



MEMORANDUM

MENDUKUNG DAN MELINDUNGI KEBEBASAN BADAN KEHAKIMAN DAN MENGEKALKAN KEYAKINAN UMUM TERHADAP BADAN KEHAKIMAN

BADAN PEGUAM MALAYSIA

PERTAHANKAN KEBEBASAN KEHAKIMAN

Yang Amat Berhormat Dato' Sri Ismail Sabri bin Yaakob
Perdana Menteri Malaysia

Yang Amat Berhormat Dato' Sri

Mendukung dan Melindungi Kebebasan Badan Kehakiman dan Mengekalkan Keyakinan Umum terhadap Badan Kehakiman

1. Dalam mengikuti prinsip pemisahan kuasa, adalah ketara bahawa kuasa kehakiman dan kebebasan kehakiman tidak boleh diganggu gugat. Prinsip ini merupakan struktur asas yang termaktub di dalam Perlembagaan Persekutuan. Lebih-lebih lagi, keyakinan umum terhadap Badan Kehakiman adalah satu lambang kerajaan demokratik yang matang dan efektif di bawah Perlembagaan Persekutuan.
2. Kami ambil maklum bahawa Hakim-Hakim Mahkamah Tinggi, Mahkamah Rayuan, dan Mahkamah Persekutuan ("Hakim Mahkamah Atasan") tidak terkecuali daripada tindakan undang-undang dan mesti bertanggungjawab ke atas jenayah yang mereka lakukan, dan bahawa agensi penguatkuasaan undang-undang harus dibenarkan untuk menjalankan tugas mereka mengikut undang-undang dan Perlembagaan Persekutuan. Walau bagaimanapun, kami menegaskan bahawa sebarang siasatan terhadap Hakim Mahkamah Atasan oleh agensi penguatkuasaan undang-undang perlu dikendalikan tanpa mengakhiris kebebasan Badan Kehakiman dan keyakinan umum terhadap wujudnya sebuah Badan Kehakiman yang bebas dan akan menegakkan keadilan dalam proses mentadbirkan keadilan.
3. Dengan segala hormatnya kami menyatakan bahawa apa-apa aduan terhadap Hakim Mahkamah Atasan dan siasatan oleh agensi penguatkuasaan undang-undang di bawah bidang kuasa Eksekutif, jika diberikan publisiti yang tidak wajar dan tidak berhati-hati, akan memberikan impak yang meluas terhadap Hakim Mahkamah Atasan dalam menjalankan tugas mereka secara bebas, menyebabkan kebebasan Badan Kehakiman disekat secara menyeluruh, dan memberi persepsi negatif serta mengurangkan keyakinan umum terhadap Badan Kehakiman.
4. Badan Kehakiman sebagai sebuah institusi yang penting dalam negara kita, dan Hakim Mahkamah Atasan yang menjalankan kewajipan kehakiman, mestilah dilindungi daripada ancaman, gangguan dan siasatan yang sambil lewa, terutamanya dalam kes-kes yang berhubungan dengan Eksekutif, memandangkan Eksekutif sendiri yang membentuk satu kategori litigan yang besar dengan potensi untuk menyalahgunakan kuasanya terhadap Hakim Mahkamah Atasan.

5. Baru-baru ini, pada 20 April 2022, Raja Petra Kamarudin (“RPK”) telah menerbitkan satu artikel yang bertajuk “*Judge Mohd Nazlan Being Investigated For Unexplained RM1 Million In His Bank Account*” di sebuah laman web yang dikenali sebagai *Malaysia Today*.¹
6. Pada 23 April 2022, Ketua Pesuruhjaya Suruhanjaya Pencegahan Rasuah Malaysia (“SPRM”), Tan Sri Azam Baki, dengan secara terbuka mengumumkan bahawa SPRM telah memulakan siasatan ke atas seorang Hakim Mahkamah Rayuan, dan menamakan Hakim Dato’ Mohd Nazlan bin Mohd Ghazali (“Hakim Dato’ Nazlan”) secara terang-terangan, atas dakwaan wang di dalam akaun banknya yang tidak dapat dijelaskan.²
7. Pada 25 April 2022, saya, sebagai Yang Dipertua Badan Peguam Malaysia, telah mengeluarkan satu kenyataan media yang bertajuk “*The Malaysian Bar Stands With and Supports Malaysian Judges Who Are Independent and With Integrity — Respect and Uphold the Integrity of the Judiciary as an Integral Institution in the Administration of Justice*”.³
8. Pada 28 April 2022, SPRM telah mengeluarkan satu kenyataan media bertajuk “SPRM Punyai Kuasa Siasat Pegawai Badan Awam”, menyatakan pendirian bahawa ia boleh menyiasat Hakim Dato’ Nazlan berdasarkan seksyen 3 Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 (“Akta SPRM”).⁴
9. Kaedah yang tidak wajar dan tidak sepatutnya oleh SPRM yang dengan secara terbuka mengumumkan siasatan dan menamakan hakim tersebut, telah menjejaskan keyakinan umum terhadap Badan Kehakiman, dan jelas merupakan satu serangan terhadap kebebasan Badan Kehakiman.
10. Kami, Badan Peguam Malaysia, dengan tegasnya mengecam tindakan SPRM yang merupakan satu tindakan yang tidak pernah dilakukan sebelum ini iaitu secara terbuka mengumumkan permulaan siasatan jenayah terhadap seorang Hakim Mahkamah Atasan,

¹ “*Judge Mohd Nazlan Being Investigated For Unexplained RM1 Million In His Bank Account*”, *Malaysia Today*, 19 April 2022. Satu salinan artikel ini boleh didapati di Lampiran A memorandum ini.

² “*MACC: Nazlan under probe*”, *The Star*, 23 April 2022. Satu salinan artikel ini boleh didapati di Lampiran B memorandum ini.

