

# **High Court issues historic injunction against the Ministry of Education for witness intimidation and “undermin[ing] the due administration of justice” in months-long absent teacher litigation in Sabah**

**2 September 2022**

- A historic, unprecedented injunction issued against the Ministry of Education that threatened, harassed, and pressured the Plaintiffs to withdraw their litigation.
- The 2020 Plaintiffs took significant bodily risks to capture evidence of the Defendants’ conduct, in line with their wishes to halt systematic oppression in Sabah.
- The 2018 and 2020 Plaintiffs detail their prior interlocutory victories
- Nearly four years after filing in October 2018, Siti Nafirah binti Siman’s (“2018 litigation”) trial will start on **12 Sept to 15 Sept 2022**. Nearly two years after filing in December 2020, Rusiah binti Sabdarin, Calvina binti Angayung, and Nur Natasha Allisya binti Hamal (“2020 litigation”) **start their trial on 5 Sept 2022**.
- Both trials are at the High Court of Kota Kinabalu. The public and media may attend. Both the 2018 & 2020 public interest litigation are filed under Messrs Roxana & Co.

After decades of allegations, yet very few proven incidents, three 20-year-old Kota Beludian women have done the impossible. Being unsealed today is their successful, historic injunction application against the Ministry of Education, their former English teacher Mohd Jainal bin Jamran, **and** their former principal Hj. Suid bin Hj. Hanapi.

The 2020 Plaintiffs filed their litigation in December 2020, but the Defendants would not file their Defence until June 2021, many months after it was expected. In the intervening months of January 2021 and April 2021, the Defendants were taking extra-judicial steps to try to force the Plaintiffs to withdraw their litigation against them, to intimidate / harass classmates and thus witnesses, and to pressure the Plaintiffs’ families to turn against their own children.

In April 2021, Rusiah binti Sabdarin as the 1st Plaintiff and key target of the Defendants, filed an extraordinary injunction application against her ex-teacher, her ex-principal, the Director General of Education, and the Minister of Education (the latter two representing the Ministry of Education).

During the injunction application hearing in August 2021, **the Senior Federal Counsel did not object to the injunction application**. Thereafter, YA Judicial Commissioner (now High Court Judge) Leonard David Shim allowed the Plaintiffs injunction application. This historic, unprecedented injunction against the entire Ministry of Education and its officers finally provides Court evidence of a pattern many thousands of Sabahans, Sarawakians, and Peninsular Malaysians have long witnessed. When the people rise up, we are told to use “the proper channels”. Yet when Malaysia’s youngest and bravest rakyat used the proper

channel to file for an independent and fair trial where both parties can submit evidence, bring witnesses, and argue on the merits of the claims, the Defendants instead began to “undermine the due administration of justice.

The Plaintiffs note this historic injunction against the Ministry of Education for “undermining the due administration of justice” during Court proceedings is the picture-perfect example of why the Ministry of Education, and the entire Executive Branch, should no longer (and never should have had the authority to begin with) to investigate their misconduct and why whistleblower protection also from an independent body is crucial.

The Plaintiffs call for a Public Ombudsman, an independent neutral institution such as “Pembela Rakyat”, to be immediately implemented with no loopholes for the powerful or wealthy and no interference from the civil service nor politicians. It would independently and fairly investigate misconduct and allow the relevant penalties, against any party. Such a Public Ombudsman is also the only way to truly protect teacher whistleblowers, many of which have been in very similar situations to Plaintiff Rusiah binti Sabdarin.

The Plaintiffs appreciate their legal team, the local Malaysian media, activists of #MakeSchoolsASaferPlace, and their teacher and MOE officer whistleblower allies. With their help, a historic precedent has been set against the Ministry of Education.

We quote selected paragraphs from the **successful injunction application** and Rusiah binti Sabdarin’s **Affidavit**, where she had bravely compiled audio evidence and screenshots of the Defendants’ actions. Some information has been kept private to the legal parties to protect the witnesses and their families. All text bolding / emphasis is ours.

