

## ORGANIZATION & MANAGEMENT

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# The Legal Aspects of Formalizing the Sportization Development of Martial Arts Societies in Malaysia

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**Key words:** Sports law, legal status, constitution, sportization process, competition

### Abstract

**Background.** The legal status of martial arts societies has remained unresolved under various laws and policies in many countries. This delays the legal aspect of institutional existence and the sportizational development process.

**Problem and aim.** Many traditional martial arts have oscillated between formal and informal art; they usually become part of dance, culture, and heritage. This study will examine the legal entity of martial arts societies in Malaysia to promote the sportization development process at the national and international levels.

**Material and methods.** The study employs a mixed-methods approach to determine the legal content analysis and interpretation of the collected data and national laws. This approach is suitable for this study as it examines the crises and conflicts encountered by the Malaysian population and as reflected in the martial arts demography.

**Results.** The study finds that club (n=1144), district (n= 363), state (n= 361) and national (n=41) martial arts societies in Malaysia are registered and legally recognized as sports. However, the legal status of the martial arts societies in Malaysia is still subject to challenges due to the lack of a national governing body and inconsistent legal provisions. This has led to conflicting interests between two or more umbrella bodies, thus obstructing the development process of martial arts as sports.

**Conclusions.** The study suggests a new approach to the legal status of martial arts societies in Malaysia through proper registration and amendment of their constitution. In order to formalize the sportization development, martial arts societies in Malaysia must be registered under the 1997 Sports Development Act (Amendment 2018) and thus adopt the objective of the 2009 National Sports Policy.

## 1. Introduction

The legal status of martial arts societies is a critical issue that requires urgent discussion. It involves the profound relationship between the state government and the international federations (IFs). The state government relies on various provisions of laws and policies to claim their sovereignty in regulating sports based on public interest. For example, incorporating the national laws and the sports-based legislations constitute the institutional guarantee to protect the participants' rights to practice martial arts as social activities or sports in general.

On the other hand, IFs also represent the highest hierarchal element of the governing control. IFs have the autonomous power to determine how a specific sports discipline is nurtured and administered [Dimitrios 2013]. Their power is embedded in the constitution and is sometimes applied in the competition rules. The combination of autonomies, both within the national and international legal framework, is unique and *sui generis* [Hassim 2018]. However, in the world of Malaysian martial arts, the issues of governance and legal framework are still vague. Most Malaysian martial arts societies are not sports associations and not registered under the 1997

Sports Development Act ("SDA 1997") [Hassim 2018]. Therefore, the legal framework of martial arts societies is regarded not as sports but as cultural and heritage-related, as emphasized under the 2005 National Heritage Act (Act 645). It follows that martial arts will only become recognized as sports if the element of competitiveness is embedded into martial arts activities; such an element requires the process of formalizing its sportization development.

There are many reasons to differentiate between martial arts and sports [Cezary *et al.* 2017]. Historically, this difference is rooted in the physical and sociology of culture, humanistic theory, and the haplology and anthropology of martial arts [Sieber, Grzywacz 2015]. In terms of Asian demography, the word 'martial arts' can be associated with 'fighting arts' or 'combat systems' [Podrigalo *et al.* 2019] that originated from ancient civilizations in China [Graff, Robin 2002; Peers 2006], India [Svinth 2002], Egypt [Peter 2010] and Malaya.

The word 'martial arts' itself is a multi-dimensional terminology that denotes not only knowledge of practice but also scientific description [Cynarski, Skowron, 2014; Kernspecht, Brizin 2012]. Besides describing martial arts as a form of fighting and self-defense, martial arts are also widely regarded in the West as a branch of fighting or combat sports [Collins 2019]. Cynarski and Skowron [2014] defined competitive contact sports as "two combatants fighting each other to gain enough points or achieve a condition to declare a winner using certain rules of direct engagement." In the legal world, it means 'self-defense' [Kopel, Gallant, Joanne 2008] and applies mostly to the criminal justice system.

Other than in terms of its demography, the fundamental evolution of martial arts can be observed in self-organized lifestyles and informal education [Zhang Guodong, Green, Gutierrez-Garcia 2016]. Viewed from this perspective, the practice of martial arts is without external regulation or institutionalization. Most people practicing martial arts train for health and inner peace, without any specific rules or governance. Even in the structural society, the hierarchy of a martial arts society is inherited within the inner circle, where the older generation naturally passes martial arts skills and knowledge on to the younger generation as part of their traditional heritage and culture [Ander *et al.* 2016]. In this way, traditional martial arts have been embedded into the cultural activities of Malaysian society, such as the performance during marriage ceremonies (*silat* for the Malays) and business celebrations (lion dance for the Chinese).

Over time, the demographic and philosophical dimensions of martial arts have created a new approach to martial arts, from their original knowledge of fighting, people, and cultural identity to a sporting dimension. It was argued that some of the martial arts have long competed at the international and world levels. For example,

Indonesia was the first host of the 1982 World Pencak Silat Championships [Firdhana, Siswantoyo 2018]. Besides *silat*, other martial arts such as boxing, *karate*, *taekwondo*, wrestling, and judo would have competed in the 2020 Tokyo Olympics. The evolution of the sporting dimension is currently termed as 'sportization process'.