³ “*Press Release | The Malaysian Bar Stands With and Supports Malaysian Judges Who Are Independent and With Integrity — Respect and Uphold the Integrity of the Judiciary as an Integral Institution in the Administration of Justice*”, *Malaysian Bar*, 24 April 2022. Satu salinan kenyataan media ini boleh didapati di Lampiran C memorandum ini.

⁴ “*Kenyataan Media | SPRM Punyai Kuasa Siasat Pegawai Badan Awam*”, Suruhanjaya Pencegahan Rasuah Malaysia, 28 April 2022. Satu salinan kenyataan media ini boleh didapati di Lampiran D1 memorandum ini.

A

dan mendedahkan nama hakim tersebut kepada umum, untuk satu jangka masa yang tidak ditentukan dan tanpa sebarang keputusan atau pengakhiran wajar, yang merupakan satu ancaman terhadap Badan Kehakiman.

11. Kami juga dengan tegasnya mengecam sebarang campur tangan sama ada secara nyata atau sebaliknya, pada setiap masa material, terhadap kebebasan Badan Kehakiman, dan pelanggaran prinsip asas pemisahan kuasa.
12. Memorandum ini disediakan berdasarkan Resolusi untuk Mendukung dan Melindungi Kebebasan Badan Kehakiman dan Mengekalkan Keyakinan Umum terhadap Badan Kehakiman, yang telah diputuskan di Mesyuarat Agung Luar Biasa Badan Peguam Malaysia pada 27 Mei 2022. Ahli-ahli Badan Peguam Malaysia telah memutuskan bahawa Badan Peguam Malaysia hendaklah mengambil langkah-langkah segera dan perlu untuk menganjurkan dan memimpin satu perhimpunan aman.⁵
13. Berikutan dengan resolusi yang tersebut di atas dan sebagai langkah proaktif dalam perhimpunan aman yang kami anjurkan hari ini, kami, Badan Peguam Malaysia, menyerahkan memorandum ini kepada YAB Dato' Sri. Kami dengan segala hormatnya menggesa dan amat berharap bahawa YAB Dato' Sri akan mengambil kira kebimbangan yang kami nyatakan di atas, akan mengecam kewajaran dan cara penyiasatan yang dilakukan oleh SPRM terhadap seorang Hakim Mahkamah Atasan, dan YAB Dato' Sri akan mengambil semua langkah dan tindakan wajar yang sedia ada, untuk mendukung dan melindungi kebebasan Badan Kehakiman dan untuk mengekalkan keyakinan umum terhadap Badan Kehakiman, termasuk mengambil langkah-langkah reformasi perundangan supaya parameter dan undang-undang mengenai proses untuk menangani dakwaan salah laku hakim-hakim dapat ditetapkan, diperjelaskan dan dihalusi supaya kebebasan Badan Kehakiman dapat terus dipelihara untuk manfaat negara kita dan masyarakat umum.



Karen Cheah Yee Lynn
Yang Dipertua
Badan Peguam Malaysia
17 Jun 2022

⁵ "Resolution on Upholding and Protecting the Independence of the Judiciary and the Preservation of Public Confidence in the Judiciary", *Malaysian Bar*, 27 Mei 2022. Satu salinan resolusi ini boleh didapati di Lampiran E memorandum ini.

TERJEMAHAN

Yang Amat Berhormat Dato' Sri Ismail Sabri bin Yaakob
Prime Minister of Malaysia

Yang Amat Berhormat Dato' Sri

Upholding and Protecting the Independence of the Judiciary and the Preservation of Public Confidence in the Judiciary

1. Judicial power and judicial independence are sacrosanct to the principle of separation of powers that stands as one of the basic structures enshrined in the Federal Constitution. Further, public confidence in the Judiciary is the hallmark of a mature and effective democratic government under the Federal Constitution.
2. While we recognise that the Judges of the High Court, Court of Appeal, and Federal Court ("Superior Court Judges") are not above the law and must be made accountable for the crimes they commit, and that law enforcement agencies must be allowed to carry out their respective tasks in accordance with the law and the Federal Constitution, we firmly maintain that any investigation of Superior Court Judges by law enforcement agencies ought to be conducted without eroding judicial independence and public confidence in the existence of an independent Judiciary that will uphold justice in the process of administering justice.
3. Respectfully, any complaint against Superior Court Judges and its investigation by law enforcement agencies under the purview of the Executive, if given undue and incautious publicity, will have a far-reaching impact on Superior Court Judges in carrying out their duties independently, and thus becoming a significant obstacle to the independence of the Judiciary, creating a negative perception as well as decreasing the public confidence repositied in the Judiciary.
4. The Judiciary as an institution of great importance to our country, and the Superior Court Judges carrying out their judicial duties, must be protected from intimidation, harassment and frivolous investigation, particularly in cases that go against the Executive, considering that the Executive forms a large category of litigants in a position to misuse its powers against Superior Court Judges.



5. Recently, on 20 April 2022, Raja Petra Kamarudin (“RPK”) published an article entitled “Judge Mohd Nazlan Being Investigated For Unexplained RM1 Million In His Bank Account” on a website known as *Malaysia Today*.⁶
6. On 23 April 2022, the Chief Commissioner of the Malaysian Anti-Corruption Commission (“MACC”), Tan Sri Azam Baki, openly announced that the MACC has commenced an investigation into a Court of Appeal Judge, and named Justice Dato’ Mohd Nazlan bin Mohd Ghazali (“Justice Dato’ Nazlan”) publicly, over an allegation of unexplained monies in his bank account.⁷
7. On 25 April 2022, I, as the President of the Malaysian Bar, issued a press release entitled “The Malaysian Bar Stands With and Supports Malaysian Judges Who Are Independent and With Integrity — Respect and Uphold the Integrity of the Judiciary as an Integral Institution in the Administration of Justice”.⁸
8. On 28 April 2022, the MACC issued a press release entitled “The MACC Is Empowered to Investigate Officers of Public Body”, taking the position that it can investigate Justice Dato’ Nazlan based on section 3 of the Malaysian Anti-Corruption Commission Act 2009 (“MACC Act”).⁹
9. The undue and unwarranted manner in which the MACC publicly announced an investigation and named the judge, has the effect of undermining public confidence in the Judiciary, and is clearly an attack on the independence of the Judiciary.
10. We, the Malaysian Bar, condemn, in the strongest possible terms, the unprecedented manner in which the MACC has publicly announced the commencement of the criminal investigation of a Superior Court Judge, and disclosed the name of the judge to the public, for an indefinite period and without any proper decision or closure, which is tantamount to an act of intimidation against the Judiciary.

