
A HISTORICAL PERSPECTIVE OF FEDERALISM IN MALAYSIA AND ITS EFFECTS ON THE CURRENT SYSTEM OF FEDERALISM

Raja Nur Alaini Bt Raja Omar
School of Business Infrastructure
Infrastructure University Kuala Lumpur, Kajang,
Selangor Malaysia
Email: ainee909@yahoo.com.my, TEL: 019-2404503

ABSTRACT

Federalism is a system of government where there is a clear demarcation of power between two levels of government. Unlike in a unitary state, each level has final authority and can be self-governing in some area. In Malaysia, after 12th General Election, there were many issues had arisen as to the running of the system after four states come under the administration of the opponent parties. This study examines the historical background of Malaysian federalism and the historical impact on the current system. It also seeks to analyse the pattern of the federalism in three phases that is, pre-independence, post-independence and after 12th General Election 2008 (GE). The pattern will be analysed based on decided cases and issues that arose between the federal and the states government especially the opponent states. This is to identify the relation between the history and federalism in Malaysia and to what extent the history affects the running of the system. The discussion would focus on the characteristics and the running of the system under the said phases. This thesis seeks to establish that the nature of the Malaysian Federalism has substantially changed from its ideal characteristics. This study argues that there is a lack of constitutional safeguards for the states since the Federal Constitution vests overwhelming power in the Federal authorities. The loopholes in the existing constitutional arrangements give room to the political power in limiting the power of the constituent states which is against the idea of federalism. This study suggests that the cooperative theory of federalism would fill in the gap by providing arguments to support a legal framework that would lead to a more cooperative and integrated federalism in Malaysia.

Keywords: Federalism, Historical Perspective, 12th General Election

INTRODUCTION

The Federal system was one of the major politically unified systems other than confederations and unitary system. Under this system there were two levels of government under which both federal and state governments were subject to the constitution. The powers of both governments were provided under the constitution and they been given exclusive powers on certain areas (Tunku Sofiah Jawa, Salleh Buang & Yaacob Merican, 2007). By that kind of arrangement, they would operate in an independent and coordinate manner. The federal system was said to be the most popular option after World War II. In Malaysia the system was firstly introduced in 1895 under the Federated Malay States (FMS). The system was formally adopted under the Federation of Malaya Agreement 1948 (FMA) after Malayan Union 1946 has been rejected by the Malays (Abdul Aziz Bari, 2006). At that time the federation was thought to be the best system to balance the need for centralization and the regional identity of the states.

PRE – INDEPENDENCE FEDERALISM

The earliest form of federalism in Malaysia was said to be the Negeri Sembilan's loose arrangements of nine different localities under the Yamtuan Besar. The office of the Yamtuan was seen as the unifying symbol, but such arrangement was not qualified to be called federal system under the modern definition of federalism. However as of fact we can say that the Malaysian federation was unofficially began with the traditional federation of Negeri Sembilan (Wu Min Aun, 1999).

The system was formally introduced by British in 1895 under the Federated Malay States (FMS) which unite four states, Perak, Selangor, Negeri Sembilan and Pahang to replace the resident system (Jayum A Jawan, 2008). It was also not a federation in true sense, but it just a mechanism used by British for the implementation of their policy in the states through the state councils chaired by the respective sultans (Mohamed Noordin Sopiee, 2005). The model of the federal system at that time was focusing on a strong central government that had sovereign power over its surrounding units. And this was the reason for the Unfederated Malay States (UFMS) in deciding not to join this federation (Muhammad Kamil Awang, 1998).

