



Housing Discrimination

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Housing Discrimination in Malaysia

1. Racial Discrimination in Malaysia

Malaysia embraces itself as a multicultural and multi-religious country. When Independence Day or Malaysia Day approaches, poster competitions in Malaysian schools will witness the portrayal of people of different races coming together joyfully, singing the national anthem or the Merdeka theme song of the year. Despite how happy and joyful the fictional characters in the poster seem, it begs the question: how does this racial harmony translate into real life?

The root of institutionalised racial discrimination in Malaysia arguably stems from the race-based policies that have been implemented and practised by the government ever since Malaya gained its independence from the British. Hirschman (1986) argued that "race relations" were a byproduct of British colonialism in the late nineteenth and early twentieth century, and that the European racial theory or conception of race had influenced the construction of race in colonial Malaya which eventually structured the social and economic order of the country. The divide and rule policies adopted at the time of British colonialism had also magnified the differences between racial groups, which are then manifested in Malaysian economic and political life as well.

Racial discrimination is not alien among Malaysians. In fact, it is a deeply-rooted issue that lies in the heart of this multiracial country which pervades through many areas including education, politics, government jobs, law enforcement, politics, and business (Malaysiakini, 2020). Sadly, property rental and housing is also not an exception when it comes to racial discrimination against the minorities.

In a study conducted by Nur Amali to investigate ethnic differences and predictors of racial and religious discriminations among Malaysians, she found out that 20-30% of the 1,200 respondents had shown or reported tendencies to discriminate (Nur Amali, 2020). The finding is considered to be considerably significant considering the government's efforts in promoting unity through diversity in a multicultural society. In this study, she specifically found out that there is a high prevalence rate of Malays and Chinese not wanting a neighbour of a different race and religion. Based on her findings, 30.5% of respondents stated they did not want people of a different race as neighbours, while 30% did not want their neighbours to be people of a different religion. She asserted that such an attitude can be attributed to various race-based policies that have been put in place such as specific school types based on race and racial quotas for higher education (Nur Amali, 2020:13). Such policies lead to negative impacts such as sentiments related to homogeneous contact preferences, which exacerbate the issue of intergroup empathy and understanding (Nur Amali, 2020:13). It is important for this issue of fostering mutual understanding and cohesion to be addressed, as mentioned by Nur Amali in her paper, *"If a person is not open to differences, it may even facilitate intolerance and then discrimination"*.

2. Key Statistics of Housing Discrimination in Malaysia

Malaysia has become so accustomed to racial discrimination that discriminatory behaviours in housing have become normalised, where potential tenants are mistreated or turned away just because of their skin colour or ethnic background due to the deeply rooted ethnocentrism within the different ethnic groups in Malaysia.

According to a survey by YouGov omnibus of more than 1,000 Malaysians, one fifth (21%) have experienced racial discrimination when trying to rent property (Ho, 2019), something that should not be happening at all in a supposed hub for multiculturalism. Furthermore, numerous complaints have also been made by minority races, recounting their experience of being discriminated against by property owners who refused to rent to them on the basis of ethnicity. Malaysian Indians, in particular, face the most significant challenge when trying to rent. With 46% of Malaysian Indians saying they have faced discrimination (Ho, 2019), it portrays a terrible reality in Malaysia right now, with no particular emphasis on solving it.

For example, some homeowners refused to accept Indian tenants because they said they were afraid of Indian cooking staining the walls and carpets, or disruptive prayers in the morning (Durai, 2015), behaviours that they then apparently extrapolated to all potential tenants of Indian descent. Furthermore, one student of Portuguese-Chinese descent even had to bring her Chinese mother with her when hunting for rooms due to Chinese-only specifications from landlords who refused to accept that she was Chinese (Durai, 2015); such actions practically do not have any explanation besides the landlords being racist and flat out refusing all potential tenants who are not Chinese.

A business intelligence analyst, Pingalayan Rabinthra Kumar, conducted a study on a popular property website, proving that the complaints are not purely anecdotal (Lim, 2020). Based on his analysis, he suggested that prospective tenants who are Indians “are rejected upfront” by about 45% of all listings in Kuala Lumpur and Selangor (Kumar, 2020).

