

Malaysian Constitutional System

Contemporary Development and Challenges

PUBLIC LECTURE
IPOLS, FAKULTAS HUKUM
UINIVERSITI MUHAMMADIAH YOGYAKARTA
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Introduction

1. Malaysian Constitutional System

- Malaysian Federalism
- Constitutional Monarchy
- Parliamentary System

2. Contemporary Development and Challenges

- Political Factor
- Public Health Factor

Conclusion

MALAYSIAN CONSTITUTIONAL SYSTEM

Malaysian Federalism

- Federalism - (Latin) foedus; covenant, agreement
- In a federation member states are bound together by the covenant/agreement.
- The agreement is the federal constitution.
- Before a federation is formed the member states are separate independent countries.
- When these countries agree to agree amalgamate and become one nation/country, a federation is created/born.
- Thus, it can be said a federation is an association of states.

Malaysia is a federal country because it is established when several independent states (sultanates) and former crown colonies joined together to form an independent country in 1957.

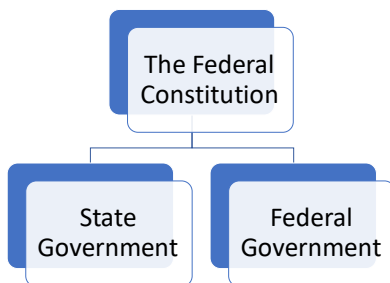


In 1957, as the colonial authority of the Malay States the British Parliament passed the Federation of Malaya Independence Act 1957. Subsequently the Federation of Malaya Agreement 1957 had been signed. The Independence Agreement was concluded on 5th August, 1957.

The parties to that Agreement were

1. Her Britannic Majesty, as the Sovereign of the then British Settlements (which later became States) of Penang and Malacca, and
2. The Rulers of the nine Malay States of Johore, Pahang, Negri Sembilan, Selangor, Kedah, Perlis, Kelantan, Trengganu and Perak.

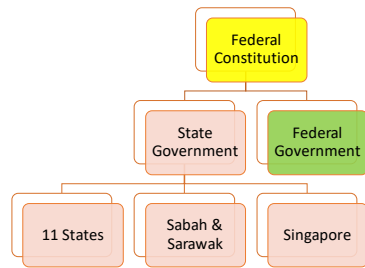
On 31st August 1957 the Federal Constitution came into operation, and the Federation of Malaya declared its independence.



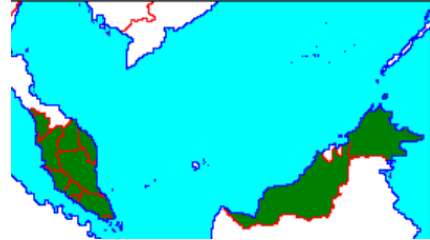
On July 9, 1963 the Governments of the Federation of Malaya, United Kingdom, North Borneo, Sarawak and Singapore signed the **Malaysia Agreement 1963**.

By this agreement **Singapore, Sarawak and North Borneo** would federate with the existing States of the Federation of Malaya.

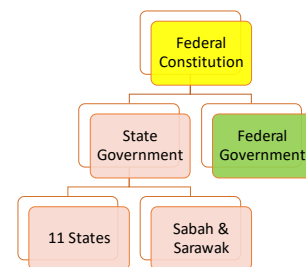
The federation would be called "Malaysia".



9



In 1965, Singapore left Malaysia and became an independent country



12



Division of Power to Govern the Country

The Federal Constitution of Malaysia Divides

Legislative power – Part VI: Article 74 & 9th Sch.

Executive power – Part VI: Article 80 & 9th Sch.

Judicial power – Article 121 & 9th Sch.

Financial Matters – Part VII & 10th Schedule
between

Federal Government	State Governments
List 1 (Federal List) of 9th Schedule	List 2 (State List) of 9th Schedule
Commerce & External Affairs	Religious affairs & Local Government

14

MALAYSIAN CONSTITUTIONAL SYSTEM

Constitutional Monarchy

‘Constitutional monarchy’
can be understood as
‘a state which is headed by a sovereign
who reigns but does not rule’.

A ‘constitutional monarch’ is

- a monarch who acts on ministerial advice/elected leader.
- a limited monarch - limited discretion.

Monarchies in Malaysia – The Malay Rulers = The King (Yang di-Pertuan Agong), Sultan, Raja and

Yang di-Pertuan Besar.

A Ruler though sovereign, has no autocratic or absolute power.

The Malay Rulers and the King (Agong) are not above the law.
They are bound by the Federal Constitution (The Law).

