

The malaysian constitution



**ASSIGN
BUSTER**

The Malaysia constitution is a measurable collective and guidelines to regulating the administration of a country. The guideline for Constitution is mainly on the basis for making laws, to rule the government in the country for fairly and efficiently. Besides that, the outline of the constitution is also to provide basis freedom, rights, responsibilities for the parties in the government, citizenship, finance, judiciary, general election and the power and responsibilities to distribute to the parties between the government and the state government.

Background of Malayan Constitution

The Malaysian Constitution is the basis and beginning of the Federation of Malaya Constitution it is towards for Independent Malaya that formed on 16 September 1963. From the background of the Constitution 1948 of the Federation of Malaya Constitution is replaced by the Reid Commission 1956, which is formulated to the new constitution to dissolution from the Malayan Union. Let us look in to the changes for the steps to the evolution of the Malaysian Constitution.

1945

Back to few years before the independent there are some changes that leading the forming of the supreme legal resources to apply for the independent democratic country from the defeat of the Japanese Second World War ended and surrendered from the year 1945. From the period of the Japanese surrender and so as the British return to Malaya and gave the opportunity to Malayan Communist Party (MCP) to government in Malaya. The MCP only gets to control the Malayan for 14 days because the chaos and the trouble were created by the member. On the September 1945, the

British return to Malaya and help to restore the peace by established the British Military Administration (BMA) to ruled the chaos military but they realized is failed, the British have decided the proposed,

Another new system of administrative of Malayan Union. The British Parliament has presented the white paper the created of the new system of administration in Malaya, on 10 October 1945 that called as Malayan Union.

In the proposal of Malayan Union is included the states of Federated, such as Perak, Negeri Sembilan, Selangor and Pahang, and so as the Unfederated stated such as Penang Island, Malacca Kelantan, Kedah, Terrengganu, Johor and Perlis. (www. sejarahmalaysia. pnm. my) The main reason for this Malayan Union is to protect the economics for the British to Malaya is under one ruling system to standardize the administration. This ruling system is to cut down the administrative cost for the Malay states. Thru this system, is showing that the British officer is hatred by the Malayan Union and had against the Malays for support during the Japanese for their Occupation in Malaya. So they felt is grateful to MPAJA that had opposed the Japanese.

The listed is the following of the Malayan Union features,

- Is had formed up the nine states of Malay states, and so as Penang and Malacca.
- Kuala Lumpur is the centre of the British Government that was a British Government which assisted to Governor for Executive Council and Legislative Council.

- The Governor is only advised by the Malay rulers, the sovereignty of a ruler of their own states is wiped off and the main issues are only to authority the Islam issues and as the Head Malay Council of Advisors.
- It is also to maintain the purpose of the State Council to manage the local government, but still under control by the central government.
- Singapore is not under the Malayan Union because it is still under the British colonial territory by the rule of the British Governor General that is above the Malayan Union.
- The principle of jus soli is based on citizenship. From this principle, the citizenship was obtained by (a) at the age of 18 years old or above of the foreigner, have to reside in Malaya through 10 out of 15 years period before 15 February 1942 and (b) a person who was born in Malaya after the formation of the Malayan Union.
- The citizenship has rights that regardless of race or origin, that have can enter into the government services to vote in the general election.

1946

Harold MacMichael, has been assigned for a task to gather the Malay state rulers for approval for the Malayan Union. In 1 April 1946, the Malayan Union is officially proclaimed and Edward Gent is the first Governor and the Malays in the country were against the Union. There are some parties opposed have been setting up to opposition of the Malayan Union. These parties are for the individual to voice out their opposition by mass media through the newspapers *Majlis* and *Utusan Melayu* and is regarding the matters of power and sovereignty of the Malay rulers through the right for the foreigner on the principle of jus soli. In 1-4 March 1946, of the Selangor Malay Union by Dato'

<https://assignbuster.com/the-malaysian-constitution/>

Onn Jaafar total 107 representations and 56 observers from 41 Malay Union is attended. As the result, of the Congress was formed the United Malay National Organization (UMNO) by Dato' Onn Jaafar as a president. The slogan of ' Long live the Malays' is coming out from the Dato' Onn Jaafar and Malays Leaders that's have travelled around the country to get the Malays to defend the position and their rights.

