to restrict their discretion further following the doctrine of stare decisis. This approach is also consistent as to what has been stipulated under the rule standards. Under this approach, judges deliver their judgement using strict interpretation and are bound to follow the rigidity of the law itself. Active approach on the other hand, allows liberal and dynamic interpretation of the law that fulfils the needs of the society and in line with

what has been stated under the non-rule standard.

Indeed, in embracing the Dworkin's interpretivism to preserve the judiciary power, Malaysia must therefore uphold the doctrine of basic structure by restraining any political influence from interfering with the judiciary system. It should be understood that Malaysia is a country that values the separation of powers, that is to say, executive, legislative and judicial branches to serve as check and balance towards the administration of the country. Therefore, they should be accountable in preventing any act of the political parties that intended to influence the judiciary especially in any ongoing cases. Not only that, condemning any act that interferes with matters related to the lawmaking process is also detrimental. Even though the legislative body is involved in the lawmaking process, one has to ensure that no political interference exists during the process, and that the law is enacted depending on the public interest, not abiding to any ruling party. It is important to note that the political meddling in the legislative branch would disregard the principle of morality that was upheld by the proponents of constitutionalism since the law would be unjust, and lead to the tyranny of administration.

5. Appropriation to Exercise Political Judgement

In today's world, the effective functioning of a government relies heavily on the collaboration between its legislative, judiciary, and executive branches. In the pursuit of stability, particularly in developing countries like Malaysia, a government must prioritize upholding law and order. From a legislative standpoint, the existence of well-crafted laws is essential for the smooth operation of society, ensuring the physical safety and psychological well-being of its citizens. Without such legislation, a society would constantly face the threat of descending into anarchy. Malaysia serves as a noteworthy example of a successful implementation of a democratic system, which has become the bedrock of our current government (Alagappa,2013). This democratic framework should be cherished and preserved as a heritage for future generations. This is especially important considering the challenges faced by many developing nations that are yet to establish a fully functional and comprehensive democratic structure. By observing the debilitating political struggles unfolding in neighbouring countries, we gain a deeper appreciation for the value of the democratic legacy we have inherited and maintained.

Since we now have a fundamental comprehension of the composition and

function of the government in Malaysia, we are in a position to proceed to a discussion of the significance of the democratic governance that we practise. First and foremost, the notion of popular sovereignty can only be put into effect if a functioning democratic system is in place. In today's world, having the strong support of the public is a necessary prerequisite for the preservation of sovereignty and without a mandate from the people, no ruler or government can be considered legitimate. For purposes of politics, the terms supreme power and absolute rule are interchangeable with the concept of sovereignty. The application of Sovereign power in modern democracies resides in the people and is exercised via elected legislatures like the Congress or the Parliament. Only the Sovereign may wield absolute authority. Blackstone defined the term "sovereign" in such a way that it "carries implications of autonomy and in order to have sovereign power is to be beyond the power of others to interfere." It is important to keep in mind that "sovereign" essentially refers to the ability to pass laws.

In light of this, what are some of the advantages and reasons why a democratic system, such as the one that exists in our country, is absolutely necessary? The essence of democracy cannot be questioned, and therefore its definition cannot be contested. When there is organised competition for political power, questions regarding the why and how of political decision-making may become clearer. The separation of powers is an essential component of any form of government that is committed to upholding the rule of law, such as a democratic form of government. In addition to this, there must be a system of institutional checks and balances, as well as the participation of citizens, either directly or indirectly, in the governance of their lives through their elected representatives .

It is common knowledge that Malaysia is a constitutional monarchy in conjunction with a parliamentary democracy. In accordance with these doctrines, the King holds the position as the head of executive position in the country. In Malaysia, the Federal Constitution also outlined the requirements that must be met for this system to function properly (Muslim, Hassan, & Jodi, 2020). The parliament of a given democracy serves as the primary governing body for that democracy. It is also important to keep in mind that in a democratic system, the administrative authority in a Parliamentary Democracy is divided between the Legislative, the Judiciary, and the Administrative or Executive branches (Othman nor and Ibrahim,2019).

And secondly, it is essential because it safeguards the fundamental liberties of

the people who reside in the country. A democratic form of government is one in which all of the citizens enjoy equal rights and are accorded a just disposition. The democratic process and the safeguarding of citizens; civil rights are beneficial to every member of the population. Democracies, in contrast to monarchies, do not segment their populations into distinct groups that are each granted a unique set of voting rights. (Jaclyn, 2018) It is possible that it acts as a platform for those who do not have a voice or who are underrepresented. It is abundantly clear from reading Articles 5 through 13 of the Federal Constitution (Government of Malaysia, 1957) of Malaysia that it is vitally important to protect the fundamental liberties of the country's citizens. Why is it important for an individual to be aware of their own legal entitlements? This is because personal liberty is absolutely necessary for citizens to be able to carry out the democratic obligations they've accepted and in order to pursue their own objectives.

