

# INTRODUCTION TO ADMINISTRATIVE LAW

## TOPIC 2: ADMINISTRATIVE POWERS

### Lesson 2.1 The nature and characteristics of administrative powers



## Lesson 2.1: Learning Outcomes

- At the end of this topic, students should be able to:
  - Define administrative powers.
  - Demonstrate the basic knowledge of nature and characteristics of administrative powers.
  - Develop communication, verbal and written skills, which play an important part in administrative law.
  - Describe about nature and characteristics of administrative powers.

# Definition of administrative powers

- **Administrative power** is the power to **administer, enforce and implement** the laws into effect.
- E.g. law on parking ticket – those who park their car without parking ticket may be compounded.



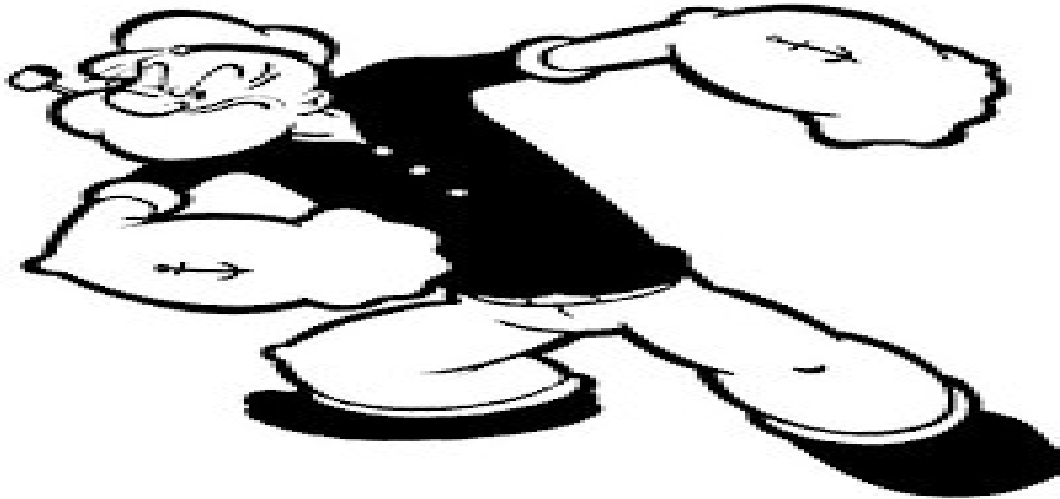
# Concept of Power and Discretion

- Administrative agencies have **power** and **discretion**.
- **Power** refers to the authority and ability to do some act in relation to administrative functions.
- **Discretion** refers to the flexible exercising of judgment and decision making allowed to the officers or agency.



