THE MALAYSIAN PRESS COUNCIL: TOWARDS STRIKING A BALANCE BETWEEN PUBLIC INTEREST AND FREEDOM OF PRESS

BY

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ABSTRACT

Article 10 of the Federal Constitution guarantees the right of freedom of the press in Malaysia, subject to several restrictions. Regardless, these restrictions have been viewed as repressive, which impedes freedom of the press in Malaysia. In the meantime, despite those restrictions are abled by laws, there are genuine cases that the press is in excesses in their function that threatened the public interest. The dilemma to strike a balance between the two extremes dictates the need for a new regulatory mechanism to be established; of which the main objective of this research. The researcher identifies that a Press Council is a suitable mechanism for that role. Regardless, a Press Council is yet to be a reality in Malaysia despite it was first proposed in the 1970s which is much attributed to disagreements among its stakeholders on its independence and its regulatory framework. In this research, the researcher had conducted several case studies on the existing regulatory models comprises of self-regulatory, statutory, and co-regulatory. In pursuance to this, the researcher has selected several existing press and media councils that employs those respective regulatory models as the benchmark to the study including but not limited to; the United Kingdom’s press regulatory framework, the Press Council of India, and the Danish Press Council as part of this thesis research objective. In addition to that, the researcher also looks into local regulatory bodies such as the Malaysian Communication and Multimedia Commission, Advertising Standards Advisory Malaysia and others. This research employs a qualitative method, which predominantly relies on library based and semi-structural interviews approach to achieve the above objectives. This study found that there is a crucial need to establish a press council in Malaysia and identified that a co-regulatory model is an ideal framework for the Council. The study also concludes that there are several law reforms need to be done to pave a way for its establishment.
خلاصة البحث

تتضمن المادة 10 من الدستور الفدرالي الحق في حرية الصحافة في ماليزيا، مع مراعاة العديد من القيود. وبغض النظر عن ذلك، فقد اعتبرت هذه القيود قمعية، مما يعترض حرية الصحافة في ماليزيا. وعلى الرغم من أن هذه القيود لم تتمكّنها القوانين، إلا أن هناك حالات حقيقية تفيد بأن الصحفا في ماليزيا قد تجاوز القيود في وظيفتها مما يعجّل صحافة في ماليزيا إلى إنشاء آلية تنظيمية جديدة؛ والتي كان الهدف الرئيسي من هذا البحث. يحدد الباحث أن مجلس الصحافة في ماليزيا ليس له أي هيئات تنظيمية، وانطلاقاً من ذلك، اختار الباحث العديد من مجالس الصحافة والإعلام القائمة التي تتولى نشر تلك النماذج التنظيمية المثلى كنموذج للدراسة بما في ذلك على سبيل المثال لا الحصر: إطار منظم للصحافة في المملكة المتحدة، ومجلس الصحافة في الهند، ومجلس الصحافة الدنماركي كجزء من هدف البحث. بالإضافة إلى ذلك، يبحث الباحث أيضاً في الهيئات التنظيمية المحلية مثل لجنة الوسائل المتعددة الماليزية، ومعايير الإعلام الاستشارية في ماليزيا وغيرها. ويستعرض هذا البحث منهجية نوعية، والتي تعتمد على المقابلات المكتبية وشبكة المقابلات لتحديد الأهداف المذكورة أعلاه. وجدت هذه الدراسة أن هناك حاجة ماسة لإنشاء مجلس للصحافة في ماليزيا وحددت أن نموذج التنظيم المشترك يخفف من اللبس في مجال الصحافة في ماليزيا وخصص إطاراً مثالياً للمجلس. وخلصت الدراسة أيضاً إلى أن هناك العديد من الإصلاحات القانونية التي يجب القيام بها لتمهيد الطريق لتأسيسها
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DECLARATION

I hereby declare that this dissertation is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

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To my late grandfather, Haji Abdul Kader Bin Awang; this is my promise to you, fulfilled.

