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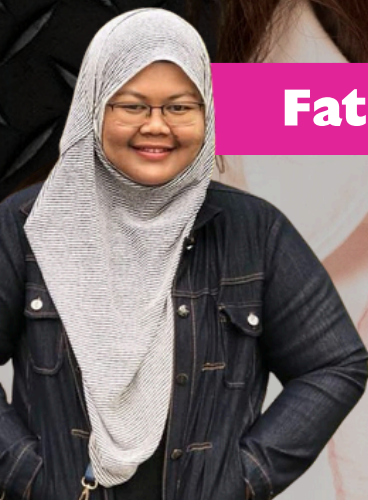
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# PENSION ADJUSTMENT SHOWDOWN:

## TRIPARTITE BETWEEN AMINAH AHMAD VS PENSIONS ADJUSTMENT (AMENDMENT)

### ACT 2013: THE PARENTAL ACT V ART. 147 OF THE FEDERAL CONSTITUTION

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#### A STRUGGLE FOR JUSTICE: THE PENSION ADJUSTMENT BATTLE OF AMINAH AHMAD



In Malaysia, retired civil servants once enjoyed pensions that rose in tandem with the salaries of current federal employees. This mechanism provided financial stability and recognised their years of dedicated service. Among these retirees is Aminah Ahmad, one of 57 individuals who stood up against the government's 2013 pension policy changes that altered this system.

Prior to 2013, the pensions of retirees adjusted in direct proportion to salary increments of active civil servants. However, this changed with the Pensions Adjustment (Amendment) Act 2013, which introduced a fixed annual 2% increase to pensions, breaking the link between pension adjustments and current salary scales. This policy shift raised concerns among retirees, who feared reduced income over time and questioned its fairness.

## LEGAL CHALLENGE: AMINAH AHMAD'S CASE

Aminah Ahmad filed a lawsuit, representing herself and 56 other retirees, asserting that the 2013 amendments were unconstitutional. Her challenge centered on Article 147 of the Federal Constitution, which protects pensioners from laws that retroactively alter or reduce their benefits. The retirees argued that the fixed 2% annual increment led to less favourable pension adjustments compared to the previous system, thereby infringing on their constitutional rights.

The courts agreed with Aminah's stance. In a significant ruling, the court determined that even the potential for a pensioner to be worse off was enough to render the amendment inconsistent with the Constitution. The ruling emphasised that the term "may" in the amendment—giving discretion to the Yang di-Pertuan Agong to increase the increment—did not guarantee protection against financial loss. As a result, the court invalidated the amendment and ordered the previous pension system to be reinstated from January 13, 2022, moving forward, but not retroactively.



## GOVERNMENT'S REACTION AND INTERIM MEASURES

Despite the court's decision, the government remained hesitant to apply it retrospectively. While it agreed to reinstate the previous pension formula for future calculations, it refused to compensate retirees for losses between 2013 and 2022. The government's justification was the absence of significant financial hardship among retirees, though critics argued this undermined the spirit of the judgement. In an attempt to ease tensions, the government offered one-time financial assistance to retirees.

Nevertheless, these payments were viewed as temporary solutions that failed to address the broader issue of justice and fairness. The government announced it would review the overall salary and pension schemes, with findings expected by the end of 2024. In the meantime, limited payments were issued to meet retirees' immediate needs. This development not only raised legal and political questions but also captured public attention. It illustrated the complex interaction between civil rights, policy reform, and constitutional law in Malaysia.

## JUDICIAL REVIEW AND ITS IMPORTANCE

Aminah's legal battle exemplifies how judicial review serves as a vital tool to challenge public authority decisions that may be illegal or unconstitutional. Judicial review allows the courts to assess whether public bodies have acted within their legal authority, followed fair procedures, and respected individual rights.

The foundational case of *Council of Civil Service Unions v Minister for the Civil Service* (1985) laid out four grounds for judicial review:

1- **Illegality** - When a public body acts outside its legal powers or misuses its authority.

2- **Irrationality (Wednesbury unreasonableness)** - When a decision is so unreasonable that no reasonable authority could have made it.

3- **Procedural Impropriety** - When the decision-making process violates the principles of natural justice, such as failing to give someone a fair hearing.

4- **Proportionality** - Particularly relevant when human rights are involved, it assesses whether actions taken are necessary and balanced in relation to the goal pursued.

In Aminah's case, the main argument rested on the claim that the amended law was unconstitutional, thereby falling under the doctrine of *ultra vires*—a legal principle meaning "beyond the powers."



## THE ULTRA VIRES DOCTRINE



The ultra vires doctrine assesses whether a public body has exceeded the powers granted to it under law. In legislative contexts, this principle applies to both the Parent Act and its subsidiary legislation. If either of these contradicts the Federal Constitution, they can be declared invalid. Aminah's case raised the argument that the Parent Act itself—specifically the amended Pensions Adjustment Act 2013—was unconstitutional because it conflicted with Article 147. If a Parent Act is invalid under the Constitution, then any subsidiary laws made under it are also void.



Historically, Malaysian courts have upheld the validity of Parent Acts in cases like *Johnson Tan Han Seng v Public Prosecutor* (1977) and *Eng Keock Cheng v Public Prosecutor* (1966), where emergency-related legislation remained enforceable. However, more recent judgments such as *Nik Elin Zurina v Kelantan State Government* (2022) show a shift, with the court's ruling that state-level laws overstepping federal jurisdiction were ultra vires. This evolving judicial approach reflects a growing readiness among courts to protect constitutional boundaries and ensure that legislation complies with the supreme law of the land, i.e., the Federal Constitution.

## BROADER IMPACT AND LESSONS



The legal battle led by Aminah Ahmad is more than a personal quest; it has become a national symbol of resilience and the struggle for justice in public administration. It has prompted critical conversations around the rights of retirees, the constitutional limits of legislative amendments, and the role of the judiciary in upholding these limits. The government's delayed and partial compliance with court rulings has also highlighted the tension between political expediency and legal obligation.



While interim relief has been provided, a full resolution is still pending. The outcome of the government's comprehensive pension review, expected by the end of 2024, remains to be seen. This case has sparked widespread interest among legal scholars, policymakers, and citizens alike. It underscores the importance of safeguarding civil rights and demonstrates how judicial mechanisms can serve as effective checks on executive power.



# CONCLUSION



The case of Aminah Ahmad vs. the Government of Malaysia is a landmark in Malaysian constitutional law and public policy. It underscores the fundamental principle that laws must align with the Constitution, especially when they affect the livelihood and welfare of citizens. Aminah's perseverance has shed light on the challenges faced by retirees and the significance of judicial review in holding public authorities accountable. Her struggle stands as a testament to the power of legal advocacy and the enduring quest for justice within a democratic society.

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