

The Uncivil Side of Civil Society: The Case of BERSIH in Malaysia

Sisi Tidak Sivil Masyarakat Sivil: Kajian Kes BERSIH di Malaysia

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ABSTRACT

The Coalition for Clean and Fair Elections (BERSIH), often reputed as the champion for electoral reform in Malaysia, has been closely observed by scholars since its inception in 2006. There is a general consensus on the vital role played by BERSIH in fostering the growth of civil society in Malaysia. This article however contends that BERSIH's establishment as well as its activities and orientation emerge from, and are a reflection of, a specific position within the Malaysian civil society acting as oppositional forces for the Barisan Nasional regime. Rather than uncritically idealizing BERSIH as an embodiment of civil society, this article shed lights on the uncivil side of BERSIH. Using secondary sources and strengthened by interviews with eleven interviewees, this study found that in most cases and under the pretext of civil society, BERSIH is driven by political considerations and applies a narrow interpretation of grassroots democratization. By focussing on its role as domestic election monitoring organization (DEMO), BERSIH's reputation appears to be in conflict with the prerequisites laid out in the operation of non-partisan DEMOs. Post-2018 General Election saw BERSIH attempting to reposition itself in the new power structure under Pakatan Harapan, at the expense of compromising its principles. The findings of this study also demonstrated the uncivil side of civil society movement such as BERSIH. Applying the term of uncivil society as the exclusive ownership of Malay-Muslim NGOs is misleading and contributes to the misconception that pro-democracy civil society has greater moral clarity.

Keywords: BERSIH; civil society; uncivil society; domestic election monitor organizations; Malaysia's election monitoring

ABSTRAK

Gabungan Pilihan Raya Bersih dan Adil (BERSIH) yang sering dianggap sebagai pejuang reformasi pilihan raya di Malaysia telah menjadi tumpuan para pengkaji sejak penubuhannya pada 2006. Wujudnya konsensus umum mengenai peranan penting yang dimainkan BERSIH dalam menyuburkan pertumbuhan masyarakat sivil di Malaysia. Artikel ini bagaimanapun berpendirian yang penubuhan, aktiviti dan orientasi BERSIH merupakan refleksi dari kedudukan khusus dalam masyarakat sivil di Malaysia yang berperanan sebagai unsur kepembangkangan kepada rejim Barisan Nasional. Beralih dari pendirian mengidealkan BERSIH secara tidak kritikal sebagai jelmaan masyarakat sivil, artikel ini cuba memaparkan sisi tidak sivil BERSIH. Menggunakan sumber-sumber sekunder dan diperkuatkan dengan temubual dengan sebelas orang aktor, kajian ini mendapati yang dalam kebanyakan kes dan di atas nama masyarakat sivil, BERSIH dipandu oleh pertimbangan politik dan mengaplikasikan tafsiran sempit mengenai demokrasi akar umbi. Dengan memfokuskan peranannya sebagai organisasi pemantau pilihan raya domestik (DEMO), reputasi BERSIH kelihatan bercanggah dengan pra-syarat yang ditetapkan dalam pengoperasian DEMO yang tidak partisan. Pasca Pilihan Raya Umum 2018 menyaksikan BERSIH cuba memposisikan semula kedudukannya dalam struktur kuasa baru di bawah Pakatan Harapan dan berkompromi tentang prinsip yang dipegangnya. Dapatan kajian ini turut mendemonstrasikan sisi tidak sivil gerakan masyarakat sivil seperti BERSIH. Mengaplikasikan istilah masyarakat tidak sivil sebagai milik eksklusif NGO Melayu-Muslim adalah mengelirukan dan menyumbang kepada salah tanggapan bahawa masyarakat sivil pro-demokrasi mempunyai kejelasan moral yang lebih unggul.

Kata kunci: BERSIH; masyarakat sivil; masyarakat tidak sivil; organisasi pemantau pilihan raya domestik; pemantau pilihan raya Malaysia

INTRODUCTION

Studies on the growth of civil society and democratization in Malaysia would be incomplete without mention of the election reform movement BERSIH (literally meaning “clean” in Malay).

Academics have credited the positive role played by BERSIH in various aspects of political studies, including its vital role leading to the historic 14th General Election (GE14) in 2018 (see for instance Lee 2014; Khoo 2016; Smeltzer & Paré 2015; Lim 2016; Chan 2018). A study by a Malaysian prodemocracy

think tank refers to BERSIH as the most influential organization among the 125 Malaysian civil society organizations (CSOs) working on reform agendas (see Sommerfeld 2019). BERSIH is also deemed as a “democratic civil society” that serves to “disseminate reformist ideas and progressive mass actions” (Abdul Rahman Embong 2018: 301). Put simply, BERSIH is an indispensable force in the development of civil society in Malaysia. This inclination thus provides a monolithic and overrated picture of BERSIH, and neglects the critical aspect of the role of BERSIH in civil society, particularly its role as domestic election monitoring organization (DEMO).

