

The notion of constitutional supremacy law constitutional administrative essay

Law



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The notion of constitutional supremacy

Constitution is the rule to country. According to the Federal Constitution of Article 4(1) , this Constitution is the supreme law of the Federation and any law passed after Merdeka Day which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void. (Federal Constitution 2012 . P. 4) Constitutional supremacy define as a doctrine where by the constitution is supreme and the government rule in accordance with the constitution and at the same time the power of government is limited by constitution so that the government will not simple punished a person without a reason and the <https://assignbuster.com/the-notion-of-constitutional-supremacy-law-constitutional-administrative-essay/>

rule of the law is more powerful than the government. Therefore, the law power is much more than the government and they also cannot just simple change the law while it is already fixed. Furthermore, the Constitution supremacy gives the court the power to oversee the executive and legislative act of the country. (Azrin Hafiz, 2011) Malaysian Constitution exist because ensure political to be stable all the time, prevent people behave violence, to ensure fairness to all people in the country, and to maintain special rights for Malays communities. According to Article 152(1) in Federal Constitution, the national language shall be the Malay language and shall be in such script as Parliament may by law provide no person shall prohibited or prevented from using or from teaching or learning, any other language and nothing in this Clause(1), for the period of ten years after Merdeka Day, and therefore until Parliament otherwise provides, the English language may be used in both Houses of Parliament, in the Legislative Assembly of every State, and all for other official purposes. If the country goes on without the rules the country will not be peaceful and communities can even behave violence. Furthermore, law can also help to discipline the country. The supremacy of the constitution is also from the third principle of Rukun Negara. This permanent constitution have more power than the Yang di-Pertuan Agong, the parliament and any court. (Maskurnia, 2010) For example in the case of Public Prosecutor v Dato' Yap Peng Respondent was charged in KL Sessions Court for criminal breach of trust, and claimed trial. The case was transferred to High Court in pursuant of section 418A Criminal Procedure Code. Respondent took an objection in High Court on the grounds that section 418A infringed Article 121(1) and 5(1) of the Federal Constitution.

Article 121(1) stated that subordinate courts, including the Sessions courts, have jurisdictions and powers contained in Subordinate Courts Act 1948. Subordinate Courts Act, 1948 provided the jurisdiction to the Sessions Court to hear and determine the respondent's case. Zakaria Yatim J held that the power to transfer any proceedings to any other court or to and from any subordinate court is vested in the High Courts, and by enacting section 418A, the Parliament has infringed the judicial power of the federation. The decision was upheld on appeal by the Supreme Court, and section 418A of the Criminal Procedure Code was declared unconstitutional and void as being an infringement of Article 121 of the Federal Constitution. (Syed Ahmad, 2007) For my opinion, I think that the court decision is correct and the constitution is supreme as the highest law.

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The Doctrine of Separation of Power

The doctrine of separations of power in Malaysia system is same with system in United Kingdom separation of power named Westminster parliamentary system compare with United States. The members of Dewan Rakyat are elected by voting of registered citizens and from the member of Dewan Rakyat, they choose the Prime Minister. The winner has to achieve at least two-thirds of majority of the vote in order to become Prime Minister. The Prime Minister is responsibility to advice the Yang di- Pertuan Agong and the cabinet is appointed by the Yang di-Pertuan Agong in the advice of the Prime Minister. Doctrine of Separation of powers in Malaysia is clearly states in the article 121(about judiciary), 44 (about legislative) and 39 (about executive) of federal constitution. (shahdhuan. 2009)The JudiciaryThe Judiciary is <https://assignbuster.com/the-notion-of-constitutional-supremacy-law-constitutional-administrative-essay/>

governed by part IX of the Constitution. It consists of the federal Court, the Court of appeal and two High Courts, one in the states of Malaya and the other in the states of Sabah and Sarawak. The jurisdiction of the courts is controlled by article 121a which states that the High Courts shall have no jurisdiction in respect of any matter in the shariah Courts (the courts having jurisdiction over persons professing the religion of islam). The federal Court is established under article 121(2) which has the power to determine appeals from decisions of the Court of appeal, of the High Court or a judge thereof, such original or consultative jurisdiction as is specified in Articles 128 and 130 or such other jurisdiction as may be conferred by or under federal law. Article 121 (1B) provides for the establishment of the Court of appeal which has jurisdiction to determine appeals from decisions of the High Court or a judge thereof and such other jurisdiction as may be conferred by or under federal law. (Hill. C. 2009. P. 22) The Legislature The legislative authority of the Federation shall be vested in a parliament. According to the Federal Constitution 2012 Parliament is defined by Article 44 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). In article 45 composition of Senate, the Senate shall consist of elected and appointed members as two members for each State shall be elected in accordance with the Seventh Schedule and two members for the Federal Territory of Kuala Lumpur, one member for the Federal territory of Labuan one member for the Federal Territory of Putrajaya shall be appointed by the Yang di-Pertuan Agong and forty members shall be appointed by the Yang di-Pertuan Agong. In article 55 Summoning,

