

Federalism in malaysia assignment



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The existence of federalism in Malaysian history dates back in 1895 during the establishment of the Federated Malay States which are the 'Protected States' of Klang, Negri Sembilan, Pahang and Perak. Federation of Malay then came later in 1948 with the unification of the nine Malay states and Settlements of Penang and Malacca by the British. Federal principle was described by K. C. Wheare as "the method of dividing powers so that the general and regional governments are each within a sphere co-ordinate and independent. His definition elaborates that under a federal system, there lies an autonomous sphere of power resides in each of the general and the regional government in which can be exercised independently of the other level. Wheare's definition on federal principle is the separateness of the central and regional authorities and this provides the distinction of a federal government from other forms of government. AN.

Dicey, also another scholar identified the three leading characteristics of a "completely developed federalism" herein includes the distribution of powers among governmental bodies (each with limited and coordinate powers), along with the supremacy of the constitution and the authority of the courts as the interpreters of the constitution. Throughout this circa 118 years since 1895, Malaysia has been evolving in the application of this federal principle, being practiced the federal parliamentary democracy with a constitutional monarch.

The objective of this paperwork is to analyse whether or not Malaysia is applying the true concept of federalism in which lies the occurrence of separate central and regional authorities. It is also to be taken as a main concern whether or not Malaysia is merely practicing a 'quasi-federation'

system. Facts and further analyses of distinguished authors will be provided to strengthen this paperwork with factual legitimates. Federal Constitution of Malaysia – An Overview In order to recognize the federalism in Malaysia, one has to know of the general essential attributes of federal governments despite its diversities.

A federation is (1) a formation of states association whereby a number of states, be it independent or semi-independent form an administrative unity of central government in matters dealing with certain affairs without jeopardizing their respective originates. In a federation there should also exists the (2) duality of government, which are the central government and the elected government of each states, provinces or cantons. This rounds up that both these governments (central and regional) are subjected directly to each citizen, I. E. The principle of “ non-centralization”.

Non-centralization can be done through a constitutionally-guaranteed diffusion of power. This diffusion of power, guarantees by enforcing it from being disturbed unilaterally. Hence, in matters pertaining to the amendments of any matter particularly in Malaysia, that involves boundaries of a state need the consents y the Conference of Rulers and legislature of the states concerned-I Federalism also connects interest groups in a durable, but limited union of mutual consent to secure each of their respective originates. This creates a sense of (3) semi-autonomous units.

In other words, state governments do not detriment their authority in regards to the entire matters of the federal government. They aimed in achieving the advantage of general interests on the government. (4)

Limitation of powers is also one of the attributes of a common federal system. Limitation of power amongst the legislative, executive, judicial and economic must be properly divided constitutionally. The division must be able to establish a federal relationship through union agreement in which division or sharing of powers is outlined meticulously.

The state of being that the Constitution holds the highest law of the land and regarded as the (5) supreme Constitution is of an attribute in generating a federal government. Constitutional dominion gives the guarantee Of a written Constitution in bringing forth the authority of power allocation between the federal and state government. Article 1 28(1) brings forth the sixth point of, (6) Judicial Review. Power has been vested to the superior courts in handle and judge issues independently.

It is to rule upon disputes and void any legislative or executive actions that do not comply according to the Constitution. (7) Amendment is also one of the key attributes in a common federal system. It is vital that the federal Constitution itself be durable against amendment occurrences except in extraordinary procedures. By Article 2(b) of the Constitution, “ Parliament may by law – alter the boundaries of any State, but a law altering the boundaries of a State shall not be passed without the onset of that State (expressed by a law made by the Legislature of that State) and of the Conference of Rulers”.

Last but certainly not of the least, (8) Equality has also been highlighted as the attribute of a common federal system, in which there should exist an equality of status amongst the States of the federation. Each of them are not

outranked of the other but worked in coordinating with each other. They should be “ equally supreme, equally represented in the Upper House of Federal legislature and fairly represented in the Lower House”. Malaysian Federal Constitution – The Principle The principles of federal set-up in the Malaysian Constitution will be brought forward and will then be discussed of its’ digress from these initial principles.

