

All MPs and Presiding Officers Should Firmly Defend Parliamentary Sovereignty

3 June 2021

We, the undersigned civil society groups, refer to the statement of the Speaker of Dewan Rakyat, Datuk Azhar Azizan Harun published by MalaysiaNow on 30 May 2021 and his interview in a local TV station on 31 May 2021. We are called upon to express our views as follows, in a hope that he will reconsider the position and direction he takes as the Presiding Officer of the Dewan Rakyat.

1. It is undeniable that the Speaker, Deputy Speakers and every Member of Parliament regardless of their ideological or political interests, have a responsibility to uphold the sovereignty and role of Parliament. Therefore, they should support efforts to ensure that Parliament can reconvene in a manner that maintains public safety so that it can continue to play its role in the management of the COVID-19 pandemic plaguing the country today.

2. We agree with Datuk Azhar Azizan Harun that the separation of the three branches of power is an important constitutional principle. However, embedded in the principle of separation of powers and our constitutional democracy is the mechanism of check-and-balance by the Legislature over the Executive, which, among others, is implemented through the legislative, representative and oversight functions of the Dewan Rakyat. It is clear that separation of powers and check-and-balance of Executive power can no longer exist when Parliament is suspended for an indefinite period of time.

3. The Yang di-Pertuan Agong in February of this year had already stated that Parliament could be allowed to reconvene during the Emergency period. Further, Deputy Speaker Dato' Sri Azalina Othman Said also recently proposed that Parliament can reconvene, alongside a set of SOPs that includes vaccinating all Parliamentary staff. Many leaders from various parties across the political spectrum have aired similar views. This indicates that there is buy-in from almost all the key stakeholders in the parliamentary process for Parliament to reconvene, and a willingness to come to an agreement on how to do so in a safe and legally viable way.

4. It is also undeniable that the process of preparing the Malaysian Parliament for virtual sittings is a challenging task. But the Malaysian Parliament can take a leaf from the practices of other countries that conduct virtual parliamentary proceedings, and also seek the advice from our country's own eminent legal experts on the ways to overcome challenges relating to cost, logistics and existing laws.

5. With regard to the issue of calling a parliamentary sitting, there is no provision in the Federal Constitution that prohibits virtual proceedings from taking place. In other words, the Federal Constitution is silent on the matter. However, the Standing Orders of the Dewan Rakyat need to be updated to allow for virtual proceedings. As such, the question becomes how to convene an initial parliamentary sitting to enable the necessary laws and regulations that need to be updated to be passed. There are possible options available that should be studied further. For example, could a parliamentary sitting be called in the normal manner under Standing Order 11 (1), but the "place" of the sitting be defined extensively so that it is not limited to the traditional chamber of the Dewan Rakyat?* Alternatively, the initial sitting can be held in the usual venue, but upon the consent of all political parties, only the necessary quorum or minimum number of members that is reflective of the balance between the parties in the Dewan Rakyat will be present for the tabling and approval of the relevant rule amendments. A further alternative (if Parliament can be convened within these last two months under the State of Emergency) is to include the necessary provisions into the Emergency Ordinance to enable virtual or semi-virtual

parliamentary sittings. The key factor in all these options is to secure the prior consent of all parties.

6. In a similar manner, the issue of breaching Article 62(5) of the Federal Constitution (which requires a Member of Parliament to be present in the Dewan Rakyat for the voting process) ought not to arise if all parties can reach a prior agreement that only the necessary quorum or minimum number of members that is reflective of the balance between the parties in the Dewan Rakyat will be present in the chamber and take part in the proceedings. If such an agreement cannot be reached, an alternative proposal is to examine whether the interpretation of Standing Orders 1, 2 and 11 of the Standing Orders of Dewan Rakyat (particularly words such as “place” and “seat” of Members) can be streamlined so that the conduct of sittings and proceedings of the Dewan Rakyat are not limited to the chamber halls in Parliament only.

7. Parliament has the power guaranteed by the Federal Constitution to determine its own procedures, subject to other provisions of the Federal Constitution (see Article 62 (1)). Standing Order 99A, in addition, provides that a failure to comply with the rules does not nullify the proceedings.

Our proposals here are not without their own challenges, but we offer them in the spirit of moving all stakeholders past the current deadlock and towards constructive discussions. The sovereignty of Parliament, and the role of Members of Parliament and its officers should be in lockstep, as they proactively take the lead in advancing the best interests of the rakyat.

Therefore, as a first step, we call on the Presiding Officers of Parliament and the leaders of the parliamentary party groups to meet and open discussions on reconvening Parliament. Members of Parliament, as well as the Speaker of the Dewan Rakyat and the President of the Dewan Negara as Presiding Officers, should jointly shoulder the responsibility of ensuring that that most important democratic institution, our Parliament, continues to function. A paralyzed Parliament is a paralyzed democracy. Where there is a will, there is a way.

This statement is initiated by the Seed Community for a Professional Parliament, a network of individuals active in civil society organisations, think tanks and academia working towards a professional Parliament that facilitates healthy policy competition between parties.

Signed by::

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