Departing from typical narrative of BERSIH, this article however contends that BERSIH’s establishment as well as its activities and orientation emerge from, and are a reflection of, a specific position within the Malaysian civil society acting as oppositional forces for the Barisan Nasional regime. Rather than uncritically idealizing BERSIH as an embodiment of civil society, this article shed lights on the uncivil side of BERSIH. This article makes two significant contributions. First, how can we conceptualize and assess BERSIH’s role vis-à-vis the operation of non-partisan election monitoring in Malaysia? Second, what are the contradictions in the operation of BERSIH as a civil movement in Malaysia?

METHODOLOGY

Aside from consulting secondary sources, this article gains its originality from interview session conducted with eleven interviewees involved in electoral governance and election monitoring. These comprise five activists currently or formerly involved in election monitoring in Malaysia, two senior leaders of BERSIH (current and former), two former high-ranking officers of the Election Commission of Malaysia (EC) and two interviewees from the Philippines (a high-ranking officer of the Commission on Elections [COMELEC] and one election observer). The in-depth interviews were targeted but unstructured, and took place in the form of one-to-one meetings.

The selection of interviewees was carefully considered to obtain a range of well-informed views. The five activists selected were representatives of several major DEMOs in Malaysia since 1990 and most of them have collaborated with BERSIH. The two representatives from BERSIH consisted of the

earliest former member of the Steering Committee 2007–2010 and also a current senior leader of the organization. Efforts were made to interview all four BERSIH chairs but to no avail. Two former high-ranking officers of the EC who dealt significantly with BERSIH were also interviewed to gain insights from their perspective. The opinion of a seasoned election observer from the Philippines was also sought to provide an external view of BERSIH. This is important because BERSIH has a strong regional network with several DEMOs in the country. We also interviewed a representative from the COMELEC to get insight on the transition of DEMO activists to the government as happened after the fall of Marcos.

BETWEEN CIVIL AND UNCIVIL SOCIETY

While civil society is one of the areas that has received the most attention from scholars over the past three decades, it can also be argued that the idea has been oversold due to the overemphasis on its positive side. Specifically, in this argument, the opposition civil society is considered as an element of democratization and it can increase the participation of the people (see Diamond 1994; Dryzek 2014). The Western conception of civil society tends to view the sector as good, bright, and advocating liberal democratic values as opposed to “bad and uncivil society” typically represented by separatist or ethno-religious groups founded on exclusivism (Kopecky 2003:18). It is this type of civil society and non-governmental organizations that are widely recognized and celebrated among Western policy makers and academia despite their lack of connection with the grassroots and their domination by the middle class (Mudde 2003:158).

The understanding also prevails in the Asian region where civil society is generally considered a moral conscience of the society. In reality, credit like this is deemed exaggerated (Alagappa 2004: 16). The increase of foreign funds and democratic aid affect the development of civil society in the context it stimulates the growth of NGOs that are exclusive, elitist, and lack strong mass support. NGO groups that typically have advantages are urban NGO groups, educated elites, and professional groups that have access to a funding network concentrated in the capital cities (Carothers 1999). In the Philippines, the civil society coup has brought more problems such as polarization, power struggles, and military intervention (Arugay 2013). After the success of People Power 2 overthrowing President Joseph

Estrada, analysts began to worry whether it would be a precedent to oust the next president by simply evoking a sentiment of public dissatisfaction (Landé 2001: 100). As a result, the protest movement in the Philippines was eventually seen as non-civilian and losing its appeal (Thompson 2008).

As explained, the term “civil society” tends to be given to pro-democracy organizations that fight for universal values such as BERSIH. In other words, BERSIH is an embodiment of civil society and civility against uncivil society characterized by racism, gangsterism, and intolerance as projected by some Malay-Muslim groups like Perkasa and Pekida (see Kua 2012; Wong 2015; Freedman 2015; Gaik 2019). The repetitive narrative has further strengthened the paradigm that civil society is reserved only for civil society organisations that fight for democracy, human rights, good governance, and so on. On the other side, uncivil society is generally reserved for the movement of the Malay-Muslim NGOs with anti-democratic tendencies. By using BERSIH as a case study, this article tries to show that the term “civil society” may not be applied exclusively to the latter.

. BERSIH AND THE CREDIBILITY GAP

Election monitors not only “must be non-partisan,” but also “must be seen to be non-partisan” (Lopez-Pintor 2005: 114). This is a key distinction that distinguishes BERSIH with other DEMOs in Southeast Asia, such as NAMFREL (Philippine) or Pollwatch (Thailand), which were established in its capacity to be an electoral watchdog. In other words, the particular political orientation of BERSIH compared to other DEMOs is too important to be neglected.

It should be noted that BERSIH was initially founded to promote free and fair elections through advocacy and mass mobilization and showed no interest in election monitoring as well as the importance of the process (BERSIH Election Observer 2019: interview; Former MAFREL Election Observer 2019: interview). Inspired by the role played by civil society in the fall of communism, BERSIH holds to the belief that electoral reform movements can become the support base for the opposition coalition (Former BERSIH Steering Committee 2016: interview; Election Watch Election Observer 2019: interview). As such, BERSIH began to organize a series of street rallies beginning with BERSIH 1 rally in 2007.

