

CONCEPTUALIZING PARTY FINANCING LEGISLATION IN MALAYSIA: BETWEEN NORMATIVE AND REALITY

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Abstract

How political parties finance their operations is not well regulated in Malaysia. There is no specific law that oversees the myriad ways political parties raise funds and to what purpose they are used. This stands in contrast to neighboring Indonesia and the Philippines, where there are laws that regulate party financing. As a result, corruption in the name of political donations is rampant in Malaysia, the infamous one being the 1MDB scandal that presently ensnares the former Prime Minister, Najib Razak. However, absence of a law that regulates party financing and the inability of the current government to enact one does not mean that Malaysia should sideline the importance of keeping political parties in line with democratic norms. In this article we argue for a normative party financing model based on five criteria if Malaysia is to promulgate a legislation to regulate political parties' finances. We suggest the proposed legislation should incorporate reporting mechanism that enforces transparency and accountability; level playing field that allows common people and smaller parties to have a stronger voice in politics; reducing patronage politics; easing ethno-religious tensions; and establishing clear separation between business and politics. We interviewed numerous party representatives, academics, and Election Commission official to solicit their inputs on the substance and viability of this proposed party funding legislation based on the abovementioned five criteria. The article ends with a set of recommendations on the ways to move forward with this proposed legislation or its iterations, both at the federal and state levels.

Keywords: *Malaysian politics, party financing, Government-Linked Companies (GLC), Malaysian Election Commission, Pakatan Harapan (PH), Barisan Nasional (BN)*

1. INTRODUCTION

Unlike its neighbors Philippines and Indonesia (see articles in this issue), Malaysia at the present does not have a law that regulates how political parties fund their operations. Party financing in Malaysia has always been plagued with corruption and lack of transparency, precisely due to the reason it is not regulated by the government. The big political parties that dominate Malaysian politics stand to benefit from the existing status quo and therefore have no incentive to reform the ways that they raise funds to fill their party coffers. It is indubitably an issue of serious concern as funding sources can reveal the vested interests behind political parties' policymaking process and coalitional dynamics. Thus, the chief aim of this article is to explore party financing models from several countries and solicit inputs from various experts, with the objective to come up with an ideal model of party financing in Malaysia. In other words, the absence of a legislation that regulates party financing does not necessarily negate the need to study and recommend party financing model that conforms to the socio-political reality in Malaysia.

This article contends that a party financing model that suits Malaysia can be an amalgam of best practices from around the world, namely in countries that implements the First-Past-The-Post (FPTP) electoral system such as the US and the UK. More importantly, the model must embody these components: 1) reporting mechanism that enforces transparency and accountability; 2) level playing field that allows common people and smaller parties to have

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a stronger voice in politics; 3) reducing patronage politics; 4) easing ethnoreligious tensions; and 5) establishing clear separation between business and politics. These five components are crucial since they deal directly with the problems that currently bedevil Malaysia.

In seeking to formulate an ideal party financing model for Malaysia, this article employs the following research questions as its main conceptual thrust:

- 1) Why is there a need to regulate party financing in Malaysia?
- 2) What type of party financing legislation suits Malaysia's ethnoreligious politics and First-Past-The-Post (FPTP) electoral system?
- 3) What are the ideal conditions that can allow for the passage of such legislation?
- 4) Is it possible to have a party financing legislation at the state level if the unpredictable climate of national politics is not conducive to its passage?

When it comes to methodology, this article employs a purely qualitative research approach that consists of document review and semi-structured interviews. We have chosen a list of thirteen informants, which comprises of party representatives, NGO activists, academics, and think tank analysts. Due to overlapping of information, we end up using the input from ten informants to inform the writing of this article. Nearly all political parties responded positively to our interview requests except the Malay-Muslim parties UMNO, PAN and Bersatu for reasons unknown to us (we did not ask PAS). As mentioned above, the scope and limitation of this research is its normative nature since there is no actual party financing law in Malaysia to speak at the moment.

The article begins with an overview of the ways political parties in Malaysia currently raise funds to finance their operations. We then proceed to discuss various party financing models around the world, in particular in countries that have similar characteristics such as the FPTP electoral system and ethnic and religious diversity. It is then followed by the section that analyzes the Malaysian socio-political context and argues for an ideal prototype of party financing that can be both feasibly attainable and politically effective. The article ends with a summary of its argument and recommendations on the ways to move forward in enacting a party financing legislation in Malaysia.

2. OVERVIEW OF CURRENT PARTY FUNDING MEANS IN MALAYSIA

As mentioned earlier, currently there is no formal law that regulates political funding in Malaysia, unlike its neighbors Indonesia and the Philippines. Therefore, there is no mechanism to oversee and hold political parties accountable for their funding. One infamous example of the lack of oversight and accountability is the 1MDB scandal that saw an "Arab donation" of USD600 million going into the personal bank account of the former PM Najib Razak, which he claimed was intended for his political party UMNO. Similar examples of lesser magnitude are rife among many politicians and political parties in Malaysia on both sides of the political aisle.

Politicians and political parties in Malaysia acquire funding via several sources. First source is the Government-Linked Companies (GLCs) and Government-Linked Investment Companies (GLICs). The federal government, mostly through the Finance Ministry and Prime Minister's Department, owns the majority shares of 67 publicly listed companies, which translates into 42 percent of market capitalization.³ GLCs are not only limited to the federal government as the state governments (mainly through the Chief Minister's Department) also own majority shares in numerous companies that operate in their respective states. Appointments to GLCs board of directors and top executive positions become highly politicized and used as rewards for

³ Edmund Terence Gomez, "Business as usual: regime change and GLCs in Malaysia," *New Mandala* (12 March 2019), <https://www.newmandala.org/business-as-usual-regime-change-and-glcs-in-malaysia/>, accessed on 19 October 2020.

supporters and allies. In short, GLCs serve as a cash cow for political parties and an integral cog within the political patronage system.

