

**A LEGAL STUDY OF A CARETAKER GOVERNMENT IN
MALAYSIA**

Acknowledgement

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Abstract

When a Parliament dissolves, caretaker government is a government which rules the country at that point of time. In Malaysia, a caretaker government is referring to the previous government which continues to take up the office in a caretaker capacity without the need of taking an oath. The question that comes into mind is that can a government which has lost its legitimacy rule the country? Is the establishment of a caretaker government hold on to the concept of democracy which allows the citizens to elect their own choice of leaders through general election?

The only provision that is relevant with the establishment of a caretaker government is in Article 43(2) of the Federal Constitution. However, there is no mention of a caretaker government in the provision. The existence of a valid convention which has been adopted and applied in Malaysia can be said to have filled the lacuna of the law with regards to the caretaker government. By examining the relevant provision and the convention, it can be concluded that in Malaysia there is actually no law which particularly govern the establishment of a caretaker government.

Apart from that, the discussion in this project paper is being extended on the strengths and weaknesses of the current legal framework of a caretaker government in Malaysia, Bangladesh and New Zealand. In doing so, it is observed that perhaps Malaysia can implement the suitable laws in Bangladesh and New Zealand as to accord the situations in Malaysia with regards to the establishment of a caretaker government.

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CHAPTER ONE: PROPOSAL

1.0 Research Background

Malaysia is a country that practices constitutional monarchy with a system of parliamentary democracy. President Abraham Lincoln described democracy as a system of “government by the people for the people”¹. Democracy is known as a social contract between the citizens and the candidate of the party. In the current legal system of Malaysia, Federal Constitution points out on the separation of powers among the executive, the legislative and the judiciary. There is also a separation of powers in the sense that the bicameral Parliament in Malaysia consists of the Senate (Dewan Negara) and the House of Representatives (Dewan Rakyat). Currently, there are 193 members of the Parliament. The members of Parliament are elected through the simple plurality system of election. They are elected from territorially delimited single-member constituencies with the plurality voting by virtue of Article 117 of the Federal Constitution². The Dewan Rakyat holds the office for five years by virtue of Article 55(3) of the Federal Constitution³. Hence, it is required that the general election is to be held every five years.

Consequently, after five years the parliament would be dissolved and a new government would be formed. Before the new government is formed, the previous government would take place and act in the caretaker capacity. This is a convention which is adopted from the British. When the Parliament is dissolved, the previous government should not be allowed to continue to take the office due to the fact that the previous government has lost its parliamentary basis and legitimacy. If the previous government is required to continue to take the office after the dissolution of parliament,

¹ “Definition of Democracy” *Democracy Building*, 2004 <<http://www.democracy-building.info/definition-democracy.html>> (24 September 2012)

² For the election of members to the Legislative Assembly of a State the State shall be divided into as many constituencies as there are elected members, so that one member shall be elected for each constituency; and the division shall be made in accordance with the provision contained in the Thirteenth Schedule. *Federal Constitution*, Article 117

³ Parliament unless sooner dissolved shall continue five years from the date of its first meeting and shall then stand dissolved. *Federal Constitution*, Article 55(3)