

Perception, Knowledge, And Acceptance Of Rome Statute In Malaysia

Associate Prof. Datuk Dr. Ismail Sualman
Centre for Media and Information Warfare Studies
(CMIWS)
Faculty of Communication and Media Studies
Universiti Teknologi MARA

Dr. Nuurrianti Jalli
Centre for Media and Information Warfare Studies
(CMIWS)
Faculty of Communication and Media Studies
Universiti Teknologi MARA

Abstract: On April 5, 2019, Prime Minister Mahathir Mohammad announced that Malaysia would withdraw from the Rome Statute of the International Criminal Court (Rome Statute) citing that the government was forced to do so due to political pressure. In Malaysia, the ratification of the Rome Statute was said to be able to undermine the power of the Malay Kings. Rome Statute is a treaty that established the International Criminal Court (ICC) that came into force in 2002. Any country that signs the Rome Statute fundamentally agrees to recognize the powers of the ICC. The treaty gives jurisdiction to ICC to penalize four specific crimes as stated in Article 5 of the statute which are 1) genocide, 2) crime against humanity, 3) war crimes, and 4) crimes of aggression. To date, 122 countries across the world are part of the convention. Malaysia's decision to withdraw from the treaty has been scrutinized by critics, asserting that the government has taken a step backward civil progressiveness. Today, Malaysia is among the minority of the countries that have yet to ratify the Rome Statute alongside countries like North Korea, China, Saudi Arabia, and Somalia. This research aims to look at the acceptance of the Rome Statute in Malaysia. A series of interviews were conducted to explore the perception, knowledge, and acceptance of the statute as well as the reactions on Malaysia's decision to withdraw from the treaty. It was found that while some of the informants supportive of Rome Statute, citing ICC as a complement to the existing law in Malaysia and serving as check-and-balance, others opposed the idea of the treaty ratification. Among the reasons found was, the statute will undermine the power of Malay Rulers and will cause discord among people of different races.

Keywords: *Rome Statute, acceptance, Malaysia, international treaty*

I. INTRODUCTION

Rome statute of the International Criminal Court Statute is an agreement that led to the formation of the International Criminal Court (ICC hereafter). The Rome Statute was approved in Rome on July 1, 1998, during a diplomatic session. They become active as from July 1, 2002. Data shows that there were 123 member nations as of October 2017. This number is after Burundi made history in 2017 by deciding to quit ICC. The Statute defines the functions of the courts, its structure, and its jurisdiction [1].

The Rome statute was rectified in New York on April 11, 2002, by ten countries. Modifications were made in 2010 at Kampala during a conference, but the amendments are yet to be implemented. After protracted negotiation, the United Nations General Assembly held a meeting on June 1988 to

finalize negotiation and adoption of the Statute. Three of the states, the People's Republic of China, the United States, and Iran came out publicly. Confusion and disarray among the citizens were evident, especially when the information about the Rome Statute was released to the public. Lack of familiarity on the treaty, many were surprised when the government suddenly pulled their decision after signing the Statute. Split opinions among the public whether or not the Statute is good for Malaysia.

This paper aims to explore the perception, knowledge, and acceptance of the Rome Statute in Malaysia through in-depth interviews with ten informants. It is hoped that through the data, the researchers will be able to shed some light on this issue and open doors for future research on perception, knowledge, and acceptance in Malaysia. Understanding the complexities of international treaties in Malaysia

In the past years, signing international treaties by the government has been treated as a delicate subject in Malaysia. The move to internalize the foreign conventions will require the government to reshape the state foreign policies. Domestication of universal human rights conventions then will only achievable through the amendments of the existing policies for international relations. The implementation of agreements like the Statute of Rome will demand the lawmakers to revisit the prerequisites for fundamental freedoms in the Federal Constitution as the promulgation of new federal laws must be consistent with the mother law [2].

International human right watchdogs such as Amnesty International and Human Rights Watch rated Malaysia's stand on human rights issues as unsatisfactory. To display government's seriousness on addressing human rights issues, Dr. Mahathir Mohammad at the UN General Assembly in 2018, said the government would ratify all remaining UN human rights conventions. The signing of the remaining treaties should be seen as a part of the newly pointed Pakatan Harapan's international commitments.

However, the decision was received backlashes from Malay and Muslim organizations, and with the main opposition parties, Umno and Parti Islam SeMalaysia (PAS) united against the decision. Stiff resistance from the Malays, resulted in the backpedaling of the government decision to ratify pending international human rights conventions ("Malaysia's leaders backtrack on ratifying UN human rights treaty," 2018).