5-1. Preserving Justice and Democracy: The Crucial Role of Malaysia's Judiciary

A democratic country requires a clear check and balance (Alagappa, 2013) between its branches, without proper regulations that separate its power there shall be abuse and overlapping of power between the three components of the government.

“All the rights secured to the citizens under the Constitution are worth nothing, and a mere bubble, except guaranteed to them by an independent and virtuous Judiciary”

Andrew Jackson highlights the importance of an independent judiciary body. Without an honest judiciary body, citizens that depend on the law will be discriminated against their rights and liberties. It is essential for a functioning judiciary, to conduct as a fair and independent body .

The judiciary body should be free of influence and pressure from public and political views, judges are required to determine further the rights and claims pursued by parties and observe the legal authority before deciding a case. The judiciary is a vital branch of government, thus is responsible for governing itself and is accountable to the public. In deciding cases, judges are expected to follow a strict ethical conduct to ensure fairness (Pejabat Ketua Pendaftar Mahkamah Persekutuan Malaysia, N.D.) in court proceedings, effectively applying related law and advocacy of justice. The separation of powers among the branches of government, serves its democracy to its citizens to be

heard, protected and supported. As the saying goes; there is no liberty, if the power of judging be not separated from the legislative and executive powers by Alexander Hamilton (Delaware Judiciary,2009).

Other than the significance of check and balance between the branches of government, moreover it is important that the judiciary remains its independence from any influence or interference of politics and public view. Judicial independence ensures the weak are protected from the powerful; the minority is not discriminated against the majority and citizens from the excessive power of the government. Judiciary independence includes the ability to perform its duties as a judge of law to decide cases accordingly, following the facts of the case, application of correct laws and to decide cases without any influence of external factors. Malaysian citizens have the right to believe that appointed judges have rightfully decided on a case, in favour of those who rightfully was wronged in the case.

5.2 Assessing Judicial Independence: Significance, Scrutiny and Comparative Analysis

The clear separation of powers and the establishment of judicial independence are crucial as they foster a system of checks and balances. By granting the judiciary the authority to oversee the legislative and executive branches, especially when they overstep their boundaries, a balanced power structure is maintained. Montesquieu argued that the existence of explicit norms governing the division of power among the judiciary, executive, and legislative departments is essential for ensuring judicial independence. According to Montesquieu, this independence should encompass both individual freedoms and rights, and the executive and legislative branches must not encroach upon the judiciary's judicial power (Fairlie,1923). Combining the judicial powers of the administrative and judicial branches would undoubtedly lead to the misuse of authority by judges, resulting in further injustice.

Illustrated in the case of *Che Ani Bin Itam v Public Prosecutor* [1984] (*Che Ani Bin Itam v Public Prosecutor*,1984).

It is now firmly established that "law" in the context of such constitutional provisions as Articles 5,8 and 13 of the Constitution refers to a system of law which incorporates those fundamental rules of natural justice that had formed part and parcel of the common law of England that was in operation at the commencement of the Constitution

The Malaysian court primarily functions independently. However, throughout

the decades, the judiciary has been widely perceived to be involved in political prosecutions, particularly in the convictions of former Deputy Prime Minister Anwar Ibrahim and during the administration of Tun Mahathir. The government-initiated sedition charges against Anwar Ibrahim's defence attorney, Karpal Singh, for the statements made in court. However, it is important to note that Malaysia continues to defy the International Court of Justice by refusing to provide the Special Rapporteur on the Independence of Judges and Lawyers immunity from prosecution.

In the author's viewpoint, a well-functioning judicial system necessitates judges who fearlessly, impartially, and diligently apply the law. The tenure of judges should not be contingent upon their ability to curry favor with the government, highlighting the crucial significance of judicial security. Insufficient compensation for judges increases the likelihood of bribery, and in certain instances, they may be coerced into accepting such bribes. Hence, adequate remuneration for judges is indispensable. Moreover, it is imperative for every court system to effectively execute the judicial decisions rendered, as having judges who obey governmental directives, engage in corruption, or disregard their responsibilities to the public is almost worse than having no judges at all.

