

Theories of Federal-State Relationship

(Teori Hubungan Persekutuan-Negeri)

RASYIKAH MD KHALID
FARIDAH JALIL

ABSTRACT

Federalism refers to an arrangement between several States which agree to be united together as a nation state. The administration of a federal state will be shared between a central government and the member States. There are two major types of federalism; dual federalism and cooperative federalism. While the former holds that the federal and state governments are co-equals with specific powers granted by the constitution, the latter denotes that although federal government is supreme over States, both acts cooperatively to solve common problem. To appreciate the meaning of federalism and federal-state relation, different approaches towards federalism will be analyze. It demonstrates how different concepts of federal-state relation can improve the management of a country and solve conflict between different levels of governments.

Keywords: Federalism; dual federalism; cooperative federalism

ABSTRAK

Federalisme merujuk persetujuan antara beberapa negeri untuk bersatu sebagai sebuah negara. Pentadbiran sesebuah negara persekutuan akan dikongsi antara kerajaan pusat dan kerajaan negeri. Terdapat dua sistem federalisme yang utama; dwifederalisme dan federalisme kerjasama. Dwifederalisme menunjukkan bahawa kerajaan persekutuan dan negeri mempunyai kuasa tertentu yang diperuntukkan oleh perlembagaan, manakala federalisme kerjasama menyatakan bahawa walaupun kerajaan persekutuan lebih banyak kuasa daripada kerajaan negeri, kedua-dua pihak akan bekerjasama untuk menyelesaikan masalah yang berkaitan. Untuk menghargai makna federalisme dan hubungan antara kerajaan persekutuan dengan negeri, pendekatan berbeza terhadap federalisme akan dianalisis. Artikel ini menunjukkan bahawa konsep yang berbeza tentang hubungan kerajaan persekutuan dan negeri dapat melancarkan pentadbiran sesebuah negara dan menyelesaikan konflik antara pelbagai peringkat kerajaan.

Kata kunci: Federalisme; dwifederalisme; federalisme kerjasama

INTRODUCTION

The jurisdictions accorded to the federal and state governments in a federation are normally laid down in the Constitution of the Federation. In this respect, Faruqi explains that the constitution is the fundamental foundation that designs the ‘basic framework’ of the country, as it lays down the structure of the government and describes the extent of powers and functions of various organs of the state.¹ This corresponds with Aristotle’s view that a

constitution can be either a frame of government, or the map of the distribution of social or economic power, or the establishment of the moral dimensions of the body politic.² This article will elaborate on the theory and concept of federal-state relation and determine whether certain concept of federal-state relation can improve the management of a country and solve conflict between them.

FEDERATION: A CONSTITUTIONAL SET UP

The late Professor Elazar stated that all constitutional systems consisted of several components with adjustment made in certain sectors to fit the circumstances of a country; however as ancient constitutionalism emphasized on socioeconomic distribution of power, modern constitution emphasizes more on the frame of government.³ In this regard, Yusoff emphasized that in any federation, the constitution becomes an important instrument for dividing powers between two or more levels of government.⁴ He quoted Birch who explained that power division will lead ‘each [level] in its own sphere, is coordinate with the others, and each acts directly on the people through its own administrative agencies.’⁵

Other authors have attempted to enumerate the attributes of federalism as compared to other forms of political organization. For example Lijphart (1985) defines federalism in terms of primary and secondary principles. In this regard, the primary element of federalism is the guaranteed division of power between central and regional governments. He further argues that this primary element is supported by five secondary attributes of federalism as described below:

- i. A written constitution which specifies the division of power and guarantees to central and regional governments that their allotted powers cannot be taken away;
- ii. A bicameral legislature in which one chamber represents the people at large and the other components units of the federation;
- iii. Over-representation of the smaller component units in the federal chamber of the bicameral legislature;
- iv. The right of the component units to be involved in the process of amending the federal constitution and to change their own constitution unilaterally; and

- v. Decentralized government, that is, the regional governments’ share of power in a federation is relatively large compared with that of regional governments in unitary States.⁶

In addition to Lijphart (1987), Daniel J. Elazar identifies six ambiguities linked with federalism as a theoretical and operational concept. In this respect, he argues that federalism can be identified either as a mean to achieve and maintain unity and diversity or as the structure and the process of government. It can also be seen as both a political and cultural phenomenon and can be pursued for both limited and comprehensive ends. It emerges as a mean to accommodate the spreading desire of people to employ common resources while maintaining their cultural distinctiveness within a larger polity.⁷ The theoretical discourses on federalism normally clarify the relationship between the federal and States governments. In this respect, Feeley and Rubin (2008) explain;

A theory of federalism is a general account of the structural arrangement of dual levels of government, one that goes beyond simple description of a particular federal system, a paired comparison of two or more federal systems, a legal analysis that seeks to formulate workable rules for defining boundaries and providing a convincing rationale for them once they have been drawn, or a historical analysis that traces changes in relationship between central state and constituent units.⁸

