PARLIAMENT OF MALAYSIA

JOURNAL OF THE MALAYSIAN PARLIAMENT

Volume 1 – 2021

ISSN 2773-4897 (PRINT)
ISSN 2773-4900 (ONLINE)

https://journalmp.parlimen.gov.my

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MODE OF CITATION
[year] JournalMP page

ISSN 2773-4897 (PRINT)
ISSN 2773-4900 (ONLINE)

AIMS AND SCOPE

- JournalMP is an open-access, peer-reviewed journal published annually by the Research and Library Division, Parliament of Malaysia.
- JournalMP focuses on practice and procedure in Houses of Parliament, issues pertaining to Parliamentary affairs involving the functions of Parliament for representation, oversight, lawmaking, and financial oversight including current issues from the Parliamentary perspective.
- In general, JournalMP is a journal for legislative studies in the Parliament of Malaysia, parliaments in the Southeast Asia region, and State Legislative Assemblies of all states in Malaysia.

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E-mail: journalmp@parlimen.gov.my
Online access: https://journalmp.parlimen.gov.my

Published by
Parliament of Malaysia
Jalan Parlimen
50680 Kuala Lumpur

Design and layout by THOMSON REUTERS

Printed by
Pebinacom Sdn Bhd (200201002096)
No 16, Jalan Kencana 20, Taman Kencana, 56100 Kuala Lumpur

EDITORIAL

Introduction

Parliament is the bulwark of democracy. Parliament places the people's representatives on the pedestal of power. It is up to them to determine which laws should be passed and which should not. In Parliament, the assertion of ministerial responsibility is made, and the government's accountability is checked. Parliamentarians make and unmake law. They hold the key to ensure that the government in power carry out their tasks and work for the people's interest and act within the ambit of the rule of law and uphold the supremacy of the Constitution. Like other government organs, Parliament is subject to the law and cannot hide behind its veil of parliamentary privileges. Parliamentarians are free to speak their mind, but the rule of sedition circumscribes freedom of speech within the four walls of the Parliament House.[1]

Walter Bagehot once said, 'A Parliament is nothing less than a big meeting of more or less idle people'. He certainly could not say the same thing about our Parliament. The fact that the people have raised many issues about Parliament indicates that Parliament is a body with plenty of activities. Parliament is always alive with issues of public concern such as on the quality of debate, the demeanour of the members of Parliament, the decorum and conduct, the extent to that arguments are well-built, well-researched and eloquently delivered, their attendance in sessions, their timely arrival or non-arrival, the significant or insignificant role of the Upper House. Despite those unfriendly comments, Parliament is an important institution for us. It has served us well. Important laws have been passed. Debates are often raised crucial issues of rights and interests, social needs and economic problems, race and religion, majority rights and minority privileges, controversies and concerns, and

1 Article 63(2) provides for the general immunity against proceedings in any court "in respect of anything said or any given by him when taking part in any proceedings of either House of Parliament or any committee thereof". Clause (4) provides that clause (2) does not "apply to any person charged with an offence under…or with an offence under the Sedition Act 1948…". See *Abdul Rahman Talib v S Seenivasagam* [1966] 2 MLJ 66, *Mark Koding v Public Prosecutor* [1982] 2 MLJ 120 (FC), and *Public Prosecutor v Lim Kit Siang* [1979] 2 MLJ 37.

many more. During the state of emergency, some argue that Parliament should sit when the executive has the right to act as the legislature. So, if Parliament does not sit, that accountability cannot be raised. Based on the argument in Article 43(3) of the Constitution that 'the Cabinet shall be collectively responsible to Parliament,' failing to call a parliamentary session violates the duty imposed by the Constitution. It is also essential to consider that government's accountability is affected not only on the floor of the House. It is the Yang di-Pertuan Agong's government that the Prime Minister and his Cabinet is serving. Therefore, the government is answerable to the His Highness and his subjects, the people of Malaysia.

The journal is meant to become the conduit to express views, concerns, critics, and improvements about parliamentary and the state legislatures roles, functions and procedure. The journal is also meant to be multidisciplinary in content, and we are inviting materials in law, political science, sociology, language, communication and any other relevant disciplines. For the inaugural edition, we have asked a few eminent persons in law, political science, sociology and language to pen their views on matters close to their hearts. These are professors, seasoned and experienced politicians and social activists known for their sharp criticism and constructive evaluation of principles and issues.

Content

The first edition focuses on articles only on various subject matters from legal and constitutional perspectives, parliamentary procedures, governance and politics, public interests, and parliamentary ethics and decorum. We hope to open up to shorter articles, commentaries on important events or decisions of courts, and book review in future editions.

For the first edition, we are proud to present eleven papers. The first article by Rais Yatim entitled "*Etika Legislatif untuk Wakil Rakyat* (Legislative Ethics for Honourable Members)" delves into establishing a set of legislative ethics applicable to members of Parliament and state legislatures in the light of deleterious elements besetting the people's representatives. The fear is that in the absence of an effective, ethical directive, members of the legislatures' value and decorum would be clouded with brashness and arrogance. The future of the nation depends on members who have a positive attitude and appropriate behaviours.

Next, Zaki Azmi writes on the government's scenario against the backdrops of the aftermath of the 2018 General Election, the new government of February 2020, the pandemic and the lockdown and through to proclamation of Emergency in January 2021. The article entitled

"Government's Powers During an Emergency" looks substantially at the legal interpretation of Article 150, complete with authorities, towards fighting the Covid-19 pandemic by utilising the powers thereunder.

The article by Nurul Izzah Anwar and Nurul Jannah Mohd Jailani entitled "Strengthening Malaysian Parliamentary Democracy Through Private Member's Bills" seeks to evaluate the effectiveness of the Dewan Rakyat in its role to check and balance the Executive powers. The article focuses on the mechanism enabling the deliberation and debate of Private Member's Bills. Drawing on local and international examples, this article argues favouring allocating space to Private Member's Bills within the parliamentary agenda and consequently returning legislators their rights and agencies towards strengthening Malaysia's parliamentary democracy.

The article "The Dewan Negara and Constitutional Reform: Upper Houses in Comparative Perspective" by Andrew Harding seeks to discuss reforms of the Dewan Negara focusing on two main areas, representation and revision, that are explored in comparative perspective, and the implications of these functions are discussed concerning the composition of the Dewan Negara. It is suggested that the proportion of senators representing the states and government-appointed senators has become imbalanced, reducing the House's efficacy in both of its roles. Accordingly, the number of appointed senators should be reduced to a minority of the total.

Political financing has become the subject of vigorous debates recently in the light of continuous criticism of the government's failure to provide closure to the issue. Edmund Terence Gomez and Joseph Tong's article titled "Financing Politics in Malaysia: Reforming the System" deals with the problem comprehensively. The authors argue that political financing should go beyond introducing new legislation. The article argues for the need to consider two additional points when this type of reform is proposed, namely: (1) institutional reforms of agencies responsible for monitoring the activities of parties and elections to allow for greater autonomy of these institutions; and (2) measures to ensure internal party elections are conducted in a manner devoid of deep monetisation.

The article in Bahasa Melayu entitled "*Mekanisme Pengawalan Bahasa Kurang Sopan (Unparliamentary Language) di dalam Dewan Rakyat: Perspektif Perundangan* (The Control Mechanism of Unparliamentary Language in the Dewan Rakyat: A Legal Perspective)" penned by Idzuafi Hadi Kamilan and Muthanna Saari discusses inappropriate and unsavoury words uttered in parliamentary proceedings. Words that are sexist and

harmful, personal attacks and condescending remarks are often the type words and sentences that came out of respected members of Parliament that are uncalled for and should be stopped. The article seeks to analyse ways and methods to control such occurrences and suggest measures to deal with the situation.

Next, the paper entitled "Role of Parliamentarians in Localising SDGs in Malaysia" contributed by Denison Jayasooria. It analyses the role of the All-Party Parliamentary Group Malaysia (APPGM) on SDGs. This is a bipartisan, multi-stakeholder group that is identifying local development issues and finding local solutions. This is undertaken in a decentralised way with the participation of the local communities. While these are short-term solution projects, it illustrates the potential of a decentralised, multi-stakeholder intervention that is locally defined and implemented. The pilot phase has also demonstrated the dual role of Members of Parliament who undertook constituency work as SDG champions at the grassroots.

Issues raised on the Public Account Committee (PAC) consistently generate lots of interest to critics and researchers. The article entitled "The Practice of Public Accounts Committee in the Parliament of Malaysia" is written by Siti Fahlizah Padlee. The research explores the PAC's current practices in Parliament on the appointment of its Chairman, and the implementation of two types of new meetings. It identifies the relationship between the PAC with other stakeholders. The research employed a case study with an exploratory, descriptive approach using data collected from published reports of PAC meetings from 2017 to 2020, the PAC's official website, interviews with a parliamentary officer-in-charge of handling the PAC, as well as international and local newspapers such as *The Straits Times* and *The Edge*.

The article about the Yang di-Pertuan Agong and Parliament is written by Abdul Mu'iz Abdul Razak and Wan Noorzaleha Wan Hasan entitled "A Reappraisal on the Constitutional Functions of the Crown, the Parliament and the Judiciary to defend Malaysian Constitutionalism". The article delves into the reality of Malaysian constitutionalism from the perspective of Yang di-Pertuan Agong's office. A doctrinal analysis is employed to ascertain the plethora of functions and powers of the Rulers, specifically on the executive authority of the Yang di-Pertuan Agong and His Majesty's roles in Parliament during times of emergency. The paper proceeded to discuss the Malaysian experience of the underlying principles of constitutionalism. The analysis focuses on judicial decisions, recent issues that touch on the existing constitutional framework's scope and powers.

The role of Parliament in dealing with sexual harassment is analysed in the article in Bahasa Melayu entitled "*Gangguan Seksual: Peranan Parlimen dalam Penggubalan Undang-undang dan Polisi yang Relevan* (Sexual Harassment: The Roles of Parliament in the Enactment of Law and Relevant Policy)". The author Rozana Abdullah looks at the process that has taken place within Parliament that has resulted in the passing of the law on sexual harassment. It aims to analyse the role Parliament played in ensuring that the bill on sexual harassment was passed based on the select committee's analysis and report. The study covers various minutes of the special committee, motions and order of meetings distributed during the third session of the 14th Parliament (until 3 December 2020). It was discovered that up until 3 December 2020, only 15.25% of parliamentary questions posted in both houses were on sexual harassment.

Another article on SDGs entitled "The APPGM-SDG (All-Party Parliamentary Group Malaysia for Sustainable Development Goals): Towards Mainstreaming SDG in Issues and Solutions of Parliamentary Constituencies" is written by Danial Mohd Yusof and Zainal Abidin Sanusi. The paper looks into the All-Party Parliamentary Group Malaysia (APPGM) on its origin, rationale, objectives, and group scope. Specific projects are discussed that include SDG programmes aimed at pioneering parliamentary constituencies in 2020.

Conclusion

The editorial board and the secretariat look forward to more contributions from researchers, writers and parliamentarians to ensure that the journal progresses and continue to become a powerful platform for those who are affectionate and concern that our legislatures serve their constitutional functions with rigour, passion and care for the rule of law. Our constitutional legacy is full of wisdom, courage, justness, fairness and always being conscientious on any issue that affects both the majority and the minority citizen. We have continuously upheld the rule of law. Our system of parliamentary democracy and an entrenched presence of the constitutional monarchy system has provided us with valuable notions of a unique system of responsible government.

Nik Ahmad Kamal Nik Mahmod
Editor-in-Chief

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Etika Legislatif untuk Wakil Rakyat

Legislative Ethics for Honourable Members

*Rais Yatim**

Abstrak

Kertas ini mengesyorkan anggota legislatif yang terdiri daripada Dewan Rakyat dan Dewan Negara serta Ahli-Ahli Dewan Undangan Negeri (ADUN) dibedung oleh suatu Etika Legislatif. Perihal ini harus diwajibkan memandangkan lantaran pengaruh negatif sudah mula bertapak dalam kalangan ahli-ahli Yang Berhormat. Jika trend ini tidak diawasi, Parlimen dan Dewan Undangan Negeri (DUN) akan muncul sebagai institusi gerhana nilai dan budi. Masa depan negara bangsa harus dijamin keutuhannya. Perkara ini boleh dicapai jika sifat dan kelakuan anggota legislatif Malaysia dibimbing secara positif.

Kata Kunci: Etika, Legislatif, Keluhuran Undang-Undang, Peraturan Am, Peraturan Mesyuarat

Abstract

This paper recommends that members of the legislature consisting of the House of Representatives and the Senate, as well as Members of the State Legislative Assembly (ADUN), be swaddled by a Legislative Ethics. This matter should be made compulsory considering that negative influence has begun to take root among the Honourable Members. If this trend goes unchecked, the Parliament and the State Legislative Assembly (DUN) will soon emerge as institutions eclipse in values and virtues or will be seen as institutions with eroding values and virtues. The future integrity of the nation must be assured. This can be achieved if the character and conduct of the Malaysian legislature are being guided in a positive manner.

Keywords: *Ethics, Legislative, Rule of Law, General Orders, Standing Orders*

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Pengenalan

Kertas ini membicarakan pentingnya etika legislatif atau etika khidmat bagi semua Ahli Yang Berhormat yang bergelar YB Wakil Rakyat di semua Dewan Perundangan – Parlimen dan Dewan Undangan Negeri (DUN). Usaha ini juga adalah sebagai instrumen panduan awalan, rujukan dan pembidang disiplin interaksi melalui nilai, kaedah berinteraksi dan tatacara kelakuan di lapangan. Instrumen panduan ini bukan sahaja berkaitan dengan kelakuan atau tingkah laku anggota dewan legislatif semasa Parlimen bersidang, semasa berbahas atau bertikam lidah, tetapi juga sebagai rujukan tentang panduan dan langkah-langkah pencegahan perwatakan negatif di dalam dan di luar dewan.

Seseorang YB Wakil Rakyat itu terdedah kepada pelbagai risiko kritikan dan cemuhan, tanggungan sosiopolitik apatah lagi beban konflik hidup yang mencabar di lapangan dan di tengah-tengah masyarakat yang dikhidmatnya. Ahli Parlimen (di Dewan Rakyat dan di Dewan Negara) dan Ahli Dewan Undangan Negeri (ADUN) di 13 negeri boleh dirumus sebagai insan pimpinan yang tinggal di dalam rumah kaca – perbuatan fizikal mereka jelas tampak kepada pemerhati dan pengamatan rakyat jelata.

Kertas ini disediakan sebagai punca kesedaran awal memandangkan Parlimen dan dewan-dewan perundangan negara peringkat negeri telah terserlah kepada kritikan dan pandangan negatif susulan tingkah laku dan gelagat ahli-ahli YB semasa berkomunikasi, berhujah dan berdebat di Dewan Rakyat khasnya. Amat buruk padahnya apabila anak-anak remaja, para pelajar dan masyarakat amnya melihat gelagat sombong, kasar bahasa dan piel tiada budi bahasa dalam kalangan segelintir pemimpin yang bergelar Yang Berhormat atau YB. Umum kerap melihat keadaan kurang menyenangkan apabila menyaksikan gelagat 'bebas cakap – bebas bantai' yang diperagakan di Dewan Rakyat – dewan legislatif tersohor tanah air. Pemimpin YB kita ini jugalah yang sering mengajak rakyat bersatu padu, mencapai kemajuan dan menyeru supaya menyokong pimpinan dan parti mereka demi masa depan bangsa dan tanah air. Harapan rakyat untuk beroleh pimpinan melalui teladan akan menjadi amat sukar diwujudkan dalam kalangan masyarakat jika kecenderungan negatif seperti ini berterusan dilihat di kaca televisyen serta paparan media sosial.

Hal ini sering menjadi tular dengan gelagat pimpinan legislatif yang kasar bahasa dan keperibadian kontroversi. Keadaan begini mungkin disebabkan oleh faktor ketiadaan latihan sebagai Wakil Rakyat yang

sesungguhnya amat kurang beroleh bimbingan dan latihan selepas kemenangan Pilihan Raya Umum (PRU) atau Pilihan Raya Kecil (PRK).

Mesti dicari jalan supaya gah tindak-tanduk negatif anggota legislatif ini dinyahkan daripada kamus perjuangan jika kita masih serius untuk mewujudkan masyarakat penyayang, toleransi dan berbudi tinggi. Tulisan ini memuatkan beberapa syor pokok ke arah mewujudkan budaya tinggi sebagai asas tamadun nasional menerusi saluran legislatif.

Perlu dirakamkan penghargaan bahawa ahli-ahli YB tanah air kita semenjak 1955 hingga kini secara kolektif telah banyak menyumbang jasa dan khidmat kepada rakyat dan negara Malaysia. Sektor legislatif negara kini yang diwakili 222 orang di Dewan Rakyat, 70 di Dewan Negara dan sekitar 600 orang ahli Dewan Undangan Negeri (ADUN) kesemuanya mempunyai rekod sumbangan membina negara yang sukar dihitung dan tidak upaya diberi nilai satu persatu. Namun di samping aluan penghargaan itu tersua jua beberapa *gading yang retak dan bumi yang tidak ditimpa hujan.* Justeru, bersama-sama kita jelujuri dan tampal kain yang koyak, tegakkan semula tiang nan condong, apungkan kembali teras nan terendam.

Peristiwa kasar bahasa dan salah nilai

Berikut diimbas kembali beberapa peristiwa gelagat kasar bahasa dan songsang nilai di Dewan Rakyat. Pada tanggal 21 November 2016, anggota dari Pasir Salak mengungkapkan, 'Yang Berhormat Seputeh ini kek, kek, kek, kek ni fasal apa? *The only woman with a "kok" is in* Seputeh'. Ungkapan itu walaupun mencetuskan ketawa jelas menimbulkan reaksi riuh-rendah. YB dari Seputeh memberi reaksi spontan, 'Ini Menteri yang tak ada tamadun punya'.

YB Ipoh Barat lantas menyelar, 'Tuan Yang di-Pertua *unparliamentary word*, suruh dia tarik balik. Itu *sexist remark*'. Kemudian setelah banyak lemparan kata-kata rentas Dewan, suasana lintang-pukang terus wujud. Tiba-tiba keluar satu suara, 'Sial punya Menteri'. Ahli dari Pasir Salak lantas membelasah tanpa menyorot kepada Timbalan Yang di-Pertua Dewan, 'Kepala otak engkau'. Tanpa perlu analisis, jelaslah Dewan Rakyat sudah jadi gelanggang bantai-membantai kata. Keadaan hiruk-pikuk memakan masa lama dan di luar kemampuan Timbalan Yang di-Pertua berbuat sesuatu.

Peristiwa kedua berlaku pada 7 Ogos 2018, YB dari Kinabatangan dalam reaksi di luar dugaan terhadap beberapa celahan termasuk daripada Ahli Puncak Borneo, Padang Serai dan lain-lain mengeluarkan

kata-kata kasar dan bersifat biadab.[1] Beliau lantas menggunakan istilah 'Tindakan kepala bapak mu lah' dan kemudian 'mencarut empat huruf' dalam bahasa Inggeris.[2] Timbalan Yang di-Pertua yang cuba meredakan keadaan hiruk-pikuk semasa itu tampak kurang berjaya mendamaikan lonjakan emosi dan laungan suara tinggi daripada pelbagai penjuru dewan mulia itu. Ungkapan mencarut itu jelas kedengaran dalam rakaman video Dewan Rakyat.

Pada 9 Ogos 2018 di bawah tajuk 'Penggunaan Perkataan Kurang Sopan di Dalam Dewan', Tuan Yang di-Pertua[3] memaklumkan kepada sidang:

> Tanpa dipastikan kenyataan tersebut ditujukan kepada siapa, YB Kinabatangan terus menjerit menggunakan perkataan *mencarut* dan mengulanginya sekali lagi menyebabkan beberapa Ahli bangun membantah…saya ingin menyatakan sekiranya tingkah laku yang sama diulang, YB Kinabatangan akan dikeluarkan dari Dewan yang Mulia ini dengan serta merta untuk satu tempoh yang diperuntukkan di bawah Peraturan Mesyuarat 44.[4]

Pada 4 April 2019, Ahli dari Tanjung Karang membuat ucapan yang sama sekali bersifat luar biasa dari segi keluhuran undang-undang. Ucapannya berkaitan dengan perbuatan yang seharusnya dianggap salah atau berunsur jenayah. Beliau menzahirkan pandangannya:

> … mencuri tidak salah, tahu? Apabila kena tangkap itu baru salah. Naik motor tidak ada topi keledar tidak salah. Apabila polis tahan baru jadi salah …[5]

Pendapat umumnya itu menimbulkan reaksi hangat yang kurang menyenangkan – seolah-olah YB itu senang dengan kecenderungan jenayah justeru mungkin menggalakkan perbuatan yang menyalahi undang-undang. Semua peristiwa ini diketahui umum kerana siaran langsung yang dibekalkan kerajaan. Gambaran daripada siaran langsung

1 Kata-katanya: "Kepala bapak mu lah", lihat DR Deb 7 Ogos 2018, Bil.14.
2 Klip videonya ada dalam simpanan Bahagian Rekod Dewan Rakyat 2018.
3 Yang di-Pertua Dewan Rakyat ketika itu YB Tan Sri Mohamad Ariff Md Yusof.
4 PM 44(2) Dewan Rakyat menetapkan, "Pengerusi hendaklah memerintah mana-mana Ahli yang berkelakuan tidak senonoh atau melakukan perbuatan yang menghina Majlis Mesyuarat atau terus tidak mengendahkan kuasa Pengerusi keluar dari Majlis Mesyuarat bagi tempoh tidak melebihi 10 hari dan Ahli tersebut hendaklah dengan serta-merta keluar dari Majlis Mesyuarat…"
5 DR Deb 4 April 2019, Bil. 16.

Radio Televisyen Malaysia (RTM) amat ketara bahawa di Dewan Rakyat berlaku kekecohan dan huru-hara persidangan; pemimpin menganjurkan konsep baharu dalam usaha menilai penjenayahan. Dewan Legislatif sepatutnya aman damai dengan hujah tersusun serta akumen intelek yang tinggi.

Tindak-tanduk politisyen,[6] iaitu sebagai wakil rakyat dan sebagai pemimpin masyarakat berkaitan belaka dengan jaluran hidup rakyat secara langsung. Setiap Ahli Parlimen atau DUN merupakan pimpinan contoh dalam khalayak kawasan masing-masing. Lantaran inilah timbul keperluan agar anggota legislatif di semua peringkat mempunyai kod etika sendiri yang mengandungi petua, bimbingan dan syarat-syarat asas bagi menjalankan khidmat sebagai Yang Berhormat wakil rakyat yang diberi gaji serta elaun bersumberkan wang rakyat. Terbaik sekiranya semua wakil rakyat yang bergelar YB atau Yang Amat Berhormat (YAB) menggalakkan dan mempromosi amalan berbudi bahasa dan mewujudkan urus tadbir integriti yang bertauliah walaupun ada dalam kalangan mereka yang pada hakikatnya memang sedia berhemah tinggi sebagai Menteri, Timbalan Menteri, Setiausaha Politik dan sebagainya. Pada masa sama, mungkin ada pula yang mendengus lalu berkata bahawa mereka *sudah lama makan garam,* justeru tidak perlu dilatih tubi lagi oleh sesiapa. Berbalik kita kepada kebenaran falsafah: lagikan *buluh tua boleh dilentur, inikan pula insan yang masih bercita-cita tinggi.* Dalam konteks inilah Etika Legislatif yang dibentangkan ini diketengahkan.

Dikotomi ketidakwajaran dan kesalahan

Sistem perwakilan rakyat di Malaysia terbahagi kepada tiga peringkat: pertama, wakil rakyat di peringkat negeri yakni di DUN[7]; kedua, di Dewan Rakyat dan ketiga, Dewan Negara (Senat)[8]. Perwakilan di peringkat negeri atau DUN ditadbir urus di bawah kawalan Perlembagaan 13 Negeri masing-masing, sementara wakil rakyat Persekutuan dikawal di bawah Bab 4 Perlembagaan Persekutuan. Istilah wakil rakyat membawa pengertian calon-calon yang berjaya dipilih melalui sistem pilihan raya

6 Penulis lebih cenderung menggunakan istilah *politisyen* daripada *politikus* atau *ahli politik*. Politikus, tiruan dari Indonesia, menyelitkan erti *tetikus* atau *menikus* justeru menimbulkan sifat curi makan, sorok-sorok dan tidak boleh dipercayai; *ahli politik* pula terlalu am erti dan implikasinya. Walau bagaimanapun istilah ini belum dalam penggunaan rasmi lagi.

7 Istilah popularnya *Dewan Undangan Negeri* atau DUN.

8 Di bawah penentuan Perkara 44 hingga 69 Perlembagaan Persekutuan.

lima tahun sekali atau mengikut tempoh-tempoh yang ditentukan dalam jangka masa maksimum lima tahun bagi sesuatu tempoh berkenaan di peringkat negeri dan Persekutuan.[9] Dalam sejarah tanah air belum pernah wujud sesuatu kerajaan negeri atau Persekutuan yang durasi sahnya genap lima tahun walaupun undang-undang menentukan jangka hayat lima tahun bagi kuat kuasa legislatif negeri dan persekutuan.[10]

Dalam jangka masa lima tahun seseorang itu bergelar Yang Berhormat sebagai wakil rakyat, sama ada sebagai ADUN atau Ahli Parlimen, individu pilihan rakyat ini berkhidmat sebagai wakil kepada rakyat di seluruh kawasan pilihan rayanya. Dari segi idealnya harus dihalusi erti seseorang yang menjadi atau terpilih sebagai wakil rakyat. Seseorang wakil rakyat DUN atau Parlimen bergelar YB ialah seseorang yang dihormati, yang terhormat lantaran sahsiah dan budi pekertinya yang baik dan yang berkhidmat selama tidak lebih lima tahun di kawasan legislatif masing-masing.

Ada beberapa keanehan dalam sistem perwakilan legislatif rakyat sama ada di peringkat Persekutuan (Parlimen) ataupun di peringkat negeri (DUN). Di Dewan Rakyat ada 222 anggota yang mewakili kawasan Parlimen sejumlah itu pula; di Dewan Negara 70 anggota mengikut agihan 40 Senator lantikan Yang di-Pertuan Agong, dua Senator bagi sesebuah negeri, dua dari Wilayah Persekutuan Kuala Lumpur dan seorang dari Labuan,[11] dan di seluruh DUN di Malaysia sedia ada sekitar 600 angggota.[12] Kesemua mereka ini diberi gelaran Ahli Yang Berhormat.[13] Salah satu persoalannya ialah; Mengapakah mereka tidak tertakluk di bawah satu tatacara atau etika perkhidmatan? Para wakil rakyat ini bebas berurusan dan bertindak dalam urusan hidupnya sebagai YB wakil rakyat.

9 Istilah *wakil rakyat* tiada terdapat dalam Perlembagaan Persekutuan atau Negeri. Ia hanya terma yang suai manfaat popular di kalangan rakyat dan media.

10 Lihat Perlembagaan Persekutuan, per 55(3).

11 Perlembagaan Persekutuan, per 45.

12 Perlembagaan Persekutuan, per 44 dan 45.

13 Panggilan *Yang Berhormat* atau YB berasal dari gelaran perwakilan legislatif Inggeris *Honourable*. (biasa dipendekkan kepada *Hon*.) Misalnya jika individu John Smith dipilih dalam pilihanraya The House of Commons di United Kingdom Britain, beliau dipanggil sebagai *The Honourable* Mr John Smith atau jika dalam mesyuarat House of Commons (yang setaraf dengan House of Representatives atau Dewan Rakyat di Malaysia dan lain-lain Dewan Legislatif di Negara-negara Komanwel).

Ketiadaan kesamarataan aplikasi undang-undang

Dalam pada itu terdapat beberapa muslihat yang memerlukan penjelasan atau justifikasi. Bolehkah seseorang wakil rakyat Parlimen, misalnya, berniaga atau menjalankan profesionnya secara yang mendatangkan pendapatan sendiri yang dari segi hadangan perlembagaan berupa 'jawatan berpendapatan'.[14] Dalam Perlembagaan Persekutuan, seseorang Ahli Parlimen dilarang menjalankan perniagaan tetapi umum mengetahui mereka yang berbuat sedemikian ramai bilangannya, malah secara terbuka menjadi Pengerusi badan-badan perniagaan korporat GLC (*Government Linked Companies*) yang berpendapatan lumayan. Tidakkah ini bercanggah dengan Perkara 48(1)(c) Perlembagaan Persekutuan yang jelas melarang seseorang YB Ahli Parlimen sebagai peniaga atau berjawatan yang mendatangkan pendapatan? Justeru, persoalan sebab-musabab tidak diambil tindakan oleh Parlimen menjadi satu tamparan kepada Parlimen sendiri sebagai sebuah institusi berasingan kerajaan dalam umpamaan *tali tiga sepilin* tetapi berasingan pilinan masing-masing – yakni Parlimen, Eksekutif dan Kehakiman? Menjadi suatu kehairanan, sementara prinsip *rule of law* (keluhuran undang-undang) – konsep legasi A.V. Dicey.[15] Konsep asingan kuasa dan fungsi ini telah menjadi batu asas atau foundasi tamadun urus tadbir dunia sejagat termasuk negara-negara Komanwel sampai ke hari ini. Bagaimanakah peruntukan Perlembagaan ini terbiar mendayuskan keutuhan perundangan itu sendiri? Hal ini mungkin disebabkan oleh konsep dan prinsip asingan kuasa serta fungsi inilah agaknya masing-masing entiti *tali tiga sepilin ini* enggan mengambil tindakan. Ada pihak menganggap bahawa kata pemutus dalam hal seperti ini adalah di bawah kuasa mahkamah; ada pula yang beranggapan hal ini muktamad di bawah bidang kuasa legislatif sendiri. Hujah mutakhir ini terdapat pada Perkara 53 Perlembagaan Persekutuan yang memperuntukkan:

> Jika berbangkit apa-apa soal sama ada seseorang ahli Majlis Parlimen telah hilang kelayakan menjadi ahli, maka soal itu hendaklah diputuskan oleh majlis itu dan keputusannya adalah muktamad.

14 Di bawah Perkara 48(1)(c) Perlembagaan Persekutuan seseorang Ahli Parlimen itu hilang kelayakannya jika 'ia memegang sesuatu jawatan berpendapatan'.

15 Nama penuhnya Albert Venn Dicey, penteori dan pengasas konsep keluhuran undang-undang British yang terkenal melalui bukunya *Introduction to the Study of the Law of the Constitution* (Oxford University, 1886).

Dari bahasa terang dalam peruntukan itu jelaslah bahawa Parlimen berkuasa penuh di atas status seseorang ahlinya jika timbul waham atau syak wasangka tentang status keahlian. Namun, terdapat beberapa kes yang dibawa ke mahkamah berkaitan dengan kekeliruan denda yang 'tidak kurang daripada 2,000 ringgit' di bawah Perkara 48(1)(e).[16] Justeru, jika seseorang ahli YB itu didenda RM2,000 sahaja atas sesuatu kesalahan; Bagaimana kedudukan hak ahli itu? Amat baik sekiranya isu yang timbul daripada kes seperti ini dimuktamadkan pengurusannya oleh Parlimen sendiri lantaran kuasa yang ada pada Perkara 53 boleh menyelesaikannya. Sebaliknya, jika seseorang Ahli Parlimen disabitkan suatu kesalahan oleh mana-mana mahkamah di Persekutuan dan dihukum penjara selama tidak kurang daripada satu tahun atau didenda tidak kurang daripada RM2,000 dan tiada mendapat ampun, anggota itu tidak harus diiktiraf hilang kelayakan sebagai Ahli Parlimen di sisi undang-undang. Pandangan ini mungkin kandas apabila seseorang YB itu sabit kesalahan mana-mana jenayah lazim seperti rasuah, pecah amanah dan lain-lain.

Ada beberapa kes kini yang melibatkan sebilangan bekas menteri dan anggota pentadbiran yang dijatuhi hukuman penjara dan didenda berjuta ringgit tetapi masih bebas bergerak dan menjalankan pelbagai kegiatan politik termasuk tugasan Parlimen mereka.[17] Konon mereka boleh begitu lantaran bicara rayuan belum selesai. Sebagai perbandingan,

16 Lihat misalnya kes *Pendakwa Raya lwn. Chua Tien Chang* 2019 MLJ 168. Salah satu isu dalam kes ini ialah sama ada bayaran denda RM1,800 yang telahpun dibayar boleh membatalkan keahlian Dewan Rakyat YB Tian Chua sebagai responden. Tian Chua, calon pilihanraya umum 2018, telah dihalang pencalonannya atas alasan beliau telah didapati bersalah dan didenda atas kesalahan di bawah s.4(1)(b) Akta Hasutan 1948. Walaupun penghakiman Y.A. Datuk Mohd Nazlan M. Ghazali mendapati Tian Chua tidak bersalah lantaran tiada terdapat kes *prima facie*, peluang bertanding responden kandas kerana lewat beroleh penghakiman.

17 Semasa artikel ini ditulis, tiga kes besar rasuah telah beroleh hukuman dari Mahkamah Tinggi: Kes Datuk Seri Tengku Adnan Tengku Mansor, bekas Menteri Wilayah Persekutuan dihukum bayar denda di bawah s.165 Kanun Keseksaan, RM2 juta lantaran menerima habuan rasuah dan satu tahun penjara: lihat *Malay Mail* 21 Disember 2020; pada 3 Februari 2021 Tan Sri Isa Samad, bekas Pengerusi FELDA/Menteri Besar Negeri Sembilan dijatuhi hukuman enam tahun penjara dan RM15.45 juta denda susulan kes rasuah pembelian hotel di Sarawak – lihat Laporan *Bernama* 3 Februari 2021; terdahulu 28 Julai 2020, bekas Perdana Menteri Datuk Sri Mohd Najib Tun Razak dihukum penjara 12 tahun dan denda RM210 juta sabit kesalahan rasuah syarikat SRC, salah satu cabang korporat 1MDB yang skandalnya melibatkan *financier* licik, Jho Low dan kes ini tersebar luas di seluruh dunia: lihat *The Star* 28 Julai 2020.

jika seseorang penjawat awam berada dalam situasi perundangan yang sama dia tetap digantung kerja di bawah Peraturan Am (*General Orders*).[18] Kenapa wujud, susulan kesalahan jenayah rasuah, misalnya, perbezaan layanan antara penjawat awam dengan Ahli Yang Berhormat?

Jawapannya, penjawat awam itu terikat dengan undang-undang dan peraturan seperti Perintah Am (yang diperbuat di bawah kuat kuasa Perkara 132 Perlembagaan Persekutuan), YB Ahli Parlimen atau YB ADUN merangkap Anggota Pentadbiran tiada tertakluk kepada penentuan hadangan kebebasan yang sama. Keadaan ini menambahkan lagi kekuatan hujah betapa pentingnya ahli-ahli Yang Berhormat dan anggota pentadbiran dikenakan layanan yang sama: manakala seseorang YB itu didakwa atau dijatuhi hukuman penjara atau denda atau kedua-duanya sekali yang tertakluk kepada proses rayuan, wajib digantung khidmatnya sehingga selesai perbicaraan atau proses rayuannya.

Malah terbaik juga jika apa-apa anugerah bintang kebesaran seseorang yang bersalah di sisi undang-undang ditarik balik oleh mana-mana pihak berkuasa anugerah peringkat negeri dan persekutuan.[19] Jika ini tidak dilakukan, seolah-olah kerajaan dan sultan bersubahat 'tutup mata sebelah' terhadap jenayah.

Secara jelasnya semasa berada dalam sidang sesuatu mesyuarat DUN atau Parlimen, mereka memang tertakluk dan dikawal di bawah Peraturan Mesyuarat (*Standing Orders*) masing-masing. Di Dewan Rakyat dan di Dewan Negara, Peraturan Mesyuarat diwujudkan semenjak 1959 lagi bersekali dengan pelbagai pindaan yang diperbuat semenjak tahun itu. Di peringkat negeri masing-masing Yang Berhormat ADUN tertakluk kepada Peraturan Mesyuarat DUN masing-masing. Malangnya mereka tidak diawasi di bawah tatacara khidmat semasa berada di khalayak atau semasa berkhidmat di kawasan masing-masing. Berbeza halnya dengan penjawat perkhidmatan awam. Semua kakitangan kerajaan

18 Bab B Peraturan Tatatertib dalam Perintah 'Am Perkhidmatan Awam Malaysia <www.jpa.gov.my>.

19 Pada 9 Februari 2021 sudah terbit berita bahawa ada usaha atau langkah yang bakal diambil untuk menarik balik anugerah bintang kebesaran PSM yang membawa gelaran Tan Sri kepada bekas Peguam Negara Tommy Thomas susulan beberapa pendedahan yang ditulisnya dalam bukunya *My Story: Justice in the Wilderness* (Petaling Jaya, SIRD, 2021). Pada tahun 2014 Sultan Selangor dilaporkan menarik balik anugerah Dato' Seri daripada Datuk Seri Anwar Ibrahim lanjutan kepada reaksi Anwar yang kononnya menyalahkan Istana kerana enggan melantik isterinya Dr Wan Azizah Wan Ismail sebagai Menteri Besar Selangor: *Malaysia Now* (5 Februari 2021) <https://www.malaysianow.com/berita/2021/02/05/usaha-untuk-tarik-balik-gelaran-tan-sri-tommy-thomas-dimulakan/>.

daripada pembantu pejabat hingga ke Ketua Setiausaha Negara, mereka ditakluki Perintah Am yang dikuatkuasakan semenjak 1948 lagi hasil positif pemerintahan penjajahan British.

Dengan tiadanya sistem penguatkuasa etika yang mengawal dan mendisiplinkan wakil rakyat selaku ahli-ahli Yang Berhormat Parlimen dan DUN, muncul pada masa ini keadaan terbiar dari sudut peraturan dan undang-undang. Lantaran ketiadaan tatacara khidmat dan kelakuan inilah yang kini harus dititikberatkan supaya prinsip keluhuran undang-undang terjamin. Dari segi Perlembagaan Persekutuan sahaja sudah ada bedanya jika hal ini diperhatikan dari implikasi peruntukan kesamaan taraf di bawah Perkara 8(1):

> Semua orang adalah sama rata di sisi undang-undang dan berhak mendapat perlindungan yang sama rata di sisi undang-undang.

Dengan berkuat kuasa Perkara 8 sahaja sudah mewajibkan pihak berkuasa dan pihak-pihak berkepentingan dalam bidang tugas legislatif untuk mengemas kini ketiadaan sama rata yang mencakupi di bawah Perkara 8 Perlembagaan Persekutuan itu. Sementelahan lagi, amplifikasi di bawah Perkara 8(2) pula menghalang apa-apa bentuk diskriminasi yang dicetuskan daripada perbezaan kulit, kaum, agama, keturunan, jantina dan tempat lahir. Namun, tampaknya persoalan seperti ini jarang kali memperoleh penentuan khasnya daripada pengamal siasah kita.

Etika legislatif

Etika legislatif yang dimaksudkan di sini harus terbahagi kepada dua: pertama, tatacara khidmat yang mengandungi dan menentukan apa-apa yang boleh dibuat dan apa yang tidak boleh dibuat sebagai YB Anggota Parlimen dan YB ADUN termasuk menteri, ketua menteri serta anggota exco masing-masing semasa bertugas harian. Seperti yang dihuraikan di atas, tatacara khidmat semasa di lapangan bersama-sama rakyat atau dalam persekitaran tanggungjawab wakil rakyat sangat memerlukan peraturan tetap dalam bentuk buku tangan (*Handbook*) Etika Wakil Rakyat. Pada asasnya mesti ada sistem akauntabiliti, ketelusan dan integriti dalam urusan membantu rakyat, cara dan kaedah agihan faedah pembangunan, pertembungan atau konflik kepentingan, penyimpanan rekod dan butiran asas, pentadbiran politik dan bukan politik seterusnya hal-hal sampingan berkaitan dengan derma politik, hubungan dengan pentadbir kerajaan, ketua-ketua jabatan, cara melayani aduan atau rungutan serta hal-hal berunsur rasuah dan salah guna kuasa.

Kedua adalah bagi YB-YB yang bersidang di Dewan Legislatif masing-masing memang sudah sedia ada Peraturan Mesyuarat (PM) atau *Standing Orders* (SO) yang berkuat kuasa melalui kuasa Speaker. Cuma persoalannya adakah SO atau PM tersebut memadai keberkesanannya? Daripada tinjauan rambang yang dilakukan, beberapa kes berkaitan 'kelakuan yang tidak bersifat parliamentari' (*unparliamentary behaviour*) di Dewan Rakyat pada tahun 2018–2019, jelas bahawa tindakan tegas belum lagi menjadi amalan.[20] Elemen yang jarang diperakukan ialah Peraturan Mesyuarat Dewan-Dewan Legislatif itu ialah undang-undang dalaman yang tidak boleh dicabar di mahkamah atas kedaulatan legislatif Parlimen dan DUN.

Pada tahun 2018 boleh dikesan tiga ucapan Ahli-ahli YB yang jelas bersifat *unparliamentary*[21] atau bertembung dengan perlakuan waras di sesebuah Dewan Legislatif. Khususnya menggunakan perkataan mencarut atau bahasa kasar dan biadab tercatat dalam laporan *Hansard*[22] Dewan Rakyat khasnya tanggal 2018. Persoalan ini harus diapungkan untuk pemerhatian semua pihak yang dianggap pemegang taruh (*stakeholders*). Pemegang taruh terbesar ialah rakyat yang dikhidmati dan undang-undang negara selain pihak berkuasa seperti Speaker atau Yang di-Pertua Dewan masing-masing. Apabila dengan jelas tiada didapati apa-apa peraturan yang lebih tegas bagi menjalankan tanggungjawab wakil rakyat yang bertauliah, akan timbul isu-isu keadilan, cabulan urus tadbir atau perkara-perkara keutamaan bagi menjalankan atau tidak menjalankan khidmat asas sebagai YB.

Memang ada pihak yang berpendapat bahawa tiada perlunya diadakan Perintah Am bagi politisyen yang berkhidmat sebagai wakil rakyat atau anggota legislatif sesebuah Dewan itu. Namun, mereka dalam golongan ini tidak pula menghuraikan persoalan; mengapa tidak? Lantaran semua Ahli Parlimen dan ADUN dibayar gaji serta elaun mereka oleh rakyat, amat setimpal jika apa-apa pencabulan terhadap imej dan reputasi

20 Undang-undang tambahan kepada Akta Suruhanjaya Perkhidmatan Awam Penggal 83.

21 Di United Kingdom apa yang dianggap sebagai bahasa tidak bersifat santun atau *unparliamentary language* di Dewan Parliamen ada dihuraikan di para 21:21 dalam buku D. Natzler dan M. Hutton, *Erskine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament* (25th edn, Butterworths, Lexis Nexis, 2019). Di sisi Peraturan Mesyuarat 36(4) Dewan Rakyat Malaysia, Ahlinya dilarang menggunakan bahasa biadab. Bagi Dewan Negara lihat Peraturan Mesyuarat 35.

22 *Hansard* ialah nama rasmi Laporan Persidangan Dewan Legislatif. Ia nama pelapor asal prosiding Parlimen Inggeris yang paling produktif dan berkesan.

tertinggi Dewan Parlimen dan DUN wajib dihindarkan demi menjaga reputasi kenegaraan yang juga begitu tinggi di mata rakyat.

Kemanusiaan dan etika

Kemanusiaan tidak pernah jauh daripada kehidupan beretika sama ada etika yang terasas secara tradisional seperti yang terkandung dalam amalan budaya, adat, asuhan agama etnik atau dalam bentuk etika yang formal seperti *Kod Etika Bagi Anggota Pentadbiran*[23] yang dikuatkuasakan melalui Kabinet Kerajaan Malaysia.[24] Kod etika tersebut khusus bagi para Menteri Kabinet yang secara kebetulan pula tidak pernah diwajibkan untuk berkursus atau diberi kursus selaku anggota pentadbiran. Istilah anggota pentadbiran di sini harus dimengertikan sama seperti yang diperuntukkan di bawah Akta Interpretasi 1948 dan Perkara 160(2) Perlembagaan Persekutuan. Jawatan-jawatan seperti Perdana Menteri, Timbalan Perdana Menteri (yang tiada diberi sebutan dalam Perlembagaan Persekutuan), Menteri, Timbalan Menteri, Setiausaha Parlimen dan Setiausaha Politik di peringkat Persekutuan dan Menteri Besar/ Ketua Menteri serta Ahli-ahli Exco dalam Kerajaan Negeri semuanya mengendalikan urusan dan pentadbiran negara. Justeru mereka mesti, selaras dengan undang-undang negara yang sedia ada berkaitan dengan jenayah, mematuhi secara insaf dan terbuka akan etika kerja masing-masing. Selaras itulah diwujudkan *Kod Etika Bagi Anggota Pentadbiran* pada tahun 2004.

Perdana Menteri, Dr Mahathir Mohamad selaku ketua kerajaan pada masa itu sering mengingatkan anggota Kabinetnya supaya mematuhi etika tersebut agar kepercayaan rakyat terhadap anggota pentadbiran menjadi teras perkhidmatan yang baik dan disegani. Perkara-perkara seperti tanggungjawab bersama (*Collective Responsibility*),[25] tegahan

23 Dalam pentadbiran Kabinet pimpinan kebanyakan Perdana Menteri terdahulu seperti Tunku Abdul Rahman, Tun Abdul Razak, Tun Hussein Onn dan Tun Dr Mahathir Mohamad, setiap Menteri dibekalkan senaskhah *Kod Etika Bagi Anggota –Anggota Pentadbiran*, Januari 2004, Jabatan Perdana Menteri untuk diteliti dan dipatuhi.

24 Untuk rujukan sistem Kabinet di Malaysia sila lihat R. Yatim, *1Malaysia Cabinet: Reflecting on Cabinet Governing* (Kuala Lumpur, Endowment Publications, 2005). Edisi awalan buku ini *Cabinet Governing in Malaysia* memuatkan naratif Kerajaan Dr Mahathir Mohamad (1995).

25 Kod Etika Bagi Anggota Pentadbiran 2004 (Putrajaya, Jabatan Perdana Menteri, 2004) s 1.

berniaga,[26] perisytiharan harta,[27] percanggahan kepentingan (*Conflict of interest*),[28] menjaga kerahsiaan kerajaan, kewaspadaan memimpin badan-badan bukan kerajaan (NGO),[29] tatakelakuan diri dan diri pasangan[30] serta beberapa perkara pokok yang lain. Penulis yang memulakan karier politiknya pada 1974 di bawah pimpinan Tun Abdul Razak Hussein (1970-1976), disusuli pimpinan Tun Hussein Onn (1976-1981) sebelum pentadbiran Tun Dr Mahathir Mohamad (1981-2003) dapat menelusuri perkembangan etika ini musim ke musim dan semua menteri di bawah pimpinan Perdana Menteri tersebut akur belaka kepada inti sari kod-kod etika yang dikemukakan oleh mereka.

Etika Yang Berhormat Wakil Rakyat (EYBWR)

Etika yang dimaksudkan dengan EYBWR di sini ialah peraturan urusan rasmi Yang Berhormat wakil rakyat yang seharusnya berteraskan amalan baik budi dan nilai-nilai murni atau tatakelakuan yang layak mewujudkan pemimpin kelas satu, berhemah dan berpotensi mencipta sifat-sifat cemerlang pada masa depan. Beretika bererti berfungsi dengan cara dan kaedah yang luhur, yang berperaturan dan yang memupuk budaya tinggi. Kelakuan atau sistem hidup yang beretika bererti hidup yang sentiasa dipagari nilai-nilai murni yang seterusnya berupaya menjadi satu sistem berteraskan budi luhur. Malah etika merupakan prinsip-prinsip moral yang membedung kelakuan atau gerak laku terpuji. Tanpa etika hidup yang diorientasikan nilai-nilai murni, seseorang itu tidak mudah berjaya menampilkan kehidupan bertamadun tinggi.

Oleh sebab Parlimen merupakan gedung legislatif yang mencipta pemimpin negara, semestinya setiap Ahli Parlimen itu pula terdiri daripada manusia yang terdidik bukan sahaja dari sudut kelayakan yang bertauliah seperti berdiploma, berijazah tetapi juga kelayakan yang tuntas murni dan berjiwa besar yang dilengkapi budaya tinggi. Kelakuannya, keterampilannya, kebolehan atau kepetahannya dalam urusan berbahasa dan berkomunikasi – semua kebolehan dan sifat ini hendaklah ada pada setiap Ahli Parlimen dan ADUN. Apakah sebabnya? Hal ini sebabkan oleh para pemimpin ini ialah pilihan rakyat dari

26 ibid s 2.
27 ibid s 3.
28 ibid s 4.
29 ibid s 5.
30 ibid s 8 dan 9.

bawah. Mereka merupakan ayam tambatan rakyat, juara dalam hal-hal memperjuangkan kepentingan rakyat dan nilai-nilai kemanusiaan terulung.

Gelanggang tempat para pemimpin terkumpul seperti Parlimen, DUN, Senat Universiti, Persidangan Adat atau Dewan Pendidik, misalnya, dianggap institusi tertinggi kepemimpinan. Institusi-institusi inilah yang layak dianggap sebagai kancah atau tuangan hidup berbudi dan berjasa.

Dalam konteks keluhuran kelakuan yang beretika itulah terkandung sahsiah atau karakter seseorang. Daripada anak hingga kepada ibu bapa; daripada guru hingga kepada penghulu seterusnya hingga kepada pemimpin – etika kehidupan sentiasa membedung mereka. Lantaran itu, dikatakan jika guru kencing berdiri, murid akan kencing berlari; bagaimana ibu bapa berperangai begitulah anak-pinaknya ketika dewasa kelak; dalam konteks masyarakat tradisional dahulu kala – kaedah penghulu berkhidmat memercikkan sifat kepimpinannya kepada anak buah di bawah pimpinannya. Akan terasa kebenaran melalui peribahasa ini, *pemimpin seranting tinggi, selangkah di hadapan*.

Kelakuan keji seperti yang dirakam dalam naratif di atas tidak beroleh tindakan setimpal pada masa perlakuannya. Dalam pada itu Ahli-ahli Parlimen kita sudah jauh ke hadapan dengan perilaku atau gelagat diri yang agak jauh dari sifat terpuji sebagai pemimpin rakyat. Jika pemimpin remaja meniru pula akan gejala kurang baik itu, negara akan kerugian. Peraturan Mesyuarat Dewan yang terpakai di Dewan Rakyat dan Dewan Negara ada lunas sorotannya kepada *House of Commons* dan *House of Lords*. Pendirian *'gentleman'* anggota kedua-dua Dewan Legislatif Inggeris itu memang wajar diteladani dan Peraturan Mesyuarat Dewan Rakyat serta Dewan Negara membenarkan nas amalan daripadanya jika diperlukan dari semasa ke semasa.

Daripada huraian am di atas dan daripada realiti yang ada dalam buku laporan *Hansard* ternyata proses mundur atau *deterioration* sudah meresap ke dalam tingkah laku, ucapan dan gaya berdebat di Parlimen Malaysia. Sebelum menjadi kritikan besar lagi bahaya, perubahan gerak kerja legislatif dalaman dan luaran harus dimulakan.

Sukar untuk membuat penentuan yang tepat berkaitan dengan gelagat, kelakuan atau perbuatan yang tergolong kepada senarai kelakuan negatif di atas. Yang nyata kini ialah rekod perbuatan itu menimbulkan suasana, imej dan kesan yang rata-rata tidak menyenangkan kerana keji dan biadab. Sifat biadab dan kurang ajar hendaknya sesekali tidak dikenakan kepada pemimpin kita.

Penutup

Latihan yang diterima oleh seseorang wakil rakyat itu biasanya daripada parti masing-masing sahaja. Parlimen tiada menyajikan latihan sebagai Ahli Parlimen. Latihan biasa seseorang wakil rakyat banyak terkait perlembagaan parti, cara dan kaedah hendak memberi sokongan kepada pucuk pimpinan dan sebagainya. Amat jarang dilaksanakan kursus Perlembagaan Persekutuan atau negeri, hak-hak asasi manusia yang terkandung di dalamnya; batas serta implikasi kuasa politik dan pentadbiran, cara mempelajari Peraturan Mesyuarat atau *Standing Orders* Dewan, kaedah-kaedah melanjutkan tatacara hidup berbudi, pantang larang sebagai pemimpin, keterampilan, integriti dan sebagainya. Pegawai kerajaan di bawah Jabatan Perkhidmatan Awam (JPA) mempunyai pusat latihan mereka di Institut Tadbiran Awam Negara (INTAN), bagi ahli-ahli politik yang semuanya ingin menjadi pemimpin besar negara dan negeri mereka tidak ada satu institut wajib untuk diasuh sebagai pengkhidmat tulen negara. Sesungguhnya dokumen-dokumen utama inilah yang wajib difahami dan dipatuhi selain Rukun Negara yang sering tertinggal dan ditinggalkan dalam arus perdana perjuangan para wakil rakyat. Semua wakil rakyat perlu diwajibkan menjalani sekurang-kurangnya enam bulan latihan dan serlahan tatanegara yang bolehlah disegmenkan mengikut jadual lima tahun seseorang itu menjadi wakil rakyat. Jadikan ini sebagai tuntutan dan kuasa perundangan supaya tiada yang ponteng. Jika ponteng atau 'curi tulang' YB itu wajib dikenakan tindakan disiplin legislatif di bawah Akta 347 tersebut di atas. Tentunya cadangan ini boleh dilaksanakan oleh kerajaan yang kukuh kedudukannya di Parlimen.

Pemerhatian dan cadangan Kod Etika Legislatif atau Kod Etika Wakil Rakyat ini diketengahkan dalam usaha membina kumpulan pemimpin legislatif masa depan negara yang disegani, yang layak dicontohi melalui kepentingan budaya tinggi yang ciri dan sifatnya wajib diamalkan oleh setiap anggota Parlimen dan ADUN. Saranan ini dirasakan amat sesuai dan perlu bukan sahaja bagi seseorang wakil rakyat di Dewan Rakyat atau di Dewan Negara tetapi juga bagi anggota mana-mana DUN. Wakil Rakyat semua parti bersatu membina negara dalam latihan dan asuhan anak Malaysia.

Yang penting ialah etika tersebut mengandungi butiran khusus tentang:

1. Tatacara kelakuan yang terperinci serta sistem disiplin,
2. Memahami struktur utama kenegaraan dan undang-undang asas negara,

3. Asas-asas Perlembagaan Persekutuan dan negeri,
4. Mempromosi Rukun Negara,
5. Perpaduan kaum yang tidak boleh diambil ringan,
6. Kandungan pencirian moral,
7. Keterampilan diri,
8. Cara berkomunikasi terbaik,
9. Latihan ledakan budi atau *virtue*,
10. Berhemah dengan semua golongan,
11. Kaedah menghormati pandangan dan pendapat orang lain,
12. Asuhan integriti,
13. Kaedah meningggikan intelektualiti sebagai pemimpin,
14. Sifat patuh kepada peraturan dan undang-undang,

dan topik-topik lain yang berkaitan dan relevan kepada setiap orang wakil rakyat yang dipanggil YB.

Etika tersebut wajib dipatuhi melalui mekanisme peraturan di bawah jagaan Parlimen atau DUN masing-masing. Dirasakan saluran terbaik adalah di bawah bab membuat peraturan di bawah Akta 347, yakni Akta Majlis Parlimen (Keistimewaan dan Kuasa) 1952 atau memadai melalui kuasa mana-mana Jawatankuasa Khas Dewan Rakyat / Dewan Negara serta DUN yang sedia ada. Walaupun boleh dimajukan melalui kuasa Petua Yang di-Pertua atau melalui usul dari mana-mana menteri kerajaan, kesan imperatifnya tidaklah sama, justeru ia mesti beroleh penguatkuasaan undang-undang atau peraturan khidmat legislatif baru.

Walau bagaimanapun, dari segi Dewan Negara, usul penubuhan Kod Etika Legislatif ini, atau lebih baik **Kod Etika Wakil Rakyat** boleh dilakukan atas suatu usul langsung di bawah PM 13(2)[31] Dewan Negara.

31 PM 13(2): Majlis Mesyuarat dengan dibawa usul yang tidak berkehendak dikeluarkan pemberitahu boleh memutuskan hendak menjalankan mana-mana jua urusan dengan tidak mengikut aturan yang telah ditetapkan. Usul ini hendaklah didahulukan daripada urusan-urusan lain dan hendaklah diputuskan dengan tidak boleh dipinda atau dibahas. *Nota:* Peruntukan kuasa ini tiada pada PM Dewan Rakyat di mana di Dewan itu hanya Menteri dibenarkan mengemukakan usul tertakluk kepada kebenaran oleh Speaker/YDP.

Malangnya peruntukan yang sama tiada didapati pada PM 14(2) Dewan Rakyat.[32] Semua anggota *whip* atau unit disiplin parti politik masing-masing wajar diwajibkan mengawas dan mengamalkan prinsip amalan terbaik *(best practices principle).* Juga harus disarankan bagi Parlimen mengadakan kursus-kursus 'baiki prestasi' dari semasa ke semasa. Dalam kursus demikian Yang di-Pertua/ Speaker, Perdana Menteri/ Timbalan Perdana Menteri, menteri atau pensyarah-pensyarah khas bolehlah menginduksi YB-YB kita. Serlahan kursus sedemikian amat wajar dilibatkan YB ADUN supaya nas bina negara Malaysia terselaras. Yang terpenting ialah keberkesanan Tuan Yang di-Pertua (Speaker) Dewan masing-masing yang sedia mempunyai kuasa pengawasan dalam sidang masing-masing. Dalam bahasa warisannya beliau mempunyai sifat dan kuasa *kendur berdenting-denting, tegang berjela-jela.*

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32 Lantaran inilah masalah timbul dalam isu hendak membawa sesuatu usul Tidak Percaya (*Non-Confidence Motion*) untuk dikemukakan oleh Ahli selain seseorang Menteri. Di bawah PM 13(2) Dewan Negara usul tidak percaya, misalnya boleh dilakukan di sisi peruntukan PM tersebut.

Government's Powers During an Emergency

*Zaki Azmi**

Abstract

This write-up looks into the political situation that existed in Malaysia commencing with the 2018 General Election when Pakatan Harapan toppled the long-established Barisan Nasional and thereafter fall of Pakatan Harapan (PH) Government in 2020. Thereafter the Perikatan Nasional (PN) led by Tan Sri Muhyiddin Yassin took over the government. The PN Government was accused of being a back-door government. Immediately after PN took over the Government, the world, including Malaysia, faced the Covid-19 pandemic. At the same time, the PN Government, which included UMNO and PAS, had only a very small majority in Parliament. The issue of the Government invoking the Emergency powers under Article 150 of the Federal Constitution was extensively discussed amongst the politicians and writers. Article 150 became very relevant. A major part of this write-up (which is supported by legal authorities) involves the legality of the Government invoking Article 150 towards fighting the Covid-19 pandemic in Malaysia.

Keywords: Article 150, Federal Constitution, Emergency Powers, Covid-19, Election

Introduction

Our Federal Constitution was drafted by the Reid Commission and enacted immediately prior to our independence in 1957 for the then Federation of Malaya. In 1963 it was extended to the Federation of Malaysia with appropriate additions and modifications. Our Constitution is the supreme law of the Federation, and any law which is inconsistent with it shall, to the extent of the inconsistency, be void.[1] There are some exceptions to this rule of constitutional supremacy. One of them is

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1 Federal Constitution, art 4(1).

that during an emergency proclaimed by the Yang di-Pertuan Agong under Article 150(1) of the Federal Constitution, emergency laws may enact provisions that are inconsistent with most of the provisions of the Constitution.[2] This will be discussed later.

Normally all federal laws must be passed by both Houses of Parliament[3] and assented to by the Yang di-Pertuan Agong[4] before they become an Act of Parliament.[5] However, an exception to Parliament's primary law-making power is the authority of the Yang di-Pertuan Agong to promulgate Emergency Ordinances during an emergency which have the same effect as an Act of Parliament.[6]

The pandemic, political instability and the economic crisis

As this article is being written,[7] Malaysia, like other countries of the world, is facing the devastation wrought by Covid-19. Multiple health and economic challenges that confront the nation call for crisis powers. Another problem faced by the present Government is the instability of the government's very small, razor-edge majority in Parliament. The 'Sheraton move' and the resignation of the previous Prime Minister on 24 February 2020[8] resulted in a 'hung', fractured parliament. Consequently, the big challenge that the current government faces is the continuous threat of not having sufficient support in Parliament to enable it to pass, among other things, Bills, including the Supply Bill.[9] The reality of the razor-thin majority and the persistent danger of party hopping compounds the possibility of the fall of the government in power at any time. That may require a premature General Election with no guarantee that the electoral result will produce a strong and stable government capable of meeting the grave health and economic crisis engulfing the nation. Though party hopping is a phenomenon known

2 ibid. arts 150(5) and 150(6). For limits on emergency powers see Federal Constitution, art 150(6A).
3 For a provision to bypass the Dewan Negara, see Federal Constitution, art 68.
4 Federal Constitution, art 66.
5 For an exception to the consent of the Yang di-Pertuan Agong, see Federal Constitution, art 66(4A).
6 Federal Constitution, art 150(2B).
7 From December 2020 to 4 January 2021.
8 His letter of resignation was delivered to the Yang di-Pertuan Agong (the King) of Malaysia at 1pm at the Palace on Monday (Feb 24). See <https://www.thestar.com.my/news/regional/2020/02/24/malaysias-dr-mahathir-quits-as-premier>.
9 Federal Constitution, arts 96 to 104.

in the past to such states as Sabah and Kelantan,[10] it has acquired special notoriety since February 2020 when the Pakatan Government of Tun Mahathir fell as a result of the breakup of his disparate coalition and 'floor crossing' by many MPs. Besides the fall of the federal government in February 2020, seven state governments have collapsed due to party or coalition-hopping between 2018-2020. These are: Sabah (twice), Perak (twice), Johor, Melaka and Kedah.[11]

Before discussing the relevant provisions of the Federal Constitution dealing with crises, it may be good to understand the saga which led to the present chronic political instability during this period. In 2018, Pakatan Harapan (PH), led by Tun Dr Mahathir Mohamad, won a reasonably safe majority at the Federal Government in the 14th General Election. It managed to do so because several political parties who were, prior to GE14, in the opposition, agreed to form PH to contest against the incumbent Barisan Nasional government. PH succeeded in obtaining the majority in the Dewan Rakyat, and Tun Dr Mahathir Mohamad was invited by the then Yang di-Pertuan Agong to form the government. PH also captured eight State Governments but with very narrow margins. At the Federal level, PH was required to appoint its Cabinet within a limited period. Many of those appointed as Federal Ministers lacked the experience in running a government. Because the formation of PH had one principal object, and that is to precipitate the downfall of the then Prime Minister of Barisan Nasional and some other senior Ministers who were allegedly corrupt, the coalition parties within PH lacked political or ideological unity and were, in fact, foes on other issues.

