

A shameful scene is unfolding in Perak.

Let me follow up on what I said earlier about the status of the Chief Minister.

The Constitution is the highest law of the land. It is the foundation and source of legal authority, and the Rulers are sworn to protect and uphold it.

According to the Constitution, Dato' Seri Nizar Jamaluddin is Menteri Besar until he resigns of his own accord, or is removed by a vote of no-confidence in a formal sitting of the assembly. The Constitution makes no provision for his removal by any other means, including by petitions or instructions from any other authority.

Two principles need clarifying in the light of today's events:

- First, the government of the day is established according to rules and principles codified in the Constitution. This is the difference between legitimately formed government and tyranny, which is rule by the law of the jungle.
- Second, legitimate constitutional government draws all its authority from the consent of the people and only from that consent. The people consent because it is their government formed according to their constitution, whose leaders they have chosen through free and fair elections.

We need to test that consent periodically. At key points such as when governments are to be formed or to be dissolved, the Constitution provides for formal, definitive tests to find out how much of the people's 'consent', or support, a government really has.

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Written by Tengku Razaleigh Hamzah
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So we conduct elections to test how much support a candidate for leadership has among the people. The question is posed in elections governed by rules and oversight agreed ahead of time. If those elections are not held, or if there is some doubt that they are free and fair, then the question of legitimate leadership is not determined. It doesn't matter how many men with flaming torches march chanting your name in the middle of the night. You need to prove you have the support of voters in a free and fair election.

Similarly, the Constitution provides for a definitive way to test if the Chief Minister or the Prime Minister commands a majority in the dewan or in Parliament, as the case may be. We put the question to a vote of confidence on the floor of the Dewan. Only the answer of the assembly counts. It doesn't matter how many sworn statements, defections, press conferences, and declarations you have, nor what forms of advertisement, display, inducement or force you bring to bear on the question.

To formally test the mandate of the current government, whether in Perak, Sabah or the Federal government, the question must either be put to the people through state elections, or to the assemblymen through a formal vote in the dewan. These are the only tests that count in our constitutional democracy.

This is what it means to be a parliamentary democracy. To remove and install governments in any other way is to violate the Constitution, erode the rule of law, and to run the risk of forming an illegal government.

Legitimate authority can only be established through the democratic means spelled out in our constitution. Rightful authority is an entirely different thing from the brute power that can be bought, sold or seized by force.

The invisible laws make our government, nation and society possible. I won't begin to describe the harm we would do these things if we began to ratify power achieved without regard for the rule of law.

Kedaulatan Undang-Undang

Suatu adegan yang memalukan kini berlangsung di Perak.

Izinkan saya membuat susulan tentang apa yang telah saya katakan tentang status Menteri Besar.

Perlembagaan merupakan undang-undang tertinggi di negara kita. Ianya asas dan sumber kuasa undang-undang; Raja-Raja Melayu telah mengangkat sumpah supaya membela dan mendukungnya.

Mengikut Perlembagaan, Dato' Seri Nizar Jamaluddin merupakan Menteri Besar sehinggalah beliau sendiri meletakkan jawatannya, atau disingkirkan melalui undi tidak percaya di dalam Dewan Undangan Negeri semasa ia bersesi. Tiada peruntukan di dalam Perlembagaan untuk pemecatan dengan cara lain, walaupun dengan mengemukakan petisyen ataupun diarah oleh mana-mana kuasa lain.

Dua prinsip asas perlu dijelaskan memandangkan apa yang telah berlaku hari ini:

- Pertama sekali, kerajaan semasa ditubuhkan mengikut peraturan dan prinsip-prinsip yang termaktub dalam Perlembagaan. Inilah bezanya antara kerajaan yang ditubuhkan secara sah dengan perampasan kuasa, iaitu cara yang tidak bertamadun.
- Kedua, kerajaan yang sah dan berperlembagaan memperolehi kuasanya daripada keizinan rakyat, dan hanyah daripada keizinan itu. Rakyat memberi keizinan ini kerana ianya kerajaan mereka yang ditubuhkan mengikut Perlembagaan mereka, dan pemimpin mereka dipilih melalui pilihanraya yang bersih dan adil.

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Dari masa ke semasa kita perlu menguji keizinan itu. Di saat-saat genting seperti apabila kerajaan akan ditubuhkan atau dibubarkan, Perlembagaan memberi peruntukan supaya melakukan ujian yang formal dan muktamad untuk mengetahui betapa kuat sokongan, atau keizinan, yang diberi kepada kerajaan itu.

Oleh itu, kita kendalikan pilihanraya untuk menguji setinggi mana sebenarnya sokongan rakyat diberi kepada seorang bakal pemimpin. Soalan ini akan dijawab semasa pilihanraya yang ditadbir dengan peraturan dan kekhilafan yang dipersetujui terlebih dahulu. Sekiranya pilihanraya tidak diadakan, atau terdapat keraguan yang ianya bersih lagi adil, jadi kepimpinan yang sah tidak dapat ditentukan. Tidak kira betapa ramai orang yang datang meriakkan nama kamu di tengah malam. Apa yang perlu dibuktikan hanyalah sokongan para pengundi semasa pilihanraya.

Perlembagaan juga memberi peruntukan yang muktamad untuk menguji samada Menteri Besar atau Perdana Menteri mendapat sokongan majoriti di Dewan Undangan Negeri atau Parlimen. Ianya melalui undi tak percaya di dalam Dewan tersebut. Jawapan yang diberi Ahli-ahli Dewan Undangan Negeri (atau Parlimen) sahaja yang boleh diambil kira. Kenyataan bersumpah, berpaling tadah, persidangan akhbar, pengisytiharan, pengiklanan atau apa jua dorongan lain tidak boleh diambil kira.

Untuk menguji secara formal mandat kerajaan semasa, samada di Perak, Sabah atau kerajaan Persekutuan, ia mesti dilakukan oleh rakyat melalui pilihanraya, atau melalui undian di dalam Dewan Undangan oleh Ahli-ahli Dewan Undangan. Ini sahaja cara yang muktamad dalam sebuah demokrasi berperlembagaan.

Inilah ertinya sebuah demokrasi berparlimen. Menubuhkan atau menjatuhkan kerajaan melalui apa jua cara lain melanggar prinsip-prinsip Perlembagaan, mencabuli hak undang-undang dan mengambil risiko membentuk kerajaan yang tidak sah.

Kuasa yang sah hanya boleh didirikan melalui cara-cara demokratik yang tertera di dalam Perlembagaan kita. Ia bertentangan daripada kekuasaan yang dijual-beli atau diambil secara paksa.

Undang-undang ini yang membolehkan kita berfungsi sebagai sebuah negara, kerajaan dan

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masyarakat. Sekiranya kita mula mempersetujui kuasa yang didapati tanpa mengambil kira undang-undang yang sedia ada, kesannya amat buruk sekali.