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Anti-Hopping Law in Malaysia: An Analysis of the Legal Framework and Enforcement Mechanisms

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ABSTRACT

Anti-hopping law was introduced in Malaysia through a constitutional amendment referred to as the Constitution (Amendment) Act (No. 3) 2022. The objective of this law was to prevent elected representatives at both the Federal and State levels from engaging in party-hopping. Despite the enactment of this law, issues have emerged due to the loopholes within the legal framework and the mechanisms for its enforcement. The provisions outlined in the Federal Constitution concerning situations leading to seat vacancies give rise to ambiguity and debate. In addition, the variations in the Speaker's decisions regarding seat vacancies also call into question the efficacy of this law. These issues have led numerous elected representatives to exploit the vulnerabilities inherent in this law. The article analyses the legal framework of the anti-hopping law in Malaysia as well as Singapore, and New Zealand for comparison. It also discusses the enforcement mechanisms of the anti-hopping law in Malaysia, as well as proposes recommendations aimed at enhancing long-term political stability in Malaysia. There is a need for a responsible political environment to



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encourage greater public participation in elections, fostering a more inclusive and democratic Malaysia where every citizen's vote truly matters.

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1. Introduction

In Malaysia, legislative authority is vested in the Parliament, which is divided into two chambers: the House of Representatives (called *Dewan Rakyat*) and the House of Senate (called *Dewan Negara*).¹ The *Dewan Rakyat* comprises 222 members who are directly elected to represent various parliamentary constituencies across the states of Malaysia.² This chamber plays a crucial role in shaping legislation and is responsible for proposing and debating laws. Conversely, the *Dewan Negara* consists of a combination of elected and appointed members. Each state elects two representatives to the Senate as outlined in the Seventh Schedule of the Federal Constitution, while the Federal Territory of Kuala Lumpur is represented by two members, and the Federal Territories of Labuan and Putrajaya each have one representative. Additionally, 40 members are appointed by the *Yang di-Pertuan Agong*, the King of Malaysia.³ The *Dewan Negara* primarily serves as a revising chamber, reviewing legislation passed by the *Dewan Rakyat* and ensuring that diverse perspectives are considered in the legislation process.

The recent political instability in Malaysia relates to more noteworthy changes in governance and electoral politics with the coming of the so-called political event known as 'Sheraton Move', which caused a power transition crisis from 23rd February to 1st March 2020.⁴ It was after this political move that a number of Members of Parliament from the coalition government of *Pakatan Harapan*, which had previously won elections in 2018, crossed over.⁵ It was all startling that such developments arose because of the infighting within the coalition, which the egos of the elected legislators became the prime cause of disappointment to the voters.⁶ The move highlighted the fragility of political alliances in Malaysia and revisited the issue of 'party-hopping' for policymakers, as leaving the party

¹ Federal Constitution, art 44.

² Federal Constitution, art 46(1).

³ Federal Constitution, art 45(1).

⁴ Roslina Abdul Latif, 'Early Days of the Malaysian Power Shift: A Look at Two Media Reports' [2021] *Academia Letters* <<http://dx.doi.org/10.20935/al944>>.

⁵ Mohd Irwan Syazli Saidin, 'Malaysia's Crisis of Political Legitimacy: Understanding the 2020 Power Transition and "Sheraton Move" Polemics Through the 'Eyes' of Malaysian Political Science Graduates' (2023) 9(1) *Cogent Social Sciences* <<https://doi.org/10.1080/23311886.2023.2222572>>.

⁶ Fabian Koh, 'Voters Left Feeling "Powerless" in Ongoing Political Gridlock Following Malaysia GE15 Results: Experts' *Channel News Asia* (Singapore, 23 November 2022) <www.channelnewsasia.com/asia/malaysia-general-election-voters-political-sheraton-move-king-experts-3095866>.

behind is considered an act of betrayal, especially to the voters who placed their trust in the politician.⁷

Party-hopping, also known as party-switching or parliamentary defection, can be described as the act of an elected representative who won the election, leaving that party or affiliation and joining another party or affiliation that is usually against that party.⁸ The representative is also said to perform party-hopping when he leaves the party and becomes independent, not representing any party. Laws against party-hopping are not mere laws since they are often enshrined in the constitution of the country. The acts of party-hopping can be detrimental to democracy as they skew the will of the people and the status quo of a given political space. People vote for their representatives with the expectation of certain fidelity, and it becomes unrealistic, leading to political problems.⁹ The social and political consequences that followed the Sheraton Move clearly indicated a crisis in the public's trust in the political establishment and inevitably called for political reforms immediately.¹⁰

In response, the Malaysian government designed a new law labelled as the anti-hopping law to reduce party-switching and enhance the responsibility of politicians holding office. Consequently, this law debars any elected Member of Parliament or a State Legislative Assembly from party-hopping, which is considered to contravene the constitution unless there is a legitimate reason to do so.¹¹ This is meant to protect the electorate's vote and restore integrity in the system by providing legal sanctions to those who engage in party-hopping.¹²

As for the anti-hopping law's remarkable aims, it does not intend merely to mitigate defections but aims to restore the public's faith in the system. After the Sheraton Move, the majority of the citizens saw no point in participating again since they felt their chosen leaders were just like the rest of trouble trouble-seeking individuals in a very personal contest. The law maintains integrity in leadership by cautioning those who have been elected to power that the people have the authority to vote them in and out at will.¹³

⁷ Khairulnizar Yahaya, 'Sheraton Move Turned Parliament Into Prostitution Den-Mahfuz' (*Malaysia Gazette*, 11 April 2022) <<https://malaysiagazette.com/2022/04/11/sheraton-move-turned-parliament-into-prostitution-den-mahfuz/>>.

⁸ Sheila Ramalingam, 'Stop the Hop!' [2022] 2 *Malayan Law Journal* cccxv.

⁹ Alea Batrisya binti Yazid, 'Malaysia Anti-Hopping Law' (*Malaysian Institute of Defence and Security (MiDAS)*) <<https://midas.mod.gov.my/others/21-anything/intern-article/329-malaysia-anti-hopping-law>>.

¹⁰ Aira Azhari, 'Where Is This Rage Coming From?' (*Institute for Democracy and Economic Affairs*, 16 July 2021) <<https://www.ideas.org.my/where-is-this-rage-coming-from/>>.

¹¹ Ram Anand, 'Malaysia Parliament Passes Anti-party Hopping Law: What Does It Mean?' *The Straits Times* (Kuala Lumpur, 28 July 2022) <www.straitstimes.com/asia/se-asia/malaysia-parliament-passes-anti-party-hopping-law-what-does-it-mean>.

¹² Nuradzimmah Daim, 'Anti-hopping Law Spells Stability, Confidence' *New Straits Times* (Kuala Lumpur, 12 November 2022) <www.nst.com.my/news/politics/2022/11/849766/anti-hopping-law-spells-stability-confidence>.

¹³ Mohd Hisham Abdul Rafar and Aisha Hani Nor Azmir, 'Constitutional Amendment Ensures All Aspects of Legislation Are Complied With—Experts' *BERNAMA* (Kuala Lumpur, 9 April 2022)

Party-hopping was not previously addressed in Malaysia's legislation, leaving politicians to change sides without the risk of punishment.¹⁴ This absence of regulation led to instability and dissatisfaction as the members of the legislature often put selfish desires ahead of their public obligations. The new law within the constitution sets out precise behaviour regarding membership in the political party with the intention of encouraging a system where politicians join for the sake of serving the public rather than self-interests.¹⁵

The anti-hopping law is an important measure to address the aftermath of the Sheraton Move as it seeks to correct political imbalances, promote compliance with electoral promises, and restore faith in governance.¹⁶ The prevention of leaving constituents behind by elected individuals under this law helps to maintain the credibility of the political paradigm.¹⁷ In the subsequent sections, this article seeks to explore in detail the anti-hopping law, its enforcement mechanisms and implementation in other countries. In the end, it presents suggestions on how the law can be made effective in a country's politics, which is centred on the people and minimises adverse effects associated with self-serving political attitudes.

