

Media Freedom and Legislation in Malaysia¹

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ABSTRACT

This paper is about Malaysian regulation with regard to the issue of media freedom. Malaysia has many laws that restrict the function of the media, either printing media, broadcasting media or the Internet. The sources of the restriction can be found in Federal Constitution and many laws such as the Internal Security Act, Sedition Act, Printing Presses and Publications Act, and others. This restriction is actually limiting the degree of democracy practised in this country. With the cases listed, this paper is in the intention to expose the limitation of media freedom in Malaysia.

Keywords: *Federal Constitution, laws, restriction, degree of democracy*

Kebebasan Media dan Perundangan di Malaysia²

ABSTRAK

Artikel ini ialah mengenai perundangan di Malaysia yang berkaitan dengan isu kebebasan media. Malaysia mempunyai banyak undang-undang yang menyekat fungsi media sama ada media percetakan, media penyiaran atau Internet. Sumber-sumber sekatan boleh didapati di dalam Perlembagaan Persekutuan dan banyak undang-undang seperti Akta Keselamatan Dalam Negeri, Akta Hasutan, Percetakan Persidangan dan Akta Penerbitan, dan lain-lain. Sekatan sebenarnya menghadkan tahap demokrasi yang diamalkan di dalam negara. Dengan kes-kes yang dipaparkan, artikel ini bertujuan untuk mendedahkan sekatan kebebasan media di Malaysia.

Katakunci: *Perlembagaan Persekutuan, undang-undang, sekatan, tahap demokrasi*

INTRODUCTION

Freedom in the press is valuable if people have full and true information on all matters of public interest. Democracy requires that the people should be able to know everything that is in their interest to know, and that it is the duty of the media to collect such information and communicate it to the masses. Patrick Birkinshaw (1996: 14) argues that while information itself is important, our ability to discern the degree of the reliability of the information provided is essential in the exploitation of resources or relationships, or in the exposure of sham. Information acquired through scientific enquiry establishes that it is irrational to believe that consulting the auspices, the stars or the tea leaves is a reliable indication of future events. Information is necessary to make sensible choice or wise judgement. Moral and ethical evaluation depends upon information acquired through our own and our predecessors' experience. Information in the form of facts institutes the basis of order in our lives, of community, regularity and knowledge.

¹ Paper presented at the International Conference on Corporate Law 2009 (ICCL 2009) on 1-3 June 2009, Universitas Airlangga Surabaya, Indonesia

² Paper presented at the International Conference on Corporate Law 2009 (ICCL 2009) on 1-3 June 2009, Universitas Airlangga Surabaya, Indonesia

In practice, it is the media that can provide most effective search for such information, and disseminate it. The access to all necessary information is a pre-requisite for the media to discharge its functions of informing and educating the people and for acting as the watchdog of their interests. Every democratic regime should, as an essential attribute of it, give access to its citizens to all the requisite information and media can perform its proper role. In Malaysia, the government uses legal measures to contain the media from being critical and perform as civil society that encourages public deliberation. Many accuse the government of manipulating the media as tool for propaganda in ensuring the ruling Barisan Nasional (BN) government maintains its status quo as the power holder. However, the government argues that it has to restrict and control the press because Malaysia as a multicultural, multiracial and multireligious country has many sensitive considerations before press freedom could be implemented. Despite Malaysia should be cautious about the issues of pornography and hate speech, the government also argues that it favours or prioritises the economic and development issue than the issue of free press. Therefore, this paper will analyse thoroughly the media laws and issues surrounding them.

MEDIA FREEDOM

The mass media includes radio, television, magazines, newspapers, and the Internet³. The concept of media freedom developed in the seventeenth and eighteenth centuries in the United States (US) and Europe. The mass media, however, began to come into being only in the 1830s with the penny press (Lichtenberg 1987: 350). Prior to this, political newspapers circulated only among elites, made no pretence of objectivity or neutrality, and were marked by a degree of vitriol and bias unmatched today. They were financed by political parties, candidates for office, or political factions, who were directly responsible for editorial policy (Schudson 1978: 14-15). Media freedom has been given a wide and confusing array of interpretations, evident in a study conducted by the Indian Press Commission which indicated that people variously understood media freedom to mean (Holland 1956, Jeffery 1986: 198-199):

1. Freedom from legal restraint – liberty, that is to say, to publish any matter without legal restraint or prohibition;
2. Freedom from prejudices and preconceived notions;
3. Freedom from the executive control of government;
4. Freedom from the influence of advertisers, or proprietors and pressure groups; and
5. Freedom from want – freedom from dependence on others for financial assistance.

In fact, all these factors are important facets of media freedom and all five should no doubt be satisfied before media freedom can be said to enjoy a real significance.

The intellectual heritage of the idea of free speech and free media is long and impressive. In 1644, John Milton (1644/1971) defended the freedom of the press and demanded the freedom to express his opinions above all other freedoms. Two centuries later, John Stuart Mill (1859/1974: 76), one of the most renowned philosophical advocates of the concept of liberty, stressed the importance of free flow of ideas and opinions. He emphasised the importance of freedom of opinion and expression to the free functioning of modern, democratic societies where the truth is upheld. The press undeniably plays a pivotal role in enabling the right of the individual for free speech to be exercised, as the press functions as conduit for

³ I will use the word ‘press’ and ‘media’ interchangeably.

disseminating information, which in turn contributes to the development of societies as a whole. Without the open communication of ideas and information, societies would remain in the darkness of ignorance. Moreover, a free press and democracy are complementary to each other. The media helps to preserve and promote democracy by safeguarding the independence of its institutions and ensuring their accountability as well as by facilitating the communication of ideas and policies.

