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The Limitations of the Right to be Heard in Disciplinary Proceedings against Public Servants in Malaysia: An Infringement of the Fundamental Liberties Under Article 5 and Article 8 of the Federal Constitution

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ABSTRACT

Since 1976, despite the Privy Council's decision in Najar Singh's case, the right to be heard particularly on its expansion to the right of oral hearing in disciplinary proceedings against public servants in Malaysia has become an ongoing challenge. This is the outcome of the different approaches adopted by the courts in determining such right to the affected public servants. This article analysed the constitutional provisions and the judicial review approach with regards to the right to be heard of public servants in disciplinary proceedings as granted in Article 135(2) of the Federal Constitution. This article employed qualitative method by using content analysis. The findings indicated that first, the interpretation of the constitutional term "a reasonable opportunity of being heard" is vague. Next, the judicial review application is inconsistent and finally, the limitation of the right to be heard deprives the life and personal liberty of a person as envisaged in Article 5 and Article 8 of the Federal Constitution. Thus, the constitutional protection of "a reasonable opportunity of being heard" which falls under Article 135(2) in the case of dismissal and reduction of a public servant's rank in Malaysia should be interpreted in the light of the fundamental liberties as guaranteed in Article 5 and Article 8 of the Federal Constitution. It is proposed that the oral hearing which is an essence to the principle of right to be heard be regulated in the disciplinary proceedings against public servants in Malaysia.

Keywords: Public servant; natural justice; right to be heard; fundamental liberties

INTRODUCTION

In the public sector, dealing with the misconducts of public servants at workplace requires a disciplinary action. This administrative process is executed by an in-house authority. All procedures and regulations related to a disciplinary proceeding must be complied by the disciplinary authority in order to avoid any unwanted consequences to the affected public servant. This is in accordance with the concept of natural justice under the common law[1] that recognises the right to be heard. The natural justice which is a vital part of the administrative law has been reformulated in the case *Ridge v Baldwin*[2] in the 1960s. The term *natural justice* embodies two important maxims: the right to be heard, or to a fair hearing (*audi alteram partem),* and the rule against bias (*nemo judex in causa sua*). This gives the affected party an opportunity to present his or her case, thus demonstrating the deliverance of justice. This article will cover the discussion on the objective, the constitutional protection to the public servants in disciplinary proceeding, judicial review approach on the right to be heard, the significant relation of Article 5 and 8 of the Federal Constitution to the right of public servants. The discussion also includes the analysis of the issue based on various case laws referred and it is concluded with a suggestion to improve the position of right to be heard to the public servants in disciplinary proceedings.

OBJECTIVES

First, this article analyses the constitutional provisions on the right to be heard in a disciplinary proceeding against a public servant. Second, it identifies the judicial review approach in dealing with such right. Third, it establishes the relation of the right to be heard and the fundamental rights as granted in Article 5 and 8 of the Federal Constitution.

CONSTITUTIONAL PROTECTION TO PUBLIC SERVANTS

The concept of natural justice which originated from the common law, is adopted in Article 135(2) of the Federal Constitution.[3] It provides public servants with an opportunity to be heard

in the case of demotion or dismissal. The composition of public servant in Malaysia is enlisted in the earlier provision of Article 135(1) which includes the armed forces, the judicial and legal service, the general public service of the Federation, the police force, the joint federal-state public service, the public service of each state and the education service. In the context of natural justice and its relation to the administrative power, Raja Azlan Shah in *Ketua Pengarah Kastam v Ho Kwan Seng (1977)*[4] decided that;

> "The rule of natural justice that no man may be condemned unheard applies to every case where an individual is adversely affected by an administrative action, no matter whether it is labelled "judicial," "quasi-judicial," or "administrative" or whether or not the enabling statute makes provision for a hearing".

Public Officer (Conduct and Discipline) Regulations 1993 govern the public servants in disciplinary matters. In addition to constitutional protection under Article 135(2), in term of the right to be heard, Regulation 34(1) in particular adopts the constitutional protection of reasonable opportunity to be heard in the case of dismissal and reduction in rank.[5] Nonetheless, the "reasonable opportunity of being heard" is limited to a written representation as clearly stated in Regulation 37(2)(b) and by the discretion of the disciplinary authority under Regulation 37(5) may be extended for further clarification before the Investigation Committee.

