

Ensuring Peaceful Co-Existence in Malaysia Based on Federal Constitution's Human Rights Approaches: An Analysis

Memastikan Kehidupan Bersama Secara Aman di Malaysia Berdasarkan Pendekatan Hak Asasi Manusia di dalam Perlembagaan Persekutuan: Satu Analisis

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Article Progress

Accepted: 23 August 2022

Reviewed: 4 October 2022

Published: 30 November 2022

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Abstract: Malaysia is a diverse country with many different ethnicities, religions, cultures, and languages. Due to these differences, religious and racial sentiments can easily be fanned and sensationalised by irresponsible parties to achieve their agenda. As such, ensuring unity and maintaining peaceful co-existence of its 32 million population poses a great challenge to the Malaysian Government. This article aims to analyse the human rights principles laid down in the Federal Constitution of Malaysia as the formula to maintain public order and peaceful co-existence in Malaysia. This article uses qualitative method by referring to various documents namely the Federal Constitution, journal articles, books and decided cases. The preliminary part of this article focuses on the overview of Malaysia's demography and the importance of peaceful co-existence of its population. Accordingly, this article will discuss the key human rights principles provided in the Constitution, followed by an analysis on selected cases to see how the Constitution has played significant roles in guaranteeing peaceful co-existence. Finally, this article concludes by stressing the importance of unity in diversity based on respect for and observance of human rights. The study in this article found that the Federal Constitution of Malaysia in particular its human rights provisions has played important roles in ensuring public order and maintaining peaceful co-existence in Malaysia's multiracial society.

Keywords: Federal Constitution, human rights, peaceful co-existence, Malaysia;

Abstrak: Malaysia adalah sebuah negara yang terkenal dengan kemajmukan penduduknya dari segi kumpulan etnik, agama, budaya dan bahasa. Disebabkan perbezaan ini, terdapat risiko berlakunya perbuatan mengapi-apikan dan mensensasikan sentimen agama dan perkauman oleh pihak yang tidak bertanggungjawab untuk mencapai agenda mereka. Oleh itu, memastikan perpaduan dan mengekalkan kewujudan bersama secara aman 32 juta penduduknya memberi cabaran besar kepada Kerajaan Malaysia. Artikel ini bertujuan untuk menganalisis prinsip hak asasi manusia yang ditetapkan dalam Perlembagaan Persekutuan Malaysia sebagai formula untuk mengekalkan ketenteraman awam dan kewujudan bersama secara aman di Malaysia. Artikel ini menggunakan kaedah kualitatif dengan merujuk kepada pelbagai dokumen iaitu Perlembagaan Persekutuan, artikel jurnal, buku dan kes yang diputuskan. Bahagian awal artikel ini memfokuskan pada gambaran keseluruhan demografi Malaysia dan kepentingan kewujudan bersama secara aman penduduknya. Seterusnya, artikel ini akan membincangkan prinsip utama hak asasi manusia yang diperuntukkan dalam Perlembagaan, diikuti dengan analisis ke atas kes terpilih untuk melihat bagaimana Perlembagaan telah

memainkan peranan penting dalam menjamin kewujudan bersama secara aman. Akhir sekali, artikel ini menekankan kepentingan perpaduan dalam kepelbagaian berdasarkan penghormatan dan pematuhan hak asasi manusia. Kajian dalam artikel ini mendapati bahawa Perlembagaan Persekutuan Malaysia khususnya peruntukan hak asasi manusia telah memainkan peranan penting dalam memastikan ketenteraman awam dan mengekalkan kewujudan bersama secara aman dalam masyarakat berbilang kaum di Malaysia.

Kata kunci: Perlembagaan Persekutuan, hak asasi manusia, kehidupan bersama secara aman, Malaysia;

Introduction

Malaysia has always been dubbed as ‘truly Asia’ due to the diversity in the ethnic groups, religions, and cultures of its population. Ever since it gained its independence from British back in 1957, Malaya as it was known then was established based on mutual understanding and compromise between various major ethnics namely Malays, Chinese and Indians. The subsequent formation of the Federation of Malaysia in 1963 which saw the merger of Federation of Malaya with Singapore, North Borneo (Sabah) and Sarawak has made the population of Malaysia even more diverse. This remains the case even though Singapore has left the Federation two years later. Bearing in mind the diverse nature of population in Malaysia, it is pivotal for the government to take effective measures in managing this multicultural population, ensuring its peaceful co-existence, and maintaining public order.