THE BACKGROUND OF MALAYSIAN MEDIA

In Malaysia, during the period of the nineteenth century, more than forty English language newspapers appeared in the Malay peninsular. What was obvious about the early English newspapers, which were published by the British colonial administrators, was that the newspapers were driven to serve British interests in Malaya and particularly to cater to the business community (Dhari 1992). By the end of nineteenth century, there was a revelation of people movement in instigating the public sphere in the media. However, this movement was influenced by ethnocentrism and ethnic-oriented media which was to provide news for certain respective communities only. For instance, when the Chinese Revolution ended at China in 1911, the local Chinese newspapers changed their focus to commerce. ‘Sin Chew’, for instance, founded by the Aw Boon Haw family and famous for its Tiger balm skin ointment, was used as a vehicle to promote its company’s product (Halimahton 2006: 3). The seeds of ethnocentrism were further sown when the Malays published the Malay newspapers in the 1870s and 1900s. Early Malay journalism in Malaya was pioneered by non-Malays in particular the Indian Muslims, the Arabs and Baba Chinese. The first Malay weekly, ‘The Jawi Peranakan’ was published in 1876 at Singapore. This was followed by other publications at Singapore, such as ‘Sekolah Melayu’ (1888), ‘Peranakan’ (1891) and ‘Bintang Timor’ (1894), and at Perak, ‘Sri Perak’ (1893) (Dhari 1992). The Indian press too highlighted Indian interests. Newspapers like ‘Tamil Nesan’ and ‘Tamil Murasu’ carried the plight of the Indians in the estates and other economic sections, championed Indian education, helped spread literary works and became the vehicle for political demands (Arabi 1989; Halimahton 2006: 4).

Malay, Chinese and Indian communities published their own newspapers for their own distinct and separate spheres and agendas. This ethnocentrism, in content and organization, progressed through the 21st century to a point where the press system in Malaysia today is actually a legacy of the colonial past (Dhari 1992). The emergence of the public sphere or in Habermas’ term, bourgeois public sphere, eventualised at the same time as the emergence of the nationalist movement in Malaya. The spirit of nationalism among local people exploited the democratic approach of the self-determination and freedom of the press introduced by the British, and used them to confront the British with demands for independence. In the early decades of twentieth century, the public sphere flourished when Malay nationalists utilized newspapers as a channel for expressing Malay interests and opposition to British administration policies. ‘Kaum Muda’ (Youth Group) was the first nationalist group that used a newspaper to spread its views especially about the Malay’s struggle against colonization, education and Islamic teachings (Abdullah 1985: 85-87). In the publication of the newspaper ‘al-Imam’ in 1906, ‘Kaum Muda’ highlighted the evil of Western (British) colonization, the value of political freedom, and the role of national sentiment among Muslim local peoples (Khoo et. al. 1982: 8). National sentiment was used to strengthen the local movement for independence.

The press was used as an obvious tool to instill the bourgeois public sphere through encouraging the nationalist movements against the British. The British finally granted Malaya independence in 1957. For the first time, freedom of the press was practiced in the 1951, 1952 and 1955 elections and later institutionalised in the Federal Constitution in 1957. The development of Malay politics was made possible by Malay press (Arabi 1989). The new government of Perikatan party realised the powerful influences of the press and decided to control it.

Government and opposition parties permitted freedom of the press through print and electronic media as tools for campaigning in the general election in 1964, although, in fact, most were biased towards the governing Perikatan party. Freedom of the press was increasingly restricted under the Internal Security Act (ISA), Sedition Act (SA), and the Printing Presses and Publications Ordinance. For instance, the Socialist Front newspapers, the 'Berita Buroh' and 'Nyala', were banned under the Printing Presses and Publications Ordinance, due to the party's pro-communist stand (Ratnam and Milne 1967: 200), and some of the party's leaders were also arrested under the ISA in the 1960s. The Perikatan government recognised the enormous impact of the media on the community and its capacity to change people's perceptions of the government. Therefore, the Perikatan government leaders, in securing its political power, had made the decision to take over the press. The first attempt was made when the United Malays National Organisation (UMNO) attempted to take over 'Utusan Melayu' newspaper after the 1959 General Election, which eventually succeeded in 1961. An UMNO political leader from the state of Terengganu, Ibrahim Fikri Mohamad, the Chairman of the newspaper's publication company, moved to take over the newspaper. It triggered off not only a major strike, by allowing government's intervention in the 'Utusan Melayu' (Hussain 1999: 26). Although the government started the initiative to curb the press in the 1960s, the racial tension on 13 May 1969 gave a huge opportunity and justification for the ruling party to control the public sphere of the Malaysian media in 1970s.

Mahathir Mohamad was the Fourth Prime Minister of Malaysia since 16 July 1981. Mahathir instigated more autocratic and increasing control of the media. He implied that racial conflict and political instability were inevitable in a multiracial society unless protected by laws like the ISA, the Printing Presses and Publications Act (PPPA) and the SA. The amendment of laws by Mahathir was presented as a preventative action starting from an operation named '*Operasi Lalang*' (Weed Operation) on 27 October 1987. Three major newspapers, the English-medium 'Star', the Chinese 'Sin Chew Jit Poh' and the Malay weekly 'Watan' had their licenses revoked (Milne and Mauzy 1999: 107-110) and by the end of the 1980s, Mahathir had a firm hold on all power and strongly applied the refeudalization process.

Malaysian media however also flourished when Mahathir introduced a privatisation strategy through the Malaysian Incorporated policy. By the end of 31 December 1995, he, also a Home Minister, approved 3,206 licenses for publications which constituted of 149 licenses for newspapers and 1,875 licenses for magazines (Safar 1996: 9). However, the commercialisation of the media in Malaysia could not sustain its original intention. In fact, the press had become an institution protected for the government, not from the government. The presses were privately owned via proxy companies which held good relationships with political elites in the government.

