

PARDON AND REMOVAL OF DISQUALIFICATION TO BE A MEMBER OF
PARLIAMENT¹

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...”

Article 42 merely speaks about “pardon”. It does not speak about “free pardon” or “full pardon”. It does not even define pardon, whether it extinguishes the conviction and sentence, or not.

In fact, for the purpose of removing the disqualification for a member of Parliament, whether the pardon extinguishes the conviction and punishment or merely forgives him of his offence and from serving the sentence, is not relevant. What matters is whether he is given a "free pardon" or not. If given, he is not disqualified. (Article 48 (1) (e)). If not, whether the disqualification is removed or not. If removed, he does not lose his qualification too. (Article 48 (3)).

It is Article 48(1)(e) that connects Article 42 and Article 48. Article 48, in so far as it is material to our present discussion, 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. As the meaning of the words “free pardon” are neither defined in Article 42 or 48, it will be a matter for the court to interpret.

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However, where the Pardon's Board intends to grant a pardon to an offender with a view to enable him to stand for parliamentary election, the wiser thing to do is to use the term "free pardon". That will clearly except him from the disqualification imposed by Article 48(1)(e).

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)).

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(3), 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!

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(1)(e)?

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.

What if a "full pardon" is given pursuant to Article 42? As far as I can ascertain, the term "full pardon" is not mentioned anywhere in the Constitution. Does it mean the same thing as a "free pardon"? Again, that is a matter for the court to decide.

In trying to ascertain the meaning, I do not think it is just a matter of looking up the dictionary meaning of the word "full" and "free". What is more important is to try to ascertain whether the Pardon's Board did address its mind to the issue of enabling the offender to stand for a parliamentary election referred to in Article 48(1)(e).

If the answer is in the affirmative, then there is more reason to argue that they meant "free pardon" but due to human error, it was reported as "full pardon." The best evidence would be the voice recording of the meeting. In this era of openness, I am sure that is not too much to ask.

What if the offender himself had appealed for "full pardon" and the Yang di-Pertuan Agong, on the advice of the Pardons Board, "allowed" it? That too is a factor to be considered by the court in trying to ascertain the intention of the Pardon's Board and the Yang di-Pertuan Agong. In the final analysis, it is what the judges think. I am more interested in their reasons that their decision.

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