

Pardons and The Constitution (The Supreme Law)

By Matthias Chang – Future Fast-Forward

Preamble

The Supreme Law of Malaysia is the Constitution.

Article 4 (1) provides:

The 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.

Therefore any law (note the emphasis “any law” regardless of Federal or State laws) which is inconsistent with the Supreme Law (to the extent of the inconsistency) **shall be void.**

See also Article 4 (3) and 4 (4).

The Supreme Head of the Federation.

Article 32 (1) provides:

There shall be a Supreme Head of the Federation, to be called the Yang di-Pertuan Agong, who shall take precedence over all persons in the Federation, and shall not be liable to any proceedings whatsoever in any court except in the Special Court published under Part XV.

Act on Advice

Article 40 (1) provides:

In the exercise of his functions under this Constitution or federal law the yang di-Pertuan Agong shall act in accordance with the advice of the Cabinet or of a Minister acting under the general authority of the cabinet, except as otherwise provided by this Constitution; but shall be entitled, at his request, to any information concerning the government of the Federation which is available to the Cabinet.

Article 40 (2) provides:

*The Yang di-Pertuan Agong **may act in his discretion** in the performance of the following functions, that is to say:*

- (a) The appointment of a Prime Minister;*
- (b) The withholding of consent to a request for the dissolution of Parliament;*

(c) The requisition of a meeting of the Conference of Rulers concerned solely with the privileges, position, honours and dignities of Their Royal Highnesses and any action at such meetings,

and in any other cases mentioned in this Constitution.

Power of Pardon

Article 42 (1) provides:

The Yang di-Pertuan Agong has power to grant pardons and respites in respect of all offences which have been tried by court-martial and all offences committed in the Federal Territories of Kuala Lumpur, Labuan and Putrajaya

See also clauses (2), (3) and (3)(a) & (b), (4) and (4)(b), (5), (7), (8), (9), (11) and (12).

Commentary

There are specific provisions on the appointments to the Pardons Board and the role of the **Attorney-General** of the Federation (or his representative nominated by him in his stead) is critical in the deliberations of the Pardons Board.

Clause (9) provides that the Pardons Board, before tendering their advice, **SHALL** consider any written opinion which the Attorney General may have delivered thereon.

Clause (11) provides that there **SHALL** be a single Pardons Board for the Federal Territories of Kuala Lumpur, Labuan and Putrajaya and the provisions of clauses (5), (6), (7), (8) and (9) **SHALL** apply mutatis mutandis to the Pardons Board under this clause and **reference** to the “Chief Minister” of the State shall be construed as reference to the Minister responsible for the Federal Territories of Kuala Lumpur, Labuan and Putrajaya.

Clause (8) read in conjunction with Clause (11) means that the Pardons Board shall meet in the presence of the Yang di-Pertuan Agong and he shall preside over it.

Without going into the controversies can Malaysians say, without any reservations, that they appreciate and understood the implications of the pardons granted by the Yang di-Pertuan Agong? I will be obliged of any advice from anyone rendered on this issue, before arriving at any impartial conclusions.