The consequences of media policy in Malaysia under Mahathir's leadership, and also his successor Prime Minister Abdullah Ahmad Badawi, was that many local newspapers, especially daily newspapers, were either controlled or owned by the Barisan Nasional (BN or National Front-previously known as the Perikatan party until 1 June 1974) party in order to dominate the public sphere of the media. For example in 2007, Media Prima Berhad, with a close link to UMNO, acquired all the private television stations including 'TV3', 'NTV7', '8TV' and 'TV9', after public television 'RTM' directly controlled by the Information Ministry. Media Prima Berhad also currently holds for example a 43 percent equity interest in The New Straits Times Press (Malaysia) Berhad (NSTP), one of Malaysia's largest publishing groups which publishes leading newspaper titles such as the 'New Straits Times', 'Berita Harian' and 'Harian Metro'. The Group also owns two radio networks, 'Fly FM' and 'Hot FM' (Media Prima 2007: 1). The result is that freedom of the press and an open public sphere are almost non-existent in Malaysia, where the government has a full power to control the media and restrict the alternative or opposition media. Clearly, the policy to control the media in Malaysia is a way to deter dissent or criticism against the government and this runs at odds with the principals of democracy. Although the issue of racial harmony is a determining factor in the policies that hinge media laws, the government manages to manipulate the

system by controlling the media to strengthen its power and dominate the public sphere (Azizuddin 2004: 12-22).

With regard to current Malaysia's prime minister, Najib Tun Razak also imposes several restrictions to the media. For example, the *Merdeka Review* reported on 15 May 2009 that seven 'sensitive' matters have been banned from being discussed on air in RTM radio programs to prevent 'controversy'. The banned topics were the opposition party politics, sex, race, language, religion, the monarchy, and morale related to current political developments (Gan 2009: 1). About two weeks after Najib became premier, the four private TV stations under Media Prima – TV3, NTV7, 8TV and TV9 – were ordered not to name political analyst Abdul Razak Baginda, Najib's close aide, when reporting on the Altantuya murder case. In fact one NTV7 talk show host-cum producer, Florence Looi, was issued a warning letter by her management and downgraded in her responsibilities after she was considered violating the NTV7's 'editorial policy'. This happens because she asked one of her two guests on her current affairs show, *Point of View*, dated 5 July 2009, to rate Najib's performance in his first 100 days. The guest, Leslie Lau, a *Malaysian Insider* consultant editor, gave Najib a 'C' or 'D', a bad rating (Surin 2009: 1-3).

What is certain is that, the Malaysian constitution guides and legislatures restrict media freedom through a number of Acts. Among them are the Internal Security Act (ISA), Sedition Act (SA), and Printing Presses and Publications Act (PPPA) plus several specific media Acts such as the Broadcasting Act, the Malaysian Communications and Multimedia Commission Act, the Communications and Multimedia Act, the Control of Imported Publication Act, the BERNAMA Act, and the FINAS Act. The government uses these restrictive laws to limit the function and role of media industry in the country.

THE FEDERAL CONSTITUTION

Freedom of expression and press is formally assured by Part II of the Federal Constitution under Article 10(1) entitled 'Freedom of Speech, Assembly and Association'. Article 10(1) allows a) every citizen has the right to freedom of speech and expression; b) all citizens have the right to assemble peaceably and without arms; and c) all citizens have the right to form associations. However, although citizens have a right to freedom of expression and press, Section 2 of the Article limits the right where Parliament may by law impose:

- (a) On the rights conferred by paragraph (a) of Clause (1), such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof, friendly relations with other countries, public order or morality and restrictions designed to protect the privileges of Parliament or of any Legislative Assembly or to provide against contempt of court, defamation, or incitement to any offence; (Federal Constitution 1999: 11)

Based on the provision above, the Barisan Nasional (BN) government has sought to protect institutions i.e. the Parliament, Courts and federal and states government from a loss of credibility and confidence arising from criticism facilitated by the practice of freedom of expression and press. The BN government has tried to avoid any misuse and exploitation of the freedoms by the citizens or foreigners that could embarrass the nation and in particular the government. For instance, the Malaysian government supported the 12 weeks' imprisonment (reduced on appeal to six weeks) of Murray Hiebert, a *Far Eastern Economic Review* journalist, on 4 September 1997 for his article entitled '*See You in Court*' which scandalised the court and threatened the credibility of judicial institutions⁴.

⁴ Murray Hiebert faced a jail sentence as he prepared to appeal a conviction for writing a 'defamatory' article about the speedy processing of a lawsuit brought by the wife of a prominent Appeal Court judge. Addressing the growing

Article 10(4) explains the reason for restricting freedom of expression and the press:

In imposing restrictions in the interest of the security of the Federation or any part of thereof or public order under Clause (2) (a), Parliament may pass law prohibiting the questioning of any matter, right, status, position, privilege, sovereignty or prerogative established or protected by the provisions of Part II, Article 152, 153 and 182 otherwise in relation to the implementation thereof as may specified in such law.

(Federal Constitution 1999: 12)

The provision of Article 10(4) was part of the amendment of the Federal Constitution in 1971 and was enforced on 10 March 1971 as a reaction to the racial conflict of 13 May 1969. During five weeks of the 1969 General Election campaign and before the racial tension erupted on 13 May 1969, the Perikatan party (now BN) faced a stiff challenge from the opposition parties, especially the Democratic Actions Party (DAP) and the Gerakan party (in the 1974 General Election, Gerakan had joined BN and currently still coincides with the BN). The opposition was accused by the Perikatan of using freedom of expression and the press to exploit racial sentiments and dissatisfaction among non-Malays, particularly Chinese and Indians, over the special rights of Malays with respect to particular occupations and higher posts in the public sectors and bringing to an end Chinese hegemony in the business industries (Comber 1983: 63). A State of Emergency was declared after the racial clash. The Federal Constitution was also amended to prohibit anyone including members of Parliament during Parliamentary sessions from questioning Part III of the Federal Constitution on Citizenship, Article 152 on National Language, Article 153 on Malay special rights to a quota of public service posts, permits and university enrolments, and Article 181 on saving for Rulers' sovereignty⁵ (Rais 1995: 168).

THE INTERNAL SECURITY ACT 1960

In 1960, the government made a decision to end the state of emergency caused by communist insurgency, despite the fact that the threat was still extant. As a result, the government took an initiative to create a new law, similar to Emergency Ordinance 1948 in the insurgency period called the Internal Security Act (ISA), with its main objective to eliminate the subversive threat and extinguish terrorism (Wu Min Aun 1999: 268).

