

# MALAYSIAN FOREIGN POLICY ON THE ISSUE OF ICERD (INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION)

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**Abstract:** ICERD (International Convention on the Elimination of All Forms of Racial Discrimination) is international treaty initiated by the United Nations to encounter racial discrimination. It was inspired by various racial discrimination in US, UK, Germany, and Spain. At 20 November 1963, some countries in UN initiated Declaration on the Elimination of All Forms of Racial Discrimination. The declaration then became ICERD at 21 December 1965 and opened to be signed at 7 March 1966. On November 2018, 179 countries had ratified ICERD. Meanwhile, 18 countries not yet ratified ICERD, including Malaysia. This article tries to find reasons of why Malaysia not yet ratified ICERD while international pressure on this issue is quite high. To answer the research problem, the writer utilize Robert D. Putnam's Two-Games theory. The research concluded that the government of Malaysia not yet ratified ICERD due to higher domestic political pressure rather than international.

**Keywords:** domestic politics; ICERD; non-government organization; racial discrimination, two level games

## Introduction

Malaysia is an independent and sovereign country located in the Southeast Asia region. Malaysia gained its independence from British occupation on August 31, 1957.<sup>1</sup> Then, on September 16, 1963, Malaysia formed the Federation of Malaysia which covers the Malay Peninsula, Sabah, Sarawak and Singapore.<sup>2</sup> However, on August 6, 1965 Singapore broke away from the Federation of Malaysia and declared its independence.<sup>3</sup> Since then, Malaysia has become a federation consisting of 13 States and 1 Federal

Territory with 3 components.<sup>4</sup> Malaysia's sovereign territory borders land with 3 countries, namely Thailand, Indonesia and Brunei Darussalam.<sup>5</sup>

Malaysian Government takes the form of Constitutional Monarchy. Thus, the King of Malaysia (Yang Di-Pertuan Agong) is the Head of State and the Prime Minister acts as Head of Government.<sup>6</sup> The Malaysian government system uses the Westminster Parliamentary model with a concentration of power in the Executive branch.<sup>7</sup> The Malaysian Parliament consists of two rooms (Bicameral), namely the Senat (Dewan Negara) and the House of Representatives (Dewan Rakyat).<sup>8</sup> Members of the Dewan Rakyat are directly elected by the people of Malaysia through the general elections with the district system every 5 years.<sup>9</sup> According to the Malaysian Constitution, the Prime Minister is appointed by Yang Di-Pertuan Agong based on the majority seats in the Dewan Rakyat.<sup>10</sup> Furthermore, the Prime Minister carries out his duties as the Chief Executive assisted by the Council of Ministers (Cabinet) which is responsible to the parliament.<sup>11</sup>

Malaysia has a population of various ethnic groups. Malaysia's population consists of Bumiputera (Malay and indigenous peoples) 69.1%, Chinese 23.0%, Indian 6.9% and others 1.0% of 29.06 million citizen.<sup>12</sup> Based on these data, the Bumiputera are the most numerous ethnic group in the social structure of the Malaysian citizen. Therefore, the Bumiputera people who led by Malays and affiliated with the United Malays National Organization (UMNO) dominated Malaysian politics and government since the era of independence.<sup>13</sup> To strengthen its legitimacy, UMNO developed a consociational politics with Chinese and Indian through the Barisan Nasional coalition.<sup>14</sup> The Barisan Nasional coalition has taken control of the Malaysian government for more than 60 years.<sup>15</sup> Then, its control ended on May 9, 2018 when the Pakatan Harapan coalition (opposition) won the 14th General Election.<sup>16</sup>

The Pakatan Harapan coalition began to govern Malaysia after Tun Dr. Mahathir Mohamad was appointed as the 7th Prime Minister by Yang Di-Pertuan Agong on May 10, 2018. Based on data from the independent polling agency Merdeka Center, the Pakatan Harapan coalition only received 30% of the votes from Malay voters.<sup>17</sup> Therefore, the Pakatan Harapan coalition won the General Election on May 9, 2018 because of the support of minority ethnic groups in Malaysia.<sup>18</sup> For decades, minority ethnic groups

in Malaysia feel that their rights had been discriminated against by the Barisan Nasional coalition government which prioritize Bumiputera in the fields of education, employment, housing and politics.<sup>19</sup> So, supporters of the Pakatan Harapan coalition hope that the Tun Dr. Mahathir Mohamad government is not acting autocratic and sectarian as was practiced by the Barisan Nasional coalition government.<sup>20</sup>

