

Malaysia's Electoral System: Issues and Framework for Electoral System Reform

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Abstract: Elections are the foundation and inevitable elements of democracy. As an inevitable element of democracy, it imposes democratic country to fix its election to be free and fair. Moreover, fair elections also enable regimes change and the implementation of good governance and may significantly advance or impede long-term democratic development. In recent years, the Malaysian government has increasingly faced negative perceptions toward the electoral system. The negative perceptions toward the Malaysian election are influenced by the performance of the Election Commission (EC). The ignorance or failure of the government to improve the credibility of every election led to the demand for reform from civil societies and Non-Governmental Organizations (NGOs) to bring the election framework in line with the concept of an ideal election. Therefore, this article aims to explore the issues of electoral reform and to suggest a framework for electoral system reform in Malaysia. This research applies a qualitative method which is document analysis and interview. The result of this study found that issues on the electoral system includes all election cycle. The electoral system reform framework shows few elements on electoral cycle such as voter education, absentee voter, and empowerment of Election Commission (EC) need serious attention from the government. This research contributes in term of reform suggestion to increase the efficiency and election credibility.

Keywords: Democracy, Election, Electoral System, Electoral Reform

1. Introduction

Elections are the foundation and inevitable elements of democracy. As an inevitable element of democracy, it imposes democratic country to fix its election to be free and fair. Moreover, fair elections also enable regimes change and the implementation of good governance and may significantly advance or impede long-term democratic development [1]. Therefore, it is important to note the credible elections must represent the people's free

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expression of choice. It can be achieved if an election is transparent, inclusive, and accountable [2]. Achieving free and fair elections remains a dream for every democratic country. Identifying the meaning of a credible, free, fair, or genuine election needs a critical review of a free and fair election. It can be done by focusing on ballot stuffing, gerrymandering, vote-buying, or intimidation of the electorate [3]. These issues should be taken seriously by the election commission to build transparency in any election.

Malaysian elections are based on the First-Past-The-Post (FPTP) system. The system is known for its simplicity and provides voters with a clear choice [4]. However, Election Commission (EC) admitted the flaws of the electoral system in terms of structure and operation. A significant drawback of the FPTP system is the occurrence of bias by large parties, where large parties get a larger share of seats than their share of votes [5]. For instance, the Barisan Nasional party has often won a larger share of parliamentary seats than its share of votes in every election in the past [6]. In recent years, the Malaysian government has increasingly faced negative perceptions toward the electoral system. The negative perceptions toward the Malaysian election are influenced by the performance of the Election Commission (EC) [7]. The ignorance or failure of the government to improve the credibility of every election led to the demand for reform from civil societies and Non-Governmental Organizations (NGOs) to bring the election framework in line with the concept of an ideal election [8]. The Coalition for Clean and Fair Election, best known as BERSIH has organized five massive rallies in Kuala Lumpur Between 2007 and 2016. The main goal of BERSIH rallies is to reform the electoral reform in Malaysia and the movement has made a significant impact on the Malaysian political milieu.

During the General Election 14 (GE14) campaign, Pakatan Harapan (PH) promised more electoral reforms to the people of Malaysia [9]. In 2018, Electoral Reform Committee (ERC) was established, and Tan Sri Rashid Ab Rahman chaired the Committee [10]. The Committee has proposed significant changes to the electoral system. The six terms of reference for the ERC include researching the need for reform to the election system, analyzing the need for reform to the election system, recommending legal amendments to strengthen the standards of election management, proposing laws for caretaker governments after the dissolution of Parliament and state assemblies, and studying electoral and other laws that relate to election matters and processes [11].

However, most electoral changes do not entirely address the electoral problem. The continuity of demands from Bersih reflects how the election was conducted in Malaysia. The demands for electoral reform involve reform on electoral system issues, including lack of transparency in the voting process, voter registration, gerrymandering, stoking tensions along ethnic and religious lines, and the absence of a truly independent EC among the contributing factors [12]. Therefore, the interest of this study is exploring the issues of electoral system and to build a framework for electoral system reform in Malaysia. The study will be guided by the Electoral Cycle Model which is divided into three phases namely pre-election period, voting period and post-election period.