Malayan Union (MU) which was introduced in 1946 even did not bring the idea of federalism had some influenced on the running of the system in Malaysia (R. H Hickling, 1960). MU was an attempt by the British to introduce the unitary system (Wu Min Aun, 1997). Unfortunately, this idea was tremendously opposed by the Malay Rulers and the majority of the Malay community. But some of the characteristics of federation today have their roots in MU format. This includes the provision which allow the federal government to assume control over the states which indicates that the power lies on the central government (K. V Padmanabha Rau, 1986)

The unsuccessful Malayan Union proposal led the British to introduce the new political unification named the Federation of Malaya in 1948 under the Federation of Malaya Agreement. It was a federation to prepare for the self – rule before the independence of Malaya by aiming at the creation of a strong central government and to accommodate the states particularly the sovereignty of the Malay rulers (Mohd Amin Hassan, 1992). The federation may be considered a major achievement in state building in the third world which disallows the British decolonization in 1957. The federation exhibited a distinct division of powers between central and regional governments (Shaikh Mohd Noor Alam bin S.M Hussain, 1988).

The federation was able to survive intact until 1963 when it became the dominant part of a larger political entity even the three enterprises; Penang, Kelantan and Johore had posed a threat to the unified system. And it was learned that the monopoly of ‘system-transformation’ authority by the central government in Kuala Lumpur doomed the four secessionist movements to failure. The central government strongly opposed to any threat to the territorial integrity of the federation. Under the Federal Constitution 1963, Sabah, Sarawak and Singapore were given larger guarantee of state autonomy than given to the Peninsular States in 1957 (Kevin YL Tan and Thio Li-Ann, 2010).

POST – INDEPENDENCE FEDERALISM

Then, after independence 1957 the constitution of 1957 retained the federal nature of Tanah Melayu. During this time there was no bargaining between the states and federal government regarding the distribution of powers and revenues due to war on communist insurgency and the already weakened position of the states.

The Reid Commission was set up to make recommendations for the establishment of a strong central government with the states and settlements enjoying a measure of autonomy and with the consultation machinery between the two levels of government (Mohd. Aris Hj Osman, 1983). The commission was concerned more with how to resolve the conflict that may arise under the federal arrangement and they recommended for the establishment of the consultative machinery such as the National Finance Council. Thus, the commission was of the opinion to give the federal authorities with upper hand. (B Simandjuntak, 1969). The Reid Commission continued with the 1948 constitutional framework but the states rights and interests have been safeguarded in the form of senate’s power on constitutional amendments (Tun Mohamed Suffian, HP Lee & F.A Trindade, 1974)

The system was still maintained under the Federal Constitution of Malaysia after the formation of Malaysia in 1963. After Sabah, Sarawak and Singapore joined the federation, the name was changed from the Federation of Malaya to Federation of Malaysia (Abdul Aziz Bari, 2008). And even Singapore was asked to leave in 1965, the agreement in 1963 remained where both Sabah and Sarawak been given special positions under the federal arrangement (Robert O. Tilman, 1976).

FEDERALISM UNDER TUNKU ABDUL RAHMAN (1957 -1970)

The running of the federalism under Tunku Abdul Rahman was smooth except for some complaints by the state of Kelantan, Singapore, Sabah and Sarawak. The reason was most of the states were under the control of the governing party. After the General Election 1959, the cooperation between the federal government and the State of Kelantan became weak. The federal government failed to use the federal fund for the states which were under the control of the opposition. On the other hand, the opposition states reluctant to cooperate with the federal government fearing that the federal government using that for political purposes. Due to the crisis, the federal government failed to launch new land scheme in Kelantan even though they willing to bear the cost for that purpose. The state then introduced its own land scheme under the Kelantan State Development Authority (KSLDA) in January 1960. The same conflict also arised in the construction of the Sultan Yahya Petra Bridge. In this case, the budget was taken from the state government fund (Mohammad Agus Yusoff, 2006).

The Kelantan government also opposed to the joining of Sabah, Sarawak and Singapore into Malaysia. The state brought the case to the court; however the decision in the case of *Government of the State of Kelantan v The Government of the Federation of Malaya and Tunku Abdul Rahman Putra Al-Haj [1963] MLJ 355* was in favour of the federal government. In this case, the Kelantan Government argued that the Malaysia Agreement and the Malaysian Act enacted pursuant thereto were void. The said agreement abolished the Federation of Malaya. Thus the consent of each of the constituent states including Kelantan ought to be sought. However it was decided that the consent of the state was not required before the other states could join as part of Malaysia.