Room Listings by Racial Preference (%)

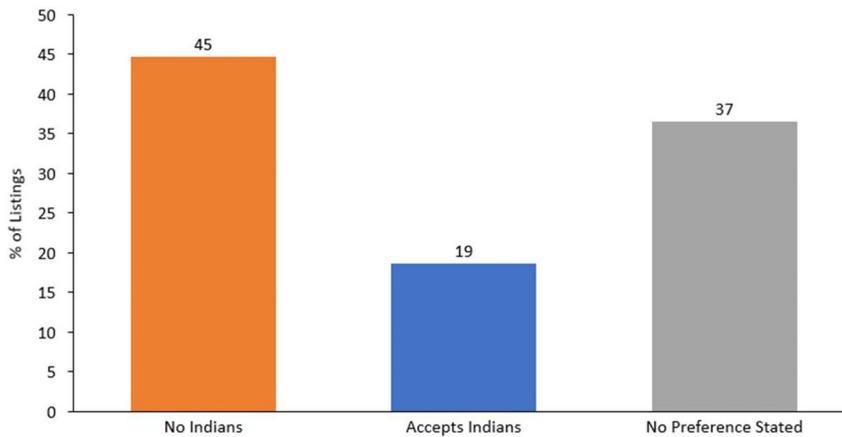


Image 1: Percentages of Room Listings by Racial Preference (Kumar, 2020)

Pingalayan also added that “no preference” listings, which contributed 37% of the findings, do not necessarily imply that “Indians are welcome” (Kumar, 2020). He also mentioned that areas closer to the capital city (KL) seemed to have fewer listings for the Indian community (Kumar, 2020).

% of Listings Open to Indians by Location

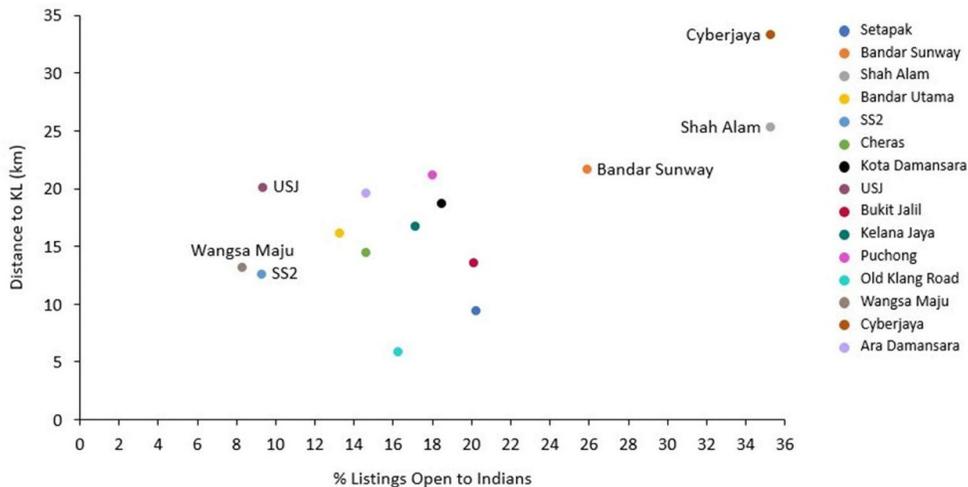


Image 2: Percentages of Listings Open to Indians by Location (Kumar, 2020)

3. Cases of Housing Discrimination in Malaysia

Furthermore, one of the most significantly impacted parties in Malaysia from such horrific behaviours is international students, primarily from African countries or ethnic backgrounds with darker skin colour. When racism has familiarised itself within members of a nation and has become commonplace, it comes as no surprise that racism is not treated as a particularly salient or distressing issue. As such, actions that have threatened Malaysia's so-called "multiculturalism" have either gone unnoticed or ignored.

