

The 'emergency': Agong's two options after he meets Malay rulers

Malaysiakini

24 October 2020

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The Yang di-Pertuan Agong will convene a meeting with eight other Malay Rulers on Oct 25 where they are expected to discuss the cabinet's request to declare an "emergency", reportedly to facilitate the battle against Covid-19 pandemic.

Malaysiakini spoke to several constitutional and legal experts and found that the monarch has at least two options when he finally has to make a decision.

The King can either accept any proposals presented by Prime Minister Muhyiddin Yassin or advise the cabinet to come up with other options.

However, the experts are at odds on how much autonomy the King has in deciding whether or not to declare an emergency.

The most popular view is that the King must ultimately follow the government's advice.

"My reading of the Federal Constitution and based on the Privy Council case of Teh Cheng Poh, the King has to accept the advice of the prime minister," said Lim Wei Jiet, a lawyer who specialises in the constitution.

He is referring to the case in 1979, where Teh challenged the legality of the Yang di-Pertuan Agong's proclamation of Penang as a security area. One of the decisions by the Privy Council then was that the King must follow the Executive's advice.

"They (Malay Rulers) can certainly suggest for the prime minister to advise the Yang di-Pertuan Agong of an alternative solution or different terms of the emergency," he said.

If the government gave more than one proposal, then the King may choose one that he feels is the best, according to Lim.

Fellow constitutional lawyer New Sin Yew also shares a similar view on what would be on the table for the sultans on Oct 25.

"By convention, the Yang di-Pertuan Agong is entitled to consult anyone before acting on the advice. So, the Agong could requisition the conference of Malay Rulers for the purposes of such consultation.

"Such consultation is to enable the King to exercise His Majesty's third role, to encourage and to warn His Government.

"The Yang di-Pertuan Agong has the right - indeed the duty - to counsel, encourage and warn His Majesty's government. His Majesty is at liberty to express his opinions on the proclamation of emergency and perhaps warn the prime minister against doing it.

"However, these would be entirely confidential between the King and the prime minister," he said.

He added that while the monarch can advise or warn the government, he must in the end act in accordance with the government's advice as required by Article 40 of the Federal Constitution.

"But it's not as simple as that. (The government) can't ignore the influence and power of our Royal Institution when it comes to decision making by the government."

'Decision is in His Majesty's hands'

Lawyer Surendra Ananth opined similar views.

"While the Yang di-Pertuan Agong might be able to discuss with the other rulers to give his feedback to the premier, I don't think he can refuse the advice of the prime minister at the end of the day," he said.

Surendra believes that the advice by a prime minister to His Majesty, however, can be challenged in court.

Meanwhile, constitutional expert and law lecturer Shamrahayu A Aziz said the King does not need to act immediately on the cabinet's advice.

"According to the principles of a constitutional monarch, the King has to ensure that whatever advice that is taken up to him is sound advice, which is accompanied by evidence and justified information for His Majesty to act on.

"The King is also entitled to request for more information and to advise the government," she said.

The associate professor at the International Islamic University Malaysia added that the King can request for the government to present their plan of action too, before agreeing to the advice.

She said proclamation of emergency is also not like the process of enacting a law,

which is enforceable within 30 days even without the monarch's agreement.

"This is about the power of the King as a constitutional monarch when he wants to act according to advice," Shamrahayu said.

When asked if the King has the power to decide on proclaiming an emergency, she said: "It is in His Majesty's hands".

It is not clear as of yet the scope or shape of the "emergency" declaration by the government. On the surface, it is reportedly an effort to combat the Covid-19 pandemic.

However, there is rife speculation that this is a political move to prevent the government's Budget 2021 from being defeated in the Dewan Rakyat next month.

Muhyiddin's Perikatan Nasional government currently has a slim two-seat majority - which is under threat from political manoeuvres by Umno and PKR.

Umno president Ahmad Zahid Hamidi previously claimed that "many" of his party's MPs are currently backing PKR president Anwar Ibrahim to be prime minister.

Separately Umno's Gua Musang MP Tengku Razaleigh Hamzah appeared to be pursuing a vote of no-confidence against the prime minister.

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