CIVIL SOCIETY PARTICIPATION IN THE UNIVERSAL PERIODIC REVIEW IN MALAYSIA

SARUNE BEH

FACULTY OF BUSINESS AND ECONOMICS
UNIVERSITI MALAYA
KUALA LUMPUR

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SARUNE BEH

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CIVIL SOCIETY PARTICIPATION IN
THE UNIVERSAL PERIODIC REVIEW IN MALAYSIA

ABSTRACT

Malaysia underwent three cycles of the Universal Periodic Review (UPR) since 2009 and accepted 60.2%, 64.66%, and 54.85% recommendations. The recommendations with the less controversial issues such as Persons with Disabilities (PWDs) received a positive response from the state, while the recommendations on the controversial issues such as Lesbian, Gay, Bisexual, and Transgender (LGBT) received none of the acceptance although they both are vulnerable groups. The state responded differently to the CSOs in the UPR process. Meanwhile, CSOs interact differently with the state in the UPR in cooperative and highly-contested relationships. This has created questions on how CSOs establish relationship with the state to influence in the UPR? What is the nature of CSOs that make the interaction between CSOs and the state cooperative but at the same time, highly contested? And, why do the state and CSOs respond differently to the UPR process over the issues of PWDs and LGBT? The research focused on these two issues and compared the interaction between PWDs and LGBT CSOs with the state in the UPR process. There is a lack of literature on understanding the CSOs-state relationship in a decision-making process in the context of human rights and with the influence of international parties. Therefore, this research aims to fill in this literature gap. The study employed a qualitative research method with in-depth interviews, secondary data collection and, thematic analysis. 20 informants from the state, CSOs, and National Human Rights Institution (NHRI) were interviewed. Social capital and counter-hegemony theories were applied to understand how CSOs create the relationship with the state in the UPR process. While the approaches of CSOs-state relationship proposed by Lewis (2013) and Young (2000) were utilised to explain the causes leading to the formation of CSO-state. The key factors that contribute to the state's decision-making in

the UPR have analysed based on the four policy perspectives proposed by Bekkers. et. al (2017), namely Rational, Institutional, Political, and Cultural. Findings show that PWDs CSOs apply the social capital approach in developing relationships with the state through three elements, namely Trust, Norm, and Network while LGBT CSOs utilising the approach of counter-hegemony through the elements of Organisation, Ideology, and Action. PWDs CSOs enjoy wider chances to participate in the policy process while LGBT CSOs have no door to participate in the policy process. Thus, UPR plays a more significant role on the issue of LGBT rather than PWDs. PWDs CSOs have not expanded their involvement in the UPR broadly because they are comfortable with the channels provided by the state. While LGBT CSOs commonly act in a rights-based approach and they have limited chances to access the state. UPR provides an opportunity for LGBT CSOs to appear themselves in the policy process.

Keywords: Universal Periodic Review (UPR); Civil Society Organisations (CSOs); Policy-making; Persons with Disabilities (PWDs); Lesbian, Gay, Bisexual, and Transgender (LGBT)

PENGLIBATAN MASYARAKAT SIVIL DALAM PENILAIAN PENGGAL SEJAGAT DI MALAYSIA

ABSTRAK

Malaysia telah melalui tiga kitaran Penilaian Penggal Sejagat (UPR) pada tahun 2009, 2013 dan 2018 dengan menerima cadangan 60.2%, 64.66%, dan 54.85% pada tahun yang dinyatakan. Isu yang bersifat kurang kontroversi seperti Orang Kurang Upaya (OKU) mendapat respon yang positif daripada kerajaan manakala isu kontroversi seperti Lesbian, Gay, Biseksual, dan Transgender (LGBT) tidak diterima walaupun kedua-dua golongan tersebut merupakan golongan yang diketepikan. Kerajaan dan Organisasi Masyarakat Sivil (OMS) masing-masing menunjukkan respon yang berbeza dalam proses UPR. OMS berinteraksi dengan kerajaan dalam bentuk yang berlainan, iaitu hubungan kerjasama (*cooperative*) dan *highly-contested*. Perkara ini telah menimbulkan persoalan mengenai bagaimana OMS membina hubungan dengan kerajaan untuk mempengaruhi keputusan dalam UPR? Apakah sifat OMS yang menyebabkan interaksi antara OMS dan kerajaan dalam bentuk hubungan kerjasama dan *highly contested*? Dan, mengapa kerajaan dan OMS memberikan respon yang berbeza terhadap isu OKU dan LGBT dalam proses UPR? Kajian ini memfokuskan pada dua isu ini dan membandingkan interaksi antara OMS OKU dan OMS LGBT dengan kerajaan di dalam proses UPR. Terdapat kekurangan sorotan kajian yang mengetengahkan hubungan OMS-kerajaan dalam proses membuat keputusan dalam konteks hak asasi manusia dan dengan pengaruh pihak antarabangsa. Sehubungan itu, kajian ini bertujuan untuk mengisi jurang sorotan kajian tersebut. Kajian ini menggunakan kaedah penyelidikan kualitatif melalui temu bual secara mendalam, pengumpulan data dan analisis tematik. Seramai 20 pemberi maklumat dari agensi kerajaan, OMS, dan institusi hak asasi manusia kebangsaan (NHRI) telah ditemu bual. Teori *social capital* dan *counter-hegemony* telah digunakan untuk memahami tingkah laku OMS dalam membina hubungan dengan kerajaan dalam proses UPR. Manakala

pendekatan hubungan OMS-kerajaan yang dicadangkan oleh Lewis (2013) dan Young (2000) telah digunakan untuk menerangkan faktor utama dalam hubungan OMS-kerajaan. Pertimbangan kerajaan untuk menerima cadangan UPR telah dianalisis berdasarkan empat perspektif dasar yang dicadangkan oleh Bekkers. et. al (2017), iaitu Rasiaonal, Institusi, Politik, dan Budaya. Hasil kajian menunjukkan bahawa OMS OKU menerapkan pendekatan *social capital* dalam membina hubungan dengan kerajaan menerusi tiga elemen, iaitu Kepercayaan, Norma, dan Rangkaian. Manakala OMS LGBT menggunakan pendekatan *counter-hegemony* menerusi elemen Organisasi, Ideologi, dan Tindakan. OMS OKU menikmati peluang yang lebih luas untuk mengambil bahagian di dalam proses penggubalan dasar. Manakala OMS LGBT tidak diberikan sebarang peluang di dalam proses ini. Sehubungan dengan itu, UPR memainkan peranan yang lebih penting bagi isu LGBT berbanding dengan isu OKU. OMS OKU tidak terlibat secara aktif di dalam UPR kerana mereka selesa dengan saluran sedia ada yang disediakan oleh kerajaan. OMS LGBT biasanya bertindak berdasarkan pendekatan hak asasi manusia sejagat dan mereka mempunyai peluang yang terhad untuk terlibat dalam proses penggubalan dasar. UPR menyediakan peluang kepada OMS LGBT untuk tampil dalam proses penggubalan dasar.

Kata kunci: Penilaian Penggal Sejagat (UPR); Organisasi Masyarakat Sivil (OMS); Penggubalan dasar; Orang Kurang Upaya (OKU); Lesbian, Gay, Biseksual, dan Transgender (LGBT)

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ABIM	:	Muslim Youth Movement of Malaysia (ABIM)
ADF	:	ASEAN Disability Forum
AGC	:	Attorney's General Chamber
AICHR	:	ASEAN Inter-governmental Commission on Human Rights
ALIRAN	:	National Consciousness Movement
ASC	:	ASEAN SOGIE Caucus
BN	:	National Front (*Barisan Nasional*)
BHEUU	:	Legal Affairs Division of Prime Minister's Department
CBR	:	Community-based Rehabilitation
CDHRI	:	Cairo Declaration on Human Rights in Islam
CEDAW	:	Convention on the Elimination of All Forms of Discrimination Against Women
CENPEACE	:	Centre for Peace Initiative
CENTHRA	:	Centre for Human Rights Research and Advocacy
CLJ	:	Concerned Lawyers for Justice
COMANGO	:	Coalition of Malaysian NGOs in the Universal Periodic Review
CRC	:	Convention on the Rights of the Child
CRPD	:	Convention on the Rights of Persons with Disabilities
CSOs	:	Civil Society Organisations
CSR	:	Corporate Social Responsibility
DEMA	:	Malaysia Youth and Students Democratic Movement
DET	:	Disability Equality Training
DPOs	:	Organisation of Persons with Disabilities
EMPOWER	:	*Persatuan Kesedaran Komuniti Selangor*
EPU	:	Economic Planning Unit
FSSG	:	Foreign Spouses Support Group
GONGOs	:	Government-organised NGOs
GSS	:	General Social Survey
GST	:	Goods and Services Tax
ICU	:	Implementation Coordination Unit
IIUM	:	International Islamic University
INGOs	:	Islamic-oriented NGOs
IDPD	:	International Day of Person with Disabilities
JAKIM	:	Department of Islamic Development of Malaysia
JAWI	:	Federal Territory Islamic Religious Department
JERIT	:	Oppressed People Network
JFS	:	Justice for Sister
JICA	:	Japan International Cooperation Agency Japan
JKM	:	Welfare Department
JKOASM	:	Network of Orang Asli villages in Peninsular Malaysia
JOAS	:	Indigenous Peoples Network of Malaysia
JPA	:	Public Service Department
JPOKU	:	Disabled Development Depart
JPNIN	:	Department of National Unity and National Integration
JUST	:	Just World Trust
IKIM	:	Institute of Islamic Understanding Malaysia
KLSCAH	:	Kuala Lumpur and Selangor Chinese Assembly Hall
LGBT	:	Lesbian, Gay, Bisexual, and Transgender
MAB	:	Malaysian Association for the Blind

MACSA	:	Malaysian Alliance of Civil Society Organisations in the UPR process
MAMPU	:	Malaysian Administrative Modernisation and Management Planning Unit
MASAA	:	Malaysian Spinal Cord Injury Advocacy Association
MASIA	:	Malaysian Spinal Cord Injury Association
MFD	:	Malaysia Federation of the Deaf
MCO	:	Movement Control Order
MOE	:	Ministry of Education
MOFA	:	Ministry of Foreign Affairs of Malaysia
MOH	:	Ministry of Health Malaysia
MOHE	:	Ministry of Higher Education
MOHA	:	Ministry of Home Affairs of Malaysia
MOHR	:	Ministry of Human Resource
MWFCD	:	Ministry of Women, Family and Community Development of Malaysia
MWG	:	Migration Working Group
NCBM	:	National Council for the Blind Malaysia
NCPWDs	:	National Council of Persons with Disabilities
NGOs	:	Non-Governmental Organisations
NHRAP	:	National Human Rights Action Plan
NHRI	:	National Human Rights Institution
OHCHR	:	Office of the United Nations High Commissioner for Human Rights
PAPWDs	:	Plan of Action for Persons with Disabilities
PEMBINA	:	*Persatuan Belia Islam Nasional*
PERTIS	:	Malaysian Islamic Vision Disability Association
PGSM	:	*Persatuan Peguam Syarie Malaysia*
PH	:	Alliance of Hope (*Pakatan Harapan*)
PN	:	National Alliance (*Perikatan Nasional*)
PROHAM	:	Society for the Promotion of Human Rights
ROS	:	Registry of Societies Malaysia
SIS	:	Sisters in Islam
SOGI	:	Sexual Orientation and Gender Identification
SOGIESC	:	Sexual Orientation, Gender Identity, Gender Expression, and Sex Characteristics
SSM	:	Companies Commission of Malaysia
SUARAM	:	*Suara Rakyat Malaysia*
SUHAKAM	:	Human Rights Commission of Malaysia
SuR	:	State under Review
UDHR	:	Universal Declaration of Human Rights
UM	:	University of Malaya
UN	:	United Nations
UN ESCAP	:	United Nations Economic and Social Commission for Asia and the Pacific region
UPR	:	Universal Periodic Review
USM	:	University of Science Malaysia
WAFIQ	:	International Women's Alliance for Family Institution and Quality Education
WAO	:	Women's Aid Organisation
WHO	:	World Health Organisation
YCK	:	*Yayasan Chow Kit*

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CHAPTER 1

INTRODUCTION

1.1.   Background of study

Malaysia is a developing country with a multi-ethnic society and a highly-centralised state where the government practises a parliamentary democracy system. Although there have been changes in the democratic pathway of the country, research suggests that Malaysia is a semi-authoritarian state (Case, 1993; Neher, 1994; Verma, 2002; Weiss & Hassan, 2003). The then-newly formed government led by the Alliance of Hope (*Pakatan Harapan* - PH) was trying to establish its leadership to engage with different groups of society including the human rights defenders and the social movement organisations. However, when the newly formed government collapsed in 2020, we see a return to a state with features similar to what was in place before 2018.

The political upheaval that has been developing in the past few years reflects Malaysia's struggle with protecting human rights and civil liberties for all communities. Indeed, Malaysia has improved a lot in terms of protection of the vulnerable groups. In practising the spirit of democracy which means "rule by the people" (Birch, 2007), the state has engaged with stakeholders such as interest groups[1], civil society as well as voluntary groups in the policy process. Understanding the demands of the people and involving key actors in society is important in achieving effective policies that focus on protecting and promoting the welfare of the people. This is reflected in how Malaysia scored the highest rank among Southeast Asian countries in the Democracy Index 2020. The country showed a significant improvement in the democracy index. In the year 2006,

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[1] "Interest group, also called special interest group, advocacy group, or pressure group, any association of individuals or organizations, usually formally organized, that, on the basis of one or more shared concerns, attempts to influence public policy in its favour" (C. S. Thomas). See link https://www.britannica.com/topic/interest-group

with a score of 5.98 (hybrid regime), Malaysia's democracy score increased to 7.19 (flawed democracy) in 2020 and ranked 39th from a total of 167 countries (The Economist Intelligence Unit, 2021). The country received encouraging scores on the five aspects of democracy.[2] However, on the aspect of civil liberties, it received the lowest score which is only 5.59.

Malaysia was rated as a "partly free" country in the report on *Freedom in the World 2020*[3] by Freedom House, scoring 21/40 for the aspect of political rights; and 31/60 for the aspect of civil liberties. The four components of civil liberties comprise freedom of expression and belief, associational and organisational rights, rule of law, as well as personal autonomy and individual rights. However, the state did put in efforts and initiatives to protect human rights, by establishing the Human Rights Commission of Malaysia (SUHAKAM), and by participating in the international human rights treaties of the United Nations (UN). Despite these initiatives, Malaysia's performance in the Democracy Index 2020 and Freedom in the World 2020 evaluations highlights that there are still weaknesses in providing the civil society with a free and safe communication platform.

Civil society plays an important role in the development of a country as it provides for needs not met by the state and helps to transform the state in line with citizens' preferences (Weiss & Hassan, 2002). Civil Society Organisations (CSOs) are the agents of democratic change who contribute to the advocacy and transformation of democracy (Lee, 2004). At the same time, they also serve as a status quo agent to the stability of the existing political order (Croissant & Giersdorf, 2011). CSOs have made important

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[2] The five aspects are (1) electoral process and pluralism; (2) functioning of government; (3) political participation; (4) political culture; and (5) civil liberties.
[3] *Freedom in the World* is an annual global report on political rights and civil liberties, composed of numerical ratings and descriptive texts for each country and a select group of territories. See link https://freedomhouse.org/country/malaysia/freedom-world/2020 for detail.

contributions to the development of a country by fostering a democratically inclined and socially aware citizenry, bringing key issues to public prominence domestically and internationally, and nurturing a significant core group within civil society to rally mass opinion at crucial junctures in support of political, social, and economic reforms (Weiss, 2003; Farduk, 2006). Similarly, the contribution of CSOs to Malaysia's political change and public policy development is significant (Karim, 1996). Thus, it is crucial to understand the role of CSOs in the policy process as well as the protection of human rights to uphold the spirit of fundamental liberties as stated in the Malaysian Federal Constitution[4].

Malaysia has witnessed a steady growth of CSOs since the 1970s and early 1980s, advocating various issues on consumer rights, education, religion, the environment, and women issues. Malaysian CSOs play a significant role in the development of democracy under the semi-authoritarian government through their involvement in the process of decision-making (Tan & Bishan, 1994; Weiss & Hassan, 2003; Farduk, 2006). The participation of CSOs in public policy-making is one way to support democratisation in the country. Their involvement in public decision-making is significant and crucial in improving the transparency and efficiency of public policies in developing countries (Hai, 2013). The Malaysian CSOs have played their role in the public policy process since decades ago by responding to the current issues and critiquing the policy formulation process (Hassan, 2003; Tan & Bishan, 1994; Weiss, 2003).

Currently, the state is keen on opening its door to invite the involvement of CSOs in the public policy process through engagement sessions and appointing the representative of CSOs to policy-making committees. However, Gomez and Ramcharan

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[4] Part II of the Constitution stated the Fundamental Liberties, included article 5 until article 13.

(2012) are of the view that the state has sought to limit the impact of CSOs' advocacy activities through the selective engagement of government-approved CSO. For instance, the interaction between the state and CSOs in the ASEAN Inter-governmental Commission on Human Rights (AICHR), and with a limited engagement session throughout the UPR process. AICHR was inaugurated by the ASEAN Leaders on 23 October 2009 at the 15th ASEAN Summit in Cha-Am Hua Hin, Thailand. This was further enhanced with the promulgation of the ASEAN Human Rights Declaration (AHRD), adopted in November 2012 with the Phnom Penh Statement on the Adoption of the AHRD signed by ASEAN Leaders[5]. The AICHR representatives are nominated by the government of ASEAN's country which is not limited to the public official but the member of CSOs are given chances to participate in this organisation by nominated as the representative of the respective country.

The Malaysian state has shown its initiative by participating actively in international platforms, especially in implementing responsibilities as a member of the UN. Malaysia has acceded to the Convention on the Rights of the Child (CRC) and Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1995 with five and nine reservations for each of the convention. The state has also ratified the Convention on the Rights of Persons with Disabilities (CRPD) in 2010. CSOs have participated in the three ratified conventions to monitor the state's implementation in protecting the rights of the target groups, namely children, women, and Persons with Disabilities (PWDs). Besides the international human rights conventions, the UN through the UN Human Rights Council (UNHCR) has established the Universal Periodic Review (UPR) in 2008, a mechanism to review the records of human rights in member states to improve the human rights situations in each of the member states.

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[5] See detail link at https://aichr.org/about-aichr-2/.

The human rights situation of all UN member states is reviewed every five years under the UPR. As an international review mechanism, international parties, specifically member states of the UN, could intervene in a country's initiative in protecting domestic human rights by proposing recommendations for the country to adopt and implement. In this review mechanism, the state cannot ignore any of the recommendations. The State under Review can only express that they have received the recommendations proposed by UN members by stating "Accept" or "Noted." In the UPR process, the involvement of CSOs is mandatory, failing of which could jeopardise the international reputation of a country and invite criticisms and pressures from other members of the UN. The UPR realises its function to protect fundamental human rights by scrutinising the record of all the member states through a consistent and periodic review (Khoo, 2014). Therefore, the state must take action by implementing the accepted recommendations. This can be done by developing and implementing related legislations and policies. Hence, the UPR is a dynamic process as it can influence the state's formation of public policy.

The Malaysian state has changed its ruling political parties three times since 2018 where the National Front Coalition (*Barisan Nasional* - BN) had its first loss after 61 years in power (since 1957). The Alliance of Hope (*Pakatan Harapan* - PH) held power for only 22 months before the National Alliance (*Perikatan Nasional* - PN) took control of the government. The upheaval of the ruling party brought changes in political culture in the public policy process as well as the state's administrative system. CSOs had to adapt themselves in the policy process to advocate their requests, including the UPR process. Malaysia has undergone three UPR reviews in 2009, 2012, and 2018. Thus, this study analyses the approaches employed by CSOs in the UPR process, causes of CSOs-state relations in the UPR, and the state's consideration in the UPR.

1.2 Problem Statement

As important as human rights instruments are to ordinary individuals, they are even more crucial to vulnerable groups as human rights instruments protect them. This thesis considers two groups of vulnerable individuals, namely persons with disabilities (PWDs) and lesbian, gay, bisexual and transgender (LGBT), who are in dire need of human rights protection for them to participate equally in society. PWDs generally refer to individuals with long-term physical, mental, intellectual, or sensory impairments that, in interaction with various attitudinal and environmental barriers, hinder their full and effective participation in society on an equal basis with others.[6] A person could acquire disabilities due to unfortunate events such as accident or illness, or he/she could be naturally born with such disabilities that can be proven medically or scientifically.

On the other hand, the LGBT community often claim that they are "born to be like that", that they are souls born to or trapped in the wrong bodies. Apart from that, an individual could also be influenced to be LBGT by the way he/she is brought up, the environment or the family he/she grew up in. Despite these conversations about how one's sexual and gender orientation is formed, the behaviour of the LGBT community is generally unacceptable by society, especially in a developing Asian country like Malaysia. This has created a challenging environment for the LGBT population, where they face constant discrimination and barriers that restrict them from participating in society on an equal basis with others.

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[6] A general definition by the United Nations (UN), retrieved
https://www.un.org/esa/socdev/enable/faqs.htm#:~:text=The%20term%20persons%20with%20disabilities,in%20society%20on%20an%20equal at 30th April 2021.

Despite facing similar challenges in participating equally in society, these two vulnerable groups are faced with entirely different fates and treatments when it comes to their pursuits for human rights. There is no absolute power or hegemony in the granting of human rights to PWDs in the policy process. The state, CSOs and the UN work harmoniously in ensuring that this vulnerable group is being well taken care of with no contestation between the state. This effort of constantly supporting PWDs was not even affected by the changes in government, namely when the *Barisan Nasional* (1957 until May 2018) conceded its power to the *Pakatan Harapan* (May 2018 until February 2020), and finally when the *Perikatan Nasional* took over the Federal government (February 2020 until current). These governments have shown their continuous support in the issues of human rights particularly related to PWDs in the domestic policy process and the international human rights mechanism such as the UPR. The PWD's related recommendations have been accepted in a range between 80%-100% in the three cycles of UPR (80% in the first cycle; 100% in the second cycle as well as 88.89% in the third cycle of UPR). However, despite these consolidated efforts by the different parties, CSOs of PWDs are still fighting for better policies to protect and advance the liberties of people with disabilities.

As the state does not exert hegemony on issues relating to the human rights of PWDs, there is an absence of counter-hegemony by CSOs actively pursuing greater and better human rights for this vulnerable group. Even among CSOs of different political and religious backgrounds, there is no disagreement when it comes to negotiating for better human rights for PWDs. However, despite such strong support from the state, CSOs and UN, PWDs are still expecting a better quality of life as they are deemed more susceptible to adverse socioeconomic outcomes such as lower level of education, poorer health outcomes, lower levels of employment, and higher poverty rates as well as

protection under the laws (Hashim, Samikon, Ismail, & Kamarudin, 2018; S. Khoo, Ta, & Lee, 2012; Narayanan, 2018; Ta, Wah, & Leng, 2011; Abdullah, Hanafi, & Hamdi, 2017). These are the problems that CSOs of PWDs are negotiating with the state directly, or indirectly through the UPR process.

While groups of PWDs are generally well supported by the state, the LGBT community, on the other hand, faces an entirely different fate when fighting for their human rights. This is due to the hegemonic power exerted by the state in the human rights policymaking process for this vulnerable group. From a legal perspective, the LGBT community (or the behaviour of LGBT) is not recognised by the Malaysian Constitution, the supreme law of Malaysia, as well as other primary laws in the country such as the Penal Code and Syariah law. From a religious perspective, the sexual orientations of the LGBT community are not acceptable by conventional religions, including the Islamic law which has the official enforcement power on Muslims in Malaysia. Even for the conventional non-Muslim community, the LGBT population is not widely welcomed as their behaviour is deemed a departure from the norm. The multitude of rejections from the state, society, and religion has led to the discrimination of the LGBT community in their everyday life including discrimination at the workplace[7], in healthcare (Maliya et al., 2018). They are also more prone to experience hate crime[8], human rights violation,[9] and lack legal protection (Teh, 1998).

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[7] See detail at link https://www.freemalaysiatoday.com/category/nation/2017/09/23/transgenders-shunned-by-employers-become-sex-workers/.
[8] A transgender woman was brutally murdered in Kuantan city, Malaysia on 24th February 2017. See link https://www.hrw.org/news/2017/02/24/transgender-woman-murdered-malaysia.
[9] See detail at link https://www.malaymail.com/news/what-you-think/2020/07/12/what-trans-people-need-is-the-license-to-be-respected-as-human-justice-for/1883690.

In 2015, there were approximately 24,000 transgender sex workers in the country. Transgender sex workers and sex transmission between men and men are one of the main populations of HIV infection groups (Ministry of Health Malaysia, 2015). The number of homosexual individuals has increased from 173,000 to 310,000 between 2013 and 2018.[10] This is a significant increase that should not be ignored by the state as the LGBT community is a vulnerable and marginalised group. These individuals face difficulty in securing a proper job and accessing basic facilities to support their livelihoods. Thus, the challenges endured by this group of minorities call for greater attention and policy interventions from the state. The LGBT community is a vulnerable group but they do not have an official avenue to participate in the state's policy process because they are not officially recognised by the government and the legal system. Therefore, one can question how do they deal with the state when they are an unrecognised group by law? Without official recognition, they will not be seen as "victims" or a "vulnerable group" in society, thereby they will be denied certain rights. The lack of official recognition of their vulnerabilities has led to limited political access for the LGBTs to participate in the state's decision-making process.

The denial of LBGT participation in the state's policy-making process is also evident in the UPR process as LGBT CSOs have not been invited to any engagement sessions organised by the state. The UPR recommendations on the LGBT community are also not accepted by the state. While the state and CSOs are supporting the issue of PWDs, the LGBT community is facing challenges when engaging with the state and other conventional CSOs in the UPR process. However, international organisations such as the UN and other CSOs are supporting the cause of the LGBT CSOs in raising their issues globally which is different from the Malaysian state's stand. The open policy by the UN

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[10] An official data announced by the Minister who in charge of religion. https://www.astroawani.com/berita-malaysia/jumlah-golongan-homoseksual-transgender-meningkat-setiap-tahun-jakim-189589. Retrieved 30th April 2021.

has offered LGBT CSOs a chance to participate in the UPR process. Apart from the support and consultations provided by the UN and international CSOs, Numan Afifi, a human rights defender was given the opportunity to intervene in the UPR Adoption Reports at the Human Rights Council in March 2019. Nevertheless, he was criticised by other local CSOs for giving misleading statement by using the phrase "state-sponsored violence" to describe state-sponsored anti-LGBT programmes [11] and was investigated by the Malaysian Police[12] over his LGBT speech on this platform.

With regard to the issue of LGBT in Malaysia, there is tension among the local CSOs as not all support the liberties of the LGBT community. On one hand, there is the Coalition of Malaysian NGOs in the UPR Process (COMANGO), the first CSO coalition in the Malaysian UPR, which has been supporting the rights of the LGBT community since the first cycle of the UPR. On the other hand, there is the Malaysian Alliance of Civil Society Organisations in the UPR Process (MACSA), the largest Islamic CSO coalition in the UPR, which supports the state's stance not to accept any recommendations related to LGBT.

While the CSOs have been invited to engagement sessions organised by the state, there is evidence that these engagement sessions are limited. There is also the view that the state does not place significant emphasis on the involvement of CSOs in the policy-making process (Svesson, 2019). The Malaysian civil society is currently developing a "counter-hegemonic" approach against the state's hegemonic stance around an ideology of national development (Miles & Croucher, 2013). Also, there have been studies that indicate CSOs serve as influential instruments for authoritarian governments to engage

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[11] https://www.malaysiakini.com/letters/472951. Retrieved 10th May 2021.

[12] https://www.thestar.com.my/news/nation/2019/04/16/activist-numan-afifi-investigated-over-lgbt-speech-at-united-nations/. Retrieve 10th May 2021.

with society by approaching social capital in policymaking in Malaysia (Croissant & Giersdorf, 2011).

These studies mainly focus on the interaction between CSOs and the state in the domestic policy process. They do not discuss the influence of international players in examining the interaction between CSOs and the state, especially the interaction in the context of human rights. The UPR, which is the most recent international human rights review mechanism to date, thus presents a very specific context in which the state and civil society actors engage to discuss human rights norms and work to promote greater human rights (Beckstrand, 2015). Given such a platform, how have CSOs utilised the UPR to protect and fight for the rights of PWDs and the LGBT community particularly in the public sphere as the UPR process is open to CSOs with diverse philosophical and political beliefs? As an official human rights mechanism, the UPR provides a public sphere for all stakeholders to participate in the review process. Habermas (1962, p.18-19) views civil society as the corollary of a depersonalised state authority, while the public sphere is referred to as "the sphere of public authority." There are always debates in the policy process to seek the most suitable decision for the people and state. The debates take place in the private engagement sessions organised by the state and are discussed openly in the public sphere on social media platforms, public forums, and seminars.

Based on past studies, a question that arises is why do human rights issues related to PWDs persist despite the high percentage of acceptance in the UPR process? There is a gap between the aspirations of the UN and the achievement of public policy in solving universal human rights issues, especially of the LGBT community. This also brings us to the question of how CSOs functionalised the UPR to further enhance their role in the policy-making process? Therefore, this research examines the phenomenon of how

policies in both PWDs and LGBT issues are responded to differently at every level, from societal, state, and international levels.

1.3 Research Questions

The research questions of the study are:

1. How do CSOs employ social capital and counter-hegemony approach to establish relationships with the state and influence the outcome in the UPR?

2. What is the nature of CSOs that make the interaction between CSOs and the state cooperative but at the same time, highly contested?

3. Why do the state and CSOs respond differently to the UPR process over the issues of PWDs and LGBT?

1.4 Research Objectives

Based on the research questions, the research objectives are designed as follows:

1. To describe the approaches that influenced the relationship between CSOs and the state and the extent of their influence on the UPR process.

2. To explain the key factors that have shaped the CSOs-state relations in the UPR process.

3. To understand the rationales behind the different responses of the state and CSOs towards the issues of PWDs and LGBT in the UPR process.

1.5 Definition of Key Terms

Several key terms are important in this research, that is, civil society organisations (CSOs), the state, person with disabilities (PWDs) as well as lesbian, gay, bisexual, and transgender (LGBT). Therefore, there is a need to provide the definition of these key terms to better understand how they are applied here.

1.5.1 Civil Society Organisation (CSO)

Civil society refers to the entire range of organised groups that are independent of the state, voluntary, and self-reliant. It also includes mass media, think tanks, social, and religious groups that are voluntarily active in society.[13] A civil society organisation (CSO) is a structured and objective-oriented organisation where a group of people act privately in pursuance of public needs (Demars, 2005). In this study, the concept of CSOs also refers to the behaviours or mass movements of a group of people concerned about a particular issue in society.

1.5.2 The State

A state is a form but not limited to only one form of a political association, and political association is itself only one form of human association (Kukathas, 2014). Forms of political association comprise different levels of communities from the local, national, regional as well as international levels. The state, also known as the government institution, is a form of human association distinguished from other social groups by its purpose, the establishment of order and security; its methods, the laws and their enforcement; its territory, the area of jurisdiction or geographic boundaries; and finally by its sovereignty (Britannica, 2020). In this study, the state is referring to the Government of Malaysia, specifically the Federal Government that is responsible for the policy process including policy-making and implementation.

1.5.3 Persons with Disabilities (PWDs)

The definition of persons with disabilities (PWDs) is in accordance with the definition in the Persons with Disabilities Act 2008 of Malaysia, "*those who have long term physical, mental, intellectual or sensory impairments which in interaction with various barriers*

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[13] https://www.civicus.org/index.php/re-imagining-democracy/stories-from-the-frontlines/3428-civil-society-and-democratisation-in-malaysia-between-resistance-and-co-optation. Retrieved 31st December 2020.

may hinder their full and effective participation in society"(G. of Malaysia, 2008). The concept of PWDs in this research, therefore, refers to the definition in this act which is also in accordance with the Malaysian PWDs Action Plan 2016-2022 (*Pelan Tindakan Orang Kurang Upaya 2016-2022*).

1.5.4   Lesbian, Gay, Bisexual, and Transgender (LGBT)

LGBT refers to the combination of the four categories of lesbian, gay, bisexual, and transgender, which are the groups of people who face discrimination because of their Sexual Orientation and Gender Identification (SOGI). SOGI is an inclusive term that applies to everyone, whether they are heterosexual, homosexual, bisexual, transgender, or cisgender (identity with the same gender that was assigned at birth).

1.6   Significance of the Study

This study interprets the interaction between the state and CSOs in the UPR process through historical tracing of CSOs' activities and the state's behaviour from the first cycle of the Malaysian UPR process. The findings of this research contribute to the literature of CSOs and their interaction with the state in Malaysia from two points. Firstly, it provides the approaches employed by CSOs in the UPR process, a human rights-based review with pressure from international organisations. The behaviour of CSOs from two different groups, the PWDs and LGBT CSOs which are the traditional and liberal, illustrates the different forms of behaviour of CSOs when dealing with the state. This comparative assessment contributes to an extension of civil society theory in human rights-based policy-making in a developing country with a pluralistic society, one where the Muslim community has a significant presence.

Secondly, this study also highlights/analyses the key factors that contribute to the formation of CSOs and the state relationships in the UPR process. Nevertheless, a majority of the CSOs that are actively involved in the UPR process do not represent the mass membership of CSOs lead by professionals or human rights activists. Thus, this study will identify the approach used by both the state and a variety of CSOs in claiming their human rights agenda on the international platform.

This research is timely and relevant because the UPR is a continuous review process where it is mandatory for the state to receive the review routinely. The UPR is an important platform for the state to present its achievements and commitment to human rights protection in the country. By understanding the nature and agendas behind CSOs, the state could invite CSOs to collaborate in the UPR process more effectively. At the same time, CSOs could also regulate their strategies to protect their rights through their involvement in the UPR process by understanding the state's considerations in accepting the UPR recommendations.

Apart from that, the political significance of the UPR is to allow other countries to examine Malaysia's human rights record (Y. H. Khoo, 2014).This review serves as a platform for the international community to evaluate the commitment of Malaysia in protecting human rights based on its fundamental principle. Since the UPR involves the international community, this might provide a different context in the decision-making process when forming policies. The implementation of accepted recommendations will be monitored by the UPR Working Committee in every cycle of the review. This is another method for CSOs to raise their problems and expectations to the state through the UPR process. Therefore, it is crucial to understand the state's considerations in accepting

the UPR recommendations where the findings can become a reference for the interested parties to understand the state's decision-making in the UPR.

1.7   Scope of the Study

The scope of research focuses on the interaction between domestic CSOs and the state on the first, second, and third cycles of the UPR process, which is from the years 2009 until 2020. The years between 2009 and 2020 marked a pivotal moment in Malaysia's political history as there were many changes in the political landscape; civic awareness in the society during these years increased, and there was also a change of ruling parties. The rise of new CSOs coalitions, as well as the increasing role of social media platforms, were also evident. Moreover, the experiences of the individuals of the state in handling the review have increased and diversified, and the state's engagements with CSOs have also grown over the past three cycles. Therefore, focusing on these three cycles would get a complete picture of the interaction between CSOs and the state in the UPR process regarding PWD and LGBT issues.

PWD CSOs were established decades ago and have flourished broadly recently. These CSOs work on diverse PWD issues, mainly on matters that concern the organisation. This study focuses on PWD CSOs that are involved directly in public decision-making, mainly in the UPR process. Although most PWD-related recommendations have been accepted in the UPR cycles, the implementation of these recommendations depends on the commitment of the state. Therefore, this research has included monitoring conducted by CSOs of the accepted PWDs recommendations.

There are two main perspectives on the issue of LGBT that has created a heated debate on how it is seen and understood by the global community and the state. From the perspective of human rights, there is an obligation of the state to protect the basic rights of LGBT individuals. From the perspective of religion, mainly the Islamic perspective, the behaviour of LGBTs is prohibited. Since the UPR is a human rights-based review, therefore, this research focuses on the fundamental principles of human rights. Nonetheless, the Islamic perspective is also analysed in this study as it is the national religion of the country, as stated in the Constitution[14]. Hence, this research also focuses on the religious perspective to study the balancing point between these two perspectives for a reasonable and applicable solution.

In the context of the policy process, the construction of the target groups brings up the point of different needs and expectations (Bekkers et al., 2017). The type of target group involves social construction in the community. Schneider and Ingram (1997) classify the target group construction into four types, namely the advantage, the challengers (contenders), the dependents, and the deviants. This classification of target group construction is reliant on two variables: the people who have power position and public perception. Power position refers to the power and ability owned by the target group to fight for their needs and expectations. Public perception depends on the acceptance level of society on the target group. As a state-driven mechanism, CSOs have limited power in the UPR process through document submissions and attending limited engagement sessions organised by the state. Hence, the CSOs have weaker power in this process, as compared to the state. This research highlights the two issues of UPR recommendations that separately gain positive and negative perceptions from society--

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[14] Article 3. Religion of the Federation.

PWDs (the Dependent) and LGBT (the Deviant) which separately receive the highest and lowest acceptance by the state.

1.8   The Organisation of the Study

There are eight chapters in this dissertation. Chapter One presents the main idea and establishes the direction for the dissertation consisting of the background of the research, including the research problem, research questions, research objectives as well as the organisation of the thesis. Chapter Two will provide the context of the case study for the research by framing the general outlook of the UPR and reviews the key players' structure and their role in the UPR process.

Chapter Three provides the literature review of the public policy process, civil society, social movements, the interaction between the state and CSOs as well as the participation of CSOs in policy-making in Malaysia. This literature also reviews the studies of the UPR globally and domestically. Moreover, after the empirical studies of PWDs and LGBTs have been discussed, the research gaps will be identified. The literature review emphasises three perspectives which are the theoretical review, conceptual review, as well as empirical review. Chapter Four explains the conceptual framework and research methodology covering the types of data, data collection process, as well as data analysis methods.

The analysis and discussion of all the three research questions are explained in Chapter Five (for the issue of the PWDs) and in Chapter Six (for the issue of LGBTs). These two chapters explain and discuss the key factors that lead to the formation of CSOs-state relations in the UPR, and how social capital and counter-hegemony approaches have separately shaped the interactions between CSOs and the state. The strategies employed

by CSOs, the state's considerations in accepting the UPR recommendations, and the significance of the UPR on the issue of PWDs and LGBT will be discussed too.

Chapter Seven provides a comparison between the behaviour of PWDs CSOs and LGBT CSOs in the UPR process. Data obtained from document analyses and in-depth interviews are triangulated and presented based on the three research questions. Chapter Eight concludes the findings of the research, provides policy implications, academic contribution, and outlines the research limitations and provides recommendations for future studies. References and appendices are provided at the end of the thesis.

CHAPTER 2

AN OVERVIEW OF THE MALAYSIAN UNIVERSAL PERIODIC

REVIEW (UPR)

2.1   Introduction

This chapter presents an overview background of the Universal Periodic Review (UPR) particularly from the context of Malaysia by illustrating how this review process works and its impact on the human rights development in Malaysia and the key players in the Malaysian UPR process. There are two sections in this chapter namely (1) the general background of the Malaysian UPR; and (2) key players in the Malaysian UPR.

The first section presents a general outlook of the Malaysian UPR from a historical perspective by explaining the aim and intention of the UPR. It then explores the Malaysian state's performance in international human rights treaties as well as the administrative process of the UPR. This part highlights the commitment of the Malaysian government to the UPR and how the state handles itself in the UPR process. As an international human rights review mechanism, the general impact of the UPR is then explored from the perspective of the human rights development of Malaysia. At the end of this section, the human rights issues that have been proposed and recommended by other United Nations' State Members and CSOs during the three cycles of the UPR process, and the accepted recommendations by the state of Malaysia are also discussed.

The second section of the chapter defines the key players of the Malaysian UPR including their responsibilities, functions, and activities in the UPR process. This section starts with an explanation of the public decision-making process in Malaysia and the administrative function of the ministries and agencies in public policy-making. This is important to understand the bigger picture of the state's behaviour in the UPR process.

The involvement of SUHAKAM in the UPR process is expected as SUHAKAM is the National Human Rights Institution (NHRI) of Malaysia. Therefore, the expectations of SUHAKAM in the UPR process is also illustrated in this section. The end of this section explains the participation of CSOs in the first, second, and third cycle of Malaysian UPR since 2009 by highlighting the involvement of CSO coalitions in the UPR process, and its background. The last part of the chapter summarises the main points of the two sections.

2.2   General Background of the Malaysian Universal Periodic Review (UPR)

The UPR was established together with the creation of the Human Rights Council by the UN in 2006 to improve the human rights situation in every country with significance for people globally. The UPR process functions as a human rights review mechanism over the member states of the UN. All member states of the UN are responsible for undertaking the review continuously in a time (not more than 5 years) in protecting and promoting human rights in the country. The reviews are conducted by the UPR Working Group which consists of 47 members of the Human Rights Council. However, the UN member state can participate in the discussion with the reviewed states. Each state review is assisted by "troikas", a group of three states who serve as rapporteurs.

The government of Malaysia shows its commitment to the UPR process by committing to the protection of the basic human rights towards inter-racial harmony and developing equitable socio-economic policies within its complex plural society.[15] This section discusses the obligation of the state in the UPR process, then explains the impact of the UPR in the human rights development of Malaysia, and the issues that have been recommended to the state during the three cycles of the UPR.

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[15] National Report of first and second UPR Malaysia (2009 & 2013), submitted in accordance with paragraph 15 (A) of the annex to Human Rights Council Resolution 5/1 & paragraph 5 of the annex to Human Rights Council resolution 16/21*.

2.2.1 The Malaysian State's Commitment in the UPR

Malaysia became a full member of the UN on 17 September 1957 after its independence on 31 August 1957.[16] Since then, the country has been responsible for supporting the programmes and initiatives in human rights protection. After the ratification of the three international human rights treaties (CRC, CEDAW, and CRPD)[17], the country has received visits from the UN Special Rapporteurs for a variety of human rights issues in Malaysia. Malaysia has received visits from the Special Rapporteur on the Sale and Sexual Exploitation of Children and the Special Rapporteur on the Human Rights to Safe Drinking Water and Sanitation separately in September and November 2018. Further, the state has also agreed to invite the Special Rapporteur on Extreme Poverty and Human Rights[18] as their forthcoming effort to engage with the UN human rights mechanism.

The Malaysian's state retains its commitment to the UN committee by being committed to the UPR since 2009. The aim of UPR is to review the status of the human rights development of member states. It provides a global platform for the UN human rights Working Groups, other member states, as well as CSOs and experts in human rights to propose and evaluate the current development of the reviewed country. Through counterparts or peer monitoring system, the UPR creates a human rights friendly environment and encouraging public policy that rational to all groups of people in the society.

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[16] Formerly joined with the name of the Federation of Malaya before its emergence Malaya, Singapore, Sabah and Sarawak on 16 September 1963. However, Singapore was expelled from the Federation on 21st September 1965.

[17] CRC has been acceded on February 1995 and CEDAW on July 1995 with both with five reservations; and CRPD has been ratified on July 2010.

[18] Malaysia's National Report in its 3rd review of UPR on 8th November 2018 at Geneva. Retrieved from http://webtv.un.org/search/malaysia-review-31st-session-of-universal-periodic-review/5859711519001/?term=&lan=english&page=2#player on 18th December 2018.

Although the UPR is an international human rights review that might seem to be distant from the people on the ground, its role in the Malaysian public policy process is significant and could not be neglected. This is because the UPR process provides a platform for the state to present and commit itself to protect human rights through its policies. Additionally, the UPR allows CSOs to participate in the UPR process openly. During this process, all human rights issues have a chance to be raised and discussed base on its importance of the issue in the reviewed member state. Other member states can propose their recommendation and comment in advance or during the review session.

The review session starts when the submitted report by the Malaysian state is confirmed by the Office of the United Nations High Commissioner for Human Rights (OHCHR). Then, the representative of Malaysia will present the national report. In the middle of reporting, two slots will be given to other attending members state to give their comments while the Malaysian representatives will respond and finally conclude the session. The number of attended state members has increased from the first to the third cycle of the UPR from 2009 to 2018. During the first cycle of the UPR, 59 state members attended the session, while 97 state members attended the second cycle in 2013, and 100 state members attended the third cycle. This trend shows that more state members are getting familiar with the UPR process and getting themselves involved in the review process. Appendix A shows the process of the three cycles of the UPR for Malaysia.

Malaysia is committed throughout the UPR sessions and began to adapt to the review process in the past nine years. Three representatives from Malaysia including the current Attorney-General spoke in the first session of the UPR, while there was only one speaker during the second and third review sessions. However, there is a team of officers working behind the presentation to provide the necessary information appropriately.

During the third cycle of the UPR, when it was Malaysia's turn to present the National Report, H.E. Mr. Dato's Seri Ramlan Ibrahim, Secretary-General of the Ministry of Foreign Affairs of Malaysia, pointed the importance and significance of the UPR and express Malaysia's good intention to share the best practices of human rights among the member states. Part of his statement was:

> *"Malaysia sees the UPR as an exemplification of positive dialogue between friends and as a forum for sharing best practices. The UPR is an avenue for a constructive and frank assessment on our achievement and shortcomings."*[19]

The reviewed member state is allowed to submit their decision on accepting the UPR recommendations to the UN Working Group either during the session with the Working Group, through submission of the addendum, or during the plenary session which will be held five to six months after the session with the Working Group. There are five types of responses that can be given by the state under review (SuR) on the recommendations, namely "Accept", "Accept in part", "Accept in principle", "Pending", and "Noted". Out of these five responses, only "Accept" is considered as accepted by the SuR, the rest are considered as "not accepted" by the SuR.[20] The responses of the Malaysian state in the first, second, and third cycle of the UPR is summarised in Table 2.1. Through the reaction of the state in the three cycles, it shows that the state is being more cautious and thoughtful in considering the UPR recommendations. The state has given the responses immediately in the report of the Working Group during the first cycle of UPR. However, they have changed their method during the second and third cycles of the UPR by submitting the decision through the addendum after the session with the Working Group.

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[19] Malaysia's National Report in its 3rd review of UPR on 8 November 2018 at Geneva. Retrieved from http://webtv.un.org/search/malaysia-review-31st-session-of-universal-periodic-review/5859711519001/?term=&lan=english&page=2#player on 18th December 2018.

[20] UPR info database. Methodology Responses to recommendations. Retrive from https://www.upr-info.org/database/files/Database_Methodology_Responses_to_recommendations.pdf on 18th December 2018.

Table 2.1: State's responses in the first, second and third cycle of the UPR

Cycle of UPR Malaysia (year)	In the report of Working Group (Date)	In the addendum	During the plenary session (Date)	Summary
First cycle (2009)	Accepted: 62 Rejected: 22 Pending: 19 Total: 103 (11 February 2009)	The delegation commented the 19 pending recommendations but no clear position was given.	The delegation commented the 19 pending recommendations but no clear position was given. (12 June 2009)	Accepted: 62 Rejected: 22 No clear position: 19 Total: 103
Second cycle (2013)	All 232 recommendations left pending (24 October 2013)	Accepted in full: 116 Accepted in part: 12[21] Accepted in principle: 22[22] Noted: 82	No additional information provided (20 March 2014)	Accepted: 116 Noted: 116 Total: 232
Third cycle (2018)	All 268 recommendations left pending (8 November 2018)	Accepted in full: 147 Accepted in part: 37 Noted: 84	No additional information provided (7 January 2019)	Accepted: 147 Noted: 121 Total: 268

(Source: UPR Info[23])

Every recommendation will be studied and go through a rigorous consideration process before the decision is made to accept or reject (mark as "noted"). This is because every single commitment made during the UPR becomes the responsibility of the state to realise and implement it through the public policy process. The achievement of accepted UPR recommendations will be materialised through the implementation of particular public policies. Hence, the decision-making in the UPR process must be in line with the current public policies (including the Disabled Persons Policy, National Education Policy and National Transport Policy 2019 – 2020) and the state's principle in public administration. The commitment of the state to the UPR process is also reflected in the process of public policy-making. This is important to make sure that the authorities form

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[21] 12 recommendations accepted in part are recommendations number 105, 107, 116, 127, 130, 148, 150, 151, 155, 193, 217 and 218).
[22] 22 recommendations accepted in principle are recommendations number 1, 5, 9, 11, 14, 20, 22-24, 26, 27, 48, 49, 77, 94, 96, 97, 125, 153, 160, 169 and 187).
[23] Retrieved and updated from https://www.upr-info.org/en/review/Malaysia on 10th Feb 2020.

and implement robust policies. Thus, the UPR is highly significant in the forming of Malaysia's public policy process.

2.2.2 The Impact of the UPR on Human Rights Development in Malaysia

As one of the main human rights mechanisms of the UN, the basic principle and core value of the UPR are based on the Universal Declaration of Human Rights (UDHR) which is the core value of human rights promoted by the UN since 1948. For decades, people all around the world strive for their interests and basic rights. However, the struggle is more demanding and complex for a country with a plural society like Malaysia. The responsibility of the state is to establish and implement public policies that would maximise the expectation of the people in society. No doubt, it is a big challenge for the state to satisfy groups of the society where they have different expectations, and sometimes, their demands are conflicting with each other. This circumstance is not surprising because it is the instinct of humans to strive for their interest and struggle for their demands. Therefore, the state constantly responds to group pressures and compromise the competing demands of influential groups including CSOs.

CSOs play an influential role in protecting and improving human rights in Malaysia. However, different groups of CSOs might have a different perspective on the definition of human rights, because they have a different understanding of public policy, and therefore, have different expectations on how these policies should protect them. These differences in views especially on human rights are based on their beliefs. The state as the public administrator always demands to be reasonable and sensible to all groups of society. However, due to diverse interpretations of the definition of human rights, there needs to be an external mechanism where the state, together with CSOs, can discuss the development of human rights issues.

As a comprehensive international human rights mechanism, the UPR is impressing upon the development of human rights in Malaysia where its function is more than an evaluation instrument. It acts as a tool for both the state and the international community to access to human rights situation in Malaysia. The UPR provides a door for Malaysia to openly discuss the country's human rights standard and expectations on an international platform. This session provides a platform for both Malaysia and other member states to communicate and review the human rights issues at the local and international levels.

Besides, the UPR has also created a structure whereby the human rights policies in Malaysia can be developed and raised to the standards of international human rights. The awareness of the state and CSOs about human rights issues have been increased through the process of the UPR especially issues related to minority groups such as children, women, and PWDs. Moreover, controversial human rights issues about the LGBT community, and other civil issues including religion and the death penalty, for instance, are also being discussed. Although the UPR is a state-driven process, other stakeholders including CSOs are being encouraged to take part in the process by submitting stakeholder reports and attending the review session in Geneva. Therefore, the UPR provides an alternative for CSOs to take part in the public policy-making process while contributing to the practice of democracy in this semi-authoritarian state.

2.2.3 Issues and Recommendations in the Malaysian UPR

Referring to the past three cycles of the Malaysian UPR, almost all of the major human rights issues have been raised by other member states and stakeholders including CSOs. These include issues of civil and political rights; economic, social and cultural rights; rights of vulnerable groups, and international human rights treaties. Human rights issues

are broad and crosscutting in different fields of public policies. Thus, cooperation and collaboration among government agencies are very crucial in succeeding in the making and implementation of public policies efficiently. Public policies are formed to serve the community with available resources. At the same time, the community also looks forward to the state to satisfy their expectations particularly matters that are related to their basic needs and quality of life. However, it is a big challenge for the state to satisfy the different expectations of society with multiple backgrounds and needs. The accepted recommendations in the three cycles of the UPR have been classified in detailed into 47 types of issues as Appendix B. However, these issues are interrelated and influence each other in the public policy process.

Controversial Issues versus Less Controversial Issues

The state and the communities have different responses towards the issues under the UPR recommendations. Issues that get support from the community easily include issues of economic, social and cultural rights, elderly persons, PWDs, women, children, basic needs of life such as rights to affordable housing, education, and health. These issues are related to basic human rights and are relatively easier to obtain support from the people because the nature of these issues is associated with basic human needs and therefore, from the perspective of a traditional society, it is rational to protect and support these vulnerable groups.

The Malaysian state has classified the UPR recommendations into seven issues. According to the state's submission in the two cycles of the UPR, the recommendations related to the less controversial issues get a higher percentage of acceptance. Table 2.2 shows the percentage of the accepted recommendations in the first and second cycle of the UPR based on classification by the Malaysian Ministry of Foreign Affairs. However,

the classification for the third UPR recommendations has not been obtained by the author. Issues of economic, social and cultural rights and the rights of vulnerable groups such as indigenous peoples, women, children, and PWDs are always recognised by the state and CSOs. However, the state has not appropriately responded to other critical and sensitive issues such as civil and political rights as well as the welfare of foreign workers, asylum seekers, and refugees. Instead, the focus was placed on economic, social and cultural rights (Khoo, 2014). The recommendations in the second UPR is increased compared to the first review. Also, the acceptance of UPR recommendations is generally increased at the second UPR as shown in Table 2.2. The increase in acceptance in several areas between 2009 and 2013 shows that the state has its concern in accepting every UPR recommendations and being more considerate in the UPR process. However, the details of state's consideration in accepting a UPR recommendations will be discussed in the later chapters.

Table 2.2: Number and percentage of accepted recommendations in the first and second cycle of Malaysian UPR

Accepted of UPR recommendations by issues	First cycle (2009)	Second cycle (2013)
1. International obligations.	5/20 (20%)	17/46 (37%)
2. Civil and political rights.	1/11 (9.1%)	19/47 (40%)
3. Economics, social and cultural rights, and the rights of indigenous peoples.	28/29 (96.6%)	42/44 (95%)
4. Women, children and person with disabilities (vulnerable group).	13/14 (92.9%)	22/23 (95.7%)
5. Foreign workers, refugee, asylum seekers and trafficking in persons.	3/10 (30%)	20/25 (80%)
6. National mechanisms on human rights.	1/3 (33.3%)	6/8 (86%)
7. General recommendations, international cooperation, human rights education training, enforcement agencies and national unity and social cohesion.	11/16 (68.8%)	24/39 (61.5%)
Total	**62/103 (60.2%)**	**150/232 (64.7%)**

Source: Ministry of Foreign Affairs

As one of the vulnerable groups in society, the issues of PWDs have gained support from CSOs and the community because it is a less controversial issue that has no contestation based on morals and humanity. There are controversial issues that the state and local community have difficulty recognising but still get attention from international and other local CSOs, such as the rights of the LGBT community. The difference in treatment and recognition between less controversial and more controversial issues have been reflected in how the state deals with the issues of PWDs and LGBT respectively. The recommendations on the issue of PWDs have a high percentage of acceptance in the three cycles of the UPR. However, none of the recommendations concerning the issue of LGBT has been accepted by the state during the review process.

2.3   Key Players in the Malaysian UPR Process

Malaysia is a federation of 13 states operating within a constitutional monarchy under the parliamentary system. The Federal Constitution is the supreme law which is also the principle and main reference in Malaysia's public policy-making. The Federal Government adopts the principles of separation of powers under the Federal Constitution with three independent powers comprising the legislature (Parliament), executive (Cabinet), and the judiciary. Each of these powers have their independent authorities. The public administration of Malaysia has generally separated into three levels of authority comprising the Federal Government, State Government, and Local Authority.

Each level of authority has separate jurisdiction and responds to different tasks while interrelated to each other. The Federal Government generally responds to public policy at the national level which uses a macro perspective. The State Government and Local Authority are mainly responsible for the implementation and formation of national policies on state and local issues that are granted under the law and legislation especially

issues on religion and land rights that are allocated under the Federal Constitution. There are three Federations, namely Kuala Lumpur, Labuan and Putrajaya, and thirteen states in Malaysia.

The UPR is under the responsibility of the Federal Government where the decision-making and implementation of accepted recommendations will be formed as national policies. Furthermore, the involvement of other stakeholders including NHRI and CSOs are encouraged by the UN OHCHR in realising the protection and development of human rights in the SuR. Therefore, the key players of Malaysian UPR are the state (mainly the Federal Government), SUHAKAM (as the NHRI) and CSOs that are active in human rights advocacy in Malaysia. These three parties play a crucial role in the Malaysian UPR since its first review in 2009.

2.3.1   The Malaysian State: Role of Ministries and Agencies in the Malaysian UPR

During the UPR, the state is responsible for preparing the national report, attending the review session, making a decision in acceptance of the UPR recommendations as well as implementing and monitoring the accepted recommendations. Presently, there are 27 ministries including the Prime Minister's Department and three central agencies under the Federal Government as illustrated in Table 2.3. The Ministry of Foreign Affairs (MOFA) acts as the spokesperson in dealing with the UPR Working Group, troika countries, and other UN member states in Geneva. The MOFA compiles the UPR national report and coordinates discussions with the respective ministries and agencies in the process of decision-making in the UPR process.

The consideration of the acceptance of the UPR recommendations is mainly referring to the input and comment from the responsible ministries or agencies to make sure the decision-making process is in line with the state's primary principle and current policies. The decision-making process is also referred to the advice from the Attorney's General Chamber (AGC) as this is an official commitment of the country at the international platform in the protection and development of human rights. In the process of preparation of the national report, the MOFA will conduct discussion sessions with involved ministries and agencies to seek their input and comment. Written comments will be submitted to the MOFA for compilation. Furthermore, some ministries or agencies will delegate responsibilities to officers who are experts in certain key issues to participate in the delegation to assist the representative of the MOFA in the session. This action is to make sure the delegation is well-prepared during the review session in Geneva.

The key ministries or agencies in the UPR process are the Ministry of Home Affairs (for the issue of civil and political rights), Ministry of Women, Family and Community Development (for the issues of vulnerable groups), Ministry of Education (for the issues concerning education) and Department of *Orang Asli* Development (for the issues of indigenous people). Thus, the state is showing its commitment and seriousness in the UPR process by collaborating with different ministries and agencies and pouring in time and resources to support human rights protection and development in the country.

Table 2.3: List of ministries and central agencies of the Federal Government of Malaysia[24]

Institution	List of institution
Ministries (24)	1. Prime Minister's Department 2. Ministry of Home Affairs 3. Ministry of Finance 4. Ministry of Defence 5. Ministry of Education 6. Ministry of Higher Education 7. Ministry of Rural Development 8. Ministry of Domestic and Trade Consumerism 9. Ministry of Entrepreneur and Co-operatives 10. Ministry of Housing and Local Government 11. Ministry of Transport 12. Ministry of Communications and Multimedia 13. Ministry of Human Resources 14. Ministry of Energy and Natural Resources 15. Ministry of Health 16. Ministry of Youth and Sports 17. Ministry of Science, Technology an Innovation 18. Ministry of Farming and Commodity 19. Ministry of Works 20. Ministry of Foreign Affairs 21. Ministry of Women, Family and Community Development 22. Ministry of Federal Territories 23. Ministry of International Trade and Industry 24. Ministry of Tourism, Arts and Culture 25. Ministry of Environment 26. Ministry of Agriculture and Food Industry 27. Ministry of National Unity
Central agencies (2)	1. Economic Planning Unit (EPU) 2. Implementation Coordination Unit (ICU) 3. Malaysian Administrative Modernisation and Management Planning Unit (MAMPU)

The state, through the MOFA, has also shown its effort to include CSOs in the UPR process as encouraged by the UPR Working Group. The MOFA has conducted a consultation session with CSOs in the first cycle of the UPR. However, it is challenging to discuss all the human rights issues in Malaysia in one consultation session as time is limited. The representatives of CSOs have expressed their dissatisfaction with the arrangement of the consultation sessions. Hence, an improvement in engagement with

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[24] Retrieved from http://www.pmo.gov.my/home.php?menu=cabinet&page=1797 and http://www.istiadat.gov.my/index.php/component/content/article/11-info/36-protokol-persekutuan on 30th January 2019.

CSOs is evident during the second cycle where the consultation sessions with CSOs have been increased to four sessions based on the classification of the UPR recommendations by MOFA, namely (1) international obligations; (2) civil and political rights; (3) economic, social and cultural rights and the rights of indigenous people; (4) women, children and person with disabilities; (5) foreign workers, refugees, asylum seekers and trafficking in persons; (6) national mechanisms on human rights; and (7) general recommendations, international cooperation, human rights education training, enforcement agencies and national unity and social cohesion. The consultations sessions of CSOs are shown in Table 2.4.

Despite the MOFA's efforts in increasing the consultation sessions, SUHAKAM and the CSOs hope that a mechanism could be established to include CSOs in the UPR process with regular meetings and discussions to increase the involvement and influence of CSOs in the Malaysian UPR. As illustrated in Table 2.4, clusters 2 to cluster 7 have been through four CSO consultation sessions. Cluster 1 refers to the international obligation where it is influenced by the decision-making of all the issues under clusters 2 to 7. Hence, there is no session organised for cluster 1.

Table 2.4: Consultation sessions with CSOs during the second cycle of the UPR[25]

Date	Cluster/ Classification	State	CSOs
19 September 2017	Cluster 2: Civil and political rights.	11 ministries and agencies	1. SUHAKAM 2. EMPOWER 3. SUARAM 4. KLSCAH 5. DEMA 6. JERIT 7. Bar Council 8. CENTHRA 9. Concerned Lawyers for Justice (CLJ) 10. *Persatuan Peguam Syarie Malaysia* (PGSM) 11. *Persatuan Belia Islam Nasional*

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[25] Information provided by the Ministry of Foreign Affairs (MOFA).