According to Gan Ching Chuan[6] the rule of natural justice and the right to oral hearing need to be applied in disciplinary proceedings. The right to a fair hearing is the *sign quo none* of the administrative process in the modern world. Apart from that, the rule of natural justice which is developed from the common law has been constitutionalised in Article 135(2).

Meanwhile Romli et al.[7], wrote that the rule of natural justice in relation to the disciplinary proceeding is the minimum requirement in the decision-making process by the quasi-judicial, such as the disciplinary authority. Additionally, in the deliverance of justice, the disciplinary authority's responsibility is not limited to only submitting the statutory and regulations but to ensure that natural justice is served to the affected employees.

In a leading reference on administrative law of the Commonwealth, Prof Jain[8] argued that the expansion of "the concept of "reasonable opportunity" in Article 135(2) has to be defined by the courts in accordance with the principles of natural justice.

JUDICIAL REVIEW CASES ON THE RIGHT TO BE HEARD

Any party who suffered grievances on the administrative decision, may obtain redress granted by the court or any statutory right of appeal. The administrative decision of any public authority may be challenged by way of judicial review application at the High Court. The High Court has the supervisory power to hear any judicial review application by any party who are dissatisfied with the decision made by the public authority. Khairil Azmin and Siti Aliza[9] described a judicial review as "the power of a court to review a law or an official act of a government employee or agent for constitutionality or for the violation of basic principle of justice." Lord Scarman highlighted that a judicial review is "a great weapon in the hands of the judges, but the judges must observe the constitutional limits set by our parliamentary system on their exercise of this beneficent power".[10]

In a judicial review, a court does not challenge the merits of a decision but rather the court examines whether the decision-making body is entitled to make such a decision. Following the rule of natural justice, the court may review a decision where there was a failure of complying with either the prompt procedural requirements as stated in the Act of Parliament or secondary legislation, or when a procedural impropriety exists in the decision-making process.[11]

In the context of the right to be heard to the public servants, the arising issue is whether the right to be heard in a disciplinary proceeding is limited to a written representation or does it also include oral hearing? In *Najar Singh v Government of Malaysia (1976)*[12], the appeal to the Privy Council was made on the basis of Regulation 27 of Chapter 27 because the appellant was not given a reasonable opportunity of being heard

orally. Regulation 27 mentioned that "no officer shall be dismissed or reduced in rank, unless he has been informed in writing of the grounds on which it is proposed to take action against him and has been afforded a reasonable opportunity of being heard". The appellant in this case was a sergeant major in the police force. His was dismissed from the police force. Subsequently, he challenged the order of dismissal but was dismissed by the High Court and Federal Court. On his later appeal to Privy Council on the grounds that his dismissal was contrary to the natural justice since he was not accorded a reasonable opportunity of being heard orally in the disciplinary proceeding, Privy Council made the decision that Regulation 27, Regulations 1969 which provides that the appellant should be given a reasonable opportunity of being heard before his dismissal, was not to be interpreted as imposing an obligation to hear the appellant orally.

The principle in *Najar Singh* was followed by Supreme Court in *Ghazi Mohd Sawi v. Mohd Haniff Omar, Ketua Polis Negara, Malaysia & Anor (1998)*[13] and by the Federal Court in *Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v. Utra Badi Perumal (2001)*[14] In *Ghazi's* case, the court reminded that the approach of the court was to be aware that in dealing with General Orders that have legislative effects, the court must not add words to them, which were never intended "even if the legislature provision is not as complete as the court might think appropriate". Further, the Supreme Court stated that reference to *Najar Singh's* case on the issue of the oral hearing was sufficient. While in *Utra Badi*, the Federal Court held that under Article 135(2) of the Federal Constitution, the right to be heard does not made an oral hearing mandatory for the individual concerned and the failure to provide an oral hearing is not a denial of justice.

However, the Court of Appeal in *Ann Seng Wan v. Suruhanjaya Polis Diraja Malaysia & Anor (2002)*[15] in interpreting the relevant provision on the right to be heard (i.e. O.26 of the General Order 1980) decided that the oral hearing is justifiable as there was no evidence against the exculpatory statement released by the appellant.

