



PARLIAMENT OF MALAYSIA

JOURNAL OF THE MALAYSIAN PARLIAMENT



Volume 2 – 2022

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

<https://journalmp.parlimen.gov.my>

JOURNAL
OF THE
MALAYSIAN
PARLIAMENT

Volume 2 – 2022

JOURNAL OF THE MALAYSIAN PARLIAMENT

MODE OF CITATION [year] JournalMP page

2022 © Parliament of Malaysia

Journal of the Malaysian Parliament (JournalMP) is an open-access journal available to all users. JournalMP is licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International (CC BY-NC-SA 4.0). Under this licence, users are free to copy and distribute, remix, adapt content, and build upon their work non-commercially, as long as appropriate credit is given to the original work, and license their new creations under identical terms. Materials appearing in JournalMP may be distributed freely by electronic or any other means provided that no charge is imposed and that JournalMP is acknowledged as the source.

Authors of articles provide their consent to publish and transfer copyright to the Parliament of Malaysia (as the publisher) upon the acceptance of an article for publication. Authors are responsible for factual accuracy and opinions expressed therein which do not necessarily reflect the knowledge, views, or position of the Parliament of Malaysia (as the publisher).

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.

CORRESPONDENCE

Enquiries, comments or suggestions should be addressed to the Journal of the Malaysian Parliament, Parliament of Malaysia, Jalan Parlimen, 50680 Kuala Lumpur, Malaysia.

E-mail: jurnalmp@parlimen.gov.my

Online access: <https://jurnalmp.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

JOURNAL OF THE MALAYSIAN PARLIAMENT

EDITOR-IN-CHIEF

Professor Dr Nik Ahmad Kamal Nik Mahmud
International Islamic University Malaysia (IIUM)

EDITORIAL BOARD

Distinguished Professor Datuk Dr Shamsul Amri Baharuddin
Institute of Ethnic Studies (KITA)

Professor Dr Andrew James Harding
National University of Singapore (NUS)

Dr Edmund Terence Gomez

Professor Dato' Dr Mohammad Agus Yusoff
National University of Malaysia (UKM)

Datin Dr Faridah Jalil

Professor Dr Jamal Othman
National University of Malaysia (UKM)

Professor Datuk Seri Dr Awang Sariyan
Dewan Bahasa dan Pustaka (DBP)

Professor Datuk Dr Denison Jayasooria
Institute of Ethnic Studies (KITA)

Associate Professor Dr Khairil Azmin Mokhtar
International Islamic University Malaysia (IIUM)

Associate Professor Dr Danial Mohd. Yusof
International Islamic University Malaysia (IIUM)

Associate Professor Dr Awang Azman Awang Pawi
University of Malaya (UM)

Associate Professor Dr Rohaida Nordin
National University of Malaysia (UKM)

MANAGING TEAM

Norlizawaty Abdu Samad
Muthanna Saari
Nurrul Saffida Kusaini
Muhammad Izarul Kayat



EDITORIAL

There are two important bills that are to be tabled soon in parliament; the anti-hopping bill and the abolition of the mandatory death penalty. The anti-hopping bill has been the subject of so many polemics within the government that it has been in and out of Cabinet meetings. Apparently, there has been a consensus reached, and the bill may see the light of the parliamentary day soon. Undoubtedly, it is difficult for legislation to reach a consensus among the government and the opposition representatives. The choice is a law that is so strict that it renders all kinds of hopping to be fatal or a law that is so flexible that its content has so many exceptions that make the law ineffective in curbing party-hopping. Thus, the middle way will be to have an anti-hopping law that caters to certain hopping that is reasonably justified. In moderating such an act, a parliamentary select committee may be considered to be established to deal with the matter. According to the Minister of Law, a possible exception for MP who is involuntarily expelled by the party; who leaves to join a party within a coalition; and the state assemblies may determine whether similar law may be promulgated in the states.¹

Meanwhile, a term-long study on the abolition of the mandatory death penalty was concluded with the Minister in charge of law and Parliament announcing the possible tabling of bills to amend various provisions of the existing laws. There are nine sections in the Penal Code [Act 574], two sections in the Firearms (Increased Penalty) Act 1971 [Act 37], and also section 39B of the Dangerous Drugs Act 1952 [Act 234], which was already amended in 2018. Further to these offences, there are 22 offences that carry the death penalty at the discretion of the court. These offences are under the Armed Forces Act 1972 [Act 77], the Water Industry Services Act 2006 [Act 708], and the Kidnapping Act 1961 [Act 365]. The main concern is to provide alternative penalties for these offences. An established principle of ‘an eye for an eye’ requires rethinking a proportionate punishment for intentionally causing death, for instance, under section 302 of the Penal Code. For the victim’s family, it is difficult to accept the fact that a person who has caused the

1 *The Star*, 22 May 2022.

death of their loved one will not end up on the gallows but will live for another twenty years or so in prison. Imagine people who are waging war against the Yang di-Pertuan Agong and have caused His Majesty's death are still alive and kicking even though they are confined in the Sungai Buloh penitentiary. For an alternative punishment, the Minister interestingly raised the possibility of implementing the Islamic law punishment of *diyat* or 'blood money'. The *diyat* is part of the *qisas*, or just retaliation, a punishment that applies the 'an eye for an eye' principle in the case of murder, causing death or bodily injuries.² Instead of the accused facing the death penalty, the victim's next of kin may opt for the payment of compensation or *diyat*. The state is to determine the amount of compensation. *Diyat* is a punishment and is not treated as compensation for the victim's death, even though there are opinions to the contrary.³

The new issue of the Journal of the Malaysian Parliament has an interesting variety of articles. From reform of Parliament to new laws, the second edition of the journal dwells on issues of public interest vis-à-vis parliamentary democracy and the role of parliament, conducts of Members of Parliament (MPs) in *Dewan Rakyat* and the controversial Police Complaints Commission Bills, the old IPCMC and the new IPCC Bills. There is also an article on the law on medical cannabis that critically evaluates the proposal of legalising cannabis. The following are the brief content of articles published in the second issue:

Reform of the legislature has always focused on the reform of *Dewan Rakyat*. Reform of *Dewan Negara* is also essential as reform has to be comprehensive. Jonathan Fong Ren Ming, in his article "Reforming the *Dewan Negara*: Its Evolution and Options for Reform", looks at the reform of *Dewan Negara* drawing practices in the Upper Houses of Australia and Canada. The paper explores the historical evolution of the *Dewan Negara* and the current issues it faces. The reference to practices in Australian and Canadian Senates is to glean usable lessons, culminating in a discussion of possible reform options for the *Dewan Negara*.

2 See M.A. Mohamed Adil, 'Shariah response to mandatory death punishment' *New Straits Times*, 22 June 2022 <<https://www.ikim.gov.my/new-wp/index.php/2022/06/22/shariah-response-to-mandatory-death-penalty/>>.

3 See M.A. Mohamed Adil, 'Mansuh hukuman mati mandatori selari dengan ajaran Islam' *Berita Harian*, 14 Julai 2022 <<https://origin.bharian.com.my/rencana/lain-lain/2022/06/965724/mansuh-hukuman-mati-mandatori-selari-ajaran-islam>>. See also P. Ismail, 'Asas perbezaan kadar diyat antara lelaki dan wanita menurut undang-undang Islam' (1997) 2(5) *Jurnal Syariah* 229-237.

Liew Chin Tong and Mohammad Fakhrurrazi Mohd Rashid write “*Lim Kit Siang dan Reformasi Parlimen Malaysia*” narrating the contribution of the veteran Member of Parliament, Lim Kit Siang, to the reform of *Dewan Rakyat*. It is argued that the domination of the ruling party, Barisan Nasional (BN), in Parliament since the early 1970s has stifled the function of Parliament as a check and balance towards the government. The efforts made came from the realisation that the executive has always been dominant and exacerbated by the rigid procedure in Parliament. As the leader of the opposition, Lim Kit Siang is said to have transformed *Dewan Rakyat* into a more democratic and balanced institution.

Asrawati Awalina Aslan discusses the conduct of Members of Parliament at *Dewan Rakyat* in her article entitled “Conduct in the House of Representatives (*Dewan Rakyat*) Parliament Malaysia”. She analyses the Code of Conduct for members of Parliament in regulating their behaviour during parliamentary sessions. The analysis is based on field research that was carried out over two phases. The first phase was to assess the public’s knowledge, attitude and perception of the behaviour of MPs. The second phase involved a semi-structured interview with six MPs. The results of the online survey confirmed that the public is more aware of the existence of misconduct among MPs and the discrimination faced by MPs who are members of marginalised groups such as women, youth, and minorities. Findings from the study concluded that although there was a higher awareness rate among the public about the misconduct of MPs, there was contradictory opinion highlighted from the MPs’ perspectives, indicating the need to look at the gap between the public and MPs’ understanding of these issues.

As part of the move to reform Parliament, it is suggested that the Parliamentary Service Act 1963 should be re-enacted. The article entitled “*Keperluan Mewujudkan Semula Akta Perkhidmatan Parlimen di Malaysia*” by Ikmal Hisham Md Tah et al. seeks to justify that the Act, which was abolished in 1993, is necessary because Parliament as an institution needs a parliamentary service system that is independent and efficient to provide impartial support to members of the House. Since 1993, parliamentary staffs have been governed by the Federal Public Service regulations that are not in line with the spirit of empowerment and independence of parliamentary institutions in uplifting the quality of parliamentary representation in Malaysia. The article sets out to ensure parliament’s check and balance function can be discharged accordingly.

Wan Ahmad Fauzi Wan Husain, in an article entitled “*Watanic Jurisprudence: Governance Principles Under the Federal Constitution*”,

provides an alternative approach to the existing principle of sovereignty in Malaysia. The legal methodology of *watanic* jurisprudence emphasises the authoritative powers of the Malay Rulers that the author submitted to legitimise the Federation of Malaya Agreement, 1948, the Federation of Malaya Agreement, 1957, and the Federal Constitution of Malaya, 1957. The article stresses the fact that previous research on this subject had ignored the principle of sovereignty as stipulated in Article 181(1) when discussing the issue of legislative powers. The author argues that since the members of the legislative, executive, and judiciary take the oath under the Sixth Schedule before discharging their respective constitutional responsibilities, it is essential to understand the essence of the oath under the Sixth Schedule vis-à-vis the duty to uphold the rule of law and the supremacy of our Constitution.

Sharifah Syahirah S. Shikh writes that patriarchy has impacted the selection of women in general elections. Her article “*Patriarki, Politik Malaysia dan Pilihan Raya Umum*” analysed qualitatively data obtained from secondary data, official documents, and observations during the GE14 period, including during the nomination of candidates as well as the month after GE14. The article hypothesised that the patriarchal system has clearly undermined and negated women’s potential as leaders in Malaysian politics and that it is strengthened through the cultural practices of political parties such as UMNO, PAS, PKR, DAP and BERSATU. In GE14, the practice of enhancing the hegemony of masculinity continued with a minimal number of female candidates, and female party members were still considered more suitable as party voters. However, there are efforts that have been carried out by various parties, especially the women’s wings of political parties, civil society, the media, and government agencies, that have challenged this system and have voiced the importance of women as leaders of the country.

Amy Tam Lay Choon, in her article “Parliamentary Oversight to Uphold Accountability in the Review Process of Sustainable Development Goals”, analyses the role of Parliament in supporting the SDG process through the enactment of legislation and the adoption of a budget. She argues that the role of parliament includes ensuring accountability for the effective implementation of the 2030 Agenda. It is followed by a regular follow-up and review with an accountability structure that will support a comprehensive assessment and oversight of SDG implementation. This paper sheds light on the steps taken by parliaments around the world to incorporate accountability into their work on SDG implementation. It would draw on lessons learned from the experiences

of these parliaments as a way forward for parliaments to be involved in the SDG implementation.

The death penalty and the right to life is the subject matter discussed by Mohamed Azam Mohamed Adil. In his article entitled "*Hak untuk Hidup dan Hukuman Mati: Respons Syariah terhadap Perundangan Antarabangsa*", the writer submits that while the Shariah recognises the right to life of each and every human, it also posits that humankind is the prize of God's creation. As humans were created by God, a human's right to life ultimately belongs to God. For God gives life, and He is the one who takes it back. Therefore, human lives are sacred, according to the Syariah, and it is a crime to take another human's life without a just cause. In this regard, Syariah has prescribed retaliation (*qisas*) that prescribes the death penalty for intentional murder. The article examines the human right to life from both the perspectives of Islam and the Federal Constitution and also examines the demands of international law on the abolition of the death penalty and what the Shariah response is in this regard.

The establishment of an independent Police Commission has been the subject of much debate since it was first mooted. It all started with the promulgation of the Independent Police Complaints and Misconduct Commission (IPCMC) Bill 2019. Due to many objections to the Bill, the Independent Police Conduct Commission (IPCC) Bill 2020 was enacted. Augustine Leonard Jen seeks to review the Bill in the article entitled "*Polemik Rang Undang-undang Suruhanjaya Bebas Aduan Salah Laku Polis 2019 (RUU IPCMC 2019) dan Rang Undang-undang Suruhanjaya Bebas Tatakelakuan Polis 2020 (RUU IPCC 2020)*". The new Bill contains 47 Clauses compared to 60 Clauses in the previous Bill. The IPCC 2020 Bill was enacted to enhance the integrity of the Royal Malaysia Police (PDRM), reduce misconduct among PDRM members and encourage public confidence in the police force. The author discusses the issues that the IPCC 2020 Bill still invites controversy and negative connotations and compares the new Bill with the old one.

The article entitled "Preventing Oversight on Medical Cannabis Legislation in Malaysia: Analysis of Risks, Benefits and Regulation Requirements" by Mohamad Haniki Nik Mohamed et al. seeks to discuss the risks, benefits and regulations of medical cannabis in the light of many countries that have legalised the use of cannabis for medical purposes. The authors argue that although there are claims and studies reported that medical cannabis is needed to treat certain diseases, the decision to legalise cannabis in Malaysia needs to carefully weigh the risks and benefits. After all, there are other FDA-approved medicines

and their clinically proven to be safe and effective alternatives that are currently available to treat such diseases. The control of cannabis licensing and selling needs to be taken into serious consideration before deciding on the regulatory status of cannabis. The lack of high-quality clinical trials regarding the benefits and harms of cannabis for medical purposes should also be a major consideration before the decision to legalise cannabis is made.

Nik Ahmad Kamal Nik Mahmud

Editor-in-Chief

CONTENTS

v Editorial

Nik Ahmad Kamal Nik Mahmud

Articles

- 1 Reforming the Dewan Negara: Its Evolution and Options for Reform
Jonathan Fong Ren Ming
- 31 Lim Kit Siang dan Reformasi Parlimen Malaysia
Lim Kit Siang and Parliamentary Reform
Liew Chin Tong and Mohammad Fakhruzzai Mohd Rashid
- 62 Conduct in the House of Representatives (*Dewan Rakyat*) Parliament Malaysia
Asravati Awalina Aslan
- 97 Keperluan Mewujudkan Semula Akta Perkhidmatan Parlimen di Malaysia
The Need to Re-enact the Parliamentary Service Act in Malaysia
Ikmal Hisham Md Tah, Muthanna Saari, Faridah Jalil, Idzuafi Hadi Kamilan and Akmal Hisham Abdul Rahim
- 128 Watanic Jurisprudence: Governing Principles in Legislative Powers Under the Federal Constitution
Wan Ahmad Fauzi Wan Husain
- 149 Patriarki, Politik Malaysia dan Pilihan Raya Umum
Patriarchy, Malaysian Politics and General Election
Sharifah Syahirah S. Shikh
- 177 Parliamentary Oversight to Uphold Accountability in the Review Process of Sustainable Development Goals
Amy Tam Lay Choon
- 200 Hak untuk Hidup dan Hukuman Mati: Respons Syariah terhadap Perundangan Antarabangsa
The Right to Life and the Death Penalty: The Shariah Response to the International Law
Mohamed Azam Mohamed Adil
- 226 Polemik Rang Undang-undang Suruhanjaya Bebas Aduan Salah Laku Polis 2019 (RUU IPCMC 2019) dan Rang Undang-undang Suruhanjaya Bebas Tatakelakuan Polis 2020 (RUU IPCC 2020)
The Polemics of the Independent Police Complaints and Misconduct Commission (IPCMC) Bill 2019 and Independent Police Conduct Commission (IPCC) Bill 2020
Augustine Leonard Jen
- 248 Preventing Oversight on Medical Cannabis Legislation in Malaysia: Analysis of Risks, Benefits and Regulation Requirements
Mohamad Haniki Nik Mohamed, Nor Ilyani Mohamed Nazar, Irna Elina Ridzwan, Nor Hidayah Mohd Taufek and Normy Syafinaz Ab Rahman



Reforming the Dewan Negara: Its Evolution and Options for Reform

*Jonathan Fong Ren Ming**

Abstract

Despite its prominent position as the upper House of the Malaysian Parliament, the inherent structural and operational weaknesses of the *Dewan Negara* culminates in a chamber that fails to inspire public attention and confidence. This is a significant contrast with the attention that the lower House, the *Dewan Rakyat* usually draws and is a departure from the original vision that it should be an influential forum of debate and discussion. Nonetheless, the general apathy with which the public may perceive the chamber should not distract from the benefits that serious reform of the chamber may provide. As attention paid to parliamentary reform in Malaysia increasingly focuses overwhelmingly on the *Dewan Rakyat*, it is equally important that the *Dewan Negara* be considered as an integral element to any parliamentary reform efforts. In dealing with this issue, this paper explores the historical evolution of the *Dewan Negara* and the current issues it faces. It then performs a comparative study of the Australian and Canadian Senates to glean usable lessons, culminating in a discussion of possible reform options for the *Dewan Negara*.

Keywords: Reform, Dewan Negara, Constitutional Law, Parliamentary Democracy, Upper Houses

Introduction

The Malaysian Parliament is a quasi-mirror of the Parliament of the United Kingdom. It consists of two chambers, namely the *Dewan Rakyat* and the *Dewan Negara*, both parallels of the House of Commons and the House of Lords respectively. Much like its British counterpart, the *Dewan Rakyat* is composed of elected Members, and is constitutionally designed to be the preeminent House in contrast to the unelected *Dewan*

* Jonathan Fong Ren Ming is an Advocate & Solicitor of the High Court of Malaya.
Email: jonathanrmfong@gmail.com

Negara, resulting in the latter's lesser public prominence versus the elected *Dewan Rakyat*.¹

The lack of attention given towards the *Dewan Negara* distracts from the original vision that it should be an "influential forum of debate and discussion"² to contribute "valuable revision"³ to legislation. Instead, a common sentiment today is that the *Dewan Negara* serves as a rubber stamp to legislation passed by the *Dewan Rakyat*.

While the topic of Parliamentary reform has gained steady traction amongst civil society, greater attention is placed on the *Dewan Rakyat* than the *Dewan Negara*. This is arguably to the detriment of not only to the *Dewan Negara* itself, but also to Malaysia's Parliamentary democracy as a whole. This paper will attempt to shine a spotlight on the *Dewan Negara* by, firstly, examining and tracking the constitutional evolution of the chamber both before and after Merdeka, and thereafter by critically assessing its present-day performance. A comparative study involving the Australian and Canadian Senates is then undertaken, followed by considerations of possible reform options that may be adopted for the *Dewan Negara*.

Powers of the *Dewan Negara*

The existence of the *Dewan Negara* is governed by Article 44 of the Federal Constitution,⁴ which establishes the Parliament as being composed of the *Dewan Rakyat* and the *Dewan Negara*:

The legislative authority of the Federation shall be vested in a parliament, which shall consist of the Yang di-Pertuan Agong and two Majlis (Houses of Parliament) to be known as the *Dewan Negara* (Senate) and the *Dewan Rakyat* (House of Representatives).

Mirroring the *Dewan Rakyat*, the *Dewan Negara* can introduce legislation, alongside reviewing, revising and holding debates over legislation⁵ passed by the *Dewan Rakyat*.

1 A. Harding, 'The Dewan Negara and Constitutional Reform: Upper Houses in Comparative Perspective' (2021) 1 *Journal of the Malaysian Parliament* 55, 56.

2 Reid Commission, *Report of the Federation of Malaya Constitutional Commission 1957* (Her Majesty's Stationery Office, 1957) para 64 (iv).

3 *ibid.*

4 Federal Constitution of Malaysia, art 44.

5 *ibid.* art 66(1).

However, the similarities end here. To begin with, the chamber is restricted from introducing or amending “Money Bills”⁶ which remain the sole domain of the Dewan Rakyat. In the event where the *Dewan Negara* does not pass a Money Bill without amendments within a month, Article 68(1)⁷ provides for the Bill in question to be presented directly to the Yang di-Pertuan Agong for assent, bypassing the *Dewan Negara*.

The *Dewan Negara* also faces similar restrictions for other Bills. Under Article 68(2)⁸, the *Dewan Negara* may reject a Bill or pass it with amendments not agreed to by the Dewan Rakyat. This will result in the Bill in question being debated again by the Dewan Rakyat at least one year after its initial passage in the Dewan Rakyat.⁹ Should the Dewan Rakyat pass the Bill without accepting any amendments by the *Dewan Negara* (or with those defined in Article 68(3)¹⁰), and upon being sent to the *Dewan Negara* it is rejected or passed with amendments not agreed to by the Dewan Rakyat, the Bill (either in its original form or with mutually agreed amendments) will be presented directly to the Yang di-Pertuan Agong for assent.

Effectively, this allows the Dewan Rakyat to completely bypass any serious objections the *Dewan Negara* might have against incoming legislation, negating the possibility of a deadlock occurring between the two Houses over legislative disagreements. The Dewan Rakyat may choose to not negotiate with the *Dewan Negara* should the Bill lack urgency, as it can simply repeat the legislative process again and constitutionally bypass the reservations of the *Dewan Negara*.¹¹

Composition of the *Dewan Negara*

The *Dewan Negara*’s composition is set out in Article 45 of the Federal Constitution.¹² It is composed of 70 unelected Senators, all appointed or elected to three year terms with a further two-term limit. The Senators

6 ibid. art 67(1); The phrase “Money Bills” here is defined by Article 67(1) and refers to Bills that primarily concern taxation and financial matters of the Federation.

7 Federal Constitution of Malaysia, art 68(1).

8 ibid. art 68(2).

9 ibid. art 68(2)(b).

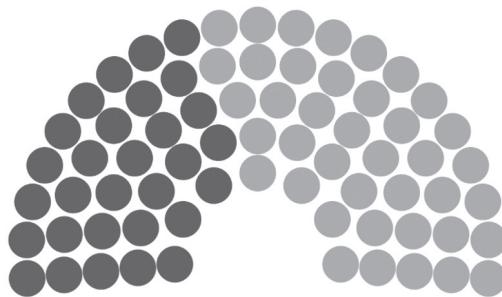
10 This refers to alterations to the Bill certified by the Speaker of the *Dewan Rakyat* to be necessary owing to the time which has elapsed since the Bill was passed in the earlier session, or to represent amendments made in that session by the Senate.

11 Harding (n 1) 61.

12 Federal Constitution of Malaysia, art 45.

are broken down into 30 Senators:¹³ two representing each of the 13 States of the Federation and Kuala Lumpur respectively, and one each from the other two Federal Territories - Labuan and Putrajaya. The other 40 Senators are appointed by the Yang di-Pertuan Agong.¹⁴

Figure 1. Graphic representing the current majority of appointed Senators in the chamber. Dark grey represents State Senators while the light grey represents the federally appointed Senators.



Twenty six (26) State Senators are appointed by their respective state assemblies. As the Federal Territories do not have legislative assemblies of their own, their Senators are appointed by the Yang di-Pertuan Agong, as is also the case with the 40 federally appointed Senators.

While the Senators are officially appointed by the Yang di-Pertuan Agong, in practice it is the Prime Minister who is responsible for the nomination of individuals as prospective Senators. Within the context of Malaysia's constitutional monarchy, the Prime Minister is effectively the final decision maker in the appointments process for Senators.

The President and the Deputy President are the presiding officers of the *Dewan Negara*. Article 56 (1) requires the President and the deputy to be chosen from among the 70 Senators. This differs from the Dewan Rakyat, where a person need not be an MP to be elected as Speaker.

Evolution of the *Dewan Negara*

The Federation of Malaya

The present Malaysian Parliament has its roots in the constitutional proposals drawn up by the Reid Commission for the Federation of

¹³ Hereinafter referred to collectively as "State Senators" unless otherwise stated, as FT Senators still represent a territory despite being federally appointed.

¹⁴ Hereinafter referred to as "federally appointed Senators".

Malaya¹⁵ in February 1957. The Commission proposed a bicameral legislature, a structure later adopted for the Malayan (and subsequently Malaysian) Parliament. In addressing the role of the *Dewan Negara*, the Commission conceived it as being an “influential forum of debate and discussion”,¹⁶ and contributing “valuable revision”¹⁷ to legislation. The *Dewan Negara*’s secondary role compared to the Dewan Rakyat was also specifically emphasised, complete with the assertion that the *Dewan Negara*’s exercise of its power to delay legislation would be in “exceptional” cases.

The Commission envisioned the *Dewan Negara* as an indirectly elected body, with the majority of the members being elected by the legislative councils of the 11 Malayan States (the State Senators). The remaining members would be nominated for a term by the Yang di-Pertuan Agong¹⁸ (the federally appointed Senators). A majority of the Commission recommended that the *Dewan Negara* be composed of two Senators from each of the 11 Malayan states, and of 11 nominated members. This gave the proposed Malayan *Dewan Negara* a composition of 22 State Senators and 11 federally appointed Senators, making a grand total of 33 Senators.

The requirement for federally appointed Senators were a matter that the Rulers and the Alliance parties specifically advocated for in their memoranda evidence to the Commission. Disappointingly, the report did not elaborate on the details of any of the specific arguments made in favour of these appointed Senators, though it may be speculated that their advocacy could very well have been centred on the need for distinguished individuals and representatives of ethnic minorities to be represented in the legislative process, especially given that this was proposed and later adopted as the criteria for appointed Senators.

Nevertheless, two members of the Commission-Sir William McKell and Justice Abdul Hamid dissented,¹⁹ deeming an unelected *Dewan Negara* to be unjustifiable. Viewing an unelected *Dewan Negara* as not conforming to the system of parliamentary democracy, they described it as being incompatible with the desire of Malayans to enjoy “self-government in the real sense and democracy in its purest form”. Yet perhaps most poignant was their invoking of the spirit of Merdeka:

15 The Federation of Malaya Constitutional Commission.

16 Reid Commission (n 2) para 64 (iv).

17 *ibid.*

18 Called the “Yang Di-Pertuan Besar” in the report.

19 Reid Commission (n 2), Note by Sir William McKell and Mr Justice Abdul Hamid on Paragraphs 61 and 62.

Merdeka, to the celebration of which the people of Malaya are looking forward, means to them freedom, freedom to govern themselves through representatives of their own choice under a system in which their parliamentary institutions shall be exclusively representative of the people's will.²⁰

In particular, they noted the irony of allowing Malaysans to directly elect the members of the predominant lower House, while not trusting them to elect the members of the much “weaker” *Dewan Negara*.²¹ Addressing the inclusion of federally appointed senators, they described this class of Senators as being out of step with a parliamentary democracy,²² due to the fact that while they are able to debate, vote on, and delay legislation already passed by the lower House - their being appointed rather than elected precludes them from public accountability.²³ Specifically, the inability to vote a Senator out of office is mentioned,²⁴ which is evidently applicable in cases where the *Dewan Negara* votes down legislation popularly supported by the people, or legislation that forms part of the governing party’s manifesto. Similar arguments were also made by the duo against the proposed indirect election of State Senators by the state assemblies, arguing that the Federal Parliament should not be concerned with local matters.²⁵

Their views ultimately remained a dissenting opinion, but the Commission allowed the possibility of the composition of the *Dewan Negara* being amended along similar arguments in the future. They subsequently recommended that the Malayan Parliament should have the powers to affect any such changes if they so desire, and this was indeed accepted and later incorporated into the Constitution.

The eventual Malayan *Dewan Negara* was very close to the Commission’s recommended composition. In the absence of access to the original text of the Malayan Constitution, the annotated version of the current Constitution gives the Malayan *Dewan Negara* as having 16 federally appointed members rather than the recommended 11.²⁶ This would have given the *Dewan Negara* a composition of 22 State Senators and

20 ibid.

21 ibid.

22 ibid.

23 ibid.

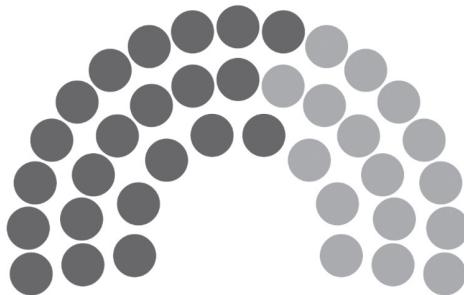
24 ibid.

25 ibid.

26 The Commissioner of Law Revision, *Federal Constitution of Malaysia* (15th reprint) notes on Article 45.

16 federally appointed members—a total of 38 Senators. Despite this apparent increase in numbers of appointed senators, the balance in the House still tilted towards the State Senators by virtue of their numbers alone. The *Dewan Negara* would retain this composition until the formation of Malaysia in 1963.

Figure 2. Graphic illustrating the first Malayan Dewan Negara and its majority of State Senators. Dark grey represents State Senators while the Light grey represents the federally appointed Senators.



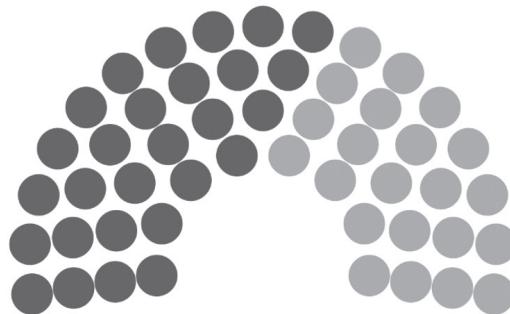
The Federation of Malaysia

The formation of Malaysia in 1963 saw a further evolution of the existing Malayan constitutional framework to accommodate the new additions of Singapore, Sabah (North Borneo) and Sarawak. What ultimately became the present Malaysian constitution was the result of deliberative work performed by two bodies created in 1962: the Cobbold Commission and the Inter-Governmental Committee (IGC). The former was setup first and foremost as a commission of enquiry to determine Sarawakian and Sabahan attitudes to the formation of Malaysia. In addition to its findings, the Commission's report also contained recommendations on the constitutional arrangements to be implemented for the expanded federation. The findings and recommendations of the Cobbold report²⁷ were further considered by the IGC, formed of representatives of the British, Malayan, North Borneo and Sarawak governments. Unlike the Cobbold Commission, the IGC's area of deliberations were wholly concerned with constitutional matters, and its recommendations formed the basis of many new provisions designed to safeguard Sabah and Sarawak's position in the federation.

²⁷ Commission of Enquiry, North Borneo and Sarawak, *The Report of the Commission of Enquiry: North Borneo and Sarawak 1962* (Colonial Office, 1962).

Both the Commission and the IGC maintained the existence of the *Dewan Negara* and expanded the existing composition to include Senators from the new States. The Commission in particular recommended a continuation of the existing quota of two State Senators per state,²⁸ which was accepted by the IGC.²⁹ This was premised on the Commission's findings that it would be "difficult" to increase the allocation to more than two Senators per state,³⁰ and implied that further state representation should be achieved through the federally appointed members.³¹ The IGC did not make any reference to these remarks in their final report, but both bodies differed on the amount of federally appointed senators to be added to the existing composition. While the Commission recommended the addition of eight appointed Senators,³² the IGC eventually settled on six appointed Senators with no further explanation.³³ This, along with two State Senators for Singapore, was incorporated into the Constitution on the 16th of September 1963 (i.e Malaysia Day). The initial Malaysian *Dewan Negara* therefore featured 28 State Senators and 22 federally appointed Senators - making a total of 50 Senators in the *Dewan Negara*, an increase of 12 from the Malayan *Dewan Negara*.

Figure 3. Graphic illustrating the expanded Dewan Negara at the formation of Malaysia. Dark grey represents State Senators while the Light grey represents the federally appointed Senators.



28 ibid. para 190(g).

29 Intergovernmental Committee on the proposed Federation of Malaysia, *Report of the Inter-Governmental Committee 1963* 2 International Legal Materials 423, para 19(1).

30 Commission of Enquiry, North Borneo and Sarawak (n 27) para 190(g).

31 ibid.

32 ibid.

33 Intergovernmental Committee on the proposed Federation of Malaysia (n 29) para 19(1).

Post-1963 evolution

The dominance of State Senators in the Malaysian *Dewan Negara* did not last long. A constitutional amendment in 1964 increased the number of federally appointed Senators to 32³⁴ versus 28 State Senators. Singapore's expulsion from the Federation in 1965 subsequently saw the *Dewan Negara* lose two State Senators with no change to the number of federally appointed Senators. Further amendments in 1978³⁵ added two Senators for the newly created Federal Territory of Kuala Lumpur alongside 10 federally appointed Senators, bringing the 1978 composition to 28 State Senators and 40 federally appointed Senators. The number of federally appointed Senators subsequently remained unchanged at 40 until years 1984³⁶ and 2001³⁷ with the further addition of one State Senator each for the new Federal Territories of Labuan and Putrajaya respectively.

Presently, the *Dewan Negara*'s composition has remained at 30 State Senators and 40 appointed Senators – a grand total of 70 Senators. This is a notable departure from the original composition of the Malayan and the first Malaysian *Dewan Negara*, as well as the composition reflected in the Reid Commission's proposals.

Table 1. Evolution of the *Dewan Negara*'s composition

Year	State & FT Senators	Federally Appointed Senators
MALAYA	22	16
16 September 1963	28	22
30 July 1964	28	32
9 August 1965	26	32
31 December 1978	28	40
16 April 1984	29	40
1 February 2001	30	40
Present	30	40

³⁴ Constitution (Amendment) Act 1964, s 6.

³⁵ Constitution (Amendment) Act 1978, s 2(1)(b).

³⁶ Constitution (Amendment) (No. 2) Act 1984, s 13.

³⁷ Constitution (Amendment) Act 2001, s 15.

Critically Examining the *Dewan Negara* States Representation

It may be tempting to conclude, off the basis of the numerical composition of the *Dewan Negara*, that the balance of power now favours the federally appointed Senators. The line of reasoning that follows is that the federal Senators would be able to outvote the State Senators in the event of a conflict between the federal government and the states over the former's legislative agenda.

However, the *Dewan Negara* rarely sees the manifestation of state-federal conflict, as these are usually solved by way of direct discussions between both the federal and state governments instead. Rather, it might actually be easier to divide the *Dewan Negara* along party lines rather than on the basis of federal and State Senators.

In that connection, the dilution of states' representation at the Federal level owes much of its onset to the dominance of the Barisan Nasional (BN) coalition in both state and federal governments for over 60 years. In the case of the *Dewan Negara*, a state legislative assembly if dominated by the ruling federal coalition could ensure the election of a compliant Senator. State Senators may then be less inclined to act independently as representatives of their respective states in the chamber even if State Senators were to form the majority in the *Dewan Negara*.³⁸

Quality of the *Dewan Negara*'s work

The Reid Commission envisioned the *Dewan Negara* as an apolitical body capable of performing technocratic review of legislation to ensure the quality of legislation. Despite the high hopes, the *Dewan Negara* does not enjoy an esteemed reputation today, with the chamber being largely perceived as a rubber stamp functioning only to pass Bills without much debate and amendments.

Any independent streak that may exist in the *Dewan Negara* would also have been overshadowed by the Federal Government's trend towards the centralisation of power, impacting upon Parliament's independence. For instance, the duration of Parliament sittings were previously decided upon by the de-facto Minister in charge of Parliament,³⁹ a ministerial position that existed during the tenure of the previous BN federal

38 Harding (n 1) 61.

39 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) para 6, 14.

government. This portfolio ceased to exist during the tenure of the Pakatan Harapan (PH) government, but was later resurrected and merged with the Law portfolio⁴⁰ when the Perikatan Nasional (PN) coalition came into power, thus formally bringing Parliament under the control of the Executive once more.

On the same note, the *Dewan Negara* sits for a far shorter time period than the Dewan Rakyat, scheduled to sit only for 24 days⁴¹ in 2022 versus 60⁴² for the Dewan Rakyat. This severely limits the amount of time allocated for legislative work, as there is simply not enough time for the *Dewan Negara* to introduce its own legislation while also debating government legislation.

Quality of Senators and the Democratic Deficit

If the *Dewan Negara* were to be an influential forum, it must be composed of members whose professional qualifications and experience render them able to contribute valuable insight to debates and legislative work. This would allow the *Dewan Negara* to delve into the technicalities of certain legislative areas in a professional and objective manner. This is not an alien concept, as many legislatures worldwide also implement certain processes to ensure the quality of a policy being translated into legislation. These usually take place in the form of select committees that scrutinise an assigned area of government policy, and committees that form part of a “committee stage” in the legislative process, and undertake detailed discussion and consideration of a particular Bill.

An ideal situation would be where the *Dewan Negara* ensures its Senators are highly qualified, professional persons, competent enough in their respective fields to delve into the technical issues of policy while simultaneously remaining above partisanship.

This is not reflected in the composition of the *Dewan Negara*. In the case of State Senators, the candidates for State Senatorship are proposed and then voted on by members of the respective state legislative assemblies (DUN) without public input. In assemblies with a dominant party or

40 The current Minister for Parliament and Law under the UMNO led government is Dato Sri Dr Haji Wan Junaidi bin Tuanku Jaafar from the GPS coalition. The position is a portfolio under the Prime Minister's Department.

41 Takwim Dewan Negara <<https://www.parlimen.gov.my/takwim-dewan-negara.html?uweb=dn&>> accessed 3 April 2022.

42 Takwim Dewan Rakyat <<https://www.parlimen.gov.my/takwim-dewan-rakyat.html?uweb=dr&>> accessed 3 April 2022.

coalition it is a simple matter to propose a name previously agreed upon by party consensus, thus rendering the election of State Senators a mere formality. This indirect election is evidently undemocratic, with the lack of public engagement disallowing public appraisal of the candidates, resulting in a general lack of knowledge of the identities of State Senators. This translates into a wider general apathy, and has the wider implication of diminishing the opportunities to hold State Senators to public account.

On the other hand, federally appointed Senators and Federal Territory Senators are appointed by the Yang di-Pertuan Agong on the advice of the Prime Minister. The constitutional requirement set out at Article 45(2)⁴³ requires Senators to be individuals who:

... have rendered distinguished public service or have achieved distinction in the professions, commerce, industry, agriculture, cultural activities or social service or are representative of racial minorities or are capable of representing the interests of aborigines.

The generality of the phrases of “distinguished public service” and “achieving distinction” is unconducive for a total comprehensive appraisal of one’s merits for the position. Without an oversight or accountability mechanism, these parameters leave the Prime Minister with a wide latitude of discretion for their nominations.

Conversely, this method also allows deliberate ignorance over an appointee’s public reputation regardless of their wealth of experience and length of service. This issue also applies to State Senators: An example is the 2013 election of Tan Sri Mohd. Ali Rustam as a Senator representing the state of Melaka, who despite his long experience in politics as Chief Minister, was also allegedly found guilty by his own party of being involved in money politics⁴⁴ and was noted for making racially charged remarks⁴⁵ following his defeat in the 2013 General Election - characteristics that would have been at odds with an esteemed *Dewan Negara*.

43 Federal Constitution of Malaysia, art 45(2).

44 ‘Mohd Ali Rustam barred from DP race, KJ given warning’ *The Edge Markets* (17 March 2009) <<https://www.theedgemarkets.com/article/updated-mohd-ali-rustam-barred-dp-race-kj-given-warning>> accessed 14 June 2020.

45 ‘Ali Rustam: Chinese didn’t appreciate me’ *Astro Awani* (6 May 2013) <<http://english.astroawani.com/election-news/ali-rustam-chinese-didnt-appreciate-me-13481>> accessed 14 June 2020.

Political Entrenchment in the Dewan Negara

The shift in focus away from the quality of Senators to rewarding political loyalty and patronage has led to a detrimental effect to the overall quality of the *Dewan Negara* by entrenching the power and the influence of the government of the day. Historically, the *Dewan Negara* was often dominated by BN affiliated Senators, which effectively guaranteed the smooth passage of a BN Government's legislation through the *Dewan Negara*.

The *Dewan Negara*'s composition being unchanged following PH's election victory at GE14 also meant that the *Dewan Negara* remained BN dominated despite PH's majority in the Dewan Rakyat (at the time). This meant that the *Dewan Negara* could vote down legislation passed by the PH dominated Dewan Rakyat, exemplified when it voted down the Bill to repeal the Anti-Fake News Act. The Act was a much-criticised BN era legislation and its repeal formed part of the PH manifesto. In the absence of a Malaysian version of the Salisbury convention,⁴⁶ the *Dewan Negara* thus saw fit to vote against the Bill.

The importance of reforming the Dewan Negara

A functioning *Dewan Negara* is important to the functioning of our parliamentary democracy. As Bills passed by the Dewan Rakyat are immediately sent to the *Dewan Negara*, the chamber is a second opportunity to debate government legislation in a more holistic manner. Ideally, the *Dewan Negara* is to act as a filter for legislation and is also intended to be another opportunity to hold the government to account, in keeping with Parliament's role as a check and balance on the Executive. Given that it is also possible to appoint professional individuals as Senators, the *Dewan Negara* further represents an opportunity to ensure greater detail on policy are not overlooked or lost in the political machinations of the elected Dewan Rakyat. This will in turn allow for the relevant amendments to be made, which will no doubt ensure that our legislation is all rounded, fair, and of higher quality.

⁴⁶ The Salisbury Convention is a UK constitutional convention under which the House of Lords will not oppose the second or third reading of government legislation promised in its election manifesto.

Comparative Study

Reform of the chamber must be aimed at addressing the wider flaws inherent to the chamber rather than being confined to treating surface-level symptoms. As previously identified, these revolve around the quality of the chamber's legislative work, the quality of its Senators, as well as in the chamber's democratic accessibility. To gain a better understanding of the expected role and operations of an upper House, this paper will undertake a comparative study of the Australian and Canadian Senates.

The Australian and Canadian Senates were chosen for this study due to the Westminster heritage shared with the *Dewan Negara*. Both nations are also federations with their Senates fulfilling a states' representation function similar to the *Dewan Negara*; The Australian and Canadian Senates also represent two opposing types of Upper Houses, with the former being a fully elected Senate and the latter being fully appointed. This will allow a better understanding of the characteristics of Upper Houses of both types, and better aid in considering reforms for the *Dewan Negara*.

State and Provincial Representation

Both the Australian and Canadian Senates function as an arena for state (or provincial) representation to a far greater extent than the *Dewan Negara*, with all Senators representing a particular State or Province. This is reflective of the historical origins of the two nations, both being federations of separate British colonies with established political and legal systems. The economic disparities between each other meant that the equal footing of the territories were given heavy emphasis, particularly by the smaller colonies. In the case of Canada, the presence of a large French population in Québec, and the later additions of established British colonies to the west that were similarly keen to have their rights and status protected, were additional factors that crystallised the need for a provincial-representative Senate.

Australia

In Australia, all 76 Senators represent the six States⁴⁷ and two⁴⁸ (of three⁴⁹) mainland Territories that makeup Mainland Australia. The equal

⁴⁷ New South Wales, Victoria, Queensland, South Australia, Tasmania, and Western Australia.

⁴⁸ Canberra (the National Capital Territory), and the Northern Territory.

⁴⁹ Jervis Bay Territory residents are represented by Canberra NCT Senators.

representation of States in the Senate is a principle enshrined in the Australian Constitution.⁵⁰ Under the provision, each Original State⁵¹ is to have no less than six Senators each. The intent behind this formula then was to protect the less populous states against domination by the two richest and most populous states - New South Wales and Victoria. This translates into the six States electing 12 Senators each, and the mainland territories electing two each. Senators representing the States are elected for six year terms with half being elected every three years, whereas those representing the Territories are elected for three year terms.

Table 2. The States and Territories of Australia and Senator allocations

State / Territory	No. of Senators
New South Wales	12
Victoria	12
Queensland	12
South Australia	12
Western Australia	12
Tasmania	12
Northern Territory	2
National Capital Territory (Canberra)	2
TOTAL	76

Canada

Like their Australian counterparts, all 105 Canadian Senators⁵² represent the 13 Provinces⁵³ and Territories⁵⁴ of Canada. At the inception of the Senate, it was determined that a population based representation was unsuitable⁵⁵ for Canada, and instead a favourable weightage was

50 Constitution of the Commonwealth of Australia, s 7.

51 "Original State" refers to the six Australian States that, as separate colonies, federated to form the Commonwealth of Australia.

52 Constitution Act (Canada) 1867, s 22.

53 Ontario, Quebec, Nova Scotia, New Brunswick, Manitoba, British Columbia, Prince Edward Island, Saskatchewan, Alberta, and Newfoundland & Labrador.

54 Northwest Territories, Yukon, and Nunavut.

55 The Senate of Canada, *The Canadian Senate in Focus 1867-2001* (2001), ch 1 pt 1 para 3 <<https://sencanada.ca/en/Content/Sen/committee/391/pub/focus-e>>.

given to less populous Provinces,⁵⁶ granting them better representation (population per Senator) than more populous Provinces.

Table 3. The Provinces & Territories of Canada, their Regions and Senator allocations

Province/Territory	Senate Region	No. of Senators
Ontario	Ontario	24
Québec	Québec	24
British Columbia	Western Canada	6
Alberta	Western Canada	6
Manitoba	Western Canada	6
Saskatchewan	Western Canada	6
Nova Scotia	Maritimes	10
New Brunswick	Maritimes	10
Prince Edward Island	Maritimes	4
Newfoundland and Labrador	Newfoundland and Labrador	6
Northwest Territories	(Territory)	1
Yukon	(Territory)	1
Nunavut	(Territory)	1
TOTAL		<u>105</u>

Senate Committees and Legislative Work

Australia

The Australian Senate's committee system is particularly notable. Most of the Senate's legislative work is performed by its committees rather than the Senate sittings, illustrated by the fact that in the year 2018, the Committees met for a total of 2081 hours versus the Senate's 577

56 ibid. para 4.

hours,⁵⁷ the equivalent of 86.7 and 24 full days respectively. This is in stark contrast to the *Dewan Negara*'s allocated 24 days of sitting in year 2022 with little to no Committees: With a typical sitting day lasting only 8 hours, this means the *Dewan Negara* will sit for at most a total of 192 hours in year 2022.

There is a large variety of committees,⁵⁸ each designed to perform a specific task or to cover a specific policy area. Generally speaking, there are two main types of committees: the Select Committees and the Standing Committees. Select Committees are created by way of a resolution of the Senate to inquire into and report upon a particular matter. As such, its size and scope are defined within the founding motion, and the committee usually ceases to exist upon the presentation of its final report, or when the allocated time for its function expires; Standing Committees on the other hand, are appointed at the beginning of each Parliament and continue to function until the end of the day of that particular Parliament.⁵⁹ The term itself is an umbrella category, as it covers a range of committees with various functions.

Table 4. An overview of the categories of Standing Committees of the Australian Senate

Standing Committee Category	Description
Domestic Committees	Comprised of eight committees. Deals with the internal operations of the Senate.
Legislative Scrutiny Committees	Comprised of two committees. Forms part of the legislative process.
Legislative and General Purpose Committees	Examines legislation, government administration, and references of a general nature.
Joint Committees	Established for the consideration of matters that should be the subject of simultaneous inquiry by both Houses.

57 Parliament of Australia, 'Senate Brief No. 4: Senate Committees' <https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Senate_Briefs/Brief04> accessed 20 December 2019.

58 ibid.

59 That is, until the next Parliament meets after an election.

The Legislative Scrutiny Committees are particularly significant due to the nature of scrutiny they perform. There are two committees under this umbrella: the Scrutiny of Bills Committee and the Regulations & Ordinances Committee. The former examines proposed legislation before they are debated by the Senate, and assesses them against a criterion of personal rights and liberties to ensure that the legislation does not overstep its legal boundaries. This Committee does not usually recommend specific changes but merely highlights provisions that do not meet the criteria, and so the onus is on Senators to propose any changes in the Chamber; On the other hand, the Regulations and Ordinances Committee performs similar scrutiny on legislative instruments and regulations drawn up by the government. With the assistance of an independent legal adviser, the Committee reviews all legislative instruments tabled in the Senate to ensure that they are each in accordance with the scope granted by its parent Act, that it does not trespass unduly on personal rights and liberties, and does not contain matter more appropriate for parliamentary enactment instead.

Another notable Standing Committee is the Legislation Committee⁶⁰ which inquires into and reports upon proposed government expenditure, legislation, and also considers and examines government administration and annual reports. This is very notable as Westminster style upper Houses do not usually examine and question government expenditure at this level of detail.

Canada

The legislative procedure of the Canadian Senate is identical to that of the lower House of Commons. Legislation goes through first and second readings, then a Committee and Report Stage, and is then put through its third reading. Committees are thus also a feature of the procedure of the Canadian Senate, with there being six main types of committees:⁶¹ Standing Committees, Special and Legislative Committees, the Committee of Selection, Joint Committees, Subcommittees, and the Committee of the Whole. While there is some commonality with the committees of the Australian Senate, the scope of the Canadian committees are less thorough than their Australian counterparts, covering only specific legislations and issues without delving into the government's

⁶⁰ A type of legislative and general purpose standing committee.

⁶¹ The Senate of Canada, *Fundamentals of Senate Committees* (2015) ch 5 <<https://sencanada.ca/en/committees/about/fundamentals/>>.

proposed expenditure and regulations and ordinances as the Australian Senate does.

In terms of commonality, both Senates feature standing committees and joint committees; Of particular interest is the Special and Legislative committees, functioning as the Canadian Senate's mechanism to scrutinise or study specific pieces of legislation or particular issues.⁶² These committees are established by a corresponding motion adopted by the Senate that also sets out the parameters of the committee's study, with no deviation permitted without the Senate's permission.⁶³ Due to the focused and limited nature of the scope, these committees cease to exist upon presentation of their final report.

Canada and the question of an elected Senate

Unlike the Australian Senators, Canadian Senators are appointed by the Governor-General⁶⁴ on the advice of the Prime Minister. The choice of an appointed Senate in Canada rather than an elected one was informed largely by experience gained from the legislature of the Province of Canada.⁶⁵ Experienced candidates had been disinclined to run for election to the Provincial legislature due to the cost of seeking votes in what were "very large" 19th century constituencies.⁶⁶ The Legislative Council⁶⁷ of the Province also started seeing its elected councillors being appointed to the provincial Executive Council,⁶⁸ which in turn diminished its role as a check on legislation; An additional problem faced by the Council that is also of interest was the gradual acquiring of career politicians of dubious quality,⁶⁹ which evidently threatened to undermine the expected quality and traditional role of an upper House. Indeed, it was envisioned that the duties and role of Senators would require "impartiality, expert training, patience, and industry",⁷⁰ and that the Canadian Senate's role was to provide "sober second thought"⁷¹ on legislation.

62 ibid. para 5.

63 ibid. para 6.

64 Constitution Act (Canada) 1867, s 24.

65 A precursor of modern day Canada. The Province was formed out of the merger of the Provinces of Lower and Upper Canada in 1841, and spanned the territory of the modern day provinces of Ontario and Québec.

66 ibid. para 5.

67 The upper house. The lower house was the Legislative Assembly.

68 The Senate of Canada (n 55) ch 1 para 5.

69 ibid.

70 ibid. para 8.

71 ibid. para 1.

There was also the fear of deadlock between the lower and upper Houses, as both Houses would be able to claim the popular mandate if both were elected – this being described as a “recipe for conflict and disaster”.⁷² As this ran counter to the purpose of the Senate, the fathers of the Confederation thus chose an appointed Senate over an elected one.

Lessons for the *Dewan Negara*

The most prominent contrast between the two Senates is that Australian Senators are fully elected by the people of the States and Territories. This has led to key differences in the role and public stature of both Senates, with the Australian Senate enjoying far more prominence than its Canadian counterpart. In turn, the Australian Senate is able to claim the popular mandate, and is entitled to scrutinise the government to a greater extent than unelected counterparts like the *Dewan Negara*.

But it is important to observe that the Australian Senate is far removed from the Westminster tradition and is closer instead to the United States Senate. This is in contrast with the Canadian Senate and the *Dewan Negara*, as both chambers were designed to be secondary to their lower Houses. For example, Sir John A. Macdonald described the Canadian Senate as a chamber “that will never see itself in opposition against the deliberate and understood wishes of the people”,⁷³ whereas the *Dewan Negara*’s power to delay legislation was to be exercised only in exceptional cases.⁷⁴

While the partisan element in an elected Senate could drive opposition Senators to scrutinise the Executive better, it does not guarantee the competence and calibre of incoming Senators. Issues could be raised simply to score political brownie points with the electorate rather than to provide any actual scrutiny. Nor does it guarantee Senators having the most agreeable ideological background – a prominent example being former Australian Senator Fraser Anning, who gained worldwide prominence after the 2019 Christchurch Mosque Shooting for his highly insensitive, racist remarks following the incident, together with his views sympathetic of the shooter.

72 ibid.

73 The Senate of Canada (n 55) ch 2 para 1.

74 Reid Commission (n 2) para 64 (iv); Likewise, while the Canadian Senate possessed an absolute veto on constitutional amendments until the patriation of the Canadian Constitution in 1982, it only ever used its veto powers twice – in 1936 and 1960.

At the same time, neither are unelected chambers free from partisan sentiments due to the ease with which the executive could nominate Senators of its choice to ensure a favourable balance of power in the chamber. The chamber would take on an inherently partisan character, thus negating the possibility of an independent and technocratic chamber. Similar concerns are present in the Canadian Senate, with the officially non-affiliated Independent Senators Group voting with the government “94.5% of the time” in 2017.⁷⁵ This demonstrates that partisanship can and will remain present in unelected Senates, especially if Senators retain their existing party affiliations.

Another crucial lesson is the importance of committees within the legislative process. The Australian and Canadian Senates’ committee system allows for extensive scrutiny of both government legislation & expenditure, and allows the Senate to function as a second layer of check and balance on the Government in every sense of the phrase; Pertinently is the fact that primary and secondary legislation are scrutinised by the Australian committees to ensure they do not infringe on personal rights and liberties. This is an important function, particularly as secondary legislation are not created under the oversight of Parliament or any other body. The fact that the *Dewan Negara* does not have any comparable committees mean that it is unable to perform such detailed scrutiny despite being well placed to do so, and is a glaring omission that limits its role and authority greatly.

Potential choices for reform of the *Dewan Negara*

The Role of the *Dewan Negara*

The reformed *Dewan Negara* should be an esteemed and influential forum for debate.⁷⁶ It must be democratic, be composed of competent and qualified Senators, and must be able to hold members of the Executive to account to a greater extent than before. Successful reform can turn the *Dewan Negara* into an effective legislative chamber and raise its public profile, allowing it to be the influential forum it was supposed to be. Furthermore, the trend of Executive oversteps and dominance in Malaysia can be reversed with this empowerment of the *Dewan Negara*

⁷⁵ É. Grenier, ‘Why the Senate is unpredictable – and its independents not so independent’ *CBC News* (19 June 2017) <<https://www.cbc.ca/news/politics/grenier-senators-votes-1.4162949>> accessed 20 December 2019.

⁷⁶ This is a return to the chamber’s original founding intent.

if it provided useful check and balance. This can reduce Executive dominance of Parliament, making Parliament a truly independent and professional institution.

A Professional and Competent Dewan Negara

The first step is the establishment of select committees specialising in a wide range of policy fields. This can be implemented very easily, as it only requires the *Dewan Negara* to pass a motion⁷⁷ establishing the committees and defining their composition and assigned scope and areas. As we have learned from the Australian Senate, these committees allow Senators to conduct in-depth scrutiny of policies implemented by the Executive as well as incoming Bills from the lower House. This will allow the *Dewan Negara* to function more effectively as a legislative chamber beyond its traditional role as a chamber for debate, giving it a professional and technocratic character distinct from the more partisan Dewan Rakyat.

Additionally, committees also allow the chamber to manage its workload more effectively. The scrutiny of Bills and policies require a large amount of time and attention to detail, potentially intruding upon the time allotted for other businesses. The main chamber's primary function as a debating chamber also renders it inherently unsuited for the task of performing detailed examinations on policy and legislative matters. This is because scrutinising policies and Bills tend to require a focused approach on a specific subject matter - Committees, with their defined policy and subject areas, provide a setup and environment more suited for the detailed questioning and examination that forms part of the scrutiny process.

The professional competency of federally appointed Senators is also a crucial element. The generality of Article 45(2)⁷⁸ means that the solution would be to remove the Prime Minister entirely from the process of nominating federally appointed Senators or to reduce their role and prominence in the process. Either solution necessarily requires the creation of a *Dewan Negara* appointments committee composed of a set number of Senators, and similar in function to the House of Lords' Appointments Commission in the United Kingdom. This may require an amendment to Article 45(2) of the Federal Constitution,⁷⁹ admittedly

⁷⁷ Standing Orders of the Dewan Negara, SO 74.

⁷⁸ Federal Constitution of Malaysia, art 45(2).

⁷⁹ *ibid.*

making it difficult to implement. Alternatively, a simple majority legislation may be introduced to create a committee responsible for recommending candidates to the Prime Minister, with the caveat that the Prime Minister's ability to reject the recommendations be limited.⁸⁰

Such a committee should be empowered to thoroughly vet all nominations for federally appointed Senators to ensure the professional competency of nominees in their given fields, the highest levels of propriety, as well as their overall merits and suitability for the position of Senators. To ensure a rigorous vetting process, this paper proposes that nominees be subject to a comprehensive evaluation involving the use of public interviews to ascertain their professional background and competencies, as well as to address any controversies involving the nominees in the past (if any). In the interest of transparency, the qualifications of the nominees and the findings of this vetting process should be made publicly available as much as possible to ensure wider public awareness over the nominees and the vetting process itself.

The effect of this committee would be a significantly raised barrier of entry for federally appointed Senators. The Federal Government would have to ensure that their nominees are capable of meeting the standards enforced by the committee, in turn discouraging the existing practice of nominating individuals on the sole basis of their political loyalty; Furthermore, the committee would also be able to ensure that the federally appointed Senators are professionally competent and qualified, able to contribute meaningfully to the chamber's legislative and policy work, in turn raising the quality of the chamber's performance and output.

A broad range of select committees will ensure that legislation and government policy will be subject to effective and robust review. Not only will Bills and policy be subject to stricter and more effective scrutiny than before, but Senators will also be able to propose more holistic and meaningful amendments to Bills and government policy. This will raise the quality and equity of legislation and governmental policy, and at the same time cement a reputation for the *Dewan Negara* as a forum for serious and effective discourse on legislation and policy.

⁸⁰ A proviso could provide for the Prime Minister being unable to reject the recommendations, or to allow rejections subject to the Prime Minister providing reasons for the rejection, and for a replacement candidate to be chosen from the same list of recommended candidates.

Democratising the Dewan Negara

The chamber's democratic deficit is centred on the lack of public engagement in the appointment of Senators⁸¹ coupled with a lack of a mechanism for the public to hold them to account. Under the current framework, the public is unable to vote for their choice of Senators,⁸² and neither do Senators face the consequences of public dissatisfaction in their actions. As a solution, elections may be held for Senators. This option is easily implemented as Article 45(4)(b) already allows Parliament to pass a Bill implementing elections for State Senators.⁸³ Hypothetically speaking, this democratises the chamber almost instantly - The public will be able to vote for their preferred candidate and Senators can be held to account through the electoral process.

However, this may be unsustainable in the long term. The ability of elected Senators to claim the popular mandate alongside the elected MPs of the lower House⁸⁴ may contribute to instances of conflict and deadlock between both chambers over contentious issues. In this scenario, elected Senators could claim the popular mandate to oppose such laws despite the governing party's own popular mandate to pass and implement them; Additionally, focusing on elections for Senators without properly addressing the underlying organisational issues will merely result in a superficial reform effort that will not yield tangible improvements in the chamber's performance and stature.

While the Australian Parliament resolves deadlock between the Houses with a double dissolution,⁸⁵ the Malaysian Parliament is not so equipped. It must be remembered that the *Dewan Negara* was created specifically to be secondary to the elected Dewan Rakyat, and only to delay legislation in exceptional circumstances; Furthermore, the appointment of Senators also allows professional individuals and ethnic minorities to be appointed to the chamber in accordance with Article 45(2), thus

81 Here, "State Senators" refers to both State and FT Senators.

82 This is particularly evident in the case of State & FT Senators, as despite representing a defined territory the local residents are unable to vote for their choice of Senators to represent them.

83 "State Senator" here does not include the Federal Territory Senators.

84 In this case, the *Dewan Rakyat*.

85 Constitution of the Commonwealth of Australia, s 57; In the event of an irresolvable conflict between the House of Representatives and the Senate, both chambers are dissolved. If the conflict persists in the reconvened Parliament after the elections, the Governor-General is empowered to call a joint session to resolve the matter.

maintaining a professional standard⁸⁶ in the chamber and ensuring minority representation in the legislative process.⁸⁷ These would be difficult to achieve in a fully elected *Dewan Negara*, as individuals may be reluctant to stand for election,⁸⁸ and neither can minority representation be guaranteed unless ethnic quotas are introduced.⁸⁹

Recall Mechanisms

As an alternative, this paper proposes the implementation of a mechanism to recall State and FT Senators.⁹⁰ This would entail the revocation of a Senator's (indirect) election or appointment once certain criteria are met. The basis for this mechanism is taken directly from the UK's Recall of MPs Act 2015, under which a petition to recall a Member of the House of Commons can be initiated if one of three criteria are met:

1. where the MP is convicted of an offence and sentenced or ordered to be imprisoned,⁹¹
2. where the MP is suspended by the House following a report from the Committee on Standards,⁹² or
3. where the MP is convicted of an offence under s.10 of the Parliamentary Standards Act 2009.⁹³

Petitions are deemed successful if signed by at least 10% of elected voters in the MP's constituency⁹⁴ and will result in the seat being vacated, triggering a by-election.

The Federal Constitution already provides for a list of criteria governing automatic disqualification of Members of both chambers, one of which

86 M. Daud, 'Revolutionising the Senate in Malaysia: Lessons from Australia and Canada' (2020) 3 *MLJ* xxxvii, xl.

87 Harding (n 1) 62.

88 This was a reason raised by the Reid Commission when justifying an unelected Dewan Negara.

89 The topic of ethnic quotas itself is a sensitive one, and will be difficult to implement for the Dewan Negara.

90 A recall mechanism is more suited for State & FT Senators as, unlike their 40 federally appointed colleagues, State & FT Senators represent the residents of a defined region.

91 Recall of MPs Act (United Kingdom) 2015, s 1(3)(a).

92 *ibid.* s 1(4).

93 *ibid.* s 1(9); Section 10 of the Parliamentary Standards Act 2009 concerns the offence of providing false or misleading information for allowances claim.

94 Recall of MPs Act (United Kingdom) 2015, s 14(3).

is the conviction of a Member of an offence and their sentencing to imprisonment for not less than a year. However, the current list omits any criterion relevant to public dissatisfaction over a Senator’s performance, negating the possibility of disqualifying a Senator on those grounds. Rectifying this requires a constitutional amendment⁹⁵ to insert public dissatisfaction as a criterion, and to provide for a recall mechanism to be created and utilised when the criterion is triggered.

It is foreseeably necessary to involve the State Legislatures (DUN) in the recall process for State Senators to conform to Malaysia’s federal structure. Hypothetically speaking, recall petitions for a State Senator would be debated by the relevant DUN once a minimum quota of signatures is reached. Assuming the motion passes in the chamber, the DUN then informs the President of the Senate on the Senator’s recall and their seat’s vacancy. In this hypothetical process, the inclusion of a minimum quota of signatures and the subsequent debate in the DUN plays the role of a safeguard to filter out spurious and vexatious petitions; Conversely, the absence of devolved legislatures in the Federal Territories makes it necessary for petitions to recall an FT Senator be sent directly to the *Dewan Negara* for debate. To ensure a higher level of safeguard, it may be necessary to set higher thresholds for petitions to recall FT Senators.

This mechanism can be challenging to implement, as constitutional amendments require a two-thirds majority to pass; There is also the issue of “public dissatisfaction” being extremely vague and being open to misuse should it be made a criterion, requiring a relevant specific criterion to be defined⁹⁶ instead if this were to be taken up as a reform option.

State Representation

The numerical imbalance between State Senators and federally appointed Senators creates the possibility of federal overstep in the chamber. This theoretically allows federally appointed Senators to vote down

⁹⁵ Further operational specifics for the process could be inserted in the Seventh Schedule. These should cover the signature quotas to be met, the requirement for the DUNs to debate a qualifying petition, and for priority to be given to motions to debate the petition over State Executive and Federal Government business (if appropriate).

⁹⁶ In practice, this is likely to be an action that would cause widespread public dissatisfaction, such as the utterance of controversial and widely criticized statements, or even a sudden switch in partisan allegiance.

and override the concerns of State Senators on matters affecting their respectively States. The solutions available to address this imbalance are to either increase the number of State Senators to three per State,⁹⁷ reduce the number of (non-FT) appointed Senators,⁹⁸ or to abolish appointed Senators outright.⁹⁹ These are options already provided for in the Federal Constitution and require a Bill passed by a simple majority of both Houses to implement.

It must be acknowledged that altering the composition of the chamber may cause new complications. For example, abolishing appointed Senators or reducing their numbers would directly reduce the opportunities available to appoint professionally qualified individuals and ethnic minorities as Senators, as the partisan nature of State Senatorship requires a level of political involvement¹⁰⁰ that may discourage politically inactive individuals from seeking election; Additionally, there may also be calls to improve Sabah and Sarawak's representation in Parliament in line with the spirit of the Malaysia Agreement 1963 by increasing their allocation of Senators. This is likely to be difficult, as while the Sabah and Sarawak state governments possesses powers not available to their Peninsular counterparts, the principle of equality¹⁰¹ would dictate that Sabah and Sarawak are not superior to the Peninsular states in the Malaysian Federation,¹⁰² and may prompt the other states to demand an increase in their Senator allocations as well. Clearly, increasing the Senator allocations of only Sabah and Sarawak may initiate wide-ranging discourse on federalism and states' rights in Malaysia.¹⁰³ Unless the intent is to trigger such a discourse, the simplest option here is to increase the Senator allocation of all States while retaining the current amount of federally appointed Senators. This will give the *Dewan Negara* a new breakdown of 43 State & FT Senators versus 40 federally appointed Senators, returning the chamber to its old majority of State Senators.

⁹⁷ Federal Constitution of Malaysia, art 45(4)(a).

⁹⁸ *ibid.* art 45(4)(c).

⁹⁹ *ibid.*

¹⁰⁰ It is to be expected that individuals would have to be active enough within the State's ruling party to be nominated as a State Senator.

¹⁰¹ That is, the principle of equality in federalism. This principle requires that all member governments within a federal state be of equal status vis-à-vis each other.

¹⁰² K.A. Mokhtar, 'Confusion, Coercion and Compromise in Malaysian Federalism' in A.J. Harding and J. Chin (eds), *50 years of Malaysia: Federalism Revisited* (Marshall Cavendish, 2016).

¹⁰³ Harding (n 1) 63.

Conclusion

Effective reform of the *Dewan Negara* is crucial for it to regain its function as a professional and competent legislative chamber, thereby allowing it to play an important role in the legislative and political process of Malaysia. It must be emphasised this requires a multi-pronged approach: A robust committee system will build legislative and professional capacity in the chamber, the implementation of a recall mechanism will mitigate the existing inherent democratic deficit, and while the question of State representation in the *Dewan Negara* may take longer to be resolved, returning to a majority of State Senators can nonetheless be a catalyst for better State representation at the Federal level. In short, a singular surface-level approach to reform, no matter how politically popular, will likely be unable to accomplish significant improvements in the current state and stature of the *Dewan Negara*.

Acknowledgement

This article was first published in Issue 8 (June 2020) and Issue 11 (October 2020) of the REFSA Brief.

References

- 'Ali Rustam: Chinese didn't appreciate me' *Astro Awani* (6 May 2013) <<http://english.astroawani.com/election-news/ali-rustam-chinese-didnt-appreciate-me-13481>> accessed 14 June 2020.
- 'Mohd Ali Rustam barred from DP race, KJ given warning' *The Edge Markets* (17 March 2009) <<https://www.theedgemarkets.com/article/updated-mohd-ali-rustam-barred-dp-race-kj-given-warning>> accessed 14 June 2020.
- Commission of Enquiry, North Borneo and Sarawak, *Report of the Commission of Enquiry: North Borneo and Sarawak 1962* (Colonial Office, 1962).
- Committees and Private Legislation Directorate, Senate of Canada, *The Canadian Senate in Focus 1867-2001* <<https://sencanada.ca/en/Content/Sen/committee/391/pub/focus-e#THE%20CANADIAN%20SENATE%20IN%20FOCUS%201867-2001>> accessed 20 December 2019.

Committees Directorate, Senate of Canada, *Fundamentals of Senate Committees* <<https://sencanada.ca/en/committees/about/fundamentals>> accessed 20 December 2019.

Constitution (Amendment) (No. 2) Act 1984.

Constitution (Amendment) Act 1964.

Constitution (Amendment) Act 1978.

Constitution (Amendment) Act 2001.

Constitution Act (Canada) 1867.

Constitution of the Commonwealth of Australia.

Daud M., 'Revolutionising the Senate in Malaysia: Lessons from Australia and Canada' (2020) 3 *MLJ* xxxvii.

Federal Constitution of Malaysia.

Grenier É., 'Why the Senate is unpredictable – and its independents not so independent' *CBC News* (19 June 2017) <<https://www.cbc.ca/news/politics/grenier-senators-votes-1.4162949>> accessed 20 December 2019.

Harding A., 'The Dewan Negara and Constitutional Reform: Upper Houses in Comparative Perspective' (2021) 1 *Journal of the Malaysian Parliament* 55.

Intergovernmental Committee on the proposed Federation of Malaysia, *Report of the Inter-Governmental Committee 1963* 2 International Legal Materials 423.

Mokhtar K.A., 'Confusion, Coercion and Compromise in Malaysian Federalism' in Harding A.J. and Chin J. (eds), *50 years of Malaysia: Federalism Revisited* (Marshall Cavendish, 2016).

Muhriz T.Z.A., *A New Dawn for the Dewan Negara? A Study of Malaysia's Second Chamber and Some Proposals* (Kuala Lumpur, IDEAS Malaysia, 2012) <<http://www.ideas.org.my/wp-content/uploads/2017/11/Dewan-Negara-Feb-20121.pdf>> accessed 20 December 2019.

Parliament of Australia, *Senate Brief No. 4: Senate Committees* <https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Senate_Briefs/Brief04> accessed 20 December 2019.

Parliament of Malaysia, ‘Takwim Dewan Negara’ <<https://www.parlimen.gov.my/takwim-dewan-negara.html?uweb=dn&>> accessed 3 April 2022.

Parliament of Malaysia, ‘Takwim Dewan Rakyat’ <<https://www.parlimen.gov.my/takwim-dewan-rakyat.html?uweb=dr&>> accessed 3 April 2022.

Recall of MPs Act (United Kingdom) 2015.

Reid Commission, *Report of the Federation of Malaya Constitutional Commission 1957* (Her Majesty’s Stationery Office, 1957).

Standing Orders of the Dewan Negara.

Lim Kit Siang dan Reformasi Parlimen Malaysia

Lim Kit Siang and Parliamentary Reform

*Liew Chin Tong** and *Mohammad Fakhrurrazi Mohd Rashid***

Abstrak

Dominasi parti pemerintah Barisan Nasional (BN) dalam Parlimen sejak awal 1970-an telah menekan fungsi Parlimen sebagai badan semak dan imbang terhadap Kerajaan. Dominasi eksekutif dan amalan Parlimen yang rigid pasca 1969 menyebabkan Parlimen tidak mampu menjalankan peranannya dengan baik dan berkesan. Kelemahan Parlimen ini telah mencetuskan idea-idea reformasi Parlimen, khususnya dalam kalangan Ahli Parlimen, agar badan legislatif negara ini benar-benar berfungsi dalam mengawasi badan eksekutif dan memenuhi aspirasi rakyat. Antara Ahli Parlimen yang komited dalam membawa agenda reformasi Parlimen ketika itu adalah Lim Kit Siang yang turut dikenali sebagai seorang negarawan dan demokrat Malaysia. Kertas ini melihat idea-idea reformasi Parlimen diketengahkan Kit Siang sejak awal tahun 1970-an telah memberi kesan signifikan kepada perjalanan pembaharuan institusi Parlimen yang lebih demokratik dan seimbang sehingga hari ini dan seterusnya mencadangkan agar idea-idea reformasi Parlimen diperluaskan lagi agar praktis atau prosedur Parlimen Malaysia dapat diperkuuhkan demi kebaikan generasi akan datang.

Kata Kunci: Demokrasi Berparlimen, Dewan Rakyat, Lim Kit Siang, Reformasi Parlimen

Abstract

The domination of the ruling party, Barisan Nasional (BN), in Parliament since the early 1970s have stifled the function of Parliament as a check and balance towards the government. The domination of the executive

* YB Liew Chin Tong is State Elected Representative for Perling, Johor and the Opposition Leader at Johor State Legislative Assembly and former Member of Parliament for Kluang and former Senator. Email: lct@liewchintong.com

** Mohammad Fakhrurrazi Mohd Rashid is Research Coordinator at Research for Social Advancement (REFSA).

and the rigid nature of Parliament caused the ineffectiveness of the role of Parliament. This ineffectiveness gave birth to the idea for the reformation of Parliament to ensure that Parliament performs its role in scrutinizing the executive and fulfilling the aspirations of the rakyat. Among the Members of Parliament who were committed to advocate for the reformation of Parliament is Kit Siang who is known widely as a statesman and Malaysian democrat. This paper examines the ideas for reforming Parliament as discussed by Kit Siang since the 1970s that have brought a significance to the transformation of Parliament into a more democratic and balanced institution. The ideas for reforming Parliament should be disseminated and Parliamentary procedures should be strengthened for the good for the coming generation.

Keywords: Parliamentary Democracy, Dewan Rakyat, Lim Kit Siang, Parliamentary Reforms

Pendahuluan

Malaysia merupakan sebuah negara yang mengamalkan sistem demokrasi berparlimen dan raja berperlembagaan. Dalam sistem ini, Parlimen merupakan salah satu cabang utama yang penting dalam Kerajaan selain badan eksekutif dan kehakiman. Model pentadbiran Malaysia boleh ditakrifkan sebagai Kerajaan Berparlimen (*Parliamentary Government*) di mana Ahli Parlimen yang telah dipilih oleh rakyat secara demokratik akan membentuk Kerajaan atau badan eksekutif berdasarkan sokongan majoriti di dalam badan perundangan.

Konsep Kerajaan Berparlimen berasaskan sistem demokrasi Westminster di United Kingdom (UK) iaitu badan eksekutif merupakan sebahagian daripada Parlimen yang perlu bertanggungjawab dan telus kepada badan perundangan. Perkara ini sama sekali berbeza amalan demokrasi di Amerika Syarikat yang berasaskan kepada pengasingan kuasa (*separation of power*) yang mengasingkan badan eksekutif, perundangan, dan kehakiman berpaksikan teori pengasingan kuasa daripada Montesquieu.¹

Parlimen mempunyai peranan dalam menggubal dan membahaskan undang-undang, meluluskan perbelanjaan Kerajaan, dan badan semak dan imbang ke atas badan eksekutif. Walau bagaimanapun, dominasi Kerajaan yang mempunyai majoriti besar boleh menyebabkan Parlimen

¹ S.S. Faruqi, *Our Constitution* (Subang Jaya, Thomson Reuters Asia Sdn Bhd, 2019) 41.

tidak dapat menjalankan fungsinya dengan baik kerana setiap usul dan agenda di dalam badan legislatif akan diluluskan tanpa semak dan imbang daripada Ahli Parlimen, khasnya blok Pembangkang.² Dominasi eksekutif dalam urusan Parlimen menyebabkan proses membuat keputusan tidak seimbang kerana ia cenderung mempengaruhi agenda Kerajaan tanpa mengambil kira pandangan pelbagai pihak.³ Secara asasnya, limitasi atau sebuah sistem demokrasi berparlimen yang lemah akan mewujudkan usaha untuk reformasi Parlimen. Agenda reformasi Parlimen merupakan satu usaha untuk memperkuuh fungsi badan legislatif untuk menyemak dan mengimbangi badan eksekutif dengan berkesan melalui penambahbaikan dari aspek amalan dan praktis Parlimen itu sendiri.⁴

Sistem demokrasi di Malaysia melalui saat getirnya apabila fungsinya hampir lumpuh disebabkan oleh dominasi badan eksekutif. Selepas tragedi 13 Mei 1969, yang berlaku sebaik sahaja pilihan raya umum (PRU) 1969 diadakan, Parlimen digantung dan Malaysia ditadbir oleh sebuah badan pentadbir darurat, iaitu Majlis Gerakan Negara (MAGERAN) bermula pada 16 Mei 1969. Meskipun Kerajaan Persekutuan dipimpin oleh Perdana Menteri, Tunku Abdul Rahman Putra Al-Haj, kuasa pentadbiran ketika itu diserahkan kepada MAGERAN yang dipengerusikan oleh Timbalan Perdana Menteri, Tun Abdul Razak Hussein. Kawalan kuasa yang besar oleh pentadbiran MAGERAN telah melumpuhkan sistem demokrasi berparlimen dan menjelaskan kedaulatan perlombagaan Persekutuan.

Penyertaan Parti Gerakan Rakyat Malaysia (GERAKAN) dan Parti Islam Se-Malaysia (PAS) serta beberapa parti lain bersama UMNO, MCA dan MIC⁵ untuk membentuk Barisan Nasional (BN) telah menjadikannya sebuah Kerajaan majoriti di Dewan Rakyat, meskipun parti-parti ini berbeza ideologi. Demokrasi di Malaysia ketika itu boleh digambarkan sebagai Demokrasi Konsosiasional (*Consociational Democracy*) yang bermaksud setiap keputusan hanya dibincangkan dalam kalangan

-
- 2 M. Ong, 'Changing Power Configuration in Malaysia' dalam B. Colin dan L.K.W. Francis (eds), *Malaysian Economics and Politics in the New Century* (Cheltenham, Edward Elgar, 2003).
 - 3 A. Lijphart, *Thinking about Democracy: Power Sharing and Majority Rule in Theory and Practice* (London, Routledge, 2008).
 - 4 B.K. Winetrobe, *Aspects of Parliamentary Reform - Research Paper 97/64* (House of Commons Library, 1997).
 - 5 Dari tahun 1957 hingga 1969, ketiga-tiga parti ini mentadbir dalam gabungan yang sama dengan nama Perikatan.

pemimpin tertentu dalam masyarakat yang berpecah-pecah untuk berkongsi kuasa bagi membentuk sebuah pemerintahan termasuk gabungan besar parti politik.⁶ Secara mudahnya, konsep Demokrasi Konsosiasional ini bergantung penuh kepada pemimpin dan cuba mengurangkan persaingan merebut kuasa dengan membentuk gabungan kuasa atau parti yang besar, seperti pembentukan BN. Persefahaman ini menjadikan UMNO sebagai tunjang utama BN dan melahirkan sebuah pentadbiran satu parti (*one-party state*) yang memberi tekanan hebat kepada sistem demokrasi berparlimen. DAP pula memilih haluan menjadi pembangkang demi memastikan wujudnya semak dan imbang ke atas Kerajaan di Parlimen.

Ternyata, keadaan demokrasi negara ketika itu yang masih muda telah menempuh pelbagai halangan yang hampir melumpuhkan fungsi Parlimen. Politik Malaysia pasca 1969 dan tahun 1970-an mencipta permulaan penting dalam usaha mengangkat agenda reformasi Parlimen untuk memastikan badan legislatif negara ini berfungsi secara demokratik, khususnya komitmen daripada Lim Kit Siang dan Parti Tindakan Demokratik (DAP) yang pertama kali mewakili suara rakyat di dalam Parlimen Malaysia pada tahun 1970-an. Kit Siang merupakan Ahli Parlimen yang komited dan mencorak politik Malaysia dengan idea-idea baharu dalam mengangkat pembaharuan pendemokrasian sistem Parlimen di Malaysia.

Meskipun agenda reformasi Parlimen ini telah bermula sejak 1970-an lagi, Kerajaan ketika itu tidak mempunyai kesanggupan politik dan komitmen untuk melaksanakan pembaharuan Parlimen.⁷ Selepas perubahan dinamik politik pada PRU-12 dan PRU-13 yang menyaksikan Kerajaan BN dinafikan majoriti dua pertiga berturut-turut di dalam Dewan Rakyat, beberapa agenda reformasi Parlimen telah dilaksanakan. Peralihan Kerajaan Persekutuan buat pertama kalinya kepada Pakatan Harapan (PH) pada PRU-14 telah menjadikan reformasi Parlimen sebagai fokus utama Kerajaan dalam memperkasakan sistem demokrasi berparlimen Malaysia yang berfungsi dengan baik.⁸

6 A. Lijphart, 'Varieties of non majoritarian democracy' dalam C. Markus, K. Thomas dan W. David (eds), *Democracy and Institution: The life work of Arend Lijphart* (Arbor, University of Michigan Press, 2000) 228.

7 M.S. Hassan, N. Mohd Hed, dan I.H. Kamilan, 'Parliamentary reforms and Sustainable Development Goals (SDG): the way forward for an inclusive and sustainable parliament' (2021) *The Journal of Legislative Studies* 1-28.

