



# The Malaysian Monarchy System: A Review of the Literature

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**Abstract.** The research examines the extent of a locally-based representation of the constitutional monarchy method in the current Westminster model of constitutional monarchy. This study argues that the latest political and constitutional developments in Malaysia demanded a locally-based approach in relation to the constitutional monarchy regime to improve the Malaysian political and constitutional landscape. This paper critically analysed the past literatures using selected themes of constitutional monarchy history. They are the historical evolution of the Malaysian monarchy system, Malaysian common law and the prerogative power and its relation to the concept of sovereignty of the ruler. This research contributes to the body of knowledge on constitutional monarchy from a locally-based perspective. This initiative is also hoped to contribute to the government's political stability, strengthen the monarchy's role as the anchor of unity among different races, and promote the country's economic development.

**Keywords:** Locally-based, Constitutional Monarchy, Westminster.

## 1 Introduction

Recent constitutional events such as the Prime Minister's selection following the resignation of Tun Dr.Mahathir in 2020, and the declaration of the emergency in January 2021, raised questions on the role of the Yang di-Pertuan Agong (YDPA) as the head of the constitutional monarch. These events and many more in the past have put the exercise of constitutional power by the monarchy to test. In some cases, the exercise power was challenged in the courts that often were decided differently although it has similarity in facts. In most cases, the courts have decided according to the Westminster principles, which might not augur well for political stability and racial harmony, and unity.

Monarchy institutions are not foreign to Malaysia as it marked a significant existence during the Malacca empire and sustained until today [2][23][27]. This institution recorded its up and down experiences throughout the conquering of the colonial over Tanah Melayu, now known as Malaysia. The Malaysian ruler's demand for the retainment of the monarchy system in the Malaysian Constitution was approved but confined

by the Westminster model of constitutional monarchy [32]. A constitutional monarchy is a form of monarchy in which the sovereign exercises authority following a written or unwritten constitution [24]. This monarchy model headed by the (YDPA) was criticised and stigmatised by many for being a puppet administrator to the government [14]. Most of the power accorded to YDPA would only be executed on the Prime Minister, Cabinet, or authoritative body's advice [16] [6] [7] [13]. In Malaysia's history, the monarchy's exercise of power was often challenged on the ground of unconstitutionality [34][22]. In addressing this issue, the courts have always referred to the Westminster model, and the historical colonisation track which has abandoned or ignored many references to the common Malaysian value, culture, identity, and belief [34] [22] [11].

As an independent country, Malaysia should develop its constitutional monarchy model that integrates its local multi-racial value, culture, and identity. Thus, this paper provides an in-depth analysis of previous studies on this area to form the base of a deeper study in developing a Malaysian common-law constitutional monarchy model that may contribute to the government's political stability, strengthen the monarchy's role as the anchor of unity among different races, and promote the country's economic development. This study is in line with the present government's initiative to inculcate the spirit of Rukun Negara and support the 16th sustainable development goal stated in Agenda 2030 and the 11th Malaysia Plan.

## 2 Problem Statement

The current Westminster model of constitutional monarchy is argued as lacking a locally-based representation of the constitutional monarchy. Westminster model stands on the idea that the head of state (monarch) shall be confined to ceremonial nature. Save for a limited number of situations where there is a margin of discretion, which discretion the Queen does not usually exercise, the British sovereign largely acts on the advice of her ministers. In contrast, Malaysian culture is based on the religious belief of its population. Malaysia owns a rich composition of culture representing multi races belief. An example, Muslims, the majority population, believe that monarch is a caliph, who the role surpasses ceremonial function. Known as a multi-racial country, one of the dominant Malaysian features is the monarch that holds a significant role to safeguard unity among all races in Malaysia. A strong racial unity contributes to creating a politically stable government, and right economic conditions conducive to attracting foreign investors [42] [17]. Although the Malaysian constitutional monarchy has a significant amount of locally-based representation as evidenced in Part 4 of the Federal Constitution, but the provisions are limited to composition, procedure and rights of the ruler.

