



# INTERNATIONAL JOURNAL OF ACADEMIC RESEARCH IN BUSINESS & SOCIAL SCIENCES



[www.hrmars.com](http://www.hrmars.com)

ISSN: 2222-6990

## The Rise of Board of Directors with Legal Education in Non-Profit Organisations: An Analysis from Malaysian Perspectives

Nur Ezan Rahmat, Mohd Hisham Mahamud & Muhammad Umar Abdul Razak

To Link this Article: <http://dx.doi.org/10.6007/IJARBSS/v11-i8/10620>

DOI:10.6007/IJARBSS/v11-i8/10620

**Received:** 04 June 2021, **Revised:** 06 July 2021, **Accepted:** 02 August 2021

**Published Online:** 19 August 2021

**In-Text Citation:** (Rahmat et al., 2021)

**To Cite this Article:** Rahmat, N. E., Mahamud, M. H., & Abdul Razak, M. U. (2021). The Rise of Board of Directors with Legal Education in Non-Profit Organisations: An Analysis from Malaysian Perspectives. *International Journal of Academic Research in Business and Social Sciences*, 11(8), 1287–1302.

**Copyright:** © 2021 The Author(s)

Published by Human Resource Management Academic Research Society ([www.hrmars.com](http://www.hrmars.com))

This article is published under the Creative Commons Attribution (CC BY 4.0) license. Anyone may reproduce, distribute, translate and create derivative works of this article (for both commercial and non-commercial purposes), subject to full attribution to the original publication and authors. The full terms of this license may be seen at: <http://creativecommons.org/licenses/by/4.0/legalcode>

**Vol. 11, No. 8, 2021, Pg. 1287 - 1302**

<http://hrmars.com/index.php/pages/detail/IJARBSS>

JOURNAL HOMEPAGE

Full Terms & Conditions of access and use can be found at  
<http://hrmars.com/index.php/pages/detail/publication-ethics>



# INTERNATIONAL JOURNAL OF ACADEMIC RESEARCH IN BUSINESS & SOCIAL SCIENCES



[www.hrmar.com](http://www.hrmar.com)

ISSN: 2222-6990

## The Rise of Board of Directors with Legal Education in Non-Profit Organisations: An Analysis from Malaysian Perspectives

Nur Ezan Rahmat<sup>1</sup>, Mohd Hisham Mahamud<sup>2</sup> & Muhammad Umar Abdul Razak<sup>3</sup>

<sup>1</sup>Associate Professor, Faculty of Law, Universiti Teknologi MARA (UiTM) Shah Alam, Selangor, Malaysia, <sup>2</sup>PhD Student, Faculty of Accountancy, Universiti Teknologi MARA (UiTM), Puncak Alam, Selangor, Malaysia, <sup>3</sup>Senior lecturer, Faculty of Law, Universiti Teknologi MARA (UiTM) Shah Alam, Selangor, Malaysia

### Abstract

Recently, there is an increase of directors with legal experience in several developing countries. Malaysia is also not left behind in this regard. Many organisations consider adding independent directors with legal experience for various related commitments, including non-profit organisations. The study employs a qualitative research methodology with a variety of other empirical contributions. This study demonstrates the descriptive statistics of the number of directors with legal education for non-profit organisations as of 31 December 2020. It analyses the rise of directors with legal education in Malaysian non-profit organisations. This study conducts investigations to get the number of BODs with a legal background in Malaysian NPOs and gather information on the advantages and disadvantages of having BODs with legal background. The results reinforced the descriptive statistic and arguments about the importance of having a lawyer as BODs in non-profit organisations. The finding shows that BODs with legal education may be of great value to NPOs while serving on the NPOs boards when they bring a unique set of knowledge, skills, perspectives, networks, and experiences, including an ability to spot and address particular issues and problems. Not only that, legal education teaches discipline, negotiation, dispute resolution, leadership, communication and analysis to BODs which instil the outstanding kind of work ethics.

**Keywords:** Board of Directors, Non-Profit Organisations, Legal Education, Legal Background, Lawyers

### Introduction

Since 2002, there has been a tsunami of legislative, legal, and legal guidelines that impose strict corporate governance requirements for organizations in the United States (US). All of this has created a high legal landscape that has shifted valuable time and attention from the key responsibilities of the board of directors (BODs) strategy and oversight. The blast of these legal obligations has complicated the structure and operation of the BOD. As such, many organisations are beginning to consider adding BODs with legal experience for various related