*4. On 23.12.2020, the Principal of SMK Tuan Gusi, Mr Nuzie Bin Hj Balus (the "Principal") contacted my father to meet him at the school to discuss the case. I will say that, after my father's return from meeting the Principal, my father started pressuring me to drop the case to "clear his name". The **Principal also urged my father to convince me to drop the case and that if I were to lose this case, I would surely be put in a juvenile detention centre**. These threats and psychological intimidation have prompted me to record any conversations in the future.*

*7. On 22.01.2021, **at the request of the Principal**, I met with the Principal at his office. During the meeting, **three teachers were also present**, namely Mr Roslan bin Asang, Yusof bin Rakunman, Mohd Sabanah Bin Abdul Rahman. During the meeting, the following, inter alia, were said to me :*

*a. **The Principal and Cikgu Roslan told me not to record the conversation;***

*b. The Principal threatened that he had the power and authority to take disciplinary action against me. The Principal brought up my absences. I verily believe that due to the impact of the global pandemic, other students suffer*

the same plight as myself and have been unable to attend some classes. Further, some of my absences are attributed to my father's ill health. In any event, at the material time, **I had only been absent from school once**. I also believe that the principal is victimising me with his threats of disciplinary action or expulsion and **would not have threatened the other students in the same manner for a single act of absenteeism**. The Principal has even threatened to use absences from the previous years against me. Prior to filing my case, the Principal and teachers **never issued a warning letter or raised concerns regarding my absence**. I verily believe that this has been raised to instil fear and force me to withdraw from the case.

d. The Principal and Cikgu Yusuf asked if I had CCTV at my house. I found this question very intimidating as they were probing the security of my house. I verily believe that whether my house had a CCTV had no relation to their duties as teachers or government servants. **I also verily believe the purpose of this interrogatory line of questioning was to imply that my house's safety was under threat**.

14. I would also say that the conduct of the Principal's and **request to have me switch my phone off during the meeting clearly shows that he was aware that he should not have addressed the issue in the manner that he did** and would continue to do so in the event he does not believe that evidence of such meeting will not be captured.

These actions are tantamount to an interference of Court process. We further quote from the legal filings,

10. I have been advised by my solicitors and verily believe that **it is not part of the official duties** of the Principal and teachers mentioned above to hold **closed-door meetings with litigants to discuss court cases without the presence of solicitors**, even if such litigants were students.

11. I have been advised by my solicitors and verily believe that the Principal and the teachers mentioned above should not have **attempted to take the law into their own hands to circumvent the court process by pressuring and threatening me to give up my claim against their masters and/or employers, the 3rd, 4th and 5th Defendants**.

12. I have been advised by my Solicitors and verily believe that the actions of the Principal and the other teachers mentioned above were **intended to undermine the due administration of justice** and/or to inhibit a litigant from availing themselves of that system of justice.

20. I was advised by my solicitors and verily believe that the balance of convenience lies with the Plaintiffs. In the event of the **continued harassment, coercion and threats by the Defendants**, whether by themselves or through their servants or

agents, there is a chance that all the Plaintiffs, including myself, will withdraw this case.

23. I will say that the interim injunction as prayed will not in any way interrupt the discharge of its public duties and **is limited only to outside of their duties as teachers, principals or administrators of the 5th Defendant.**

The Injunction Order itself will last the duration of the legal proceedings. The restrictions include:

1. The Defendants and / or their agents are restrained and prohibited from approaching, interfering, harassing, disturbing, and / or coercing any of the Plaintiffs or their family members.
2. The Defendants and / or their agents are restrained and prohibited from approaching the Plaintiffs and their residences within 500 metres.
3. The Defendants and / or their agents are restrained and prohibited from sending unsolicited messages, statements, phone calls, or any other telecommunication to the Plaintiffs and their families.

This Injunction Order is issued against the 1st - 4th Defendants in the 2020 High Court litigation, and thus also the 1st, 2nd, 6th, & 7th Defendants of the 2018 High Court litigation.