The institution of ruler provided under Article 38 stands as a unique feature of our constitution but the confinement of ruler to safeguard Islamic matter has limit and restricts this institution of ruler to effectively function in the check and balance system. This can be evidenced through the current decision of federal court that declares the state legislative assembly does not have power to legislate in the area of criminal. This has undermined the function of state rulers. However, the existing Westminster model

of constitutional monarchy has failed to advance this vital role. Such a model has led to the disparity of judgment within the judiciary branch when deciding on constitutional issues model [26][34][41]. The interpretation given to proclamation of emergency has seen the example of disparity of judgement given by court using the premise of constitutional monarchy. In the 1968 case of Stephen Kalong Ningkan, the court agree that proclamation of emergency should be within the sole discretion of the YDPA. This case indicates that the power of the head of state exceeds beyond constitution, However, later cases [41][46] had taken a U-turn of decision emphasising that YDPA being a constitutional monarchy needs to always act following advice. It also spurs uncertain understanding among the legal industry players, academicians, teachers, and students [16].

### **3 Research Question**

The primary question pertinent to the study is how far the current Westminster model of constitutional monarchy nurtures the locally-based representation of the constitutional monarchy approach in Malaysia is highlighted in the literature review.

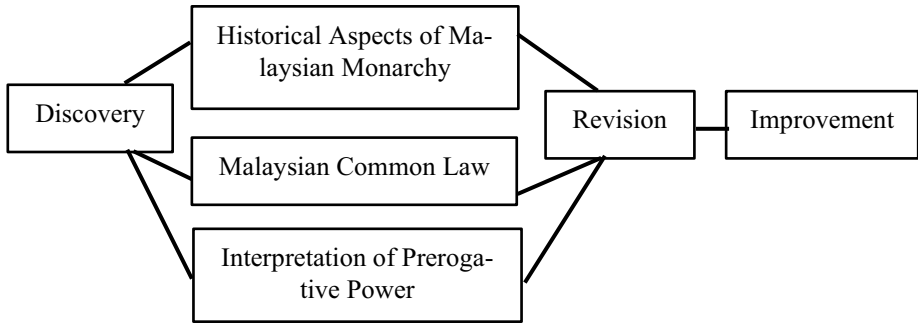
### **4 Purpose of Study**

This paper is the introductory part of a research on a constitutional monarchy model a Malaysian common-law approach. The main purpose of this paper is to critically analyse the extent of a locally-based representation of the constitutional monarchy method in the current Westminster model of constitutional monarchy in the previous studies on this area.

### **5 Research Methodology**

#### **5.1 Content Analysis**

In accumulating and analysing the previous studies on this area, this paper adopts a qualitative research methodology for legal research that was highly based on analysis of legal doctrines, concept, theories, and principles. It involves investigation and research on facts, data and/or concepts theoretically on the principles and rules of certain legal issues. It is a study that requires full research and is done systematically. This method aimed at the discovery, revision, and improvement of the application of a concepts, theories and principles studied [23]. The paper critically analysed the past literatures using selected themes of constitutional monarchy history.



**Fig.1** The process of analysing the constitutional monarchy system in Malaysia

Fig. 1 illustrates the discovery process identifying three main themes. They are historical aspects of constitutional monarchy in Malaysia, Malaysian common law and the prerogative power and its relation to the concept of sovereignty of the ruler. The reviews were made making the Federal Constitution of Malaysia and statutes that are relevant to the area of constitutional monarchy, constitutional amendments, and legal cases as the basis of analysis. The sources referred to includes textbooks, historical documents, administrative reports, journals articles, government reports, newspaper articles, and online sources. Archival research method helps to facilitate the investigation of primary sources held in an archive such as the administrative records, historical documents, and textual materials. The data were analysed by creating codes and categories, gleaning themes on the prevalence of constitutional monarchy perceptions and experiences.