On the other hand, Roget [1995] defined sport as "an activity engaged in for relaxation and amusement". Sport is defined in section 2 of the SDA 1997 as any of the activities listed in the First Schedule. The Act defines sporting activities under the SDA 1997 in the modern context, which include the organization of competitions, seminars, clinics, or courses for a sport, sending participants to sporting competitions or events, and any other activity ancillary or related to a sport [Hassim 2018].

The sportization process is the structured development of an activity that evolves into a competitive, regularized, and rationalized sport. During this process, a traditional form of martial art will establish its governing bodies, develop more formalized sets of rules, and be finally recognized as a sport. According to Sheard [1998], boxing is an example of prize-fighting that has become subject to more specific rules and competitive regulation. Elias and Dunning [1986] believed that any regulated fighting competition can be labeled as 'mimetic event' or 'excitement' despite its dangerous implications.

Besides sportization, the specificity of sports will ensure that "the sports structure, including notably the autonomy and diversity of sports organizations, a pyramid structure of competitions from the grassroots to elite level and organized solidarity mechanisms between the different levels and operators, the organization of sport on a national basis, and the principle of a single federation per sport" should be upheld [Blackshaw 2002]. The combination of the sportization process and the specificity of sports are derived from the constitution. Unfortunately, these characteristics are not associated with martial arts societies in Malaysia.

Normally, the sports constitution not only enforces governance and structural rules but also regulates activities such as organizing events and competitions. The regulation describes the substantive rules of the respective discipline as well as illustrates the procedural aspects, such as the rule that prohibits a lower club from participating without consent in competitions not sanctioned by the national or international federation. This practice ensures the clarity and coherence necessary for good governance. However, martial arts societies in Malaysia face many problems due to the uncertainty of their legal status. There are many discussions in Malaysia about the scope of legal status issues of martial arts societies as sports and public matters [Farrer 2015; Hassim 2018; Shapie, Shahiid 2015]. If martial arts are regulated under the auspices of government policies and national legislations and Malaysian National Sports Policy 2009, they will be adapted as 'sports and industry' in the future.

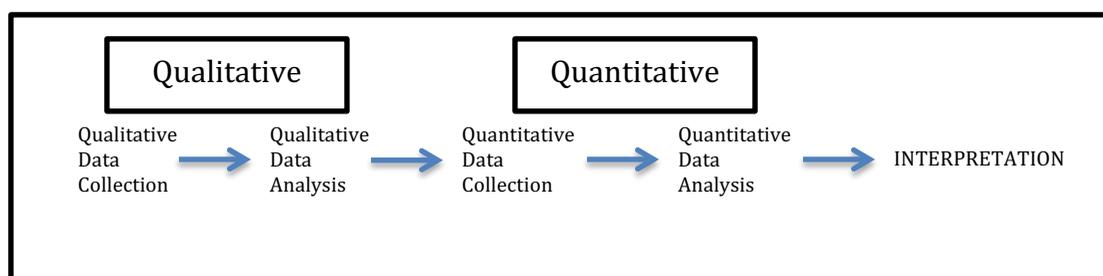


Fig. 1. Study protocol for a sequential exploratory mixed-methods approach. Adapted from Terrell S. [2011]

Besides the national policy, other sports legislations that support the sportization development plan of martial arts include the Sports Development Act 1997 (SDA 1997). Section 3(2) and Section 8(2) of the SDA 1997 have respectively acknowledged the power of international guidelines from IFs or world bodies and the Malaysian participation in the Olympics or other international competitions. There are specific martial arts legislations namely the Martial Arts Societies Act 1976 (MASA 1976) and the Society Act 1966 that also contributed to the evolution of martial arts societies in the country. However, MASA 1976 has not yet been enforced in Malaysia; thus, the registration of the martial arts societies falls under the jurisdiction of the Society Act 1966. In order to ensure that the competitive nature of martial arts is developed at the highest level, various programs can be organized by the National Sports Council (through the National Sports Council Act 1979) and the National Sports Institute (through the National Sports Institute Act 2011).

Therefore, to formalize the sportization development of martial arts societies in Malaysia, the study aims to identify the need for proper registration and establishing a single governing and representative body. This paper will also discuss the legality status and jurisdiction of the societies, especially for the process of sportization development that supports sports and competitions.

## 2. Material and methods

This paper has adopted a mixed-methods approach. This method advances the systematic integration or mixing of quantitative and qualitative data within a single investigation or inquiry [Wisdom, Creswell 2013]. In order to investigate the process of sportization for martial arts societies in Malaysia, the author needs to explain various concepts explored in related literature and interpret the concept using currently existing data. Tashakkori and Teddlie [2008] defined this method as ‘the pragmatist paradigm products’ that combine the qualitative and quantitative approaches within different phases of the research process. The pragmatic approach is suitable for this study, as it examined the crises and conflicts encountered by the Malay (i.e., *silat*), the Chinese (i.e.,

*lion dance*), and the Indian (i.e., *kalaripayat*) martial arts societies in Malaysia.

