

PRESS RELEASE

2 February 2021

NGOs ASK COURTS TO CONSIDER ROLE OF JUDICIARY AND PARLIAMENT IN ENSURING CHECKS AND BALANCES DURING EMERGENCY

We, the undersigned civil society organisations (CSOs), involved in various areas of advocacy to strengthen parliamentary democracy and the safeguarding of the civic space, filed a public interest suit today at the High Court against Prime Minister Muhyiddin Yassin and the government of Malaysia, to seek court declarations on issues related to the Emergency (Essential Powers) Ordinance 2021.

We are concerned that the proclamation of emergency and the Emergency Ordinance has resulted in both Houses of Parliament being unable to fulfil their constitutional role of debating and voting on the Emergency Ordinance. We are also concerned that the main effect of the emergency ordinance is the suspension of the Parliament while it is business as usual for both the government, judiciary and private sectors, subject to the restrictions imposed under the ongoing Movement Control Order (MCO).

We would like the courts to declare if they have the power to review any attempt that circumvents constitutional provisions which require these instruments to be brought before Parliament first.

In particular, we are seeking declarations on whether the Emergency (Essential Powers) Ordinance; or Section 14 of the Ordinance, which suspends Parliament; and Article 150(8) of the Constitution, which oust the jurisdiction of the courts, are unconstitutional.

In our submission to the Kuala Lumpur High Court today, we posed the following questions of law.

1. Given that both Houses of Parliament had not been dissolved but only stood adjourned at the relevant times, whether the Proclamation of Emergency issued on 11 January 2021 (vide P.U.(A)7/2021) and the Emergency (Essential Powers) Ordinance 2021 promulgated on 14 January 2021 had to be laid before both Houses of Parliament pursuant to Article 150(3) of the Federal Constitution?

2. Whether Section 14 of the Emergency (Essential Powers) Ordinance 2021 relating to the suspension of Parliament is valid insofar as it prevents or frustrates the operation of Article 150(3) of the Federal Constitution? (Section 14 purports to, inter alia, disable the operation of

the provisions of the Federal Constitution relating to the summoning, prorogation and dissolution of Parliament and to cancel any meeting of Parliament that had been summoned but not yet held).

3. Whether the 1981 constitutional amendment that added Article 150(8) of the Federal Constitution that purportedly ousts the jurisdiction of the courts is unconstitutional (for violating Articles 4 and 121 of the Federal Constitution and/or the basic structure of the Federal Constitution)?

4. Whether Article 150(8) of the Federal Constitution, even if valid, prevents the courts from reviewing the constitutionality of an ordinance made under Article 150(2B) that does not comply with, prevents or frustrates the requirements of Article 150(3) of the Federal Constitution (which require the proclamation/ordinance to be laid before Parliament)?

The suspension of Parliament is an extremely drastic measure. This Emergency overreaches the Constitution and is disproportionate. As citizens and public-spirited, interest groups fighting for reform, the suspension of Parliament affects our work greatly as we are unable to access and seek recourse during parliamentary sittings on matters of concern.

We believe the rule of law should be preserved and the spirit of the Federal Constitution is adhered to, where there is a clear separation of powers between the Executive, Legislative and Judiciary, and that no one branch of government should subjugate the others.

The loss of such checks and balances in our parliamentary democracy would have long-term irrevocable impact that could ruin our country, as an unchecked government could turn draconian and kleptocratic.

We believe the government already has enough powers to handle the COVID-19 crisis and they do not need to resort to suspending Parliament through the Emergency Ordinance.

Like all Malaysians, we are extremely concerned with the devastating impacts of this pandemic - the loss of lives, livelihood and rapid erosion of our economy. Political stability is necessary for the government to steer us out of this unprecedented crisis, but stability must not be achieved at the expense of institutional checks and balances provided by Parliament and the Judiciary.

For these reasons, it is in the public interest that we undertook this legal challenge to allow the court to determine the constitutional powers of Parliament and the Judiciary in upholding our system of checks and balances.

We undertook this litigation in the public interest to defend the rule of law and the system of checks and balances and to seek the judiciary's determination on issues related to the Emergency Ordinance.

Signed by:

1. The Coalition for Clean and Fair Election (BERSIH 2.0)
2. Suara Rakyat Malaysia (SUARAM)
3. Center for Independent Journalism (CIJ)
4. Aliran
5. The Kuala Lumpur and Selangor Chinese Assembly Hall (KLSCAH)
6. Pergerakan Tenaga Akademik Malaysia (GERAK)
7. Save Rivers

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