There are a few provisions under the ISA restricting people's freedom in Malaysia mainly in term of freedom of expression and the press. Section 8(1) of the ISA provides:

If the Minister (Home Minister) is satisfied that the detention of any person is necessary with a view to preventing him from acting in any manner prejudicial to the security of Malaysia or any part thereof or to the maintenance of essential services therein or to the

level of spurious litigation in the Malaysian courts, Hiebert highlighted the RM 6 million damages being sought by the mother of Govind Sri Ram against the International School of Kuala Lumpur for 'unfairly dropping' her son from the school debating team. Noting the student's father as Court of Appeals judge Gopal Sri Ram, Hiebert commented that 'many are surprised at the speed with which the case raced through Malaysia's legal labyrinth'. Awaiting appeal, Hiebert had his Canadian passport held for two years (Hilley 2001).

⁵ Article 181 entitled 'Saving for Rulers' sovereignty, etc. says:

- (1) Subject to the provisions of this Constitution, the sovereignty, prerogatives, powers and jurisdiction of the Rulers and the prerogatives, powers and jurisdiction of the Ruling Chiefs of the Negeri Sembilan within their respective territories as hitherto had and enjoyed shall remain unaffected.
- (2) No proceedings whatsoever shall be brought in any court against the Ruler of a State in his personal capacity except in the Special Court established under Part XV.

economic life thereof, he may make an order (hereinafter referred to as a detention order) directing that person be detained for any period not exceeding two years. (ISA 1998: 187)

Clearly this shows that Home Minister has the power to determine whether an individual should be arrested under ISA because his or her acts may be judged by the police and Home Ministry as a threat to the country or even to the government. Section 8(5) further allows for ‘restriction orders’, i.e. imposing restrictions on a person’s freedom of movement, freedom of association and freedom of expression if the Minister is satisfied that such restrictions are necessary for the above-mentioned purposes (SUARAM 2003a). Section 8(5) mentions that if the Minister is satisfied that any purposes mentioned in subsection (1) it is necessary that control and supervision should be exercised over any person or that restriction and conditions should be imposed upon that person in respect of his activities, freedom of movement or places of residence or employment, but that for that purpose it is unnecessary to detain him he may make an order (hereinafter referred to as ‘a restriction order’ imposing upon that person all or any of the following restrictions and conditions:

- (a) for imposing upon that person such as may be specified in the order in respect of his activities and the places of his residence and employment;
- (b) for prohibiting him from being out of doors between such hours as may be specified in the order, except under the authority of written permit granted by such authority or person as may be so specified;
- (c) for requiring him to notify his movement in such manner at such times and to such authority or person as may be specified in the order;
- (d) for prohibiting him from addressing public meetings or from holding office in, or taking part in the activities as adviser to, any organisation or association, or from taking part in any political activities; and
- (e) for prohibiting him from travelling beyond the limits of Malaysia or any part thereof specified in the order except in accordance with permission given to him by such authority or person as may be specified in such order.

In addition Section 22(1) empowers the Minister to ban the printing and circulation of publications that are deemed prejudicial to security and public order. He may do so if he finds that the publication (ISA 1998: 198-99):

- (a) contains any incitement to violence;
- (b) counsels disobedience to the law or any lawful order;
- (c) is calculated or likely to lead to the breach of the peace, or to promote feelings of hostility between different races or classes of the population; or
- (d) is prejudicial to the national interest, public order, or security of Malaysia.

Detention under the ISA could not be challenged in any courts with no role for judicial review. In 1989, the Parliament passed amendments to the ISA where Section 8B(1) prevents any acts of the Minister taken under the ISA from being brought into question by the courts. Section 8B(1) as amended reads:

There shall be no judicial review in any court of, and no court shall have or exercise any jurisdiction in respect of, any act done or decision made by the Yang di-Pertuan Agong or the Minister in the exercise of their discretionary power in accordance with this Act, save in regard to any question on compliance with any procedural requirement in this Act governing such act or decision. (ISA 1998: 180)

Mahathir Mohamad, Malaysia's Prime Minister, argued that the government alone was able to determine, from information it received, what action was necessary to preserve the country's stability and security and that:

It is not appropriate for us to follow the practice in other countries where courts play an interventionist role in substituting the decisions of the Executive as this is against the concept of 'separation of powers' between the Executive and the Judiciary. (Amnesty International 1999: 13)

Printing and electronic media are restricted – both printing and broadcasting media are limited in voicing out good news about the government leaders and race relations in Malaysia. Besides, there is a strict policy for the media practitioners especially the journalists in reporting the news if it is against the government policy and inflicts political instability in the country.

The person responsible for drafting the ISA in 1960, R.H.Hickling, agreed that the act had become tougher and was open to mishandling by the government for political reasons:

Since I drafted the original act, the ISA has been tightened up and tightened up until now there's no provision for judicial review. Unfortunately over the years the powers have been abused. Instead of locking up people suspected of organizing violence, which is the phrase used in the preamble to the ISA, it's been used to lock up political opponents, quite harmless people. (Wu Min Aun 1999:269)

In November 2002, Sarawak police chief Mohd Yusoff Jaafar threatened to use the ISA against those who posted 'seditious' messages on a popular website, *'Sarawak Talk'* that could stir up racial and religious hatred or threaten the peace in the state. He added that the police could trace them even if they had pseudonyms and that his men were very close to apprehending them. In December 2002, a total of 10 persons were arrested under Section 28 of the ISA for allegedly disseminating false reports in e-mails warning of pre-planned bombings in Kuala Lumpur. Police also seized personal computers allegedly used to forward the e-mail. All of them have since been released on bail. The offence carries a fine not exceeding RM 5,000, imprisonment for a term not exceeding three years or both. Following the incident, Deputy Education Minister Abdul Aziz Shamsuddin said that the UMNO supreme council meeting had discussed the viability of imposing harsher sentences, including whipping, on those who spread rumours or sent poison pen letters, as their actions could threaten national stability (SUARAM 2003b: 36).