Table 1. Phases of qualitative and quantitative methods.

| Phase   | Methods                                | Action  |
|---------|--|---|
| Phase 1 | Step 1<br>Qualitative Data Collection  | This step focuses on the literature review. Sources are in the form of the legislation, regulations (bylaws), national body’s constitutions, and content analysis of published articles.  |
|         | Step 2<br>Qualitative Data Analysis    | The data analysis uses conventional content analysis and legal interpretation. The analysis clarifies the various dimensions of the sportizational development process and the concept of constitutionalizing.  |
| Phase 2 | Step 3<br>Quantitative Data Collection | To present the comprehensive data of martial arts societies in Malaysia, the authors seek the help of the Sports Commissioner Office (Ministry of Youth and Sports Malaysia.) to access compile data from the registration system (e-ROSA)  |
|         | Step 4<br>Quantitative Data Analysis   | The collection and analysis of qualitative data (literature) and the collection of data (e-ROSA) goes through the integration process for interpretation. This step evaluates the theories and creates more augmentations to present the outcome of the study [Palinkas, Aarons, Horwitz <i>et al.</i> 2011]. |

The pragmatist paradigm has historically been the cornerstone of social-science research. Studying the legal status and constitutional direction of martial arts societies is a social science issue [Cairns 1935]. This method also refers to a ‘true’ or ‘real’ situation and represents a worldview that emphasizes what works rather than “what might be considered absolutely” [Charles *et al.* 1839–1914]. Thus, to achieve the aims of this paper, the study investigates the reality of the legal position (registration status) of martial arts societies. It also reviews the acceptance of martial arts as a sport under the provisions of the SDA 1997. Upon recognizing the legal position,

the study can determine the suggestions and development plans at both the national and international levels. The design (*Figure 1*) illustrates the new concept of the sportization development process. As there are few empirical studies of martial arts' sportization strategy, the authors have adopted the study protocol for a sequential exploratory mixed-methods approach. This protocol serves as the exploring and developing tools for the sportization process of Malaysian martial arts societies. The ideal design of this study required a simple step-by-step data collection process (*Table 1*).

**Table 2.** The list of Registered Martial Arts Societies in Malaysia (March 2020). Resource: Extracted from ROSA, Sports Commissioner Office.

| No. | Discipline           | National | State | District | Club |
|-----|----------------------|----------|-------|----------|------|
| 1   | Silat                | 2        | 17    | 25       | 74   |
| 2   | Taekwondo            | 8        | 84    | 101      | 444  |
| 3   | Silambam             | 1        | 16    | 44       | 121  |
| 4   | Wushu                | 2        | 26    | 36       | 61   |
| 5   | Karate-do            | 13       | 113   | 94       | 129  |
| 6   | Shorinji Kempo       | 1        | 6     | 0        | 2    |
| 7   | Aikido               | 1        | 3     | 5        | 6    |
| 8   | Tomoi                | 0        | 2     | 2        | 21   |
| 9   | Chenshi Taijiquan    | 1        | 9     | 2        | 8    |
| 10  | Jujitsu / Jiu-Jitsu  | 0        | 1     | 0        | 3    |
| 11  | Capoeira             | 0        | 0     | 0        | 5    |
| 12  | Brazilian Luta Livre | 0        | 1     | 1        | 0    |
| 13  | Tang Soo Do          | 1        | 4     | 1        | 4    |
| 14  | Muaythai             | 2        | 13    | 21       | 131  |
| 15  | Kickboxing           | 0        | 3     | 0        | 1    |
| 16  | Gusti                | 1        | 6     | 3        | 9    |
| 17  | Tinju                | 3        | 20    | 17       | 43   |
| 18  | Kendo                | 0        | 4     | 1        | 2    |
| 19  | Kuoshu               | 0        | 1     | 0        | 5    |
| 20  | Chun Khun Do         | 0        | 3     | 0        | 0    |
| 22  | Kung fu              | 1        | 10    | 0        | 1    |
| 23  | Wing Chun            | 0        | 0     | 0        | 4    |
| 24  | Martial Arts         | 0        | 0     | 0        | 7    |
| 25  | Hunyuan Qigong       | 0        | 0     | 0        | 1    |
| 26  | Taiji Qigong         | 0        | 0     | 2        | 2    |
| 27  | Soo Bahk Do          | 0        | 0     | 0        | 2    |
| 28  | Chinwoo              | 0        | 0     | 0        | 3    |
| 29  | Ganso Kenpo          | 0        | 0     | 0        | 1    |
| 30  | Judo                 | 1        | 10    | 5        | 8    |
| 31  | Sukan Tarung Derajat | 0        | 2     | 0        | 14   |
| 32  | Hapkido              | 0        | 0     | 0        | 2    |
| 33  | Iaido                | 0        | 1     | 0        | 0    |
| 34  | Kutoe/Kuntau         | 0        | 0     | 0        | 2    |
| 35  | Sambo                | 1        | 1     | 0        | 1    |
| 36  | Kurash               | 1        | 0     | 0        | 0    |
| 37  | Mixed Martial Art    | 1        | 5     | 3        | 27   |
|     | Overall (Total)      | 41       | 361   | 363      | 1144 |

This design involves two phases. Phase 1 involves the qualitative selection and reading of related materials, followed by Phase 2, the quantitative data collection phase which builds directly on the results from the qualitative

material selection phase. This allows for the qualitative results to be explained in more detail through the interpretation of the qualitative data. Table 1 explains the action taken for each phase.