commitments. The rationale for appointing BODs with legal experience is that their presence on the board would increase the quality of board supervision, help build varied skills and attributes that relevant to the purpose, needs and strategies of the organization and most importantly, receive the benefit of legal counsel. Subsequently, data showed that the percentage of lawyers as BODs in the US had risen substantially from 24.5% (2000) to 43.9% (2009) (and topping at 47.5% in 2005) (Litov et al., 2013). Meanwhile, in Krishnan et al (2011) sample of Russell 1000 firms, 36% and 37% of audit committees in 2003 and 2005, respectively, have at least one BOD with a legal background. As estimated, 72 of the largest 100 companies have at least one lawyer as a BOD in Australia. In Singapore, an estimated 62 of the largest 100 companies have at least one lawyer on the board. In Malaysia, although that there is no specific data on BODs with a legal background in any organisation, the KPMG survey 2013 shows that 58% of the BODs are accountants, bankers or lawyers and the percentage increase to 64% in 2017. This paper attempts to bring to light the underlying impetus for Malaysian enterprises to engage directors with legal background and to analyze the associated economic and performance impact to the organization. This paper not only contributes to the literature of the professional background of independent directors but also extends the literature of law and finance. Furthermore, it provides a catalyst for researchers on how to improve a governance efficiency in corporations by having a board member with a legal background. While this scenario affluent the for-profit sector, the non-profit sector also receives the influence. Recent controversies involving the non-profit sector have taught that this sector is also prone to scandals such as for-profit; therefore, whatever steps taken by the for-profit sector give many benefits and avoid such scandals, the non-profits sector may follow. Based on this affirmation, the non-profit organisations (NPOs) also start to include a BOD with a legal background for similar reasons such as for-profit. However, scholars such as Peregrine & Broccolo (2007) stated that many NPOs have yet to follow the for-profit sector's lead when making such changes. That is mainly due to many chief executives' reluctance to allow the general counsel to directly access the board instead of always going through the chief executive. Moreover, it is also due to an understandable hesitancy on the part of lawyers who work at NPOs to raise the issue with the chief executive for fear of appearing to feather their nests. The result is that many NPOs of BODs are denied regular and immediate access to the general counsel when they are called on in meetings to focus on issues with legal implications. Contrariwise, based on the non-academic articles, opinions, gossips and others, NPOs that appoint BODs with legal education, in reality, take advantage of the presence of this type of BODs to obtain a free form of legal service since most NPOs have limited resources. It seems that the motivation on the presence or lack of the BOD with legal background gives a mixed impression to the public. Hence, this study explores this issue in two parts: Firstly, a descriptive investigation on the number of BODs with legal education in Malaysian NPOs and: Secondly, the study discusses the benefits and drawbacks of not considering BODs with a legal background and lastly, the effects of having BODs with legal background.

A central focus of this study is the functions of the board. Two basic models have emerged seeking to explain directors' responsibilities and interactions with parties in and around the corporation (Hillman & Dalziel, 2003). The dominant model is premised on agency costs, assigning to the board a monitoring function that can improve firm performance by reducing inefficiencies (Sharpe, 2011). The second model considers the board to be a management resource provider, including human capital (such as experience, expertise, and reputation) and relational capital (such as ties to other firms and regulators). Under this

"resource dependence" approach, the board spans the divide between the company and its external environment, improving firm performance through its ability to manage its business (Hillman et al., 2000; Hillman & Dalziel, 2003; Pfeffer, 1972).

This paper makes the following contributions: First, the study gathers data about NPOs BODs and identifies the number of BODs with legal background. This step is significant to establish new information on the number of BODs with a legal background in Malaysian NPOs. This information soon after can be used by the future study as a reference and benchmark; Second, the study extends the investigation on the benefits and drawback of considering BODs with a legal background, especially in the NPOs sector; Third, there has been considerable recent discussion on the effect of having a lawyer in the boardroom, the study adds some knowledge in this issue by obtaining some opinions through the interview. The paper proceeds as follows: the first part discusses the literature on the possible reasons for not considering BODs with the legal background and the effects of having this type of BODs on the boardroom. The second part is the analysis of descriptive data of BODs with a legal background in Malaysian NPOs. The third part discusses the result of interviews that have been done to get some opinions on the issues related to the study purposes. The paper then concludes that the issue, limitation of the study, and recommendations for future research.

### Literature Review

BODs have a fiduciary duty to act in the company's best interest and exercise the duty of skill, care and diligence, and the business judgment rule (Balan et al., 2014). The duty of care by the BODs have developed from the subjective test that imposed an only minimal duty of care in *Re City Equitable Insurance* [1925] Ch 407 to a higher degree of fiduciary duty where a BOD with less skill and experience had a higher prospect of escaping liability for negligence than his or her counterpart who had more excellent skill and experience. Later, *AWA Ltd v Daniels and Ors* (1992) 10 ACLC 933 challenged the proposition in *Re City's* case by imposing a higher duty of care and diligence unto the directors. This concept has been incorporated in Section 213 of the Malaysian Companies Act 2017 (CA 2016) where requires BODs to perform their duties with a standard of knowledge, skill and experience that may reasonably be expected of another BOD with the same responsibilities, along with any additional knowledge, skill and experience that the BOD has. This is encapsulated as part of the business judgement rule. While the CA 2016 requires BODs to perform their duties with a standard of knowledge, skill and experience, there is no requirement on the BODs specific skills stated in any guideline or directive. Nevertheless, based on the suggested skill set prescribed by the Bank Negara Malaysia's Guidelines on Corporate Governance for Development Financial Institution<sup>1</sup>, legal skill is one of the listed essential skills required by BODs besides accounting, IT, finance, public administration and business management. This statement suggests that someone with a legal background is indeed an option to be made as BODs.

Nevertheless, literature on the benefit of having a BOD with a legal background in the boardroom is limited. Many studies do not specifically direct their research toward benefit but to different approach such as financial reporting quality (Krishnan et al., 2011), firm value (Litov et al., 2013) and disclosure (Lewis et al., 2014). Nevertheless, several works of literature that indirectly indicates lawyers in the boardroom could be used as a reference. Among the preminent study was the Cornell Lawyer-Director Study (15 February 2013). Findings

---

<sup>1</sup> Guideline 2.18 of Bank Negara Malaysia's Guidelines on Corporate Governance for Development Financial Institutions 2011

describe the general benefits that lawyers may bring as BOD members, such as the judgment that comes from their training and experience, a better understanding and appreciation for legal and regulatory risks, and an enhanced vigilance regarding their fiduciary duties based on their potentially heightened duty of care and liability. The study analyzed approximately 10,000 factors to conclude that, on average, when a public corporation had a lawyer-director. The study then suggests that market participants may not broadly recognize the value of lawyer directors, creating a potential investment arbitrage opportunity. BODs without lawyer-directors may be overemphasizing the necessity simply for independent directors versus the statistically significant incremental value added by the skillsets of lawyer directors, regardless of whether they are independent. Nevertheless, as a director who is also a legally qualified lawyer, he will be held to the same standard of care commensurate with his knowledge in law, his special skill as a business lawyer and his probable involvement with the matter at hand (Knepper, 1979).

