



Nur Azam Anuarul Perai*

The Multiple Regulator Model: A Case of Too Many Cooks?

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Abstract: Regulation protects the third sector from mismanagement, provides data for policy development, and increases public trust and confidence in its organisations. Different agencies regulate Malaysian third sector organisations (TSO), based on their legal forms and varying activities or functions. Yet, can different regulations governing organisations with similar objectives effectively address issues affecting the sector as a whole? This study provides an overview of the Malaysian third sector regulatory landscape and examines the operational challenges caused by the multiple regulator environment. Third sector actors and regulators were interviewed to understand how they navigate legal and regulatory requirements. Findings show that regulation is hampered by discrepancies surrounding the interpretation and application of laws. This Malaysian study shows that regulatory inconsistencies affect the sector's operational efficiency and diminish trust between the TSOs and regulators. Based on these findings, uniformity in regulation is crucial to build trust in the sector, as well as between actors and regulators.

Keywords: third sector, charity regulations, multiple regulators, regulatory inconsistency

1 Introduction

The growing prominence of nonprofit organisations that operate outside the boundaries of the public and private sectors has ignited the interest in methods and outcomes of their regulation (Breen, Dunn, and Sidel 2017; Cordery 2013; DeMattee 2019; Sidel 2003). The role third sector organisations (TSO) play in the provision of social and welfare services requires them to be closely monitored to safeguard stakeholders' interests, and to build trust in the sector. Regulation governing the sector, its organisations and activities, determines what is permitted and prohibited through a combination of laws and constitutional protections. In

*Corresponding author: Nur Azam Anuarul Perai, Faculty of Social Sciences, University of Stirling, Stirling, UK, E-mail: n.b.perai@stir.ac.uk. <https://orcid.org/0000-0003-1845-4468>

the pursuit of public interest, regulation guards against market failures, externalities and moral hazards; protecting stakeholders from actuarial, sociocultural and political risks (Haines 2017). Supervision also includes self-regulation through the implementation of codes of good practise (Breen 2017), and closer integration of self and state regulation leads to stronger accountability systems (Phillips 2019). Stigler's (1971) public interest theory asserts that regulation is necessary to protect the public from risks arising from information asymmetry. Imposing minimum reporting standards would enable third sector data to be publicly available, facilitating scrutiny by stakeholders (Cordery 2013). Such availability of reliable data and stakeholder scrutiny would also make identification of anomalies easier and avert major scandals like the ones involving OXFAM and Kids Company.

Despite the strong case for regulation, Zulhibri (2014) argues that regulating the third sector constrains its existence, operations and activities by creating barriers to operational activities, independent speech and resources. He found that most legal frameworks in developing countries to be counterproductive and burdensome. Regulations are also identified as a barrier to TSOs' participation in advocacy, political and economic activities (Bloodgood, Tremblay-Boire, and Prakash 2014). Regulation does not achieve its objectives when regulators' priorities are misplaced, slow to react or not given adequate resources and support from the state (Phillips 2019). Similarly, a light touch regulatory environment is not sufficient to improve accountability and build public trust (Cordery 2013).

Malaysian TSOs and charities are governed by different regulators and laws based on their chosen legal form. They can choose to register as societies with the Registrar of Societies, or as non-profit companies limited by guarantee with the Companies Commission of Malaysia, or foundations with the Legal Affairs Division of the Prime Minister's Department. Youth societies are registered with the Registrar of Youth Societies while the Sports Commissioner's Office registers sports associations. Charitable trusts and foundations can also be registered at the Labuan International Business and Financial Centre. While different legal forms may be required for different activities or functions (Anheier and Toepler 2019), different and possibly duplicate regulations governing organisations with similar objectives is inefficient and may not effectively address important issues affecting the sector (Lyons 2003).

There have been no in-depth studies on the multiple regulator model of the Malaysian third sector. Previous studies mainly centred around the description of laws and legal frameworks, without detailed examination of the impact of multiple regulators or the regulatory challenges faced by third sector organisations (Ali and Hassan 2017; Arshad et al. 2011; George 2001). Other recent studies focus on financial reporting (Ali et al. 2012; Arshad et al. 2013; Atan, Zainon, and Wah 2013; Hasnan et al. 2012; Zainon et al. 2011; Zainon, Atan, and Wah 2014) and terrorist financing (Ali et al. 2011; Hamin 2018; Omar 2016).

This study aims to uncover the impact of multiple regulators on the sector, thus enhancing understandings of Malaysia's complex legal and regulatory framework for the third sector. This paper asks: what is the preferred legal form for Malaysian TSOs? Does the duplicate regulatory environment protect the interests of stakeholders? Can different regulations governing organisations with similar objectives effectively and efficiently address pressing issues faced by the sector? The challenges faced by Malaysian TSOs are explored, detailing how they cope with the current legal and regulatory environment.