Major political parties also own businesses that generate income to be channeled back into party coffers. Some of these businesses such as in the media industry are also employed as a propaganda tool to legitimize the government. UMNO for instance owns Utusan Malaysia, a major Malay newspaper, and several TV stations as part of the conglomerate Media Prima, while the Chinese political party MCA owns one of the main English newspaper The Star.⁴ These media were in turn employed as a propaganda tool for the former BN government to legitimize its rule and demonize the opposition until the 2018 general election when the BN government lost.

Political parties also raise funds from within their own ranks. Most political parties require Members of Parliament (MPs) and State Assemblypersons (*Ahli Dewan Undangan Negeri*, ADUN) to give up a portion of their monthly salaries for party coffers, ranging from 10 to 30 percent. As a reference, a cabinet minister, for instance, earns on average RM55,650 (USD13,788) per month and an MP slightly less, depending on their allowances and attendance record.⁵ According to Howard Lee Chuan How, the Chair of DAP Socialist Youth (DAPSY), DAP mandates its elected representatives to allocate 30 percent of their salaries to the party, of which 25 percent would go to the party's national headquarters and 5 percent would go to state chapters.⁶ The Malaysian Socialist Party (*Parti Sosialis Malaysia*, PSM) also requires its elected representatives to contribute one-third of their salaries to the party, half of which would go to party headquarters and the remaining half would be used to run constituency service centers and community organizing work. The Chair of PSM, Jeyakumar Devaraj, even gave up 80 percent of his salary to the party when he was serving as the MP for Sungai Siput.⁷ PKR, meanwhile, asks its elected representatives to contribute between 10 to 20 percent of their salaries to the party, with the ones representing poor constituencies having to pay the lower rate.⁸

Political parties and politicians are also known to receive donations and other forms of support from the business community. It is common to see businesses sponsoring events for political parties and politicians. Business community generally knows no political loyalty and easily shift sides when the political tide turns. In the state of Penang for instance the property developers, arguably the state's biggest lobbying group, was politically cozy with the party Gerakan, which governed Penang from 1969 until 2008. After Gerakan's shocking loss in the 2008 election and subsequently replaced by the party DAP, it did not take long for the property developers to ingratiate themselves to the new DAP state government.⁹ Now the symbiotic relationship between property developers and DAP is such that the party's critics mock it as "Developers Action Party."

Another source of funding for politicians comes from MP's allocation for constituency work. Each MP is currently entitled to RM800,000 (USD193,000) per year to carry out constituency work. The allocation can be used for minor projects and emergency assistance in the MP's respective constituency. However, in practice, only MPs who are part of the ruling government are given the full allocation. During the BN government era, opposition MPs did not receive any allocation for constituency work while during the PH government after 2018, opposition MPs received much less than PH MPs.¹⁰

4 *The Star*, "Quick take: Media Prima declines after Umno sells stake," (3 July 2019) <https://www.thestar.com.my/business/business-news/2019/07/03/quick-take-media-prima-declines-after-umno-sells-stake>, accessed on 19 October 2020.

5 Semakan Online, "Tangga Gaji Menteri Kabinet & Ahli Parlimen Malaysia," (13 May 2018), <https://semakanonline.com/tangga-gaji-menteri-kabinet-ahli-parlimen-malaysia/>, accessed on 10 January 2021.

6 Interview via Zoom with Howard Lee Chuan How, Chair, DAP Socialist Youth (DAPSY), 1 December 2020.

7 Interview via Zoom with Sivarajan Arumugam, Secretary General, Parti Sosialis Malaysia, 30 November 2020.

8 Interview via Zoom with Fahmi Fadzil, Member of Parliament (Lembah Pantai), Parti Keadilan Rakyat, 30 December 2020.

9 Mohamed Basyir, "DAP-led Penang govt sold 2,000ha of land to private developers, says Loo," *New Straits Times*, (13 March 2018), <https://www.nst.com.my/news/nation/2018/03/344789/dap-led-penang-govt-sold-2000ha-land-private-developers-says-loo>, accessed on 19 October 2020.

10 Hemananthani Sivanandam, et al, "Uproar in Dewan Rakyat over allocations for MPs." *The Star*. (1 April 2019),

Finally, to a lesser extent, political parties from both sides of the political divide also receive assistance from international agencies and organizations such as USAID, AUSAID, various German *stiftungen* (foundations), among others. This type assistance is usually program-specific that helps to build party capacity, women leader empowerment, democracy education and other non-regime threatening activities. This funding source is less important than the aforementioned ones and does not qualitatively influence the way a party functions, either from the view of good governance or democratization.¹¹

The former BN government first tried to introduce a legislation to regulate political donations in 2016 but it did not make much headway. The law proposal, dubbed Political Donations and Expenditure Act (PDEA), faced vigorous criticisms from the opposition parties as they were worried that a full disclosure of their donors would result in witch-hunts from the government.¹² In September 2019, the then PH government started a discussion on Political Funding Bill at the inter-ministerial level with the hope of tabling the bill for parliamentary vote in 2020. One key aspect of the discussion is to adopt the German model, which is to disburse funding based on the number of votes gained by political parties in the general election. The PH government's recommendation was to provide RM10 (USD2.40) for every vote received by political parties. But in late February 2020, Malaysia went through an abrupt change of government and as of now the political funding bill has been shelved. In the current political climate it is highly unlikely that this bill will see the light of day, much less debated and passed by the parliament. Nevertheless, it is not a reason to drop the effort of formulating a party financing model for Malaysia as opportunity to debate and enact the legislation might yet arise in the future. Therefore, the aim of this article is to survey various best practices from around the world and solicit expert opinions when it comes to party financing in order to extrapolate the ideal model for Malaysia.

