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Mimi Sofiah Ahmad Mustafa, Yuhanza Othman, Marziana Abd Malib, Ida Rahayu Mahat

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## Managing the Rules of Natural Justice amongst Teachers in Melaka

Mimi Sofiah Ahmad Mustafa, Yuhanza Othman, Marziana Abd  
Malib, Ida Rahayu Mahat

Law Department, Universiti Teknologi MARA Melaka Branch, Malaysia

### Abstract

Everyone should know the law. Irrespective of your background, the law presumes that you should know the law. This is incompatible with the maxim "Ignorance of Law is No Defence". Despite this maxim, there seems to be a significant number of individuals who appear to be in the dark with some basic laws in this country. This writing discovers whether teachers in public schools in Melaka know of one basic law namely the rules of natural justice (RNJ) before any action is taken against them because of disciplinary issues, misconduct or breach of rules and others. This doctrinal writing is delivered based on library research collecting secondary data from academic text books, online journals and reported cases. Topping that up were the surveys collected online amongst 126 teachers from three districts in Melaka making this study also empirical in nature. The finding of this study was also gathered from cases brought to courts in relation to teachers and it indicates that there is still room for improvement for managing the RNJ application in decision making in schools. The outcome of this study provides guidelines for the State Education Department to strategize a mechanism to convey the rules to teachers in Melaka so that they will be aware of their rights and responsibilities. It also serves as a path for researchers to further discover the status for teachers in other states as well as identifying other aspects relating to this law.

**Keywords:** Disciplinary Proceedings, Judicial Review, Rules of Natural Justice, Schools

### Introduction

Teachers in Malaysia are mostly public servants and by that, they are subject to certain rules and regulations made through policies and directives by the respective bodies responsible for their affairs. As a public servant, teachers enjoy several rights that are spelt out in various pieces of legislations and regulations passed by the Parliament or any other bodies that have the authority to do so. One of the many rights available for teachers is the right to be heard before any action or decision is taken against them.

The right to be heard is the right to state one's side of the story whenever an adverse action is going to be taken against that person. It is recognized in the highest law of Malaysia whereby article 135(2) the Federal Constitution states that "...no member of such a service as aforesaid shall be dismissed or reduced in rank without being given a reasonable opportunity of being heard..." Therefore, any teacher in Malaysia should know that they are given the

opportunity to be heard before they are dismissed or reduced in rank because of what is alleged against them.

Opportunity to be heard may come in several manners such as oral or written hearing, discussions with superior persons, interviews, inquiries and so on. Whenever an accused is given this right, the decision reached by the administrator would be fairer and with just cause. Such an opportunity is readily available in the rules of natural justice as enunciated by the Administrative Law.

The law is referred to as the rules of natural justice (RNJ) which is a procedural safeguard against improper exercise of power by a public body (Jain, 2011). This particular procedure is mandatory to be observed by public bodies before making any adverse decisions against anyone who might be affected by those decisions. Thus, teachers are in that category of people who are subject to RNJ because of what is provided by the above mentioned articles (Art.135) in the Federal Constitution. Meaning to say, if any decision is made regarding teachers but it is not according to RNJ, the decision can be challenged for judicial review in the courts of law.

In *Ricky Gundah v Chairman Education Service Commission [2016]* the applicant brought the case to the court after he was dismissed by the defendant on allegations of being absent without leave for a total of 122 days. The applicant wished to be reinstated as a teacher at the school he last had his teachings. Another case to cite is the case of *Fauziah Khanom binti Irshad Ali Khan v Pegawai Pejabat Pelajaran Daerah Johor Bahru & Ors [2013]* where a senior administrative teacher was taken actions against because she was accused of absent without leave. She was transferred to another school and her salary was reduced. She filed the case to the court because she was not happy with the decisions against her. Both cases are among the many cases that had been brought to courts in Malaysia for judicial review by teachers who found that their rights under RNJ were not observed.