The Constitution has provided for both the level of federal and state on the separation of executive, legislature and judicial branches. The rights of the Ruler of the State on matters of constitutional rights and privileges is also guaranteed in which was stated in Article 71(1), as long as it complies to the Constitution of the state. Each state is also granted of a fully-elected one-chamber legislature lead by a Chief Minister. Federal principles also allow all States to preserve their own Constitution so long as it gives vital necessities provided for by part of the Eighth Schedule of the Federal Constitution. It has also been stated that the Federal List of 27 paragraphs deals with external affairs, defense, internal security’, citizenship, finance, trade, commerce, shipping, navigation, and fisheries on high seas. The State List of 13 paragraphs covers Muslim law, land tenure, Malay reservation, agriculture, forestry, local government, turtles and revering fishing. Although stated only in the State List on the matters of Islamic Law, it is not the case that it was dealt solely in the hands of State power. The jurisdiction is shared between Federal and State authorities.

The Federal Parliament deals with matters on Islamic pilgrimage, Islamic banking and tactful, as stated in several paragraphs of List I. State power on Islamic matters are listed in Schedule 9 List II, Paragraph 1. There also exists <https://assignbuster.com/federalism-in-malaysia-assignment/>

additional or Supplementary State List for Saba and Karakas in which includes the powers dealing with native law and customs, ports and harbors and in Saba, the matters of Saba Railway. Supplementary Concurrent List for Saba and Karakas also reaches to the extent to cover nine matters including shipping under 15 tons, charities and theatres.

Existence of Shari's court ruling, though it is primarily federal in nature, States had also been permitted in organizing their own Shari's courts in matters of Malay customs as well as Islamic principle in areas of Schedule 9, List II, Paragraph 1. Saba and Karakas has an add-on of Native Law and Courts. Federalism Practice in Malaysia – The Digression Although it is true from the points elaborated on the principles of Malaysia's Federal System that autonomy system has been exercised to the States, through a more analytical observation, one may uncover or notice the focus of centralization of power residing in the Federal government.

In contrast with the federal government, one may notice the limitations of power reside in the State government to be more limited than that of the Federal government. One may be able to observe that the partnership of both these governments is an unequal one and the Federal government may be able to impinge the State rights effortlessly. Digression means. Since we have already observed the margin of power centralization in Federal government, we may be able to track the means of their impingement towards the State government and one of them is through Constitutional amendments.

As we are all aware of, power of amending resides mainly in the Parliament which may make amendments in accordance to Articles 2(b), 159 and 161 e with two-thirds of majority from the members of Parliament, may amend the rights of States at will, except in the two cases of territorial changes to the boundaries of States under Article 2(b) and the rights of Sabah and Sarawak in which requires consent of States in the amending process. In matters pertaining to International treaties may also be useful in this digression.

Subject to Article 76(1)(a), Parliament may make laws with respect to any matter listed in State List for the sole purpose of exercising treaties with foreign nations, or any international organization's decision. But in compliance with Article 76(2), if ever it affects the Islamic law or racial customs or native laws in Sabah and Sarawak, then there is a duty to consult with the States concerned. One of the most vital area that was used as means of digression in this matter is on the subject of Fiscal matters; or financial grounds of the nation. Majority of taxes be it direct or indirect belongs to the Centre (Federal government).

Nevertheless, in Article 109 and Article 110, Constitution guarantees money compensations to states in form of Capitation Grants and State Road Grants. States are also eligible to be funded from other revenues such as sources from land, mines, Katz, and fitter. Sometimes, these funds seem to be of insufficient and further allocations of conditional grants will be made. However, it is deem notable that states under opposition parties may have a difficult time in getting approval of these funds for the running of their programmer. Funds that are collected by the Central reflects on a federation with high degree of tax concentration.

There will also be the occurrence Of “ fiscal gap” which deals on the far contrasts of both the states’ domestic revenue and their expenditure. They also subject to another alternative of fiscal control whereby they do not allow state to raise or borrow money except from the federation itself or a federally-approved bank such as the case in Article 11 1 (2) & (3). It is also worth the attention to note that federal prevalence in functions and resources is less prominent in the states of Saba and Karakas. In the contents of the Constitution itself too, it had already been devised a plan on overriding state laws such as in Article 75.

Article 75 states, “ If any state law is inconsistent with a Federal Law, the federal law shall prevail and the state law shall, to the extent of inconsistency, be void”. This Article is probably meant to be applicable only to matters dealing with the Concurrent List or to land and local government as stated in Article 76(4). However, scholarly opinions suggested that the implications on Article 75 states that if ever there shall be a conflict between the Federal and State government, the federal law ought to prevail.

Conclusion In regards to the observation and analyses brought out, it may be observed that despite establishing a strong, but most definitely not true but quasi- Federal government, the authority of the Constitution provides central government with branches of alternatives in state matters. Allocations of financial powers though were tilted in favor mostly on the central government; state revenues were also somewhat not neglected. We may also be able to recognize the power of Malaysia’s federal government in sense of their centralization of power residence.