



The Kuala Lumpur Courts Complex houses various courts of Malaysia's judiciary system.

Law reigns supreme over the 'prince and pauper'

By DATUK SERI JAHABERDEEN MOHAMED YUNOOS

OUR founding fathers had the foresight to draft principles that are not only necessary for a progressive nation, but also critical for the unity of a pluralistic society – the Rukun Negara.

One of the principles of the Rukun Negara is Kedaulatan Undang-undang (sovereignty or rule of law). What this briefly means is that the law reigns supreme and no one is above it.

Our most important legal document, with which all other laws of the land must be consistent, is the Federal Constitution.

Article 4 of the Federal Constitution clearly provides itself to be the supreme law of Malaysia and that any law passed after Merdeka Day which is inconsistent with the Constitution shall be void.

It is also interesting to note that even Parliament is subject to the provisions of the Federal Constitution because Malaysia does not practise parliamentary supremacy like the United Kingdom.

In Malaysia, the law rules over the "prince and the pauper". In this sense, therefore, the Federal Constitutional supremacy legal structure of our nation reinforces the fourth principle of Rukun Negara – the rule of law.

Rule of law is only good if the law itself is just and good in the first place. It will be counterproductive if, for example, the law itself is oppressive, does not provide stability and peace for the nation, does not encourage citizens to live life according to their full talents and does not address the practical challenges of our society.

So, how would we rate our Constitution in the context of Malaysian realities?

Is it good for us to be "ruled" by our Constitution and the laws that are not inconsistent with it?

We have to first acknowledge that our

socio-cultural reality is that we are a pluralistic society of diverse languages, ethnicities, cultures and religions.

While these may be common features of any society, the diversity itself may become either a bane or boon depending on how the society perceives and manages it.

We are blessed that our founding fathers negotiated a Federal Constitution that was sensitive to our diversities.

There are about five main religions in Malaysia. However, Article 3(1) of the Federal Constitution, while recognising Islam as the official religion of Malaysia, provides that other religions may be practised in peace and harmony in any part of the country.

In other words, Article 3(1), together with Article 11(1) of the Federal Constitution provides for freedom to profess and practise the religion of one's choice.

There are also laws in the Penal Code that make it criminal to insult any religion. These are important laws as they immediately remove the potential for violent conflicts arising from differences in religious views and practices.

Many may also not know that there are specific provisions in the Federal Constitution making it illegal to discriminate against any citizen on account of religion, race, descent or gender for purposes of employment in the government service, any profession or employment, or doing business.

Article 8 of the Federal Constitution guarantees every citizen, regardless of our diversity, equal protection under the law in important aspects of our life.

Article 12 of the Federal Constitution touches on another important aspect of our life – education. The right and access to education have been freed from any discrimination based on religion, race or descent.

In the case of languages, while Article



Jahaberdeen: 'The Rukun Negara's fourth principle goes a long way towards fostering peace among the citizens.'

152(1) provides that the Malay language shall be the national language, Article 152(a) provides that no person shall be prohibited from using (other than for official purposes), teaching or learning any other language.

Article 152(1)(b) further provides that both the Federal and state governments have the right to preserve and sustain the use and study of the language of any other community in Malaysia.

Hence, it is very clear that the Federal Constitution has taken into consideration the diverse and pluralistic nature of Malaysian society and contains provisions that masterfully maintain and preserve the unity and balance between the citizens.

It is therefore very important that the citizens are always vigilant that any laws passed

are consistent with the sacrosanct provisions of the Federal Constitution.

In this way, Malaysians will collectively be able to ensure that the rule of law as stated by the Rukun Negara is supported by just laws.

Rule of law also has several other important characteristics. Among others, the law must be certain and not arbitrary, the legal process must be accessible to all citizens and be made transparent, and there must be fairness in the application of the law.

In Malaysia, all our courts are accessible to the public and therefore, justice is not only done but is seen to be done.

Our judges are held accountable for the decisions they make through the detailed judgments that they have to write. In fact, if the litigant feels that the earlier judge had erred in the law, he can appeal to a higher court.

Due to the fact that the "law rules", a citizen may even legally challenge various executive (government) decisions by way of judicial review of the decisions.

This is an important development if we recall that once upon a time in world history, power was concentrated in the hands of one person – the King, whose whims and fancies were also the law.

Hence, our Rukun Negara's fourth principle goes a long way towards stabling the nation and fostering peace, harmony and unity among the citizens.

Our unwavering task as citizens is to ensure that only just laws are enacted and that the rule of law is protected.

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