For the Stature of Rome, the main arguments were through the implementation of its provisions, the power of the Malay rulers, notably the Yang Di-Pertuan Agong (YDPA hereafter) will be corroded. Since ICC does not recognize the special status of monarchs and royal blood, the YDPA and Malay Rulers in Malaysia are subjected to laws of the 'commoners' without putting into consideration their unique position in the national landscape. The following section will provide a historical overview of the Malay rulers in Malaysia as well as the roles and special position of YDPA in the state. Yang Di-Pertuan Agong as the King of Malaysia To understand this the context of this study, it is pivotal for readers to understand the position of the YDPA in Malaysia. The role of the YDPA as the King of Malaysia is mentioned about 300 times in the Federal constitution. In line with the unique position of the YDPA as the King in the Article 32 (1) of the Federal Constitution, his majesty serves as the Head of the State and given the highest priority of all people in Malaysia. Although the YDPA holds the executive power, YDPA is to act under the advice of the Prime Minister and the cabinet based on Article 40 (1) of the Constitution. This particular provision distinguishes the state of absolute monarchy from the constitutional system of kings in the country. While many believe that the role of the YDPA is merely ceremonial, critics have seen YDPA acts as the agent for check-and-balance in mitigating power monopoly by the ruling government [3].

Under the Constitution, the YDPA also has the power to appoint the Prime Minister, the cabinets, dissolve the existing Parliament, YDPA also has the power to declare a state emergency. The YDPA also has the power to pardon based Article 42(1) of the Federal Constitution;

“The Yang di-Pertuan Agong has power to grant pardons, reprieves and respites in respect of all offences which have been tried by court-martial and all offences committed in the Federal Territories of Kuala Lumpur, Labuan and Putrajaya; and the Ruler or Yang di-Pertua Negeri of a State has power to grant pardons, reprieves and respites in respect of all other offences committed in his State.”

This particular clause highlights that YDPA has the power to grant pardons for all offenses committed in KL, Labuan, and Putrajaya. Also, the royal sovereignty should be given to Malay rulers (Sultans) to grant pardons for all crimes committed within their States. The YDPA is also the supreme commander of the armed forces (Article 41 of the Federal Constitution) and his famous role of preserving Islam and the national language His majesty is also responsible as a protector of the special privileges of the Malays and the Bumiputeras of Sabah and Sarawak and is also the protector of the provisions of Article 153 - preserving the legitimate interests of others.

II. METHOD

To explore the research objective and obtain a deep understanding, the researchers had used the qualitative method. The data was gathered using an in-depth interview. Meanwhile, to ensure that the researchers had gained the comprehensive data and information, the researchers have chosen to use a semi-structured interview where the participants had the freedom to express their opinions, and at the same time, the researcher had the flexibility to probe questions to obtain more information.

The participants were selected based on a purposive sampling, where they were identified based on their credential and expertise in this area of research. There were ten (10) participants involved; six of them are political leaders from five different political parties in Klang Valley (Kuala Lumpur, Putrajaya, and Shah Alam) while four of the participants are an academician who has been heavily involved in law studies. Each interview sessions were recorded and were transcribed into text for analyzing purposes by the researchers. All interviews were conducted face-to-face with an approximate duration of one hour per informant. In this paper, all informants will not be identified with personal identifiers to protect informants' identities.

To ensure that the researchers have gained enough data and profound exploration of the research objective, the researcher has constructed the questions into five sub-themes. The details of the sub-themes are as follow:

1. Perception on the Statute of Rome
2. Knowledge on the Statute of Rome
3. Statute of Rome and Malaysia's sovereignty
4. Readiness of Malaysians for Statute of Rome
5. Reasons to support or reject the Statute of Rome

All recorded interviews were transcribed into verbatim and later analyzed using a thematic analysis. Thematic analysis is an analytical method to analyze data in identifying the themes (or patterns) within qualitative data [4]. Thematic analysis is a flexible method to identify themes or patterns of a language because of its applicability within a range of theoretical framework. It is not tied to or require any specific theory of language or explanatory framework for it to work. Thematic analysis is a useful analysis method in the data-driven analysis that is meant to understand the representation of phenomena.

