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Singapore | 11 September 2020

The Rise and Fall of State Governments in Malaysia: Institutions, Constitutions and Political Alignment

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EXECUTIVE SUMMARY

- The Pakatan Harapan-aligned Sabah state government held by Parti Warisan Sabah (Warisan) fell in late July 2020 when 13 state assemblypersons defected to align with former Sabah Chief Minister and Sabah Barisan Nasional chairman Musa Aman.
- The Sabah state election will be held on 26 September 2020, ahead of a general election which is widely expected to be called before the end of the year. The outcome of the Sabah state election will therefore carry important lessons for all political parties at the national level in crafting their political strategies.
- Historically, political alignment with the federal government seemed to be the most decisive factor in shaping the outcome of state government formation. Nonetheless, the Rulers or governors of respective states have played a crucial role on various occasions, by exercising their discretion on whether it was appropriate to appoint a new Chief Minister or allow the dissolution of a state legislature to hold new elections. The Rulers in turn have to operate within the framework of the state constitutions.
- The electoral strategies at state level have become extremely complicated, given the existence of multiple parties, the fluidity of their collective and individual members' political loyalties, and the ongoing negotiations over leadership and prime ministerial candidacies.

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INTRODUCTION

The Sabah state government fell in late July when 13 state assemblypersons defected from Parti Warisan Sabah (Warisan) to align with former Sabah Chief Minister Musa Aman. Immediately, the latter announced that he had sufficient support to form the new state government. But Warisan leader Shafie Apdal had by then already written to the Sabah governor, requesting for the state assembly to be dissolved, which took place on 30 July. A state election will now be held on 26 September.

As a rule, a state government is formed by the political party or the coalition that has the majority of electoral support in the state assembly. But what happens when a number of elected state representatives switch sides to the extent that a new political coalition now claims to have majority support in the assembly? Is this enough for it to form a new government? This article analyses the various roles played by different institutions in determining state government outcomes, including state constitutions and state Rulers¹ or governors².

THE ROLE OF STATE CONSTITUTIONS

State constitutions provide the legal basis for state governments' formation. As with the Federal Constitution 1957 in relation to the appointment of the Prime Minister and the formation of the federal government, state constitutions lay out how the Chief Minister³ is to be appointed, and not how the state government per se is to be formed. The following phrase is replicated across all state constitutions, that the state Ruler or governor shall appoint as Chief Minister "a member of the Legislative Assembly who in his judgement is likely to command the confidence of the majority of the members of the Assembly". The constitutions generally proceed to say that the other members of the State Executive Council for states in Peninsular Malaysia, or state ministers in the case of Sabah and Sarawak, are to be appointed upon the advice of the Chief Minister.

Several things are therefore clear. First, the constitutions do not provide for the state government outcome as such, but instead provide for the Chief Minister's appointment. The constitutions are in effect silent on and do not formally recognise political parties or coalitions. Second, the state Ruler or governor is given the ultimate mandate to decide upon who, in his judgement, commands the confidence of the majority of legislators. In fact, the term "likely to" denotes a future tense: can the Ruler or governor appoint somebody who, at that particular moment, may not have the confidence of the majority, but who, if appointed, is likely to obtain it?

THE ROLE OF THE RULER OR GOVERNOR

Because there is no constitutional provision that explicitly states a process to determine how the Ruler or governor is to be convinced of the person who is likely to command the confidence of the majority, political parties have taken to signing statutory declarations to declare their support for a leader. In late February when the Pakatan Harapan (PH) federal government fell, Members of Parliament (MPs) from either side of the divide were asked to sign statutory declarations in support of their Prime Minister of choice. The King decided

to meet with each of the 222 MPs individually to ascertain where their support went, and it was that which resulted in him selecting Muhyiddin Yassin as Prime Minister.

Likewise at the state level, different Rulers or governors have taken to adopting different approaches, based on varying underlying reasons. For instance, a Ruler or governor may believe that the likelihood of confidence in a particular leader is being affected by matters happening at the federal level, or by the possibility of a political impasse. This concern has resulted in varied outcomes. When state assemblypersons had previously changed allegiances, the Ruler or governor had either agreed to dissolve the state assembly, or deny the dissolution in support of the new party or coalition.

In the recent case in Sabah, the governor decided to dissolve the state assembly upon the request of the state's Chief Minister when the number of state legislators supporting Warisan was no longer large enough to form a majority in the state assembly.

