

# **RSOG Seminar**

## **“Public Sector Impartiality: Myth and Reality”**

with

**Prof. Dr. Nik Ahmad Kamal Nik Mahmud**  
Head of the Governance, Law & Public Policy Cluster  
National Professor Council (MPN)

**When** : 04 October 2012  
**Where** : Razak School of Government  
**Who** : Prof. Dr. Nik Ahmad kamal Nik Mahmud

### **About The Seminar**

In his speech to the public service on 8th March 2012, Prime Minister Dato' Sri Najib Tun Razak abolished SBPA and concurrently announced the establishment of the Suruhanjaya Khas Mengenai Transformasi Perkhidmatan Awam (SKMTPA) to review and improve certain suggestions in the former. Razak School of Government (RSOG) is leading the initiative with a three-part seminar series to develop a comprehensive memorandum to SKMTPA detailing suggestions to fulfil the government's transformation agenda. This first seminar focused on the need to modify or destruct the traditional conventions, such as anonymity, that governed the public service.

### **Summary**

Prof. Nik Ahmad Kamal Nik Mahmud began by illustrating the conventions of ministerial responsibility to the Parliament: the civil service is permanent and non-political, remaining in office even when governments change, the civil servants are required to serve the government of the day, the ministers and their departmental heads loyally, truthfully and objectively, and, remain anonymous and are protected from public criticism or praise.

National interest and national security both play a factor in the tenure of the public servants. The security of the public servants' tenure is compared to the right of life. In the case of dismissal, Prof. Nik Ahmad Kamal Nik Mahmud explained that the constitutional position of the public servants is based on Article 132 FC (dismissal at will by Yang Di-Pertuan Agong), Article 135 (safeguard against arbitrary dismissal) and Act 605 (no involvement in partisan politics). To curb information leakage to the public, the Official Secret law and the Whistleblower Protections Act 2012 are observed.

The constitutional provision, which suggests that the ministers are responsible for the action and inaction of their public servants based on Article 43 (3), raises some challenges:

- i. Ineffectiveness of the doctrine as the ministers pushes the blame to the public servants rather than resigning due to mistakes and misconducts.
- ii. Lifting public servants' anonymity. The public servants were expected to make policy decision and defend policy in public. The minister is expected to resign when he/she is not aware or has not been consulted by the public servants on decisions made.
- iii. Lack of neutrality. This is a crucial issue since the public servants' neutrality on the government of the day is a basic structure of the public service ethos.

In the UK, well-documented cases of Crichton Down and Westland PLC have resulted in resignation of ministers because of the actions of their civil servants. A new directive, the Armstrong Memorandum, was issued to ensure that if minister is aware about the misconduct of the public servants, minister is expected to resign; whereas, if the minister is not aware, he/she shall not resign but action must be taken against the civil servants. However, in Malaysia, Statutory Bodies Disciplinary Regulations made pursuant to Act 605, Statutory Bodies (Discipline and Surcharge) Act 2000) covers only acts that cause conflict of interest, personal and official interest; negligence; insubordination etc. It neglects acts that raised constitutional issue, as exemplified in cases in the UK. Clive Ponting, who disclosed secret documents because he believed the minister was going to mislead the Parliament, was charged under the OSA, and Collete Bowe, who was ordered by top civil servants to leak documents to the press association but received the blame instead.

## Questions, Complaints & Comments Raised

- 1 Adapting the spoils system might not be ideal as it promotes hard-line party loyalists and it disrupts the traditional Westminster political system has been adapted and functioning well.
- 2 The implementation of policies is done without any clarification of doubts as public servants are typically forced to execute according to political directives rather than having the liberty to implement with impartiality.
- 3 Political preference is a right that is guaranteed by the constitution for the public servants. However, there is always an equilibrium point to ensure the neutrality of public servants without denying their political rights.
- 4 Neutrality in the public service should be administered to both at the public servants' level as well as at the ministerial.

5

Integrity and neutrality, crucial roles in public servants, must be nurtured extensively through training and implementation of codes of conduct.

### **About the Speaker**

Prof. Dr. Nik Ahmad Kamal Nik Mahmud is currently the Head of the Governance, Law and Public Policy (GPPa) cluster of the National Professor Council (MPN). This council acts as an advisory body to the government regarding issues relating governance, law and public service. Part of its contribution towards the national transformation agenda is to review and analyse public sector governance codes and suggest to the government on how to improve them.

He is also attached to International Islamic University of Malaysia (IIUM). He graduated with LL.B from the University of Malaya. He also obtained LL.M from University of London, DSLP from International Islamic University of Malaysia and PhD from the University of Aberdeen. He specializes in civil law, labour law and industrial relations law. He was involved in two book projects as a co-author; Administrative Law in Malaysia (Student Edition) and Employment Law in Malaysia.

### **Contact**

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