



Y KONG, WONG & PARTNERS
MEMBER FIRM OF YINGKE INTERNATIONAL
ADVOCATES & SOLICITORS

COURTROOM INSIGHT

Lee Bak Chui & Ors v Kerajaan
Negeri Kedah Darul Aman & Ors
[2024] 8 CLJ 765

Kedah Loses Appeal as Court of
Appeal Upholds Federal Control Over
Gaming Licences

18 DECEMBER 2025

A decorative graphic at the bottom of the page consisting of numerous thin, overlapping, wavy lines in a light gold color, creating a sense of movement and depth.

BACKGROUND FACTS

The dispute arose from a policy decision by the Kedah State Government not to renew or approve local authority licences for pool betting and gaming premises within the state.

Although pool betting operations are regulated under federal law, Kedah justified its decision on the basis of state policy considerations, including public morality and social concerns.

The affected operators, holding valid federal approvals issued pursuant to the Pool Betting Act 1967, challenged the state's decision by way of judicial review. They argued that the state's blanket non-renewal policy was unconstitutional, ultra vires and in direct conflict with federal law.

At the heart of the dispute was a constitutional question:

Can a state government effectively prohibit a federally regulated activity by refusing to renew local authority licences?

HIGH COURT DECISION

In **Lee Bak Chui & Ors v Kerajaan Negeri Kedah Darul Aman**^[1], the High Court ruled in favour of the operators and quashed Kedah's decision.

Key Findings of the High Court

The High Court held that: -

[1] Lee Bak Chui & Ors v Kerajaan Negeri Kedah Darul Aman & Ors [2024] 8 CLJ 765



- Betting and gaming fall squarely within federal legislative competence, pursuant to Item 4(1) of the Federal List under the 9th Schedule of the Federal Constitution[2].
- The Pool Betting Act 1967[3] confers exclusive regulatory authority on the Federal Government, including licensing and supervision.
- Kedah's decision, although framed as a local licensing matter, had the effect of prohibiting pool betting altogether, thereby encroaching upon federal powers.
- A state cannot do indirectly what it cannot do directly, namely, banning a federally permitted activity through administrative measures.
- While states retain powers over local government and premises licensing, such powers must be exercised harmoniously and consistently with federal law.

The High Court therefore found the state action to be ultra vires, unconstitutional, and legally irrational, and granted relief by way of certiorari. However, the Court stopped short of granting mandamus or declaratory relief on discrimination under Article 8.

COURT OF APPEAL OUTCOME

The Kedah State Government appealed, arguing that the High Court had unduly restricted state powers and failed to appreciate the legitimate scope of state policy discretion.

In December 2025, the Court of Appeal dismissed the appeal by a 2–1 majority, thereby affirming the High Court's decision.

[2] Federal Constitution, <https://lom.agc.gov.my/federal-constitution.php>.

[3] Pool Betting Act 1967,

https://www.commonlii.org/my/legis/consol_act/pba19671989220/.

Majority Decision

The majority judges held that:

- Federal authority over betting and gaming is paramount and states cannot undermine that authority through administrative or licensing decisions.
- The refusal to renew local authority licences was not a neutral regulatory act, but a substantive prohibition in disguise.
- Such prohibition directly conflicted with the federal statutory framework, rendering the state decision unconstitutional.
- The constitutional division of powers under Articles 74 and 80 requires strict adherence, and states cannot rely on public policy justifications to override express federal legislation.

The Court emphasised that licensing powers must not be weaponised to defeat federal law. Where Parliament has legislated comprehensively, state action must yield.

Dissenting Judgment

The dissenting judge took the view that: –

- The state was merely exercising its authority over local government and premises licensing, which falls under the State List.
- Matters of morality, social welfare and public interest justified the policy decision.
- Courts should be slow to interfere with executive policy decisions, particularly where no express prohibition exists.

However, the majority rejected this approach, finding that constitutional limits, not policy preferences, must prevail.

LEGAL IMPACT & SIGNIFICANCE

Reaffirmation of Federal Supremacy

This decision reinforces a fundamental constitutional principle: Where federal law occupies the field, state action must conform.

The Court of Appeal's ruling confirms that states cannot neutralise federal legislation by indirect means. This is especially significant in areas such as gaming, finance, and regulated industries where Parliament has deliberately centralised control.

Limits of State Policy Decision

While states retain broad discretion in policymaking, the judgment makes clear that: –

- Policy discretion does not override constitutional competence.
- Administrative decisions cloaked as licensing or regulation will be scrutinised for their substantive effect, not merely their form.
- Courts will intervene where a policy decision results in legal inconsistency or constitutional breach.

This marks an important check on executive overreach at the state level.

Broader Implications for Regulated Industries

Beyond gaming, the ruling has implications for other federally regulated sectors, including: –

- Finance and banking
- Telecommunications
- Energy and utilities
- Alcohol and controlled trades

Any attempt by states to impose de facto bans through licensing or administrative measures may now face heightened judicial scrutiny.

CONCLUSION

The Court of Appeal's decision in the Kedah pool betting case does more than resolve a licensing dispute. It invites a broader reflection on the increasing divergence between state-level policy aspirations and the constitutional framework governing federal authority.

Across Malaysia, state governments may hold markedly different moral, social or political views from those embodied in federal legislation. This case raises an important question: to what extent can state policy be pursued when it cuts across an area Parliament has chosen to regulate comprehensively? The Court of Appeal's answer is clear, policy diversity cannot override constitutional allocation of powers.

At the same time, the judgment does not deny the legitimacy of state concerns over public morality or social impact. Instead, it draws a firm constitutional boundary: such concerns must be addressed through lawful channels, whether by legislative reform at the federal level or through cooperative federal-state engagement, rather than by administrative measures that effectively nullify federal law.

As Malaysia continues to navigate differing governance philosophies across states, this decision serves as a reminder that federalism is not merely about autonomy, but also about constitutional discipline. The real challenge ahead lies not in choosing between federal control and state values, but in finding principled ways for both to coexist within the rule of law.

Whether this tension will prompt legislative reconsideration, policy harmonisation, or further constitutional litigation remains to be seen, but the conversation is far from over.

Contributors



SIEW CHAN WAI, SHAWN
(Partner)

✉ shawn@ykwong.com.my

☎ 03-2141 0172

🌐 www.ykwong.com.my/

📍 16-03, Menara EcoWorld
Bukit Bintang City Centre
No. 2, Jalan Hang Tuah
55100 Kuala Lumpur

For further legal advice on Judicial Review, please contact us, Y Kong Wong & Partners.