3. COMPARING PARTY FINANCING MODELS

Proponents of party financing law in Malaysia often refer to the “German model” as the benchmark for formulating the substance of the law, namely in creating a more equitable playing field for political parties and introducing mechanisms to enforce transparency and accountability. The German government provides funding to any political parties that have obtained at least 0.5 percent of votes in the latest national or European election or one percent of votes in the latest state election. Due to the Mixed-Member Proportional (MMP) electoral system practiced by Germany, only the votes from the party-list are counted in the funding allocation, not the candidate-list. The federal government provides €0.85 per vote for the first four million votes and €0.70 per vote thereafter. Political parties are also entitled to a matching grant of €0.38 for every Euro they receive from membership fees and individual donations not exceeding €3,300. The federal government distributes these funds four times a year in the form of estimated advance payment, which would be adjusted later based on actual expenditures. Political parties must submit an annual financial statement to the President of Bundestag that fully discloses their income and expenditures. Violators would be punished with up to three years of imprisonment and a hefty fine.¹³ While the “German model” seems attractive especially when it comes to narrowing the gap

<https://www.thestar.com.my/news/nation/2019/04/01/uproar-in-dewan-rakyat-over-allocations-for-mps/>, (accessed on 19 October 2020).

11 Muhammad Takiyuddin Ismail, *Bantuan Demokrasi dan Pendanaan Asing di Malaysia: Melewati Pertukaran Rejim* (Kuala Lumpur: Universiti Malaya Press, 2019).

12 Kamles Kumar, “Najib: BN wants ‘transparent’ political funding, but Opposition must also agree,” *Malay Mail* (30 September 2016), <https://www.malaymail.com/news/malaysia/2016/09/30/najib-bn-wants-transparent-political-funding-but-opposition-must-also-agree/1217847>, accessed on 19 October 2020.

13 Edith Palmer, “Campaign Finance: Germany,” *Library of Congress* (2009), <https://www.loc.gov/law/help/campaign-finance/germany>, accessed on 10 January 2021.

between big and small political parties, a wholesale adoption of its party financing system might not be suitable to Malaysia's First-Past-The-Post (FPTP) system, which skews heavily towards big and well-established political parties.

Thus, it is instructive for proponents of party financing law in Malaysia to look at countries that practice the FPTP electoral system. The United Kingdom (UK) is one such country. While the UK government does not provide a comprehensive, votes-based public funding for political parties like in Germany, it does have allocate limited financial assistance for party activities. Every year the UK parliament channels £2 million to all political parties under the Policy Development Grant program. The main objective of this grant is to help political parties develop concrete policies for their election manifestos. The grant is available to all parties with at least two sitting members in the House of Commons. The UK parliament also provides funding to opposition parties to carry out their parliamentary business. The United States (US) is another country that practices the FPTP electoral system. Public funding in the US is available for those who are eligible to contest in the presidential primaries. The public funding matches individual contributions but not from corporations, labor unions, and Political Action Committees (PAC). The source of this public funding comes from individual annual tax return, where on the tax return form American taxpayers have the option of donating USD3 to the Presidential Election Campaign Fund, which the U.S. Treasury would in turn channel to eligible candidates.¹⁴ Major presidential candidates typically forgo public funding since it imposes a limit on how much the candidates can raise and spend. Instead, they prefer to raise unlimited funds from private contributions. As such, public funding in the US is only utilized by minor presidential candidates with a long shot of winning the general election.

4. PARTY FINANCING MODEL IN MALAYSIA: NORMATIVE VERSUS REALITY

As mentioned earlier in this article, a party financing model in Malaysia should normatively include these five criteria: 1) reporting mechanism that enforces transparency and accountability; 2) level playing field that allows common people and smaller parties to have a stronger voice in politics; 3) reducing patronage politics; 4) establishing clear separation between business and politics; and 5) easing ethnoreligious tensions. In late 2019, the then *Pakatan Harapan* (PH) government promulgated a proposal for Political Funding Bill at the inter-ministerial level. The main aspect of the proposal was to adopt the "German model," which was to disburse funding based on the number of votes gained by political parties in the general election. The proposal called for RM10 (USD2.40) per vote. It also included recommendations for funding regulatory mechanisms to ensure transparency, integrity and corruption-free, though it was unclear in what forms these regulatory mechanisms were to take shape and the extent of their regulatory powers.¹⁵ The abrupt change of federal government in late February 2020 derailed the plan to introduce the legislative draft in the parliament. It is highly unlikely that the present *Perikatan Nasional* (PN) government will introduce its own party financing legislation since it is employing the entrenched patronage system to survive challenges to its legitimacy and a party financing legislation will only hamper its ability in doing so.¹⁶

14 Federal Election Commission, "Public funding of presidential elections," (2020), <https://www.fec.gov/introduction-campaign-finance/understanding-ways-support-federal-candidates/presidential-elections/public-funding-presidential-elections/>, accessed on 10 January 2021.

15 *Malay Mail*, "Bill on political funding for tabling next year," (29 October 2019), <https://www.malaymail.com/news/malaysia/2019/10/29/bill-on-political-funding-for-tabling-next-year/1804916>, accessed on 19 October 2020.

