

PARDON AND REMOVAL OF DISQUALIFICATION TO BE A MEMBER OF
PARLIAMENT

By
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Article 42(1) of the Federal Constitution provides:

“42. (1) The Yang di-Pertuan Agong has power to grant pardons, reprieves and respites in respect of all offences....committed in the Federal Territories...”

Cambridge English Dictionary explains the meaning of the word “pardon” as follow: *“If someone who has committed a crime is pardoned, that person is officially forgiven and their punishment is stopped.”*

“Reprieve” means “to stop or delay the punishment, especially by death, of a prisoner.”

“Respite” means “to postpone a sentence, etc”.

The meanings of the three words are overlapping. For our present purpose, it is sufficient to say that pursuant to Article 42, various types of “pardons” may be given. For example, if a person who has not served the prison sentence is “pardoned”, he does not have to serve the sentence. If he has served a portion of the sentence of imprisonment imposed on him, he does not have to serve the remainder of his sentence. A sentence imposed on a convicted person, such as death penalty, may be postponed, A sentence may be replaced by a lighter sentence. An imprisonment sentence may also be shortened.

The words “full pardon” are not used in the Constitution. However, if a person is granted a full pardon and to be released immediately, then, from the moment the order is made, he is a free man.

The granting of pardon, reprieve and respite does not mean that the conviction and sentence are extinguishment from the court record. The court order remains, however the offender is excused from serving the sentence.

The pardon should not be equated with a court order of setting aside, quashing, or a declaration of null and void. Only courts may make such orders.

However, whether the pardon extinguishes the conviction and sentence or not is of no significance in so far as the disqualification for being a member of Parliament under Article 48(1)(e) is concerned. What matters is whether a “free pardon” is given. If a free pardon is given, he is not disqualified. If not, he is disqualified.¹

¹ Added on 9th October 2018.

Note that Article 42 does not mention the relationship between pardon under the article and the disqualification or removal of a Member of Parliament. However, that is mentioned by Article 48(1)(e).

Article 48 (1)(e) provides:

48. (1) Subject to the provisions of this Article, a person is disqualified for being a member of either House of Parliament if—

(a)

(e) he has been convicted of an offence by a court of law in the Federation ... and sentenced to imprisonment for a term of not less than one year or to a fine of not less than two thousand ringgit and has not received a free pardon; or

.....

(3) The disqualification of a person under paragraph....(e) may be removed by the Yang di-Pertuan Agong....”.

Article 48(1)(e) states what causes a person to be disqualified. It also states the exception, that is, if the person gets a free pardon. Strangely, the words "free pardon" are not mentioned in Article 42.

The effects of both provisions, when read together, are:

1. A person is disqualified for being a member of Parliament if he has been convicted of an offence and is punished with imprisonment for a term of not less than one year or a fine not less than two thousand Ringgit. (Article 48 (1) (e))
2. If he receives a free pardon, he is not disqualified. (Article 48 (1) (e)).
3. If he does not receive a free pardon, the disqualification may be removed by the Yang di-Pertuan Agong. (Article 48 (3)).

What is the meaning of “free pardon”? The Constitution does not interpret it. Is it the same as a “full pardon”? That is a matter for the court to decide.

Under Article 42, the pardon is given on the advice of the Pardon’s Board. Is the Yang di-Pertuan Agong required to act on the advice of the Pardon’s Board in removing the disqualification under Article 48?

The Pardon’s Board is established under Article 42 for the purpose of that article only. No mention is made either in Article 42 or 48 that it applies to Article 48. Further, the removal of disqualification is not a pardon under Article 42. Therefore, I do not think that in removing the disqualification, the Yang di-Pertuan Agong is required to act on

the advice of the Pardons Board. Whether he has to act on the advice of the Prime Minister is another matter.

Therefore, a person who is disqualified as a member of Parliament under Article 48 (1) (e) who has not obtained a free pardon may apply for the removal of the disqualification pursuant to Article 48(3).

If his disqualification is removed pursuant to Article 48, even if he does not receive a free pardon under Article 42, he is eligible to contest in an election from the prison and become a member of Parliament. In fact, he could even become a Prime Minister if his party wins the majority of the parliamentary seats!

How will he attend the parliamentary sitting is another matter. Perhaps, the Prison Superintendent should see to it.

How will he carry out his duties as Prime Minister if he becomes a Prime Minister? We do not have to think about other options. If a prisoner could have been given a "full pardon" to enable him to contest in a by-election in order to become a member of Parliament, and, may be, a Prime Minister; certainly, a prisoner whose party has won the majority of the parliamentary seats (if that happens) and is agreed by the party to become Prime Minister, is in a stronger position to be given a free pardon! Based on the precedent, what is the reason for rejecting it? Whether the people want a convicted person to be a Prime Minister is again another question.

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