The scenario changed after the General Election 1964 (GE 2) when the Menteri Besar of Kelantan willing to cooperate with the federal government. The state accepted the fund from the federal government for the development of rural area. In 1967, the Prime Minister gave RM 1 million as a loan to the state. By that the federal government was seen to control the state (Mohammad Agus Yusoff, 2006). Among others, the federal government put a condition for the state to seek advice before declaring state budget. The state failed to follow this in declaring State Budget 1968. Thus the federal government denied the financial support to Kelantan except for the allocation provided by the Federal Constitution. Here it showed that the financial power given to the federal government gave advantage to them.

In the case of *Government of Malaysia v Government of the State of Kelantan [1968] 1 MLJ 129* the federal government claimed that the financial arrangement between the state and the private company, Timbermine Industrial Corporation Co Ltd was against the Federal Constitution under Article 111 (2). The states were required to get permission from the federal government before they could enter into loan arrangement. A state was not allowed to borrow money except from the federation or a federally

approved bank. However, the Federal Court decided that such financial arrangement with a private company to raise RM 2.5 million that was to be refunded or forfeited depending on the conditions was not considered as loan. The arrangement did not constitute 'borrowing' in violation of Article 111 (2) (S. Jayakumar, 1971)

After the General Election 1969 (GE 3), the emergency was declared in Malaysia and this gave the opportunity for the federal government to unite the political powers. In 1970, Barisan Nasional (BN) was formed and in September 1972, PAS joined as part of UMNO (Mohammad Agus Yusoff, 1995). This showed that by the proclamation of the emergency, the legislative power of the federal parliament becomes greatly widened if the two houses were not sitting as could be seen under article 150 (2B), (5) & (6). On the other hand, Article 150 (4) stated that the executive authority of the federation while the proclamation of emergency was in force might extend to any matter within the legislative authority of the state. The federal government used the opportunity to do any necessary things during the emergency period.

FEDERALISM UNDER TUN ABDUL RAZAK (1970 – 1976)

The conflict between the State of Kelantan and the federal government has been reduced after the Menteri Besar of Kelantan willing to cooperate with the federal government. At this juncture, both levels of governments were really cooperating and coordinating. Due to this, the federal constitution was amended in 1971 where the political party could not touch the sensitive issues in their election campaign anymore as provided under the Sedition Act 1971. These issues used to be the main agenda for PAS in the previous election campaign. (Mohammad Agus Yusoff, 2006). However after the General Election 1974 (GE 4) the conflict took place again when PAS disagreed with the appointment of Dato' Mohamed Nasir as new Menteri Besar of Kelantan (Ho Khai Leong and James Chin, 2001).

FEDERALISM UNDER TUN HUSSEIN ONN (1976 - 1981)

Under Tun Hussein Onn, the disagreement on the appointment of Dato' Mohamed Nasir lead to the declaration of emergency in Kelantan in November 1977 and PAS was kicked out from UMNO (Ahmad Atory Hussein, 1997). The emergency ended on 12 February 1978. Kelantan State Legistave Assembly was dissolved and the state election was conducted on 11 Mac 1978. UMNO won the election and the relation between the two levels of governments was improved. The development projects were brought to Kelantan for examples, Empangan Kemubu Project, FELDA and KESEDAR. (Mohammad Agus Yusoff, 2006).

