

INDEPENDENCE OF THE JUDICIARY IN SENEGALESE AND MALAYSIAN LAW: A COMPARATIVE STUDY

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Abstract

This comparative study looking for relevance differences and similarities about law of judicial independence between two (2) different countries in which Malaysia and Senegal which are one of the good countries supporting the principle of independence of the judiciary, Malaysia has been colonized by British which is the father of Common law and the most important sources of the law is courts decisions despite the influence of civil law tradition though the codifications of certain rules and the Islamic principles. And that is why there are similarities between Malaysia and England by looking its regulations which related to the judicial independence. However, Senegal is a country colonized by French and its laws are codified by following the French system. It is imperative that the rules are an element of regulatory between in the part, the population themselves and or between the government and his peoples. Furthermore, in fact, Therefore, The independence of the judiciary is an integral part of a constitutional democracy. The difficulty associated with establishing this independence involves the judiciary inevitably being part of the political process: the political environment produces the leaders, who in turn appoint the members of the judiciary. In this sense, it is to be expected that there are fundamental relationships between the political actors and those who are assigned by these actors to execute the responsibility of interpreting the laws independent which have to be more applicable by people of any state. There could have many similarities between Malaysia and Senegal in matter of law of judicial independent, which are deserved a particular regard into a future harmonization or unification of laws.

Keywords: Independence, judiciary, Senegal, Malaysia

1.Introduction

The judicial authority is the responsible for the execution of justice in each country. At the same time, it has the power and right from the law to regulate people's lives in a way that can safeguards their rights and freedoms. However, this cannot be done without establishment of a responsible and independent judicial system that able to solve problems of the society. It is necessary for any judicial system which wants to prove its effectiveness in the society to be at the level of challenges by playing the rule of law. In addition, the judiciary is not less than legislative and executive authority but it is complementary to both of them. And that is because its rule to practice laws and solve many crimes problems in the country.

In the principle of independence of the judiciary, the schools of law and jurisprudence have left behind the ideal formula that can achieve the best model which can realize the performance of judiciary, as also many states have been different in the application of these theories in their judiciary's institutions. But we can see that the most important for these schools and states is working forward to achieve the effective performance of a judicial authority that can ensure to accomplish the basic meanings of the rule of law. And it is also mentioned that the principle of independence of judiciary – as the primary guarantor of impartial justice which can be always in the service of society- has been the interest to all those who seek to promote the principles of justice and democracy.

Judicial independence is intertwined with the doctrines of separation of powers and of checks and balances, both of which are generally considered to be defining characteristics of a democracy. And that means in term of the organic meaning, it is intended to provide the independence of judges as individuals and not to place them under the authority of any of the ruling authorities and to be only subject to the rule of law. In the sense of judicial independence as an authority it must be defiantly independent of the legislative and executive authorities, based on that, it should not allow any party to give orders or instructions or suggestions relating to its organization and performance. This principle is a rule governing the relationship of the judicial authority with other powers of the state by granting it a constitutional authority which is independent of the rest of the authorities.

Finally, by looking to the important of judicial independence in each state and as we know it have mentioned in the law of all states that the judiciary is independent, this research come to look into the Senegalese and Malaysian law to compare in the matter of the independence of the judiciary by showing some current issues relating to it and to classify their similarities.

2. Overview of judicial independence

The principle of judicial independence is closely linked to the principle of separation of powers. And the rule of this principle is to make the judiciary as an authority which stands on equal next to the legislative and the executive authorities, and be independent of them in order to exercise its obligations to protect individual rights and their freedoms.

And independent judiciary is a fundamental element of democracy. Various international treaties including the Universal Declaration of Human Rights (1948) (UDHR), the International Covenant on Civil and Political Rights (1976) (ICCPR) and the African Charter on Human and People's Rights (1981) contain provisions affirming the importance of this principle¹. For instance, Article 14 of the ICCPR states that:

In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

Similarly, Article 26 of the African Charter declares that:

State parties to the present Charter shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter.