Parliamentary System

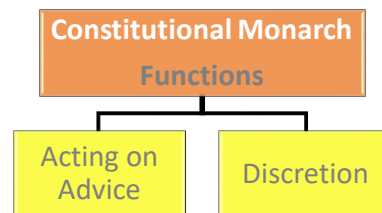
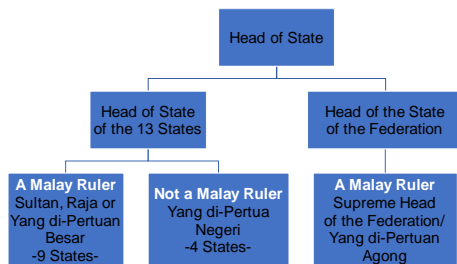
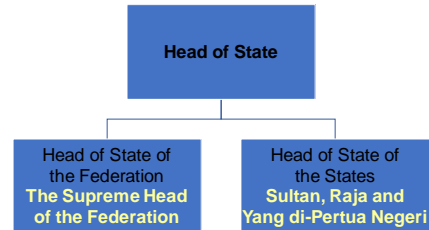
The monarchs are heads of state but they are not heads of the government.

Article 71(1) . Federal Guarantee of State Constitutions.

The Federation shall guarantee the right of a Ruler of a State to succeed and to hold, enjoy and exercise the constitutional rights and privileges of Ruler of that State in accordance with the Constitution of that State

Article 181. Saving For Rulers' Sovereignty, etc.

(1) Subject to the provisions of this Constitution, the sovereignty, prerogatives, powers and jurisdiction of the Rulers and the prerogatives, powers and jurisdiction of the Ruling Chiefs of Negeri Sembilan within their respective territories as hitherto had and enjoyed shall remain unaffected.



Acting on Advice

State Level The Rulers and the Governors	Federal Level The King
-ADVISOR- <ul style="list-style-type: none"> The Chief Minister or The Menteri Besar -Section 1 (1) of the 8th Schedule -Section 2 of the 8th Schedule.	-ADVISOR- <ul style="list-style-type: none"> The PM or member of the cabinet -Art. 40 (1) -Art. 40 (1A)

Yang di-Pertuan Agong

Article 40. Yang di-Pertuan Agong to act on advice.

(1) In the exercise of his functions under this Constitution or federal law the Yang di-Pertuan Agong shall act in accordance with the advice of the Cabinet or of a Minister acting under the general authority of the Cabinet...

(1A) In the exercise of his functions under this Constitution or federal law, where the Yang di-Pertuan Agong is to act in accordance with advice, on advice, or after considering advice, the Yang di-Pertuan Agong shall accept and act in accordance with such advice.

Sultan / Raja/ Yang di Pertua Negeri

8th Schedule

S. 1(1)

In the exercise of his functions under the Constitution of this State or any law or as a member of the Conference of Rulers the Ruler shall act in accordance with the advice of the Executive Council or of a member thereof acting under the general authority of the Council....

S. 1(1A)

In the exercise of his functions under the Constitution of this State or any law or as a member of the Conference of Rulers, where the Ruler is to act in accordance with advice or on advice, the Ruler shall accept and act in accordance with such advice.

Yang di-Pertuan Agong

Article 40 (2)

The Yang di-Pertuan Agong may act in his discretion in the performance of the following functions, that is to say:

- (a) the appointment of a Prime Minister;
 - (b) the withholding of consent to a request for the dissolution of Parliament;
 - (c) the requisition of a meeting of the Conference of Rulers concerned solely with the privileges, position, honours and dignities of Their Royal Highnesses, and any action at such a meeting,
- and in any other case mentioned in this Constitution.

The Malay Rulers

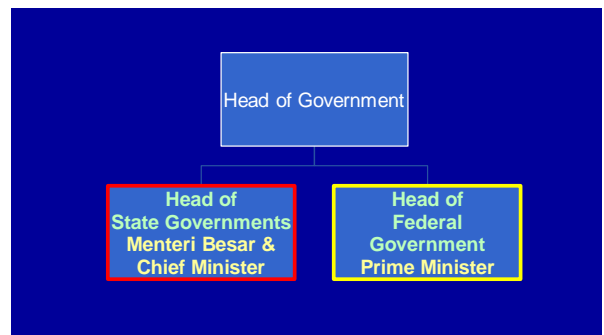
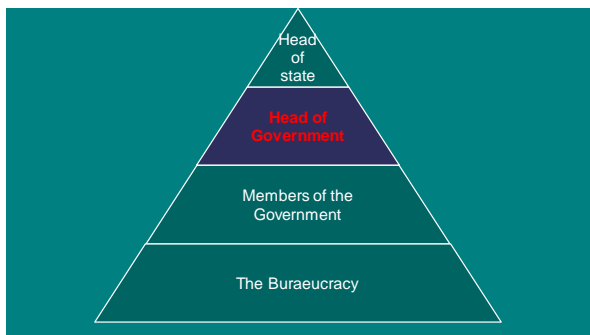
Section 1(2) 8th Schedule

The Ruler may act in his discretion in the performance of the following functions (in addition to those in the performance of which he may act in his discretion under the Federal Constitution) that is to say: :

- (a) the appointment of a Menteri Besar;
- (b) the withholding of consent to a request for the dissolution of the Legislative Assembly;
- (c) the making of a request for a meeting of the Conference of Rulers concerned solely with the privileges, position, honours and dignities of Their Royal Highnesses or religious acts, observances or ceremonies;
- (d) any function as Head of the religion of Islam or relating to the custom of the Malays;
- (e) the appointment of an heir or heirs, consort, Regent or Council or Regency;
- (f) the appointment of persons to Malay customary ranks, titles, honours and dignities and the designation of the functions appertaining thereto;
- (g) the regulation of royal courts and palaces.

