

Only Najib and his Cabinet will fall in no-confidence vote, say lawyers
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By V. Anbalagan

Only the Cabinet, and not the Barisan Nasional (BN) government, will fall in the event that a no-confidence vote against Datuk Seri Najib Razak succeeds, constitutional lawyers say.

Cabinet members will have to step down together with the prime minister upon the king accepting his resignation, or if he refuses to dissolve Parliament.

This will also be the case if the majority of legislators do not pass the budget.

Lawyer Philip Koh Tong Ngee said a political chief executive (prime minister, menteri besar or chief minister) could be voted out in a no-confidence vote or when the budget was not approved.

"In such scenario, (prime minister, menteri besar or chief minister) must report to the head of state. He can either request the house to be dissolved to hold a fresh election or tender his resignation," he told The Malaysian Insider.

Koh said should the request be refused, the prime minister must tender his resignation so that the head of state can appoint the replacement.

Cabinet members will go along with the outgoing prime minister, he added.

Koh had been a counsel in the legal battle between PAS's Datuk Seri Mohammad Nizar Jamaluddin in the dispute with BN's Datuk Seri Zambry Abdul Kadir, over who the rightful Perak menteri besar was following the ruling coalition's takeover of the state from the opposition in 2009.

On Tuesday, former prime minister Tun Dr Mahathir Mohamad urged BN lawmakers to join forces with the opposition to support a vote of no confidence against the prime minister.

Dr Mahathir had said that BN would still remain in power, since it had the majority in the Dewan Rakyat.

The Dewan Rakyat has 134 MPs from BN, 87 from the opposition, and one independent.

Communications and Multimedia Minister Datuk Seri Salleh Said Keruak, however, rebutted Dr Mahathir, saying the entire BN would fall if a no-confidence vote against the prime minister succeeded.

Salleh said Dr Mahathir's suggestion would only fulfil the opposition's dream.

As in the Perak constitutional crisis, Koh said the king would proceed to appoint another MP who in his judgment was likely to command the confidence of the majority of members in the house.

"A close reading of the constitution will reveal the appointment is blind to party lines, although MPs contest under the banner of a coalition or a political party," he said.

He said once a new prime minister was appointed, he would form a Cabinet to assist him to run his administration until the end of the parliamentary term.

Koh said there was the possibility of a unity government if the opposition bloc aided in the no-confidence vote against the incumbent prime minister. The new prime minister would be nominated from among BN MPs.

Former Bar Council president Ragnath Kesavan agreed with Dr Mahathir that BN would not lose power, as even without Najib's vote, the coalition had the majority with 133 MPs.

"Only 113 or a simple majority plus one is needed to oust the prime minister, and BN itself has the numbers," he said.

BN will still form the government until the Dewan Rakyat is dissolved in 2018 if their numbers do not split. – September 5, 2015.

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