2. Literature Review

The additional momentum built by civil society in Malaysia has ensured that the reform of the electoral system remains on the reform agenda even though the hegemony of the one-party state was shattered during the 2018 general election [13]. The issue of malapportionment and gerrymandering, which had constantly been denounced and fought against by the electoral reform movement, appears to be the main driving force behind electoral reform activists' efforts to improve the voting system in Malaysia [14]. The

imminence of electoral reform has long been identified as the key to improving democracy in Malaysia. For decades, election manipulation through gerrymandering, malapportionment, and issues with voter registration and election management have undermined the quality and competitiveness of democracy. Electoral system reform was stated as one among eight items of the long-term reform agenda that the Coalition for Clean and Fair Election (Bersih) has put forward when it was launched on 23rd November 2006 in the parliament house. Bersih was founded by five opposition parties and was soon joined by additional non-governmental organizations [15]. Bersih is a common name for the "Coalition of Free and Fair Elections," which is working to reform Malaysia's electoral system by tackling widespread electoral malpractice and sweeping away any "unclean" practices to guarantee free and fair elections [16]. In 2007, Bersih organized its first public march, demanding four things from Malaysia's government to secure a free and fair voting process. The rally took place in Kuala Lumpur and Petaling Jaya, respectively, near Dataran Merdeka and Istana Negara. The gathering drew some 10,000 people, with yellow shirts and ribbons acting as emblems of the protest. During the event, a memorandum comprising four requests was also given to Malaysia's government. The demands included electoral register cleansing, the use of indelible ink, the elimination of postal voting for military and police personnel, and the granting of free and equal access to the media for all political parties.

The Bersih campaign has continued to increase public awareness of the country's electoral system's flaws and issues. The second demonstration included eight more requests, including four that were not addressed during the general election campaign in 2008. A 21-day campaign period, free and equal access to the media for all parties, the development of public institutions, the eradication of corruption and dirty politics, the reform of the postal vote, the use of indelible ink, and the cleansing of the electoral register are among the demands.

In response to electoral issues, the Malaysian government established the Parliamentary Select Committee (PCS) in 2011. It was also influenced by the Bersih 2.0 demonstration. The Committee has issued a report with 22 suggestions aimed at strengthening Malaysia's electoral system. The key recommendation made by the Committee, however, did not meet Bersih's requirements because many of the recommendations required a long implementation period, many allegations of electoral fraud were not acknowledged in the report, and the recommendations were to be implemented by the existing Election Commission. Consequently, a new public protest has been called to demand the resignation of the existing electoral commission, the execution of the previous eight requests, and foreign observers to witness the 13th general election.

Bersih held yet another demonstration in 2013, namely, Bersih 4.0. The rally took place following the general election in Malaysia in 2013. The protesters claimed that the government had cheated to win the election because the opposition received many votes but ultimately lost the election since the government won the most seats under the Westminster electoral system. The rally's main objectives were to ensure a free and fair election, a clean government, the freedom to dissent, the strengthening of parliamentary democracy, the recovery of Malaysia's economy, and the resignation of the prime minister. The most recent Bersih movement took place in 2016, and it called for clean elections, clean government, strengthening parliament democracy, protecting the right to dissent, and empowering Sabah and Sarawak. Therefore, the Bersih campaign was successful in advocating for fundamental reforms in Malaysian political culture [17]. However, hope for Bersih to represent a key building block in forming a society that genuinely respects and protects Malaysians' positive and negative freedoms [18].

Previously, Malaysia's government has amended a few of the electoral systems. It is to ensure the credibility of the election in terms of transparency. In 2008, before the 12th General Elections, the election commission had decided to use indelible ink on polling day [19]. Indelible ink during polling day aimed to prevent election fraud through multiple voting. It was also one of the demands of Bersih on the free and fair election [20]. However, despite all reforms, civil society, non-governmental organizations, and the opposition remain with negative perceptions towards the election commission's performance and electoral system.