Many individual PH leaders lost sight of nation-building and looking after their constituents, but instead were motivated to continually highlight the fault of the previous BN Government. The PH Government was not seen to be moving. It seems, or at least it is believed, that many older and senior civil servants were silent supporters of the BN. This situation was exacerbated by the fact that many members of the coalition parties within PH did not get along with each other. These members led by Tan Sri Muhyiddin bin Yasin decided to work with some MPs

10 See *Dewan Undangan Negeri Kelantan & Anor v Nordin Salleh & Anor* (2) [1992] 1 CLJ Rep 90.

11 Ida Lim, 'How Pakatan lost half its States, after prematurely ceding federal power in the 2020 political crisis' *The Malay Mail*, (Petaling Jaya, 20 May 2020) < https://www.malaymail.com/news/malaysia/2020/05/20/how-pakatan-lost-half-its-states-after-prematurely-ceding-federal-power-in/1867814>.

from Barisan Nasional, who were the opposition party to PH. Tan Sri Muhyiddin bin Yasin sought the Yang di-Pertuan Agong's blessing to form the new government, which he was allowed to do on 1 March 2020. Before the Government was taken over by PN, during the period of 24 February to 1 March, Tun Dr Mahathir was asked by the King to be the Interim Prime Minister.

Immediately after the overthrow of the PH government at the federal level, a few members from the Parti Warisan, Sabah, jumped to the Barisan Nasional in Sabah. As a result, Parti Warisan lost its majority status in the Dewan Undangan Negeri. Learning from what had happened at the Federal Government level, Datuk Seri Panglima Shafie Apdal advised the Governor to dissolve the Dewan Undangan Negeri, which advice was acceded to by the Governor. The Dewan Undangan Negeri of Sabah was dissolved on 30 July 2020. Under the Sabah Constitution, a State General Election had to be held for Sabah within 60 days of the dissolution.

A General Election meant that there were campaigns and physical contacts amongst the candidates and their supporters. Without going into too much detail, as a result of the State Election, Covid-19 in Sabah spiked to an unprecedented level.[12] West Malaysians who went to Sabah for the election also brought back the virus to West Malaysia, which caused the daily figures in West Malaysia to also increase to as high as four digits daily. The total daily figures for the nation started running in four figures for a few months since then.

Since the fall of the Mahathir government in February 2020, six State Governments in Johore, Malacca, Kedah, Sabah and Perak (twice) have crumbled. The most recent is on 3 December 2020 when the Menteri Besar of the State Government of Perak Datuk Seri Ahmad Faizal Azumu from the Parti Pribumi Bersatu Malaysia (BERSATU) lost the Assembly's vote of confidence.[13] He had to resign and was replaced by a member of UMNO, Datuk Saarani Mohamad.[14] The cause of this change of leadership seems to be the loss of faith in the Menteri Besar personally. However, the ruling coalition remains in power. Many see this as a temporary arrangement to avoid holding the State Election

12 According to media report the infection rate in Sabah post-election went up to over 400 cases daily.

13 See <https://www.theedgemarkets.com/article/perak-mb-loses-confidence-vote>.

14 See <https://www.bharian.com.my/berita/nasional/2020/12/763557/saarani-angkat-sumpah-jawatan-mb-perak-ke-14>.

in light of the Covid-19 crisis, which worsened following the Sabah election . The Government as well as the citizens, are apprehensive about holding any election until an effective vaccine is found and Malaysians vaccinated. The vaccines have been identified, but Malaysian are yet to be vaccinated. Even epidemiologists are warning that the vaccines are not the silver bullet. This is merely a brief of the political scenario as well as the situation of the Covid-19 pandemic in Malaysia as this article is being written.

The dilemma of holding Covid-era elections

A related issue is vacancies in Parliament and State Assemblies resulting from the deaths of members of the Dewan Rakyat or the Dewan Undangan Negeri. In the normal course of events in the past, there was never any hurdle in conducting a by-election following the death of a member of the Dewan Rakyat or State Assembly or the calling of a general election after the dissolution of the Federal Parliament. However, the unfortunate experience of the Sabah election campaign and the election itself resulted in a sudden rise in Covid-19 cases in Sabah, with the virus spreading to Semenanjung Malaysia. The large majority of the citizens of Malaysia and the current federal and state governments are against the holding of any elections at the federal or state levels because, as had happened in Sabah, the electoral exercise would entail large gatherings of people, close contacts between voters and contestants and a great deal of inter and intrastate travel.

However, there is a legal dilemma: the law prescribes mandatory electoral contests within prescribed time frames. The Federal and the State Constitutions require a by-election or general election to be held within 60 days of the dissolution of an Assembly or the arising of a vacancy in Parliament or an Assembly.[15] This requirement cannot be avoided since it is a mandatory provision of the respective Federal and State Constitutions, which are supreme laws that cannot be ignored under normal circumstances. The only way to avoid holding an election in this current pandemic is for the King, acting on the advice, to proclaim Malaysia or part thereof under a state of emergency under Article 150 of the Federal Constitution.[16] Indeed, this has been done recently.

15 Federal Constitution, arts 54(1) and 55(4).
16 ibid. art 150.

Supply Bills 2021

The Government put before the Dewan Rakyat the Supply Bills 2021; to the relief of the vast majority of the population, the Supply Bills were passed in Parliament notwithstanding the perceived objection by some politicians and political parties. Dato' Seri Anwar Ibrahim, the current Leader of Opposition, failed in his promise to prevent the passing of the Supply Bills. The Government won at the second reading on policy by a voice vote as well as at the Committee stages for all the Bills and the third reading. It is worth noting that the joint statement issued by Tun Dr Mahathir and Tengku Razaleigh,[17] urging MPs to vote their consciences (apparently persuading them to vote against the Supply Bills), had little impact on the majority of MPs' decision to support the Bills.

The Supply Bills, when enacted into an Act, will provide for the budget of the nation. Had the Supply Bills not being passed, the Government would have faced difficulty in running the country. It would also have been an indication that the Government has lost the support of the majority in the Dewan Rakyat. This would require the House to be dissolved and a fresh election called. With the Covid-19 pandemic racing through the country and the world, as well as the experience of Sabah, calling for an election at this time will toll the death knell. It is common knowledge that the pandemic had resulted in a threat to the health of the population, closures of businesses, loss of jobs and closure of schools. Compensation given by the Government during the total lockdown in March-April 2020 is phenomenal. The loss to the Government in terms of national revenues is estimated to be RM2 billion per day. If this had continued, the only option would be for an emergency to be declared for the whole of Malaysia on the grounds that there is a threat to the economic life of Malaysia.

The last straw

As the politicians squabble over several issues, including the capability of the PN Government, threats of withdrawal of support for the PN Government and the question of who the next Prime Minister should be, the daily Covid-19 cases as well as death resulting from contracting the virus continue to cause more damage. The daily figures increase at a stupendous rate of from 3-digit daily of new cases to over 4,000 daily new cases. The projection by the Ministry of Health was that the daily

17 See <https://www.bernama.com/en/general/news.php?id=1912179>.

new cases and deaths would continue to increase at a steep rate if no serious action was taken to stop or drastically slow down the increase.[18] Three UMNO MPs who, as part of UMNO was supporting the PN Government announced their withdrawal of support. These are Tengku Razaleigh Hamzah (MP for Gua Musang),[19] Datuk Ahmad Jazlan Yaakub (MP for Machang),[20] and Dato' Seri Mohamed Nazri Aziz (MP for Padang Rengas).[21] Dato' Seri Anwar Ibrahim continued to claim that he has majority support in the Dewan Rakyat, although no figures or names of those purportedly supporting him were disclosed. Tengku Razaleigh was also named as a possible candidate for the Prime Minister's post. These actions by the politicians (even before the announcement by Dato' Seri Mohamed Nazri withdrawing his support) made the political situation more unstable. These two situations call for extraordinary and grave actions to be taken by the PN Government. The last straw broke the camel's back.

As was expected by many, on Monday 11 January 2021, the Prime Minister announced a stricter movement control order.[22] Many areas where cases were extremely high were put in another lockdown, although not as strict as the first lockdown at the beginning of the pandemic. Other areas which are not too serious were imposed a less restrictive lockdown. As this article is being written, more areas were continued to be placed under higher restrictions.[23]

The following day, another major surprise was declared by the Prime Minister (preceded by an announcement from the Istana Negara). An Emergency under Article 150 was proclaimed by the Yang Di-Pertuan Agong acting on the advice of the Prime Minister.[24] The Emergency was to take effect immediately until 1 August 2021, which date may be

18 See <https://www.theedgemarkets.com/article/malaysia-could-hit-5000-daily-cases-months-end-if-no-action-was-taken-%E2%80%94-moh>.

19 See <https://www.astroawani.com/berita-politik/ku-li-sahkan-tidak-akan-mengundi-belanjawan-2021-273128>.

20 See <https://www.nst.com.my/news/politics/2021/01/655970/ahmad-jazlan-withdraws-support-pn>.

21 See <https://www.nst.com.my/news/politics/2021/01/656675/nazri-aziz-withdraws-support-muhyiddins-government>.

22 See <https://www.nst.com.my/news/nation/2021/01/656447/mco-20-five-states-three-fts>.

23 See <https://www.malaymail.com/news/malaysia/2021/01/15/kelantan-sibu-placed-under-mco-after-surge-in-covid-19-cases/1940812>.

24 See <https://www.nst.com.my/news/nation/2021/01/656604/updated-state-emergency-not-military-coup-or-curfew-pm-clarifies>.

shortened or extended depending on the condition of the pandemic. In his announcement, the Prime Minister cited the worsening of the Covid-19 pandemic as the impetus for an emergency declaration. He assured that it would last for only so long as is necessary, and if the people so want, an election could be held at any time thereafter. One of the effects that was immediately seen was that no election would be held during this Emergency. Sarawak, whose government is due to end in June 2021, will also have to postpone the election. As expected, Opposition parties and their leaders strongly criticised the declaration of Emergency as a way for Tan Sri Muhyiddin Yasin to hold on to office.[25] Further, they accused the Prime Minister of intending to abuse his power during the Emergency by invoking provisions to the detriment of the nation but to his benefit. Only time will tell how he will utilise his powers during the Emergency.

Nature and scope of emergency powers

The rest of this article seeks to discuss the powers of the Yang di-Pertuan Agong vis-à-vis the legislative powers of Parliament during an emergency.

Nature of the power

Article 150 provides as follows:

> (1) If the Yang di-Pertuan Agong is *satisfied* that a grave emergency exists whereby the *security, or the economic life, or public order* in the Federation or *any part thereof* is threatened, he may issue a Proclamation of Emergency making therein a declaration to that effect.[26]

As to the meaning of threat to 'security, or the economic life, or public order' perhaps certain examples of previous activities and incidences accepted by the Courts may be useful in understanding them. Threats by communist terrorist to exploit a situation existing in any area have been accepted as a threat to security. For this purpose, the Government can rely on intelligence report by its agents.[27] In *The Zamora*, Lord Parker C.J

25 See <https://www.malaymail.com/news/malaysia/2021/01/12/opposition-labels-pms-emergency-announcement-a-political-move-that-endanger/1939650>.
26 Federal Constitution, art 150(1) (emphasis added).
27 *Stephen Kalong Ningkan v Government of Malaysia* [1968] 2 MLJ 238 PC.

expressed the view: 'Those who are responsible for the national security must be the sole judge of what the national security requires'.[28] As late as 1977 in *R v Secretary of State for Home Affairs, Ex-parte Hosenball* Lord Denning said: 'It is a case in which national security is involved: and our history shows that, when the state itself is endangered, our cherished freedoms will have to take second place'.[29] More recently, however, the European Commission seemed reluctant to accept the statement of the government as to the existence of an emergency. Also, in *Council of Civil Service Unions v Minister for the Civil Service*, Lord Scarman said:

> once the factual basis is established by evidence so that the court is satisfied that the interest of national security is a relevant factor to be considered in the determination of the case, the court will accept the opinion of the Crown or its responsible officer as to what is required to meet it, unless it is possible to show that the opinion was one which no reasonable minister advising the Crown could in the circumstances reasonably have held.[30]

The government acting on the advice of its experts in the civil service and agencies normally would be accepted as final by the courts, without having to disclose the details.

In respect of the threat to economic life, some examples can include natural disasters, e.g. exceptionally bad floods, drought or other calamities that cause or threaten damage to agriculture, e.g. large-scale crop failures, damage to the industry. Our current Covid-19 pandemic can, if not properly controlled, be seen as a threat to the economic life of Malaysia or any part thereof . Therefore, the Yang di-Pertuan Agong is correct in declaring an emergency for those areas where by-elections need to be held due to vacancies occurring. No one can honestly dispute that the Covid-19 pandemic is a threat to life and the economy after what we have seen had happened in Sabah post-election. The damage caused to the national economy by the closing of the economic activities resulting from the pandemic has been crippling for the nation's coffers.[31]

The last situation in which an emergency can be declared is the existence or threat of breach of public order. A good example is what happened

28 *The Zamora* [1916] 2 AC 77, 107.

29 *R v Secretary of State for Home Affairs, Ex-parte Hosenball* [1977] 1 WLR 766, 778.

30 (1984) 3 AER 935; These views are consistent with the conclusion expressed in C.V. Das, 'Emergency Powers and Parliamentary Government in Malaysia: Constitutionalism in a new Democracy' (PhD thesis, University of Brunel 1994).

31 ibid.

in the 13 May 1969 tragedy, where there were riots and destruction of properties and loss of lives. No one would even think of challenging the proclamation of emergency made following the occurrence of the incident. What was challenged was the continuation of the declaration although the nation had returned to normalcy. Hence the decision in *Teh Cheng Poh*.

Duration of an emergency

Article 150(1) empowers the Yang di-Pertuan Agong to declare an emergency if he is satisfied that any of the conditions mentioned in Article 150 exist. The emergency can last until the King makes a proclamation revoking the emergency[32] or until Parliament annuls the Proclamation.[33]

Does the King act on advice?

There is a scholarly dispute about whether the King's emergency powers are entirely discretionary or are exercised on the PM's advice. Some writers and politicians argue that the discretion to declare an emergency rests totally with the Yang di-Pertuan Agong because the words 'If the Yang di-Pertuan Agong is satisfied', if interpreted literally, clearly confer a personal discretion on the Monarch. This was also the view taken by the then Federal Court (prior to the inclusion of Article 40(1A)) in the case of *Stephen Kalong Ningkan (No.2) (1968)*[34].

However, this cannot be so because Article 40(1)[35] imposes a duty upon the Yang di-Pertuan Agong to act on the advice of the Cabinet or a Minister acting under the authority of the Cabinet save where the

32 Federal Constitution, art 150(3). See also *Teh Cheng Poh v PP* [1979] 1 MLJ 50, per Lord Diplock:

> 'The power to revoke, however, like the power to issue a proclamation of emergency, vests in the Yang di-Pertuan Agong, and the Constitution does not require it to be exercised by any formal instrument. In their Lordships' view, a proclamation of a new emergency declared to be threatening the security of the Federation as a whole must by necessary implication be intended to operate as a revocation of a previous Proclamation, if one is still in force.'

33 Federal Constitution, art 150(3).

34 In my opinion the Yang di-Pertuan Agong is the sole Judge and once His Majesty is satisfied that a state of emergency exists it is not for the Court to inquire as to whether or not he should have been 'satisfied'. *Stephen Kalong Ningkan v Government of Malaysia* [1967] 1 LNS 167.

35 Federal Constitution, art 40(1).

Constitution provides otherwise. The royal duty to act on advice is further fortified by the introduction of Article 40 (1A)[36]. It is submitted that the King's exercise of emergency powers is subject to Article 40(1) and 40(1A) for the following reasons:

1. First, Article 40(1) and 40(1A) apply across the board to all royal functions under the Constitution and laws 'except as otherwise provided'.

2. Second, Article 40(2) provides four exceptions to Article 40(1), where the King may act on his own. The four discretionary areas are: (i) the appointment of a Prime Minister; (ii) the withholding of consent to a request for the dissolution of Parliament; (iii) the requisitioning of a meeting of the Rulers concerned solely with the privileges, position honours and dignities of the Rulers of Malaysia; and (iv) 'any other case mentioned in this Constitution'.[37] Emergency powers are nowhere mentioned in Article 40(2)'s list of discretionary powers. The interpretation of the discretion exercisable under Article 40(2)(a) and its equivalent provisions in the State Constitutions have been in many cases scrutinised by the Courts.[38]

3. Third, though Article 40(2) states that the King may act in his discretion 'in any other case mentioned in this Constitution', what is meant is 'any other case (*explicitly*) mentioned in this Constitution' as with items (a) to (c) in Article 40(2), the right to ask for any information from the government (Article 40(1)), delaying legislation for 30 days under Article 66(4A), and some constitutional appointments as under Articles 139(4) and 141A(2).

36 Inserted by Act A885 with effect from 24 June 1994. Article 40(1A) states: 'In the exercise of his functions under this Constitution or federal law, where the Yang di-Pertuan Agong is to act in accordance with advice, on advice, or after considering advice, the Yang di- Pertuan Agong shall accept and act in accordance with such advice'.

37 Federal Constitution, art 40(2).

38 For example: *Dato' Dr Zambry Abd Kadir v Dato' Seri Ir Hj Mohammad Nizar Jamaluddin; Attorney General of Malaysia (Intervener)* [2009] 5 CLJ 265; *Tun Datu Haji Mustapha Bin Datu Harun v Tun Datuk Haji Mohamed Adnan Robert, Yang Di-Pertua Negeri Sabah & Datuk Joseph Pairin Kitingan* (No 2) [1986] 1 LNS 136; *Tan Sri Musa Hj Aman v Tun Datuk Seri Panglima Hj Juhar Hj Mahiruddin & Anor And Another Application* [2020] 9 CLJ 44.

4. Fourth, the Privy Council, in the case of *Teh Cheng Poh,*[39] has put the matter beyond all doubt that in the exercise of emergency powers, the King acts on advice. Lord Diplock stated that:

> when one finds in the Constitution itself or in Federal law powers conferred upon the Yang di-Pertuan Agong that are expressed to be exercisable if he is of opinion or is satisfied that a particular state of affair exists or that particular action is necessary, the reference to his opinion or satisfaction is, in reality, a reference to the collective opinion or satisfaction of the members of the Cabinet, or the opinion or satisfaction of a particular Minister to whom the Cabinet have delegated their authority to give advice upon the matter in question.

In sum, the power to proclaim an emergency and frame Emergency Ordinances is a constitutional power exercisable on advice and not in accordance with the personal discretion of the Yang Di-Pertuan Agong. However, in acting on the advice of the Cabinet to declare an emergency, the Yang di-Pertuan Agong is not forbidden to consult any person, including his brother Rulers. The King is not required to act mechanically or as a rubber stamp. He may 'advise, caution and warn'. He may delay the decision and ask the PM to reconsider. The PM may pay heed to the royal advice as it appears the PM did recently. It is reported that late in October 2020, the PM advised the declaration of a national emergency to enable the Government to combat the many crises the nation is facing. The King advised caution. Consequently, the Cabinet and the Prime Minister reconsidered their advice to the Yang di-Pertuan Agong. Ultimately, no national emergency was declared.[40] Nevertheless, what if the PM had insisted on the Yang Di-Pertuan

39 In *Teh Cheng Poh v Public Prosecutor* [1978] 1 LNS 202, Lord Diplock stated: 'Although this, like other powers under the Constitution, is conferred nominally upon the Yang di Pertuan Agong by virtue of his office as the Supreme Head of the Federation and is expressed to be exercisable if he is satisfied of a particular matter, his functions are those of a constitutional monarch and except on certain matters that do not concern the instant appeal, he does not exercise any of his functions under the Constitution on his own initiative but is required by Article 40(1) to act in accordance with the advice of the Cabinet'.

40 Media Statement by Istana Negara (25 October 2020) <http://pengurusan.istananegara.gov.my/index.php?option=com_content&view=article&id=421:kenyataan-media-istana-negara-kdymm-spb-yang-di-pertuan-berkenan-menerima-menghadap-yab-perdana-menteri-di-istana-abdul-aziz-kuantan-pahang-25-okt-2020&catid=95&Itemid=634>.

Agong acting on his advice? It is submitted that due to Article 40(1) and 40(1A), the Yang di-Pertuan Agong has no alternative but to ultimately accept the advice. Any decision of the Yang di-Pertuan Agong to go against the advice of his Prime Minister to declare an emergency, would be an unusual and unprecedented act contrary to the traditions of a constitutional monarchy, based on the Westminster system of government. The assertion of personal satisfaction by the Head of a State in the matter of an emergency may place future governments in a difficult position in exercising their duty and responsibility in governing a nation.[41] This concern has in fact been referred to by some writers.[42] 'A constitutional monarch, with a ceremonial figurehead role, may provide continuity and stability, provide a unifying non-partisan representative of the state, and reinforce democratic legitimacy with other sources of authority, including traditional and in some cases religious authority'.[43] This statement correctly describes the Malaysian constitutional monarchy as we experience today, including the monarch being the Head of the religion of Islam.

To the layperson, the words 'advice' in Article 40(1) and 'satisfied' in Article 150(1) are given the normal, literal meaning used in daily conversation, but legally these words have to be given a legal interpretation that is harmonious with the rest of the Constitution. Those who are inclined to give a literal or popular definition must be reminded that they are treading on thin ice. As was reminded by a writer,[44] the danger of giving such interpretations to those words is to forget that the King is to act on the advice of his Government. In this respect, it is also not the conventional practice in the Westminster government system for the Palace to issue statements relating to the day to day running of the Government. Such statements should only be issued by the Government. To the relief of many, the King ultimately paid heed to the PM's advice. The

41 See also Constitutional Monarchy by Tun Abdul Hamid Mohamad <http://library.kehakiman.gov.my/digital/Speech/2014/174._CONSTITUTIONAL_MONARCHY.pdf>.

42 ibid.

43 E. Bulmer, *Constitutional Monarchs in Parliamentary Democracies* (Stockholm, International IDEA, 2014).

44 'Suka atau tidak, saya percaya pendekatan YDPA itu akan menjadi precedent dan amalan di masa hadapan dan penghakiman Privy Council itu, lama kelamaan, akan dilupai begitu sahaja'. See <https://www.tunabdulhamid.my/index.php/speech-papers-lectures/item/1009-sambungan-kepada-%E2%80%9Cproklamasi-darurat-wajibkah-ydpa-mengikut-nasihat-pm?%E2%80%9D>.

King agreed to declare an emergency in the parliamentary constituency of Batu Sapi[45] in Sabah as well as two other constituencies, i.e. the federal constituency of Gerik in Perak and the Sabah State constituency of Bugaya. These vacancies were a result of the passing away of their respective representatives.

Non-justiciability

Is there any possibility of judicial review of the King's exercise of emergency powers? Although the Yang di-Pertuan Agong's decision to declare an emergency has to be made pursuant to the advice of his Prime Minister and/or Cabinet, once that decision is made, such exercise of power by the Yang di-Pertuan Agong under Article 150(1) and (2B) shall be final and shall not be challenged or called into question in any court. This is provided for in Article 150(8), which was inserted on 15 May 1981. It seems to close all doors to challenging the satisfaction of the Yang di-Pertuan Agong to declare an emergency or promulgate an Ordinance. To this observation, several qualifications must be made:

> First, the satisfaction of the Yang di-Pertuan Agong must be by way of the advice of the Prime Minister and/or the Cabinet. If the King acts on his own and declares an emergency on his own initiative, suspends or dissolves Parliament, promulgates Emergency Ordinances and assumes emergency powers for himself, the courts may not sit idly by and may declare that the words 'If the Yang di-Pertuan Agong is satisfied' mean that 'if the Yang di-Pertuan Agong, acting on advice, is satisfied…'.
>
> Second, if the King rejects the PM's advice to proclaim an emergency, but the PM insists that his advice is binding under Article 40(1) and 40(1A), courts will have the difficult task of deciding whether a Declaration can be issued that the King is bound by the advice of his Government or to declare that the issue is non-justiciable.
>
> Third, it must be observed that the provision in Article 150(8) on the non-reviewability of the King's emergency powers does not transfer emergency powers from the government of the day to the Monarch. The real effect of Article 150(8) is that it seeks to immunise the government of

45 Media Statement by Istana Negara (18 November 2020) <http://pengurusan.istananegara.gov.my/index.php?option=com_content&view=article&id=423:kenyataan-media-istana-negara-sesi-menghadap-yab-perdana-menteri-18-november-2020&catid=95&Itemid=634>.

the day from judicial review. The non-reviewability of the King's powers under Article 150 does not convert His Majesty's non-discretionary power into a discretionary one. It basically means that the *government's advice* under Article 150 is non-reviewable by the courts.

Fourth, the issue of non-reviewability by the courts is itself open to debate. Recent decisions from the Federal Court like *Indira Gandhi Mutho v Pengarah Jabatan Agama Islam Perak* indicate that the judicial power of the courts cannot be taken away from the courts even by an ouster clause or a constitutional amendment.[46] On issues of constitutionality, the superior courts cannot be easily ousted.[47] For example, Article 150(6A) bars the violation of six civil rights[48] even during an emergency. If an Act of Parliament or an Ordinance by the King were to violate these limits, then it is arguable that judicial review will lie, notwithstanding Article 150(8). One can rely on the Anisminic principle[49] that the term 'determination' means a valid determination. An unconstitutional or ultra vires determination is a nullity, and no ouster clause can save it. An illustration of this comes from *Teh Cheng Poh*, where it was decided by the Privy Council that the Yang di-Pertuan Agong's discretion in declaring any area as a security area pursuant to the Internal Security Act made under Article 149 is exercised on advice. Although the powers of the ISA under Article 149 are different from the provision of Article 150, the principle derived from that decision is that the Cabinet's decision in advising the Yang di-Pertuan Agong to declare any area as a security area is open to challenge in the court. Since the King is required in all executive functions to act in accordance with the advice of the Cabinet, mandamus could, in their Lordships' view, be sought against the members of the Cabinet requiring them to advise the Yang di-Pertuan Agong to revoke the Proclamation. The exclusionary provision in Article 150(8) is yet to be tested in our superior courts. As has been seen in a few landmark cases, the courts are jealously protective of their constitutional jurisdiction and do not readily allow the legislature to take it away. The tussle between

46 *Indira Gandhi Mutho v Pengarah Jabatan Agama Islam Perak & Ors And Other Appeals* [2018] 3 CLJ 145; and the UK Supreme Court in *R (Miller) v Secretary of State for Exiting the European Union (Rev 3*) [2017] UKSC *5*.

47 *Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat* [2017] 3 MLJ 561 FC*; Alma Nudo Atenza v PP* [2019] 3 AMR 101 FC.

48 The six topics are: Islamic law, custom of the Malays, native law and custom in Sabah and Sarawak, religion, citizenship and language.

49 *Anisminic v FCC* [1969] 2 AC 147.

the legislature and the courts has been going on for a long time. On questions of constitutionality, the court's jurisdiction cannot be ousted. See *Indira Gandhi Mutho v Pengarah Jabatan Agama Islam Perak;*[50] *Semenyih Jaya;*[51] *and Alma Nudo.*[52]

Fifth, there is the possibility of a judicial challenge on the ground of mala fide or *fraudem legis* as in the case of *Stephen Kalong Ningkan v Government of Malaysia*[53]. On the issue of an exercise of power that is mala fide, courts impose high standards of proof, and the burden lies on the accuser, but courts do not turn away a complainant entirely. See the recent UK Supreme Court cases of *R (Miller) v Secretary of State for Exiting the European Union*[54] *and R (Miller) v The Prime Minister and Cherry v Advocate General.*[55]

Whether *Miller* will be followed in Malaysia is an open question. In Malaysia, as said earlier, any challenge to the 'absolute discretion' of the

50 *Indira Gandhi Mutho v Pengarah Jabatan Agama Islam Perak & Ors And Other Appeals* [2018] 3 CLJ 145: 'The significance of the exclusive vesting of judicial power in the Judiciary, and the vital role of judicial review in the basic structure of the constitution, is twofold. First, judicial power cannot be removed from the civil courts. The jurisdiction of the High Courts cannot be truncated or infringed. Therefore, even if an administrative decision is declared to be final by a governing statute, an aggrieved party is not barred from resorting to the supervisory jurisdiction of the court. The existence of a finality clause merely bars an appeal to be filed by an aggrieved party'.

51 *Semenyih Jaya Sdn Bhd* [2017] 3 MLJ 561.

52 [2019] 3 AMR 101 FC.

53 *Stephen Kalong Ningkan v Government of Malaysia* [1968] 1 MLJ 119.

54 *R (Miller) v Secretary of State for Exiting the European Union (Rev 3*) [2017] UKSC *5*: '121. Where, as in this case, implementation of a referendum result requires a change in the law of the land, and statute has not provided for that change, the change in the law must be made in the only way in which the UK constitution permits, namely through Parliamentary legislation. What form such legislation should take is entirely a matter for Parliament. But, in the light of a point made in oral argument, it is right to add that the fact that Parliament may decide to content itself with a very brief statute is nothing to the point. There is no equivalence between the constitutional importance of a statute, or any other document, and its length or complexity. A notice under article 50(2) could no doubt be very short indeed, but that would not undermine its momentous significance. The essential point is that, if, as we consider, what would otherwise be a prerogative act would result in a change in domestic law, the act can only lawfully be carried out with the sanction of primary legislation enacted by the Queen in Parliament'.

55 [2019] UKSC 41.

Government is intended to be removed by Article 150(8).[56] In matters of national security, while the Government moves towards eliminating any questioning of its discretion, the Courts, on the other hand, are going in the opposite direction to do the contrary. However, it may be consoling to our legislators to know that perceptibly, our courts do not seem to be as judicially active as in the United Kingdom. Also, most Malaysian cases striking down provisions in ordinary legislation are based on the fact that ordinary legislation collides with Article 121, which confers judicial powers on the courts. As discussed above, the Courts have shown reluctance in conferring upon Parliament the right to pass legislation that restricts the powers of the Judiciary.[57] However, Article 150(8) is not ordinary legislation but a provision within the Federal Constitution, and it expressly states 'Notwithstanding anything in this Constitution'. Whether the exclusion of the courts to question the matters provided in Article 150(8) can be upheld has to be left to the lawyers to challenge and for the Courts to decide. There is a possibility that the Courts will not allow misuse or abuse by the executive of that exclusionary clause.

Emergency Ordinances

A law promulgated by the Yang di-Pertuan Agong during an emergency is referred to as an Emergency Ordinance, and such an Ordinance has the full effect of an Act of Parliament. Such a law can override any provision of the Constitution except on matters of Islamic law, the custom of Malays, native customary laws of Sabah and Sarawak, matters relating to religions, citizenship and language.

Duration of emergency laws

Laws made during an emergency do not have a sunset clause, but they lapse on the expiration of six months, beginning with the date when an emergency proclamation ceases to be in force (Article 150(7)).

Multiple proclamations

A later proclamation does not override an earlier proclamation. Multiple proclamations may coexist and overlap with each other. This

56 See Tan Sri Zainun Ali's judgments in *Indira Gandhi* [2018] 3 CLJ 145 and *Semenyih Jaya Sdn Bhd* [2017] 3 MLJ 561.

57 *Semenyih Jaya Sdn Bhd* (n 51).

Article 150(2A) was inserted following the Privy Council decision in *Teh Cheng Poh*, which held that no two proclamations could overlap each other, and a later proclamation overrides a former one. With the addition of Article 150(2A), *Teh Cheng Poh* is no more good law on this point.

Parallel law-making powers

During an emergency, the executive acquires primary law-making powers coterminous with those of Parliament. The only limitations are, first, that the power of the Yang Di-Pertuan Agong to promulgate an Ordinance during an emergency can be exercised only if the two Houses are not sitting concurrently. If the two Houses are sitting concurrently, which they rarely do, then such a law must be enacted by Parliament. Second, the word 'sitting' is restrictively defined as 'only if members of each House are respectively assembled and carrying out the business of the House'. This clause is still waiting to be interpreted by the Courts.[58] How narrow or wide it is going to be will be left to be seen. Third, an Ordinance promulgated by the Yang di-Pertuan Agong must be laid before the Dewan Rakyat as well as the Dewan Negara and shall cease to have effect if such a law is annulled by both Houses (Article 150(3)).

Federal-state relations

It should also be noted that the powers of the Federal Parliament and the Government during an emergency extend to the legislative authority of the States as well: Article 150(2C), 150(4), 150(5).

Proclamations

Malaysia has experienced several emergencies since the declaration of independence in 1957. These are:

1. The 1964 nationwide emergency (Confrontation).
2. The 1966 Sarawak emergency.
3. The 1969 nationwide emergency (Racial Riot).
4. The 1977 Kelantan emergency.
5. The 2020 Batu Sapi, Sabah constituency emergency.

58 Article 150(9) of Federal Constitution inserted on 15 May 1981.

6. The 2020 Gerik (Perak) and Bugaya (Sabah) constituency emergency.

Of the six emergencies declared in Malaysia, the 1969 Emergency was the one that was most acceptable by the people. It was declared as a result of racial and political rioting. The rioting was brought about by two opposing political parties, each made up of Malaysians of basically two different races, i.e. the Chinese and the Malays. The party consisting of the Chinese went around celebrating the success of their party in the General Election held a few days earlier, making provocative statements against members of the opposing party. This created anger amongst the Malays in the other party that led to the rioting. The riots continued for a couple of days, during which time many were killed and properties were burnt down. This was when the then Prime Minister Tunku Abdul Rahman decided to advise the then Yang di-Pertuan Agong to declare a national emergency. Since Parliament had not been summoned since its last dissolution before the General Election, there was no Parliament in session. This enabled the caretaker government to administer the country. Towards this end, the National Operations Council (NOC) or Majlis Gerakan Negara (MAGERAN) was formed. A few necessary Ordinances were promulgated by the Yang di-Pertuan Agong.

Two years later (20 February 1971), Parliament was summoned to sit.[59] In the meantime, many political parties were invited to form a coalition called the National Front or Barisan Nasional. The Democratic Action Party (DAP) was not part of Barisan Nasional. The parties that comprised the Barisan Nasional were United Malay National Organisation (UMNO), Malaysian Chinese Association (MCA), Malaysian Indian Congress (MIC), People's Progressive Party (PPP), Gerakan and later Pan-Malaysian Islamic Party (PAS). The coalition was constituted formally on 1 January 1973 and registered as a political party on 1 June 1974.[60]

Conclusion

Malaysia's Federal Constitution was drafted based on the Westminster system of government and materially similar to the other constitutions of the Commonwealth countries. The power to declare an emergency is found in all these constitutions. Unlike the Parliament of the United

59 DR Deb 20 February 1971, Bil. 1.

60 J. Liow and M. Leifer, *Dictionary of the Modern Politics of Southeast Asia* (4th edn, Oxon, Routledge, 2015) 102.

Kingdom, which derives its legislative powers from the notion of the supremacy of Parliament, the governments of countries like Malaysia derive their legislative, executive and judicial powers from their written Constitution. It must be recognised that any country can face an emergency at any time, no matter how peaceful the country expects to be. It is when the country suddenly faces a situation where the normal legislative and executive powers are insufficient to solve the emergency situation or the threat thereof that it requires special, wider and practically unlimited powers to tackle such a situation. This was foreseen by our forefathers, who provided for provisions like Article 150. However, it is expected that these special powers are not to be used unless the country faces an exceptional situation and unless there are no alternative means of overcoming the situation. From experience, the Governments of Malaysia since independence, it is happily noted that emergency powers under Article 150 have generally been used sparingly and only in situations that really require it.

Immediately after the Declaration of Emergency was announced, dissenting voices were heard, whether with political or genuine concerns. Even if the court makes a decision on the validity or otherwise of the declaration, the discussions and protests, one way or the other, will continue until the Covid-19 is totally eradicated from Malaysia. It is hoped that the Emergency declared on 11 January 2021 would only last for so long as is necessary.

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Strengthening Malaysian Parliamentary Democracy Through Private Member's Bills

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Abstract

At present, the ability of the Malaysian Legislature – specifically the House of Representatives (Dewan Rakyat) – to effectively check and balance the powers of the Executive is impeded by the lack of a formal mechanism enabling the deliberation and debate of Private Member's Bills. The Government or the Executive branch remains the primary agenda-setter in Parliamentary sittings, thus undermining the full extent of legislative independence and representative debate taking place in the August House. Drawing on local and international examples, this article argues in favour of allocating space to Private Member's Bills within the parliamentary agenda and consequently returning legislators their rights and agencies towards strengthening Malaysia's parliamentary democracy.

Keywords: Private Member's Bill, Parliamentary Democracy, Legislative, Executive, Separation of Powers

Introduction

This article was written mid-pandemic in the middle of an Emergency declared on 12 January 2021. In the same eventful week, Malaysians bid farewell to our most respected and memorable former Lord President of the Supreme Court, Tun Salleh Abbas. These events draw attention to Malaysia's main three branches of parliamentary democracy: the Executive, Judiciary, and the Legislative, all considered the three representatives of the 'government' by the late Tun Salleh Abbas himself.[1]

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1 *Government of Malaysia v Lim Kit Siang* [1988] 2 MLJ 12.

To quote constitutional expert Shad Saleem Faruqi, the 'three compartments of parliamentary democracy are not supposed to exist in compartmentalised isolation, but [...] act as a check and balance for each other'.[2] While it is said that the Legislative arm's role is to promulgate, amend, pass and repeal laws, in practice, it is seen to legitimise a set of bills that have been decided upon by the Executive as the latter wields a disproportionate influence over parliamentary affairs.[3]

The limits of legislative action are the subject of this article, specifically with regards to the space accorded for bills brought by private members of Parliament. In this text, we will also highlight the lead author's attempts to push for Private Member's Bills during her tenure as a Member of Parliament from 2008 to the present day as well as comparisons with existing practices in other Commonwealth parliamentary democracies.

Parliamentary agenda

The Malaysian system is characterised as a parliamentary democracy featuring a constitutional monarchy.[4] Within it, the Executive is helmed by the Prime Minister, whose domain of power resides with the governing of the nation. As for the Judiciary, other than administering justice according to law, the courts are expected to guard against excesses of the administration and unconstitutional action. The final and third branch, the Legislature – a bicameral parliament consisting of the lower house, the House of Representatives (Dewan Rakyat) and the upper house, the Senate (Dewan Negara) – is tasked with creating and amending laws. The separation of powers within the Malaysian state apparatus is often interpreted as each branch not being permitted to interfere in the functioning of the other, a principle fundamental to an effective, functioning parliamentary system.[5]

However, in practice, the Executive remains primarily the agenda-setter in Parliament.[6] The government has the authority to decide which questions are to be orally debated each day of the sitting, alongside

2 See <https://www.thestar.com.my/opinion/columnists/reflecting-on-the-law/2018/06/21/proposals-for-parliamentary-reforms-post-ge14-the-institutional-efficacy-of-our-elected-legislature> accessed 17 January 2021.

3 A. Lijphart, *Thinking about Democracy: Power Sharing and Majority Rule in Theory and Practice* (London, Routledge, 2008).

4 A. Ibrahim and A. Joned, *The Malaysian Legal System* (Kuala Lumpur, Dewan Bahasa dan Pustaka, 1995).

5 P. Mikuli, 'Separation of Powers' <https://oxcon.ouplaw.com/view/10.1093/law-mpeccol/law-mpeccol-e466> accessed 27 January 2021.

6 Lijphart (n 3).

the order in which bills are to be read and subsequently debated on the floor. What this usually means is that Private Member's Bills are not given the space to be debated over the course of the Parliamentary session. Furthermore, not only do members of the Executive-led cabinet have influence over the passing of legislation, they also decide which Parliamentary Select Committees are permitted to pass.[7]

Private Member's Bills in Malaysia

The background

The Malaysian parliamentary system features three types of bills: Public, Private and Hybrid Bills. Public Bills concern matters of public interest - the Budget, for example, falls under this category. Private Bills, on the other hand, deal with issues relating to a particular group; originating from parties outside of Parliament, whether it be private individuals, NGOs or corporate entities. The utilisation of Private Bills in Malaysia is rare and virtually unheard of. Finally, Hybrid Bills relate to issues that involve matters of both public and private interests; for example, those with widespread public ramifications yet jointly cause a specific impact on a particular group of people.[8]

A Private Member's Bill is defined as a bill brought by a private member of Parliament[9] who is not a member of the Executive while Government Bills originate from the Executive. As a general rule, bills from the latter are almost always debated and eventually passed in Parliament[10] provided they gain the support of the majority, with the exception of laws that touch on constitutional matters.[11] While the utilisation of Private Member's Bills is a concept inherited from the Westminster parliamentary system, the way countries approach and feature Private Member's Bills within their respective parliamentary agendas vastly differ[12, 13].

7 See <https://www.freemalaysiatoday.com/category/nation/2019/04/25/parliament-mulling-11-more-select-committees/> accessed 17 January 2021.

8 See <https://www.parlimen.gov.my/glosari1.html?&lang=en> accessed 18 January 2021.

9 Private member: any Member of Parliament who is not a member of the cabinet (Executive).

10 W.J.T. Jaafar, 'Achieving real and effective parliamentary scrutiny of the executive' (2008) 89(2) *PARLIAMENTARIAN* 19.

11 Constitutional amendments require two thirds majority to be passed.

12 W. Case, 'Malaysia in 1992: Sharp Politics, Fast Growth, and a New Regional Role' (1993) 33(2) *Asian Survey* 184.

13 See section below on Private Member's Bills around the world.

The procedures for the submission of a Private Member's Bill in Malaysia is described in the Standing Orders of the Dewan Rakyat - specifically item 49(1).[14] To be successfully passed, a Private Member's Bill must first be submitted to the Speaker, who then holds discretionary powers over its listing on the Order Paper. The successful inclusion of a fully-fledged bill is subject to its adherence to the Standing Orders and Federal Law as interpreted by the Speaker.[15] Being listed on the Order Paper, however, is by no means a guarantee of the said bill being prioritised and later allowed for debate on the floor.

Usually, these types of bills are placed at the bottom of the list as Government bills take precedence for debates on any given day. The Private Member's Bills will typically linger on the Order Paper but will only be debated in the rare instances that it gains Executive approval.[16] For any given bill to be passed (Private Member's Bill or otherwise), it requires a simple majority of votes in the Dewan Rakyat and the Dewan Negara. The bill is then presented to the Agong for his assent under Article 66 of the Federal Constitution.[17]

To our knowledge, there exists no record of a Private Member's Bill on its own successfully passing into law in Malaysia. The success of such a bill hinges greatly on the ability of the sponsor to convince a member of the Executive branch to take it up, thus converting it into a Government Bill. A Minister within the Executive also has the power to move a bill up the Order Paper, so its debate may take precedence over other Government matters of the day.[18] This privilege is supported by the Parliament Standing Orders 15(2), which states that 'Government business shall be set down in such order as the Government thinks fit and communicate to the Setiausaha'.

A process that relies so heavily on government assent does not bode well for a truly democratic Parliamentary system as this highlights clearly how power is centralised within the Executive.[19] In a fully functioning

14 See <https://www.parlimen.gov.my/images/webuser/peraturan_mesyuarat/PMDR-eng.pdf> accessed 17 January 2021.

15 D. Loh and J.A. Surin, *Understanding the Dewan Rakyat* (Kuala Lumpur, ZI Publications Sdn Bhd, 2011).

16 Refer to Standing Orders of the Dewan Rakyat, SO 49(4), subject to SO 51.

17 C. Das, 'Democracy And The Sultanate System In Malaysia' (2019) 21 *Journal of Malaysian and Comparative Law* 97.

18 A.F.A. Hamid, 'Shifting Trends of Islamism and Islamist Practices in Malaysia, 1957–2017' (2018) 7(3) *Southeast Asian Studies* 363.

19 F.M. Arifin and N. Othman, 'The Dynamic of Policymaking Process in Malaysia' (2018) 10(1) *International Journal of West Asian Studies* 74.

Parliamentary system, the Legislative arm is tasked with providing the necessary checks and balances to counter Executive powers.[20] However, without a mechanism for Opposition and Backbencher MPs to moot Private Member's Bills, their legislative power, and by extension the Legislature, is curtailed.

The process of Private Member's Bills being adopted by Ministries and converted into Government Bills is vague and non-transparent. It is uncertain just how many of these Bills have been successfully taken up as there exists no central repository which records them. However, to offer a personal example of the conversion process, the Sexual Harassment Bill mooted in 2018 – built on years of existing work by the Women's Aid Organisation (WAO) and the Joint Action Group for Gender Equality (JAG) – was adopted by the then Minister of Women, Family and Community Development, Datuk Seri Dr Wan Azizah binti Datuk Dr Wan Ismail as a Government Bill.[21] To date, however, this bill has not been tabled, nor the latest version of it shared with stakeholders by the current Minister, Datuk Seri Rina Mohd Harun.

Another motion most notably discussed in the public domain was the RUU355, a bill to amend the Syariah Courts (Criminal Jurisdiction) Act 1965 pushed by the President of the Islamic Party (PAS) and Marang MP, Datuk Seri Hj Hadi Awang. The Private Member's Bill was eventually prioritised as an agenda by the then Minister in the Prime Minister's Department, Datuk Seri Azalina Othman.[22] This was done in accordance with Standing Order 14(2), which states that a minister is able to move a motion to proceed before any predetermined business of the day. The RUU355 was supported by the previous Barisan Nasional (BN) government and considered for conversion to a Government Bill; however, this support was later retracted.[23]

In 1966 Tanjong MP Dr Lim Chong Eu managed to get his original Private Member's Bill approved by the Executive (specifically the Deputy Prime Minister) and processed by the Attorney-General's Office. The said

20 V. Vithiatharan and E.T. Gomez, 'Politics, Economic Crises and Corporate Governance Reforms: Regulatory Capture in Malaysia' (2014) 44(4) *Journal of Contemporary Asia* 599.

21 WAO, *WAO Annual Report 2018* (WAO 2019).

22 K.C.C. Kin, '*The Value of Private Member's Bills in Parliament: A Process Comparison between Malaysia and the United Kingdom*' (*Penang Institute Issues*, 2019) <https://penanginstitute.org/publications/issues/the-value-of-private-members-bills-in-parliament-a-process-comparison-between-malaysia-and-the-united-kingdom/>.

23 SUARAM, *Malaysia Human Rights Report 2017: Civil and Political Rights* (Petaling Jaya, Suara Inisiatif Sdn Bhd, 2018).

bill was introduced to amend Article 159(3) of the Federal Constitution and was allowed to be read a second time. Notwithstanding initial government support, the bill was eventually voted down.[24] Another example of a Private Member's Bill which was allowed for debate but failed to secure the necessary votes was Gua Musang MP Tengku Razaleigh's proposed amendment to the Societies Bill to revive the United Malays National Organisation (UMNO) in 1988.[25]

As described above, many obstacles stand in the way of Private Member's Bills (PMBs) being prioritised. As a result, the PMBs that eventually make it to the debating stage are few and far between. However, there are still merits in championing Private Member's Bills as each one acts as a launchpad for discussions around issues brought up through such proposed bills. These bills may raise awareness on niche issues and may even influence the government to incorporate ideas raised into future Executive-led legislation.[26]

It is with the reasons above that the lead author worked on several Private Member's Bills across the span of her tenure as a Member of Parliament (2008 - present). These Private Member's Bills are listed in Table 1 below, with summaries of each bill to follow.

Table 1. Private Member's Bills brought forward by Nurul Izzah Anwar

No	Private Member's Bill	Year
1.	Industry Skills Education And Training Commission Bill 2018	2018
2.	Racial and Religious Hate Crime Bill 2016	2016
3.	National Harmony and Reconciliation Bill 2016	2016
4.	Sedition Act (Repeal) 2013	2013
5.	Petroleum Development Act 1974 (Amendment) 2012	2012
6.	Printing Presses And Publications Act (Repeal) 2012	2012
7.	Revocation of Emergency Bill 2011	2011

24 DR Deb 25 October 1966, Vol. III No. 13.
25 DR Deb 6 December 1988, Jil. II Bil. 63.
26 J.C.H. Lee and others, 'Elections, Repertoires of Contention and Habitus in Four Civil Society Engagements in Malaysia's 2008 General Elections' (2010) 9(3) *Social Movement Studies* 293.

Industry Skills Education And Training Commission Bill 2018

The Industry Skills Education and Training Commission Bill 2018 (ISET) was mooted in 2018 to establish a commission to centralise the curriculum, accreditation and regulation of Technical and Vocational Education Training (TVET) across Malaysia. This Commission was tasked with managing the complex governing of TVET by seven ministries and their relevant agencies, all working in their respective silos.

The government, then Pakatan Harapan (PH) and the preceding Barisan Nasional (BN) governing coalition had commissioned at least four studies on the TVET ecosystem in Malaysia. Closed reports by Boston Consulting Group (BCG), PricewaterhouseCoopers (PWC), Global Market Research and Public Opinion (IPSOS), as well as committees comprising local and international experts, shared one key conclusion: there was a need to streamline programmes and empower one single accreditation authority to enable more students to benefit from curriculums matching the needs of industry. The ISET bill's raison d'être was to fulfil this need. However, the bill required the cabinet's buy-in before being prioritised on the parliamentary agenda.

Racial and Religious Hate Crime Bill 2016

The Racial and Religious Hate Crime Bill 2016 was recommended alongside the National Harmony and Reconciliation Bill as replacements to the contentious Sedition Act. Its main aim was to punish acts of racial and religious hatred in the pursuit of preserving national harmony whilst concurrently protecting the right to freedom of speech, association and expression.

National Harmony and Reconciliation Bill 2016

As mentioned above, the National Harmony and Reconciliation Bill 2016 was proposed to replace the Sedition Act. Its explicit aim was to prohibit discrimination in Malaysia on any grounds, whether in terms of ethnicity or gender. This bill was also formulated in light of the work by the National Unity Consultative Council (NUCC), which was originally set up in 2013 but eventually dissolved three years later by then Prime Minister Datuk Seri Najib Razak.[27]

27 See <https://www.freemalaysiatoday.com/category/nation/2016/11/03/mujahid-rawa-mourns-death-of-nucc/> accessed 31 January 2021.

Sedition Act (Repeal) 2013

The 2013 Private Member's Bill repealing the Sedition Act was drafted in collaboration with the Malaysian Centre for Constitutionalism and Human Rights (MCCHR). The intention was to abolish a draconian law notorious for its use in suppressing civil dissent, silencing legitimate opposition, and denying peaceful assembly. Civil organisations have long called for its repeal for the threat it is said to pose on Malaysian democracy and freedom of speech.[28] Under this Act, individuals declared by the ruling Government as a threat to public security have been arrested, inclusive of but not limited to legislators and leaders from the opposition[29, 30]. The enforcement of this law is seen to be arbitrary and much criticised as a government tool to crack down on dissent without according victims justifiable legal recourse. For this reason, the repeal of the Sedition Act was proposed as part of a larger push for government reforms - an initial pledge made by former Prime Minister Datuk Seri Najib Razak before scaling back due to pressure by ultra-conservative forces.[31]

Petroleum Development Act 1974 (Amendment) 2012

As a resource-rich nation, the amount of petroleum funds extracted from our national petroleum company, Petronas, to finance public spending has long been a matter of contention for stakeholders. In 2011, Petronas paid 55% of its net profits to the government, in comparison to the global national oil company average of 38%.[32] Despite the public outcry, the government has never divulged the specifics of how this money has been spent. This Private Member's Bill was drafted to address ongoing concerns and called for the transparent disclosure of expenditure extracted from Malaysia's finite natural resources.

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28 See <https://www.hrw.org/news/2019/07/17/malaysia-end-use-sedition-act> accessed 17 January 2021.

29 See <https://www.ipu.org/sites/default/files/documents/malaysia-e.pdf> accessed 17 January 2021.

30 K. Loganathan and others, 'Fetters on Freedom of Information and Free Speech in Malaysia: A Study of the Licensing and Sedition Law' (2015) 12(2) *e-Bangi* 297.

31 See <https://www.article19.org/resources/malaysia-pm-najib-razak-must-fulfill-promise-repeal-sedition-act-without-delay/> accessed 31 January 2021.

32 E.T.H. Lee, '*Scope For Improvement: Malaysia's Oil And Gas Sector*' (*REFSA*, 2013) <https://refsa.org/wp-content/uploads/2020/10/pdfslide.net_og-scoping-report-malaysia-final-20130701-compressed.pdf> accessed 17 January 2021.

This bill was also championed in relation to the Extractive Industries Transparency Initiative (EITI), which aims to set a global benchmark for the good governance of oil, gas and mineral resources. By 2014, EITI had formally approached Petronas to adopt its transparency standards, emulating 44 (now 55[33]) countries that willingly disclosed their government revenues and company payments for independent scrutiny.[34]

Printing Presses And Publications Act (Repeal) 2012

Ensuring the freedom of the press was one of the key issues that led to the proposal to repeal the Printing Presses And Publications Act (PPPA) - an act which grants the government absolute power to revoke newspaper licenses. The Act has been condemned by civil society organisations for its role in curbing media freedom and stifling public debate. For some time, media outlets were viewed as subservient to the government in power for fear of violating the PPPA.[35]

The bill repealing the PPPA comes in tandem with the proposal to establish an independent media council to govern media companies, eventually creating a more conducive environment for media freedom and bipartisan coverage. The bill also took into consideration Malaysia's existing defamation laws, which remains far more stringent than in the UK or Australia, and deemed as a sufficient bulwark against false publications.[36]

Revocation of Emergency Bill 2011

Since the 1960s, Malaysia has been under Emergency rule, whereby any decrees issued are not subject to judicial review. A constitutional amendment in 1960 provided that an Emergency remains in place until revoked by Parliament.[37] Prior to this year, Emergency rule has

33 See <https://eiti.org/> accessed 16 January 2021.

34 See <https://www.thestar.com.my/business/business-news/2014/06/10/eiti-hopeful-of-msia-adopting-transparency-standards/?styl> accessed 17 January 2021.

35 J.M. Fernandez, 'Malaysia's Printing Presses and Publications Act: Time to Discard a Draconian Relic of a Bygone Era' in B. Debatin (ed), *The Cartoon Debate and the Freedom of the Press: Conflicting Norms and Values in the Global Media Culture* (Berlin, Lit Verlag, 2007).

36 L.J. Lumsden, 'How independent? An analysis of GE13 coverage by Malaysia's online news portal coverage' (2013) 29(2) *Jurnal Komunikasi: Malaysian Journal of Communication* 1.

37 C. Das, 'The Basic Law Approach to Constitutionalism: Malaysia's Experience Fifty Years On' (2007) 15(2) *Asia Pacific Law Review* 219.

been invoked on four occasions – in 1964 because of the confrontation with Indonesia, in 1966 and 1977 to address state political problems in Sarawak and Kelantan, and in 1969 following racial riots in Kuala Lumpur. This Private Member's Bill called for these Emergency declarations to be revoked. At the time, there were 82 related ordinances and laws promulgated from the time of the emergency. Intended for a different time, these laws now serve a very different purpose and are deemed as repressing democratic rights as well as the smooth running of Malaysia's parliamentary democracy. The Revocation of Emergency Bill was submitted six months prior to its eventual revocation by the then Prime Minister, Datuk Seri Najib Razak.[38]

Private Member's Bills around the world

Private Member's Bills are typically a feature of countries that adopt the Westminster system. As a general rule, Government Bills introduced by the Executive take precedence over Private Member's Bills.[39] The United Kingdom features a mechanism that allows Private Member's Bills to be fairly selected and then debated on the parliament floor. There are three different methods for a Private Member's Bill to successfully reach the debating stage: the ballot, the ten-minute rule, and presentation by MPs.[40] Private Members' Bills have precedence over government business on thirteen Fridays in each session under Standing Order 14(8). On the first seven Fridays allotted to Private Members' Bills, priority is given to ballot bills. The British Parliament regularly passes Private Member's Bills, ranging from three to 12 bills in total, for every Parliamentary session since the year 2000. Recently passed bills include the Parental Bereavement (Leave and Pay) Act 2018.

New Zealand also prioritises Members' Bills (up to 1995 known as Private Member's Bills) by dedicating every alternate Wednesday in the duration of their Parliamentary sitting to local, private and members' bills.[41] Starting with the 2020-2023 Parliamentary term, if a given Member's

38 See <https://www.newmandala.org/nurul-izzah-on-the-path-towards-democratising-malaysia/> accessed 26 January 2021.

39 A. Lijphart, *Patterns of Democracy: Government Forms and Performance in Thirty Six Countries* (London, Yale University Press, 1999).

40 See <https://www.parliament.uk/about/how/laws/bills/private-members/> accessed 15 January 2021.

41 See <https://www.parliament.nz/en/pb/bills-and-laws/proposed-members-bills/> accessed 18 January 2021.

Bill receives support from 61 members, it will be tabled without going through the ballot. On average, five Member's Bills have been passed every Parliamentary term since 1984. Previous Member's Bills that have made the cut include the Compensation for Live Organ Donors Bill in 2016 and the End of Life Choice Act 2019.

Canada saw 63 Private Member's Bills passed in its Parliament under Stephen Harper's tenure as Prime Minister (2006-2015). Changes to the Canadian Parliament's Standing Orders were made following a report by the McGrath Committee, which acknowledged the importance of Private Member's Bills, inclusive of current rules relating to Private Members' Business, the establishment of the order of precedence, and the procedures such bills are debated.[42]

Making the case for Private Member's Bills in Malaysia

As discussed in this article, the Malaysian Parliament may recognise Private Member's Bills, however, their tabling is very much under the Executive's discretionary powers. The mechanisms employed by other Commonwealth nations to enable the passing of such bills are useful considerations for Malaysia to allocate space for the fair tabling of Private Member's Bills, independent of the Executive.

Allocating a specific slot for the tabling of Private Member's Bills

Malaysia could dedicate one day every fortnight for Private Member's Bills as practised by countries such as the United Kingdom and New Zealand. While the UK currently allows Private Member's Bills to be discussed on Fridays, which may impact the quorum on days when members of Parliament return to their respective constituencies,[43] it remains a viable option for Malaysia since our parliamentary sessions end on Thursdays.

Using a ballot system

In the UK and New Zealand, the ballot system remains the most effective mechanism allowing Private Member's Bills to be successfully

42 R. MacKay, 'Parliamentary Rules Concerning Private Members' Bills' (2018) *Canadian Parliamentary Review* 22.

43 See <https://www.hansardsociety.org.uk/publications/guides/private-members-bills#how-many-private-members-bills-become-law-each-parliamentary-session> accessed 21 January 2021.

debated.[44, 45] Implementing a ballot system would enable Private Member's Bills to be tabled fairly, without Executive interference. It allows all MPs an equal chance of getting their PMBs selected for debate, without the need for Executive lobbying.

Other considerations

There may also be a need to introduce a mechanism that reduces instances of 'filibustering', otherwise known as time-wasting tactics by a mere handful of Members of Parliament who go on to speak at length about a particular bill, thus blocking other Private Member's Bills ranked lower on the Order Paper. This was one of the suggestions proposed to improve existing procedures vis-à-vis the tabling of Private Member's Bills in the UK.[46] Other suggestions include ensuring that the procedures for Private Member's Bills are simplified to enable more MPs to participate successfully in this democratic and legislative right.

Conclusion

This article has highlighted the importance of revisiting and reforming the way the Malaysian Parliament approaches Private Member's Bills. True separation of powers can only occur when the Legislative arm has the right to introduce and discuss legislation of their own, independent of the prevailing agenda of the government in power. Creating a mechanism for Private Member's Bills to be fairly debated allows for a more measured and balanced power dynamic between the Executive and Legislative wings, thus expanding the democratic space within the parliamentary process. Malaysia thus far has been lagging behind with a system that does not allow for easy implementation of Private Member's Bills which has resulted in virtually none of them being taken up, as evidenced above. The one-sided nature of the legislation process hamstrings a Parliament unable to exercise its true potential. The good news is that provided there is the political will to make these changes from the prevailing government, the potential solutions are numerous.

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44 S. Moriue, 'Support for Private Members' Bills in the United Kingdom and Japan' (2020) 41(3) *Statute Law Review* 304.

45 B.D. Williams and I.H. Indridason, 'Luck of the draw? Private members' bills and the electoral connection' (2018) 6(02) *Political Science Research and Methods* 211.

46 See <https://www.hansardsociety.org.uk/publications/guides/private-members-bills> accessed 21 January 2021.

By dedicating a specific day to Private Member's business and utilising a ballot system for the fair selection of Private Member's Bills, Malaysia will join the ranks of countries such as the United Kingdom and New Zealand, which rightly prioritise the interests of the electorate by allowing a more diverse set of legislative debate and discussion - which may not be prioritised or be in the interest of the existing ruling clique. Ensuring such mechanisms are in place will allow for crucial legislative matters to be discussed thoroughly in Parliament before securing the majority support to pass. At the very least, it will assist in raising awareness on key issues faced by the electorate and the nation.

Aside from the occasional headline, PMBs remain a parliamentary mechanism far removed from the consciousness of the *rakyat*. The same is true of other ancillary mechanisms, including the work of our various Parliamentary committees. The reality is Parliament reflects a perception of place with plenty of debate but little actual lawmaking. Whether this perception is accurate is separate from the underutilisation of additional mechanisms to supplement and strengthen the lawmaking process. Ultimately, this underscores the importance of strengthening Malaysian legislators' agency and ability to pass laws in ensuring the expansion and efficacy of our parliamentary democracy.