**NOTICE**

***(Pursuant to Order 45 rule 7 of Rules of Court 2012)***

*If you, the within named MOHD JAINAL BIN JAMRAN, the 1st Defendant abovenamed, disobey this order, you will be liable to process of execution for the purpose of compelling you to obey the same.*

*If you, the within named HJ. SUID BIN HJ. HANAPI, the 2nd Defendant abovenamed, disobey this order, you will be liable to process of execution for the purpose of compelling you to obey the same.*

*If you, the DIRECTOR GENERAL OF EDUCATION MALAYSIA, the 3rd Defendant abovenamed, disobey this order, you will be liable to process of execution for the purpose of compelling you to obey the same.*

*If you, the MINISTER OF EDUCATION MALAYSIA, the 4th Defendant abovenamed, disobey this order, you will be liable to process of execution for the purpose of compelling you to obey the same.*

Siti Nafirah binti Siman also reiterated her three successful victories over the Defendants in her pre-trial litigation. The Defendants argued against her each time, yet YA High Court Judge Ismail Brahim sided with Siti Nafirah each time: her Discovery application, her Further & Better Particulars Application, and the Dismissal of the Defendants' Striking Out Application (sans the striking out of Defendant 3, SMK Taun Gusi).

### **Key Facts As You Report:**

1. SMK Taun Gusi is located in **Kota Belud**, Sabah. It is now the subject of two High Court trials. Kota Belud, Sabah, is one of the 10 poorest districts in all of Malaysia.<sup>1</sup>
2. The four High Court Plaintiffs were all former students of the 1st Defendant. The claimed events occurred in 2015 for the 2018 litigation; 2017 for the 2020 litigation.
3. Siti Nafirah binti Siman is 22 years old; she was in class 4 PD (Perdagangan). Siti Nafirah was the Ketua Kelas of 4 PD.
4. Rusiah binti Sabdarin is 21 years old; she was in class 4 SS (Sains Sukan). Rusiah was the Ketua Kelas of 4 SS.
5. Nur Natasha Allisya binti Hamali is 21 years old; she was in class 4 SS (Sains Sukan). Nur Natasha was an SMK Taun Gusi Prefect.
6. Calvina binti Angayung is 21 years old; she was in class 4 SS (Sains Sukan). She was SMK Taun Gusi's Head Prefect.
7. Defendant Officer Nuzie Bin Hj Balus was SMK Taun Gusi principal in the 2021 injunction events. In the 2015 and 2017 events of claimed extreme teacher absenteeism, SMK Taun Gusi's principal was 2nd Defendant Haji Suid bin Haji Hanapi.

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<sup>1</sup> Twelfth Malaysia Plan, page 188 (2021). The data was compiled by DOSM in 2019.  
<https://bit.ly/RMK12-en>

# Summary of the Claim

High Court of Sabah and Sarawak at Kota Kinabalu

[BKI-22NCvC-101/10-2018](#)

**Plaintiff: Siti Nafirah binti Siman**

Former SMK Taun Gusi student

Form 4 Perdagangan “4 PD” in 2015

## DEFENDANTS

**D1 — Mohd Jainal bin Jamran**

English teacher of Form 4 Perdagangan; servant of the Ministry of Education

**D2 — Hj. Suid Bin Hj. Hanapi**

Principal of SMK Taun Gusi; servant of the Ministry of Education

**D3 — Sekolah Menengah Kebangsaan Taun Gusi**  
National school under the Ministry of Education

**D4 — District Education Officer of Kota Belud**

District-level officer of the Ministry of Education

**D5 — Director of Education, Sabah**

State-level officer of the Ministry of Education

**D6 — Director General of Education Malaysia**

Advisor to the Minister of Education

**D7 — Minister of Education Malaysia**

Highest office in the Ministry of Education

**D8 — Government of Malaysia**

Employer and/or principal of all above defendants;  
defender of the Federal Constitution