One significant and prevailing criticism of BERSIH is that the organization was actually an initiative by politicians rather than civil society. Although BERSIH decided to break away from political parties and operate independently in 2010 by changing its name to BERSIH 2.0, the political influence remains conspicuous. Many critics saw BERSIH rallies as being hijacked by politicians, featuring active involvement by politicians who led most of the BERSIH rallies as well as partisan demands such as “Free Anwar” (Gomez 2011; NIEI Election Observer 2018: interview). This criticism is further affirmed by actions of BERSIH top leadership who actively campaigned on the opposition platform in 2013 General Election (GE13). BERSIH 4 and 5 rallies, for instance, were overshadowed by the presence of Mahathir Mohamad—previously an ardent critic of BERSIH but who later rode on BERSIH’s popularity to further his criticism on Najib and the 1MDB scandal. At the same time, BERSIH seemed to reciprocate Mahathir’s action, realizing the need to mitigate the prevalent perception that saw BERSIH as a Chinese platform. Two of its leaders, Ambiga Sreenevasan and Maria Chin, expressed their support for the Citizens’ Declaration initiated by Mahathir to force Najib to resign. While the move itself was made under individual capacity, it sparked internal conflict among BERSIH members who perceived it as unwarranted support for a person identified as the source of collateral damage in Malaysia (*Malaysiakini* 2016).

Analyses predicting that BERSIH’s dependence on political parties for support would be unproductive (Farish 2011) became a reality in the BERSIH 4 rally. Compared to the multi-ethnic BERSIH 3 rally, BERSIH 4 seemed to be monolithic in composition following the exit of PAS from the Pakatan Rakyat coalition. It should be noted that PAS had played a vital role in mobilizing a significant number of Malay participants in previous rallies. Without PAS, the BERSIH 4 rally turned out to be predominantly Chinese, a situation that was easily exploited by UMNO and Malay conservative groups to associate it with the DAP. Although BERSIH managed to increase its Malay participants in BERSIH 5 (Hew & Maszlee 2016), the rally was regarded as overkill and counterproductive. After the rally, there was a widespread consensus among prodemocracy groups that the movement should start to engage more with rural communities and focus on voter education (*Today Online* 2016; Proham 2016). BERSIH however realized that this recommendation

would prove difficult to fulfil, as the movement had long since generated a bad reputation among rural communities especially in Malay-majority areas. BERSIH did attempt to mitigate this perception by appointing a Malay Chairman, Shahrul Aman, in 2018 and by highlighting the role of Malay literary icon A. Samad Said in its programs. However, the effort failed to soften the image of BERSIH as an exclusive middle class and urban-centric movement (Holler-Fam 2015; Praba 2016; Hafidz Baharom 2015).

Since the BERSIH 3 rally, the movement had been losing its core identity as a coalition fighting for electoral reform and gradually came to be perceived as an umbrella rally for all kind of dissatisfactions toward the BN regime. In addition to its support to Mahathir, BERSIH's excessive focus on the 1MDB scandal sparked criticism among prodemocracy activists who saw the movement straying from its original objective and fighting for issues unrelated to electoral reform (see Praba 2016). BERSIH continued to receive flak after Maria Chin decided to step down as its Chairman to contest in the GE 2018 under the People's Justice Party (PKR) ticket (Mei 2018; Tay 2018).

THE DISCURSIVE MANIPULATION OF PUBLIC OPINION

In line with its objectives that revolve around protest and public mobilization, BERSIH adopted a confrontational approach as its main strategy. This strategy is fundamentally against the prerequisite of election monitoring based on constructive engagement with all stakeholders notwithstanding their political affiliations (Global Network of Domestic Election Monitors 2012; Cabrera 2017). Critical journalist Terence Fernandez, for instance, criticized BERSIH for its persistent refusal to hold rallies in the stadium as recommended by the authority, which would later become a source for its antagonistic relation with the BN government (Fernandez 2016). Granted, police did use excessive brutality in handling the BERSIH 3 rally, including violence against journalists. But such act of brutality was also a response anticipated by BERSIH to strengthen its victim narrative (see Hishamuddin 2018c). During a presentation to international activists in June 2019, BERSIH current chairman, Thomas Fann included a classic photo depicting police brutality against protesters in a slideshow on the BERSIH 2 rally in 2011 (Fann 2019b). Further scrutiny reveals that the image

actually depicted a protest held in 2006 (see Sang Harimau 2006). BERSIH also seemed unhesitant to touch on diplomatic sensitivity. When receiving the Asia Democracy and Human Rights Award 2016 from the Taiwan Foundation for Democracy, the organizer censored Maria Chin's speech regarding the 1MDB scandal to preserve diplomatic sensitivity (*Free Malaysia Today* 2017).

