

Anti-Hopping Law: Six pertinent questions WONG CHIN HUAT / The Star / 15 May 2022

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A Parliamentary Special Select Committee (PSSC) is studying the traditional Anti-Hopping Law (AHL), which will automatically vacate seats of party-hoppers, followed by by-elections. The bill is expected to be tabled in Parliament in July. Here are six pertinent questions in the debate.

1. Should the AHL cover expulsion?

An AHL normally does not just cover voluntary quitting, but also involuntary expulsion by the party. If expulsion is excluded, then traitors can stay put in the party and sabotage from within. Whether or not the party sacks them, they get away. However, an AHL that covers expulsion also gives party leaders tremendous power: they can sack intra-party rivals from Parliament by sacking them from the party. The sacked MPs then would have to fight for survival in by-elections against their party's machinery. Further, if the government holds a solid majority, it can use this to silence MPs and make Parliament a perfect rubber-stamp.

This is the question that derails the AHL bill at the Cabinet meeting on April 6. Bersatu, whose president Tan Sri Muhyiddin Yassin was expelled from Umno for opposing 1MDB, strongly opposes the inclusion of expulsion in the AHL.

2. Should the AHL cover coalition-hopping?

The traditional AHL faces a more complicated terrain in Malaysia because we have pre-election coalitions. A simple question to illustrate this complication: When Bersatu pulled out from Pakatan Harapan in the Sheraton Move, Tun Dr Mahathir Mohamad and five other MPs were subsequently sacked or quit for opposing this move.

Who had hopped and should face by-elections – Muhyiddin's camp who quit Pakatan? Mahathir's camp who quit Bersatu? Pakatan voters are unlikely to be satisfied with an AHL that will let Bersatu get away while Mahathir's camp faces by-election if the Sheraton Move replays. However, if the AHL covers coalitions, then parties cannot part easily when irreconcilable differences emerge. Is it fair if one party is sacked by others and has to face by-elections alone?

Like party leaders who may abuse their power in expulsion, dominant parties in coalitions may also abuse their power to cause coalition-hopping.

3. How is party affiliation defined?

To make things more complicated, Malaysian parties sometimes nominate non-members as candidates or even lend their flag to allies, like what PKR did to Pakatan candidates in the Peninsula in 2018. Conventionally, registered coalitions use the coalition logo for their candidates instead of individual parties' logos.

If party affiliation is defined by the symbol used in election, coalition-hopping by party would be covered. However, this creates a bigger problem. When an MP may be removed by a leader of another party which s/he has no power over as a non-member, then Parliament's power is not held by MPs, but by a few nominators of MPs. Then, the Westminster parliamentary

democracy as we know it would be turned upside down.

4. What are the realistic options?

With the three complications intertwined, what are the realistic options before the PSSC?

The most ambitious and adventurous option is to have a catch-all AHL on all common forms of party-hopping – voluntary resignation, expulsion, independent MPs joining parties and even coalition-hopping, with automatic vacation of seats. Since voters just want an AHL and don't care about nuances, why worry about the unintended consequences before they strike?

The most cautious and minimalist option is to have automatic vacation of seats for the most clearcut form – MPs voluntary quitting their parties to join other parties or become independents, nothing else. Such AHL would be weak but safe and can definitely be supported by all parties.

The middle-of-the-road option is to use automatic vacation of seats on voluntary resignation and leave all nuanced forms of party-hopping to voters-initiated vacation of seat, or what is called 'recall'.

Party leaders can make any decision, whether to sack MPs or to take their parties out of their pre-election coalition, voters get to decide whether by-elections should happen. This gives power to voters instead of party leadership to decide who should stay or go. In the design proposed via a private member's bill by Datuk Seri Azalina Othman Said last October, MP of Pengerang, a party-hopper's seat can only be vacated followed by a by-election, if enough voters – 40% or half of the last election's turnout rate – signed a recall petition within 21 days.

Because most MPs have not bothered to study Azalina's bill, if this middle-path is adopted, the PSSC may table in June only Part 1 of the AHL with automatic vacation of seats in June, and table in July or later the Part 2 with recall.

5. Should the States have the identical AHL?

In 1992, the Supreme Court ruled that automatic vacation of seats restricts freedom of association for MPs, and the States have no power to do so. Most would agree that this obstacle should be removed, but how? Should the States be empowered to choose their AHL or imposed with a carbon copy of the Federal AHL?

If the Federal AHL is imposed through the Eighth Schedule of the Federal Constitution but turns out to fail or cause problems in some States, these States cannot modify their law before a two-third majority in Parliament amends the Federal Constitution. So, does Parliament know which AHL design is best before this risky move? See, we are back to Question 4.

6. What else besides the AHL are needed?

Here's the bad news: if voters support hoppers, no traditional AHL or recall can stop party-hopping. In the 2020 Sabah state election, 17 hoppers sought re-election in the same constituencies and 11 won. To attack the root causes of party-hopping like patronage, selective prosecution and electoral mandate for candidates only, we need more than an AHL.

Here are seven reforms that can be considered for an MOU 2.0: firstly, limiting the number of ministerial posts to lure defection and banning MPs from GLC posts; secondly, Attorney General's Chambers (AGC) reform; thirdly, Equal/Equitable Constituency Development Fund law; fourthly, Political Financing Law; fifthly, Constructive Vote of No-Confidence (CVNC); sixthly, Fixed Term Parliament; and finally, balancing mandates with candidates with also mandates for parties in electoral system.

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