MALAYSIAN CONSTITUTIONAL SYSTEM

Parliamentary System



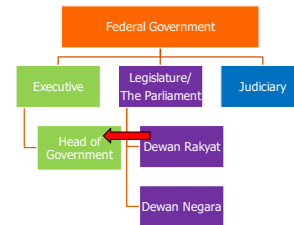
Appointment & Qualifications

A member of the House of Representatives
/A member of the State Legislative Assembly

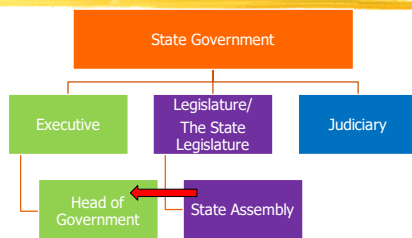
Parliamentary System

- The executive branch of government depends on the support of the legislative branch /parliament.
- If the legislative branch /parliament doesn't like the Prime Minister, members of legislative branch /parliament can cast a vote of no confidence and replace him.
- This tends to make the head of government/ executive leader subservient to the legislative branch /Parliament.

Appointment & Qualifications



Appointment & Qualifications



Appointment & Qualifications

A member of the House of Representatives
/A member of the State Legislative Assembly

Parliamentary System

- The head of government (the Prime Minister) must come from elected from the legislative branch and is chosen/determined by the legislative branch directly.
- Hence, there is no clear-cut separation of powers between the executive and legislative branches.
- The ability of a Prime Minister Menteri Besar/ Chief Minister to control the majority of the Dewan is important in order to ensure the stability of the government.

Parliamentary System and Accountability

Parliament serves as a locus of accountability and oversight in a democracy in at least two ways.

First, Parliament is the agency through which government is held accountable.

Second, elections are the mechanism through which parliamentarians are held accountable.

The actual workings of any Parliament will be governed by both of these considerations. Parliament is likely to hold government accountable with some view in mind of how it too will be held accountable in elections.

Head of Government

A. Prime Minister

- Perdana Menteri (Prime Minister) presides over the Cabinet

Article 43 (2) (a)

B. Chief Minister/ Mentri Besar

- Menteri Besar presides over the Executive Council

S 2(2)(a) 8th Schedule

Appointment Prime Minister

The Yang di-Pertuan Agong shall appoint as Perdana Menteri (Prime Minister) a member of the House of Representatives **who in his judgment** is likely to command the confidence of the majority of the members of that House.

Article 43 (2) (a)

The Yang di-Pertuan Agong **may act in his discretion** in appointing the Prime Minister.

Article 40 (2) (a)

Appointment Chief Minister/ Mentri Besar

The Ruler shall appoint as Menteri Besar a member of the Legislative Assembly who **in his judgment** is likely to command the confidence of the majority of the members of the Assembly

S 2(2)(a) 8th Schedule

The Ruler may **act in his discretion** in the appointment of a Menteri Besar.

S(2) (a) 8th Schedule

Appointment

The King/Sultan does not act with total freedom.

The Prime Minister/ Menteri Besar/ Chief Minister must be:

1. A member of the Dewan Rakyat/ the State Legislative Assembly
2. Able to command the confidence of the majority.

Qualifications Prime Minister

i. A member of the House of Representatives.

Article 43 (2) (a)

ii. 18 years (Minimum)

Article 47

iii. Not Disqualified to be a member of Parliament

Article 48

iv. Citizen by operation of law.

Article 43(7) - Article 14(1)

Qualifications Chief Minister/ Mentri Besar

i. A member of the Legislative Assembly.

S. 2(2)(a) of 8th Schedule

ii. 18 years

S. 5 of 8th Schedule

iii. Not disqualified to be a member of the Assembly

S. 6 of 8th Schedule

iv. Citizen by operation of law

S. 2(3) of 8th Schedule - Article 14(1)

Qualifications Mentri Besar (MB)

The Constitutions of nine states with Malay Rulers explicitly mentions that the MB must be a Malay and Muslim.

HOWEVER

In appointing a Menteri Besar the Ruler may, in his discretion, dispense with any provision in the Constitution of this State restricting his choice of a Menteri Besar, if in his opinion it is necessary to do so in order to comply with the provisions of this section.

S. 2(4). 8th Schedule

Qualifications Prime Minister

Unlike the Constitutions of nine states with Malay Rulers where the basic law explicitly mentions that the MB must be a Malay/Muslim, the Federal Constitution imposes no requirement of race, religion or region.

However, there is a convention in favour of a Malay appointee.

Qualifications Chief Minister

Unlike the Constitutions of nine states with Malay Rulers where the basic law explicitly mentions that the MB must be a Malay/Muslim, in states without a Malay Ruler there is no requirement of race, religion or region.

