

OPINION: Do laws grind the poor, and rich men rule the law?

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by Roger Tan

I have written before that “be you never so high, the law is above you” (NST, Jan 29).

So it is always dispiriting to find out whenever this fundamental principle of the rule of law is disregarded by the influential, rich, well-connected and the powerful with impunity.

The topical case before us is the two councillors of the Klang Municipal Council (MPK) who were reported to be erecting their mansions without any approval. It was reported that for this contravention of planning and building laws, councillor Datuk Zakaria Mat Deros was only slapped with a fine of RM24,000 which has been described as the maximum fine permitted under the law.

Zakaria, who is also the Port Klang state assemblyman, was reported to have blamed his former architect for not first getting the necessary approval.

It was also reported that Zakaria also owns a restaurant in Port Klang which had recently been found to be unlicensed, and that council enforcement officers actually demolished a rival restaurant for minor infractions but took no action instead against Zakaria’s unlicensed restaurant.

Meanwhile, the other MPK councillor, Mazlynoor Abdul Latiff, openly admitted that he was also building his mansion at Kampung Raja Uda in Jalan Lengkungan without any approval. He even had the audacity to claim, as reported, that other councillors had also built their mansions, much bigger ones, within the same area without building plans. Mazlynoor revealed that he had, in fact, submitted a plan to MPK’s planning department in 2005, but it was returned to him as it did not conform to the sewerage infrastructure. He added that as it involved costs, he went ahead with the construction and that he would submit the plans after Hari Raya. So the fact remains that the development and construction of his mansion took place without any approval.

At the same time, the Menteri Besar of Selangor Datuk Seri Dr Mohd Khir Toyo had also referred the matter involving the appointments of Zakaria, his son Zainuri and his daughter-in-law Roselinda Abdul Jamil as Klang councillors to the Selangor Umno liaison committee.

This whole affair about the MPK councillors is now not only becoming a farce, but has raised three very troubling issues:

- Is the RM24,000 fine the only punishment MPK can mete out to Zakaria?
- Why do these two councillors have such scant regard for the laws which they are actually entrusted to enforce?
- Is there something wrong with the law, particularly in the manner in which we regulate our system of local government?

In my opinion, a fine of RM24,000 is not the only penalty which can be imposed against Zakaria for contravening the laws especially when it was also reported that no planning permission had been given.

It was therefore surprising that MPK did not take any action against Zakaria either under the Street, Drainage and Building Act 1974 (“Act 133”) or the Town and Country Planning Act 1976 (“Act 172”).

It appeared that, instead, MPK decided to fine Zakaria under paragraph 17 of the First Schedule of the Uniform Building By-Laws 1984, a subsidiary legislation made under Act 133 which reads:

“In all cases where work has been commenced before plans have been approved or a permit obtained a fee equal to ten times that specified in the relevant preceding paragraph may be charged. “The payment of this enhanced fee will not exempt any person from being prosecuted by the local authority should it decide to do so.”

The paragraph says that the payment does not prevent MPK from prosecuting Zakaria.

The law governing the development of land and erection of buildings is contained in Acts 133 and 172.

Generally, before anyone develops his land, he is required to obtain a planning permission under Act 172. The planning permission is usually valid for a period of 12 months during which time the landowner is required to fulfil the conditions attached to the approval, unless it is extended. Having obtained the planning permission does not entitle the landowner to commence construction of his building. He is also required to obtain approval to the building plans and specifications under Act 133.

Section 26(1) of Act 172 provides that any person who commences, undertakes or carries out any development or permits the same to be done without any planning permission commits an offence and is liable, on conviction, to a fine not exceeding RM500,000 or to imprisonment for a term not exceeding two years or both. In the case of a continuing offence, a further fine may extend to RM5,000 for each day during which the offence continues after the first conviction for the offence. Sub-section (2) also states that "unless the contrary is proved, the owner of the land in respect of which any act that constitutes an offence under subsection (1) is done shall be deemed to have permitted the doing of that act." Act 172 also allows the local authority which is the local planning authority to require the land to be restored as far as possible to the condition it was in before the development was commenced.

Section 72 of Act 133 also provides that where the local authority is satisfied that a building has been erected or is in the course of erection without the building plans and specifications being approved by the local authority, the local authority may require the landowner to do any one or more of the following acts:

- (a) to stop work;
- (b) to demolish such building within such time as the local authority may specify; and
- (c) to take steps as may be ordered by the local authority.

It follows that MPK obviously owes the public an explanation as to why it has not invoked the above-mentioned sections of Acts 133 and 172. I am sure the public would like to know whether a stop work order or demolition order has been issued; and what steps MPK has ordered these two councillors to take.

Without a satisfactory explanation, it will not stop the public from asking whether MPK is practising double standards when it comes to enforcing these two pieces of legislation against a public perception that local authorities have no qualms whatsoever to tear down buildings and extensions of ordinary folk and even places of worship if they have been erected without prior building plan approval. Is this another case of what Oliver Goldsmith would describe: "Laws grind the poor, and rich men rule the law"?

Why do these two councillors have such scant regard for the laws which they are actually entrusted to enforce?

