

Socializing the Constitution: Malaysian National Agenda

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Abstract

Of late, various constitutional issues come to the surface and become the subject of debate among the society members be it in the social media or in the printed or electronic media. Issues like the position of Malay Kings, the special rights of Malays, Islam and Malay Language are often debated. This debate is something that sparks an interest because the public begins to pay attention to the content of the constitution. Although sometimes the debate does not truly convey the actual meaning of constitution, the public is beginning to like talking about the constitution that, all this while, is difficult to grasp and which appears to only be understood by lawyers or those reading law only. Thus, it is advisable to start socialising the constitution. The concept of socialising the constitution means that the community has to be exposed with the constitution not only from the legislative aspect alone but also from the historical, cultural, religious, political and ethnic relations aspects. This is stated by the Reid Commission Report that stresses on how important it is for the constitution to take into account the factors of history, tradition, economy and social that existed in 1957.

Keywords: constitution, socialisation, Malaysia, ethnic, Malay

1. Introduction

The Unity Action Plan and the Five-Year National Integration (2005-2010) state that issues like challenging the social contract, religious and language conflicts, often emerge and can provoke ongoing conflicts if they are not dealt with properly. At the same time, the 2017-2020 Unity Strategic Half-Study Term still had the assumption that the challenges of ethnic unity in Malaysia revolve around the following items:

- Polarisation and various forms of socio-economic imbalance transcending the region and ethnicity.
- The social integration process still reveals some weakness in terms of the interaction and effective involvement among the community members.
- The irresponsible attitude of some individuals and groups in slandering and spreading false news can evoke worry and disharmony among the people.

This shows that issues involving the special position of the Malays, the Malay Language and religion are always raised in Malaysia. However, simultaneously, Malaysians agree that the solidification of unity and integration between the ethnic and the regions is very important to ensure Malaysia's sustainability as a country with multiple ethnic groups and regions that stay segregated between states. From Table 1, there are three main ethnic groups in Malaysia namely Bumiputera, Chinese and Indians respectively covering 69.1%, 23.0% and 6.9% of the total number of Malaysian citizens in 2018. The statistics shows the variety of ethnic groups in Malaysia divided into three large ethnic groups namely Bumiputera comprising of Malays and Bumiputera Sabah dan Sarawak, Chinese and Indians not to mention other ethnic groups.

Table 1. The composition of Malaysian citizens, 2010-2018 (in million)

Total number of citizens (Million)	Year 2010		Year 2017		Year 2018	
Bumiputera	17.95	67%	19.78	68.8%	20.07	69.1%
Chinese	6.52	24.3%	6.67	23.2%	6.69	23.0%
Indian	1.97	7.4%	2.00	7.0%	2.01	6.9%
Other ethnic groups	0.35	1.3%	0.29	1.0%	0.29	1.0%
Total number of citizens	26.79	100%	28.74	100%	29.06	100%

Source: Malaysian Statistics Department

This variety shows that issues like language, religion, special position of Malays and the position of Malay Kings known as traditional elements of the Main Pillars of the Federal Constitution become an important factors in fabricating the bond of the ethnic relations among Malaysians. According to Ratnam (1969), these issues will determine the ethnic relations in the future by looking at how issues surrounding the special position of the Malays, religion and language are resolved. Thus, discussions about the royal institutions, the position of Islam, Malay Language and the special position of the Malays demonstrate that there is a close relation among them where one element cannot simply be abandoned. Maintaining an element means maintaining other elements – they are inextricably linked in the context of ethnic relations in Malaysia.

2. Federal Constitution in a Glance

For a sovereign country, the constitution is the highest legislative source and every individual needs to understand its great nature. Its existence serves as a guide in arranging and coordinating the administration of a country. Apart from that, the constitution also plays the role as guidance for law formation be it for the government, the people or anyone at all.

In Malaysia, there is no one institution that can out rule the supremacy of the Federal Constitution. Even the three government bodies that refer to the power segregation doctrine namely legislative, judiciary and executive, let alone the Yang di-Pertuan Agong himself are subjected to the Federal Constitution (Suffian, 1987). For example, the legislative power must be carried out subjected to the restraints imposed by the constitution. Meanwhile, the judiciary power, or the court must also be carried out subjected to the restraints imposed by the constitution.

