



TINDAK MALAYSIA 2021 TRAINING #3

Understanding Redelineation (From
Law Perspective)

CONTENTS

- Basics of Redelineation
- Constitutional Clauses
- Building Blocks of Redelineation
- Impact of Unfair Redelineation
- NGO's stance on Redelineation Limits
- Fixing Building Blocks – Daerah Mengundi

BASICS OF DELINEATION/DELIMITATION

- Definition
- Has two parts: Apportionment and Delimitation
- Relevant Articles/Schedules: Article 2, 46, 113, 114, 115, 116, 117 and 13th Schedule
- 13th Schedule Principles:
 - (A) Federal Seats are nested within the state and DUN doesn't cross Federal Seat Boundaries – **HONOURED**
 - (B) Consideration of available facilities for polling and voter registration – **VIOLATED**
 - (C) Constituency to have approximately equal voting population with exception of country districts and weightage to be applied for those districts - **VIOLATED**
 - (D) Preservation of local ties - **VIOLATED**

Constitutional Clauses

- Article 113
 - (1) – EC may review the divisions of Malaysia and States to comply with 13th Schedule. The term 'delimit' removed in 1962 (What are the consequences?)
 - (2) (i) – Originally the clause had an upper limit for redelineation (10 years) to be done and there was a requirement to comply with Articles 116 and 117. Now, redelineation to comply with 13th Schedule
 - (2) (ii) – Interval between one redelineation cycle and another is no less than 8 years. Upper Ten year limit is removed (What is the consequence?)
 - (2) (iii) – Review period is 2 years from the date of commencement. Date of Commencement – Refer to 113 (9)
 - (3) – EC can change electoral boundaries should state boundaries alter without waiting for 8 years. (Has this happened? How this apply to Putrajaya in 2001?)
 - (3)(A) – Free tool for redelineation anytime or necessary tool to fix our boundaries?

Constitutional Articles

- Article 113

- (3)(A) (i)- When you change the number of seats in Parliament or DUN, (if less than 8 years of the previous redelineation), EC shall undertake a review of federal or state constituencies, as the case may be of the area affected (What is the consequence?). (Existed from 1984)
- (3)(A) (i)- The review because of seat increase/decrease don't affect standard interval of redelineation of Clause (2). (Existed from 1984)
- (3)(A) (iii) – EC has no obligation to comply with 13th Schedule (What's the consequence?). (Existed from 1984)
- (3)(B) – If seat increase occurs after 8 years of previous redelineation, review is to follow Clause 2 (Has this been followed?)(Worth examining Sarawak redelineation of 2015 and Sabah redelineation of 2016). Existed from 1992

Constitutional Articles

- Article 113
 - (6) – There shall be separate unit of reviews for States of Malaya, Sabah and Sarawak. KL, Putrajaya and Labuan are to be grouped with States of Malaya. (Now you know why Sarawak Redelineation timing is different to Peninsular Malaysia's Redelineation)?
 - (9)- Date of Commencement for Clause (2) or Clause 3(A) is the date of publication of the notice, with reference to 13th Schedule
 - (10) – Date of Completion is the date of submission of the report to Prime Minister. Notice of such date shall be published by EC in the Gazette (Refer to Sabah Report Submission as an example)

Constitutional Articles

- Article 114(2) – Members of Election Commissions which enjoys public confidence
- Article 115 (2) – For the purposes of delimitation of Constituencies, shall seek the advice of two federal officers with knowledge of topography and population distribution who are selected by the King (Does it mean the head of DOSM and JUPEM get selected?)
- Article 116(1) – Single Member Territorial Representation for Parliament. The watering down on constituency size limits took place in 1962 where references to Article 116(3), (4), (5) were removed
- Article 117 – Single Member Territorial Representation for DUN. Similarly, watering down on constituency size took place

Constitutional Articles

- Article 116 (Deleted) – Clauses (3),(4),(5) – Once EC had the power to apportion seats using electoral quota. Maximum +/- 15% deviation from State Electoral Quota. Clear definitions of Electoral Quota and Population Quota. (Removed in 1962)
- 8th Schedule (4)(2) (Deleted) - the number of elected members of the Legislative Assembly shall be the same as or a multiple of the number of the Federal constituencies into which the State is divided under Article 116 of the Federal Constitution. (Deleted in 1983) (What is the consequence?)