- Pulau Pinang, Melaka, Sabah and Sarawak –

PM/MB/CM

The status of the prime minister has been described as ***primus inter pares***: Latin for "first among equals."

This concept defines not only the prime minister's relationship with Cabinet, but also, in a sense, his or her relationship with the public in our modern democratic society.

Ablity to Command the Confidence of the Majority

When the party chooses its leader it is always with the understanding that if the party comes to power, he would be the Prime Minister.

In the early days at the Federal level, the role played by the Yang di-Pertuan Agong in appointing the Prime Minister has been no more than giving constitutional endorsement to the decision of the party.

'Party' here also mean the 'the governing coalition'.

Ablity to Command the Confidence of the Majority

It should be noted that the terms "party" and "coalition of parties" are not referred to in Article 43(2)(b).

The leader of the largest party in the House of Commons is by convention asked by the monarch to be Prime Minister and to form a government.

However it is not necessarily so.

Under the constitution, how a Prime Minister should or could command the confidence of the majority in the Dewan Rakyat is not stated.

Article 43(4)

If the Prime Minister **ceases to command the confidence of the majority** of the members of the House of Representatives, then,

unless at his request the Yang di-Pertuan Agong **dissolves Parliament**,

the Prime Minister shall **tender the resignation** of the Cabinet.

Hung Parliament

The term hung Parliament refers to a fragmented parliament in which no single party or single coalition party secures an absolute majority.

In the context of federal government or the Parliament in Malaysia, an absolute majority would mean 112 out of the 222 seats in the elected Dewan Rakyat.

In the states, the number of seats that form absolute majority depends on the total number of seats in the state legislature.

Governing without a Majority

The Yang di-Pertuan Agong/Sultan/ YDPN may install a "minority government".

This government lacks majority support. Thus, it will rely on ad hoc support from willing MPs to survive no-confidence motions, pass budgets and secure essential legislation.

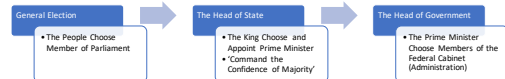
Minority governments is a weak government and generally lead to early dissolutions and fresh general election.

ALTERNATIVE
Informal Coalition
Unity Government (Cross Party)

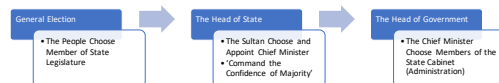
Contemporary Development and Challenges

POLITICAL FACTOR

Change of government Westminster System – Support in the Parliament FORMATION OF GOVERNMENT (FEDERAL LEVEL)



FORMATION OF GOVERNMENT (STATE LEVEL)



14th General Election To Elect

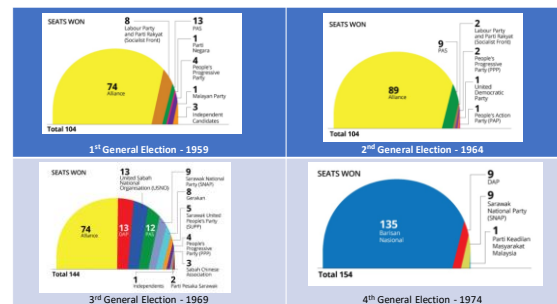
- A. Members of Federal Legislature (The Parliament) – 222 MPs/Seats
- B. Members of State Legislatures – 12 State Legislatures (Not Including Sarawak)

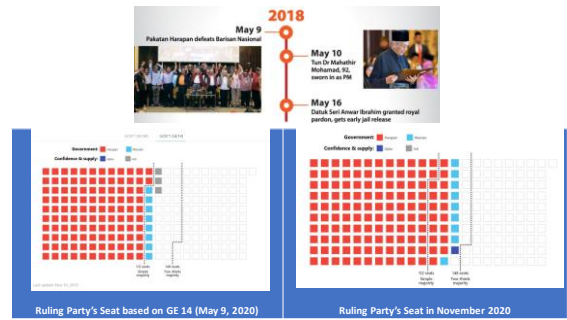
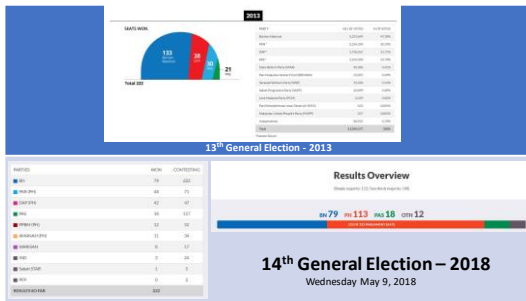
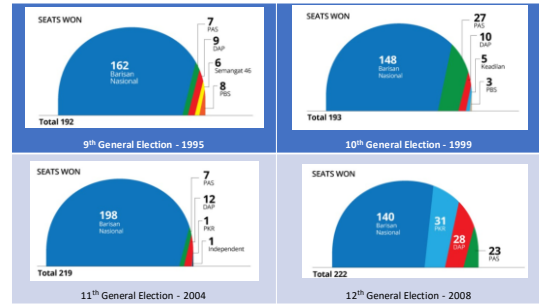
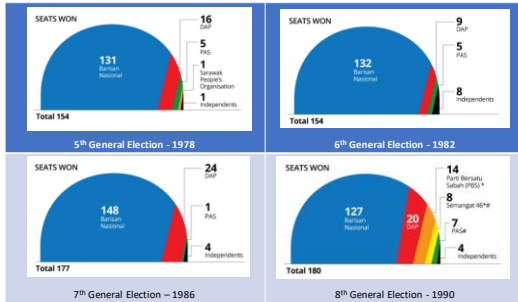
Change of Government after 14th General Election