Al-Fatihah
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Bennet Coleman v Union of India AIR 1973 SC 106
Castells v. Spain, 24 April 1992, Application No. 11798/85
Channing Arnold v. The Emperor AIR 1914 PC 116
Charkaoui v. Canada (Citizenship and Immigration) [2007] 1 S.C.R. 350
Corbett v. Corbett [1970] 2 All ER 33 (Divorce Ct)
Dr. S. V. Charupure v. Midday (1989-90) A.R. 181
German Federal Constitutional Court, Case 1 BvR 586/62,610/63 and 512/64 [1966]
Der Spiegel
Hamdard Dawakhana v. Union of India 1960 2 SCR 671 (SC)
Hogan v. Hinch (2011) 243 CLR 506, [31] (HC)
Hong Leong Equipment Sdn Bhd v. Liew Fook Chuan and Another appeal [1996] 1 MLJ 481
Indian Express Newspaper v. The Union of India. (1985) 1 SCC 641
Kerajaan Malaysia v. Mat Shuhaimi Bin Shafiei [2018] 2 MLJ 133
Law Dak Kee v. Public Prosecutor [1976] 2 MLJ 229 (FC)
Lingens v. Austria, 8 July 1986, Application No. 9815/82
Malayala Manorama v. Youth Wing of Communist Party of India & Govt. of Kerala (1983) P.C.1 Rev. 62 (January)
Mamat bin Daud & Ors v. Government of Malaysia [1988] 1 MLJ 119
Mat Shuhaimi bin Shafiei v. Public Prosecutor (2014) 2 MLJ 145 (COA).
Minister for Home Affairs and Another v. Jamaluddin bin Othman [1989] 1 MLJ 418
Minister of Home Affairs, Malaysia v. Persatuan Aliran Kesedaran Negara [1990] 1 CLJ 699 (SC)
Mirzan Mahathir v. China Press Bhd & Anor (unreported)
Mirzan Mahathir v. Sin Chew Jit Poh, Guang Ming Daily & Pemandangan Sinar
(unreported)
Mohamed Ezam Bin Mohd Noor v. Ketua Polis Negara & Others [2002] 4 MLJ 449 (FC)
Ong Ah Chuan v. PP [1981] 1 MLJ 64 (PC)
President, AISMNF v. Delhi Administration (1989-90) A.R.29
Printers (Mysore)Ltd v. Asst. Commercial Tax Officer 1994 SCR (1) 682, 1994 SCC (2) 434
Public Prosecutor v. Khong Teng Khen [1976] 2 MLJ 166 (FC)
Public Prosecutor v. Oh Keng Seng [1979] 2 MLJ 174
Public Prosecutor v. Param Cumaraswamy [1986] CLJ (Rep) 606
Public Prosecutor v. Pung Chen Choon [1994] 1 MLJ 566 (SC)
Public Prosecutor v. Pung Chen Choon [1994] 1 MLJ 566 (SC)
Queen-Empress v. Jogendra Chunder Bose And Ors (1892) ILR 19 Cal 35
R v. Electricity Commissioners, ex parte London Electricity Joint Committee Co [1924] 1 KB 171 (HL).
Reg v. Hicklin (1868) LR 3 QB 360
Re Application of Tan Boo Liat [1976] 2 MLJ 83 (FC).
Romesh Thappur v. Madras AIR 1950 SC 124
S v. Makwanyane 1995 3 SA 391 (CC),
Syarul Ema Rena binti Abu Samah v. Pendakwa Raya [2018] MLJ 1128
Teh Cheng Poh v. PP [1978] 1 MLJ 30
The Attorney General, Malaysia v. Chiow Thiam Guan [1983] 1 MLJ 51 (FC)
Thorgeirson v. Iceland, Application No. 13778/88
Utusan Melayu (Malaysia) Berhad v. Dato’ Sri DiRaja Haji Adnan Bin Yaakob [2016] 1 MLJU 302 (FC)
LIST OF STATUTES

Communications Decency Act,47 U.S.C (1996)(United States)
Competition Commission Act 2010 (Act 713)(Reprint 2016)
Defamation Act 1996 (c 31) (United Kingdom)
Defamation Act 2013 (c 26) (United Kingdom)
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Malaysian Aviation Commission Act 2015 (Act 771)
Media Liability Act (Consolidating Act 2014-08-11 no. 914) (Denmark)
Penang Freedom of Information Enactment 2010 (Enactment 16)
Pennsylvania Consolidated Statutes (United States)
Press and Registration of Book Act 1867 (25 of 1867) (India)
Press Council (Amendment) Act 1970 (India)
Press Council Act 1965 (No.34 of 1965) (India)
Press Council Act 1978 (No 37 of 1978) (India)
Statutory Bodies (Discipline And Surcharge) Act 2000 (Act 605)(Reprint 2001)
Statutory Bodies (Power To Borrow) Act 1999 (Act 598)(Reprint 2001)
The Constitution of India
The Constitution of the United States of America
The Public Order Act 1986 c.64 (Revised 2018) (United Kingdom)
Universal Declaration of Human Rights (UDHR)(1948)
CHAPTER ONE
INTRODUCTION TO THE RESEARCH

1.1 INTRODUCTION
The purpose of this chapter is to give the overall perspective of the current PhD thesis. The chapter will begin with vital themes of the research, succeeded by background to the research, statement of the problem, research questions, and objectives of the research, hypothesis, research scopes and limitations, and significance of the research. Research methodology used in this thesis shall be expounded in order to construe the manner of the data collected and analyzed. Finally, existing literatures available will be reviewed for the purpose of to identify relevant research gaps that demand this study to be conducted.