## LAWS VIOLATED

### Public Officers (Conduct and Discipline) Regulations of 1993

- Regulations 3A, 3C(1), 3C(2), 23, 24, 25
- Breached by D1, D2, D4, D5, D6, D7, D8

### Education Act of 1996

- Failure to prepare for examinations, unlawful acts and omissions, no reasonable actions taken, right to a quality education
- Breached by D1, D2, D4, D5, D6, D7, D8

### Misfeasance in Public Office

- Committing unlawful acts and knowingly causing injury & losses while in capacity as public officers
- Committed by D1, D2, D4, D5, D6

### Federal Constitution

- Violations of articles 5 & 12 on right to education: no reasonable actions taken to prevent, willful and intentional acts and/or omissions, had knowledge or means of knowledge of harm inflicted
- Violated by D1, D2, D4, D5, D6, D7, D8

### United Nations Convention on the Rights of the Child (ratified by Malaysia in 1995)

- All relevant articles, including right to education
- Violated by D1, D2, D4, D5, D6, D7, D8

## FEBRUARY 2015

- D1 stopped entering 4 PD English lessons

## MARCH 2015

- D1 still refused to enter any 4 PD English lessons
- District, state, and national education officers were notified (D4, D5, D6, D7)

## APRIL 2015

- D1 still refused to enter any 4 PD English lessons
- Plaintiff pleaded with school assistant
- Principal notified; state education officer **again** notified (D2, D5)

## MAY 2015

- D1 still refused to enter any 4 PD English lessons

## JUNE 2015

- D1 still refused to enter any 4 PD English lessons
- District education officer **again** notified (D4)

## JULY 2015

- D1 still refused to enter any 4 PD English lessons
- State education officer **again** notified; admitted aware of long-term misconduct at school (D5)
- Plaintiff pleaded again with school assistant

## AUGUST 2015

- D1 still refused to enter any 4 PD English lessons, save one week
- Principal **again** notified; saw 4 PD's blank attendance book; district, state, & national education officers **again** notified, visited school, & refused meeting 4 PD students (D2, D4, D5, D6, D7)
- Principal, district education officer called meetings and requested two-week self-observation; both claimed ignorance of D1's absences sans two weeks prior; D1 confronted, yet refused to explain misconduct (D1, D2, D4)

## SEPTEMBER 2015

- D1 still refused to enter any 4 PD English lessons
- District education officer **again** notified and visited school, refused to discuss D1's continued absence (D4)

## OCTOBER 2015

- D1 still refused to enter any 4 PD English lessons
- Principal met 4 PD class; threatened to deny all remaining English lessons until students claimed responsibility for D1's absences and wrote favourable words about D1; students, in desperation and fear, signed such statements (D2)
- Principal instructed D1 to fabricate attendance signatures of 4 PD English lessons; claimed only two months versus an actual seven months (D1, D2)

## REMEDIES

- Declarations** that D1, D2, D4, D5, D6, D7, and D8 breached their statutory duties under the Education Act by (1) failing to teach her English from February to October 2015 and (2) failing to prepare her for examinations. Likewise, they (3) violated her constitutional right to access education under Article 5 & 12 under the Federal Constitution.
- Declaration** that D2, D4, and D5 (4) breached their duties under Regulation 3C, 25, and 26 of the Public Officers (Conduct and Discipline) Regulations 1993.
- Declaration** that the acts of by D1, D2, D4, D5, and D6 (5) amounted to misfeasance in public office.
- Exemplary, General, and Aggravated Damages; costs; and any further relief deemed fit and proper.