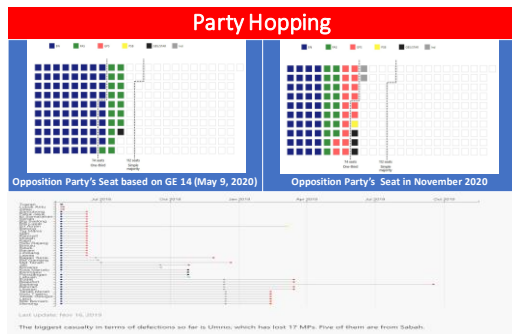
A. Federal Level

B. State Level

- i. Sabah
- ii. Perak
- iii. Melaka
- iv. Johor
- v. Kedah







2020: Twists and Turns of Malaysian Politics

WEDNESDAY – 25 March 2020

Even as the King meets the remaining MPs at the National Palace, Dr Mahathir appears on national television and says he is seeking to form a unity government of individuals who will set aside party politics and ideology.

But Mr Anwar says all 92 PH MPs back him as premier candidate, distancing the coalition from Dr Mahathir's plan for a government that includes all parties.

THURSDAY – 26 March 2020

Dr Mahathir agrees to return as Bersatu chairman, and says Parliament will meet on March 2 to allow lawmakers to vote on whether they want him or Mr Anwar to be the prime minister. Dr Mahathir says he is confident he has the minimum support from 112 MPs to continue as premier.

PH, meanwhile, rejects Dr Mahathir's plan for a government that abandons PH's coalition manifesto, while Umno briefs its 191 divisional chiefs on preparations for fresh polls.

2020: Twists and Turns of Malaysian Politics

MONDAY – 23 March 2020

The Prime Minister Dr Mahathir's party Bersatu, with 26 MPs quits the ruling PH coalition and 11 PKR MPs leave the party.

PH collapses as it needs at least 112 of the total 222 lawmakers in Parliament to remain as the government.

Dr Mahathir resigns as prime minister and Bersatu chairman.

The King accepts his resignation but appoints him interim prime minister until a new leader is chosen. The King, on the advice of the Prime Minister, dissolves all Cabinet appointments.

PH leaders announce their support for Dr Mahathir to remain as prime minister. Mr Anwar says Dr Mahathir was not involved in the political plot.

TUESDAY – 24 March 2020

The King, Sultan Abdullah Ri'ayatuddin, begins one-on-one interviews with lawmakers to determine who they want as the next prime minister.

2020: Twists and Turns of Malaysian Politics

FRIDAY – 27 March 2020

Morning

The Conference of Rulers meets the King to discuss the political crisis. The King, by this time, has the numbers on how MPs give their support, and who has the majority.

Afternoon

Malaysia's Parliament Speaker Mohamad Ariff Mohamad Yusof, dismissing Dr Mahathir's call for a special session for March 2, says there will not be any Parliament sitting that day unless the King says otherwise. In a rebuff to Dr Mahathir, Malaysia's King says he, and not Parliament, will decide on the next PM. The King also says he does not have confidence that any MP has majority support to form a new government, after meeting all lawmakers.

Bersatu says it will nominate Tan Sri Muhyiddin Yassin as its prime minister candidate. BN and PAS, with a total of 60 MPs, back Mr Muhyiddin as PM. With Bersatu's 36, this means Mr Muhyiddin has 96 lawmakers backing him.

But Mr Anwar says he has the numbers to form the government. He already has 92 MPs from PH but indicates that others are ready to defect to his side.

2020: Twists and Turns of Malaysian Politics

SATURDAY – 28 March 2020

9:24am: Interim PM Mahathir says he is confident he has the numbers needed to garner majority support in Parliament.

9:30am: PH coalition declares its support for Dr Mahathir as its candidate for prime minister, decrying efforts to install a "backdoor government involving kleptocrats and traitors".

10:00am: Bersatu's Mr Muhyiddin, PAS chief Abdul Hadi Awang, PAS secretary-general Takiyuddin Hassan and Umno president Ahmad Zahid Hamidi head to the National Palace for an audience with the King. They leave after 40 minutes.

1:52pm: Mr Anwar enters the National Palace, leaving 10 minutes later.

2:30pm: Mr Anwar tweets that he has handed over a letter to the Palace stating that PH now supports Dr Mahathir instead of Mr Anwar for the position of PM.

4:33pm: The King announces that he appoints Mr Muhyiddin as Malaysia's 8th prime minister.