This paper begins with an overview of the legal and regulatory framework governing Malaysian and selected South East Asian third sectors. This is followed by an analysis of key themes from interviews with TSO leaders and regulators, to uncover their insights on the issues faced by the sector vis-à-vis how the sector is regulated. The paper concludes with suggestions to enhance third sector regulation in Malaysia.

2 Malaysian Third Sector Regulation

Malaysia is comprised of 11 states in the Malay Peninsula, two states on the island of Borneo and three federal territories, two in the peninsular and one in Borneo. British influence in Malaysia began in 1786 and ended in 1963, hence many regulations in place today had their origins in laws passed by colonial administrators.

The right to associational life is guaranteed by the Malaysian constitution under article 10(1)(b): *all citizens have the right to assemble peaceably and without arms*, and 10(1)(c): *all citizens have the right to form associations*. Regulation of non-governmental and non-commercial organisations in Malaysia began in 1869 with the enactment of Ordinance XIX: An ordinance for the Suppression of Dangerous Societies. This legislation was a response to the frequent riots between Chinese clan organisations, known as “secret societies”. The 1869 ordinance however, only served as a means of registering the secret societies and did very little to control their activities (Cheng 1972). Amendments were made in 1913 to introduce the “Registrar of Society”, responsible for registration and regulation of societies. A much-revised Societies Ordinance was passed in 1949, which compels all societies in the Federation of Malaya to register or to apply for exemption from registration. In 1966 the Societies Ordinance was replaced with the Societies Act, itself a merger of three ordinances: the 1949 Ordinance for the Federation of Malaya, the 1957 Ordinance for the State of Sarawak and the 1961 Societies Ordinance of the State of Sabah.

The Societies Act however, only governs associations; there are many other Acts and Enactments that govern charities and charitable activities (Ali and Hassan 2017; Arshad et al. 2011; George 2001). Other laws governing TSOs include the

Trustee (Incorporation) Act (1952) which governs trusts and foundations, and the Labuan Foundation Act (2010) which regulates charitable foundations registered in the Labuan midshore financial centre. Besides the charitable and voluntary organisations listed above, each state in Malaysia manages its own *waqf* (Islamic trust), and Hindu endowment bodies which are governed by separate state level legislation.

The laws and regulations governing the Malaysian third sector are thus fragmented and in need of rationalisation (Ali and Hassan 2017; George 2001), with some laws seen to be restrictive and repressive (Arshad et al. 2011). Such claims are, however, not unusual as efforts to monitor and regulate the activities of non-governmental and civil society organisations have been present since the colonial period (Douglas 1972).

Multiple agencies regulating third sector organisations are not unique to Malaysia. TSOs in the Philippines come in three different forms, and are regulated by two different regulators depending on their activities. Philippine mutual benefit associations, however, are not classified as charitable or benevolent organisations as they are defined as insurance companies under Chapter VII of the Philippine Insurance Code. Indonesia has two types of TSOs with legal status and also allows “societal organisations” to operate without legal entity status. In Vietnam, four different ministries oversee five types of TSOs. Singapore, despite having a central regulator that oversees third sector organisations and their activities, allows charities to choose their preferred legal form. The only exception is Thailand where the Interior Ministry oversees all locally registered foundations.

South East Asian countries have a similar regulatory pattern to Malaysia with multiple registration and supervision agencies (Hasan 2008). Appendix 1 presents a snapshot of the legal forms and regulators for the selected countries.

3 Malaysian Third Sector Regulators

Other than trade unions, youth and sports organisations which are required by law to register with the Department of Trade Unions (JHEKS), Registrar of Youth Societies (ROY) and the Sports Commissioner’s Office (SCO) respectively, other TSOs, are free to choose their preferred platforms from amongst the other regulators. A Malaysian third sector organisation can only be registered with one regulator; dual or multiple registrations is not allowed. Appendix 2 shows the distribution of Malaysian TSOs according to regulator. This, however, does not present the complete picture of the Malaysian third sector. A number of TSOs are not registered with the above-mentioned statutory bodies but are governed by individual Acts of Parliament. Appendix 3 lists these TSOs and their governing Acts of Parliament.

The seven regulatory bodies are themselves governed by different Acts of Parliament. They generally have differing treatments of most aspects of governance, but they all have a common task – monitor TSOs that choose to or are required to be registered with them. Appendix 4 lists the ministry overseeing each regulator and its governing law. Apart from ROY and SCO all other regulators report to different ministries. Appendix 5 lists the types of organisations regulated by each regulator. The Legal Affairs Division only regulates trusts and foundations domiciled in Peninsular Malaysia; all other regulators oversee TSOs registered anywhere in Malaysia.

