

Protection of Youth Rights: The Role of Human Right Commission of Malaysia (SUHAKAM)

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Abstract: Malaysia introduced Youth Societies and Youth Development Act 2007 (YSYDA 2007) and gazetted in July 2007. It is an Act to facilitate the development of youth in Malaysia from the aspect of education, research and human resource. Therefore, this study aims to examine efforts of the Human Rights Commission of Malaysia (SUHAKAM) as a National Human Rights Institution (NHRI), play an important role in the mainstream of the efforts to ensure the protection and promotion of youth rights. This study is totally a qualitative research study in which it is more exploratory in nature and possibly resulting in the development of concepts and theories. This study also used historical and interview approach as to find out how and why SUHAKAM have come to take their present form. In addition, this study also summarizes the efforts and roles played by the SUHAKAM pursuant to protect of youth rights.

Key words: Youth rights, human rights, role, human rights commission

INTRODUCTION

Legislation in Malaysia provide space and security to preserving, promoting and defending human rights. This is based on the provisions which are termed fundamental freedoms or fundamental liberties through clauses 5-13 of Part II of the Constitution.

In realizing the efforts of the Human Rights Commission of Malaysia (SUHAKAM) as a National Human Rights Institution (NHRI), play an important role in the mainstream of the efforts to ensure the protection and promotion of human rights at the national level can be carried out optimally (HRCOM, 2016).

The importance of the role of NHRIs as SUHAKAM independent and able to function well formulated in the Paris Principles of 1993 which is a guide to assess the achievement of a NHRI at a global level. The document contains, among others, two important principles and main diversity and freedom. The second principle is the main yardstick to see if institutions such as SUHAKAM will be able to function effectively or otherwise. In reality, the principle of diversity is to prevent certain groups that dominate the institutions of human rights.

After >20 years old is adopted, the international community considers the Paris Principles in 1993 as a combination of the most appropriate, in the protection and promotion of human rights. However, the nature of society as well as challenges in the context of preserving

human rights also require reasoning the essence of these principles, especially in translating the desire to conform with the current. It is to be among the major challenges for institutions such as SUHAKAM in the balance between the needs and demands of those principles to the sovereignty of the Federal Constitution which is the supreme law of the country.

In the last two decades, new type of human rights actors has emerged in the international community: National Human Rights Institutions (NHRIs). NHRIs have increased significantly in number and have emerged worldwide. No unified definition of NHRI can be found; however, it can be described broadly as an independent institution established by a national government to promote and protect human rights at the national level (Cardenas, 2003; UN Handbook, 1995). Advocated by the United Nations (UN), NHRIs have been increasingly recognized as important actors for the promotion and protection of human rights at the national level.

The Principles relating to the Status of National Human Rights Institutions (the so-called Paris Principles), adopted by the UN General Assembly through Resolution No. 48/134 of December 20, 1993, researcher as a set of international normative standard for NHRI. The Paris Principles provide a framework on the mandates, functions and compositions of NHRI to ensure its effectiveness in socializing and implementing human rights norms. Vested with the authority to promote and

protect human rights, the independency from the state and the requirement to work with various actors at national, regional and international levels, a NHRI is a human rights actor with a unique role. In particular, the Paris Principles suggest that NHRI shall promote and protect the rights of those who are made vulnerable by society due to their gender, age, sexuality, religion or other minority status.

With such unique role and responsibility, NHRIs are actors with high potential to promote and protect the rights of youth at the national level. One important role to promote and protect these rights is by socializing international norms of youth rights into domestic practices (Marsh and Payne, 2007). The study aims to understand how National Human Rights Institutions (NHRIs) promote and protect the rights of youth at the state level by socializing international human rights norms and to give empirical facts on the work of NHRIs by taking the Human Rights Commission of Malaysia (SUHAKAM) as the case studies.

In analyzing the role of NHRIs in socializing the norms of youth rights this article is going to study and analyze the strategies and mechanisms adopted by SUHAKAM in increasing public awareness on the rights of youth, encouraging the ratification of relevant international human rights conventions, promoting the institutionalization of the norms of youth rights into national laws and policies, strengthening government mechanism for youth and engaging with transnational advocacy networks on youth rights (Mason, 2002).

THE MANDATE OF NATIONAL HUMAN RIGHTS INSTITUTIONS

Adopted by the UN General Assembly through Resolution No. 48/134 of 20 December 1993, the Principles relating to the Status of National Human Rights Institutions (the Paris Principles) work as guidelines for the establishment of a National Human Rights Institution (NHRI). The Paris Principles gives comprehensive guidelines regarding the responsibilities of NHRIs in areas such as raising awareness on human rights conditions, promoting ratification of international conventions and ensuring implementation of human rights norms 36. NHRIs should also have the authority to receive and solve cases on alleged human rights violations. In particular, the Paris Principles require NHRIs to promote and protect the rights of vulnerable groups such as youth.