The rule of thumb states that a sample size of more than 300 is appropriate for most exploratory factor analyses [Harrington 2009]. In this study, the sample size is 1,144 sports bodies registered under the Sports Commissioner Office (SCO), consisting of martial arts societies at all levels. The data is retrieved from the Registration of Sports Association System or *Sistem Maklumat Badan Sukan* (e-ROSA [https://erosa.kbs.gov.my/ks\\_user/login.php](https://erosa.kbs.gov.my/ks_user/login.php)) upon receiving official consent and written approval from the Sports Commissioner (Step 3).

**Table 3.** The list of Registered Martial Arts Societies after the Amendment of 2004 for State and National level. Resource: Extracted from ROSA, Sports Commissioner Office.

| No. | Discipline           | State      | National  | Total      |
|-----|----------------------|------------|-----------|------------|
| 1   | Silat                | 5          | 0         | 5          |
| 2   | Taekwondo            | 54         | 5         | 59         |
| 3   | Silambam             | 15         | 0         | 15         |
| 4   | Wushu                | 10         | 1         | 11         |
| 5   | Karate               | 60         | 2         | 62         |
| 6   | Shorinji             | 6          | 1         | 7          |
| 7   | Aikido               | 3          | 1         | 4          |
| 8   | Tomoi                | 2          | 0         | 2          |
| 9   | Chenshi Taijiquan    | 9          | 1         | 10         |
| 10  | Jiu-Jitsu            | 1          | 0         | 1          |
| 11  | Tang Soo Do          | 4          | 1         | 5          |
| 12  | Muaythai             | 13         | 2         | 15         |
| 13  | Kick Boxing          | 3          | 0         | 3          |
| 14  | Gusti                | 5          | 1         | 6          |
| 15  | Tinju                | 14         | 2         | 16         |
| 16  | Kendo                | 4          | 0         | 4          |
| 17  | Kuoshu               | 1          | 0         | 1          |
| 18  | Chun Kuhn Do         | 1          | 0         | 1          |
| 19  | Kung Fu              | 10         | 1         | 11         |
| 20  | Judo                 | 6          | 0         | 6          |
| 21  | Sukan Tarung Derajat | 2          | 0         | 2          |
| 22  | Iaido                | 1          | 0         | 1          |
| 23  | Sumba                | 1          | 1         | 2          |
| 24  | Kurash               | 0          | 1         | 1          |
| 25  | Luta Livre           | 1          | 0         | 1          |
| 26  | Mixed Martial Art    | 5          | 1         | 6          |
|     | <b>Total</b>         | <b>236</b> | <b>21</b> | <b>257</b> |

Limitation: The data collection represents the number of martial arts societies registered after the commencement of the Act 1997 as required by Section 16 of the latter. Previously, the societies are registered under the Societies Act 1996. This is clearly stated in Section 3 of the MASA 1976. Furthermore, at the time of the study, more than 400 martial arts societies are still registered under the 1966 Societies Act.

### 3. Result

There are more than 2,000 martial arts (especially *silat*) registered under the Society Act 1966. The findings in Table 1 and Table 2 show that 1,909 martial arts societies are registered statutorily under the Sports Commissioner's office. These include clubs (n=1144), districts (n= 363), states (n= 361) and national (n=41). The number of state-level n=236 (65.3%) and national-level n=21 (51.2%) martial art societies are registered as 'sports' due to the Amendment of SDA 1997 in 2004. A total of 63.9% (n=257) represents Group 1 and receives more sporting characteristics due to their structured governance in terms of their sportizational development plan and constitutional provisions. This group strictly follows the SCO's template, and their activities are recognized as 'sporting activities' under Section 2 of the SDA 1997. Group 2 (before the Amendment of 2004) of the martial arts societies represents only 36% (n=145) and belongs to the categories that face many legal challenges and will be discussed further.

The lack of a legal entity for unincorporated societies in Group 2 (36%) constitutes the greatest challenge due to the voluntary nature of the societies. The committees bear all liabilities and thus will be held responsible for any impairments and internal conflicts faced by the martial arts societies. In terms of their legal setting, the most prominent martial arts societies around the world are based on traditional self-defense and are structurally headed by the principal or master. This kind of setting does not reflect the good governance practices in Group 2; thus, most martial arts will remain part of the cultural heritage. In order for those societies to be competitive and professional, the legal aspects must be realigned similar to Group 1 (65.3%) through their national and international constitution.

Figure 2 illustrates the pyramid nature of the national and international structure. The International Federation (IF) represents the highest level, followed by the National Body (NSB), the State Sports Body (SSB), and the district or club at the lowest level. Each level represents the model of sports competition and devel-

opment.