There are some reason for the Malays to opposed the Malayan Union is,

- The granting of the citizenship to the non-Malays. On the 1947, the Malays population is only at 47. 46%, therefore is have great effect on the economic and political at that time because the non-Malays is over took the population of the Malays.
- Erosion of Malays rulers' power and sovereignty. The rulers' of it is for the Malays to become the supreme head to have more power. In this point, if the ruler's is lost is as a result the lost of the Malays power as well.
- MacMicheal's treats in getting the rulers to sign the agreement. The forces and threatened the Malays ruler's to sign the agreement to form Malayan Union and the Malays has become angry.

Meanwhile, the opposition is came by the former British officer from Malaya, Frank Swettehem, R. O. Winstedt, George Maxwell and Cecil Clementi Smith. From this British officer , the British is to abolished the Malayan Union and since then the non-Malays is not interested in the Malayan Union by saying the is being colonial and undemocratic. The British have decided to postpone the right of the enforcement of the right for the citizenship. From this

implementation of the Malayan Union as a result to leading to failure as according some matter,

- Strong opposition from the Malays. The strong sense of nationalism from the Malays towards the Malayan Union.
- No strong support from the non-Malays. Due to excluding of Singapore the non-malay is lost of interested in the Malayan Union.
- Wrong timing. The result from the Japanese occupation is still remaining the feeling of enemy still exist between the Malays and the Chinese and the condition of it, is still not yet peaceful. Due to the economic and the social is still a problem and have a strong gut the Malayan Union is only for the Malays and not to favoring the non-malays, the strong loyalty from the Malays as well at that moment.
- Wrong introduction. In London, the blackmail to get the agreement to sign by the ruler's is still a strong objection by the Malaya people
- Opposition from former British administrators in Malaya. The former British is protected the special right for the Malays.

1948

Federation of the Malaya (Persekutuan Tanah Melayu - PTM) was formed on 1, February 1948 the decision of the British Government. On 25 July, 1948, have a new constitution to replace the Malayan Union. The members of the committee is by 6 British officer, 4 representatives Malays rulers and 2 UMNO representatives is different from the Malayan Union, including the following matter,

- Is giving protection to the Malay rulers of power and sovereignty

- A constricted condition for the non-Malays citizen and special right for the Malays.

However, from this pressure of the Malays and the British Government, is not fully accepted by the other group from the non-Malays and the Malays community.

The non-Malays have formed All-Malaya Council of Joint Action (AMCJA) and so as the Pusat Tenaga Rakyat (PUTERA) for the Malays, these two forces have joined together as AMCJA-PUTERA because they have different views of the UMNO. It's become the same objective to fight for the independence of the country.

The formation of the Federation of Malaya is fixed by the British Government on 1, February 1948 for it to be established and the British High Commissioner is the head, for the Legislative Council and Federal Executive Council, and for the nine Malay states include of Penang and Malacca, will have their rights over their own states. The state government is responsible for the local government, land matter, health, education and agriculture. The Malacca and Penang Island, the administration have come under the Resident Commissioner. The aim from the British is to establish the Federation of Malaya to independence. For the non-Malays that were born in Malaya, can grant their citizenship. From this challenge the British have decided to divide the rule and policy according to the place of residence and occupation. According to the Barnes Report in school, the English is at secondary level and the primary is at Malay. For the Chinese school from the Fen-Wu report is remains unchanged.

The British Government had set up the Inter-Ethnic Relations Committee to have an open discussion for racial problems. On this Committee is to give the Malay to involve themselves in business and industry, the non-Malays is on politics. The General election is introduced to give peace and prosperity to the nation. The Member System is introduced in the Federal Legislative Council to give local people to involve in administrative system. The purpose of this Member System is to give the local people is to appoint as representative in the central government position and to create the spirit of cooperation and compromise between the people to the administrative. In 1951, the politics parties become strong to want to achieve the independence. Dato' Onn Jaafar is the head of UMNO, have joint the parties with MIC and MCA to Alliance, to create a strong union with Malays, Chinese and Indian, that gives strong strength and support to the communities in the country. However, there are also some party that wanted to achieve the independence thru that combines from PUTERA and combine from the Malays and Indonesian by created Melayu Raya. There are also some other parties such as MCP, that's involved in revolution in China and Russia and so as other parties like Islamic wanted to set up an Islamic government. UMNO have change the slogan ' Long Live the Malays' to ' Merdeka' in 1951.