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The Dewan Negara and Constitutional Reform: Upper Houses in Comparative Perspective

*Andrew Harding**

Abstract

This article looks at issues relating to the possibilities for reforming Malaysia's Dewan Negara (Senate) with regard to its constitutional functioning, rather than its internal operation. Two major functions of upper houses – representation and revision – are explored in comparative perspective, and the implications of these functions are discussed in relation to the composition of the Dewan Negara. It is suggested that the proportion of senators representing the states and government appointed senators has become imbalanced, reducing the efficacy of the House in both of its roles, and accordingly that the number of appointed senators should be reduced to a minority of the total. Over the last six decades the House has had too little impact on law-making and accountability. Reforms can tap into the House as a major resource in Malaysian public life.

Keywords: Law Reform, Upper House, Malaysia, Constitution, Legislature

The United Kingdom's House of Lords, an English joke goes, is rather like BBC Radio 3 (the classical music channel): everyone agrees it should exist, but nobody listens to it, or can say quite what it is for. Like all such jokes this is an exaggeration, and I believe the House of Lords in fact makes important contributions to legislation and policy; but the joke does raise the undoubted ambiguity surrounding the precise role to be fulfilled by upper houses, which seems to be pertinent in every system of government that involves a bicameral parliament. There is an almost tragic indeterminacy about upper houses.

The raising of reform questions across the board in Malaysia since 2018 has touched many – one might say almost all - aspects of the country's governance. It is natural therefore that reform of the *Dewan Negara* has

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also been discussed both within and outside the House.[1] Accordingly, in this contribution I wish to explore not so much the internal workings of the House, which could very well be an interesting subject for the discussion of reform[2] (and I do not mean to marginalise it), but rather the larger questions of the constitutional role of the House, and therefore also, necessarily, I will argue, the question of its composition.

Malaysia's Parliament was always from the beginning seen as inevitably bicameral, once the system of government was decided to be a federal one,[3] but until recently the *Dewan Negara* had been little noticed by most people. In this it is not unusual in the broader experience of upper houses.[4] Following the rejection in 2019 of the Bill to repeal the Anti-Fake News Act 2018, I was asked by several people about the issue of legislative process under the Pakatan Harapan government, as this was to many people a strange development. I was surprised to discover how many educated people had no idea of the existence, let alone the precise role, of the *Dewan Negara*. Even some of those who were well aware of its role questioned whether the upper house should really be necessary in a democratic system of government. It was as though the House had, paradoxically, lain quiet for some decades only to incur irritation when finally giving cause to be noticed. It was even suggested to me that appointed senators had no moral right to sit in the House after the election, let alone to block legislation that had passed the lower house. So in my view it is very timely to have public debate, especially amongst senators, MPs, scholars, and legal and state government officials, as to reform of the House. Even if no reform resulted from such debate, that would, if unfortunate, at least be very educative to all concerned. And in fact changes have been made already; for example, the House now has nine new committees mirroring the 'special select committees', established under Standing Order 80 in the *Dewan Rakyat*.[5]

1 S.S. Faruqi, 'The Malaysian Parliament: Problems, Prospects and Proposals for Reform' in M.A.M. Yusof and others (eds), *Law, Principles and Practice in the Dewan Rakyat (House of Representatives) of Malaysia* (Subang Jaya, Sweet & Maxwell, 2020) 513-6.

2 See, e.g., T.Z.A. Muhriz, *A New Dawn for the Dewan Negara? A Study of Malaysia's Second Chamber and Some Proposals* (Kuala Lumpur, IDEAS Malaysia, 2012).

3 A. Harding, *The Constitution of Malaysia: A Contextual Analysis* (2nd edn, Oxford, Hart/ Bloomsbury, 2021, forthcoming) ch.1.

4 M. Russell, *Reforming the House of Lords: Lessons from Overseas* (Oxford, Oxford University Press, 2000).

5 M.A.M. Yusof, 'The Committee System', in Yusof and others (n 1).

Comparative considerations

Malaysia is not unusual in having serious questions as to the role of its upper house, as I have indicated. Upper houses the world over have been very much challenged in finding a role that differs materially from that of the lower house, which inevitably enjoys greater electoral legitimacy.[6] Upper houses can of course comprise elected as well as appointed members, but even then, one has to explain in what way its legitimacy is increased by that fact; it is usually argued that upper house elections should be according to a different method from the lower house, for example by proportional representation as opposed to a simple majority, or the 'first-past-the-post' system. The Philippines, imaginatively, uses the 'plurality-at-large' system to elect 24 senators from the country as a whole as one constituency, with voters able to vote for up to 12 candidates.[7]

There remains, however, a good deal of ambiguity and uncertainty around the question of the role of the upper house. For example, the House of Lords in the United Kingdom has periodically been the subject of debates on reform, and occasionally even actual reforms (as during the government of Tony Blair, 1997-2007), ever since about 1650, and yet hardly anyone appears to think that the reform process is, even now, anywhere near complete, and there seem to be as many opinions as those pronouncing one as to how to move forward.[8] Even though there is broad agreement that reform is needed, there has been little agreement as to the shape or ultimate objective of such reform, so that the House of Lords seems to embody a series of unprincipled compromises rather than a finished article.[9] In particular the House of Lords has been bedevilled by the apparently elitist and illegitimate nature of its composition, embodied in the principle of heredity which means in effect, in the words of the Earl of Onslow during the debate on reform of the heredity principle in 1999, that '[the only] reason for my being here … [is that] my forbears got plastered [very drunk] with

6 See, e.g., D. Kapur and P.B. Mehta, 'The Indian Parliament as an Institution of Accountability' (2006) UNRISD Democracy, Governance and Human Rights Programme Paper no 23, 13ff.

7 Constitution of the Philippines, art VI, s 2.

8 P. Leyland, *The Constitution of the United Kingdom: A Contextual Analysis* (4th edn, Oxford, Hart/ Bloomsbury, 2021, forthcoming) ch 5.

9 ibid.

George IV'.[10] In 1911 and 1949 it was thought necessary to reduce the veto powers of the House of Lords to a mere delaying power. In 1911 this issue sparked a serious constitutional crisis, resolved only by the special measure of flooding the House with Liberal peers in order to get the Parliament Act 1911 passed.[11] The Prime Minister's power to elevate, for example, party donors or personal associates to the peerage, is another controversial matter.[12]

The House of Lords is often compared, sometimes to its detriment, with the United States' Senate. Yet here again there is controversy over both the composition and the powers of the House. It is asked why tiny states such as Wyoming (population 582,000) have the same number of representatives as states large enough to be nation-states in their own right, such as California (population 39,900,000, or about 68 times the size of Wyoming).[13] It is also asked why it is right for a Senate dominated by one party to be able to block legislation promised by its opponents who have won the presidency and a majority in the House of Representatives. The powers of the Senate over impeachment of the President and appointment of Supreme Court justices are also roundly criticised, both in principle and in their exercise. Justices are now openly referred to as 'Democrat' or 'Republican' judges.[14]

Wider afield, there is even less consensus around the exact purpose of having an upper house, and around its composition and what its powers should be, especially in its relation to the lower house. We can be fairly sure that a solid rationale exists for having an upper house in a federal system of government, because otherwise the rights or powers of states could be taken away or abridged by a majority in the lower house,

10 Debate on the House of Lords Bill, HL Deb 30 March 1999, vol 599, cc 352.

11 Leyland (n 8). It is worth noting here that although the way in which the Act was pushed through Parliament seems to enjoy dubious constitutionality, the House of Lords had itself acted contrary to constitutional convention by refusing to pass money bills that had been passed in the House of Commons. Such situation, thankfully, cannot occur in Malaysia due to Article 68 of the Federal Constitution, which provides that the *Dewan Negara* can only delay a money bill by one month, but cannot veto such bill.

12 'Boris Johnson's Tory-Linked Peerages Raise Fresh Claims of Cronyism' *The Guardian* (London, 24 December 2020).

13 'Why Should Wyoming voters Have More Power than Californians?' *Los Angeles Times* (California, 20 September 2020).

14 J. Gramlich, '5 Facts About the Supreme Court' *Factank* (Washington, 5 October 2020).

and the federal bargain effectively changed or even abolished entirely without agreement on the part of the federation's subjects – the states or provinces that comprise it.[15] Accordingly, there is actually no federal system that does not embody an upper house as an essential element. The United States, Canada, Germany, Nigeria, Kenya, India, Pakistan, and Australia, for example, as well as Malaysia, all have an upper house, and Ethiopia's is even called 'the House of the Federation'.[16] However, the similarity stops right there in terms of both powers and composition of these upper houses. Loosely speaking, in all these cases, it is the primary role of the upper house to represent the states in the federal system. But obviously issues relating to federalism do not arise all the time, and so it has other roles in addition. Its composition varies from direct election to appointment, there being several intermediate positions. Yet upper houses also exist and are of significance in unitary states too, such as the United Kingdom, Ireland, Japan, the Philippines, Thailand, Italy, Spain, South Africa, Chile, and France. On the other hand, New Zealand, Singapore, and Israel are unitary states with a unicameral parliament. The choice seems therefore to be principally between an upper house with the role of representing the states and perhaps other interests that would not otherwise be represented (for example minority groups), and the role of functioning as a chamber of second thoughts that can delay or prevent hasty legislation that is in some way unconstitutional, trespassing for example on fundamental rights or sacred principles of governance, or perhaps simply on reflection unwise. We can call these roles, respectively, 'representative' and 'revisionary'.

Of course, there is nothing to prevent an upper house performing both representative and revisionary functions. For example, one possible type of reform of the House of Lords might be for it to play a larger role in protecting the interests of the various regions and the four nations of the United Kingdom, giving it a representative in addition to a revisionary role. Similarly, in Malaysia the *Dewan Negara* could play a larger role than it presently does in the legislative process and in scrutinising the exercise of executive powers.[17]

15 F. Palermo and K. Koessler, *Comparative Federalism: Constitutional Arrangements and Case Law* (Oxford, Hart/Bloomsbury, 2017) ch 6.

16 Constitution of Ethiopia 1994, pt Two.

17 S.S. Faruqi, *Our Constitution* (Subang Jaya, Sweet and Maxwell, 2019) 224ff.

The *Dewan Negara* under the Constitution

In Malaysia the need for an upper house is deeply related to the federal structure adopted in 1948 and entrenched in the 1957 *Merdeka* Constitution, and the system of electing and appointing members was drawn up to reflect this underlying rationale. Given the brief experience of a unitary state (the Malayan Union of 1946-48) and the strong opposition thereto, guarantees were needed of the autonomy and continuance of the states.[18] This is confirmed indirectly also by the fact that the states themselves all have a unicameral legislature, unlike the US states, which all have a bicameral legislature.

The *Dewan Negara* is smaller than the *Dewan Rakyat*, comprising only 70 members, less than one third of the numbers of MPs (222).[19] However, it is usual (the House of Lords is an exception in this respect) to have a smaller upper house; the Philippines' Senate has only 24 members, as discussed above, while the Australian Senate has 76 members, all of whom represent states or territories.[20] Of the 70 Malaysian senators, currently 26 are elected by the 13 state legislative assemblies (two for each state), irrespective of the population or importance of the State. There is, however, no requirement for these members also to be members of their respective state legislative assemblies. The other 44 members are appointed by the *Yang di-Pertuan Agong* on the advice of the Government, and must be persons who have rendered distinguished public service or have achieved distinction in the professions, commerce, industry, agriculture, cultural activities, or social service, or are representatives of racial minorities or are capable of representing the interests of the *orang asli*. Of these appointed members, however, four are chosen to represent the three Federal Territories (two for Kuala Lumpur, and one each for Putrajaya and Labuan). These latter are good examples of the representative function, which appears to be the House's primary function in the Malaysian federal system.

A senator's term of office is a single term of three years, renewable once only (reduced from a single term of six years in 1978) and is not affected by a parliamentary dissolution.[21] Therefore, in the case of a change in the federal government (since 1957 occurring only twice, in 2018 and 2020), the executive is likely to be faced with a hostile, opposition-controlled *Dewan Negara*, whose composition it cannot change except slowly as

18 Harding (n 3).
19 Federal Constitution, art 45(1).
20 Constitution of Australia, pt Two, art 7.
21 Federal Constitution, art 45(3).

senators' three-year terms expire. This indeed was the case during 2018-20, when little legislation was actually passed, mainly due to a hostile *Dewan Negara*. In December 2018 indeed the House rejected a bill that had passed the *Dewan Rakyat* to repeal the Anti-Fake News Act 2018, which had been enacted under the previous government. This was the first time a bill had ever been rejected by the House. The three-year term also allows the government a considerable amount of patronage in that senators can be replaced more often than before 1978; and it thereby enhances the power of the government over the House.[22]

Following the 14th General Election in May 2018, it was argued by some that appointed senators should all resign as they were appointed by the previous government, although nothing in the constitution indicates that they should, and in fact the *Dewan Negara* is not dissolved when the *Dewan Rakyat* is dissolved.[23] Given that senators do not, in theory at least, represent any party as such and their support does not count in the calculation of a parliamentary majority for prime-ministerial appointment purposes, but are appointed from amongst worthy citizens, this argument lacks substance constitutionally. If the *Dewan Negara* proves to be an obstacle to legislation, the remedy is surely not to ask them to resign, but to invoke the general powers of the *Dewan Rakyat*, which include a power to override objections from the *Dewan Negara* on the expiry of one year, or one month in the case of a money bill.[24] The discussion of resignation of senators indicates that either a rethink or a clearer understanding of the powers of the *Dewan Negara* is overdue.[25] As with leaders of independent agencies and other official appointees, once appointed, senators are servants of the public, and they should not be regarded, or regard themselves, as party-political appointees, any more than the heads of independent agencies or leading officials like the Attorney-General and the Auditor-General.

This is of course a somewhat idealistic notion, and there is in practice a likelihood that appointed senators will exercise their functions on a purely party-political basis, given the method of their appointment and the fact that they have no long-term security of tenure, having tenure of only three years.

22 Faruqi (n 17) 225.
23 S. Alagan, *Federal Constitution: A Commentary* (Subang Jaya, Thomson Reuters, 2019) 276.
24 Federal Constitution, art 68(1).
25 Muhriz (n 2).

Composition of the *Dewan Negara*

Two solutions to the problem of representation versus revision come to mind.

First, another look at the process for appointing senators might be in order, with a view to ensuring that senators are appointed for good public reasons, and membership of the House is not simply what one commentator called a temporary parking lot for politicians.[26] This could be achieved by the establishment of a separate and independent commission to consider nominations on a national and non-political basis.

Secondly, a reduction in the number of appointed members is in my view in order. All commentators, as far as I am aware, have criticised the gradual increase in appointed senators so that they now easily outnumber the state-appointed members. The number of appointed members has increased from 16 to 44 since 1957; and since 1964 they have had a majority over the state-elected members. This position diminishes the representative role of the House while also reducing its independence from the government of the day, thus defeating both upper-house rationales, the representative and revisionary, in one blow. If one counted the four federal-territory senators as similar in nature to the state-appointed ones, giving, let us say, a number of 30 in all, then maximum number of appointed members should not exceed 30. The retention of at least a number of appointed members preserves the revisionary role of the House. At the same time, appointed members can represent other interests such as those of the *orang asli*, who are not concentrated in one or two states, and they can also bring to the House valuable expertise of one kind or another.

The issue of representation raises, however, somewhat awkwardly, the issue of representation of Sabah and Sarawak in the House. As matters stand these states are entitled under Article 45(1), in the matter of membership of the House, to the same treatment as the other eleven states. However, there is a case to be made for giving Sabah and Sarawak special protection of their constitutional status, as is strongly implied in the Malaysia Agreement 1963 as the founding document of post-1963 Malaysian governance, which was supposed to protect that status and offer equal partnership rather than a takeover of the Borneo states by the existing Federation of Malaya. In this hypothetical case it would

26 ibid.

follow that if, as provided in the Malaysia Agreement,[27] Malaysia is a partnership of three territories – the Federation of Malaya, Sabah, and Sarawak (Singapore having left in 1965) - then the composition of the Senate should arguably reflect the equal status of these three entities. This would mean, for example, that the state-appointed members should be one third from each entity, not two from each state as is presently provided: for example, eleven from Malaya (one for each state), eleven from Sabah and eleven from Sarawak.

This idea might seem odd, but is quite logical in terms of the representative role if we take the Malaysia Agreement seriously, provided one accepts the premise of equal partnership, which of course is a bone of contention in itself.[28] It is, however, open to a rather large objection, namely, that it would give Sabah and Sarawak a very large controlling interest in the legislative process such that a combination of the two could in effect veto any legislation whatsoever, even legislation which does not implicate any right or essential interest of those two states. It would in effect create an elephant trap for all legislative projects. Given that the combined population of Sabah and Sarawak is about six million, compared to more than 26 million in 'Semenanjung', this numerical dominance of two states over eleven, I anticipate, would not be acceptable to the majority of legislators, and might seem wrong in principle to many people. The objection, however, does not take account of the appointed members, and this cohort of members could dilute the controlling interest of the Borneo states. Any such change would require a constitutional amendment, which would in turn require some kind of political agreement concerning the participation of Sabah and Sarawak in the Federation. I present this idea in order to underline the fact that the representative role is important but difficult to express fairly, whether one stays with the present composition of the House or gives special representation to Sabah and Sarawak. The latter would also entail those states having no advantage in the allocation of seats in the *Dewan Rakyat* – one clearly cannot have two bites of the same cherry.

On this issue I conclude that the present allocation of state/territory had probably best be maintained, unless the number of state representatives

27 *The Report of the Commission of Enquiry: North Borneo and Sarawak, 1962*, published by the Colonial Office as Cmnd 1794/1962 (HMSO) para 327.

28 A. Harding, 'Devolution of powers in Sarawak: A dynamic process of redesigning territorial governance in a federal system' (2017) 12(2) *Asian Journal of Comparative Law* 257.

were increased (as is allowed by Article 45(4) of the Constitution) from two to three. Whatever decision is made on that, I would want to insist that the appointed members should not exceed in number the state members. The electoral process for senators should also be revisited to decide whether the present system produces the best results.

Turning to the process of reform, it would be possible to reform many other aspects of the House without constitutional amendment, and in fact the Constitution does envisage that its composition might change radically over time. Apart from the fact that Article 45(4) allows parliament to increase the number of state-elected members from two to three for each state, it also provides for the possibility of direct popular election of state members, as well as for the numerical decrease or even complete abolition of appointed members. By appointing members who support the government, the latter has been (until 2018) able to ensure that there will be no effective opposition to its measures in the *Dewan Negara*. The House has rarely amended Bills passed by the *Dewan Rakyat*. Its debates have made little impact on the wider political scene, being rarely reported in the news media. And its composition ensures that its role in protecting states' rights is quite limited.[29]

With imagination a more positive role for the House could be found in terms of checking constitutionality, ratifying appointments of public officials, or investigating or considering matters that the *Dewan Rakyat* has no time to investigate. As things stand the *Dewan Negara* has been striking for its lack of impact on legislation, on government, or on constitutional practice. It should be ranked as a 'dignified' element in the constitution (in the sense in which 19th-century author Walter Bagehot described the House of Lords) that could, in a new and more democratic era, instead become an 'efficient' element (also in Bagehot's sense).[30] The all-important question is, in what way that objective could be achieved. At the very least the Dewan Negara represents a valuable resource that has not been tapped, in terms of both the expertise of appointed members and the local knowledge of state members.

29 As an example, the Territorial Sea Act 2012 was passed, infringing on Sarawak's continental shelf to the benefit of the federation, without any demur in the *Dewan Negara* – states' rights were not protected on this occasion: T. Yeoh, 'Federal-state Relations under the Pakatan Harapan Government' in *Trends in Southeast Asia*, Issue 12, Yusof Ishak Institute for Southeast Asian Studies (2020). The Sarawak Assembly had passed a motion rejecting this Act.

30 W. Bagehot, *The English Constitution* (ed M Taylor, Oxford, Oxford University Press, 2000) 7.

It is well here to consider further the revisionary role of the House, where it acts as a chamber of second thoughts. The argument here is that a majority in the lower house may be carried away in passing a rash measure or one that requires deeper and more careful consideration. An upper house can provide an alternative view, or at least time (up to one year in Malaysia) for further reflection: delay is often an effective ameliorative measure. The large problem with this rationale lies in its implications. Upper houses are not normally elected, but even in the case of an elected upper house the question arises on what basis the upper house can overturn with finality decisions made by an elected lower chamber? This question has bedevilled the British parliament for more than a century, as we have seen, and it lurks as potential snag-net in any bicameral parliamentary system.

There is no very compelling answer to this question except the concession that the upper house may not be able to insist in the final analysis that its view prevails, becoming on this hypothesis a chamber of second thoughts rather than a blocking or vetoing chamber like the US Senate. Accordingly, constitutions normally give the lower house the power to affirm its view and override the upper house, often after a period of time or a process of amendment of a bill has been exhausted. Even where this is not the case, it is usual for the lower house to be able to pass the budget despite opposition from the upper house, which, by convention, or constitutional provision in some cases (as in Malaysia), concedes to the lower house. The reasons for this can be seen very clearly in the UK's constitutional crisis of 1910-11, when the powers of the Tory-dominated House of Lords to block legislation were reduced substantially. The same applies in relation to the constitutional crisis in Australia in 1975, where blocking of legislation in the Liberal-controlled Senate led to the controversial dismissal of a Labour government that controlled the lower house.[31] In both cases it was averred that the upper house had acted unconstitutionally, the majority therein abusing its powers to conduct a war of attrition against the elected government. In both cases a drastic measure was deployed – flooding of the House of Lords with Liberal peers in the UK, and dismissal of the government by the Governor-General in Australia.

31 P. Kelly and T. Bramston, *The Dismissal in the Queen's Name: A Ground-breaking New History* (Hawthorn, Penguin Australia, 2015).

Conclusion

We can identify several good general reasons for retaining upper houses and indeed for celebrating their contribution, even if such contribution sometimes seems a very quiet and unobtrusive one. In preparing this article I spoke to an Indian scholar whose excellent book on the Indian Constitution, I pointed out, made hardly any mention of the *Rajya Sabha*, the upper house of parliament.[32] Was this an indication, I inquired, of its lack of utility? He responded that in fact in his view the upper house was both inherently necessary and had made useful practical contributions. Despite the fact that arguments rage continually over the details of both powers and composition, only a few extreme ideologues will argue for complete abolition of an upper house. Experience indicates that both main rationales for retaining an upper house (representation and revision) have much to be said for them.

The problem of what we may called the animated but unreflective majority has troubled political philosophers ever since the problems experienced by ancient Athenian democracy. In 427 BCE the Athenian *ekklesia* (assembly) voted to put to death all the men of Mytilene, which had had the effrontery to rebel against Athens, and sell the women and children into slavery. A galley was sent to deliver the dreadful news to the Athenian general at Mytilene. The next day the members of the assembly thought the better of their cruel decision, sending a second galley with instructions to convey their reversal of the earlier decision. Thucydides reports that the oarsmen of the first galley, weighed down by their deeply troubling news, proceeded more slowly than the oarsmen of the second galley, which was motivated to get to Mytilene ahead of them. As it happened the first galley was forestalled as the second entered the harbour simultaneously, and the Mytileneans were saved.[33] For ever after those interested in political systems have been aware of the dangers of uncontrolled demagoguery, or populism as we now call it. We see many very troubling examples of this across the world. An upper house affords a legitimate and convenient place for second thoughts, where reflection can replace emotion as the tenor of decision-making, and larger principles can come to the fore. This is a general truth of no

32 A. Thiruvengadam, *The Constitution of India: A Contextual Analysis* (Oxford, Hart/Bloomsbury, 2017); see, however, Kapur and Mehta (n 6).

33 R.B. Strassler (ed), *The Landmark Thucydides: A Comprehensive Guide to the Peloponnesian War* (New York, Touchstone, 1998) 3.36-3.50.

special relevance to Malaysia. However, the *Dewan Negara* can in my view play a more significant role than hitherto in acting as a check on the operation of party politics. More than that, it is represents a very large human resource that can be put to better and indeed excellent use, not just as a preventive measure but as a producer of good policy, good questions to government, and acting ultimately as a force for national integration and good governance. Suitable reforms can facilitate such change in the role of the House for the future, and it is to be hoped that this aspect of the reform process will be moved forward. There is much that the House itself can do to further such reforms.

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Financing Politics in Malaysia: Reforming the System

*Edmund Terence Gomez** and *Joseph Tong***

Abstract

While debates about reforms of the financing of politics focus on money spent during federal and state elections, this study argues for a review of the financing of internal party elections. In Malaysia, the government proposed reforms of the financing of politics, but its focus was on only one issue, the introduction of a new law governing political parties. This article argues for the need to consider two additional points when this type of reform is proposed, namely: (1) institutional reforms of agencies responsible for monitoring the activities of parties and elections, to allow for greater autonomy of these institutions; and (2) measures to ensure internal party elections are conducted in a manner devoid of deep monetisation. The main reason for these additional proposals is that objectionable practices in the financing of party elections are being replicated in federal and state elections.

Keywords: Political Financing, Institutions, Legislation, Party Elections, Reforms

Not long after a general election in 2008 in Malaysia, public concerns emerged over the financing of political parties. In that epochal election, opposition parties secured unprecedented control of five state governments, which included two of the wealthiest states in the Malaysian federation. The opposition had achieved this unexpected feat even though an uneven playing field prevailed during federal and state elections. Parties in the ruling multi-party Barisan Nasional (BN, or National Front) coalition had always had access to considerable sums of money

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from a variety of sources, a factor that had undermined the conduct of fair electoral competition. However, after 2008, since both ruling and opposition-based parties were now beneficiaries of much funding from companies, this led to even greater monetisation of politics, with private funds seeping into the political arena in even larger quantum.

Following this general election, opposition parties have been reticent about remodelling the financing of politics. For this reason, campaigns to reform political financing have been driven by civil society, in an effort to institute public trust in political parties. However, the demand for reforms to staunch the flow of money into the political system by non-governmental organisations (NGOs) has not had much impact.

Reforms in the financing of politics became imperative in 2015 after a major scandal broke involving a government-owned enterprise named 1Malaysia Development Bhd (1MDB), a company under the jurisdiction of the federal government's Ministry of Finance. Public revelations about misappropriated money from 1MDB were linked to another controversy, involving RM2.6 billion[1] that had been channelled into the personal bank account of the sitting Prime Minister Najib Razak, who also served as the Minister of Finance. According to Najib, this money was from a foreign donor, given to him to finance the 2013 general elections. This scandal revealed serious abuse of this government-owned enterprise, with funds from it allegedly flowing into the political system and used during the general and state elections in 2013.[2] The 1MDB scandal also revealed the use of slush funds, as well as the covert funding of politicians by foreign individuals – and possibly also foreign governments. Funds from these sources were also believed to be used by Najib, as president of the United Malays National Organisation (UMNO), the leading party in the BN, to consolidate his position in the party, including through the buying of support.

These two controversies were particularly disconcerting because the monetisation of internal UMNO elections was by then an issue of much

1 In September 2017, the exchange rate between the US dollar and Malaysian ringgit was $1=RM4.21.

2 The controversy surrounding 1MDB was described by the British-based *The Guardian* (28 July 2016) as 'the world's biggest financial scandal'. When the United States' Department of Justice released a report on 1MDB, it alleged that US$3.5 billion had been misappropriated from this government-owned enterprise. For a discussion on this scandal's impact on Malaysian politics, see W. Case, 'Stress Testing Leadership in Malaysia: The 1MDB Scandal and Najib Tun Razak' (2017) 30(5) *The Pacific Review* 633.

concern. UMNO was seen as a party that only functioned well when its members were served by different forms of patronage, such as the award of important government-generated concessions, or rents, and appointments as directors of the multitude of companies owned by the federal and state governments.[3] UMNO members were even reputed to be given money on a regular basis by party leaders to remain loyal to the party.[4] Such concession-based politics had contributed to escalating corruption, allegations of serious conflicts-of-interest and the inability of a new breed of politicians to rise in the party hierarchy. Matters of this sort had been raised as major concerns since the 1980s, indicating the long and urgent need to promote transparency and accountability in the financing of parties. However, little had been done to stem such unproductive, even corrupt, political practices involving the abuse of money. Indeed, the scale of the problem, specifically in terms of the volume of funds involved, had evidently escalated during party elections. These practices of monetised politics had also come to be employed during federal and state elections.

UMNO had used a slush fund since the immediate post-colonial period, creating it to secure new funding sources, beyond the fees the party obtained from its largely rural membership. This slush fund was controlled by senior party leaders and remained a crucial source of funding for UMNO. Nearly five decades later, when Mahathir Mohamad resigned as UMNO president in 2003, he handed to his successor, Abdullah Ahmad Badawi, party assets of RM200 million in cash and RM1.2 billion in shares and property.[5]

It was, however, in 1981 that the scourge of monetised elections commenced in the form of vote-buying during UMNO's general assembly, comprising about a thousand members. By the early 1990s, the practice of vote-buying had filtered down to the grassroots, necessitating the use of an enormous volume of funds as UMNO claimed to have about

3 For an in-depth study of the companies, statutory bodies, sovereign wealth funds, public trust agencies and foundations owned by the federal government, see E.T. Gomez and others, *Minister of Finance Incorporated: Ownership and Control of Corporate Malaysia* (Basingstoke, Palgrave-Macmillan, 2017).

4 J. Funston, 'UMNO – From Hidup Melayu to Ketuanan Melayu' in B. Welsh (ed), *The End of UMNO?: Essays on Malaysia's Dominant Party* (Petaling Jaya, Strategic Information and Research Development Centre, 2016).

5 E.T. Gomez, 'Resisting the Fall: The Single Dominant Party, Policies and Elections in Malaysia' (2016) 46(4) *Journal of Contemporary Asia* 570.

three million members.[6] As the problem of money politics escalated, Mahathir referred to it as a cancer that had permeated the body politic, creating a self-enriching patronage culture that was corroding party support.[7] Yet, Mahathir's call for change went unheeded as UMNO's membership shifted decisively away from its rural base to business people, with politics serving as an avenue to secure easy access to government-generated rents.

A related longstanding concern has been the volume of funds distributed during UMNO elections which is reputedly more than the amount of money used during a general election. This allowed individual politicians with access to such funds greater capacity to ascend the hierarchy during party elections. The considerable abuse of money and government rents during party elections has contributed to serious factionalism. While factions are the norm in political parties anywhere, they are normally based on differing ideological or political viewpoints. In UMNO, factions are determined primarily by which political leaders have the most funds to distribute to the grassroots. This money-based factionalism has persistently threatened the existence of UMNO, with break-away parties formed by ex-leaders on three occasions since the late 1980s.[8]

The issues surrounding 1MDB and the Prime Minister's slush fund subsequently destabilised UMNO, contributing to serious intra-elite feuding that culminated in a formidable new opposition party led by Mahathir. Meanwhile, unacceptable characteristics of Malaysia's political finance regime continued to persist. These features included uncapped donations and expenditure and the fact that ruling parties of federal and state governments could benefit from abuse of the huge network of government-linked companies (GLCs) that constitute a substantial portion of the economy.[9] These practices have undermined public confidence in the legitimacy of political leaders to govern, as well as their willingness to eradicate corruption.

This article reviews political financing based on the premise that in order to allow parties to function efficiently, access to money is important. However, political financing must be transparent, properly accounted

6 E.T. Gomez, 'Monetizing Politics: Financing Parties and Elections in Malaysia' (2012) 46(5) *Modern Asian Studies* 1370.

7 ibid.

8 E.T. Gomez, 'Electoral Funding of General, State and Party Elections in Malaysia' (1996) 26(1) *Journal of Contemporary Asia* 81.

9 Gomez and others (n 3).

for, disclosed publicly and subjected to effective regulatory and social oversight. The article provides a historical account of Malaysia's political landscape to obtain insights into the problems associated with the financing of politics during parliamentary and state elections, as well as during electoral campaigns within parties. The study then offers proposals involving political finance reforms. The study ends with a call for, among other things, greater public disclosure in the financing of politics and autonomous and effective enforcement by regulatory regimes.

Monetised elections in Malaysia

Offering solutions to problems of political financing necessitates an understanding of how money corrupts politics and impairs free and fair elections. While parties in Malaysia, specifically those constituting the BN, are able to raise and spend considerable amounts of money during general elections, only the candidates are responsible for submitting an account of their campaigns' income and expenditure. The volume of funds used during an election campaign as declared by a candidate is normally no reflection of the actual amount of money spent. This is because candidates seldom declare what their parties have spent on their campaigns during the election, indicating the need to promote transparency and accountability in political financing.

The principal laws relating to elections in Malaysia are embodied in Part VIII (arts 113-20, together with the Thirteenth Schedule) of the Federal Constitution of 1957. Articles 113 and 114 provide for the existence of an Election Commission for the purpose of conducting elections, keeping electoral rolls and reviewing the division of the country into constituencies. By ensuring that all citizens can elect a representative freely, and that all those who desire to stand as candidates can present themselves to the voting public unencumbered, the Commission is meant to create a level playing field.

Regulations regarding expenses during parliamentary and state elections are outlined in the Election Offences Act 1954, and cover types of expenses as well as the total amount. Candidates for a parliamentary seat are permitted election expenses up to a maximum of RM200,000 each, while the maximum amount allowed for a candidate contesting a state seat is RM100,000. No variation is permitted on the basis of the geographical size of the electoral district or other characteristics of the constituency, for example, whether it is urban or deeply rural. However, expenses are permitted in excess of the maximum sum allowed for

transport of electors in remote areas who have to cross the sea or a river to reach a polling station.[10]

Only expenditure incurred between the date of publication of the Notice of Election and the day of election is subject to these financial limitations. There is no duty on the candidate to disclose any income or expenditure outside this campaign period. There is no requirement of any monthly, yearly or periodical return once the statutorily-required one-off return on the proper form is filed within 31 days after the election. There is thus nothing to prevent a candidate from raising money or incurring considerable expense in the run-up to the election, nor does the law forbid successful candidates from spending unlimited sums on their supporters after the victory.[11] The Election Commission does not analyse, tabulate or publish returns of the candidates, but people interested in these reports can view them on request.[12]

Coercion in the form of treats or threats and bribes are prohibited by law, but these are common practices during elections. A common allegation during elections is that funds are used to rig votes, causing the expenditure during campaigns to far exceed the stipulated maximum. While complaints of such irregularities can be made to the Election Commission, most parties, particularly those in the opposition, tend to seek redress through the courts.

Political parties are governed by the Societies Act 1966, which also covers all non-political societies. The Act requires political parties to register and submit financial accounts to the Registrar of Societies, a body under the authority of the Ministry of Home Affairs. These accounts are not disclosed to the public and do not require parties to reveal their sources of funding. Nor does the law set limits on contributions and spending or bar the ownership of business enterprises by parties, and it provides for little transparency in a party's internal affairs. With minimal requirements for the disclosure of sources of party funding, the manner in which parties derive funds to finance their activities remains rather opaque.

10 See S.S. Faruqi, *Document of Destiny: The Constitution of the Federation of Malaysia* (Kuala Lumpur, Star Publications, 2008) 605-6 & 609-10 for an insightful discussion on this matter.

11 For a detailed discussion on this issue, see A.R. Rahman, *The Conduct of Election in Malaysia* (Kuala Lumpur, Berita Publishing, 1994) 7-8, 64-7 & 125-32.

12 S.S. Rachagan, *Law and the Electoral Process in Malaysia* (Kuala Lumpur, UM Press, 1993).

Within parties, growing forms of monetised elections have contributed to a persistent need for political leaders to be regularly privy to funds from different sources. This problem is particularly acute in UMNO, compelling government leaders to repeatedly critique members during the party's general assemblies of the debilitating impact of monetised politics. In 1985, the then UMNO president, Mahathir, spoke out strongly against the influence of money, citing as examples those who had distributed cash to members to secure support. One aspiring politician had spent RM600,000 in his bid to become a division chairman, while others had offered expenses-paid overseas trips in exchange for votes. Meanwhile, then UMNO Deputy President Musa Hitam expressed his fear that his party would soon become a 'get-rich-quick club'.[13] Despite these criticisms by the UMNO leadership, the problem of deeply monetised elections continued to escalate. During the 1993 party election, allegations abounded that RM200-300 million had been spent by just one faction during a highly divisive campaign when the UMNO deputy presidency was contested. By 1995, one candidate reportedly had to spend about RM6 million to secure the post of division chairman, compelling Mahathir to propose an amendment in UMNO's constitution to ban vote-buying.[14] Despite this, UMNO has not been able to adequately check serious escalation of the abuse of money during party elections. By 1996, money politics had become so divisive that during the run-up to the party election Mahathir gave this as his reason for banning campaigning for party posts.[15]

There were, however, debates by the turn of the century around the need to deal with growing monetisation of politics. These debates focused on core elements of political financing. Party representatives frequently cite financial management and fundraising processes as the easiest areas for abuse. It is extremely difficult for leaders to keep track of all the money flowing in and out of the party, particularly with offices and members spread across the country. Financial donors can also present problems for a party by demanding rewards in return for their support. Parties have approached this problem in different ways. Most parties agree that enhanced transparency of party finances limits opportunities

13 See Funston (n 4) for an in-depth account of UMNO's history, at a time when money first began to be abused in large volume during party elections.

14 'Let's Hope Graft will End: Mahathir' *New Straits Times* (20 June 1994). See also <http://eresources.nlb.gov.sg/newspapers/digitised/issue/straitstimes19940620-1>.

15 Funston (n 4).

for corruption. For example, all members should be allowed to review their party's financial records and ensure that there are adequate checks and balances within the electoral system. However, even such practices are difficult to implement. One prominent politician, a former leader of a component BN party commented:

> The party members don't know and do not ask for information on who the donors are. As long as there's money why should they ask? The information is privy to top leaders because people who donate want to remain anonymous. Among party members, allegations of money politics are always there because if a candidate loses, they will accuse those who won as practising vote-buying. They never look into a mirror and evaluate themselves. In Malaysia, politicians do not fear a bad reputation for accepting donations from some specific sources. But donors do fear finding themselves involved in political scandals (that is why they want to be anonymous) because the government may use the information on donations against the opposing parties and the donors themselves.[16]

As mentioned, the practice of deeply monetised internal party elections also prevails in other leading parties in the BN. Two major component BN members, the Malaysian Chinese Association (MCA) and the Malaysian Indian Congress (MIC), have a long history of deeply monetised party elections.[17] Interestingly, problems involving the financing of campaigns during party elections have, as mentioned, also emerged among parties in the opposition. These problems are strikingly similar to those in UMNO, though this is not unexpected, as these parties include ex-UMNO leaders and members who had defected and established new parties. This issue is particularly true of PKR, led by ex-UMNO leaders, once a key faction within the ruling party.

Since the monetisation of elections has become a serious problem in parties, some of them have employed a variety of measures to instil ethical conduct among members, leaders and candidates and to punish those who engage in unethical behaviour. There is, however, much consensus among politicians that codes of conduct and written regulations are inadequate to check irregularities during party electoral campaigns.

16 Interview with a then senior leader of a leading party in the BN (18 February 2009).

17 For a review of party elections in the MCA and MIC, see E.T. Gomez, *Political Business: Corporate Involvement of Malaysian Political Parties* (Cairns, James Cook University, 1994).

Other preventative methods are required, including punitive measures as well as stringent enforcement avenues to check abuse of money during elections. If there is no threat of action by independent monitoring mechanisms against corrupt acts, such as bribery, vote buying and abuse of government machinery and resources during party elections, it is unlikely there will be a change of behaviour or mindsets about abusing money during elections. Party regulations, if any, will remain largely ignored and ineffective without proper, preferably outside, evaluation and monitoring.

While the practice of patronage by leaders to secure support is crucial before party elections, this can backfire on the party during federal and state elections. For example, warlords have prevented young UMNO members, including those who are well-educated and articulate, from ascending the party hierarchy as they are unwilling to relinquish party positions, such as branch and division leadership, for fear of losing access to concessions from the government.[18] This has led to UMNO re-nominating parliamentarians and state assemblymen with tarnished records, in spite of the BN's constant rhetoric of the need to curb rent-seeking and corruption, undermining the party's organisational capacity to shift the electoral allegiances of voters. During the 2008 general election, UMNO grassroots bitterly complained about their inability to convince voters to support the BN because UMNO had re-nominated parliamentary candidates with severely blemished reputations, including those against whom serious allegations of corruption had been levelled. The re-nomination of party warlords has inevitably undermined public support for UMNO, a key factor in the persistent decline of support for the BN, most evident in 2008 when the ruling coalition lost control of five state governments and the popular vote in the peninsula-based constituencies.[19] UMNO members were more careful about the practice of dissent in this form during the 2013 general election, reflected in the party's better performance despite the BN's loss of the popular vote.

Several political parties have announced their intention to implement broad internal party reforms, but the extent of their enforcement has

18 Interview with young UMNO party member in the state of Kedah during the 2013 May election campaign.

19 B. Welsh, 'Malaysia's Fallen Hero: UMNO's Weakening Political Legitimacy', in B. Welsh (ed), *The End of UMNO?: Essays on Malaysia's Dominant Party* (Petaling Jaya, Strategic Information and Research Development Centre, 2016).

not been encouraging or transparent. Examples of a party's general reform and anti-corruption activities include UMNO's creation of an independent disciplinary committee to investigate and punish corruption within the party. This committee has penalised several party officials for buying votes during party elections.[20] Although the committee has purportedly dealt with hundreds if not thousands of alleged cases of money politics and other breaches of party ethics, it has not issued a report on this matter to members. Another BN member, Parti Gerakan Malaysia (Gerakan), allows candidates vying party posts to appoint 'election observers' to check vote-buying during party elections.

Among opposition parties, the Islamic-based Parti Islam Se Malaysia (PAS) established an ombudsman council (or Hisbah system) to ensure compliance with ethical standards. There are now religious counsellors at all levels of the party who provide advice on ethics and serve as mentors to party members. All leaders are required under this system to declare their assets and there is a special committee to investigate violations. Members of the general public can submit a complaint about any party member to the Council.

Another major opposition party, the Democratic Action Party (DAP), once placed 'anti-corruption' at the top of its agenda and organised numerous forums to discuss legislative reforms. The party submitted recommendations to the Anti-Corruption Bill of 1997 and demanded greater transparency in party funding. It also required candidates to sign resignation letters for their seats in advance, in case they violated party principles, namely by switching parties.

These proposals to curb the monetisation of politics have proven to be ineffective, indicating that self-regulation has not served to check this problem. Crucially, too, even when some parties, such as PKR, have allowed for an independent assessment of their elections, this has not helped curb the use of money in its electoral process.

When Najib took office as Prime Minister in 2009, his stated primary objectives were to end the practices of patronage and rent-seeking.[21] This was Najib's answer to a clear call from the electorate during the 2008 general election to reform the conduct of politics. Najib introduced a

20 See <https://www.thestar.com.my/news/nation/2009/03/18/umno-ali-rustam-accepts-decision-but-will-appeal> for a list of party members who were disciplined for using money to secure support.

21 Gomez (n 6).

slew of reform ideas, including on the financing of politics, as well as to reduce the state's presence in the economy, a mechanism to end selective patronage-based affirmative action that benefited primarily UMNO members at the expense of poor Malays. All three reform proposals were considered, the views of experts were sought and preliminary ideas were drawn up.[22] However, the decision on affirmative action was reversed, the political financing reform plan was quietly shelved and the government stopped proposing privatisation as one of its core policy objectives. In all three cases, the core matter was that of protecting UMNO's economic interests. Najib had recognised the call for change from the electorate, but also had to respond to demands by UMNO members not to institute reforms that would undermine their vested economic interests, secured through selective patronage, when key policies such as affirmative action were being implemented. Moreover, money politics had become embedded in UMNO and reforms involving these policies would have badly stymied party leaders seeking to channel state-generated concessions to the grassroots. In a party mired in monetised politics and patronage, the only way a leader can continue to maintain support is through the practice of patronage.

Inevitably, the volume of money employed in general and state elections has increased, as seen most clearly in the 2013 general election.[23] Both the BN and opposition coalitions now solicit money from businesses. Since it is now possible that the opposition might secure power at the federal level – they control three state governments – businesses hedge their bets by supporting both coalitions. The opposition also allege that in order to secure the electoral support of the poor, the BN introduced a cash transfer policy called Bantuan Rakyat 1Malaysia (1Malaysia Citizen Support, or BR1M). This policy helped the BN win seats in deeply divided parliamentary and state constituencies in 2013.[24] UMNO leaders also employ this liberal distribution of money to members who are poor. In 2015, an UMNO Senator admitted giving money to members during the party's annual general assembly, after photos of her doing so spread on the Internet. She defended the cash handout as her attempt

22 ibid.

23 M.L. Weiss, 'Payoffs, Parties, or Policies: "Money Politics" and Electoral Authoritarian Resilience' (2016) 48(1) *Critical Asian Studies* 77.

24 J. Saravanamuttu, *Power Sharing in a Divided Nation: Mediated Communalism and New Politics in Six Decades of Malaysia's Elections* (Singapore, Institute of Southeast Asian Studies, 2016).

to 'share her fortune with the less fortunate' members of her rural constituency.[25]

In 2015, following public revelations about misappropriated money from 1MDB, and Najib's subsequent admission that RM2.6 billion had been channelled into his personal bank account, it was revealed that once a month, each of the 191 UMNO division chairmen received RM50,000 for 'expenses' from the party president. This meant that a total of RM114.6 million was annually distributed to the division chiefs. Najib justified this practice by arguing that this form of fund flow was similarly employed by his predecessors, Abdullah and Mahathir, when they served as prime minister. According to Najib:

> I never asked him (Abdullah) about political funding for the party all those six years I was his deputy. How he got the money, who gave the money were all under his discretion.... We never discussed such matters in the party supreme council, let alone openly. We only wanted to know that things were going properly all the way to the elections (quoted in Asia Sentinel 3 March 2016).[26]

Following serious criticisms of the flow of funds into his personal account, Najib instituted a National Consultative Committee on Political Financing to offer reform suggestions.[27] However, NGOs derided Najib's mandate to the Committee to advise him only on the tenets of a new law.

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25 'Caught on Camera Handing Out Cash, UMNO Senator Says Just "Sharing Fortune"', *The Malay Mail* (Petaling Jaya, 15 December 2015) <https://www.malaymail.com/news/malaysia/2015/12/15/caught-on-camera-handing-out-cash-umno-senator-says-just-sharing-fortune/1023587>.

26 See <https://www.asiasentinel.com/politics/power-najibs-money-and-malaysias-corrupt-system/> accessed 21 February 2018.

27 A task force comprising the Attorney General, the Inspector General of Police, the Governor of Bank Negara (the central bank) and the Director of the Malaysian Anti-Corruption Commission had begun investigation into the 1MDB scandal. However, before it was able to finish its work, Najib removed the Attorney General on the grounds that he was sick and could not continue to work. The Public Accounts Committee (PAC) established to review the 1MDB controversy was then basically paralysed when Najib appointed its chairman to the cabinet. A new PAC chairman, friendly to Najib, was appointed and he promptly declared that Najib had done nothing wrong. Meanwhile, Bank Negara submitted a report that action be taken against Najib, specifically for the funds that had flowed into his personal account. However, the new Attorney-General dismissed the Bank's recommendation that action be taken, claiming that nothing in the report showed that Najib had done any wrong. For an account of this episode, see <https://www.cnbc.com/2015/10/08/malaysia-attorney-general-no-offences-by-1mdb-officials-in-central-bank-report.html>.

The Committee was not to review institutional reforms to enforce these laws. About 70 NGOs, led by a group of prominent ex-civil servants, later submitted to Najib a comprehensive proposal on political financing reform. The proposal covered the regulatory and legal framework of political financing, autonomy and enforcement power for institutions and regulation of both general election campaigns as well as party elections. Nothing came of these proposals as the government did not respond to them.

In September 2016, when the Cabinet Committee released its report, its proposals resembled those by the NGOs, but with three fundamental differences. The Committee proposed removing caps on funds given to, and spent by, parties, legitimising the huge inflow of money into the system. It did not include a revised institutional framework to empower the EC and related agencies, a crucial change to guarantee that the opposition's donors would not be unfairly targeted. There was also no discussion about checking the abuse of money during party elections. The opposition opposed these proposals but did not offer an alternative plan. Although the BN parties, including UMNO, publicly endorsed the proposed political funding reforms by the Committee, nearly a year after the release of the report, a draft law had still not been tabled in parliament for debate.[28]

What is clear is that the reforms proposed by the Cabinet Committee hardly dealt with the issues that needed to be tackled to curb the widespread abuse of money in the political system. Indeed, the proposals appeared to legitimise the use of an unlimited amount of money in politics, a proposal that would be of much benefit to UMNO. So, what reforms are required in Malaysia, to ensure fairness in the electoral process?

The reforms needed

Figure 1 outlines a three-pronged approach to strengthen transparent and accountable financing of Malaysian politics. This approach requires, first, that the relevant laws are reviewed to provide a framework for sound regulation of elections involving political parties. Second, the relevant oversight institutions must have sufficient autonomy and be empowered to monitor and enforce the revised political funding

28 N. Firdaws, 'Political Funding Reforms Get Thumbs Up from UMNO, BN', *Free Malaysia Today* (30 September 2016).

framework. Institutional reforms are imperative as much power is concentrated in the dominant party, UMNO. Institutional reforms would, by necessity, involve devolution of power to agencies responsible for oversight of the running of parties and the conduct of parliamentary and state elections. Third, there is a need to monitor internal party elections that are driven by money-based factionalism, rent-seeking and patronage. The abuse of money and other concessions by candidates to acquire support to ascend the party hierarchy is undermining the integrity of political parties.

Figure 1. Three-pronged reform approach

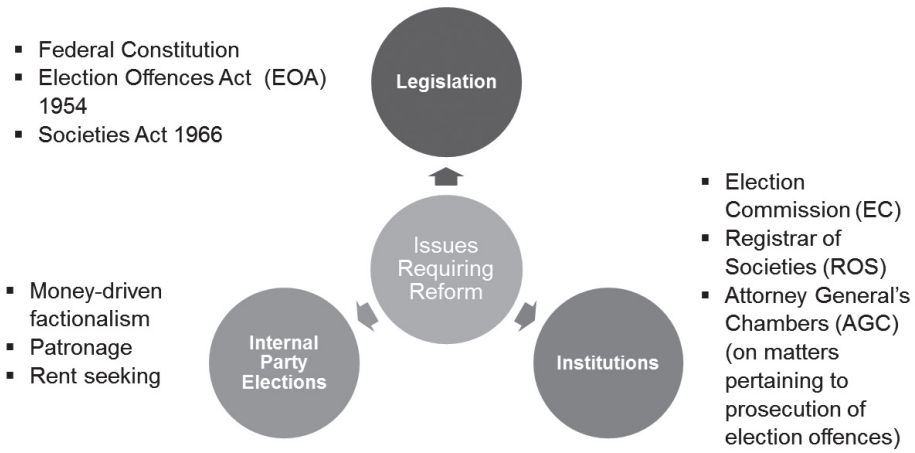


Table 1 indicates the need for new legislation governing only political parties, for example, a Political Parties Act that provides adequate regulation for the oversight of political financing regulations. Also listed are other core aspects of the new Act that would have to be introduced to curb deep monetisation of elections. Table 1 further indicates the need for a single, leading oversight body to monitor political parties as well as elections, including those within parties, namely a reformed Election Commission. These oversight duties are now divided between the Election Commission and other government agencies, and that has proved ineffective. The third segment of Table 1 provides further information about legislative and institutional reforms to create a level playing field during elections.

Table 1. Overview of reform recommendations

Enact a Political Parties Act to:	Strengthen the Election Commission to:	Create equitable access to funding to:
1. Ban secret funds 2. Ban foreign funds 3. Set contribution and expenditure limits 4. Strengthen reporting requirements 5. Enhance public disclosure 6. Introduce guidelines for caretaker government 7. Regulate the financing of party elections	1. Protect its autonomy and impartiality 2. Register and supervise political parties 3. Strengthen monitoring and enforcement capabilities 4. Enhance independence of prosecution of election offences	1. Regulate private funding of politics 2. Regulate party ownership of business 3. Balance access to public funding 4. Strengthen public disclosure 5. Prevent victimisation of donors to opposition parties

Legislative reforms

The primary objective of reform of the proposed legislation is to strengthen transparency and accountability in the financing of politics. While there are suitable laws overseeing the conduct of federal and state elections, they offer inadequate provisions to ensure disclosure of the sources of funds, nor is there a list provided of permissible and non-permissible donors. The relevant laws are silent on the funding of internal party elections.

The existing Election Offences Act 1954 merits review of its rules on access to funding, limits on contributions, expenditure, disclosure and reporting. This is because this Act does not restrict how much parties can receive from individuals, corporations and politically-linked third-party donors, nor is it mandatory to reveal the identity of donors. There are expenditure limits on candidates standing for election but only during the official campaign period. There are no spending limits on expenses incurred by a party, whether directly or indirectly for the benefit of its candidates. There are no spending restrictions on the quantum of money spent outside the election period.

A key issue requiring reform involves disclosures. Reporting requirements and public disclosure of political financing and spending are minimal. Candidates must submit financial statements detailing their

income and spending during the election campaign period but are not obliged to account for their expenditure outside the campaign period. Existing reporting requirements are extremely basic and not subject to much oversight. Public disclosure requirements remain weak.

One fundamental new provision to ensure parties have equitable access to funds is that they are privy to public financing. Public financing of politics in some form or the other is a growing practice worldwide. About 75% of countries now have a provision for government funding of political parties.[29] The issue of public funding of parties during federal and state elections, as well as to help them run their party machinery and activities, is imperative to ensure a well-functioning political system. For example, financial support for parties during general elections is crucial because of the growing cost of political campaigning and the increasing scarcity of resources for it. Another reason for public funding of politics is that it helps reduce financial inequalities across parties, allowing them to compete on a minimally equal footing. This provision will enhance equality of chances for parties and thus fairer political competition, while also limiting the potentially disruptive role of powerful monied interests in the political system. Public financing of elections, however, requires adequate regulations and monitoring to ensure there is little or no abuse of such support. These regulations should include provisions to enable parties or individuals enter the electoral process solely for the purpose of contesting, even though they lack sufficient support or credibility to do so. However, private contributions have to be provided in relatively small amounts.

The primary mechanism introduced to curb the influence of private interests over the political system is to set limits on the volume of donations that a party or politician can accept from an individual or company. Two basic approaches to address this concern, apart from external control and transparency efforts, are a public law that restricts the permissible amount of donations and by imposing certain conditions on the qualification of donors. Limitations on the amount of private contributions may consist of a maximum threshold on the amount of money that may be accepted from a single source, although different ceilings may apply for different types of donors, for example, from individuals and companies. Restrictions may also consist of a limit on

29 I. van Biezen and P. Kopecky, 'The State and the Parties: Public Funding, Public Regulation and Rent-Seeking in Contemporary Democracies' (2007) 13(2) *Party Politics* 235.

the total sum of acceptable private contributions. Different thresholds may exist for different types of party activity such as routine operational costs and parliamentary or state elections.[30]

Regulations on the qualification of donors can take two basic forms. First, impermissible donors, that is, those excluded from making financial contributions to parties altogether or whose donations are strictly limited. A second approach, a positive list of permissible donors, entails a potentially more restrictive approach, as no donations may be accepted from a person or entity not included on the list.[31] This approach prohibits donations from certain groups and individuals, usually foreign nationals. The most principled objection to foreign donations to parties is that they interfere with the autonomy and sovereignty of domestic politics. About half the countries in the world partially or completely ban contributions from foreign nationals; these include the United States, Canada, Britain, Germany, France, India and Japan.[32]

Given the wide prevalence of secret funds held by politicians, this practice should be deemed illegal. This appears to be a common practice among leaders of all parties, with no requirements on politicians to declare the source of these funds. Transparency is required through legislation to ban this practice, a key lesson that emerged when it was disclosed that Prime Minister Najib operated such an account without the knowledge of any other politician. In spite of this, there appears to be no political will among most Malaysian politicians to ban the issue of slush funds.

Effective public disclosure requires, first, that candidates and parties provide details of receipts and expenditures and, second, that campaign and party funding reports are available for public scrutiny. Public disclosure allows the public to decide what to do with the information disclosed. Disclosure is generally accepted as more neutral than other restraint strategies. A major benefit of effective disclosure is that the media

30 I. van Biezen, 'Political Parties as Public Utilities' (2004) 10(6) *Party Politics* 701.

31 ibid.

32 In Britain, the Political Parties, Elections and Referendum Act stipulates bans on foreign funding, while in the United States, foreign residents (although not permanent residents), are not allowed to contribute financially to federal and state political contests, see I. Van Biezen, *Political Parties in New Democracies: Party Organization in Southern and East-Central Europe* (Basingstoke, Palgrave-Macmillan, 2003) 27. However, surrogate donors or organisations in the United States serving as covers for foreign funders have circumvented this ban, see USAID, *Money in Politics Handbook: A Guide to Increasing Transparency in Emerging Democracies* (Washington, USAID, 2003).

and civil society are empowered to 'follow the money', thereby keeping a check on politicians. The logic is that openness is the antidote to the influence of big money and to the secrecy that enables illicit funding or unsavoury donations.[33]

An issue of primary importance is legislation to limit campaign and party finance contributions. This involves setting legal limits on the size of each donation, with one set of criteria for individuals and another set for corporations, while in both cases the list of persons who qualify as donors must be clearly delineated. Private companies would, of course, be allowed to contribute more than private individuals. Contribution limits serve as the best mechanism to ensure private individuals and firms have little capacity to influence election outcomes or public policy if the candidate or party supported secures control of government. However, a major loophole regarding contribution limits is that they can be circumvented by breaking donations into smaller amounts, called 'bundling', or by donating in the names of others.[34] Contribution limits also encourage wealthy candidates to self-finance their own campaigns. Another issue of concern is that a loan can be given by an individual or company to a party or candidate that is, by definition, not a donation. This loan can remain unpaid for an indefinite period.

Under current legislation, donors in Malaysia, whether corporate or individual, have no duty to disclose donations to the Election Commission or to the public. Their tax returns may, however, include this information, in order to obtain a deduction but tax returns are not open for scrutiny by the Election Commission or the public. The financial patronage of parties by government linked companies (GLCs) is wholly disregarded by the law though these companies reputedly channel funds to politicians.[35] A large number of statutory bodies in business, as well

33 US Agency for International Development (USAID) *Money in Politics Handbook: A Guide to Increasing Transparency in Emerging Democracies* (Washington, USAID Technical Publication Series, 2003).

34 ibid.

35 At the October 2009 UMNO general assembly, one delegate was quoted in the press as stating: 'Many GLCs are sending tithe money to the Prime Minister and Deputy Prime Minister's constituencies and ignoring other areas that are poor and really need help'. According to this press report, another UMNO delegate went on to accuse the 'directors of GLCs of "*tidur sebantal*" (sharing the same bed) with the Opposition', further quoting him as stating: 'There should be good links between UMNO and the GLCs and there should be undivided loyalty of GLC board of directors for UMNO'. See the report 'UMNO delegates hit out at GLCs' *The Star* (Petaling Jaya, 16 October 2009) <https://www.thestar.com.my/news/nation/2009/10/16/umno-delegates-hit-out-at-glcs>.

as privatised businesses, although under majority ownership by the government, including public utility providers, banks and construction and property developers, are reputedly a source of funds for UMNO leaders.[36,37] Any company in which the government has a financial stake, or over which it has administrative control, should not donate funds to a political party or candidate.

A balance must be achieved in disclosure laws between protecting privacy while providing for donor identity. Provisions to achieve this balance could include requiring donors to be identified by full name, address and occupation, but only to the Election Commission. Safeguards on the privacy of this personal information could involve blocking out all information except name and amount and banning politicians or the government of the day from using the donor list to intimidate those who fund the opposition. Additionally, disclosed information must be available to the public in a timely manner. In general, public disclosure should occur before polling day as knowledge about financial backers may sway opinions and votes. During the non-election period, parties must be required to publish donations in a regular manner, that is, quarterly, while weekly, even daily, disclosure should be required during election periods.

Expenditure limits can either restrict the total amount of funding a party or candidate may spend, or they can limit the amount spent in particular ways and on particular activities. This means that some forms of expenditure must be banned altogether. These limits may consist of an absolute sum per candidate or party.[38] Expenditure limits are reportedly more popular than contribution limits.[39] A cap is placed

36 Gomez and others (n 3).

37 A recent study of the GLCs noted that these companies had been subjected to important reforms to inspire confidence in the market that they function as well-managed enterprises. The GLCs, after all, constitute about 32% of the total marketisation of companies listed on the domestic stock exchange. GLCs also have a huge presence in the economies of the 13 state governments in the federation. This study further pointed out that the GLC reforms had led to the removal of UMNO members from these firms' board of directors. UMNO members also no longer figure as owners of big businesses. The consequence of the reforms within the GLCs is that it enhanced the influence of the Minister of Finance over these firms. Prime Minister Najib, as mentioned, also serves as the Minister of Finance. This has led to further intra-UMNO contestation over how government resources were being employed. See Gomez and others (n 3) for an in-depth discussion of the GLCs.

38 M. Hofnung, 'Financing Internal Party Races in Non-Majoritarian Political Systems: Lessons from the Israeli Experience' (2006) 5(4) *Election Law Journal* 372.

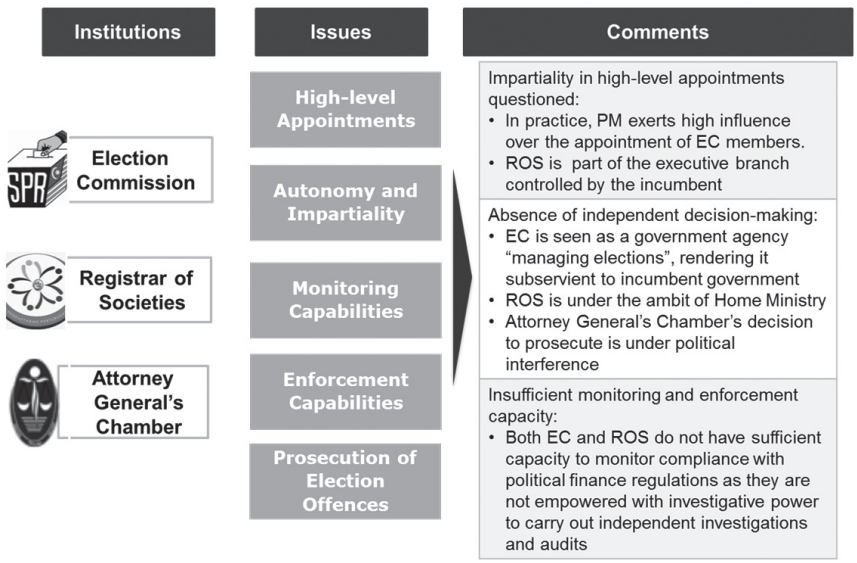
39 USAID (n 27).

on either the gross amount of expenditures by each candidate or party or, alternatively, the candidate's or party's expenditure per voter.[40] The intent is to restrain the cost of political campaigns and establish an even playing field that limits the influence of any party or candidate. Limiting the high costs of campaigns is assumed to reduce the demand for deep-pocketed donors.