8 Pakatan Harapan, *Buku Harapan Membina Negara Memenuhi Harapan* (Pakatan Harapan, 2018) Janji 16.

Kertas ini akan membincangkan permulaan Parlimen pasca 1969 dan tekanan yang dikenakan ke atas fungsi institusi Parlimen Malaysia. Selain itu, kajian ini turut melihat idea-idea reformasi Parlimen yang pernah dicadangkan Kit Siang sejak 1970-an sehingga ia boleh menjadi asas kepada usaha melaksanakan reformasi Parlimen pada hari ini. Kemudian, kertas ini akan merumuskan bagaimana usaha meneruskan kesinambungan idea-idea dan cadangan reformasi Parlimen bagi membangunkan institusi Parlimen yang lebih berfungsi dan demokratik.

Permulaan Parlimen Malaysia pasca 13 Mei 1969

Pasca tragedi 13 Mei 1969 turut membentuk sistem demokrasi Malaysia bersifat Autoritarianisme Berdaya Saing (*Competitive Authoritarianism*) di mana amalan demokrasi hanya menyebelahi pihak berkuasa atau parti pemerintah meskipun ia bebas dan pelbagai tekanan dikenakan terhadap parti Pembangkang supaya tidak dapat menggugat kedudukan Kerajaan.⁹ Amalan demokrasi di Malaysia juga ditakrifkan sebagai separa demokrasi (*quasi-democracy*) kerana hak dan nilai demokrasi liberal yang diberikan kepada rakyat sering dipinggirkan dan lebih mengutamakan kepentingan pihak Kerajaan.¹⁰ Parlimen pula tidak dapat mengangkat pendekatan penyertaan awam secara terbuka dan aktif, tetapi semua keputusan akan ditentukan sepenuhnya oleh badan eksekutif atau parti Kerajaan.¹¹ Selain itu, ia memperlihatkan pentadbiran Malaysia mempraktikkan nilai-nilai demokrasi tetapi turut menonjolkan ciri-ciri pentadbiran autoritarianisme.¹² Harold Crouch pula menyatakan sistem demokrasi di Malaysia adalah sebuah demokrasi yang telah diubahsuai (*modified democracy*) iaitu unsur demokrasi seperti pilihan raya diadakan hanya sekadar untuk menguji populariti Kerajaan dan mengenakan pelbagai sekatan untuk melemahkan Pembangkang.¹³

Parlimen hanya dibuka semula buat pertama kali selepas PRU 1969 pada 23 Februari 1971, iaitu hampir dua tahun selepas peristiwa 13 Mei

9 M.L. Weiss, *The Roots of Resilience: Party machines and grassroots politics in Singapore and Malaysia* (Singapore, National University of Singapore (NUS), 2020) 108.

10 W. Case, 'Malaysia's resilient pseudodemocracy' (2001) 12 *Journal of Democracy* 43–57.

11 M.J. Esman, *Administration and development in Malaysia* (New York, Cornell University Press, 1972).

12 D.K. Mauzy, 'The Challenge to Democracy Singapore and Malaysia's Resilient Hybrid Regimes' (2006) 2(2) *Taiwan Journal of Democracy* 47–68.

13 H. Crouch, *Government and Society in Malaysia* (New York, Cornell University Press, 1996).

1969. Pembukaan Parlimen ini penting buat DAP dan Kit Siang kerana kali pertama terlibat dalam proses sistem demokrasi berparlimen Malaysia. Permulaan awal DAP dalam Parlimen sangat mencabar. Pihak Kerajaan ketika itu menekan parti Pembangkang, termasuk mendakwa DAP menjadi punca berlakunya rusuhan pada 13 Mei 1969. Pembangkang dituduh menjalankan kempen hasutan sehingga prestasi Perikatan pada PRU 1969 jatuh merosot. Fungsi Parlimen ketika itu hanyalah sekadar simbol demokrasi kerana proses membuat keputusan di dalam Parlimen didominasi oleh parti kerajaan.¹⁴

Kerajaan turut melemahkan fungsi Pembangkang dengan mengambil tindakan tegas untuk menahan beberapa Ahli Parlimen dan Ahli Dewan Undangan Negeri (ADUN) Pembangkang, termasuk Kit Siang, di bawah Akta Keselamatan Dalam Negeri (ISA) pasca tragedi 1969.¹⁵ Tindakan keras Kerajaan menahan wakil rakyat Pembangkang menimbulkan kebimbangan parti DAP sekiranya rakyat tidak dapat melihat nilai kepentingan sistem demokrasi berparlimen kepada mereka memandangkan Kerajaan mengambil tindakan drastik kepada individu yang tidak sehaluan dengan keputusan mereka.¹⁶

Sejak hari pertama Ahli Parlimen DAP bersama Kit Siang mengangkat sumpah sebagai Ahli Parlimen, mereka berpegang kepada prinsip-prinsip demokratik sebagai asas perjuangan meskipun berdepan pelbagai tekanan politik daripada parti pemerintah. DAP berpegang teguh kepada kedaulatan Parlimen. Namun, Kerajaan BN telah menekan fungsi Parlimen dan menyekat kebebasan Ahli Parlimen dalam membahaskan isu-isu yang dianggap sensitif. Contohnya, pihak Kerajaan membentangkan Akta Pindaan Perlombagaan 1971 di Dewan Rakyat untuk menghalang Ahli Parlimen membahaskan isu-isu yang menyentuh tentang kewarganegaraan, bahasa kebangsaan, dan bahasa komuniti lain.¹⁷ DAP dan Kit Siang mengkritik pindaan ini dan berpendapat Parlimen perlu menjadi ruang perbahasan terbuka dalam membincangkan isu negara dan rakyat walaupun dalam perkara-perkara sensitif.

Malah, pandangan DAP ini diambil pemimpin parti pemerintah dalam konteks yang lebih beremosi sehingga Ketua Pemuda UMNO dan Menteri

14 F. Loh dan B.T. Khoo (eds), *Democracy in Malaysia: Discourse and Practices* (Richmond, Curzon Press, 2002) 4.

15 R.S. Milne dan D.K. Mauzy, *Politics and Government in Malaysia* (Singapura, Times Book International, 1983).

16 Weiss (n 9) 120.

17 Milne dan Mauzy (n 15).

Besar Selangor waktu itu, Datuk Harun Idris, membuat ugutan keras untuk mengepung bangunan Parlimen beramai-ramai sekiranya pindaan tersebut tidak diluluskan.¹⁸ Tindakan ini mengancam kebebasan dan kehormatan Parlimen, sekaligus menandakan bermulanya era “negara satu parti” yang memerintah Malaysia selama hampir enam dekad.

Pindaan Perlembagaan Persekutuan pada tahun 1971 secara tidak langsung telah memperluaskan lagi pengukuhan dominasi parti pemerintah di dalam Parlimen dan menyukarkan Ahli Parlimen Pembangkang menyuarakan pandangan secara terbuka.¹⁹ Setiap halangan dan tekanan daripada Kerajaan menimbulkan keimbangan terhadap fungsi sebenar Parlimen sebagai institusi yang seharusnya menyelesaikan isu negara dengan penglibatan Ahli Parlimen pelbagai parti. Kedudukan majoriti dua pertiga parti pemerintah di Parlimen ketika itu menjadi faktor kesukaran Ahli Parlimen dan Kerajaan mencapai kata sepakat secara konsensus dan dwipartisan.²⁰

Cabaran sistem demokrasi berparlimen Malaysia

Apabila BN menguasai Dewan Rakyat dengan majoriti dua pertiga, Pembangkang tidak dapat menjalankan fungsi semak dan imbang terhadap jemaah menteri dengan berkesan. Kedudukan majoriti besar parti pemerintah memudahkan usul atau undang-undang Kerajaan diluluskan di Parlimen tanpa penelitian daripada pihak Pembangkang. Kit Siang melihat dominasi satu parti di Parlimen akan memberi kesan buruk kepada pembangunan negara yang ketika itu berhadapan dengan isu perpaduan dan ekonomi yang meruncing.

Melalui tulisannya “Pendemokrasian Kehidupan Malaysia”, beliau menekankan kaedah untuk memastikan dominasi satu parti dapat diatasi dengan meletakkan asas demokrasi dan perpaduan nasional sebagai keutamaan seperti pendemokrasian Parlimen dan Dewan Undangan Negeri (DUN) untuk memberi peluang dan kekebalan kepada Ahli Parlimen dan Ahli Dewan Undangan Negeri untuk menyuarakan keimbangan dan harapan rakyat.²¹

18 C.T. Liew, *Lim Kit Siang: Patriot, Leader, Fighter* (Kuala Lumpur, Research for Social Advancement (REFSA), 2021) 44.

19 J. Funston, *Malay Politics in Malaysia - A study of PAS and UMNO* (Kuala Lumpur, Heinemann, 1980).

20 K. Von Vorys, *Democracy without consensus* (Kuala Lumpur, Oxford University Press, 1976).

21 Ucapan Titah Diraja oleh Lim Kit Siang di Dewan Rakyat, 11 Mei 1972. Lihat <<https://bibliotheca.limkitsiang.com/1972/05/11/democratisation-of-malaysian-life-2/>>.

Cadangan beliau tidak dipandang serius oleh Kerajaan ketika itu. Dalam erti kata lain, Parlimen pasca 1969 hanyalah institusi bagi memenuhi proses pilihan raya dan supaya blok Pembangkang tidak mengkritik Kerajaan secara berstruktur dan kritikal.²² Keterhadan ini menyebabkan Ahli Parlimen, khususnya Pembangkang, menghadapi pelbagai cabaran untuk memastikan Parlimen dapat berfungsi secara efektif bagi menyemak akauntabiliti Kerajaan dan menyelesaikan isu-isu rakyat.

Salah satu cabaran utama Parlimen Malaysia adalah keterhadan dalam ruang dan peluang yang diberikan kepada Ahli Parlimen untuk mempengaruhi keputusan atau proses menggubal undang-undang. Ahli Parlimen tidak dapat membahaskan Rang Undang-Undang (RUU) secara berkesan. RUU atau pindaan terhadap sesuatu Akta sering dibuat tanpa semakan terperinci dan pihak Kerajaan tidak mengambil serius akan cadangan Ahli Parlimen untuk menambah baik RUU tertentu.

Contohnya, pada 15 Julai 1976, Kit Siang dan beberapa orang Ahli Parlimen Pembangkang telah menghantar notis kepada Speaker Dewan Rakyat berkenaan beberapa cadangan untuk meminda RUU Kerja (Pindaan) yang bakal dibentangkan oleh Kerajaan dalam masa seminggu.²³ Namun, pindaan yang dicadangkan tidak dibentangkan atas alasan Speaker Dewan Rakyat tidak menerima apa-apa notis daripada Ahli Parlimen Pembangkang.²⁴ Notis yang dihantar oleh Ahli Parlimen Pembangkang sebenarnya telah memenuhi Peraturan Mesyuarat Dewan Rakyat, Peraturan Mesyuarat 57 yang menyatakan Ahli Parlimen boleh menghantar apa-apa pindaan yang hendak dicadangkan dengan mengeluarkan notis atau pemberitahuan kepada Parlimen sehari sebelum Jawatankuasa sebuah-buah Majlis menimbangkan RUU.²⁵ Keputusan Speaker Dewan Rakyat yang tidak mengambil tindakan lanjut untuk menyiasat dan menjelaskan permasalahan yang timbul memperlihatkan bagaimana peranan Ahli Parlimen amat terhad dalam mempengaruhi proses menggubal atau meminda RUU.

Kit Siang dan Ahli Parlimen Pembangkang juga mencadangkan agar RUU Kerja ini dirujuk kepada Jawatankuasa Khas berdasarkan

22 S. Chee, 'Public Accountability in Malaysia: Form and substance' dalam G.B.N. Pradhan dan M.A. Reforma (eds), *Public Administration in the 1990: Challenges and opportunities* (Manila, Eastern regional organization for public administration, 1991) 105-126.

23 DR Deb 15 Julai 1976, Bil. 2.

24 *ibid.*

25 Peraturan-peraturan Majlis Mesyuarat Dewan Rakyat, PM 57(2).

Peraturan Mesyuarat Dewan Rakyat, Peraturan Mesyuarat 58²⁶ agar ia boleh disemak secara terperinci oleh Ahli Parlimen. Tetapi, cadangan tersebut tidak mendapat sokongan Ahli Parlimen, khususnya mereka dari pihak Kerajaan.

Selain itu, Parlimen bertanggungjawab untuk mengawal selia dasar dan keputusan yang dilaksanakan oleh badan eksekutif. Berdasarkan Perkara 43(3) Perlumbagaan Persekutuan, jemaah menteri perlu bertanggungjawab kepada Parlimen yakni menjawab pertanyaan dan memberi penerangan kepada setiap persoalan yang dikemukakan oleh Ahli Parlimen.²⁷ Namun, kuasa Parlimen pasca 1969 untuk menyemak ketelusan badan eksekutif di Malaysia dilemahkan. Menteri tidak mempunyai komitmen untuk menjawab pertanyaan ataupun menerima cadangan daripada Ahli Parlimen memandangkan majoriti besar di Parlimen tidak memungkinkan kedudukan badan eksekutif tergugat. Parti pemerintah sering menggunakan disiplin parti yang ketat untuk menghalang Ahli Parlimen Kerajaan membuat sebarang penolakan yang boleh menggugat kedudukan Kerajaan dan perlu bersatu memberi tekanan kepada pihak Pembangkang.²⁸ Malah, pihak Kerajaan menggunakan kedudukan majoriti selesa untuk meminda prosedur dan Peraturan Mesyuarat Dewan Rakyat bagi mengehadkan ruang dan peluang Ahli Parlimen Pembangkang mengkritik Kerajaan.²⁹ Salah satu faktor kemerosotan fungsi Parlimen adalah undang-undang yang dibawa oleh pihak Kerajaan diluluskan tanpa sebarang pindaan.³⁰

Meskipun terdapat pelbagai halangan, Kit Siang tetap menggunakan ruang yang ada bagi memulakan idea reformasi Parlimen agar institusi ini benar-benar mengangkat nilai demokratik demi kesejahteraan rakyat. Sebuah institusi Parlimen yang lemah, seperti di Malaysia, akan memberi kesan buruk kepada pentadbiran negara apabila setiap dasar yang dibuat hanya menumpukan kepentingan sebelah pihak dan akan

26 Peraturan Mesyuarat ini menjelaskan tentang aturan Jawatankuasa Pilihan Khas untuk menimbangkan sesuatu RUU di dalam Dewan Rakyat.

27 S.S. Faruqi, *ISEAS Yusof Ishak Institute Perspective No. 132 - Reform of Parliament: Lessons from 2020-2021* (Singapore, ISEAS Yusof Ishak Institute Perspective, 2021).

28 M. Puthucheary, 'Ministerial responsibility in Malaysia' dalam M. Suffian, H.P. Lee dan F.A. Triandie (eds), *The Constitutional of Malaysia: Its Development, 1957-1977* (Kuala Lumpur, Oxford University Press, 1987) 123-135.

29 M. Ong, 'Government and Opposition in Parliament' dalam Z. Haji Ahmad (ed), *Government and Politics of Malaysia* (Singapore, Oxford University Press, 1987).

30 I.H. Kamilan dan M.S. Hassan, 'The Function of Parliament' dalam M.A. Md Yusof dan lain-lain (eds), *Law, Principles and Practice in the Dewan Rakyat (House of Representative) of Malaysia* (Subang Jaya, Sweet & Maxwell, 2020).

membuka ruang kepada salah guna kuasa, dan kecuaian pihak eksekutif mentadbir negara.³¹ Kelemahan ini telah menjadi faktor penting untuk melaksanakan agenda reformasi Parlimen di Malaysia demi memastikan institusi ini berfungsi secara efektif.³² Selain itu, perubahan institusi Parlimen juga akan mewujudkan keseimbangan peranan badan eksekutif dan perundangan dalam struktur pentadbiran negara,³³ termasuk memperkuat prosedur dan amalan Parlimen yang lebih efektif dan berkesan dalam membuat sesuatu dasar demi kepentingan rakyat.

Walaupun reformasi Parlimen telah digerakkan oleh Kit Siang dan Ahli Parlimen Pembangkang sejak awal 1970-an lagi, namun idea-idea ini hanya mula dibincangkan secara aktif dan terbuka selepas PRU-12 pada 8 Mac 2008 apabila buat pertama kali dalam sejarah negara BN dinafikan majoriti dua pertiga di dalam Dewan Rakyat. Unsur-unsur tekanan yang dilaksanakan oleh badan eksekutif kepada sistem demokrasi berparlimen di Malaysia juga telah mewujudkan gerakan masyarakat sivil yang turut menuntut pemulihran sistem demokrasi dan politik secara menyeluruh.³⁴ Peristiwa ini membuka politik Malaysia ke fasa *deliberative democracy* atau demokrasi secara rundingan, bermaksud satu keadaan di mana perbincangan secara rasional, terbuka, dan demokratik dalam membuat keputusan melibatkan pelbagai pihak, termasuk proses membuat keputusan di Parlimen.³⁵ Peralihan Kerajaan Persekutuan buat pertama kali dalam enam dekad kepada Pakatan Harapan (PH) pada 9 Mei 2018 menyaksikan agenda reformasi Parlimen menjadi fokus utama Kerajaan dalam menambah baik sistem demokrasi berparlimen di Malaysia yang turut mengambil inspirasi dan usaha reformasi Parlimen yang diketengahkan Kit Siang.

Institusi Ketua Pembangkang

Kit Siang yang dipilih sebagai Ahli Parlimen Bandar Melaka dalam PRU 1969, telah dilantik menjadi Ketua Pembangkang ketiga dalam

31 C. Lee, *ISEAS Yusof Ishak Institute Perspective No. 79 - Making Sense of Malaysia's Institutional Reforms* (Singapore, ISEAS Yusof Ishak Institute Perspective, 2018).

32 Hassan, Mohd Hed dan Kamilan (n 7).

33 P. Norton, 'Parliamentary Reform' (2002) XI-3 *Revue Française de Civilisation Britannique* 18-30 <<http://rfcb.revues.org/696>> dicapai 12 Julai 2016.

34 M.L. Weiss, *Protest and Possibilities: Civil Society and Coalitions for Political Change in Malaysia* (California, Stanford University Press, 2006).

35 J. Bohman, *Public Deliberation: Pluralism, Complexity and Democracy* (Cambridge, MIT Press, 1996) 4.

Dewan Rakyat mulai Januari 1973. Ketika itu, PAS yang merupakan pembangkang sejak Merdeka telah menyertai BN untuk membentuk kerajaan gabungan. Kemudian, jawatan tersebut disandang oleh para pemimpin Parti Kebangsaan Sarawak (SNAP), iaitu James Wong Kim Min dari Ogos hingga Oktober 1974 dan Edmund Langgu Saga dari November 1974 hingga November 1975 sehingga SNAP pula menyertai BN.³⁶

Kit Siang kembali menjadi Ketua Pembangkang dari November 1975 hingga November 1999, iaitu selama 24 tahun sehingga beliau kalah dalam persaingan Parlimen Bukit Bendera dalam PRU10. Pada tahun 2004, beliau kembali ke Dewan Rakyat sebagai Ahli Parlimen Ipoh Timor serta menjawat jawatan Ketua Pembangkang sehingga tahun 2008. Bagi Kit Siang, sejak 1969, selain daripada penggal 1999-2004, beliau telah menjadi Ahli Parlimen selama 48 tahun.³⁷

Sewaktu menjadi Ketua Pembangkang, beliau meletakkan usaha untuk mengembangkan lagi sistem demokrasi berparlimen di Malaysia yang sering berhadapan dengan tekanan daripada parti pemerintah.³⁸ Meskipun jawatan Ketua Pembangkang bukan satu jawatan rasmi dan tidak mempunyai protokol kekanan dalam pentadbiran negara, Kit Siang telah meletakkan standard yang tinggi sebagai Ketua Pembangkang di Dewan Rakyat. Contohnya, ketika Parlimen dalam era 1970-an, Ahli Parlimen Pembangkang tidak diberi ruang secukupnya untuk membentangkan usul atau ucapan penangguhan di Parlimen. Dominasi Kerajaan dalam perjalanan Parlimen telah menghadkan masa kepada mereka untuk berucap. Bagi mengatasi masalah ini, Kit Siang sebagai Ketua Pembangkang menulis sepucuk surat kepada Perdana Menteri, Tun Abdul Razak pada 28 Oktober 1974 untuk mencadangkan Kerajaan melaksanakan reformasi Parlimen seperti memperuntukkan masa yang lebih banyak kepada Ahli Parlimen Pembangkang bagi membahaskan usul di Parlimen.³⁹ Agenda reformasi Parlimen Kit Siang dipertimbangkan oleh Perdana Menteri dan ketika sesi Parlimen pada tahun 1974 hingga 1978, lebih banyak usul pihak Pembangkang dibahaskan di dalam Parlimen hasil daripada usaha perubahan Parlimen yang dicadangkan oleh Kit Siang kepada Perdana Menteri.

36 Liew (n 18) 45.

37 A. Harding, *The Constitution of Malaysia: A Contextual Analysis* (2nd edn, Oxford, Hart/ Bloomsbury, 2021) 99.

38 *ibid.*

39 Ong (n 29) 40-55.

Sejak 1971, Ketua Pembangkang merupakan jawatan rasmi yang menerima gaji dan seorang kerani di pejabat Parlimen bagi menguruskan hal ehwal dalam Dewan Rakyat.⁴⁰ Fungsi Ketua Pembangkang Malaysia berbeza dengan amalan Parlimen Westminster. Di United Kingdom (UK), Ketua Pembangkang dan beberapa orang Ahli Parlimen Pembangkang merupakan sebahagian daripada ‘Privy Council’ atau Majlis Penasihat Raja. Penyertaan Ketua Pembangkang dalam Privy Council penting agar pihak Pembangkang juga mendapat perkembangan semasa tentang pentadbiran UK, khasnya dalam soal keselamatan dan pertahanan negara.⁴¹ Kanada pula mengiktiraf kedudukan Ketua Pembangkang sebagai individu yang ke-14 paling kanan dalam protokol rasmi kerajaan dan statusnya setaraf dengan menteri kabinet. Ia menunjukkan kepentingan Ketua Pembangkang dalam pentadbiran sesebuah negara dan bukan sekadar ‘musuh’ kepada parti kerajaan.

Peranan Ketua Pembangkang dalam Parlimen Malaysia hanya mengalami perubahan signifikan selepas Pembangkang berjaya manafikan majoriti dua pertiga BN di Parlimen pada PRU-12. Apabila fungsi Pembangkang kukuh di Parlimen, integriti dan tadbir urus badan eksekutif dapat disemak imbang sehingga blok Pembangkang berjaya mendedahkan ketirisan kerajaan dan kelemahan dasar Kerajaan. Walaupun jumlah Ahli Parlimen Pembangkang bertambah selepas PRU 2008, dan terus meningkat pada PRU 2013, Kerajaan BN masih cuba memenggirkan suara mereka di Parlimen.

Dalam perkara ini, Kit Siang mencadangkan agar kedudukan dan fungsi Ketua Pembangkang diiktiraf sebagai salah satu jawatan rasmi yang tarafnya sama dengan kedudukan seorang Jemaah Menteri dan mempunyai keutamaan dalam urusan Parlimen dan negara.⁴² Antara cadangan tersebut adalah memperuntukkan kakitangan kepada Ketua Pembangkang, iaitu dua orang Setiausaha Politik, seorang Setiausaha Sulit, dan seorang Pembantu Penyelidik agar Ketua Pembangkang dapat menjalankan tugasnya dengan lancar. Cadangan ini juga sebagai satu pengiktirafan kepada peranan Pembangkang dalam sistem pentadbiran negara yang kian penting buat rakyat.

Kini, status jawatan Ketua Pembangkang di Parlimen sama taraf dengan Menteri. Pengiktirafan ini hadir apabila Perdana Menteri, Dato'

40 Harding (n 37) 99.

41 Lihat <<https://www.instituteforgovernment.org.uk/explainers/privy-council>>.

42 K.S. Lim, ‘Parliamentary reforms should be top agenda of 13th parliament’ *Blog Lim Kit Siang* (10 Mei 2013) <<https://blog.limkitsiang.com/2013/05/10/parliamentary-reforms-should-be-top-agenda-of-13th-parliament/>>.

Sri Ismail Sabri Yaakob menghantar surat rasmi kepada Datuk Seri Anwar Ibrahim pada Oktober 2021 untuk mengesahkan naik taraf status Pejabat Ketua Pembangkang dengan kemudahan-kemudahan yang setara dengan Pejabat Menteri.⁴³ Perkara ini dapat dilaksanakan hasil daripada Perjanjian Persefahaman (MoU) Transformasi dan Kestabilan Politik yang ditandatangani pada 13 September 2021 antara Kerajaan Persekutuan dan blok Pembangkang terbesar, Pakatan Harapan (PH) yang meletakkan asas reformasi Parlimen sebagai agenda utama untuk dilaksanakan oleh Kerajaan Persekutuan.

Rang Undang-undang Ahli Persendirian

Berdasarkan Peraturan Mesyuarat Dewan Rakyat, Peraturan Mesyuarat 49(1), Rang Undang-undang (RUU) Persendirian atau *Private Member's Bill* adalah satu undang-undang yang dibawa oleh mana-mana Ahli Parlimen yang tidak menganggotai badan eksekutif.⁴⁴ RUU ini memberi peluang kepada mana-mana Ahli Parlimen Pembangkang atau penyokong Kerajaan mengemukakan undang-undang dalam perkara tertentu untuk dijadikan sebahagian Akta Kerajaan. Selain itu, proses membawa RUU Ahli Persendirian juga sering melibatkan individu, persatuan, dan orang awam yang mempunyai kepentingan dalam perkara tertentu. Secara asasnya, RUU Ahli Persendirian memberi ruang kepada Ahli Parlimen membawa penyelesaian alternatif di Parlimen. Dari sudut yang berbeza, ia memperlihatkan Parlimen tidak hanya bergantung kepada Kerajaan untuk mencadangkan sesuatu undang-undang.

Hakikatnya, Parlimen Malaysia tidak pernah meluluskan RUU Ahli Persendirian⁴⁵ menjadi sebuah Akta Kerajaan sejak enam dekad yang lalu. RUU Ahli Persendirian sukar dibawa dan diluluskan Parlimen atas dua faktor. Pertama, agenda Kerajaan didahulukan di Parlimen berbanding urusan yang melibatkan usul daripada Ahli Parlimen bukan Kerajaan.⁴⁶ Kedua, Kerajaan boleh melengahkan perbahasan RUU Ahli Persendirian dengan menambah jumlah RUU Kerajaan di kertas Aturan Mesyuarat. Cara ini menyebabkan RUU Ahli Persendirian, khasnya daripada kalangan Ahli Parlimen Pembangkang, terletak di giliran

⁴³ Lihat <<https://www.astroawani.com/berita-politik/pejabat-ketua-pembangkang-dinaik-taraf-setara-pejabat-menteri-324886>>.

⁴⁴ Peraturan-peraturan Majlis Mesyuarat Dewan Rakyat, PM 49(1).

⁴⁵ Faruqi (n 1).

⁴⁶ Peraturan-peraturan Majlis Mesyuarat Dewan Rakyat, PM 15(1).

paling bawah atau hanya direkodkan di dalam Aturan Mesyuarat tanpa sebarang pengundian dan perbahasan.⁴⁷

Walau bagaimanapun, Kit Siang dan pihak Pembangkang telah memanfaatkan RUU Ahli Persendirian sejak era 1970-an lagi untuk membawa perkara yang berkaitan dengan kepentingan rakyat dan negara. Sebagai contoh, pada 21 Mac 1978, Kit Siang mengusulkan RUU Persendirian bagi menghalang Ahli Parlimen dan Ahli Dewan Undangan Negeri (ADUN) bertukar atau melompat parti. Agenda ini dibentangkan beliau sebagai usaha mengatasi masalah rasuah politik yang kian berleluasa ketika itu. RUU Ahli Persendirian ini dibahaskan oleh Ahli Dewan Rakyat daripada pihak Kerajaan mahupun Pembangkang. Kemudian, setiap pertanyaan yang dibangkitkan oleh Ahli Parlimen dijawab oleh Perdana Menteri ketika itu, Tun Hussein Onn.⁴⁸ Namun, RUU Ahli Persendirian ini tidak mendapat sokongan daripada pihak Kerajaan. Dari sudut yang berbeza, Parlimen tidak memperuntukkan masa dan ruang khas untuk Ahli Parlimen mengemukakan RUU Ahli Persendirian.⁴⁹

Kini, setelah lebih empat dekad beliau membentangkan RUU Ahli Persendirian tersebut, Kerajaan Persekutuan akhirnya membentangkan pindaan Perlembagaan Persekutuan dan usaha menggubal sebuah akta khusus bagi mengatasi isu lompat parti dengan membentuk sebuah Jawatankuasa Pilihan Khas bagi membuat kajian yang lebih lanjut. Ia juga hasil desakan atau tuntutan daripada individu, persatuan, dan orang awam yang menyokong undang-undang menghalang wakil rakyat lompat parti selepas ia dilihat akan menyebabkan rakyat hilang kepercayaan terhadap sistem demokrasi berparlimen di Malaysia.

Sekurang-kurangnya, Ahli Parlimen pada era 1970-an seperti Kit Siang mempunyai ruang untuk mengusul dan membahaskan RUU Ahli Persendirian di Parlimen. Situasi hari ini amat berbeza kerana kebanyakan usul RUU Ahli Persendirian dibawa oleh Ahli Parlimen tidak dibahas dan diundi. Sebagai contoh, RUU Ahli Persendirian daripada Ahli Parlimen Pengerang, Datuk Seri Azalina Othman Said berkaitan pemecatan Ahli Parlimen yang melompat parti telah ditolak oleh Speaker Dewan Rakyat untuk dibahaskan di Parlimen.⁵⁰ Pihak Kerajaan menyatakan RUU Ahli

47 Peraturan-peraturan Majlis Mesyuarat Dewan Rakyat, PM 14(2).

48 DR Deb 21 Mac 1978, Bil. 1, 78.

49 M.A. Md Yusof dan S.S. Faruqi, ‘The Constitutional Position of Malaysia’ dalam M.A. Md Yusof dan lain-lain (eds), *Law, Principles and Practice in the Dewan Rakyat (House of Representative) of Malaysia* (Subang Jaya, Sweet & Maxwell, 2020).

50 Lihat <<https://www.malaysiakini.com/news/602685>>.

Persendirian yang dibawa oleh Azalina bercanggah dengan Perkara 67 Perlembagaan Persekutuan kerana ia akan membawa kesan kepada implikasi kewangan dan ia hanya boleh dibawa sekiranya mendapat sokongan daripada seorang Menteri.⁵¹

Ternyata, usaha membawa RUU Ahli Persendirian di Parlimen pada era 1970-an, seperti yang dilakukan oleh Lim Kit Siang, telah membuka ruang kepada Ahli Parlimen untuk memberi cadangan alternatif bagi menyelesaikan isu rakyat. Namun, situasinya tetap sama apabila Kerajaan tidak terbuka untuk mempertimbangkan RUU Ahli Persendirian yang dibawa oleh Ahli Parlimen dibahas atau menjadi Akta Kerajaan. Malah, peraturan rigid dari sudut Peraturan Mesyuarat Dewan Rakyat dan Perlembagaan Persekutuan, dengan meletakkan syarat RUU Ahli Persendirian perlu mendapat sokongan Menteri untuk dibentangkan, menjadi faktor utama Ahli Parlimen tidak berpeluang membentangkan cadangan dan isu-isu yang diperjuangkan oleh mereka.

Pertanyaan-pertanyaan di Parlimen

Salah satu mekanisme penting dalam sistem demokrasi berparlimen sebagai alat pengawasan (*oversight*) ke atas badan eksekutif adalah sesi pertanyaan. Berdasarkan amalan biasa di Parlimen seluruh dunia, sesi pertanyaan ini amat penting untuk Ahli Parlimen mendapatkan maklumat dan penjelasan daripada Menteri Kabinet mengenai sesuatu isu atau dasar. Ia turut menjadi pendekatan penting untuk menguji ketelusan Kerajaan dalam mempertahankan dasar yang dibawa agar ia tidak mempunyai sebarang kelompongan yang boleh menjelaskan kehidupan rakyat.⁵² Di Malaysia, sesi pertanyaan ini merupakan sebahagian daripada tanggungjawab jemaah menteri kepada Parlimen

51 Perkara 67 (1) Perlembagaan Persekutuan menghuraikan tentang Sekatan terhadap pembawaan Rang Undang-Undang dan pencadangan pindaan-pindaan yang melibatkan pencukaian, perbelanjaan, dsb. Sokongan Kerajaan kepada RUU Ahli Persendirian Ahli Parlimen pernah berlaku apabila Kerajaan menyokong RUU Ahli Persendirian yang dibawa oleh Ahli Parlimen Marang, Datuk Seri Abdul Hadi Awang untuk meminda Akta Mahkamah Syariah (Bidang Kuasa Jenayah) (Pindaan) 2016 atau RUU 355 yang berjaya dibentangkan di Dewan Rakyat pada 6 April 2017. Situasi ini berlaku apabila Azalina Othman Said, Menteri di Jabatan Perdana Menteri (Parlimen dan Undang-undang) ketika itu, membawa urusan pembentangan RUU Ahli Persendirian ini sebagai agenda utama Kerajaan di dalam urusan Dewan Rakyat. Walau bagaimanapun, pindaan RUU 355 ini tidak pernah dibahas dan diluluskan oleh Parlimen.

52 M.A. Md Yusof dan lain-lain (eds), *Law, Principles and Practice in the Dewan Rakyat (House of Representative) of Malaysia* (Subang Jaya, Sweet & Maxwell, 2020).

berdasarkan Perkara 43(3).⁵³ Maka, Ahli Parlimen akan mengajukan pertanyaan kepada Menteri, sama ada dalam bentuk lisan atau bertulis, bagi mendapatkan maklumat daripada pihak Kerajaan.

Seawal penglibatan mereka di Parlimen, Kit Siang telah menghantar 152 pertanyaan pada setiap satu mesyuarat Dewan Rakyat untuk dijawab oleh menteri.⁵⁴ Perkara ini pada awalnya dibenarkan oleh Parlimen kerana tiada had untuk bertanyakan soalan. Peraturan Mesyuarat Dewan Rakyat dipinda dengan meletakkan had maksimum 20 pertanyaan lisan dan lima pertanyaan bertulis Parlimen bagi setiap mesyuarat Parlimen. Kini, jumlah pertanyaan bagi setiap Ahli Parlimen dikurangkan lagi kepada 15 pertanyaan, iaitu 10 pertanyaan lisan dan lima pertanyaan bertulis dalam setiap satu mesyuarat.⁵⁵

Masalah utama dalam sesi pertanyaan di Parlimen adalah jawapan oleh Menteri tidak mencapai tahap yang diharapkan oleh Ahli Parlimen. Malah, ada Menteri yang kerap tidak hadir ke sesi pertanyaan dan menyerahkan tugas kepada Timbalan Menteri atau Setiausaha Parlimen sahaja. Situasi ini berlaku kerana kedudukan Kerajaan ketika itu begitu selesa dengan majoriti dua pertiga yang sukar digugat oleh pihak Pembangkang.⁵⁶

Kit Siang melihat hak dan ruang yang diberikan kepada Ahli Parlimen untuk menyemak dan mengimbangi Kerajaan kian terhad walaupun Peraturan Mesyuarat Dewan Rakyat telah dipinda beberapa kali, termasuk peluang untuk Ahli Parlimen bertanya soalan ke atas badan eksekutif. Bagi mengatasi masalah ini, Kit Siang mencadangkan agar sesi pertanyaan di Parlimen diperluaskan dengan memperkenalkan *Prime Minister's Question Time (PMQ)*.⁵⁷ Konsep PMQ ini memerlukan Perdana Menteri hadir ke sesi pertanyaan di Parlimen sebanyak dua kali

53 Perkara 43(3) Perlembagaan Persekutuan menerangkan tentang tanggungjawab Menteri kepada Parlimen.

54 Sebelum pembukaan persidangan Parlimen pada tahun 1971, Lim Kit Siang telah menghantar 152 pertanyaan, diikuti Ahli Parlimen DAP lain seperti Goh Hock Guan (117 pertanyaan) dan Fan Yew Teng (101 pertanyaan). *Straits Times* (Malaysia, 20 Februari 1971) dalam Milne dan Mauzy (n 15) 233.

55 Peraturan-peraturan Majlis Mesyuarat Dewan Rakyat, PM 22.

56 H.H. Lim, 'Public Administration: The effect of executive dominance' dalam Loh dan Khoo (n 14) 165-197.

57 PMQ memberi peluang kepada Ahli Parlimen UK mengemukakan pertanyaan secara bersemuka dengan Perdana Menteri UK di House of Commons. Sesi ini mengambil tempat pada jam 12.00 tengahari setiap hari Rabu ketika Parlimen bersidang. Lihat <<https://www.parliament.uk/business/news/parliament-government-and-politics/parliament/prime-ministers-questions/>>.

seminggu dengan peruntukan masa 15 minit bagi menjawab pertanyaan-pertanyaan daripada Ahli Parlimen secara bersemuka.⁵⁸

Perubahan politik dengan isu-isu semasa yang bergerak secara dinamik, memerlukan Ahli Parlimen diberikan lebih ruang dan hak lebih banyak untuk mengemukakan pertanyaan bagi mendapat keterangan terperinci daripada Jemaah Menteri, khususnya dalam isu-isu semasa. Pada tahun 2016, transformasi Parlimen telah dilaksanakan oleh Speaker Dewan Rakyat, Tan Sri Pandikar Amin Mulia. Salah satu perubahan yang dilakukan ketika itu adalah menambah pendekatan bagi Ahli Parlimen mengemukakan pertanyaan kepada Menteri yang dikenali sebagai Waktu Pertanyaan-pertanyaan Menteri atau *Minister's Question Time* (MQT).⁵⁹ Sesi ini memberi peluang kepada Ahli Dewan Rakyat bertanyakan soalan lisan kepada Menteri bertanggungjawab dengan notis soalan dihantar dalam masa 24 jam. Sesi MQT memberi peluang kepada Ahli Dewan Rakyat bertanyakan soalan lanjut kepada Menteri berkenaan isu semasa. Ini merupakan perubahan baik berbanding amalan Parlimen dahulu yang mengehadkan pertanyaan secara terbuka di antara Jemaah Menteri dan Ahli Dewan Rakyat.

Beberapa pembaharuan sesi pertanyaan Parlimen dilaksanakan semasa pentadbiran Kerajaan PH. Pertama, memperuntukkan sesi MQT pada setiap hari Khamis untuk memberi ruang kepada Ahli Parlimen bertanyakan soalan kepada Perdana Menteri. Keputusan ini dibuat supaya Ahli Parlimen dapat menguji dan meminta penjelasan Perdana Menteri dalam isu dasar. Lebih penting lagi, ia juga kaedah berkesan untuk memastikan Perdana Menteri sentiasa aktif menghadiri sidang Parlimen yang selalunya kurang memberangsangkan.

Kedua, menguruskan masa pertanyaan lisan di Dewan Rakyat kepada enam minit bagi memastikan sebanyak 15 pertanyaan lisan dapat dijawab dalam tempoh satu jam setengah. Speaker Dewan Rakyat bagi sesi 2018-2020, Tan Sri Mohamad Ariff Yusof, telah memulakan amalan memperuntukkan hari tertentu untuk kementerian mengambil giliran menjawab pertanyaan lisan semasa hari bersidang. Contohnya, dalam tempoh dua hari persidangan, pertanyaan lisan hanya berkenaan tujuh kementerian yang ditetapkan oleh Speaker Dewan Rakyat.⁶⁰ Tujuan

58 Lihat <<https://www.limkitsiang.com/archive/2002/may02/lks1545.htm>>.

59 Peraturan-peraturan Majlis Mesyuarat Dewan Rakyat, PM 24.

60 C.T. Liew, 'Dua Tahun Penambahbaikan Parlimen: Meneruskan Agenda Reformasi' *Liew Chin Tong Website* (12 Julai 2020) <<https://liewchintong.com/ms/2020/07/12/dua-tahun-penambahbaikan-parlimen-meneruskan-agenda-reformasi/>>.

perubahan ini dilaksanakan adalah bagi memberi ruang kepada Menteri, Timbalan Menteri, dan kakitangan awam melakukan persediaan rapi untuk menyediakan jawapan kepada Ahli Parlimen. Manfaat yang sama dapat dirasai oleh wakil rakyat apabila mereka juga boleh bersiap sedia mengajukan pertanyaan bermutu ketika sesi tersebut.⁶¹

Usul Penangguhan Ahli Parlimen

Amalan Parlimen terdahulu membenarkan sekurang-kurangnya dua orang Ahli Parlimen mengemukakan usul penangguhan bagi membawa apa-apa isu yang difikirkan penting untuk diambil perhatian oleh Jemaah Menteri. Menurut Kit Siang:

Sebagai pekerja politik yang bertanggungjawab, Ahli Parlimen DAP menggunakan pakai sepenuhnya usul penangguhan Parlimen, iaitu perbahasan setengah jam sebelum penangguhan Dewan dalam setiap persidangan di mana Ahli Parlimen dapat membangkitkan isu atau masalah khusus untuk perhatian dan jawapan menteri. (Namun) pindaan sekali lagi dibuat kepada Perintah Mesyuarat Dewan Rakyat untuk memansuhkan usul penangguhan bagi dua mesyuarat Parlimen yang panjang dalam setiap sesi, iaitu mesyuarat perbahasan titah ucapan Diraja dan mesyuarat Belanjawan.

Tanpa rasa kecewa, Ahli Parlimen DAP terus memanfaatkan usul penangguhan bagi dua mesyuarat Parlimen yang pendek. (Namun) pihak Kerajaan melakukan sabotaj apabila semua Ahli Parlimennya mengosongkan Dewan, kecuali seorang Ahli Parlimen atau menteri, yang memaksa sidang ditangguhan (tanpa ucapan penangguhan). Di luar Dewan, Ahli-ahli Parlimen Kerajaan ketawa seperti budak-budak nakal yang merasakan diri mereka pandai dengan tidak mempedulikan loceng meminta mereka masuk Dewan untuk mencukupkan korum. Di House of Commons (Dewan Rakyat) United Kingdom, ucapan penangguhan memang biasa dibuat di dalam Dewan yang hampir kosong tetapi tiada Ahli Parlimen akan sabotaj dengan menjeritkan “tiada korum” apabila ucapan dimulakan.⁶²

Sekatan dalam membawa usul penangguhan ini merumitkan usaha Ahli Parlimen Pembangkang membawa isu rakyat untuk diselesaikan oleh Kerajaan. Walau bagaimanapun, Kit Siang mengambil peluang yang

61 M.A. Md Yusof, *Parliament, Unexpected: Recollections of Parliament, Politics, and Pandemic in Malaysia* (Petaling Jaya, Matahari Books, 2022) 131.

62 Liew (n 18) 46-7.

ada menerusi ucapan penangguhan untuk membangkitkan sesuatu cadangan dasar yang perlu diambil perhatian oleh Kerajaan.

Antara ucapan penangguhan yang dibawa oleh Kit Siang adalah cadangan untuk menurunkan had umur layak mengundi daripada 21 tahun kepada 18 tahun pada 10 Disember 1971. Kit Siang memberi cadangan dasar ini kepada Kerajaan atas dua hujah. Pertama, warganegara berusia 18 tahun dianggap matang dan perlu dilayan seperti orang dewasa biasa kerana mereka terlibat menyumbang kepada sektor ekonomi negara dan mampu memiliki harta. Kedua, populasi negara yang terdiri daripada 60 peratus golongan belia ketika itu menjadikan golongan ini kumpulan majoriti yang layak membuat keputusan menentukan hala tuju negara.⁶³ Usul penangguhan ini dijawab oleh Timbalan Menteri di Jabatan Perdana Menteri ketika itu, Abdul Taib Mahmud dengan menyatakan Kerajaan tidak bersedia melaksanakan cadangan dibawa oleh Kit Siang kerana keutamaan Kerajaan waktu itu adalah untuk membangunkan ekonomi negara.

Menyedari bahawa Ahli Parlimen perlu diberikan lebih banyak masa untuk membawa ucapan penangguhan tanpa mengganggu perjalanan Dewan sidang utama, Dewan Rakyat telah meminda Peraturan Mesyuarat Dewan Rakyat untuk mewujudkan Kamar Khas (*Special Chamber*),⁶⁴ yang merupakan sebahagian daripada Pelan Transformasi Parlimen yang diusahakan oleh Speaker Tan Sri Pandikar Amin.

Kamar Khas merupakan sistem yang diguna pakai oleh Parlimen Australia (*Federal Chamber*) dan United Kingdom (*Westminster Hall*). Ia merupakan sebuah Dewan yang setara dan menjadi sebahagian daripada Dewan Sidang yang sebenar.⁶⁵ Kewujudan Kamar Khas ini dapat mengatasi masalah ucapan penangguhan di Dewan Rakyat yang mengambil tempat selepas jam 5.30 petang. Perkara ini menyebabkan perjalanan mesyuarat Dewan Rakyat, khasnya urusan-urusan penting Kerajaan, terpaksa ditangguhkan untuk memberi laluan kepada ucapan penangguhan. Dengan adanya Kamar Khas, Ahli Parlimen boleh membawa usul penangguhan berkaitan masalah kawasan dan dasar di bawah Kerajaan Persekutuan. Kesemua usul ini akan dijawab

⁶³ DR Deb 10 Disember 1971, Bil. 39, 4538-44.

⁶⁴ Jawatankuasa Peraturan Mesyuarat, *Penyata Jawatankuasa Peraturan Mesyuarat, Majlis Mesyuarat Dewan Rakyat* (DR 2013-2018, DR 2/2016).

⁶⁵ M.F. Rashid, *REFSA Briefing Paper 5 - Reformasi Parlimen: Tinjauan Tiga Tahun Penubuhan Kamar Khas di Malaysia* (Kuala Lumpur, REFSA, 2020).

oleh Menteri atau Timbalan Menteri secara lisan. Sejak Kamar Khas diperkenalkan pada tahun 2016, sebanyak 360 usul telah dibahaskan sehingga tahun 2019 dan majoriti usul Kamar Khas dibahaskan oleh Ahli Parlimen Pembangkang.⁶⁶

Sewaktu era Speaker Tan Sri Mohamad Ariff pula, Kamar Khas diperkasakan lagi dengan siaran secara langsung melalui media atas talian. Perubahan ini dibuat memandangkan persidangan Kamar Khas tidak mendapat sambutan daripada orang ramai.⁶⁷ Justeru, siaran langsung Kamar Khas diharapkan dapat mendedahkan orang awam tentang perjalanan Kamar Khas secara lebih rapat. Bagi wakil rakyat pula, ia peluang penting untuk memaklumkan orang awam, khususnya rakyat di kawasan, tentang usul dibawa mereka bagi menyelesaikan isu-isu tertentu.

Penubuhan Jawatankuasa Pilihan Khas

Cetusan idea asal Kit Siang diperluaskan sewaktu beliau membahaskan idea reformasi Parlimen dalam usul Persendirianya di Dewan Rakyat pada 17 Jun 1980. Ucapan beliau menyentuh tentang kepentingan sistem demokrasi berparlimen di Malaysia untuk dibangunkan dan diperkasakan agar ia sejajar dengan keperluan semasa dan mampu mengatasi cabaran masa depan. Perkara utama yang dibangkitkan adalah konsep hak Parlimen untuk mengawal kuasa badan eksekutif. Dalam ucapan beliau:

Dalam Dewan ini di mana Ahli-ahlinya datang dari berbagai-bagai parti politik sudah tentulah kita akan mempunyai pandangan-pandangan yang berbeza berdasarkan kepada fahaman-fahaman kepartian. Tetapi kita semua bersama mengadakan satu kualiti yang sama iaitu kita semua adalah Ahli-ahli Parlimen dan kita semua sama-sama harus pandang berat supaya menentukan terhadap pengawalan (control) Parlimen yang lebih berkesan ke atas Eksekutif tanpa mengira pertalian parti.

Adalah menjadi satu keperluan dalam hal-hal melibatkan kepentingan hak dan kuasa Parlimen vis-à-vis Executive bahawa Ahli-ahli Parlimen baikpun dari parti Pemerintah atau parti Pembangkang mengambil satu pendirian yang sama untuk menjamin bahawa hak-hak dan keistimewaan-keistimewaan Parlimen tidak dicabuli oleh Eksekutif.⁶⁸

66 ibid.

67 Md Yusof (n 61) 131.

68 DR Deb 17 Jun 1980, Bil. 21.

Salah satu cadangan yang diutarakan Kit Siang adalah penubuhan Jawatankuasa Pilihan Khas (JPK) atau *Select Committee* di Dewan Rakyat sebagai mekanisme berkesan mengawal badan eksekutif. Pembangkang sentiasa tertekan ketika itu kerana diberi masa yang terlalu pendek untuk mengkaji setiap RUU dan Anggaran Belanjawan kementerian. Kit Siang pernah membawa isu ini di Parlimen kerana Ahli Parlimen diberi masa dua hari sahaja untuk meneliti anggaran tambahan bagi tahun 1979 dan 1980 bagi 18 kementerian yang berjumlah RM1 bilion.⁶⁹ Masa yang sangat singkat itu menyebabkan Ahli Parlimen tidak mampu meneliti butir-butir Belanjawan tersebut dengan terperinci.

Situasi ini membuktikan sisi ketidakpedulian badan eksekutif yang mahu meluluskan sebarang perbelanjaan dan RUU tanpa mempertimbangkan pandangan konstruktif Pembangkang. Ini menjadi sikap sesebuah Kerajaan yang mempunyai majoriti terlalu besar dalam Parlimen, khususnya apabila ia melibatkan persoalan tentang perbelanjaan Kerajaan. Atas sebab inilah Kit Siang mencadangkan penubuhan JPK Belanjawan (*Estimate Committee*) untuk memberi peluang dan sumber kepada Ahli Parlimen mengkaji dasar dan perbelanjaan Kerajaan secara terperinci.⁷⁰

Cadangan penubuhan JPK Belanjawan ini juga perlu memainkan peranan menyemak kerangka belanjawan negara dan mengawasi prestasi Kerajaan melaksanakan rancangan ekonomi lima tahun, yakni Rancangan Malaysia, supaya dapat memberi cadangan alternatif untuk Kerajaan mengatasi cabaran tertentu. Kaedah ini juga sebenarnya memberi pendedahan lebih meluas kepada Ahli Parlimen tentang selok-belok isu dasar dan pentadbiran Kerajaan. Maklumat yang diperolehi Ahli Parlimen dalam JPK boleh memberi nilai tambah kepada perbahasan dasar konstruktif dan bermutu di Dewan Rakyat. Namun, usul penubuhan sistem JPK ini ditolak Kerajaan ketika itu.

Seperti beberapa usaha reformasi yang dinyatakan di atas, sistem JPK ini hanya dilaksanakan selepas 38 tahun Kit Siang mencadangkannya di Parlimen. Pada 4 Disember 2018, Speaker Tan Sri Mohamad Ariff mengumumkan enam JPK di Dewan Rakyat iaitu: JPK Menimbang Rang Undang-undang, JPK Bajet, JPK Pertahanan dan Hal Ehwal Dalam Negeri, JPK Hak Asasi dan Kesaksamaan Gender, JPK Hubungan Antara Negeri-negeri dan Persekutuan serta JPK Untuk Melantik Jawatan-Jawatan

⁶⁹ K.S. Lim, *Malaysia in the Dangerous 80s* (Petaling Jaya, Democratic Action Party, 1982) 325.

⁷⁰ *ibid.*

Utama Perkhidmatan Awam.⁷¹ Pentadbiran PH komited melaksanakan sistem JPK bagi memperkuuh fungsi semak dan imbang Parlimen serta memastikan Ahli Parlimen, khususnya blok Pembangkang, dapat terlibat sama dalam proses membuat dasar dengan lebih meluas.

Perkara utama yang mahu dicapai dalam pelaksanaan sistem JPK adalah mewujudkan semangat kerjasama dwipartisan di antara Ahli Parlimen Kerajaan dan Pembangkang melangkaui kepentingan politik kepartian. Dari sudut yang lebih luas, pembaharuan ini dapat mencipta budaya lebih matang dalam membahas atau membincangkan sesuatu isu di Parlimen berbanding situasi lama Ahli Dewan Rakyat yang sering melanggar etika dan bersikap tidak berparlimen semasa mesyuarat Dewan Rakyat berlangsung.⁷² Sistem JPK ini yang diperkenalkan pada era PH diteruskan sewaktu pentadbiran Perdana Menteri Tan Sri Muhyiddin Yassin dan penggantinya Dato' Sri Ismail Sabri Yaakob.

Selain itu, pembaharuan dalam struktur Jawatankuasa Kira-kira Wang Negara (PAC) dengan melantik Ahli Parlimen Pembangkang sebagai Pengerusi PAC juga merupakan agenda Reformasi Parlimen yang pernah dicadangkan oleh Kit Siang. Konsep ini penting untuk mengatasi masalah konflik berkepentingan kerana Ahli Parlimen Kerajaan cenderung untuk mengikut telunjuk badan eksekutif sehingga ia boleh menjaskan kredibiliti dan keberkesanan PAC menjalankan siasatan secara bebas.

Selepas peralihan Kerajaan pada tahun 2018, Parlimen telah melantik Ahli Parlimen Pembangkang pertama menjadi Pengerusi PAC dan amalan ini diteruskan sehingga hari ini.⁷³ Ini satu perubahan besar buat Parlimen Malaysia memandangkan jawatan Pengerusi PAC dipegang oleh Ahli Parlimen Kerajaan sejak PAC ditubuhkan pada tahun 1959.⁷⁴ Beberapa Dewan Undangan Negeri (DUN) seperti Selangor dan Pulau Pinang telah lebih awal melantik wakil rakyat Pembangkang sebagai Pengerusi PAC, iaitu sejak tahun 2008.

⁷¹ Jawatankuasa Dewan, *Penyata Jawatankuasa Dewan, Majlis Mesyuarat Dewan Rakyat (DR 2018-2023, DR 6/2018)*.

⁷² Md Yusof (n 61) 129.

⁷³ Parlimen melantik Datuk Seri Dr. Ronald Kiandee (Ahli Parlimen Beluran) daripada BN menjadi Pengerusi PAC pada tahun 2018. Selepas Ronald Kiandee menukar parti ke BERSATU, Datuk Seri Dr. Noraini Ahmad (Ahli Parlimen Parit Sulong) menjadi Pengerusi PAC pada tahun 2019. Noraini merupakan Ahli Parlimen wanita pertama di Malaysia menjawat jawatan tersebut.

⁷⁴ Lim (n 42).

Forum membincangkan reformasi Parlimen

Bagi Kit Siang, reformasi Parlimen merupakan agenda nasional yang perlu digarap oleh kesemua Ahli Parlimen daripada pelbagai parti. Institusi ini perlu diperakui sebagai forum perbincangan politik tertinggi negara bagi mencari solusi sebenar isu rakyat dan negara. Beliau telah mencadangkan sebuah Jawatankuasa Parlimen atau dipanggilnya sebagai Persidangan Tuan Speaker Mengenai Reformasi Parlimen atau *Speaker's Conference* untuk memperluaskan idea-idea reformasi Parlimen Malaysia. Jelas beliau:

*Cadangan saya bahawa ada satu Speaker's Conference atas parliamentary reforms ialah supaya boleh kaji dengan mendalam pengalaman-pengalaman, contoh-contoh dan tauladan-tauladan di institusi-insititusi Parlimen di Iain-lain bukan sahaja di House of Commons malahan di lain-lain negara Komanwel pun mereka ada innovate konsep procedural yang mereka sendiri yang mungkin kita boleh belajar bukan imitate tetapi mungkin fikiran dan idea-idea itu kita boleh gunakan.*⁷⁵

Pada tahun 2019, Speaker Tan Sri Mohamad Ariff, telah mengadakan *The Speaker's Lecture Series*, iaitu siri dialog membincangkan idea reformasi Parlimen dan penambahbaikan undang-undang dan demokrasi di Malaysia dan luar negara. Program ini merupakan usaha ‘Merakyatkan Parlimen’ melibatkan gerakan masyarakat sivil dan tetamu jemputannya daripada tokoh-tokoh Parlimen seluruh dunia seperti David Elder, bekas Setiausaha House of Representative Australia (Clerk of the Australian House of Representatives) dan Ketua Ombudsman New Zealand, Peter Boshier.⁷⁶ Kemudian, Dewan Rakyat juga menubuhkan Kaukus Reformasi Institusi dan Tadbir Urus Parlimen⁷⁷ yang turut dianggotai oleh Kit Siang untuk membincangkan idea-idea reformasi Parlimen dan penambahbaikan dasar dalam pelbagai sektor.

Kesimpulan

Reformasi Parlimen merupakan agenda penting untuk memastikan sistem demokrasi berparlimen di Malaysia dapat menjalankan fungsinya

⁷⁵ DR Deb 17 Jun 1980, Bil. 21.

⁷⁶ Lihat <<https://www.astroawani.com/berita-malaysia/sudah-tiba-masa-adam-ombudsman-malaysia-speaker-dewan-rakyat-217977>>.

⁷⁷ Lihat <<https://www.roketkini.com/2019/09/25/kaukus-reformasi-institusi-dan-tadbir-urus-parlimen-perlu-jadi-perintis-pemikiran-baharu-isu-penting-negara/>>.

dengan berkesan. Tujuan melaksanakan reformasi Parlimen di Malaysia amat jelas iaitu memperkuuh peranan semak dan imbang ke atas badan eksekutif dengan memberi lebih banyak ruang kepada Ahli untuk terlibat secara aktif dalam proses di Parlimen, khasnya dalam menggubal dasar dan undang-undang negara.⁷⁸ Meskipun idea-idea reformasi Parlimen yang diketengahkan oleh Ahli Parlimen seperti Kit Siang berhadapan dengan pelbagai cabaran, reformasi Parlimen dilihat berjaya berkembang dan diterima pelbagai pihak dengan adanya ruang pendemokrasian yang lebih luas sejak PRU-12. Reformasi Parlimen yang terus dibahas dan dibincangkan generasi hari ini adalah kesinambungan idea-idea yang pernah dicadangkan oleh Ahli Parlimen berpengalaman seperti Kit Siang. Ini terbukti apabila idea-idea reformasi Parlimen yang konsisten dibawa oleh Kit Siang sudah menjadi kenyataan, sama ada yang dilaksanakan oleh kerajaan PH sepanjang 22 bulan pemerintahannya atau yang mula dikuatkuasakan pada era BN pra-2018 apabila rakyat menuntut reformasi dalam pelbagai bidang.

Menariknya, agenda reformasi Parlimen hari ini telah menjadi agenda nasional yang diusahakan secara dwipartisan antara Kerajaan dan Pembangkang. Perjanjian MoU Transformasi dan Kestabilan Politik antara Kerajaan Persekutuan dan PH⁷⁹ yang mengetengahkan pembaharuan Parlimen, merupakan contoh terbaik bagaimana agenda reformasi Parlimen perlu dilaksanakan pada hari ini. Komitmen yang berterusan daripada pihak Kerajaan dan Ahli Parlimen untuk mengangkat reformasi Parlimen sebagai agenda nasional akan memperluaskan lagi peranan Parlimen dalam mencorak hala tuju pentadbiran negara yang berintegriti dan bertanggungjawab.

Walaupun sebahagian daripada idea reformasi Parlimen dicadangkan Kit Siang berjaya dilaksanakan, masih terdapat banyak lagi agenda pembaharuan Parlimen perlu diusahakan agar Parlimen benar-benar efektif dan mempunyai kesinambungan dengan agenda reformasi Parlimen dalam jangka masa panjang. Pertama, Ketua Pembangkang di Malaysia seharusnya diberi pengiktirafan sewajarnya dalam struktur pentadbiran negara seperti yang diamalkan di United Kingdom dan Kanada. Pengiktirafan ini sekaligus memberi peluang kepada blok Pembangkang untuk terlibat dalam proses membuat keputusan tertinggi

⁷⁸ K.Y. Hooi, 'Post-legislative Scrutiny in the Process of Democratic Transition in Malaysia' (2020) 4 *Journal of Southeast Asian Human Rights* 52-88.

⁷⁹ 'Perjanjian Persefahaman (MoU) Transformasi dan Kestabilan Politik' *Parlimen Malaysia* (13 September 2021) <<https://www.parlimen.gov.my/images/webuser/bkk/MOU.pdf>>.

pentadbiran negara. Peranan Ketua Pembangkang perlu diberikan perspektif baharu dengan melihat Ketua Pembangkang rakan strategik Kerajaan dan sebagai individu yang bakal menerajui Kerajaan satu hari nanti.

Kedua, amalan dan prosedur Parlimen perlu dikaji semula untuk melibatkan lebih ramai Ahli Parlimen membawa RUU Ahli Persendirian di Parlimen. Di Parlimen New Zealand, Ahli Parlimen boleh membawa RUU Ahli Persendirian pada hari Rabu ketika mesyuarat Parlimen berlangsung.⁸⁰ Praktis seperti ini merupakan contoh terbaik bagaimana Parlimen Malaysia perlu memperuntukkan masa yang lebih mencukupi kepada Ahli Parlimen di Malaysia untuk membawa RUU Ahli Persendirian, dan bukan membenarkan Kerajaan mendominasi urusan Parlimen sahaja.

Ketiga, memperuntukkan Hari Pembangkang (*Opposition Day*) di dalam Parlimen Malaysia. Ini merupakan praktis biasa di Parlimen UK, apabila parti Pembangkang diberikan 20 hari untuk menentukan agenda perjalanan Parlimen seperti menentukan tajuk usul dan perbahasan.⁸¹ Parlimen Malaysia melalui Dewan Rakyat boleh memperuntukkan sekurang-kurangnya satu jam dalam seminggu untuk Hari Pembangkang.⁸² Pelaksanaan Hari Pembangkang di dalam Parlimen Malaysia akan memberi nilai tambah kepada Ahli Parlimen Pembangkang untuk bergerak aktif dalam urusan Parlimen. Mereka turut berpeluang membawa dasar yang difikirkan penting untuk dibahas dan diputuskan demi kepentingan awam.

Keempat, terdapat keperluan juga untuk mengukuhkan sistem Jawatankuasa Pilihan Khas dengan memberi peranan yang lebih signifikan dalam meneliti dan mengkaji setiap dasar dan prestasi Kerajaan secara bebas. Oleh itu, kajian diperlukan untuk meminda Peraturan Mesyuarat Dewan Rakyat, Peraturan Mesyuarat 83(4) yang kini membenarkan Jawatankuasa Pilihan Khas mengkaji perkara atau RUU yang diserahkan oleh Dewan Rakyat sahaja.⁸³ Pindaan peraturan ini diharapkan dapat memperluaskan lagi peranan Jawatankuasa Pilihan Khas dalam melihat dasar dan isu kepentingan orang awam secara meluas dan menyiasat prestasi kerajaan secara telus dan terbuka.

⁸⁰ Lihat <<https://www.parliament.nz/en/pb/bills-and-laws/proposed-members-bills/>>.

⁸¹ Lihat <<https://www.instituteforgovernment.org.uk/explainers/official-opposition>>.

⁸² S.S. Faruqi, 'The Malaysian Parliament: Problems, Prospect and Proposal for Reform' dalam M.A. Md Yusof dan lain-lain (eds), *Law, Principles and Practice in the Dewan Rakyat (House of Representative) of Malaysia* (Subang Jaya, Sweet & Maxwell, 2020).

⁸³ Peraturan-peraturan Majlis Mesyuarat Dewan Rakyat, PM 83(4).

Pada masa yang sama, terdapat juga agenda reformasi Parlimen dalam memperkasakan badan legislatif mewujudkan semula Akta Perkhidmatan Parlimen bagi memberi autonomi kepada institusi Parlimen menguruskan hal ehwal dan hala tujunya sendiri tanpa campur tangan daripada badan eksekutif. Pemberian autonomi ini diharapkan juga dapat memberi ruang yang lebih baik kepada pembaharuan prosedur dan amalan di Parlimen.⁸⁴ Selain itu, perbincangan mengenai kepentingan dan idea-idea reformasi Parlimen juga perlu diteruskan di setiap lapisan masyarakat, khususnya kepada belia yang kini sudah layak mengundi selepas had umur mengundi diturunkan kepada 18 tahun. Penyertaan warganegara berusia 18 tahun dalam pilihan raya akan memperkuuhkan lagi legitimasi Kerajaan dan fungsi Parlimen itu sendiri.⁸⁵ Ini merupakan peluang terbaik untuk generasi akan datang melihat kepentingan institusi Parlimen dalam aspek yang lebih menyeluruh. Ia juga selari dengan dapatan Laporan Inter-Parliamentary Union (IPU) bertajuk *Global Parliamentary Report 2022 - Public engagement in the work of parliament* yang menekankan kepentingan pengukuhan penglibatan awam dalam proses Parlimen dengan pendekatan yang lebih responsif dalam menguruskan pandangan orang awam.⁸⁶ Dalam erti kata lain, agenda reformasi Parlimen tidak sepatutnya bersifat statik dan perancangan untuk menambah baik amalan Parlimen yang efektif wajar diteruskan demi memastikan institusi ini dapat menyemak dan mengimbangi badan eksekutif dengan berkesan dan menguruskan isu-isu dasar yang lebih rencam pada masa hadapan.

Rujukan

'Akta Majlis Parlimen diperkasa, Akta Perkhidmatan Parlimen 1963 akan dikembalikan - Rais Yatim' Astro Awani (28 Oktober 2021) <<https://www.astroawani.com/berita-malaysia/akta-majlis-parlimen-diperkasa-akta-perkhidmatan-parlimen-1963-akan-dikembalikan-rais-yatim-327775>>.

⁸⁴ Lihat <<https://www.astroawani.com/berita-malaysia/akta-majlis-parlimen-diperkasa-akta-perkhidmatan-parlimen-1963-akan-dikembalikan-rais-yatim-327775>>.

⁸⁵ Faruqi (n 82).

⁸⁶ Laporan ini menekankan bagaimana Parlimen seluruh dunia perlu mengambil serius penglibatan orang muda, yang kini populasinya kian meningkat di seluruh negara, bagi meneruskan penambahanbaikan dan meluaskan proses Parlimen dalam jangka masa panjang. Inter Parliamentary Union (IPU), *Global Parliamentary Report 2022 - Public engagement in the work of parliament* (Geneva, IPU, 2022).

'DAP calls for far-reaching parliamentary reforms to make the Malaysian Parliament fit for the 21st century era of information and communications technology' *Lim Kit Siang Blog* (7 Mei 2002) <<https://www.limkitsiang.com/archive/2002/may02/lks1545.htm>>.

'Kaukus Reformasi Institusi dan Tadbir Urus Parlimen perlu jadi perintis pemikiran baharu isu penting negara' *Roketkini.com* (25 September 2019) <<https://www.roketkini.com/2019/09/25/kaukus-reformasi-institusi-dan-tadbir-urus-parlimen-perlu-jadi-perintis-pemikiran-baharu-isu-penting-negara/>>.

'Official opposition' *Institute for Government* (14 Februari 2022) <<https://www.instituteforgovernment.org.uk/explainers/official-opposition>>.

'Pejabat Ketua Pembangkang dinaik taraf setara pejabat Menteri' *Astro Awani* (12 Oktober 2021) <<https://www.astroawani.com/berita-politik/pejabat-ketua-pembangkang-dinaik-taraf-setara-pejabat-menteri-324886>>.

'Perjanjian Persefahaman (MoU) Transformasi dan Kestabilan Politik' *Parlimen Malaysia* (13 September 2021) <<https://www.parlimen.gov.my/images/webuser/bkk/MOU.pdf>>.

'Prime Minister's Questions' *UK Parliament* (tt) <<https://www.parliament.uk/business/news/parliament-government-and-politics/parliament-prime-ministers-questions>>.

'Privy council' *Institute for Government* (28 Februari 2022) <<https://www.instituteforgovernment.org.uk/explainers/privy-council>>.

'Proposed members' bills' *New Zealand Parliament* (tt) <<https://www.parliament.nz/en/pb/bills-and-laws/proposed-members-bills>>.

'RUU hibrid masih pilihan terbaik tangani isu lompat parti - Azalina' *Malaysia Kini* (12 Disember 2021) <<https://www.malaysiakini.com/news/602685>>.

'Sudah tiba masa ada Ombudsman Malaysia - Speaker Dewan Rakyat' *Astro Awani* (20 September 2019) <<https://www.astroawani.com/berita-malaysia/sudah-tiba-masa-ada-ombudsman-malaysia-speaker-dewan-rakyat-217977>>.

Bohman J., *Public Deliberation: Pluralism, Complexity and Democracy* (Cambridge, MIT Press, 1996) 4.

Case W., 'Malaysia's resilient pseudodemocracy' (2001) 12 *Journal of democracy* 43-57.

Chee S., 'Public Accountability in Malaysia: Form and substance' dalam Pradhan G.B.N. dan Reforma M.A. (eds), *Public Administration in the 1990: Challenges and opportunities* (Manila, Eastern regional organization for public administration, 1991) 105-126.

Cheng K.C.K., *Penang Institute Issues - The Value of Private Member's Bills in Parliament: A Process Comparison between Malaysia and the United Kingdom* (Pulau Pinang, Penang Institute, 2019).

Crouch H., *Government and Society in Malaysia* (New York, Cornell University Press, 1996).

DR Deb 10 Disember 1971, Bil. 39, 4538-44.

DR Deb 15 Julai 1976, Bil. 2.

DR Deb 17 Jun 1980, Bil. 21.

DR Deb 21 Mac 1978, Bil. 1, 78.

DR Deb 28 Mac 2018, Bil. 15.

DR Deb 6 April 2017, Bil. 20.

Esman M.J., *Administration and development in Malaysia* (New York, Cornell University Press, 1972).

Faruqi S.S., *ISEAS Yusof Ishak Institute Perspective No. 132 - Reform of Parliament: Lessons from 2020-2021* (Singapore, ISEAS Yusof Ishak Institute Perspective, 2021).

— *Our Constitution* (Subang Jaya, Thomson Reuters Asia Sdn Bhd, 2019).

— 'The Malaysian Parliament: Problems, Prospect and Proposal for Reform' dalam Md Yusof M.A. dan lain-lain (eds), *Law, Principles and Practice in the Dewan Rakyat (House of Representative) of Malaysia* (Subang Jaya, Sweet & Maxwell, 2020).

Funston J., *Malay Politics in Malaysia - A study of PAS and UMNO* (Kuala Lumpur, Heinemann, 1980).

Harding A., *The Constitution of Malaysia: A Contextual Analysis* (2nd edn, Oxford, Hart/ Bloomsbury, 2021) 99.

Hassan M.S., Mohd Hed N. dan Kamilan I.H., 'Parliamentary reforms and Sustainable Development Goals (SDG): the way forward for an inclusive and sustainable parliament' (2021) *The Journal of Legislative Studies* 1-28.

Hooi K.Y., 'Post-legislative Scrutiny in the Process of Democratic Transition in Malaysia', (2020) 4 *Journal of Southeast Asian Human Rights* 52-88

Inter Parliamentary Union (IPU), *Global Parliamentary Report 2022 - Public engagement in the work of parliament* (Geneva, IPU, 2022).

Jawatankuasa Dewan, *Penyata Jawatankuasa Dewan, Majlis Mesyuarat Dewan Rakyat* (DR 2018-2023, DR 6/2018).

Jawatankuasa Peraturan Mesyuarat, *Penyata Jawatankuasa Peraturan Mesyuarat, Majlis Mesyuarat Dewan Rakyat* (DR 2013-2018, DR 2/2016).

Lee C., *ISEAS Yusof Ishak Institute Perspective No. 79 - Making Sense of Malaysia's Institutional Reforms* (Singapore, ISEAS Yusof Ishak Institute Perspective, 2018).

Liew C.T., 'Dua Tahun Penambahbaikan Parlimen: Meneruskan Agenda Reformasi' *Liew Chin Tong Website* (12 Julai 2020) <<https://liewchintong.com/ms/2020/07/12/dua-tahun-penambahbaikan-parlimen-meneruskan-agenda-reformasi/>>.

— Lim Kit Siang: Patriot, Leader, Fighter (Kuala Lumpur, Research for Social Advancement (REFSA), 2021) 44.

Lijphart A., 'Varieties of non majoritarian democracy' dalam Markus C., Thomas K. dan David W. (eds), *Democracy and Institution: The life work of Arend Lijphart* (Arbor, University of Michigan Press, 2000) 228.

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

Lim G.E., '80th Birthday Tribute To My Father Lim Kit Siang' *The Rocket* (21 Februari 2021) <<https://www.therocket.com.my/en/80th-birthday-tribute-to-my-father-lim-kit-siang/>>.

Lim H.H., 'Public Administration: The effect of executive dominance' dalam Loh F. dan Khoo B.T. (eds), *Democracy in Malaysia: Discourse and Practices* (Richmond, Curzon Press, 2002) 165-197.

- Lim K.S., 'Parliamentary reforms should be top agenda of 13th parliament' *Lim Kit Siang Blog* (10 Mei 2013) <<https://blog.limkitsiang.com/2013/05/10/parliamentary-reforms-should-be-top-agenda-of-13th-parliament/>>.
- *Malaysia in the Dangerous 80s* (Petaling Jaya, Democratic Action Party, 1982) 325.
- *Time Bomb in Malaysia: Problems of National-Building in Malaysia* (Petaling Jaya, DAP, 1978).
- *Ucapan Titah Diraja di Dewan Rakyat 11 Mei 1972* <<https://bibliotheca.limkitsiang.com/1972/05/11/democratisation-of-malaysian-life-2/>>.
- Loh F. dan Khoo B.T. (eds), *Democracy in Malaysia: Discourse and Practices* (Richmond, Curzon Press, 2002) 4.
- Mauzy D.K., 'The Challenge to Democracy Singapore and Malaysia's Resilient Hybrid Regimes' (2006) 2(2) *Taiwan Journal of Democracy* 47–68.
- Md Yusof M.A. dan Faruqi S.S., 'The Constitutional Position of Malaysia' dalam Md Yusof M.A. dan lain-lain (eds), *Law, Principles and Practice in the Dewan Rakyat (House of Representative) of Malaysia* (Subang Jaya, Sweet & Maxwell, 2020).
- Md Yusof M.A. dan lain-lain (eds), *Law, Principles and Practice in the Dewan Rakyat (House of Representative) of Malaysia* (Subang Jaya, Sweet & Maxwell, 2020).
- Md Yusof M.A., *Parliament, Unexpected: Recollections of Parliament, Politics, and Pandemic in Malaysia* (Petaling Jaya, Matahari Books, 2022) 131.
- Milne R.S. dan Mauzy D.K., *Politics and Government in Malaysia* (Singapura, Times Book International, 1983).
- Norton P., 'Parliamentary Reform' (2002) XI-3 *Revue Française de Civilisation Britannique* 18-30 <<http://rfcbe.revues.org/696>> dicapai 12 Julai 2016.
- Ong M., 'Government and Opposition in Parliament' dalam Haji Ahmad Z. (ed), *Government and Politics of Malaysia* (Singapore, Oxford University Press, 1987).

- ____ ‘Changing Power Configuration in Malaysia’ dalam Colin B. dan Francis L.K.W. (eds), *Malaysian Economics and Politics in the New Century* (Cheltenham, Edward Elgar, 2003).
- Ooi K.B., *Hak untuk berbeza pendapat: Lim Kit Siang, sebuah lakaran biografi* (Kuala Lumpur, REFSA, 2012) 50.
- Peraturan-peraturan Majlis Mesyuarat Dewan Rakyat.
- Puthucheary M., ‘Ministerial responsibility in Malaysia’ dalam Suffian M., Lee H.P. dan Triandle F.A. (eds), *The Constitutional of Malaysia: Its Development, 1957-1977* (Kuala Lumpur, Oxford University Press, 1987) 123-135.
- Rashid M.F., *REFSA Briefing Paper 5 - Reformasi Parlimen: Tinjauan Tiga Tahun Penubuhan Kamar Khas di Malaysia* (Kuala Lumpur, REFSA, 2020).
- Von Vorys K., *Democracy without consensus* (Kuala Lumpur, Oxford University Press, 1976).
- Weiss M.L., *The Roots of Resilience: Party machines and grassroots politics in Singapore and Malaysia* (Singapore, National University of Singapore (NUS), 2020) 108.
- ____ *Protest and Possibilities: Civil Society and Coalitions for Political Change in Malaysia* (California, Stanford University Press, 2006).
- Winetrobe, B.K., *Aspects of Parliamentary Reform - Research Paper 97/64* (House of Commons Library, 1997).

Conduct in the House of Representatives (*Dewan Rakyat*) Parliament Malaysia

*Asrawati Awalina Aslan**

Abstract

The frequent occurrences of misconduct among Members of Parliament during the *Dewan Rakyat* sessions highlight the importance of a code of conduct in ensuring the sessions are conducted in a constructive and conducive environment. Sexist, racist and immature remarks uttered during sessions, as well as acts of discrimination against youth and minority groups, indicate the inability of MPs to conduct themselves respectfully and directly influence the levels of diversity and inclusivity in the Malaysian Parliament. This research study was conducted in two phases, with the aim to assess the public's knowledge, attitude and perception of the behaviour of MPs during the sessions and identify different perspectives through the lens of MPs themselves on these issues. A descriptive cross-sectional study was conducted with a total of 1071 respondents aged 18 years and above participating in the online public survey in the first phase. A semi-structured interview with a total of six MPs was done in the second phase of the study using purposive sampling. The results of the online survey confirmed that the public is more aware of the existence of misconduct among MPs and the discrimination faced by MPs who are members of marginalised groups such as women, youth, and minorities. Four themes emerged from the interview with the MPs; parliamentary reforms, discriminatory comments, the role of the speaker and journalism bias. Findings from the current study concluded that although there was a higher awareness rate among the public about the misconduct of MPs, there was contradictory opinion highlighted from the MPs' perspectives, indicating the need to look at the gap between the public and MPs' understanding of these issues.

Keywords: Age Discrimination, Code of Conduct, Dewan Rakyat, Racist Remarks, Sexist Remarks

* Asrawati Awalina Aslan is Project Researcher at the All Women's Action Society Malaysia (AWAM). Email: asrawatiawalina@gmail.com

Introduction

A Code of Conduct is a distinct and formal document consisting of a set of principles and values that defines the expectations and standards of how an organization, government agency, corporation, an associated entity, or a person should behave. This includes the minimum levels of enforcement and disciplinary measures for the organizations, employees, and volunteers.¹ A code of conduct connects an organisation's mission, values and beliefs to professional conduct requirements. The code will help to express the values that the organization intends to reinforce in its leader and employees, with the aim of creating a better organization.² In politics, a code of conduct is intended to act as a tool that goes beyond the legal range of political choices. It seeks to express a standard of conduct that should be valued and practiced by those who practice politics, regardless of their political associations, be it a region, an agency, or a government.³

Malaysia is a country governed by a parliamentary democratic system with a Constitutional Monarchy as the head of state. Each of the 222 Members of *Dewan Rakyat* represents a distinct constituency. Every five years, members are elected via publicly held elections. In Malaysia, the latest code of ethics by the Prime Minister's Office was released in 2018, applicable to the administrative staff and members of Parliament. This includes Prime Minister, Deputy Prime Minister, ministers, deputy ministers, parliamentary secretary, political secretary, administrative and parliament staff.⁴ It is important to note that this code of ethics is not applicable to the behaviour/conduct of Members of Parliament (MPs) during *Dewan Rakyat* sessions as it touches on the overall ethics and morality aspects.

*Kod Etika Peribadi yang merupakan tata kelakuan yang berlandaskan faktor nilai norma dalam masyarakat yang menjadi teras tata kelakuan Anggota Pentadbiran dan Ahli Parliment yang menghasilkan peribadi integriti yang mulia serta diteladani oleh rakyat.*⁵

1 See <<https://www.waterintegritynetwork.net/2015/12/03/code-of-conduct/>> accessed 10 November 2021.

2 See <<https://www.ethics.org/resources/free-toolkit/code-of-conduct/>> accessed 10 November 2021.

3 A. Argandoña and others, 'Code of Ethics for Politicians' (2012) 3 *Ramon Llull Journal of Applied Ethics* 9.

4 Jabatan Perdana Menteri, *Kod Etika Bagi Anggota Pentadbiran dan Ahli Parliment* (2nd edn, Vol. 2, Putrajaya, 2018) 3.

5 *ibid.*

In addition, Parliament Malaysia has produced the Standing Orders of the Dewan Rakyat that cover all the rules during the *Dewan Rakyat* sessions.⁶ However, there is no appropriate guideline that focuses specifically on the behaviour/conduct of parliament members. This has probably contributed to many incidents of misconduct among MPs as there is no guidance on how to properly conduct oneself, especially during the *Dewan Rakyat* sessions. There were countless reports in the media on the misconduct of MPs, which had the tendency to overshadow their main duties as elected representatives of the people. Besides, there have been a steady number of reports in the media that reveal the dissatisfaction of Malaysians towards their country's politicians, whom they perceive to be immature, sexist, racist and unable to conduct constructive and progressive debates during the *Dewan Rakyat* sessions.

It is reasonable to assume the behaviour/conduct issues of Members of Parliament have impacted the representatives of women, youth and minorities in the Parliament, where they are found to be disproportionately lower. Attitudes such as immature exchanges, making sexist and racist statements, and the inability to obey the Standing Orders of the Parliament do influence the levels of diversity and inclusivity in the Parliament. Lack of monitoring to ensure adherence to the Standing Orders and any other codes of conduct has contributed to misconduct among MPs. It also highlights the necessity of establishing a code of conduct focused on MPs' behaviour/conduct during *Dewan Rakyat* sessions that requires them to comply with and guides them in behaving respectfully with each other and treating everyone, including themselves, with dignity.