Notably, in 2016, residents and the management of a condominium complex in Cheras erected a banner urging landlords to "say no to African people", with the banner displaying a dark-skinned man with a big yellow X across his face (Ng, 2018).



Image 3: Residents of Pangsapuri Waja holding up the banner (The Star, 2016)

Unfortunately, no actions have been taken as of date as Malaysia does not have any laws restricting or barring discrimination or racism (Malaysia: How landlords get away with racism, 2018). Another similar case occurred at Ridzuan Condominium in Bandar Sri Subang, where the management tried to evict and ban tenants of African descent from renting twice, once in 2013 and once in 2017 (Annuar, 2017). As the majority of the African population in Malaysia are students (Tan, 2016), such blatant racism could potentially detract potential qualified and educated students from African countries from choosing Malaysia as their study destination. However, beyond this, the denial of a basic human right to a people group should never be allowed.

Other examples of international students facing discrimination include needing to take a long time to find accommodation due to racial preferences in ads (Durai, 2015), based on severe racial profiling and stereotypes. To quote a Nigerian international student who needed to take close to a year to find accommodation, "I went through countless houses but as soon as the homeowner heard that I was African, vacancies would magically fill themselves up" (Durai, 2015). Such archaic behaviours and mindset have no place in the country, and should be weeded out through the implementation of strict rules and laws banning such discriminatory acts.

4. Attempts made by the government to tackle discrimination in housing

Article 8 Clause (2) of the Federal Constitution states that:

'Except as expressly authorized by this Constitution, there shall be no discrimination against citizens on the ground only of religion, race, descent or place of birth in any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment'

(Delegates of Reid Commission and Cobbold Commission, 1957)

According to lawyer Syahredzan Johan, Article 8(2) applies only vertically by our courts which means it does not apply horizontally amongst residents (Selladurai, 2020). In other words, when an individual's rights have been violated only in cases such as if the state discriminates against the individual, then action can be taken. Therefore, Article 8(2) does not extend according to court ruling between individuals or the private sector which may have resulted in homeowners and property agents forming their own "law" based on supposed racial "preferences". For example, a banner was put up at Pangsapuri Waja

which

stated that 'in accordance to their internal housing law, no Africans are permitted to rent premises in the property ' (IUT, 2018). The internal housing law referred to is not an actual law but it is treated as a set of guidelines created by the administration in the residential complex. There is no regulation towards these guidelines as Malaysia has not placed a

proper law towards anti-discrimination or anti-racism laws In late September 2018, Prime Minister Najib Razak mentioned that there are no proposed plans for such laws anytime soon as education should be the answer to the nation's unity problem.

a. Timeline of the government attempts on tackling discrimination in housing

2019:

The federal government was preparing a fair housing policy that included provisions to address racially discriminatory practices by tenants and landlords. The Housing and Local Government Ministry director-general N Jayaseelan stated that his ministry was examining the Fair Housing Act in the United States for guidance. According to The Malaysian Insight (TMI), Jayaseelan stated that the fair housing policy would ensure the welfare of stakeholders, including tenants and landlords, and would cover both the rental market and ownership (Malaysiakini, 2019). The main goal was to streamline all existing laws and future laws related to property for a unitary housing or property market. However, the policy did not manage to go through as the governing party changed in the following year.

August 2020:

The Housing and Local Government (KPKT) Minister Zuraida Kamaruddin tabled a law to regulate matters between landlords and tenants through the Residential Tenancy Act

(RTA) which will have a main focus on curbing 'racist' practices by certain landlords and property agents (Lim, 2020). The RTA was also geared towards offering protection to both tenants and landlords while taking into account the interests of every party involved. The KPKT Minister mentioned that the RTA would especially address racist practices at low-cost housings.

b. Coverage of the RTA

1. Indiscriminate eviction

Even without the RTA, under section 7(2) of the Specific Relief Act 1950, a landlord cannot evict a tenant and/or recover possession of the premise unless he/she has a court order. The landlord also cannot change the locks or retake the property by force.

2. Rent controls

Presently, rental rates in Malaysia are based on market forces. By enforcing price control, it ensures vulnerable people have some kind of protection or assistance on the road to recovery. As shelter is a basic human right.