In October 2018, Malaysian people were shocked by the emergence of a discourse about Pakatan Harapan coalition's plan to ratify the ICERD (The International Convention on the Elimination of All Forms of Racial Discrimination). ICERD is a convention or agreement among countries that has aimed to remove all forms of racial discrimination in the people's lives.<sup>21</sup> The Convention was adopted by the United Nations in 1963 and entered into force in 1969 for member countries that had ratified it.<sup>22</sup> Regarding to the discourse of ratification of ICERD that developed in Malaysia, Prime Minister Tun Dr. Mahathir Mohamad stated that his government would not ratify ICERD.<sup>23</sup> The statement becomes an anomaly if you see that the majority of supporters of the Pakatan Harapan coalition are minority ethnic groups who has discriminated and reformist Malay groups who want to improve human rights in Malaysia.

The majority of countries in the Southeast Asian region have ratified ICERD. There are only 3 ASEAN member countries that have not ratified ICERD, namely Malaysia, Brunei Darussalam and Myanmar.<sup>24</sup> Whereas among Islamic countries, only Malaysia and Brunei Darussalam have not ratified ICERD.<sup>25</sup> Countries that have not ratified ICERD will certainly get international pressure from other countries as well as non-government organizations that support human rights. Thus, the decision of the Malaysian government not to ratify ICERD raises the research question: "Why has Malaysia not ratified ICERD despite international pressure?". Thus, the scientific task of this article is to provide answers to the research questions by using appropriate frameworks and theories so that they can complement the treasure of knowledge about ICERD problems in Malaysia.

## Literature Review

The debate about ICERD (The International Convention on the Elimination of All Forms of Racial Discrimination) in Malaysia is not a completely new phenomenon. But so far there are not many academic writings that discuss these problems using the international relations science approach. That empirical fact is the background for making this article, so I hoped that it can become a new contribution to science in general and the study of International Relations in particular. Even if possible, this article can be a reference or recommendation for foreign policy makers regarding to the issue of ICERD.

Shandra Vaahini and Shahrul Mizan Ismail from the Faculty of Law of the Universiti Kebangsaan Malaysia published a paper entitled "Deprivation of Nationality: Coping with Discrimination through 1965 CERD" in 2017. The paper is a scientific review of ICERD using a law science approach to answer the question of whether rejection granting citizenship status on the ground of race or discrimination against certain ethnicities is an act that violates ICERD? According to both of them, the refusal to give citizenship status on discriminatory grounds clearly violates ICERD provisions and it can have a negative impact on other human rights such as the right to choose on the election, own property, get health services, get a job and the right to travel.<sup>26</sup> This article should be appreciated because it can be a basic review to understand the meaning of nationality and discrimination in the ICERD perspective. However, the paper does not specifically discuss the issue of ICERD in Malaysia.

Furthermore, Shahrul Mizan Ismail and Maziah binti Hamzah, both of whom came from the Faculty of Law of the Universiti Kebangsaan Malaysia, published a paper entitled "Penghapusan Diskriminasi Perkauman: Halatuju dan Cabaran" in 2017. The article more specifically discusses the issue of ratifying ICERD in Malaysia compared to previous writings. There is even an explanation of the implementation of ICERD in Southeast Asian countries that have ratified the convention, namely Indonesia and Singapore.<sup>27</sup> But in explaining the causes or reasons why the Malaysian government has not ratified ICERD, the two authors stressed the explanation of domestic factors such as economics, politics, socio-culture and religion. Whereas the process of diplomacy or negotiation of the

Malaysian government at the international level with regard to the ICERD issue has received little attention.