The judiciary plays a crucial role in the system of checks and balances, a role which demands independence from the executive and legislature. By applying national constitutions, legislation and the common law to official actions, courts are supposed to ensure that the other branches of government respect the rights of the people and do not act illegally. Courts are often

¹ Transformation and The Independence Of The Judiciary In South Africa, Researched and Written by Amy Gordon with David Bruce, Published By Csvr, Peper N 7.

asked to review the validity of legislation, and members of the executive branch often come before the courts as litigants. To allow courts to carry out their functions and fairly determine the legality of governmental action, courts must be free from any actual or perceived interference by other branches of government. Clarifying the importance of independence in assuring the effective functioning of courts², David Dyzenhaus, a law and philosophy professor, stated:

At the moment that a court accepts jurisdiction over a controversy between government and an individual, government is demoted — it loses its claim to be the exclusive representative of the state. At the same time, the individual is promoted to a public role, to one with an equal claim to represent the state. The court, then, in deciding between these claims, articulates a vision of what the state is and publicly draws the line between law and politics... In order to articulate this vision, the court needs to be independent (1998: 172).

2.1 Institutional Independence

On a more structural level, judicial independence has two components: individual independence and institutional independence. Institutional independence refers to the existence of “structures and guarantees to protect courts and judicial officers from interference by other branches of government”, while individual independence refers to judicial officers’ acting independently and impartially³. Underscoring the nearly universal support for these notions, numerous documents shed light on the structural safeguards that protect institutional and individual independence. Recognizing that “an independent, impartial, honest and competent judiciary is integral to upholding the rule of law and engendering public confidence and dispensing justice”, the Commonwealth (Latimer House) Principles on the Three Branches of Government (2003), a document approved by the heads of government of the Commonwealth countries, provides a framework for implementing the principles of separation of powers and judicial independence. Similarly, the Basic Principles on the Independence of the Judiciary (1985) (UN Principles), a United Nations (UN) document endorsed by the General Assembly in 1985, lists several principles aimed at securing independence.

² TRANSFORMATION AND THE INDEPENDENCE OF THE JUDICIARY IN SOUTH AFRICA, RESEARCHED AND WRITTEN BY AMY GORDON WITH DAVID BRUCE, PUBLISHED BY CSV, PEPER N 7.

³ International Bar Association, April 2006: 4

In terms of ensuring institutional independence, constitutional guarantees of the separation of powers and of non-interference in the judiciary by other branches of government are crucial. As the *UN Principles* states:

The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary (section 1).

Moreover, institutional independence requires that the judiciary has sole “jurisdiction over all issues of a judicial nature” (Sections 3 and 4)⁴.

2.3 Individual Independence

Individual independence involves a variety of factors that help ensure that judges can act free from the influence of any outside sources. For instance, judges must have security of tenure either in the form of life-long appointments, set terms of office or a mandatory retirement age⁵. A well-defined process for removing judges from office also prevents the executive or legislature from dismissing judges in retaliation for an unfavorable decision and from using threats of impeachment to pressure judges. Likewise, judges should be removed only “for reasons of incapacity or behavior that renders them unfit to discharge their duties”⁶. Disciplinary procedures should also be “fairly and objectively administered”⁷. Similarly, to protect them from fear of reprisals for their decisions, judges should be immune from civil suits arising from acts or omissions in the course of exercising their judicial functions⁸.

Another important safeguard, financial security, is crucial to maintaining individual independence preventing other branches of government from using threats of salary reduction to influence judges⁹. Financial security includes adequate remuneration and protections against the arbitrary reduction or suspension of judges’ salaries. Similarly, the adequate provision of

⁴ Transformation and The Independence of The Judiciary in South Africa, Researched and Written by Amy Gordon with David Bruce, Published By Csvr, Peper N 8.

⁵ Latimer House Principles, section IV[b]; UN Principles, sections 11, 12.

⁶ UN Principles, section 17; Latimer House Principles, section IV[d]

⁷ Latimer House Principles, section VI[b]

⁸ UN Principles, section 16.

⁹ UN Principles, section 11; Latimer House Principles, section IV[b]

resources allows the “judicial system to operate effectively without any undue constraints which may hamper” independence (*Latimer House Principles*, section IV[c]).

The judicial appointments process also impacts on individual independence. Judicial appointments “should be made on the basis of clearly defined criteria and by a publicly declared process” (*Latimer House Principles*, section IV[a]). The appointments process must also “safeguard against judicial appointments for improper motives”, and people selected should “be individuals of integrity and ability with appropriate training or qualifications in law” (*UN Principles*, section 10). If the appointment of judges were not based on well-defined criteria or not open to public scrutiny, the executive could try to appoint judges who shared its beliefs and would be unlikely to challenge government acts. Similarly, if appointments are based on merit as opposed to party allegiance or other inappropriate factors, judges will be less likely to feel that they need to favor the people who appointed them.