3. Direct and Indirect Discrimination

When someone is being treated less favourably than the other because of their race, religion, gender, sexual orientation or other protected grounds, also known as direct discrimination. For example, when the landlord or property agent refuses to rent out the property to someone based on their race.

Indirect discrimination is where there is a requirement such as a rule or policy that is the same for everyone but has an unbalanced effect on particular groups like women, disabled people, or people of certain races. For example, when a landlord decides he will only rent his property to a family, knowing there is a large number of single workers in a particular area, who might otherwise apply to rent the property.

The tabled RTA will mainly be based on the Australian Tenancy Act 1997, which is currently being used in New South Wales and Victoria (Property Guru, 2020). The RTA was set to change in the first quarter of 2022. Presently, there has been no update about the tabled law as the governing party changed in 2021.

Based on the timeline shown, there were attempts by the government to enforce a law in preventing discrimination on housing but none of these attempts has been implemented in the Federal constitution. We strongly urge the newly-elected Minister of Housing to push this law forward and enforce it as soon as possible as shelter is a basic human right need and no authority should have the right to revoke this need from anyone else.

5. Anti Discrimination Laws

a. Case study: Australia

In Australia, the Racial Discrimination Act 1975 (RDA) protects residents from any forms of discrimination (race, nationality, ethnicity) in areas such as employment, education, housing or access to public places (Racial Discrimination, 2014). As per Section 12 of the RDA (Racial Discrimination Act 1975), principals or agents must not refuse to dispose of a property, disallow an individual from acquiring or leasing, terminating a lease of a potential buyer or tenant due to their race, color, nationality or ethnicity.

In addition, every state in Australia has its own anti-discrimination law (e.g., Victoria has the Equal Opportunity Act 2010 that protects their resident from discrimination). It has its own governing body that instils the law and investigates all complaints submitted by individuals who have faced any forms of discrimination (e.g., Victoria has the Victorian Equal Opportunity to oversee any complaints on discrimination.). Also, regardless of your location, complaints of discrimination can be submitted to the Australian Human Rights Commission for investigation (Rights in Your State or Territory, n.d.). Besides, as Australia is a multicultural country, the Human Rights Commission acknowledges that not all residents of Australia are fluent in English; thus, they accept applications from any language, and they are more than happy to provide a translator or interpreter for the complainant (Complaints under the Racial Discrimination Act, n.d.) .

b. Case Study: United Kingdom (UK)

Like Australia, the UK has a similar law that protects residents from discrimination, the Equality Act 2010. Under Part 4 of the Act, a person must not refuse to dispose of a property, disallow an individual from acquiring or leasing, mistreating or evicting someone from a residential or business accommodation based on their race or ethnicity (Equality Act 2010). On top of that, Section 9 the Act goes into depth of race's definition, including color, nationality, ethnicity, and national origins (Equality Act 2010).

Similarly, suppose individuals feel that they were discriminated against in regards to housing. In that case, they have the right to file a complaint to either their local council or the Housing Ombudsman. Before that, individuals are suggested to send an informal letter to the agent or principal that has discriminated against them detailing the incident. If they took no further actions, such individuals should escalate it to a formal complaint and submit it to their local council or any housing association. Compared to the informal complaint, local councils and most housing associations are obligated under the "Public Sector Equality Duty" or "Public Law" to investigate all complaints filed by individuals (Complaining about housing discrimination, 2019).

However, it is worth noting that despite such anti-housing discrimination laws being implemented in Australia and the UK, residents of such countries still experience housing discrimination. For instance, in the UK, Black and Asian people were 5 times more likely to experience discrimination when looking for a place than Caucasians (Butler, 2021). In Australia, 3% of the complaints received by the Australian Human Rights Commission were related to housing discrimination for the year 2019-2020 (it should be highlighted that such numbers may be underrepresented as most people would be afraid to voice out when they face discrimination or they are unaware of what are the proper channels) (Australian Human Rights Commission 2019-20 Complaint statistics, n.d.).