Meanwhile, Nursyafiah binti Ahmad Razali from the Universiti Kebangsaan Malaysia also discussed the issue of ICERD in his article entitled "Justification for Malaysia Towards Accession of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)" in 2019. According to him, there are several justifications in terms of state law and Islamic law which can be used as justification for the steps of the Malaysian government to ratify ICERD.<sup>28</sup> However, ICERD cannot replace Article 3 (Islam as the state religion), Article 153 (special position for the Bumiputera group) and Article 181 (prerogative for Malay rulers) because the concept of "law" in Malaysia is narrowly defined in Article 160 (2) and it's not including international law.<sup>29</sup> The article pays attention to domestic and international conditions, but focuses more on discussing ICERD issues from the point of view of law science. So that the aspects of politics, diplomacy and negotiations of the Malaysian government at the domestic and international level are less well explained.

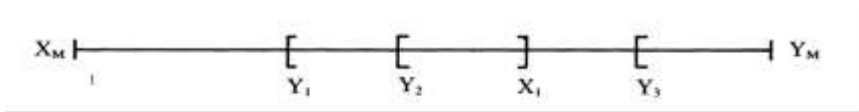
## **Methodology**

The analytical framework that will be used to answer the research question above is the Two-Level Games theory by Robert D. Putnam. According to the theory, the signing and ratification of international conventions or agreements by a country is the result of consideration of domestic politics and international politics. This shows that there is a very close link between domestic politics and international politics, so the combination of both will produce what is called foreign policy. Therefore, the theory of Putnam is very suitable for analyzing Malaysian foreign policy relating to the issue of ICERD (The International Convention on the Elimination of All Forms of Racial Discrimination).<sup>30</sup>

Robert D. Putnam emphasized the importance of the negotiation process at two levels to reach an agreement. Level I is a negotiation process that occurs in an international environment and leads to a tentative agreement.<sup>31</sup> At this level, national governments will try to overcome domestic pressure while minimizing the negative consequences of

international pressure.<sup>32</sup> While level II is a negotiation process that occurs in the domestic environment by involving constituent groups to agree on a decision, namely ratifying or not ratifying an international agreement.<sup>33</sup> Constituent groups usually seek their interests by pressuring national governments to adopt policies that benefit their groups and this is often used by politicians to build coalitions.<sup>34</sup>

According to Putnam, the state does not act as a single actor in formulating foreign policy. But there are other domestic actors who influence the decisions taken by the state, namely: public opinion, political parties, legislators, interest groups and social classes.<sup>35</sup> So in practice, interests at level I can be intertwined or in contrast to interests at level II. Furthermore, Putnam creates a "win-set" as a measure to determine the level of achievement of negotiations on international agreements at two levels and their implications for state decisions (ratifying or not ratifying). The win-set is illustrated by Putnam in the model as follows:

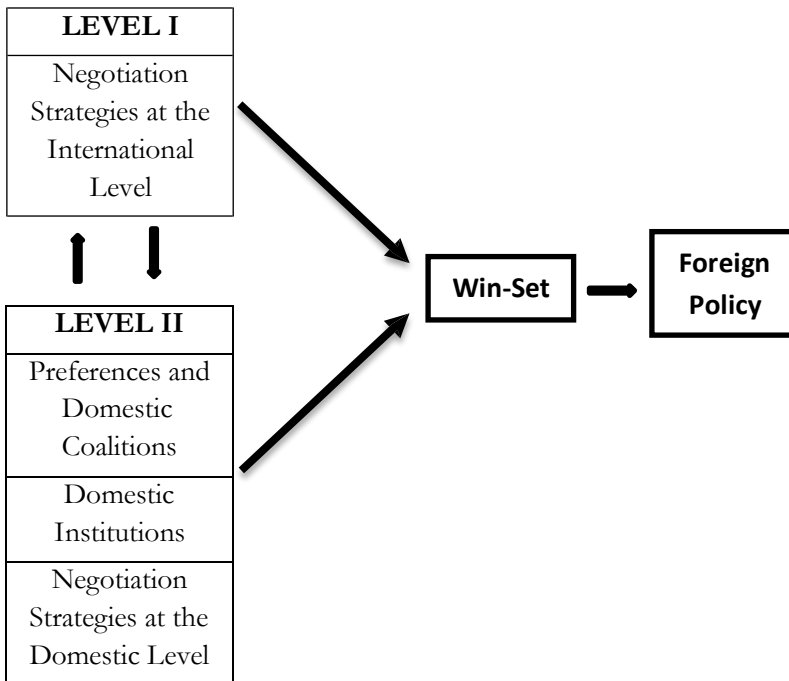


**Figure 1. Effects of Reducing Win-Set Size**

Win-set as the model above reflects a simple zero-sum game between X and Y formulated by Putnam in the theory of Two-Level Games.  $X_M$  and  $Y_M$  are the maximum points of the outcomes of X and the outcomes of Y.<sup>36</sup> While  $X_1$  and  $Y_1$  are the minimum points for ratification to occur.<sup>37</sup> That means, if the outcomes of X reach in  $X_1$  and the outcomes of Y reach in  $Y_1$ , both of them will agree to ratify.<sup>38</sup> But, if the outcomes of Y only reach in  $Y_3$ , there will be a deadlock because there is no overlap between the outcomes of X and the outcomes of Y.<sup>39</sup> The size of win-set depends on the amount of overlap that occurs between the two parties.

The greater achievement of win-sets at level II will further facilitating approval to ratify agreements at level I. Related to this, Putnam analyzes several determinants that influence the achievement of win-sets at level I

and level II. At level I, the determinants that influence the achievement of win-sets is negotiation strategies at the international level.<sup>40</sup> While at level II, the determinants that influence the achievement of win-sets are preferences and domestic coalitions, domestic institutions, and negotiation strategies at the domestic level.<sup>41</sup> Thus, Robert D. Putnam's Two-Level Games theory can be described in the conceptual framework as follows:



**Figure 2. Conceptual Framework of Two-Level Games Theory**

## **Discussion**

### **Malaysian Negotiation Strategies at the International Level**

The technical implementation of ICERD (The International Convention on the Elimination of All Forms of Racial Discrimination) is governed by a body called the Committee on the Elimination of Racial Discrimination (CERD). CERD consists of 18 independent experts selected by ICERD participating countries.<sup>42</sup> All ICERD participating countries must submit routine reports on the implementation of the convention points at the domestic level to CERD a year after ratification and then take place every two years.<sup>43</sup> Then CERD will examine each report received and provide an assessment or recommendation to the governments of the ICERD participating countries.<sup>44</sup> In addition, CERD also carries out its monitoring function in the form of early warning procedures, examination of complaints between countries and examination of individual complaints.<sup>45</sup>

The Pakatan Harapan coalition plan to ratify ICERD (The International Convention on the Elimination of All Forms of Racial Discrimination) has become a political issue that has been widely debated by the public at the domestic and international level at the end of 2018. The issue was begun with a speech by the Malaysian Prime Minister Tun Dr. Mahathir Mohamad on September 28, 2018 in the 73rd UN General Assembly session. Malaysian Prime Minister Tun Dr. Mahathir Mohamad at the forum stated that his government would immediately ratify the remnants of the UN Human Rights instruments including ICERD which had not been ratified by the previous government (Gnanasagaran 2018). Then on October 31, 2018, the Malaysian Prime Minister Tun Dr. Mahathir Mohamad stated that the ratification of ICERD would take place after the government held negotiations with all races.<sup>46</sup>

The statement of the Prime Minister of Malaysia Tun Dr. Mahathir Mohamad is also supported by several key officials at the Ministry of Foreign Affairs. On November 8, 2018, Malaysian Foreign Minister Datuk Seri Saifuddin Abdullah stressed that the Malaysian government would place special emphasis on advocating human rights issues at the international level.<sup>47</sup> The statement was delivered by Malaysian Foreign Minister Datuk