The same applies to the power of the Yang di-Pertuan Agong as the Head of the three branches of the government- it must be done confined to the restrictions imposed by the constitution. Even the Federal Law or the State Law about certain things can be declared as invalid by the court if the law conflicts with the Federal Constitution to a certain degree. This is because the constitution allocates clearly under 4(1) that this constitution is the main law of the constitution and any law approved after the independence and which opposes this constitution must be null and void as far as it can go.

The basis of the Federal Constitution, to date, began with the declaration of the Malaya Federal Constitution on 1 February 1948. Following this constitution, a British High Commissioner was placed under the central government as the highest ruler. Local people are presented through the Council of Meeting and the Legislative Council to prepare for self-administration. Thus, when the Alliance won the 1955 General Election by dominating 51 out of 52 seats contested, a conference was held in London from 18 January to 6 February 1956. Consequently, a commission named Reid Commissioner was formulated to lay out a new constitution for the Malayan Federation that is free and independent.

Malaya Federal Constitution was formulated by Reid Commission founded in 1956. The commission was led by Lord Reid and he accepted 131 written memorandum and they conferred from June to October 1956. This constitution is solidified, practical and respectable because this commission had asked for the suggestions and views not only from the political parties but also from the public, individuals and Malay kings. It explains that the Federal Constitution has now obtained the agreement and the views from all Malaysians. The suggestions of the Reid Commission were re-examined by the Alliance, Malay kings and British government to be agreed upon. Finally, the Malaya Federal Constitution draft was accepted and declared as the Federal Constitution on 31 August 1957.

During the formulation of the constitution, both the Malays and non-Malays agreed to do several things that are very important to the country's stability- it refers to the social contract. Through this social contract, the non-Malays were granted the flexible rights of citizenship based on the principal of *jus soli*. Meanwhile, the Malays were allocated in the constitution Islam as the religion of the constitution, Malay Language as the national language and the special position of the Malays and the position of the Malay kings or what is called the traditional elements in the constitution. However, in terms of the ethnic relations in Malaysia, this element should be known as the Main Pillar of the Constitution because the issues of Islam, special position of the Malays, and the Malay Language have always become the sources of conflict in the community. Thus, with the use of the term the Main Pillar of the Constitution, it can reflect on how important for this to be understood so that there would not be any dispute among various ethnic groups in Malaysia and how different this is from the constitution established in other countries. For Malays, the main pillar is very important as the mainstay of life, the way a house cannot be fully erected if the main pillar is not erected.

Again, the Federal Constitution had to be renewed when Singapore, Sabah and Sarawak combined with Malaya and formed Malaysia on 16 September 1963. The formation of Malaysia in 1963 brought another dimension to

ethnic relations in Malaysia. With the entry of Sabah and Sarawak, the position of the Bumiputera in both the states was given the same status as the Malays where they were also included in Article 153. However, the allocation did not give a license to oppress other races because the special rights of the Malays and Sabah dan Sarawak Bumiputera have to be protected by means of not denying the endorsed position of the said groups.

The Malaysian Treaty sealed in 1963, was an agreement done among leaders of Malaya, Sabah and Sarawak. It is better known as Twenty Articles containing the demands of Sabah dan Sarawak that agreed to be part of Malaysia. Among the agenda contained in the Twenty Articles are about the immigration, language, finance and the special rights of Sabah and Sarawak Bumiputera. It can be referred to in List II and List III also regarding the additional allocations for Sabah and Sarawak.

The position of Sabah and Sarawak in the constitution has been protected by the power of the *Yang di Pertua Negeri* of the states whereby an amendment can only be done if both had approved it. This indicates that the parliament cannot amend the special position of Sabah and Sarawak Bumiputera. This resembles the role and the authority of the Royal Council with regard to the position of the Malays.

It is important to analyse the history of the enactment because through this, the spirit and purpose of an allocation get to be studied. The constitution cannot be precisely understood without making any reference to the history and the main characteristics also the background of the enactment. What seems to be clear-cut would be the fact that allocations like Islam, royal administration and the special position of Malays have long existed before British arrival in Malaya. The presence of other ethnic groups, also influences the development of the constitution (Embong, Musa, & Muslim, 2018).