Constitutional Articles

- 13th Schedule (In depth)
- Formed in 1962
 - Clause 2 (a) – the containers of state boundaries and federal seats for redelineation was added in 1963
 - Clause 2 (b) – Consideration of available facilities WITHIN the constituencies for registration and polling machines (Did Semenyih 2019 by elections demonstrated the constituency failed to take account of this clause?)
 - From 1963 to 1973 – Clause 2 (c) originally states the number of electors within each constituency ought to be approximately equal throughout the unit of review (What is the consequence – refer to aborted 1971 redelineation?)

Constitutional Articles

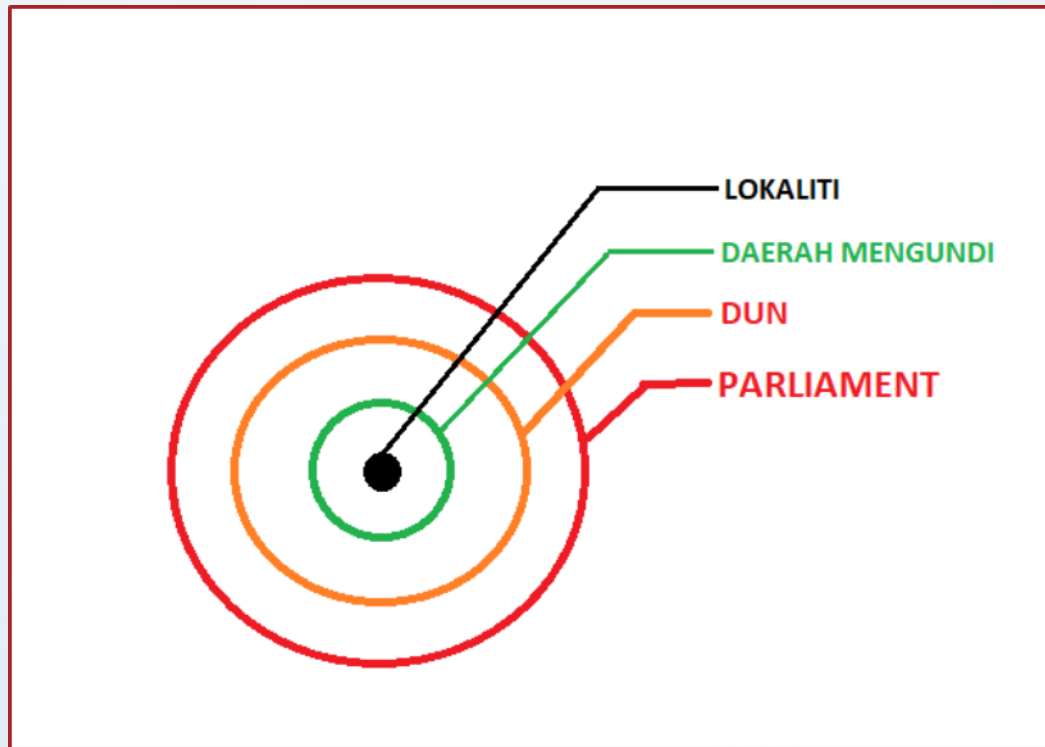
- 13th Schedule (In depth):
 - Clause 2(d) cautioned any redelineation breaking local ties. In 1963, it was changed to maintenance of local ties
 - Clause (3) – Number of electors of current roll used for delimitation
 - Clause (4) – EC must show the effect of proposed recommendation, copy of the recommendation found in a specified place in the constituency
 - Who Can Object: State, Local Authority, Body of 100 electors are shown in the current electoral roll of the constituency in question
 - If there was objections in the first round, EC does inquiry.
 - Then EC does second round of recommendation and objections may occur
 - No more than two local inquiries are done