Based on Figure 1, this paper also discovers two supporting possibilities for sportization of martial arts in Malaysia. The first is related to the concept of governmentality, whereby the number of sports bodies at the level (club - n=1144; district - n=363; state - n=361; and national - n=41) have accepted the standard practice of international sports structure. The regulation imposed by the 1997 Sports Development Act (SDA 1997), especially after the Amendment of 2004, has shifted the traditional practice of self-regulation towards better governance. This concept is generally understood as the art of governance [Foucault 1991] and concerns the way the government directs the subjected group's behavior and actions [Jeffreys, Sigley 2009]. The strategy is to establish organized practices (mentalities, rationalities, and techniques) through which the subjects are governed, or reflect the best practices of the governing sports organization [Foucault 2008].

In this regime of practice, the order is achieved through the means, mechanisms, procedures, instruments, tactics, techniques, technologies, and vocabularies where authority is constituted [Dean 2010]. Before implementing the concept of governmentality in the sportization process, all martial arts societies (n=1909) must first register following the requirement of Section 15 of the SDA 1997. The rationale is to organize and sanction martial arts activities. Through sanctioning, martial artists can participate and represent Malaysia at the international level. The same techniques were applied to ensure public order and safety measures for martial artists, officials, and spectators. All registered martial arts societies must adhere to the regime of practice in conducting and participating in the martial arts competitions through section 34 of the same SDA 1997.

### 5. Discussion

The control of the martial arts societies by the Malaysian government has introduced the standard constitution template for various types of martial arts in Malaysia (PJS

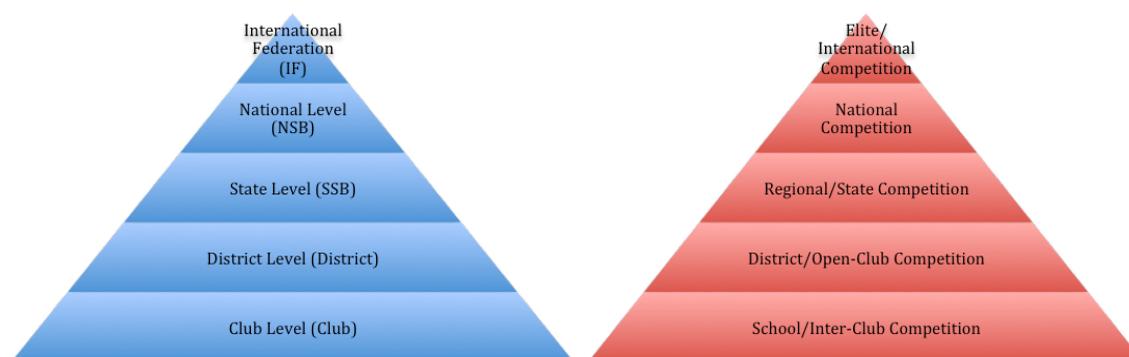


Fig. 2. The pyramid model of international martial art societies – sportization development [adapted from Tinning, Kirk, Evans 1993]

Template, 2005). This comprehensive template promotes the transformation of societies into one particular structure recognized by the sporting world [Abbott 1999]. The recognition of the international guidelines is allowed under section 3(2) of the SDA 1997 and Objective 8 of the National Sports Policy 2009. It focuses on sport excellence at national and international level in the true spirit of sportsmanship. This adaptation and recognition may offer the Malaysian martial arts societies the status of ‘sports association’ and their activities the status of ‘competitive sports’.

The Sports Commissioner’s constitutional template (standard protocol and guidelines) also requires the incorporation of section 19 of the Second and Third Schedules of the SDA 1997 for implementing their training system and competition format, both at the national and the international level. The training and competition start at the grassroots level as highlighted in Objective 3 (NSP 2009). Besides competitive (high performance sports), the martial arts societies have to focus on revitalizing the sports culture at the grassroots through developing local clubs’ programs and nurturing young athletes with potential. It means that martial arts at the club and district level should play their role in talent scouting, talent identification, and looking for new recruitment. At the international level, the institution must also play the same role in organizing a more structured competition to ensure the continuity of the martial arts sportization development plan. China is a very good example: the highest sports authority in China (the State General Administration for Sport) has been working towards the admittance of *wushu* into the Olympics [Liu 1993; Theeboom *et al.* 2017]. In Malaysia, however, the following challenges have contributed to the slow progress of the sportization process of martial arts.

*(a) The issue of the governing and representative body*

SDA 1997 requires the existence of a governing or representative body for sports bodies in Malaysia, in accordance with the statutory requirement of section 2 and the Second Schedule. However, the study found that 19 martial arts societies (out of 37 martial arts and represented by “0”) are not governed at the national level or not represented by an umbrella body (see Table 2). The failure to establish the national governing body in any sports discipline, however, cannot be viewed as the indirect failure of the government agency to advise and control the early entry and registration process (see Rule 1(a)(b)(c)(d) of the Second Schedule), but it will slow down the sportization development process. There are many other reasons for this failure, such as lack of sufficient state member representatives and no affiliation to the international federation [Arnout *et al.* 2015]. The government agency (PJS) or sports ministry should take urgent steps of intervention to establish the required

national governing or representative body for martial arts societies in Malaysia.

