

Jurisprudence and ITS Relation to Malaysia Political Scene

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Abstract

As a nation that operates under a democratic form of government, Malaysia is home to a diverse range of political beliefs, each of which is supported by a distinct political party. In addition to that, it is made up of citizens of multiple races, such as Malay, Indian, Chinese, and other races, each of whom unquestionably has their own opinion concerning a variety of different subjects. The disparities in political ideology and cultural upbringing that exist between different ethnic communities are an essential factor in the potential for racial tensions. The objective of this article is twofold: first, to examine how politicians in Malaysia obtain support from voters, either directly or indirectly, by utilising jurisprudence theory; and second, to analyze how politicians, by utilising their authority, attempt to govern people in a peaceful manner. While the study employs a doctrinal approach, the data were gathered through library research to learn how Malaysian politicians use their positions of authority to further their own agendas while attempting to uphold the stability of the nation and the well-being of the people. The analysis concluded that the study of jurisprudence, which encompasses both the theory and philosophy of law, has a significant bearing on Malaysia's political and legal institutions and the constitutional processes and justifications for those institutions. Although obtaining justice for all parties can be challenging, nations typically prefer to adopt decisions that prioritise protecting the general welfare over pursuing the goal of justice.

Keywords: Jurisprudence, School of Thought, Politics, Election, Manifesto.

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1. Introduction

Any law's importance and efficiency depend on how widely it is known that it exists and how willingly people to whom it applies or to whom it is addressed accept its consequences. Law is only dimly understood as a tool of justice. However, the courts we are familiar with are courts of law rather than courts of justice because justice is a divine concept and has little to no bearing on the study of law. However, the law is one of the ways we work to achieve justice; even so, we are aware that we rarely succeed and that the best we can hope for is harmony.

Malaysia has embraced a democratic system of government (Hassan and et al,2022), one that is predicated on the idea that the majority's will holds influence over the government and that the elected officials of the people may carry out that will. Such a form of government can turn into tyranny because it depends on the willingness of the minority to accept the will of the majority, or if the law created did not strike a balance between what is ideal and what is feasible, or if those in authority lacked the basic virtues of decency and fair play that are necessary to maintain social harmony. We invoke the idea of equality that everyone should be treated equally when we use the word "law". Article 8(1) of the Federal Constitution states that "all persons are equal before the law and entitled to the equal protection of the law." Thus, this writing discusses further political behaviour towards Malaysia and the jurisprudence behind it. The study employs a doctrinal approach to deliberate further on this topic (Althabhwawi,2022) (Yaacob and Markom,2022). The data were gathered through library research like the study conducted by Allahverdizadeh & Karimi (2023) and Bagheri et al. (2021). This method was used to learn how Malaysian politicians use their positions of authority to further their own agendas while attempting to uphold the nation's stability and the people's well-being.

2.Natural Law in Malaysia's Political Scene

In Malaysia, there are a lot of political scenes that have a relation to jurisprudence. Be it from morality to divine law, even another school of thought like positivism and sociologist, there will always exist a theory of jurisprudence in every policy or tactic being put out by our politicians as they know it will benefit them. Looking at natural law, there are many scholars that have their own theories on what natural law is. St. Thomas Aquinas, a renowned naturalist, developed a view where a man can be understood only as part of a properly functioning social whole; where he put

it within a Christian world-view and said, “the goods disclosed by nature belonged within the *lex aeterna*, God’s plan for the universe into which rational man could gain insight through revelation (the *lex divina*) and conscious participation (the *lex naturalis*)” (Freeman,2014).

This was further developed by Finnis, where he expanded that view of Aquinas to a man's need to assert certain basic goods for human beings, objective values, in the sense that every reasonable human being must assent to their value as objects of human striving. These goods must be seen in the light of a community of human beings, for only in communal life are the conditions for pursuing basic goods. The teleological perspective holds that man has ends that can be determined by examining his nature and desires. Finnis intends to demonstrate that natural law is founded on who provides man with his goals. This will surely flow back to natural law from a deity or God. Despite that, it is also well known how natural law emphasizes reaching moral truths through pure reason, and pure reason here will be god’s plan for the universe. According to Pufendorf, natural law is binding because it is willed by God (Freeman,2014).

