



LETTER | Is the revocation of emergency ordinances constitutional?

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Published: Jul 29, 2021 8:12 PM • Updated: 8:12 PM

LETTER | On July 27, Malaysians woke up to the revocation of all emergency ordinances passed during the emergency. All the major newspapers had reported that *de facto* Law Minister Takiyuddin Hassan informed Dewan Rakyat on July 26 that the government decided to cancel the ordinances on July 21, which were formulated during the proclamation of emergency based on Article 150(3) of the Federal Constitution.

This revelation created various questions. Can the government revoke the ordinances by merely making such a declaration? Was the revocation done in accordance with the Federal Constitution?

It is argued that the law minister's declaration is mere hogwash and the six ordinances remain valid irrespective of what he had

said in Parliament.

Two reasons are provided in support of this view.

Article 150(3) of the Federal Constitution states as follows: "A proclamation of emergency and any ordinance promulgated under Clause (2B) shall be laid before both Houses of Parliament and, if not sooner revoked, shall cease to have effect if resolutions are passed by both Houses annulling such proclamation or ordinance,[emphasis mine] but without prejudice to anything previously done by virtue thereof or to the power of the Yang di-Pertuan Agong to issue a new proclamation under Clause (1) or promulgate any ordinance under Clause (2B)."

In *Mark Koding v Public Prosecutor* [1982] 2 MLJ 120 the Federal Court decided that the legality of an ordinance "will cease to be in operation only if [it is] revoked by His Majesty or if both Houses of Parliament resolved to annul the proclamation; without such a positive act, it remains in force [Article 150(3)]."

Based on Article 150(3) and *Koding's* case, it is submitted that ordinances made during emergencies can be revoked only in two ways ie by His Majesty or both Houses of Parliament. Any other method will not revoke the ordinances.

Secondly, the revocation was also not made by His Majesty on the advice of the cabinet (reading Article 150 and Article 40 of the Federal Constitution). See *Teh Cheng Poh v Public Prosecutor* [1979] 1 MLJ 50.

It was reported on July 29, that the Comptroller of the Royal Household of Istana Negara had stated that "His Majesty expresses great disappointment over the statement made on July 26 that the government has revoked all emergency

ordinances promulgated by His Majesty, although the revocation has not yet been given royal assent.”

His Majesty has also emphasised that “Article 150(2B), read with Article 150(3) of the federal constitution, clearly provides that the power to enact and repeal emergency ordinances rests with His Majesty,” which was not done in this case.

Based on the arguments above, it would seem that the ordinances which were passed during the emergency are still valid and effective.

One final point to note, by misleading Parliament and His Majesty, the law minister may be referred to the Committee of Privileges for contempt of the House under Standing Order 36(12) of the Dewan Rakyat.

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