Institutional reforms

Figure 2 lists the main institutions that require reforms, the core issues that have to be addressed, and why changes are necessary. The primary aim of these reforms is to ensure that these institutions have autonomy from the executive arm of government, specifically the prime minister, to monitor elections and the activities of political parties. The three major institutions that are involved in debates about the monitoring of parties and their financing are the Election Commission (EC), the Registrar of Societies (ROS) and the Attorney General's Chambers. Only the Attorney General's Chambers can prosecute those who violate the electoral-based laws, but this institution lacks the capacity to monitor compliance with political finance regulations. The appointment of the Attorney General by the King, on the advice of the Prime Minister, has also been shrouded in controversy.

Figure 2. Overview of institutional reforms



40 ibid.

The EC is under the direct control of the King, while the Ministry of Home Affairs has oversight of the running of the ROS, the government agency that has oversight of all political parties. The Federal Constitution has to be amended to ensure the independence and impartiality of the EC. This is because the Prime Minister exerts high influence over the appointment of the EC members, compromising this institution's autonomy and impartiality. Under the Societies Act 1966, the independence and impartiality of the ROS has to be reviewed, as this institution is responsible for the registration and supervision of conduct and financing of political parties, including financing of party elections. The Prime Minister, who is responsible for the appointment of the Minister of Home Affairs, traditionally tends to select a highly trusted political ally for this post. On a number of occasions in the past, the Prime Minister has concurrently served as Minister of Home Affairs.

These structural conditions of Malaysia's single dominant party state constrain the independent functioning of these oversight institutions. In this context, five pertinent issues require immediate action, namely: impartial appointment to high-level positions; autonomous and impartial enforcement; monitoring capabilities; enforcement capabilities; and prosecution of election offences. Additionally, political parties have to be registered under EC, instead of the ROS, while there is a need for the creation of an Office of Public Prosecutors (OPP) to deal with parties and politicians who violate the law. The Attorney General's Chambers role should be limited to serving as the government's legal advisor.

This new institution, the OPP, is imperative, because the EC and ROS have little regulatory capacity to act independently against parties who violate electoral and institutional regulations. The EC, in particular, appears unable to act as an autonomous institution, as its proposals and recommendations are subject to review by the Prime Minister before they are tabled in Parliament. Moreover, an amendment to Section 9A of the Elections Act 1958 further reduced checks-and-balances by the judicial branch, rendering the EC a government agency responsible merely for 'managing elections'.[41]

However, the EC retains considerable discretion and initiative, and its performance can have a significant impact on public confidence in the electoral system. The EC must satisfactorily fulfil two dimensions of performance, that is, impartiality and competence in carrying out

41 H.H. Lim, 'Making the System Work: The Election Commission', in M. Puthucheary and N. Othman (eds), *Elections and Democracy in Malaysia* (Bangi, Universiti Kebangsaan Malaysia Press, 2005).

its functions, if it is to inspire confidence in the electorate. However, both the competence and the impartiality of the EC have been publicly questioned. Some of the more serious expressions of concern include complaints about the EC's preparation of accurate and clean electoral rolls and the manner in which parliamentary and state constituencies are re-delineated.

To enhance the independence and integrity of the EC, the key reforms required include that Election Commissioners should have a six-year term with the option for extension of a second term. These commissioners cannot be removed, except in accordance with the procedure as prescribed by the Federal Constitution for the removal of Federal Court Judges.[42] The rationale for these provisions is that this will allow the commissioners to see through a minimum of one full election cycle.

To ensure that the EC is held accountable for the way it fulfils its duties, the commissioners must come under the regular scrutiny of a Parliamentary Select Committee (PSC), under the leadership of a member of the opposition. The PSC will receive reports submitted by the EC on an annual basis and after any state or federal elections. When the EC carries out inquiries into improvements to be made to the electoral system and processes, all changes will be subjected to review by the PSC before being brought to Parliament for ratification. A similar process has to be instituted in the 13 state assemblies. The debates on constituency re-delineation exercises at the PSC, based on the EC's recommendations, should be made open to the public. To further ensure its independent running, the EC should submit its expenditure reports to the PSC.

Since the ROS falls under the ambit of the Ministry of Home Affairs, this renders it subservient to the executive. The ROS's duties include registering and, when necessary, de-registering, parties, and acting against them when they fail to conform with the regulations overseeing their activities under the Societies Act. Allegations abound that there is a high abuse of this authority by the ROS, with applications by people to establish parties aligned to or partial to the BN approved in unholy haste. For example, the application by Parti Sosialis Malaysia (PSM) to be registered as a political party was a long-drawn matter which required intervention by the court. PSM was allowed to register as a political party in 2008, ten years after submitting its application. On the other hand, a new party, Makkal Sakti, formed in early 2009 and espousing

42 See Federal Constitution, art 125 which deals with this issue.

support for BN, obtained its registration from the ROS on 11 May 2009, a few months after its formation.[43]

Like the EC, the ROS does not have sufficient capacity to monitor compliance of political finance regulations as they are not empowered with investigative power to carry out independent investigations and audits. The EC and ROS have little regulatory capacity to act independently against parties violating electoral regulations as this is under the sole jurisdiction of the Attorney General. The duties of the ROS, involving monitoring political parties, should come under the jurisdiction of the EC.

Since the Attorney General's Chambers plays the role of public prosecutor, the Attorney General is not insulated from accusations of political interference when prosecuting perpetrators of election offences. Major reforms are required here to ensure that the Attorney General's Chambers functions only as a legal advisor to the government and as a legal draftsman. The primary role of the Attorney General's Chambers will be to advise the government on legal matters and aspects of public policies, as well as draft legislation. The Attorney General will also cease to exercise the powers of prosecution by statute or convention. Prosecution powers will be vested solely with the Public Prosecutor or Director of Public Prosecutions, who will exercise such powers independently of the Attorney General. The Public Prosecutor will be bound by the principle that any decision to prosecute should be made by him alone, independent of political consideration. The Public Prosecutor will enjoy security of tenure similar to that of a judge and he or she cannot be summarily removed by the government.

The rationale for the creation of the OPP and the appointment of an independent Public Prosecutor is to ensure the independence of the prosecution's decision-making function. This reform will reduce, if not eliminate, inappropriate political control, direction and influence. The reforms would entail re-defining the functions of the Attorney General as stipulated in the Federal Constitution and establishing a new and separate institution, the OPP. The appointment of the Attorney General and Public Prosecutor will be done by an independent commission. Those appointed as the Attorney General or Public Prosecutor, like a judge, cannot be removed, except in accordance with the procedure

43 See <https://www.thestar.com.my/news/nation/2009/05/18/ros-gives-green-light-to-makkal-sakthi-party/> accessed 8 February 2018.

as prescribed by the Federal Constitution for the removal of Federal Court Judges.[44]

Internal party reforms

All political parties are required under the Societies Act to elect office bearers, hold annual meetings and keep audited accounts for their members. However, there are no requirements for these parties to submit audited accounts, or to disclose the sources and amounts of donations received before, during or after the election period. Parties must be required by law to prepare, submit and disclose their annual statements of income and expenditure and be open about their funding sources and the volume of their revenues and donations. These stipulations should apply to members running to secure posts during a party election. There must be a public right of inspection of the accounts of all political parties.

Current regulations under the Societies Act that oversee the running of political parties do not contain provisions on contribution and expenditure caps, or public disclosure, nor are there any reporting requirements. For this reason, the volume of funds distributed during party elections often exceeds that used during general elections. It is typically in the form of vote-buying, through lavish meals and gifts, cash handouts and economic concessions. This drives money-based factionalism where electoral victory is based on one's ability to provide contracts, rather than policy ideas and leadership capacity. Candidates consistently spend huge amounts of money to win party elections to secure a strong position to be appointed to key positions in the federal and state cabinets or in GLCs. In spite of these problems, there is little oversight of election spending as internal party contests are governed by a party's constitution.

Since current laws in Malaysia do not regulate the financing of internal party elections, internal practices to curb monetised elections within the party include codes of conduct, financial audits, independent disciplinary committees, training and ethical education programmes, monitoring and evaluation procedures and term limits for party leaders. Moreover, the financial reports of parties and candidates are not regularly audited or verified by independent auditors, further suggesting the low veracity of the reports.

44 This, as mentioned in Firdaws (n 28), will be in accordance with Article 125 of the Federal Constitution.

Political parties should be required to submit annual financial reports covering both sources of income and expenditure outside election campaign periods. After an internal election, parties must compile audited financial reports prepared by those contesting for posts and submit them to the EC, the institution that should be responsible for overseeing their activities. Contribution caps of the sort set for national elections should be applied to party elections. Reporting and disclosure requirements (election and post-election) of national elections should be similarly applied to party elections.

These reforms are imperative as weak public disclosure and restricted public access requirements undermine the trustworthiness of the reports presented by parties. During party elections, candidates are currently required to submit a financial statement covering income and expenditure after the campaign period. One concern here, however, is that this provides insufficient insight to account for income and expenditure outside the election period. History has indicated that the most acute forms of abuse of money to mobilise the support of the grassroots in fact occur in the run-up to an election.

The positive effects of internal party reform go beyond strengthening the political party system and ensuring fair electoral competition. Party practices and conduct can shape the behaviour of a country's leaders and legislators, as most of them start their careers in the party. Anti-corruption indoctrination at the party level has national repercussions by helping build political will to tackle corruption. Through enhanced democracy, accountability and transparency within party structures and in decision-making processes, the election of leaders will be based on merit. Accountable and transparent party fund management will help ensure that politicians act in the interest of the constituents and ideologies they profess to represent.

Conclusion

What is interesting about the Malaysian case is that suggestions to reform the financing of politics have come from the ruling BN, albeit after its leader, Najib, was implicated in a major controversy when it was revealed that an enormous volume of funds had flowed into his bank account, money which he claimed was later distributed to party members. These reforms have reportedly been prepared by people outside of politics, although led by a non-UMNO cabinet member. Interestingly, however, these reforms can be effectively used to serve as a tool to entrench UMNO's dominance of the political system, mainly because they do

not entail any devolution of power to oversight agencies to allow them to act with favour. For this reason, the opposition has been, justifiably, reluctant to endorse the government-proposed reforms. However, since the opposition is now also privy to substantial funds from the private sector, it has not proposed an alternative set of reforms.

In settings where the political financing regime systematically advantages the incumbent against challengers, changes to political financing can invariably affect the electoral or organisational agendas of one side or the other. For instance, pursuing reforms that seek to level the playing field between well-resourced candidates and under-resourced ones, or promoting more transparency in donations and regulations, are common goals of political finance reform. But the even-handed application of such reforms would involve fundamental changes to the ways in which incumbents hold power, and possibly lessen their chances of holding on to power. In this regard, the key actors who have acted to proposed holistic reforms have not attempted to introduce institutional reforms, allowing for the autonomy of oversight agencies to act without favour. Since these reforms have been seen by all parties as being detrimental to their interests, both financially and also because it calls for close monitoring of internal party elections, members of civil society have been the primary advocates of meaningful change. These reforms are imperative to ensure a well-functioning political system, as well as inspire confidence among the public that parties carry out their activities in an accountable manner.

Interestingly, there is a general consensus between politicians and civil society members as to the nature of the reforms that are required, seen in the response of all parties to the recommendations made by the special committee created by the government and comprising non-politicians. However, it is quite likely that the incumbent government will selectively implement political finance regulations in a way that will undermine the opposition. Members of the opposition, with some justification, argue this is the reason why they are reluctant to support reforms. These cabinet committee reforms will likely constrain them in the short term, but this has not compelled the opposition to present their own version of the reforms that are required, particularly when support for the ruling coalition appears weak.

If meaningful reforms are not instituted, it is quite likely that the current disputes between parties and NGOs about them will persist. There has long been a demand for change involving, in particular, clean governance to eradicate corruption and bring an end to patronage and

monetised politics. Moreover, even though legislation regulating parties, elections and political finance is one approach to reform party practices, significant change will also have to come from within parties. A review of party elections in various countries illustrates that as parties integrate democratic procedures into the selection process, they report that their candidates are of a higher calibre and that the 'purchasing' of party positions and nominations becomes more infrequent.[45] If officials and candidates are determined by the entire party membership through a clean, secret and fair voting process, patronage and corruption would no longer be determinants of the party's leadership.

Acknowledgement

This article was first published in Volume 18, Number 2 (2017, Article 3) of the Australian Journal of Asian Law.

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Mekanisme Pengawalan Bahasa Kurang Sopan (*Unparliamentary Language*) di dalam Dewan Rakyat: Perspektif Perundangan

The Control Mechanism of Unparliamentary Language in the Dewan Rakyat: A Legal Perspective

*Idzuafi Hadi Kamilan** and *Muthanna Saari***

Abstrak

Kekerapan insiden penggunaan bahasa kurang sopan di Parlimen merupakan cabaran besar dalam memastikan kelakuan tertib khususnya semasa perbahasan di dalam Parlimen. Pernyataan seksis, perkataan kesat, serangan peribadi termasuk pernyataan merendah-rendahkan orang (*condescending*) adalah dianggap sebagai bahasa kurang sopan dalam Parlimen yang tidak seharusnya mempunyai tempat dalam mana-mana badan perundangan. Penulisan ini menelusuri insiden penggunaan bahasa kurang sopan yang tidak berkesudahan di Dewan Rakyat, Parlimen Malaysia meskipun pelbagai peraturan dan Petua Speaker telah dibuat terhadap penggunaan bahasa sedemikian. Peraturan Mesyuarat 36(4) Peraturan-peraturan Majlis Mesyuarat Dewan Rakyat merupakan pengawal utama terhadap kesalahan menggunakan bahasa kesat dan pernyataan seksis di dalam Dewan Rakyat. Usaha untuk mendisiplinkan ahli Parlimen berkenaan penggunaan bahasa kurang sopan melalui pelbagai pendekatan perundangan sedia ada dipercayai sudah tidak berkesan. Oleh itu, penulisan ini menganalisis bagaimana bahasa kurang sopan dikawal di badan perundangan negara lain, seterusnya mencadangkan mekanisme pengawalan yang lebih baik dalam mentadbir ketidak tertiban penggunaan bahasa kurang sopan di Dewan Rakyat. Kegagalan untuk mengenakan hukuman yang lebih tegas terhadap

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penuturan bahasa kurang sopan bukan sahaja mencemarkan kesucian institusi Parlimen tetapi memberi isyarat kepada awam bagaimana sesebuah masyarakat yang sihat dan matang perlu berkelakuan.

Kata Kunci: Bahasa Kurang Sopan, Pernyataan Seksis, Dewan Rakyat, Peraturan Mesyuarat, Kod Etika

Abstract

The frequent occurrences of unparliamentary language represent ever-important challenges in ensuring parliamentarians' orderly conduct, particularly during debates in the House of Parliament. Sexist remarks, offensive words, personal reflections, including condescending remarks, are all deemed to be unparliamentary of which should not have a place in any legislature. This paper traces the incessant occurrences of unparliamentary language in the Dewan Rakyat, Parliament of Malaysia, notwithstanding the imposition of regulations and Speaker's rulings against such languages. Standing Order 36(4) of the Dewan Rakyat is the principal guardian against offensive language and sexist remarks in the Dewan Rakyat. Attempts to discipline parliamentarians concerning unparliamentary language through various existing legal approach proved to no avail. Therefore, this paper analyses how unparliamentary language is restrained in other legislatures and proposes a better mechanism for dealing with the disorderly conduct of unparliamentary language in the Dewan Rakyat. Failure to impose stricter sanction over unparliamentary language utterance impaired the sanctity of Parliament and signalled to the public how a mature and healthy society should behave.

Keywords: *Unparliamentary Language, Sexist Remarks, Dewan Rakyat, Standing Order, Ethical Code*

Pendahuluan

> Kesopanan dan disiplin diri merupakan intipati penting wacana di dalam Parlimen ... Hal ini bermaksud ia bukan sekadar bersopan santun bagi Ahli yang telah selesai berucap untuk duduk dan kekal mengikuti ucapan seterusnya ... Dengan asas sifat tingkah laku (sopan dan berdisiplin) seperti yang termaktub di dalam konvensyen Dewan, bahawa tradisi perdebatan yang kuat dapat diterima dan boleh diangkasakan di dalam Dewan secara demokratik.[1]

1 Select Committee on Procedure UK HC, *Short speeches* (Fourth Report, 1990-1991, xi).

Parlimen adalah sebuah institusi pembuatan keputusan tertinggi yang penting untuk rakyat di dalam sesebuah negara. Ini kerana institusi Parlimen mempunyai sejarah panjang yang bersusur galur sebagai sebuah badan penasihat yang terdiri daripada pembesar-pembesar yang menasihati Ratu di England.[2] Justeru, penghormatan institusi Parlimen kekal pada hari ini dengan tatacara, prosedur hatta perbahasan yang dijalankan harus berasaskan tatacara yang penuh adab, tertib, bebas dan penuh bertamadun sesuai dengan sifat Parlimen yang pernah menjadi badan Penasihat Diraja.[3] Bagi memastikan ahli Parlimen dapat menjalankan peranannya dalam menyampaikan pandangan maka ahli Parlimen ini dilindungi dengan kekebalan dan keistimewaan Parlimen. Hak, kekebalan dan keistimewaan Parlimen ini dijamin dan dilindungi di bawah Perlembagaan bagi membolehkan mereka menjalankan tanggungjawabnya dengan berkesan di dalam Parlimen. Keistimewaan Parlimen membolehkan ahli-ahli Parlimen bebas menyampaikan pandangan di samping ahli Parlimen tidak boleh dibicarakan di Mahkamah sama ada dalam kes sivil mahupun jenayah atas perkataan yang diucapkan atau atas tindakannya di dalam Parlimen.

Malah keistimewaan Parlimen membolehkan ahli Parlimen sebagai pemimpin yang telah dipilih rakyat boleh menyuarakan suara rakyat tanpa perasaan gentar. Justeru, ahli Parlimen sebagai pemimpin harus bersuara dengan menggunakan bahasa yang sopan, menggunakan budi pekerti yang tinggi serta tertib di dalam institusi Parlimen yang dinaungi Raja.[4] Walaupun setiap ahli Parlimen dijamin kebebasan bersuara di bawah Perlembagaan namun terdapat sekatan yang diperlukan untuk mencegah ahli Parlimen daripada menyerang watak dan maruah seseorang individu yang lain di dalam Dewan. Sering kali terdapat keadaan ahli-ahli Parlimen menggunakan perkataan *'unparliamentary language'* atau bahasa kurang sopan. Perkataan kurang sopan atau *unparliamentary language* yang dilontarkan ahli Parlimen sama ada sengaja mahupun tidak akan mengundang kemarahan dan kadangkala mengundang pertikaman lidah yang berterusan.

Oleh itu, menjadi tanggungjawab Speaker atau Pengerusi yang mempengerusikan mesyuarat untuk memastikan peraturan berbahas digunakan di dalam Dewan bagi mengawal tingkah laku ahli-ahli, sama

2 R. Blackburn dan lain-lain, *Griffith and Ryle on Parliament: Functions, Practice and Procedures* (2nd edn, London, Sweet & Maxwell, 2003) 6-088.

3 New South Wales Legislative Council Practice, *Rules of Debate*.

4 A.B. Abdullah, *Parlimen Malaysia: Amalan dan Chara* (Kuala Lumpur, Dewan Bahasa dan Pustaka, 1969) 67.

ada kepada ahli-ahli lain dan kepada institusi Parlimen sendiri. Kuasa disiplin Pengerusi untuk memastikan perbahasan sangat berfokus dan relevan dan kuasa disiplin ini membenarkan Pengerusi mengarahkan mana-mana ahli yang gagal bertindak dengan tingkah laku dengan sewajarnya untuk meninggalkan Dewan.[5] Bagi tujuan penulisan ini, skop perbahasan adalah berkisar pada undang-undang yang digunakan untuk mengawal penggunaan bahasa kurang sopan (biadab) di dalam Dewan Rakyat dan mencadangkan penambahbaikan dan mekanisme lain yang boleh digunakan untuk mengawal ahli Dewan Rakyat khususnya di dalam Parlimen Malaysia daripada terus menggunakan bahasa kurang sopan secara berterusan di dalam Dewan.

Penggunaan bahasa kurang sopan di Parlimen

Sejarah dan perkembangan

Sejarah penggunaan perkataan bahasa kurang sopan bermula di *House of Commons* apabila seseorang menyalahi aturan menghormati orang lain.[6] Konvensyen 'menghormati orang lain' di dalam Parlimen dapat dilihat dengan setiap ahli Parlimen bergelar 'Yang Berhormat' serta diterjemahkan juga agar seseorang ahli tidak saling menuduh ahli yang lain sebagai berbohong, mabuk, memberi gambaran yang salah, atau menghina satu sama lain.[7] Penggunaan bahasa kurang sopan dikatakan telah bermula sejak abad ke-17. Namun catatan pertama dalam *Oxford English Dictionary* mengenai penggunaan bahasa kurang sopan hanya bermula pada tahun 1810: 'Speaker menyatakan bahawa...seorang Ahli telah menggunakan bahasa kurang sopan'.[8] Namun, terdapat beberapa pelanggaran lebih awal khususnya apabila Oliver Cromwell membubarkan Parlimen pada 20 April 1653, dia menggunakan kata-kata yang memalukan dengan memanggil pemerintah ketika itu sebagai '*whoremasters,* pemabuk, korup dan orang yang tidak adil'.[9]

Institusi Parlimen sejak itu berkembang dan kini mengkanunkan di dalam peraturan mesyuaratnya berhubung perkataan yang tidak dibenarkan untuk diucapkan oleh ahli Parlimen di dalam Dewan. Definisi

5 New South Wales Legislative Council Practice (n 3) 299.
6 G. Hughes, *An Encyclopedia of Swearing: The Social History of Oaths, Profanity, Foul language, and ethnic slurs in the English-speaking world* (London, ME Sharpe, 2006) 477.
7 ibid.
8 ibid.
9 ibid.

bahasa kurang sopan secara asasnya terlalu luas untuk dibincangkan malahan amalannya berlainan dari satu Parlimen dengan satu Parlimen yang lain. Malah, penggunaan bahasa kurang sopan juga boleh berubah disebabkan tempat, budaya, masa dan individu. Justeru, penggunaan bahasa kurang sopan di dalam Parlimen terus berkembang sehingga hari ini.

Definisi bahasa kurang sopan di Parlimen

Pelbagai definisi dirujuk berhubung perbuatan kurang sopan di dalam Parlimen antaranya adalah tindakan ahli yang membayangkan peribadi seseorang dengan sesuatu yang lain sama ada dengan apa-apa perbandingan dengan niat yang tidak baik.[10] Peraturan berhubung bahasa kurang sopan dan biadab bertujuan untuk mencegah penghinaan peribadi kepada seseorang ahli dan pada masa yang sama bertujuan untuk mengehadkan ahli untuk berucap di dalam Dewan Parlimen.[11] Selain itu, termasuk dalam bahasa kurang sopan adalah pernyataan seksis. Perkataan yang selalunya dianggap biasa boleh ditafsirkan sebagai seksis apabila diungkap berdasarkan aspek intonasi dan suasana perbahasan.

Bagi menentukan sama ada bahasa yang diungkap ahli Parlimen adalah kurang sopan atau tidak di Parlimen Australia, pemangku Timbalan Presiden *Senate*, Senator Wood pada tahun 1955 merujuk sepertimana berikut:

> … dalam tafsiran saya berkenaan Peraturan Mesyuarat 418 [bersamaan dengan peraturan mesyuarat *House of Representatives* 90 yang berkaitan dengan Ahli], perkataan kurang sopan atau ofensif mestilah bersifat kurang sopan dalam pengertian sebenar perkataan tersebut. Apabila seseorang menceburi politik, serangan yang bersifat politik tidak dianggap kurang sopan. *Kurang sopan bererti serangan dalam bentuk peribadi. Pandangan ini juga terpakai kepada maksud 'motif yang tidak baik' dan 'serangan peribadi' sepertimana yang dijelaskan dalam peraturan mesyuarat*. Sekali lagi, apabila seseorang menceburi kehidupan awam dan menjadi seorang ahli Parlimen, dia mendedahkan dirinya kepada risiko dikritik dalam bentuk politik.[12]

10 M. Harris dan D. Wilson, *McGee Parliamentary Practice in New Zealand* (Auckland, Oratia Books, 2017) XXX.

11 ibid.

12 D.R. Elder, *House of Representatives Practice* (7th edn, Canberra, Department of the House of Representatives, 2018) 516 (penekanan dimasukkan).

Adalah menjadi tanggungjawab Speaker bagi menentukan sama ada kenyataan itu berbaur seksis atau tidak.[13] Dakwaan bahawa seorang Menteri atau ahli lain tidak mengatakan sesuatu dengan benar atau menipu sama sekali juga merupakan manifestasi bahasa *unparliamentary language* di dalam Dewan dan amalan ini hampir diguna pakai di kebanyakan negara Komanwel.[14] Sering kali juga ahli Parlimen memohon maaf atas penggunaan perkataan yang digunakan dengan menarik balik dan mengulanginya lagi sambil bersikap skeptikal.

Skop perbincangan penulisan ini hanya melihat peraturan penggunaan bahasa kurang sopan yang dikanunkan oleh Dewan Rakyat melalui Peraturan Mesyuarat 36(4) Peraturan-peraturan Majlis Mesyuarat Dewan Rakyat yang menyentuh dua aspek penting iaitu penggunaan bahasa kurang sopan (biadab) atau seksis di Parlimen. Pada peraturan lain disebutkan juga, seseorang ahli tidak dibenarkan menyebutkan nama ahli yang lain serta mengeluarkan sangkaan jahat ke atas sesiapa ahli yang lain yang juga boleh dianggap sebagai *unparliamentary language.*[15] Oleh itu dapat disimpulkan, tingkah laku baik dan kesopanan yang tinggi adalah ciri perdebatan yang seharusnya diguna pakai ahli di dalam Parlimen.[16] Namun, bahasa kurang sopan di dalam Parlimen boleh terjadi apabila berlakunya serangan dalam bentuk peribadi seorang ahli Parlimen kepada seorang ahli Parlimen yang lain sama ada melalui perbuatan atau melalui perkataan dengan bermotifkan tidak baik.

Bahasa kurang sopan di Parlimen United Kingdom

Parlimen di United Kingdom sebagai Parlimen tertua dan dikenali sebagai '*Mother of Parliament*' telah menggariskan beberapa aturan bagaimana perbahasan yang baik harus dijalankan. *Erskine May's Parliamentary Practice* yang pertama kali ditulis pada tahun 1844 telah mengekalkan perkataan yang ditulis oleh Sir Gilbert (yang kemudian dikenali dengan gelaran Lord Campion) di dalam edisi ke-14 pada tahun 1946:

> *Good temper and moderation are the characteristics of parliamentary language. Parliamentary language is never more desirable than when a*

13 Lihat ucapan YB Dato Seri Mohamed Nazri Aziz, dalam DR Deb 27 Nov 2012, Bil. 68, 39.

14 N.W. Wilding dan P. Laundy, *An encyclopaedia of parliament* (New York, FA Praeger, 1968) 744.

15 Peraturan-peraturan Mesyuarat Dewan Rakyat, PM 36(5) & 36(6).

16 Petua Speaker terhadap Point of Order dari Fiona Mactaggart dalam UK HC Deb 19 Jan 2012.

> *Member is canvassing the opinions and conduct of their opponents in debate.*[17]

Perkataan ini telah diterjemahkan Yang di-Pertua Dewan Rakyat, Tan Sri Datuk Seri Panglima Pandikar Amin Mulia semasa ucapan sulungnya sebagai Yang di-Pertua Dewan Rakyat selepas mengangkat sumpah pada 24 Jun 2013 sebagai,

> Kesabaran dan kesederhanaan adalah ciri-ciri berbahas di Parlimen. Bahasa Parlimen adalah lebih menggamit apabila seseorang Ahli sewaktu berbahas dapat mempengaruhi pendapat dan pendirian pihak lawan.[18]

Hal ini selari dengan kebebasan bersuara yang dibenarkan di dalam Parlimen United Kingdom sepertimana diungkapkan oleh Speaker John Bercow pada 9 Mei 2012,

> *Freedom of speech in debate is at the very heart of what we do here for our constituents, and it allows us to conduct our business without fear of outside interference. But it is a freedom that we need to exercise responsibly in the public interest and taking into account the interests of others outside this House. [...] We should ensure that every Member is heard courteously, regardless of the views that he or she is expressing. [...] Every member of the public has a right to expect that his or her Member of Parliament will behave with civility, in the best traditions of fairness, with the highest level of probity and with integrity*.[19]

Erskine May umumnya melarang perbahasan di dalam Parlimen berhubung dengan tingkah laku Raja sendiri, waris kepada Raja atau ahli-ahli Keluarga Diraja. Larangan untuk mengeluarkan bahasa kurang sopan dalam Parlimen juga terpakai kepada *Lord Chancellor, Governor General* wilayah bebas dan hakim Mahkamah tertinggi di United Kindom. Selain itu, larangan ini juga terpakai kepada ahli kedua-dua Dewan di Parlimen dan khususnya ahli yang memegang jawatan di

17 D. Natzler dan M. Hutton, *Erskine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament* (25th edn, Butterworths, Lexis Nexis, 2019) 495.

18 Lihat ucapan YB Tan Sri Datuk Seri Panglima Pandikar Amin Haji Mulia selepas mengangkat sumpah sebagai Yang di-Pertua Dewan Rakyat dalam DR Deb 24 Jun 2013, Bil. 1, 4.

19 Clerk of the House of Commons, *Use of Unparliamentary Language* (UK HC, 2012-2013, 19) <https://publications.parliament.uk/pa/cm201213/cmselect/cmproced/writev/language/p19.htm> dicapai 15 Julai 2020.

dalam *House of Commons* seperti *Speaker, Chairman of Ways and Means* dan ahli-ahli lain di dalam Jawatankuasa Pengerusi (*Panel of Chairs).*[20] Larangan mengeluarkan bahasa kurang sopan juga terpakai di dalam kes ahli-ahli di luar daripada Dewan.

Selain itu, terdapat juga kuasa mendisiplinkan ahli-ahli diberikan kepada Speaker sepertimana dalam Peraturan Tetap 43 dan 44, Peraturan Tetap *House of Commons*, United Kingdom. Speaker atau Pengerusi boleh mengarahkan ahli yang berkelakuan tidak senonoh untuk segera keluar dari Dewan sepanjang hari tersebut dan bentara boleh bertindak atas arahan yang diterima daripada Speaker. Jika Speaker merasakan kuasa ini tidak mencukupi maka Speaker boleh menamakan ahli yang ingkar berdasarkan tatacara yang perlu diikuti di bawah Peraturan Tetap 44.[21] Sekiranya ahli yang dinamakan Speaker atau Pengerusi tidak mengendahkan kuasa Pengerusi/Speaker atau berulang kali mengganggu perjalanan mesyuarat dengan melanggar peraturan mesyuarat maka Speaker boleh mengemukakan persoalan dan usul untuk menggantung ahli tersebut. Jika kesalahan dilakukan di dalam Jawatankuasa seluruh Dewan maka Pengerusi harus menggantung prosiding Jawatankuasa dan melaporkan kepada Dewan. Speaker juga boleh memohon usul dibawa ke hadapan bagi persoalan yang sama jika kesalahan telah dilakukan di dalam Dewan yang sama.[22]

Peraturan Tetap 44(2) menyatakan bahawa jika berlaku penggantungan di bawah Peraturan Tetap 44(1) maka penggantungan buat kali pertama akan berjalan selama lima hari dan sekiranya ada, penggantungan buat kali kedua akan berjalan selama 20 hari. Penggantungan ini termasuk hari ahli digantung tetapi dalam keadaan tertentu sehingga Dewan memutuskan penggantungannya akan berakhir.[23] Speaker atau Pengerusi tidak boleh mengusulkan dengan 'menamakan' lebih daripada seorang ahli dalam satu masa yang sama kecuali dua atau lebih ahli melakukan kesalahan yang sama mengingkari perintah Pengerusi.[24]

Selain itu, Parlimen United Kingdom telah mengkanunkan Kod Etika dan Tatacara kepada ahli Parlimennya melalui ketetapan dengan mewujudkan *House of Commons Code of Conduct* yang telah diluluskan

20 Lihat <https://erskinemay.parliament.uk/section/4873/incidental-criticism-of-conduct-of-certain-persons-not-permitted/> dicapai 11 Januari 2021.
21 Standing Orders House of Commons UK, SO 43 dan SO 44.
22 ibid. SO 44(1).
23 ibid. SO 44(2).
24 ibid. SO 44(3).

di dalam *House of Commons* pada 12 Mac 2012, 17 Mac 2015 dan 10 Oktober 2019.[25] Tujuan Kod Tatakelakuan ini adalah untuk membantu ahli Parlimen menunaikan tanggungjawab mereka kepada Parlimen, kawasan dan masyarakat. Secara amnya kod ini bertujuan untuk mewujudkan satu prinsip dan amalan yang seharusnya diguna pakai oleh setiap ahli Parlimen dalam menjalankan tanggungjawab mereka. Antara prinsip penting bagi memastikan ahli Parlimen menggunakan bahasa yang sopan adalah:

> *Respect*
>
> *18. A Member must treat their staff and all those visiting or working for or with Parliament with dignity, courtesy and respect.*[26]

Selain Petua Speaker dan Peraturan Mesyuarat di dalam *House of Commons*, United Kingdom, perbuatan menyinggung perasaan yang dilafazkan sama ada kepada Dewan atau kepada individu boleh juga dihukum dengan hukuman yang sewajarnya dan kadangkala sehingga dikenakan hukuman penjara. Hal ini boleh dilihat berasaskan prinsip institusi Parlimen juga mempunyai kuasa pemutus sebagai sebuah Mahkamah yang tersendiri.[27] Kuasa ini diberikan dengan tujuan untuk melindungi Dewan daripada perbuatan yang kurang sopan dan perbahasan yang boleh timbul disebabkan penggunaan perkataan yang menimbulkan sakit hati.

Bahasa kurang sopan di Parlimen Australia

Parlimen Australia melalui kedua-dua Peraturan-peraturan Tetap *House of Representatives* dan *Senate* mempunyai peruntukan khusus berkaitan bahasa kurang sopan di dalam Parlimen. Larangan untuk mengeluarkan bahasa kurang sopan dalam Parlimen dikhaskan terhadap mana-mana ahli Parlimen lain serta terhadap mana-mana ahli badan kehakiman (hakim). Peraturan Tetap *House of Representatives Australia* dengan jelas menyatakan berkenaan larangan ini:

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25 *House of Commons Code of Conduct approved by the House of Commons* pada 12 Mac 2012, 17 Mac 2015 dan terkini 10 Oktober 2019. Lihat <https://publications.parliament.uk/pa/cm201719/cmcode/1882/188201.htm> dicapai 19 Januari 2021.

26 UK HC, *Code of Conduct* (2017-2019, 1474) para 9 & 18.

27 Lihat perenggan 11.23 dalam W. McKay dan lain-lain, *Erskine May Parliamentary Practice* (23rd edn, Butterworths, Lexis Nexis, 2004) 96.

89 Offensive words

A Member must not use offensive words against:

(a) either House of the Parliament or a Member of the Parliament; or

(b) a member of the Judiciary.[28]

90 Reflections on Members

All imputations of improper motives to a Member and all personal reflections on other Members shall be considered highly disorderly.[29]

Manakala Peraturan Tetap *Senate* juga memberi peruntukan berkenaan bahasa kurang sopan:

193 Rules of debate

(3) A Senator shall not use offensive words against either House of Parliament or of a House of a state or territory parliament, or any member of such House, or against a judicial officer, and all imputations of improper motives and all personal reflections on those Houses, members or officers shall be considered highly disorderly.[30]

Beberapa kelakuan turut dikenal pasti sebagai tidak sopan dan tertakluk di bawah peraturan mesyuarat berkenaan kelakuan tidak sopan.[31] Kelakuan yang ditakrifkan sebagai tidak sopan dikategorikan antaranya seperti mengganggu Dewan dengan sengaja dan tanpa henti, menggunakan perkataan yang boleh dibantah dan enggan ditarik balik, enggan mematuhi peraturan mesyuarat dengan sengaja dan tanpa henti, dengan sengaja tidak mematuhi perintah Dewan, tidak mempedulikan autoriti Speaker dengan sengaja dan tanpa henti, serta dianggap sebagai telah berkelakuan tidak sopan oleh Speaker.[32] Selain itu, beberapa kelakuan lain turut diputuskan sebagai tidak sopan seperti menuduh seorang ahli Parlimen sebagai kurang siuman atau tidak serius, mengajuk suara atau perbuatan seorang ahli, dan menutur perkataan yang merujuk kepada ciri fizikal seorang ahli.[33] Walau bagaimanapun, penuturan bahasa kurang sopan terhadap mana-mana ahli Parlimen

28 Australian House of Representatives (HoR) Standing Orders, SO 89.
29 ibid. SO 90.
30 ibid. SO 193.
31 ibid. SO 94 dan Australian Senate Standing Orders, SO 203.
32 Australian House of Representatives (HoR) Standing Orders, SO 91 dan Australian Senate Standing Orders, SO 203.
33 Elder (n 12).

dan sebarang tuduhan dengan motif yang tidak baik serta serangan peribadi terhadap mana-mana ahli Parlimen adalah termasuk di bawah kelakuan tidak sopan yang dilarang di dalam Parlimen.

Amalan di Parlimen Australia juga merujuk kepada pendekatan yang digunakan di *House of Commons UK* dalam mengelaskan ungkapan kurang sopan seperti berikut:

- tuduhan dengan motif palsu dan tersembunyi,
- gambaran yang salah terhadap pernyataan ahli lain dan tuduhan membuat gambaran yang salah,
- tuduhan menuturkan perkara palsu yang disengajakan,
- bahasa yang kesat dan menghina yang boleh menimbulkan keadaan tidak terkawal.[34]

Penentuan sesuatu perkataan yang diungkapkan oleh seseorang Ahli Parlimen sebagai bahasa kurang sopan yang tertakluk di bawah Peraturan Tetap adalah diputuskan oleh Speaker/Pengerusi Mesyuarat. Pertimbangan yang dilakukan oleh Speaker dibuat berdasarkan sifat serta konteks perkataan yang diungkapkan.[35] Adalah menjadi tanggungjawab Speaker untuk mencelah sekiranya didapati sesuatu bahasa kurang sopan telah diungkapkan sama ada terhadap Parlimen atau mana-mana ahli Parlimen dan juga menjadi tanggungjawab Speaker untuk menentukan kelakuan seseorang ahli Parlimen sebagai tidak sopan atau tidak senonoh apabila ada ahli Parlimen menarik perhatian Speaker terhadap kelakuan berkenaan.[36] Bahasa yang tidak sesuai dan *unparliamentary* juga boleh berlaku apabila ahli mengungkapkan perkataan yang diungkapkan oleh ahli Parlimen lain. Ini bermaksud memetik ungkapan ahli Parlimen lain juga menyebabkan seorang ahli berkenaan sendiri dianggap mengeluarkan perkataan yang kurang sopan.[37] Larangan memetik ungkapan ahli lain dijelaskan dalam contoh berikut,

34 M. Jack, *Erskine May Parliamentary Practice* (24th edn, Butterworths, Lexis Nexis, 2011).

35 Elder (n 12) 514.

36 Australian House of Representatives (HoR) Standing Orders, SO 92.

37 Australian HoR Deb 5 Mei 1978, 1894-1895 <https://parlinfo.aph.gov.au/parlInfo/download/hansard80/hansardr80/1978-05-05/toc_pdf/19780505_reps_31_hor109.pdf;fileType=application%2Fpdf#search=%22hansard80/hansardr80/1978-05-05/0083%22> dicapai 1 September 2020.

> *Senator Bob Brown: ... This is the new leader of the coalition, who is reported to have said that '<u>climate change is crap</u>', if you will excuse me, Temporary Chair.*
>
> *The TEMPORARY CHAIRMAN (Senator Troeth): I think that is unparliamentary, Senator Brown. I **would ask you to withdraw** that.*
>
> *Senator Bob Brown: It is a quote that the Leader of the Opposition is said to have made and in which he said he was using hyperbole.*
>
> *The TEMPORARY CHAIRMAN (Senator Troeth): Quoting something still does not make it parliamentary.*
>
> *Senator Bob Brown: Then **I withdraw**.*[38]

Dalam menentukan sesuatu bahasa kurang sopan, penjelasan yang diberikan pemangku Timbalan Presiden *Senate*, Senator Wood pada tahun 1955 cuba membuat suatu garis pemisah antara kritikan yang bersifat politik dengan bahasa kurang sopan,

> … dalam tafsiran saya berkenaan Peraturan Mesyuarat 418 [bersamaan dengan peraturan mesyuarat *House of Representatives* 90 yang berkaitan dengan Ahli], perkataan kurang sopan atau ofensif mestilah bersifat kurang sopan dalam pengertian sebenar perkataan tersebut. Apabila seseorang menceburi politik, serangan yang bersifat politik tidak dianggap kurang sopan. Kurang sopan bererti serangan dalam bentuk peribadi. Pandangan ini juga terpakai kepada maksud 'motif yang tidak baik' dan 'serangan peribadi' sepertimana yang dijelaskan dalam peraturan mesyuarat. Sekali lagi, apabila seseorang menceburi kehidupan awam dan menjadi seorang ahli Parlimen, dia mendedahkan dirinya kepada risiko dikritik dalam bentuk politik.[39]

Ketentuan Speaker terhadap bahasa kurang sopan juga melibatkan perkataan yang dianggap tidak dapat diterima dalam perbahasan walaupun ia tidak ditujukan terhadap mana-mana institusi yang dilindungi atau penjawat yang disenaraikan dalam peraturan mesyuarat.[40] Dalam perkara ini, Presiden *Senate*, Senator John Hogg

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38 Australian Senate Deb 30 Nov 2009, 9435 <https://parlinfo.aph.gov.au/parlInfo/download/chamber/hansards/2009-11-30/toc_pdf/7320-5.pdf;fileType=application%2Fpdf#search=%22chamber/hansards/2009-11-30/0610%22> dicapai 1 September 2020.

39 Elder (n 12) 516.

40 J.R. Odgers, *Odgers' Australian Senate Practice* (Canberra, Australian Government Publishing Service for Department of the Senate, 1997) <https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Odgers_Australian_Senate_Practice/Chapter_10#footnote-102-backlink> dicapai 26 Ogos 2020.

menjelaskan bahasa *unparliamentary* digunakan secara umumnya merujuk kepada ungkapan yang dinyatakan di sebaliknya terhadap pelbagai larangan dalam Peraturan Tetap 193,

> Aturan! Awal hari ini, Senator Forshaw berjanji untuk merujuk kepada Petua saya bahawa Senator Schacht patut menarik balik bahasa tidak sesuai yang diungkapkannya. Adalah menjadi kewajiban bagi Pengerusi untuk mengarahkan sebarang bahasa tidak sesuai seperti perkataan kesat ditarik balik walaupun ia bukan bahasa ofensif terhadap mana-mana penjawat yang dilindungi di bawah Peraturan Tetap 193. Senator Forshaw juga merujuk kepada saya sama ada ia perlu dikeluarkan daripada hansard. Walau bagaimanapun, oleh kerana prosiding Senate adalah bersifat awam, Pengerusi berpendapat bahawa mengeluarkan daripada hansard adalah tidak sesuai. Saya ingin meminta Senator untuk menghormati kemuliaan perbahasan dan meminta agar tidak menggunakan bahasa yang tidak sesuai.[41]

Skop bahasa kurang sopan juga tidak terhad kepada makna perkataan yang kesat semata-mata, tetapi diluaskan lagi kepada menuduh seorang ahli Parlimen sebagai menipu dan sengaja mengelirukan Dewan dan perbuatan ini dianggap sebagai suatu pertuduhan dengan motif tidak baik. Pertuduhan sengaja mengelirukan Dewan merupakan suatu perkara yang hanya boleh dibawa melalui suatu usul substantif kerana kesalahan mengelirukan Dewan adalah besar dan dianggap sebagai menghina Parlimen.[42] Skop bahasa kurang sopan yang diungkapkan juga dihadkan kepada perkataan yang ditujukan secara jelas kepada seorang ahli Parlimen. Peraturan bahasa ofensif atau kurang sopan tidak dapat digunakan sekiranya ditujukan kepada sekumpulan ahli Parlimen yang tidak dapat dikenal pasti secara individu. Walau bagaimanapun, ini tidak bermakna sebarang pertuduhan ofensif terhadap ahli Parlimen secara kolektif tidak mempunyai sebarang aturan di dalam Parlimen. Pengecualian diberi kepada pertuduhan yang melibatkan hasutan, pengkhianatan, korupsi atau ketidakjujuran secara sengaja.[43] Speaker

41 Australian Senate Deb 15 Mei 2002, 1631 <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=CHAMBER;id=chamber%2Fhansards%2F2002-05-15%2F0144;query=Id%3A%22chamber%2Fhansards%2F2002-05-15%2F0146%22> dicapai 1 September 2020.

42 Australian HoR Deb 19 Jun 2003, 17045-6 <https://parlinfo.aph.gov.au/parlInfo/download/chamber/hansardr/2003-06-19/toc_pdf/2595-2.pdf;fileType=application%2Fpdf#search=%22chamber/hansardr/2003-06-19/0137%22> dicapai 27 Ogos 2020.

43 Elder (n 12) 517.

Billy Snedden kemudiannya turut menggunakan petua ini ketika membuat ketetapan supaya perkataan 'sekumpulan pengkhianat' ditarik balik,

> Pada masa lepas terdapat petua yang menyatakan adalah *unparliamentary* untuk membuat tuduhan terhadap suatu kumpulan sebagai berbeza daripada seorang individu. Namun, petua tersebut tidak akan saya gunakan lagi. Pada pendapat saya, sekiranya suatu pertuduhan dibuat terhadap mana-mana ahli Parlimen dianggap sebagai *unparliamentary* dan kurang sopan, maka demi menjaga kepentingan Dewan yang mulia ini, pertuduhan dan bahasa yang sama juga tidak boleh digunakan terhadap semua ahli Parlimen. Sekiranya tidak, adalah perlu bagi setiap ahli yang dituduh itu secara individu untuk bangun dan melepaskan dirinya daripada tuduhan berkenaan…. Saya meminta semua ahli yang berhormat untuk berhenti menggunakan ungkapan yang *unparliamentary* terhadap suatu kumpulan atau kepada semua ahli Parlimen, yang merupakan bahasa *unparliamentary* sekiranya ditujukan kepada ahli Parlimen secara individu.[44]

Apabila sesuatu ungkapan kurang sopan dan dianggap *unparliamentary* dituturkan dalam Parlimen, ahli Parlimen yang menuturkan ungkapan berkenaan dikehendaki menarik balik (*withdraw*) perkataan berkenaan. Sekiranya ahli Parlimen yang menutur perkataan berkenaan tidak menarik balik perkataan tersebut, Speaker boleh mengarahkan ahli Parlimen berkenaan untuk berbuat seperti yang diarahkan. Dalam kebanyakan situasi, ahli Parlimen yang diarahkan untuk menarik balik perkataan *unparliamentary* berkenaan akan akur dengan arahan Speaker sebagaimana digambarkan dalam contoh berikut:

> *Mr Gosling: What an idiot!*
>
> *The DEPUTY SPEAKER: The Member for Solomon* ***will withdraw*** *that unparliamentary comment.*
>
> *Mr Gosling:* ***I withdraw****.*[45]

Kekerapan insiden bahasa kurang sopan dan *unparliamentary* diungkapkan di Australia digambarkan dalam satu proses carian

44 ibid.

45 Australian HoR Deb 4 Mac 2020 <https://www.aph.gov.au/Parliamentary_Business/Hansard/Hansard_Display?bid=chamber/hansardr/ad5ca6c0-b47f-4462-b26c-d5271c755f99/&sid=0125> dicapai 1 September 2020.

perkataan melalui transkrip digital atau hansard Parlimen. Dalam suatu carian perkataan '*Mr Speaker I withdraw*' atau '*I withdraw Mr Speaker*' melalui hansard Parlimen negeri Queensland bagi tempoh 1997-2010, sebanyak 554 hasil ditemui. Manakala carian di *House of Representatives* bagi tempoh yang sama pula menemui 151 hasil carian.[46] Tuduhan terhadap Speaker juga merupakan suatu tindakan kurang sopan dan ahli Parlimen yang membuat pertuduhan berkenaan dikehendaki menarik balik pertuduhan tersebut,

> *Ms Plibersek: Most biased Speaker ever!*
>
> *The SPEAKER: The Member for Sydney is reflecting on the chair and* ***will withdraw****.*
>
> *Mr Pyne: You are appalling.*
>
> *Ms Plibersek:* ***I withdraw****.*
>
> *Mr Pyne: You are a real piece of work.*
>
> *The SPEAKER: The Leader of the House* ***will also withdraw****.*
>
> *Mr Pyne: Madam Speaker, the campaign continues from the opposition; but, if it assists the House,* ***I withdraw****.*
>
> *The SPEAKER: At every moment there was nothing but disrespect and there was nothing but noise – and a wall of noise. It was quite deliberately done.*[47]

Walau bagaimanapun, terdapat juga insiden yang memerlukan Peraturan Tetap 94(a)[48] digunakan oleh Speaker apabila seseorang ahli Parlimen menarik balik perkataan kurang sopan namun terus mengganggu Dewan. Peraturan mesyuarat ini dianggap sebagai pendekatan yang berkesan dalam menjaga aturan dalam Dewan serta kurang mengganggu aturan perjalanan Dewan. Sebanyak 260 insiden direkodkan di bawah peraturan mesyuarat ini dalam tempoh Parlimen ke-45 (2016-2019) dengan purata

46 C. Salisbury, 'Mr Speaker, I withdraw...': standards of (mis) behaviour in the Queensland, Western Australian and Commonwealth parliaments compared via online Hansard' (2011) 1 *Australasian Parliamentary Review* 26, 170-1.

47 Australian HoR Deb 27 Nov 2014 <https://www.aph.gov.au/Parliamentary_Business/Hansard/Hansard_Display?bid=chamber/hansardr/07c1718f-8e51-4958-9cc9-f8492bfb5c93/&sid=0143> dicapai 24 Ogos 2020.

48 *94(a) The Speaker can direct a disorderly Member to leave the Chamber for one hour. The direction shall not be open to debate or dissent, and if the Member does not leave the Chamber immediately, the Speaker can name the Member under the following (94(b)) procedure.*

tiga insiden bagi setiap hari persidangan.[49] Contoh penggunaan peraturan mesyuarat ini adalah seperti berikut,

> *Mr Rob Mitchell: You are a full of crap!*
>
> *The SPEAKER: The Prime Minister will resume his seat. The member for McEwen **will withdraw** that remark.*
>
> *Mr Rob Mitchell: **I withdraw**.*
>
> *The SPEAKER: And he will now withdraw from the chamber.*
>
> *Mr Rob Mitchell interjecting –*
>
> *The SPEAKER: Member for McEwen, you'd better be very careful what you say. You know the rules very well.*
>
> *The member for McEwen then left the chamber.*[50]

Apabila arahan Speaker kepada ahli Parlimen untuk meninggalkan Dewan menurut Peraturan Tetap 94(a) tidak berkesan, Speaker boleh menamakan dan menggantung ahli Parlimen di bawah Peraturan Tetap 94(b),

> *Mr Husic interjecting –*
>
> *The SPEAKER: The member for Chifley is anxious to leave and get an early plane, is he?*
>
> *Mr Husic interjecting –*
>
> *The SPEAKER: The choice is yours. You can leave now.*
>
> *Mr Husic: Can I? Thank you! Better than hearing another Truss answer.*
>
> *The SPEAKER: The member **will withdraw** –*
>
> *Mr Husic: Of course **I withdraw**.*
>
> *The SPEAKER: and leave quicly under 94(a).*
>
> *Mr Husic: I'll be quicker than Warren's answer.*
>
> *The SPEAKER: I think the **member is named**.*

49 Australian HoR Deb 5 Dis 2017 <https://www.aph.gov.au/Parliamentary_Business/Hansard/Hansard_Display?bid=chamber/hansardr/32a123fb-7b68-4315-aa37-273ae7bed1ad/&sid=0115> dicapai 1 September 2020.

50 Australian HoR Deb 7 Sep 2017 <https://www.aph.gov.au/Parliamentary_Business/Hansard/Hansard_Display?bid=chamber/hansardr/951d369a-2fe5-4c5a-b7b6-f3bbf485cb15/&sid=0097> dicapai 24 Ogos 2020.

> *Mr Pyne: I move:* ***That the member for Chifley be suspended from the service of the House.***
>
> *The SPEAKER: The question is that the motion be agreed to.*
>
> *DIVISION: AYES 84 (35 majority) NOES 49 PAIRS 0*[51]

Sebanyak 457 insiden ungkapan bahasa kurang sopan, ofensif dan *unparliamentary* telah direkodkan dalam *House of Representatives Australia* bagi tempoh 2009-2020.[52] Senarai bahasa kurang sopan ini adalah luas dan mencakupi pelbagai petua Speaker dalam menentukan bahasa kurang sopan dalam Parlimen. Terdapat perkataan kurang sopan yang benar-benar bersifat kesat secara langsung, terdapat juga yang bersifat tidak langsung dan terdapat juga pertuduhan-pertuduhan yang boleh dianggap sebagai mempunyai ambang bahasa kurang sopan yang agak rendah. Namun, semua ini telah dikelaskan sebagai bahasa kurang sopan dalam Parlimen dan secara umumnya bertujuan untuk mengawal tingkah laku dan pertuturan ahli Parlimen di dalam Parlimen.

Pengawalan kebebasan bersuara ahli Parlimen dan kebebasan Parlimen

Peruntukan Perlembagaan Persekutuan

Hak bersuara ahli Parlimen dan keistimewaan Parlimen di Malaysia didasari Perkara 10 dan Perkara 63, Perlembagaan Persekutuan. Perkara 10(1), Perlembagaan Persekutuan secara terang menyatakan bahawa setiap warganegara mempunyai hak untuk bersuara. Manakala, di bawah Perkara 63, Perlembagaan Persekutuan menyebutkan 'Kesahan apa-apa prosiding di dalam mana-mana satu Majlis Parlimen atau dalam mana-mana jawatankuasanya tidak boleh dipersoalkan di dalam mana-mana mahkamah'. Perkara 10 dan Perkara 63, Perlembagaan Persekutuan menjamin kebebasan bersuara ahli Parlimen dan institusi Parlimen namun kebebasan ini juga terhad dan harus dikawal dengan kaedah yang sewajarnya antara lain menggunakan peraturan dalaman seperti Peraturan Mesyuarat Majlis Mesyuarat Dewan Rakyat dan Dewan

51 Australian HoR Deb 17 Jul 2014 <https://www.aph.gov.au/Parliamentary_Business/Hansard/Hansard_Display?bid=chamber/hansardr/9c18a223-4397-465e-bb44-fdddfbae3cf2/&sid=0115> dicapai 1 September 2020.

52 Consolidated List of Unparliamentary Expressions – 2009-2020 House of Representatives. (Canberra, Department of the House of Representatives, tidak diterbitkan).

Negara. Walaupun secara asasnya kebanyakan ahli Parlimen bercakap menggunakan bahasa yang sopan namun terdapat juga segelintir ahli Parlimen yang menggunakan sindiran, membuat tohmahan kepada ahli-ahli lain, menggunakan perkataan yang menyakiti hati kepada ahli lain, menghina yang kesemuanya adalah bersifat *unparliamentary* atau dikategorikan juga sebagai bahasa kurang sopan.[53]

Akta Majlis Parlimen (Keistimewaan dan Kuasa) 1952

Akta Majlis Parlimen (Keistimewaan dan Kuasa) 1952 memperuntukkan kuasa dan keistimewaan Parlimen serta kebebasan bercakap dan berbahas di dalam Parlimen. Seksyen 3 Akta ini memperuntukkan kebebasan ini tidak boleh dicabar atau dipersoalkan dalam mana-mana Mahkamah atau tribunal di luar Majlis. Selain itu, Akta ini turut memberi kuasa tertentu kepada Dewan Negara dan Dewan Rakyat untuk mengawal bukan sahaja ahli Parlimen tetapi juga orang lain yang terlibat dalam apa-apa prosiding Dewan. Peruntukan penting dalam Akta ini juga adalah berhubung dengan kuasa menyiasat dan mengenakan hukuman bagi penghinaan terhadap Dewan dan jawatankuasa-jawatankuasanya.

Seksyen 9 Akta Majlis Parlimen (Keistimewaan dan Kuasa) 1952 pula memberi kuasa kepada Parlimen untuk menghukum atas kesalahan menghina Parlimen. Antara hukuman yang dibenarkan adalah menghukum secara terus kerana menghina dengan dikenakan denda tidak melebihi RM1,000 dan jika apa-apa denda yang dikenakan itu tidak dibayar dengan serta-merta pesalah itu boleh diletakkan dalam jagaan penjaga mana-mana penjara.[54] Akta ini masih belum diguna pakai sehingga hari ini untuk menjatuhkan hukuman ke atas ahli Parlimen disebabkan penggunaan bahasa kurang sopan di dalam Dewan. Namun, antara kesalahan yang relevan berhubung kait dengan bahasa kurang sopan yang boleh dihukum di bawah Akta ini adalah:

a) gagal atau enggan dengan sengaja mematuhi perintah Majlis yang boleh menyebabkan Majlis mungkin tergendala; [55]

b) menyerang, menghalang atau mencela ahli Parlimen lain di dalam Majlis; [56]

53 Abdullah (n 4) 67.
54 Akta Majlis Parlimen (Keistimewaan dan Kuasa) 1952, s 9.
55 ibid. s 9(c).
56 ibid. s 9(e).

c) mencabar seseorang ahli untuk berlawan kerana kelakuannya di dalam majlis; [57]

d) membuat kekacauan di dalam Majlis menyebabkan prosiding Majlis terganggu; [58]

e) menyiarkan fitnah palsu atau skandal terhadap ahli Parlimen dengan menyentuh kelakuan mereka sebagai ahli. [59]

Peraturan-peraturan Majlis Mesyuarat Dewan Rakyat

Perkara 62, Perlembagaan Persekutuan memberikan Dewan Negara dan Dewan Rakyat kuasa untuk mengawal selia tatacaranya sendiri. Dengan punca kuasa di bawah Perkara 62, Perlembagaan Persekutuan maka wujud Peraturan-peraturan Majlis Mesyuarat Dewan Rakyat dan Dewan Negara.[60] Selain Dewan Negara dan Dewan Rakyat, Perlembagaan atau Undang-undang Tubuh Kerajaan negeri juga memperuntukkan kuasa yang sama kepada Dewan-dewan Undangan Negeri. Dengan kuasa sedemikian, maka Dewan Negara, Dewan Rakyat dan Dewan-dewan Undangan Negeri boleh membuat peraturan mesyuarat masing-masing bagi mengawal selia tatacara dan urusan Dewan masing-masing. Tatacara Parlimen dan peraturan Majlis Mesyuarat Parlimen sepertimana yang dijelaskan di dalam *Erskine May* boleh dibahagikan kepada tiga kumpulan. Pertama, bentuk tatacara yang digunakan di dalam Dewan. Kedua, susunan pengarahan dan penurunan kuasa dan ketiga, peraturan yang mengawal perjalanan bentuk dan susunan (*machinery*).[61]

Oleh itu kewujudan Peraturan Mesyuarat di dalam Majlis Parlimen menyebutkan dengan terang dan jelas, syarat-syarat bagi perbahasan yang mengawal kandungan perbahasan dan tatacara berbahas. Contohnya, di dalam Peraturan Mesyuarat 23(1)(c) menyatakan apabila seseorang ahli ingin memberikan soalan, pertanyaan ahli tersebut tidak boleh mengandungi sebarang hujah, sangkaan, tohmahan, puji atau keji atau mengandungi perkataan yang boleh mengelirukan, menyindir

57 ibid. s 9(g).
58 ibid. s 9(h).
59 ibid. s 9(l).
60 Perlembagaan Persekutuan, per 62(1).
61 L.K. Hock, 'Peraturan-peraturan Majlis Mesyuarat Dewan Undangan Negeri dan Implikasinya', (Seminar Sistem Berparlimen di Terengganu, Kuala Terengganu, 1993).

atau menyakitkan hati ataupun mengenai sebarang perkara dangkal atau meminta penerangan mengenai sesuatu perkara remeh. Sesuatu pertanyaan itu tidak boleh dikeluarkan berkenaan dengan sifat atau kelakuan sesiapa melainkan sifat dan kelakuannya dalam menjalankan urusan jawatannya sahaja.[62]

Sekiranya seseorang ahli mengeluarkan sangkaan jahat ke atas ahli lain maka adalah penting untuk perkataannya dibuktikan dengan fakta. Ini kerana peraturan mesyuarat menyatakan seseorang ahli itu adalah bertanggungjawab untuk memastikan apa yang beliau katakan di Dewan adalah berasaskan fakta. Peraturan Mesyuarat 35(1) menyebutkan ahli yang hendak bercakap dikehendaki bangun di tempatnya dan setelah dipanggil namanya oleh Pengerusi maka barulah ahli tersebut berdiri dan mula berbahas dengan mengarahkan ucapannya kepada Pengerusi. Seseorang ahli tidak boleh memulakan ucapannya atau berucap melainkan setelah diberikan keizinan oleh Pengerusi.