Others like Litov et al (2013) signify that lawyer-directors' benefits in today's world significantly outweigh the costs. Beyond monitoring, the lawyer-directors manage litigation and regulations and structure compensation to align CEO and shareholders' interests. Their results have been an average of 9.5% in firm value and an almost doubling in public companies' percentage with lawyer-directors. Meanwhile, Dallas (2003) study notice that as corporations have increased in size and complexity, so have the demands on their operations, requiring more complex organizational structures, such as departments and divisions, a more diverse workforce possessing various levels and areas of expertise. Subsequently, the demands on corporate BODs have also changed. She concludes that having BODs with optimum composition (which include legal practitioners) could enhance manager monitoring, effective BODs functioning and BODs effectiveness.

Although that lawyer is eager to serve and contribute to the organization as a BOD and could benefit, as mentioned above, some scholars specify the disadvantages. In general, some organizations are sceptical in appointing a lawyer as their BOD<sup>2</sup>. General assumption such as chairman does not consider transactional legal skills as distinctive (however vital) as they can be bought "by the hour" from law firms. Most organizations consider themselves to have capable legal departments with senior legal advisers just below board-level; boards have been seeking in the past few years – knowledge of emerging markets, understanding of new technology and insights into the impact of globalization – have not favoured legal appointments. Cox (2002) analysis shows concerns on the desirability and implications of dual service of lawyer-directors. As shown in his study, the costs of dual service for both the client and the attorney are much higher than those captured by earlier commentators. Even so, seen, the competitive legal landscape is such that he can expect dual service not merely to grow with time as law firms become increasingly concerned about securing their relationship with the corporate client. If this occurs, the implications examined here will no doubt become a reality.

Roger, Anderson, Blount (2006), in their paper "Lawyers as directors of non-profit corporations", remarked that NPOs do not want to tolerate some risk if they have a lawyer as their BOD. The risks are disqualification risk and risk of loss of the attorney-client privilege. Disqualification risk happens if an NPO's BODs issued; the lawyer-director may be disqualified

---

<sup>2</sup> The Lawyer as director of a client. *The Business Lawyer*, American Bar Association. Vol. 57, No. 1 (November 2001), pp. 387-396.

from representing the corporation or the other board members in the litigation. Other BODs may assert they relied on the advice of the lawyer-director as counsel. Also, as noted above, the lawyer-director may have interests as a defendant in the litigation that materially limits his or her ability to represent the corporate defendant. Meanwhile, the risk of loss of the attorney-client privilege is when the lawyer-director is asked to give legal advice to the board; the risk arises that the usual attorney-client privilege will not protect the lawyer director's communication and the board. This risk is a result of the three largely evidentiary difficulties: (i) proving that the communication related to legal, as opposed to business, advice; (ii) proving that the communication was made as a legal advisor and not as a director; and (iii) proving that the other directors intended their communication to and from the lawyer-director to be a confidential communication with counsel and not merely a discussion among directors. Hershman raised the same concern because of the risk the communication between the director-lawyer and the board will not be privileged (Hershman, 1978).

Overall, organizations wish to recruit lawyers to their boards for a variety of reasons: legal expertise and perspectives, stature, good judgment, negotiating skills, and of course, financial contributions. The fiduciary duty of care requires that BOD members attend meetings and pay attention to the organisation's governance, overseeing management to fulfil the mission. Besides, most NPOs board memberships come with a (stated or tacit) expectation that each member will donate or solicit funds on behalf of the organization. Some organizations have a stated amount; others ask that each board member give them an amount meaningful. In addition to governing and personal giving, board members may be expected to serve in an external relations role, advocating for the organization and introducing it to new funding sources such as private philanthropists, donor-advised funds, government funders, corporations and foundations. In many NPOs, particularly those with larger boards, much of the board's work is carried out through committees, whose activities and recommendations are memorialized in minutes and regularly reported to the board for discussion, refinement and ratification. It is also submitted that common law allows for delegation of authority provided this is authorized by the company's constitution and for the director to rely on the exercise of such power by the person to whom the power has been delegated. Section 216 of CA 2016 allows any BOD or executive managers or any persons primarily responsible for the management of the company to delegate "any power of the Board to any committee of the Board, director, officer, employee, expert or any other person" unless such delegation is restricted by the CA 2016, company's constitution, board resolution or member's resolution. The case of *Vita Health Laboratories Pte Ltd v Pang Seng Meng* [2004] 4 SLR 162 held that if the BODs have caused the company to suffered losses for his reliance on the sales forecast made by the company's country manager, he will not be liable for the damages. Attorneys may be particularly well-suited for the minute-taking role and keeping track of the organization's adherence to its policies and by-laws. Despite the benefits of having lawyers as BODs in NPOs, there are opinions that the profession's unsuitability as a board is due to several reasons.