⁶ “Judge Mohd Nazlan Being Investigated For Unexplained RM1 Million In His Bank Account”, *Malaysia Today*, 19 April 2022. A copy of this article is found in Annexure A to this memorandum.

⁷ “MACC: Nazlan under probe”, *The Star*, 23 April 2022. A copy of this article is found in Annexure B to this memorandum.

⁸ “Press Release | The Malaysian Bar Stands With and Supports Malaysian Judges Who Are Independent and With Integrity — Respect and Uphold the Integrity of the Judiciary as an Integral Institution in the Administration of Justice”, Malaysian Bar, 24 April 2022. A copy of the press release is found in Annexure C to this memorandum.

⁹ “Press Statement | The MACC Is Empowered to Investigate Officers of Public Body”, Malaysian Anti-Corruption Commission, 28 April 2022. A copy of the press statement is found in Annexure D2 to this memorandum.

11. We also condemn, in the strongest possible terms, any interference, whether explicit or otherwise, at all material times, with the independence of the Judiciary, and breaches of the fundamental principle of separation of powers.
12. This memorandum is prepared based on the Resolution on Upholding and Protecting the Independence of the Judiciary and the Preservation of Public Confidence in the Judiciary, which was adopted at the Extraordinary General Meeting of the Malaysian Bar held on 27 May 2022 where the Members of the Malaysian Bar have resolved that the Malaysian Bar shall take immediate and necessary steps to organise and lead a peaceful protest.¹⁰
13. Following the aforementioned resolution and as a proactive step in our peaceful protest today, we, the Malaysian Bar, present this memorandum to YAB Dato' Sri. We respectfully urge and earnestly hope that YAB Dato' Sri will take into account the aforesaid concerns, will condemn the propriety and manner of the investigation commenced by the MACC towards a Superior Court Judge, and will take all measures and reasonable actions available to YAB Dato' Sri to uphold and protect the independence of the Judiciary and to preserve public confidence in the Judiciary, including measures of legislative reform so that the parameters and the law on the process of addressing allegations of misconduct against judges are set, clarified and refined to ensure the independence of the Judiciary is continually preserved for the betterment of our country and the general public.



Karen Cheah Yee Lynn

President

Malaysian Bar

17 June 2022

¹⁰ "Resolution on Upholding and Protecting the Independence of the Judiciary and the Preservation of Public Confidence in the Judiciary", Malaysian Bar, 27 May 2022. A copy of the resolution is found in Annexure E to this memorandum.

LAMPIRAN A

Judge Mohd Nazlan being investigated for unexplained RM1 million in his bank account

 malaysia-today.net/2022/04/19/judge-mohd-nazlan-being-investigated-for-unexplained-rm1-million-in-his-bank-account

April 19, 2022

It is said the RM1,036,127.40 in cash which Nazlan banked into his Maybank account is part of the RM2 million he received from Jho Low for “services rendered”. What services was this and since Jho Low is linked to 1MDB does this not pose a serious conflict of interest?

NO HOLDS BARRED

Raja Petra Kamarudin

It looks like the controversy surrounding the judge in Najib Tun Razak’s SRC International case, Mohd Nazlan Mohd Ghazali, is not just about his undeclared conflict of interest. There is now the investigation regarding the unexplained RM1,036,127.40 that has suspiciously appeared in his Maybank account number XXXXXXXXX0433.

This money came in during the time Nazlan was the group general counsel and company secretary of Maybank. And it is suspected that it is tied to the decision Maybank made to create SRC International.

1MDB’s minutes of meeting reveals that the proposal to form SRC came from Maybank and not from Najib, as judge Nazlan stated in his written judgement on why he finds Najib guilty

In his judgement, Nazlan said Najib created SRC as a means to steal 1MDB’s money. Now it has been revealed that the proposal to form SRC came from Maybank and not from Najib. And this is recorded in 1MDB’s minutes of the meeting.

Hence Nazlan’s judgement is flawed. And the fact that Nazlan used this excuse as one of the reasons to find Najib guilty raises the allegation of a flawed trial, not only marred by Nazlan’s conflict of interest but also by the grounds as to why he finds Najib guilty.

It is said the RM1,036,127.40 in cash which Nazlan banked into his Maybank account is part of the RM2 million he received from Jho Low for “services rendered”. What services was this and since Jho Low is linked to 1MDB does this not pose a serious conflict of interest?

The timing of the “services rendered” fee makes it impossible to deny any conflict of interest. The date coincides with the date of 1MDB’s RM6.17 billion loan and the decision 1MDB made on the acquisition of Tanjung Energy Holdings Sdn Bhd.

Judge Nazlan was very much part of the 1MDB money heist involving Jho Low, Jasmine Loo, Terence Geh and Tim Leissner

Also involved in this exercise are Jho Low, Jasmine Loo, Terence Geh and Tim Leissner, all who are implicated in the 1MDB money heist. And Nazlan was very much part of this gang of thieves.

Nazlan should not only be disqualified from hearing the SRC case, but the trial should be declared a mistrial and Nazlan should be arrested and charged for corruption.

Why is Nazlan not being called up by the MACC to explain the RM2 million he received from Jho Low? It looks like Nazlan committed conflict of interest not only in Najib's SRC trial but also in the decision to create SRC, and the decision regarding the RM6.17 billion loan and the acquisition of Tanjung Energy Holdings Sdn Bhd.

Tunggu apa lagi, MACC?