Peraturan Mesyuarat 35(2) menyebutkan sekiranya terdapat dua atau lebih ahli bangun serentak maka Pengerusi hendaklah memanggil ahli yang dahulu sekali terpandang olehnya. Manakala Peraturan Mesyuarat 35(6) membenarkan Yang di-Pertua atau Pengerusi mengehadkan masa bagi ahli Parlimen berucap sekiranya menghadapi kekangan masa jika perlu. Peraturan Mesyuarat 36 adalah merujuk kepada isi-isi ucapan di dalam Dewan Rakyat. Peraturan Mesyuarat ini mengandungi 12 perenggan kecil yang antara lain menyebutkan jika ahli Parlimen membahaskan rang undang-undang:

(1) Seseorang Ahli Dewan apabila membahaskan Rang Undang-undang yang meminda akta induk, hanya perkara-perkara yang berkaitan Rang Undang-undang itu sahaja yang dibenarkan bercakap dan tidak kepada perkara yang melibatkan akta induk.

(2) Tidak boleh disebutkan apa-apa perkara yang sedang dalam timbangan mahkamah sekira-kira pada timbangan Pengerusi harus merosakkan kepentingan-kepentingan pihak yang berbicara itu.

(3) Adalah salah pada peraturan mesyuarat jika dicuba menimbangkan semula apa-apa perkara tertentu yang telah diputuskan oleh Majlis Mesyuarat dalam penggal Majlis yang ada sekarang, kecuali

62 Peraturan-peraturan Majlis Mesyuarat Dewan Rakyat, PM 23(1)(c).

dengan dikeluarkan usul bersendiri bagi membatalkan keputusan Majlis Mesyuarat berkenaan dengan perkara itu.

(4) Adalah menjadi kesalahan bagi Ahli-ahli Dewan yang menggunakan bahasa kurang sopan (biadab) atau membuat pernyataan seksis.

(5) Seseorang ahli tidak dibenar menyebutkan nama ahli yang lain.

(6) Seseorang ahli tidak boleh mengeluarkan sangkaan jahat ke atas siapa-siapa ahli lain.

(7) Nama Seri Paduka Baginda Yang di-Pertuan Agong atau nama Raja-raja Melayu atau Tuan-tuan Yang Terutama Yang di-Pertua-Yang di-Pertua Negeri tidak boleh digunakan bagi mempengaruh Majlis Mesyuarat.

(8) Kelakuan atau sifat Seri Paduka Baginda Yang di-Pertuan Agong atau nama Raja-raja Melayu atau Tuan-tuan Yang Terutama Yang di-Pertua-Yang di-Pertua Negeri atau Hakim-hakim dan lain-lain orang yang menjalankan keadilan mahkamah atau ahli-ahli Majlis Pasukan Bersenjata atau mana-mana Suruhanjaya Jawatan Kerajaan yang ditubuhkan menurut Bahagian X dalam Perlembagaan atau ahli-ahli Suruhanjaya Pilihan raya atau siapa-siapa jua Ketua Negara negeri-negeri yang bersahabat dengan Malaysia, tidak boleh disebutkan kecuali dengan dikeluarkan usul bersendiri bagi maksud-maksud itu.

Peraturan Mesyuarat 36 tidak menjelaskan sama ada kandungan ini hanya mengawal percakapan lisan semata-mata atau *unparliamentary language* boleh berlaku dalam bentuk perbuatan. Peraturan Mesyuarat 36(4) hanya menjelaskan kesalahan bagi ahli Parlimen yang menggunakan bahasa kurang sopan (biadab) atau membuat pernyataan seksis. Walaupun Peraturan Mesyuarat 36(4) kebiasaannya merujuk kepada bahasa yang dituturkan namun kadangkala peruntukan ini turut diguna pakai bagi merujuk tingkah laku perbuatan. Hal ini signifikan apabila Yang Berhormat Tuan Khoo Poay Tiong dan beberapa ahli Parlimen lain telah mengusulkan kepada Yang di-Pertua Dewan Rakyat untuk merujuk Yang Berhormat Puncak Borneo kepada Jawatankuasa Hak dan Kebebasan setelah didakwa menunjukkan isyarat lucah semasa sesi penggulungan perbahasan Rang Undang-undang Perbekalan 2021 di bawah Kementerian Perusahaan Perladangan dan Komoditi pada 1

Disember 2020.[63] Justeru, Peraturan Mesyuarat 36(4) telah digunakan bagi merujuk ahli Parlimen Puncak Borneo atas tindakan menunjukkan isyarat lucah sebagai bahasa kurang sopan di dalam Parlimen.

Hakikatnya, peruntukan bahasa kurang sopan wujud sama ada di Parlimen United Kingdom, Parlimen Australia malahan di Parlimen Malaysia. Bahkan termasuk dalam bahasa kurang sopan di Parlimen Malaysia apabila menyentuh nama, kelakuan atau sifat penjawat-penjawat tertentu di dalam Perlembagaan Persekutuan seperti Yang di-Pertuan Agong sebagai Ketua Negara, Raja-raja Melayu, Hakim, serta ahli-ahli Suruhanjaya Pilihan Raya dan Suruhanjaya Jawatan Kerajaan sepertimana Peraturan Mesyuarat 36(7) dan 36(8). Memandangkan Malaysia mengamalkan sistem Persekutuan, maka larangan penggunaan bahasa kurang sopan turut diperluaskan kepada Ketua-ketua Negeri dan sebagainya.

Pindaan Peraturan Mesyuarat 36(4) Peraturan-peraturan Mesyuarat Dewan Rakyat

Pada 27 November 2012, Jawatankuasa Peraturan-peraturan Mesyuarat telah mencadangkan untuk meminda Peraturan Mesyuarat 36(4) dengan memasukkan selepas perkataan 'biadab' melarang ahli Parlimen 'membuat pernyataan yang seksis'. Pindaan ini bertujuan untuk memperuntukkan secara khusus bahawa seseorang ahli juga dilarang daripada mengeluarkan apa-apa pernyataan yang berbentuk seksis khususnya semasa perbahasan. Insiden penggunaan bahasa kurang sopan yang bersifat seksis oleh Ahli Parlimen Kinabatangan terhadap Ahli Parlimen Batu Gajah pada tahun 2007 dianggap sebagai klimaks kepada pelanggaran peraturan berkenaan bahasa kurang sopan. Sebelum itu, terdapat beberapa insiden lain antaranya melibatkan Ahli Parlimen Jerai (1995), Sri Gading (2000), Kinabatangan (2001), Timbalan Menteri Kesihatan (2004), Jerai (2005), Tangga Batu (2005), Pendang (2005), Kubang Kerian (2005), Rantau Panjang (2006).[64] Penggunaan perkataan seksis masih terus diungkapkan walaupun selepas dimasukkan pindaan

63 Lihat perenggan 76, Aturan Urusan Mesyuarat DR 17 Disember 2020, 22. Usul Tuan Khoo Poay Tiong [Kota Melaka] yang merujuk Peraturan Mesyuarat 36(4) dan 41(a) untuk merujuk Ahli Parlimen Puncak Borneo kepada Jawatankuasa Hak dan Kebebasan.

64 A. Zamhari, 'Senarai penggunaan perkataan seksis di dalam Parlimen Malaysia' (*Malaysiakini*, 17 May 2007) <http://www.malaysiafrance.com/2007/05/sexist-remarks-uttered-in-parliament.html> dicapai 11 Januari 2021.

terhadap Peraturan Mesyuarat 36(4) pada tahun 2012.[65] Terkini adalah apabila Ahli Parlimen Baling menyebutkan perkataan kurang sopan seperti 'gelap tidak nampak' dan 'pakailah bedak' kepada Ahli Parlimen Batu Kawan.[66] Oleh itu, perkataan yang bersifat seksis juga telah turut sama dikategorikan sebagai perkataan kurang sopan di dalam Parlimen.

Kuasa Yang di-Pertua untuk mentafsir Peraturan Mesyuarat dan mendisiplinkan ahli Parlimen

Setiap Speaker sama ada di Dewan Negara, Dewan Rakyat mahupun di Dewan-dewan Undangan Negeri mempunyai kuasa menjaga disiplin dalam mesyuarat Dewan untuk memastikan persidangan Dewan berjalan dengan tenteram dan sempurna sepertimana tertera dalam Aturan Urusan Mesyuarat dalam masa yang ditetapkan.[67] Kuasa disiplin ini perlu untuk menghalang tindakan yang bersifat lucah, biadab, dan menghina kemuliaan oleh sesiapa sahaja kepada institusi Parlimen. Menurut Peraturan Mesyuarat 41(e), apabila seorang ahli Parlimen sedang berucap, ahli-ahli lain hendaklah diam dan tidak boleh mengganggu dengan cara kurang adab. Tetapi apabila terdapat Ahli yang menyalahi peraturan mesyuarat maka ahli lain boleh bangun mencelah Ahli yang sedang berucap dan meminta perhatian Speaker berhubung kesalahan yang menyalahi Peraturan Mesyuarat.

Kebiasaannya Ahli Parlimen lain akan bangun dengan menyebutkan '*Point of Order*' dan memetik di bawah Peraturan Mesyuarat tertentu yang dirujuk.[68] Hal ini penting kerana kesalahan yang berlaku harus dicelah semasa kesalahan tersebut berlaku. Amalan ini sama sepertimana *House of Representatives, Australia*.[69] Ahli Parlimen lain akan memohon pertimbangan Speaker untuk satu keputusan atau Petua Speaker berhubung kesalahan yang dilakukan. Speaker di bawah kuasa budi

65 DR Deb 9 Apr 2015, Bil. 20, 112-6.

66 Petua Yang di-Pertua Dewan Rakyat dalam DR Deb 14 Jul 2020, Bil. 3, 1. Perbincangan lanjut perkataan seksis boleh dirujuk dalam M. Balakrishnan, 'Parliamentary Questions and Debates' dalam M.A.M. Yusof dan lain-lain (eds), *Law, Principles and Practice in the Dewan Rakyat (House of Representatives) of Malaysia* (Subang Jaya, Sweet & Maxwell, 2020) 305-6.

67 M.Z. Ismail, 'Penggantungan Ahli Dari Dewan' (Persidangan Speaker-speaker Dewan Parlimen dan Dewan-dewan Undangan Negeri Seluruh Malaysia kali ke-32, Subang Jaya, 2003).

68 Peraturan-peraturan Majlis Mesyuarat Dewan Rakyat, PM 37(1)(a).

69 Elder (n 12) 515.

bicaranya berhak untuk masuk campur dan menentukan sama ada sesuatu perkataan boleh dianggap sebagai kurang sopan atau *unparliamentary*. Kebiasaannya, penentuan Speaker bergantung kepada sifat perkataan dan konteks bagaimana perkataan itu digunakan.[70]

Peraturan Mesyuarat 42 membolehkan seseorang ahli Parlimen ditegur oleh Speaker mengenai suatu peraturan mesyuarat. Ahli yang sedang bercakap 'hendaklah duduk dan Majlis Mesyuarat atau Jawatankuasa hendaklah diam supaya Speaker boleh didengar dengan tidak terganggu'. Speaker akan mendapatkan penjelasan daripada ahli yang mengeluarkan perkataan kurang sopan itu untuk menerangkan penggunaan atau maksud perkataan yang dikeluarkan.[71] Sekiranya perkataan kurang sopan diungkapkan ahli Parlimen maka Speaker atau Pengerusi yang mempengerusikan mesyuarat mempunyai kuasa untuk mengarahkan perkataan berkenaan ditarik balik dengan kadar segera.[72] Ahli-ahli Parlimen lain akan mendesak supaya permohonan maaf dilakukan selepas itu dan dalam banyak keadaan, Speaker akan mengarahkan permohonan maaf dilakukan atas perkataan bahasa kurang sopan yang dikeluarkan. Hal yang sama juga berlaku di *House of Representatives, Australia* apabila perkataan kurang sopan akan diarahkan ditarik balik oleh Speaker. Namun, perkataan kurang sopan yang ditarik balik tidak diikuti dengan permohonan maaf memandangkan secara tidak langsung penarikan balik penggunaan perkataan itu telah menandakan permohonan maaf kecuali Speaker mengarahkannya secara spesifik.[73]

Pada sesetengah keadaan, kadangkala Speaker akan mendiamkan diri terhadap perkataan yang didengarnya agar perbahasan dapat diteruskan tanpa gangguan.[74] Hal ini dapat dilihat semasa pemilihan Yang di-Pertua Dewan Rakyat yang baharu pada 13 Julai 2020, terdapat 16 perkataan yang seharusnya bersifat *unparliamentary* seperti 'speaker bodoh', 'mabuk', 'Carlsberg', 'cucu', 'atuk', 'tidak siuman', 'barua' dan lain-lain lagi telah diucapkan oleh ahli Parlimen sama ada penyokong

70 ibid. 514.

71 Antara contoh adalah apabila Timbalan Yang di-Pertua Dewan Rakyat, Dato Seri Azalina Othman Said meminta YB Ahli Parlimen Bintulu memberikan penjelasan berhubung kenyataan beliau terhadap Ketua Pengarah Kesihatan. DR Deb 11 Nov 2020, Bil. 34, 85.

72 DR Deb 6 Nov 2008, Bil. 57. Rujukan lanjut di dalam M.A.M. Yusof dan lain-lain (eds), *Law, Principles and Practice in the Dewan Rakyat (House of Representatives) of Malaysia* (Subang Jaya, Sweet & Maxwell, 2020) 189-90.

73 Elder (n 12) 514.

74 Blackburn dan lain-lain (n 2) 6-089.

kerajaan atau pembangkang di dalam Dewan Rakyat tanpa teguran daripada Pengerusi.[75] Adalah tidak wajar bagi seseorang ahli Parlimen memberikan komen peribadi terhadap ahli lain. Sebarang penggunaan bahasa kasar atau bahasa menghina yang digunakan di dalam perbahasan juga harus ditarik balik dengan segera.[76]

Selain itu, bukan semua perkataan yang dianggap kurang sopan boleh dianggap *unparliamentary language* kerana Speaker memainkan peranan penting mengawal penggunaan bahasa kurang sopan di dalam Parlimen. Contohnya, pada 7 Oktober hingga 5 Disember 2019, perkataan bodoh digunakan hampir 140 kali. Namun, ia digunakan dalam pelbagai bentuk seperti apabila ahli Parlimen mengingatkan kerajaan bahawa pengundi tidak bodoh atau Speaker mengingatkan supaya ahli-ahli Parlimen tidak menggunakan perkataan bodoh. Pada masa yang sama, perkataan bodoh juga digunakan ahli Parlimen bagi menghina lawan mereka.[77]

Terdapat dua keadaan di dalam *House of Commons*, United Kingdom bagi seseorang Ahli boleh digantung keahliannya. Pertama, sekiranya berkelakuan tidak sopan di dalam Dewan. Kedua, apabila Ahli didapati telah tidak mematuhi Kod Etika sebagai Ahli Parlimen atau telah melakukan penghinaan kepada Dewan.[78] Amalan di Parlimen Malaysia adalah dengan memerintahkan ahli untuk keluar atau digantung keahliannya dalam Dewan sekiranya ahli berkelakuan tidak sopan atau mengganggu perjalanan mesyuarat.[79] Tanggungjawab Pengerusi yang mempengerusikan mesyuarat adalah untuk memastikan peraturan berbahas digunakan di dalam Dewan serta mengawal tingkah laku ahli, sama ada terhadap ahli lain atau kepada institusi Parlimen sendiri. Kuasa disiplin Pengerusi bertujuan untuk memastikan perbahasan sangat berfokus dan relevan. Kuasa disiplin Pengerusi juga untuk mengarahkan mana-mana ahli meninggalkan Dewan apabila gagal bertindak dengan

75 DR Deb 13 Jul 2020, Bil. 2.

76 Rules of behaviours and courtesies in the House of Commons Issued by the Speaker and the Deputy Speakers, House of Commons, November 2018, 8.

77 R. Ahmad dan lain-lain, 'How effective was your MP in Parliament? Find out here' *The Star* (Kuala Lumpur, 11 Jan 2020) <https://www.thestar.com.my/news/nation/2020/01/11/how-effective-was-your-mp-in-parliament-find-out-here> dicapai 11 Januari 2021.

78 O. Gay, 'House of Commons Background Paper: Disciplinary and Penal Powers of the House of Commons' (27 November 2012), House of Commons Library, dicapai 4 Januari 2020.

79 Ismail (n 67) 2.

tingkah laku dengan sewajarnya.[80] Kepentingan menjaga kelakuan tertib dan peranan Pengerusi dijelaskan dalam satu Jurnal *House of Commons* bertarikh 22 Januari 1693 seperti berikut,

> *To the end that all the Debates in this House should be grave and orderly, as becomes so great an Assembly; and that all Interruptions should be prevented; Be it Ordered and Declared, That no Member of this House do presume to make any Noise or Disturbance, whilst any member shall be orderly debating, or whilst any Bill, Order or other Matter, shall be in reading or opening: And, in case such Noise or Disturbance, that Mr Speaker do call upon the Member, by Name, making such Disturbance: And that every such Person shall incur the Displeasure and Censure of the House.*[81]

Secara asasnya, Pengerusi akan memberikan amaran dengan menarik perhatian Majlis Mesyuarat atau Jawatankuasa kepada kelakuan seseorang ahli yang berdegil-degil menyebutkan perkara yang tidak ada kena-mengena dengan perkara mesyuarat atau berulang-ulang menyebutkan hujahnya sendiri atau hujah-hujah ahli lain dalam sesuatu perbahasan, dengan memerintahkan ahli berkenaan untuk berhenti bercakap.[82] Sekiranya seseorang ahli berkelakuan tidak senonoh atau melakukan perbuatan menghina Dewan atau tidak mengendahkan kuasa Pengerusi secara berterusan maka Pengerusi boleh memerintahkan Ahli yang berkelakuan sedemikian keluar dari Majlis Mesyuarat selama suatu tempoh tidak melebihi 10 hari dan Ahli ini hendaklah dengan serta merta keluar dari Majlis Mesyuarat.[83] Kuasa pengusiran ini adalah signifikan kerana perkataan 'hendaklah' yang dirujuk di sini bermaksud tiada pilihan lain bagi Speaker kecuali mewajibkan ahli Parlimen yang berterusan mengungkapkan perkataan atau menunjukkan perbuatan tidak sopan ini untuk keluar dari Dewan.[84]

Jika mesyuarat berakhir sebelum tamat tempoh Ahli itu diperintahkan keluar maka baki tempoh hukuman yang dijalankan seseorang Ahli itu hendaklah dibawa ke mesyuarat akan datang melainkan jika Parlimen dibubarkan. Pemprorogan (pemberhentian sementara) Parlimen tidak

80 Rules of Debate, New South Wales Legislative Council Practice, 299.
81 Gay (n 78) 1.
82 Peraturan-peraturan Majlis Mesyuarat Dewan Rakyat, PM 44(1).
83 ibid. PM 44(2).
84 S. Buang, 'Apa Dah Jadi Dengan Ahli Parlimen?' *Sinar Harian* (Shah Alam, 26 Julai 2020) <https://www.sinarharian.com.my/article/93994/KHAS/Pendapat/Apa-dah-jadi-dengan-ahli-Parlimen> dicapai 10 Januari 2021.

menggugurkan baki tempoh hukuman yang dikenakan ke atas seseorang Ahli.[85] Sekiranya Peraturan Mesyuarat 44(1) dan (2) tidak mencukupi untuk menangani kelakuan seseorang ahli, tindakan di bawah Peraturan Mesyuarat 44(3) boleh dimulakan untuk menggantung perkhidmatan seseorang ahli. Pengerusi mesyuarat hendaklah menamakan Ahli yang berkenaan iaitu dengan menyebut namanya. Tatacara menggantung perkhidmatan seseorang Ahli kebiasaannya dengan menyebut nama Ahli tersebut seperti berikut:[86]

> Saya dengan ini menamakan Ahli Yang Berhormat Tuan [nama].

Seorang Menteri hendaklah selepas itu bangun dan mencadangkan dan seorang Menteri lain menyokong suatu usul seperti berikut:

> Bahawa Majlis Mesyuarat dengan ini memutuskan bahawa Tuan [nama] digantung daripada perkhidmatan Majlis Mesyuarat ini sehingga (tarikh).

Pengerusi hendaklah mengemukakan usul itu bagi diputuskan oleh Majlis Mesyuarat tanpa sebarang pindaan, penangguhan atau perbahasan. Sekiranya usul tersebut dipersetujui dan diterima maka ahli yang berkenaan akan diarahkan keluar dari Dewan dan tidak dibenarkan menghadiri mesyuarat yang sedang berjalan itu. Apabila ahli yang diarahkan keluar dewan berdegil enggan dikeluarkan daripada Dewan maka ahli tersebut boleh dikeluarkan dengan kekerasan dengan bantuan Bentara Mesyuarat.[87] Walau bagaimanapun, jarang sekali kekerasan digunakan oleh Bentara untuk mengeluarkan ahli Parlimen yang degil. Hakikatnya, Peraturan Mesyuarat 44 memperuntukkan tiga kaedah di mana Yang di-Pertua boleh menggantung seorang ahli yang telah melakukan kesalahan menggunakan bahasa kurang sopan (biadab) atau seksis di dalam Dewan. Pertama, menggunakan kuasanya sendiri yang diberikan Peraturan Mesyuarat iaitu penggantungan tidak melebihi 10 hari. Kedua, melalui penamaan mengikut suatu usul oleh seorang Menteri (termasuk Timbalan Menteri) untuk penggantungan melebihi 10 hari dan usul ini tidak akan dibahaskan. Ketiga, melalui kuasa mutlak

85 Z. Ibrahim, 'Kawalan dan Prosiding Dewan' (Persidangan Speaker-speaker Dewan Parlimen dan Dewan Undangan Negeri Seluruh Malaysia kali ke-31, Kota Kinabalu, 2002) 3.

86 Ismail (n 67) 3.

87 Abdullah (n 4) 78-9.

Majlis Mesyuarat yang dibuat melalui suatu usul yang keputusannya akan dicadangkan oleh Jawatankuasa Hak dan Kebebasan.[88]

Selain daripada peruntukan di bawah Peraturan Mesyuarat 44, Yang di-Pertua Dewan Rakyat berkuasa di dalam mengawal tatacara di dalam Dewan berpandukan kuasa yang diberikan di bawah Peraturan Mesyuarat 99 dan 100. Peraturan Mesyuarat 99 memberikan Yang di-Pertua Dewan Rakyat kuasa untuk mentafsirkan mana-mana Peraturan Mesyuarat dan amalan majlis mesyuarat dan tafsiran beliau adalah muktamad kecuali jika terdapat usul persendirian yang menentang keputusan tersebut. Melalui Peraturan Mesyuarat 99 juga, Yang di-Pertua Dewan Rakyat boleh mengeluarkan petua-petua berkenaan sesuatu Peraturan-peraturan Mesyuarat dan amalannya. Manakala Peraturan Mesyuarat 100 memberikan kuasa kepada Yang di-Pertua mengawal selia perkara yang tidak diperuntukkan secara khusus dalam Peraturan Majlis Mesyuarat seperti mengarahkan bagaimana Peraturan Mesyuarat patut dilaksanakan.

Cadangan penambahbaikan dan kesimpulan

Keputusan yang dibuat Speaker kebiasaannya tidak terkandung di dalam Peraturan-peraturan Majlis Mesyuarat. Keputusan untuk menentukan sama ada sesuatu perkataan atau perbuatan itu boleh dianggap menghina Dewan adalah bergantung sepenuhnya kepada budi bicara Yang di-Pertua atau Pengerusi yang terikat untuk mentafsirkannya berdasarkan punca kuasa daripada Peraturan Mesyuarat.[89] Hakikatnya perbuatan ahli atau sesiapa sahaja yang berada di dalam kawasan Parlimen semasa mesyuarat boleh dikatakan melakukan perbuatan menghina Parlimen jika ia bercanggah dengan undang-undang seperti Akta Majlis Parlimen (Keistimewaan dan Kuasa) 1952 dan Peraturan-peraturan Majlis Mesyuarat, Dewan Rakyat dan Dewan Negara.[90] Perbuatan ahli tidak kira melalui gerak anggota badan[91] atau percakapannya boleh

88 Ismail (n 67) 4-5.

89 Lihat Petua Yang di-Pertua Dewan Rakyat, YB Tan Sri Dato' Mohamad Ariff Md. Yusof dalam DR Deb 9 Ogos 2018, Bil. 16. Rujuk kompilasi Petua Speaker dalam A.Z.Z. Abidin dan lain-lain, 'Selected Speaker's Ruling (2006-2019)' dalam M.A.M. Yusof dan lain-lain (eds), *Law, Principles and Practice in the Dewan Rakyat (House of Representatives) of Malaysia* (Subang Jaya, Sweet & Maxwell, 2020) 214-5.

90 M.Z. Ismail, 'Amalan dan Tradisi Parlimen' (Persidangan Speaker-speaker Seluruh Malaysia kali ke-20, Kota Bharu, 1988) 10.

91 S.N.Z. Miscon, 'Isyarat Lucah: 23 MP Bawa Usul ke atas Timbalan Menteri' (*Malaysia Dateline*, 23 Disember 2020) <https://malaysiadateline.com/isyarat-lucah-23-mp-bawa-usul-ke-atas-willie-mongin/> dicapai 11 Julai 2021.

ditafsirkan sebagai lucah atau tidak adalah bergantung kepada budi bicara Yang di-Pertua.

Sebagai tambahan, tindakan ahli Parlimen yang membuat provokasi kepada ahli lain sehingga menimbulkan kemarahan dan penggunaan bahasa kurang sopan juga merupakan suatu perkara yang harus diberikan pertimbangan agar tindakan yang sama boleh diambil di bawah Peraturan Majlis Mesyuarat Dewan Rakyat seperti terhadap ahli Parlimen yang mengeluarkan perkataan kurang sopan.[92] Memandangkan perkataan kurang sopan di dalam Parlimen Malaysia tidak pernah dikodifikasi di dalam satu bentuk sebagai senarai '*Unparliamentary Language*' maka mungkin sudah sampai masanya Parlimen Malaysia mempertimbangkan untuk menyenaraikan perkataan kurang sopan sejak Parlimen Malaysia mula bersidang. Amalan menyenaraikan bahasa kurang sopan di Parlimen negara-negara Komanwel telah dilakukan setiap tahun dalam jurnal *The Table, the Journal of the Society of Clerks-at-the-Table in Commonwealth Parliaments.*

1. Pindaan kepada Akta Majlis Parlimen (Keistimewaan dan Kuasa) 1952

Amaran dan tindakan keluar yang diarahkan Speaker untuk mengeluarkan ahli Parlimen yang berbahasa kurang sopan bukan sesuatu yang baharu.[93] Setiap kali berlakunya penggunaan bahasa kurang sopan maka akan diikuti pertikaman lidah berpanjangan dalam kalangan ahli di dalam Dewan Rakyat maka setiap kali itulah Speaker akan membuat Petua menegur perbuatan ahli Parlimen. Maka timbul satu persoalan sama ada mekanisme amaran dan Petua Speaker ini dihormati dan dijunjung tinggi oleh ahli Parlimen walaupun telah wujud Peraturan Mesyuarat 43 dan 44, Peraturan-peraturan Majlis Mesyuarat Dewan Rakyat yang menyatakan keputusan Yang di-Pertua adalah muktamad dan beliau bertanggungjawab memastikan peraturan-peraturan Majlis Mesyuarat dihormati dan keputusan hanya boleh disemak semula melalui satu usul persendirian.[94]

92 Tindakan provokasi ahli terhadap ahli lain yang menyebabkan penggunaan perkataan kurang sopan di dalam Dewan Rakyat. Rujuk DR Deb 7 Ogos 2018, Bil. 14, 41.

93 Tindakan ini dilakukan secara konsisten oleh Speaker: Tan Sri Datuk Seri Panglima Pandikar Amin Haji Mulia dalam DR Deb 23 Okt 2008, Bil. 51; YB Tan Sri Dato' Mohamad Ariff Md. Yusof dalam DR Deb 9 Ogos 2018, Bil. 16; YB Datuk Azhar Azizan Harun dalam DR Deb 21 Jul 2020, Bil. 7, 1.

94 Peraturan-peraturan Majlis Mesyuarat Dewan Rakyat, PM 43 & 44.

Oleh itu, sudah sampai masanya tindakan yang lebih tegas harus diambil. Pindaan terhadap Peraturan-peraturan Mesyuarat di dalam Dewan Rakyat dan Akta Majlis Parlimen (Keistimewaan dan Kuasa) 1952 perlu dilakukan. YB Kasthuri Patto pernah mencadangkan Peraturan Mesyuarat 36(13) diwujudkan agar sesiapa yang melakukan kesalahan di bawah Peraturan Mesyuarat 36(4) dan 36(10) terus dirujuk kepada Jawatankuasa Hak dan Kebebasan untuk siasatan dan Peraturan Mesyuarat 36(14) (yang baharu) sekiranya dengan sengaja melakukan kesalahan di bawah (4) dan (10) harus dijatuhkan denda tidak kurang daripada RM500 atas kesalahan di bawah seksyen 9(c), Akta Majlis Parlimen (Keistimewaan dan Kuasa) 1952.[95]

2. **Cadangan usul 'Bahasa Kurang Sopan' dikemukakan pada setiap awal permulaan persidangan Dewan Rakyat atau Dewan Negara**

   Usul merupakan cadangan yang boleh dikemukakan setiap ahli untuk mendapat ketetapan di dalam Dewan. Dengan adanya ketetapan (resolusi) daripada Dewan maka usul akan menjadi sebahagian perintah dan jika diingkari boleh dianggap menghina Dewan dan dikenakan hukuman di bawah Akta Majlis Parlimen (Keistimewaan dan Kuasa) 1952. Pada 13 Jun 2012, satu usul berhubung bahasa kurang sopan telah dikemukakan di dalam *House of Commons*, United Kingdom seperti berikut:

   > *That this House dislikes the unacceptable language allowed during the first Opposition Day debate on 13 June 2012; and directs that the occupants of the Chair should not regard its use then as being a binding precedent.*[96]

   Oleh itu, usul bahasa kurang sopan boleh dikemukakan Kerajaan setiap kali sebelum penggal Parlimen baharu dibuka bagi mengingatkan setiap ahli Parlimen peri pentingnya menjaga tertib dan martabat institusi Parlimen daripada menggunakan bahasa kurang sopan di dalam Parlimen.

95 K. Patto, 'Propose for 2 new amendments to the Parliamentary Standing Orders against MPs who utter racist, sexist, offensive and unparliamentary remarks in Parliament' (*DAP Malaysia*, 22 Jul 2020) <https://dapmalaysia.org/statements/2020/07/22/30079/> dicapai 11 Januari 2021.

96 Usul Bahasa Kurang Sopan di dalam House of Commons, United Kingdom (13 Jun 2012) <https://edm.parliament.uk/early-day-motion/44331/unparliamentary-language> dicapai 19 Januari 2021.

3. Whip Parti

Selain melalui kaedah perundangan, kaedah bukan undang-undang juga boleh digunakan. Perbincangan dan perjumpaan bersama whip parti berhubung penggunaan perkataan-perkataan yang berbentuk hasutan, rasis, biadab dan seksis dalam Dewan Rakyat wajar dilakukan. Pendekatan ini dilakukan oleh Yang di-Pertua Datuk Azhar Azizan Harun di samping mengeluarkan Petua Speaker terhadap penggunaan bahasa kurang sopan sebelum itu.[97] Kesemua whip parti yang hadir telah sebulat suara memperbaharui komitmen mereka untuk mempertahankan peraturan-peraturan Majlis Mesyuarat Dewan Rakyat dalam memastikan perkataan berbaur hasutan, rasis, biadab dan seksis tidak digunakan oleh Ahli-ahli Yang Berhormat.

4. Kod Etika Ahli Parlimen Malaysia

Di peringkat antarabangsa, terdapat pelbagai institusi dan badan antarabangsa yang telah mengesyorkan pelbagai kod etika kepada ahli Parlimen. *Commonwealth Parliamentary Association (CPA)* mencadangkan suatu *Recommended Benchmarks for Codes of Conduct Applying to Members of Parliament*. Antara tujuan pembentukan kod tatakelakuan ahli Parlimen ini adalah untuk mendorong ahli Parlimen menjadi lebih beretika dalam tingkah laku serta meningkatkan kesopanan dan memperkukuhkan kepercayaan masyarakat terhadap institusi Parlimen.[98] Hal ini dapat dilihat di dalam Perenggan 3.4 kod ini yang menyatakan sikap bertamadun (sivil) iaitu bagaimana ahli Parlimen harus melayan orang lain dan institusi Parlimen dengan rasa hormat, penuh maruah dan sopan termasuk kepada kakitangan Parlimen. Perenggan 3.5 pula berhubung tingkah laku iaitu setiap ahli Parlimen mestilah tidak melakukan serangan, gangguan atau menakut-nakutkan orang lain.[99]

Selain itu, terdapat juga *Common Ethical Principles for Members of Parliament* yang dicadangkan oleh Pertubuhan Pemantauan Parlimen di peringkat dunia agar institusi Parlimen menangani

97 Rujuk Petua Yang di-Pertua Dewan Rakyat dalam DR Deb 21 Jul 2020, Bil. 7, 1.
98 Commonwealth Parliamentary Association (CPA), *Recommended Benchmarks for Codes of Conduct applying to Members of Parliament* (London, CPA, 2016) 4.
99 ibid. perenggan 3.4 dan 3.5.

persoalan integriti ahli Parlimen khususnya menjadi lebih beretika dan sopan apabila bersuara di dalam Dewan. Terdapat lima elemen penting yang disenaraikan yang seharusnya menjadi etika dan prinsip ahli-ahli Parlimen termasuklah mempertahankan demokrasi, hak asasi manusia dan keluhuran undang-undang, berkhidmat demi kepentingan orang awam, memastikan integriti awam, bersifat profesional, dan menghormati kepelbagaian dan pluralisme.

Justeru, dua elemen penting di dalam etika dan prinsip ahli Parlimen yang boleh dicadangkan berdasarkan dokumen ini dapat dilihat di mana ahli Parlimen harus bersikap profesional. Ahli Parlimen harus bersikap menghormati ahli Parlimen yang lain atau kepada warganegara dan ini termasuk tidak menjatuhkan martabat institusi Parlimen itu sendiri. Selain itu, ahli Parlimen harus bertindak secara bertamadun dan menggunakan perkataan sopan dan bersesuaian di dalam perbincangan politik dan perbahasan dewan.

Bagi menghormati kepelbagaian dan pluralisme, seharusnya ahli Parlimen bersikap dan mempunyai tanggungjawab memastikan atmosfera yang bersifat inklusif di dalam badan perundangan bagi semua segmen di dalam masyarakat. Pada masa yang sama ahli Parlimen harus menunjukkan sikap toleransi sifar kepada ahli Parlimen yang menggunakan ungkapan kebencian dalam apa bentuk sekalipun. Ini termasuklah intimidasi, sama ada terhadap bangsa, etnik, gender, agama, status minoriti atau apa-apa perkara. Ahli Parlimen juga bertanggungjawab mengambil peranan melindungi ruang bagi perbincangan politik secara pluralisme di dalam institusi Parlimen dan masyarakat. Ahli Parlimen mesti menghormati rakan-rakannya dengan hormat tanpa mengira parti atau afiliasi politik mereka.[100]

Oleh itu, sudah sewajarnya Parlimen Malaysia melalui sebuah Jawatankuasa Dewan atau Jawatankuasa Pilihan Khas Parlimen[101] yang merangkumi pelbagai parti boleh ditubuhkan untuk

100 GOPAC, *Common Ethical Principles for Members of Parliament* <http://gopacnetwork.org/Docs/Common_Ethical_Principles_for_Members_of_Parliament.pdf> dicapai 17 Januari 2021.

101 Peraturan-peraturan Majlis Mesyuarat Dewan Rakyat, PM 81.

merangka dan mencadangkan sebuah Kod Tatakelakuan Ahli Parlimen Malaysia. Cadangan kodifikasi *Recommended Benchmarks for Codes of Conduct Applying to Members of Parliament* oleh *Commonwealth Parliamentary Association (CPA)* dan *Common Ethical Principles for Members of Parliament* yang digubal oleh Pertubuhan Pemantauan Parlimen boleh dijadikan asas bagi Kod Tatakelakuan Ahli Parlimen Malaysia.

Jadual 1. Senarai sebahagian perkataan kurang sopan di Malaysia

Bil	Tarikh	Bahasa Kurang Sopan / *Unparliamentary language*
1.	27 Mei 1963	Dia jadi tali barut siapa…
2.	4 Januari 1964	Basohkan jiwanya yang kotor dan hatinya yang busok itu biar dia insaf dan menjadi saorang laki-laki yang tulin
3.	7 Januari 1964	Amaran dari Speaker
4.	3 Mac 1967	*Go to hell*
5.	22 November 1983	Tahi dan kurang ajar
6.	24 Oktober 1989	Kurang ajar, histeria
7.	15 November 1997	Kakak tua
8.	21 Jun 2007	Otak bodoh
9.	9 Mei 2007	Bocor
10.	30 April 2008	*Bigfoot*
11.	2 Julai 2009	Bodoh
12.	18 Julai 2013	Pondan
13.	19 Oktober 2015	Bodoh
14.	20 Oktober 2015	Speaker rujuk perkataan ahli: '*I deliberately abused my power. I sabotaged the investigation*'.
15.	23 Mac 2016	Berbohong
16.	30 Mac 2016	*Unparliamentary sign language*

Bil	Tarikh	Bahasa Kurang Sopan / *Unparliamentary language*
17.	3 November 2016	Speaker zalim
18.	21 November 2016	*The only woman with a 'kok' is in Seputeh*
19.	26 Oktober 2017	Bodoh
20.	2 April 2018	Kurang ajar
21.	23 Oktober 2018	Menipu
22.	18 Julai 2019	Rogol bawah umur Bangsat, babi
23.	9 Oktober 2019	*Sexist remark*
24.	4 November 2019	Kurang ajar
25.	19 November 2019	Kerajaan penipu Kepala otak hang
26.	21 November 2019	Syaitan-syaitan di sebelah sana.
27.	13 Julai 2020	Gelap dan sapu bedak
28.	2 November 2020	Tidak makan ubat wei? Makan ubat.
29.	5 November 2020	Tuan Yang di-Pertua, saya ingat Yang Berhormat Sepang ini tidak makan ubat, dia tanya soalan yang pelik-pelik. Soalan ini keluar daripada topik. Kerajaan Perikatan Nasional adalah kerajaan yang halal.
30.	10 November 2020	Curi duit
31.	10 November 2020	Katak Puru
32.	11 November 2020	DG takut mati
33.	12 November 2020	Akan tetapi itu *ruling* yang **bodoh** yang jahat!
34.	1 Disember 2020	Oleh sebab itu- inilah masalahnya. Ini yang orang kata dilema orang-orang agama. Tadi pun Yang Berhormat Tasek Gelugor pun bekas Hakim Mahkamah Syariah. Akan tetapi penipu. Jadi inilah masalahnya apabila orang-orang agama menjadikan imej agama semakin runtuh.

Bil	Tarikh	Bahasa Kurang Sopan / *Unparliamentary language*
35.	1 Disember 2020	Yang Berhormat Kuala Krai, ini *you* tidak boleh faham. Ini bukan *standard you.* Duduk lah!
36.	1 Disember 2020	Budak-budak duduk dahulu…
37.	7 Disember 2020	Itu saya setuju bahawa jalan raya di Sabah ini, Memang teruk. Lebih-lebih lagi, teruk lagi diterukkan oleh kerajaan Warisan dahulu.
38.	7 Disember 2020	'Yang Berhormat Shah Alam, *you shut up! You* tiada buat apa-apa, jadi **gila** sahajalah kau'.

Perakuan

Penulis merakamkan penghargaan terhadap bantuan oleh pasukan dari Institusi Reformasi Politik dan Demokrasi (REFORM), khususnya Farah Nabilah binti Mohd Firdaus, Akmal bin Rahim, dan Muhamad Zikri Jinal dalam menyusun senarai bahasa kurang sopan bagi tahun 2020.

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Role of Parliamentarians in Localising SDGs in Malaysia

*Denison Jayasooria**

Abstract

Sustainable Development Goals (SDG) focuses on seventeen universal goals pertaining to economic, social and environmental concerns. It requires greater innovation in localising the agenda in order to impact the most vulnerable sections of our society and ensure no one is left behind. One new initiative in Malaysia, which is the focus of this article, is the All-Party Parliamentary Group Malaysia (APPGM) All-Party Parliamentary Group Malaysia (APPGM) role SDGs. This is a bipartisan, multi-stakeholder group that is identifying local development issues and finding local solutions. This is undertaken in a decentralised way with the participation of the local communities. This APPGM on SDG and the localising agenda reached out to ten parliamentary constituencies in 2020 and was funded by a special grant (RM1.6 million) from the Ministry of Finance. A total of 34 SDG solution-based projects are addressing poverty, education, inequality, environmental and waste management concerns. While these are short-term solution projects, it illustrates the potential of a decentralised, multi-stakeholder intervention process which is locally defined and implemented. The pilot phase has also demonstrated the dual role of Members of Parliament who undertook constituency work as SDG champions at the grassroots. They have a major role in giving voice in parliamentary discussions and debates on SDG perspectives to the development agenda, balancing economic, social and environmental concerns.

Keywords: Localising SDGs, Multi-stakeholder Engagement, MPs as SDG Local Champions, Local Solutions, Local Agenda

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Introduction

The United Nations launched the Sustainable Development Goals (SDG) in September 2015 with the theme of 'leaving no one behind' and 17 universal goals impacting economic, social and environmental aspects of development as the 2030 agenda. Malaysia adopted these goals in development planning and made specific references to SDGs in the Eleventh Malaysia Plan (2016 to 2020) and the Mid-Term Review of the Eleventh Malaysia Plan (2018). The localising of SDGs at the delivery and implementation level is the next major thrust for policymakers. Malaysia presented its Voluntary National Review (VNR) Report on SDGs in July 2017 at the High-Level Political Forum, United Nations in New York and is due to present its second VNR report in July 2021. There is, therefore, a clear federal government commitment on this matter, but there are challenges at the localisation of SDGs at the State and district levels. The global agenda, which is endorsed by Putrajaya, is not being adequately popularised at the district and local authority levels. The 17 SDG goals are not new to policymakers or agencies at the delivery level. However, what is unique are the interconnected nature of the SDGs, which requires not a silo intervention but a cross-cutting approach in delivery. This is where a multidimensional approach to development that encompasses a variety of development concerns is essential and holds them in balance.

One of the key agendas of the SDGs at the implementation stage is multi-stakeholder engagement. This is the major partnership thrust of SDG 17.17, where the call is for the promotion of effective public, private and civil society partnerships are made. While it is the role of the national government for the implementation of SDGs, nevertheless the partnership among all the major stakeholders, namely government agencies at Federal, State and local levels, with the private sector, with civil society organisations and the voluntary sector, including the academic institutions is envisioned.

The Malaysian CSO SDG Alliance has been active since October 2015 on SDG matters as a network of organisations involved in economic, social and environmental development concerns. From the beginning, the Alliance has engaged with the Economic Planning Unit (EPU), which is the focal point for the SDGs. The Alliance is a member of the National SDG Steering Committee established by EPU in 2016 and have actively participated at all national seminars in 2016 and 2019, including providing input to the Malaysian VNR (2017) and the National SDG Roadmap.

In this context of localising of SDGs and enhancing multi-stakeholder engagement, a great opportunity arose with the reform agenda of Parliament since 2018 when the Speaker of the *Dewan Rakyat* began an agenda to 'demystify Parliament'[1] by undertaking a series of public engagement events such as public forums, workshops, parliamentary visits and Speaker's Lecture series. Between September 2018 and October 2019, Parliament hosted 37 public events, which provided space for public engagement, and this was intensified with electronic communications.[2] Of the 37 public events, four had direct relevance to SDGs, and the author participated in three of these. On 8 December 2018, in the Seminar on Malaysian Parliamentary Reform when one of the speakers, Mr Stefan Priesner, the UN Resident Coordinator, through his talk on the 17 SDG goals, mooted the idea of a greater parliamentary role in SDGs.

The Malaysian CSO SDG Alliance hosted a series of conversations with the Speaker, and on 1 July 2019, a dinner was hosted as an interaction between Members of Parliament and CSOs. This was followed by a National Forum on SDGs held on 19 July 2019 hosted by Kingsley Strategy Institute, Parliament and the CSO SDG Alliance. The CSOs called for greater parliamentary involvement at two levels, namely at the policy-making and monitoring the delivery at the local level. CSOs saw Members of Parliament as enablers for the localising of SDGs at the ground level. These conversations with the Speaker and a number of Members of Parliament (MPs) resulted in establishing the All-Party Parliamentary Group Malaysian (APPGM) on SDGs in October 2019.

This article describes the partnership among the various stakeholders, especially with parliamentarians playing a very active role in localising SDGs in their parliamentary constituency. The MPs played a major role in identifying unresolved local issues and finding an SDG-based solution to address them. Enhancing the monitoring of SDG delivery, especially at the grassroots in ensuring 'no one is left behind' is a major role for parliamentarians. In addition to the local action, another parliamentarian role is the SDG policy formulation: the formulation of development policies and plans, annual budget allocations, and parliamentary question time to Cabinet members on SDG delivery impacting economic, social and environmental concerns.

1 S.F. Salahuddin and others, 'Parliament and the Public' in M.A.M. Yusof and others (eds), *Law, Principles and Practice in the Dewan Rakyat (House of Representatives) of Malaysia* (Subang Jaya, Sweet & Maxwell, 2020) 476.

2 ibid. 476-80.

We will focus on three key aspects in this article. Firstly, explore the role of parliamentarians. Second, about the SDG agenda and the formation of the APPGM SDG and thirdly, the pilot project of localising SDGs in ten parliamentary constituencies in 2020. We can recognise the potential of MPs as SDG champions.

Role of parliamentarians

In reviewing the role of parliamentarians, we will explore the various duties of MPs as practised in Malaysia, drawing from the constitutional provisions and practical outworking. In Malaysia, the Parliament is constituted by the Federal Constitution, which is the supreme law of the Nation. Malaysia adopted a Westminster style of parliamentary democracy, where Parliament is the highest legislative body and its functions are clearly stated in the Federal Constitution.

MP's Oath

Article 59 of the Federal Constitution specifically refers to an Oath that every Member of Parliament must take, as stated in the Sixth Schedule. This is a loyalty pledge to Malaysia and takes the Oath of preserving, protecting and defending the Constitution. What is significant is that every MP takes this Oath after being elected to be truly Malaysian and not based on party affiliations. Therefore all MPs must take a national and not sectorial outlook once elected.

Five key roles of parliamentarians have been identified[3], namely role on the floor of the house, committee role, check and balance the role of executives, private members' bill and the constituency function. These could be classified as a dual role (Legislative Role and Constituency Role), which will be discussed here.

Legislative role

There are seven different legislative roles as stated by the Inter-Parliamentary Union[4], which have relevance for Malaysia too, such as lawmaking, approval of the national budget, oversight of executive

3 M.A.M. Yusof and S.S. Faruqi, 'The Constitutional Position of Parliament' in Yusof and others (n 1) 36-7.

4 I.H. Kamilan and M.S. Hassan @ Yahya, 'The Functions of Parliament' in Yusof and others (n 1) 128.

action, treaties ratification and monitoring, debating issues (national and international), hearing and redressing grievances and approval of constitutional changes. MPs have the role, especially among those who are backbenchers and Opposition, to review the matters before the house placed by Cabinet members. This will include the King's speech, the Budget, legislations for approval and all policy matters. In many ways, it is holding the executive in check and accountable through the question and answer session.

The Twelfth Malaysia Plan (2021-2025) sets the development agenda for the nation over the next five years. This provides a good opportunity in Parliament for debate and discussion. This development document would contain the policy directions and financial commitments on the social, economic and environmental commitments being made by the Federal Government. There will be a clear pathway for the Shared Prosperity Vision Agenda, too, including more details on the multidimensional poverty indicators as well as directions for the implementation of the Sustainable Development Goals (SDG). MPs will have an opportunity to review the development agenda and provide their analysis and input, including drawing relevance and application to their constituencies, which may be rural, urban or semi-urban locations in Malaysia.

MPs could better prepare themselves for these parliamentary discussions through participation in academic and professional discussion pertaining to economic, social and environmental development concerns. Many academics and civil society organisations, including think tank groups, are working on many development issues and concerns. Since 2018, there have been many discussions and seminars in Parliament on a wide range of national issues and concerns, including the Federal Constitution and the Sustainable Development Goals. Since 2020, many of these conversations have been online with active participation by MPs.

Constituency role

The Constituency role is an important function of MPs. 'Many MPs set up Service Centres and perform the commendable role of a one-person "Public Complaints Bureau". A special allocation is given to each MP to run his/her Service Centre'.[5] However, there are differing views on this matter due to voter expectation on MPs to solve local government

5 Yusof and Faruqi (n 3) 37.

matters, which distracts them from their primary role in fulfilling a legislative function [6] and about 54% of voters 'did not understand the different jurisdictions between the federal and state governments over public services'.[7] An additional concern highlighted is with reference to the unequal allocation of constituency funding allocated. This is because MPs who are part of the Federal government party receive far more allocations as compared to opposition MPs.[8] This practice has been upheld by all the political parties which have held the Federal government.[9]

Although the MP faces challenges in fulfilling this role at the constituency level, MPs are on the ground almost every week addressing local issues at the constituency level. It is noted that constituency services are important. This conclusion was drawn after a study on the role of legislators by examining the experiences of three MPs from rural, urban and semi-urban constituency in the mid-1970.[10] This constituency role provides MPs an opportunity to play a part in localising SDGs as the ultimate SDG goal is to address local issues especially impacting vulnerable communities at the grassroots. This avenue enabled CSOs to convince a number of MPs to adopt an SDG framework to identify local issues and find local solutions that are cross-cutting (economic, social and environmental) through a multi-stakeholder engagement process through the establishment of the APPGM SDG.

SDGs and the Malaysian development agenda

SDGs as a development thrust

The theme of SDGs centre on the thrust of 'leaving no one behind'. Therefore there is a key focus on disadvantaged and marginalised

6 I. Kwek, 'Yang Berhormat at Your Service' *The Rocket* (2 March 2011) <https://www.therocket.com.my/en/yang-berhormat-at-your-service-by-ivy-kwek/>.

7 M. Kaur, 'Most Back Elections for Local Councils' (17 June 2010) <https://merdeka.org/v2/most-back-elections-for-local-councils-by-minderjeet-kaur/>.

8 KiniGuide, 'A closer look inside the 'MP allocations' cookie jar', (2 November 2020) <https://www.malaysiakini.com/news/549075>.

9 I. Lim, 'Wong Chen says opposition MPs now getting RM100k from PM for community, intends to use during COVID-19 period' *Malay Mail* (Petaling Jaya, 30 March 2020) <https://www.malaymail.com/news/malaysia/2020/03/30/wong-chen-says-opposition-mps-now-getting-rm100k-from-pm-for-community-inte/1851627>.

10 M. Ong, 'The Member of Parliament and his constituency: The Malaysian case' (1976) 1(3) *Legislative Studies Quarterly* 405 <https://www.jstor.org/stable/439505?seq=1>.

individuals, families and communities. This could be addressing the concerns of the poor, women, indigenous people, disabled people, migrants and refugees, youths and the elderly. The approach is a holistic and balanced development approach with an emphasis on a human rights basis with a focus on economic, social and environmental concerns. This is best illustrated by the five Ps, namely people, planet, prosperity, peace and partnership.

There are 17 goals, 169 targets and 230 indicators. This is a comprehensive set of development agenda which is to be realised by 2030. These are to be incorporated in the national and local development plans with a clear focus to enhance the quality of life as well as to ensure this is realised through a sustainable approach where there is a balance between economic, social and environmental aspects. While this is a major shift at the policy level in the development agenda but at the delivery and implementation level, there are still many challenges as monetary considerations tend to supersede social and environmental priorities. Therefore the partnership approach among all stakeholders (SDG 17.17) and the emphasis on justice and good governance (SDG 16.b) is to ensure a non-discriminatory approach that is inclusive of all irrespective of gender, ethnicity, disability, and socioeconomic status. This is reflected in need for reliable disaggregated data (SDG 17.18).

SDGs and legislators

The call in the SDGs is for multi-stakeholder engagement as reflected in SDG 17.17, where there is a partnership approach among different actors. While the government plays the leading role, it must facilitate the participation of other sectors such as the business, academic, voluntary and local community. With specific reference to legislators, both national and local, are found in SDG 16.7.1. However, the good governance, transparent and accountable structure provides for the involvement of all stakeholders at all levels are found in SDG 16.6. In addition, there is a focus to ensure that the decision-making process must be responsive, inclusive, participatory and representative, as reflected in SDG 16.7. An indicator to determine this are disaggregated indicators providing a breakdown by sex, age, disabilities and population group (SDG 16.7.2).

The SDG agenda 'acknowledges the role of parliament to hold the government to account for their commitments to eradicate poverty and

achieve sustainable development'.[11] As the people's representative, Parliament has the role to 'monitor and evaluate progress and setback and queries and deliberates on the government efforts to ensure delivery of the goals'.

The direct involvement of MPs is an aspect that is envisioned in the SDGs, and the policy documents released by the United Nations highlights this emphasis. 'Parliamentarians have an opportunity and constitutional responsibility, to play a significant role in supporting and monitoring SDG implementation'.[12] The Agenda 2030 Declaration acknowledges 'the essential role of national parliaments through their enactment of legislation and adoption of budgets and their role in ensuring accountability for the effective implementation of our commitments'.[13] The parliamentary oversight[14] role in monitoring delivery and implementation, including budget and expenditure,[15] are areas that parliamentarians could be working on. In addition, they could also be working with other oversight institutions such as the Human Rights Commission and the Anti-Corruption Agency. This is reviewing the work of the agencies in the delivery and implementation of SDGs. In this context, public engagement[16] on SDGs and greater visibility is essential in grassroots providing feedback.

There is the area of working with the national statistic body[17], which is responsible for collecting key statistics. They are the central collector of data, and this data is essential for the national review as well as in the preparation of global reports like the VNR. Parliamentary role in the localisation of SDGs[18] as a specific action including working with local government, community-based, and civil society organisations is highlighted. In addition, there could be a parliamentary level public hearing. There is a need to build the capacity of parliamentarians and staff members on SDGs.[19] This is an education focus on integrating the

11 A.T.L. Choon, 'Caucuses and Parliamentary Friendship Groups', in Yusof and others (n 1) 406-7.

12 UNDP and GOPAC, *Parliament's role in implementing the Sustainable Development Goals. A Parliamentary Handbook* <https://www.undp.org/content/undp/en/home/librarypage/democratic-governance/parliamentary_development/parliament-s-role-in-implementing-the-sustainable-development-go.html>.

13 See <https://sdgs.un.org/2030agenda>.

14 UNDP and GOPAC (n 12) 23-4.

15 ibid. 36.

16 ibid. 46.

17 ibid. 25.

18 ibid. 54-5.

19 ibid. 60-1.

goals in everyday work. There is the dimension of working on public policies and relevant legislation[20] at the parliamentary level, enhancing the implementation of SDGs.

Establishing the APPGM SDG

The APPGM on SDG was established on 17 October 2019 by the Malaysian Parliament. This is the first of the APPGMs established. Two other APPGMs have been established, namely the APPGM on Refugees[21] and the APPGM for the Reform of All Places of Detention[22]. This is a bi-partisan group of parliamentarians from both the Government and opposition parties with a specific focus on SDGs. The Malaysian CSO SDG Alliance[23] played a major role in this establishment through its many discussions with the Speaker of Parliament in late 2018 and early 2019. The Alliance was appointed as the secretariat.

The APPG as a concept was taken from the United Kingdom's Parliamentary model, which is a 'cross-party caucus'.[24] The APPG brings together parliamentarians from different political parties for a common agenda. In the Indian parliamentary example, these cross-party caucuses are known as parliamentary forums. However, in Malaysia, it was decided to use the APPGM terminology with its set of guidelines.[25] It can further be noted that:

> the guidelines in establishing an APPGM is rather administrative concern without being bounded by the Standing Orders and other rigid rules. It is meant to be a less procedural body as it aims to encourage Members of Parliament to pursue their subject of interest and liberally engage with the larger civil society. Subsequently, the underlying objective of the APPGM is to better equip Members of Parliament with the necessary expert views and concrete on-the-ground experiences of any given subject of interest.[26]

20 ibid. 51.
21 See <https://www.facebook.com/RefugeeCoalitionMY/>.
22 See <https://codeblue.galencentre.org/2021/01/11/covid-19-a-death-sentence-in-jail-parliament-group/>.
23 D. Jayasooria, 'Role of Civil Society Organisations in Localising SDGs in Malaysia' in A. Mahadi and N. Zhafri (eds), *Making SDGs Matter: Leaving No One Behind* (Kuala Lumpur, Konrad Adenauer Stiftung and ISIS Malaysia, 2021) <https://www.isis.org.my/wp-content/uploads/2021/02/SDG-Book.pdf>.
24 Choon (n 11) 402.
25 ibid. 410-1.
26 Salahuddin and others (n 1) 481.

At the establishment in October 2019, YB Maria Chin Abdullah from PH-PKR was elected as the Chair, and YB Dato Seri Nancy Hj Shukri from GPS-PBB was elected as the Deputy. However, with the change of the Federal Government in early 2020, YB Dato Seri Hajjah Rohani Abdul Karim of GPS-PBB was elected as Chair and YB Maria Chin Abdullah as the Deputy. This change was made to comply with the APPGM rules, which indicate that the Chair of the APPGM must be from the government party. Since the formation of the APPGM SDG, 13 members of Parliament are involved in the SDG pilot phase. Eight[27] parliamentarians are members of the APPGM SDG committee. (Six are from the House of Representatives and two from the Senate). Another five members of Parliament[28] who are part of the Malaysian Cabinet as Ministers and Deputy Ministers are involved only at the constituency level.

Table 1. Breakdown of the allocation, 2020

PURPOSE	PERCENTAGE (%)	ALLOCATION
Awareness and capacity building	8.19	131,000
Mapping, Research, documentation & publication	11.81	189,000
Community projects- SDG solutions & innovations at the Parliamentary constituency level	70.62	1,130,000
Administration & coordination of APPGM- SDG	9.38	150,000
Total		2,000,000

Source: APPGM-SDG (2020).

27 APPGM-SDG Committee. The following MPs were elected to APPGM-SDG Committee:-
Chair: YB Dato' Sri Hajjah Rohani Abdul Karim (GPS-PBB, Batang Lupar, P201); Deputy Chair: YB Puan Maria Chin Abdullah (PKR, Petaling Jaya, P105); Secretary: YB William Leong Jee Keen (PKR, P097 Selayang); Treasurer: YB Kelvin Yii Lee Wuen (DAP, P195 Bandar Kuching); APPGM Members (DR): YB Tuan Wong Tack (DAP, Bentong, P089); YB Tuan Hj. Ahmad Bin Hassan (WARISAN, Papar, P175). APPGM Members (DN): YB Senator Adrian Banie Lasimbang (DAP Sabah) & YB Senator Datuk Paul Igai (Progressive Democratic Party, Sarawak).

28 YB Dato' Sri Mustapa Mohamed (BERSATU, Jeli, P030); YB Dato' Sri Hajjah Nancy Hj. Shukri (GPS-PBB, Batang Sadong, P200); YB Tuan Arthur Joseph Kurup (PBRS, Pensiangan, P182); YB Tuan Hj. Awang Hashim (PAS, Pendang, P011) & YB Datuk Seri Dr Wee Jeck Seng (BN-MCA, Tg. Piai, P165).

One major breakthrough for the APPGM SDG was the allocation of RM2 million in the 2020 Budget by the Ministry of Finance for the localising of SDGs, and of this, RM1.6 million was utilised for the pilot phase of implementation in 2020. Similarly, the 2021 Budget has allocated RM5 million to increase the outreach to another 20 Parliamentary constituencies in order to reach a total of 30 parliamentary constituencies with the localising of the SDG agenda. We received a very strong endorsement from Economic Planning Unit (EPU), Prime Minister's Department, in the review and submission process. Ministry of Finance's Budget section also reviewed us positively.

In terms of governance, the funds are managed by The Society for the Promotions of SDGs, which is the legal entity for the Malaysian CSO SDG Alliance. The approvals are based on the budget allocations approved by the Ministry of Finance and the Economic Planning Unit during the application process. Accountability and major decision making is by the APPGM SDG Committee. The secretariat submits monthly activity and financial reports to Parliament and the Ministry of Finance.

Localising SDGs in Malaysia

Methodology of the APPGM SDG

The pilot phase of the APPGM SDG will be undertaken in seven States and ten parliamentary constituencies, as indicated in Table 2. This reflects both rural and urban locations. Five of these locations are MPs with the current Federal Government and five from the opposition. In the APPGM SDG work, there are five key priorities as listed below:-

i. Addressing poverty and inequality in Malaysian society;

ii. Mainstreaming gender perspectives in SDG delivery;

iii. Ensuring greater multi-stakeholder partnerships (among MPs, government agencies, CSOs, academics, private sector and local communities);

iv. Strategically ensure that there is an effective cross-cutting of the 17 SDG goals to foster balanced development (economic, social & environmental); and

v. Seeking to give greater visibility of SDG at the local level through the delivery of services as well as at the national level through policy discussions at Parliament and with decision-makers in Putrajaya.

Table 2. Project location and details

No.	State	Parliamentary Constituency	Name of MP	Date of Visit
1.	Kedah	Pendang	YB Tuan Hj Awang Hashim (PAS, Pendang, P011)	18 – 20 July 2020
2.	Kelantan	Jeli	YB Dato' Sri Mustapa Mohamed (BERSATU, Jeli, P030)	07 – 09 August 2020
3.	Selangor	Selayang	YB Tuan William Leong Jee Keen (PKR, Selayang, P097)	18 – 20 January 2020
4.	Selangor	Petaling Jaya	YB Puan Maria Chin Abdullah (PKR, Petaling Jaya, P105)	19, 23 February & 5 June 2020
5.	Pahang	Bentong	YB Tuan Wong Tack (DAP, Bentong, P089)	14 – 16 January 2020
6.	Johor	Tanjong Piai	YB Datuk Seri Dr Wee Jeck Seng (BN-MCA, Tg. Piai, P165)	18 – 20 January 2020
7.	Sabah	Papar	YB Tuan Hj Ahmad Bin Hassan (Warisan, Papar, P175)	21 – 23 February 2020
8.	Sabah	Pensiangan	YB Tuan Arthur Joseph Kurup (PBRS, Pensiangan, P182)	25 – 27 February 2020

No.	State	Parliamentary Constituency	Name of MP	Date of Visit
9.	Sarawak	Kuching	YB Tuan Kelvin Yii Lee Wuen (DAP, Bandar Kuching, P195)	2 – 4 February 2020
10.	Sarawak	Batang Sadong	YB Dato' Sri Hajjah Nancy Hj. Shukri (GPS-PBB, Batang Sadong, P200)	24 – 26 February 2020

Source: APPGM SDG (2020).