That said, the Election Commission (EC) remained an archenemy for BERSIH. The former was consistently portrayed as an incompetent institution that conspired with the BN government to manipulate the elections. The BERSIH 3 rally was still held despite close meetings between BERSIH and the EC and even though the Yang Di-Pertuan Agong, at the time King Mizan, commanded BERSIH and the government to reach an amicable settlement. The EC Chairman at the time, Abd. Aziz Mohd Yusof, explained that he was shocked when Ambiga, a seasoned lawyer, suggested that automatic voter registration could be implemented without the need for a constitutional amendment (see Zulkifli 2011). A top EC official who also present in the meeting also recounted how Ambiga admired the knowledge and competency of the Deputy Chairman of EC at the time, Wan Ahmad, when the latter was responding to issues raised by BERSIH. Nevertheless, BERSIH continued to issue misleading and often pre-emptive, unconstructive statements in public (Wan Ahmad, 2013; Former High-Ranking Officer of EC 2018: interview). For example, to justify the BERSIH 3 rally, scholar-cum-activist Lim Teck Ghee (2011) selectively highlighted manipulations perpetrated by the BN and the EC cited in local and foreign academic studies. But absent in his writing is a balanced assessment on the transparency and competency of Malaysian electoral system (see Crouch 1993:1996; Case, 2001; IDEAS & CPPS 2013; Merdeka Centre 2013).

A seasoned Malaysian election observer distinguished two key aspects in the role of BERSIH and Election Watch, the first domestic election monitor in the 1990 GE. First, although EW was a critic of the Malaysian electoral process, it was never in its agenda to mobilize the people against the government (Election Watch Election Observer 2019: interview). Additionally, EW members consisted of people with impeccable reputation such as Mohd Suffian (former Chief Justice), Ahmad Nordin (former Auditor General of Malaysia), Chandra Muzaffar (seasoned scholar and social activist), and Param Kumaraswamy

(former chairman of the Bar Council). While some of its members did establish networks with Western entities, this was kept to the minimum. EW never received any technical and financial assistance from Western democracy promoters, unlike BERSIH that has received funds from the National Democratic Institute (NDI) and the Open Society Foundation (Election Watch Election Observer 2019: interview). Rightly or wrongly, although the receipt was small and only used for the study on redelineation, being a recipient of foreign funds would expose BERSIH to criticism and allegation associating the movement as an instrument for regime change (see Mohd Irwan Syazli 2018). The negative perception is further fuelled by the holding of the People's Tribunal Conference organized by BERSIH, which was chaired and attended by foreign experts. The Malaysian "civil society" has long been unhesitant to seek international attention, which eventually proved to be unproductive for the legitimacy of its cause (Gurowitz 2000: 833). A more contemporary example is BERSIH's demand to President Obama during his visit to Malaysia in 2015 to pressure Najib regarding the 1MDB scandal (Syed Jaymal 2015).

Another miscalculation for BERSIH was to adopt misleading lessons from the grassroots democratization in the Philippines and Indonesia for application to the Malaysian context, especially by its architect for protest, Hishamuddin Rais. As a seasoned protestor, Hishamuddin is a staunch believer that BN could only be toppled through street rallies. He was responsible for convincing BERSIH leadership to pursue this strategy—including cooperating with Mahathir—despite disagreement voiced by a number of NGOs (Hishamuddin 2018b; 2018c). A statement by Maria Chin saying that change should have already taken place given the scale of BERSIH rallies as elsewhere (Koh, 2018) also implies agreement on adopting the result of people's power exerted in the Philippines and Indonesia.

But such inspiration was taken superficially without regard to the context at hand as BN did not use methods of manipulation similar to the Marcos or Suharto regimes. Such misconception is the reason for BERSIH's failure to understand the social reality by overemphasizing a narrative of democracy that is detached from the masses (Hafidz Baharom 2015). For instance, Suharto's New Order posed direct, tangible, and severe threats to activists through the use of repressive state apparatus, the military and police, to kill or kidnap activists; this also included

the use of local thugs (Hadiwinata 2009). Although Indonesia has already passed the transition phase, the country is still burdened by rampant corruption, vote-buying, and money politics, which still persisted in the latest 2019 PEMILU (Member of BAWASLU Indonesia, interview, September 2019). A majority of General Election Commission officials were also charged with and jailed for corruption in 2005 (Beitinger-Lee 2009: 80–81). Similarly, the Philippines also experienced apparent and severe electoral violence and manipulation issues. The fall of Marcos did not bring any substantive change in the Philippines electoral system, which is still rampant with violence, fraud, incompetency, and corruption among COMELEC officials, such as the case of Hello Garcia in 2005 and corruption allegation involving the Chairman of COMELEC, Andres Nautista, in 2017 (Thompson 2010; Hutchcroft 2008). These situations may explain the more institutionalized nature of election monitoring in both countries that requires the involvement of hundreds of thousands of their citizens.