THE OFFICIAL SECRET ACT 1972

The Official Secret Act (OSA) 1972 (Act 88) replaced the Malay States Official Secret Ordinance 1950 and was based on the British OSA 1911 and 1920. It was intended to curb and protect government secrets from falling into the hands of foreign agents or countries where this might be detrimental to national security. However the OSA was also seen to impose wide, largely unjustified restrictions on the rights to freedom of expression and press, and on the examination and discussion of issues of public interest by the political opposition. By curbing access to public information and information relating to the public interest, the electorate's right to know was curtailed and the means to uphold public accountability

weakened (Amnesty International 1999). The OSA defines an official secret as any documents of the Cabinet, State Executive Council and documents concerning national security, defence and international relations. However, under Section 2 of OSA defines official secret as any official letters, information, and other material which is classified by the Minister, the Chief Minister of state or appointed public officers as ‘Top Secret’, ‘Secret’, ‘Confidential’ or ‘Restricted’ (OSA 1998: 277). Section 2B allows the Minister and the Chief Minister of State appoint public officers through a letter of approval signing by the Minister and the Chief Minister of State to classify any official letters, information or material as ‘Top Secret’, ‘Secret’, ‘Confidential’, or ‘Restricted’ (OSA 1998: 280). The Minister and the Chief Minister of State have a total control of the government documents and can hold it as secret as long as they want. It can therefore, cover any government document, and because of the unclear meaning of the word ‘secret’, any ministers and public officers could effectively classify any documents, materials and information as secret whenever they wish. As a result of the broad powers they have, many government documents are unjustly classified as ‘official secret’, which seriously undermines the right to information. Moreover, under Article 16A, the decision of ministers and appointed public officer in classifying official secret is final and cannot be challenged in court. It looks like a denial of the right to judicial review and an abrogation of the power of the judiciary (Yap S.S. 2002).

When the government amended the Act in 1983 and again in 1986, there were many criticisms from the opposition as well as non-governmental organisations (NGOs) who were worried that the act could be misused (Aziz B. 1999: 17). The 1983 amendment increased the fine as a response to the Bumiputera Malaysian Finance Ltd. (BMF) scandal. The BMF scandal had jeopardised government credibility when foreign media published articles from government sources and information from public officers, involving some of Malaysia’s political leaders. The scandal had caused BMF a major loss with a total of RM2.5 billion through Hong Kong branch. It happened when three Hong Kong land brokers turned bankrupt caused by the downturn of land market in Hong Kong. Although the loss came from the ambiguity issue in loan and the flaw of documentation, the close relations between BMF officers and few leaders might be the cause of the loss (Crouch 1996: 202). Implication from the BMF case, amendment of the OSA was done once again in 1986 to change from fine penalty to mandatory punishment for one year (Chandra 1989: 141).

On 13 January 2000, the conviction under Section 8(1)(i) OSA was of Mohamad Ezam Mohd Nor⁶, Youth Chief of the National Justice Party, for disclosing two classified Anti Corruption Agency (ACA) reports. These concerned an investigation into corruption by two political leaders, Minister of International Trade and Industry, Rafidah Aziz and former Chief Minister of Melaka, Rahim Tamby Chik (MASSA: 30)⁷. No criminal proceeding was ever initiated against the named parties. Minister in the Prime Minister’s Department, Rais Yatim, who is also the *de facto* law minister, has since said that the cases against the two ministers have been closed, as the evidence against them was unsubstantiated. However, in Ezam’s speech to the court after his conviction, he said that the ACA, as supported by the attorney general’s chamber, had recommended criminal prosecution against Rafidah on five counts of corruption and against Rahim on four counts of corruption (SUARAM 2003b: 85).

⁶ Mohamad Ezam was a Political Secretary of the sacked and imprisonment former Deputy Prime Minister, Anwar Ibrahim. At the time of conviction, Ezam was already under incarceration without trial under the ISA; he had been imprisoned since April 2001 for allegedly attempting to overthrow the government through ‘militant’ means. He also faces numerous other criminal charges of sedition, unlawful assembly and rioting (SUARAM 2003b).

⁷ Section 8(1)(i) says:

communicates directly or indirectly any such information or thing to any foreign country...or to any person other than a person to whom he is duly authorised to communicate it; (OSA 1998: 285-286)

Sections 16(1) and (2) of the OSA contain broad provisions allowing for arrest and detention without warrant, and substantially reverses the burden of proof. It states that ‘until the contrary is proven’, any of the activities proscribed under the Act will be presumed to have been undertaken ‘for a purpose prejudicial to the safety or interest of Malaysia’ (SUARAM 2003a: 11). This makes it difficult for opposition leaders who are always critical towards government policies (Chandra 1989: 137-39)⁸. For example in early case of 1976, DAP Secretary General Lim Kit Siang was found guilty of receiving and revealing information about the purchase of Swedish warships for the Malaysian Navy, a controversy which prompted allegations within and outside parliament of excessive expenditure and possible misuse of public funds. The judgment in his case established that once official documents came into possession of an unauthorised party it was *ipso facto* a violation of Section 8, if it could not be proved that the transmission of the documents was with lawful authorisation. Lim Kit Siang was fined RM15,000. However, on appeal, the Federal Court reduced the fine to less than RM2,000, and Lim Kit Siang was therefore not automatically disqualified from the Parliament (Amnesty International 1999: 28)⁹.

In 1992, civil servants and journalists allegedly involved in the leak of official documents concerning the controversial purchase of cars for Kuala Lumpur City Hall were threatened with prosecution. Then in 1995, two Harian Metro journalists in Johor were arrested under the OSA and remanded in custody for reporting a local kidnapping case using information, which the police regarded as ‘classified’. Charges were not pursued. In April 1999, Deputy Prime Minister Abdullah Ahmad Badawi (now Prime Minister of Malaysia) stated that he would issue guidelines to government media officers to clarify that the OSA should not be used by officials to suppress information from the public (Amnesty International 1999).

