

RESIGNATION OF YANG DI-PERTUAN AGONG AND WHAT FOLLOWSⁱ

By
Tun Abdul Hamid Mohamad

On January 6, 2019, the 15th Yang Di-Pertuan Agong of Malaysia resigned from his office. No reasons were given. Nor will I guess.

I consider January 6, 2019 as a very important day for constitutional monarchy in Malaysia. It shows its maturity. If the YDPA, for reasons best known to him, thinks he is unable to properly discharge his duties as the YDPA, or even if he simply does not like the job, or he does not like the people he has to work with, or for whatever reasons, the right thing for him to do is to resign.

We know that a few days earlier the Rulers had an unscheduled meeting. We do not know whether they discussed about him or his position, what decision was made, if any, and whether it was communicated to him. If the answers to all these questions are in the affirmative resulting in his resignation, then that is a very dignified way of doing things.

Even Dato' Seri Najib, say what you like about him, handed over the government to Pakatan Harapan with dignity when his party lost the GE 14.

Compare them with the speaker of the Perak State Legislative Assembly after GE 13 who literally clung onto the speaker's table when the guards tried to forcefully remove him after he refused to vacate his seat, after his government lost its majority in the assembly. Even if he was of the opinion that his government still had the majority and/or he was stronger than the guards, he should have stood up and walked down with dignity, for, it was below his dignity, as a speaker, in official attire, to struggle with the guards, what more, finally, to be carried out of the assembly. He should seek other remedies.

I had expressed my opinion that it was not right for the YDPA to tell the newly sworn-in Prime Minister, Tun Dr Mahathir that he agreed to pardon Dato' Seri Anwar Ibrahim before the meeting of the Pardon's Board and to meet Dato' Seri Anwar Ibrahim, who was still serving his imprisonment sentence and told him that he would be pardoned, also before the meeting of the Pardon's Board. To make it worse, the YDPA even told Dato' Seri Anwar that he was being pardoned because of the injustice done to him. That was very demoralizing to the courts, the Public Prosecutor and the police as it made them look like the tools of the previous government. (See Pengampunan Dato' Seri Anwar Ibrahim dan Keadilan Kepada Saiful. (14 05 2018)).

The other disturbing thing that we read in the press during his reign is that the YDPA had held the swearing-in ceremonies outside the office hours. The controversial swearing-in ceremony of Tun Md Rauf as Chief Justice and Tan Sri Zulkefli Ahmad Makinuddin as President of the Court of Appeal for the extended period was done at night. So was the swearing-in ceremony of Tan Sri Richard Malanjum as Chief Justice. These are serious and solemn official functions. They should be done during office hours.

It is also hoped that, soon, the Rulers would elect a new YDPA who understands constitutional monarchy, federalism, rule of law, understands and respects the Constitution and abides by it.

Gone are the days of absolute power of the Melaka Sultanate. A constitutional monarch must realise that his powers come from the Constitution. It is the Constitution that gives the powers and limits them. It is the Constitution that determines how the powers are to be exercised.

Of utmost importance, some powers may be exercised at his discretion while others must be exercised on the advice of the Prime Minister. Constitutionally, the word “advice” has a different meaning from the word advice used in our daily conversation. It simply means that you have to follow the advice, the same way as the Malay Rulers had to follow the “advice” of the British Residents before Merdeka.

I am sorry if I make it sound so bad. That is the reality. You may wonder why. Call it the Englishmen’s way of doing things. After a long battle with their kings ending with constitutional monarchy that we adopt, the phrase “on the advice of” certainly sounds more diplomatic, more civil and more friendly than “as ordered by” or “as directed by” the Prime Minister!

There is another thing that the YDPA must know i.e. conventions. Constitutional monarchy cannot work without convention. There are things that the YDPA, like the King or Queen of England, must do even though, (in the case of Malaysia which has a written Constitution, England does not) the Constitution is silent on it.

A good example is Article 44 which provides:

“44. the legislative authority of the Federation shall be vested in a parliament, which shall consist of the yang di-Pertuan Agong and two Majlis (houses of parliament) to be known as the Dewan Negara (Senate) and the Dewan Rakyat (house of Representatives).”

By convention, after both the Dewan Rakyat and the Dewan Negara had passed a bill, the YDPA will give his assent to it. He is, by convention, not to refuse to give his assent. If this and other conventions were known and adhered to in 1983, perhaps the first constitutional crisis could have been avoided and the massive amendments to the Constitution were not necessary.

Usually, everyone, on assuming a new job goes through some kind of in-service training. I think the highest and most important job in the country should not be an exception, unless the YDPA is himself a lawyer. There is nothing to be ashamed of. It is better to learn earlier than to make mistakes later, what more when the mistake will affect the whole nation.

Coming now to the people. There is a growing tendency among the Malays to call upon the Rulers, through the Conference of Rulers to intervene in any matter, legal,

administrative or political in which they do not get satisfactory response or solution from the government.

Now, there is a trend to send memorandum to the Rulers regarding current political issues, calling on the rulers, through the Conference of Rulers, to intervene. It is important to remember that the Conference of Rulers was established for specific purposes. (Please read my keynote address “Majlis Raja-Raja: Fungsinya Menurut Perlembagaan Persekutuan” (19 September 2017).

It is important that the YDPA, Rulers, politicians and the people to know the powers and limitations of the various institutions in a constitutional monarchy and that the institutions should work within its boundaries and not be called to interfere in matters outside its jurisdiction.

What is most disturbing is the increase in rude and insulting comments on the YDPA and the Rulers in social media. There is a limit to freedom of speech. People who do not know, care or respect the limit or are simply “biadab”, should not be allowed to abuse it.

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tunabdulhamid@gmail.com
<http://www.tunabdulhamid.my>
<https://tunabdulhamid.me>

ⁱ Amended on 12 January 2019.