prorogation and dissolution of Parliament, the Yang di-Pertuan Agong shall from time to time summon Parliament and shall not allow six months to elapse between the last sitting in one session and the date appointed for its first meeting in the next session. The Yang di-Pertuan Agong may prorogue or dissolve Parliament. Parliament unless sooner dissolved shall continue for five years from the date of its first meeting and shall then stand dissolved. Whenever Parliament is dissolved a general election shall be held between within sixty days from the date of the dissolution and Parliament shall be summoned to meet on a date not later than one hundred and twenty days from that day. A Bill pending in Parliament shall not lapse by reason of the prorogation of Parliament. A Bill pending the assent of the Yang di-Pertuan Agong under Clause (4)(a) or Clause (4A) of article 66 shall not lapse by reason of the prorogation or dissolution of Parliament. The House of Representative consists of 222 elected members who shall hold office until the dissolution of parliament. (Hill. C 2009. P. 22)c) The Executive power is vested in the Cabinet of Minister which is appointed by the Yang di-Pertuan Agong to advise him. The Yang di-Pertuan Agong first appoints as Prime Minister to preside over the Cabinet, a member of the House of Representatives who in his judgment is likely to command the confidences of the majority of the members of that house (in article 43(2)). It has grown to be a convention that the President of UMNO (United Malays National Organisation). The major Malay-based political party in the ruling Barisan Nasional coalition be appointed Prime Minister. On the advice of the Prime Minister, the Yang di-Pertuan Agong then appoints other ministers from among the members of either house of Parliament. The Cabinet is

collectively responsible to Parliament (in article 43(3)). If the Prime Minister ceases to command the confidence of the majority of the members of the House of Representatives, then unless at his request the Yang di-Pertuan Agong dissolve Parliament, the Prime Minister must tender the resignation of the Cabinet (in the article 43(4)). (Sherilah Suhanah Syed Ahmad. 2007. P.

110)General Advantages of Parliamentary System (UK and Malaysia)The first advantage of Parliamentary System is to maintain harmony cooperation between executive and legislative branches so that this country can develop in a very smooth flow. Secondly, the problem of authority and jurisdiction changes had decrease. The Parliamentary system concentrated so government can have full power to settled emergency issues. Thirdly, with this system a party can increase the interaction and harmony between their own members and opposition as well. Lastly, critics and useful public opinion will be received in the assembly by the ministers. (shahdhuan. 2009. P. 4)

<http://www.scribd.com/doc/19220341/Separation-of-POwers-in-Malaysia-UK-and-US>General Disadvantages of Parliamentary System (UK and Malaysia)The only disadvantage of Parliamentary system is that it against the theory of separation of powers. According to the law a Parliament cannot commend itself. Combination of executive and legislative functions in the same set of individuals leads to harsh government. (shahdhuan.

2009)Legislative ProcedureAccording to Article 66 of Federal Constitution, proposals from government of members of parliament in either house, when a Proposed Bill has been passed by the House in which it originated it shall be sent to the other House; and it shall be presented to the Yang di-Pertuan Agong for his assent when it has been passed by other House and

agreement has been reached between the two House on any amendments made in it or when it is required to be so presented under Article 68. The Yang di-Pertuan Agong shall within thirty days after a Bill is presented to him assent to the Bill by causing the Public Seal to be affixed thereto. If a Bill is not assented to by the Yang di-Pertuan Agong within the time specified in Clause(4), it shall become law at the expiration of the time specified in that Clause in the like manner as if he had assented thereto.

Two-thirds Majority in the Federal Parliament

The definition of two-thirds majority is two out of three in an amount.