FEDERALISM UNDER TUN DR MAHATHIR (1981 -2003)

When Tun Dr Mahathir was appointed as the fourth Prime Minister of Malaysia, all the states were under the leadership of BN components (B.H Shafruddin, 1987). However there were so many crisis happened under Tun Dr Mahathir leadership. First, the issue regarding constitutional amendment in 1983 where the government proposed to shorten the period given to the YDPA for giving consent to the bill passed by the parliament under article 66 (5) of the Federal Constitution from 30 days to 15 days. It was also been proposed that the power to declare emergency would be given to the Prime Minister. The compromise was achieved where the power to declare emergency was retained under the YDPA and the duration for giving consent to the bill was extended to 60 days. (Mahathir Mohamad, 2011)

The political crisis happened after the General Election 1986 (GE 7), where UMNO was declared as an illegal organization. Due to this, UMNO was splitted into New UMNO and Semangat 46. It could be said that the relation between the federal and state government was good until this crisis took place (Mohammad Agus Yusoff, 2006). In the General Election 1990 (GE 8), UMNO lost all its seats in Kelantan to Angkatan Perpaduan Ummah (APU). In consequence to that, the federal government put Kelantan under pressures by preventing the private firms to invest in Kelantan. Kelantan Menteri Besar and Chief Minister of Sabah were not invited to a meeting of Menteri Besar and Chief Minister in November 1990 to discuss about Malaysian Development Plan. In addition, they were terminated to be the chiefs of the State Security Council (Mohammad Agus Yusoff, 2006).

In 1992, the federal government introduced the Code of Ethics for Rulers to limit the rulers' power followed by the 1993 amendmend which abolished the rulers' immunity (Mohammad Agus Yusoff, 1995). The federal government also rejected the hudud law passed by Kelantan Government as it was against Article 75 of the Federal Constitution. The state government of Kelantan also failed to cooperate with the federal government and it was seen through failure of the KESEDAR project and issue on Pergau.

After the General Election 1999(GE 10), Terengganu failed under PAS and the state did ask the federal government to review the oil royalty but Tun Dr Mahathir firmly said that no state will be given more autonomy than the other states under the federation. The proposal to set up Islamic State was also rejected by the federal government. And to overcome the feeling of anti federal government, Jabatan Perpaduan Negara was set up to enhance the intergration among Malaysians (Mohammad Agus Yusoff, 1995).

Thus, it can be said that the federalisme under Tun Dr Mahathir was really centralized. The financial power of the federal government really been used to get the support from the states government as the federal fund became the main source of revenue for the state.

FEDERALISM UNDER TUN ABDULLAH AHMAD BADAWI (2003 – 2009)

Under Tun Abdullah Ahmad Badawi there was no big issue on federalism arisen. Among the issue was the failure of the federal government to continue the construction of the Kuala Krai – Kota Bharu Highway under RMK 5 which forced the Kelantan State Government to run the project by itself. The State also failed to cooperate with the federal government when the state rejected the grant for the improvement of Sekolah Pondok. The federal government also failed to get the approval from the state for the ECER project.

In Perak, the issue was on the appointment and dismissal of Perak Menteri Besar (MB). The Sultan of Perak appointed Dato' Seri Nizar Jamaluddin as MB. But the dispute arisen when two of the members of the Perak State Legislative Assembly from Pakatan Rakyat joined UMNO. The Sultan then appointed Dato Dr Zambry Abdul Kadir to replace Dato' Seri Nizar Jamaluddin as MB. The case was brought to the court but there were two different judgements given by the High Court and the Federal Court. The High Court ruled in favour of Dato' Seri Nizar Jamaluddin while Federal court decided otherwise.

THE HISTORICAL IMPACT ON THE CURRENT FEDERALISM UNDER DATO' SERI NAJIB TUN RAZAK

The federalism under Dato' Seri Najib was really challenging. The fall of the five states in PRU 12 (2008) to the opposition parties really changed the running of the federal system in Malaysia. Both federal and the opposition led – states tried to show their power as guaranteed under the Federal Constitution (Muhammad Yusuf Saleem, 2008). There were so many issues arisen particularly in Selangor (Muhamad Nadzri Mohamed Noor, 2009).