Seri Saifuddin Abdullah while conducting the Malaysia's Universal Periodic Review in Putrajaya, Malaysia. Furthermore, at the same forum in Geneva, Switzerland, Secretary General of the Malaysian Foreign Ministry Datuk Seri Ramlan Ibrahim also stated that the Malaysian government was considering a process to ratify UN human rights treaties including ICERD.<sup>48</sup>

Before the Pakatan Harapan coalition led the Malaysian government, the issue of ICERD had surfaced and had become a public debate under the Barisan Nasional coalition government. In response to the issue, in 2011 the Barisan Nasional coalition government formed the ICERD Technical Committee under the supervision of the Unity and Integrity Department Studies in the Prime Minister's Department.<sup>49</sup> But after the committee conducted a review of ICERD in 2011 and 2015, the Barisan Nasional coalition government canceled the idea to ratify it because the convention was deemed not in accordance with the Federal Constitution.<sup>50</sup> In addition, there were several international factors that led to the rejection of ICERD by the Malaysian government under the leadership of the Barisan Nasional coalition. If viewed from a historical point of view, Malaysia has never taken part in the process of creating and developing ICERD, so that the country does not have a contribution to thought or control of ICERD.<sup>51</sup>

Malaysia also recently joined the UN Universal Periodic Review (UPR) in 2009. The UPR is a forum that initiated by the UN Human Rights Council and encouraged by UN member states to report what actions have been taken by each country in order to improve the human rights situation and fulfill human rights enforcement obligations at the domestic level.<sup>52</sup> Based on Council Resolution 5/1 of June 18, 2007, each country must first hold consultations with stakeholders that are relevant to human rights issues at the domestic level before holding a UPR.<sup>53</sup> Thus, the Malaysian government involved Human Right Commission of Malaysia (Suruhanjaya Hak Asasi Manusia Malaysia/SUHAKAM), a joint NGO (the Coalition of Non-Governmental Organizations/COMANGO) and representatives of civil society (Jaringan Orang Asli Semenanjung/JOAS) in preparing government reports to be taken to UPR.<sup>54</sup>

SUHAKAM, COMANGO and JOAS are the three bodies that are the liaison between the Malaysian government and the UN Human Rights Council. All three have the duty to report on the condition of human rights

in Malaysia to the UN Human Rights Council and lobby the Malaysian government to enforce human rights in accordance with UN conventions, treaties or resolutions. This shows the negotiation process of the Malaysian government at the international level. During the Barisan Nasional coalition government, the Malaysian negotiation process at the international level resulted in considerable “win-sets” and was supported by the success of negotiations at the domestic level so that several international human rights treaties or conventions were ratified but did not include ICERD. Whereas in the early days of the Pakatan Harapan coalition government, the Malaysian Prime Minister Tun Dr. Mahathir Mohamad told the United Nations that his country would ratify a number of international human rights conventions or agreements including ICERD, but then the Malaysian government changed its mind and stated that it refused to ratify ICERD. The change in policy certainly shocked the UN Human Rights Council, UN member states and other international parties.

### **Domestic Preferences and Coalitions in Malaysia**

Malaysian Prime Minister Tun Dr. Mahathir Mohamad stated that his government would immediately ratify international treaties on human rights that had not been ratified by the previous government. The statement was delivered by Tun Dr. Mahathir Mohamad while addressing representatives of world countries in the 73rd UN General Assembly session, 28 September 2018.<sup>55</sup> From several international conventions or agreements on Human Rights that are planned to be ratified by the Malaysian government, ICERD (The International Convention on the Elimination of All Forms of Racial Discrimination) is the main discourse debated by the public at the domestic level.<sup>56</sup> Therefore, the public at the domestic level was divided into two groups, namely groups that supports the ratification of ICERD and groups that reject it.