Federalism generally concerns with diffusion of political power in the name of liberty with the aim to achieve unity or energetic government.⁹ With regard to this Elazar (1985) argued; “the federal idea rests on the principle that political and social institutions and relationship are best established through covenants, compacts, or other contractual arrangement”.¹⁰ To correspond with Elazar’s theory, several definitions have been propounded based on their operational concepts. Rodee et. al see

federalism as “ a constitutional definition of governmental power between the national and constitutional units, whilst Friedrich defined federalism as “a union of group united by one or more common objectives but retaining their distinctive group being for other purposes.”¹¹ On a different note, Babalawe believes that federalism “advocates and promotes the form of organization of a state in which power is dispersed or decentralized by contract as a means of safeguarding local entities and individual liberties”.¹² This echoes Elazar’s belief that federalism requires considerable tolerance of diversity and willingness to take political action through conciliation. It is a viable option for multi-cultural States that willing to unite, share common resources and achieve political integration and stability.

It is interesting to note that several federal arrangements exist in practice where countries can apply the federalism concept either strictly or partially. This has led some writers to argue whether one country conforms to a federal criteria and one does not. Wheare (1953) suggested that the United States of America is the best model for the modern idea of federal government and regarded some countries as quasi-federal for subordinating one unit of government to the central government within their constitution. Thus countries like Nigeria, Malaysia and India are to be regarded as quasi-federal as the federal government is permitted to declare a state of emergency on any state and to take over the running of the government of certain region for a specific period of time.¹³ In contrast, Elazar (1985) noted that there is more than one way to apply federal principles when he said that “federalism can be considered a genus of political organization of which there are several species.”¹⁴ He argued that the United States of America invented modern federalism but added a federation as

a second form. He regarded Europe as confederation when preexisting entities joined to form a common government for specified purposes. He further noted that, as a consequence of the World War II, new federal arrangements have been developed in the form of federacies, associated States arrangements and common market.¹⁵ All these remain part of federal arrangement with slight adjustment is made according to the need of societies in those countries.

There are also arguments that States decide to join a federation due to the benefits that it offers. Inman and Rubinfeld (1997) argue that federalism encourages efficient allocation of natural resources, fosters political participation and protects basic liberties and freedom.¹⁶ This will guide them to decide on the characteristic of federalism that they would want based on the number of layers of government, the amount of representation in the federal government and most importantly the amount of authority that each levels of government will get.¹⁷ Although federalism permits diversity, increase political participation and improves efficiency can be used to protect certain privileged group. The state and local governments can also frustrate national policy and obstruct actions on national issues. This is not the case in Malaysia as dual and centralized federalism permits the federal government to spread the benefits and costs of government unevenly with poorer States like Perlis, Kedah, Sabah and Sarawak and even lower financial assistance to the state government under the opposition like Kelantan. It is timely that Malaysia revisits the concept of federal and state government relationship in the United States of America and Australia especially in environmental or natural resources management.

DUAL FEDERALISM

Dual federalism is a concept to describe a federal-state relation when both governments enjoy exclusive and non-overlapping spheres of authority. This is a normal type of federalism as States that join the federation will want to remain as independent governments as they were before and do not want to be treated as an administrative subdivision of the federal government. It has been referred to as the layer-cake federalism since each level of governments has their own administrative and legislative jurisdiction. In *South Carolina v United States*,¹⁸ Justice Brewer described dual federalism as:

A dual system of government, national and state, each operating within the same territory and upon the same persons; and yet working without collision, because their functions are different. There are certain matters over which the National Government has absolute control, and no action of the State can interfere therewith, and there are others in which the State is supreme, and in respect to them the National Government is powerless.¹⁹

Dual federalism usually becomes a common practice in a federation as it ensures each state remains sovereign despite being control to some extent by the federal government. It ensures that States possess exclusive control over their natural resources and remain powerful in their localities. In most constitutions, distinct division of federal and state legislative powers exhibit clear practice of dual federalism with natural resources remain under the exclusive jurisdiction of the States. In Malaysia, the States of Sabah and Sarawak gain extra powers compared to other States in West Malaysia as a result of

agreement to join the Federation of Malaysia. This can be seen in supplements to the State List (List IIA) and the Concurrent List (List IIIA) of the Ninth Schedule of the Federal Constitution of Malaysia where they continue to possess powers over native law and customs, ports and hydroelectricity. The financial provisions however remain centralized with the majority of the income goes to the federal fund. The federal government also has more legislative power over States and may legislate on state matters under several circumstances. This is due to the fact that historically, Malaysia has been constructed as a centralised federal state and the centralisation was made to achieve efficiency and development.²⁰