This article hopes to highlight the significant potential of the anti-hopping law to positively impact Malaysian citizens by ensuring that elected representatives remain accountable to the constituencies who elected them. By promoting a political culture where voters' choices are respected and preventing opportunistic behaviour, people may feel more inclined to participate in elections and civic activities, fostering a more transparent, accountable, and responsive political landscape, and offering hope for a society where every citizen's voice and vote meaningfully contribute to the nation's future.

1.1 Problem Statement

After the Sheraton Move, the government decided to enact the law pertaining to party-hopping amongst the Members of Parliament and State Legislative Assembly to avoid floor-crossing and political instability at the Federal and State levels. Ultimately, on 28th July 2022, the Constitution (Amendment) Act (No.3) 2022 Bill was approved by the Parliament.

Despite the introduction of the anti-hopping law in Malaysia, the issue of political instability and government instability persists due to the loopholes and incomplete

<www.bernama.com/en/news.php?id=2070483>.

¹⁴ "'Sheraton Move' Would Not Have Happened With Anti-hopping Law, Says Ong' *Free Malaysia Today* (Petaling Jaya, 21 July 2022) <www.freemalaysiatoday.com/category/nation/2022/07/21/sheraton-move-would-not-have-happened-with-anti-hopping-law-says-ong/>.

¹⁵ Muhamad Nadzri Mohamed Noor, 'The 14th General Election, the Fall of Barisan Nasional, and Political Development in Malaysia, 1957-2018' (2018) 37(3) *Journal of Current Southeast Asian Affairs* 139 <<https://doi.org/10.1177/186810341803700307>>.

¹⁶ 'Comment: Anti-hopping Law an Important Step Towards Good Governance' *Malaysiakini* (31 July 2022) <<https://m.malaysiakini.com/columns/630276>>.

¹⁷ Anti-hopping Bill Is a Beginning Towards Restoring Integrity of Politicians' *Bernama* (Kuala Lumpur, 27 July 2022) <<https://international.astroawani.com/malaysia-news/anti-hopping-bill-beginning-towards-restoring-integrity-politicians-373175>>.

implementation of the law. This has led to concerns over the effectiveness of the law in preventing the collapse of elected governments and ensuring stability in the country's political landscape. There have been several issues about the loopholes in the anti-hopping law that came into effect on 5 October 2022. According to Prof Datuk Dr Sivamurugan Pandian, the spirit behind the introduction of the anti-hopping law was to prevent lawmakers from switching parties or extending their support elsewhere without their own party's consent.¹⁸ He suggested that it might be the time to revisit this legislation in the *Dewan Rakyat* to ensure that there are no loopholes, thereby safeguarding democracy, the electorate and the mandate entrusted by the voters.

In addition, there are also weaknesses in terms of the enforcement mechanisms of the anti-hopping law. This issue has been voiced by *Gabungan Pilihan Raya Bersih dan Adil*.¹⁹ They believe that the Speaker of the *Dewan Rakyat*, Tan Sri Johari Abdul, failed to enforce the anti-hopping law. This is evident when he exercised his discretionary powers to sustain the position of six members of Parliament from *Parti Pribumi Bersatu Malaysia* who switched their support to the *Kerajaan Perpaduan*. This is also disputed by Tan Sri Muhyiddin Yassin, the President of *Parti Pribumi Bersatu Malaysia*, that the Speaker of the *Dewan Rakyat* is wrong in ruling that there were no vacancies in the four Parliamentary seats won by former members of the party on the *Gabungan Rakyat Sabah* ticket.²⁰ He asserted that the Speaker of the *Dewan Rakyat* had misinterpreted Article 49A(3) of the Federal Constitution.

Therefore, it is critical to analyse the legal framework of the anti-hopping law in Malaysia; at the same time, a comparison is made with the law governing the same matter in Singapore and New Zealand. Furthermore, it is also crucial to examine its enforcement mechanism in Malaysia and to suggest improvements to ensure its optimal implementation and effectiveness in preventing political instability and promoting stable government in Malaysia.

1.2 Methodology

This study utilises a doctrinal legal research method with qualitative analysis. The techniques used to collect the relevant data are library-based to examine statutory provisions and case law relevant to the issue of anti-hopping law in Malaysia. Sources come from both primary and secondary sources. The primary sources comprise the Federal Constitution and court cases with a focus on the Constitution (Amendment) Act (No.3) 2022 that contained

¹⁸ Imran Hilmy, 'Experts: Anti-party Hopping Loopholes Should Be Closed' *The Star* (George Town, 14 July 2024) <<https://www.thestar.com.my/news/nation/2024/07/14/experts-anti-party-hopping-loopholes-should-be-closed>>.

¹⁹ Roskhoirah Yahya, 'Speaker Sia-Siakan Peluang Perkasa Akta Anti Lompat Parti—Bersih' *Sinar Harian* (Shah Alam, 11 July 2024) <<https://www.sinarharian.com.my/article/674413/berita/politik/speaker-sia-siakan-peluang-perkasa-akta-anti-lompat-parti---bersih>>.

²⁰ Nurul Huda Husain, 'Dakwa Speaker Khilaf, Bersatu Bawa Kes Ke Mahkamah—Muhyiddin' *Sinar Harian* (Shah Alam, 17 January 2023) <<https://www.sinarharian.com.my/article/240965/berita/politik/dakwa-speaker-khilaf-bersatu-bawa-kes-ke-mahkamah---muhyiddin>>.

the amendment of Article 10 and Article 48, the new provision (Article 49A) and other provisions, including Article 160 and the amendment of the Eighth Schedule. This article also referred to the Constitution of the Republic of Singapore and the Electoral Act 1993 of New Zealand for the purpose of comparison. Singapore is chosen since it has an active political competition with strict provisions forbidding political hopping through Article 46(2)(b) of the Constitution, whereby the defection has not posed a threat to its politics and governance.²¹ New Zealand provides a point of view where there is a dual system of governance with distributive electoral representation and more advanced solutions to the problem of anti-partisan hopping that allow political activity without compromising parties through its Electoral (Integrity) Amendment Act 2018.²² This comparison aims to provide the best available practices and any other insights which may assist in changing the foundations of anti-hopping law within the Malaysian context. Emphasis will be placed on the potential improvements to the legal environment in Malaysia based on the studied advantages of the laws of other countries. Meanwhile, secondary sources consist of books, journals, theses, newspaper articles, proposal papers, working papers, infographics, and online databases that are related to the anti-hopping law in Malaysia.

This study uses content analysis. The data analysis techniques involve interpretation, synthesis and summarising of the collected information. Content analysis is suitable for this doctrinal research since it relates to the objective and involves a systematic understanding and interpretation of the meaning and characteristics of the information. The information can be in written, oral or visual whereby this research will mainly focus on the written information to be analysed.

2. The Legal Framework of the Anti-Hopping Law in Malaysia, Singapore and New Zealand

In Malaysia, the anti-hopping law can be observed in the Federal Constitution after the amendment in 2022.²³ This constitutional amendment altered Articles 10, 48, 160, and the Eighth Schedule, and inserted a new article labelled Article 49A.