Mazlynoor's response is rather disturbing. This law enforcer seemed to be saying that there is nothing wrong with what he did when there are so many other VIPs also doing it. Such a response is indeed unbecoming of a councillor who has been entrusted to enforce the very same law which he showed no regret whatsoever to have breached. There just cannot be one law for the rich and connected, and another for the poor and unconnected. Everyone is entitled to be treated equally in his dealings with the public authorities. If this persists, this case will remove any deterrence against anyone who disobeys the law.

This whole affair now reminds me of the words of Shamsul Hoque, the director of Legal Education and Training Institute of the Bangladeshi Bar Council who once described law as a scarecrow. This was what he wrote in 2003:

"The scarecrow is put in a cornfield to frighten birds away. The innocent, simple birds are really scared and they don't dare to come near the field. But some birds strong and greedy do not get frightened. They are often found not only to come near the scarecrow, but also to perch on its arms and head to rest after eating the grain to their hearts' content. Seeing these birds enjoying food and security, some other birds ask themselves, 'They are having good meals. The scarecrow does not scare them. Why should we be fools and starve?' So all the birds join in the feast.

"A law is made with the express intent to help people in getting justice through a legal system, thereby aiming to achieve the 'greatest happiness of the greatest number'. But very often the law fails to serve this purpose. The innocent, simple, illiterate and the poor cannot access legal procedure because it is highly expensive, complicated and time-consuming to them. So they look upon law from a distance as a frightening scarecrow. "On the other hand, some people in society like those strong, greedy birds, tame, twist or tarnish a law and use it for their own benefits. Some others follow suit and seize the opportunity, too. Thus the law is made into a no-more frightening, rather a tattered scarecrow. "It is this second group that is mainly responsible for making many laws ineffective. Not only that, they make law an accomplice in fulfilling their greed for power and possessions."

Is there something wrong with the law, particularly in the manner in which we regulate our system of local government?

A councillor is indeed a very important person. He forms part of the local authority which exercises its powers and performs its duties under the Local Government Act 1976 ("Act 171"). As the local authority is also the approving authority for planning permission under Act 172 and building plans and specifications under Act 133, he is therefore a member of the decision making body.

In discharging his duties, he is well protected by law. Section 125 of Act 171 and section 95 of Act 133 grant him general

immunity against any personal action, liability, claim or demand whatsoever.

However, it is the state government and not the federal government, that is, the Ministry of Housing and Local Government, that has supervisory control over the local authority.

Under Act 171, the federal minister is only required to be consulted by the state authority under eight situations:

- (1) declare any area in such state to be a local authority area;
- (2) assign a name to such local authority area;
- (3) define the boundaries of such local authority area;
- (4) determine the status of the local authority for such local authority area and such status shall be that of a municipal council or a district council;
- (5) change the name of any local authority area;
- (6) change the status of a local authority area;
- (7) alter the boundaries of any local authority area; and
- (8) merge two or more local authorities into one local authority.

But the main reason why state governments and local authorities do take into account any advice given by the federal government is simply because of financial consideration as financial grants and loans are provided by the federal government to the local authorities. Also, the federal government and the state governments form the National Council for Local Government set up under Article 95A of the Federal Constitution and which is chaired by a federal minister.

It follows that it is the state authority, which is essentially the state executive council, that has control over local authorities, and the Menteri Besar, being its head, actually calls the shots.

Section 9 of Act 171 provides that the state authority may from time to time give the local authority policy directions of a general character relating to matters which appear to the state authority to affect the interests of the local authority area, and the local authority has to give effect to all such directions as soon as possible.

Section 10(7) of Act 171 then provides that if the mayor or president of the local authority does not agree with the other councillors as to the exercise of any of his powers or of the powers of the local authority, he shall refer the matter to the Menteri Besar whose decision shall be final and binding on the local authority.

As regards the appointment of the the Zakaria family members as MPK councillors, section 10(2) of Act 171 provides that councillors of the local authority shall be appointed from among persons who are ordinarily resident in the local authority area and who in the opinion of the state authority:

- (a) have wide experience in local government affairs or;
- (b) who have achieved distinction in any profession, commerce or industry; or
- (c) are otherwise capable of representing the interests of their communities in the local authority area.

Therefore, even though councillors are political appointees, the state authority must adhere to these criteria when appointing them. The interests of the local community is of paramount importance and the most important criterion is whether the appointees are capable of representing the interests of the local community. The government must be mindful of this; otherwise there is nothing to prevent a ratepayer later from challenging any appointment.

It follows that Dr Khir should have perhaps first referred the matter to the state executive council instead of his party. While politically this may make sense as councillors are usually local political leaders who wield considerable grassroots support, legally it is the state executive council which should decide who should be appointed and re-appointed.

However, so long as we continue to read about these unhealthy antics of local councillors, the calls of bringing back local elections will grow louder. But is this a solution? It is said that while elections may bring about transparency and accountability at local politics, a local authority controlled by the opposition may find it difficult to run its local authority area as many local authorities cannot survive without financial grants from the government as revenue collected from the local assessments is just not enough.

I am of the view that the time has come for the government to look again at Act 171 to address the many weaknesses in the Act so that the system of local government can meet up with the ever-demanding needs and expectations of our citizenry today.

The last time a Royal Commission was set up to study the system of local government was in 1965 which produced the Athi Nahappan Report in 1969 that led to Act 171.

Perhaps, as a start, section 10(2) can be amended to require the state authority to consult either the minister or the National Council for Local Government in the appointment and re-appointment of local councillors.