Looking at the research gap related to the public's knowledge, attitudes and perception of the behaviour/conduct of MPs during the *Dewan Rakyat* session, a study was proposed toward this aim by conducting a public online survey. This study also aimed to understand this issue from different perspectives; thus, a semi-structured interview was conducted with participating MPs. Through the findings from both public and MPs, this study intends to understand the impact of behaviour/conduct of MPs during *Dewan Rakyat* sessions and recommend a code of conduct that can serve as a guide for them during the parliamentary sittings.

⁶ Parliament of Malaysia, *Standing Orders of the Dewan Rakyat* (14th Publication, Kuala Lumpur, Percetakan Nasional Malaysia Berhad, 2018).

Literature Review

Definition of Code of Conduct

Generally, a code of conduct is a set of guidelines for employees to follow when they are working for a company or an organization. It establishes the expectations and guidelines for how an organization, government agency, corporation or an individual should conduct themselves.⁷ In an organization, a code of conduct can help create a committed environment because it not only establishes a solid cultural base for the organization but also assists in the enforcement and implementation of legal, ethical policies and procedures for all types of decision-making.⁸

In politics, a code of conduct serves a different purpose because it is normally a voluntary agreement on the rules and behaviours of the political parties and their supporters during the election campaign. The main objectives of this code in politics are to ensure all the political parties agree and obey the rules during elections and increase the trust in the electoral process, especially in transitional countries where the rule of law is not yet established and trusted.⁹ To be said, a code of conduct is intended to act as a potential tool that goes beyond the legal range of political choice that should be treated as a standard guideline for every political party regardless of their associations and choices.

The terms “Code of Conduct” and “Code of Ethics” are often used interchangeably, contributing to the misunderstanding about their goals and practices, as well as how their effectiveness should be evaluated. A Code of conduct is a legal document that aims to restrict, prevent or detect specific types of behaviours, whereas a code of ethics is a document that focuses on the ideals, beliefs and norms that should guide the behaviour of a person in carrying out their roles and responsibilities in the organization. Simply put, a code of conduct is used to address specific behaviours, whereas ethics provides a broader perspective and direction for organisational decision-making.¹⁰

7 See <<https://www.delta-net.com/compliance/code-of-conduct/faqs/why-is-a-code-of-conduct-important>> accessed 11 November 2021.

8 S. Mintz, ‘Using a Code of Conduct to Build Trust in the Workplace’ <<https://www.workplaceethicsadvice.com/2011/10/using-a-code-of-conduct-to-build-trust-in-the-workplace.html>> accessed 12 November 2021.

9 International IDEA, *Code of Conduct for Political Parties: Campaigning in Democratic Elections* (1st edn, Slovenia, Studio Signum, 1999) <<https://www.idea.int/publications/catalogue/code-conduct-political-parties-campaigning-democratic-elections>> accessed 12 November 2021.

10 P.G. Thomas, *A Code of Ethics or Code of Conduct for Political Parties as a Potential Tool to Strengthen Electoral Democracy in Canada: Discussion Paper on the Advantages and Disadvantages of a Code* (Canada, Elections Canada, 2014).

Malaysia's Political Representation Gap

Malaysia Gender Gap Index (MGGI) measures the gap between women and men in four areas: economic participation and opportunity, education attainment, health and survival, and political empowerment. A score of 1.0 (100%) indicates that gender equality has been achieved.

Table 1. Malaysia Gender Gap Index (MGGI), 2017 – 2019

Sub-index	2017	2018	2019
Economic participation and opportunity	0.726	0.727	0.717
Education attainment	1.040	1.054	1.053
Health and survival	0.961	0.958	0.958
Political empowerment	0.061	0.106	0.108
MGGI score	0.697	0.711	0.709

Source: Department of Statistics (2020)

Based on the data provided by DOSM in 2020, women surpassed men in the Education attainment domain with a score of 1.053 in 2019, albeit with a slight decrease from the previous year's score, 1.054 in 2018. Next, the Health and Survival domain recorded 0.958 in 2019, which remains consistent with the previous year. Following that is the Economic participation and opportunity, which recorded a score of 0.717. Generally, women's labour force participation rates for developed countries should exceed 60.0%, whereas Malaysia has yet to achieve the recommended rate; of 56% in 2019.¹¹ Out of the four domains, political empowerment recorded the lowest score at 0.108 in 2019, indicating that women were still lagging in the Ministerial, Parliament and State Elected Representatives (DUN) positions. The overall score for the MGGI score in 2019 is 0.709. This score ranked Malaysia 73rd globally, a drop of ten places compared to 2018; Malaysia ranked 63rd with a score of 0.7111. In the Global Gender Gap Report, Malaysia was ranked 104th in 2020 (out of 153 countries), with an overall score of 0.677, dropping three places from 2019.¹²

¹¹ See <https://www.dosm.gov.my/v1/index.php?r=column/cthemeByCat&cat=444&bul_id=QlliTUxPQnhrR2tVa2kyOFpkWmhaZz09&menu_id=L0pheU43NWJwRWVSZklWdzQ4TlhUUT09> accessed 12 November 2021.

¹² World Economic Forum, *Insight Report: Global Gender Gap Report 2020* (Geneva, World Economic Forum, 2020) 8-13.

One of the reasons that contributed to Malaysia being low in the gender gap assessment was due to the low number of women in the Malaysian Parliament, and this figure was also significantly lower than their regional counterparts.¹³ In 2019, the number of women Members of Parliament (MPs) equaled 14.9% of the *Dewan Rakyat* seats, five female ministers (17.8%), four female Deputy Prime Ministers (14.8%) and nine women in the cabinet (16.4%).¹⁴ In conclusion, Malaysia has yet to reach the target of women's political representation of 30.0%.¹⁵ Additionally, the female candidacy rate in Malaysia's election remains low, although there is an increasing pattern from 8.0% in the 13th general election to 11.0% in the 14th general election.¹⁶ However, the lack of women's representation in politics, despite women making up 48.5% of the total population in Malaysia, indicates the existence of gender gap issues in the politics of Malaysia.¹⁷

The age gap is also one of the issues that is often related to political representation in Malaysia. Malaysians aged 40 and below account for more than 60% of the overall population, yet the majority of elected representatives in the *Dewan Rakyat* are over 50 years old. According to current data, the average age of *Dewan Rakyat* MPs is 55.89, with only 18.02% of the MPs aged 45 and under.¹⁸ This is significantly important because it tackles the age gap in Malaysian politics and the need for more youth members. One of the initiatives coming from the government's Youth Transformation Laboratory 2010 was the Malaysian Youth Parliament, or "*Parlimen Belia Malaysia*" (PBM), which was meant to act as a safe space and platform for Malaysian youth to showcase their ability. Despite this initiative, the youth in PBM faced numerous challenges that

13 S.J.S. Liu, 'Gender Gaps in Political Participation in Asia' (2020) *International Political Science Review* 6-14 <<https://doi.org/10.1177%2F0192512120935517>>.

14 See <https://data.ipu.org/node/103/data-on-women?chamber_id=13454> accessed 12 November 2021.

15 See <<https://www.kpwkm.gov.my/kpwkm/index.php?r=portal/about2&articleid=TWNLFIOU0dxSIZqbjR3cUozWGJKdz09&id=b0J5ZFBERFhsalo2U05TWk1nSzVDQT09>> accessed 12 November 2021.

16 P.J. Yeong, 'How Women Matter: Gender Representation in Malaysia's 14th General Election' (2018) 107(6) *The Round Table* 771 <<https://doi.org/10.1080/00358533.2018.1545943>>.

17 See <https://www.dosm.gov.my/v1/index.php?r=column/cthemeByCat&cat=155&bul_id=OVByWjg5YkQ3MWFZRTN5bDJiaEVhZz09&menu_id=L0pheU43NWJwRWVSZklWdzQ4TlhUUT09> accessed 12 November 2021.

18 See <https://data.ipu.org/node/103/data-on-youth?chamber_id=13454> accessed 12 November 2021.

hampered the program's effectiveness, including a lack of funds to carry out any program, a lack of youth representatives in Malaysia's political scene, a lack of awareness about the PBM, and negative responses from adults.¹⁹ Negative perceptions from the adults on the capabilities of the youth as leaders and the view that politics are only for older and more experienced persons will leave the youth feeling discouraged and hence not motivated to get involved in politics. It is important to acknowledge the experience and knowledge of the older section of society; however, at the same time, acknowledgment of the youth's contribution is also needed to further encourage their participation in politics.

Case study of Behaviour/ Conduct Issues among Parliament Members during Dewan Rakyat session

Below were some behaviour/conduct issues involving MPs during *Dewan Rakyat* sessions which were reported in the Malaysian media:

1. Racist remarks

During the *Dewan Rakyat* session, a few cases of misbehaviour/misconduct involving parliament members were obviously linked to racial statements. In one instance, one MP made a disparaging remark about another MP's skin colour.²⁰ It is wrong for the MPs to touch on this sensitive issue, especially since it is clear and definite racism.

2. Sexist remarks

In reference to a particular woman MP, one MP infamously alluded to women's menstrual cycle, calling it a "leak". Even after 10 years since the incident, the media still sensationalizes the behaviour of this MP.²¹

3. Immature remarks

The MPs have shown a lack of respect for youth and minority groups. A recent case involved an MP who made a remark belittling another MP in relation to his age.²² Media reports on this incident led to further public disappointment with the behaviour of MPs.

¹⁹ M.U.M. Sani and S. Saad, 'Pelaksanaan dan Cabaran Penglibatan Belia dalam Parlimen Belia Malaysia' (2018) 13(1) *Journal of Social Sciences and Humanities* 1.

²⁰ DR Deb 13 July 2020, Bil. 2, 75.

²¹ DR Deb 9 May 2007, Bil. 5.

²² DR Deb 13 July 2020, Bil. 2, 41.

The Dewan Rakyat Standing Order contains points on impolite language (rude) or sexist statements. Standing Order 36(4) touches on two important aspects: the use of impolite (rude) language or sexist remarks in Parliament. MPs are not allowed to make any immature or malicious remarks that can be considered *un-parliamentary language*.²³ Good behaviour/conduct is very important to enable constructive debates during Parliament sessions. Usually, all these misconducts happened when MPs attacked each other personally, either using words or through their behaviour. Although clearly stated in the Standing Order, the fact that misconduct of the MPs happens regularly indicates the lack of understanding and awareness of the Standing Order itself.

In addition, members of parliament are generally immune from civil and criminal liability for any statements made or actions taken during the Parliamentary proceedings.²⁴ In parliamentary terminology, the word “privilege” refers to such privileges and immunities enjoyed by both the House of Parliament and its Committees collectively. Sometimes, it can be described as the amount of the unique privileges enjoyed by each House individually and collectively as a constituent part of the parliament.²⁵ The main purpose of having this privilege is to allow each House and its representatives to carry out their responsibilities effectively without any interference from anyone outside of the parliament and protect their independence and authority.²⁶

In Malaysia, the privilege is defined in Sections 3 and 7 of the Houses of Parliament (Privileges and Powers) Act 1952,²⁷ which is explained below:

1. Freedom of speech and debate

There shall be freedom of speech and debate or proceedings in the House and such freedom of speech and debate or proceedings shall not be liable to be impeached or questioned in any court or tribunal out of the House.

23 Standing Orders of the Dewan Rakyat, SO 36(5) & 36(6).

24 See <<https://www.parlimen.gov.my/fungsi.html?uweb=p&lang=en>> accessed 13 November 2021.

25 A. Masum, ‘Parliamentary Privilege and its Practice in Malaysia: An Overview’ (2012) 2 *Malayan Law Journal* 100.

26 H. Hassan, ‘Parliamentary Privilege, Convention, Tradition and Practice’ *Malay Mail* (1 June 2020) <<https://www.malaymail.com/news/what-you-think/2020/06/01/parliamentary-privilege-convention-tradition-and-practice-hafiz-hassan/1871209>> accessed 13 November 2021.

27 See <<https://www.parlimen.gov.my/kemudahan-ahli.html?uweb=dr&>> accessed 13 November 2021.

This means that a court will not be able to bring anything stated by MPs in Parliament into question (such as the High Court or the Federal Court). Expanding on this point, the courts will be unable to intervene if one MP chooses to hurl insults or harsh remarks at another MP.

2. Immunity of members from civil or criminal proceedings for anything done or said before the House

No member shall be liable to any civil or criminal proceedings, arrest, imprisonment, or damages by reason of any matter or things which he may have brought by petition, bill, resolution, motion, or otherwise, or have said before the House or any committees.

This ensures that MPs cannot be punished or penalised for activities like introducing motions (proposing new laws or amending current laws) or making contentious statements. In terms of where and when these privileges or immunities are accessible, it is evident that they are only available to MPs while parliament is in session.

Thus, in hope with these parliamentary privileges, MPs should carry out their duties as representatives for the public without fear of a lawsuit or any interruption from anyone, but it is not an excuse to justify any bad conduct/behaviour during the sessions. However, it is also important to address how much this privilege could affect the way the conduct/ behaviour of MPs during the sessions, as it could be an excuse to behave inappropriately and a ticket to escape punishment, or it could truly help the MPs to carry out their duties effectively.

Currently, most of the MPs only need to apologise for their misconduct, as reported in the media. There have been a few cases of MPs being suspended from *Dewan Rakyat*: but the majority of these cases result in only a warning from the Speaker of *Dewan Rakyat* as redress. This begs the question - how effective is this action in terms of preventing future bad conduct/behaviour of MPs? In the context of these MPs' misconduct, it is critical to discuss the role of the Speaker of the *Dewan Rakyat* as the one that holds the responsibility of controlling the house.

Methodology

In order to gain a holistic perspective, this study applied a mixed research design. Mixed method research will help to get a better understanding of the connections or contradictions between qualitative and quantitative data and will allow us to answer the research problem in a more

comprehensive way.²⁸ This study used a quantitative approach in the first phase and a qualitative approach in the second phase of the study. An online public survey for Malaysians aged 18 years and above across Malaysia was conducted in the first phase. The aim of this survey was to reach out to a broad segment of the Malaysian population to gather public opinions on behaviour/conduct issues among MPs during sessions. The rationale for conducting an online survey was due to Covid-19 and the movement control order (MCO) because of the pandemic. Importantly, the online survey was a more cost-effective study and could be conducted in a short period of time.²⁹ Thus, considering all the factors, this study decided to use an online survey method to collect the quantitative data of the study.

A set of questionnaires was prepared using an online form for the public to access and answer the questions. The questionnaire is divided into two sections; Section 1: Personal and background information, and Section 2: Knowledge, attitude and public perception of MPs' behaviour/ conduct during the *Dewan Rakyat* sessions. The Google form was available in dual languages; Malay and English. Before the survey was conducted, a pre-test was carried out among 30 respondents with similar characteristics; Malaysians aged 18 years and above. To reduce bias, these 30 respondents were selected using purposive sampling and comprised of All Women's Action Society (AWAM) Exco Members, AWAM staff, Exco members of partner NGOs and a selection of people from the public within AWAM's community.³⁰ All 30 respondents were excluded from the actual data collection.

The survey was conducted from 18th June to 18th July 2021 through a social media campaign³¹ and direct engagement.³² The survey continued

28 S. Almalki, 'Integrating Quantitative and Qualitative Data in Mixed Methods Research - Challenges and Benefits' (2016) 5(3) *Journal of Education and Learning* 291 <<http://dx.doi.org/10.5539/jel.v5n3p288>>.

29 M.S.D.P. Nayak and K.A. Narayan, 'Strengths and Weaknesses of Online Surveys' (2019) 24(5) *IOSR Journal of Humanities and Social Sciences* 31 <10.9790/0837-2405053138>.

30 Information and feedback from each member were collected including their understanding of the questions, duration to complete the survey and any further improvement before the actual survey was conducted.

31 Link for the google form to access the public online survey was shared through various social media platforms: Instagram, Twitter, Facebook and Whatsapp.

32 Engagement with other Civil Society Organisations (CSOs) and selected Members of Parliament through voluntary participation were done to engage the survey with the public.

until 30th July 2021 as AWAM collaborated with Cent-GPS and gathered a total of 1071 survey respondents.³³ All data obtained for the public online survey was analysed using the IBM SPSS version 23. For Likert scale questions, internal consistency was determined by Cronbach's alpha. The Shapiro-Wilk and Kolmogorov-Smirnov tests were used to determine the normality of the data ($p>0.05$ indicates that the data were normally distributed). The descriptive data was presented as percentages and frequencies for the categorical variables, while means and standard deviations were used for continuous data.

In the second phase of the study, semi-structured interviews were conducted with a group of MPs that aimed to identify and understand these issues from their perspectives. These semi-structured interviews involved MPs from different political parties for a diverse range of information. Semi-structured interviews are one of the most common methods used in qualitative research. This method usually entails a discussion between the researcher and the respondents, which is guided by a flexible interview protocol and supported by follow-up questions, probes and comments. It will help the researcher collect open-ended data and explore the respondents' thoughts, feelings and opinions about the topic.³⁴ Thus, in the second phase, this study attempted to explore MPs' views and opinions about the behaviour/conduct of MPs during the *Dewan Rakyat* sessions. MPs were invited to participate in this interview and given information sheets and consent forms prior to the interview sessions. Participation was entirely voluntary, and they had the right to withdraw from the study at any point.

The interviews were conducted in three separate sessions with a total of six MPs; they were the elected representatives and served as active MPs in *Dewan Rakyat*. All of the sessions were conducted online using the Zoom application in three different sessions, considering the movement restrictions imposed by the current situation of the COVID-19 pandemic and the availability of the MPs. The sessions were video and audio recorded as well as transcribed. The average length of each session was about one hour, and respondents were allowed to speak freely in English and Malay. A set of questions were carefully formulated

33 Cent-GPS or The Centre for Governance and Political Studies is a KL based political science and social behavioural research firm specializing in both quantitative and qualitative research.

34 W.C. Adams, 'Conducting Semi-structured Interviews' in K.E. Newcomer and others (eds), *Handbook of Practical Program Evaluation* (4th edn, Jossey Bass, 2015).

after conducting the public online survey to gain a viewpoint on their perception of the behaviour and conduct of MPs during a Parliament proceeding in *Dewan Rakyat*.

The transcripts that were recorded verbatim were verified by the respondents to ensure the trustworthiness of the data. Researchers considered using the inductive approach by analyzing the data to obtain emerging themes.³⁵ The verified transcripts were then analysed by using the six-phase guide method for conducting the thematic analysis; 1) Becoming familiar with the data; 2) generating initial codes; 3) Search for themes; 4) Review themes; 5) Define themes; 6) Write-up.³⁶

Results and Discussion

Phase 1: Quantitative approach: Public Online Survey

Demographic and Socioeconomic Background

68.3% of 1071 respondents from the public online survey were from the age group of 18 to 29 years old, with a mean age of 28.7 ± 10.3 years, indicating responses collected from this study were mostly from the perspectives of the younger generation (Table 2). As mentioned, this study was conducted using a web-survey method in which a Google form was created, and respondents could complete the questionnaire at their convenience by using different platforms such as computers and mobile devices.³⁷ However, the obvious drawback of using this method was the accessibility and familiarity of using the internet for certain populations. Generally, young people are the most frequent users than older people, which explains the higher proportion of younger age groups in the present study.³⁸

The majority of the respondents in this study were women (57.0%), and Malays constituted 55.2% of the overall respondents (Table 2). The distribution of respondents based on ethnicity was consistent with data provided by DOSM, in which the major ethnic group composition

-
- 35 M. Saunders and others, *Research Methods for Business Students* (5th edn, England, Prentice Hall, 2009).
- 36 V. Braun and V. Clarke, 'Using Thematic Analysis in Psychology' (2006) 3(2) *Qualitative Research in Psychology* 77 <<http://dx.doi.org/10.1191/1478088706qp063oa>>.
- 37 M.P. Couper and P.V. Miller, 'Web Survey Methods: Introduction' (2008) 72(5) *Public Opinion Quarterly* 832 <<https://doi.org/10.1093/poq/nfn066>>.
- 38 T.H. Shih and X. Fan, 'Comparing Response Rates from Web and Mail Surveys: A Meta-Analysis' (2008) 20(3) *Field Methods* 249 <<http://dx.doi.org/10.1177/1525822X08317085>>.

in Malaysia is *bumiputera* which consists of Malays, Orang Asli, the ethnicity groups of Sarawak and Sabah (69.6%).³⁹ The educational level of respondents was higher, with 1.4% having completed secondary school, 7.8% having completed matriculation/form 6 (STPM) level and the majority (90.8%) either already having completed or receiving their tertiary education; college or university. Malaysia's adult illiteracy rate decreased steadily from 16.1% in 1990 to 4.2% in 2012.⁴⁰ Overall, there was an improvement in educational attainment in Malaysia, which thus explained the probability those respondent in the present study had a higher awareness of the importance of education to create better employment opportunities and directly improve their living status.⁴¹

Most of the respondents (43.3%) worked in the private sector, while 35.3% were students, which is consistent with the distribution of the age group as the majority of the respondents were those aged 18 - 29 years old. The current study reported a higher employment status; 58.5% were employed in the public sector, private sector and self-employed. As mentioned, the education level of the respondents was higher and consistent with the employment status of the respondents in this study. Briefly, higher educational levels helped to create better opportunities for employment and perhaps explained the higher employment rate in this current study.⁴²

Income classification of the respondents was based on the Household Income and Basic Amenities Survey Report (2019) by DOSM.⁴³ More than half of the respondents (80.2%) were categorized in the B40 group with a monthly income below RM 4,850, 14.8% in the M40 group with an income ranging from RM 4,850 to RM 10,960 and the remaining 5.0% were in the T20 group; which is the highest group drawing monthly

39 See <https://www.dosm.gov.my/v1/index.php?r=column/cthemeByCat&cat=155&bul_id=OVByWjg5YkQ3MWFZRTN5bDJiaEVhZz09&menu_id=L0pheU43NWJwRWVSZklWdzQ4TlhUUT09> accessed 12 November 2021

40 See <<https://www.ilmia.gov.my/index.php/en/dashboard-datamart/kilm/indicators/item/education-attainment-illiteracy>> accessed 22 November 2021.

41 N.K.H. Singh, W.S. Lai and M.N.M. Saukani, 'Impact of Education Levels on Economic Growth in Malaysia: A Gender Base Analysis' (2018) 14(4) *Malaysian Journal of Society and Space* 13 <<https://ejournal.ukm.my/gmjss/article/view/23419>>

42 W.S. Lai and I. Yussof, 'Impact of Higher Education on Income and Economic Growth: A Cross Country Evidence' (2018) 52(2) *Jurnal Ekonomi Malaysia* 189 <https://www.ukm.my/jem/wp-content/uploads/2021/06/jeko_522-15.pdf>.

43 See <https://www.dosm.gov.my/v1/index.php?r=column/cthemeByCat&cat=120&bul_id=TU00TmRhQ1N5TUxHVWN0T2VjbXJYZz09&menu_id=amVoWU54UTl0a21NWmdhMjFMMWcyZz09> accessed 22 November 2021.

incomes above RM 10,960. However, due to the outbreak of the Covid-19 pandemic, many households experienced a decline in their monthly income and have seen households with higher income groups shifting to the lower-income group.⁴⁴

Table 2. Distribution of Respondents Based on Demographic Characteristics (n=1071)

Variables	n (%)	Mean±SD
Age (years)		28.7 ± 10.3
18 – 29	732 (68.3)	
30 – 39	198 (18.5)	
40 – 49	79 (7.4)	
50 - 59	36 (3.4)	
≥60	26 (2.4)	
Gender		
Male	435 (40.6)	
Female	611 (57.0)	
Prefer not to disclose	25 (2.3)	
Ethnicity		
Malay	591 (55.2)	
Indian	290 (27.1)	
Chinese	125 (11.7)	
Ethnicity of Sarawak	8 (0.8)	
Ethnicity of Sabah	6 (0.6)	
Others	51 (4.8)	
Marital status		
Single	767 (71.6)	
Married	270 (25.2)	
Others ¹	34 (3.2)	

⁴⁴ See <https://www.dosm.gov.my/v1/index.php?r=column/cthemeByCat&cat=493&bul_id=VTNHRkdiZkFzenBNd1Y1dmg2UUlrZz09&menu_id=amVoWU54UTl0a21NWmdhMjFMMWcyZz09> accessed 22 November 2021.

Variables	n (%)	Mean±SD
Level of Education		
Secondary school	15 (1.4)	
Matriculation/ Form 6 (STPM)	84 (7.8)	
College/ University	972 (90.8)	
Occupation		
Public sectors	94 (8.8)	
Private sectors	464 (43.3)	
Self-employed	57 (5.3)	
Not-employed ²	66 (6.2)	
Students	378 (35.3)	
Retiree	12 (1.1)	
Household monthly income (RM)³		
B40 (<RM4850)	859 (80.2)	
M40 (RM 4850 – RM 10960)	158 (14.8)	
T20 (>RM 10960)	54 (5.0)	

¹Others: divorced, widowed and separated (World Marriage Data, 2008); ²Not-employed included housewives; ³Income classification based on Household Income and Basic Amenities Survey Report (2019)

Knowledge about Dewan Rakyat and the behaviour/conduct amongst Members of Parliament during Dewan Rakyat sessions

Seven questions regarding respondents' knowledge of *Dewan Rakyat* and the behaviour/conduct of MPs during *Dewan Rakyat* sessions were asked (Table 3). Overall, the majority of the respondents were able to answer all the questions correctly and categorized as having higher knowledge of these issues. There was no prior study that could be used as baseline data in comparing the level of public knowledge about *Dewan Rakyat* and its role. As discussed previously, higher knowledge about these issues may be linked to the higher educational levels and higher accessibility to the internet among the respondents that enabled them to learn and obtain information via online. The Internet is widely used as a learning

tool for enhancing knowledge and skills.⁴⁵ However, it is also important to address the possibility of receiving incorrect information, thus, it was not solely guaranteed that respondents have an understanding of *Dewan Rakyat* and its role, despite the current study reporting higher knowledge among respondents.⁴⁶

Table 3. Respondents' knowledge about *Dewan Rakyat* and the behaviour/conduct amongst Members of Parliament during *Dewan Rakyat* sessions (n=1071)

No.	Questions	n (%)	
		Yes	No
1.	Have you ever heard of the <i>Dewan Rakyat</i> in the Parliament?	1038 (96.9)	33 (3.1)
2.	Do you know the role of <i>Dewan Rakyat</i> ?	983 (91.8)	88 (8.2)
3.	Have you ever followed/watched any <i>Dewan Rakyat</i> sessions? (even if you have watched only parts of the session, you may answer Yes)	920 (85.9)	151 (14.1)
4.	Are you aware of the existence of misconduct among Members of Parliament during <i>Dewan Rakyat</i> sessions?	957 (89.4)	113 (10.6)
5.	In your opinion, do the Members of Parliaments in <i>Dewan Rakyat</i> conduct themselves respectfully during the <i>Dewan Rakyat</i> sessions?	60 (5.6)	1011 (94.4)
6.	As a Malaysian citizen, are you satisfied with the standards of behaviour/conduct of Members of Parliament in the <i>Dewan Rakyat</i> ?	9 (0.8)	1062 (99.2)
7.	Are you aware of the discrimination faced by women, youth and minorities Members of Parliament in the <i>Dewan Rakyat</i> ?	885 (82.6)	186 (17.4)

⁴⁵ E. Papanis, P. Giavrimis and E.M. Papani, 'The Contribution Of The Internet Into Learning' (2010) 2(1) *Review of European Studies* 54.

⁴⁶ F.P.B. Mota and I. Cilento, 'Competence For Internet Use: Integrating Knowledge, Skills, And Attitudes' (2020) 1 *Computers and Education Open* <<http://dx.doi.org/10.1016/j.caeo.2020.100015>>.

Mean ± SD	6.40 ±1.09
Overall Score of Knowledge Status	n (%)
Low (0-4)	76 (7.1)
High (≥ 5)	995 (92.9)
Min – Max	1 – 7

Table 4 shows the distribution of respondents' answers to four open-ended questions that were asked subsequently in the knowledge domain (Table 3). All of these short questions mainly revolved around assessing the respondent's initial views on the conduct/behaviour of MPs during *Dewan Rakyat* sessions and their ability to give examples of misconduct and discrimination faced by MPs who are women, youth and minority groups. About 85.9% of the respondents shared that they have followed or watched at least one session of the *Dewan Rakyat*. As a result, the majority of respondents provide varied yet consistent responses based on their initial assessment of the situation in *Dewan Rakyat*. Out of all the responses, three main points can be discussed; unprofessional behaviour, behaviour/conduct issues and Speaker of *Dewan Rakyat*.

Respondents mainly expressed their disappointment over the lack of good debating skills, such as being ill-prepared without proper facts to support their contention during debates, in addition to irrelevant topics and subjects, unnecessary bickering, shouting and fighting with each other during the sessions.⁴⁷ However, as the sessions can be watched live through various platforms, there was a higher possibility that the media would only highlight the unsavoury exchanges or incidents that served to sensationalise the sessions further to attract the public's interest. For example, various short video clips were circulated on social media like Twitter, Facebook and YouTube and the fact that these short videos were widely shared instead of the full session can deepen the public's distrust and misunderstanding of the sittings in *Dewan Rakyat*.

⁴⁷ Z. Manzor, 'Dewan Rakyat: Ramai Kesal Jadi Tempat Bergaduh' *Kosmo* (27 July 2021) <<https://www.kosmo.com.my/2021/07/27/dewan-rakyat-ramai-kesal-jadi-tempat-bergaduh/>> accessed 22 November 2021; A.Tarmizi, 'YB, Tolonglah Jaga Adab Ketika Berbahas' *Sinar Harian* (29 July 2021) <<https://www.sinarharian.com.my/article/152535/SUARA-SINAR/Analisis-Sinar/YB-tolonglah-jaga-adab-ketikaberbahas>> accessed 22 November 2021.

Table 4. Distribution of responses on knowledge about *Dewan Rakyat* and the behaviour/ conduct amongst Members of Parliament during *Dewan Rakyat* sessions

No.	Question	Responses
1.	If yes to question 3, what is your initial opinion on the behaviour/conduct of Members of Parliament during the <i>Dewan Rakyat</i> sessions?	<p>i. Unprofessional behaviours</p> <ul style="list-style-type: none"> • Failed to use parliament as a medium for them to express/ debate on the real issues for public – personal and political aspects. • Low quality of debating skills – failed to prepare proper data/ facts/ points to back up their point during debating. • Bring up irrelevant topics/ subjects – debates usually revolve about personal attacks, unnecessary bickering and shouting with rude words. • There is no listening involved – interrupted with each other and too many mixed opinions. <p>ii. Behaviour/conduct</p> <ul style="list-style-type: none"> • Racist remarks • Sexist remarks • Rude languages/ words – swearing • No respect between each other – shouting, fighting, body shaming, name-calling <p>iii. Speaker of <i>Dewan Rakyat</i></p> <ul style="list-style-type: none"> • Not neutral – unfair and biased • Disrespect of speakers during the session – especially women speakers • Speaker of <i>Dewan Rakyat</i> failed to play his role as he should – give the opportunity to the Members of Parliament to act recklessly during the sessions

No.	Question	Responses
2.	If No to question 5, can you give an example of misconduct by any Members of Parliament during <i>Dewan Rakyat</i> sessions?	i. Racist remarks <ul style="list-style-type: none">• Touch on sensitive issues – skin colours ii. Sexist remarks <ul style="list-style-type: none">• Dirty jokes• Insulted other MP's name• Made jokes about women iii. Disrespectful attitude of the <i>Dewan Rakyat</i> Speaker iv. Unethical attitudes <ul style="list-style-type: none">• 'Vaping' during the session• Interrupt others – shouting and fighting v. Rude languages/ words vi. Disrespectful of young MPs vii. Disrespectful of women MPs
3.	If yes to question 6, please state your reason (s).	–
4.	If yes to question 7, can you give examples of acts/behaviours that you consider to be discrimination against women, youth and minorities Members of Parliament in <i>Dewan Rakyat</i> ?	i. Age discrimination <ul style="list-style-type: none">• Opinion from young MPs were often belittled – deemed too young to give their opinion and express their stand ii. Racist remarks <ul style="list-style-type: none">• Not respecting cultural differences• Being insensitive – skin colour, name-calling with rude words iii. Sexist remarks <ul style="list-style-type: none">• Opinion from women MPs were often belittled/ usually rejected – deemed women too emotional to express their rationale opinion• Unfair treatment – less time to talks/ debates• Women's issues are not a priority iv. OKU discrimination <ul style="list-style-type: none">• Insensitive toward this group• Lack of issues/ policy pertaining to this group v. Lack of women and youth representatives in Parliament

¹ Refer to Table 3 for the question

More than half of the respondents (89.4%) were aware of the existence of misconduct by the MPs and discrimination faced by MPs who are women, youth and minority groups (82.6%) (Table 3). These findings confirmed the public's increased awareness of MPs' behaviour/conduct during sessions. Overall, more than 90.0% of the respondents' believed MPs were unable to conduct themselves respectfully and expressed their dissatisfaction with the standard of behaviour shown during the *Dewan Rakyat* sessions. Consistently, racist and sexist remarks uttered by certain MPs during the sessions formed the highest number of MP misconduct by MPs from the survey. Racist and sexist remarks are referred to as un-parliamentary language that is strictly prohibited and clearly stated in the current Standing Orders of the *Dewan Rakyat*, Standing Order 36(4) indicated the lackadaisical attitude of MPs to familiarise themselves with the Standing Order.⁴⁸

It is important for MPs to display good behaviour and strictly refrain themselves from making any racist or sexist statements, especially during *Dewan Rakyat* sessions. It was utterly astonishing how a racist remark made by an MP was taken lightly during the session and had not evoked any public outcry.⁴⁹ In a country with multi-diverse ethnic groups, it is important for us to always respect cultural differences and be aware of sensitive issues like skin colour.⁵⁰ The lack of women and youth representatives in the Parliament was one of the main concerns expressed by the respondents, especially seeing some misconduct by the MPs clearly expressed towards these groups. Respondents were clearly disappointed with the discrimination against younger MPs in the past sittings.⁵¹ It clearly showed disrespect towards the younger generation when the elder MPs, without any shame or guilt, mocked them, despite them being elected representatives and carrying the same responsibility.

Malaysian youth are more politically aware today than in the past, with a growing desire to participate in and contribute to the political scene as much as possible. For instance, the establishment of the Malaysian United Democratic Alliance (MUDA) - a new political party consisting of young people, and the rise of social movements such as *Undi18* proved the increasing interest of the younger population in being involved in

48 Standing Orders of the Dewan Rakyat, SO 36(4).

49 S. Suyi, 'LETTER | Put Racists To Shame' *Malaysiakini* (16 July 2020) <<https://www.malaysiakini.com/letters/534720>> accessed 22 November 2021.

50 DR Deb 13 July 2020, Bil.2, 75.

51 *ibid.* 41.

politics and the decision-making process.⁵² A party led by young people will help to set the platform for them to have the opportunity to contest in the next election and possibly increase their chances of being elected as the people's representatives in Parliament. A new set of fresh ideas and energy from the youth would benefit Malaysia's democratic processes as a whole; however, it lacks a platform to channel and express these ideas.

The Speaker of *Dewan Rakyat* holds the biggest responsibilities, including maintaining the order of the House, ensuring the discussions are relevant and focused, and enforcing the Standing Order in the event of a disagreement.⁵³ The Standing Order grants the Speaker full authority, and any decision or ruling by the Speaker is final, and the Speaker chairs all four standing Committees – House Committee, Standing Orders Committee, Committee of Privileges and Committee of Selection (The Standing Committee). Above all, the important key aspect of a Speaker of the *Dewan Rakyat* is impartiality and non-partisan in his/her action. However, findings from the current study believed there was inequality shown by the Speaker. When the Speaker of *Dewan Rakyat* failed to ensure all the MPs obeyed the Standing Order, it led to reckless behaviour and misconduct during the sessions.

Attitudes of respondents on the behaviour/conduct of Members of Parliament during Dewan Rakyat sessions

A total of four statements were made in assessing the attitudes of respondents on the behaviour/conduct of MPs during *Dewan Rakyat* sessions by using the four Likert-scale responses (Table 5). The majority of the respondents (80.0% to 90.0%) strongly agree and agree across all four statements.

More than half of the respondents (85.0%) believed the behaviour/conduct issues among MPs greatly influenced the participation of women, youth and minority groups in Parliament. In 2021, the fact that the women composed of 15.9 million or 48.6%⁵⁴ of the total Malaysian

52 F. Zaidi, 'An Emergence of Youth Participation in Malaysian Politics' IDEAS (25 August 2021) <<https://www.ideas.org.my/an-emergence-of-youth-participation-in-malaysian-politics/>> accessed 22 November 2021.

53 See <<https://www.parlimen.gov.my/yang-di-pertua.html?uweb=dr&lang=en>> accessed 22 November 2021.

54 See <https://www.dosm.gov.my/v1/index.php?r=column/cthemeByCat&cat=155&bul_id=OVByWjg5YkQ3MWFZRTN5bDJiaEVhZz09&menu_id=L0pheU43NWJwRWVSZklWdzQ4TlhUUT09> accessed 12 November 2021.

population argues the proposition for more women representatives in politics and decision-making positions. Despite the increasing interest of the youth population in political aspects, currently, there is largely a lack of youth representatives in politics and Parliament. Despite the government's numerous initiatives, such as *Parlimen Belia Malaysia* (PBM), *Parlimen Digital*, and others, there was no discernible impact on the number of youth representatives in *Dewan Rakyat*.

The prevailing stereotype that younger people need to respect the older generation resulted in the youth losing their respect and trust in Malaysia's politics and political establishment. The same situation is observed in women's participation in politics. The misconduct, including sexist remarks and name-calling toward younger MPs, might cause people to view the political culture in Malaysia as toxic and out of bounds for them to actively participate. However, further comprehensive research is required to further understand the relationship between the misconduct of MPs and the lower participation of these groups in politics and decision-making positions.

The majority of the respondents believed that it was critical for each MP to understand their role and responsibility as elected representatives and to consistently improve their standard of conduct in order to maintain their credibility. As government officials elected by Malaysians, their main role is to deliver to public needs and represent people's voices in Parliament. Conversely, an Ipsos survey in 2021 revealed about 63.0% of Malaysians believed politicians in Malaysia have a lack of understanding of the real situation that happened at the grassroots of society.⁵⁵ The dissatisfaction of the public towards Malaysian politicians was primarily because they believed the MPs failed to understand their role, as they clearly failed to deliver the issues of their constituencies during the sittings. All of the misconduct of these MPs would eventually affect the overall ecosystem of politics in Malaysia. As MPs, they should act as a role model to society, displaying a professional set of behaviour as leaders. However, when some MPs recklessly disregarded all of these, it allowed the public to focus more on their misconduct rather than on their capability as an elected leader.

⁵⁵ See <<https://www.ipsos.com/en-my/press-release-fracturing-societies-and-systems>> accessed 22 November 2021.

Table 5. Attitudes of respondents on behaviour/conduct of Members of Parliament during *Dewan Rakyat* sessions (n=1071)

No.	Statements	n (%)			
		Strongly agree	Agree	Disagree	Strongly disagree
1.	The behaviour/conduct issues of Members of Parliament have an influence on the participation of women, youth and minorities in politics.	547 (51.1)	359 (33.5)	99 (9.2)	66 (6.2)
2.	The behaviour/conduct of Members of Parliament in <i>Dewan Rakyat</i> affects the level of public confidence in them	786 (73.4)	214 (20.0)	37 (3.5)	34 (3.2)
3.	It is important for every Member of Parliament in <i>Dewan Rakyat</i> to improve their standards of conduct to ensure their credibility as an elected government official.	923 (86.2)	100 (9.3)	12 (1.1)	36 (3.4)
4.	It is important for every Member of Parliament in the <i>Dewan Rakyat</i> to understand their roles and responsibilities as an elected government official.	905 (84.5)	114 (10.6)	17 (1.6)	35 (3.3)
Mean ±SD		14.48 ± 2.20			
Overall Score of Attitude Status		n (%)			
Low (0 – 8)		37 (3.5)			
High (≥ 9)		1034 (96.5)			
Min – Max		4 – 16			

Perception of respondents on behaviour/conduct of Members of Parliament during Dewan Rakyat sessions

A total of four statements were asked to the respondents to gather their perception of the behaviour/conduct of MPs during *Dewan Rakyat* sessions with four Likert-scale responses (Table 6). The majority of the respondents (72.0%) disagree and strongly disagree with the first statement that touches on the ability of MPs to always be ready to listen

to the public opinion on this issue. The Ipsos survey in 2021 revealed that 70.0% of Malaysians believed Malaysian politicians did not really care about public opinion.⁵⁶ Despite this, the public still believed some MPs were actually able to conduct themselves professionally without creating any irrelevant provocation during the session. To ensure the sessions were productive, MPs should always be prepared with the proper data and facts to hold constructive debates. In the Standing Order, there was a list of orders that explained the rules of debate, including the time and manner of speaking, the contents of the speech, interruptions, scope of debate and many more. As an example, Standing Order 37 explained the rule on interruptions during debating. Thus, if the MPs truly acknowledged and obeyed this Standing Order, a conducive environment could be created during the debates.

More than half of the respondents (85.4%) believed that an action or punishment should be taken against MPs if they commit an act of misconduct. However, despite all the series of misconduct that had already happened and reported in the media, there was no absolute punishment or action taken against the MPs. Most of the misconduct that took place was resolved with the utterance of apologies from the offending MPs. According to Standing Orders 80 and 80(A), the Committee of Rights and Privileges is responsible for conducting an investigation if MPs violate any Standing Order, which is further explained through Standing Order 44(2).⁵⁷ However, through this order, the discretion lies with the Speaker of the House either to suspend the MPs, or close the cases through acknowledgment and apology from the offending MP. Often, when any misconduct happens, the Speaker will issue a warning to the MP. However, opinions were divided on whether the warning by the Speaker was truly being respected by the members of the House.⁵⁸

56 ibid.

57 The Speaker has the power to dismiss any members that commit any misconduct to be suspended for at least 10 days or less and needs to withdraw from the House immediately.

58 I.H. Kamilan and M. Saari, 'Mekanisme Pengawalan Bahasa Kurang Sopan (*Unparliamentary Language*) di dalam Dewan Rakyat: Perspektif Perundangan' (2021) 1 *Journal of the Malaysian Parliament* 98 <<https://journalmmp.parlimen.gov.my/jurnal/index.php/jmp/article/view/33/18>>.

Table 6. Perception of respondents on behaviour/conduct of Members of Parliament during *Dewan Rakyat* sessions (n=1071)

No.	Statements	n (%)			
		Strongly agree	Agree	Disagree	Strongly disagree
1.	Members of Parliament are always ready to listen to public opinion about their behaviour/conduct during <i>Dewan Rakyat</i> sessions.	184 (17.2)	116 (10.8)	443 (41.4)	328 (30.6)
2.	Members of Parliament are able to conduct themselves in a professional manner without any unwanted and/or irrelevant provocation to other members during any <i>Dewan Rakyat</i> sessions.	364 (34.0)	182 (17.0)	292 (27.3)	233 (21.8)
3.	Action/ punishment should be taken against Members of Parliament if they commit acts of misconduct during the <i>Dewan Rakyat</i> sessions.	915 (85.4)	120 (11.2)	15 (1.4)	21 (2.0)
4.	A revamp in <i>Dewan Rakyat</i> is needed to encourage a higher number of Members of Parliament who are women, youth and minorities.	793 (74.0)	220 (20.5)	36 (3.4)	22 (2.1)
Mean ± SD		12.69 ±2.12			
Overall Score of Perception Status		n (%)			
Low (0 – 8)		9 (0.8)			
High (≥9)		1062 (99.2)			
Min – Max		7 – 16			

Phase 2: Qualitative Approach: Semi-structured interview

Parliamentary Reforms

Parliamentary reform was an umbrella term that was used in almost all the questions asked during the interview to describe the current situation that is taking place within the *Dewan Rakyat* and how it can revamp the structure and procedure of conducting business in the House. Over six

codes were assigned to this theme, in which all the respondents mentioned at least one of the descriptors for the umbrella term of Parliamentary reform. Parliamentary reform is an overhaul process of scrutinizing legislation, and according to the Oxford Reference, it covers a variety of proposals for alterations to the composition, power, procedure, and structure of Parliament. Malaysiakini published an online report on 31 August 2021, which claimed that reforms of Parliament in Malaysia are long overdue.⁵⁹

When respondents were asked to give their opinion on the behaviour/conduct among MPs during the *Dewan Rakyat* session, their responses were mostly about the insufficient number of days for Parliament proceedings to discuss issues and the very little time allocated for MPs to raise the issues and speak, which results in MPs interrupting debates in order for them to be heard. A comprehensive reform to allocate more days to convene and discuss issues, as well as allocating more time for MPs to speak, is necessary to ensure that issues are well discussed and debated in a conducive environment. Apart from that, there may be a need to submit issues to the Select Committee for a pre-review before bringing them to the *Dewan Rakyat* for a decision because it will inevitably save a lot of time and avoid interminable and long-drawn proceedings, which can exhaustively adjourn in the wee hours of the morning.

Two of the respondents concurred that when MPs are well prepared and address all inquiries to them, the session becomes automatically more pleasant and conducive for constructive discussions in a civil manner. One respondent was quoted as saying, "*Everybody was okay because he took our questions and was honest and straightforward with us. He gave us what we wanted instead of saying that he will respond with a written answer*"... (translated to English). It was important for MPs to provide reasonable explanations with concrete facts and not to divert or avoid the subject matter of discussion, which is usually deemed important and serious.

Moreover, a salient point that was brought up under this umbrella theme was to retract the statement "*mohon maaf dan tarik balik*" verbatim, which means "I apologize and I retract the statement". This statement, which is found in the Standing Order, grants MPs the leeway to deliberately make an offensive comment and, if found guilty, be acquitted of the offence. As such, this does not prevent MPs from making discriminatory

59 W.M. Tangau, 'MP SPEAKS | What's Next For Parliamentary Reforms?' *Malaysiakini* (31 August 2021) <<https://www.malaysiakini.com/columns/589372>> accessed 22 November 2021.

comments, i.e. sexist, racist, ageist slurs, and name-calling, which have been prevalent, especially during the 14th Parliament sitting. Two out of six respondents suggested that the Speaker is within his rights to take immediate action to punish and impose a minimum fine of RM500.00 on MPs that are convicted rather than wait for the Rights & Privileges Committee to decide after calling for a meeting. This is because although these meetings with this Committee take place in parallel with the Parliament proceeding, it is up to the availability of the Speaker as he chairs those meetings too.

Role of the Speaker

All the respondents delineated the difference between the Standing Order and Parliamentary Immunity, which has grey areas in certain subjects. One of them is not sparing MPs who loosely use discriminatory comments that are destructive to the viewers who follow the live broadcast and also disruptive to the entire session of the House. Most of the respondents suggested that punishment and suspension of offenders be mandatory to prevent this phenomenon from escalating. From the interviews, one respondent said that "*Parliamentary Immunity is actually intended to allow the MPs to raise controversial issues pertaining to misuse of power, corruption ...and that nobody can take legal action against you*" (the MP). And another respondent added that "*However, when you talked about the Standing Order, the sexist remarks, the discriminatory remarks, I think it's about how the way they enhance the rule in Dewan Rakyat and make sure whoever making those remarks they would be punished or they will be suspended in the Dewan Rakyat*".

The Speaker presiding over a *Dewan Rakyat* session should be impartial and enact the Standing Orders when necessary while maintaining the rights and privileges of the MPs. It is imperative that the Speaker remains impartial and just in maintaining the rights and privileges of every MP in the House. It is the duty of the Speaker to identify, acknowledge, and take action promptly when an MP violates the Standing Order. A respondent retorted by describing that complacency among MPs, especially those who have retained their seats for too long, tend to abuse the Parliamentary Immunity privilege more often than others by making these discriminatory comments. "*It's not the Parliamentary Immunity that allows some MPs to behave like that. But I think the number one reason is the complacency because this Government, many of them have been part of the system, spending over more than 20 years being an MP...*" the respondent quipped.

Discriminatory Comments

According to the online public survey, most Malaysians felt that MPs must improve their standards of conduct to ensure their credibility as elected government officials in order to earn the confidence of the people. Among the many examples of acts or behaviours of MPs that the public indicated as misconduct and unprofessional were racist and sexist remarks, age discrimination, disrespectful of the Speaker, disrespectful to women and youth MPs, as well as foul language. These incidents have occurred and repeated over the years because the Speaker did not address them for their actions at the time. There were no severe punishments meted out immediately, and most of the time, the Speaker was seen as biased against the MPs, especially the Opposition. By the time the Rights & Privilege Committee convenes and makes a conclusion to take action on an MP that was found guilty of making the derogatory remark, the session would have been adjourned. As a result, the majority of the respondents agreed that a more non-partisan and honorable Speaker is required in Parliamentary reforms.

While a respondent quoted that "*I think there are various examples such as disrespectful remarks made against my colleagues for sexism and ageism (YB Kasthuri was name called dark and YB Syed Saddiq was name called grandson)*", another quipped "*The Speaker should able to manage the ecosystem in the house*". When the researcher asked for examples of discrimination in Dewan Rakyat, another respondent stated that "*...the Speaker and Deputy Speaker, I think failed to control the Parliament*".

Journalistic Bias

In Malaysia, the entire *Dewan Rakyat* session is broadcast on the TV1 channel on national television. But because of its long sessions, most people tend to watch its highlights on social media platforms such as YouTube and Facebook. This is where media reporting and journalism play a significant role in reporting the unbiased truth of these proceedings. Instead, what is showcased are usually snippets of heated debates and ruckus, which are not only distasteful but do not give the entire narrative, given that it has been edited to increase views and subscribers to their channels on YouTube. This is very impactful as even a person who is not staying abreast with the current political scenario will absolutely be made to believe the misconduct of MPs is unprofessional and loathe the nation's governance.

This vicious cycle has not only caused a public outcry questioning the professionalism of the elected government officials, but they have

lost their confidence in these leaders that represent their constituency. What has made it worse is that these snippets have also made a mockery of the Parliament and its integrity and sanctity. Consequently, this will affect the younger generation, women and minorities to join politics, fearing that they will be ill-treated in Parliament and broadcast on national television.

Thus, when the respondents were asked if they felt the behaviour/conduct of MPs during *Dewan Rakyat* sessions was acceptable or not, a respondent said, "*I think the current angle that you always see is, 1) we have live telecast the whole time, but obviously the (press) picks up the sensational or heated arguments. So, as a result, people would only see the five minutes of the heated argument instead of the 6 – 7 hrs of debates. So, people probably have the impression that all we do during the session is only shout, which is only 5 – 6 mins*". To which another respondent concurred, "*Actually Parliament sitting even though like we only have sitting until 5 or 5:30 pm, during the 5 – 7 hrs, many MPs raised many good and important points as well. But, it's always those heated arguments being highlighted. But I think eventually, when people see the video (online) which showcases us quarrelling and shouting at each other, it makes people feel that Parliament is not a respectable place and then it doesn't inspire them to become politicians or inspire them to get involved in politics*".

In an age where every aspect of our lives revolves around the Internet, the Malaysian press particularly must play a more responsible role as a significant partner in communicating accurate news while maintaining their independence and freedom. This is imperative in a democracy like Malaysia. They must create public awareness by being transparent in reporting government activities, being a source of sound information, and doing thorough investigations before reporting unbiased news. Moreover, it is critical to examine the quality of reporting among the journalist fraternity at present in order to curb the sensationalism that sells. Presenting the information to the public must be within the core principles of journalism; otherwise, it could be detrimental to the progressiveness of the country, whether deliberately or not.

Conclusion, Implications and Recommendation

The conclusion that can be drawn from the findings suggests that unbiased journalism and Parliamentary Reforms must be given due consideration by incorporating the recommendations from the concerns raised by the public as well as the issues highlighted by the MPs. Through the public online survey, although there was higher knowledge of the role of *Dewan*

Rakyat and the issues related to the behaviour/conduct of MPs during the sessions, there was a prominent gap in the public's knowledge and understanding of these issues. The public understanding was a mere basic set of knowledge, which was in contradiction with that of the MPs. By institutionalizing this integrated approach to political reforms collectively, the constitutional rights of every citizen, be it an MP or a layperson, will be protected, thus promoting harmonious living in a multiracial democracy such as Malaysia.

The most prominent strength of this timely project was the fact that it was a two-phase study which utilized both methods, a quantitative followed by a qualitative approach. First, a cross-sectional online survey was conducted in an attempt to obtain data from the general public on their knowledge and perception of the behaviour/conduct of MPs during the *Dewan Rakyat* sessions. Subsequently, a qualitative approach was adopted where semi-structured interviews with MPs from different political parties were performed to identify and determine the issues within the *Dewan Rakyat* through an inductive method; the data obtained were analyzed to define the themes of the case study. To the best knowledge of the researchers, this study is the first attempt to assess the public's opinion on the behaviour/conduct of MPs as well as to identify the issues from the perspective of MPs themselves.

The qualitative approach of this study had the challenge of sourcing a wider pool of respondents. The number of invitations sent out to the MPs for the qualitative approach was limited due to AWAM and Cent-GPS' networking capacity among Malaysian MPs. Out of 15 invitations that were sent out, only six MPs agreed to voluntarily participate. All six are from the Opposition party. Due to this factor, this study takes into account that their responses might have been tainted with bias and must be interpreted with caution so as not to generalize them to all members.

The existing Standing Order is in dire need of being reviewed, revised, and amended by all means necessary to explicitly delineate the rules and regulations of the MPs and Speaker during a *Dewan Rakyat* session. It is, after all, a set of procedural rules that is agreed by the *Dewan Rakyat* to govern the conduct of business within the *Dewan Rakyat*. And therefore, when it comes to imposing penalties and fines as mechanisms to rectify poor conduct, it cannot afford ambiguity. Explicit terminologies and definitions construed as discriminatory comments are warranted in order to ensure a fair and just ruling during sessions. This could significantly improve biased ruling when it comes down to the ruling of the House Speaker.

It is imperative for the *Dewan Rakyat* to re-examine the Standing Order, scrutinize the legislation and make substantial provisions to not only guard its traditional rights and privileges but also its members for effective governance. Taking into account that Malaysia is a developing multiracial democracy, reviewing the relevance of certain terminologies and definitions in a timely fashion is essential. In the last general elections, Malaysia has seen more groups of minorities join politics. Distinct terminologies and definitions for women and youth must be carefully included to ensure nobody is ill-treated during sessions. Imposing fines and suspensions on members convicted of violating the Standing Order must be explicitly described to ensure that members, as well as the Speaker, are made aware and well informed when considering making such a ruling.

References

- '[PRESSRELEASE]-Fracturing Societies And Systems' *Ipsos* (29 July 2021) <<https://www.ipsos.com/en-my/press-release-fracturing-societies-and-systems>> accessed 22 November 2021.
- 'Code of Conduct, Behaviour Standards" WIN - Water Integrity Network (12 April 2019) <<https://www.waterintegritynetwork.net/2015/12/03/code-of-conduct/>> accessed November 10, 2021.
- 'Codes of Conduct for Political Parties' Ace Electoral Knowledge Project <<https://aceproject.org/main/english/ei/eif01a1.htm>> accessed 12 November 2021.
- 'Current Population Estimates, Malaysia 2020' DOSM (15 July 2020) <https://www.dosm.gov.my/v1/index.php?r=column/cthemeByCat&cat=155&bul_id=OVByWjg5YkQ3MWFZRTN5bDJiaEVhZz09&menu_id=L0pheU43NWJwRWVSZklWdzQ4TlhUUT09> accessed 12 November 2021.
- 'Data on Women in National Parliament' Parline: the IPU's Open Data Platform <https://data.ipu.org/node/103/data-on-women?chamber_id=13454> accessed 12 November 2021.
- 'Data on Youth in National Parliament' Parline: the IPU's Open Data Platform <https://data.ipu.org/node/103/data-on-youth?chamber_id=13454> accessed 12 November 2021.

- 'Education Attainment & Illiteracy' *Institute of Labour Market Information & Analysis (ILMIA)* <<https://www.ilmia.gov.my/index.php/en/dashboard-datamart/kilm/indicators/item/education-attainment-illiteracy>> accessed 22 November 2021.
- 'Household Income and Basic Amenities Survey Report 2019' *DOSM* (10 July 2020) <https://www.dosm.gov.my/v1/index.php?r=column/cthemeByCat&cat=120&bul_id=TU00TmRhQ1N5TUxHVWN0T2VjbXJYZZ09&menu_id=amVoWU54UTl0a21NWmdhMjFMMWcyZz09> accessed 22 November 2021.
- 'Kementerian Pembangunan Wanita, Keluarga Dan Masyarakat – Pencapaian' *KPWKM* <<https://www.kpwkm.gov.my/kpwkm/index.php?r=portal/about2&articleid=TWNLVFI0U0dxSlZqbjR3cUozWGJKdz09&id=b0J5ZFBERFhsalo2U05TWk1nSzVDQT09>> accessed 12 November 2021.
- 'Official Portal of The Parliament Malaysia - Privileges for Members of Parliament' *Parliament of Malaysia* <<https://www.parlimen.gov.my/kemudahan-ahli.html?uweb=dr&>> accessed 13 November 2021.
- 'Official Portal of The Parliament of Malaysia – Function' *Parliament of Malaysia* <<https://www.parlimen.gov.my/fungsi.html?uweb=p&lang=en>> accessed 13 November 2021.
- 'Official Portal of The Parliament of Malaysia – Speaker' *Parliament of Malaysia* <<https://www.parlimen.gov.my/yang-di-pertua.html?uweb=dr&lang=en>> accessed 22 November 2021.
- 'Statistics on Women Empowerment In Selected Domains Malaysia, 2020' *DOSM* (1 December 2020) <https://www.dosm.gov.my/v1/index.php?r=column/cthemeByCat&cat=444&bul_id=QlliTUxPQnhrR2tVa2kyOFpkWmhaZz09&menu_id=L0pheU43NWJwRWVSZklWdzQ4TlhUUT0> accessed 12 November 2021.
- 'What is a Code Of Conduct & Why is it Important?' *DeltaNet International* <<https://www.delta-net.com/compliance/code-of-conduct/faqs/why-is-a-code-of-conduct-important>> accessed 11 November 2021.
- 'Why Have a Code of Conduct - Free Ethics & Compliance Toolkit' *Ethics and Compliance Initiative* (25 October 2021) <<https://www.ethics.org/resources/free-toolkit/code-of-conduct/>> accessed 10 November 2021.

Adams W., 'Conducting Semi-structured Interviews (2015)' in Newcomer K.E. and others (eds), *Handbook of Practical Program Evaluation* (4th edn, Jossey Bass, 2015).

Almalki S., 'Integrating Quantitative and Qualitative Data In Mixed Methods Research—Challenges And Benefits' (2016) 5(3) *Journal of Education and Learning* 291-93 <<http://dx.doi.org/10.5539/jel.v5n3p288>>.

Argandoña A. and others, 'Code of Ethics for Politicians' (2012) 3 *Ramon Llull Journal of Applied Ethics* 9.

Braun V. and Clarke V., 'Using Thematic Analysis in Psychology' (2006) 3(2) *Qualitative Research in Psychology* 77 <<http://dx.doi.org/10.1191/1478088706qp063oa>>.

Couper M.P. and Miller P.V., 'Web Survey Methods: Introduction' (2008) 72(5) *Public Opinion Quarterly* 831 <<https://doi.org/10.1093/poq/nfn066>>.

DeJonckheere M. and Vaughn L., 'Semistructured Interviewing In Primary Care Research: A Balance of Relationship and Rigour' (2019) 7 *Family Medicine and Community Health*.

DR Deb 13 July 2020, Bil. 2.

DR Deb 9 May 2007, Bil. 5.

Hassan H., 'Parliamentary Privilege, Convention, Tradition and Practice' *Malay Mail* (1 June 2020) <<https://www.malaymail.com/news/what-you-think/2020/06/01/parliamentary-privilege-convention-tradition-and-practice-hafiz-hassan/1871209>> accessed 13 November 2021.

International IDEA, *Code Of Conduct for Political Parties Campaigning In Democratic Elections* (1st edn, Slovenia, Studio Signum, 1999).

Kamilan I.H. and Saari M., 'Mekanisme Pengawalan Bahasa Kurang Sopan (*Unparliamentary Language*) di dalam Dewan Rakyat: Perspektif Perundangan' (2021) 1 *Journal of the Malaysian Parliament* 98 <<https://jurnalmp.parlimen.gov.my/jurnal/index.php/jmp/article/view/33/18>>.

Lai W.S. and Yussof I., 'Impact of Higher Education on Income and Economic Growth: A Cross Country Evidence' (2018) 52(2) *Jurnal Ekonomi Malaysia* 189.

- Liu S.J.S., 'Gender Gaps in Political Participation in Asia' (2022) 43(2) *International Political Science Review* 209 <<https://doi.org/10.1177%2F0192512120935517>>.
- Manzor Z., 'Dewan Rakyat: Ramai Kesal Jadi Tempat Bergaduh' *Kosmo* (27 July 2021) <<https://www.kosmo.com.my/2021/07/27/dewan-rakyat-ramai-kesal-jadi-tempat-bergaduh/>> accessed 22 November 2021.
- Masum A., 'Parliamentary Privilege and Its Practice In Malaysia: An Overview' (2012) 2 *Malayan Law Journal* 100.
- Mintz S., 'Using a Code of Conduct to Build Trust In The Workplace' *Workplace Ethics Advice* (10 October 2011) <<https://www.workplaceethicsadvice.com/2011/10/using-a-code-of-conduct-to-build-trust-in-the-workplace.html>> accessed 12 November 2021.
- Nayak M.S.D.P. and Narayan K.A., 'Strengths and Weaknesses of Online Surveys' (2019) 24(5) *IOSR Journal of Humanities and Social Sciences* 31 <10.9790/0837-2405053138>
- Papanis E., Giavrimis P. and Papani E., 'The Contribution of The Internet Into Learning' (2010) 2(1) *Review of European Studies* 54 <<http://dx.doi.org/10.5539/res.v2n1p54>>.
- Sani M.U.M. and Saad S., 'Pelaksanaan dan Cabaran Penglibatan Belia dalam Parlimen Belia Malaysia' (2018) 13(1) *Journal of Social Sciences and Humanities* 1.
- Saunders M. and others, *Research Methods for Business Students* (5th edn, England, Prentice Hall, 2009).
- Shih T. and Xitao F., 'Comparing Response Rates from Web and Mail Surveys: A Meta-Analysis' (2008) 20(3) *Field Methods* 249 <<http://dx.doi.org/10.1177/1525822X08317085>>.
- Singh N.K.H., Lai W.S. and Saukani M.N.M., 'Impact of Education Levels on Economic Growth in Malaysia: A Gender Based Analysis' (2018) 14(4) *Malaysian Journal of Society and Space* 13.
- Suyi S., 'LETTER | Put Racists to Shame' *Malaysiakini* (16 July 2020) <<https://www.malaysiakini.com/letters/534720>> accessed 22 November 2021.

Tangau W.M., 'MP SPEAKS | What's Next For Parliamentary Reforms?' *Malaysiakini* (31 August 2021) <<https://www.malaysiakini.com/columns/589372>> accessed 22 November 2021.

Tarmizi A., 'YB, Tolonglah Jaga Adab Ketika Berbahas' *Sinar Harian* (29 July 2021) <<https://www.sinarharian.com.my/article/152535/SUARA-SINAR/Analisis-Sinar/YB-tolonglah-jaga-adab-ketikaberbahas>> accessed 22 November 2021.

World Economic Forum, *Insight Report: Global Gender Gap Report 2020* (Geneva, World Economic Forum, 2019).

Yeong P.J., 'How Women Matter: Gender Representation in Malaysia's 14th General Election' (2018) 107 *The Round Table* 771 <<https://doi.org/10.1080/00358533.2018.1545943>>.

Zaidi F., 'An Emergence of Youth Participation in Malaysian Politics' IDEAS (25 August 2021) <<https://www.ideas.org.my/an-emergence-of-youth-participation-in-malaysian-politics/>> accessed 22 November 2021.

Keperluan Mewujudkan Semula Akta Perkhidmatan Parlimen di Malaysia

The Need to Re-enact the Parliamentary Service Act in Malaysia

Ikmal Hisham Md Tah, Muthanna Saari**, Faridah Jalil***, Idzuafi Hadi Kamilan**** and Akmal Hisham Abdul Rahim******

Abstrak

Parlimen merupakan institusi yang sangat penting dalam pembinaan sesebuah negara. Parlimen berperanan untuk menjalankan fungsi sebuah institusi yang komited kepada pengawasan terhadap kuasa eksekutif pihak kerajaan dan menjadi saluran untuk menyampaikan pandangan serta aduan daripada masyarakat menerusi wakil-wakil yang dipilih ke Dewan Rakyat. Dewan Negara pula berperanan sebagai pengawas kepada keputusan Dewan Rakyat. Oleh itu, institusi Parlimen memerlukan sistem pentadbiran Parlimen yang bebas dan cekap supaya dapat memberikan perkhidmatan kepada ahli-ahli Yang Berhormat tanpa mengira latar belakang kepartian. Selepas Akta Perkhidmatan Parlimen 1963 dimansuhkan pada tahun 1993, tiada undang-undang khusus mengenai perkhidmatan Parlimen. Hal ini menyebabkan kakitangan Parlimen tertakluk di bawah Skim Perkhidmatan Am Persekutuan. Namun perubahan masa dan keadaan menyebabkan terdapatnya keperluan untuk mewujudkan semula undang-undang Perkhidmatan Parlimen. Makalah ini akan menerangkan tentang keperluan untuk mewujudkan semula undang-undang Perkhidmatan Parlimen bagi memastikan institusi Parlimen dapat diperkasakan dan bersifat bebas supaya memberi manfaat kepada kualiti perwakilan Parlimen di Malaysia. Beberapa buah negara

* Dr Ikmal Hisham Md Tah is senior lecturer at the Faculty of Law, Universiti Teknologi MARA (UiTM). Email: *ikmal@uitm.edu.my*

** Muthanna Saari is Research Officer at the Parliament of Malaysia.

*** Datin Dr Faridah Jalil is a former Professor of Law at the Faculty of Law, Universiti Kebangsaan Malaysia (UKM).

**** Idzuafi Hadi Kamilan is Executive Director at Institut Reformasi Politik dan Demokrasi (REFORM).

***** Akmal Hisham Abdul Rahim is lecturer at the Faculty of Administrative Science & Policy Studies, Universiti Teknologi MARA (UiTM).

seperti United Kingdom, Australia, New Zealand dan Kanada dijadikan sandaran mengenai keperluan mewujudkan semula akta berkaitan Perkhidmatan Parlimen. Makalah ini akhirnya mencadangkan bahawa akta ini perlu diwujudkan semula bagi memastikan fungsi semak dan imbang dapat dilaksanakan dengan lebih baik dan saksama.

Kata kunci: Autonomi, Kebebasan Parlimen, Kuasa Pengawasan, Pengasingan Kuasa, Perkhidmatan Parlimen

Abstract

Parliament represents an ever-important institution in the nation-building of a country. Parliament is committed to its oversight function towards the executive action of the government and represents the voice of the people through its elected representatives to the Dewan Rakyat (House of Representatives) of Malaysia. The Dewan Negara (House of Senate) plays its check and balance role in the decisions taken in the Dewan Rakyat. Therefore, Parliament as an institution needs a parliamentary service system that is independent and efficient to provide impartial support to members of the House. Since the Parliamentary Service Act 1963 was abolished in 1993, there has been no specific legislation on parliamentary services in place in Malaysia. This has resulted in parliamentary staff being bound under the Federal Public Service. However, in the current context of modern parliament, there is a pressing need for legislation on parliamentary service to be introduced to ensure the empowerment and independence of parliamentary institutions in uplifting the quality of parliamentary representation in Malaysia. The practice in several countries, such as the United Kingdom, Australia, New Zealand and Canada, is compared to evaluate the need to reintroduce the parliamentary service act. This article finally sets out to recommend the reintroduction of the act to ensure parliament's check and balance function can be discharged accordingly.

Keywords: Autonomy, Parliamentary Independence, Oversight, Separation of Powers, Parliamentary Service

Pengenalan

Badan perundangan merupakan satu cabang kerajaan, selain badan Eksekutif dan badan Kehakiman dalam prinsip pengasingan kuasa, yang memainkan peranan penting dalam usaha menggubal undang-undang negara selaras dengan Perlembagaan Persekutuan. Parlimen

sebagai institusi perundangan tertinggi dalam negara juga berperanan untuk mengawal dan memeriksa badan Eksekutif dan dengan syarat tertentu memeriksa badan Kehakiman. Kepentingan fungsi kawalan Parlimen juga adalah bagi mengehadkan kuasa eksekutif di samping mempertahankan hak asasi manusia bagi rakyat selaku pemegang taruh utama berdasarkan teori A.V. Dicey.¹ Kebebasan Parlimen untuk menjalankan tanggungjawab dengan baik boleh dinilai berdasarkan keupayaannya mengawal sumbernya.² Bagi mencapai kebebasan institusi Parlimen, pelbagai mekanisme perundangan sama ada melalui perlombagaan bertulis, undang-undang atau amalan dan tatacara di dalam Parlimen dilaksanakan bagi mengurus hal ehwal pentadbiran dan kewangan Parlimen.

Kebanyakan negara mengiktiraf prinsip autonomi Parlimen secara rasmi dalam peruntukan perlombagaan negara masing-masing. Walaupun pengasingan kuasa tidak dinyatakan secara jelas dalam Perlombagaan Persekutuan Malaysia, namun prinsip ini telah benar-benar menjadi sebahagian daripada Perlombagaan Persekutuan.³ Manakala undang-undang yang berkaitan perkhidmatan Parlimen merupakan satu instrumen perundangan yang digunakan secara meluas untuk menganunkan ciri-ciri utama, prinsip, mandat, komposisi, kakitangan, belanjawan dan tadbir urus institusi Parlimen. Antara contoh undang-undang perkhidmatan Parlimen adalah seperti Parliamentary Service Act 2000, New Zealand, House of Commons (Administration) Act 1978, United Kingdom, Parliamentary Service Act 1999, Australia dan Parliament of Canada Act 1985, Kanada.

Malaysia pernah mempunyai undang-undang Perkhidmatan Parlimen sebelum 1993 yang dikenali sebagai Akta Perkhidmatan Parlimen 1963. Rang Undang-Undang Perkhidmatan Parlimen telah dibentangkan oleh YTM Tunku Abdul Rahman Putra Al-Haj pada 11 Mac 1963 bertujuan untuk menyediakan syarat-syarat kelayakan dan perkhidmatan bagi staf perkhidmatan Parlimen. Rang undang-undang tersebut telah

1 G. Brennan, 'The Parliament, the Executive and the Courts: Roles and Immunities' (1997) 9(2) *Bond Law Review* 136, 137-8.

2 CPA, *The Financing and Administration of Parliament - Report of a CPA study group hosted by the Legislature of Zanzibar, Tanzania, from 25 to 29 May 2005* (London, CPA, 2005) <<https://www.cpahq.org/media/awydqld2/administration-and-financing-of-parliament-study-group-report-1.pdf>> dicapai 25 Ogos 2021.

3 *Gobind Singh Deo v Yang Dipertua, Dewan Rakyat & Ors* [2010] 9 CLJ 449.

diluluskan di Dewan Rakyat pada 12 Mac 1963⁴ tanpa perbahasan dan di Dewan Negara pada 15 Mac 1963.⁵ Walau bagaimanapun, akta ini hanya digunakan selama 30 tahun sebelum dimansuhkan bersekali dengan pindaan Perlembagaan Persekutuan pada 21 Oktober 1992.⁶ Sepanjang berkuat kuasa, akta ini telah dipinda pada tahun 1972⁷ agar selaras dengan Perkara 56, 57, 58 dan 65 Perlembagaan Persekutuan untuk memberi keutamaan kepada Dewan Negara selain telah disemak pada tahun 1989 (Akta 394). Usaha mengembalikan undang-undang perkhidmatan Parlimen telah dipergiat sejak dimansuhkan dan terdapat sekurang-kurangnya tiga usaha besar bagi mengembalikan undang-undang perkhidmatan Parlimen dengan draf rang undang-undang turut dicadangkan.

Makalah ini meneliti aspek penting undang-undang perkhidmatan Parlimen dalam amalan sistem Westminster dan seterusnya menghuraikan kepentingan Malaysia mewujudkan semula Akta Perkhidmatan Parlimen selaras dengan kewujudan perundangan yang setara di negara-negara Komanwel seperti United Kingdom, Australia, New Zealand dan Kanada. Kepentingan undang-undang perkhidmatan Parlimen diteliti terhadap prinsip kebebasan dan autonomi Parlimen dalam ruang lingkup prinsip pemisahan kuasa dalam sistem sesebuah kerajaan.

Metodologi

Kajian ini menggunakan metodologi kajian perbandingan berdasarkan analisis dokumen berkenaan Perkhidmatan Parlimen di Malaysia dan negara-negara Komanwel terlibat seperti United Kingdom, Australia, New Zealand dan Kanada. Dokumen-dokumen yang dianalisis merangkumi akta berkaitan yang relevan mengenai Perkhidmatan Parlimen, Hansard Parlimen, buku-buku, artikel jurnal, laman web Parlimen berkaitan, keratan akhbar serta laporan-laporan berkaitan kebebasan dan autonomi institusi Parlimen. Selain itu, perbincangan

4 DR Deb 12 Mac 1963, Vol. IV No. 38 <<https://www.parlimen.gov.my/files/hindex/pdf/DR-12031963.pdf>>.

5 DN Deb 15 Mac 1963, Vol. IV No. 7 <<https://www.parlimen.gov.my/files/hindex/pdf/DN-15031963.pdf>> 542-9.

6 DR Deb 21 Okt 1992, Jilid II Bil. 29 <<https://www.parlimen.gov.my/files/hindex/pdf/DR-21101992.pdf>> 6422-534.

7 DR Deb 10 Feb 1972, Jilid I Bil. 66 <<https://www.parlimen.gov.my/files/hindex/pdf/DR-10021972.pdf>> 7561-7.

bersama-sama bekas Setiausaha Parlimen di Australia⁸ dan United Kingdom⁹, telah diadakan untuk menjelaskan dengan lebih lanjut amalan-amalan berkaitan Perkhidmatan Parlimen di negara-negara berkenaan.

Kebebasan dan autonomi Parlimen

Konsep pemisahan kuasa dalam sistem sesebuah kerajaan menekankan kepentingan kebebasan dan autonomi parlimen untuk menjalankan fungsinya. Peranan parlimen dalam usaha membincangkan perkara-perkara yang berkepentingan dengan orang ramai, meluluskan belanjawan serta menyemak urusan kerajaan memerlukan institusi ini bersifat bebas supaya tanggungjawabnya dapat dilakukan dengan efektif. Prinsip dalam Commonwealth Latimer House menyatakan kebebasan ahli parlimen turut meliputi keupayaannya menjalankan tanggungjawab perundangan selaras dengan peruntukan Perlembagaan serta bebas daripada gangguan yang tidak diingini.¹⁰

Laporan *CPA Recommended Benchmarks for Democratic Legislatures* merupakan suatu penanda aras penting dalam kalangan negara Komanwel untuk memperincikan aspek kebebasan ahli parlimen menjalankan peranannya dengan berkesan. Antara prinsip utama yang digariskan termasuk:¹¹

- Imbuhan yang adil dan penggantian perbelanjaan Parlimen harus diperuntukkan secara tidak berpihak,
- Penubuhan badan atau mekanisme bebas harus diwujudkan bagi menentukan imbuhan dan faedah daripada ahli Parlimen,
- Badan perundangan harus mengawal perkhidmatan Parlimen berbanding eksekutif dalam usaha menentukan terma perkhidmatan,

8 Perbincangan bersama David Elder, bekas ‘Clerk of the House of Representative Australia’ pada 29 Mei 2021 dan 5 Jun 2021.

9 Perbincangan bersama Sir David Lionel Natzler, bekas ‘Clerk of the House of Commons United Kingdom’ pada 3 Ogos 2021.

10 CPA, *Commonwealth Latimer House Principles on the Three Branches of Government* (London, CPA, 2009) <<https://www.cpahq.org/media/dhfajkpg/commonwealth-latimer-principles-web-version.pdf>> dicapai 25 Ogos 2021.

11 CPA, *Recommended Benchmarks for Democratic Legislatures* (London, CPA, 2006) <<https://www.cpahq.org/media/l0jjk2nh/recommended-benchmarks-for-democratic-legislatures-updated-2018-final-online-version-single.pdf>> dicapai 25 Ogos 2021.

- Peruntukan tertentu yang mencukupi bertujuan melindungi dan memastikan tiada gangguan daripada badan Eksekutif,
- Ketua Perkhidmatan Parlimen harus dilindungi di bawah Perlembagaan atau perundangan daripada sebarang tekanan politik,
- Imbuhan Ketua Perkhidmatan Parlimen harus ditentukan melalui mekanisme/badan bebas,
- Badan korporat, melalui perundangan atau ketetapan badan perundangan harus ditubuhkan bagi menyediakan perkhidmatan dan kewangan untuk tujuan Parlimen dan menyediakan tataurus yang baik bagi perkhidmatan Parlimen.

Pentadbiran Parlimen sebagai teras institusi Parlimen bertanggungjawab menyokong urusan sehari-hari Parlimen termasuk perkara-perkara berhubung pengambilan kakitangan, pengurusan, penyelenggaraan, belanjawan, aspek teknikal Parlimen dan sebagainya.¹² Laporan CPA *The Financing and Administration of Parliament* turut mencadangkan beberapa tindakan yang harus diambil bagi melindungi integriti dan kebebasan Parlimen, tataurus Parlimen, kebebasan kewangan, perkhidmatan Parlimen dan kebertanggungjawaban awam.¹³ Bagi memastikan pentadbiran Parlimen mampu menjalankan fungsinya dengan berkesan, institusi Parlimen perlu disokong dengan sumber yang baik. Secara asasnya, Parlimen yang mempunyai sumber yang mencukupi harus mempunyai kakitangan yang mahir dan berkebolehan untuk memberi sokongan yang tidak berpihak, perkhidmatan maklumat dan perpustakaan yang komprehensif, kemudahan pejabat bagi setiap ahli Parlimen dan kemudahan yang disediakan untuk parti utama pembangkang atau parti pembangkang.¹⁴

Walau bagaimanapun, sumber yang mencukupi untuk menyediakan perkhidmatan dan kemudahan berkaitan sahaja adalah tidak memadai. Parlimen harus mempunyai autonomi tanpa campur tangan badan Eksekutif dan satu pendekatan terhadap jaminan autonomi Parlimen adalah melalui peruntukan Perlembagaan. Banyak negara melalui Perlembagaan masing-masing mengiktiraf prinsip autonomi Parlimen

12 IPU, *Comparative research paper on Parliamentary administration* (Geneva, IPU, 2020) 1.

13 CPA (n 2).

14 D. Beetham, *Parliament and democracy in the twenty-first century: A guide to good practice* (Geneva, IPU, 2006).

dalam satu atau beberapa peruntukan Perlembagaan. Penilaian terhadap darjah kebebasan sesebuah Parlimen diambil kira terhadap aspek pentadbiran yang melibatkan pengambilan sumber manusia serta aspek kewangan yang melibatkan pengurusan kewangan Parlimen. Kedua-dua aspek ini memainkan peranan penting untuk menentukan darjah kebebasan Parlimen kerana aspek ini akan menentukan sejauh mana Parlimen mampu menyediakan kemudahan dan sokongan untuk Parlimen melaksanakan fungsinya secara bebas dan tidak berpihak.

Autonomi pentadbiran

Kebebasan dan autonomi Parlimen bermaksud Parlimen tidak boleh diganggu gugat oleh badan Eksekutif mahupun Kehakiman dan dalam konteks Perlembagaan Persekutuan, Parlimen mempunyai kuasa untuk menentukan peraturan dan tatacaranya sendiri.¹⁵ Autonomi pentadbiran mewakili hak penentuan secara kendiri yang melibatkan cara perkhidmatan Parlimen boleh disediakan.¹⁶ Kebanyakan autonomi yang dimiliki institusi Parlimen berdasarkan aspek ketidakbergantungan dan kebebasan Parlimen untuk tidak menuruti kehendak badan Eksekutif selain keupayaan Parlimen untuk membebaskan dirinya daripada sebahagian peraturan undang-undang biasa dan membuat peraturannya sendiri.¹⁷

Perlembagaan sesebuah negara ialah dokumen penting yang menandakan prinsip autonomi Parlimen diiktiraf secara rasmi. Satu gambaran pengiktirafan terdapat dalam prinsip pengasingan kuasa iaitu prinsip asas yang menggalakkan autonomi. Walau bagaimanapun, bagi negara dengan perlembagaan tidak bertulis, autonomi Parlimen dicerna melalui konvensyen. Prinsip autonomi yang pelbagai ini juga merupakan manifestasi hubungan kuat autonomi Parlimen dengan prinsip pemisahan kuasa atau kitaran sejarah yang melahirkan prerogatif di pihak Parlimen melalui autonomi pentadbiran dan kewangan. Autonomi Parlimen ini mempunyai tujuan bagi membolehkan Parlimen menjalankan tugasnya secara bebas sepertimana yang telah diperuntukkan oleh Perlembagaan atau konvensyen.

15 Perlembagaan Persekutuan, per 62.

16 CPA (n 2).

17 M. Couderc, ‘The administrative and financial autonomy of parliamentary assemblies’ (1998) *Association of Secretaries General of Parliaments* 177 <<https://www.asgp.co/node/29411>> dicapai 28 Jun 2021.