			12. I-Medik
14 June 2017	Cluster 3: Economics, Social and cultural rights, and the rights of indigenous peoples.	15 ministries and agencies	1. SUHAKAM 2. Bar Council 3. EMPOWER 4. WAO 5. North South Initiative 6. JOAS 7. JERIT 8. DEMA 9. Penang Institute 10. Justice For Sister 11. Foreign Spouses Support Group 12. PROHAM 13. CENTHRA
28 July 2017	Cluster 4: Women, children and person with disabilities (PWD). Cluster 5: Foreign workers, refugee, asylum seekers and trafficking in persons.	15 ministries and agencies	1. SUHAKAM 2. Bar Council 3. EMPOWER 4. CENTHRA 5. WAO 6. SIS Forum 7. I-Medik 8. JOAS 9. JKOASM 10. Harum 11. YCK 12. Pusat Komas 13. PEMBINA 14. ABIM 15. GSS 16. Cencel Care 17. *Pusat Jagaan dan Pendidikan Warga Emas Darul Insyirah* 18. Foreign Spouses Support Group 19. Migration Working Group 20. AIM
14 September 2017	Cluster 6: National mechanisms on human rights. Cluster 7: General recommendations, international cooperation, human rights education training, enforcement agencies and national unity and social cohesion.	4 ministries and agencies	1. SUHAKAM 2. Bar Council 3. JKOASM 4. *Pusat Komas* 5. CENTHRA

2.3.2 Expectations of SUHAKAM in the Malaysian UPR

The Human Rights Commission of Malaysia (SUHAKAM) plays its role as the National Human Rights Institution since the first cycle of the UPR. The position of SUHAKAM as the third party is to urge the state to accept the UPR's recommendations based on the principle and values of the UDHR and the requirement of other stakeholders including CSOs and the community. SUHAKAM also monitors the implementation of accepted UPR recommendations by the state.

SUHAKAM plays an essential role in ensuring the implementation of accepted UPR recommendations as well as monitoring the UPR process through four main steps: (1) the establishment of an internal committee on the UPR follow-up; (2) the dissemination of the UPR process and outcomes to various stakeholders; (3) the facilitation of consultation with key stakeholders particularly the relevant Government agencies, to obtain updates concerning the implementation of the UPR recommendations by the government and (4) the development of a checklist that contains the UPR recommendations and implementation progress by the government.[26]

As an NHRI, SUHAKAM addresses all issues related to the protection and development of human rights in Malaysia. However, SUHAKAM is supported by the state financially and politically, based on the selection of the commissioners since its establishment in 1999, which was granted in the Human Rights Commission of Malaysia Act 1999 (Act 597). Hence, SUHAKAM has been trying its best to establish its independent reputation as a third party in the human rights development of the country. SUHAKAM has submitted an interim report and oral statement to the UPR Working

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[26] SUHAKAM stated its monitoring mechanism on the implementation of accepted UPR recommendations as well as the operation of the UPR process by the state through these four-step and was stated in its annual report in 2010, a year after the first cycle of Malaysian UPR.

Group in the first cycle of the UPR. A few years later, SUHAKAM submitted a midterm report and stakeholder report separately during the second and third cycles of the UPR. Two months after the third cycle of review in November 2018, SUHAKAM submitted an intervention statement to the state through the MOFA on 15 January 2019, expressing their concerns and disappointment of the state's involvement in the third cycle, especially regarding issues related to civil and political rights, economic social and cultural rights, and vulnerable groups including the LGBT community.[27]

In monitoring the implementation of accepted recommendations, SUHAKAM has also attended the consultation sessions organised by the MOFA together with the representative of CSOs. Furthermore, SUHAKAM has also taken the effort to raise awareness and promote the participation of CSOs and other stakeholders in the UPR process. In 2014, six briefing sessions on the UPR with representatives from the state agencies, CSOs, the media have been conducted in several cities across the country such as Kuala Lumpur, Kuching, Kota Kinabalu (capital of Sabah), Johor Bahru, Penang, and Kuala Terengganu. Realising the crucial role of the media, a briefing session was organised specifically for the media practitioners at Kuala Lumpur in 2014.

> "*While the Commission acknowledges that it is the Government that has the primary responsibility to implement the UPR recommendations, it also recognises the crucial role of other stakeholders such as CSOs in all stages of the UPR process, including in the follow-up stage.*" (SUHAKAM, 2014)

As an organisation that was established by the State and receives Federal financial support, SUHAKAM has initiated to develop its reputation as an independent party in Malaysia's human rights movement. This includes the publication of the human rights annual report (SUHAKAM report) and urging the state to debate its annual report in the parliament. At the same time, SUHAKAM has also actively participated in other human

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[27] Retrieved from https://www.suhakam.org.my/wp-content/uploads/2018/04/SUHAKAMs-Intervention-Statement.pdf on 30th January 2019.

rights issues such as issues on LGBT and international human rights treaties. The expectation of SUHAKAM in the UPR is relatively high because the UPR has provided a platform for the state and other stakeholders including NHRI and CSOs to work together to protect human rights. Also, the pressure from the international community including the UPR Working Group which is under the UN and other member states might play a role in urging the state to improve its public policy for a higher level of protection. As a comprehensive international human rights mechanism, the UPR is significant in the protection of human rights protection in Malaysia.

2.3.3 CSO's participation in the Malaysian UPR process

In line with the setting by the UN in the UPR process, the Malaysian state opens the door to CSOs in the UPR process but with very limited space. The state remains its authoritarian style in the UPR where it has made CSOs react in a counter-hegemonic aspect in this process. Nonetheless, the state has not been able to emasculate civil society the review process except in a formal sense (Alagappa, 2004). In the case of the UPR, some of CSOs who have too limited or merely have no access to the state have reacted in a counter-hegemony approach, this includes the LGBT CSOs.

CSOs can participate in the UPR process through five main ways which are by participating in the consultation session organised by the state; providing information about the human rights situation in the respective SuR by submitting a stakeholder report and other types of written submission; attending the review session in Geneva to lobby the members of the UPR Working Group and participating in the Human Rights Council during the adoption of the report; and acting as the watchdog to monitor and participate in the implementation of the accepted UPR recommendations by the SUR.[28]

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[28] Retrieved from https://www.upr-info.org/en/how-to/role-ngos on 1st February 2019.

The state encourages by the UN to hold national consultation or engagement sessions with stakeholders including CSOs who are active in human rights issues to provide a platform for both policy-makers and CSOs to debate the issues of the UPR recommendations and also to review the progress of accepted UPR recommendations. A good understanding between these two parties is crucial in making a good decision in the UPR process, where public policy aims to solve problems in a country by planning and managing public resources efficiently to suit the needs of people.

Malaysian CSOs first participated in the first cycle of the UPR in 2009, and the number of CSO participation has increased in the third cycle of the UPR in 2018. There were ten CSO submissions during the first cycle of the UPR and 27 submissions on the second cycle of the UPR. These CSOs are diverse in backgrounds and are working on different issues of human rights. However, some CSOs have participated and established a coalition in the UPR to participate in the Malaysian UPR more actively. The number of CSOs who participated in the Malaysian UPR process has increased from the first cycle of the UPR (14 CSOs) to the second cycle of UPR (34 CSOs), and the third cycle in 2018 (65 CSOs) including both local and international CSOs. Currently, the Coalition of Malaysian NGOs in the UPR Process (COMANGO) and The Malaysian Alliance of Civil Society Organisations in the UPR Process (MACSA) are the two biggest coalitions of domestic CSOs that participate actively in the Malaysian UPR process. Appendix C shows the list of CSOs that participated in the first, second, and third cycles of the UPR.

The Coalition of Malaysian NGOs in the UPR Process (COMANGO)

The Coalition of Malaysian NGOs in the UPR process (COMANGO) was formed in 2008,[29] and comprises 53 CSOs. The secretariat of COMANGO has been established to

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[29] http://www.suaram.net/?tag=comango.

coordinate activities, run related works in the UPR process, and represent the coalition in dealing with the UPR Working Group, the Malaysian state as well as other CSOs in the UPR process. COMANGO secretariat consists of two prominent human rights CSOs in Malaysia, namely *Persatuan Kesedaran Komuniti Selangor* (EMPOWER) and *Suara Rakyat Malaysia* (SUARAM).[30] COMANGO started to participate in the Malaysian UPR process since its first cycle in 2009. Apart from engaging with the state particularly with the Ministry of Foreign Affairs, this coalition has also maintained good contact with SUHAKAM and legal organisations such as the Malaysian Bar Council. Members of COMANGO are listed as shown in Figure 2.1.

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(1) *Persatuan Kesedaran Komuniti Selangor* (EMPOWER), (2) *Suara Rakyat Malaysia* (SUARAM), (3) All Women's Action Society (AWAM), (4) Association of Women Lawyers (AWL), (5) Asylum Access Malaysia, (6) Center to Combat Corruption and Cronyism (C4 Center), (7) Centre for Independent Journalism (CIJ), (8) Challenger, (9) Community Action Network (CAN), (10) Foreign Spouses Support Group (FSSG), (11) *Gerakan Pembebasan Wanita* (GPW), (12) Good Shepherd Welfare Centre, (13) HAKAM, (14) Imagined Malaysia (15) *Jaringan Kampung Orang Asli Semenanjung Malaysia* (JKOASM), (16) *Jaringan Orang Asal SeMalaysia* (JOAS), (17) *Jaringan Rakyat Tertindas* (JERIT), (18) Justice For Sisters, (19) KLSCAH Civil Rights Committee, (20) Knowledge and Rights with Young people through Safer Spaces (KRYSS), (21) *Komuniti Muslim Universal* (KMU), (22) Lariche Community, (23) Lawyers For Liberty, (24) Malaysia Youth and Student Democratic Movement (DEMA), (25) Malaysian Atheists and Secular Humanists (MASH), (26) Malaysian Physicians for Social Responsibility, (27) Migration Working Group (MWG), (28) North-South Initiative (NSI), (29) *OKU Bangkit*, (30) PANGGAU, (31) *Pelangi* Campaign, (32) People Like Us Hang Out! (PLUHO), (33) People's Service Organisation (PSO), (34) Perak Women for Women Society, (35) *Persatuan Sahabat Wanita Selangor*, (36) *Pertubuhan Pembangunan Kebajikan dan Persekitaran Positif Malaysia* (SEED), (37) *Projek Dialog, (38) Pusat KOMAS*, (39) Sabah Women's Action-Resource Group (SAWO), (40) Sarawak Women for Women, (41) *Seksualiti Merdeka*, (42) *Sinui Pai Nanek Sengik* (SPNS), (43) Sisters in Islam (SIS), (44) Society for the Promotion of Human Rights, Malaysia (PROHAM), (45) Tenaganita, (46) The Malaysian Feminist, (47) The Talisman Project, (48) *Tindak Malaysia*, (49) *Universiti Kaki Lima* (Sidewalk University), (50) Women's Aid Organisation (WAO), (51) Women's Centre for Change, (52) Penang (WCC), (53) Yayasan Chow Kit.

Figure 2.1: Members of COMANGO[31]

COMANGO comprises CSOs of diverse backgrounds and interests that work on the protection and development of human rights in Malaysia for decades. For instance, many of them include ones that advocate for the rights of women and children, people

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[30] https://uprmalaysia.com/
[31] Retrieved from "COMANGO Joint Stakeholder Report on Malaysia for the 31st session in the 3rd cycle of the HRC's Universal Periodic Review in 2018" on 1st February 2019.

with disabilities, the LGBT community, freedom of the press, consumers' rights, foreign spouses' issues, groups from the Chinese community, as well as youth and students. These groups have also played an active role in human rights development in Malaysia because they raise abuse issues to the state, society, and the international community by organising activities, publishing reports, and conducting training workshops on democracy. However, these groups of CSOs under COMANGO practise a liberal perspective of human rights which shares the core values of the UDHR.

Members of COMANGO are mostly human rights and social activists while some of them are practising lawyers. They have much experience in human rights and social movements, including the *Reformasi* and *Bersih* movement. Therefore, the coalition holds a more liberal concept of human rights where they respect the rights of individuals while respecting the rights of the majority. Even though there is a huge number of COMANGO members but because COMANGO is a voluntary-based coalition, most of them are struggling with financial support in conducting activities. Therefore, the number of activities that can be executed is limited.

Apart from limited finances, COMANGO has also faced other challenges. On 8th January 2014, the Ministry of Home Affairs (MOHA) declared that COMANGO was a non-registered coalition because the coalition was not registered under the Registry of Societies of Malaysia (ROS). However, this is more of a procedural and technical issue that does not have any serious negative impact on COMANGO's role as the experts in human rights issues in Malaysia. EMPOWER and other CSOs that are members of COMANGO have a good relationship with MOFA and have been invited to the CSO engagement session organised by MOFA in 2017. Apart from that, the relationship between the state and COMANGO seems to have improved with the changing of the

ruling party on 9th May 2018 where the coalition had the opportunity to meet the new Minister of Foreign Affairs on 15 August 2018 to discuss the issues of UPR and other human rights issues. The relationship between COMANGO and the state is maintained during the third cycle of UPR.

INGOs - MuslimUPRo, CENTHRA and MACSA

Despite the active commitment by COMANGO, this coalition seems to lack involvement from the religion-based NGOs especially the Islamic NGOs (INGOs), which have a significant role in the public policy process in Malaysia due to its status as the religion of the Federation.[32] The INGOs have taken part in the public policy process and the social movements of Malaysia which have started decades ago, with the prominent INGOs such as the Muslim Youth Movement of Malaysia (ABIM) and Sisters in Islam (SIS) (Hassan, 2003).

In 2013, the activities of COMANGO have attracted the attention of the INGOs as most of the CSOs of COMANGO are from the liberal groups and the opinion on several human rights issues such as LGBT and freedom of religion contradicts the views held by the INGOs. Furthermore, certain groups of INGOs believe that the practice of Syariah law should only be discussed by the Syariah experts and scholars of Islamic jurisprudence instead of people only with a human rights background to ensure the role of religion is treated as a comprehensive element in the scope of human rights.[33]

The INGOs have later expanded their involvement in the second cycle of the Malaysian UPR in 2013 through the Coalition of Muslim NGOs (MuslimUPRo). The MuslimUPRo is supported by a group of people from different INGOs including the

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[32] Article 3 in the Federal Constitution of Malaysia.
[33] https://www.thestar.com.my/news/nation/2013/10/13/muslim-ngos-to-observe-malaysias-session-in-un/#sOYpfyzZ2O8Y4SDg.99

Islamic and Strategic Study Institute (ISSI), Malaysian Muslim Solidarity (ISMA), and Concerned Lawyers for Justice (CLJ). During their participation in the second cycle of the Malaysian UPR in 2013, the coalition ensured the country's report of Malaysia in the UPR was properly written according to Syariah laws and the Federal Constitution.[34]

The coalition later facilitated the establishment of the Centre for Human Rights Advocacy (CENTHRA), an organisation that has been incorporated as a limited liability company under Malaysian Law but operates as an NGO. The members of this newly developed INGO are from two major groups, namely practising lawyers and academic scholars from tertiary institutions. Since then, the involvement of INGOs in the UPR process has been operated under the name of CENTHRA. However, CENTHRA has expanded its focus on a broad area of human rights issues instead of specifically focusing on the UPR process.

The Malaysian Alliance of Civil Society Organisations in the UPR Process (MACSA) was established on 16 November 2017 with the specific aim to advocate for human rights based on Islamic principles in Malaysia through participation in the Malaysian UPR process. There are 36 INGOs at the beginning of the establishment. The number of members of MACSA later increased to 46 INGOs as Figure 2.2 illustrates the common interest of human rights from the Islamic perspective. Currently, the chairman of this coalition is the representative of CENTHRA and the co-chairperson is held by the representative from the International Women's Alliance for Family Institution and Quality Education (WAFIQ). Similar to COMANGO, MACSA also faces financial constraints in the UPR process as they are a voluntary-based CSO. The expenses are supported by the members of the coalition according to the ability of the organisation.

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[34] https://www.thestar.com.my/news/nation/2013/10/13/muslim-ngos-to-observe-malaysias-session-in-un/#sOYpfyzZ2O8Y4SDg.99

(1) Centre for Human Rights Research and Advocacy (CENTHRA), (2) Allied Coordinating Committee of Islamic NGOs (ACCIN), (3) *Persatuan Peguam-peguam Muslim Malaysia* (PPMM), (4) Islamic and Strategic Studies Institute *Berhad* (ISSI), (5) *Ikatan Pengamal Perubatan dan Kesihatan Muslim Malaysia* (I-MEDIK) *Darul Insyirah*, (6) *Pertubuhan Muafakat Sejahtera Masyarakat Malaysia* (MUAFAKAT), (7) *Persatuan Orang Cacat Penglihatan Islam Malaysia* (PERTIS), (8) *Persatuan Belia Islam Nasional* (PEMBINA), (9) Concerned Lawyers for Justice (CLJ), (10) Pertuuhan Ikatan Kekeluargaan Rumpun Nusantara (HARUM), (11) *Gabungan Peguam Muslim Malaysia* (i-PEGUAM), (12) *Ikatan Muslimin Malaysia* (ISMA), (13) *Majlis Ittihad Ummah*, (14) *Pusat Kecermelangan Pendidikan Ummah* (PACU), (15) *Persatuan Peguam Syarie Malaysia* (PGSM) (16) Coalition of Sabah Islamic NGOs (CONCERN), (17) *Harakah Islamiah* (HIKMAH), (18) *Lembaga Al-Hidayah*, (19) Malaysian Chinese Muslim Association (MACMA) Sarawak, (20) *Halaqah Kemajuan Muslim Sarawak* (HIKAM), (21) *Pertubuhan IKRAM Negeri Sarawak*, (22) *Pertubuhan Kebajikan Islam Malaysia* (PERKIM) *Cawangan Sarawak*, (23) *Angkatan Belia Islam Malaysia* (ABIM) *Negeri Sarawak*, (24) *Yayasan Ikhlas Sarawak*, (25) *Persatuan Ranuhabban Akhi Ukhti* (PRAU), (26) *Ikatan Graduan Melayu Sarawak* (IGMS), (27) *Persatuan Kebangsaan Melayu Sarawak* (PKMS), (28) *Sukarelawan Al-Falah YADIM Sarawak*, (29) *Persatuan Kebajikan Masyarakat Islam Subang Jaya* (PERKEMAS), (30) Young Professionals (YP), (31) *Pertubuhan Damai & Cinta Insani* (PENDAMAI), (32) *Yayasan Ihtimam Malaysia* , (33) *Persatuan Amal Firdausi* (PAFI), (34) *Persatuan Jihad Rkonomi Muslim Bersatu Malaysia*, (35) *Yayasan Himmah Malaysia* (HIMMAH), (36) *Persatuan Syafaqah Ummah* (SYAFAQAH), (37) *Gabungan Perstauan Institusi Tahfiz Al-Quran Kebangsaan* (PINTA), (38) Malaysian Lawyers Circle (MLC), (39) The International Women's Alliance for Family Institution and Quality Education (WAFIQ), (40) Centre for Alternative Policies in Economics (CAPE), (41) Muslim Youth Movement of Malaysia (ABIM), (42) International Relations and Diplomacy Committee, Malaysian Youth Parliament (PBM), (43) Majlis Tindakan Ekonomi Melayu Berhad (MTEM), (44) WADI Malaysia, (45) Human Security and Peace Scholars Networks (HOPE), (46) *Pergerakan Belia India Muslim Malaysia* (GEPIMA).

Figure 2.2: Members of MACSA

Subsequently, the coalition of INGOs has started participating in the second cycle of the UPR process since 2013 through the establishment of the MuslimUPRo, CENTHRA, and MACSA. Currently, MACSA act as the coalition of INGOs in the UPR process by submitting a stakeholder report, attending the engagement session by the state, publishing articles in the newspaper, conducting interview sessions on the radio, namely conducted by the Institute of Islamic Understanding Malaysia (IKIM FM), holding internal discussion sessions and training workshops, as well as submitting its report to the Minister of Religious Affairs in the Prime Minister's Department.

2.4   Summary

The key players in the UPR process are the state, CSOs, and SUHAKAM. Certainly, the expansion of the involvement of CSOs in the UPR process has brought different demands and higher expectations in the UPR recommendations. However, this situation serves as a platform for the state to recognise the concerns and demands for CSOs in human rights issues and public policy in the country. As stated above, there are two main coalitions that are actively involved in the UPR process, which are COMANGO and MACSA. However, these two CSO coalitions subscribe to a different definition of human rights, specifically, the universal human rights and Islamic perspective of human rights. Their stand on certain issues might be different and conflicting as they have different views in understanding and judging the principles of human rights.

As the public administrator, the state is responsible to create a platform for CSOs to participate in the public policy process by establishing the rules of the process and manage group conflict. Nonetheless, the decision-making in the UPR process is affected by the current developments of public policy, and the laws of the country, as it is an inter-influenced process. The acceptance of UPR recommendations which is influenced by the current national policy can be considered as the result of the struggle and competition between CSOs that participated in the decision-making process. The state constantly responds to the CSOs (the pressure groups) by bargaining, negotiating, and compromising among competing demands of influential groups and balancing conflict of interests in society. CSOs in Malaysia have different values, sizes, organisational strength, advocacy, and communication pattern. Therefore, they might employ different strategies, approaches, and methods when participating in of the UPR process based on the different principles and perspectives that promoted by these CSOs.

CHAPTER 3

LITERATURE REVIEW

3.1 Introduction

This chapter reviews the literature and past studies related to the study in three main parts, which are (1) the theoretical and conceptual reviews of the public policy process, and civil society (2) the empirical review of the interaction between CSOs and the state in the Malaysian context, and (3) the research gaps that need to be addressed by the study.

The first part, the theoretical and conceptual reviews consist of the definitions of the public policy process, public participation in policy-making, and the determinants of public participation in the policy process. This part also describes the formation and concepts of civil society. Three main concepts of civil society, namely conflict, social capital, and counter-hegemony are discussed to elucidate the challenges of CSOs while interacting with the state. As a member of society who is active in the public policy process, civil society groups adapt to overcome the challenges by applying different approaches and concepts.

The second part of this chapter reviews the literature from an empirical perspective. It analyses the participation of CSOs in public decision-making as well as the relationship between CSOs and the state from the Malaysian context. The third part clarifies the research gaps that are intended to be addressed by this study, focusing on the relationship between CSOs and the state, including the perspectives of CSOs and issues of PWDs and the LGBT community. The participation of CSOs in public decision-making and the relationship between CSOs and the state have been identified through the understanding of this scenario.

To frame the context for this study, a conceptual framework is created to describe the interaction between CSOs and the state in the UPR process, particularly on the issues of PWDs and LGBT. The differences in nature between these two issues, which are less controversial and more controversial make a distinction between these two groups of CSOs.

3.2   Public Policy

3.2.1   The Concept of Public Policy

Public policy is a purposive course and goal-oriented action by an actor or set of actors. In this case, the actor refers to the state in dealing with a problem or issue of concern by the public or the state itself. Public policy is also the response of the state to political or public problems based on values and norms where these two elements are deeply interrelated with all members of society (Geurts, 2011). Public policy consists of patterns of actions taken over time; it is a product of demand by both the state and society in a government-directed course of action in response to pressure about a perceived problem. Therefore, from the perspective of the public, public policy can be seen to be positive (a deliberately purposive action) or negative (a deliberately purposive decision not to take action) (Smith & Larimer, 2009).

Anderson (2003) defines public policy in simpler terms which are the state's decisions including what it does not do. As the executive policymaker, the state chooses to address or solve the public's problem by using public resources. However, the choice is not simply made by the state, it is decided based on the integration of scientific shreds of evidence with a systematic process in the policy process. The aim of forming and implementing efficient policies is to bridge the gap between values and norms in a situation expected by both the state and non-state parties, which includes CSOs. As the

authority that holds the power to manage and coordinate public trust and resources, the state is always expected to fulfil their duties with integrity and transparency to create the most efficient solutions while optimising the use of resources. The process of implementing public policies is complex and involves many parties including stakeholders such as state agencies.

Conventionally, the official policymakers are the legislatures, the executive, the administrative agencies and the courts, while the unofficial participants are the interest groups, political parties, and individual participants (Anderson, 1979). These groups of people play a fundamental role in public decision-making, where the policymakers hold the authority and power in the system of regulation and administration. All the decisions impact and affect society. The public policy in the context of this study, therefore, includes the decision-making process by the state, with the involvement of the stakeholders particularly the civil society.

The state faces many challenges in the public policy process as the process to formulate policies is getting more complex and demanding due to modernisation. The policy process is not purely focused on the outcome of the state's decisions, it is also a form of "persuasion" that involves the policymaker influencing the stakeholders; being value-laden by obtaining advice on some normative about policy from the related parties, as well as action that was taken after a decision has been done. These three characteristics of policy studies, "persuasion", being "unabashedly value-laden", as well as "action-oriented", have made policy studies essential in contributing to academics (Michael Moran, Rein, & Goodin, 2006).

The study of public policy is encircled by three components, namely, the model of causation (policy-making), policy implementation, and policy evaluation (Peters, 2015). Public policies represent choices backed by the coercive powers of the state. In the ideal rationalist world, policy choices would be made objectively and efficiently. Policymakers would identify a problem, search and study for all possible alternatives to address the problem, weighing the cost and benefits of each issue, and selecting the most efficient and effective solution (Smith & Larimer, 2017). Despite the state's effort in minimising the costs in public administration, policymakers are required to consider the demands and expectations of members of society. The state needs to have foresight in seeing the constraints when implementing a decision. The type of issues and circumstances also play a role in the state's policy-making.

3.2.2 The Public Policy-making

The aim of public policy research is not to determine the "best" policy but the most suitable policy after taking into consideration the various interests of stakeholders. Policymakers have the authority to distribute the resources and implement policies through the development of public policy. Other non-state key players and stakeholders should be involved in the decision-making process to ensure the effectiveness and the efficiency of public policy by formulating relevant and comprehensive policies.

Policy-making is a process where policies are made in sequence but these processes overlap and intertwine. The process consists of problem identification, agenda-setting, policy formulation, policy legitimation, policy implementation, and policy evaluation. In this process, deciding the crux of the problem is even more important than deciding the solutions to solve it (Dye, 2011, p.28). Problem identification and agenda setting are always the first steps in policy development. The process of public policy-

making is a decision-centric and goal-driven process where the action on the decision must be taken to produce the outcome that is a compromise between the targeted result and the imposed constraints. Therefore, in this research, the barriers and problems that stakeholders face have been defined before the interaction between CSOs and the state are analysed.

The making of public policy can be characterised as a complex, dynamic, constantly evolving, interactive, and adaptive system. It is not a one-way communication but a dynamic, interactive, and human-centred process. Actors are engaged in a goal-driven decision-making process and have a great deal of autonomy in the way they organise their work (Geurts, 2011). Policy-making typically involves a pattern of action, extending over time and involving many decisions, some routine while some are not (Anderson, 1979). Researches have suggested that participation of members of society, such as interest groups, CSOs, public opinion, and government institutions are pivotal in producing practical and sustainable public policies that fulfil stakeholders' expectations while resolving problems (Bach, 2012; Burstein, 2008; Hill & Varone (eds.), 2017; Mazmanian & Sabatier, 1980; Page et al., 2013; Page, 2005; Walters et al., 2000). Despite the dynamic nature of public policy, it still lacks a sound theory due to the complexity of the relationship between the actors in the policy process (Lewis, 2012). Therefore, this research attempts to examine the phenomenon of how policies in both PWDs and LGBT issues are responded to differently at every level, from societal, state, and international levels.

The 2019 Public Policy Yearbook listed the ten most frequently appearing terms in the current prominent research which are political, environmental, social, governance, management, science, policies, analysis, health, and development. The five recent

theoretical focus areas that include agenda-setting, adoption, and implementation, policy analysis, policy history, policy process theory, and public opinion (Jenkins-Smith, Krutz, Carlson, & Weible, 2019; Trousset, Jenkins-Smith, Carlson, & Weible, 2017). However, most studies focus on public policy processes in developed countries, specifically in the West[35] where the social context, norms, and values of these countries are different from developing countries. Studies conducted on Southeast Asian countries such as Malaysia, a developing country growing with its unique and complex structure of society with plural ethnic and religion are limited (Ho, 1992; Horowitz, 1989; Maloney, Jordan, & McLaughlin, 1994; Mccourt & Foon, 2007). As public policy is flexible and dynamic, influenced by current behaviours and attitudes of the actors along the process, therefore, policies constantly need to be debated and reviewed based on the changing demands and development of society.

Recently, the Malaysian state has embarked on transforming its leadership and administration in the public policy process, following the trend of the democratic process where people's awareness of the development of the public policy process is increasing (Case, 1993). Therefore, there is still room to explore how the key players influence the formation of public policy and the main factors in public decision-making in Malaysia, as the political culture and people's expectations are ever-changing due to the rapid development in education and information technology.

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[35] According to the 2017 Public Policy Yearbook, approximately 72 percent of 892 Yearbook members work with-in the United States and the remaining 28 percent of members working across five continents including Europe (18.4%), Asia (9%), Australia and Oceania (2.6%); Africa (2.1%); and South America (1.9%).

3.2.3 Public Participation in Policy-Making

The policy process is influenced by public participation that comprises a range of interest groups that exert power and authority over policy-making. These influences affect each stage of the process from agenda-setting to the identification of alternatives, weighing the options, choosing the most suitable one and implementing it. Therefore, the impact of public opinion on policy remains substantial when the activities of interest organisations, political parties, and elites are taken into account (Burstein, 2008). The influence of interest groups, power, and authority is one of the important themes in public policy-making studies (Sutton, 1999) where they are the main players in the policy-making process.

There are still aspects that have been neglected in policy studies from a political science perspective. This includes the importance of role-playing by the actors of policy communities comprising multiple levels of public and private institutions, substantive policy information, the influence of policy elites in the general public, the desirability of longitudinal studies, and the differences in political behaviour across policy types (Sabatier, 1991). Hence, CSOs should be involved in public decision-making to provide input that reflects the current needs of society, especially vulnerable groups. Grindle and Thomas (1991) are of the view that policy-making is an interactive process instead of a linear process. This process is also a synthesis of a combination of case management and the support of dynamic rules, where case management supports the required level of collaboration, coordination, integration, and compliance, while the dynamic rules empower policymakers to cope with the dynamics of the policy-making process, with its changing actors, events, loops, statuses and interactions (Geurts, 2011). The participation of CSOs in the policy process can help to produce a policy by taking considerations of the needs and expectations of the stakeholders.

3.2.4   The Determinants of Public Participation in Policy Process

The involvement of CSOs in public decision-making is a purposive action where the interactions among numerous actors in the policy process are significant in shaping policy decisions (Peters, 2015). Scholars have determined the factors of public participation in the policy process to be successful and significant. These determinants include (1) the purpose of public involvement; (2) the nature of the issue (Walters et al., 2000); (3) discourse community and interest network (Hai, 2013); and (4) process, quality, structure and political factors (Khalid, Mushtaq & Naveed 2016). These four determinants have been used as a guide in analysing the participation of CSOs in the UPR process in this research.

(i)   The Purpose of Public Participation

Public participation in decision-making is purposive in nature, where stakeholders and related parties are invited to share their views and suggestions on a new developing policy, as well as the implementation of an existing policy. The five reasons for involving the public in decision making are (1) discovery; (2) education; (3) measurement; (4) persuasion; and (5) legitimisation (Walters et al., 2000).

Discovery of an issue is important for the public to get a clearer understanding of policies by finding specific criteria in that particular policy when they start to get involved in the policy-making process. The role of education is to create awareness among the public about the specific issue and propose solutions. As people of diverse backgrounds and expertise participate in public policy, various and numerous opinions and suggestions arise to assess public opinion regarding a set of policies. Hence, measurement is crucial to identify the best solution or the most suitable proposal in a policy process. Once a solution has been identified, it is pivotal for the state to persuade the public to believe in

and accept the recommended solution. This stage is crucial for the state to obtain support from the public as a sign that they warrant the state's decisions. Finally, the agreed solution will be implemented through legitimisation to comply with public norms or legal requirements to realise a newly developed public policy.

(ii)   The Nature of the Issue

The nature of public policy varies as sometimes, it is too broad to identify its category and the responsible government agency that is accountable for the coordination. However, by understanding the nature of the issue, the right public participation strategies could be employed to ensure public participation is effective (Creighton, 2005; Walters et al., 2000) to produce the best solution in public policy-making.

(iii)   Discourse Community and Interest Network

Community discourse is important as it allows groups that are often excluded or overlooked to participate in the policy process. Hai (2013) emphasises the importance of participation by non-state actors in the policy process in developing countries, where these actors might contribute new ideas in designing a policy. Hai states that discourse community and interest network are important components in influencing non-state actors to participate in the policy process.

(iv)   Process, Qualities, Structure, and Politics

Policies are formulated based on the realities and circumstances of a country. The inability to do so would mean that the policies are inefficient. Khalid, Mushtaq and Naveed (2016) found loopholes and failures in the policy-making process in Pakistan. They highlighted that to implement policies, in theory, there needs to be a connection of policy process between policymakers and reality. The reality of the process of the

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formation and implementation of public policy includes stakeholders who experience the impact of the policy, and the academicians who study the related discipline. The second factor is making the policy understandable among the stakeholders to strengthen the implementation and effectiveness of the policy. While the structure of the state organisation is crucial to invite participation from non-state parties, the state would also need to ensure that the methods and frameworks allow and encourage open discourse from society. Apart from public participation, politics which comprise ministerial and civil servants are also integral parts of the policy process. To galvanise support and manage opposing views while delivering the effectiveness of the policy, the state needs to create space for non-state parties to participate.

3.3 The Formation of Civil Society and Civil Society Organisations (CSOs)

3.3.1 The Concept of Civil Society

The formation of civil society is an outcome of the engagement of three groups in society, which are the state, CSOs and social organisations in public discourse and how they use an idea to legitimise their actions and create a social movement. This process, however, has its merit based on a historical process (Whitfield, 2003). Civil society can be understood as an idea where the role of the group is to shape the rules of the political game and influence the state's decisions. Understanding the development of civil society is also a way to analyse the historical processes of society. Parekh (2014) defines civil society as:

> *"...a group of individuals held together, and forming a single society, by virtue of subscribing to a consensually based public authority and sharing in common the practice of civility. Civil society was a human artefact, created, sustained and capable of being changed by human being." (pg.15)*

Civil society generally refers to the action taken by a group of people. It is a discipline that seeks to explain the interaction between individuals and groups of people

that have diverse roles and interests such as political parties, official structures (bureaucracy) or voluntary organisations, struggling for specific aims and interest. Civil society discourse analyses the phenomenon, dynamic interaction, and the changing nature of civil society through observation and understanding the needs of members of society. The ultimate objective for those members is to fulfil their needs and interests based on specific principles or beliefs.

In this study, civil society is conceived as the realm of organised social life that is voluntary, self-generating, largely self-supporting, autonomous from the state, and bound by a legal order or set of shared rules. It is distinct from "society" in general in that it involves citizens acting collectively in the public sphere to express their interests, passions, and ideas, exchange information, achieve mutual goals, make demands on the state, and hold state officials accountable (Diamond, 1994). The main differences between society and civil society are that civil society is financially independent, autonomous from the state, and is bounded by a legal order or shared values. Diamond (1994) categorises civil society into seven different groups according to interests, namely (1) economic (2) cultural (3) informational and educational (4) interest-based (5) developmental (6) issue-oriented and (7) civic interests (Diamond, 1994). The key element that Diamond highlights are how civil society is vital to limit state power, develop democratic attributes, create channels for the articulation, aggregation, and representation of interests, generate opportunities for participation and influence all levels of governance, monitor elections, and disseminate information (Freedman, 2009).

The formation of collective action as a means of influencing public policy has long been a part of history. The development of the concept of civil society has been deemed crucial for improving the quality of governance, empowering people and

enabling development. CSOs are usually made up of the middle class as they are more likely to form associations and groups to protect and promote their interests and demand a response from the state. In democratic states, demands coming from well-organised, well-funded, and well-connected groups are more likely to be heard. Hence, rather than just mass mobilising public participation (Freedman, 2009), the activity of CSOs is often a structured, goal-oriented, and collective action.

Theories of civil society often describe the interaction between members of society. The theory of civil society was first proposed by Aristotle as *politike koinonia* which refers to a political society, or "a unique collective activity and a unified organisation with a single set of goals that is derived from the common *ethos*" (Cohen & Arato, 1994). Since then, prominent theories have been introduced by de Tocqueville, Hegel, Marxist, Robert Putnam, and Antonio Gramsci. Recently, the discourse on civil society has been further developed and thus, changing the public discourse of the rights of vulnerable groups due to the fall of Communism, popularisation of democratic ideologies, disenchantment with past economic models, and the rapid rise of CSOs globally.

3.3.2 The Development of CSOs and Its Role in the Policy Process

Collective action is a universal part of the human experience, regardless of time, space and culture, though manifested in many different ways (Edwards, 2004). A form of collective action through CSOs is a kind of structured and objective-oriented organisation where a group of people act privately in pursuance of public needs (Demars, 2005). CSOs provide a platform for members of society to organise activities and deliver their opinions to achieve their objectives. They represent the interests of different stakeholders and target groups by contributing ideas and suggestions to create comprehensive and efficient

public policies. CSOs are best-known for different, but often interrelated activities; the delivery of services to people in need, and the organisation of policy advocacy, and public campaigns in pursuit of social transformation (Lewis, 2010).

The literature on the development of CSOs has evolved since the last decade with a range of debates about the implication of CSOs in society. The early discourse on CSOs in the 1980s grappled with issues such as CSOs' efficiency, impact and scale while a new set of debates has gained prominence in the early 1990s (Mercer, 2002). Since 1990, the concept of civil society has evolved and focused on one's natural strengths. Civil society is intimately connected with the role of local communities, associations, or groups (Whaites, 1996). Therefore, the participation of CSOs in the policy process is crucial and significant.

The role of CSOs has progressed rapidly in the 21st century where people are more willing to contribute to society by addressing different types of issues, especially issues of public interest. Individuals and societal groups tend to voice out their opinions through a structured organisation. It is becoming a trend for society to form a group to gain more visibility and influence. The role and implication of CSOs have been affirmed in the local community and international bodies such as the UN and other international CSOs. Besides carrying out activities relating to universal welfare and charity, CSOs also monitor public policy and administration as well as the formal leadership in the society. In other words, they act as the watchdog to the bureaucracy and political mechanisms. Therefore, it is to be expected that sometimes conflict may emerge between the state and CSOs in respect to certain issues or public policies as the role of CSOs as a third party is to represent the interest of the public.

The function of CSOs is not only to support the public or stakeholders in the democratisation process in a country. However, there is a different view that the role of CSOs can sometimes be obstacles to democratisation and supporters of authoritarian regimes, this scenario has happened in countries with a different type of policy, authoritarian regimes as well as CSOs (Wishchermann, 2018). Therefore, it is crucial to understand the nature and the objective of an CSO. As CSOs are supported by the public and sometimes by the state, CSOs have been requested to ensure the resources have been used accordingly. Hence, the administration and management of CSOs should be transparent and fully accountable. This will ensure that the credibility and reputation of CSOs are maintained and respected.

3.3.3 Civil Society Theories in the Policy Process

Weiss (2004) identifies four paths for civil societies to gain influence over the state in the policy process, namely (1) top-down change in political societies through the co-optation of leaders, agendas, or both; (2) policy advocacy including aggregation of opinions and representation of alternative approaches to issues which are done by the state; (3) socialisation toward new political norms or priorities (by the individual or group particularly human rights activist) and (4) comprehensive political reform systems including changes in political norms, legislation, and leadership. These four paths shape the pattern of civil society as well as CSOs in influencing the public policy process through different theories and types of action.

The two theories of civil society that have been proposed by scholars in analysing the development of civil society include the New Left and the neo-Tocquevillean, or liberal-democracy model. The New Left conception is rooted in the Gramscian formulation of civil society, which departs significantly from Marx's conception. On the

other hand, the neo-Tocquevillian model is based on the conception of a limited state that would confine itself to the political sphere and guarantee the legal framework and other conditions, such as socioeconomic equality, necessary for the effective functioning of civil society (Alagappa, 2004). The three main concepts of civil society are (1) conflict; (2) social capital and (3) Gramsci perspective (hegemony vs counter-hegemony). These three concepts reflect the dynamic relationship between the state and CSOs in different situations, especially during the policy process.

(i)   Conflict

The two different concepts of civil society, conflict and social capital, have been developed by scholars and activists from Eastern Europe and Latin America respectively during the 1970s. The civil society concept of conflict emerged from the context of the totalitarian and authoritarian system of governance in Eastern Europe. Hegel identifies civil society as the realm that is situated between the family and the state, where individuals are free to associate to pursue their needs and interest with mutual respect and within the limit of laws (Parekh, 2014). However, Marx later rejected Hegel's thoughts and claims that civil society actually represents the interest of the bourgeois group (Lee, 2004) whereby it is also a realm of conflict or between the state and the organised classes (Parekh, 2014). This argument later evolved into the concept of conflict, which supports the importance of empowering individuals and disadvantaged groups in the process of democratisation.

Both Hegel and Marx pointed out that civil society is a non-state actor, and play a pivotal role in democratisation where they deal with the state for the benefit of the groups in society. However, the process may not be smooth and straightforward. The interaction between the state and civil society can be understood as a conflict between

two parties. The theory of conflict is based on the argument that by empowering disadvantaged groups and opening a space for them to organise, protect, and articulate their interests and well-being, civil society can galvanise democratisation and uphold democracy. There is a connection between a democratic state and the role of advocacy and the presence of public interest groups, especially social movements. When civil society, especially disadvantage groups address/question the state by holding them accountable, these groups may be seen as a threat by the state, thus creating conflict.

The state considers itself as a representative of the universal interest in society. No autonomous social organisations in the state are permitted (Lee, 2004). This concept has been the subject of criticism by Democratic-leaning theorists, who doubt the ability of the state to understand the needs and expectations of the people, including those of minority groups. However, Lee (2004) points out that Hegel and Marx did not put in the interest of the bureaucratic class which would pursue policies to further advance them..

(ii) Social Capital

The concept of social capital was originally introduced by Alexis de Tocqueville, a French diplomat, political scientist, and historian. Tocqueville in his classic work, *Democracy in America*, which was published after his travels in the United States, claimed that there was an "inevitable connection" between voluntary associations and democracy. According to Tocqueville, society is divided into three realms: the state (the formal institution), civil society (the economic society) and political society (the arena of voluntary associations) (Lee, 2004).

Tocqueville defined social capital as "the art of association where individuals learn to act together to pursue common objects of their desires with full of skills" and civil associations as the means where "feeling and ideas are renewed, the heart enlarged, and the understanding developed" (Tocqueville, 1969, p.514-515). Associational life is regarded as a generator of social capital, which are trust, reciprocity, and networks, emphasising the power and importance of collective action for the common goal of the society.

In contrast, Putnam expanded Tocqueville's view that civil society is where social capital is generated and developed. The central idea of social capital is networking and the associated norms of reciprocity have value whereby the value of the people who are in the society and has been demonstrable externalities. Hence, there are both public and private faces of social capital (Putnam, 2001). Putnam later emphasises that the claim that social capital has diminished in America is inaccurate because this notion only considers civic associations and excludes public interest and advocacy groups. The social capital view is generally sceptical of the contributions of advocacy and public interest groups to sustain a healthy democracy (Lee, 2004, p.7-8).

Putnam's (1993; 1995) approach to civil society focuses more on civil associations instead of mass membership who are not active participants in the organisations. An organisation with numerous members who are inactive is not considered an effective organisation and will not play a significant role in society. This is because the value and meaning of social capital are generated and developed by a group of civil associations. From Putnam's observation of the American society in the early nineteenth century, he noted that political society is composed of civil and political associations where the former refers to voluntary organisations like churches, school, and

professional societies, while the latter refers to local government, parties, and public associations.

Social capital generally refers to an autonomous group of people who have the same desire to work together to achieve the ultimate goal which is beneficial for society and the community in general. The struggle of the movement usually takes a long time since their claim involves bringing impactful on the policy and society. According to Putnam (2001), the central idea of social capital is the value of networks and the associated norms of reciprocity. This value is about the existence of people in both public and private faces of social capital. However, the examples provided by Putnam were limited to the situation in the United States (US) and may not be applicable in developing countries like Malaysia. Civil society movements in Malaysia have engaged with the concept of social capital for decades ago. The Malaysian context is discussed in the following section.

As a brief conclusion, the differences between conflict and social capital lie in (1) the groups in civil society they emphasise with; (2) how civil society specifically affects democracy; (3) types of relationships between civil society and the state; and (4) their different expectations of democracy (Lee, 2004). The concept of conflict and social capital are useful as the model of the interaction between the state and CSOs and the public. A common theme from these concepts is the emphasis on the participation of the public for a social movement to succeed.

(iii)   Gramsci's Perspective (Hegemony vs. Counter-hegemony)

Gramsci proposed the concept of "hegemony" to address social, cultural, and moral values in a Marxist society to explain how a class can establish its culture, and moral superiority independently of its direct political power (Joll, 1977). Gramsci theorised that dominant groups maintain their position through a mix of sheer force or coercion through a political party, with the active participation of subordinate groups which includes civil society that act based on consent using hegemony as their approach.[36] In Gramsci's view, the role of political society, the "apparatus of a state's coercive power" is to enforce "discipline on those groups who do not 'consent'" (Gramsci, 1992, pg.12). Gramsci viewed civil society as an integral part of the state as they act based on consent using hegemony that is pursued through "extremely complex mediums, diverse institutions, and constantly changing processes" (Buttigieg, 1995, pg.7).

Counter-hegemony is an elaboration of the central point in Marxist thought by Antonio Gramsci whereby he argued that cultural hegemony describes how the dominant class specifically the bourgeois, dominates cultural discourse and symbols. They maintain psychological control and consequently, its dominant position in society through the manipulation of symbols and values (R. H. Cox & Schilthuis, 2012). This theory proposes that the rule of one class over another does not depend on economic or physical power alone, but rather, on persuading the ruled to accept the system of belief of the ruling class and to share their social, cultural, and moral values. However, the counter-hegemony thinking and discourse involve the identification of alternate values and principles, disseminating them among the working class and struggling to supplant the counter-hegemonic discourse with the prevailing (R. H. Cox & Schilthuis, 2012). Gramsci focused more on the role of the superstructure in the processes of establishing the reign

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[36] https://warofposition.com/94. Retrieved on 18th January 2021.

of the ruling class than actual power understood as enforcement and administration (Gorski, 2007).

There are three tendencies that are manifested by civil society: hegemonic, counter-hegemonic, and tactical tendencies. The hegemonic tendency is defined by a strong adherence to conventional views, while counter-hegemonic tendency challenges the usefulness of this concept as a lens through which to interpret state-society relations or to envisage notions of democracy. On the other hand, tactical tendency cuts across this cleavage. It uses the idea of achieving an objective using other means such as obtaining foreign support for the construction of an autonomous civil society (Whitfield, 2003). The concept of civil society in Gramsci's perspective is that no sphere acts as a buffer against the state, but rather, an arena of constant competition, conflict, and a clash of ideas. Whoever controls civil society succeeds in manufacturing consent among the masses (Ramasamy, 2004, p.202). Gramsci's concept of hegemony critically acknowledges the active role of subordinated people in the operation of power and thus, allows for a nuanced conception of political and cultural authority (O'Shannassy, 2009).

Gramsci conceived of two methods for challenging hegemony; a "war of movement or war of manoeuvre" and a "war of position" (Coutinho, 2013). A "war of manoeuvre" involves physically overwhelming the coercive apparatus of the state. The success of this strategy depends on the nature of the state's hegemony and its position within a civil society where they are vulnerable and not well-developed (Cox, 1983). However, Gramsci (2007) argues that the "war of position" is resistance to cultural domination, rather than physical domination as an alternative for civil society to challenge the state. Cox (1983, pg.165) describes a "war of position" as a process that "slowly builds

up the strength of the social foundation of the new state" by "creating alternative institutions and alternative intellectual resources within the existing society."

The Gramsci framework describes the dynamic interaction between the state and CSOs in determining the public rules and regulations based on different priorities and considerations. The 2008 General Election in Malaysia has been categorised as a political tsunami in the country with opposition parties enjoying electoral success both at the federal and state levels. This situation can be interpreted within a Gramsci framework where the progressive movement has been reacting to the hegemonic authority (O'Shannassy, 2009; Miles & Croucher, 2013).

Malaysian civil society is slowly forming a "counter-hegemonic" direction where the successive Malaysian governments understand the role and power of the working class. As a response to that, the state has constructed a hegemony around the ideology of national development (Miles & Croucher, 2013). Providing the context of the country and limited resources, the Malaysian CSOs are mostly issue-oriented. Although they commonly advocate for different issues, they also often unite as a coalition on some issues, thus creating the power of social capital. Their roles and functions can therefore be understood as a response to the increasing authoritarianism of the state (Tan & Bishan, 1994).

3.4   Civil Society Participation in Public Policy Process: The Malaysian Context

3.4.1   Malaysian CSOs

Malaysian CSOs consist of communities of diverse interests and backgrounds. The primary historical antecedents to contemporary Malaysian CSOs are Chinese associations, reformist Indian associations, Malay nationalists as well as Islamic organisations that had

been established before independence (Hassan, 2003). As time evolved, the number of CSOs grew rapidly. Tan and Bishan (1994) categorised Malaysian CSOs into seven different groups (1) community-based organisations (2) community service organisations (3) worker-employer oriented organisations (4) women's organisations (5) youth organisations (6) professional organisations, and (7) coalitions and campaign groups. The development of CSOs can be understood as a response to, and the outcome of the increasing authoritarianism of the state and the public perception that the state drastically restricts society and creates imbalances and inequality in the country (Tan & Bishan, 1994). In other words, critical events can alter the balance of authoritative beliefs (Horowitz, 1989). The state's authoritarian approach in how it deals with public issues has created a social movement whereby Malaysian CSOs of diverse interests such as human rights, commerce, and social welfare organisations have grown rapidly for the past decade.

Miles and Croucher (2013) classify CSOs into two different types. The human rights-based organisations lead by the social activists mainly focus on human rights protection by the state in the public policy process. This group challenges the state's political agenda to achieve their expectations. Another type of CSO focuses more on welfare for vulnerable groups. The state has generally more tolerance for welfare-oriented CSOs by offering them to occasionally participate in policy-making. Comparatively, social movement organisations and human rights CSOs have faced enormous obstacles in carving out a space in society (Gomez & Jomo, 1999; Kua, 2005; Miles & Croucher, 2013; Verma, 2002).

Besides CSOs that respond to general issues of society (secular CSOs), there is also the existence CSOs that fight for religious issues. As a country whereby most of its

citizens are Muslims, Islamic-oriented NGOs (INGOs) is one of the religion-based CSOs that has an active and significant role in society. Similar to other secular CSOs, some of the INGOs receive sponsorship from the government while some do not. Generally, Malaysian INGOs prefer to maintain an image as service and welfare CSOs with a non-political identity and a non-ethnic basis. However, there are several politically engaged INGOs such as *Angkatan Belia Islam Malaysia* (ABIM), which was established on 6 August 1971, and Sisters in Islam (SIS), which was formed in 1985. INGOs actively participate in democratic discourse, particularly on the role of Islam in the country as a defining factor in political life based on Islamic principles (Hassan, 2003).

Malaysian citizens have always shown their willingness to participate in the development of the country since the nation achieved its independence in 1957. Civil society first started with a small interest group for issues in the community communicating their concerns to the authority. Pressing issues such as environmental rights, education rights, and other human rights issues were raised later. Hence, the involvement of CSOs in public policy-making is valuable and crucial.

The involvement of Malaysian CSOs or interest groups in the formation of public policy has started decades ago. Studies have investigated the interaction between the state and the private sector, particularly focusing on the different types of contacts between them, attitudes of the private sector towards the state, methods of influence (Mehden, 1975), the involvement of public interest groups in policy-making (Harding, 1992; Horowitz, 1989) especially concerning the National Economic Policy (NEP) and National Development Policy (NDP) (Mehden, 1975).

The non-state contestations are initiated by several critically minded and highly politicized CSOs. Many of these organisations were formed to address societal issues neglected by the state. For instance, CSOs such as *Suara Rakyat Malaysia* (SUARAM), the National Consciousness Movement (ALIRAN), *Angkatan Belia Islam* (ABIM), *Dong Jiao Zong* (Ang, 2014; Kua, 2005; Tan & Teoh, 2016), Just World Trust (JUST) and Centre for Peace Initiative (CENPEACE) have been very critical of the state on a variety of issues (Ramasamy, 2004, p.209). Recently, the authority has opened its door by inviting CSOs to participate in the development of public policy, particularly on women, children, and education. However, the cooperation between the authority and CSOs can still be adjusted and improved, particularly in respect of forming civil and political rights policies.

Social movements drive the struggle of civil society and CSOs in the country. Given the dynamic relationship between the state and civil society in Malaysia, CSOs have made important contributions to foster a democratically inclined and socially aware citizenry by bringing key issues to public prominence and nurturing the minds of the people. This would then give the civil society the influence to rally mass opinion at crucial junctures in support of political, social and economic reforms (Weiss, 2003). Although British colonialism has had such a big influence on the relationship and interaction between CSOs and the Malaysian state, Weiss (2005) highlights that the relationship between CSOs and the state should be studied from the influence of the public sphere by both parties, specifically what the condition of the state appears to its citizens and interaction between CSOs and the state. Moreover, Hedman (2001) opines that the Malaysian civil society mobilisation has run aground because of the lack of class formation pattern, the position of Islam as the Federal religion, and legacies of the Left.

One of the approaches that civil society and human rights CSOs in Malaysia subscribe to is demonstrations, especially in making their views and concerns known, particularly concerning injustice. A demonstration is a collective action of like-minded people who find it a useful form of expression, without causing harm to others (*The Right to Demonstrate?!*, 1999). The *Reformasi* movement is one of the prominent social movements in Malaysia contributing to the changing and development of the political framework of Malaysia. Thousands of demonstrators took to the streets almost weekly, demanding changes, including justice, greater transparency, and accountability on the part of the government of the day (Nain, 2002). The new media started to develop fast during this time where social media and communication methods are developing, including the widespread use of the internet, website, blog and others. The state may not realise the internet has transformed the political, economic and lifestyle of its citizen, particularly in the urban area. The internet has expanded the space and shifted the character of the public sphere (Weiss, 2012). This development of the new media has later been utilised by CSOs in the public sphere as well as participation in the policy process. Furthermore, the news coverage especially the language used by the media has also played a crucial role in the construction of social reality in Malaysia, this situation can be seen in the *Reformasi* Movement since 1998 (Manan, 2001).

Nevertheless, demonstration is one of the famous and common methods that utilised by CSOs in raising their voice to the state, especially during the National Front Coalition era. The prominent demonstrations include the *BERSIH* rally and HIDRAF rally that started in 2006 and 2007. *BERSIH* started out as the Joint Action Committee for Electoral Reform, which was formed in July 2005. The coalition's objective was to push for a thorough reform of the electoral process in Malaysia. The Coalition for Clean and Fair Elections (better known by its Bahasa Malaysia name "*BERSIH*") issued its first joint

communiqué on 23 November 2006[37]. At its formation, *BERSIH* comprised civil society organisations and political parties with the objective of campaigning for clean and fair elections in Malaysia. *BERSIH*'s journey thus far has been both monumental and memorable. The public demonstration of November 2007, which saw thousands of ordinary Malaysians take to the streets in support of clean and fair elections, was a critical juncture in our nation's electoral journey.

While the HINDRAF (the Hindu Rights Action Force) rally has been conducted by the civil society in 2007 to called the protest over alleged discriminatory policies. The rally was the second such street protest after the 2007 *BERSIH* rally in Kuala Lumpur on 10 November 2007. The rally started when a crowd approximately 10,000 people[38] gathered outside the Petronas Twin Towers to urge the state for a non-discrimination policies and welfare. Bothe the *BERSIH* and HINDRAF was mobilised by the CSOs and supported by people from the ground. These 2 big demonstrations have later brought an impact to the General Election in 2008 which the political opposition managed to deny the incumbent National Front coalition a two-thirds parliamentary majority, where it also called as the "political tsunami" in Malaysia.

Based on the evidences presented above, highlights that the Malaysian middle class is the key player in Malaysian civil society. The middle class includes professionals, students and members of academia. It has to be remembered, however, that the support of the grassroots is a must to ensure that the social movement is successful. There are several different typologies and assessments of Malaysian CSOs/ civil society, however, the classification by Miles and Croucher (2013) into two different types of human rights-

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[37] Retrieved fromhttps://www.bersih.org/about-us/ on 18th December 2021.
[38] Retrieved from https://www.reuters.com/article/us-malaysia-protest-idUSKLR16504820071125 on 18 December 2021.

based associations and welfare for vulnerable groups CSOs is appropriate to the scope of this study due to the different analysis on the PWDs and LGBT CSOs in the UPR.

3.4.2 CSOs in Public Decision-Making

Malaysian CSOs play a significant role in the development of the country by participating and raising the awareness of the public in the development and implementation of public policy. The involvement of CSOs in public policy-making is part of democratisation in the country where the society can offer their opinions and demands in the policy-making process. In line with the concept of the third factor, CSOs act as development actors in public management and governance.

CSOs act at different levels in society. This has brought to the different functions of CSOs in society as well as in the policy process. The three distinct but interrelated levels of CSOs in public policy are: (1) as part of a set of ideas about how development should be managed, (2) as a key element of the dominant policy model that places 'good governance' policies at its core and (3) as a set of practices which help to structure the work and identities of professionals and activists within the worlds of development work (Lewis, 2010). CSOs could improve the quality of public decision-making by providing a broad spectrum of value and data in completing the content and substance of the new policy-making (Schuck, 1977).

Engagement with stakeholders is needed in producing effective and people-oriented policies. Nowadays, the engagement and consultation sessions have been implemented in a variety of patterns including private sessions and open discussions. The accessibility of CSOs to public policy-making is at different levels and patterns. To strategies, the nature and the aim of the group shapes how the state views and judges the

CSOs and this categorisation affects the cooperative relationship between them. Based on how the state views the CSOs, there are usually two different positions of CSOs with particular strategy consists of (1) insider status (core insider group, specialist insider group, and peripheral insider group), and (2) outsider status (outsider group by ideology or goal, and, outsider group by choice) (Maloney et al., 1994). The position of CSOs might affect the interaction between CSOs and the state, which is also brought to the level of CSOs' participation in the policy process.

Researchers have analysed the participation of public interest groups and CSOs in public decision-making in Malaysia (Harding, 1992; Mehden, 1975; Schuck, 1977; Horowitz, 1989; Ho, 1992; Maloney et al., 1994; Marzuki, Hay, & James, 2011), as well as on the relationship between CSOs and the state (Tan & Bishan, 1994; Mercer, 2002; Hsu, 2010; Miles & Croucher, 2013; Lewis, 2013). Moreover, recent studies on the relationship between the state and CSOs in Malaysia mainly subscribe to the Gramsci perspective (Verma, 2002; Weiss, 2003; Alagappa, 2004; Weiss et al., 2004; Ramasamy, 2004; Lai, 2004; Kua, 2005; Demar 2005; Freedman, 2009; Shannassy, 2009; Croissant & Giersdorf, 2011; Welsh, 2011; Miles & Croucher, 2013). Previous studies mostly focus on the interaction between the state and local CSOs on a specific issue. Hence, the purpose of this study is to address the theoretical gap concerning the interaction between CSOs and the state in the context of comprehensive human rights decision-making through both cooperative and confrontational approaches.

3.4.3 The Relationship between CSOs and the State in Policy Process

To exercise democratic values in the country, the Malaysian state has started to engage with the CSOs decades ago. However, spaces to conduct open discourse are still limited since effective laws and policies restrict freedom of speech, assembly, press, and other

forms of social activities (Weiss, 2014). Different methods have been used by CSOs in achieving their aims and agendas. Although CSOs are applying the counter-hegemony approach while interacting with the state, some organisations take a different approach in developing the relationship with the state in the policy process as there is no perfect approach for CSOs to make their involvement successful in the policy-making process.

Apart from social movements and actions by the CSOs, developing an effective and efficient relationship with the state is one of the keys to success. Farduk (2006) found that some selected CSOs in Malaysia have promoted social capital in social movements, where they bridge the relationship among heterogeneous groups, and with the state. In this research, counter-hegemony and social capital have been applied to understand the interaction between CSOs and the state in the UPR process. This is due to the different approaches have been utilised by CSOs in pursuing different issues in the UPR process.

The relationship between CSOs and the state is important in producing a pragmatic and sustainable public policy. Therefore, identifying the factors influencing the relationship between the state and CSOs is beneficial for both parties to manage their relationship with each other. Lewis (2013) classifies the relationship of CSOs and the state into two types; cooperative relation and highly contested relation (Table 3.1).

Table 3.1: Relationship between Civil Society Organisations (CSOs) and the state

Type of relationship	Approach/ aspect
1. Cooperative relation **- Lewis (2013)**	1. Political cultural
	2. Organisational imperatives and functional coincidence
	3. Behavioural and attitudinal aspects of civil society
2. Highly contested relation **- Young (2000)** *Dualistic Characterisation of Civil Society*	1. Self-organising
	2. Public sphere

Source: Lewis (2013) & Young (2000)

CSOs that struggle under autocratic states with very limited space of involvement in the policy process are more likely to maintain a highly contested relationship with the state. Young (2000) states that civil society has two traits; they are self-organising and used to interact with the state through the public sphere. These are is the two factors to view the relationship of the state and CSOs under a highly contested relationship. These two aspects underscore the complexity of the contested relationship between the state and society where the authoritarian state also resorts to repression and coercion against some CSOs. Self-organising refers to the intention of CSOs in applying the concept of democracy by creating an organisation that is free from any regimes of coercion, contributing to self-determination and self-development by giving support in terms of identity, voice, and providing goods and services.