Several studies are found to have been discussed on the RNJ. Rao (2006) described the need to apply the RNJ in sporting organizations. Rao described the requirement of court's intervention in matters of the rights of the athletes in the form of judicial review albeit the existence of a formal written document that stated otherwise. Coggins (2013) discussed the application of the RNJ in construction proceedings in Australia in relation to the alternative dispute resolution available in that country. Churches (2015) mentioned that there was indeed the need to conform to the RNJ as in some countries it has been made a statutory requirement. Trustee's removal was discussed in an article by Machell et.al (2022) as to whether the RNJ should be applied and the article also mentioned about the extent of the court's supervisory jurisdiction in relation to the RNJ. In another article written by White (1994), the application of the RNJ was discussed in school children expulsion with respect to the United Nations Convention on the Rights of the Child and relevant developments in American and Australian law dealing with children. Pauzi et. al (2013) described the extent of the application of the RNJ in UiTM Cawangan Pahang and the relevant laws to be followed when conducting internal disciplinary proceedings against the students. Pretorius (2021) dealt with the duty of an internal investigator to observe the RNJ when conducting an investigation that has an adverse effect on the person being investigated and that factors such as the applicable statutory framework, the powers of the investigator, the potential impact on affected persons and relevant precedent must be given due thoughts in determining whether there is a right to be heard in an investigative context. Removal of judges was discussed in an article written by Ramalingam (2022) where it was concluded that observation of the RNJ was crucial in the discipline and removal of judges for an independent judiciary.

From the above discovery of previous research, nothing could be found on the application of the RNJ for disciplinary cases for teachers and as to their awareness of this basic rule in the administrative law.

This study has the purpose of communicating the law relating to the rules of natural justice and discovering its existence amongst teachers in the state of Melaka. The outcome of this study provides guidelines for the State Education Department to strategize a mechanism to convey the rules to teachers in Melaka so that they will be aware of their rights and responsibilities. It also serves as a path for researchers to further discover the status for teachers in other states as well as identifying other aspects relating to this law.

### Methodology

Since the objective of this study is to determine whether teachers in Melaka know their basic rights as a government staff in relation to the rules of natural justice, data collection was made among teachers only. To achieve the objective, data were collected using google form platform distributed to respondents through emails and WhatsApp application. The selection of respondents was based on non-probability sampling where the samples were selected through purposive and judgmental sampling. The close-ended questions were distributed to 126 respondents who are teachers located in schools in the state of Melaka. There were twelve questions posted to the respondents; six on the background and demography of the respondents; the balance six were related to the determination of their knowledge on the rules of natural justice. Apart from that, secondary data were obtained from online decided cases, online published journals, online bulletins and textbooks. Decided cases relating to teachers were mentioned to prove judicial reviews were made for decisions taken against teachers.

### Rules of Natural Justice (RNJ)

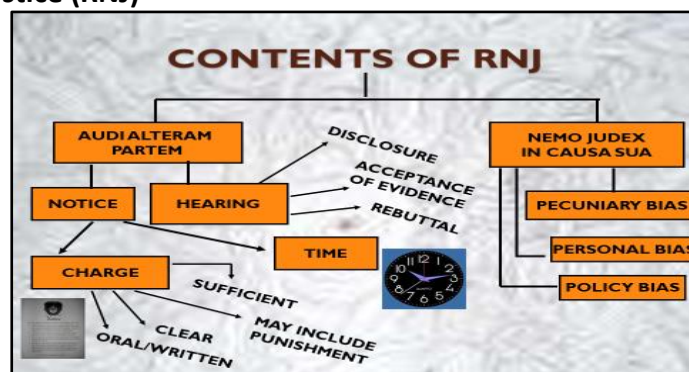


Figure 1: Elements of Rules of Natural Justice  
Ahmad Mustafa, MS (2018)

The above figure displays the composition of RNJ. As mentioned in the earlier paragraphs, this rule is a procedure that must be observed by the public authority before taking action against any individual. When a case is brought to the court for judicial review, the court will not look at the merit of the decision but will only consider whether the procedure laid down in RNJ has been observed. Thus, it is imperative that every single procedure is fully conformed to by the decision maker in order to avoid the case being challenged in the court for judicial review.

