

## EDITORIAL

In July 2019, Parliament passed the amendment to Article 119 of the Federal Constitution. Two provisions were amended: reducing the age of eligibility to vote in elections and allowing the automatic registration of persons as voters upon reaching the age of 18. Sections 3(a) and (b) of the Constitutional (Amendment) Act 2019 were recorded in the gazette as P.U.(B) 615/2021 and became effective on 15th December 2021.

In 2022, Parliament passed the Anti-Hopping law via the Constitutional (Amendment) (No. 3) Act 2022 (Act A1663), and it took effect on October 5, 2022. In the last edition of the Parliament Journal, I lamented about the law that awaited tabling in Parliament, and finally, the law has become a reality. The amendment to Article 48 and the new Article 49A incorporated the Anti-Hopping law. The law provides, among others, that a member of Parliament who leaves his party after being elected in an election shall vacate his seat after joining another political party. The exceptions are that he will not lose his seat if he is removed from his party or if he joins another party *en bloc* together with other members of his political party. The amendment received wholesale support from members of Parliament, something that has not happened for a long time.

The State of Kelantan had once passed an enactment that prohibited party-hopping, with the consequence of the member of the State Assembly losing his/her seat. When it was applied against two members of the Assembly, who were deemed to have lost their seats for party-hopping, the validity of the enactment was challenged in court.<sup>1</sup> The court decided that the enactment was contrary to Article 10(2) of the Federal Constitution, freedom of association.

The court concluded that the anti-hopping law was unconstitutional because members of the assembly were guaranteed the right to choose their political party as provided by the constitution, and the right should not be impinged by any law. The court went on to decide (obiter) that even if the law was valid, the state legislature had no jurisdiction to pass such a law as only Parliament has the power to pass the law.

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<sup>1</sup> *Dewan Undangan Negeri Kelantan & Anor lwn Nordin bin Salleh & Anor* [1992] 1 MLJ 697.

The 2022 constitutional amendment is significant due to several reasons. First, the amendments to articles 10 and 48 have expanded the right to freedom of association vis-à-vis the *Nordin bin Salleh* decision by the Supreme Court. In that respect, Parliament and the State Assemblies are free to promulgate a law to prevent party-hopping. In the *Nordin bin Salleh* case, the Supreme Court held that:<sup>2</sup>

Turning to the right to form associations guaranteed by Art 10(1)(c), it is the right of direct relevance to the issue which arises for decision in the present case; by Art 10(2)(c), only Parliament may by law impose such restrictions thereon, as it deems necessary or expedient in the most exceptional circumstances and that too in the interest of the security of the Federation or any part thereof, public order or morality, and on no other grounds.

In this case, the Kelantan Constitution — a state law — by art XXXIA, seeks to restrict the fundamental right of a member of the legislature to form associations, which of course, includes the right to dissociate, and it operates by way of disqualification, once the member exercises that right.

It is, in our view, inconceivable that a member of the legislature can be penalized by any ordinary legislation for exercising a fundamental right that the Constitution expressly confers upon him subject to such restrictions as only Parliament may impose and that too on specified grounds, and on no other grounds.

Notable speeches by the judges of the Supreme Court further imposed the stand taken by the Supreme Court in the case. Gunn Chit Tuan SCJ said:<sup>3</sup>

Applying that test, I am of the view that the right claimed by the respondents in this case, i.e. the right to leave one political party and to join another, is an integral part of the fundamental right of association or at least partakes of the same basic nature and character as the freedom of association so that the exercise of that right to leave one political party and join another is in reality and substance nothing

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2 Ibid, at 713.

3 Ibid at p 718. See Puthan Perumal, “The concept of a deliberate fundamental breach of Member of Parliament’s oath as Member of Parliament” [2020] 5 MLJ xxxvii. The writer argued that the right to stand as a candidate and the right to remain as an elected legislature are two different matters regulated by different provisions and considerations.

but an instance of the exercise of the fundamental right of association guaranteed under art 10(1)(c) of the Federal Constitution.

