

PERDANA STI POLICY BRIEF

No. 7 JULY 2019

Muhammad Fathy Yusof **SHOULD VOTING AGE BE LOWERED TO 18?**

fathi@utm.my

The concept of universal suffrage is excluded by age limit to ensure that only those who can exercise rational judgment is entitle to vote. Casting a vote is essentially not a mere expression of opinion but a process of making wise and reasoned political decision. Therefore, the Constitution could be reasonably excludes the voting right to certain group of people according to their age.

Under the Malaysian law, the right to vote only belongs to citizens who have reached 21 years old on the “qualifying date”, i.e. the date when a citizen



applies to be a registered voter. Previously, the registration and revision were only conducted once annually, and many citizens who had just reached the qualifying age were unable to vote in election because they had to wait the annual registration process. The recent amendment which requires the

EC to conduct all-year-round registration exercise and to revise supplementary electoral roll once every three month, apparently increases the new voters' chance to vote.

Apart from that, art. 119 of the Federal Constitution should also be amended to increase the voting qualification age. When the voting right was introduced in new democracies including Malaysia in the mid of the nineteenth century, the minimum voting age was normally 21 years old, or above. However, since 1970's several states had reduced the minimum age to 18 years old. Currently, the vast majority of the 191 member states of the United Nations, including large democracies like India, USA, Pakistan, Australia and Canada, have a minimum voting age of 18. Some states like Indonesia and Sudan have a lower voting age of 17. Furthermore some states even reduced the voting age to only 16 years. Only a few states retain minimum age to vote at 21st or 20th.

While the minimum voting age is 21 years old, the age of majority under the Malaysian law,¹ as well as under international human right instruments² is eighteen. Therefore, it is odd to deny right to vote for citizens who have reached 18 years, since many laws consider them as sufficiently mature to personally involve in various rights such as property ownership,³ company establishment, real property dealings and commercial transactions. Apart from that, there are many statutes that provide minimum ages below 18 years old, for different activities such as application for license for motorcycle and motorcar, enter into contract of service or apprentice and marriage.

One may argue that the citizen below 21 years old is not sufficiently mature to exercise their voting right. This assumption apparently flawed as persons



at age eighteen have already legally and customarily attained physical and intellectual maturity. Malaysian family laws for Muslims and non-Muslims, suggest that persons at 18th have achieved physical maturity as they are allowed to enter

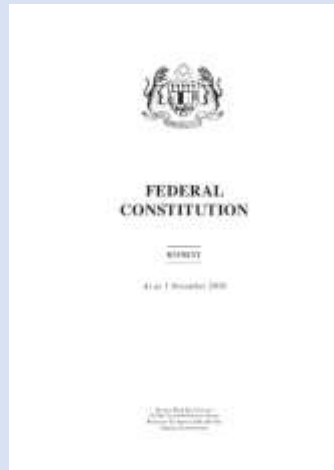
contract of marriage at that age or below.

In fact under Islamic law a person has a complete capacity to execute of his duties and rights in a manner recognized by law when he has reached the age of puberty which normally occurs between nine to fifteen years old. If the signs of puberty do not appear earlier, the age of puberty is determined by reaching certain age limits i.e. fifteen years for both boys and girls according to the majority of Islamic scholars. Obviously, the puberty age as well as physical maturity becomes significant sign of the ability to make reasonable choice on leadership and public affairs.

Apart from that, there are laws⁴ that clearly indicate that the persons above eighteen years have already enjoyed intellectual maturity and become substantially independent. They also cease to be treated as a child in several matters such as care, protection, temporary custody, medical treatment

and criminal offences.⁵ Therefore, they should similarly be trusted to make political decision free of any pressure or undue influence from their parents. Moreover, in exercising voting right, the most significant feature is maturity in social awareness and responsibility. A sense of social responsibility normally developed around the ages of thirteen and fifteen, as suggested in some research evidence.

The framers of the Constitution chose 21 years as the minimum age more than fifty years ago for it was the prevailing global trend in democratic



system. As civilization has changed and advanced, the age at which people start to commit to the rights and responsibilities as citizens has changed too. The existence of well-structured education system, advanced information and technology, and modern communication infrastructure enable citizens to grasp political ideas and get information on political development in very efficient ways. With high literacy rate among citizens, and large number of internet usage especially among younger generation, Malaysia should no

longer unfairly exclude the voting right for citizens between 18 to 21 years.