3. Constitution from the Perspective of Ethnic Relations

In the context of ethnic relations in Malaysia, the things regarded as beneficial to the Malays in the Federal Constitution are balanced by other allocations that also give advantages to the non-Malays. Islam being the religion for the federal is balanced by the allocation of freedom for every person to practice any religion in peace and harmony. The same goes with the Malay Language; it has to be balanced with the allocation that no one is to be prohibited from using (other than for official purposes) or teach or learn any other languages. The same goes with the determination of the special position of the Malays and the Sabah and Sarawak Bumiputera which is balanced with the allocation that the government cannot revoke, withdraw or cause other people's rights to be nullified.

Thus, the traditional elements or the Main Pillar of the Constitution are very important to be talked about because they are an important factor to create the Malaysian identity and to instil the understanding towards unity. It is also an agreed social contract that formulates the constitution which is needed to ensure stability also progress; it determines the way the constitution is adhered with (Salleh, 1985). The elements have also existed hundreds of years prior to the establishment of the constitution in 1957 and its role is to stabilize the country's political system. This is stated by Reid Commission Report stressing on the importance of the constitution accounting for factors of history, tradition, economy, and social in 1957.

Other than the role as the political stabiliser, the things that involve the special position of Malays, Islam and Malay Language also the position of Malay kings are also protected under the Sedition Act, and regarded as sensitive issues that cannot serve as issues for public discussions. This was stated by Tun Abdul Razak, the Malaysian Prime Minister as the 1971 Constitutional Law was presented:

... Let us remember in our hearts and minds the lessons we get from the 13 May incident, let's not discuss and debate about what had sparked the incident and how it began because then we might not remember the irresponsible parties that had instilled seeds of suspicion and worry among the races also used the sensitive issues to take advantage of this racial sentiment during the election campaigns that took place in April and May 1969. They deliberately created fear and anger by questioning and making fun of the prerequisites in the constitution about the Malay Language and the special position of Malays further causing this sense of insecurity felt by the Malays when they saw how big a gap between them and the non-Malays, especially in the economy and education (Malaysia 1972).

4. The Amendment of the Constitution

From the discussion above, it shows there have always been efforts from time to time to challenge the Main Pillar of the Constitution especially after GE 14. Will the concern based on the incident above lead to the Main Pillar of the Constitution be at stake? We have to refer to the context of the Federal Constitution. It has to be understood that there a difference between the constitutional amendment and act amendment. The latter only requires easy majority in the House of Common whereby out of the full 222 seats, an easy majority would be

112. Based on this, for every government, they can easily amend acts like the Sedition Act, False News Act, University Act, University and University College Act and others. Unlike the constitutional amendment, the process is more difficult, according to the steps below:

- i. Article 159 (4) rules out that some items can be amended only by requiring more than 2/3 for every House, among which are the oaths, also the selection and termination of service of the members of the State Council.
- ii. Article 161 (E) rules out that some items can be amended by requiring 2/3 support of every House and agreed by the Yang di Pertua of Sabah and Sarawak to involve the interests of Sabah dan Sarawak such as the state jurisdiction and the special position of the Bumiputera.
- iii. Article 159 (5) rules out that there needs to be 2/3 support from every House and the approval of the Royal Council involving agenda like the royal sovereignty, the special position of Malays, the Sabah and Sarawak Bumiputera, national language and federal religion.

Clearly, based on the content of the constitution, the process of amendment is daunting and it required two-third of the majority of votes from 222 seats which exceeded 148 seats. After the 12th GE right to the 14th GE, the government did not have the two-third majority. Thus, the amendment of the constitution cannot be done. The amendment on Islam, Malay, Sabah and Sarawak Bumiputera, National Language, the position of the Malay kings and citizenship with other conditions whereby other than two-third majority of votes, the amendment has to be endorsed with the Malay Royal Council, regardless of which ruling party, be it Barisan Nasional or Pakatan Harapan even DAP. Although the government won the seats by two-third, as long as it is not endorsed by the Royal Council, the amendments on Islam, Malays, Sabah and Sarawak Bumiputera, the position of Malay kings and citizenship cannot be carried out.

