

The Existence and Responsibilities of The Malaysian Armed Forces Council: A Constitutionalism Perspective

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Abstract

This research paper analyses the existence and responsibilities of the Malaysian Armed Forces Council (AFC) through the lens of constitutionalism. Article 137 of the Federal Constitution stipulates that the administration of the Malaysian Armed Forces (MAF) must be administered in accordance with AFC. This research paper employs qualitative research methodology, specifically content analysis supported by a series of elite interviews, to investigate how an actual practise of constitutionalism domain as described in Article 137 relates to the AFC. The primary objective of this paper is to examine the constitutional application of Article 137 and the reality practise based on five factors: conceptual, historical, cultural, doctrinal, and leadership. The investigation demonstrates that the AFC is a military service of its own kind (*sui generis*). The concept of the AFC as the Separation of Power binds the three realms, namely the King, the Armed Forces, and the Conference of Rulers. Article 137 of the Federal Constitution establishes that no other council or service commission has the same unique characteristics.

Keywords: Armed Forces Council, Federal Constitution, Separation of Power, The King, *Sui Generis*.

Introduction

The Armed Forces Council (AFC) is a Malaysian military body established under Article 137 of the Federal Constitution. It is a constitutional body responsible for the command, discipline, and administration of Malaysia's armed forces. The position of King as Supreme Commander of the Armed Forces is stated in Article 41 of the Federal Constitution. For the purpose of the constitution, the military is considered one of the public services as stated in Article 132 of Federal Constitution. The Constitution designates the military as a distinct and unique branch

of public service in comparison to other forms of public service. These are all meant to honour the *sui generis* of military service as the military philosophically belongs to the King (monarchy), the people and the state. The military's primary responsibility lies in safeguarding and preserving the constitution, as articulated in the majority of military creeds worldwide. Article 137 of the Federal Constitution has clarified the roles, memberships and the procedure of the AFC as follows

a. The Roles of the AFC

- (1) There shall be an Armed Forces Council, which shall be responsible under the general authority of the Yang Dipertuan Agong for the command, discipline, and administration of, and all other matters relating to the Armed Forces, other than matters relating to their operational use
- (2) Clause (1) has effect subject to the provision of any federal law, and any such may provide for the vesting in the Armed Forces Council of any functions with respect to the Armed Forces

b. The Membership of the AFC

The Armed Forces Council shall consist of the following members, that is to say:

- (1) The Minister for the time being charged with responsibility for defence, who shall be the Chairman;
- (2) One member representing Their Royal Highnesses, who shall be appointed by the Conference of Rulers;
- (3) The Chief of Defence Force who shall be appointed by the Yang Dipertuan Agong;
- (4) A civilian member, being a person performing the duties of the office of Secretary General for Defence, who shall act as Secretary of the Council;
- (5) Two senior staff officers of the Federation Armed Forces, appointed by the Yang Dipertuan Agong;
- (6) A senior officer of the Federation Navy, appointed by the Yang Dipertuan Agong;
- (7) A senior officer of the Federation Air Force, appointed by the Yang Dipertuan Agong.
- (8) Two, if any, additional members, whether military or civilian, appointed by the Yang Dipertuan Agong;

c. The Procedures of the AFC

The Armed Forces Council may act notwithstanding a vacancy in its membership and may, subject to this Constitution and to federal law, provide for all or any of the following matters

- (1) The organisation of its work and the manner in which its functions are to be performed, and the keeping of records and minutes;
- (2) The duties and responsibilities of the several members of the council, including the delegation to any members of the council of any of its powers or duties;
- (3) The consultation by the council with persons other than its members;

- (4) The procedure to be followed by the council in conducting its business (including the fixing of a quorum), the appointment, at its option, of a Vice-Chairman from among its members, and the functions of the Vice-Chairman;
- (5) Any other matters for which the council considers its necessary or expedient to provide for the better performance of its functions.