In connection with that, During the General Election 14 (GE14) campaign, Pakatan Harapan (PH) promised more electoral reforms to the people of Malaysia [21]. In 2018, Electoral Reform Committee (ERC) was established, and Tan Sri Rashid Ab Rahman chaired the Committee [22]. The electoral system reform proposed by the ERC is the culmination of years of advocacy by the growing electoral reform movement in Malaysia. The committee has proposed significant changes to the electoral system. The ERC's six terms of reference include reviewing election laws and other laws related to electoral matters and processes, analyzing the need for reform for the electoral system, recommending amendments to laws to strengthen election management standards, proposing laws to interim government following the dissolution of Parliament and state legislatures, and researching the need for reform of the electoral system [23].

3. Methodology

This research is qualitative research that applies secondary and primary data. Every informant who participates in this study selected based on their background and commitment to elections and the election commission of Malaysia. An in-depth and semi-structured interview used in this study to gain information about the issues and needs for reform in the electoral system and election commission of Malaysia.

4. Result and Discussion

Briefly, this study focuses on electoral issues and proposes an electoral reform framework based on the Electoral Cycle Model which is divided into three phases namely pre-election period, voting period and post-election period. Based on this study, elections in Malaysia experienced various issues in the pre-election phase, especially malapportionment, political money, electoral roll, enforcement of election laws and voter education. while, during voting period, the main issues faced is regarding absentee voters and on post-election period emphasize the position and powers of Election Commission (EC).

4.1 Pre-election

4.1.1 Malapportionment

Malapportionment is a term used in political science to describe a situation where the allocation of electoral districts or seats in a legislative body is unequal or unfair. In other words, it occurs when some districts or regions are over-represented while others are under-represented, which can result in an unfair distribution of political power. Other than that, it also caused by historical factors, population shifts, or deliberate gerrymandering by political parties seeking to gain an advantage. It can lead to a situation where a minority of voters or regions have a disproportionate influence on the political process, which can undermine the principles of democracy and lead to social and political unrest. According to respondent 1,

“Gerrymandering is a tool used by political parties to continue to get support from certain groups which is still happening in Malaysia. Therefore, the EC needs to be completely independent so that the problem of gerrymandering no longer occurs to give advantages to certain parties”.

Since the country gained independence, the re-delineation issue has become a constant issue in this country. On General Election 14 (GE14) the issue of re-delineation was raised again because of the process is controversial and more in favor of BN. This causes it to conflict with the principle of delineation stated in Section 2 Schedule 13 of the Federal Constitution which states that electoral districts should be nearly equal in the number of voters and needed to maintain local relations. The problem of malapportionment violates established principles by producing large gaps between the population of constituencies, resulting in highly unequal vote values.^[24] The impact of electoral delimitation irregularities is significant as it can distort the democratic process and undermine the principle of one person, one vote. Precincts with fewer voters may have disproportionate influence, while areas with more voters may be underrepresented. This can lead to a situation where a party with a minority of the popular vote can still win a majority of seats in Parliament.

4.1.2 Electoral Roll

In Malaysia, the electoral roll is always a point of contention during elections. Many non-governmental organizations independently unveil dubious voters by analyzing available voter register data. The issues include an excessive number of voters registered at one address, voters on the register without an address, voters with the same name and date of birth, deceased and non-citizen voters.

One issue related to voter registration in Malaysia is the issue of eligible voters being unable to register or update their voter information due to various challenges. For instance, some citizens may face difficulties in obtaining the necessary documents to prove their citizenship or address, especially for those who live in rural areas or are from low-income households. The EC has been making efforts to address these challenges, such as by setting up mobile registration booths and implementing online registration platforms.

Another issue is the accuracy of the voter registry. There have been cases of the voter registry containing inaccurate or outdated information, which could lead to ineligible individuals being registered or eligible voters being unable to cast their vote. The EC has been taking steps to improve the accuracy of the voter registry, such as through regular updates and data cleansing exercises. According to the respondent 2,

“Some errors that were still left over from JPN data that that hadn't been cleaned up and despite we had done our own cleaning a few times, there were still some cases where there were names on the electoral roll that that should have been removed. But I say we're still going through that ongoing cleaning process”.

There have also been concerns raised about the transparency and fairness of the voter registration process in Malaysia. Some political parties and civil society organizations have alleged that the EC has not been impartial in its handling of voter registration, and that there have been instances of gerrymandering and other forms of electoral malpractice. The EC has denied these allegations and stated that it is committed to ensuring a free and fair electoral process.