Other government bodies that oversee third sector organisations include the Inland Revenue Board which approves and regulates organisations with tax exempt status, and Bank Negara Malaysia (the central bank) which monitors TSOs to prevent them from being used for money laundering or terrorist financing. Consequently, different TSOs are governed by different regulations and laws. This multiple and duplicate regulator environment could lead to inconsistencies in regulation especially when similar issues are treated differently by different regulators. This could result in what Phillips (2019) terms as “gaps in regulation”. Despite the multiple regulators, a few studies found that Malaysian TSOs face minimum regulatory requirements with no financial reporting and governance framework (Arshad et al. 2013; Atan et al. 2012; Hasnan et al. 2012; Othman and Ali 2014).

4 Methods and Scope

This paper gathers the experiences of Malaysian third sector actors and regulators through interviews, to understand the sector’s regulatory regime. It attempts to “*understand the world from the subjects’ points of view and to unfold the meaning of their lived world*” (Kvale 2006:481). Interview participants were selected through purposive sampling based on a researcher-defined criterion. This non-random sampling technique depends upon the researcher’s judgement without an underlying theory or fixed number of respondents (Tongco 2007). Despite having the objective of a sample that represents the diversity of a population, purposive sampling does not involve proportionality (Battaglia 2008; Palys 2008). Purposive sampling is deemed to be appropriate where a limited number of reliable primary data sources are accessible (Teddlie and Yu 2007).

All interviews were conducted in April 2017 in Malaysia. Potential participants from the sector were contacted via email and those who did not reply within 10 working days were replaced by another candidate.

Twelve individuals representing 11 third sector organisations were interviewed. Selection was crucial to ensure data quality and for this reason only senior officers with decision making powers were selected. They are considered accurate and reliable witnesses as they have experience and in-depth knowledge of the sector, its organisations and activities, and hence, are able to provide greater insights (Welch et al. 2002). Details of the respondents are presented in Appendix 6. In addition to the third sector actors, senior officials from three regulators were also interviewed, giving a total of 14 interviews in the study

This research employs an abductive research strategy (Timmermans and Tavory 2012) as it addresses both “what” and “why” research questions from a limited sample. An abductive design aims to describe and understand the social phenomena from the perspective and worldview of its actors.

The interviews were tape recorded and transcribed verbatim but omitted non-relevant conversations such as icebreakers, fillers, and unnecessary repetitions. Grammar was not corrected but non-English lexical items, including those considered dialectal and slang words, were converted into Standard English. Transcribed conversations are explained in the paragraph following the quote to clarify its context.

The findings focus primarily on reporting and interpreting interviewee responses to ensure credibility, and to minimise researcher bias. Open coding or line-by-line coding was used to unlock the contents of the transcripts, and was undertaken manually due to the relatively small number of interviews, each not lasting more than 60 min. Examining transcripts line-by-line keeps the researcher focussed on the data and reduces the potential of forcing them into preconceived ideas (Charmaz 2004). The coding process identifies keywords and phrases used by interviewees to represent the respondents’ view of a given theme in the interview questions. Each theme is explained based on the collective responses from the interviewees. This process is an “inverted” model of thematic analysis as themes did not emerge from the interview transcripts but were instead embedded in the interview questions and were guided by the research questions.

5 Findings

Three major themes emerged from the analysis of interview data: choice of legal form, fundraising regulations and inconsistencies in application of laws.

5.1 Legal Form

Given the multiple registration options available, respondents were asked to identify factors influencing their choice of registration platform. Interviewee 4 has this to say:

What's quickest, what has less red tape and what will have less trouble or oversight

Around 75% of registered Third Sector organisations in Malaysia are registered as societies with the ROS (Perai 2019). However, Interviewees 4, 7, 11 and 12 suggested that some organisations prefer to register as private companies with the Companies Commission of Malaysia because it is seen as easier, faster and a relatively hassle-free way to obtain legal status. The objective of registration is often to obtain a legal status. Being legally registered, regardless of the legal form, provided TSOs with legitimacy, enabled them to organise activities in a formal way, and most importantly, allowed them to collect funds. However, Interviewee 8 found the registration process burdensome and a personal relationship with officials within the regulatory agencies was a means to facilitate the process. Civil society organisations working on issues deemed controversial often find it more difficult to meet ROS' registration requirements hence the tendency to register as companies is higher among these CSOs (Interviewees 4 and 7). However, it is difficult to confirm Interviewee 4's claim that "*majority of NGOs in this country, especially those working on issues that are sensitive, are all companies*" as they are not identifiable from other commercial entities registered with the Companies Commission. These organisations were not included in this study's definition of the Malaysian third sector because they are not registered with any of the seven regulators. McCabe, Phillimore, and Mayblin (2010) suggest that organisations choose to be unregistered because they wish to be anonymous due to their political affiliations or illegal activities. This reasoning could also apply to Malaysian TSOs, and the earlier mentioned "sensitive issues" can be construed as not being in-line with the establishment.