This shows that natural law only binds morally, and it is according to those who believe in God, and this is what had been used by Malaysian politicians as a tool to succeed. For instance, the issue of the application of Hudud, which is a divine rule revealed in the holy Quran to govern Muslims while upholding the sanctity of Islam, has been utilised by Parti Islam Se Malaysia (PAS) as a strategy in order to obtain the support of Muslims in Malaysia. The concept of “rise with Islam” by PAS encouraged people to support them in the name of supporting the religion, which is Islam (Junaidi Awang Besar and et al.,2020). Since the beginning, PAS has been advocating for the Islamization of both government and law (Saat,2015). One of their leaders, Ustaz Dr Haron Din, published the book "Hudud Dalam Perundangan Islam" in 1978. This book stresses the significance of Hudud and shows how the Islamic code of law can help transform Malaysia into a progressive state (Ghani,2020).

This shows how a divine law considered as a purpose for a man become a drive for them to support a political party that uses moral, religion and god’s plan as a campaign and political play. This was consistent with the studies conducted by Bernard et al. (1954), in which he identifies three causes for political preferences. First are income, position, and employment. Second, ethnicity, religion, and race. Third, territoriality and the distinction between urban and rural regions. According to the findings of the study, the success of this political play in Tumpat, Kelantan can be attributed to concentrated

religion and the necessity for divine law in the campaign. 37% of respondents to a questionnaire in 2021 claimed they would vote for a candidate because of their religion, ethnicity, or age, which together made up the majority of the sample (Junaidi Awang Besar and et al.,2022). This demonstrates how significant of a part natural law plays in the society of Malaysians. This is in accordance with Finni's belief that a man needs to proclaim certain fundamental goods that they value as objects of human effort; in the Malaysian context, is the religion of Islam.

Hobbes asserted in his book *The Leviathan* that the laws of nature do not necessarily bind humans everywhere and at all times. They are obligatory in the sense that everyone should wish to observe them. A man who fulfils their promise while others do not would make himself a prey on others and procure his own ruin (Freeman,2014). The support towards PAS was driven by their achievements to maintain their reputation as a political party that is free from corruption (Awang,2018). However, one also needs to acknowledge that being a Muslim-majority country, Hobbes' idea of natural laws did have some influence. In other words, because of the belief of the majority, one will feel obliged to follow that belief, and that has become a great political strategy for PAS to win the support of the people because they are promoting the laws of nature in their campaign. This would have been different if the majority of the voters did not really have observance towards Islam, then PAS would lose their ability to utilize the law of nature that is on their side .

In addition, it appears that the former administration, Pakatan Harapan, which was in power from 2018 to 2019 at the time, shattered people's trust that they would protect Islam, prompting an uproar and a desire to protect the respect of the religion (Anonymous,2018). In this respect, Locke's stance on majority agreement holds that a decision made by the majority is equivalent to a decision made by the entire society. Locke's viewpoint was reflected in the research carried out by Junaidi Awang Besar et al. (2020), which found that the voters voted for PAS because the party has a history free of corruption, which was the goal of the vast majority of voters. The social contract will undoubtedly be connected to the political play that takes place. Both Hobbes and Locke utilise it in their arguments, although Hobbes uses it to defend absolutism while Locke uses it to advocate limited constitutionalism.

In general, the social contract was utilised to express political ideals. According to John Locke's *Two Treatises on Government*, the fundamental

principle of political theory is that "no man can be subjected to the political power of another without his own consent." When a man is happy with the ideas of a political party, it is easier to get their consent to be subjected to that political party. This was conveyed in a questionnaire distributed in Kangar, Perlis, where the winning party, which is the collision of UMNO, and PAS, won the hearts of the voters based on their ideas, and this made the people give their consent to be subjected to this political collision (Shukrimun and et al.,2022).