The methodology of the pilot phase is divided into four phases, as indicated in Table 3. In Phase One, the attempt is to map the local issues during the three-day visit to the parliamentary location. This is a very important phase where we meet the MP and staff to review local issues. We then meet CSO, NGO and community leaders in a focus group discussion on what they feel are the local issues. We then undertake three to four field visits. In Phase Two, the focus is on solutions to the issues identified based on the priority list. Here the intervention project or program will be designed. It will be presented for approval for financial allocation. Phase Three is the implementation and delivery stage. The final Fourth Phase is the review, evaluation and impact assessment.

Table 3. Project implementation phases

Months	Areas	Details
Phase 1 (2 months)	Mapping and Awareness Raising. Identification of issues and stakeholders.	Mapping of local issues; mapping of key state & non state actors; Awareness raising. Identifying local solutions. Documenting the findings by researchers. A three-day field visit.
Phase 2 (2 months)	Project/programme design phase. Solutions Focus.	Drawing up the SDG project proposals. Presentation to APPGM-SDG JK for approval for grants. At the parliamentary level conducting capability building workshops.

Months	Areas	Details
Phase 3 (5 months)	Project/programme execution.	Execution of community-based SDG solution projects at the Parliamentary level. Monitoring project implementation. Research synthesis – including identifying cross-cutting issues.
Phase 4 (1 month)	Project review and drawing conclusions.	Project completion. Impact assessment & review. Financial audit. Empirical Research – including undertaking impact assessments; and policy evaluations. & integrated APPG report.

Source: APPGM-SDG (2020).

As indicated, each Parliamentary constituency will go through the four phases of implication, starting with the field visits, prioritising local issues, designing capacity building programs and also solutions projects. Each parliamentary constituency is allocated RM120,000 for solutions projects and RM8,800.00 for capacity building.

Local research findings

Local researchers[29] from local universities were appointed to undertake the field study documentation. They have submitted the phase one study based on the three-day field visit, including drawing up the local priority list. The local researchers are preparing the next phase of their study, which will provide an analysis basis on secondary data sources on the local issues by seeking validation of the initial findings. Based on these initial findings, a comprehensive analysis of eight common issues[30] faced in the pilot phase of the study was formulated, which

29 Ten researchers from local universities were appointed:- Pendang: Dr Zaheruddin Othman (UUM); Jeli: Dr Wan Amir Wan Zal (UMK); Selayang: Dr Lau Zhe Wei (UIA); Petaling Jaya: Calvin Cheng (ISIS Malaysia); Bentong: Dr Khairul Azmi Sidek; Tanjong Piai: Dr Irina Safiri Zen; Papar: Dr Murnizam Halik (UMS); Pensiangan: Dr Junaenah Solehan (UCSF); Kuching & Batang Sadong: Dr Zaimuariffudin Shukri Nordin (UNIMAS).

30 Source from the powerpoint presentations made by Head of the Research team, Mr Alizan Mahadi (ISIS Malaysia)- Issue Mapping: Common Issues across all/most Constituencies.

became the basic framework for drawing up solution projects. These eight issues are:[31]

i. **Poverty** – pockets of poverty still exist and even declining in many areas, particularly among certain target groups, despite improvements at the national and aggregated level. Poverty is multidimensional as well as a multiplier resulting in the achievement of other areas (SDG 1 and interlinked with all SDGs).

ii. **Education, skills and training** of youth and women, depriving them of opportunities to improve their livelihoods. This is particularly in areas that are geographically distant (i.e. rural and semi-rural areas) and mainly B40 (i.e. Petaling Jaya). This inhibits the opportunity to attain other higher-order goals of the SDGs and improve their socio-economic status (SDG 4, 5 and 8).

iii. **Inequality** persists, where delivery of development does not necessarily reach many low-income (B40) economic status as a target group. Geographically, delivery is unbalanced on various issues, including waste management, healthcare and dissemination of social welfare benefits. (SDG 10 and interlinked with all SDGs).

iv. **Infrastructure development** is required where many geographical areas do not have access to basic services such as waste management and resulting in difficulties in logistics for accessing markets (SDG 9 and interlinked with all SDGs).

v. **Health and nutrition** is a major challenge across all constituencies, with access to healthcare facilities still a challenge in many isolated geographical areas and cases such as TB and polio still occurring. Access to healthcare for undocumented and stateless persons is also a pressing issue. (SDG 3, SDG 16 and interlinked with all SDGs).

vi. **Environment** in some areas is deteriorating and affecting the income (i.e. fishermen, farmers), health and livelihoods of those that depend on it. The issues are often linked to unsustainable planning and development. However, little evidence linking environmental issues with other development concerns was found with mandates across various agencies. Additionally, natural resources is a state

31 ibid.

matter with federal-state relationship a challenge (SDG 13, 14, 15, 16, 17 and linked with all SDGs).

vii. **Floods** have been highlighted as a major issue in various areas though few links were made to issues such as climate change (SDG 13) and linked with all other areas.

viii. **Waste management** was also highlighted as an issue across most areas with mandates and responsibilities fragmented (SDG 12 and linked with all SDGs).

In terms of the target group, especially noting the SDGs' theme of leaving no one behind, four categories of people could be identified. First, people in the rural areas, namely, farmers, fishermen, paddy farmers, rubber tappers and smallholders. Second, people in the urban areas, namely the B40, dwellers in low-cost housing and squatters. Third the youth and women. The final group are specific disadvantaged groups, the Orang Asli and indigenous people in Sabah and Sarawak and migrants.

Solution projects at the constituency level

Based on the research findings and local prioritisation, 34 solution projects were selected in the pilot phase of the localising SDGs in the ten constituencies in 2020. It must be noted that all these are short term projects undertaken within five to six months and with the allocated RM120,000. In a majority of cases, the projects are each allocated about RM50,000 each. The breakdown of the projects is provided in Table 4, which identifies the projects based on one key priority of the eight key research findings. In Table 5, the projects are identified based on cross-cutting aspects, which overlap within the eight categories, including a brief title of each of the 32 projects.

Table 4. Solutions projects by major categories

Categories	Numbers	Reference
Poverty	3	SP01; SP07; SP34
Education	9	SP02; SP05; SP06; SP15; SP19; SP21; SP22; SP23; SP24.
Inequality	12	SP04; SP08; SP12; SP14; SP16; SP17; SP18; SP20; SP25; SP26; SP30; SP31.

Categories	Numbers	Reference
Infrastructure	–	
Health	–	
Environment	8	SP10; SP11; SP13; SP27; SP28; SP29; SP32; SP33.
Flood	–	
Waste	2	SP03; SP09
Total	**34**	

Source: APPGM-SDG (2020).

In Table 4, the three main areas that the projects address are tackling inequality (35%), education (26%) and environment (23%). Many of the projects focus on economic empowerment with a particular emphasis on women (SP14, SP19) or rural poor communities (SP32, SP33). Likewise, education too has many good projects such as special education classes for the urban poor (SP14, SP05) and special language course for refugees (SP24). There are significant environmental and waste management projects (SP03, SP13) just to cite a few examples.

Table 5 is intriguing as it provides basic information based on constituencies on one end and the eight classifications based on research findings on the other. There is a brief mention of the type of project undertaken. One of the significant findings in this mapping and classification of the solution projects[32] is the cross-cutting nature of the projects. The cross setting nature is an important dimension of nature's ground-level problems. This analysis of the cross-cutting nature as per Table 5 shows that 32 of 34 projects have a poverty focus, 26 out of the 34 have an education focus, and all the 34 projects address inequality. Therefore the concerns based on SDG 1 on poverty, SDG 4 on education and SDG 10 in addressing inequality are the major thrust of these 34 solution projects. Here the concerns of addressing the socio-economic concerns such as economic and income generation as well as education are still the major concerns at the grassroots.

32 Classification of Solution Projects done by Mr Anthony Tan (APPGM SDG Finance Executive).

Table 5. Classification of solutions projects

No.	State	Constituency	SP No.	Poverty	Education	Inequality	Infrastructure	Health	Environment	Floods	Waste	Project Type
1.1	Kedah	Pendang	SP31	1	1	1						SDG Action Plan
1.2	Kedah	Pendang	SP32	1		1			1		1	Eco-Tourism
2.1	Selangor	Petaling Jaya	SP14	1	1	1						Women Empowerment
2.2	Selangor	Petaling Jaya	SP15	1	1	1						Education
2.3	Selangor	Petaling Jaya	SP16	1	1	1						Inter-Agency
2.4	Selangor	Petaling Jaya	SP17	1	1	1	1	1				Crisis Management
3.1	Selangor	Selayang	SP18	1		1	1	1			1	Improvement of Flats
3.2	Selangor	Selayang	SP19	1	1	1					1	Skills Training - cafe & baking
3.3	Selangor	Selayang	SP20	1	1	1					1	Micro Entrepreneurship
3.4	Selangor	Selayang	SP21	1	1	1						Air-Con training
3.5	Selangor	Selayang	SP22	1	1	1						Skills Fair
3.6	Selangor	Selayang	SP23	1	1	1						Digital Marketing
3.7	Selangor	Selayang	SP24	1	1	1						Basic Malay for Refugees
3.8	Selangor	Selayang	SP25	1		1						Housing Census
4.1	Johor	Tanjung Piai	SP03	1		1	1	1	1		1	Waste Management & Buyback
4.2	Johor	Tanjung Piai	SP13	1		1			1			Eco-Tourism
5.1	Kelantan	Jeli	SP27	1	1	1			1			Fish Project
5.2	Kelantan	Jeli	SP28	1	1	1			1			Mushroom Project
5.3	Kelantan	Jeli	SP29	1		1			1			Eco-Tourism
5.4	Kelantan	Jeli	SP30	1	1	1						Social-Enterprise
6.1	Pahang	Bentong	SP01	1	1	1			1		1	Organic Farming
6.2	Pahang	Bentong	SP02		1	1						Unity Film
6.3	Pahang	Bentong	SP33	1	1	1			1		1	Organic Farming
7.1	Sabah	Papar	SP10	1	1	1			1			Fish Project
7.2	Sabah	Papar	SP11	1	1	1			1		1	Farming Project
8.1	Sabah	Pensiangan	SP08	1		1		1				Health & Wellbeing

No.	State	Constituency	SP No.	Poverty	Education	Inequality	Infrastructure	Health	Environment	Floods	Waste	Project Type
8.2	Sabah	Pensiangan	SP09	1		1			1		1	Waste Management
8.3	Sabah	Pensiangan	SP12	1	1	1		1				Women Empowerment
9.1	Sarawak	Bandar Kuching	SP06	1	1	1						TVET
9.2	Sarawak	Bandar Kuching	SP07	1	1	1			1		1	Socio-Economy
9.3	Sarawak	Bandar Kuching	SP34	1	1	1			1		1	Socio-Economy
10.1	Sarawak	Batang Sadong	SP04	1	1	1						Marketing for Small Farmers
10.2	Sarawak	Batang Sadong	SP05		1	1						English Language
10.3	Sarawak	Batang Sadong	SP26	1	1	1		1				Women Income & Health
		TOTAL		32	26	34	3	6	13	0	11	

Source: APPGM-SDG (2020).

In the remaining six categories, the cross-cutting nature does not surface as much in numbers as compared to the highest three (poverty, education and inequality). We can note that environmental concerns were listed in 13 solution projects; 11 projects address waste, health in six but none address the issue of flooding. The solutions for flooding are more long term projects requiring more funds and not short term within the applications of APPGM SDG funds. The flooding concerns will be presented to Federal agencies for their intervention through other development funding. One concern expressed by members of the secretariat is the missing gender perspective. There are efforts among the CSOs to review the 34 solution projects from a gender perspective.[33] It can be stated in a majority of projects which have a socio-economy focus, the majority of participants are women. Therefore in undertaking

33 Professor Dato' Dr Rashila Ramli who is a member of the APPGM SDG Secretariat is undertaking an evaluation of the 2020 SDG solution projects from a gender perspective. This review study is sponsored by the Malaysian National UNESCO Commission (SKUM) in partnership with a number of stakeholders including IKMAS-UKM.

SDGs, the visibility of a gender perspective will be consolidated in year two of the SDG localising agenda.

Policy implications and conclusion

In this article, we have noted that SDGs provide a good opportunity for parliamentarians to be involved in localising SDGs at the grassroots level. In the context of the dual role of parliamentarians, one at the Parliament and the other at the constituency level, we can clearly recognise the role of Parliamentarians in localising SDGs. By reviewing the pilot phase of the SDGs in 10 parliamentary locations, we can learn a number of lessons. The MPs who are members of the APPGM SDG played a very active role in 2020 at the committee stage in finalising the work of the APPGM. In the implementation of the ten pilot programmes, it was noted that all the ten MPs had played an active part. During the three-day field visit, all the MPs provided a clear analysis of the local issues and concerns in a very comprehensive way. Likewise, they and their staff knew all the problematic neighbourhoods and locations. We were able, with the MP's support, to prioritise the local needs as well as finalise the short term solution projects. There is, therefore, a clear role for MPs as champions for the localising projects.

However, there are many challenges, especially for MPs who are not part of the government party, especially in the uneven allocation of the constituency funds as well as difficulty in addressing and resolving the many issues and needs identified at the parliamentary constituency level. Through the localising of SDGs, all MPs, whether in the Government party or opposition, can play an effective role if their position is viewed not from their political party but as elected representatives of the people. Respecting democracy and the people's will is essential, and all governments must view the role of elected representatives as people's choice. MPs who know their constituencies must also serve the people and not just those who voted for them. Once elected, they represent all the people within that parliamentary constituency.

The strength and potential of an APPGM is the bi-partisan nature of the APPGM, where the MPs could focus on common areas of policy concern and ground action. This is well illustrated in the localising of SDGs at the parliamentary level, where the MPs could serve as local champions and foster a multi-stakeholder partnership in addressing parliamentary level needs, concerns and issues. At the next level of the APPGM SDG work, we will need to further develop the policy implications of SDGs

in the development agenda not just for local relevance but also national, regional and global implications. The opportunity arises as there will be a presentation and debate in Parliament on the Twelfth Malaysia Plan. The APPGM SDG secretariat has already had dialogues with the EPU on our SDG findings from the pilot study[34] as well as our perspectives on the multidimensional poverty indicators[35].

Three specific policy recommendations:-

1. First, the Federal Government could enlarge funding made available at the local level for bi-partisan constituency local development projects. A decentralised action committee could be established at every parliamentary constituency which is based on a multi-stakeholder partnership model. All elected members of parliament, irrespective of whether they are part of the government or opposition, are part of this process. This local development committee will identify local needs and issues, prioritise them and identifies local solutions and providers to deliver them. A percentage of the Federal and State government development funds could be utilised. In this way, there might be a stronger local participation and ownership of the projects.

2. Second, at the Parliamentary level, there should be opportunities for MPs to be directly involved in policy discussion with the relevant agencies, especially the Federal government, in addressing policy and structural concerns, which has long term implications. MPs should approach relevant development agencies on cross-cutting SDG issues rather than view them as silo concerns, particularly regarding matters pertaining to their parliamentary constituencies.

3. Third and finally, there must be capacity building programmes that provide clear awareness and technical inputs on SDGs, development concerns (economic, social and environmental) to equip MPs with the knowledge to monitor the development planning agenda as it impacts the lives of grassroots communities, thereby improvising the quality of life of all Malaysians.

34 APPGM SDG Secretariat meeting with EPU on 9 July 2020 chaired by YB Arthur Joseph Kurup, Deputy Minister in Prime Minister's Department (Economy) and 22 July 2020 chaired by YB Datuk Seri Mustapha Mohamed, Minister in Prime Minister's Department (Economy).

35 APPGM SDG Secretariat meeting with EPU Team on 22 July 2020 and 18 August 2020.

This article illustrating the 2020 pilot project at ten parliamentary constituencies has shown the full potential of a decentralised approach for local planning and multi-stakeholder partnerships at the district and local levels. The coming years will further illustrate the role MPs and the local people can play in improving the quality of life and ensuring 'no one is left behind'.

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The Practice of Public Accounts Committee in the Parliament of Malaysia

*Siti Fahlizah Padlee**

Abstract

The Public Accounts Committee (PAC) of Malaysia is a permanent committee made up of members from Malaysia's House of Representative, the Dewan Rakyat, and has grown in function since its establishment in 1959. The PAC initially served as a financial oversight body to check the financial procedures and performance accountability of executive bodies. Then, it started to pursue a series of reforms to make it more effective and accountable. Therefore, this research explores the current practices of the PAC in the Parliament of Malaysia pertaining to the appointment of its Chairman. It also analyses the implementation of two types of new meetings and identifies the relationship between the PAC with other stakeholders. The research employed a case study with an exploratory, descriptive approach using data collected from published reports of PAC meetings from 2017 to 2020, the PAC's official website, interviews with a parliamentary officer-in-charge of handling the PAC, as well as international and local newspapers such as The Straits Times and The Edge. The research found that changes in the appointment of the Chairman have not affected the PAC reports as the core task of a Chairman is to set the committee's agenda with consultation from the committee and Auditor General, as well as to ensure that the reports are released. The two new types of meeting (i.e. verification meeting and response reporting meeting) are crucial to enhance the PAC performance. Furthermore, the seven ex-officio possess prominent roles to provide and check the validity of data. This can avoid the manipulation of data and corruption between the PAC and the Executive.

Keywords: PAC, Chairman, Meetings, Ex-Officio, PAC Report

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Introduction

The Public Accounts Committee (PAC) of Malaysia is a permanent committee formed by both the government and opposition Members of Parliament (MPs) in Malaysia's House of Representative, the Dewan Rakyat. Its mandates are derived from the Standing Order 77 of the Dewan Rakyat. Mandates (a) to (c) are related to public finance, while Mandate (d) gives authority to the PAC to look at issues other than public finance.

Standing Order 77(1) posits that the PAC is 'for the examination of:

(a) the accounts of the Federation and appropriation of the sums granted by the Parliament to meet the public expenditure;

(b) such accounts of public authorities and other bodies administering public funds as may be laid before the House;

(c) reports of the Auditor-General laid before the House in accordance with Article 107 of the Constitution;

(d) such other matters as the Committee may think fit, or which may be referred to the Committee by the House.'

The current structure of the PAC has gone through important changes in recent years. It includes the appointment of the Chairman from the opposition party that started in 2018. The PAC has its staff since April 2015, headed by the Chief Secretariat and supported by two auditors and four administrative staff. Previously, the PAC was assisted by the clerk and secretariat of the Dewan Rakyat. The PAC also now has four types of meetings instead of two types of meeting previously implemented where the Verification Meeting was added in 2019 while the Response Reporting Meeting was introduced in 2018.

Other than Standing Order 77, the PAC derives authority from government regulation and circulars. Section 304(a) Treasury Instructions, Amendments 2008 [*Pindaan Arahan Perbendaharaan (AP) bertarikh 31 Julai 2008*] Auditor-General Report posits that the Secretary-General of Treasury or State Financial Officer must submit a copy of the report to the responsible Controlling Officer (Chief of Secretary from responsible ministry) for his comments after receiving the Report Auditor General of Malaysia. Furthermore, Section 304(b) addresses matters such as actions from the PAC to submit reports to the Legislative Body and responsible Controlling Officer. The power of PAC is also enshrined in Section III, Article 11(b), General Circular No. 2 the Year 1982 that outlines the duties and responsibilities of a Secretary-General of Ministry as the main

advisor to the Minister. The Secretary-General is also responsible to the Public Accounts Committee in controlling expenditure and keeping proper accounts for each duty undertaken by them.

This paper aims to examine the current practices of the PAC and the significant differences from previous practices. It discusses the current practices of the PAC pertaining to the appointment of its Chairman, which include issues on the appointment of Chairman from the opposition, the appointment of a minister who was previously a PAC Chairman, and the appointment of a Chairman from senior parliamentarians. It also analyses the implementation of the two new types of meetings and identifies the relationship between the PAC with other stakeholders.

Literature review

The literature review is divided into two sections. The first section explores the current literature on the practices of the Public Account Committee in general and the second section discusses the issues of the Public Account Committee practices in Malaysia.

Practices of the Public Account Committee (PAC)

PAC originates from the traditional model of Westminster that is commonly implemented by Commonwealth countries. The first PAC was established in 1857 in the UK Parliament, and it was called the Select Committee on Public Monies. The PAC's primary duty since the very beginning is to examine reports related to public finances and serves as an oversight to the Audit Department.[1] Most current literature on PAC focuses on its effectiveness as a body that can highlight issues of pertinent importance for the Executive to act upon and make necessary changes and improvements.

As the jurisdiction of the PAC is derived from the Constitution or Parliamentary Standing Orders of the country, there are five powers that the PAC should have for it to be an effective body, which are:

i) to freely choose the subjects for examination,

ii) to investigate all past and present issues committed with the government expenditures,

1 'History - Public Accounts Committee' <https://old.parliament.uk/business/committees/committees-a-z/commons-select/public-accounts-committee/history-of-committee/> accessed 18 February 2021.

iii) to hold the government accountable for its spending,

iv) to examine the public account[2], and

v) to evaluate whether the expenditures have met the intentions and intended expectations of the legislature and whether value for money was achieved.[3]

Stakeholders engagement with the PAC has also shown to play an essential role in the effectiveness of the PAC. The main stakeholder for the PAC is the auditor general. This is because the PAC depends on high-quality audit reporting to identify potential issues and solutions, whereas the auditor general requires an effective PAC to ensure that all government departments and agencies take the audit outcomes seriously.[4] Thus, the role of the auditor general in the accountability process of the PAC should clearly be stated in the country's constitution or a legislative act.[5]

It is also important to highlight the relationship between the PAC and the Executive. This is because the Executive is the main organisation where the PAC does its investigation. One aspect of this relationship is the PAC's authority in calling the Executive to give evidence to the committee, such as summoning a minister or senior public officer for this purpose.[6] Another aspect is the implementation of the Executive to follow the recommendations set out by the PAC.[7]

2 R. Stapenhurst and others, 'Ex Post Financial Oversight: Legislative Audit, Public Accounts Committees…and Parliamentary Budget Offices?' (OECD Parliamentary Budget Officials and Independent Fiscal Institutions 4th Annual Meeting, Paris, February 2012) <https://www.oecd.org/gov/budgeting/49778002.pdf> accessed 17 February 2021.

3 J. Wehner, *Best Practices of Public Accounts Committees* (Cape Town, Association of Public Accounts Committees (APAC) South Africa, 2002) <https://www.internationalbudget.org/wp-content/uploads/Best-Practices-of-Public-Accounts-Committees.pdf> accessed 15 February 2021.

4 ibid.

5 Commonwealth Association of Public Accounts Committees, *Handbook August 2020* (CAPAC, 2020) <https://www.uk-cpa.org/media/3686/capac-handbook-240820.pdf> accessed 17 February 2021.

6 ibid.

7 E. Hedger and A. Blick, *Enhancing accountability for the use of public sector resources: how to improve the effectiveness of Public Accounts Committees* (London, Overseas Development Institute, 2008) <https://cdn.odi.org/media/documents/3466.pdf> accessed 18 February 2021.

The composition and staffing of the PAC are also essential in determining its efficacy. The Chairman and committee members are appointed for the full term of parliament due to the PAC's work nature that investigates issues from one year to another. The PAC should also be composed of both government and opposition MPs. Its members must not be appointed among cabinet members and be free from government interference to perform its oversight functions.[8] Moreover, the PAC requires the assistance of specialised officers from the Finance Ministry who can provide logistical and technical advice.[9] In practice, a full-time clerk to the committee and one or two expert advisers are sufficient to support the PAC.[10]

In ensuring better accountability and effectiveness, the PAC establishes meetings and events such as conducting public hearings, reporting and recommendations, and monitoring government response. Public hearing conducts inquiry of witnesses and provides evidence as requested by the committees. Such reporting and recommendations contain outcomes from the issues raised by the committee members, and they must be agreed upon by the PAC. This includes recommendations for action by the government whom must then respond to the PAC reports. The response will be given in timelines in which the PAC will check and follow up the implementation by the government according to the report. It will also call for explanation from the senior officials from responsible ministries in the event of failure or delayed implementation of such recommendations.[11] Thus, the factors that make an effective PAC include the powers accorded to it, its relationship with the stakeholders, especially the Auditor General and the Executive, the formation of its members and staff availability, and its ability to have public meetings and produce reports with constructive recommendations.

The issues of Public Account Committee practices in Malaysia

Existing literature on the PAC in Malaysia focuses mainly on the issues that affect the effectiveness of the PAC in being a reporting body. The first issue is regarding its Chairman, who should be independent not only from government interference but also influences from political parties. A PAC Chairman must also have positive values such as integrity on

8 Commonwealth Association of Public Accounts Committees (n 5).
9 Wehner (n 3).
10 Hedger and Blick (n 7).
11 Commonwealth Association of Public Accounts Committees (n 5).

account of having the authority to set the time for meetings and select the topics to be examined.[12] The independence of the PAC comes into question, following a trend in the government to appoint ministers who were previously Chairman of the PAC.[13] Besides that, the Chairman plays a significant role in the effectiveness of the PAC, particularly when there is an appointment from senior parliamentarians.[14]

The PAC's effectiveness can also be judged in terms of its power and authority to summon anyone for questioning on a particular issue. It is also important for the PAC to hold press conferences and choose subjects for examination without subjecting to the government's direction or advice. The PAC should also have the ability to request its budget that will allow the committee to manage its activities according to its needs.[15] Nevertheless, the PAC faces significant challenges, especially on insufficient staffing and the absence of its own office.[16] It is also highly dependent on the Auditor General to gather information. However, auditors from the National Audit Department and PAC claim that their role is not detecting fraud but rather to advise the agencies.[17]

Members of the PAC also serve as important factors in determining the extent of its effectiveness. The consensus among PAC members from different political parties can be a pertinent challenge due to the difference in political views and agendas.[18] Another issue is regarding

12 Z.M. Daud and others, 'The Success Factors of the Public Accounts Committee (PAC) in Malaysia: The Public Perspective' (2012) 1(1) *IPN Journal of Research and Practice in Public Sector Accounting and Management* 59 <http://jurnal.ipn.gov.my/wp-content/uploads/2020/12/5.the-success-factors-of-the-public-full-article.pdf> accessed 15 February 2021.

13 Z.M. Daud and I. Fraser, 'Auditors' and PAC Members' Views on Performance Auditing Practices in Malaysia: A Qualitative Approach' (2015) 23(S) *Pertanika Journal of Social Sciences and Humanities* 89 <http://psasir.upm.edu.my/id/eprint/43895/1/Auditors%E2%80%99%20and%20PAC%20Members%E2%80%99%20Views%20on%20Performance%20Auditing%20Practices%20in%20Malaysia.pdf> accessed 15 February 2021.

14 Z. Saleh and H.A. Hasan, 'The Role of the Public Accounts Committee in Enhancing Government Accountability in Malaysia' (Centre for Public Sector Governance, Accountability and Performance 2014 Annual Symposium, Melbourne, October 2014) <http://eprints.um.edu.my/13401/1/the_role_of_the_public.pdf> accessed 15 February 2021.

15 Daud and others (n 12).

16 Z.M. Sori and others, 'Perceived Public Account Committee Effectiveness: The Malaysian Case' <https://ijbt.unimap.edu.my/images/stories/IJBT%20JUNE%202019/IJBT_Vol_9_June_2019_8_209-220.pdf> accessed 15 February 2021.

17 Daud and others (n 12).

18 Sori and others (n 16).

the commitment of the committee members.[19] Some members do not portray significant interest to participate in meetings. Thus, full meeting attendance is often difficult to achieve due to the members' commitment to other individual matters and the lack of incentive for them to attend.[20] The members themselves must be independent when involved in any PAC matters. This includes zero interference from their respective political parties and being non-partisan in dealing with other PAC members from different parties.[21] The PAC should also explore the possibilities of organising public hearings.[22] This will allow them to demonstrate to the public that PAC is indeed an independent committee and that the PAC members must conduct themselves better in implementing their role as their performance will be monitored by the public.[23]

The literature discussion above shows a glaring gap in explaining the structure of the PAC in Malaysia, particularly post-2018. Therefore, this research aims to examine the current practices of the PAC and its significant distinction from the previous practices. This article focuses on three main changes that have occurred to the PAC, namely the significance of appointing a PAC Chairman among members of the opposition, improvement in the types of meetings conducted, and the role of the seven ex-officio. Past literature on the effectiveness of the PAC in general, as presented in the first part of the literature review, serves as a benchmark to determine whether the changes implemented have been effective.

Methodology

The present study is a replication of a case study via an exploratory, descriptive approach.[24] The case study is defined as an exploration

19 ibid.
20 Sori and others (n 16).
21 Z.Z. Abidin and others, 'Perceived Public Accounts Committee Independence: The Malaysian Case' (2019) 9(2) *International Journal of Business and Technopreneurship* 209 <https://ijbt.unimap.edu.my/images/stories/IJBT%20JUNE%202019/IJBT_Vol_9_June_2019_8_209-220.pdf> accessed 15 February 2021.
22 Saleh and Hasan (n 14).
23 ibid.
24 A.B. Irawan, 'The Role of The Public Accounts Committee: An Indonesian Case Study' (2014) 3(3) *West East Journal of Social Sciences* 1 <https://www.researchgate.net/profile/Agus_Irawan3/publication/299468312_The_Role_of_the_Public_Accounts_Committee_An_Indonesian_Case_Study/links/5c888088a6fdcc38174fa464/The-Role-of-the-Public-Accounts-Committee-An-Indonesian-Case-Study.pdf> accessed 15 February 2021.

of an individual, group, or phenomenon.[25] Moreover, it describes the characterisation of a case or event as well as the process of features.[26] Exploratory has a different approach from descriptive. The former can be open for further examination, and prior fieldwork or small-scale data collection may be conducted before the research questions and hypotheses are proposed.[27] Whereas the latter describes the types of data collection in the descriptive study, which include examining the data collected from various resources[28] such as published reports of PAC meetings from 2017 to 2020, the PAC's official website, interviews with a parliamentary officer-in-charge of handling the PAC, as well as international and local newspapers such as The Straits Times and The Edge. Results from a descriptive study can be minimal to moderate structured, open-ended, individual, or focus group interviews.[29] Particular attention will be placed on the published reports of PAC meetings from 2017 to 2020, the PAC's official website, interviews with a parliamentary officer-in-charge of handling the PAC, international and local newspapers such as The Straits Times and The Edge.

Findings and discussions

There are three justifications in this research. First is the current practices of the PAC, including the appointment of its Chairman from the opposition, the appointment of a minister who was a PAC Chairman, and the appointment of a Chairman from a senior parliamentarian. Second, there are two types of new meetings. Third, there are seven ex-officio PAC Parliament as permanent representatives from the government.

Current practices of PAC: appointment of chairman

The appointment of a PAC Chairman among the opposition members is a remarkable change for the PAC in Malaysia. This shows that PAC serves

25 A.B. Starman, 'The case study as a type of qualitative research' (2013) 64(1) *Journal Of Contemporary Educational Studies* 28 <https://www.researchgate.net/publication/265682891_The_case_study_as_a_type_of_qualitative_research> accessed 14 February 2021.

26 ibid.

27 Z. Zainal, 'Case study as a research method' (2007) 9 *Jurnal Kemanusiaan* 1 <https://jurnalkemanusiaan.utm.my/index.php/kemanusiaan/article/view/165/158>.

28 V.A. Lambert and C.E. Lambert, 'Qualitative Descriptive Research: An Acceptable Design' (2012) 16(4) *Pacific Rim International Journal of Nursing Research* 255 <https://he02.tci-thaijo.org/index.php/PRIJNR/article/view/5805/5064> accessed 15 February 2021.

29 ibid.

as a strong check and balance body while reflecting the government's willingness to be transparent through an independent scrutiny body.[30] In August 2018, YB Datuk Seri Dr Ronald Kiandee (UMNO - Beluran) was the first MP from the opposition party to be appointed as the PAC Chairman.[31] Such change in the PAC Chairman appointment policy was done to follow the Westminster model. However, the practice was not done into law as there was no amendment to Standing Order 77 to include this as a provision. However, the new practice of appointing an opposition MP as the PAC Chairman did not stop even when YB Datuk Seri Dr Ronald Kiandee resigned from his post after only four months following his decision to join Parti Pribumi Bersatu Malaysia, which is a party in the governing coalition of Pakatan Harapan. His place was succeeded by another opposition MP, YB Datuk Seri Dr Noraini Ahmad (UMNO - Parit Sulong) in April 2019. She was the first woman to hold this position.[32] However, she later resigned from the position following her appointment as a Cabinet Minister in March 2020.

The appointment of PAC Chairman from the opposition MPs is still practised with the appointment of YB Tuan Wong Kah Woh (DAP - Ipoh Timur) in August 2020. However, whether the Chairman is from a government or opposition party has minimal impact on the effectiveness of the PAC.[33] This is because the Chairman has no sole power to decide regarding the contents of the final report published by the PAC. The Chairman only has the prerogative to set the PAC's agenda but in consultation with other PAC members and also the Auditor General.[34] Besides that, the appointment of the Chairman and Deputy Chairman of the PAC are made by the Prime Minister through a motion in the Dewan Rakyat, which is similar to the appointment process of the Dewan Rakyat Speaker. Every committee member, including the Chairman and Deputy Chairman, holds the position in the PAC for five years or until

30 Wehner (n 3).

31 'Malaysia, For the First Time, Appoints Opposition MP As Head of Key Public Accounts Committee' *The Straits Times* (Singapore, 7 August 2018) <https://www.straitstimes.com/asia/se-asia/malaysia-for-the-first-time-appoints-opposition-mp-as-head-of-key-public-accounts> accessed 15 February 2021.

32 A.N. Idris, 'Noraini appointed PAC Chairman' *The Edge Financial Daily* (Petaling Jaya, 12 April 2019) <https://www.theedgemarkets.com/article/noraini-appointed-pac-chairman> accessed 15 February 2021.

33 Daud and others (n 12).

34 PAC chair has power to set committee's agenda but in consultation with committee and auditor general. PAC chair usually takes responsibility to ensure report released.

the dissolution of the Dewan Rakyat, their resignation from the post, or the formation of a new government.

The appointment of Chairman does not necessarily be the factor of seniority in the parliament. YB Dato' Sri Hasan bin Arifin (UMNO - Rompin) was a PAC Chairman from 2015 until 2018, and he had only won for the first time in the 2015 General Election. His deputy was YB Dr Tan Seng Giaw (DAP - Kepong), who has been an MP since 1982. Similarly, the current PAC Chairman, YB Tuan Wong Kah Woh (DAP - Ipoh Timur), has only been an MP since 2018, while the current Deputy Chairman, YB Dato' Hajjah Azizah Mohd Dun (Bersatu - Beaufort), has been an MP since 2004 and is also a former Deputy Minister in the Federal Government.

The composition of the PAC must be not less than six and not more than 12 committee members, excluding the Chairman and Deputy Chairman. The Committee of Selection selects these committee members, and the number of representatives from the government and opposition parties is decided by the seating composition in the Dewan Rakyat, as specified in Standing Order 82. (1) . In addition, as stated in Standing Order 77(4), no members may be appointed or nominated to act as the Chairman or assume their role as members of the PAC while holding the portfolio of a minister. In the event that both the Chairman and Deputy Chairman are absent for a meeting, the PAC members shall elect among themselves to preside over the meeting (Standing Orders 77(3)).

Current practices of PAC: implementation of two new types of meetings

Chart 1. The process of PAC meetings

The PAC has four main meetings and a pre-council meeting. The major meetings are: i) the proceeding meeting, ii) the housekeeping meeting, iii) the verification meeting, and iv) response reporting meeting. Such an increase in the types of the meeting reflects the expanding role of the PAC that is confined to investigating frauds and checking on the performance of the Executive branch of the government. A pre-council meeting is a trivial meeting conducted before the proceeding meeting. Meanwhile, the proceeding meeting is an officially closed meeting with witnesses and evidence presentation. Sometimes, an issue can involve

multiple ministries. Next is the housekeeping meeting where a draft report is produced and opinions, as well as suggestions, are summarised with regards to the topic concerned. After the draft report is completed, the PAC members will go through the draft report to check and verify the contents before it is presented as the final report to the Dewan Rakyat. This meeting is important to check and ensure that the facts in the draft report are accurate. The verification meeting was introduced in 2019, and the PAC decided to implement a response reporting meeting in 2018. It is a follow-up action of the PAC after presenting the PAC report at the Dewan Rakyat. The PAC shall decide the frequency of each type of meeting, held once or more than a dozen times. For instance, the 1MDB issue had the most number of meetings. It took 18 meetings to discuss the issue, which comprised two pre-council meetings, 11 proceeding meetings, and five housekeeping meetings.[35] Since there are more meetings than ever before, the PAC needs more comprehensive staffing and budgeting. Currently, the PAC only comprises the Chief Secretariat, two auditors, and four administrative staff.

In the pre-council meetings, the Chief Secretariat will suggest topics for the Chairman's attention. The Chairman will call for a meeting with the committee members to discuss any pertinent topics and issues that the PAC should investigate. The members can either agree or disagree with the topics. Once the PAC members have agreed with the topic, it will be brought to the proceeding meeting. A selection of topics is the right course of action for the PAC, as stated in Standing Order 77(1)(d). Besides that, traditionally, topic selection can also be highlighted by the Auditor General through the Auditor General's reports that have been tabled in the Dewan Rakyat. Meanwhile, PAC members may raise any topics that their respective parties suggest. The selection of topics also can come from the public via email or letters sent to the Chief Secretariat or the PAC members. For example, the issue of the Sale Transactions on Land owned by Dewan Bandaraya Kuala Lumpur (DBKL) was brought up by a committee member of the PAC itself.

After deciding on the topic worth investigating, the PAC will organise a proceeding meeting with the Controlling Officer (the Chief of Secretary) from the respective ministry related to the topic. The proceeding meeting is an officially closed meeting for a witness statement and evidence gathering. Sometimes, a single topic can deal with several ministries.

35 Interview with the parliamentary officer in-charge of handling the PAC (Parliament, 10 February 2021).

For instance, in the case pertaining to Air Mobility development, there were three ministries involved, namely the Ministry of Entrepreneur Development and Cooperatives (MEDAC), Ministry of International Trade and Industry, and the Prime Minister's Department of Malaysia. Thus, three Controlling Officers from these ministries attended the proceeding meeting. The Controlling Officer will explain the causes or reasons for weaknesses and any precautionary actions taken. The PAC may send a show-cause letter to any Controlling Officer who fails to attend the meeting. They can also reject any representative of the Controlling Officer if they find that the Controlling Officer's absence is unreasonable and insufficient. The PAC can also obtain oral and written evidence from anyone stated in Standing Order 83(2). There is no public hearing session as it is restricted under Standing Order 85 that posits confidentiality of the evidence gathered from an inquiry. Furthermore, the report must remain confidential and cannot be shared by the PAC members to anyone before presented to the Dewan Rakyat.

In the housekeeping meeting, a draft report will be produced. It is also known as the presentation for drafting report PAC meeting. All PAC members will summarise their opinions and suggestions in this meeting. The drafting of the report will be done by the Secretariat and the PAC with assistance from the Auditor General. Previously, the draft report was written by the Auditor General because there were no secretariats before 2013. However, the former Chief Auditor General of Malaysia requested the PAC to form a secretariat team to assist them in conducting meetings and writing the PAC reports.[36] The draft report prepared by the PAC Secretariat will be checked and verified by the PAC members in the verification meeting before being presented at the Dewan Rakyat. This meeting is important to ensure that the facts in the draft report are correct, genuine, and not altered by referring back to the Hansard. Until now, there has never been any disagreement among the PAC members on the content of the final report. A PAC member who disagrees with the final report must submit a minority report to the PAC, and it has never been done so far. Besides that, if any witnesses want to change the statement of the evidence in the draft reports, they also must submit a letter to the PAC. The final PAC report will be published on the PAC official website after being presented in the Dewan Rakyat.

The final PAC report explains in detail the discussions and findings during the proceeding meetings. It shows the PAC members have studied

36 ibid.

and investigated the issue seriously. There is a fixed and standard format that has to be followed, such as the chapters division. One of the common issues regarding the final reports of the PAC is that the PAC reports are outdated because of the time taken between the finishing of the report and its presentation in the Dewan Rakyat. Sometimes, the presentation can be delayed for up to three months until the next Dewan Rakyat session begins. The final PAC report is not always about criticisms and pointing out mistakes but may also highlight any positive attributes found in an issue such as the satisfactory performance of the institution (i.e. Khazanah) as stated in the case on Khazanah Treasury's Investment Loss, 2019.[37]

Eventually, there are two different types of reports that are presented in the Dewan Rakyat in relation to the PAC investigations. First is the PAC report itself, and second is the Response Report that the PAC presents to the Dewan Rakyat after obtaining feedback from the Ministry of Finance. It is a follow-up action after presenting the PAC report at the Dewan Rakyat based on two different categories. The first category refers to issues related to the Ministry of Finance (MoF), which requires a follow-up action from the MoF to inform the Controlling Officer of the related ministry. The second category refers to a follow-up action from the PAC Secretariat to directly inform the respective ministry. The Controlling Officer must act based on the suggestions made by the PAC and at the same time reports the ministry's action to the MoF. Then, the MoF shall prepare a memorandum to the PAC on the progress response by the ministry. This memorandum will be further presented in the PAC meeting to release information or take necessary action.

From January 2018 until December 2020, at least 16 PAC reports were presented in the Dewan Rakyat. Meanwhile, there were only five response reporting reports from the government ministries. These reporting reports are pertaining to the Project Redevelopment issues on Existing Facility at Bukit Jalil Sports Complex, Management Public Marina, Khazanah Treasury's Investment Loss, Goods and Services Tax (GST) Reimbursement Claim amounting to RM19.4 billion, and Air Mobility management.[38] Even though there is still a lack of response

37 Public Accounts Committee, *Kerugian Pelaburan Khazanah Nasional* (DR 2018-2023, DR.7/2019) <https://www.parlimen.gov.my/pac/review/docs-202-244.pdf> accessed 15 February 2021.

38 Official Web of Parliament Public Accounts Committee (PAC) <https://www.parlimen.gov.my/pac/index.php> accessed 18 February 2021.

reporting reports submission, the submission of these reports by the respective ministries shows that the government ministries can take heed of the issues highlighted in the PAC report and improve their governance and practices.

The role of ex-officio PAC parliament

There are also several ex-officio members from specific government agencies and departments serve as permanent representatives in the PAC. Initially, only two ex-officio members were from the Auditor's General Office and the Ministry of Finance. In 2018, an additional of five ex-officio members were added from the Malaysian Anti-Corruption Commission, Attorney General Chamber of Malaysia, Ministry of Economic Affairs, Account General's Department of Malaysia, and the Public Service Department. All these seven specific stakeholders have the relevant knowledge to assist the PAC.

All ex-officio members are required to attend the proceeding and housekeeping meetings. The main objective of having ex-officio in the meetings is to obtain reliable and consistent information from each stakeholder. These ex-officio members will verify all information and data in the PAC draft reports. They must keep all information strictly confidential until after the final report has been presented in the Dewan Rakyat. The presence of these ex-officio members in the PAC enhances the effectiveness of the PAC and subsequently improves the credibility of its reports.

Conclusion

This study has found several noteworthy findings on the development of PAC practices throughout the past few years. First, the appointment of opposition MPs as the PAC Chairman can be seen as a positive move in portraying a more independent image of the PAC. However, having an opposition MP as the Chairman has no major impact on the effectiveness of the PAC as its decisions are often based on consensus among its members. However, as three of the most recent PAC Chairmen are from the opposition, it seems that this practice will remain and that gradual positive changes may occur with the effectiveness of the PAC. Second, the adoption of two new meetings (i.e. verification meeting and response report meeting) shows that the PAC is streamlining and becoming more focused on producing better reports and follow-ups. This can make the PAC to be taken more seriously as an oversight body

by government ministries, departments, and agencies. Third, there has been an improved and better cooperation and interaction between the PAC and the seven stakeholders represented by the seven ex-officio in the PAC meetings. This is because the presence of these seven ex-officio enhances the expertise available for the PAC, enabling the committee to produce reports of better quality as well as more practical recommendations. The PAC in Malaysia had experienced these changes in the past few years, which shows the commitment by the government and MPs that this oversight committee and the Parliament of Malaysia as a whole can play a bigger role for better governance in Malaysia. Therefore, it justifies the need for more studies on the effectiveness of the PAC in Malaysia, the changes that have been implemented, and recommendations for future betterment.

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A Reappraisal on the Constitutional Functions of the Crown, the Parliament and the Judiciary to Defend Malaysian Constitutionalism

*Abdul Mu'iz Abdul Razak** and *Wan Noorzaleha Wan Hasan***

Abstract

This article aims to delve into the reality of Malaysian constitutionalism, from the perspectives of the institution of the Crown in Malaysia, inclusive of His Majesty Yang di-Pertuan Agong and Their Royal Highnesses the Malay Rulers, the roles and functions of Parliament and the Judiciary. A doctrinal analysis is employed to ascertain the plethora of functions and powers of the Rulers, specifically on the executive authority of the Yang di-Pertuan Agong and His Majesty's roles in Parliament during times of emergency. The paper proceeded to discuss the Malaysian experience of the underlying principles of constitutionalism. Judicial cases, recent constitutional issues and events, actions by the Crown will be analysed and responded from the perspective of constitutionalism. This article concludes by reiterating the Crown, Parliament and the Judiciary as important institutions which uphold the core features of the constitution and endorse the values and characteristics of constitutionalism.

Keywords: Constitutionalism, Constitutional Monarchy, Executive Authority, Parliament, Judiciary

Introduction: His Majesty the Yang di-Pertuan Agong and Their Royal Highnesses the Malay Rulers

The Crown in Malaysia is the symbol of strength, unity and religious tolerance. That being said, the role of the Yang di-Pertuan Agong and the Malay Rulers should not be construed just as a symbol, restricted to emblems and *Istiadat* only. Their Royal Highnesses are the bastion of the Malay culture and the religion of Islam. Generally understood,

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the functions of the institution of the monarchy in Malaysia is rooted in the concept of constitutional monarchy supplemented by the ideals of parliamentary democracy. The Yang di-Pertuan Agong is the Head of State, and in accepting such an appointment and before exercising the functions thereunder, His Majesty has to take the oath as stated in Article 37, Part 3 Schedule 4 of the Federal Constitution. The oath of Office of the Yang di-Pertuan Agong described four main responsibilities of His Majesty, which are; firstly, to perform duties in accordance with the constitution and laws of Malaysia; secondly, to uphold the laws of the country; thirdly, to fulfil the rules of law and order and promote good governance of the country; and lastly, to protect Islam as the religion of the federation at all times.

In view of the tumultuous political scene in Malaysia, the Yang di-Pertuan Agong played an active role in ensuring the functions and powers can be implemented in safeguarding the welfare and prosperity of the nation. The constitutional monarchical system practised in Malaysia is uniquely homegrown and different from any other monarchy system that survived in the modern world. The Yang di-Pertuan Agong is an institution in which a Malay ruler appointed from among the nine Malay Rulers in Malaysia by the Conference of Rulers in accordance with Schedule III of the Federal Constitution. The elected Yang di-Pertuan Agong will hold the post for a period of five years. When the Yang di-Pertuan Agong has been elected, the Keeper of the Great Seal of the Rulers will inform the result of the appointment by letter to both Houses of Parliament, the Dewan Rakyat and the Dewan Negara. The Yang di-Pertuan Agong may resign or be removed from office, as provided under Article 33(3) of the Federal Constitution. For countries that applied constitutional monarchy as in this country, all powers, functions and roles of the Yang di-Pertuan Agong as the Head of State are enumerated in the Federal Constitution, being the supreme law of the land.[1]

Further, Article 181(1) of the Federal Constitution guarantees the sovereignty and powers of the Yang di-Pertuan Agong and their Royal Highnesses, the Malay Rulers. His Majesty is accorded with the honour of preserving the special position of Malays and the natives of Sabah and Sarawak as the local inhabitants while protecting the interests of other racial groups in this country. Yang di-Pertuan Agong is the Head of Religion of Islam for the states of Pulau Pinang, Sabah, Sarawak and the Federal Territories of Kuala Lumpur, Putrajaya and Labuan.[2]

1 Federal Constitution, art 4(1).
2 ibid. art 3(3).

The Yang di-Pertuan Agong, being on top of the composition of the federal legislature,[3] has the power to summon, prorogue and dissolve the Parliament.[4] A Bill that has been passed by the House of Representatives and the House of Senate must be assented by the Yang di-Pertuan Agong before it is gazetted and enforced.[5] Article 66(4A) was amended and allowed the bill to become a law in 30 days without His Majesty assent.[6] This provision shows that the country upholds the power and roles of Parliament to legislate laws and in line with the principle of parliamentary democracy dan constitutional monarch that is practised in Malaysia. His Majesty may deliver His Royal Decrees in any of the Houses of Parliament or both.[7] An opening of Parliament marks the beginning of a parliamentary session each year, His Majesty usually addresses His royal decree in the House of Representatives. It takes place in front of both houses, in the presence of the executive and Judiciary. This constitutional practice is that His Majesty is the head authority of the Legislative as well as other government bodies, including the executive and judiciary.

The Yang di-Pertuan Agong is also the executive authority of the federation and has the power to rule, subject to provisions of the Federal Constitution. His Majesty shall hold, keep and use the Public Seal of the Federation.[8] The authority to govern is delegated to the executive branch of the government, and His Majesty fulfils the constitutional functions on advice by the Prime Minister and the Cabinet.[9] National safety and harmony are the responsibilities of the Yang di-Pertuan Agong[10] and the government of the day. Due to this, the Yang di-Pertuan Agong is accorded with the powers to proclaim a state of emergency if His Majesty is satisfied that a grave emergency exists whereby the security, economic life, or public order in the Federation or any part thereof is threatened.[11]

The constitution has envisaged provisions to protect the institution of the Crown from being the subject of ridicule and adverse critics.

3 ibid. art 43.
4 ibid. art 55.
5 ibid. art 66.
6 This provision was amended by Act 566 in force from 16 December 1983; Act 584 enforced on 20 January 1984; and lastly Act 885 enforced on 24 June 1994.
7 Federal Constitution (n 1) art 60.
8 ibid. art 36.
9 ibid. art 39.
10 Referring to the oath of office of the Yang di-Pertuan Agong in Federal Constitution, art 37(1).
11 Federal Constitution (n 1) art 150.

Article 10(2) and (4) empowered the Parliament to pass a law prohibiting the questioning of any matter, right, status, position, privilege, sovereignty or prerogative established or protected by the provisions of Part III, Article 152, 153 or 181, and firm effort must be done to enforce such legislations to protect the constitution and the institution of the Crown[12] for the harmony of the country.

Executive authority of the Federation

Literal reading of the Federal Constitution would give the impression that the Yang di-Pertuan Agong wield vast powers in the federation. However, it should be noted that from the constitutional perspective, the reality is quite the opposite. The Federal Constitution, through Article 39, has vested the Yang di-Pertuan Agong with the executive authority of the federation, exercisable either by him or the Cabinet. This article, through plain words, made a distinction between to whom executive authority is given and to whom such authority may be exercisable, which brings into attention on the succeeding Article 40(1) and 40(1A) on the executive functions of the Yang di-Pertuan Agong. These provisions provide that the vast powers of the Yang di-Pertuan Agong are exercisable upon the advice of the Cabinet, and by constitutional convention, the advice of the Prime Minister. Any provisions which confer power on the Yang di-Pertuan Agong, either accorded by the Federal Constitution or any federal law, should not be read in isolation with Article 40(1)[13] and this position is entrenched in the judicial precedence in Malaysia.[14]

From the perspectives of principles of constitutional monarchy and parliamentary democracy, the powers exercised by the Crown are not personal to an individual monarch.[15] The exercise of the executive powers still largely remained with the Cabinet acting in the name of the Crown. The key starting point on the exercise of the powers of the Yang di-Pertuan Agong should be Article 40(1), and this is further supplemented with Article 40(1A), which require the Yang di-Pertuan

12 Section 3 of the Sedition Act makes the offence of incitement to incite dissatisfaction or disloyalty to the Yang di-Pertuan Agong.

13 S.S. Faruqi, *Our Constitution* (Subang Jaya, Sweet & Maxwell, 2019) 193.

14 *Stephen Kalong Ningkan v Tun Haji Abang Openg* [1967] 1 MLJ 46; *Stephen Kalong Ningkan v Government of Malaysia* [1968] 1 MLJ 119; *Karam Singh v Menteri Hal Ehwal Dalam Negeri* [1969] 2 MLJ 269; *Balakrishnan v Ketua Pengarah Perkhidmatan Awam Malaysia* [1981] 2 MLJ 259.

15 S.S. Faruqi, *Document of Destiny: The Constitution of the Federation of Malaysia* (Petaling Jaya, The Star Publication, 2007) 437.

Agong to mandatorily accept and act in accordance with advice after His Majesty was presented with such advice. The Yang di-Pertuan Agong is accorded with both non-discretionary and discretionary powers. Other than those express provisions which provided that the Yang di-Pertuan Agong may act on his discretion, non-discretionary powers would mean that the Yang di-Pertuan Agong exercised those powers and functions on the advice of the Prime Minister and evidently most of the powers accorded to the Yang di-Pertuan Agong by the Federal Constitution are in this category.

There are also executive functions of the Yang di-Pertuan Agong, which are exercisable on the advice of the Cabinet after consultation with the Conference of Rulers, which includes appointment to several constitutional institutions. Among such critical appointments is the appointment of superior court judges in accordance with Article 122B, whereby it is indicated that the Yang di-Pertuan Agong will appoint the superior court judges while acting on the advice of the Prime Minister, after consulting the Conference of Rulers. In *Re Dato' Seri Anwar bin Ibrahim*[16], it is worth reiterating the judgement of the learned judge in the following words:

> So in the context of art 122B(1) of the Constitution, where the Prime Minister has advised that a person be appointed a judge and if the Conference of Rulers does not agree or withholds its views or delays the giving of its advise with or without reasons, legally the Prime Minister can insist that the appointment be proceeded with. Likewise, in the case of a request from the Conference of Rulers for revocation of an appointment of an advice from it to revoke an appointment already made, the Prime Minister need not respond.[17]

Evidently, 'consultation' as mentioned in Article 122B(1) here should not be equated with 'consent' of the Conference of Rulers, which might pose a dilemma when the advice of the Prime Minister clashes with the wishes of His Majesty's brother Rulers. In this regard, Professor Shad opined[18] that the wishes of the Conference of Rulers are usually a 'make or break' decision because the Yang di-Pertuan Agong is highly likely to also respect the wishes of His Majesty's brother Rulers.[19] If

16 [2000] 2 MLJ 481.

17 *Re Dato' Seri Anwar Ibrahim* [2000] 2 MLJ 481, 484H-I.

18 Faruqi (n 13) 194.

19 See <https://www.bharian.com.my/berita/nasional/2020/10/746086/agong-mendapati-tiada-keperluan-isytihar-darurat> accessed 27 January 2021.

such a situations were to actualise, the Yang di-Pertuan Agong can advise, caution and warn the Prime Minister, however ultimately, it is His Majesty's constitutional duty to accept the advice of the Prime Minister. Article 40(2) conferred explicit discretionary powers to the Yang di-Pertuan Agong in specified situations, which are; firstly, on the appointment of the Prime Minister; secondly, he may withhold consent to dissolve the House of Representatives; and thirdly, on the requisitioning of a meeting of Conference of Rulers.

Regarding the first situation, i.e. the appointment of the Prime Minister, this discretion afforded is not absolute on the behest of His Majesty. The discretion is qualified by the requirement in Article 43(2)(a) that the prospective candidate for the premiership shall have the majority support of the House of Representatives. Judicial guidance in this regard is worthwhile to note. In *Tun Datu Hj. Mustapha v Tun Datuk Adnan Robert and Datuk Pairin Kitingan*[20] , where the court agreed that the Head of State cannot constitutionally exercise an appointment of Chief Minister without taking into account the number of elected seats secured by each and every political party. If the Head of State omits to take into account the number of seats of the political party, it cannot be said that he exercised his judgment under Article 6(3) of the Sabah Constitution. In this instance, the Head of State would be said to be acting unlawfully and unconstitutionally. If no single party obtained a majority in the House of Representatives to secure its leader's candidacy for the premiership, the Yang di-Pertuan Agong will designate the leader of any viable coalition that won the General Election, as has commonly been practiced in the context of Prime Minister appointment in Malaysia.

Constitutional experience in this regard has been put to the test through a situation that had arisen in the Malaysian political atmosphere in February 2020 whereby the Cabinet of Tun Dr Mahathir Mohamad fell when he lost the majority of the House of Representatives due to a number of Members of Parliament who crossed the floor of the August Chamber. Following Article 43(4), Tun Dr Mahathir Mohamad had the choice to either tender his resignation or request for the dissolution of Parliament and the country would face another election. However, the situation of Covid-19 could worsen, and an election would not be prudent at that time, he tendered his resignation to the Yang di-Pertuan Agong on 24 February 2020.[21] The exercise of the discretionary powers of

20 [1986] 2 MLJ 420.

21 See <https://www.astroawani.com/berita-politik/tun-dr-mahathir-resigns-as-prime-minister-231545> accessed 27 January 2021.

the Yang di-Pertuan Agong, by His Majesty's wisdom, had a significant effect in solving this constitutional puzzle. His Majesty, at his behest, decreed that all Members of Parliament to have an audience with His Majesty at the National Palace to inquire each of them as to whom shall have the majority support in Parliament.[22] By taking active steps in this regard, His Majesty Seri Paduka Baginda Yang di-Pertuan Agong Al-Sultan Abdullah Ri'ayatuddin Al-Mustafa Billah Shah managed to discern a viable coalition among the Members of Parliament under the leadership of Tan Sri Muhyiddin Yassin to form a government with the latter holding the premiership.[23]

Power to combat Emergency: historical perspective and the functions of the Parliament

Another aspect of executive power of the Yang di-Pertuan Agong is embedded in Article 150(1) on the proclamation of emergency. The reason for the insertion of the power to combat emergencies can be traced back to the Reid Commission Report,[24] whereby back then the federation is shadowed with the threat of communist insurgency, the Commission was of the opinion that the federation should be accorded with adequate power in the last resort to protect essential national interests. The Reid Commission went on to state that suspension of the fundamental rights and State rights may only be justified to such an extent as may be necessary to meet any particular danger which threatens the nation. On this note, in *Stephen Kalong Ningkan v Government of Malaysia*,[25] the Privy Council gave guidance on the scope of what may amount to an emergency situation. It was held that emergency is warranted because of the grave emergency and as such threatens the security or economic life of the Federation, the term 'emergency' covers a wide range of situations which includes wars, famines, earthquakes, floods, epidemics and the collapse of civil government.[26] Pursuant to the Covid-19 pandemic, the government of Tan Sri Muhyiddin sought the satisfaction of the Yang di-Pertuan Agong to proclaim a state of emergency throughout the nation

22 See <https://www.astroawani.com/berita-malaysia/221-ahli-parlimen-selesai-menghadap-yang-dipertuan-agong-231801> accessed 27 January 2021.

23 See <https://www.astroawani.com/berita-malaysia/muhyiddin-yassin-dilantik-pm-ke8-232149> accessed 27 January 2021.

24 *Report of the Federation of Malaya Constitutional Commission 1957* (Her Majesty's Stationery Office, 1957).

25 [1968] 2 MLJ 238.

26 ibid. 242.

and such a proclamation was issued on 12 January 2021, which will last until 8 August 2021.[27] The proclamation sought to curb the spread of the Covid-19 pandemic and protect the citizens.

It is interesting to note the judicial tide has not subsided on the point that the Federal Crown shall act on the advice of the Cabinet even in the situation of an emergency, and this has been affirmed in *N Madhavan Nair v Government of Malaysia*,[28] where it was held that emergency rule which passes legislative powers from Parliament to the Yang di-Pertuan Agong has not displaced His Majesty's position as the constitutional monarch, and His Majesty is thus, still bound by the Constitution to act at all times on the advice of the Cabinet. The situation might be different if there is no Cabinet in sitting, and as such, the Yang di-Pertuan Agong may act on his discretion.[29] Another position on this matter when there is a caretaker government is highlighted below.

The Emergency proclamation of 1969 is a significant example. A general election was held on 10 May 1969, however the election, which is yet to be completed in Sabah and Sarawak were suspended by a Directive issued by the Yang di-Pertuan Agong.[30] The May 13th racial riots broke out, which is believed to stem from the clash of the Malay and the Chinese supporters on the evening of polling day. The riot extended till the next day, and the Proclamation of Emergency was declared on 15 May 1969.[31] His Majesty, the then Yang di-Pertuan Agong, Almarhum Sultan Ismail Nasiruddin Shah, had appointed Tun Abdul Razak as the Chairman of MAGERAN and to promulgate the Emergency Ordinance.[32]

The Emergency proclamation of 1969 is significantly different because the Parliament was dissolved, and the nation was governed by a caretaker government. On the pretext that the Yang di-Pertuan Agong is not bound by the advice of a caretaker government,[33] His Majesty acted within His Majesty's discretion and not on the advice of the caretaker Prime Minister. Under Ordinance 2 of 1969, the then Yang di-Pertuan Agong appointed Tun Abdul Razak as the Director of National Operations Council (NOC), also known in Malay as Majlis Gerakan Negara (MAGERAN) to exercise

27 See <https://www.straitstimes.com/asia/se-asia/malaysias-king-declares-national-state-of-emergency-to-curb-spread-of-covid-19> accessed 29 January 2021.