To justify action against unregistered organisations, an ROS Assistant Director was reported by the media as saying, "*unregistered organisations were usually highly likely to engage in activities that could undermine peace in the country*" (Bernama 2016). However, the rationale for this assertion is unclear as the news report did not elaborate on the basis for the statement. Interview data indicated that these organisations' absence from the database is a result of them choosing to register as commercial entities due to restrictions and overzealous supervision, perceived or real, on registration with the ROS. Interviewees 4 and 7 claim that the ROS rules and regulations are too narrow and restrictive; creating a constrained

environment that limits their freedom to express themselves. A similar trend was observed in Vietnam where stricter regulations were imposed on certain organisations that the state regards as being a threat (Sidel 2009) and in China, where NGOs seen to be involved in politically sensitive activities often find it problematic to fulfil registration requirements (Li, Lo, and Tang 2017).

Some third sector organisations register as companies as a short-term measure due to the ease of registration. This was the option undertaken by Interviewee 12 and re-registered with the ROS some years later when it was operationally and financially stable. Registration as companies instead of charitable bodies is the easiest way to get legalised. It also enables them to circumvent the inconsistent approval process and overcome the difficulty to meet registration requirements. Interviewee 12 found this to be especially true among smaller organisations without the personnel, time, or financial resources to undertake the ROS registration process. They are often understaffed and most of their time is spent attending to the needs of the communities and conducting social welfare programmes, leaving no time to get themselves formalised and register with any regulator. There are also charities which remained unregistered because they have no idea how to go about getting formalised; Interviewee 12 reports receiving enquiries from smaller charities asking for advice on how to register with the authorities.

The respondents' observations of registration as private companies and unregistered organisations suggest that the database of registered Malaysian third sector organisations presents a large spectrum of missing data and may not accurately reflect the sector's actual size. The existence of unregistered charities and the inability to account for "below the radar" activities and organisations is also an issue in the UK (McCabe and Phillimore 2010), and in the US, where it was estimated that 21% of very small volunteer sector organisations are unregistered (Toepler 2003).

Registering a third sector organisation as a private company may not attract donors, especially those looking for tax exemption. Interviewee 7 commented that some donors may feel short-changed without any tax benefits because being registered as commercial entities does not allow organisations to apply for tax exempt status. Regulator B stressed that private companies, being business entities, are not allowed by law to collect donations as their main source of income. Therefore, Malaysian TSOs registered as companies are likely to be breaching the law. Further, getting tax exempt status from the Inland Revenue Board (LHDN) is not automatic upon registration with any regulator. Regulators A and B confirm that organisations wishing to obtain tax exempt status must make a separate application to the tax authorities. The concern raised by a number of respondents is their ineligibility caused by their registration as private companies.

Despite agreeing that registering with ROS would be ideal, the CSOs argue that a downside is the regulator's inconsistent interpretation and application of laws. Respondents reported that the many different interpretations generate arbitrary decisions. They believe that laws regulating third sector organisations and activities in Malaysia are inconsistent where regulators apply different standards to different cases, putting TSOs at their mercy:

The problem is here (sic) the regulator is actually the main person who decides but if you have a regulator that applies one set of standards for one group but another set of standard for another. The regulators have their own personal sympathies, they have their own interpretation, they have their own understanding of what is considered approve-able or not, sensitive or not (Interviewee 4)

He suggests that when it comes to processing applications regulators are selective based on their personal preferences or inclination. However, being legally registered is not the only sign of effectiveness as Interviewee 9 feels that individuals running and supporting the organisation are key to the success of any TSO. In their case, registration is merely to keep on the right side of law, not wanting to be accused of being an illegal organisation.

Interviewee 4 has a slightly more deep-seated view where he feels that registration is used a means for the state to control civil society and stifle public discourse, and a hindrance to freedom of speech and thought, similar to the views of Zulkhibri (2014). Interviewee 4 further adds that informal groupings should be permitted to exist to allow freedom of expression. However, motivation for state regulation is mostly to protect stakeholders, the donors, beneficiaries, as well as the TSOs themselves from fraudulent activities such as illegal fundraisers, or substandard service providers (Irvin 2005; Liazos 2000). Regulator A, on the other hand, had a cordial attitude towards unregistered groups undertaking charitable activities but cautioned that being unregistered means it would be difficult for regulators to ensure stakeholders are protected against criminal elements.

5.2 Fundraising Regulations

All respondents unanimously agreed that registration is required if organisations intend to collect funds, be it from individuals, corporations or the government. Registration gives TSOs legal standing and provides assurances to donors that they are giving their money to a legitimate organisation. Without registration, the organisation not only lacks legitimacy, but is limited in the activities they can undertake. For most respondents, registration and fundraising are closely related.