Based on the latest demographic statistic, the population of Malaysia stood at about 32.7 million, of which 30.2 million are citizens and 2.4 million are non-citizens. Out of the 30.2 million citizens, 69.9% or 22.9 million are Bumiputeras, 22.8% (7.5 million) are Chinese, 6.6% (4.1 million) are Indians and 0.7% (0.2 million) are others (DOSM, 2022). According to Mason and Omar (2004), the term ‘Bumiputera’, which literally means ‘sons of the soil’, comprises of the Malays in Peninsula Malaysia and other native indigenous groups in Sabah and Sarawak, Muslims and Non-Muslims alike. In Peninsula Malaysia, in addition to the Malays, the Malaysian Thai community found largely in the northern Malaysian states bordering Thailand; and also, the small Portuguese community, found largely in Melaka are also categorised as Bumiputeras.

However, the term excludes Chinese and Indians, even those locally born, as they are considered as migrant communities. As such, it can be understood

that the Bumiputera in Peninsula Malaysia refers to those indigenous ethnic groups who have come to make Malaya their home before the arrival of the British and the subsequent attendant in mass migration of the Chinese and Indian communities. In the economic perspective, despite being the minority groups, the non-Bumiputeras held 25% equity ownership as compared to only 17.2% held by the Bumiputeras. This falls short of the government’s target to raise Bumiputera’s equity ownership to 30%. This target was set up as part of the New Economic Policy (NEP), following the events of May 13, 1969, due to the economic disparity between the races (Yaakob, 2021).

The May 13 riot and racial incident, having been fuelled by the economic disparity between the races, has left a black mark in Malaysian history as a country. It taught all Malaysians from leaders to ordinary people a great lesson on the importance of unity despite living in diversity. Indeed, being a multiracial country is rather unique for Malaysia, but it can also become the main challenge to create peaceful co-existence. If not properly managed, religious, and racial sentiments can easily be created and difficult to handle. Hence it is very essential to manage religious and racial issues wisely and with sanity as conflicts in religion and race can contribute to instability in unity among people of different religions and races (Kuntum, 2003; Sintang, 2014).

This article discusses the importance of Federal Constitution, in particular its human rights provisions, towards maintaining public order in the country. Being the main document on which the establishment of the country has been based, it can be said that the Federal Constitution is the key element in uniting all Malaysians to co-exist and live harmoniously. After this part that serves as introduction, this article continues with the discussion on the key human rights principles provided in the Federal Constitution. This will be followed by an analysis on selected example

of the applications of these human rights principles to see how the Federal Constitution has played significant roles in guaranteeing peaceful co-existence. Finally, this article concludes by stressing the importance of unity in diversity based on respect for and observance of human rights.

Human Rights And The Federal Constitution

To understand human rights in Malaysian perspectives, it is worthwhile to examine the main legal source of the country i.e. the Federal Constitution. In general, human rights protection in Malaysia is provided under Articles 5-13 of the Constitution - commonly referred to as the 'Fundamental Liberties.' The meaning of the term 'Fundamental Liberties', however, was not explained, neither by the drafter of the Constitution i.e. the Reid Commission nor the Government. It was only in 1999, when the Human Rights Commission of Malaysia Act (Act 597) was enacted, the meaning of 'fundamental liberties' was specifically clarified. Section 2 of the Act provides that 'human rights refer to fundamental liberties in Part II of the Federal Constitution'. Hence, in the light of that Section, it can be summarised that 'fundamental liberties' provided in the Constitution reflect the basic human rights guaranteed for the citizens (Adil and Ahmad, 2014). Nevertheless, for the purpose of the Act, references can also be made to the Universal Declaration of Human Rights 1948 (UDHR) insofar as it is not contradictory to the Federal Constitution.