The public sphere refers to the communication network in creating a public discourse for a particular topic in the public policy process that is related to the accountability of the state (Young, 2000). The idea of the public sphere was introduced by Jürgen Habermas (1962) who pointed out that the public sphere is the space for people to speak up openly, particularly from the Bourgeois perspective. This idea has been extended and widely used by other actors in different platforms including the policy process. The public sphere is a realm of social life in which something approaching public opinion can be formed (Jürgen Habermas, 1974). It is a platform for the stakeholders as well as the public to deliver their opinion to the authority.

The notion of the public sphere is not static but changes dramatically according to the latest development of communication media. The rapid growth of information technology such as the internet and social media platforms are also encouraging citizens to participate in the public policy process, which democratises the process in Malaysia

(Abdul Majib, 2010). The development of the media platform provided a wider space for the stakeholders as well as the public to raise their opinions and comment on a particular issue. Public opinion that is held in public spaces now includes the media such as newspapers, magazines, radio, and television. Currently, it has been extended to other platforms such as social media in the network society (Boeder, 2005) such as YouTube, Facebook, Instagram, WhatsApp and Telegram. The expression of "public opinion" tends to criticise and influence public institutions by citizens formally and informally; and they often use social media platforms to express their opinions, particularly their dissatisfaction with the state. These views expressed on the internet can now be seen as the latest form of "public opinion." These social media platforms have also created a network within society, to find people who share similar political views. Therefore, networking is one of the valuable key concepts of the public sphere in delivering issues faced by the public or stakeholders to the authority.

For CSOs to have a more cooperative relationship with the state, there needs to be a relatively safe space for CSOs to deliver their opinions. By putting a theoretical approach with the assumption that a contemporary authoritarian state has sufficient authority and capacity to regulate CSOs to a considerable degree, there are three approaches in explaining cooperative relations between CSOs and the state which are the (1) political-cultural aspect; (2) organisational imperatives and functional coincidence; and (3) behavioural and attitudinal aspects of civil society (Lewis, 2013). These three approaches influence the relationship between CSOs and the state in public decision-making in the context that CSOs have a platform to engage in the policy process under a minimal contestation (Hsu, 2010; Ziegler, 2010; Lewis, 2013; Spires, 2011).

(i) Political Cultural Aspect

The political-cultural aspect refers to the behaviour and attitude of the state and CSOs when they interact with each other. These behaviours and attitudes are derived from their ideology of political, economic, and social interactions and partially shared social and cultural norms (Lewis, 2013). CSOs with different histories, aims, and ideologies play different roles in society. These differences have made them acquire a different degree of urgency in their political discourse (Parekh, 2014). As a hybrid regime, CSOs have access to political agendas in social movements. This is one of the methods they use to influence the public policy process (Weiss, 2014). It is an indirect approach that CSOs use to recreate the political narrative of the state.

Instead of pushing democratic values in the policy process or challenging the authoritarian state, CSOs reflect on the state's structures and operations by reaffirming the state's legitimation and reproducing the elements of structures, behaviours, and discourse in the dynamic relationship. In a study of civil societies in Palestine and the Middle East, Jamal (2007), argues that CSOs reproduce elements of the political context accordingly based on the state's position, tendencies of beneficial parties (or patron-client tendencies), and the structure of the CSO itself. This is how civil societies in authoritarian regimes sustain and reproduce the authoritarian norms and practices (Heydemann, 2008).

CSOs that are supported by the state such as Government-Organised Non-Governmental Organisations (GONGOs) and other CSOs that have similar political ideologies with the state might share a dominant culture. They share a common language and understanding of political ideology where these have been applied during the policy-making process. This situation has contributed to the development of state-CSOs in the

policy process. However, CSOs with different political ideologies and beliefs from the state experience different ways of interacting with the state.

These CSOs provide ideas and opinions to the state that have a different perspective. Nevertheless, some CSOs sometimes cooperate with the opposition parties on certain issues. This situation usually happens when they have a common interest or want the same outcome (Funston, 2001; Verma, 2002; Welsh, 2011). The inter-political relationship between CSOs and the state or other political parties have blurred the true purpose of those organisations under the context of civil society (Freedman, 2009). However, the state and CSOs do not disregard the political influence in the policy-making process. The political culture stays as one of the factors in the relationship between the state and CSOs. Nonetheless, how different political cultures influence the relationship between CSOs and the state is yet to be determined and is this factor plays a crucial role in developing the relationship between CSOs and the state in the policy-making process under the semi-authoritarian state in a developing country such as Malaysia.

(ii) Organisational Imperatives and Functional Coincidence

The second approach, organisational imperatives and functional coincidence refer to the function of a CSO in supporting the state's goals in a specific issue. This is a realistic situation where the state demands the support of civil society in the policy process under the context of democracy. CSOs that carry important functions often overlap with the goals of the state will survive under their rule, particularly authoritarian states where the state and CSOs develop a mutually advantageous mode of cooperation in the policy process (Lewis, 2013). Hsu (2010) and Spires (2011b) illustrate how CSOs have survived under authoritarian states through the functionalist approach, by supporting the state's goals through the execution of the organisation's goals and other types of activities.

However, CSOs in more democratic nations have a more cooperative relationship with the state due to the spaces given by the state to CSOs (Ziegler, 2010). These studies demonstrate the survival of CSOs in developing countries such as in China and Central Asia and contrast them with more democratic nations.

One of other functions of CSOs is to support the state, instead of challenging or replace the role of the state in achieving this particular goal. In this circumstances, the relationship between the state and CSOs coexist in a "contingent symbiosis" where these two parties collaborate to achieve a common goal (Spires, 2011a). This context usually applies to GONGOs. In a study of GONGOs in Syria, Kawakibi (2013) summarised functional areas of GONGOs in three general aspects, which are (1) compensating for reducing state welfare activities as a result of economic reforms; (2) offering structures through which to co-opt newly emerging social groups; (3) attracting foreign funding. Although his arguments focus primarily on GONGOs in Syria, it has illuminated the important functions of CSOs in contributing to the development of the country. Nevertheless, there is one factor that should be studied about GONGOs and independent CSOs, which is the aspect of financial resources. The activities or the statements of these organisations in the public sphere might be limited by the frame set by the state due to the financial support or other types of resources provided by the state to GONGOs or CSOs. By receiving the resources by the state especially the financial support, organisation might self-set with a situation where they should be pleasantly or cooperate nicely with the state. Nevertheless, CSOs might obtain financial support from local or international bodies where they share the same principles and purpose, however, the true intentions of the donors are worth studying. This is to defend the accountability and independence of a CSO in a policy process. Hence, it is important for a CSO to pretend its independency and autonomy while accepting a donation from the other bodies.

(iii) Behavioural and Attitudinal Aspects of Civil Society

Behavioural and attitudinal aspects of CSOs are their social interaction by defining the actions, attitudes, and behaviours of that organisation, instead of its structure. This approach analyses the interaction between the state and CSOs from a social aspect instead of the objectivist conception of civil society (Lewis, 2013). Akman (2012) sketched the anatomy of civil society from the orientation of social actors, an alternative conception of civil society instead of focusing on the structure and objectivism of a CSO.

The behavioural and attitudinal approaches prioritise the action of CSOs when interacting with the state, rather than the traditional traits of CSOs. In this view, the social value of civil society such as empathy, respect, as well as their willingness to compromise and stick to the rules is applied by CSOs in the decision-making process (Wischermann, 2010). This approach prioritises human behaviour rather than traditional characteristics of CSOs such as the ideologies, aims, size of the organisation, as well as execution of CSOs. Prominent actors and members are the two dimensions of interest networks that shape the structure and behaviour of the policy networks (Hai, 2013). The behavioural trait of CSOs is important in shaping the interaction between CSOs and the state in the policy process.

3.5   Transitional Human Rights Advocacy on the issue of PWDs and LGBT

The philosophy of human rights has been promoted and pursued by the states and society in pursuing the respect of the human being globally and domestically. This trend has occurred after the nonbinding Universal Declaration of Human Rights (UDHR), followed by the introduction of many global and regional human rights treaties. Those international treaties have unconditional effects on human rights. The improvement in human rights is typically more likely in the more democratic country, or the more international non-

governmental organisations its citizens participate in (Neumayer, 2005). This can be seen from the situation where although Malaysia has ratified the CRPD in 2010, there are still problems faced by this community as identified by the researchers in the literature.

The value of human rights has been interpreted differently by different approaches based on universalism and human rights based on relativism that advocates cultural relativism and particularism (Nor, 2020). This scenario has brought different stands of parties, including CSOs into pursuing human rights in the country. The effort to include the values of human rights values in the policy process in a developing country like Malaysia take by the state and CSOs to find a suitable mould for the country in promoting the respect of human rights. The problem of implementing human rights ideals derives is mainly from the fact that human rights are not "compossible" where the implementation of one human right can require the violation of another, or the protection of one person may require the violation of the same human right of another (Freeman, 2002). This situation occurs in the issue of LGBT in Malaysia where the group of LGBT has not been recognised by the state and not accepted by the majority of society.

3.5.1   Human Rights and the Rights of PWDs

The protection of PWDs' rights have been worked through international human rights conventions and declarations. The UN CRPD play as one of the main guidelines for the state and society in protecting the rights of PWDs. The 3 key principles of human rights, namely dignity, equality, and inclusivity are essential in protecting the rights of PWDs. As mentioned in Chapter 1, Malaysia has ratified CRPD in 2010. Majority of the UPR recommendations related to the issues of PWDs have been accepted by the state. However, studies found that the rights of PWDs in Malaysia have yet to be fully practiced. The

implementation of CRPD is less effective where the state is mainly focused on promoting the rights of PWDs instead of protecting the rights of PWDs (Abdullah et al., 2017).

The role of CSOs in promoting PWDs' rights has been strengthening where there is the involvement of CSOs in the movements of the rights of PWDs worldwide (Kirakosyan, 2016). Furthermore, to consolidate the effectiveness of PWDs' rights protection, the social model of disability has been studied. The introduction of the social model of disability was an attempt to readdress the power balance where disability was to be defined in the context of a disabling environment, and disabled people were empowered as citizens with rights (Islam, 2015). Therefore, the social model of disabilities in the human rights approach is seen to be more appropriate to analyse the rights of PWD compared to medical models (Tah & Mokhtar, 2018).

3.5.2 Human Rights and the Rights of LGBT

The rights pursue by the LGBT community are mainly on marriage equality and the criminalisation of same-sex sexual conduct. However, (Gerber, Raj, Wilkinson, & Langlois, 2021) has identified another 8 issues that should be concerned to develop a holistic approach to address the myriad human rights violations on the LGBT, namely (i) laws prohibiting discrimination based on sexual orientation, gender identity and expression; (ii) criminal laws to address hate crimes; (iii) ban conversion therapy; (iv) address the persecution of transgender people; (v) address the invisibility of bisexuals; (vi) prohibit non-essential surgery on intersex infants; (vii) protection of the rights of LGBTIQ asylum seekers and refugees; and (viii) safe and inclusive schools for LGBTIQ students. Besides these issues, the sexual politics of LGBT also has been raised by scholars, which generally includes sexual health and well-being of the LGBT (Thiel, 2014b). Besides, the politics of LGBT rights also has a key internal dynamic in this

movement (Langlois, Wilkinson, Gerber, & Offord, 2017). Some of these issues happened in Malaysia and has been explained further in Chapter 6.

The exclusion of LGBT people from human rights protection arises from public policies on a wide range of issues. The main obstacles to the inclusion of LGBT rights are stereotypically religious, socio-cultural, and institutional. This situation happens worldwide where LGBT people face discrimination and violations of their fundamental human rights. Meanwhile, this situation occurred in the CSOs where the LGBT rights were not raised by the human rights-based CSOs such as Amnesty International and Human Rights Watch (Ibhawoh, 2014) during the 1970s and 1980s.

The transition of human rights in the LGBT has progressed, especially in the developed and western countries. The European Union (EU) emphasizes human rights for LGBTI individuals in its internal and external policies, thus setting a powerful example for acceptance and inclusion worldwide (Thiel, 2022). However, such cooperation optimises human rights attainment in a transnational manner, it is simultaneously being constrained by its embeddedness in the state's agency, which in turn has to mitigate demands by the stakeholders such as member states, the EU institutions as well as the CSOs (Thiel, 2014a). While in South Africa, although the majority of the community opposes the issue of LGBT, it has progressed much faster since democratisation in 1994. This is because the stable political alignments allow it to concentrate on lobbying and litigation, where it has compellingly argued that its agenda dovetails with that of the ruling elite (Thoreson, 2008).

The movement of LGBT rights in Southeast Asia begins with a holistic examination of the LGBT Rights Elephant with 4 elements: legal; cultural; human rights

regime; and political homophobia (Wilkinson, Cai, Paula Gerber, Baden Offord, 2017). The Southeast Asia countries develop their rhetorical standards in the rights of LGBT (Langlois et al., 2017) based on its regional and national context. LGBT movements in Southeast Asia have used ASEAN as a platform for their advocacy. The ASEAN framework serves as a valuable platform for solidarity among the activists with a better understanding (Weiss, 2021). However, there are still spaces to adjust and tune to find a rational framework in protecting LGBT rights in Southeast Asia internally and worldwide.

Focusing on the situation in Malaysia, the influence of the values of religions particularly on the Muslims contribute on the transition of LGBT rights in the country. Rahman (2014) argued that an understanding on the social significance of sexual diversity and rights of LGBT within intersecting political context that creating the cultural divides it purports merely to describe and thus structuring the perceived opposition of Islam and sexual diversity (Rahman, 2014, p.27-28). Despite, Brown (1995, 2021) explored the naturalness of homosexuality according to the Bible and in the view that the behaviour of LGBT is also develop naturally without the intention of an individual (Brown, 1995, 2011).

An understanding of rights as political claims should include an appreciation of the importance of the importance of identity and injury, for rights can function as a discourse through which identity is contested and reconfigured rather than simply reified (Zivi, 2005). The issue of LGBT for the Muslims in not only in Malaysia but it is a global issue. There are some initiatives to protect the rights of LGBT globally, particularly the discrimination on the LGBT. However, legal protections against SOGI discrimination are still vary (Lau, 2018). Therefore, it is yet the consensus needed to draft an international convention on LGBT rights in the near future (Linde, 2015).

3.6 Research Gaps

The research gaps for this study are developed from the perspectives of CSOs and the state's interaction in the Malaysian UPR process including the issues of PWDs and the LGBT community. This study contributes to the theoretical and empirical gap of the relationship between CSOs and the state in the Malaysian UPR process focusing on PWDs and the LGBT community.

3.6.1 Civil Society in the UPR in Southeast Asia and Global Perspectives

As an international human rights mechanism, the UPR is ambitious to seek advanced protection of human rights globally (Gomez & Ramcharan, 2018) including Southeast Asian countries. The UPR opens a door for CSOs to raise their voices by attracting the eyes of the public internationally and domestically. It is the only supranational procedure of international human rights review. The state's engagement with the stakeholders, particularly the civil society, is one of the requirements requested in the UPR process. This requirement has been implemented by countries globally.

African countries have engaged with civil society in the UPR process. For example, Etone (2020) studied the impact of the UPR in Africa has drawn engagements in Kenya, Nigeria as well as Gambia. In Kenya, civil society participation in the UPR process is productive. The state recommendations are relevant and address similar issues in the stakeholders' reports to improve the human rights situation. However, the state did not effectively engage with the national consultation body such as the Human Rights Council (HRC) (Etone, 2020). Nevertheless, there are spaces for civil society to increase their role in the UPR process in African countries, particularly on the implementation of accepted recommendations.

In Indonesia, the engagement sessions and the UPR cycles on human rights are characterised by the issues of institution building, cooperation among various stakeholders including civil society at the international, regional, and provincial levels. In Thailand, human rights defenders continue their initiatives to deal with a military dictatorship. Therefore, in the Southeast Asian context, the majority of the examined state do not appreciate much of the human rights discourse (Rathgeber, 2018). From the Southeast Asian context, reviews are disintegrated into rituals, follow-up mechanisms are weak, and civil society participants are obstructed by domestic measures to participate (Gujadhur & Limon, 2016).

The UPR recommendations cover a wide scope of human rights issues. One of the critical issues that attract the attention of the state and civil society is the death penalty. This issue has been raised by international CSOs in Brunei, Malaysia, Singapore, and Myanmar (Ravi, 2018). Apart from that, the issue of LGBT has attracted the attention of the state and international society which has led to a growing dialogue in Southeast Asia. However, much remains to be done in Southeast Asia on the protection of LGBT rights (Justice, 2018). The LGBT issue is a controversial one in Southeast Asian countries, particularly Malaysia. As the UPR is a new and ambitious mechanism that seeks to advance and protect human rights globally, there is still a lot of work to be done, particularly controversial issues.

The studies of the UPR generally emphasise the behaviour of the state and CSOs in the UPR process, the effectiveness of UPR in promoting human rights in particular countries, the shortcomings and opportunities of the UPR from the view of CSOs (Lilliebjerg, 2008), the role of the National Human Rights Institution (NHRI) (Y. H. Khoo, 2014), as well as the participation of CSOs in the UPR process. Beckstrand (2015) studied

the recommendations and the behaviour of the state and CSOs in the UPR process from a macro perspective through a mixed-method as well as a text-heavy approach on paired cases. There are a variety of human rights issues in the UPR recommendations, however, the recommendations on the issues of women and the rights of children are more likely being accepted by the state.

In an assessment of the Malaysian UPR on human rights development, Khoo (2014) states that the political significance of the UPR is to allow other countries to examine Malaysia's human rights records. Current studies emphasise the process and collaboration of CSOs as well as the NHRI in the UPR process. However, there are limited studies on the strategic impact of the participation of CSOs in the UPR process in human rights protection. Hence, evidence-based research, particularly on CSO engagement strategies in the UPR process is needed to offer a guide for a better and effective engagement process (Gomez & Ramcharan, 2018).

The UPR has strengthened the human rights principles in Malaysia by creating domestic momentum. At the same time, it has also provided legitimation and entry points for CSOs and other stakeholders to engage with the state. Nevertheless, there is a need to identify the approaches employed by CSOs in the UPR process, and how these CSOs utilise these approaches to interact with the state in the UPR process. Therefore, this study aims to address one of the shortcomings in the existing literature on the UPR due to its limited engagement with theoretical frameworks. It also attempts to analyse the influence of civil society in the UPR process beyond exclusively coercive models and use a theory to suggest pathways to increase the efficiency of civil society participation in the UPR process.

3.6.2   Civil Society and the Issue of PWDs

The Definitions dan Models

The definitions of disability have been developed from different perspectives by scholars. It was first based on the economic abilities where it is drawn from the urban or industrialised settings in both developed and developing countries. The economic perspective has been affiliated with employment problems where this is one of the main issues faced by PWDs. The studies of PWDs have later evolved to include other perspectives because it cuts across many such as welfare, rehabilitation, education, as well as civil rights. However, no solution would work well in all situations because it depends on the cultural, social as well as the economic context of a particular country (Barnartt, 1992).

Regarding the studies of PWDs, there are two paradigms namely, the medical model, and the social model. The medical model is based on the medical perspective where the PWDs must occupy the "disabled" status based on a medical doctor's order. Nevertheless, the medical model is insufficient to protect the rights of PWDs from social obligations as well as civil rights. The issue of PWDs should be elaborated on and adopted in both two paradigms by the state in the policy-making process (Pfeiffer, 2000).

International Institutions

The studies of PWDs have later expanded to emphasise the perspective of human rights to raise awareness among the public and policy-makers. Besides the state, international institutions particularly the UN have been making initiatives in protecting the rights of PWDs. The issue of PWDs has become one of the main concerns of the United Nations Economic and Social Commission for Asia and the Pacific region (UNESCAP). The UNESCAP has pushed efforts to advocate awareness of the rights of

PWDs internationally. This effort, however, needs the cooperation of the state, CSOs, professional and educational institutions, as well as the mass media (Parker, 2001). As a result of the international initiative, the Convention on the Rights of Persons with Disabilities (CRPD) was established in 2006. The establishment of CRPD has shifted the medical model of disability policy towards the social model by adopted a human rights-based approach (Tah & Mokhtar, 2016).

The Issues of PWDs in Malaysia

The studies of PWDs are varied and close to the needs of PWDs in the country. Employment is one of the major issues being studied by scholars. Field studies have been done in the northern part of Malaysia to understand the intention of employers of retail, manufacturing, construction, and transportation sectors in favour of employing PWDs. Findings show that there are very few enabling policies in making the employment for PWDs successful. For instance, there lacks a mechanism to handle issues related to PWDs and built environment which is fully accessible to them (Tiun, Lee, & Khoo, 2011).

To increase employment and protect the equality of PWDs, the state has been urged to play a more active and committed role towards distributing equitable educational opportunities and enhancing the employment rate of PWDs. The state needs to be more proactive in translating the universal rights of education and employment opportunities for PWDs from mere policy rhetoric into inclusive realities (Khoo, Tiun, & Lee, 2012). The issue of employment includes workplace discrimination as one of the major issues experienced by PWDs and therefore, the state needs to address discrimination issues as they are affecting the other living conditions of the PWDs, including their financial ability, welfare as well as the quality of life (Jani & Aziz, 2017; Khoo, Tiun, & Lee, 2013; Lee, Abdullah, & See, 2011; Rosli, Sabri et al., 2015).

The studies of disabled children have been done to detect the quality of life of the family with disabled children so that their children's needs will be fulfilled. Family with disabled children need a combination of various services that apply a trans-disciplinary concept (Hss, 2008; Clark, Brown, & Karrapaya, 2012). The accessibility of PWDs has been studied to investigate the facilities design, implementation of standard code of accessibilities in commercial buildings, as well as higher education institutions. These studies have found that the facilities and design of buildings in Malaysia still do not fulfil the standard code and must be improved for better accessibility. Similarly, research has also found that the same situation is prevalent in public transport services (Ahmad et al., 2017; Hashim et al., 2012; Isa et al., 2016; Jamaludin & Kadir, 2012; Kamarudin et al., 2014; Hikmah et al., 2012; Rosli & Sabri, 2017; Yiing, Yaacob, & Hussein, 2013).

The studies of PWDs also illuminate the issues faced by the PWDs from individual perspectives, such as employment, education, disabled children, accessibility, human rights as well as legal aspects. Apart from these perspectives, the issue of PWDs has been studied from a legal perspective. The Person with Disabilities (PWDs) Act 2008 has been implemented, however, it has its weaknesses, especially concerning the implementation and enforcement of the law (Abdullah, Hanafi, & Hamdi, 2017). When the legal system is weak, disabled communities face social exclusion in Malaysia. Therefore, awareness of the rights of PWDs must be raised within the state and the public to better protect disabled people.

The movement of CSO PWDs in Malaysia has started decades ago but most of the organisations operate on a charity-based model. The involvement of CSOs in the policy process concerning disabilities has started being more proactive and tend to protect their rights and interest through the policy process. One of the significant involvements

of CSOs is the commercialisation of healthcare services in Malaysia. A study has found that the CSOs have challenged healthcare commercialisation, thus highlighting that political changes have indeed provided more opportunity for the disabled community in the process (Rasiah et al., 2017).

However, there is still much to explore on the participation of the Malaysian CSOs in the policy-making process, and the interaction between these CSOs and the state, particularly concerning PWDs from the context of human rights. The influence of international parties such as the UN is is yet to be explored. Therefore, this study attempts to address this research gap.

3.6.3 Civil Society in the Issue of LGBT in Malaysia

The studies of LGBT were first discussed in the medical and legal perspectives, two of the dominant perspectives of studies on the LGBT community (Barmania & Aljunid, 2017; Maliya et al., 2018; Rutledge et al., 2018; Vijay et al., 2018). The medical and legal arguments on the LGBT community in the earlier phase of development had indeed changed the narrative of the LGBT and the perceptions of society. Nelson, Paitich, and Steiner (1976) had focused on these two issues in their study and proposed that the legal definition of gender should be enhanced for transsexual patients. However, the studies of LGBT mainly emphasise transgender persons as compared to homosexual and bisexuals as transgender persons are easier to identify compared to the other three groups.

The discussion on the LGBT community later evolved to the context of universal human rights as well as religious and cultural values such as Asian values, Islamic and theological perspectives. However, this issue has been ignored by the leaders of Asian countries including Malaysia, where they argue that the LGBT issue is a "Western issue"

and "enhancing democratic rights would lead to homosexuality" (Offord & Cantrell, 2000). There are views that the existence of LGBT is influenced by Western culture and contradicts Asian values. They relate the issues of transgenders with universal principles of human rights (Lee, 2016) and argue that it contradicts Asian values and the norms of Malaysian society (Jamal, 2018).

These statements reflect the cultural practices of "Asian values" that emphasise family and social harmony (Laurent, 2005). Leaders in Asia tend to avoid further discussion about LGBT due to the norms and culture of society, as the lifestyle and behaviour of LGBT are not openly accepted by society. However, the characteristics of transgenders in Malaysia have many similarities in other parts of the world although the definition and identity of transgenders in Malaysia may differ in some ways (Teh, 2001b). Besides the definition and legal perspectives, the concept of transgender rights (homosexual rights) are also being debated from the aspects of cultural relativism versus the universalism of human rights; the rights of individual and community; cultural imperialism and cultural convergence, as well as globalisation and international relations (Offord & Cantrell, 2000).

In Malaysia, the male transgender is commonly called "*Mak Nyah.*" A seminar was organised by the University of Malaya in 1987 to discuss transgenders, mainly from medical and legal aspects. The theme of the seminar was "Towards defining transgender identity and status in society" (*Ke arah menentukan identiti "May Nyah" dalam masyarakat*) had gathered the scholars to brainstorm and debate on the issue of transgenders. The definition of transgender and other legal related recognition should be clearly stated legally to avoid this issue becoming complicated (Majid, 1987). The studies of transgenders in Malaysia have been further discussed from the common law and

Syariah law (Awal, 2005; Mohamad, 2015; Muhammed & Amuda, 2018; Teh, 2001b; Witten, 2015). Nonetheless, there are no laws that legalise the identity of LGBTs in Malaysia.

Besides, as a country with most of the citizens is Muslims, the issue of LGBT has always been narrated from the perspective of Islam. The identity of transgenders in Malaysia is influenced by cultural and religious factors (Teh, 2001b). The identification of transgenders has been analysed from the legal and Islamic aspects, where the Syariah Law in Malaysia has authority on Muslim transgenders (Majid, 1987). Therefore, the definitions of transgenders have been studied from the perspective of religion mainly the Islamic perspective as well as the theologies. Nevertheless, the guide and signposts of religions are crucial in identifying the issues of transgenders in Malaysia (Goh, 2012b, 2012a, 2012, 2014).

The studies of transgenders in Malaysia have later illuminated the problems they face such as the issue of discrimination. A study on self-perception, attitudes, and life experience has been done by interviewing 29 transgenders in Malaysia. The challenges experienced by the transgender community are the issues of gaining access to appropriate medical intervention, marriage and adoption, securing changes of name and sex in legal documents, and experience with the police (Teh, 1998).

Malib & Mustafa (2014) are in the view that the LGBT is a social issue in society and needs to be solved to avoid the enlargement of the group. The studies of LGBT have later evolved to study the social and social-cultural aspect (Nemoto et al., 2018; Jamal, 2018; Vadevelu et al., 2018). Many of them stay at lower social status and forced to work as sex workers due to rampant discrimination while seeking employment (Chang et al.,

2012). Past studies on LGBT have mainly focused on the individual perspective and transgender groups. However, the groups of LGBT are facing almost the same fate to protect their rights. Recently, these groups act together as a bunch of groups to protect their rights and to interact with the state. Therefore, this research tends to understand the approach and methods used by these CSOs in protecting the rights of LGBT in Malaysia as well as their participation in the international human rights mechanism where they might receive higher acceptance from the international community.

3.7   Summary

Recent literature has demonstrated the involvement of CSOs in the policy process in Malaysia as well as the movement of Malaysian CSOs since decades ago. However, there are still new pieces of knowledge to explore to understand the current development of the CSOs-state relationship particularly especially how a human rights-based review mechanism and the presence of international bodies can impact the dynamics between CSOs and the state. According to research, the interaction between CSOs and the state is a dynamic process where it can be changed or adjusted based on the current needs of society which includes the changing political, cultural, and other related aspects.

Beckstrand (2015) demonstrates the importance of domestic CSOs in the UPR, where these organisations could produce more detailed, specified, and contextualised testimony and monitoring information than many transnational organisations in the UPR process. However, his study has yet to indicate the intentionality behind a state or CSO's phrasing. In the limited Malaysian UPR studies, Khoo (2014) highlights the political significance of the UPR in human rights development in Malaysia. In another study, Khoo (2018) only examines the effectiveness of SUHAKAM in the UPR process. Meanwhile, the value aspect mentioned in the social capital and public sphere are also very relevant

to the Malaysian case as the UPR involves both less controversial issues such as the PWDs, and the LGBT, a highly controversial one, in the context of human rights-based decision-making, which is the UPR process.

Therefore, there is a gap that needs to be identified and addressed which are the approaches employed by CSOs in the UPR process, the key factors that shape the CSOs-state relationship, and why the state react differently on two different types of issues, the less controversial issue (PWDs) as well as the controversial issue (LGBT).

CHAPTER 4

CONCEPTUAL FRAMEWORK AND

RESEARCH METHODOLOGY

4.1   Introduction

This chapter explains the conceptual framework and outlines the methodology of the research. This research intends to investigate the interaction between CSOs and the state in the UPR process on the issues of PWDs and LGBT. There are two parts to this chapter, the conceptual framework and the research methodology. The first part of the chapter describes the use of social capital and counter-hegemony as the main theories in this research, while the approaches of CSO-state interaction proposed by (Lewis, 2013) have been employed to explain the relationship between CSOs and the state in the UPR process. A conceptual framework has been presented in this chapter to analyse and support the entire study.

The second part of the chapter illustrates the methodology adopted in the research. This research adopted a qualitative approach using a case study method, focusing on the interaction between CSOs and state in the UPR process on the issues of PWDs and LGBT. The research methodology has been developed based on the need for research questions, which is to provide a clearer picture and explanation on the complex social issues (Marshall, 1996) of the UPR recommendations which involve the interaction and behaviour of people that form CSOs and the state. This chapter also outlines the research design, sources of information, the sampling process to identify the key players and the informants of the research, data collection methods and tools, reliability and validity of the data, as well as the analytical method through the theories and concepts that have been

identified for the study. A comparison of the relationship between CSOs and the state on how they address the issues of PWDs and LGBT is presented at the end of the research.

4.2 Social Capital and Counter-Hegemony in the Relationship between CSOs and the State

Social capital and counter-hegemony theories were used as the theoretical guidelines in conducting this research. The concept of social capital here refers to the features of social organisation proposed by Putnam, Leonardi, and Nonetti (1993) that comprises trust, norms, and networks that can improve the efficiency of society by facilitating coordinated actions. These three features are the main guide in explaining the interaction between PWDs CSOs and the state in a cooperative relationship.

On the other hand, LGBT CSOs do not enjoy the same experience as PWDs CSOs in the UPR process or any event in the public policy process. The resistance of the Malaysian society, as well as the state, restricts avenues for LGBT CSOs in delivering their request in the official public policy process. Therefore, the concept of counter-hegemony has been used to explain the actions and behaviour of LGBT CSOs in the UPR process. Specifically, the counter-hegemony approach is referring to a confrontation or opposition to existing status quo and its legitimacy in politics and various other spheres of life. Standing in a tight position, the LGBT CSOs try to deliver their views in the policy process through any possible methods. Therefore, the counter-hegemony concept is suitable to illustrate their actions and behaviour in the UPR process.

To understand the factors that influence the relationship between CSOs and the state, Lewis (2013) proposed a way for this purpose. As mentioned in Chapter Three, Lewis (2013) states that the cooperative relationship between CSOs and the semi-

authoritarian state can be explained by three approaches, namely through (1) political culture; (2) organisational imperatives and functional coincidence; and (3) behavioural and attitudinal attributes. To complement this relationship, he proposed the Young Dualistic approaches (Young, 2000) to explain a highly contested interaction between CSOs and the state based on the aspects of self-organisation and the role of the public sphere. This research focuses on two different issues in the UPR, PWDs and LGBT. Therefore, the two types of relationships between CSOs and the state might manifest themselves, particularly where different CSOs might practise similar or different approaches during the UPR process.

4.3   Conceptual Framework

Using the concepts of social capital and counter-hegemony, the interaction between PWDs and LGBT CSOs with the state can be depicted in Figure 4.1. This conceptual framework was developed to describe the strategy and contribution of the research to the body of knowledge. As mentioned in section 4.2, the concepts of social capital and counter-hegemony have been used to explain how the PWDs and LGBT CSOs interact with the state in the UPR process. The approaches used by these two groups of CSOs might be different due to the different nature of the issue; the issue of LGBT for instance is controversial as the nature of LGBT may not be accepted by the state, thereby forming a tense relationship between certain CSOs with the state.
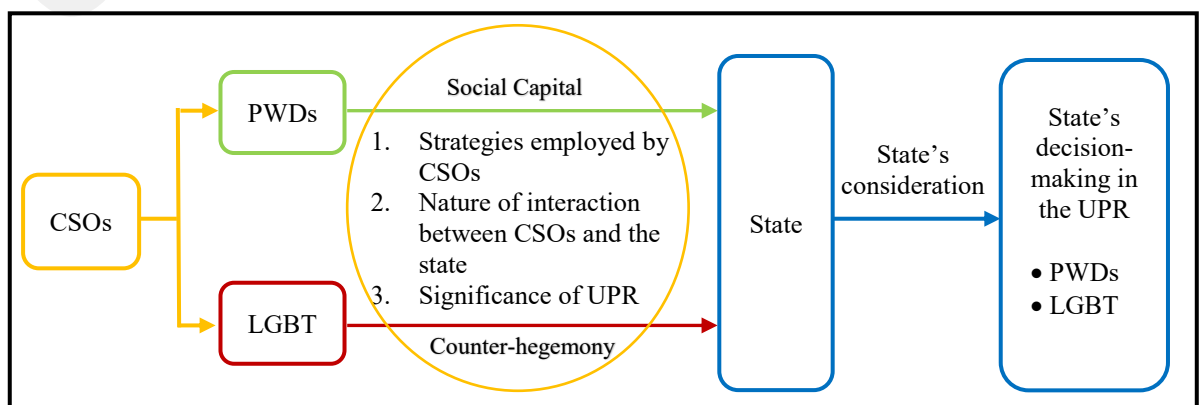
Figure 4.1: Conceptual framework of the research *(Source: Designed by the author)*

Social capital emphasises the resources such as social networking that can be used by CSOs while interacting with the state. To strengthen their resources and ability in bargaining with the state, CSOs might need to fortify themselves using these three approaches, namely societal trust, norms, and networks. CSOs that manifest trustworthiness may manage to obtain support from members of society. At the same time, the state might seek the CSO's views and engage them in public decision-making. Societal norms are commonly referring to the rules and standards that are accepted and implemented by the state, members of society as well as the values that are accredited by the society. While networks are the resources that CSOs have in persuading the state to consider their expectations that are mainly based on the objectives of the organisation.

While a CSO's social capital is the social influence they have with members of society, counter-hegemony is the approach CSOs use to project the values, beliefs, and narrative they are fighting for. The term counter-hegemony was based on Gramsci's proposed concept of social, cultural, and moral "hegemony" in society (Joll, 1977). These aspects have been used to explain how a group can establish its culture, and moral superiority independently under a political power. Counter-hegemony, therefore, involves the identification of alternate values and principles, disseminating them, and struggling to supplant the counter-hegemonic discourse with the prevailing one (R. H. Cox & Schilthuis, 2012). This concept is originally based on the Gramsci framework that describes the dynamic interaction between CSOs and the authoritarian state in public decision-making on different priorities and considerations.

As encouraged by the UPR Working Group, CSOs could participate in the UPR through the given platform in the review process as well as raise and discuss openly the concerned issues, particularly controversial issues like LGBT that is inhibited by the state

and the general public in Malaysia. This platform that is conducted in the public sphere allows the state and stakeholders to discuss any public policy issues. However, the interaction between LGBT CSOs and the state in the public sphere has been explained by Young (2000). This concept of the public sphere was originally coined by Habermas (1962) where he defined the public sphere as a space where citizens could engage as equals in critical discussion about the state and society and influence political development by being in the process.

4.4 Research Methodology

This research is an attempt to study the interaction between CSOs and the state in the UPR process, particularly in the cases of PWDs and LGBT. Therefore, this research is a collective case study (Berg & Lune, 2017; Stake, 1995), a two-case study through the collection of all relevant data and information from related persons and resources in the Malaysian UPR process. The aim of compiling these case studies is to increase understanding, insight, and to improve the ability to theorise about a broader context of CSOs and their interaction with the state in public decision-making.

The research interprets the interaction of CSOs and the state in the UPR process which focuses on PWDs and LGBT subjectively, instead of using the positivist approach that tend to assume there is a single, objective truth that can be uncovered through data collection and analysis process (Rosen, 2019). The researcher obtained subjective evidence from the informants for a clearer and deeper picture of the case being studied. The rich descriptions and experiences shared by the informants are crucial in analysing the evidence. The issues of PWDs and LGBT have been socially constructed from the human rights-based approach by the CSOs as well as NHRI. Therefore, the researcher

employed an interpretivist perspective by applying social constructivism and associated the findings with an epistemological philosophical assumption.

Social constructivism uses the interpretivism approach/method where the researcher seeks to understand the experience in the world. By looking from the view of different key players could assist the researcher to interpret and understands the behaviour of the key players in the UPR, especially the different CSOs in a more comprehensive view. In this study, the author experienced and interpreted the process of research throughout the data collection process where it becomes one of the key analysis tools in the study. The researcher attempted to create a close relationship with the informants, resonating with the epistemological assumption about subjective evidence obtained from participants. In this case, the researcher had become the "insider" of the research (Creswell & Poth, 2018). In other words, this study obtained the data and evidence from the informants in a short distance by attending the meetings, discussion sessions as well as seminars organised by the state or related CSOs, shaping the analysis and results that are impacted by the experiences of the researcher throughout the research process.

4.4.1 Research Design

The research method was designed to discover the approaches, strategies, activities, and behaviours of both CSOs and the state in the UPR process. These methods are intended to obtain the related data to answer the research questions and to meet the research objectives. There are two different subunits in the study, which are the issues of PWDs and LGBT. However, the study analyses the issues separately to investigate the participation of CSOs. The research setup develops naturalistic generalisations from data (Yin, 2014, 2018). The research procedure starts with problem identification, theoretical research, research fieldwork, research analysis, and research findings, and conclusion.

4.4.2 Case Study Approach and Unit of Analysis

The study focuses on the interaction between CSOs and the state in the UPR process where the study is bounded by time and context that can inform the problem (Creswell, Hanson, Clark Plano, & Morales, 2007). As a regular international human rights mechanism, the UPR process is a contemporary phenomenon of rigorous policy-making discussing all the human rights issues in Malaysia in the general public policy process (Yin, 2014). The empirical inquiry regarding the interaction between CSOs and the state, and the role of CSOs in public decision-making in the context of the UPR is answered through the investigation of this study. Yin (2018) suggests that a case study approach is suitable when (a) the main focus of the study is to answer "how" or "why" questions; (b) the researcher has little or no control over behavioural events, and (c) the focus of the study is a contemporary phenomenon. Hence, the researcher conducted a case study approach to explore and understand the issues of research in detail.

The characteristics of a case study are to explore a real situation, a contemporary bounded system (a case), or multiple-bounded systems (cases) over time. The case study approach is valuable for complex interventions development study (Baxter & Jack, 2008), exploring individuals and organisations through interaction as well as the relationship (Yin, 2003) where the nature of the research emphasises cause and effect, testing theories, and an apprehension of the truth (Harrison, Birks, Franklin, & Mills, 2017). Creswell and Poth (2018) highlight multiple sources of information including primary and secondary data collection are appropriate for this research where the interaction between CSOs and the state is the focus of the study, particularly on how two different issues-- the PWDs and LGBT in the Malaysian UPR are treated. These features are suitable for this study to understand the interaction between CSOs and the state, as well as the influence of CSOs in the UPR process.

As a universal human rights review mechanism, UPR recommendations comprise all the issues in Malaysia related to the broad human basic rights issues. However, this study focuses on two issues, the PWDs, and LGBT in the UPR process where it can be analysed and discussed between the different subunits (Baxter, P., & Jack, 2008). Hence, these two chosen issues are the embedded units in this case study where it provides richer data and multiple perspectives of discussion. Therefore, this is a collective case study where two issues have been discussed under a single human rights mechanism.

The unit of analysis in this study comprises the state, mainly state officials and stakeholders of the UPR, which are CSOs that are involved in the Malaysian UPR process. The state officials consist of the high, middle, and junior level officers where they are responsible for different types of tasks in the decision-making process. The junior officers are usually those who work at the desk and their task is to collect related information and compiling input from various ministries and agencies into one country report. While the middle and high-level officials who are more experienced will filter and finalise the report which will represent the country in the UPR process. On the other hand, the leader or person in charge of CSOs who has knowledge and experiences in the UPR process has been identified as the source person of CSOs. At the same time, the researcher highlighted the role of SUHAKAM as the key player in human rights development in Malaysia. Therefore, information from SUHAKAM's representatives has been taken as evidence and data in this study, especially for the purpose of triangulation.

4.4.3   Sampling Process

The involvement of the state official members in the UPR process is mainly coordinate by the Ministry of Foreign Affairs (MOFA). The UPR recommendations have been categorised by several group that under the provision of selected ministries. Since the

thesis in focusing on only 2 issues, therefore, interview the informants who involved in the decision-making of the particular recommendations is able to provide adequate resources for the research. The same situation happened for the CSOs who involve in the UPR process. COMANGO and MACSA are the 2 main CSOs coalition in the Malaysian UPR, therefore, the members of these 2 coalitions have been identified as the informant for the research. The UN representative is not involved in the state's decision-making of the UPR recommendations. As mentioned in the thesis, the state has engaged the CSOs once for each category in the 3rd cycle of UPR in 2019. The author has attended all the session and observed the interaction between the state and CSOs. The researcher considered the involvement of all actors in the Malaysian UPR process since its first cycle in 2009 when organising the research sample for the study. 20 informants were interviewed to obtain primary data for this research. They are mainly individuals or experts from state agencies, CSOs, and SUHAKAM. The description of the informants is presented in Table 4.1.

Table 4.1: Percentage of informants by category

Category	Number of informants	Percentage (%)
State agencies	9	45
CSOs	9	45
SUHAKAM	1	5
CSO, SUHAKAM & National Council	1	5
Total	**20**	**100**

(i)   Informants of State Agencies

Public decision-making is a cross-sectional process in a public institution. Therefore, interviews were conducted with nine officials from seven ministries or agencies to explore and understand the view of the state in the UPR process, particularly in the issues of PWDs and the LGBT community. These comprise the MOFA, Ministry of Women, Family, and Community Development (MWFCD), Ministry of Home Affairs (MOHA), Disabled Development Department (JPOKU) (an agency under the Department of Social Welfare), Department of Islamic Development of Malaysia (JAKIM), Legal Affairs

Division of Prime Minister's Department (BHEUU), and Ministry of National Unity (formally known as the Department of National Unity and National Integration - JPNIN). These ministries and agencies are separately responsible for the UPR process, issues of PWDs, and the LGBT community.

(ii) Informants of CSOs

Informants from CSOs are individuals who are involved in the Malaysian UPR process by preparing the stakeholder memorandums as well as attending the UPR session in conjunction with the review session. The author interviewed another nine informants from eight CSOs. COMANGO and MACSA are the biggest CSO coalitions in the Malaysian UPR process, and the main purpose of these establishments is to deliver the requirements and views of CSOs in the UPR process. These two coalitions provided data related to the views, stand, and behaviour of CSOs in the UPR process from a macro view.

This research is focused on two cases under the UPR, the PWDs and the LGBT community. Hence, CSOs that fight for the rights of these two minority groups have been identified in the data collection process. There are 44 NGOs/ CSOs of different size and level from the nationwide that work with the issues of PWDs with the Department of PWDs (JPOKU), where most of them work on the welfare of the particular group or the member of the organisation. Some of these organisations cooperated with each other while some of them are functioning by the same group of people. This research is focusing on the perspective of human rights for the issue of PWDs, therefore, the research has identified and interviewed three CSOs that fight for PWDs' issue at the national level and mainly work from the rights of PWDs in the country, which are *OKU Bangkit*, PERTIS, the Malaysian Spinal Cord Injury Advocacy Association (MASAA). *OKU Bangkit*, and PERTIS are the CSOs that participate in the UPR process by contributing to the

stakeholder's report in the UPR Working Group. While MASAA is a newly established PWDs CSOs that strengthens advocacy work from the human rights perspective instead of only focusing on the welfares and providing support to the members.

There is no official record of LGBT CSOs in Malaysia. This is due to the unaccepted of these group by the authority. Therefore, when collecting data on LGBT issues, the researcher approached the organisations that active on the issue of LGBT and who are active in this issue in the UPR process. This includes the representatives of the International Women's Alliance for Family Institution and Quality Education (WAFIQ), Justice for Sister (SIS), and *Pelangi* Campaign. These informants are the leaders or coordinators of the organisation that play a significant role in the UPR process by representing their respective organisations. WAFIQ members subscribe to an Islamic worldview while SIS and *Pelangi* Campaign strengthen the rights of the LGBT community from the perspective of human rights. All these three CSOs have been involved in the UPR process. They have vast experience in the human rights movement in Malaysia which based on their knowledge, experience, and positions held. The researcher studied and interviewed these three different organisations to ensure that the study includes an analysis of different viewpoints from multiple players in the UPR.

(iii) Informants of SUHAKAM and the National Council for Persons with Disabilities (NCPWDs)

Besides the representatives from the state agencies and CSOs, the author interviewed two SUHAKAM officials. The first informant is a SUHAKAM officer who was involved in the UPR process; he was interviewed for the researcher to understand the view from the perspective of the NHRI. The second informant is a human rights expert who served as the Commissioner of SUHAKAM for two terms (six years) after the first Malaysian UPR

process began. This informant has rich experience in organising CSOs, and he is also serving as one of the members of the National Council for Persons with Disabilities (NCPWDs) and was holding the position of SUHAKAM Commissioner. Both these informants provided data that represents the view of SUHAKAM and NCPWDs, which is a council chaired by the Minister, and the members are the state agencies, medical experts, PWDs CSOs and academics.

4.4.4   Data Collection Methods

The research was constructed based on primary and secondary data collection methods. An application of research ethical clearance was approved by the University of Malaya Research Ethics Committee (Appendix D) in fulfilling the university's requirement. In-depth interviews are the main method is collecting the primary data. Secondary data such as the state's country report, the memorandums by CSOs as well as the list of UPR recommendations were reviewed to understand the interaction of related key players in the Malaysian UPR.

(i)   Primary Data

The data collection was separated into two different levels through nested arrangement (Yin, 2011) from a broader level to a narrower level to obtain data and information from both macro and micro views. The broader level of data collection comprised the behaviour, actions as well as activities taken by the CSOs in the UPR process, concerns of the state to involve CSOs in the UPR process as well as the state's consideration in accepting the UPR recommendations. This stage was to understand the primary concern of the way how CSOs interact with the state and the key factors that influence the willingness of the state to involve CSOs in the policy process. The narrower level was to focus separately on the issues of PWDs and the LGBT community in the UPR process.

The collected data from each level were cross-checked and analysed from a macro view (between levels) and a micro view (within each level). The primary data collection was done mainly through in-depth interviews.

In-depth Interviews

The data was collected and analysed using detailed systematic procedures. Preliminary data collection was implemented to obtain empirical information and data for the research to understand the overarching picture of the research. The primary data refers to the information obtained through in-depth interview sessions on the UPR recommendations and observations of the informants that represent the state and CSOs. An in-depth interview is the main method of obtaining the primary data for the study. The process of the interview is more like a conversation than a formal discussion, with a specific purpose and an expected response (Marshall & Rossman, 1996, p.80) within the scope of research.

The interview sessions were done in an open-ended structure with the guidance of a set of semi-structured questions to obtain in-depth responses without discouraging the willingness of the informants in sharing related information. This guide helped to produce emerging themes during the data analysis process. The list of questions which is also known as the interview protocol aimed to produce emerging themes during analysis, which is an aspect of qualitative methodology. The list of questions is as shown in Appendix E1, E2, and E3.

There are six sections of questions in the interview protocol. The first section and the second sections are to understand the background informant and his/her agency/organisation. The third section aims to know the consideration of the state in accepting the UPR recommendations based on four perspectives proposed by Bekkers,

Fenger, and Scholten (2017) which are the cultural, rational, political, and institutional perspectives. These are the four themes to analyse how far each of these perspectives influences the state's decision-making in the UPR process. These themes provide data to answer Research Question 3 where the issues of PWDs and LGBT have been compared according to these perspectives of acceptance of UPR recommendations.

The fourth section aims to understand the role of key players in the UPR process, and the actions taken by the agency/ organisation while participating in the UPR process. The themes of these two sections comprise (1) significance of the UPR in solving the issue (to solve the problem facing by the community); (2) issues of concern by the particular CSOs; as well as (3) strategies employed by CSOs. Questions in the fifth section are to obtain data about the interaction between CSOs and the state in the UPR process. The themes that emerged in the section are according to the approaches proposed by Lewis (2013), under two different types of relationships, the cooperative relationship (political culture, functional, and attitudinal) and highly contested relationship (self-organisation, and public sphere). These approaches reflect the key factors that influence the relationship between CSOs and the state.

Three sets of interview protocols were developed based on the three categories of the informants which represent CSOs, the state, and SUHAKAM. Before the interview started, the researcher obtained the consent of each informant and the researcher adhered to the ethics guidelines set by the University of Malaya. All the informants were briefed that the information and data given are for the purpose of the research and the organisation of the data was done in compliance with research ethics. The interview sessions were held according to the guidelines and the conceptual framework of the study. However, they were encouraged to share any other extra information which is related to the research. All

interview sessions were recorded using an audio recorder. The researcher stopped the interview session once the data reached saturation, whereby the same information and description were raised by other informants for the same questions.

In the dissemination of the results of this study, anonymity and confidentiality are maintained. Names of the informants were not revealed, instead, they were identified by a coding system. It is crucial to distinguish their identity while putting their statements to support the results of the study. The codes that were used are listed in Table 4.2 where "S" stands for the officer from the state (government agencies), "CSO" stands for representative of CSOs, "N" stands for the representative of SUHAKAM, and "CN" stands for an informant who has experience from both CSO and SUHAKAM.

Table 4.2: Codes used for identifying informants

Informants from various agencies	Code
1. Officer from the state (government agencies)	S1, S2, S3, S4, S5, S6, S7, S8, S9
2. Civil Society Organisations (CSOs)	CSO1, CSO2, CSO3, CSO, CSO5, CSO6, CSO7, CSO8, CSO9
3. SUHAKAM	N1
4. CSO, SUHAKAM and NCPWDs	CN1

The in-depth interviews were conducted between May 2018 until July 2020, across the second and third cycle of the UPR. Due to the Covid-19 pandemic, a Movement Control Order (MCO) and other types of administrative control were implemented by the Malaysian state on 18th March 2020, forcing two sessions of in-depth interviews to be conducted through Zoom video communications. These online interview sessions were implemented based on the face-to-face interview protocol to maximise the similarity between these two types of interviews.

Besides face-to-face interviews, the primary data collection was assisted through several methods including conversations through email, telephone, and messages (by

using Short Message System (SMS) and WhatsApp mobile application) as well as face to face discussion. Data obtained from these methods are mostly additional information to the in-depth interview sessions.

(ii)   Secondary Data

The secondary data provided information for the researcher to gain a better understanding of the wider issues. The data also provide evidence to support and prove the analysis of the primary data. The secondary data of this research comprise (1) the official documents of the state, CSOs and SUHAKAM; (2) information on official websites and social media platforms; and (3) observation note taken by the author when participating in activities organised by CSOs, and the state. Both the primary and secondary data have been linked and analysed parallelly and finally, triangulated for validity and reliability of data.

(a)   Documents

The secondary data has also referred to the UPR recommendations for the three cycles in 2009 until 2018 that were proposed by the State Members of the UN. This data illustrates the universal human rights best practices from other countries for Malaysia to emulate. This is important to understand the recommendations received by the Malaysian state throughout the three cycles of the UPR. The other data is mainly from the documents produced by the state, CSOs, and SUHAKAM. Malaysia's UPR country report, official statements, state agencies' annual report, as well as official documents of related public policies provided rich data of the situation that the state faces in the UPR process, especially concerning the issues of PWDs and LGBT.

In the UPR process, CSOs have delivered their problems and concerns through the stakeholder's report. Those reports provide the main issues faced by CSOs or the

particular community in the country. The CSOs' stakeholder's report to the UPR Working Group, press statements and annual reports deliver the concerns of CSOs on the particular issues. While SUHAKAM's annual reports and the UPR reports reflect the concern of SUHAKAM in selected human rights issues of the country. During the three cycles of the UPR, there were only a few CSOs that submitted their written proposal to the state although the state encourages CSOs to submit their written report. Besides, press statements by both the state and CSOs are taken into consideration and thought of the organisation in the UPR process.

(b)   Official Websites and Social Media Platforms

The researcher also referred to information provided on the official websites and social media accounts of the state, the UPR Working Group, CSOs as well as SUHAKAM. The information obtained from these platforms contributed to the development of the overall picture of the Malaysian UPR process.

(iii)   Participation and Observations (Activities and Archival Record)

The author attended an engagement session organised by CSOs in 2019 to discuss the UPR recommendations with Members of the Malaysian Parliament. Other CSOs and SUHAKAM also attended the session. The observation was done and the engagement session was recorded. The session included presentations by the representatives of CSOs on the UPR recommendations, the responses of the attended Members of Parliament as well as the interaction between the two parties. In 2019, the author had also attended seminars and conferences organised by the state and CSOs. It included seminars on LGBT, a conference on International Day of PWDs, as well as high impact engagement sessions between the state and CSOs on the issues of. By attending these activities, the researcher

was able to observe the opinions and behaviour of the state, CSOs as well as experts such as activists and academicians.

To obtain wider and richer data, observations were done and recorded in a memo during the interview sessions as well as through the participation of the author in the engagement session that involved both the state and CSOs. These approaches were employed to ensure that the study goes beyond uncovering the understanding of the informants (Merriam & Tisdell, 2016). In addition, the video recording of the UPR review session which has been uploaded by the UPR Working Group has been observed and studied to understand the real situation of the review process in Geneva, Switzerland. The information obtained from observing these activities has been recorded in the author's notes for the purpose of triangulation.

4.4.5 Data Management and Analysis

(i) Data Management

There are two types of collected data which are the primary data (audio-recorded of the in-depth interviews) and the secondary data (documents shared by the informants including the memorandum, reports as well as other resources obtained from the official websites). All collected data were converged rather than handled in isolation (Baxter & Jack, 2008). The in-depth interview sessions were conducted in English and transcribed into conversational text. All transcriptions were carefully edited and saved as Microsoft Word documents in a dedicated folder. The printed documents were compiled in a folder while the other documents in softcopy were saved on the laptop and a hard disk.

(ii)   Data analysis

There are two stages of analysis in this research. The analysis first done on an issue-based which the data of PWDs and LGBT have been analysed separately to understand the interaction between CSOs and the state from the aspects of (1) significance of UPR in these two issues; (2) strategies employed by CSOs; (3) key factors that influence the relationship between these CSOs and the state; and (4) the state's considerations in accepting the UPR recommendations based on the rational, institutional, political, and cultural perspectives (Bekkers et al., 2017).

The rational perspective considers public policy as a way to solve societal problems. Therefore, this approach is looking at the factors that contribute to effective and efficient problem-solving. Information and knowledge play an important role in understanding the root of the problem. While the institutional perspective strengthens the formal and informal rules that affect the behaviour of policy actors and thereby affecting the effectiveness and efficiency of policies, the political perspective refers to the struggles between dependent stakeholders in the policy process to protect their rights or to develop common interest with their counterparts. The cultural perspective acknowledges that our past experiences, beliefs, values, and positions affect our understanding. This perspective explains the endeavour to bridge the diverging ideas about policy and integrate them into a shared understanding by highlighting the importance of language, symbols, visuals, and interactions in the policy process.

Secondly, a comparison between the two issues of PWDs and LGBT was conducted based on the four aspects mentioned above, to compare the differences and similarities between the issues of PWDs and LGBT CSOs in the UPR process. These comparative aspects are to identify the behaviours of CSOs in reacting to the UPR process,

and the reasons why they behave so. Moreover, the research also illustrates the interaction between PWDs and LGBT CSOs with the state in the UPR process. Lastly, the analysis has compared rigorously the reasons the Malaysian state reacts differently on the issue of PWDs and LGBT in the UPR process. The concept of data analysis is shown in Figure 4.2.
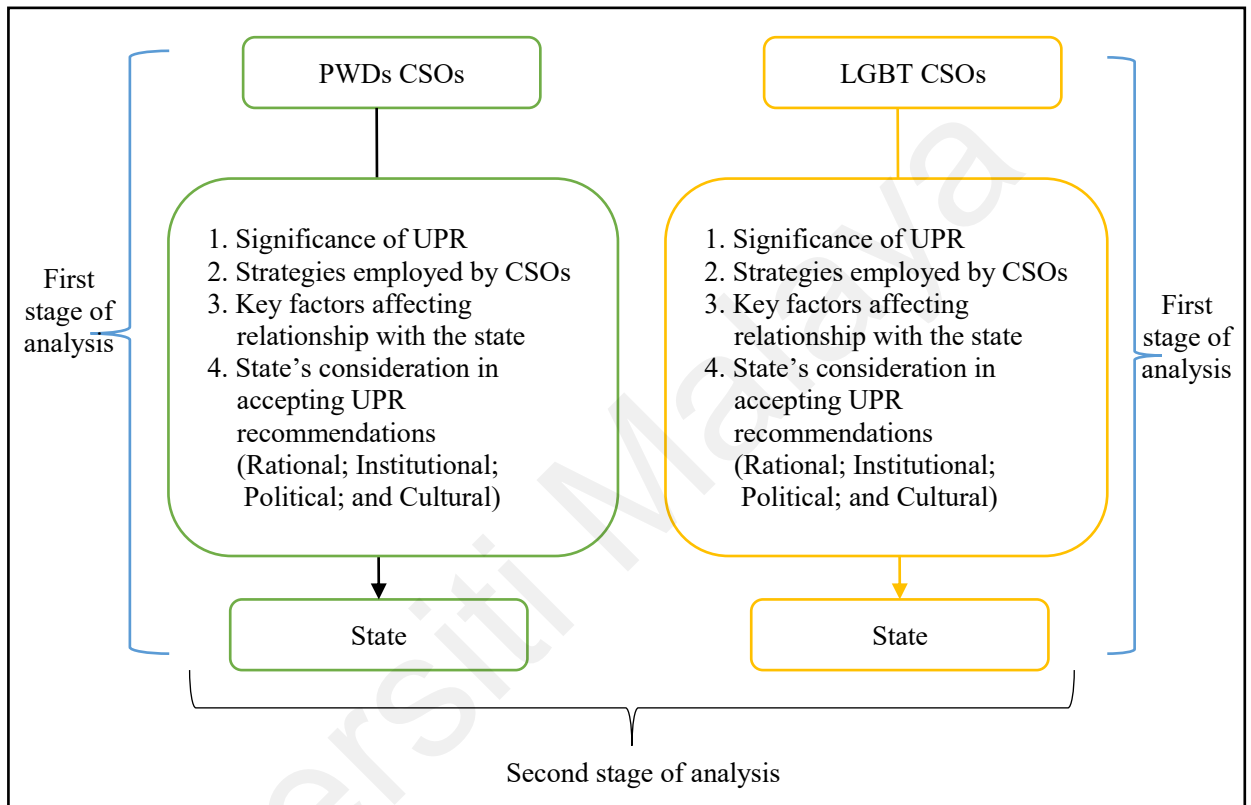
Figure 4.2: Concept of data analysis

Thematic analysis and category coding were employed in the first stage of analysis. The author analysed the descriptive and interpretative data emphasising the context of the case study and integrating the latent contents to illustrate a thematic map of the CSOs' participation in the UPR. The data analysis process started when the researcher created codes from the transcription, then the codes were grouped, and finally, categorised based on these themes that were created based on the concept and approaches mentioned above. At the end of the data analysis, the network in between these themes was created to understand the relationship, the similarities and the differences between CSOs and the state in the UPR process. This process was conducted manually with the

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assistance of Atlas.ti Version 8. Using the analysis tool software is helped the researcher to locate materials to sort and link memos with codes, themes, or documents for ease of reviewing (Creswell & Poth, 2018). However, the researcher needed more time and experience to learn how to use the tool efficiently. Nevertheless, the software was used as part of the analysis tool in the data analysis. The software was used to create codes and themes, while the process linking the interaction between CSOs and the state was done manually by drawing on papers and creating maps in Microsoft Word.

To triangulate the findings, the researcher analysed the secondary data that included memorandums, reports, press statements, official websites, and memos from observations during interviews and the researcher's participation in the activities to find pieces of evidence to support the findings in the primary data. The statements in these documents as well as the stand and view of the informant or their organisation have been highlighted and matched with the related themes.