Meanwhile, in *Yusof Sudin v. Suruhanjaya Perkhidmatan Polis & Anor. (2012)*[16], Zulkefli Makinuddin FCJ, when allowing the appeal ruled that the principle in *Utra Badi's* case is a general principle and restricted to its own facts and later gave the following judgement:

"When there is a request by the public officer for an oral hearing after he had denied all the charges and appeared to have exculpated himself by furnishing credible evidence in his representation letter, by virtue of O.26 (5) of the General Orders 1980, the officer should be accorded an oral hearing to satisfy the requirement of Article 135(2) of the Federal Constitution. It would become all the more necessary for the oral hearing or enquiry to be held if there was no evidence to contradict the public officer's exculpatory statement (*Ann Seng Wan v. Suruhanjaya Polis Diraja Malaysia & Anor*; refd) (*Mat Ghafar Baba v. Ketua Polis Negara & Anor*, refd)".

The inconsistency of judicial review on the right to be heard particularly on its expansion to the oral hearing becomes more exacerbated after the *Yusuf Sudin's* case when the same Federal Court in *Kerajaan Malaysia & Ors v. Tay Chai Huat (2012)*[17] upheld the principle applied in *Utra Badi* and *Vickneswary*[18] that "the right to be heard given by Article 135(2) of the Constitution did not require a member of the service facing disciplinary charges to be given an oral hearing". The judgement in *Yusuf Sudin's* case was delivered on 11 July 2011 and the appeal of *Tay Chai Huat* was heard on 25 April 2011 but the judgement was reserved. In *Tay Chai Huat,* Mohd Ghazali FCJ reiterated his dissenting judgement in *Yusuf Sudin's* case where on the question whether the principle in *Utra Badi* and *Vickneswary* is applicable in all cases or whether there are exceptions to this principle, he firmly stated;

"My answer would be that the principle applies to all cases. If the disciplinary authority considers that no further clarification is required, I do not think that the officer concerned can insist or demand that a committee of inquiry be appointed."

Later, in *Suruhanjaya Perkhidmatan Awam v. Hjh Marina Hj Mustafa*, *(2015)*[19] the Court of Appeal referred to the case of *Mat Ghaffar*[20] and decided:

"In all cases, it is a settled principle that the right to be heard as enshrined in Article 135(2) of the Federal Constitution does not necessarily include oral hearing. However, as stated by Gopal Sri Ram, JCA in *Raja Abdul Malek Muzaffar Shah*:

"Cases may arise where, in the light of peculiar facts, the failure to afford an oral hearing may result in the decision

arrived at being declared a nullity or quashed. (see R v. Immigration Appeal Tribunal [1977] 1 WLR 795)."

Meanwhile the Court of Appeal in *Abdul Ghani Che Mat v. Pengerusi Suruhanjaya Pasukan Polis & Ors. (2017)*[21] held that *audi alteram partem* rule indicates that a decision can be made only when the affected person had been given equal opportunity, in which he has the right to know both sides of his case; the right of hearing is the minimum standard of procedural fairness.

The most recent case on the issue of the right to an oral hearing was the case of *Vijayarao a/l Sepermaniam v. Suruhanjaya Perkhidmatan Awam Malaysia (2018)*,[22] where the Court of Appeal held that:

"Where there is a request by the public officer for an oral hearing after he had denied all the charges and appeared to have exculpated himself by furnishing credible evidence, the officer should be afforded an oral hearing. An oral hearing should be granted when there is a request and when the disciplinary authority is faced with two sets of facts, documents and evidence. The circumstances of each case must be fully considered before the court can conclude whether or not the right to an oral hearing has been properly observed by the disciplinary authority".

Upon subsequent appeal to the Federal Court, the court decided that under Article 135(2), an oral hearing may be included in the right to be heard or reasonable opportunity of being heard, especially if the alleged officer had made a request for it after denying all charges and is perceived to be exculpating himself of the alleged charges.

Conclusively, the courts' decisions in the abovementioned cases demonstrate that the interpretation of the constitutional term "a reasonable opportunity of being heard" was vague. The courts' approach on the interpretation of the relevant provision of law seems to be liberal or restricted. The review of available literature also indicates that the provisions of the constitution on this matter are not definitive and the ambit of the right to a reasonable opportunity of being heard accorded to the public servants under Article 135(2) of the Federal Constitution remains uncertain. Consequently, the right to an oral hearing is typically left out at the expense of the disciplinary authority.[23]

ARTICLE 5 AND ARTICLE 8 OF FEDERAL CONSTITUTION

In the case of *Yusuf Sudin v. Suruhanjaya Perkhidmatan Polis & Anor. (2012)*[24], the Federal Court make observation that procedural fairness is closely connected to fundamental right. For instance, the right to life in Article 5 as enshrined in our Federal Constitution[25] is of paramount importance. The court said that "income is the foundation or many fundamental rights and when work is the sole source of income, the right to work becomes as much fundamental right." The appellant, according to the court, should be given the right to oral hearing as his reputation and livelihood were very much at stake, thus enabling him to defend himself more effective and meaningful.