RNJ has two main elements namely *audi alteram partem* (AAP) which means the right to be heard and *nemo iudex in causa sua*, basically refers to as the rules against bias - *Gazzriz Sdn Bhd v Hasrat Gemilang Sdn Bhd [2016]*. In order to determine whether the administrator has made a valid decision, these two elements must be observed; if not the decision can be challenged in the courts of law. *Audi alteram partem* requires the public body to give a fair hearing to the accused and it consists of two smaller elements namely notice and hearing.

Notice is an important element of AAP where the accused / alleged person can have a reasonable opportunity to defend himself/herself properly. This is fulfilled by giving a complete and clear charge to the accused and reasonable time for him/her to prepare the case. What is a reasonable time will depend on each case. The more serious the charge is the more time should be given to the accused. In *Che Hong Yee v Timbalan Menteri Keselamatan Dalam Negeri, Malaysia & Ors [2008]*, the court held that the claimant was not given a reasonable time where he only knew he had the right to appeal after the expiry of such a time to do so. In another case of *Zulkifli bin Shahari v Telekom Malaysia Berhad [2016]*, it was also decided that the plaintiff was not given a reasonable time for a right of hearing by his employer before dismissing him. However, in *Abd Ghani bin Che Mat v Pengerusi Suruhanjaya Pasukan Polis & Ors [2015]* the defendant was held not to be in breach of the RNJ because they had given the plaintiff reasonable time and clear charges before being tried by the Disciplinary Board.

Apart from the element notice, the decision maker must also observe the hearing process and whether or not the hearing should be conducted orally or in a written representation will depend on each case. Usually, when the charge is serious, an oral hearing is expected to be carried out - *Kerajaan Malaysia & Ors v Tay Chai Huat [2012]* and *Yusof bin Sudin v Suruhanjaya Perkhidmatan Polis & Anor. [2011]*.

The hearing must obviously be a reasonable one which basically must fulfill three elements to avoid the case being judicially reviewed later on by the court. The first one is disclosure of documents which basically requires the decision maker to reveal every material that they are using in the hearing to the accused. This is in line with what we call a fair game in a fair trial. There cannot be any element of surprise. Thus, if the accused lacks disclosure of documents for his/her hearing, the decision is regarded as tainted and can be subject to the judicial review. The case of *Dato' Dr Muhammad Ridzuan bin Mohd Salleh & Anor v Syarikat Air Terengganu Sdn Bhd [2012]* shows the importance of disclosing material facts before a hearing commences so as not to tarnish the validity of any decisions. Another case that can be referred to is *Lam Siew Leong v Krishna Kumar s/o RK Krishnan (sued in the capacity of a Public Officer of a Registered society named Malayan Racing Association) [2017]*.

The second element for a reasonable hearing is the acceptance of evidence by the decision maker which basically means that if the accused wishes to bring witnesses to testify for him/her, the authority must accept them in a reasonable quantity. Or the evidence could be any documents that are necessary to be used by the accused in the trial. In *PWC Corp Sdn Bhd v Ireka Engineering & Construction Sdn Bhd and another appeal [2018]* there was a breach of RNJ because the adjudicator in a tribunal failed to accept a valid evidence brought by the respondent in this case who was the claimant for judicial review. It should be noted that this is an important element of a fair hearing because the accused must be able to produce his/her evidence to assist him/her in the trial - *Kayangan Kemas Sdn Bhd v TMT Solutions Sdn Bhd [2019]*.

The last element that should be observed by the decision maker in order to reach a fair hearing is the opportunity for the accused to rebut the materials against him/her by allowing



the accused to cross examine the administrator's witnesses and/or be represented by someone else or a lawyer. In a case decided by the Federal Court, *Malaysia Airline System Bhd v Wan Sa' adi @ Syed Sa' adi bin Wan Mustafa [2015]*, the Industrial Court was held to be in breach of RNJ when it did not allow the respondent to cross examine some witnesses for charges of sexual harassment against him.