LAMPIRAN B

MACC: Nazlan under probe

S thestar.com.my/news/nation/2022/04/23/macc-nazlan-under-probe

23 April 2022

PUTRAJAYA: Court of Appeal judge Datuk Mohd Nazlan Mohd Ghazali (pic) is being investigated over allegations of unexplained money in his account.

Confirming this, Malaysian Anti-Corruption Commission chief commissioner Tan Sri Azam Baki said an investigation paper had been opened after reports were lodged.

“Yes, we have started our investigation. The procedure is to investigate when a report has been officially lodged.

“We opened an investigation paper because there were reports lodged, not because claims were made on portals or social media,” he told The Star.

Mohd Nazlan was the judge who convicted former prime minister Datuk Seri Najib Razak over the misappropriation of RM42mil of SRC International Sdn Bhd funds.

However, Azam declined to reveal if his officers would be looking for documents or would summon individuals for questioning.

“The investigation is still in the early stage. My officers will decide during the course of investigation,” he said.

StarPicks

DRIVING IOIPG’S VISION FORWARD WITH TRUST

An article dated April 20 published by the blog Malaysia Today claimed that Mohd Nazlan is being investigated for an unexplained RM1mil in his account.

The article alleged that the money came in during the time Mohd Nazlan was the group general counsel and company secretary of Maybank.

Mohd Nazlan lodged a police report against the blog on Thursday, denying the accusations which he said were malicious, baseless and aimed at tarnishing his credibility as a judge.

In a statement, the Office of the Chief Registrar of the Federal Court of Malaysia said a police report was lodged so that investigations could be carried out under Section 500 of the Penal Code and Section 233 of the Communications and Multimedia Act, and other related provisions.

LAMPIRAN C

Press Release | The Malaysian Bar Stands With and Supports Malaysian Judges Who Are Independent and With Integrity — Respect and Uphold the Integrity of the Judiciary as an Integral Institution in the Administration of Justice

malaysianbar.org.my/article/news/press-statements/press-statements/press-release-the-malaysian-bar-stands-with-and-supports-malaysian-judges-who-are-independent-and-with-integrity-respect-and-uphold-the-integrity-of-the-judiciary-as-an-integral-institution-in-the-administration-of-justice

Press Release | The Malaysian Bar Stands With and Supports Malaysian Judges Who Are Independent and With Integrity — Respect and Uphold the Integrity of the Judiciary as an Integral Institution in the Administration of Justice 25 Apr 2022 1:38 pm

The Malaysian Bar is appalled with the turn of events that the Malaysian Anti-Corruption Commission (“MACC”) has commenced an investigation into YA Dato’ Mohd Nazlan Mohd Ghazali, JCA (“YA Dato’ Nazlan”). It is not apparent to the public, who lodged the report, or when such a report was lodged. What is obvious to the Malaysian Bar is that there should be no double standards by the authorities in approaching the same issue — and on this basis we demand equivalent investigations to be carried out by the police on the report lodged by YA Dato’ Nazlan on the allegations raised in statements issued by Raja Petra Kamarudin on his blog, *Malaysia Today*, dated 20 April 2022.

Quite apart from such double standards, the Malaysian Bar notes that the Office of the Chief Registrar of the Federal Court had also announced that the post contained false, baseless and malicious accusations to, amongst other things, interfere with the due administration of justice.

Let it be known that the Judiciary is an institution of the highest value for both political and economic stability in every country. It is an indispensable condition for the existence of the rule of law that the Judiciary be independent and impartial, and must always be perceived to be so. The Judiciary as an institution and judges individually are conferred with certain constitutional guarantees to insulate them from political and other influence and pressure in order to secure their independence and impartiality.

There is a justifiable reason for this necessity. Since the events of 1988 in Malaysia, the independence and impartiality of the Judiciary has been a source of concern. Thankfully, our current Chief Justice had restored confidence in the Judiciary and beyond that, overhauled the system to make it not just efficient, but credible and with integrity — maintaining the order in which the rule of law plays so crucial within our democratic nation.

The Malaysian Bar fully supports the efforts of the Chief Justice in maintaining the independence of the Judiciary. We fully recognise that all Judges must have the proper space to discharge their judicial duties in a manner apparent to all, and that the judicial process and decision is independent, free of any interference, considered, reasoned,

honest; and above all that, justice must be seen to be done. It is on this basis that the Malaysian Bar is unable to support this negative and rash perception being pushed by irresponsible parties, and urge that such misconception be arrested immediately; otherwise another crisis of confidence will re-emerge in the independence and impartiality of the Judiciary and the administration of justice in the country.

The Malaysian Bar further states that the MACC investigation violates the doctrine of separation of powers and also undermines the independence of the Judiciary, and is unconstitutional. There are mechanisms in place to deal with this issue, and pending the determination in such an issue, any attempts by irresponsible parties can be seen as stabbing public confidence in the Judiciary. Article 125 of the Federal Constitution provides a specific pathway that allows for complaints of judicial misconduct to be addressed in a manner that ensures continued public confidence in the Judiciary.

Such purported investigations by MACC will have an impact on the Judiciary as it undermines the rule of law and creates intimidation and a climate of fear. This perpetuates insecurity and suspicion amongst our citizenry of the Judiciary, and does not augur well for the growth and maturity of our nation. The mere possibility of such an investigation by MACC, let alone an actual investigation, would undermine, and be perceived as undermining, judicial independence. A public perception could arise that the judges make decisions that ensure they are not made the subject of investigations by the enforcement authorities, which are publicly perceived as being under the control of the Government. It could further be perceived that in arriving at such misconceived perceptions that judges are therefore compelled to take steps to ensure that they do not antagonise the Government. This would be a disservice to the faith we have in our rule of law and our democratic nation.

Without that necessary confidence instilled in the Judiciary as an institution, the system of administration of justice cannot command the respect and acceptance which are essential to its effective operation in our administration of justice.