III. FINDINGS

A thematic analysis was done on the transcribed audio files and the following themes were found:

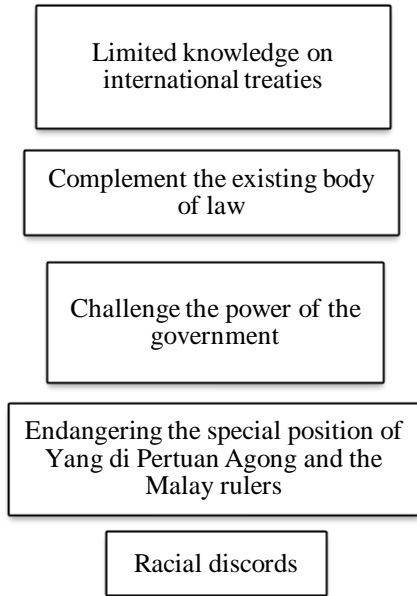


Figure 1: Five main themes found post-analysis.

Limited knowledge of international treaties signed by the Malaysian government. Based on the responses, it was found that generally, all informants have said Malaysians still have limited knowledge on international treaties involving Malaysia such as Statute of Rome, International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) among others. For example, one of the respondents said,

“I have heard of the statute before although I must admit I have limited knowledge on this or any other international treaties signed by our government. But I have basic idea of Rome Statute, I know that it is related ICC on matters related to war crimes etc. I think many of us Malaysians are not really aware of Rome Statute, really.” (Informant #5)

Another respondent also made a similar remark,

“Malaysia is still new to the international treaties, and our people are not well informed of many of these foreign statutes. How do we expect them to know the weight they entail?” (Informant #1)

Some respondents said that Malaysians displayed lack of knowledge on Statute of Rome in general and due to the limited understanding of the treaty, many comments made on social media tend to be misleading and contains false information. False information one of the modern dangers [5] was shared widely on social media; such content could potentially lead to public misunderstanding.

“Since we work as politicians, we have to know a little about these treaties should our constituents ask us about it later. But I think Malaysians still lack in understanding of International treaties. For example, one person I spoke to said he got ideas about Statute of Rome on social media like Facebook and Twitter, and I could see that he was terribly misinformed.” (Informant #2)

Statute of Rome to complement the existing body of law in Malaysia Although most informants had limited knowledge on the Statute of Rome, four respondents posited that the use of Statute of Rome would complement the existing body of law in Malaysia rather than replacing the existing judiciary. For example, informant #1 said,

“Besides, Rome Statute will only be used when there’s four international crimes (the informant was referring to crimes against humanity, crimes of aggression, war crimes and genocide as constituted in the Rome Statute) have been committed and ICC will prosecute on the four international crimes only.....based on the treaty, the statute shall be complementary to the national criminal jurisdictions.” Informant #1

The same point was made by informant #10 asserting that the ICC should be seen as a replacement to the current legal framework in Malaysia but only as a complementary legal entity.

“The important thing about the ICC is that it is not anticipated to replace the role of the courts in countries that signed the Rome Statute. The ICC is meant to complement the courts in Malaysia.” Informant #10

Another deemed ICC as the ‘court of last resort’ indicating that the Statute of Rome if signed will only be used as the last option should the national judiciary could no longer implement or execute its duties under its legal provisions.

“ICC made to complement the courts in Malaysia, and function as a court of last resort (hand-gestured apostrophe) only if Malaysia is unable to genuinely take action on the crimes committed. The statute specifically stated that it should not be interpreted as authorizing any of its signatory countries to intervene in an armed conflict or internal affairs of any country.”

Challenge the power of the government. While some of the informants deemed supportive of the treaty, some said that by implementing Statute of Rome will challenge the Malaysian government's status quo. By allowing a foreign body to intervene in national matters, some believe would provide rooms for foreign intervention. For example, one of the informants said,

“ICC contradicted the Federal Constitution because it affected the power of the rulers. Indirectly we can see that it will affect the sovereignty of Malaysia.”
Informant #3

Another informant also echoed the same sentiment,

“It would be a huge disadvantage to Malaysia if we become one of the signatories of the Rome Statute. We will be subjected to international ruling, and by being a member of international convention, it will not prevent foreign power to challenge the sovereignty of our nation.”
Informant #6

The move to retract from the international treaty was deemed necessary by the five informants interviewed. One of the informants asserted that while Malaysia would be a subject of mockery as the government decided to withdraw from the treaty despite the pledge to uphold human rights, in the long run, the decision was necessary to protect the power of the government.

“I think it was a wise decision made by the government to withdraw from the treaty to protect the power of the state. Although the repercussion includes international mockery towards our pretentious effort to salvage human right.” Informant #7

Another interesting feedback from one of the informants noted that by accepting foreign intervention on national matters will be an insult to the local judiciary system.