This absence of a governing and representative body for martial arts societies has two negative effects. The first impact concerns the structure and governance where the non-existence of an umbrella association will create more problems, violence [Janina, 2015], and even decline [Chidanand, Sundar 2019]. This impact will also negatively influence the martial art development and administrative aspects such as daily administration and the appointment of the executive members [Arnout *et al.* 2015, Walters, 2008]. At the state level, there is the possibility of legal challenge and uncertainty of the final decision in the future direction of the society [Bickford 2020]. This uncertainty will also seriously influence sports development. The second impact negatively affects access to any specified modules or training programs and centralized tournaments [Geoff, Matthew 2008]. As a result, many unsanctioned subordinates, both at the club and state level, will not be able to send their members (including office bearers or officials) or athletes [Nanz, Steffek 2004]; thus, the newly established club will not be able to represent the discipline. Also, without majority support, it is difficult to seek financial assistance from the government. Gradually, the society will slowly decline [Chidanand, Sundar 2019], and the process of the sportization will not be materialized.

Table 2 also illustrates the missing structural level of martial societies. The study found that 11 (n=11) martial arts societies have no representative at the state level. This missing link will disturb the eco-system of the sports pyramid [Cynarski 2012] and cause more constitutional conflicts [Teemu, Noora 2021]. Brennan and Laurence [2013] explained that the missing relationship is always subjected to many legal challenges in terms of the policy decision-making progress, especially during the congress meeting or the Annual General Meeting (AGM) [Young 2016]. The constitution of the national level prohibits the representative of the club level from becoming a proxy or individual member during the AGM process. Only state members are qualified to vote for a new board at the national level. Similar administrative issues such as the selection procedures and athlete representative list [Podrigalo 2017], the process of distributing financial assistance from national to the club, sanctioning and permission for club activities and licensing issues (logo and brand of the discipline) may lead to the devastation and destruction of the society [Birren, Schmitt 2017].

*(b) The non-existence of the structured governing body*

Another challenge for the martial art sportization process is the principle of democracy [Kyriazis *et al.* 2015]. To be constitutionally recognized by the world sporting system, martial arts societies must also adhere to the democratic and hierarchal pyramid system of sports [David, Ian 2017]. However, the nature of the martial

arts is different from other sports, where the committee selection in the congress meeting and AGM seems to maintain the traditional way of strictly respecting their grandmasters. Even today, some traditional systems in Malaysia still accept the role of the grandmaster or *sifu* or *guru* as the prominent leader who holds the top position. As the nature of this system contradicts the democratic way as emphasized by the international federation, the club and individual members have not only failed to form a unified group, they have also failed to fulfil the expectation of the international federation. For example, rural martial arts groups in modern China still practice religious rituals in uniting martial arts groups. As the Malaysian situation is based on various systems of belief and races, a new structured and unified governing body should be introduced to facilitate the sportization process among the martial arts societies. In order to ensure the international expectation, the objectives of the governing body rely on sporting spirit, sports competitiveness, and sports professionalism. Mixed martial arts are the best example to illustrate all these expectations [Sanchez, Malcolm 2010].

Based on the above discussion, the slow development process of sportization will affect some of the following martial arts societies in Malaysia: *Hunyuan Qigong* (club), *Ganso Kenpo* (club) *Iaido* (state) and *Kurash* (national); all societies were established with this problem. In fact, some of the societies are already in apparent decline, as reflected in unrenewed registrations and the lack of new memberships.

Besides the issue of establishing new martial arts societies in Malaysia, those with numbers have also failed to form the majority in their annual election process. The study found that not in all states the martial arts societies were able to form the majority necessary to create the national association. *Kenpo* (6), *Aikido* (3), *Tang Soo Do* (4), *Gusti* (6), *Sumba* (1) and *Mixed Martial Arts* (5) are examples of societies that failed to form the majority votes in establishing their national governing body. On the other hand, *Wushu* (10), *Taijiquan* (9) *Kung fu* (10) illustrated the standard and accepted disciplines that formed a strong majority and were able to create an uncontested national governing body. Despite the many studies on leadership and martial arts relationship [Shapie *et al.* 2016; Bradford, Leberman 2019; Adler 2006; Heckler 2007], all these proposed expectations will not be fulfilled unless a structured governing body is formed.

#### (c) *The conflicting interests of two governing bodies*

The study also found that some martial arts societies have two or more governing bodies. This situation may also affect the sportization development process where the IF normally recognizes only one representative body at the national level. In the case of *Taekwondo Australia Ltd v TKD Sports Taekwondo Australia* [2010] FCA 1592, the Federal Court of Australia recognized only one governing

body to represent Australia in the Olympic Games. The governing body is internationally affiliated under the IF to implement consistent rules and regulations, especially for selection criteria and representation. Table 4 lists six martial art disciplines that have more than one governing body. There are two governing bodies that represent *Silat*, *Wushu*, and *Muay Thai*, whereas *Taekwondo* (8), *Karate* (13), and *Tinju* (3) have more governing bodies. Based on this table, the reasons for more than one governing body are various and probably due to the divergence of the original martial arts discipline into various forms and styles. To ensure strict government control and promote a faster sportization process, there is a need for a strict registration mechanism to select one rightful representative of the governing body. The failure to control the registration of various governing bodies to represent the same discipline will lead to misunderstanding and misrepresentation among martial art practitioners and the general community. The resulting conflict and court action will delay the sportization process and affect the sports development of the respective martial arts society.