In other parts of the world, dual federalism has been practiced in countries like the United States of America, Australia, Canada, Brazil and India. In the United States of America, States have reserved powers that need to be taken into account in determining the extent of powers vested in the federal government.²¹ This indicates that States are allowed to perform some of the functions of government free from federal government interference. As will be discussed later, this position changed in the 1930s when the New Deal policies were introduced to encourage more cooperation between the federal and state governments due to industrialization and globalization. Nevertheless, as the federal government's role expanded over the century, a shift towards new federalism took place in 1970s to return or devolve some of the power to the state government.²² This was done mainly on the basis of the subsidiarity principle to give appropriate decision making power to the lowest appropriate level of government. The same progress from dual to cooperative federalism and back to devolution or decentralization can be seen in India. The 73rd and 74th amendment

to the Indian constitution for instance created the third tier of government called Panchayati Raj based on the subsidiarity principle.²³

The arguments whether dual federalism is still valid or should be discarded has been continuously debated in the United States of America. This is especially true in the context of environmental policy. Engel argues that overlaps between the government often occurs and static allocation of authority between them contradict the process of federal policymaking in which multiple levels of government interact in the regulatory process. Thus, management of environmental ills should be allocated to one or the other level of government with minimal overlap.²⁴ He further argues that such allocation “deprives citizens of the benefits of overlapping jurisdiction such as a built-in check upon interest group capture, opportunities for regulatory innovation and refinement, and relief for the courts from the often futile and confusing task of jurisdictional line-drawing.”

Although dual federalism is not the exact reflection of most federal system today, critics continue to discourse about relevancy of dualist federalism. Schapiro argues that dualist federalism must be inherently local so that it goes beyond the reach of federal power and vice versa.²⁵ Although dualist federalism accepts some overlap of state and federal authority, it seeks to safeguard some sacred precincts of complete state or federal hegemony.²⁶ He further explains that the court is often left with a difficult task to distinguish these boundaries, i.e. what is truly ‘local’ or truly ‘national’. In some situation, the court accepts that there are overlaps due to dualism but has difficulty in addressing them, especially in interstate issues.²⁷ As Young puts it, the court has to divide the world into two categories like local or

national; interstate of intrastate; manufacturing or commerce; in order to “describe distinct fields of regulatory jurisdiction in which one government or the other would have exclusive authority.”²⁸ This confuses the general public and prevents them from exercising self-governance responsibly.

The determinations whether a subject matter fall within the jurisdiction of the federal or state government have been determined by applying the doctrine of “pith and substance” in Malaysia. In the case of *Mamat b Daud v Government of Malaysia*, the applicants was charged under section 298A of the federal Penal Code for doing a religious act that may cause disunity.²⁹ By applying the doctrine of “pith and substance” the court held that section 298A was unconstitutional since religion is a state matter. In this respect, the law was referred to as colorable since it pretends to be legislation on public order when in pith & substance it is about religious offences. In *Ketua Pengarah Jabatan Alam Sekitar & Anor v Kajing Tubek & Ors* the court applied the doctrine to prevent the application of the federal law requirement for Environmental Impact Assessment in the state of Sarawak although both have concurrent power regulate the production, supply and distribution of electricity.³⁰ This is because environment is a state matter under Item 2(a) of List II and Item 13 of List IIIA of the Federal Constitution.

It appears that strict dualist approach to federalism does not fit in the process of globalization and climate change. As more and more natural resources are being impacted by climate change and as the local industries are becoming more open to threats of globalization, state requires further assistance by the federal government to initiate policies that can ensure a win-win situation to all. In Malaysia, the federal government has been heavily involved in

addressing issues like water resources which is mostly local in nature. Although the federal government has the power sharing in water supply and services since 2005, the water that is supplied through the pipe originates from rivers in States and only States should determine whether the amounts of water resources is adequate or to initiates interstate water transfer. The fact that National Water Services Commission (SPAN) becomes the only regulator in water supply and services raises the issue of how jurisdictions need to be shared between governments when a matter falls under the Concurrent List.

COOPERATIVE FEDERALISM

If dual federalism holds that the federal and state governments are co-equals with specific powers granted by the constitution, cooperative federalism denotes that although federal government is supreme over States, both acts cooperatively to solve common problem. This concept recognizes that overlaps do occur when the federal and state governments are exercising their authority granted under the constitution. Due to this, the concept has been also referred to as the marble cake federalism to represent the inevitable overlapping duties of the two governments similar to the mixing colors of a marble cake.³¹ Other authors have also introduced other terms to describe a similar notion to cooperative federalism. Schapiro refers it as interactive federalism which means both parties disregards the boundaries between them and embraces any overlapping through cooperation.³² Engel however terms the concept as dynamic federalism as he believes that rather than defining federal and state authority, the “policymakers, courts, and scholars should seek ways to harness and channel the political motivations that lead to

jurisdictional overlap to minimize its downsides; through legislative solutions that allow States to innovate within the bounds of federal ground rules while providing a flexible framework for interaction between the federal and state players”.³³