The General Election was held on 19th November 2022. The outcome was another first for Malaysia. No coalition had obtained a simple majority, and for the first time since independence, we experienced a hung Parliament. Still, the impact of “Undi 18” was not seen to significantly determine the outcome, despite it being said to have increased the number of young voters 18-21 years old to up to 1.4 million.<sup>4</sup> On the other hand, the Anti-hopping law, in a way, had a positive impact, perhaps with no attempt being made by any of the elected members to jump ship. A controversy was nonetheless recorded in the case of four MPs from Sabah.

The Sabah’s four MPs from Sabah won the general election under the Perikatan Nasional (PN) banner but then exited PN when Gabungan Rakyat Sabah (GRS) declared to leave Bersatu (PBBM).<sup>5</sup> Bersatu is the main party in the PN coalition. On December 10, 2022, former Sabah Bersatu leader Datuk Seri Hajiji Noor was reported to have said that Sabah Bersatu leaders had unanimously decided to quit Bersatu but would remain under the GRS.<sup>6</sup> On December 29, 2022, Ronald Kiandee, the Sabah Bersatu chief and Beluran MP, sent a notice to the Dewan Rakyat to complain about the status of the said four MPs after they exited Bersatu. On January 15, 2023, Sipitang MP Datuk Matbali Musah, one of the four affected MPs, confirmed that he received a copy of the letter from the Speaker to the Sabah PN chief stating that the four seats remain unchanged and there are no casual vacancies.<sup>7</sup> The Speaker purported to have decided under Article 49A(3) of the Federal Constitution. If the decision is challenged in a court of law, does Article 63 of the Federal Constitution prevail? There are two questions to determine whether

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4 Farah Solhi, Fuad Nizam, “GE15: Young voters cast as kingmakers” – *The New Straits Times*, November 8, 2022.

5 GRS is the coalition currently in power.

6 Bernama, <<https://www.theedgemarkets.com/node/649916>>29 November 2022.

7 New Strait Times, “Four Sabah MPs who exited Bersatu have been told they get to keep their seats, says Matbali”, by Olivia Muwil, December 29, 2022. This was confirmed by Sipitang MP Datuk Matbali Musah after he received a copy of a letter from the speaker addressed to Sabah Perikatan Nasional chief Datuk Seri Dr Ronald Kiandee today. Matbali added that copies of the letter were also sent to other three MPs – Minister in the Prime Minister’s Department Datuk Armizan Mohd Ali (Papar), Deputy Tourism, Arts and Culture Minister Khairul Firdaus Akbar Khan (Batu Sapi) and Datuk Jonathan Yassin (Ranau).

the four have vacated their seats under Article 49A of the Constitution. First, whether they have been disqualified under the Constitution, and second, whether the decision made by the Speaker is protected by parliamentary privilege.

On the disqualification matter, Article 48(1)(a)-(f) provides for the scenario when a person is disqualified from becoming a member of Parliament.<sup>8</sup> The provisions are applicable for pre- and post-election qualifications. Article 49A is applicable as a post-election disqualification. By article 49A (3), the decision to disqualify MPs and to declare the seats vacant is the responsibility of the Speaker of Dewan Rakyat. The question is whether the House Speaker's decision under Article 49A (3) is a 'proceeding' in the context of clause (1) of Article 63. If it is a 'proceeding' of the House, the decision is not challengeable in a court of law. Article 72(1) of the Federal Constitution states, "The validity of any proceedings in the Legislative Assembly of any State shall not be questioned in any court." Therefore, it is unclear whether the matter will see its day in court.

In a hung parliament, political parties are expected to negotiate among themselves to garner the majority support to present to His Majesty Yang di-Pertuan Agong that a leader among them should be appointed as the Prime Minister. According to the UK Cabinet Manual, when an election does not result in an overall majority, the incumbent government remains in office and is entitled to testify in Parliament if it can command the confidence of the House of Commons. It is expected to resign if it fails to command confidence. Alternatively, political parties may hold discussions to establish who is best able to command the confidence of the House of Commons and should form the next government. After the 15th General Election, the Yang di-Pertuan Agong mooted the establishment of a unity government, and after a few days of negotiation, His Majesty exercised his power under Article 43(2) of the Federal Constitution to appoint Datuk Sri Anwar Ibrahim as the tenth Prime Minister of Malaysia. The first unity government was established since independence. When Parliament convened, the vote of confidence was tabled, and Dewan Rakyat endorsed the new Prime Minister and his government.