The Federal Constitution human rights provisions stipulated under Fundamental Liberties confer a number of civil and political liberties, among them the right to life and liberty (Article 5), abolition of slavery and forced labour (Article 6), protection against retrospective criminal laws and repeated trials (Article 7), equality before the law (Article 8), freedom of movement and protection against banishment (Article 9), freedom of speech, assembly and association (Article 10), freedom of religion (Article 11), rights in respect of education (Article 12), and right to property (Article 13). However, it should be noted that these fundamental rights are not absolute and are subject to extensive regulation by Parliament on such ground as public order, national security and morality as permitted by the Federal Constitution (Faruqi, 2019). In other words, the enjoyment of human rights as provided under Article 5-13 may be restricted if such enjoyment does not augur well for public order and

peaceful co-existence of Malaysian population.

Federal Constitution as Catalyst for National Unity

Peaceful co-existence is an essential element for national unity. It implies the ability of mankind to live in harmony. All human beings must admit the fact that diversity and plurality of cultures, ethnicities and religions are part of God's creation of the universe and of mankind. These are signs of the greatness in His creations and must be duly appreciated and respected. Acceptance of these differences in mankind is critical towards peaceful co-existence (Abdul Aziz, 2014). In the Malaysian context, it is important for all Malaysians to understand the history that has led to the formation of the country. This includes the element of 'social contract' i.e. the mutual agreement between major ethnic groups in Malaysia, or Malaya during the early stage of independence. The British will not grant independence status if the Malays did not accept Chinese and Indians as citizens. The Malays agreed to accept that condition and in return, the Chinese and Indians also accepted the privileges of the Malays. It was a trade-off that was deliberately made to last by including it in the Federal Constitution (Mohamad, 2018).

Hence, in a multi-religious and multi-ethnic country like Malaysia, a very good understanding between different religious followers is important for a peaceful co-existence (Abdul Muthaliff et. al., 2017). In this context, the Federal Constitution has played a vital role as a catalyst for national unity that binds all multiracial populations together under one roof as Malaysian family. If there are any disputes and conflicts, the Federal Constitution will be the main reference to find solution.

Maintaining Public Order

Although the Federal Constitution does not explicitly touch on the peaceful co-existence, it does mention about maintaining public order, public health and morality which are the key elements to guarantee peaceful co-existence. Without the fulfilment of these elements, the enjoyment of any human rights will be restricted. The element of maintaining public has been stated vividly in few provisions. For example, in Article 9(2), it was stated that:

“Subject to Clause (3) and to any law relating to the security of the Federation or any part thereof, public order, public health, or the

punishment of offenders, every citizen has the right to move freely throughout the Federation and to reside in any part thereof”.

Article 10(2), on the other hand, stated that:

“Parliament may by law impose-

(a) on the rights conferred by paragraph (a) of Clause (1), such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof, friendly relations with other countries, public order or morality and restrictions designed to protect the privileges of Parliament or of any Legislative Assembly or to provide against contempt of court, defamation, or incitement to any offence;

(b) on the right conferred by paragraph (b) of Clause (1), such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof or public order;

(c) on the right conferred by paragraph (c) of Clause (1), such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof, public order or morality.”

In addition, Article 11 that provides the right to freedom of religion has stated in clause (5) that:

“This Article does not authorise any act contrary to any general law relating to public order, public health, or morality.”

Example of Cases

Considering the wide use of internet-based social networking in Malaysia nowadays, it is understandable that the violations of freedom of speech and expression as provided under Article 10 can easily be perpetrated by irresponsible quarters in the community. This will impede the efforts to maintain public order and peaceful co-existence. As such, there are situations where it is necessary for these freedoms to be restricted. In this regard, there are a few Acts that regulate this freedom. These include the Sedition Act 1948, Official Secrets Act 1972, Printing Presses and Publication Act 1984, Penal Code, and the Communications and Multimedia Act

1998 (CMA) (Tan, 2021).

