

MALAYSIAN BAR CONTESTS PARDON BOARD'S REDUCED SENTENCE

By New Sunday Times

The Malaysian Bar will file a judicial review against the Federal Territories Pardons Board over its decision to reduce former Prime Minister Datuk Seri Najib Razak's prison term by half for his SRC International corruption conviction. The motion was passed at its 78th Annual General Meeting (AGM) yesterday. Newly elected Malaysian Bar president Mohamed Ezri Abdul Wahab said 238 members supported the motion, with one member objecting.

He said the judicial review would be filed within two weeks. Asked why the Bar Council had to be the one to file such a court challenge and not other individuals or organisations, Ezri replied: "The floor (attendees at the AGM) has decided on that, therefore, it is our responsibility to file the judicial review to protect the rule of law. "We are filing the judicial review against the Pardons Board and not against the decision by the Yang di-Pertuan Agong."

"So, the judicial review is to ascertain what is the right thing that should happen," he told a press conference after the AGM. On February 2, the Federal Territories Pardons Board reduced Najib's fine from RM210 million to RM50 million, and halved his 12-year jail term. This means that the former prime minister will be released from prison on August 23, 2028.

Mohamed Ezri Abdul Wahab



Najib was found guilty of one count of abuse of power when Retirement Fund Inc (KWAP) granted a RM4 billion loan to SRC Inc. Sdn. Bhd., as well as three counts each for criminal breach of trust and abuse of power involving RM42 million of SRC funds. SRC International is a former subsidiary of strategic investment firm 1Malaysia Development Berhad (1MDB).

The sentence was meted out by the High Court on July 28, 2020. On October 19 of the same year, Najib filed a petition containing 307 grounds of why he should be freed of the charges. On December 8, 2021, the Court of Appeal upheld the High Court's decision and dismissed Najib's appeal to set aside his conviction and jail sentence. On August 23, 2022, the Federal Court upheld the conviction.

The 70-year-old former Pekan member of parliament is still facing four charges of abusing his position to obtain bribes totalling RM2.3 billion of 1MDB funds and 21 charges of money laundering involving the same amount.

The Malaysian Bar Council will most likely in challenging the Pardons Board's decision to reduce the jail term and fine for

1MDB

1Malaysia Development Berhad

KWSP
EPF



Datuk Seri Najib Razak

SRC
International Sdn. Bhd

Datuk Seri Najib Razak in the SRC International Sdn Bhd case, legal and constitutional expert said. The Malaysian Bar yesterday said it would file for a judicial review of the Pardons Board decision to reduce Najib's prison term by half for his SRC International corruption conviction. However, it also clarified that the judicial review concerned the Pardons Board – the manner and how it was conducted – and not the decision made by the Yang di-Pertuan Agong.

Professor Dr. Nik Ahmad Kamal Nik Mahmood said: "If they resolve to bring the matter to court (to challenge the Pardons Board's decision), it is most likely that they will fail," he told the New Sunday Times. Nik Ahmad Kamal said there was already line of case law, decided by the highest court, which ruled that pardon was the prerogative power of the Yang di-Pertuan Agong and that the court had no jurisdiction to challenge it. "And the (Federal) Constitution recognises that only the king has that prerogative power. Therefore, it is up to the king to decide whether to pardon or otherwise, as well as to reduce the sentence of anyone," he said.

Nik Ahmad Kamal, nevertheless, said the justification made by the proposer of the motion at the Malaysian Bar's 78th annual general meeting, who argued that Najib's application for a pardon should not have been processed and decided as he had only served 1 ½ years of his 12-years jail term and that he had not paid the RM210 million fine was a "sound argument". "But then again, the Prison (Department) rules that we have under the Prison Act does not require that condition to be fulfilled first before you can apply for pardon. There is nothing in the rules that say that. The only limitation to the application provided is that once your application is rejected, you have to wait for two years before you can reapply (filing fresh application for pardon)," he said.



Professor Dr. Nik Ahmad Kamal



Zainur Zakaria

It is learnt the motion was proposed by former Malaysian Bar president Zainur Zakaria. Zainur as reported by FMT, claimed that the Federal Territories Pardons Board "acted ultra vires under Article 42 of the Federal Constitution" in slashing the former prime minister's 12-year jail sentence to six years as well as reducing the RM210 million fine to RM50 million. ■

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