Merit-based appointments also help ensure that judges have the necessary legal education and experience, both of which help foster and reinforce the importance of judicial independence. Furthermore, to protect independence, any system of promoting judges “should be based on objective factors, in particular ability, integrity and experience”¹⁰. If judges believe that the content rather than the quality of their decisions will impact on their likelihood of being promoted, they might be reluctant to make decisions upon which the government will look unfavorably¹¹.

3. The Independence of the Judiciary in Senegalese Law

After Senegal got its independence from France in 1960, Senegalese leaders who have taken the power from the colonizer they suddenly faced an examination of building a modern state which will be capable to develop the country, to get the way out from this challenges they decided to transfer the French model and create the new state by using its laws and regulations. The structure of the Senegalese state was not create based on the natural development and was not to because of the convictions of the defeated majority. This transfer made some similarity

¹⁰ UN Principles, section 13

¹¹ Transformation and The Independence of The Judiciary in South Africa, Researched and Written by Amy Gordon with David Bruce, Published By Csvr, Peper N 8

between Senegalese and French law. However, it can be noted that relative success was seen in this new state. It was mentioned clearly in the first Senegalese constitutional that powers are separated as a principle and it was transferred from the French system.

In addition, Senegal have benefited a lot from its democracy to build pillars for the principles of judicial independence. Democracy without the rule of law is just as empty as the rule of law without democracy. Democracy concerns the rule of law and the rule of law deals with the independence of the judiciary. In other words, the rule of law is a necessary condition for democracy and sustainable development. If Africa is in dire need of democracy, as both a necessary as well as a sufficient need for sustainable socio-economic development, then the actual cardinal need is for a system where citizens play a meaningful role in the affairs of the state. This relationship between the system of government and the citizens must be characterized by a clear understanding and appreciation, by both parties, of the separation of powers, protection of human rights, and due process. After all, development is about human progress and enhanced quality of life – which is a consequence of a mature network of communications and relationships, including the manner in which disputes that are bound to occur from time to time are settled¹².

It is very important to notice that judicial independence will not suddenly give its rule by only separating the powers of the state but it should have constitutional, legal and administrative guarantees. And the success of judicial independence in each country depends on this guarantees. Based on that, and by looking to the judicial independence in Senegalese law we can find how the law is paying great attention for this guarantees to reach the main aim and to make the judiciary independent.

3.1 The Constitutional Foundations of Judicial Independence in Senegalese Law

We mean by these foundations or pillars all guarantees that can upgrade the principle of judicial independence which established in the Senegalese constitution. We find that the

¹²The paradigm of an independent judiciary: Its history, implications and limitations in Africa *Joseph b diescho page n 9*.

Senegalese constitution of 1960, it was the first constitution after independence, in its article 59-60-62¹³ stated some important principles in this aspect.

Firstly, it have stated in the article 59 the complete separation between the judiciary and the rest of authorities:

The judiciary is independent of the executive and legislative authority.

Secondly, the article 60 have given the power to the president of the republic next to the supreme judicial council to guard the principle of the independence of the judiciary:

President of the republic is the guarantor of the independence of the judiciary ... and it is assisted by the supreme judicial council.

While article 62 have made that the appointment of judges is one of the main function of the president of the republic, in coordination with the supreme judicial council:

The president of the republic have to appoint judges of the court and members of the Supreme Court's, in coordination with supreme judicial council.

By the way, these guarantees are enshrined in the Senegalese constitution of 1963, in article 80 in the first and fourth paragraphs¹⁴. It is good to mention the improvement in the same article in third paragraph which provides for the prohibition of the dismissal of judges by the president of the republic. In addition, in the Senegalese constitutions of 2001 and 2016¹⁵, it have been seen the reputation of these articles which really mean that the legislator of Senegal in term of constitutional have found in this articles sufficient to ensure full judicial independence which is not a reality in term of practice and it will be discussed when we will highlight the current issues and the internal threats of the independence of the Senegalese judiciary.