The Human Rights Commission of Malaysia (SUHAKAM) was established by the Parliament in 1999 under the Human Rights Commission of Malaysia Act 1999, Act 597. The establishment of SUHAKAM was

influenced by various 38 factors, among others the involvement of Malaysia in the United Nations Commission on Human Rights, the growing recognition on the universality of human rights, the changing in the Malaysian politics towards democracy as well as the experience of the establishment of NHRIs in the region (SUHAKAM, webpage).

However, the establishment should be scrutinized, whether it is also merely an instrumental gesture from the Government, particularly since at the beginning of its establishment SUHAKAM was placed under the Ministry of Foreign Affairs-and now under the Prime Minister's Department. Act 597 states that functions of SUHAKAM are to promote awareness on human rights; to advise and assist the Government in formulating legislation and administrative procedures and recommend necessary measures; to recommend the Government regarding subscription or accession of treaties or international instruments on human rights and to inquire, upon complaints or by its own motion, human rights infringements (Act 597, Section 4). One breakthrough in SUHAKAM's mandate is that the Commission has the authority to visit detention places, increasing their ability to monitor the situation.

SUHAKAM structures its organization into four groups: Education and Promotion Working Group; Complaints and Inquiries Working Group; Law Reform and International Treaties Working Group Economic, Social and Cultural Rights Working Group. In addition, SUHAKAM has a Committee on International Issues and Cooperation which maintains SUHAKAM's networks at the regional and international levels. According to Prof. Dr. Aishah Bidin, Commissioner of SUHAKAM, the strategy of SUHAKAM in dealing with migrant workers issue can be divided into three main concerns, i.e., complaints mechanism, education and business and human rights. Based on ratified human rights conventions, SUHAKAM works to ensure that the government protects the rights of youth. As mandated by Human Rights Commission Act 1999, Act 597, SUHAKAM also has the authority to receive complaints from any group or individual including youth.

The Human Rights Commission of Malaysia (SUHAKAM) was established by an Act of Parliament in 1999, under the Human Rights Commission of Malaysia Act 1999 (Act 97). The main functions of the Commission are (SUHAKAM, webpage):

- To promote awareness of and provide education in relation to human rights
- To advise and assist the government in formulating legislation and procedures and recommend the necessary measures to be taken

- To recommend to the government regarding accession to international human rights instruments
- To inquire into complaints regarding infringements of human rights

With the goal of achieving greater fulfilment of civil, cultural, economic, political and social rights, the commission makes it a point to monitor the human rights impact of the government's law reforms; the exercise of freedom of assembly and conditions in places of detention. Additionally, it works to ensure the rights of vulnerable groups such as children (which includes youth), women, older persons, indigenous peoples, persons with disabilities, migrant workers, refugees asylum seekers and detainees (Hasmy, 2016).

With regard to the Human Rights Commission of Malaysia, the Human Rights Commission of Malaysia Act (Act 597) serves as the legal framework for the tasks that SUHAKAM is mandated to do (Diesing, 1979). The Commission is mandated to perform the following functions, among others:

- Power to receive and investigate complaints
- Power to subpoena information and examine witnesses
- Power to enter and inspect premises
- Mandate to educate and conduct research with regard to human rights
- Power to advise/make recommendations to Government and/or Parliament on laws, regulations, policies or programs/international treaties

The Commission believes that an important aspect of the prevention of human rights violations stems from activities such as awareness-raising and also monitoring. As such, part of the Commission's initiatives includes the "Program SUHAKAM Bersama Masyarakat" which is an outreach program that primarily targets sub-urban and rural communities who have little understanding of the Commission's work and human rights in general.

The theme is usually general in nature, focusing on the commission's role and functions as a National Human Rights Institution as well the general idea behind youth rights and how it affects their daily lives.

ROLES OF SUHAKAM

Measures to prevent human rights violations are essentially encompassed in the Federal Constitution of Malaysia, whereby the Constitution protects 'Fundamental Liberties' in Articles 5-13. The Federal Constitution guarantees certain fundamental liberties such as:

- Personal liberty (Article 5)
- Prohibition against slavery and forced labour (Article 6)
- Protection against retrospective criminal laws and repeated trials (Article 7)
- Equality before the law and the rights to equal protection of the law (Article 8)
- Prohibition of banishment and freedom of movement (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)

The Federal Constitution is viewed and practiced as the supreme law of the land and this is enshrined in Part VI, Article 75 of the Federal Constitution (1957), concerning relations between the Federation and the States which states that: 'If any State law is inconsistent with a federal law, the federal law shall prevail and the State law shall, to the extent of the inconsistency, be void.'