Interviewees 2, 11 and 12 note that registration on its own does not automatically allow organisations to solicit funds, particularly in public places, as a police permit is required to physically solicit for donations in public. Clause 5, Item 4 of the constitution template issued by the ROS states that endorsement by the ROS and approval from the relevant authorities must first be obtained before seeking donations from the public. Collecting donations only from members is a strategy used by Interviewees 1 and 9 to ensure they do not break any fundraising rules. The House to House and Street Collections Act 1947, a colonial era law to regulate public fundraising, is still enforced in Peninsular Malaysia today. This Act only regulates fundraising in public places and does not include provisions pertaining to online fundraising. Section 4(1) of the Act requires approval from the relevant authorities before undertaking any public fundraising. The relevant authority is defined in Section 2(1)(a) as the Officer in Charge of Police District. In the State of Sarawak, the Act that governs public collection of donations is Public Collections Ordinance 1996 (Chapter 21). This requirement was confirmed by Regulator A, stating that while they do not restrict fund raising activities, approvals must be obtained before conducting such activities.

Interestingly, Interviewees 10 and 11 found that the authorities themselves are not well versed on the rules governing public collection of donations. They stress that it is not their intention to break any laws, but having committed to a welfare programme, they had to proceed with collecting donations. According to the Financial Action Task Force, one vulnerability of a nonprofit organisation is they are sometimes set up as a charitable organisation but raising funds to support unlawful activities including terrorism. Unauthorised fund raising could be construed as illegal deposit taking or an attempt to launder money and will be investigated under the Anti Money Laundering Act 2001. Guidelines on Regulation of Markets under Section 34 of the Capital Markets and Services Act 2007 regulate crowdfunding in Malaysia but only addresses equity crowdfunding platforms. The Act is silent on community or charitable crowdfunding either via crowdfunding platforms or directly through the charity's website. Interview data suggest that specific laws regulating online fundraising is either non-existent or not publicised and this could lead to exploitation of donors.

5.3 Inconsistent Regulatory Enforcement

Interviewees 1, 2, 9, 10 and 11 highlighted the lack of regulatory enforcement, noting that regulators were not adequately monitoring TSOs or their activities. Interviewees 6 and 12 feel the ROS is burdened with too many supervisory responsibilities to be fully informed and responsive. Interviewees 3 and 12 found

laws to be vague and confusing while inconsistent application of laws was a complaint by Interviewees 4 and 7. Respondents suggest that a culture of what they describe as “self-reporting” exists in the Malaysian third sector where instead of monitoring the activities of TSOs, the regulator only takes action when it receives reports of misconduct. Nevertheless, Interviewee 5 notes they do get reminders to submit annual returns, which suggests that monitoring by the regulators is not totally absent.

Interviewee 11 claims that the structure within the public sector creates co-ordination problems which leads to the lack of enforcement. To overcome the problem, a central body like a charities council to guide TSOs was suggested by Interviewees 12 and 3:

Singapore has a Charities Commission, if we can put something like that in place, ... and ensure there is enforcement in providing legal guidance to the third sector, I think at least they [TSOs] can just get on with doing their job

There is (sic) no laws on NGOs, a lot of things [laws] are not there, [such as] human resource law. Things we discuss among us one is on (sic) regulatory perspective, there is no one regulatory body we can refer to, that we can seek guidance from

However, Interviewee 4 suggests that such body already exists:

Technically the ROS is supposed to be this [TSO regulator], [but] it [ROS] needs to be impartial and we need to have less regulation but more (sic) streamlining of the regulation

He contends that the ROS is best placed to be the central regulator but also feels there is too much regulation which needs to be simplified. There was very little mention of self-regulation among the third sector actors interviewed, apart from Interviewee 2 who stated that they share internal processes and best practises with their peers. While acknowledging the existence of regulatory issues, there was no indication of any sector-driven initiatives to overcome them.

The three regulators interviewed were non-committal when asked about a central regulatory body, although two suggested that they are open to the idea of one single body to oversee the sector. Regulator C advised that the ROS, SSM, BHEUU and Labuan FSA are already working together with the central bank to monitor the finances of TSOs, indicating efforts are being undertaken to get regulators to work collaboratively, albeit only on finance related issues. Regulator B notes that the different regulators have their purposes and the main concern is how TSOs obtain their funds which suggests that preventing anti money laundering activities is one of their major objectives.

6 Discussion

Depending on the circumstances, a nongovernmental organisation, society, foundation or a charitable organisation established in Malaysia may choose to register with most of the earlier listed regulatory bodies.

Obstacles to registration, bureaucratic hurdles and not having the means to legitimise the organisations are the main issues when discussing legal status of Malaysian TSOs. Considerations influencing the choice of platform are: ease of registration, conditions attached to registration, permissible activities and the financial cost of fulfilling statutory requirements. Registration as private limited companies or remaining unregistered are common options taken to overcome these issues. Unregistered organisations are not allowed under Malaysian law and any person organising or participating in any activity of an unregistered society may face legal action (Arshad et al. 2011). Strict controls forced some segments, especially those involved in rights and advocacy, to seek alternative registration options to obtain legitimacy. Organisations who feel they could fall under the “sensitive” or “controversial” categories, and those short of resources tend to register as companies. While these types of TSOs can move faster without being hindered by bureaucracy, there is very little remedy if anything untoward happens when providing social or welfare services as they are not regulated by any laws protecting stakeholders.

