

MALAYSIA

Ten questions about the Pardons Board's decision on Najib's SRC International sentence



The Federal Territories Pardons Board's statement via its secretariat did not use the word 'pardon' at all when saying it had decided to trim down Datuk Seri Najib Razak's jail sentence and fine. Under the reduced sentence, the Pardons Board said Najib would be released in 2028 if he pays the RM50 million fine, or be released in 2029 if he does not pay the fine. — Picture by Yusof Mat Isa

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By Ida Lim

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KUALA LUMPUR, Feb 3 — With Datuk Seri Najib Razak's prison sentence cut to six years and his fine reduced to RM50 million, there are still burning questions to be answered, including when the former prime minister will actually be released.

Will Najib have to be in prison for six years or will he leave for home earlier? Can the Pardons Board's decision to reduce his jail time be changed or appealed or reversed? When can he join elections again?

Malay Mail has all the answers for you from four senior criminal lawyers and the Prison Act. Hang tight for this quick 10-question list:

1. So, was Najib pardoned or not?

Short answer: Yes, but it is a “partial” or “conditional” pardon.

The Federal Territories Pardons Board’s statement via its secretariat did not use the word “pardon” at all when saying it had decided to trim down Najib’s jail sentence and fine. Under the reduced sentence, the [Pardons Board said](#) Najib would be released in 2028 if he pays the RM50 million fine, or be released in 2029 if he does not pay the fine.

When contacted, lawyer Datuk N. Sivananthan told *Malay Mail*: “He was not granted a full pardon. It’s a partial pardon.

“It’s just a terminology, full pardon means everything is removed, and you are put in a position as if there’s no conviction. In Datuk Seri Najib’s case, the conviction still stands, it is just a pardon in respect of the sentence and the fine, so it’s still a pardon, but in a sense, it is a partial pardon, not a full pardon.”

Lawyer Datuk Baljit Singh Sidhu told *Malay Mail* it does not matter that the Pardons Board did not use the word “pardon” when announcing the reduction in Najib’s jail term, and said it still amounts to a partial pardon: “This is definitely the decision of the Pardons Board, it’s a partial pardon naturally, because they reduced the sentence.”

Lawyer Salim Bashir Bhaskaran told *Malay Mail* that Najib is “deemed to have been granted conditional pardon and both his jail term and fines are reduced”, noting that both the options of commuting or reducing a sentence and the alternative of immediate release would both be considered as “pardon”.

Najib’s daughter Nooryana Najwa Najib yesterday expressed disappointment that her father was not given a “full pardon and immediate release”, stressing that both he and his family are confident that he is not guilty.

2. Why does it matter if Najib was given a full pardon or partial pardon? (Hint: How soon he can contest to be an MP again?)

Short answer: Without a full pardon, Najib cannot contest in elections until five years after his prison term ends.

Salim said the difference is that a free pardon would remove all of Najib’s punishments and disqualifications, while a partial pardon by commuting the sentences and with conditions attached would mean that he is still subject to the five-year bar from being an election candidate.

“The prohibitions to contest under Article 48 Federal Constitution applies to all convicts except those whom been granted free pardon, whom are not subjected to the five years’ bar,” he said.

Lawyer Datuk Geethan Ram Vincent told *Malay Mail* that the effect of a full pardon is that a persons’ conviction “vanishes”: “For example, Dato Seri Anwar Ibrahim was granted a full

pardon for sexual misconduct offence. If Datuk Seri Najib was granted a full pardon, he would be able to run in the election without any time bar.”

Even if Najib’s jail term ends earlier in 2026 instead of 2028 due to good behaviour, Geethan said he would “still be disqualified from membership of parliament for five years from the date he is released” since he did not get a full pardon.

He said the exception would be if the Agong were to remove Najib’s disqualification, which would then enable him to contest in elections. “To do this, Datuk Seri Najib may have to write to the YDPA to request that the YDPA exercise his power under Article 48(3) of the Federal Constitution to remove the disqualification.”

Based on the reduction of Najib’s sentence without a full pardon, Sivananthan said: “He’s still a convicted criminal and will have the five-year disqualification from election. Only if he had been given a full pardon, then upon release from jail, he would be released from jail immediately and he would be able to contest the next election.

“But here, his five years will be calculated from the date of his one-third remission, so as it stands, it would be five years from August 2026 if he’s paid the fine, August 2027 if he hasn’t paid the fine,” he said. (Sivananthan’s calculations are based on the one-third reduction that prisoners on good behaviour could get, with two alternative scenarios of Najib’s 2028 jail term and 2029 jail term to end earlier in 2026 and 2027.)

