

Does Malaysia Have a Newly Independent Judiciary?

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The dismissal of charges against a prominent blogger fuels speculation over why and how.

The decision Friday by High Court Justice Syed Ahmad Helmy Syed Ahmad to free the Raja Petra Kamaruddin, the editor of the internet publication Malaysia Today, has kicked off an intense round of speculation in Malaysia that the courts might be breaking loose from the thrall of the United Malays National Organisation, the country's biggest ethnic political party.

Raja Petra was ordered jailed on a plethora of charges in September, mainly for writing a series of scathing if not scabrous editorials and articles that sought to link Deputy Prime Minister Najib Tun Razak to the 2006 execution murder of Mongolian translator Altantuya Shaariibuu, then 28, the jilted lover of Najib's best friend, Abdul Razak Baginda. Abdul Razak and two of Najib's bodyguards were arrested and subjected to one of the longest trials in Malaysian history before Abdul Razak was freed last week.

The decision to free Abdul Razak spurred widespread controversy from critics who argued that the well-connected think-tank director's acquittal was engineered because of his friendship with Najib. One of the articles that got Raja Petra into trouble, among many, was his printing a private investigator's allegations that Najib had been the woman's lover and had passed her on to Abdul Razak. The bodyguards remain in jail and have been ordered to put on a defense, raising questions over why they would kill a woman they didn't know without being ordered to do so.

In addition to being subject to charges of criminal defamation, Raja Petra was also charged with sedition and ultimately was given two years in prison for violating the country's notorious Internal Security Act, which allows for what amounts to indefinite imprisonment without trial or habeas corpus. He was charged with publishing articles and readers' comments critical of Islam and an insult to Muslims as well as publishing allegedly defamatory or false articles about Malaysia's leaders "with the intention of undermining public confidence and inciting hatred against the government; the articles are alleged to be a threat to national security."

"I believe some of the authorities didn't want him released," said a well-connected executive with ties to the regime of Prime Minister Abdullah Ahmad Badawi. "It's the judge. At least they're more independent in making decisions now, and not afraid of upsetting the executive. As much as I dislike Raja Petra for the shithead he is, as you know the ISA has been abused too many times in the past and victims have had no avenue to seek justice. Of late, there have been several instances of judges making more independent decisions, and that gives us all hope."

There are questions whether Raja Petra will stay released, however. One Kuala Lumpur-based lawyer said he thought Syed Ahmad had based his decision on faulty legal reasoning. *"The AG is going to appeal Raja Petra's release and another court may rearrest him,"* he added. *"I don't think this is a big deal and you shouldn't read too much into it."*

Nonetheless, the case is inextricably bound up in Malaysian politics, which in turn is inextricably bound up with the Malaysian judiciary. In 1988, amid a revolt against Mahathir's leadership, a Malaysian high court ruled that UMNO was an illegal organization. With the case going to the Supreme Court, which had issued other adverse rulings against the government, former Prime Minister Mahathir Mohamad in effect fired Salleh Abbas, the Lord President, along with three other Supreme Court justices. From that time forward, there were few if any decisions that went against the government.

In late 2007, the opposition leader Anwar Ibrahim kicked over an enormous scandal with a videotape that purported to show VK Lingam, a lawyer friend of Mahathir's, in conversation with Ahmad Fairuz Sheikh Abdul Halim, then the country's third-ranking judge who was in charge of most senior judges. The conversation seemed to indicate that Mahathir was closely involved in the appointment of malleable judges favourable to the then-prime minister's closest cronies, particularly gaming tycoon Vincent Tan. Syed Hamid, the Shah Alam High Court judge who ordered Raja Petra freed, was appointed to his position during the reign of one notorious Supreme Court head, Eusoff Chin, who himself was accused of a host of judicial irregularities.

When Badawi took over as prime minister in 2002, he vowed reforms, but by and large he has been thwarted from within UMNO, which has split into two factions, one headed by Badawi. Mahathir, who will be 84 next month, has emerged as the de facto kingmaker behind the second despite leaving the party in a huff after an announcement earlier this year that he would be investigated on allegations that he had participated in the fixing of judgships.

Although Mahathir held no official position in the party, his merciless attacks on his successor continued virtually since he left office, picking up considerable steam after UMNO received a relative drubbing in March 8 elections, losing the ruling national coalition's two-thirds hold in parliament which had prevailed since independence 50 years ago. Badawi appears to have been fatefully weakened and has been forced to promise to step down early next year to make way for the scandal-tainted Najib, who has not only suffered from the allegations of his involvement with the murdered Altantuya but with other scandals stemming from his reign as defense minister.

Thus Raja Petra's attacks on Najib are in effect an attack on the government itself. The scenarios involving his release range from a newly independent judiciary to a judiciary in revolt against the Badawi wing of the party to a slap in the face to Najib. The Kuala Lumpur-based lawyer pointed out that Mahathir himself had dealt the first blow by declaring that Raja Petra's arrest was a mistake. He has defended Raja Petra ever since.

"I would like to think Raja Petra's release is an indication of a revitalised judiciary, re-asserting their role to be the arbiter between the overwhelming powers of the state and the right of an individual not to be denied his or her liberty arbitrarily," said a well-connected political observer in Kuala Lumpur. *"The judge's ruling suggests the courts will take a much stricter approach in assessing the government's claim that the person detained is a threat to national security."*

The observer pointed to two other significant recent cases that argue for a new impartiality on the part of the judiciary. First, Zaki Azmi, recently named Chief Justice by Abdullah Badawi, has publicly recused himself from hearing cases involving Umno, given the fact that he had been a lawyer for the party and because he had been elevated to the high court in record time.

In the other case, Sessions Court Judge SM Komathy Suppiah dealt the prosecution a serious setback in its attempt to bring opposition leader Anwar Ibrahim to court on sodomy charges, dismissing a prosecution motion to move the case to another court.

"If there's one thing I am glad about what Abdullah Badawi has done is he has allowed so much more freedom that the likes of Raja Petra can get justice," said the business executive. "Even more, ordinary people who were denied justice because big business and the executive had a hold on judges can now actually hope and actually get a fair hearing."

Raja Petra's arrest and those of other journalists and politicians under the ISA were met with widespread condemnation across the globe from press and civil rights organizations including Amnesty International, which said the government was using the ISA *"as a repressive measure to control dissent. It should be revoked immediately, and Raja Petra, along with over 60 others currently held under the ISA, should either be charged with an offence and brought to fair trial or released immediately."*

"We welcome the release today of Raja Petra Kamaruddin but reiterate that he never should have been imprisoned in the first place," said Bob Dietz, Asia program coordinator for the Committee to Protect Journalists, in a prepared statement. *"CPJ calls on the Malaysian authorities to renew their lapsed commitment to a free and open Internet and to stop harassing the country's online journalists and writers."* For his own part, on his release Friday, Raja Petra said he believed the judge had acted independently without any outside influence. *"Malaysia Today is meant to provoke society, but when you touch on sensitive things, you will be detained It is like poking at a beehive, sometimes, you get stung,"* he told the Kuala Lumpur-based Star newspaper. *"But that is the only way to invite society to be united and to correct what is wrong."*

P.S.

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