Interview data reaffirms the assertions of Harding (1992), Weiss (2003) and Arshad et al. (2011) that registration as private limited companies is a common option taken by TSOs due to its relative ease of incorporation, and to bypass the stringent requirements set by the regulators when evaluating applications. However, interview data showed that for some this may be a temporary measure. Once the organisation is financially and operationally stable, they would convert their registration to the ROS. Nevertheless, identifying such TSOs could be difficult as there is currently no way to differentiate between commercial enterprises and “TSO companies”.

While it is technically possible to register a TSO as a limited liability partnership (LLP), the Limited Liability Partnership Act (2012) does not allow LLPs to be set up for charitable purposes. In addition, registration as private enterprises will result in many TSOs being outside the regulators’ purview. This could expose the sector to abuse as it enables TSOs to offer social and welfare services without having to go through any quality checks by the authorities. Fundraising TSOs registered as companies are in breach of Section 137(1) of the Financial Services Act (FSA 2013) for using commercial entities to conduct private fund raising. It is an offence for any person to accept monetary deposits without a licence. With regards

to fundraising, TSOs often find themselves on the wrong side of the law due to the rules regulating fundraising are not spelled out in the laws governing TSOs, but instead are from other Acts of Parliament. They added that some authorities governing TSO fundraising are not fully aware of their authority, while some laws are not clear on TSO fund raising.

The picture of the third sector painted by the respondents shows a political environment where the state is seen to have a firm hand in regulating and controlling which activities can or cannot be undertaken. Pockets of the sector, in particular civil society advocacy organisations, are critical of how laws are interpreted and enforced. Such state control over the third sector especially civil society is unusual as Malaysia is not seen as an authoritarian regime, unlike China or Vietnam, where controls over third sector activities are evident (Li, Lo, and Tang 2017; Sidel 2009). Despite some respondents highlighting state interference in third sector affairs, they did not indicate any decrease in the “social entrepreneurial” spirit, suggesting that intensity of third sector activities is not affected by political pressures. This, in addition to their efforts to provide social services even when not legally registered, or registered as a non-TSO, suggests the sector provides what Young (2000) terms as a “supplementary model” of government-non-profit relationship. The sector is seen a means to fill gaps in the provision of social and welfare services, to make up for the shortcomings of the state.

The view on enforcement is different depending on whose views are expressed. Apart from the civil society groups who feel that the regulators are too strict, others report that enforcement is lacking. Nevertheless, inconsistent interpretation of the laws and selective enforcement are the main complaints. The many criticisms and adverse opinions of the regulatory regime point towards regulatory weakness in the Malaysian third sector concerning the interpretation and enforcement of laws. This also suggests a trust deficit between the sector and the state, especially among TSOs working in areas deemed by the authorities to be sensitive or controversial. The mistrust is due to inconsistent interpretation and application of laws and not seen as a consequence of the multiple regulator environment.

The duplicate regulators overseeing TSOs in Malaysia could lead to administrative difficulties especially if there is no uniformity in the sector’s supervision and regulation. Problems would arise if the different laws provide different treatments or penalties for identical issues or offences. For example, the penalty for managing a society whose registration has been revoked under Section 42 of the Societies Act (1966) is a fine not exceeding RM15,000 but the penalty for a similar offence under Section 81 of the Youth Societies and Youth Development Act (2007) is RM5000. Inconsistencies could also happen in policy development, for example

when the Minister changes, as the governing laws accord significant powers to the Minister.

Analysis for policy development and policy improvements may be difficult if different agencies have differing record keeping, reporting standards and requirements, leading to a lack of transparency and inconsistent databases. During a seminar on NPO Compliance in 2014, the Companies Commission's Compliance Director admitted that multiple regulators of TSOs in Malaysia resulted in the sector not having a standard reporting requirement as well as lacking in transparency. In addition, current accounting standards do not cater to the nature of TSO activities such as value creation and other elements within the organisation that should be reported beyond its financial performance (Bakar et al. 2014; Othman et al. 2012).

Duplicate regulators and legal frameworks could hinder efforts to understand the sector's dimensions. Varying reporting structures, data management and disclosure requirements make research on the sector challenging. This in turn could lead to difficulties in developing appropriate policies and strategies to address the needs of the sector and its stakeholders. The situation is further aggravated as many organisations which are considered to be part of the third sector are not under the purview of any statutory bodies or government department and thus may not be included in the sector's future planning.

7 Conclusions

This paper uncovered the registration patterns of Malaysian TSOs, vague fundraising rules and varying regulatory enforcement. This study highlights the shortcomings of a multiple regulator environment, and found systemic inconsistencies in the regulation of the Malaysian third sector. These issues should be addressed to ensure the welfare and rights of stakeholders are protected, and to minimise, if not eliminate, the risk of fraud or unethical practises within the sector.