## Methodology

To obtain a more in-depth understanding of the issue, the study conducts two investigations; Firstly, to get a descriptive analysis of a number of BODs with a legal background in Malaysian NPOs. The data used for this study is the NPOs under the category of CLBG registered under SSM. The reason for selecting these NPOs is that the NPOs under this category are the NPOs incorporated under the Malaysian Companies Act 2016 ("CA

2016") as public companies. Therefore, these NPOs are bound to submit their segmental reporting together with their audited financial statements. All these requirements make the information gathering process more accessible than NPOs registered under ROS Malaysia. In addition, NPOs under the SSM list are the NPOs with proper administration and usually are the NPOs that are well organised and have the correct information. The study uses the following technique:

*Step 1 - Identify NPOs with available information*

Items	Details	Sources	2019	2020
			No of NPOs	
1	Total NPOs	SSM website	2,040	2151
2	Inactive NPOs (550 form) <sup>3</sup>	SSM e-info database	220	235
3	Dormant NPOs <sup>4</sup>	SSM e-info database	54	98
4	NPOs without website / outdated website <sup>5</sup>	Website	1120	1285
5	NPOs with a website but no information on BODs <sup>6</sup>	Website	326	303
Final total NPOs to be reviewed			<b>320</b>	<b>230</b>

Table 1: Number of NPOs with available information

*Step 2 - Review NPOs to acquire information on BODs with legal education.*

The NPOs have been reviewed one after the other to get information on their BODs background. The website and SSM e-database have been used for this purpose. If there is no information available, the study then contacts the respective NPOs by email and phone. By the end of the day, out of 320 NPOs in 2019 and 230 in 2020, numerous NPOs have BODs with legal background for both years. The details of this information will be explained in the latter part of the paper.

Secondly, using information from the first part, the study randomly selected BODs with legal education for an email interview. Email interview has been chosen for several reasons; firstly is to eliminate the boundaries of time and space (Bowden & Galindo-Gonzalez, 2015), secondly is to reduce research cost, thirdly is to prioritizes participants' comfortability (Tanis, 2012), and lastly, the written responses are easily converted to transcribe data

<sup>3</sup> Form 550 (Company Act 2016) is a notice to the organization that their organization will be strike off if they do not reply within stipulate period given. The reasons for this issuance of the form are; the organization is not carrying on business or is not in operation; the organization has contravened the Act; the organization is being used for unlawful purposes or any purpose prejudicial to or incompatible with peace, welfare, security, public interest, public order, good order or morality in Malaysia; or in any case where the organization is being wound up.

<sup>4</sup> A dormant company is one that has been registered with CCM but is not carrying on any kind of business activity or receiving any form of income. Therefore, CCM considers it dormant (or inactive) for corporation tax purposes. It can be dormant from the date of its incorporation, or it can become dormant after a period of activity.

<sup>5</sup> NPOs without website/outdated website have been excluded because the availability of the information is questionable.

<sup>6</sup> Some NPOs reluctant to reveal information on their BODs in the website. We consider these NPOs not transparent and

resulting in significant savings over the typical expenditures for transcribing an oral interview (Hawkins, 2018). Before beginning the interview process, the researchers must know the interviewees and establish trust (Mann & Stewart, 2001). One way to establish trust is to demonstrate a shared identity with participants. Indeed, many online researchers suggest that self-disclosure early in the interview process is essential to a fruitful interview experience (Illingworth, 2001; Kivits, 2005; O'Connor & Madge, 2001). Therefore, once the interviewee has been identified, they have been contacted to establish the rapport. Phones called were made to the selected NPOs to get their endorsement and information on the BODs, especially for their phone number and email address. Later, the possible interviewees were invited by email to participate in the exercise by explaining the online interview's purpose and aims. If necessary, the phone called was made in order to give further explanation. If they agree, the study emailed the question and covered the email containing attachments such as covering letter and status acknowledgement. Each potential interviewee was informed (before agreeing to be interviewed) that the interviews would be reported in a manner where specific statements could not be attributed to particular individuals. Overall, the email interviews were conducted and managed as diagram 1.

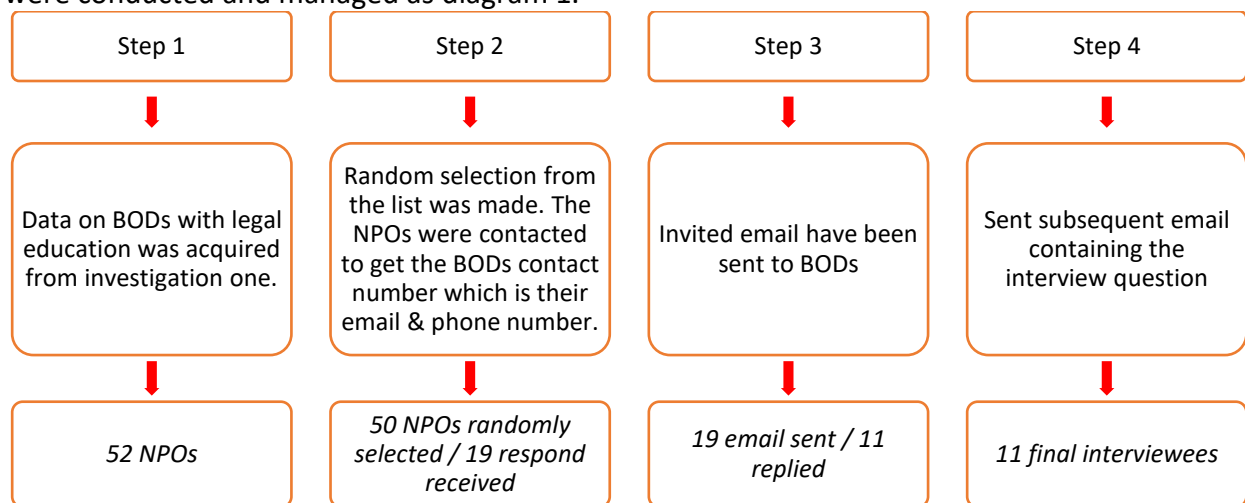


Diagram 1: the flow of email interview

In developing the interview question, the study has considered a few elements, such as the interview technique and the interviewees' availability. Therefore, the questions must be concise, easy to understand and not time-consuming. As a result, four questionned have been created to answer the research objectives. The questions are:

1. How many years of experience do you have as BODs in NPOs?
2. In your opinion, what are the benefits of having a BOD with legal education in NPOs?
3. In your opinion, what are the reasons for NPOs not to consider a BOD with legal education in their board?
4. Do you think that NPOs should have a BOD with legal education on their board? If yes, please state the reason.