## 6 Findings: The Reviews

### 6.1 The Historical Evolution of the Malaysian Monarchy System

Previous literatures on Malaysian monarchy system can be map to several themes and one of the significant areas is the history of constitutional monarchy and how this system developed through activities of legislative, executive and judiciary. Many studies on this theme shared their views and discovery on the transformation of Malaysian monarchy system from absolute monarchy to constitutional monarchy connecting it to the evolution from Malacca Sultanate system to the intervention by the British colonisation of Malay States. Although there were studies that traced the existence of monarchy system in Malaysia way before the Malacca empire, but the study of monarchy and its connection to the legal system were best elaborated by studies on the Malacca Sultanate onwards. Writers [24][30] agreed that the significant contribution of the Malaysian ruler can be analysed on how history had recorded the administration of Malacca in the 13th century that was under a great Muslim Ruler and has positioned Malacca as an empire with comprehensive administrative structure and system [2][24][28][42].

Some authors use the indigenous perspective in viewing Hukum Kanun Melaka that enshrined the concept of ruler's sovereignty that were majorly influenced by the Islamic values [42]. Under the Islamic principles, the Ruler is attached to the Islamic Caliphate concept, and this was accepted and becomes the new norms within Malay society during Malacca Sultanate [5]. The similar acknowledgment can be seen in the selected essays and speeches of HRH Sultan Azlan Shah who said Islam accepted monarchy rather than introducing it. In Islam, the Head of State is also the Religious and Governmental Leader [40]. He is recognised as the Prophet's successor. The rulers are awarded with sovereignty above others by the God. By this he shall govern the rights of others as to ensure harmony and peace among the people and must be well-versed in religious instruction [35]. As his Majesty is Allah's vicegerent, the monarch's delegation of powers must be limited to what has been prescribed by the divine law [38][39]. The holding of Islam as the law of the land and the Canon Law Melaka as the Constitution of Malaya itself explains the source the true sovereignty of the Malay Rulers founded during the Malay Sultanate Malacca [42]. According to Liaw's study, the provisions in the Malacca Code of Laws were added from time to time until the 19th century [47]. Input from the study of several writers [48][30][47] showed that the Malacca Code of Laws continued to be adopted by the Governments Malay State even after the dissolution of the Malacca Malay Kingdom around the end of the 17th century ruled in Johor. The continuity of the Malacca Code of Law can be seen in the existence of the Undang-Undang 99 Perak, Hukum Kanun Pahang, Undang-Undang Kedah, Undang-undang Johor dan Undang-Undang Sungai Ujung.

Majority of the previous researchers [40][36][42] agree that after the British intervention in the Malay Kingdoms began with the Treaty of Pangkor of 1874, until now Western theory and legal principles civil society is used as a framework for interpreting the sovereignty of the Yang di-Pertuan Agong and the Malay King in the Constitution. With the acceptance of 1874 treaty the British reduced the concept of absolute Monarchy. Indeed, as late as 1931 when Braddell gave his account of the legal status of the Malay States, the titah or command from a Malay Sultan was still law [49]. The British used the Rulers to dominate the subjects because they understood the Malay sense of allegiance to the Ruler [40]. They took away the Rulers' powers, but they were allowed to keep those related to their religion and customs. For hundreds of years, the British had also fought several wars to limit the power of their monarchs. To suit their objectives, they expanded the concept of constitutional monarchy to this country [40]. However, the influence of ruler's sovereignty interpreted within the ambit of Malacca Sultanate history has special contribution to the holistic concept of Malay ruler sovereignty in Malaysia. The intertwined concept between western influence and Malaysian history of rulers serves as the foundation to the interpretation of constitutional monarchy in Malaysia and can be traced in the Constitution of Malaysia. In fact, Mustafa contended that interpreting Malaysian constitutional monarchy with single focus of western approach is not the true reflection of the concept itself [8]. It is self-evident that the structure of Malaysia's constitutional system makes any argument in support of western thinkers' constitutional monarchy ideas more difficult to uphold. Bidin on similar footing elaborated that when independence was eventually granted to Peninsular Malaysia the constitution of rulership was simply continued but with some modification in order

to bring it in line with the concept of parliamentary democracy and independence [3]. Yatim on similar point said despite the loss of his Majesty pre-British status and limited monarchical rights as a result of the 1993 constitutional reform, hereditary Sultans and Chiefs continue to be venerated in Malaysia [36].