While the state does not interfere in activities they consider to be non-controversial, their definition of what is "controversial" is vague and changeable. Without it being clearly and officially defined, inconsistencies in regulation will continue and the losers will be the third sector beneficiaries. This is especially the case if regulatory uncertainties prevent them from reaping the benefits of the sector's work, or from being heard.

Regulators could look at ways to make it easier for organisations to obtain legal status such as simplifying documentation or aiding those who are less familiar with the regulatory processes. Registration would enable their activities, including fundraising exercises, to be monitored and safeguard against unethical

or fraudulent practises. The concern however, is not only about registration or the legal form, but also the duplicate and inconsistent regulation of TSOs. While different legal forms and regulations may be necessary to regulate different types of organisations (Anheier and Toepler 2019), efforts should be made to ensure uniformity of at least the basic governing rules to ensure adequate monitoring, standardised treatment, transparency and accountability. This could close legal or regulatory loopholes, minimising the possibility of TSOs being misused for unlawful purposes.

Many organisations registered and administered by ROY and SCO were formerly registered with ROS. The Sports Development Act 1997 and the Youth Societies and Youth Development Act 2007 compelled sports bodies and youth associations to migrate to the newly established regulators. The creation of additional regulators to oversee the registration and activities of these organisations reduced ROS' regulatory and administrative burden but at the same time led to duplications in operational and supervisory activities. In this instance, (re)centralising supervision of these three types of TSOs may be a way to increase efficiency and reduce inconsistencies in regulation. Many have proposed a central regulatory body to oversee the sector (Ali and Hassan 2017; Bernama 2020, Institute for Democracy and Economic Affairs 2016; George 2001; Othman and Ali 2014), but its establishment may not be sufficient if the root causes – the interpretation and enforcement of laws, are not addressed. Nevertheless, a central body such as the charities commission would go a long way towards harmonising the regulatory processes.

Interview data suggest that fundraising laws should highlight the “dos and don'ts” in soliciting donations, clearly identifying who can fundraise, permissible methods of raising funds and locations where TSOs can or cannot solicit for donations. The regulatory inconsistency especially on interpretation of laws and treatment of certain offences leads to uncertainty amongst third sector practitioners and donors especially when they are unsure of the governing laws and their status and rights (Lyons 2003). Lack of clarity and consistency in the application of laws leads to gaps in regulation (Phillips 2019) and policy neglect (Anheier and Toepler 2019), causing the interests and rights of all stakeholders to be compromised. Therefore, the third sector regulatory regime in Malaysia appears to correspond with DeMattee's (2019) bureaucratically-illiberal regime, where red tape and regulations increase the costs and obstacles to registration and operations.

This paper identified interpretation and application of laws as the main shortcomings of the present multiple regulator model. The study is limited by the small sample, findings are restricted to the respondents' experiences and knowledge, and in particular, the accuracy and honesty of their stories. Another

shortcoming of this study is the inability to obtain views from TSOs registered with BHEUU, JHEKS and those governed by individual Acts of Parliament. Conclusions therefore present a glimpse of the regulatory challenges faced by the sector. Nevertheless, these exploratory findings highlight the sector's concerns and serve as a starting point to further examine the pros and cons of a multiple regulator environment in the effort to further strengthen the sector's integrity and efficiency.

Appendices

Appendix 1 Third Sector Organisations in South East Asia: Legal Form, Law and Regulator

| Country | Legal form | Governing law | Regulator |
|--------------------------|--|---|--|
| Philippines ^a | Non-stock corporations | Revised Corporation Code | Securities and Exchange Commission (SEC) of the Philippines |
| | Nongovernmental educational institutions | Section 87 | |
| | Microfinance NGO | Microfinance NGOs Act | |
| Indonesia ^b | Associations | Law No. 17/2013 on Societal Organizations | Ministry of Home Affairs Ministry of Law and Human Rights |
| | Foundations | Law No. 16/2001 on Foundations | |
| | Societal organisations without legal entity status | <i>Staatsblad</i> 1870-64 | |
| Vietnam ^c | Social relief establishments (SRE) | Decree 103/2017 on Social Relief Establishments | Ministry of Labour, Invalids, and Social Affairs |
| | Social and charitable funds | Decree 93/2019 on Social And Charitable Funds | Ministry of Home Affairs |
| | Associations | Decree 45/2010 on Associations | Ministry of Home Affairs |
| | Scientific and technological organisations (STO) | Decree 08/2014 on STO | Ministry of Science and Technology |
| Singapore ^d | International NGOs | Decree 12/2012 on INGOs | Ministry of Foreign Affairs |
| | Society | Societies Act 1967 | Registry of Societies and Commissioner of Charities (COC) |
| | Company limited by guarantee (CLG) | Companies Act (Cap. 50) | Accounting and Corporate Regulatory Authority and COC |
| | Charitable trust | Trust deed | COC |

(continued)

| Country | Legal form | Governing law | Regulator |
|-----------------------|------------|--|----------------------|
| Thailand ^e | Foundation | Regulations, Operation and Registration of the Foundation B.E. 2545 (2002) | Ministry of Interior |

^a<https://www.cof.org/country-notes/nonprofit-law-philippines>. ^b<https://www.cof.org/content/nonprofit-law-indonesia>. ^c<https://www.cof.org/country-notes/nonprofit-law-vietnam>. ^d<https://www.charities.gov.sg/setting-up-a-charity/Pages/Overview.aspx>. ^e<http://www.thailand-business-law-center.com/registering-a-thailand-non-government-organization-ngo/>.