The Malaysian Bar is fully aware that the Judiciary is not in any position to take steps to protect itself by involving itself in a trial by media or any form of public controversy, and that there is therefore a need by the Malaysian Bar to protect the dignity and integrity of the courts and the Judiciary as a whole, considering the nature of the office has always been defenceless to criticisms or wild allegations made by irresponsible parties. We have seen such wild attempts to hurt lawyers, members of the public, as well as the Judiciary as an institution, and now, specific judges.

The Malaysian Bar is greatly averse to any investigation by MACC which may set the terms of an unsavoury precedent, and no doubt have an adverse effect in the future process undertaken by our authorities in similar circumstances against the Judiciary or individual judges — since these circumstances appear to be more frequent nowadays when one hides behind the comfort of cyberspace. The continued attempts to cut into the credibility of our respected institutions should be curbed immediately. We call for a

circumspect approach by our authorities; that they do not fall to the temptation of irresponsible noise made by keyboard warriors. Cull the easy approach, for the greater good of our nation.

Karen Cheah Yee Lynn
President
Malaysian Bar

24 April 2022

LAMPIRAN D1



KENYATAAN MEDIA SURUHANJAYA PENCEGAHAN RASUAH MALAYSIA

Alamat : **Bahagian Komunikasi Strategik,
Aras 18, Blok C,
Ibu Pejabat
Suruhanjaya Pencegahan Rasuah Malaysia,
No. 2, Lebuhr Wawasan, Presint 7,
62250 Putrajaya**
Tel. : **03-8870 0015**
E-mel : komunikasi@sprm.gov.my
Web : www.sprm.gov.my
Twitter : twitter.com/SPRMMalaysia
Facebook: facebook.com/sprm.benci.rasuah
Youtube : www.youtube.com/odvmacc

SPRM PUNYAI KUASA SIASAT PEGAWAI BADAN AWAM

SURUHANJAYA Pencegahan Rasuah Malaysia (SPRM) ingin menjelaskan berkaitan isu siasatan terhadap seorang hakim yang dibangkitkan oleh segelintir pihak sehingga mendapat perhatian umum baru-baru ini.

Berdasarkan prosedur, Suruhanjaya ini bertanggungjawab untuk mengesahkan dan menyiasat sesuatu laporan atau aduan rasmi yang telah dibuat kepada SPRM melibatkan perkara-perkara di bawah bidang kuasanya.

SPRM telah diberikan kuasa untuk menyiasat kes jenayah rasuah di bawah Akta SPRM 2009 termasuk siasatan terhadap 'pegawai badan awam' yang ditafsirkan dalam Seksyen 3 akta tersebut seperti berikut:

"Pegawai badan awam" ertinya mana-mana orang yang menjadi anggota, pegawai, pekerja atau pekhidmat sesuatu badan awam, dan termasuklah anggota pentadbiran, ahli Parlimen, ahli sesuatu Dewan Undangan Negeri, hakim Mahkamah Tinggi, Mahkamah Rayuan atau Mahkamah Persekutuan, dan mana-mana orang yang menerima apa-apa saraan daripada wang awam, dan, jika badan awam itu ialah suatu perbadanan seorang, termasuklah orang yang diperbadankan sebagai perbadanan itu."

Selaras dengan prinsip pengasingan kuasa, setelah semua proses siasatan selesai dilakukan, kertas siasatan akan dikemukakan kepada Pejabat Peguam Negara untuk membuat keputusan sama ada melakukan pendakwaan atau sebaliknya.

SPRM juga telah mempunyai rekod menyiasat hakim yang mana kertas siasatan berkaitan diserahkan kepada Pejabat Peguam Negara untuk membuat penilaian.

Berhubung siasatan terhadap hakim tersebut, SPRM telah menerima satu aduan pada 15 Mac 2022 disusuli dua lagi aduan pada 23 dan 27 April 2022. Siasatan ini masih berada di fasa awal dan melibatkan kepentingan awam. Harus dijelaskan bahawa apabila sesuatu siasatan dijalankan terhadap mana-mana individu, ia tidak bermakna individu tersebut telah melakukan kesalahan.

Sehubungan itu, SPRM memohon masyarakat umum memberi ruang untuk proses siasatan dijalankan mengikut lunas undang-undang yang ditetapkan.

SURUHANJAYA PENCEGAHAN RASUAH MALAYSIA PUTRAJAYA

28 APRIL 2022



Untuk maklumat lanjut, sila hubungi Pengarah Bahagian Komunikasi Strategik,
Kamaruddin M. Ripin (03-88700016) atau Badrila Jamlus (03-88700200)

Suruhanjaya Pencegahan Rasuah Malaysia (SPRM) merupakan sebuah agensi penguatkuasaan yang ditubuhkan melalui pengubalan Akta SPRM 2009 (Akta 694) bagi meningkatkan keberkesanan dan kecekapan dalam usaha pencegahan rasuah di Malaysia serta untuk memperbaiki persepsi kebebasan dan ketelusan dalam pelaksanaan fungsi-fungsi SPRM. SPRM turut disokong oleh mekanisme *check and balance* dalam memastikan SPRM bertindak selaras dengan kehendak perundangan negara dan aspirasi masyarakat. Suruhanjaya ini dahulunya dikenali sebagai Badan Pencegah Rasuah (BPR).

LAMPIRAN D2



PRESS STATEMENT MALAYSIAN ANTI- CORRUPTION COMMISSION

Address : **Strategic Communication Division
Level 18, Block C,
Head Quarters
Malaysian Anti-Corruption Commission,
No. 2, Lebuhr Wawasan, Presint 7,
62250 Putrajaya**
Tel. : **03-8870 0015**
Email : komunikasi@sprm.gov.my
Web : www.sprm.gov.my
Twitter : twitter.com/SPRMMalaysia
Facebook: facebook.com/sprm.benci.rasuah
Youtube : www.youtube.com/odvmacc

THE MACC IS EMPOWERED TO INVESTIGATE OFFICERS OF PUBLIC BODY

THE Malaysian Anti-Corruption Commission (MACC) would like to clarify the issue of the investigation of a judge which was raised by some parties and has received public attention recently.