Che Hamdan Razali (2018) describes the result of GE14 as an antithesis to the belief previously held by Hishamuddin—that change could only be brought about through street politics. Hishamuddin later admitted that his theory was wrong, but still insisted on the crucial role played by BERSIH in the election (Fathi Aris & Abdul Rahim 2018).

JUDGEMENTAL BIASES

Another vital aspect of election monitoring, beyond neutrality, is the prerequisite for DEMOs to produce accurate, impartial, and timely reports. Such reports must be based on fact, rather than perception or rumours (see Cabrera 2017). The symbiosis between these two key aspects is clearly discernible since neglect of the non-partisanship factor would inevitably lead to biased and sentiment-driven reports. Although BERSIH should be credited for publishing its observation reports on the 2013 and 2018 GEs, it could be argued that both reports were generally based on a preconceived notion. Just a week before the polling day in the GE 2018, Hishamuddin had declared the presence of intensive electoral manipulation organized by BN to prevent the imminent victory of Pakatan (Hishamuddin 2018). Four days later, BERSIH issued a pre-emptive statement describing the upcoming GE 2018 as already unclean, unfree, and unfair, tainted by various manipulations (see Naidu 2018). Thus, it

is to be expected that the report would reflect a value-laden, judgmental, and biased tone. Some examples are cited below:

1. The use of inappropriate hyperbole such as “the dirtiest [election] ever” (PEMANTAU 2014: iii)
2. Exaggerated claims such as “rampant violations” (PEMANTAU 2014: 61), “the failure of indelible ink” (PEMANTAU 2014: 61); “tireless work of civil society groups, polling and counting agents and many candidates, mitigated the effects of fraud and manipulation [in GE14]” (PEMANTAU 2018: 93); “The EC turned a blind eye to the manipulations of the electoral roll and, in many cases, assisted in this manipulation” (PEMANTAU 2018: 91); “The number of irregularities on polling day point to either a deliberate attempt by the EC to manipulate election results or unacceptable standards of preparation of election materials and the training of election workers” (PEMANTAU 2018: 92);
3. General information using words such as “allegedly”, “suspected,” and “rumoured” (found in reports for both PEMANTAU 2014 and PEMANTAU 2018);
4. Tendency to ignore misconduct by opposition parties. The 2013 GE report only had two entries on Pakatan Rakyat while the 2018 GE report had just eight entries on PH (a *Malaysiakini* reader questioned why BERSIH did not dispute the allegations of power outage during vote counting and phantom voters put forward by PKR leader Rafizi Ramli in the GE13 (see Bob Ramli 2015).
5. Arbitrary conclusion: “What PEMANTAU can conclude is that GE13 did not meet domestic and international standards for clean, free and fair elections” (PEMANTAU 2014: 10); “GE14 was neither free nor fair” (PEMANTAU 2018: 93).
6. A visibly partisan recommendation: “For the current EC Commissioners to resign or be removed” (PEMANTAU 2018: 16).
7. One activist who had participated in BERSIH’s mission also criticizes its 2013 GE report that was not published until a year after the election and opened up the perception of “cooked up the report” (MEO-Net Election Observer 2019: interview).

Compared to BERSIH’s value-laden reports, more balanced assessments were produced by three professional CSOs appointed by the EC in the 2013 GE, i.e., IDEAS and Center for Public Policy Studies (CPPS) (the two think tanks produced joint reports)

as well as the established polling organization Merdeka Center. In addition to publishing their reports within a short period after the election, monitoring reports by IDEAS & CPPS and Merdeka Center were not spoiled by an overzealous tone and laden with sentiment. There is the use of hedging and qualifications, a quality that is almost absent in reports produced by PEMANTAU. That is to say, while these CSOs criticized the shortcomings of the EC and manipulations orchestrated by the BN government, they also acknowledged the smoothness of the election, competency of the EC, and the compliance with procedures on polling day. Several comments that reflect this tendency can be observed below:

1. “[D]espite all the efforts by the EC, they continue to face criticism from many quarters. There is widespread perception that the EC is not politically independent” (IDEAS & CPPS 2013: 18).
2. “The campaigns that took place during GE13 [were] visibly expensive for all sides” (IDEAS & CPPS 2013: 21);
3. “We believe [the issue of phantom voters is] directly related to problems associated with the electoral rolls as discussed in Section 4.4. However, we were not able to verify if the alleged foreigners were indeed foreigners, or they were actually Malaysians who looked like foreigners” (IDEAS & CPPS 2013: 29);
4. “Despite the various technical issues, we found that the overall election process proceeded smoothly and the vast majority of the glitches were not major. Many of these issues were rectified by the EC officers on duty immediately. We also found most nomination and polling centres to be well organised” (IDEAS & CPPS 2013: 29).
5. “While we acknowledge some inherent structural problems which compromised the independence of the EC, however, we noticed that the EC adopted a combative, partisan language while responding to the criticisms and even [labelled] its critics with negative terms” (Merdeka Center 2013: 11);
6. “Upon inspection of the Peninsula Malaysia results, we have identified some discrepancies between the gazetted figures versus official figures from the EC website... We consider the sum of discrepancies to be minor and do not impact the overall results of the election”

- (Merdeka Center 2013: 22-23);
7. “[H]aving conducted an independent and impartial observation of the elections, IDEAS and CPPS conclude that GE13 was only partially free and not fair” (IDEAS & CPPS 2013: 31);
 8. “The EC’s handling of election logistics was generally well conducted which reflects their administrative and technical competence... [However after further assessment on] crucial shortcomings encountered in our observation, we conclude this was an election that was generally smoothly executed but compromised by some serious flaws” (Merdeka Center 2013: 30).

