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Limiting Prime Minister Tenure in Malaysia Parliamentary System of Government: From a Legal Point of View

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ABSTRACT

Malaysia Parliamentary system of government have practiced democratic governance since its first session in 1957. The Yang Di Pertuan Agong (YDPA) as the Head of State is empower by the Federal Constitution to appoint any members from Dewan Rakyat who in His Majesty judgement is likely to command the confidence of the majority members of Dewan Rakyat. Only 9 members of Dewan Rakyat have ever appointed to the position of Prime Minister since 1957 after 15 General election. Unlike Presidential system of government, which normally limit the tenure of a President to two terms of four years each, there is no limit on the tenure of any Prime Minister as long the appointment is according to the provision stipulated within Article 43 of Federal Constitution of Malaysia. The Constitution of Malaysia emphasize only two main priorities in the appointment of Prime Minister which can be summarize as the prerogative power of YDPA and the members of Parliament must hold the majority confidence of Dewan Rakyat. This practice has ensured democratic governance as its core function and confirming majority rule in Dewan Rakyat that become the main voice of people representatives. However, this practice may create another dilemma of bureaucratic polemic since it could allow any members of Parliament to clinch the power in such substantial tenure as long the members hold the confidence of the house of representative. Executive power can project immense power and the cloth of administration will enable unrelenting advantageous towards the people that wield it. This research intends to explore further the notion of limiting Prime Minister tenure in Malaysia system of government by reviewing its legality, practicality and rational. Doctrinal analysis from secondary sources is used in this research. This research found that limiting Prime Minister tenure acquire certain modification in our law and the initiative of political party. Research recommends further discussion on the tenure of Prime Minister in order to guide the law makers and public at larger of the importance of such notion.

Keywords: Federal Constitution, limitation, tenure, Prime Minister.

1. INTRODUCTION

Malaysia has established democratic rule since the first general election held in 1955, The Alliance party spectacular win by capturing 51 out of 52 Federal legislative seat beckoning the new era of independence for Malayan people. Tunku Abdul Rahman Putra Al Haj become the first Chief Minister of Malaya and the first cabinet members were appointed as minister for the new government begin their official duty to administer the nation. Dictate by the utmost responsibility towards the nation and the people of Malaya, our executive become the main pillar in exercising their solemn oath as dual executive which transcend into the echo of time balancing the need of people choice for their representative to govern them and royal institution

becoming the symbol of unity as the head of state. Parliamentary democracies system allowed the people of a nation to choose their representative or leader thru democratic free and fair election. After 5 years, the Prime Minister will seek an audience with the Yang Di Pertuan Agong of Malaysia requesting the dissolution of parliament in order to conduct new general election to choose the new government. This practice can be done much earlier than 5 year allocation of limit since there is no fix tenure for any government under the parliamentary system of government. The YDPA as head of State will act in his majesty discretion upon the request for the dissolution of Parliament but his majesty may accept or reject the request by the Prime Minister. After the dissolution of parliament, fresh general election will be held for federal parliamentary seat and qualified citizens will be allowed to become the candidate and electoral voters. Once the result is announced any political parties or coalition will have the opportunity to become the next government if they already captured at least a simple majority from 222 seats of Dewan Rakyat. However, the biggest question still remained unsolved since the position of Prime Minister is appointed not elected. His majesty the YDPA of Malaysia have the final say in appointing any member from Dewan Rakyat that in his majesty opinion have the confidence and support of Dewan Rakyat. Since there is no direct election, any members of Parliament as long they have enough support from the floor is eligible to become the next Prime Minister. This eventually led to this research which in essence focus on limiting the tenure of any prime minister in Malaysia democratic system of government. Objectively the research will review the legality of the position of prime minister, the rationality of limiting the term for any member of Dewan Rakyat to hold the position as prime minister and eventually evaluate the rationality to limit the term in more constructive understanding.

2. METHODOLOGY

Doctrinal analysis from secondary sources is used in this research. It is a qualitative work that relies largely on information that is readily available to the public, such as reports, research, publications, case studies, and legal reports. Each source that was received was subjected to in-depth analysis to provide an authentic and accurate evaluation, which was necessary to achieve the goal of the research.

3. RESULTS AND DISCUSSION

Malaysia establish parliamentary democratic rule since independence in 1957. This will ensure eligible citizen the right to vote their representative for parliamentary seat according to the respective constituent. Currently the Malaysian House of Representative also known as Dewan Rakyat comprise of 222 members from 13 states and federal territories. Any member of Dewan Rakyat pursuant to Article 43(2) (a) who likely in command of the majority confidence of Dewan Rakyat can be appointed as Prime Minister to preside over the Cabinet by his majesty the Yang Di Pertuan Agong of Malaysia. This lead to the notion that the position of Prime Minister is by appointment of Yang Di Pertuan Agong and not through election furthermore Article 40 (2) (a) empower the Yang Di Pertuan Agong alone to act in his discretion to appoint any member of Dewan Rakyat to the position of Prime Minister and this function is exclusively practice by his majesty alone without any interference from any branches and even the judiciary would not intervene in this matter since the court will not have any *Locus Standi* regarding this particular matter of appointment. The federal constitution only mentions one particular pre condition under Article 43(7) which limit any person who is a citizen by naturalization or registration under Article 17 of federal constitution shall not be appointed as Prime Minister of Malaysia. Federal constitution obviously delegates the power of appointment to the Yang Di Pertuan Agong, this is consistent with basic parliamentary concept that ensure check and

balance within executive branch that empower the head of state (YDPA) to appoint head of government (PM). However, it should be highly noted that his majesty must not involve directly in politics and serve only as neutral person in accepting or rejecting potential candidate who wish to become the Prime Minister. Any potential candidate must convince his majesty that he or she have the confidence the majority members of Dewan Rakyat, there is no specific method mention in the federal constitution however since the formation of the first cabinet in 1955 the political parties who won the biggest seat in parliament or any coalition that support any member of Dewan Rakyat will have the biggest chance to become the next Prime Minister.

Limiting Prime Minister Term

The basis of any limitation transpired thru any law that specifically limit or prohibit such measure. There is no specific provision in the federal constitution that mention such limitation. Federal constitution of Malaysia quiet explicit in term of the appointment and removal of Prime Minister however no specific provision appears regarding limitation. Furthermore, Members of Parliament (Remuneration) Act 1980, Houses of Parliament (Privileges and Powers) Act 1952 two most significant federal legislation regarding the members of parliament does not limit any term for members of parliament in office, with the exception of members of Dewan Negara that only have 6 year term. Consequently, Prime Minister is not a public servant by virtue of Article 132 that list down public services for the federation, which relate to the limitation as a public servant for mandatory retirement according to Pension Act 1980. Based on the basis of legality there is no law that limit the Prime Minister tenure in office; therefore it can be limited according to certain mechanism.

4. CONCLUSION AND RECOMMENDATION

Recommend further discussion on the tenure of Prime Minister in order to guide the law makers and public at larger of the importance. The Major concern on concentration of power which may lead to abuse of power must become the focal point discussion. Political harmony and stability will ensure growth in economic and social stability.

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