

Affirming Malaysia's party-based government By WONG CHIN HUAT / The Star / 25 Dec 2022

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SHOULD our parliamentary governments be formed by individual parliamentarians or parties?

This is perhaps the most important debate about our political system that we need at this stage of democratisation. The answer we need is not a simple yes or no, but a whole package of measures that need to follow either choice.

The current government, now officially known as the Malaysia Unity Government, comprises Pakatan Harapan, Barisan Nasional, Gabungan Parti Sarawak (GPS), Gabungan Rakyat Sarawak (GRS), and Parti Warisan.

The Federal Constitution did not even originally recognise the existence “political parties”, arguably providing a case for individual parliamentarians forming the government; this also explains why prime ministers can be appointed by counting statutory declarations (SDs) signed by individual MPs.

In force since Oct 5, the Anti-party Hopping Law (AHL) – ie, insertion of the new Article 49A and amendments to Articles 10 and 160 – recognises the electoral mandate enjoyed by parties.

Article 49A states: “(1) Subject to the provisions of this Article, a member of the House of Representatives shall cease to be a member of that House and his seat shall become vacant immediately on a date a casual vacancy is established by the Speaker under Clause (3) if – (a) having been elected to the House of Representatives as a member of a political party:

(i) he resigns as a member of the political party; or (ii) he ceases to be a member of the political party; or (b) having been elected to the House of Representatives otherwise than as a member of a political party, he joins a political party as a member.”

The AHL, however, does not fully establish that governments have to be formed by parties. Nor does it say that decisions about confidence and supply matters – losing which will oust the sitting government – have to be party-based decisions.

Further, the AHL's power is also limited because MPs are not punished with seat vacation if they are involuntarily sacked.

Controversial agreement

The 15th General Election has laid down a good precedence – which, with repetition, may become a Constitutional convention – that government formation in a hung Parliament should be party-based.

This has been done in three steps: first, inter-party negotiation between Pakatan Harapan and Barisan Nasional to produce a core of exactly 112 seats, the simple majority that defeated the “115 SDs” claim made by Perikatan Nasional president Tan Sri Muhyiddin Yassin; second, the coalition government agreement (CGA) that laid down the coalition government's agenda and

rules; third, the confirmatory vote of confidence (COVC) that proved Anwar's parliamentary majority.

However, the COVC and every confidence and supply (ie, budget) vote in the future poses two difficult questions to the party-based government model.

First, should decisions on confidence and supply matters be party-based too? Second, if so, how to avoid clipping Parliament's power to check and balance the Executive?

If MPs can vote freely on confidence and supply matters, then such votes may simply become another form of SD trade, and the party-based government model may be buried in another Sheraton Move, this time on Parliament's floor. This is exactly what the five partners of the coalition government want to prevent, as spelled out in Clauses 4(a)-4(d) of the CGA.

How to enforce it? Contrary to widespread misunderstanding, the CGA is toothless to make its intentions a reality.

The tool of enforcement is – by way of amending party Constitutions – to make defiance of party directives in confidence and supply voting an act that would cause a lawmaker cease to be party member, hence losing his/her seat under the AHL.

Such an amendment to a party Constitution was already done by DAP and Amanah to bind their 48 MPs before the CGA. Barisan claims that their 30 MPs are also similarly bound by their pre-nomination agreement.

Hence, 70 other government MPs were free to vote against Anwar in the confidence vote motion on Dec19 without the risk of losing their seats.

The real effect of the CGA is that PKR, Barisan, GPS, GRS, Warisan and Upko would follow DAP and Amanah's footsteps to amend their respective party Constitutions. Can parties be trusted?

This begs the next question: are we trading in political promiscuity of individual MPs for tyranny of party bosses?

The amendment to DAP and Amanah's respective party Constitutions covers MPs, senators and state assemblymen for defiance of all party directives, beyond confidence and supply matters. Likewise, Clause 4(d) of the CGA claims that parties have prerogatives on how their MPs vote on "all motions".

The worst scenario is that instead of building party-based governments which the public can hold responsible, we unwittingly build a structure for an oligarchy of party bosses.

In such a dystopian scene, party bosses in coalition government control their MPs who are too afraid to even voice dissent for fear of losing their seats, and Parliament completely becomes a rubber stamp of the Executive, unless some coalition partners pull out to bring down the government.

This is not unthinkable. With unrestrictive power given to party bosses, a hung Parliament may see many parties of personality cults, and party bosses colluding to loot the state.