# Types of Administrative Powers

1. Legislative (rule-making) power
2. Quasi-judicial (decision-making) power
3. Administrative power



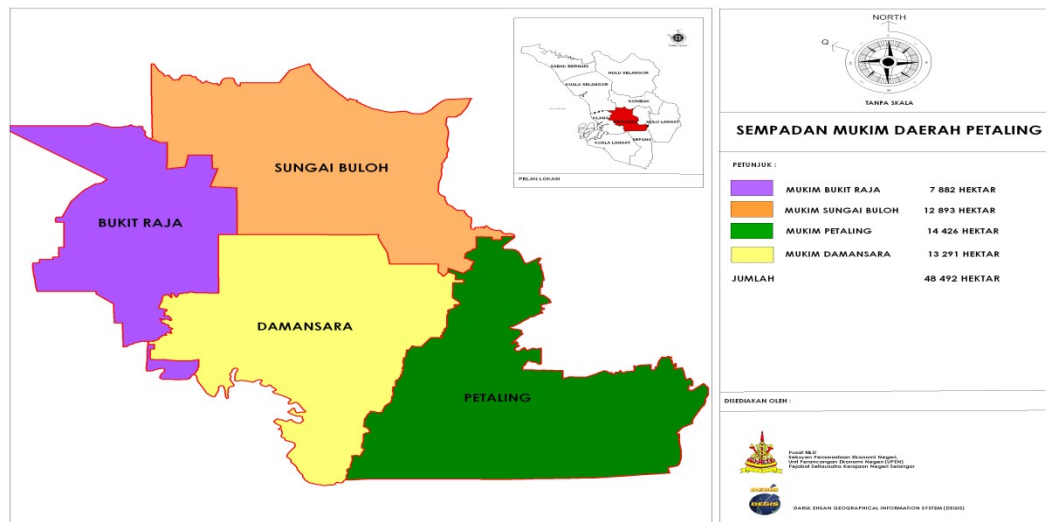
# 1. Legislative power

- Usually the Parliament or State Legislative Assembly will make **Parent Law**.
- Administrative agency has legislative power to **make subsidiary legislation** based on the **parent law**.



# 1. Legislative power

- S 102 Local Government Act 1976 – Every local authority has the power to **make, amend and revoke by-laws** in relation to the good order and government of the local authority area.



# 1. Legislative power

- Examples of laws made by administrative agencies:
  - Licensing of Trades, Businesses and Industries (Federal Territory of Kuala Lumpur) By-laws 2016
  - Building (Federal Territory of Kuala Lumpur) By-laws 1985





# 1. Legislative power

- Who has the legislative power?
  - The person specifically mentioned in the parent Law
  - Power to pass the subsidiary legislation is delegated to various administrative agencies:
    - Yang di-Pertuan Agong
    - Minister
    - Officers who are stated in the Parent law (such as the Director General of a government department)
    - A statutory body with the relevant Minister's consent

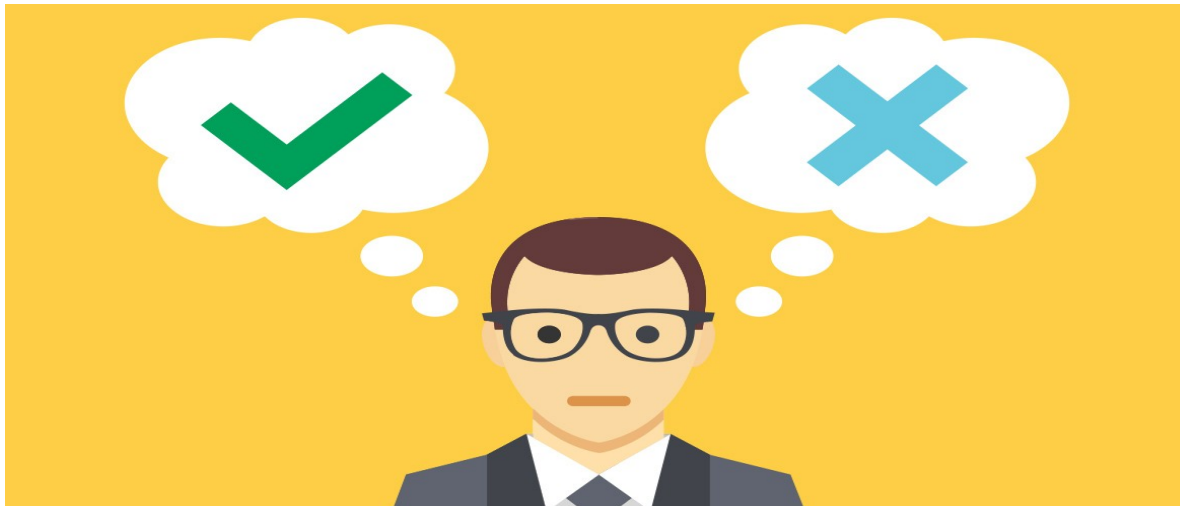
# 1. Legislative power

- Limits of legislative power:
  - Only power specifically given by the parent law
  - Power cannot violate Federal Constitution
  - Judicial review for ultra vires (beyond powers)
  - Must follow procedures laid by parent law
  - Cannot be sub-delegated (delegatus non potest delegare)