Perkara ini diistilahkan sebagai '*functional autonomy*' yang boleh dimanifestasi melalui kebolehan setiap Dewan "menentukan bentuk organisasi dan tatacara, memilih kakitangannya dan merujuk jawatankuasanya yang boleh dipanggil oleh Speaker, dan perkara paling penting adalah dengan menentukan tatacaranya sendiri".¹⁸ Autonomi pentadbiran di dalam Parlimen merupakan ciri-ciri yang dikongsi bersama oleh semua badan perundangan negara-negara lain. Pemisahan kuasa pentadbiran dicedok daripada ciri kebanyakan Parlimen sebagai "*flexible separation*" atau "*separation-cooperation*" yang bermaksud autonomi Parlimen wujud dalam struktur organisasi institusi di dalam negara dengan Parlimen harus milikinya.

Autonomi kewangan

Kepentingan institusi Parlimen mempunyai kebebasan dalam aspek kewangan dinyatakan sebagai

*... when Parliament does not have financial independence there is always the danger that the executive will be encouraged to exercise undue control over expenditure to the detriment of the parliamentary process... An all-party committee of Members of Parliament should review and administer Parliament's budget which should not be subject to amendment by the executive.*¹⁹

Kebebasan kewangan institusi Parlimen akan membolehkan Parlimen menggaji kakitangan terbaik untuk bekerja di Parlimen, memastikan mekanisme dan proses semak dan imbang kepada Kerajaan sama ada dari aspek kemudahan dan sumber manusia dapat disediakan dengan sempurna tanpa halangan kewangan dan sebagainya.

Hakikatnya, selari dengan peredaran masa, kebanyakan negara sudah bergerak menguruskan pentadbiran dan kewangan Parlimen dengan cara yang baharu. Kebanyakan institusi Parlimen mula bersikap lebih kritikal kepada perkara-perkara penting seperti struktur tataurus dan hubungan dengan badan Eksekutif. Penubuhan Parlimen sebagai badan korporat adalah antara kaedah baharu di banyak negara yang mengamalkan sistem demokrasi berparlimen agar institusi Parlimen dapat mengoptimumkan sumber yang ada dan pada masa yang sama meningkatkan kebebasan daripada badan Eksekutif. Berdasarkan

18 ibid.

19 CPA (n 2).

perkembangan semasa, selain daripada kebebasan, elemen seperti keberkesanan dan kebertanggungjawaban Parlimen, kebebasan dana dan kawalan kewangan institusi Parlimen, hubungan antara badan Eksekutif, Speaker, badan korporat, Setiausaha/Pegawai Perakaunan dan kakitangan Parlimen, tahap pembahagian kuasa yang dibenarkan oleh badan korporat kepada perkhidmatan parlimen, pengurusan aset manusia dan kebertanggungjawaban adalah antara isu-isu yang tersenarai berkenaan perkhidmatan Parlimen.

Struktur semasa Parlimen Malaysia

Pentadbiran

Pentadbiran Parlimen semasa diketuai oleh Ketua Pentadbir Parlimen Malaysia (KPPM) yang merupakan Pegawai Tadbir dan Diplomatik Gred Utama B. KPPM bertanggungjawab terhadap segala urusan dan hal ehwal pentadbiran dan kewangan Parlimen Malaysia. Manakala urusan yang berkaitan perjalanan Majlis Mesyuarat Dewan Negara dan Dewan Rakyat dipertanggungjawabkan kepada Setiausaha Dewan Negara dan Setiausaha Dewan Rakyat. Sekretariat Parlimen Malaysia dianggotai seramai 349 perjawatan yang terdiri daripada lantikan tetap dan lantikan kontrak. Fungsi sekretariat Parlimen Malaysia dilaksanakan oleh 11 bahagian berikut:

i. Pejabat Penasihat Undang-undang

Pejabat Penasihat Undang-undang dianggotai oleh dua orang Pegawai Undang-undang daripada Skim Perundangan dan Kehakiman. Fungsi utama pejabat ini adalah untuk memberi pandangan tentang undang-undang, perkara berkenaan gubalan, perkara berkaitan pendakwaan dan guaman, serta kajian undang-undang.

ii. Bahagian Komunikasi Korporat

Bahagian Komunikasi Korporat melapor kepada KPPM dan diketuai oleh Pegawai Perhubungan Korporat. Fungsi utama bahagian ini ialah pengurusan media, pengurusan lawatan ke Parlimen Malaysia, pengurusan fotografi dan visual (video), dan pengurusan Galeri Parlimen Malaysia. Selain itu, bahagian ini turut berperanan terhadap pengurusan khidmat pelanggan dan pusat khidmat sehenti Parlimen Malaysia.

iii. Bahagian Pengurusan Dewan Negara dan Bahagian Pengurusan Dewan Rakyat

Pengurusan di kedua-dua buah Dewan Negara dan Dewan Rakyat dipertanggungjawabkan kepada Setiausaha Dewan Negara dan Setiausaha Dewan Rakyat. Kedua-dua perjawatan ini dinyatakan dalam Perkara 65 Perlembagaan Persekutuan yang menjelaskan bahawa Yang di-Pertuan Agong melantik Setiausaha Dewan Negara dan Setiausaha Dewan Rakyat daripada kalangan anggota perkhidmatan awam am Persekutuan. Setiausaha Dewan masing-masing dibantu oleh Bahagian Pengurusan Dewan Negara dan Dewan Rakyat yang diketuai oleh seorang Setiausaha. Bahagian Pengurusan Dewan Negara dan Dewan Rakyat masing-masing dibahagikan kepada Seksyen Perundangan dan Prosiding, Seksyen Penyata Rasmi, Seksyen Jurubahasa dan Terjemahan dan Seksyen Bentara. Selain itu, Bahagian Pengurusan Dewan Rakyat mempunyai tambahan Seksyen Jawatankuasa dan Sekretariat Jawatankuasa Kira-kira Wang Negara (PAC). Fungsi utama Bahagian Pengurusan Dewan Negara dan Dewan Rakyat adalah untuk membantu pengurusan persidangan Dewan masing-masing termasuk segala urusan yang berkaitan Jawatankuasa Pilihan dan Jawatankuasa Pilihan Khas.

iv. Bahagian Penyelidikan dan Perpustakaan

Bahagian Penyelidikan dan Perpustakaan terdiri daripada dua komponen iaitu penyelidikan dan Perpustakaan Parlimen Malaysia. Penyelidikan dibahagikan kepada Seksyen Ekonomi, Seksyen Sosial, Seksyen Sains, Tenaga dan Teknologi, dan Seksyen Antarabangsa dan Keselamatan. Pegawai penyelidik dalam bahagian ini merupakan perjawatan terbuka. Fungsi bahagian ini adalah untuk melaksanakan penyelidikan bagi membantu perbahasan ahli-ahli Parlimen serta menyokong ahli-ahli Parlimen yang menghadiri persidangan di dalam dan luar negara. Perpustakaan Parlimen pula berfungsi untuk mengurus perpustakaan dan mengurus pangkalan data dan koleksi yang berkaitan Parlimen. Perpustakaan Parlimen Malaysia diketuai oleh Pustakawan daripada Skim Perkhidmatan Pustakawan.

v. Bahagian Keselamatan

Bahagian Keselamatan diketuai oleh Setiausaha Bahagian Keselamatan dan dianggotai oleh pegawai keselamatan kerajaan dan penolong pegawai keselamatan. Perjawatan utama dalam bahagian ini dilantik

daripada Skim Keselamatan dan Pertahanan Awam. Fungsi utama bahagian ini adalah untuk menyelaras dan memastikan kawalan keselamatan, menguatkuasakan peraturan dan langkah keselamatan fizikal selaras dengan kehendak Kawasan Larangan Tempat Larangan 1989, mengendali dan memantau sistem keselamatan elektronik dalam usaha menjamin keselamatan Parlimen.

vi. Bahagian Pengurusan

Bahagian Pengurusan terbahagi kepada Seksyen Pengurusan Sumber Manusia dan Inovasi dan Seksyen Kewangan dan Akaun. Seksyen Pengurusan Sumber Manusia dan Inovasi meliputi unit perkhidmatan dan jawatan, unit latihan dan kompetensi, unit keurusetiaan strategi dan inovasi, unit pengurusan prestasi dan integriti dan unit pentadbiran. Fungsi utama bahagian ini adalah untuk mengurus hal-hal perkhidmatan kakitangan, perjawatan dan penstruktur organisasi, urusetia kepada kenaikan pangkat, tata tertib dan panel pembangunan sumber manusia dan mengurus pengurusan aset dan inventori. Dalam aspek kewangan, bahagian ini berperanan untuk menyediakan anggaran, mengurus dan mengawal peruntukan dan perbelanjaan Parlimen Malaysia serta mengurus perakaunan Parlimen Malaysia.

vii. Bahagian Senggara Fasiliti & Landskap

Bahagian Senggara Fasiliti & Landskap diketuai oleh seorang Ketua Jurutera daripada Skim Jurutera. Fungsi bahagian ini dibahagikan kepada Seksyen Kerja Awam dan Struktur yang terdiri daripada unit bangunan dan unit landskap, Seksyen Mekanikal dan Seksyen Elektrik. Bahagian ini bertanggungjawab untuk melaksanakan pemeriksaan dan audit keadaan fizikal bangunan dari aspek struktur bangunan, sistem mekanikal dan sistem elektrik, serta merancang dan melaksanakan kerja-kerja pembaikan dan penyelenggaraan ke atas Kompleks Bangunan Parlimen Malaysia dan kediaman-kediaman rasmi Yang di-Pertua Dewan, taska dan unit-unit kuarters milik Parlimen Malaysia.

viii. Bahagian Teknologi Maklumat

Bahagian Teknologi Maklumat bertanggungjawab untuk menyelaras pembangunan, pelaksanaan, penambahbaikan dan penyelenggaraan sistem aplikasi termasuk sistem persidangan Dewan Negara dan Dewan Rakyat, mengurus dan mentadbir segala aspek berkaitan pangkalan data,

teknologi maklumat, infrastruktur dan rangkaian serta keselamatan teknologi maklumat. Bahagian ini diketuai Pegawai Teknologi Maklumat dan perjawatan utama dalam bahagian ini dilantik daripada Skim Sistem Maklumat dan dibahagikan kepada Seksyen Aplikasi dan Pentadbiran serta Seksyen Teknikal.

ix. Bahagian Hal Ehwal Ahli Parlimen

Bahagian Hal Ehwal Ahli Parlimen bertanggungjawab menguruskan segala hal ehwal ahli Parlimen yang berkaitan pelantikan dan penamatan perkhidmatan ahli Parlimen, urusan pembayaran atau pemberhentian segala elaun yang dinikmati ahli Parlimen serta menguruskan segala kemudahan dan keistimewaan ahli Parlimen. Bahagian ini dibahagikan kepada Unit Kemudahan dan Perkhidmatan Ahli Parlimen dan Unit Elaun dan Tuntutan.

x. Bahagian Perhubungan Antarabangsa & Protokol

Bahagian Perhubungan Antarabangsa & Protokol bertanggungjawab sebagai urus setia dan penyelaras bagi persidangan yang dianjurkan oleh Parlimen Malaysia untuk pertubuhan khususnya berkenaan parlimen seperti *Inter-Parliamentary Union (IPU)*, *Parliamentary Union of the OIC Member States (PUIC)*, *Commonwealth Parliamentary Association (CPA)*, *ASEAN Inter-Parliamentary Assembly (AIPA)*, *Society of the Clerks-at-the-Table in Commonwealth (SOCATT)* dan banyak lagi. Bahagian ini juga mengendalikan lawatan rasmi ke luar negara untuk Yang di-Pertua, Timbalan Yang di-Pertua Dewan Negara dan Dewan Rakyat, serta ahli-ahli Parlimen. Selain itu, bahagian ini turut bertindak sebagai urus setia kepada Parliamentary Friendship Group dan Kaukus di samping membantu urusan protokol bagi majlis yang dianjurkan oleh Parlimen Malaysia. Bahagian ini terbahagi kepada Seksyen Pertubuhan Antara Parlimen (Hubungan Multilateral) dan Seksyen Pertubuhan Antara Parlimen (Hubungan Bilateral).

Pelantikan kakitangan

Perjawatan di Parlimen Malaysia adalah daripada Perkhidmatan Awam Persekutuan. Secara umumnya, kaedah pengisian perjawatan daripada perkhidmatan ini adalah melalui pelantikan tetap, pelantikan secara kontrak dan peminjaman/ pertukaran sementara. Kaedah pelantikan ini diringkaskan dalam Jadual 1 berikut:

Jadual 1. Pengisian Jawatan dalam Perkhidmatan Awam Persekutuan

Bil	Perkara	Pelantikan Tetap	Pelantikan Secara Kontrak	Peminjaman/ Pertukaran Sementara
1.	Kaedah Pengambilan	Permohonan secara dalam talian dan calon perlu melalui proses tapisan, peperiksaan, ujian fizikal, ujian psikometrik, pusat penilaian dan temu duga. Pelantikan tetap adalah pada gred lantikan.	Pelantikan secara kontrak boleh dilakukan sekiranya memerlukan pegawai berpengalaman dan mempunyai kepakaran tertentu. Iklan kekosongan dikeluarkan di peringkat jabatan. Calon perlu melalui proses tapisan, peperiksaan, ujian fizikal, ujian psikometrik, pusat penilaian dan temu duga. Pelantikan secara kontrak boleh dilakukan pada gred lantikan atau gred naik pangkat tertakluk kepada kelulusan kelonggaran syarat skim daripada JPA.	Peminjaman/pertukaran sementara merupakan suatu kaedah melantik pegawai yang sedang berkhidmat untuk dilantik ke sesebuah agensi bagi mendapatkan perkhidmatan pegawai yang berpengalaman, berkemahiran, berwibawa dan bersesuaian dengan keperluan agensi tetapi bukan untuk tujuan naik pangkat.
2.	Pihak Berkuasa Melantik	Suruhanjaya Perkhidmatan Awam (SPA)	Suruhanjaya Perkhidmatan Awam (SPA)	Suruhanjaya Perkhidmatan Awam (SPA)
3.	Ketua Perkhidmatan	Bergantung pada skim perkhidmatan pegawai	Ketua Jabatan	Bergantung pada skim perkhidmatan pegawai
4.	Penempatan Pegawai	Kelulusan Ketua Perkhidmatan	Ketua Jabatan	Ketua Jabatan/ Agensi Peminjam

Sumber: Parlimen Malaysia

Lantikan secara kontrak terbahagi kepada perjawatan yang terkandung dalam Waran Perjawatan serta yang di luar Waran Perjawatan yang telah diperuntukkan kepada setiap jabatan. Perbezaan antara kedua-dua lantikan secara kontrak ini terletak pada kod pembayaran gaji yang digunakan dalam terma pembayaran kerajaan. Pelantikan kakitangan bagi mengisi perjawatan di Parlimen Malaysia diuruskan oleh Seksyen Pengurusan Sumber Manusia dan Inovasi di bawah Bahagian Pengurusan. Bagi mengisi kekosongan perjawatan yang disebabkan persaraan atau pertukaran keluar kakitangan, pengisian kekosongan berkenaan bergantung kepada Ketua Perkhidmatan jawatan berkenaan.

Sekiranya Ketua Perkhidmatan bagi jawatan berkenaan ialah KPPM, Parlimen Malaysia perlu memohon kepada SPA sebagai pihak berkuasa melantik untuk menjalankan proses temu duga bagi memilih calon yang berkelayakan. Manakala bagi perjawatan dengan Ketua Perkhidmatan selain KPPM, Parlimen Malaysia perlu memohon kepada Ketua Perkhidmatan bagi jawatan berkenaan untuk melaksanakan pengisian kekosongan jawatan berkenaan. Jadual berikut menunjukkan perjawatan di Parlimen Malaysia berdasarkan skim perkhidmatan dan ketua perkhidmatan yang bertanggungjawab terhadap pengisian perjawatan berkenaan di Parlimen Malaysia.

Jadual 2. Perjawatan dan Skim Perkhidmatan di Parlimen Malaysia

Bil	Ketua Perkhidmatan	Skim Perkhidmatan	Perjawatan
1.	Ketua Pentadbir Parlimen Malaysia	Pentadbiran dan Sokongan	Pegawai Tadbir, Jurubahasa Serentak, Pegawai Penyelidik, Pembantu Awam, Pembantu Operasi, Bentara Parlimen, Pemandu Kenderaan, Pengawal Keselamatan
2.	Ketua Pengarah Perkhidmatan Awam	Skim Tadbir & Diplomatik, Pentadbiran dan Sokongan	KPPM, Pegawai Tadbir Diplomatik, Pembantu Tadbir (Perkeranian/Operasi), Setiausaha Pejabat/Pembantu Setiausaha Pejabat
3.	Peguam Negara	Perundangan dan Kehakiman	Penasihat Undang-undang
4.	Ketua Pengarah Penerangan	Sosial	Pegawai Perhubungan Korporat, Pegawai Penerangan

Bil	Ketua Perkhidmatan	Skim Perkhidmatan	Perjawatan
5.	Ketua Pengarah Keselamatan Kerajaan	Keselamatan dan Pertahanan Awam	Pegawai Keselamatan Kerajaan, Bentara Mesyuarat
6.	Ketua Pengarah Kerja Raya	Jurutera	Ketua Jurutera, Jurutera
7.	Ketua Pengarah MAMPU	Sistem Maklumat	Pegawai Teknologi Maklumat
8.	Ketua Akauntan Negara	Kewangan	Akauntan, Penolong Akauntan
9.	Ketua Pengarah Penerangan	Pentadbiran dan Sokongan	Pegawai Penerbitan, Penolong Pegawai Penerbitan
10.	Ketua Pengarah Perpustakaan Negara	Sosial	Pustakawan, Pembantu Pustakawan

Sumber: Parlimen Malaysia

Kewangan

Pentadbiran kewangan Parlimen Malaysia diketuai oleh KPPM yang merupakan Pegawai Pengawal bagi semua urusan kewangan di bawah peruntukan Parlimen daripada Bajet Tahunan Persekutuan Malaysia. Peruntukan untuk Parlimen Malaysia diuruskan oleh pihak Parlimen Malaysia dan dipantau oleh Kementerian Kewangan Malaysia tertakluk kepada keseluruhan Pekeling Perbendaharaan Malaysia. Proses mendapatkan peruntukan kewangan tahunan bermula dengan pihak Parlimen Malaysia menyediakan Anggaran Perbelanjaan Tahunan bagi tahun berikutnya mengikut Siling Indikatif yang ditentukan oleh Kementerian Kewangan Malaysia. Keperluan peruntukan daripada setiap pejabat Yang di-Pertua Dewan, Timbalan Yang di-Pertua Dewan dan setiap Bahagian dalam Parlimen akan diselaraskan untuk penyediaan draf Anggaran Perbelanjaan Tahunan berkenaan. Proses dalam ini melibatkan perbincangan antara KPPM, Setiausaha-setiausaha Dewan, wakil pejabat-pejabat Yang di-Pertua dan Timbalan Yang di-Pertua serta semua Setiausaha Bahagian.

Anggaran Perbelanjaan Tahunan berkenaan yang disahkan oleh KPPM seterusnya dikemukakan kepada Kementerian Kewangan Malaysia. Anggaran Perbelanjaan Tahunan ini seterusnya akan disemak bersama-sama Pejabat Belanjawan Negara, Kementerian Kewangan Malaysia dengan semua wakil Parlimen Malaysia. Berdasarkan sesi semakan ini, Pejabat Belanjawan Negara, Kementerian Kewangan Malaysia akan membentangkan cadangan anggaran ini kepada Jawatankuasa Bajet

di Kementerian Kewangan Malaysia untuk diluluskan. Peruntukan kewangan tahunan untuk Parlimen Malaysia hanya diketahui selepas selesai perbahasan bajet tahunan di Parlimen. Peruntukan kewangan tahunan untuk Parlimen Malaysia dinyatakan dalam jadual berikut:

Jadual 3. Program Kewangan Tahunan Parlimen Malaysia

Vot	Program	Aktiviti	Kegunaan
T05 YPDR	Urusan Parlimen	Pentadbiran Am	Gaji dan Elaun Ahli Parlimen Yang di-Pertua Dewan Rakyat
T06 YPDN	Urusan Parlimen	Pentadbiran Am	Gaji dan Elaun Ahli Parlimen Yang di-Pertua Dewan Negara
B01 Parlimen Malaysia	Urusan Parlimen	Pentadbiran Am	Peruntukan bagi pengoperasian Parlimen. Contoh: a) Gaji dan elaun kakitangan b) Tuntutan perjalanan kakitangan c) Kontrak-kontrak seperti pengoperasian/penyelenggaraan ICT, penyelenggaraan bangunan, sewaan kenderaan dan peralatan d) Perolehan bekalan, perkhidmatan dan kerja e) Yuran persatuan antarabangsa
		Pengurusan Dewan	Peruntukan bagi Ahli Parlimen dan perjalanan dewan. Contoh: a) Gaji dan elaun kakitangan dewan b) Gaji dan elaun TYDP c) Elaun dan kelayakan Ahli Parlimen d) Tuntutan perjalanan Ahli Parlimen
	Program Khusus	Bertugas Ke Luar Negara	Peruntukan bagi semua urusan lawatan rasmi, lawatan kerja, menghadiri persidangan/seminar dan lain-lain di luar negara
		Emolumen Kakitangan Kontrak	Peruntukan gaji, elaun dan kelayakan kakitangan kontrak (di luar waran perjawatan)
	One-off	Contoh: Perolehan Aset, Pembaikan Bangunan	Perolehan atau projek-projek kecil one-off (sekiranya ada)

Sumber: Parlimen Malaysia

Kaedah perbelanjaan peruntukan kewangan Parlimen Malaysia berdasarkan Anggaran Perbelanjaan Tahunan yang telah dikemukakan. Semua pembayaran gaji dan elaun kepada kakitangan dan ahli Parlimen dilakukan secara automatik setiap bulan melalui Sistem Gaji. Manakala perbelanjaan bagi semua perolehan yang telah dirancang perlu dilaksanakan oleh setiap bahagian yang bertanggungjawab setelah mendapat kelulusan KPPM. Perbelanjaan ini hendaklah mematuhi tatacara perolehan mengikut Pekeliling Perbendaharaan/ Perolehan Kerajaan. Pembayaran bagi semua perolehan yang mematuhi peraturan dilaksanakan oleh Unit Perolehan dan Bayaran, Seksyen Kewangan dan Akaun, Bahagian Pengurusan setelah disahkan oleh bahagian yang bertanggungjawab. Bayaran berkaitan ahli Parlimen seperti tuntutan perjalanan, bayaran elaun mesyuarat dan sebagainya pula dilaksanakan oleh Bahagian Hal Ehwal Ahli Parlimen.

Dalam aspek perbelanjaan peruntukan kewangan, Parlimen Malaysia bertanggungjawab mentadbir sepenuhnya peruntukan ini. Parlimen Malaysia juga bertanggungjawab mengemukakan laporan suku tahun pengurusan kewangan dan akaun kepada Kementerian Kewangan Malaysia berdasarkan Pekeliling Perbendaharaan.²⁰ Dalam situasi sekiranya peruntukan kewangan tahunan Parlimen Malaysia tidak mencukupi, permohonan peruntukan tambahan akan dikemukakan kepada Kementerian Kewangan Malaysia dengan menyatakan perincian keperluan tambahan. Sekiranya, terdapat peruntukan lebihan yang tidak dibelanjakan, Kementerian Kewangan Malaysia boleh mengeluarkan waran sekatan untuk menarik balik lebihan peruntukan tersebut.

Akta Perkhidmatan Parlimen Negara Komanwel

Akta Perkhidmatan Parlimen mempunyai pelbagai struktur dan bentuk di negara masing-masing. Setiap negara Komanwel mewarisi sistem daripada Westminster dan mempunyai keunikan tersendiri dalam aplikasi berkaitan perkhidmatan Parlimen. Terdapat dua bentuk utama akta perkhidmatan parlimen yang diamalkan di dunia, iaitu pertama, berasaskan pendekatan berasaskan Suruhanjaya (*Commissioner-based*) contoh di United Kingdom, Australia, New Zealand dan kedua bertaraf pendekatan berasaskan pentadbiran (*administrative based*) seperti di Kanada.

20 Perbendaharaan Malaysia, 'Garis Panduan Pelaksanaan Jawatankuasa Pengurusan Kewangan Dan Akaun' <<https://1pp.treasury.gov.my/pindaan/sebelum/597/muat-turun>> dicapai 3 Februari 2022.

United Kingdom

Perjalanan perkhidmatan Parlimen, terutamanya *House of Commons* (HOC), berlangsung dengan disokong oleh statut yang khusus untuk memastikannya teratur dan efektif. Di United Kingdom, terdapat tiga akta utama iaitu House of Commons Administration Act 1978, Parliamentary Corporate Bodies Act 1992 dan House of Commons Commission Act 2015. Ketiga-tiga Akta ini memainkan peranan yang penting dalam urusan pentadbiran dan pengurusan House of Commons United Kingdom.²¹

Akta utama untuk mentadbir perkhidmatan Parlimen di United Kingdom dikenali sebagai House of Commons Administration Act 1978. Laporan Bottomley pada tahun 1973, menyatakan cadangan penubuhan Akta ini adalah bagi memperkemaskan pentadbiran House of Commons supaya lebih seragam dan mempunyai koordinasi yang lebih baik.²² Selain itu, bagi urusan penubuhan bahan korporat bagi harta tanah membabitkan House of Commons, satu Akta dikenali sebagai Parliamentary Corporate Bodies Act 1992 telah diwujudkan. Manakala House of Commons Commission Act 2015 telah menjelaskan peranan House of Commons Commissioner dari segi aspek komposisi dan fungsi berkaitan.²³

Suruhanjaya Perkhidmatan Parlimen yang diwujudkan menerusi HOC(Administration)Act 1978, HOC Commission Act 2015 mempunyai komposisi iaitu Speaker, Ketua Dewan HOC, Ahli HOC yang dilantik Ketua Pembangkang, 2 ahli selain Ahli HOC dan 2 ahli rasmi HOC iaitu *Clerk of the HOC* dan *Director General HOC*. Satu keunikan yang terdapat dalam komposisi ahli Suruhanjaya Perkhidmatan Parlimen UK ialah komposisi ahli-ahli luar daripada Parlimen seperti pakar-pakar bidang tertentu dipilih menganggotai Suruhanjaya (Commission) tersebut. Berdasarkan Seksyen (1) 4 Akta berkaitan, seramai empat orang ahli dilantik bukan daripada *Minister of Crown* yang terdiri daripada pakar-pakar bidang tertentu yang boleh menasihatkan Suruhanjaya berkaitan apa-apa sahaja isu dalam perkhidmatan Parlimen.²⁴

Dalam aspek kewangan, Seksyen 3 (1) HOC Act 1978 menjelaskan tanggungjawab Suruhanjaya bagi menyediakan laporan penggunaan sumber kewangan dan perkhidmatan di HOC pada setiap tahun. Seorang

21 R. Rogers and R. Walters, *How Parliament Works 8th edition* (Routledge, 2019).

22 M.T. Ryle, 'The Legislative Staff of the British House of Commons' (1981) 6(4) *Legislative Studies Quarterly* 497.

23 Rogers and Walters (n 21).

24 ibid.

pegawai akaun daripada kakitangan pentadbiran HOC boleh dilantik menerusi Seksyen 3 (2) HOC Act 1978 bagi menyediakan dan menjaga perkara berkaitan sumber kewangan HOC.

Australia

Perkhidmatan Parlimen Australia tertakluk di bawah Parliamentary Service Act 1999. Akta ini dibaca bersama-sama Perlembagaan Australia, Public Service Act 1999, Fair Work (Transitional Provisions and Consequential Amendment) Act 2009, Charter of Budget Honesty Act 1998 dan Public Governance, Performance and Accountability Act 2013.²⁵ Akta pertama, Parliamentary Service Act 1999 ini mempunyai keunikan tersendiri kerana penerapan nilai-nilai seperti komited, etika, penghormatan, akauntabiliti dalam Parlimen Australia dan tidak bersifat berat sebelah seperti terkandung dalam Seksyen 10 Akta berkaitan. Sebagai tambahan, Seksyen 10A Akta tersebut menekankan tentang perkhidmatan yang menekankan perkembangan kerjaya (*career-based service*) dan berteras kualiti kerja dan pembuatan keputusan berasaskan merit.

Australia mempunyai sistem sokongan sosial dan profesional bagi setiap ahli Parlimen, Senator dan bersifat bebas daripada Eksekutif berdasarkan Seksyen 9. Berlainan dengan United Kingdom, peruntukan berkaitan Suruhanjaya Perkhidmatan Parlimen (*Parliamentary Service Commission*) telah dimasukkan dalam Seksyen 39 dan 40 Akta terutamanya berkaitan fungsi-fungsi Suruhanjaya seperti memberi nasihat kepada ‘*Presiding Officers*’ berkaitan amalan Parlimen termasuk memberi laporan dan menjalankan inkuiри dalam perkara berkaitan dengan kepentingan awam. Presiding Officers ini merujuk President of Senate dan apa-apa berkaitan termasuk *Clerk of the House*, *Speaker House of Representative* termasuk *Clerk of the House* menerusi Seksyen 7.²⁶

Public Governance, Performance and Accountability Act 2013, ialah statut penting yang menyokong kedudukan Parlimen Australia sebagai institusi yang bebas dan bertanggungjawab. Akta ini bertujuan untuk mempertingkat pencapaian sektor awam dan memperbaik kualiti maklumat yang disampaikan kepada Parlimen bagi menyokong peranan Parlimen iaitu mengawal aktiviti dan perbelanjaan kewangan negara.

25 Makluman berkaitan undang-undang Perkhidmatan Parlimen di Australia boleh diperolehi menerusi <https://www.aph.gov.au/About_Parliament/Parliamentary_Departments> dicapai 16 Februari 2022.

26 Parliamentary Service Act (Australia) 1999, s 7.

Tanggungjawab yang dikenakan oleh akta kepada agensi kerajaan untuk membuat pelaporan memudahkan Parlimen bagi menjalankan semakan. Tugasan ini dijalankan oleh *Joint Committee of Public Accounts and Audit* yang merupakan jawatankuasa kewangan awam dalam Parlimen.

Peruntukan bagi Perbelanjaan Parlimen pula dibuat menerusi Annual (Parliamentary Department) Act tersendiri. Terdapat dua jawatankuasa dikenali sebagai *House Committee on Appropriations and Administration* dan juga *Senate Committee on Appropriation and Staffing* yang berperanan untuk mencadangkan dan menyemak anggaran perbelanjaan jabatan masing-masing. Seterusnya, anggaran perbelanjaan ini akan diserahkan kepada badan Eksekutif untuk dibentangkan di Parlimen.

New Zealand

Undang-Undang Perkhidmatan Parlimen di New Zealand dikenali sebagai *Parliamentary Service Act (PSA) 2000*. Selain itu, akta-akta yang lain berkaitan dengan urusan Parlimen ialah *The Clerk of House Representative Act 1988* berkaitan dengan urusan ‘Clerk’ di dalam Parlimen, *Legislation Act 2012* berkaitan dengan pemodenan penerbitan berkaitan undang-undang dan Parlimen serta *The Parliamentary Agencies Delegations Legislation Act 2019* yang membenarkan perwakilan kuasa antara agensi-agensi Parlimen.²⁷

New Zealand juga mempunyai Suruhanjaya Perkhidmatan Parlimen yang terdiri daripada Speaker, Ketua Majlis (Leader of House), Ketua Pembangkang dan sejumlah ahli Parlimen yang dilantik menerusi ketetapan *House of Representative* mewakili parti politik (seorang ahli) dan tambahan seorang ahli bagi setiap 30 orang ahli yang berada dalam Dewan Perwakilan.²⁸ Dari segi struktur Pentadbiran, Ketua Eksekutif mengetuai pentadbiran Parlimen dan dibantu oleh empat bahagian yang lain iaitu Perkhidmatan Pelanggan dan Penglibatan Parlimen, Perkhidmatan Korporat, Perkhidmatan Perpustakaan dan Penyelidikan, Maklumat dan Keselamatan.

Dari aspek kewangan, Seksyen 29 *The Clerk of House Representative Act 1988* peruntukan gaji, elauan dan perbelanjaan bagi urusan berkaitan Parlimen di bawah akta ini dibayar menggunakan peruntukan kewangan Parlimen. Penubuhan satu jawatankuasa dikenali sebagai *Committee to Review Annual Appropriation* bagi mengawal selia perbelanjaan Parlimen

27 Kesemua Undang-Undang berkaitan Perkhidmatan Parlimen New Zealand boleh dicapai di <<https://www.legislation.govt.nz/>> dicapai 9 Februari 2022.

28 Parliamentary Service Act (New Zealand) 2000, s 15(2).

yang diketuai oleh Speaker dan tiga (3) ahli dilantik bertujuan untuk memastikan sumber kewangan yang mencukupi bagi pentadbiran, sistem sokongan parlimen, servis komunikasi bagi ahli Parlimen dan tujuan sokongan bagi parti dan ahli.²⁹

Kanada

Perkhidmatan Parlimen di Kanada ditadbir menerusi *Parliament of Canada Act* 1985 dan beberapa undang-undang kecil termasuk *Rules of the Senate of Canada, Board of Internal Economy Members By-Law, Committees By-Law, Governance and Administration By-Law*, dan juga *Rules of Practice and Procedure of the Board of Internal Economy*.³⁰ Berbeza dengan negara-negara Komanwel lain yang mempunyai Suruhanjaya, Parlimen di Kanada menggunakan dua jawatankuasa khas yang bertanggungjawab dalam urusan pentadbiran Parlimen. Jawatankuasa pertama ialah *Standing Senate Committee on Internal Economy, Budgets and Administration* (*Standing Senate Committee*) ditubuhkan di bawah Seksyen 19.1 (4) *Parliament of Canada Act* 2985 dengan komposisi seramai 15 orang ahli diketuai oleh President of Senate, Ketua Majlis (Kerajaan) atau ahli dilantik dan Ketua Pembangkang atau ahli lantikan. Jawatankuasa Kedua pula dinamakan sebagai *Board of Internal Economy of the House of Commons* (*The Board*) ditubuhkan dengan komposisi seramai sembilan (9) orang ahli terdiri daripada Speaker, 2 ahli Queen's Privy Council, Ketua Pembangkang, Ahli selain daripada lantikan kerajaan berdasarkan kepada komposisi parti di Dewan Perwakilan Parlimen Kanada (*House of Representative Canada*).³¹

Urusan pentadbiran di Parlimen terbahagi kepada dua iaitu di Dewan Senat dan Dewan Perwakilan. Di Dewan Senat, tiga (3) orang pegawai paling kanan mengetuai pentadbiran iaitu Setiausaha (*Clerk of the Senate*), *Law Clerk* dan seterusnya *Parliamentary Council* yang merupakan Ketua Pegawai Perkhidmatan Korporat. Manakala di peringkat Dewan Perwakilan, Setiausaha Dewan dibantu oleh Ketua Eksekutif Clerk's Management Group yang terdiri daripada tujuh orang (7) orang ahli yang mewakili pelbagai perkhidmatan di Parlimen.

29 Parliamentary Service Act (New Zealand) 2000, s 20 (1).

30 Bacaan lanjut berkaitan undang-undang perkhidmatan Parlimen di Kanada boleh diperolehi di <<https://www.ourcommons.ca/Boie/en/by-laws-and-policies>> dicapai 16 Februari 2022.

31 Rujukan di Board of Internal Economy (Current Membership) di <<https://www.ourcommons.ca/boie/en/membership>> dicapai 16 Februari 2022.

Bagi autonomi kewangan, The Board berkuasa dalam urusan berkaitan pentadbiran dan kewangan di Dewan Perwakilan Kanada dan hendaklah menyediakan anggaran peruntukan perbelanjaan pada tahun fiskal.³² Seksyen 79.1 sehingga 79.5 *Parliament of Canada Act 1985* telah menyediakan peruntukan bagi Pejabat Belanjawan Parlimen yang bersifat bebas dan tidak berat sebelah serta bertanggungjawab dalam penyediaan analisis makroekonomi dan dasar fiskal bagi meningkatkan kualiti perbahasan dan memastikan perbelanjaan Parlimen lebih telus.

Perkhidmatan Parlimen di Malaysia

Akta Perkhidmatan Parlimen 1963

Akta Perkhidmatan Parlimen 1963 mempunyai lapan seksyen utama yang menjelaskan kelayakan bagi pelantikan dan syarat-syarat perkhidmatan kakitangan Parlimen, penubuhan Jawatankuasa Penasihat Perkhidmatan Parlimen dan membuat perundangan subsidiari berkaitan hal ehwal Parlimen.³³ Dalam aspek kakitangan, Seksyen 4 telah memperuntukkan kuasa melantik kakitangan di bawah kuasa Speaker Dewan Rakyat dan Dewan Negara. Kedua-dua jawatan ini telah dilantik oleh Yang di-Pertuan Agong menerusi peruntukan Perkara 65 Perlembagaan Persekutuan. Dalam aspek pengurusan gaji dan penceن, Seksyen 6 menjelaskan kuasa-kuasa berkaitan adalah di bawah Jawatankuasa Penasihat Perkhidmatan Parlimen yang dilantik.

Jawatankuasa Penasihat Perkhidmatan Parlimen telah ditubuhkan di bawah Seksyen 5 dan dianggotai oleh Yang di-Pertua Dewan Rakyat selaku Penggerusi, Yang di-Pertua Dewan Negara, masing-masing seorang ahli dilantik Dewan Negara dan Dewan Rakyat oleh Perdana Menteri, seorang ahli Parlimen Parti Pembangkang yang dilantik oleh Yang di-Pertua Dewan Rakyat, seorang pegawai Perbendaharaan atau wakil dan seorang Pegawai Perjawatan dan wakilnya. Dalam aspek perundangan subsidiari, Seksyen 7 bertujuan memastikan kawal selia dilakukan terhadap Parlimen termasuk urusan pelantikan, syarat perkhidmatan, kenaikan pangkat dan tatatertib perkhidmatan Parlimen. Undang-undang kecil ini boleh dibuat oleh Yang di-Pertuan Agong setelah berunding dengan Jawatankuasa Penasihat. Peraturan-peraturan Perkhidmatan Parlimen 1983 telah diluluskan di bawah Seksyen 7

32 Parliament of Canada Act (PCA) 1985, ss. 52.3 dan 52.4 (1).

33 Akta Perkhidmatan Parlimen 1963.

mengandungi perincian seperti disebutkan berkaitan Perkhidmatan Parlimen.

Walau bagaimanapun, akta ini telah diwartakan pemansuhannya pada 19 November 1992 melalui Akta Perlembagaan (Pindaan) 1992 [Akta A837].³⁴ Menurut Wan Junaidi, pemansuhan akta yang berkaitan berlaku kerana terdapat pertentangan antara Speaker Dewan Rakyat dan kakitangan Parlimen termasuk masalah dalaman dan isu-isu berkaitan.³⁵ Hanya pada tahun 2005, Tan Sri Shahrir Samad, Ketua Whip Kerajaan yang merupakan ahli Parlimen Johor Bahru ketika itu telah mencadangkan agar akta ini diperkenalkan semula.³⁶ Selepas 2018, semakin ramai ahli Parlimen memahami betapa pentingnya akta ini diwujudkan semula bagi memastikan institusi Parlimen dibela, bersifat neutral dan kebijakan kakitangan dapat dilindungi.³⁷

Memperkenalkan Semula Akta Perkhidmatan Parlimen

Sejak dimansuhkan pada tahun 1993, terdapat sekurang-kurangnya tiga usaha besar dilakukan bagi memperkenalkan semula Akta Perkhidmatan Parlimen. Pertama, pada tahun 2011, YB Dato' Sri Dr Wan Junaidi Tuanku Jaafar, Timbalan Yang di-Pertua Dewan Rakyat ketika itu mengetuai Jawatankuasa Pembaharuan Undang-undang di Parlimen. Jawatankuasa ini telah mencadang dan mendraf Rang Undang-undang Perkhidmatan Parlimen kepada pihak Kerajaan. Kedua, YB Tan Sri Datuk Seri Panglima Pandikar Amin Mulia, Yang di-Pertua Dewan Rakyat semasa melaksanakan agenda Transformasi Parlimen Malaysia pada tahun 2016 turut berusaha mengembalikan Akta Perkhidmatan Parlimen. Draf untuk memperkenalkan semula Akta Perkhidmatan Parlimen telah disertakan bersama Penyata Jawatankuasa Dewan, Majlis Mesyuarat Dewan Rakyat.³⁸ Ketiga, usaha yang diketuai oleh YB Tan Sri Dato' Mohamad Ariff Md Yusof, Yang di-Pertua Dewan Rakyat semasa

34 D.R. 29/92 Rang Undang-undang untuk meminda Perlembagaan Persekutuan 1992 (1992).

35 W.J. Tuanku Jaafar, *Evolusi Parlimen dan Evolusi Speaker Parlimen Malaysia* (Kuala Lumpur, Dewan Bahasa dan Pustaka, 2013).

36 DR Deb 13 Okt 2005, Bil. 53 <<https://www.parlimen.gov.my/files/hindex/pdf/DR-13102005.pdf>> 4.

37 DR Deb 18 Jul 2018, Bil. 3 <<https://www.parlimen.gov.my/files/hindex/pdf/DR-18072018.pdf>> 78-101.

38 Jawatankuasa Dewan (DR 2013-2018, DR.14/2016), <<https://www.parlimen.gov.my/ipms/eps/2016-11-24/DR.14.2016%20-%20PENYATA%20JAWATANKUASA%20DEWAN%20MAJLIS%20MESYUARAT%20DEWAN%20RAKYAT.pdf>>.

era Kerajaan Pakatan Harapan pada tahun 2018, telah menyediakan draf Rang Undang-Undang Suruhanjaya Perkhidmatan Parlimen untuk dipertimbangkan.³⁹

Daripada tiga draf cadangan mengembalikan Akta Perkhidmatan Parlimen, hanya cadangan pada tahun 2016 telah dikemukakan kepada Majlis Mesyuarat Dewan Rakyat untuk pertimbangan pihak kerajaan manakala dua lagi cadangan masih di peringkat penelitian. Dalam cadangan ini, Akta Perkhidmatan Parlimen 1963 dicadangkan untuk dihidupkan semula melalui pengenalan suatu rang undang-undang. Pengenalan ini akan melibatkan pindaan terhadap Perlembagaan Persekutuan yang melibatkan Perkara 65 berkaitan pelantikan Setiausaha Dewan Negara dan Setiausaha Dewan Rakyat dan Perkara 132 berkenaan perkhidmatan-perkhidmatan awam. Dengan pengenalan akta ini juga akan mengubah perkhidmatan Parlimen daripada Perkhidmatan Awam Persekutuan kepada Perkhidmatan Tertutup Parlimen. Selain itu, keanggotaan Jawatankuasa Penasihat Perkhidmatan Parlimen berdasarkan Akta Perkhidmatan Parlimen 1963⁴⁰ turut dicadangkan untuk diluaskan dengan pelantikan Peguam Negara atau wakilnya bagi memberi nasihat undang-undang dan Ketua Pesuruhjaya Anti Rasuah Malaysia untuk memastikan keutuhan dan integriti pentadbiran Parlimen.

Pengenalan perkhidmatan Parlimen secara tertutup yang berasingan daripada Perkhidmatan Awam Persekutuan dikenal pasti memberikan implikasi tertentu kepada kelancaran perkhidmatan Parlimen. Tempoh peralihan yang mencukupi perlu diberikan bagi memastikan kecekapan dalam pengurusan dan pentadbiran Parlimen tidak terjejas sekiranya tenaga kerja berkemahiran dan berkebolehan tidak dikekalkan di Parlimen. Justeru, dicadangkan supaya pegawai dan kakitangan sedia ada yang sedang berkhidmat di Parlimen dilantik secara pinjaman atau apa-apa kaedah lain dalam perkhidmatan bagi mewujudkan kesinambungan dalam perkhidmatan. Selain itu, isu kenaikan pangkat, tindakan tatatertib dan lantikan pegawai dan kakitangan turut memerlukan pemerhatian bagi mengelakkan berlakunya '*brain drain*' atau isu integriti dalam lantikan dan disiplin pegawai dan kakitangan Parlimen.

39 DR Deb 28 Nov 2019, Bil. 64 <<https://www.parlimen.gov.my/files/hindex/pdf/DR-28112019.pdf>> 25-6.

40 Akta Perkhidmatan Parlimen 1963, s 5.

Pengenalan Akta Perkhidmatan Parlimen yang baharu

Bagi merangka sebuah rang undang-undang Perkhidmatan Parlimen Malaysia yang baharu, cadangan undang-undang perkhidmatan Parlimen Malaysia harus mengandungi ciri-ciri penting yang telah digariskan oleh badan antarabangsa seperti CPA yang telah menyimpulkan bahawa aspek penting dalam pengurusan efektif bagi Parlimen boleh ditentukan melalui kebolehan institusi Parlimen mengawal sumber yang diperlukan bagi menjalankan tanggungjawabnya terhadap kerajaan.⁴¹ Ciri-ciri penting lain juga boleh dirujuk dalam beberapa undang-undang Perkhidmatan Parlimen seperti House of Commons (Administration) Act (United Kingdom) 1978 dan Parliamentary Services Act (Australia) 1999. Rang Undang-undang Perkhidmatan Parlimen harus dipertimbangkan sebagai wajah baharu perkhidmatan Parlimen Malaysia dengan mengambil kira beberapa aspek penting berikut:

1. Punca kuasa undang-undang perkhidmatan Parlimen di bawah Perlembagaan Persekutuan

Punca kuasa bagi undang-undang perkhidmatan Parlimen yang baharu harus dimasukkan kembali ke dalam Perlembagaan Persekutuan. Pindaan terhadap Fasal (2) Perkara 65, Perlembagaan Persekutuan dilakukan seperti berikut,

- (2) *Setiausaha Dewan Negara dan Setiausaha Dewan Rakyat hendaklah dilantik oleh Yang Di-Pertuan Agong dan, tertakluk kepada Fasal (3), setiap orang hendaklah memegang jawatan sehingga dia mencapai umur enam puluh lima tahun atau apa-apa umur lain sebagaimana yang diperuntukkan oleh Parlimen melalui undang-undang, melainkan jika dia terlebih dahulu meletakkan jawatannya.*

Dengan syarat bahawa Fasal ini tidaklah boleh dikira sebagai menghalang Yang Di-Pertuan Agong daripada membuat pelantikan itu daripada kalangan anggota perkhidmatan awam yang baginya Bahagian X terpakai bagi apa-apa tempoh yang lebih pendek sebagaimana yang difikirkannya patut, dan proviso ini hendaklah disifatkan telah menjadi bahagian perlu Perkara ini mulai dari hari Merdeka.

Selain itu, Fasal (4) Perkara 65, Perlembagaan Persekutuan juga dicadangkan dikembalikan sebelum pindaan pada tahun 1992,

41 CPA (n 2).

Kecuali sebagaimana yang diperuntukkan dengan nyata selainnya oleh Perkara ini, kelayakan untuk pelantikan dan syarat-syarat perkhidmatan Setiausaha Dewan Negara dan Setiausaha Dewan Rakyat, dan anggota kakitangan Majlis-majlis Parlimen, bolehlah dikawal selia oleh undang-undang Persekutuan.

2. Kedudukan Suruhanjaya Perkhidmatan Parlimen

Kedudukan Suruhanjaya Perkhidmatan Parlimen dalam akta baharu diperincikan komposisi ahli, kaedah pelantikan ahli dan tempoh masa pelantikan. Komposisi ahli Suruhanjaya yang berasaskan keahlian Jawatankuasa Penasihat Perkhidmatan Parlimen seramai tujuh ahli seperti mana Seksyen 5 Akta Perkhidmatan Parlimen 1963 boleh dikembangkan dengan penambahan lima ahli menjadikan keahlian Suruhanjaya Perkhidmatan Parlimen seperti berikut:

- i. Yang di-Pertua Dewan Negara sebagai Pengerusi,
- ii. Yang di-Pertua Dewan Rakyat sebagai Pengerusi Bersama,
- iii. Ketua Majlis Dewan Rakyat,
- iv. Ketua Pembangkang atau seorang ahli Dewan Rakyat yang dilantik Ketua Pembangkang bagi mewakili pembangkang,
- v. Seorang ahli Dewan Negara yang dipilih melalui ketetapan Dewan Negara,
- vi. Seorang ahli Dewan Rakyat yang dipilih melalui ketetapan Dewan Rakyat,
- vii. Seorang ahli luar,
- viii. Ketua Pengarah Perkhidmatan Awam atau wakil,
- ix. Ketua Setiausaha Perbendaharaan atau wakil,
- x. Ketua Pentadbir Parlimen atau dikenali sebagai Setiausaha Bagi Parlimen,
- xi. Setiausaha Dewan Negara dan Setiausaha Dewan Rakyat sebagai Setiausaha Bersama.

Komposisi ini adalah seperti amalan di dalam House of Commons (Administration) Act (United Kingdom) 1978.⁴² Keanggotaan ahli luar dalam Suruhanjaya ini adalah bagi memberi ruang kepakaran dan perspektif pihak di luar daripada institusi Parlimen dan lantikan dibuat melalui ketetapan Parlimen berdasarkan merit dan pemilihan yang terbuka dan saksama serta bukan merupakan ahli Parlimen dan bukan di bawah kawalan badan Eksekutif.⁴³ Tempoh pelantikan ahli Suruhanjaya adalah selama lima tahun apabila Suruhanjaya Perkhidmatan Parlimen ditubuhkan selepas pilihan raya umum kecuali Parlimen dibubarkan terlebih dahulu.

3. Jawatan Ketua Pentadbir Parlimen

Ketua Pentadbir Parlimen bertanggungjawab kepada Suruhanjaya Perkhidmatan Parlimen dan tugas serta peranan yang sama turut dimainkan oleh *Director General* di *House of Commons, United Kingdom* dan *Secretary Department of Parliamentary Services* di Parlimen Australia. Jawatan Ketua Pentadbir Parlimen, Setiausaha Dewan Negara dan Setiausaha Dewan Rakyat adalah setara dalam struktur organisasi Parlimen seperti mana amalan Parlimen Australia dalam usaha membantu operasi Suruhanjaya Perkhidmatan Parlimen.

4. Pemisahan perkhidmatan Parlimen daripada badan Eksekutif secara jelas

Pemisahan perkhidmatan Parlimen daripada badan Eksekutif secara jelas adalah selari dengan amalan demokrasi berparlimen di peringkat antarabangsa. Pindaan Perkara 132(4)(a), Perlembagaan Persekutuan perlu dilakukan bagi mengecualikan perkhidmatan Parlimen daripada perkhidmatan awam seperti mana sebelum pindaan Perlembagaan pada tahun 1992.

5. Kewangan institusi Parlimen

Model autonomi kewangan di United Kingdom memberi kuasa kepada Speaker untuk membentangkan sendiri belanjawan

⁴² House of Commons (Administration) Act (United Kingdom) 1978, s 1 <<https://www.legislation.gov.uk/ukpga/1978/36/contents>>.

⁴³ M. Salik, *Model Law for Independent Parliaments: Establishing Parliamentary Service Commission for Commonwealth Legislatures* (London, CPA, 2020) 15 <https://www.cpahq.org/media/usdnwcqp/model-law-for-independent-parliaments_final.pdf>.

institusi Parlimen ke dalam House of Commons.⁴⁴ Manakala di Australia, walaupun amalannya mirip dengan amalan di Malaysia, peruntukan untuk Parlimen diperolehi daripada Rang Undang-Undang Perbekalan (Jabatan Perkhidmatan Parlimen) yang berasingan daripada rang undang-undang perbekalan tahunan kerajaan. Hal ehwal kewangan bagi Parlimen yang selaras dengan amalan Parlimen yang bebas perlu mengambil kira dua aspek utama iaitu menyediakan dan membentangkan anggaran perbelanjaan tahunan kepada Parlimen yang perlu diperuntukkan daripada Kumpulan Wang Disatukan untuk perkhidmatan Parlimen bagi tahun berikutnya, dan menentukan jumlah peruntukan bagi perkhidmatan Parlimen melalui perundingan dengan badan Eksekutif, tanpa sebarang persetujuan awal oleh mana-mana pihak selain Parlimen.⁴⁵

6. Ketelusan dan tataurus yang baik

Aspek ketelusan dan tataurus yang baik merupakan ciri-ciri pengurusan sesebuah institusi Parlimen yang berkesan untuk mentadbir dan mengoptimumkan sumber. Penerbitan laporan tahunan institusi Parlimen berupaya untuk memastikan peranan, tanggungjawab dan kebebasan Parlimen dilapor dan disemak secara terbuka. Parlimen Australia menetapkan untuk laporan tahunan dikemukakan kepada Speaker, Jawatankuasa Pilihan dan kepada Parlimen.⁴⁶ Amalan sama turut dilakukan di United Kingdom apabila laporan tahunan Parlimen dikemukakan kepada House of Commons Commission berdasarkan House of Commons (Administration) (United Kingdom) Act 1978.

Kesimpulan

Makalah ini telah meneliti aspek penting dalam usaha merangka undang-undang perkhidmatan Parlimen dengan melihat amalan sistem Westminster di United Kingdom, Australia, New Zealand dan Kanada. Tiga ciri penting yang dapat dirujuk bagi sebuah Parlimen yang bebas adalah jaminan dalam Perlembagaan, autonomi institusi yang melibatkan pentadbiran dan kewangan. Kewujudan semula akta ini

⁴⁴ House of Commons (Administration) Act (United Kingdom) 1978, s 3(1).

⁴⁵ ibid. 20.

⁴⁶ Parliamentary Service Act (Australia) 1999, s 65.

membolehkan semangat perlembagaan atau '*constitutionalism*' seperti pemisahan kuasa, semak dan imbang dapat dijalankan dengan lebih teratur dan saksama. Sudah tiba masanya Malaysia mempunyai Akta Perkhidmatan Parlimen seperti negara-negara lain bagi memastikan kebebasan dan integriti Parlimen untuk menjalankan tanggungjawab selaras dengan Perlembagaan Persekutuan. Walaupun kepentingan perkhidmatan Parlimen dikenal pasti mampu meningkatkan kebebasan dan tadbir urus institusi Parlimen, sistem Parlimen Westminster yang diamalkan di negara ini akhirnya memerlukan azam siasah (*political will*) daripada pihak kerajaan sendiri bagi mewujudkan semula undang-undang perkhidmatan Parlimen. Namun, selaras dengan pelbagai model, penanda aras dan amalan di peringkat antarabangsa, keperluan mengembalikan semula undang-undang perkhidmatan Parlimen merupakan keutamaan bagi meningkatkan imej dan peranan Parlimen sebagai institusi perundangan tertinggi dalam negara.

Perakuan

Kertas ini merupakan sebahagian hasil penyelidikan bertajuk 'Kajian Penyelidikan Berhubung Mengembalikan Undang-Undang Perkhidmatan Parlimen di Malaysia' oleh penyelidik-penyelidik daripada Institut Reformasi Politik dan Demokrasi (REFORM) bersama-sama Bersih & Adil Network (BERSIH 2.0) dan dibiayai oleh Malaysia Reform Initiatives (MARI).

Rujukan

Akta Perkhidmatan Parlimen 1963.

Beetham D., *Parliament and democracy in the twenty-first century: A guide to good practice* (Geneva, IPU, 2006).

Board of Internal Economy (Current Membership) <<https://www.ourcommons.ca/boie/en/membership>>.

Brennan G., 'The Parliament, the Executive and the Courts: Roles and Immunities' (1997) 9(2) *Bond Law Review* 136, 137-8.

Couderc M., 'The administrative and financial autonomy of parliamentary assemblies' (1998) *Association of Secretaries General of Parliaments* 177 <<https://www.asgp.co/node/29411>> dicapai 28 Jun 2021.

CPA, *Commonwealth Latimer House Principles on the Three Branches of Government* (London, CPA, 2009) <<https://www.cpahq.org/media/dhfajkpg/commonwealth-latimer-principles-web-version.pdf>> dicapai 25 Ogos 2021.

— *Recommended Benchmarks for Democratic Legislatures* (London, CPA, 2006) <<https://www.cpahq.org/media/l0jjk2nh/recommended-benchmarks-for-democratic-legislatures-updated-2018-final-online-version-single.pdf>> dicapai 25 Ogos 2021.

— *The Financing and Administration of Parliament - Report of a CPA study group hosted by the Legislature of Zanzibar, Tanzania, from 25 to 29 May 2005* (London, CPA, 2005) <<https://www.cpahq.org/media/awydqld2/administration-and-financing-of-parliament-study-group-report-1.pdf>> dicapai 25 Ogos 2021.

D.R. 29/92 Rang Undang-undang untuk meminda Perlembagaan Persekutuan 1992 (1992).

DN Deb 15 Mac 1963, Vol. IV No. 7 <<https://www.parlimen.gov.my/files/hindex/pdf/DN-15031963.pdf>> 542-9.

DR Deb 10 Feb 1972, Jilid I Bil. 66 <<https://www.parlimen.gov.my/files/hindex/pdf/DR-10021972.pdf>> 7561-7.

DR Deb 12 Mac 1963, Vol. IV No. 38 <<https://www.parlimen.gov.my/files/hindex/pdf/DR-12031963.pdf>> 4089-90.

DR Deb 13 Okt 2005, Bil. 53 <<https://www.parlimen.gov.my/files/hindex/pdf/DR-13102005.pdf>> 4.

DR Deb 18 Jul 2018, Bil. 3 <<https://www.parlimen.gov.my/files/hindex/pdf/DR-18072018.pdf>> 78-101.

DR Deb 21 Okt 1992, Jilid II Bil. 29 <<https://www.parlimen.gov.my/files/hindex/pdf/DR-21101992.pdf>> 6422-534.

DR Deb 28 Nov 2019, Bil. 64 <<https://www.parlimen.gov.my/files/hindex/pdf/DR-28112019.pdf>> 25-6.

Gobind Singh Deo v Yang Dipertua, Dewan Rakyat & Ors [2010] 9 CLJ 449.

House of Commons (Administration) Act (United Kingdom) 1978 <<https://www.legislation.gov.uk/ukpga/1978/36/contents>>.

- House of Commons (Canada) <<https://www.ourcommons.ca/Boie/en/by-laws-and-policies>>.
- House of Commons Commission Act (United Kingdom) 2015.
- IPU, *Comparative research paper on Parliamentary administration* (Geneva, IPU, 2020).
- Jawatankuasa Dewan* (DR 2013-2018, DR.14/2016) <<https://www.parlimen.gov.my/ipms/eps/2016-11-24/DR.14.2016%20-%20PENYATA%20JAWATANKUASA%20DEWAN%20MAJLIS%20MESYUARAT%20DEWAN%20RAKYAT.pdf>>.
- Legislation (New Zealand) <<https://www.legislation.govt.nz/>>.
- Parliamentary Department (Australia) <https://www.aph.gov.au/About_Parliament/Parliamentary_Departments> .
- Parliamentary Service Act (Australia) 1999.
- Perbendaharaan Malaysia, ‘Garis Panduan Pelaksanaan Jawatankuasa Pengurusan Kewangan Dan Akaun’ <<https://1pp.treasury.gov.my/pindaan/sebelum/597/muat-turun>> dicapai 3 Februari 2022.
- Perlembagaan Persekutuan Malaysia.
- Public Governance, Performance and Accountability Act (United Kingdom) 2013.
- Rogers R. and Walters R., *How Parliament Works 8th edition* (Routledge, 2019).
- Ryle M.T., ‘The Legislative Staff of the British House of Commons’ (1981) 6(4) *Legislative Studies Quarterly* 497.
- Salik M., *Model Law for Independent Parliaments: Establishing Parliamentary Service Commission for Commonwealth Legislatures* (London, CPA, 2020) 15 <https://www.cpahq.org/media/usdnwcqp/model-law-for-independent-parliaments_final.pdf>.
- Tuanku Jaafar W.J., *Evolusi Parlimen dan Evolusi Speaker Parlimen Malaysia* (Kuala Lumpur, Dewan Bahasa dan Pustaka, 2013).

Watanic Jurisprudence: Governing Principles in Legislative Powers Under the Federal Constitution

*Wan Ahmad Fauzi Wan Husain**

Abstract

Before 1948, all legislative powers were vested in Malay rulers in their respective states. The Malay Rulers were the makers of the Federal Constitution through a constitutional development process, even though many parties drafted it. This paper applies the legal methodology of watanic jurisprudence. The position of Malay rulers is essential because they were sovereign authorities that legitimized the Federation of Malaya Agreement, 1948, the Federation of Malaya Agreement, 1957, and the Federal Constitution of Malaya, 1957. Previous research on this subject had ignored the principle of sovereignty as stipulated in Article 181(1) when discussing the issue of legislative powers. As a result, many parties viewed parliamentary democracy as the Malaysian principle of sovereignty. Hence, this paper intends to explain the influence of Islam and Malay customs as the governing principles of legislative powers under the Federal Constitution. This paper is important because members of the legislative, executive, and judiciary take the oath under the Sixth Schedule before discharging their respective constitutional responsibilities. This paper would assist in understanding the essence of the oath under the Sixth Schedule vis-à-vis the duty to uphold the rule of law and the supremacy of our Constitution.

Keywords: The Maker of the Federal Constitution, Watanic Jurisprudence, Malay Customs, Article 181(1), The Rule of Law

* Datuk Dr Wan Ahmad Fauzi Wan Husain is Associate Professor at the Faculty of Industrial Management, Universiti Malaysia Pahang (UMP). Email: wanfauzi@ump.edu.my

Introduction

The Federal and State Constitutions provide legislative powers to their respective authorities. The Parliament is the federal legislative authority in which the legislative powers are vested, subject to the supremacy of the Federal Constitution. Part VI of the Federal Constitution stipulates the relations between the Federation and the States in distributing legislative powers.¹ On the other premise, the state legislative council is the authority to legislate laws as conferred by the state constitution and further guaranteed by the Federal Constitution.²

Before the British intervention in the internal affairs of the Malay states, Malay rulers exercised all legislative power with their counselors in their respective states. After the Malay rulers entered into various treaties with the British in the 19th century, the British advisors were appointed to assist the administration but not rule the Malay states.³ By the Federation of Malaya Agreement, 1948, the Malay rulers, being the sovereigns of their respective states, had agreed to form an interim federal authority together with the settlements of Penang and Malacca.⁴ The Malay states under the Federation of Malaya Agreement, 1948 means the states of Johore, Pahang, Negri Sembilan, Selangor, Perak, Kedah, Perlis, Kelantan, and Terengganu and all dependencies, islands, and places which, on 1 December 1941, were administered as part thereof, and the territorial waters adjacent thereto.

The Federation of Malaya Agreement, 1948, introduced the distribution of legislative, executive, and judicial powers between the Federal and State authorities in preparation for self and strong central government

-
- 1 Article 73 of the Federal Constitution provides, "*In exercising the legislative powers conferred on it by this Constitution- (a) Parliament may make laws for the whole or any part of the Federation and laws having effect outside as well as within the Federation; (b) the Legislature of a State may make laws for the whole or any part of that State.*"
 - 2 Article 74(2) of the Federal Constitution provides, "*Without prejudice to any power to make laws conferred on it by any other Article, the Legislature of a State may make laws with respect to any of the matters enumerated in the State List (that is to say, the Second List set out in the Ninth Schedule) or the Concurrent List.*" Section 11(1), Part I, Eight Schedule (Provisions to be inserted in State Constitutions) provides the exercise of legislative power, "*The power of the Legislature to make laws shall be exercised by Bills passed by the Legislative Assembly and assented to by the Ruler.*"
 - 3 Reid Commission, *Report of the Federation of Malaya Constitutional Commission 1957* (Her Majesty's Stationery Office, 1957) 7-8.
 - 4 See The Federation of Malaya Agreement, 1948.

in Malaya.⁵ Later, the Federation of Malaya Agreement Agreement, 1957, was signed by the Malay rulers for their respective states and Sir Donald Charles MacGillivray on behalf of the British Queen as a legal process for the self-government of Malaya named Persekutuan Tanah Melayu, leading to the birth of the Federal Constitution of Malaya, 1957. The Federal Constitution bestowed legislative powers on the Federation as enumerated in the Ninth Schedule of the Federal Constitution and other matters stipulated in the constitutional provisions. By the Federation of Malaya Agreement, 1957, the British surrendered their sovereignty over Penang and Malacca to the Yang di-Pertuan Agong.⁶

This paper applies the legal methodology of watanic jurisprudence to interpret Malaysia's relevant constitutional provisions and legal principles. Watanic jurisprudence is more indigenous for arguing the constitutional system of a sovereign nation because it first determines the legal framework applicable therein, either continuum or dichotomy, before attempting further analysis.⁷ It then analyzes legal issues based

5 "AND WHEREAS it seems expedient to His Majesty and to Their Highnesses that the Malay states, the Settlement of Penang and the Settlement of Malacca should be formed into a Federation with a strong central government..." The preamble of the Federation Agreement of Malaya, 1948. See also Part VII and the Second Schedule of the Federation of Malaya Agreement, 1948.

6 "3. As from the thirty-first day of August, nineteen hundred and fifty-seven, the Malay states and Settlement shall be formed into a federation of states by the name of Persekutuan Tanah Melayu, or in English, the Federation of Malaya, under the Federal Constitutional set out in the First Schedule to this Agreement; and thereupon the said Settlement shall cease to form part of Her Majesty's dominions and Her Majesty shall cease to exercise any sovereignty over them, and all power and jurisdiction of Her Majesty or the Parliament of the United Kingdom in or in respect of the Settlement or the Malay States or the Federation as a whole shall come to an end." The preamble of the Federation Agreement of Malaya, 1957. The sovereignty of the Yang di-Pertuan Agong in the Federation could be construed from inter alia Articles 181(1), 32(1), 38, 39, 3(3), 41, 42, 44, 66 and 121 of the Federal Constitution. It is worthy to note here that Yang di-Pertua Negeri Penang and Malacca are not sovereign, and they are appointed by the Yang di-Pertuan Agong. Read W.A.F. Wan Husain, *Kedaulatan Malaysia Governan Utama Negara* (Selangor, Abad Sinergi Sdn. Bhd. & Penerbit UMP, 2022).

7 According to F. Venter, *Constitutional Comparison: Japan, Germany, Canada & South Africa as Constitutional States* (South Africa, Kluwer Law International, 2000) 1, "The phenomenon of law is universal. It is associated with order, authority and the state. Despite the universality of the notion, the variation of its content reminds one of the variation within humanity itself, of the diversity of cultures, languages and religions." For further reading on continuum and dichotomous legal frame work, read W.A.F. Wan Husain, *Yang di-Pertuan Agong: Kedaulatan, Prerogatif dan Amalan* (Kuala Lumpur, Dewan Bahasa dan Pustaka, 2021).

on the constitutional text, statutes, and accepted legal principles within its legal framework. In doing so, local laws and customs are analyzed to determine the principles of sovereignty and the constitutional system based on a broad and purposive manner in the correct linguistic, philosophy, and local historical context. The relevant philosophical framework will be taken as the governing principle to analyze the constitutional provisions, legal documents, and other legal issues.⁸ This method is in line with the rules of constitutional interpretation outlined in the Federal Court's case of *Indira Gandhi A/P. Mutho v. Pengarah Jabatan Agama Islam Perak & Ors and other appeals*.⁹

The Federal Court in *Indira Gandhi* adopted the rules of constitutional interpretation by the Supreme Court of Canada¹⁰ as follows:

The rules of constitutional interpretation require that constitutional documents be interpreted in a broad and purposive manner and placed in their proper linguistic, philosophic, and historical contexts..... Generally, a constitutional interpretation must be informed by the foundational principles of the Constitution, which include principles such as federalism, democracy, the protection of minorities, as well as constitutionalism, and the rule of law

These rules and principles of interpretation have led this Court to conclude that the Constitution should be viewed as having an 'internal architecture' or 'basic constitutional structure' ... The notion of architecture expresses the principles that the individual elements of the Constitutional are linked to the others and must be interpreted by reference to the structure of the Constitution as a whole' ... In other words; the Constitution must be interpreted to discern the structure of Government that it seeks to implement.

Based on the method of watanic jurisprudence, Wan Ahmad Fauzi¹¹ concluded that Malaysia upholds the continuum legal framework. The continuum legal framework means that the legal principles and political system adhere to religious teachings that prevail over the doctrine of

8 W.A.F. Wan Husain, 'Watanic Jurisprudence: Articulating the Legitimate Elements of the Basic Structure of the Federal Constitution' (2021) 29(1) IIUM Law Journal 1-2.

9 [2018] MLJU 69.

10 *Re: Reference re Senate Reform* (2014: 25-26).

11 Read Wan Husain (n 7); W.A.F. Wan Husain, *Kedaulatan Raja-Raja Melayu: Jurisprudens, Governan & Prinsip Perlombagaan Persekutuan* (Selangor, Abad Sinergi Sdn. Bhd., 2018).

human creation. The principle of the continuum legal framework is based upon the verses of al-Qur'an. One of the Quranic verses that underpins the said legal framework is as follows:

He has ordained for you of religion what He enjoined upon Noah and that which We have revealed to you, [O Muhammad], and what We enjoined upon Abraham and Moses and Jesus – to establish the religion and not be divided therein. Difficult for those who associate others with Allah is that to which you invite them. Allah chooses for Himself whom He wills and guides to Himself whoever turns back [to Him].¹²

The principle of the continuum legal framework is well explained by Ibn Kathir when he was interpreting the above verse. According to Ibn Kathir:¹³

The religion of the messengers is one. Allah says to this Ummah (Muslim community throughout the world); He (Allah) has ordained for you the same religion which He ordained for Nuh, and that which We have revealed to you; Allah mentions the first Messenger who was sent after Adam, that is, Nuh, peace be upon them, and the last of them is Muhammad, and that which We ordained for Ibrahim, Musa and Isa, Then He mentions those who came in between them who were the Messengers of strong will, namely Ibrahim, Musa and Isa bin Maryam. This Ayah (verse) mentions all five, just as they are also mentioned in the Ayah (verse) in Surah Al-Ahzab, where Allah says; And (remember) when We took from the Prophets their covenant, and from you, and from Nuh, Ibrahim, Musa, and Isa, son of Maryam. (33:7) The Message which all the Messengers brought was to worship Allah Alone, with no partner or associate, as Allah says; And We did not send any Messenger before you, but We revealed to him (saying); None has the right to be worshipped but I, so worship Me. (21:25). And according to a Hadith (the Prophet said), We Prophets are brothers, and our religion is one. In other words, the common bond between them is that Allah Alone is to be worshipped, with no partner or associate, even though their laws and ways may differ, as Allah says. To each among you, We have prescribed a law and a clear way. (5:48) Allah says here, saying you should establish religion and make no divisions in it, meaning Allah enjoined all the Prophets (peace and blessings of Allah be upon them all) to be as one, and He forbade them to differ and be divided. Intolerable for the idolators

12 Ash-Shuraa [42]: 13.

13 See <<https://qurano.com/en/42-ash-shura/verse-13/>> accessed 30 May 2022.

is that to which you call them. means, ‘it is too much for them to bear, and they hate that to which you call them, O Muhammad, i.e., Tawhid.’ Allah chooses for Himself whom He wills and guides unto Himself who turns to Him in repentance. This means that He is the One Who decrees guidance for those who deserve it and decrees misguidance for those who prefer it to the right path.

In Malaysia, as discussed in depth in the book entitled *Yang di-Pertuan Agong: Sovereignty, Prerogative and Practice*,¹⁴ our constitutional system recognizes the sovereignty of the Malay rulers as trustees of the Almighty Allah¹⁵ and the supremacy of the Constitution.¹⁶ Our democratic system is not absolute, and it is, in fact, a constitutional democracy as opposed to the Westminster parliamentary democracy; hence the word ‘democracy’ is not stipulated in our Federal Constitution.¹⁷

Article 181(1) of the Federal Constitution,¹⁸ the oath of the Yang di-Pertuan Agong under the Fourth Schedule,¹⁹ and other constitutional provisions envisage the reception of the continuum legal framework. In the premises, the principles of the Malay customs become essential because they define the sovereignty of Malay Rulers.²⁰ The position of Malay rulers is essential because they were the source of authority that legitimized the Federation of Malaya Agreement, 1957, and our Federal Constitution, 1957.

Previous research on this subject had ignored the principle of sovereignty as stipulated in Article 181(1) when discussing legislative

14 Wan Husain (n 7).

15 Federal Constitution of Malaysia, art 181(1) and fourth sch.

16 Federal Constitution of Malaysia, art 4(1).

17 See the text of Federal Constitution.

18 181. (1) *Subject to the provisions of this Constitution, the sovereignty, prerogatives, powers and jurisdiction of the Rulers and the prerogatives, powers and jurisdiction of the Ruling Chiefs of Negeri Sembilan within their respective territories as hitherto had and enjoyed shall remain unaffected.*

19 We ibni Yang di-Pertuan Agong of Malaysia do hereby swear: Wallahi; Wabillahi; Watallah; and by virtue of that oath do solemnly and truly declare that We shall justly and faithfully perform (carry out) our duties in the administration of Malaysia in accordance with its laws and Constitution which have been promulgated or which may be promulgated from time to time in the future. Further We do solemnly and truly declare that We shall at all time protect the Religion of Islam and uphold the rules of law and order in the Country.

20 The Constitutional Working Committee Report, dated 18 November, 1946.

powers and other related issues.²¹ The closest discussion on the sovereignty of Malay rulers was attempted in the Supreme Court's case of *Che Omar bin Che Soh vs Public Prosecutor*.²² However, Salleh Abas, CJ relied on M.B. Hooker without examining primary sources, thus misleading himself to conclude that the Malay rulers ascribed the sovereignty to themselves, no longer in the position as the trustee of the Almighty Allah.²³

Hence, this paper intends to explain the influence of Islam and Malay customs as the governing principles of legislative powers under the Federal Constitution. This paper is important because members of the legislative, executive, and judiciary take the oath under the Sixth Schedule before discharging their respective constitutional responsibilities.²⁴ This paper would assist in understanding the essence of the oath under the Sixth Schedule vis-à-vis the duty to uphold the rule of law and the supremacy of our Constitution.

Islam and Malay Customs Viewed from Watanic Jurisprudence

Islam as the religion of the Federation is a constitutional provision with its legal position, not just a political slogan.²⁵ The position of Islam in our Federal Constitution was related to its position before the independence day.²⁶ Islam has been the law of the land and placed the position of Malay Rulers as the shadow of the Almighty Allah.²⁷ The above position continues until today because it has been entrenched by Articles 181(1), 3(1), the oath of the Yang di-Pertuan Agong, and many other provisions

21 See C.N. Mustafa, 'The 1993 Royal Immunity Crisis: The Kerajaan, the Constitution and the dilemma of a new bangsa' (PhD thesis, University of Kent 2000); A. Bidin, 'The Historical and Tradition Features of the Malaysian Constitution' (1993) 21 *Jebat* 3-20; S.S. Faruqi, *Document of Destiny: The Constitution of the Federation of Malaysia* (Petaling Jaya, Star Publications, 2007).

22 (1988) 2 MLJ 55.

23 For further discussion, read W.A.F. Wan Husain, *Kenegaraan Malaysia: Sejarah, Kedaulatan dan Kebangsaan* (Perlis, Penerbit Universiti Malaysia Perlis, 2020) 82-96.

24 Federal Constitution of Malaysia, arts 43(6), 43B(4), 57(1A)(a), 59(1), 124 & 142(6).

25 Federal Constitution of Malaysia, art 3.

26 W.A.F. Wan Husain, 'Insight: The Interpretation of Islam Within the Legal Framework of the Indigenous Malaya' (2021) 4(2) *Journal of Governance and Integrity* 64-72.

27 *Ramah binti Taat v Laton binti Malim Sutan* [1927] 6 FMSLR 128; Read written laws such as Hukum Kanun Melaka, Hukum Kanun Johor, Hukum Kanun Pahang, Hukum Kanun Perak, and Undang-Undang Kedah.

of the Federal Constitution and the Malay rulers' position in their respective states. There is no legal basis to rely on Article 3(4), as argued by some scholars and politicians, to negate the position of Islam if the purpose of the said provision is viewed from its historical context and proper perspective.²⁸

The interpretation of Islam within its constitutional framework must be placed in its proper linguistic, philosophical, and historical context. The shadow of the Almighty Allah connotes the position of Malay Rulers as a caliph, the trustee of sovereign authority held by HIM alone.²⁹ Thus, Malay rulers' sovereignty needs to be clearly understood because they were the maker of the Federal Constitution through a process from 1946 until 1957. They are the maker of the Federal Constitution because, without their assent to the state enactments and federal ordinances as required by the Federation of Malaya Agreement, 1957, there would not be a federation as it exists today.³⁰ They are the maker due to their position as sovereign rulers.³¹ The maker means the final authority vested in them to execute the above agreements and pass the laws legitimizing the Federal Constitution of Malaya, 1957. This term is different for a drafter or a framer who is not sovereign. According to Western scholars and Muslims, sovereignty is the highest governing principle of a country.³² Hence, the principle of sovereignty governs values, ethics, and doctrine adopted by a government in regulating its law and regulation.³³

Apart from the position of Islam, the Malay customs play a significant role in retaining the Islamic legal principle in Malaya until today, both in practice and constitutional law. Malay customs are manners, culture, and law other than commandments revealed in al-Quran and al-Sunnah; it includes the systems, rules, ethics, and values that do not conflict with the principles of Islam as inherited from the practices of

²⁸ For a detailed argument on Articles 181(1) and 3(4) of the Federal Constitution, read W.A.F. Wan Husain, *Kedaulatan Malaysia Governan Utama Negara* (Selangor, Abad Sinergi Sdn. Bhd. & Penerbit UMP, 2022) 186-242, 249-266.

²⁹ S.A.A. Maududi, *Islamic Law and Constitution* (12th edn, Lahore, Islamic Publication Pvt. Ltd, 1997) 166.

³⁰ Federation of Malaya Agreement 1957, cl 6.

³¹ See The Federation of Malaya Agreement, 1948; and The Federation of Malaya Agreement, 1957.

³² D. Philpott, 'Sovereignty: An Introduction and Brief History' (1995) 48(2) *Journal of International Affairs* 353-368; Maududi (n 29).

³³ *ibid.*

society recognized by the Malay sultanates in the past. Malay customs also include traditional political and legal systems.³⁴

The traditional Malay system had a legislative authority known by various names, the Royal Council.³⁵ The Royal Council, headed by a Malay ruler, acted as the legislative authority in the traditional Malay system. Some legislative powers were delegated to his nobles, and such practice could be traced in various written laws before 1948, such as Hukum Kanun Melaka, Hukum Kanun Johor, Hukum Kanun Pahang, Undang-undang 99 Perak. The Hukum Kanun sources were al-Qur'an, al-Sunnah, ijma', and customs. The word "laws" is widely used today to replace hukum kanun. Hukum Kanun consists of Syariah law and customs.³⁶ Customs bearing legal enforcement known as *adat muhakkamah* was legislated through shura and accepted practice.³⁷ *Adat muhakkamah* is a form of Malay customs.³⁸

Various written laws pre-independence day stipulates the principle of Malay customs, among others, as laid in the *Preface to the Pahang Code of Laws*,³⁹ as follows:

And after that, I have thanked Him for His past Grace and that which is to come. That He may make me from the people of His beloved and the people of the Leader of all His messengers whom He commanded He brought all His words and canons of the previous Prophet by doing justice and doing Amar bil-ma'ruf wa nahiya al-Munkar then so enlighten all these worlds with the light of their religion. Peace be upon him and all his family and all his friends and all his people. Thereafter, then He made some among all His creatures, kings; as His Glorious Word says: Inni jaa'ilun fi al-ardzi Khalifah. Haza fi ar-risalati yahkumu al-qanun fil-Burhani - fa al-Malki al-Kabir wa al-wazir. Amma ba'd (translated by the author).

34 See M.Y. Hashim, 'Daulat dalam Tradisi Budaya dan Politik Kesultanan Melayu Abad ke-15 dan Awal Abad ke-16: Antara Mitos dan Realiti' (1995) 3(3) *SEJARAH: Journal of the Department of History*; W.A.F. Wan Husain (n 23) 1-24; M.A. Zaini (ed), *Siri Titah Sultan Nazrin Muizzuddin Shah* (Kuala Lumpur, Dewan Bahasa dan Pustaka, 2021) 70-71.

35 See C.C. Brown (translated from MS Raffles), 'Malay Annals' (2010) *Journal of the Malayan Branch of the Royal Asiatic Society*; W.A.F. Wan Husain, *Kedaulatan Raja-Raja Melayu: Jurisprudens, Governan & Prinsip Perlembagaan Persekutuan* (Selangor, Abad Sinergi Sdn. Bhd., 2018) 121-148.

36 See Y. Isa (ed), *Hukum Kanun Pahang* (Pahang Museum Manuscript version, Kuala Lumpur, MacroCity Resources, 2003).

37 A.K. Zaydan, *Al-wajiz fi usul al-fiqh* (Kaherah, Dar al-Tawziâ wa al-Nasyr al-Islami, 1993).

38 Isa (n 36) 106-107, 118-121, 152-158.

39 ibid. 3-4; Read Wan Husain (n 7) for further detailed explanation.

The principle of Malay customs dictates their forms, which could evolve over time. Malay customs are the existing laws duly recognized by Article 162 of the Federal Constitution. Their principle is perpetual and vital in defining our constitutional system. Article 162 read:

162. (1) Subject to the following provisions of this Article and Article 163*, the existing laws shall, until repealed by the authority having the power to do so under this Constitution, continue in force on and after Merdeka Day, with such modifications as may be made therein under this Article and subject to any amendments made by Federal or State law.