The essence is consent which had been mentioned by Locke, and it was utilized tremendously, which caused the ultimate win of the PAS-UMNO collision in Kangar, Perlis. However, the question is how to get the best ideas in order to gain the consent of the subject. J.M Finnis had underlined the basic forms of human good under the "universal" values theory that shall be a guideline to help us understand how a campaign was strategically put by our politicians .

The first basic form of good that had been put out by J. M Finnis is life. He further explained that the term "life" here signifies every aspect of the vitality (vita, life), which puts a human being in good shape for self-determination. Hence, life here includes bodily (including cerebral) health and freedom from the pain that betokens organic malfunctioning or injury. This was the approach taken in the Budget 2023, where the government spearheaded by UMNO had manifested to allocate an amount of RM 36.139 billion for healthcare (Sukaimi,2022) as a means of gaining support. The voters greeted it with a round of applause, as healthcare and survival are fundamental requirements, and those who can give them would undoubtedly win their support. Even the former Minister of Health, Khairy Jamaluddin, pointed out that this amount was a sign of the government's appreciation and an indication of how important citizen healthcare is to the government.

Secondly, the basic value is knowledge which is crucial for a human being. In Budget 2023, the politicians promised to give as much as RM 372.3 billion for education. They planned to utilise RM430 million to construct five new schools in rural areas and two new school buildings in Cyberjaya and Denai Alam (Bernama,2022)). The third basic good of human is play. According to J.M. Finnis, play is defined as "the performance may be solitary or social, intellectual, or physical, strenuous, or relaxed, highly structured, or relatively informal, conventional or ad hoc in its pattern. An element of play can enter into any human activity, even the drafting of laws, but is always analytically distinguishable from its "serious" context, and some activities, enterprises, and institutions are entirely or primarily pure

play ”.

From Malaysia's political context, it was shown that play also was seen as a way of gaining the heart of Malaysian when Budget 2023 pulled out an overwhelming RM 332 million for sports which included improving the facilities, programs, and incentives for the athletes (Mohd Khalid,2022). The fourth fundamental good is an aesthetic experience that is related to but distinct from play. J.M. Finnis said, unlike a play, aesthetic experience is what is sought after and valued after the play, which simply is the beautiful form “outside” one and the “inner” experience of appreciation of its beauty. In other words, it is the emotion you get out of an activity or “play” itself .

This is a problem in Malaysia’s political scene because no step has been taken by our politicians to utilize this basic good, but this aesthetic experience itself is about emotion, then it was subjective to utilize it using monetary power by promising it in the Budget. But we shall look into things that have been done by the politicians to play with the emotion of our people. Lastly, religion is also considered a basic good for a human being. This basic good has its relationship with what had been discussed before in terms of what gives man a purpose. Hence, because of the purpose of protecting the religion itself, it gives the politicians a space to utilize this as a way of presenting the ideas of their respective political parties. This was once again portrayed in the Budget 2023, where RM 1.5 billion was pledged to be given to Islam development, where RM 150 million for upgrading facilities, RM 6.5 million for endorsing the Halal industry, and many more (Adnan,2022). This shall be seen to show that the government protects the religion which fulfilled the basic good that had been underlined by J. M. Finnis. Although the government that initiated the Budget 2023 did not win with a majority in General Election 15, still because of their campaign that used these five basic goods still won enough seats for them to remain in the government as a part of a collision with Pakatan Harapan. This shows that the theory of “universal” value plays a significant role in gaining the support of the voters and taking their consent to be subjected to one political party.