In fact, prior to the case *Yusuf Sudin,* the Court of Appeal in *Raja Abdul Malek Muzaffar Shah bin Raja Shahruzzaman v Setiausaha Suruhanjaya Pasukan Polis & Ors. [1995]*[26] had advanced the law by holding that failure to afford oral hearing may result in nullity or quashed even though the law on oral hearing is not stated in General Order 26(4).[27] In line with this view, we may refer to Prof Jain (1997)[28] where he submitted that the scope of "reasonable opportunity" cannot be reduced by legislation since the term, as stated in Article 135(2), is the root concept provided by the constitution. The term should be defined by the courts according to the rule of natural justice and the principle of procedural fairness. Gopal Sri Ram in *Raja Abdul Malek's* case observed that the notion of procedural fairness has raised a bigger issue of constitutional dimension in relation to the impact of Article 8(1) of the Federal Constitution:[29]

"At the heart of the plaintiff's primary submission lies the concept of procedural fairness in its widest application. The term "procedural fairness" is preferred over the traditional nomenclature "rule of natural justice". It is a concept that includes, but not limited to, the rule of natural justice. An interesting area of the law, I was sorely tempted to deal with the full breadth of the argument advanced by the counsel. It involves, amongst other matters, a historical examination of the concept of procedural fairness; a discussion on the effect upon administrative actions of humanizing the provision of art 8(1) as explained by the Privy Council in *Ong Ah Chuan v PP* [1981] AC 648 at pp 670-671; [1981] 1 MLJ 64 at

pp 70-71 and of course, a consideration of the full impact of the landmark decision in *Dewan Negeri Kelantan & Anor v Nordin bin Salleh & Anor* [1992] 1 MLJ 697"

A progressive approach was also promoted by the Court of Appeal in interpreting Article 5 and 8 of the Federal Constitution in the case *Tan Tek Seng v Suruhanjaya Perkhidmatan Pendidikan & Anor (1996)*[30] The Court provided a broader and more liberal meaning to the word "life" in Article 5 which includes the right to livelihood. The combined effect of Article 5 and 8 which guarantees a fair procedure and punishment was also observed. By considering all relevant factors related to the case,[31] the Court of Appeal agreed that the dismissal and punishment given by the disciplinary authority to *Tan Tek Seng* were too severed. Subsequently, the appellant was reduced in rank. Gopal Sri Ram JCA referred to Article 5(1) and Article 8(1) of the Federal Constitution 290:[32]

"In the light of this interpretation, the institution of disciplinary proceedings against a public officer has to observe procedural fairness and the doctrine of proportionality besides complying with the hearing requirement of Article 135(2)".

In *Tan Tek Seng's* case, the court referred to the test of infringement of a fundamental right, which was established by the Supreme Court in *Dewan Undangan Negeri Kelantan & Anor* v *Nordin bin Salleh & Anor.*[33] In reference to this case, the Supreme Court stated that "whether that action directly affects the fundamental rights guaranteed by the Federal Constitution or that its inevitable effect or consequence on the fundamental rights is such that it makes their exercise ineffective or illusory."[34] In fact, a more expansive interpretation of equality was adopted by the Court of Appeal where the judge boldly stated that it would be wrong, both in principle and authority, to cling on to an archaic and arcane approach to the construction of Article 8(1).[35]

On the issue of natural justice, the Court of Appeal also in *Tan Tek Seng's* case reminded that it was wholly unnecessary for the court to look to the courts of England for any inspiration for the development of jurisprudence of the subject of natural justice. The justification was that Malaysia had a dynamic written constitution and that it was the duty of the judge to resolve issues of public law by resorting to the constitutional provision.[36] The Court of Appeal further established that the issue of procedural fairness is a question of constitutional dimension, particularly Article 5(1) and Article 8(1). In relation to Article 8, Choo Chin Thye[37] wrote that the constitutional notion of equality and its related notions of rejecting arbitrariness and instituting of fairness housed in Article 8 stand on a far superior footing to the English common law principles of equality because the latter is enshrined in the supreme law of Malaysia.