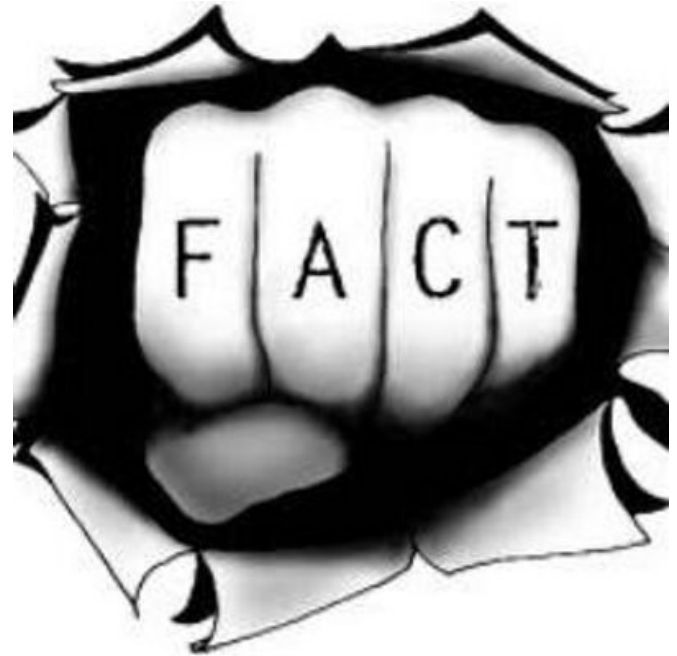
## 2. Quasi-judicial power

- Quasi-judicial power is also known as **semi-judicial power**.
- It refers to the **power** given to **administrative agency** to **make decision** and **determine rights** of those who **appear** before it.



## 2. Quasi-judicial power

- **Elements of quasi-judicial power:** Power to -
  - Hold hearings
  - Weigh evidence
  - Examine facts
  - Make conclusion
  - Exercise discretion



# Difference of quasi-judicial and judicial power

|  | Judicial power | Quasi-judicial power |
|--|----------------|----------------------|
|  |                |                      |
|  |                |                      |
|  |                |                      |

# Examples of quasi-judicial power

| Act | Tribunal/ Commission |
|-----|----------------------|
|     |                      |
|     |                      |
|     |                      |

### 3. Administrative power

- Administrative power is the **residual power** that is **neither legislative nor judicial**, exercised by **public authorities**.



# Types of administrative power

- a. Advisory power
- b. Investigating power
- c. Prosecuting power
- d. Enforcement power





## a. Advisory power

- Advisory power means power to **advise** and **give suggestions**.
- A public authority may submit a report/ proposal to:
  - Cabinet
  - Parliament
  - Head of Executive of a public body (e.g. IGP of PDRM)



## b. Investigating power

- **Investigation** is one of the major functions of public authorities.
- It may investigate **illegal conduct, unlawful practices** and **breach of law**.



## **b. Investigating power**

- Examples of investigating power:
  - Power to search persons and premises
  - Power to inspect and take sample
  - Power of seizure
  - Power to subpoena attendance of any persons
  - Power to direct production of documents
  - Power to conduct interview and interrogation/  
power to examine witnesses
  - Power to obtain information

## c. Prosecuting power

- S 120(1) Local Government Act 1976 (LGA) - the local authority may direct any prosecution for any offence under the Act or any by-law, rule or regulation.
- S 34(9) LGA 1976 - A prosecution for an offence shall not be instituted except with the **sanction of the Public Prosecutor.**