Certain elements are needed for cooperative federalism to work. Almost all authors agree that each government possesses certain autonomous powers that may be exercised cooperatively. In Malaysia, the division of the legislative powers between the federal and state governments shows clear intention of dual federalism although cooperation between the two governments is encouraged when the federation is created. Article 76 of the Federal Constitution also provides a basis for cooperation as the federal government can legislate on matters under the State List upon state government’s request. In addition, the establishment of a national body such as the National Land Council, the Local Government Council and the Conference of Rulers shows that state’s consent remains highly relevant in the national development process.³⁴

Despite the dualist approach in legislative power, cooperation can be achieved as the federal principle itself is referred to as “the method of dividing powers so that the general and regional governments are each, within a sphere, coordinate and independent”.³⁵ Cooperative federalism emerges where both government are required to work together to achieve a common end. On this Watts explains that the fundamental character of a federal system is a political system characterised by two sub-systems that are neither politically subordinate to each other, but which interact in a cooperatively and competitively manner.³⁶ In this respect it is submitted that jurisdiction under the Concurrent List under the Federal Constitution indicates

cooperative federalism as both government will work together to meet common ends.

In the United States of America, the era of cooperative federalism started after President Franklin Roosevelt initiated the New Deal in 1937. During the Great Depression, the President felt that the only way to stabilize the economy was for the federal government to control certain state's programmes such as social security, housing and agriculture so that he could create more jobs, people will have more money, spent more and regenerate the economy.³⁷ At the earlier stages, the deal was seen as unconstitutional as the federal government acted beyond its constitutional power. Nevertheless, close cooperation between federal and state government was strengthened by intergovernmental grants programme with fiscal sharing. From 1970, the American Congress has incorporated cooperative federalism in environmental legislations notably in pollution control which requires both federal and state governments to work together to protect the environment. In 1999, the Clinton administration gave more money to state government to strengthen the environmental power sharing. While States are given the liberty to administer the federal programme, they must adhere to the federal standards.³⁸

For a cooperative federal system to work, the federal government needs to induce States to cooperate and implement the federal policies at the state level. Sarnoff suggests that one way to induce state cooperation is through the "carrot and stick" approach.³⁹ This mainly refers to cooperation of the state to implement federal policy and they will receive some funding to implement the policies. The fund made available is the 'carrot' and the federal government will impose the 'stick' and take away the fund if state fails to adhere to the federal standards. Fishman argues that the federal 'carrot' will provide a foundation for

partnership in cost-sharing for state administration of the federal environmental policy.⁴⁰ The 'stick' to the funding refers to continuous federal scrutiny of state programme, enforcement records, issuance of permit and administrative orders. Although federal funding seems to be the key for cooperation, the federal government will achieve a certain level of uniformity and compliance when state government comply with the federal government's requirement.⁴¹

Cooperative federalism has also been practiced in Australian water resources management, notably in managing the Murray-Darling river basin which run across the States of New South Wales, Victoria, Queensland and South Australia as well as the Australian Capital Territory. In 1992, the Council of Australian Governments (COAG) was established as a platform for cooperative federalism in Australia.⁴² It is an inter-governmental forum in Australia which members include the Prime Minister, State Premiers and the President of the Australian Local Government Association.⁴³ It is set up to "initiate, develop and monitor the implementation of policy reforms that are of national significance and which require cooperative action by Australian governments".⁴⁴ In 1994 the council developed the Water Reform Framework to create more efficient water markets through trading in temporary water allocations or permanent water entitlements. This resulted in the implementation of the National Water Initiatives which requires States to develop implementation plan which amongst others will "be developed cooperatively between States and Territories which share water resources to ensure appropriate co-development of those actions which are of a cross-jurisdictional nature."⁴⁵ The carrot and stick approach was used when conditional funding was made available by the Commonwealth to induce States to

implement the framework by 2010. By 2008, the COAG has developed programmes to address urban water reform, enhance water market and improving information flow and capacity building in water resources management.

Cooperative federalism is also entrenched in the Australian Constitution. Section 96 of the Constitution in particular allows the Commonwealth Parliament to grant financial assistance to any State on such terms and conditions as the Parliament thinks fit. To date, this provision has been interpreted widely to the effect that the Commonwealth has granted funds in areas even beyond its legislative competence. The Commonwealth has in fact used this provision to persuade States to implement federal policy using the carrot and stick approach. Alternatively, the Commonwealth can legislate on water matters by way of States' referral power. Thus it can be seen that prior to the enactment of the Australian Water Act 2007, the Commonwealth's dealing in water resources was done mainly through political deal making with state governments. This situation changed in 2007 when the Commonwealth uses its power under Section 51 of the Constitution which provides for jurisdiction over trade and commerce, financial corporation and external affairs to pass the Waters Act 2007.⁴⁶ The Commonwealth remains optimistic that it will continue to receive cooperation from States to manage the Murray-Darling River Basin. Doubts have now arisen over the legality of the Commonwealth's move to use section 51 to legislate on state's matter. However, cooperative federalism remains a workable approach that enables governments at different level to play some role in water resources management in Australia.