16 Azmil Tayeb, "Malaysia in 2020: Fragile Coalitional Politics and Democratic Regression," *Asian Survey* 61 Vol. 1 (February 2021).

The bleak prospect of passing a party financing legislation in the current political climate should not preclude us from drafting a model based on inputs from party representatives and political analysts that is suitable for Malaysia. This model still incorporates the abovementioned five normative criteria, which will be parsed in detail by our informants, particularly taking into account the realpolitik context of Malaysia. Most informants agree on adopting transparency and equitable aspects of party financing model found in Germany and Scandinavian countries despite these countries practicing different type of electoral system than Malaysia, which will also be discussed below.

5. TRANSPARENCY, ACCOUNTABILITY, AND ENFORCEMENT

When it comes to transparency and accountability, all our informants agree on the need to create a financial reporting mechanism for all political donations and make it fully accessible to the public. As mentioned earlier, the reason the massive 1MDB political scandal was able to take place was because political parties and politicians were not obligated by law to report any donations, be it from inside or outside the country. According to Thomas Fann, the Chairperson of BERSIH 2.0, a coalition working towards a clean and fair election in Malaysia, due to the complexity and varied ways through which funds are channeled to political parties and politicians, as exemplified by the said 1MDB fiasco, the proposed party financing legislation must establish a reporting mechanism that is comprehensive and sophisticated.¹⁷ Simply having a reporting mechanism in place is not suffice as it has to be complemented with full asset and expenditure declaration by political parties and independent agencies that are endowed with the unimpeded authority to investigate and punish violators. The Commissioner of the Malaysian Election Commission, Faisal Hazis, states that the current law only requires political parties to declare their expenditures during the short election period, starting from the nomination day until the polling day, which typically spans around two weeks. In order for the reporting mechanism to fully capture the depth of party finances, the party financing law must require political parties to declare their assets and expenditures all year round and be subjected to independent audit.¹⁸ A full accounting of political parties' assets and finances will make it easier to detect any glaring discrepancy between cash inflow and outflow, which is a tell-tale sign of mismanagement and corruption.

While transparency requires a full disclosure of political donors, some members from the opposition political parties register their reservation of such openness due to the potential that it can be exploited for nefarious political ends. In an illiberal democracy such as Malaysia, where the opposition does not compete at the same level as the government, an open reporting system that discloses names of persons and companies that donate to the opposition might exposed them to serious political repercussions. The government can sift through the donors' list and seek to punish by any means those who support the opposition. This is the fear voiced out by the Member of Parliament (MP) from the People's Justice Party (*Parti Keadilan Rakyat*, PKR), Fahmi Fadzil. He instead proposes a law that is able to balance the citizens' right to support their preferred political parties as well as ensuring their anonymity and safety, so as to prevent any backlash, in particular not to run afoul of the 2010 Personal Data Protection Act.¹⁹ It is also sentiment shared by Shakir Ameer, the Vice Chair of DAPSY (the youth wing of the Democratic Action Party, DAP). According to him, a full disclosure that openly displays the names of persons and businesses might leave them vulnerable to boycott by public or the government.²⁰ Except

17 Interview via Zoom with Thomas Fann, Chairperson, BERSIH 2.0, 2 December 2020.

18 Interview via Zoom with Faisal Hazis, Commissioner, Malaysian Election Commission, 30 November 2020.

19 Interview via Zoom with Fahmi Fadzil, Member of Parliament (Lembah Pantai), Parti Keadilan Rakyat, 30 December 2020.

20 Interview via Zoom with Shakir Ameer, Vice Chair, DAP Socialist Youth (DAPSY), 30 November 2020. See also Sebastian Dettman and Edmund Terence Gomez, "Political financing reform: Politics, policies, and patronage in Malaysia,"

for the brief 22-month interregnum between 2018 and 2020 when the PH was in control of the federal government, both PKR and DAP, the political parties of which the two aforementioned informants are part, have always been part of the opposition and therefore know full well the extent to which the government goes to silence its critics. It is thus imperative for the proposed law to guarantee that for the sake of transparency and accountability, reported political donors must not be harassed or intimidated solely because of their political choices.

A reporting mechanism is only as good as its enforcement component since there is no point in having full disclosure when the offenders can escape sanction with impunity. In Malaysia, the Attorney General's Chamber (AGC) typically prosecutes corruption charges against politicians and political parties. Since 1980 AGC has been subsumed under the Prime Minister's Department and the appointment of the Attorney General is a prerogative of the Prime Minister, usually a party loyalist. As such, there is a general perception that the AGC is not independent and merely a political tool employed at the behest of the Prime Minister and the federal government to target opposition parties and critics. The prosecution of 1MDB case during the BN government rule is illustrative of the AGC's emasculation. Despite overwhelming evidence of corruption charges against the then Prime Minister Najib Razak, the AGC, along with the Malaysian Anti-Corruption Commission (MACC), decided that there was no prima facie case to pursue.²¹ It was not until PH took control of the federal government in 2018 that Najib Razak was formally charged for the 1MDB case.