4.1.3 Lack of civic education

Malaysia, civic education has been a critical issue in recent elections. The country has a long history of political polarization, and there have been concerns about the lack of

knowledge and understanding among voters, particularly in rural areas. This lack of knowledge can make voters vulnerable to manipulation by political parties and undermine the democratic process. According to the respondent 1,

“Civic education is an important matter that should be a long-term project to build a democratic Malaysian nation”.

One of the main issues on lack of civic education is the limited access to information, particularly in rural areas. Many Malaysians do not have access to the internet or social media, which can make it difficult to reach them with information about the democratic process. Another challenge is the lack of trust in the government and political institutions. Many Malaysians are skeptical of the government's intentions and may not believe that civic education is a priority. There is also a concern that civic education could be used as a tool for propaganda rather than as a means of promoting informed citizenship.

4.1.4 Enforcement of Electoral Laws

The EC relies on the Royal Malaysian Police and the Malaysian Anti-Corruption Commission to enforce election laws, especially during election campaigns. Enforcement against electoral malpractices has been weakened as the EC claims they have no direct authority to act against preparators. According to the respondent 1,

“The legal framework does not give the EC full authority to monitor the election, but the ones in power are the MMCC, the MACC and the police, so the EC does not have full authority in trying to monitor the election campaign, in the end sometimes the EC is pointed at as ineffective”.

4.2 Voting Period

4.1.1 Postal Voter or Absent Voters

Postal Voters or Absent Voters consist of:

- i. Armed Forces who are in service and spouses.
- ii. Government personnel (Federal Government, States Service or Local Authorities) who are in service abroad and spouses.
- iii. Individuals studying full time in Universities, Technical Colleges, Training Institutions, or other bodies abroad (only if they are sponsored by the Government) and spouses.

The main issue of postal voting is the short period of time they get to cast their vote and have their votes counted. This is because the ballots will only be printed with the candidate's name and mailed out after the EC has set nomination day. Most citizens and students living outside Malaysia pointed out that the short period of time given for postal vote registration and campaigning is the main constraint for postal voters. Because of the short period of time, many overseas voters were unable to register as postal voters.

In addition, the short campaigning period also means that the time allowed for ballot papers to be posted from Malaysia and vice versa is very short and increases the risk of votes not reaching Malaysia on time. For example, during the Johor state election, the late arrival of postal ballots to voters in the UK meant there were only five days for voters to send their ballots back to Malaysia. Voters had to use other means to ensure their ballots arrived on time. According to Bernama (2022), some postal voters complained via Twitter that they had

registered almost a week but were disappointed because they have yet to receive their ballot papers. According to the respondents, many voters asked to improve the time given so that they could have time to receive the ballot paper and return the ballot paper.

4.3 Post-Election Period

4.3.1 The Role of the Election Commission

The Election Commission (EC) conducts the preparation and implementation of elections in Malaysia. It includes the functions on delineation of electoral constituencies, preparing and revising the voter register, and the conduct of elections for the House of Representatives and the State Legislative Assembly. The latest structure of the EC, as defined in the Federal, allows for executive intervention or influence when the *Yang Di-Pertuan Agong* appoints its members on the advice of the Prime Minister. When BN ruled for a long time, the EC like other independent institutions and governments was an instrument for the incumbent to maintain power. According to the respondent 1,

“When the EC makes the electoral delimitation, the study is submitted to the cabinet, the cabinet will be thorough, and the scrutiny will also be made by the Prime Minister. In fact, the prime minister can apply for an amendment, therefore, the powers available to the EC have been lost, so there are reforms on electoral boundaries to restore the power”.

Other than that, respondent 3 argued that,

“The EC is still under the observation of the government, where the EC is not yet completely independent and still follows decisions made by the ruling government or policy making based on an agreement between the government and the opposition”.

4.4 Electoral System Reform Framework

The electoral system reform framework in Malaysia shows above are based on the discussion from the ideas of informants and accordance to the Electoral Cycle Model.

