



Recall Elections and Anti Party Hopping Law

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Type of Party Switching/Defection/Floor Crossings/Movements

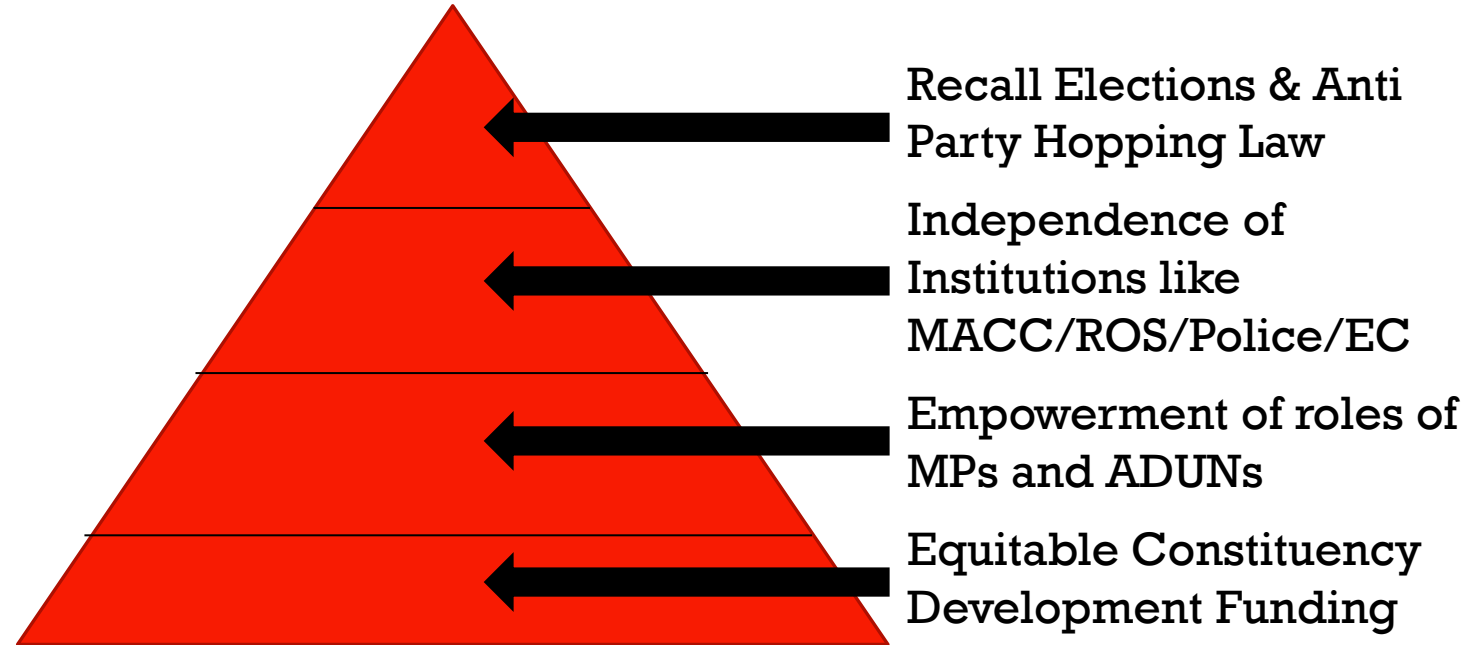
- **At individual and party level, following are types of movements**
 - **Voluntary:**
 - Party A's Rep switch sides to Party B
 - Party A's Rep switch sides to be Independent
 - Independent Rep switch to Party Flagged Rep
 - **Involuntary**
 - Expelled (for not following party's leader's direction)
 - Party deregistration
 - **In between**
 - Party switching coalitions
 - Party mergers
 - Dissolution of party (not forced by legislating body)
- **Exception to these movements: to become Speaker**
- **Any form of recall elections and anti party hopping law should be assessed in terms of their capability to manage the movements**

Why Parties/ Individuals switch sides

- **Why MPs or ADUN switch sides?**
 - policy positioning of a legislator
 - political party positioning
 - ability of a political party to influence outcomes
 - ability of a legislator to influence such outcomes
 - Personal upgrades
 - Being coerced to switch
- **Why Parties switch coalitions?**
 - Disagreement of common policy framework
 - Being expelled
- **Some of the reservations made about recall elections and anti party hopping law tend to revolve around these points**

