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UTM SEBUAH UNIVERSITI



Issue #4 | Oct. 2024

RISE

Catalysing Global Research Excellence

magazine

Changing Lives
and **Empowering
Humanities**

eISSN 2805-5683



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THE RULES OF NATURAL JUSTICE:

The Powerful Humane Life Changing Law



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he law can be seen as a very powerful tool in one's life. Among the functions of the law are to ensure society lives in peace and harmony by requiring everyone to obey the enacted rules that help settle disputes and promote justice (Jain, 2020). From a legal perspective, changing lives and empowering humanity involves using the law as a tool to promote justice, protect rights, and ensure equal opportunities for all individuals. This can be viewed from several key areas where the law plays a critical role in societal transformation and empowerment. An example would be the human rights law, which focuses on protecting and promoting the rights of individuals and groups against violations by governments, organizations, and other individuals. Legal frameworks both at international and national levels, such as the Universal Declaration of Human Rights and various human rights

treaties, also play a crucial role. Lawyers, activists, and non-governmental organizations (NGOs) often work to defend human rights by challenging oppressive laws and advocating for policy reforms.

This writing concerns the rights of individuals from the perspective of administrative law, which deals with the administration and regulation of government agencies (for both the Federal and State level). Bradley and Ewing (2022) defined administrative law as "the branch of public law concerned with the composition, procedures, powers, duties, rights and liabilities of the various organs of government which are engaged in administering public policies". An English jurist, A.V. Dicey, stated that administrative law concerns "the portion of the nation's legal system which determines the legal status and their liabilities, of all state officials, which defines the rights and

liabilities of private individuals in their dealings with public officials and which specify the procedure by which those rights and liabilities are enforced". Hence, administrative law protects individuals who have been adversely affected by the actions taken or decisions made by administrators.

One of the most powerful protections available under the administrative law is the rules of natural justice (RNJ). RNJ deals with procedural fairness and ensures that a fair decision is reached by an objective decision maker. It is a procedural safeguard against improper exercise of power by a public body, which protects the rights of individuals and enhances public confidence in the process. Restrictions of power can be achieved procedurally on the theory where if people are compelled to act in the right way, they may generally do the right thing and come to the right decision.

From the perspective of life changes and humanity, the RNJ confers everyone the right to be heard (*audi alteram partem*) and the protection against bias (*nemo iudex in causa sua*). These two elements must be fulfilled when a decision is made or when an action is taken against someone. If not, the decision made and the action taken will be declared as null and void. This process is called the judicial review, whereby the aggrieved party will seek the court's aid to review the action taken to determine its legality. The case of ***Maria Chin Abdullah v Ketua Pengarah Imigresen [2021] 2 CLJ 579*** explains the willingness of the court to set aside the decision of the defendant who failed to give the claimant the right to be heard before an order was issued to ban her from travelling. This is a violation of Article 5(1) of the Federal Constitution which asserts the fundamental liberties of the people of Malaysia.



In *audi alteram partem*, a person must be given notice and hearing before any adverse decision is made against him/her. This is to ensure that the person could tell their side of the story. Notice that this means that an accused must be given charge and time before any hearing is carried out to determine the outcome of the case. A charge is mandatory for the accused because by knowing the charge, then only can they know what wrong they are alleged to have done. Imagine going to a trial but not knowing the reason for being there and what preparation to be done beforehand! Hence, it would be inhumane if the charge to the accused is never mentioned before the hearing takes place. Examples of charges include misconduct, absence without leave, and breach of trust. The charge given to the accused must also be complete and adequate and must not be vague. In ***Maradana Mosque Trustee v Mahmud [1967]***, the decision to take over a private school by the government was held invalid because the government reached the decision based on another undisclosed charge.

The other element under notice is time, where the accused must be given reasonable time to prepare their case. If the accused knows of their charge but time given to them to prepare the case is insufficient, then this goes against the RNJ. The court will regard the decision made against them as void. As a guideline, the more serious the charge is, the longer the time that should be given to the accused so that they can adequately prepare their

case. In ***Phang Moh Sin v Commissioner of Police [1967]***, the court held that the decision to dismiss the plaintiff was null and void as they only found out about the charge right before the hearing commenced.

After knowing the charge and after being given reasonable time to prepare, the accused should be given the right of a reasonable hearing which contains the right of disclosure of materials used in the hearing, the right to call witnesses, and the right to rebut (to be represented and to cross examine). In certain situations, the accused must be presented with reasons for the decision made against him. It was decided in ***Dr Ahmad Jaafar Bin Musa v Suruhanjaya Perkhidmatan Pelajaran [2018]*** that the decision to dismiss the applicant was ineffective because he was not given the opportunity to call for witnesses during the disciplinary proceeding that could affect his future career. In another case, ***Ng Chuan Hock v Tan Sri Musa Bin Dato' Hj Hassan [2013]***, the court was satisfied that the appellant was deprived of his rights after he was asked to leave the hearing when his witness testified for him after he was charged with nine charges.

The RNJ also requires the decision maker to avoid making a biased decision. This is based on the maxims that a man should not be a judge in his own cause and that justice must not only be done but must be seen to be done. The test is whether there is 'real likelihood' of bias in the facts of the case and this has to be ascertained with reference to 'right minded persons'. The court will not hesitate to set aside a decision made by the administrator if it discovers the panel of the hearing has not been objective in reaching the decision, such as being the person who charges the accused as the panel would likely have already made the decision before the case is heard. In ***Dato' Kanalingam Vellupilai v Majlis Peguam & Anor [2004]***, the decision to dismiss the applicant from the Bar Council was null and void because the Bar Council as the complainant sat as one of the members in the Disciplinary Board meeting. The classic case of ***Metropolitan Properties Co v Lannon [1968]*** displays how a decision made by a Civil Committee to reduce the rent of a flat was considered to be biased because the chairman was the son of one of the tenants. The court held that there was a real likelihood of bias on the part of the decision maker. Even if he was as impartial as could be, if a right-minded person thinks there is a real likelihood of bias on his part, then he should not sit. If he does sit, the decision cannot stand.

To conclude, the rules of natural justice certainly demonstrate the means of how one's life could change by adopting the law in a correct way and by observing the correct procedures in making decisions. From not getting any opportunity to be heard, the RNJ offers a humane guarantee for an accused to ensure that he has all the possible rights to have a fair trial at the administrative level.

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Published by

Unit of Research Communication & Visibility

Department of Research & Innovation,
Level 5, Bangunan Canseleri Tuanku Syed Sirajuddin,
Universiti Teknologi MARA, 40450 Shah Alam, Selangor



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