Meanwhile, on the protection granted by Article 5(1) of the Federal Constitution, the Court of Appeal had extended the interpretation of the word "life" to include more than mere existence but extended to form the quality of life. In the context of disciplinary proceeding, it encompasses the right to continue in public service subject to removal for good cause by resort to a fair procedure. Further, having examine the provision in Article 135(2), the court considered that the provision as giving "effect to the joint operation of Article 5(1) and Article 8(1) in the context of the dismissal of public servants.[38] Gopal Sri Ram JCA in *Tan Tak Seng* ruled that, as Article 135 (2) was a specific provision incorporating procedure fairness, reliance on the wider provisions of Article 5(1) and 8(1) would be unnecessary save it two areas:

"In the first category will fall cases in which a determination has to be made as to the nature and extent of a fair procedure that is required to be applied to the facts of a particular case. The second category comprises of those cases in which the punishment imposed is found to be inappropriate to the nature of the misconduct found to have been committed in a given case. Thus, the requirement of fairness which is the essence of art 8(1), when read together with art 5(1), goes to ensure not only that a fair procedure is adopted in each case based on its own facts, but also that a fair and just punishment is imposed according to the facts of a particular case".[39]

Unfortunately, the proportionality concept which was upheld by the Court of Appeal in *Tan Tek Seng* was overruled by the Federal Court in *Ng Hock Cheng v. Pengarah Am Penjara Taiping & Ors*[40] The appellant was dismissed by the disciplinary authority due to heavy debts. He argued before the High Court, Court of Appeal, and Federal Court that the initial punishment was too severe. All the three courts

agreed that the disciplinary tribunal is the best judge for the misconduct of its employees. The Federal Court observed:

> "The government is the best judge in any cases involving the misconduct of a public servant. The court will only intervene when an accusation against a public servant leads to a distinctive consequential punishment. The intervention could only be made on the ground of noncompliance with Article 135(1) or (2) of the Federal Constitution, the rule of natural justice, or the disciplinary procedure. Other than these, the court does not have the main authority to decide any penalty for the employee's misconduct. The punishment is not mainly decided by the court".

In some judicial decisions, the Federal Court may hesitate to constitutionalise the judicial review of an administrative action on the term "right to life" in Article 5(1). In *Utra Badi's* case for example, the constitutional approach in *Raja Abdul Malek* was initially reaffirmed by the Court of Appeal, however the Federal Court reversed the decision based on the *Najar Singh's* case. Other than that, in *Pihak Berkuasa Negeri Sabah v. Sugumar Balakrishnan (2002),*[41] the Federal Court reversed the decision in the Court of Appeal, thus restricting the interpretation of the right to life in Article 5(1) of the Federal Constitution. The Federal Court disagreed with the Court of Appeal on the basis of "personal liberty" in Article 5(1) of the Federal Constitution; all facts are the integral part of life itself and determine the quality of life.

In *Sugumar's* case, the Federal Court adopted the personal liberty concept by Suffian LP in *Government of Malaysia & Ors v Loh Wai Kong (1979).*[42] The concepts of "life" and "personal liberty" were confined to unlawful detention, arrest, and access to legal advice. Thus, the Federal Court viewed Article 5(1) of the Federal Constitution to be limited by Article 5(2), 5(3), 5(4), and 5(5). It was indeed submitted that those sub-articles are not the accompanying clauses to Article 5(1). The sub-articles also exist separately from Article 5(1) and do not appear as sub-articles to Article 5(1) in order to limit the definition, meaning and scope of Article 5(1).

ANALYSIS

Based on the cases discussed above, few pertinent observations can be made in respect of the position of the right to be heard:

1. Managing the public servant's discipline is nothing of extraordinaire substance. It is subject to the judicial review via the "ultra vires doctrine"; either when there is an abuse or non-exercise of power or when there is a breach of mandatory procedure of natural justice.
2. The courts, in a progressive approach, would resolve the issue of the right to be heard not merely based on the disciplinary regulation; the rule can be widened by resorting to the provisions in Article 5 and Article 8 the Federal Constitution since public servant is clearly protected under Article 135(2) of the Federal Constitution.
3. The courts, in a restricted approach, would diligently follow the principle of judicial review on the basis of illegality, irrationality, and procedural impropriety. The courts may also limit their intervention in disciplinary cases when a fundamental procedural flaw is present, particularly when there has been an error in the process or whether there was a procedural irregularity in the decision-making proceedings leading to the public servant's dismissal.
4. Regarding the relationship between Article 5(1), Article 8 (1) with Article 135(2), such relationship could be established only when the court in a judicial review applies a liberal approach in interpreting Article 5 and Article 8, as complementary to Article 135(2). The court is willing to give a broad meaning to the word life in Article 5 to include the right to livelihood. It is also observed that the combined effect of Article 5 and Article 8 would guarantee a fair procedure and just punishment. The principles of administrative law in Article 8 and other constitutional provisions cannot be negated by other statutory provisions.

CONCLUSION

The findings of this article are useful to inform the disciplinary authority about the measures to reform the procedural law of the disciplinary proceeding against public servants. The phrase "reasonable opportunity of being heard" under Article 135(2) does not explain whether the rule should be extended to oral hearing which

is also part of the procedural fairness in natural justice.[43] Consequently, the phrase has persistently generated numerous case laws.[44] Furthermore, over the period of twelve years since 1957, Article 135 is the most litigated provision and the cases related to this article constitute one-third of all reported court cases using various provisions of the Constitution.[45]

By the execution of the right to an oral hearing, the decision of the disciplinary authorities would not be subject to be reviewed by the court on the ground of procedural inconformity, thus allowing the rule of natural justice to serve the public servants in Malaysia. In support of this agenda, the provision of Regulation 37(5) of the Public Officer (Conduct and Discipline) Regulations 1993 proposed to be amended as follows;

"Where the appropriate Disciplinary Authority is on the opinion that the case against the officer requires further clarification, *on the request of the officer*, the Disciplinary Authority may appoint a committee of inquiry…" (Supported amendment in the *italic*)

With the proposed amendment, the officer has the right to defend his case orally before the Disciplinary Committee and this amendment make the reference to inquiry committee is not solely on the discretion of the Disciplinary Committee. Hopefully, it would probably resolve the inconsistency of the interpretation of the term "a reasonable opportunity of being heard" of Article 135(2) of the Federal Constitution.

NOTES

1 By virtue of section 3 of the Civil Law Act 1956, the court must apply the common law of England subject to local circumstances of the States of Malaysia permits and to any written law in force.

2 [1964] AC 40.

3 Article 132(2) of the Federal Constitution states "no member of such a service as aforesaid shall be dismissed or reduced in rank without being given a reasonable opportunity of being heard": *Federal Constitution*, 2010, at p. 124.

4 [1977] 2 MLJ 152.

5 Regulation 34 (1) provides that an officer shall not be dismissed or reduced in rank unless he/she has been informed in writing of the grounds on which it is proposed that an action be taken against him/her and that a reasonable opportunity of being heard be afforded.

6 Gan Ching Chuan, *Disciplinary Proceedings Against Public Officers in Malaysia*, Lexis Nexis, Singapore, 2007.

7 Fariza Romli, Nuarrual Hilal Md Dahlan & Rusniah Ahmad, *Prinsip Keadilan Asasi Dalam Undang-Undang Berkaitan Prosedur Perbicaraan Tatatertib di Jabatan Polis: Suatu Analisa, UUM Journal of Legal Studies* 3, 2012, pg.145-163.

8 Jain, M. P., *Administrative Law of Malaysia and Singapore*, Third Edition, Malayan Law Journal, Kuala Lumpur, 1997.

9 Khairil Azmin Mokhtar and Siti Aliza binti Alias, The Doctrine of Separation of Powers: Judicial Review as a Check and Balance Tool, Chapter One at pg. 7, in *Constitutional law and human right in Malaysia: topical Issues and Perspectives.* Khairil Azmin Mokhtar editor, Thomson Reuters Sdn. Bhd., Selangor, 2013.

10 Quoted from G. Hogan, *Constitutional and Administrative Law in a Nutshell*, Sweet & Maxwell, 1993, pg. 74.

11 Ibid, pg. 80.

12 [1976] 1 MLJ 203.

13 [1998] 1 CLJ 405.

14 [2001] 2 MLJ 417

15 [2002] 1 CLJ 493.

16 [2012] 1 CLJ 448.