## Result and Discussion

### Part 1 - Descriptive statistic on the number of BODs with legal background

The study defines a BOD as a legal expert or a BOD with a legal background if he/she has a law school degree, such as JD, LL.M, or LL.D. The result shows that out of 320 NPOs that the study reviews in 2019, only 59 NPOs (18.43%) have BODs with legal education, while 60



NPOs are in 2020 (26.09%). If evaluation made on the total NPOs as of 31 December 2019, the 59 NPOs represent only 2.9% from 2,040 NPOs, and for 31 December 2020, the 60 NPOs represent only 2.79% for 2020. Both percentages indicate that Malaysia's NPOs have an insignificant number of BODs with a legal background in their organization for those two years. Whether these NPOs do not recognise the advantage of having someone with a legal background in their boardroom or perhaps these NPOs do need someone with legal background for a specific reason is uncertain. At the same time, more investigation needs to be done to obtain more information regarding the issue. However, the study confirms that the presence of BODs with a legal background in the Malaysian NPOs sector is low.

Further analysis on BODs with legal education also has been done according to the type of NPOs based on classification by SSM. The study manages to describe the information as per below:

Types of NPOs / Years	Total number of BODs according to the type of NPOs		Total number of NPOs according to the type of NPOs		% of BODs with a legal background in this type of NPOs		% of NPOs that have BODs with legal background	
	2019	2020	2019	2020	2019	2020	2019	2020
Charity	117	94	172	98	23.4%	18.09%	9.3%	18.37%
Education	147	108	21	18	4.76%	12.03%	28.57%	38.89%
Environment	18	13	3	2	11.11%	0	33.33%	0
Industry	474	544	79	92	4%	5.15%	33%	34.78%
Health	21	16	12	3	23.81%	43.75%	25%	33%
Religion	114	32	19	4	3.50%	3.13%	10.53%	25%
Research	77	39	9	5	7.8%	23.1%	55.56%	20%
Social	11	7	2	1	0	14.3%	0	0
Sport	5	22	1	3	0	9.01%	0	0
Art	7	13	1	2	0	0	0	0
Others	6	9	1	2	0	0	0	0
<b>Total</b>	<b>997</b>	<b>897</b>	<b>320</b>	<b>230</b>	<b>7.12%</b>	<b>8.70%</b>	<b>18.43%</b>	<b>26.09%</b>

Table 2: Descriptive statistic for NPOs

The number of BODs in each NPO is diverging according to the type of NPOs, total BODs and operation nature. For example, NPOs established for women right contain more BODs with a legal background than charitable NPOs. Another example is NPOs that established specifically for religious purposes contain fewer BODs with legal background. NPOs under the industry category have more BODs with legal education, while NPOs under specific category or particular purposes like sport, art or health perhaps needless BODs with this type. It can be concluded that NPOs could be selective in their BODs appointment, while the study is also unable to specify whether NPOs realize the benefit of having someone with a legal background on their board by looking at the distribution of data. Nevertheless, it confirms that particular category of NPOs in Malaysia, such as industry and charity, tend to have more BODs with legal education than others. In terms of the number of BODs, the maximum number of BODs in the NPOs is 30 persons, and the minimum is two persons. Most of the NPO with large BODs are the NPOs under the industry category and operate on the public sector's fringe. The imbalance of BODs number among the NPOs also affects the appointment of BODs with legal education. Their founder or co-founder represents most

NPOs; some are by their family and people they know or others. This kind of practice limits the appointment, limiting the opportunity for those who have legal education to join. Perhaps this rationalization explains the low number of BODs with legal education in Malaysian NPOs.

### Part 2 – Analysis of the email interview

This paper extends this investigation by conducting the email interview based on the part 1 exercise. The eleven interviewee's details are as follow:

No	Types of NPOs that they are attached to	Years as the BODs at the NPOs	Legal qualification	Gender
1	Industrial	2	Bachelor of Laws.	F
2	Environmental	10	LL.B	M
3	Education	11	Barrister-At-Law (Lincoln's Inn, London)	F
4	Art	2	LL.B & LL.M	M
5	Charity	4	Diploma in Education, Diploma Admin & Islamic Law, BA in Shariah.	M
6	Industrial	4	LL.B & Master Art in Economy	M
7	Research	4	LL.B, LL.M (Shariah), Master of Comparative Laws (MCL), Ph.D. in law.	F
8	Charity	1	LL.B	M
9	Charity	3	LL.B, Master of Comparative Laws (MCL)	F
10	Education	5	LL.B University of Warwick, UK	F
11	Industrial	3	LL. B (UiTM)	M

Table 3: Analysis of the interviewees

The above details of interviewees answer the study first question, which is:

#### RQ1 - How many years of experience do you have as BODs in NPOs?

Out of ten interviewees, two interviewees have experience for ten years or more. Interviewees no 2 and 5 are the founder and co-founder of the NPOs and are still on the board. Interviewee no 2 is the environmental lawyer, and then it is not strange that he involve in this type of NPOs. Meanwhile, interviewee no 2 was a government servant at the minister of education 11 years ago when the NPOs have appointed her.