The main aim of this research is to analyse the constitutional application of Article 137 and its practical implementation, focusing on five key aspects: conceptual, historical, cultural, doctrinal, and leadership. In order to enhance the analysis, a set of expert interviews will be employed in conjunction with the narrative technique and content analysis method. This research elucidates the distinctive and unparalleled nature of the military. The establishment in question possesses distinct characteristics in terms of its laws, ethos, values, roles, organisational structure, responsibilities, specialities, orientation, customs, traditions, and practises, which differentiate it from other public services, political entities, governmental agencies, and the broader public society. This research endeavour aims to provide valuable insights to many stakeholders, including the military, government, and civil service, in order to enhance their comprehension of the primary issue underlying their protracted dispute. Ultimately, the findings of this study may contribute to identifying potential avenues for resolution and progress. Therefore, it is imperative that the parties involved demonstrate respect and compliance with the established boundaries in their interactions with the military.

This research is of utmost importance in addressing the currently degrading *sui generis* of military service; characterised by a lack of understanding regarding the fundamental principles of loyalty to the monarchy and the nation. Additionally, there is a diminishing of the responsibilities of the Armed Forces Council (AFC) in terms of aligning the military with other public services. This includes areas such as ranks, terms of service, regulations, compensation and benefits, protocols, ceremonial practises, and customs. Consequently, these elements are contributing to a decline in the prestige of military service, so exerting a detrimental influence on the overall character of military service. While it is true that other state public services may exhibit certain forms of distinctiveness, they lack the inherent and unparalleled ethos and ideals that are characteristic of military service. The aforementioned concerns and narratives have a direct influence on the unique nature of military service, military effectiveness, ethos, and ideals, which serve as the fundamental pillars of military power and capability.

Conceptual Approach: Specific Governing Body

Constitutionally, there are only seven categories of Public Service: the Armed Forces, the Judiciary and Legal Service, the General Public Service, the Police Force, the Joint Public Services, the Public Service of each State and the Education Service. All of these services are known as the Public Services, and each has distinct constitutional roles, responsibilities, governing bodies, orientation, culture, practices and values. The governing body for the military is the AFC as stated in Article 137 of the Federal Constitution. Meanwhile the Judicial and Legal Service is governed by the Judicial and Legal Service Commission as stated in Article 138. According to Article 139, the General Public Service of the Federation is governed by the Public Service Commission and Article 140 stipulates that the Police Force is administered by the Police Service Commission. According to Article 141A, the Education Service is governed by the Education Service Commission. The Public Service Department (PSD) is subordinate to these constitutional governing body as they are stated in the constitution, whereas the PSD

does not (Syed Danial, personal communication, 2021). The specific governing body is the primary authority to govern respective Public Services preceding any other authority, especially the entity that does not exist in the constitution. Significantly, all of these governing bodies are referred to as Service Commissions, with the exception of the military, which is referred to as the AFC. This designation distinguishes military service as unique in comparison to other public services (Abdul Aziz, 2013).

The public services have their own legal statute that regulates, guides, and governs how they perform their duties. The military has the Armed Forces Act 1972 (Act 77) while the Legal and Judicial Service has the Legal Profession Act 1976 (Act 166). The Education Service is governed by the Education Act of 1966 (Act 550), while the Police Force is governed by the Police Act of 1967. This assortment of legal acts demonstrates that these Public Services are governed by their respective legal acts, with the exception of the General Public Services, which are not governed by any legal act. These regulating bodies play vital roles in monitoring any malfeasance within the domain of Public Services that fall under their purview by conducting periodic checks and balances. According to Borhan (2018), ironically, Malaysia is the only country in the world that has no Public Service Act. As part of the 12th Malaysia Plan, the government proposed the introduction of a Public Service Act. It is contended that such an Act would establish a professional civil service characterised by a distinct demarcation of roles, responsibilities, and jurisdiction between the administrative body and the civil services (The Star, 2021).

The AFC is part of government machinery as indicated in the Schedule Ninth (6) (b), Federal Constitution. Nevertheless, the AFC may not always conform to the directives or mandates of other governmental entities, especially if such instructions are deemed contrary to the military's and the state's best interest. The reason for this is attributed to the necessity of the AFC to comply with its own constitutional standards and provisions, as outlined in Article 137 of the Federal Constitution. Hence, in instances where the government or relevant governmental bodies seek military engagement in matters pertaining to governance, civil affairs, or operational utilisation of the military, it is imperative for the Joint Service Chiefs Committee to assess the viability, practicality, legitimacy, and legality of such actions within the framework of the law and constitution (Syahrizat and Shahrom, personal communication, 2021).