Baljit similarly said that Najib’s “conviction still stands” as he was not given a full pardon, and that he would have to stay out of elections for five years after his jail term ends (earliest in 2026 if Najib pays the RM50 million fine).

Najib will turn 71 this year. In the best-case scenario, he will be 73 if his jail term ends in 2026 (assuming he shows good behaviour as a prisoner now and gets a one-third reduction in jail term, and pays the RM50 million fine).

After considering the five-year disqualification since he was not fully pardoned, the earliest that Najib can join any elections for parliamentary seats would be 2031. He will be aged 78 by then.

If he does not pay the RM50 million fine, he can contest five years after August 2027, which would be 2032 or when he is aged 79.

The 15th general election was held in 2022, and the next general election is due in 2027 (if not held earlier).

3. Is it unusual for the Pardons Board to reduce sentences?

Sivananthan said it is instead full pardons that are rare or are more of an “exception”: “It is not unusual for the Pardons Board to reduce sentences. Very often in fact, they reduce sentences. Full pardons are rare, but sometimes it has been given.”

Based on his experience, Baljit said the Pardons Board would typically either grant pardon with immediate release or not grant pardon, instead of reducing sentences as seen in Najib’s case yesterday.

4. Can Pardons Board decisions be further revised, amended, reversed, or challenged?

Short answer: Pardons Board's decisions cannot be challenged in court. Some view the Pardons Board as possibly being able to revise its own decision (depending on the situation), while some view it as final.

Salim said the Pardons Board merely advises the Yang di-Pertuan Agong (in the case of Federal Territories Pardons Board) or state rulers (for the respective states' pardons board), noting: "His Majesty is not bound by the advice given, and His Majesty is not bound to give any reasons in his sole act of exercising prerogative of mercy.

"The decision of YDPA or Rulers are not subject to legal challenges in court," Salim said.

Baljit said there are two different views, with one view being that the Pardons Board will not be able to re-examine its decision to reduce Najib's sentencing due to the doctrine of "functus officio" as it has already sat and decided on the matter and that it will be "final".

Baljit said the other view is that Najib might try and ask the Pardons Board to review its decision, as there is no provision for an appeal process to the Pardons Board and the law does not stop him from appealing: "That will be interesting to see, the jurisprudence on the pardon, which the law is silent on this."

Asked if the Pardons Board could revise its own decision, Geethan told Malay Mail that the Pardons Board's decision would be final: "In my opinion, it is a final decision, unless there is a serious breach of the parole conditions." (Remember this word "parole". See below.)

Sivananthan said the Pardons Board's decisions are not "subject to judicial review" or for review by the courts.

Sivananthan said the Pardons Board's decision cannot be reversed or further revised to "enhance" Najib's sentence to back to the original sentence, as it is the prerogative of the ruler to forgive and that restoring Najib's original sentence after it has been reduced would go against the nature of royal pardons.

If any revisions are to be made by the Pardons Board in the future, it can only be for a further reduction of Najib's sentence, he said.

"But theoretically there is nothing stopping Datuk Seri Najib from filing a fresh pardon application and for the Pardons Board which will be chaired by the new King to consider it, and to reduce it if they want to," he said, but said this would usually apply if there are "fresh circumstances".

"There is nothing to prohibit a fresh application although as a matter of practice it would not be considered unless very poor health etc," he said, confirming that there have been prisoners in the past who made fresh pardons bid after Pardons Board decisions (such as to reduce sentencing or reject pardon bids).

5. Will the Pardons Board's decision to reduce his jail term and fine affect his other criminal trials?

Short answer: No.

Geethan said that Najib's "Partial Pardon will likely not have any effect on his ongoing criminal cases".

"Datuk Seri Najib's only conviction, at the moment, is the one by the High Court in 2020 and later affirmed by the Federal Court in 2022. He is technically innocent until proven guilty, in relation to his ongoing criminal cases," he said, referring to Najib's current only conviction over SRC International Sdn Bhd's RM42 million.

Najib has three other criminal trials, including the ongoing trial over the misappropriation of more than RM2 billion of 1Malaysia Development Berhad's (1MDB) funds where the case has been heard for around 200 days and with 49 prosecution witnesses testifying so far and with multiple boxes of documentary evidence involved.

Sivananthan said the Pardons Board's decision over Najib's SRC case will not affect his other criminal trials, noting that typically sentences for different criminal cases will run "consecutively" or after the earlier sentence has been completed.

In the hypothetical scenario of conviction in other trials, Sivananthan however also said the court will have the discretion to decide whether to order for the sentence to run consecutive to the current sentence, or to have the sentence run "concurrently" or to run from the date the person started serving his prison sentence.

