

AKHBAR : KOSMO  
 MUKA SURAT : 7  
 RUANGAN : NEGARA



LARANGAN merokok yang telah dikuat kuasakan di premis makanan sejak 2019 – GAMBAR HIASAN

Mahkamah Rayuan kekalkan peraturan KKM

## Larangan merokok di premis makanan sah

**PUTRAJAYA** – Mahkamah Rayuan semalam memutuskan larangan merokok di semua premis makanan yang dikuatkuasakan oleh Kementerian Kesihatan (KKM) sejak 1 Januari 2019, munasabah dan tidak melanggar Perlembagaan Persekutuan.

Panel tiga hakim diketuai oleh Datuk Yaacob Md. Sam sebulat suara berpuas hati tindakan merokok di tempat awam bukan hak asasi yang perlu dilindungi di bawah Perlembagaan.

Mahkamah berpendapat, larangan itu tidak mendiskriminasi mana-mana pihak atau bercanggah dengan Perkara 8 Perlembagaan Persekutuan kerana terpakai kepada semua individu yang mengunjungi premis makanan.

Panel itu yang turut dianggotai oleh Hakim Mahkamah Rayuan Datuk M. Gunalan dan Hakim Mahkamah Tinggi Datuk Lim Chong Fong memutuskan demikian selepas menolak rayuan tujuh individu.

Mahkamah tidak memerintahkan sebarang kos kerana kes itu melibatkan interpretasi undang-undang dan kepentingan awam.

Tujuh individu tersebut merayu keputusan Mahkamah Tinggi pada 29 Oktober 2019 yang menolak permohonan semakan kehakiman mereka untuk mendapatkan perintah certiorari bagi membatalkan keputusan KKM melaksanakan larangan merokok di kedai makan.

Mereka ialah Mohd. Hanizam

Yunus, 55, Zulkifli Mohamad, 60, Mohd. Laisani Dollah, 49, Mohd. Sufian Awaludin, 38, Ridzuan Muhammad Noor, 56, Mohd. Yazid Mohd. Yunus, 51, dan Yuri Azhar Abdollah, 43.

Hakim Gunalan ketika membacakan penghakiman itu berkata, mahkamah tidak melihat bahawa larangan itu merupakan satu ketidakadilan kerana KKM telah mengambil kira faktor kepentingan awam seperti tahap kesihatan pengunjung dan pelanggan premis makanan.

Panel itu turut berpuas hati terhadap dapatan Mahkamah Tinggi bahawa KKM telah mendapatkan maklum balas awam, namun tiada bantahan diperolehi daripada orang ramai berhubung cadangan larangan itu.

AKHBAR : NEW STRAITS TIMES

MUKA SURAT : 9

RUANGAN : NATION/NEWS

## EATERIES

# APPEALS COURT UPHOLDS SMOKING BAN

Court of Appeal says smoking in public places is not a fundamental right to be protected

## PUTRAJAYA

**T**HE Court of Appeal here yesterday upheld the Health Ministry's decision to ban smoking in all eateries, ruling that smoking in public places is not a fundamental right that should be protected under the Federal Constitution.

A three-member panel comprising Court of Appeal judges

Datuk Yaacob Md Sam and Datuk M. Gunalan and High Court judge Datuk Lim Chong Fong dismissed an appeal by seven individuals who sought to challenge the ministry's decision in banning smoking in eateries.

The individuals are Mohd Hanizam Yunus, 55, Zulkifli Mohamad, 60, Mohd Laisani Dollah, 49, Mohd Sufian Awaludin, 38, Ridzuan Muhammad Noor, 56, Mohd Yazid Mohd Yunus, 51, and Yuri Azhar Abdollah, 43.

Judge Gunalan, who delivered the court's decision in an online proceeding, said the health minister was empowered under the law to impose restrictions on smoking such as where or when smoking was prohibited.

"It is our view that banning smoking at eateries, restaurants etc. can be considered as not be-

ing in violation of Article 5 (right to life or personal liberty) and Article 8 (all persons are equal before the law and entitled to equal protection of the law) of the constitution.

Gunalan said the appellate court panel agreed with the High Court's interpretation that the act of smoking in public places is not a fundamental right that ought to be protected under the constitution.