4.5   Summary

This study aims to analyse the behaviour and actions of CSOs in the UPR process, particularly on the issues of PWDs and LGBT, and the response of the state in accepting the UPR recommendations. Therefore, the study employed a case study approach under the context of the UPR. The informants were identified through a purposive sampling process, and the sampling was extended to some other related informants through a snowball approach. Nevertheless, an in-depth interview is the main method to obtain the primary data for the study. Interviewing informants from different groups provided the researcher data from different views to understand the interaction between the actors in the UPR. The interview was stopped when the information obtained reached saturation. The interview questions were checked by peers and related experts for reliability and

validity. The pilot interview was conducted to assess the interview process and to improve the possible weaknesses of the process. The research was carried out appropriately based on the ethical request by the university, and the interview protocol was approved by the University of Malaya Research Ethics Committee.

The researcher was invited to attend the engagement session of CSOs and Members of the Parliament, as well as high-level engagement sessions between state and PWD CSOs in 2019. By attending these sessions as an observer, the researcher experienced the way CSOs communicate with the state and their expectations in related policies as well as in the UPR. Secondary data comprise CSOs memorandum, state's country report, SUHAKAM's report as well as other information obtained from official websites and social media platforms that had been collected throughout the study. This information is crucial as evidence to support the research findings and for the purpose of triangulation. The analysis was done manually with the assisting of the Atlas.ti Version 8 software to assist with data management dan analysis. This research employed an empirical and systematic method to obtain the findings.

CHAPTER 5

RIGHTS OF PERSONS WITH DISABILITIES IN THE

MALAYSIAN UPR

5.1   Introduction

This chapter explains the development of rights of persons with disabilities (PWDs) by exploring the influence of civil society organisations (CSOs) in the policy process and their participation in the UPR from the first cycle to the third cycle from 2009 until 2018. The significance of the UPR in the issues of PWDs is to understand the rationale of their participation in the UPR. This chapter also analyses how the state and stakeholders particularly the CSOs, the National Council of PWDs (NCPWDs), and the Human Rights Commission of Malaysia (SUHAKAM) protect PWDs' rights through the UPR process. Moreover, this chapter explains how the social capital approach has shaped the relationship of CSOs and the state in the policy and the UPR process, as well as the state's considerations in accepting the UPR recommendations on the issues of PWDs.

There are seven main parts of this chapter that present the overview of CSOs and the state in the UPR process. The chapter starts from the background of PWDs in Malaysia by illustrating the state's policies on PWDs, then proceeds with discussing the role and function of the key actors regarding PWDs in Malaysia such as the NCPWDs, SUHAKAM, and CSOs. The second part identifies the barriers and challenges faced by PWDs where these challenges have been caused by all parties in society and not just by PWDs.

In the third part, the chapter analyses the development of PWDs CSOs in Malaysia by illustrating the overview of the organisations and introduces three of the most active

and well-known organisations at the national level. This part also discusses how the CSOs expand from charity-based to rights-based organisations. Moreover, their interaction with the state in the policy process is also explained. The fourth part examines the UPR recommendations on the issues of PWDs in the three cycles of the UPR, and the acceptance of the state on these recommendations.

The fifth part illustrates the interaction between CSOs of PWDs and the state. Specifically, it analyses the significance of the UPR in the making of policy during the UPR process; how the CSOs participate in the UPR process by explaining the strategies employed to influence the state's decision-making in the UPR process; key factors that have shaped the relationship between CSOs of PWDs and the state; as well as the state's considerations in accepting the UPR recommendations on the issues of PWDs. The sixth part discusses how social capital has shaped the relationship between the state and CSOs of PWDs. Lastly, a summary is presented to provide the overview of the interaction between the CSOs and the state in the policy process as well as in the UPR process.

5.2   Persons with Disabilities (PWDs) in Malaysia: An Overview

In Malaysia, the official definition of PWDs can be referred to the Disabled Persons Policy (*Dasar Orang Kurang Upaya*), and Persons with Disabilities Act 2008. The Disabled Persons Policy defines PWD as "*someone who has a long-term disability in physical, mental, intellectual or sensory and when faced with challenges they may not be able to participate fully and effectively in society*." While Article 2 of the Person with Disabilities Act 2008 states that "persons with disabilities*"* include those who have *"long term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society.*" These definitions align with the definitions as stated in the UN CRPD Article 1 "*those who have*

long-term physical, mental, intellectual or sensory impairments which in interaction with

various barriers may hinder their full and effective participation in society on an equal

basis with others."

Both the Disabled Persons Policy and Persons with Disabilities Act 2008 (PWDs Act 2008) were developed on the context of a social model by emphasising the challenges and barriers faced by the PWDs, and, how these obstacles influence the participation of the PWDs in society. In other words, the state tends to solve the barriers that making the PWDs being isolated and excluded from full participation in society. In Malaysia, the key actors in the PWDs policy process consist of the state, CSOs of PWDs, the NCPWDs, and SUHAKAM. Therefore, it is crucial to understand the background and mechanism of these actors in the issues concerning PWDs. As the policy-making is a dynamic process with the aim to solve the problems face by the particular community, it is worth to understand the challenges faced by both the disabled community and the state in policy-making, as well as the interaction between the state and the population of disabled persons.

5.2.1 Background

The issue of PWDs is a worldwide issue and experienced by the international community. The World Report on Disability had presented evidence and barriers commonly faced by PWDs. More than one billion people in the world live with forms of disability, while nearly 200 million experience considerable difficulties in functioning (WHO, 2011). The report highlights nine cross-cutting recommendations, namely (1) enable access to all mainstream systems and services; (2) invest in programmes and services for people with disabilities; (3) adopt a national disability strategy and a plan of action; (4) involve people with disabilities; (5) improve human resource capacity; (6) provide adequate funding and improve affordability; (7) increase public awareness and understanding about disability;

(8) improve the availability and quality of data on disability; and (9) strengthen and support research on disability. The issue of PWDs is a common and important issue that requires attention from the state and support from and society.

Several initiatives have been taken by the United Nations (UN) in promoting and protecting the rights of persons with disabilities. Since 1992, the UN has been celebrating the International Day of Person with Disabilities (IDPD) on 3rd December. This annual celebration aims to observe and raise the issues of PWDs internationally. Besides, the UN Convention on the Rights of Persons with Disabilities (CRPD), which was adopted in 2006 aims to "*promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.*"[39] The CRPD is a platform to ensure PWDs have access to the same rights and opportunities as other individuals. This is due to the stigma and discrimination that the group of PWDs suffer are common in all societies. The Convention challenges society worldwide to understand disability as a human rights issue.

The UN State Members are encouraged to ratify the UN CRPD and practice the spirit of this convention throughout the policy process. As of 30 June 2012, 182 out of 193 UN State Members have ratified the CRPD, including Malaysia[40]. Malaysia signed the UN CRPD on 4th August 2008, and ratified the Convention on 16th July 2010, with reservations to Articles 15[41] and Article 18[42]. The definition of PWDs in the Malaysian PWDs Act of 2008 is the same as the definition as stated in the CRPD. This can be interpreted that the core values of the rights of PWDs in Malaysia are in tandem with the

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[39] https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-1-purpose.html. Retrieved on 15th April 2019.

[40] https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html. Retrieved on 30th June 2021.

[41] Freedom from torture or cruel, inhuman or degrading treatment or punishment.

[42] Liberty of movement and nationality.

spirit of the UN. In fact, the initiatives of the state to protect the rights of PWDs reflect the best practices of the international community particularly the UN. Although Malaysia has not signed the Optional Protocol of the CRPD, the ratification of the CRPD indicates the country's willingness and commitment to translate these rights into policies. The Optional Protocol for CRPD provides the Committee of the CRPD to examine individual complaints about alleged violations of the Convention by States parties to the Protocol. However, since this is an Optional Protocol, UN State Members face less pressure compared to the ratification of the Convention itself even though 94 UN State Members have signed the Optional Protocol.

To fortifies the protection of human rights, the UN has started the review mechanism over its member states through the Universal Periodic Review (UPR) since 2008 where Malaysia has received its first review in the next 4 years of the implementation of UPR. The issue of PWDs has been included in the UPR through recommendations made by member states that are concerned with those issues. The State Under Review (SUR) is required to report the human rights situation in its country by presenting the making and implementation of policy in the country to the UPR Working Group as well as State Members. In the report, the state aligns the UPR country report with its current policies. At the same time, the state also the implement policies in line with the accepted recommendations. This a symbiosis process, where the UPR recommendations are reflected in the state's current policies.

As an Asian country, Malaysia is also committed to the Asia and Pacific Decade of Persons with Disabilities, the Incheon Strategy from 2013 to 2022 (Jani & Aziz, 2017; Tah & Mokhtar, 2016). The Incheon Strategy is an agreement in the Asian and Pacific region with aims to accelerate disability-inclusive development and the CRPD ratification

and implementation. The theme of the Incheon Strategy is to "Make the Real Rights" for PWDs, aiming to realise the protection of PWDs through the regional agreed disability-inclusive development goals. To create a barrier-free and rights-based society for PWDs, the Incheon Strategy provides 10 goals, 27 targets and 62 indicators which are determined through the discussion of the state representatives (policy-makers), organisations of PWDs (stakeholders) and civil society. Malaysia has implemented its commitment by launching the Plan of Action for Persons with Disabilities (PAPWDs) 2016-2022 by putting the goals of the Incheon Strategies into the plan of action.

The UN and its member states have cooperated internationally through the CRPD, the Incheon Strategy as well as the UPR to protect the rights of PWDs and monitoring the implementation of the ratified convention. In fact, the CRPD, the Incheon Strategy as well as the UPR challenge people worldwide to understand PWDs as human rights issues rather than considering this issue as an issue of medicine, charity or dependency.

5.2.2 State's Policies on PWDs

As of 18 December 2020, a total of 570,000 PWDs in Malaysia have registered in the Department of Social Welfare, MWCFD. However, the number shown in the registration system does not reflect the actual amount of PWDs as the record of the National Registration Department shows there are 4.7 million PWDs in Malaysia.[43] The WHO through the International Classification of Functioning, Disability and Health (ICF) has classified PWDs into eights types, which are (1) mobility and physical impairments; (2) vision disability; (3) psychological disorder; (4) spinal cord disability; (5) hearing

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[43] https://www.utusan.com.my/berita/2020/12/hanya-570000-oku-daftar-jkm/. Retrieved on 31st May 2021.

disability; (6) invisible disabilities; (7) head injuries (TBI) – brain disability; and (8) cognitive or learning disabilities.[44]

The Malaysian state has localised the classification and categorised PWDs into seven types, namely (1) deaf/ hearing impaired; (2) blind/ visually impaired; (3) physically disabled; (4) learning disabilities; (5) speech impaired; (6) cerebral palsy; and (7) other types of disabilities. According to the Malaysian Department of Social Welfare, a total of 453,258 persons were registered as PWDs in 2017. By category, the highest number is persons with physical disabilities (35.2%), followed by persons with learning disabilities (34.8%), visual impairment (8.9%), mental impairment (8.3%), hearing impairment (7.6%) and multiple disabilities (4.7%). Speech impairment has been registered to be the lowest group of PWDs, accounting to only 5% of the total registrations.[45] This classification is important for the state in framing relevant policies based on the specific needs of PWDs.

Based on the high number of PWDs in Malaysia, it is no wonder the Malaysian state is committed in protecting the rights of PWDs and improving the quality of life through the enactment of the law, formulation of new policies, and taking appropriate measures and actions to comply to international laws and commitments. However, the Malaysian state is more careful in accepting recommendations by the UPR, as well as other international mechanisms, whereby the state always wants to make sure that they are ready or well prepared before accepting a recommendation or ratifying a convention. This can be seen in the ratification of the CRPD and accepting the UPR recommendations since its first cycle in 2009.

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[44] https://www.disabled-world.com/disability/types/. Retrieved on 15th November 2019.

[45]

https://www.dosm.gov.my/v1/index.php?r=column/cthemeByCat&cat=152&bul_id=NU5hZTRkOSs0RVZwRytTRE5zSitLUT09&menu_id=U3VPMldoYUxzVzFaYmNkWXZteGduZz09. Retrieved on 23rd April 2019.

The Federal Constitution and the Persons with Disabilities Act 2008 (Act 685) grant welfare and basic rights to PWDs (Abdullah et al., 2017). Article 8 of the Federal Constitution stated that "*All persons are equal before the law and entitled to the equal protection of the law*" grant the equality for the people in this country including the PWDs. Sections 26 to 31 of the Persons with Disabilities Act 2008 have clearly stated the rights of PWDs in access to (1) public facilities, amenities, services, and buildings; (2) public transport facilities; (3) education; (4) employment; (5) information, communication and technology; (6) cultural life and (7) recreation, leisure and sport. The state, through related ministries and agencies, is responsible for ensuring the success of these accessibilities to safeguard the rights and welfare of PWDs. Besides, to increase the quality of life and wellbeing of PWDs in Malaysia, the state is also protecting PWDs inhabitation and rehabilitation, health and other types of assistance and protection.

The Disabled Persons Policy has been established based on the concept of equality of rights for PWDs in Malaysia. This policy also emphasises the value of human rights such as glory, honour, and independence to enable them to live independently. The four objectives of policies for PWDs are (1) recognition and acceptance of the principle that disabled persons have equal rights and opportunities for full participation in society; (2) ensure the disabled enjoy the rights, opportunities, and access equally under the law of the state; (3) eliminate discrimination against a person due to his inability; and (4) educate and raise public awareness about the rights of the disabled.[46] To achieves these objectives, the Malaysian state has developed the Plan of Action for Persons with Disabilities (PAPWDs) 2016 - 2022, having the same timeline as the Incheon Strategy (2013 - 2022). This action-based plan is in line with the Disabled Persons Policy and the nine goals of Incheon Strategy, covering the issues of accessibility, economy, education, health, social

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[46] http://www.jkm.gov.my/jkm/index.php?r=portal/left&id=cCtGNGNKVE9obFhBRUl5RERPRjVoUT09. Retrieved on 23rd April 2019.

services, participation in the decision-making process, improvement of risk management, research and development, advocacy as well as international obligations.

However, one of the goals of the Incheon Strategy, Goal 6 that "ensures gender equality and women's empowerment," was not part of Malaysia's action plan. The state has allocated all the issues of women fully under the responsibility of the Department of Women Development even though the department is under the portfolio of the same ministry, which is the Ministry of Women, Family and Community Development (MWFCD). The decision of the state to split the issues of women and PWDs indicate that they prioritise the identity of a person based on gender rather than the needs of physical impairment. Specific departments have been created to handle the issues of women and PWDs separately.

The CSOs of PWDs have a different view whereby they believe that women who have disabilities should be put under the plan of action of PWDs too. Unfortunately, a woman with disabilities faces double barriers compared to a male with disabilities. The issue of women with disabilities should not be solved separately by two different government departments, but the problems should be addressed using a combined policy under the same department by assisting other related departments. The state's decision to not put Goal 6 of the Incheon Strategy in the action plan has led to an interpretation by CSOs that women with disabilities are not prioritised under the initiative of the state.

In order to improve the skill of PWDs, the Malaysian state has also created programmes for the disabled community with hopes that it can improve their living conditions and hone their skills to prepare them for employment. Programmes prepared by the state include the Job Coach Programme, Disability Equality Training (DET), and

Community-based Rehabilitation (CBR). The Job Coach Programme aims to train PWDs to ready themselves to start a new job. This programme also does job-matching to seek suitable jobs for PWDs. While DET provide trainings for PWDs and non-PWDs to understand the issues of PWDs from the perspective of social model. These training programmes have been introduced by Japan International Cooperation Agency Japan (JICA). The state had cooperated with JICA since 2009 on the Job Coach Programme, while the DET was introduced since 2005. These two programs are still going on and organised by the Welfare Department.

The CBR was introduced by the World Health Organisation (WHO), as a strategy for rehabilitation, equalisation of opportunity, poverty reduction, and social inclusion of PWDs. The existence of CBR is to ensure the benefits of CRPD for the PWDs. Malaysia started the CBR programme since 1984. There are three models of CBR which are home-based, centre-based, and centre-home based. To provide better service, the state has established the CBR One Stop Centre as the focal point of the community by integrate the resources and support. At the same time, the state has also created CBRNet, a multimedia programme to support the learning of Down Syndrome children and other children with learning disabilities.

Institutional Framework of PWDs

Besides the MWFCD which is the core government agency responsible for the issues of PWDs, other ministries and government agencies also play a role given the nature of problems faced by PWDs. These include the Ministry of Education (MOE), Ministry of Higher Education (MOHE), Ministry of Finance (MOF), Ministry of Federal Territories, Ministry of Health (MOH), Ministry of Human Resource (MOHR), Ministry of Home Affairs (MOHA) as well as the Public Service Department (JPA). The cooperation

between these ministries has established a comprehensive mechanism to provide services and protect the rights of PWDs in Malaysia. The policies related to the PWDs and its responsible ministries are shown as Appendix F. while the institutional framework of PWDs is illustrated in Figure 5.1.
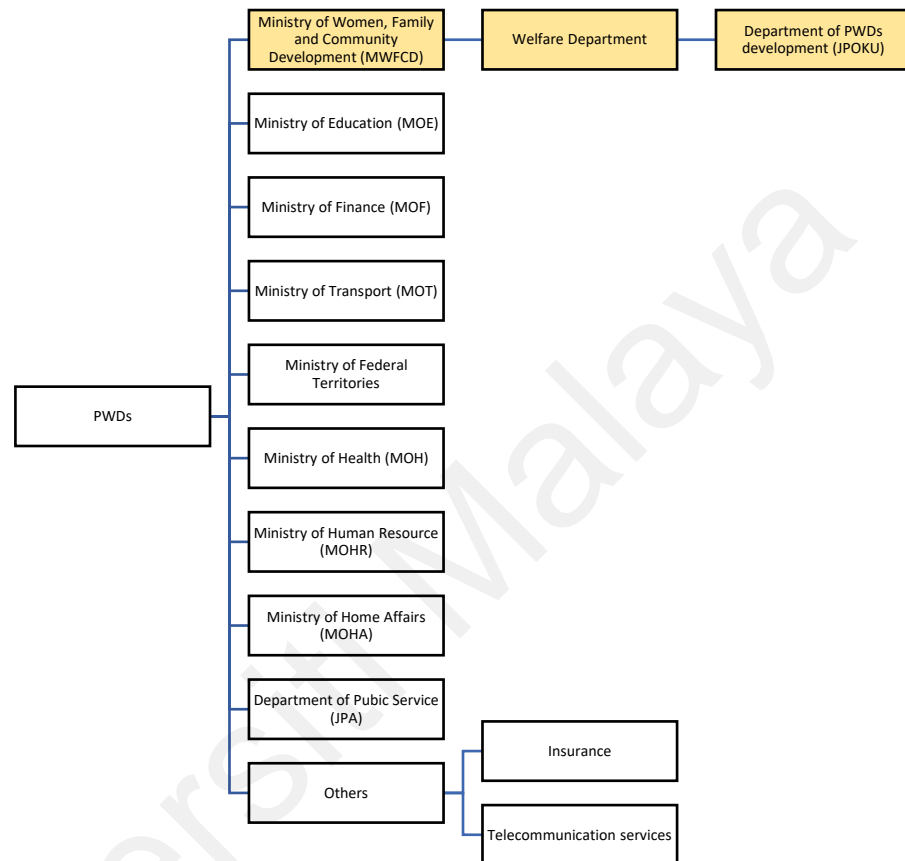
Figure 5.1: Institutional framework of PWDs in Malaysia
Source: Created by the researcher.
Note: The main state agencies which handle PWDs issues are highlighted.

The collaboration between the ministries has happened under the implementation of the Plan of Action for PWDs (2016 - 2022), such as the policies of education and skill development. Several steps have been initiated to provide quality life and education for children with disabilities. Six day-care centres have been established for children with disabilities, including one specific centre for autistic children. Besides, the state has also established education, training institutions, and organised rehabilitation programmes for PWDs. As of March 2019, 554 rehabilitation programmes (Community Recovery Programme - *Program Pemulihan dalam Komuniti*) have been launched all over the

country. As of December 2018, a total of 20,573 PWDs have participated in this programme. Persons with learning disabilities have also enjoyed learning and custody in *Taman Sinar Harapan* (The Ray of Hope), a government institution run by the MWFCD. There are seven *Taman Sinar Harapan* institutions in Peninsular Malaysia as of June 2021.

The state also offers special education programmes (*Program Pendidikan Khas*) for children of PWDs specifically for those with visual and hearing impairment. This programme is a formal education programme under the government education system, fully funded by the MOE. A systematic training programme is also in place to train teachers for to teach students with disabilities. Despite these different programmes implemented by the Malaysian state to protect and advance PWDs, interestingly, there is no specific policy or legislation for PWDs before the creation of the Disabled Persons Policy, PWDs Act 2008, and the PAPWDs (2016-2022) since 2008, except for what has been stated in the Constitution. Hence, the influence of international human rights mechanisms such as the CRPD, UPR, as well as the Incheon Strategy can be seen from this case where initiatives and active actions have been taken by the state since they have pledged to protect and advance the rights of PWDS through the international human rights mechanism.

5.2.3   National Council for Persons with Disabilities (NCPWDs)

In August 2008, the state established the National Council for Persons with Disabilities - NCPWDs (*Majlis Kebangsaan Bagi Orang Kurang Upaya*) under the responsibilities and commitment granted by the PWDs Act 2008. The appointment of the Minister of the MWCFD as the Chairman of the NCPWDs signifies the state's seriousness in upholding the rights of PWDs as any issue of major concern could then be brought to the cabinet for

deliberation. There are twenty members in the council in which half of them are representatives from related government agencies while the other half are experts in handling issues of PWDs. Apart from the six individuals that are registered as PWDs, another two of the committee members are medical doctors. There is a retired Senior State Welfare Officer who is working as a voluntary social worker in an NGO. There is also a mother of a disabled child, who she is a leader of an NGO of PWDs.

Based on the interviews, the informants and actors of the PWDs are satisfied with the appointment of individuals who are experts on the issues of PWDs. However, their understanding of their collective power and responsibilities under the PWDs Act 2008 needs to be increased to maximise the function and achievement of the NCPWDs. Due to the lack of political will, an expert who is familiar with the PWDs Act 2008 from the legal perspective is needed to understand their rights appropriately under the legal provision. One of the informants said:

> "… the members in the council not really realise their power. Because the Act, under the section 9, they put the function of the Council is so broad, and, I think the members of the council from last till now, they are not really realised, they are not really appreciate the power that comfort by the act." (CSO6)

To diversify the members of the NCPWDs, the senator of PWDs should be appointed as one of the Council Members as the issues of PWDs can be raised in the Upper House of the Parliament by the PWD Senator. Although the Upper House of Parliament will commonly discuss the issues and policies after the Lower House of Parliament, the Upper House is one of the main platforms to raise an issue for consideration of the state and public.

> "… I think that is important, it is important for the Senator to stay on the National Council for the Disabled." (CSO5)

The NCPWDs holds only two meetings in a year to discuss the issues of PWDs in the country. The infrequent meetings do not give enough time for policymakers to

discuss and address the issues faced by the big group of PWDs, particularly from an operational perspective. Hence, the NCPWDs has established six sub-committees to discuss important issues specifically. The six sub-committees are the Committee of Design and Architecture; Committee of Transport; Committee of Work; Committee of Education; Committee of Quality Life Care (QLC); as well as Committee of Registration of PWDs.

The six sub-committees are chaired by five high posts of government officers. The Committee of Design and Architecture and Committee of Registration of PWDs have been chaired by the Secretary-General of the MWFCD. The main task of the Committee of Design and Architecture is to create awareness among the government departments on the concept of universal designs on buildings and facilities by creating guidelines such as the Malaysian Standard 1331 (MS1331)[47] as a standard to be fulfilled by architects and contractors when developing a building. The Committee of Registration of PWDs is to focus mainly on the national registration of PWDs and the data related to PWDs.

The Committee of Transport is chaired by the Secretary-General of the Ministry of Transport to provide a transportation system that is user-friendly for disabled communities. The Committee of Work is chaired by the Secretary-General of the Ministry of Human Resource to focus on employment. Moreover, the Secretary-General of the the Ministry of Education chairs the Committee of Education on all issues on education. The Committee of QLC is chaired by the Secretary-General of the Ministry of Health. The establishment of the six sub-committees shows the focus of the NCPWDs on the six main issues faced by PWDs in their basic life from an operational perspective. Moreover, the symbiotic relationship between ministries and government agencies indicates that there

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[47] MS1331:2003 is a Code of practice for access of disabled person outside buildings (First Revision) specifics the basic requirements for the provision and design of outdoor facilities.

is an increasing concern and improvement on the welfare of PWDs. However, despite inter-government initiatives, the efficiency of these six-committees must be improved because the issues and challenges faced by the PWDs are dynamic and often evolve due to the changes in the environment such as the spread of diseases, innovation of technology, and rapid use of communication platforms such as social media.

Apart from increasing the efficiency of the six sub-committees, the NCPWDs must be more vocal and active in advancing the rights of disabled communities. To date, there are no specific actions done by the NCPWDs in participating in international conventions including the UPR. This is because there is an inter-relationship between the domestic PWDs policies and the UPR, where the acceptance of the CRPD and the UPR recommendations are in line with PWDs policies. Furthermore, the UPR process plays its role as a pushing factor to improve the policy-making and implementation of the policies domestically. One of the informants said:

> *"For sure yes… (UPR) is the pushing factor. What are the issues been raised by them (in the UPR), normally we will also discuss. In some manner we are also discuss in our National Council meetings, but not specifically we will mention UPR report. Normally we will say this is the report by international body, so we need some suggestion from the National Council members… we can say that surely it will help us to improve our services for person with disabilities." (S8).*

The NCPWDs has not participated in the UPR directly but they contribute through domestic policy process. However, the actions taken by the members of the NCPWDs in the UPR are passive because they usually rely on the meeting agenda proposed by the secretariat, which is the Department of PWDS (JPOKU). The NCPWDs has an important role in the formulation and implementation of policies regarding PWDs as this is the only council established specifically to help PWDs in the country. The informant has proved this statement by saying:

> *"… I would say in terms of the highest level of policy-making for persons with disabilities is coming from this National Council's discussion. Usually will be*

discussed there, from there will be take up by the relevant ministries... All PWDs and all agencies in the council will discuss in a very thorough manner for the issues, then they will come out with the policies." (S8).

Despite the significant role of the NCPWDs in improving the welfair of the PWDs in Malaysia, the members of the NCPWDs should be diverse in their expertise. The members of NCPWDs are indeed experts in their respective fields, however, they do not have a legal expert as a member of the council. Having a legal expert would be pivotal as legal enforcement is needed to grant the rights of PWDs. The legal group has also never absented from the PWDs issues. For example, the Malaysian Bar Council has organised awareness campaigns on issues regarding PWDs in 2012, cooperating with other NGOs to create awareness.

> *"... still significant but need to reform..." (CSO5)*

> *"Yes, it's a lot of space for improvement… Because is a human process. Whatever we put to the government … we have to make sure they know actually, they really understand what the situation is. That is our duty who knows about these things. That's why my words for the National Council for the Disabled, the question is whether the members really know what is the law is all about? What is their power comfort by the law?" (CSO6)*

Besides the structure and functionof the NCPWDs, the public expects more transparency about the development of PWDs in Malaysia. For instance, the reports of the NCPWDs should be open to society, especially to CSOs. To solve the issues of PWDs, opinion from the floor is needed for a comprehensive undertsanding. Hence, the public expects tranperancy in reporting especially when releasing reports and other related documents that could help to improve the understanding between NCPWDs and the public, especially CSOs of PWDs. As a council that protects the rights of the PWDs, developing a good relationship with SUHAKAM could make the NCPWDs have higher social capital, or in other words, public support in domestic and international platforms. SUHAKAM is working on the issues of PWDs as well as the UPR and CRPD. Hence,

the National Council could develop a bigger influence and power through an extension of their networking.

5.2.4   SUHAKAM and Issues of PWDs

The Human Rights Commission of Malaysia (SUHAKAM) was established under the SUHAKAM Act 1999. As an NHRI, SUHAKAM works on all the issues of human rights in Malaysia where it addresses different communities which is very broad. The SUHAKAM Act 1999 states that the number of commissioners shall not exist 20 persons, however, the appointment of the commissioner is commonly based on the needs of the commission in terms of its structure, job scope, as well as budget. SUHAKAM faces different constraints such as manpower and financial constraints, however, it still shows its keen concern on the issues of PWDs through monitoring and assisting the state in protecting and promoting the rights of PWDs.

SUHAKAM as an NHRI, had appointed a PWD representative as a commissioner. Mr. Francis Johen anak Adam, who is also physically disabled was appointed as the first PWD as Commissioner of SUHAKAM for two terms which was from 2013 to 2019. The appointment of PWDs in the commission is a positive move in fostering better understanding on the issues of PWDs as well as to present the issues of PWDs from the perspective of human rights on national and international platforms. Although the challenges of PWDs are very broad, the appointment of a disabled person as one of the commissioners could assist the NHRI to be more alert and understand thoroughly about the problems Malaysian PWDs face.

Despite the positive development of SUHAKAM, previously, it had other priorities due to the huge number of human rights cases in Malaysia. According to SUHAKAM's annual report, since 2000, the commission had many issues of PWDs that

were of concern by SUHAKAM. However, the issues of PWDs were relatively small compared to other issues such as civil and political rights, children, and indigenous people. In the beginning, SUHAKAM was focused on the issues of children with learning disabilities and issues related to education for PWDs. The concerned issues have later expanded to the issues of accessibility, health, employment, housing, barrier-free environment, the establishment of the PWDs Act as well as the ratification, implementation, and reservation withdrawal of CRPD (Appendix G). SUHAKAM has also jointly organised activities with CSOs, including conferences, public forums, and International Day of Persons with Disabilities. SUHAKAM's concerns focus on the perspective of human rights where every person should enjoy their rights and be respected as a human being.

In 2009, one of the UPR recommendations was proposed to Malaysia to ratify the CRPD in the first cycle of the UPR. Although that recommendation was not accepted by the Malaysian state, this recommendation had attracted the attention of SUHAKAM. A year later, there was one specific chapter that discussed the issue of PWDs in the annual report of SUHAKAM. This was the first time a chapter was created specifically to discuss the issue of PWDs in SUHAKAM's annual report since its establishment in 1999. Therefore, it shows that the UPR has attracted SUHAKAM to pay more concern in the issue of PWDs.

SUHAKAM's current responsibilities and focus on PWDs are wider. For instance, the commission focuses on fighting for the registration of PWDs, public education system, access to public facilities, amenities, services and buildings, public transportation facilities, employment opportunities, and healthcare services.[48] Another focus by the

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[48] https://www.suhakam.org.my/areas-of-work/pendidikan/orang-kurang-upaya-oku/. Retrieved on 24th April 2019.

commission is the right to education of children with learning disabilities (CWLD). A field trip has been done to collect information while a series of activities on human rights for special education has been organised for teachers who teach vision and hearing impairment (SES) and learning disabilities (SEIP) in Peninsular Malaysia. These activities have been participated by related NGOs.

Unlike the NCPWDs, SUHAKAM has been playing a more active role on international platforms. For instance, SUHAKAM often participates in the UPR by submitting reports to the UPR Working Groups every cycle since 2009. At the same time, SUHAKAM attends the CSO engagements sessions organised by the state through the Ministry of Foreign Affairs (MOFA). The commission maintains a good relationship with the state, CSOs as well as the Bar Council in the UPR process. These relationships have been developed on the basis of trust, reciprocity, and networking that occurs between SUHAKAM and CSOs as well as the state in which there are the elements of social capital. SUHAKAM plays its role as the national institution to protect human rights in Malaysia since its establishment in 1999. Although the establishment of SUHAKAM is under the SUHAKAM Act 1999 [*Act 597*] and the financial support by the state, SUHAKAM stands on its best in handling the human rights issues in Malaysia. As an NHRI, it also gains the trust of CSOs in delivering the human rights violations in the country. SUHAKAM also plays as a coordinator in between CSOs and the state in various human rights issues, this situation provides a reciprocity relationship between SUHAKAM and the other counterparts in the human rights issues. Moreover, the active role of SUHAKAM has also made this institution develop wider networking with the state, CSOs as well as international human rights organisations.

It has a very strong social networking with the UN and its Working Group as well as the NHRI from the other countries. SUHAKAM used to be treated as an advisory body to the state. They hold the state's accountability to its commitments in the UPR and while trying to engage the state and CSOs in the UPR process. However, its effectiveness in the UPR is still weak because of its dual roles, responsible to the state and CSOs. The state has sometimes treated it as part of the CSOs because SUHAKAM pressures the state when it believes the states transgresses in its protection of certain human rights issues. Therefore, there are arguments that that SUHAKAM might not work effectively because they are a body created and supported by the state.

Nevertheless, SUHAKAM still has a good relationship with the state and CSOs because of its reputation as an NHRI, it has gained respect from local and international bodies. SUHAKAM has networked with international bodies such as the UN and NHRI from other countries. Although the focus of the Human Rights Commission in the issue of PWDs is not as primary as other human rights issues but its contribution to the issue of PWDs in the UPR is substantial. SUHAKAM has raised the issue of PWDs in its first time attending the UPR info[49] pre-session to deliver and highlight the specific issues and recommendations to the Permanent Missions which would be directly involved in making recommendations during the Malaysia's third UPR.[50]

The Malaysian state, as well as the other actors in society such as CSOs and NHRI, are responsible for the issues of PWDs. The three parties have shown their commitment within their capacity to protect the rights of PWDs. In this process, it can be said that the international human rights mechanisms are impactful in the protection of the rights of

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[49] UPR Info is a non-profit organisation, non-governmental organisation based in Geneva with a regional office in Nairobi. It aims to raise awareness of the UPR and to provide capacity-building tools to all stakeholders, such as UN Members States, NHRIs, parliamentarians, civil society, media, and academics.

[50] SUHAKAM 2018 Annual Report, page 169.

PWDs. The fact that the states has accepted the ratification of the UN CRPD in 2010, creation of Plan of Action for Persons with Disabilities (PAPD) as well as the review in the UPR, indicates the state's commitment to protect the rights of PWDs in the country.

5.3   Barriers and Challenges Faced by PWDs Community

Recognising the challenges faced by the PWDs and knowing their expectations is vital in the policy-making process. This condition also affects the state's decision-making in the UPR. At this stage, the state could identify the problems of PWDs which contributes into the agenda-setting in the process of the UPR. Issues of PWDs are dynamic and vary depending on their specific needs and environment. Therefore, it is an important step to understand their current situation and expectations. The informants have shared their experiences and concerns from different perspectives in the interview sessions. The rich information that they have shared is important especially for policy-makers and CSOs to understand the expectation and current situations of PWDs in Malaysia and from the context of UPR further.

Generally, the barriers faced by PWDs include inadequate policies and standards, negative attitudes (prejudices happen in education, employment, healthcare and social participation), lack of provision of services, problems with service delivery, inadequate funding, lack of accessibility, consultation and involvement, and lack of data and evidence (WHO, 2011). These barriers and challenges have been identified through the reports of the state, SUHAKAM, memorandums submitted by CSOs such as *OKU Bangkit* (through COMANGO) MACSA (prepared by PERTIS), and the information provided by the informants. While the Malaysian state has taken initiatives in providing good and high-quality services for PWDs, there are still disabling barriers for this vulnerable group in their everyday life. A respectful and reasonable environment is

essential for the PWDs community. There are 12 barriers and challenges that have been raised by the informants mainly from the key informants and key actors from PWDs CSOs. These barriers and challenges have been grouped under four categories according to the type of needs, namely (1) physiological needs; (2) safety needs; (3) social needs; as well as (4) rights of PWDs in policy process as Figure 5.2.
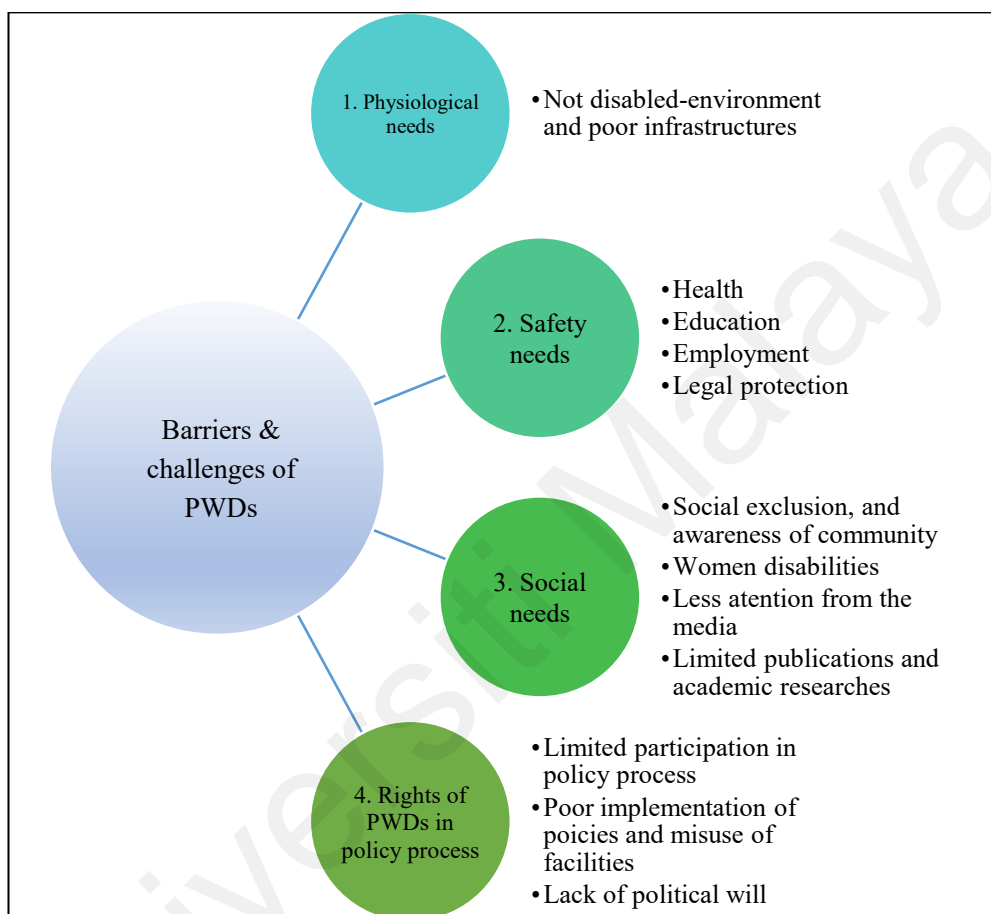
Figure 5.2: Barriers and challenges faced by PWDs community in Malaysia
(Source: Created based on the findings in 5.3 by the researcher)

These barriers prohibit PWDs to be self-sufficient. The PWD community would like to live independently while enjoying the amenities and access provided by the Malaysian state. However, the public needs to change their perception of PWDs. Under these circumstances, empathy is essential instead of sympathy. Two informants who have vast experience working with the disabled community said:

> *"… the PWDs are telling us please don't baby them so much, they also want to be independence in that sense." (S5)*

"Even some PWDs, they don't want public to help them. They have some kind of perception that, no, we no need your help. I can manage on my own. When you ask them, if they say yes, they only help; if they say no, don't help. Because they can manage on their own." (S8)

The disabled community is a growing group where their nature is dynamic and subjective to the difficulty and discomfort of a person in his/her life. The definition of PWDs changes based on the need for the current situation from time to time. These include the discovering of a new disease.

"... we also develop, for example, there are cases where people with skin disorders ask for an identity of disability, albino asks to recognised as a disability, soon it may not be 7 (categories), maybe 10 (categories), maybe 15 (categories). It involved a concept, a developing concept." (CSO5)

The informants shared their concerns based on the collective views of an individual or a PWDs, the responsibility of the state, role of CSOs or NGOs, and expectations of the Malaysian people and the international community. The PWDs community often participate in policy-making and the UPR process where these are their initiatives to make their voice heard by the state. Certainly, the ultimate objective is to solve the problems, or, at least to reduce the difficulty that they face in their everyday lives. The issues of PWDs should be seen from the perspectives of PWDs and the public as they are one of the major components in the society. The following section highlights the different needs of PWDs that the state and CSOs need to be aware of.

5.3.1 Physiological Needs

(i)   Not Disabled-friendly Environment and Poor Infrastructures

Living in a safe and secure environment is one of the basic needs in life. Although the state has launched a few initiatives in securing the quality of life for PWDs, there are still some difficulties faced by them in enjoying their basic rights in everyday life. One of the main barriers for PWDs is poor accessibility to amenities and facilities, even for those

living in the capital of the country and urban conglomeration such as Kuala Lumpur[51] and the Klang Valley. The design of most buildings, especially public amenities and facilities, is not user-friendly for the disabled community. This includes pathways to access into buildings, public toilets, parking lots, and facilities such as lifts and handrails for them to move safely in the pathway and in a building. However, there are some buildings and areas in the city which are PWD-friendly, notably shopping malls (Bashiti & Rahim, 2016). Nevertheless, more buildings and spaces should be integrated to create a friendly environment for PWDs. Informant CSO 8 shared his view as below:

> "… the building is not accessible, is mostly mainly because of that they have no ramp or somethings like that, so we cannot access." (CSO8)

The functionality of facilities must be evaluated from time-to-time to make sure it is effective and useful for PWDs. For instance, the poor design of ramps is troublesome for those in wheelchairs while a broken pathway is dangerous for the visually-impaired. The maintenance of these facilities is still a big challenge to the authorities and responsible parties. It is the responsibility of the authority to create a safe environment for all users including PWDs. The safety system has to be in place to meet the special needs of PWDs. For example, the common use of a fire alarm with loud sound is less effective for person with hearing impairment. The system and building designer must improve the facilities and systems specifically to assist PWDs.

Poorly designed buildings and amenities may seem insignificant to people who are fully able, however, these small but detailed changes make a big difference for the disabled community. The PWD community are mostly concerned about the state's failure in providing basic needs such as facilities, accessibilities, as well as good services as it

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[51] https://www.thestar.com.my/news/community/2013/10/23/kuala-lumpur-not-disabledfriendly-faulty-aids-and-poor-facilities-in-the-city-poses-a-challenge-for/. Retrieved on 24th April 2019.

prevents them from achieving quality life. Nevertheless, these are the basic issues that are yet to solved by the state to the community. Sometimes, the welfare and services model have to be reconsidered and reimplemented by the state. The informants said:

> *"The first one is the accessibilities issue. Accessibilities is there for them to go to school, go to the hospital, go to work and so on, 50% of their problems can be solved." (S8)*

> *"The PWDs that I met, they go like all they need is just availability, accessibilities. They are not asking a lot, not a lot. But they just want things like proper ramp, proper space for them, proper toilet for them." (S5)*

> "E*ven most of the developed country, PWDs are like that. For them, if let's say they can cope up by their own, they can do by their own, they will carry on. They are not hoping by others... But in our country is still a big matter, if let's say they need to go to a shop, or any other places, restaurants and so on, the curb will be there. They can't go on their own. They need someone to bring them, that is the issue." (S8)*

The transportation system is one of the basic facilities in everyday life. However, the effectiveness of Malaysia's public transportation, both in urban and rural areas need to be improved to enable the participation of PWDs in the labour market as Tiun and Khoo (2013) and Rosli, Sabri, Wahab, and Zakaria (2015) have argued that unfriendly and inaccessible local public transportation systems limit PWDs to participate in the labour market. Their inability to participate in the workforce would eventually restrict their livelihoods and the growth of the state's economy too.

5.3.2 Safety Needs

(i) Health

Health problems cannot be separated from PWDs. Some people with disabilities inherently have health problems. Hence, PWDs and their family members should equip themselves with specific knowledge related to their health problems. However, the problem occurs when PWDs are unable to deliver their problems well, or when the family

members have limited knowledge about the physical and psychological aspects that affect disabled people. One informant shared:

> *"... health issues. Sometimes, they are not very well explained about their health problems. They are already been PWDs, they must be also well-equipped with knowledge on how to take care of themselves and so on, if they can't take care, parents must do something. Sometimes this part will be neglected." (S8)*

The state realises that different programmes must be implemented to raise awareness about the physical and psychological state of PWDs, while empowering the disabled communities and their families for continued support. However, with the rise of healthcare cost, this has posed challenges to the state as well as PWDs. In line with the Global Disability Plan of Action (POA) endorsed by the WHO in 2014, the MOH has established a three-phase Healthcare Programme for PWDs. In Phase 1 (1996-2010), the MOH began developing programmes and services for PWDs and the ministry has continued to concentrate on strengthening the programme and services for PWDs in Phase 2 (2011-2020). Lastly in Phase 3 (2021 -2025), the ministry is tasked to consolidate the programmes and services for PWDs. Children, parents, extended family members, and the community are the four intervention groups that the state prioritises under the ministry's healthcare programmes.

On top of POA, the recommendations in the UPR process have impetus for policy reform and the protection of the rights of PWDs. One of the UPR recommendations in the first UPR was to ratify the Disabilities Convention (proposed by Finland). The Malaysian state has later ratify the Convention on the Rights of People with Disabilities (CRPD) in 2010. Besides, initiatives have been taken by the state in protecting the rights of PWDs through related policies. The PWDs Action Plan 2016 -2022 has been introduced to strengthen the implementation of this effort. The protection of PWDs is a

continuous process where it could be improved from time in another one time. Therefore, the UPR act as other motivations in pushing the state in protecting the rights of PWDs.

(ii)   Education

In fulfilling the rights to education, the state has provided special education programmes and special education institutions for PWDs. However, PWDs still face problems accessing education, one of it being the lack of awareness on the need to seek special education. As education starts within the family, the awareness and understanding of family members, especially the parents play a pivotal role in identifying the special needs of a child with disabilities in making the right choices for education. Even if parents are aware of their children's special needs, there are certain challenges PWDs experience in enjoying the happiness of learning. PWDs have very limited choices in obtaining formal education as most of the public education programmes and facilities focus on the needs of persons with physical disabilities, while the education opportunity for persons with learning disabilities such as autism, down syndrome, and attention deficit hyperactivity disorder (ADHG)[52] are somewhat limited. Due to the above-mentioned difficulties, some of PWDs have only attained basic level of education such as in primary or secondary school.

In Malaysia, preschool education is not compulsory in the formal public education system. However, it is a trend for parents to send their child to preschool as early preparation for formal education. The state has also formed rules and regulations as measures to control and monitor preschool education programmes. However, there are still lack of emphasis on the physical environment in government preschools given their moderate readiness in providing quality education (Shaari & Ahmad, 2016). Hence, there

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[52] http://www.utusan.com.my/rencana/forum/bela-nasib-oku-sepenuhnya-1.736255. Retrieved on 29th April 2019.

is still room for the state and community to collaborate to increase the quality and effectiveness of preschool education, especially the special education programmes and institutions.

(a)   Mainstream Education System

The state is responsible to provide basic education for people in the country, including PWDs. The right to education is a basic right for all as stated in the Federal Constitution of Malaysia, Article 12, Rights in respect to education (Government of Malaysia, 2010). Therefore, the state has included special education in the public education system which has been introduced as the "zero-reject policy." Under this policy, none of the children shall be rejected in public schools. MOE classify "Special Needs Students" as a student *"certified by a medical practitioner, or an optician, audiologist or psychologist, whatever the case may be, whether in government or private services, as students with visual impairments, hearing impairments, speech disabilities, physical inabilities (disabilities), learning disabilities or any combination of disabilities*"[53].

The mainstream education system provides special education to children who have special needs. Currently, the Ministry of Education (MOE) provided 3 types of programs at pre-school, primary, secondary, and tertiary education or secondary education, comprises of (i) special education schools (*Sekolah Pendidikan Khas* - SKP), or (ii) in mainstream schools that implement the Integrated Special Education Program (*Program Pendidikan Khas Integrasi* - PPKI) or (iii) Inclusive Education Program (*Program Pendidikan Inklusif Arus Perdana* - PPI AP). There are 93,951 students studying in these 3 types of programs in 2020. With this, there are 14,774 teachers and

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[53] https://www.malaysia.gov.my/portal/content/29488?language=my. Retrieved on 24th December 2021.

6,529 assistant teachers who serve in these educational institutions in 2020 (Ministry of Education of Malaysia, 2020).

Based on the interviews, the informants feel excited and hopeful about the zero-reject policy as it provides opportunities for all children, particularly those with disabilities to learn and under the formal education system. In fact, the Community-Based Rehabilitation (CBR) programme has been set up to provide service for PWDs who are unable to participate in the mainstream education system.

> *"Education for PWDs is a big issue. Now, we have zero reject policy, implemented by the government just recently this year. We hope that the intake in the government school starting this year will be increased. No school can reject children with disabilities. Whatever it is, they must accept first, then they will do the assessment and so on. Whatever is, they need to accept children with disabilities in the main stream schools". (S8)*

> *"Pendidikan Khas (Special Education) is considered as main stream education. So, they will be in the education system." Those that can't be in the education system, are the one will be referred to us and we will put them in our CBR, Community-Based Rehabilitation." (S8)*

> *"... the issue of education, including the educable and non-educable, can be educated, can be studied in the Special Education regulations 2008." (CSO5)*

(b)   Tertiary Education

The education pathway for PWDs in Malaysia does not stop at the primary or secondary level. In fact, the Malaysian state encourages all Malaysians, including PWDs to further their studies, therefore, tertiary education should be ready to provide services to the PWD students. At the university or college level, there are only limited numbers of PWDs who further their study to tertiary education. In 2017, there were only 18 PWDs students enrolled in undergraduate programmes in University of Malaya (UM), constituting only 0.43% of total number of new students.[54] Therefore, all parties including the state, family members and the community should work together to increase the percentage of PWDs

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[54] https://www.bharian.com.my/berita/pendidikan/2017/09/320992/um-pilihan-pelajar-oku. Retrieved on 26th April 2019.

in tertiary education even though it is the main responsibility of the state to provide PWDs with access to quality education to prepare them before they enter the workforce. Hence, their education needs must be fulfilled and improved in line with the concept of human rights.

As it is the state's goal to have more knowledgeable and skilled population, more universities have been reformed to include more PWDs in the university. Public universities such as the UM, International Islamic University (IIUM), as well as University of Science Malaysia (USM) have setup a special unit for PWD students. From 2010 until 2021, there are 186 PWDs students who registered at the PWDs Student Unit under the Psychology and Counselling Section, UM for the program undergraduate and postgraduate. However, there were 18 students who graduated from between 2010 until 2017 (University of Malaya, 2020).

> *"But some universities, I think UM, UIA, and USM already started a special unit for person with disabilities. They are doing wonders, they are giving lot of advices for student with disabilities, and some of them, those graduated also been employed by the university, that is something good." (S8)*

> *"UM is doing that, I think Encik Firdaus is there under the Unit OKU. He is a blind as well. That kind of arrangement is in the pipe line, there is a lot of improvement. But only a few of universities. We hope that all the 20 IPTA will do that." (S8)*

Moreover, private universities and colleges have also established a special unit, namely the Disability Unit, specifically for students with disabilities to provide education and training for the PWD students. United Kingdom-based universities such as Nottingham University, for instance, is aware of the education of PWDs and has implemented initiatives in the university.

> *"And IPTS, a few of them already started the Disabilities Unit, Sunway College and Nottingham University already done that. Those based from UK, yes, they are very aware on Disabilities Unit. Like Masha College, or any other normal college, I think haven't started with the Disabilities Unit. I think that is for the training part." (S8)*

(c)   After-school Training

Education programmes and trainings are varied and should be customised to fit the needs of the students. There are students who do not continue their studies after secondary school. Therefore, after school training could equip them with more useful knowledge and skills to thrive in society. However, after-school training programmes are still limited for PWD students. Currently, there are programmes that are mainly offered to students with hearing impairment. Unfortunately, PWDs with mental disabilities typically receive a negative view as they would create problems in the institution.

> *"... training for the person with disabilities. After their schooling, where do they go? Parents are in dilemma. Let's say after 18 or 19 years old, their children finished Special Education, what is next? Not many institutions willing to take them."* (S8)

> *"... Let's say if they want to go to like Community College? Polytechnic? Only very few Polytechnic are taking PWDs. That one also only the hearing impairment. They are taking only PWDs with hearing impairment, the others they haven't open."* (S8)

> *"Community College is taking those is LD, learning disabilities and also hearing (impairment), not cover other disabilities. And how about mental? Are we prepared to taking them to the training centers? We see the stereotype; we feel that the mental person will create a lot of problem in our institution. So, usually they won't take in."* (S8)

(iii)   Employment

Getting employment is another challenge for PWDs. While the willingness of employers to employ PWDs is more apparent than before, there are still several obstacles in allowing PWDs to participate in the labour market. Some of them face discrimination and exploitation at work (Tiun & Khoo, 2013) such as prejudice against PWDs with respect to their ability and their appearance, inconvenient physical facilities, and public transportation (Rosli et al., 2015). From the employer's perspective, hiring PWDs is challenging due to additional cost of training and supervision, and the lack of knowledge in the management's handling of PWD workers and disability issues. People with disabilities also have limited pre-requisite skills and training, and face negative

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stereotypes due to their disabilities (Ta et al., 2011). It is therefore the responsibility of the state to intervene in the employment of PWDs by translating the universal rights of employment opportunities from mere rhetoric into inclusive realities (S. Khoo et al., 2012).

Those who have managed to gain employment, unfortunately face discrimination at work and this has been happening decades ago. People in society commonly stereotype the ability of PWDs, and this influences their discernment in their decision-making at work. The society must be more aware of the needs and ability of PWDs as this is injustice for the PWDs who are seeking for a job and the employers who need the capable employees.

> *"There was a vacancy I interviewed. They rejected me because they saw I have a problem with getting around. But that was the wrong question, is about transport but not about work. But nobody gave me a chance. That what was happened before." (CN1)*

> *"Yes. The awareness is not there. But that's how they look at me. The worse thing is that they never ask me, nobody question me. Actually, I get the 2ⁿᵈ upper, that I was the top 15 in the class, the class have 50. But doesn't matter. I was among the first few Bumiputra local graduate. I came from a poor family; I need a job." (CN1)*

Realising the challenging situation that PWDs face to get employment, the state started to implement the "policy of 1% PWDs in the public sector" since 2010. Although the government efforts should be praised, it seems that more initiatives and actions can be taken as the percentage of PWDs in the public sector is still very low. Until 30th June 2019, there are 3,686 disabled people workings in the public sector which is only 0.29% of the total public servant.[55]

> *"... Dasar 1% OKU di sector awam (The policy of 1% PWDs in the public sector). Currently, we achieve only 0.3%, very sad to say that. But the fact is, just recently, we understood that PM (Prime Minister) started to ask JPA (Public Service Department) to make sure if within these few years, 2 – 3 years, the 1% can be*

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[55] https://www.astroawani.com/berita-malaysia/kerajaan-komited-realisasikan-satu-peratus-penjawat-awam-oku-222528 . Retrieved on 2nd July 2019.

fulfilled, or can be filled in the government sector. So, they are trying their very best to do some improvement, recruitment process to take in more person with disabilities. So, hope to see in another 2 years, the number of PWDs in the public sector will be at least achieved 1%." (S8)

(iv)   Legal Protection

Legal framework is crucial as it provides official protection in granting the rights of PWDs. In Malaysia, the Persons with Disabilities Act 2008 is a legal protection for the registration, protection, rehabilitation, development, and wellbeing of persons with disabilities. At the same time, the establishment of the National Council for Person with Disabilities (NCPWDs) is also to further advance the wellbeing of PWDs. While the informants agreed on the importance of the law in protecting the rights of PWDs, they are concerned about the efficiency and effectiveness of the legal enforcement that needs to be improved to benefit PWDs.

> *"From 2008 to 2012 there was a polemic, some discussion, and polemic on whether the Act was useful for disabilities, for the disabled. And whether the act is a tiger with no fangs, or how we want to review it or we want to fight it, or whether we want to change a new act? It is a matter of debate. So, it's first at the domestic level." (CSO5)*

The efficiency of the law should be seen and felt by stakeholders as they are the parties that would benefit from the legal implementation. Public policy is an interactive process, and the same concept applies to the enforcement and implementation of the law. Nonetheless, the state is taking the initiative to protect the rights of PWDs, but these efforts must work together with stakeholders, particularly the PWDs and their family members. The informant said:

> *"Because the main issue is, you have to utilise the provision of the act, to ensure that existing to the act being... because our principle, justice is not only done but must seem to be done. The law is not just be a law, but is must ought to be feeling by the people." (CSO6)*

5.3.3 Social Needs

(i)   Social Exclusion and Awareness of Community

PWDs are often socially excluded from society due to their physical, mental, or learning disabilities. The awareness of disabled individuals in the community remains low although the challenges of PWDs is not a new concept in the Malaysian society. The informants shared their views:

> *"Wherever you are, wherever you be, there must be people of the disabled. Every single (person) has to take care of the disabled. But, still not working…" (CSO6)*

> *"What I am saying is their awareness does not exist, consciousness does not exist… The   awareness of the community on PWDs is not "less" but actually almost none, almost none." (CSO5)*

Despite the social exclusion that PWDs face, the public's awareness about the plight of the disabled community has improved compared in the past, but the progression is still slow. The community has very little knowledge about PWDs as the informants said:

> *"There is a stereotype... Negative thinking against the disabled...I think the change is already there, it is just slow…Yes, very little knowledge… They don't know." (CSO5)*

Certainly, there are persons who are willing to assist PWDs. However, with very little knowledge or understanding of PWDs, they are sometimes being rejected by the PWDs. This situation happens when someone is willing to give help and the person who receives the assistance is ready and pleased to make it happen. Hence, thinking from another person's perspective is crucial to make a good intention happen. As PWDs are part of society, they should be accepted by the public especially in public areas. The family institution is also important in advancing the rights and prosperity of PWDs. However, the informants found that the awareness of the community remains low and sometimes they refuse to give a helping hand to PWDs. All parties have a role to play in educating the public, including the state and the community itself.

"I think there is also problems with the awareness of disabilities in Malaysia. There are many reasons, not only the government factor, but it is also the community factor and also have to look at different segments of society." (CSO5)

"... They are also, sometimes, they can't fit in the family, that is the issue. ... we hope the public will accept them as part of the community, the awareness needs to be there for them to accept person with disabilities." (S8)

"... there is one person said, when the PWD wanted to asks help from the normal public, beside the road, the public mention to the person with disabilities: "no, no, I can't help you. Sorry, I can't help you". I don't know why he did that. But the awareness may be is not there, and he might be felt, either way, one he might feel that, if I have something happens to him, I have to be responsible. He might think like that." (S8)

Due to the slow progress in accepting the rights of PWDs within society, the state has launched campaigns and training programmes to increase the understanding and awareness of the public about disabled communities. These initiatives have been implemented by different agencies to educate the public about the community of PWDs. Moreover, the mindset of the public needs to be changed. They should abandon the stereotype thinking about PWDs.

"I think that one is improved, improved. We can see the improvement but the question whether it's so slow or in the static stage." (CSO6)

"That one is increasing I would say. Because we doing a lot of campaign, the registration, awareness and so on, quite number of people come in and giving their view... That is our hope, in one day, in Malaysia most PWDs will be well accepted by the community. (S8)

(ii) Women with Disabilities

Women with disabilities have been particularly vulnerable to the advance of risks, including domestic, sexual violence, and abuse. They experience much more double standards and abuse in their life compared to their male counterpart. An example given by an informant:

"When a person is disabled, and then she is a woman, she will have a double, a double, a double identity, and she will have a double problem as well. For example, a female disabled, with visually impairment, the difficulty for them to find a mate is not the same as the male disabled. A woman who is disabled, a woman who is visually impaired, she is a PWD, her difficulty in finding a mate.

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Some more, their exposure to violence, sexual violence, it would be very, very exposed." (CSO5)

(iii)   Less Attention from the Media

The role of media is not only to spread information but also to educate the public and community. however, there is a very limited number of programmes about PWDs on Malaysian television. This includes digital media such as documentation and educational videos on social media platforms and public websites. In fact, the media is a powerful force to influence the public by spreading information and influencing the discourse for a specific issue.

The informant has raised one of the examples of increasing public awareness through media, which is illustrated from the announcement in the light rail train (LRT) station. This public transportation system is only available in the city like Kuala Lumpur and the Klang Valley. The informant found that the awareness of the passengers is very low, their attitude is passive about the existence of the PWDs, although they sometimes will be alert on this issue after being reminded about PWDs by the announcement. The fact that passengers depend on public service announcements to realise that they need to help disabled people on the train highlights their lack of empathy.

> *"We don't have media that comfortable with…, media that very comfortable to talk about the disabled… In the announcement of the LRT station's announcement: "Please provide seats for pregnant women, for this, and for the Disabled… Disabled, only come to their mind when there is an announcement at the LRT." (CSO5)*

However, media producers should understand specifically when to highlight an issue and incorporate views from different parties who are involved in the issue. The example is given in the case of blind individuals selling tissue at public spaces without highlighting the problem faced by the blind.

"... sometimes the media highlights the issue of disabilities especially the blind, I mean incorrectly. For example, they talked about the blind selling tissue is a kind of syndicate. They do not look at the cost of living, the job, the employability that is not available to them. But the question arises: oh, this is a syndicate. So, that misunderstandings cause the people feel that way…" (CSO5)

(iv) Limited Number of Publications and Academic Research

Publication on PWDs has started decades ago in magazines and academic journals. Those articles highlight PWDs from different perspectives to create awareness among the public and to explore more about this community although it may seem that sharing information about them is less effective. In the 1980s, the articles published discussed the issues of PWDs from the perspective of human rights. However, the understanding of the concept of human rights in PWDs remains low. Hence, the analysis and articles on this issue should be increased and disseminated through various approaches that resonate with society today.

