

## **LETTER | The Faustian bargain in restoring Bornean autonomy**

**Malaysiakini**

**09 April 2021**

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LETTER | On April 8, 2021, the Perikatan Nasional declared that Sabah and Sarawak will no longer be states but a 'Wilayah' (Territory) in the Federation.

The rule of law dictates that every law must be passed according to the constitutionally assigned procedures.

The Federal Constitution has made a clear provision that Sabah and Sarawak are states. I, for one, think that is historically unfair. This is the leitmotif of the failed MA93 constitutional amendment in 2019 which sought to restore the equal status between the Borneo States and Malaya.

Let us make it very clear. The concept of wilayah is absent in the Federal Constitution. To create a new constitutional concept requires constitutional amendments.

This has been done before when we created the Federal Territories of Labuan, Kuala Lumpur and Putrajaya. The Federal Territory of Kuala Lumpur was created in a constitutional amendment in 1973; Putrajaya in a constitutional amendment in 2001; Labuan in a constitutional amendment in 1984. All of which were passed by a two-thirds majority.

The deliberation is for good reasons. Any creation of new federal territories has far-reaching consequences in terms of power division in federalism.

There will be questions on federal-state power division, who is the head of religion, land matters, finance interpretational issues on different articles in the Federal Constitution.

Therefore, declaring Sabah and Sarawak as a 'Wilayah' puts us in a very dangerous situation. The country is in the thrall of arbitrary executive interpretation of what such a declaration might mean.

Does it mean Sabah and Sarawak will have more local jurisdiction in terms of immigration, education and petroleum royalties? Does it mean Sabah and Sarawak will no longer be governed by constitutional articles that govern the states such as Article 74, which says 'the Legislature of a State' may have legislative powers as stated in the Ninth Schedule.

Frankly, no one really knows, because there was no parliamentary debate, no Hansard, no ministerial explanation, no discussion. The effect of this declaration was totally up to the Perikatan Nasional government.

The upshot is the declaration is unconstitutional and should have no effect. But no one can say for sure unless we bring it to court.

This is yet another incident of the erosion of rule of law under the Perikatan Nasional government that has wrecked the institution with its emergency manoeuvre.

We must watch with caution and demand clarification on this declaration, whether or not we are for Bornean autonomy.

For if we don't object to the use of unconstitutional means when it is favourable to our cause, we won't be able to when it is not.

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