The Federal Constitution of Malaysia provides for the protection of basic human rights standards which includes youth. These include liberty of the person (Article 5) and prohibition of slavery and forced labour (Article 6). At the national level, legislative measures that exist to prevent human rights violations and abuses can be found in Acts and laws on issues that either have a human rights component or relate to certain groups of society whose rights may be at risk of being violated. An example of this would be youth rights. Malaysia has a number of laws that not only aim at preventing the violations of youth rights but also to ensure the care and rehabilitation of youth. An example of this is Children and Young Persons (Employment) Act 1966 and the Education Act 1996.

In the context of our country, the Human Rights Commission Act 1999 (Act 597) is the reference that defines the roles and functions of Suhakam. Section 4 (4) of this 597 affirms that the Universal Declaration of Human Rights 1948 should be given serious attention as long as the declaration is not unconstitutional (Gerring, 2007). This means that any rights and freedoms which are not specified in Section II but are referred to in the UDHR in 1948 must be considered, provided there is no conflict with the Federal Constitution.

SUHAKAM represents the Government's initiative in ensuring that Malaysia had its own independent National Human Rights Institution (NHRI). Hence while there may not be any form of human rights protection mechanisms at the local level, the Commission is tasked in the promotion and protection of human rights at all levels.

The organizational structure of SUHAKAM is one that has allowed accessibility and participation alike, in the pursuit to promote and protect human rights. Hence, specific groups were formed on Education and Public Relations (EPRG), research and policy development (RPDG) as well as on Complaints, Inquiries and Monitoring (CMIG). For instance, under CMIG, SUHAKAM is tasked to inquire into complaints regarding infringements of human rights received from the public and to investigate complaints and to recommend to the authorities appropriate measures to redress the infringement. Hence while SUHAKAM represents a national human rights institution, it must be reiterated that our work encompasses all levels, from government to grassroots.

SUHAKAM is unaware of any specific initiatives by the Government to mainstream human rights in local administration and public services. This may be because the human rights issue as a whole, is a relatively fledgling idea and not particularly high on the national agenda as compared to other issues concerning economic growth and security which is generally typical of developing countries.

As of now, the most significant step that the Federal Government has taken with regard to the promotion and protection of human rights is the National Human Rights Action Plan (NHRAP), where by the frame work for the Plan is in the process of being formulated (Seidman, 1998). In this case, a successful NHRAP would require collaboration from state and local governments. Therefore, SUHAKAM is hopeful that the implementation of the NHRAP would indeed include human rights mainstreaming in local administration and public services.

Mahmood Zuhdi said, headed by the Education and Promotion Division of SUHAKAM, the Commission extended its Training for Law Enforcement Agencies to include providing its human rights course to enforcement officers from all the local councils in Perak (Stake, 1994). In previous years, it had conducted courses in Selangor and Penang, working with the Training Centre for Local Authorities. The aim is to sensitise enforcement officials to human rights in performing their tasks. One of SUHAKAM's good practices involves promoting awareness on human rights through education and campaigns which are held regularly and nationwide (Greenhill, 2010). As mentioned above, these activities also involve local authorities. We feel such activities have created greater levels of awareness and understanding which is the foundation for better compliance with human rights standards (Marshall and Rossman, 2011).

CONCLUSION

Youth rights are protected and realized through the Declaration of Human Rights in general and specifically in the Constitution of Malaysia. Claims on rights should be in line with the implementation of the responsibilities that should be met first. Youth should perform their responsibilities as citizens of a great importance to the country, in addition to understanding the rights allocated to them (Creswell, 2009). Through the Malaysian Youth Council as the main body of the national level, the youth can make the council as the main channel to convey their wishes and dreams more effectively.

In practice, these rights can only be realized when there are governments that implement it without the government, the rights outlined it very difficult to realize. Clearly states that the United Nations is required to implement them in the national administration. Even at the international level there are mechanisms to monitor the implementation of human rights in any country. Malaysia through SUHAKAM able to realize the efforts to ensure youth rights are protected and fulfilled within the framework of law and democratic practices in Malaysia.

Essentially, the Commission is of the view that there is still much room for improvement with regard to the Government's frequency in engaging with civil society as whole (Risse and Sikkink, 1999). The principle of meaningful consultations should be entrenched and present in all aspects of the Government's decision-making processes, especially when they concern issues that affect citizens such as the enactment of new laws, the formulation of policies, National Budgets, etc., to ensure that the Malaysian Government's decisions are in line with the interests of its peoples especially young generation.

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