



BAR COUNCIL MALAYSIA
KERTAS-KERTAS CADANGAN
REFORMASI INSTITUSI DAN
UNDANG-UNDANG



BAR COUNCIL MALAYSIA

PART D

**ATTORNEY GENERAL'S
CHAMBERS/
PUBLIC PROSECUTOR**

Index: Part D – Attorney General’s Chamber / Public Persecutors

No	Items	Pages
1	<u>Separation of the Role of Public Prosecutor from the Attorney General</u> Executive Summary on Separation of the Role of Public Prosecutor from the Attorney General	1-2

Separation of the Role of Public Prosecutor
from the Attorney General
Executive Summary

Position of the Bar: Separate the Role of Public Prosecutor (“PP”) from the Attorney General (“AG”).

To have the offices of the AG and the PP completely separated.

I. Introduction

1. The AG acts both as the adviser to the Government and as the PP (Article 145(3), Federal Constitution and Section 376(1), Criminal Procedure Code).

II. Negative Perception of the Current Fused System

2. The inherent conflict of interest in taking on both the roles of AG and PP arises when a member of the Executive is being criminally investigated.
3. The AG is appointed by the Yang di-Pertuan Agong (the “**YDPA**”) on the advice of the Prime Minister (Article 145(1)). The YDPA is bound by the advice of the Prime Minister (Article 40(1A)). The AG holds his office at the pleasure of the YDPA (Article 145(5)). In essence, the Prime Minister decides on the appointment and removal of the Attorney General.
4. This problem came to bear when the former Prime Minister of Malaysia, Dato’ Seri Najib Tun Razak, was investigated for his involvement in 1Malaysia Development Berhad (1MDB). The then-AG, Tan Sri Abdul Gani Patail, was part of the special task force in charge of the said investigation. He was summarily removed from his office and replaced with Tan Sri Dato’ Sri Haji Mohamed Apandi bin Haji Ali, who then went beyond the constitutional role of the Attorney General to absolve the former Prime Minister of any criminal wrongdoing.

5. There is nothing inherently wrong with providing the Prime Minister with the discretion to appoint and remove the Attorney General. That authority is normal in a lawyer-client relationship. The problem arises when the Attorney General is also required to act as the PP. It is imperative that the Public Prosecutor be able to make impartial decisions independent from the Executive.

III. Solution

6. The AG does not play any role in prosecutorial matters. This will allow for transparency and accountability.
7. A system of complete separation, as similarly adopted in India, is proposed. Article 76 of the Indian Constitution provides for the role of the AG. The AG has no role whatsoever when it comes to prosecutorial matters. Such matters are put within the exclusive purview of the Public Prosecutors and the Assistant Public Prosecutors under the Indian Criminal Procedure Code 1973. Such prosecutors are appointed by the Central Government and State Governments. This is a highly de-centralized system.

IV. Conclusion

8. There is uniform consensus on the need to separate the offices of the AG and PP to maintain prosecutorial independence.