Malay customs are valid legal sources as the custom is an element assigned to the law under Article 160(2) of the Federal Constitution. Article 160(2) provides that “Law” includes *written law, the common law in so far as it is in operation in the Federation or any part thereof, and any custom or usage having the force of law in the Federation or any part thereof;*

From an epistemological point of view, Malay customs generally include the appreciation of the Malayan local community to the laws of nature, community life, ethics, regulations, and the customary practices that are still acceptable in the daily lives of Malays. From a broader perspective, Malay customs are the cultural and legal practices that exist today apart from the religious laws revealed in the Qur'an and Sunnah; they encompass systems, regulations, ethos, and values that do not contradict the principles of Islamic teachings as inherited from the practices of society recognized by the Malay Sultanates in the past.⁴⁰

Malay customs from the ancient Malay Sultanates dictated written laws according to their forms, ethics, and practices suitable to the community. The laws of the Malacca Code and the laws of the Malay States after that, such as the Pahang Code, Johor Law, Perak Code, and Kedah Law, are among the written laws that assembled not only the constitutional law but also the various laws that were in force at the time.

The Constitutional Working Committee Report 1946 states that the sovereignty in each Malay State shall rest as heretofore in His Highness the Ruler of that State according to Malay customs.⁴¹ In every pre-independence day agreement, the doctrine of advice introduced by

⁴⁰ Wan Husain (n 23) 1-24.

⁴¹ C.O 537/1530 No. 50823 Part III (Colonies, General: Supplementary and Secret Original Correspondence, 18 November 1946).

the British in Malaya does not apply to the Islamic religion and Malay customs affairs.⁴²

There are two excerpts in the Reid Commission Report, 1956-1957, which testify to advisory practices in the Malay States, namely:

21. ... *In these States, the executive authority rested with the local State Government and was exercised by Malay officials of whom the Mentri Besar was the head, and there was a friendly co-operation between the State administration and the British Advisor, which made it unnecessary for the ultimate power of "advice" to be exercised. It was the policy of these States to preserve the Malay way of life and to develop their administrations based on the considerable degree of self-government which they enjoyed.*

26. ... *The Rulers had reserved powers in respect of State affairs similar to those of the High commissioner in respect of Federal affairs. State administrations under Mentri Besar were set up in each of the former Federated Malay States and were continued in each of the former Unfederated Malay States. There was provision for the establishment of State Executive Councils at meetings of which the ruler of the State concerned would normally preside. Each ruler was empowered to act in opposition to the advice given to him by members of the Council if, in any case, it should, in his judgment, be right so to do. The State Agreements provided that the prerogatives, powers, and jurisdiction of the Rulers would be those which they possessed on 1 December 1941, subject to the provisions of the Federation Agreement and the State Agreements. The Rulers undertook to govern their States according to written constitutions and accepted the responsibility of encouraging the education and training of the Malay inhabitants of the States to fit them to take a full share in the economic progress, social welfare, and government of the States and of the Federation. A British Advisor was appointed in each State, and the Rulers undertook to accept the advice of their Advisors on all state affairs other than those relating to the Muslim religion and Malay custom. ...*

The above report shows the British advice only in implementing the executive function of a Malay Ruler. The powers given are limited, and the advice does not mean changing the teachings of Islam and the essence of Malay customs.

42 See Pangkor Treaty 1874, and other agreements entered by the Malay Rulers with the British Government before 1948.

Today, Malay customs fall under the State Legislature's jurisdiction.⁴³ Hence, Item 1 List II of the Ninth Schedule empowers the State Legislature to legislate Malay customs in statutes.⁴⁴ Item 9 List II of the Ninth Schedule retains the jurisdiction of the State Legislature to create offences relating to Malay customs.

The Federal Constitution further entrenches the legal position of Malay customs, and article 150(6A) prevents the extension of Parliament's legislative powers on any matter of Islamic law or Malay custom, even during the emergency period. Such special protection is also enjoyed by the laws or customs of natives in Sabah and Sarawak.

Malay customs have been the practices of the States of Malaya and their local inhabitants; they are local circumstances as stipulated in section 3 of the Civil Law Act 1956 (Revised 1972). The principle of Malay customs as aforesaid shall take precedence over the common law of England and the rules of equity in the judicial system as envisaged by section 3 of the Civil Law Act 1956 (Revised 1972). Section 3 provides:

3. (1) Save so far as other provision has been made or may hereafter be made by any written law in force in Malaya, the Court shall:
 - (a) in Malaya or any part thereof, apply the common law of England and the rules of equity as administered in England on 7 April 1956;
 - (b) ...
 - (c) ...

Provided always that the said common law, rules of equity, and statutes of general application shall be applied so far only as the circumstances of the States of Malaya and their respective inhabitants permit and subject to such qualifications as local circumstances render necessary.

Constitutionally speaking, the judiciary of Malaysia must recognize the principle of Malay customs as a source of law over the English common law and rules of equity. Article 181(1) and other constitutional provisions, together with Section 3 of the Civil Law Act 1956 (Revised 1972), legitimize the Malay customs as the prevailing conditions. The

⁴³ Federal Constitution of Malaysia, item 1 list II of the Ninth Schedule.

⁴⁴ Parliament may legislate Malay customs for the Federal Territories of Kuala Lumpur, Putrajaya and Labuan.

position of Malay customs embedded in Article 150(6A) also guarantees the continuity of the monarchy institution and limits the legislative acts made via ordinances and laws passed under Clauses (2B) and (5) of Article 150. Malay customs recognize Malay Rulers in the highest hierarchy of the traditional political system. The monarchial system is further entrenched by Article 38(4) and becomes one of the elements of the basic structure of our Constitution.⁴⁵ Therefore, our constitutional system upholds the sovereignty of the Malay rulers and the supremacy of the Constitution; both are the governance of our parliamentary system, government and judiciary.

Implications of Islam as the Principle of Sovereignty

Islam as the religion of the Federation is still interpreted independently from its position as the principle of Malaysian sovereignty. Articles 181(1), 3(1), 37(1), 11, and 150(6A) primarily address Islam's position within our legal framework. Yang di-Pertuan Agong and the Malay Rulers took the oaths to protect the sanctity of Islam, which is the faith of the supreme leaders and the majority of the Malaysians.

Article 181(1) retains the sovereignty of the Malay Rulers according to Malay customs. Malay customs acknowledge Almighty Allah as the ultimate sovereign, with Malay rulers serving as His trustees. Hence, Islam has become the principle of sovereignty long before independence day. The British advisors had never touched on the position of Islam during their intervention in the internal affairs of the Malay states, and the British continued to recognize the position of Islam and Malay customs as being part of their Agreement. The principle of Malay customs itself places Islam as the law of the land and Malay Rulers as the head of religion. Malay customs have developed practice following the Islamic legal principles since the Malay Sultanate of Malacca.⁴⁶ One could not deny that the way Malays understand Islam contrasts with the numerical creed embraced by British officials in Malaya.

Islamic laws are the rules in the Qur'an and al-Sunnah, including the legal principles stated by the two primary sources above. Islamic legislation is the law passed in the form of constitutions, acts, enactments, or the like, as well as customs adopted based on the legal principles of the Qur'an and al-Sunnah, and supported by qiyas and ijma'.

45 Wan Husain (n 8) 1-28.

46 Read C. Lopez, 'The British Presence in the Malay World: A Meeting of Civilizational Traditions' (2001) 19 *SARI: Jurnal Alam dan Tamadun Melayu* 3-33.

Ahmad Fairuz, CJ in the case of *Lina Joy vs the Federal Islamic Religious Council & Ors*⁴⁷ adopted the definition of Islam by Maududi when his lordship articulates in his judgment as follows:

Islam is not only a gathering of dogmas and rituals, but it is also a complete way of life including all fields of activities of humans, private or public, laws, politics, economy, social, culture, moral or judiciary. And if studied, Articles 11(1), 74(2), and item 1 in list 2 in Schedule 9 of the Federal Constitution are clear that Islam includes, among other things, Islamic laws.

As sanctioned in the al-Qur'an and al-Sunnah, such as compulsory acts, Islamic law is obligatory even if the government does not legislate it. However, the government must properly enact a legal ecosystem, including legislation. Such legislation is required as Islam emphasizes justice in law enforcement and its administration. Islamic law and legislation have a similar position as both need to be upheld for justice and well-being and to avoid harm to people's lives.⁴⁸ The above principles also underlie the principle of executive and judiciary powers within the ambit of our constitutional system.

According to Ahmad Fairuz, CJ in *Lina Joy*,⁴⁹ Islam is not only a gathering of dogmas and rituals, but it is also a complete way of life, including all fields of activities of humans, private or public, laws, politics, economy, social, culture, morals or judiciary. Thus, the same principle applies within the context of the Federal Constitution that recognizes Islam as the religion of the Federation, while the same position has been in the Malay states for hundreds of years.

It was a constitutional development process that finally, the Malay Rulers passed the Federal Constitution with the advice of their respective Council of States.⁵⁰ Such an exercise was required by the Federation of Malaya Agreement, 1957. Clause 6 of the Federation of Malaya Agreement, signed by the Malay Rulers, stipulates as follows:

The foregoing provisions of this Agreement are conditional upon the approval of the said Federal Constitution by Federal Ordinance and by an Enactment of each of the Malay States.

47 [2004] 2 MLJ 119.

48 W.A.F. Wan Husain, 'Insight: The Conceptual Framework For Buiding The World-Class Good Governance Ethics' (2020) 4(1) *Journal of Governance and Integrity* 1-5.

49 [2004] 2 MLJ 119.

50 Read *Constitutions of The States of Malaysia* (2nd edn, Kuala Lumpur, International Book Services, 1998).

The First Schedule of the above Federation of Malaya Agreement, dated 5 August 1957, contains the Federal Constitution of Malaya 1957. The process to approve the Federal Constitution by the Federal Ordinance and Enactment of each Malay State took place in August 1957. More importantly, the above process proved that the Federal Constitution had been legitimized by the sovereign power of the Malay Rulers. Without their approval, the Federal Constitution could not extend its powers over the State within limits set by the constitutional law. In other words, the source of the Federal Constitution's authority and powers is the sovereignty that recognizes Almighty Allah as the ultimate sovereign and where Malay rulers reside as His trustees. The Ninth Schedule of the Constitution contains the Federal List, State List, and Concurrent List to determine the distribution of legislative powers between the Federation and States. Item 1 List II (State List) of the Ninth Schedule stipulates as follows:

1. Except with respect to the Federal Territories of Kuala Lumpur, Labuan and Putrajaya, Islamic law and personal and family law of persons professing the religion of Islam, including the Islamic law relating to succession, testate and intestate, betrothal, marriage, divorce, dower, maintenance, adoption, legitimacy, guardianship, gifts, partitions and non-charitable trusts; Wakafs and the definition and regulation of charitable and religious trusts, the appointment of trustees and the incorporation of persons in respect of Islamic religious and charitable endowments, institutions, trusts, charities and charitable institutions operating wholly within the State; Malay customs; Zakat, Fitrah and Baitulmal or similar Islamic religious revenue; mosques or any Islamic public place of worship, creation and punishment of offences by persons professing the religion of Islam against precepts of that religion, except in regard to matters included in the Federal List; the Constitution, organization and procedure of Syariah courts, which shall have jurisdiction only over persons professing the religion of Islam and in respect only of any of the matters included in this paragraph, but shall not have jurisdiction in respect of offences except in so far as conferred by federal law; the control of propagating doctrines and beliefs among persons professing the religion of Islam; the determination of matters of Islamic law and doctrine and Malay customs.

In addition, Article 77 of the Federal Constitution retains the power of the State legislature to make laws concerning any matter not enumerated in any of the Lists set out in the Ninth Schedule, not being a matter on

which Parliament has the power to make laws. The State legislature can also continue to create certain offences where Item 9, List II (State List), Ninth Schedule provides:

9. Creation of offences in respect of any of the matters included in the State List or dealt with by State law, proofs of State law and of things done thereunder, and proof of any matter for purposes of State law.

The State legislature's powers are not limited to matters that can only be tried in the Syariah Court. The Syariah Court is the Muslim Court. The Muslim courts are not new but existed before 1948 with other courts under the authority of the States. As a result of the Federation of Malaya Agreement, 1948, the Malay Rulers delegated their highest judicial review powers in aspects other than the personal laws of Muslims to the Supreme Court, today known as the Federal Court. On the other hand, the Yang di-Pertuan Agong and the Malay rulers retain their authority to pardon according to their respective jurisdictions.⁵¹

State legislatures within their jurisdiction may also enact laws triable by the judicial power of the Federation, that is, courts under Article 121 of the Federal Constitution. Article 121 read:

The judicial power of the Federation

121. (1) Subject to Clause (2), the judicial power of the Federation shall be vested into High Courts of co-ordinate jurisdiction and status, namely-
 - (a) one of the States of Malaya, which shall be known as the High Court in Malaya and shall have its principal registry in Kuala Lumpur; and
 - (b) one in the States of Sabah and Sarawak, which shall be known as the High Court in Borneo and shall have its principal registry at such place in the States of Sabah and Sarawak as the Yang di-Pertuan Agong may determine;
 - (c) (Repealed);
 and in such inferior courts as may be provided by federal law.

There are Items 2 until 12A in the State List within the State's legislative powers but placed under the purview of the judicial courts of the

51 Federal Constitution of Malaysia, art 42.

Federation.⁵² For example, Article 11(4) allows the State legislature to enact laws to control or restrict the propagation of any religious doctrine or belief among persons who follow the religion of Islam. This law is enforceable against non-Muslims; therefore, its forum is within the judicial courts of the Federation.

Although criminal jurisdiction falls under the Federal List, that does not mean that State legislatures are no longer allowed to enact laws affecting the personal offences of Muslims vis-à-vis shariah criminal offences. Criminal law and offences are public law, and public law is part of the law governing the relationship between the State and a person or persons, the internal organs and institutions, the branches of government, and the relationship between a person or persons in society.

Public law includes constitutional law, administrative law, and criminal law.⁵³ Personal law applies only to certain groups or classes of society or specific people based on religion, beliefs, and culture.⁵⁴ Private law is a branch of law that is not public and relates to persons or institutions bound by contract or principle of accountability.⁵⁵ Thus, violation of personal or private laws is not a crime but an offence. The above is the category of laws used to differentiate between crime and offence.

The list I of the Ninth Schedule outlines the jurisdiction of Federal law, which includes civil and criminal laws and procedures as stipulated in Item 4. Criminal laws and procedures are listed in Federal law, neither List III nor the Concurrent List. That means only Parliament has the power to enact criminal laws and procedures. However, that does not mean that State legislatures cannot enact offences within the scope of Muslim personal law. Item 1 of List II provides *the creation and punishment of offences by persons professing the religion of Islam against the precepts of that religion, except concerning matters included in the Federal List;*

Hence, offences against the precepts of Islam that apply only to Muslims are offences under Item 1, List II of the Ninth Schedule, which is the power of State legislatures. Despite being named Syariah criminal offences by the State Enactment, such offences are not crimes

52 Except Item 9 when dealing with the matters to be dealt with Syariah Court

53 L.B. Curzon, *Dictionary of Law* (Sixth edn, Kuala Lumpur, International Law Book Services, 2007) 343; ‘Public law’ Merriam-Webster Dictionary <<https://www.merriam-webster.com/dictionary/public%20law>> accessed 25 November 2021.

54 ‘Personal law’ Merriam-Webster Dictionary <<https://www.merriam-webster.com/dictionary/personal%20law>> accessed 25 November 2021.

55 Curzon (n 53) 332; ‘Private law’ Merriam-Webster Dictionary <<https://www.merriam-webster.com/dictionary/private%20law>> accessed 25 November 2021.

or criminal law under the Federal Constitution. Strictly speaking, the criminal offences of shariah are included in the State List because they are still personal laws of Muslims and not applicable to non-Muslims.

Summarily, Islam and Malay customs are the sources of legislative powers embedded in the Federal Constitution. It is a fundamental duty of the members of Parliament to uphold the position of Islam and Malay customs as enshrined since the supremacy of the Federal Constitution has become the pillar of Malaysia. The oath under the Sixth Schedule taken by every member of Parliament imposes a sacred obligation to protect the Federal Constitution vis-à-vis the source of the legislative powers. The Sixth Schedule reads as follows:

I, , having been elected (or appointed) as a member of the House of Representatives (or the Senate), do solemnly swear (or affirm) that I will faithfully discharge my duties as such to the best of my ability, that I will bear true faith and allegiance to Malaysia, and will preserve, protect and defend its Constitution.

Conclusion

The traditional Malay system did have a legislative authority of its own. The function of the Malaysian Parliament as a legislative authority is not peculiar to the traditional Malay system of the Royal Council based on shura, and it has been developed over time and later modelled after some features of Westminster. Our Parliament does not have absolute power as in Britain because many amendments under the Federal Constitution require the Conference of Rulers' consent. The principle of sovereignty and the supremacy of the Constitution become a yardstick for the validity of laws passed by legislative authorities.

The position of Islam and Malay customs in the Federal Constitution becomes clearer if viewed from watanic jurisprudence. The position of the precepts of Islam in the Federal and State Lists explains the ambit of Article 3(1), and Article 3(4) guarantees the jurisdiction of the State over the religion of Islam as enshrined in List II. The judicial courts of the Federation and Syariah courts are forums to implement and equally enforce Islamic law and its legal principles according to their respective jurisdictions. As envisaged in Section 3, Civil Law Act 1956 (Revised 1972), Malay customs are our local circumstances. The principle of Malay customs legitimizes Islam as the principle of Malaysian sovereignty. Islamic injunctions within the Federal legal framework cover the aspects

of public and private laws. In addition, List III of the Ninth Schedule provides a Concurrent List for the Federation and States. On the other hand, personal law and those not included in List I and III fall within the state legal framework. The above interpretational approach could resolve the jurisdictional clashes between the Federation and the State constitutionally.

Finally, Article 181(1) retains Islam as the law of the land and clarifies its position as the religion of the Federation. In short, all branches under the Federal Constitution should uphold the principle of sovereignty, as explained. Hence, ultimately Shariah-compliant is the primary governing principle of legislative powers under the Federal Constitution.

References

- 'Personal law' *Merriam-Webster Dictionary* <<https://www.merriam-webster.com/dictionary/personal%20law>> accessed 25 November 2021.
- 'Private law' *Merriam-Webster Dictionary* <<https://www.merriam-webster.com/dictionary/private%20law>> accessed 25 November 2021.
- 'Public law' *Merriam-Webster Dictionary* <<https://www.merriam-webster.com/dictionary/public%20law>> accessed 25 November 2021.
- Allen J. de V., Stockwell A.J. & Wright L.R. (eds), *A Collection of Treaties and Other Documents Affecting the States of Malaysia* Vol. 2 (London, Oceana Publication, 1981).
- Ash-Shuraa [42]: 13 <<https://qurano.com/en/42-ash-shura/verse-13/>> accessed 30 May 2022.
- Bidin A., 'The Historical and Tradition Features of the Malaysian Constitution' (1993) 21 *Jebat* 3-20.
- Brown C.C. (translated from MS Raffles), 'Malay Annals' (2010) *Journal of the Malayan Branch of the Royal Asiatic Society*.
- C.O 537/1530 No. 50823 Part III (Colonies, General: Supplementary and Secret Original Correspondence, 18 November 1946).
- Che Omar bin Che Soh v Public Prosecutor* [1988] 2 MLJ 55.
- Civil Law Act 1956 (Revised 1972).

- Constitutional Working Committee Report, dated 18 November, 1946.
- Constitutions of The States of Malaysia* (2nd edn, Kuala Lumpur, International Book Services, 1998).
- Curzon L.B., *Dictionary of Law* (Sixth edn, Kuala Lumpur, International Law Book Services, 2007).
- Faruqi S.S., *Document of Destiny: The Constitution of the Federation of Malaysia* (Petaling Jaya, Star Publications, 2007).
- Federal Constitution of Malaysia.
- Federation of Malaya Agreement, 1948.
- Hashim M.Y., 'Daulat dalam Tradisi Budaya dan Politik Kesultanan Melayu Abad ke-15 dan Awal Abad ke-16: Antara Mitos dan Realiti' (1995) 3(3) *SEJARAH: Journal of the Department of History*.
- Indira Gandhi A/P. Mutho v. Pengarah Jabatan Agama Islam Perak & Ors and other appeals* [2018] MLJU 69.
- Isa Y. (ed), *Hukum Kanun Pahang* (Pahang Museum Manuscript version, Kuala Lumpur, MacroCity Resources, 2003).
- Lina Joy vs the Federal Islamic Religious Council & Ors* [2004] 2 MLJ 119.
- Lopez C., 'The British Presence in the Malay World: A Meeting of Civilizational Traditions' (2001) 19 *SARI: Jurnal Alam dan Tamadun Melayu* 3-33.
- Maududi S.A.A., *Islamic Law and Constitution* (12th edn, Lahore, Islamic Publication Pvt. Ltd, 1997) 166.
- Mustafa C.N., 'The 1993 Royal Immunity Crisis: The Kerajaan, the Constitution and the dilemma of a new bangsa' (PhD thesis, University of Kent 2000).
- Pangkor Treaty 1874.
- Philpott D., 'Sovereignty: An Introduction and Brief History' (1995) 48(2) *Journal of International Affairs* 353-368.
- Ramah binti Taat v Laton binti Malim Sutan* [1927] 6 FMSLR 128.
- Re: Reference re Senate Reform* (2014) 25-26.

Reid Commission, *Report of the Federation of Malaya Constitutional Commission 1957* (Her Majesty's Stationery Office, 1957).

Smith S.C., *British Relations with the Malay Rulers from Decentralisation to Malayan Independence 1930-1957* (Oxford University Press, 1995).

Venter F., *Constitutional Comparison: Japan, Germany, Canada & South Africa as Constitutional States* (South Africa, Kluwer Law International, 2000).

Wan Husain W.A.F., 'Insight: The Conceptual Framework for Buiding The World-Class Good Governance Ethics' (2020) 4(1) *Journal of Governance and Integrity* 1-5.

— 'Insight: The Interpretation of Islam Within the Legal Framework of the Indigenous Malaya' (2021) 4(2) *Journal of Governance and Integrity* 64-72.

— 'Watanic Jurisprudence: Articulating the Legitimate Elements of the Basic Structure of the Federal Constitution' (2021) 29(1) *IIUM Law Journal* 1-2.

— *Kedaulatan Malaysia Governan Utama Negara* (Selangor, Abad Sinergi Sdn. Bhd. & Penerbit UMP, 2022).

— *Kedaulatan Raja-Raja Melayu: Jurisprudens, Governan & Prinsip Perlembagaan Persekutuan* (Selangor, Abad Sinergi Sdn. Bhd., 2018).

— *Kenegaraan Malaysia: Sejarah, Kedaulatan dan Kebangsaan* (Perlis, Penerbit Universiti Malaysia Perlis, 2020).

— *Yang di-Pertuan Agong: Kedaulatan, Prerogatif dan Amalan* (Kuala Lumpur, Dewan Bahasa dan Pustaka, 2021).

Zaini M.A. (ed), *Siri Titah Sultan Nazrin Muizzuddin Shah* (Kuala Lumpur, Dewan Bahasa dan Pustaka, 2021).

Zaydan A.K., *Al-wajiz fi usul al-fiqh* (Kaherah, Dar al-TawziÊ wa al-Nasyr al-Islami, 1993).

Patriarki, Politik Malaysia dan Pilihan Raya Umum

Patriarchy, Malaysian Politics and General Election

Sharifah Syahirah S. Shikh*

Abstrak

Artikel ini bertujuan untuk menganalisis situasi wanita sebagai pemimpin dan calon dalam politik Malaysia terutamanya ketika Pilihan Raya Umum ke-14 (PRU-14). Patriarki telah dipilih sebagai konsep analisis untuk meninjau sejauh mana amalan ini telah memberi kesan kepada wanita yang ingin bergiat secara aktif sebagai pemimpin dan wakil rakyat dalam politik Malaysia. Patriarki ini sering kali menjadi faktor pengukuhan hegemoni maskuliniti iaitu pemikiran, amalan dan sistem yang mengagungkan kaum lelaki secara berlebihan. Setakat ini, Malaysia mencatatkan ranking dunia yang mengecewakan bagi jumlah pemimpin wanita terutamanya dalam legislatif iaitu kedudukan ke-143 daripada 187 buah negara. Kedudukan ini menggambarkan kemunduran demokrasi negara dari segi memberi peluang dan ruang kepada separuh warganegara Malaysia iaitu kaum wanita. Terdapat tiga objektif artikel ini iaitu (i) membincangkan latar belakang wanita dan politik Malaysia; (ii) mengenal pasti amalan patriarki dalam politik Malaysia, (iii) menganalisis inisiatif yang dijalankan ketika PRU-14 yang telah mencabar amalan patriarki ini. Artikel ini ditulis berdasarkan kaedah kualitatif dengan menganalisis data yang diperoleh melalui data sekunder, dokumen rasmi dan pemerhatian sepanjang tempoh PRU-14 termasuklah ketika penamaan calon serta sebulan pasca PRU-14. Artikel ini mendapati bahawa amalan patriarki secara jelas telah menggugat dan menidakkannya potensi wanita sebagai pemimpin dalam politik Malaysia dan diperkuuh melalui amalan budaya parti-parti politik seperti UMNO, PAS, PKR, DAP and BERSATU. Dalam PRU-14, amalan yang memperkuuh hegemoni maskuliniti masih diteruskan dengan jumlah calon wanita yang minimum dan ahli-ahli parti wanita masih dianggap lebih sesuai sebagai peraih undi parti. Hegemoni maskuliniti

* Dr Sharifah Syahirah S. Shikh is senior lecturer at the Faculty of Education, Humanities and Arts, Kolej Universiti Poly-Tech MARA (KUPTM), Kuala Lumpur. Email: shsyahirah@kuptm.edu.my

ialah konsep yang menjelaskan kewujudan amalan masyarakat yang secara sistematik mendukung patriarki dan ketuanan lelaki wujud dalam semua aspek terutamanya sosial, ekonomi dan politik. Walau bagaimanapun, terdapat usaha yang telah dijalankan oleh pelbagai pihak terutamanya sayap-sayap wanita parti politik, masyarakat sivil, media dan agensi kerajaan yang telah mencabar sistem ini dan menyuarakan kepentingan wanita sebagai pemimpin negara. Antara usaha yang telah dijalankan ialah demonstrasi NGO wanita selepas PRU-14 yang menuntut peningkatan jumlah pemimpin wanita dalam kabinet.

Kata kunci: Patriarki, Politik Malaysia, Pemimpin, Pilihan Raya Umum, Wanita

Abstract

This article aims to analyse the situation of women as leaders and candidates in Malaysian politics, especially during the 14th General Election (GE14). The patriarchy practice is chosen as an analytical concept in reviewing how this system has impacted women who want to actively engage as leaders and representatives of the people in Malaysian politics. Patriarchy is often a factor that strengthens the hegemony of masculinity, that is, thinking and culture that glorifies men in excess. So far, Malaysia has recorded a disappointing world ranking for the number of female leaders, especially in the legislature, ranking 143rd out of 187 countries. This ranking position illustrates the country's democratic setback in providing opportunities and space to half of Malaysians, namely women. There are three objectives of this article, which are (i) discussing women's background and Malaysian politics, (ii) identifying the practices of the patriarchal system in Malaysian politics, and (iii) analysing the initiatives undertaken during GE14 that have challenged this patriarchal system. This article is written on a qualitative basis by analysing data obtained from secondary data, official documents, and observations during the GE14 period, including during the nomination of candidates as well as the month after GE14. This article found that the patriarchal system has clearly undermined and negated women's potential as leaders in Malaysian politics and that it is strengthened through the cultural practices of political parties such as UMNO, PAS, PKR, DAP and BERSATU. In GE14, the practice of enhancing the hegemony of masculinity continued with a minimal number of female candidates, and female party members were still considered more suitable as party voters. This hegemony of masculinity is a concept that explains the existence of societal practices that systematically uphold patriarchy, and male supremacy exists in all

aspects, primarily social, economic and political. However, there are efforts that have been carried out by various parties, especially the women's wings of political parties, civil society, the media, and government agencies, that have challenged this system and have voiced the importance of women as leaders of the country. Among the efforts that have been carried out is the demonstration of women NGOs after GE14, which demanded an increase in the number of women leaders in the cabinet.

Keywords: Patriarchy, Malaysian Politics, Leader, General Elections, Women

Pengenalan

Keputusan Pilihan Raya Umum Ke-14 (PRU-14) pada 9 Mei 2018 menunjukkan satu perubahan ketara dalam pola pengundian yang telah mengurangkan dominasi Barisan Nasional dalam pentadbiran negara. Perkara ini juga merupakan permulaan kemelut politik yang berpanjangan di Malaysia. PRU-14 telah mencerminkan keupayaan dan kekuatan pengundi dalam usaha membawa perubahan ketara dalam politik Malaysia. Satu sebab utama perubahan pola pengundian ini ialah pendemokrasian informasi yang memudahkan pengundi mendapatkan pelbagai maklumat termasuklah maklumat yang ingin dirahsiakan oleh pihak tertentu begitu juga maklumat yang belum tentu kesahihannya. Malah, sepanjang proses PRU-14 berlangsung terdapat pengukuhan kepada wajah politik baharu yang lebih menekankan keadilan sosial, peranan wanita dan pemuda, hak asasi manusia dan kesaksamaan ekonomi melalui manifesto dan gerak kerja parti-parti politik serta NGO. Walau bagaimanapun, apabila dilihat dari sudut keseimbangan jantina dalam kepimpinan, PRU-14 masih tidak menunjukkan perubahan yang signifikan untuk mengetengahkan calon dan meningkatkan jumlah wakil rakyat wanita dalam Parlimen dan Dewan Undangan Negeri.

Saranan untuk memastikan minimum 30% wanita sebagai pembuat keputusan dalam legislatif masih gagal direalisasikan. Dasar ini bukanlah yang berat sebelah tetapi merupakan dasar afirmatif yang mendukung konsep kesaksamaan substantif berbanding dengan konsep kesaksamaan formal.¹ Kesaksamaan substantif bermaksud amalan dan dasar yang mendukung keadilan dengan mengambil kira latar belakang dan cabaran

¹ Kementerian Pembangunan Wanita, Keluarga dan Masyarakat, *Prestasi Parti Politik dan Calon Wanita dalam Pilihan Raya Umum ke-14: Pemerhatian Awal KPWKM* (Putrajaya, KPWKM, 2018).

yang dihadapi oleh individu atau kumpulan disebabkan oleh jantina, keadaan fizikal, kaum dan sebagainya. Kesaksamaan substantif berbeza daripada kesaksamaan formal yang mengamalkan kesamarataan tanpa mengira diskriminasi dan cabaran yang dihadapi disebabkan oleh jantina, keadaan fizikal, kaum dan sebagainya. Konsep kesaksamaan substantif ini perlu diketengahkan bagi golongan yang mempunyai bukti latar belakang yang telah dipinggirkan dalam sesuatu aspek kehidupan seperti wanita di Malaysia dalam bidang kepimpinan.² Oleh sebab representasi dan suara kaum wanita sering kali dipinggirkan, huraihan terhadap proses pembangunan negara sering kali lebih cenderung kepada sudut pandangan kaum lelaki.³ Hal ini telah menyebabkan suara dan kepentingan wanita selaku separuh populasi negara kurang dipandang serius dalam parliment. Contohnya, perbincangan mengenai penjagaan anak telah diketengahkan oleh majoriti wakil rakyat wanita dan hanya seorang wakil rakyat lelaki sahaja. Wakil rakyat wanita berupaya membincangkan keperluan untuk memperbanyak pusat penjagaan kanak-kanak dan penambahan belanjawan secara mendalam berbanding wakil rakyat lelaki.⁴ Namun, hasil kajian penyelidikan seperti Manderson,⁵ Dancz,⁶ Rashila Ramli,⁷ Maznah Mohamed,⁸ Roslina Ismail,⁹

-
- 2 Konsep kesaksamaan substantif ini adalah satu dari tiga prinsip utama Convention on Elimination of All Forms of Discrimination yang telah diangkat sebagai undang-undang hak asasi wanita antarabangsa Pertubuhan Bangsa-bangsa Bersatu (PBB).
 - 3 N.S. Karim dan R. Talib, *Pergerakan Wanita dalam Memperjuangkan Hak* (Selangor, UKM Press, 2016).
 - 4 U.A. Ahmad Zakuan, *Women in the House Leadership in the Malaysian Parliament* (Selangor, IIUM Press, 2019); U.A. Ahmad Zakuan, 'Women in the Malaysian parliament: Do they matter' (2010) 18(2) *Intellectual discourse* 283-322.
 - 5 L. Manderson, *Wanita, Politik dan Perubahan: Pergerakan Kaum Ibu UMNO, Malaysia, 1945-1972*, Samsudin Jaapar (terjemahan) (Kuala Lumpur, Fajar Bakti, 1981).
 - 6 V.H. Dancz, *Women and Party Politics in Peninsular Malaysia* (New York, Oxford University Press, 1984).
 - 7 R. Ramli, 'Gender and Politik: Satu Penelitian Teoritis dan Empiris' dalam G. Mayudin (ed), *Teori Sains Politik Pilihan: Aplikasinya dalam Konteks Malaysia* (Bangi, UKM Press, 1999); R. Ramli dan lain-lain (eds), *Seethings and Seatings: Strategies for Women's Political Participation in Asia Pacific* (Chiang Mai, Asia Pacific Forum on Women, Law, and Development (APWLD), 2005).
 - 8 M. Mohammad, 'At the Centre and The Periphery: The Contribution of Women's Movements to Democratization' dalam K.B.T. Khoo dan F. Loh (eds), *Democracy in Malaysia: Discourses and Practises*. (Surrey, CURZON, 2002) 216-240.
 - 9 R. Ismail, *Penyertaan Wanita Dalam Politik: Satu Kajian Sikap Lelaki Islam Di Terengganu* (Terengganu, Universiti Malaysia Terengganu, 2003).

Sharifah Syahirah,¹⁰ Ummu Atiyah Ahmad Zakuan,¹¹ Kartini Aboo Talib dan Zaireeni Azmi¹² mendapati wanita masih dipinggirkan dalam kepimpinan Malaysia. Hal ini menggambarkan bahawa kaum wanita kurang diberi peluang untuk berperanan dalam struktur pemerintahan kerajaan. Berpaksikan keputusan PRU-14, artikel ini membahas cara amalan dan kepercayaan patriarki telah menjadi faktor utama yang menyebabkan peratusan representasi dan kepimpinan wanita dalam politik masih lagi rendah.

Latar Belakang Wanita dan Politik Malaysia

Wanita di Malaysia telah bergiat aktif dalam hal ehwal masyarakat dan politik negara semenjak sebelum merdeka lagi. Namun, mereka lebih diiktiraf sebagai penggerak persatuan atau parti politik dan kurang diberi peluang dalam kepimpinan yang telah mencatatkan peratusan yang rendah dalam semua sektor termasuklah sektor yang didominasi wanita. Jawatankuasa *Convention on Elimination of All Forms of Discrimination Against Women* (CEDAW) (2021) telah mengkritik prestasi kerajaan Malaysia dalam usaha meningkatkan jumlah pemimpin wanita terutamanya dalam sektor yang didominasi wanita seperti pendidikan. Contohnya, walaupun majoriti guru dan pensyarah ialah wanita tetapi kepimpinan tertinggi iaitu guru besar dan naib canselor masih didominasi oleh kaum lelaki. Peluang dan piawaian kriteria pemimpin yang lebih cenderung kepada sifat maskulin telah menyebabkan peluang wanita dalam kepimpinan adalah terhad. Contohnya seperti bersuara dalam (*deep voice*), mimik muka yang serius dan dipercayai mempunyai status yang lebih tinggi daripada wanita dalam keluarga.¹³ Dalam politik

10 S.S. Syed Shikh, 'Gender Politics in the 13th Malaysian General Election (GE13): Descriptive, Substantive & Surrogacy Representation Analysis' (Seminar Media & Pilihanraya Umum 2013, 2013); S.S. Syed Shikh dan R. Ramli, 'Mitos Demokrasi dan Politik Gender di Malaysia?' dalam S. Daud dan M.T. Ismail (eds), *Pilihan Raya Umum ke-13: Refleksi Politik Perubahan* (Selangor, UKM Press, 2016) 76-94; S.S. Syed Shikh dan U.A. Ahmad Zakuan, 'Wanita dan Politik: Analisis Pilihan Raya Umum Malaysia ke-14' dalam K. Aboo Talib dan Z. Azmi (eds), *Penglibatan Wanita dalam Pilihan Raya* (Bangi, UKM Press, 2019) 17-44.

11 U.A. Ahmad Zakuan, 'Representation of Women in the Malaysian Parliament 1999- 2007' (PhD tesis, International Islamic University Malaysia (IIUM), 2014).

12 K. Aboo Talib, 'Merentasi Naratif Partisipasi' dalam K. Aboo Talib dan Z. Azmi (eds), *Penglibatan Wanita dalam Pilihan Raya* (Bangi, UKM Press, 2019) 117-52.

13 R. Faizan dan lain-lain, 'The effectiveness of Feminine and Masculine Leadership Styles in relation to contrasting gender's performances' (2018) MPRA Paper No. 87713 <https://mpra.ub.uni-muenchen.de/87713/1/mpra_paper_87713.pdf>.

Malaysia, kekurangan pemimpin wanita tidak dianggap sebagai satu permasalahan dan dapat dilihat daripada peratusan wanita dalam Parlimen dan Dewan Undangan Negeri. Perkara ini dizahirkan dengan catatan keputusan pilihan raya umum di Malaysia semenjak merdeka seperti Jadual 1.

Jadual 1. Jumlah Ahli Dewan Rakyat Malaysia Mengikut Jantina (1959-2018).

PRU	Tahun	Jumlah	Lelaki	Wanita
PRU-1	1959	104	101	3 (2.9%)
PRU-2	1964	104	101	3 (3.9%)
PRU-3	1969	144	142	2 (1.4%)
PRU-4	1974	154	149	5 (3.2%)
PRU-5	1978	154	147	7 (4.5%)
PRU-6	1982	154	146	8 (5.2%)
PRU-7	1986	177	170	7 (4%)
PRU-8	1990	180	169	11 (6.1%)
PRU-9	1995	193	177	15 (7.8%)
PRU-10	1999	193	173	20 (10.4%)
PRU-11	2004	219	197	21 (9.6%)
PRU-12	2008	222	198	24 (10.8%)
PRU-13	2013	222	198	23 (10.4%)
PRU-14	2018	222	190	32 (14.4%)

Sumber: Sharifah Syahirah & Ummu Atiyah (22: 2019)

Jadual 1 ini menunjukkan jumlah wakil rakyat wanita tidak selari dengan jumlah warganegara wanita yang mempunyai kepentingan dan situasi berbeza berbanding warganegara lelaki. Sistem demokrasi yang matang dan baik perlu mempunyai representasi diskriptif yang selari dengan jumlah pelbagai kumpulan warganegara sesebuah negara terutamanya

dari segi jantina, kaum, agama dan masyarakat terpinggir.¹⁴ Sebab utama jumlah wakil rakyat wanita adalah rendah kerana parti-parti politik tidak memberi peluang yang saksama kepada wanita untuk menjadi calon. Hal ini terjadi berpunca daripada dominasi lelaki dalam kepimpinan tertinggi parti, ahli parti wanita lebih dianggap sebagai penyokong dan pembantu parti, dan pemikiran bahawa lelaki lebih sesuai menjadi pemimpin berbanding wanita juga penyebab parti-parti politik memilih calon lelaki seperti di negeri Terengganu.¹⁵

Berdasarkan Kementerian Pembangunan Wanita, Keluarga dan Masyarakat,¹⁶ terdapat peningkatan pencalonan wanita seramai 239 orang (10.24%) berbanding dengan 168 orang (8.8%) dalam PRU-13. Namun, peningkatan ini masih jauh untuk merealisasikan sasaran sekurang-kurangnya 30% wanita sebagai pembuat keputusan legislatif seperti yang telah disarankan oleh organisasi antarabangsa seperti Pertubuhan Bangsa-Bangsa Bersatu (PBB) dan Inter-Parliamentary Union (IPU). Dasar minimum 30% ini telah dipersetujui secara dasarnya oleh Kerajaan Malaysia dan telah disebut dalam Dasar Wanita Negara dan Pelan Tindakan Pembangunan Wanita iaitu mencapai sekurang-kurangnya 30% wanita di Dewan Undangan Negeri, Dewan Rakyat dan Dewan Negara dengan dua aktiviti umum iaitu mengadakan latihan membina upaya wanita dalam bidang politik khususnya golongan wanita muda, dan mengadakan latihan kepekaan gender kepada ahli politik/ individu yang cenderung kepada politik.¹⁷ Setelah lebih daripada 10 tahun diperkenalkan, ternyata aktiviti umum ini tidak begitu berkesan dalam usaha mencapai sasaran minimum 30% wanita sebagai pembuat keputusan di peringkat legislatif negara dan negeri. Kegagalan ini telah dicatatkan dalam ranking serantau negara-negara anggota ASEAN dan global.

14 C. Ng, *Gender and Rights: Analysis for Action* (Universiti Sains Malaysia, 2006) 24.

15 Z. Azmi, *Gender dan politik: Kajian kes ke atas wanita UMNO dan PAS di Terengganu dan Selangor* (Universiti Malaya, 2001).

16 *ibid.*

17 Kementerian Pembangunan Wanita, Keluarga dan Masyarakat, *Pelan Tindakan Pembangunan Wanita* (KPWKM, 2009) 190.

Jadual 2. Jumlah Wakil Rakyat Wanita dan Kedudukan Ranking Inter-Parliamentary Union (IPU) Negara-Negara Anggota ASEAN.

No	Negara	Peratusan Representasi Wanita (%)	Tarikh	Kedudukan IPU
1	Vietnam	30.3%	05.2021	60
2	Singapura	29.1%	07.2020	65
3	Filipina	27.7%	05.2019	75
4	Laos	22.0%	02.2021	106
5	Indonesia	21.9%	04.2019	107
6	Kemboja	20.8%	07.2018	112
7	Thailand	15.8%	03.2019	138
8	Myanmar	15.3%	11.2020	140
9	Malaysia	15.0%	05.2018	143
10	Brunei	9.1 %	01.2017	167

Sumber: Sharifah Syahirah & Ummu Atiyah (2019), Inter-Parliamentary Union (2022)

Jadual 2 menunjukkan prestasi Malaysia untuk memastikan keseimbangan suara dan kepentingan berdasarkan jantina berbanding negara-negara anggota ASEAN. Malaysia mempunyai jumlah wakil rakyat wanita yang kedua terkecil dalam kalangan negara anggota ASEAN dan berada di kedudukan ke-143 dalam dunia.¹⁸ Kedudukan ini tidak selari dengan takrifan sistem demokrasi yang baik iaitu keperluan mempunyai keseimbangan jumlah representasi yang mencerminkan populasi negara. Politik kehadiran warganegara wanita yang juga dikenali sebagai representasi diskriptif seringkali dipandang remeh oleh amalan demokrasi yang tidak sensitif gender. Sistem demokrasi sedia ada tidaklah sempurna dan secara sistematik telah meminggirkan golongan minoriti dengan amalan majoriti mudah.¹⁹ Walaupun wanita merupakan separuh daripada populasi dalam setiap negara, amalan dan

18 Inter-Parliamentary Union, *Women in Parliament and Cabinet* (IPU, 2022).

19 S. Dovi, 'Preferable Descriptive Representatives: Will Just Any Woman, Black, or Latino Do?' (2002) 96(4) *American Political Science Review* 729-43.

budaya yang berkiblatkan ketuanan lelaki (hegemoni maskuliniti) telah menyebabkan wanita kurang digalakkan atau diberi peluang sebagai pemimpin. Contoh amalan ketuanan lelaki ialah tanggapan bahawa ketua isi rumah ialah lelaki dan tafsiran agama yang meletakkan lelaki menjadi pilihan utama sebagai pemimpin. Persoalannya, sampai bilakah kaum wanita yang telah maju dalam pelbagai bidang seperti pendidikan dan profesional akan dipinggirkan dalam kepimpinan politik Malaysia?

Oleh itu, artikel ini memberi tumpuan terhadap proses Pilihan Raya Umum ke-14 dan menyelidik sejauh mana amalan patriarki yang mendukung ketuanan lelaki (hegemoni maskuliniti) telah mengekalkan peminggiran wanita dalam kepimpinan politik. Tiga objektif utama artikel ini adalah (i) membincangkan latar belakang sistem patriarki di Malaysia, (ii) mengenal pasti amalan patriarki dalam PRU-14, dan (iii) menganalisis inisiatif yang dijalankan ketika PRU-14 yang mencabar amalan ini. Kajian ini menggunakan pendekatan kualitatif untuk menganalisis kenyataan dan perbincangan dalam media serta dokumen rasmi. Aktiviti pemerhatian partisipasi (*participatory observation*) secara bersemuka dan platform sosial media juga telah dijalankan sepanjang PRU-14.

Amalan Sistem Patriarki

Sumbangan wanita terhadap pembangunan dan kemajuan negara telah terbukti dan diakui oleh semua pihak. Namun, masih ada golongan yang beranggapan penyertaan dan kepimpinan wanita yang rendah bukanlah perkara yang penting untuk mengukuhkan demokrasi negara.²⁰ Terdapat juga golongan yang menggunakan tafsiran agama serta budaya untuk menyekat peluang wanita dalam kepimpinan.²¹ Dalam dunia yang serba moden ini, kaum wanita masih lagi berhadapan dengan amalan dan fahaman bahawa wanita ialah kaum yang lebih rendah statusnya berbanding lelaki disebabkan oleh amalan patriarki yang masih wujud di Malaysia. Amalan ini memberi penekanan kepada dominasi kuasa

20 M.A. Mohamed Adil, 'Wanita dalam sistem pemilihan demokrasi' *BH Online* (25 April 2018) <<https://www.bharian.com.my/rencana/muka10/2018/04/416576/wanita-dalam-sistem-pemilihan-demokrasi>>.

21 Perbincangan mengenai kepentingan peranan lelaki sebagai pemimpin berbanding wanita seringkali diketengahkan dalam ceramah agama dan penulisan di media masa seperti penulisan seorang pensyarah dari Universiti Sultan Zainal Abidin (UniSZA), M.S. Nasir, 'Lelaki Pemimpin Wanita' *My Metro* (14 Januari 2019) <<https://www.hmetro.com.my/addin/2019/01/411835/lelaki-pemimpin-wanita>>.

lelaki (kuasa ke atas/ *power over*).²² Amalan patriarki mengutamakan kaum lelaki dan sedikit banyak telah mengehadkan hak-hak wanita.²³ Amalan ini juga bertujuan untuk memperkuat hegemoni maskuliniti iaitu amalan dan pemikiran yang mengagungkan ketuanan lelaki ke atas wanita. Istilah hegemoni maskuliniti juga merujuk pembudayaan dan konstruksi sosial yang mempromosi amalan dan kepercayaan bahawa dominasi lelaki ke atas wanita ialah fitrah (*given nature*).²⁴ Menurut Madeline Berma,²⁵ secara *de jure* Malaysia tidak membezakan hak serta kewajipan wanita dan lelaki. Namun, secara *de facto*, latar belakang sosiobudaya, institusi kerajaan, keluarga dan masyarakat masih mendiskriminasikan wanita. Skor Indeks Jurang Gender Global menunjukkan Malaysia masih mempunyai jurang gender yang besar iaitu 0.68. Antara contoh tiada kesaksamaan status, dari segi ruang dan peluang untuk wanita berbanding lelaki ialah jumlah purata pendapatan wanita adalah lebih rendah berbanding lelaki iaitu RM2,995 berbanding RM3,174. Wanita lebih digalakkan menjadi isteri dan ibu yang baik hingga menyebabkan tenaga buruh wanita Malaysia adalah antara yang terendah dalam kalangan anggota ASEAN iaitu 53.5% berbanding lelaki 77.7%,²⁶ dan takfir agama yang menekankan subordinasi wanita sebagai isteri kepada suami dengan penekanan kepada konsep taat suami sebagai satu kewajipan utama.²⁷ Konsep ini telah disalahgunakan oleh para suami yang tidak bertanggungjawab dan menyekat potensi isteri untuk bekerja, menjadi pemimpin dan berbakti kepada masyarakat.

22 S.S. Syed Shikh, 'Pemerksaan Representasi Politik Wanita di Malaysia: Analisis Pilihan Raya Umum ke-12 (PRU12) 2008' (2010) 7(1) *The Journal of Administrative Science* 11-37.

23 K. Bhasin, *What is Patriarchy?* (New Delhi, Kali for Women, 2006).

24 R.W. Connell dan J.W. Messerschmidt, 'Hegemonic Masculinity: Rethinking the Concept' (2005) 19(6) *Gender & society*, 829-59; S.S. Syed Shikh dan lain-lain, 'Gender and Religious Interpretation in Malaysian social media: Sentiment and Semantic Representation Analysis' (2017) 9 *Journal of Media and Information Warfare* 23-44.

25 M. Berma, 'Kesaksamaan Gender tanggungjawab semua' *BH Online* (8 Mac 2020) <<https://www.bharian.com.my/kolumnis/2020/03/663102/kesaksamaan-gender-tanggungjawab-semua>>.

26 J. Jaafar, 'Penyertaan Wanita Dalam Ekonomi' *Newsletter Jabatan Perangkaan Malaysia* (2020) <https://www.dosm.gov.my/v1/uploads/files/6_Newsletter/Newsletter%202020/DOSM_BPPA_2-2020_Siri-37.pdf>.

27 Konsep taat pada suami berulang-ulang kali disebut sebagai kewajipan isteri. Konsep ini banyak ditulis dalam laman sesawang jabatan agama seperti <<https://muftiwp.gov.my/artikel/irsyad-al-hadith/2369-irsyad-al-hadith-siri-ke-263-sujud-pada-suami>>. Begitu juga di akhbar dan laman sesawang NGO, sosial media dan sebagai. Konsep ini tidak perlu diikut oleh suami kepada isteri.

Walaupun terdapat peningkatan jumlah pemimpin wanita di peringkat kepimpinan tertinggi, tetapi realitinya ramai wanita menghadapi pelbagai halangan untuk menjadi pemimpin dan wakil rakyat. Antara persoalan yang timbul berkait dengan status wanita yang tertumpu kepada sistem patriarki yang mengamalkan subordinasi, dominasi dan pergantungan wanita dalam hubungan antara lelaki dan wanita. Amalan patriarki telah lama wujud dalam masyarakat, dengan nilai budayanya dikuasai oleh lelaki.²⁸ Kepercayaan, amalan dan struktur sosial sesuatu masyarakat sering kali mempengaruhi peranan wanita dan lelaki yang telah diwarisi sejak zaman-berzaman. Melalui amalan patriarki, kehidupan wanita ditentukan oleh konstruksi sosial masyarakat yang mempercayai bahawa status lelaki adalah lebih tinggi berbanding wanita. Amalan ini membentuk satu kitaran yang secara berterusan dan secara sistematik meminggirkan wanita dalam pelbagai aspek kehidupan terutamanya dalam usaha merancang dan membuat keputusan termasuk dalam bidang politik yang melibatkan kuasa.²⁹ Contohnya di Tanah Melayu, Khatijah Sidek (Mantan Ketua Wanita UMNO) telah dipecat daripada UMNO kerana lantang menyuarakan ketidakadilan yang berlaku terhadap wanita dan peluang untuk memimpin. Pada tahun 1954, Khatijah Sidek mendapatkan tidak ada seorang pun kaum ibu UMNO yang dipilih sebagai ahli majlis tertinggi. Beliau telah membuat ucapan membantah seperti yang berikut;

"Kenapa tak da seorang pun kaum ibu terpilih dalam majlis tertinggi UMNO?..." "Adakah ini bererti kaum bapa dan pemuda menilai kaum ibu rendah dan tugasnya hanyalah berbakti kepada kaum lelaki semata-mata?" ... "Tengok, kaum ibu menjual sapu tangan yang kami sulam sendiri dan berjaya mengutip \$500 yang kami sumbangkan kepada parti. Kaum lelaki tidak pun membuat apa-apa seperti itu" ... Kalau beginilah cara dan sikap kaum bapa dan pemuda, tidak ada gunanya kaum ibu menghadiri perhimpunan ini" (Khatijah Sidek 1995: 132) ³⁰

28 ibid.

29 R. Talib dan N.S. Karim, *Tan Sri Zaleha Ismail: Aspirasi & Perjuangan* (Selangor, Unit Perancang Ekonomi Negeri Selangor, 2005); A. Zainuddin, *Dasar Wanita Negara Dalam Mengarusperdanakan Gender: Kajian Sektor Politik dan Pekerjaan* (Selangor, Institut Kajian Etnik, 2015).

30 K. Sidek, *Memoir Khatijah Sidek Puteri Kesateria Bangsa* (Bangi, UKM Press, 2010); S.A. Aziz, 'Khatijah Sidek: Suara Pejuang Terpinggir yang dibisukan dalam Sejarah Perkembangan Politik UMNO' (2011) 81(3) *Akademiaka* 43-47; H. Ting, 'Khadijah Sidek and Fatimah Hashim: Two Contrasting Models of (Malays) Feminist Struggle?' (2007) *Malaysia: Public Policy and Marginalised Groups* 115-42.

Khatijah Sidek kemudiannya secara lantang menyuarakan betapa pentingnya UMNO untuk memberikan kerusi kepada kaum ibu dan alasan bahawa wanita terlalu lemah, kerja mereka di dapur dan belum tiba masanya adalah tidak munasabah. Hanya kerana kelantangannya untuk memartabatkan kedudukan wanita dalam politik telah menyebabkan beliau dipecat daripada UMNO pada tahun 1956. Sejarah Khatijah Sidek ini telah membuktikan bahawa amalan patriarki yang mendukung ketuanan atau hegemoni lelaki ini ialah realiti dan telah menjadi satu sistem yang berupaya mengekalkan dominasi lelaki dalam kepimpinan politik. Amalan yang berhasil daripada pemikiran zaman-berzaman (melalui budaya dan tafsiran agama) ini juga secara sistematik telah memperkuuh peranan wanita yang hanya terhad dalam institusi kekeluargaan dan dianggap tidak signifikan untuk berperanan dalam ruang awam.³¹

Di Malaysia, pergerakan wanita bermula berdasarkan kesedaran politik dan semangat nasionalisme yang begitu membara seawal tahun 1960-an dan semakin aktif sepanjang tahun 70-an dan 80-an.³² Malah, penglibatan wanita Melayu dapat dianggap sebagai contoh penglibatan wanita dalam politik yang terbaik di Asia³³ Beberapa orang sarjana seperti Lenore Menderson,³⁴ Ramlah Adam,³⁵ Siti Hawa Man,³⁶ Couillard,³⁷ Huthéesing,³⁸ Maznah Mohamed,³⁹ Zeenath Kausar,⁴⁰ Sharifah Syahirah & Ummu Atiyah⁴¹ mendapati bahawa kaum lelaki sentiasa mendominasi

31 K.P. Hughes (ed), *Contemporary Australian Feminism* (Australia, Longman Chesire, 1994).

32 R. Ramli, 'Pembangunan Politik dan Gender: Cabaran dan Strategi bagi calon-calon wanita' dalam R. Talib dan S. Thambiah (eds), *Gender, Budaya dan Masyarakat* (Kuala Lumpur, Universiti Malaya, 1998) 152-62.

33 Karim dan Talib (n 3).

34 *ibid.*

35 R. Adam, 'Pergerakan Wanita UMNO Malaysia, 1945-1972: Satu Analisa' (1980) 9 *Dlm. Malaysia Dari Segi Sejarah* 26-54.

36 S.H. Man, *Sejarah Perkembangan Politik Pergerakan Wanita UMNO Selangor* (Latihan Ilmiah, Jabatan Sejarah UKM, 1984).

37 M.A. Couillard, 'The Pangs and Pitfalls of Development for Malay Women: From the Rule of The Domestic Sphere to its Downfall' (1990) 8(1) *Kajian Malaysia* 68-92.

38 O.K. Huthéesing, 'Male Jargon, Female Talk: Verbal Exchanges on Academe and the Mundane' (1994) XII(1&2) *Kajian Malaysia* 185-209.

39 M. Mohamad, 'Feminism and Islamic Family Law Reforms in Malaysia: How Much and to What Extent?' (1998) 4(1) *Asian Journal of Women's Studies* 8-32.

40 Z. Kausar, *Women in Politics: The Case of Peninsular Malaysia* (Kuala Lumpur, Research Centre, IIUM, 2006).

41 *ibid.*

pelbagai aspek terutamanya politik. Peranan wanita dalam sektor politik dikatakan masih kekal dengan fahaman bahawa patriarki dan hegemoni lelaki yang menambah kesulitan untuk meningkatkan penglibatan dan posisi mereka dalam politik adalah terhad kepada peratusan kecil.⁴²

Sepanjang PRU-14 berlangsung, amalan secara sistematik patriarki ini adalah jelas. Amalan ini bermula daripada pemilihan calon yang bergantung kepada keputusan presiden dan jawatankuasa parti politik yang didominasi oleh kaum lelaki. Persoalan sama ada calon wanita ialah *winnable candidate* merupakan satu contoh amalan patriarki untuk menyekat wanita daripada menjadi calon kerana hal ini tidak dipersoalkan apabila calon lelaki dinamakan. Hal yang sama juga berlaku ketika seorang wanita menjadi pemimpin utama sesebuah organisasi. Wanita juga sering kali dibebani persoalan tentang cara untuk membahagikan kerjaya dan keluarga sedangkan persoalan ini tidak pernah diajukan kepada kaum lelaki. Malahan terdapat pelbagai artikel dalam akhbar⁴³ dan jurnal mengenai hal ini seolah-olah tanggungjawab menjaga keluarga ialah seratus peratus tugas wanita.⁴⁴

Amalan patriarki ini telah menyebabkan hanya 251 calon wanita yang dipilih daripada 2333 calon dalam PRU-14 iaitu peningkatan 1.2% berbanding PRU-12 dan PRU-13. Jadual 3 menunjukkan jumlah calon wanita bagi PRU-12, PRU-13 dan PRU-14.

Jadual 3. Jumlah Calon Pilihan Raya Malaysia Mengikut Jantina.

PRU/TAHUN	Jumlah Calon Wanita dari keseluruhan jumlah calon	Peratusan calon wanita
PRU12 (2008)	129 wanita dari 1459 calon	8.8%
PRU13 (2013)	168 wanita dari 1900 calon	8.8%
PRU14 (2018)	251 wanita dari 2333 calon	10%

Sumber: Sharifah Syahirah (2010), Sharifah Syahirah & Ummu Atiyah (2019)

Walaupun sejumlah besar kaum wanita telah bergiat aktif dalam parti politik ternyata kepimpinan parti politik masih mendukung

42 F. Bari, *Women's Political Participation: Issues and Challenges* (Bangkok, Thailand, Division for the Advancement of Women-UN, 2005).

43 'Pilih kerjaya atau keluarga' My Metro (23 Mei 2017) <<https://www.hmetro.com.my/hati/2017/05/231719/pilih-kerja-atau-keluarga>>.

44 N.R. Abu Bakar, 'Wanita bekerja dan pengurusan keluarga' (2012) 8(7) *Malaysia Journal of Society and Space* 155-62.

amalan dan pemikiran patriarki dengan memilih 90% calon setiap parti dalam kalangan lelaki dalam PRU-14 dan sebelumnya. Ternyata suara pemimpin-pemimpin sayap wanita tidak diambil serius oleh pemimpin utama parti-parti politik. Contohnya, Shahrizat Abdul Jalil telah pun berulang kali menyuarakan kepentingan meletakkan minimum 30% calon wanita Barisan Nasional.⁴⁵ Begitu juga Rohani selaku Menteri Pembangunan Wanita, Keluarga dan Masyarakat dan Azizah Mohd Dun yang juga telah menyuarakan perkara yang sama.⁴⁶ Hal yang sama juga berlaku kepada pemimpin wanita Pakatan Harapan yang telah berulang kali menyuarakan kepentingan parti meletakkan sekurang-kurangnya 30% calon wanita.⁴⁷ Semasa PRU-14, sekali lagi timbul persoalan sama ada relevan dasar sekurang-kurangnya 30% ini dilaksanakan. Rafidah Aziz mengatakan bahawa kuota 30% untuk calon wanita adalah tidak perlu kerana perlu mengikut kualiti calon. Marina Mahathir dalam Forum #30peratus anjuran *Joint Action Group* (JAG) pada 29 Mei 2018 menyoal Rafidah Aziz tentang maksud kualiti calon sedangkan piawaian yang sedia ada lebih berpaksikan piawaian maskulin yang tidak selari dengan sifat wanita. Kuota minima 30% ini penting kerana data menunjukkan wanita jauh dipinggirkan dalam kepimpinan politik. Rafidah Aziz kemudiannya menjawab bahawa beliau mahu lebih daripada 30% dan kalau boleh hingga 50%. Jawapan ini mengambarkan salah faham mengenai dasar sekurang-kurangnya 30%. Dasar ini bukan mengehadkan wanita sebagai pemimpin kepada 30% tetapi ingin memastikan jumlah minimum respresentasi diskriptif adalah minimum 30% dan jika melebihinya adalah lebih baik.⁴⁸

Keputusan PRU-14 menunjukkan bahawa 14.4% calon wanita telah berjaya menjadi wakil rakyat di Parlimen walaupun peratusan calon wanita hanyalah 10.76%. Keputusan ini selari dengan beberapa kaji

45 ‘Wanita UMNO Pohon 30% Calon Wanita di Terengganu’ *Berita Harian* (16 November 2016) <<https://www.bharian.com.my/berita/politik/2016/11/213561/wanita-umno-pohon-30-calon-wanita-di-terengganu>>.

46 ‘Rohani Harap 30 Peratus Calon BN Adalah Wanita’ *Utusan Borneo Online* (17 April 2018) <<https://www.utusanborneo.com.my/2018/04/17/rohani-harap-30-peratus-calon.bn.adalah.wanita>>; ‘Harap Lebih Ramai Calon Wanita BN pada PRU14 – Azizah’ *Malaysiakini* (14 Julai 2017) <<https://www.malaysiakini.com/news/388567>>.

47 ‘Wanita PKR Sambut Baik PH Letak 30% Calon Wanita pada PRU14’ *Malaysiadateline* (3 Februari 2018) <<https://malaysiadateline.com/wanita-pkr-sambut-baik-ph-letak-30-calon-wanita-pada-pru14/>>.

48 AWAM Malaysia, ‘Apa makna kualiti yang Rafidah maksudkan?’ *Free Malaysia Today* (20 Mei 2018) <<https://www.youtube.com/watch?v=mc8VPuCxgFI>>.

selidik yang telah diadakan bahawa rakyat Malaysia tidak memilih wakil rakyat berdasarkan jantina tetapi memilih berdasarkan keperibadian, bersikap jujur, ikhlas dan amanah, tahap pendidikan, parti politik dan manifesto parti.⁴⁹ Jumlah pencalonan wanita berpunca daripada sistem patriarki yang telah lama berakar umbi dalam parti-parti politik. Siapa-siapa dan apa-apa piawaian calon yang baik atau *winnable candidate* mengikut piawaian yang berasal daripada sudut pandangan hegemoni maskuliniti semata-mata. Jadual 4 menunjukkan komposisi calon wanita mengikut parti-parti politik.

Jadual 4. Calon Ahli Parlimen Wanita Mengikut Parti-Parti Politik

PRU	BN ⁵⁰	PR - PH ⁵¹	PAS ⁵²
PRU12	46	28	10
PRU13	71	30	25
PRU14	84	83 + 8	38

(Sharifah Syahirah, 2010, 2015 dan Kajian Lapangan PRU14, 2018)

Jika dilihat dari segi komposisi jawatankuasa tertinggi parti, jumlah calon jelas didominasi oleh kaum lelaki seperti dalam UMNO daripada 56 ahli hanya tujuh orang wanita (12.5%), Parti Islam SeMalaysia daripada 35 ahli hanya tiga wanita (8.6%) dan Democratic Action Party (DAP) daripada 30 ahli hanya tiga wanita (10%). Hanya Parti Sosialis Malaysia (PSM) mempunyai 38.9% wanita dalam jawatankuasa tertinggi. Manakala, terdapat dua parti politik yang mempunyai

49 J. Awang Besar, 'Kriteria Pemimpin dan Pola Sokongan kepada Parti Politik di Dewan Undangan Negeri N56 Apas, Sabah' (2018) 14(3) *Malaysian Journal of Society and Space* 128-40; S.S. Syed Shikh dan lain-lain, *Persepsi dan Harapan Wanita Muda Malaysia* (Selangor, KITA Resources, 2016); S.S. Syed Shikh dan M.H. Bazli, 'The Voters' Choice and Hope in the 14th Malaysian General Election' (1st International Conference on Cross-disciplinary Academic Research (ICAR), 21 Disember 2021).

50 BN adalah Barisan Nasional dan parti-parti politik adalah berdasarkan pra PRU-14 iaitu sebanyak 13 parti politik.

51 PR-PH adalah Pakatan Rakyat-Pakatan Harapan yang menggambarkan pertukaran nama ketika pra PRU-14. Terdapat perbezaan ketara dari segi jumlah parti yang menyertai PR ketika PRU-12 dan PRU-13 berbanding PR-PH ketika PRU-14.

52 PAS dikira secara berasingan memandangkan PAS telah memilih untuk bergerak secara solo ketika PRU-14 sebelum bersepakat dengan UMNO dengan nama Muafakat Nasional (MN).

25% ahli jawatankuasa tertinggi wanita iaitu Parti Maju Sabah (SAPP) dan Parti Keadilan Rakyat (PKR).⁵³

Setelah hari penamaan calon berlangsung, pemimpin sayap wanita parti politik telah membuat kenyataan akhbar bahawa mereka akur dengan keputusan parti. Beberapa sebab yang diberikan menggambarkan kesan daripada amalan dan pemikiran patriarki parti-parti politik di Malaysia. Satu sebab ialah parti perlu memilih berdasarkan merit dan bukan kuota. Kenyataan ini seolah-olah ingin menidakkannya kemampuan wanita berbanding lelaki. Isu merit tidak ditimbulkan apabila memilih calon lelaki tetapi seringkali digunakan untuk tidak memilih lebih ramai wanita menjadi calon.⁵⁴ Dalam pelbagai statistik rasmi seperti dalam Laporan CEDAW Kerajaan Malaysia,⁵⁵ kaum wanita Malaysia mempunyai keupayaan dan merit dalam pelbagai aspek terutamanya pendidikan dan ketokohan menjadi pemimpin. Namun, ada juga masih berpendapat wanita kurang layak kerana sifat wanita yang berbeza dengan lelaki. Pendapat ini berdasarkan definisi merit yang berpaksikan piawaian patriarki dan hegemoni maskuliniti yang telah ditolak oleh negara-negara maju seperti Sweden, Kanada, Finland, New Zealand dan Netherland serta telah berjaya mempunyai lebih daripada 30% pemimpin wanita dalam legislatif. Contoh penolakan definisi merit yang berpaksikan hegemoni maskuliniti adalah apabila wartawan bertanya kepada Justin Trudeau, Perdana Menteri Kanada tentang sebab keseimbangan gender penting dalam kabinetnya dan beliau hanya menjawab, ‘Because it’s 2015’ diikuti dengan tepukan gemuruh.⁵⁶ Jawapan beliau menggambarkan bahawa ketidakseimbangan gender dalam kabinet telah ketinggalan zaman.

53 ibid.

54 ‘Gagal capai kuota calon wanita’ *Kosmo Online* (21 April 2018).

55 UN Committee on the Elimination of Discrimination Against Women, *Laporan CEDAW Kerajaan Malaysia 2004* (UN Committee on the Elimination of Discrimination Against Women (CEDAW), 12 April 2004) <https://www.refworld.org/publisher/CE_DAW,,MYS,41174e424,0.html>; UN Committee on the Elimination of Discrimination Against Women, *Laporan CEDAW Kerajaan Malaysia 2018* (UN Committee on the Elimination of Discrimination Against Women (CEDAW), 14 Mac 2018). <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/070/50/PDF/N1807050.pdf?OpenElement>>.

56 Rakaman wawancara pendek ini boleh tonton di <<https://www.youtube.com/watch?v=LLk2aSBrR6U>> yang bertajuk Justin Trudeau “Because it’s 2015!” di saluran Youtube Frederic Bisson.

Inisiatif Mencabar Sistem Patriarki dalam PRU-14

Walaupun peratusan calon dan wakil rakyat wanita masih rendah, advokasi dan inisiatif untuk meningkatkan pemimpin wanita dalam politik telah diadakan dengan lebih jelas dan sistematik. Pelbagai inisiatif dijalankan oleh pelbagai pihak terutamanya organisasi kerajaan, parti politik, masyarakat sivil dan media. Kementerian Pembangunan Wanita, Keluarga dan Masyarakat telah pun mengeluarkan kenyataan bertulis yang bertajuk Prestasi Parti Politik dan Calon Wanita dalam Pilihan Raya Umum ke-14: Pemerhatian Awal KPWKM pada 29 April 2018.⁵⁷ Dalam kenyataan ini, KPWKM telah mengetengahkan peratusan calon wanita berbanding PRU-13 dan telah memberi perincian peratusan calon wanita bagi setiap negeri.

KPWKM menzahirkan harapan agar PRU-14 dapat memperbaik prestasi Malaysia dalam Laporan Indeks Jurang Gender Global (2018) dan kedudukan *ranking* dalam Inter-Parliamentary Union. Kenyataan ini juga menyebut tentang Artikel 7 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) yang telah memberi penekanan tentang hak wanita dalam kepimpinan dan politik negara. Hal ini juga telah digariskan dalam Dasar Wanita Negara dan Pelan Tindakan Dasar Wanita yang menyasarkan sekurang-kurangnya 30% calon wanita bagi setiap parti politik. Kenyataan ini diakhiri dengan mengetengahkan saranan ahli jawatankuasa CEDAW di Geneva pada Februari 2018 yang menekankan bahawa prestasi jumlah calon wanita PRU-14 perlu dikaji dan besar kemungkinan memerlukan penetapan kuota sekurang-kurangnya 30% wanita sebagai calon pilihan raya bagi setiap parti di peringkat Dewan Rakyat dan Dewan Undangan Negeri.

Selain daripada inisiatif KPWKM, Jawatankuasa Khas Pembinaan Sistem dan Undang-undang Pilihan Raya telah mencadangkan penetapan dasar minimum 30% calon wanita dalam senarai pencalonan parti sebagai cadangan ke-35 daripada 49 cadangan yang telah diberikan bagi penambahbaikan sistem pilihan raya umum Malaysia.⁵⁸ Pasca PRU-14 mencatatkan penambahan minimum jumlah menteri dan timbalan menteri wanita daripada tiga menteri wanita kepada lima menteri wanita daripada 26 menteri (19%). Namun, terdapat penurunan

⁵⁷ ibid.

⁵⁸ '49 Syor Pembinaan Sistem Pilihan Raya' Berita Harian (27 Ogos 2020) <<https://www.bharian.com.my/berita/nasional/2020/08/725329/49-syor-pembinaan-sistem-pilihan-raya>>.

jumlah timbalan menteri wanita iaitu enam orang kepada empat orang timbalan menteri wanita (17.4%). Kemelut politik pasca PRU-14 telah menyebabkan perubahan anggota kabinet berlaku sebanyak tiga kali dan jumlah menteri dan timbalan menteri wanita adalah seperti Jadual 5.

Jadual 5. Komposisi Menteri dan Timbalan Menteri Wanita Pasca PRU14

Kabinet Pasca PRU14	Menteri Wanita/ Jumlah Keseluruhan Menteri	Timbalan Menteri Wanita/ Jumlah Keseluruhan Timbalan Menteri
Mahathir Mohammad Tarikh: 10 Mei 2018	4/26	4/23
Muhyiddin Yassin Tarikh: 10 Mac 2020	5/27	3/38
Ismail Sabri Tarikh: 21 Ogos 2021	5/27	4/38

Sumber: Senarai Anggota Kabinet Malaysia (2018, 2020, 2021)

Para pemimpin sayap wanita parti-parti politik kini lebih berani bersuara dengan lantang mengenai keperluan memberikan peluang dan ruang yang lebih banyak kepada wanita sebagai pemimpin dan calon dalam pilihan raya. Manifesto PRU14 pakatan parti-parti politik juga mencerminkan suara dan kepentingan wanita berjaya diketengahkan dalam parti-parti politik.⁵⁹ Mantan Ketua Pergerakan Wanita UMNO, Shahrizat Abdul Jalil, berkata;

Wanita bekerja kuat dan penuh dedikasi, kesetiaan kita pada parti tidak boleh disangkal, namun jika wanita tiada di sisi parti, diletak di belakang atau kata mudahnya, tidak dikemukakan sebagai calon, akan hancurlah perjuangan kita.

Para pemimpin sayap wanita parti-parti politik kini semakin lantang mendesak parti politik untuk melaksanakan usul sekurang-kurangnya 30% calon wanita bagi PRU15. Berikut ialah kenyataan mengenai kuota calon wanita PRU-15 yang telah disebut oleh pemimpin wanita parti politik;

59 N.S.A. Ismail dan Z. Md Zain, 'Agenda Wanita dalam Manifesto Parti Politik' dalam K. Aboo Talib dan Z. Azmi (eds), *Penglibatan Wanita dalam Pilihan Raya* (Bangi, UKM Press, 2019) 45-61.

1. Mantan Naib Presiden PKR, Zuraida Kamarudin mencadangkan kuota 30% diperuntukkan kepada calon wanita sebagai satu agenda reformasi pilihan raya.⁶⁰
2. Ketua Srikandi Parti Pribumi, Rina Harun telah memberi jaminan beliau akan memastikan 30% kuota diberikan kepada calon wanita dalam PRU-15.⁶¹
3. Pergerakan Wanita UMNO terus konsisten mendesak parti agar memberikan minimum 30% kuota kepada calon wanita dalam Perhimpunan Agung UMNO 2021.⁶²
4. Ketua Wanita UMNO, Noraini Ahmad mahu parti memberikan penghargaan kepada kesetiaan sayap wanita dengan meletakkan 30% calon wanita dalam PRU-15.
5. Ketua Wanita PKR, Fuziah Saleh menyatakan sasaran strategik 11 kerusi parlimen untuk calon wanita bagi memastikan sasaran minimum 30% tercapai.

Pemimpin-pemimpin wanita dalam parti politik ini juga telah bersama-sama membentuk Majlis Pimpinan Wanita Malaysia (COMWEL)⁶³ yang akan mencadangkan kepada Suruhanjaya Pilihan Raya (SPR) bagi penetapan minimum 30% calon wanita dalam PRU-15.

Tuntutan minimum 30% kuota oleh para pemimpin wanita dalam parti-parti politik juga telah disuarakan oleh dua pakatan NGO wanita utama iaitu Majlis Kebangsaan Pertubuhan-pertubuhan Wanita Malaysia (NCWO) dan *Joint Action Group* (JAG). NCWO merupakan pakatan NGO wanita yang dianggotai oleh lebih daripada 200 NGO wanita kebangsaan dan negeri seawal tahun 1960-an.⁶⁴ Manakala, JAG pula

60 ‘Cadang kuota 30 peratus kerusi pilihan raya untuk wanita – Zuraida’ *BH Online* (13 Januari 2019) <<https://www.bharian.com.my/berita/politik/2019/01/519500/cadang-kuota-30-peratus-kerusi-pilihan-raya-untuk-wanita-zuraida>>.

61 ‘Rina jamin 30 peratus calon PRU15 untuk wanita’ *Sinar Harian* (30 November 2020) <<https://pru.sinarharian.com.my/info-berita/1622/rina-jamin-30-peratus-kuota-calon-pru15-untuk-wanita>>.

62 ‘Mahu 30 peratus kuota calon wanita dalam semua pilihan raya’ *My Metro* (19 Mac 2022) <<https://www.hmetro.com.my/mutakhir/2022/03/822549/mahu-30-peratus-kuota-calon-wanita-dalam-semua-pilihan-raya>>.

63 COMWEL terdiri dari 13 ahli parlimen wanita dan 31 ahli Dewan Undangan Negeri wanita yang dirasmikan oleh Yang di-Pertua Dewan Rakyat pada 8 Mac 2021.

64 National Council of Women’s Organisations (NCWO) (*ncwomalaysia.org*, 2017) <https://ncwomalaysia.org/ncwo_wp/history/>.

merupakan gabungan beberapa NGO hak asasi wanita yang ditubuhkan pada tahun 1985.⁶⁵

Sebagai pakatan NGO wanita yang terbesar di Malaysia, NCWO telah mengeluarkan satu kenyataan media⁶⁶ bagi menzahirkan tiga (3) harapan kepada Kerajaan Pusat dan Kerajaan Negeri supaya;

1. Memperkasakan kepimpinan wanita di peringkat eksekutif kebangsaan dengan melantik sekurang-kurangnya 30% menteri wanita dalam kabinet yang akan diumumkan.
2. Memperkasakan kepimpinan wanita di peringkat legislatif dengan melantik sekurang-kurangnya 30% wanita dalam Dewan Negara bagi mengimbangi kekurangan peratusan wanita di Dewan Rakyat.
3. Memperkasakan kepimpinan wanita di peringkat negeri dengan melantik sekurang-kurangnya 30% wanita sebagai EXCO negeri.

(Kenyataan NCWO, 11 Mei 2018)

JAG juga telah melancarkan kempen #30peratus dan mengadakan demonstrasi di hadapan Istana Negara pada 24 Mei 2018. JAG telah menuntut kerajaan untuk melantik minimum 30% wakil rakyat wanita dalam kabinet seperti yang telah dijanjikan dalam manifesto Pakatan Harapan, "Buku Harapan", dalam Iltizam Khas Untuk Wanita, Iltizam 5, "Mendemokrasikan sistem politik agar wujud lebih ramai pemimpin wanita yang tampil ke hadapan", Janji 2, "Memastikan sekurang-kurangnya 30 peratus daripada pembuat dasar di setiap peringkat ialah wanita".⁶⁷ Antara sepanduk yang kelihatan ketika demonstrasi tersebut ialah;

"Baru 20% je, Kami mahu 30%"

"Calon wanita MP yang layak untuk kabinet ada. Tak perlu ikut hierarki parti"

"Menang pun sudah, Patuhi janji wahai PH"

"We vote for change, so change"

"Dakwat masih dijari, jangan mungkir janji"

"#30peratus wanita dalam kabinet"

(Kajian Lapangan Demonstrasi #30peratus, 28 Mei 2018)

65 All Women's Action Society (AWAM, 2022) <<https://www.awam.org.my/partners/>>.

66 National Council of Women's Organization Malaysia (NCWO) *Kenyataan Majlis Kebangsaan Pertubuhan-pertubuhan Wanita Malaysia, National Council of Women's Organizations, Malaysia (NCWO) Pasca Pilihan Raya ke-14* (11 Mei 2018).

67 'We believe that gender equality is important in achieving a thriving democracy' Empower Malaysia (2018) <<https://www.empowermalaysia.org/our-work>>.

Pemerhatian ketika PRU-14 mendapati bahawa pihak media massa telah memberi tumpuan khas mengenai agenda pemerkasaan wanita semenjak pra-PRU-14. Antara stesen akhbar, televisyen dan radio yang telah secara konsisten mengetengahkan isu pemerkasaan kepimpinan wanita dalam politik negara adalah seperti Sinar Harian, Berita Harian, Astro Awani, TV3, Wacana Sinar, Nasional FM, Traxx FM, Bernama Radio, Bernama TV, Malaysiakini, Utusan Malaysia dan Free Malaysia Today. Pihak media massa ini telah menjemput para aktivis pemerkasaan wanita yang terdiri daripada NGO dan ahli akademik seperti Sharifah Hapsah, Marina Mahathir, Madeline Berma, Nurainie Haziqah, Angela Kuga Thas, Rozana Isa, Ummu Atiyah dan Sharifah Syahirah untuk mengetengahkan hasil kajian, amalan baik negara maju dan kepentingan mengiktiraf wanita sebagai pemimpin negara seperti dalam Program #Malaysia Memilih dan Program 100 hari Malaysia Baharu, Astro Awani (2018) yang mempunyai segmen mengenai liputan kepimpinan wanita.

Azizan Zainuddin⁶⁸ mendapati bahawa penggunaan media sosial juga telah meningkatkan kepekaan pengundi Malaysia tentang keperluan lebih ramai pemimpin wanita dalam politik negara. Twitter dan Facebook telah menjadi platform pilihan utama dalam perbincangan mengenai wanita dalam PRU-14 terutamanya oleh pihak media, NGO wanita dan aktivis wanita seperti Forum #30 peratus anjuran Joint Action Group (JAG), Warta PRU-14: Analisis calon wanita hanya gimik?, Perkongsian mengenai Wanita Malaysia Pasca PRU-14, Sinar Harian dan Implikasi Pengundi atas Pagar dan Wanita, Sinar Harian. Beberapa isu feminim yang menjadi tumpuan dalam media sosial ialah isu personaliti calon wanita, pengundi wanita, pekerjaan, kebajikan wanita dan kanak-kanak, pemerkasaan wanita dalam politik, pekerjaan dan keselamatan. Perbincangan mengenai inisiatif yang telah dijalankan oleh empat pihak utama iaitu kerajaan, parti politik, NGO wanita dan media ini menunjukkan inisiatif yang berterusan untuk merealisasikan peningkatan peratusan wanita sebagai pemimpin dalam politik Malaysia terutamanya bagi PRU-15 akan datang.