In due course, the AFC is expected to possess the ability to comprehend commands, articulate them, and subsequently translate them into military operations. It is important to highlight that the requirements and circumstances of the military may not always be directly applicable or comparable to those of other public service sectors, especially when considering matters of security. In 2013, the AFC did not express opposition towards a circular issued by the PSD (Jabatan Perkhidmatan Awam, 2013). This circular aimed to harmonise the remuneration of Armed Forces personnel with that of other Public Services, taking into account their military positions and service grades. Considering the absence of military service and ranks, which do not align with other classifications of public service, it would have been appropriate for the AFC to be endowed with the autonomy and jurisdiction to handle the matter. Meanwhile, it is imperative for the military to uphold, safeguard, and preserve its distinctiveness. The understanding of military affairs and the distinct nature of military service is mostly within the purview of the Armed Forces itself.

Historical Approach: His Majesty Service

The Cobbold Commission had been tasked to draft the Federal Constitution in 1956. Hence, the primary source of reference was the Commonwealth Constitution, which is also employed in other nations like Australia, India, and Pakistan (Abdul Aziz, personal communication, 2021). The Commission specifically designated a particular provision within the constitution, namely Article 137, as the primary article establishing the existence of the AFC. The presence of the Defence Council in the United Kingdom can be seen as a parallel to the existing AFC in the Malaysian Armed Forces (Shahrudin, 2019). The historical connections between the United Kingdom Forces and the Malaysian Armed Forces have played a significant role in various sectors. Both can be classified as Her Majesty Service, which is referred to as 'Perkhidmatan Seri Paduka Baginda' in the Malaysian context. The aforementioned statement serves as a compelling testament to the presence of the representatives of Their Royal Highnesses, who have effectively instilled the essence of the Malay Rulers within the AFC. Furthermore, it is imperative to emphasise that all communication pertaining to this council is predicated upon the official duties and significance of His Majesty's role, which must be accorded utmost importance in every facet and situation.

The Armed Forces played a pivotal role in providing support to the civil authorities in controlling the race riot that occurred on 13 May 1969. The nation experienced a period of darkness during which the military intervened in response to an impending condition of turmoil that was deemed to be beyond control. During the onset of the racial conflicts in Kuala Lumpur, Tun Abdul Razak received a briefing from the Inspector General of Police at the time, Tan Sri Salleh. It was conveyed to Tun Abdul Razak that the police force was unable to effectively manage the riots and so sought the involvement of the military for intervention. Tun Abdul Razak promptly inquired of General Tunku Osman Jewa, the Chief of Armed Forces Staff, on the military's willingness to assume control of the government. The General provided a positive response, asserting that there would be no problem. Within this particular setting, it has been empirically established through historical evidence that the military does not possess any propensity or desire to assume governance of the nation. Upon the restoration of peace and security, the military relinquished its governing powers to civilian entities, subsequently redeploying its men to their designated barracks. Ultimately, the primary objective of the military is to safeguard the nation, its inhabitants, and the constitutional framework of the state (Nordin, 2021).

Cultural Approach: Universal Practices

It is a widely accepted convention that the Armed Forces worldwide possess a distinct governing body to oversee their operations, owing to the unique nature of military duty. In most of the Commonwealth States, this governing body is commonly referred to as the Defence Council, which primarily assumes responsibility for overseeing the Armed Forces of the respective state. The composition of this council differs throughout states, contingent upon their own constitutional requirements (Syed Danial, personal communication, 2021). However, the disparities between them are quite minor, as they largely retain similar functions, duties, memberships, and procedural aspects within the council. The influence of political systems or governing bodies also plays a significant role in this matter. The nature of governance is intrinsically contingent upon the identity of the head of state, be it an Emperor, King, Sultan, President, Prime Minister, or Chancellor. The preservation of the unique nature of military service necessitates the governing body of the Armed Forces, including the

Supreme Commander and the Armed Forces themselves, to exhibit sensitivity towards this issue.