17 [2012] 3 MLJ 149

18 *Public Services Commission & Anor v Vickneswary a/p RM Santhivelu* [2008] 6 CLJ 573

19 [2015] 4 CLJ 312.

20 *Mat Ghaffar Baba v. Ketua Polis Negara & Anor.* [2008] 1 CLJ 773

21 [2017] 3 CLJ 399.

22 [2017] 4 CLJ 451, pg. 452. This case was further appealed to Federal Court.

23 Zukiferee Ibrahim, Abdul Majid Tahir Mohamed, The Right to Oral Hearing in Disciplinary Proceeding Against Public Servants in Malaysia: A Malaysia Perspective, *UUMLJS* 10(1), 2019, pg. 60-69.

24 [2012] 1 CLJ 448

25 Article 5(1) states: No person shall be deprived of his or her life or personal liberty save in accordance with law.

26 *Raja Abdul Malek Muzaffar Shah bin Raja Shahruzzaman v Setiausaha Suruhanjaya Pasukan Polis & Ors.* [1995] 1 MLJ 308.

27 Gan Ching Chuan, Malaysian Administrative Law: Recent Case Law Development, *Journal of Malaysian and Comparative Law* 22: 1 & 2, 1995, pg 85-86.

28 Jain, M. P. 1997. *Administrative Law of Malaysia and Singapore*. 3rd Edition. Kuala Lumpur: Malayan Law Journal, p.279.

29 Article 8(1) provides: All persons are equal before the law and entitled to the equal protection of the law.

30 (1996) 1 MLJ 261

[31] In this case, the Court based on a number decision of Indian Supreme Court held that in deciding the punishment, it must act fairly and reasonably: "If the acts arbitrarily or unfair or imposes a punishment that is disproportionate to the misconduct then, its decision, to this extent becomes liable to be quashed or set aside."

[32] Hari Chand, Contemporary Judicial Review in Wu Min Aun (ed), *Public Law in Contemporary Malaysia*, Longman, 1998, pg. 214.

[33] [1992] 1 MLJ 679.

[34] [1996] 1 MLJ 261, pg. 282. In *Nordin's* case, the court referred to the decision of Indian Supreme Court in *Smt Maneka Gandhi v Union of India AIR 1978 SC 597* which was considered as the landmark case in the development of Indian administrative and constitutional law related to Article 14 of the Indian Constitution on the approach to equal protection which in pari materia with Article 8 of Federal Constitution.

[35] Peter S Crook, Natural Justice and Constitution: Recent Cases from the Court of Appeal, *Journal of Malaysian Comparative Law,* 1996, pg. 43.

[36] *Tan Tek Seng* case, pg. 281.

[37] Choo Chin Thye, The Role of Article 8 of the Federal Constitution in the Judicial Review of Public Law in Malaysia, 3 MLJ, 2002, pg. civ-cxxvii.

[38] Peter S Crook, Natural Justice and Constitution: Recent Cases from the Court of Appeal, *Journal of Malaysian Comparative Law,* 1996, pg. 45

[39] Ibid, pg. 45

[40] [1998] 1 CLJ 405.

[41] (2002) 4 CLJ 105

[42] (1979) 2 MLJ 33

[43] Sridevi Thambapillay, Recent Developments in Judicial Review of Administrative Action in Malaysia: A shift from the Grounds Based on Common Law Principles to the Federal Constitution. *Prosiding Persidangan Undang-Undang Tuanku Jaafar*, Putrajaya, 21-22 August 2007.

[44] Shad Saleem Faruqi, Safeguards for Public Servants, http://www.Malaysianbar.org.my [19 October 2011].

[45] S.Jayakumar, Protection For Civil Servants: The Scope of Article 135(1) And (2) of The Malaysian Constitution As Developed Through The Cases, *MLJ,* 1969, pg. liv-lxii.

REFERENCES

Abdul Ghani Che Mat v. Pengerusi Suruhanjaya Pasukan Polis & Ors, [2017] 3 CLJ 399.

Ann Seng Wan v. Suruhanjaya Polis Diraja Malaysia & Anor. [2002] 1 CLJ 493.

B. Surinder Singh Kanda v. Government of the Federation of Malaya [1962] MLJ 169.

Cooper v Wandsworth Board of Works (1863) 14 CBNS 180; 143 ER 414.

Crook, P. S. 1996. Natural Justice and the Constitution: Recent Cases from the Court of Appeal, *Journal of Malaysian and Comparative Law*, 23 Part 1 & 2.