Although the secrecy of government documents is important for the national security, the use of the Act to shield corruption, if it happened, is clearly an abuse of power. The OSA provides that anything classified by the Executive as secret is to be treated as such, no matter what its content and clearly, the OSA can be used as a tool to restrict public freedom and to prevent people’s freedom in the press.

THE SEDITION ACT 1948

The Sedition Act (SA) 1948 (Act 15) was implemented by the British colonial government in Malaya in 1948. It was known as Sedition Ordinance 1948, designed to contain any risk to the colonial administration triggered by local people’s dissatisfaction and initiated by communist party insurgency. Chandra Muzaffar (2000: 1) believes the reason behind the creation of this law by the British was not only to contain communist militancy but also to restrain rising nationalist movements, especially from UMNO, seeking to free Malaya from British colonisation.

After the events of 13 May 1969, the SA was tightened for the purposes of national stability. Since the amendment of the Act in February 1971, the government strictly enforced the law and prosecuted anyone who questioned about the citizenship status of the non-Malays; national language and other communities language; Malay special rights or other races interests; and Malay Rulers sovereignty (Malaysia 1971:

⁸ Section 16(1) and (2) explain (OSA 1998: 293):

- (1) it shall not be necessary to show the accused person was guilty of a particular act tending to show a purpose prejudicial to the safety or interests of Malaysia;
- (2) notwithstanding that no act as stated in subsection (1) is proved against him, the accused person may be convicted if, from the circumstances of the case, his conduct or his known character as proved it appears that his purpose was a purpose prejudicial to the safety or interests of Malaysia;

⁹ Lim Kit Siang was found guilty under Section 8(1)(b) on leaking any official secrets or codes, signals, or secret words about war equipment and other tools, equipment and vehicles which being used for security and peaceful purpose of Malaysia (OSA 1998: 285).

3)¹⁰. Section 2 SA defines the word ‘seditious’ as anyone who does or attempts to do, or makes any preparation to do, or conspires with any person to do any act which has or would have a seditious tendency, who utters any seditious words, or who prints, publishes or imports any seditious publication. Furthermore, it is a crime to have in one’s possession, without lawful excuse, any seditious publication (Sedition Act 1998: 391). Seditious acts also include organising a public hearing or publishing an article which could create public disorder or instability, i.e. picketing, strikes, demonstrations, riots and undermining the credibility of government bodies such as the judiciary and the police.

As a result of racial rioting on 13 May 1969, SA has been used to prevent the media from publishing news that could create anger or disharmonious relations between races in Malaysia (Aziz Z. 1988: 147). The SA was used in 1971 to prosecute DAP parliamentarian Fan Yew Teng and party member Dr. Ooi Kee Saik. Fan Yew Teng had published an article entitled ‘*Alliance Policy of Segregation: Evidence Galore*’ in the DAP newsletter The Rocket. This was the text of a speech by Dr. Ooi, alleging that the ruling coalition policies in a number of sectors were racially discriminatory. In 1975 Fan Yew Teng was found guilty and fined RM 2,000 or a six months’ prison sentence. He then automatically lost his parliamentary seat (Amnesty International 1999).

Shad Faruqi (1989: 3) reviewed the SA in his paper entitled ‘*Laws Relating to Press Freedom in Malaysia*’. He observed that the concept of sedition in Malaysia was much broader than in the United Kingdom, Ireland, India and Australia. A Malaysian lawyer was, therefore, unable to give a clear definition of what constitutes free speech and free press and what constitutes sedition, with the consequent effect that ‘this legal uncertainty is very much in favour of the prosecutor’. Under the SA of Malaysia, sedition could be committed in any of the following ways: inciting disaffection against any Malay Ruler or government; inciting unlawful changes to any lawful matter; inciting contempt for the administration of justice; raising discontent among the people; promoting ill-will between races or classes, or questioning ‘sensitive issues’ such as citizenship, the national language, special privileges of Malays and natives of Sabah and Sarawak and the status of the Malay Rulers (Mohammad H.K. 1998: 278).

Sections 3(1) and 4(1)¹¹ tightly control the political opposition and Section 9(1) regulates the press. Section 9(1) states that anyone can be prosecuted for publishing in any presses material considered by the

¹⁰ A seditious tendency is then defined in Section 3 as follows:

- (1) A ‘seditious tendency’ is a tendency -
 - (a) to bring into hatred or contempt or to excite disaffection against any Ruler or against any Government;
 - (b) to excite the subjects of the Ruler or the inhabitants of any territory governed by any government to attempt to procure in the territory of the Ruler or governed by the Government, the alteration, otherwise than by lawful means, of any matter as by law established;
 - (c) to bring into hatred or contempt or to excite disaffection against the administration of justice in Malaysia or in any State;
 - (d) to raise discontent or disaffection amongst the subjects of the Yang di-Pertuan Agong or of the Ruler of any State or amongst the inhabitants of Malaysia or of any State;
 - (e) to promote feelings of ill-will and hostility between different races or classes of the population of Malaysia; or
 - (f) to question any matter, right, status, position, privilege, sovereignty or prerogative established or protected by the provisions of part III of the Federal constitution or Article 152, 153 or 181 of the Federal Constitution.

¹¹ Under Section 4(1) of the Sedition Act any person who:

- a) does or attempts to do, or makes any preparation to do any act which has or which would, if done, have a seditious tendency;
- b) utters any seditious words;

Court as seditious (SA 1998: 394-95). On 25 August 1998, opposition parliamentarian Lim Guan Eng was imprisoned for sedition after Court in the judgement agreed that Lim had made maliciously false statements and published them in 1995. Lim in the statements accused the Attorney General of mishandling allegations that the Chief Minister of Melaka was guilty of statutory rape of a schoolgirl. Because of his conviction, Lim Guan Eng was disqualified from being a Member of Parliament or holding elective office. He was prohibited from holding any position in a political party for five years and barred from pursuing his profession as an accountant.