Interestingly, the exclusive authority to undertake such actions lies with the Supreme Commander, the Armed Forces, and the AFC. This is due to the fact that individuals lacking comprehensive knowledge, exposure, specialised training systems, doctrines, jurisdiction, understanding, and capacity pertaining to the unique and unconventional military service values would be unable to do so (Zahidi, personal communication, 2021). Hence, the military's primary objective is to uphold and commemorate its unique nature of service, while effectively disseminating it to non-military groups. Additionally, it encompasses the necessity for the military to inculcate within the non-military institution the unique nature of military service. The purpose of this measure is to prevent any additional decline in military performance, ethos, and ideals.

According to the constitutional provisions, the Chairman of the AFC is designated to be the defence minister. Evidently, the individual in question has been bestowed with this role due to his cultural standing as the defence minister. Before assuming the aforementioned position, it is necessary for him to receive appointment from the Prime Minister and obtain authorization from the King in his capacity as Defence Minister. The primary role of the defence minister extends beyond the exclusive focus on the Armed Forces domains, encompassing responsibilities in the realms of politics, defence, and ministerial affairs. This suggests that the Minister bears the responsibility of supervising various facets, including defence policy, defence industry, logistics, procurement of capital assets, budgetary affairs, veterans' affairs, welfare of military personnel, and public relations. The Chairman of the AFC, despite occupying a prominent position within the organisation, has a deficiency in their grasp of the AFC's functions and responsibilities.

As a matter of fact, ministerial post in defence is contingent upon the duration of the governing political party's term. Practically, the transition of political party in governance is typically accompanied by a corresponding shift in the Minister of Defence. This is the point at which uncertainties arise, necessitating the AFC's awareness and readiness to adapt to any shifts in political environments. Drawing from Malaysia's recent political landscape, it is noteworthy to highlight that subsequent to the 14th General Election in 2018, there have been three successive Defence Ministers who have assumed the position of Chairman of the AFC within a span of around three years. The current circumstances have given rise to uncertainties over the appropriate course of action for the AFC, as it becomes necessary to take into account the political interests of the AFC Chairman.

Doctrinal Approach: Separation of Power

The fundamental principle behind the governance of the military entails the establishment of a distinct, defined, and effective agency or regulatory institution responsible for ensuring the appropriate adherence to and exemplary conduct of the military in its whole. Hence, the proposition that the AFC bears constitutional responsibility, within the broad purview of the King's general power, for the command, discipline, administration, and various other aspects pertaining to the Armed Forces, except operational deployment, is a robust doctrinal constitutional provision (Zahidi, personal communication, 2021). The King as the Supreme Commander of the Armed Forces is clearly designated in the Article 41 of the Federal Constitution, and it should be honoured. Hence, it is imperative that the management of the Armed Forces be entrusted to a singular specialised institution that is tailored to accommodate the unique requirements, roles, responsibilities, characteristics, functions,

prestige, pride, status, fighting spirit, moral compass, ethos, and values that are inherent to the Armed Forces, and are distinct in their nature. The primary objective of this measure is to guarantee the perpetual doctrinal effectiveness, capability, and readiness of the Armed Forces in addressing a wide range of national security, defence, and military-related concerns. The memberships of the AFC are consisting of mixture of various background of personalities that converge into one solid entity. They are having their respective roles in the council according to their own mandate and capacity. For instance, the Minister who is representing the political domain, Their Royal Highnesses Representative representing the King and Malay Rulers. The Chief of Defence Force and three Service Chief represent the Armed Forces domain. The Secretary General of Ministry of Defence representing the public domain. The Judge Advocate General representing the judicial and legal domain. The arrays of membership in question possess a *sui generis* origin and adhere to the theory of separation of powers. The composition of the council consists of individuals from many backgrounds who come together and unite under a common purpose, each with their own interests, responsibilities, and obligations (Syed Danial, personal communication, 2021). Hence, the decisions rendered by the AFC are regarded as doctrinally "broadly-based decisions of interest" that ought not to be readily challenged. In the present context, it appears that the AFC, under the direct authority of His Royal Highness, the Yang Dipertuan Agong seems to be subservient to political masters and Department of Civil Service (Shahrudin, 2019).