MACC is another federal agency responsible for investigating corruption charges especially in public sector. Part 3 of the 1954 Election Offences Act dictates the scope and limitation of MACC authority when it comes to monitoring politicians and political parties for any campaign irregularities including bribery and undue influence. In reality, the MACC rarely investigates, much less arrests, anyone for electoral offences. Hence, all of our informants agree that federal agencies that oversee activities of political parties such as the AGC, MACC and EC need to be freed from political pressure and be allowed to act independently without fear or favor. In addition to institutional independence, the PKR MP, Fahmi Fadzil, stresses the need to beef up the MACC by endowing the agency with unfettered prosecutorial authority and enough manpower to carry out its duty in order for the proposed party financing law to be effective.²² The Secretary General of the political party Malaysian Chinese Association (MCA), Andrew Chong Sin Woon, pushes for the establishment of an independent regulatory agency with full investigative and enforcement authority and not placed under any ministry to look into financial dealings of political parties.²³ Meanwhile, Jeyakumar Devaraj, the current Chairperson of PSM, recommends that the 1954 Election Offences Act be amended to include limit on campaign spending by third parties and ban on candidates from attending events organized by third parties to prevent any conflict of interests.²⁴

6. LEVELING THE PLAYING FIELD

The proposed party financing law must also act as a democratizing force by opening up the

Journal of Contemporary Asia 50 Vol. 1 (2020), p. 46.

21 *Malaysiakini*, "Probe Apani over alleged 1MDB cover-up – Kepong MP," (2 June 2019), <https://www.malaysiakini.com/news/478328>, accessed on 19 October 2020.

22 Interview via Zoom with Fahmi Fadzil, Member of Parliament (Lembah Pantai), Parti Keadilan Rakyat, 30 December 2020.

23 Interview via Zoom with Andrew Chong Sin Woon, Secretary General, Malaysian Chinese Association (MCA), 9 December 2020.

24 Interview via Zoom with Jeyakumar Devaraj, Chairperson, Socialist Party of Malaysia (PSM), 28 November 2020.

political space to small parties and regular citizens. Many of our informants strongly prefer the German political financing model as a basis for the proposed party financing law in Malaysia (see preceding section). Not surprisingly, the inter-ministerial proposal drafted by the previous PH government also recommended the German financing model. But as discussed earlier, the German political financing model is based on the country's Mixed-Member Proportional (MMP) electoral system, which allocates funding to political parties that manage to win seats in the parliament based on the number of votes they receive. MMP allows smaller parties higher likelihood of making it into the parliament, which in turn gives them access to public funds.

Unfortunately, the First-Past-The-Post (FPTP) electoral system practiced by Malaysia heavily favors big, well-established political parties at the expense of smaller, lesser-known political parties. In this winner-takes-all system, small parties have little chance of getting into the parliament and will thus be deprived of public funding. Jeyakumar Devaraj confronts this political reality first-hand as the head of a small political party. He proposes that the new party financing law to allow all political parties registered with the Registrar of Societies, a federal agency, to have access to public funds. One way to do it is through voters' consent. According to him, there should be a third ballot at the election where voters get to choose which political parties they wish to fund with their tax money. Jeyakumar Devaraj suggests the amount of RM10 (USD2.50) per vote per year to be given to political parties out of public funds. That way smaller parties will still receive funding to run their operations without having to win a seat in the parliament.²⁵ Andrew Chong of MCA concurs with Jeyakumar Devaraj. He says that the proposed party financing law should look to Taiwan, where political parties that do not win any seats are entitled to public funds since the votes they gain reflect people's mandate.²⁶ Faisal Hazis, the EC Commissioner, believes that the German model is not suitable for Malaysia due to differences in electoral systems though he supports adopting some aspects of it such as grant-matching, where the federal government would match the amount parties raised from their membership dues and donations.²⁷ Short of revamping the electoral system, the proposed party financing law should consider the ways to increase the participation of small parties through public funding as recommended by the aforementioned informants.

7. REDUCING PATRONAGE POLITICS

The public expect politicians and political parties to provide for their needs, big or small, which in turn places tremendous financial pressure on them. The patronage politics favors MPs and political parties in the ruling coalition while putting the opposition MPs and political parties at a disadvantage. As mentioned earlier, MPs receive annual allocation and development funds to service their constituency by carrying out welfare programs and small infrastructure projects. MPs from the ruling coalition receive significantly more than opposition MPs, which then allows the former to buy support from the public. MPs and political parties from the ruling coalition also have full access to other government resources through various ministries that are not available to opposition MPs. While there is a campaign spending cap for candidates – RM100,000 for state elections and RM200,000 for federal elections – there is no limit to what parties can spend during an election season. According to Faisal Hazis, this is a serious problem in the election law since party campaign finances are non-transparent and not audited. As such, parties with bigger resources would engage in patronage politics and outspend their less financially well-off rivals. Therefore, it is imperative that the proposed party financing law mandates parties to fully declare their expenditure before, not only during, election season.²⁸ In the words of the prominent election analyst, Wong Chin Huat, the main objective of a party financing law is to stop MPs and ADUNs (state assemblypersons) from acting like Santa Claus

²⁵ Ibid.

²⁶ Interview via Zoom with Andrew Chong Sin Woon, Secretary General, Malaysian Chinese Association (MCA), 9 December 2020.

²⁷ Interview via Zoom with Faisal Hazis, Commissioner, Malaysian Election Commission, 30 November 2020.

²⁸ Ibid.

delivering toys on Christmas eve, or in this case, the election.²⁹ The parties' search for resources is not only limited to government coffers as parties are also deeply intertwined with the business world and the Government-Linked Companies (GLCs), which will be discussed next. It is therefore crucial that the proposed law should make it abundantly clear its objective in minimizing the influence of patronage politics presently pervasive in Malaysia.