The most serious defect of sedition laws in Malaysia is that they represent a disproportionately serious interference with democratic debate. Any benefits they may be deemed to bring in terms of protecting public order, which as the analysis above makes clear, are slight, are far outweighed by the harm done to freedom of expression in its most important guise, namely as an underpinning of democracy. Lee Min Choon (1989: 5) comments that some of the restrictions imposed under the SA ‘may be unreasonable’. The writer further points out that judicial construction and elaboration by the judges have not helped matters. One particular judicial remark on the meaning of ‘disaffection’ was analysed, and the assessment it invoked from the writer was that ‘this restriction tends to stifle the legitimate activities and aims of political opposition’ (Mohammad H.K. 1998: 279).

THE PRINTING PRESSES AND PUBLICATIONS ACT 1984

The Printing Presses and Publications Act (PPPA) 1984 (Act 301) was based on Printing Presses Ordinance 1948 used during Emergency period caused by communist insurgency. This Ordinance was revised in 1971 because of the rioting on 13 May 1969 to provide the power to revoke the licenses of newspapers that aggravated national sensitivities or were detrimental to national development goals. The Ordinance became the PPPA in 1984. PPPA has also been used to strengthen and tighten the law regarding the monitoring of ownership of printing presses and the production of materials such as books, papers and magazines.

Section 3 requires each publication to apply for a license or permit from Home Minister annually. This can be withdrawn without judicial review. It is systematically used to force the media to conform to government-approved views (SUARAM 2003a). Section 3 states: ‘The Minister may in his absolute discretion grant to any person a license to keep for use or use a printing press for such a period as may be specified in the license and he may in his absolute discretion refuse any application for such license or may at any time revoke or suspend such license for any period he considers desirable’ (PPPA 1997: 319-327). Under Section 7 of the PPPA, the government may at its discretion ban the publication, import and circulation of any manuscripts deemed prejudicial to ‘public order, morality, security, the relationship with any foreign country or government, or which is likely to alarm public opinion, or which is otherwise prejudicial to public interest or national interest’.

The PPPA further provides in Section 8A(1) for a jail term and/or heavy fine of RM 20,000 for editors, journalists, publishers, and printers if found guilty of ‘maliciously publishing false news’, defined as ‘not taking reasonable measures to verify the news’. Former Judge and Vice Chairman of the Malaysian Human Rights Commission, Harun Hashim (1999: 13) commented that:

c) prints, publishes, sells, offers for sale, distributes, or reproduces any seditious publication; or
d) imports any seditious publications,
shall be guilty of an offence, and shall on conviction be liable ... to a fine not exceeding RM 5000 or to imprisonment ... not exceeding three years or to both

The Act (PPPA) is clearly unconstitutional if the constitutional rights stand alone ... It imposes restrictions on the right to freedom of speech and expression, but as such restrictions are permitted by the Constitution, the law is valid.

Chandra Muzaffar (1986: 2) reviewing the PPPA wrote:

...the 1984 Printing Presses and Publications Bill removes whatever minor safeguards that now exist in checking the exercise of executive authority. It confers absolute power upon the minister concerned. Whatever his virtues as an individual, there is no doubt that he will be in a position to control the most fundamental of all freedoms—the freedom of expression. It may well give him the sort of dictatorial image that he may not desire or deserve.

The government has often threatened to terminate or not renew the license of some presses particularly newspapers from the opposition parties such as Harakah owned by Pan-Islamic Malaysia Party (Parti Islam SeMalaysia, PAS), Suara owned by Peoples Party (Parti Rakyat Malaysia, PRM) and The Rocket owned by DAP. The wider effects of the PPPA upon freedom of expression and press, the media and the development of civil society in Malaysia have been far reaching. During the *Operasi Lalang* (Weed Operation) in 1987, three newspapers, the English-medium The Star, the Chinese Sin Chew Jit Poh and the Malay weekly Watan had their licenses revoked. They resumed publication in 1988 but the ban, and resulting changes in editorial staff, engendered a climate of self-censorship among journalists which continued through the 1990s. This provoked serious domestic criticism of allegedly one-sided coverage by the mainstream press. This also remained in practice with regards to the Anwar Ibrahim case and the *Reformasi* movement in 1998 and 1999 (Amnesty International 1999). In 2000, the government party of BN did not renew the permits of magazines like Detik, Tamadun, Wasilah and a newspaper Eksklusif for criticising the government on the issues of Anwar and political rights¹². Harakah had been forced to limit its circulation from twice a week to twice a month and must sell the paper to the PAS party members only, not to the public. Executive Director for the Committee to Protect Journalists (CPJ), Ann Cooper, protested against government actions censoring the press, naming Prime Minister Dr. Mahathir Mohamad as one of the enemies of the press because the government:

... severely restricts the Malaysian public's ability to evaluate important issues facing the country ... In the absence of such alternative voices, Malaysia cannot be called a democratic state. (freeMalaysia 2000a: 1)

There are two reasons why the government wants to restrict freedom of the press and introduced PPPA in Malaysia; firstly, to ensure racial order and, secondly, to limit the ability of foreign presses in influencing people's attitudes and minds against the government and country as a whole. A statement made by former Information Ministry Parliamentary Secretary Zainuddin Maidin in May 2002 at a seminar held in conjunction with World Press Freedom Day is typical:

The big problem faced by Asian countries now after the end of the Cold War is the infiltration by subversive elements from the developed countries through their media and use of local journalists to carry out the agenda of Western media imperialism. (SUARAM 2003b: 77)

¹² Detik had been given a letter by the Home Minister asking reasons why the magazine should not be banned because of not informing the Home Ministry that the magazine had elected its new Chief Editor. Wasilah had been banned because the magazine did not put its full name Al Wasilah in the registration. Meanwhile, Tamadun had been accused and banned for writing the articles that could suspend people's reliance to the government. However, Eksklusif newspaper had been warned for spreading rumours (freeMalaysia 2000b: 2).

Mahathir (1999: 71) expresses the same view with a strong criticism to the foreign imperialist agendas:

Make no mistake. The people who control the media control our minds, and probably control the world....Not the national Governments of tiny developing nations...or the Government of powerful nations. A very few people in the west control all the international media.