In February 1952, the UMNO and MCA have won 9 seat out of 12 seat, and from this, the UMNO willing to sacrifice and share the power with other committee for unity to have a wide support from the Alliance. In April 1953, Dato' Onn Jaafar have organize a national conference in Kuala Lumpur to discuss for the independence of Malaya. The first election has been request in 1956.

1955

But the decision of the Dato' Onn Jaafar followers is on 1955 and the British government is demand on the Alliance party more. In 1954, the British have turn down the Alliance representative in London for the independence of the country. In return, the UMNO and MCA members have resign from the post of government and that's lead to the British to agree the election in 1955.

On 27, July 1955, the first general election was held, in Malaya. The party that's involve is Alliance, (UMNO, MCA, MIC), Islamic Party of Malaya (PAS), National Party (Parti Negara) , Labour Party (Parti Buruh) and People's Progressive Party (Parti Progresif Rakyat). From this election the Alliance party won 51 seats out of 52 seats.

1956

In February 1956, Tunku Abdul Rahman, as a Chief Minister leading the team to London to negotiate for Malaya's the independence. The 4 representatives of Datuk Panglima Gantang, Dato's Ahamd Kamil, Abdul Aziz Majid and Dato's Mohd Seth, representatives of Alliance : Tunku Abdul Rahman, Dr Ismail Abdul Rahman, Dato's Abdul Razak Hussien and Colonel H. S Lee and the British representative in Malaya. Is lasted for three week , from 18 January to 8 February 1956, that the Lord Lennox Boyd, Secretary of British Colonial Territories the negotiation have a condition to drawn up the Malaya's new Constitution.

1957

On 31, August 1957, have declare that the independence for Malaya and announced the date of independence at Padang Bandar Hilir Malacca after return from London.

The set up of Reid Commission that's headed by Lord Reid is to draw up the constitution for the independence of Malaya. The Commission has amended few times from June to October 1956. Out of 131 written ones, is drawing up of the Constitution framework, Malay rulers and the Alliance. The Federal Legislative Council had accepted and approve by the Constitution on 15, August 1957 and effects on 27, August 1957. There is some following based on the 1957 Malayan Constitution for the concept of monarchy and democracy as fundamental principles:-

- The head is the Yang di-Pertuan Agong and for the respective state is a ruler from each states
- ' Son of the soil' for the Malays is recognize and the guaranteed the special rights as well
- The national language is the Malay, where else English is still can be use in the 10years after the independence in the Legislative Council
- The Malayan citizen is for those who born in Malaya and same goes too, after the Independence
- For the Federation of Malaya, Islam is the official religion and for the non-Malay is freedom to worship their own.

The Selangor Club Green (Dataran Merdeka) is the symbolized the Malayan Independence day at the first second when the clock reaches after midnight on 31, August 1957. The changes of the Union Jack (British flag) to the Malaya independence flag Jalur Gemilang was flown on the same day. Tunku Abdul Rahman was appointed to become the first Prime Minister that chosen by the Yang di-Pertuan Agong of the Federation of Malaya.

1962

After the Independence for six years Sabah, Sarawak and Singapore joined Malaya and become a new nation of members, Malaysia. The Cobbold Commission is setting up on April, 1962 while Tunku Abdul Rahman and Tan Siew Sin at London.

Is to survey for the opinions for Sabah and Sarawak citizen by February to April 1962. From the survey is shown that 70% people in the country are favor in joining Malaysia and so the task of the new constitution is begin. On July 1962, Malaysia to have a Pre-agreement consultation in London, and to resolve the differences between the Cobbold Commission and the Malayan reports. As a result, the agreement has been amended and the acceptance of the Malaya's proposal. The primary draft for the Inter-Government Committee is known as Landsdowne Committee, as a new constitution.

For Singapore referendum, Lee Kuan Yew is support the merge with Malaya and the population from Singapore, 70% is agreed on the merge. Singapore is retain in the interest in Malaya, to have urge to merge, Tunku Abdul Rahman had made proposal in 1961. United People's Party is against the formation of Malaysia because the parties have a different direction of ideology.