"Aliran magazine wrote articles about disabilities. But what's wrong with it? Why the information did not spread in the human rights community?... But it was in the 1980s, 1990s. Then comes to 2000s, there is a little by little, not much." (CSO5)

5.3.4 Rights of PWDs in Policy Process

(i) Limited Participation in the Public Policy Process

CSOs of PWDs seek for more participation in the public policy process as they have more concerns such as the implementation and monitoring of policies and collaboration between the state agencies in the policy process.

(a) Implementation and Monitoring of Policy and Action Plan

The state has established a policy framework to provide services and protect the rights of the PWDs, however, the implementation of the policy lacks efficiency. Therefore, implementation must be improved for the comprehensive framework to be successful. The weak monitoring system is caused by several factors such as bureaucratic protocols,

a loose collaboration of inter-governmental agencies, limited budget and human resources, lack of transparency in the policy process, and the absence of an independent monitoring mechanism. The informants have pointed these factors and hope these can be improved for better policy-making and implementation for the PWDs.

> *"That is just like a plan, a plan that has no implementation. For me, almost 80%, 80% of what is in the plan is unfulfilled and not implemented. Yes, it is just a plan. And I think most government action plans are actually just a plan." (CSO5)*

> *"There is a lot of improvement compared to before… The questions now are implementing and monitoring. Implementation… We have good policy, even the law is not so bad, but need improvement… And, the policy and action plan must be fulfilled is not by the Ministry of Women, but by the government as a whole." (CN1)*

> *"...monitoring mechanism. If there is a testimonial mechanism or monitoring mechanism. We have failed, I think. Because not many agencies realised, aware of the existence of this policy and action plan." (CSO6)*

The the state's weakness in monitoring and enforcing the policy and legal framework can be seen based on two examples; the construction of buildings in fulfilling the Malaysian Standard 1184, and the distribution of car stickers for PWDs. Most of the buildings do not comply to the MS1184 standards and therefore, the state needs to monitor the efficiency of the policy.

> *"...whoever develop any building, they must comply with the MS1184, Malaysian Standard 1184, 2014… But some buildings we know that even though they checked but still not accessible. So that one still puzzles our outcome, after been checked by using the 1184, I mean approved by the Local Council, but yet still can't be used the OKU. May be the specification is not there, quite narrow and so on, maybe in terms of, who did the checking didn't do it properly. So, the engineers and also the architects need to be seriously look in this matter." (S8)*

Another example given by an informant is the illegal distribution of car stickers for PWDs where the stickers can be bought at some stationery shops in the country:

> *"That one (PWD sticker) is illegal. That one you are buying is illegal. Legal one you have to get it free of charge from JPJ, but you must produce all the documents. Your green card, your driving license. That's why only driving OKU are eligible to get. That one is illegal, they just bought it and stick." (S8)*

The state should establish an independent monitoring mechanism involving groups of PWDs to monitor the implementation of PWDs policies. Nonetheless, the state has established the NCPWDs as a platform for the PWDs to participate in the public policy process. In fact, the job scope of NCPWDs is more focused on the policy process at a macro level and it has only two meetings yearly.

(b) Finding Opportunities in Institutions: Utilising the Function of the Ministry of Women, Family and Community Development (MWFCD), Welfare Department (JKM) and the Department of Persons with Disabilities Development (JPOKU)

The MWFCD has been identified as the ministry that is in charge of PWDs. From the administrative perspective, the ministry formulates policies from a macro view. The Welfare Department under the MWFCD was established to look after the issues of PWDs operationally while JPOKU is a specific department under JKM to manage and implement all policies and action plans for PWDs.

Based on the interviews, CSOs of PWDs appreciate the opportunities provided by the state, particularly the responsible agencies such as the MWFCD, JKM, and JPOKU. However, the efficiency should still be improved as the current formal relationship still remains superficial. The informants acknowledge the initiatives done by the state from the ministry level to the department level, however, they believe that resources provide to departments should be increased for better implementation. At the same time, an informant believes that the complexity in the state organisation perhaps could be simplified for better and more efficient administration.

> *"There is a complex layer between the government agencies, and this is the problem… JKM has their problems too, budget problem."(CSO5)*

> *"We need to revamp and improve, all the way, the various program that have been implemented, for the improvement. For budget and other things, to review and monitor… The welfare Department is too busy... Like I said, JPOKU how*

many staffs there? Not many. So, you need to bring up the manpower, the expertise." (CN1)

(ii)   Poor Implementation of Policies and the Misuse of Facilities

In 2000, the Ministry of Housing and Local Government had issued the Guidelines and Planning Standards for PWDs. The guideline proposes a facility planning requirement to create a friendly and accessible environment for PWDs particularly in public spaces such as housing and recreation areas, business centres, and public transportation systems. This guideline has been distributed to the local authorities. However, several accidents have occurred due to poor implementation of policies. In March and November 2017, two PWDs (visually-impaired) were seriously injured after falling at the Monorail station in Kuala Lumpur. In the same year, there was an incident where a PWD was found dead after being hit by a train in Perlis, a northern state of Peninsular Malaysia.[56] These incidences show that the implementation of PWDs policies require further improvement in providing PWDs good quality of life and environment.

In line with the spirit of human rights, the state has been taking efforts in creating policies, acts, and guidelines to protect and promote the rights of PWDs. However, there are still ample room for improvement on the effectiveness and efficiencies of those policies. A public policy will fail if implemented poorly. The creation of policies for PWDs are to improve the wellbeing of the vulnerable group where their needs are special and they deserve basic human rights. Hence, the state should stake steps to improve their access to public amenities and services by re-evaluating and reformulating the state's policies.

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[56] http://www.utusan.com.my/rencana/utama/memelihara-hak-orang-kurang-upaya-1.599110. Retrieved on 26th April 2019.

In addition to creating safer and sustainable public spaces and services for the disabled community, the public needs to have a more positive perception towards them. Public awareness is needed to create a friendly environment for PWDs. Indeed, special facilities have been prepared for the disabled community who face difficulty in their daily commute which includes an allocation of parking lots, public toilets, lifts and ramps in multi-storey buildings, and a special lane for PWDs. However, cases of misuse of these facilities are rampant with people fighting over designated parking lots even though both parties are not PWDs,[57] the use special restrooms to avoid long queues as well as taking up seats in public transportation reserved for PWDs.

(iii)   Lack of Political Will

Political will is one of the key factors in making a policy effective. No policy will be achieved without political support. In the case of PWDs, the informants firmly say that there is a lack of political will when it comes to implementing effective policies. For instance, one of the informants claimed that there is no political will at all. The level of political will affecting the making of policies, ensuring the effectiveness of the PWDs Act 2008, implementation of the action plan, as well as the performance of the state at international human rights platforms such as the CRPD and UPR. Although there has been a change in the ruling party in 2018, which is before the second cycle of the UPR, the level of political will remains low. However, the informants still have hope that political support will increase by enlightening the politicians to understand more about the plight of PWDs in Malaysia.

> *"I am saying the political will is still our challenge to ensure the functioning of the act… my concern is the direction setup by the political side. If the political side not really understand, or even know nothing about the PWDs… my concern is leaders of the government, they have to seek proper knowledge to ensure the proper result can be achieved… No political will from both BN and PH.*

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[57] http://www.utusan.com.my/rencana/utama/kemudahan-oku-selalu-disalahgunakan-1.711742. Retrieved on 12th April 2019.

Government has changed, but the issues remain… That's our challenge for Malaysian people." (CSO6)

"What I want to say is, PH or BN, they are the same. No political will, not less, but no political will at all…" (CSO5)

"But from the information we have, from the input we got. There is no such thing." (CN)

The barriers and challenges faced by PWDs are interrelated and influence one another. These issues are separately handled by different state agencies. Therefore, the collaboration between state agencies is crucial to address the problems for the protection of the rights of PWDs.

5.4   CSOs in issues of PWDs in Malaysia

5.4.1   CSOs of PWDs

CSOs that actively fight for PWDs are mainly from the disabled community. As the stakeholders of the issues, they know the issues and problems very well. The establishment of Malaysian CSOs of PWDs is based on the needs of a specific group where they commonly focus on the specific issues faced by a particular group of PWDs. They provide services for their members and look after their welfare. Besides, they also collaborate with other PWDs and non- CSO PWDS and private companies (through Corporate Social Responsibility - CSR programmes) to provide assistance and services to members. Commonly, charity programmes such as fund-raising activities and other types of social services are organised for this purpose. For example, a local company organised a charity walk programme on 9 November 2019 to raise funds for the National Council for the Blind, Malaysia (NCBM) by purchasing 50 braille machines which are urgently needed by its members.[58] Thus, these CSO PWDs are commonly operate based on a self-help and charity-based concept.

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[58] http://www.mcmillanwoods.com/2019/10/17/mcm-100000-steps-challenge/. Retrieved on 27th November 2019.

Generally, CSOs of PWDs in Malaysia tend to operate conventionally based on the rules and regulations set by the state. Most of the active organisations have registered with the Registry of Society Malaysia (ROS). There are 11 categories of CSOs under the registration of ROS. The civil society organisations have been classified as one of the six sub-categories under the category of "Welfare" with the title of "Person with Disabilities - PWDs" for "those with physical disabilities. The other six sub-categories under "Welfare" are "Elderly", "Children", "Care Center", "Single Mother", and "Welfare for Members". As of 29th January 2020, there are 1,155 CSOs registered under the "PWDs" sub-category. The numbers of civil society organisations have been increasing over the years, making from all categories of groups of PWDs. Commonly, the PWDs CSOs operate based on a charity-based approach, where their aims and objectives are to provide support and assistance to the members who are facing the similar problems and challenges.

There are three levels of PWDs CSOs in Malaysia; the community-level, state-level as well as the national-level. Some of these CSOs work in isolation while some of them are well-established and active. Commonly, the state deals with CSOs that are established well on a national level that can galvanise support of the majority from the disabled community.

> *"If let's say, they have ten and use for one category, and each NGO demands for various kinds of issues. So, we can't solve the problem. That's why normally we will ask them to, please come with one voice. You all discuss among yourself then come to us, ok, this is what we need." (S8)*

CSOs of PWDs of the visually disabled are CSOs that participate actively in the policy-making process. The four national-level CSOs are the Malaysian Association for the Blind (MAB), National Council for the Blind Malaysia (NCBM), the Malaysian Islamic Vision Disability Association (PERTIS), and the Society for the Blind Malaysia. The prominent CSOs at the national-level are the Malaysia Federation of the Deaf (MFD)

as well as the Malaysian Spinal Cord Injuries Association (MASIA). This study identifies three prominent national-level CSOs that are active in the policy process to illustrate a brief picture of the participation of CSOs in Malaysia, namely the NCBM, MFD, as well as MASIA.

(i)   The National Council for the Blind, Malaysia (NCBM)

The National Council for the Blind, Malaysia (NCBM) was formed and registered in 1986 as a national co-ordinating body to provide the members of the organisation to enjoy equal opportunity in receiving education, rehabilitation, and employment services. To achieve the aim of the organisation, the NCBM also provides a platform for the representatives from around Malaysia to raise awareness and discuss about the works of education, employment, blindness prevention, and advocacy. Besides, this organisation also allocates financial support for specific projects including training for identified individuals. The NCBM is a well-known CSO of PWDs in Malaysia. The organisation is always invited by the state in policy-making discussions.

(ii)   The Malaysian Federation of the Deaf (MFD)

The Malaysian Federation of the Deaf (MFD) was established on 8 December 1987. It is a self-help organisation run by the Deaf itself. This organisation has 14 sub-organisations at the state level. The MFD has been given the mandate to represent the Deaf to fight for their rights and needs, and to provide services to ensure the community can live in harmony with others. The mission of the MFD is to create independent, competitive Deaf communities in education, socio-economic, and careers in line with Malaysia's goals. This organisation has received seven awards since 2001, including the United Nations

Malaysia Award in 2001, PWDs' Character Award (*Anugerah Tokoh Orang Kurang Upaya*) in 2002, and PWDs Special Award (*Anugerah Khas OKU*) in 2015.[59]

(iii)   The Malaysian Spinal Cord Injuries Association (MASIA)

The Malaysian Spinal Cord Injuries Association (MASIA) is another self-help CSO of PWDs to promote their integration and full participation in society. The organisation encourages its members to live a quality life and actively participate in society. As an active CSO, one of their achievements is when the representative of MASIA, Madam Batmavathi Krishnan was appointed as the Senator of the Upper House (Dewan Negara) from 2013 until 2016 for two terms (The tenure of appointment is a three-year term for a maximum of two terms, applicable to both federal and state appointments). The appointment of the representative of PWDs in the Upper House shows the willingness of the state to include PWDs in the policy-making process. Therefore, the existence of CSOs is essential to provide a platform for PWDs, the state, and the people in society to communicate and give positive influence in policy-making.

Diversity of CSOs of the Disabled Community

To practise the spirit of democracy, the state allows the establishment of CSO as long as it follows the rules and regulations set by the state, which is under the authority of the ROS. There are CSOs that represent the same group of PWDs at the national level such as the NCBM, MAB as well as PERTIS for the visually disabled, and this applies to other groups too. The operation of these organisations is based on different perspectives, including welfare, location (geographical), as well as religion-based. The diversity of these CSOs provide PWDs plenty of platform if they seek support and assistance.

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[59] https://www.mymfdeaf.org/anugerah. Retrieved on 30th November 2019.

There have also been new CSOs created because of the different opinions of the members of the organisation. The Malaysian Spinal Cord Injury Advocacy Association (MASAA) is a newly (established in 2018) established CSO that focuses mainly on advocacy work besides to provide the support and assistance to the related PWDs. Although they have almost similar aims with the Malaysian Spinal Cord Injuries Association (MASIA) and have some redundancy in terms of the membership of the organisation, they advocate more for PWDs to increase society's awareness. The establishment of a new organisation includes the different opinions among the members and to focus on different parts of work for the community. Despite the growing number of organisations, there have been no judgment or criticism against the different establishments as all organisations collaborate and work together toward one aim.

Charity-based CSOs

Although there is a huge number of PWD CSOs in Malaysia, these organisations are mainly focus on welfare-based programmes and activities to fulfil the needs and solving technical problems of the members. Nevertheless, the PWD CSOs do work together on certain programmes and circumstances to improve the welfare and other related rights for PWDs. The operation method of these CSOs has created a charity-based approach where their priorities are the individual basic needs for their members, including the physiological and safety needs, and connection to society (Figure 5.3). These three needs reflect the first three-levels of Maslow's Hierarchy of Needs, which are from the bottom: physiological needs, safety needs, as well as love and belonging. Maslow's Hierarchy of Needs highlight that there are five levels of needs in an individual's motivation, the fourth level is self-esteem and the highest level is self-actualisation. The need from the bottom must be fulfilled before individuals acquire the higher levels of needs.
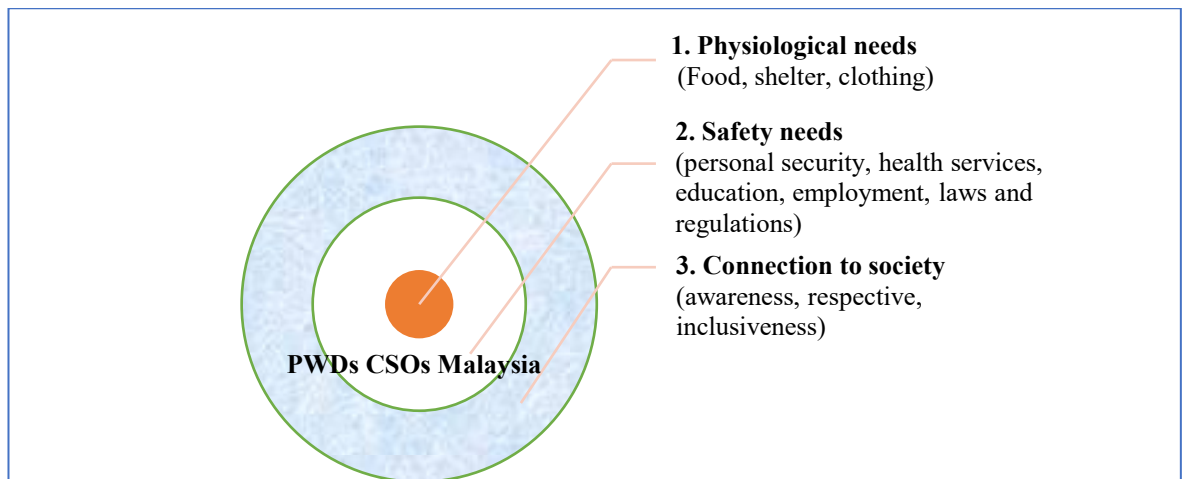
Figure 5.3: Focus of PWDs CSOs in Malaysia
(Source: Created by the researcher by modified from Maslow's Hierarchy of Needs)

In the case of PWD CSOs, the physiological needs for a PWD are the matters that enable the individual to survive such as food, shelter, and clothing. These are the essential needs for an individual, however, these basic needs are sometimes a challenge for a PWD to survive. While safety needs refer to personal security, health services, education, employment, and protection from danger where this is usually related to the establishment of law and regulations. PWD CSOs usually will obtain funds, donations, and other types of supports from the state and society for these purposes. The state, through a variety of policies, has provided support to CSOs, while other members of society such as the corporate sector provides support through community activities and corporate social responsibility (CSR) programmes.

As part of society, PWDs have to interact with other parties in society to enjoy a sense of belonging. A connection to society is referred to the interaction between the PWD with society including the environment. For someone to experience a sense of belonging in their community, they first would need to be respected as a human being without any prejudice, a basic foundation of these relationships as well as a way in preparing an inclusive environment in society.

5.4.2 From Charity-Based to Rights-Based CSOs

In line with the organisation's aims and objectives, PWD CSOs are commonly operated as a charity-based approach. Although these CSOs are active in society, they used to work in isolation as many small groups and were only concerned about the issues that they experience in their daily life. This is not surprising because the issues that they are concerned about are generally essential problems they need for them to survive such as food, accessibilities, facilities, health, education, and employment. Therefore, the CSOs of PWDs are not used to frame their challenges using a human rights paradigm. At the same time, the human rights organisations are less focused on the issues of PWDs. This is because there are fundamental issues/ problems that prioritise by these organisations which are related to their basic needs and living matters. Besides, the less exposure of PWDs CSOs from human rights perspective is also another factor that made these organisations given short shrift from the perspective of human rights.

> *"... these NGOs are head over heels for money. So, this causing they have no time to think about matters of awareness, human rights issues, and also the UPR ... Not all CSO leaders know, in details. Maybe only the Human Rights Committee knows, the others don't." (CSO5)*

> *"The disabled community is very distant to the question of human rights, also the UPR... So, there is a sense of isolation between the disabled community with the issue of human rights, and the human rights community with the issue of disability. It looks like there is a distance and a gap." (CSO5)*

However, the development of rights-based CSOs has evolved, especially since the ratification of the CRPD in 2010. The two prominent rights-based PWD CSOs are *OKU Bangkit* (Rise of PWDs) and *Harapan OKU* (Hope of PWDs). The establishment of *OKU Bangkit* in 2012 and *Harapan OKU* (Hope of PWDs) use a different approach in policy-making by underlying the concept of human rights in PWDs movement.

In 2012, a group of PWDs established a mass movement called *OKU Bangkit*. This was the first movement organised by PWDs to perform their activities in the concept of civil society and from the perspective of human rights. *OKU Bangkit* has participated in the Malaysian UPR process. On the other hand, *Harapan OKU* with its slogan "Make Our Rights Real" is an advocacy group that fights for the rights of PWDs in Malaysia. *Harapan OKU* has formed a special law reform group to study the amendment of the PWDs Act 2008. The finding of this law reform group has been presented to the representatives of the state as well as the other CSOs on the International Day of Persons with Disabilities on 5th December 2019. The theme of the National Forum was, "*National Forum on Achievement and Challenges: 10 years Post-ratification of the United Nations Convention on the Rights of Person with Disabilities (CRPD)*" reflects the main concern and desire of the CSOs, where the issue of PWDs should be viewed and understood from a rights-based concept.

Recently, the CSOs have been focusing on the implementation of the CRPD, the amendment of the PWDs Act 2008, and other possible methods to fight for their rights including the UPR. This has been interpreted as a symbolic movement of CSOs that is beginning to shift from a charity to a right-based concept. Although it does not involve all PWD CSOs in the shifting process but it is another growing movement in the country.

In reality, it is not necessary for all PWDs CSOs to use a right-based concept. Some of the PWDs CSOs, especially the local-level ones might remain working using the same module which is focusing on welfare and other basic needs. However, PWDs CSOs of the national-level might employ a rights-based concept because the knowledge, resources, networking as well as support network that they have would enable them to play a larger role fighting for the needs PWDs in Malaysia.

5.4.3 Interaction between the State and PWDs CSOs

As an official body, the state constantly emphasises the formality of CSOs. Officially, they prefer to deal with CSOs who are registered with the ROS. From the state's viewpoint, formality and systematic channels are important key points to show the representative of an organisation. Therefore, the CSOs tend to formalise their organisation as a step to access the door of the state. PWD CSOs understand that the registration makes their organisation formal and legal which allow their organisations to obtain support from the state, especially financial support. This is important because financial support is one of the main obstacles in organising an activity or even provide services to members.

According to literature, there are three types of relationships between state and CSOs in the policy process. In the case of Malaysia, it is found that PWD CSOs maintain a cooperative relationship with the state by developing a good reputation with the state by providing input and opinion to the state in policy-making. The networking built with the state as social capital for PWD CSOs allows them to participate in the making of policies and present the problems faced by the disabled community. This can be explained through the sharing of informant CSOs6 and four justifications that will be discussed below.

> *"The development is become better because more bodies, NGOs or CSOs been setup for the benefit of the disabled, so they, meaning more engagement been done among the PWDs group and the government agencies". (CSO6)*

(i) Involvement of PWD CSOs in Policy-making Mechanisms

Firstly, the involvement of PWD CSOs participate in policy-making mechanisms through engagement sessions, audit assessments, and discussion sessions organised by the state to assist the state in producing comprehensive laws and regulations that are inclusive to PWDs. They also play a role as the assessor in policy implementation and evaluation,

giving feedback to improve the effectiveness and efficiency of the policy. Informant CSOs 2 shared his experience as below:

"we are in opportunity for a wider engagement, a broader engagement." (CSO2)

In 2019, the CSOs were involved in the drafting of the 2020 Federal budget and audit the assessment of public transport by the Ministry of Transport. The involvement of CSOs in the formulation of Malaysia's PWD policies have been commendable, however, the state should increase the participation of CSOs to produce more efficient policies for PWDs. As PWDs, there are some circumstances that need to be shared by the stakeholders to highlight the particular policy. Having empathy is important to produce an efficient and valuable policy. The participation of PWD CSOs in policy-making is significant where the state listens and tries to improve the facilities and public services according to the comment of PWDs, as there are areas to improve.

(ii) Involvement of PWDs in Policy Implementation

Secondly, the state implements PWD policies by involving PWDs as trainees during the implementation process. The Disability Equality Training (DET) by the Welfare Department has appointed PWDs as trainers to run the programme. The DET is a comprehensive method for understanding issues related to disabilities based on the social model perspective. The DET was introduce in Malaysia in 2005 by the Japan International Cooperate Agency (JICA) in collaboration with the Welfare Department to develop a range of services to support the participation of PWDs in society. The DET aims to change the public's perception of the disability. This is a programme open for all interested people including the PWDs and non-PWDs. The state arranges the PWDs as the trainer for this programme.

(iii)   Co-organise Events and Activities

Thirdly, the state and CSOs co-organised activities to discuss the issue of PWDs and for a specific celebration. These include the National PWDs Day, and the International Day of Person with Disabilities. In 2019, there were two days of events in celebrating the International Day of PWDs, when the state organised a National Forum, discussion, and dialogue between the state and CSOs. These programmes are organised to create awareness in society about the plight of PWDs. The inclusion of PWDs in the organisation of these events would increase their sense of participation as well as to produce a more relevant activity for the PWD community.

(iv)   Establishment of National Council of Person with Disabilities (NCPWDs)

The NCPWDs is an official body to discuss the issues and policies of PWDs which is chaired by the Minister of MWFCD. The members of this council comprise ten experts who are familiar with the issues of PWDs, while another ten members are representatives from the other state agencies. It is one of the most important platforms for the disabled community to deliver their concerns to the state. At the same time, the state also shares their ideas and limitations in the policy process and seeks advice from the representatives. Both policy-makers and the representatives of the disabled community communicate and work together on this platform. Informant CSO6 shared his experience on the NCPWDs as below:

> *"... the existence of National Council for the Disabled, and their effectiveness or whether they are fulfilling the function under the act." (CSO6)*

Cooperation between the State and PWD CSOs

PWD CSOs cooperate with the state by attending the discussion sessions that the state organises, mainly by the MWFCD, and other ministries including the MOH, the MOE, and the MOF to discuss specific issues. Although PWD CSOs believe that the state should

perform better in protecting the rights PWDs in the country, they choose to contribute in a moderate way by co-operating with the state through the official channel offered by the state, and sometimes co-organise activities with the state. Besides the organisation of activities and attending discussion sessions, the CSOs also release press statements and share their opinions on the concerning issues of PWDs through social media platforms such as Facebook and Instagram. The participation of PWD CSOs is connected to the community through general platforms that can access other groups of the society. The knowledge, passion, and initiative by CSOs and individuals are acknowledged by the state.

> *"Our NGOs are actually playing a very important role. Because they are giving a lot of issues, points for us to improve our services. Most of the NGOs, they always complain, we will take up. We take it in a positive manner." (S8)*

The interaction between the state and CSOs is a state-driven approach where the CSOs behave based on the rules set by the state. However, both the state and CSOs are aware of their role and responsibilities where they have the common aim to improve the quality of life of PWDs in Malaysia in fulfilling their needs and protecting their rights. It is a symbiotic relationship.

> *"That's why we established our own NGO, so, our own NGO, we are force to follow the rules of ROS, the Registrar of Society. We have to follow the rules of Registrar of Society, we have to move properly within the regulation. We understand we have the responsibility to each other." (CSO7)*

Although the CSOs are in the view that the state could do more and should do better in protecting the rights of PWDs, they are generally satisfied with the state's performance and initiatives, and are positive to cooperate and support the state in the issue of PWDs. The PWDs CSOs maintain a cooperative relationship with the state concering PWDs and they act as a third party to monitor the state in the protection of the rights of PWDs in Malaysia. This relationship has extended to the handling of related international mechanism process including the CRPD and the UPR.

5.5   Issues of PWDs in the UPR

5.5.1   UPR Recommendations on the Issues of PWDs

There are four recommendations in the first cycle of the UPR; six recommendations in the second cycle, and 18 recommendations in the third cycle (Appendix H). A total number of 29 recommendations have been proposed by UN Member States in the three cycles of the UPR from 2009 to 2018. Out of the 29 recommendations, 26 recommendations have been accepted by the government of Malaysia.

In the first cycle of the UPR, four recommendations that were proposed by Turkey, Belarus, Sri Lanka, and Morocco suggest the Malaysian state to continue their efforts in protecting and supporting the rights and welfare of PWDs. These recommendations were basically agreed upon the effort and initiative taken by the Malaysian state on the rights of PWDs and children with disabilities. These recommendations are in line with the state's current policies. Therefore, the recommendations have been received positively and eventually, accepted by the Malaysian state and being accepted.

Despite Malaysia developing the PWDs Act in 2008, the state refused to accept the recommendation by Finland that requests the state to ratify the CRPD in the first cycle of the UPR in 2009. This was the only recommendation that was not accepted by the Malaysian state, even when the state became the signatory of the CRPD in 2008. Policy-making or public decision-making is commonly a rigorous process with comprehensive consideration and deliberation. The state ratified the CRPD two years after the establishment of the PWDs Act 2008 with two reservations[60] in 2010. The state's decision-making in the first UPR process on the issue of PWDs, particularly the

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[60] Reservations on article 15 Freedom from torture or cruel, inhuman or degrading treatment or punishment; and article 18 Liberty if movement and nationality.

ratification of CRPD shows that the state inclines to prepare itself well in terms of the current policies and regulations before committing to any international obligations.

Four years later, six recommendations were proposed in the second cycle of the UPR in 2013. Again, the issues that were raised are related to the education system, children with disabilities, improving accessibilities, allocating more funding for the protection of the rights of PWDs. Although there are recommendations urging the state to corporate with international bodies by submitting overdue reports on CEDAW and CRPD, it has been accepted because these recommendations focused on the administrative perspective (to submit report). All of these recommendations are in line with the direction of the state in the protection of PWDs and therefore, they did not request the state to change their current policies. Hence, all six recommendations haves been accepted by the Malaysian state.

However, in 2018, two of 18 recommendations were not accepted by the state in the third cycle of the UPR. Mexico recommended Malaysia to sign and ratify the Optional Protocol to the CRPD which allows individuals and groups to complain to the CRPD Committee when there is a breach of basic rights of the PWDs while Turkey proposed for the state to withdraw its reservations from CRPD. By understanding the consideration of the state in the UPR, it is not difficult to understand why those recommendations were not accepted by the state. The recommendations contained the direction of policy and might bring changes to the current policies. Moreover, the recommendations also interfere with the Federal Constitution. Unfortunately, these two recommendations strengthen the rights of PWDs from the human rights perspective. Tah and Mokhtar (2016) claimed that the reservation of the articles should be removed for better progress of human rights development in Malaysia.

5.5.2 Significance of the UPR in the Making of Policies on PWDs

Currently, the Malaysian state has developed a comprehensive legal framework on the PWDs policy system. The institutional legal framework of PWDs consists of the establishment of the related rules and regulations, which are the PWDs Act 2008, the NCPWDs, National Policy of PWDs, and PWDs Action Plan. Administratively, the state has established a specific department to handle the issue of PWDs which is the JPOKU under the administration of the MWCFD. The implementation of policies and plans is administratively handled by JPOKU, while the making of related policies is under the responsibility of the MWFCD. At the international level, the state has ratified the UN CRPD, accept the review of the UPR, and celebrate the International Day for PWDs.

As an Asian country, the Malaysian state has developed the PWDs Action Plan based on the goals of the Incheon Strategy.[61] The state also has a protocol to conduct an engagement session with CSOs to reconcile ad-hoc issues or to obtain input for other policies, such as the annual national budget, implementing audits for public facilities, and other related issues such as the National Human Rights Action Plan (NHRAP). CSOs of PWDs are aware of the opportunities and platforms prepared by the state in the policy-making process.

> *"... Then, about the PWDs Act itself. That are among issues we are trying to bring up through UPR process as well." (CSO6)*

It is the responsibility of the state to engage with PWD CSOs on the issues of PWDs as well as the making and implementation of policies. The formal institution of policy-making has been developed in the country particularly when the state started to ratify the UNCRPD. Although the disabled society is urging the state to amend the PWDs

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[61] The Incheon strategy provides the Asian and Pacific region, and the world, with the first set of regionally agreed disability-inclusive development goals. It comprises 10 goals, 27 targets and 62 indicators, including ensuring disability-inclusive disaster risk reduction and management.
Retrieved from https://www.preventionweb.net/publications/view/34904 on 14th January 2020.

Act 2008 for better protection, the establishment of the act is a regulative legislation to protect the rights of PWDs. Moreover, the disabled society expect the implementation of PWD policies to be improved to increase its effectiveness. The issues of PWDs have been recognised as a social obligation and it should be solved appropriately and rationally based on the priority of the issues and the state's available resources.

The state shows its willingness in taking responsibility for the rights of PWDs by the symbiotic collaboration between ministries and agencies, such as the MWFCD, the main ministry responsible for the issues of PWDs, and the agencies under the ministry, JKM as well as JPOKU. These agencies have direct connection with PWDs where these shared experiences have made them understand the issues of PWDs better. The MWFCD has a clear understanding of the plight of PWDs and the obstacles they face because of their experiences in communicating and handling the issues of PWDs directly. This highlights that having engagement sessions is a good platform for both the state and PWDs CSOs to communicate for a better solution in protecting the rights of PWDs.

Nonetheless, there have been experiences where PWDs faced obstacles caused by the administrative setting, including the changing of policies as well as the ruling political party. One of the experiences was the tax exemption, the Goods and Services Tax (GST) for basic support equipment for the disabled community; the application had been approved after the submission by PWD CSOs. However, the application for tax exemption was requested to be resubmitted when the GST was replaced by the Sales and Service Tax (SST) on 1 June 2018, when the newly elected government, the *Pakatan Harapan* (PH) was the new ruling party. Other exemptions for PWDs include medical

charge exception, road tax, fee for identity document replacement, tax relief, excise duty, home phone lines, as well as national zoo tickets.[62]

Due to the various challenge that the disabled community faces, the state has developed a mechanism for PWD CSOs to participate in the policy-making process, with a comprehensive structure in the policy process cycle from its formation until the implementation of the policy. Moreover, the complete administrative structure has been established by putting the MWFCD as the focal point and JPOKU acts as the agency to manage the administrative works and implement PWDs policies. At the same time, the state enhances legal protection by developing the PWDs Act 2008, Disabled Persons Policy, and the PWDs Action Plan. These three policies are interrelated and need to be reviewed based on the needs of the PWDs. This is happening where the PWD CSOs urge the state to review the act for improvement. CSOs of PWDs tend to use the existing mechanism provided by the state as a platform to participate in policy-making and focus less on the UPR due to the reasons below:

(i)   Existing policy-making mechanism

The current mechanism allows CSOs to share their opinion to the state. These organisations tend to discuss within the spaces that have been provided by playing their role in the current policy-making mechanism. They are comfortable with the current relationship with the state, although there are still spaces to improve, particularly the interaction with other state agencies and monitoring of policy implementation. Nevertheless, the current mechanism provides adequate spaces for PWD CSOs to deliver their opinion.

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[62] https://www.malaysia.gov.my/portal/content/30332. Retrieved on 13th January 2020.

(ii)   The focus of PWDs CSOs (Charity-based vs Rights-based CSOs)

Most of the active PWD CSOs employ a charity-based approach which their focus is mainly on the basic needs and problems faced by the community itself. These CSOs focus on solving the problems in their everyday life by building a bridge for the state to understand the disabled community's expectation and to enhance the efficiency of policy implementation. Although there are new established rights-based CSOs, such as *OKU Bangkit* and *Harapan OKU*, these CSOs are progressing slowly compared to the charity-based PWD CSOs. *OKU Bangkit* is currently less active due to the seasonal UPR process, hence, the organisation's leaders and members have regularly focus on other CSOs. However, *Harapan OKU* maintains active and focuses their advocacy mainly on the review and amendment of the PWDs Act 2008.

(iii)   UPR recommendations on issues of PWDs

Almost all the UPR recommendations on PWDs have been accepted by the state. There are only 3 out of 29 recommendations that were not accepted by the state in the three cycles of the UPR. Most of the debates during the UPR process were on the recommendations related to controversial issues such as civil and political rights, religious issues, LGBT issues, and international obligations.

(iv)   Lack of exposure to the UPR

UPR as a state-driven mechanism, involves mainly the action of the state has made this human rights review mechanism less familiar in the PWDs community comparing with the other international human rights conventions. The state will be reviewed every 4.5 years. The review process mainly involves the state and emphasises less on local CSOs. Therefore, the UPR has been understood as an international mechanism that is quite out of reach from the PWD community.

5.6   PWDs CSOs and the State in the Malaysian UPR

Malaysia has undergone three cycles of the UPR for the past ten years (2009 - 2018). The platform has opened its doors to CSOs to participate in the review process in various methods including by submitting the stakeholder's report, attending the review session, and courtesy meetings with the representatives of the UPR Working Group. However, the issues of PWDs have attracted limited participation from CSOs in the Malaysian UPR compared to other issues such as civil and political rights, women, and children.

Apparently, the key CSOs in the issues of PWDs are PWDs CSOs where these CSOs understand the problems and issues of PWDs very well. According to the participation of CSOs in the three cycles the UPR, CSOs of PWDs have raised their concerns and issues through the stakeholder's report in the second and third cycles of the UPR through different CSO coalitions, which are COMANGO and MACSA. Nevertheless, the CSOs do not participate actively in the UPR process where they are only attached under these two coalitions. Therefore, the significance of the UPR in the forming policies on PWDs, and how CSOs influence the public policy process in Malaysia is worth studying for a better understanding of the participation of CSOs in policy-making in Malaysia. Figure 5.4 illustrates how PWD CSOs interact with the state in the UPR process by explaining the significance of the UPR regarding PWDs, the strategies employed by the CSOs, key factors that affect the relationship with the state, and the state's considerations in accepting the UPR recommendations of PWDs.

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│            PWDs CSOs                 │
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│          1.   Significance of UPR – less                 │
│  (i)  Existing policy-making mechanism                   │
│  (ii) Focus of PWDs CSOs (Charity-based vs Rights-based) │
│  (iii) UPR recommendations on issues of PWDs             │
│  (iv) Lack of exposure to the UPR                        │
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│          2.   Strategies employed by CSOs                │
│  (i)  Stakeholder's report                               │
│  (ii) Engagement session                                 │
│  (iii) Attending UPR process at Geneva                   │
│  (iv) Good networking with the state                     │
│  (v)  Work with SUHAKAM                                   │
│  (vi)  Networking with politicians                       │
│  (vii) Social media (official website, Facebook)         │
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│     3.   Key factors affecting relationship with the     │
│          state                                           │
│  (i)  Political and culture                              │
│       • seldom relate to political perspective           │
│       • general understanding: vulnerable                │
│       • lack of human rights values                      │
│  (ii) Organisation imperative and Functional             │
│       • support members (PWDs)                           │
│       • deliver expectation to the state                 │
│       • aim: in line with the state                      │
│       • supportive to the state in policy process        │
│  (iii) Behavioural and attitudinal                       │
│       • Registered CSOs                                   │
│       • Utilise communication platforms by the state     │
│       • Cooperative in policy process                    │
│       • PWDs activists: cooperative                      │
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│  4.   State's considerations in accepting UPR            │
│       recommendations                                    │
│  (i)  Rational perspective                               │
│       • National interest                                │
│       • State's readiness                                │
│  (ii) Institutional perspective                          │
│       • Public policy institutions and inter-agencies    │
│         collaboration                                    │
│       • Consensus decision-making                        │
│       • Legal perspective                                │
│  (iii) Political perspective                             │
│       • Less role                                        │
│  (iv) Cultural perspective                               │
│       • Shared values and understanding - state and      │
│         society                                          │
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│              State                   │
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Figure 5.4: PWDs CSOs-state in the UPR process

5.6.1 Cooperative Relationship between CSOs of PWDs and the State in the UPR Process

There are two CSOs that are involved in the Malaysian UPR process, *OKU Bangkit*, and PERTIS. These CSOs have join different CSOs coalitions in the UPR process, the COMANGO and MACSA.

(i) *OKU Bangkit* in COMANGO

The founders of *OKU Bangkit* are are active in the human rights movement in Malaysia with various backgrounds. The establishment of *OKU Bangkit* is supported by human rights activists, CSOs, and professional groups such as the Malaysian Bar Council. The Malaysian Bar council has been actively assisting the development the PWDs movement, particularly when focusing on the human rights aspect. The official announcement of the *OKU Bangkit* establishment was held at the office of the Bar Council. Before the establishment of *OKU* Bangkit, the Bar Council had organised seminars to discuss the Persons with Disabilities Act 2008.

COMANGO is the first coalition of domestic CSOs that have been participating since the first cycle of the UPR in 2009. The organisation has opened doors to CSOs that are interested to participate in the UPR process. *OKU Bangkit* was invited by COMANGO to contribute to the stakeholders' report to the UPR Working Group This took place after the co-organisation was conducted by the Bar Council which is one of the leading members of COMANGO. The collaboration between the Bar Council and *OKU Bangkit* in the awareness campaign in 2012 has later led to the joining of *OKU Bangkit* in COMANGO, which is a way of entering the UPR process. *OKU Bangkit* has strengthened the issues of the PWDs Act 2008, public transportation system, financial support, and increased representation of PWDs in the public policy system. They

contributed four recommendations in the second cycle of UPR as illustrated in Table 5.2. These issues cover the basic needs of PWDs, protection of their rights by the, and their contribution to the public policy process.

In 2018, they remained focus on enhancing the issues of amendments of PWDs Act 2008, public transportation, financial aid, political participation and representation of PWDs in the third cycle of the UPR. In addition, they also urge the state to submit a country report to the Committee of the CRPD and make the report open to the public. The recommendations have complemented the memorandum of COMANGO in concerning comprehensive issues in Malaysia for the second cycle of the UPR in 2013. The recommendations of *OKU Bangkit* seem to be considered by the state where the representative of PWDs was appointed as the Senator in the Upper House. YB Bathmawathi Krishnan, was appointed as the Senator from 18 November 2013.[63]

(ii)   The Malaysian Islamic Vision Disability Association (PERTIS) in MACSA

The Malaysian Islamic Vision Disability Association (PERTIS) is a religion-based CSO that active in the policy-making. PERTIS is a charity-based CSO established in 1996 with the aim to support the visually disabled community by organising learning programmes and other peer support activities. A few members of PERTIS were involved in *OKU Bangkit* in 2012. However, some of them had decided to subscribe to a traditional approach where they feel the structured and charity-based CSO is more efficient for them to participate in the public decision-making including the UPR process. PERTIS joined MACSA since its establishment in 2018. Similar to the role of *OKU Bangkit* in COMANGO, PERTIS has contributed to the issues of PWDs in MACSA's stakeholders report.

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[63] YB Bathmawati Krishnan served for two terms of appointments. Her appointment was finished on 17th November 2019.

In the third cycle of the UPR, PERTIS raised the issues on job and subsistence, purchasing insurance and properties as well as the misuse of basic facilities for PWDs. PERTIS has proposed six recommendations on the issues of PWDs through MACSA's report as shown in Table 5.2.

Table 5.2: Recommendations proposed by OKU Bangkit and PERTIS in the second and third cycle of UPR in 2013 and 2018.

OKU Bangkit (COMANGO)	PERTIS (MACSA)
1. Amend the PWDs Act to provide sanctions for non-compliance with its provisions.	1. Ensure full compliance with CRPD and the implementation of policies relating to disabled people.
2. Make it a condition that their carriers must be disable friendly when granting licences to operators of public transportation.	2. Withdraw Malaysia's reservation on article 15 CRPD and to ratify the Optional Protocol.
3. Increase the amount of financial support to PWDs.	3. Amend articles 8(2) and 12(1) of the FC to eliminate discrimination based in disability.
4. Appoint at least one PWD to the Senate.[64]	4. Amend Act 685 [65] to include provisions on sanctions and enforcement.
5. Submit and make public the government's report to the CRPD Committee.[66]	5. Enact a special legislation to regulate against discrimination of disabled people in workplace.
-	6. Enforce Employment Quota Circular and to extend its application to private sector.

The issues highlighted by *OKU Bangkit* and PERTIS are illustrated in Figure 5.5. These issues are interrelated and indicate the priorities of these organisations. Public transportation, financial aid, and employment issues are challenges related to the basic needs of the PWDs community. Political representation and appointment to the Senate reflect the desire of PWD CSOs to participate in the public policy system. The withdrawal of reservation in the CRPD, submission of the country report to the CRPD Committee,

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[64] Only in the second cycle of UPR in 2013.

[65] PWDs Act 2008.

[66] Only in the third cycle of UPR.

and the amendment of FC for the betterment of PWDs are their concerns from the perspective of human rights.
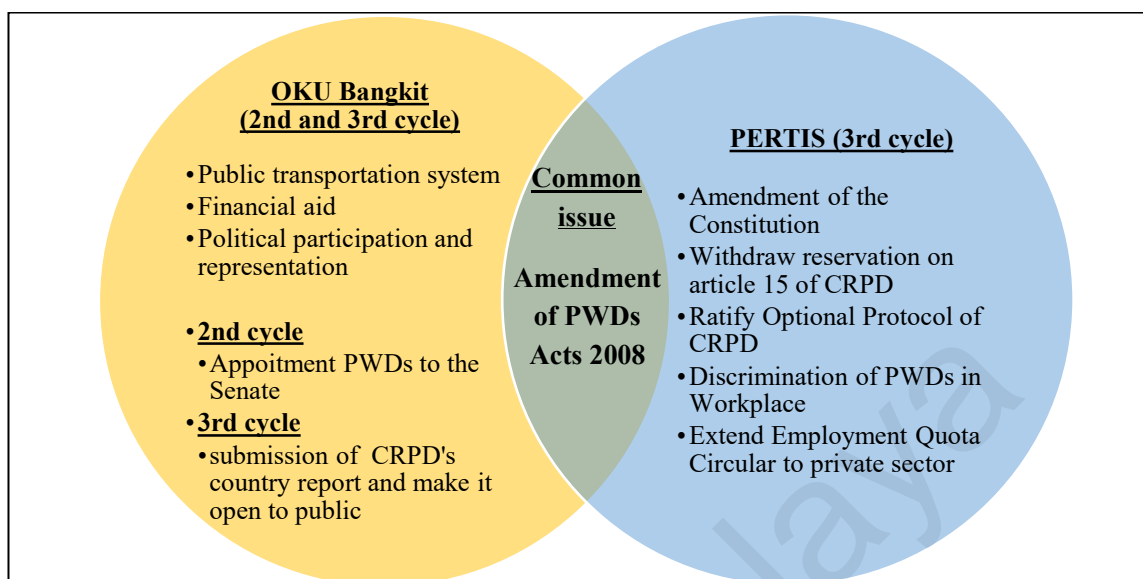
Figure 5.5: Issues raised by OKU Bangkit and PERTIS in the second and third cycle of UPR *(Source: Created by the researcher)*

The only common issue shared by *OKU Bangkit* and PERTIS is the amendment on the PWDs Act 2008. Both of the organisations proposed the state to amend the PWDs Act 2008, making the act more relevant with enforcement power to protect the rights of PWDs. The issues raised by are partly from the barriers and challenges faced by PWDs in Malaysia. Since there is very limited space in the UPR process due to a huge number of human rights issues that have been raised, the CSOs of PWDs could only propose the most critical issues where it will bring positive impact to the community. The issues of PWDs are interrelated. Therefore, they prioritise critical issues such as the amendment of the PWDs Act 2008 and the initiative to protect the rights of PWDs.

5.6.2 Strategies Employed by CSOs in the UPR

CSOs participate in the UPR process through seven strategies that include the submission of the stakeholder's report, engaging with the state, attending UPR sessions at Geneva, developing good networking with government institutions, working with SUHAKAM, as

well as through social media and other digital platforms (Figure 5.6). All these strategies are supported by specific knowledge and skills about the issue of PWD and a thorough understanding of the reviewing process in the UPR. Moreover, the working culture of the state are essential for effective and efficient participation.
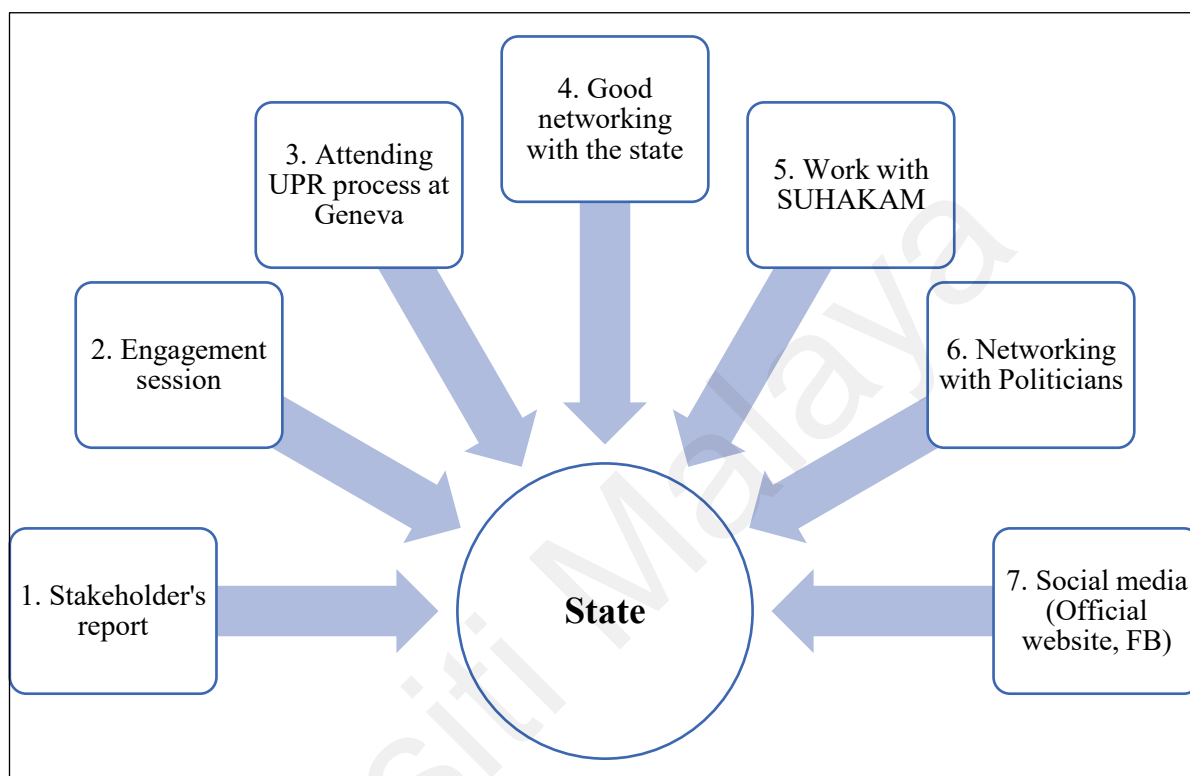
Figure 5.6: Strategies employed by CSOs in participating in the UPR process
(Source: Created based on the findings in 5.6.3 by the researcher)

(i)   Submission of Stakeholder's Report

The submission of the stakeholder's report is one of the traditional practices of CSOs in delivering their views and opinions in the UPR. This is one of the initiatives that can be taken by CSOs actively to inform the state, the UPR Working Group, and the international community about their hopes from the human rights perspective. *OKU Bangkit* and PERTIS have separately contributed their expectations on the issues of PWDs through COMANGO and MACSA. However, none of the memorandums have been submitted independently by the PWDs CSOs for the three cycles of the UPR. The expectations of PWDs CSOs are only part of the many memorandums combined by the coalition responsible which are the COMANGO and MACSA. In other words, these CSOs are less

active in participating in the UPR process. Although submission of memorandums has indeed happened in the UPR process, the memorandums are submitted to the UPR Working Group rather than directly to the state.

(ii) Engagement Sessions by the State

Engagement sessions organised by the state are the only platform for CSOs to directly discuss with the representatives of the state. However, these engagements sessions are limited and there are too many issues to be discussed. Therefore, the sessions mainly discuss the implementation of accepted recommendations as well as the recommendations that not accepted by the state in the UPR.

(iii) Attending a Review Session in Geneva

The visits to Geneva are one of the methods for CSOs deliver their expectations and concerns to the UPR Working Group and UN State Members. The representatives of COMANGO attend every UPR review process in Geneva since the first cycle in 2009. The representatives of MuslimUPRo and MACSA, on the other hand, have separately attended the review sessions in the second and third cycles in 2013 and 2018. Besides, the CSOs have managed to meet the Permanent Representative of Malaysia to the UN, Dato' Amram Mohamed Zin when attending the third cycle of the UPR in November 2018. Therefore, the visit to Geneva gave an opportunity for CSOs to develop and strengthen their networking at the international level with the UN Working Group and other State Members. However, financial support is needed for the visits.

(iv) Good Networking with the State (Government Institutions)

PWDs CSOs have developed good networking and maintain good relations with the state through their participation in policy-making, particularly with government institutions

responsible for the issues of PWDs. However, some CSOs involved in the UPR process have conflict with other government agencies on other issues. One of the cases that arose was when the Ministry of Home Affairs (MOHA) announced that COMANGO is an unregistered organisation, but this was a matter of technical procedure where it did not give substantive negative effects to the relationship between COMANGO and government agencies such as the MWFCD and MOFA.

(v) Work with SUHAKAM

SUHAKAM has organised round table discussion sessions with CSOs in the UPR process. As an NHRI, SUHAKAM is responsible to understand the issues faced by both the state and CSOs in the UPR process. CSOs understand their capacity in delivering their concerns to SUHAKAM where it is another platform to channel their opinion in the consideration of the state in the UPR process.

(vi) Engagement with Politicians

Politicians play a crucial role in policy-making in Malaysia. CSOs, human rights activists and PWDs CSOs have networked with politicians from different parties. PWDs CSOs have been provided several platforms to engage with ministers including the engagement sessions, NCPWDs, and other special discussion sessions based on the needs of the ministry.

CSOs have managed to meet different ministers before the third cycle of the UPR. COMANGO had a discussion with the Minister of Foreign Affairs on 15th August 2018[67] while MACSA met the Minister of Prime Minister Department on 23rd October 2018. The discussions with ministers took place after the changing of the ruling party on 8th May

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[67] http://www.bernama.com/en/news.php?id=1632848. Retrieved on 15th January 2020.

2018. This is because CSOs maintain a good relationship with the respected politicians before the change of the government.

(vii) Social Media and Other Digital Platforms

Social media and other digital platforms such as the official websites are the main advocacy methods to spread the information globally. Facebook is the common social media platform used by CSOs to share their plight and opinions on the UPR. The state, CSOs, as well as the UN Working Group have utilised the function of social media and other digital platforms to disseminate information in the UPR process.

5.6.3 Key Factors Shaping the Relationship between PWDs CSOs and the State in the UPR

The attitude and strategies employed by PWDs CSOs in the UPR process show that the CSOs maintain a cooperative relationship with the state in the policy process, including the UPR process. As mentioned by Lewis (2013) the cooperative relationship between CSOs and the state with a can be explained from three aspects, (1) political culture; (2) organisational imperatives and functional coincidence; and (3) behavioural and attitudinal aspects. Therefore, the key factors that influence the relationship between PWDs CSOs and the state are explained based on these three aspects.

> *"Yes. So far, we are maintaining very good relationship. Maybe one or two NGOs will be like a bit harsh to us. But doesn't matter, we understand their problems as well. Because we need to understand all the issues." (S8)*

(i) Politics and Culture

The state and PWDs CSOs are aware that the disabled community is vulnerable and affirmative action is needed to improve the quality of life of this group. This value of understanding shapes the pattern of interaction that the state is dominant in the policy process while the CSOs and other stakeholders provide feedback to improve the particular

policy within the platform provided by the state. The state creates these platforms by having the engagement sessions, establishment of the NCPWDs, and co-organised events with PWDs CSOs. All these activities are driven by the state, while PWDs CSOs cooperate accordingly. Both the organisations and the state accept a political culture where the elements of a semi-authoritarian structure remain in the PWDs policy process.

Apart from the general understanding on how the Malaysian state and CSOs collaborate, the UPR process provides the human rights perspective in the policy process. As a human right mechanism, the basic value of those recommendations is based on universal human rights which emphasise the basic rights of PWDs that should be protected in public policy. However, there is still some areas to be explored by both the state and PWDs CSOs in realising the spirit of universal human rights in the policy process. This is because the existing relationship is stable and maintained by these two parties for a period of time. Most of the CSOs, including the newly developed ones do not focus on the UPR process because they prefer to access the state through the traditional way. This can be seen from the cooperation between PWDs CSOs and the state in several platforms provided by the state in the policy process, including the establishment of the NCPWDs, training and coaching programs provided by the state as well as other activities that co-organised by these 2 parties including the program of International Day of Disabled Person.

Nevertheless, there is a small group of CSOs that believe that the value of human rights should be included in the policy process. They form a movement, take part in the human rights-based activities, participate in the UPR process by joining the CSOs coalition, and contribute input into the stakeholder's report to the UPR Working Group. This group of PWDs CSOs is just a small step in pushing the awareness of human rights

in the policy process. At the same time, the state, through the UPR process is becoming more aware of the basic human rights in the policy process. Therefore, there is a possibility to add the human rights elements in the PWDs policy through the UPR process.

(ii) Organisational Imperatives and Functional Coincidence

The establishment of CSOs of the disabled community aims to provide support to the members and to deliver their voice to the state in the policy process. The existence of these CSOs have important functions that support the state in handling the issues of PWDs. They provide the state information about the current situation of the disabled community as well as their expectations.

> *"Our NGOs, like 2 weeks back we had a dialogue session with the Deputy Minister, they give their points, their arguments, they said how come this assistance is not enough for the PWDs. We need to increase it… education still not… even though zero reject policy, but still having problems to go to the universities, colleges, and schools. So, that kind of method is still there. They will complain to us as a platform."*
> *(S8)*

Since there is a huge number of CSOs of PWDs, the state collaborates with selected prominent CSOs that lead the disabled community. The state recognises their involvement which contributes to the policy process in handling the issues of PWDs. Besides contributing in the policy-making process, PWDs CSOs also monitor the state's policy implementation. The state has accepted their participation and invite them to participate in policy process. This practise has been implemented by several ministry and agencies accordingly.

> *"Our NGOs are actually playing a very important role. Because they are giving a lot of issues, points for us to improve our services. Most of the NGOs, they always complain, we will take up. We take it in a positive manner." (S8)*

> *"… we advocate in terms of, for example, the audit access. For the audit access, Ministry of Transport involved us... For recently we have a forum, Focus Group Discussion about election… inclusive election. How to increase the election process, make it inclusive." (CSO8)*

As a stakeholder, PWDs CSOs contribute to the policy process by providing relevant information and supporting the state by cooperating in the implementation of related policies.

(iii)   Behavioural and Attitudinal Aspects

PWDs CSOs maintain a cooperative attitude when dealing with the state. All prominent CSOs have been officially registered with the Registry of Society (ROS), and they follow the rules set by the state in the policy process. With several communication platforms and financial support provided by the state, PWDs CSOs cooperate with the state. They accept the setting by the state in the policy-making mechanism and collaborate in the policy process with a moderate attitude.

> *"That is much more acceptable for the government. We know how the government responses. When we try to create conflict with them, that is not very good, that is not very… Yes, sometimes we have to understand their limitations… The agencies, actually they have their own capacity how to change. So, when they understand, they can work on their own capacity how to change society to be more inclusive with the PWDs. They have their own scopes of power. We don't need shout at the minister only. We just can approach the officers, department…" (CSO7)*

OKU Bangkit tries to push a different way in the policy process. It is a mass movement instead of a conventional organisation. The individuals of this group try to contribute differently instead of being involved in the policy mechanism of the state. Subscribing to the concept of human rights, they expect the state to protect the rights of PWDs from a universal human rights perspective, instead of purely on the aspect of social welfare. This organisation has participated in the UPR by joining COMANGO. They contribute by providing input for the coalition in preparing the stakeholder's report of the UPR. However, this is the way CSOs contribute to the policy process using a different approach, but the attitude of these activists maintains cooperative, and this behaviour is accepted by the state.

5.6.4 The State's Considerations in Accepting the UPR Recommendations on the Issue of PWDs

There are fundamental principles and primary references referred by the state in public policy-making and in considering the UPR recommendations. The state acknowledges its obligation in the UPR by taking the effort to fulfil its responsibility in the mechanism. However, there are several considerations by the state in accepting the UPR recommendations. This section analyses the state's considerations in accepting the UPR recommendations of the issues from four theoretical perspectives proposed by Bekkers et al. (2017) which are the (1) rational (2) institutional (3) political and (4) cultural perspectives.

(i) Rational Perspective

(a) National Interest

National interest is the first priority in any policy-making as well as in accepting the UPR recommendations. This includes the social-economic and national security perspectives. The state is aware of its rights and authority in the UPR process where they have the rights to decline/reject the recommendations based on certain considerations.

> *"... national interest is the highest consideration. Why we should ratify something if it might make us take actions that could affect our country's security and interest... national interest, on the whole, socioeconomic, political, security. If the recommendations, for example, suggest to abolish the preventive law, we cannot accept it because the security interest must come first. But if it recommends changing this law for a little bit of space, then this is something we can accept as long as it doesn't affect the importance of security."* (S7)

> *"... because this is our sovereign right. So, that is the concern, human right versus sovereign right versus..."* (S5)

(b)   State's Readiness

On the other hand, the state's readiness refers to the preparation of the state to implement and fulfil the recommendations once it has been accepted. In the first cycle of the UPR, the recommendation of ratification of the CRPD was not accepted. Although the state became a signatory of the CRPD in 2008, the PWDs Act was gazetted on 24 January 2008. At the same time, the state also refers to current policies, and the possibility of policy implementation while considering the UPR recommendations.

> *"... generally, you accept international standards. But, in implementation, you go for each issue, some issues, and if you fell cannot, you don't feel sorry that you couldn't accept it."(S3)*

The issue of PWDs is a shared concern by the state and society with shared values and understanding. These concerns are reflected in the UPR process where the state has accepted a high percentage of recommendations on the issue of PWDs.

(ii)   Institutional Perspective

(a)   State Institutions and Inter-agency Collaboration

The state established several public institutions in handling the issues of PWDs as shown in Figure 5.1 (Institutional framework of PWDs in Malaysia). The MWFCD leads the PWDs policy process with the assistance of the other related ministers. Moreover, JPOKU has been established to implement policies and to run technical matters on the PWDs issue. Although the UPR is coordinated by the MOFA, the acceptance of recommendations on the issue of PWDs is still under the responsibility of the MWFCD. The state's distribution of responsibilities between the state agencies on the issues of PWDs in the UPR process has been clearly stated and implemented effectively by the state. The collaboration among the state agencies is practised by the state in the UPR process.

