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The possible effect(s) of a confidence vote against the prime minister — Mark Goh Wah Seng



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AUGUST 12 — The Prime Minister’s action in the recent days had partially confirmed what I had presented in my previous opinion letter entitled “Possible reason on [the] refusal to lay [the] emergency laws before Parliament” (dated 2/8/2021). In that opinion letter, I argued that Parliament’s votes against the Emergency Ordinances (if it materialises) will amount to a vote of confidence or no confidence (as both terms are two sides of the same coin) against the Prime Minister (‘PM’) and the PN government. As it turns out, all the major newspapers reported on 4/8/2021 that the PM will table a separate vote of confidence before Parliament albeit not through the Emergency Ordinance.

Given this development, I intend to examine the purpose of the vote of confidence and the effect of such a vote on the legitimacy of the PM and the PN government.

The purpose of a vote of confidence

Under the Westminster model, the PM and his cabinet (‘government’) are responsible to lead and direct parliament. To execute its policies and duties successfully, the government must retain the confidence of Parliament. Without the support of the majority in Parliament, it is simply impossible for a government to operate effectively since the government’s plans will be frustrated by Members of Parliament (MPs) consistently voting against the government’s policies and bills. Hence, a vote of confidence is required to test the support for the government in Parliament. Parliament may express its confidence directly (like what PM Mahiaddin has proposed to do in September, 2021) or indirectly through the budget or a significant bill where a defeat of that bill tantamounts to a loss of Parliament’s confidence in the government.

Two possible results and effects of a vote of confidence

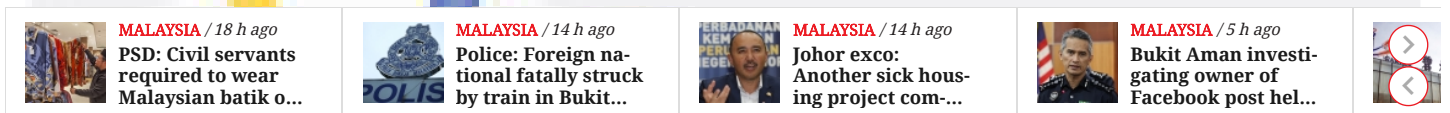
A successful vote of confidence.

A successful vote of confidence will mean that the PM has expressly secured Parliament’s confidence. — Bernama pic

This means that the PM has expressly secured Parliament’s confidence. Dissident MPs from his party who voted against the PM will be purged or punished via disciplinary action. MPs, who are not from the PM’s party, may have their positions in GLCs and other institutions which were initially given to them removed. The PM will continue to dominate Parliament until the next election.

An unsuccessful vote of confidence.

This will trigger the operation of Article 43(4) of the Federal Constitution which states as follows:



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“If the Prime Minister ceases to command the confidence of the majority of the members of the House of Representatives, then, unless at his request the Yang di-Pertuan Agong dissolves Parliament, the Prime Minister shall tender the resignation of the Cabinet.”

The subsequent possible events which may happen if a vote of confidence is unsuccessful can be gathered from the decision of the Federal Court in *Dato' Dr. Zambry bin Abd Kadir v Dato' Seri Ir Hj Mohammad Nizar bin Jamaluddin (Attorney General of Malaysia, intervener)* [2009] 5 MLJ 464 and Prof Shad Faruqi's paper entitled “Royal Role On Issue of Confidence.”

- a) Once the decision of the vote of (no) confidence is presented to the King and the King is satisfied that the parliamentary support for the PM has been withdrawn, His Majesty can require the PM to advise for a dissolution of Parliament or resign under Article 43(4).
- b) If the PM advises for a dissolution, the King will still retain the discretion under Article 40(2)(b) to either accept or reject the advice. Because of the current pandemic, it is argued that the King will probably reject the advice to dissolve parliament.
- c) If the PM resigns, the King has a choice either (i) to appoint a new PM from the House or (ii) ask the resigning PM to stay on in an interim capacity until a final decision is made on who is to fill the vacancy. This was what happened in May 2020 when Tun Mahathir resigned.
- d) If the PM refuses to resign.

In the Federal Court case of *Dato' Dr. Zambry* (supra) ('Perak case') it was decided that once the Menteri Besar has lost the confidence of the legislature, he must tender his resignation and the resignation of the Executive Council. If the Menteri Besar refuses to resign, the Sultan is at liberty to appoint another Menteri Besar because the Executive Council is dissolved once the MB has lost the confidence of the majority of the members of the Legislative Assembly [para 50]

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Following the decision of *Dato' Dr. Zambry* (supra), if the King rejects the PM's advice to dissolve parliament, His Majesty can demand the resignation of the PM. If the PM refuses to resign, the King can remove the PM by appointing someone else who in His Majesty's judgment is likely to command the confidence of the House.

Until the next parliamentary sitting in September 2021, the rakyat anxiously waits for the resolution as the uncertainty gravely affects their lives and livelihoods.

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