

# Electoral Boundaries (Hackathon Politik: Rules of The Game)

JOHORE

Defining the future of Malaysian Politics Danesh Prakash Chacko (4/9/2021) danesh@tindakmalaysia.com Tindak Malaysia

ASTS OF

MALACCA

CONSTITUENCIES MAP

Showing PARLIAMENTARY AND STATE CONSTITUENCIES

Scale: 2 Miles to an inch.

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(57)

(ULU KUANTAN)

PARLIAMENTARY (KUANTAN)

PARLIAMENTARY AND STATE CONSTITUENCIES

STATE

for survey

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# Quick Background

- Am trained in Geomatics (Mapping Science)
- Delved into world of Redelineation since 2013
- Currently, as one of the Directors of Tindak Malaysia , an electoral reform group
- Tindak Malaysia, started in 2008, popularised PACA trainings.
- Within few years, we, Tindak Malaysia came to a conclusion that election outcomes were fixed by rigged boundaries
- Tindak has been researching on redelineation since
  2011



### Electoral Boundaries & Electoral System

- Boundary delimitation usually refers to process of drawing electoral boundaries. Also known as redelineation or redistribution
- It has two major components: apportionment and redelineation itself
- The delimitation process is critical in plurality/majoritarian system. The impact is high
- However, we cannot say delimitation is absent or not important in other electoral system. For example,
  - Mixed Member Proportional redelineation needed for single member constituencies
  - Proportional System need to apportion appropriate number of constituencies per multimember district (that generally correspond to administrative division) due to population
- Unfair delimitation will worsen the impact of plurality system

### Electoral Boundaries & Electoral System

- Malaysia practices one of the electoral system under plurality family (FPTP). How do I know?
- Article 116 (2) states Single Member Territorial Representation (for Dewan Rakyat)
- Article 117 states Single Member Territorial Representation (for DUN)
- Elections Act 1958 (13) (1) the winner of DUN or Dewan Rakyat constituency is the one who has the greatest number of valid votes wins the seat
- Article 113 (2) (i) Election Commission (EC) review the boundaries of Dewan Rakyat and DUN constituencies and recommend changes to comply with 13<sup>th</sup> Schedule

### Triggering Redelineation/ Ideal Parliament (and DUN) Size

- How can Redelineation trigger in Malaysia?
  - After 8 years (no upper limit) from the completion of last review of boundaries – Article 113 (2)
  - Alteration to State Boundaries/Addition of States Article 113 (3)
  - Change in Number of Seats in Dewan Rakyat or DUN Article 113 (3A)
- What is an ideal size of Parliament (for Dewan Rakyat)?
  - Our parliament grew from 104 to 222
  - Use Cube Root Law: 318 (minimum)
  - Use modified Wyoming principle (Labuan as base): 327
  - Use modified Wyoming principle (Perlis as base)\*: 128
  - \* Treat Perlis having one Parliamentary constituency

### Triggering Redelineation/ Ideal Parliament (and DUN) Size

- There is no prescribed ideal size for DUN (State Level)
- We, Tindak Malaysia, advocates reinstatement of ratio principle
- Ratio principle: The number of DUN seats shall be the same or multiple of the Parliamentary seats per State
- Example: Perlis has 3 Parliamentary Seats and 15 DUN Seats (3x5)
- History:
  - Didn't exist in 1954 delineation with exception
  - Indirectly implied via Article 171 (from 1957 to 1963)
  - Emphasized in 1960 redelineation
  - Codified in 8<sup>th</sup> Schedule 4(2) (1962 1983)
  - 8<sup>th</sup> Schedule 4 (2) repealed in 1983. Only 3 states respect the ratio principle (Perlis, Terengganu, Pahang) until today

### Triggering Redelineation/ Ideal Parliament (and DUN) Size

- Why the ratio concept is important?
- Simple reason: Equalization of DUNs should result in equalization of Parliament seats or vice versa
- If there is no ratio principle, you can equalize all DUNs within +/-15% of state average, you can never equalize all Parliamentary Seats (From experience!)

How do you equalize constituencies for both state and federal levels?