Next element in RNJ after the *audi alteram partem* is the rule against bias (*nemo iudex in causa sua*). *Suraya binti Amdah v Ketua Setiausaha Kementerian Kesihatan Malaysia & Anor [2016]* is an example of a case where an issue of bias was brought up by the claimant against a secretary who prepared the charge but was present in the hearing against the claimant. However, there was no element of bias because the court applied the principle of necessity where his presence was necessary to carry out the hearing. Hence, it should be noted that a person who has an interest in the hearing, must exclude himself/herself from being a judge in the hearing. As the saying goes, justice must not only be done but it must be seen to be done.

### **Disciplinary Procedure for Teachers**

As it is, teachers in Malaysia are generally subject to the rules in the Public Officers [Conduct and Discipline] [Chapter "D"] General Order, 1980 (GO). Any violation of the rules will cause the teachers to be brought before a panel of decision makers to determine the necessary actions as the punishment as provided by Clause 4 of the Public Officers (Conduct and Discipline) Regulations 1993. Each State Education Department follows guidelines laid down by the Ministry of Education for such an action according to Article 144(5B) of the Federal Constitution which states, "... that pursuant to the powers conferred by the Constitution on the Yang di-Pertuan Agong, a law was made by the Yang di-Pertuan Agong establishing the various Disciplinary Boards at the Ministries and Departments level to assist the Public Services Commission in exercising its power and duties in relation to disciplinary control."

Generally, a disciplinary action against a teacher in Malaysia can be divided into three main categories namely (General Orders, 2020):

1. Criminal Procedures: Disciplinary action against related cases/officers subject to criminal proceedings.
2. Disciplinary action by detention order, monitoring, restricted residence, banishment and others
3. Disciplinary proclamation: Action procedures for continuous absenteeism and non-traceable officers

The following charts describe the flow of actions that need to be observed before any teacher is being brought for a disciplinary matter.

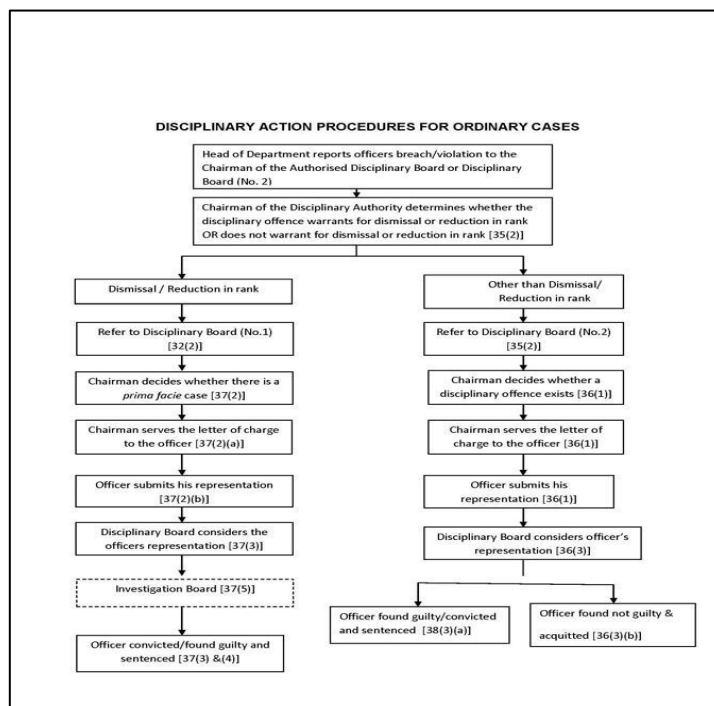


Figure 2: Disciplinary Action Procedures for Ordinary Cases for Teachers

<https://www.moe.gov.my/>

By looking at the chart, it can be seen that the disciplinary proceeding starts with a report made by the school headmaster and later sent to the State Education Department. The State Education Department will then form a committee to carry out investigations prior to the disciplinary proceeding by establishing and determining facts of the case, charge and all other logistics relating to the trial. After all these have been determined, the accused will receive a notice asking him/her to attend a disciplinary conducted by the State Education Department at a given date, time and venue. Usually, it will take place at the office of the State Education Department. The accused will be informed of the right to bring any witnesses to assist him/her in the hearing and he/she should know that he/she has a right to cross examine witnesses of the State Education Department and the right to have disclosure of evidence of the Department.