(Softissimo, 2008) This rule is adopted by Malaysia government and it is a very important element for a democratic country. As mention in separation of power, two-third rule has played a vital role in legislative body to amend constitutions, other than that it also important to release a Malay reservation land, prevent dominance and build confidence. The rule of two-third majority was used to amend the constitution. According to Article 159(3) claimed that, a bill for making any amendment to the Constitution (other than an amendment excepted from the provisions of this Clause) and a Bill for making an amendment to a law to passed under Clause (4) of Article 10 shall not be passed in either House of Parliament unless it has been supported on Second and Third Readings by the votes of not less than two-thirds of the total number of that House. In Article 46(1) stated that, The House of Representatives shall consist of two hundred and twenty-two elected members. As such, to fulfill the two-thirds requirement, minimum 148 over 220 votes must be required. In some case if member of the House of Representative had been suspended□ the total number of the House of

representative shall be the same. For example in case happen in 2010 December, a number of members from opposition party has been suspended but the number of member of House of Representative remain the same. (People's Daily Online, 2010) Furthermore, it is also to release a Malay reservation land. Subject to Article 87 stated that, any land in a State which immediately before Merdeka Day was a Malays reservation in accordance with the existing law may continue as a Malay Reservation in accordance with that law until otherwise provided by an Enactment of the Legislature of that State, being an Enactment - (a) passed by a majority of the total number of members of the Legislative Assembly and by the votes of not less than two-thirds of the members present and voting; and (b) approved by resolution of each House of Parliament passed by a majority of the total number of members of that House and by the votes of not less than two-thirds of the members voting. The two-thirds majority rule is also a way to prevent the dominance of a smaller majority. (Encyclopedia. com, 2013) For example, if there is no two-thirds majority rule, a weaker party may dominate the House because if any decision made by the weaker party is not good enough, the stronger party has no chance to disagree. To make sure that this country is running in a smooth and fair condition, two-thirds majority rule is the best way to settle issue and make law. The Dewan Rakyat has the responsibility to elect a Prime Minister. A person has to achieve at least two-thirds of majority in order to make him or her become a Prime Minister. Furthermore it is important to gain as much vote as possible because, in the Article 43(2)(a), stated that, the Yang di-Pertuan Agong shall first appoint as Perdana Menteri (Prime Minister) to preside over the Cabinet

a member of the House of Representative who in his judgment is likely to command the confidence of the majority of the members of that House. This means that, in order to become a Prime Minister you have to gain the confidence from the Yang di-Pertuan Agong. Two-thirds of majority vote is necessary to ensure that the position of the Prime Minister is firm. In the conclusion, two-thirds majority rule is truly important in order to run this country to a more stable, advance and harmony environment. It is vital in the amendment of the constitution, release a Malay land reservation, to prevent big group dominate by small group and to build confidence of the Yang di-Pertuan Agong.

Notion of a Two-Party System

A two-party system is where two parties compete for majority control of the government in an electoral system (Barrington, Bosia & Bruhn, 2010). These parties have a duopoly, which means that they share nearly the entire political power of the country (sparknotes, 2013). Small and independent parties do exist but they do not play any role in electoral outcomes at the national level. They do not possess any political importance in the nation. A party is by Example of countries which has the two-party are the United Kingdom, Australia, The United States of America and Jamaica. The United States of America has the most obvious two-party system in which two parties, namely the Democrats and Republicans dominate the political scene in the country. In order for a two party system to work, a party must obtain a majority after an election and must be able to govern the nation without acquiring support from the opposing party. In a two-party system, a rotation of power is usually expected (Historylearningsite, 2013). One of the

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advantages of having a two-party system is this concept will help to solve issues among the voters. They also assist voters indirectly as the voters' choices are simplified and minimized. This is because there is a clear division between the two parties. Voters are able to vote based on the different ideologies and views that are held by the parties. Hence, voters have more confidence and better convictions on which party to vote for. With this system, the government can be held accountable. For example, if a voter does not like the way party X runs the nation, there is a definite alternative for the voter to make a decision (Silverman, 2009). Another advantage of having a two-party system is that it provides stability to the country. This system promotes centrism and leads to political stability which also cultivates economic growth in the country. At the same time, the opposing party is able to act as a political watchdog for the country, watching every move of the ruling party and holding the party that holds the office in check (Tran, 2007). This provides political equilibrium to the country because the opposing party is able to determine whether the ruling party is steering the nation in the right path. It also lowers corruption in the country as the government is being watched by the opposition. The government has to think about the people as they can easily vote for the opposition during the next election (Daniel, 2011). The first disadvantage of having a two-party system is that the parties provide lesser choices for voters to choose and decide. As a country with a two-party system only has two dominant parties, the parties only select candidates with the broadest possible appeal (Silverman, 2009). Moreover, voters that possess either different views and ideologies regarding the views and ideologies of both the parties which