5. Socializing the Constitution

Post-14th GE, various issues of the constitution have emerged and become the debate among the society, be it in the social media or the electronic media. Issues like the Malay kings, special rights of the Malays, Islam and Malay Language are often debated. This debate is something fascinating because the people began to become interested in the content of the constitution. Although the debate does not fulfil the actual meaning of the constitution, but the people were becoming bolder when talking about the constitution that all this while was regarded as an undecipherable document or one that is only understood by law-reading people. At the same time, most academic discussions about the constitution are in English, legally technical and jargon-laden, only understood by those embarking upon the field of legislation or law.

Thus, the time could not be better to socialise the constitution. The concept means that the people have to be exposed with the constitution not only in terms of the legislation but in terms of history, culture, religion, politics and ethnic relations. This is stated by the Reid Commission Report that emphasised on the significance of the constitution, accounting for factors of history, tradition, economy and social that have long been around since 1957.

Through the concept of socializing this constitution, the society can understand the content of the constitution. The study done by (Nazri, 2017) clearly shows that there is a significant association between the level of knowledge and understanding of the students and students' acceptance towards the allocation of the constitution because they have high level of knowledge and understanding about the constitution, and they also have high level of acceptance towards the allocation in the constitution.

Thus, people's understanding towards the rationale of allocation in the constitution like Islam and the Malays is important to be explained because it can influence the people in accepting issues related to Islam and the Malays in the constitution. This is because when people understand why an allocation is included in the constitution, they can accept it easily if compared to the situation if they do understand. It proves that the rationale as to why an allocation is included in the constitution needs to be accounted for. For example, the people have to be given the rationale why Malays have to get a special position, why Islam is regarded as federal religion, why Malay Language has to be chosen as the national language and why the royal institution is retained in the Malaysian administrative structure.

The Main Pillar is also the prerequisite and collaboration between the Malays and the non-Malays. It means that the special rights of the Malays, Islam as the federal religion and Malay Language as the national language as the prerequisite to accept the rights of citizenship of the non-Malays has to be retained and consolidated. The pre-requisite shows that the previous leaders have accepted a formula to resolve the issues that emerge without causing any conflict between ethnic groups in Malaya at the time.

For instance, other than exerting the power allocated by the Constitution, Yang di-Pertuan Agong also becomes the symbol of unity of the Malaysians comprising of various ethnic groups. Malays, Chinese, Indians and other races regard the Majesty as the guardian of interests and hope of every ethnic group in Malaysia. This is because, under the Constitution it is allocated that it is the responsibility and mandate of the Yang di-Pertuan Agong to preserve the special position the Malays and Sabah and Sarawak Bumiputera, also the valid interests of other races. The same goes where the Royal Council has the authority in amending the allocation about citizenship. The mandate and responsibility is something that is really difficult because issues like religion and special position of Malays also citizenship often become the polemic among the pluralistic society. If the issues are not dealt with properly, it can affect the country's stability. Although the Majesty's function is as the symbol of unity and this is seen as passive and uncontroversial, the guarantee that can help highlight the neutral attitude of the Yang di-Pertuan Agong is important to avoid him from being seen as an administrative tool.

- Yang di-Pertuan Agong is also the symbol of justice and equality because he is the one who appointed all the judges in Federal and High Courts after consulting the Prime Minister who has discussed this with the Perdana Menteri setelah berunding dengan Royal Council. The same applies to the appointment of the national auditor, chairperson and members of the Election Commission and the Education Service Commission. These positions are important in safeguarding the interests of the people with a neutral approach, or specifically not being biased towards any party or even the government itself. He is also regarded as the Pillar of Honour because he has the power to induct, confer honour, medals and decorations to certain people who have served well or excellently to the country regardless of ethnic boundaries.

The Yang di-Pertuan Agong and the Royal Council are elements of the Main Pillar that hold such a supreme role in Malaysia. To the Malays, they are the beacon of hope and an epitome of unity among the people of various ethnic backgrounds. This is because they are not chosen from a political channel and they are exempted from politics. This is one of the reasons that enable the royal institution to have the potential in playing its role unconditionally as determined by political parties. The political parties, on the other hand, would have all of their decisions bound to the sentiment and considerations of the party. Yang di-Pertuan Agong stands as a constitutional institution, with a Malay background and this is very important because the Prime Minister, the Cabinet and the Parliament do not necessarily have to be a Malay. In a symbolic way, the Yang di-Pertuan Agong acts as the authoritative, endorsing power conferred by the Malay states to the central authority (Muslim & Umar, 2017).