Similarly, Singapore also includes an anti-hopping law in its constitution, namely Article 46 of the Constitution of the Republic of Singapore.²⁴ On the other hand, New Zealand has a separate independent legislation relating to the anti-hopping law, which is the Electoral Act 1993. The Act was then amended through the Electoral (Integrity) Amendment Act 2018, which reviewed Section 55 and inserted new provisions of Sections 55AAB until 55E.²⁵

²¹ Thio Li-Ann, *Constitution of The Republic of Singapore: The Indigenisation of a Westminster Import*, (Constitutionalism in Southeast Asia, vol 2 Reports on National Constitutions, Konrad-Adenauer-Stiftung 2008) <https://www.kas.de/documents/252038/253252/7_dokument_dok_pdf_21147_1.pdf/88cd2619-ebd8-a05d-d8a6-4ad44cd05bfe?version=1.0&t=1539667659148>.

²² New Zealand Legislation, No 39, Public Act 5.

²³ Constitution (Amendment) Act (no 3) 2022.

²⁴ Constitution of the Republic of Singapore, art 46.

²⁵ New Zealand Legislation (n 22).

The discussion below will explore the legal framework of the anti-hopping law in Malaysia, Singapore and New Zealand. The analysis of laws from each of these countries will indicate the loopholes of the anti-hopping law, especially in Malaysia.

2.1 Legal Framework of Anti-Hopping Law in Malaysia

Malaysia's anti-hopping law was introduced after the collapse of the *Pakatan Harapan government* due to the Sheraton Move by 11 Members of Parliament who switched their party affiliation.²⁶ The law was enacted by constitutional amendment in the Federal Constitution and came into force on 5 October 2022.

2.1.1 Amendment of Article 10

Article 10 of the Federal Constitution is amended by inserting Clause (3A). This clause provides additional restrictions under Article 49A and Section 7A in the Eighth Schedule. The new additional restriction relates to the limitation on party switching of the Members of Parliament.

Without the amendment of Article 10, the effect of the judgment in the case of *Dewan Undangan Negeri Kelantan and Anor v Nordin bin Salleh and Anor*²⁷ will still be in force. In this case, the court held that Article XXXIA of the Kelantan Constitution, which provided that the seat of the members of the State Legislative Assembly shall become vacant if he resigns, expelled or for any reasons that make himself not the member of the political party was invalid and void because it violates the right to association in Article 10.

2.1.2 Amendment of Article 48

Article 48 of the Federal Constitution is amended by deleting Clause (6). Clause (6) previously provided that a Member of Parliament who ceases his membership shall be disqualified from being a Member of Parliament for five years from the effective date.

With the deletion of this Clause, the restriction on being a Member of Parliament for five years after ceasing his membership shall not apply. Ceasing as a Member of Parliament is different from disqualification as a Member of Parliament under Clause (3) of Article 48. This amendment provides an opportunity for the Member of Parliament who ceases membership to contest again for the seat without waiting for five years.

²⁶ Ahmad Suhael Adnan, 'PRU15: Enam "Dalang" Langkah Sheraton Tumbang' *BH Online* (Kuala Lumpur, 20 November 2022) <<https://www.bharian.com.my/berita/nasional/2022/11/1028785/pru15-enam-dalang-langkah-sheraton-tumbang>>.

²⁷ [1992] 1 Malayan Law Journal 697.

2.1.3 Amendment of Article 160

Article 160 of the Federal Constitution is amended by inserting the interpretation of the term 'political party'. The term means a society that aims to participate in elections for the House of Representatives or the State Legislative Assembly. This includes societies whose objects or rules allow for such participation, as well as those engaging in activities that involve running candidates in these elections. It also includes coalitions of these societies that are registered under federal law.

2.1.4 Insertion of New Article 49A

Article 49A of the Federal Constitution relates to the change of a member's political party or party-hopping. This provision is the most controversial among the other provisions of the anti-hopping law.

There are two situations that cause the Member of Parliament's seat to become vacant immediately, according to Article 49A(1). The first scenario describes the situation when the Member of Parliament does party-hopping or becomes an independent representative, while the second scenario indicates the situation when an independent representative becomes a member of a political party after winning the election.

Article 49A(2) provides three circumstances where the Member of Parliament does not cease from being a member of the House. Firstly, the dissolution or cancellation of the registration of his political party. Secondly, the reason is due to his resignation from the membership of his political party upon election as the Speaker. Lastly, the expulsion of his membership from his political party. The procedure for managing the revocation of a representative seat is set out under Article 49A(3). When the Speaker of the *Dewan Rakyat* receives written notice from any member of the *Dewan Rakyat* of a casual vacancy, he shall confirm the casual vacancy and notify the Election Commission within 21 days from the date of the written notice.

Furthermore, Clause (4) of Article 49A provides to hold an election under Article 54 whereby the casual vacancy shall be filled within 60 days from the date of Election Commission receives the notification from the Speaker as a normal process stipulated in the Constitution.

2.1.5 Amendment of the Eighth Schedule

The Eighth Schedule to the Federal Constitution concerns the provisions to be inserted in the State Constitutions. This schedule needs to be read with Article 71(4) of the Federal Constitution, which provides that Parliament may by law make provisions for giving effect in the State to the essential provisions at any time when the Constitution of any State does not contain the provisions that are set out in Part I of the Eighth Schedule.

The amendment of the Eighth Schedule is essential to ensure that the State inserts the same amendment in their constitutions. For the anti-hopping law, section 6(5) of the Eighth Schedule has been deleted, and section 7A regarding a change of a member's political party has been inserted. The provision as contained in Clause 49A above has been inserted. Thus, the State must amend their constitutions to enforce the anti-hopping law.

2.2 Legal Framework of the Anti-Hopping Law in Singapore

After Singapore gained independence in 1965, the political landscape was unstable due to competition among various political parties.²⁸ To ensure national unity and stability, the ruling People's Action Party introduced the anti-hopping law due to the fear that if Members of Parliament are allowed to switch parties freely, it would create fragmentation and erode public confidence in the political system.²⁹ Not only does this law restrict switching between political parties, but it also signifies a commitment towards unity and stability in Singapore's politics. The law expects voters to orient themselves more with party ideologies than with personal personalities. This would enhance accountability as the then elected representatives would lean more toward thinking about the popular will through enlightened representation rather than pursuing personal interests.³⁰

2.2.1 Article 46(2)(b) of Singapore Constitution

Article 46(2)(b) of the Constitution of the Republic of Singapore specifically mentions that a seat shall become void if a Member of Parliament ceases to be a member of, is expelled, or resigns from the political party under which he was elected. This is an important step in guarding the integrity and coherence of the parliamentary system as well as aligning the representation of constituents with the original intent of their votes.

This provision reinforces accountability by ensuring that constituents cast votes in expectation that their elected representatives will uphold the political principles of the party of which they were a member at the time of election. The article enhances their fidelity to the constituents and political party, insofar as their sitting in Parliament depends upon that very party. Should they cross over, it is usually a signal of departure from the party's platform, thereby causing the voters who supported him by virtue of party association to feel a sense of disconnect. Furthermore, through this provision, Singapore has secured parity between political stability and policy coherence in its parliamentary system. These two factors are essential to influence electoral outcomes and governance. Keeping a seat vacant when party-

²⁸ Cheang Bryan and Choy Donovan, 'Culture of Meritocracy, Political Hegemony, and Singapore's Development' (2024) 37 *International Journal of Politics, Culture, and Society*, 265 <<https://doi.org/10.1007/s10767-023-09458-x>>.

²⁹ Eugene Tan Kheng Boon and Gary Chan, 'Ch. 01 The Singapore Legal System' (*Singapore Law Watch*, 7 February 2019) <<https://www.singaporelawwatch.sg/About-Singapore-Law/Overview/ch-01-the-singapore-legal-system>>.

³⁰ Fraenkel Jon, 'Party-Hopping Laws in the Southern Hemisphere' (2012) 64(2) *Political Science* 106 <<https://www.tandfonline.com/doi/abs/10.1177/0032318712466758>>.

switching occurs reduces the chance of fragmentation and opportunism and secures the legislature's composition from party discipline and similar policy goals.