“If the government decided to accept foreign interference through the Rome Statute as a local court does not want or cannot afford to talk about it as it is, then it seems that the government does not believe in its own legal system. I for one, see this as a blow and humiliation to the branch of the state judiciary.” Informant #5

According to two of the informants, if the Malaysian government insist on signing the Statute of Rome, some amendments to the constitution should be made to ensure the power of the rulers is protected.

“If you could see countries like France, Belgium, Luxembourg, Chile and many others had studied in-depth and found that they needed to amend their constitutions before ratifying this statute. Clearly stating that they will not give up their legislative powers to foreign power like ICC. ICC will only have a say on matters related to the four specific crimes listed in the convention”
Informant #5

Endangering the special position of Yang di Pertuan Agong and the Malay rulers

Eight of the informants noted that by ratifying Statute of Rome, will put the special position of the YDPA as the head of the state at risk. Not only that, the special position of the Malay sultanates, in general, will be exposed to potential threats as the International Criminal Court does not recognize social status such including royal blood. For example, informant #4 said,

“Agong's immunity will be at risk if Malaysia is to sign the Rome Statute as the ICC does not recognize individual's status (referring to royal status).” Informant #4

“Maybe only some of us may know the extent to which this (referring to the Statute of Rome) and the Agong's immunity issues will be borne by the consent of the Rome Statute and the extent of its validity. As soon as this agreement signed, this agreement will affect the immunity of Yang di-Pertuan Agong.” Informant #2

“As a Malaysian who really love our dear country, I think that we should reject this treaty and try our level best to protect the ruler's position.” Informant #6

Some even argued by jeopardizing the special position of the Yang Dipertuan Agong whose power limited to matters related to Islam and Malay [6], one of the informants noted,

“The power lost to the ICC will make the YDPA lost his immunity and potentially affect the position of Islam in our constitution. Statute of Rome has to be studied thoroughly to see its potential side

effects towards our constitution.” Informant #5

“Agong’s immunity will be at risk if Malaysia is to sign the Rome Statute as the ICC does not recognize individual’s status (referring to royal status).” Informant #4

While some informants disagreed that ratification of the treaty will jeopardize the special position of the Yang Di-Pertuan Agong,

“Agong’s immunity will not be at risk if Malaysia signing the Rome Statute because we have a constitutional monarchy system in Malaysia, in accordance to the Article 40 (1) of the Federal Constitution, the duties of the YDPA are done on the advice of the the Prime Minister or Cabinet. Therefore, you could see that Malaysia’s participant in Rome Statute will not affect the position and immunity of the YDPA.” Informant #10

Racial discords. Another dominant theme found was how the implementation of the Statute of Rome could open doors for the non-Malays to criticize the royal institution in Malaysia. When such comments made by the non-Malays, it could trigger dissatisfaction among the Malays.

“ICC could be misinterpreted by non-Malays and will be used to justify critical criticism towards the royal families, or Yang Di-Pertuan Agong for example. Remember the case involving the Sultan of Perak for instance a few years ago, say for example it was generally known to many that we adopted the statute, irresponsible individuals would use Statute of Rome to criticize court decision to imprison the person that defamed the Sultan on social media. Since we do not have specific le-mejeste law in our country like Thailand. People could twist our words and claimed that it was an act of silencing critics, and the severe punishment was an act of crime towards humanity. I could see this statute used by the non-Malays to criticize Malay rules and worse it could lead to racial clash.” Informant #4

While informant #8 reminded that Malaysians have to remember the sacrifices made by the Malay rulers, especially during the colonial years. Therefore the informant believed that it is necessary for the modern citizens to return their loyalty to the Malay rulers for their past sacrifices.

“We will have to remember that the Malay sultanates sacrificed a lot especially during the colonial years. While many of us both Malays and the non-Malays failed to see this due to lack literacy of our own history, many would question the relevancy of royal hierarchy in modern world. I would say this is especially evident among the non-Malays. This will become another big racial issue should there was a heated public discourse on this matter.” Informant #8

IV. DISCUSSION

Eight out of the ten informants rejected the need to sign the Statute of Rome. Although the treaty could serve as a complementary to the existing body of law in Malaysia, the priority and full power should be given to the national judiciary system. Hostile attitude towards international treaties could be seen based on the feedback provided by the informants citing that signing international agreements would give the opportunity for foreign powers to intervene in national matters. This will also give outsiders the power to challenge not only the government’s status quo but also the special position of the Malay rulers.