2020: Twists and Turns of Malaysian Politics

Parti Pribumi Bersatu Malaysia (Bersatu) president Muhyiddin Yassin was sworn in as Malaysia's prime minister on Sunday (March 1, 2020)



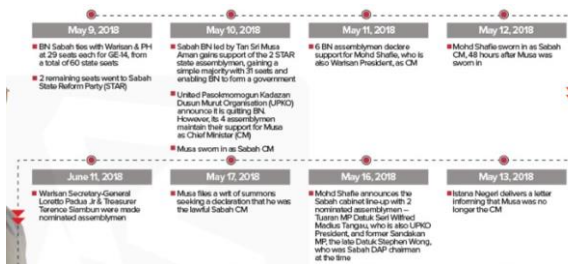
Contemporary Development and Challenges

B. State Level

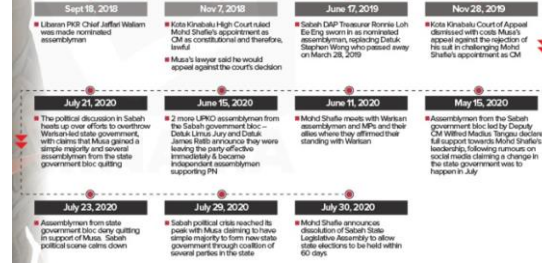
CHANGE OF GOVERNMENT AFTER 14TH GENERAL ELECTION

The State of Sabah

SABAH POLITICAL CHRONOLOGY POST GE-14



SABAH POLITICAL CHRONOLOGY POST GE-14



SABAH STATE ELECTION 2020
COURT GIVES NOD FOR FRESH POLLS

AUG 21

- The High Court dismissed the application by the 33 assemblymen for leave for a judicial review of the decision of the Yang Dipertua Negeri Tun Juhar Mahabidin in dissolving the state legislative assembly
- This paves the way for a fresh state election

RULING BY JUDICIAL COMMISSIONER LEONARD DAVID SHIM

- Sabah Chief Minister Datuk Seri Hamed Shafie Apdal is found to have acted within the Sabah Constitution in requesting Juhar to dissolve the state assembly
- Juhar is also found to have acted within the ambit of his constitutional power to dissolve the state assembly
- The proclamation to dissolve the state assembly is constitutional and valid

APPEAL

- The 33 assemblymen filed an appeal 5 minutes after the decision was made
- The group is led by former chief minister Tan Sri Musa Aman, assemblyman for Sungai Siboga

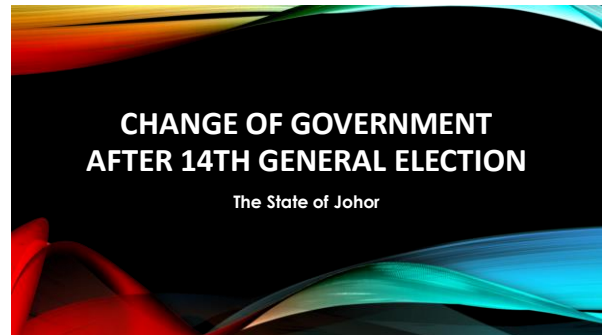
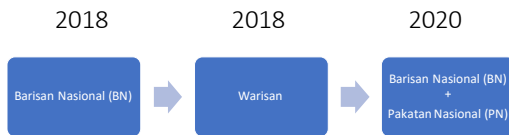
LAWYERS

- A TEAM OF LAWYERS LED BY TENGKU ENABUDDIN represented the applicants (33 assemblymen)
- SABAH ATTORNEY GENERAL BRENDON KETH SUI represented Juhar, Hamed Shafie and the Government of Sabah
- SENIOR FEDERAL COUNSEL SUZANA STANIS & NAWAZUL represented the Election Commission

SABAH STATE ELECTIONS TO BE HELD ON SEPTEMBER 26TH AND EARLY VOTING ON SEPTEMBER 22ND

Sabah State Election 2020 Result





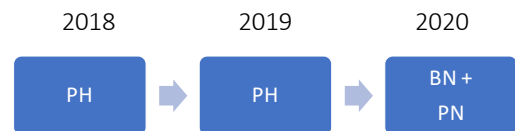
Osman Sapian was appointed as MB Johor after Pakatan Harapan (PH) won 36 state seats out of 56 in the 14th General Election (GE14).

Osman, who lasted just 11 months as MB Johor, informed His Royal Highness of his resignation as Johor menteri besar April 13, 2019.

Dr Sahrudin Jamal, an assemblyman from Pakatan Harapan (PH) was sworn in as Menteri Besar on April 14, 2019, replacing Osman Sapian.

In February 28, 2020 a new coalition government comprising PPBM, Umno and its Barisan Nasional allies, and PAS, to form the state government, following the break-up of the Pakatan Harapan coalition. The Sultan of Johor had summoned all 56 assemblymen in the state to hear their views and later said the new coalition had the support of 28 assembly members while PH had the support of 26. Last week, PPBM pulled out of the national PH coalition.