The panelists in the hearing are appointed by the State Education Department and they usually are government staff and have expertise in the education field. Each State Education Department has its own legal unit. This unit is usually responsible to ensure the disciplinary proceeding takes place in accordance with the standard operating procedure fixed by the Education Ministry. It is imperative to observe the procedure laid down by the law as mentioned in the previous paragraphs. This is apparently necessary because a procedure not observed by the Department would cost a judicial review to be made to the High Court for the decision reached by the Disciplinary Body of the Education Department irrespective of how fair the decision has been attained.

It should be noted that there are different sets of procedures for the categories of charges mentioned earlier. Below are three other charts for the purpose of understanding the procedures.

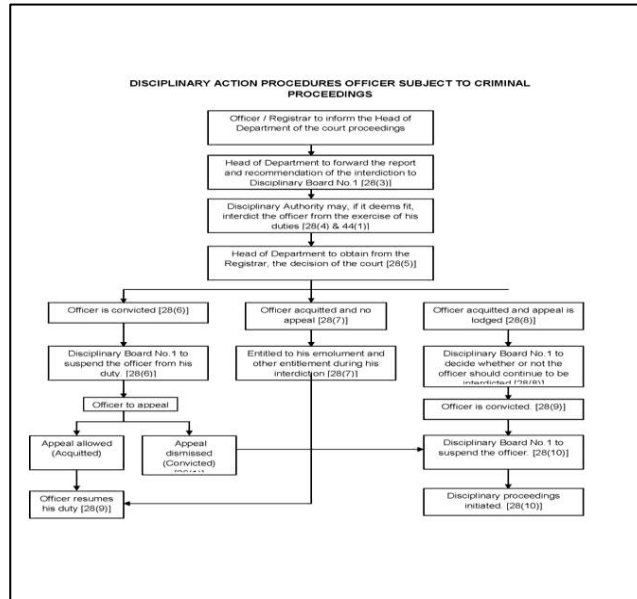


Figure 3: Disciplinary Action Procedures for Criminal Charge  
<https://www.moe.gov.my/>

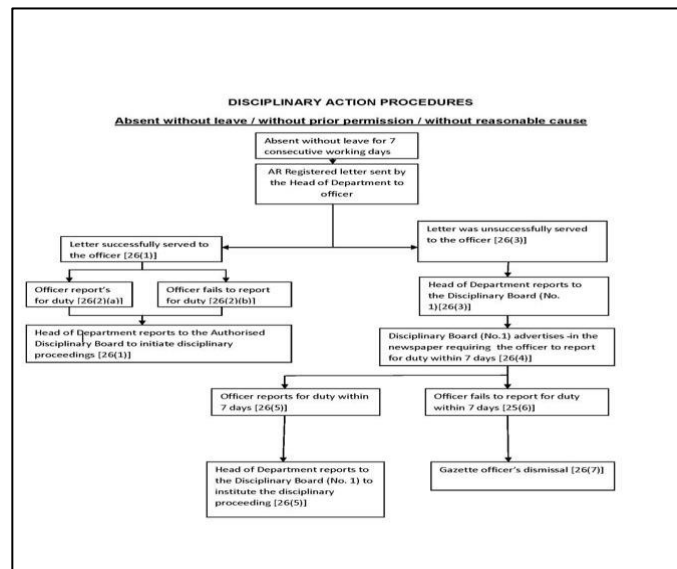


Figure 4: Disciplinary Action Procedures for Absent Without Leave / Without Prior Permission / Without Reasonable Cause  
<https://www.moe.gov.my/>