Hierarchy in Managing/ Deterring Party Hopping in Malaysia

Managing Party Hopping in Malaysia



It is important to know that recall elections and anti party hopping law are at the pinnacle of forms of deterrence

Case Study of Penang Anti Party Hopping Law

- Article 14A(1) of the State Constitution states Subject to this Article, a member of the Legislative Assembly shall vacate his/her seat:
 - When he or she who was party flagged ADUN ('A') switches to be party flagged ADUN ('B')*
 - When he or she who was party flagged ADUN ('A') switches to be Independent*
 - When he or she who was party flagged ADUN is expelled from the party
 - When he or she who was party flagged ADUN ceases to be a member of the original party
 - Independent flagged ADUN joined a party
- * This interpretation of 'resigns'
- Anti Party Hopping Law is specific in usage – deterring defections

Case Study of Penang Anti Party Hopping Law

- Introduced despite Noordin Salleh Case
- Noordin Salleh Case shows anti party hopping law at state level impose restriction of freedom of association of ADUNS, which is a right enshrined by Federal Constitution and it is not the domain of the state to put this type of disqualification
- One can argue that Penang State law has not been challenged
- Application: Motion (now withdrawn) to vacate the seats held by two ADUNs by PKR and two ADUNs of PPBM.
- Article 14(A) (1) make sense in term of application on two PKR ADUNS (Afif and Zulkfli)
- However, ADUNs did not leave PPBM. PPBM switch coalitions. Is this an overstretch?

Case Study for Recall Elections

- **As part of 'Akta Mencegah Lompat Parti' proposal**
 - Recall Elections was proposed
 - Part of the MP Movements discussed in the Akta:
 - Leave the Political Party (to be with other Party or Independent)
 - Expelled from the Party
 - Party was declared illegal or deregistered
 - Don't follow party orders and took a personal stance during voting in the Parliament
- Recall Elections is initiated by the voters. It is on the voters to decide to approve or penalise such movements explained above
- Two major types of Recall Elections: Restricted or Unrestricted
- I classify YB Azalina's proposal to be Restricted Recall Elections

Case Study for Recall Elections

- The proposal does not say the details of a recall Elections
- Taiwan (unrestricted version) – an example study
 - Applicable for members of Legislative Yuan, municipal councillors, municipal mayors etc
 - Recall can be applied to above individuals after they served more than a year
 - To initiate the recall proposal, you need 1% of the total original voters of electoral districts (must be signed) to start and prepare statement of reason no more than 5000 words
 - Taiwan EC will verify the details of the proposers within 25 days
 - After verification, EC will ask for additional 10% of total original voters for electoral districts. Duration collection of signatures: 20 – 60 days (subject to who you recall)

Case Study for Recall Elections

- **Taiwan (unrestricted version)**
 - Within 15 – 40 days, EC verifies the signatures of the said additional 10% voters
 - If everything is ok, person to be recalled will be asked to pass statement of defense within 10 days
 - After 10 days, EC will announce the details of the recall elections
 - Recall is to be done within 20 – 60 days from establishment of the proposal
 - A ballot will be issued to the voters: Agreed to Recall or Not Agree to Recall
 - The person (let's say member of Legislative Yuan) will be recalled if more than 25% of the voters participate and Agree to Recall exceeds Not Agree to Recall
- **Recall Elections Duration: 234 days (Kaohsiung Mayor recall). Anti Party Hopping Law Duration: 52 days (Kelantan 1991) (Chee Han, 2020)**

Assessment of Recall Elections and Anti Party Hopping Law

	Anti Party Hopping Law	Recall Elections
Usage	<ul style="list-style-type: none"> Strictly for defections or hopping (subject to definition) 	<ul style="list-style-type: none"> Restricted (to tackle party hopping, truancy) Unrestricted (voters to assess performance of elected reps)
Suitability for Type of Democracy	New democracies	Independent of maturity of democracy
Pros	<ul style="list-style-type: none"> Immediate deterrence on any formation of illegal government 	<ul style="list-style-type: none"> Flexible Empower Voters to decide on performance of elected reps

Assessment of Recall Elections and Anti Party Hopping Law

	Anti Party Hopping Law	Recall Elections
Cons	<ul style="list-style-type: none">• Requires proper definition of political party (no conflation to coalitions)• Expulsion clause will result overpowering Party Leaders• Inflexible for complex party movements	<ul style="list-style-type: none">• Requires proper definition of political party (for Restricted Versions)• Abuse (due to signatures and threshold requirements)• Slow on penalizing defectors
Electoral System Compatibility	Independent but debatable	Independent but must be tweaked to circumstances

