

Najib, repeal Section 9A of the Elections Act

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COMMENT BN chairperson Najib Abdul Razak's proposal to place the Election Commission (EC) under a parliamentary select committee (PSC) is a sign that he finally recognises that the national reconciliation we need is not one of communal nature between the Malays and the Chinese - not even one of geographical nature - but one of a political nature between those who reject and those who accept the integrity of the 13th general election, and hence the legitimacy of his claimed premiership.

Such a realisation should mean his and Umno's acceptance of the new political reality that the two-party system is here to stay, and that a roundtable between BN and Pakatan Rakyat - ala what the Polish Communists and the Solidarity union had in 1989 - should take place.

The 'Black 505' rallies cannot be cracked down by force as the police will not have enough lock-ups for tens of thousands of protesters. Race-baiting by Utusan Malaysia and Umno's ultra-nationalist agents won't work.

NONEIntimidation by state agencies from the police, the Malaysian Communications and Multimedia Commission (MCMC), to the Immigration Department won't work. The days that Malaysians would be cowed by the party state as helpless businesspersons before protection-fees-collecting gangsters are gone.

If anything, the Umno-BN's attempts to punish voters only reinforced the majority's rejection towards the regime.

The public's anger on the prevailing fraud can only be arrested if there are at least some guarantees that the 14th general election will not be a replay of May 5th. And the EC, which acts like the BN's 14th component party more than ever before, indeed tops the list of public discontent.

Flawed suggestion

However, Najib's PSC proposal is flawed in principle and practice.

Under the federal constitution, the EC is meant to be even more independent than the Chief Justice of the Federal Court, the president of the Court of Appeal, the Chief Judges of Malaya, Sabah and Sarawak, and all the judges in the Federal

Court, the Court of Appeal and the High Courts.

Under Article 122B, the Yang di-Pertuan Agong needs to act on the prime minister's advice in appointing these senior judges. However, under Article 114(1) of the federal constitution, the commissioners' appointment is theoretically made by the Yang di-Pertuan Agong only after consultation with the Conference of Rulers.

This intention is clearly to prevent the EC, whose job is to be the referees of politicians in elections from being controlled by the politicians themselves.

Hence, Najib's suggestion to put the EC under a PSC shows either his ignorance or disregard of the independence of the EC as intended by the constitution drafters.

NONE In practice, we have seen how the PSC on electoral reform worked under the dismaying leadership of Maximus Ongkili (left).

Despite the bipartisan membership, the panel lacked the political will to pursue real reforms and failed to take a stand on many issues. The most pathetic recommendation is to actually have another PSC on the electoral rolls.

Putting aside the question of constitutionality and constitutional design, unless Umno-BN is truly committed to electoral reforms, a PSC overseeing the EC will likely end up as an instrument to legitimise the EC's partiality.

One root cause of the EC's subservience to the power of the Executive is that the body has always been packed with retired senior civil servants, whose careers were to take orders from politicians rather than checking on them. Despite the constitutional provision that explicitly excludes the Executive in the EC appointment process, the Executive has been controlling it since Tunku Abdul Rahman's time.

The real test for Najib

If Najib is serious about national reconciliation - so his questionably-obtained 133-seat majority in the federal Parliament may be given the minimal acceptance and allowed to run the country until the next election is called - he should show his commitment to electoral reform on two things.

NONE First, he should join the growing public call for the current EC line-up to step down. No prime minister has the power to even advise the Agong on the sacking of the EC members. However, if Najib calls for the EC's resignation, certainly Abdul Aziz Mohd Yusof, Wan Ahmad Wan Omar (right) and their gang will have to go.

Najib can then propose a constitutional mechanism, after bipartisan negotiations and public consultations, to advise the Agong and the Conference of Rulers on the appointment of the EC members.

Second, Najib should see through that the 13th Parliament will rectify flaws in the current election laws, which affect a wide range of matters from voter registration, campaigning freedom, media access, political finance, electoral administration, to constituency redelineation.

Top on this priority should be the deletion of Section 9A of the Elections Act 1958. This section has effectively prevented fraud and errors in the electoral rolls from being challenged and corrected in the court once the rolls are gazetted. And the deletion of an inserted section is so easy, no additional technicality involved.

The section which stipulates that "after an electoral roll has been certified - or re-certified, as the case may be - and notice of the certification or re-certification has been published in the gazette as prescribed by regulations made under this Act, the electoral roll shall be deemed to be final and binding and shall not be questioned or appealed against in, or reviewed, quashed or set aside by, any court" was in fact inserted after the court announced the outcome of the Likas by-election null and void over discrepancies in the electoral roll.

NONE Until and unless this section is repealed, the previous discrepancies and fraudulent entries in the existing electoral rolls are likely to stay.

So, will Najib (left) allow this Section 9A to be repealed? Does Najib want real national reconciliation?

As the head of the BN's 133-member parliamentary delegation, Najib has three options on this. Firstly, he may initiate a government bill to this effect. Secondly, he may propose a PSC with concrete terms of reference (TOR) to correct this and other flaws in the election laws. Thirdly, he may allow a private member's bill to be tabled on this and throw his support on that.

Malaysians should keep their eyes on this, beginning June 24 when the Parliament is convened, not on another PSC.