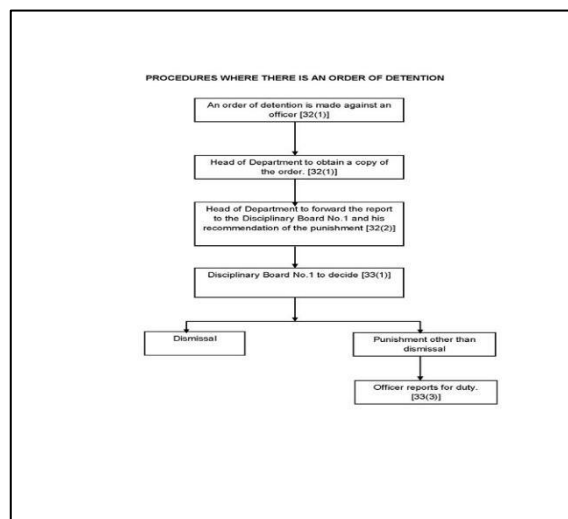


Figure 5: Procedures Where There is a Detention Order

<https://www.moe.gov.my/>

### Some Court Cases Involved Claims Against Teachers

Several cases decided by the courts in relation to teachers also suggest that the teachers might not have been given the opportunity to be heard fairly when charges were made against them. In *Dr Ahmad Jaafar Bin Musa v Suruhanjaya Perkhidmatan Pelajaran [2018]* the court granted *certiorari*, a remedy to quash the decision of an administrative body, to the plaintiff who was accused of absence without leave. The defendant was held to have breached the RNJ when they refused to accept evidence from the plaintiff. To add, there was a delay in initiating the disciplinary proceeding against the plaintiff. In another case of *Nurul Aida bt Ahmad Nori & Anor v Global Educare Sdn Bhd [2016]*, the court granted damages to the applicants who were teachers in a child care center who were unjustly dismissed without just cause and excuse. The court also held in *Sekolah Sri Cempaka v Aida Rozyiana bt Awang [2005]* that the applicant was infringed of her right as the school failed to give her sufficient time to improve on her performance after the issuance of the warning letter, and also by not forwarding any evidence regarding the applicant's work performance subsequent to the issuance of the warning letter. The case of *Dr Chandra Muzaffar v Universiti Malaya [2002]* needs a special mention here although it concerns a case brought by a lecturer from a Public University. The court awarded the claimant damages because the University had violated his right to be given a fair hearing and his legitimate expectation to become a permanent staff of the University was denied to him because the authority concerned did not exercise such power accordingly.

Several other cases brought to courts revealed judgments made against the teachers such as *Fauziah Khanom binti Irshad Ali Khan v Pegawai Pejabat Pelajaran Daerah Johor Bahru & Ors [2013]*, *Qatrun Nada binti Mohd Latfi v Ketua Pengarah Jabatan Agama Islam W.Persekutuan Labuan & Anor [2014]* and *Fairview Schools Berhad v Jasvindar Kaur Kartar Singh & Ors [2019]*. Although these teachers did not get what they claimed for, the fact that the cases were brought before the court in the first place displays the willingness of the court to hear those cases concluding they were serious and not frivolous.

### **Finding and Discussions from Online Survey**

The survey was distributed to teachers who are teaching from several schools in the state of Melaka. 126 respondents took part in the survey where 114 of them were female teachers and the balance of 12 teachers were male. The survey required them to state their age and most of the respondents were from the age range of 41-45 years old (23 people), followed closely by those between 46-50 years old (22 people), 21 people each for the age range 51-55 years old and 36-40 years old. 43 respondents were also administrators at their respective schools. 70 teachers who took part in the survey are primary school teachers and the rest of 56 teachers teach in secondary schools. Almost half of the respondents (62 people) i.e. are teachers from the Alor Gajah district, 53 were from Melaka Tengah and 11 teachers were from the Jasin District.

The teachers were required to identify the category of the school at which they were attached to. 54 teachers represented the Sekolah Menengah Kebangsaan (Secondary Schools), 33 were from Sekolah Kebangsaan (Primary Schools), 31 were from Sekolah Rendah Agama (Primary Religious Schools), 6 were from Sekolah Jenis Kebangsaan Cina/Tamil (Chinese/Tamil Primary Schools) and 2 teachers were from Sekolah Menengah Agama (Secondary Religious Schools).

As to the question as to whether the respondents knew of any procedure for addressing disciplinary issues, wrongdoings and so on which would affect their career as a teacher, 104 teachers answered in the affirmative, 11 answered no and the other 11 were not sure. However, when asked about the term "rules of natural justice", 77 teachers admitted they had never heard of the rules and 21 teachers were unsure. 28 teachers answered yes to the question. From these responses, it is quite apparent that most of the teachers were aware of disciplinary procedures available for them. Unfortunately, the question did not further inquire of the source of their awareness.