"As the ban applies to all persons, all patrons, the issue of discrimination, if in fact it arises at all, does not infringe Article 8 of the Federal Constitution.

"There was no error of law or fact or failure of judicial appreciation by the High Court judge in arriving at her decision to dismiss the appellants' judicial review. Hence there are no grounds for us



A no-smoking sign at an eatery. FILE PIC

to disturb or interfere with the decision of the learned judge."

The court also did not make any order as to costs.

On Oct 29, 2019, the then High Court judge Datuk Seri Mariana Yahya (now Court of Appeal judge) dismissed the individuals' judicial review application to get a certiorari order to quash the decision of the Health Ministry to ban smoking in eateries.

In their judicial review filed on Dec 31, 2018, naming the ministry as respondent, the seven men, who had set up a society called Persatuan Pertahankan Perokok, also sought a declaration that the

ministry's decision on banning smoking in eateries was unconstitutional.

They claimed that smokers had equal rights with non-smokers to visit and spend their time in food premises for as long as they wished and that the government did not provide adequate facilities such as smoking areas or include provisions under the smoking ban for entrepreneurs to prepare their own non-smoking areas.

The ministry imposed the ban on smoking in all restaurants and food premises on Jan 1, 2019. **Bernama**

AKHBAR : THE STAR

MUKA SURAT : 10

RUANGAN : NATION

# Eatery smoking ban stays

## Group of seven challengers loses case at Court of Appeal

By NURBAITI HAMDAN  
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**PUTRAJAYA:** Smoking in public is not a fundamental right that should be protected under the Federal Constitution, ruled the Court of Appeal.

A three-judge panel said this in its dismissal of an appeal by a group of smokers who sought to challenge the government's smoking ban at eateries.

The panel, chaired by Court of Appeal judge Justice Yaacob Md Sam, unanimously dismissed the appeal by seven individuals – who had set up a society called Persatuan Pertahanan Perokok (PHP) – during online proceedings here yesterday.

Two other judges on the panel were Justices M. Gunalan and Lim Chong Fong.

Justice Gunalan, who read out the decision, said the Health Minister was empowered under the law to impose various restrictions on smoking such as where smoking was to be prohibited or when.

**“...smoking in public places is not a fundamental right that ought to be protected...”**

Justice M. Gunalan

The panel also upheld that the smoking ban at eateries and restaurants could not be considered as being in violation of Articles 5 and 8 of the Federal Constitution.

“We agree with the learned (High Court) judge's interpretation that the act of smoking in public places is not a fundamental right that ought to be protected under the Federal Constitution.

“As the ban applies to all persons and patrons, the issue of discrimi-

nation, if in fact it arises at all, does not infringe Article 8 of the Federal Constitution,” he said.

The judge also said they found no error of law or fact or failure of judicial appreciation by the High Court judge in arriving at her decision to dismiss the appellants' judicial review application.

“Hence, there is no grounds for us to disturb or interfere in the decision of the learned judge. We accordingly dismiss this appeal and uphold the decision of the learned judge,” Justice Gunalan added.

The court did not make any order as to costs.

On Oct 29, 2019, the Kuala Lumpur High Court ruled that the smoking ban at all eateries imposed by the Health Ministry did not breach the people's right to liberty and equality.

Justice Mariana Yahya said the respondent had taken into account public interest factors in enforcing the ban to protect the public, including infants, from the danger of smoke from cigarettes.

On Feb 29, 2019, the seven-man group filed a judicial review application, naming the Health Ministry as the sole respondent.

They were Mohd Hanizam Yunus, 52, Zulkifli Mohamad, 56, Mohd Laisani Dollah, 46, Mohd Sufian Awaludin, 35, Ridzuan Muhammad Noor, 52, Mohd Yazid Mohd Yunus, 48, and Yuri Azhar Abdullah, 39.

They filed the application in their capacity as pro-tem PHP supporters.

In their application, they claimed the smoking ban contradicted the Federal Constitution as smoking was not a criminal activity and was not banned in the country.

They claimed that smokers had equal rights as non-smokers when visiting, eateries and spending as much time as they wanted there.

They contended that the smoking ban ran contrary to the provisions, and principles of law and or went against procedures, as the respondent was never reported to have met smokers or stakeholders to discuss the enforcement of the ban beforehand.