



POLICY BRIEFS

PARTY-HOPPING OF LAWMAKERS IN MALAYSIA: A MENU OF REMEDIES

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Malaysia is no stranger to the world of legislators switching allegiances during their term. The number of defections hit unprecedented levels in 2020 when the elected Pakatan Harapan (PH) federal government collapsed, followed by the fall of a string of PH state governments. Voters may feel betrayed and are likely to negatively alter their voting behaviour in future elections, such as refusing to vote. Thus, it is important to examine the reasons for the 'hopping' behaviour of legislators and also the policy measures to manage this issue.

Beyond the view that a legislator hops to get a better 'deal', there are other motivations behind such moves (Heller and Mershon, 2008):

1. Policy positioning of a legislator
2. Political party positioning
3. Ability of a political party to influence outcomes
4. Ability of a legislator to influence such outcomes

The structures of Malaysia's electoral system and party politics provide an interesting perspective to the hopping of legislators across party lines. In Malaysia, one important question that has to be addressed is the election of individual representatives for constituencies. Who or what is being voted for – is the voter entrusting the vote to a candidate, party, coalition, or all of them ([Wong, 2020](#))? Secondly, while there are calls for hopping legislators to resign, there is a law in Malaysia which deters this act. Currently, our federal and state constitutions bar a legislator who resigns in midterm from contesting for the next five years. Thirdly, the 1992 Supreme Court decision on the Nordin Salleh case ([Reza, 2020](#)) declared that an anti-hopping law at the state level goes against the concept of freedom of association, which is protected by the Malaysian Constitution. As a result, the status quo makes any state-level anti-hopping law ineffective.

In light of these obstacles, the following are two recommendations to manage political hopping in Malaysia.

Option 1: Limited Anti Party-Hopping Law

Anti party-hopping laws disqualify the legislator to continue his or her term in legislature due to switching allegiances and/or expulsion from the party. Advocates of this law argue that the defecting legislator breached the faith of the voters, hence such a law can strengthen the party, prevent larger parties from luring smaller parties in exchange of rewards, and uphold accountability.

There are variations of anti party-hopping laws throughout the world, which can be summarised to the following situations whereby the elected representative loses the seat when:

1. he or she resigns from the original party;
2. he or she moves to another party; and
3. he or she is expelled from the original party.

The main benefit of this mechanism is that the consequences that are subjected on the defecting legislator are immediately effective. The only financial cost for the above measure will be the by-election.

However, an all-encompassing anti party-hopping law will greatly strengthen the influence and authority of a political party over its representatives. It may introduce a bigger problem where legislators could ignore the will of the people to avoid being expelled by their political party, thus losing their seats.

This law is also limited to only penalising hopping by individual legislators and could not be applied when political parties (with their representatives) switch coalitions en masse during an elected term. For example, Penang's anti party-hopping law is unable to remove the two state representatives of Bersatu although Bersatu left the PH coalition which rules the Penang state. While voters may see a betrayal of their mandate, an anti party-hopping law is ineffective in disqualifying the elected representatives in this circumstance.

For Malaysia, a limited anti party-hopping law should be explored in terms of the following:

1. Adding a clause to Article 10 (2)(c) of the Federal Constitution whereby party hopping is prejudicial to public order ([Loh, 2020](#)).
2. Adding a clause to Article 51 of the Federal Constitution whereby a legislator will lose his or her seat in Parliament when he or she resigns from the party (which he or she stood originally for in the previous election).

Option 2: Recall Elections

According to [International Institute for Democracy and Electoral Assistance \(International IDEA\)](#), a recall election is a procedure for voters to remove their elected legislator through a direct vote before that legislator's term has ended. This will give voters power to control the behaviour of the legislator. This mechanism can also be used when voters perceive that their legislator is not performing their functions to the electorate's expectations.

According to International IDEA, recall elections have two main stages:

1. Initiation of the recall process whereby a sufficient number of signatures are collected to support the recall.
2. Upon the attainment of verification and with the required level of support, the recall vote takes place.

Some key considerations for this mechanism:

1. A voter of a given constituency of the age of 18 and above (together with 1% of electors of the constituency) may launch the recall initiative.
2. Signatures should only be collected once the proposed recall initiative is successfully filed at the Election Commission (EC). A maximum period of four months could be given to collect the signatures.
3. The recall vote will be only called should there be a petition of 10% of current registered voters (signatories) of the entire constituency before the recall takes place. All signatures must be verified by the EC prior to the start of the recall vote within 30 days after the petition is filed.

4. The recall vote is to be initiated within 60 days when the recall vote is successfully verified.
5. The incumbent is removed when a majority of the registered voters participate in the recall vote and votes for recall exceed the number of votes that are not in favour of recall.
6. After a successful recall, a normal by-election will be called to fill the vacancy.

In the context of Malaysia, recall mechanisms can be utilised for instances such as when an elected representative is expelled from their initial party and for political parties that switch coalitions. Moreover, the recall mechanism can be employed for other scenarios, such as penalising a legislator who is convicted of a crime but escapes disqualification due to the leniency of the punishment. Recall elections can be introduced at the state and federal level via constitutional amendments. Unlike an anti-hopping law (due to 1992 Nordin Salleh case), recall elections could be introduced at the state level without a parliamentary act.

While this mechanism is laudable, we should be aware of the financial cost for this process. With a recall process, costs will include signature verification, drafting the specific proposal and the conduct of a recall vote. Should the incumbent be recalled, there will be the additional cost for a by-election. Since the 2018 General Election, each by-election for a state constituency costs RM 1-2 Million and for a federal constituency, RM 3-4 Million. Secondly, the effect of recall elections on the defecting politician is not immediate due to multiple procedures for recall.

Conclusion

In light of ever-increasing political instability in Malaysia, both anti party-hopping laws and recall elections should be studied closely.



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