The constitutional framework does not explicitly specify that the Armed Forces, for the purpose of operations, are exempt from the jurisdiction of the AFC. The comprehension of this idea holds significant importance for all involved parties. It is noteworthy that the Armed Forces, aside from being subject to the jurisdiction of the monarch, also upholds a tangible presence within the National Security Council (NSC), whereby the defence minister enjoys a permanent membership. During the transitional period, it is important to highlight that the Chief of Defence Force assumes the role of an invited member, principally involved in providing advisory support. The purpose of this status is to ensure the readiness of the Armed Forces for deployment, subject to the approval of the King as determined by the administration (Danial, personal communication, 2021).

In the event that the National Security Council (NSC) recommends the utilisation of military force in response to an unforeseen threat or security scenario, the following circumstances shall arise. In the event of a mandate, the Armed Forces will consistently respect to established military protocols, particularly with regard to the chain of command, legal considerations encompassing the laws governing armed conflicts, and the management of its constituent elements. The Joint Service Chief Committee of the Armed Forces shall engage in deliberations regarding the potential use of military force before submitting their recommendations to both the monarch and the governing body. Hence, it is incumbent upon the Chief of Defence Force to furnish the King, who assumes the role of the Supreme Commander, with prompt and regular updates pertaining to the state of readiness, advancements, and achievements of the Armed Forces in specific conflict or security situations (Zahidi, personal communication, 2021). The preservation of military honour is maintained within the given framework, wherein the distinctiveness of this honour is protected. In this framework, every tier of commanders has the duty of accountability to their higher-ranking commanders, ultimately extending to the supreme commander. This statement elucidates the clear and unequivocal correlation between stakeholders in the administration of military affairs.

Leadership Perspectives: Constitutional Capacity

According to the constitution, the individual holding the position of Minister of Defence is officially designated as the Chairperson of the AFC. The determination of this stance is contingent upon the political party currently holding power in a democratic system. The potential change in the AFC chairperson is likely to occur, subject to the current political environment. One could posit that the evaluation of the AFC chairman's priority is contingent upon the duration of his five-year term (Abdul Aziz, personal communication, 2021). Nevertheless, the aforementioned data indicates that its period may be relatively brief. Despite the continuity of a political party's ruling power, there remains a possibility for a change in the chairman of the AFC. Moreover, in the event of a specific political party attaining power, it is extremely probable that they will proceed to choose a new Minister of Defence. In this context, it is imperative for the military personnel of the AFC to uphold and maintain their vested military interests, which are distinct and unique. While politicians may come and go, the military continues to endure. Despite the frequent changes in the chairmanship of the AFC, it is imperative to uphold and sustain the tasks, responsibilities, and ongoing advancement of the AFC.

In contrast, the role of the Representative of Their Royal Highnesses is characterised by greater permanence and stability when compared to the post of the Chairman of the AFC. The individual's status remains unaffected by political fluctuations. Undoubtedly, his duration of service as a permanent member of the AFC surpasses that of any other members. This enables him to effectively oversee and have substantial influence throughout the AFC meeting. According to Syed Danial (personal communication, 2021), he has had the opportunity to work under several Ministers of Defence and five Chief of Defence Force. Through his experiences, he has observed both similarities and contrasts in their leadership styles. The individual's primary responsibility entails disseminating the shared principles of the AFC, while expressing personal viewpoints in accordance with established protocols and in their capacity as the spokesperson of Their Royal Highnesses. The leadership responsibilities of this representative are of utmost importance in guaranteeing the AFC's consistent adherence to its constitutional obligations, as well as fostering a harmonious relationship among the Armed Forces, the King, the Malay Rulers, the Conference of Rulers, the government, and the wider civil society.

