RSIS COMMENTARY

27 February 2026

Constitutional Significance of the Najib Razak "Addendum Case" on Royal Pardon

Shad Saleem Faruqi

RSiS S. RAJARATNAM SCHOOL OF INTERNATIONAL STUDIES
Nanyang Technological University, Singapore

RSiS 30

RSIS S. RAJARATNAM SCHOOL OF INTERNATIONAL STUDIES
Nanyang Technological University, Singapore

RSIS COMMENTARY

www.rsis.edu.sg No. 034 – 27 February 2026

Constitutional Significance of the Najib Razak "Addendum Case" on Royal Pardon

By Shad Saleem Faruqi

SYNOPSIS

The Najib Razak "Addendum Case" invites fresh thinking about several issues in constitutional jurisprudence relating to royal pardons and even beyond.

COMMENTARY

The landmark ruling by Justice Alice Loke Yee Ching in the "Addendum Case" of *Dato' Sri Mohd Najib Tun Hj Abd Razak v Menteri Dalam Negeri and 5 Others* (2025) breaks new ground.

In 2020, former Malaysian Prime Minister Najib Razak was convicted in the "SRC Case" and sentenced to 12 years' imprisonment and a fine of RM210 million (US$54.0 million). On his petition to the Pardons Board, chaired by the King on 29 January 2024, Najib's sentence was reduced to six years and the fine was lowered to RM50 million (US$12.87 million).

On 12 February 2024, news broke out that on the same day as the Pardons Board's decision, a supplementary Addendum Order of the King had provided that Najib's six-year reduced sentence be served at home instead of in prison.

On 1 April 2024, Najib commenced judicial review proceedings to enforce the King's Addendum. After appeals and cross-appeals, the judicial review application was remitted to the High Court for a full hearing before High Court Justice Loke.

The judge made her ruling on 22 December 2025, rejecting Najib's application to enforce the royal "addendum order" on several grounds, including a violation of constitutional procedures. Her bold decision received much praise as well as criticism

on the ground that a long line of binding superior court precedents had already established that the “prerogative of mercy” is not challengeable in a court of law.

Validity of the Addendum Order

According to the learned judge, the court was invited to provide the relief of Mandamus – a command to a public authority to perform its public duty. At issue was the validity of the “Addendum order”. The order was made by the King subsequent to the formal meeting of the Pardons Board and without the knowledge of the other Board members.

The judge held that the power of mercy, although a high prerogative, must be exercised in conformity with constitutional requirements. She ruled that the Addendum Order failed the following requirements of Article 42:

1. The Attorney-General’s *written* opinion was not sought in relation to the house arrest.

2. The King made only one decision during the Board’s meeting, which was to reduce the imprisonment and fines. The issue of house arrest was neither deliberated nor decided.

3. The Board was never given the chance to tender its advice to the King regarding the house arrest.

4. The Board’s advice to the King is mandatory under Article 42. “The validity (of the Addendum) is contingent upon adherence to the requirements of the Federal Constitution”.

Is the house arrest order akin to a respite order?

Najib contended that the Addendum Order constitutes an act of reprieve or respite, not of pardon, and does not mandate the advisory function of the Board. Only a “pardon” mandates the Board’s deliberation.

The judge rejected this submission. All the enumerated mercies, including respite, were subject to the procedures of Article 42, and it was not stated anywhere that reprieve and respite are exempt from the Board’s deliberation.

“House arrest” is nowhere mentioned in the Constitution or laws

A “house arrest” is outside the prescribed mercies of pardon, reprieve, respite, remission, suspension, or commutation enumerated in Articles 42(1) and 42(2). Neither does any other law provide for house arrest.

In making this ruling, Justice Loke went well beyond examining procedural issues. Although she did not say so, she went into the issue of jurisdiction. Since house arrest is not prescribed as an act of mercy, its grant raises the issue of jurisdiction, as seen in the House of Lords CCSU Case, rather than simply a matter of “procedural impropriety”.

To support her decision, one could ask: If the King bestows mercy on someone sentenced to death and decides that, instead of death, the person should be expelled from the country for life, the sentence, although merciful, is beyond the monarch's powers. Or if the petitioner for pardon is the King's son or daughter and, despite the disqualification under Article 42(12)(c), the King chairs the Board, surely the courts are not barred from declaring the proceedings and the decision invalid on the grounds of illegality.