It should also be justified that, the Islam and Malay allocations do not only concern with certain things only. Other than Article 3, Article 11, Article 12, Article 121 (1A), the allocation of Islam is included in Article 150 and the position of the Yang Dipertuan Agong (Muslim & Buang, 2011). The allocation of the Malays in the constitution, is not only included in Article 153, but also found in Article 8(5e), Article 89 and 90 and Thirteenth Table about the boundaries of election areas. This is consistent with Nazri research (2017) where the mean value on the question items for level of knowledge, understanding and acceptance for Article 150, Article 8(5e), Article 89, Article 90 and Thirteenth Table is low. This shows that the discussion about Islam and Malays in the media and the community is only focusing on Article 3, 11, 12, 121 (1A) also 153. What is more, the allocations for Malays and Islam have given an impact or implication towards the ethnic relations in Malaysia. This indicates that the issue of Islam and Malays will continue to be a conflict in the society of it is not dealt with the best way possible (Muslim, Hassan, Alias, Mat, & Ibrahim, 2019).

The same goes with the understanding about the rationale that Malay Language is to serve as the national language. The main purpose for making the Malay Language the national language is to fulfil the requirement to unify various ethnic groups so that it will become a united country through one shared language, which is the Malay Language, a medium of instruction of this country since the Malacca Sultanate. This is because when the constitution was first laid out, previous leaders had decided that an independent country could not continue to use English as the official language if they were to unite the people who were characteristically pluralistic. Thus, the non-Malays need to accept Malay Language as more than the national language, and at the same time Malays should accept the rights of the non-Malays to use and learn their mother tongue as dictated in the constitution.

Thus, it is proposed that in the concept of socialising the constitution, things like the explanation about ethnic cooperation when demanding for independence, when enacting the constitution, the rationale for an allocation to be included in the constitution, the explanation about the social contract, the explanation about the elements of tradition in the constitution namely the Malay Language, Islam and the special position of Malays, the writing that stresses on the spirit and the philosophy of the constitution and not merely in the form of the legislation and the justification on the role of traditional elements must be emphasized. The Social Contract Awareness Program has to be implemented aiming at making the students aware of the importance of having knowledge and

understanding on the social contract. This can be done through the cooperation between the National Unity Department and the National Integration with government agencies, NGOs and the community also private agencies by taking into account the aforementioned factors. Other than that, the implementation of the special position of the Malays needs to be done transparently so that any dissatisfaction among them can be set aside. This is because they felt that the allocation did not apply to all Malays, but instead only to certain elitists.

The education system today also instills students' understanding towards the social contract until they do not understand and find it difficult to accept anything that is contained in the constitution. The difficulty in accepting is what causes the conflict to happen every now and then whenever there are issues related to Islam and Malays in the constitution. For that, the textbook writing especially history books have to be written by stressing on the rationale as to why Islam and Malays have their advantages and special rights as dictated in the Federal Constitution (Rahman, Samian, & Muslim, 2018).

The emphasis on the rationale will lead the students to accept things openly as they are the educated ones and they have a critical and an open thinking about a particular issue. The circumstances seem to have forced them to accept something without any rationale for it causing them to oppose it. Thus, the Constitution and the Society course needs to be made compulsory to all students especially in Higher Learning Institute because they are the leaders of the future and so they need to understand the content of the constitution (Muslim, 2012).

6. Conclusion

It is hoped that through the concept of socializing the constitution such as constitution awareness program, Introduction to the Constitution and Community course, the role of the National Unity and National Integration Department and various other parties, it can unravel any issues regarding the constitution among Malaysians of various ethnic groups. Thus, this needs to be understood by every layer of the society, especially the younger generation so they are always prepared in any issues involving the Main Pillars of the constitution. This is as stated by the 215th Royal Council, that both Islam and Malays are the main foundation for the formation of Malaysia.

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