> *"... even though we have our Policy Division under the Ministry, usually they will consult with us for all the inputs. Because we are under the operation side. So, when*

come to the policy side, normally we will be together to discuss the issue and so on. Because some policies need to be consulted with all the stakeholders and also with our clients. So, we will do that before come out with the policy… Inter-agencies collaboration." (S8)

(b) Decision-making Consensus

Although the state agencies play different roles and responsibilities in handling the issues of PWDs, the public decision-making on this has implemented a consensus to integrate the efficiency and effectiveness of policies. The agencies are aware of their power and responsibilities. When it comes to the issue of PWDs, the MWFCD is the main actor in the decision-making process, while the other agencies will support by providing resources and advice according to the current policies, effective acts, as well as execution of the decision. In the UPR process, the state agencies have the shared understanding that the MOFA represents the state as a whole at the external level, while the decisions in accepting the recommendations of the issue of PWDs have been made internally with the lead of MWFCD.

> *"These are some of the things that I look in terms of preparation for the UPR. Leadership, leadership is important. Collaboration is important. Having the right structure for people to be involved in producing the report is also important, equally important."* (S4)

> *"Sometimes even though we have our standing more to accept it but we are also come to a consensus with the suggestion by MOFA and AG, then we have to obey, we have to follow. Their statement is more to the country's point of view. So, we have to come to a consensus, that is very important."* (S8)

(c) Legal Perspective

Besides the comprehensive public institution, the informants also mentioned the state's consideration from the legal perspective. The acceptance of the UPR recommendations always ties to the state's current policy. Therefore, the effective laws, as well as the Federal Constitution (FC) are the foundation of the state in the UPR process. The premier reference in the consideration is the FC which is the supreme law in the country. The laws refer to civil law and the Syariah law that apply in different contexts in the country. The

state will make sure the accepted UPR recommendations do not contradict the existing policy and laws, including the other statutes, bills, and official legislation. It is not possible for the state to accept a recommendation that contradicts with the FC and the effective laws. This includes the Syariah Law as one of the enforcement laws in Malaysia that policymakers need to consider during the UPR process.

> *"The Federation Constitution to me is really paramount in our country. That one cannot allow others to say our Federation Constitution doesn't mean anything. That's why when we make a reservation, we say we will not uplift because it is against our Federal Constitutions and also our current policies…" (S4)*

> *"But if the suggestion or comment by the UPR or any international body is against our Federal Constitution, surely, we are not going to entertain that. Whatever it is, we are still in line with our Federal Constitution and also our national policy." (S8)*

(iii) Political Perspective

Preparation in the UPR process is mainly handled by the state officer instead of the ministers who are politicians. Decision-making in the UPR process is guided by current policies and the state's legal framework. Therefore, the political perspective plays less of a role in the UPR process. The appointment of the representative of PWDs as the Senator of the Upper House of Parliament has been treated as the state's way to invite PWDs into the policy directly. The public-decision, however, never obtains any objection from the political perspective. This situation happens in the UPR process as well. The informants mentioned less about the political aspects of the interview sessions.

> *"How PWDs participated in our political process?... we have a senator, PWD senator." (S8)*

> *"We don't look at political background." (S5)*

(iv)   Cultural Perspective

As the less controversial issue, the PWDs related recommendations receive the widest tolerance by the state compared to the other issues. This can be seen from the percentage of accepted recommendations. Apart from the recommendations that do not align with the legal aspects and the state's readiness, all of the recommendations have been accepted by the state in the three cycles of the UPR. The state as well as the society have a shared understanding and values of the UPR recommendations. The acceptance of these recommendations indicates that these recommendations are indeed improving the rights of PWDs.

5.7   Discussion: Social Capital in the Cooperative CSOs-state Relationship in the UPR

PWDs CSOs cooperate well with the state in the public policy process. This can be seen from the involvement of the CSOs in the policy process and the participation of activists in state institutions such as the NCPWDs. As the stakeholder and the end-user of the policy, the CSOs are capable to provide the state adequate knowledge and information related to the disabled community. The experiences of PWDs CSOs' involvement in policies that related to the PWDs have created a relationship between PWDs CSOs and the state in the policy process. The involvement of PWDs CSOs has become a norm in the policy-making process, this is due to the intention of the state in producing public policy to fulfil the need of the PWDs community. Furthermore, the network among the PWDs CSOs has strengthened the influence of these organisations in providing the state some relevant information to improve the policy for the good of the PWDs community. Therefore, the involvement of PWDs CSOs in NCPWDs and other official bodies i.e. the working committee under the related state's agencies is a common situation in the policy process. This practice shows how PWDs CSOs influence in the policy-making process.

The UPR complements the state's approaches in solving PWDs' issues in Malaysia, due to the comprehensive policy-making mechanism developed by the state where the CSOs can participate in the process. The UPR unleashed its function in raising awareness of rights-based policy on the issues of PWDs to both the state and CSOs as proposed by Khoo et al. (2012) to translate policies into rights-based actions. As mentioned by Jesudason (1995), civil society must be considered historically and institutionally to regulate its democratising potential. Historically, CSOs play a role in the policy process by contributing related information and expectations from the grassroots. The participation of CSOs in the UPR process (specifically *OKU Bangkit* and PERTIS), is a step forward for CSOs in progressing to the perspective of human rights. Figure 5.7 shows how the CSOs interact with the state through the legal and institutional frameworks, and international platforms to contribute to the issues of PWDs. The contribution of the CSOs can be seen from their involvement in these platforms provided by the state.
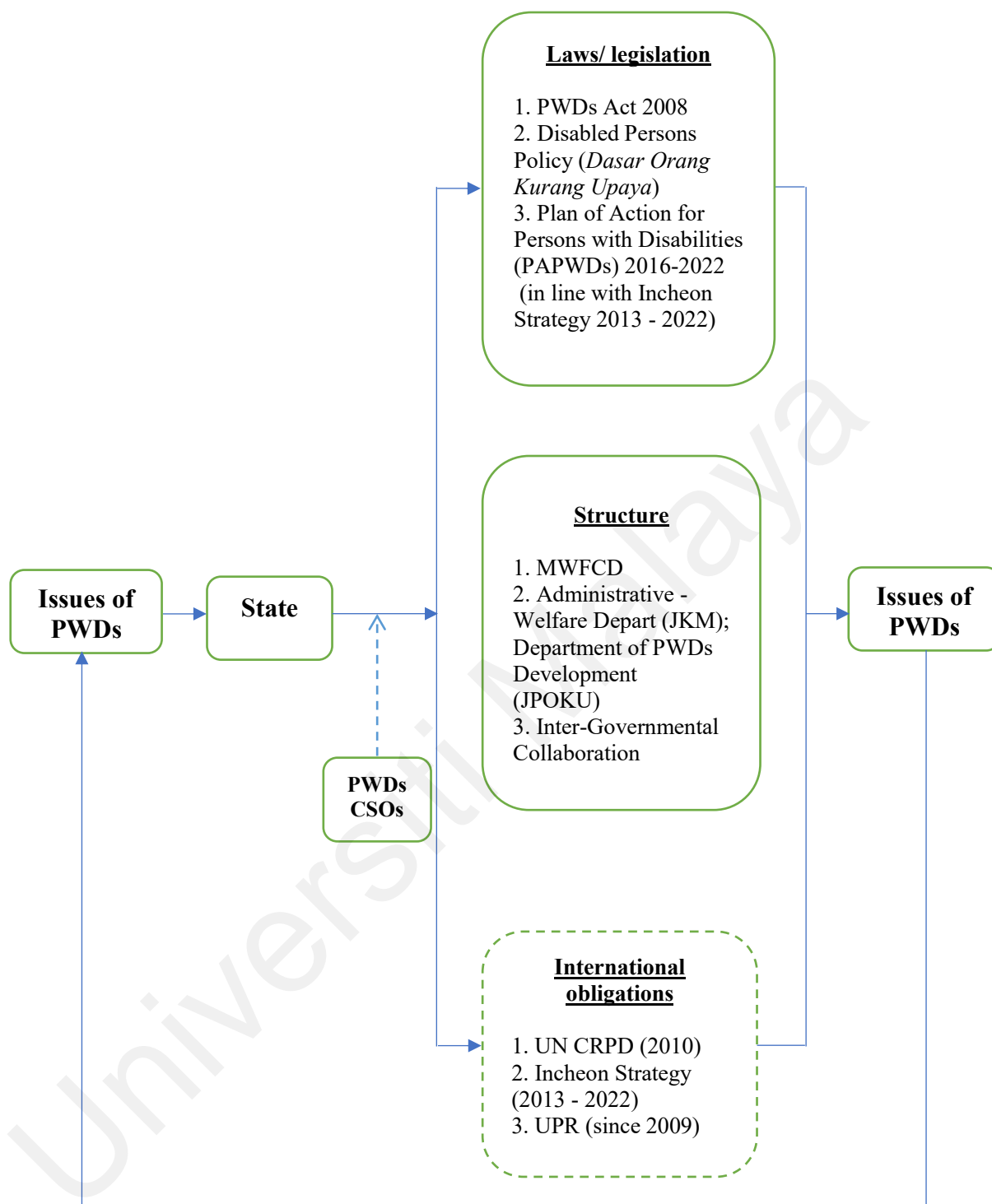
Figure 5.7: CSOs and State on the Issues of PWDs *(Source: Created by the researcher)*

The general acceptance of the state on the issue of PWDs has made the CSOs adjust themselves to cooperate with the state in a passive way. Indeed, they appreciate the platforms provided by the state in the policy process and especially the CSOs that receive financial support from the state, but these CSOs use a different approach from the concept

of GONGOs as explained by Tan and Bishan (1994). With the deep understanding of the needs of PWDs community and networking that has been created among themselves, the CSOs are able to provide the state useful information, and monitor the implementation of policy by giving feedback. Although there were requirements to increase the level and chances to participate in the policy process, they choose to communicate with the state patiently. This situation has shaped a cooperative relation between the CSOs and the state. Therefore, the type of relationship has established a social capital approach supported by the elements of trust, norms, and network. The interaction remains cooperative in the international mechanism such as the CRPD and UPR as shown in Figure 5.8.
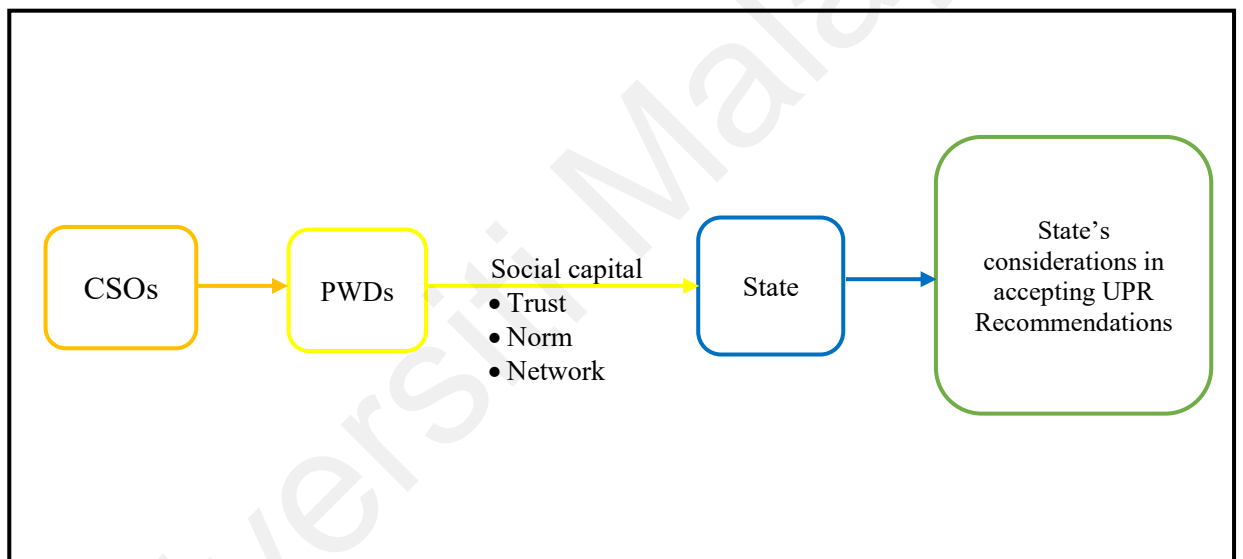
Figure 5.8: Social capital in PWDs CSOs-state relation (*Source: Created by the researcher*)

The participation of CSOs in the UPR is built on the member's knowledge of the mechanism, the particular issues, and their skills in preparing the UPR report. PWDs CSOs have received a high level of trust from the state in improving PWDs policies. The contributions of PWDs CSOs have been recognised by the state, where the function of the CSOs is to support the state's action in providing a better service and improve the quality of policy services. Although there are complaints about the drafting and

implementation of policies, the state interprets the intention of PWDs CSOs in the policy process positively.

The establishment of coalitions of CSOs is an associated norm of reciprocity of the knowledge and skill of its members which are the core values of CSOs in the UPR process. CSOs utilise their networking in the UPR process, where this is the social capital for the groups to participate significantly in the UPR. The elements of the cooperative relationship between PWDs CSOs and the state have made the voice of PWDs CSOs being easier to be listened to by the state. The elements started with "trust", where the state believes in PWDs CSOs in providing some other information regarding the issues of PWDs community in the country. The second element, "norm" makes the PWDs policy process being discussed in a way where the representatives from the PWDs CSOs have been involved in the policy process regularly. And, "network" has been established between PWDs CSOs and the state along throughout the engagement session and other activities in the policy process.

Although the CSOs participate through COMANGO and MACSA, their opinions are still shared with the state and the UPR Working Group. The participation of CSOs in the UPR process is significant in advocating for the rights of PWDs on behalf of the state and society. However, the main focus of the CSOs is to influence PWDs in the current policy-making system developed by the state. In this process, the state is the dominant player in the relationship and CSOs are willing to corporate with the state within the policy-making mechanism.

CSOs of PWDs practise the four pathways to influence the state's consideration in the UPR which is proposed by Weiss (2004). They access the political society through the politicians by practising a top-down influence method. They also work closely with the state in policy advocacy and deliver their concern and problem through the platform prepared by the state. Some individuals, especially CSO leaders are active in the human rights movement and have good networking and resources (by the individual or group particular human rights activist) and they participate in comprehensive system reform through the making of legislation.

CSOs of PWDs are aware of the key factors leading to the formation of a relationship with the state, and the context of the issues which is more receptive by the state and society. They accept and follow the rules and norms set by the state. As a vulnerable group, they emphasise this advantage and cooperate with the state. The interaction between CSOs of PWDs in Malaysia contradicts Weiss's (2005) explanation that the CSOs-state is often complex and ambivalent. In Malaysia, the CSOs-state relation is more conservative on the issue of PWDs. Therefore, the CSOs-state relationship is divergent in a different context of issues in Malaysia's public policy. As an international human rights mechanism, the issues of PWDs remain to receive wider acceptance from the state because the decision-making in the UPR is directly influenced by the PWDs policies.

Both CSOs and the state didn't mention of the ASEAN Disability Forum (ADF) during the interview sessions. ADF is a network composed by Organisation of Persons with Disabilities (DPOs) of the ASEAN region to advocate for disability inclusive policy formulation and implementation. ADF works in all areas, aiming to the main stream and the needs of people with Disabilities to enter their perspectives in the policy framework

of ASEAN. It is a platform of action to bring the voice of DPOs at grassroots level to policy-makers and to connect people to the policy makers who live in its member countries[68]. As mentioned above, most of the PWDs CSOs are mainly focus on the platforms that prepared by the state. Therefore, the international platforms such as ADF as well as the UPR play as a platform that access PWDs CSOs to the international and regional communities which would able to make them share the information and activities with others.

5.8 Summary

This research asserts the importance of social capital perspective to understand the relationship between PWDs CSOs and the state in the policy process through their participation in the process of the UPR. The state has developed an institutional framework in handling the issues of PWDs, which are the PWDs Act 2008, Disabled Persons Policy (*Dasar Orang Kurang Upaya*), Plan of Action for Persons with Disabilities (PAPWDs) 2016-2022, and the establishment of the NCPWDs. SUHAKAM still deals with PWDs but with less focus compared to other critical and controversial issues of human rights.

The existence of PWDs is a natural and well-known circumstance as they are part of society. Challenges faced by the PWDs are kind of tamed problems as people in society have a high certainty of knowledge about the PWDs community, and the state, as well as members of society, have high consensus on benchmarks on this issue. However, there are still weaknesses of the state's administrative and policy implementations on the issues of PWDs where in actuality, all of these issues can be improved by increasing the efficiency in public awareness and public policy process. To increase the involvement

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[68] https://www.aseandisabilityforum.com/about. Retrieved on 31st December 2021.

and influence of participation in the policy process, CSOs can start to set a consensus of goals with the state in the policy process to solve the problems or reduce the challenges faced by the PWD community. This includes CSOs of the PWDS and other CSOs that are concerned about the plight of the disabled community. This type of goal-medium relationship contributes to increasing the efficiency of the policy process for PWDs.

The majority of the PWDs CSOs focus on their own problems which are to solve the practical problems for a better quality of life, while very little attention has been paid to a macro level such as from the perspective of human rights and collaboration at the international platform. However, there are CSOs that have started to view their issues from a human rights perspective, which brings to the growing of rights-based CSOs from charity-based CSOs. As an issue that is very dependent on the policy-maker, society and environment, the issues of PWDs are often being well received by the state and society. However, the responsibility of the state should not only satisfy their basic needs but also their rights from the human rights perspective. As a comprehensive international human rights mechanism, the UPR is essential to highlight the issues of PWDs on a global platform.

With useful knowledge, skills, and networking, the interaction between PWDs CSOs and the state has shaped a cooperative relationship under the social capital approach. The key factors that shape this relationship are mainly based on the three perspectives proposed by Lewis (2013), political and culture, organisation imperative and functional, and behavioural and attitudinal aspects. The state's consideration in accepting the UPR recommendations are mainly based on rational, institutional, and cultural perspectives, while the political perspectives play a less dominant role compared to the three perspectives. The state is committed to developing a human rights-based policy in the

country, based on the principles and considerations of the state. The participation of CSOs in the UPR process has successfully advocated the state, the Malaysian society, and the international community on the problems and difficulties faced by the disabled community. They have several platforms to participate in the policy-making process, but the UPR provides them with another international platform where it can become another force in monitoring the state's protection of the rights of PWDs.

CHAPTER 6

LESBIAN, GAY, BISEXUAL AND TRANSGENDER (LGBT)

IN THE MALAYSIAN UPR

6.1   Introduction

This chapter has six main sections. It primarily explains the movement of the lesbian, gay, bisexual and transgender (LGBT) community by illustrating the current situation of the LGBT community, the existing legal, and institutional framework, as well as the problems they faced. In response to those trends, this chapter further discusses the initiative of LGBT CSOs in the policy process and how they participate in the UPR process. This chapter also examines the significance of the UPR in the issue of LGBT, and the strategies employed by LGBT CSOs in the UPR. Lastly, the researcher illuminates the relationship between LGBT CSOs and the state by using the counter-hegemony approach at the end of the chapter.

The chapter starts with an overview background of the LGBT community in Malaysia by defining the terms of LGBT; legal framework and state's policies on the issues of LGBT as well as SUHAKAM's concern on this issue. The second section identifies the problems faced by LGBT persons in Malaysia. While the third section analyses the movement of the community and the development of LGBT CSOs in Malaysia. The fourth part explains the UPR recommendations on the issue of LGBT and the significance of the UPR on the issues of LGBT. The fifth section focuses on the interaction between LGBT CSOs and the state in the UPR process by explaining the strategies employed by the CSOs in the UPR; key factors that shape the relationship between LGBT CSOs and the state in the UPR process; and the state's considerations on

the issue of LGBT in the UPR process. The last section illuminates how LGBT CSOs use the counter-hegemony approach when interacting with the state. Lastly, the summary provides an overview of the participation of LGBT CSOs in the UPR and the role of the UPR in the issue of LGBT as a whole.

6.2 Lesbian, Gay, Bisexual and Transgender (LGBT) in Malaysia: An Overview

6.2.1 Background

Malaysia, as a plural society with a complex social fabric, where religion, traditional cultural and moral values have influenced the perspective of the Malaysian people on the issues of LGBT. In Malaysia, religion is still considered as one of the main guidelines in people's lives. The interpretation of religions toward LGBT individuals is different from each other. Islam, as the official religion of Malaysia where Muslims comprise the majority in the country, this community has its own beliefs and principles on the behaviour of sexual orientation, same-sex attraction (SSA), homosexual, bisexual, and transgender people. These behaviours are generally not accepted by the Muslim community according to their learning and Islamic worldview. Official efforts have been taken to rectify the behaviour of LGBT in the Muslim community These agencies such as the Department of Islamic Development Malaysia (JAKIM), the National Fatwa[69] Council of Malaysia (*Majlis Fatwa Kebangsaan Malaysia*), Federal Territory Islamic Religious Department (JAWI) as well as the Islamic Departments in all 13 states are actively addressing the issue of Muslim LGBTs in Malaysia.

In Malaysia, according to statistics released by JAKIM, there have been 310,000 LGBT individuals in the country as of October 2018. The number of LBGT individuals in Malaysia has been increasing yearly where there were only 173,000 LGBT individuals

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[69] An edict issued by a Muslim religious authority. According to Malaysian law, fatwas approved by the *Sultan* in each state are published in the gazette and take on the force of Sharia law.

registered in the country back in 2013.[70] The department also expressed concern about the growing number of transgenders from 10,000 people in 1998 to 30,000 in 2018, a 200% increase in 20 years. In an attempt to realign the sexual orientation of these individuals, JAKIM has conducted 1,450 rehabilitation cases for LGBT.[71] However, it is worth noting that the statistics given above are not representative of the whole LGBT community in Malaysia as they do not include non-Muslims. Therefore, the total number of LGBT in Malaysia is expected to be more than the figures cited above.

Apart from the Muslim community, homosexuality is still a taboo in the other conservative non-Muslim communities. This is due to the uncommon circumstances that happen in the conservative society. This might be seen through the discrimination of LGBT people in healthcare, employment, education as well as family violence and rejection (Human Rights Watch, 2014). Besides, there was an incident where Reverend Ou Yang Wen Feng, a Malaysian gay minister same-sex marriage to his African-American partner in New York has been condemned by several Christian and Muslim leaders (Shah, 2013). However, as a country with a majority of Muslims and with a dual legal system (civil law and sharia law), the issue of LGBT has constantly been highlighted by the Muslim community and the authority from the federal and the state level.

The LGBT community is not just a Malaysian phenomenon, it is indeed a global phenomenon. Surveys in Western cultures find, on average, that about 93.2% of men and 86.8% of women identify as completely heterosexual, and 2% of men and 0.5% of women as completely homosexual (Bailey et al., 2016). In 2011, an estimated 3.5% of adults in the US identify as LGB, and an estimated 0.3% of adults are transgender. This implies

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[70] http://www.astroawani.com/berita-malaysia/jumlah-golongan-homoseksual-transgender-meningkat-setiap-tahun-jakim-189589. Retrieved on 2nd January 2019.
[71] http://www.astroawani.com/berita-malaysia/jumlah-golongan-homoseksual-transgender-meningkat-setiap-tahun-jakim-189589. Retrieved on 6th March 2019.

that there are approximately nine million LGBT Americans. [72] In 2017, the LGBT community estimated to rises to 4.5%. However, there is no estimation of the total population of LGBT globally. [73]

Despite the growing number of LGBT individuals, the subject of sexual orientation and gender identity (SOGI) which is closely associated with the acronym LGBT has always garnered attention and mixed responses from the Malaysian community. The traditional moral values of a community accept the genders and sexual orientation of male and female, whereas other combinations - female and female (lesbian), male and male (gay) and any person with both female and male sexual orientations (bisexual) - are generally not accepted (Human Rights Watch (HRW), 2014). Procedurally, a person is identified as either female or male based on their physical identification at birth. A conflict occurs when the person is more comfortable expressing himself or herself as a gender other than the gender assigned at birth. These individuals are commonly transgender persons. The Malaysian state defines a transgender person as a person whose gender identity differs from their sex at birth. The term "Mak Nyah" is commonly used in the Malaysian context (Ministry of Health Malaysia (MOH), 2015).

As the LGBT community is not openly accepted in Malaysian society, LGBT individuals have been subject to name-calling. They are frequently remarked as "*songsang,*" which means inverted, deviant, abnormal in the Malay language, "flawed" and "sinful" (Goh, 2017). Other labels or terms frequently used by society to refer to this group are tabulated and explained in Table 6.1. These terminologies often originate from the Malay, Chinese, Tamil, and other local languages as well as the culture in Malaysia. However, some of these terms describe the LGBT group without prejudice. For example,

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[72] https://williamsinstitute.law.ucla.edu/publications/how-many-people-lgbt/. Retrieved on 20th December 2020.
[73] https://news.gallup.com/poll/234863/estimate-lgbt-population-rises.aspx. Retrieved on 20th December 2020.

"*Mak Nyah*" is the term describing transgender female with the original meaning of "Madam Trans" according to the culture of Baba and Nyonya, while "*Thirunangai*" originates from the Tamil word "*thiru*" which means "Mister" and "*nangai*" means "female", where this term was first introduced by the Government of Tamil Nadu. Besides, the term "*Aravani*" is a combination of "*ara*" (half) and "*vani*" (female) which means "half male and half female."[74]

Table 6.1: Terminology of Lesbian, Gay, Transgender and other people who behave differently from their gender assigned at birth in Malaysia

Group	Terms	Description
Lesbian	*Pengkid*[75], tomboy.	Physical identity is female, behave like male, homosexual.
	lesbo, lessy[76].	Physical identity and gender identity are female, but like female, homosexual.
Gay	*Kunyit*[77]	Homosexual
Transgender female	*Mak nyah*[78](since 1987), Ah Kwa [79], Thirunangai[80].	Physical identity is male, gender identity as female.
Others	*Sotong*[81]	Male who behaves like female in action.
	Bapok, pondan[82], tranny, shemale.	Male who behaves like female, and like to dress as a female (cross-dresser, transvestite).

6.2.2 Legal Framework and State's Policy on the Issues of LGBT

Article 8 of the Federal Constitution of Malaysia protects its citizens from discrimination, however, this protection so far, does not fall on the LGBT individuals who are Malaysian citizens. However, Malaysian Muslims face more prohibitions in addition to the laws stipulated in the Federal Constitution. For instance, both the civil and Syariah Laws prohibit the activities of LGBT. As for non-Muslim LGBTs or those who perform any homosexual activity is codified in Section 377 or any offences provided under the Penal

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[74] https://www.malaymail.com/news/opinion/2013/11/20/transgender-bukan-bapok/565885. Retrieved on 21st March 2019.
[75] Pengkid became a localized synonym for a masculine-looking Malay-Muslim lesbian who is outlawed in Malaysia through Islamic discourses (Wong, 2012b).
[76] https://www.urbandictionary.com/define.php?term=Lessy. Retrieved on 25th November 2021.
[77] This is a Malay word, means "turmeric".
[78] https://www.malaymail.com/news/opinion/2013/11/20/transgender-bukan-bapok/565885. Retrieved on 21st March 2019. This word originally from culture of Baba and Nyonya at Malacca.
[79] This is a Chinese dialect – Hokkein word.
[80] Tamil Language means "Mr. Female".
[81] This a Malay word, means "squid".
[82] This is a Malay word.

Code [Act 574]. Section 377 (Unnatural Offences) comprise four sub-sections as stated below:

- Section 377A. Carnal intercourse against the order of nature.

- Section 377B. Punishment for committing carnal intercourse against the order of nature.

- Section 377C. Committing carnal intercourse against the order of nature without consent, etc.

- Section 377D. Outrages on decency.

On the other hand, Muslim LGBTs are governed by Syariah Criminal Offenses (Federal Territories) Act 1997 [Act 559] (*Akta Kesalahan Jenayah Syariah (Wilayah-Wilayah Persekutuan) 1997*). Several states in Malaysia have instated Shariah laws which applies to all Muslims, criminalising same-sex (male/male and female/female) sexual acts with up to three years imprisonment and whipping. The Shariah Penal law in Pulau Pinang confers penalties for sodomy (*Liwat*) and lesbian relations (*Musahaqah*) with fines of RM5,000, three years imprisonment, and six lashes of the whip. All these penalties can be combined.[83] One of the implemented cases included pleading guilty to breaking Islamic laws, sentenced to six strokes of the cane each, and a fine of RM3,300 on 2 women for having lesbian sex at Terengganu.[84]

The *Mukhayyam*

Among the factors that contribute to the changes in sexual orientation and identity are (1) nurture, the way a child has been grown up; (2) traumatic history, including sexual abuse that one has experienced; (3) bullying or being mocked by the others; (4) peer influence;

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[83] https://76crimes.com/anti-lgbt-laws-malaysia/. Retrieved on 19th March 2019.
[84] https://www.straitstimes.com/asia/se-asia/two-malaysian-women-caned-under-islamic-law-for-lesbian-sex. Retrieved on 22nd March 2019.

and (5) influence from social media. Informant S9 and CSO4 shared their point of view as below.

> *"For us, this is a factor of nurture, the meaning of the way he/she grew up; the way he/she was educated by family members, mom and dad. So, to some extent, it affects how his/her mindset or the way he/she thinks. There may be a tendency towards him/her saying he looks like… which is the opposite of the original gender." (S9)*

> *"He becomes transgender because the nature at that time forces him to become transgender. The family doesn't care, he has a bad experience, he has been sexually abused." (CSO4)*

> *"Now we are in the middle of an issue, there are transgender icons who are so brave, openly promote their lifestyle on social media… we are thinking, how are we going to overcome this issue, because they give influence, influencer. They are the influencers." (S9)*

"A man posing as a woman" is stated as a crime under the Syariah law. Also, cross-dressing such as "a man with female dressing or a woman with a man dressing" is an offence under the Syariah law and they might be arrested and charged under the law. However, JAKIM and the State Religious Department tend to offer rehabilitation programmes such as *Mukhayyam* to the related individuals. According to JAKIM, *Mukhayyam* is a voluntary religion-based rehabilitation programme offered to LGBT individuals who are interested. Islamic CSOs such as the International Women's Alliance for Family Institution and Quality Education (WAFIQ) play their role by assisting the implementation of the programme. Informant CSO4 and S9 share their experience of the programme.

> *"I believe that transgender is a matter of faith, which can be dealt with faith voluntarily… we see improvement and how they embrace faith. So, what we are doing, we are just giving them the opportunity. There is no force." (CSO4)*

> *"… more to awareness, spirituality, getting to know yourself, then there is health awareness on HIV issues, risky behaviours. We also have career motivation and guidance… and, we also have outdoor activities." (S9)*

However, the human rights defenders and LGBT CSOs have a different view on this programme by stating that *Mukhayyam* is "state-sponsored violence[85]." In March 2019, Numan Afifi, a Malaysian human rights defender intervened the UPR Adoption Reports at the Human Rights Council by emphasising the implementation of state-sponsored anti-LGBT programmes. A statement endorsed by 41 human rights CSOs has listed out the related programme which include (1) JAKIM's voluntary treatment and rehabilitation programme *('Ilaj Wa Syifa'); (2) Mukhayyam*; (3) seminar and programme; (4) outreach activities; (5) JAKIM's e-book "*Panduan Hijrah Diri*" as well as (5) a 5-year action plan (Action Plan to address Social Ills such as LGBT Behaviour).[86]

Despite the accusations made by the LGBT CSOs, the state and Islamic CSOs deny this censure and stress that *Mukhayyam* is not a conventional conversion therapy but a voluntary religion-based rehabilitation programme.

> *"... says that all these religious approaches are crime, what they called, state-sponsored violence, which we really disagree… people who are asking us to stop religious approaches, and we don't find evidence that this is harmful… Ours are not conversion therapy and I told them many times." (CSO4)*

The *Mukhayyam* programme receives different views from Islamic CSOs and LGBT CSOs, but these two parties have never sat down and discussed this issue rationally. The state, as the main organiser of the *Mukhayyam* programme, has yet to meet the LGBT CSOs to discuss issues that concern both parties. Therefore, these organisations keep arguing through their official websites, and social media platforms. This situation prolongs the debate without addressing the problem.

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[85] https://www.thesundaily.my/local/lgbt-activist-asked-to-withdraw-statement-against-mukhayyam-programme-FG796007. Retrieve on 26th December 2021.
[86] https://www.queerlapis.com/evidence-of-state-sponsored-violence-and-discrimination-against-lgbt-persons-in-malaysia/. Retrieve on 31st July 2020.

6.2.3   SUHAKAM and Issues of LGBT

As an NHRI, SUHAKAM is responsive to all human rights-related issues in Malaysia. However, the Commission prioritises only certain issues of human rights due to its limited resources. The annual report of SUHAKAM started to highlight the issue of LGBTs in 2010 due to the frequent complaints they receive about the rights of LGBT persons being violated. Bullying and intimidation often happen due to their gender and sexual orientation. Standing based on human rights and fundamental liberties, SUHAKAM is committed to the issues faced by this vulnerable group.

> *"The Commission stands firm that their human rights and fundamental liberties must be upheld and respected at all times. There can be no justification in harming them, no matter how different they are or how unacceptable their LGBT-related actions are to the majority."* (SUHAKAM, 2010)

The issues of LGBT that had been raised between 2010 until 2012 include discrimination, brutality, violation of rights, implementation of the legal framework, as well as the human rights of LGBT persons. Interestingly, the issue of LGBT did not appear in SUHAKAM's annual report from 2013 until 2017. However, the discussion on LGBT was evoked in the 2018 annual report, mainly on the cases of the resignation of the human rights activist, Numan Afifi, the issues surrounding caning imposed by Syariah Court, brutality cases as well as discrimination in the workplace. The issues of LGBT that had been raised in SUHAKAM's annual report from 2000 until 2018 are shown in Appendix I.

The fact that the LGBT issues are not consistently highlighted in SUHAKAM's annual report highlights that they are not consistent in dealing with the plight of LGBTs but rather, on a case-based basis. In the beginning, this issue was raised in the report three years after the Yogyakarta Principles, an international human rights legal principle on the application of international human rights law about sexual orientation and gender

identity. [87] However, the annual report for 2019 had not been published when this dissertation was being drafted. Therefore, it can be concluded that SUHAKAM is not consistent in addressing the issues of LGBT in the country.

6.3   Problems Faced by the LGBT Community

The LGBT community is a minority community in society, but it involves a large segment of the population. Although these four groups have been categorised as a small bunch, there are commonalities and different levels on the problems faced by these groups. Discrimination is one of the common problems faced by the LGBT community. Furthermore, trans people are seriously facing violence on the streets and gender markers due to their physical appearance and dressing that is easier for people to recognise.

> *"All these issues are not the same. For example, for the trans community, violence on the street is very prominent among their community. There's also an issue about gender markers in their identity cards, so this kind of issue is not what the LGB community is facing. In the LGB, the lesbian, the gay, the bisexual communities, the more prominent issues that they face are discrimination, especially at the workplace and in school. This issue also is faced by the trans community, but… for the gay, bisexual communities, there's a lot of reports that we receive about discrimination that they receive in these spaces."* (CSO10)

However, the general problems experienced by the LGBT community in Malaysia are commonly similar. This is due to the four groups that have been put in the same basket locally and internationally where they are commonly facing the same problem. The problems the LGBT community encounter are (1) discrimination; (2) family and community acceptance; (3) violence and harassment; (4) health; (5) education; (6) facilities; (7) legal perspective; and (8) lack of comprehensive institutional framework. These problems have been categorised based on the type of needs as illustrated in Figure 6.1.

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[87] https://yogyakartaprinciples.org/introduction/. Retrieved on 29th March 2019.
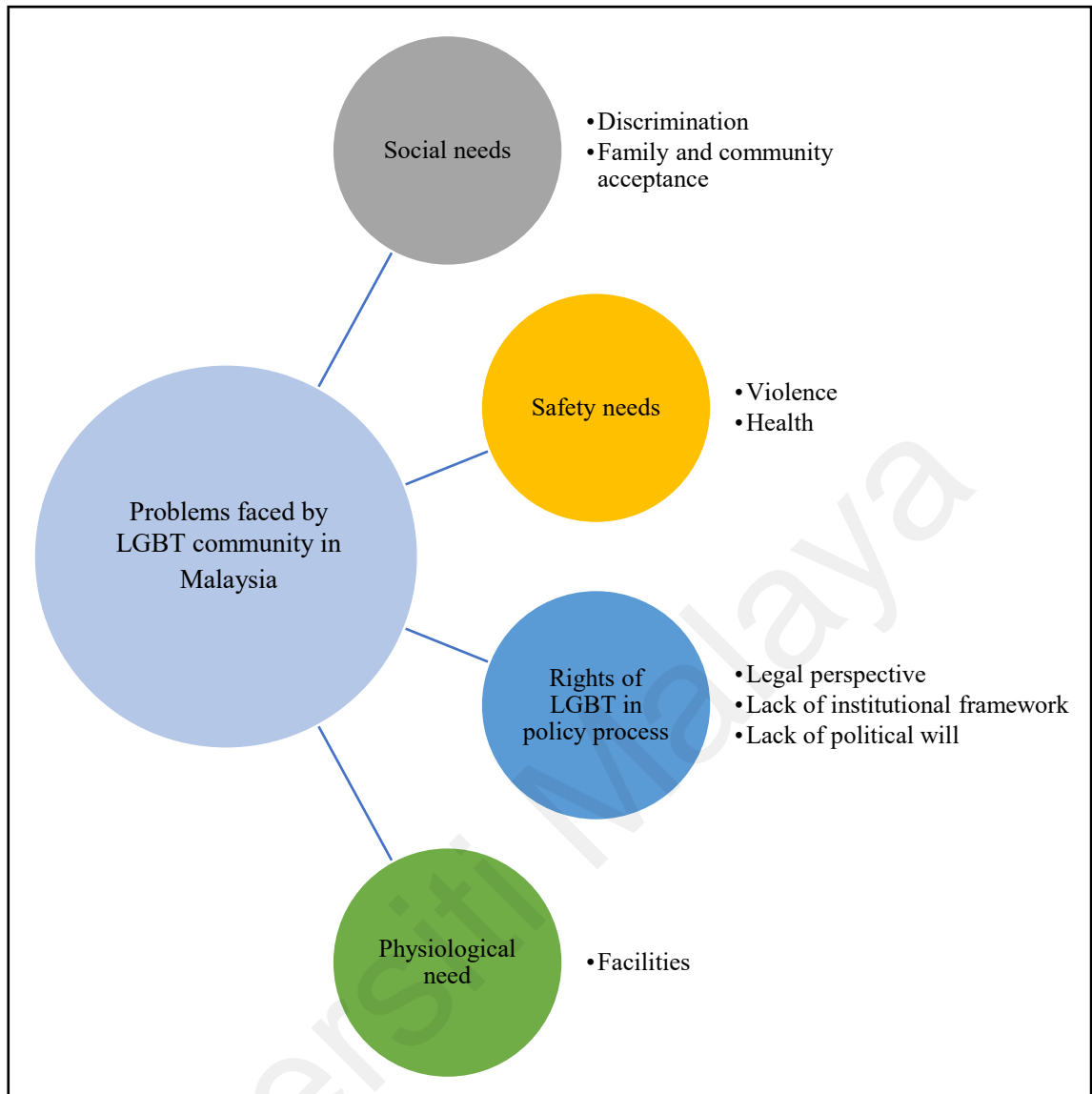
Figure 6.1: Problems faced by the LGBT community in Malaysia
(Source: created base on the findings in 6.3 by the researcher)

6.3.1   Social needs

(i)   Discrimination

(a)   Discrimination in the workplace

LGBT individuals in Malaysia are often marginalised with little or no space in the society given the rejection they endure from the state and community. As they confront constant discrimination, one of them being workplace discrimination, and live in a pressured environment, most of them face the problem of fulfilling basic needs. Discrimination against LGBT individuals in the workplace has put a toll on their quest to make a living. Due to the difficulty in securing proper occupation, some of the transgenders have even

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resorted to working as sex workers. However, some informants claim that they do not discriminate against LGBT individuals. However, some requirements and rules should be followed by all the employees commonly, such as their dress code.

> *"… they should not be discriminated against a job or anything. But even discriminated against job also, I would tell them: you would have to follow the employers' requirement. Even if you… don't wear something that makes employers… your dressing and all that… So, if they follow, that they can always get the job."(S9)*

> *"They should not be discriminated in terms of getting jobs. But again, if let's say the employers decide not to take them because of professional or commercial reasons, and that is something that they cannot… if they don't qualify on paper to do that job, then they should not tell that, claim that is discrimination."(CSO2)*

There was a case where the Special Officer to the Youth and Sports Minister, Numan Afifi, also an LGBT activist had to step down from his political appointment after receiving pressure from the opponent and public on social media. The Minister claimed that this had happened due to backlash and threats from the "opposition propagandists."[88]

(b)   Discrimination in Schools

Discrimination also occurs in schools or higher education. For instance, there was one case when the student's scholarship was terminated by the sponsor when the student was identified as gay. Moreover, there are cases where the university or school dismiss their student who are part of the LGBT community. Informant CSO10 shared the cases as below:

> *"We have gay people being cut off from their scholarship, so the scholarship board found out that he is gay and they decided not to let him continue with his scholarship. Because they say that will harm the reputation of the board, or the organisation.*
>
> *We also have universities or schools that dismiss their student. They bound their students from attending, from perceiving their education. So, this sort of discrimination is currently happening within the LGBT community." (CSO10)*

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[88] https://www.thestar.com.my/news/nation/2018/07/09/lgbt-activist-numan-afifi-quits-as-syed-saddiq-press-officer/. Retrieved on 22nd March 2019.

(ii)   Acceptance of Family and Society

(a)   Family

The family unit is the primary institution where every individual grows and learns. Therefore, the family unit, particularly the parents has great influence over a child. However, there are limited roles played by parents in monitoring and giving attention to their children. Bad experiences faced by individuals, including sexual abuse, is also one of the facts influencing individuals in their growth.

> *"A lot of them go to that path because they have previous bad history: sexually abuse, problematic family…" (CSO4)*

LGBT individuals need family support and recognition, especially the blessing of parents. However, not all of them are accepted by the family. During the engagement session with LGBT CSOs, the state was requested to advocate families to accept LGBT individuals, but this needs hard work and deeper communication between the parents and their child as it involves the value and belief of the individual.

> *"… they ask JAKIM to advocate family, meaning father and mother to accept their child as what they are. Meaning if he wants to be transgender, accept it. But we can't force the parents. Everyone has their own value." (S9)*

(b)   Society

Historically, evidence suggests that transgender women, especially those with specific cultural and ritual roles, were well respected before the 20th century in Malaysian society (Goh, 2014). According to the author:

> *"Trans* persons have long been important figures in the landscape of the Malay Archipelago. In the 19th century, the manang bali or Iban shamans who dressed as women were respectable curers and local leaders. Right up to the 20th century in the archipelago, many transwomen were royal courtiers. Transwomen village performers were also favourably treated by the Sultan of the state of Kelantan in the 1960s." (Goh, 2014)*

Such cultural/ritual roles assumed by transgenders had largely diminished in the 20th century as society moved towards practising a more modern way of living. The

Human Rights Watch reported that the Malay community remains considerably tolerant towards transgender people (HRW, 2014, pp.9, retrieved from Peletz, 2009, pp.58-59). Presently, transgenders have limited roles in the Malay society, assuming a ritual status such as *mak andam*, roles that include planning weddings and beautifying brides. The acceptance of such a role to be assumed by transgenders in the Malay community demonstrates the mixed response among the community.

Mak Lil and Sarah, two elderly transwomen who shared their experience in the Human Rights Watch Report 2014 (pp.8), expressed that there were fewer discriminations in the early 80s. However, their life became more challenging ever since official institutions started to monitor the LGBT community and implemented stringent policies against LGBT individuals. These policies affect transgenders more as they are more visible than the other groups of LGB. One such piece of evidence is the issuance of a fatwa in 1982 against the performance of Sex Reassignment Surgery (SRS) on transgenders by the National Fatwa Council[89] which brought about significant changes to LGBT individuals in the country. This decision was made by state religious agencies based on the Islamic principle and beliefs. These agencies later started to monitor and enforce Syariah Law and other related policies upon the Muslim LGBT community. People in society are also influenced by the state, politicians, and the media. These influences the perspective of the public toward the LGBT community. Informant CSO10 mentioned:

> *"When the government or politician or media says bad things about our LGBT community, it will not just remain as words, it would not just remain as writing. Sooner or later, that writing, that words will inspire people to return it into action. They will be violent because of the words. (CSO10)*

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[89] The 4th *Muzakarah* of the Fatwa Committee National Council of Islamic Religious Affairs Malaysia held on 13-14th April 1982 has discussed sexual transplant from male to female. The Committee has decided that: 1. sexual change from male to female or vice versa through operation is prohibited by Islamic law; 2. a person who is born male remains a male even though he has successfully changed to female through operation; 3. a person who is born female remains a female even though she has successfully changed to male through operation; and 4. however, for a person who was born as a *khunsa musykil* [intersex] who has two private parts of male and female, it is permitted to undergo operation to retain the most functional private part according to the suitability.

6.3.2   Safety Needs

(i)   Health Issues

According to the National Strategic Plan (Ending Aids 2016 -2030) by the Ministry of

Health (MOH) in 2015, there were approximately 45,000 sex workers in Malaysia, while

24,000 were transgender sex workers. This line of work has exposed transgenders to

greater health risks. Sex workers are among the group with the highest risk of exposure

to HIV infection. In 2009, the HIV infection rate was 83.7%, 83.8% in 2012, and 86.6%

in 2014. In this case, HIV prevalence among the transgender population increased from

4.8% in 2012 to 5.6% in 2014 (Ministry of Health Malaysia, 2015). The health of LGBT

individuals is a major concern by the state and therefore, should be addressed to reduce

the health risk of people residing in Malaysia. Informant CSO4 shared the information as

stated below:

> *"I also see how being transgender and gay have implications towards health. We
> have 3,000 cases per year, new HIV cases. Initially, we have 46% by homosexual,
> 39% by heterosexual, and the rest for example IVDU, drug user, from pregnant. So,
> 46% is from bi and homo, and 39% is from hetero. So, some people are saying: Oh,
> 46% and 39%, there is just a matter of 7%. But they forgot bi and homosexual are
> the minority. They are only about 3,000, but they contribute to 46%. Whereas
> heterosexual is actually about the rest of us, 25 million.*
>
> *Since 2010, four categories, those who are using drugs, sharing drug needle,
> intravenous drug users, sex worker, transgender and homosexual, every year they
> are monitored by the Ministry of Health. Because these groups contribute more
> than 5%, meaning in 100 of them, five are getting HIV. This is very high. 5% among
> IVDU, sex workers... I think is about 5-6%, transgender is also about 7.6%,
> homosexual is about 9%. This is 2 years ago. Last year, transgender has become
> 10%, increased; homosexual almost triple, 21%, one in five homosexuals is getting
> HIV positive. So, the impact of health is very high." (CSO4)*

Health problems are one of the critical issues in the LGBT community which is

related to the basic needs of the community. Therefore, the state, CSOs, as well as LGBT

individuals need to pay more attention to this matter for the good of all communities.

(ii)   Violence

There have been cases of brutal attacks against LGBT individuals especially transgender women as they are easier to be identified. In August 2018, a transgender woman was attacked by a group of assailants with sticks and pipes in Seremban, the capital of Negeri Sembilan.[90] On 13th December 2018, a 32-year-old transgender woman was attacked by a group of youths in Klang, a city in Selangor, Malaysia.[91] Three weeks later, another transgender woman in Klang, 39 years old, was dead due to the injuries sustained.[92] There was another case that happened at Kuantan, the capital of Pahang, where a transgender woman was found dead with a gunshot wound and her body mutilated.[93]

> *"We have a case like few years, maybe 2 years ago, 2 men were caught in a car, there were beaten by… I think it was a neighbourhood watch, Rukun Tetangga or something, where is not the government but… the neighbourhood doing this. It's not happened just like that, maybe they heard about LGBT is wrong, so that's why they feel that they have to do something about this." (CSO10)*

As there are increasing cases of violence against the LGBT community, especially transgender women, the state must find to protect the basic rights of citizens.

6.3.3   Rights of LGBT Individuals in Policy Process

(i)   Legal Framework

The legal framework is granted by the state's authority in enforcing the behaviour or activity of LGBT individuals. Informant CSO4 interpret the laws as follows:

> *"Every state has a law, and it has been implemented… transgender who dress like the opposite sex, and with immoral intention. The fact that you are transgender, you just stand there in the middle of the road, nobody would catch you. They just allow you to do whatever you want to do. But if, for example, you are transgender and you participate in a beauty pageant or you dress seductively, or you are selling sex, that's where the enforcement officer will charge you. These are the laws to make you understand." (CSO4)*

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[90] https://www.nst.com.my/news/nation/2018/08/404423/rising-fear-malaysias-lgbt-community. Retrieved on 26th March 2019.
[91] https://www.straitstimes.com/asia/se-asia/death-of-transgender-woman-in-malaysia-sparks-fears-of-rising-hate-crime. Retrieved on 26th March 2019.
[92] https://www.nst.com.my/news/crime-courts/2019/01/446458/another-transgender-woman-killed-bukit-tinggi-incident. Retrieved on 26th March 2019.
[93] https://www.malaymail.com/news/malaysia/2017/02/25/transwoman-murdered-in-kuantan-due-to-appear-as-witness-next-month/1322847. Retrieved on 26th March 2019.

However, there is a different perspective. The legal framework is developed based on a binary concept stemming from a binary society in Malaysia. The informant believes that there should be a third way to bind fair laws for the transgender person.

> *"For example the law liwat (same-sex intercourse), although by definition it said, it is a sexual relationship between man. But because we live in a binary society in Malaysia. Then, you know and the law is binary, so these laws are then also applied to trans people." (CSO9)*

There are proclaims that the existing laws, either the Penal Code or Syariah Law consequences criminalisation on the LGBT individual. This happens when the LGBT individual is arrested under these laws by enforcement agencies.

> *"I just want to address the point on 377A. I think when we mention criminalisation, we do talk about the Penal Code as well, because the Penal Code have a wide briefing inside… we have documented cases of trans people have been torture. We also documented many cases of law enforcement… like the people from the Religious Agency, either arbitrary arresting, or assaulting for sexual favours, or whatever else, because of the existing laws.*
>
> *The law Musahaqah[94], it criminalises… it is applied broadly against people who assigned female at birth, so whether you are a trans man or Pengkid or if you are lesbian, or any kind of, anywhere on the spectrum, then you are vulnerable to being under arrested under these laws… The legal structure that we have in Malaysia, criminalises everybody." (CSO9)*

> *"There are cases that the LGBT individual is being discriminated particularly in seeking a job because of their identity. Under rational circumstances, their rights as a citizen should be protected… lack of protection in terms of the laws. But there is also not enough anti-discrimination laws. For example, an employer can fire an LGBT person simply for their identity. There is no protection." (CSO10)*

The issue of LGBT is not simply a religious issue because it relates to many other issues in the community such as legal, health, cultural, and social implications. Therefore, the state should reform certain laws to develop an intersectional legal framework for more rational and effective policies to protect the LGBT community that is proven to be a vulnerable group.

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[94] *Musahaqah* or lesbianism is defined as sexual intercourse between a woman and a woman (Syariah Criminal Code Enactment 1998 Section 2: Interpretation).

> *"The impact is much greater on Muslim persons. It will be good to apply an intersectional framework to see how does this law impact, what is the impact of this law beyond the direct application of this law, and in terms of the perception that they create about LGBT people." (CSO9)*

(ii)   Lack of Comprehensive Institutional Framework

With the authority given by the Syariah Enactment, JAKIM has taken charge of handling Muslim LGBTs. However, there is no official state agency responsible for the matters of non-Muslim LGBTs. Therefore, this issue is sensitive in the plural Malaysian society that requires comprehensive considerations that need to be handled holistically. Informant S9 shared some information as stated below:

> *"LGBT is a sensitive issue. So, no ministry or agency wants to lead, or even want to get involved in this issue. But this is a real issue. How we manage this issue holistically? I mean, holistically, in integration, so that we can look together.*
>
> *That is a real challenge… when it comes to LGBT issues, it is quite complicated. That is why no agency is willing to lead. JAKIM handles the issue from the angle for Muslims only." (S9)*

The Ministry of Women, Family, and Community Development (MWFCD) was designated as the responsible government institution responsible for the LGBT community in 2020. However, until 2019, the government through the National Social Council had officially appointed the Department of National Unity and Integration (JPNIN) to take charge of the issue of LGBT as a whole, including non-Muslim LGBTs. A closed-door dialogue was conducted to discuss the issues of LGBT. However, this role was returned to the MWFCD as JPNIN was transformed to the Ministry of National Unity by the new ruling party in March 2020. The lack of a comprehensive institutional framework has also caused difficulty in the data collection of LGBTs in Malaysia especially data related to non-Muslim LGBTs. The data is not desegregated due to the binary context of society as well as different law applies to the Muslim and non-Muslim

LGBT. The data about the LGBT community is limited and confidential, proving it very difficult for non-state parties to access the data.

> *"Data is so difficult to access, and statistics are so difficult to access in Malaysia… you only get male, female. Then you don't who is being arrested for what? How many trans people are being arrested? The lack of data analysis, lack of data desegregation, and also lack of data analysis also making it difficult for us thoroughly monitor prosecution everything.*

> *This data is not desegregated. I think for non-Muslim cases, it is a bit more difficult to document if you don't have cases coming to you and seeking support. Whereas for Syariah cases, it is easier to document because the law much more…the laws that have used are much more specific in the sense that it directly criminalises people." (CSO9)*

(iii)   Lack of Political Will

As a sensitive issue, LGBTs gain little political will in the policy process. The *Pakatan Harapan*[95] government showed a slightly open attitude to LGBTs as compared to the *Barisan National*[96] government. Informant S5 mentioned:

> *"Previously, we have the problem of talking about LGBTs, but now the new government they say we can accept, so we have to prepare on how to handle these changes." (S5)*

There is a very limited number of politicians who speak out for the LGBT community. This is due to the pressure from the public or attacks by the other politicians. Out of parliament, the Socialist Party of Malaysia is the only political party that would like to voice out for the LGBT community.

> *"Politicians are afraid to say anything except for maybe one or two, Charles Santiago is, of course, the most outspoken, actually, he receives a lot of attacks and comments against him because of that."*

> *There are also smaller politicians who are not represented in the Dewan, for example, Parti Sosialis Malaysia, they are open, they are for LGBT rights, and they are ok. I mean there was some backlash but they still survive." (CSO10)*

Although politicians are very careful about talking openly addressing the issues of LGBT, they have been raised in the Parliament. In 2019, there were three parliament

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[95] The ruling coalition of Malaysia from 9th May 2018 to 24th February 2020.
[96] The ruling coalition of Malaysia from 1957 to 2018.

sessions in 92 days. The terms or issues of LGBTs have been raised in 24 days (26.09%). There were 21 times where MPs intervened on the issues of LGBT during the three sessions. The issues were: (1) challenging Islam, against religion, and culture; (2) action against LGBT people; (3) call for action against the organiser of women's march; (4) call for condemnation of LGBT people; (5) freedoms should have its limit; (6) HIV fear-mongering, misinformation; (6) censorship; as well as (7) ratification of UN treaties. Besides, the terms related to LGBT have also been used as an insult, joke, or to provoke other MPs, and political parties.[97]

6.3.4   Physiological Needs

(i)   Facilities

This research found that basic facilities might not be the main problem faced by LGBT CSOs. The facilities that the LGBT community needs have been mentioned by informants and human rights CSO, and these include the arrangement of LGBT persons in the prison and hospitals and the use of toilets. The life of LGBT persons in prisons often turns into tragedies as they become victims of sexual assault. Violence and sexual assault happen when female LGBTs are imprisoned or detained together with male inmates during the arrestment due to their gender identity stated in their official identification documents (Human Rights Watch, 2014, pp.27-29). Therefore, the Malaysian Prison Department has made some arrangements by placing transgender prisoners in a special prison if it is necessary. However, this arrangement is not a common practice as it is a rare and special arrangement based on the needs of the individual.

> *"It depends on the case. It is not a general policy but depends on the case. There was a case of prison from Thailand, this Mak Nyah is beautiful and has operated everything. He was placed at the female cell, a special cell."(S9)*

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[97] This information has provided by Justice For Sisters.

There are cases in the hospital where transgender persons request to stay in the female ward. While the most common issue is regarding the toilets.

"In the hospital, they demanded, the transgender, there are 2, 3 people, the senior transgender, who are 50, 60 year old, they request to be in the female ward. But the hospital says: No. We put them as what (gender) mention in their IC (identity card)." (S9)

"Then the toilet issue. The transgender usually will go to the female toilet, then the women will say: we feel threatened, we feel not secured. This will become a polemic. Therefore, if we want to fulfil their wishes, we also have to see what the consequences are. What are the consequences if we open that thing?" (S9)

There are cases where the state tries to solve the problem based on the needs of transgender persons. However, this situation does not happen regularly but, it depends on the case. This shows LGBT individuals are not officially recognised by the state and the legal system.

"They have their way to separate, but it doesn't mean they recognise the transgender. They just solve the issue case by case. These are the isolated cases, not many cases actually." (S9)

These problems endured by LGBT persons particularly transgenders, coincide with the findings by Nemoto, de Guzman, Teh, Iwamoto, and Trocki (2018) where they highlight that transgenders often experience hypervisibility in public settings, including harassment, intimidation, and have limited access to health needs.

6.4   LGBT Civil Society Organisations (LGBT CSOs) in Malaysia

6.4.1   Background of LGBT CSOs

The operation of LGBT CSOs is dissimilar from the ordinary registered CSOs or NGOs in Malaysia. Most of the LGBT CSOs is a non-registered organisation because it is too difficult for the LGBT CSOs to be registered officially as a non-government organisation under the Registry of Societies Malaysia (ROS). Sometimes, they prefer to work as a campaign or movement. The LGBT community believe that freedom of association is

granted in the Federal Constitution to all communities. Therefore, they claim that they should be given the right to publicly express, assemble, and form an organisation.

> *"The Constitution should protect us. Expression, we should have the right to publish, we have the right to assemble, to express ourselves. We have freedom of speech. What the government is doing, is actually against the Constitution."* (CSO10)

Despite not being officially registered with the RSO, LGBT CSOs persevere and work with the support of grassroots. LGBT CSOs are commonly community-based organisations. They support each other by providing a variety of assistance and services, including legal support, shelter, counselling, as well as advocacy works. These CSOs are established by LGBT activists who have different knowledge and expertise, which explains how they can operate well without the official support of the state. One of the prominent organisations, Justice for Sisters (JFS) provides legal support to LGBT persons. They work on the legal aspect including collecting data on the case of LGBTs in Malaysia. Other well-known LGBT CSOs or community groups such as SEEDS Foundation, Pelangi Campaign, *Sesxualiti Merdeka*, and Queer Lapis. These organisations collaborate, providing support to the LGBT community in the country. The informants share their views as below:

> *"There are other community-based organisations… It's mostly on welfare stuff… Pelangi Campaign, Justice For Sisters, SEED Foundation is doing it, Queer Lapis, there is a lot of… who are doing engagement or advocacy to the public."* (CSO10)

> *"… the Diversity Pelangi, Queer Lapis, Sexualiti Merdeka. So, there are many LGBT groups… our strength is about the legal area, and also looking the discrimination and violence, from an advocacy angle. We provide legal support."* (CSO9)

LGBT Organisations Official Website

Information related to LGBT can be accessed on several websites. However, it is worth highlighting that such information might not be accessible when using official internet connections such as those provided in public universities in Malaysia. This is because these websites are blocked by the Malaysian Communications and Multimedia Commission (MMC). This observation further underscores the sensitivity of LGBT issues in traditional Malaysian society. Table 6.2 summarises the list of LGBT organisations and the status of their websites. The control of access to those related websites shows that the state and authorities are monitoring and limiting the advocacy of LGBT in the country.

Table 6.2: LGBT organisations and their websites/ social media in Malaysia

Name of CSOs	Description	Activity
1. Justice For Sisters (JFS)	A grassroots campaign organised by concerned members of the public to raise public awareness about issues surrounding violence and persecution against the Mak Nyah community in Malaysia.	Active as of 25th August 2020.
2. Queer Lapis	A LGBT CSO to provide support to the LGBT community.	Active as of 25th August 2020.
3. Pelangi Campaign	A social movement seeks to advocate for LGBTQ rights in Malaysia through outreach and bringing awareness to the genera public as well as mobilising grassroots action among its community.	Active as of 25th August 2020.
4. Sexualiti Merdeka	An annual sexuality rights festival held in Kuala Lumpur, and represents a coalition of Malaysian NGOs.	Active as of 25th August 2020.
5. Axcest	A Malaysian gay and lesbian social networking and information site.	"Page not found" Could not accessed as of 13rd March 2019.
6. forPLU	An e-zine for People Like Us founded in 2000 to service the LGBT (lesbian, gay, bisexual and transsexual) community in Malaysia by providing information, business directory and news of events and issues important to the community.	"Page not found" Could not accessed as of 23rd March 2019.
7. Fridae	Asia's largest gay and lesbian social networking and information site. Topics covered include latest news on politics, health, LGBT rights, and issues that affect gays in Asia.	Active as of 25th August 2020.
8. LPG	An LGBT group based in Kuala Lumpur. LPG stands for Leadership Program for Gays.	Active as of 25th August 2020.