## 6.2 Malaysian Common Law

Past authors agreed that the understanding of common law under the Malaysian context is when applied in the context of a State, in that it denotes a system based on the English legal system [45]. In the context of the common law as imported and received in Malaysia from the British, it refers to the customary judge made law of these nations [45]. Whereas there was a system of laws and enforcement in place in the territories of the former Malaya long before the common law was introduced by the British. For example, the position of Islam and Malay custom was to some extent left unaffected by the British, paving the way for a parallel court system to develop [45]. The author also highlighted that the British made law, namely the Civil Law Ordinance 1956 ties Malaysian law interpretation to the British Common Law in the event of lacunae even after independence. This piece of statute however, acknowledged the existence of Malaysian common or local law in the sense that the application of English law needs to adhere to the principle of permissibility of local circumstances.

In Malaysia, after the early reception of the common law to be modified to suit our local conditions, the greatest source of law has been vided statutes. A significant portion of the common law has been imported into this jurisdiction by codification in legislation. Statutory law is dominant in areas such as company law, tax law, social security, labour law and family law. The position is somewhat different than in the United Kingdom where many areas of the common law are not codified for example, contract and tort. The approach of the courts in interpreting the law has grown significantly "variegated" throughout time, absorbing, and incorporating case law from various jurisdictions other than the United Kingdom. When Peninsular Malaysia gained independence, the constitution of rulership was simply maintained, with few changes to bring it into conformity with the concepts of parliamentary democracy and independence. Thus, instead of being obliged to accept British advice, the rulers have now to accept the advice of their ministers and to act accordingly [3].

This ability to transform, absorb and adapt is itself characteristic of the Malaysian common law. The importance of maintaining, reconciling, and accommodating more than one system of law is particularly important in a nation state such as Malaysia where diversity and pluralism is a fact of life. In particular some principles within the Shariah system may infiltrate into the common law system. Within this idea some literatures propounded the common core character of Malaysian legal system where harmony is a major goal in the cultural ethos of the Malays, Chinese, Indians, Ibans, Dayaks, and other ethnic groups that make up Malaysia's population [45]. The unique character of multi-racial country was some of the significant effect of colonisation. The British were responsible for the immigration of Chinese and Indians. As a result, by the time Malaya was ready for independence, it was beset by competing interests. The rulers were terrified of what would happen if the people took control of the country. They were afraid

of ending up like the heads of states who had chosen self-rule in India, Pakistan, Indonesia, and other countries. The Malays feared being dominated by the Chinese, who are economically stronger, as happened only a mile or two away in Singapore. The Chinese and Indians were concerned about Malay dominance and sought a say in the government of the country where they had settled [40]. Within these competing claims that the term 'social contract' founded its foot. Yaakop and Aziz are of the opinion that social contract is a reflection of Malay consideration in allowing the granting of citizenship to the non-Bumi that shall shield the special privileges of Malay from being attack by the Non-Bumi [49]. According to Abdul Aziz the standing of Islam and Malay customs remained unaffected by the treaties' influence on state governance [38]. This is an indicator, if not an attestation, that Islam and Malay practises held a special place in the local system, and that the British had no impact on them.