The implementation of this regulation urges deliberation of the individual rights against the collective party's freedom. There exists also a situation when a Member of Parliament loses the seat after resigning or being expelled, which then gives rise to debate on the scales standing between individual political agency and coherence of parties. Party matters are necessary; however, this affects what a Member of Parliament believes and the representation towards their constituents.

2.2.2 Article 46(3) of Singapore Constitution

Article 46(3) of the Constitution of the Republic of Singapore provides for the conditions in which those whose seats in Parliament have subsequently vacated may be eligible for re-election as Members of Parliament, provided that they fulfil the conditions set out in the Constitution. This matter is indicative of Singapore's commitment to establishing a healthy democratic framework, enabling active participation by its citizenry in politics.

The article lays a basis for continuity and participation in the public sphere and provides an opportunity for former elected representatives who might have accrued valuable experience and wisdom through their tenure to come back to the legislative field in case the seats get vacated for any reason, such as resignation, disqualification, or other circumstances.

It reflects a cut that allows for the opportunity within the context of a changing political horizon to characterise the dynamics of parliamentary democracy. It effectively allows bringing back familiar and comfortable faces within the house, as the provision is especially important at times of political upheaval or uncertainty when it is necessary to provide a stabilising influence, even as democracy thrives, and representation continues. It is a critical framework in its application to former Parliamentarians as it lays out the facility for re-engagement in political processes while buttressing basic tenets of democratic governance. It recognises in the Constitution the fact of the importance of experienced leadership and creates an atmosphere under which the participation in active politics is acknowledged and facilitated.

2.3 Legal Framework of the Anti-Hopping Law in New Zealand

New Zealand's systems of governance and election have since undergone significant transformations that have greatly impacted party loyalty by establishing the first-past-the-post systems that normally follow single-party majority governance to produce stable governments, but these have mostly marginalised the smaller parties and their supporters.³¹ A slow process of disenchantment was in motion with this system by the early 1990s, when

³¹ 'The History of New Zealand's Party System' (*New Zealand Parliament*, 3 March 2020) <<https://www.parliament.nz/mi/get-involved/features/the-history-of-new-zealands-party-system/>>.

the referendum of 1993 initiated the system called Mixed-Member Proportional to give the voters the opportunity to cast two votes; one directed to the candidate of the specific electorate and the other to any of the political parties.³² The system improves parliamentary representation regarding the proportionality of such representation, closely related to public opinion. The flexibility of the system, however, also raised issues related to party loyalty and especially around the idea of party-hopping. To that end, the anti-hopping law was introduced by the Electoral (Integrity) Amendment Act 2018 to protect and enhance party loyalty as part of democratic representation.³³

2.3.1 Section 55A

In Section 55A of the Electoral (Integrity) Amendment Act 2018, all Members of the Parliament are covered except for those who are elected as independents. This brings out the pertinent relationship between the parliamentarians and their respective political parties, which essentially forms the foundation of New Zealand's parliamentary democracy. It sets a clean path for the cessation of membership in a party, hence keeps a check on accountability and promotes the integrity of party representation within Parliament.

Subsection 2 of Section 55A states that a parliamentary seat would have been declared vacant if any Member of Parliament ceases to be a member of the party to which he or she was elected. This provision is crucial in upholding the democratic representation of a constituency. A Member of Parliament who no longer belongs to his political party raises questions concerning his mandate or legitimacy in representing the constituency. Therefore, the legal basis to vacate the seat is to ensure that the voters' choice, made in the context of party affiliation, is respected and honoured.

Subsection 3 of the same provision lists certain criteria under which a Member of Parliament may be found to have ceased to belong to his political party. They include:

(a) A Member of Parliament ceases membership by writing to the Speaker in the manner provided under Section 55B. Such a mechanism provides the voluntary conscious action of a Member of Parliament without emphasising the latter's politics on any personal agency level within its political confines.

(b) Alternatively, this would also mean ceasing his/her party affiliation if the parliamentary head of the political party gives a written notice under Section 55C to the Speaker. This provision therefore describes the total power of the party head in keeping party discipline and cohesion.

³² 'The Road to MMP' (*New Zealand History*, 13 January 2016) <<https://nzhistory.govt.nz/politics/fpp-to-mmp/first-past-the-post>>.

³³ Craig McCulloch, 'Waka-Jumping Bill Passes Into Law After Heated Debate' *RNZ Radio New Zealand* (27 September 2018) <<https://www.rnz.co.nz/news/political/367427/waka-jumping-bill-passes-into-law-after-heated-debate>>.

Section 55A provides a legal basis for the cessation of party membership. This provision ensures that Members of Parliament are accountable to the parties from which they are elected. Thus, they do not stray from the electoral mandate that is conferred upon them. Secondly, it promotes stability in governance based on clearly established grounds for terminating party membership. The provision contributes to political stability by vacating the seats when the members change their party association, thereby eliminating the probable menace of power imbalance and factionalism within the Parliament. Finally, the provision renders electoral integrity by giving credence to the electoral choices of voters and upholding the principle of representative democracy, thus making any disaffiliation of Members of Parliament null from their party.

2.3.2 Section 55B

Section 55B of the Electoral (Integrity) Amendment Act 2018 prescribes the procedural requirements for a member of Parliament to inform the Speaker regarding a change in party affiliation or status. It deals with the integrity and order of parliamentary representation in New Zealand. The provision in this section guarantees that any transition occurring in a parliamentary membership happens openly and orderly, ensuring accountability of the elected officials.

The first stipulation of Section 55B mandates that any written notice corresponding to Section 55A(3)(a) should be signed by the issuing member. This requirement reflects the need to hold the Members of Parliament accountable and ensure personal responsibility for decision-making. A signature serves not just as a formal endorsement but also validates that it is genuine communication. Since it involves an individual member, the possibility of wrong or unauthorised declarations, which could lead to misunderstanding in parliamentary proceedings, is averted.

This notice must be sent to the Speaker of the House regarding the importance of parliamentary procedures and the role of the Speaker in controlling parliamentary business as the arbiter of order and decorum, in asserting that any party changes must follow proper procedure to preserve parliamentary integrity. Section 55B places conditions, stating that they must inform the Speaker of their resignation from their political party and intention to register as an independent member or another party. This enables them to respond to the changing needs of the political environment, but also ensures that parliamentary records reflect the accurate status of such members.

2.3.3 Section 55C

The requirements regarding written notices submitted by Members of Parliament are provided for under Section 55C of the Electoral (Integrity) Amendment Act 2018. The provision becomes very pertinent in the light of party politics concerning formal communication between party leaders and the parliamentary authority.

Firstly, section 55C (a) lays down that the notice in writing must be signed by the parliamentary leader of the political party before which the Member of Parliament serves. This provision provides that notice shall be duly endorsed by the leaders of the political party, thereby attesting to the seriousness of the act by the decision to sign. Such power is vested in them because the leader is given all the rights to act on behalf of the party, thereby strengthening the resolution from the party's point of view.

Secondly, the stipulation in section 55C (b) that the notice must be addressed to the Speaker is crucial for maintaining the open lines of communication within the parliamentary framework. The Speaker is a neutral authority within the House of Representatives, and the addressing of such a notice to him or her sustains parliamentary integrity. This formal address protects the notice from being given to and entertained by any improper channel within the parliamentary system, thereby securing the orderly conduct of its affairs.

Section 55C (c) goes further to provide that the written notice must be accompanied by a statement in accordance with the provisions of section 55D. This additional provision furthers the cause for transparency and accountability in the process. Importantly, the requirement for a conforming statement ensures that the reasons behind the notice are articulated clearly, thereby providing context and rationale to the Speaker and, by extension, to the wider parliamentary body. The process serves to enhance those democratic principles of fairness and due process into the governance framework. Section 55C establishes a structured approach to how political parties convey major decisions affecting their parliamentary representatives.