#### RQ2 - What is the benefit of having a BOD with legal education in NPOs?

The increasing trend in the western country on appointing BODs with legal background to organization indicates undeniable advantages. One of the most prevalent advantages that people always discuss is that BODs with legal education can consult the board for legal advice. Since most NPOs have limited resources, they may expect someone with that expertise to provide legal services on a pro bono basis, although many people join boards with different intentions. Besides this general understanding of having BODs with a legal background, three interviewees (1, 4, 5, 6 and 9) stated that someone with a legal background in the board could offer more than legal advice. Interviewee 9 stated that,

*"Having a lawyer on board can be good for both sides: NPOs receive the benefit of legal counsel, while lawyers get to support a cause they are likely passionate about, and connects them to other community leaders outside the legal circle. This opportunity is not lost on new lawyers who are encouraged by their firms to invest time volunteering in the community".*

The above statement is quite true since most successful lawyers have many community connections. These may include grant-making organizations, community activists, politicians, business leaders, school leaders, accountants and other lawyers. Connecting the organization and staff with some of these contacts is par for the course of serving on board. NPOs can leverage the lawyer's relationships to build a more extensive network and increase their donor base. Additionally, when the need arises to engage corporate counsel, having a BOD, an insider to the legal community, is invaluable. Lawyers know their fellow lawyers. They will have informed opinions regarding not only the competence of other attorneys but also their integrity. They know other lawyers' personalities and will have a sense of who would be a good fit for NPOs. They may also know which attorneys will most likely be able to practice within NPO's budget constraints. Even when unfamiliar with a prospective attorney, a lawyer is specially equipped to read between the lines when scouting an unfamiliar lawyer.

Another benefit of having a BOD with a legal background in NPOs is that NPOs could receive general legal knowledge. Interviewees no 2, 3 & 10 are on the same opinion. Interviewee 3 stated that;

*"Experienced lawyer basically know all the type of law because of their experience. Some of them are partners at the firm, and some serve as legal officers for years. An experience like this develop lawyer into someone who could face any issue by the organization.*

Under their training, lawyers are analytical thinkers. They are steeped in the law's basics, including contracts, lawsuits, liability and liability insurance, and issues concerning employment, immigration, health care, and government regulations. People with legal education on board draw from this knowledge while serving, thus helping make business and programming decisions. Moreover, this type of BOD also could help in making tough decisions. Because of their training and experience, many of them can identify problems early. They can also help problem solve and mediate myriad interests among the board and stakeholders of the NPOs.

Another benefit stated by interviewees no 7 & 8 is the value of NPOs could be increased when they have a lawyer around. They believe that having a lawyer enhances public perception toward the organization regarding integrity and compliance to any legal aspect. Generally, when the public observe that someone with a legal background or someone with legal enforcement in the organization, they tend to assume that the organization is reliable. In NPOs, this perception is important as NPOs rely on the public's support for their continuous operation.

Furthermore, some of the interviewees also support the benefits of having someone with a legal background such as:

*"They possess a range of skills and intellectual qualities that complement those of existing directors."*

*"Person like lawyers is comfortable dealing with complexity and brings an important perspective to the grey area between morality and the law."*

*"Lawyers in professional practice have plenty of exposure to clients' business challenges and belong to sizeable commercial enterprises of their own."*

*"They can contribute diversity and insight to boardroom debate and decision making."*

It is agreeable for the above statement as the diversity of thought and background is as valuable to boards as gender or ethnicity. Boards should not be limited to people with business and finance experience. In fact, someone with legal background and experience possesses a challenging and forensic mind-set that is needed now more than ever, especially in this challenging time of covid-19.

In conclusion, a person with legal education on board brings a unique set of knowledge, skills, perspectives, networks, and experiences, including identifying and addressing particular issues and problems. When someone with legal background represents a corporation or even an NPO, they represent the entity, not its volunteers, staff or BODs. If an attorney (for example) represents a corporation and serves as a BOD, they are not bound to legal counsel and one of the duly authorized constituents. The part also makes known that people with legal education in a board are typically detail-oriented, conscientious, and risk-averse. Many are citizens and activists committed to doing the right thing (admittedly, a fluid concept). Such a person is an asset to any board. For such reason, many NPOs actively seek out this kind of person to serve as BODs. However, this can also cause a misunderstanding of the capacity in which the person is going to serve. NPOs may want and expect the person to serve as pro bono counsel, while many join as a BOD to serve purely on a volunteer basis. However, the relationship starts; it is not uncommon to see the person eventually providing legal advice to the NPOs, whether in the official capacity as the lawyer or attorney. Service on the NPOs board can be gratifying to both the lawyer and the organization. NPOs always consider a person from other non-management pools to be their BODs, and specifically, having a person with legal background on board can come with great benefits, both to them and the organization, and comes with some risks to both. Nevertheless, when the risks are adequately managed, the service can be positive and fruitful. Besides, NPOs often seek out someone with a legal education to serve on their BODs, and doing so is an excellent way for this kind of person to contribute to their communities, but the unique professional skills they bring can also implicate critical ethical considerations.

### **RQ3 - What are the reasons for NPOs not considering a BOD with legal education in their board?**

Having a person with legal education on board can be good for both sides. However, many lawyers join NPOs boards with the expectation not to serve as the lawyer for the organization. Nevertheless, there is an opportunity for NPOs to receive the benefit of legal counsel. However, not all organizations can accept the lawyer on their board. One of the reasons given by interviewee no 8 is that the organization has a sceptic belief that not all lawyers can give legal advice to the NPOs. The opinion is also shared by interviewees 4 and 9. Interviewee 9 comments:

*"Some organization has a negative opinion on the lawyer as they think some lawyer has limited knowledge on NPOs legal issue."*

This is quite right as one thing to know about the lawyer is that they do not have expertise in all law areas. A conveying attorney likely will know enough to advise on NPOs taxation issue. A criminal attorney probably should not advise on the employment issue that come out. Understandably, people turn to the lawyer in the room whenever a legal issue crops up. However, it can get the NPOs (and the lawyer's BOD) into a sticky situation if the organization relies on advice from a lawyer outside of their expertise. Thus, for the organization to appoint someone they might think cannot contribute to the organization, the organization should turn into specific criteria, such as the accountant or someone prominent in society.

