Five questions on TPPA for Malaysian MPs
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COMMENT Finally, after more than two years of mystery, the controversial Trans-Pacific Partnership Agreement (TPPA) - "America's biggest secret" has been revealed to the public after persuasions from NGOs, the coalition group #bantahTPPA and opposition MPs.

Public protests, awareness campaigns and conventions have been organised, time and again, but none of them have succeeded in opening the eyes of the Malaysian government to the concerns of the general public on the new trade regime.

This prompted the group led by Muslim Youth Movement Malaysia (Abim) to file for a judicial review, on Nov 4, 2015, seeking a court order to stop Putrajaya from signing the TPPA on the basis that the agreement will cause adverse effects on the sovereignty of the Federal Constitution and our domestic legislation.

The suit was filed with the belief that the judiciary, as the supreme interpreter of the Federal Constitution, would take a position in protecting the basic structure of the constitution.

However, despite all the concerns expressed, the application for a judicial review was rejected by the High Court on the ground that the trade agreement was yet to be signed.

Role of the legislature

It is now up to those in Parliament to voice their concerns on the adverse impacts of the TPPA. Although it is a prerogative right of the executive, i.e. the prime minister to sign the TPPA, the special parliamentary session on the TPPA to be presented and debated must assure space for MPs to voice their opinions on the matter.

Here are five questions for our MPs, as they enter the first round of debates on the TPPA today.

1. Do our MPs fully understand and care about the TPPA?

Given the limited period of time before the parliamentary session begins, it poses a real challenge for our MPs to be well-prepared for any debate or discussion concerning the TPPA.

Are they making the effort to actually read the entire text of the TPPA? Apart from the fact that the TPPA text itself consists of 6,000 pages, have they come across all the documents of the negotiation process, which began in 2013, along with two documents on cost and benefit analyses by the Institute of Strategic and International Studies and consultant

PriceWaterhouseCoopers (PwC) Malaysia?

It is unfortunate for Malaysians if the MPs have no interest to treat the issue with paramount importance to begin with.

The people are now looking to the MPs to offer assurances and support concerning the impact of the trade regime on our country and the people as a whole.

2. Do our MPs understand the role of the legislature?

The ruling party in Malaysia uses the Chief Whip system to ensure that each MP votes in accordance with the party's policy when necessary.

Although the Chief Whip rarely issues official directives, government MPs often tend to follow the party's policy, risking its punishment if they dare to act in contradiction.

The scenario is totally against the principle of liberty and democracy to ensure the system of "checks and balances" as firmly written by Montesquieu: "When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner." (Book XI Chapter II)

In reality, internal conflicts pertaining to a political party's policies have posed as a hindrance to the MPs who try to uphold the separation of power doctrine, having been clearly-demonstrated in the fact that most MPs from the ruling party who contravene the government's stance in Parliament have been sanctioned.

The MPs must firmly fight for the doctrine of separation of powers, or risk Parliament becoming a dysfunctional institution when it comes to safeguarding the interests of the people.

3. Do our MPs think like statesmen or politicians?

The TPPA has long-term impact on all Malaysians, from one generation to another. From thorough and in-depth discussions, the TPPA is believed to be likely to have negative impacts towards the people at large.

Entire aspects of lives of the people, including culture, cost of living, employment, medication and the environment, are expected to be affected negatively when the TPPA binds Malaysia, and the effects will last for generations to come.

We have a choice regarding the direction that our country will take. It is either we leave our descendants an independent and better Malaysia, or a "Malaysia for sale" that may destroy their future.

The 19th century American clergyman James Freeman Clarke said: "A politician thinks of the next election. A statesman, of the next generation." Where do our MPs stand?

4. Will our MPs endorse the amendments of Malaysian laws to compromise with foreign investors?

After the TPPA is signed, the Malaysian government will be given a period of two years to deal with it according to our own national procedures and domestic laws.

Any provision in our own legal system which contravenes the TPPA will be amended so that it fully follows the aspirations of the TPPA.

This will include jurisdiction of the court, where the Malaysian court has no longer the power to decide on any dispute between foreign investors and the Malaysian government. The power of Investor-State Dispute Settlement (ISDS) stated in the Section B of Investment Chapter clearly speaks for itself.

The Federal Constitution is not limited to the issue of Islamic administration and special position of the Malays and Natives of Sabah and Sarawak respectively, as enshrined under Article 3 and Article 153.

Specific amendments to the current stucture will surely take place so that our national policy will not undermine foreign inverstors' interests.

Within the two years of ratification period, MPs will have no choice but to endorse any amendments to our legislation that may affect the foreign investors whereas the laws themselves are essential to protect the interest of Malaysians.

5. Do our MPs turn up as Malaysian representatives or as agents of foreign investors?

The “people first” mantra has always been a major theme in the manifesto of any political party. Certainly, those who turned out and voted for the 222 Members of Parliament had done so believing that the MPs would honour their promise to safeguard the interests of the people.

Hence, in deciding the TPPA, the MPs must walk the talk by taking the interests of the people as paramount and with utmost consideration.

The mandate by the MPs to vote on the TPPA was not obtained, but given to them, by the people.

Unlike foreign investors who come and go, the role of the people to determine the future of MPs is permanent. Thus, it is important for the MPs, regardless of any ideology, to offer assurances to speak up based on the interests of the people rather than those of foreign investors.

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