Kesimpulan

Perbincangan artikel ini telah mengetengahkan situasi kepimpinan wanita dalam politik Malaysia yang masih menghadapi pelbagai

⁶⁸ A. Zainuddin, 'Media Sosial dan Penglibatan Wanita dalam Pilihan Raya' dalam K. Aboo Talib dan Z. Azmi (eds), *Penglibatan Wanita dalam Pilihan Raya* (Bangi, UKM Press, 2019) 86-98.

kekangan disebabkan amalan patriarki dan ideologi hegemoni maskulin. Kemajuan wanita dalam pendidikan, ekonomi dan penyertaan aktif wanita dalam masyarakat serta parti politik kurang diberi pengiktirafan oleh jawatankuasa tertinggi parti-parti politik kerana masih mendukung sistem patriarki untuk membuat keputusan parti politik. Dominasi pemimpin lelaki dalam jawatankuasa tertinggi parti-parti politik merupakan penyebab utama sistem patriarki dikekalkan dan parti-parti politik lebih cenderung untuk memilih calon lelaki dalam PRU-14. Faktor-faktor lain iaitu tafsiran agama, ekonomi, kesedaran, sosialisasi, diskriminasi berdasarkan jantina, persepsi dan persekitaran juga memperkuuh amalan ini dan menambah kesukaran wanita untuk menjadi pemimpin dalam politik Malaysia.⁶⁹ Namun, keputusan PRU-14 mencatatkan penambahbaikan yang telah berlaku dari segi jumlah calon, wakil rakyat dan pemimpin wanita dalam kabinet. Inisiatif yang telah dilaksanakan oleh kerajaan, parti politik, NGO dan pihak media telah membuktikan kesungguhan pelbagai pihak bagi memastikan semua parti politik akan melaksanakan dasar minimum 30% calon wanita dalam PRU-15. Semoga Malaysia tidak akan lagi dicatatkan sebagai negara yang ketinggalan dalam sistem demokrasi yang mendukung kesaksamaan gender selepas PRU-15.

Rujukan

- '20 tahun tak jemu tingkat potensi ekonomi wanita' *Berita Harian* (4 Februari 2017) <<https://www.bharian.com.my/taxonomy/term/61/2017/02/243832/20-tahun-tak-jemu-tingkat-potensi-ekonomi-wanita>>.
- '49 Syor Pembentukan Sistem Pilihan Raya' *Berita Harian* (27 Ogos 2020) <<https://www.bharian.com.my/berita/nasional/2020/08/725329/49-syor-pembentukan-sistem-pilihan-raya>>.
- 'Cadang kuota 30 peratus kerusi pilihan raya untuk wanita – Zuraida' *BH Online* (13 Januari 2019) <<https://www.bharian.com.my/berita/politik/2019/01/519500/cadang-kuota-30-peratus-kerusi-pilihan-raya-untuk-wanita-zuraida>>.
- 'Gagal capai kuota calon wanita' *Kosmo Online* (21 April 2018).

⁶⁹ N.R. Saidon dan lain-lain, 'Faktor Kepimpinan dan Gender dalam Penglibatan Politik Wanita di Malaysia (1980-2013)' (2017) 87(3) *Akademika* 63-75.

- 'Harap Lebih Ramai Calon Wanita BN pada PRU14 – Azizah' *Malaysiakini* (14 Julai 2017) <<https://www.malaysiakini.com/news/388567>>.
- 'Mahu 30 peratus kuota calon wanita dalam semua pilihan raya' *My Metro* (19 Mac 2022) <<https://www.hmetro.com.my/mutakhir/2022/03/822549/mahu-30-peratus-kuota-calon-wanita-dalam-semua-pilihan-raya>>.
- 'Pilih kerjaya atau keluarga' *My Metro* (23 Mei 2017) <<https://www.hmetro.com.my/hati/2017/05/231719/pilih-kerjaya-atau-keluarga>>.
- 'Rina jamin 30 peratus calon PRU15 untuk wanita' *Sinar Harian* (30 November 2020) <<https://pru.sinarharian.com.my/info-berita/1622/rina-jamin-30-peratus-kuota-calon-pru15-untuk-wanita>>.
- 'Rohani Harap 30 Peratus Calon BN Adalah Wanita' *Utusan Borneo Online* (17 April 2018) <<https://www.utusanborneo.com.my/2018/04/17/rohani-harap-30-peratus-calon-bn-adalah-wanita>>.
- 'Wanita PKR Sambut Baik PH Letak 30% Calon Wanita pada PRU14' *Malaysiadateline* (3 Februari 2018) <<https://malaysiadateline.com/wanita-pkr-sambut-baik-ph-letak-30-calon-wanita-pada-pru14/>>.
- 'Wanita UMNO Pohon 30% Calon Wanita di Terengganu' *Berita Harian* (16 November 2016) <<https://www.bharian.com.my/berita/politik/2016/11/213561/wanita-umno-pohon-30-calon-wanita-di-terengganu>>.
- 'We believe that gender equality is important in achieving a thriving democracy' *EmpowerMalaysia* (2018) <<https://www.empowermalaysia.org/our-work>>.
- Aboo Talib K., 'Merentasi Naratif Partisipasi' dalam Aboo Talib K. dan Azmi Z. (eds), *Penglibatan Wanita dalam Pilihan Raya* (Bangi, UKM Press, 2019) 117-52.
- Abu Bakar N.R., 'Wanita bekerja dan pengurusan keluarga' (2012) 8(7) *Malaysia Journal of Society and Space* 155-62.
- Adam R., 'Pergerakan Wanita UMNO Malaysia, 1945-1972: Satu Analisa' (1980) 9 *Dlm. Malaysia Dari Segi Sejarah* 26-54.
- Ahmad Ayoub M.M., 'Irsyad Al-Hadith Siri Ke-263: Sujud Pada Suami' *Pejabat Mufti Wilayah Persekutuan* (11 April 2018) <<https://muftiwp.gov.my/artikel/irsyad-al-hadith/2369-irsyad-al-hadith-siri-ke-263-sujud-pada-suami>>.

Ahmad Zakuan U.A., 'Women in the Malaysian parliament: Do they matter' (2010) 18(2) *Intellectual discourse* 283-322.

____ 'Representation of Women in the Malaysian Parliament 1999- 2007' (PhD thesis, International Islamic University Malaysia (IIUM), 2014).

____ *Women in the House Leadership in the Malaysian Parliament* (Selangor, IIUM Press, 2019).

All Women's Action Society (AWAM, 2022) <<https://www.awam.org.my/partners/>>.

AWAM Malaysia, 'Apa makna kualiti yang Rafidah maksudkan?' *Free Malaysia Today* (20 Mei 2018) <<https://www.youtube.com/watch?v=mc8VPuCxgFI>>.

Awang Besar J., 'Kriteria Pemimpin dan Pola Sokongan kepada Parti Politik di Dewan Undangan Negeri N56 Apas, Sabah' (2018) 14(3) *Malaysian Journal of Society and Space* 128-40;

Aziz S.A., 'Khatijah Sidek: Suara Pejuang Terpinggir yang dibisukan dalam Sejarah Perkembangan Politik UMNO' (2011) 81(3) *Akademiaka* 43-47.

Azmi Z., 'Gender dan politik: Kajian kes ke atas wanita UMNO dan PAS di Terengganu dan Selangor' (Tesis Sarjana Muda, Universiti Malaya, 2001).

Bari F., *Women's Political Participation: Issues and Challenges* (Bangkok, Thailand, Division for the Advancement of Women-UN, 2005).

Berma M., 'Kesaksamaan Gender tanggungjawab semua' *BH Online* (8Mac2020)<<https://www.bharian.com.my/kolumnis/2020/03/663102/kesaksamaan-gender-tanggungjawab-semua>>.

Bhasin K., *What is Patriarchy?* (New Delhi, Kali for Women, 2006).

Bisson F., *Justin Trudeau "Because it's 2015!"* (5 November 2015) <<https://www.youtube.com/watch?v=LLk2aSBrR6U>>.

Connell R.W. dan Messerschmidt J.W., 'Hegemonic Masculinity: Rethinking the Concept' (2005) 19(6) *Gender & society*, 829-59.

Couillard M.A., 'The Pangs and Pitfalls of Development for Malay Women: From the Rule of The Domestic Sphere to its Downfall' (1990) 8(1) *Kajian Malaysia* 68-92.

- Dancz V.H., *Women and Party Politics in Peninsular Malaysia* (New York, Oxford University Press, 1984).
- Dovi S., 'Preferable Descriptive Representatives: Will Just Any Woman, Black, or Latino Do?' (2002) 96(4) *American Political Science Review* 729-43.
- Faizan R. dan lain-lain, 'The effectiveness of Feminine and Masculine Leadership Styles in relation to contrasting gender's performances' (2018) MPRA Paper No. 87713 <https://mpra.ub.uni-muenchen.de/87713/1/mpra_paper_87713.pdf>.
- Hughes K.P. (ed), *Contemporary Australian Feminism* (Australia, Longman Chesire, 1994).
- Hutheesing O.K., 'Male Jargon, Female Talk: Verbal Exchanges on Academe and the Mundane' (1994) XII(1&2) *Kajian Malaysia* 185-209.
- Inter-Parliamentary Union, *Women in Parliament and Cabinet* (IPU, 2022) <<https://data.ipu.org/women-ranking?month=5&year=2022>>.
- Ismail N.S.A. dan Z. Md Zain, 'Agenda Wanita dalam Manifesto Parti Politik' dalam Aboo Talib K. dan Azmi Z. (eds), *Penglibatan Wanita dalam Pilihan Raya* (Bangi, UKM Press, 2019) 45-61.
- Ismail R., *Penyertaan Wanita Dalam Politik: Satu Kajian Sikap Lelaki Islam Di Terengganu* (Terengganu, Universiti Malaysia Terengganu, 2003).
- Jaafar J., 'Penyertaan Wanita Dalam Ekonomi' *Newsletter Jabatan Perangkaan Malaysia* (2020) <https://www.dosm.gov.my/v1/uploads/files/6_Newsletter/Newsletter%202020/DOSM_BPPA_2-2020_Siri-37.pdf>.
- Karim N.S. dan Talib R., *Pergerakan Wanita dalam Memperjuangkan Hak* (Selangor, UKM Press, 2016).
- Kausar Z., *Women in Politics: The Case of Peninsular Malaysia* (Kuala Lumpur, Research Centre, IIUM, 2006).
- Kementerian Pembangunan Wanita, Keluarga dan Masyarakat, *Pelan Tindakan Pembangunan Wanita* (KPWKM, 2009) 190.
- , *Prestasi Parti Politik dan Calon Wanita dalam Pilihan Raya Umum ke-14: Pemerhatian Awal KPWKM* (Putrajaya, KPWKM, 2018).
- Man S.H., *Sejarah Perkembangan Politik Pergerakan Wanita UMNO Selangor*

- (Latihan Ilmiah, Jabatan Sejarah UKM, 1984).
- Manderson L., *Wanita, Politik dan Perubahan: Pergerakan Kaum Ibu UMNO, Malaysia, 1945-1972*, Samsudin Jaapar (terjemahan) (Kuala Lumpur, Fajar Bakti, 1981).
- Mohamad M., 'Feminism and Islamic Family Law Reforms in Malaysia: How Much and to What Extent?' (1998) 4(1) *Asian Journal of Women's Studies* 8-32.
- Mohamed Adil M.A., 'Wanita dalam sistem pemilihan demokrasi' *BH Online* (25 April 2018) <<https://www.bharian.com.my/renanca/muka10/2018/04/416576/wanita-dalam-sistem-pemilihan-demokrasi>>.
- Mohammad M., 'At the Centre and The Periphery: The Contribution of Women's Movements to Democratization' dalam Khoo K.B.T. dan Loh F. (eds), *Democracy in Malaysia: Discourses and Practices* (Surrey, CURZON, 2002) 216-240.
- Nasir M.S., 'Lelaki Pemimpin Wanita' *My Metro* (14 Januari 2019) <<https://www.hmetro.com.my/addin/2019/01/411835/lelaki-pemimpin-wanita>>.
- National Council of Women's Organisations (NCWO) (*ncwomalaysia.org*, 2017) <https://ncwomalaysia.org/ncwo_wp/history/>.
- National Council of Women's Organization Malaysia (NCWO) *Kenyataan Majlis Kebangsaan Pertubuhan-pertubuhan Wanita Malaysia, National Council of Women's Organizations, Malaysia (NCWO) Pasca Pilihan Raya ke-14* (11 Mei 2018).
- Ng C., *Gender and Rights: Analysis for Action* (Universiti Sains Malaysia, 2006) 24.
- Pritchard, M.F., *Land, Power and Peace: Land tenure systems and the formalization agenda in Rwanda* (Montreal, McGill University, 2010).
- Ramli R. dan lain-lain (eds), *Seethings and Seatings: Strategies for Women's Political Participation in Asia Pacific* (Chiang Mai, Asia Pacific Forum on Women, Law, and Development (APWLD), 2005).
- _____, 'Gender and Politik: Satu Penelitian Teoritis dan Empiris' dalam Mayudin G. (ed), *Teori Sains Politik Pilihan: Aplikasinya dalam Konteks Malaysia*. (Bangi, UKM Press, 1999).

- ____ ‘Pembangunan Politik dan Gender: Cabaran dan Strategi bagi calon-calon wanita’ dalam Talib R. dan Thambiah S. (eds), *Gender, Budaya dan Masyarakat* (Kuala Lumpur, Universiti Malaya, 1998) 152-62.
- Saidon N.R. dan lain-lain, ‘Faktor Kepimpinan dan Gender dalam Penglibatan Politik Wanita di Malaysia (1980-2013)’ (2017) 87(3) *Akademika* 63-75.
- Saleh Y. dan lain-lain, ‘Pola sokongan pengundi muda sebelum Pilihan Raya Umum ke 14 di Malaysia’ (2020) 16(1) *Malaysian Journal of Society and Space* 80-94.
- Sidek K., *Memoir Khatijah Sidek Puteri Kesateria Bangsa* (Bangi, UKM Press, 2010).
- Syed Shikh S.S. dan Ahmad Zakuan U.A., ‘Wanita dan Politik: Analisis Pilihan Raya Umum Malaysia ke-14’ dalam Aboo Talib K. dan Azmi Z. (eds), *Penglibatan Wanita dalam Pilihan Raya* (Bangi, UKM Press, 2019) 17-44.
- Syed Shikh S.S. dan Bazli M.H., ‘The Voters’ Choice and Hope in the 14th Malaysian General Election’ (1st International Conference on Cross-disciplinary Academic Research (ICAR), 21 Disember 2021).
- Syed Shikh S.S. dan lain-lain, *Persepsi dan Harapan Wanita Muda Malaysia* (Selangor, KITA Resources, 2016).
- ____ dan Bazli, M.H., ‘The Voters’ Choice and Hope in the 14th Malaysian General Election’ (1st International Conference on Cross-disciplinary Academic Research (ICAR), Kuala Lumpur, 21 Disember 2021).
- ____ dan lain-lain, ‘Gender and Religious Interpretation in Malaysian social media: Sentiment and Semantic Representation Analysis’ (2017) 9 *Journal of Media and Information Warfare* 23-44.
- ____ dan lain-lain, *Persepsi dan Harapan Wanita Muda Malaysia* (Selangor, KITA Resources, 2016).
- ____ dan Ramli R., ‘Mitos Demokrasi dan Politik Gender di Malaysia?’ dalam Daud S. dan Ismail M.T. (eds), *Pilihan Raya Umum ke-13: Refleksi Politik Perubahan* (Selangor, UKM Press, 2016) 76-94.
- ____ ‘Gender Politics in the 13th Malaysian General Election (GE13): Descriptive, Substantive & Surrogacy Representation Analysis’ (Seminar Media & Pilihanraya Umum 2013, 2013).

- ____ ‘Pemerkasaan Representasi Politik Wanita di Malaysia: Analisis Pilihan Raya Umum ke-12 (PRU12) 2008’ (2010) 7(1) *The Journal of Administrative Science* 11-37.
- Talib R. dan Karim N.S., *Tan Sri Zaleha Ismail: Aspirasi & Perjuangan* (Selangor, Unit Perancang Ekonomi Negeri Selangor, 2005).
- Ting H., *Electoral System Change for a More Democratic Malaysia? Challenges and Options* (Selangor, IKMAS, UKM, 2021).
- ____ ‘Khadijah Sidek and Fatimah Hashim: Two Contrasting Models of (Malays) Feminist Struggle?’ (2007) *Malaysia: Public Policy and Marginalised Groups* 115-42.
- UN Committee on the Elimination of Discrimination Against Women, *Laporan CEDAW Kerajaan Malaysia 2004* (UN Committee on the Elimination of Discrimination Against Women (CEDAW), 12 April 2004) <<https://www.refworld.org/publisher,CEDAW,,MYS,41174e424,0.html>>.
- UN Committee on the Elimination of Discrimination Against Women, *Laporan CEDAW Kerajaan Malaysia 2018* (UN Committee on the Elimination of Discrimination Against Women (CEDAW), 14 Mac 2018) <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/070/50/PDF/N1807050.pdf?OpenElement>>.
- Zainuddin A., ‘Media Sosial dan Penglibatan Wanita dalam Pilihan Raya’ dalam Aboo Talib K. dan Azmi Z. (eds), *Penglibatan Wanita dalam Pilihan Raya* (Bangi, UKM Press, 2019) 86-98.
- ____ *Dasar Wanita Negara Dalam Mengarusperdanakan Gender: Kajian Sektor Politik dan Pekerjaan* (Selangor, Institut Kajian Etnik, 2015).

Parliamentary Oversight to Uphold Accountability in the Review Process of Sustainable Development Goals

*Amy Tam Lay Choon**

Abstract

The 2030 Agenda on Sustainable Development recognises the contribution of multi-stakeholders in the process of conducting regular and inclusive reviews of progress at the national and sub-national levels. Parliaments have an essential role in supporting the process through the enactment of legislation and the adoption of budget. The role of parliament includes ensuring accountability for the effective implementation of the 2030 Agenda. A regular follow-up and review with an accountability structure would support a comprehensive assessment and oversight of SDG implementation. In adopting a whole-of-nation approach and ensuring effective law and policy implementation, oversight of SDG implementation actions would ensure that resources, policies, and programmes produce the intended outcome. The SDG Goal 16 supports good governance as an enabler to the other 16 goals. The good governance process enhances accountability, transparency, and participatory decision-making for an inclusive SDG implementation. This paper sheds light on the measures taken by parliaments around the world in placing accountability into their work on implementing the SDG. It would draw on lessons learned from the experiences of these parliaments as a way forward for parliaments to be involved in the SDG implementation.

Keyword: Accountability, Monitor and Review, Parliamentary Oversight, Parliamentary Committee, SDG

Introduction

In 2015, all United Nations Member States adopted the 2030 Agenda for Sustainable Development with 17 Sustainable Development Goals

* Amy Tam Lay Choon is Research Officer at the Parliament of Malaysia. Email: amytam@parlimen.gov.my

(SDG). The Member States pledged to ensure no one is left behind and assumed national ownership of its implementation. The goals would need to be embedded in federal laws, policies, and strategies to achieve the targets by 2030. The role of parliament is vital to support the process of conducting regular and inclusive reviews of laws, policies and plans at the national and sub-national levels and hold governments accountable for the goals they have subscribed to.¹ Sustainable development recognises that good governance (Goal 16) is crucial for effective, accountable, and transparent institutions at all levels to achieve equitable and sustainable management of resources. Indeed, parliament is a significant player to achieve the SDGs.

After five years of adopting the 2030 Agenda, the Member States have aligned the SDGs with the national development plans. They have established SDG implementation roadmaps and made progress reports for the Voluntary National Review (VNR). Parliaments play an equally vital role in supporting these actions. They debated laws, policies, and budgets to align them with the SDG implementation. They deliberated their action plans during international conferences, such as the First Global Parliamentary Meeting on Achieving the SDGs held in September 2021.

The 2030 Agenda highlighted the importance of systematic follow-up and review² of the SDG progress at the national level. Although the governments have the primary responsibility to conduct regular and inclusive checks of progress, parliaments can support the process of such a review. Parliaments have the power to provide the most robust accountability structure for the SDG process to either pass a draft piece of legislation, approve the budget or demand modifications. The process allows them to be involved and engaged in a multi-stakeholder partnership for laws, policies, and budget allocations to be adequately reflected in the national SDG priority areas. However, often parliaments are weakly associated with this process. There is likely no clear structural framework for their role, or the parliamentarians have only limited knowledge of the SDGs. A statement from a former Chief Judge of the

1 Inter-Parliamentary Union, 'Hanoi Declaration: The Sustainable Development Goals: Turning Words into Action adopted by the 132nd IPU Assembly' *IPU* (1 April 2015) <<http://archive.ipu.org/conf-e/132/rpt-gendebate.htm>> accessed 15 November 2021.

2 United Nations, 'Transforming our world: the 2030 Agenda for Sustainable Development. Resolution adopted by the General Assembly on 25 September 2015 A/RES/70/1' *UN* <https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/299&Lang=E> accessed 14 November 2021.

High Court of Malaya³ corroborated that parliamentary oversight on executive actions is under-rated. In this instance, there have been calls for stronger parliamentary oversight on human rights, environmental governance, combating corruption and access to justice. If the SDGs are to be achieved, parliaments should respond to the SDGs' constraints and challenges. Parliaments can do much more when systematically involved in discussions to address policies and structural concerns⁴ on the SDG. Institutionalising the SDG is a necessary first step for accountability and effective parliamentary engagement.

This paper describes the relevance of advancing accountability in parliament, good practices of SDG oversight in selected parliaments, and a review on the role of parliaments to support the government on the SDG implementation while keeping in mind that the SDGs are neither mandatory nor strict frameworks.

Methodology

This paper analysed the involvement of national parliaments to support the monitoring and reviewing of the implementation of the SDGs. The parliaments covered in this desk research were selected from the ASEAN and European regions, Australia, Kenya, and Fiji. The basis for choosing these parliaments was the availability of current data and documents for verification and them being institutional leaders in monitoring and reviewing the SDG. The analysis was built on the contents of the parliamentary involvement in SDG, as stated in the VNR reports. Cross-referencing was carried out for verification.

The core objectives of this paper are to serve as a baseline and benchmark for parliaments when they consider or evaluate the monitoring and reviewing processes to strengthen accountability. Henceforth, this paper should be regarded primarily as a reassessment or stocktaking exercise for parliaments' involvement in the whole-of-nation approach. Each parliament would need to conduct its own assessment with the government to determine the depth of its implementation.

3 Z. Ibrahim, 'Foreword' in M.A. Md Yusof and others (eds), *Law, Principles and Practice in the Dewan Rakyat (House of Representative) of Malaysia* (Subang Jaya, Sweet & Maxwell, 2020) v.

4 D. Jayasooria, 'Role of Parliamentarians in Localising SDGs in Malaysia' (2021) 1 *Journal of the Malaysian Parliament* 137.

Advancing Accountability in Parliament

Many countries have progressed in institutionalising the SDG follow-up and review. Considering that implementing the SDGs started in 2016 - in just two years, 42 percent of 153 countries surveyed in a study⁵ have shown that they have planned for a direct parliamentary involvement in SDG implementation. The governments are cognizant that effectual implementation of the SDGs requires the participation of parliaments.

In 2015, the parliaments were brought into the process of SDG implementation during the 132nd Inter-Parliamentary Union (IPU) and the 4th Conference of Speakers. The Hanoi Declaration on the Sustainable Development Goals: Turning Words into Action adopted by the 132nd IPU Assembly on 1 April 2015 commits parliaments to strengthen national ownership of the goals and make the people understand how the goals apply to their lives. Parliaments must ensure that each voice is heard in the political process without discrimination and, irrespective of social status, as they represent the people in their constituency.

The sustainable development approach is, however, not new. It continues and expands the work on the Millennium Development Goals (MDG). For 15 years, beginning from 2000, the MDGs established measurable, universally-agreed objectives for tackling extreme poverty and hunger, preventing deadly diseases, and expanding primary education to all children, among other development priorities. However, the MDGs achieved limited success due to a weak accountability regime⁶, low implementation and insufficient monitoring and reporting to provide a solid basis for evaluating performance. For instance, the parliamentarians were rarely involved in the MDGs in the Malaysian context. Many were not even aware of the MDGs.

In advancing the SDG and lessons learned from implementing the MDG, the 2030 Agenda states that the responsibilities of the parliament are to enact legislation, adopt budgets, and ensure accountability for the effective implementation of commitments.⁷ The 2030 Agenda Item 79 encourages the Member States to organise their review processes to include a broad range of societal stakeholders and suggests that

5 F. Fitsilis and F.D. Vrieze, 'How parliaments monitor sustainable development goals—a ground for application of post legislative scrutiny' (2020) 26(3) *The Journal of Legislative Studies* 448.

6 M. Fehling and others, 'Limitation of the Millennium Development Goals: a literature review' (2013) 8(10) *Global Public Health* 1109.

7 United Nations (n 2) item 45.

parliaments and other institutions support these processes. It further encourages parliaments and other institutions, such as audit institutions and human rights agencies, to support the government to conduct regular and inclusive reviews of progress made at the national and sub-national levels, which are country-led and country-driven.

Goal 16 recognises good governance at all levels:

Goal 16.3 Promote the rule of law at the national and international levels and ensure equal access to justice for all

Goal 16.6 Develop effective, accountable, and transparent institutions at all levels

Goal 16.7 Ensures responsive, inclusive, participatory, and representative decision-making at all levels

Parliaments are in a unique position of having both privileged understandings of the interests of their constituency and constitutional responsibility for scrutinising the work of the government. These roles come together when assessing legislation from the poverty, socio-economic, economic, education, health, and environmental perspective. The parliaments hold the government accountable for carrying out its responsibilities effectively through oversight function.

A horizontal accountability structure ensures checks and balances between institutions to prevent abuse of power. Being accountable to parliament means that ministers must explain and provide information on their area of responsibility. It also means that the ministers must take remedial action or apologise for failures. The Parliament of Malaysia has a constitutional obligation to hold the government accountable⁸ - '*accountability is consistent with the spirit of the doctrine of collective and individual Ministerial responsibility as enshrined in Article 43*'.⁹

The accountability of the government to parliament is demonstrated most clearly and publicly at Question Time (oral and written questions) directed at the Ministers, plenary debates on bills, the Budget and Royal Address in Reply debates, motions or through a parliamentary committee inquiry. In addition, some parliaments have established all-party parliamentary groups or ad hoc cross-party caucuses to facilitate discussions. By asking questions and seeking clarifications directly from

⁸ Federal Constitution of Malaysia, art 43.

⁹ I.H. Kamilan and M.S. Hassan @ Yahya, 'The Functions of Parliament' in Md Yusof and others (n 3) 132.

the ministers or holding hearings and inquiries, it would encourage accountability and raise awareness and capacity building on SDGs.

The most systematic method for oversight of the executive is through parliamentary committees, which track the work and conduct specific investigations. Parliaments have established committee systems to parallel the respective government departments or clusters of the government departments, such as the one in the Parliament of Malaysia. The committees possess the authority, structure, and mandates delegated to them through the Standing and Special Orders adopted. The committees scrutinise legislation and policies referred to them and have the power to recommend amendments. The committees also are bound to follow the procedures set out in the Standing Orders and any specific Special Orders that the parliament has issued, such as the power to establish sub-committees. The committee system is systematic, and it enables the governance structure within parliament to become more effective in examining the executive body. It is dissimilar for the all-party parliamentary groups and ad hoc cross-party caucuses, which usually pursue common themes or legislative objectives. The all-party groups and ad hoc caucuses lack the authority and mandate for systematic scrutiny of the executive.

The following section describes how selective national parliaments incorporate SDG monitoring and reviewing processes into their work.

Integration of the SDG in parliaments around the world

This paper identifies three groups of parliamentary structure for SDG oversight: the first group comprises parliaments with a dedicated structure. It includes the National Assembly of Pakistan, German Bundestag, the House of Representatives of the Republic of the Philippines, National Assembly of Thailand, Parliament of Denmark, and National Assembly of Kenya.

The second group comprises parliaments making use of an existing structure which includes the Parliament of the United Kingdom, the Parliament of Australia, the House of Representatives of the Republic of Indonesia, the Parliament of Fiji, the Parliament of Finland, the Parliament of Sweden, and the Parliament of Norway.

And finally, the all-party parliamentary groups and alliances, which includes the Malaysian Parliament's All-Party Parliamentary Group Malaysia on Sustainable Development Goals (APPGM-SDG), the UK Parliament's All-Party Parliament Group on Sustainable Development

(APPG-SDG), the European Parliament's All-Party Parliamentary Group on SDG and the Danish Parliament's All-Party Coalition for the Sustainable Development Goals (the 2030 Network).

Table 1. Selected National Parliamentary Oversight on SDG

Parliaments with a dedicated structure	
1 National Assembly of Pakistan	National and Provincial Parliamentary Task Force on SDGs
2 German Bundestag	Parliamentary Advisory Council on Sustainable Development
3 The House of Representatives of the Republic of the Philippines	Standing Committee on Sustainable Development Goals
4 National Assembly of Thailand	Committee on Foreign Affairs, Sub-committee on Considering and Monitoring the Progress of the Implementation of the Sustainable Development Goals of the United Nations and the Implementation of the International Obligations, Committee on Public Health, Sub-committee on Universal Health Coverage for Sustainable Development
5 Parliament of Denmark Finance Committee	Working Group on the SDGs
6 National Assembly of the Republic of Kenya	Parliamentary Caucus on Sustainable Development Goals and Business

Making use of an existing structure	
1 Parliament of UK, House of Common Select Committees and Environmental Audit Committee	
2 Parliament of Australia, Senate Standing Committee	
3 Parliament of Fiji Standing Committee	
4 The House of Representatives of the Republic of Indonesia, the Parliamentary Body for Inter-Parliamentary Cooperation or Badan Kerja Sama Antar Parlemen	
5 Parliament of Finland Standing Committee	
6 Parliament of Sweden Standing Committee	
7 Parliament of Norway Standing Committee	

All-Party Parliamentary Groups and All-Party Coalition on the SDGs (Network)

- 1 Parliament of Malaysia All-Party Parliamentary Groups Malaysia on Sustainable Development Goals (APPGM-SDG)
 - 2 Parliament of UK APPG on Sustainable Development
 - 3 European Parliament APPG on SDG
 - 4 Parliament of Denmark All-Party Coalition on the Sustainable Development Goals (2030 Network)
-

a) Parliaments with a dedicated structure on SDG

Following the adoption of the 2030 Agenda, Pakistan and Germany were among the first countries to adopt the SDG as part of their national development agenda. The National Assembly of Pakistan has established the National and Provincial Parliamentary Task Force on SDGs to oversee progress on the SDGs, while the German Bundestag has the Parliamentary Advisory Council on Sustainable Development (PACSD). Pakistan's Parliamentary Task Force oversees international development commitments and builds consensus on SDG critical challenges. It has representation from the federal and provincial levels to develop work plans around priority areas and keep parliamentarians updated on progress made on the SDG, especially in their constituencies. The Bundestag's PACSD oversees the government's National Sustainable Development Strategy. It monitors and supports sustainable development policy at the national, European, and international levels. In addition, the PACSD also receives ministry reports on SDG implementation.

Among the ASEAN Member Parliaments, the House of Representatives of the Republic of the Philippines and the National Legislative Assembly of Thailand support the implementation of the SDG by setting up committees and sub-committees dedicated to achieving the SDG. The House of Representatives of the Republic of the Philippines established a Committee on Sustainable Development Goals to study and deliberate on the needs, concerns and interests of the nation's commitment to the 2030 Agenda. Likewise, the National Legislative Assembly of Thailand has established sub-committees on sustainable development through the Committee of Foreign Affairs and Public Health. It has further established

a standing committee on SDG¹⁰ to ensure the national budget allocation and draft legislation meet the SDG criteria.

In 2018, the Danish Parliament established a Parliamentary Working Group on the SDG under the Parliamentary Finance Committee. This group comprises 16 parliamentarians, and it focuses on measuring progress, assists the various committees in Parliament on the SDG matters, and monitors the government's work on the SDG implementation.

The Kenya Parliamentary Caucus on Sustainable Development Goals and Business drew up a Strategic Plan 2019–2023 to promote parliamentary action on the Sustainable Development Goals and Business through legislation, representation, oversight, advocacy and partnerships.

b) Making use of an existing structure

The Parliament of the United Kingdom and Australia have a similar structure for monitoring and reviewing SDGs. They carried out periodic reviews and made recommendations to the government. The UK House of Commons has conducted inquiries on the goals and their delivery through the International Development Committee, the Environmental Audit Committee, and the Women and Equalities Committee. The Senate of the Australian Parliament referred the matters concerning the progress of SDG in Australia to the Standing Committee on Foreign Affairs, Defence and Trade References Committee.

The Parliament of Fiji undertook a self-assessment exercise on the SDG in 2019. Subsequently, it launched a Guidance Note for specific entry points to implement the SDG proactively. The SDG reviewing would focus on committees for which government oversight is a part of their mandate: the Social Affairs Committee, Economic Affairs Committee, Public Accounts Committee, Justice Law and Human Rights Committee, Foreign Affairs and Defence Committee, and Natural Resources Committee.

The House of Representatives of the Republic of Indonesia has been involved in the 2030 Agenda since the early stages of SDG

10 Inter-Parliamentary Union and the House of Representatives of the Republic of Indonesia, *Sessions Report, First Global Parliamentary Meeting on Achieving the SDGs, Turning the challenges of the COVID-19 pandemic into opportunities for parliaments to achieve the SDGs* (2021) <<https://www.ipu.org/file/12672/download>> accessed 23 December 2021.

conceptualisation. The Presidential Decree of the Republic of Indonesia emphasised the importance of applying an inclusive principle involving four participation platforms, of which one concerns the 'government and parliament'.¹¹ Accordingly, the Parliamentary Body for Inter-Parliamentary Cooperation or Badan Kerja Sama Antar Parlemen (BKSAP) was established in the Indonesian Parliament to enhance cooperation and coordination between parliament and the government. BKSAP has organised the World Parliamentary Forum on SDGs for three consecutive years, i.e., 2017 - 2019, and helped prepare the VNR. In addition, BKSAP regularly conveys input and recommendations to parliament regarding the SDGs' legislation, budgeting, and supervision.

The Parliament of Finland works closely with the government to strengthen the effectiveness of policy development. The Committee for the Future coordinates and handles matters concerning the 2030 Agenda. Since 2017, the parliament has received the government's annual progress reports submitted by the Prime Minister's Office to parliament. The Committee will then prepare the parliament's response to the government's report.

The Committee on Finance and the Committee on Foreign Affairs in the Parliament of Sweden review legislation and plans relating to the SDGs. For instance, in June 2020, the Committee on Finance examined a government bill on Sweden's implementation of the 2030 Agenda. In addition, the Committee on Foreign Affairs has special responsibility for policy coherence. Following up on an approved government's bill on implementing the 2030 Agenda, the government will begin reporting to the parliament in 2022.

The Parliament of Norway receives the government's annual budget proposals and the National Budget Report. Since 2016, the government of Norway has reported on the progress of the SDG to parliament. The proposals are discussed in the relevant parliamentary committees. The Committee on Scrutiny and Constitutional Affairs reviews and makes recommendations on matters concerning the supervision of the government. In 2020, the Office of the Auditor General of Norway (OAG) provided parliament with an audit of the national follow-up on the SDGs from 2016 to 2019/2020.

¹¹ The other three platforms are "Academics and Experts", "Philanthropy and Business Actors" and "Civil Society Organisations and Media".

c) All-Party Parliamentary Groups and All-Party Coalition on SDGs

The Parliament of Malaysia established the All-Party Parliamentary Group on Sustainable Development Goals (APPGM-SDG) in 2019. The APPGM-SDG is modelled after the House of Commons' All-Party Parliamentary Group (APPG). The APPGM-SDG is an informal group made up of parliamentarians, civil society, academia and specialists undertaking an active role in localising SDGs in parliamentary constituencies, with funds provided by the Ministry of Finance. Thirty parliamentarians have localised the SDG in their constituencies to ensure that marginalised communities' needs and challenges are integrated into the national development plans. The APPGM-SDG had a role in preparing the country's second VNR 2021. Parliamentarians were engaged in public consultation and side talks for SDG capacity building and awareness during the days leading to the High-Level Political Forum. It marked an improvement from the first VNR Report submitted in 2017. Then, parliament had no involvement. The APPGM-SDG creates SDG awareness by linking the federal and local governments with the local communities for grounded programmes. In the pre-and post-tabling of the Shared Prosperity Vision 2030 and the 12th Malaysia Plan, the APPGM-SDG were engaged with the government on public policies. As a result, the overall outcome has a more balanced account of the SDG achievement. Localising the SDG provides a mutually beneficial working platform for parliamentarians to raise local concerns related to SDG with the federal government, local government, civil society, NGOs, academia and authority for intervention programmes. It is a good showcase of multi-stakeholder participation to map local issues and draw micro and macro interventions.

The Parliament of the UK's All-Party Parliamentary Group on the UN Global Goals for Sustainable Development (APPG-SDG) brings together parliamentarians to promote debates and monitor SDG implementation. In addition, it provides a forum for liaising with the ministers, external organisations, including the private sector, experts in their fields of international development, and discussions with high-level speakers from the international community. The secretariat of the APPG is Bond, a global development network for UK NGOs working in the international development and humanitarian sector. The APPG-SDG and Bond SDG Working Group provide inputs when the committees of House of Commons scrutinise the executive on the progress of SDGs in the UK.

On 24 September 2020, the SDG Alliance—MEPs for Agenda 2030 was established in the European Parliament. MEP (Members of the

European Parliament) for SDGs (MEPs4SDGs) is an informal group open to all 27 MEPs committed to promoting the SDGs in the European Parliament and the European Union. It is looking into leading the group to a permanent position¹² after the election in 2022. The group organises periodical roundtables to identify approaches and actions for the European Parliament in implementing the SDGs.

The All-Party Coalition on the SDGs in the Danish Parliament (2030 Network) comprises parliamentarians from all parties, and they meet to engage policymakers and civil society. Currently, the Network has 74 members representing all parliamentary parties. The 2030 Panel supports the 2030 Network's parliamentary work by providing critical and constructive feedback, knowledge and analysis of the government's action plan and the VNR report. The 2030 Panel has members from the business community, a variety of organisations, researchers, and NGOs. It organises meetings with ministers and holds annual multi-stakeholder forums. Partnerships are essential in achieving the SDGs. The 2030 Network and the Working Group on the SDGs under the Parliamentary Finance Committee engage and encourage parliamentarians to be involved in the SDG implementation.

Based on the above, it is observed that:

1. Parliamentary oversight structure of the SDGs progress

Each parliament exercises its roles differently in monitoring and reviewing the 2030 Agenda. Parliaments with a dedicated structure established task force, specialised committee, and caucus, which may further establish sub-committees on specifics to review legislation supporting the SDG. For instance, Pakistan's National and Provincial Parliamentary Task Force on SDG established a sub-committee on Child Rights.

When there is no dedicated structure, oversight is carried out through mandated existing committees. It is common to assign the monitoring and reviewing of the progress of the SDGs to the committee on foreign affairs or international development. Perhaps this is because of the correlation of sustainable development to the United Nations. The UK House of Commons International Development Committee, the Australian Parliament Senate Standing Committee on Foreign Affairs, the House of

12 Inter-Parliamentary Union and the House of Representatives of the Republic of Indonesia (n 10).

Representatives of the Republic of Indonesia Parliamentary Body for Inter-Parliamentary Cooperation, the National Assembly of Thailand, the Finnish Parliament Committee on Foreign Affairs and the Swedish Parliament Committee on Foreign Affairs are examples of SDGs positioned in the international/foreign affairs committee.

Parliaments may assign the monitoring and reviewing of the 2030 Agenda to specific-related committees, such as the Women and Equalities Committee. It is also a viable option when the committee on finance monitors and reviews the implementation of the SDGs because it would facilitate the budgetary needs of SDG priority areas.

Interestingly, the Prime Minister's Office of Finland leads the country to report on the SDG progress to the Parliament of Finland. The All-Party Parliamentary Groups and All-Party Coalitions network groups strengthen awareness and build capacity to achieve the SDG. In addition, Malaysian's APPGM-SDG has an additional role in localising the SDG and carrying out intervention programmes.

2. Political Commitment and a whole-of-nation approach

Political commitment and a whole-of-nation strategic framework are central to coherence. Therefore, building a strong, inclusive political commitment and leadership at the highest political level is necessary for achieving the SDG. For instance, The President of the Republic of Indonesia clearly and publicly expressed commitment to institutionalise the implementation of SDG. Other than that, the submission of reports from the Prime Minister's Office of Finland to parliament also shows the political commitment from the government.

The provision in the Constitution of Kenya 2011 binds all persons and all State organs at both levels of government. The supreme law of the Republic outlines sustainable development as 'the national value and principles of governance binding every person and every state organ.' Under Standing Order No. 259A, the parliamentarians established the Parliamentary Caucus on SDGs in 2017 to promote Sustainable Development and Responsive Business through legislation, representation, oversight, and partnerships.

The involvement of the Auditor General of Norway has paved the way for Norway's first national action plan on implementing

the 2030 Agenda in 2021. Following up on the approved government bill in December 2020, Sweden will implement the 2030 Agenda to achieve economically, socially and environmentally sustainable development through a coherent policy nationally and internationally.

3. Embedding the monitoring and reviewing of the SDGs in the Standing Committees

A common strategy to strengthen oversight of the SDG implementation is to seek upgrading into the committee system. For instance, the Danish Parliament has incorporated a Working Group on the SDGs under the Parliamentary Finance Committee after it was encouraged by the 2030 Network. In addition, the Bundestag PACSD has proposed to be upgraded into a Committee for Sustainable Development.¹³ Committees typically perform some of the core functions of parliament regarding legislation, oversight, and accountability measures.

4. Mainstreaming the SDGs into national budgets

Public budgets are among the most effective instruments for governments to address the 2030 Agenda. Therefore, federal funding should be structured according to sustainability criteria. For instance, the Malaysian Budget 2022 was structured according to sustainability criteria, thus, placing Malaysia among the ten countries in the world that have fully aligned their national budgets to the SDG. The 2022 Budget will lead Malaysia towards low carbon practices, a greener environment and better community empowerment.

5. Multi-Stakeholder Partnership

Establishing multi-stakeholder partnerships through all-party groups provides wide-ranging parliamentary activities, such as multi-stakeholder dialogue, awareness, and capacity building. The Malaysian APPGM-SDG has leapt forward with its unique brand of multi-stakeholder partnerships, which includes parliamentarians, civil society, academia and subject specialists working together

13 The German Federal Government, *Report on the Implementation of the 2030 Agenda for sustainable development, German Voluntary National Review to the HLPF 2021* (Berlin, The German Federal Government, 2021).

to localise the SDGs and finding solutions to everyday problems plaguing the communities. Localising the SDGs has highlighted the importance of having the local government as drivers and models in achieving the implementation of the 2030 Agenda, particularly SDG Goal 11, on sustainable cities and communities.

Conclusions and Recommendations

Parliaments can promote accountability for the SDG in several ways. Studies have identified that parliaments and independent oversight agencies are cornerstones for national SDG accountability regimes. However, parliaments stand out from the rest. Their roles and functions ascribed to them have a considerably broader scope – ranging from participation in the national SDG coordination group, aligning the national budget with the SDG, oversight and scrutiny through dedicated SDG committees or parliamentary committees or sub-committees, capacity building and awareness programmes through all-party parliamentary groups or caucuses and engaging directly with the communities in localising the SDGs. Within these functions, the parliaments can ensure the executive's accountability, answerability, and responsibility to parliament.¹⁴

Parliaments can make or amend laws to ensure consistency with the 2030 Agenda. They can monitor and review the government and its agencies' actions in implementing the SDG. They can assess progress on the SDG through periodic reports, VNR and action plans tabled in parliament. They can assess budgets and ensure that adequate financial resources are allocated to achieve the SDGs. They can also hold public hearings and inquiries to stimulate public discourse and debate about policies to achieve the SDGs, and provide opportunities for grassroots and subject specialists to offer their perspectives on what is and is not working on the ground. Thus, when the elements of the SDG are embedded in the parliament's work, it will stimulate action in areas of critical importance: people, planet, prosperity, peace and partnership.

How should parliaments adopt SDGs into their work?

The Inter-Parliamentary Union (IPU) has developed a self-assessment toolkit to implement SDGs. For example, the Parliament of Fiji conducted a self-assessment exercise to reflect on the capacity of engagement in

¹⁴ S.S. Faruqi, 'The Malaysian Parliament: Problems, Prospects and Proposals for Reform', in Md Yusof and others (n 3) 495.

SDG implementation. Some parliaments began by building awareness and capacity through all-party groups. Buy-ins are crucial to ensure deep-rooted mutual commitment from all political parties, so that good policies do not drift when the government's term ends.

There are various ways for parliaments to assign SDG responsibility - they may utilise a dedicated SDG structure, use existing committees, caucus or all-party groups. Each option has its value. Reviewing the actions of government and their agencies in implementing the SDG requires parliaments to have clearly assigned responsibility for the issues to be reviewed. Therefore, it is essential to embed the SDG in legislative processes and establish a proper review structure. For this reason, a dedicated parliamentary structure such as the SDG Committee or Task Force can arguably provide the most vital instrument of accountability through which parliaments can hold governments accountable. For instance, the National Parliamentary Task Force on Sustainable Development Goals of Pakistan set up a Special Committee on Child Rights to serve as a platform to coordinate and achieve targets of SDG related to children's welfare and development. Interestingly, the Task Force might be the only dedicated parliamentary structure that links all-party and all legislative provinces in an 'all-inclusive approach' for a comprehensive review of implementing SDGs. Another instance of a dedicated parliamentary committee is the Committee on Sustainable Development Goals of the Republic of the Philippines, which has approved a bill to establish the SDGs Council of the Philippines under the National Economic Development Authority.

Some parliaments opt to use existing structures for SDG oversight. In the parliamentary committee, the parliamentarians examine the government action, seek information and documents, interrogate government officials, and conduct hearings and assessments to determine whether policies, regulations, and programmes are effectively implemented to support the SDGs. For instance, the UK House of Commons International Development Committee, Environmental Audit Committee and Women and Equalities Committee heard the submissions from the public on issues concerning the implementation of SDGs – *UK implementation of the SDG* (2016), *Sustainable Development Goals in the UK* (2017), *Implementation of Sustainable Development Goal 5 in the UK* (2017), *UK progress on the SDGs: the VNR* (2019), *Sustainable Development Goals in the UK follow-up on hunger, malnutrition, and food insecurity in the UK* (2019), and further formulated recommendations to strengthen SDG compliance. The UK government had then responded to the inquiries.

Parliamentarians can consider hearing submissions and report back to the plenary, allowing the committee's report to be tabled and publicly debated. Such a structure ensures that parliamentarians and the public are aware of developmental implementation issues and challenges. A committee system may not be comprehensive in its coverage, but it is sufficient for accountability to be selective about critical concerns.

Alternatively, parliamentarians can also establish cross-party groups or caucuses on the SDGs to create opportunities to exchange possibilities for mainstreaming the SDGs into legislation, such as the National Assembly of the Republic of Kenya Parliamentary Caucus on SDGs and Business. However, cross-party groups or caucuses lack the proper bite to hold the government accountable. The UK'S APPG-SDG and the Danish Parliament's 2030 Network have established parliamentary committees and sub-committees, apart from the all-party groups on the SDGs. The European Parliament's APPG-SDG is also looking into formalising the group after the election in March 2022.

The Parliaments of Finland, Sweden, Denmark, Germany, and Norway actively monitor and review the government's action on the SDG regularly. The parliamentary work combines the committee's role for oversight and the informal activities through all-party groups. Perhaps, the ingredients for an effective parliamentary model to support the government in monitoring and reviewing the SDG implementation lie in the parliament having a broader role, both in the formal and informal spheres. It is a proposition for further study. After all, Europe is leading the way on the 2030 Agenda. 19 out of the top 20 countries making good progress on the SDG are in Europe.¹⁵ The Parliament of Finland has acknowledged that the parliament has a crucial role in ensuring accountability for the work of the government.

Institutionalising the SDGs in parliament will also depend on the rules of procedure, expertise, budget, the capacity of the parliamentarians, and the oversight culture. Expertise in the SDG should comprise subject specialists and the internal support of dedicated parliamentary researchers. As in the committee system in the UK and Australian Parliament, dedicated specialist researchers are the key personnel.

Regardless of the structure adopted, mandate, clear rules and procedures are essential for systematic monitoring and reviewing.

15 J.D. Sachs and others, *Sustainable Development Report 2021: The Decade of Action for the Sustainable Development Goals* (Cambridge, Cambridge University Press, 2021) <<https://s3.amazonaws.com/sustainabledevelopment.report/2021/2021-sustainable-development-report.pdf>> accessed 17 November 2021.

Examples of ways in which parliaments can provide oversight in the SDG activities are:

- Parliamentarians are consulted to prepare the VNR and subsequent review of the findings;
- The government regularly provides review reports to parliament on SDGs progress for review;
- Parliamentarians are directly involved in SDG implementation strategy;
- Incorporating SDGs into the budget evaluation framework;
- Building awareness and capacity for communication and coordination with the sub-national and local governments;
- Advocating for sectoral, national, regional, and international cooperation and partnerships on the SDGs;
- To review and approve or reject the executive's budget and oversee the use of public funds.

References

- 'SDGs and the role of parliaments' *Agora Portal for Parliamentary Development* <<https://agora-parl.org/resources/aoe/sdgs-and-role-parliaments>> accessed 27 November 2021.
- Adiputri R.D., 'The Role of Parliament in Sustainable Development Goals: A case study of Southeast Asia in international parliamentary forums' (2021) 5(1) *Jurnal Perencanaan Pembangunan* 127 <10.36574/jpp.v5i1.73> accessed 15 November 2021.
- Bexell M. and Jönsson K., 'Realising the 2030 Agenda for sustainable development – engaging national parliaments?' (2020) *Policy Studies* <<https://doi.org/10.1080/01442872.2020.1803255>> accessed 17 November 2021.
- Breuer A. and others, 'Key players in national SDG accountability: The role of parliaments' (2021) *Briefing Paper, No.15/2021, Deutsches Institut für Entwicklungspolitik (DIE)* <<https://dx.doi.org/10.23661/bp15.2021.v1.1>> accessed 16 November 2021.

- Breuer A. and Leininger J., 'Horizontal Accountability for SDG Implementation: A Comparative Cross-National Analysis of Emerging National Accountability Regimes' (2021) 13(13) *Sustainability* 7002 <<https://doi.org/10.3390/su13137002>> accessed 12 November 2021.
- Cheng Y. and others, 'Global Action on SDGs: Policy Review and Outlook in a Post-Pandemic Era' (2021) 13(11) *Sustainability* 6461 <<https://doi.org/10.3390/su13116461>> accessed 15 November 2021.
- De Vrieze F. and Hasson V., Westminster Foundation for Democracy, *Post-Legislative Scrutiny, Comparative Study of Practices of Post-Legislative Scrutiny in selected parliaments and the rationale for its place in democracy assistance* (London, Westminster Foundation for Democracy, 2017) <<http://m.knesset.gov.il/Activity/Oversight/Documents/OversightComparativeStudy.pdf>> accessed 5 November 2021.
- De Vrieze F. and Norton P., 'The significance of post-legislative scrutiny' (2020) 26(3) *The Journal of Legislative Studies* 349 <<https://doi.org/10.1080/13572334.2020.1780008>> accessed 16 November 2021.
- De Vrieze F., *Post-Legislative Scrutiny Guide for Parliaments* (London, Westminster Foundation for Democracy, 2017) <https://www.wfd.org/wp-content/uploads/2018/07/WFD_Manual-on-Post-Legislative-Scrutiny.pdf> accessed 7 November 2021.
- Department of Foreign Affairs and Trade Australia, *Report on the Implementation of the Sustainable Development Goals 2018* (Sydney, Department of Foreign Affairs and Trade Australia, 2018).
- Department of International Development, UK, *VNR of progress towards the Sustainable Development Goals* (London, Department of International Development, 2019).
- Deveaux K. and Rodrigues C., *Parliament's Role in Implementing the Sustainable Development goals – A Parliamentary Handbook* (New York, GOPAC, UNDP and IDB, 2018) <<https://www.undp.org/publications/parliaments-role-implementing-sustainable-development-goals>> accessed 5 November 2021.
- Economic Planning Unit, Prime Minister's Department, *Malaysia VNR (VNR) 2021* (Putrajaya, Economic Planning Unit, 2021).
- *SDG Roadmap for Malaysia Phase 1: 2016–2020* (Putrajaya, Economic Planning Unit, n.d)

Faruqi S.S., 'Peaceful, Just and Inclusive Societies: Good Governance and Institutional Reform Proposals in Malaysia' in Mahadi A. and Zhafri N. (eds), *Making SDGs Matter: Leaving No One Behind* (Kuala Lumpur, Institute of Strategic and International Studies (ISIS) Malaysia, 2021).

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

Fehling M., Nelson B.D. and Venkatapuram S., 'Limitation of the Millennium Development Goals: a literature review' (2013) 8(10) *Global Public Health* 1109 <<https://doi.org/10.1080/17441692.2013.845676>> accessed 15 November 2021.

Fitsilis F. and De Vrieze F., 'Parliamentary Oversight of Sustainable Development Goals and the Application of Post-Legislative Scrutiny Principles' (2019) Wroxton Workshop Working Paper 2019 <<https://wroxtonworkshop.org/wp-content/uploads/2019/07/2019-Fitsilis-De-Vrieze-.pdf>>.

— 'How parliaments monitor sustainable development goals—a ground for application of post legislative scrutiny' (2020) 26(3) *The Journal of Legislative Studies* 448 <<https://doi.org/10.1080/13572334.2020.1772445>> accessed 16 November 2021.

— 'Interface between Post-Legislative Scrutiny and sustainable Development Goals and the state of play in South East Asia and the Pacific' (Academic Seminar on Post-Legislative Scrutiny in Asia, Yangon, Myanmar, 17-18 June 2019) <<https://www.slideshare.net/DrFotiosFitsilis/interface-between-pls-and-sdgs-and-the-state-of-play-in-south-east-asia-and-the-pacific>> accessed 18 November 2021.

Government Offices of Sweden, VNR 2021, *Report on the implementation of the 2030 Agenda for Sustainable Development* (Stockholm, Government Offices of Sweden, 2021).

Inter-Parliamentary Union and the House of Representatives of the Republic of Indonesia, *Sessions Report, First Global Parliamentary Meeting on Achieving the SDGs, Turning the challenges of the COVID-19 pandemic into opportunities for parliaments to achieve the SDGs 28–30 September 2021* <<https://www.ipu.org/file/12672/download>> accessed 23 December 2021.

Inter-Parliamentary Union and United Nations Development Programme, *Global Parliamentary Report 2017, Parliamentary Oversight: Parliament's Power to Hold Government to Account* (Geneva, IPU-UNDP, 2017).

Inter-Parliamentary Union, 'Hanoi Declaration: The Sustainable Development Goals: Turning Words into Action adopted by the 132nd IPU Assembly' IPU (1 April 2015) <<http://archive.ipu.org/conf-e/132/rpt-gendebate.htm>> accessed 15 November 2021.

— 'Institutionalisation of the Sustainable Development Goals in the work of parliaments' <<https://www.ipu.org/file/7639/download>> accessed 16 November 2021.

— *Parliaments and the Sustainable Development Goals, A self-assessment toolkit* (Geneva, IPU, 2017) accessed 6 November 2021.

Kamilan I.H. and Hassan @ Yahya M.S., 'The Functions of Parliament' in Md Yusof M.A. and others (eds), *Law, Principles and Practice in the Dewan Rakyat (House of Representatives) of Malaysia* (Subang Jaya, Sweet & Maxwell, 2020).

Kanie N. and others, 'Rules to goals: emergency of new governance strategies for sustainable development' (2019) 14 *Sustainability Science* 1745 <<http://doi.org/10.1007/s11625-019-00729-1>> accessed 30 November 2021.

Karlsson-Vinkhuyzen S., Dahl A.L. and Persson A., 'The emerging accountability regimes for the Sustainable Development Goals and policy integration: Friend or foe?' (2018) 36(8) *Environment and Planning C: Politics and Space* 1371 <<https://doi.org/10.1177/2399654418779995>> accessed 16 November 2021.

Lindberg S.I., Luhrmann A. and Mechkova V., 'From de-jure to de-facto: Mapping Dimensions and Sequences of Accountability' (2017) *World Development Report, Governance and the Law* <<http://hdl.handle.net/10986/26212>> accessed 20 November 2021.

Md Yusof M.A. and others, *Law, Principles and Practice in the Dewan Rakyat (House of Representatives) of Malaysia* (Subang Jaya, Sweet & Maxwell, 2020).

Ministry of Economy, the Republic of Fiji, VNR, *Fiji's Progress in the implementation of the Sustainable Development Goals* (Fiji, Ministry of Economy, 2019).

Ministry of Finance of Denmark, *Report for the VNR, Denmark's implementation of the 2030 Agenda for Sustainable Development* (Copenhagen, Ministry of Finance, 2021).

Ministry of Foreign Affairs of Thailand, *Thailand's VNR on the Implementation of the 2030 Agenda for Sustainable Development* (Bangkok, Ministry of Foreign Affairs of Thailand, 2021).

Ministry of National Development Planning, *Indonesia's VNR (VNR) 2021, Sustainable and Resilient Recovery from the COVID-19 Pandemic for the Achievement of the 2030 Agenda* (Jakarta, Ministry of National Development Planning, 2021).

Ministry of Planning, Development and Reforms, *Pakistan's Implementation of the 2030 Agenda for Sustainable Development, VNR* (Ministry of Planning, Development and Reform Government of Pakistan, 2019).

Montero A.A., 'UN/DESA Policy Brief No. 114, Connecting the dots: The still elusive synergies between accountability institutions and the follow-up and review of the Sustainable Development Goals' *UNDESA Economic Analysis* (23 September 2021) <<https://www.un.org/development/desa/dpad/publication/un-desa-policy-brief-114-connecting-the-dots-the-still-elusive-synergies-between-accountability-institutions-and-the-follow-up-and-review-of-the-sustainable-development-goals/>> accessed 20 November 2021.

Naidoo R. and Fisher B., 'Sustainable Development Goals: pandemic reset' (2020) 583 *Springer Nature Limited* 198 <<https://media.nature.com/original/magazine-assets/d41586-020-01999-x/d41586-020-01999-x.pdf>> accessed 15 November 2021.

Norwegian Ministry of Local Government and Modernisation, *VNR 2021 Norway, Report on the Implementation of the 2030 Agenda for Sustainable Development* (Oslo, Norwegian Ministry of Local Government and Modernisation, 2021).

Parliament of the Republic of Fiji and United Nations Development Programme, *Oversight of the Implementation of the Sustainable Development Goals* (Parliament of the Republic of Fiji and UNDP) <<http://www.parliament.gov.fj/wp-content/uploads/2019/05/GuidanceNote-FijiParliamentStandingCommittees.pdf>> accessed 20 November 2021.

Prime Minister's Office 2020:8, *VNR 2020 Finland* (Helsinki, Prime Minister's Office, 2020).

Sachs J.D. and others, *Sustainable Development Report 2021: The Decade of Action for the Sustainable Development Goals* (Cambridge, Cambridge University Press, 2021) <<https://s3.amazonaws.com/sustainabledevelopment.report/2021/2021-sustainable-development-report.pdf>> accessed 17 November 2021.

The German Federal Government, *Report on the Implementation of the 2030 Agenda for sustainable development, German VNR to the HLPF 2021* (Berlin, The German Federal Government, 2021).

United Nations Department of Economic and Social Affairs, *Transitioning from the MDGs to the SDGs: accountability for the post-2015 era* (New York, United Nations Department of Economic and Social Affairs, 2015) <https://www.un.org/en/development/desa/policy/cdp/cdp_background_papers/bp2015_25.pdf> accessed 29 November 2021.

United Nations, 'Follow-up and review of the 2030 Agenda for Sustainable Development at the global level. Resolution adopted by the General Assembly on 29 July 2016 A/Res/70/299' (2016) <<https://undocs.org/A/RES/70/299>> accessed 14 November 2021.

— 'Review of the implementation of General Assembly resolution 67/290 on the high-level political forum on sustainable development, resolution 70/299 on the follow-up and review of the 2030 Agenda for Sustainable Development at the global level and resolution 72/305 on the strengthening of the Economic and Social Council. Resolution adopted by the General Assembly on 12 August 2020 A/Res/74/298' (2020) <<https://undocs.org/en/A/RES/74/298>> accessed 14 November 2021.

— 'Transforming our world: the 2030 Agenda for Sustainable Development. Resolution adopted by the General Assembly on 25 September 2015 A/RES/70/1' (2015) <https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/299&Lang=E> accessed 14 November 2021.

— *The Sustainable Development Goals Report 2021* (New York, United Nations, 2021) <<https://unstats.un.org/sdgs/report/2021/The-Sustainable-Development-Goals-Report-2021.pdf>> accessed 11 November 2021.

Hak untuk Hidup dan Hukuman Mati: Respons Syariah terhadap Perundangan Antarabangsa

*The Right to Life and the Death Penalty:
The Shariah Response to the International Law*

*Mohamed Azam Mohamed Adil**

Abstrak

Hak untuk hidup ialah satu daripada aspek asas hak asasi manusia. Tanpa hak ini, manusia berisiko kehilangan hak lain seperti kebebasan beragama, kebebasan bersuara dan pendapat, kebebasan bergerak, hak pemilikan harta dan banyak lagi. Melindungi hak untuk hidup ialah asas kepada pembinaan tamadun, tanpanya, adalah mustahil untuk mengekalkan budaya bertamadun dan mencapai kemajuan teknologi. Nyawa manusia adalah suci menurut syariat. Allah SWT yang menghidupkan manusia dan hanya Allah SWT yang berhak mematikan manusia. Maka, dianggap satu jenayah untuk mengambil nyawa manusia lain tanpa alasan yang adil. Dalam hal ini, syariah telah menetapkan pembalasan (qisas) yang menetapkan hukuman mati bagi pembunuhan dengan sengaja atau bayaran diyat (*blood money*) kepada keluarga mangsa. Artikel ini mengkaji hak asasi manusia untuk hidup dari kedua-dua perspektif; Islam dan Perlumbagaan Persekutuan. Selain itu, artikel ini menganalisis kedudukan hukuman mati dalam konteks undang-undang di Malaysia dan pandangan syariah. Artikel ini juga mengkaji tuntutan undang-undang antarabangsa mengenai pemansuhan hukuman mati dan ingin mengetengahkan respons Syariah dalam hal ini.

Kata kunci: Hak untuk Hidup dan Mati, Undang-undang Jenayah Syariah, Hukuman Mati Mengikut Syariah dan Undang-undang Malaysia, Konvensyen Antarabangsa, Pemansuhan Hukuman Mati

* Associate Professor Dr Mohamed Azam Mohamed Adil is the Director-General of the Institute of Islamic Understanding Malaysia (IKIM) and former Deputy Chief Executive Officer of the International Institute of Advanced Islamic Studies (IAIS) Malaysia. Email: mazamadil@ikim.gov.my

Abstract

*The right to life is one of the fundamental aspects of human rights. Without this right, people risk losing other rights, such as freedom of religion, freedom of speech and opinion, freedom of movement, property ownership rights, and many more. Protecting the right to life is foundational to the building of civilisation, without it, it is impossible to sustain a civilised culture and achieve technological advancement. Hence, jurists and philosophers are unanimous in considering this right to be inalienable and non-negotiable. While Syariah recognises the right to life of each and every human, it also posits that humankind is the prize of God's creation. Because humans were created by God, a human's right to life ultimately belongs to God. For God gives life, and He is the one who takes it back. Therefore, human lives are sacred, according to the Syariah, and it is a crime to take another human's life without a just cause. In this regard, Syariah has prescribed retaliation (*qisas*) that prescribes the death penalty for intentional murder. This article examines the human right to life from both perspectives of Islam and the Federal Constitution. It also analyses the position of the death penalty in the legal context in Malaysia and the Shariah's view. This paper also examines the demands of international law on the abolition of the death penalty and what the Shariah response is in this regard.*

Keywords: *The Right to Life and Death, Syariah Criminal Law, Death Penalty in Syariah and Malaysia, International Convention, Abolition of Death Penalty*

Pendahuluan

Hak untuk hidup (*right to life*) merupakan satu perkara pokok dan yang paling asas dalam hak asasi manusia. Tanpa hak ini, manusia akan kehilangan hak-hak yang lain seperti hak kebebasan beragama, hak kebebasan diri, hak kebebasan bercakap dan memberi pendapat, hak pemilikan, hak kebebasan bergerak dan pelbagai hak asasi manusia yang lain. Hal ini adalah kerana hak manusia untuk hidup dianggap paling penting kerana tamadun tidak akan terbina tanpa ada perlindungan dan jaminan terhadap hak ini. Justeru, para fuqaha dan ahli falsafah menganggap hak untuk hidup sebagai hak yang dominan dan tidak boleh dirunding (*non-negotiable*).¹

1 M.H. Kamali, *The Right to Life, Security, Privacy and Ownership in Islam* (Kuala Lumpur, IAIS Malaysia & Ilmiah Publishers, 2014) 1; K.A. Mokhtar, 'The Right to Life and Freedom from Torture' in A.G. Hamid@K.M. Sein (ed), *Human Rights Law - International, Malaysian and Islamic Perspectives* (Petaling Jaya, Thomson Reuters Malaysia, 2012) 57.

Walaupun hak untuk hidup ini diiktiraf sebagai hak yang wujud terhadap setiap insan di sisi Syariah tetapi hakikatnya manusia hanyalah sebagai makhluk ciptaan Allah SWT. Manusia bukanlah pencipta kehidupan kerana hak kehidupan ini milik Allah SWT. Dialah yang menghidupkan dan Dialah yang mematikan manusia. Oleh sebab itu, manusia tidak boleh mengambil nyawa manusia lain kerana perbuatan itu dianggap jenayah. Memandangkan nyawa manusia ialah satu perkara yang “suci”, Syariah sangat memeliharanya melalui undang-undang qisas yang membawa kepada hukuman bunuh atau dikenakan bayaran diyat (*blood money*) kepada keluarga si mangsa.²

Persoalan yang sering diperdebatkan dalam arena antarabangsa termasuk di negara Islam ialah seruan supaya hukuman bunuh dimansuhkan. Malah bagi negara yang masih menjalankan hukuman bunuh, seruan supaya dimansuhkan hukuman tersebut atau menggantung hukuman tersebut termasuk melaksanakan moratorium terhadap pelaksanaan hukuman bunuh.

Hak untuk Hidup

Islam menjamin hak manusia untuk hidup kerana ia merupakan kehendak objektif Maqasid Syariah yang paling utama. Berdasarkan perbincangan cendekiawan dalam hal ini, pemeliharaan nyawa diletakkan dalam kategori kedua selepas agama. Namun, dalam keadaan tertentu, pemeliharaan nyawa boleh ditempat di kedudukan yang paling atas kerana tanpa nyawa, manusia tidak boleh hidup dan menjaga agama. Larangan mengambil nyawa sendiri dan orang lain dinukilkan dalam ayat 195 surah al-Baqarah:

Jangan kamu mencampakkan diri kamu ke arah kebinasaan.

Dalam surah al-Nisa' ayat 93, Allah SWT berfirman:

Dan sesiapa yang membunuh seorang mukmin dengan sengaja, maka balasannya ialah neraka jahanam, kekal ia di dalamnya, dan Allah murka kepadanya, dan melaknatkannya serta menyediakan baginya azab seksa yang besar.

Akan tetapi dalam keadaan tertentu pengambilan nyawa seseorang itu diharuskan dengan syarat secara sah mengikut ketentuan syariah seperti hukuman bunuh terhadap pembunuh kecuali mendapat pengampunan

2 Kamali (n 1) 1-2.

oleh waris si mangsa atau/dan diganti dengan bayaran diyat, hukuman rejam sehingga mati bagi penzina muhsan, hukuman mati terhadap penderhaka/pemberontak (bugahah) kepada kerajaan yang sah, hirabah (merompak dan membunuh) yang dikenakan hukuman bunuh dan disalib, dan bagi pandangan sesetengah fuqaha dalam kes murtad. Kesemua kes yang disebut di atas hendaklah dijatuh hukuman oleh mahkamah. Terdapat juga pengecualian pengambilan nyawa orang lain sekiranya tindakan tersebut terpaksa dilakukan untuk mempertahankan diri sendiri. Perkara ini dijelaskan dalam ayat 194, surah al-Baqarah:

Bulan haram dengan bulan haram dan pada sesuatu yang patut dihormati berlaku hukum qisas. Oleh sebab itu, barang siapa yang menyerang kalian, maka seranglah ia seimbang dengan serangannya terhadap kalian. Bertakwalah kepada Allah dan ketahuilah bahawa Allah berserta orang-orang yang bertakwa.

Dalam ayat 41 surah al-Syura, Allah SWT berfirman:

Dan sesungguhnya orang yang bertindak membela diri setelah ia dizalimi, maka mereka yang demikian keadaannya, tidak ada sebarang jalan hendak menyalahkan mereka.

Hal ini juga diterangkan dalam satu hadis:

Barang siapa yang mempertahankan harta bendanya lalu terbunuh maka matinya adalah mati syahid.³

Hak untuk Hidup di sisi Perlembagaan Persekutuan

Dalam konteks Perlembagaan Persekutuan, hak untuk hidup diperuntukkan dalam Perkara 5(1):

Tiada seseorang pun boleh diambil nyawanya atau dilucutkan kebebasan dirinya kecuali menurut undang-undang.

Walau bagaimanapun, Perlembagaan Persekutuan tidak mendefinisikan skop hak untuk hidup. Nampaknya, mahkamah berperanan untuk membuat tafsiran tersebut.⁴

Dalam satu kes *Suzana bt Md Aris lwn DSP Ishak bin Hussain & Ors*,⁵ Mahkamah memutuskan apabila hak untuk hidup seseorang tertuduh

³ ibid.

⁴ Lihat Mokhtar (n 1) 59.

⁵ [2011] 1 MLJ 107.

dalam tahanan polis yang tidak mendapat bantuan perubatan yang sepatutnya dianggap telah melanggari hak hidup orang itu. Keadaan tertuduh telah mengalami muntah darah tetapi dinafikan bantuan perubatan yang sepatutnya dianggap telah melakukan satu kecuaian dan melanggari hak untuk hidup.⁶

Hak untuk hidup dalam Perlembagaan bukan setakat untuk melindungi seseorang itu daripada diambil nyawanya tanpa sah tetapi melampaui daripada itu. Dalam kes *Tan Tek Seng lwn Suruhanjaya Perkhidmatan Pendidikan & Anor*,⁷ Mahkamah Rayuan merujuk dua kes di India bagi mentakrifkan hak untuk hidup. Dalam kes *Olga Telli lwn Bombay Municipal Corp*⁸ Mahkamah memutuskan bahawa hak untuk hidup termasuklah hak untuk penghidupan kerana seseorang itu tidak boleh hidup tanpa adanya satu cara hidup iaitu satu penghidupan. Oleh sebab itu, hak untuk hidup merupakan sebahagian daripada hak dalam Perlembagaan, seseorang itu tidak boleh dinafikan haknya untuk mendapat satu cara penghidupan. Menafikan hak tersebut dianggap menafikan hak untuk hidup.⁹

Dalam satu lagi kes *Delhi Transport Corporation lwn DTC Mazdooe Congress & Ors*,¹⁰ Mahkamah memutuskan bahawa hak untuk hidup meliputi hak untuk penghidupan. Justeru, hak tersebut tidak boleh tergantung terhadap pihak berkuasa tertentu dengan menafikan haknya untuk mendapat pendapatan untuk hidup.¹¹

Dalam konteks di Malaysia, hak untuk hidup seperti yang diperuntukkan dalam Perkara 5(1) meliputi hak secara sah dari segi undang-undang untuk mendapat pekerjaan atau pendapatan termasuk untuk menerima manfaat. Hal ini termasuk hak untuk hidup secara sihat dan bebas daripada pencemaran alam.

Dalam kes *Ketua Pengarah Jabatan Alam Sekitar & Anor lwn Kajing Tubek & Ors and Other Appeals*,¹² Mahkamah memutuskan bahawa “hak untuk penghidupan” sebenarnya tersirat di bawah hak untuk hidup dengan mengambil kira hak adat penduduk pribumi yang boleh dianggap sebagai “hak untuk penghidupan”. Pendekatan ini kemudiannya disahkan dalam kes *Kerajaan Negeri Johor & Anor lwn Adong bin Kuwau &*

6 Lihat juga Mokhtar (n 1) 59-61.

7 [1996] 1 MLJ 261; [1996] 2 CLJ 771.

8 AIR 1986 SC 180.

9 Lihat juga Mokhtar (n 1) 59-61.

10 AIR Supp (1) SCC 717.

11 Lihat juga Mokhtar (n 1) 59-61.

12 [1997] 3 MLJ 323.

*Ors,*¹³ kerana Mahkamah Rayuan memutuskan bahawa apa-apa sahaja yang menafikan hak untuk penghidupan membawa kepada penafian hidup itu sendiri dan tindakan Kerajaan Negeri telah melampaui batas yang menafikan hak seseorang warganegara untuk mendapat satu penghidupan. Justeru, Kerajaan Negeri bertanggungjawab membayar pampasan yang dikira sebagai satu remedi akibat daripada perbuatan yang juga melanggari Perkara 13 Perlembagaan Persekutuan yang menjamin hak terhadap harta.¹⁴

Melihat kembali hak untuk hidup seperti yang diperuntukkan dalam Perkara 5(1) Perlembagaan Persekutuan, negara mempunyai tanggungjawab untuk memastikan hak ini terpelihara dengan mengambil langkah-langkah bagi memelihara nyawa manusia. Namun, dalam peruntukan ini juga nyawa seseorang itu juga boleh diambil oleh negara sekiranya telah melanggari peruntukan undang-undang. Oleh yang demikian, Parlimen boleh membuat undang-undang yang menghukum dengan hukuman mati.

Hukuman Mati dalam Perundangan Malaysia

Di Malaysia, hukuman paling berat yang dikenakan atas kesalahan jenayah ialah hukuman mati. Terdapat beberapa undang-undang yang mengenakan hukuman mati, antaranya:

a) Kanun Kesiksaan:

Seksyen 121 – melancarkan perang terhadap Yang di-Pertuan Agong.

Seksyen 121A – Kesalahan terhadap Yang di-Pertuan Agong.

Seksyen 132 – Bersubahat dalam angkatan bersenjata.

Seksyen 194 – Memberi atau mereka keterangan palsu dengan niat hendak mendapat sabitan atas kesalahan hukum bunuh.

Seksyen 302 – Membunuh orang.

Seksyen 305 – Menyubahati membunuh diri.

Seksyen 364 – Menculik untuk membunuh.

Seksyen 374A – Tebusan.

Seksyen 396 – Rompak berkumpulan serta membunuh orang.

13 [1998] 2 MLJ 158.

14 Lihat juga Mokhtar (n 1) 59-61.

b) Akta Senjata Api 1971:

Seksyen 3 - mengenakan penalti kerana melepaskan tembakan daripada sesuatu senjata api dengan melakukan kesalahan berjadual iaitu seseorang pada masa melakukan atau cuba melakukan atau bersubahat melakukan sesuatu kesalahan berjadual melepaskan tembakan daripada sesuatu senjata api dengan niat menyebabkan kematian atau kecederaan seseorang hendaklah dihukum bunuh walaupun tiada apa-apa kecederaan dilakukan.

Seksyen 3A – penalti bagi rakan-rakan si penjenayah dalam hal melepaskan tembakan senjata api dihukum bunuh kecuali dia dapat membuktikan bahawa dia telah mengambil langkah yang munasabah untuk mencegah lepasan tembakan.

Seksyen 7(1) (a) & (b) – Hukuman bunuh atau penjara seumur hidup dan juga dihukum sebat tidak kurang daripada enam kali bagi mereka yang berdagang dengan senjata api.

c) Akta Dadah Berbahaya 1952:

Seksyen 39B(1) Tiada seorang pun boleh bagi pihak dirinya atau bagi pihak mana-mana orang lain, sama ada atau tidak orang lain itu berada di Malaysia:

- (i) Mengedar dadah berbahaya; atau
- (ii) Menawar untuk mengedar dadah berbahaya; atau
- (iii) Melakukan atau menawarkan atau melakukan sesuatu perbuatan sebagai persediaan untuk atau bagi maksud pengedaran dadah berbahaya,

adalah dengan melakukan satu kesalahan terhadap Akta ini dan jika disabitkan kesalahan hendaklah dijatuhkan hukuman mati mandatori.

Walau bagaimanapun, Akta Dadah Berbahaya 1952 ini telah dipinda pada tahun 2017 dengan memberi pilihan kepada hakim, tertakluk kepada keadaan apabila pengedar dadah itu dapat membantu pihak-pihak berkuasa bagi membasmi aktiviti yang berlawanan dengan undang-undang, boleh menjatuhkan hukuman penjara 30 tahun (seumur hidup). Dengan kata lain, hukuman mati tidak lagi bersifat mandatori.

Perlu dinyatakan di sini bahawa dengan pindaan Akta Dadah Berbahaya 1952 pada penghujung tahun 2017, masih terdapat kes yang dijatuhkan hukuman mati.¹⁵ Menurut Gwen Lee,¹⁶ pindaan Akta Dadah Berbahaya (2017) nampak cantik di atas kertas seolah-olah hakim diberi pilihan bahawa hukuman mati ke atas pengedar dadah tidak lagi bersifat mandatori, tetapi hakikatnya ia masih berjalan seperti sebelumnya. Pada pandangan beliau, tujuan kerajaan meminda Akta Dadah Berbahaya (Pindaan 2017) mungkin atas desakan undang-undang antarabangsa yang diketuai oleh Pertubuhan Bangsa-bangsa Bersatu (PBB) melalui Human Rights Council.¹⁷

Kesalahan yang Membawa kepada Hukuman Mati dalam Undang-undang Islam

Seperti yang dibincang sebelum ini bahawa terdapat kesalahan-kesalahan dalam undang-undang jenayah Islam yang mengenakan hukuman mati dalam hudud, qisas dan takzir. Di bawah kategori hudud terdapat sekurang-kurangnya empat kesalahan yang membawa kepada hukuman mati:

- a) Kesalahan zina bagi penzina muhsan dihukum bunuh dengan direjam dengan batu. Perkara ini berdasarkan hadis Asif seorang buruh yang berzina dengan isteri majikannya dan satu lagi hadis berkaitan dengan perzinaan antara Maiz dengan seorang wanita Ghamidiyah.¹⁸
- b) Kesalahan hirabah ialah merompak harta orang lain dengan menggunakan senjata sama ada membunuh si mangsa atau

15 Lihat ‘Three men, including two Taiwanese nationals, were sentenced to death by the High Court of Kuala Lumpur after they were found guilty of trafficking in eight kilogrammes of drug into the country’ Bernama (Malaysia, 4 April 2017) <www.bernama.com.my> dicapai 18 Jun 2020.

16 Temubual dengan Pengarah Eksekutif Interim, Amnesty International Malaysia (Petaling Jaya, 19 April 2017).

17 Lihat “Question of the Death Penalty”, General Assembly, Human Rights Council, 27th Session, Agenda 2 & 3, Annual report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and Secretary-General, 30 June 2014.

18 A. Mohd Noor, ‘Hukuman Mati Mandatori: Satu Analisis Menurut Pengalaman Undang-undang di Malaysia dan Syariah’ (2008) 12 *Jurnal Undang-undang dan Masyarakat* 18.

membunuh si mangsa tanpa mengambil hartanya. Hukuman hirabah adalah dibunuh dan disalib atau dipotong tangan dan kaki perompak dengan cara silang atau dibuang daerah.¹⁹

- c) Kesalahan bughah atau pemberontak terhadap kerajaan yang sah dan adil. Para fuqaha berselisih pendapat sama ada kesalahan ini diletakkan di bawah hudud atau takzir. Meskipun begitu, hukuman mati dikenakan terhadap pemberontak kerana ia mengancam negara.²⁰
- d) Kesalahan murtad iaitu keluar daripada agama Islam. Fuqaha berbeza pendapat sama ada kesalahan murtad dikategorikan di bawah hudud atau takzir. Bagi mazhab Hanafi, kesalahan murtad diletakkan di bawah takzir. Namun, hukuman mati boleh dikenakan walaupun diletakkan di bawah takzir. Namun, wanita dan kanak-kanak yang murtad tidak boleh dihukum bunuh dalam kes murtad. Manakala bagi majoriti fuqaha, kesalahan murtad hendaklah dibunuh setelah diberi satu jangka masa yang tertentu untuk bertaubat.²¹

Hukuman bunuh ini menurut jumhur fuqaha berdasarkan Hadis dan Ijmak ulama, meskipun al-Quran tidak menyebut langsung sebarang hukuman di dunia. Yang jelas, dalam al-Quran, hukuman orang murtad akan mendapat balasan seksaan neraka. Hukuman terhadap orang murtad di muka bumi disebut dalam beberapa hadis:

‘Nyawa seseorang Islam boleh diambil sekiranya berzina, membunuh dan meninggalkan agamanya,’ dan ‘Sesiapa yang menukar agamanya hendaklah dibunuh’.

Bagi sesetengah fuqaha, hukuman terhadap orang murtad dikategorikan di bawah takzir, iaitu tidak dihukum bunuh. Walau bagaimanapun, bagi sesetengah fuqaha, hukuman takzir boleh mencapai hukuman had iaitu bunuh. Bagi sesetengah cendekiawan yang lain, orang yang keluar dari pada agama Islam secara senyap dan tidak menghina agama Islam, tidak dikenakan sebarang hukum di dunia.²²

19 Al-Maidah: 33.

20 Al-Hujurat: 9.

21 M.A. Mohamed Adil, *Pelaksanaan Undang-undang Islam di Malaysia: Khayalan Atau Realiti?* (Kuala Lumpur, Ilham Books & IAIS Malaysia, 2018) 76-79.

22 ibid. 76-79; M.H. Kamali, *Freedom of Expression in Islam* (Cambridge, Islamic Text Society, 1997) 247; M.H. Kamali, *Islamic Law in Malaysia: Issues and Developments* (Petaling Jaya, Ilmiah Publisher, 2000) 203-220.