Hasni Mohammad is being sworn in as the state's new menteri besar.



CHANGE OF GOVERNMENT AFTER 14TH GENERAL ELECTION

The State of Kedah

Based on the 14th General Election (GE14) result, Datuk Seri Mukhriz Mahathir was appointed as he Menteri Besar after Pakatan Harapan (PH) was given the mandate to form a government in Kedah. The PH coalition won the 2018 general election with a simple majority of 19 reps versus 17 in the opposition. PAS led the opposition with 15 seats. Umno has two seats.

On May 17, 2020 Datuk Seri Mukhriz Mahathir announces his resignation as Kedah Menteri Besar.

A new state government had been expected for several days after Muhammad Sanusi Md Nor, a member of the opposition (PN), announced he had obtained the support of 23 state assembly members, more than sufficient for a majority in the 36-member state assembly to form a new Perikatan Nasional government.

He said those supporting PN had signed sworn statements. Two PKR assemblymen announced earlier they had quit their party to be independent members who would support Perikatan Nasional. PN had also obtained the support of four PPBM members.

Muhammad Sanusi was appointed on 17 May 2020 after Kedah Sultan consented to his appointment. The appointment was made under the provisions of Article 35 and 37(2)(a) of the Constitution of the State of Kedah after he obtained the support of the majority of the state assemblymen.

2018

PH



2020

PN +
BN

CHANGE OF GOVERNMENT AFTER 14TH GENERAL ELECTION

The State of Melaka

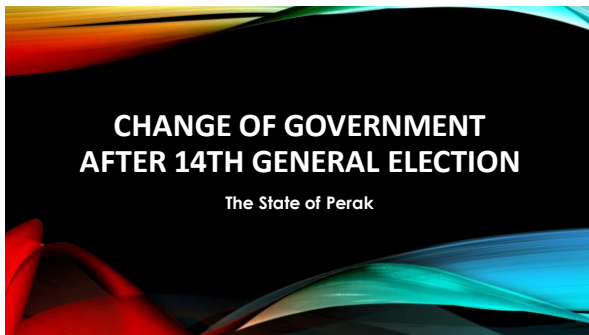
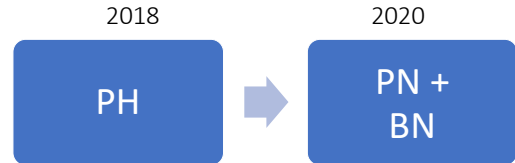
Pakatan Harapan had held a simple majority with 15 seats in the assembly, through DAP (8), PKR (3), Amanah (2) and PPBM (2), while Umno formed the opposition with 13 seats. Adly Zahari from PH was appointed chief minister on March 11, 2018.

In early March 2020 Adly had informed the head of state at a meeting of his government's loss of a majority in the state assembly. PH had originally 15 out of the 28 state seats in Melaka and it is now only left with 13.

He proposed for the state assembly be dissolved to pave the way for fresh state election. The call was in line with Article 7 (4) of the state constitution which states that any chief minister who loses the majority support through the vote of no confidence in a state assembly should resign from the position, unless the Yang di-Pertua Negeri on the chief minister's advice dissolves the state assembly. The office of the Yang Di Pertuan Negeri, Khalil Yaakob, said the request to dissolve the state assembly been rejected.

The Melaka state government has been told to resign after the collapse of the Pakatan Harapan coalition, and the Yang Di Pertua Negeri is to appoint a new chief minister to head a new government.

The new development saw 17 assemblymen expressed their support for PN and BN coalition namely, six from Barisan Nasional (BN); Bersatu (two); PKR (one) and Independent (one). Later Datuk Sulaiman Md Ali from Umno has been appointed as the new Melaka Chief Minister on Monday, March 9, 2020.



Ahmad Faizal Azumu was sworn in as Perak MB in May 2018 after GE14 under Pakatan Harapan (PH).

On March 9, 2020 Perak Mentri Besar Ahmad Faizal Azumu, announced that PPBM, Umno and PAS were forming a new state government under the PN coalition.

Faizal resigned as Perak MB on March 10 to make way for a new state government under a new mentri besar, and was sworn in again as mentri besar on March 13. In other words Faizal Azumu was sworn in as Perak MB for the second time in March 2020 under the PN government.

On 5th December 2020 Ahmad Faizal Azumu resigned today as the menteri besar of Perak, along with the state executive councillors after he lost a confidence vote in the state legislative assembly a day earlier. Five days later Datuk Saarani Mohamad, also from the same coalition, was appointed as the new Mentri Besar.



The Sultan of Perak, Sultan Nazrin Muizzuddin Shah

The frequent changes of government is not an achievement, but a reflection of failure among the political leaders.

The politicians' failure to gather solid support in ensuring a stable government will take a toll on the people's wellbeing.

The political crisis was not a history that the country should be proud of
The Sultan urged politicians to put a stop on acts that would cause instability to the state administration.