### **6.3 The Interpretation of Prerogative Power of Malaysian Monarchy**

The scope of ruler's prerogative power was another area that has been centre to many discussions. The Sultanate has become the basis of Malay cultural and political identity rather than of the exercise of power and it has remained so to this day. This opinion was supported by the receiving of advice doctrine and the royal immunities which were rejected by many constitutional scholars [1][42][38][27]. In commenting on the explicit constitutional provision that accords His Majesty with prerogative power, many authors agree that Article 40(2) that clearly exempt His majesty from acting on advice. From the three matters where His Majesty need to act on advice, the appointment of Prime Minister was most covered and discussed by majority of the authors. The Federal Court in Anwar's case held that Article 40 divides the functions of the monarch into two distinct categories, i.e. those functions that he may exercise in his discretion and those that he must exercise or act in accordance with ministerial advice [50]. Except for his function under Article 40(2), the other functions to be exercised by him under the Constitution or federal law must be exercised following the Cabinet's advice or a Minister acting under the general authority of the Cabinet. Reference to the Yang di-Pertuan Agong is only a formality by virtue of His Majesty being the constitutional monarch [15][25].

Because the rulers are now constitutional monarchs, it is unclear what is meant by sovereignty in defining ruler sovereignty under Article 181. However, given the phrasing of Article 39 and the concept of reserve powers, this clause may shed some direction of interpretation [1]. The uncertain interpretation on the concept of sovereignty in the Federal Constitution became more complicated when British-Malayan officials once arbitrarily extend the application of the principles of common law and equity in Malaya [1].

The study on Malaysian monarchy can also be structured according to the time that reflected the issues within the Malaysian administration system at that point of time. Examples, amendment of constitution 1983, 1988, 1993. legislative veto, royal immunities, transfer of power to declare emergency, constitutional crisis, deterioration of judicial independence were some of the focal points for critical discussions in several writings.

Importance of preserving the ruler's institution, the ruler's prerogative power, and YDPA and the State rulers' power to act on advice. Previous authors [24][32] while writing on the Malaysian rulers, emphasised the reasons to preserve this institution and relate this to protecting the Bumiputera Rights and sanctity of the Islamic religion. Another reason to preserve the monarch system is how this institution anchored in maintaining unity in this multi-racial country [24][32][28]. The decision made by the ruler is impartial, unlike the political coalition that has always formulate their decision based on the personal sentiment and vision that they formed [25]. Abdul Ghani highlighted the inter-dependence of the peoples' institution and the royal institution to the extent that the nonexistence of either one would create an incomplete government [2]. Authors such as Muslim and Abdul Ghani argue that government creation starts by having a ruler who will determine the state's direction [32]. Lee quoted the words of Prof. Harding that state that the survival of the federal system also depends partly on the maintenance of the monarchy [19][16]. The two aspects are inextricably intertwined, and it would require a very significant political convulsion to remove them both.

Concerning upholding justice and maximising the protection of people's rights, Muslim relate the non-biased appointment of the top public service officials that prioritised protection to the public [32]. In elaborating the ruler's constitutional function, Choo submitted that the Rulers was not meant to be merely perfunctory and ceremonial [9]. It is a critical constitutional body that the Constitution's framers purposefully established as an additional facet to the three essential government branches. The Conference of Rulers was intended to be an additional constitutional auditor.

Many authors agree that the Monarch discretionary power construction in Malaysia should be restricted to the concept of constitutional monarchy [16][6][7][13]. While elaborating on the constitutional monarchy concept, these authors refer to the Westminster Model and the common law rules. The YDPA and State ruler's prerogative power was often discussed on the monarch's discretionary and non-discretionary power. In elaborating on the importance of the YDPA to dominate the process of selecting the suitable Prime Minister mentioned the perception of the society on this matter [33], where the political parties would have all their decisions bound to the sentiment and considerations of the party, the YDPA stands as a constitutional institution, that can decide on the qualified head of government. Symbolically, YDPA acts as the authoritative, endorsing power conferred by Constitution that serves as a putative counterbalance against an overly ambitious Prime Minister [33]. This empowered the monarch with a power that may outgrow the Parliament's confines from which the Prime Minister would have owed his supports of majority [37].