Constitutional Articles

- 13th Schedule (In depth)
 - After that EC completed final review, they submit report to PM – showing division of constituencies in line of Section 2 of 13th Schedule and name of such constituencies (or stating their opinion for no boundary alteration). PM may or may not modify recommendations before submission to Parliament. PM will lay the report to House of Representatives with draft Order
 - The Draft Order approved if its gets no less than one-half of the votes from members of House of Representatives. PM submit the draft order to the King
 - The King shall make an Order out of the draft and Order will come into force on such date that may be specified in therein
 - If the draft Order is rejected, the Prime Minister with consultation of EC may amend the boundaries before getting approval from House of Representatives

Building Blocks of Redelineation

- Building Blocks: Address, Localities and Polling Districts



- Blue indicates locality
- Red indicates polling district (DM)

Building Blocks of Redelineation

- As soon as redelineation is concluded, EC is to divide constituencies into polling districts and places are appointed for polling
- Alteration of polling districts can occur anytime as needed. But there is one loophole – Previously, alternation of polling districts can affect the next revision of electoral roll. Now it is silent...
- Usually One Polling District = One Polling Place.
- Regulation 8 of ROE – Electoral Roll in relation to Delimitation. (Issue with Kimanis by election). Should it be N23/N24 or N30/N31?

COMMON VIOLATIONS

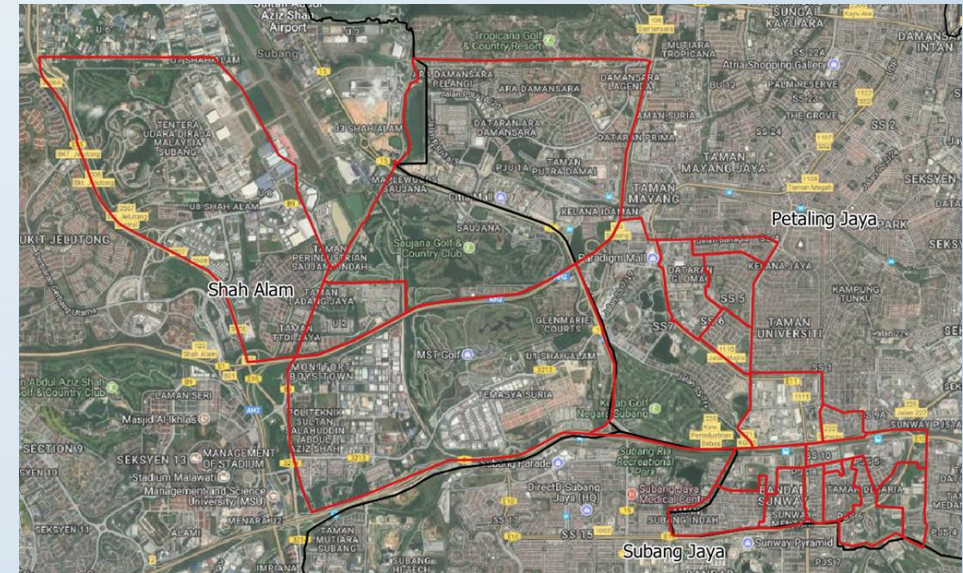
MALAPPORTIONMENT

- Case: Allowing Undersize seats to depopulate and allowing oversize seats to overpopulate without doing anything (Penang)

<i>Deviation from Electoral Quota of the State</i>	<i>2013 Affected Seats</i>	<i>2016 Affected Seats</i>	<i>Voter Population Growth (2013 - 2016)</i>
Exceeding - 33%	2	2	-5.72%
-33 % to - 15%	10	10	0.68%
-15% to 0%	10	10	2.98%
0 to 15%	8	8	3.03%
15% to 33%	5	5	1.87%
Over 33%	5	5	4.90%

GERRYMANDERING

- Arbitrary joining of communities with disparate interests and local authorities



*Red boundaries show polling districts of Seri Setia.
Black boundaries are the local council boundaries.

