



The movement of “Black Lives Matter” had gained traction once again in the US after the killing of George Floyd by Minneapolis police officers. The incident had sparked widespread protests calling for the dismantling of systemic racism which took place not only in the US, but also other parts of the world. As more conversations on racial equality are beginning to take place, it is perhaps time for Malaysia to take a hard look at what is happening in its own backyard.

Article 8 of the Federal Constitution (FC) guarantees that all persons are equal before the law and there should be no discrimination on grounds of religion, race, descent, place of birth or gender. However in the same breath, Article 153 of the FC provides for the special position of the Malays and natives of Sabah and Sarawak, commonly referred to as the Bumiputera. Since the FC was drafted to be general in nature, no mechanics have been provided and it is up to the government of the day to translate the articles of FC into policies.

Article 153 has led to the implementation of affirmative action policies that grant special privileges to the Bumiputera. The purpose of the affirmative action is to address the economic imbalance between Bumiputera and non-Bumiputera. The implementation of affirmative action could be seen in the practices of almost every social, economic and political institution.

Affirmative action policies

In the education sector, the public matriculation program which is one of the major pathways to public tertiary education has a Bumiputera quota. A public university is also especially reserved for Bumiputera. Bumiputera businesses also benefit from tenders especially reserved for them in public procurement. In the housing industry, there are not only Malay reserved lands, but there are also Bumiputera quotas for lots in housing projects and Bumiputera discounts.

Any criticism on the affirmative action must be resisted since it is entrenched in Article 153 of the FC. Given the unique racial dynamics in Malaysia, one could argue that the implementation of affirmative action is necessary in order to preserve peace and harmony between different races. However, there have also been criticisms about the deteriorating state of racial relations in Malaysia, which ought to be taken seriously.

Is racial discrimination widespread in Malaysia?

It is not uncommon for companies to openly discriminate in their hiring policies, by specifying their preference for a specific race. Advertisements for tenancies are also laced with racial criterion, with recent reports stating that it is most difficult for people of African descent to look for places to rent. There have been numerous instances of overt and covert racial discrimination, such as Malaysians making racist remarks casually in the passing or subjecting people of certain ethnicities to a particular stereotype and treating them differently. It also does not help that the Malaysian political landscape is heavily race-based, resulting in discussions of almost every national issue to be formed along racial lines.

To date, there has been no specific anti-discrimination or anti-racism law enacted in Malaysia. There had been plans to table anti-discrimination laws in the Parliament, including a National Harmony and Reconciliation Commission Bill to form a commission to address racial or religious differences, which never came into existence.

Other jurisdictions across the world had long enacted anti-discrimination laws to address discrimination of all nature. For example, the Equality Act 2010 in the UK prohibits discrimination based on nine protected characteristics, which include race, religion and gender. Although the enactment of anti-discrimination laws may not fully eradicate racism, it is an important first step to be taken to improve race relations and promote racial harmony.

Race relations in Malaysia is a complicated issue to navigate since Malaysia is a large melting pot of different ethnicities and cultures. The divide and conquer rule during British colonisation had left lasting consequences on Malaysian race relations, which had been reflected through everyday individual biases. Given our divided history, conversations about racial equality and egalitarianism may be considered foreign or even threatening to some segments of society. However, it is the constructive conversation that we ought to have, as we aim to be a developed nation.

Leonard Yeoh is a partner and Nurul Qarirah a legal associate with the legal firm, Tay & Partners.



LEONARD YEOH

Partner, Head of Dispute Resolution and Employment & Industrial Relations Practice Groups

For further information and advice on this article and/or on any areas of Dispute Resolution and Employment & Industrial Relations, please contact: leonard.yeoh@taypartners.com.my



NURUL QARIRAH

Associate

nurul.qarirah@taypartners.com.my