

**SEPARATION OF POWER BETWEEN THE JUDICIARY BODIES AND  
EXECUTIVE BODIES IN MALAYSIA: A LEGAL CRITICS AND  
SUGGESTIONS TO REFORM.**

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Submitted in Partial Fulfillment of the Requirements for the Requirement for the Bachelor in  
Legal Studies (Hons)

**Universiti Teknologi MARA**

**Faculty of Law**

October 2010

The Students/Authors conform that the work submitted is their own and that appropriate  
credit has been made to the work of others.

## ACKNOWLEDGEMENT

We are highly honored to have completed this report and we would also like to express our highest gratitude to these people:

1. Mr. Ismail Badiuzaman, our advisor for this paper for all the guidance and help that he has provided to us in finishing this report.
2. Professor Shad Saleem Faruqi, (UiTM Lecturer for Constitutional Law) for providing us with his opinion from the perspective of an academician on the interview for this report.
3. Dato' Haji Mohamad Zaim, (ADUN Belanja) for providing us with his opinion from the perspective of an executive on the interview for this report.
4. Mdm. Normawati Hashim, for all her advises regarding this report.
5. Our parents and friends for providing us with financial means and moral support in completing this report.
6. All the parties involved in helping us completing this report.

It hopes that this research may provide benefit in explaining the said concept of our constitutional law especially regarding the doctrine of separation of power.

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## **ABSTRACT**

This research aims to explore the constitutional laws on the doctrine of separation of power based on Federal constitution. It is to look into the practice of separation of power where it could highlight the interaction of law with other aspects of life such as economic, social and political development of the country. It also help to highlight the mechanism in preserving the fundamental liberties in protecting the citizens as stated in Federal Constitution under article 5 until article 13.

Furthermore, the research also looks into the practical standpoint, which this research of this nature would provide the information about the extent of the issue or problem in the practice of separation of power. The research would also be able to provide better understanding for the societies in the said concept of separation of power. In addition the study will delve into the importance and the implication of reforming the doctrine of separation of power in various aspects especially on economic, politically and social.

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## 1.0 INTRODUCTION.

The doctrine of separation of powers, traceable in its modern form to the France political philosopher, Montesquieu, emphasises the mutual exclusiveness of the three major organs of the government which is the legislative, executive and judiciary. The main idea is that each of these organs should exercise only one type of function. There should not be concentration of all the functions in one organ; otherwise it will pose a threat to the personal freedom, for in that case it can act in arbitrary manner. It could enact a tyrannical law, execute it in despotic manner and interpret it in an arbitrary manner without any external control. The doctrine therefore emphasises that the legislature should be confined to the legislative function only and have no executive or judiciary function. The purpose underlying the separation doctrine is to disperse governmental power so as to prevent absolutism and allocate each function to the institution best suited to discharge it.

In Malaysia, the relationship between judiciary and executive is overlapping with each other. To preserve judicial independence and integrity of other organs, Article 121 to article 131A of the Federal Constitution incorporates several safeguard into the fabric of the law.<sup>2</sup> The overall constitutional design is to devise institutional as well as functional separation and independence for the judicial organ of state. The independence of judiciary is safeguard by incorporating law like Article 122, 122A and 122AA of the federal constitution which lay down the jurisdiction of the court, the court hierarchy and the composition of the court.<sup>3</sup> Another example is article 122B and 123 of the federal constitution which lay down the procedures for appointment of the superior court judges.<sup>4</sup>

M.P. Jain, *Administrative Law of Malaysia and Singapore* (Butterworths Kuala Lumpur 3<sup>r</sup> edn 2004) Shad Saleem Faruqi, *Document of Destiny*. The constitution of Malaysia (Star Publication Selangor 2008) Ibid at 53 Ibid