8. CLEAR SEPARATION BETWEEN BUSINESS AND POLITICS

For decades the erstwhile ruling coalition Barisan Nasional (BN) had tapped into the private sector for more resources to fund its operations while enriching its politicians in the process. Patronage politics mentioned above would not have been as effective had there not been a boost in resources coming from the private sector. These private resources come in three forms: party-owned businesses, GLCs, and corporate contributions (financial and in-kind). The corporate sponsored patronage was enabled by the highly interventionist nature of the Malaysian government that controlled significant portion of the private sector, particularly in construction, banking, and media. Even corporations that are not formally linked to the government found it financially beneficial to ally themselves with BN by way of contributions.³⁰

All of our informants agree that overhauling the relationship between business and politics must be an integral part of the proposed party financing law. The first on the chopping block is the political appointments of politicians and party loyalists to the board of directors of GLCs. Political appointments to GLCs have long served as rewards to party loyalists, who in turn channel the GLCs' resources back to political parties. It is also a way to deter defection and keep alliance intact.³¹ Since it is difficult to prevent political appointees in GLCs, Wong Chin Huat suggests that political parties implement stringent requirements that ensure only well-qualified candidates are appointed to directorship positions in GLCs, namely bureaucrats and corporate leaders. It is also imperative to prohibit sitting politicians from being appointed to such positions. He also states that GLCs must be thoroughly audited by independent auditing firms, in particular to identify if any of their resources are being channeled back to political parties.³²

When it comes to business ownership by political parties, it is arguably trickier to regulate. All of our informants agree that political parties should be allowed to engage in the business sector as a means for income generation but with several caveats. Political parties and politicians must fully disclose their assets, including donations, and business interests in the reporting mechanism discussed earlier. Presently, asset declaration is not mandatory and even when it is done it is superficial at best. The EC Commissioner, Faisal Hazis, recommends that assets owned by individual political party to be capped at RM1 billion (USD247 million) since political parties should not operate like regular profit-oriented corporations since they are in the business of public interests.³³ Party-owned business must also be prohibited from receiving government contracts, which highlights the sheer importance of transparency and independent auditing in the proposed party financing law.

The proposed party financing law must also find a way to curb the pervasive and unaccountable corporate influence on political parties and politicians. Currently, there is no limit to the amount corporations can contribute to political parties. It goes without saying that more contribution equals bigger say in party's agenda and decision-making process. Further worsening the

²⁹ Interview via Zoom with Wong Chin Huat, Professor of Political Science, Sunway University, Selangor, 30 December 2020.

³⁰ Sebastian Dettman and Edmund Terence Gomez, "Political financing reform: Politics, policies, and patronage in Malaysia," *Journal of Contemporary Asia* 50 Vol. 1 (2020): p. 40.

³¹ Ibid.

³² Interview via Zoom with Wong Chin Huat, Professor of Political Science, Sunway University, Selangor, 30 December 2020; interview via Zoom with Faisal Hazis, Commissioner, Malaysian Election Commission, 30 November 2020.

³³ Interview via Zoom with Faisal Hazis, Commissioner, Malaysian Election Commission, 30 November 2020.

problem is the lack of requirement for parties to disclose their donors and the donation amounts. Thomas Fann, the Chairperson of BERSIH 2.0, suggests putting a cap on donation amounts given to political parties. For a corporation, he recommends a contribution limit of RM1 million (USD247,000) while for private donors the amount is RM100,000 (USD24,700) in a single fiscal year.³⁴ It is crucial that these donations are reported transparently in a system that is accessible to the public at-large. Finally, the proposed party financing law must guarantee that donors who contribute to opposition parties will not be targeted and punished by the government, chiefly by adhering to the 2010 Personal Data Protection Act, a point previously made by the PKR MP, Fahmi Fadzil, and the DAP stalwart, Shakir Ameer.

9. EASING ETHNO-RELIGIOUS TENSIONS

Ethnic relations in Malaysia are managed through a type of political system Arend Lijphart calls consociationalism.³⁵ Consociationalism is normally found in countries where there are intense sectarian rivalries along ethnic and religious lines such as Lebanon and Belgium. The main thrust of consociationalism is that every major sectarian group in the society would have representation at the highest echelons of government, so as to prevent a majoritarian rule that marginalizes the interests of minority groups. In the context of Malaysian politics, major ethnic groups such as Malays, Chinese, Indians and various indigenous Borneo tribes would have their interests represented at the federal level through ethnic-based political parties such as the United Malay National Organisation (UMNO), Malaysian Chinese Association (MCA), Malaysian Indian Congress (MIC), and tribal-based parties in Borneo Malaysia. The downside of consociationalism is that it fosters a communal-based politics where public goods are seen through the ethnic lens as in which ethnic group gets what and how much, which in turn creates distrust among ethnic groups and widens the sectarian divide.

Adding to this heady ethno-religious mix is the central role of Islam in Malaysia and how closely it intertwines with the Malay identity. According to Article 160 in the Malaysian constitution, a Malay person is also a Muslim, which means we cannot touch on one identity without including the other. Islamic interests meanwhile are represented by two competing Islamic political parties: the Pan-Malaysia Islamic Party (*Parti Islam Se-Malaysia*, PAS) and the National Mandate Party (*Parti Amanah Negara*, PAN). Malay-based parties such as UMNO and Bersatu also claim to represent the interests of Islam due to the reason mentioned above. While many of the opposition political parties are not ethnic- or religious-based, the fact remains that ethno-religious sentiments are widely pervasive in Malaysian politics, which leads to the contentious polarization seen in the society today.