Brunei is keen on the merge at first, Sultan Ali Saifuddin was preferred to be independence and changed his mind when the Parti Rakyat, Ahmad M. Azahari is a leader of this strong opposition party to revolt the merge of Brunei.

For Sabah and Sarawak, the people population aware that will be different in the structure after the merging with Malaya. The citizen is fearful of losing their rights due to 'Malayan domination' and especially the non-Malay so as the concern of the religion and language. The Chinese is having fearful to the Chinese Singaporean due to the competition of economic.

1963

Tunku Abdul Rahman has solved a problem between the Singapore Referendum and United Nations Investigation, that resulting for the local political changes and others interferences. The United Nation mission is to have a certain answer from the Sabah or Sarawak citizen. However, the Philippines and Indonesia was continue to opposed because Sabah is claimed under the Sulu Sulatanate that belongs to Philippines, there are 2/3 people supported it. Meanwhile, Indonesia wanted to merge to 'Indonesia Raya' at the same timing to have Malaya to become North Borneo Federation of Sabah, Sarawak and Brunei. (www. scribd. com)

On 8 July, 1963, in London, all the party have agreed and sign the agreement of the Malaysian Agreement from the report of Inter-Government Committee that have become the foundation by all members The Federation of Malaya Parliament had approved to the Malaysia Act of amend Article (1) and (2) 1957, had effect on 16, September 1963 the day that proclaim to Malaysia, Queen of England has decide to let Sarawak, North Borneo and Sabah to combine to become independence with the Malaysian Federation

The Rukun Negara is a principle of the supremacy of the Constitution that's comes in third after the principle on God and the country. The citizen can

have a security, wealth and special rights to protect in the Constitution as a respect to the country's regulation under the Malaysian Constitution.

The main features of the Malaysian Constitution are as following:-

- Is a federation
- Is a constitutional monarchy
- The country that practices parliamentary democracy
- The freedom of Islam as an official religion in Malaysia
- To rule the law and the supremacy of the Constitution
- The separation of the power in the legislative, the judiciary and the government with freedom to have different function with no conflict
- The power of the Judiciary is validity and transparency that within the provision of Constitution
- Sabah and Sarawak has the native tribes (son of the soil) and so as the national language, citizenship and the special rights.

Based on Article 153, is based on the Malaysian ethnic background is due to benefit the Bumiputera, for the Islam that is Malay race that born in Malaysia, and is also apply to the Sabah and Sarawak orang asli to have this privileges. (www. statemaster. com)

Under the Federal Section, the head of chief is the Yang di-Pertuan Agong is the chosen by the Malays ruler to rotate for five years. The Yang di-Pertuan Agong is also as a symbol to the nation. His Majesty is the country's head and the Parliament as well. The Yang di-Pertuan Agong is also the commander of the armed forces and can appoint the task to the Courts judges to carry out the justice on behalf in the conflict laws. The Yang di-

Pertuan Agong is an official government action and executive in the country's regulation. All His Majesty acts are also by the advice of the Prime Minister.

However, the Malaysian Constitution can be amended through the Parliament process in the Article 159 and 161E. The use of the Malaysian Constitution is based on the multi-racial Malaysian society. The people can give their opinions in the public view and suggestion through the Constitution. Within the year of 48 years, the amendment has been done for 42 times according to Shad Saleem Farugi, for this amendment to be done, it needs a 2/3rds of the majority agreed is required by the Houses of Parliament. (www.statemaster.com)

It is formed by 1 Federal Constitution, Kuala Lumpur, and 13 states: Constitution, Terengganu, Sarawak, Sabah, Selangor, Perak, Perlis, Penang, Negeri Sembilan, Kelantan, Kedah, Pahang, Johore and Malacca. The power of the Parliament is given to make the Federal laws (Acts) and other laws such as Islamic laws and DUN and the states laws. The power of the separation is at the federal, state & concurrent list as follows:

- The Federal List is regards to external affair, defense, internal security, civil and criminal law, citizenship, finance, commerce and industry, health, labour, fishery and tourism.
- State list is Muslim law, land, agriculture and forestry, local government, riverine fishing, library, museums and local government.
- Concurrent list is scholarship, protection of wildlife, town and country planning, drainage and venery, housing, culture and sport.

There are five important elements in the Malaysian Constitution such as the religion, the national language, and the special rights for the Bumiputera, the special rights and the citizenship. This element is important because it's the most relevant to the multi-racial society and so as to the constitutional monarchy for the practices of the Parliamentary democracy.