2.3.4 Section 55D

For the procedure, Section 55D of the Electoral (Integrity) Amendment Act 2018 mandates that a parliamentary leader provide a written statement whenever the conduct of its members threatens the proportionality of political parties in Parliament, as it derives from the outcome of the last general election. This is indeed an important tool for maintaining the sanctity of the elective system and ensuring that parliamentary representation reflects the people's will.

Firstly, the clear statement should purport to show reasonably the parliamentary leader's belief that the member has behaved, or is likely at some point to behave, in a way that does or will distort the proportionality of political party representation. An assertion requires a sound basis: that is to say, the idea of accountability and transparency in parliamentary dealings is emphasised. The claim should be backed by evidence or reasoning that justifies the belief in such distortion, positioning the statement as not just a formal gesture, but rather one likely to reflect considerable concern over a potential misrepresentation in an election process.

Subsection (b) of Section 55D emphasises how, although such procedural fairness might exist in the notification process. The parliamentary leader is required to give the affected individual due written notice setting forth the grounds for such opinion as per paragraph

(a). Thus, the statute exhibits great regard for due process, allowing the member the chance to bring in his perspective and defend his actions before anything further happens. Thereby ensuring that the parliamentary leader's actions are not only based on personal conviction but also under scrutiny and subject to response by the member involved.

This provision also requires a significant confirmatory step, through paragraph (c), in which the parliamentary leader assures that at least two-thirds of all parliamentary members who are part of that party have agreed that a written notice under section 55A(3)(b) be given. This collective consent adds validity to the action taken against the members, showing that these decisions are not 'singles' but rather involve a consensus within the party's parliamentary caucus. Such an obligation serves to advance the democratic dimensions of party structures and management accountability levels for party members apart from leadership.

Finally, subsection (d) stipulates compliance with internal party rules about giving notice. The parliamentary leader must certify whether all procedural requirements mandated by the party rules have been satisfied or if no other requirements exist. This provision stresses the need to comply with statutory regulations and internal governance structures in ensuring that the process proceeds according to established norms and practices of the involved political party, accommodating statutory obligations and party autonomy.

2.3.5 Section 55E

Section 55E of the Electoral (Integrity) Amendment Act 2018 gives major definitions related to the meaning and application of Sections 55A to 55D. It lays a legal foundation for understanding the roles and affiliations of Members of Parliament vis-à-vis political parties. The pertinent definitions include such terms as 'parliamentary leader' and 'political party for which the member of Parliament was elected', thereby shedding much light on the process of legislation and that of political entities.

The term 'Parliamentary leader' is pivotal in understanding how to structure the leadership of a political party. In accordance with subsection (a), however, it is defined as the Member of Parliament recognised by the majority of parliamentary members from that party. This definition rests on the principle of majority recognition in the political institution, most probably highlighting that such a leader must be supported by the agreement of the party members. Subsection (b), on the other hand, is intended to cover cases where such a recognised leader is absent or incapacitated and then allow any act of a Member of Parliament holding that position to be referred to as parliamentary leader. With such a provision, continuity of leadership and governance has been set up in the party, and consequently, stability in the political institution will be achieved.

It also addresses the definition of parliamentary leadership and clarifies what is understood as a political party for the Member of Parliament elected.³⁴ This definition is a bifurcation of two scenarios. The first part refers to a Member of Parliament elected to represent an electoral district, stating that the political party affiliated with that Member of Parliament is one that nominated him or her as a constituency candidate. It ensures a tight grip on the electorates for representatives, making them answerable to the electorates who elected them. On the other hand, subsection (b) deals with where the Members of Parliament are elected through party lists, making it clear that the concerning political party is that under which a member's name was submitted on the list. This distinction is very important because it investigates the different avenues by which Members of Parliament can find themselves elected, so that it can recognise the different kinds of electoral processes taking place.

2.4 Differences Between the Anti-Hopping Law in Malaysia, Singapore and New Zealand

The legal framework of the anti-hopping law in these countries has its features that make it different from each other. In discussing its differences, there are still similarities, especially in terms of the consequences of an act of party-hopping, which amounts to a vacancy of the seat, and it also limits the right to association, especially to the people's representative.

2.4.1 Circumstances that Cause Vacancy of the Seat

The most obvious difference between these three countries is the circumstances that cause the vacancy of the seat. In New Zealand, the act amounts to party-hopping when the representative ceases to be a parliamentary member of the political party for which they were elected (Section 55(fa) of the Electoral Act 1993).

Meanwhile in Singapore, it provides three circumstances that constitute an act of party-hopping which is, first, the member of Parliament ceases to be a member of the political party for which he stood in the election, second, the member of Parliament was expelled from the political party for which he stood in the election, third, the member of Parliament resigned from the political party for which he stood in the election.³⁵

In Malaysia, there are two situations that establish an act of party-hopping.³⁶ Firstly, the member of Parliament who has been elected to the *Dewan Rakyat* as a member of a political party resigns as a member of the political party or ceases to be a member of the political party. Secondly, the member of Parliament who has been elected to the *Dewan Rakyat* as an independent representative joins a political party as a member afterwards.

³⁴ 'The History of New Zealand's Party System' (n 31).

³⁵ Constitution of the Republic of Singapore, art 46(2)(b).

³⁶ Federal Constitution, art 49A(1).

Based on this observation, Malaysian's anti-hopping law does not include the situation of expulsion of the representative from the political party in its provision as the act of party-hopping unlike Singapore. This causes the issue of the effectiveness of this law to come into question and may lead to uncertainty of the provisions. Therefore, elected representatives who engage in party-hopping can take this opportunity to cover up their actions due to the loopholes of Article 49A of the Federal Constitution.

2.4.2 Exceptions to the Vacancy of the Seat

Even though the objective of the anti-hopping law is clearly to prevent the act of party-hopping, somehow, the lawmaker still put an exception to this law. Referring to Malaysia, Singapore, and New Zealand, Singapore's anti-hopping law is the only country that is silent regarding the exception of the act not amounting to party-hopping.

In New Zealand, a member elected as an independent representative is immune from the act of party-hopping,³⁷ whereas Malaysia provides three exceptions. The exceptions are firstly, if the registration of the Member of Parliament's political party was dissolved, secondly, the resignation is due to the election as the Speaker, and thirdly, the expulsion of the member of Parliament membership of the political party.³⁸

Based on this observation, Malaysia's anti-hopping law may lead to some confusion, especially the exceptions that fall under expulsion from the membership of the political party. This exception may cause conflict with Article 49A(1) of the Federal Constitution, especially in circumstances of '... he ceases to be a member of the political party'. A deep examination shows that 'expelled from the political party' and 'ceases to be a member of the political party' have the same meaning and effect when a representative of the people does party-hopping. If he hops from the party and his action leads to his expulsion as a member of the party, then he also ceases to be a member of the party. This argument indicates the weakness of the anti-hopping law in Malaysia due to the exceptions under Article 49A(2) that conflict with Article 49A(1).

3. The Enforcement Mechanisms of the Anti-Hopping Law in Malaysia

The enforcement mechanisms of the anti-hopping law are significant for political stability and accountability among elected representatives in Malaysia. This is a law that was enacted to prevent the phenomenon of hopping from one party to another, with the objective of safeguarding the integrity of the electoral process by barring lawmakers from changing parties after being elected into office. However, critics have often raised concerns about the efficacy of such enforcement mechanisms due to the legal complexities surrounding them, possible loopholes, and the problems in monitoring compliance.

³⁷ Electoral Act 1993, s 55A(1).

³⁸ Federal Constitution, art 49(2).