OTHER FORMS OF FEDERALISM AND FUTURE CHALLENGES

A federal system is theoretically an agreement among States to be governed by another federal government and the system can only work with cooperation between those in the agreement. Problems arise when the federal government assume too much of the legislative power and dual federalism ensues through strict application of the legislative capacity. This becomes more complicated in the management of natural resources as it knows no administrative borders and closely connected to one another in the ecosystem. To some degree, cooperative federalism is useful in managing natural resources as it enables a more holistic ecological approach towards environmental ills and gave more consideration to the entire ecosystem that depend on a clean environment.⁴⁷ However, the dividing line between what is dual or cooperative federalism can sometimes be blurred by the fact that a federal system must involve cooperation between different levels of government in the system.

One notable form of federal-state relationship is known as centralised federalism. Elazar (1985) once noted that a federation is 'a polity compounded of strong constituent entities with a strong federal government, each possessing powers delegated to it by the people and empowered to deal directly with the citizenry in the exercise of those powers'.⁴⁸ This means that a strong federal is inevitable and the absent of such power may lead to secession or even a collapse of a federation. To another extreme, critics have argued that the central government often imposes coercion to ensure the survival of the federation. Taylor for instance argues that the birth and death of a federation concerns with the "politics of sovereignty" and coercion can be used as a mean of force to achieve compliance,

especially in a hybrid federal regime like the Russian federation. More often than not a centralized federalism has been intentional. Finland for instance moves towards a centralist direction since its inception in 1920.⁴⁹ This occurs when the federal government took advantage of the weak position of the Austrian provinces (Lander) to the extent that “the Lander has been relegated to the position of administrative subunits in a decentralized state rather than retaining their position as the constituent members of a federal union”.⁵⁰ Malaysia can be regarded as centralist since it was recorded in the Reid Commission that centralization is important to ensure the continuity of the federation.

Due to different arrangement of federalism, some authors argue that several federated States do not really exercise the real spirit of federalism. Riker questioned the very existence of federalism by stating that “federalism is no more than a constitutional legal fiction which can be given whatever content seems appropriate at the moment” as he felt that it does not make any difference in the way people are governed.⁵¹ On a similar note, Erk (2006) argues that federalism will become relevant if it is developed under the spirit of democracy as it will ensure democratic participation, representation and accountability as well as to accommodate territorially based ethnic, cultural and linguistic differences in divided societies. It will also be relevant for theoretical discourse when it focuses on the implications of federalism for public policy and governmental effectiveness.⁵² He however believes that federal system like Austria has moved in a centralist direction when the federal government took advantage of its initial power and expanded into policy areas under the province’s jurisdiction. The provinces are merely seen as ‘administrative subunits’ in a decentralized state and not

being treated as constituent members of a federal union.⁵³ Although the constitution provides Austria as a federation, it works as a unitary state in practice. It can be argued that Malaysia’s position is not the same as Austria as the state governments still possess a considerable list of legislative powers.

Federal-state relation can also be tested in natural resources management which runs across administrative borders. Some critics refer problems in managing water resources as a “wicked problem” since the solution to these problems is temporary,⁵⁴ do not react in a scientifically predictable manner,⁵⁵ and require government to adopt an adaptive approach to the problem.”⁵⁶ Adaptive federalism has then been introduced as an approach to deal with wicked problems within a federal system; though it is similar to cooperative federalism which requires an implementation plan which is more resilient and adaptive to changes, namely climate change. Since water respect no boundaries, decision making can then be made by the lowest possible administrative level affected with the change and can be more responsive and adaptive.

CONCLUSION

A fresher look into federalism acknowledges the fact that it stands better position to adapt to changes than that of a non-federal system. A federation involves multi-layered governance whereby certain capacity is reserved to a higher level to design policy and allow collective action. Although the lowest level of governance is more of the policy implementer, the designer must equip the local government with capacity to engage the stakeholders in the implementation. Without it, as Brown puts it, “there is little to prevent the inevitable conflicts over outcomes and performance

from re-infecting federal-state relations, and jeopardizing further collaboration”.⁵⁷ Although dual federalism encapsulates the agreement on power allocation between the federal and state government, cooperative federalism proves to be a better alternatives in the modern and complex multi-level governance. As a matter of facts, all parties are expected to be more responsive and adaptive to changes and challenges of the modern world.