The group that supports the ratification of ICERD consists of several human rights organizations such as Persatuan Kebangsaan Hak Asasi Manusia (HAKAM), Pusat Komunikasi Masyarakat (Pusat KOMAS), Suara Rakyat Malaysia (SUARAM), Sisters in Islam (SIS), the Society for the Promotion of Human Rights (PROHAM), Kuala Lumpur & Selangor

Chinese Assembly Hall (KLSCAH) and so on.<sup>57</sup> In addition, there is state institution that also support the ratification of ICERD, namely Human Right Commission of Malaysia (Suruhanjaya Hak Asasi Manusia Malaysia/SUHAKAM). These groups stated that the ratification and implementation of ICERD was an important step for Malaysia to demonstrate its commitment as a member of the United Nations in developing the country based on the principle of equality, respect and acceptance for all citizens.<sup>58</sup> In addition, the signing and ratification of ICERD will set minimum standards of behavior for the Malaysian government in overcoming the issue of racism, promoting education against racism and making policies to stop the speech of racial hatred.<sup>59</sup>

The group that supports the ratification of ICERD also believed that ICERD does not violate the Article 153 of the Federal Constitution.<sup>60</sup> and the Article 1 of ICERD in line with the political manifesto of the Pakatan Harapan coalition.<sup>61</sup> Furthermore, that group made advocacy efforts by making discussions or seminars, campaigns, scientific publications, petitions and even giving recommendations directly to the Malaysian government. These efforts were made to change people's perceptions of ICERD so they would support the Malaysian government's initiation to sign and ratify the convention. But on the other hand, there are groups that reject the ratification of ICERD, namely several Islamic organizations belonging to the Gerakan Pembela Ummah and the opposition political parties (UMNO and PAS).<sup>62</sup>

The group that reject ICERD considers that the ratification of ICERD can result in the elimination of privileges for Malays, Bumiputera and Muslims in Malaysia which have been protected by the Article 153 of the Federal Constitution.<sup>63</sup> In addition, President of Parti Islam se-Malaysia (PAS), Datuk Seri Abdul Hadi Awang also stated that the Malaysian government does not need to ratify ICERD because religious freedom and the right to all races are guaranteed by the Federal Constitution.<sup>64</sup> In order to fight for their aspirations, the group that opposed to ICERD conducted a demonstration called "Himpunan 812" on December 8, 2018 in Kuala Lumpur, Malaysia.<sup>65</sup> The demonstration was attended by about 60.000 people and walked in an orderly manner.<sup>66</sup>

## **Domestic Institution in Malaysia**

According to Robert D. Putnam, domestic institutions can be interpreted as the procedures for ratifying international conventions or agreements at the domestic level and the autonomy of government institutions related to the ratification process from domestic pressure. Typically, a convention or international agreement will be followed up into Malaysian law after it has been ratified by the Federal Government and confirmed by a parliamentary decision.<sup>67</sup> According to Article 71 of the Ninth Schedule and List I of the Federal Constitution, the Malaysian Parliament can make laws relating to external affairs, including treaties, agreements and conventions.<sup>68</sup> However, the article does not explicitly discuss about the procedure for ratifying international agreements.<sup>69</sup> Then, all laws made by the Malaysian Parliament based on the international conventions or agreements must comply with Article 4 of the Federal Constitution.<sup>70</sup> Article 4 of the Federal Constitution is the Main Guild Act included in Part I (Countries, Religion and Federal Law) of the Federal Constitution.

There are several government institutions in the form of ministries and state institutions that are directly involved in the plan for ratifying ICERD in Malaysia. The ministries or state institutions include: Ministry of Foreign Affairs of Malaysia, Ministry of Home Affairs of Malaysia, Prime Minister's Department of Malaysia (Jabatan Perdana Menteri Malaysia), Human Right Commission of Malaysia (Suruhanjaya Hak Asasi Manusia Malaysia/SUHAKAM), Attorney General Chambers of Malaysia (Jabatan Peguam Negara Malaysia) and Parliament of Malaysia. From the six ministries or state institutions, the Parliament of Malaysia became a domestic institution with the strongest autonomy. That is because the Malaysian government system uses the Westminster Parliamentary model, so that the policies of the executive branch (government) depend directly on the support of the legislative branch (parliament). While SUHAKAM, Prime Minister's Department and Ministries in Malaysia only acts as a consultative body that provides information or recommendations to the Malaysian government regarding the ratification of ICERD.