Based on procedures, the Commission is responsible for verifying and investigating any official reports or complaints that have been made to the MACC involving matters under its jurisdiction.

The MACC has been empowered to investigate corruption cases under the MACC Act 2009 including investigations against officers of public body as defined in Section 3 of the Act as follows:

“Officer of a Public Body” means any person who is a member, an officer, an employee or servant of a public body, and includes a member of the administration, a member of Parliament, a member of a State Legislative Assembly, a judge of the High Court, Court of Appeal or Federal Court, and any person receiving any remuneration from public funds.”

In line with the principle of separation of powers, once the investigation process is completed, the investigation paper will be submitted to the Attorney General's Chambers to be decided on whether to prosecute or otherwise.

The MACC also has a record of investigating judges where investigation papers are then submitted to the Attorney General's Chambers for assessment.



Regarding the investigation against the said judge, the MACC received a complaint on 15 March 2022 followed by two more complaints on 23 and 27 April 2022. This investigation is still in its initial phase and is of public interest. It should be clarified that when an investigation is conducted on any individual, it does not mean that the individual has committed an offense.

In this regard, the MACC requests the public to provide space for the investigation process to be carried out in accordance with the law.

THE MALAYSIAN ANTI-CORRUPTION COMMISSION
PUTRAJAYA

28TH APRIL 2022

LAMPIRAN E



**Badan Peguam Malaysia
Malaysian Bar**

www.malaysianbar.org.my

Wisma Badan Peguam Malaysia
2 Leboh Pasar Besar
50050 Kuala Lumpur, Malaysia
Tel : +603-2050 2050
Fax : +603-2050 2019
Email : council@malaysianbar.org.my

**Resolution Adopted at the Extraordinary General Meeting of the Malaysian Bar
(27 May 2022)**

**Resolution on Upholding and Protecting the Independence of the Judiciary and the
Preservation of Public Confidence in the Judiciary**

- (1) **Whereas** judicial power and judicial independence are fundamental and sacrosanct to the principle of separation of powers that stands as one of the basic structures enshrined in the Federal Constitution.
- (2) **Whereas** public confidence in the Judiciary is the hallmark of a mature and effective democratic government under the Federal Constitution.
- (3) **Whereas** the Malaysian Bar has consistently defended the independence of the Judiciary and public confidence in the Judiciary as part of its statutory obligation to uphold the cause of justice without regard to its own interests or that of its Members, uninfluenced by fear or favour, under section 42(1) of the Legal Profession Act 1976.
- (4) **Whereas** on 20 April 2022, Raja Petra Kamarudin (“RPK”) published an article entitled “Judge Mohd Nazlan Being Investigated For Unexplained RM1 Million In His Bank Account” on a website known as *Malaysia Today*.¹
- (5) **Whereas** on 23 April 2022, the Chief Commissioner of the Malaysian Anti-Corruption Commission (“MACC”), Tan Sri Azam Baki, openly announced that the MACC has commenced an investigation into a Court of Appeal Judge, and named Justice Dato’ Mohd Nazlan bin Mohd Ghazali (“Justice Dato’ Nazlan”) publicly, over an allegation of unexplained monies in his bank account.²
- (6) **Whereas** on 25 April 2022, the President of the Malaysian Bar issued a press release entitled “The Malaysian Bar Stands With and Supports Malaysian Judges Who Are Independent and With Integrity — Respect and Uphold the Integrity of the Judiciary as an Integral Institution in the Administration of Justice”.³

¹ “Judge Mohd Nazlan Being Investigated For Unexplained RM1 Million In His Bank Account”, *Malaysia Today*, 19 April 2022. A copy of this article is found in Annexure A to this motion.

² “MACC: Nazlan under probe”, *The Star*, 23 April 2022. A copy of this article is found in Annexure B to this motion.

³ “Press Release | The Malaysian Bar Stands With and Supports Malaysian Judges Who Are Independent and With Integrity — Respect and Uphold the Integrity of the Judiciary as an Integral Institution in the Administration of Justice”, Malaysian Bar, 24 April 2022. A copy of the press release is found in Annexure C to this motion.

- (7) **Whereas** on 28 April 2022, the MACC issued a press release entitled “The MACC Is Empowered to Investigate Officers of Public Body”, taking the position that it can investigate Justice Dato’ Nazlan based on section 3 of the Malaysian Anti-Corruption Commission Act 2009 (“MACC Act”).⁴
- (8) **Recognising** that Judges of the High Court, Court of Appeal, and Federal Court (“Superior Court Judges”) are not above the law and must be made accountable for crimes they commit, and that law enforcement agencies must be allowed to carry out their respective tasks in accordance with the law and the Federal Constitution.
- (9) **Recognising** that any investigation of Superior Court Judges by law enforcement agencies must be done in a manner that does not erode judicial independence, and public confidence in the Judiciary and its independence.
- (10) **Recognising** that any complaint against Superior Court Judges and its investigation by law enforcement agencies under the purview of the Executive, if given undue and unwarranted publicity, will have a far-reaching impact on Superior Court Judges and the independence of the Judiciary, and the public confidence reposed in the Judiciary.
- (11) **Recognising** that the Judiciary as an institution, and the Superior Court Judges carrying out their judicial duties, must be protected from intimidation, harassment and frivolous investigation, particularly in cases that go against the Executive, considering that the Executive forms a large category of litigants in a position to misuse its powers against Superior Court Judges.
- (12) **Recognising** that the undue and unwarranted manner in which the MACC publicly announced an investigation and named the judge, has the effect of undermining public confidence in the Judiciary, and is clearly an attack on the independence of the Judiciary.
- (13) **Recognising** that the Judiciary cannot step into the public arena to defend itself.
- (14) **Recognising** that the Malaysian Bar plays a crucial and complementary role to the Judiciary in the administration of justice and must support the independence of the Judiciary, which is essential to our democratic system, rule of law, our legal profession, and the nation.