IMPACT OF UNFAIR REDELINEATION

DEEPEN URBAN – RURAL DIVIDE

Sabah : Malapportionment of Proposed & Existing Seats (2016)

Recently, Sabah witnessed the creation of 13 new state seats (from total of 60 to 73)

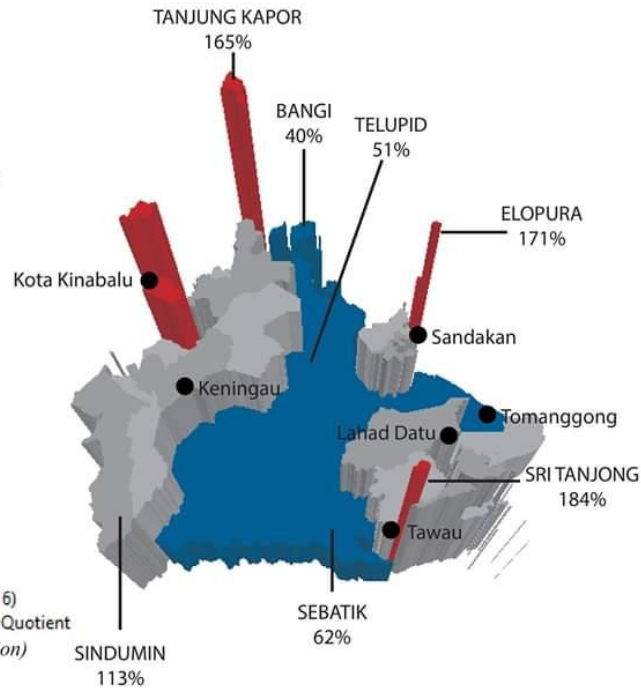
However, the creation of new seats did not address the issue of gross deviation of voter values across the state.

Since Sabah's physical and electronic communication is limited, deviation from ideal voter count should not exceed 25%.

Malapportionment deepens the urban-rural divide of Sabahan politics and undermines the One Man, One Vote and One Value concept

