
Possible reason behind govt's refusal to lay emergency ordinances before Parliament

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IN *Salahuddin bin Ayub & Ors v Perdana Menteri Mahiaddin Md Yasin & Anor* [2021] MLJU 967, the High Court had made the following decision on Article 150(3) of the Federal Constitution.



Amongst others, the High Court decided that laws that were made ('promulgated') by the Agong during the emergency ('Ordinances') will remain effective until Parliament decides otherwise. If Parliament approves the Ordinances, it will continue to be effective and it must be stopped if Parliament annuls it. The High Court also noted that Parliament's

disapproval of the Ordinances however does not affect anything that has happened during the enforcement of the Proclamation of Emergency or Ordinances.

If this is the effect of Article 150(3), it begs the following questions:

Why is the PN government reluctant to lay the Ordinances before Parliament?
What could be the reason behind the government's decision?

It may be that having a thin majority in Parliament, the PN government is concerned that Parliament may reject its proposal of the Ordinances and this rejection may be taken as a vote of no confidence against the government. This view is supported by the recent report in the Star Online, where Umno has expressly declared that "it will withdraw its support for PM Muhyiddin" (Star Online, July 8, 2021) and the vile threat that the "Opposition will reject [all] bills [and proposals] tabled by Muhyiddin Yassin's administration" (Star Online, May 20, 2020).

On the issue of confidence, the Federal Court in *Mohammad Nizar Jamaluddin v Zambray Abdul Kadir (Attorney General, intervener)* [2010] 2 MLJ 285 had decided that "question of confidence in the MB [Prime Minister in the case of

Parliament] may be determined by means other than a vote of no confidence in the Legislative Assembly [or Parliament].”

Besides presenting a motion in Parliament, there are two other methods by which Parliament could express its lack of confidence in the government. (See Philip Norton, *The Fixed-term Parliaments Act and Votes of Confidence* (see <https://core.ac.uk › download › pdf>).

The two methods are as follows:

1. Confidence attaching to votes on substantive issues

A Government may decide that a measure was so central to its programme that there would be little point in continuing in office if it is defeated. In the second reading of the European Communities Bill in 1972 (which legally allows the UK to join the European Community), the then British Prime Minister Edward Heath told the House that ‘if this House will not agree to the Second Reading of the Bill.... my colleagues and I are unanimous that in these circumstances this Parliament cannot sensibly continue’ (HC Deb. 17 Feb. 1972, col. 752). In 1993, John Major made passage of the European Communities (Finance) Bill as an issue of confidence.

2. Implicit votes of confidence

They include votes on the budget or bills which the government considers so important that Parliament’s decision on these bills will also determine its confidence in the government. The categories of what constitutes a vote of confidence are not closed. The decision on these bills may cause Parliament to move a motion of no confidence against the government.

In our case, if Parliament rejects the PN government’s proposal that the ordinances should be annulled, this will indicate that Parliament has lost confidence in the government. This decision will justify a motion of the vote of no confidence in Parliament against the government which if successful, will result in the demise of the PN government.

Due to the fear of the uncertain outcome of Parliament’s decision, and the risk of losing its power, it is submitted that the PN government had taken the drastic step to prevent the Ordinances from being presented before

Parliament.

This may explain the various actions taken and excuses provided by the government in the recent days, ranging from the announcement that Parliament will only sit for five days, the announcement that the Agong has revoked the Ordinances earlier (which was refuted by the Palace), to the recent announcement that Parliament sitting will now be postponed to prevent the transmission of Covid-19 infection in Parliament. – August 2, 2021.

** Mark Goh Wah Seng is a senior law lecturer at HELP University.*

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