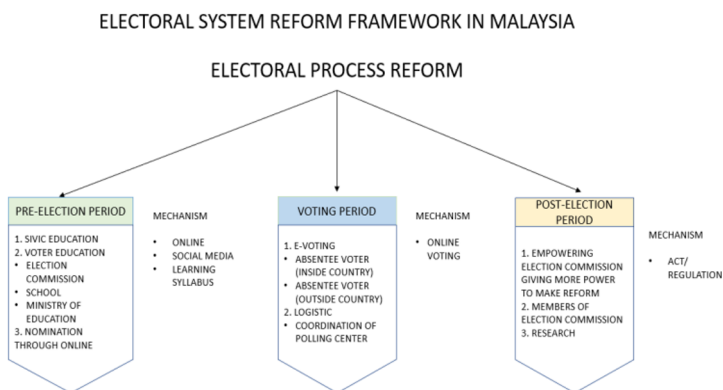


Figure 1. Electoral System Reform Framework in Malaysia

4.4.1 Pre-Election Period

Discussions in the electoral reform framework show that reforms on pre-election period involving changes to the age limit of voters eligible to vote are consistent with the reviewer's reform proposals. Researchers propose reforms in promoting civic education and voter education to improve voters' understanding of the electoral system and process in Malaysia. In the context of a multi-ethnic society such as Malaysia, efforts towards continuing to strengthen civic education are needed to achieve unity in general and the development of youth. This is because civic education is important as it develops political knowledge, enhances intellectual skills and community engagement, and influences the formation of a civilized individual character. This approach is also important towards the realization of the formation of a Malaysian nation.

In addition, voter education is a critical element in building voter confidence in the newly introduced technology. The EC should be strategic and proactive in providing information on how to vote, how the entire system works, why new technologies have been adopted and methods to ensure system integrity. Voter education strategies should consider target audiences and use a variety of outreach methods based on how different voter segments typically access information.

Thus, to realize the proposal to uphold civic education and education of voters, certain parties such as the EC, schools, and the Ministry of Education (MOE) need to take the initiative to work with each other to convey knowledge to voters, especially young people as well as school and university students.

In addition, reforms to the process of nominating candidates during elections are also needed. Candidate nomination in Malaysia required candidates to come to the nomination center on specified date and time given by the EC can be reflected by introducing online nomination. This is to make it easier for candidates to fill in the form directly to the EC system. In addition, the world, including Malaysia has been shocked by the covid-19 pandemic which restricted the movement of the people. In this regard, to prepare the country from the threat of disease outbreaks, efforts to establish an online candidate nominating system should be implemented. This is because Malaysia's experience in conducting Chini, Pahang and Slim by-elections, Perak and Sabah State Elections (PRN) in 2020 during COVID-19 pandemic is an important foundation in determining the appropriate safety and prevention aspects of transmission to be maintained and improved in the future [24]. In fact, this experience can at least be used one of the main sources of reference as an effort to re-evaluate legislation, procedures and logistics related to security management in elections, at least in the context of Malaysia [25].

4.4.2 Voting Period

During the voting period, the reform proposal focused on absentee voters. In the context of EC, Absent Voters, based on Regulation 2, Elections (Registration of Electors) Regulations 2002, Malaysian citizens who are eligible to register as Absent Voters if they belong to the category of military personnel; wife or husband of military personnel; civil servants currently serving abroad; wife or husband of a civil servant who is currently serving abroad; full-time students studying in higher education institutions abroad; and the wife or husband of a full-time student studying at a higher education institute abroad. Meanwhile, in this study, absentee voter was extended to absentee voters who are sick and have difficulty attending polling centers and university students. While overseas absentee voters are individuals who are abroad and unable to return to Malaysia to vote. Therefore, to facilitate the voting process for sick people, university students and citizens who are abroad, the EC

needs to take an alternative such as the use of online voting. This is due to the insistence from some quarters that voters from Sabah and Sarawak who reside in Peninsular Malaysia and Peninsular Malaysia voters in Sabah and Sarawak be given the status as absentee voter. This push is made so that Sabah and Sarawak voters can vote in Peninsular Malaysia without having to return to their respective states and Peninsular Malaysia voters in Sabah or Sarawak can vote in the East Malaysian states. Therefore, the use of online voting for the absentee voter group is a reform that can facilitate the voting process. However, those who wish to vote online need to register themselves in the EC system to avoid duplication of votes. Therefore, for anyone in the listed group to have registered to vote online, the individual cannot vote at the polling station on polling day.