Sabah Proposed State Seats (2016)
Deviation from Equalized Quotient

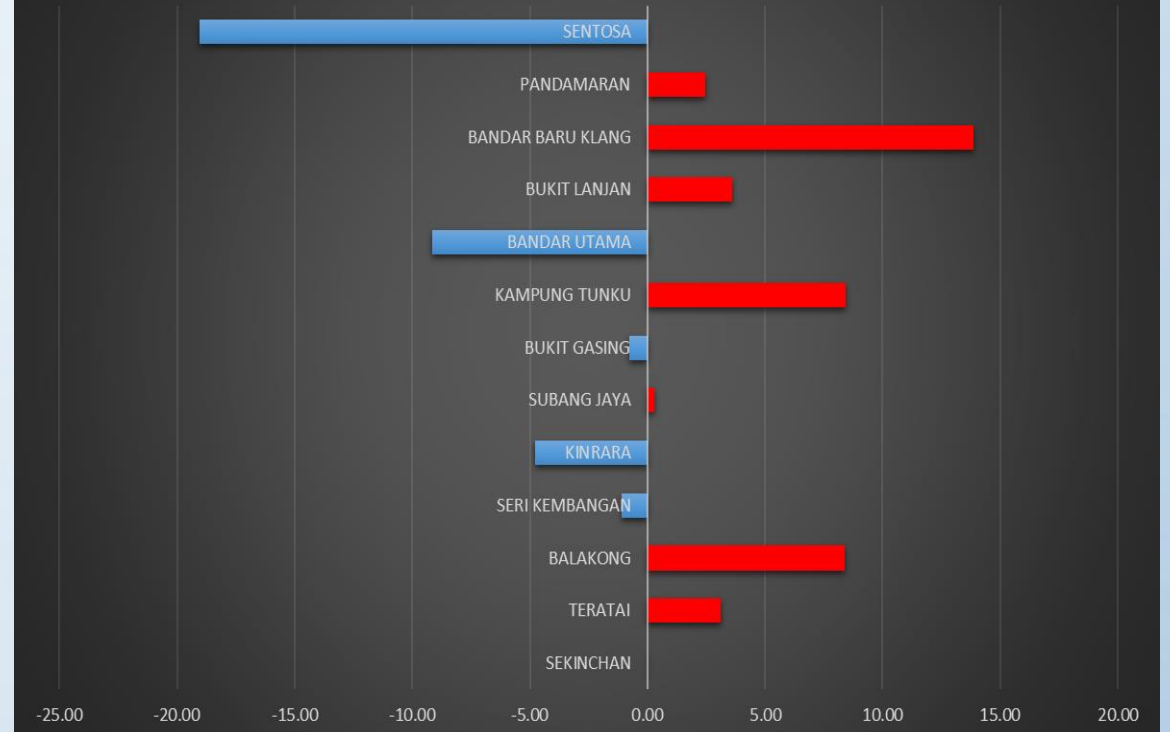
0 - 75 (Over representation)
76 - 100
101 - 125
126 - 200 (Under representation)