Bagi majoriti ulama dan cendekiawan di Malaysia, orang yang murtad hendaklah dihukum tetapi mengikut bidang kuasa yang diberikan, perkara ini boleh diertikan dengan hukuman takzir. Mereka berpendapat, membiarkan orang Islam keluar Islam tanpa sebarang hukuman akan meruntuhkan agama Islam. Pendekatan hukuman takzir yang diambil oleh minoriti fuqaha adalah dengan mengambil sikap ‘mencegah’ dan ‘memelihara agama’ seperti yang terkandung dalam Maqasid Syariah di bawah perbincangan Awarid al-Khamsah. Perkara ini bertepatan dengan umat Islam yang memelihara lima perkara iaitu memelihara agama, nyawa, akal, keturunan, dan harta.²³

Meskipun begitu, amalan di Malaysia ialah sesuatu permohonan bagi perisytiharan bukan lagi Islam hendaklah dibuat di Mahkamah Syariah. Perkara ini termasuk bagi mereka yang memeluk Islam (muallaf) atau lahir sebagai orang Islam. Hakim seterusnya akan merujuk pemohon tersebut kepada Jabatan Mufti bagi tujuan istitabah. Dalam proses ini, pihak Jabatan Mufti akan melihat latar belakang pemohon dan setakat mana ajaran Islam diketahui oleh pemohon terutamanya bagi golongan muallaf.²⁴

Pendekatan hukuman fizikal atau denda bukanlah pilihan oleh Mahkamah Syariah kerana ia melihat setakat mana pemohon mendalamai ajaran Islam. Sekiranya, pemohon masih mahu meneruskan hasrat untuk meninggalkan agama Islam setelah melalui proses istitabah, hakim akan membuat keputusan sama ada pemohon bukan lagi seorang Islam atau sebaliknya.²⁵

Penulis lebih cenderung mengambil pendekatan nasihat dan istitabah bagi mereka yang memohon perisytiharan bukan lagi Islam. Hal ini adalah kerana dalam beberapa kajian yang dibuat oleh penulis dan kumpulan penyelidik, majoriti yang memohon keluar Islam adalah daripada golongan muallaf atau mereka yang memeluk agama Islam. Hanya segelintir daripada mereka yang lahir sebagai orang Islam.²⁶

Malah Majlis Agama Islam Selangor mengambil pendekatan nasihat bagi mereka yang memohon keluar daripada agama Islam. Satu modul khas yang dikenali dengan Modul Penasihatinan Akidah telah dikeluarkan oleh Jabatan Mufti Negeri Selangor pada tahun 2018 sebagai garis

23 M.H. Kamali, *Islamic Law in Malaysia: Issues and Developments* (Petaling Jaya, Ilmiah Publisher, 2000) 203-220.

24 Mohamed Adil (n 21) 88.

25 *ibid.*

26 M.A. Mohamed Adil dan lain-lain, *Laporan Akhir - Murtad dan Kebebasan Beragama: Satu Kajian Kes di Selangor* (Shah Alam, Majlis Agama Islam Selangor, 2010) 67-98.

panduan pentadbiran untuk mengendalikan sesi penasihatan akidah terhadap pemohon bermula dari penerimaan kes sehingga selesai sesi penasihatan serta penyediaan laporan untuk diberikan kepada mahkamah.²⁷ Tiada sebarang hukuman fizikal atau denda dikenakan terhadap pemohon untuk keluar daripada agama Islam.

Kategori kesalahan kedua dalam undang-undang jenayah Islam yang membawa kepada hukuman mati ialah qisas. Qisas merangkumi pembunuhan dan mencederakan seseorang yang berbentuk hukumannya ialah balasan balik (*retaliation*) atau bayaran diyat kepada waris si mangsa. Qisas dianggap kesalahan perseorangan/individu yang menyentuh kepentingan orang perseorangan (*haq al-fard/’ibad*). Justeru, pihak waris semangsa boleh membuat pilihan sama ada si pembunuh dihukum setimpal iaitu dibunuh balas atau dengan menggantikan nyawa itu dengan diyat (*blood money*) atau/dan memaafkan si pembunuh.

Diyat merupakan bayaran wajib yang dibayar oleh penjenayah dalam kes pembunuhan atau kecederaan dengan kadarnya ditentukan oleh syarak. Meskipun diyat ialah ‘bayaran darah’ (*blood money*), ia masih bersifat *uqubah (punishment)* dan bukannya ganti rugi atau *dhaman (compensation)*. Terdapat juga pandangan bahawa bayaran diyat adalah sebagai ganti rugi dan ada juga yang berpendapat bahawa bayaran ini antara keseksaan dengan ganti rugi.

Hukuman di bawah takzir. Takzir pula meliputi apa-apa kesalahan yang selain hudud dan qisas yang banyak terletak atas budi bicara hakim dan pemerintah. Hal ini juga merujuk kesalahan-kesalahan hudud yang penyaksian dan pembuktianya tidak mencapai syarat yang dikehendaki untuk menjatuhkan hukuman hudud. Syariat Islam memberi kuasa kepada pemerintah untuk menentukan perbuatan yang dianggap menjadi satu kesalahan. Namun, kuasa itu bukan mutlak kerana terdapat garis panduan yang menyentuh kepentingan awam dan tindakan yang diambil tidaklah bercanggah dengan nas Syarak. Diberi kuasa perundangan kepada pemerintah bertujuan mengadakan peraturan dan undang-undang yang betul bagi menjaga masyarakat umum dan memeliharanya daripada sebarang keburukan.

Seperti yang disebut sebelum ini, hukuman takzir, walaupun mengikut ketetapan pemerintah dan hakim, para fuqaha berbeza pandangan sama ada kesalahan di bawah kategori takzir boleh dikenakan hukuman mati. Menurut pandangan majoriti fuqaha daripada mazhab Syafi’e, Hanafi dan

²⁷ Jabatan Mufti Negeri Selangor, *Modul Penasihatan Akidah* (Selangor, Jabatan Mufti Negeri Selangor, 2018).

sesetengah pengikut mazhab Hanbali, hukuman maksimum takzir tidak boleh menyamai hukuman seperti dalam hudud.²⁸ Walau bagaimanapun, terdapat ulama dalam Mazhab Hanafi berpendapat bahawa hukuman takzir boleh menyamai hukuman hudud iaitu dikenakan hukuman mati dalam kes-kes jenayah berulang seperti melakukan liwat berulang kali (walaupun asalnya hukuman takzir) dan kes-kes yang mengancam nyawa orang ramai. Iman Malik juga berpendapat bahawa hukuman mati dalam takzir boleh dikenakan dalam kes-kes berat seperti menjadi pengintip bagi musuh Islam.²⁹

Pandangan majoriti fuqaha di atas menjelaskan bahawa tujuan utama hukuman takzir dikenakan adalah untuk mereformasi dan mendisiplinkan pesalah. Maka, hukuman mati telah lari daripada tujuan utama tersebut. Justeru, mengikut majoriti mazhab fiqh, hukuman takzir yang dikenakan terhadap semua kes mestilah tidak sampai kepada hukuman hudud. Perkara ini merujuk satu hadis, "Barang siapa yang menjatuhkan hukuman menyamai hudud sedangkan ia bukan hudud, maka ia telah melampaui batasan."³⁰

Sebenarnya, dalam undang-undang jenayah Islam, hukuman fizikal terutamanya hukuman mati ialah pilihan hukuman terakhir. Pendekatan supaya pesalah bertaubat, menyesal atas perbuatan salah dan alternatif hukuman lain merupakan pilihan utama berbanding hukuman mati. Dalam hal ini, pemerintah diberi pilihan untuk mengambil pendekatan yang terbaik untuk maslahah umum demi memenuhi keadilan.

Bahkan melihat tiga matlamat hukuman dalam undang-undang jenayah Islam iaitu (1) hukuman balas (retribusi) atau balasan setimpal; (2) pemulihan – memulihkan kelakuan dan membentuk kerohanian terhadap pesalah supaya ia kembali baik; dan (3) pencegahan – yang mengenakan hukuman berat – meliputi hukuman fizikal termasuk hukuman mati, ia meletakkan menjatuhkan hukuman berat di pilihan terakhir setelah matlamat hukuman (1) dan (2) gagal membaikkan pesalah.

28 Mohd Noor (n 18) 19-20.

29 ibid. 20.

30 Hadis yang dipetik oleh al-Baihaqi, *Sunan al-Baihaqi* (Vol 8, 327, Istanbul, Dairatul Maeri al-Islamiyyah, tt) hadis yang diriwayatkan oleh al-Nu'man bin Bashir. Hadis ini juga dipetik dalam *Mawsu'ah al-Fiqhiyyah* (Kuwait: Taba'ah zat As-Salasi, 1988) di bawah "takzir", bil. 12, 265.

Tuntutan Undang-undang Antarabangsa: Mansuhkan Hukuman Mati

Merujuk perbincangan mengenai hukuman mati, nampaknya Pertubuhan Bangsa-bangsa Bersatu (PBB) melalui Human Rights Council dan tuntutan antarabangsa menggesa agar hukuman mati dihapuskan. Melihat perkembangan sejak dua dekad ini menyaksikan banyak negara telah menghapuskan hukuman mati. Sehingga hujung tahun 2017, 106 negara telah memansuhkan undang-undang mengenai hukuman mati bagi semua kesalahan jenayah dan terdapat 142 negara yang telah memansuhkan hukuman mati dalam undang-undang umum. Perkara ini menunjukkan bahawa trend dunia adalah ke arah memansuhkan hukuman mati. Hanya sebilangan kecil negara yang masih melaksanakan hukuman mati. Hal ini dapat dilihat, hanya t empat negara yang telah melaksanakan hukuman mati pada tahun 2017.³¹

Pendekatan ini juga menyaksikan pelaksanaan hukuman mati atas kesalahan pengedar dadah juga berkurang di Iran dan di Malaysia. Sebagai contohnya, Malaysia telah mengambil langkah positif dengan meminda Akta Dadah Berbahaya 1952 pada tahun 2017 yang secara relatifnya boleh mengurangkan hukuman mati mandatori bagi kesalahan mengedar dadah.³²

Melihat pelaksanaan hukuman mati di arena antarabangsa, rekod menunjukkan semakin menurun dari tahun 2016 ke tahun 2017. Rekod Amnesty International menunjukkan sebanyak 993 pelaksanaan hukuman mati telah berjalan pada tahun 2017, kurang 4% dari tahun 2016 (1,032) dan 89% dari tahun 2015 (1,634), satu rekod tertinggi sejak 1989. Data ini tidak termasuk di negara China kerana hukuman mati di negara ini diklasifikasikan sebagai rahsia.³³

Bagi hukuman mati, turut menyaksikan pengurangan 17% di peringkat global, berkurang kepada 2,591+ pada tahun 2017 berbanding rekod tinggi

31 Amnesty International, *Amnesty International Global Report: Death Sentences and Executions 2017* (Amnesty International, 2018) 5.

32 ibid.

33 ibid. 6. Pelaksanaan hukuman mati yang berlaku pada tahun 2017 di peringkat global menyaksikan Afghanistan (5), Bahrain (3), Bangladesh (6), Belarus (2+), China (+), Mesir (35+), Iran 507+, Iraq (125+), Jepun (4), Jordan (15), Kuwait (7), Malaysia (4+), Korea Utara (+), Pakistan (60+), Palestin (6: di bawah pihak berkuasa Hamas, Gaza), Arab Saudi (146), Singapura (8), Somalia (24: Putland 12, Federal Government of Somalia 12), Selatan Sudan (40), UAE (1), USA (23), Vietnam (+) dan Yemen (2+). Tiada rekod sahih boleh diperolehi di Libya dan Syria pada tahun 2017 akibat peperangan saudara yang berlaku, lihat ibid. 6 & 38.

sebanyak 3,117 pada tahun 2016. Dari jumlah yang disebut di atas, Iran, Arab Saudi dan Iraq merupakan tiga negara teratas yang menjalankan hukuman mati di Timur Tengah. Kebanyakan kes pelaksanaan hukum mati di Iran berkait rapat dengan kesalahan pengedaran dadah berbahaya.³⁴ Bilangan negara yang menjalankan hukuman mati juga berkurangan daripada 55 pada tahun 2016 kepada 53 pada tahun 2017. Meskipun begitu, sekurang-kurangnya 21, 919 kes yang telah dihukum dengan hukuman mati pada tahun 2017.³⁵

Hukuman mati mandatori dapat dilihat di negara-negara seperti Brunei Darussalam, Ghana, Iran, Malaysia,³⁶ Maldives, Mynamar, Nigeria, Pakistan, Arab Saudi, Singapura dan Trinidad & Tobago. Di Singapura, hukuman mandatori terhadap pengedar dadah mendapat liputan meluas dunia baru-baru ini berikutan Nagaenthran K Dharmalingam seorang rakyat Malaysia, yang didapati bersalah menyeludup dadah ke Singapura telah menjalani hukuman gantung sampai mati pada 27 April 2022.³⁷ Nagaenthran dikhuatiri menghadapi masalah kurang upaya intelek gagal dalam beberapa usaha rayuan terakhir termasuk surat rayuan oleh Yang di-Pertuan Agong, Perdana Menteri Malaysia, pertubuhan bukan kerajaan dan pertubuhan hak asasi manusia antarabangsa. Hukuman mati ini dikecam hebat oleh banyak pertubuhan antarabangsa.³⁸

Bagi Amnesty International, hukuman mati mandatori adalah bercanggah dengan perlindungan dalam hak asasi manusia kerana ia

³⁴ Amnesty International (n 31) 30.

³⁵ ibid. 7-8. Hukuman mati di peringkat global pada tahun 2017 melihat Afghanistan (11+), Algeria (27+), Bahrain (15), Bangladesh (273+), Belarus (4+), Botswana (4), Brunei Darussalam (1), China (+), Democratic Republic of Congo (22+), Mesir (402+), Equatorial Guinea (2), Gambia (3), Ghana (7), Guyana (3), India (109), Indonesia (47+), Iran (+), Iraq (65+), Jepun (3), Jordan (10+), Kenya (21+), Kuwait (15+). Laos (1+), Lebanon (12+), Libya (3+), Malaysia (38+), Maldives (2), Mali (10), Maghribi (15+), Myanmar (2+), Nigeria (621), Korea Utara (+), Pakistan (200+), Palestin (16: Wilayah Hamas, Gaza), Qatar (1), Arab Saudi (1+), Sierra Leone (21), Singapura (15), Somalia (24" Puntland 16; Federal Government of Somalia 8), Selatan Sudan (16+), Sri Lanka (218), Sudan (17+), Taiwan (3), Tanzania (5+), Thailand (75), Trinidad dan Tobago (9), Tunisia (25+), UAE (5), USA (41), Vietnam (35+), Yemen (5+), Zambia (94) dan Zimbabwe (11), lihat ibid. 7.

³⁶ Dengan pindaan Akta Dadah Berbahaya 1952 (2017), hakim diberi budi bicara untuk memilih hukuman antara hukuman mandatori atau penjara 30 tahun dan 15 sebatan.

³⁷ 'Warga Malaysia dihukum gantung 27 April ini di Singapura' *BH Online* (20 April 2022) <<https://www.bharian.com.my/dunia/asean/2022/04/947846/warga-malaysia-dihukum-gantung-27-april-ini-di-singapura>>.

³⁸ 'Singapura Laksana Hukuman Mati Terhadap Rakyat Malaysia Kurang Upaya Intelek' *Benar News* (27 April 2022) <<https://www.benarnews.org/malay/berita/my-nagaenthran-mati-220427-04272022173516.html>>.

tidak mengambil kira keadaan sebenar tertuduh dan keadaan kesalahan tersebut.³⁹

Di Malaysia, terdapat sekurang-kurangnya empat pesalah yang telah menjalani hukuman gantung pada tahun 2017. Manakala sekurang-kurangnya 38 kes baru yang dikenakan hukuman mati mandatori, 21 orang terlibat dalam pengedaran dadah, 16 kes melibatkan pembunuhan dan satu kes melibatkan senjata api. Empat daripada mereka ialah wanita. 12 orang daripada warga luar negara termasuk 10 yang dijatuh hukum atas kesalahan pengedaran dadah.⁴⁰

Manakala data yang diperoleh daripada Jabatan Penjara Malaysia dan laporan media nasional melaporkan bahawa terdapat sejumlah 1,123 pesalah yang dijatuh hukuman mati sehingga bulan Februari 2017 dan sejumlah 800 orang sehingga Ogos 2017. Meskipun begitu, pada 12 Oktober 2017, Sultan Perak telah berkenan mengampunkan dua lelaki yang dijatuhkan hukuman mati mandatori di bawah Akta Dadah Berbahaya 1952.⁴¹

Dengan perkembangan terbaru pada 30 November 2017, Dewan Rakyat telah meminda Akta Dadah Berbahaya 1952 (Rang Undang-undang D.R. 45/2017) dan kemudian diluluskan di Dewan Negara pada 14 Disember 2017 manakala Yang di-Pertuan Agong memperkenankan pindaan ini pada 27 Disember 2017. Pindaan ini memberi pilihan kepada hakim, dalam kes-kes tertentu yang menunjukkan bahawa pesalah memberi kerjasama kepada pihak berkuasa dalam undang-undang berkenaan, menjatuhkan hukuman penjara 30 tahun (seumur hidup) dan sebatan 15 kali. Dengan ini, hukuman mati dalam Akta ini tidak lagi berbentuk mandatori. Walau bagaimanapun, hukuman sebat sivil yang diamalkan di Malaysia merupakan satu bentuk hukuman yang dahsyat dan menyakitkan.⁴²

Melihat perkembangan terkini, sehingga penghujung 2021, lebih daripada dua pertiga negara di dunia menghapuskan hukuman mati. Terdapat 144 negara yang telah memansuhkan hukuman mati dalam

39 Amnesty International (n 31) 8.

40 ibid. 22, 38-39.

41 ibid. 22-23; lihat juga ‘Gallows await 1,122’ *The Star* (Malaysia, 28 March 2017) <www.thestar.com.my/news/nation/2017/03/28/gallows-await-1122-16-prisoners-executed-between-2014-and-feb-21/> dicapai 18 Ogos 2019; ‘An end to mandatory death penalty?’ *New Straits Times* (Malaysia, 17 August 2017) <<https://www.nst.com.my/opinion/columnists/2017/08/268727/end-mandatory-death-penalty>> dicapai 18 Ogos 2019.

42 Amnesty International (n 31) 23.

semua undang-undang jenayah.⁴³ Perkara ini menunjukkan penurunan berterusan penggunaan hukuman mati.⁴⁴

Melihat respons antarabangsa termasuk daripada Human Rights Council (HRC) Pertubuhan Bangsa-bangsa Bersatu (PBB),⁴⁵ Amnesty International (AI),⁴⁶ Penal Reform International (PRI),⁴⁷ International Commission against the Death Penalty (ICADP)⁴⁸ dan International Bar Association,⁴⁹ tuntutan mereka adalah supaya hukuman mati dimansuhkan sama sekali. Alasan mereka ialah peruntukan dalam ICCPR ‘menyokong kuat’ supaya ia dihapuskan walaupun Perkara 6 ICCPR tidak menyatakan dengan jelas pemansuhan hukuman mati. Meskipun begitu, seruan untuk memansuhkan hukuman mati semakin kuat sejak 60 tahun yang lalu terutamanya apabila United Nations Declaration of Human Rights (UDHR) 1948 digagaskan.

Meskipun begitu, Perkara 6(2) Convention on the Rights of the Child (CRC) mensyaratkan bahawa hukuman mati hanya boleh dikenakan dalam kesalahan yang dianggap paling berat yang secara umumnya diterima pakai oleh masyarakat antarabangsa dan prinsip yang digagaskan dalam undang-undang antarabangsa. Meskipun begitu, tiada definisi yang jelas mengenai kesalahan jenayah paling berat.⁵⁰

Economic and Social Council menetapkan bahawa kesalahan paling berat tidak termasuk kesalahan yang berkaitan dengan ekonomi, pengedaran dadah, kesalahan yang tidak melibatkan mangsa dan

43 ibid. 24 & 40. Human Rights Council melaporkan bahawa lebih dari 160 negara telah memansuhkan atau mengambil langkah penangguhan ke atas hukuman mati atau menangguhkan pelaksanaan hukuman mati, lihat “Question of the Death Penalty”, General Assembly, Human Rights Council, 27th Session, Agenda 2 & 3, Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and Secretary-General, 30 June 2014, 3.

44 Amnesty International (n 31) 24.

45 Lihat “Question of the Death Penalty”, General Assembly, Human Rights Council, 27th Session, Agenda 2 & 3, Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and Secretary-General, 30 June 2014.

46 Amnesty International (n 31) 24.

47 Penal Reform International, *Sharia Law and the Death Penalty: Would Abolition of the Death Penalty Be Unfaithful to the Message of Islam?* (London, Penal Reform International, 2015).

48 International Commission against the Death Penalty, *International Commission against the Death Penalty Review 2013* (Geneva, International Commission against the Death Penalty, 2013).

49 International Bar Association, London <<https://www.ibanet.org/>>.

50 Mokhtar (n 1) 63-65.

kesalahan yang berkaitan dengan moral antaranya, zina bagi muhsan, pelacur dan orientasi seks sejenis.⁵¹

Human Rights Committee juga menegaskan bahawa kesalahan paling berat tidak termasuk murtad, terlibat dengan kegiatan homoseksual, perbuatan seks haram, penggelapan oleh pegawai dan mencuri kerana terpaksa.⁵²

Perlu dinyatakan bahawa Second Optional Protocol (SOP) yang merupakan sebahagian daripada ICCPR 1966 diperkenalkan dengan objektif untuk memansuhkan hukuman mati. Walaupun SOP mewajibkan ahlinya untuk memansuhkan hukuman mati, tetapi Perkara 2.1 memberarkan ahlinya untuk membuat reservasi bagi menjatuhkan hukuman mati untuk jenayah berat dalam kes peperangan. Namun, Malaysia sehingga sekarang masih tidak mengesahkan SOP dan ICCPR 1966.⁵³

Pandangan memansuhkan hukuman mati disokong oleh Jerald Joseph, mantan Pesuruhjaya SUHAKAM, yang mengatakan bahawa hukuman jenayah berat telah melalui evolusi dari segi bentuk hukuman. Maka, hukuman mati hendaklah dimansuhkan.⁵⁴

Respons Syariah terhadap Hukuman Mati

Melihat kepada bentuk hukuman berat yang dikenakan ke atas pesalah dalam undang-undang jenayah Islam terutama dalam hukuman mati seperti yang dibincangkan sebelum ini, terdapat hukuman mati dalam undang-undang hudud di bawah kesalahan hirabah, zina, bughah dan murtad.⁵⁵

Sebenarnya, hukuman dalam undang-undang jenayah Islam terbahagi kepada dua: (i) hak Allah SWT sepenuhnya seperti dalam kes hirabah yang dikenakan hukuman mati, dan (ii) hak manusia seperti hukuman bunuh di bawah qisas memberi pilihan kepada waris semangsa sama ada dibalas balik dengan hukuman bunuh terhadap pembunuh atau dengan gantian dengan diyat. Perkara ini menunjukkan bahawa tidak semua hukuman bunuh dalam undang-undang Islam adalah tetap dan tidak boleh berubah.⁵⁶

51 ibid.

52 ibid.

53 ibid.

54 Temubual dengan Jerald Joseph, mantan Pesuruhjaya SUHAKAM (Kuala Lumpur, 25 April 2018).

55 Mohamed Adil (n 21) 35-40; Mohd Noor (n 18) 21-25.

56 Mohamed Adil (n 21) 35-40; Mohd Noor (n 18) 21-25.

Pelaksanaan hukuman hudud dalam kes zina melalui kesaksian tidak pernah berlaku pada zaman Rasulullah SAW kecuali dalam kes pengakuan pesalah sendiri yang mahu menyuci diri dan menyesal atas perbuatan zina tersebut. Malah hukuman hudud tidak boleh dilaksanakan dalam keadaan kecaburan (syubhah) seperti yang dinukilkan dalam sebuah hadis:

Elakkan hukuman hudud sekiranya ada syubhah.⁵⁷

Perkara ini dikuatkan oleh satu hadis lain yang diriwayatkan oleh Aisyah bahawa Nabi Muhammad SAW bersabda:

Elakkan menjatuhkan hukuman hudud seboleh mungkin dan cuba cari jalan mengelak hukuman ini. Adalah lebih baik Imam itu tersilap daripada tidak menjatuhkan hukuman daripada menjatuhkan hukuman hudud.⁵⁸

Malah Abu Yusuf pernah memetik pandangan bahawa Khalifah Umar al-Khattab lebih cenderung menggantung pelaksanaan hukuman hudud sekiranya berlaku keraguan.⁵⁹

Justeru, dalam konteks sekarang, seseorang hakim mestilah memastikan bahawa bukti yang dikemukakan adalah melampaui sebarang bayangan keraguan (*beyond any shadow of doubt*). Sekiranya wujud, walaupun sedikit bayangan keraguan itu, maka hakim hendaklah membuang kes tersebut dan tertuduh terlepas daripada hukuman tersebut.⁶⁰ Tambahan pula, terdapat perbezaan antara fuqaha mengenai hukuman mati bagi kesalahan penzina muhsan dan penzina bukan muhsan. Pendekatan tidak membezakan bentuk hukuman antara penzina muhsan dengan bukan muhsan boleh diambil dengan merujuk ayat 2-5, surah al-Nur dengan hanya mengenakan 100 kali sebatan. Dalam ayat ini juga, suruhan agar penzina untuk bertaubat daripada kesalahan yang dibuat dijelaskan bersama-sama hukuman sebatan tersebut.⁶¹

57 Riwayat Ibn Majah dalam kitab al-hudud, Hadis no, 2535.

58 Y.I. Abu Yusuf, *Kitab al-Kharaj* (Cairo, al-Matba'a al-Salafiyya, Edisi ke 5, 1396) 164; A.I. Muhammad al-Tirmidhi, *Sunan al-Tirmidhi* (Beirut, Dar al-Fikr, 1400/1980) hadis 1447; A.A. al-Khatib Al-Tabrizi, *Mishkat al-Masabih* M.N. Al-Albani (ed) (Beirut, Dar al-Fikr, Edisi ke 2, 1400/1980) hadis 3570.

59 Abu Yusuf (n 58) 165.

60 Mohamed Adil (n 21) 35-40; Mohd Noor (n 18) 21-25.

61 M.H. Kamali, 'Hudud in Malaysia: Issues and Reform Proposals' in M.A. Mohamed Adil and M.H. Kamali (eds), *Islamic Law in Malaysia, Issues, Developments and Challenges*, (Ampang, The Malaysian Current Law Journal Sdn Bhd, 2018) 24-31.

Bagi fuqaha yang membezakan hukuman antara penzina muhsan dengan penzina bukan muhsan merujuk hadis yang mengkhususkan hukuman penzina 100 kali sebatan yang bersifat umum yang disebut dalam al-Quran dengan hukuman khusus rejam sehingga mati bagi penzina muhsan.⁶² Terdapat pandangan ulama kontemporari bahawa hukuman terhadap penzina ialah 100 kali sebatan tanpa membezakan antara penzina muhsan dengan penzina bukan muhsan merujuk penerimaan hadis yang menganakan hukuman rejam sehingga mati seperti yang dibincangkan sebelum ini. Pandangan oleh Muhammad Abu Zahrah, Mustafa Ahmad al-Zarqa, Yusuf al-Qaradiwi dan Sheikh Ali Gomma bahawa hadis yang menerangkan hukuman rejam sehingga mati adalah dalam kategori ahad. Pada pandangan mereka, hadis bertaraf mutawatir sahaja yang tidak ada keraguan yang boleh diterima terutama dalam perkara berhubung dengan hukuman mati.⁶³

Walau bagaimanapun, pandangan jumhur fuqaha berpendapat bahawa hukuman rejam ke atas penzina muhsan adalah kerana pesalah tersebut telah menikmati persetubuhan jenis secara sah mengikut undang-undang perkahwinan tetapi telah melanggar hak (hudud) Allah SWT. Tambahan pula, kesaksian yang begitu ketat dalam undang-undang tatacara jenayah Islam menyebabkan agar sukar hukuman rejam ini dapat dijatuhan oleh hakim kecuali pengakuan oleh pesalah. Hakim selalu diingatkan supaya mengelak menjatuhkan hukuman hudud sekiranya terdapat elemen syubhah seperti yang dibincang sebelum ini.⁶⁴

Manakala hukuman mati terhadap bughah (penderhaka) kepada pemerintah menjadi perbezaan antara fuqaha sama ada di bawah kesalahan hudud atau takzir. Maka, hukuman ini tidak semestinya dijatuhan dengan hukuman mati dan boleh diganti dengan hukuman lain.

Bagi hukuman mati terhadap orang murtad pula, seperti yang dibincangkan oleh penulis sebelum ini, ia merupakan perbahasan fuqaha sama ada ia dikategorikan di bawah kesalahan hudud atau takzir. Begitujuga terdapat pandangan fuqaha yang menyatakan bahawa orang murtad tidak dijatuhan dengan hukuman bunuh. Pendekatan seperti yang diamalkan di negeri Selangor⁶⁵ dan peruntukan undang-

62 ibid.

63 M.H. Kamali, *Crime and Punishment in Islamic Law: A Fresh Interpretation* (New York, Oxford University Press, 2019) 84-90.

64 Mohamed Adil (n 21) 35-40.

65 Jabatan Mufti Negeri Selangor (n 27).

undang dalam Enakmen Undang-undang Pentadbiran Agama Islam Negeri Sembilan tidak mengambil pendekatan sebarang hukuman atas pemohonan keluar daripada agama Islam.⁶⁶

Walau bagaimanapun, hukuman berat yang terdapat dalam kesalahan hudud ialah pilihan hukuman terakhir dan berbentuk pengajaran pesalah tersebut agar ia tidak mengulangi kesalahan tersebut.⁶⁷

Penekanan Kepada Taubat

Satu aspek penting dalam ajaran Islam ialah penekanan kepada taubat sekiranya melakukan kesalahan. Para fuqaha berbeza pandangan untuk mengambil penekanan kepada taubat dalam kes jenayah yang membawa hukuman mati. Terdapat sesetengah fuqaha Syafie dan Hanbali yang berpendapat bahawa taubat menggantung hukuman daripada diteruskan dalam kes hudud yang berkait dengan hak Allah SWT kecuali dalam kes qazaf yang melibatkan hak manusia. Sekiranya ia melibatkan hak manusia seperti dalam kes mencuri dan merompak, taubat oleh pelaku itu diterima sekiranya tidak meneruskan perbuatan tersebut.⁶⁸

Imam Malik, Imam Abu Hanifah dan sebahagian daripada mazhab Syafie dan Hanbali berpendapat bahawa taubat tidak diambil kira dalam kesalahan hudud kecuali dalam kes hirabah. Perkara ini meliputi kesalahan seperti zina dan mencuri yang dikenakan hukuman terhadap mereka yang bertaubat atau tidak kerana taubat hanya diterima setelah menjalani hukuman.⁶⁹

Ibn Taimiyyah dan Ibn Qayyim al-Jawziyyah berpendapat bahawa dengan bertaubat, ia mengangkat hukuman terhadap pesalah dengan syarat kesalahan itu melibatkan hak Allah. Sekiranya ia berkait dengan hak manusia, si mangsa atau keluarga boleh memaafkannya dan ini mengangkat dirinya daripada dijatuhi hukuman. Dalam kesalahan murtad seperti yang dibincangkan sebelum ini, penekanan kepada taubat dalam tempoh tertentu memang diberi tempat. Sekiranya orang murtad itu bertaubat, maka diangkat hukuman bunuh terhadapnya. Ibn Hazm al-Zahiri berpandangan bahawa taubat ialah satu suruhan oleh Allah SWT terhadap hamba-Nya, maka manusia dikehendaki

66 Enakmen Undang-undang Pentadbiran Agama Islam Negeri Sembilan (Pindaan 2003), s 119.

67 Mohamed Adil (n 21) 35-40.

68 Kamali (n 63) 27-41.

69 ibid.

bertaubat. Begitu juga manusia hendaklah mengajar orang lain untuk turut melakukan taubat sebelum pelaksanaan hukuman.⁷⁰

Kesimpulan dan Cadangan

Dari perbincangan di atas, dapat disimpulkan bahawa hukuman mati dalam undang-undang jenayah Islam ialah pilihan hukuman terakhir. Bagi kes qisas, hukuman mati boleh diganti dengan bayaran diyat. Bagi hukuman mati yang dikenakan atas kesalahan-kesalahan berat seperti hirabah dan bughah, walaupun dianggap sebagai kesalahan hudud di bawah undang-undang jenayah Syariah, pendekatan hukuman lebih ringan dialu-alukan sekiranya pelaku tersebut menyerah diri kepada pihak berkuasa atau bertaubat setelah melakukan kesalahan tersebut. Manakala bagi hukuman rejam sehingga mati terhadap penzina muhsan adalah sebagai pengajaran besar kerana ia sudah berkahwin dan menikmati persetubuhan. Perkara ini berbeza dengan penzina bukan muhsan yang dikenakan hukuman sebatan Syariah sebanyak 100 kali dengan mengambil kira latar belakang bahawa penzina bukan muhsan belum pernah berkahwin dan menikmati persetubuhan. Meskipun begitu, terdapat juga pandangan bahawa tiada perbezaan hukuman terhadap penzina muhsan dan bukan muhsan kerana al-Quran hanya menyebut hukuman sebatan 100 kali. Hukuman rejam sehingga mati bagi penzina muhsan disebut dalam hadis sahaja dan terdapat perbahasan ulama mengenai kedudukan hadis tersebut.⁷¹

Undang-undang kesalahan jenayah Syariah berdasarkan wahyu. Kesalahan jenayah Syariah ada yang berbentuk hukuman fizikal dan berbentuk denda. Hukuman atas kesalahan jenayah Syariah (hudud) merupakan ketetapan Allah SWT yang melindungi kepentingan awam dan tindakan ini tidak boleh diremitkan. Hukuman berat dalam undang-undang jenayah Syariah tidak zalim dan berperikemanusiaan. Penekanan kepada taubat dalam kes yang melibatkan hak Allah SWT hendaklah diutamakan daripada menjatuhkan hukuman. Masyarakat hendaklah dididik supaya memahami inti pati peruntukan kesalahan jenayah Syariah yang terdapat di negeri-negeri yang mempunyai kekangan hukuman dan bidang kuasa. Pendekatan nasihat, pemulihan

70 ibid.

71 ibid.; M.H. Kamali, M.A. Mohamed Adil and W.N. Wan Mansor, 'Death Penalty in Shariah and Contemporary Law: A Comparative Analysis' (2020) 11 *IAIS Malaysia Policy Issue Papers* 9.

dan kaunseling perlu diberi penekanan awal terutama yang melibatkan kesalahan akidah seperti permohonan perisytharan bukan lagi seorang Islam seperti yang diamalkan di Negeri Sembilan dan di Selangor.

Tuntutan memansuhkan hukuman mati seperti dalam Second Optional Protocol (SOP) dan undang-undang antarabangsa lain boleh dilaksanakan dalam kes takzir yang mengenakan hukuman bunuh. Memandangkan terdapat perbezaan pandangan bahawa hukuman bunuh tidak boleh dikenakan dalam kesalahan takzir, pendekatan memansuhkan hukuman mati dalam kesalahan takzir boleh diterima pakai terutamanya dalam kes hukuman mati bagi kesalahan pengedaran dadah.⁷² Dengan pemakaian hukuman mati tidak terpakai dalam kesalahan takzir, perkara ini tidak akan menimbulkan sebarang persoalan dalam isu hak manusia untuk hidup.

Perkembangan terkini bahawa kerajaan Malaysia bersetuju memansuhkan hukuman mati mandatori di negara ini, setelah menerima dan mengambil maklum syor Jawatankuasa Khas Hukuman Gantian Terhadap Hukuman Mati Mandatori diketuai Mantan Ketua Hakim Negara, Tun Richard Malanjun dikemukakan dalam Laporan Kajian Hukuman Gantian Terhadap Hukuman Mati Mandatori.⁷³

Sehingga keputusan Kabinet itu diluluskan di Parlimen, Malaysia antara 56 negara masih mengekalkan hukuman mati. Bagi melaksanakan hukuman mati, Malaysia menggunakan teknik gantung. Daripada 32 kesalahan boleh dijatuhkan hukuman mati, 11 kesalahan adalah hukuman mati mandatori. Seperti dibincangkan di atas, kebanyakan kes hukuman mati di Malaysia membabitkan kesalahan pengedaran dadah di bawah Akta Berbahaya 1952 (Pindaan 2017).

Walaupun Malaysia masih mengekalkan hukuman mati, pendekatan memansuhkan hukuman mati mandatori melihatkan satu perkembangan mengikut trend antarabangsa.

Pendekatan ini juga menyaksikan pelaksanaan hukuman mati ke atas kesalahan pengedar dadah juga berkurang di negara ini. Pindaan Akta Dadah Berbahaya 1952 pada 2017 merupakan langkah positif yang secara relatifnya boleh mengurangkan hukuman mati mandatori bagi kesalahan mengedar dadah.

72 M.A. Mohamed Adil and A.B. Abdullah, 'The Application of Shari'ah Principles of *Ta'zir* in Malaysian Common Law: A *Maqasid-Based Proposal*' (2016) 17 *Islam and Civilisational Renewal* 1, 57-60.

73 'Hukuman mati mandatori dimansuhkan' BH Online (10 Jun 2022) <<https://www.bharian.com.my/berita/nasional/2022/06/964375/hukuman-mati-mandatori-dimansuhkan>>.

Di samping itu, kerajaan juga akan meneliti dan membuat kajian lanjut terhadap cadangan hukuman gantian terhadap 11 kesalahan lain yang membawa hukuman mati mandatori dan 22 kesalahan yang membawa hukuman mati yang tertakluk kepada budi bicara hakim.

Ini bagi memastikan bahawa hukuman gantian yang dicadangkan adalah setimpal dengan kesalahan yang dilakukan terutama yang melibatkan kesalahan membunuh. Satu mekanisme menyeluruh dengan mengambil pendekatan yang terkandung dalam undang-undang qisas yang memberi peluang kepada waris si mangsa turut terlibat dalam menganggotai Lembaga Pengampunan seperti yang terkandung dalam Perkara 42(5) Perlembagaan Persekutuan. Dalam hal ini, pihak waris si mangsa boleh menasihati Lembaga Pengampunan sama ada pembunuh itu dibunuh balas atau bayaran diyat dikenakan atau/dan diberi kemaafan. Manakala peruntukan mengenai bayaran diyat boleh dimasukkan dalam Seksyen 426 Kanun Acara Jenayah di mana bayaran pampasan dibuat kepada waris si mangsa.

Rujukan

'An end to mandatory death penalty?' *New Straits Times* (Malaysia, 17 August 2017) <<https://www.nst.com.my/opinion/columnists/2017/08/268727/end-mandatory-death-penalty>> dicapai 18 Ogos 2019.

'Gallows await 1,122' *The Star* (Malaysia, 28 March 2017) <<https://www.thestar.com.my/news/nation/2017/03/28/gallows-await-1122-16-prisoners-executed-between-2014-and-feb-21/>> dicapai 18 Ogos 2019.

'Hukuman mati mandatori dimansuhkan' *BH Online* (10 Jun 2022) <<https://www.bharian.com.my/berita/nasional/2022/06/964375/hukuman-mati-mandatori-dimansuhkan>>.

'Singapura Laksana Hukuman Mati Terhadap Rakyat Malaysia Kurang Upaya Intelek' *Benar News* (27 April 2022) <<https://www.benarnews.org/malay/berita/my-nagaenthran-mati-220427-04272022173516.html>>.

'Three men, including two Taiwanese nationals, were sentenced to death by the High Court of Kuala Lumpur after they were found guilty of trafficking in eight kilogrammes of drug into the country' *Bernama* (Malaysia, 4 April 2017) <www.bernama.com.my> dicapai 18 Jun 2020.

'Warga Malaysia dihukum gantung 27 April ini di Singapura' *BH Online* (20 April 2022) <<https://www.bharian.com.my/dunia/asean/2022/04/947846/warga-malaysia-dihukum-gantung-27-april-ini-di-singapura>>.

"Question of the Death Penalty", General Assembly, Human Rights Council, 27th Session, Agenda 2 & 3, Annual report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and Secretary-General, 30 June 2014.

[1996] 1 MLJ 261.

[1996] 2 CLJ 771.

[1997] 3 MLJ 323.

[1998] 2 MLJ 158.

[2011] 1 MLJ 107.

Abu Yusuf Y.I., *Kitab al-Kharaj* (Cairo, al-Matba'a al-Salafiyya, Edisi ke 5, 1396) 164.

AIR 1986 SC 180.

AIR Supp (1) SCC 717.

al-Baihaqi, *Sunan al-Bahaqi* (Vol 8, 327, Istanbul, Dairatul Maeri al-Islamiyyah, tt).

al-Khatib Al-Tabrizi A.A., *Mishkat al-Masabih* M.N. Al-Albani (ed) (Beirut, Dar al-Fikr, Edisi ke 2, 1400/1980) hadis 3570.

Amnesty International, *Amnesty International Global Report: Death Sentences and Executions 2017* (Amnesty International, 2018) 5.

Enakmen Undang-undang Pentadbiran Agama Islam Negeri Sembilan (Pindaan 2003).

International Bar Association, London <<https://www.ibanet.org/>>.

International Commission against the Death Penalty, *International Commission against the Death Penalty Review 2013* (Geneva, International Commission against the Death Penalty, 2013).

Jabatan Mufti Negeri Selangor, *Modul Penasihatan Akidah* (Selangor, Jabatan Mufti Negeri Selangor, 2018).

Kamali M.H., 'Hudud in Malaysia: Issues and Reform Proposals' in Mohamed Adil M.A. and Kamali M.H. (eds), *Islamic Law in Malaysia, Issues, Developments and Challenges*, (Ampang, The Malaysian Current Law Journal Sdn Bhd, 2018) 24-31.

— *Crime and Punishment in Islamic Law: A Fresh Interpretation* (New York, Oxford University Press, 2019) 84-90.

— *Freedom of Expression in Islam* (Cambridge, Islamic Text Society, 1997) 247.

— *Islamic Law in Malaysia: Issues and Developments* (Petaling Jaya, Ilmiah Publisher, 2000) 203-220.

— *The Right to Life, Security, Privacy and Ownership in Islam* (Kuala Lumpur, IAIS Malaysia & Ilmiah Publishers, 2014) 1.

Mohamed Adil M.A. and Abdullah A.B., 'The Application of Shari'ah Principles of *Ta'zir* in Malaysian Common Law: A *Maqasid-Based Proposal*' (2016) 17 *Islam and Civilisational Renewal* 1, 57-60.

Kamali M.H., Mohamed Adil M.A. and Wan Mansor W.N., 'Death Penalty in Shariah and Contemporary Law: A Comparative Analysis' (2020) 11 *IAIS Malaysia Policy Issue Papers* 9.

Mohamed Adil M.A. dan lain-lain, *Laporan Akhir – Murtad dan Kebebasan Beragama: Satu Kajian Kes di Selangor* (Shah Alam, Majlis Agama Islam Selangor, 2010) 67-98.

Mohamed Adil M.A., *Pelaksanaan Undang-undang Islam di Malaysia: Khayalan Atau Realiti?* (Kuala Lumpur, Ilham Books & IAIS Malaysia, 2018) 76-79.

Mohd Noor A., 'Hukuman Mati Mandatori: Satu Analisis Menurut Pengalaman Undang-undang di Malaysia dan Syariah' (2008) 12 *Jurnal Undang-undang dan Masyarakat* 18.

Mokhtar K.A., 'The Right to Life and Freedom from Torture' in Hamid@K.M. Sein A.G. (ed), *Human Rights Law – International, Malaysian and Islamic Perspectives* (Petaling Jaya, Thomson Reuters Malaysia, 2012) 57.

Muhammad al-Tirmidhi A.I., *Sunan al-Tirmidhi* (Beirut, Dar al-Fikr, 1400/1980) hadis 1447.

Penal Reform International, *Sharia Law and the Death Penalty: Would Abolition of the Death Penalty Be Unfaithful to the Message of Islam?* (London, Penal Reform International, 2015).

Temubual dengan Jerald Joseph, mantan Pesuruhjaya SUHAKAM (Kuala Lumpur, 25 April 2018).

Temubual dengan Pengarah Eksekutif Interim, Amnesty International Malaysia (Petaling Jaya, 19 April 2017).

Polemik Rang Undang-undang Suruhanjaya Bebas Aduan Salah Laku Polis 2019 (RUU IPCMC 2019) dan Rang Undang-undang Suruhanjaya Bebas Tatakelakuan Polis 2020 (RUU IPCC 2020)

The Polemics of the Independent Police Complaints and Misconduct Commission (IPCMC) Bill 2019 and Independent Police Conduct Commission (IPCC) Bill 2020

*Augustine Leonard Jen**

Abstrak

Rang Undang-undang (RUU) Suruhanjaya Bebas Tatakelakuan Polis 2020 (RUU IPCC 2020) merupakan satu RUU yang digubal bagi menggantikan RUU Suruhanjaya Bebas Aduan Salah Laku Polis 2019 (RUU IPCMC 2019). RUU ini mengandungi 47 Fasal berbanding 60 Fasal dalam RUU sebelumnya. RUU IPCC 2020 ini digubal untuk mempertingkat integriti Polis Diraja Malaysia (PDRM), mengurangkan salah laku dalam kalangan anggota PDRM dan menggalakkan keyakinan orang awam terhadap pasukan polis. Namun, RUU IPCC 2020 masih lagi mengundang kontroversi dan konotasi negatif yang wajar diberi perhatian. Kertas melihat isu-isu berbangkit berkenaan kedua-dua RUU ini.

Kata kunci: IPCMC, IPCC, Polis, Salah Laku

Abstract

The Independent Police Conduct Commission (IPCC) Bill 2020 was enacted to replace the Independent Police Complaints and Misconduct Commission (IPCMC) Bill 2019. This Bill contains 47 Clauses compared to 60 Clauses in the previous Bill. The IPCC 2020 Bill was enacted to enhance the integrity of the Royal Malaysia Police (PDRM), reduce misconduct among PDRM members and encourage public confidence in the police force. However,

* Augustine Leonard Jen is Research Officer at the Parliament of Malaysia. Email: augustine@parlimen.gov.my

the IPCC 2020 Bill still invites controversy and negative connotations that deserve attention. This paper looks at the issues that have arisen regarding these two bills.

Keywords: IPCMC, IPCC, Police, Misconduct

Pengenalan

Pada 18 Julai 2019 Rang Undang-undang Suruhanjaya Bebas Aduan Salah Laku Polis 2019 (RUU IPCMC) telah dibacakan buat kali yang pertama oleh Menteri di Jabatan Perdana Menteri (JPM) semasa sesi Dewan Rakyat di Mesyuarat Kedua, Penggal Kedua, Parlimen ke-14, empat belas tahun selepas Laporan Suruhanjaya Diraja Penambahbaikan Perjalanan dan Pengurusan Polis Diraja Malaysia 2005 yang mengesyorkan penubuhan suatu badan pemantau bebas bagi menangani salah laku dalam kalangan anggota pasukan Polis Diraja Malaysia (PDRM) serta menambah baik operasi serta pengurusan PDRM. IPCMC 2005 pertama kali dicadangkan oleh Suruhanjaya Diraja Penambahbaikan Perjalanan dan Pengurusan Polis Diraja Malaysia (PDRM) pada tahun 2005, ketika pentadbiran Perdana Menteri Tun Abdullah Ahmad Badawi. IPCMC 2005 kemudiannya menjadi Suruhanjaya Integriti Agensi Penguatkuasaan (EAIC) selepas mendapat bantahan keras oleh pasukan polis di bawah Ketua Polis Negara pada waktu itu, Tan Sri Musa bin Tan Sri Hj. Hassan.

IPCMC 2019 dicadangkan bagi menggantikan Suruhanjaya Integriti Agensi Penguatkuasaan (EAIC) dan berperanan yang mengawal selia 21 agensi penguatkuasaan termasuk PDRM melalui Akta Suruhanjaya Integriti Agensi Penguatkuasaan 2009 [Akta 700]. Akta 700 telah diwartakan pada 3 September 2009 dan berkuat kuasa pada 1 April 2011. Walau bagaimanapun, terdapat pelbagai persepsi negatif orang awam terhadap EAIC yang dikatakan tidak efektif dan berkesan kerana syor-syor yang dibuat EAIC tidak mengikat Pihak Berkuasa Tatatertib (PBT) agensi-agensi penguatkuasaan berkenaan. Oleh itu, terdapat desakan daripada pihak yang berkepentingan dan orang awam yang mencadangkan agar IPCMC ditubuhkan. RUU IPCMC 2019 kemudiannya dirujuk kepada Jawatankuasa Pilihan Khas Menimbang Rang Undang-undang untuk diteliti. Sebelum dirujuk kepada Jawatankuasa Pilihan Khas Menimbang Rang Undang-undang, RUU IPCMC mengandungi 24 pindaan. Setelah dirujuk kepada Jawatankuasa, terdapat penambahan 13 pindaan menjadikan jumlah keseluruhan 37 pindaan.

Jadual 1. RUU IPCC 2020 vs RUU IPCMC 2019

	Rang Undang-undang Suruhanjaya Bebas Aduan Salah Laku Polis 2019 (RUU IPCMC 2019)	Rang Undang-undang Suruhanjaya Bebas Tatakelakuan Polis 2020 (RUU IPCC 2020)
Bacaan Pertama	18 Julai 2019	26 Ogos 2020
Bacaan Kali Kedua dan Ketiga ¹	7 Oktober 2019	—
Laporan Jawatankuasa Pilihan Khas Menimbang Rang Undang-undang ² dibentangkan	27 November 2019	—
Ditarik Balik	26 Ogos 2020	—
Bilangan Fasal	60	47

Ringkasan Rang Undang-undang Suruhanjaya Bebas Tatakelakuan Polis 2020

Rang Undang-undang Suruhanjaya Bebas Tatakelakuan Polis 2020 bertujuan untuk mengadakan peruntukan bagi penubuhan Suruhanjaya Bebas Tatakelakuan Polis. Matlamat Akta yang dicadangkan adalah untuk mempertingkat integriti pasukan polis, mengurangkan salah laku dalam kalangan anggota pasukan polis dan menggalakkan keyakinan orang awam terhadap pasukan polis. RUU IPCC 2020 dilihat akan dapat membantu mencapai matlamat untuk pelaksanaan dan pentadbiran sistem perundangan yang lebih adil di samping memelihara kebebasan asasi individu sebagaimana yang dijamin oleh Perlembagaan Persekutuan. Namun demikian, perkara ini tidak dinyatakan secara jelas dalam RUU IPCC 2020.

1 Dirujuk kepada Jawatankuasa Pilihan Khas Menimbang Rang Undang-undang berdasarkan kepada Peraturan Mesyuarat 54(2)'. Lihat DR Deb 17 Oktober 2019, Bil 33, 111 <<https://www.parlimen.gov.my/files/hindex/pdf/DR-07102019.pdf>>.

2 Jawatankuasa Pilihan Khas Menimbang Rang Undang-undang, *Laporan Jawatankuasa Pilihan Khas Menimbang Rang Undang-undang Suruhanjaya Bebas Aduan Salah Laku Polis* (DR 2018-2023, DR.10/2019) <<https://www.parlimen.gov.my/ipms/eps/2019-11-27/DR.10.2019%20-%20DR.10%20Tahun%202019%20-%20Laporan%20Jawatankuasa%20Pilihan%20Khas%20Menimbang%20Rang%20Undang-Undang%20Suruhanjaya%20Bebas%20Aduan%20Salah%20Laku%20Poli.1.pdf>> dicapai 20 April 2022.

Peruntukan dalam RUU IPCC 2020 lebih adil tanpa menjelaskan kepentingan pengadu, penyiasat dan individu dituduh.³ Berbanding dengan RUU IPCMC 2019, RUU ini mengundang bantahan dalam kalangan warga PDRM kerana memperuntukkan kuasa kepada Suruhanjaya terbabit untuk menjalankan siasatan, apakah lagi mengambil tindakan terhadap pihak yang terbabit. RUU IPCC 2020 mengandungi 47 fasal memperlihatkan satu perubahan utama apabila sebarang tindakan selepas mempertimbangkan dapatan dan syor jawatankuasa aduan akan dilakukan agensi berkaitan, mengikut bidang kuasa masing-masing. RUU IPCC juga tidak memperuntukkan sebarang kuasa kepada Suruhanjaya untuk mengambil tindakan.

Jadual 2. Rang Undang-undang Suruhanjaya Bebas Tatakelakuan Polis 2020

Bahagian	Perkara	Seksyen
1	Permulaan – Tajuk ringkas, permulaan kuat kuasa dan ketidakpakaian; Matlamat; Tafsiran Bahagian I Akta yang dicadangkan memperkatakan perkara permulaan. Fasal 1 mengandungi tajuk ringkas dan permulaan kuat kuasa Akta yang dicadangkan. Fasal 2 mengandungi tafsiran bagi takrif dan ungkapan tertentu yang digunakan dalam Akta yang dicadangkan.	1 hingga 2
2	Bahagian II Akta yang dicadangkan memperkatakan penubuhan, fungsi dan kuasa Suruhanjaya. Fasal 3 bertujuan untuk mengadakan peruntukan bagi penubuhan Suruhanjaya. Fasal 4 dan 5 memperkatakan fungsi dan kuasa Suruhanjaya. Fasal 6 bertujuan untuk mengadakan peruntukan bagi anggota Suruhanjaya. Fasal 7 mengandungi peruntukan mengenai tempoh jawatan anggota Suruhanjaya. Fasal 8 mengadakan peruntukan bagi pembayaran saraan dan elaun kepada anggota Suruhanjaya.	3 hingga 13

3 L.A. Abdul Karim, 'IPCC tampil kelainan berbanding IPCMC' BH Online (26 Ogos 2020) <<https://www.bharian.com.my/berita/nasional/2020/08/724825/ipcc-tampil-kelainan-berbanding-ipcmc>> dicapai 20 April 2022.

Bahagian	Perkara	Seksyen
	<p>Fasal 9 menyatakan hal keadaan yang baginya jawatan anggota Suruhanjaya menjadi kosong.</p> <p>Fasal 10 mengandungi peruntukan mengenai mesyuarat Suruhanjaya.</p> <p>Fasal 11 menyatakan hal keadaan yang baginya Timbalan Pengerusi atau anggota Suruhanjaya lain boleh menjalankan fungsi Pengerusi.</p> <p>Fasal 12 memperuntukkan bahawa anggota Suruhanjaya hendaklah menzahirkan kepentingannya mengenai apa-apa perkara yang dibincangkan oleh Suruhanjaya atau dalam apa-apa perbincangan di hadapan Suruhanjaya.</p> <p>Fasal 13 menyatakan bahawa fungsi dan kuasa Suruhanjaya boleh dijalankan oleh mana-mana anggota Suruhanjaya, mana-mana pegawai Suruhanjaya, mana-mana jawatankuasa atau mana-mana anggota pasukan polis.</p>	
3	<p>Bahagian III Akta yang dicadangkan memperkatakan pentadbiran Suruhanjaya.</p> <p>Fasal 14 bertujuan untuk memberi kuasa kepada Menteri untuk melantik seorang Setiausaha yang akan menjadi ketua pegawai eksekutif.</p> <p>Fasal 15 menyatakan hal keadaan yang baginya Suruhanjaya boleh, dengan persetujuan Menteri, melantik mana-mana pegawai Suruhanjaya untuk menjalankan fungsi Setiausaha buat sementara waktu.</p> <p>Fasal 16 bertujuan untuk memberi kuasa kepada Suruhanjaya untuk melantik mana-mana orang untuk menjadi pegawai Suruhanjaya.</p> <p>Fasal 17 bertujuan untuk memberi kuasa kepada Suruhanjaya untuk mengambil khidmat perunding untuk membantu Suruhanjaya melaksanakan fungsi dan kuasanya.</p> <p>Fasal 18 bertujuan untuk membenarkan Suruhanjaya menujuhan jawatankuasa untuk membantu Suruhanjaya.</p> <p>Fasal 19 mengadakan peruntukan mengenai pengeluaran kad kuasa kepada anggota Suruhanjaya dan pegawai Suruhanjaya.</p>	14 hingga 21

Bahagian	Perkara	Seksyen
	<p>Fasal 20 bertujuan untuk membenarkan Suruhanjaya membuat perkiraan dengan jabatan kerajaan atau pihak berkuasa tempatan atau badan berkanun untuk menggunakan kakitangan atau kemudahannya dan membuat perkiraan dengan pasukan polis bagi anggota pasukan polis untuk bekerjasama atau membantu Suruhanjaya melaksanakan fungsinya.</p> <p>Fasal 21 bertujuan untuk membenarkan Suruhanjaya untuk bekerjasama dengan mana-mana agensi penguatkuasaan lain, jabatan Kerajaan Persekutuan atau Negeri dan orang lain untuk melaksanakan fungsinya.</p>	
4	<p>Bahagian IV Akta yang dicadangkan mengandungi peruntukan yang berhubungan dengan pengurusan aduan oleh Suruhanjaya.</p> <p>Fasal 22 memperuntukkan bahawa Suruhanjaya boleh menerima aduan atau menguruskan aduan yang dirujuk kepadanya mengenai salah laku.</p> <p>Subfasal 22(2) bertujuan untuk memperuntukkan bahawa salah laku tidak termasuk apa-apa tindakan yang dikawal selia di bawah seksyen 96 dan 97 Akta Polis 1967.</p> <p>Fasal 23 mengadakan peruntukan bagi penubuhan Jawatankuasa Aduan.</p> <p>Fasal 24 menyatakan cara untuk membuat aduan terhadap mana-mana anggota pasukan polis.</p> <p>Fasal 25 bertujuan untuk mengadakan peruntukan bagi pengelasan aduan.</p> <p>Fasal 26 bertujuan untuk mengenakan kewajipan ke atas pasukan polis untuk merujuk kepada Suruhanjaya mengenai apa-apa kejadian yang melibatkan jenayah seksual atau apa-apa kejadian yang mengakibatkan cedera parah atau kematian terhadap mana-mana orang yang pada masa itu, orang itu berada dalam tahanan atau jagaan anggota pasukan polis.</p>	22 hingga 26

Bahagian	Perkara	Seksyen
5	<p>Bahagian V Akta yang dicadangkan mengandungi peruntukan mengenai kuasa penyiasatan oleh Suruhanjaya dan pegawai Suruhanjaya.</p> <p>Fasal 27 memperkatakan kuasa pegawai Suruhanjaya untuk mengeluarkan notis bertulis untuk memerintahkan mana-mana orang untuk hadir di hadapan pegawai itu untuk diperiksa secara lisan, atau untuk memerintahkan mana-mana orang untuk memberikan suatu pernyataan bersumpah bagi maksud penyiasatan itu.</p> <p>Fasal 28 memperkatakan kuasa Suruhanjaya untuk mendapatkan dokumen atau benda lain daripada seseorang bagi maksud penyiasatan.</p> <p>Fasal 29 menghendaki pegawai Suruhanjaya untuk menyerahkan dapatannya mengenai penyiasatan kepada Jawatankuasa Aduan untuk membolehkan Jawatankuasa Aduan menimbangkan dapatan dan mengemukakan syor kepada Suruhanjaya.</p> <p>Fasal 30 bertujuan untuk mengadakan peruntukan bagi tindakan yang perlu diambil oleh Suruhanjaya selepas menimbangkan syor Jawatankuasa Aduan seperti yang berikut:</p> <ul style="list-style-type: none"> (a) merujukkan apa-apa aduan salah laku yang diterima olehnya kepada Suruhanjaya Pencegahan Rasuah Malaysia jika kesalahan adalah di bawah Bahagian IV Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009; (b) merujukkan dapatan kepada pihak berkuasa berkaitan mengenai apa-apa dapatan salah laku yang bersifat jenayah yang diterimanya atau dirujuk kepadanya; (c) merujukkan apa-apa dapatan salah laku kepada Suruhanjaya Pasukan Polis; dan (d) merekodkan dapatan jika dapatan tidak menzahirkan perbuatan salah laku. <p>Suruhanjaya boleh mengarahkan Pasukan Petugas untuk membuat penyiasatan lanjut jika Suruhanjaya tidak berpuas hati dengan apa-apa dapatan atau syor yang dibuat oleh Jawatankuasa Aduan. Suruhanjaya hendaklah memaklumkan pengadu mengenai tindakan yang telah diambil ke atas aduannya.</p>	27 hingga 32

Bahagian	Perkara	Seksyen
	<p>Fasal 31 bertujuan untuk mengadakan peruntukan bagi penubuhan Pasukan Petugas bagi maksud penyiasatan salah laku mana-mana anggota pasukan polis.</p> <p>Fasal 32 bertujuan untuk membolehkan Suruhanjaya memulakan penyiasatan salah laku atas inisiatifnya sendiri</p>	
6	<p>Bahagian VI mengandungi peruntukan mengenai kesalahan.</p> <p>Fasal 33 menjadikannya suatu kesalahan bagi seseorang yang mengugut, menghina atau mencederakan mana-mana orang yang memberikan keterangan di hadapan Suruhanjaya.</p> <p>Fasal 34 menjadikannya suatu kesalahan bagi seseorang yang memberikan maklumat palsu kepada Suruhanjaya.</p>	33 hingga 34
7	<p>Bahagian VII mengandungi peruntukan pelbagai.</p> <p>Fasal 35 mengadakan peruntukan bagi perkongsian apa-apa maklumat umum antara Suruhanjaya dengan pasukan polis atau mana-mana pihak berkuasa berkaitan yang berhubungan dengan fungsi dan kuasa Suruhanjaya.</p> <p>Fasal 36 mengadakan peruntukan bagi perlindungan Suruhanjaya, anggota Suruhanjaya dan pegawai Suruhanjaya termasuklah mana-mana orang yang bertindak di bawah arahan Suruhanjaya daripada apa-apa tindakan, liabiliti, tuntutan atau permintaan. Ia juga memperuntukkan bahawa tiada keterangan, dokumen atau dapatan Suruhanjaya boleh diterima dalam mana-mana tindakan sivil atau jenayah terhadap orang yang memberikan keterangan itu.</p> <p>Fasal 37 memperkatakan peruntukan kewangan Suruhanjaya.</p> <p>Fasal 38 bertujuan untuk memperuntukkan bahawa Akta Badan Berkanun (Akaun dan Laporan Tahunan) 1980 hendaklah terpakai bagi Suruhanjaya.</p> <p>Fasal 39 bertujuan untuk memperuntukkan bahawa Suruhanjaya dikehendaki untuk mengemukakan dan membentangkan laporan tahunan di Parlimen.</p>	35 hingga 42

Bahagian	Perkara	Seksyen
	<p>Fasal 40 memperuntukkan bahawa peruntukan bagi Akta Perlindungan Pihak Berkuasa Awam 1948 hendaklah terpakai bagi Suruhanjaya dan pegawaiinya.</p> <p>Fasal 41 memperuntukkan bahawa tiap-tiap anggota Suruhanjaya dan pegawai Suruhanjaya hendaklah disifatkan sebagai pekhidmat awam mengikut pengertian Kanun Kesekeaan semasa menjalankan kewajipannya.</p> <p>Fasal 42 melarang penzahiran maklumat yang berhubungan dengan hal ehwal Suruhanjaya.</p> <p>Fasal 43 bertujuan untuk mengadakan peruntukan bagi permulaan dan penjalanan pendakwaan.</p> <p>Fasal 44 mengadakan peruntukan bagi perlindungan kepada orang yang membantu Suruhanjaya.</p> <p>Fasal 45 bertujuan untuk mengadakan peruntukan bagi tanggungjawab pasukan polis untuk bekerjasama dengan dan membantu Suruhanjaya, termasuklah memberikan apa-apa maklumat yang dikehendaki oleh Suruhanjaya.</p> <p>Fasal 46 bertujuan untuk memberi kuasa kepada Menteri untuk membuat peraturan-peraturan.</p> <p>Fasal 47 mengandungi peruntukan peralihan berbangkit daripada penubuhan Suruhanjaya Bebas Tatakelakuan Polis.</p>	

Isu-isu Berbangkit Berkaitan Rang Undang-undang (RUU) Suruhanjaya Bebas Tatakelakuan Polis (IPCC)

Polemik berkaitan dengan isu ini bermula sejak Laporan Suruhanjaya Diraja Penambahbaikan Perjalanan dan Pengurusan Polis Diraja Malaysia 2005 dibentangkan kepada umum. Terdapat beberapa isu yang dibangkitkan berkenaan RUU IPCC 2020 oleh Organisasi Masyarakat Sivil (CSO), Badan Bukan Kerajaan (NGO), media dan pihak berkepentingan lain. Berikut adalah antara kupasan terpilih berkenaan RUU IPCC 2020.

i. Pemerkasaan Suruhanjaya Integriti Agensi Penguatkuasaan (EAIC/SIAP) dan Suruhanjaya Pasukan Polis (SPP)

Antara isu yang dibangkitkan, sebab-musabab Suruhanjaya Integriti Agensi Penguatkuasaan tidak diperkasakan untuk membawa fungsi-

fungsi seperti yang terkandung dalam RUU IPCMC 2019 dan RUU IPCC 2020. Turut dibangkitkan, sebab-musabab PDRM memerlukan satu Suruhanjaya khusus untuk menangani isu-isu berkaitan dengan aduan salah laku, siasatan salah laku, prosiding untuk menangani salah laku dan sebagainya serta mengenai perkara lain yang berkaitan dengannya.

Persoalan juga mula timbul, sebab-musabab EAIC atau SPP tidak diperkasakan/ditambah fungsinya/kuasanya untuk menjalankan fungsi-fungsi seperti mana yang terkandung dalam RUU IPCMC 2019 dan RUU IPCC 2020. Hal ini disebabkan kerana pewujudan satu Suruhanjaya baru akan melibatkan implikasi kewangan yang besar kepada kerajaan. Persoalan yang diajukan adalah, “Adakah ‘pelaburan’ ini berbaloi?”

ii. Ombudsman

Rang Undang-undang Ombudsman Malaysia bakal diperkenalkan tidak lama lagi bagi menggantikan Biro Pengaduan Awam (BPA).⁴ Perkara ini dibangkitkan atas alasan mekanisme Ombudsman⁵ tidak diguna pakai untuk menangani isu-isu berkaitan dengan aduan salah laku, siasatan salah laku dan prosiding untuk menangani salah laku seperti yang dipraktikkan oleh Ireland Utara dan Belanda.

iii. Syor-syor Berkaitan dengan Akta

Menurut Suruhanjaya Hak Asasi Manusia (SUHAKAM), RUU IPCC 2020 tidak merangkumi inti pati RUU IPCMC 2019 serta syor Suruhanjaya Diraja Penambahbaikan Perjalanan dan Pengurusan Polis Diraja Malaysia 2005.⁶ SUHAKAM juga menyatakan keimbangan dengan kurangnya kebebasan dan kelemahan fungsi IPCC kerana ia tidak diberikan kuasa tatatertib bagi menangani salah laku polis. Setiausaha IPCC akan dilantik oleh Menteri Dalam Negeri dan pegawai-pegawai IPCC juga dilantik secara pinjaman dari mana-mana agensi Kerajaan untuk menjadi pegawai penyiasat. Tambahan pula, penurunan kuasa IPCC kepada mana-mana

4 ‘Lebih 100 Undang-Undang Akan Digubal, Pinda, Perbaharui Atau Mansuh’ BERNAMA (23 Januari 2019) <<https://www.bernama.com/bm/am/news.php?id=1687925>> dicapai 20 April 2022.

5 Sebagai contoh, *The Office of the Police Ombudsman for Northern Ireland dan National Ombudsman*, Belanda.

6 SUHAKAM, ‘Media Statement Human Rights Commission Of Malaysia’ (SUHAKAM, 27 Ogos 2020) <<https://suhakam.org.my/2020/08/press-statement-no-24-of-2020-suhakam-expresses-its-concerns-on-the-ipcc-bill-2020/>> dicapai 28 Ogos 2020.

anggota pasukan polis boleh membawa kepada isu konflik kepentingan dari aspek fungsi yang dinyatakan dalam RUU serta kebebasan IPCC. Justeru, SUHAKAM menegaskan seruannya untuk penubuhan badan bebas bagi meningkatkan akauntabiliti pasukan polis dan menyediakan sistem semak dan imbang sebagai mekanisme pengawasan.

iv. Perbandingan antara Fasal 30 RUU IPCC⁷ dengan Fasal 31 RUU IPCMC⁸ berkenaan dengan kuasa Suruhanjaya

The amendment in the IPCC Act puts the power to decide on penalties (or whether to take any action at all) in the hands of the Police Force Commission, which is not independent of the police. Hence, regardless how strong the evidence and findings of a comprehensive investigation carried out by the IPCC, the findings cannot be referred to the Attorney General's Chambers, Parliament or any panel within the IPCC itself to take necessary action. This is as good as allowing the police to review findings and decide penalties for its own members.

7 Lihat RUU IPCC – Fasal 30. (1) Selepas menimbangkan dapatan dan syor oleh Jawatankuasa Aduan di bawah subseksyen 29(2), Suruhanjaya hendaklah mengambil tindakan yang berikut: (a) jika dapatan menzahirkan apa-apa kesalahan di bawah Bahagian IV Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009, merujukkan dapatan itu kepada Suruhanjaya Pencegahan Rasuah Malaysia; (b) jika dapatan menzahirkan apa-apa kesalahan jenayah di bawah mana-mana undang-undang bertulis, merujukkan dapatan itu kepada pihak berkuasa berkaitan; (c) jika dapatan menzahirkan apa-apa salah laku, merujukkan dapatan salah laku itu kepada Suruhanjaya Pasukan Polis dengan syor untuk tindakan tatatertib; dan (d) jika dapatan menzahirkan tiada salah laku, menolak aduan itu dan memaklumkan Ketua Jabatan yang berkaitan. (2) Jika Suruhanjaya tidak berpuas hati dengan dapatan dan syor oleh Jawatankuasa Aduan di bawah subseksyen 29(2), Suruhanjaya boleh mengarahkan Pasukan Petugas untuk membuat penyiasatan lanjut. (3) Suruhanjaya hendaklah merekodkan dapatan yang disebut dalam subseksyen (1) dan memaklumkan pengadu tentang tindakan yang telah diambil ke atas aduan itu.

8 31. (1) Suruhanjaya hendaklah mempunyai kuasa tatatertib ke atas apa-apa salah laku yang dilakukan oleh mana-mana anggota pasukan polis. (2) Suruhanjaya boleh menjalankan bidang kuasa tatatertib ke atas apa-apa aduan berkenaan dengan salah laku mana-mana anggota pasukan polis. (3) Suruhanjaya hendaklah menubuhkan Lembaga Tatatertib yang mempunyai bidang kuasa, dan terdiri daripada anggota, sebagaimana yang dinyatakan dalam Jadual. (4) Walau apa pun subseksyen (3), jika aduan salah laku itu adalah terhadap Ketua Polis Negara, Ketua Setiausaha Negara hendaklah menubuhkan suatu Lembaga Tatatertib Khas untuk mendengar aduan itu dan prosiding di hadapan Lembaga Tatatertib Khas itu hendaklah dijalankan mengikut peraturan-peraturan yang dibuat di bawah Perkara 132 Perlembagaan Persekutuan.

Sorotan literatur terhadap polemik ini juga mendapati, "Mengapakah RUU IPCC tidak diberikan kuasa tata tertib bagi menangani salah laku polis?"

v. Fasal 13, 14 dan Fasal 16 RUU IPCC

The Secretary of IPCC is to be appointed by the Minister in charge of Home Affairs and the officers of IPCC may be appointed from any government agencies on secondment basis to be its investigators. Moreover, the delegation of IPCC's powers to any members of the police may also raise issues of conflict of interest in terms of the IPCC's stated functions in the Bill and its independence.⁹

Some of the bill's provisions raise serious concerns about the commission's independence, Human Rights Watch¹⁰ said. Under the draft law, the home affairs minister would appoint the secretary of the commission and issue regulations governing the commission's procedures.

Pelantikan Setiausaha Suruhanjaya oleh Menteri Dalam Negeri boleh membawa kepada isu konflik kepentingan dari aspek fungsi¹¹ yang dinyatakan dalam RUU IPCC 2020 serta kebebasan Suruhanjaya itu sendiri. Pada masa yang sama, penurunan kuasa IPCC kepada mana-mana anggota pasukan polis juga boleh membawa kepada isu konflik kepentingan dari aspek fungsi yang dinyatakan dalam RUU serta kebebasan IPCC.

vi. Pelantikan Ahli Suruhanjaya

Ketiadaan peruntukan fasal seperti tertera di bawah (merujuk Akta Suruhanjaya Integriti Agensi Penguatkuasaan 2009) dalam RUU IPCC 2020 juga turut menjadi perhatian oleh *Human Rights Watch*. Menurut artikel yang ditulis:

⁹ Lihat Human Rights Watch, 'Malaysia: Proposed Law Reverses Police Reforms' (Human Rights Watch, 28 Oktober 2020) <<https://www.hrw.org/news/2020/08/28/malaysia-proposed-law-reverses-police-reforms>> dicapai 20 April 2022.

¹⁰ ibid.

¹¹ Lihat RUU IPCC 2020 Fasal 4. Fungsi Suruhanjaya adalah seperti yang berikut:(a) untuk menggalakkan integriti dalam kalangan anggota pasukan polis; (b) untuk menasihati Kerajaan dan membuat syor berhubung dengan langkah-langkah yang sesuai untuk diambil dalam menggalakkan integriti dalam kalangan anggota pasukan polis; (c) untuk melindungi kepentingan orang awam melalui penanganan salah laku mana-mana anggota pasukan polis; dan (d) untuk membentuk dan mengadakan mekanisme bagi menerima aduan dan menyiasat salah laku oleh mana-mana anggota pasukan polis.

Unlike both the prior bill and the EAIC, the draft law does not bar the appointment of former police officers or current government officials to the commission.¹²

RUU IPCC 2020

(2) *Tiada seorang pun boleh dilantik sebagai anggota Suruhanjaya jika dia ialah atau pernah menjadi seorang anggota pasukan polis atau dia ialah seorang anggota perkhidmatan awam.*

Akta Suruhanjaya Integriti Agensi Penguatkuasaan 2009

(2) *Tiada seorang pun boleh layak dilantik sebagai Pesuruhjaya jika dia ialah atau pernah menjadi seorang pegawai penguat kuasa.*

vii. Keperluan untuk Notis

Sebagai sebuah badan bebas, Suruhanjaya berhak mengadakan lawatan mengejut ke tempat-tempat dan premis tanpa notis, untuk melihat sendiri keadaan asal tempat dan premis tersebut. Namun, menurut Fasal 5(2)(b) seperti yang dinyatakan dalam RUU IPCC 2020:

(b) *membuat lawatan ke mana-mana tempat dan premis seperti balai polis, rumah kakitangan polis, lokap dan pusat tahanan dengan memberikan notis awal kepada Ketua Jabatan yang berkaitan dan membuat apa-apa syor yang perlu;*

Keperluan notis berkemungkinan menjelaskan fungsi Suruhanjaya seperti tertera dalam Fasal 4 iaitu:

4. *Fungsi Suruhanjaya adalah seperti yang berikut:*

- (a) *menggalakkan integriti dalam kalangan anggota pasukan polis;*
- (b) *menasihati Kerajaan dan membuat syor berhubung dengan langkah-langkah yang sesuai untuk diambil dalam menggalakkan integriti dalam kalangan anggota pasukan polis;*
- (c) *melindungi kepentingan orang awam melalui penanganan salah laku mana-mana anggota pasukan polis; dan*
- (d) *membentuk dan mengadakan mekanisme bagi menerima aduan dan menyiasat salah laku oleh mana-mana anggota pasukan polis.*

12 Human Rights Watch (n 9).

viii. Fasal 22, 22(2) dan 27(4)(a) & (b)

Memetik artikel yang dikeluarkan oleh Persatuan Aliran Kesedaran Negara, artikel tersebut menyatakan:

With the inclusion of this sections in the IPCC Bill, the commission will be worse than the existing mechanisms under the Enforcement Agency Integrity Commission (EAIC) as investigation for key misconduct does not include acts covered by the inspector general's standing orders, police officers can refuse to answer based on a subjective and arbitrary excuse, and there is no power for the commission to ensure its recommendations are implemented.¹³ The IPCC has been modified to narrow the scope of powers and jurisdiction of the commission.

Justeru, perkara berbangkit mengenai kategori-kategori Skop Salah Laku tidak diperincikan dalam RUU IPCC 2020 telah menjadi satu polemik. Menurut syor Laporan Jawatankuasa Pilihan Khas Menimbang Rang Undang-undang Suruhanjaya Bebas Aduan Salah Laku Polis 2019 bersetuju peranan JIPS dan kawalan tatatertib PBT PDRM masih relevan sebagaimana pengesyoran dengan cadangan pindaan seperti yang berikut:

- (a) subfasal 22(2) untuk memberi kuasa kepada Suruhanjaya untuk menetapkan mana-mana tatakelakuan yang boleh dikategorikan sebagai salah laku kecil dan pindaan selanjutnya untuk memperincikan secara jelas dan nyata jenis-jenis salah laku kecil;
- (b) fasal 25 dipinda dengan memasukkan perenggan (d) dalam fasal 25 bagi membolehkan IPCMC merujuk aduan salah laku kecil kepada Ketua Jabatan PDRM bagi tujuan penyiasatan;
- (c) fasal 31 dipinda dengan memasukkan subfasal (5) yang baharu untuk memberikan Suruhanjaya kuasa untuk melantik mana-mana anggota PDRM untuk menjalankan bidang kuasa tatatertib atas aduan salah laku kecil; dan
- (d) fasal 34 dipinda dengan memasukkan perenggan subfasal (2) yang baharu untuk memberi mana-mana anggota PDRM yang

¹³ Lihat ‘‘New’ IPCC an attempt to mislead Malaysia’ (ALIRAN, 3 September 2020) <<https://m.aliran.com/civil-society-voices/new-ipcc-an-attempt-to-mislead-malaysia>> dicapai 20 April 2022.

dilantik untuk menjalankan fungsi kawalan tata tertib atas aduan salah laku kecil.

Oleh itu, timbul persoalan, mengapa terdapat pengecualian untuk Fasal 22(2) RUU IPCC 2020 di bawah Seksyen 96 dan 97 Akta Polis 1967?¹⁴ Turut dibangkitkan, mengapa terdapat klausa untuk enggan menjawab soalan atau mendedahkan maklumat sensitif seperti yang tertera di dalam Fasal 27(4)(a) & (b) RUU IPCC 2020?

ix. Ketiadaan Fasal 31 RUU IPCMC 2019

Perkara berkenaan Fasal 31 RUU IPCMC 2019 telah dibangkitkan kerana tidak terdapat dalam RUU IPCC 2020. Ketiadaan Fasal 31 berkaitan dengan Kuasa Tatatertib untuk Suruhanjaya yang bakal ditubuhkan sedikit sebanyak menjelaskan fungsi dan tujuan Suruhanjaya ini ditubuhkan.

Menurut Fasal 31, RUU IPCMC 2019 menyatakan:

Kuasa tatatertib

31. (1) *Suruhanjaya hendaklah mempunyai kuasa tatatertib ke atas apa-apa salah laku yang dilakukan oleh mana-mana anggota pasukan polis.*

14 Lihat Akta Polis 1967 [Akta 344]. Peraturan-Peraturan Polis 96. (1) Yang di-Pertuan Agong boleh membuat peraturan-peraturan yang bernama “Peraturan-Peraturan Polis” yang tidak berlawanan dengan Akta ini. (2) Khususnya dan tanpa menyentuh keluasan yang tersebut di atas, Yang di-Pertuan Agong boleh membuat Peraturan-Peraturan Polis, berhubungan dengan semua atau mana-mana perkara berikut: (a) kenaikan pangkat dan penurunan pangkat; (b) disiplin, termasuk pentakrifan kesalahan disiplin, prosedur disiplin dan mengawal selia dan melaksanakan hukuman; (c) kenaikan pangkat dan peperiksaan kemahiran; (d) perihal dan pengeluaran senjata, amunisi, perlengkapan, pakaian seragam dan keperluan untuk dibekalkan kepada anggota Pasukan dan kepada anggota badan lain yang ditubuhkan atau didirikan untuk menjalankan tugas polis di bawah Akta ini; (e) kebenaran untuk tidak hadir; (f) bayaran yang dikenakan kepada anggota awam atau pihak berkuasa berkanun bagi perkhidmatan tambahan dan khas oleh polis dan untuk salinan laporan, pelan dan gambar foto yang dibuat oleh pegawai polis; semua perkara yang, di bawah Akta ini, boleh diperuntukkan atau ditetapkan oleh Peraturan-Peraturan Polis dan Perintah Tetap 97. Ketua Polis Negara boleh mengeluarkan perintah pentadbiran, bernama “Perintah Tetap”, yang tidak berlawanan dengan Akta ini atau dengan kaedah-kaedah atau Peraturan-Peraturan Polis yang dibuat di bawahnya, untuk kawalan dan arahan dan maklumat am Pasukan dan semua badan yang ditubuhkan atau didirikan untuk menjalankan tugas polis di bawah Akta ini.