	Activities include gatherings and parties, sports events and outings.	
9. PurpleLab	A social networking website created by lesbian women, organising social get-together and regular events.	"Page not found" Could not accessed as of 13rd March 2019.
10. Queer Malaysians	A live journal website serving gay and lesbians in Malaysia, with discussions and posts about events and meetings.	Active as of 25th August 2020.
11. Tilted World	The first Malaysian blog on LGBT (lesbian, gay, bisexual, transsexual) rights, issues and expressions.	"Page not found" Could not accessed as of 13rd March 2019.
12. Utopia-Asia	A well-established and comprehensive website of information for gays and lesbians in all Asian countries, including detailed listings for Malaysia.	"Page not found" Could not accessed as of 13rd March 2019.

(Source: Part of sources from angloinfo[98])

Human Rights-based Movement

LGBT CSOs work using the context of human rights. Their demands and claims are commonly based on the universal principles of human rights declared by the United Nations (UNHRD). These CSOs believe that the state shall consider equality as one of the pillars in the policy process to protect human rights.

> *"It is really important for us to look at human rights as a universal concept. And these rights are stated in the principle of equality and non-discrimination, justice, and all of these other things. The connection and all these things that the UN Declaration said… our rights are universal, there is no way anyone can say that they get to have more rights than LGBT people. All of these rights have to be from an intersectional perspective. I think this is why is so important to understand what equality means." (CSO9)*

LGBT CSOs mostly work on advocacy and engagement with the stakeholders, the state, and politicians. The network and collaboration between these organisations are strong as they are a vulnerable group in society. Although the human resources of this group are very limited, they work closely together toward the same goal.

> *"SEED provides shelter for transwomen. We work collaboratively, and Pelangi provides psychosocial support. So, we work collaboratively with people, another groups." (CSO9)*

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[98] https://www.angloinfo.com/how-to/malaysia/family/lgbt/lgbt-organisations. Retrieved on 22nd March 2019.

"Things are always the same, whatever the … community is important, yes, we do a lot of advocacy, engaging stakeholders like the government, the politicians, but our work cannot go far if we don't have strong community networking." (CSO10)

They believe that they should be given the space to enjoy the rights granted under the Constitution and the UNHRD. However, some of their activities have been criticised by the conservative community, other CSOs, and politicians.

"Nobody talks about stopping violence against the LGBTs, they also Malaysian, they also have human rights, they also have fundamental liberties, which is guaranteed in our Constitution. All these have not changed." (CSO3)

One of the pieces of evidence that LGBT individuals are deprived of basic human rights is the denial and criticism of their participation in open public events such as public demonstrations. For example, the involvement of LGBT groups in the march to celebrate International Women's Day on 8th March 2019 was heavily criticised not just by the Malaysian state, but the community as well. The rainbow flag, which symbolises the LGBT movement, was raised in the march where they walked together with other participants to raise awareness about their existence and rights to be respected. This was besides the organiser's main objectives of demanding greater women's rights, including stopping violence based on gender and sexual orientation, banning child marriages, ensuring freedom to make choices over their own bodies and lives, and getting a dignified minimum wage of RM1,800.[99] However, their demonstration was heavily criticised by certain groups in the community, notably politicians and Islamic CSOs, which subsequently led to a heated discourse on the issues of LGBTs in Malaysia.[100]

Members of the Malaysian Parliament were not satisfied with the open LGBT movement in the rally. They claimed that this incident was a misuse of democratic space

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[99] https://www.thestar.com.my/news/nation/2019/03/10/women-march-organisers-stress-rally-was-about-women-rights/ Retrieved on 12th March 2019.
[100] http://belia.org.my/wp/2019/03/12/kenyataan-media-mbm-mbm-anggap-laungan-hak-lgbt-gugat-kestabilan-dan-keharmonian-negara/. Retrieved on 12th March 2019.

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given by the authority.[101] Moreover, Muslim legal experts, such as the state Mufti denounced that the action of the group was a challenge to Islamic laws and the patience of the Muslims.[102,103] This incident had later turned into a police case under section 9(5), Peaceful Assembly Act 2012.[104] The evolvement of this incident shows that Malaysian society, specifically the Muslim community is highly sensitive to the issues of LGBT and has very limited tolerance against LGBT individuals. The issue of LGBT is controversial in Malaysian society. However, as a country that champions the spirit of democracy and human rights, this issue needs to be addressed to ensure the rights of everyone to be protected and given opportunities to enjoy their basic human rights in the country.

6.4.2   Interaction between LGBT CSOs and the State

As mentioned in Chapter 4, one of the key factors that influence the relationship between the state and CSOs is the bureaucracy. In the case of LGBTs, is it always difficult for LGBT CSOs to register as non-profit-organisations under the ROS. An informant shared his/her experience as below:

> *"We also face legal barriers in terms of our organisation. I think other NGOs also face the same. They try to apply for ROS but ROS keeps rejecting the LGBT group. We tried 5 times to apply, and all applications were forwarded to the Ministry of Home Affairs, and it was never approved.*
>
> *Even there are organisations that manage to get approved, somehow, there's always the risk that ROS will close it down. Saying that this is against public order, this is harmful… they usually use that… "disrupts the harmony of society," we don't even know what that means (laugh)". (CSO10)*

There are LGBT CSOs that make themselves an official organisation by registering under the Companies Commission of Malaysia (SSM). However, this method is costly

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[101] https://www.straitstimes.com/asia/se-asia/in-muslim-malaysia-uproar-over-lgbt-groups-at-womens-day-march. Retrieved on 14th March 2019.

[102] https://www.bharian.com.my/berita/nasional/2019/03/539247/perhimpunan-lgbt-menghairankan-haiwan-dr-maza Retrieved on 12th March 2019.

[103] https://www.bharian.com.my/berita/nasional/2019/03/539620/polis-buka-kertas-siasatan-himpunan-lgbt Retrieved on 14th March 2019.

[104] https://www.bharian.com.my/berita/nasional/2019/03/540082/kdn-tak-lulus-permohonan-jika-tahu-ada-unsur-lgbt. Retrieved on 14th March 2019.

and it might make it hard to get financial support. And, the most important thing is that the nature of a commercial organisation is dissimilar to an NGO. Therefore, this is not always the best choice for LGBT CSOs.

> *"We have to try other means like forming as a… SSM, the Suruhanjaya Syarikat Malaysia. Yes, that's the only thing we can do. That is very difficult, the cost is very high, and some funders don't want to fund this kind of entity, they want ROS. Things are very hard for us." (CSO10)*

The second key factor that shapes the relationship between the state and CSOs is the function of CSOs. There are no specific policies and state agencies responsible for protecting the rights of the LGBT community. The only official laws that govern the LGBT community are the Syariah law and Section 377, Penal Code. The state's stand is clear that open LGBT behaviour is not accepted in the country. Therefore, the state is passive in engaging LGBT CSOs to avoid any misunderstanding on the initiative of the state on the LGBT community. The Malaysian state finds no similar function of LGBT CSOs with the state's policies. Therefore, there is very limited engagement between the state and LGBT CSOs under these circumstances. Unfortunately, LGBT CSOs have a limited door to access the state and participate in the policy process officially.

> *"There has been very limited or non-existent engagement by all these ministries, by these governmental departments, between them and LGBT community. Muslim or non-Muslim, there is no engagement, or very limited... How are you going to know what the situation is within our community? There's no engagement at all whether it is in public or in closed-door." (CSO10)*

However, despite the traditional distant approach the state has towards LGBT CSOs, currently, the state is opening its doors to listen to these CSOs. The state allows the participation of LGBT CSOs or activists in public engagement although they have not been invited to join the engagement sessions. The issues of LGBTs have also been discussed openly on the internet.

> *"We are not that extreme in that sense… the current LGBT, if you Google, there are a lot of open discussions on the internet. They ask some government bodies… they have to have conversations whether they like it or not." (S5)*

In 2019, the *Pakatan Harapan* (Alliance of Hope) government officially instructed the Ministry of Unity to be responsible for the issues of LGBTs, especially non-Muslims. Engagements have been done with LGBT groups, however, this situation has been suspended with the new ruling government in February 2020. The issues of non-Muslim LGBTs is now administratively ambivalent which brings back to the previous situation where there is no specific state agency officially responsible for it.

> *"I don't see any engagement. But I do acknowledge that the Ministry of Perpaduan, Ministry of Unity, they actually engage with the LGBT groups, last year they had a meeting with the LGBT community, there's only starting with the dialogue, I think that is good. But other ministries, there is no engagement." (CSO10)*

Although there is no access to the state in policy-making as well as in the UPR process, the LGBT CSOs still seeking for opportunities to raise up their voice or request to the state. This is because the aim of the LGBT CSOs is to get a more reasonable treat by the state, specifically in the basic rights protection. Therefore, to influence the decision of the state is their ultimate objective instead of making fire with the state. Counter-hegemonic described the approach taken by LGBT CSOs, a way of tool that utilised by this group in participating in the UPR process.

6.5   Issues of LGBT in the UPR

6.5.1   UPR Recommendations on the Issues of LGBT

The philosophy behind the UPR is based on the human rights values of the UN, which is the UDHR. However, there are opinions that the UDHR is generally a reference for human rights values promoted by the West, where the culture and values might differ from the East. Therefore, the uniqueness of each country shall be considered while adopting these values. This can be seen from the creation of Asian Values by the leaders of Southeast Asia including Malaysia. The concept of Asian Values has been promoted by Lee Kuan Yew and Mahathir Mohamad with the opinion that some of the western

values are not suitable to the eastern community particularly the Asians that practice a different concept from the west. The concept argues the notion of universal human rights that strengthen individual rights, this is not applicable to or is less suitable for Asian cultures, where the basic building block of a society is not the individual but the family (Shen & Tsui, 2018). Therefore, in the case of the UPR, only the recommendations that match with the current values of Malaysia as a Southeast Asian developing country will be considered for acceptance.

Recommendations on the issue of LGBT started in the first cycle of UPR, and the number of recommendations is increasing in every cycle. There are two recommendations in the first cycle, seven recommendations in the second cycle, and ten recommendations in the third cycle of UPR (Appendix J). The recommendations started with general statements in requesting the Malaysian state to consider law reform based on human rights protection particularly on the discrimination against LGBT persons. The recommendations have then been added to their proposal on the decriminalisation of LGBT persons in Malaysia.

In addition to the previously stated issues, in the third cycle of the UPR, the recommendations were detailing the issue of discrimination in several sectors, including employment, health, education, housing and other areas. The recommendations in the third cycle are closer to the problem faced by LGBT persons. The issue of bullying in school has been raised in this cycle where anti-bullying campaigns shall be implemented in schools addressing all forms of bullying including ones based on actual or perceived sexual orientation, gender identity or gender expression. This recommendation has been "partly accepted" by the Malaysian state. The status of "partly accepted" does not mean it has been "fully accepted" by the state. Therefore, this recommendation remains as

"noted" in the UPR official report. However, the informants shared their positive feeling about the decision made by the state on this recommendation. This is one small step in protecting the rights of LGBT persons in the country, particularly the young in the school. As a summary of the three cycles of the UPR, none of the recommendations has been accepted by the state. Thus, it is still a long way for the LGBT CSOs to keep fighting for the rights of the LGBT community.

6.5.2 Significance of the UPR in the Issues of LGBT

As an international human rights mechanism, the UPR provides a platform for LGBT CSOs to access international organisations and voice out their request openly and officially. This is what they never get in the current policy process in Malaysia. With no or limited space, LGBT CSOs grab the UPR as a chance to speak to the world and the state itself. For an issue that has almost no opportunity in the policy process, the UPR is a good platform for LGBTs to participate in public decision-making, although it is an indirect approach. The human rights values that are upheld in the UPR process are aligned with the requests of the LGBT community for their basic needs under the concept of universal human rights.

> *"Yes. It creates rooms for us, tools for us. Because there are not many rooms here in Malaysia. Internationally, then we can speak about that. So, definitely significance, definitely important. We need the help, more engagement at the international stage... that's why we need the UPR! Because the United Nations of Human Rights saying that human beings for freedom of expression, freedom of beliefs, and freedom of association, and all these rights should guaranty by the Constitution."* (CSO10)

> *"The UPR is important because... it's a lot of opportunity for advocacy and movement building... We see the highest standard of human rights domestically."* (CSO9)

The UPR applies a democratic approach to upholding human rights values. The review process acts as a tool for LGBT CSOs to advocate for the LGBT cause based on the principles of human rights and the development of the movement. As the vulnerable,

LGBT CSOs found opportunities and chances in the UPR, where this mechanism is a platform to protect their rights domestically under the pressure from international parties.

6.6   LGBT and state in the Malaysian UPR

The UPR is an alternative platform for LGBT CSOs to raise their issues globally. This human rights-based mechanism provides a space for international parties to propose LGBT-related recommendations to the states, including Malaysia. As a review mechanism, the state must accept or note (instead of reject) the recommendations in the UPR. The recommendations on LGBT that have been raised during the three cycles of LGBT are mainly related to basic human rights for the LGBT community, decriminalisation based on sexual orientation, discrimination in the workplace, health, education, and other related policies, amendment of civil laws as well as developing public awareness on the discrimination against LGBTs.

> *"But let's say we take a country, maybe Sweden asks questions about LGBT, then Malaysia has to answer that question. If recommendations were given by that country, then Malaysia has to accept the recommendations or take note. They cannot reject the recommendations. They can only take note." (CSO9)*

Figure 6.2 was created to show the LGBT CSOs-state relationship in the UPR process by explaining the significance of the UPR in the issue of LGBT, the strategies employed by LGBT CSOs, key factors that affect the relationship with the state, and the state's considerations in accepting the UPR recommendations.
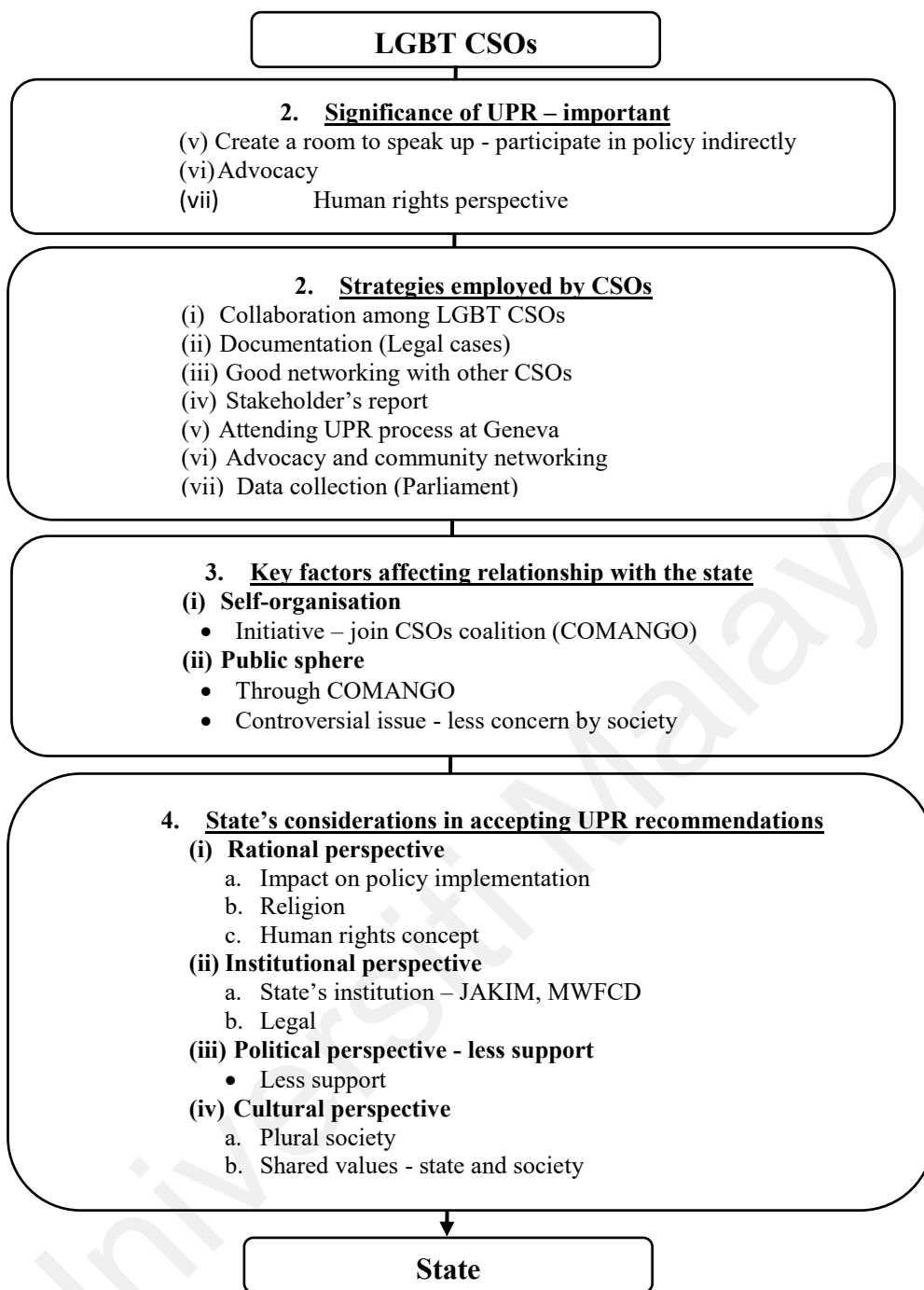
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┌─────────────────────────────┐
│          LGBT CSOs          │
└─────────────────────────────┘

╭─────────────────────────────────────────────────────╮
│          2.   Significance of UPR – important          │
│  (v) Create a room to speak up - participate in policy indirectly │
│  (vi) Advocacy                                          │
│  (vii)        Human rights perspective                  │
╰─────────────────────────────────────────────────────╯

╭─────────────────────────────────────────────────────╮
│          2.   Strategies employed by CSOs              │
│  (i)  Collaboration among LGBT CSOs                     │
│  (ii) Documentation (Legal cases)                      │
│  (iii) Good networking with other CSOs                 │
│  (iv) Stakeholder's report                             │
│  (v) Attending UPR process at Geneva                   │
│  (vi) Advocacy and community networking                │
│  (vii)  Data collection (Parliament)                   │
╰─────────────────────────────────────────────────────╯

╭─────────────────────────────────────────────────────╮
│      3.   Key factors affecting relationship with the state │
│  (i)  Self-organisation                                │
│    • Initiative – join CSOs coalition (COMANGO)        │
│  (ii) Public sphere                                    │
│    • Through COMANGO                                   │
│    • Controversial issue - less concern by society     │
╰─────────────────────────────────────────────────────╯

╭─────────────────────────────────────────────────────╮
│  4.   State's considerations in accepting UPR recommendations │
│    (i)  Rational perspective                           │
│        a. Impact on policy implementation              │
│        b. Religion                                     │
│        c. Human rights concept                         │
│    (ii) Institutional perspective                      │
│        a. State's institution – JAKIM, MWFCD           │
│        b. Legal                                        │
│    (iii) Political perspective - less support          │
│        • Less support                                 │
│    (iv) Cultural perspective                           │
│        a. Plural society                               │
│        b. Shared values - state and society            │
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┌─────────────────────────────┐
│            State            │
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Figure 6.2: LGBT CSOs-state in the UPR Process

6.6.1   Highly Contested Relationship between LGBT CSOs and the State in the UPR

LGBT CSOs have participated in the UPR since its second cycle through the coalition of COMANGO by highlighting the issues of the LGBT community in Malaysia in the stakeholders' and mid-term report, where these reports have been submitted to the UPR Working Group. The representatives of LGBT CSOs have later attended the third cycle

of the UPR in 2018 by reporting the challenges that the LGBT community endures in Malaysia. These LGBT CSOs include Justice For Sisters (JFS), *Seksualiti Merdeka*, *Pelangi* Campaign, as well as SEED foundation. They are the LGBT CSOs that encountered problems and issues with their identity and took the opportunity to share their experiences and expectations for public awareness. They request policies that would protect their rights based on the principles of basic human rights.

> *"There is very limited window where the Ministry of Foreign Affairs through the UPR, they engage with civil society. But they don't engage with LGBT groups directly. So, LGBT groups have to make a coalition with other NGOs that work for other issues, for example, COMANGO." (CSO10)*

Five main issues have been raised by COMANGO in the second and third cycles of the UPR which are (1) equality and non-discrimination; (2) cooperation with special procedures; (3) constitutional and legislative framework; (4) national, institutional and human right infrastructures, and policy measures; and (5) rights to life, liberty and security of the person. There is no direct party between LGBT CSOs and the state in the UPR process. Therefore, this interaction happens in a highly contested relationship. Apart from LGBT CSOs, Islamic CSOs are also concerned about the issue of SOGI/ LGBT. The Islamic CSOs have a coalition in the UPR, which is MACSA. The MACSA coalition has proposed two issues in their stakeholder's report, including LGBT's rights to religion, and discrimination against LGBT people, although there is no LGBT CSOs in the coalition. MACSA mentioned the term of "Gender-sanitisation' in their stakeholder report in the second UPR. As a coalition that promotes only binary gender, MACSA is in the view that there should only 2 types of gender being used in the country. Table 6.3 shows the recommendations raised by these CSOs in the UPR.

Table 6.3: Recommendations proposed by COMANGO and MACSA in the second and third cycles of the UPR

COMANGO	1. Equality and non-discrimination
	  i. Recognition of SOGI rights as human rights.
	  ii. End all discriminatory and harmful and anti-LGBT speech and activities.
	  iii. Enact a comprehensive anti-discrimination law.

	2. Cooperation with Special Procedures (international human rights mechanisms)
	  i. Issue an open invitation to all the Special Procedures.
	  ii. Accept request by special procedures when they seek to visit Malaysia.

	3. Constitutional and Legislative Framework i. Attempts to the amendment of the Syariah Court (Criminal Jurisdiction) Act 1965 which predictably brings damage to the administration of Islamic laws, and exacerbates the deterioration of human rights situation in Malaysia, includes the LGBT persons.
	4. National Institutional and Human Rights Infrastructures, and Policy Measures i. Stop the implementation of action items under the NHRAP that undermine the rights of LGBTIQ.
	5. Rights to life, liberty and security of the person i. LGBT HRDs and HRDs in general face multiple forms of reprisals from various actors for upholding rights of the LGBT.

MACSA	1. LGBT's rights to religion
	  i. Provide gender-sanitisation and human rights training to religious authorities.
	  ii. For religious authorities to formulate guidelines on gender-sanitisation.
	  iii. Educate the Malaysian communities to respect the religious rights of the LGBT community.

	2. Discrimination against LGBT people i. Provide entrepreneurship incentives and loans in starting business or assistance in getting job to get out from the sex trade.

The request by COMANGO is more comprehensive because the recommendations were proposed by the LGBT CSOs, the persons that endured the problems. Although the two coalitions have differences understanding on the rights of LGBT persons, however, they share one common issue, which is the discrimination against LGBT persons and the initiative to protect themselves at work and the start of a new career. Figure 6.3 shows the differences and common issues shared by both COMANGO and MACSA.
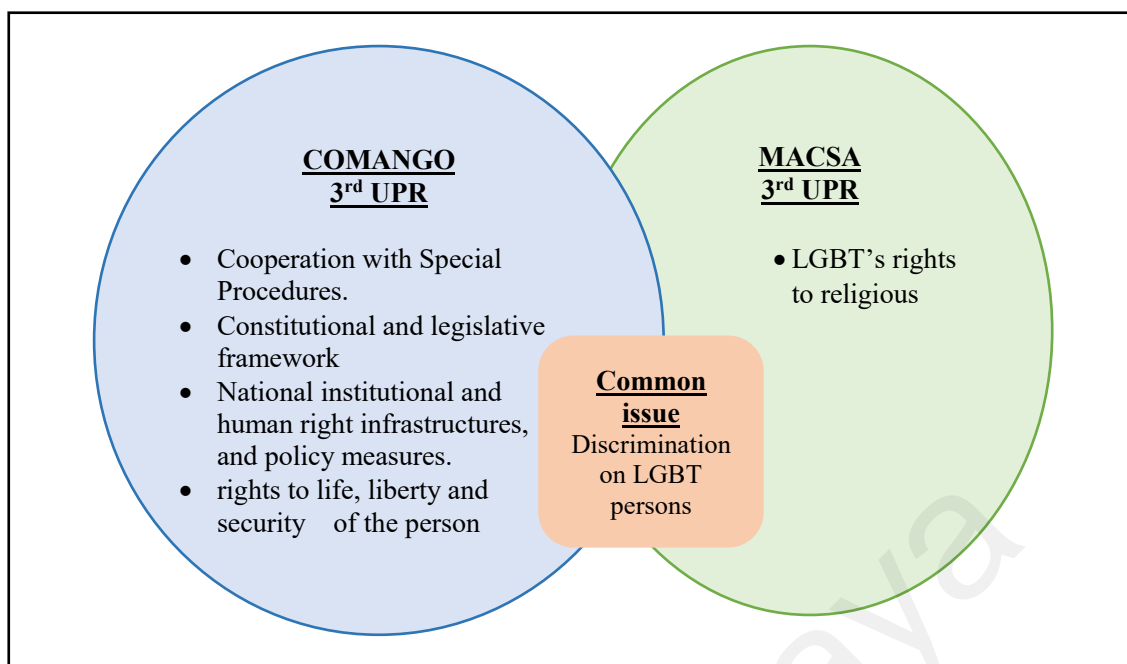
Figure 6.3: issues raised by COMANGO and MACSA in the second and third cycles of the UPR *(Source: Created by the researcher based on the findings in 6.6.1)*

Both the coalitions underline the principles of human rights as the common ground in supporting the issue of LGBT. This common value has brought the coalitions to the same approach about LGBT, the discrimination against LGBT, a very serious issue that affects the survival of the LGBT in their daily lives which affect their income, education, health, and social protection. Both coalitions insist to raise awareness in society to respect the LGBT based on the foundations of human rights. Therefore, there is no direct conflict at the basic point between these two coalitions where the common principles upheld is based on the same foundation.

However, religion has differentiated the coalitions. COMANGO emphasises the element of universal human rights which are based on the UDHR while MACSA emphasises the element of religion according to the CDHRI. This is a crucial point that differentiates the fundamental principles that uphold these coalitions and provide COMANGO and MACSA framework on the issue of LGBT. COMANGO accepts the current situation of LGBT persons and works for the rights and freedom of LGBT while

MACSA is focused on how to assist the LGBT to return to the right way of life from the Islamic perspective. This is not a right or wrong issue, but the coalitions work on the values that they uphold.

The fact that COMANGO and MACSA share the same concerns on the issue of discrimination of LGBT creates a possibility for the coalitions to cooperate in the UPR. However, subscribing to different views of human rights has restricted this possibility because MACSA believes that LGBT behaviour shall be corrected to return to the right way according to Islamic principles. A different view on the starting point might cause the possibility to become lower but it does not mean the door has closed.

6.6.2   Strategies Employed by LGBT CSOs in the UPR

The issue of LGBT has not been officially governed by policies as it is a controversial issue that is debated in Malaysian society. Hence, the LGBT CSOs employ seven strategies in the UPR. These strategies are mostly not in the current official procedure but more in the initiative by documenting and building networks with non-state parties.
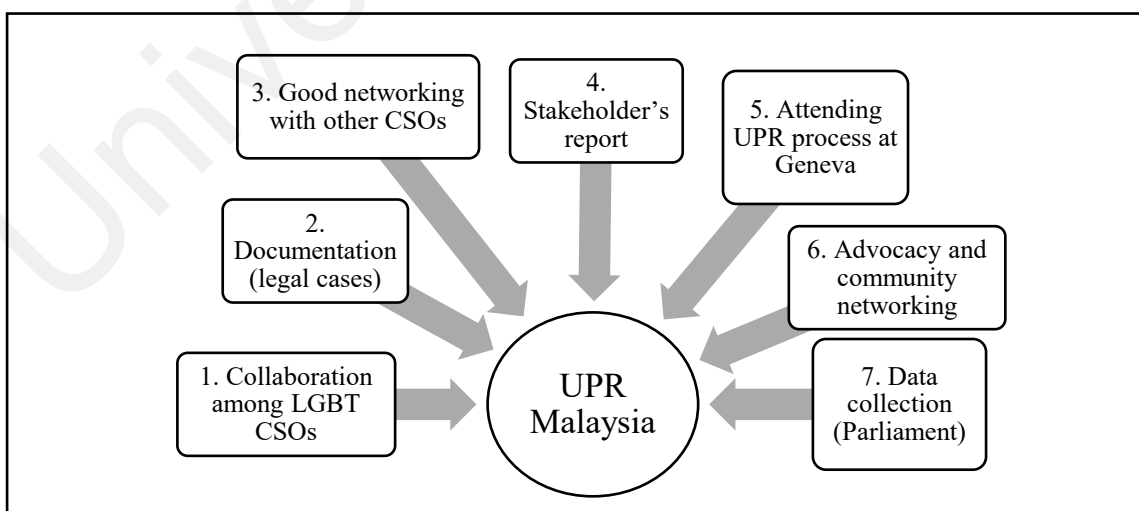

Figure 6.4: Strategies employed by CSOs in participating in the UPR
(Source: Created based on the findings in 6.7.3 by the researcher)

(i)   Collaboration among LGBT CSOs

As a vulnerable group in society, LGBT CSOs collaborate and support each other in different forms, including information sharing, and solidarity support. Each CSO has its task and aims to provide support to the members of the community. This is a common strategy to use by CSOs to strengthen their social movements. The information provided by LGBT CSOs has contributed to the COMANGO stakeholder's report in the second and third cycles of the UPR.

> *"SEED provides shelter for transwomen and some other groups. We work collaboratively, and Pelangi Campaign provides psychosocial support. So, we work collaboratively with people, other groups, but our main focus remains legal support and also risk management and things like that, and human rights documentation, research and advocacy." (CSO9)*

(ii)   Documentation (Legal cases)

LGBT CSOs also document related legal cases including human rights violations and legal charges on LGBT persons. Documenting legal cases is important as these cases are evidence of problems faced by the LGBT community that will be used by CSOs in proposing trustworthy statements and expectations in the UPR.

> *"... primary focus of us has been documenting human rights violation, looking at cases of gender-based violence and hate crimes face by trans people, and all of that. We also do many other forms of legal advocacy, that cut across sexual orientation and gender identity, gender expression and sex." (CSO9)*

LGBT CSOs tend to develop an evidence-based context in strengthening its pursuit to international parties, particularly the UN Member States that will propose recommendations in the UPR.

> *"...these three UPR cycles, we also see that the LGBT report are far more evidence-based, we have more documentation that we want to put up, and, the countries that provide LGBT recommendations are also increased." (CSO9)*

(iii)   Good Networking with Other CSOs

LGBT CSOs have developed good networking with other local CSOs, particularly human rights CSOs. This is because they employ a human rights-based movement. These human rights CSOs uphold the principles of universal human rights for all, they have knowledge and expertise, experiences, resources, and strong networking. Support and comradeship from human rights CSOs provide LGBT CSOs resources and platforms to participate in the UPR.

> *"We get to like tumpang sekaki (grab the opportunity to take part), when other groups also engage in these conversations. So, that has been one of our strategies… You only can engage with MOFA through COMANGO. But there is no direct engagement between MOFA to LGBT groups directly, no. But indirectly through COMANGO, there are engagements." (CSO10)*

(iv)   Stakeholder's Report

LGBT CSOs voice out their issues and requirements by contributing to the COMANGO stakeholder's report. This information is crucial to illustrate the feeling and situation of the LGBT community in Malaysia to the world. As this report has been submitted to the UPR Working Group, the State Members are and international CSOs are also interested. The issue of LGBT has been inserted in the COMANGO stakeholder's report during the second and third cycles of the UPR. While MACSA has also raised the issue of LGBT in its first stakeholder's report during the third UPR.

(v)   Attending the UPR Session in Geneva

Both representatives of COMANGO and MACSA have attended the UPR session in Geneva. The representatives must prepare well to express their views in the special session that is allocated to CSOs by the UPR Working Group. There are more than 50 organisations in COMANGO, therefore, LGBT CSOs have to compete with other CSOs to get the chance to talk in the session, especially during the very limited and important

session in Geneva. Nevertheless, LGBT CSOs have obtained an opportunity to present their issues and expectation in the third UPR cycle in Geneva.

> *"... the room is very small because there are other NGOs as well, they are working on their issues. Sort of not competing but the room is very small."* (CSO10)

(vi) Advocacy and Community Networking

Advocacy for society is one of the main tasks of LGBT CSOs. This controversial issue commonly receives negative responses from the public, particularly the Muslim community. Therefore, advocacy work is needed to clarify the real situation of the LGBT community and to express their demands for basic human rights including their basic needs in everyday life. LGBT CSOs acknowledge the importance of a community in their movement. Therefore, they also work on developing networks with all parties in the community, particularly with state agencies, politicians, and other CSOs.

> *"Community is important, yes, we do a lot of advocacy, engaging stakeholders like the government, the politicians, but our work cannot go far if we don't have strong community networking… we are doing engagement or advocacy to the public."* (CSO10)

(i) Data Collection (Parliament)

To share their own experiences, LGBT CSOs have collected primary data at the Parliament. Observation has been done during the three parliament sessions in March, April, July, October and November 2019. The aim is to collect the data on the frequency of LGBT being mentioned in the Parliament debate, the responses of the Members of Parliament as well as the frequency of how the LGBT is used as an insult, to provoke or as a joke in Parliament. These data have been collected by LGBT CSOs as evidence to illustrate the attitude of MPs in handling the issues of LGBT.

6.6.3 Key Factors Shaping LGBT CSOs-state Relation in the UPR

There is very limited interaction between LGBT CSOs and the state in the policy process. As an issue that is not generally accepted by society, the relationship between LGBT CSOs and the state can be tense, at times. LGBT CSOs receive none of the opportunities to engage with the state in the UPR process, and they find no door to directly communicate with the state in this process. Therefore, the key factors that shape the relationship between LGBT CSOs and the state in the UPR can be understood from the perspectives of self-organisation and the public sphere, as proposed by Young (2000).

(i) Self-organisation

In the process of the UPR, LGBT CSOs have no door to engage with the state. However, they participate in the UPR process by joining COMANGO. As a coalition with majority secular CSOs, LGBT CSOs have obtained opportunities in COMANGO to participate in the UPR directly by contributing to the stakeholder's report, attending engagement sessions organised by the state, as well as engagement sessions with Members of the Parliament. The initiatives taken by LGBT CSOs have created their own opportunities to participate in the UPR process directly. These changes would not have existed if they maintained a passive behaviour in the UPR process. Although the state did not offer any opportunities for LGBT CSOs, they manage to interact with the state through self-organisation in the UPR process.

(ii) Public Sphere

The public sphere is a social phenomenon that consists of elementary action and association of a group of individuals. Habermas (1996) describes the idea of the public sphere as "*a network for communicating information and point of views, such as expressing opinions of affirmative or negative attitudes. The stream of communication is,*

in the process, filtered and synthesised in such a way that they coalesce into bundles of topically specified public opinions." In the case of the UPR, LGBT CSOs deliver their expectations through the platforms that are provided for CSOs in the UPR process. Apart from contributing to COMANGO's stakeholder report, the representative of LGBT CSOs, Numan Afifi had attended the third cycle of the UPR in Geneva and took that opportunity to speak up on the issue of LGBT in the session. The actions of LGBT CSOs in the UPR process, however, received a strong backlash from the state where this representative was later called up by the Malaysian Royal Police for investigation.[105] The initiatives of LGBT CSOs have attracted the attention of the state; however, this issue is still neglected by society.

6.6.4 The State's Considerations on the Issue of LGBT in the UPR

Studies have been done from the perspectives of religion (mainly from the Islamic perspective), health, discrimination in labour, and other social areas (Ismail & Nasri, 2019; Maliya et al., 2018; Mohamad, 2015; Teh, 2001a; Wong, 2012a). These are the main issues that the state and society prioritise. However, the issue of LGBT has also been studied from the concept of basic human rights as some of the problems endured by this community implicate human rights violence (Goh, 2017; HRW, 2014; Laurent, 2005).

The UPR emphasises the concept of universal human rights, however, the state receives none of the LGBT related recommendations in the three cycles. The contestation on the state's action on this issue relatively high compared to the other issues, which is a deviant issue that generally receives negative public perception. The state's decision-making on the recommendations related to the LGBT community reflects the state's domestic stand and policies on LGBT. This behaviour can be understood from the four

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[105] https://www.thestar.com.my/news/nation/2019/04/16/activist-numan-afifi-investigated-over-lgbt-speech-at-united-nations/. Retrieved on 20th April 2019.

perspectives namely, the rational, institutional, political, and cultural perspectives that have been used in the analysis of the recommendations of PWDs in Chapter Five (Bekkers et al., 2017).

(i) Rational Perspective

LGBTs are not openly accepted and tolerated in Malaysian society. The public's understanding of the LGBT community is based on limited resources that generally provide information and knowledge from a conservative view. This is due to how certain LGBT groups that are unordinary are framed by the media which receive controversial reactions from society. Due to the strong negative reaction in society, the state has considered a common understanding and awareness of society in accepting LGBT-related recommendations. This action that the state is taking includes the impact on the policy implementation and the role of religion. However, since the UPR is a human rights-based mechanism, the element of human rights has been considered in the recommendations.

(a) Impact on the Policy Implementation

The state emphasises the impact on the policy implementation as one of the considerations in accepting the LGBT-related recommendations. The informants are aware of their responsibility to influence the public, especially on the issue of LGBT that is highly debated.

> *"... the end of the day we have to fully digest, fully assess what is the outcome of our action if we fully accept without analysing thoroughly what could possibly be impacted on our action. It must responsible enough when we agree to something. (S4)*

(b)   Religion

The Constitution states that Islam is the religion of the Federation, and the Syariah Law has jurisdiction over every Muslim in Malaysia. The status of religion in the Constitution as well as in the legal framework of Malaysia grant the role of religion in the policy process including in the UPR process. The behaviour of LGBT is not accepted by some religions, especially Islam. Therefore, the influence of religion exists in the decision-making of the UPR process.

(c)   Human Rights Concept in the Policy Process

The state is aware that the human rights concept should be considered in the policy process as well as the UPR process as this is a human rights mechanism. However, the informants shared their point of view that the concept of human rights shall be based on the Malaysian context, instead of simply entirely adopting the elements of universal human rights.

> *"I go to context… if you feel that the recommendation is not suited to the context of the country, no matter international community says, just do it… it can be based on social economics but not necessarily social contract." (S3)*

> *"…All individuals have their rights, and it is safeguarded. To us, we say like "all individuals", we didn't say like "all individuals including LGBT", what I say is like all have the rights, you have the rights, I have the rights, all of us."(S4)*

> *"I think all these human rights instruments, I think they should be fair that every country has their own definition of progress, and unity and happiness. It shouldn't be judged just because in your country everybody wearing pants then they are happy, in certain countries maybe they wear a dress and they are happy." (S5)*

(ii)   Institutional Perspective

(a)   State Institutions - JAKIM, MWFCD

The issue of LGBT is complex and intersects different fields of policies. Moreover, there is no specific government agency responsible for this issue. Specifically, JAKIM is responsible for the issue of Muslim LGBTs only. While non-Muslim LGBTs are directed

to the MWFCD because the LGBT issues intersect with gender roles which are under the responsibility of the MWFDC. Despite the complex nature of the LGBT community, the issues they experience are wide and include other aspects such as security, employment, and education. Therefore, the fact that there is no official institution responsive to the issues of LGBT makes the group more vulnerable.

(b)   Legal Perspective

Besides the Constitution, the principal guide for the state in handling the LGBT community is the civil and Syariah law. The pattern of the state's decision-making on the UPR recommendations for the LGBT community encompasses the mentioned laws and concerns. Based on the conversations with the informants, they are not against the Constitution or civil laws. However, they respect the laws but seeking for solutions to solve the problems without breaking the existing laws.

> *"Which are not against the general values of the Malaysian people including the Syariah Law, as we know that we have our… the state laws, we recognise Syariah Law as one of the enforcement of laws..." (CSO2)*

> *"The one which is not against the Federal Constitution. Which are not against the general values of the Malaysian people including the Syariah Law, as we know that we have our… the state laws, we recognise Syariah Law as one of the enforcement of the law." (N1)*

> *"… for example, it is against the law, then something can be taken against you to make sure that you get redress as an individual. But those are the hard questions that will post to us here in Malaysia, which we still be fine. No matter how long ago we submitted our report, it is still in the system, unless of course, Malaysia change into a different country all together which thus not practise a dual legal system. So, these are the things that we have put reservations, for example, LGBTs we have not to put our reservation on." (S4)*

(iii)   Political Perspective

The political aspect facilitates a discursive space for argumentation and debate in the policy process. However, the issues of LGBT obtain restricted space in the policy process, and there is no door for this community to officially access the policy process. The

Parliament has seldom discussed the LGBT issue as politicians have limited concerns about the issue. This reflects the superficial relationship and engagement between the state and the LGBT community.

> *"Politicians are afraid to say anything except for maybe 1 or 2, Charles Santiago is of course the most outspoken, actually he receives a lot of attacks and comments against him because of that. The problem with politicians is they don't do engagement, they don't reach out to the LGBT community, and, that's when they feel." (CSO10)*

Therefore, the issue of LGBT is not a priority from a political perspective, and this is happening in the UPR process as well. There is very little support from politicians as the people who raise this issue openly faces strict repercussions. One of the examples was the case of Numan Afifi, an LGBT activist who stepped down as the Special Officer to a Minister. This incident did not receive much support from other politicians, even those from his own political party. However, he did get some support from a few politicians who used to be human rights activists. Charles Santiago, a Member of Parliament (MP), defended his colleague from the perspective of human rights. He commented that systemic discrimination must stop, otherwise the country would continue to be a hostile place for the LGBT community.[106]

(iv)   Cultural Perspective

The state is clear and respects the uniqueness of the country in the public decision-making process. This happens in the UPR process too. This uniqueness here refers to the social structure of Malaysian society as a plural society and the shared values that are upheld by the society.

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[106] https://www.thestar.com.my/news/nation/2018/07/09/charles-santiago-defends-numan-afifi-gay-rights-are-human-rights/.
Retrieved on 22nd March 2019.

(a) Plural Society

As a country with a plural society, the Malaysian state has its consideration in deciding on a policy. The state is finding a balance between communities by listening to the different voices of the communities. The Malaysian context is indeed complex and has always been considered in the policy process. The informants understood the state's commitment to the international human rights mechanism including the UPR, but they never neglect the needs of the communities and instead, try to find a balancing point among the community while being committed to the international community.

> *"… you are plural community, the standard, somehow, even though you talk about international standard, you always have to return to your contextual standard. Contextual as Malaysian, contextual from one community to another, contextual in terms of plural community." (S3)*

> *"We have to think it more. You cannot ignore one group over another. But to be equally… The human rights say like once you agree to something it is applicable to all. But in anyone's situation, sometimes you can't do that to cover all." (S4)*

(b) Shared Values

The state emphasises shared values that are upheld by Malaysian society in the UPR process. These values are the shared understanding that is accepted by the communities. The informants explained this aspect by dividing the comment into two general perspectives, the individual and family values. This analogy has been expanded to bigger units such as the community, society, and country. Therefore, the shared values that are upheld by the majority have been considered in the UPR process. This consideration has influenced the state's acceptance of LGBT related recommendations.

> *"That was a question about, LGBT, what is Malaysian LGBT? I mean we all have our own personal view about that. But let's talk about it in terms of family versus one person, so which is far more important? A family or just one person? Of course, equally are the rights of either one person or a family. These are also things that we have to mild over. Are we ready to accept LGBT? Is it an orientation? Is it gender? What is actually LGBT here in Malaysia?" (S4)*

6.7   Discussion: Counter-hegemony in the LGBT CSOs-state Relationship in the

UPR

The open behaviour and activities of the LGBT community are not accepted by the dominant groups of the Malaysian society including individuals from government institutions and a majority of the communities. This intolerance towards the LGBT community has marginalised this group where they receive less protection from the state and society. The Malaysian state and society also view and understand the LGBT community from social, health, and religious perspectives. The issue of LGBT is also seen based on the majority's religious and moral values. However, the requirements of the LGBT community are mainly the basic needs that affect their survival in their daily lives such as discrimination at work and school, personal security caused by violence, and discrimination and social acceptance by society including family members.

The LGBT community and the state do not view the problems the same way which causes both parties to subscribe to different methods in handling the situation. The state practises a one-way communication with the LGBT and rarely engages the LGBT community directly and the LGBT CSOs in the policy-making process. Therefore, two-way communication is needed to clarify and understand the problems and expectations of the LGBT community where it contributes to more effective policy-making. The status of LGBT CSOs has also not been officially recognised by the state, while open activities organised by these CSOs have always been criticised by the state and other members of society particularly the Islamic CSOs. The reaction of the state and these CSOs highlight that the issue of LGBT is not accepted by the Malaysian state and community, forcing LGBT CSOs to work in a repressed environment and under a coercion atmosphere.

In the policy process, the issue of LGBT has been divided into Muslim or non-Muslim LGBT, therefore, there is a lack of comprehensive institutional framework in handling the issue of LGBT, except JAKIM as the main authority that governs Muslim LGBTs. However, there is an absence of an institutional framework that is responsible for the issue of LGBT as a whole. Both the informants who represent the state and CSOs agreed that there should be a main official agency to coordinate the issue of LGBT. This opinion differs from Spires (2011) that CSOs can survive in an authoritarian regime with a fragmented state institution, where CSOs and the authoritarian state can thus exist in a "contingent symbiosis." This is because the Malaysian state remains a semi-authoritarian regime in the UPR process, where LGBT CSOs are not strictly banned and controlled by the state as long as they do not step beyond the state's limits which are the state's considerations in the UPR. As the CSOs are not recognised, they are always criticised by the state. This situation has made the LGBT CSOs seek protection under other CSOs that willing to collaborate, and COMANGO is the only coalition in the UPR process that is willing to do that.

The considerations of the state on this issue are generally based on the existing laws, the implementation of policy, context, shared values of the society, and the role of religion, particularly Islam as the national religion. This can be seen in the role of Islam as stated in Constitution and the Syariah law in the policy process. Meanwhile, studies have highlighted the influence of religion on LGBT (Haridi & Salleh, 2016; Haridi, Rahman, & Wazir, 2016; Mohamad, 2015; Muhammed & Amuda, 2018; Shah, 2013; Witten, 2015).

The nature of the Malaysian context influences the chances and actions of LGBT CSOs within the sphere of civil society as mentioned by Hedman (2001) on the

significance of the nature of a particular regime for collective action in society. Being a vulnerable group that is marginalised by society, the LGBT community has very limited opportunities in raising their concerns in the policy process. These circumstances have happened in the UPR process, where there is no door for the LGBT CSOs to access the state on the UPR recommendations. Bates (1975) claimed that *"in considering the recommendations related to the LGBT, the state play its role as a hegemonic institution."* The Malaysian state applies the same approach when handling the issue of LGBT. The idea of hegemonic practice by the state has created a condition that makes the LGBT CSOs and use a counter-hegemonic movement in the UPR process. This idea is important because the basic premise of hegemony is that man is not ruled by force alone, but also by ideas (Bates, 1975).

Initiatives have been taken by the LGBT CSOs to deliver their voice in the UPR process, including the efforts in establishing organisations, advocacy work for ideology, and being proactive in taking action as illustrated in Figure 6.5. The organisation, ideology, and action are the three conditions for hegemonic change (Katz, 2006). These are the ways LGBT CSOs take part in the Malaysian UPR process.
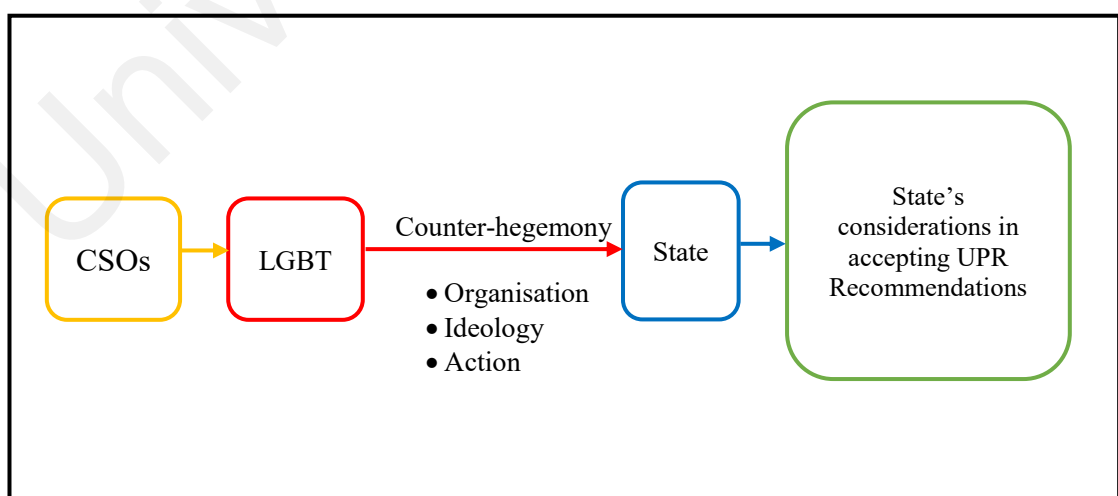

Figure 6.5: Counter-hegemony in LGBT CSOs-state relation
(Source: Created by the researcher)

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To survive in the semi-authoritarian regime, LGBT CSOs have taken the initiative to access the state in the UPR process by participating in the CSO coalition (COMANGO), sharing their expectations and ideology in the state's engagement sessions with Members of the Parliament and the UPR review process. These actions are aligned with the two approaches proposed by Young (2000) with regard to self-organisation and the public sphere. However, these initiatives and approaches have received demotivating reactions from the state where LGBT CSOs were given very limited opportunities to speak up in the engagement session. An LGBT activist was also summoned by the state through the Malaysian Royal Police because of his speech in the third UPR review process in Geneva. [107] Nevertheless, these circumstances have not discouraged LGBT CSOs to abandon their movement for LGBT rights. With that, the relationship between LGBT CSOs and the state remain under counter-hegemonic conditions.

LGBT CSOs continue their struggle by expanding their networking and platform, from participating in the state's official engagement sessions to international platforms such as the UPR. Nonetheless, there are some other regional level's platforms created by the LGBT CSOs such as the ASEAN SOGIE Caucus (ASC), a network of human rights activists from Southeast Asia, works for the inclusion of Sexual Orientation, Gender Identity, Gender Expression, and Sex Characteristics (SOGIESC) in the mandate of human rights duty bearers in the ASEAN region[108]. This regional network provides a space for LGBT CSOs to support each other in terms of information sharing, advocacy as well as the promotion and protection of the human rights of the LGBT community. As of 2021, ASC has submitted joint stakeholder reports in the UPR of Indonesia, Myanmar, Philippines, Singapore, Thailand and Vietnam[109]. Therefore, the ASC has been seen as a

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[107] https://www.malaysiakini.com/news/472521, and https://www.thestar.com.my/news/nation/2019/04/16/activist-numan-afifi-investigated-over-lgbt-speech-at-united-nations/. Retrieved on 20th December 2020.
[108] https://aseansogiecaucus.org/about. Retrieved on 31st December 2021.
[109] https://aseansogiecaucus.org/resources/upr-reports. Retrieved on 31st December 2021.

regional network that could provide the Malaysian LGBT CSOs in the UPR process, particularly in providing advocacy and networking support.

The UPR is a review process that upholds the protection of human rights, promoted in the UN Universal Declaration of Human Rights (UHDR). This review process can be treated as one of the platforms for LGBT CSOs to promote their ideology and demands. However, there is a debate on the human rights values upheld in the UDHR for its failure to consider the cultural and religious context of non-Western countries.[110] Muslim countries view that the Syariah should not be an exception to international human rights norms. Therefore, the Cairo Declaration of Human Rights (CDHRI) was adopted in 1990 by members of the Organisation of the Islamic Conference (OIC). The CDHRI highlights that the fundamental human rights and freedoms according to Islam are an integral part of the Islamic religion. The human rights values promoted in the CDHRI were endorsed by 45 Muslim countries including Malaysia. The state has included the CDHRI as one of the references for the blueprint of its first National Human Rights Action Plan (NHRAP) in 2018. The development of the NHRAP is one of the accepted UPR recommendations in the first Malaysian UPR.

Meanwhile, the Islamic CSO coalition (MACSA) and Islamic state agencies such as JAKIM emphasise that the CDHRI is a concern by the state in the decision-making on human rights-related issues, including the issue of LGBT. The considerations of the state in the LGBT-related recommendations are mainly based on the Constitution and Syariah law. The state adheres to its stand in upholding human rights protection in the country where the UDHR and CDHRI are guides and references instead of compulsory documents to be followed. The strong stand of the state in handling itself in the international platform

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[110] https://www.nationalreview.com/2003/01/human-rights-and-human-wrongs-david-g-littman/. Retrieved on 25th December 2020.

can be seen as the previous Prime Minister, Mahathir Mohamed emphasised Asian Values whereby the country has its own values and culture to protect, instead of following the entire concept from Western countries. The state adheres to its stand in handling the issue of LGBT in the UPR process, as mentioned by Offord and Cantrell (2000) where Asian leaders including Malaysia claimed that "*the LGBT/ transgender issue is a Western issue*" and contradicts the Malaysian culture (Jamal, 2018).

Due to the state's stand on LGBT, LGBT CSOs remain vulnerable in the policy process where they have almost no door to engage with the state. However, the UPR provides a platform for them to raise their issues and interact with the state to address and discuss the related policies to solve their problems, while COMANGO functions as a channel to LGBT CSOs in the UPR. The requests of LGBT CSOs mainly from the perspective of the universal human rights upheld by the UN. Although the state adheres to its principle and considerations, there are still spaces for both parties to negotiate that might be suitable for the state and the Malaysian society, especially issues surrounding discrimination, safety, education and health.

Although COMANGO and MACSA both subscribe to the principles of human rights, these two coalitions uphold different interpretations of principles of human rights in the UPR, UDHR and CDHRI. COMANGO promotes the idea of universal human rights as mentioned in the UDHR which is based on a liberal perspective. On the other hand, MACSA safeguards the philosophy of human rights from an Islamic perspective. This difference has affected the decision and behaviour of the two coalitions in the UPR process. COMANGO provides full support to the entire UPR recommendations on LGBT, while MACSA defends the protection of human rights values under the Islamic philosophy by encouraging the state to reject LGBT related recommendations. Moreover,

members of MACSA have supported the state in operating rehabilitation programmes for the Muslim LGBT.

The different perspectives of COMANGO and MACSA have created a tense relationship, especially when participating in the UPR process. They have opposite views on the state's decision-making on LGBT-related recommendations. However, they once shared a similar concern, which is discrimination against the LGBT community. Therefore, these coalitions can collaborate in defending the rights of LGBT from discrimination although the possibility is thin because of the vast different fundamental principles that these coalitions uphold.

6.8 Summary

LGBT is conventionally a controversial issue in Malaysian society. The influence of religion, local culture, and shared values in society has played a role in how the state and society perceive the LGBT community and thus, how it affects the policy process. JAKIM is the main state agency responsible for the issue of LGBT but only limited to Muslims. However, no institution governs the LGBT community which includes non-Muslims. The issue of LGBT receives less attention in the policy process and sometimes it is simply treated as a religion or a moral issue. JAKIM plays its role in handling the issue of Muslim LGBTs from the Islamic perspective through rehabilitation and education programmes among the community. One of the rehabilitation programmes organised by JAKIM, the *Mukhayyam*, has been criticised by human rights defenders and LGBT CSOs as a "state-sponsored violence." However, the state and the Islamic CSOs deny this censure and stress that *Mukhayyam* is a voluntary religion-based rehabilitation programme instead of a conventional conversion therapy.

Besides the fact that LGBT is seen as a religious issue, there is very limited opportunity for LGBT CSOs to communicate with the state, particularly in the public policy process. The fact that there are limited avenues for CSOs to communicate with the state also reflects the lack of political will in solving this issue due to the sensitivity of the issue. Furthermore, SUHAKAM has not paid enough attention to the issue of LGBT consistently but addresses it in a case-based context. These circumstances make LGBT a vulnerable group. Therefore, LGBT CSOs seek alternatives to raise their issues and problems mainly from the perspective of human rights to solve their problems that threaten their daily lives including (1) discrimination; (2) family and community acceptance; (3) violence and harassment; (4) health; (5) education; (6) facilities; (7) legal perspective; and (8) lack of comprehensive institutional framework.

The UPR provides a platform for LGBT CSOs to access a global audience and seek support from international parties for the good of the community. The UPR recommendations are mainly focused on the issues of discrimination, decriminalisation of LGBT persons, and the protection of human rights for LGBT persons where these are the main concerns of the LGBT community. The recommendations also propose the Malaysian state to consider law reform and rational policy development to protect the rights of the LGBT community and to solve their problems. Informants show their appreciation toward this international mechanism which upholds the spirit of democracy by strengthening the role of stakeholders and CSOs, and the universal principles of human rights.

Commonly, LGBT CSOs are not officially registered under ROS, sometimes they prefer to work as a campaign or movement. They work from the context of human rights and strongly believe that the state shall consider equality as one of the pillars in the policy

process to protect their rights. Therefore, to legitimise their fight for human rights in Malaysia, LGBT CSOs join the COMANGO coalition to participate in the UPR process. The Islamic CSOs coalition-MACSA has raised their view from the Islamic perspective in the third cycle of the UPR. However, the secular and Islamic CSOs coalitions together have raised a common issue, which is the discrimination against LGBT persons and the protection of LGBT at the workplace. Therefore, it can be said that there is a small common ground among these two coalitions even if they interpret LGBT from different perspectives.

The issue of LGBT is disputed based on two perspectives-- from a religious and basic human rights perspective. Solving this issue is imperative to ensure harmony and peace in society. Wrestling between the supportive and opposition groups on this issue has forced the state to find a balancing point to provide a room for its people (including LGBT persons) to enjoy their basic human rights within the condition that is allowed from a religious perspective. Otherwise, this issue might trigger a bigger and broader social problem that might affect other community groups if it is not handled wisely by the state.

LGBT CSOs employ a variety of methods to participate in the UPR process, including collaborating with LGBT CSOs, compiling documentation, establishing good networking with other CSOs, contributing to the UPR stakeholder report, attending and speaking up in the UPR review process, advocating and developing networking in the community, and collecting empirical data in the Parliament. As a vulnerable group working on a controversial issue under a semi-authoritarian state, LGBT CSOs interact with the state through a counter-hegemony approach. They take initiative in developing the organisation and joining COMANGO to gain alternative opportunities to participate

in the UPR and policy process. They also advocate their ideology and situation to the international community.

Recommendations on the issue of LGBT was first stated in the first cycle of the UPR, and, the number of recommendations has been increasing in every cycle. The state upholds its principles and values while considering the UPR recommendations. The study examines the state's considerations in LGBT-related recommendations from four perspectives, namely rational (impact on policy implementation, religion, and human rights concept), institutional (state's institutions and legal perspective), political (less support), and cultural perspectives (plural society and shared values). Although the UPR emphasises the value of universal human rights, none of the LGBT-related recommendations have been accepted by the state in the three cycles of the Malaysian UPR. Thus, it is still a long way for LGBT CSOs to advocate for the protection of the rights of the LGBT community.

CHAPTER 7

DISCUSSION: A COMPARISON BETWEEN PWDS AND LGBT CSOs WITH THE STATE IN THE MALAYSIAN UPR PROCESS

7.1   Introduction

This chapter discusses the findings of the study by comparing the two cases of PWDs and LGBT CSOs in the UPR process from theoretical and empirical perspectives. There are three sections in this chapter. The first section highlights the role of the Universal Declaration of Human Rights (UDHR) and the Cairo Declaration on Human Rights in Islam (CDHRI) in the state's decision-making in the UPR. These two declarations are international human rights principles references referred by COMANGO and MACSA, therefore, it is crucial to understand the differences between these two declarations.

The second section discusses the formation of the relationship between CSOs and the state by comparing theoretical approaches applied by PWDs and LGBT CSOs in the UPR process involving social capital and counter-hegemony. This section also compares the causes leading to the formation of the CSOs-state relationship in the UPR process from four perspectives, including the significance of the UPR for the particular issue, strategies employed by both CSOs, key factors that shape the relationship of CSOs with the state, as well as the state's considerations in the UPR process for the two issues. Lastly, the third part concludes the comparison of the two cases by illustrating the similarities and dissimilarities between these two cases.

7.2   The Universal Declaration of Human Rights (UDHR) and Cairo Declaration of Human Rights on Islam (CDHRI) in the UPR Process

As a mechanism under the UN, the value of UDHR plays a role in supporting the fundamental value of the UPR. The main value of human rights upheld in the UDHR emphasises the freedom of an individual as Article 1 states that "All human beings are born free and equal in dignity and rights" (United Nations, 1948). While the CDHRI provides an overview of the Islamic perspective on human rights based on Islamic Sharia as its sole source. The CDHRI believes that fundamental rights and freedom according to Islam are an integral part of the Islamic religion which guides Muslim communities. Thus, this explains that Sharia law and Islamic framework are the core principles upheld by the CDHRI.

The Malaysian state strengthens both the roles of the UDHR and CDHRI in its first National Human Rights Action Plan (NHRAP), which is one of the UPR recommendations committed by the Malaysian state since its first cycle in 2009. This shows that the Malaysian state is in a position to realise the principles of human rights promoted in the UDHR and CDHRI. Nevertheless, there are differences between the perspectives of human rights subscribed by the UDHR and CDHRI. The UDHR promotes the freedom of an individual as a human being, free from any elements including religion. Although the CDHRI also fights for human rights, it emphasises the teachings of Islamic values which may contradict the liberal concept of human rights the UDHR upholds. Despite these two differences, the Malaysian state shows its neutral stand in trying to balance between these two declarations by emphasising the Federal Constitution as the supreme law in public decision-making. This behaviour can be seen in the state's decision-making in accepting the UPR recommendations in the past three cycles. Besides,

the state after 2018 was receptive and responsive to civil society demands, including the UPR Review process for a short period because a few CSOs were part of the state.