The citizenship is the special status for the people in the country to have their rights. This status did provide benefits; rights and other facilities that are include the responsibility as a citizen. The special rights are as following,

- The citizen will have a right to vote in the election by the age of 21 years old on the qualify date.
- The citizen have their right to participate themselves to take part in politics in the country that's include the seat for contestant in the election. The citizen can be also joining the political talk at the age of 18 years old. Its means the citizen can also be the prime minister thru the election by the vote from the citizen.
- All position in the government is filled up only by the citizen of the country itself such as the Legislative, Judiciary and the Executive.
- The citizen will also entitle or free to have their own land property and will be consider thru the special conditions that related in the property development. For instance, the Bumiputera will get 5% on the property and for the non-Bumiputera is not entitle for the discount.
- The citizen are entitle to have the benefit and facilities in the country such as welfare benefits, education, public library, medical from the government hospital or Health clinic from every district area and

others that provided by the country. The petroleum subsidy had been supported for the citizen as well.

- The citizen will have the freedom to move around the country such as from the north (Penang) to travel to south (Johor).
- The citizen will not be exiled by the country.

The citizen will also have some responsibility and his role to the country in return to have this protection and the special rights. As following below matter, the citizen will need to, - Joining the national service if he is required to by the country.

- To follow the laws and helps to support the country system.
- If the country need a contributions for the country regardless to the economy crisis, because the support from the citizen is the progress for the nation of well-being of society's.
- The citizen needs to participate to support the national programmes and events, for instance the Independence Day

The domicile for the citizen is important to have citizenship laws to protect the status and rights for the each of the citizen in the country. The citizenship laws is to different for the citizen and the non-citizens and it's to separate by the country from the official regulation. From this laws, it's to give the citizen special rights and for the non-citizen is also protected by the laws that's won't violates in the international regulation. In 1948, Malaysia already beginning made the citizenship laws.

Meanwhile, when the time the British who rule, there is no law(s) yet for the citizen or the foreigner, the British practices ' open door policy' so that to welcome the foreigner to come freely to the country. In 1948, the Federation <https://assignbuster.com/the-malaysian-constitution/>

of Malaya Agreement has embodied the citizenship laws. The improvements have been done by 1952, it was carried or passes to the Malaya states and to the ruler's and for those that becomes citizen of the Federation of Malaya. The status of citizen is given based on the resident period in the Malaya.

Based on the Article 14 to Article 15, the Federal Constitution has set up more detail for the citizenship laws after the Independence Day.

Loss of citizenship status

There are two ways the citizen can lose their citizenship such as he or she can reject the citizenship based on personal reason and if the citizen has abuse or violated the laws, can be in the prohibited period. There is also some of the reason such as:

- The citizen have become other country citizen, for instance, if the citizen in Austria have become a citizen of the Austria. He or she cannot have more than one citizenships
- The citizen can have the rights to enjoy other country facilities, such as the rights is only for that country citizen, for instance, he or she can use both passport to go to other country and so as to participate the election as well
- For the women such as she married to a man from other country, therefore the citizenship will be in concerned
- If the citizen betrays or acts negatively, that's show that he or she is not loyal to Malaysia.
- The citizen having business or ties with enemy or hostile country

- The citizen that have been sentence within 5 year period during the staying in the country, its apply to the jail sentence as well if less than 12month or will fined not less than RM 5000. 00 that within the Federation.
- The citizen that provide of gives service that without permission from the country
- The Malaysian citizen that lives in other foreigner country more than five years, can be exceptional if on with the service on behalf of Malaysian Government.
- The false influence of the citizenship
- The citizenship status for a foreigner women through marriage, if she divorce by the husband can be excepted for such cases of divorce if the husband is passed away

From all the above statement is clearly show that the citizenship is special status, because the application or the inherited can be withdrawn due to certain offences. Therefore, every of the citizen should be appreciate the citizenship and responsible to ourselves as a citizen and so to the country.

The fundamental liberties is define as the some certain fundamental individual rights or human civilization, that's apply to the lowest level as well to have the right for some condition and so as to the democratic way for the society's

References:

- www.sejarahmalaysia.pnm.my
- www.scribd.com
- www.statemaster.com