

ADMINISTRATIVE JUSTICE:
THE ROLE OF JUDICIARY IN ADMINISTRATIVE
DECISIONS IN MALAYSIA

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PREFACE

Since independent administrative law, has shown a tremendous growth in Malaysia. With an exception, the courts have also made a number of pronouncement bearing on administrative law.

And in number of these cases, courts have shown signs of creativity, just as other courts in other countries have done. As the states come to play an active role in regulating the citizens affairs, and as the administrative impinges on individual interest - the effect is that more cases with various aspects and problems of Administrative law subsist.

Thus it is the aim of this project paper to show the ^{role of} judiciary ~~role~~ to play ⁱⁿ a meaningful part in developing the elements of administrative behaviour towards the citizens. The courts must ensure that in so doing the administrative ~~to~~ restrict themselves to the law, constitutionalism, democratic value and administrative exigencies.

Briefly this project paper endeavours to portray the Judiciary Role in administrative law in Malaysia. This paper seeks to highlight court pronouncements and extract principle and the court attitude therefrom. Apart from the above elements the independence of judiciary is also emphasised, to show the

<u>CONTENTS</u>	<u>PAGES</u>
1. TITLE PAGE	i
2. PREFACE	iv
3. TABLE OF CASES	viii
4. TABLE OF STATUTES	xii
5. ARTICLES	xiii
6. BIBLIOGRAPHY	xiv
 <u>CHAPTER I</u>	
1. Introduction:	
A General Outlook In Our Judiciary	1
 <u>CHAPTER II</u>	
2. The Judiciary:	14 - 36
2:1 - Law and Authority	14
2:2 - The Judges	22
a. Appointment	22
b. Remuneration	26
c. Conduct	27
d. Tenure of Office (Removal)	33
 <u>CHAPTER III</u>	
3. The Role of the Judiciary	37 - 85
3:1 - In the Context of Separation of Powers	37
3:2 - Judiciary and the Rule of Law	43
3:3 - Interpretation of Statutes	46

CHAPTER I

INTRODUCTION: A GENERAL OUTLOOK IN OUR JUDICIARY

As Lord Hailsham, the Lord Chancellor, said; that "the judicial independence was under threat from growing criticism and attacks on Judges in Parliament and by the media."¹

Thus it is clearly showed that the Public confidence in Judiciary had eroded to certain extent, and something should be done by the Judiciary bodies themselves and the government in particular. It is the aim of this project paper to disclose and to highlight any deficiencies in our Judiciary system in reference to the nation administrative law.

After the decision of Dato' Mokhtar Hashim v P.P.² who was sentenced to death but his sentence was commuted to life imprisonment by the Pardons Board. Discussions as to the sentence and commute were held by various human right bodies as well as the public. the implication from the said discussion is that various questions, issues and even criticism pertaining to our Judicial System were put forward to relevant authorities by unsatisfactory figures, especially from the members of the public, through various mode of communication.

¹ Judges' Freedom is Paramount - 1983 1 CLJ, 272

² (1983)2 MLJ 232

What is concerning with Dato' Mokhtar case is that how the Court in Malaysia treat equality before the law of the citizen. And is Dato' Harun Hj. Idris v P.P.³ the question of discriminatory of law was highlighted. The main question is whether the s.418A (Criminal Procedure Code) which give power to Public Prosecutor to transfer case from Subordinate Court to High Court, was valid vis-a-vis Act. 8 (equality before the law).

In the above case Attorney-General acting in capacity as Public Prosecutor, require the Sessions Court to transfer the case to High Court. The action was challenged as constitutionally in valid. The Federal Court as such give wide interpretation on Article 8. That the s.418a (Criminal Procedure Code) was not discriminatory, because there the Attorney-General while doing his discretion under the policy or priciple, that the case must be of unusual importance and difficulty. Such situation was found in Dato' Harun case. This meant that equality is not absolute and it need not apply to all persons uniformly.

In Sim Kie Chan Case⁴, question of equality was again highlighted.

³ (1977)2 MLJ 155

⁴ Unreported case - the Star, August 21, 1985