7.3   The Formation of PWDs and LGBT CSOs-state Relation in the UPR

The theoretical challenges of how PWD and LGBT CSOs interact with the state have been addressed in Chapter One, which allows us to understand the multi-facets of social capital and counter-hegemony approaches employed by PWDs and LGBT CSOs in the UPR process. PWDs CSOs generally receive a higher level of acceptance from the state and society, and therefore, choose to work cooperatively with the state in the policy process as well as in the UPR process. In this case, social capital has been utilised by these organisations to interact with the state. Social capital as one of the important traits in democratisation (Putnam, 1995) strengthens the elements of trust and participation. It is an approach used by many organisations, specifically CSOs in this research that capitalise on the importance of networking and resources.

As the Malaysian state dominates the discourse on LGBT and limits the behaviour of the LGBT community through the implementation of public policy, the LGBT CSOs participate in the UPR process through a counter-hegemony approach to slowly challenge the authority of the state using the influence of civil society and culture. The limitation of LGBT CSOs in participating in the public policy process elucidates that the state still uses a semi-authoritarian approach in handling the issue of LGBT or SOGI. The fact that the state has not accepted any of the UPR recommendations in the three cycles of the UPR reflect that the state does not publicly and officially protect the rights of the LGBT community. Therefore, initiatives have been taken by LGBT CSOs to make themselves seen and heard in the public decision-making as well as in the UPR process. CSOs can choose 'a war of manoeuvre' or 'a war of position' in dealing with the state. As mentioned

in Chapter Three, these two strategies might be employed by CSOs according to the situation. In the case of LGBT CSOs, 'a war of position' has been utilised in the UPR process.

The document review with historical tracing and the interviews conducted in this research have helped the researcher to clarify the ideologies on interactions of PWDs and LGBT CSOs with the state and the state's considerations in the UPR process. The findings show that the interaction between these two CSOs and the state are indeed different, forcing PWDs and LGBT CSOs to apply different approaches in dealing with the state in the UPR process. This behaviour is reflected in how they interact with the state in the public policy process.

Commonly, the issue of PWDs receives wider acceptance from the state and society as discussed in Chapter Five. The reason the disabled community is accepted by the society can be explained by the Dependent target group construction in the policy process as described by Bekkers, Fenger, and Scholten (2017), where the policy directed at the support of groups who are in a difficult position causes them to be dependent on help and support on others. Therefore, PWDs CSOs are often invited to participate in the related policy process regularly through the NCPWDs, engagement sessions organised by the state, and participate in other official organisations or working committees under JPOKU. Thus, the interaction and interfaces of the PWDs CSOs across the PWDs' related policy process have bearing on the overall orientation and ideology of social capital. Thus, the positive relationship between the state and PWD CSOs

The issue of LGBT has always been controversial in Malaysian society which is caused by deviating existing cultural norms, religious values, and the principles of the Constitutions, and other effective laws on the recognition of the status of LGBT. Therefore, public display of the LGBT community and their open behaviour are not accepted by Malaysian society as a whole. Moreover, LGBT individuals are viewed as deviants, forcing them to be placed in a weak power position and receive negative public perception. Thus, LGBT CSOs seek support and understanding from the perspective of human rights in solving their problems focusing on basic needs and fundamental rights stipulated under existing laws and the principles of the UDHR. However, the participation of the LGBT CSOs in the policy process and the UPR process has been inhibited by the state causing LGBT CSOs to work under cultural and religious contestation in Malaysia, which has forced the group to use the counter-hegemony approach to advance and protect the cause of the LGBT community.

PWDs and LGBTs receive different responses from the state and society, although they are both vulnerable groups located in a weak power position. This is caused by how the Malaysian state and society understand and view these groups. As a result, PWDs are received positively by the public but the LGBT community is not, thereby marginalising them within the community. Therefore, it can be suggested that public perception plays a significant role in influencing the support and tolerance of the state and society.

7.3.1 Social Capital and Counter-hegemony in the UPR

The stark difference in acceptance has forced these organisations to subscribe to different approaches when dealing with the state in the policy process and in the UPR process. PWDs CSOs maintain a good relationship with the state and participate in the PWDs policy process by practising the social capital approach, while the LGBT CSOs continue

their struggle through the counter-hegemony approach. The same methods are used in the UPR process as shown in Figure 7.1.
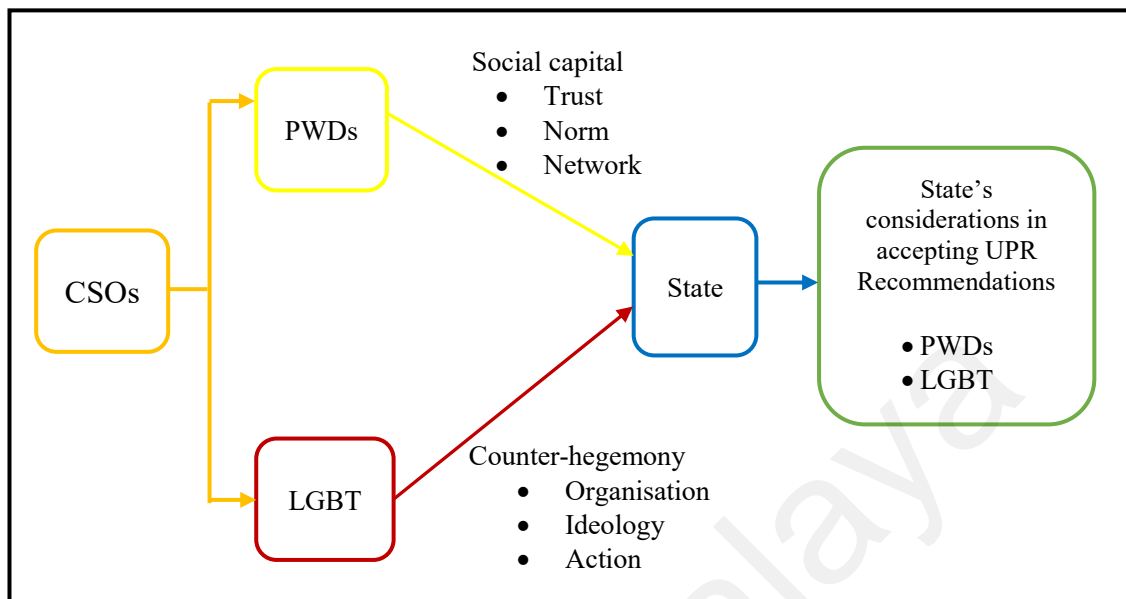

Figure 7.1: PWDs and LGBT CSOs-state relation in the Malaysian UPR
(Source: Designed by the author)

(i)   Social Capital and PWDs CSOs in the UPR

PWDs CSOs focus on the domestic policy process instead of the UPR because the state provides a wider space for them to participate in the policy process regularly. In line with the central idea of social capital, PWDs CSOs have developed a strong network with the state to improve the quality of life of the disabled community. These organisations have also associated norms of reciprocity among the PWDs CSOs to strengthen the influence of the groups in the policy process.

Recently, the state has opened its doors to PWDs CSOs. Hereafter, these organisations take this opportunity to interact actively with the state in the policy process. As the notion of social capital is centred on social networks, civic engagement, norms of reciprocity, and generalised trust (Yasunobu & Bhandari, 2009), PWDs CSOs are more comfortable in delivering their ideas and comments through the existing platforms provided by the state. This reflects the trust that PWDs CSOs have with the state in

solving their problems and protecting their rights and livelihood. In fact, the element of trust occurs in both PWDs CSOs and the state in making more efficient and relevant policies for the disabled community. PWDs CSOs trust the intention and initiative of the state in taking responsibility in the issue of PWDs, while the state favours engaging with them for a deeper and closer understanding of the issue and problems faced by the PWDs community.

Recently PWDs CSOs and the state cooperated in the policy process. The prominent CSOs prioritise the fighting for basic needs including the physiological, safety, and social needs of the community as these need to be solved to grant the disabled community quality of life. This situation has made most of the PWDs CSOs remain to be charity-based in the policy process instead of rights-based. The cooperative relationship has made most of the PWDs CSOs put less focus on the UPR process, and explain why the prominent CSOs do not participate in the past three cycles of the UPR. Only two PWDs CSOs participated in the UPR process, which is *OKU Bangkit* and PERTIS who separately joined COMANGO and MACSA. The participation of these two PWDs CSOs can be seen as the growth of PWDs CSOs in advocating the rights of PWDs on international platforms with a heavier focus on human rights.

According to the classification of the four target group construction by Bekkers et al. (2017), the construction of PWDs is categorised as the Dependents, making this issue and the voice of PWDs CSOs easier to be heard and accepted by the state and society. This factor allows CSOs to employ a social capital approach when dealing with the state. With the construction of Dependents, the UPR recommendations proposed by PWDs are tolerated much better by the state in the three cycles of the UPR.

Cooperation between CSOs and the state in the PWDs policy process has developed maturely, where both parties are familiar with the real situation and collaborate to address the problems the best way. Despite the changes of the government from *Barisan National* to *Pakatan Harapan* in May 2018, then to the current government, *Perikatan Nasional* since February 2020, the governments have shown a consistent stand in supporting the issues of PWDs and interacting with the CSOs. The leaders of the related ministries including the politicians (i.e. the Minister) and the state officer (i.e. the Secretary-General) show their willingness in listening and solving the issue of PWDs. Therefore, it can be seen that the way PWDs CSOs participate in the policy process aligns with the two ideas proposed by Weiss (2004), the top-down change through the co-optation of leaders and agendas; and through policy advocacy. PWDs CSOs utilise the elements of trust, norms, and social networks while interacting with the state, which are the fundamental components of social capital. Therefore, this has brought a cooperative relationship between PWDs CSOs and the state in the policy process.

(ii) Counter-hegemony and LGBT CSOs in the UPR

Differing from PWDs CSOs, LGBT CSOs constantly work under pressure and in a controversial environment. This is due to how the LGBT is understood and seen that deviates from the norms of Malaysian society that also resonates with the Deviant construction. Based on the Constitution, existing laws, beliefs and norms of Malaysian society, the state shows its strong stand in rejecting the LGBT-related recommendations in the past three cycles of the UPR. As mentioned in Chapters 3 and 6, the Malaysian state remains to be a semi-authoritarian state in the public policy process, particularly dealing with issues that do not conform to existing laws and the culture of Malaysian society.

The concept of Asian values is still being used by the state when addressing deviant behaviour in Malaysian society. LGBT is prohibited in the Syariah law as well as the Penal Code thereby cementing the idea that LGBT is deviant and not accepted by Malaysians. The state safeguards the traditional values and culture upheld by the country and society through existing laws to limit the spread and movement of the LGBT community. This has made the LGBT a controversial issue and receives very little tolerance from society and the state. However, LGBT CSOs continue their struggle to solve the predicament faced by the community on the basis of universal human rights.

Gramsci's concept of hegemonic approach refers to the condition in which the dominant classes utilise the state to both coerce and achieve their dominance within civil society (Katz, 2006). LGBT CSOs' actions in the policy process and the UPR can be explained as a counter-hegemonic approach to deliver their voice to the state. The UPR provides a platform for the LGBT CSOs to engage with the international community for a social relationship, forming a counter-hegemonic movement through three elements namely, the organisation, ideology, and action. LGBT CSOs influence the state's consideration of LGBT related recommendations by taking the initiative to organise the groups in representing the LGBT community in the UPR process, advocating the ideology and discourse from the universal human rights perspective, and actively participating in the UPR process.

The LGBT community has developed organisations to galvanise power in dealing with the state. All the LGBT-based organisations are not officially accepted by the state. They are unregistered organisations and have never been invited by the state for engagement sessions. These organisations work under very limited resources and in poor conditions with less support from other CSOs. However, they persevere and continue

their movement with limited resources and support. COMANGO provides a platform for LGBT CSOs in delivering their voice to the state and to the international community.

In the UPR process, LGBT CSOs emphasise the human rights ideology that is upheld by the UDHR on the issue of LGBT in Malaysia. This ideology differs from the perspective of the Malaysian state that focuses on the Syariah law and Penal Code, as well as Asian values. This ideology avoids confrontation with the state from traditional values but from the universal human rights perspective. The advocacy of this discourse in the UPR offers an alternative ideology to the state to look at the issue of LGBT from a different perspective.

LGBT CSOs take action on domestic and international platforms to deliver their issue to the state. As a vulnerable group with limited support from the state and society, LGBT CSOs keep moving in various ways to raise their voices, including collaborating with CSOs that are willing to cooperate with them, advocating universal human rights on behalf of the LGBT community, and provide support to the LGBT persons on social media. At times, the process was slow due to limited resources but they kept moving despite the challenges they faced. Staying in a hostile environment, LGBT CSOs utilise the elements of counter-hegemony in their struggle to fight for their rights and to solve the problems faced by the community.

The interaction between LGBT CSOs' and the state demonstrates that LGBT CSOs use a war of position occurs in the UPR process where they emphasise the ideology of universal human rights on the issue of LGBT in Malaysia. Although the LGBT movement has been impeded by the state and discouraged by the local community, they continue conducting activities and persevere without attracting too much attention and

controversy. Moreover, their ideology has been supported by several local CSOs such as the secretariat of COMANGO. The collaboration between COMANGO and LGBT CSOs shows that Malaysian society is beginning to slowly change.

7.4 Comparison of Causes Leading to the Formation of CSOs-state in the UPR Process

The study analyses the formation of the relationship between CSOs and the state when it comes to addressing PWDs and LGBT in the UPR through four perspectives; (1) significance of the UPR; (2) strategies employed by CSOs; (3) key factors that affect the relationship between CSOs and the state; and (4) the state's consideration in accepting UPR recommendations. Table 7.1 shows the comparison between PWDs and LGBT CSOs in the UPR process from these four perspectives. The significance of the UPR on these particular issues explains the background and reasons behind the response of CSOs in participating in the UPR process, and the strategies employed in the UPR to influence the outcome of the UPR process. These two perspectives are the initiatives that CSOs take and can control. However, key factors that affect the relationship between CSOs and the state's considerations fall within the responsibility of the state. Therefore, the initiatives of CSOs and the state in the UPR can be explained through these four perspectives.

Table 7.1: Comparison between PWDs CSOs and LGBT CSOs with the state in the UPR process

Perspective	PWDs CSOs	LGBT CSOs
1. Significance of UPR	<u>Less significance of UPR</u> (i) Existing policy-making mechanism (ii) Focus of PWDs CSOs (Charity-based vs Rights-based) (iii) UPR recommendations on issues of PWDs (iv) Lack of exposure to the UPR	<u>Significance of UPR - important</u> (i) Create a room to speak up - participate in policy indirectly (ii) Advocacy (iii) Human rights perspective

2. Strategies employed by CSOs	(i) Stakeholder's report (ii) Engagement session (iii) Attending UPR process at Geneva (iv) Good networking with the state (v) Work with SUHAKAM (vi) Networking with politicians (vii) Social media (official website, Facebook)	(i) Collaboration among LGBT CSOs (ii) Documentation (Legal cases) (iii) Good networking with other CSOs (iv) Stakeholder's report (v) Attending UPR process at Geneva (vi) Advocacy and community networking (vii) Data collection (Parliament)
3. Key factors affecting relationship with the state	**(i) Political and culture** • seldom relate to political perspective • general understanding: vulnerable • lack of human rights values **(ii) Organisation imperative and functional** • support members (PWDs) • deliver expectation to the state • aim: in line with the state • supportive to the state in policy process **(iii) Behavioural and attitudinal** • Registered CSOs • Utilise communication platforms by the state • Cooperative in policy process • PWDs activists: cooperative	**(i) Self-organisation** • Initiative – join CSOs coalition (COMANGO) **(ii) Public sphere** • Through COMANGO • Controversial issue - less concern by society
4. State's considerations in accepting UPR recommendations	**(i) Rational perspective** • National interest • State's readiness **(ii) Institutional perspective** • Public policy institutions and inter-agencies collaboration • Consensus decision-making • Legal perspective **(iii) Political perspective**	**(i) Rational perspective** • Impact on policy implementation • Religion • Human rights concept **(ii) Institutional perspective** • State's institution – JAKIM, MWFCD • Legal perspective **(iii) Political perspective** • Less support

	• Less role **(iv) Cultural perspective** • Shared values and understanding - state and society	**(iv) Cultural perspective** • Plural society • Shared values - state and society

(Source: Created by the researcher)

7.4.1   Significance of the UPR for the Issues of PWDs and LGBT

(i)   The Less Significant Impact of the UPR for PWDs

PWDs CSOs receive less attention in the UPR process, as prominent and active domestic CSOs from various categories do not participate in the UPR in the past three cycles as the state has developed a more inclusive institutional framework in managing PWDs in the country. PWDs CSOs are given opportunities to participate in the policy process and communicate with the state on a particular issue. The appointment of PWDs in the Upper House of the Parliament, for instance, shows the state's commitment to protecting the rights of PWDs. This situation has also happened in the appointment of a PWDs as the Commissioner of SUHAKAM. Therefore, the role of PWDs CSOs has been recognised by the state in the existing policy-making mechanism.

As mentioned in Chapter Five, PWDs CSOs mainly operate using a charity-based approach instead of a rights-based approach because these CSOs in prioritising solving the problems that involve the basic needs and rights of the disabled community as shown in Figure 5.3. There were only two PWDs CSOs that participated in the UPR process, the *OKU Bangkit* and PERTIS, through COMANGO and MACSA. *OKU Bangkit* acts as a civil movement on the issue of PWDs while PERTIS is an organisation with an Islamic background. These two CSOs participate in the UPR by raising the challenges PWDs have endured from the perspective of human rights. However, the existence of these two PWDs CSOs in the UPR process highlights the development of these organisations that are slowly evolving from charity-based to rights-based.

The state has accepted most of the UPR recommendations regarding PWDs. This has made the disabled community be more supportive of the state's initiatives as the outcome of the UPR process is positive. However, since PWDs CSOs mainly focus on local policies and activities, they have less experience in the UPR process. Therefore, for the reasons above, the UPR is less significant in promoting the rights of PWDs in Malaysia and explains the majority of these organisations focus less on the UPR.

(ii)   The Major Significance of the UPR for the LGBT Community

The UPR process provides a space for the LGBT CSOs to advocate the rights of the LGBT community from the universal human rights perspective. Therefore, LGBT CSOs welcome the initiative and implementation of the UPR recommendations in Malaysia. This is an opportunity for them to raise their issues and comments to the state and the international community which has brought the organisations to participate actively in the UPR process.

As a controversial group in the country, LGBT CSOs have limited opportunities to raise their problems. Their existence has not been officially recognised and encouraged by the state and society, thereby shutting the door to access to the policy process. Some problems that violate the rights and livelihood of LGBT persons are discrimination at the workplace and public spaces that threaten their safety in their daily lives. The UPR that is based on the foundation of universal human rights promotes the fundamental rights for all humans, and argue that humans are born free and equal.[111] Therefore, this has prompted LGBT CSOs to actively take part in the UPR process to advocate the rights of the LGBT community in Malaysia and galvanise support from the international community.

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[111] For more information of the UN on the rights of LGBT can visit
https://www.ohchr.org/en/issues/discrimination/pages/lgbtunresolutions.aspx.

Therefore, the UPR is significant to the LGBT CSOs as it gives access to the state and policy process, enabling them to raise awareness about the LGBT community to the state and society in the context of universal human rights. For the reasons above, the UPR process has brought different views and interpretations of the PWDs and LGBT CSOs in achieving their expectations particularly to influence the policy process. For the PWDs CSOs, the UPR is less significant; while it is more significant for LGBT CSOs in bringing them an avenue to participate in the policy process.

7.4.2 Strategies Employed by PWDs and LGBT CSOs in the UPR Process

Both PWDs and LGBT employ a variety of methods in participating in the UPR. There are similar and dissimilar strategies employed by these two CSOs. The strategies used are influenced by the 1) resources and 2) social capital obtained by CSOs. Both PWDs and LGBT CSOs have used these two strategies in the UPR process. As encouraged by the UPR Working Group, CSOs are welcome to submit their stakeholder's reports in the UPR process and attend the review session at the UN Geneva Convention.

Apart from the traditional methods used by CSOs, they also depend on strong networking. The method used is influenced by the resources and networking of that particular CSO. As PWDs CSOs maintain a good relationship with the state in the policy process, they tend to engage with the state closely on the issue of PWDs. At the same time, they also work with SUHAKAM and maintain good networking with politicians. The PWDs CSOs have also utilised social media by developing an official website and other social networking platforms such as Facebook to advocate their issue to the public.

However, LGBT CSOs employ some other different methods from PWDs CSOs in the UPR process. As a vulnerable group, they collaborate among LGBT CSOs and other CSOs that accept their mission and believe in the principles of universal human rights. They maintain relationships with these CSOs and seek support and resources in the policy and the UPR process. To provide evidence-based proof, LGBT CSOs document legal cases of LGBT persons to be used as evidence for the violence and discrimination endured with hopes to seek support from the state and society.

Apart from that, they have collected data at the parliament on the violence of LGBT among the politicians particularly Members of Parliament. Documentation and data collection are methods to obtain empirical information and evidence to strengthen the violence against LGBTs in Malaysia. Documenting is pivotal in presenting substantial evidence to support the cause of LGBT. The collected information and documents will be used to advocate the issue of LGBT to the state, Malaysian society, and the international community. There are similarities and dissimilarities of strategies employed by PWDs and LGBT CSOs in the UPR process. However, these strategies show that CSOs are proactive in taking part in the UPR process and actions have been taken based on their aims and resources. There is no perfect strategy, but CSOs employ the most suitable strategy to achieve their aims and goals.

7.4.3 Key Factors Shaping the Relationship between PWDs and LGBT CSOs with the State in the UPR Process

PWDs and LGBT CSOs have a different relationship with the state in the UPR process. As mentioned in Chapter Five, PWDs CSOs utilise the social capital approach in dealing with the state; while Chapter Six explained how LGBT CSOs continue their struggle through a counter-hegemonic approach. The different approaches used by these two

CSOs have brought dissimilar types of key factors that shape the relationship between PWDs and LGBT CSOs with the state.

There are three main factors that influence the relationship between PWDs CSOs and the state namely (1) political and culture; (2) organisational imperative and functional; and (3) behavioural and attitudinal factors. These three factors lead to a more cooperative interaction between CSOs and the state where the requirements to improve the rights of PWDs are in line with the aims of the state in the policy process. PWDs CSOs have faced limited barriers in developing relationships with the state. This situation has made them cooperate with the state peacefully instead of arguing openly.

On the other hand, LGBT CSOs receive much less support from the state and society. This circumstance has made them choose to be more proactive and progressive in dealing with the state and advocacy works. It is worth underlining that the changes of the government do not bring a significant impact to the acceptance of the state in the issues of LGBT in the UPR process. Although the Pakatan Harapan government has slightly opened the door to engage with CSOs, such as COMANGO and MACSA, the unsupportive attitude towards the recommendations on LGBT remains the same. None of the related recommendations have been accepted by the state in the third cycle of the Malaysian UPR in 2018. From here, it can be suggested that the state (government of the day) strongly supports the Federal Constitution on the status of the LGBT community in Malaysia.

However, the predicament faced by LGBT groups can be discussed from different perspectives for better problem-solving. This can be seen from the third cycle of the UPR, whereby the issue of bullying in school was raised and anti-bullying campaigns were

implemented in schools to address all forms of bullying including ones based on actual or perceived sexual orientation, gender identity, or gender expression. This recommendation was "partly accepted" by the state. Although it is still considered as "yet to be accepted by the state," but it is an encouraging step for the LGBT CSOs. Therefore, the CSOs could work from the perspective of social issues instead of fight for the recognition of their identity which contradicts the basic principles of Malaysian laws.

As LGBT CSOs are not registered officially under the ROS, this does not prevent them from raising their issue to the state and society. The LGBT group works in groups to protect the rights of the LGBT community. They seek support from other CSOs that are more receptive to their problems and participate in the social movement to attract the attention of the state and society. LGBT CSOs also advocate their issue in the public sphere to deliver their voice to the state.

The contrasting response of the state in dealing with CSOs of PWDs and LGBT has made these organisations react differently in the public policy process and UPR process. Although the PWDs and LGBT CSOs employ different approaches in dealing with the state in the UPR, they are moving toward the same goal which is to improve the quality of life of the community and to protect the fundamental rights granted by the Constitution for Malaysian citizens.

7.4.4 The State's Consideration in Accepting UPR Recommendations on the Issues of PWDs and LGBT

Apart from the fundamental principles upheld by the state in public decision-making, the state has other considerations in accepting the UPR recommendations concerning PWDs and LGBT. The study analyses the state's considerations from four perspectives proposed

by Bekkers et al. (2017) which comprises rational, institutional, political, and cultural perspectives. The nature of the issue is rooted in Malaysia's cultural norms and values and has created a different level of acceptance by the state in the UPR process.

(i)   Rational Perspective

The state strengthens its national interest and readiness by accepting the recommendations concerning PWDs. The main consternation of the state is how the recommendations benefit PWDs and society, and how well the state is prepared to implement the particular recommendation. The state is also worried about the impact on existing policies as the Penal Code and Syariah law have restricted the LGBT movement in the country. Furthermore, from a religious aspect, Islamic principles have been emphasised when considering these recommendations. Although the universal human rights value has been mentioned in the UPR process, the norms, culture, and values upheld by the state and the majority have been highlighted in the UPR process and trumps the rights of the LGBT community. Therefore, the LGBT-related UPR recommendations that urge the state to officially recognise be more LGBTs have not been accepted in the past three cycles.

(ii)   Institutional Perspective

The Malaysian state has developed an inclusive policy and institutional framework for the issue of PWDs. Public policy institutions have been established where the MWFCD has been appointed as the focal agency in handling the issue of PWDs. Apart from that, other related agencies have taken the responsibility to improve their services to the disabled community by collaborating with other agencies and CSOs. This has brought to consensus decision-making in PWDs policy. Moreover, the PWDs Act 2008 highlights

the intention of the state to provide better services to the PWDs community although there are areas that need to be improved.

Unfortunately, there is a lack of institutional framework in handling the issue of LGBT. This might be caused by a dual legal system in managing the issue of LGBT. The issue of Muslim LGBT is under the authority of JAKIM, while the issue of non-Muslim LGBT has fallen under the responsibility of different agencies according to the nature of the issue. Therefore, the issue of LGBT has always been neglected and this has made the LGBT persons remain a vulnerable group that has no access to the policy process. This situation does not give a good impact in addressing the challenges of the LGBT, and it has brought the CSOs to confront the state where they have to choose to a counter-hegemonic approach when fighting for their rights.

(iii)   Political Perspective

The political perspective is less significant in the case of PWDs because the institutional framework of PWDs is relatively inclusive, and therefore, the CSOs tend to play their role and influence the policy process instead of using a political approach. Commonly, PWDs CSOs are more comfortable dealing with official agencies in solving the problems. This can be seen from the interaction between PWDs CSOs and the state in the policy process. Although PWDs CSOs are urging the state to amend the PWDs Act 2008 to become more effective in protecting the rights of PWDs, they deliver their recommendations to the state through a more cooperative approach with the MWFCD. Due to their cooperative relationship, PWDs CSOs enjoy a more receptive response from the state in the policy process.

On the other hand, LGBT CSOs enjoy having a different relationship with the state as the issue is a sensitive political and religious matter in the domestic policy and the UPR process. They receive less support from state agencies and politicians in fighting for the rights of LGBT in Malaysia. The LGBT term and description have been mocked by Members of Parliament in the Parliament sessions. Therefore, LGBT CSOs face much more challenges in proposing their views to the state compared to CSOs of PWDs.

(iv) Cultural Perspective

The state and society have similar shared values and understanding on the issue of PWDs. They are supportive of PWDs and willing to contribute to creating a better environment for the disabled community. However, LGBT CSOs did not receive similar shared values from the state and society where they have less tolerance of the LGBT community and believe that this behaviour should be corrected into the common values held by society. Although there might be a small group of people that support the issue of LGBT, this community experiences great difficulties in the plural society of Malaysia.

The issue of PWDs and LGBT, although they are both the vulnerable groups in society but are treated very differently by society. The response of society to these issues is relatively opposite. This is because the issue of PWDs is in line with the culture of Malaysian society while the LGBT issue contradicts the norms of society.

Comparison of the State's Decision-making on Recommendations Concerning PWDs and LGBT

The state's decision-making in the UPR process on the issues of PWDs reflect the pattern of seven characteristics in the policy process proposed by Bekkers, Fenger, and Scholten (2017). The (1) explanatory mechanism; (2) human behaviour; (3) policy instruments; (4)

evaluation criteria; (5) role of knowledge and information; (6) structure of the policy process; and (7) role of politics. The state shows a big difference in the seven characteristics when dealing with the issues of PWDs and LGBT in the UPR process. The pattern of state decision-making in the UPR on the issues of PWDs and LGBT has been summarised in Table 7.2.

Generally, the state's decision-making in the UPR process is in tandem with the formal and informal rules and effective policies, based on the fundamental values and principles stated in the Constitution. The state forms its policies strictly based on the rules that have been established and these regulations become the policy instrument in structuring the decision-making process. For the issue of PWDs, the evaluation in the decision-making process is based on the logic of consequences and appropriateness on the implementation of policies and internal coordination among the state agencies. The structure of the policy process, nonetheless, sticks to the effective rules and regulations. The contestation on the issue of PWDs is relatively low due to the acceptance of the public and state agencies. Therefore, the issues of PWDs are accepted even within the state's political framework.

Apart from the existing rules and fundamental values, religion plays a significant role in the decision-making of the LGBT issue. LGBT CSOs seek support from international groups to influence the state's decision-making in the UPR process. The norm and culture of the state and society have affected the evaluation of the state in the UPR process. The research found that both CSOs and the state have different perspectives in the policy process, and they have limited knowledge and understanding about each other, especially the state as it has shown less interest to understand the expectations of the LGBT community. The LGBT issue has also received less political attention.

The 3 cycles of UPR have raised the awareness of the members of the state, particularly the involved ministries to take the element of human rights in the policy-making process. One of the new mechanisms has been developed according to the accepted UPR recommendations, which is the National Human Rights Action Plan (NHRAP). The NHRAP was one of the recommendations accepted by the Malaysian state in the second UPR in 2013. This action plan has launched by the Prime Minister in 2018 and it is a 5 years plan for every cycle in the plan. This action plan comprises 5 key thrusts, aimed to increase the protection of human rights through public policies in Malaysia[112].

Table 7.2: Pattern of state's decision-making in the UPR process for the issue of PWDs and LGBT

Characteristic	PWDs recommendations	LGBT recommendations
1. Explanatory mechanism	Grown practices and established formal and informal rules as well as the effectiveness of the policy. The fundamental values and principles stated in the Federal Constitution.	According to the formal and informal rules the values and principles stated in the Federal Constitution. Religion plays a role in the decision-making process.
2. Human behaviour	State's representative acts strictly base on the rules that have established. CSOs caught in the frame of formal rules and policy processes.	State's representative acts strictly base on the rules that have established. CSOs jump out of the frame of formal rules. Seeking for outsider's influence.
3. Policy instruments	Rational selection of tools from the rules and regulations.	Rules, regulations, and religion value structuring the decision-making process.
4. Evaluation criteria	Based on the logic of consequences and appropriateness on the implementation of PWDs policies, and internal coordination among the state's agencies.	Based on the basic principle of policy-making, norm, and culture of the state and society.
5. Role of knowledge and information	More knowledge and information lead to better decision.	Lack of understanding and less interest to obtain more information due to the principle and value.

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[112] https://www.bheuu.gov.my/index.php/en/arkib/arkib-berita/2018/1121-the-launching-ceremony-of-the-national-human-rights-action-plan-nhrap. Retrieved on 28th December 2021.

6. Structure of the policy process	Stick to effective rules and regulations.	Stick to effective rules, regulations as well as the religion value.
7. Role of politics	A better understanding from the political perspective. The interaction between the political actors is surrounding the rules and regulations.	Lack of understanding from the political perspective. Poor interaction between the political actors and LGBT CSOs.

Source: Created by the researcher base on the seven characteristics in the policy process proposed by Bekkers, Fenger, and Scholten (2017)

7.5 Summary

Despite the official channels and avenues provided by the state, the UPR process provides an alternative method for CSOs to contribute to the policy process and to deliver their voice and comment on a particular issue. There are similarities and dissimilarities of values upheld in the UDHR and CDHRI. The Malaysian state does not want to break any values within these declarations. However, the LGBT CSOs utilise the war of position in the UPR process through the advocacy of ideology on the universal human rights to protect the rights of LGBT in the country.

PWDs and LGBT CSOs show react differently toward the Malaysian UPR process. This is caused by the different status and opportunities of the CSOs in participating in the policy process. PWDs CSOs pay less attention to participating in the UPR process because they are comfortable with the current policy process that enables them to contribute to the policy process. The uncontroversial nature of the issue of PWDs has enabled the CSOs to receive wider opportunities to raise their issues and a cooperative relationship between PWDs CSOs with the state in the policy process. With this, they maximise the social capital that they have to achieve their goals in the policy process. Most of the PWDs CSOs operate in a charity-based approach, with the existence of the UPR, PWDs CSOs with a rights-based approach have occurred to emphasise the rights

of PWDs, where the policy-making to fulfil the expectation of PWDs is a type of the rights of PWDs instead of a charity action.

Comparatively, the LGBT CSOs faced more challenges in participating in the policy process and in the UPR process. The controversial nature of the LGBT issue has put the LGBT CSOs in a difficult situation in dealing with the state. As the LGBT movement is not accepted by the state and society due to its deviance from cultural norms, religious values, and the Constitution, it has forced LGBT CSOs to react in a counter-hegemonic approach. In fact, the semi-authoritarian state has clearly shown its intention to correct the LGBT community into appropriate behaviour that reflects the values and culture of Malaysian society.

Fortunately, the UPR process provides an alternative for LGBT CSOs to seek more support from the international community and from global human rights groups which emphasise the freedom of an individual as a human being. Therefore, LGBT CSOs focus on the UPR process and contribute to the UPR process in various ways. Nonetheless, the relationship between LGBT CSOs with the state is weaker and at times, antagonistic as compared to PWDs CSOs. Therefore, they must seek alternatives to persevere and continue their struggle in fighting for their cause.

The nature of both the issues of PWDs and LGBT has created a contrasting reaction from the state. This is one of the main factors that influence the strategies and the key factors that affect the relationships between PWDs and LGBT CSOs with the state. There is no best approach to follow but the most suitable way for CSOs to continue interacting with the state to gain the highest impact and influence the policy and UPR process. This chapter has found the causes leading to the formation of the relationship

between PWDs and LGBT CSOs with the state, the state's considerations in the UPR process, and the significance of UPR for both the issues of PWDs and LGBT in Malaysia.

CHAPTER 8

CONCLUSION AND RECOMMENDATIONS

8.1   Introduction

This chapter concludes the findings of the research by highlighting the research questions and addressing them. The conclusion of the research is presented by illustrating the approaches employed by CSOs and how these methods have influenced their interaction with the state especially with regard to PWDs and LGBT. This chapter also includes a comparison between these two issues in the UPR process.

The second section proposes several recommendations that can be executed within policy implementation and academia. This study is significant as it contributes empirically in the policy process and theoretically in the study of Malaysian CSOs with the Malaysian government in the public decision process with the presence of the international community. The policy implications have been identified based on the core issues stressed by CSOs and the state in the UPR process. The academic contributions have been made based on the findings of the research on the literature and related studies on the UPR, PWDs and LGBT. Lastly, the chapter underscores the limitation of the research and possible future studies that can be conducted to further contribute to the study of CSOs and the Malaysian state.

8.2   Conclusion

This research aims to identify the interaction between CSOs and the state in the Malaysian UPR process. As explained in Chapter One, the study focuses on the relationship between CSO and the state in dealing with two issues with different target group consisting of the PWDs and the LGBT communities. While the power position of both PWDs and LGBT

CSOs is weak, they are treated very differently by the state and society; PWDs are perceived positively while LGBTs are viewed negatively. The stark difference in treatment and perspective of these issues has helped the researcher to focus on the UPR which is an international policy-making process that is state-driven. The contrasting relationship of PWDs CSOs and LGBT CSOs with the state explains the different approaches and behaviours employed by CSOs in the UPR process. Therefore, three research questions as follows were established to achieve the aim of the research.

    i.   How do CSOs employ social capital and counter-hegemony approach to establish relationships with the state and influence the outcome in the UPR?

    ii.   What is the nature of CSOs that make the interaction between CSOs and the state cooperative but at the same time, highly contested?

    iii.   Why do the state and CSOs respond differently to the UPR process over the issues of PWDs and LGBT?

The research outcome was summarised to answer the three research questions above. The discussion of the three research questions was presented based on issues that emerged from the case study as documented in Chapters 5 and 6. Chapter 7 compared these two cases in the UPR process. To answer the theoretical questions in Research Question 1, the development of a research framework that incorporates the elements of social capital and counter-hegemony identified the practices and role of CSOs in the UPR process.

(i)   The Issue of PWDs

Chapter 5 explained how PWDs CSOs interact with the state in the policy process. With the current policy-making framework developed by the state, PWDs CSOs are more comfortable extending their influence through a social capital approach by utilising the

trust obtained from the state in the policy-making process. As a Dependent type of stakeholder, PWDs CSOs receive a more positive reaction and trust from the state and society. Assisting the PWDs is a behaviour that is encouraged by members of society which is also a cultural norm. Although there are weaknesses in the policy-making process when it comes to improving the quality of life and protecting their rights, PWDs CSOs prefer to deal with the state through existing policies. They participate in the public policy process through various platforms including the NCPWDs and the Upper House of the parliament.

Apart from the social capital approach adopted by CSOs of the disabled community, networking is one of the crucial social elements for CSOs to access the state and to obtain support from society. They access the state by networking and maximising the resources that they have. As such, the relationship between PWDs CSOs and the state has developed through three aspects proposed by Lewis (2013), namely political culture, organisational imperatives and functional coincidence, as well as behavioural and attitudinal aspects of civil society. These aspects elucidate the interaction between PWDs CSOs and the state. However, the research found that political culture plays less of a role in developing the relationship as the issues of PWDs are positively received by the state and society, thus the CSOs focus on their role within the existing policy process that is provided in the current institutional framework.

As organisations that operate using a charity-based approach, PWDs CSOs collaborate among themselves by sharing resources and networks to strengthen their influence in the policy-making process. Their strong networking and sense of community have influenced CSOs to focus their contribution on the policy process domestically instead of focusing too much on the UPR process. In fact, they are aware of the

establishment of international platforms such as the CRPD but most of them pay less attention to the UPR process.

As PWDs-related recommendations are highly accepted in the UPR by the Malaysian state, it has made PWDs CSOs less confrontational and argumentative. However, the development of a rights-based approach among a small group of CSOs has started to advocate the issue of PWDs from a human rights approach instead of purely from a charity approach. They emphasise the rights of PWDs in receiving friendlier and more effective services for the disabled community to attain a quality of life which is the responsibility and commitment of the state to protect the rights of PWDs in Malaysia.

(ii)   The Issue of LGBT

On the other hand, the issue of LGBT has been treated very differently by the state and society. Chapter 6 analysed the current situation of the LGBT community and the interaction between LGBT CSOs with the state in the policy process as well as in the UPR process and highlighted that as an issue that is constructed based on the idea of Deviants as LGBT CSOs receive limited assistance and support from the state and society. As the state maintains its semi-authoritarian behaviour in handling the issue of LGBT, the LGBT community is generally not openly accepted by Malaysian society especially the Muslim community where the behaviour of LGBT is strictly prohibited by Islam. Therefore, the state has taken action to limit the LGBT movement especially Muslim LGBTs, with the aim to correct them by submitting to common values and Islamic teachings.

LGBT CSOs employ a counter-hegemonic approach in dealing with the state because they have very limited opportunities to participate in the policy process.

Therefore, they utilise the three elements of counter-hegemony to increase their influence in the policy and UPR process, namely through organisation, ideology, and action. As a vulnerable group, they strengthen the voices of LGBT persons by establishing various organisations with the aim to fight for the rights of LGBT and provide support to the LGBT community. With cultural norms and religious teachings that have a strong influence in Malaysian society, they try to deliver their demand from the perspective of universal human rights which should be respected and protected above and beyond the fundamental human rights.

This ideology of human rights has been emphasised by LGBT CSOs in the UPR process as the UDHR also upholds the same principles. However, there is a long way to go when it comes to advocating the rights of LGBT in Malaysia because same-sex relationships and the change of genders are prohibited in Malaysia, the Penal Code, and Syariah Law. Therefore, to find an alternative to protect the rights of LGBT persons, CSOs actively participate in the UPR process by joining the coalition of CSOs and contributing to the stakeholder report, thereby making their voices heard at the review session in Geneva. In the speech given by the representative of LGBT CSOs in the third review session, LGBT CSOs openly expressed their situation to the representatives of UN Member States. The actions of LGBT CSOs have been interpreted as a war of position under the counter-hegemonic approach. This is one of the ways they can deliver their problems and expectations to the state by creating pressure on international platforms and obtaining support from other countries. With the current policy framework, they have very restricted opportunities to speak and communicate with state officials. Therefore, they maximise any opportunities they have to solve the problems faced by the LGBT community in Malaysia.

The three elements of counter-hegemony utilised by LGBT CSOs are in line with the two aspects of a highly contested relationship proposed by Young (2000), namely self-organising and the public sphere. With no support from the state and limited backup from Malaysian society and other CSOs, they tend to seek support from the international community by creating pressure from the other countries and international organisations such as the UN and international CSOs. Therefore, the UPR is pivotal for LGBT CSOs to deliver their voices and participate in the policy process on a global scale.

(iii)   Comparison between the Issues of PWDs and LGBT

There are obvious differences between PWDs and LGBT CSOs in dealing with the state because of the nature of the issues and the cultural values and norms upheld by the state and society. Chapter 7 presented the comparison between these two issues from four perspectives, such as the significance of the UPR on the particular issue, strategies employed by CSOs, key factors shaping the CSOs-state relationship, and the state's consideration in accepting the related UPR recommendations. These four perspectives have thoroughly explained why the state reacts differently to the UPR recommendations suggested by PWDs and LGBT CSOs.

The current policy framework developed by the state has also contributed to the different approaches employed by PWDs and LGBT. PWDs CSOs continue their movement by utilising the social capital approach while LGBT CSOs seek more alternatives to access the state. The UPR offers an international platform in championing the principles of universal human rights. Therefore, it is significant for the LGBT CSOs to participate and advocate their issues to the international community which can eventually pressure the state to make positive changes for the LGBT community in Malaysia.

8.3   Recommendations

The research proposes recommendations that can be implemented in two areas - policy implications and academic contribution to improve the CSOs-state relationship in the UPR process. These recommendations aim to increase the effectiveness and efficiency in the UPR process and domestic policy-making on the issues of PWDs and LGBT. The research also hopes to contribute to the body of knowledge of CSOs for a better understanding of the interaction between CSOs and the state in the Malaysian UPR process.

8.3.1   Policy Implications

The policy implications are divided into three parts; the UPR process, the issue of PWDs, and the issue of LGBT in Malaysia. The research explains the core problems faced by the PWDs and LGBT communities, the characteristics and nature of these two issues, and the philosophy and considerations behind the state's decision-making in the policy process. These would help CSOs and the state to understand their respective concerns and priorities, thereby increasing the efficiency of CSOs participation in the UPR process.

(i)   The UPR Process
(a)   Strengthen the role of CSOs

As explained in Chapter 4, the role of CSOs has been stressed by the UN OHCHR in the UPR process. However, the past three cycles of the Malaysian UPR indicate that the participation and influence of CSOs in the UPR only happened once in every cycle. Although COMANGO, the only coalition of CSOs, has submitted the mid-term report of CSOs to the UPR Working Group, this report has not been utilised by the state in the policy process. As a state-driven mechanism, the participation of CSOs in the UPR process is reliant on the opportunities and chances offered by the state. Therefore, the

research scope focuses on the issues of PWDs and LGBT that fall on the construction of the CSOs' weak power, where the participation and influence on both issues are very dependent on the policies set by the state.

As CSOs are the state's stakeholders and the end-users of the policy, their problems and expectations should be made a priority by the state. The state as the policymaker formulates policies and implement them within a rational framework guided by the Federal Constitution, legislation, culture and values of society. As the authority, the state is responsible for the outcome of every policy or decision. Rich information on the core problems of society is needed for more efficient public decision-making. Therefore, the role of CSO in the UPR should be strengthened for this purpose.

In the first UPR cycle, the state only conducted one engagement session with CSOs. While there has been improvement in terms of the number of engagement session from only one in the first cycle to five sessions, in the second and third cycles of the UPR, this thesis reckons that participation of CSOs in the UPR process remains limited. Therefore, the involvement of CSOs in the UPR process could be increased by opening a wider door for CSOs consultations. The role of CSOs in the UPR should be strengthened for the efficiency of the decision-making process and policy implementation.

(b)   Reinforce CSOs-state interaction

As the UPR review is not meant to shame the issues highlighted by organisations, the state could be more open to engaging with CSOs in this process. CSOs represent the community and understand their core problems and expectations deeply, and therefore, can convey those ideas and problems in the policy process and decision-making in the UPR. With the experiences that they have, CSOs could contribute useful information to

the state when considering the recommendations. Therefore, the interaction between CSOs and the state should be reinforced to create a stronger relationship. The interaction between CSOs and the state in the UPR process happens only in every cycle, thus limiting the opportunity of exchanging information on the particular issues in the UPR process.

Maintaining a good relationship with the state could reduce the gap between stakeholders and the policymaker. Thus, understanding the principles and values that both parties believe in can help determine which approach should be used in their relationship. This study elucidates the actions of CSOs and the state in the UPR process, including the significance of UPR, the strategies employed by CSOs, key factors that influence the state's behaviour towards CSOs, and the state's considerations in accepting the UPR recommendations.

By understanding the significance of the UPR on the PWDs and LGBT community, the state should understand better the behaviour of CSOs in the UPR process. The strategies employed by CSOs depend on the state's stand in involving CSOs in the UPR process. The interaction between CSOs and the state could be improved by engaging with CSOs of diverse backgrounds and expertise that believe in the significance of the UPR. There are members of the civil society who are human rights experts and active in the international human rights affairs including the UPR. Therefore, utilising these resources and professional experts might help the state to understand the issues in society thereby producing efficient policies and making decisions that are close to the people within the basic principle of the country in the UPR process.

(ii)   The issue of PWDs

There are three policy implications on the issue of PWDs, which are to strengthen the enforcement of legal framework, CSOs advocating in the UPR, and the transformation of PWDs CSOs from charity-based to rights-based organisations. Although PWDs CSOs have been given the opportunity to participate in the policy process from the making until the implementation of PWDs policy, there are improvements that can be done to enhance the efficiency and effectiveness of the policies. This can be seen from the state's legal framework, a wider standpoint of PWDs CSOs, and the development of human rights value in PWDs CSOs.

(a)   Strengthening the Enforcement of Legal Framework - PWDs Act 2008

The PWDs Act 2008 was gazetted in January 2008 and came into force on 8 July 2008, after the Malaysian government signed the CRPD on 8 April 2008 and ratified the convention on 19 July 2010. The scope of the PWDs Act 2008 covers the establishment of the NCPWDs, registration of disabled peoples, and promotion and development of the quality of life and well-being of PWDs, as well as the administrative matters in managing the law and policy. In 2019, the state announced its plan to amend the PWDs Act 2008, where the scope of the act includes raising awareness to society.[113] Since then, the state has established a special committee in 2020 and recruited representatives of PWDs CSOs to discuss and propose recommendations for the amendment of the PWDs Act 2008.[114]

The state's decision to amend the PWDs Act 2008 highlights its intention to improve the legal system for the disabled community. However, the research found that the most important element that should be included in the act is the enforcement of the

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[113] https://www.bharian.com.my/berita/nasional/2019/12/633980/dakwa-individu-salah-guna-kemudahan-oku. Retrieved on 22nd January 2021.
[114] https://www.sinarharian.com.my/article/92760/BERITA/Nasional/Jawatankuasa-khas-tambah-baik-Akta-OKU-2008. Retrieved on 22 January 2021.

law. The legal framework of the PWDs issue should be strengthened to grant the rights and benefits of PWDs to provide them with a safe environment that encourages their growth and wellbeing. The emphasis of raising public awareness about PWDs could be the first step of the state to advocate their rights. However, it cannot be achieved without strengthening the law with enforcement power. Therefore, the state needs to be more progressive in improving the effectiveness and efficiency of the legal framework concerning PWDs.

(b)   Expand International Perspectives (PWDs CSOs) - Understanding the UPR

The thesis also found that local PWDs CSOs have limited knowledge and understanding of the UPR process. This is because they were given more opportunities to participate in the domestic policy process set up by the state. Based on the interviews, PWDs CSOs are comfortable with the current setup of participation in the policy process. They are active in local activities organised by the state and others CSOs. The issue of PWDs is not a purely local issue but also attracted the international eyesight from the human rights perspective. Therefore, it is suggested that PWDs CSOs should expand their focus on engaging on international platforms for a wider audience where it could help to produce better recommendations for an inclusive PWDs policy in Malaysia.

Having a wider view on the issue could help PWDs CSOs access the international community and other international CSOs. The UPR is one of the international human rights mechanisms that could bring the issues of PWDs to be discussed from the perspective of human rights and the role of the state and individuals of society to help the disabled community. The CSOs might also get more access to other international human rights organisations and PWDs CSOs where these resources might provide them more information and support in the making of policies.

(c)   The Establishment of Rights-based PWDs CSOs

As mentioned in Chapter 5, domestic PWDs CSOs mainly function on a charity-based approach by putting their focus mainly on the basic needs of the community. This is because people's basic needs have a direct influence on the quality of their lives. However, the operation of PWDs CSOs is conventional which depends strongly on the state's behaviour. As a state-driven mechanism, the UPR provides the state with an option where the state drives the pattern and implementation of the UPR process in the country. Despite the idea that the UPR is a state-driven mechanism, it also serves as a platform where the issues of PWDs can be highlighted from the human rights perspective instead of a charity project. Therefore, the development of CSOs to a rights-based approach could also change how the organisations function and advocate the issues from a human rights perspective rather than purely from a charity perspective.

The establishment of newer PWDs CSOs such as MASAA and *OKU Bangkit* is a breakthrough for the PWDs community in directing their struggle to a rights-based perspective. Besides, the establishment of the PWDs coalition, OKU Harapan is practising the principles of human rights in their initiative. This thesis underscores that the charity-based approach could be maintained by PWDs CSOs, but the new establishment of rights-based PWDs CSOs could be encouraged for better development of the disabled community. The growing number of rights-based PWDs CSOs could attract the attention of the state to further protect the rights of PWDs from a human rights perspective. This is crucial to enhance the role of CSOs in providing a rights-based policy framework for the community.

(iii)   The issue of LGBT

The issue of LGBT remains controversial in Malaysian society as the culture of the LGBT deviates from the cultural norm and religious values of society. Besides, religion plays a role that greatly influences the attitudes of society, particularly the Islamic religion because Muslims are the majority in the Malaysian plural society. The behaviour of LGBT is prohibited by Islam, and the Syariah Law is one of the effective laws that govern Muslims in Malaysia. The Islamic religion departments manage the issue of Muslims LGBT according to the authority granted by the Syariah Law. Meanwhile, non-Muslim LGBT individuals are subjected to the Penal Code of Malaysia. Under this circumstance, the issue of LGBT is generally being discussed under the philosophy of Islamic religion and traditional moral values adopted by Asian societies.

As the issue of LGBT is not openly discussed in Malaysia, the UPR provides an avenue for both CSOs and the state to understand the issue of LGBT from the view of universal human rights. As mentioned in Chapter 6, the problems faced by the LGBT community comprise the basic needs including the basic needs of living. However, the state has not provided an inclusive policy to solve the issues of LGBT effectively. The current public administration presents its policies and solution in a loose structure where this issue is not handled by the state under a united system. The Muslim LGBT community receives an overwhelming response from society with strict regulations while non-Muslims LGBTs have been neglected by the state. It is irrational to simply lump the issue of Muslims LGBT and non-Muslims LGBT under one roof. Therefore, the state should create two levels of public administration structure where the issue of LGBT can be handled from (1) the basic level with a general perspective that is related to the entire LGBT community; and (2) separate the issue of LGBT into two different clusters, for Muslims and non-Muslim LGBTs.

As an international human rights mechanism, the UPR process refers to the universal principles of human rights as upheld by the UDHR. Therefore, the state might analyse and consider those recommendations from the context of basic needs. The study provides three recommendations on the LGBT issue in the UPR process; (1) to understand the core problems of LGBT; (2) looking at the issues of LGBT from a basic needs perspective in the policy process and the UPR process; and (3) restructuring and realigning the institutional framework.

(a)   Understand the Core Problems of LGBT

CSOs and the state have different positions in viewing the issue of LGBT. The state does not accept the open behaviour of the LGBT community and always makes sure that its action does not give rise to any possible interpretation of their recognition of LGBT individuals. The state carefully protects the principles and philosophy of the laws and values that the majority upholds. However, the research found that there the LGBT community faces various problems that need assistance and protection from the state and society. This is regarding the problems that threaten their safety and everyday life with discrimination at the workplace, education institutions, and public areas.

To solve these problems effectively, the state should view the problems from the most basic level which is related to the rights of these individuals to be free from discrimination and irrational attacks. These are the rights that should be enjoyed by the LGBT community as they too, are Malaysians and therefore, should be equally protected by the country's law. The discrimination that happens in the workplace, education institutions, and public areas have made it incredibly challenging for LGBT individuals to survive daily. These circumstances have made them lose opportunities to work and learn. As a vulnerable group, the LGBT community needs the protection and assistance

of the state to solve these basic problems just to survive. The state should give a helping hand as the philosophy of all religions and the moral values of society uphold the protection of human beings from any irrational harm and destruction.

(b)   Basic Needs Perspective in Policy Process

As a policymaker, the state would need to collect a lot of information in the policy-making process. This is crucial to produce a relevant and effective policy to effectively solve the problems in society. In the case of LGBT, the state should separate this issue into two levels which have been discussed in the previous section; the basic needs of the entire LGBT community and separate the LGBT issue into Muslims and non-Muslims clusters. Currently, the state focuses mainly on the prohibition of the LGBT movement as unacceptable, stated by religion as it deviates from the norms of society. Meanwhile, LGBT CSOs highlight the universal human rights that are upheld by the UDHR. LGBT CSOs have also stressed the core problems faced by the community which threaten their safety and survival. These problems are directly affecting their everyday life which is the first level of problem that abuse their rights to survive.

The different treatment between PWDs and LGBTCSOs by the state in the policy process has created a gap between these two groups. Therefore, the core problems faced by the LGBT community could be solved by putting both LGBT CSOs and the state on the same point of view, which is the first level of the problem, the core problems (basic needs) of the LGBT community. As LGBT is a controversial issue in Malaysian society, it is a long journey for both CSOs and the state to solve this problem. Therefore, encouraging both stakeholders and the state to view the issue the same way could be the first step to increase the possibility of solving the issue of LGBT.

(c)   Restructuring and Coordinating Institutional Framework

There are two administrative systems that handle the issue of LGBT, for the Muslims and non-Muslims. However, there is no synchronised coordination between these two systems. The religion departments are active in handling the issue of Muslim LGBTs through legal enforcement on the behaviour of LGBT, organising spiritual rehabilitation programmes according to religious teachings, and proposing to amend the Syariah Law. Relatively, the administration of the non-Muslim LGBT is uncoordinated where there is no focal agency to handle the issues of non-Muslim LGBTs as a whole. Non-Muslim LGBTs have been handled in a case-based style, where the cases that are reported will fall under the state agency responsible for the type of case. Unfortunately, this situation indicates that the issue of LGBT is not a priority of the state.

As LGBT is an issue that could lead to other problems in society such as health, social and education issues, it is, therefore, crucial for the state to restructure the public administration to handle this issue. This has been discussed thoroughly in Chapter 6. A focal agency should be appointed to coordinate the issue of LGBT as a whole. Meanwhile, the coordination on administration between the agencies responsible for Muslim and non-Muslim LGBTs could be considered by the state to strengthen the efficiency of public administration.

8.3.2   Academic Contributions

The thesis has demonstrated the importance of CSOs in the UPR process by analysing the interaction between CSOs and the state on the issues of PWDs and LGBT based on the Dependent and Deviant construction in the policy process. This thesis has made four significant contributions to the literature on policies based on international human rights particularly the UPR, and CSOs' influence on the issues of PWDs and LGBT. Specifically,

the first contribution is the role of CSOs in the UPR process and the current development of CSOs-state relationship in the UPR process. This study provides a history of CSOs' participation in the Malaysian UPR process since the first cycle. It also increases the understanding of social capital and counter-hegemony in shaping the CSOs-state relation in the UPR.

The second contribution of this study is the development of PWDs CSOs from a charity-based to a rights-based organisation. The target of this study was to understand the causes that shape the CSOs-state relation in the UPR process. Although there are studies on factors that influence CSOs-state relations, this study attempted to include the context of human rights as well as the influence of international parties in this relationship. The study explained the participation of PWDs CSOs in the public policy process and identified the causes that influence PWDs CSOs' behaviour in the UPR process. These CSOs are comfortable with the state's institutional framework to participate in the policy process. However, eventually they have expanded from a charity-based to a rights-based organisation through the UPR process that strengthens the value of human rights.

The third contribution is how the study highlights the efficiency of CSOs' participation in the LGBT issue and the understanding between both LGBT CSOs and the state in solving this issue. LGBT CSOs and the state have very different views when discussing this issue. Therefore, they argue on a different view in the policy process. The study confirms the core problems endured by the LGBT community and the concerns of the state on the issue of LGBT. The author recommends for these two parties to negotiate and compromise to ensure that the LGBT community's basic needs are protected. There are issues that can be solved together and also the issues that hardly gain consensus from

both CSOs and the state such as the recognition of LGBT's behaviour and identity. However, this should not become a reason to ignore their rights as a citizen of Malaysia.

Lastly, the fourth contribution is by comparing the difference of CSOs-state relations between these two extremely different issues. The study focused on the issues of PWDs and LGBT which have some similarities as both are vulnerable groups but experience different levels of acceptance from society. Through the comparison between these two issues, the similarities and the differences of CSOs' strategies, and the state's considerations in decision-making, have been identified to answer the questions of why the state react differently when dealing with these two issues. The author believes that the findings of this study can provide a fresh perspective to the discourse of CSOs-state relation in the UPR process.

8.4   Limitations of the Research

The first limitation of this thesis is that the findings cannot be generalised to the whole process of UPR. This is due to the limited scope of the thesis where scarce resources and time had compelled the researcher to focus on only two case studies extracted from the UPR process with specific features of target group construction, namely PWDs and LGBT. Also, the research in this thesis was conducted across the second and third cycles of the UPR, whereby the third UPR cycle started on 8 November 2019 and will end only in November 2023. Therefore, there is possibility that the state and/or the CSOs may change their behaviour, approaches or policies before the conclusion of the third cycle which may differ from what are uncovered in this thesis. Although all the necessary data was collected for the research, it is reckoned that they are insufficient to permit the researcher to propose any other policy recommendations above and beyond what have been stated in Section 8.3.1 to the Malaysian state.

Another constraint faced by the researcher was the lack of access to official documents and resources, particularly regarding the issue of LGBT. Compared to the issues of PWDs, the information on LGBT is limited and not made available to the public. Moreover, the data collected by the state is mainly on Muslim LGBT, while the information of the non-Muslim LGBT is still lacking. Therefore, a more comprehensive data is needed for a better understanding of the LGBT community in Malaysia and subsequent formulation of solid policies to ensure their access to universal human rights.

8.5   Future Studies

This study has documented the nature of CSOs and how they participate in the UPR process and explains the issues of PWDs and LGBT thoroughly, as well as CSOs-state relations in how they deal with the two issues. However, these are only two out of seven categories identified by the state. An opportunity exists for future studies to expand to other issues in the UPR which receive low acceptance of recommendations or are controversial in nature. For instance, issues of greater variety or data relating to other vulnerable groups such as indigenous people as well as foreign workers can be considered for this purpose. Findings from such research could help to understand and generalise CSOs' participation and the state's behaviour in considering controversial issues in the UPR.

There are some other cross-sections for the vulnerable people, i.e. a woman PWD who has a double identity of vulnerable which are PWD and women. The situation of this individual might differ from the other group of vulnerable people. Therefore, a study on this cross-sectional individual might be considered from the perspective of intersectional theory.

This research explains the scenario and context of the Malaysian UPR for the past three cycles (2009 until current). As a long-term human rights review process, it is worth studying the influence of the UPR on Malaysia's public policy process, and how the state and CSOs can utilise this review process to solve the problems faced by the communities. Besides, a study on the relationship among CSOs in the UPR can be done to understand the interaction among CSOs that uphold different philosophies and values on different issues in the UPR. As UPR is an international obligation that involves all the member state of the UN, therefore, it is worth to understand the experience whether it is align with or diverge from experience of other countries. This could provide a wider picture on the level of involvement and commitment of the Malaysia state compare to the other countries in the UPR.

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