



MEDIA RELEASE

CLARIFICATION ON TRIBUNAL PROCEEDINGS RE: ELECTION COMMISSION

There has been much misconception and misinformation surrounding the Tribunal proceedings held on 28th January 2019. This is to clarify the position of this Chambers on the preliminary issue raised by the Chairman of the Tribunal.

It is a fact that members of the Election Commission resigned from their office – 5 members on 18 October 2018, and 1 member on 27 November 2018. Their resignations were to take effect on 1 January 2019. Their resignations were assented to by His Majesty, the Yang di-Pertuan Agong on 26 October 2018 and 29 November 2018, respectively.

There are 4 reasons why proceedings before this Tribunal are not academic:

1. Two-fold mandate

- The Tribunal is established pursuant to Articles 114(3), 125(3) and 125(4) of the Federal Constitution with two distinct mandates, namely:
 - (i) to investigate actions on the part of EC members, before and on polling day 9th May 2018, with regard to the preparation and conduct of the 14th General Elections, in order to determine whether they amount to misconduct; and
 - (ii) if so satisfied, to make recommendations to His Majesty on appropriate action to be taken against them, including their removal from office.
- By virtue of these mandates, the Tribunal must first carry out an investigation into their conduct as stated in the 13 charges against them to determine the facts as to the issue of misconduct. These are very serious charges which, if established, will demonstrate personal culpability on the part of the EC members for the way in which GE-14 was organized.
- The relevant period of time that the Tribunal is tasked to investigate is before and on polling day (9th May 2018). The members were then in office, and it is their conduct then that is being investigated.

2. Scrutiny and investigation

- The acts or omissions of EC members cannot be immune from scrutiny and investigation of the Tribunal simply because they have resigned.
- The Tribunal may not be restricted to recommending the punishment of removal from office, which is the most extreme. They may alternatively recommend other appropriate action pursuant to the second part of their mandate.

3. Deliberate

- The resignations of the EC members were clearly a deliberate move to frustrate investigations of the Tribunal, and to avoid the ignominy of being removed, with all its attendant consequences.
- The resignations were tendered immediately after it was reported that the Government had begun the process of establishing such a Tribunal, and yet, were “post-dated” unilaterally by the EC members to take effect on 1 January 2019.

4. Real effect

- The outcome of the Tribunal proceedings can potentially have direct financial implications to the EC members’ entitlements to pension

and other benefits, which will accrue to them on resignation, but may not be payable if they are removed.

Ultimately, the Tribunal is free to decide on the preliminary issue as it wishes, and to make recommendations to His Majesty.

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