One previous incident shows some similarities to the above case: in 1987, 27 of Sarawak's state assemblymen (the "Maju" group) declared that they had lost confidence in Chief Minister Taib Mahmud (New Straits Times, 2 April 1987). Gathering in the Ming Court Hotel in Kuala Lumpur, they planned to unseat Taib. However, Taib pre-empted an official vote of no confidence by requesting to dissolve the state assembly and then calling a snap state election (Woon, 2012). While the state constitutions say governors may "prorogue or dissolve" the legislative assembly, they also state that the Ruler/governor may act in his discretion to withhold consent to a request for the dissolution of the state assembly. In both the 1987 Sarawak case and the 2020 Sabah case, the governors agreed to the request by the disputed Chief Minister to dissolve the state assembly to make way for a new election.

INCIDENTS WHERE DISPUTES DID NOT RESULT IN STATE DISSOLUTION

However, most other incidents of state assemblyperson defections in the past did not result in state dissolution, namely in Terengganu (1961), Sarawak (1966), Kelantan (1977), Sabah (1994), Perak (2009), Sabah (2018), and Johor, Malacca, Perak and Kedah (2020).

In Terengganu in 1961, two Parti se-Islam Malaysia (PAS) assemblypersons and three Parti Negara representatives defected to the United Malays National Organisation (UMNO), and a motion of no-confidence was passed against the PAS Chief Minister. The resultant new state government was led by Chief Minister Ibrahim Fikri Mohammad, from UMNO (Bedi, 2014).

In Sarawak, Stephen Kalong Ningkan lost the confidence of the majority in the state legislative assembly in 1966. The federal government then "persuaded the state governor to use his reserve powers to dismiss Ningkan", but the latter argued this to be wrongful dismissal since a proper no-confidence motion should have first been passed (Chin, 1997). The federal government then declared a state of emergency in Sarawak and amended the federal and state constitutions to allow the governor to call for a special legislative assembly sitting; a no-confidence vote was then held and it resulted in Ningkan's exit as Chief Minister (Chin, 1997).

In Kelantan, PAS led a successful no-confidence vote against the UMNO Chief Minister although both parties were working in coalition at the time, in 1977. Chief Minister Mohammad Nasir chose not to resign, and instead sought dissolution of the state assembly, which the Sultan did not consent to. The King issued a proclamation of emergency in Kelantan, and federal officers were given executive powers in the state (Fong, 2008). Three months later, fresh state elections were held and UMNO won (Kamlin, 1980).

In the 1994 Sabah state election, Parti Bersatu Sabah (PBS) won 25 seats, just two more than the 23 seats won by the Barisan Nasional (BN) coalition. BN then mobilized resources to fund the formation of a new party SAPP, supported minor parties to fight PBS, and enticed PBS defectors to leave the party, resulting in the BN acquiring the majority and forming a new state government (Chin, 1997).

In the 2009 Perak case, three Pakatan Rakyat (PR) legislators defected and caused the PR state government to collapse. Although the then PR Chief Minister tried to contest this in court, he did not succeed, and the Perak Sultan did not agree to his request to dissolve the state assembly and to call for new elections. Instead, he appointed UMNO's Zambry Abdul Kadir as Perak's new Chief Minister.

Just after the May 2018 election, Sabah Barisan Nasional (BN) led by Musa Aman had a simple majority, and he was sworn in on 10 May as Chief Minister by the governor. However, six legislators later defected to Warisan, and the Pakatan Harapan (PH)-aligned Shafie Apdal was sworn in as the new Chief Minister 48 hours later. When Musa Aman contested Warisan's Shafie Apdal's legitimacy as Chief Minister, the Kota Kinabalu High Court cited the Federal Court ruling from the Perak 2009 case to say that there was no need for a vote of no-confidence in the state assembly to establish if the Chief Minister had lost his majority support as it can be established through "extraneous sources" (Malaysiakini, 7 November 2018).

When the PH government fell in February 2020, this also sparked off a series of changes at the state government level. State assemblypersons defected from PH component parties to support Perikatan Nasional (PN) parties in the states of Johor, Malacca, Perak and Kedah. PN gained four states in total, and in none of these cases was the state assembly dissolved.

In the above cases (Terengganu, 1961; Sarawak, 1966; Kelantan, 1977; Sabah, 1994 and 2018; Perak, 2009; Johor, Malacca, Perak and Kedah, 2020), the Rulers or governors opted for the new majority attained through defections to form the new government – or rather, for the person that the majority supported to be appointed Chief Minister – and that a dissolution followed by a fresh election was not necessary. In other words, they exercised their right to withhold consent to a request for dissolution.