NOTES

- ¹ Shad Saleem Faruqi, Document of Destiny: The Constitution of the Federation of Malaysia, Star Publications (Malaysia) Bhd, Selangor, 2008, p 3.
- ² As quoted in Elazar, D. J., Constitution-Making: The Pre-Eminently Political Act. Redesigning the State: The Politics of Constitutional Change in Industrial Nation. Banting & Simeon, Palgrave Macmillan, 1985, p 232.
- ³ Elazar Constitution-Making: The Pre-Eminently Political Act, p 233.
- ⁴ Mohammad Agus Yusoff, 'The Politics of Malaysian Federalism: The Case of Kelantan', (2001) 28 *Jebat*, p 36.
- ⁵ Birch, A. H., *Federalism, Finance and Social Legislation in Canada, Australia and the United States*, Clarendon Press, Oxford, 1957, p 306.
- ⁶ Lijphart, A., 'Non-Majoritarian Democracy: A Comparison of Federal and Consociation Theories ', (1985) 15 (2) *Publius*, p 4-5.
- ⁷ Elazar, *Exploring Federalism*, p 38.
- ⁸ Freeley, M. M. & Rubin, E., *Federalism: Political Identity and Tragic Compromise*, The University of Michigan Press, Michigan, 2008, p 3.
- ⁹ Elazar, *Exploring Federalism*, p 40.
- ¹⁰ Elazar, *Exploring Federalism*, p 45.
- ¹¹ As quoted in Akindele, S. T. & Olaopa, O. R., 'The Theory and Practice of Federalism as a Structural Mechanism of Governance: How Adequate for Gender Struggle and Representation in Nigeria?', (2003) 5 (3) *Anthropologist*, p 170.
- ¹² As quoted in Ebegbulem, J. C., 'Federalism and the Politics of Resource Control in Nigeria: A Critical Analysis of the Niger Delta Crisis ', (2011) 1 (12) *International Journal of Humanities and Social Science*, p 28.
- ¹³ Wheare 1953, as quoted in Ebegbulem, J. C., 'Federalism and the Politics of Resource Control in Nigeria: A Critical Analysis of the Niger Delta

- Crisis', (2011) 1 (12) *International Journal of Humanities and Social Science*, p 220.
- ¹⁴ Elazar, *Exploring Federalism*, p 6.
- ¹⁵ Elazar, *Exploring Federalism*, p 7.
- ¹⁶ Inman, R. P. & Rubinfeld, D. L., 'Rethinking Federalism', (1997) 11 (4) *Journal of Economic Perspectives*, p 44.
- ¹⁷ Inman & Rubinfeld, 'Rethinking Federalism', p 45.
- ¹⁸ 199, U.S. 437, 448 (1905).
- ¹⁹ As quoted in Schapiro, R. A., 'From Dualist Federalism to Interactive Federalism', (2007) 56 (1) *Emory Law Journal*, p 4.
- ²⁰ Harding, A., *The Constitution of Malaysia: A Contextual Analysis, Constitutional System of the World*, Hart Publishing, Oxford, 2012, p 21.
- ²¹ Section 1983 of the Civil Rights Act 1871.
- ²² Kincaid, J., 'The Devolution Tortoise and the Centralization Hare', (1998) *New England Economic Review*, p 15.
- ²³ Vijay Kelkar, Recent Evolution of Indian Federalism, (2010) International Development Research Centre (IDRC) Ottawa.
- ²⁴ Engel, K. H., 'Harnessing the Benefits of Dynamic Federalism in Environmental Law', (2007) 56 *Emory Law Journal*, p 161.
- ²⁵ Schapiro, R. A., 'Justice Stevens's Theory of Interactive Federalism', (2006) 74 *Fordham Law Review*, p.2133. He explained that dual federalism does not describe the actual operation of government in the United States today especially in the light of September 11 and Hurricane Katrina.
- ²⁶ Schapiro, 'Justice Stevens's Theory of Interactive Federalism', p 2134.
- ²⁷ Schapiro, 'Justice Stevens's Theory of Interactive Federalism', p 2138.
- ²⁸ Young, E. A., 'Dual Federalism, Concurrent Jurisdiction, and the Foreign Affairs Exception', (2001) 69 *George Washington Law Review*, p 139-188.
- ²⁹ [1988] 1 MLJ 119.
- ³⁰ [1996] 2 MLJ 388.
- ³¹ Oates, W. E., 'The New Federalism: An Economist's View', (1982) 2 *Cato Journal*, p 475.
- ³² Schapiro, R. A., 'From Dualist Federalism to Interactive Federalism', (2007) 56 (1) *Emory Law Journal*, p 3.
- ³³ Engel, 'Harnessing the Benefits of Dynamic Federalism in Environmental Law', p 162.
- ³⁴ Shaik Mohd. Noor Alam S. M. Hussain, *Federalisme di Malaysia*. Kuala Lumpur: Dewan Bahasa dan Pustaka, 1988, p 54.
- ³⁵ Wheare, K. C., *Federal Government*, Oxford University Press, London, 1963, p 14.