28 [1975] 2 MLJ 286, 289.

29 *Public Prosecutor v Mohd Amin Mohd Razali* [2000] 4 MLJ 679.

30 P.U. (A) 147/69, art 150(4).

31 *Report of the May 13th Tragedy: A Report of The National Operation Council* (Kuala Lumpur, October 1969).

32 Emergency (Essential Powers) Ordinance No.1 of 1969.

33 Also in *PP v Mohd Amin Mohd Razali* [2000] 4 MLJ 679, 692.

the executive authority of the Federation, under Article 39 and any powers that were granted by His Majesty and expressly stated under the law to include legislative authority.[34] Parliament was reconvened on 20 February 1971, after the suspended Sabah and Sarawak elections were completed. The Yang di-Pertuan Agong then repealed Ordinance 2 of 1969, and the NOC was abolished.

In reference to the proclamation of emergency, Article 150(3) requires the Yang di-Pertuan Agong to lay the proclamation before the House of Representatives and the House of Senate, and both Houses may pass a resolution to annul such proclamation. Such provision is the backdrop of a mechanism of parliamentary control over the actions of the executive during an emergency. In practice, however, the control is ineffective as the executive may enforce its will on Parliament due to the fact that there is the dominance of government MPs which has prevented the exercise of this power.[35] In addition, section 14 of the Emergency (Essential Powers) Ordinance 2021, an ordinance made pursuant to the proclamation of the emergency gazetted on 14 January 2021, provided that there would be no Parliament sitting throughout the proclamation unless the Yang di-Pertuan Agong thinks it is appropriate to summon the Parliament. Furthermore, parliamentary scrutiny is halted in an emergency as the Yang di-Pertuan Agong is empowered to prorogue or dissolve Parliament via Article 55(2), which would enable executive authoritarianism in governing the nation. At this juncture, Professor Shad commented that for all practical purposes, a proclamation of emergency by the Yang di-Pertuan Agong is not subject to adequate control by the Parliament.[36] Retrospectively, it is recommended by the Reid Commission that the Parliament should be called as soon as possible and get involved in approving the ordinances made by the government. They recommended the approval should come within 15 days from the date such ordinance is made.[37] It is humbly submitted that the recommendations put forth by the Reid Commission in their Report be used as the basis in promulgating the ordinances made under the proclamation of emergency and allowing the Parliament to be summoned.

Furthermore, on the basis that the functions and legitimacy of Parliament lie on the fact that such an authority is given by the will of the people of the nation, it is also submitted that the Parliament should

34 Ordinance No. 2 1969, s 8.
35 Faruqi (n 13) 222.
36 Faruqi (n 15) 676.
37 Report of the Federation of Malaya Constitutional Commission 1957 (n 24) art 175.

be allowed to perform its functions during the time of an emergency. Generally, legislating laws is the main function bestowed upon the Parliament, and no legislative proposal can be allowed to operate without going through the complex, yet required, the legislative process in Parliament. Despite executive dominance in the Malaysian Parliament, it must be upheld, in spirit and practice, Parliament's duty to legislate, even during an emergency. This is unmistakably allowed by Article 150(5) and (6), which supposedly widen the Parliament's power during an emergency. During an emergency, in enacting any legislation, there is no requirement to consult the States to get the consent of the Conference of Rulers and State Governors in areas where in usual times is needed, and such laws only require simple majority subsequently when it is tabled in Parliament. Historically, the federal legislature has exercised such powers, for example, over the state of Kelantan through Kelantan (Emergency Powers) Act 1977 and in amending the Sarawak Constitution through the Emergency (Federal Constitution and Constitution of Sarawak) Act 1966.

At this juncture, it is submitted that the emergency ordinance should be holistic in providing provisions that would facilitate the sitting of Parliament. Deputy Speaker of Dewan Rakyat, YB Azalina Othman Said, in her letter to the Attorney-General on 17 February 2021, addressed the need for provisions to improvise Parliament sittings instead of suspending Parliament altogether. This move is lauded for its emphasis to hold the government accountable to Parliament. Enforcing ministerial responsibility against the Cabinet and the ministers individually can no longer be done pursuant to the suspension of Parliament, according to the learned Deputy Speaker.

It is further submitted that from the constitutional perspective, Parliament must be allowed to fulfil its functions as enumerated in the Federal Constitution, despite the presence of the bulk of executive personnel in the August Chambers. The adoption of the concept of parliamentary government is coupled with the notion of 'responsible government', which made the government answerable to the will of the people, exercisable through the Parliament. Evidently, this is provided in Article 43(3) of the Federal Constitution that the Cabinet shall be collectively responsible to Parliament. Specifically, this is done during debates and daily Q&A session whereby government MPs have the opportunities to explain government policies and programmes. It is understood that some critics of the parliamentary governments opined that in this system, the legislature only legitimates the actions

of the executive and no longer are they afforded the control to legislate, seeing that the majority Members of Parliament are in the Cabinet.[38] This ultimately gives the idea that the role in legislating falls on the shoulders of the bureaucrats. However, it should also be noted that with the number of government MPs diminished to a simple majority in Dewan Rakyat, the scrutiny of government actions is more robust in the last few years. Professor Shad noted that the questions and debates in Parliament are more 'penetrative', resulting in the grand inquest of the nation acquiring greater significance. He further states that, however, this depends on the impartiality of the Speaker of the House.[39] With the advancement of modern technology and the proliferation of social media, Parliament debate activities are broadcasted across the nation. This gave a golden opportunity for the elected representatives to evidently show to their constituents that they are at work to fulfil the will and aspirations of their constituents. Public scrutiny in this modern age is indeed more penetrative, and surely this will be reflected in the coming polls.

Should Parliament failed in its duty to perform its constitutional functions, the will of the people might be curtailed, and the spirit of constitutionalism might wither away.

Malaysian constitutionalism and the Crown's significant role

Professor Andrew Harding indicated that to understand what amounts to constitutionalism, considerations as to practical implementations, advanced applications of the constitution and understanding of the theoretical objectives behind such constitutional provisions are due in order to have a holistic concept of constitutionalism.[40] There must be a distinction between constitutional texts and their practical implementation coupled with the objective of such constitutional provisions. He further stated that constitutionalism is essentially the informing values and actual practices of the constitutions, and it is in the latter that evidence of the autochthonous character of Malaysian constitutionalism can be seen.

38 Federal Constitution, art 43(2), Prime Minister and his Cabinet is the coalition of political parties that won the majority in Dewan Rakyat. Ministers are also allowed to come from Dewan Negara, but Prime Minister must come from Dewan Rakyat, Federal Constitution, art 43(2)(a).

39 Faruqi (n 13) 223.

40 A. Harding, 'New Asian Constitutionalism: Myth or Reality?' (7th Professor Emeritus Ahmad Ibrahim Memorial Lecture Series, International Islamic University Malaysia, 2006).

In the context of the Crown, constitutionalism dictates the core teachings and compliance to the Malay *Adat* that transpires over centuries of usage, albeit there were times when those usages were curtailed and diminished to the point of insignificance during the British rule. The Federal Constitution of Malaysia dates back to 1957, but the constitutionalism of Malaysia, or rather Tanah Melayu, is older than that. Throughout Asian countries' historical perspectives, which bears upon them major constitutional changes in the 1980s and 1990s, the Federation's 1957 constitution survived virtually intact with its core values remained rooted. With that in mind, all these years, constitutionalism has survived longer, although admittedly through various changes, which is expected as it is in the nature of constitutionalism that it never stands still. The culmination of incidents, practices, the emergence of constitutional institutions, including that of the Federal Crown and the Conference of Rulers, has shaped Malaysian constitutionalism to be uniquely autochthonous to this land and remained relevant to this day.

Throughout the years of constitutional governments in Malaysia, we have seen how constitutional provisions, be it federal or state, are being applied by the Crown and other players of constitutionalism which are politicians and social activists. Some of these instances are recorded in judicial precedence, notably the case of *Dato' Seri IR Hj. Mohammad Nizar bin Jamaluddin v Dato' Seri Dr Zambry bin Abdul Kadir*[41] when the then Sultan of Perak took cognisance of the extraneous circumstances to gather enough information regarding who held the majority support of the Perak Legislative Assembly. This is an example where the ideals of constitutionalism, though not expressly stated, is at play. Practical implementation of the practice of choosing a head of government for a state legislative assembly, coupled with advanced applications of constitutional provisions on choosing the head of government and understanding the theoretical objectives behind such a provision, are the considerations that described constitutionalism in this aspect. The State Crown in this situation looked at limiting the establishment of majority support through the vote in the legislative assembly to be counter-productive, when in fact it is proven through any judicial or non-judicial precedence that it should not be limited to just one method. This view is also evident in *Datuk Amir Kahar v Tun Mohd Said bin Keruak Yang Di-Pertua Negeri Sabah & Ors.*[42]

41 [2010] 2 MLJ 285.
42 [1995] 1 MLJ 169.

In upholding ideals of constitutionalism, which includes the notion of limited government, it should be noted that Abdul Aziz Bari argued that the privileges accorded to the Crown are related to their role in helping the constitutional government's function according to its ideals, which may include limited discretionary powers of the executive.[43] This is because unfettered discretionary powers and constitutionalism do not mix. Hence, Article 40(1) attaches to the use of powers and functions of the Yang di-Pertuan Agong at the federal level, harmonised with the basic tenets of constitutionalism as the Crown in a constitutional monarchy system do not wield absolute power. The Crown's role in the context of upholding the core values of constitutionalism is therefore significant.

Its reference can be made to *Indira Gandhi v Pengarah Jabatan Agama Islam Perak*[44] where the Federal Court, quoting *Reference Re Secession of Quebec*,

> Constitutionalism facilitates … a democratic political system by creating an orderly framework within which people may make political decisions. Viewed correctly, constitutionalism and the rule of law are not in conflict with democracy, rather they are essential to it. Without that relationship, the political will upon which democratic decisions are taken would itself be undermined.[45]

Political dynamism which coloured the nation's parliamentary democracy is thus the product of the advancement of constitutionalism itself. The Crown, being the vessel of the core values of constitutional monarchy, is the safeguard of the ideals of parliamentary democracy, which seeks to uphold the values of constitutionalism, specifically concerning responsible government.

Malaysian constitutionalism and an overview of the role of the judiciary

Professor Shad opined that constitutionalism entails the promotion of values and ideals to ultimately promote the good governance of a nation. This is applied together with the concepts of 'limited government', 'separation of powers' and 'rule of law', among others. The list of

43 A.A. Bari, 'The 1993 Constitutional Crisis: A Redefinition of the Monarchy's Role and Position?' in A. Harding and H.P. Lee (eds), *Constitutional Landmarks in Malaysia: The First 50 Years 1957 – 2007* (Petaling Jaya, LexisNexis, 2007) 229.

44 [2018] 1 MLJ 545, 565.

45 [1998] 2 SCR 217, Supreme Court Canada.

values and ideals form features of a democratic political system in which a country functions and these values and ideals at times overlap each other in their applications.[46] Some of these values and ideals are discussed below.

Constitutionalism demands that state authorities and citizens from all walks of life respect the law. Officers of the State authority would be deemed against the spirit of constitutionalism if they are allowed to deny or deprive citizens of the entitlements of their rights on the general, vague and subjective grounds of national interest, public policy, economic efficiency or good government.[47] This is also in line with the recommendations made in the Reid Commission Report, whereby fundamental rights should be guaranteed by the Constitution, and it is followed by the reiteration of the function of the Courts, which is accorded with the power and duty to enforce those rights.[48]

The Reid Commission further noted that they disagreed with the suggested curtailing of Courts' powers to be placed in the Constitution regarding certain principles or aims of policy. The disagreement stems from the fact that the constitutional guarantees would be illusory because it would be unenforceable in law and ultimately be counter-effective in protecting the rights of the citizens against the long arm of the executive or the legislature. Such celebration of the Courts' roles, while also upholding the values of constitutionalism, can be demonstrated in the *Pengarah Tanah dan Galian Wilayah Persekututan v Sri Lempah Enterprise Sdn Bhd*,[49] where Raja Azlan Shah CJ (as His Majesty then was) reminded of the functions of the courts as the bastion to safeguard the liberty of the people:

> Every legal power must have legal limits, otherwise, there is a dictatorship. In particular, it is a stringent requirement that a discretion should be exercised for a proper purpose and that it should not be exercised unreasonably. In other words, every discretion cannot be free from legal restraint; where it is wrongly exercised, it becomes the duty of the courts to intervene. The courts are the only defence of the liberty of the subject against departmental aggression. *In these days when government departments and public authorities have such great powers and influence, this is a most important safeguard for the ordinary citizen:*

46 Faruqi (n 15) 24.
47 ibid.
48 Report of the Federation of Malaya Constitutional Commission 1957 (n 24) art 161.
49 [1979] 1 MLJ 135, 148. FC

> *so that the courts can see that these great powers and influence are exercised in accordance with law.* I would once again emphasise what has often been said before, that "public bodies must be compelled to observe the law and it is essential that bureaucracy should be kept in its place" (per Danckwerts L.J. in *Bradbury v London Borough of Enfield* [1967] 3 All ER 434 442).[50]

Constitutionalism dictates limiting the discretionary powers of institutional abuse or misuse of powers.[51] Coupled with the words of the Raja Azlan Shah CJ (as His Majesty then was), such judicial control is to avoid destruction of constitutional values which the authority of the State should instead promote. It is here that judicial control can be regarded as the last bastion in order to ensure the executive exercise of discretionary powers is in line with the core values of constitutionalism. *Pengarah Tanah dan Galian Wilayah Persekututan v Sri Lempah Enterprise Sdn Bhd* echoed in *Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors*[52] whereby it is stated that constitution must be interpreted in light of its historical and philosophical context, as well as its fundamental underlying principles, which includes the rule of law and constitutionalism. Pursuant to the underlying principles of constitutionalism, it strengthens the role of the judiciary as the ultimate arbiter of the lawfulness of state action.

Waldron commented that constitutionalism is not just about the normative theory about forms and procedures of governance of a State, it is also about 'controlling, limiting and restraining the power of the state'.[53] Such control, while some may be provided in statutory legislation, however, it is ultimately up to the Courts to ensure that such limitations and restrains in exercising the powers provided to the State authority are observed. In addition to this, Hamid Sultan JCA, dissenting in *Nik Noorhafizi bin Nik Ibrahim & Ors v Public Prosecutor*[54], quoting *IR Coelho* in the Supreme Court of India, touches on the duty of the Courts in upholding the constitution in that even judicial precedence which is unconstitutional must be disregarded. The exercise of the power of the authority of the State must be controlled in order to maintain democratic principles upon which it is founded. this is because according to *IR*

50 ibid. (emphasis added).
51 Faruqi (n 15) 30.
52 [2018] 1 MLJ 546.
53 J. Waldron, 'Constitutionalism: A Sceptical View' (2012) *New York University School of Law, Public Law Research Paper,* No.10-87, 13.
54 [2013] 6 MLJ 660, 713-4.

Coelho, constitutionalism is a legal principle, not just a philosophical concept which the Courts are entrusted to uphold. The Courts' duty is further emphasised in the judiciary is dutybound to interpret legislation on the assumption that Parliament would not wish to legislate contrary to fundamental rights.

At this juncture, it is vital to also reminisce the reminder by Salleh Abas LP in *Lim Kit Siang v Dato Seri Mahathir Mohamad*[55] that the Courts, as the guardian of the constitution within its ambit, are equipped with the power of judicial review, not just on construction and interpretation of legislation. This power of judicial review is not implying that the Courts are superior to the Parliament, but it connotes that both organs are the subjects and inferior to the constitution. The Courts, imbued with the responsibility to be the arbiter between the individual and the State and between individuals, must also, out of necessity and acting in accordance with the constitution and the law, 'be the ultimate bulwark against unconstitutional legislation or excesses in administrative action'.[56]

Conclusion

Constitutionalism is not just some philosophical concept or understanding devoid of any sense of reality. It is the internalisation of constitutional values into the fabric that defines the actions and inactions of governments or any authority in the State and its impact on the people as a whole. It is the holistic outlook that goes beyond the constitutional texts and focuses on more than just the setting to which it applies. It is the tenets that shape the interpretation of the constitution into the everyday machinery of institutions that were created to protect the liberties of the people. Malaysian constitutionalism specifically denotes that the practices, ideals, conventions applicable in the Malaysian constitutional contexts are unique to Malaysia, dating back to the days even before the Federation of Malaya was formed. This is partly evident through the recommendations made to and accepted by the Reid Commission in promulgating the Federal Constitution as the bedrock of this nation.

Furthermore, a homegrown version of the ideals of constitutionalism that dictate the internalisation of values is the backbone of the concept of constitutional monarchy supplemented by parliamentary democracy. Malaysian constitutionalism dictates that the interpretations, practices and conventions should be moulded using the framework that is

55 [1987] 1 MLJ 383, 386-7.
56 ibid.

truly Malaysian, this is where the function of the Courts is vital. Such practices and conventions are results of the application of local laws and interpretation of local cultures embedded in our system, which is in line with Article 160 of the Federal Constitution on what is described as 'law'. The creation of Malaysia's own notion of constitutionalism is on track via the application in the cases as discussed.

From the perspective of the Crown, even though practitioners, teachers and students of the law can look at how other liberal societies around the world react to their monarchies, it is submitted that in Malaysia, we should look at and apply what has been transpired in this beloved land for many centuries, instead of plainly 'scooping' what other liberal societies are doing. Echoing Professor Shad in his famed *Document of Destiny*, His Majesty the Yang di-Pertuan Agong and Their Royal Highnesses the Malay Rulers are well-suited to promote good governance and protect the 'social contract' on which this nation was founded. Scrutinies by the Crown plays a crucial role in supplying check and balance and promote openness and transparency in government, which fulfils the ultimate aim of constitutionalism.

The Parliament, as the grand inquest of the nation, should be allowed to fulfil its functions as enumerated in the Federal Constitution and dictated by the principles of constitutionalism. The alleged subordination of the Parliament to the executive must be answered with openness and strong political will by both the government and the opposition. The internal process of Q&A, Minister question time, workings of opposition MPs, number of sitting days in Parliament are a few matters that required attention. During an emergency, the Parliament's functions should not be curtailed, specifically regarding the inability to sit as provided in the Emergency Ordinance. This would solidify the subordination of the Parliament to the executive. To uphold the spirit of constitutionalism, Parliament's functions should be strengthened to safeguard the integrity of the notion that it is the bastion of the people's will.

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Gangguan Seksual: Peranan Parlimen dalam Penggubalan Undang-undang dan Polisi yang Relevan

Sexual Harassment: The Roles of Parliament in the Enactment of Law and Relevant Policy

*Rozana Abdullah**

Abstrak

Gangguan seksual semakin diiktiraf sebagai satu pelanggaran ke atas hak asasi manusia kerana menafikan peluang wanita untuk mendapat kesamarataan dan kebebasan hidup seperti lelaki. Sekiranya tidak ditangani dengan berkesan, gangguan seksual akan menyumbang kepada kebejatan insaniah dalam setiap strata kehidupan – ekonomi, politik dan sistem sosial. Menteri di Jabatan Perdana Menteri (Parlimen dan Undang-undang) menyatakan bahawa sehingga Jun 2020 sahaja, Mahkamah merekodkan sebanyak 131 kes gangguan seksual. Pada masa ini, mangsa gangguan seksual dilindungi mengikut peruntukan dalam pelbagai konteks perundangan kerana tiada undang-undang khusus bagi mengadili kes-kes gangguan seksual. Namun, undang-undang yang diguna pakai masih tidak cukup kukuh untuk memberi pengadilan sepenuhnya kepada mangsa. Penggubalan rang undang-undang gangguan seksual yang lebih holistik ialah satu keperluan yang perlu diutamakan pada masa ini. Dalam konteks ini, Parlimen ialah platform terbaik bagi Ahli-ahli Parlimen untuk menyemak dan mengimbangi peranan yang dimainkan kerajaan dalam usaha membendung jenayah gangguan seksual. Oleh itu, penulisan ini bertujuan menganalisis peranan yang dimainkan oleh Parlimen dalam memastikan rang undang-undang gangguan seksual dibentang, dilulus dan dilaksanakan. Data mengenai peranan Parlimen diperoleh melalui penganalisaan terhadap laporan yang dikemukakan oleh Jawatankuasa Pilihan Khas dan kandungan perkakasan Mesyuarat

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Parlimen yang meliputi Aturan Urusan Mesyuarat, Usul dan Risalat yang diedarkan pada sesi Mesyuarat Penggal Ketiga Parlimen Keempat Belas (sehingga 3 Disember 2020) dengan memberi perhatian khusus kepada isu-isu gangguan seksual. Hasil kajian mendapati bahawa sehingga 3 Disember 2020, hanya 15.25% soalan berkaitan gangguan seksual dikemukakan oleh Ahli-ahli Parlimen Dewan Rakyat dan Dewan Negara di sepanjang sesi mesyuarat berlangsung.

Kata Kunci: Gangguan Seksual, Mangsa, Parlimen, Ahli Parlimen, Rang Undang-undang Gangguan Seksual

Abstract

Sexual harassment is increasingly being recognised as a violation of human rights and undermines equality of opportunity between women and men. Failing to respond to sexual harassment cases adequately can impede human productivity in every stratum of life - economy, politics, and social system. Minister in the Prime Minister Office (Parliament and Law) stated, as of June 2020, the Court recorded 131 cases of sexual harassment. Currently, there are no specific laws tailored to address sexual harassment cases, and victims are protected by provisions under different types of law. However, most of the provisions offer limited redress for sexual harassment cases, making it difficult for victims to claim justice. Recognising these inadequacies, it is crucial for the Government to legislate a specific law that will provide conclusive justice for the victims. In this context, Parliament serves as a platform for Members of Parliament to scrutinise the Government and push for the enactment of a long-waited Sexual Harassment Bill. Therefore, this paper aims to examine the roles of Parliament in ensuring that the sexual harassment bill is tabled, approved and executed. The Special Select Committee reports and content of Meeting tools such as Meeting Order Papers, Motions, and 'Risalat' distributed throughout the 3rd Session of the Fourteenth Parliament (as of 3 December 2020) were analysed to identify relevant data particularly on issues pertaining to sexual harassment. The study demonstrates that, as of 3 December 2020, only 15.25 % questions on sexual harassment were raised by Members of Parliament from the House of Representatives and House of Senate throughout the session.

Keywords: *Sexual Harassment, Victims, Parliament, Members of Parliament, Sexual Harassment Bill*

Pendahuluan

Isu-isu seksual atau seksualiti masih dianggap sebagai tabu dan tidak dibincangkan secara terbuka oleh sebilangan besar masyarakat Malaysia. Sesetengah individu akan berasa tidak senang apabila mendengar perkara berkaitan seksual dibincangkan secara terbuka. Malah ada juga yang beranggapan bahawa tidak sopan untuk menyebut waima perkataan seksual sekalipun. Tambahan pula sekiranya perkataan tersebut terlontar daripada mulut kanak-kanak. Seksual dari kaca mata masyarakat adalah terlalu awal untuk diungkapkan oleh kanak-kanak. Stigma masyarakat yang berfikiran begini menyebabkan kes-kes gangguan seksual adakalanya tidak dilaporkan secara terbuka. Malah ada yang menganggap isu ini tidak pernah wujud dan mengapa pula perlu menggubal sebuah undang-undang khusus bagi mengadili kes-kes berunsur gangguan seksual. Gangguan seksual boleh didefinisikan sebagai perlakuan yang kurang disenangi melalui kata-kata, isyarat, sentuhan, psikologi dan visual yang berunsur seks yang biasanya dilakukan berulang-ulang.[1] Persoalannya mengapa gangguan seksual tidak dilihat sebagai satu perbuatan jenayah? Walhal telah wujud beberapa kejadian yang membuktikan bahawa gangguan seksual ialah permulaan kepada perbuatan jenayah berat seperti rogol dan bunuh.[2]

Peningkatan kes-kes gangguan seksual di negara ini harus dilihat sebagai satu unsur yang boleh merencat pencapaian matlamat utama Wawasan Kemakmuran Bersama, iaitu untuk menyediakan taraf hidup yang wajar (*decent standard of living*) kepada semua rakyat Malaysia pada tahun 2030.[3] Perlakuan tidak bermoral ini memberi pelbagai implikasi negatif terhadap pembangunan negara dalam konteks sosial, ekonomi dan politik. Menurut Presiden Persatuan Psikiatri Malaysia, Dr. Hazli Zakaria, trauma pada mangsa disebabkan gangguan seksual menjadi satu bentuk buli, penindasan, penderaan, dan ketidakadilan sepanjang hayat.[4] Tambahan pula, tekanan perasaan pasca trauma seperti mimpi buruk akibat teringat kejadian lampau menjadikan mereka lebih sensitif

1 Lihat <http://www.mohr.gov.my/psikologi/pdf/APA_ITU_GANGGUAN_SEKSUAL.pdf> dicapai 18 Februari 2021.

2 Lihat <http://www.sinarharian.com.my/article/22332/SIASAT/Jenayah-pedofilia-makin-membimbangkan> dicapai 13 Januari 2021.

3 Lihat <http://dbook.penerangan.gov.my/dbook/dmdocuments/ringkasan_wawasan_kemakmuran_bersama/mobile/index.html> dicapai 7 Disember 2020.

4 Lihat <http://www.bharian.com.my/wanita/keluarga/2020/03/666031/trauma-gangguan-seksual-masa-lampau-lebih-teruk> dicapai 7 Disember 2020.

sehingga menyebabkan tekanan mental. Sekiranya kesihatan mental mereka tidak dirawat dan dibiarkan membarah dalam diri mangsa, maka akan lahirlah kelompok generasi yang lemah dari segi pemikiran dan daya tahan. Situasi ini pastinya akan merencat kecemerlangan modal insan serta pembangunan sistem sosial negara.

Dari sudut ekonomi, gejala gangguan seksual yang tidak terkawal boleh meruntun kedudukan ekonomi sesebuah organisasi dan melembabkan penyertaan wanita dalam pasaran kerja. Hal ini akan membantutkan hasrat kerajaan untuk mencapai 59% penyertaan wanita dalam pasaran kerja.[5] Penglibatan wanita dalam pasaran tenaga kerja adalah amat penting kerana hasil kajian oleh *Khazanah Research Institute* pada tahun 2018 menunjukkan bahawa pertambahan penyertaan sebanyak 30% wanita dalam pasaran buruh akan membantu mempertingkat GDP negara antara 7 hingga 12%.[6]

Kes antara *Mohd Ridzwan bin Abdul Razak v Asmah binti Hj Mohd Nor*[7]merupakan satu contoh dalam mentafsirkan impak yang dilalui oleh mangsa gangguan seksual di tempat kerja. Dalam kes ini, pelaku ialah Pengurus Besar di Bahagian Pengurusan Risiko, Lembaga Tabung Haji (LTH). Manakala mangsa ialah Pengurus Kanan di bawah seliaan pelaku. Berdasarkan laporan yang dikemukakan mangsa kepada Ketua Pegawai Eksekutif LTH, pelaku telah antara lain melakukan gangguan seksual terhadap mangsa menggunakan kata-kata lucah, jenaka kotor berunsur seksual, menggunakan kata-kata kasar dan kesat dalam e-mel serta beberapa kali mempelawanya untuk dijadikan isteri kedua. Hasil daripada siasatan yang dilakukan oleh Jabatan Sumber Manusia LTH, pelaku telah diberikan amaran secara pentadbiran dan mangsa pula dipindahkan ke jabatan lain yang tiada kaitan dengan kepakaran beliau. Akibat berasa tidak puas hati dengan tindakan mangsa, pelaku telah memfailkan saman fitnah terhadap mangsa kerana membuat aduan tanpa bukti kukuh serta mengakibatkan kontrak kerjanya tidak diperbaharui. Antara tuntutan yang dikemukakan pelaku ialah (i) deklarasi bahawa dia tidak bersalah dalam menyebabkan gangguan seksual terhadap mangsa; (ii) permohonan maaf secara terbuka daripada mangsa;

5 Lihat <http://www.kabinet.gov.my/bkpp/pdf/Kajian_separuh_penggal_RMK11.pdf> dicapai 7 Disember 2020.

6 Lihat <http://www.kpwkm.gov.my/kpwkm/uploads/files/TextUcapan/Ucapan_Timb_MenteriII/Final%20Teks%20Ucapan%20YBM_Sambutan%20Hari%20Wanita%20dan%20Kemerdekaan_25%20Ogos%202020%20(2).pdf> dicapai 7 Disember 2020.

7 [2016] CLJ JT (10).

(iii) mangsa hendaklah meminta LTH untuk mengeluarkan kenyataan bahawa pelaku tidak bersalah; dan (iv) perintah untuk LTH menarik balik amaran kasar secara pentadbiran dan semua rujukan tentangnya dalam rekod kerja pelaku di LTH.[8]

Mangsa kemudiannya memfailkan tuntutan balas dengan menyabitkan pelaku sebagai telah menyebabkan beliau mengalami tekanan emosi dan mental yang serius sehingga mengakibatkan trauma serta jatuh sakit. Mahkamah mendapati wujud bukti yang lebih daripada mencukupi untuk membuktikan pelaku telah membuat komen lucah berunsur seksual yang ditujukan secara langsung kepada mangsa atau ketika kehadiran mangsa. Mahkamah juga mendapati perbuatan gangguan seksual tersebut meninggalkan kesan yang sangat serius terhadap mangsa dan terangkum di bawah tort yang membawa kepada '*nervous shock*' seperti yang berlaku dalam kes *Wilkinson v Downtown*.[9] Malahan, kata-kata lucah berunsur seksual yang dikeluarkan pelaku ke atas mangsa dikategorikan sebagai gangguan seksual dalam bentuk lisan di bawah Kod Amalan untuk Mencegah dan Membasmi Gangguan Seksual di Tempat Kerja 1999. Mangsa akhirnya berjaya menuntut ganti rugi umum sebanyak RM100,000 dan RM20,000 sebagai ganti rugi teladan daripada pelaku.[10]

Walaupun kes yang terjadi antara *Mohd Ridzwan v Asmah*[11] ini berjaya memberi keadilan kepada mangsa, namun terdapat banyak lagi kes gangguan seksual yang tidak dapat diselesaikan kerana kesukaran untuk mengemukakan bukti (*beyond reasonable doubt*) yang kukuh. Menurut Jabatan Tenaga Kerja (JTK), daripada 98 kes yang direkodkan, hanya 89 kes berjaya diselesaikan, di mana sebanyak 57 kes didapati tiada bukti kukuh untuk membuat pertuduhan ke atas pelaku. Manakala selebihnya didapati bersalah dan mempunyai asas kukuh untuk dikenakan tindakan iaitu lapan orang dibuang kerja, empat orang digantung kerja, 17 orang diberi amaran, seorang diturunkan pangkat, dan dua orang ditukarkan ke tempat lain.[12]

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8 Lihat <http://www.digitalnewsasia.com/sites/default/files/files_upload/Mohd%20Ridzwan%20bin%20Abdul%20Razak%20v%20Asmah%20Binti%20Hj%20Mohd%20Nor%20CLJ_2015_4_295.pdf> dicapai 27 November 2020.

9 P. Roycroft, 'Wilkinson v Downtown After Rhodes and Its Future Viability in New Zealand' <http://www.nzlii.org/nz/journals/VUWLawRw/2017/5.pdf> dicapai 7 Disember 2020.

10 H. Hashim, 'Saman gangguan seksual?' <http://www.sinarharian.com.my/article/57923/KOLUMNIS/Saman-gangguan-seksual> dicapai 7 Disember 2020.

11 [2015] 4 CLJ 295.

12 Pemerhatian di atas Cadangan Penggubalan Akta Gangguan Seksual, Kementerian Pembangunan Wanita, Keluarga dan Masyarakat.

Dalam jawapan bertulis kepada Ahli Parlimen Batu Kawan pada sesi Mesyuarat Kedua, Penggal Ketiga, Parlimen Keempat Belas Dewan Rakyat, Dato' Takiyuddin Hassan, Menteri di Jabatan Perdana Menteri (Parlimen dan Undang-undang) mengemukakan jumlah bilangan kes gangguan seksual dari tahun 2014 hingga Jun 2020 yang tiada tindakan lanjut (NFA), pelaku dituduh di mahkamah, pertuduhan ditarik balik, pelaku dilepaskan tanpa dibebaskan (DNAA), pelaku disabitkan kesalahan selepas perbicaraan penuh dan pelaku mengaku salah dan dihukum seperti berikut:[13]

Jadual 1. Kes-kes Gangguan Seksual Mengikut Status

Tahun	NFA	Tuduh	Tarik Balik	DNAA	Sabit	Mengaku Salah	Jumlah
2014	14	47	6	7	21	7	**102**
2015	41	32	3	4	3	7	**90**
2016	50	54	3	3	11	23	**144**
2017	41	72	1	11	9	22	**156**
2018	32	61	3	4	7	17	**124**
2019	31	95	8	4	7	19	**164**
2020	31	88	7	0	2	3	**131**
Jumlah	**240**	**449**	**31**	**33**	**60**	**98**	**911**

Sumber: Parlimen Malaysia

Walaupun terdapat penurunan kes pada tahun 2015, namun jumlah kes gangguan seksual yang dilaporkan terus meningkat pada setiap tahun dari 2016 hingga 2019 kecuali tahun 2018 yang menunjukkan sedikit penurunan. Namun begitu, dalam keadaan negara bergelut menentang pandemik COVID-19 sehingga terpaksa mengisytiharkan Perintah Kawalan Pergerakan bermula 18 Mac hingga 2 Mei 2020, dan diikuti Perintah Kawalan Pergerakan Bersyarat pada 4 Mei hingga 9 Jun 2020, jumlah kes yang dilaporkan pada tahun 2020 adalah jauh lebih tinggi berbanding tahun-tahun sebelumnya. Berdasarkan Jadual 1 di atas,

13 Pemberitahuan Pertanyaan Jawab Bukan Lisan, Mesyuarat Kedua, Penggal Ketiga Parlimen Keempat Belas Dewan Rakyat, Soalan No. 190 <https://www.parlimen.gov.my/files/jindex/pdf/Telah%20dikemaskini%20pada%209%20September%202020.pdf>.

jumlah laporan yang diterima sehingga Jun 2020 sahaja adalah sebanyak 131 kes. Statistik ini mencerminkan bahawa kes gangguan seksual boleh berlaku di mana-mana, pada bila-bila masa dan persekitaran, waima dalam keadaan Perintah Kawalan Pergerakan. Statistik ini juga menunjukkan jumlah kes NFA dan pertuduhan ditarik balik adalah tinggi iaitu masing-masing berjumlah 240 dan 31 kes. Hal ini membuktikan bahawa terdapat keperluan yang mendesak untuk menggubal sebuah rang undang-undang (RUU) yang lengkap serta dapat memberi definisi gangguan seksual secara lebih inklusif agar dapat memberi hak dan perlindungan kepada mangsa dengan sepenuhnya.

Oleh itu, penulisan ini akan menganalisis peranan yang dimainkan oleh Parlimen dalam mengangkat isu-isu berkaitan kes gangguan seksual sehingga membawa kepada pembentangan sebuah rang undang-undang gangguan seksual. Data mengenai peranan Parlimen diperoleh melalui penganalisaan terhadap laporan yang dikemukakan oleh Jawatankuasa Pilihan Khas dan kandungan perkakasan Mesyuarat Parlimen, meliputi Aturan Urusan Mesyuarat, Usul dan Risalat yang diedarkan pada sesi Mesyuarat Penggal Ketiga Parlimen Keempat Belas (sehingga 3 Disember 2020) dengan memberi perhatian khusus kepada isu-isu gangguan seksual.

Sorotan literatur

Sifat dan kemampuan wanita yang ditafsirkan sebagai kurang berkeupayaan untuk mempertahankan diri menyebabkan wanita lebih terdedah untuk menjadi mangsa gangguan seksual. Rekod oleh Polis Diraja Malaysia mendapati sebanyak 1218 kes gangguan seksual dilaporkan dari tahun 2013 hingga 2017. Daripada jumlah ini, mangsa lelaki adalah hanya 257 orang sahaja dan selebihnya ialah wanita[14]. Statistik ini menunjukkan bahawa gangguan seksual bukan sahaja berlaku terhadap wanita, malahan turut menyasarkan kaum lelaki. Menurut Rohani Abdul Rahim, semua orang berkemungkinan mengalami gangguan seksual pada apa juga peringkat umur, bila-bila masa atau di mana-mana tempat dengan pelbagai cara melalui kata-kata, isyarat atau sentuhan.[15] Perbezaan tempat gangguan seperti di tempat kerja, di jalanan, di institusi pendidikan dan di tempat persendirian,

14 Lihat <http://www.astroawani.com/berita-malaysia/lelaki-juga-boleh-jadi-mangsa-kepada-gangguan-seksual-214285> dicapai 7 Disember 2020.

15 R.A. Rahim, 'Undang-undang Gangguan Seksual di Malaysia: Satu Analisa' (2011) 1 *Current Law Journal* 1.

mempengaruhi kekerapan dan jenis gangguan yang cenderung dilakukan oleh pengganggu.[16]

Namun, kebanyakan kajian lepas lebih tertumpu kepada kes-kes gangguan seksual yang terjadi di tempat kerja seperti kajian ke atas kes antara *Mohd Ridzwan v Asmah* oleh Jashpal Kaur.[17] Kes ini mempamerkan sikap tidak bertanggungjawab pelaku sebagai ketua jabatan terhadap kakitangan bawahannya. Di samping itu, hasil tinjauan oleh Vase.ai dan Pertubuhan Pertolongan Wanita (WAO) ke atas 1,010 wanita di Malaysia mendapati 62% daripada wanita yang ditinjau mengatakan bahawa mereka pernah mengalami satu atau pelbagai bentuk gangguan seksual di tempat kerja.[18] Manakala kajian yang dijalankan oleh Ishak dan lain-lain mendapati tingkah laku gangguan seksual yang paling kerap dilakukan di tempat kerja adalah menjanjikan ganjaran jika mangsa memberi kerjasama terhadap perbuatan berunsur seks.[19] Hal ini bersamaan dengan kes yang berlaku terhadap pelajar pelatih perubatan di sebuah hospital perubatan awam di Lembah Klang. Dalam paparan bertajuk '*A sex predator is in the house*', seorang Ketua Jabatan dilaporkan telah menyalahguna kuasa apabila cuba membuka butang baju dan mencium pegawai perubatan siswazah di bawah seliaannya ketika melakukan perbincangan mengenai urusan kerja.[20] Malahan Ketua Jabatan tersebut turut mengugut untuk menggagalkan ujian bagi komponen bukan akademik sekiranya pegawai perubatan berkenaan enggan menuruti kemahuannya. Insiden ini telah menimbulkan pelbagai polemik dalam kalangan masyarakat kerana perbuatan Ketua Jabatan tersebut sangat bertentangan dengan etika dan amalan kedoktoran. Perkara ini bukan sahaja mencalar imej golongan profesional dan disifatkan sebagai sangat tidak beretika, malah boleh dikenakan tindakan penahanan kerja bagi maksud penyiasatan seperti yang digariskan dalam Perkara 43,

16 J.E. Gruber, 'A Typology of Personal and Environmental Sexual Harassment: Research and Policy Implications for the 1990s' (1992) 26 *Sex Roles* 447.

17 J.K. Bhatt, 'Commentary: Landmark Award of Compensatory Damages for Sexual Harassment at the Workplace – Harrassers and Employers Beware!' (2016) 3 *ILR* ix.

18 Lihat <http://wao.org.my/pengalaman-dan-persepsi-wanita-terhadap-gangguan-seksual-menandakan-keperluan-yang-mendesak-untuk-penggubalan-akta-gangguan-seksual/> dicapai 18 Februari 2021.

19 I.M. Shah dan lain-lain, 'Gangguan Seksual di Tempat Kerja: Kajian ke atas Mangsa dan Pelaku di Sekitar Johor Bahru, Johor' (2004) <http://eprints.utm.my/id/eprint/2702/1/71958.pdf> dicapai 18 Februari 2021.

20 Lihat <http://www.thestar.com.my/news/nation/2018/07/29/a-sex-predator-is-in-the-house-housemen-relate-horror-stories-of-seniors-who-abuse-position> dicapai 7 Disember 2020.

Perintah-Perintah Am Kerajaan (Peraturan-Peraturan Pegawai Awam (Kelakuan dan Tatatertib) 1993). Malahan kes-kes gangguan seksual turut dilaporkan giat berlaku dalam kalangan pengamal perundangan wanita di negara ini.[21]

Kebanyakan kes gangguan seksual dilaporkan berlaku di luar waktu bekerja iaitu ketika mereka menyertai program-program perjumpaan sosial. Namun begitu, kebanyakan mangsa kes gangguan seksual berasa malu untuk membuat laporan menyebabkan tiada rekod yang tepat untuk membuktikan jumlah sebenar mangsa gangguan seksual terutamanya yang melibatkan golongan lelaki. Berdasarkan kajian oleh Pertubuhan Perikatan Wanita Antarabangsa (Wafiq), Pusat Penyelidikan dan Advokasi Hak Asasi Manusia (CENTHRA) serta USIM yang diketuai oleh Prof. Madya Dr. Rafidah Hanim Mokhtar, lebih daripada separuh mangsa (57.1%) tidak mengemukakan aduan rasmi, dengan alasan mereka tidak berfikir apa-apa tindakan akan diambil (46.7%), mereka tidak tahu bagaimana untuk membuat aduan (13.3%), mereka takut akan implikasi (13.3%), mereka berasa malu (11.1%) dan minoriti mereka menganggap bahawa tindakan sedemikian tidak penting (4.4%).[22] Sekiranya pekerja lelaki yang mengalami gangguan seksual, perasaan malu untuk membuat laporan akan lebih berganda kerana kekuatan yang ada pada lelaki akan ditertawa dan dipertikaikan oleh rakan-rakan sekerja.[23] Mungkin ramai yang beranggapan, dengan kekuatan dan kegagahan lelaki, mereka mampu menepis sebarang perbuatan berbentuk gangguan seksual. Namun kajian oleh Azura dan Ahmad mendapati daripada 387 responden yang ditinjau, terdapat seramai 37 orang wanita dan 14 orang lelaki pernah mengalami gangguan seksual, manakala selebihnya tidak pernah mengalami gangguan seksual.[24]

Oleh yang demikian, Malaysia sememangnya sangat memerlukan penggubalan sebuah undang-undang khusus yang dapat memberi

21 Lihat <http://www.malaysiakini.com/news/482319> dicapai 7 Disember 2020.

22 Lihat <http://wafiq.my/2018/12/26/jangan-biarkan-penyerang-seksual-terlepas> dicapai 7 Disember 2020.

23 Lihat <http://psasir.upm.edu.my/id/eprint/68997/1/Ganguan%20seksual%20merentasi%20gender%20dan%20status.pdf> dicapai 18 Februari 2021.

24 A. Hamdan dan A.I.F.C.A. Rahim, 'Persepsi Kefahaman Pekerja Berhubung Gangguan Seks di Tempat Kerja' (2010) 5 *Jurnal Psikologi & Kaunseling Perkhidmatan Awam Malaysia* <http://www.researchgate.net/publication/323833895_Persepsi_Kefahaman_Pekerja_Berhubung_Gangguan_Seksual_Di_Tempat_Kerja> dicapai 18 Februari 2021.

perlindungan secara holistik kepada mangsa gangguan seksual. Suatu undang-undang yang bersifat mencegah wajar diwujudkan bagi membolehkan orang awam bergerak bebas di mana-mana juga tidak kira sama ada di tempat kerja, di institusi pengajian tinggi, di tempat persendirian atau di jalanan bagi menjalankan urusan seharian mereka.[25] Penggubalan sebuah rang undang-undang gangguan seksual ialah satu keperluan yang mendesak memandangkan negara-negara lain telah sekian lama mempunyai undang-undang khusus untuk menangani kes-kes gangguan seksual. Sebagai contoh, India telah memperkenalkan *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013* iaitu '*an Act to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto*'.[26]

Dalam konteks ini, Ahli-ahli Parlimen hendaklah menggunakan lantai perbahasan Dewan Rakyat dan Dewan Negara untuk menggesa dan mempengaruhi kerajaan, terutamanya jemaah Menteri agar rang undang-undang gangguan seksual dibentangkan di Parlimen pada kadar segera. Shamrahayu menyatakan bahawa Ahli-ahli Parlimen ialah legislatif yang bukan sahaja membuat undang-undang bagi rakyat di kawasan pilihan raya mereka, tetapi mereka menggubal undang-undang bagi keseluruhan negeri (bagi Dewan Undangan) atau negara (bagi ahli Dewan Parlimen).[27] Malahan, peranan legislatif bukanlah semata-mata menggubal undang-undang, tetapi memantau pelaksanaan undang-undang dan kesan undang-undang yang digubal.[28]

Relevan dengan kehendak zaman, Parlimen harus berfungsi sebagai 'role model' kepada usaha-usaha untuk mempromosikan persekitaran yang sensitif terhadap gender.[29] Sejajar dengan gelombang yang dibawa Kempen #MeToo, Parlimen Kanada memperkenalkan polisi yang menetapkan setiap Ahli Parlimen dan kakitangannya untuk

25 ibid.

26 S.B. Shekar, 'Documents of Constitutional and Parliamentary Interest' (2013) 3 *The Journal of Parliamentary Information* 250.

27 S.A. Aziz, 'Peranan Ahli Parlimen dan Sifat Ketertinggian Perlembagaan' < http://www.ikim.gov.my/index.php/2015/10/05/peranan-ahli-parlimen-dan-sifat-ketertinggian-perlembagaan/> dicapai 7 Disember 2020.

28 S.A. Aziz, 'Peranan Wakil Rakyat' <http://www.ikim.gov.my/new-wp/index.php/2015/06/23/peranan-wakil-rakyat/> dicapai 7 Disember 2020.

29 T. Verge, 'Too Few, Too Little: Parliaments' Response to Sexism and Sexual Harassment' (2020) 0 *Parliamentary Affairs* 1.

menjalani latihan mengenai aspek-aspek gangguan seksual.[30] Jelas sekali, Parlimen ialah landasan terbaik untuk Ahli-ahli Parlimen menyuara dan memperjuangkan permasalahan rakyat. Tamsilnya, pentas siasah politik United Kingdom bersepakat menyokong soalan tergempar yang dikemukakan Harriet Harman, Ahli Parlimen Camberwell dan Peckham (*Mother of the House of Commons*) yang mahukan Andrea Leadsom (*Leader of the House of Commons*) mengemukakan pelan perancangan beliau bagi menangani isu gangguan seksual di Parlimen United Kingdom.[31] Dalam membahaskan isu-isu rakyat, setiap Ahli Parlimen terikat dengan peraturan bertulis yang ditetapkan dalam 'Peraturan-peraturan Majlis Mesyuarat' (secara ringkasnya disebut Peraturan Mesyuarat). Peraturan Mesyuarat menggariskan mekanisme untuk menyemak tindakan badan eksekutif seperti pertanyaan parlimen, usul, rang undang-undang dan jawatankuasa pilihan Dewan.[32] Di persada politik antarabangsa, *Inter-Parliamentary Union* mencadangkan agar Kaukus Wanita-wanita Parlimen atau jawatankuasa mengenai kesamarataan gender memainkan peranan sebagai mekanisme kawalan yang efektif dalam menangani jenayah gangguan seksual.[33]

Jika ditelusuri, sememangnya terdapat pelbagai kajian mengenai gangguan seksual dibuat oleh para akademia dan inteligensia. Antaranya ialah kajian mengenai gangguan seksual dalam kalangan pekerja wanita sektor industri di Johor Bahru[34] dan kajian mengenai persepsi kefahaman pekerja berhubung gangguan seksual di tempat kerja.[35] Namun, dalam konteks negara ini, belum terdapat sebarang kajian yang secara spesifiknya menyentuh mengenai peranan yang dimainkan oleh Parlimen dalam menangani isu ini. Oleh itu, penulisan ini menggabungjalinkan pelbagai mekanisme kawalan yang diguna pakai

30 M.L. Krook, 'Westminster Too: On Sexual Harassment in British Politics' (2018) 89(1) *The Political Quarterly* 65.

31 ibid.

32 N.M.B. Mydin dan J.S. Sabaruddin, 'Pertanyaan Parlimen: Suatu Analisa Mengenai Pematuhan Peraturan Mesyuarat Oleh Ahli Parlimen' (2018) *Current Law Journal* 1.

33 IPU, 'Guidelines for the elimination of sexism, harassment and violence against women in parliament' <http://www.ipu.org/resources/publications/reference/2019-11/guidelines-elimination-sexism-harassment-and-violence-against-women-in-parliament> dicapai 7 Disember 2020.

34 A. Yahaya dan Y. Boon, 'Gangguan Seksual di Kalangan Pekerja Wanita Sektor Industri di Johor Bahru: Sejauh Manakah Kebenarannya' (Seminar Kaunseling Industri, UTM Skudai, Oktober 2001) <http://core.ac.uk/download/pdf/11785793.pdf> dicapai 18 Februari 2021.

35 ibid.

Parlimen Malaysia untuk mengenal pasti sejauh mana isu-isu gangguan seksual diangkat dan diperbahaskan oleh Ahli-ahli Parlimen. Antara mekanisme kawalan yang diberi fokus ialah peranan yang dimainkan Jawatankuasa Pilihan Khas, kandungan perkakasan Mesyuarat Parlimen seperti Aturan Urusan Mesyuarat, Usul dan Risalat yang diedarkan kepada Ahli-ahli Parlimen. Penulisan ini diharapkan dapat mencetus pemikiran baharu dalam kalangan masyarakat konvensional dan menarik lebih ramai Ahli Parlimen untuk membahaskan isu-isu gangguan seksual sehingga pembentangan rang undang-undang gangguan seksual direalisasikan.

Kerangka perundangan berkaitan gangguan seksual di Malaysia

Malaysia masih belum mempunyai peruntukan undang-undang yang khusus bagi menangani kes-kes berkaitan gangguan seksual. Malahan takrifan gangguan seksual juga tidak disebut dalam mana-mana akta yang digunakan. Berdasarkan Kod Amalan Untuk Mencegah dan Membasmi Gangguan Seksual di Tempat Kerja (1999) yang dikeluarkan oleh Kementerian Sumber Manusia (KSM), gangguan seksual diiktiraf sebagai satu gangguan sama ada secara lisan, bukan lisan, visual, psikologi atau fizikal:[36]

i. yang atas sebab yang munasabah, boleh dianggap oleh penerima (mangsa) sebagai mengenakan syarat berbentuk seksual ke atas pekerjaannya; atau

ii. yang atas sebab yang munasabah, boleh dianggap oleh penerima (mangsa) sebagai satu pencabulan maruah, atau penghinaan atau ancaman terhadap dirinya tetapi tiada hubungan terus dengan pekerjaannya.

Bersandarkan takrifan ini, KSM mengkategorikan gangguan seksual kepada dua jenis, iaitu:

i. Gangguan seksual berbentuk ugutan iaitu perbuatan yang memberi kesan secara langsung kepada status pekerjaan seseorang seperti perbuatan mengugut pekerja bawahan untuk memberi layanan seksual kepadanya.

36 Lihat <http://www.wccpenang.org/01important/laws/Kod-Amalan-Untuk-Mencegah-dan-Membasmi-Gangguan-Seksual-di-Tempat-Kerja.pdf> dicapai 17 September 2020.

ii. Gangguan seksual berbentuk ancaman terhadap ketenteraman peribadi iaitu tingkah laku seksual yang dianggap oleh mangsa sebagai ancaman, ugutan atau penghinaan, tetapi tidak mempunyai kaitan secara langsung dengan faedah-faedah pekerjaan.

Kerangka undang-undang utama yang wajib dikupas ialah Perkara 8(1) dan (2) dalam Perlembagaan Persekutuan[37] yang melarang amalan diskriminasi berdasarkan agama, kaum, keturunan, tempat lahir atau jantina seseorang. Jelas sekali, peruntukan ini memberi hak kesamarataan dan kebebasan kepada setiap warganegara menurut perspektif undang-undang. Justeru, perlakuan gangguan seksual boleh dianggap sebagai satu bentuk diskriminasi dan telah melanggar hak asasi manusia kerana menyekat kehidupan manusia untuk bergerak dengan bebas, baik di tempat awam mahupun tempat kerja. Layanan yang berbeza terhadap seseorang berdasarkan jantina dan kuasa, atau keinginan mendapatkan imbuhan seksual ialah satu bentuk diskriminasi kerana perbuatan ini menafikan hak individu lain untuk mencapai kesamarataan. Sekaligus, perbuatan ini menutup peluang individu lain untuk mencapai kejayaan dan bertentangan dengan Perkara 8 dalam Perlembagaan Persekutuan.

Sementara itu, Artikel 4(c) *Declaration on the Elimination of Violence Against Women* menekankan untuk 'melaksanakan usaha wajar (due diligence) untuk menghalang, menyiasat, dan mengikut perundangan negara, menghukum tindakan keganasan terhadap wanita, sama ada tindakan tersebut dilakukan oleh kerajaan atau orang persendirian'.[38] Lazimnya, mangsa gangguan seksual boleh mendapatkan keadilan daripada Mahkamah mengikut konteks dan jenis perlakuan gangguan seksual yang dihadapi. Dalam hal ini, kes-kes gangguan seksual yang diklasifikasikan sebagai berunsur jenayah boleh dirujuk mengikut peruntukan di bawah Kanun Keseksaan.[39] Namun begitu, Kanun Keseksaan hanya memperuntukkan elemen-elemen gangguan seksual seperti mengucapkan kata-kata, membuat bunyi, atau isyarat, mempamerkan objek yang bersifat lucah dan seksual yang boleh

37 Lihat <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/MY/Perlembagaan%20Persekutuan%20(Cetakan%20Semula%202020).pdf> dicapai 18 Disember 2020.

38 M. Saari, *Hak Asasi Manusia dan Persoalan Budaya* (Kuala Lumpur, Ilham Books, 2019) 122.

39 Akta Kanun Keseksaan (Pindaan) 2014 <http://www.federalgazette.agc.gov.my/outputaktap/20141230_A1471_BM_Act%20A1471.pdf> dicapai 18 Disember 2020.

ditakrifkan sebagai perlakuan gangguan seksual kerana melibatkan pencerobohan atau cubaan untuk menceroboh tubuh badan seseorang.[40] Selaras dengan peruntukan ini, seorang pakar psikiatri telah dihadapkan ke mahkamah atas pertuduhan di bawah Seksyen 509 Kanun Keseksaan kerana menghantar pelbagai mesej lucah melalui aplikasi *WhatsApp* kepada bekas pesakitnya di Hospital Thomson, Kota Damansara.[41] Antara mesej yang dihantar pakar psikiatri tersebut berbunyi 'seks adalah baik, dia melakukan banyak hubungan seks, dan setiap orang harus menikmati seks'.

Manakala Seksyen 354 pula menyentuh mengenai perlakuan berunsur serangan, paksaan jenayah, dengan niat dan pengetahuan mahu mencabul kehormatan mangsa. Selain itu, unsur-unsur jenayah lain seperti liwat, rogol, mencabul kehormatan dan lain-lain perbuatan yang disifatkan sebagai satu cubaan untuk menceroboh tubuh badan seseorang turut dikategorikan sebagai jenayah. Walau bagaimanapun, sebagai undang-undang jenayah, peruntukan yang diguna pakai dalam Kanun Keseksaan hanyalah bersifat menghukum dan mencegah. Justeru, peruntukan di bawah Kanun Keseksaan masih belum dapat memberi keadilan sepenuhnya kepada mangsa kerana lebih cenderung kepada gangguan berbentuk fizikal iaitu serangan yang menggunakan kekerasan dengan tujuan hendak mencabul atau merogol.

Bagi individu yang beragama Islam dan tinggal di Wilayah Persekutuan, Seksyen 29 dalam Akta Tatacara Jenayah Syariah (Wilayah-Wilayah Persekutuan) 1997[42] memperuntukkan bahawa sebarang perlakuan yang tidak sopan dan bertentangan dengan undang-undang Islam boleh disabitkan dengan denda sebanyak RM1,000 atau penjara tidak melebihi enam bulan atau kedua-duanya sekali. Seksyen 35 pula memperuntukkan seseorang yang menggalakkan, memaksa atau meminta seseorang untuk terlibat dengan sesuatu jenayah (seksual) boleh didapati bersalah dan disabit dengan denda tidak melebihi RM5,000 atau penjara tidak melebihi 3 tahun atau kedua-duanya sekali.[43] Caj hukuman yang rendah dan tidak setimpal dengan kesan trauma yang ditanggung mangsa memperlihatkan

40 Rahim (n 13).

41 Lihat <http://www.freemalaysiatoday.com/category/bahasa/2019/07/25/persatuan-doktor-gesa-tindakan-terhadap-perunding-psikiatri-ganggu-mangsa-rogol/> dicapai 19 Februari 2021.

42 Lihat <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/MY/Akta%20560%20-%20Akta%20Prosedur%20Jenayah%20Syariah%20(Wilayah-Wilayah%20Persekutuan)%201997.pdf> dicapai 18 Disember 2020.

43 ibid.

kegagalan undang-undang ini untuk memberi keadilan kepada mangsa gangguan seksual. Malah, undang-undang ini hanya terpakai kepada orang-orang Islam sahaja kerana Perkara 121(A) dalam Perlembagaan Persekutuan tidak membenarkan Mahkamah Tinggi dan mana-mana mahkamah di bawahnya campur tangan dalam urusan kes-kes yang berada di bawah bidang kuasa Mahkamah Syariah.

Terdapat beberapa undang-undang yang boleh diguna pakai untuk menangani kes-kes sivil seperti Akta Perhubungan Perusahaan 1967,[44] Akta Kerja 1955,[45] Peraturan Pegawai Am (Kelakuan dan Tatatertib) 1993, Akta Keselamatan dan Kesihatan Pekerjaan 1994[46] dan undang-undang tort. Namun begitu, pemakaian undang-undang ini perlu melihat kepada konteks di mana kesalahan itu dilakukan. Sekiranya gangguan seksual tersebut dilakukan oleh penjawat awam dan di mana-mana kementerian atau agensi kerajaan, pemangsa boleh didakwa mengikut Peraturan 4A Peraturan Pegawai Am (Kelakuan dan Tatatertib) 1993 yang memperuntukkan seperti berikut:[47]

1. Seseorang pegawai tidak boleh melakukan gangguan seksual terhadap orang lain, iaitu seseorang pegawai tidak boleh:

    i. membuat cubaan untuk merapati orang lain secara seksual, atau meminta layanan seksual daripada orang itu; atau

    ii. melakukan apa-apa perbuatan yang bersifat seksual berhubung dengan orang lain, dalam keadaan yang setelah mengambil kira segala hal keadaan, akan menyebabkan seseorang yang waras tersinggung, terhina atau terugut.

2. Sebutan dalam subperaturan (1) tentang perlakuan sesuatu perbuatan yang bersifat seksual kepada orang lain:

    i. termasuklah perbuatan sesuatu pernyataan yang bersifat seksual kepada, atau di hadapan, orang lain itu sama ada pernyataan itu dibuat secara lisan, bertulis atau dengan apa-apa lain; dan

44 Lihat <http://www.mp.gov.my/acts/Industrial_Relations_Act_1967_As_At_1_October_2015.pdf> dicapai 5 Disember 2020.

45 Lihat <http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20265%20-%20Employment%20Act%201955.pdf> dicapai 5 Disember 2020.

46 Lihat <http://www.dosh.gov.my/index.php/ms/perundangan/akta/3773-akta-keselamatan-dan-kesihatan-pekerjaan-1994-akta-514/file> dicapai 5 Disember 2020.

47 Lihat <http://docs.jpa.gov.my/docs/pu/pua395.pdf> dicapai 5 Disember 2020.

ii. tidak terhad kepada perlakuan perbuatan itu di tempat kerja atau dalam waktu kerja sahaja selagi perlakuan itu memburukkan atau mencemarkan nama perkhidmatan awam.

Jelas sekali, peraturan ini melarang penjawat awam daripada melakukan gangguan seksual terhadap seseorang, sama ada dalam bentuk ugutan, pujukan atau permintaan yang dianggap menyinggung dan menghina individu yang lain. Dalam peraturan ini, gangguan seksual dirujuk sebagai melakukan pernyataan bersifat seksual (secara lisan atau bertulis atau dengan apa-apa cara lain) semasa berada di tempat kerja atau waktu kerja yang menimbulkan keburukan dan mencemarkan perkhidmatan awam. Walaupun Kod Amalan Untuk Mencegah dan Membasmi Gangguan Seksual di Tempat Kerja yang dikeluarkan KSM dirangka bertujuan meminimumkan kes gangguan seksual, namun Kod ini hanya berkisar mengenai garis panduan penubuhan serta pelaksanaan mekanisme dalaman sahaja. Kod amalan ini bukan sahaja tidak memberi sebarang impak perundangan, malahan tidak menggariskan bentuk hukuman yang patut dikenakan kepada pelaku. Hal ini memungkinkan kes-kes gangguan seksual di tempat kerja diselesaikan di peringkat dalaman sahaja. Malahan, pemakaiannya dikhususkan kepada sektor swasta sahaja.