3.2 The Legal and Administrative Foundations of Judicial Independence in Senegalese Law.

We mean by that all details laws and regulations which related to the judicial institutions that have created specifically to supervise the independent of the judiciary. The first of these

¹³ Ismaïla Madior FALL, Textes constitutionnels du Sénégal de 1959 à 2007 Université Cheikh Anta Diop de Dakar, Faculté des Sciences Juridiques et Politiques, Centre de Recherche d'Étude et de Documentation sur les Institutions et les Législations Africaines Collection du CREDILA, XXIII p. 48

¹⁴ FALL, p. 73

¹⁵ FALL, p. 217

institutions is the supreme council of the judiciary and its internal law has been issued since 1992, however, it is noted its weakness and ineffectiveness during this time even its laws have been reformed several times, the first was in 1992 and the latest in 2008. These reforms were all formality which did not affect the essence of the issues related to the independence of the judiciary. That is why this led to the creation of the “General Inspectorate of Courts and Chambers” in 1975.

The Senegalese legislator wanted the Supreme Council of the judiciary to be the base by laying down the basic rules and leading to judicial independence. The internal law of the Council included fundamental issues that directly affect the principle of independence, such as the appointment of the judiciary, the impeachment, transfer, discipline and methods of their assignment. However, the law of the Council did not react the legislator's ambition because of two main reasons: The first is the weakness of the constitutional authority, where we find that the constitutional guarantees narrowed the powers of the Council, the second is the absence of functional control authorities for the judiciary, and the establishment of the General Inspectorate of the courts was only created to fill this shortfall.

The text of the internal law of the Council that the President of the Republic have to appoint judges in coordination with the Minister of Justice¹⁶, and it is not permissible to transfer judges or to upgrade their post without the consent of them¹⁷. Therefore, the most important provisions of this law is that Public Prosecution judges is under the supervision of their superiors and under the Minister of Justice authority, and that they can be transferred without an upgrade, but have added that they have complete autonomy during trial sessions¹⁸.

4. The Independence of the Judiciary in Malaysian Law

It is important to reiterate in upholding the rule of law, the state needs to have a legal system which accords with requirement of the Rule of Law, that is, a legal system in which the judiciary is effective, efficient and independent in order to protect the Rule of Law.

Thus, the independence of the judiciary is critical to the rule of law.

¹⁶ **LOI ORGANIQUE** N° 92.27 DU 30 MAI 1992 PORTANT STATUT DES MAGISTRATS, Article 4.

¹⁷ **LOI ORGANIQUE** N° 92.27 DU 30 MAI 1992 PORTANT STATUT DES MAGISTRATS, Article 5.

¹⁸ **LOI ORGANIQUE** N° 92.27 DU 30 MAI 1992 PORTANT STATUT DES MAGISTRATS, Article 6.

As observed by Lord Woolf in his Article *“Rule of Law and A Change in the Constitution”*¹⁹ *“One of the most important of the judiciary’s responsibilities is to uphold the rule of law, since it is the rule of law which prevents the government of the day from abusing its powers. Ultimately, it is the rule of law which stops a democracy descending into an elected dictatorship. To perform its task, the judiciary has to be, and seen to be, independent of government, unless the public accepts that the judiciary are independent, they will have no confidence in the honesty and fairness of the decisions of the courts.”*

The judiciary must not only be independent but must also be seen to be independent. In this regard, public perception could not be ignored because it reflects the measure of confidence that the public has in the judiciary.

Speaking of judicial independence, it must occur at both levels: at the individual judges level and at the institutional level. At the individual level, a judge should always act with integrity and independent. As guidance, Part 3 of the Judges Code of Ethic 2009 sets out the code of conduct that judges have to adhere to. Section 5 of the Judges.

Code of Ethic 2009 provides that a judge shall exercise his judicial *function independently on the basis of his assessment of the facts and in accordance with his understanding of the law, free from any extraneous influence, inducement, pressure, threat or interference, direct or indirect from any quarter or for any reason.

The independence of the judiciary as an institution is secured by Part 9 of the Constitution and other related legislations which governs the appointment, security of tenure and remuneration of judges²⁰.

4.1 Appointment of Judges in Malaysian Law

On appointment: Judges are appointed under Article 122B of the Federal Constitution. Previously the appointments of Judges were made by the Yang Di pertuan Agong, acting on the advice of the Prime Minister, after consulting the Conference of Rulers and the Chief Justice. However, since 2009, the system of appointment had been changed, with the setting up of the Judicial Appointment Commission (“the JAC”), which was established under the Judicial

¹⁹ This paper was presented at Squire Centerany Lecture, University of Cambridge, on 3.3.2004

²⁰ SYARAHAN PERDANA INTEGRITI 2012 “RULE OF LAW AND JUDICIAL SYSTEM” By THE RT. HON. TUN ARIFIN BIN ZAKARIA CHIEF JUSTICE OF MALAYSIA, PAGE N. 27.