In addition, at the voting period, reforms on logistical issues involving the coordination of polling places are required. This is because there are polling centers that do not meet the procedures set by the EC. EC in each polling area has to monitor the polling centers so that each procedure is the same as the other polling centers. For example, the rules during polling day should be standardized at each polling center.

4.4.3 Post-Election Period

This section discusses the last stage of reform is the post-election period. The proposed reforms at this stage focus on the empowerment of the EC involving the membership and powers of the EC. The appointment of members of the Election Commission of Malaysia is through Article 114(1) and (2) of the Federal Constitution which meets the requirements as set out in Article 114(3) and (4) of the Federal Constitution. The matter states that a member of the EC appointed as a member of the EC must not have attained the age of sixty-six years and shall not be bankrupt, engage in any paid office or occupation outside of his duties or be a member of any one Parliamentary Council or Legislative Assembly of a State. The membership of a member of the Electoral Commission shall be valid until the age of sixty-six years or upon disqualification under Clause (4) and may at any time resign his office by a letter personally signed by him addressed to the Yang di-Pertuan Agong but shall not be removed from office except or for reasons and in the same manner as a judge of the Federal Court. Therefore, for the empowerment of the EC's position, membership in the EC needs to be overhauled by re-evaluating the appointment period of an EC member.

In addition, the powers of the EC which are under the authority of parliament also require amendments so that the EC can stand alone as an independent body and not depend on any other department. According to Muhammad Fathi, Y. (2016), the constitution has provided a good basis for the conduct of elections, but the amendments that occurred after independence have eroded some of the EC's freedom to perform its role [26]. Therefore, to overcome this problem, there is a provision in the constitution that needs to be amended to strengthen the role of the EC. According to respondent 1:

In 1970, the absolute power of the EC was changed and put to parliament, but technically not under parliament, in fact under the prime minister because the prime minister would deliver the report in parliament. So finally, when the EC makes the electoral delimitation, the study is submitted to the cabinet, the cabinet will be thorough, and the scrutiny will also be made by the Prime Minister. In fact, the prime minister can apply for an amendment, therefore, the powers available to the EC have been lost, so there are reforms on electoral boundaries to restore the power.

The discussion above is in line with the opinion of the Kofi Annan Foundation (2019), other matters that need to be considered for future reform of the EC institution include

responsibility for the re-delimitation of electoral constituencies and responsibility for the registration and regulation of political parties. When the Registrar of Societies is under the supervision of the Ministry of Internal Affairs, it is better to transfer the registration and regulation of political parties to an independent EC. However, separating responsibility for the redeliberation of constituencies requires an amendment to the Federal Constitution.

5. Conclusion

Election in Malaysia has gone through changes of electoral system and processes. Among the reforms that have been carried out is the placement of EC power in the parliament, especially regarding re-delimitation of constituencies. In addition, during the Barisan Nasional (BN) era, several reforms were also carried out including the introduction of postal ballots and the use of indelible ink. Meanwhile, during the Pakatan Harapan (PH) era, PH has proposed to introduce *Undi18*, which is lowering the eligibility age limit for voting and election candidates to 18 years old. However, most electoral changes do not entirely address the electoral problem. The continuity of demands from Bersih reflects how the election was conducted in Malaysia. Therefore, this research has built a framework for election reform in Malaysia. Several reform proposals have been discussed, namely in the pre-election period, civic education and voter education need to be dignified. This matter can be implemented with the cooperation of various parties such as SPR, schools and the Ministry of Education. In addition, the candidate nomination process is also among the reform proposals discussed at that stage. Next, at the voting period, the researcher has proposed to create an online voting platform for absentee voters in and outside the country involving the sick, students and individuals who cannot return to the country during the election. Finally, for the post-election period, the proposal to empower EC membership and powers has been discussed so that the EC can become a truly independent body.

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