Below is the discussion of the enforcement mechanisms of the anti-hopping law in Malaysia, particularly on the powers of the *Dewan Rakyat* and State Legislative Assembly, and the jurisdiction of the courts and their roles in upholding the law and adjudicating any transgressions made against it within the political context of the country.

3.1 *Dewan Rakyat* and State Legislative Assembly

The power to enforce the anti-hopping law belongs to the Member of Parliament, the State Legislative Assembly, and the Speaker. It is guaranteed by the Federal Constitution in Article 49A and section 7A of the Eighth Schedule.

The Party Leader or Member of Parliament, or member of State Legislative Assembly, must report the casual vacancy that occurred via a written notice to the Speaker immediately. After the Speaker has received the notice of this casual vacancy, the Speaker is required to confirm the said casual vacancy within 21 days, and then he must report this vacancy to the Election Commission.

3.1.1 Discretionary Power of the Speaker

Article 49A(3) of the Federal Constitution grants the discretionary power to the Speaker to confirm the casual vacancy that has been conveyed to him either by the Party Leader or a Member of Parliament.³⁹ This clause also applies to the Speaker at the State level as provided in section 7A(3) of the Eighth Schedule. To establish a vacancy of the seat, the Speaker must interpret Article 49(A)(1) and (2) because these provisions detail the circumstances that cause the vacancy and its exceptions. If the Speaker thinks that the notice of casual vacancy does not meet the conditions as per Article 49A(1) or is immune from clause (2), the said notice will not be confirmed as a casual vacancy.

The issue that arises regarding this discretionary power is that the Speaker has the absolute right to interpret Article 49A to confirm the vacancy of the seat.⁴⁰ The exception under Article 49(2)(c), which states that expulsion from the membership of the political party has raised questions in terms of the purpose and effect of this provision. Article 49A(1)(a)(i) provides that a member of *Dewan Rakyat* shall cease to be a member of the House, and his seat shall become vacant as soon as a date casual vacancy is ascertained by the Speaker under clause (3) if 'he resigns as a member of the political party' or 'he ceases to be a member of the political party'. There is a difference between 'resign as a member of the political party' and 'he ceases to be a member of the political party'.⁴¹ If the Member of Parliament leaves the party, the Member of Parliament actually 'resign as a member of the

³⁹ Federal Constitution, art 49A(3).

⁴⁰ Hasimi Muhamad, 'Dipecat Bersatu: Parlimen Gua Musang, Jeli Mungkin Tiada PRK—Penganalisis' *Astroawani* (Kuala Lumpur, 21 June 2024) <<https://www.astroawani.com/berita-malaysia/dipecat-bersatu-parlimen-gua-musang-jeli-mungkin-tiada-prk-penganalisis-475768>>.

⁴¹ Nik Ahmad Kamal Nik Mahmud, 'Undang-Undang Antilompat Parti: Pandangan Sepintas Lalu' (2023) 35(1) *Kanun: Jurnal Undang-Undang Malaysia* <<http://jurnal.dbp.my/index.php/Kanun/article/view/8454>>.

political party' and 'ceases to be a member of the political party'. However, if he is expelled from a political party, the provisions of Article 49A(1) do not apply because the Member of Parliament falls under Article 49A(2)(c).

The issue can be illustrated when the decision for the confirmation of the vacancy by the Speaker at the Federal level and State level was inconsistent. In the case of Mohd Azizi bin Abu Naim, he was a former member of the State Legislative Assembly of Kelantan who is also a Member of Parliament. He won both seats by becoming a candidate for the People's Representative from the *Parti Pribumi Bersatu Malaysia*. However, he had pledged support for the '*Kerajaan Perpaduan*'. In other words, he had given support to the government. His actions contradicted the stance of the party he won during the election. Because of this, he was expelled from being a member of *Parti Pribumi Bersatu Malaysia*.⁴² The Speaker of the State Legislative Assembly of Kelantan had confirmed the vacancy of his seat.⁴³ On the other hand, the Speaker of the *Dewan Rakyat* did not confirm the vacancy of the seat.⁴⁴ The different decisions made by both Speakers in interpreting the anti-hopping law caused some confusion on how the law should be enforced. The absolute power that the Speaker holds can influence the existence of the vacancy of the seat. This clearly demonstrates the weakness of the anti-hopping law, which is entirely dependent on the discretion of the Speaker.

Referring to the infographic on the anti-hopping law, it touches on the example of a situation where several members in a party have different views from the party they are a part of. If the action of not following the party's decision causes several members to cease party membership, then those members are considered to have changed parties and must vacate their seats.⁴⁵ This illustration describes a similar situation that happened in Mohd Azizi's case, where he did not follow *Parti Pribumi Bersatu Malaysia's* stance.

3.1.2 Inconsistent Implementation of the Anti-Hopping Law at the State Level

The amendment to the Eighth Schedule of the Federal Constitution provides a chance for the State governments to amend their respective State Constitutions to realise the Federal government's desire to curb party-hopping activities among elected representatives. However, the amendment is subject to the consent of the Ruler or *Yang di-Pertua Negeri*.⁴⁶

⁴² Muhamad (n 40).

⁴³ Nor Fadlina Abdul Rahim, 'Speaker DUN Kelantan Umum Kekosongan Kerusi Nenggiri Disandang Wakil BERSATU' *BeritaHarian* (Kota Bahru, 19 June 2024) <<https://www.bharian.com.my/berita/nasional/2024/06/1260441/speaker-dun-kelantan-umum-kekosongan-kerusi-nenggiri-disandang-wakil>>.

⁴⁴ 'Enam Bekas Ahli Parlimen Bersatu Kekal Wakil Rakyat' *Harian Metro* (Kuala Lumpur, 10 July 2024) <<https://www.hmetro.com.my/utama/2024/07/1109769/enam-bekas-ahli-parlimen-bersatu-kekal-wakil-rakyat>>.

⁴⁵ 'Infografik Akta Anti-Lompat Parti' (*Bahagian Hal Ehwal Undang-Undang*) <<https://www.bheuu.gov.my/en/media/infografik>>.

⁴⁶ Zanariah Abd Mutalib, 'Hanya 7 Negeri Kuat Kuasa Undang-Undang Lompat Parti' *Berita Harian* (Kuala Lumpur, 23 February 2023) <<https://www.bharian.com.my/berita/nasional/2023/02/1068356/hanya-7->

Until now, the law prohibiting party-hopping has been implemented in almost all States except Terengganu, Pahang, and Johore. It is evident that the responsibility for implementing the anti-hopping law lies with the State legislature itself. The Federal government has no authority to intervene in issues related to party-hopping, as this matter does not fall within the concurrent list outlined in the Ninth Schedule of the Federal Constitution. For instance, in Terengganu, the State government holds the view that it is unnecessary to table the Anti-Hopping Bill to the State Legislative Assembly on the grounds that the legislature comprises only two Parties, namely *Parti Islam Se-Malaysia* and *Barisan Nasional*.⁴⁷ In fact, the Terengganu government further asserts that it will only table the Bill if they receive instructions from the Party (*Parti Islam Se-Malaysia*) at the central level.

The refusal of some state governments to table the Anti-Party Bill shows that there is a lack of coordination in legal reform between the Federal and State governments. The weakness of the anti-hopping law is clear in the rejection of the Anti-Hopping Bill by three State governments. This has thwarted the Federal government's desire to fully implement this law.