If there are three oranges and we want 8 slices, two oranges will be divided into three slices each and last orange is divided into two slices



Tindak Malaysia



Orange 1 is divided into three slices where each slice is around 33 or 34 grams (close to approximately equal)

,Average slice weight: 300gm/8 = 37.5 gm

Slices of Orange 1 and 2 met the equalization criteria of +/-15% Slices of Orange 3 have weights exceeded +15% deviation from average weight. If you want equalization for constituencies at state and federal level, number of state seats should be a multiple of federal seats. If not, no equalization in one of the tiers

Orange 3 is divided into two slices where each slice is around 50 grams

### Key Principles of Redelineation

- 13<sup>th</sup> Schedule Clause 2 of the Federal Constitution has four guiding principles
  - (a) Federal Seats are nested within the state and DUN doesn't cross Federal Seat Boundaries
  - (b) Consideration of available facilities for polling and voter registration
  - (c) Constituency to have approximately equal voting population with exception of country districts (difficulty in reaching electors) and weightage of area to be applied for those districts
  - (d) Preservation of local ties

### Key Principles of Redelineation 2(a)

- Clause 2 (a) "while having regard to the desirability of giving all electors reasonably convenient opportunities of going to the polls, constituencies ought to be delimited so that they do not cross State boundaries and regard ought to be had to the inconveniences of State constituencies crossing the boundaries of federal constituencies"
- Meaning: Parliamentary Seats shall not cross the state boundaries and no DUN seats shall straddle between two parliamentary seats. A DUN is a subset to Parliament
- In the 1954 delineation of 52 Malayan Constituencies, there was a room for constituency to be over two states for polling accessibility. However, this wasn't pursued
- Only Redelineation Principle that is honoured

### Key Principles of Redelineation 2(a)

- Why honour this clause?
  - To avoid issues in the production of electoral rolls
  - To avoid voter confusion on polling day
  - (for Pre-Automatic Voter Registration AVR), not to cause problems for voter registration process

### Key Principles of Redelineation 2(b)

- Clause 2 (b) "regard ought to be had to the administrative facilities available within the constituencies for the establishment of the necessary registration and polling machines;"
- Meaning: When a parliamentary constituency and state constituency is drawn, it is important to know the presence of administrative facilities and voter registration facilities for the purposes of voter registration and polling
- Importance of this principle is grossly understated in activist and academic circles. This principle became more important when the Undi18 bill was tabled
- This Redelineation principle is violated

### Key Principles of Redelineation 2(b)

- Why honour this clause?
  - Voter Registration can be done smoothly (pre–Automatic Voter Registration -AVR)
  - Polling machinery can operate efficiently
- A polling district defines where you vote. According to Elections Act (1958) (7)(3) – One polling district = One polling station. But there are exceptions where one polling district = >1 polling station
- Importance of 2 (b) in post GE14 Era:
  - Number of voters per stream have reduced from 750 per stream to 600 per stream after GE14
  - Implementation of Undi18 (inc. AVR) may result at minimum of an increase of 5.6 million new voters
  - Channeling OKU voters to first polling stream (Saluran 1)

### Key Principles of Redelineation 2(b)

#### Example of Violation of Principle 2 (b)



#### DUN Luyang in Greater KK (Sabah)

- Why polling stations for Foh Sang, Bukit Padang and Taman Fu Yun are outside the DUN?

### Key Principles of Redelineation 2(c)

- Clause 2 (c) "the number of electors within each constituency in a State ought to be approximately equal except that, having regard to the greater difficulty of reaching electors in the country districts and the other disadvantages facing rural constituencies, a measure of weightage for area ought to be given to such constituencies"
- Meaning: With the removal of Articles 116 (3)(4)(5), there are no limits to deviation (for constituency electorate size). With free hand, EC able to justify each constituency has its own communication difficulties, area, demographics and geography to create oversize and undersize seats
- This Redelineation principle is violated

### Key Principles of Redelineation 2(c)

- Why honour this clause?
  - The part of the clause that must have proper honouring is the approximately equal. Honour One Person One Vote One Value (OPOVOV)
  - The problem with the definition of urban-rural for redelineation is it didn't exist for 2015 Sarawak
     Redelineation, 2018 Peninsular Malaysia Redelineation and 2019 Sabah Redelineation (overdue)
  - For rural areas, a weightage is given based on area.
    However, this is subjective
- Why Lipis (undersize) has an electorate size half of Jerantut (just nice)? Both are largely rural and Jerantut is nearly twice the size of Lipis? What weightage of area are we talking about?

Difficulty in reaching electors?

# Key Principles of Redelineation 2(c)



#### ASSESSMENT OF DIFFICULTY IN REACHING ELECTORS

SUBSCRIPTION OF INTERNET AT HOME BY DISTRICT (2016) MALAPPORTIONMENT AMONG PARLIAMENTARY SEATS (2016)



Source: DOSM, Election Commission, Tindak Malaysia, Danesh Mapping Consultancy

By 2019, all districts have more than 80% of its households with internet subscription. The digital divide in Selangor has narrowed significantly. Road networks are very good in Selangor and more highways may cut through rural areas.