3. Positivism in the Political Scene in Malaysia

In addition to a consideration of the perspective of one political party, PAS, and how they employ natural law in their political campaign strategy, this article examines the perspectives of another political powerhouse in Malaysia: Barisan Nasional (BN) and its relation to positivism. Positivism is derived from the word “posited”, which signifies that positivist studied the

law as it was posited, as laid down and not as it ought to be. Austin himself insisted on a determinate person or body as the source of a command, presumably on the footing that a command is an exercise of the will of some particular person or persons (Freeman,2014). This perspective demonstrates Austin's desire to establish that law is a command issued by a sovereign power at its own will.

In addition to that, Austin insists that the law must be backed by sanction. As has already been pointed out, the law essentially depends on authority. Due to mutual recognition that the other person has a right to obedience, authority implies that one person is obliged to obey the other. In other words, when someone sets a rule that must be followed, they are asserting their right to do so, and when someone obeys them, they recognise their right to do so (Freeman,2014). There is a possible connection between this and Article 153 of our Federal Constitution, which states unequivocally that the rights of the Malay people and Bumiputera cannot be violated in any form. This provision was made by our founding fathers because they believed that those rights should be maintained and should be obeyed by every citizen in Malaysia. This issue of Malay and Bumiputera rights has been used by BN to them, they pull out Malay supremacy in their campaign as it is something undisputable which is great because it gives them the advantage. When you have something undisputable on your side, it gives you the utmost power to influence people.

In the book *Perspectives in Jurisprudence* by Elspeth Attwool, published in 1977, Ruben claims that Austin held the position that democracy of the masses was superfluous to the furthering of the public welfare. This was not the idea in politics and was the reason Austin got criticised over this belief. Ruben further said that Austin was not interested in reform but in defending the status quo. This belief that Austin held was due to the fact that, at that particular time, he placed a high priority on the well-being of the expanding British Empire. This was not the case in contemporary politics, as it is now recognised that the downtrodden have the right to vote for whomever they choose. It is essential to have the support of the majority, and public welfare is an effective means of achieving this. This was shown in research done in Germany, where it shows that politicians with majority support behind them which, earned through public welfare, have an exorbitant percentage to win the election. Hence, this shows that not all that Austin said shall be a benchmark in positivism, but critics have done over his beliefs too can help to improvise positivism, and definitely, this critic would help the development of the political play. In Malaysia, there are many politicians

who have used public welfare as a tool to gain majority support which had discussed earlier.

4.Sociological in Malaysia Political Scene

Prior to delving into the specifics of the political climate as seen through the lens of sociological jurisprudence, it is necessary first to get a firm grasp on the foundation upon which this ideology is formed. Pound's sociological jurisprudence offers a broad theory that has been considered to be the purpose of legislators, tribunals, and even philosophers, particularly in regulating relationships and enforcing conduct in a society where the range of free activity is limited while demand is infinite. The following is a general theory... satisfying human demands, of securing interests or satisfying claims or demands with the least of friction and the least of waste ... (Masotti and Weinstein,1969).

By emphasizing and regulating the relationships and prescribing behaviour in a world that forms a balance with the maximum fulfilment of social demands, this theory offers the ideal of justice as the purpose of the law. Every person can become unpleasant to one another if their interests or desires conflict with one another, which is a crucial decision to make. This is also the rationale for Pound's broad idea of maximization of demands with the least amount of friction at this point. According to Pound's idea, it is impossible to fulfill every person's goal, but it is feasible to maximize them with the least amount of friction.

According to Pound's "theory of interests," an interest must be preserved when it is acknowledged as a legal right. Pound defines "interest" as ... a demand or desire or expectation which human beings, either individually or in groups or associations or relations, seek to satisfy (Clarence,1958). It is impossible to satisfy all interests at once, especially when they are in contradiction.

