

**THE DISCRETIONARY POWERS OF THE YANG DI-PERTUAN AGONG:
ITS SIGNIFICANCE TO THE WORKABILITY OF MALAYSIAN
GOVERNMENT**

By

Faez b Razak (2007296382)
Hazralika bt Hamzah (2007294534)
Mohd Izuddin b Mohamad (2007266988)

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

**Universiti Teknologi MARA
Faculty of Law**

October 2009

The students/authors confirm that the work submitted is their own and that appropriate credit has been given where reference has been made to the work of others.

ACKNOWLEDGMENT

This research project has been carried out by a team which has included Faez b. Abdul Razak, Hazralika bt. Hamzah and Mohd. Izuddin b. Mohamad. First and foremost, the deepest gratitude to Allah S.W.T for His mercy and blessings. Without these, the authors will not have the mind to think, the hands to write and the heart to appreciate. Secondly, this research would not have been possible without the support of many people. The authors wish to express their gratitude to the learned supervisor, Puan Normawati Bte Hashim, for her guidance and support in the process making of this project paper from the beginning until the end. Special thanks to the learned Prof. Emeritus Shad Saleem Faruqi, for his precious knowledge and thoughts, unveil what is hidden and light up the darkness which surrounded the authors. Not forgetting Puan Nadzriah Ahmad, for her time in sharing her views with the authors. In addition, special thanks also to Puan Norha Abu Hanifah, for her teachings and guidance during the class of Legal Research and Methodology. Finally, the authors wish to convey thanks to their beloved parents, of who without their love, sacrifice and support they would no have the strength to be here today.

ABSTRACT

As introduced by its title “The Discretionary Powers of The YDPA: Its Significance and Workability in the Malaysian Government”, this project paper accumulates the discretionary powers of the Yang di-Pertuan Agong entrenched in the Malaysian Federal Constitution. Hence, determining its significance and workability in the Malaysian government. This research is done out of the proposition that the YDPA as a mere nominal head of the States. The objectives are of two: First, to determine the extend of his discretionary powers entrenched in Malaysian highest authority of Federal Constitution and second, to come up with the significance of his role through his discretionary powers to the workability of the Malaysian government to show that he is not just a mere symbol. Consequently, several discretionary powers have been identified. Firstly, the power to appoint the Prime Minister, secondly, the withholding of consent to a request for Parliament’s dissolution, third, powers to convene the meeting of the Conference of Rulers, fourthly, powers to declare emergency, fifth, powers to grant pardon and finally, other residual and implied discretionary powers. As the research is done pertaining to these powers, the YDPA’s significance is indeed apparent to the workability of the Malaysian governmental system. This can be deduced from the fact that, the YDPA is evidently regarded as someone who provides check and balance, as a mediator to the constitutional dispute and on certain points cater to the sociological needs of the public.

TABLE OF CONTENTS

| | |
|-----------------------|------|
| Acknowledgment | ii |
| Abstract | iii |
| Contents | iv |
| Table of Cases | vii |
| Table of Legislations | viii |

CHAPTER ONE: INTRODUCTION

| | | |
|-----|---------------------------------------|---|
| 1.1 | Introduction | 1 |
| 1.2 | Research Background | 1 |
| 1.3 | Problem Statement | 2 |
| 1.4 | Objectives | 3 |
| 1.5 | Research Methodology | 3 |
| 1.6 | Scope and Limitations of the Research | 4 |
| 1.7 | Significance of Study | 4 |
| 1.8 | Provisional Plan | 5 |

CHAPTER TWO: THE DISCRETIONARY POWERS OF THE YANG DI- PERTUAN AGONG: A BRIEF OUTLOOK

| | | |
|-----|-------------------------------------------------------|----|
| 2.1 | Intoroduction | 6 |
| 2.2 | From Absoltue Monarch to Constitutional Monarch | 6 |
| 2.3 | The Discretionary Powers of the Yang di-Pertuan Agong | 9 |
| 2.4 | Concluding Remark | 11 |

CHAPTER THREE: THE HISTORY OF THE POSITION AND POWERS OF THE YANG DI PERTUAN AGONG

| | | |
|-----|----------------------------------------------------------|----|
| 3.1 | Introduction | 12 |
| 3.2 | Early Concept of the Malay Sultanate | 12 |
| 3.3 | The British Administration in Malaya | 14 |
| 3.4 | Position of Rulers After Independence | 15 |
| 3.5 | Present Position of the Yang di-Pertuan Agong | 16 |
| 3.6 | Powers of the Yang di-Pertuan Agong as the Head of State | 16 |

CHAPTER FOUR: DISCRETIONARY POWERS OF THE YANG DI- PERTUAN AGONG UNDER THE FEDERAL CONSTITUTION

| | | |
|-------|------------------------------------------------------------------------------------------------------------|----|
| 4.1 | Introduction | 18 |
| 4.2 | Appointment of the Prime Minister under Article 40(2)(a) | 18 |
| 4.2.1 | Interpretation of Article 40(2)(a) | 18 |
| 4.2.2 | Concluding Remark | 21 |
| 4.3 | The Withholding of Consent to a Request of the Dissolution of Parliament | 22 |
| 4.3.1 | The King and the Parliament | 22 |
| 4.3.2 | Concluding Remark | 26 |
| 4.4 | Requisition of Meeting of the Conference of Rulers by the Yang di-Pertuan Agong | 26 |
| 4.4.1 | The 1983 Constitutional Amendment | 27 |
| 4.4.2 | The 1993 Constitutional Amendment | 28 |
| 4.4.3 | Concluding Remark | 30 |
| 4.5 | The Yang di-Pertuan Agong's Power of Pardon | 31 |
| 4.5.1 | Members of the Pardons Board | 31 |
| 4.5.2 | The Yang di-Pertuan Agong to Act on Advice of the Pardons Board | 32 |
| 4.5.3 | Concluding Remark | 33 |
| 4.6 | Proclamation of Emergency | 34 |
| 4.6.1 | Meaning of Emergency | 34 |
| 4.6.2 | When Can Emergency be Proclaimed and Whether it is the Discretionary Power of the Yang di-Pertuan Agong | 35 |
| 4.6.3 | Powers of the Yang di-Pertuan Agong During Emergency | 37 |
| 4.6.4 | Revocation of Emergency | 38 |
| 4.6.5 | Concluding Remark | 39 |
| 4.7 | Implied Discretionary Powers | 40 |
| 4.7.1 | Right to Warn, Caution and Give Advice | 40 |
| 4.7.2 | Dismissal of the Prime Minister | 41 |
| 4.7.3 | Caretaker Government | 44 |
| 4.7.4 | Concluding Remark | 45 |

CHAPTER FIVE: CONCLUSION AND RECOMMENDATION

| | | |
|-------|--------------------------------------------------------------------------|----|
| 5.1 | The Analysis of the Discretionary Powers of the Yang di-Pertuan Agong | 46 |
| 5.1.1 | Appointment of the Prime Minister | 46 |
| 5.1.2 | Withholding of Consent to A Request for the Dissolution of Parliament | 46 |
| 5.1.3 | Requisition of Meeting of the Conference of Rulers | 46 |
| 5.1.4 | Power of Granting Pardon | 47 |
| 5.1.5 | Power to Declare Emergency | 47 |