

Lesson 5: Executive I

1. Separation of Powers

2. The Yang di-Pertuan Agong (YDPA)

2.1 Executive Functions of the YDPA

- (1) Functions exercisable on the advice of the PM**
- (2) Functions exercisable on the advice of the PM after consultation with the Conference of Rulers**
- (3) Functions exercisable on the advice of a body**
- (4) Discretionary Powers of the YDPA**

2.2 Disabilities of the YDPA

1. Separation of Powers

- ▶ **The Federal Constitution divides the government into 3 branches:**

- 1. Executive**
- 2. Legislature**
- 3. Judiciary.**

Executive

- 1. The Yang di-Pertuan Agong (YDPA)**
- 2. The Prime Minister**
- 3. The Cabinet**
- 4. Minister**

2. The Yang di-Pertuan Agong (YDPA)

- ▶ **The YDPA is the head of state (but not head of government). He reigns, but he does not rule. He is a constitutional monarch, his role is mostly formal and ceremonial and must be exercised on advice.**
- ▶ **Since 1993, the YDPA enjoys no immunities from civil or criminal proceedings in his personal capacity. But proceedings by or against the YDPA in his personal capacity shall only be brought in a Special Court.**

▶ **[Special Court – see Art. 182]**

► Special Court

- 1. Special Court was established under Art. 182.**
- 2. The Special Court consists of:**
 - (1) The Chief Justice (Chairman)**
 - (2) The 2 Chief Judges of the High Courts
i.e. - Chief Judge of Malaya
- Chief Judge of Sabah & Sarawak**
 - (3) 2 other persons (who hold or have held
office as judge of the Federal Court or
High Court) appointed by the Conference
of Rulers.**

Special Court

- 3. Art. 183 – No action (civil or criminal) shall be instituted against the YDPA or the Ruler in his personal capacity in the Special Court except with the consent of the Attorney General.**

- ▶ Once the YDPA is charged with an offence in the Special Court, he shall cease to exercise the functions of the YDPA.
- ▶ The YDPA is elected by the Conference of Rulers among the 9 hereditary Sultans for a term of 5 years, but may at any time **resign** his office by tendering his resignation to the Conference of Rulers.
- ▶ The YDPA may be **removed** from office by the conference of Rulers (at least 5 votes required).

List of YDPA

- | | |
|----------------------------|---|
| 1. Negeri Sembilan | 10. Negeri Sembilan |
| 2. Selangor | 11. Selangor |
| 3. Perlis | 12. Perlis |
| 4. Terengganu | 13. Terengganu |
| 5. Kedah (21/9/70–20/9/75) | 14. Kedah (13/12/2011–12/12/2016) |
| 6. Kelantan | 15. Kelantan (13/12/2016 – 6/1/2019 (Resigned)) |
| 7. Pahang | 16. Pahang (31/1/2019–Present) |
| 8. Johore | |
| 9. Perak | |

2.1 Executive Functions of the YDPA

- ▶ **Under the Constitution, the executive functions of the YDPA may be divided into 4 categories:**
(Most of the functions are non-discretionary)
- 1. Functions exercisable on the advice of the Prime Minister**
- 2. Functions exercisable on the advice of the PM after consultation with the Conference of Rulers**
- 3. Functions exercisable on the advice of a body**
- 4. Discretionary Functions**

(1) Functions exercisable on the advice of the PM

- 1. Appointment & dismissal of Ministers and Deputy Ministers**
- 2. Appointment of 44 Senators**
- 3. Appointment of Attorney General**
- 4. Assent to Bills passed by the 2 Houses of Parliament**

- 5. To summon or prorogue the House of Representatives**
- 6. Performance of the functions of the supreme commander of the Armed Forces
(He is not operationally responsible for the arm forces
—— He is not the commanding officer)**
- 7. Proclamation of emergency**
- 8. Promulgation of emergency Ordinances**
- 9. Grant of honours**

- 10. To safeguard the special position of the Malays and the natives of Sabah & Sarawak**
- 11. To safeguard the legitimate interests of other communities (communities other than the Malays and the natives of Sabah & Sarawak)**

In the exercise of all the above functions, the YDPA's role is purely formal & symbolic.

These powers & functions are in reality vested in the Prime Minister.

(2) Functions exercisable on the advice of the PM after consultation with the Conference of Rulers

- 1. Appointment of superior courts judges**
- 2. Appointment of Auditor- General**
- 3. Appointment of the Election Commission (A Chairman, A Deputy Chairman & 5 other members)**

In the exercise of all the above functions, the Constitution requires the YDPA to consult with the Conference of Rulers in addition to obtaining the advice of the PM.

Duty to consult does not mean duty to obey. It simply means duty to consider without being bound.

If the views of the Conference of Rulers and the PM do not coincide, the YDPA can advise, caution and warn the PM. But in the end the YDPA must accept the advice of the PM.

(3) Functions exercisable on the advice of a body

(i) Islamic Affairs - The YDPA act on the advice of the Islamic Council.

- [* Sultans are the head of Islam in their states.**
- * For states without a Sultan and for the federal territories of Kuala Lumpur, Putrajaya and Labuan, the head of Islam is the YDPA.]**

(ii) Granting Pardons – The YDPA act on the advice of the Pardons Board.

Note - Only for:

- (a) offences tried in the court-martial**
- (b) offences committed in the Federal Territories**

(4) Discretionary Functions of the YDPA

- 1. Appointment of the Prime Minister.
(here, the YDPA is not completely free)**
- 2. The withholding of consent to a request for the dissolution of Parliament.**
- 3. The requisitioning of a meeting of the Conference of Rulers concerned solely with the privileges, position, honours and dignities of Their Royal Highnesses.**

2.2 Disabilities of the YDPA

- 1. He cannot exercise any power as Ruler of his state except:**
 - (a) that of head of the Muslim religion;**
 - (b) the power to amend the state constitution;**
 - (c) the power to appoint a Regent**
- 2. He cannot hold any appointment carrying remuneration;**

- 3. He cannot actively engage in any commercial enterprise;**
- 4. He cannot receive any emoluments as state Ruler;**
- 5. He cannot, without the consent of the Conference of Rulers, be absent from the Federation for more than 15 days, except on a state visit to another country.**