Furthermore, Pound emphasized 'social engineering' in his theory, contending that law is a tool for addressing what is typically referred to as "social wants" which are demands, claims, and expectations in a civilized society (Sahamid,2005). More specifically, achieving social satisfaction while making the fewest sacrifices. The law sees "social engineering" as a form of social jurisprudence and views it in connection to general theory and sociological jurisprudence. The general theory, in contrast, is the objective of law where opposing interests can be harmonised, and interpersonal relationships are synchronized (Mahajan, 2010). The law must

have all possible effects as a form of ‘social engineering’ to prevent conflicting interests in society while maintaining social order and competing interests. Pound divides interest into three categories namely i) individual interest, ii) public interest; and iii) social interest.

Private interest is another name for individual interest. As the name implies, it is the demand, claim, or desire of people from the perspective of personal existence. Interests in personality, interests in family life, and interests in substance are the main topics. Personality interests include physical and spiritual interests, including well-being, avoidance of harm, fair treatment at work, and willpower (Mahajan,2010). Furthermore, public interest focuses on a state’s interests, as seen through the prism of political activity. It consists, in general, of claims made inside a social structure that is politically organised (Gardner,1961). Pound believes that a state’s interests have two components which includes right to freedom of action, reputation for honour, protection, and integrity, and are regarded as legal entities. Additionally, it involves the assertions that a politically organised society is a company made out of property (Mahajan,2010).

Moreover, social interest is regarded as the largest category. When they are characterised as ‘demands or claims involved in civilized society but from the position of a social life,’ as opposed to the individual life in individual interest, it is considered that they are separate and vital interests (Nalbandian,2011). It is normal for the social group to assert its claim of social interest. Social interests and the idea of security are frequently related. For instance, organizations involved in domestic relations, general safety, public health, religion, economics, and politics; environmental preservation; freedom of speech and expression; and others. Some of this freedom is fundamental liberties that must be safeguarded and protected in accordance with the law. In fact, fundamental liberties are meaningless unless there are assurances that they may be properly enforced through remedies (Gan Chee Keong,2016).

In the context of the political landscape of Malaysia, the application of sociological jurisprudence can be observed in the instance of the prohibition of transgenderism. The issue of the third gender has been debated, especially post the 14th General Election in Malaysia. In 2018, Mujahid Yusof Rawa, former minister of the Prime Minister’s Department (Religious Affairs), denied that the Malaysian government recognises the LGBT community (Bernama,2018; Ahmad Pauzi,2018). This issue has been sensationalised and got the attention of many including political parties to discourse about it. Due to the allegation, on December 15, 2022, Mujahid

filed the suit after PAS in a Facebook post claimed that the former Minister in the Prime Minister's Department (Religious Affairs) supported the LGBT community. PAS was named as a defendant and sued through its Secretary General (Mokhtar,2023). Later after the change of the government, in October 2021, Idris Ahmad, the former minister of the Prime Minister's Department (Religious Affairs), stated that the third gender would not be established in Malaysia as it will not only involve the issue of disharmony among the community but will have a huge impact on the existing legal system, especially sharia law (Utusan,2021).

Regarding the prohibition of transgenderism, the National Fatwa Council published a fatwa (religious decree) regarding gender transformation surgery. The Council determined that such a procedure is forbidden in Islam; nonetheless, the person who conducts the procedure will keep his or her biological sex. The Council also established tasyabbuh (man resembling woman and vice versa) as haram (forbidden) in 2008 and 2015 (Mohd Nor,2015). This is aligned with one of the hadith by Prophet Muhammad, which mentions;

لَعَنَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ الْمُتَشَبِّهِينَ مِنَ الرِّجَالِ بِالنِّسَاءِ، وَالْمُتَشَبِّهَاتِ مِنَ النِّسَاءِ بِالرِّجَالِ

“The Messenger of Allah (ﷺ) cursed men who copy women and cursed women who copy men.” (Bukhari, Book 77, Hadith 102)

Shariah laws in Malaysia's 13 states include sanctions for transgender-related behaviour in line with this stance. For example, Section 28 of the Shariah Criminal Offences (Federal Territories) Act 1997 stated that any male who poses as a woman in public is committing an offence and can be fined not exceeding RM1000 or imprisonment (not exceeding one year). In addition, Mohamad (2015) believes that Lesbians, Gays, Bisexuals, and Transgenders should be controlled and prevented in Malaysia through the implementation of Sharia criminal law. She emphasised that serious action must be taken to prevent this group from disparaging and insulting Sharia law in Malaysia .