- ³⁶ Watts, R., *Administration in Federal System*, London: Hutchinson Educational Ltd., 1970, p 45.
- ³⁷ Wallis, J. J. & Oates, W. E. The Impact of the New Deal on American Federalism, p 155-180.
- ³⁸ Glicksman, R. L., 'From Cooperative to Inoperative Federalism: The Perverse Mutation of Environmental Law and Policy', (2006) 41 *Wake Forest Law Review*, p 731.
- ³⁹ Sarnoff, J. D., 'The Continuing Imperative (but Only from a National Perspective) for Federal Environmental Protection ', (1997) 7 (2) *Duke Environmental Law & Policy Forum*, p 242.
- ⁴⁰ Fischman, R. L., 'Cooperative Federalism and Natural Resources Law', (2006) 14 *N.Y. U. Environmental Law Journal*, p 142.
- ⁴¹ Weiser, P. J., 'Towards a Constitutional Architecture for Cooperative Federalism', (2001) 79 *North Carolina Law Review*, p 665.
- ⁴² Pigram, J. J. & Musgrave, W. F. 1998. Murray-Darling Basin: Cooperative Federalism under Test in Australia. Conflict and Cooperation on Trans-Boundary Water Resources. Just, Kluwer Academic Publishers, p.55; see also Painter, M., 'The Council of Australian Governments and Intergovernmental Relations: A Case of Cooperative Federalism', (1996) 2 *Publius*, p 101-120.
- ⁴³ Council of Australian Governments, About Council of Australian Governments, 2013, http://www.coag.gov.au/about_coag (11 May 2013).
- ⁴⁴ Australian Government Department of Environment, Council of Australian Governments Water Reform, 2013, <http://www.environment.gov.au/topics/water/australian-government-water-leadership/council-australian-governments-water-reform> (15 May 2013).
- ⁴⁵ Clause 9 (iii) Intergovernmental Agreement On A National Water Initiative Between the Commonwealth of Australia and the Governments of New South Wales, Victoria, Queensland, South Australia, the Australian Capital Territory and the Northern Territory.
- ⁴⁶ S.51 (i) (xx) and (xxix) Commonwealth Constitution.
- ⁴⁷ Fischman, 'Cooperative Federalism and Natural Resources Law', p 187.
- ⁴⁸ Elazar, *Exploring Federalism*, p 7.
- ⁴⁹ Erk, J., 'A Federation without Federalism', (2004) 34 (1) *Publius*, p 1.
- ⁵⁰ Erk, 'A Federation without Federalism', p 3.
- ⁵¹ Riker 1969, as quoted in Erk, J., 'Does Federalism Really Matter?', (2006) 39 (1) *Comparative Politics*, p.104. The author also quote S. Rufus Davis's forty-four adjectives preceding the term federalism which are "dual, orthodox, classic, polis, traditional, cooperative, bargaining, integrated, interdependence, reactive, new, permissive, functional, pragmatic, organic, pluralistic, monarchic, perfect, imperfect, direct, private, picket-fence, coercive, competitive, centralized, decentralist, peripheralized, fused, corporate, national, social, oligarchic, unitary, constitutional, international, military, political, monistic, polar, total, partial, contract, feudal-functional, incipient (Rufus S. Davis, *The Federal Principle: A Journey through Time in Quest of a Meaning* (Berkeley:University of California Press, 1978), p 24.
- ⁵² Erk, 'Does Federalism Really Matter?', p 104.
- ⁵³ Erk, 'A Federation without Federalism', p.2. He however argued that the provinces has not only fail to utilize their legislative powers but also on all matters not specified under the Federal List or commonly referred to residual powers. If these are exercised, then the provinces should be able to safeguard their prerogatives.
- ⁵⁴ Hearnshaw, E. J. S., Tompkins, J.-M. & Cullen, R. 2011. Addressing the Wicked Problem of Water Resource Management: An Ecosystem Services Approach. 55th Annual AARES National Conference. Melbourne, Victoria.
- ⁵⁵ Allen, Gerald M. & Gould, Ernest M., Complexity, Wickedness, and Public Forests (1986) *Journal of Forestry* (84)4, p 20-24.
- ⁵⁶ Davidson, B. & Malano, H., 'Wicked Problems Demand Adaptive Responses: How Does the Murray Darling Plan Stack Up? ' [2011] *The Conversation* <http://theconversation.com/wicked-problems-demand-adaptive-responses-how-does-the-murray-darling-plan-stack-up-4584> (11 January 2014).
- ⁵⁷ Brown, A. J. 2006. Federalism, Regionalism and the Reshaping of Australian Governance. Federalism and Regionalism in Australia: New Approaches, New Institutions? Alexandra J. Brown & Bellamy. New South Wales, ANU E Press, p 27.

REFERENCES

- Allen, G. M. & Gould, E. M. 1986. Complexity, wickedness, and public forests. *Journal of Forestry* 84(4): 20-24.
- Akindele, S. T. & Olaopa, O. R. 2003. The theory and practice of federalism as