Seterusnya, Seksyen 13 dan 14 dalam Akta Hubungan Perusahaan 1967 memperuntukkan prosedur untuk memasukkan polisi berkaitan gangguan seksual dalam Perjanjian Kolektif yang dibuat antara Ketua-Ketua Kesatuan Sekerja dengan majikan sebagai kontrak perkhidmatan. Dalam usaha melindungi pekerja secara inklusif, kerajaan telah menggubal Akta Kerja 1955 untuk mengawal selia hubungan antara majikan dan pekerja serta membentuk hubungan dan persekitaran kerja yang harmoni. Namun begitu, Seksyen 14(3) dalam Akta Kerja 1955 dilihat tidak menyediakan peruntukan yang kukuh untuk melindungi mangsa daripada perlakuan gangguan seksual di tempat kerja. Hal ini adalah kerana Akta ini hanya mengambil kira perlakuan bahaya yang melibatkan kekerasan fizikal sahaja sedangkan gangguan seksual turut melibatkan perlakuan yang mempamerkan objek lucah atau menggunakan kata-kata lucah. Walakin begitu, Akta ini membolehkan majikan didakwa sebagai telah melanggar kontrak sekiranya gagal menyediakan persekitaran kerja yang selamat dan kondusif. Bahkan, pekerja berhak untuk menuntut sebagai telah dipaksa berhenti disebabkan keadaan persekitaran yang

tidak selamat seperti dalam kes antara *Freescale Semiconductor Malaysia Sdn. Bhd. v Edwin Michael Jalleh & Anor*.[48]

Usaha untuk melindungi pekerja daripada pelbagai ancaman di tempat kerja turut diperuntukkan dalam Akta Keselamatan dan Kesihatan Pekerjaan 1994. Seksyen 15(1) dalam Akta ini menyatakan:[49]

> (1) Adalah menjadi kewajipan tiap-tiap majikan dan tiap-tiap orang yang bekerja sendiri untuk memastikan, setakat yang praktik, keselamatan, kesihatan dan kebajikan semasa bekerja semua pekerjanya.
>
> (2)(e) pengadaan dan penyenggaraan persekitaran pekerjaan bagi pekerja-pekerjanya yang, setakat yang praktik, selamat, tanpa risiko kepada kesihatan, dan memadai berkenaan dengan kemudahan bagi kebajikan mereka yang sedang bekerja.

Frasa 'setakat yang praktik' dalam Akta ini memberi pengertian yang luas dan tidak membayangkan satu bentuk mekanisme penghalang kepada perlakuan gangguan seksual di tempat kerja. Adakah memadai sekadar menampal notis amaran bertujuan atau melarang sebarang bentuk perlakuan gangguan seksual? Walhal Mahkamah Persekutuan menyatakan majikan bertanggungjawab secara kontrak untuk menyediakan persekitaran yang selamat kepada semua pekerja termasuk wanita.

Di samping itu, undang-undang tort boleh digunakan sebagai mekanisme perlindungan oleh orang awam termasuk pekerja daripada menanggung kerugian, kerosakan dan kecederaan akibat gangguan seksual. Undang-undang tort juga membolehkan mangsa membuat tuntutan sekiranya diganggu secara lisan seperti kes antara *Loganathan Maniam v Murphy Sarawak Oil Co Ltd*[50]. Mahkamah Perindustrian mendapati wujud pembuktian yang nyata bahawa pemangsa telah melakukan gangguan seksual terhadap setiausahanya. Mengikut *Donovan & Ho*, antara lain Mahkamah mendapati:

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48 [2013] 4 ILR 237; Lihat H.A. Wahab dan M. Hassan, *Undang-undang dan Tadbir Urus Sumber Manusia* (Kedah, UUM Press, 2016) 87.

49 Lihat <http://www.dosh.gov.my/index.php/ms/perundangan/acts-legislation/3773-akta-keselamatan-dan-kesihatan-pekerjaan-1994-akta-514/file> dicapai 6 Disember 2020.

50 [2020] 2 ILR 275; Lihat <http://dnh.com.my/case-spotlight-non-physical-sexual-harassment/> dicapai 6 Disember 2020.

> *The Claimant had therefore committed unnecessary acts that were unacceptable, given the position he was holding, and considering the culture and background of his colleagues. His actions showed a lack of decorum as a superior and was abusive in nature.*

Keputusan yang dibuat oleh Mahkamah ini jelas sekali menunjukkan bahawa gangguan seksual ialah satu kesalahan yang tidak boleh diterima oleh sistem sosial kerana menghalang kemajuan diri individu untuk berperanan secara efektif bagi mempertingkat kemajuan diri.

Dalam perkembangan terkini, kerajaan sedang giat memperkemas penggubalan draf rang undang-undang gangguan seksual sebagai pelengkap kepada perundangan sedia ada dan pekeliling serta arahan pentadbiran yang diguna pakai pada masa ini.[51] RUU ini mestilah berfungsi sebagai mekanisme perundangan yang kukuh dan bersifat menolak sebarang keinginan yang boleh mendorong kepada perlakuan berunsur gangguan seksual. Berdasarkan perancangan asal, draf rang undang-undang gangguan seksual dicadang dibentangkan di Parlimen pada sekitar Mac 2020. Walau bagaimanapun, mengambil kira perubahan yang berlaku dalam tampuk pemerintahan negara, cadangan penggubalan RUU ini dijangka dibentangkan untuk bacaan kali pertama pada Mesyuarat Ketiga Penggal Ketiga Parlimen Keempat Belas 2020. Namun begitu, pembentangan RUU ini masih belum dapat direalisasikan kerana tempoh mesyuarat terpaksa disingkatkan berikutan penularan pandemik COVID-19 di negara ini berada pada tahap kritikal.

Tinjauan kedudukan perundangan berkaitan gangguan seksual di negara luar

Mahkamah Agong Amerika Syarikat mengiktiraf gangguan seksual sebagai satu bentuk diskriminasi seks yang salah mengikut perspektif undang-undang berlandaskan Perkara VII, Akta Hak-hak Sivil, 1964[52]. Seterusnya, *The Equal Employment Opportunity Commission* (EOC) di

51 Pemberitahuan Pertanyaan Jawab Bukan Lisan, Mesyuarat Kedua, Penggal Ketiga Parlimen Keempat Belas Dewan Rakyat, Soalan No. 520 <https://www.parlimen.gov.my/files/jindex/pdf/Telah%20dikemaskini%20pada%209%20September%202020.pdf>.

52 R.A. Rahim, 'Fenomena Gangguan Seksual Terhadap Pekerja Wanita dalam Organisasi: Suatu Implikasi dalam Perundangan Malaysia' (2008) 12 *Jurnal Undang-undang dan Masyarakat* 144 <http://ejournal.ukm.my/juum/article/view/7547/3067 dicapai 7 Disember 2020.

Amerika Syarikat menggariskan panduan untuk menentukan bahawa gangguan seksual telah berlaku sekiranya[53]:

i. Perlakuan yang diminta itu, sama ada secara terbuka atau tertutup telah berlaku sebagai satu syarat atau terma kepada pekerjaannya;

ii. Persetujuan atau penolakan oleh individu itu dijadikan asas bagi menentukan keputusan terhadap pekerjaannya dan kesan kepada individu itu sendiri; dan

iii. Perlakuan itu bertujuan atau memberi kesan yang mengganggu secara munasabah terhadap prestasi kerja individu atau membentuk persekitaran kerja yang mengganggu, menimbulkan kegusaran atau menghina.

Pada umumnya, kebanyakan negara luar telah lama mengiktiraf gangguan seksual sebagai kesalahan jenayah yang perlu diberi hukuman setimpal dengan kesalahan yang dilakukan serta trauma yang dihadapi mangsa. Di peringkat negara-negara Komanwel, sebarang perlakuan bersifat membuli dianggap sebagai telah melakukan kesalahan di bawah undang-undang *Sex Discrimination Act 1984*,[54] *Disability Discrimination Act 1992*,[55] *Racial Discrimination Act 1975*[56] dan *Age Discrimination Act 2004*[57]. Di Australia umpamanya, seorang bekas pekerja telah mengemukakan saman terhadap *Oracle Corporation Australia* atas pertuduhan diskriminasi, gangguan seksual, pelanggaran kontrak kerja dan beberapa lagi pertuduhan lain. Dalam kes antara *Richardson v. Oracle Corporation Australia Pty Ltd*[58] ini, Mahkamah Persekutuan Australia telah memutuskan:

> *the general of general damages in respect of pain and suffering and loss of enjoyment of life caused by sex discrimination has scarcely altered since 2000 and does not reflect the shift in the community's estimation of the value to be placed on these matters. The range has remained unchanged, notwithstanding that the community has generally gained a deeper appreciation of the experience of hurt and humiliation that victims of sexual harassment experience and*

53 ibid. 160.
54 Lihat <http://www.legislation.gov.au/Details/C2014C00002> dicapai 5 Disember 2020.
55 Lihat <http://www.legislation.gov.au/Details/C2016C00763> dicapai 5 Disember 2020.
56 Lihat <http://www.legislation.gov.au/Details/C2016C00089> dicapai 5 Disember 2020.
57 Lihat <http://www.legislation.gov.au/Details/C2017C00341> dicapai 5 Disember 2020.
58 Lihat <http://ballawyers.com.au/wp-content/uploads/Bradley-Allen-Love-Ethos-233-September-2014-Damages-for-sexual-harassment.pdf> dicapai 5 Disember 2020.

the value of loss of enjoyment of life occasioned by mental illness or distress caused by such conduct.

Richardson telah memenangi kes ini dan diberi ganti rugi sebanyak $130,000 (termasuk $100,000 ganti rugi umum) atas trauma yang ditanggungnya. Pengiktirafan Mahkamah terhadap kes yang dikemukakan oleh Richardson ini telah mengubah landskap perundangan Australia dalam menangani kes-kes gangguan seksual. Hal ini jelas apabila mahkamah bukan sahaja mempertimbangkan kesan trauma yang ditanggung Richardson pada masa itu, malah penganugerahan pampasan terhadapnya turut mengambil kira kesan trauma sepanjang hayat akibat tekanan perasaan dan pengalaman perit yang dialaminya. Keputusan mahkamah Australia ini mencetuskan pemikiran baharu dalam kalangan mangsa gangguan seksual yang selama ini bersikap mendiamkan diri kerana pampasan yang diterima tidak setimpal dengan kesan trauma yang ditanggung mangsa. Pembelaan melalui perspektif undang-undang terhadap Richardson membuka ruang kepada lebih ramai lagi mangsa gangguan seksual di negara itu untuk tampil membuat laporan.

Dalam konteks negara India pula, gangguan seksual di tempat kerja dianggap sebagai telah mencabuli hak wanita untuk mendapat kesamarataan dan kebebasan hidup. Peruntukan ini dinyatakan dengan jelas dalam *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act*, 2013. Menurut Akta ini, gangguan seksual menyebabkan persekitaran kerja menjadi tidak selamat dan mengekang wanita untuk bekerja dengan produktif. Situasi ini bukan sahaja menghalang perkembangan sosial dan ekonomi wanita, malahan turut mengekang pencapaian Matlamat Pembangunan Mampan (SDG) 2030 terutamanya Matlamat 5 dan Matlamat 10[59] yang menekankan kesaksamaan gender dan mengurangkan ketidaksamarataan. Malahan, konsep kesamarataan turut dimasukkan dalam Artikel 14 dan 15 dalam Perlembagaan India[60] yang melarang diskriminasi dalam konteks agama, bangsa, jantina atau tempat kelahiran atau yang mana-mana satu antaranya. Peruntukan ini juga dilihat bersesuaian dengan Artikel 11 dalam *Convention on Elimination of All Forms of Discrimination against*

59 Dasar Keterangkuman Gender Kerajaan Negeri Pulau Pinang <http://pwdc.org.my/wp-content/uploads/2019/08/GI-Booklet-BM-Version.pdf> dicapai 7 Disember 2020.

60 Lihat <http://www.india.gov.in/sites/upload_files/npi/files/coi_part_full.pdf> dicapai 7 Disember 2020.

Women (CEDAW)[61] yang disertai Malaysia pada tahun 1995. CEDAW menetapkan setiap negara ahli hendaklah menghalang sebarang bentuk diskriminasi terhadap wanita terutamanya di tempat kerja.

Bersesuaian dengan ketetapan CEDAW ini, *General Recommendation No.19* (1992)[62] yang dikemukakan *United Nations* menekankan kesamarataan hak terhadap wanita dalam bidang pekerjaan akan terhalang sekiranya keganasan mengikut gender seperti gangguan seksual di tempat kerja tidak dihapuskan. Dalam pada itu, gangguan seksual turut diklasifikasikan sebagai satu perbuatan yang menyalahi undang-undang di Singapura apabila negara itu memperkenalkan *Protection from Harassment Act*[63] pada 15 November 2014. Secara umumnya, negara-negara luar telah lama menggubal akta khusus untuk menangani kes-kes gangguan seksual. Antaranya ialah *Anti-Sexual Harassment Act* 1995[64] (Filipina), *Labour Code*[65] (Perancis), *Criminal Code*[66] (Russia), *Sex Discrimination Act* 1975[67] (United Kingdom), dan *Protection against Harassment of Women at the Workplace Act* 2010 (Pakistan).[68]

Melihat kepada ketersediaan negara-negara luar serta beberapa negara jiran seperti Singapura dan Filipina dalam menangani jenayah gangguan seksual, Malaysia juga perlu mengorak langkah mengikut laluan yang sama. Dengan kata lain, sudah tiba masanya bagi Malaysia untuk menambah baik kerangka perundangan sedia ada dengan memperkenalkan sebuah akta khusus yang dapat memberi perlindungan dan remedi kepada mangsa gangguan seksual. Di samping itu, sebagai tambahan kepada kerangka perundangan yang diguna pakai, adalah wajar sekiranya sebuah tribunal khas ditubuhkan di negara ini untuk mendengar dan menangani kes-kes berkaitan gangguan seksual.

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61 Lihat <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm> dicapai 7 Disember 2020.

62 Lihat <http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Recommendations.aspx> dicapai 7 Disember 2020.

63 Lihat <http://sso.agc.gov.sg/Act/PHA2014?ProvIds=pr3-> dicapai 7 Disember 2020.

64 Lihat <http://www.ombudsman.gov.ph/GAD/Laws%20and%20Mandates/republic_act_7877.pdf> dicapai 7 Disember 2020.

65 Lihat <http://knowledge.leglobal.org/wp-content/uploads/sites/2/LEGlobal-Employment-Law-Overview_France_2019-2020.pdf> dicapai 7 Disember 2020.

66 Lihat <http://www.wipo.int/edocs/lexdocs/laws/en/ru/ru080en.pdf> dicapai 7 Disember 2020.

67 Lihat <http://www.legislation.gov.uk/ukpga/1975/65/pdfs/ukpga_19750065_en.pdf> dicapai 7 Disember 2020.

68 S. Buang, 'Time for a sexual harassment act?' *New Straits Times* (Kuala Lumpur, 13 Julai 2017) <http://www.nst.com.my/opinion/columnists/2017/07/256939/time-sexual-harassment-act> dicapai 7 Disember 2020.

Peranan Parlimen dalam penggubalan rang undang-undang gangguan seksual

Ahli-ahli Parlimen memikul tanggungjawab besar untuk terus membangkitkan isu-isu berkaitan gangguan seksual dan menggesa supaya rang undang-undang gangguan seksual dibentangkan dengan kadar segera. Parlimen sebagai cabang kerajaan yang bebas dan berautonomi ialah landasan terbaik bagi Ahli-ahli Parlimen untuk menyampai dan memperdengarkan segala keluh-kesah rakyat yang sekian lama menantikan sebuah undang-undang yang benar-benar dapat memberi perlindungan kepada mereka daripada perlakuan gangguan seksual. Tambahan pula, Perkara 8(2) dalam Perlembagaan Persekutuan melarang sama sekali sebarang bentuk diskriminasi berasaskan gender. Manakala Perkara 5(1) dalam Perlembagaan Persekutuan memperuntukkan bahawa seseorang tidak boleh dinafikan kebebasan diri dan diambil nyawanya kecuali mengikut undang-undang. Hak untuk mendapat kebebasan diri ini terpakai dalam kes antara *Hong Leong Equipment Sdn. Bhd. v Liew Fook Chuan*[69], di mana hakim mentafsirkan '*live*' sebagai meliputi '*livelihood*'. Oleh itu, mangsa gangguan seksual boleh mendakwa bahawa haknya terhadap kehidupan akan terkesan sekiranya berada dalam persekitaran yang toleran kepada gangguan seksual.

Sementara itu, Perlembagaan Persekutuan memperuntukkan hak atau kuasa perundangan ke atas Parlimen melalui Perkara 44 yang berbunyi:

> Kuasa perundangan Persekutuan hendaklah terletak hak pada Parlimen yang dikenali sebagai Dewan Negara dan Dewan Rakyat.[70]

Parlimen Malaysia ialah lambang kepada keutuhan sistem Demokrasi Berparlimen di bawah pentadbiran Raja Berperlembagaan dengan Seri Paduka Baginda Yang di-Pertuan Agong sebagai Ketua Negara.[71] Selaku penjaga utama kepada keluhuran Perlembagaan, Ahli Parlimen memainkan peranan penting dalam memastikan rang undang-undang gangguan seksual yang dibentangkan bukan sahaja memberi definisi yang jelas berkaitan perlakuan gangguan seksual, malah bersifat holistik dan berkesan. Pada masa yang sama, Ahli-ahli Parlimen tidak boleh menyokong, memberi undi dan meluluskan mana-mana RUU yang tidak

69 Lihat *Hong Leong Equipment Sdn. Bhd.* [1997] 1 MLJ 481, 521.
70 Perlembagaan Persekutuan, per 44.
71 Lihat <http://www.parlimen.gov.my/pengenalan.html?view=235&uweb=web&> dicapai 30 November 2020.

bertepatan dengan hala tuju dan aspirasi negara.[72] Justeru, Parlimen perlu menyediakan ruang dan peluang yang sebaiknya kepada Ahli-ahli Parlimen untuk menyemak imbang status serta kerangka penggubalan rang undang-undang gangguan seksual. Dalam konteks ini, Ahli-ahli Parlimen boleh memilih mana-mana mekanisme untuk menyemak imbang peranan badan eksekutif dalam menangani isu gangguan seksual. Antaranya adalah dengan cara mengemukakan soalan-soalan berkaitan gangguan seksual melalui Waktu Pertanyaan-pertanyaan Menteri (MQT), Pertanyaan-pertanyaan Bagi Jawapan Lisan oleh Menteri-menteri (QMA), Pertanyaan-pertanyaan Bukan Lisan, Kamar Khas, Usul, Jawatankuasa Pilihan dan Risalat yang dibawa masuk ke dalam Dewan.

Hasil daripada penelitian yang dilakukan ke atas maklumat yang terkandung dalam Aturan Urusan Mesyuarat Dewan Rakyat dan Dewan Negara pada Mesyuarat Pertama, Mesyuarat Kedua dan Mesyuarat Ketiga, Penggal Ketiga bagi Parlimen Keempat Belas, soalan-soalan yang dikemukakan oleh Ahli-ahli Dewan di antara 18 Mei hingga 3 Disember 2020 adalah seperti berikut:

Jadual 2. Pertanyaan-pertanyaan Berkaitan Isu Gangguan Seksual

Bil.	Tarikh	No. Soalan	Jenis Pertanyaan	Ahli Dewan
1.	21/07/2020	12	QMA	Ahli Parlimen Pandan
2.	21/07/2020	47	QMA	Ahli Parlimen Batu Kawan
3.	18/08/2020	12	QMA	Ahli Parlimen Merbok
4.	18/08/2020	37	QMA	Ahli Parlimen Segambut
5.	26/08/2020	47	QMA	Ahli Parlimen Permatang Pauh
6.	13 Julai – 27 Ogos, 2020	190	Bukan Lisan	Ahli Parlimen Batu Kawan
7.	13 Julai – 27 Ogos, 2020	225	Bukan Lisan	Ahli Parlimen Batu Sapi
8.	13 Julai – 27 Ogos, 2020	520	Bukan Lisan	Ahli Parlimen Pandan
9.	21/09/2020	38	QMA	Senator Tuan Ismail Yusop

Sumber: Parlimen Malaysia

72 ibid.

Berdasarkan statistik di atas, bagi tempoh 59 hari Mesyuarat berlangsung (sehingga 3 Disember 2020), hanya sembilan soalan berkaitan gangguan seksual dikemukakan oleh Ahli-ahli Parlimen, iaitu lapan soalan dikemukakan oleh Ahli Dewan Rakyat dan satu soalan oleh Ahli Dewan Negara. Secara keseluruhannya, sehingga 3 Disember 2020, hanya 15.25% soalan berkaitan gangguan seksual dikemukakan oleh Ahli-ahli Parlimen Dewan Rakyat dan Dewan Negara di sepanjang sesi Mesyuarat Penggal Ketiga Parlimen Keempat Belas (2020). Jumlah ini adalah terlalu kecil jika dibandingkan dengan komposisi Ahli Dewan Rakyat (222 orang) dan Ahli Dewan Negara (66 orang). Secara tidak langsung, statistik ini menunjukkan bahawa isu gangguan seksual kurang mendapat perhatian Ahli-ahli Dewan. Dari perspektif yang berbeza, hal ini juga disebabkan waktu Mesyuarat terpaksa disingkatkan berikutan kebimbangan pihak pentadbiran Parlimen dan Kementerian Kesihatan Malaysia akan kewujudan kluster baru wabak COVID-19 dalam kalangan kakitangan Parlimen, Ahli-ahli Parlimen, pengamal media, pegawai-pegawai kerajaan dan lain-lain pihak yang terlibat dengan urusan Mesyuarat Parlimen. *Standard Operating Procedur*e (SOP) ini dibuat dengan mengambil kira amalan-amalan terbaik yang diguna pakai oleh negara-negara luar seperti Australia dan United Kingdom. Atas dasar itu, Mesyuarat Pertama, Penggal Ketiga Parlimen Keempat Belas (Dewan Rakyat dan Dewan Negara) hanya berlangsung selama satu hari sahaja iaitu pada 18 Mei 2020. Secara khususnya, Mesyuarat ini dilangsungkan untuk memberi laluan kepada pendengaran Titah Kebawah Duli Yang Maha Mulia Seri Paduka Baginda Yang di-Pertuan Agong XVI.

Di samping itu, statistik ini juga menunjukkan hanya dua soalan berkaitan gangguan seksual yang dikemukakan oleh Ahli Parlimen lelaki. Soalan tersebut dikemukakan dalam sesi Pertanyaan-pertanyaan Bukan Lisan (13 Julai – 27 Ogos 2020) oleh Ahli Yang Berhormat Datuk Liew Vui Keong dan soalan nombor lapan bagi sesi Pertanyaan-pertanyaan Lisan oleh Senator Tuan Ismail Yusop. Hal ini membuktikan bahawa terdapat keperluan untuk mengarusperdanakan wanita dalam bidang politik. Pada masa ini, representasi wanita dalam bidang politik di negara ini adalah pada kadar 14.9% sahaja. Nyata sekali, masih banyak usaha perlu dilakukan untuk mengarusperdanakan penyertaan wanita dalam bidang politik agar mencapai tahap 30%. Antaranya adalah dengan memperuntukkan secara mandatori sebanyak 30% pencalonan buat wanita dalam Pilihan Raya Umum ke-15 nanti. Usaha ini adalah sangat kritikal memandangkan 15.7 juta daripada keseluruhan (32.5 juta) penduduk Malaysia ialah wanita.

Selain itu, peranan yang dimainkan oleh Ahli Parlimen dalam Jawatankuasa Pilihan Khas juga menentukan kecenderungan Ahli Parlimen terhadap isu yang dibangkitkan di dalam Dewan. Umpamanya, Ahli Parlimen Batu Kawan ialah satu daripada tujuh (7) Ahli Dewan yang dilantik menganggotai Jawatankuasa Pilihan Khas Kesaksamaan Gender dan Pembangunan Keluarga yang dipengerusikan oleh Ahli Parlimen Merbok. Peraturan Mesyuarat 81 dalam Peraturan Majlis Mesyuarat Dewan Rakyat memperuntukkan penubuhan Jawatankuasa Pilihan Khas yang dilantik dengan perintah Majlis dan tertakluk kepada Peraturan Mesyuarat 81(1).[73] Secara khususnya, jawatankuasa ini ditubuhkan dengan tujuan:

i) untuk meneliti perkara berkaitan tindak balas Kerajaan terhadap penghakiman mahkamah mengenai kesaksamaan gender dan pembangunan keluarga, dan

ii) untuk meneliti Rang Undang-undang, menyiasat dan melaporkan apa-apa perkara yang dirujuk kepadanya oleh Dewan atau Menteri, termasuk apa-apa cadangan, usul, petisyen, laporan atau dokumen-dokumen lain yang berkaitan dengan kesaksamaan gender dan pembangunan keluarga.

Bersesuaian dengan tujuan penubuhan Jawatankuasa ini, pelbagai isu berkaitan gender yang antara lainnya turut menyentuh isu gangguan seksual sering dibangkitkan dalam mesyuarat di peringkat Jawatankuasa. Malahan, wakil-wakil badan bukan kerajaan (NGO) seperti *Joint Action Group for Gender Equality* (JAG), *Sisters in Islam* (SIS) dan juga SUHAKAM turut dijemput untuk memberi pandangan dan berkongsi maklumat. Selain Ahli Parlimen Batu Kawan, pengalaman mempengerusikan Jawatankuasa Pilihan Khas ini turut mendorong Ahli Parlimen Merbok, untuk mengemukakan soalan mengenai isu gangguan seksual dengan meminta Kementerian Pembangunan Wanita, Keluarga dan Masyarakat (KPWKM) menyatakan secara terperinci perkembangan terkini berkenaan penggubalan RUU Gangguan Seksual. Selain keanggotaan dalam Jawatankuasa Pilihan Khas, jawatan yang pernah disandang oleh Ahli Parlimen turut mempengaruhi kecenderungan Ahli Parlimen dalam membangkitkan isu berkaitan gangguan seksual di peringkat Mesyuarat Dewan. Kedua-dua Ahli Parlimen yang pernah menjawat jawatan Menteri dan Timbalan Menteri kepada KPWKM, iaitu Ahli Parlimen Pandan dan

73 Jawatankuasa Dewan (DR 2018-2023, DR.6/2019).

Ahli Parlimen Segambut turut mengemukakan pertanyaan mengenai gangguan seksual pada waktu Pertanyaan-pertanyaan Lisan dalam sidang Mesyuarat Kedua, Penggal Ketiga, Parlimen Keempat Belas.

Sementara itu, penyataan seksis sama ada diungkap secara lisan atau menggunakan bahasa isyarat oleh Ahli Parlimen semasa perbahasan boleh dikategorikan sebagai satu bentuk gangguan seksual kepada Ahli Dewan yang lain. Umum sedia maklum bahawa sidang Mesyuarat Parlimen sering digemparkan dengan pelbagai penyataan seksis oleh Ahli-ahli Parlimen seperti 'siling bocor', 'pondan', 'gelap' dan berbagai lagi istilah yang mendapat penentangan Ahli Dewan. Malahan terdapat juga sesetengah Ahli Parlimen yang menggunakan bahasa isyarat tertentu sehingga dianggap sebagai '*unparliamentary*' kerana mempamerkan perlakuan yang tidak boleh diterima oleh Ahli Dewan yang lain. Menurut KSM, perlakuan yang kurang disenangi melalui kata-kata, isyarat, sentuhan, psikologi dan visual yang berunsur seks yang biasanya dilakukan berulang-ulang dikategorikan sebagai gangguan seksual. Oleh itu, bagi mengharmonikan suasana Dewan, Menteri di Jabatan Perdana Menteri (ketika itu), Dato' Seri Mohamed Nazri Abdul Aziz, telah mengemukakan Penyata Jawatankuasa Peraturan-peraturan Mesyuarat (Kertas Dewan Rakyat DR 4 Tahun 2012) untuk meminda Peraturan Mesyuarat 20(1) dan Peraturan Mesyuarat 36(4). Peraturan Mesyuarat 20(1) dipinda untuk memasukkan 'risalat' hendaklah dalam bentuk cetak, elektronik atau apa-apa rupa cara yang diperintahkan oleh Tuan Yang di-Pertua. Manakala Peraturan Mesyuarat 36(4) dipinda untuk memasukkan selepas perkataan 'biadab' perkataan 'atau membuat pernyataan seksis'. Pindaan ini dibuat untuk memberi peruntukan secara khusus bahawa seseorang Ahli dilarang daripada mengeluarkan apa-apa penyataan berbentuk seksis.[74] Ketika membahaskan pindaan terhadap Peraturan Mesyuarat ini, Ahli Parlimen Rantau Panjang menyebut:

> Ini adalah satu perkara yang saya kira bertepatan sebab dalam kita memberi sumbangan kepada pembangunan negara tidak mengira masalah gender, yang paling penting ialah bagaimana kita memberi sumbangan yang terbaik dan seharusnya masalah seksis ini tidak menjadi suatu perkara yang menjadi amalan kita sebagai Ahli Dewan.

Dalam pada itu, Yang di-Pertua Dewan Rakyat (YPDR), Datuk Azhar Azizan Harun telah membuat pemasyhuran mengenai penggunaan

74 DR Deb 27 November 2012, Bil. 68, 18.

perkataan-perkataan berbentuk hasutan, rasis, biadab dan seksis pada 21 Julai 2020 yang antara lain berbunyi:[75]

> Oleh itu, saya dan Timbalan-timbalan Yang di-Pertua, akan mengambil tindakan berlandaskan peraturan-peraturan Majlis Mesyuarat Dewan Rakyat sekiranya perkataan-perkataan yang dimaksudkan tadi masih disebut selepas ini oleh Ahli-ahli Yang Berhormat di dalam Dewan yang mulia ini.

Usul ini dibentang setelah perbincangan dibuat bersama Ketua-ketua Whip parti yang dihadiri oleh Ahli Parlimen Gombak sebagai Ketua Whip Kerajaan, Ahli Parlimen Bagan Datuk mewakili Barisan Nasional, Ahli Parlimen Larut mewakili BERSATU, Ahli Parlimen Kota Bharu mewakili PAS, Ahli Parlimen Petrajaya mewakili GPS, Ahli Parlimen Sungai Petani mewakili PKR, Ahli Parlimen Lanang mewakili DAP, Ahli Parlimen Hulu Langat mewakili AMANAH, Ahli Parlimen Papar mewakili WARISAN, Ahli Parlimen Simpang Renggam mewakili BEBAS dan Ahli Parlimen Arau sebagai Pengerusi *Backbenchers*. Hasil daripada perbincangan yang dilakukan, Ketua-ketua Whip sebulat suara bersetuju untuk memperbaharui komitmen mereka dalam mempertahankan Peraturan Mesyuarat Dewan Rakyat dan memastikan perkataan berbaur hasutan, rasis, biadab dan seksis hendaklah tidak digunakan oleh Ahli-ahli Parlimen. YPDR juga menyeru Ahli-ahli Parlimen untuk berbahas dalam ketertiban dan adab susila yang sopan untuk memelihara kesucian Dewan.

Komitmen Ahli-ahli Parlimen untuk mengguna pakai usul yang dikemukakan YPDR ini adalah sangat kritikal kerana setiap pertuturan dan perlakuan Ahli-ahli Parlimen menjadi ikutan rakyat hingga ke peringkat akar umbi. Malahan, sewaktu merasmikan Istiadat Pembukaan Penggal Ketiga Majlis Parlimen Keempat Belas, Seri Paduka Baginda Yang di-Pertuan Agong, Al-Sultan Abdullah Ri'ayatuddin Al-Mustafa Billah Shah Ibni Sultan Haji Ahmad Shah Al-Musta'in Billah bertitah 'Sebagai seorang pemimpin, Ahli-ahli Yang Berhormat menjadi teladan dalam menyemai nilai-nilai positif kepada rakyat'.[76] Justeru, Ahli-ahli Parlimen memainkan peranan penting dalam menyalurkan mesej yang tepat mengenai gangguan seksual kepada setiap lapisan masyarakat. Rakyat sememangnya menaruh harapan yang tinggi terhadap Ahli-ahli Parlimen, terutamanya dalam menyuara dan memperjuangkan segala

75 DR Deb 21 Julai 2020, Bil. 7.
76 DR Deb 18 Mei 2020, Bil. 1, 5.

kesulitan yang dihadapi mereka, ekoran peningkatan kes gangguan seksual dalam tempoh pandemik COVID-19. Menurut *The All Women's Action Society* (AWAM), 18.5% daripada panggilan yang diterima ialah berkaitan kes gangguan seksual dan kebanyakannya dilakukan melalui akaun media sosial tanpa nama dengan membuat komen berbaur seksis, lelucon atau gangguan secara terang-terangan.[77]

Selain itu, Laporan Tahunan Suruhanjaya Hak Asasi Manusia (SUHAKAM) dikemukakan ke dalam Dewan sebagai risalat rujukan Ahli-ahli Parlimen pada 4 November 2020. Sejak penubuhan SUHAKAM pada tahun 1999, usaha untuk membentangkan laporan tahunan SUHAKAM ke Dewan Rakyat akhirnya direalisasikan pada 5 Disember 2019. Penerimaan Parlimen untuk membahaskan laporan tahunan ini mempamerkan kesediaan Kerajaan bagi mendengar dan membincangkan perkara-perkara yang menyentuh hak asasi manusia di negara ini. Selain daripada menyokong usaha-usaha reformasi kerajaan, SUHAKAM turut terlibat dalam merangka dan menggubal RUU gangguan seksual. Komitmen SUHAKAM ini dinyatakan dengan jelas dalam laporan tahunannya yang berbunyi:[78]

> *The participants said that many sexual harassment cases, particularly those occurring in the workplace, were unreported because victims did not understand what constitutes sexual harassment. They were also fearful of repercussions from the perpetrator or their employer.*

Jelas sekali, sebagai satu cabang kerajaan, fungsi Parlimen harus bersifat dinamik dalam membantu Ahli-ahli Parlimen melaksanakan amanah dan tanggungjawab mereka. Parlimen harus memastikan agar Ahli-ahli Parlimen mendapat akses kepada sumber yang lengkap, terkini dan autentik. Usaha ini akan dapat memperkasa kredibiliti Ahli-ahli Parlimen dalam memainkan peranan semak dan imbang terhadap keberkesanan agensi kerajaan dan juga kementerian yang menerajui penggubalan rang undang-undang gangguan seksual ini.

Penutup

Sebagai sebuah institusi perundangan terulung negara, Parlimen memainkan peranan penting dalam menggubal dan meluluskan undang-

77 Lihat <http://www.freemalaysiatoday.com/category/bahasa/2020/05/25/ngo-dakwa-pkp-punca-kes-gangguan-seksual-online-melonjak/> dicapai 19 Februari 2021.

78 SUHAKAM, *Laporan Tahunan SUHAKAM 2019* (SUHAKAM 2020) <http://www.parlimen.gov.my/ipms/eps/2020-11-04/ST.88.2020%20-%20ST%2088.2020.pdf> dicapai 5 Disember 2020.

undang negara serta memastikan suara rakyat diwakili dengan penuh wibawa dan akauntabiliti. Oleh yang demikian, Parlimen hendaklah memastikan pembentangan rang undang-undang gangguan seksual dibentang mengikut perancangan yang ditetapkan. Mekanisme-mekanisme semak dan imbang seperti Waktu Pertanyaan Menteri, soalan bertulis kepada kerajaan dan sesi libat urus jawatankuasa hendaklah dipergunakan sepenuhnya oleh Ahli-ahli Parlimen untuk mengenal pasti status dan kekangan yang merencatkan pembentangan RUU ini. Seharusnya, Jawatankuasa Pilihan Khas diberi kuasa memanggil wakil-wakil kerajaan untuk tampil memberi penjelasan dan berkongsi maklumat yang lebih komprehensif agar dapat mempertingkat perasaan kebertanggungjawaban di setiap peringkat kepimpinan.

Pada masa yang sama, wanita perlu diberi lebih ruang untuk menyuarakan aspirasi mereka dalam sesi Mesyuarat Dewan supaya isu-isu berkaitan wanita menjadi sebahagian daripada dasar dan pelan pembangunan negara. Selain wanita, Ahli-ahli Parlimen lelaki perlu turut berperanan untuk menyuarakan isu-isu gangguan seksual di peringkat Mesyuarat Dewan. Selain mengiktiraf sumbangan wanita dalam arus pembangunan negara, keterlibatan Ahli Parlimen lelaki dalam mengangkat isu-isu berkaitan gender, pastinya dapat membudaya dan mempromosikan Parlimen Malaysia sebagai sebuah institusi yang sensitif gender di persada antarabangsa. Di samping itu, adalah wajar sekiranya Kumpulan Parlimen Rentas Parti (*All Party Parliamentary Group-APPGM*) berkaitan wanita dibentuk di Parlimen Malaysia bagi meneruskan peranan yang dimainkan oleh kaukus wanita. Usaha ini bukan sahaja dapat memperkasa suara wanita dalam pelbagai arena, malah membantu merapatkan Indeks Jurang Gender Malaysia yang ketika ini masih belum mencapai tahap memuaskan.

Secara tuntasnya, adalah wajar bagi Kerajaan untuk menggubal sebuah akta yang lengkap dan kemas bagi menangani jenayah gangguan seksual di negara ini agar dapat memberi perlindungan secara total kepada mangsa. Akta ini perlu memberi definisi gangguan seksual yang jelas, dengan mengadaptasi perspektif dan budaya masyarakat Malaysia terutamanya dari sudut perundangan, ekonomi, psikologi dan sosial. Akta yang digubal juga perlu mempunyai mekanisme akauntabiliti yang kukuh, dengan mengambil kira penubuhan tribunal bebas untuk mendengar dan menangani kes gangguan seksual secara lebih holistik. Pelaksanaan undang-undang ini nanti, pastinya akan menjadikan masyarakat berasa lebih selamat dan dilindungi, baik ketika berada di tempat kerja mahupun di persekitaran awam.

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The APPGM-SDG (All Party Parliamentary Group Malaysia for Sustainable Development Goals): Towards Mainstreaming SDG in Issues and Solutions of Parliamentary Constituencies

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Abstract

This paper looks into the creation of the APPGM (All Party Parliamentary Group Malaysia) in various fields as one of the 14th Malaysian Parliament Reform Agenda. It will explain the origins and rationale of APPG in relation to the need for multilevel and multi-stakeholder engagement over themes and issues with parliament for interaction, documentation, transparency, education and reference. It will then describe the guidelines and rules for the creation of APPGM, and more specifically, the proposal, formation and set up for the APPGM for Sustainable Development Goals (SDG) from the meeting minutes of the House Committee of the Dewan Rakyat. This also includes a discussion of the pioneering parliamentary constituencies involved in 2020 and the outcome of research on identified themes and issues mapping, proposed and ongoing project solutions and dynamic partnerships taking place in implementing the program. It will also highlight the favourable decision to continue with the APPGM-SDG and the proposal for the involvement of additional parliamentary constituencies in 2021. The paper will conclude by stating the importance of the APPGM-SDG in advocating and incorporating sustainable development as a practical model for parliamentary constituency issues and solutions.

Keywords: Parliamentary Reform, APPGM-SDG, Constituency Issues and Solutions, ESD (Education for Sustainable Development), Multi-stakeholder Engagement

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Introduction: APPGM as part of the 14th Parliament reform agenda

In the 14th Parliamentary Reform Agenda, the study for the creation of APPGM in various fields is one of thirteen items that are included. The others being the creation and institutionalisation of various Parliamentary Select Committees; empowering procedural initiatives for more effective use of parliamentary sessions; appointment of an opposition MP (Member of Parliament) as Chairperson of the PAC (Public Accounts Committee); defining time limit for oral question and answers; efforts in reintroducing the Parliamentary Services Act; studying the creation of Parliamentary Services Commission; organising Parliamentary Speaker's Lecture Series; actively engaging the public in relation to courses, workshops and seminars in parliament; upgrading web portal and launching of mobile application of the Malaysian Parliament; creating a caucus of Parliamentary Reform and Governance; publishing an Erskine May version of Parliamentary Practices, and encouraging the changing mindset for a better Parliamentary Culture.[1] The proposal paper of the guidelines and rules for the creation of APPGM defines the function of the APPG as a forum or platform for MPs of the Dewan Rakyat and Senators of the Dewan Negara, and also includes external partners such as academics, NGOs (Non-Government Organisations), professionals and specialists to discuss, research and present a report of recommendations on various themes and issues to parliament and its committees. The APPGM-SDG was originally formally approved and registered with the Secretary of Parliament on 17 October 2019. Following Malaysia's political crisis and change of Government in March 2020, the continuation of the APPGM in general, and specifically the APPGM-SDG and APPGM-Refugee, were also later agreed to in the House Committee Meeting minutes number 1 and 2 on the 6th and 13th of August, 2020.[2]

This paper will look into the origins and rationale of APPG in relation to the need for multilevel and multi-stakeholder engagement over themes and issues of public importance with parliament. It will briefly describe the guidelines and rules for creating an APPGM, and in more detail, the proposal, formation and set up for the APPGM-SDG. This includes a discussion of the pioneering parliamentary constituencies involved and the outcome of research on themes and issues mapping, project solutions

1 See <https://www.parlimen.gov.my/ypdr/agendareformasiparlimen.html> accessed 1 January 2021.

2 See <https://www.parlimen.gov.my/ipms/eps/2019-10-16/DR.6.2019%20-%20DR%206.2019.pdf> accessed 29 December 2020.

and partnerships in them in 2020 and subsequent constituency additions in 2021 due to its performance and continuation. The significance of this group can perhaps be gauged from the international acknowledgement it received from United National University through the Global RCE (Regional Centres of Expertise) Network based on one of the APPGM-SDG project solutions – capacity building for localising SDG in Tanjung Piai and Bentong, carried out by Sejahtera Centre, IIUM. In this context, the true value and merit of the APPGM-SDG is its incorporation of ESD (education for sustainable development) as a practical model for constituency responsibility and work involving multiple stakeholders. This model can be regarded as a pioneering initiative that provides truly multilevel and multi-stakeholder players on one single engagement platform, i.e., politicians, government agencies, business players and most importantly, local community (quadruple helix approach) to identify issues and solutions for the parliamentary constituencies.

A brief look at the rationale for APPGs in Malaysia's parliamentary system

As early as March 2019, parliament made public its efforts to create APPGs. The reference for Malaysia was the UK (United Kingdom) APPG register which is intended to make the institution more accessible to the public. In the UK, All-Party Parliamentary Groups (APPGs) are informal cross-party groups with no official status within Parliament. These groups are administered by and for Members of the Commons and Lords and also involve individuals and organisations from outside Parliament in their running and activities. APPGs are organised based on national and contemporary issues of interest, with the APPG register being updated every six weeks. They are numbered in the hundreds, e.g., 355 APPGs in February 2020:

> An All-Party Parliamentary Group (APPG) consists of Members of both Houses who join together to pursue a particular topic or interest. In order to use the title All-Party Parliamentary Group, a Group must be wide open to all Members of both Houses, regardless of party affiliation, and must satisfy the rules agreed by the House for All-Party Parliamentary Groups. The Register of All-Party Parliamentary Groups, which is maintained by the Parliamentary Commissioner for Standards, is a definitive list of such groups. It contains the financial and other information about Groups which the House has decided should be published. The Register is published on the parliamentary website

> and updated approximately every six weeks. All-Party Parliamentary Groups cover a diverse range of subjects and are established for a rich variety of purposes. They provide a valuable opportunity for parliamentarians to engage with individuals and organisations outside Parliament who share an interest in the subject matter of their Group. They are not, however, official parliamentary bodies, and Groups must avoid presenting themselves in a way which leads to their being confused with select committees.[3]

As quoted above, the definition of the APPGM mentioned earlier is similar to the UK Parliament APPG. In fact, the APPGM as a concept refers to the Westminster, UK Guide to rules on APPG (May 2017) by a WFD (Westminster for Democracy) consultant. Then Speaker of the Dewan Rakyat, Mohamad Ariff Md Yusof, emphasised the need for a platform to facilitate multi-stakeholder engagement with parliament to discuss arising matters of public interest and the exchange of ideas as part of the 14th Parliamentary Reform Agenda. The APPG concept is intended to be interactive, including the involvement of the Speaker and parliamentary executives with the likes of civil society and academia, ensuring a channel of communication with documented content for reference and recommendation to lawmakers as contemporary policy input and feedback. Documented working papers, proceedings and resolutions can be beneficial to all stakeholders involved in the sessions, especially as they can be forwarded to parliamentary committees or MPs (Members of Parliament).[4] The approved general guiding rules on APPGs are that:

> APPGs covers a diverse range of subjects and provides valuable opportunities for parliamentarians to engage with individuals and organisations outside Parliament who share an interest in the subject matter of their group.
>
> An APPG is registered by the Speaker of Parliament's office, but it is not an official parliamentary body like a Parliamentary Select Committee.
>
> APPGs are essentially run by and for members of Parliament from both houses and are made up of backbenchers. It draws MPs from all political parties as this is a cross party and bipartisan effort.

3 See <https://www.parliament.uk/about/mps-and-lords/members/apg/> accessed 30 December 2020.

4 See <https://www.bharian.com.my/berita/nasional/2019/03/536592/parlimen-wujud-kumpulan-rentas-parti> accessed 20 December 2020.

APPGs can also incorporate individuals and organisations from outside Parliament in their administration of the APPG and activities.

An APPG must have a minimum of 2 meetings a year and the minutes must be submitted to the Speaker's office.

An APPG could set up a secretariat with the support of an outside parliament organisation, including staff and secretariat for APPGs.

All the funds raised for the APPG activities above RM10,000.00 must be registered with the Speaker's office.

APPG's annual report of activities and financial statement must be filed with the Speaker's office.

APPGs must be open to all members of both houses of Parliament. Only parliamentarians are formal members of the APPGs, and only MPs have voting rights.

An APPG Chair and Deputy need to be appointed from among MPs from the Dewan Rakyat.

APPGs may choose to involve outside organisations in their work as the secretariat, panel of consultants and subject resource persons. These outside members have no voting rights.[5]

The APPGM-SDG

Since 2015 when SDG was adopted, Malaysia has given its commitment to work together with other countries in achieving the goals by nationalising and localising the framework. While there are many ongoing initiatives being set up for this purpose, APPGM-SDG, in collaboration with CSO-SDG Alliance is now becoming one of the most active platforms for this purpose. The APPGM-SDG was proposed to monitor the implementation of SDG in participating parliamentary constituencies. The SDG refer to the economic, social and environmental concerns of the UN 2030 Agenda and its 17 goals. The objectives of the APPGM-SDG include:

1. Engaging with MPs across political parties on the UN 2030 Agenda and SDG in relation to development, planning and delivery;

5 See <https://www.parlimen.gov.my/ipms/eps/2019-10-16/DR.6.2019%20-%20DR%206.2019.pdf> accessed 1 January 2021.

2. Strengthening the oversight function of Parliament and MPs for the government of the day to be accountable to international conventions, in this case, the implementation of the SDG;
3. Developing policy and strategy papers as recommendations to MPs to benefit their parliamentary debates and work with select committees and agencies;
4. Assisting monitoring and implementation of SDG at parliamentary constituency level and extract issues and concerns from localising them for parliamentary debates and discussion;
5. Assisting MPs on local solutions, initiatives and interventions on SDG for their parliamentary constituencies; and
6. Preparing discourse materials for parliamentary debates and discussion on SDG and UN 2030 Agenda.

Initial activities include the pilot testing of localising SDG at a targeted number of five parliamentary constituencies, preparing case study reports of the five pilot constituencies partly as feedback to gaps of development planning for the 12th Malaysia Plan, and also organise SDG workshops to help with the Shared Prosperity Vision agenda, Mid-term Review of the 11th Malaysia Plan, and mainstreaming SDG into public policymaking in the future.[6]

The APPGM-SDG Committee comprises of 8 members:

Chairman:	YB Dato' Sri Hajjah Rohani Abdul Karim (GPS-PBB, Batang Lupar P201)
Deputy Chairman:	YB Puan Maria Chin Abdullah (PKR, Petaling Jaya P105)
Secretary:	YB Tuan William Leong Jee Keen (PKR, Selayang P097)
Treasurer:	YB Dr Kelvin Yii Lee Wuen (DAP, Bandar Kuching P195)
Member (DR):	YB Tuan Wong Tack (DAP, Bentong P089) & YB Tuan Ahmad Hassan (WARISAN, Papar P175)
Member (DN):	YB Senator Adrian Banie Lasimbang (DAP Sabah) & YB Senator Datuk Paul Igai (PDP, Sarawak)

6 ibid.

They are supported by a Secretariat from the Malaysian Civil Society Organisations (CSO)-SDG Alliance, which comprises of:

Head of Secretariat:	Prof. Datuk Dr Denison Jayasooria
Head of Finance:	Ms Lavanya Rama Iyer
Head of Research:	Mr Alizan Mahadi & Assoc. Prof. Dr Zainal Abidin Sanusi
Head of Solutions:	Dr Lin Mui Kiang
Treasurer:	Mr Kon Onn Sein
Program Officer:	Ms Nur Rahmah Othman
Finance Officer:	Mr Anthony Tan Kee Huat

and 7 Lead Coordinators.[7]

A pilot phase in 2020 was carried out in seven states, including 10 parliamentary constituencies mostly in January and February, except for Pendang and Jeli, which were visited in July and August, respectively. Other parliamentary constituencies included Selayang and Petaling Jaya in Selangor, Bentong in Pahang, Tanjung Piai in Johor, Papar and Pensiangan in Sabah, and Bandar Kuching and Batang Sadong in Sarawak. A timeline was decided in relation to this phase, and an extension was granted by Parliament and the Ministry of Finance till March 2021 due to the COVID-19 pandemic. The project is identified as having 4 phases, i.e.:

> Phase 1. Mapping & Awareness Raising / Identification of Issues & Stakeholders (Jan – March 2020)
>
> Phase 2. Project & Program Design Phase/Solutions Focus (April – June 2020)
>
> Phase 3. Project/Program Execution (July 2020 – Jan 2021)
>
> Phase 4. Project Review & Drawing Conclusions (Feb – March 2021)[8]

The following section will highlight critical aspects and findings of the project's implementation at the parliamentary constituencies,

7 APPGM-SDG, 'Presentation Slides: Review of 2020 and Prospects for 2021 in Localising SDGs - 9 December (APPGM-SDG 2020)'.

8 ibid.

including identified niche themes of the constituencies in relation to the SDG; contextual mapping of issues and themes in relation to SDG; stratification of the segment of society or those at risk from SDG perspective; and need for capacity building in terms of SDG within the respective constituency, project solutions based on the identified issues, and necessary partnerships for successful implementation of the project; as well as a brief financial overview of the project.

APPGM-SDG: implementation strategies for research, project solutions, and partnership developments

From a broader development perspective, the APPGM-SDG project can be regarded as a platform for performance measurement or barometer in looking at the delivery of Malaysia's national development. Within such context, the implementation of the four phases of the project at each of the constituency has adopted a 6-step situational analysis approach to ensure the connectivity between the local development issue as the direct and indirect implication from the national development agenda. The first strategy is to do profiling of the community based on issue mapping by identifying various concern raised by community members regardless of the scale and intensity of the problem. Secondly, the identified issues are then prioritised in relation to the SDG theme and those most at risk of being left behind. Thirdly, an analysis of the issues is carried out in relation to policy evaluation and impact assessment from the dimensions of three sustainable development components – economic, social, and environmental. The fourth step is the development of a solution project proposal by interested stakeholders. Fifth, the execution and monitoring of the accepted solution project. The last step is impact assessment and reporting back to the APPGM-SDG committee.[9]

The profiling and issue mapping strategy uses the identified SDG template that refers to integrated social, economic and environmental concerns across the 10 parliamentary constituencies. Based on the mapping exercise, here are the findings of the important issues faced by the constituencies:

1. ***Poverty,*** i.e. despite improvements at the national level, pockets of poverty still exist, and poverty (SDG 1 or No Poverty) has a multiplier effect affecting the achievement of other SDG goals.

9 ibid.

2. Being in rural or semi-rural places, and B40 urban poor, e.g. Petaling Jaya may compromise ***education, skills and training of youth and women*** for improved livelihoods, opportunities and socio-economic status in relation to SDG 4 (Quality Education), SDG 5 (Gender Equality) and SDG 8 (Decent Work and Economic Growth).

3. ***Inequality*** in access to development for the B40, whether in waste management, healthcare, or social welfare benefits. SDG 10 (Reducing Inequalities) is also seen as having a multiplier effect on the other SDG.

4. ***Infrastructure*** development is also seen as being needed in many constituencies to facilitate industry and innovation (SDG 9 Industry, Innovation and Infrastructure).

5. ***Health and nutrition*** and access to their facilities are still a major challenge across constituencies that have isolated geographical areas with cases of Tuberculosis and Polio still occurring and also problematic for undocumented and stateless persons. In this context, SDG 3 (Good Health and Wellbeing) and SDG 16 (Peace, Justice and Strong Institutions) are also interlinked to the other SDG.

6. ***Environmental*** degradation affects farmers and fishermen in Tanjung Piai due to unsustainable development and mandates across relevant agencies, including state and federal relations. Here, SDG 13 (Climate Action), 14 (Life Below Water), 15 (Life on Land), 16 and 17 (Partnerships for the Goals) are interrelated.

7. ***Floods*** are also identified as a significant issue in various areas (related to SDG 13), and finally,

8. ***Waste Management*** is also identified as having fragmented mandates (related to SDG 12 Responsible Consumption and Production).

While all constituencies may face these issues, it is thought that it will be interesting to have a comparative analysis of how different SDG give different challenges and potentially different solutions depending on the general socio-economic status of the constituency. For this purpose, the project has categorised the identified issues into different niche themes according to SDG references as stated below:

Figure 1. SDG: Niche Themes of Constituencies (Report of APPGM-SDG)

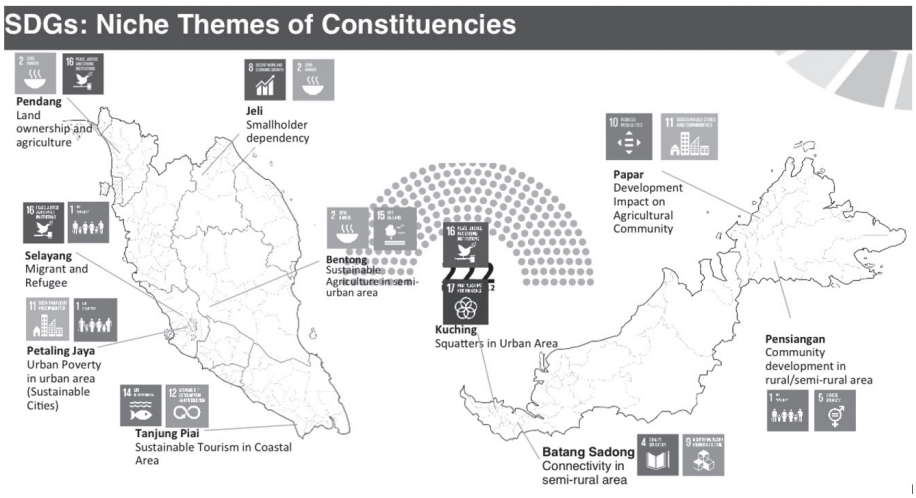

Table 1. Major Themes and Characteristics of Constituencies

No.	Parliamentary Constituency	Major Themes	Characteristics
1	Bentong (P089)	Sustainable Agriculture	Semi-urban
2	Selayang (P097)	Migrant	Semi-urban
3	Petaling Jaya (P105)	Urban Poverty	Urban
4	Tanjung Piai (P165)	Sustainable Tourism	Semi-rural
5	Papar (P175)	Development Impact on Agriculture	Semi-rural
6	Pensiangan (P182)	Youth & Women Empowerment	Rural and semi-rural
7	Kuching (P195)	Squatters	Urban
8	Batang Sadong (P200)	Connectivity and Accessibility	Semi-rural and rural

No.	Parliamentary Constituency	Major Themes	Characteristics
9	Pendang (P011)	Agriculture and Land Ownership	Rural
10	Jeli (P030)	Smallholder Schemes and Decent Work	Rural

Source: APPGM-SDG

Based on this issue mapping, a preliminary identification of communities at risk was analysed in relation to the parliamentary constituencies. In peninsular Malaysia, in the Bentong constituency, farmers, Orang Asli and B40 are identified as having the most risk to be left behind due to economic status and identity. In Selayang, migrants, Orang Asli and B40 are identified due to identity, economic and legal status. In Petaling Jaya, urban poverty of the B40 is associated with low-cost housing, i.e. people's housing project, or better known as PPR, due to economic status. In Tanjung Piai, the fishermen and paddy farmers are identified due to geography and economic status. In Pendang, farmers and rubber tappers are identified due to geography and economic status, and in Jeli, the B40, smallholders, women, youth and Orang Asli are identified due to identity, geography (in this case, connectivity), and economic status. As for East Malaysia, in Papar, paddy farmers and fishermen are identified due to economic status and geography, and in Pensiangan, youth and women are identified due to identity or gender, age and geography. In Kuching, squatters are identified due to identity, economic and legal status, and in Batang Sadong, youth and farmers are identified due to geography and economic status.[10]

A total of 22 capacity building projects and 34 solution projects were proposed and approved based on these issues and targeted communities. RM8,800.00 is allocated for each capacity building project, which was executed as workshops. They comprise of capacity building in relation to community development (9 projects), mainstreaming SDG for community leaders/NGOs and civil servants (7 projects), health and wellbeing (2 projects), women and youth empowerment (2 projects), and needs assessment (2 projects). Other solution projects can be categorised into immediate and medium-term action-based projects with a budget

10 ibid.

of RM120,000.00 per constituency and an implementation period of 4-6 months. They comprise of farming (organic and aquaculture) (six projects), women empowerment, entrepreneurship, and community development (four projects each), national unity, health and wellbeing, education and language development, and ecotourism (three projects each), technical skills development and waste management (two projects each). The solution projects are not to solve the issue in total, but they contribute to mitigating the issues identified and hopefully will showcase a way forward in solving the problems and ultimately contribute towards achieving identified SDG of the constituency.[11]

The project has fostered a fascinating collaboration model involving project leaders who are supposed to be subject matter experts, direct engagement of community members, MPs, and relevant local authorities. From the whole solution projects, partnerships have been established among the project implementors circle, which include district councils (two in number), municipal councils (three) and city councils (five), research institutions and universities (eight), and CSOs (Civil Society Organisations) (32). Among the implementing partners for the solution projects include Sejahtera Centre of IIUM (International Islamic University Malaysia), PPH (Persatuan Penggerak Hijau), PSSM (Persatuan Sains Sosial Malaysia), SAWO (Sabah Women's Action Resource Group), SADIA (Sarawak Dayak & Iban Association), Yayasan Salam, NCSM (National Cancer Society of Malaysia), Raleigh KL (Raleigh International KL), UMS (University Malaysia Sabah), MyPJ and many more. The involvement of these agencies is significant in many ways, especially from the SDG 16 and 17 perspectives that are considered as core towards achieving the SDG in its entirety.[12]

Apart from the core activity of solution projects, APPGM-SDG also organised and participated in various discourses with multi-stakeholders in 2020 on the COVID-19 pandemic and recurring themes. They included conversations, for example, on *Post COVID-19 Recovery: Development Plans, Policies and Programs, Post COVID-19 Recovery Agenda Based on SDG: Building the Local, Economy in Rural Areas, Post COVID-19 Recovery Agenda: Building Local Economy in Urban Areas (Where the B40 and Migrants Live), Build Back Better for Health, Resilience & Sustainability: Corporate Malaysia's & Global Proposals for Post COVID-19 Recovery, UN75 National*

11 Sekretariat APPGM-SDG, *Laporan Gerak-Kerja APPGM-SDG 2019/2020* (Malaysian CSO SDG Alliance, 2020) 17-20.

12 ibid.

Conversation: The Future We Want and The UN We Need - Our Shared Global Visions & Collective Agreement to Multilateralism, Online Policy Forum: 2020 Census & Relevance, Online Conversation: Watered Down Development in Selangor, Global Community Builders Summit 2020 (GLOBS20), Malaysia Urban Forum 2020 and many more.[13]

A total of RM2 million has been allocated for the APPGM-SDG, with approximately RM1,530,400.00 utilised for awareness, capacity building and solution projects for the 10 parliamentary constituencies. The remainder of the budget was allocated for research activities and publication, administration and coordination, and contingencies.[14] It may not be excessive to claim that the impact that the APPGM-SDG project has made in mainstreaming SDG among the members of Parliament and the community is intangibly worth more than the funding allocated.

SDG performance in Malaysia and the continuation of the APPGM-SDG

Malaysian SDG commitment is getting more evidence since 2015, with stronger reference being made to SDG in national budgetary mechanism and development plan. In a statement during the launching of indicators for Malaysia, Minister in Prime Minister's Department, Datuk Seri Mustapa Mohamed, who is also the MP of Jeli, explains that from the 247 global indicators, Malaysia has prepared 52% or 128 indicators with a further 29% or 73 indicators to be done. From the global indicators, 19% or 46 indicators are either irrelevant or without existing data. The SDG five focus areas of social development, global stewardship, prosperity, peace and partnership will be incorporated into relevant policy documents such as the 12th Malaysia Plan and the Shared Prosperity Vision 2030. He also emphasised the importance of the APPGM-SDG, which he himself is a member of, in helping to achieve the 2030 Agenda for Sustainable Development for Malaysia.[15] With this progress made, it is imperative that each parliament constituency, as an important development platform, give more attention to integrating SDG in their communities.

Operating on a unique model of collaboration – quadruple helix – and having secretariat members and project leaders coming from diverse social and academic backgrounds has made APPGM-SDG an interesting

13 ibid.
14 APPGM-SDG (n 7).
15 Sekretariat APPGM-SDG (n 11) 21.

showcase that it has gained trust and reputation by the relevant agencies to be further continued with further additional budget. In relation to the expansion of the APPGM-SDG, Malaysian CSO-SDG Alliance's Prof. Datuk Denison Jayasooria, who is also Head of the APPGM-SDG Secretariat, mentions that in 2021, they will be carrying out the project in 20 new parliamentary constituencies while the existing 10 parliamentary constituencies will undergo a new phase of SDG localisation, making it 30 in total.[16] This will mean an additional budget of RM3 million for the 20 new parliamentary constituencies APPGM-SDG members in 2021.

Conclusion

The importance of the APPGM-SDG is in advocating and incorporating sustainable development as a practical model for MPs and their parliamentary constituencies. It is a bipartisan platform for localising SDG capacity building and solutions. Its model includes multiple stakeholders at the grassroots level, providing channels of communication and offers a decentralised approach in the policymaking environment through partnerships. The APPGM-SDG facilitates inter-agency collaboration for a multidimensional approach by incorporating local communities for solutions to issues while providing ESD (Education for Sustainable Development) through practice for lifelong community learning. By mainstreaming SDG, it provides a model of governance and leadership and a way of strategising the approach to issues and solutions for the participating MPs in their political constituencies. Ultimately, APPGM-SDG hopes to offer a new perspective to the development model in terms of the meaning of development itself and the delivery mechanisms.

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16 See <https://focusmalaysia.my/mainstream/dosm-msia-needs-close-monitoring-to-achieve-2030-agenda/> accessed 4 January 2021.

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