**Table 4:** Martial Arts Societies that is represented by more than two governing bodies.

| Martial Arts | State Representative | Governing Body |
|--------------|----------------------|----------------|
| Silat        | 17                   | 2              |
| Taekwondo    | 84                   | 8              |
| Wushu        | 26                   | 2              |
| Karate       | 113                  | 13             |
| Muay Thai    | 13                   | 2              |
| Tinju        | 20                   | 3              |

#### (d) *The inconsistency of the SDA 1997 and MASA 1976*

In Malaysia, sport is defined as any of the activities listed in the First Schedule, SDA 1997. The definition is not exhaustive, as the word ‘any’ connotes an extension that signifies a broad meaning [Hassim 2018]. It means that for the registration and development of sports, any physical activity can be categorized as sports if it falls within the context of SDA 1997. Sports should be distinguished from play or other informal leisure or recreational activities [Jeffrey 1988] and contain an element of competitive games characterized by the acceptance of rules and regulations [Lombardo 2012; Hassim 2018].

Despite the general acceptance of the definition of sports as ‘any physical activity’, the issue was raised whether SDA 1997 also recognizes all types of martial arts and self-defense activities as sports. The historical legal dilemma was long discussed before the commencement of SDA 1997. The Parliamentary Debate on 30 October 1975 was held to discuss the Martial Arts Societies Act 1976 (MASA 1976) which had initially defined martial arts as ‘more than culture and heritage.’ Section 2 of the MSA 1976 clearly defines ‘martial arts’ or ‘any form of martial arts’ to mean “any of the martial arts specified

in the First Schedule or any combination thereof and any other forms of physical training, the study or practice of which enabled the doer to acquire the skills to physically defend himself or herself against armed or unarmed attack.”

**Table 5.** Types of Martial Arts [section 2 – First Schedule] of the Martial Arts Societies Act 1976 and the Sports Development Act 1997.

| Category             | Types of Martial Arts (MASA 1976)   | Types of Martial Arts (SDA 1997) |
|----------------------|---|----------------------------------|
| <b>1. Chinese</b>    | Hsing-I<br>Pa-kua<br>Pai-hao<br>Shaolin<br>Tang lang<br>Tai chi chiuan<br>Pok khik<br>Wu shu<br>Kung fu | Wushu                            |
| <b>2. Japanese</b>   | Karate-do<br>Judo<br>Jujutsu<br>Kendo<br>Iaido<br>Aikido  | Karate-do<br>Judo                |
| <b>3. Korean</b>     | Taekwondo<br>Tangsudo   | Taekwondo                        |
| <b>4. Malay</b>      | All forms of silat  | Silat Olahraga                   |
| <b>5. Indonesian</b> | Pentjak-silat   |                                  |
| <b>6. Thai</b>       | Toi-muay  |                                  |
| <b>7. Indian</b>     | Silambam  | Silambam                         |
| <b>8. Western</b>    |   | Boxing<br>Wrestling<br>Fencing   |
| <b>9. General</b>    |   | Martial Arts<br>Archery          |

The objective of MASA 1976 is not only to organize structured activities, as illustrated in Section 2, but to establish the Martial Arts Supervisory Council (MASC) that will be responsible for the regulation and control of martial arts societies in Malaysia. MASC has a more significant impact to ensure martial arts are contested nationally and internationally. However, MASA 1976 has yet to be enforced, and this affects the harmony between SDA 1997 and MASA 1976. MASA 1976 will not interfere with the legal status and constitutional issues of the societies as it only governs the competition and international activities of the martial arts administratively.

The purpose of listing these different martial arts forms, specifically under the First Schedule, is to legally recognize them as sports. However, these lists are confusing and redundant. Therefore, a unified list for a simple recognition process of sportization under both SDA 1997 and MASA 1976 has to be created. Once recognized, the societies will receive financial and technical assistance

from the government. The list in the First Schedule of SDA 1997 shows that not all martial arts are individually registered under the Sports Commissioner’s Office. Lechner and Solberg [2021] stated that sports and major event organizers normally apply and receive financial support from the government for their activities and development. Thus, in the case of non-registration under the SDA 1997, martial arts societies may face financial difficulties in structuring their development plan and organizing competitive events.

The inconsistency of martial art societies registered under SDA 1997 and MASA 1976 is illustrated in Table 5. As a comparison, there are 51 sports listed in the First Schedule, SDA 1997. *Boxing, Judo, Karate-do, Silat Olahraga, Tae Kwan Do, Wushu, Silambam, and Martial Arts* represent the martial arts category. On the other hand, MASA 1976 has listed more than 20 martial arts. MASA 1976 has listed general forms of *silat*. There are more than 368 types of Malay silat in Malaysia [Anuar 2007] and all these *silat* associations need proper registration (under SDA 1997) and should be recognized as sports for the development process.

