

## **COMMENT | Agong vs PM: Who is right?**

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COMMENT | A confrontation of sorts has occurred between the Agong and the prime minister over the issue of the annulment of the emergency ordinances.

On July 29 at noon, the Agong issued a statement rebuking de facto Law Minister Takiyuddin Hassan and attorney-general Idrus Harun for failing to honour their promise to allow Parliament to debate on the annulment of the emergency ordinances.

The Agong also expressed his deep disappointment that Takiyuddin had misled Parliament by claiming that the emergency ordinances were revoked on July 21 when the Agong had not even assented to it.

Retorting the Agong, Prime Minister Muhyiddin Yassin issued a statement in the same evening, pointing out that the cabinet did advise the Agong on July 23 to annul the emergency ordinances and that under Article 40(1) of the Federal

Constitution, the Agong was bound to act in accordance with such advice.

With that, Muhyiddin asserted that Takiyuddin did no wrong when he informed Parliament that the emergency ordinances were revoked on July 21 and that there was no need for Parliament to debate the matter.

So, between the Agong and the prime minister, who is right and who is wrong?

Let me unzip this conundrum.

### **Fundamental principle**

Before we go into the details, we must first recognise a fundamental principle of the Federal Constitution. And that is: Parliament is the supreme and ultimate authority to make laws.

It is in recognition of this principle that Article 150(2B) and Article 150(3) of the Constitution are written the way they are. I quote these clauses of Article 150 (Proclamation of Emergency) as follows:

Article 150(2B): "If at any time while a Proclamation of Emergency is in operation, except when both Houses are sitting concurrently, the Yang di-

Pertuan Agong is satisfied that certain circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as circumstances appear to him to require.”

Article 150(3): “A Proclamation of Emergency and any ordinance promulgated under Clause (2B) shall be laid before both Houses of Parliament and, if not sooner revoked, shall cease to have effect if resolutions are passed by both Houses annulling such Proclamation or ordinance but without prejudices to anything previously done by virtue thereof...”

We observe from Article 150(2B) that the Agong can only make laws during an emergency when Parliament is not sitting and not otherwise. In other words, the Agong, who acts on the advice of the prime minister or cabinet, only comes in as a surrogate legislator to relieve an emergency in such instances, and not as a permanent replacement of Parliament.

This is in recognition of the fact that Parliament, and not the Agong or the cabinet, is the rightful authority to make laws, and any law made to cater for an emergency situation during the absence of a sitting Parliament must be submitted to it for its endorsement or amendment or rejection in the first instant when it sits.

This is the reason why Article 150(3) is included – to allow Parliament to fulfil its such constitutional responsibility. For which, the prime minister's first duty when Parliament meets is to present the emergency ordinances for its scrutiny and decision thereon.

### **Bizarre attempt**

With this principle in mind, the cabinet's stealthy attempt to revoke these emergency ordinances only a few days before Parliament re-convened came as a shock to everyone.

Needless to say, such bizarre attempt to pre-empt Parliament from exercising its authority goes against the spirit of the Constitution and is a betrayal of Parliament. It must be condemned by all Malaysians.

Luckily, the Agong had the wisdom to see through such treacherous act against the Constitution and Parliament and advised the cabinet to desist and instead to submit the laws to Parliament to make its decision as demanded by the Constitution.

It is important to note that the proposed revocation was never signed by the Agong, neither has it been gazetted or enforced. As such, it remains an intent, not

law.

Besides, under the Constitution, such revocation of emergency ordinances promulgated under Article 150(2B) can only be performed by Parliament, or the Agong when the former is not sitting.

It was hence a despicable lie when Takiyuddin announced in Parliament on July 27 that all the emergency ordinances were revoked on July 21. Worse, when the prime minister and the cabinet abetted such lie with the statement to rebut the Agong.

One cannot help but wonder: Why should the Perikatan Nasional (PN) government try to deny Parliament its right to decide on these emergency ordinances?

The answer lies in an illegitimate government paranoid of exposing its lack of majority parliamentary support through a vote count in Parliament.

Revoking these laws before Parliament meets would have deprived the opposition the chance to expose the dishonourable self-serving intent behind the proclamation of emergency, leading to the emphatic rejection of such emergency and the subsequent ordinances by the House.

As it is through such dubious emergency rule, during which Parliament is suspended, that PN hopes to perpetuate its unconstitutional rule despite not having majority parliamentary support.

For having committed such gargantuan wrong against the nation, the prime minister and the cabinet must resign forthwith.

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