For these reasons, the government uses its power to strengthen the media laws particularly the PPPA and control almost all local media companies either directly or indirectly. However, it looks like the government seeking to control people's mind, not the western media. By controlling the media, the ruling party could also contain political opposition.

Raja Aziz Adruse, a widely respected lawyer has written:

The time has come to consider seriously the validity and constitutionality of the ... Act, bearing in mind that its effect is to provide a prior restraint on the exercise of the right of free speech and expression. Instances of initially good Government becoming arrogant and corrupt through failure to check them are many. (Wu Min Aun and Hickling 2003: 134)

Such is the proposal of a wise, experienced Malaysian counsel but, alas, likely to be ignored in official circle given his constant criticism of various governmental actions.

OTHER LAWS

Beside the laws mentioned in the previous sections, there are also several laws that responsibly and specifically restrict the media such as the Broadcasting Act, the Control of Imported Publication Act, the BERNAMA Act, and the FINAS Act. The Broadcasting Act allows Information Ministry to control and monitor all radio and television channels and stop the permit of any private companies which broadcasting information that contradict with government policies or against 'Malaysian values' (Asian values from Malaysian perspective). The 1988 Act, notes Zaharom Nain (1996), was introduced:

“in anticipation of the further commercialisation of broadcasting, especially television. Indeed, in the midst of the supposed ‘deregulation’ of broadcasting (it) now gives the Minister of Information virtually total powers to determine who will, and who will not broadcast, and to determine the nature of the broadcast material...On paper, this means one individual has the power to decide.”

Under the Act, any potential broadcaster needs to apply for a licence from the minister. Further, Part III, Section 10(1) of the Act states that ‘It shall be the duty of the licensee to ensure that the broadcasting matter by him complies with the direction given, from time to time, by the minister.’ The October 1996 amendments made to the already stringent legislation were aimed at taking into account the introduction of new services, such as cable and satellite television, satellite radio, pay-TV, and video-on-demand (Zaharom 2002:129).

The Malaysian Communications and Multimedia Commission (MCMC) is the regulator for the converging communications and multimedia industry, including the Internet. At the time it was created its key role was the regulation of the communications and multimedia industry based on the powers provided for in the Malaysian Communications and Multimedia Commission Act (1998) and the Communications and Multimedia Act (1998). Pursuant to the Acts the role of the MCMC is to implement and promote the

government's national policy objectives for the communications and multimedia sector and is also charged with overseeing the new regulatory framework for the converging industries of telecommunications, broadcasting and on-line activities. Its social regulation roles include the area of content development as well as content regulation. The latter includes the prohibition of offensive content as well as public education on content-related issues (Malaysian Communications and Multimedia Commission 2004). The Section 211 of the Communications and Multimedia Act 1998 in Malaysia provides: 'No content applications service provider, or other person using a content applications service, shall provide content which is indecent, obscene, false, menacing, or offensive in character with intent to annoy, abuse, threaten or harass any person' (Communications and Multimedia Act 1998). Consensus is necessary both at the rule-generating stage and at the enforcement stage (Klein 2002; Biegel 2001: 53). However most people believe that one of the reasons the Internet worked so well and vigorous is that it has been free of government regulation (Biegel 2001: 355). The rules and regulations are believed to reduce the passion of Internet using, but ironically, the utility of websites has flourished. In 1996, when former Prime Minister, Mahathir Mohamad launched the ambitious Multimedia Super Corridor (MSC) project to attract the world's leading Information Technology (IT) companies, the government came up with the MSC Bill of Guarantees, which included a commitment that the Malaysian government would never censor the Internet. This policy has continue until today and the oppositions and civil society movements have obviously benefited from this policy by creating a new public sphere of the Internet after mainstream broadcasting and printed media are hostile to them (George 2006: 60-70).

The Control of Imported Publication Act 1959 tries to control and regulate the circulation and transmission of all foreign media publications within Malaysia, and bestows on the government the full power to ban foreign publications if the government believes that they constitute a risk to public order, morality or the security of Malaysia. A special office in the Home Ministry censors all foreign publications and has repeatedly delayed licenses for publications deemed too critical for the government. Several foreign publications have been forced to retract stories or publish public apologies after publishing articles deemed too critical for the government (SUARAM 2003a: 25). For instance, the Malaysian government stopped *The Economist* edition entitled *The World in 2004* from circulating in Malaysia because the edition included an article by the imprisoned Anwar Ibrahim criticising the Malaysian government.

The BERNAMA Act (Berita Nasional Act) was established in 1967 as the government official news agency named BERNAMA, amended in June 1990 in order to give BERNAMA exclusive rights to distribute news photographs, economic and financial data and other material. The amendment also allowed BERNAMA to ignore the international conventions protecting freedom of information (Commission on Human Rights 1998:3). The National Film Development Corporation Act (FINAS) 1981 was amended in 1984 in response to technological changes that had taken place in the film industry. The amended Act, among other things, widens the definition of film to incorporate video tapes, video discs, laser discs, and video compact discs. By doing so, officials of FINAS can exercise control over and act against people who are found to be contravening certain provisions of the Act. Under the Act, anyone who possesses three or more copies of the same film is deemed to be involved in film distribution, and therefore is required to apply for a distribution permit (Zaharom 2002: 129-130). As argued by the opposition, the government uses these restrictive laws to strengthen its power in controlling the media industry in the country. These restrictive laws are typically justified by one or more of four principal arguments: the national stability, developmental journalism, pornography and hate speech which will be discussed in the next chapter.

CONCLUSION

Malaysian laws mentioned in this chapter are definitely curbing the practice of press freedom. Although the laws should be functioned to ensure the media responsibility being practised in Malaysia, limitations especially in open public debate and political speech expressed by the opposition in the media are contradictory to the understanding about the ideal role of the media in any democracy. Malaysian government who designs and implements the legislation has given many justifications such as national security and developmental journalism in legitimising the practice of controlling and monitoring the media.

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