From the perspective of sociological jurisprudence, as Pound places an emphasis on dividing the law into three different kinds of interest, the transgender community strive for their own interests, including the right to life (Faruqi,2008). The fact that transgender people have their human dignity violated in Malaysia is not shocking news. The right to live without discrimination, intolerance, and flagrant disregard for one's human dignity is the individual interest that transgender people demand from the

perspective of their daily lives. The transgender society additionally demands equal opportunity and the right to justice, employment, education, and identity recognition, in addition to these proactive steps from the public. On the other hand, it is in the public interest for a state to be safe and peaceful. The State seeks to protect itself from any threat or commotion and is required to do so. The State government must first weigh the implications before supporting transgender people in their demand for official recognition of their position in society. This does not, however, imply that being transgender is improper and should be discriminated. Instead, it enables a phenomenon that was before unacceptable to become acceptable. In such a procedure, the State government must take precautions. Forcibly recognising the position of transgender people can only cause unanticipated trouble in society if the public at large is not ready for it. In accordance with Pound's theory, the court will have to weigh the importance of each interest (individual interest versus public interest) and determine how many concessions each stakeholder should make in the event that these interests' conflict.

For social interests, it can occasionally be closely connected; thus, Pound does not mean to make a clear distinction between them. According to Pound, an individual interest will turn into a social interest when viewed from the perspective of society. The desire of society is to give transgender people a non-discriminatory living environment. At the same time, the State has a duty to maintain social order and stop a specific group of people from engaging in alleged immoral behaviour.

Pound's theory of social engineering proposes rejecting the customary mentality and enacting a far more accommodative law to address the requirements of society as a whole in order to resolve these competing interests. A lawyer or judge should assess and balance competing interests before finding a fair balance (Chand,2019). Therefore, Malaysian politicians may have achieved a balance between acknowledging this phenomenon and forbidding it rather than criminalizing transgender people like what the Prime Minister's Department (Religious Affairs) did to the third gender. This viewpoint is in line with Pound's sociological jurisprudence, which maintains that the goal of the law is to maximize satisfaction while causing the least amount of friction and disturbance

5. Conclusion

Every politician is indeed trusted by the people through elections to govern the country as possible. However, accomplishing justice while finding a solution to a problem is not a simple task and might be seen as a challenging endeavour. For instance, Article 153 of the Federal Constitution, which is frequently invoked by political parties in reference to the unalienable special position of the Malays and Bumiputera, is viewed as fair by Malay and Bumiputera, whereas members of other ethnicities feel uneasy. In addition, it is considered that some issues, such as the controversy surrounding the prohibitions against transgender people, do not have a conclusion to their answers in terms of achieving justice. The right to life is a well-established ideal. Under Article 5 of the Federal Constitution, everyone in Malaysia has the right to life, which includes the right to subsistence and a good standard of living. This is in line with Article 1 of the Universal Declaration of Human Rights that all people are born free and equal in their rights. Recognising the rights of transgender individuals would be met with unavoidable opposition; given that the majority of Malaysia's population is Muslim, this opposition will be particularly intense. In any event, Pound's conception of jurisprudence, which seeks to serve social demands by balancing competing interests, must be observed in order to implement his theory of law. The States made the decision to prioritize the needs of the majority over the demands of the minority population. Therefore, the struggle to get justice for all parties is indeed a difficult thing, and in addition to achieving the objective of justice, a country prefers to make decisions that are more about preserving the public interest.

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