Besides the above opinion, seven of the interviewees (1, 2, 3, 5, 6, 7 & 10) indicated that conflicts could arise for lawyers serving as members of an NPO BOD because of the duties imposed on NPOs BODs as well as lawyers' ethical duties to clients as outlined in the Model Rules. As part of the duty of loyalty, a BOD must act in the organisation's best interests, including not using confidential information of the organization to its detriment. With such duty to the organization, a lawyer's service on the NPO board might preclude the lawyer or the lawyer's law firm from being adverse to such organization. This was the situation in *Berry v. Saline Mem'l Hosp.*, 907 S.W.2d 736 (Ark. 1995), when a hospital in Arkansas was sued by a party represented by a law firm, one of the lawyers was a former trustee of the hospital. In that case, the Arkansas Supreme Court upheld a lower court's disqualification of the law firm on the basis that a lawyer in the firm was a former hospital trustee and, as such, had a fiduciary relationship with the hospital and continued to owe the hospital a duty of loyalty. Conflicts also can arise for a lawyer/director when the lawyer's firm represents a client that is a grant recipient of the NPOs. Although this is rarely happening, there is some opinion that such a situation may preclude a lawyer from serving on NPOs board. Still, to the extent the situations occur infrequently, the organization and lawyer/director should handle them by following conflict of interest requirements imposed by state statute and the organization's conflict of interest policies.

Interviewee 3, on the other hand, believes that a lawyer who engages as the NPO lawyer and becomes a BOD in the same NPO can create some conflict. She gave a view that:

*"A conflict can arise when the lawyer/director is serving as the lawyer for the NPO. Although there is no ethical prohibition against a lawyer serving as a director of a client. Still, the dual role can give rise to potential conflicts."*

Moreover, she observed,

*"A lawyer for NPOs who is also a member of its board of directors should determine whether the responsibilities of the two roles may conflict. The lawyer may be called on to advise the NPOs in matters involving the actions of the directors. Consideration should be given to the frequency with which such situations may arise, the potential intensity of the conflict, the effect of the lawyer's resignation from the board and the possibility of the NPO's obtaining legal advice from another lawyer in such situations"*.

Though the conflict may not hit the NPOs, Roger, Anderson, Dorsett & Jernigan (2006) indicate that the conflict may give some risks to the lawyer who is the director in the NPOs disqualification risk and risk of loss of the attorney-client privilege. Therefore not all NPOs would like to take this kind of menace and faced difficulties someday.

Other than that, interviewee no 1 stated the link between the NPOs core purpose and the benefit of having someone with a legal background on the board. Her comment was:

*"The legal view is always available through the general counsel, the company secretary and other advisors."*

Her comments make sense given the need for such NPOs to succeed. For example, if NPOs are health-based, they must have BODs that genuinely specialize in health. At the same time, advice on other matters can be obtained from high-quality legal advice from outside counsel or professional. Some NPOs have a secretary who attends meetings and advises the board on governance and regulatory compliance expertise. Thus, a similar opinion was voiced out by interviewee no 6:

*"We should be prioritising people in business and finance roles as future non-executives, not lawyers. There are plenty of the former."*

Based on the opinion, the study believes that though NPOs is the voluntary organization with the abundance of challenges around, NPOs must also think about their survival and continuity. Not surprisingly, many NPOs in Malaysia start to involve in the social enterprise rather than moving on NPOs platform alone. Thus, to make it successful, BODs with business capability is much needed than a legal background.

### **RQ3 - Do you think that NPOs should have a BOD with legal education on their board?**

All interviewees agreed that NPOs should have at least one BOD with legal education. However, they have given the mixed answer on the reason why BODs with legal education is needed. Five of the interviewees (3, 4, 7, 8, & 9) cited that diversity in BODs is highly needed to make the composition of BODs balance. Meanwhile, interviewee 1 and 5 believe that someone with legal education cannot make the NPOs comply with the rules and regulation to monitor and advise. Interviewee 2, 6 and 10 indicated that BODs with legal education might indicate that the NPOs show some signpost to their stakeholders that their organization is well established. This is important as NPOs are still relying on the support of the stakeholders for their operation.

### **Conclusion**

Based on the analysis, the first part of the paper manages to show that the percentage indicates that NPOs in Malaysia have an insignificant number of BODs with a legal background in their organization. Whether these NPOs do not recognise the advantage of having someone with a legal background in their boardroom or perhaps these NPOs do need someone with legal background for a specific reason is uncertain. Thus, the study confirms that BODs with a legal background in the Malaysian NPOs sector are low and focused on specific categories of NPOs. Simultaneously, the study also detects an increase of BODs with legal education in 2020 compared to 2019, although the number of samples reduces for 2020. It can be seen that NPOs under the categories of industry, education and health contribute to the increase while

others remain the same. Nevertheless, these two years observation did not give an accurate picture of the issue as there is a limitation of information regarding NPOs. Some barriers, such as lack of information on BODs, restrain the study from getting quality information. Eventually, despite the challenges, the first part of the paper provides a helpful overview of the issue.