However, with the exception of Kelantan in 1977 and Perak in 2009, it is unclear whether in the other instances there was in fact a request by the Chief Minister to his respective Ruler or governor to request for dissolution when the defections had taken place. Interestingly, in June 2020, the Johor Sultan threatened to dissolve the state legislative assembly to make way for a snap election, when Amanah deputy president Salahuddin Ayub claimed that a change of government could take place again. This has never been done before and is likely to raise constitutional questions, since the relevant clause only permits Rulers or governors to withhold consent to a request for dissolution, and not to dissolve state assemblies on their own accord without the Chief Minister's request.

Importantly, in all the above cases, the political party that emerged as state government was the one aligned to or had the support of the political coalition forming the federal government: BN in 1961, 1966, 1977, 1994 and 2009, PH in 2018, and PN in 2020. Also, with the exception of Sarawak in 1966, Kelantan in 1977 and Sabah in 1994, the other incidents took place simultaneous to or shortly after a general election or change in national government, for example Terengganu in 1961 (two years after the 1951 election) and Perak in 2009 (less than a year after the 2008 election).

The present 2020 Sabah case therefore differs on several counts. First, the governor seems to have been persuaded that the defections were not convincing enough for a new state government to be formed, and instead he agreed to the dissolution. Subsequently, although Musa Aman claimed to have 33 statutory declarations supporting him, the Kota Kinabalu High Court dismissed his claim that the dissolution was not valid. Second, the outcome is against the interests of the current coalition holding federal power. Musa Aman is aligned to BN, presently part of the Perikatan Nasional central government.

Finally, although the present events are transpiring separately from a general election, they are certainly tied directly to national trends. Following the change in government in March 2020, there has been increased political fluidity, formation of new parties, and ever-changing alliances. The lack of a strong, stable government, and unpredictability over which party or coalition is to come into power nationally in the near future will invariably have an effect on the outcome of the state election.

IMPLICATIONS ON POLITICAL STRATEGY

The highly complex and intertwining roles played by the constitution and the Ruler or governor hold direct implications for the various parties' electoral strategies in the upcoming state election. The track record indicates that when states are aligned with the federal government, they benefit from a smoother and non-hostile relationship, development funds and projects for the state are easily approved, and problems within the state are more quickly resolved. The inverse is also true, that opposition-led states tend to have restricted constituency development funds and projects tend either to stall or to be cancelled altogether (Washida, 2019; Yeoh, 2020).

The strategy of aligning with the centre is a logical one to pursue.

However, given the current political scenario in which there is uncertainty on multiple fronts, such a strategy is challenging for Sabah's political parties. For one thing, there is speculation that a general election will be called before the end of the year. Parti Pribumi Bersatu Malaysia (PPBM), the Prime Minister's party, has decided to join Muafakat Nasional (which comprises coalition partners UMNO and PAS), instead of the latter two joining the governing coalition PN, indicating that UMNO has the upper hand. The presence of Mahathir Mohamed's new party, Parti Pejuang Tanahair (Pejuang), the previous support of DAP and Amanah for Mahathir as prime ministerial candidate, as well as the presence of opposition leader Anwar Ibrahim's PKR, make for a highly uncertain political situation in which negotiations will invariably be complicated.

Given the above, any state-based party will be hard-pressed to consider the best electoral strategy for itself. On the one hand, it will want to align with the present federal government. But on the other hand, the PN itself may not last as a fixed coalition, even if component parties win in the upcoming 15th general election. Parties emerging as victors from the general election may negotiate separately and independently of their alliances, and cobble together post-election, as opposed to pre-election, coalitions. If the desired outcome is to align with the political coalition that forms the federal government, then Sabah state-based parties will have to take a gamble.

Whatever path they choose to take, they still need to be cognizant of the legal-institutional framework. Malaysia has had a long history of federal intervention into states, including the withholding of federal development funds from opposition-held states and the imposing of state emergencies. This article has however placed a greater emphasis on the decisive role played by two equally important institutions—the constitutional framework, as well as the state Ruler or governor. Despite the historical patterns, what ultimately determines the direction of the state government outcome seems to be political alignment with the centre, the legal-constitutional structure as well as the monarchy.

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¹ The Rulers of all states except Perlis and Negeri Sembilan use the title of Sultan, while the Ruler of Perlis uses Raja, and the Ruler of Negeri Sembilan is known as the Yang di-Pertuan Besar.

² Section 19A of the Federal Constitution provides for the appointment of Yang Di-Pertua Negeri, more commonly known as governors, in the states of Malacca, Penang, Sabah and Sarawak, by the King acting on his discretion but after consultation with the Chief Minister. The appointment is for a term of four years. While governors are also included in the Conference of Rulers, they differ from state Rulers in a number of ways. For instance, Rulers are the heads of religion for Islam in their states, whereas governors are not.

³ For the purposes of this article, the term Chief Minister is used to represent both Menteri Besar and Chief Minister.

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