BERSIH judgemental approach also caught the attention of election observation activist in the Philippines:

[BERSIH is] our friends, but the thing is, they’re not fair in making assessment. They have their own prejudices and biases. For instance, if you’re an independent election observer, you have to be evidence-based... Because you can always be arbitrary and say that it’s judgmental. Unfortunately, BERSIH started out very good, highly idealistic aspiration, but slowly you can see them being polarized and pulled only to one side (2019: interview)

PAKATAN HARAPAN ERA: FROM GUARD DOG TO LAPDOG?

Critical journalist Terence Fernandez was among the small number of prodemocracy activists who criticized the close ties between BERSIH and Pakatan leaders after the BERSIH 5 rally in 2016. In so doing, Fernandez (2016) also raised a scenario: “What if the alternative front does take power in Putrajaya one day? Will that be the end of BERSIH too? Or should it continue as a noisy check and balance?” Fernandez was right on point in raising this question.

Aside from Maria Chin who succeeded in becoming an MP, several other BERSIH leadership and activists were incorporated into the power structure. These include Ambiga who joined the Institutional Reform Committee formed by the PH government, Shahrul Aman who was appointed as Media Secretary to a minister, and Secretariat Manager of BERSIH, Mandeep Singh, who was appointed as Special Officer to a minister. The biggest reward received by BERSIH was when two of its activists, Azhar Harun and Zoe Randhawa, were appointed as chairman and member of the EC, respectively (although Azhar was rather indirectly

involved with BERSIH). Scholars who are friendly with BERSIH, Azmi Sharom and Faisal Hazis, were also among those appointed as Commissioners. The appointments received criticism because the decisions bypassed the Parliament and went directly against the widely campaigned promise in the PH manifesto prior to GE14. BERSIH however quickly defended PH’s decision, stating that the requirement for parliamentary approval for key appointments would only delay the electoral reform process (Ida Lim 2018b).

A change in platform can be expected to bring a change in values. Such was the case for NAMFREL activists who were appointed to lead COMELEC after the fall of Marcos. According to a high-ranking official of COMELEC:

When you have the people from CSOs transitioning to the government, there is always the danger of being co-opted because, obviously, when you’re in the government, you’re looking at things with a different perspective. The most high profile case ever happened was with one of our commissioners [who was the former Chairman of NAMFREL during the revolution, Jose Concepcion]. As a commissioner, he had to modulate his position on many things, which sort of put him at odds with his former colleagues. And his reasoning was always, “But you see, I see their problems now. I see why the COMELEC is doing this and not that. Even though we might want them to do that. I can see why they can’t and they have to do this half-measure or do something else entirely.” (High Ranking Official of COMELEC 2019: interview)

In the context of BERSIH as well as their activists who are now sitting in the EC, two cases serve as an example. First, a BERSIH activist acknowledged that the level of their trust deficit has gone down after being given the opportunity to fully observe the process as well as difficulties faced by the EC in performing its tasks (BERSIH Activist No. 2 2019:interview). In one of the by-elections after GE 2018, an EC bureaucrat appointed BERSIH representatives as Head of Polling Station. According to the official:

Just imagine, they even made a mistake in calculating the Form 14 (result for each stream) where in fact, the numbers aren’t that big for a typical by-election such as this. Around 100 to 200 plus. And we did take that opportunity [to get back at them]. So at the end of the day, [BERSIH] really can criticize [when they’re outside of the system]. We have to remember the pressure for EC staffs who are exhausted from their work—from early morning until 6 in the evening. That’s why sometimes 6 can seem to look like 9. It’s a human factor [and not an organized fraud] (Election Commission Official 2019:interview)

The second example is a statement issued by EC Chairman Azhar Harun, praising the EC staff as “the best” and “succeeded in organizing 14

elections without any major glitches.” In addition to downplaying some of the allegations that were more of a perception issue, the current EC leadership had to use the very same excuse used by its predecessors to justify its lack of authority to implement things, especially with regard to electoral offences committed by PH (Azhar 2018; 2019; *Free Malaysia Today* 2019). In fact, after being briefed on one important issue of the so-called electoral manipulation, one of the new EC Commissioners acknowledged that the issues were not as serious as they were alleged to be and were in agreement with the complexity of the system (Election Commission Official 2019: interview).