Therefore, the government of Prime Minister Tun Dr. Mahathir Mohamad needs a two-thirds majority in the Parliament of Malaysia to be

able to amend the Federal Constitution as a consequence of the decision to ratify ICERD.<sup>71</sup> This requirement is difficult to fulfill by the Malaysian government because the Pakatan Harapan coalition does not control two-thirds of the majority in parliament and there are a number of parliamentarians from the Pakatan Harapan coalition who reject ICERD (Channel NewsAsia 2018). So, on November 23, 2018 the Ministry of Home Affairs published a press release stating that the Malaysian government decided not to sign and ratify the ICERD.<sup>72</sup> This decision shows the weak achievement of “win-sets” in the domestic institutional level to ratify the CERD.

### **Malaysian Negotiation Strategies at the Domestic Level**

Debate about the plans of the Pakatan Harapan government to ratify ICERD became the main headline in a few weeks after the speech of the Malaysian Prime Minister Tun Dr. Mahathir Mohamad at the 73rd UN General Assembly session. Malaysian Foreign Minister Dato’ Seri Saifuddin Abdullah was accused of being an intellectual actor who gave input to the Prime Minister to deliver the speech and began to move it as the official policy of the Malaysian government.<sup>73</sup> The accusation was addressed to Dato’ Seri Saifuddin Abdullah because of his personal background as an idealist activist in fighting for liberal values in Malaysia.<sup>74</sup> MP from UMNO Rembau Khairy Jamaluddin was the first to question the matter and demanded Dato’ Seri Saifuddin Abdullah to resign from his position.<sup>75</sup>

Meanwhile, national human rights institutions along with several NGOs that support the enforcement of human rights in Malaysia continue to pressure the Pakatan Harapan government to immediately ratify ICERD. Human Right Commission of Malaysia (Suruhanjaya Hak Asasi Manusia Malaysia/SUHAKAM) supports the promise of Prime Minister Tun Dr. Mahathir Mohamad to position Malaysia at the forefront of policies and implementation of progressive civil rights.<sup>76</sup> According to SUHAKAM, racial discrimination in any form should not occur in multiracial and moderate Malaysian society because all citizens have the right to live peacefully based on civilized values.<sup>77</sup> Therefore, SUHAKAM joined the call

for accession to ICERD and urged the Malaysian government to raise public awareness about ICERD through direct public involvement.<sup>78</sup>

The Pusat KOMAS as a Human Rights NGO issued a statement supporting the planned ratification of ICERD by the Pakatan Harapan government and held the "8th National Conference on Non-Discrimination: Malaysia Approaching ICERD Ratification" in Petaling Jaya on October 23, 2018. The conference was held to encouraging the Malaysian government to accelerate the process of ratifying ICERD, studying and imitating the implementation of ICERD in Southeast Asian countries, understanding the debate about ratifying ICERD and identifying solutions.<sup>79</sup> The conference participants consisted of Government Representatives, Elected State Representatives, the Attorney General's Chambers (AGC), SUHAKAM, civil society organizations and academics.<sup>80</sup> YB Senators Waytha Moorthy (Minister of National Unity and Social Welfare on the Prime Minister Office) at the conference stated that the Pakatan Harapan government was committed to ratifying six international human rights treaties including ICERD in the first quarter of 2019.<sup>81</sup>

The two main opposition political parties in Malaysia, namely the Parti Islam se-Malaysia (PAS) and United Malays National Organization (UMNO) expressly rejected the plan to ratify ICERD and they united to hold an anti-ICERD demonstration in Kuala Lumpur on December 8, 2018.<sup>82</sup> UMNO Supreme Assembly members who are also MP from Pengerang Dato' Seri Azalina Othman Said urged the Malaysian government to bring the ICERD issue to a parliamentary hearing before deciding to sign and ratify it.<sup>83</sup> If the ICERD issue is brought to a parliamentary hearing, the Pakatan Harapan coalition will lose because it requires approval of 2/3 of the majority of votes in parliament while the Pakatan Harapan coalition only controls 127 of 222 seats in the Dewan Rakyat (People's Council). In addition, some members of the Pakatan Harapan coalition also disagreed with the plan to ratify ICERD. In response, the two main leaders of the Pakatan Harapan coalition, Tun Dr. Mahathir Mohamad (Chairperson of the Parti Pribumi Bersatu Malaysia/PPBM) and Dato 'Seri Anwar Ibrahim (Chair of Parti Keadilan Rakyat/PKR) signaled that their government would refrain from ratifying ICERD.<sup>84</sup>