- (2) Suruhanjaya boleh menjalankan bidang kuasa tatatertib atas apa-apa aduan berkenaan dengan salah laku mana-mana anggota pasukan polis.
- (3) Suruhanjaya hendaklah menubuhkan Lembaga Tatatertib yang mempunyai bidang kuasa, dan terdiri daripada anggota, sebagaimana yang dinyatakan dalam Jadual.
- (4) Walau apa pun subseksyen (3), jika aduan salah laku itu terhadap Ketua Polis Negara, Ketua Setiausaha Negara hendaklah menubuhkan suatu Lembaga Tatatertib Khas untuk mendengar aduan itu dan prosiding di hadapan Lembaga Tatatertib Khas itu hendaklah dijalankan mengikut peraturan-peraturan yang dibuat di bawah Perkara 132 Perlembagaan Persekutuan.

x. Fasal 28(6) RUU IPCC 2020

Fasal 28(6) memperkatakan kuasa Suruhanjaya untuk mendapatkan dokumen atau benda lain daripada seseorang bagi maksud penyiasatan di mana persoalan yang mungkin timbul – Adakah Fasal tersebut tidak akan disalahgunakan (*abuse*) untuk mengelakkan mana-mana pihak daripada mengemukakan apa-apa dokumen yang boleh membantu siasatan?

(6) *Jika mana-mana anggota pasukan polis atau pegawai badan awam berpendapat bahawa suatu dokumen atau benda lain yang diminta oleh Suruhanjaya itu mengandungi maklumat yang akan memudaratkan keselamatan negara atau kepentingan negara, anggota pasukan polis atau pegawai badan awam itu hendaklah mendapatkan kelulusan Ketua Jabatan masing-masing sebelum mengemukakan dokumen atau benda lain itu kepada Suruhanjaya.*

xi. Mekanisme terhad untuk menerima aduan

Turut dibangkitkan, mengapakah saluran aduan menjadi terhad? Bagi menjawab persoalan ini, penelitian dibuat terhadap rumusan Laporan Jawatankuasa Pilihan Khas Menimbang Rang Undang-undang Suruhanjaya Bebas Aduan Salah Laku Polis 2019, Jawatankuasa bersetuju dan mengesyorkan supaya Suruhanjaya melaksanakan mekanisme pengurusan aduan yang lebih komprehensif melibatkan tapisan aduan-aduan sebagaimana dipraktikkan oleh IOPC melalui *Statutory Guidance* dan digubal sebagai peraturan (*regulation*) di bawah fasal 50 RUU IPCMC 2019 untuk menangani aduan berbentuk tohmahan yang tidak berasas terhadap anggota PDRM.

RUU IPCMC 2019

Aduan terhadap pasukan polis

24. (1) *Apa-apa aduan yang dibuat oleh mana-mana orang terhadap pasukan polis atau anggota pasukan polis hendaklah dibuat secara bertulis dan ditujukan kepada Jawatankuasa Aduan.*

RUU IPCMC 2019 -- Pindaan dalam Jawatankuasa

9. *Fasal 24 Rang Undang-undang dipinda –*

- (a) *dalam subfasal (1), dengan memotong perkataan “secara bertulis”; dan*
(b) *dengan memotong subfasal (4).*

Perenggan 9 bertujuan untuk meminda subfasal 24(1) untuk membolehkan orang awam untuk membuat aduan melalui pelbagai cara.

RUU IPCC 2020

Aduan terhadap anggota pasukan polis

24. (1) *Apa-apa aduan yang dibuat oleh mana-mana orang terhadap anggota pasukan polis hendaklah dibuat secara bertulis dan ditujukan kepada Jawatankuasa Aduan.*

xii. Kuasa Menahan

IPCC sebagai badan bebas sewajarnya mempunyai kuasa terhadap PDRM untuk menjalankan fungsi dan tanggungjawab dengan berkesan. Ketiadaan peruntukan seperti Fasal 29(3) IPCMC 2019 berkemungkinan menyebabkan fungsi Suruhanjaya tidak dapat dijalankan dengan berkesan.

RUU IPCMC

Fasal 29(3) Bagi maksud menyiasat apa-apa insiden di bawah seksyen 47, anggota Pasukan Petugas hendaklah mempunyai semua kuasa penyiasatan sebagaimana yang terkandung dalam Kanun Tatacara Jenayah [Akta 593] dan kuasa sedemikian hendaklah sebagai tambahan kepada kuasa yang diperuntukkan di bawah Akta ini dan tidak mengurangkan kuasanya di bawah Akta ini.

xiii. Hak-hak Anggota Polis

Ketiadaan Fasal berkenaan Hak-hak Anggota Polis yang disiasat mengikut RUU IPCC 2020 tidak dinyatakan secara jelas dalam RUU IPCC 2020. Persoalan yang timbul:

- i. Adakah pegawai yang disiasat diberi hak tertentu?
- ii. Apakah hak pegawai di bawah prosiding tatatertib dijamin oleh Rang Undang-undang itu?
- iii. Adakah aturan keadilan semula jadi (*rule of natural justice*) terpakai?
- iv. Apakah status *Police Bill of Right* dalam pelaksanaan RUU IPCC 2020?

Namun, apabila penelitian dibuat terhadap Laporan Jawatankuasa Pilihan Khas Menimbang Rang Undang-undang Suruhanjaya Bebas Aduan Salah Laku Polis 2019, Jawatankuasa bersetuju bahawa prinsip *natural justice* perlu dipatuhi tetapi tiada keperluan untuk menggubal *Bill of Rights* sebagai sebahagian daripada RUU IPCMC 2019 memandangkan IPCMC menerima pakai Peraturan-Peraturan Pegawai Awam (Kelakuan dan Tatatertib) 1993 [P.U.(A) 395/1993] dengan ubah suaian yang sewajarnya dalam usaha mengendalikan prosiding tatatertib terhadap anggota PDRM. Jawatankuasa juga bersetuju dengan pengesyoran supaya fasal 35, 36 dan 37 yang baharu dimasukkan bagi memberikan hak kepada mana-mana anggota PDRM yang terkilan dengan keputusan PBT PDRM untuk merayu ke Lembaga Rayuan Tatatertib Salah Laku Kecil IPCMC dengan syarat salah laku kecil itu diberikan tafsiran yang nyata dan jelas. Jawatankuasa seterusnya berpandangan bahawa terdapat keperluan untuk memasukkan mekanisme berkenaan rayuan bagi kes-kes selain salah laku kecil.¹⁵

xiv. Isu Keanggotaan, Kebajikan dan Prasarana Kerja

Menurut Laporan Suruhanjaya Siasatan Diraja Penambahbaikan Pasukan Polis 2005, antara cadangan RCI berkenaan adalah untuk memperkuuh pasukan polis dari segi kebijakan dan prasarana kerja serta hal-hal lain, termasuk meningkatkan jumlah keanggotaan.

Salah laku anggota mungkin berpunca daripada isu Keanggotaan, Kebajikan dan Prasarana Kerja yang menyebabkan moral anggota-

15 Jawatankuasa Pilihan Khas Menimbang Rang Undang-undang (n 2).

anggota yang berkhidmat menjadi rendah. Oleh itu, isu ini patut diberi perhatian sewajarnya.

Perbincangan

RUU berkaitan dengan perkara ini perlu memberikan perlindungan pada rakyat jelata dan adil kepada pemegang taruh terutama anggota-anggota PDRM kerana cadangan RUU ini memberi kesan terhadap mereka. Tidak dinafikan, RUU versi tahun 2005 yang dicadangkan melalui Suruhanjaya Diraja Penambahbaikan Perjalanan dan Pengurusan Polis Diraja Malaysia (PDRM) dan RUU IPCMC 2019 dilihat bersifat tidak adil kepada PDRM sehingga satu *Police Bill of Rights* dicadangkan bagi memastikan hak-hak dan keadilan dapat diberikan kepada anggota-anggota PDRM. Sebagai contoh, diberi hak untuk didengar, hak untuk diwakili peguam, hak untuk maklumat pertuduhan dinyatakan secara jelas dalam notis pertuduhan dan hak untuk dibekalkan apa-apa dokumen yang akan digunakan terhadapnya dalam prosiding tatatertib.

Polemik berkenaan perkara ini boleh dielakkan jika Dasar Negara bagi Amalan Baik Peraturan atau *National Policy on Good Regulatory Practice* (NPGRP)¹⁶ diguna pakai semasa proses penggubalan RUU ini. Namun, dasar ini mempunyai satu pengecualian kerana sebarang draf cadangan baru atau pindaan peraturan yang berkaitan dengan keselamatan dan kedaulatan negara dikecualikan daripada pemakaian Pekeliling Am ini. NPGRP ini memerlukan satu Analisis Impak Peraturan atau RIA dilaksanakan. Tujuan RIA adalah untuk meningkatkan kualiti dasar dan peraturan melalui analisis cadangan peraturan yang teliti, mantap dan menyatakan kos serta faedah; Menilai masalah melalui opsyen status quo, peraturan atau bukan peraturan; dan Memastikan penyelesaian dasar tertentu dapat menghasilkan keputusan yang dikehendaki.¹⁷

NPGRP mempunyai satu perbezaan dengan Dasar Negara bagi Pembangunan dan Pelaksanaan Peraturan (NPDIR) 2013¹⁸ kerana dasar ini memperlihatkan penggunaan *Behavioural Insights* atau pandangan tingkah laku sebagai satu daripada alat pengurusan Amalan Baik

16 Lihat ‘Dasar Negara Bagi Amalan Baik Peraturan (NPGRP)’ <https://www.jpm.gov.my/images/PDF/pekeliling_am/2021_-_PA_BIL_1_-_Dasar_Negara_Bagi_Amalan_Baik_Peraturan_NPGRP.pdf> dicapai 20 April 2022.

17 Jawatankuasa Pilihan Khas Menimbang Rang Undang-undang (n 2).

18 Lihat Pekeliling Am Bilangan 1 Tahun 2013. Dasar Negara Bagi Pembangunan Dan Pelaksanaan Peraturan <https://www.jpm.gov.my/images/PDF/pekeliling_am/Surat_Pekeliling_Am_Bil_1_Tahun_2013.pdf> dicapai 20 April 2022.

Peraturan. *Behavioural Insights* dibangkitkan kerana berdasarkan Isu-Isu Semasa Prosiding Jawatankuasa Pilihan Khas Menimbang Rang Undang-undang Mengenai RUU IPCMC 2019 menyentuh perkara berkenaan dengan kebijakan anggota PDRM yang melaksanakan tugasan dalam keadaan serba kekurangan yang meliputi aspek perjawatan, kelengkapan logistik dan kuarters.

Oleh itu, Kerajaan hendaklah menambah baik aspek kesejahteraan dan kebijakan anggota PDRM terlebih dahulu sebelum IPCMC dilaksanakan. Jawatankuasa Pilihan Khas Menimbang Rang Undang-undang telah mengesyorkan agar Kerajaan menyediakan peruntukan kewangan yang sewajarnya untuk meningkatkan fasiliti, logistik dan kebijakan seperti pemasangan kamera litar tertutup (CCTV) di lokap, pemakaian kamera badan (*body worn camera*) dan kenderaan pasukan PDRM. Jika kebijakan dititikberatkan, secara tidak langsung, perkara ini akan membangkitkan semangat anggota-anggota PDRM untuk berkhidmat dengan lebih baik serta isu-isu berkaitan dengan salah laku akan berkurangan.

Impak IPCC 2020

Penubuhan sebuah Suruhanjaya khusus yang dicadangkan seperti IPCMC 2019 dan IPCC 2020 boleh mengelakkan dakwaan penyiasatan secara tidak telus dan berat sebelah oleh pasukan PDRM dan secara tidak langsung boleh meningkatkan keyakinan orang awam untuk melaporkan salah laku kepada Suruhanjaya berkenaan. Penubuhan Suruhanjaya ini juga boleh digunakan sebagai platform untuk menambah baik penyampaian perkhidmatan anggota PDRM. Jawatankuasa Pilihan Khas Menimbang Rang Undang-undang juga bersetuju dan mengesyorkan Kerajaan menyediakan jumlah perjawatan dan kemudahan yang bersesuaian, peruntukan kewangan untuk latihan yang berterusan bagi membolehkan fungsi dan kuasa IPCMC dijalankan secara efektif.

Kesimpulan

Kedua-dua RUU yang digubal bagi penubuhan suatu badan pemantau bebas bagi menangani salah laku dalam kalangan anggota pasukan Polis Diraja Malaysia (PDRM) serta menambah baik operasi serta pengurusan PDRM telah mengundang kontroversi kerana penggubalan rang undang-undang tersebut tidak memenuhi hak, syor serta aspirasi sesetengah pihak. Pengamatan dan sorotan yang dilaporkan melalui media memperlihatkan RUU IPCC ini seolah-olah RUU yang baharu atau *a fresh bill*. Namun, jika diamati, RUU IPCC ini merupakan RUU

IPCMC kerana telah ditambah baik dengan memasukkan beberapa pindaan, hasil daripada input yang diperoleh daripada pemegang taruh yang berkenaan. Tiga puluh rumusan yang dikemukakan melalui Laporan Jawatankuasa Pilihan Khas Menimbang Rang Undang-undang Suruhanjaya Bebas Aduan Salah Laku Polis 2019 kebanyakannya menjawab polemik-polemik yang dibangkit.

Naratif yang dimainkan oleh pihak media melalui laman web mereka sendiri atau penerbitan artikel di laman web tertentu juga memainkan peranan dalam isu ini. Namun, naratif yang dimainkan condong ke arah negatif. Oleh itu, pihak Kementerian yang bertanggungjawab iaitu Kementerian Dalam Negeri disarankan untuk memantau dan mengawal naratif berkenaan dengan RUU ini. Pada masa yang sama terdapat beberapa penambahbaikan yang boleh dipinda dalam RUU IPCC 2020 ini bagi menjadikannya benar-benar membawa aspirasi yang dinyatakan dalam Laporan Suruhanjaya Diraja Penambahbaikan Perjalanan dan Pengurusan Polis Diraja Malaysia serta keperluan semasa.

Rujukan

“New’ IPCC an attempt to mislead Malaysia’ (*ALIRAN*, 3 September 2020)<<https://m.aliran.com/civil-society-voices/new-ipcc-an-attempt-to-mislead-malaysia>> dicapai 20 April 2022.

‘Dasar Negara Bagi Amalan Baik Peraturan (NPGRP)’ <https://www.jpm.gov.my/images/PDF/pekeliling_am/2021_-_PA_BIL_1__-Dasar_Negara_Bagi_Amalan_Baik_Peraturan_NPGRP.pdf> dicapai 20 April 2022.

‘Lebih 100 Undang-Undang Akan Digubal, Pinda, Perbaharui Atau Mansuh’ *BERNAMA* (23 Januari 2019) <<https://www.bernama.com/bm/am/news.php?id=1687925>> dicapai 20 April 2022.

Abdul Karim L.A., ‘IPCC tampil kelainan berbanding IPCMC’ *BH Online* (26 Ogos 2020) <<https://www.bharian.com.my/berita/nasional/2020/08/724825/ipcc-tampil-kelainan-berbanding-ipcmc>> dicapai 20 April 2022.

Akta Polis 1967 [Akta 344].

DR Deb 17 Oktober 2019, Bil 33, 111 <<https://www.parlimen.gov.my/files/hindex/pdf/DR-07102019.pdf>>.

Human Rights Watch, 'Malaysia: Proposed Law Reverses Police Reforms' (*Human Rights Watch*, 28 Oktober 2020) <<https://www.hrw.org/news/2020/08/28/malaysia-proposed-law-reverses-police-reforms>> dicapai 20 April 2022.

Input Penyelidikan berkenaan Rang Undang-undang Suruhanjaya Bebas Aduan Salah Laku Polis 2019 (RUU IPCMC) vs Rang Undang-undang (RUU) Suruhanjaya Bebas Tatakelakuan Polis (IPCC) dan Perbandingan Dengan The Independent Office for Police Conduct (IOPC) United Kingdom & Wales & The Independent Police Complaints Council (IPCC) Hong Kong <<http://e-prs.parlimen.gov.my/eprs/research/download/337>>.

Jawatankuasa Pilihan Khas Menimbang Rang Undang-undang, *Laporan Jawatankuasa Pilihan Khas Menimbang Rang Undang-undang Suruhanjaya Bebas Aduan Salah Laku Polis* (DR 2018-2023, DR.10/2019) <<https://www.parlimen.gov.my/ipms/eps/2019-11-27/DR.10.2019%20-%20DR.10%20Tahun%202019%20-%20Laporan%20Jawatankuasa%20Pilihan%20Khas%20Menimbang%20Rang%20Undang-Undang%20Suruhanjaya%20Bebas%20Aduan%20Salah%20Laku%20Poli.1.pdf>> dicapai 20 April 2022.

Laporan Suruhanjaya Diraja Penambahbaikan Perjalanan Dan Pengurusan Polis Diraja Malaysia, 2005.

Pekeliling Am Bilangan 1 Tahun 2013. Dasar Negara Bagi Pembangunan Dan Pelaksanaan Peraturan <https://www.jpm.gov.my/images/PDF/pekeliling_am/Surat_Pekeliling_Am_Bil_1_Tahun_2013.pdf> dicapai 20 April 2022.

Perlombagaan Persekutuan.

Rang Undang-undang (RUU) Suruhanjaya Bebas Tatakelakuan Polis (RUU IPCC 2020).

Rang Undang-undang Suruhanjaya Bebas Aduan Salah Laku Polis 2019 (RUU IPCMC 2019).

SUHAKAM, 'Media Statement Human Rights Commission Of Malaysia' (*SUHAKAM*, 27 Ogos 2020) <<https://suhakam.org.my/2020/08/press-statement-no-24-of-2020-suhakam-expresses-its-concerns-on-the-ipcc-bill-2020/>> dicapai 28 Ogos 2020.

Preventing Oversight on Medical Cannabis Legislation in Malaysia: Analysis of Risks, Benefits and Regulation Requirements

Mohamad Haniki Nik Mohamed^{}, Nor Ilyani Mohamed Nazar^{**},
Irna Elina Ridzwan^{***}, Nor Hidayah Mohd Taufek^{***} and
Norny Syafinaz Ab Rahman^{****}*

Abstract

The United Nations Office on Drug and Crime (UNODC) ranked cannabis as the most widely used substance worldwide in 2021. It has been predicted that the use will dramatically increase in the next five years due to an increasing number of countries starting to legalise it for medical purposes. In 1983, Malaysia declared the substance use problem as a national emergency. Since then, the government has taken many steps to establish a ‘country without illicit drugs’. To analyse risks, benefits and regulations of medical cannabis, a narrative review synthesising the findings of literature retrieved from computerised database search was conducted. Increasing evidence shows that legalising cannabis leads to an increased number of people starting to abuse this substance and become dependent on it, including the country that became the first to legalise cannabis. Although there are claims and studies reported that medical cannabis is needed to treat certain diseases, the decision to legalise cannabis in Malaysia needs to carefully weigh the risks and benefits.

* Professor Dr Mohamad Haniki Nik Mohamed is Professor at the Kulliyyah of Pharmacy, International Islamic University Malaysia (IIUM). Email: haniki@iium.edu.my

** Dr Nor Ilyani Mohamed Nazar is Assistant Professor at the Kulliyyah of Pharmacy, and Leader, Substance Use Disorder Research Group, International Islamic University Malaysia (IIUM).

*** Dr Irna Elina Ridzwan is Assistant Professor at the Kulliyyah of Pharmacy, International Islamic University Malaysia (IIUM).

**** Dr Nor Hidayah Mohd Taufek is Assistant Professor at the Kulliyyah of Pharmacy, International Islamic University Malaysia (IIUM).

***** Dr Norny Syafinaz Ab Rahman is Assistant Professor at the Kulliyyah of Pharmacy, International Islamic University Malaysia (IIUM).

After all, there are other FDA-approved medicines clinically proven to be safe and effective alternatives that are currently available to treat such diseases. The control of cannabis licensing and selling needs to be taken into serious consideration before deciding on the regulatory status of cannabis. Therefore, the best way to prevent the spike of cannabis abuse in Malaysia is by prohibiting possession, planting, harvesting and processing cannabis, even for personal use. The lack of high-quality clinical trials regarding the benefits and harms of cannabis for medical purposes should also be a major consideration before the decision to legalise cannabis is made.

Keywords: Benefits, Legislation, Medical Cannabis, Regulations, Risks

Introduction

Medical cannabis has been controversially coined since day one of its introduction. Many countries have legislatively amended cannabis from controlled to lesser regulated or unregulated substance groups. This is reflected in the United Nations Office on Drug and Crime (UNODC) report 2021, when cannabis was ranked as the most widely used substance worldwide. The prominent urge for the legalisation in several countries is mainly due to industrial and economic pressure and, to a certain extent, for medical reasons. In Malaysia, there is an overwhelming demand for the legalisation of medical cannabis specifically from the medical cannabis advocacy groups. Diverse stakeholders such as researchers, economists and politicians have also been lobbying the government with their expert opinions, market value projections and even political power. The advantages, especially from this country's medical and economic perspectives, are plausibly underscored. Numerous talks and seminars were conducted to invite interests from industrial players and grassroots community. They will, in due course, be the end-users of the developed substance. When tossing the information directly to the civil society, the incongruent basic understanding, such as the plant origin, cultivation control, compound involved for medical purposes, clinical use and related legislative issues, is far more worrying. Although a few Asian countries have followed suit with the decriminalisation and legalisation move, the Malaysian government is still maintaining its status quo to allow a more comprehensive evaluation of the implication of risks and benefits for the community of interest.

A narrative review was performed involving the literature retrieved from computerised database search on cannabis plant species, varieties

and relevant compounds, its recreational effects especially in the long run, evidence and recommendations on its medical use, the legalisation requirements as well as the implication of risks and benefits on the population. The search was conducted via PubMed, Cochrane Library, Google Scholar, official reports and websites from the United Nations Office, World Health Organisation, National Institute of Drug Abuse, Ministry of Health Malaysia and the National Anti-drug Agency with keywords ‘Cannabis’, ‘Medical Cannabis’, ‘Marijuana’, ‘Medical Marijuana’, ‘Benefits’, ‘Risk’, ‘Legalisation’ and ‘Regulation’. Summary of evidence retrieved in English language was synthesised and reviewed by five experts from the Substance Use Disorder Research Group (SUDRG), Kulliyyah of Pharmacy, International Islamic University Malaysia (IIUM).

Understanding the Cannabis sp. Plant and Its Effects

Cannabis is a herbaceous plant consisting of at least three main species, namely *Cannabis sativa L.*, *Cannabis indica* and *Cannabis ruderalis*. *Cannabis sativa* is the most widely found and grown species worldwide. This plant contains at least 540 types of alkaloids and >100 phytocannabinoids with the main ones being delta-9-tetrahydrocannabinol (THC) and cannabidiol (CBD).¹ THC is the main alkaloid of cannabis that exerts the psychoactive effects or affecting the mind of its users.² CBD, on the other hand, is a non-psychotomimetic compound with some evidence on its medical and health benefits.³ CBD constitutes 40% of the plant’s active substances.⁴ The active constituent of cannabis resides in dried leaves, resin, seeds, stems, flowers and oil of the plant, and these make the whole plant usable and consumable.⁵ The oil, originated from the dry exudates of the leaves, is better known as hashish.⁶ The term cannabis or

-
- 1 M.R. Amin and D.W. Ali, ‘Pharmacology of Medical Cannabis’ (2019) *Adv Exp Med Biol* 1162, 151-165.
 - 2 F. Zulfiqar and others, ‘Cannabisol, a novel D9-THC dimer possessing a unique methylene bridge, isolated from Cannabis sativa’ (2012) 53 *Tetrahedron Letters* 3560-3562.
 - 3 D.L. Boggs and others, ‘Clinical and Preclinical Evidence for Functional Interactions of Cannabidiol and Δ9-Tetrahydrocannabinol’ (2018) 43(1) *J Neuropsychopharmacology* 142-154.
 - 4 A.R.M. Scheir and others, ‘Cannabidiol: a Cannabis sativa constituent, as an anxiolytic drug’ (2012) 34(1) *Official Journal of the Brazilian Psychiatric Association* S104-S117.
 - 5 W. Hall and L. Degenhardt, ‘Medical marijuana initiatives: are they justified? How successful are they likely be?’ (2003) 17(10) *CNS Drugs* 689-697.
 - 6 D.E. Greydanus and others, ‘Marijuana: current concept’ (2013) (42) *Frontiers in Public Health* 1, 1-17.

marijuana refers to cannabis plants with high THC content while hemp refers to cannabis plants with low THC content (<0.3%) and high CBD content that has low risk of abuse.⁷

The primary effects of THC from cannabis are mediated through partial agonism of central and peripheral cannabinoid receptors of the endogenous cannabinoid system; cannabinoid 1 receptor (CB_1R) and cannabinoid 2 receptor (CB_2R).⁸ Its predominant action at the CB_1R receptor is believed to produce its psychoactive effects such as euphoria (high), anxiety, paranoia, perceptual alteration and cognitive deficits; whereas its action at the CB_2R is primarily responsible for some immunological and anti-inflammatory cascades.⁹ Since THC is excreted via hepatic and renal mechanisms, a more exaggerated and prolonged side effects are expected in individuals with hepatic or renal impairment.¹⁰

In contrast to THC, evidence showed that CBD exerts its pharmacological effects *in vivo* through facilitatory interaction with serotonin 1A ($5\text{-HT}_{1\text{A}}$).¹¹ It was also found to have some activities at delta and μ opioid receptors.¹² Hence, many pre-clinical and clinical studies conducted to evaluate its potential on health and medical benefits.

Globally, cannabis is among the psychoactive substances with high consumption after tobacco and alcohol. In 2019, about 200.4 million or around 4% of the world's population aged 15-64 years were cannabis

-
- 7 R.E. Aluko, 'Hemp seed (*Cannabis sativa L.*) proteins: composition, structure, enzymatic modification, and functional or bioactive properties' in S. Nadathur, J.P.D. Wanasundara and L. Scanlin (eds), *Sustainable protein sources* (Academic Press, 2017).
 - 8 G.A. Cabral and others, 'CB2 receptors in the brain: role in central immune function' (2008) 153(2) *British Journal of Pharmacology* 240–251.
 - 9 R.G. Pertwee, 'The diverse CB1 and CB2 receptor pharmacology of three plant cannabinoids: delta9-tetrahydrocannabinol, cannabidiol and delta9-tetrahydronabivarin' (2008) 153(2) *British Journal of Pharmacology* 199–215.
 - 10 S. Medina and M. Khawand-Azoulai, 'Palliative Care and Symptom Management in Breast and Gynecological Cancers in Adrian Cristian (ed), *Breast Cancer and Gynecologic Cancer Rehabilitation* (Elsevier, 2021).
 - 11 F.V. Gomes and others, 'Cannabidiol injected into the bed nucleus of the stria terminalis reduces the expression of contextual fear conditioning via 5-HT1A receptors' (2012) 26(1) *Journal of Psychopharmacology* 104–113; I.E.M. Magen and others, 'Cannabidiol ameliorates cognitive and motor impairments in bile-duct ligated mice via 5-HT1A receptor activation' (2010) 159(4) *British Journal of Pharmacology* 950–957; C.A. Stern and others, 'On disruption of fear memory by reconsolidation blockade: evidence from cannabidiol treatment' (2012) 37(9) *Neuropsychopharmacology* 2132–2142.
 - 12 Pertwee (n 9).

users.¹³ In Malaysia, statistics on drug use from 2018 to 2020 showed that cannabis use was only recorded between 3% to 5%. However, tobacco and cannabis are believed to be the starting substances of a person's involvement with other illicit drugs.¹⁴

Recreational Cannabis

The use of cannabis with tobacco or nicotine is a very common case.¹⁵ Cannabis is mixed with tobacco when smoking due to the perfect complement by targeting the similar neuronal receptor system in the brain that leads to intense 'high' state¹⁶ as these two substances can be consumed through the same route. Initially, the combination of these substances is used to assist in burning or to titrate the effect of cannabis. Eventually, this led the cannabis users to nicotine exposure and dependence.¹⁷ The THC constituent in cannabis eases the anxiety-generating properties of nicotine.¹⁸ Moreover, smoking tobacco cancels out the sedative effects of cannabis.

Addiction and dependence on cannabis can occur even if some claim that cannabis does not cause addiction. In the United States of America (US) for example, addiction and dependence on marijuana increased from 30.2% in 1992 to 35.6% in 2002. Addiction and dependence on cannabis can occur within a year in users who start smoking marijuana. Being the leading substance used by the population worldwide, cannabis use and abuse are predicted to increase even more in five years.¹⁹ Cannabis

13 United Nations Office on Drugs and Crime, *World Drug Report 2021* (United Nations publication, Sales No. E.21.XI.8).

14 Agensi Antidadah Kebangsaan, Kementerian Dalam Negeri, *Buku Maklumat Dadah* (Putrajaya, 2020).

15 K.W. Clements and others, 'The demand for marijuana, tobacco and alcohol: inter-commodity interactions with uncertainty' (2009) 39(1) *Empirical Economics* 203-239; D.E. Ramo and J.J. Prochaska, 'Prevalence and co-use of marijuana among youth adult cigarette smokers: an anonymous online national survey' (2012) 7(5) *Addiction Science & Clinical Practice*.

16 M.L. Rubinstein and others 'Frequent marijuana use is associated with greater nicotine addiction in adolescent smokers' (2014) 141 *Drug and Alcohol Dependence* 159-162; J.S. Zeiger and others, 'Subjective effects for alcohol, tobacco, and marijuana association with cross-drug outcomes' (2012) 123 *Drug and Alcohol Dependence* S53-S58.

17 Rubinstein and others (n 16).

18 G.L. Ream and others, 'Smoking tobacco along with marijuana increases symptoms of cannabis dependence' (2008) 95(3) *Drug and Alcohol Dependence* 199-208.

19 World Drug Report, Booklet 2: *Global overview of drug demand and drug supply* (Vienna, Austria, UNODC Research, 2021).

is strongly believed to serve as gateway to other 'harder' substances such as amphetamines, cocaine and heroin. The percentage of cannabis harm rate is 20% compared to 23% for amphetamines. The harmful effects on other people are higher than that on users of both cannabis and amphetamines.²⁰ Cannabis consumption can increase the risk of road accidents due to movement control disorders, cause psychological disorders and increase the risk of developing psychosis and depression. Because cannabis can also interfere with brain function associated with learning and memory processes, taking cannabis can lead to the risk of job loss and dropouts in learning, especially for adolescents.²¹

Various studies were conducted to assess the long-term effects of cannabis use on health. Respiratory system problems such as chronic cough, increased production of phlegm, pneumonia, chest pain, decreased lung function and lung infections were reported among cannabis users. In addition, the use of high amounts of cannabis and smoke resulting from the habit of smoking cannabis could be the cause of cancer.²² Although some studies claimed that THC and CBD might lower the risk of cancer, their evidence was still relatively weak.²³

According to the National Institute of Drug Abuse (NIDA) report, smoking cannabis is more dangerous than smoking cigarettes because the inhaled tar remains in the lungs in higher quantities.²⁴ This is closely related to the methods and tools used to smoke the cannabis. The consumption of one cannabis pipe is equivalent to the consumption of 2.5 to 5 cigarettes for high amount of cannabis use.²⁵ About 50% of the THC in a joint (rolled cannabis for smoking) enters the brain within minutes.²⁶

-
- 20 D.J. Nutt and others, 'Drug harms in the UK: a multicriteria decision analysis' (2010) 376(9752) *Lancet* 1558-1565.
 - 21 V. Antičević and others, 'The personality traits and social characteristics of Croatian heroin addicts and cannabis users' (2011) 35(3) *Collegium antropologicum* 701-707; J.L. Bottorf and others, 'Relief-oriented use of marijuana by teens' (2009) 4(1) *Substances Abuse Treatment, Prevention, and Policy*; J. McLaren and R. Mattick 'Towards a national cannabis strategy' (2003) 6(1) *Of Substance: The National Magazine on Alcohol, Tobacco, and Other Drugs* 15; J. Pereira and T. Wiegand, 'Marijuana' (2014) 3 *Encyclopedia of Toxicology* 157-159. Elsevier Inc.
 - 22 J. McLaren and R. Mattick, 'Towards a national cannabis strategy' (2013) 4(1) *Of Substance: The National Magazine on Alcohol, Tobacco and Other Drugs* 15.
 - 23 Greydanus and others (n 6).
 - 24 McLaren and Mattick (n 22); M.L. Howden and M.T. Naughton, 'Pulmonary effects of marijuana inhalation' (2011) 5(1) *Expert Review of Respiratory Medicine* 87-92.
 - 25 Greydanus and others (n 6).
 - 26 J. Pereira and T. Weigand, 'Marijuana' (2014) *Encyclopedia of Toxicology*, 2nd Ed. Elsevier Inc.

Cannabis consumption can also cause harmful effects to the heart, especially for the elderly and those with a history of heart disease.²⁷ Such harmful effects include heart attack, stroke, rapid heartbeat and heart failure.²⁸ Heart rate was found to increase within two minutes after smoking cannabis even at low concentrations.²⁹ This is also supported by other studies that found smoking cannabis could instantly increase heart rate by 20% to 100% and this effect lasted for three hours.³⁰ Users also experienced a 4.8% increased risk of having a heart attack within the first hour of smoking cannabis. The abnormality to the heart was almost identical to that observed in cocaine users.³¹

Medical Cannabis

History shows that cannabis has been used for millennia to reduce pain and other somatic and psychological symptoms. Cannabis-based products for medical use contain cannabinoids derived from the cannabis plant, including THC, CBD, or a combination of THC and CBD. Synthetic cannabinoids for medical use typically mimic the effects of specific cannabinoids such as THC.³² Cannabis in its natural form or pharmaceutically produced drugs (e.g., dronabinol) have been studied over the recent years and reported to have potential efficacy in reducing pain, muscle spasticity, fibromyalgia, chemotherapy-induced nausea and vomiting, intractable childhood epilepsy (e.g., Lennox-Gastaut syndrome), Chron's disease, ulcerative colitis, dementia, Alzheimer's, anxiety, post-traumatic stress disorder (PTSD), multiple sclerosis (MS), glaucoma, as well as to help improve the appetite of patients with acquired immunodeficiency syndrome (AIDS).

A THC/CBD combination product (e.g., nabiximols or Sativex®), is a prescription-based botanical drug developed from a 1:1 combination of

27 McLaren and Mattick (n 22).

28 Greydanus and others (n 6).

29 A. Liguori and others, 'Separate and combined side effects of marijuana and alcohol on mood, equilibrium and simulated driving' (2002) 163(3) *Psychopharmacology* 399-405.

30 Z. Latif and N. Garg, 'The impact of marijuana on the cardiovascular system: a review of the most common cardiovascular events associated with the marijuana use' (2020) 9(6) *Journal of Clinical Medicine* 1925.

31 Greydanus and others (n 6).

32 T.P. Freeman and others, 'Changes in delta-9-tetrahydrocannabinol (THC) and cannabidiol (CBD) concentrations in cannabis over time: systematic review and meta-analysis' (2021) 116(5) *Addiction* 1000.

two selected cannabis strains. One strain, tetranabinex yields a high THC content and the other, nabidiolex yields a high CBD content. The flowers are dried, extracted and utilised to formulate nabiximols. Nabiximols mainly consists of THC and CBD (70% w/w) and other phytocannabinoids derived from the plant material.³³ The 1:1 combination of THC:CBD appears to allow for higher doses of THC without increasing the risk of adverse effects as CBD acts to antagonise some of the psychoactive and sedative effects of THC without interfering with intended THC effects such as muscle relaxation and reduction of spasticity.³⁴

Recently, many Malaysians were shocked by the news involving a local singer-composer who allegedly grew marijuana for the treatment of his mental disorder.³⁵ However, the use of cannabis or its psychoactive substance as a drug has been questioned in terms of its effectiveness and safety for such purposes. On the other hand, epidemiological study evidence confirms that marijuana use may increase the risk of psychotic disorders or psychosis.³⁶ In fact, the psychotropic effects of THC resemble the symptoms of psychotic disorders, including paranoia, sensory changes, euphoria and hallucinations.³⁷

Psychosis is a mental disorder that impairs the ability to distinguish reality from fiction. This includes delusions, hallucinations and disorganised speech and behaviour.³⁸ High dose of cannabis can lead to hallucination manifested as sensing things that are not actually present.³⁹ There is also risk of developing schizophrenia in heavy cannabis users. In addition, for those who already suffer from this illness, the disease will worsen. It is proven that the rate of hospitalisation is increased

-
- 33 E. Russo and G.W. Guy, 'A tale of two cannabinoids: the therapeutic rationale for combining tetrahydrocannabinol and cannabidiol' (2006) 66(2) *Medical Hypotheses* 234–246.
 - 34 D.L. Boggs and others, 'Clinical and Preclinical Evidence for Functional Interactions of Cannabidiol and Δ9-Tetrahydrocannabinol' (2018) 43(1) *Neuropsychopharmacology* 142–154.
 - 35 See <<https://www.nst.com.my/news/crime-courts/2022/03/783271/singer-composer-suspected-cultivating-ganja-plants-remanded-seven>> accessed 12 April 2022.
 - 36 S. H. Gage and others, 'Association between cannabis and psychosis: epidemiologic evidence' (2016) 79(7) *Biological psychiatry* 549–556.
 - 37 D.C. D'Souza and others, 'The psychotomimetic effects of intravenous delta-9-tetrahydrocannabinol in healthy individuals: implications for psychosis' (2004) 29(8) *Neuropsychopharmacology* 1558–1572 <doi: 10.1038/sj.npp.1300496>.
 - 38 McLaren and Mattick (n 22).
 - 39 Greydanus and others (n 6); Barrett and others, 'Hallucinations following acute cannabis dosing; a case report and comparison to other hallucinogenic drugs' (2018) 3(1) *Cannabis and Cannabinoid Research* 85–93.

in schizophrenic patients who took cannabis.⁴⁰ Repeated exposure to cannabis sensitised the mesolimbic pathway in the brain, which makes it vulnerable to people with underlying psychosis.⁴¹ Cannabis will damage the endocannabinoid system due to the disturbance that it may cause. The risk of getting schizophrenia is raised by two times due to cannabis interference with the endocannabinoid system.⁴² Psychosis effects are far stronger to those who took cannabis at the early stage (before 16 years old) because the brain is still developing and will be more exposed to alterations caused by cannabis and its constituents. Increased risk of depression, anxiety and paranoia has been observed in cannabis users at this age.⁴³

Some studies suggested that CBD might attenuate the schizophrenia-like symptoms in people who use cannabis.⁴⁴ However, research does not support recommending medical cannabis (THC or CBD) to treat patients with schizophrenia. Further research should examine THC and CBD in schizophrenia with and without comorbid cannabis use disorder (CUD) and may consider the role of CBD in mitigating symptom exacerbation from THC.⁴⁵

The current body of evidence regarding cannabinoid therapeutics in psychiatry is still scant and it is considered premature to recommend cannabinoid-based interventions. Indeed, few studies revealed tentative support for CBD for reducing social anxiety and mixed evidence for adjunctive use in schizophrenia. Weak evidence from case studies suggested that medical cannabis might be useful to improve sleep and PTSD. The results from preliminary research involving THC showed that there was no benefit for depression or for CBD in mania. Only one study suggested some potential benefits for an oral cannabinoid/terpene combination for attention deficit hyperactivity disorder (ADHD).⁴⁶

40 Greydanus and others (n 6).

41 A.J. Porath-Waller and others, 'A meta-analytic review of school based prevention for cannabis use' (2010) 37(5) *Health Education & Behavior* 709-723.

42 Greydanus and others (n 6).

43 A.J. Porath-Waller and others (n 41); Liguori and others (n 29); W. Hall and Degenhardt, 'Cannabis use and the risk of developing psychotic disorder' (2008) 7(2) *World Psychiatry* 68-71.

44 C. Morgan and H. Curran, 'Effects of cannabidiol on schizophrenia-like symptoms in people who use cannabis' (2008) 192(4) *British Journal of Psychiatry* 306-307.

45 S. Ahmed and others, 'The Impact of THC and CBD in Schizophrenia: A Systematic Review' (2021) 23(12) *Front Psychiatry* 1225.

46 J. Sarris and others, 'Medicinal cannabis for psychiatric disorders: a clinically-focused systematic review' (2020) 20(1) *BMC Psychiatry* 24 <doi: 10.1186/s12888-019-2409-8>.

In the case of dementia, there is no evidence that cannabinoids are effective in the treatment of behavioural disorders or other symptoms of dementia⁴⁷ and there is no relevant evidence-based clinical guidelines regarding the use of medical cannabis for treating dementia.⁴⁸ Whereas for multiple sclerosis (MS) patients, nabiximols was reported as safe and effective for patients with MS whose spasticity could not be treated with the first-line oral drugs. However, there is no scientific evidence that smoking marijuana can be beneficial to patients with MS.⁴⁹

Cannabis-based drugs have been found to be useful for treating refractory chemotherapy-induced nausea and vomiting. However, current study methods and chemotherapy regimens as well as newer anti-emetic drugs may change this conclusion.⁵⁰

The same goes for studies that investigate the effectiveness of cannabis to reduce pain associated with cancer. A systematic review included five studies which showed pain reduction, two showed no change while six could not provide certainty. Authors concluded that the potential benefits of treating chronic neuropathic pain with cannabis-based medicines (herbal cannabis, plant-derived or synthetic THC, THC/CBD oromucosal spray) may be outweighed by their potential harmful effects.⁵¹

Cannabis has also been used for fibromyalgia, a clinically well-defined chronic condition of unknown aetiology characterised by chronic widespread pain that often co-exists with sleep problems and fatigue. Treatment focuses on reducing the main symptoms and disabilities, as well as improving quality of life. However, there are no convincing and high-quality studies that nabilone, a synthetic drug derived from

-
- 47 S. Krishnan and others, 'Cannabinoids for the treatment of dementia' (2009) 2 *Cochrane Database of Systematic Reviews* Art. No.: CD007204. <DOI: 10.1002/14651858.CD007204.pub2>.
 - 48 K. Peprah and S. McCormack, *Medical Cannabis for the Treatment of Dementia: A Review of Clinical Effectiveness and Guidelines* (Ottawa, Canadian Agency for Drugs and Technologies in Health, 2019).
 - 49 Y.D. Fragoso and others, 'Cannabis and multiple sclerosis' (2020) 20(8) *Expert Review of Neurotherapeutics* 849-854 <doi: 10.1080/14737175.2020.1776610>.
 - 50 L.A. Smith and others, 'Cannabinoids for nausea and vomiting in adults with cancer receiving chemotherapy' (2015) 11 *Cochrane Database of Systematic Reviews* <DOI: 10.1002/14651858.CD009464.pub2>.
 - 51 M. Mücke and others, 'Cannabis-based medicines for chronic neuropathic pain in adults' (2018) 3 *Cochrane database of systematic reviews* <DOI: 10.1002/14651858.CD012182.pub2>.

cannabis, plays a role in treating people with fibromyalgia. Furthermore, tolerability to nabilone was found to be low in these patients.⁵²

As for the treatment of rheumatoid arthritis-related pain, one small, low-quality study assessing oromucosal cannabis versus placebo found a small difference in favour of cannabis in the oral rating score of ‘pain at the moment’ after a five-week period of treatment. However, patients who received cannabis were more likely to experience the incidence of side effects, such as dizziness (26%), dry mouth (13%) and light headedness (10%). In conclusion, cannabis has more pronounced side effects and its potential harms outweigh any benefits that patients get.⁵³

Cannabis has also been studied for Lennox-Gastaut syndrome (LGS), an age-specific epilepsy syndrome characterised by multiple seizure types, including drop seizures. LGS has a characteristic electroencephalogram, an onset before age 8 years old and an association with drug resistance. A recent systematic review included two studies involving CBD in children and adolescents which did not show overall cessation or reduction of seizures. On the other hand, 72 more people per 1000 experienced adverse effects with add-on cannabidiol that led to their discontinuation from the study.⁵⁴

There are still no clear results of studies on the effectiveness and safety of cannabis and cannabis oil in adults with active Crohn’s disease or ulcerative colitis (UC). Also, there is no evidence for the use of cannabis or CBD to maintain UC in remission.⁵⁵

Medical cannabis in patients with glaucoma was investigated in 14 eligible publications, including one systematic review without meta-analysis and one book section. Of all studies, one investigated the effect of medical cannabis on intraocular pressure, and this study indicated no change in the outcome.⁵⁶

Finally, the evidence for the efficacy and safety of cannabis and CBD for AIDS patients is also being disputed. The studies were short-term

52 B. Walitt and others, ‘Cannabinoids for fibromyalgia’ (2016) 7 *Cochrane Database of Systematic Reviews* <DOI: 10.1002/14651858.CD011694.pub2>.

53 B.L. Richards and others, ‘Neuromodulators for pain management in rheumatoid arthritis’ (2012) 1 *Cochrane Database of Systematic Reviews* <DOI: 10.1002/14651858.CD008921.pub2>.

54 F. Brigo and others, ‘Anti-seizure medications for Lennox-Gastaut syndrome’ (2021) 4 *Cochrane Database of Systematic Reviews* <DOI: 10.1002/14651858.CD003277.pub4>.

55 T.S. Kafil and others. ‘Cannabis for the treatment of ulcerative colitis’ (2018) 11 *Cochrane Database of Systematic Reviews* <DOI: 10.1002/14651858.CD012954.pub2>.

56 S.A. Millar and others, ‘A systematic review of cannabidiol dosing in clinical populations’ (2019) 85(9) *British Journal of Clinical Pharmacology* 1888–900.

and involved a small number of patients. Long-term data showing ongoing effects on AIDS-related morbidity and death and safety to patients taking effective antiretroviral therapy are still needed.⁵⁷

In summary, most of the studies on the safety and efficacy of marijuana reported results that were inconclusive or mixed. Only studies involving the use of cannabis in the treatment of chronic non-cancer pain, cancer, epilepsy and MS reported better effects. However, there are several studies in the treatment of cancer, chronic non-cancer pain, Crohn's disease, glaucoma and MS have found that the patients either felt worse or did not experience any significant differences. Furthermore, among the reviews of high-quality studies, the use of cannabis reported to have a better effect was only for the treatment of chronic non-cancer pain and epilepsy.

Legislation

Legislative provisions in the form of possession, distribution, cultivation and use of cannabis for recreational and medical purposes are currently different from country to country. Most countries still prohibit the use of cannabis for recreational purposes and it is still subject to the laws governing the substance. However, some countries have adopted a policy of decriminalisation whereby the possession of this substance is no longer a crime. Among the countries that have allowed the use of cannabis for recreational purposes include Canada, the US, and the Netherlands. Some countries such as Canada and Uruguay also allow the sale of cannabis commercially and in the Netherlands, the sale of cannabis is allowed in licensed stores.

In the US, Colorado had become the first state to legalise cannabis in December 2012 for recreational sales, followed by Washington. Initially, about 20 states including Columbia had legalised cannabis for medical purposes.⁵⁸ Immediately, following legalisation in Colorado, 136 retail stores obtained license to sell cannabis throughout Colorado. The public can buy up to one ounce of taxable cannabis for either recreational or medical purposes if they present a medical marijuana registry card or better known as the 'red card'.⁵⁹

⁵⁷ E.E. Lutge and others, 'The medical use of cannabis for reducing morbidity and mortality in patients with HIV/AIDS' (2013) 4 *Cochrane Database of Systematic Reviews* <DOI: 10.1002/14651858>.

⁵⁸ R.G. Morris and others, 'The effect of medical marijuana laws on crime: evidence from state panel data, 1990-2006' (2014) 9(3) *PLoS One* e92816.

⁵⁹ R. Benmamar, 'Colorado: a first in the USA for legal sale of marijuana' (2014) 15(2) *The Lancet oncology* E55.

To date, a total of 44 countries have allowed cannabis use for medical purposes including Thailand, the only country in Southeast Asia that has allowed cannabis oil to be used. Users are allowed to possess cannabis oil containing THC in an amount not exceeding 0.2% for medical purposes and must have a recognised prescription or certificate. Cannabis was listed as a controlled drug under the Thai Narcotics Act. The license for the production and sale of cannabis products is still strictly regulated by the Thai government. The current laws and regulations for those who are caught smoking or possessing cannabis is still a long time of incarceration. Recently, the Thai government has officially removed cannabis and hemp from the Category V list of Narcotics Act.⁶⁰ As a result, all parts of cannabis plants including flowers and seeds are allowed for use of medical and research purposes. Cannabis for recreational use is still not allowed in Thailand, but cultivation of cannabis plants is permissible for personal use only and it must be in small amounts and registration with the authorities is required. The Thai government established a multilevel system around manufacturing, prescribing, monitoring and evaluation, to ensure appropriate implementation of the changed legislation and to mitigate against potential adverse outcomes. Although composition of cannabis in products legalised for medical purposes has been standardised, THC content is still varied between batches, which signifies strict quality control for manufacturing is highly warranted. Due to the limited availability of the authorised products and prescribers, people continue to obtain cannabis-based products from folk healers and black markets.⁶¹

In the US, cannabis is classified as a Schedule 1 substance under the Controlled Substances Act and remains illegal at the federal level. Medical cannabis is currently legal in 37 states of the US and as of mid2021, it is estimated that there were 5.4 million state-legal patients of medical cannabis.⁶² Although medical cannabis is legal at state level, the US Department of Justice reserves the right to enforce the laws enacted by the Congress when pursuing prosecutions related to marijuana offences. At the state level, dispensaries of cannabis are allowed but

60 See <<https://thediplomat.com/2022/02/thailand-drops-cannabis-from-its-list-of-controlled-narcotics/>>.

61 N. Zinboonyahgoon and others, ‘Medicinal cannabis in Thailand: 1-year experience after legalization’ (2021) 162 *Pain* S105-S109.

62 See <<https://www.mpp.org/issues/medical-marijuana/state-by-state-medical-marijuana-laws/medical-marijuana-patient-numbers/>> accessed 12 April 2022.

some states put restrictions on the dosage form and doses of products that are allowed to be dispensed. For instance, Minnesota only allows liquid extract products, while New York allows ingested doses with not more than 10mg of THC and not a smoked product.⁶³

In Malaysia, strict laws are still imposed on all cannabis-related offences including mandatory death sentence if an individual has more than 200g of cannabis as stipulated under the Dangerous Drugs Act 1952.⁶⁴ The use of cannabis for recreational and medical purposes has yet to be allowed in Malaysia despite efforts to allow the use of cannabis for medical purposes have been discussed in the cabinet since 2018.⁶⁵

The legalisation of substances with a high risk of abuse or addiction for medical purposes requires comprehensive data to weigh the benefits and risks to patients and the public. Malaysia needs to examine and learn from the experience of countries that have approved the cultivation of cannabis plants for their own use and medical purposes. For example, in Australia, the legalisation of medical cannabis began in November 2016. Views from the public, scientific data and explanations from experts have been considered towards allowing cannabis-based products to be prescribed for a range of diseases by registered medical practitioners specifically trained to treat patients using medical cannabis products. Australia has published clinical guidelines allowing more than 30,000 indications for over 100 types of cannabis products for medical purposes primarily for chronic diseases.⁶⁶ Transparency at every level in producing, distributing and using cannabis products to treat patients is essential to avoid a greater risk of abuse and harm among the public. Malaysia should scrutinise the risks at all levels to prevent the issues of smuggling and abuse from worsening in the country.

The US National Institute of Drug Abuse (NIDA) stated that it is relatively safer to use medical cannabis with accurate composition of chemicals extracted from the plant compared to the whole cannabis

63 See <<https://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx>> accessed 15 April 2022.

64 See <<https://www.pharmacy.gov.my/v2/en/documents/dangerous-drugs-act-1952-and-regulations.html>> accessed 12 April 2022.

65 See <<https://www.straitstimes.com/asia/se-asia/malaysia-in-talks-to-become-first-in-asia-to-allow-medical-pot>> accessed 12 April 2022.

66 N. Lintzeris and others, 'Medical cannabis use in the Australian community following introduction of legal access: the 2018–2019 Online Cross-Sectional Cannabis as Medicine Survey (CAMS-18)' (2020) 17(1) *Harm Reduction Journal* 37 <<https://doi.org/10.1186/s12954-020-00377-0>>.

plant itself.⁶⁷ Nevertheless, there was insufficient evidence regarding the significant effectiveness of specific disease treatment as well as the long-term adverse outcomes among patients receiving medical cannabis such as stroke, psychosis and any mental disorders. For example, a meta-analysis highlighted that marijuana use among adolescents increased the risk of depression and suicide attempts by 1.37 and 3.46 times more than those who did not use marijuana respectively,⁶⁸ and caused early onset of psychosis.⁶⁹ Severe mental disorders can cause serious problems to individuals receiving medical cannabis for chronic diseases which could harm the public.

When an addictive substance is made into prescription medicines, the risk of abuse should be carefully evaluated. The opioid epidemic in the US stemmed from addiction developed in patients from taking oxycodone (OxyContin®) has led to a lawsuit filed against Purdue Pharma that initially claimed safety without much warning of the medication addictive effects.⁷⁰ It was well reported that the three most abused and misused prescription medicines included opioids, central nervous system depressants and stimulants.⁷¹ The fact that cannabis can act as a stimulant drug, a tranquilizer and hallucinogen may certainly pose the risk of abuse and psychiatric problems.⁷² The prescription medicines designed with clinically efficacious sedative, analgesic, anxiolytic, anaesthetic or stimulant properties has also led to the emergence for their abuse.⁷³ In

67 See <<https://nida.nih.gov/publications/research-reports/marijuana/marijuana-safe-effective-medicine>> accessed on 14 April 2022.

68 G. Gobbi and others, 'Association of Cannabis Use in Adolescence and Risk of Depression, Anxiety, and Suicidality in Young Adulthood: A Systematic Review and Meta-analysis' (2019) 76(4) *JAMA Psychiatry* 426-434 <[doi:10.1001/jamapsychiatry.2018.4500](https://doi.org/10.1001/jamapsychiatry.2018.4500)>.

69 S. J. Van der Steur and others, 'Factors moderating the association between cannabis use and psychosis risk: a systematic review' (2020) 10(2) *Brain sciences* 97.

70 P.C. Webster, 'Oxycodone class action lawsuit filed' (2012) 184(7) *Canadian Medical Association Journal* E345–E346 <<https://doi.org/10.1503/cmaj.109-4158>>.

71 National Institute of Drug Abuse (NIDA) (2022) <<https://nida.nih.gov/publications/research-reports/misuse-prescription-drugs/overview>> accessed on 14 April 2022.

72 E.F. Domino, 'Neuropsychopharmacologic studies of marijuana: Some synthetic and natural THC derivatives in animals and man' (1971) 191(1) *Marijuana: Chemistry, Pharmacology, and Patterns of Social Use* 166-191; A.D. Hathaway and J. Sharpley 'The cannabis experience: An analysis of flow' in D. Jacquette (ed), *Cannabis: What were we just talking about?* (Wiley-Blackwell, 2010) <<https://doi.org/10.1002/9781444324440.ch3>>.

73 S. H. Hernandez and L.S. Nelson, 'Prescription drug abuse: insight into the epidemic' (2010) 88(3) *Clinical pharmacology and therapeutics* 307–317 <<https://doi.org/10.1038/clpt.2010.154>>.

the US, the 2018 National Survey on Drug Use and Health has reported that prescription pain reliever misuse was the second most common form of illicit drug use.⁷⁴ Lessons should be learned from the opioid epidemic that happened in the US that led to nearly 500,000 people dying from an overdose involving any opioid, including prescription and illicit opioids between 1999–2019.⁷⁵

The prevalence of prescription medicine abuse was highly dependent on ease of access. Regulation and legalisation of medical cannabis can be carefully studied in comparison to prescription opioids. For example, despite being regulated in Schedule II, the US population consumed opioid pain medications for 80% of the global opioid supply between 2001-2010, with an overall increase of 149% between 1997-2007 and a steady rise of emergency department visits for prescription-controlled drugs including opioids.⁷⁶

In Malaysia, pain medications such as tramadol, morphine and oxycodone were the most common opioids used at the public hospital outpatient settings.⁷⁷ However, there was a lack of documentation regarding data addressing prevalence of adverse events, abuse or misuse of prescribed opioids. In Canada, it was reported that 58% of drug-related deaths in Ontario were attributed to opioids with approximately one-third of deaths involving oxycodone.⁷⁸ Data transparency and high-quality research in the local context must be available to ensure that medical cannabis does not add to the existing problems of substance abuse, misuse or addiction. For example, the US Department of Health and Human Services outlines the activities to prevent prescription medicine abuse and misuse within the following eight domains: 1) surveillance, 2) drug abuse prevention, 3) patient and public education, 4) provider education, 5) clinical practice tools, 6) regulatory and oversight activities,

⁷⁴ Substance Abuse and Mental Health Services Administration, 'Key substance use and mental health indicators in the United States: Results from the 2019 National Survey on Drug Use and Health' (2020) <<https://www.samhsa.gov/data/>>.

⁷⁵ Centre for Disease Control and Prevention (CDC), 'Wide-ranging online data for epidemiologic research (WONDER)' (2020) <<http://wonder.cdc.gov>>.

⁷⁶ L. Manchikanti and others, 'Therapeutic use, abuse, and nonmedical use of opioids: a ten-year perspective' (2010) 13(5) *Pain physician* 401–435.

⁷⁷ C.S. Zin and others, 'Trends and patterns of analgesic prescribing in Malaysian public hospitals from 2010 to 2016: tramadol predominately used' (2018) 11 *Journal of Pain Research* 1959-1966 <<https://doi.org/10.2147/JPR.S164774>>.

⁷⁸ P. Madadi and others, 'Characteristics of Opioid-Users Whose Death Was Related to Opioid-Toxicity: A Population-Based Study in Ontario, Canada' (2013) 8(4) *PLoS ONE* e60600 <<https://doi.org/10.1371/journal.pone.0060600>>.

7) drug abuse treatment, and 8) overdose prevention initiatives.⁷⁹ The multifaceted approaches must be inclusive, properly documented and evaluated continuously considering the changes in various aspects occurring in the community over the years. By passing medical cannabis laws, some studies reported that there was an increase in the number of individuals who use, abuse and become dependent on cannabis.⁸⁰ This number is much lower in the state that did not authorise cannabis as a legal substance.⁸¹

The laws in regulating medical cannabis should also be tightened in relation to prescriptions, sales, purchases, usages and so on. In terms of enforcement of illicit substance abuse, the National Anti-Drug Agency in Malaysia has reported a decrease in the arrests of cannabis use cases over a 5-year period compared to the total of all cases of illicit drugs of 8.7% (2016), 3.9% (2017), 4.3% (2018), 2.7% (2019) and 2.1% (2020).⁸² The decrease in the arrest rate however does not necessarily mean that its use among civilians is reduced. Rather, the arrest rate is affected by various factors such as the COVID-19 pandemic, number of operations, enforcement, the accuracy of urine tests and so on. Additional risk assessments and planning in law enforcement are needed to ensure that cannabis abuse does not increase when medical cannabis is legalised in Malaysia.

In comparison to cigarettes and other tobacco products that have been legalised despite proven to increase the economic burden due to various diseases and deaths, generally cannabis was seen as less harmful and posed medicinal benefits because data from high-quality studies were

79 Centre for Disease Control and Prevention (CDC), 'Addressing Prescription Drug Abuse in the United States Current Activities and Future Opportunities' (2013) Behavioral Health Coordinating Committee Prescription Drug Abuse Subcommittee, US Department of Health and Human Services.

80 R.L. Pacula, 'Examining the impact of marijuana legalization on marijuana consumption: insights from the economic literatures' (2010) *RAND Drug Policy Research Center* 1-24; S. Harper and others, 'Do medical marijuana laws increase marijuana use? Replication study and extension' (2012) 22(3) *Medical Marijuana Laws and Marijuana Use* 207-212; J. Scheurmeier and others, 'Temporal trends in marijuana attitudes, availability and use in Colorado compared to non-medical marijuana states: 2003-2011' (2014) 140 *Drug and Alcohol Dependence* 145-155.

81 Substance Abuse and Mental Health Data Archive, *National survey on drug use and health* (Rockville, Maryland, 2014).

82 Agensi Anti-Dadah Kebangsaan (AADK), 'Statistic Trend of Number of Drug Addicts Detected According to Type of Drugs, 2016 – 2020' (2021) <<https://www.adk.gov.my/en/statistic-trend-of-number-of-drug-addicts-detected-according-to-type-of-drugs-2016-2020/>> accessed 14 April 2022.

still insufficient. Data on the harms related to cigarettes and other tobacco products have been well reported worldwide over several decades. In Malaysia, cigarettes have also been declared as prohibited or *haram* by the National Fatwa Council in March 1995 and are regulated in accordance with the Control of Tobacco Product Regulations (CTPR) 2004 under the Food Act 1983. On the other hand, cannabis as a prohibited drug is regulated under Section 2 of the Dangerous Drugs Act 1952 and is still not legalised for personal or medical use.⁸³

Conclusion

Since CBD and THC compounds originated from the same species of *Cannabis sativa*, there is a fine line between medical and recreational use of cannabis. Legalisation of cannabis might expose unnecessary risks of addiction and psychiatric disorders in the population. This is especially true if large-scale cultivation is allowed in this country, even with the implementation of strict rules and regulations. Most of the studies on the safety and efficacy of cannabis reported either weak or inconclusive results. Reviews of high-quality studies reported the use of cannabis is to have a better effect only for the treatment of chronic non-cancer pain and specific type of epilepsy. From the legislation perspective, comprehensive regulations and guidelines at every step of cultivation, production, handling and usage should be established before the legalisation to avoid any deviation. Not only that, enforcement of the laws must be at par with other countries such as Australia or Canada and capable of controlling the appropriate use of cannabis in the community, strictly for medical purposes. At this juncture, the motion to legalise the medical use of cannabis is not urgent and, at the same time, must not be oversighted.

References

- 'Dangerous Drugs Act 1952 and Regulations' Official Portal of Pharmaceutical Services Programme (25 May 2022) <<https://www.pharmacy.gov.my/v2/en/documents/dangerous-drugs-act-1952-and-regulations.html>> accessed 12 April 2022.

⁸³ Ministry of Health Malaysia (MOH), 'Soalan lazim: Kanabis (Cannabis)' (2020). Program Perkhidmatan Farmasi <<https://www.pharmacy.gov.my/v2/ms/entri/soalan-lazim-kanabis-cannabis.html>> accessed 14 April 2022.

'Is marijuana safe and effective as medicine?' *National Institute on Drug Abuse* (July 2020) <<https://nida.nih.gov/publications/research-reports/marijuana/marijuana-safe-effective-medicine>> accessed 14 April 2022.

'Malaysia in talks to become first in Asia to allow medical marijuana' *The Straits Times* (26 September 2018) <<https://www.straitstimes.com/asia/se-asia/malaysia-in-talks-to-become-first-in-asia-to-allow-medical-pot>> accessed 12 April 2022.

'Medical marijuana patient numbers' *Marijuana Policy Project* (27 May 2021) <<https://www.mpp.org/issues/medical-marijuana/state-by-state-medical-marijuana-laws/medical-marijuana-patient-numbers>> accessed 12 April 2022.

'Singer-composer suspected of cultivating ganja plants remanded for seven days' *New Straits Times* (25 March 2022) <<https://www.nst.com.my/news/crime-courts/2022/03/783271/singer-composer-suspected-cultivating-ganja-plants-remanded-seven>> accessed 12 April 2022.

'State medical cannabis laws' *National Conference of State Legislatures* (14 Jun 2022) <<https://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx>> accessed 15 April 2022.

'Synthetic Cannabinoids (K2/Spice)' *National Institute on Drug Abuse (NIDA)* (2012) <<http://www.drugabuse.gov/publications/drugfacts/spice-synthetic-marijuana>>.

'Thailand Drops Cannabis From Its List of Controlled Narcotics' *The Diplomat* (9 Februari 2022) <<https://thediplomat.com/2022/02/thailand-drops-cannabis-from-its-list-of-controlled-narcotics/>>.

Agensi Anti-Dadah Kebangsaan (AADK), 'Statistic Trend of Number of Drug Addicts Detected According to Type of Drugs, 2016 – 2020' (2021) <<https://www.adk.gov.my/en/statistic-trend-of-number-of-drug-addicts-detected-according-to-type-of-drugs-2016-2020/>> accessed 14 April 2022.

Agensi Antidadah Kebangsaan, Kementerian Dalam Negeri, *Buku Maklumat Dadah* (Putrajaya, 2020).

Agrawal A. and others, 'Cannabis and other illicit drugs: comorbid use and abuse/dependence in males and females' (2003) 34(3) *Behavior Genetics* 217-228.

- Ahmed S. and others, 'The Impact of THC and CBD in Schizophrenia: A Systematic Review' (2021) 23(12) *Front Psychiatry* 1225.
- Aluko R.E., 'Hemp seed (*Cannabis sativa L.*) proteins: composition, structure, enzymatic modification, and functional or bioactive properties' in Nadathur S., Wanasundra J.P.D. and Scanlin L. (eds), *Sustainable protein sources* (Academic Press, 2017).
- Amin M.R. and Ali D.W., 'Pharmacology of Medical Cannabis' (2019) *Adv Exp Med Biol* 1162, 151-165.
- Antičević V. and others, 'The personality traits and social characteristics of Croatian heroin addicts and cannabis users' (2011) 35(3) *Collegium antropologicum* 701-707.
- Barrett F.S. and others, 'Hallucinations following acute cannabis dosing; a case report and comparison to other hallucinogenic drugs' (2018) 3(1) *Cannabis and Cannabinoid Research* 85-93.
- Benmaamar R., 'Colorado: a first in the USA for legal sale of marijuana' (2014) 15(2) *The Lancet oncology* E55.
- Boggs D.L. and others, 'Clinical and Preclinical Evidence for Functional Interactions of Cannabidiol and Δ9-Tetrahydrocannabinol' (2018) 43(1) *Neuropsychopharmacology* 142-154.
- Bottorff J.L. and others, 'Relief-oriented use of marijuana by teens' (2009) 4(1) *Substances Abuse Treatment, Prevention, and Policy*.
- Brigo F. and others, 'Anti-seizure medications for Lennox-Gastaut syndrome' (2021) 4 *Cochrane Database of Systematic Reviews* <DOI: 10.1002/14651858.CD003277.pub4>.
- Cabral G.A. and others, 'CB2 receptors in the brain: role in central immune function' (2008) 153(2) *British Journal of Pharmacology* 240–251.
- Centre for Disease Control and Prevention (CDC), 'Addressing Prescription Drug Abuse in the United States Current Activities and Future Opportunities' (Washington, US Department of Health & Human Rights, 2013).
- Centre for Disease Control and Prevention (CDC), 'Wide-ranging online data for epidemiologic research (WONDER)' <<http://wonder.cdc.gov>> (2020).

Clements K.W. and others, 'The demand for marijuana, tobacco and alcohol: inter-commodity interactions with uncertainty' (2009) 39(1) *Empirical Economics* 203-239.

D'Souza D.C. and others, 'The psychotomimetic effects of intravenous delta-9-tetrahydrocannabinol in healthy individuals: implications for psychosis' (2004) 29(8) *Neuropsychopharmacology* 1558–1572 <doi: 10.1038/sj.npp.1300496>.

Dangerous Drug Act 1952 [Act 234] <<https://www.pharmacy.gov.my/v2/en/documents/dangerous-drugs-act-1952-and-regulations.html>>.

Domino E.F., 'Neuropsychopharmacologic studies of marijuana: Some synthetic and natural THC derivatives in animals and man' (1971) 191(1) *Marijuana: Chemistry, Pharmacology, and Patterns of Social Use* 166-191.

Fragoso Y.D. and others, 'Cannabis and multiple sclerosis' (2020) 20(8) *Expert Review of Neurotherapeutics* 849-854 <doi: 10.1080/14737175.2020.1776610>.

Freeman T.P. and others, 'Changes in delta-9-tetrahydrocannabinol (THC) and cannabidiol (CBD) concentrations in cannabis over time: systematic review and meta-analysis' (2021) 116(5) *Addiction* 1000.

Gage S. H. and others, 'Association between cannabis and psychosis: epidemiologic evidence' (2016) 79(7) *Biological psychiatry* 549-556.

Gobbi G. and others, 'Association of Cannabis Use in Adolescence and Risk of Depression, Anxiety, and Suicidality in Young Adulthood: A Systematic Review and Meta-analysis' (2019) 76(4) *JAMA Psychiatry* 426-434 <doi:10.1001/jamapsychiatry.2018.4500>.

Gomes F.V. and others, 'Cannabidiol injected into the bed nucleus of the stria terminalis reduces the expression of contextual fear conditioning via 5-HT1A receptors' (2012) 26(1) *Journal of Psychopharmacology* 104–113.

Greydanus D.E. and others, 'Marijuana: current concept' (2013) (42) *Frontiers in Public Health* 1, 1-17.

Hall W. and Degenhardt L., 'Cannabis use and the risk of developing psychotic disorder (2008) 7(2) *World Psychiatry* 68-71.

- Hall W. and Degenhardt L., 'Medical marijuana initiatives: are they justified? How successful are they likely be?' (2003) 17(10) *CNS Drugs* 689-697.
- Haney M., 'The marijuana withdrawal syndrome: diagnosis and treatment' (2005) 7(5) *Current Psychiatry Reports* 360-365.
- Harper S. and others, 'Do medical marijuana laws increase marijuana use? Replication study and extension' (2012) 22(3) *Medical Marijuana Laws and Marijuana Use* 207-212.
- Hathaway A.D. and Sharpley J., 'The cannabis experience: An analysis of flow' in Jacquette D. (ed), *Cannabis: What were we just talking about?* (Wiley-Blackwell, 2010) <<https://doi.org/10.1002/9781444324440.ch3>>.
- Hernandez S. H. and Nelson L.S., 'Prescription drug abuse: insight into the epidemic' (2010) 88(3) *Clinical pharmacology and therapeutics* 307-317 <<https://doi.org/10.1038/clpt.2010.154>>.
- Howden M.L. and Naughton M.T., 'Pulmonary effects of marijuana inhalation' (2011) 5(1) *Expert Review of Respiratory Medicine* 87-92.
- Kafil T.S. and others, 'Cannabis for the treatment of Crohn's disease' (2018) 11 *Cochrane Database of Systematic Reviews* <DOI: 10.1002/14651858.CD012853.pub2>.
- ____ 'Cannabis for the treatment of ulcerative colitis' (2018) 11 *Cochrane Database of Systematic Reviews* <DOI: 10.1002/14651858.CD012954.pub2>.
- Krishnan S. and others, 'Cannabinoids for the treatment of dementia' (2009) 2 *Cochrane Database of Systematic Reviews*. Art. No.: CD007204. <DOI: 10.1002/14651858.CD007204.pub2>.
- Latif Z. and Garg N., 'The impact of marijuana on the cardiovascular system: a review of the most common cardiovascular events associated with the marijuana use' (2020) 9(6) *Journal of Clinical Medicine* 1925.
- Leatherdale S.T. and others, 'Marijuana and tobacco use among young adults in Canada: are they smoking what we think they are smoking?' (2007) 18(4) *Cancer Causes Control* 391-397.
- Liguori A. and others, 'Separate and combined side effects of marijuana and alcohol on mood, equilibrium and simulated driving' (2002) 163(3) *Psychopharmacology* 399-405.

- Lintzeris N. and others, 'Medical cannabis use in the Australian community following introduction of legal access: the 2018–2019 Online Cross-Sectional Cannabis as Medicine Survey (CAMS-18)' (2020) 17(1) *Harm Reduction Journal* 37 <<https://doi.org/10.1186/s12954-020-00377-0>>.
- Lutge E.E. and others, 'The medical use of cannabis for reducing morbidity and mortality in patients with HIV/AIDS' (2013) 4 *Cochrane Database of Systematic Reviews* <DOI: 10.1002/14651858>.
- Madadi P. and others, 'Characteristics of Opioid-Users Whose Death Was Related to Opioid-Toxicity: A Population-Based Study in Ontario, Canada' (2013) 8(4) *PLoS ONE* e60600 <<https://doi.org/10.1371/journal.pone.0060600>>.
- Magen I.E.M. and others, 'Cannabidiol ameliorates cognitive and motor impairments in bile-duct ligated mice via 5-HT1A receptor activation' (2010) 159(4) *British Journal of Pharmacology* 950–957.
- Manchikanti L. and others, 'Therapeutic use, abuse, and nonmedical use of opioids: a ten-year perspective' (2010) 13(5) *Pain physician* 401–435.
- McLaren J. and Mattick R. 'Towards a national cannabis strategy' (2003) 6(1) *Of Substance: The National Magazine on Alcohol, Tobacco, and Other Drugs* 15.
- 'Towards a national cannabis strategy' (2013) 4(1) *Of Substance: The National Magazine on Alcohol, Tobacco and Other Drugs* 15.
- McLoughlin B.C. and others, 'Cannabis and schizophrenia' (2014) 10 *Cochrane Database of Systematic Reviews* <DOI: 10.1002/14651858. CD004837.pub3>.
- Medina S. and Khawand-Azoulai M., 'Palliative Care and Symptom Management in Breast and Gynecological Cancers' in Cristian A. (ed), *Breast Cancer and Gynecologic Cancer Rehabilitation* (Elsevier, 2021).
- Melberg H.O. and others, 'Is cannabis a gateway to hard drugs?' (2009) 38(3) *Empirical Economics* 583–603.
- Millar S.A. and others, 'A systematic review of cannabidiol dosing in clinical populations' (2019) 85(9) *British Journal of Clinical Pharmacology* 1888–900.

Ministry of Health Malaysia (MOH), 'Soalan lazim: Kanabis (Cannabis) Program Perkhidmatan Farmasi (6 March 2020) <<https://www.pharmacy.gov.my/v2/ms/entri/soalan-lazim-kanabis-cannabis.html>> accessed 14 April 2022.

Morgan C. and Curran H., 'Effects of cannabidiol on schizophrenia-like symptoms in people who use cannabis.' (2008) 192(4) *British Journal of Psychiatry* 306-307.

Morris R.G. and others, 'The effect of medical marijuana laws on crime: evidence from state panel data, 1990-2006' (2014) 9(3) *PLoS One* e92816.

Mücke M. and others, 'Cannabis-based medicines for chronic neuropathic pain in adults' (2018) 3 *Cochrane database of systematic reviews* <DOI: 10.1002/14651858.CD012182.pub2>.

National Institute of Drug Abuse (NIDA), 'Overview' (2022) <<https://nida.nih.gov/publications/research-reports/misuse-prescription-drugs/overview>> accessed on 14 April 2022.

Nutt D.J. and others, 'Drug harms in the UK: a multicriteria decision analysis' (2010) 376(9752) *Lancet* 1558-1565.

Pacula R.L., 'Examining the impact of marijuana legalization on marijuana consumption: insights from the economic literatures' (2010) *RAND Drug Policy Research Center* 1-24.

Peprah K. and McCormack S., *Medical Cannabis for the Treatment of Dementia: A Review of Clinical Effectiveness and Guidelines* (Ottawa, Canadian Agency for Drugs and Technologies in Health, 2019).

Pereira J. and Wiegand T., 'Marijuana' (2014) 3 *Encyclopedia of Toxicology* 157-159. Elsevier Inc.

____ 'Marijuana' (2014) *Encyclopedia of Toxicology*, 2nd Ed. Elsevier Inc.

Pertwee R.G., 'The diverse CB1 and CB2 receptor pharmacology of three plant cannabinoids: delta9-tetrahydrocannabinol, cannabidiol and delta9-tetrahydrocannabivarin' (2008) 153(2) *British Journal of Pharmacology* 199-215.

Porath-Waller A.J. and others, 'A meta-analytic review of school based prevention for cannabis use' (2010) 37(5) *Health Education & Behavior* 709-723.

Ramo D.E. and Prochaska J.J., 'Prevalence and co-use of marijuana among youth adult cigarette smokers: an anonymous online national survey' (2012) 7(5) *Addiction Science & Clinical Practice*.

Ream G.L. and others, 'Smoking tobacco along with marijuana increases symptoms of cannabis dependence' (2008) 95(3) *Drug and Alcohol Dependence* 199-208.

Redonnet B. and others, 'Tobacco, alcohol, cannabis and other illegal drug use among young adults: the socioeconomic context' (2011) 121(3) *Drug and Alcohol Dependence* 231-239.

Richards B.L. and others, 'Neuromodulators for pain management in rheumatoid arthritis' (2012) 1 *Cochrane Database of Systematic Reviews* <DOI: 10.1002/14651858.CD008921.pub2>.

Rubinstein M.L. and others 'Frequent marijuana use is associated with greater nicotine addiction in adolescent smokers' (2014) 141 *Drug and Alcohol Dependence* 159-162.

Russo E. and Guy G.W., 'A tale of two cannabinoids: the therapeutic rationale for combining tetrahydrocannabinol and cannabidiol' (2006) 66(2) *Medical Hypotheses* 234–246.

Sarris J. and others, 'Medicinal cannabis for psychiatric disorders: a clinically-focused systematic review' (2020) 20(1) *BMC Psychiatry* 24 <doi: 10.1186/s12888-019-2409-8>.

Scheir A.R.M. and others, 'Cannabidiol: a Cannabis sativa constituent, as an anxiolytic drug' (2012) 34(1) *Official Journal of the Brazilian Psychiatric Association* S104-S117.

Scheurmeyer J. and others, 'Temporal trends in marijuana attitudes, availability and use in Colorado compared to non-medical marijuana states: 2003-2011' (2014) 140 *Drug and Alcohol Dependence* 145-155.

Smith G.W. and others, 'Patterns of polydrug use in Great Britain: findings from a national household population survey' (2010) 113(2-3) *Drug and Alcohol Dependence* 222-228.

Smith L.A. and others, 'Cannabinoids for nausea and vomiting in adults with cancer receiving chemotherapy' (2015) 11 *Cochrane Database of Systematic Reviews* <DOI: 10.1002/14651858.CD009464.pub2> .

- Stern C.A. and others, 'On disruption of fear memory by reconsolidation blockade: evidence from cannabidiol treatment' (2012) 37(9) *Neuropsychopharmacology* 2132–2142.
- Substance Abuse and Mental Health Data Archive, *National survey on drug use and health* (Rockville, Maryland, 2014).
- Substance Abuse and Mental Health Services Administration, 'Key substance use and mental health indicators in the United States: Results from the 2019 National Survey on Drug Use and Health' (2020) <<https://www.samhsa.gov/data/>>.
- United Nations Office on Drugs and Crime, *World Drug Report 2021* (United Nations publication, Sales No. E.21.XI.8).
- Van der Steur S. J. and others, 'Factors moderating the association between cannabis use and psychosis risk: a systematic review' (2020) 10(2) *Brain sciences* 97.
- Walitt B. and others, 'Cannabinoids for fibromyalgia' (2016) 7 *Cochrane Database of Systematic Reviews* <DOI: 10.1002/14651858.CD011694.pub2>.
- Webster P.C., 'Oxycodone class action lawsuit filed' (2012) 184(7) *Canadian Medical Association Journal* E345–E346 <<https://doi.org/10.1503/cmaj.109-4158>>.
- World Drug Report, *Booklet 2: Global overview of drug demand and drug supply* (Vienna, Austria, UNODC Research, 2021).
- Zeiger J.S. and others, 'Subjective effects for alcohol, tobacco, and marijuana association with cross-drug outcomes' (2012) 123 *Drug and Alcohol Dependence* S53-S58.
- Zin C.S. and others, 'Trends and patterns of analgesic prescribing in Malaysian public hospitals from 2010 to 2016: tramadol predominately used' (2018) 11 *Journal of Pain Research* 1959-1966 <<https://doi.org/10.2147/JPR.S164774>>.
- Zinboonyahgoon N. and others, 'Medicinal cannabis in Thailand: 1-year experience after legalization' (2021) 162 *Pain* S105-S109.
- Zulfiqar F. and others, 'Cannabisol, a novel D9-THC dimer possessing a unique methylene bridge, isolated from *Cannabis sativa*' (2012) 53 *Tetrahedron Letters* 3560-3562.



PARLIAMENT OF MALAYSIA

ARTICLES

Reforming the Dewan Negara: Its Evolution and Options for Reform
Jonathan Fong Ren Ming

Lim Kit Siang dan Reformasi Parlimen Malaysia

Lim Kit Siang and Parliamentary Reform

Liew Chin Tong and Mohammad Fakhrurrazi Mohd Rashid

Conduct in the House of Representatives (*Dewan Rakyat*) Parliament Malaysia
Asrawati Awalina Aslan

Keperluan Mewujudkan Semula Akta Perkhidmatan Parlimen di Malaysia

The Need to Re-enact the Parliamentary Service Act in Malaysia

Ikmal Hisham Md Tah, Muthanna Saari, Faridah Jalil, Idzuafi Hadi Kamilan and Akmal Hisham Abdul Rahim

Watanic Jurisprudence: Governing Principles in Legislative Powers Under the Federal Constitution

Wan Ahmad Fauzi Wan Husain

Patriarki, Politik Malaysia dan Pilihan Raya Umum

Patriarchy, Malaysian Politics and General Election

Sharifah Syahirah S. Shikh

Parliamentary Oversight to Uphold Accountability in the Review Process of Sustainable Development Goals

Amy Tam Lay Choon

Hak untuk Hidup dan Hukuman Mati: Respons Syariah terhadap Perundangan Antarabangsa

The Right to Life and the Death Penalty: The Shariah Response to the International Law
Mohamed Azam Mohamed Adil

Polemik Rang Undang-undang Suruhanjaya Bebas Aduan Salah Laku Polis 2019 (RUU IPCMC 2019) dan Rang Undang-undang Suruhanjaya Bebas Tatakelakuan Polis 2020 (RUU IPCC 2020)

The Polemics of the Independent Police Complaints and Misconduct Commission (IPCMC) Bill 2019 and Independent Police Conduct Commission (IPCC) Bill 2020
Augustine Leonard Jen

Preventing Oversight on Medical Cannabis Legislation in Malaysia: Analysis of Risks, Benefits and Regulation Requirements

Mohamad Haniki Nik Mohamed, Nor Ilyani Mohamed Nazar, Irna Elina Ridzwan, Nor Hidayah Mohd Taufek and Norny Syafinaz Ab Rahman

Barcode

ISSN 2773-4897