It is hereby resolved that:

- (1) The Malaysian Bar condemns, in the strongest possible terms, the unprecedented manner in which the Malaysian Anti-Corruption Commission (“MACC”) has publicly announced the commencement of criminal investigation of a Superior Court Judge, and disclosed the name of the judge to the public, for an indefinite period and without proper closure, which is tantamount to an act of intimidation against the Judiciary;

⁴ “Press Statement | The MACC Is Empowered to Investigate Officers of Public Body”, Malaysian Anti-Corruption Commission, 28 April 2022. A copy of the press statement is found in Annexure D to this motion.

- (2) The Malaysian Bar condemns, in the strongest possible terms, any interference at any time with the independence of the Judiciary, and breaches of the fundamental principle of separation of powers;
- (3) The Malaysian Bar shall take immediate and necessary steps to organise and lead a peaceful protest at a time and venue as the Bar Council deems suitable, and such other steps as deemed appropriate by the Bar Council in its discretion, which may include to challenge the propriety and manner of the investigation commenced by the MACC of Justice Dato' Nazlan, as stated in the preamble to this resolution, and/or to advocate legislative reform to protect the independence of the Judiciary from interference by the Executive and to uphold public confidence in the Judiciary; and
- (4) The Malaysian Bar calls upon the Attorney General, being the guardian of the public interest, to take all necessary steps to protect the institution of the Judiciary and the sacrosanct principle of independence of Judiciary from such intimidation and interference.

Judge Mohd Nazlan being investigated for unexplained RM1 million in his bank account

 malaysia-today.net/2022/04/19/judge-mohd-nazlan-being-investigated-for-unexplained-rm1-million-in-his-bank-account

April 19, 2022

It is said the RM1,036,127.40 in cash which Nazlan banked into his Maybank account is part of the RM2 million he received from Jho Low for “services rendered”. What services was this and since Jho Low is linked to 1MDB does this not pose a serious conflict of interest?

NO HOLDS BARRED

Raja Petra Kamarudin

It looks like the controversy surrounding the judge in Najib Tun Razak’s SRC International case, Mohd Nazlan Mohd Ghazali, is not just about his undeclared conflict of interest. There is now the investigation regarding the unexplained RM1,036,127.40 that has suspiciously appeared in his Maybank account number XXXXXXXX0433.

This money came in during the time Nazlan was the group general counsel and company secretary of Maybank. And it is suspected that it is tied to the decision Maybank made to create SRC International.

1MDB’s minutes of meeting reveals that the proposal to form SRC came from Maybank and not from Najib, as judge Nazlan stated in his written judgement on why he finds Najib guilty

In his judgement, Nazlan said Najib created SRC as a means to steal 1MDB’s money. Now it has been revealed that the proposal to form SRC came from Maybank and not from Najib. And this is recorded in 1MDB’s minutes of the meeting.

Hence Nazlan’s judgement is flawed. And the fact that Nazlan used this excuse as one of the reasons to find Najib guilty raises the allegation of a flawed trial, not only marred by Nazlan’s conflict of interest but also by the grounds as to why he finds Najib guilty.

It is said the RM1,036,127.40 in cash which Nazlan banked into his Maybank account is part of the RM2 million he received from Jho Low for “services rendered”. What services was this and since Jho Low is linked to 1MDB does this not pose a serious conflict of interest?

The timing of the “services rendered” fee makes it impossible to deny any conflict of interest. The date coincides with the date of 1MDB’s RM6.17 billion loan and the decision 1MDB made on the acquisition of Tanjung Energy Holdings Sdn Bhd.

Judge Nazlan was very much part of the 1MDB money heist involving Jho Low, Jasmine Loo, Terence Geh and Tim Leissner

Also involved in this exercise are Jho Low, Jasmine Loo, Terence Geh and Tim Leissner, all who are implicated in the 1MDB money heist. And Nazlan was very much part of this gang of thieves.

Nazlan should not only be disqualified from hearing the SRC case, but the trial should be declared a mistrial and Nazlan should be arrested and charged for corruption.

Why is Nazlan not being called up by the MACC to explain the RM2 million he received from Jho Low? It looks like Nazlan committed conflict of interest not only in Najib's SRC trial but also in the decision to create SRC, and the decision regarding the RM6.17 billion loan and the acquisition of Tanjung Energy Holdings Sdn Bhd.

Tunggu apa lagi, MACC?

MACC: Nazlan under probe

S thestar.com.my/news/nation/2022/04/23/macc-nazlan-under-probe

23 April 2022

PUTRAJAYA: Court of Appeal judge Datuk Mohd Nazlan Mohd Ghazali (pic) is being investigated over allegations of unexplained money in his account.

Confirming this, Malaysian Anti-Corruption Commission chief commissioner Tan Sri Azam Baki said an investigation paper had been opened after reports were lodged.

“Yes, we have started our investigation. The procedure is to investigate when a report has been officially lodged.

“We opened an investigation paper because there were reports lodged, not because claims were made on portals or social media,” he told The Star.

Mohd Nazlan was the judge who convicted former prime minister Datuk Seri Najib Razak over the misappropriation of RM42mil of SRC International Sdn Bhd funds.

However, Azam declined to reveal if his officers would be looking for documents or would summon individuals for questioning.

“The investigation is still in the early stage. My officers will decide during the course of investigation,” he said.

StarPicks

DRIVING IOIPG’S VISION FORWARD WITH TRUST

An article dated April 20 published by the blog Malaysia Today claimed that Mohd Nazlan is being investigated for an unexplained RM1mil in his account.

The article alleged that the money came in during the time Mohd Nazlan was the group general counsel and company secretary of Maybank.

Mohd Nazlan lodged a police report against the blog on Thursday, denying the accusations which he said were malicious, baseless and aimed at tarnishing his credibility as a judge.

In a statement, the Office of the Chief Registrar of the Federal Court of Malaysia said a police report was lodged so that investigations could be carried out under Section 500 of the Penal Code and Section 233 of the Communications and Multimedia Act, and other related provisions.