3.2 Jurisdiction of the Court

In Malaysia, the anti-hopping law enforcement issue involves the jurisdiction of courts to adjudicate electoral cases according to their authority as derived from the Federal Constitution and other statutes.⁴⁸ The highest judicial authority is the Federal Court, which sets legal precedents on the interpretation of law.⁴⁹ Though they are the courts that enforce the law and make sure that elected representatives abide by it, they have always exercised restraint in dealing with political conflicts, especially those relating to the process of parliament. These courts will only interfere when there is a contravention of constitutional laws or individuals' rights.⁵⁰ In effect, therefore, the courts occupy a critical position in the preservation of democratic processes, but within the boundaries of court jurisdiction, achieving that fragile balance between legislative intention and judicial oversight.⁵¹

negeri-kuat-kuasa-undang-undang-lompat-parti>.

⁴⁷ 'Tiada Keperluan DUN Terengganu Bentang RUU Lompat Parti' (*Portal Rasmi Kerajaan Negeri Terengganu*, 4 August 2022) <<https://www.terengganu.gov.my/index.php/ms/arkib/berita-utama/1403-tiada-keperluan-dun-terengganu-bentang-ruu-lompat-parti>>.

⁴⁸ 'Jurisdiction of Federal Court' (*Pejabat Ketua Pendaftar Mahkamah Persekutuan Malaysia*) <www.kehakiman.gov.my/en/jurisdiction-federal-court>.

⁴⁹ *ibid.*

⁵⁰ *ibid.*

⁵¹ Nurhafilah Musa, 'Federalism, Constitutionalism and Democratic Society in Multicultural Societies– A Case Study of Malaysia' (2008) IFF Summer University <https://d1wqtxts1xzle7.cloudfront.net/31872055/federalism__constitutionalism_and_democratic_society-_case_study_of_malaysia-libre.pdf>.

3.2.1 The Court's Authority to Entertain Judicial Review

The anti-hopping law's enforcement mechanism in Malaysia is based primarily on Article 49A of the Federal Constitution, and it prohibits elected representatives from switching political parties without losing their seats in the *Dewan Rakyat*, the lower house of Parliament. Thus, the effectiveness of this law largely rests on the authority of courts to adjudicate on legislative acts pertaining to individual rights as well as party the most important area of judicial oversight.⁵² Such oversight will ensure that enforcement of the law does not infringe on fundamental rights or exceed powers conferred on legislative authorities.

The courts of Malaysia have certain jurisdictional powers which enable them to review with respect to actions undertaken under the anti-hopping law.⁵³ One among these mechanisms is the *writ of quo warranto*, which empowers the courts to determine whether or not, on the matter of declaring a seat vacant due to party-hopping, a Speaker of the *Dewan Rakyat* has acted within their authority.⁵⁴ It assists the courts in examining whether legislative body actions comply with provisions of a constitution and democratic principles. Moreover, an exercise of judicial review allows individuals to challenge legislative acts that they believe encroach on the individual's rights, which is to seek relief from the Speaker's declaration through the courts.⁵⁵

In the event of alleged party-hopping, the parliamentary seat of a Member of Parliament is declared vacant, and courts can thoroughly examine it. In case a Member of Parliament challenges that declaration to be invalid or illegal, he could resort to a judicial review to challenge the validity of actions taken by the Speaker. It becomes significant judicial scrutiny when claims of arbitrary decision-making are considered or a declaration disproportionate impacts the rights of any individual Member of Parliament. Courts do play a significant role in the enforcement of anti-hopping law in defining the framework for judicial review.

An important part of the courts' function in this regard is the balancing act that they need to perform, that is, safeguarding individual rights whilst still maintaining party loyalty.⁵⁶ The courts must weigh in their deliberation as to whether the actions taken under the anti-hopping law are merely reasonable or proportionate. Moreover, they ought to be

⁵² Björn Dressel and Tomoo Inoue, 'Politics and the Federal Court of Malaysia, 1960–2018: An Empirical Investigation' (2020) 9(1) Asian Journal of Law and Society 26 <<https://doi.org/10.1017/als.2020.18>>.

⁵³ Ern Nian Yaw, 'Legal Nutshell– Judicial Review' (*Malaysian Bar*, 14 September 2011) <<https://www.malaysianbar.org.my/article/news/legal-and-general-news/legal-news/legal-nutshell-judicial-review>>.

⁵⁴ Izmi Izdiharuddin Che Jamaludin Mahmud and Khairul Anuar Abdul Hadi, 'From Common Law Principles to Judicial Activism: The Duty to Provide Reasoned Decisions in Administrative Law in Malaysia' (2023) 26(2) Gading Journal for Social Sciences <<https://gadingssuitm.com/index.php/gadingss/article/view/386>>.

⁵⁵ Norazlina Abdul Aziz and others, 'An Overview of Judicial Review in The Malaysian Court' (2023) 13(1) International Journal of Academic Research in Business and Social Sciences, 336 <<http://dx.doi.org/10.6007/IJARBS/v13-i1/16182>>.

⁵⁶ Lorne Neudorf, 'Judicial Independence in Malaysia' [2017] The Dynamics of Judicial Independence 47, <https://doi.org/10.1007/978-3-319-49884-3_2>.

able to examine the purpose behind the law in its legislative intent to ensure that it serves some legitimate purpose in the political scene. This balancing act would provide constitutional protection to individuals, including the rights to free speech and association, without sacrificing the integrity of political parties.

3.2.2 The Doctrine of Separation of Powers

The enforcement of anti-hopping law in Malaysia is fundamentally based on the principle of separation of powers, manifesting the duties of the Executive, Legislative, and Judicial organs of the State.⁵⁷ Thus, setting out checks and balances essential for a working democracy, each of these organs can operate on its own without interference from the other.

As such, the Judiciary assumes a role in determining the fair administration of the law by which the anti-hopping law is supposed to be applied.⁵⁸ The courts are involved in adjudicating disputes arising from this law relating to politicians' contestation about their disqualification and allegations of misuse. In affording a judicial forum for legal redress, the Judiciary protects the rights of individuals and ensures that the enforcement of the law would not result in arbitrary and unjust outcomes. In engaging with the legislative intent of the anti-hopping law, the Judiciary further signals an intent to safeguard democratic principles and protect the electoral process.

Additionally, the engagement of the Judiciary in electoral affairs glorifies its outstanding role in preserving the integrity of the democratic architecture.⁵⁹ The courts must carefully set the balance between enforcement and civil liberties, guarding against possible overreach by both the Legislature and the Executive.⁶⁰ As the Judiciary entertains disputes and secures the electoral process from possible abuses, it also firmly establishes itself as a powerful pillar in the political landscape of Malaysia, ensuring that the anti-hopping law works as intended while locking onto democratic and just principles.

4. Recommendations to Enhance Political Stability

Stable political conditions significantly influence a nation's development, particularly in the socio-economic aspects, as they enable the uninterrupted implementation of government policies without external interference. The introduction of the anti-hopping law by the government represents a drastic step by the government in addressing this issue. However, the loopholes in this law are clearly visible when its enforcement fails to fulfil the objectives of this law. The issue of enhancing political stability will be discussed below by providing

⁵⁷ Rangaswamy D, 'Judicial Accountability: A Comparative Note on India and Malaysia' (2024) 4(1) *Asian Journal of Law and Policy* 25 <<https://doi.org/10.33093/ajlp.2024.2>>.

⁵⁸ Neudorf (n 56).

⁵⁹ Faridah Jalil, 'Judicial Accountability: A Study of Malaysia Copy' (PHD thesis, University of Warwick 2007).

⁶⁰ Wilson Tze Vern Tay, 'Constitutional Overlaps: Judicial Power and the Executive and Legislative Arms of Government' [2020] Centre for Asian Legal Studies Work-in-Progress (WiP) Series <<https://doi.org/10.2139/ssrn.3606362>>.

suitable recommendations. Some of these recommendations are the enactment of an independent Anti-Hopping Act, strengthening of electoral integrity, and the introduction of the recall election law.