While noting that the Pardons Board decision in the SRC case is a separate matter from Najib's other cases, Baljit also said: "In light of this development, whether the attorney general is going to withdraw other charges, it will be interesting to see."

6. What is this "parole" thing? Is it common? (Hint: You don't have to serve all your sentence in jail, but conditions apply)

Salim said that a parole "is when a prisoner is allowed to be released and continues serving the remaining sentence outside the prison walls on the promise of good conduct".

Geethan said being granted parole is "quite common" in Malaysia.

"All prisoners with a minimum jail term of one year can apply for parole, except for those who were convicted under the Fourth Schedule of the Prisons Act for crimes such as (i) waging war against the YDPA, the Ruler, Governor or Speaker of the State; (ii) giving false evidence with intent to cause a person to be convicted with death penalty; (iii) causing death; (iv) rape and (v) intercourse against the order of nature," he said.

"One famous person who was given parole is Dr Khir Toyo (former menteri besar of Selangor), after serving six months of his one-year sentence. He was convicted of corruption when buying real estate," Geethan said.

Noting that the parole system has been used in many occasions in the past, Salim also cited Mohamad Khir Toyo as an example of when prisoners were released on parole, adding: "In normal occurrences, those whom are convicted for less violent crimes are considered for parole."

Baljit said that parole is typically given when the prisoner's conviction "doesn't involve crimes of brutality or violence", and that this could include crimes such as theft, forgery and white-collar crimes.

(For more about the purpose of the parole programme, see the [Prisons' website](#). Among other things, the prisons' Parole and Community Services Division aims to give prisoners a second chance at a better life in the future and to help them adapt or reintegrate into society, while seeking to promote good behaviour among prisoners and to reduce the rate of reoffending, as well as reducing inmate operational costs in prisons.)

7. Can Najib apply for parole? When can he apply for parole? How does the parole process work?

Citing the Prison Act's Section 46E(6), Geethan said Najib can apply for parole once he has served half of his jail term (not including the one-third remission or reduction that prisoners who show good behaviour are entitled to).

All the other lawyers also said Najib would be able to apply for parole once he reaches the half-way mark in his jail term. For example, if his jail term is six years and ending in 2028 (if he pays the RM50 million fine), he will be able to apply for parole after three years, namely August 2025 which is next year.

Then, after taking into account the one-third reduction for prisoners who show good behaviour, the actual sentence that Najib would have to serve would be four years, Sivananthan said. Which means Najib would only have to spend three years in jail and one year at home, when he would be considered to have fully served his sentence by August 2026. (This is assuming he pays his RM50 million fine).

If Najib does not pay the RM50 million fine, the half-way mark would be three-and-a-half years, Sivananthan said. And he could complete his sentence after four years and eight months.

But when asked if Najib could be released on parole immediately after applying for it and if it is granted, Baljit said no as the process could take two to three months, where Najib will have to appear before the parole board for it to decide whether to grant him parole.

Sivananthan said there is a policy now "for prisoners to be released on parole so the prisons are not overcrowded", and said Najib would be eligible for parole as the offences he was convicted of in the SRC case do not fall under categories of non-eligible offences such as manslaughter and sexual crimes.

8. What happens if Najib is granted parole?

Short answer: He will not see his jail term further reduced, but will be allowed to spend the rest of it outside prison (with conditions attached).

Salim said a parole officer will be assigned to monitor the movement and behaviour of convicts on parole, noting: "The paroled convict can work and continue with his life as normal citizens and stay at his residence during the parole period of serving the remaining sentencing."

In the event Najib is granted parole, Geethan said it would enable him to complete his remaining jail sentence at his residence on the promise of good behaviour, but noted that “being granted parole does not mean Datuk Seri Najib has complete freedom”.

“As a parolee, he will be still bound by the remainder of the sentence and must obey the terms and conditions that comes with it,” he said, noting that such conditions will be stated in the Parole Order.

“The common conditions that are usually attached to parole are: a) reporting to the parole officer at a time and address stated in the Parole Order; b) participating in rehabilitation programmes as directed; c) not allowed to leave the district without the permission of the parole officer; and d) prohibited from leaving the country.”

Sivananthan said during the period that Najib is on parole (the third to fourth year, again assuming he pays his RM50 million fine), there would be parole conditions attached, which would typically be informing the parole officer of where and what you are doing, and to not commit any offence during the parole period.

9. A caveat?

Citing Section 46E(4) and Section 46E(5), Sivananthan however said parole would only be considered for prisoners who do not have any other pending charges or any other pending appeals.

“Also as long as there is a charge pending or an appeal and the appeal is regardless if its the prosecution’s appeal against an acquittal,” he said, agreeing that this would mean Najib cannot apply for parole now since he has other pending criminal cases in the court.