There are several cases being reported in the news that indicated the restriction on the freedom of expression using the Acts as mentioned above. For example, in September 2021, a man was charged in the Ayer Keroh sessions court in Melaka for making and posting disparaging remarks on Facebook against the Rulers and Islam. The offence under Section 233(1)(a) of the Communications and Multimedia Act 1998 (Act 588) is punishable under Section 233(3) of the same, which provides for a fine of not exceeding RM50,000 or a jail term of up to one year or both, as well as a fine of RM1,000 per day for continuing the offence. The accused, however, pleaded not guilty to the charge (Free Malaysia Today, 2021).

In another example, a photographer was on 2nd April 2021 fined RM15,000 for insulting Hinduism on Facebook, two years ago. The 54-year-old had uploaded the comments on his Facebook profile 'Zamri Bin Abd Razak' with intention to annoy others. The charge under Section 233(1)(a) of the Communications and Multimedia Act 1998 carries a fine not exceeding RM50,000 or an imprisonment for a term not exceeding one year or both (NST, 2021).

In addition, insulting the Yang di-Pertuan Agong Al-Sultan Abdullah Ri'ayatuddin Al-Mustafa Billah Shah is also considered a crime that can lead to public unrest and thus should be restricted. Such an act led to the police detaining an individual with the Facebook account name 'Iswardy Morni', who is believed to have made insulting statements and mocked His Majesty, offences under Section 8(2) and Section 11 of the Sedition Act 1948. The individual will be investigated under section 504 of the Penal Code and the Communications and Multimedia Act 1998 (Zainuddin, 2021).

The above three cases are examples of many other restrictions being enforced on the right to freedom of expression and other human rights when the enjoyment of such freedom was not exercised responsibly. The punishment being imposed on the offenders will give a good lesson to all Malaysians on the need to respect each other and not to incite hatred. These restrictions can be considered as a constitutional method to maintain public order and avoid public unrest. This approach will help government in particular the Home Ministry to guarantee peaceful co-existence and national unity in Malaysia.

Conclusion

Indeed, understanding the notion of peaceful co-existence is vital for a country like Malaysia where plurality of cultures and religions characterise its society. It is important for all Malaysians to realise that as the country progresses further in its path as a nation, they should be far more integrated and stronger as a society. Respect and mutual understanding must be the backbone and essence in their interactions. Whatever differences that exist in the society be it race, religion, culture or even political preferences and ideologies, Malaysians must come together as one entity to face any challenges that come forth (Abdul Aziz, 2014). Having been together under the same roof for 64 years now since the country gained its precious independence status, it is better for all Malaysians to look back at how the country was established and the philosophies behind it. It was a long journey and not easy to reach the current stage. It took years of blood, sweat and tears to build this nation and all which have been achieved today but, if the Malaysians are not careful enough, it may only take few days to destroy this country and ruin its stability and unity.

Hence, it is high time for all Malaysians to strengthen the spirits of brotherhood and unity, harmonise all the differing views among them and maintain the nation's well-being and prosperity. It is true that Malaysia was named after the word Malay which reflects the original inhabitants of this country and because of that, special privileges for them were stated in the Federal Constitution. However, this should not be seen as a symbol of discrimination or racism but as part of the country's foundation. The Indians and Chinese were brought by the British during pre-Independence era to help in developing the country by working in plantations and tin-mining, respectively. Those days, it is correct to say that they are immigrant because they were brought from elsewhere and not born or raised here. But now after 64 years of nationhood, it is incorrect to label these communities as immigrants or guests anymore because they are Malaysians who were born here, received education here, found family here and will die here. They have also, together with other Malaysians including from Sabah and Sarawak, contributed to the development of the nation. This is their home, and their rights are also enshrined in the Federal Constitution.

In that spirit, this article concludes that unity in diversity should be based on respect for and

observance of human right. Human rights should be exercised and enjoyed responsibly and not through violating others' rights. Respecting and having mercy on others is also a reflection of the concept of Rahmah Li Al-'Alamin which places peaceful co-existence as one of its top priorities. The study in this article found that the Federal Constitution in particular its human rights provisions has played important roles in ensuring public order and maintaining peaceful co-existence in Malaysia's multiracial society. The Federal Constitution is the key recipe for uniting the country's multiracial community. Only with this stability, we can make our country prosper and live harmoniously despite the diversity.