Among the issues were first concerning the Langat 2 Project. Selangor under Tan Sri Khaled Ibrahim failed to agree with the federal government on the said project to overcome the water shortage by not giving the state land for that purpose. He denied the allegation which state that Selangor would face water crisis in 2012 – 2013. He instead proposed to the federal government to restructure the water management in Selangor and would not agree to Langat 2 project until the restructuring process was in place.

The state government also banned the use of '1 Malaysia' logo in Selangor which was taken back after that since it was not a collective decision. From the incident we can say that the state government was not together with the federal government in promoting the concept of '1 Malaysia'.

The other issue was on the appointment of SUK Selangor, Mohd Khusrin Munawir. The appointment of the SUK was made by the National Chief Secretary. MB Selangor tried to amend the state constitution to return the power to appoint SUK to the Sultan but failed to get the required majority in the State Legislative Assembly. The appointment of Selangor SUK was given to the federal government after the amendment to the state constitution in 1993.

In Islamic matters, the state government of Selangor decided that the banning of the selling of liquor in Malay majority area as void. The ban was made by the Majlis Bandaraya Shah Alam (MBSA). The seller had been given the authority to sell liquor subjected to self-regulations. And in the case of Jabatan Agama Islam Selangor (JAIS) raid on the church at Damansara Utama Methodist Church (DUMC), the state government asked JAIS to make a full report on the incidence. It was said that the raid was done by JAIS and JAIS was under the control of the federal government, Jabatan Kemajuan Islam Malaysia (JAKIM). In both cases, it showed that even Islamic matters were under the State List but the conflict between the two levels of government still arisen.

The issue also arisen on the redevelopment project of Kelana Jaya Sports Complex. It was said that the proposed plan was based on the illegal version of Petaling Jaya Local Plan 2 which was against the original plan. Under the original plan, the said land was gazetted as recreation land and not commercial land which denied the commercial activities there. This situation gave pressure to the state government since the local government was under the state jurisdiction.

CONCLUSION

Looking to the history of the federalism in Malaysia, our federal system was central biased system (Shad Saleem Faruqi, 2008). The power of the federal government under the federal Constitution was really wide as compared to the states. Most of the important jurisdictions were given to the central. However the right of the states was also preserved under the said constitution following the recommendation under the Reid Commission Report 1957. But since merdeka, the power given to the federal government keep increasing instead of decreasing. This was because of the history of federalism which showed the intention of introducing the system was for the political unification among the states and a strong central government was needed to preserve the said unification.

This study showed that the history had great influence on the running of the system in Malaysia. In the early period after the formation of Malaysia, there were only small issues on federalism and the central really had real power over the states. The scenario became clearer under Tun Dr Mahathir Mohammad and there were so many federalism cases had arisen. But Tun

really preserved the central power, because for him giving more autonomy to the states would invite more problems on the running of the system in Malaysia.

However, after the General Election 2008 (GE 12), it seemed that the powers of the central government were challenged by the opponent – led states especially Selangor. And we can say that the federal government unlike under Tun Dr Mahathir did not really use the power given under the Federal Constitution. The opposition states on the other hand, tried their best to uphold their autonomy as guaranteed under the Federal Constitution. This led to the lack of cooperation between the two levels of government in Malaysia after GE 12.