The question then, with the status quo in place, if it is possible for the proposed party financing law to include mechanisms and reforms that can temper ethno-religious tensions in Malaysian politics? In the course of our research, almost all of our informants think that alleviating ethno-religious tensions should not be the main focus on the proposed law. They believe that the proposed law should concentrate instead on transparency, accountability, and leveling the political playing field (as discussed above). It is difficult to see how the proposed law can help to reduce the toxic ethno-religious political climate, short of forcing communal-based parties to change their *raison d'être* to become more citizenship-based parties. Nevertheless, the EC commissioner, Faisal Hazis is hopeful that the proposed law can have a moderating and regulatory effect on the deeply conservative, predominantly provincial PAS by bringing it into mainstream politics and simmering down its divisive rhetoric.³⁶ In all, when it comes to reforming Malaysia's acrimonious ethno-religious politics, the proposed party financing law

34 Interview via Zoom with Thomas Fann, Chairperson, BERSIH 2.0, 2 December 2020.

35 Arend Lijphart, "Consociational Democracy." *World Politics* 21 Vol. 2 (January 1969): 207-225.

36 Interview via Zoom with Faisal Hazis, Commissioner, Malaysian Election Commission, 30 November 2020.

might not be the right remedy for it.

10. PARTY FINANCING LEGISLATION AT THE STATE LEVEL

One question that we asked in this article if it is possible to enact party financing law at the state level if the effort fails at the federal level. The answer is a qualified no. The primary reason being that activities of political parties fall under the aegis of the Registrar of Societies, a department under the Ministry of Home Affairs. As such, any attempt by a state legislature to pass the law will be seen as ultra vires since it runs afoul of the constitution. Another reason is that state governments simply do not have the financial wherewithal to provide funding to political parties. The highly centralized federalism practiced in Malaysia means that most states are dependent on federal support for their budgets, which makes it unlikely that they will allocate public funds for political parties.

However, according to some of our informants there are ways to circumvent this constitutional barrier. The state assembly can adopt some aspects of the proposed party financing bill discussed above without violating the federal constitution. For one, it can pass a law that requires all its members to fully declare their assets and personal campaign finances after they are sworn in to increase transparency and minimize conflict of interests. This is a view shared by Mak Kah Keong, the Secretary General of *Parti Gerakan Rakyat Malaysia* (Gerakan) and Sivarajan Arumugam, the Secretary General of PSM.³⁷ The key from not running into the constitutional brick wall is to regulate members of the political parties, not the political parties per se. Arguably, similar law can also be enacted at the federal level. The lower house of the Malaysian parliament did in fact pass a special motion on 1 July 2019 that mandated all MPs and their immediate family members to declare their assets at the risk of getting fined or suspended. By the end of 2019, there were still 62 MPs – mostly from UMNO and PAS – who had yet to declare their assets, out of the 222 total MPs in the lower house.³⁸ Wong Chin Huat, meanwhile, proposes that state government allocates special funding for political parties that achieve certain diversity quota in their elected representatives in the state assembly such as women and ethnic minorities. He also recommends prohibition on appointment of politicians to the directorship of state government-owned enterprises, similar to previously discussed recommendation made at the federal level.³⁹ In short, all hope is not hope if the proposed party financing legislation fails to pass at the federal level as state governments are still able to implement some aspects of it as long as they remain within the constitutional boundary.

11. IDEAL CONDITIONS TO ENACT THE LEGISLATION

In the currently unstable and contentious political climate at the federal level, it is a seemingly insurmountable undertaking to enact the party financing legislation. The PN government is not interested in taking up the effort to introduce this bill in the parliament as it is fully preoccupied with challenges posed by pandemic and the threat to its precarious hold on power. Therefore, the effort to enact the party financing legislation has to be carried out in a medium-to-long political game, namely when there is a federal government that is stable and strong enough. Our informants agree that there are two crucial, mutually-reinforcing, aspects that can help to ensure the passing of this legislation. First is political will by party leaders, which is woefully

37 Interview via Zoom with Mak Kah Keong, Secretary General, Parti Gerakan Rakyat Malaysia, 10 December 2020; interview via Zoom with Sivarajan Arumugam, Secretary General, Parti Sosialis Malaysia, 30 November 2020.

38 Ahmad Fairuz Othman, et al, "Dewan Rakyat passes special motion on asset declaration," *New Straits Times*, (1 July 2019), <https://www.nst.com.my/news/nation/2019/07/500680/dewan-rakyat-passes-special-motion-asset-declaration>, accessed on 10 January 2021; Arjuna Chandran Shankar, "Sixty-two MPs yet to declare assets," *The Edge Markets*, (5 December 2019), <https://www.theedgemarkets.com/article/sixtytwo-mps-yet-declare-assets>, accessed on 10 January 2021).

39 Interview via Zoom with Wong Chin Huat, Professor of Political Science, Sunway University, Selangor, 30 December 2020.

lacking now. Political parties, on both sides of the aisle, when in power find the status quo to be immensely beneficial and therefore have no incentive to reform the entrenched system. The PH coalition included in its election manifesto the intention to do away with political appointments to GLC directorships but reneged on the promise when it came to power in 2018.⁴⁰ Second aspect is the political mobilization from civil society organizations, which serves two functions: shoring up the political will of party leaders so as to embolden them to initiate the reforms; and raising widespread awareness among the public on the importance of the proposed legislation and its positive impact on the overall health of democracy.⁴¹ It is also important to educate the public not to see their elected representatives as Santa Claus, which would only perpetuate the culture of political patronage and corruption.⁴²

Besides the two aforementioned aspects, our informants also offer other conditions that can ease the passage of the proposed law. Fahmi Fadzil stresses that the proposed law must be weighted and balanced in the Malaysian context in order for it to be amendable to MPs across the partisan divide. It means that the proposed law must consider the malapportionment problem, geography and socio-economic backgrounds of the constituencies, the level of infrastructure development in various constituencies, among others.⁴³ Echoing the PKR MP, BERSIH 2.0 in its exhaustive report on political financing recommends that party votes' threshold for funding eligibility to be set regionally. It means that peninsular Malaysia, Sarawak and Sabah will each have their own threshold, which BERSIH 2.0 suggests set at 2 percent. Finetuning the thresholds regionally will allow small regional parties, most of which are located in Sarawak and Sabah, more opportunity to access public funding.⁴⁴ In short, the workings of the proposed law need to be finessed and should not be a one-size-fits-all remedy.