For the second part, it is concluded that there is some common ground between the arguments for and against BODs with legal education sitting on NPOs boards. They can make excellent BODs, but they do not belong there by right or indeed solely by dint of a long and successful professional legal career. As a constituency, they possess many of the core skills expected of effective BODs, including judgment, integrity, independence and an ability to assimilate key information. However, these skills alone may well not be enough to persuade chairpersons to add them to their boards. Besides, they must have a thorough and proven understanding of NPOs nature, business, social enterprise, ability to contribute at a strategic level, and a better facility with numbers than most have at present. In short, this person probably needs to skill up to become compelling candidates. This may be an easier transition for general counsels who have been close to the board and the strategic decisions of NPOs operation over a number of years. Many of the necessary skills will have rubbed off on them, and they may well be seasoned boardroom operators. However, experienced partners from a major law firm have the advantage of having worked with a broad range of organizations and sectors over their careers. The variety of corporate challenges they have witnessed will most likely outnumber what is possible within a single organization. Nevertheless, for persons with a legal education to assume that they are naturals in the boardroom because they have advised boards may work against them rather than for them. This kind of person with a broad skill-set should not be discounted as potential BODs. There is room for them in this role, but only those who have all the board's skills. The fact that they are lawyers/attorney/prosecutor becomes less relevant than the qualities they can bring to the boardroom as the businessmen and women they have become.

The paper, therefore, provides new evidence on the presence of BODs with legal education on the NPOs board, especially in the Malaysian viewpoint. The evidence could be a benchmark for future studies in governance, NPOs, and legal profession study. Though it has significant contributions, this study also has some limitations. The limited number of NPOs, year observations and the fact the study only covers a single sector mean it cannot provide an overall picture of the Malaysian perspective. Therefore, future research should consider a comprehensive study to be another beneficial approach for understanding BODs with legal education in Malaysia.

## References

- Balan, S., Guan, S. T., & Ling, S. T. Y. (2014). Directors Duties of Care, Skill and Diligence: An Analysis of Some Developments in Malaysia. *Journal of Malaysian and Comparative Law*, 41(2), 53.
- Bowden, C., & Galindo-Gonzalez, S. (2015). Interviewing When You're Not Face-To-Face: The Use of Email Interviews in a Phenomenological Study. *International Journal of Doctoral Studies*, 10, 79–92.
- Cox, J. D. (2002). The Paradoxical Corporate and Securities Law Implications of Counsel Serving on the Client's Board. *Wash. ULQ*, 80, 541.
- Dallas, L. L. (2003). The Multiple Roles of Corporate Boards of Directors. *San Diego L. Rev*, 40, 781.

- Hawkins, J. E. (2018). The Practical Utility and Suitability of Email Interviews in Qualitative Research. *The Qualitative Report*, 23(2), 493–501.
- Hershman, M. (1978). Special Problems of Inside Counsel for Financial Institutions. *The Business Lawyer*, 33(March), 1435–1451.
- Hillman, A. J., Cannella, A. A., & Paetzold, R. L. (2000). The Resource Dependence Role of Corporate Directors: Strategic Adaptation of Board Composition in Response to Environmental Change. *Journal of Management Studies*, 37(2), 235–256. <https://doi.org/10.1111/1467-6486.00179>
- Hillman, A. J., & Dalziel, T. (2003). Boards of Directors and Firm Performance: Integrating Agency and Resource Dependence Perspectives. *Academy of Management Review*, 28(3), 383–396. <https://doi.org/10.5465/AMR.2003.10196729>
- Illingworth, N. (2001). The Internet Matters: Exploring the Use of the Internet as a Research Tool. *Sociological Research Online*, 6(2), 79–90. <https://doi.org/10.5153/sro.600>
- Kivits, J. (2005). Online Interviewing and the Research Relationship. *Oxford: Berg., Virtual methods: Issues in social research on the Internet*, 35–49.
- Knepper, W. (1979). Liability of Lawyer-Directors. *Ohio State Law Journal*, 40, 341.
- Krishnan, J., Wen, Y., & Zhao, W. (2011). Legal Expertise on Corporate Audit Committees and Financial Reporting Quality. *The Accounting Review*, 86(6), 2099–2130. <https://doi.org/10.2308/accr-10135>
- Lewis, B. W., Walls, J. L., & Dowell, G. W. S. (2014). Difference in Degrees: CEO Characteristics and Firm Environmental Disclosure: Research Notes and Commentaries. *Strategic Management Journal*, 35(5), 712–722. <https://doi.org/10.1002/smj.2127>
- Litov, L. P., Sepe, S. M., & Whitehead, C. K. (2013). Lawyers and Fools: Lawyer-Directors in Public Corporations. *Geo. LJ*, 102, 413.
- Mann, C., & Stewart, F. (2001). Internet Interviewing. In J. Gubrium & J. Holstein, *Handbook of Interview Research* (pp. 602–627). SAGE Publications, Inc. <https://doi.org/10.4135/9781412973588.n35>
- O'Connor, H., & Madge, C. (2001). Cyber-Mothers: Online Synchronous Interviewing using Conferencing Software. *Sociological Research Online*, 5(4), 102–117.
- Peregrine, M. W., & Broccolo, B. M. (2007). 'Independence' and the Nonprofit Board: A General Counsel's Guide. *Journal of Health Law*, 39(4), 497.
- Pfeffer, J. (1972). Size and Composition of Corporate Boards of Directors: The Organization and its Environment. *Administrative Science Quarterly*, 17(2), 218. <https://doi.org/10.2307/2393956>
- Ririh, D. P., & Anis, C. (2021). Effectiveness of the Board of Directors and Company Performance: Corporate Governance Perspective in Indonesia. *Jurnal Penelitian Ekonomi dan Bisnis*. Vol. 6, No. 1.
- Sharpe, N. F. (2011). Process over Structure: An Organizational Behavior Approach to Improving Corporate Boards. *S. Cal. L. Rev.*, 85, 261.
- Tanis, M. (2012). *Online Social Support Groups* (A. N. Joinson, K. Y. A. McKenna, T. Postmes, & U.-D. Reips, Eds.; Vol. 1). Oxford University Press. <https://doi.org/10.1093/oxfordhb/9780199561803.013.0010>