# Key Principles of Redelineation 2(c)

- When there is a violation of Clause 2(c), it gives birth to malapportionment. Malapportionment is creation of electoral districts with divergent ratios of voters to representatives
- Clause 2(c) unfortunately limited to contain intrastate malapportionment with some loopholes in it
- Two forms of malapportionment appeared in 2016-2018 Redelineation
  - Unrectified : Penang
  - Aggravated : Selangor

# Key Principles of Redelineation 2(c)

#### Unrectified Malapportionment

- Case: Penang hardly experienced Redelineation with exception of polling district reshaping in Balik Pulau and Kepala Batas
- Allowing Undersize seats to depopulate and allowing oversize seats to overpopulate without doing anything (Penang)
- Average Seat Size: 66750 (2016) & 73346 (2019)
- Tanjong (George Town): Undersized by 25% (2016) and now 32% (2019) from State Electoral Quota
- Tanjong is an undersized Urban Seat

#### Aggravated Malapportionment



Why different electors of Klang Parliamentary Seat have different voting value? Are Voters of Pelabuhan Kelang more important those in heart of Klang?

# Key Principles of Redelineation 2(c)

### Key Principles of Redelineation 2(d)

- Clause 2(d) "regard ought to be had to the inconveniences attendant on alterations of constituencies, and to the maintenance of local ties;"
- Meaning: Preservation of Local ties shall include avoiding unnecessary break up of local communities. Consider following district, local authority or Bahagian Boundaries.
   EC report also mentioned that every constituency doesn't have to be under one local authority for their definition of local ties
- This Redelineation principle is violated

# Key Principles of Redelineation 2(d)

- Why honour this clause?
  - In the absence of elected local governments, MPs and ADUNs are the middleman between voters and local governments for local issues. To ensure effectiveness (for now) of communication on this matters, a DUN should be within one local authority and parliamentary seat should not exceed two local authorities (unless equalization demands otherwise)
  - Prevention of occurrence of political and racial gerrymandering

### Key Principles of Redelineation 2(d)

 When there is a violation of Clause 2(d), it gives birth to gerrymandering. Gerrymandering manipulates the boundaries an electoral constituency so as to favour one party or class



DUN Seri Setia is deliberately drawn to include polling districts in Shah Alam though population weight is in Petaling Jaya. Red Boundaries are polling district boundaries. Black Boundaries are Council Boundaries



DUN Seri Andalas before 2018 Redelineation



DUN Sungai Kandis (formerly Seri Andalas) after 2018 Redelineation

### Example of Political Gerrymandering

# **Brief History**

- We can examine the history of redelineation in few ways:
  - A) Timeline
  - B) Evolution of redelineation principles
- Today, we go with (B)
- This section is not a comprehensive view of history, but with two major focus

Evolution of Limits on Constituency Size (towards runaway intrastate malapportionment)

1973 – Present



\*\* +/-33% limits not mentioned. For example, in 1954 delineation, Johore Tenggara was -38.1% from Johor Constituency Population Average. For 1968 Sarawak delineation, Bandar Kuching was 60% above Sarawak Electoral Quota Evolution of Limits on Constituency Size (towards runaway interstate malapportionment)



No Unit of Review No ratio between DUN and Parliament constituencies per states with some exceptions

No Unit of Review The ratio was implied via Article 171. The ratio principle was introduced in 8<sup>th</sup> Schedule in 1962

Unit of Review (Sabah, Sarawak & Malaya) introduced The ratio principle was intact *Equalization within a state only The ratio principle was intact* 

Equalization within a state only The ratio principle was removed (1983) Evolution of Local ties and Composition Consideration (towards institutionalizing gerrymandering)



Strive to follow district boundaries (unless equalization demands otherwise) district boundaries and distribution of

concept of equalization community with priority of equalization

Consider issues caused by constituency changes and in 1963, term of maintenance of local ties was added

#### Evolution of Local ties and Composition Consideration

1973 - Present

*Yes on paper:* 

- EC considers presence of local council boundaries and does not take racial or religious consideration for redelineation

Reality: The opposite



1974 redelineation increased the share of Malay Majority DUN constituencies from 35.7% in 1969 to 63.6% in 1974



1984 redelineation redrawn the parliamentary constituency of Telok Kemang (today, Port Dickson) – red line –which disrespected Port Dickson district boundaries- green line



1994 redelineation resulted in reduction of racially mixed parliamentary constituencies in Sabah and more Muslim Bumiputera Seats