Faruqi contends that the power of the YDPA in appointing the Head of the Government is a wide margin of discretion and wisdom. As the primary individual in the constitution, the King can make essential appointments according to the constitution and according to Parliamentary Acts [11][31]. In discourses relating to non-discretionary power of the YDPA, the ability of the monarch to refuse advice, constitutional authors referred to Article 40(1) of the Federal Constitution [13][21]. The King might ask for any information in possession of the Cabinet, and that information cannot be withheld from him despite the Official Secrets Act 1972. He believes that the YDPA may temper



his advisers' counsel and offer guidance from his fund of experience. Other than tempering with the advice, the sovereignty of the monarch was also highlighted in other ways. Most constitutional advocates agreed that the King is given several more nebulous powers over Parliament itself [1][12][31]. An example is the special emergency powers' which includes the power to act as the legislature in lieu of Parliament. Writings on Malaysian experience on the appointment of Prime Minister focuses on the interpretation of Constitutional provision that has formed a convention that makes the head of party, alliance, coalition that has secured the majority votes shall be appointed as the Prime Minister [12].

In commenting on the recent attempt to divert from this convention by the proposal of the 7th Prime Minister to have a nonpartisan unity government, critics argued it as a suggestion that is extremely dangerous as it concentrates power in the hands of a Prime Minister that will lead to risks of abuse of power and dictatorship. In defining a unity government, Zainal said the idea of a unity government is theoretically harmonious [44]. A prime minister with the majority support chooses the Cabinet members regardless of their party background and instead bases their choices on the Cabinet members' expertise and professionalism. On the Prime Minister's dismissal, Lee, while citing Bari's writing, mentioned that although the YDPA does not have the power to dismiss the Prime Minister who can still secure the majority's support [18][6]. However, the YDPA has the power to instruct the Dewan Rakyat speaker to allow for a vote of no-confidence during the Parliament session. Such a situation falls within the scope of the power of the YDPA being a guardian of the constitutional. Both Bari, and Ali agree that the rulers are aware of the need for them to showcase their power to adapt to the modern and developing constitutional interpretation that modifies the ceremonial-limited function that they used to be attached [6][4]. Based on the preceding literature, writings on ruler's institution highlighted the importance of preserving this institution connecting it to historical evidence on the creation of a strong government, the role of the ruler to protect the people as their decision will be impartial and served as check and balance on the execution of power by the ruling government. Although the discussion provides an in-depth discussion on its importance, the ruler's significant role during a crisis has not been addressed.

Previous literature also has mainly focused on the scope and limits of the prerogative power of the YDPA. While some authors agree that the constitutional prerogative power of the YDPA is limited as Malaysian monarch is a constitutional monarchy and the constitutional prerogative power of the YDPA is limited as Malaysian monarch is a constitutional monarchy and the constitution provides for the power to act on advice, some authors made the bold claim that the YDPA has an inherent power that extends beyond the constitutional purview. The literature review found an absence of studies that formulate the Malaysian common law constitutional monarchy model that may reduce the disparity of thoughts when describing and arguing on the monarch's scope of power and role.

## 7 Conclusion

In summary based on the preceding literatures on the existing Malaysian constitutional monarchy, common interpretation of majority relates Malaysian monarchy system to the Westminster model. As to date, there is an absence of studies on previous literature that forms the basis for the development of the Malaysian model of constitutional monarchy. Thus, as propounded by past literatures where this study concurs with, its timely for Malaysia to propose a new Malaysian common-law model of constitutional monarchy that can be formulated by adopting Malaysian local identity, values, culture, and beliefs would be a better alternative to understanding the constitutional monarchy's role and functions within the landscape of Malaysia. The paper output helps in forming the basis of a Malaysian common-law model of constitutional monarchy. The new common-law model supports the government's mission to inculcate the spirit of Ruku Negara among the people that can be seen when the government introduced the Malaysian monarchy system in the study of history for form 5 students in early 2021. The diluted understanding of the pillars of Ruku Negara has to some extent contributed to disharmony relations among different races in Malaysia and shaken the government's stability.

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