Fadzil bin Mohamed Noor v Universiti Teknologi, Malaysia [1981] 2 MLJ 196.

Fariza Romli, Nuarrual Hilal Md Dahlan & Rusniah Ahmad. 2012. Prinsip Keadilan Asasi Dalam Undang-Undang Berkaitan Prosedur Perbicaraan Tatatertib di Jabatan Polis: Suatu Analisa. *UUM JLS* 3: 145-163.

Federal Constitution. 2017. Malaysia: The Commissioner of Law Revision.

Gan Ching Chuan. 2007. *Disciplinary Proceedings Against Public Officers in Malaysia*. Singapore: Lexis Nexis.

Ghazi bin Mohd Sawi v Mohd Haniff bin Omar, Ketua Polis Negara [1998] 1 CLJ 405.

Government of Malaysia & Ors v Loh Wai Kong (1979) 2 MLJ 33

Jain, M. P. 1983. *Administrative Law in the Common-Law Countries: Recent Developments and Future Trends*. Kuala Lumpur: Universiti Malaya.

Jain, M. P. 1997. *Administrative Law of Malaysia and Singapore*. 3rd Edition. Kuala Lumpur: Malayan Law Journal.

Ketua Pengarah Kastam vs. Ho Kwan Seng [1977] 2 MLJ 152

Kerajaan Malaysia & Ors v. Tay Chai Huat [2012] 3 MLJ 149

Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v. Utra Badi Perumal [2001] 2 MLJ 417

Mat Ghaffar Baba v. Ketua Polis Negara & Anor, [2008] 1 CLJ 773

Mohd Ahmad v. Yang Di-Pertua Majlis Daerah Jempol, Negeri Sembilan and Anor [1997] 3 CLJ 135.

McInnes v Onslow-Fane [1978] 1 WLR 1520.

Mullock v Abeedeen Corporation [1971] 2 All ER 1278, 1294.

Najar Singh v Government of Malaysia & Anor [1976] 1 MLJ 203.

Ng Hock Cheng v Pengarah Am Penjara Taiping & Ors. [1998] 1 CLJ 405.

Nik Ahmad Kamal Nik Mahmood. 2003. Perkhidmatan Awam. In. Ahmad Ibrahim, Faiza Thamby Chik, Ramlah Muhammad, Asiah Daud & Ismail Hassan (Eds.). *Perkembangan Undang-Undang Perlembagaan Persekutuan*, pp. 231-273. Kuala Lumpur: Dewan Bahasa dan Pustaka.

Pihak Berkuasa Negeri Sabah v. Sugumar Balakrishnan (2002) 4 CLJ 105

Public Officer (Conduct and Discipline) 1993. 2017. International Law Book Services.

Raja Abdul Malek Muzaffar Shah bin Raja Shahruzzaman v Setiausaha Suruhanjaya Pasukan Polis & Ors. [1995] 1 MLJ 308.

Ridge v Balwin [1964] AC 40.

Rama Chandran v. The Industrial Court of Malaysia [1997] 1 MLJ 1,

Ramalingam s/o Muthusamy v Chong Kim Fong [1978] 1 MLJ 83,

Tan Tek Seng v Suruhanjaya Perkhidmatan Pendidikan & Anor, [1996] 1 MLJ 261

Shad Saleem Faruqi. 2008. *Document of Destiny, The Constitution of the Federation of Malaysia*. Star Publication Berhad.

Suruhanjaya Perkhidmatan Awam v. Hjh Marina Hj Mustafa [2015] 4 CLJ 312.

V Ananta Raman, Natural Justice- The Malaysian Experience [1993] 3 MLJ i.

Public Services Commission & Anor v Vickneswary a/p RM Santhivelu [2008] 6 CLJ 573.

Vijayarao A/L Sepermaniam v Suruhanjaya Perkhidmatan Awam Malaysia [2018] MYFC 20.

Yusof Sudin v. Suruhanjaya Perkhidmatan Polis & Anor [2012] 1 CLJ 448.

Zainal bin Hashim v Government of Malaysia [1979] 2 MLJ 276.

Zukiferee Ibrahim & Abdul Majid Tahir Mohamed. 2019. The right to oral hearing in disciplinary proceeding against public servants in Malaysia: A Malaysia perspective. *UUMJLS* 10(1): 60-69.

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