Press Release | The Malaysian Bar Stands With and Supports Malaysian Judges Who Are Independent and With Integrity — Respect and Uphold the Integrity of the Judiciary as an Integral Institution in the Administration of Justice

malaysianbar.org.my/article/news/press-statements/press-statements/press-release-the-malaysian-bar-stands-with-and-supports-malaysian-judges-who-are-independent-and-with-integrity-respect-and-uphold-the-integrity-of-the-judiciary-as-an-integral-institution-in-the-administration-of-justice

Press Release | The Malaysian Bar Stands With and Supports Malaysian Judges Who Are Independent and With Integrity — Respect and Uphold the Integrity of the Judiciary as an Integral Institution in the Administration of Justice 25 Apr 2022 1:38 pm

The Malaysian Bar is appalled with the turn of events that the Malaysian Anti-Corruption Commission (“MACC”) has commenced an investigation into YA Dato’ Mohd Nazlan Mohd Ghazali, JCA (“YA Dato’ Nazlan”). It is not apparent to the public, who lodged the report, or when such a report was lodged. What is obvious to the Malaysian Bar is that there should be no double standards by the authorities in approaching the same issue — and on this basis we demand equivalent investigations to be carried out by the police on the report lodged by YA Dato’ Nazlan on the allegations raised in statements issued by Raja Petra Kamarudin on his blog, *Malaysia Today*, dated 20 April 2022.

Quite apart from such double standards, the Malaysian Bar notes that the Office of the Chief Registrar of the Federal Court had also announced that the post contained false, baseless and malicious accusations to, amongst other things, interfere with the due administration of justice.

Let it be known that the Judiciary is an institution of the highest value for both political and economic stability in every country. It is an indispensable condition for the existence of the rule of law that the Judiciary be independent and impartial, and must always be perceived to be so. The Judiciary as an institution and judges individually are conferred with certain constitutional guarantees to insulate them from political and other influence and pressure in order to secure their independence and impartiality.

There is a justifiable reason for this necessity. Since the events of 1988 in Malaysia, the independence and impartiality of the Judiciary has been a source of concern. Thankfully, our current Chief Justice had restored confidence in the Judiciary and beyond that, overhauled the system to make it not just efficient, but credible and with integrity — maintaining the order in which the rule of law plays so crucial within our democratic nation.

The Malaysian Bar fully supports the efforts of the Chief Justice in maintaining the independence of the Judiciary. We fully recognise that all Judges must have the proper space to discharge their judicial duties in a manner apparent to all, and that the judicial process and decision is independent, free of any interference, considered, reasoned,

honest; and above all that, justice must be seen to be done. It is on this basis that the Malaysian Bar is unable to support this negative and rash perception being pushed by irresponsible parties, and urge that such misconception be arrested immediately; otherwise another crisis of confidence will re-emerge in the independence and impartiality of the Judiciary and the administration of justice in the country.

The Malaysian Bar further states that the MACC investigation violates the doctrine of separation of powers and also undermines the independence of the Judiciary, and is unconstitutional. There are mechanisms in place to deal with this issue, and pending the determination in such an issue, any attempts by irresponsible parties can be seen as stabbing public confidence in the Judiciary. Article 125 of the Federal Constitution provides a specific pathway that allows for complaints of judicial misconduct to be addressed in a manner that ensures continued public confidence in the Judiciary.

Such purported investigations by MACC will have an impact on the Judiciary as it undermines the rule of law and creates intimidation and a climate of fear. This perpetuates insecurity and suspicion amongst our citizenry of the Judiciary, and does not augur well for the growth and maturity of our nation. The mere possibility of such an investigation by MACC, let alone an actual investigation, would undermine, and be perceived as undermining, judicial independence. A public perception could arise that the judges make decisions that ensure they are not made the subject of investigations by the enforcement authorities, which are publicly perceived as being under the control of the Government. It could further be perceived that in arriving at such misconceived perceptions that judges are therefore compelled to take steps to ensure that they do not antagonise the Government. This would be a disservice to the faith we have in our rule of law and our democratic nation.

Without that necessary confidence instilled in the Judiciary as an institution, the system of administration of justice cannot command the respect and acceptance which are essential to its effective operation in our administration of justice.

The Malaysian Bar is fully aware that the Judiciary is not in any position to take steps to protect itself by involving itself in a trial by media or any form of public controversy, and that there is therefore a need by the Malaysian Bar to protect the dignity and integrity of the courts and the Judiciary as a whole, considering the nature of the office has always been defenceless to criticisms or wild allegations made by irresponsible parties. We have seen such wild attempts to hurt lawyers, members of the public, as well as the Judiciary as an institution, and now, specific judges.

The Malaysian Bar is greatly averse to any investigation by MACC which may set the terms of an unsavoury precedent, and no doubt have an adverse effect in the future process undertaken by our authorities in similar circumstances against the Judiciary or individual judges — since these circumstances appear to be more frequent nowadays when one hides behind the comfort of cyberspace. The continued attempts to cut into the credibility of our respected institutions should be curbed immediately. We call for a

circumspect approach by our authorities; that they do not fall to the temptation of irresponsible noise made by keyboard warriors. Cull the easy approach, for the greater good of our nation.

Karen Cheah Yee Lynn
President
Malaysian Bar

24 April 2022

PRESS STATEMENT MALAYSIAN ANTI- CORRUPTION COMMISSION

Address : **Strategic Communication Division
Level 18, Block C,
Head Quarters
Malaysian Anti-Corruption Commission,
No. 2, Lebuhr Wawasan, Presint 7,
62250 Putrajaya**
Tel. : **03-8870 0015**
Email : komunikasi@sprm.gov.my
Web : www.sprm.gov.my
Twitter : twitter.com/SPRMMalaysia
Facebook: facebook.com/sprm.benci.rasuah
Youtube : www.youtube.com/odvmacc

THE MACC IS EMPOWERED TO INVESTIGATE OFFICERS OF PUBLIC BODY

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THE MALAYSIAN ANTI-CORRUPTION COMMISSION
PUTRAJAYA

28TH APRIL 2022