

Should the Agong decide the next PM?

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COMMENT The question posed by the Selangor constitutional crisis to all Malaysians is not about who is the best candidate for Selangor, or even whether a woman can be a head of government, but this: should the head of state be given the power to pick the head of government?

Specifically, should the Yang di-Pertuan Agong be given the power to choose the next prime minister of Malaysia after the 14th general election (GE14)?

In the 13th general election (GE13), 51 percent of Malaysians found that their votes could not put their favourite prime ministerial candidate in power, as a result of the Election Commission's amazing work in malapportionment and gerrymandering of constituencies.

If despite all the flaws and weaknesses of Pakatan Rakyat, the coalition wins an even larger vote share, say, 60 percent, to secure them a clear majority of 77 percent in Parliament, could it decide its own prime minister? Will the Agong ask each coalition party to submit two candidates for his consideration?

This is not imagination running wild, but exactly the consequence if the Sultan of Selangor now gets his way in choosing the next menteri besar.

After all, the provisions in the federal and Selangor constitutions on the appointment of the chief executive are similar. If the Sultan of Selangor can enjoy extra-constitutional power, why should the next Agong (the Sultan of Kelantan if GE14 is held after 2017; Sultan of Kedah if before) be denied the same power? How can His Majesty be stopped then if His Royal Highness cannot be now?

And the next questions: why do we need elections for, if the political parties contest only for the power to nominate a number of prime-ministerial candidates? How can we possibly have "responsible governments" if heads of governments are chosen, not by whether they command the backing of the legislatures, but by whether they please the palaces?

The very existence of parliamentary government and constitutional monarchy will then be called into question.

Power to assess, not to choose

Article 43(2)(a) of the Federal Constitution stipulates: "The Yang di-Pertuan Agong shall first appoint as Perdana Menteri (Prime Minister) to preside over a cabinet a member of the House of Representatives who in his judgment is likely to command the confidence of the majority of the members of the House."

In similar language, Article 53(2) (a) of the Selangor State Constitution stipulates: "His Royal Highness shall first appoint as Menteri Besar to preside over the State Executive Council, 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."

While Article 40(2)(a) of the Federal Constitution and Article 55(2)(a) of the Selangor Constitution provide for royal discretion in the appointment of the prime minister or menteri besar, the discretionary power is purely on the exercise of judgment on the commanding of "the confidence of the majority of the members" of the respective legislatures.

Such judgment is necessary only when it is not clear which party/coalition has the majority in the legislature. A head of state has no discretion in appointment, beyond the exercising of such judgment, and certainly the state constitution mentions nothing about his preference.

By asking the Pakatan Rakyat parties to submit more than one name, the sultan has acted beyond his constitutional power. He is effectively transforming his power to assess to the power to choose.

Instead of approving whoever commands "the confidence of the majority of the members of the assembly" (technically 29 assemblypersons at the minimum), the sultan is asking the parties to make themselves a shortlisting board and himself the final decision maker.

Hasn't this be done before?

The Sultan of Selangor is certainly not the first ruler who desires more power than a constitutional monarch is entitled to. So, why should we jump on this? If Umno has bowed on this before, why can't Pakatan Rakyat just do the same? Two reasons rule out our excuses for silence.

First, the majority bloc is crystal clear - Dr Wan Azizah Wan Ismail has had the support of 30 lawmakers since Aug 14 and this majority has not evaporated after 12 days, when the sultan made his unconstitutional request for extra names. To insist on an alternative candidate, the Sultan is openly sidelining and dividing the political parties - which are the basis of parliamentary government.

The severity of royal intervention into politics in this case can only be compared with the 2008 Terengganu constitutional crisis whereby the sultan appointed an Umno lone ranger, Ahmad Said (right), as menteri besar despite the objection from 22 other Umno lawmakers, who made up exactly a two-third in the House.

If the Terengganu constitutional crisis was not rectified because of the weakness of the prime minister Abdullah Ahmad Badawi, Umno and BN, Pakatan Rakyat must stand its ground now in Selangor. If Pakatan will do whatever BN does, then what is the point of

Selangorians voting for Pakatan to replace BN?

Second, the previous tussles - the Terengganu episode included - involved only the central party (Umno) and the state monarchs. Even when Umno/BN might be weak at the state level, it was strong enough at the federal level to decide its own top leader and prime minister. The accession of Najib in 2009 was decided by Umno, not by the Agong.

The same cannot be said of Pakatan now. Imagine this, in GE14, with the same Parliament's size, PKR wins 52 seats, PAS and DAP each win 59 seats and BN wins 62 seats, just exactly the same portion as in the Selangor Legislative Assembly (for convenience's sake, with Abdul Khalid Ibrahim being counted into the BN camp).

Will the Yang diPertuan Agong reject the common candidate, nominated by Pakatan Rakyat and solidly backed by PKR and DAP's 111 parliamentarians (exactly half), and request the three parties to nominate two candidates each for his consideration? Will PAS president Abdul Hadi Awang again try to broker a unity government between PAS and BN to be headed by Azmin Ali?

Poll over palace's MB

Clearly, Pakatan has no right to drag the nation into chaos in GE14 if the principle that the majority party/coalition decides the head of government cannot be even adhered to.

The question is not whether Wan Azizah is qualified to be the menteri besar. It is not even about what policies Pakatan can bring to Selangor. It is about whether Pakatan still believes in and is committed to parliamentary democracy, the very basis of constitutional monarchy.

If the answer is 'yes', then Pakatan must stand firm on its menteri besar candidate. It must not accept a menteri besar selected by and answerable first to the Selangor palace. It cannot be a party to any compromise that may sink Malaysia into disaster after GE14.

If PAS cannot commit itself to parliamentary democracy and constitutional monarchy, it should just leave Pakatan. Hadi would surely be more at home as a minister in BN than an opposition leader in Pakatan.

And if, despite a clear stand from Pakatan, the constitutional crisis still persists, Wan Azizah as the leader of 30 Pakatan lawmakers should call upon the caretaker Menteri Besar Khalid Ibrahim to seek dissolution of the assembly.

While the menteri besar-designate does not have the legality to do so, she has every ounce of legitimacy. And Malaysians who remember the 2009 Perak constitutional crisis will stand by her.

Pakatan must be brave to face the voters. It must be brave to defend parliamentary democracy and constitutional monarchy in Malaysia, rather than see the nation being

dragged towards chaos and instability by unscrupulous elected and unelected players.

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