

## A humble submission Syahredzan Johan

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# A landmark judgment on judicial power

A Federal Court decision earlier this year has restored judicial power of the federation to the judiciary.

EARLIER this year, the Federal Court delivered a landmark judgment in the case of *Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat*.

The Federal Court had to consider issues concerning the constitutionality of certain provisions in the Land Acquisition Act 1960, the law that governs compulsory acquisition of land.

The crux of the matter is whether Parliament may limit or oust the jurisdiction of the courts through federal legislation.

In 1988, Article 121(1) of the Federal Constitution was amended to remove the words “the judicial power of the federation shall be vested in two High Courts” from the article, thus deleting the provision that the judicial power of the federation is vested in the judiciary.

Article 121(1) now reads, “the High Courts and inferior courts shall have such jurisdiction and powers as may be conferred by or under federal law”.

After the amendment, Article 121(1) has been interpreted by the courts to mean that the jurisdiction of the courts is to be decided by Parliament.

In other words, Parliament could limit or remove the jurisdiction of the courts, by way of federal law. Judicial power of the federation is determined by Parliament.

However, in *Semenyih Jaya*, the Federal Court held that the judicial power of the federation still vests with the judiciary, despite the amendment to Article 121(1) in 1988.

The Federal Court also affirmed the “basic structure doctrine”,

which was first introduced to Malaysia in the Federal Court case of *Sivarasa Rasiah v Badan Peguam Malaysia & Anor*.

The basic structure doctrine originates from India and states that constitutional amendments which disturb the basic structure of the Federal Constitution would themselves be unconstitutional.

The decision in *Semenyih Jaya* will have wide-ranging implications.

Firstly, “ouster clauses” in legislations that remove the jurisdiction of the courts to review certain matters within the law are now open to challenge.

Secondly, provisions in the law that bind judges to the decisions, rulings or directions of non-judicial bodies could also now be challenged.

In *Semenyih Jaya*, the provision that bound the judge to the assessors’ determination of compensation was found to be unconstitutional. Judicial power cannot reside in other bodies.

The role of the judiciary in any country is to interpret the law, review the actions of other State bodies and uphold the fundamental liberties of the people.

The judiciary can only carry out these functions effectively if it is independent and free from interference.

This is why judicial independence, real or perceived, is of the utmost importance. The people must have confidence in the judiciary.

Any attempt to interfere with the independence of the judiciary or to exert influence on it, or any action

that gives rise to the perception that the judiciary is subservient to the executive, must be opposed and resisted.

In the same vein, the judiciary cannot be the check and balance to the other State bodies if, as stated by the Federal Court in *Semenyih Jaya*, the Courts are “effectively suborned to Parliament” by circumscribing the jurisdiction of the courts.

At least in this regard, the judgment in *Semenyih Jaya* is a welcome affirmation of the role of the judiciary within the Malaysian context.

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