Moving Forward

- Recall Elections and Anti Party Hopping Law have their own merits and demerits
- How do you bring the best of both worlds together?
- Recall Elections and Anti Party Hopping Law have many variants of their own
- Tindak Malaysia advocates:
 - Limited anti party hopping law: Focus on penalizing wilful jumping of MPs/ADUNs from party to party or independent
 - Recall Elections to handle all other forms of party movements
- Tindak Malaysia advocates the Mixed Member Proportional electoral system adoption
- Contents of Appendix 1 and 2 must be added into constitution and relevant act
- Please study New Zealand Electoral Integrity Amendment Act as good example on handling expulsion of MPs (for anti party hopping law context)

References

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Appendix 1: Defining Political Party

- Party definition (from Tindak Malaysia's BERES proposal):
 - “any society which by any of its objects or rules, regardless whether such object or rule is its principal object or rule, or constitutes merely an object or rule which is ancillary to its principal object or objects or to its principal rule or rules, makes provision for the society to participate, through its candidates, in elections to the House of Representative, or to the Legislative Assembly of a State, or to a Local Authority, or makes provision for it to seek the appointment of a person proposed or supported by it to the Senate; or”
 - “any society which, notwithstanding anything contained in its objects or rules, carries on any activity or pursues any objective which involves its participation, through its candidates, in elections to the House of Representatives, or to the Legislative Assembly of a State, or to a Local Authority, or which involves its seeking the appointment of a person proposed or supported by it to the Senate;”

Appendix 2: Strengthening the Nomination Form

- Nomination Form to mention the political party that contesting candidate is associated with. The candidate is to write the name of the Political Party or state 'Independent';
- The contents of Article 59 (1) and 6th Schedule (2) to be inserted into the Nomination Form. This is to remind should the constitution stipulates anti hopping or recall elections, the candidate who signs the agreement is fully aware that his or her term can be terminated in midway of his or her service

Appendix 3: New Zealand Anti Party Hopping Law – a case of conditional expulsion

- Electoral (Integrity) Amendment Act 2018
- New Zealand practices Mixed Member Proportional Electoral System
- Why it came about:
 - “enhance public confidence in the integrity of the electoral system; and”
 - “enhance the maintenance of the proportionality of political party representation in Parliament as determined by electors.”
- Who does it apply to?
 - “This section applies to every member of Parliament, except a member elected as an independent.”
- How does vacancy occur?
 - “The seat of a member of Parliament to whom this section applies becomes vacant if the member of Parliament ceases to be a parliamentary member of the political party for which the member of Parliament was elected (subsection 2).”

Appendix 3: New Zealand Anti Party Hopping Law – a case of conditional expulsion

- How does vacancy occur (continued)?
 - “For the purposes of subsection (2), a member of Parliament ceases to be a parliamentary member of the political party for which the member of Parliament was elected only if— (subsection 55A(3))”
 - “the member of Parliament delivers to the Speaker a written notice that complies with section 55B; or
 - the parliamentary leader of the political party for which the member of Parliament was elected delivers to the Speaker a written notice that complies with section 55C.”
 - “If political party leader states the said MP ceases to be member (i.e., expulsion)
 - “state that the parliamentary leader reasonably believes that the member of Parliament concerned has acted in a way that has distorted, and is likely to continue to distort, the proportionality of political party representation in Parliament as determined at the last general election; and”

Appendix 3: New Zealand Anti Party Hopping Law – a case of conditional expulsion

- **How does vacancy occur (continued)?**
 - **“If political party leader states the said MP ceases to be member (i.e., expulsion) (continued)**
 - state that the parliamentary leader has delivered to the member of Parliament concerned written notice—
 - (i) informing the member that the parliamentary leader considers that paragraph (a) applies to the member and the reasons for that opinion; and
 - (ii) advising the member that he or she has 21 working days from the date of receiving the notice to respond to the matters raised in the notice by notice in writing addressed to the parliamentary leader; and
 - **“state that, after consideration of the conduct of the member and his or her response (if any) by the parliamentary members of the political party for which the member was elected, the parliamentary leader of that party confirms that at least two-thirds of the parliamentary members of that party agree that written notice should be given by the parliamentary leader under section 55A(3)(b); and”**