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8 The grounds for disqualification include undischarged bankruptcy, holding the office of profit, failure to submit a report on election expenses under the law, being convicted by the court of law and sentenced to at least a year imprisonment or a fine of not less than RM2000, voluntarily obtains another country's citizenship or exercises another country's civil rights.

In this edition of the Journal, there are nine articles covering various issues that are directly and indirectly related to the legislature.

The first article on parliamentary select committees, entitled “Sistem Jawatankuasa Pilihan Khas di Dewan Rakyat, Parlimen Malaysia: Penilaian kritikal terhadap instrumen semak dan imbang legislatif” (The Special Select Committee in the Dewan Rakyat, Parliament of Malaysia: A critical appraisal of legislative checks and balances instrument) looks at the role of checks and balances in the legislature through the Special Select Committee System in the Dewan Rakyat. The paper provides, first, a brief overview of the background to the establishment of the current Special Select Committee System in the Dewan Rakyat, followed by a comparison with select committee systems in the United Kingdom, Australia, and New Zealand. Next, this paper analyses the strengths and possible improvements of the Special Select Committee System before concluding with serious considerations for its strengthening as a way forward for the realisation of the Special Select Committee System for legislative bodies in Malaysia.

The second article on the Research and Publication Division of the Malaysian Parliament, entitled “Pengukuhan Perkhidmatan Penyelidikan Bagi Keberkesanan Parlimen” (Strengthening Research Services for the Effectiveness of Parliament), evaluates this study and explores the functions and research products introduced by this division to further strengthen its function and role in the parliamentary institution. An exploration of the similarities and differences in functions and products was also conducted involving the research section in three foreign parliaments, namely the UK Parliament, Parliament House of Australia, and New Zealand Parliament. The selection of these three countries has been the main reference for Parliament Malaysia since its establishment in 1959. The findings showed that the Research and Library Division of the Parliament of Malaysia had improved its service and competency with the addition of new products such as opinions and editorial writings in the local newspaper and article journals. Furthermore, strengthening this research division also involves external participation, particularly by academicians and civil society, in various academic activities organised by this division. The findings further suggest the need to increase the number of research officers working at the Research and Library Division of the Parliament of Malaysia to meet the high workload and product output.

The use of “pantun” in the Dewan Negara proceeding is the theme of the third article, “‘Yang Indah-Indah’, Language and Ideology in the

Discourse of Pantun of Dewan Negara 14th Parliament”. The article seeks to discuss politicians’ inclination to use ‘pantun’ as a discursive strategy in political discussions despite its brevity due to its accurate, concise, and captivating quality and its strong effect on readers. Consequently, discourse Pantun becomes one of the important sources of explanation of the phenomena of language and power that take place in political discourse. The study aims to elucidate the relationship between language and power that exists in Pantun forms, as well as analyse the principles that support the aesthetics of Pantun recited in the Fourteenth Parliament of Senate Assembly’s Hansard text. Van Dijk’s Ideological Square Scheme within the Critical Discourse Analysis is applied, along with Muhammad Haji Salleh’s literary theory, Puitika Sastera Melayu (PSM).

Food security is an issue of great importance to the country. The fourth article, entitled “Food Politics and the Paradigm Shift in the Parliament Debate and Food Security” argues that food security is a political issue and should be handled with care in confined aspects known as food politics. This is a preliminary study to determine the most prominent topics of food security among the members of the House of Representatives debates and whether the debates were in line with and portrayed the actual situation on the ground among the public. Hansards from the Parliament of Malaysia (2019;2022) were obtained as secondary data for analysis. The finding showed that availability was frequently mentioned in the debates in parliament. It is not surprising, as availability was the precursor of the other dimension of food security. Additionally, the food security issues raised by our politicians align with the issue shaking the public, which is the 3C shock.