In particular, judicial independence ensures that judges are free to come to the conclusion that actions or decisions taken by the government are in violation of the law. For example, the violation of rights of individuals, including those individuals' fundamental liberties listed in the Federal Constitution and to decide what appropriate remedy should be awarded. Judicial independence ensures judges are able to carry out their duties in a manner that does not compromise the integrity of the judicial system. The judicial system should be equipped with the tools necessary to correct instances of governmental overreach and to ensure that the government stays within the bounds of the law through the use of methods such as statutory interpretation and procedures such as judicial review. Courts act as the mechanism to accomplish this because of their exceptional powers and structural isolation from both the legislative and the administrative branches of government. In the fight for fairness, honesty and integrity in the judiciary, ensuring the honesty and impartiality of the judicial system should be of the utmost importance.

Laws are designed to combat bribery and other forms of corrupt behaviours,

which are essential in many countries because they make it impossible for affluent and influential persons to undermine the rule of law. It is difficult to predict how much of an impact a code of ethics will have on judicial behaviour and public perception. Critics have the opinion that the Code has had no impact whatsoever on the behaviour of judges, much less the confidence of the general public. Those who fought against its enactment in 2009; Judge Code of Ethics 2009, believe that it is ineffectual because it does not address the fundamental causes of the issue, which include involvement of the government in matters pertaining to the judiciary and corruption itself (Arun Kasi,2019). A lack of political restriction in legislation indicates the lack of dedication to an unbiased and fair administration of justice.

In point of fact, the establishment of a code of ethics does not necessarily result in an increase in the credibility of the judiciary. In contrast to Singapore, which is ranked highly for judicial independence despite the absence of a published code, the Malaysian judiciary continues to battle with public perception. In the World Economic Forum's report on global competitiveness for 2014/2015, the level of judicial independence was listed as the 20th most important factor. Malaysia was ranked as the 36th most important factor. Singapore is ranked 3rd when it comes to freedom from the control of the government, while Malaysia is ranked 15th in this category (Jaclyn L Neo,2016).

The public's view of the impartiality of the judicial system is nevertheless tainted by accusations of the court showing political favouritism. For instance, the recent decision of the Federal Court to sustain opposition leader Anwar Ibrahim's sodomy conviction despite significant faults in the evidence presented by the prosecution has been under heavy scrutiny and been called into question. The perception of judicial collaboration was strengthened as a result of the circumstances surrounding the verdict, specifically the fact that the government allegedly issued a statement of support as the verdict was pronounced. However, it is important to keep in mind that there have been instances in the past in which the courts have adopted a stance that is diametrically contrary to that of the administration, the decision of the Court of Appeal in *Nik Nazmi bin Ahmad v Public Prosecutor* to strike down section 9(5) of the Peaceful Gathering Act.

This section of the law imposes criminal penalties on organisers who fail to notify the police at least 10 days before a planned public gathering. The Court of Appeal decided to strike down this section of the law. Unquestionably, the

Court's decision to invalidate was predicated on a few meagre and constrained grounds. It accepted that it was constitutional to impose a notification requirement on event organisers, but judged it improper to automatically attach criminal sanctions for violation with the notification requirement.

The Judge Code of Ethics 2009 despite its flaws, is still considered as a weapon that has the potential to be very important in the endeavour to strengthen the independence of the judiciary branch. It is abundantly clear that a Code by itself is insufficient, it is necessary for it to be backed by other processes and systems that adhere to the same values of objectivity, accountability, and effectiveness. The Judicial Appointment Commission Malaysia was founded in 2009 with the purpose of ensuring that the selection and appointment of Superior Court Judges are carried out in a timely manner while also being effective and fair.

In addition, one could argue that the Code should be stretched even further to include and strengthen assertions of judicial independence in opposition to the administration. This would be a possibility if the Code were revised. In addition, there is room for improvement in the education of the general public regarding the tight connection that exists between the rule of law and the independence of the judiciary, as well as in the dissemination of information regarding acceptable judicial behaviour. Self-perception will surely improve as the Malaysian judiciary begins to heal from the problems that have beset it over the course of the past two decades, and judges will become more vehement about protecting their independence. As a result, the 2009 Code has the potential to play a significant aggressive role, in addition to the self-regulatory and public confidence requirements it already has.

6. Drawbacks of a Politicized Judiciary

According to Marxist, law acts as a means to preserve the status quo whether economically or those in power (Nigam,1996). It is important for the judiciary to act in accordance with the principle of separation of power that is valued in Malaysia, overlapping of power will cause the rise of abuse of judiciary power.

The principle of separation of powers in Malaysia permits the judiciary to be independent of influence in decision making (Niemann,2018), however the judiciary in Malaysia does not hold the ultimate power as certain cases can be pardoned by the Yang Dipertua Agung.

