THE RULE OF LOCUS STANDI IN ADMINISTRATIVE LAW

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ABSTRACT

LOCUS STANDI IN ADMINISTRATIVE LAW

This paper focuses on the issue of *locus standi* which has become a major concern in public law as it often becomes a hurdle to the public spirited individuals who seek judicial review against administrative action or decision. Most of the modern countries interpreted the rule liberally. In Malaysia, the liberal approach was celebrated in many decisions such as *Lim Cho Hock* and *Tan Sri Haji Othman Saat*. However, the rule suffered a setback in 1988 as the Federal Court adopted a restrictive approach which froze the rule at pre-1977 of common law in *Government v Lim Kit Siang*. The restrictive approach is condemned in modern era as it does not facilitate the citizens who wish to safeguard their interest or to uphold human rights and rule of law. Hence, many cases in Malaysia were struck out by the court on the basis of lack of standing. Therefore, this research proposes that Malaysia should liberalize the rule of standing to ensure that the rule of law and rights of citizen are safeguarded. This research will also highlight the advantages and disadvantages of the two approaches. In doing so, comparison between the position of *locus standi* in public law action in Malaysia with England, Australia and Canada will be made.

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CHAPTER 1: INTRODUCTION

1.1 Background of Study

The term *locus standi* denotes legal capacity to institute proceedings and is used interchangeably with terms like "standing" or "title to sue".[1] It concerns a person's legal capacity to institute proceedings. A question that usually arise is whether a person has *locus standi* or standing to bring proceedings in the court to challenge an administrative action or decision?[2] In some jurisdiction, the requirement for *locus standi* is mandatory where the judicial power is constitutionally limited to the determination of a case or controversy or a matter which is defined by reference to criteria which include or the legal capacity of the parties to the litigation.[3] A party has to show to the court sufficient connection to and harm from the law or action challenge in order to support their participation in the case. Without such connection, the party will be deemed as lack of standing and their case will be struck out.

In the field of private law, there is not much problem in regard to the question of *locus standi* because the right the parties seek falls under the category of interest which is protected by common law and equity such as right arising out of contract or commission of torts. In contrast, the questions of *locus standi* are most frequently arisen in the field of public law. This is because public law litigation involves the constitutionality of legislation and the validity of administrative action which are not always concerned with the vindication of individual rights. The court has to determine whether the interest are worthy of legal protection so to entitle the litigants to challenge the action upon their interest.[4]

In common law, the rules of standing to seek judicial review of administrative action have been developed by the court not by the legislation. The current position in common law with regard to the *locus standi* is that the court is moving towards the liberalisation of the rule of *locus standi* in seeking judicial redress against complaints

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1 S M Thio, *Locus Standi and Judicial Review* (University Press Singapore 1971) p.1.

2 M P Jain, *Administrative law of Malaysia and Singapore* (Butterworth Asia 3rd edn 1997) p.749.

3 Ibid.

4 Ibid at 2.

of maladministration. This is because the court is in view that if the rule of standing is strict, there may arise a situation when there is no one qualified to bring an action in the court and, consequently, the administrative order may then go unreviewed. This will amount to a negation of rule of law which requires that the administration should act lawfully not lawlessly. The new liberal rule of standing was introduced in Britain in 1978.

In Malaysia, the court has adopted the strict approach rule or restrictive rule.Nevertheless, the court has recognised the development of the rule of standing as was introduced in Britain. This can be seen in pre-1988 era where it appeared that the trend of judiciary was towards liberalising the *locus standi* rule, but this trend received a set-back in 1988 and since then, the law has not recovered. By the changing of this trend it reflects that the court are not yet prepared to apply the liberal approach in regard to the issue of *locus standi* in Public Law. This can be seen in two decided cases, which are the case of *Mohamed bin Ismail v Tan Sri Haji Othman Saad*[5] and *The Government v Lim Kit Siang*.[6] However, this research will focus on the case of *The Government v Lim Kit Siang*[7] as this is the landmark case in regard to the current position of the rule of *locus standi* in Malaysia. On the objective assessment of the UEM case, it seems that the question of *locus standi* has not been settled definitely. Besides that, some emphasize will be placed on the growing trend of public law litigation in various commonwealth jurisdiction and the approach these jurisdiction adopt when dealing in the law of *locus standi.*

The present day shows that the common law world is moving towards liberalisation of the rule of *locus standi* in seeking judicial redress against complaints of maladministration. It would be a shame if Malaysia were to lag in behind in regard to this matter. Therefore, it is the time for Malaysia to direct its mind from restrictive view to a more liberal view regarding the law of *locus standi* as its promise a more safer ways to protect citizen against the unlawful administrative action.

5 *Mohamed bin Ismail v Tan Sri Haji Othman Saad* [1982] 2 MLJ 133

6 *The Government v Lim Kit Siang* [1988] 2 MLJ 12

7 Ibid.