Source: SPR 2016

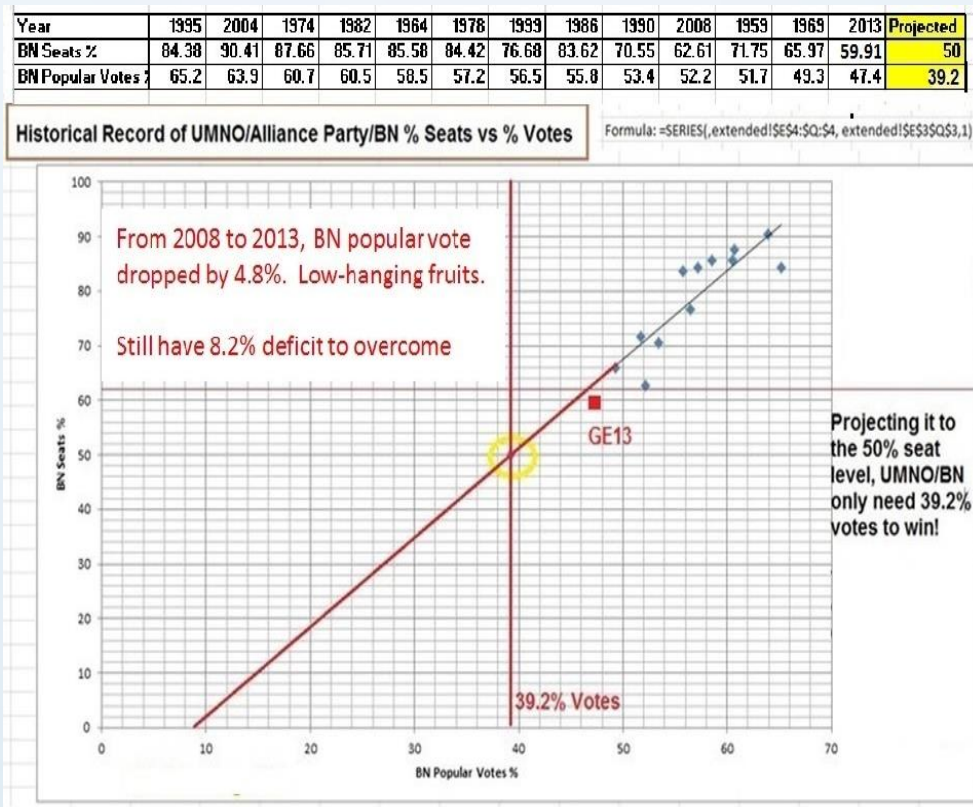
PERPETUATING RACIALISATION

IMPACT OF REDELINEATION ON CHINESE MAJORITY SEATS



IMPACT OF UNFAIR REDELINEATION

UNFAIR ADVANTAGE TO SOME



PENALISING CONSTITUENCY

LOYARBUROK

Liberavi Animam Meam
I Have Freed My Spirit

The System | Human Rights | Selected Exhortations | Public Interest Cases | PusatRakyat.LB | The Lobby | LB Rants

Raison D'être | Terms of Use

"Peruntukan" challenge: Court can't question government

11 October 2011 | Selected Judgments | Posted by Shannuga K

57 Shares

The Court of Appeal has set aside the Order granting leave to Dr Jeyakumar Devaraj to challenge the "Special Constituency Allocation" given by the Federal Government only to Barisan Nasional MPs.

In February of this year, Aziah Ali J had granted the Sungai Siput MP Dr Jeyakumar Devaraj leave to apply for judicial review so that the Court could examine if the manner in which the Federal Government was disbursing millions of ringgit of taxpayers monies over the years through Barisan Nasional MPs was legal. The judgment there was summarised here.

I summarised the facts of the challenge as follows:-

The Special Constituency Allocation is a fund administered through the Implementation and Coordinating Unit of the Prime Minister's Department and given for various small projects throughout Malaysia.

Politicians from the ruling Barisan Nasional coalition have publicly stated many times that the Fund is only for Barisan Nasional politicians and Barisan Nasional constituencies.

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What is the main motivation of the Bar

NGOS' STANCE ON REDELINEATION

- Deviation from Electoral Quota
 - Tindak Malaysia: +/- 15% for States of Malaya and +/- 25% for Sabah and Sarawak
 - Bersih: +15% and – 33% for any given state
 - Huazong: The largest constituency should not be Three times larger than the smallest one in terms of the number of voters
- Local Ties
 - Pursuance of equalization vs Pursuance of respecting local ties (2014)
 - Largely similar between Tindak and Bersih. Huazong interpretation involves a hierarchy where local administrative ties should take precedent in interpreting local ties over other forms of natural or cultural boundaries

FIXING THE BUILDING BLOCKS: DM

- **CURBING GERRYMANDERING & MALAPPORTIONMENT**

- Polling District population to be between of 2 to 4 % of state electoral quota
- No polling district violate local authority boundaries
- Aim to form constituencies that respect local administrative ties or geographical or cultural boundaries

- **ACCESSIBILITY TO POLLING CENTRE**

- A constituency should be built where 80% of the population can be accessed via roads
- Remote areas: voters can be reached via water or overland within 2 hours
- Appointed polling centres must be publicly accessible
- Only use military and police facilities as polling centres if publicly accessible

References

- http://www.bersih.org/ge14-electoral-reforms-memo/#_Toc480554789
- <http://www.thenutgraph.com/uncommon-sense-with-wong-chin-huat-constituency-redelineation-and-citizen-vigilance/>
- <http://www.spr.gov.my/ms/pilihan-raya/pengemaskinian-daerah-mengundi>
- http://ppn.spr.gov.my/kedah/?page_id=3746
- Malaysian Constitution
- Elections Act 1958
- Registration of Electors (ROE) 2002

CONCLUSION

- Fair Redelineation is the basis of fair representation of voters' preference
- Fair Redelineation is built on reasonable building blocks
- Fair Redelineation ensures ease of voting access and allowing elected representative to service the community effectively
- Fair Redelineation curbs race based politics and ensure Malaysia has a functioning Democracy