REFERENCES

- Abdul Aziz Bari. (2006). *Malaysian constitution: A critical introduction*, 3rd reprint, Malaysia: The Other Press.
- Abdul Aziz Bari. (2008). *Perlembagaan Malaysia: Asas – asas dan masalah*, 4th ed., Kuala Lumpur: Dewan Bahasa dan Pustaka.
- Ahmad Atory Hussein. (1997). *Dimensi Politik Melayu 1980 – 1990, Antara Kepentingan dan Wawasan Bangsa*, 2nd. reprint, Malaysia: Dewan Bahasa dan Pustaka.
- B.H Shafuruddin. (1987). *The federal factor in the government and politics of Peninsula Malaysia*, Singapore: Oxford University Press.
- B Simandjuntak.(1969). *Malaysian federalism 1945-1963: A study of federal problems in a plural Society*, Malaysia: Oxford University Press.
- Ho Khai Leong and James Chin. (2001). *Unequal contest: Federal-state relations under the Mahathir's administration, in Mahathir's administration performance and crisis in governance*, Singapore: Times Books International.
- Jayum Anak Jawan. (2008). *Malaysian politics and government*, 5th ed., Malaysia: Karisma Publication.
- K. V Padmanabha Rau. (1986). *Federal Constitution of Malaysia: A commentary*, Malaysia: Malaysian Current Law Journal.
- Kevin YL Tan and Thio Li-Ann. (2010). *Constitutional law in Malaysia and Singapore*, 3rd ed. Malaysia: Lexis Nexis.
- Mahathir Mohamad. (2011) *A Doctor in the House*, Malaysia: MPH Group Publication .
- Mohamed Noordin Sopiee. (2005). *From Malayan Union to Singapore separation, political unification in the Malaysia region 1945 – 65*, 2nd ed., Kuala Lumpur: Universiti Malaya Press.
- Mohammad Agus Yusoff. (1995). *Pencapaian PAS dan UMNO dalam politik UMNO, 1959 -1990 dalam Perkembangan dan perubahan sosio - politik Kelantan, 1955 – 1995*, Malaysia: UKM, Bangi.
- Mohammad Agus Yusoff. (1995). *Pindaan Perlembagaan 1993 dan Imuniti Raja – Raja: Reaksi dan Penerimaan Masyarakat Kelantan dalam Perkembangan dan Perubahan Sosio-Politik Kelantan, 1955 – 1995*, Malaysia: UKM, Bangi.
- Mohammad Agus Yusoff. (2006). *Malaysian federalism, conflict or consensus*, Malaysia: UKM, Bangi.
- Mohd Amin Hassan. 1992. *Dalam Malaysia Warisan dan Perkembangan*. Dewan Bahasa dan Pustaka. Malaysia. Hlm.200
- Mohd. Aris Hj Osman. (1983). *Perkembangan perlembagaan Malaysia*, Petaling Jaya: Fajar Bakti Sdn. Bhd.
- Muhamad Nadzri Mohamed Noor. (2009). *Politik Malaysia di persimpangan, praktik politik dalam PRU 2008 dan Kontemporari*, Malaysia: SIRD.
- Muhammad Kamil Awang. (1998). *The Sultan and the constitution*, Malaysia: Dewan Bahasa dan Pustaka.
- Muhammad Yusuf Saleem. (2008). dalam *Abdul Rashid Moten, Government & politics in Malaysia*, Singapore: Cengage Pte Ltd.
- R. H Hickling. (1960). *An Introduction to the Federal Constitution*, Kuala Lumpur.
- Robert O. Tilman. (1976). *In quest of Unity: The centralization theme in Malaysia federal relations, 1957-1975*. Occasional Paper No 39. Institute of Southeast Asian Studies.
- S Jayakumar. (1971). *Constitutional law, cases from Malaysia and Singapore*, Singapore: Malayan Law Journal.
- Shad Saleem Faruqi. (2008). *Document of destiny: The constitution of the Federation of Malaysia*, Malaysia: Star Publications.
- Shaikh Mohd Noor Alam bin S.M Hussain. (1988). *Federalism di Malaysia*, Malaysia: Dewan Bahasa dan Pustaka.
- Tun Mohamed Suffian, HP Lee, F.A Trindade. (1974). *The Constitution of Malaysia, its development: 1957-1977*, 3rd. Impression, Kuala Lumpur: Oxford University Press.
- Tunku Sofiah Jawa, Salleh Buang & Yaacob Merican. (2007). *Tun Mohamed Suffian's: An Introduction to the Constitution of Malaysia*, 3rd. Ed. Selangor: Pacifica Publications.
- Wu Min Aun. (1997). *The Malaysian legal system*, Malaysia: Longman.
- Wu Min Aun. (1999). *Public law in contemporary Malaysia*, Malaysia: Longman.