4.1 Enactment of an Independent Anti-Hopping Act

Political stability is indispensable for the advancement of any nation, and in the case of Malaysia, incessant party-hopping by Members of Parliament breeds instability and erodes public trust.⁶¹ To remedy this, we can take a cue from the more successful Electoral (Integrity) Act 2018 in New Zealand, where the potential for party-hopping is adequately checked and public faith in the electoral system assured.⁶²

According to the New Zealand model, strong legislation can maintain the integrity of political parties and deter opportunistic behaviour from Members of Parliament.⁶³ An effective Anti-Hopping Act independent of political affiliations would be beneficial in Malaysia. It will stop Members of Parliament from switching political parties and ensure accountability to their constituents to improve the stability of politics. Currently, Article 49A of the Federal Constitution contains a basic approach which prevents hopping, but it fails to specify enough to build a governable structure for enforcement. Independent Anti-Hopping Act could formulate a more comprehensive and specific legal framework. Within this Act, party-hopping must be clearly defined, the legitimate reason as to why a person changes party affiliation must be stated, and punishment imposed.

An important constituent of the Anti-Hopping Act ought to be stringent penalties applied to those Members of Parliament who offend its provisions; a binding principle that requires elected officials to remain with their elected party; and a mechanism that enables the voters to raise complaints about alleged breaches. All these provisions would deepen democratic engagement and heighten the accountability of Members of Parliament to the voters.

Overall, Malaysia needs a focused Anti-Hopping Act to further bolster its political stability to credibility. The country should learn from New Zealand and enact a preventive measure against party-hopping to minimise the damaging effects it inflicts on public trust in the democratic process.

⁶¹ Fabian (n 6).

⁶² Electoral (Integrity) Amendment Act 2018, s 55A.

⁶³ Jack Vowles and Janine Hayward, 'Ballot Structure, District Magnitude and Descriptive Representation: The Case of New Zealand Local Council Elections' (2021) 56(3) *Australian Journal of Political Science* 225 <<https://doi.org/10.1080/10361146.2021.1935449>>.

4.2 Strengthening of Electoral Integrity

Presently, Malaysia is confronting a major political challenge concerning party-hopping, greatly affecting the electoral process and democracy.⁶⁴ Party-hopping was initially brushed aside by the ruling elite, which has made voters cynical and led them to proclaim reform. Therefore, restoring electoral integrity through amending two pieces of legislation, the Election Commission Act 1957 and the Election Offences Act 1954, is paramount.⁶⁵ These two pieces of legislation are outdated and ill-equipped for today's political world.

First, it is the revision of the 1957 Election Commission Act to make it an offence for a Member of Parliament and that of the assembly of states to change or transfer their political party.⁶⁶ It is because at the present level, the existing rules are ineffective and allow politicians to hop from one allegiance to another without accountability, losing the voters' trust in those politicians. Hence, a clear-cut prohibition on hopping from one party to another would stimulate stability and promote accountability on the part of elected officials.

The second on the agenda is what needs to be revised to incorporate punishment for party-hopping, or in other words, moving from one political party to another political party. On the contrary, the law does not effectively dissuade politicians from changing their party affiliations, which has a severe effect on election results and public confidence in the elections. By providing specific sanctions for party-hopping, the act will be much more in tune with modern democratic norms. Besides that, encouraging ethical values in politics during open discussions of the Election Commission with political parties will help clear some grey areas towards accountability in governance. Voters can also know through educational campaigns about the bad effects of party-hopping and be informed to make a difference by knowing its effects on good governance and political stability.⁶⁷

For example, reforming the Elections Commission Act and the Election Offences Act would be required in addressing the issue of party-hopping in Malaysia. Such legal updates would forge a healthier political climate, bring down opportunistic tendencies, and increase public confidence in the democratic process; perhaps they would be entry points for reform in the political culture of Malaysia.⁶⁸

⁶⁴ Mohd Irwan Syazli Saidin (n 5).

⁶⁵ Raiz Mukhliz Azman Aziz, 'Election Disputes: A Comparative Analysis of the Judicial Review Process in Malaysia and Indonesia' (2024) 32(2) *International Islamic University Malaysia Law Journal* 297 <<https://doi.org/10.31436/iiumlj.v32i2.946>>.

⁶⁶ *ibid.*

⁶⁷ Irma Wani Othman, Mohd Azri Ibrahim and Mohd Sohaimi Esa, 'Democratization and Mature Elections: A Study of Youth Political Participation in Voters 18 and Automatic Voter Registration' (2022) 7(29) *International Journal of Law, Government and Communication* 600 <<https://doi.org/10.35631/IJLGC.729041>>.

⁶⁸ Helen Ting Mu Hung, 'Electoral System Change for a More Democratic Malaysia? Challenges and Options' [2022] *Institute of Malaysian and International Studies, Universiti Kebangsaan Malaysia* <<https://www.ukm.my/ikmas/wp-content/uploads/2021/09/Report-on-Electoral-System-Reform-2021.09.30.pdf>>.

Reform of the Elections Commission Act and the Election Offences Act would make it possible to address the issue of party-hopping in Malaysia. It is such legal reforms that would establish a politically healthy environment, cut opportunism, and even improve public confidence in the democratic process, as such reforms would be the entry for reform in Malaysia's political culture.

4.3 Introduction of the Recall Election Law

Recall Election, also referred to as Representative Recall, is a mechanism that enables citizens to withdraw the mandate conferred upon an elected representative, particularly in the situation of party-hopping.⁶⁹ It allows the by-election to be held again in the area that causes a casual vacancy. The main purpose of the Recall Election law is to empower the citizens to evaluate the performance of their representative who was elected through the election process. This is to safeguard the rights of the voters who have placed their trust in the respected representatives based on their political affiliations and the manifesto they promised.

Apart from that, this law also serves as a deterrent against the issue of party-hopping, which can directly combat the widespread phenomenon where representatives of the people turn their backs on the mandate given not only by the political party, but also by the people's trust.⁷⁰ This can also increase the integrity among members of the assembly and the people's confidence in returning the power to choose representatives to the people, and is a progressive step towards building a more democratic country. This recommendation is one of the important steps towards restoring and preserving democratic practices and strengthening the institution of Parliament and the State Legislative Assembly, which should place the interests of the citizens and the country as a priority.

5. Conclusion

The anti-hopping law in Malaysia, amended through a constitutional amendment, aims to prevent elected representatives from switching parties, a practice known to undermine political stability and public trust in democratic principles, as evidenced by the "Sheraton Move" incident. Despite its passage, the law faces challenges in its legal framework and enforcement, as some representatives are still engaging in party-hopping, often leading to their expulsion from their parties. The law's stipulations do not equate "switching support" with party-hopping, creating ambiguity regarding certain actions.

Research comparing Malaysia's anti-hopping law with those in Singapore and New Zealand reveals significant differences in the circumstances leading to seat vacancies and

⁶⁹ 'Kertas Kajian Awal Berkaitan Suatu Undang-Undang Lompat Parti Untuk Malaysia' (*Bahagian Hal Ehwal Undang-undang*, December 2021).

⁷⁰ Wong Chin Huat 'How to Deter Party hopping in Malaysia? An Exploration of Remedies' (*Bersih*, 4 January 2021) <<https://bersih.org/wp-content/uploads/2021/01/Executive-Summary-Party-Hopping-final.pdf>>.

exemptions. Malaysia allows multiple exceptions, while New Zealand has fewer, and Singapore has none. The enforcement of the law relies on the House of Representatives, State Legislative Assemblies, and the Judiciary.

The recommendations include establishing an independent Anti-Hopping Act, strengthening electoral integrity, and introducing the Recall Election law to enhance long-term political stability. Overall, the study aims to provide insights to lawmakers and the public, emphasising the importance of safeguarding democratic rights and resisting actions that betray voter mandates.

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