## 6. Conclusion

The discussion of the legal status and the constitutional issues of the martial arts societies requires more legislative solutions and governmental improvements. The future of sports martial arts depends on highly competitive skills, and its organized events must be in accordance with the regulations and rules of the International Sports Federations, the International Olympic Committee, and the International Paralympics Council at the national and the international level.

The study suggests that the sportization process does not stop with the recognition of legal status and proper constitutional documents; it includes all efforts to promote better growth directed towards preparing for the sportizational development process. Further studies should be conducted to ensure the continuity of martial arts practices as part of cultural heritage as well as competitive sports.

(1) Martial arts development plan – It refers to the development direction of the country with the aim to endorse the practice of proper martial arts among all participants to promote a healthy lifestyle, good ethics, and sportsmanship.

(2) The need for modern competition rules – The winning point in the world of fighting is straightforward. For example, in the ultimate fight kicking and punching is permissible. The fighters resort to chokes, hair pulling, locks and bars, elbow strikes, and head butts. They continue the fight even after the opponent is already down and defenseless. The referee is supposed to be the judge for the competition, and he acts not only as an arbitra-

tor but also adjudicator. In the future, the competition should consider many legal aspects such as the high duty of care and the implication of mutual consent.

(3) The trend of the globalization process and international institutions – According to Jarvie and Maguire [1994], global sports have impacted the habits of societies and their environment. Over time, as sports practices moved from small to large scale, from low intensity to high intensity, and from natural materials to synthetics, the athletes, spectators, viewers, and employers will become consumers of scarce resources and become threats to the environment.

The Malaysian government must ensure that the process of sportization is initiated through the interpretation of the NSP 2009. It will gradually create a martial art sports culture where Malaysians are encouraged to practice healthy and competitive lifestyles. Participation in the sports culture is collectively represented by national integration and identity. The highest level of sports-based identity in Malaysia is reflected in martial arts. As martial arts is also defined as ‘intangible cultural heritage’ under the National Heritage Act 2005, these intangible cultural heritage objects must be conserved and developed through various means, including performance and facilitation.

Thus, to complement the need to facilitate and develop martial arts culture globally, the government must not only limit the participation of martial arts but design it to achieve excellence at international competitions. It is now timely to start the sportization process by revitalizing the martial arts sports culture by nurturing young martial arts athletes with the potential to prepare them to compete in international martial arts competitions. As a result, in the future, martial arts in Malaysia can contribute towards the national agenda, and the potential of martial artists can be legally recognized as sportspersons, international competitors, and professional athletes.

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## Aspekty prawne formalizacji rozwoju sportowego stowarzyszeń sztuk walki w Malezji

**Słowa kluczowe:** prawo sportowe, status prawny, konstytucja, proces sportyzacji, współzawodnictwo

### Streszczenie

Tło. Status prawny stowarzyszeń sztuk walki w wielu krajach pozostaje nierozwiązany na gruncie różnych ustaw i polityk. Powoduje to opóźnienie prawnego aspektu istnienia instytucji i procesu rozwoju sportowego.

Problem i cel. Wiele tradycyjnych sztuk walki oscyluje między sztuką formalną a nieformalną; zwykle stają się one częścią tańca, kultury i dziedzictwa. Niniejsze opracowanie ma na celu zbadanie osobowości prawnej stowarzyszeń sztuk walki w Malezji, aby promować proces rozwoju sportowego na poziomie krajowym i międzynarodowym.

Materiał i metody. W niniejszym opracowaniu zastosowano podejście mieszane do analizy treści prawnych i interpretacji zebranych danych oraz przepisów prawa krajowego. Podejście to jest odpowiednie dla tego studium, ponieważ bada kryzysy i konflikty napotymane przez malezyjską populację i odzwierciedlone w demografii sztuk walki.

Wyniki. Badanie wykazało, że klubowe (n=1144), okręgowe (n= 363), stanowe (n= 361) i krajowe (n=41) stowarzyszenia sztuk walki w Malezji są zarejestrowane i prawnie uznane jako sporty. Jednak status prawny stowarzyszeń sztuk walki w Malezji jest nadal trudny ze względu na brak krajowego organu zarządzającego i niespójne przepisy prawne. Doprowadziło to do konfliktu interesów pomiędzy dwoma lub więcej organami patronackimi, utrudniając w ten sposób proces rozwoju sztuk walki jako sportu.

Wnioski. Badanie sugeruje nowe podejście do statusu prawnego stowarzyszeń sztuk walki w Malezji poprzez odpowiednią rejestrację i zmianę ich konstytucji. W celu sformalizowania rozwoju sportowego, stowarzyszenia sztuk walki w Malezji muszą być zarejestrowane zgodnie z Ustawą o Rozwoju Sportu 1997 (Poprawka 2018) i tym samym przyjąć cel Narodowej Polityki Sportowej z 2009.