Strengthening Parliament

Hence, we need a proper debate and narrative on a "party-based government" that is based on a stronger rather than weaker Parliament.

This requires, first, that confidence and supply votes be strictly defined through a fixed term Parliament law to avoid the AHL being abused to build party bosses' unchecked power over parliamentarians.

Beyond that, parties should be truly strengthened so that their differences from each other are based fundamentally on programmes and policies, not on patronage or personality, which breeds corruption and power abuse.

This requires Parliament and state legislatures to be truly functional so that lawmakers can win votes by enhancing public interest through better laws and policies and more prudent budgets, instead of dispensing patronage.

If lawmakers are elected for the patronage they can deliver, then no AHL and by-election can deter party-hopping when it can bring more patronage. In the 2020 Sabah state elections, 11 out of the 17 party-hoppers who sought re-election in the same constituency won it, and 10 of them had earlier hopped to the federal government's side.

Here are 10 necessary reforms for implementation, or at least debate, in the next five years .

1. **Restricting loss of confidence through a fixed term Parliament law:** The AHL must be protected from abuse by draconian amendments to party Constitutions that can cause lawmakers to lose seats for defying any party instruction.

First, parties must not take away MPs' decisions beyond confidence and supply votes. Second, the government's loss of confidence must be explicitly and strictly defined, excluding the government's defeats in Constitutional amendments, legislative Bills and individual ministerial budgets.

Strict definition of loss of confidence can be provided by a fixed term Parliament law, which commits the government to serving the full term, unless early dissolution is justified by a loss of confidence or necessitated by a motion supported by a two-third majority.

2. **Parliamentary committees:** Setting up parliamentary committees to scrutinise ministries as well as broader issues can train both government backbenchers and Opposition MPs (collectively known as private MPs) to develop policy expertise and engage with stakeholders. This prepares them to be future ministers on one hand and raise voters' expectation on their delivery to go beyond constituency service and patronage on the other.

As committees should run all year long beyond parliament's session, the chairs and deputy chairs – from different sides of the divide – should be paid extra allowances.

3. **Shadow Cabinet:** By way of a parliamentary Act, the Opposition leader should be allowed to name a shadow minister for every minister, who shall be provided with a fraction of a minister's salary (drawing from Australia's example, it can be a third), the cost of a policy research aide and commensurate access to government information.

The shadow Cabinet should be sworn in at the Palace as His Majesty's Loyal Opposition. Providing them recognition and salaries can both incentivise them to be patient and wait for the next election to take power, and also raise public expectations of their alternative programmes and policies.

4. **Non-governmental business time:** The Dewan Rakyat should expand its sitting days from the average of 60 days in the two decades before the Covid-19 pandemic to at least 100 days, without cutting the number of hours per day.

And a quarter of that time (for example, afternoons of every Wednesday and Thursday) should be reserved for Opposition parliamentarians and government backbenchers, and the agenda should be set by a committee elected by them. This ring-fenced slot can allow for tabling of private member's Bills and reports by parliamentary committees.

5. **Equitable constituency allocations:** By way of a parliamentary Act, all parliamentarians, regardless of party membership, should be given the same amount of constituency allocation so

that the playing field in service provision is level.

6. **Public funding of political parties:** By way of the political finance law, all parties winning votes beyond a stipulated threshold in federal and state elections should be provided funds annually to reduce their dependence on private funders. And a fraction of this fund should be earmarked for policy development.

7. **Parliamentary Services Act:** One of the unfulfilled promises of the last agreement between government and Opposition, the Parliament Services Bill, should be tabled in February 2023 without delay to give Parliament administrative and financial autonomy.

8. **Parliamentary budget office:** As in the United States and United Kingdom, our Parliament should set up an independent budget office to provide independent evaluation of budgets and budget implications of policy proposals, so that Parliament and the public can make informed decisions and judgements.

9. **Elected senate:** Our Senate should be fully elected and transformed into a powerful guardian of state rights, with Sabah and Sarawak over-represented with 34% membership.

If senators can be elected on a party mandate via Closed-List Proportional Representation (CLPR), then parties can send technocrats to the Senate in preparation for Cabinet appointments.

10. **Electoral system change:** As the public increasingly wants to give parties a direct mandate, we should consider adding CLPR seats to the current first-past-the-post seats in the Dewan Rakyat. As Closed-List MPs elected from larger constituencies are better at issue representation than addressing local concerns, we may see a stronger Parliament.

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