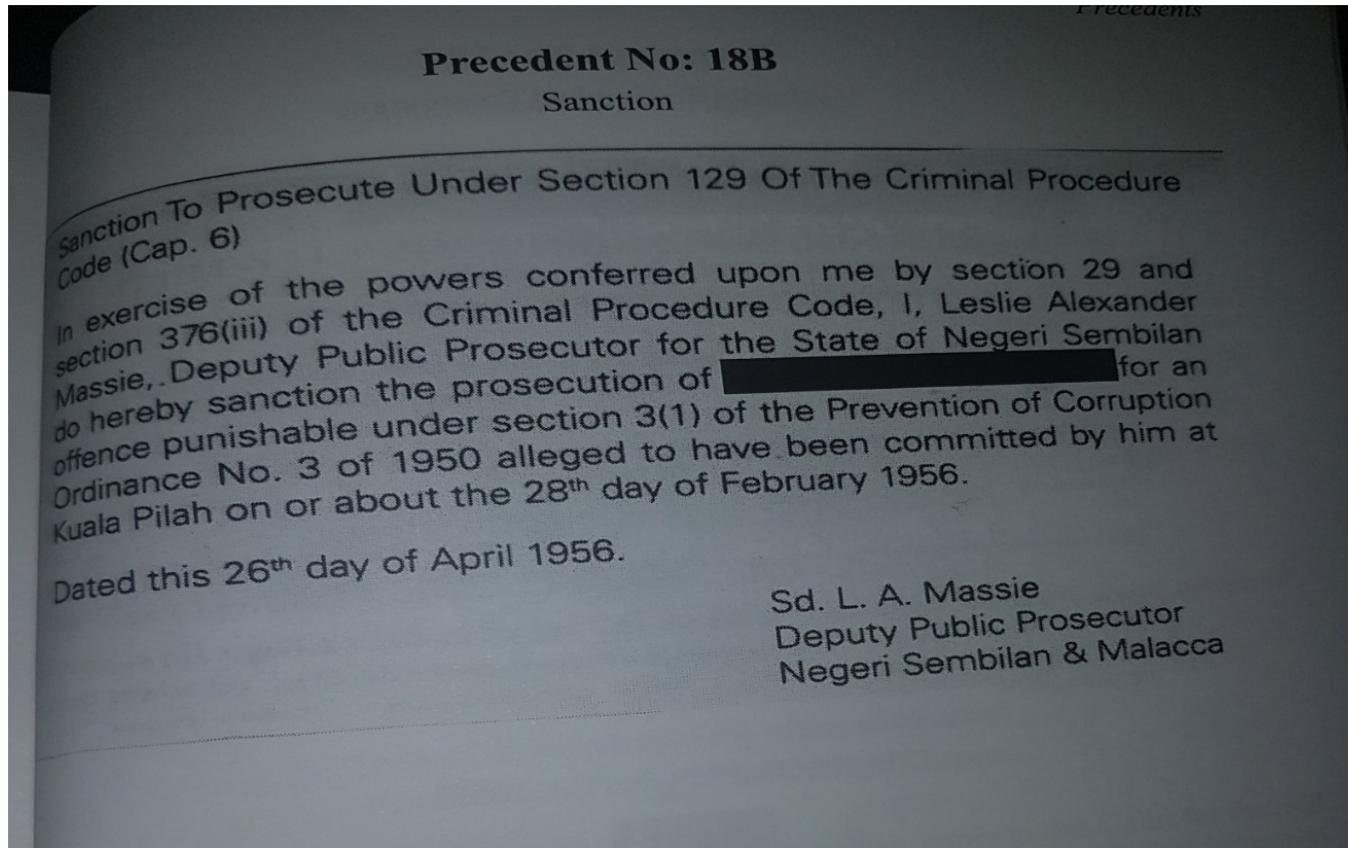


## c. Prosecuting power

- “Sanction” – The Public Prosecutor takes cognizance (notice) of the matter.
- Does not require deep consideration.
- S 129(3) CPC – Sanction must be in writing.



## c. Prosecuting power



## d. Enforcement power

- Enforcement power is the power to carry out and implement the laws and subsidiary legislation.
- Enforcement is the process of ensuring compliance with laws, regulations, rules, standards and guidelines.



## d. Enforcement power

- Types of enforcement power:
  - **Non-judicial enforcement:** The agency can enforce the law without taking civil or criminal action. E.g. A local council may revoke business license of a license holder that violates the conditions specified in the license.
  - **Civil enforcement:** The agency brings a civil suit against violation of law (sue the party in court)
  - **Criminal enforcement:** The agency has the authority to initiate criminal prosecutions or to refer the case to the public prosecutor's office.



**THANK YOU.**