What BERSIH needs the most now is to enlarge its access to influence electoral reform, especially with regard to its three main projects: lowering the voting age from 21 to 18 (passed by the Parliament in July 2019), substituting the First Past the Post system with Proportional Representation and a more equitable redelineation. Considering that such access would only be possible through engagement with the EC and the Election Reform Committee, BERSIH seems compelled to compromise and to appear more “civil” in its modus operandi. Thus, the formation of the new EC leadership after the 2018 GE paved the way for convergence between the EC and BERSIH as well as two other electoral NGOs, Tindak Malaysia and Engage (hereafter referred as Bersih & Co). The latter seems to become a vital citizens’ arm (a term used in the Philippines to denote a group of observers appointed by COMELEC, such as NAMFREL and PPCRV) for the EC especially in the context of electoral monitoring. Nine by-elections post GE14 saw BERSIH steadily increasing its influence and visibility, which overshadows the role of other DEMOs appointed by EC. This is also reciprocated by special access provided by the EC to BERSIH & Co to participate in improvement of the electoral process (Tindak Malaysia 2019; Election Commission Official 2019: interview).

The special cooperation between the EC and BERSIH & Co. had sparked friction between BERSIH and other DEMOs where the latter see their own involvement as a mere formality and are rarely consulted (KPPN Election Observer 2019:interview). BERSIH’s objective to dominate the sphere of influence among DEMOs in Malaysia is made clear following Ambiga statement urging the PH government to fund the organization unconditionally (Tong 2019). The demand received heavy opposition from the public and but also from

BERSIH supporters, who cautioned against conflict of interest. Other DEMOs also accused BERSIH as selfish since it only demands the fund be allocated to itself rather than to all DEMOs.

In addition to its close relationship with the EC, BERSIH & Co. also made their presence felt in the Election Reform Committee (ERC), a partisan body established by the Pakatan to study electoral reform. The Committee sparked controversy as it is headed by Abdul Rashid Rahman, a former EC Chairman (2000–2008) who was opposed by BERSIH during the latter’s early years and is now a Vice-President of BERSATU under Mahathir. Abdul Rashid himself sparked controversy when he called for government contracts to be given to BERSATU members to fund their grassroots operations (*The Star Online*, 6 January 2019). Despite criticizing such development and urging the ERC to be seen as non-partisan (*Malaysiakini* 2018). BERSIH compromised on the matter and joined the Committee.

BERSIH’s proximity to the power structure has however affected its ferocity; it is seen now as being tamed. The movement no longer sees any need to take an aggressive approach or go to the streets to combat electoral manipulation which, ironically, is widely practiced by the PH government. It now emphasizes the need to work within the permitted legal framework and according to the laws (Fann 2019). The culmination of difficulties for BERSIH in balancing its act came with the Tanjung Piai by-elections held in November 2019 and regarded as the most fiercely fought by-election (PH was crushed by a majority of 15,086 in contrast to its 524 majority victory in the 2018 GE). Although PH had seemed cautious enough in using menus of manipulation in the previous by-elections, the Tanjung Piai by-election saw Pakatan go all out to influence the voters by promising various monetary and development rewards throughout its campaign. BERSIH in a statement responding to such behaviours only described them as “legal but unethical” (*Free Malaysia Today* 2019b). The most vital criticism came from vocal human rights activist and Advisor for SUARAM (partner of BERSIH) Kua Kia Soong, who describes the EC and BERSIH as practicing a double standard regarding the misconduct committed by PH (*Free Malaysia Today* 2019c). In the larger context, the taming of BERSIH is also a reflection of the dilemma surrounding prodemocracy CSOs in the post-GE14 era. Other than the inclusion of many activists in the system, there is a concern that they are losing their edge in becoming a third voice and seem

to submit to the PH government on several issues so as to not stir the already worsening ethno-religious sentiment. In a system laden with resistance to change, CSOs seem confused and unable to position themselves in the new PH government (Kow 2018; CIVICUS 2019: 140-141).

In September 2019, BERSIH sparked the most widespread criticism since its inception, including from its supporters, following a statement calling for Hong Kong to release pro-democracy activists imprisoned in the ongoing anti-extradition protest. The BERSIH statement is seen as unbecoming in its attempt to meddle in other countries' affairs and its show of support for violent riots. The unvisited website of BERSIH and that of Thomas Fann have been lively again with harsh comments condemning the BERSIH stand. BERSIH however underestimated this criticism and reiterated its support in a second statement in mid-November. The *Free Malaysia Today* news portal, which broadcast BERSIH's second prompt, received protest comments from nearly 900 users within 24 hours. The comments, which came largely from BERSIH supporters, represent almost 10 times the number of comments received by BERSIH since its first statement in September (*Free Malaysia Today* 2019d).