As previously mentioned, unlike the UK and Australia, Malaysia, despite being a multiracial country, still does not have a specific law protecting their residents from any form of discrimination in regards to housing, in spite of many of such cases occurring country-wide and not having a proper governing body to investigate such cases.

c. Malaysia

Therefore, the Malaysian government should firstly continue the efforts of tabling the RTA to ensure the interest of both tenants and landlords are kept. On top of ensuring direct and indirect discrimination are prevented in the housing industry, the government should look into introducing exclusionary (pre-acquiring or leasing a property) and non-exclusionary (post-leasing a property) policies. Diving into the details, exclusionary policies would include banning landlords and agents from preventing certain individuals or families from acquiring or leasing a property due to their race through explicit refusal (advertisement stating a certain race are not allowed to apply) or any form of discrimination. Furthermore, non-exclusionary policies include ensuring landlords or agents from evicting and terminating the tenant's lease or mistreatment of tenants purely due to their racial background.

Besides, the Ministry of Housing and Local Government should define racial discrimination as done by the UK and not just limiting racial but also national origin to ensure that international students and foreign workers in Malaysia are not discriminated against. Moving forward, the ministry must also set up a governing body that oversees discrimination incidents and instil the policies mentioned above to ensure that all residents in Malaysia are not discriminated against due to their race, ethnicity, or national origin.

Bibliography

1. Annuar, A., 2017. Four years on, Ridzuan Condominium attempts to ban 'Africans' again. Malay Mail, [online] Available at: <<https://www.malaymail.com/news/malaysia/2017/11/05/four-years-on-ridzuan-condominium-attempts-to-ban-africans-again/1502637>> [Accessed 24 September 2021].
2. Australian Human Rights Commission. 2014. Racial Discrimination. [online] Available at: <<https://humanrights.gov.au/our-work/employers/racial-discrimination>> [Accessed 9 October 2021].
3. Australian Human Rights Commission. n.d. Australian Human Rights Commission 2019-20 Complaint statistics. [online] Available at: <https://humanrights.gov.au/sites/default/files/2020-10/AHRC_AR_2019-20_Complaint_Stats_FINAL.pdf> [Accessed 9 October 2021].
4. Australian Human Rights Commission. n.d. Complaints under the Racial Discrimination Act. [online] Available at: <<https://humanrights.gov.au/our-work/complaint-information-service/complaints-under-racial-discrimination-act-0>> [Accessed 9 October 2021].
5. Butler, P., 2021. Black, Asian and disabled tenants 'more likely to face housing discrimination'. [online] The Guardian. Available at: <<https://www.theguardian.com/society/2021/may/26/black-asian-disabled-tenants-more-likely-face-housing-discrimination>> [Accessed 9 October 2021].
6. Citizens Advice. 2019. Complaining about housing discrimination. [online] Available at: <<https://www.citizensadvice.org.uk/housing/discrimination-in-housing/taking-action/complaining-about-housing-discrimination/>> [Accessed 9 October 2021].
7. Delegates of Reid Commission and Cobbold Commission, 1957. Constitution of Malaysia 1957 - Part II. [online] Available at: <<http://www.commonlii.org/my/legis/const/1957/2.html>> [Accessed 1 September 2021].
8. Durai, A., 2015. Room-hunting college students face racism in Malaysia. [online] R.AGE. Available at: <<https://www.rage.com.my/renter-bender/>> [Accessed 23 September 2021].
9. Hirschman, C., (1986). 'The Making of Race in Colonial Malaya: Political Economy and Racial Ideology'. Sociological Forum (Randolph, N.J.) 1 (2) (Apr 1,): 330-361. DOI:10.1007/BF01115742. Available at: <https://www.jstor.org/stable/684449>. [Accessed 2 September 2021].
10. Ho, K., 2019. A fifth of Malaysians have faced ethnic discrimination when renting property. [online] YouGov. Available at: <<https://my.yougov.com/en-my/news/2019/02/14/fifth-malaysians-have-faced-ethnic-discrimination-/>> [Accessed 9 September 2021].