Reference

Abdul Aziz, E. (2014, September 17). Peaceful Co-Existence for Malaysia. *Laman Web Rasmi IKIM* <https://www.ikim.gov.my/new-wp/index.php/2014/09/17/peaceful-co-existence-for-malaysia/>

Abdul Muthaliff, M. M., Abd Rahman, M. R., Mahyuddin, M. K., Mokhtar, A. N. & Ahmad, Y. (2017). Non-Muslims' views of co-existence with Muslims in Seremban, Negeri Sembilan, Malaysia. *International Journal of Current Research*, 9(03), 47765-47772.

Department of Statistics Malaysia (DOSM). (2022, July 29). *Current Population Estimates, Malaysia, 2022* [Press Release]. [https://www.dosm.gov.my/v1/index.php?r=column/pdfPrev&id=dTZXanV6UUdyUEQ0SHNWVhpSXNMUT09#:~:text=The%20total%20population%20of%20Malaysia,to%202.4%20million%20\(2022\)](https://www.dosm.gov.my/v1/index.php?r=column/pdfPrev&id=dTZXanV6UUdyUEQ0SHNWVhpSXNMUT09#:~:text=The%20total%20population%20of%20Malaysia,to%202.4%20million%20(2022))

Faruqi, S. S. (2019). *Our Constitution*. Sweet & Maxwell.

Bernama. (2021, September 13). Man charged with insulting Rulers, Islam. *Free Malaysia Today*. <https://www.freemalaysiatoday.com/category/nation/2021/09/13/man-charged-with-insulting-rulers-islam/>

Kuntom, A. (2003). Agama Asas Perpaduan. In Jaffary Awang, Mohd Nasir Omar and Muda@Ismail Abdul Rahman. *Agama dan Perpaduan kaum di Malaysia*. Penerbit UKM.

Mason, R. & Omar, A. (2004). 'The Bumiputera Policy': Dynamic and Dilemmas. *Kajian Malaysia*, 21(1&2), 1-12.

Mohamad, M. (2018, November 27). Pushback against ICERD reflects old fears over trade-off with non-Malays, says Dr M. *Free Malaysia Today*. <https://www.freemalaysiatoday.com/category/nation/2018/11/27/pushback-against-icerd-reflects-old-fears-over-trade-off-with-non-malays-says-dr-m/>

Mohamed Adil, M. A. & Ahmad, N. M. (2014). Islamic Law and Human Rights in Malaysia. *ICR Journal*, 5(1), 43-67.

Khairah N. Karim. (2021, April 2). Photographer slapped with RM15,000 fine for insulting Hinduism. *New Straits Times*. <https://www.nst.com.my/news/crime-courts/2021/04/679006/photographer-slapped-rm15000-fine-insulting-hinduism>

Sintang, S. (2014). Peaceful Co-Existence in Religious Diversity in Sabah, Malaysia. *Global Journal of Human Social Science*, 4(1), 67-77.

Tan, J. (2021, January 14). Stamping Out Hate Speech. *The Star*. <https://www.thestar.com.my/opinion/letters/2021/01/14/stamping-out-hate-speech>

Yaakob, I. S. (2021, September 27). 30% Bumiputera equity yet to be achieved, says PM. *Free Malaysia Today*. <https://www.freemalaysiatoday.com/category/nation/2021/09/27/30-bumiputera-equity-yet-to-be-achieved-says-pm/>

Zainuddin, H. (2021, May 30). Home minister: Insulting Agong a crime that may cause public unrest in Malaysia. *The Malay Mail*. <https://www.malaymail.com/news/malaysia/2021/05/30/home-minister-insulting-agong-a-crime-may-cause-public-unrest-in-malaysia/1978182>

Statutes

Communications and Multimedia Act 1998.
Federal Constitution of Malaysia, 1957.
Human Rights Commission of Malaysia Act (Act 597) 1999.
Official Secrets Act 1972.
Penal Code.
Printing Presses and Publication Act 1984.
Sedition Act 1948,
Universal Declaration of Human Rights 1948 (UDHR).