As for BERSIH itself, this balancing act proves detrimental to its cause. In face of PH's lacklustre performance as a government especially with regard to sluggish reforms, BERSIH continues to put pressure on PH to seize the moment, including openly urging Mahathir to hand over power to Anwar Ibrahim to guarantee the smoothness of the reforms. Prominent Malaysian political scientist William Case had reminded PH at the beginning of the transition of power to be wary of the scale and the speed of reform for fear of triggering an authoritarian backlash. See Ida Lim (2018). The "authoritarian backlash" finally transpired when the PH government fell to the National Alliance (PN) through new political realignment at the end of February 2020. This controversial event also affected the remaining reputation of BERSIH. Their activist, Hishammuddin Rais (who was in the camp of Azmin Ali, one of the co-conspirators who toppled PH) had a verbal fight with BERSIH chairman Thomas Fann on television defending the move (see *Astro Awani* 2020). Former chairman Maria Chin was also severely criticized by her supporters for attending a "coup" dinner on the first day of the crisis (Danial 2020). BERSIH also warned that it would hold a street rally to protest the "backdoor government." (*Today Online* 2020).

This intimidation however received a cold response. The biggest blow to BERSIH was the "defection" of EC Chairman Azhar Harun – an individual who had been widely supported and defended by BERSIH from the beginning – who accepted the appointment of Speaker of the House of Representatives under the PN government led by Prime Minister Muhyiddin Yassin.

CONCLUSION

This article critically analyses the movement that has long been regarded as an indispensable force in the development of civil society in Malaysia. It argues that the establishment, activities, and orientation of BERSIH should not be observed in isolation but rather as a reflection of the history of "civil society" in Malaysia. It functioned as an oppositional force toward the BN regime and this, in turn, makes it closer to the Pakatan Harapan. As a result, BERSIH's reputation as an election monitor appears to be in conflict with the prerequisites laid out in the operation of "non-partisan" DEMOs. In most cases and under the pretext of civil society, BERSIH is driven by political considerations and applies a narrow interpretation of grassroots democratization. After gaining larger access into the power structure within the Pakatan government, BERSIH appears to be compromising with issues it once pursued in order to influence the decision-making process.

Notwithstanding the arguments above, several caveats and qualifications should be given. First, it is not the intention of this article to discredit the role of BERSIH. In all fairness to BERSIH, the movement possesses other valuable packages for the operation of DEMOs including resource experts, ability to secure public funding, capability to attract a relatively large number of volunteers, and publishing reports accessible to the public. Secondly, much of the "sacred" perception of BERSIH was also constructed by default given the weaknesses of the BN and EC leadership of the day. The failure of BN and its apparatus to handle BERSIH properly and resorting to coercive measures had a direct impact on BERSIH's high reputation. More importantly so, some of the repressive measures were decided by the court as illegal such as the banning of BERSIH and yellow shirts, the arrest of almost 200 activists and politicians under the Emergency Ordinance after the BERSIH 3 rally, barring Maria Chin from going abroad to receive the 2016 Gwangju Human Rights Awards, charging a BERSIH supporter with

dropping a balloon in an event attended by Najib and the most unreasonable of all, the arrest of Maria Chin under the controversial Security Offences and Special Measures Act (SOSMA) in 2016. On the EC's side, their secretive, defensive and combative approach also played a significant role in enhancing the reputation of BERSIH (see IDEAS & CPPS 2013: 19; Merdeka Center 2013: 14).

The significance of this article can be found in two aspects. First, BERSIH must re-examine the non-partisan principles fundamental to DEMOs should it want to be perceived as a watchdog. BERSIH purported to be a "watchdog" that represents the interests of Malaysian. Over the years, however, BERSIH functioned more as an electoral guard dog. Unlike a watchdog, CSO guard dogs are more concerned with their interests, or are more likely to compromise public interests against those of certain groups associated with them. As a result, there are two sets of rules among guard dog CSOs against different power blocs. Against the opponent's block, the guard dog CSO is aggressive and fierce, barks hard to attract public attention, and works hard to bring down the opponent. On the other hand, its nature is less visible, more diplomatic, conciliatory, and even forgiving, towards the bloc of interest (Donohue, Tichenor, Olien 1995: 116). As aptly put by a seasoned election observer from the Philippines:

Non-partisanship is [not just a] requirement. It's a must. We from time to time were invited by politicians to gatherings or even [rallies]. We outright tell them, sorry we cannot do that. We are very careful even with photos and colours [so that we are not associated with any parties]. That's the sacrifice that we have to make. Although we feel strongly about a particular candidate or issue, we cannot go out in public and talk about it. [When you become an election monitor], it's like probably even changing your lifestyle because you don't want to be branded [as partisan]. Once you kowtow and liaise with politicians, that's the end [of an organization] (High-ranking leader of election monitoring organisation from Philippine 2019: interview).

Second, the discussion has demonstrated the uncivil side of civil society movement such as BERSIH. Rather than following the corpus of studies that view BERSIH as a saviour civil society, this article contends that its significance has been exaggerated. Applying the term of uncivil society as the exclusive ownership of Malay-Muslim NGOs is misleading and contributes to the misconception that pro-democracy civil society has greater moral clarity.

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