The next question required the teachers to reveal as to whether they had ever been called for an internal investigation due to disciplinary action. 12 teachers admitted they had been called for that purpose whereas the rest of 114 teachers answered non-affirmative. The respondents were also asked to share whether their colleagues had been called for internal investigations and 38 people answered yes compared to 88 people who answered otherwise. From these responses, it could be gathered that among the respondents there were teachers that had actually experienced internal investigations which made them quite knowledgeable on this procedure. Nonetheless, the number that had never been called for internal investigation exceeded those that had.

The following question asked whether the school had ever briefed the respondents as to their rights and responsibilities if called for internal investigation to which more than half of them answered no (88 teachers). The other 25 answered yes and 20 were unsure. This indicates that there is a severe need for this law to be communicated to the teachers so that they could be aware of what to do in the event they were called for internal investigations. Matters like reasonable time and a clear and complete charge should be delivered to them apart from the right to bring and cross examine witnesses. These rights are the basic procedures that should be highlighted to the teachers to ensure a fair hearing.

The respondents were also queried as to whether it was necessary for the school to organize a talk by lawyers or other relevant bodies to communicate the teachers' rights and responsibilities if called for internal investigations. 64 respondents agreed, 32 of them disagreed and the balance of 30 teachers were uncertain about it. Looking at these responses, we also wondered why there were teachers who did not agree to the suggestion posed in the

question. Assuming they were unclear about the impact of not having experts in this field to relate to them of their rights and responsibilities, then the education authorities could possibly instruct some teachers from the schools to undergo a briefing about the RNJ and the teachers could convey them to the rest of the teachers at their respective schools.

When questioned about the necessity of being aware of their rights and responsibilities before any adverse decisions were taken against them in their teaching career, 120 teachers concurred, 4 were doubtful and 2 disagreed. The respondents gave their reasons for this question. Among the reasons delivered were: -

- so that justice could be upheld
- to be more knowledgeable as to what to do if faced with the issue
- not to be oppressed
- to avoid committing any disciplinary offences
- to equip themselves with the current challenging students' discipline
- to protect the teachers' affairs
- as guidance to act accordingly

From the last set of responses, the authors were left in the dark as to the six respondents that did not concur with the essential need to be equipped with the knowledge of the RNJ as it was quite obvious from the rest of them that this set of rules are inevitably crucial to their career as teachers. This could be seen from the list of selected reasons given by the 120 respondents. It is almost certain that most of the teachers were very concerned about the impact of being charged with disciplinary actions. It is regrettable if the teachers were not told of the right procedure to defend themselves if they encountered such an undesirable situation.

### **Conclusion**

The rules of natural justice (RNJ) described in this paper must be adhered to by all bodies that are conferred power to make adverse decisions against the staff under their trust. The RNJ is the minimum standard to be observed by all public bodies when making decisions. From the above findings, it can be gathered that teachers in each district in Melaka are not all well informed about this law albeit their importance to the teachers in their teaching career. Many comments made by the teachers participating in the survey conducted showed their concern over their future with regard to their pension if being charged for disciplinary matters. The fact that they were not specifically told of their rights for a fair hearing further placed them in a deeper concern. Thus, it is proposed that the education authorities take this matter seriously so as to convey this right to all teachers within their jurisdiction. A collaborative initiative with any legal agencies should be made an annual compulsory event for each school to be included in the school's academic calendar. Posters demonstrating the RNJ should be displayed at the teacher's comment room and meeting room. Infographics on the topic could definitely be of utmost advantage and beneficial for the teachers to understand and be well-equipped with this knowledge.

### **Acknowledgement**

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### Corresponding Author

Mimi Sofiah Ahmad Mustafa

MARA University of Technology Melaka Branch, Malaysia, KM26, Jalan Lendu, 78000 Alor Gajah, Melaka.

Email: mimi@uitm.edu.my

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