Appendix 2 Number of Organisations by Regulator

| Regulator | No. of organisations | Percent |
|---|----------------------|---------|
| Legal Affairs Division of the Prime Minister's Department | 359 | 0.45 |
| Department for Trade Union Affairs | 734 | 0.92 |
| Labuan Offshore Financial Services Authority | 17 | 0.02 |
| Registrar of Societies | 59,479 | 74.58 |
| Registrar of Youth Societies | 8351 | 10.47 |
| Office of the Commissioner of Sports | 8774 | 11.00 |
| Companies Commission of Malaysia | 2036 | 2.55 |
| Total | 79,750 | 100.00 |

Perai (2019).

Appendix 3 TSOs not Registered with any Regulators

| Organisation | Governing Act |
|---|---|
| Parent-Teachers Associations | Education Regulations (Parents and Teachers Association) 1998 of the Education Act 1996 |
| Boy Scouts | Boy Scouts Association of Malaysia (Incorporation) Act 1968 |
| Girl Guides | Girl guides Act 1953 |
| Malaysian Red Crescent Society (formerly Red Cross) | Malaysian Red Crescent Society (Incorporation) Act 1965 |
| St. John Ambulance of Malaysia | St. John Ambulance of Malaysia (Incorporated) Act 1972 |
| Salvation Army | Salvation Army (Incorporation) Ordinance 1956 |
| Farmers Associations | Farmer's Association Act 1973 |
| Fishermen Associations | Fishermen's Association Act 1971 |
| Pure Life Society | Pure Life Society (Shudda Samajam) (Incorporation) Ordinance 1957 |

Appendix 4 Regulators, Ministries and Governing Laws

| Regulator | Ministry | Governing Act |
|---|---|---|
| Registrar of Societies | Home Affairs | Societies Act 1966 |
| Registrar of Youth Societies | Youth and Sports | Youth Societies and Youth Development Act 2007 |
| Office of the Commissioner of Sports | Youth and Sports | Sports Development Act 1997 |
| Companies Commission of Malaysia | Domestic Trade, Co-operatives and Consumerism | Companies Act 2016 |
| Legal Affairs Division of the Prime Minister's Department | Prime Minister's Department | Trustee (Incorporated) Act 1952 |
| Labuan Offshore Financial Services Authority | Finance | Labuan Foundation Act 2010 or Labuan Trust Act 1996 |
| Department for Trade Union Affairs | Human Resources | Trade Union Act 1959 |

Appendix 5 Regulators and Organisation Type

| Regulator | Organisation type |
|---|--------------------------------|
| Registrar of Societies | Associations |
| Registrar of Youth Societies | Youth associations |
| Commissioner of Sports | Sports associations |
| Companies Commission of Malaysia | Companies Limited by Guarantee |
| Legal Affairs Division of the Prime Minister's Department | Trust/Foundation |
| Labuan Financial Services Authority | Trust/Foundation |
| Department for Trade Union Affairs | Trade unions |

Appendix 6 Interview Participants

| Anonymisation | Position | Employment status | TSO registration |
|---------------|---------------------------|-------------------|------------------|
| 1 | President | Volunteer | ROS |
| 2 | Chief Operating Officer | Salaried employee | SSM (CLBG) |
| 3 | Founder | Salaried employee | ROS |
| 4 | Manager | Salaried employee | SSM (CLBG) |
| 5 | Principal | Salaried employee | ROS |
| 6 | Deputy Executive Director | Salaried employee | ROS |

(continued)

| Anonymisation | Position | Employment status | TSO registration |
|---------------|----------------------|-------------------|------------------|
| 7 | Coordinator | Salaried employee | SSM (PLT) |
| 8 | Country Head | Volunteer | ROY |
| 9 | Chairman | Volunteer | ROS |
| 10, 11 | President, Treasurer | Salaried employee | ROS |
| 12 | Coordinator | Volunteer | ROS |

Appendix 7 Interview Questions

1. What is the common or preferred legal structure/form of a voluntary/charitable/non-profit organisation in Malaysia?
2. Why is [answer Q1] the preferred choice?
3. Why are legal forms other than [answer Q1] not popular?
4. Can you describe how Malaysian TSOs are regulated?
5. What are your main complaints on the current laws, processes?
6. Can you describe the current issues surrounding the third sector?

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