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11. IUT. 2018. Malaysia: How landlords get away with racism. [online] Available at: <<https://www.iut.nu/news-events/how-landlords-get-away-with-racism-in-malaysia/>> [Accessed 16 September 2021].
12. Kumar, P.R., 2020. [Twitter] 15 November. Available at: <<https://twitter.com/pingster2008/status/1327921431477252096>>
13. Lim, I., 2020. In spotlight on Indians' home-renting difficulties, lawyer says no law in Malaysia against individuals' racial discrimination. Malay Mail, [online] Available at: <<https://www.malaymail.com/news/malaysia/2020/12/23/in-spotlight-on-indians-home-renting-difficulties-lawyer-says-no-law-in-mal/1934324>> [Accessed 23 September 2021].
14. Malaysiakini. 2019. Gov't mulls including 'anti-racial discrimination' to fair housing policy. [online] Available at: <<https://www.malaysiakini.com/news/473805>> [Accessed 25 August 2021].
15. Malaysiakini (2020). 'YOURSAY | Honestly, are Malaysians racist?'. Malaysiakini, 14 December [online]. Available at: <https://www.malaysiakini.com/news/555082> [Accessed 2 September 2021]
16. National House Buyers Association., 2020. New Residential Tenancy Act to address racist landlords - Is this a smart move? - iproperty.com.my. [online] Available at: <<https://www.iproperty.com.my/news/residential-tenancy-act-malaysia/>> [Accessed 25 August 2021].
17. Ng, K., 2018. Racism in Malaysia's housing market: how landlords get away with barring African and South Asian tenants. South China Morning Post, [online] Available at: <<https://www.scmp.com/lifestyle/article/2127261/racism-malaysia-and-struggle-africans-and-south-asians-rent-kuala-lumpur>> [Accessed 9 September 2021].
18. Nur Amali Aminnuddin and Juliet Wakefield, (2020) 'Ethnic differences and predictors of racial and religious discriminations among Malaysian Malays and Chinese'. Cogent Psychology, 7:1, Available at: DOI: 10.1080/23311908.2020.1766737 [Accessed 2 September 2021].
19. Property Guru., 2021. What Is The Upcoming Residential Tenancy Act All About?. [online] Available at: <<https://www.propertyguru.com.my/property-guides/what-is-the-upcoming-residential-tenancy-act-all-about-44122>> [Accessed 25 August 2021].
20. Selladurai, R., 2020. Residential Tenancy Act (RTA) To Stop Racial Discrimination In Malaysia's Rental Market! - Varnam MY. [online] Varnam MY. Available at: <<https://varnam.my/community/2020/35412/alleged-racial-discrimination-in-malaysias-rental-market-is-real-its-not-okay/>> [Accessed 25 August 2021].
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21. Tan, Y.L., 2016. Anti-African banner is unacceptable, says Proham. The Star, [online] Available at: <<https://www.thestar.com.my/news/nation/2016/06/22/anti-african-banner-is-unacceptable-says-proham/>> [Accessed 23 September 2021].
22. The Star, 2016. Anti-African banner is unacceptable, says Proham. [image] Available at: <<https://www.thestar.com.my/news/nation/2016/06/22/anti-african-banner-is-unacceptable-says-proham/>> [Accessed 23 September 2021].
23. Women With Disabilities Australia 2020. n.d. Rights in Your State or Territory. [online] Available at: <<https://oursite.wwda.org.au/your-rights/your-rights-in-your-state-or-territory>> [Accessed 9 October 2021].
24. Racial Discrimination Act 1975.12 [online] Available at: <https://www.legislation.gov.au/Details/C2016C00089> [Accessed 24 Oct. 2021].
25. Equality Act 2010.32,33,34,35,36,37,38 [online] Available at: <https://www.legislation.gov.uk/ukpga/2010/15/part/4> [Accessed 29 Oct. 2021].
26. Equality Act 2010.9 [online] Available at: <https://www.legislation.gov.uk/ukpga/2010/15/section/9> [Accessed 29 Oct. 2021].