# **Brief History**

#### • Other pointers:

- EC lost ability to have the final say on electoral boundaries from 1962
- EC's independence has gradually eroded after the retirement of the first EC's Commissioners and first EC's Chairman
- Admission by former EC's Chairman Tan Sri Rashid that redelineation exercises favoured certain ethnic groups
- 1984 amendments resulted the following:
  - Redelineation may not occur after 8 years
  - If there is a change of size of Dewan Rakyat and DUN, redelineation can be done anytime, no waiting for 8 years
  - Referring to subpoint above, EC may choose to exempt applying principles of 13<sup>th</sup> Schedule for this redelineation
- EC, in the past, held secret discussion with ruling party or leaders for delineation of constituencies

### Moving Forward

#### What we advocate for:

- Reinstatement of +/-15% from State Electoral Quota as the basis of constituency electorate size for Peninsular Malaysia and +/-25% for Sabah & Sarawak now
- Reinstatement of Ratio Principle. The DUN Size shall be the same or multiple of Parliamentary constituencies in the State
- Parliament should only prescribe total number of Dewan Rakyat constituencies and Boundaries Commission (separate from EC) shall determine the apportionment and redelineation. Parliament shall have no final say
- Boundaries shall respect local ties (every state is unique) with equalization at the highest priority
- Reinstatement of principles of 1957 constitution that ensures interstate malapportionment is minimized
- EC to advise the government such that roads in a constituency shall reach at least 80% of the voters by 2025

### Moving Forward

- Constituencies should be drawn with these considerations:
  - Representativeness
  - Equality of Voting Strength
  - Transparency
  - Non-discrimination
- A homework can you propose to me fair DUN constituencies for Port Dickson district? Criteria:
  - +/-15% of State Electoral Quota
  - Respect local ties (mukim, district, council and other micro local ties)
  - Contiguity
  - Transportation Network

### REFERENCES

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- https://www.slideshare.net/daneshchacko/presentations
- https://www.malaysiakini.com/columns/583542
- Special Thanks to Adhy Aman (from International IDEA) to clarify the concept of Apportionment (31/3/2021)

### Follow Tindak Malaysia

- Website: <u>http://www.tindakmalaysia.org/home-2</u>
- Facebook (Malay & English): <u>https://web.facebook.com/TindakActionMalaysia</u>
- Facebook (Chinese): <u>https://web.facebook.com/chinesetindakmalaysia/</u>
- Twitter: <u>https://twitter.com/TindakV2</u>
  - YouTube: https://www.youtube.com/c/TindakMalaysiacom
- Telegram: <u>https://t.me/joinchat/AN6G7xZMziRiN2Y1</u>
- Please this dedicated site about redelineation -<u>http://www.tindakmalaysia.org/persempadanan</u> (We are looking to train redelineation objectors)





Drawn by S.M. Sabri and Danesh

### Appendix 1: Impact of 1974 Redelineation on Penang

Using European Commission data of 1975 (as the base) and treat 1975 as the base, we can see before and after effect of Redelineation. 1974 redelineation generated rural DUNs. The gap between largest DUN and smallest DUN pre and post Redelineation was a multiple greater than 2





# Appendix 2: Application of Ratio principle for Penang

Since Penang has 13 Parliamentary Constituency, ideal DUN size would be 39 (preferred) or 52. In 52 DUN proposal, the seats parted more than +/-15% deviated by less than 200 electors

#### Penang

- 13 Parliamentary Constituencies and 40 DUN Constituencies (Status Quo) NO RATIO
  - Biggest DUN is 3.62 times bigger than smallest DUN\*
- 13 Parliamentary Constituencies and 39 DUN Constituencies (Proposed)
  - Biggest DUN is 1.34 times bigger than smallest DUN
- 13 Parliamentary Constituencies and 52 DUN Constituencies (Proposed)
  - Biggest DUN is **1.37 times** bigger than smallest DUN
- \* EC refused to rectify malapportionment in 2018
- Melaka
  - 6 Parliamentary Constituencies and 28 DUN (Status Quo) NO RATIO
    - Biggest DUN is **4.30 times** bigger than smallest DUN\*
  - 6 Parliamentary Constituencies and 28 DUN (Reformed)- NO RATIO
    - Biggest DUN is **1.37 times** bigger than smallest DUN
  - 6 Parliamentary Constituencies and 30 DUN
    - Biggest DUN is 1.34 times bigger than smallest DUN
  - \* EC refused to rectify malapportionment in 2018
- The basis of the assessment is to equalize all the DUNs constituencies first and equalize Parliamentary constituencies accordingly. When ratio principle is applied, it is much easier to equalize Parliamentary constituencies for Melaka and Penang

### Appendix 3: Assessing impact of (no) ratio