During the interviews, some of the informants also made a point to remember the historical perspective of colonial intervention in Malaysia and understand the sacrifices made by the Malay rulers to maintain peace and order. Through the responses, we could see that the informants were protective of the special position of the Malay rulers, particularly concerning Yang Di-Pertuan Agong. By adopting foreign treaties like the Statute of Rome, eight of the informants believe that the power and special position of the Yang Di Pertuan Agong will be put at risk. If the Yang Di-Pertuan Agong’s power is questioned, it was believed that matters under his power would be affected such as the position of Islam as the official religion in Malaysia [7] as well as matters related to the Malays [8].

Results also revealed the majority of the opinions indicated that Malaysians are relatively politically illiterate when it comes to international treaties. Therefore various reactions could be seen on social media, and many of the opinions made by the public are driven by content consumed such as news, shared statuses, among others. While some information on social media is reliable, there are many misinformation as well as disinformation shared on platforms like Twitter, Facebook, and even WhatsApp. The over-sharing of such content could stir public opinion, and low literacy on such a topic could potentially even jeopardize national security. There should be some initiatives to be taken by the government in informing the public on international treaties that the nation is a part of. By providing enough reliable information, the government will be able to mitigate negative public discourse that could negatively impact the state whenever such issues arise. One of the concerns highlighted by the informants was the need to contain false information when it comes to matters related to

race. Since Malaysia is a multiracial country [9], the government has to be proactive in containing misinformation and disinformation as such content could potentially threaten the spirit of unity among its citizens.

During the interview, two informants also made a point that the newly elected Pakatan Harapan government should have paid more attention to more important national matters such improving the national economy, infrastructures, and focus on promises through its election manifesto. In May 2018, the Pakatan Harapan government successfully toppled Barisan Nasional, the world longest-serving government [10] after leading Malaysia's national administration for almost 61 years.

V. CONCLUSION

As a conclusion, we found that at least among the interviewees, the majority of them (eight) displayed negative perception and hostile attitude towards the Statute of Rome. Based on their perception, it is understandable that eight of the informants rejected the convention. Additionally, informants also believed that Malaysians generally have lack of knowledge in understanding international treaties and its potential impacts on Malaysia; therefore, necessary efforts should be placed by the government to assist in improving national literacy on such matter. Lastly, the findings for this study was gathered from the opinions of a few selected informants. Therefore the results could be interpreted as biased. Thus future research could complement the data through the use of a questionnaire or relevant research approach involving the general public to come up with a more holistic finding.

ACKNOWLEDGEMENTS

This paper has been presented in international conference on demokratisation in southeast asia. Thank you for the mommittee

REFERENCES

1. Cassese, A., Gaeta, P., & Jones, J. R. (Eds.). (2002). *The Rome statute of the International Criminal Court: a commentary* (Vol. 1). Oxford: Oxford University Press.
2. Mohamad, R. (2018, July 30). Ratifying international conventions. *The Star Online*. Retrieved from <https://www.thestar.com.my/opinion/letters/2018/07/30/ratifying-international-conventions#hdQyv7gdAgEOve8.99>
3. Hamid, H. (2019, February 1) Kuasa Yang di-Pertuan Agong dalam Perlembagaan. *Utusan Malaysia*. Retrieved from <https://www.utusan.com.my/berita/nasional/kuasa-yang-di-pertuan-agong-dalam-perlembagaan-1.833365>
4. Clarke, V., & Braun, V. (2013). Teaching thematic analysis: Overcoming challenges and developing strategies for effective learning. *The psychologist*, 26(2), 120-123.
5. Kumar, S., & Shah, N. (2018). False information on web and social media: A survey. *arXiv preprint arXiv:1804.08559*.
6. Barraclough, S. (1983). Managing the challenges of Islamic revival in Malaysia: a regime perspective. *Asian Survey*, 23(8), 958-975.
7. Hamzah, A., & Bulan, R. (2003). *An introduction to the Malaysian legal system*. Oxford Fajar Sdn. Bhd
8. Harding, A. (1993). Sovereigns immune? The Malaysian monarchy in crisis. *The Round Table*, 82(327), 305-314.
9. Jaafar, R. B., & Pettit, J. H. S. (1993). Atopic eczema in a multiracial country (Malaysia). *Clinical and experimental dermatology*, 18(6), 496-499.
10. Govindasamy, A. R. (2014). Social movements in contemporary Malaysia: The cases of BERSIH, HINDRAF and Perkasa. In *Routledge Handbook of Contemporary Malaysia*(pp. 116-126). Routledge.