The merger of the three branches of government will not only disrupt the balance of power, but it will also undermine the judiciary's ability to wield its utmost power in upholding the law. The judiciary is an essential institution that plays a key role to resolve disputes, interpret laws, and act as a supervisory body over the performance of the executive authority. In addition, apart from the fact the judiciary too acts to solve problems and manage crises. The executive branches of government possess a great deal of authority, which has shown that Malaysia's governments function through the fusion of the three bodies, the correlation and the balance of powers provides security and welfare.

Moreover, mergers of government bodies will allow the overlapping of the legislature body and the judiciary. There are no overlaps in terms of personnel, but there are functional overlaps between the two organs. (Law Teacher, 2013) Whenever there are conditions of breach of parliamentary privilege or contempt of parliament, the legislature can enforce it by regulating its own composition and procedure, as if it were the judiciary. In theory, judges cannot legislate, but in practice, they do it through the doctrine of judicial precedent. This appears to be a violation of the principle of separation of powers, as the judges appear to assume the role of the legislature in enacting laws.

If the judiciary body does not have its independence thus, injustice would prevail.

Badariah Sahamid quoted "Pernah dikatakan bahawa walaupun maksud keadilan sukar ditakrif manusia secara naluri (instinct) boleh mengenali dengan serta-merta apabila berlaku ketidakadilan"

Although the term justice has not been defined strictly however, a human can comprehend when there is injustice. For instance, this can be seen in society in terms of criminal offences, in the case of Noor Suzaily Mukthar the people believe and acknowledge that killing commits to an offence by section 300 of the Penal Code. The accused was found guilty thus will be punished in accordance with the law and evidence provided by the prosecution. Society agrees upon that such an offence should be punished thus injustice promoted by the judiciary body will embark unfairness and dislike from the public. In decision making, judges are required to observe the evidence and provide a consensus law that will uphold justice for the nation, in spite of that if driven judgement will not only disrupt the peace of the society moreover it will put distrust in the judiciary body a whole. Society previews the judiciary as an

organisation that upholds the law with due force, they are not subjected to any political influence that indicates their independence and true justice of the law.

7. Conclusion

In reality, political influence should not interfere with the integrity of the judiciary, as the judiciary is the body that preserve the law and is independent (Neuburger and et al, N.d.) of any influence, however the question that arises is to whether the influence can still penetrate in the judiciary, in contrast to what has occurred under the administration of the former Prime Minister.

In this context, it is essential to remember that a politicised judiciary system has detrimental effects on democracy, as it undermines the independence of the court, enables corruption, impedes economic growth, and reinforces a vicious cycle of dishonest leaders. In this regard, it becomes increasingly important to find a solid solution (Bagheri and et al,2021). Appointments and transfers of judges constitute the first significant arena of political power. Although our Constitution outlines the distinctions between the powers of the executive, the legislative, and the judiciary in a schematic manner, for practical reasons it also permits one department to serve as a check on the other. As a result, the power dynamics between these branches become significant.

The independence of the judiciary should not supplant the demand for the interdependence of the three parts of government. Similarly, steps should be taken to dilute the political influence in the judiciary to the greatest extent possible because, first, it has a negative impact on the judiciary's primary purpose, which is to uphold truth and justice, and second, the concept of a competent and independent judiciary was incorporated into the constitution for the democratic governance of the country. Therefore, it is vital that these procedures be taken.

In a democratic nation, the people have the last word and hold the actual authority. In a democracy, fundamental justice is a cherished commodity that is intended to serve the people. It is a benefit that is best provided to citizens by the judiciary. It can even be a monopoly because it is a service that only the courts can offer. On the flip side of democracy, the people themselves select the quality of the government under which they live.

To reclaim their former prominence and equitable allocation of government functions, and most crucially to re-establish the appropriate separation of

powers, the court must regain the public's trust. In the end, the judiciary is a separate branch of government whose existence and prestige serve to counterbalance the power of the other branches. In return, the general populace should support the judiciary's function. (Muslim and et al,2020).

The appointment and transfer of judges represent a significant arena of political power, despite constitutional distinctions between the executive, legislative, and judiciary branches. Thus, the power dynamics between these branches become significant, and steps should be taken to minimize political influence in the judiciary.

While the independence of the judiciary should not overshadow the need for interdependence among the three branches of government, it is crucial to safeguard the judiciary's primary purpose of upholding truth and justice. This concept of a competent and independent judiciary is fundamental to democratic governance. In a democracy, ultimate authority lies with the people, and the judiciary serves as a means to provide fundamental justice. Rebuilding public trust in the judiciary is essential to restore its rightful place and ensure a fair distribution of government functions. The judiciary, as a separate branch of government, serves as a counterbalance to the power of other branches, and it is incumbent upon the general populace to support its role.

To conclude, the words of Chief Justice John Marshall are worth recalling: "It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases must, of necessity, expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each".

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