

A constitutional blunder by Najib

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COMMENT The first task that Najib Abdul Razak faced upon being sworn in as prime minister on May 6, 2013 after leading the BN to victory in the 13th general election, was to form the cabinet.

Constitutionally, the prime minister does not have a free hand in his choice of cabinet ministers. Article 43(2)(b) of the federal constitution provides that cabinet members shall be "members of either House of Parliament".

Traditionally, the cabinet is dominated by members elected by the people to serve in the Dewan Rakyat. However, prime ministers often do appoint a few cabinet members from the Senate (Dewan Negara).

malaysia parliament parlmen building 050907 frontIt is important to keep in mind that unless a person is a member of either House of Parliament, he cannot be a cabinet member. This is consistent with the position in other parliamentary democracies.

Further, our deputy ministers and parliamentary secretaries also have to be parliamentarians, as per Articles 43A(1) and 43B(1) of our federal constitution. Only political secretaries are exempt from this strict requirement.

It was therefore shocking to note the statement made by Paul Low on May 24 that he has not yet been sworn in as a senator. Yet he "purportedly" took the oath of office as a cabinet minister before the Yang di-Pertuan Agong on May 16.

Article 43(6) of the constitution reads: "Before a Minister exercises the functions of his office, he shall take and subscribe in the presence of the Yang di-Pertuan Agong the oath of the office and allegiance and the oath of secrecy set out in the Sixth Schedule."

The oath of office and allegiance that Low had to take under the Sixth Schedule of the constitution reads: "I,, having been appointed as a member of the Senate, do solemnly swear that I will faithfully discharge my duties as such to the best of my ability, that I will bear true faith and allegiance to Malaysia, and will preserve, protect and defend its constitution."

One other cabinet minister (Abdul Wahid Omar) and three deputy ministers who

have not been appointed senators also took their oath of office before His Majesty on May 16.

All these appointments are plainly and clearly unconstitutional.

If they uttered the words stated above in taking their oath of office before the Yang di-Pertuan Agong, they told an untruth because none of these five men had been appointed as a senator prior to becoming a minister or deputy minister.

Appointments cannot be backdated

Under the federal constitution, the sequence is plain and clear: one must first be elected by the people or be appointed to the Senate before one can become a minister; and not the other way.

If these ministers and deputy ministers have been discharging the functions of their office since May 16, they have been acting unconstitutionally.

Their appointments cannot be backdated. Neither can their actions be ratified in future. Rather, they have to be appointed to the Senate first, and thereafter required to take their oath of office again before His Majesty.

NONEThe lip-service the government and its officers paid to the federal constitution, which is the supreme law of the land and which overrides all other laws that are inconsistent with it, is again demonstrated by this blatant disregard of something so elementary and so well-established.

Since Merdeka, hundreds of ministers and deputy ministers have been appointed. One would have thought, therefore, that the relevant authorities would have a detailed checklist on the steps that have to be taken for such appointments to be made lawfully and properly.

Senior career officers in the Attorney-General's Chambers, the Prime Minister's Office, the Cabinet Secretariat and the Senate should have given proper advice to PM Najib, so that this debacle could have been avoided.

Much shame has been brought to our system of government by this monumental blunder. Immediate corrective steps must be taken to regularise the position, and an apology made to Malaysians.

Would anybody step up to accept individual or collective responsibility?

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