The fifth article is on Sustainable Development Goals (SDGs), entitled “Perspectives, Experiences, and Involvement of Youths in Promoting Sustainable Development Goals in Malaysian Parliamentary Constituencies” analysed SDGs that aimed to create new partnerships that involve all sectors of society to establish a community that leaves no one behind. People often think of youth as drivers of innovation and social change, and they can play a key role in realising the SDGs at the local level. This study used an action research methodology to examine the perspectives, experiences, and competence of Malaysian youths regarding their contributions to promoting the SDGs. Data was taken from the Malaysian SDG Agent Initiative, which involved 67 participants in a quantitative survey and 24 in the second phase as SDG Agents. The findings describe youths’ perspectives and experiences with three aspects

of youth involvement in promoting SDGs. It is unequivocally affirmed from various perspectives that youth hold such a significant role as active agents contributing to the promotion of the SDGs, especially in raising awareness about the SDGs in the local community via organising SDG workshops and participating in different dialogues.

The sixth article, entitled “Parliamentarians & Multi-Stakeholder Partnerships in Implementing SDGs at Parliamentary Constituencies (Between 2020 and 2022) during the 14th Parliamentary Session,” explains the role played by the Parliamentary Group Malaysia on Sustainable Development Goals (APPGM-SDG) and a review of its performance over the past three years and the way forward for the next four to five years. Through the localisation process, the importance of partnerships between parliamentarians, civil society activists, academicians from universities, and policy think tank groups have a direct impact at both the grassroots at the micro level through SDG micro solution projects and policy advocacy on macro and national and cross-cutting concerns. Both dimensions have good scope for citizens and participation in grassroots decentralised delivery of services on the one hand, as well as macro national level policy formulation.

The seventh article on “Youth Development in Muar Parliamentary Constituency through ‘the Room’ Projects” deals with the All-Party Parliamentary Group Malaysia on the Sustainable Development Goals (APPGM-SDG) that works with constituencies to combat the issues to achieve Sustainable Development Goals. Muar is one of the constituencies collaborating with APPGM-SDG in developing the Muar youth. The objective of ‘The Room’ project is to promote youth engagement in creative and arts activities. In the course of running the project, it is discovered that youth encounter a variety of obstacles that might restrict their personal development, limit their chances, and impede their capacity to contribute to society. These obstacles can be associated with education, jobs, mental health, and social concerns. The youth’s need for a creative space was raised during issue mapping. The Room project related to Sustainable Development Goals to achieve the SDG 17 goals. The finding shows that the projects successfully attracted 175 youth participants in various 11 activities, and there are nine SDGs involved with the project, such as SDG 1, SDG 3, SDG 5, SDG 8, SDG 10, SDG 11, SDG 12, SDG 14 and SDG 16.

The eighth article, entitled “Malay States Rights to the Continental Shelf: Malaysia Case Study According to Watanic Jurisprudence Analysis,” examines the sovereign rights of a country over her territorial waters. It

is an old issue, but disputes continue, resulting in political tensions. The paper aims to review the rights of a Malay state over the territory of the Continental Shelf in Malaysia, as it is there that petroleum resources are explored. It is a legal analysis using a case study design promoting the method of watanic jurisprudence to analyse a few primary legislations, including UNCLOS, the Continental Shelf Act 1966, and the Territorial Sea Act 2012. This paper concluded that the territorial waters of the Malay States in the Federation could not be limited to 3 nautical miles from the low tide line in pursuance of the Territorial Sea Act 2012 without strict compliance with Article 2 of the Federal Constitution. The legitimacy of the territorial limits of the State's waters is essential as it determines the State's rights to the Continental Shelf and its petroleum production recognised for a coastal state by International Law.

The ninth article, titled "Terrorism and the Overview on Impacts Towards Government Policies in Malaysia, the United States, and the United Kingdom", studied anti-terrorism legislation in Malaysia in comparison with similar statutes in the United States and the United Kingdom. The introduction of the Security Offences (Special Measures) Act (SOSMA) 2012 in Malaysia is one of the significant legislations in combating terrorism. Anti-Terrorism legislations are, without a doubt, a sine qua non for countries in pursuit of the state's stability and security. The article evaluates the impacts of terrorism on government policies in Malaysia, the United States, and the United Kingdom, and emphasis will be placed on whether the policies, i.e., the domestic legislation carried out, manage to play a significant role in combating terrorism.

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