- a structural mechanism of governance: How adequate for gender struggle and representation in Nigeria? *Anthropologist* 5(3): 169-178.
- Australian Government Department of Environment. 2013. Council of Australian Governments Water Reform.
<http://www.environment.gov.au/topics/water/australian-government-water-leadership/council-australian-governments-water-reform> [15 May 2013].
- Birch, A. H. 1957. *Federalism, Finance and Social Legislation in Canada, Australia and the United States*. Oxford: Clarendon Press.
- Brown, A. J. 2006. Federalism, regionalism and the reshaping of Australian governance. In *Federalism and Regionalism in Australia: New Approaches, New Institutions?*, edited by Alexandra J. Brown & Bellamy, J. A. New South Wales: ANU E Press.
- Council of Australian Governments. 2013. About Council of Australian Governments.
http://www.coag.gov.au/about_coag [11 May 2013]
- Davidson, B. & Malano, H. 2011. Wicked problems demand adaptive responses: how does the Murray Darling plan stack up? The Conversation.
<http://theconversation.com/wicked-problems-demand-adaptive-responses-how-does-the-murray-darling-plan-stack-up-4584> [15 May 2012].
- Ebegbulem, J. C. 2011. Federalism and the politics of resource control in Nigeria: A critical analysis of the Niger Delta crisis. *International Journal of Humanities and Social Science* 1(12): 218-229.
- Elazar, D. J. 1985. Constitution-making: The pre-eminently political act. Dlm. *Redesigning The State: The Politics Of Constitutional Change In Industrial Nation*, edited by Banting, K. G. & Simeon, R. New York: Palgrave Macmillan.
- Elazar, D. J. 1987. *Exploring Federalism*. Alabama: The University of Alabama Press.
- Engel, K. H. 2007. Harnessing the benefits of dynamic federalism in environmental law. *Emory Law Journal* 56: 159-190.
- Erk, J. 2004. A federation without federalism. *Publius* 34(1): 1-20.
- Erk, J. 2006. Does federalism really matter? *Comparative Politics* 39(1): 103-120.
- Freeley, M. M. & Rubin, E. 2008. *Federalism: Political Identity and Tragic Compromise*. Michigan: The University of Michigan Press.
- Fischman, R. L. 2006. Cooperative federalism and natural resources law. *New York University Environmental Law Journal* 14: 179-231.
- Glicksman, R. L. 2006. From cooperative to inoperative federalism: Perverse mutation of environmental law and policy. *Wake Forest Law Review* 41: 719-803.
- Harding, A. 2012. *The Constitution of Malaysia: A Contextual Analysis*. Oxford: Hart Publishing.
- Hearnshaw, E. J. S., Tompkins, J.-M. & Cullen, R. 2011. Addressing the Wicked Problem of Water Resource Management: An Ecosystem Services Approach. 55th Annual AARES National Conference. Melbourne, Victoria.

- Inman, R. P. & Rubinfeld, D. L. 1997. Rethinking federalism. *Journal of Economic Perspectives* 11(4): 43-64.
- Kelkar, V. 2010. *Recent Evolution of Indian Federalism*. Ottawa: International Development Research Centre (IDRC).
- Kincaid, J. 1998. The devolution tortoise and the centralization hare. *New England Economic Review* 913-948.
- Lijphart, A. 1985. Non-majoritarian democracy: A comparison of federal and consociation theories. *Publius* 15(2): 3-15.
- Mohammad Agus Yusoff. 2001. The politics of Malaysian federalism: The case of Kelantan. *Jebat* 28: 1-24.
- Oates, W. E. 1982. The new federalism: An economist's view. *Cato Journal* 2: 473-488.
- Pigram, J. J. & Musgrave, W. F. 1998. Murray-Darling Basin: Cooperative Federalism under Test in Australia. In. *Conflict and Cooperation on Trans-Boundary Water Resources*, edited by Just, R. E. Kluwer Academic Publishers.
- Sarnoff, J. D. 1997. The continuing imperative (but only from a national perspective) for federal environmental protection. *Environmental Law & Policy Forum* 7(2): 225-319.
- Schapiro, R. A. 2007. From dualist federalism to interactive federalism. *Emory Law Journal* 56(1): 1-18.
- Schapiro, R. A. 2006. Justice Stevens's theory of interactive federalism. *Fordham Law Review* 74: 2133-2176.
- Shaik Mohd. Noor Alam S. M. Hussain. 1988. *Federalisme di Malaysia*. Kuala Lumpur: Dewan Bahasa dan Pustaka.
- Wallis, J. J. & Oates, W. E. the impact of the new deal on American federalism. <http://www.nber.org/chapters/c6892> [13 June 2013].
- Watts, R. 1970. *Administration in Federal System*. London: Hutchinson Educational Ltd.
- Wheare, K. C. 1963. *Federal Government*. London: Oxford University Press.
- Weiser, P. J. 2001. Towards a constitutional architecture for cooperative federalism. *North Carolina Law Review* 79: 663-720.
- Young, E. A. 2001. Dual federalism, concurrent jurisdiction, and the foreign affairs exception. *George Washington Law Review* 69: 139-188.
- Rasyikah Md Khalid
Faculty of Law
The National University of Malaysia (UKM)
43600 UKM Bangi
Selangor.
Email: rasyikah@ukm.edu.my
- Faridah Jalil
Faculty of Law
The National University of Malaysia (UKM)
43600 UKM Bangi
Selangor.
Email: faridah@ukm.edu.my