# Summary of the Claim

High Court of Sabah and Sarawak at Kota Kinabalu

[BKI-22NCvC-88/11-2020](#)

**Judge: YA Tuan Leonard David Shim**

Judicial Commissioner

High Court of Kota Kinabalu

**2nd Plaintiff: Nur Natasha Allisya binti Hamali**

Form 4 Sains Sukan "4 SS" in 2017

Former SMK Taun Gusi student and school prefect

**1st Plaintiff: Rusiah binti Sabdarin**

Form 4 Sains Sukan "4 SS" in 2017

SMK Taun Gusi student and 4 SS class monitor

**3rd Plaintiff: Calvina binti Angayung**

Form 4 Sains Sukan "4 SS" in 2017

Former SMK Taun Gusi student and head prefect

## LAWS VIOLATED

### Public Officers (Conduct and Discipline)

#### Regulations of 1993

- Regulations 3A, 3C(1), 3C(2), 23, 24, 25
- Breached by **D1, D2**

### Education Act of 1996

- Failure to prepare for examinations, unlawful acts and omissions, no reasonable actions taken, right to a quality education
- Breached by **D1, D2, D3, D4, D5**

### Misfeasance in Public Office

- Committing unlawful acts and knowingly causing injury & losses while in capacity as public officers
- Committed by **D1, D2, D3, D4, D5**

### Federal Constitution

- Violations of articles 5 & 12 on right to education: no reasonable actions taken to prevent, willful and intentional acts and/or omissions, had knowledge or means of knowledge of harm inflicted
- Violated by **D1, D2, D3, D4, D5**

### United Nations Convention on the Rights of the Child (ratified by Malaysia in 1995)

- All relevant articles, including right to education
- Violated by **D5**

## REMEDIES

1. **Declarations that D1, D2, D3, D4, and D5** breached their statutory duties under the Education Act by (1) failing to teach the Plaintiffs English class from March to October 2017 and (2) failing to prepare them for examinations. Likewise, they (3) violated her constitutional right to access education under Article 5 & 12 under the Federal Constitution.
2. **Declaration that D2** (4) breached his duties under Regulation 3C, 25, and 26 of the Public Officers (Conduct and Discipline) Regulations 1993.
3. **Declaration that the acts by D1 and D2** (5) amounted to misfeasance in public office.
4. Exemplary, General, and Aggravated Damages; costs; & any further relief deemed fit and proper.

## DEFENDANTS

### **D1 — Mohd Jainal bin Jamran**

Form 4 Sains Sukan English teacher of SMK Taun Gusi; Ministry of Education servant (transferred early 2020)

### **D2 — Hj. Suid bin Hj. Hanapi**

Principal of SMK Taun Gusi; Ministry of Education servant [retired early 2020]

### **D3 — Director General of Education Malaysia**

Advisor to the Minister of Education

### **D4 — Minister of Education Malaysia**

Highest office in the Ministry of Education

### **D5 — Government of Malaysia**

Employer and/or principal of all above defendants; defender of the Federal Constitution

### MARCH 2017

- D1 frequently did not enter, arrived late, and/or left early during 4 SS English lessons
- The Plaintiffs repeatedly requested **D1** to enter; **D1** ignored their notifications

### APRIL 2017

- D1 frequently did not enter, arrived late, and/or left early during 4 SS English lessons; the Plaintiffs waited and/or requested D1 to enter; D1 ignored all notifications

### MAY 2017

- D1 frequently did not enter, arrived late, and/or left early during 4 SS English lessons; the Plaintiffs waited and/or requested D1 to enter; D1 ignored all notifications
- The 3rd Plaintiff informed **D2** of **D1's** refusal to teach; **D2** refused to take action against **D1** or provide a substitute teacher to 4 SS

### JUNE 2017

- D1 frequently did not enter, arrived late, and/or left early during 4 SS English lessons; the Plaintiffs waited and/or requested D1 to enter; D1 ignored all notifications

### JULY 2017

- Initially, **D1** frequently did not enter, arrived late, and/or left early during 4 SS English lessons; the Plaintiffs waited and/or requested **D1** to enter; **D1** ignored all notifications
- By mid-July, **D1** completely and wholly refused to enter 4 SS

### MARCH TO OCTOBER 2017

- The Plaintiffs notified several teachers and school administrators of **D1's** misconduct. Despite repeated notifications, no action was taken against **D1** nor was 4 SS provided a substitute teacher.