



# **UiTM@Media** **2016**

# Rencana Pilihan



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**Legislative function:** The Dewan Negara is an essential component of Parliament and, except as provided in Article 68, its assent is necessary for the passage of legislation in Parliament. The Dewan Negara can revise, improve or delay Dewan Rakyat Bills. As a second debating chamber it can act after mature, non-political and calm consideration. Because it operates in a less political way than the Dewan Rakyat, a more objective examination of ill-considered legislative proposals is possible. For this purpose, it can establish Select Committees to vet Dewan Rakyat Bills.

Through a Scrutiny Committee on Subsidiary Legislation, it can keep subsidiary legislation under review – a job the Dewan Rakyat is woefully lacking in.

Unfortunately, ever since parliament first sat in 1959, less than five Dewan Rakyat Bills have been amended by the Dewan Negara. Once, 15 bills were passed in the Senate in two days! In 2005, women senators vehemently opposed controversial amendments to the Islamic Family Law Bill but they were compelled by the party whip to support the Bill. A few months ago, the National Security Council Bill was debated critically but accepted without any changes.

**Representing the States:** Through two state-elected Senators for each state, the Dewan Negara has the important “federal function” of representing the states and protecting their rights.

The problem is that state Senators do not always vote and speak as “instructed delegates” of the states. They speak and vote according to their party affiliations. A greater coordination between state Senators and state governments is necessary if the voice of the states is to be effectively heard in the Dewan Negara.

**Representation to special groups:** Many professionals have a distaste for politics. But they can contribute to the legislative process by being appointed Senators under Article 45(1). Regrettably, politics overrides constitutional design. The Senate has become the back door for politicians who lose in the general election to be nominated to the Senate before elevation as ministers or deputies.

One measure to strengthen the Senate is to let professional groups and minorities like the orang asli elect their own representatives to be appointed to the upper house.

Previously, a Senator's term was six years. In 1978, this was changed to three years with the possibility of one renewal. This amendment has increased the executive's power of patronage and has affected the independence of the Senators.

**Deliberative function:** Along with the Dewan Rakyat, the Dewan Negara provides a valuable constitutional safeguard to check and limit the power of the Government. This is achieved through question time in which Ministers must supply information, answer questions or justify policies. Dewan Negara debates on topics of contemporary importance can provide the Government with an important second opinion on issues of concern to the nation.

To assist its deliberative function, the Dewan Negara could set up departmental committees to keep ministries under review. Regrettably, no such tradition of departmental committees exists even in the Dewan Rakyat.

The ineffectiveness of the Dewan Negara has led many critics to suggest that there is no place in a modern democratic constitution for a non-representative second chamber.

This criticism is short-sighted

because, with appropriate reforms, the Dewan Negara, like the reformed House of Lords in the UK, can play a valuable role in the parliamentary set-up of the country.

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Shad Saleem Faruqi **reflecting on the law**

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## Reflecting on Dewan Negara's role

People would like to see the Dewan Negara as part of the check-and-balance mechanism of the country.

THE new President of the Dewan Negara, Senator Datuk S. A. Vigneswaran, is reported to have said that "his main aim is to ensure that the Dewan Negara was not seen as a mere rubber stamp by the people." Many patriotic citizens likewise would like to see the Dewan Negara as part of the check-and-balance mechanism of the country, as was intended by the forefathers of the Constitution.

**Constitutional role:** The Constitution of Malaysia and the Standing Orders of the Senate envisage these functions for the Senate:

- > The legislative function of making and revising laws;

- > The federal function of representing the 13 States and the federal territories;

- > The sectoral representative function of enabling experienced and talented persons and members of minorities and aborigines to sit in Parliament without going through the electoral process; and

- > The deliberative function of examining government policy and keeping the executive in check.

Regrettably things have not quite worked out this way.

**Membership:** Unlike the fully elected Senate in the United States and Australia, our Dewan Negara is not popularly elected although the Constitution in Article 45(4) envisages that possibility. Senators represent geographical areas and special interests rather than voters.

Under Article 45, the Dewan Negara consists of 44 appointed and 26 indirectly elected Senators. The scheme of the Merdeka Constitution

was different: state-elected Senators had a plurality over appointed Senators. There were 22 state-elected and 16 appointed Senators.

Article 45(4) even envisaged an increase in the number of state Senators from two to three; a decrease in the 16 appointed Senators; and a future provision for direct elections to the Senate!

Regrettably, post-1957 amendments have altered the ratio between elected and appointed Senators from 22:16 in 1957 to 28:22 in 1963 to 28:32 in 1964 to 26:40 in 1978 to 26:42 in 1984 and to 26:44 in 2001. Today 44 of 70 (or 63%) Senators are politically appointed.

Such an unfavourable ratio of elected and appointed Senators is not conducive to democratic legitimacy. This drastic change to allow nominated Senators to overwhelm state Senators was unsuccessfully challenged in the courts in *Phang Chin Hock v PP* (1980).

To strengthen the Senate, we must return to the spirit of Article 45(4) and, firstly, amend the Constitution to ensure that elected Senators outnumber nominated ones. Secondly, the elected Senators should be elected by using the list-proportional representation system. This system would ensure that a party is able to secure seats in proportion to the amount of popular votes it has garnered.

The current simple plurality system in the Dewan Rakyat results in parties winning seats disproportionate to their popular votes.

**Legislative function:** The Dewan Negara is an essential component of

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Utusan Malaysia, Mingguan Malaysia, Berita Harian, Berita Minggu,  
New Straits Times, The Star, Sunday Star, The Sun, Star Metro,  
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