dominate the country, it makes it difficult for them to decide as there are only two choices for them to choose from. Besides that, having a two-party system makes parties promote division. The ruling party and the opposing party usually seeks political advantage over one another. Hence, candidates in a party have to draw a line to separate themselves from the other party. As a result, both the parties will not compromise with each other and will not help each other. This causes over-competitiveness which might result in a gridlock, which disallows constructing solutions in governing the country (Silverman, 2009). Malaysia has a two-party system. However, it is technically under a one party rule due to oppression prior to the 12th general election. Before the 12th general election, a one-party system existed in Malaysia with the ruling party dominating against a fragmented opposition led by a few parties (Gan, 2010). Characteristics of oppression includes massive corruption, tight control of the media and the judiciary not being independent. Countries such as Singapore have a single-party system with the ruling party being dominant since the 1960's and yet they are progressing and developing very well. They possess a few characteristics that Malaysia does not have. For example, zero corruption tolerance (Lim, 2013). The two-party system slowly emerged in Malaysia since the 2008 general election. Three main opposition parties went into the 2008 general election with a primary purpose to deny the ruling party as many seats as possible. Surprisingly, the opposition parties denied the ruling party of a two-third majority and captured five states without forming a coalition together. After that, they had to form a coalition in order to govern the five states and thus, a major party was born. Comparing Malaysia with other countries

having a two-party system such as England, Australia and Canada, Malaysia is still far behind. The main characteristics of a two-party system are a free and independent press, freedom of assembly and independent public institutions. Hence, these countries undergo changes of governments very often and are still advancing at a high speed. In a two-party system, the citizens are served by politicians (Lim, 2013). Since the political tsunami after the 2008 general election, Malaysia is slowly progressing towards having a two-party system.

Rakyat's political maturity

Political maturity can be defined as a politician being to help people in the country first rather than themselves, where people are more important compared to materialistic. As people wanted a honest and helpful person to be the leader. Besides that, how much people know about the important issue in politics or country and what will they do or how to solve the problem after knowing an issue. The more information they get, the more maturity they are, their decision and action shows their maturity. For example, by getting the information what the person did in previous for people in the country, people vote the person they think are the qualified person to be the leader in election. One of the good examples shows the political maturity in Malaysia was Bersih 3.0. This event known as a celebration of political maturity and the purpose of the campaign was raising the awareness of election, people want a clean election that makes sure the ghost voter and foreigner does not exist in Malaysia elector list. People conduct the event in a peace mood and this shows people can solve a problem in a good way not in an agitated way, what people want is just to express their feeling to government.

(Sakmongkol, 2012) Media plays an important role in informing the public about politics, campaigns and elections, it also a very important tool in politic especially social media. Nowadays, younger more likely expose to social media for example Facebook, Twitter, Blog and many more. Hence, government or politician can spread the information to younger generation through the social media to inform them the event or even ask the younger to support or comment on the event too. In Malaysia, government control over media although many of media Companies are privately own. The combination of political party ownership and strictly licensing condition in the press shows that alternative voice struggle to gain a hearing. It will reduce the information or truth from the media to people, it will reduce people political maturity too. (Wang, 2001) Compared to media in US, US operating media in the libertarian theory, media in US are free from outside pressure and people with opposing views will be heard in the media. For example the media or print media had published what the government had done wrong, the government will try to solve the problem quickly. If the government did not take any action, people will lose the confidence to government and may consider not vote for them on the next election. The mass media has influence on people how they look at their politicians and other world leaders. (Natal, 2010) Furthermore, education will also affect the political maturity too. All politician must study politics to gain a qualification . They have to understand and must have more experience of politic to become a politician. Education can help people to understand what is happen on the parliament. A person with full education will know how to recognize true and false. For people as well, people who have higher education will solve

problem in peaceful way because they know agitated can't solve problem well. (Answers, 2013) Socialization will affect the political maturity. In a family, basic political education will be given by parents to their son or daughter, family is very important to affect the political maturity for childhood. Family will develop specific political orientations for their children and. So, usually they will act as the first agent of socialization. However, family should not affect the children mind so that they can have their own decision. (Imej, 1999) People who being informed and wants to know more will help peoples to make a mature decision. People have more education and drag in the societal issues through discusses and action not in agitated way, this shows people political maturity, so that we can build a stronger democracy country.