Thomas Fann, meanwhile, holds a more sanguine outlook on the prospect of passing the proposed party financing legislation in the current political climate. He believes that there is a higher chance for reforms to take place now because there is no one dominant party and that the coalitions are fragile. As such, political parties are more willing to consider bipartisan agreement that can level the political playing field for all, including but not limited to party financing reforms.⁴⁵ Political parties must also undergo a serious internal reform, particularly in revamping their party election system, before they can make a good-faith effort in passing the party financing legislation. Rising up the party leadership typically requires buying the support of the rank-and-file members, which then compels contenders to seek as much funding as possible, licit or otherwise.⁴⁶ Money politics within political parties needs to be flushed out before genuine party financing reforms can take place. In light of the conditions we have discussed above, it remains a tall order to pass an effective and comprehensive party financing legislation, be it in present time or later down the road.

40 Robin Augustin, "Unhappy with PH's GLC appointments, NGOs want task force for reforms," *Free Malaysia Today*, (24 January 2019), <https://www.freemalaysiatoday.com/category/nation/2019/01/24/unhappy-with-phs-glc-appointments-ngos-want-task-force-for-reforms/>, accessed on 10 January 2021; interview via Zoom with Sivarajan Arumugam, Secretary General, Parti Sosialis Malaysia, 30 November 2020.

41 Interview via Zoom with Sivarajan Arumugam, Secretary General, Parti Sosialis Malaysia, 30 November 2020; interview via Zoom with Fahmi Fadzil, Member of Parliament (Lembah Pantai), Parti Keadilan Rakyat, 30 December 2020.

42 Interview via Zoom with Wong Chin Huat, Professor of Political Science, Sunway University, Selangor, 30 December 2020.

43 Interview via Zoom with Fahmi Fadzil, Member of Parliament (Lembah Pantai), Parti Keadilan Rakyat, 30 December 2020.

44 A 2 percent threshold means that political parties that receive at least 2 percent of the total votes cast in the most recent general election will be eligible for public funding. In the regional context, it means that 2 percent of total votes cast in peninsular Malaysia, Sarawak, and Sabah, respectively. Ooi Kok Hin, "Public Funding of Political Parties in Malaysia: Debates, Case Studies and Recommendations," *BERSIH 2.0 Report* (2021), pp. 66-67.

45 Interview via Zoom with Thomas Fann, Chairperson, BERSIH 2.0, 2 December 2020.

46 Edmund Terence Gomez and Joseph Tong, "Financing Politics in Malaysia: Reforming the System," *Australian Journal of Asian Law* 2 Vol. 18 (2017), p. 15.

12. CONCLUSION

It is high time that Malaysia follows in the footsteps of its neighbors Indonesia and the Philippines in enacting a law that regulates political financing. Malaysian politics is awash in unaccountable funding from various undisclosed sources that has significantly eroded public confidence in political parties over the years. The proposed party financing legislation should seek to restore diminished public confidence in the viability of political parties as an agent of change and a force of good. The passage of party financing legislation also needs to be accompanied with serious institutional reforms, which overarching purpose is to ensure the independence of monitoring and enforcement agencies in carrying out their responsibilities. Examples of institutional reforms that can be undertaken in conjunction with the law include imposing term limits for EC commissioners and an explicit guarantee for their independence and placing ROS under the ambit of EC since ROS oversees party activities and finances.⁴⁷ By leaving ROS under the Ministry of Home Affairs, as is the case now, it allows ROS to be used as a political cudgel to punish opposition and critics of the sitting government since ROS has the authority to de-register political parties and NGOs, and thus making them illegal at the stroke of a pen. There is no better time to enact a party financing law as presently the public's trust in politicians and political parties is at an all-time low.⁴⁸ A party financing law that is transparent, independent, and democratically empowering is indeed one of the best remedies to cope with this malady.

47 Ibid., p. 14.

48 Durie Rainer Fong, "Trust in politicians at all-time low, says analyst," *Free Malaysia Today*, (3 March 2020), <https://www.freemalaysiatoday.com/category/nation/2020/03/03/trust-in-politicians-at-all-time-low-says-analyst/>, accessed on 10 January 2021.

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LIST OF ZOOM INTERVIEWS

Jeyakumar Devaraj, Chairperson, Socialist Party of Malaysia (PSM), 28 November 2020.

Shakir Ameer, Vice Chair, DAP Socialist Youth (DAPSY), 30 November 2020.

Faisal Hazis, Commissioner, Malaysian Election Commission, 30 November 2020.

Sivarajan Arumugam, Secretary General, Parti Sosialis Malaysia, 30 November 2020.

Howard Lee Chuan How, Chair, DAP Socialist Youth (DAPSY), 1 December 2020.

Thomas Fann, Chairperson, BERSIH 2.0, 2 December 2020.

Andrew Chong Sin Woon, Secretary General, Malaysian Chinese Association (MCA), 9 December 2020.

Mak Kah Keong, Secretary General, Parti Gerakan Rakyat Malaysia, 10 December 2020.

Wong Chin Huat, Professor of Political Science, Sunway University, Selangor, 30 December 2020.

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