The Chief of Defence Force, as one of the four permanent members of the AFC, assumes the role of representing the Armed Forces in its entirety. He is supported by other senior officers from the three services, namely the Chief of Army, Chief of Navy and the Chief of Air Force. Consequently, it is imperative for him to exhibit authentic military leadership, as he is perceived as the custodian of the Armed Forces' flag, colours, interests, reputation, pride, prestige, essence, ethos, and persona inside the AFC. The primary objective is for him to effectively convey the cohesiveness of the military, characterised by a unified leadership philosophy, culture, and values (Zahidi, personal communication, 2021). However, various Chief of Defence Force individuals encounter distinct leadership environments and difficulties, which therefore influence their thought processes and behaviours. However, the core principle remains unchanged, which is the preservation and defence of the unique and inherent nature of military duty. The efficient execution of functions and responsibilities within the AFC rests mostly on the council members, particularly those with military expertise (Affandi, personal communication, 2021). One concern arising from this circumstance is that laws that are not enforced or utilised over an extended period of time may gradually lose their relevance and effectiveness (Shamrahayu, personal communication, 2022). Hence, the

Chief of Defence Force's leadership responsibilities within the AFC retain considerable importance in the unique context of military service, particularly in ensuring the adherence to constitutional and legal obligations.

Appointed Senior Military Officers

Traditionally, the responsibility for this function has been entrusted to the Service Chiefs, specifically the Chief of Army, Chief of Navy, and Chief of Air Force. These are the long-standing practises. According to the constitution, the membership of senior military officers in the AFC is not contingent upon holding the position of Service Chief. In reality, any senior military officer can become a member of the council as long as they have been chosen by the King. Furthermore, it should be noted that they do not hold permanent membership in the AFC (Danial, personal communication, 2021). The members of the AFC play a substantial role, primarily by their active participation in the voting procedures and their provision of expert perspectives on pertinent matters being deliberated. The significance of their leadership abilities and efforts cannot be overstated in preserving the distinct character of military service.

In normal circumstances, two additional Senior Military Officers and Civilian Officers are the Assistant Chief of Staff for Serving Personnel and the Judge Advocate General. Their present is to acknowledge the resolution and express their opinion, if deemed appropriate (Zahidi, personal communication, 2021). While their current role within the AFC is that of an ordinary member, their leadership impact holds significant importance in guiding the AFC towards making optimal decisions that prioritise the unique nature of military service. For example, it is imperative that the Assistant Chief of Staff for Serving Personnel at the Armed Forces Headquarters possesses a comprehensive understanding of the issues pertaining to the personnel of the Armed Forces, ensuring that they are well-organized and compliant with the military's specifications and service needs. In contrast, the Judge Advocate General assumes a leadership position with the primary objective of overseeing the adherence of the AFC to its constitutional obligations, legal statutes, established rules, regulations, and procedural guidelines (Sharizal, personal communication, 2021). In other words, both additional members play crucial responsibilities in facilitating the seamless conduct of the AFC meeting.

Conclusion

Constitutionalism encompasses the commitment of the governmental body accountable for the Armed Forces to abide by the constitutional obligations. The Constitution and legal provisions have designated military service as His Majesty Service, which is to be accorded the utmost level of importance and attention. However, it is worth noting that the majority of constitutional practises within the military align with internationally accepted norms and standards. The phenomenon being discussed is the genuine synchronisation and universal acceptance of a unique and distinct kind of military duty on a global scale. Constitutionalism encompasses the principle of separation of powers, which delineates the allocation of tasks and membership within the AFC. The purpose of this measure is to uphold the preservation of a harmonious relationship within the membership. The leadership of the AFC comprises individuals who possess substantial constitutional expertise and competence. The discussion and decision-making process within the AFC is facilitated by the active participation of its members, which aids in determining the most optimal constitutional conclusion. The AFC's presence and responsibilities are of utmost importance in preserving the distinct characteristics of military service, namely with regard to the hierarchical organisation,

adherence to rules and regulations, and management of administrative functions within the Armed Forces. The AFC bears the responsibility of encapsulating the essence, ethos, dignity, standing, morality, strategic acumen, and most importantly, the distinctive attributes of military service.

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