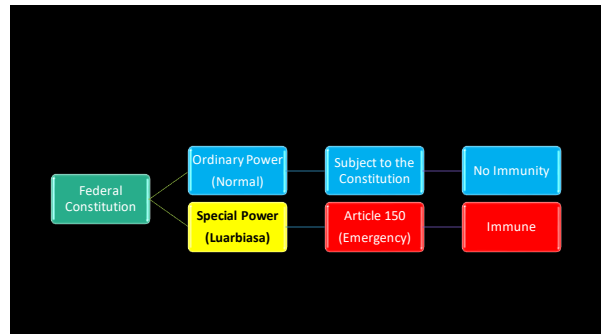
"It is a failure among political leaders in guaranteeing a consistent support so that we can focus on governing the state in the best interests of the people"



The COVID-19 had been declared as
the Public Health Emergency of International Concern (PHEIC)
 by World Health Organization

- The ongoing COVID-19 pandemic poses myriad challenges to constitutional regimes around the world. However, it is by no means the first time that public health emergencies have led to questions of constitutionalism.
- During emergencies, human rights are susceptible of being suspended or derogated. The flexibility and dynamism of the human-rights-derogation regime is also due to the unforeseeable nature of emergencies.

DR KHAIRIL AZMIN MOHTAR



Attempt to Proclaim Emergency

Prime Minister Muhyiddin met with the king at the monarch's residence in Pahang state on Friday afternoon on October 25 2020, hours after the prime minister convened a special cabinet meeting to discuss his plan to request that the Yang di-Pertuan Agong declare a state of emergency.

Prime Minister Muhyiddin Yassin sought the drastic measures following a recent spike in virus cases. Prime Minister argued emergency powers would bring stability to fight Covid-19 amid speculation they will lose a looming vote on the budget, which could prompt snap polls some fear could worsen the outbreak.

Under the constitution, the Yang di-Pertuan Agong has the power to declare a state of emergency if he is persuaded there is a grave threat to Malaysia's security.

Attempt to Proclaim Emergency

The Yang di-Pertuan Agong however later rejected the proposal by the premier to declare a state of emergency and suspend parliament to fight the coronavirus. Following a meeting of the Conference of Rulers on Sunday, October 25, the monarch was "of the view that there is no need at this moment for the king to declare a state of emergency in the country or in any part of Malaysia".

In highlighting the need for national unity politicians were urged to refrain from politicking and to seek conciliatory ways to resolve issues relating to the upcoming budget session. The King, in consultation with his brother Rulers had decided that as the situation in the country was well managed it was not appropriate to declare a state of Emergency.

Despite rejecting the request by the Prime Minister, the Yang di-Pertuan Agong praised the government's handling of the outbreak and urged politician to "stop politicking that could destabilise the country".

The General Rule

Applies to all parts of the country
EXCEPT Batu Sapi in Sabah

- All rights are protected at all times under the current legal regime of the pandemic in Malaysia.
- The laws that being used are ordinary laws.
- The law and regulations/orders are subject to the Constitution.
- Any provision of the law and its enforcement which are in conflict with the Constitution will be deemed illegal and unconstitutional.
- Article 4(1) applies.

Article 4. Supreme Law of the Federation.

(1) This Constitution is the supreme law of the Federation and any law passed after Merdeka Day which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void.

- The laws in Malaysia to deal with COVID19 Pandemic are not above the Constitution.
- The laws cannot be inconsistent with any part of the Constitution.

PREVENTION AND CONTROL OF INFECTIOUS DISEASES ACT 1988
Prevention and Control of Infectious Diseases Regulations 2020

The Exception

**Proclamation of Emergency
for Batu Sapi, Sabah**



The Background to the Batu Sapi By-Election

The Batu Sapi seat fell vacant following the death of Datuk Liew Vui Keong on Oct 2.

The polling date for the Batu Sapi by-election has been set for Dec 5. Election Commission chairman Datuk Abdul Ghani Salleh said a special meeting had fixed Nomination Day for Nov 23. Early voting to elect a new lawmaker for the parliamentary constituency in Sabah is on Dec 1.

The Election Commission (EC) could not postpone a by-election. Election Commission chairman Datuk Abdul Ghani Salleh said

"The Federal Constitution stipulates that the Commission must hold an election within 60 days after it falls vacant. This can only be postponed if the government declares an emergency. On our part, we can raise the issue and make recommendations if the Covid-19 pandemic turns for the worst. But it has to be the government that makes the decision".

On November 18, 2020, the Proclamation of Emergency based on Clause (1) Article 150 of the Federal Constitution was made by the Yang di-Pertuan Agong after studying the explanation given by Prime Minister Tan Sri Muhyiddin Yassin, who had presented his advice based on a decision taken at the Cabinet meeting.

The Prime Minister said

"The proclamation of emergency is only to call-off and postpone the by-election to safeguard the people's lives. The livelihood of Batu Sapi folks will not be affected. There's no curfew or administration ala army in Batu Sapi."



PUA 329/2020

PROCLAMATION OF EMERGENCY THE FEDERAL CONSTITUTION

PUA 330/2020

EMERGENCY (ESSENTIAL POWERS) ORDINANCE 2020