

As the Head of the State, the Yang di-Pertuan Agong has broad jurisdiction as defined in the Federal Constitution. His power is essentially comprised three branches of Government, namely the Executive, Legislative and Judicial. In addition, he also performs its functions as the Supreme Commander of the armed forces, the power of the right to a pardon, protecting the special rights of the Malays and native ethnic in Sabah and Sarawak and a source of honor and greatness.

THE POWER OF FORGIVENESS UNDER ARTICLE 42 OF THE FEDERAL CONSTITUTION

BY **MOHD AYOP ABD RAZID**

He also undertook diplomatic functions to appoint Malaysian diplomats to be sent abroad and receive foreign diplomats, in addition to attending various functions and events.

The author would like to focus on the power to confer forgiveness or the power to pardon and defer sentence for offences tried by military courts and for all offences in the Federal territory of Kuala Lumpur, Labuan and Putrajaya. The power of the Yang di-Pertuan Agong is provided under Article 42 of the Federal Constitution.

If we refer to Article 42 (1), the power to pardon is not only owned by the Yang di-Pertuan Agong but Sultan or Governor * a State also owns power of forgiveness and postpone penalties on all other offences committed in the State.

Clause (2) says the sentence has been passed by military courts or by a civil court in the exercise of power in the federal territories of Kuala Lumpur, Labuan and Putrajaya. If an offence has been committed wholly or partly outside the Federation or in some States or in circumstances that raises supposition where it was committed, the offence shall be deemed to have been committed in the State where the offence has been tried (clause (3))

Clause (4) (a) States that the extent to which powers that may be exercised by the Yang di-Pertuan Agong and the provisions thereof may be made by federal law under article 40 (3). Whereas clause (4) (b) states that the powers exercised by the Sultan or the Governor of a State in accordance with the advice of the Pardon Boards constituted for the State.

It is apparent that in order to implement the power to pardon, the Pardon Board will be established in accordance with clause (5). The Pardon Board which was established for each State shall comprise the Federal Attorney General, the Menteri Besar and not more than three other members appointed by the Sultan or the Governor. However, the Attorney General may from time to time by the instrument delegating his functions as a member of the Board to someone else.

Under clause (5) that, the Sultan or the Governor may appoint a person to carry on for a while the duties of a member of the Board appointed by him who is absent or unable to perform his duties. Clause (6) States that the members of the Pardon Board which has been appointed by the Sultan for clemency or Governor is appointed for a period of three years and may be reappointed. They may resign as a member of the Board at any time.

Clause (7) says a member of the State Council or a member of Assemblymen must be appointed by the Sultan or the Governor to be a member of the Pardon Board to perform temporary duties for a member of the Board.

What is the function of the Pardon Board? Clause (8) States that the Pardon Board shall meet in the presence of the Sultan or the Governor. The Sultan or the Governor shall lead the meeting. Meanwhile, Clause (9) also states that before the Pardon Board give advice on any matter, it shall consider any written opinion may have been submitted by the Attorney General on the matter.

Clause (10) states that nevertheless of anything in this Article, power to Pardon and postpone the penalties or remit, suspend or reduce a sentence-sentence passed by any court established under any law regulating Muslim Affairs in the State or the federal territories of Kuala Lumpur, Labuan and Putrajaya shall be exercised by the Yang di-Pertuan Agong as the head of the religious in the State.

Clause (11) States that for the purposes of this Article, there shall be established only one Pardon Board for the federal territories of Kuala Lumpur, Labuan and Putrajaya and the provisions of clause (5), (6), (7), (8) and (9) shall apply mutates mutandis * (with changes needed) for Pardon Board under this clause except that the reference to "the ruler or Yang di-Pertua Negeri" shall be construed as a reference to the Yang di-Pertuan Agong and the reference to "Menteri Besar" of the sates respectively shall be construed as a reference to the Minister responsible for The federal territories of Kuala Lumpur, Labuan and Putrajaya.

What about its position if the Amnesty case the Royal family members themselves. This is described under clause (12) stating notwithstanding contained in this Constitution, if the powers were:

(a) has to be carried out by the Yang di-Pertua Negeri of a State and is required to be carried out in respect of