Meaning and extent of enumerated clemencies

The power of pardon is not open to any and every act of clemency. Article 42(1) confines it to pardons, reprieves, and respites. Article 42(2) refers also to remission, suspension and commutation. However, none of these terms are precisely defined, and a future court may wish to take up this challenge.

Non-reviewability of a pardon decision

Najib submitted that, despite the above issues, the prerogative of pardon is non-reviewable. This principle of non-justiciability is supported by a long line of superior court cases which are binding on the High Court.

Justice Loke acknowledged these binding cases but relied on a more recent Federal Court ruling in *AG v Dato' Sri Mohd Najib Razak* that "the exercise of … clemency by the King is not absolute. It is to be carried out in accordance with the constitutional limits prescribed by Article 42, particularly through the framework of advice and procedure embedded therein. She drew a distinction between the substance of a pardon order (which is non-justiciable) and the prescribed constitutional procedures required to grant it. Questioning the propriety of the decision is not justiciable, but the court is entitled to scrutinise the order against the procedural provisions in the Constitution.

Significance of Justice Loke's decision

Justice Loke's decision in the "Addendum Order" case is now on appeal, and its outcome remains uncertain. However, as it stands, her decision is significant for the following reasons:

1. It is an important assertion of judicial independence.

2. It reiterates that the King is a constitutional monarch who must exercise his powers in accordance with the Constitution. The prerogative of mercy is no exception.

3. Her ruling reiterates the principle that all powers must be exercised according to procedure. Its gist is that while the substance of a pardon is non-justiciable, judicial review is available if procedures were not followed.

4. Her judicial decision gives a narrow interpretation to the hitherto seamless concept of non-justiciability. In a remarkable break with precedents, the judge held that

although the substance or merit of a pardon is non-justiciable, the prescribed constitutional procedures to grant a pardon were subject to judicial scrutiny.

Looking to the future

During the course of appeal in this case or later, a number of constitutional and jurisprudential issues that were not raised (or skilfully avoided) may wash up on Malaysia's legal shores.

1. Is the grant of mercy in Malaysia an inherent, non-statutory, prerogative power or a constitutional grant? An understanding of this issue is relevant to the question of justiciability or non-justiciability. According to A.V. Dicey in *An Introduction to the Study of the Law of the Constitution* (1885), "Every Act which the executive government can lawfully do *without the authority of an Act of Parliament* is done in virtue of this prerogative." Under the Malaysian Constitution, the provision on pardon is not an inherent, non-statutory power, but is one of the lengthiest constitutional provisions, approximately 800 words long.

2. Under Article 42(9), the Pardons Board is required to tender "advice" to the King. All decisions made before 1994, and some after, 1994 in Malaysia have held that the King is not bound by this advice. These precedents need reconsideration in the light of the 1994 insertion of Article 40(1A) into the law, which binds the King to any advice rendered.

Since the abolition of royal immunity by the 1993 constitutional amendments to Articles 181-183, the clemency powers in Malaysia have undergone significant changes, which the courts have not yet enforced. Justice Loke's decision is a good first step towards a new jurisprudence on the scope of clemency.

---

[1]PP v Soon Seng Sia [1979] 2 MLJ 170; Chiow Thiam Guan v Supt of Pudu Prison [1983] 2 MLJ 116; Sim Kie Chon v Supt of Pudu Prison [1985] 2 MLJ 385; Supt of Prison v Sim Kie Chon [1986] 1 MLJ 494; Karpal Singh v Sultan of Selangor [1988] 1 MLJ 64; Juraimi Husin v Pardons Board, Pahang [2002] 4 MLJ 529; Datuk Seri Anwar Ibrahim v Mohd Khairul Azam Abdul Aziz [2023] 2 MLJ 545.
[2][2025] 5 MLJ 944.

Emeritus Professor Datuk Dr Shad Saleem Faruqi is the former Holder of the Tunku Abdul Rahman Chair at the University of Malaya. Before that, he served at UiTM, USM and UIAM.

S. Rajaratnam School of International Studies, NTU Singapore
Block S4, Level B3, 50 Nanyang Avenue, Singapore 639798

Please share this publication with your friends. They can subscribe to RSIS publications by scanning the QR Code below.