

Enact Recall Procedure Law to Stop Political Frogs in States

The Coalition for Clean and Fair Elections (BERSIH 2.0) today launched a report that proposes the implementation of a Recall Procedure Law (RPL) at the state level to address the issue of party-hopping that has plagued Malaysia for decades. The RPL returns the mandate to the voters by allowing them to propose a petition to keep or sack an assemblyperson who has switched parties for personal gains or if the party leadership disagreed with his/her decision. This has been the practice in countries like India, Germany, Canada and the United States where initiatives to stop party-hopping have started at the sub-national level.

This research report entitled “A Case for State-Level Recall Procedure Law to Remedy Party-Hopping in Malaysia” was commissioned by BERSIH 2.0 to Professor Wong Chin Huat, an esteemed political scientist who wrote it with the assistance of Wo Chang Xi.

The report details how the RPL does not immediately remove the assemblyperson from the seat but actually triggers the aforementioned proposal to be signed by constituents. BERSIH 2.0 then proposes a set of restricted triggers or grounds so that this law cannot be abused. These are:

1. If an ADUN resigns or is expelled from a party, unless to assume the office of a Speaker.
2. If the ADUN was elected as an independent and subsequently joins a political party.
3. If the ADUN is convicted of a non-compoundable offence after being elected, except those falling under the Sedition Act 1948, the Printing Presses and Publications Act 1984, Sections 211 and 233 of the Communications and Multimedia Act 1998 and the Peaceful Assembly Act 2012, or is imprisoned for a compoundable offence.
4. If an ADUN has been absent from the sittings of the Legislative Assembly for 50% percent of the sitting days for a consecutive period of six months.

The process starts with a recall proposal, which must be headed by a lead proponent and undersigned by a minimum of 1% of electors in the constituency. If this succeeds, a petition will call for signatures requiring a threshold of 40% of constituents or half the constituency's turnout rate at the last elections, whichever is lower. If this threshold is met, then the seat is declared vacant and a by-election will be held as in the case of any other casual vacancy. The recall procedure should be administered by a three-person Recall Board nominated by the Chief Minister and appointed by the State Legislative Assembly. The board members cannot be politicians and must be gender representative. The entire procedure should take no more than 80 days.

The benefits of the RPL is firstly, that it returns the mandate to the voters to decide instead of waiting till the next general election. Secondly, it is constitutional unlike an anti-hopping law and does not restrict an elected representative's freedom of association. Third, elected representatives can exercise this freedom on policy issues and participate in backbench revolt or cross the floor as they see fit, balanced with their constituents' approval.

BERSIH 2.0 would also like to emphasise the importance of concomitant reforms to the RPL. Party-hopping is symptomatic of structural and clientelist issues such as voters' over-reliance on elected representatives for constituency services and a lack of scrutiny on key government and GLC appointments, allowing these positions to be dished out by the Executive like candies to children to engender compliance and support. If these aforementioned structural issues are not addressed and if voters support the party-hopping for clientelist reasons, then the RPL will be less effective.

The RPL is just but one in the repertoire of solutions to address the problems of party-hopping. Other mechanisms that BERSIH 2.0 has called for previously to reduce the incentives for such behaviour would be:

1. 'Confidence and Supply Agreements' between government and opposition parties to prevent abrupt toppling and installing of governments caused by ambitious lawmakers wanting to be kingmakers; and
2. Empowerment of opposition lawmakers and government backbenchers through legislative reform to enable the successful tabling of private-members' bills, restricting and regulating key government & GLC appointments, equitable constituency development funds, local elections to improve local council services, reduce the reliance on ADUNs/ MPs, and the reformation of the Attorney General's Chamber, MACC and IRB so they cannot be weaponised by the Executive to induce crossovers.

BERSIH 2.0 urgently calls for the implementation of this RPL by state governments before the

next General Election as a deterrence to pre-election party-hopping and to reinvigorate voters who have been disillusioned by the rampant party-hopping that has occurred in the last two years.

Released by, The Steering Committee of BERSIH 2.0 BERSIH 2.0 Secretariat