In addition, the popular phrase “no taxation without representation” implies that voting right should be given to people who had contributed financially to the state. The citizens above 18 years old had legally qualified to work and liable to pay income tax. Eighteen years citizens who own lands, run businesses, invest in stock market, manage companies or involve in any commercial transaction also required to pay certain taxes. It is unfair for these taxpayers to be denied the representation and the rights to express political opinion through ballot box. Indeed, with support from both ruling and opposition parties, there is no reason to maintain the outdated age limit for voting right in Malaysia.

Footnotes:

¹ Art. 119

² Regulation 13 of Elections (Registration of Electors) Regulation 2002.

³ Such as in Brazil, Cuba and Nicaragua.

⁴ Minimum voting age at 21 in Central African Republic, Fiji, Gabon, Kuwait, Lebanon, Malaysia, Maldives, Monaco, Morocco, Pakistan, Samoa, Singapore, Solomon Islands, Tokelau and Tonga

⁵ Minimum voting age at 20 in Cameroon, Japan, South Korea, Nauru, Taiwan and Tunisia

⁶ Under Section 4 of the Age of Majority Act 1971 (Act 21) the minority of all males and females shall cease and determine within Malaysia at the age of eighteen years and every such male and female attaining that age shall be of the age of majority.

⁷ See for example The United Nation's Convention on the Rights of the Child (UNCRC), which categorize persons under 18 years as children and entitled to the certain rights as children.

⁸ See National Land Code 1965 section 43 (alienation)

⁹ See National Land Code 1965 section 205 (dealings)

¹⁰ See the Contract Act 1950 section 11

¹¹ Under the Road Transport Act 1987 (Act 333) and a person who attained 16 and 17 years may apply driving license. See also Motor Vehicles (Driving License) Rules 1992 (P.U.(A) 409/92)

¹² The Children and Young Persons (Employment) Act 1966 (Act 350) distinguishes category of "child" from "young person". "Child" means any person who has not completed his fourteenth year of age or of such age as the Yang di-Pertuan Agong may by notification in the *Gazette* prescribe. While "young person" means any person who, not being a child, has not completed his sixteenth year of age.

¹³ under Islamic Family laws a male below 18 years or a female below 16 can enter contract of marriage after obtaining written approval from Syarie Judge. Refer for example, Section 8, the Islamic Family Law (Federal Territories) Act 1984 (Act 303).

¹⁴ minimum age for marriage of a non-Muslim minor in Malaysia is 18 years for male, and 16 years for female. See Section 10, the Law Reform Act (Marriage and Divorce) Act 1976 (Act 164)

¹⁵ Art. 985 of the *Al-Majallah Al-Ahkam Al-Adaliyyah* provides that "the time of puberty is proved by the emission of seed in dreams and the power to make pregnant, and by the menstrual discharge, and power to become pregnant."

¹⁶ *Al-Majallah*, art. 986

¹⁷ See Wahbah Al-Zuhaili, *Al-Fiqh Al-Islami wa Adillatuh*, Vol. IV, p. 122. See also art. 987 of *Al-Majallah*.

¹⁸ Under the Child Act 2001¹ a "child" refers to a person under the age of eighteen years. Under the Child Act children are given special rights relating to care, protection, temporary custody, medical treatment and criminal offences.

¹⁹ Under section 2 of the Child Act 2001 minimum age for criminal liability is 12 years. However, children above 10 and under 12 years can commit offence if they attained sufficient maturity of understanding to judge of the nature and consequence of their conduct on that occasion. See also Section 82-3 of the Penal Code (Act 574).

²⁰ Adelson, J. and O'Neil, R. (1966) 'The Growth of Political Ideas in Adolescence: The Sense of Community' in the *Journal of Personality and Social Psychology*, Vol. 4, pp.295–306.

²¹ See the Children and Young Persons (Employment) Act 1966 (Act 350) and the Employment Act 1955 (Act 265). These statutes generally allow person in 16 year of age to involve in any employment as an adult

²² Oh Tong Keong, a leader from Gerakan, one of BN's component party, calls the government to reduce the age eligibility of voting. His statement was supported by Mr Karpal Singh from DAP. See *Free Malaysia Today*, "Reduce voting age to 18," 13 September, 2010, <<http://freemalaysiatoday.com/fmt-english/politics/barisan-nasional/10159-reducing-voting-age-to-18>> and *Free Malaysia Today*, "Karpal: DAP should adopt one candidate-one seat policy," 18 September, 2010, <<http://freemalaysiatoday.com/fmt-english/politics/pakatan-rakyat/10381-karpal-dap-should-adopt-one-candidate-one-seat-policy>>