Appointment Commission Act 2009. The Act is enacted with the intention to improve the process of appointment of judges and judicial commissioners, by:

- a) Selecting suitable qualified persons who merit appointment as judges of the superior court for the Prime Minister's consideration; and
- b) Formulating and implementing mechanisms for the selection and appointment of judges of the superior court²¹.

The appointment and promotion of judges are now made on the recommendation of the JAC. As Chairman of JAC, I can assure you that the selection of judges is based entirely on merit, though, for promotions, seniority is also taken into account. It is done through secret ballot. One important provision of the JAC Act is section 2 which provides for the upholding of the independence of judiciary. It stipulates that:

“The Prime Minister must uphold the continued independence of the judiciary and must have regard to-

- (a) the need to defend that independence;*
- (b) the need for the judiciary to have the support necessary to enable them to exercise their functions;*
- (c) The need for public interest to be properly represented in regard to matters relating to the judiciary, the administration of justice and related matters.”*

Therefore it is incumbent for the Prime Minister to defend the independence of judiciary. This is not to say that it wasn't so in the past, because it has always been the constitutional duty of the Prime Minister to do so. But now the Act has expressly provided so.

Has the commission served its purpose? The former Chief Justice, YAB Tun Abdul Hamid bin Mohamad's remark on this in the Malaysia Judiciary Yearbook 2011 is highly pertinent. He wrote:

“Having been a member for three years, speaking personally, I am happy to state that the Commission had served its purpose very well, decisions are mostly unanimous and that the government has respected the Commission's recommendation. In short, it is working pretty well and it is worth having it.”

²¹ SYARAHAN PERDANA INTEGRITI 2012 “RULE OF LAW AND JUDICIAL SYSTEM” By THE RT. HON. TUN ARIFIN BIN ZAKARIA CHIEF JUSTICE OF MALAYSIA, PAGE N. 27.

It is secured by Article 125 (6) and 125 (7) of the Federal Constitution. The remuneration is charged on the Consolidated Fund and shall not be altered to judges' detriment.

From the above, it is clear that ample constitutional and statutory provisions are in place to secure the independence of judiciary as an institution.

An independent judiciary will only be illusory if not a mere mockery, if there is no clear separation of powers between the three main organs of Government, namely the executive, the legislature and the judiciary. Simply put, each must be separated and independent from one another. They should act as checks and balances to one another. On this, HRH Sultan Azlan Shah in his paper "*Supremacy of Law in Malaysia*", 17 remarked:

"Basic to this doctrine is the elaborate system of checks and balance whereby it is ensured that the power is not concentrated in any one body, but dispersed and mutually checked. Thus, for instance, power reposed in the legislature is moderated by the power placed in the judiciary, and vice versa."

It is a common belief that the doctrine of separation of powers has always been part and parcel of our constitutional framework. This has come into question since the amendment to Article 121 in 1988. And also under the new Article 121, the judicial power is no longer vested in the courts. The courts' jurisdiction and powers are now limited to those conferred by or under the federal law²².

5. Current Issues Relating to Judicial Independence in Senegal and Malaysia.

Without any doubt and based on what have been observed above, it is illustrated that Senegal and Malaysia have adopted the idea of the separation of powers after the establishment of the states, which mean totally determination of accepting idea of independence of the judiciary, but this was not enough to make the system of judiciary more independent, and that is why we have seen some threats that have been a burden on the national judicial system structure in both countries.

The constitutional and legal guarantees for judicial law in Senegal which have mentioned above indicate the existence of legislative shortcoming that has made the Senegalese judiciary in

²² SYARAHAN PERDANA INTEGRITI 2012 "RULE OF LAW AND JUDICIAL SYSTEM" By THE RT. HON. TUN ARIFIN BIN ZAKARIA CHIEF JUSTICE OF MALAYSIA, PAGE N. 30.

the position of direct use and influence by the executive branch in one form or another. The most important of these threats concerns such as the appointment and confirmation of judges, the relationship between prosecutors and the executive branch, Supreme Judicial.

With the exception of two judges of the Constitutional Court and the eight judges of the Supreme Court of Justice (HUTE COUR DE JUSTICE), the Constitution empowered the President of the Republic to appoint all judges of the courts, including prosecutors, and the Supreme Council of Magistrates have only right to share ideas about appointment of judges, the strangest is that members of the public Prosecution under the supervision and control directly to the Minister of Justice, and transferring them by the executive power does not need to obtain the opinion of the Supreme Council of judges, and that have shown the clear threat to the independence of the judge's personal.