Finally, the Malaysian Prime Minister's Office issued an official statement that the Pakatan Harapan government would not ratify ICERD on November 23, 2018. The statement was a sign of the failure to reach domestic negotiations to ratify ICERD. If negotiations at the domestic level are not achieved, it is difficult for the Malaysian government to continue negotiations at the international level.

## **Conclusion**

The Malaysian government under the leadership of the Pakatan Harapan coalition seeks to realize the "New Malaysia" jargon as promised during the campaign. One of the steps taken to realize the jargon is to make Malaysian foreign policy more committed to upholding human rights at national and international levels. That is because during the previous administration, the Barisan Nasional coalition which led Malaysia was considered to be less serious in ratifying and implementing all international human rights conventions or agreements.

The Barisan Nasional government only ratifies several international human rights conventions or agreements such as CEDAW (Committee on the Elimination of Discrimination Against Women), CRC (Convention on the Rights of the Child) and CRPD (Convention on the Rights of Persons with Disabilities). Whereas throughout the Barisan Nasional government, ICERD (The International Convention on the Elimination of All Forms of Racial Discrimination) was not signed and ratified by Malaysia for several political reasons such as the suspicion that the convention was a tool for western countries to intervene in domestic politics, the convention would abolish the privileges of the Bumiputera group and the convention was contrary to Islamic law. Nonetheless, the discourse about ICERD always arises and raises public debate in Malaysia so that the Pakatan Harapan government regards it as homework that must be immediately completed.

Based on the analysis using Robert D. Putnam's "two-level games theory", the failure of the Pakatan Harapan government plan to ratify ICERD was caused by the large number of rejections that occurred at the domestic level so that the level II win-set was not achieved. When there is no win-set at level II, the negotiation process at level I (the international

level) is declared unsuccessful or failed. In the Malaysian negotiation process at the international level, the Pakatan Harapan government demonstrated its commitment to ratify ICERD. But at the domestic level, national coalitions and preferences represented by opposition political parties (UMNO and PAS) and Malay-Islamic organizations explicitly did not support the commitment of the Pakatan Harapan government to ratify ICERD. Furthermore, the public and politicians in Malaysia are divided into two groups (supporting or rejecting the ratification of ICERD) and the group that rejects the ratification of ICERD tends to be more dominant. In addition, there are some Pakatan Harapan members who have expressed their resistance to government policies regarding ICERD. Only the Ministry of Foreign Affairs and Human Right Commission of Malaysia (Suruhanjaya Hak Asasi Manusia Malaysia/SUHAKAM) expressed strong support for the planned ratification of ICERD by the Pakatan Harapan government.

With regard to domestic institutions in Malaysia, the ICERD ratification process cannot be fulfilled because the procedures stipulated in the Federal Constitution cannot be implemented (2/3 of the majority in the People's Council/Dewan Rakyat). In addition, the autonomy of the government represented by the Ministry of Foreign Affairs and SUHAKAM is not enough to make Malaysia approve the ratification of ICERD. In fact, finally Prime Minister Tun Dr. Mahathir Mohamad as one of the authorities in the ICERD ratification process stated that the Malaysian government would consult first with all races. Foreign parties such as UNHRC also lobbied the Malaysian government through SUHAKAM but still could not persuade Malaysia to immediately ratify ICERD. This shows that the Malaysian government prioritizes domestic political considerations rather than international political considerations in taking foreign policy related to ICERD.

## Endnotes

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<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*



<sup>4</sup> Central Intelligence Agency. "The World Factbook East Asia-Southeast Asia: Malaysia." *Central Intelligence Agency Web site*. January 29, 2019.  
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