The greatest threat is that the Supreme Council of the Judiciary, which is responsible for supervising the independence of the judiciary and proposing judges for the purpose of appointment or transfer, is headed by the President of the Republic himself with the membership of the Minister of justice. The legal basis for this application is that the Constitution made the head of state to be the guarantor of the independence of the judiciary and to make it honorable Council, while the opposite was happened, executive authority should be to oversee the judiciary, and not carry out its functions.

The reformists and leaders of civil society organizations and independents of the official organs never stop calling all responsible in the state to reconsider the national judicial system, and working to remove these threats, The subject has been strongly discussed in the agendas of national meetings, In 2009, and the National Commission for the Reform of Institutions, which was established in 2013 devoted considerable attention to the issue of the independence of the judiciary in its final report²³.

One of the recommendations of the national meetings to create an expanded powers of the constitutional court rather than the current Constitutional Council, and its president to be as President of the Supreme Judicial Council instead of the President of the Republic²⁴, also mentioned in the National Committee of the reform of the institutions proposed the text of the

²³ Final report n. 20, 29.

²⁴ Assises Nationales au Sénégal, Charte de gouvernance démocratique, p. 2

following: "The Supreme Judicial Council is responsible for managing the career development of judges ... and the head of the Constitutional Court to be the president of the Supreme Council of the Judiciary ... "25. The agreement on these proposals was not accidental, but unanimity is a sign of no doubt about the seriousness of the matter, This proposal means a radical change in The National Judicial Organization, through reform of the removal of the executive branch from the body of the judiciary by separating the President of the Republic and the Minister of Justice from the Council. Moreover, and to give the Council power to ensure the independence of the judiciary and not only supervises it, and this is the eye of organic independence and career, without that there is no judicial independence. Unfortunately, this recommendation was one of the neglected proposals, and was not included in the recent constitutional amendments, and that means the executive still covets the judiciary in its grip and under its instruction and all real examples prove this issue.

In this matter, Malaysian law have stated that the judiciary is independent just only to perform its duties such as protection of the individual against illegal acts of the administration; providing remedies for wrongs done to the individuals; ensuring that administrative bodies act lawfully; and ensuring that administrative bodies perform their public duties. In addition, the Malaysian legislator have given good laws to reach the objective of protecting judicial independence. However, issues were found in case of practice in term of removal of judges and detecting political influence²⁶. The rule of law must be supported by a judicial system which is independent from any extraneous interference thus, emphasizing the significance of the doctrine of separation of powers. In recent years, positive measures have been taken by the government to advance the rule of law and the independence of judiciary through the setting up of the JAC and the repeal of the infamous preventive laws²⁷.

CONCLUSION:

²⁵ Commission nationale de réforme des institutions, Avant-projet de Constitution, p. 29 article 106

²⁶ Judicial Independence: some recent problems, by Geoffrey Robertson, published on June 2014 by IBAHRI thematic papers N.4

²⁷ SYARAHAN PERDANA INTEGRITI 2012 "RULE OF LAW AND JUDICIAL SYSTEM" By THE RT. HON. TUN ARIFIN BIN ZAKARIA CHIEF JUSTICE OF MALAYSIA, PAGE N. 37.

It is very important in the state to have a strong regulations which always preserve the independence of the judiciary and make judges to be free to do their duties as well as we have seen above in Senegalese and Malaysian laws. In addition, we can remark that the similarity between Senegalese in Malaysian law in method of giving the importance of the judicial independent and making regulations which are completely ruling the freedom of judges. However, it can be seen that there are main issues which affect the practice of the principle of the judicial independent in these two countries which are the following. The First is the political environment produces the leaders, who in turn appoint the members of the judiciary. The second difficulty is the human factor. Although professionally trained jurists pledge to be impartial in their interpretation of the laws, and to be true to the intentions of the lawmakers of old, their human bias and preference may stand in the way of true impartiality .The third difficulty comprises historical, traditional, cultural and experiential differences towards the concept of the law and its bearing upon all, without exception. In other words, there are cultures where the law is supreme, whereas in others, the person in the leader is more supreme than the law. The independence of the judiciary has also to be reinforced from within the judiciary itself. This can only be achieved through such measures as proper selection of judges, judicial training and strict adherence to the code of ethics.

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