1.2 BACKGROUND TO THE RESEARCH AND STATEMENT OF THE PROBLEM
In Malaysia, freedom of expression is guaranteed under Article 10 of the Federal Constitution. Freedom of press in Malaysia is not expressly stated under the said provision, however it falls under the ambit of protection as provided in Article 10 which allows limited freedom of expression to be practice in the country. Thus even though the press in Malaysia is relatively free, in reality it is subjected to many regulations and controlled instruments that are available through parliamentary legislations and administrative norms;¹ as allowed by the Federal Constitution. At one

side, people argued that such restraints are necessary since Malaysia is built on multi-
diverse society coming from different faiths and ethnicities. The composition of
the society itself reflects that restriction norms and laws such as Printing Presses and
Publication Act 1984 and Sedition Act 1948 should be in existence as a safeguard
mechanism to protect racial relations within the society. Hate crimes such as hate
speeches can be prevented at the initial stage before it even struck discontent among
the society at large through these preventive laws. Therefore, some quarters strongly
believe that a tight restriction on press and media is necessary in order to safeguard
the Malaysia multi-racial society.

On the other hand, many argued that those restrictive legal instruments had
created a repressive and oppressive environment towards the press industry in
Malaysia; as according to the former Malaysian BAR President, Christopher Leong.²
In addition to that, Amnesty International in its reports published in 2003, contended
that the Printing Press and Publications Act 1984 had proved to be one of the most
detrimental factors that restricts freedom of speech, freedom of press and civil liberty
in Malaysia. For instance, in 1987 three newspapers publication companies namely
The Star, Sin Chew Jit Poh and Watan retracted their publication license for
commenting the government approach on Political Crisis 1987.³ While, Sedition Act
1948 for example, had been used several times to impede freedom of speech of the
press. For instance, in the case of Melan Abdullah v. PP⁴ the Chief Editor of Utusan
Melayu was charged under S 3(1) (f) for republishing a speech made by a member of
parliament calling for “abolishment of vernacular schools”. In addition to that, the

² Diyana Ibrahim, "Majlis Peguam Gesa Mansuhkan Akta Mesin Cetak, Tubuh Badan Media yang
³ V Gayathry and Amnesty International, Malaysia : Hak Asasi Dipertikaikan : Undang-Undang
Mengongkong Kebebasan di Sebuah Negara Demokrasi Berparlimen, (London: Amnesty International,
2003).
Sedition Act 1948\(^5\) also empowers the Courts by law to suspend the operation of the press as a substitute punishment or as an addition to the penalty. \(^6\) Furthermore, the Court also have power; by the request of the Public Prosecutor to prohibit the circulation of any publications that by the Court’s observation is deemed to be seditious. \(^7\)

The grievances from the press community had been addressed in World Press Freedom Day held on 3\(^{rd}\) May 1999, where 581 Malaysian reporters had signed a Memorandum to be sent to the Minister of Internal Affairs asking for those Act to be abolished. \(^8\) These legal restrictions have consequently impeded the role of the press as the “Fourth Estate” in the country as an alternative mechanism of check and balance against the authorities.

Apart from that, the pattern of monopoly of ownership of the press companies by political entities has not only affects the role of the press as the voice of check and balance, but at the same time destroys the its credibility as a reliable source of information. The recent closure of Utusan Malaysia after 80 years in operation shows how oppression against the freedom of press can affects a press company economically. Utusan Malaysia, owned by a political party, United Malayan National Organisation (UMNO) had lost its readers for many years due to credibility crisis. \(^9\)

The closure of Utusan Malaysia had affected thousands of its former staff for the loss of their bread and butter. In addition to that, the rise of citizen journalism that mainly

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use online medium as its main means of dissemination of information had made press ethics to be more challenging to govern, as it does not bound by any sound ethical boundaries.10

It is also strange to note that, the governance over printed and online media in Malaysia where the content of the information may be the same, however the treatment in the eyes of law may be different. This is due to the fact that while the printed press is still stuck with regulations provided under archaic laws as mentioned earlier, the internet content regulation however is regulated under self-regulatory scheme, supervise by a state regulatory body, namely by the Malaysian Communications and Multimedia Commission (MCMC). This is why in Malaysia, online press content enjoys better flexibility and independence compared to its counterpart, the printed press. Such difference of treatment, in the researcher’s opinion, is a clear evidence of breach of the concept of equality under the Rule of Law. Thus, given the challenges highlighted above, to strike between the need to uphold freedom of press while at the same time to protect the interest of the public has become of essence. Some suggested that a Media or a press council would be an ideal mechanism for the role.11

It should be noted that basically the idea to establish a Media or Press Council in Malaysia is not new. Based on the findings of the researcher, the idea has been first mooted back during the Premiership of Tun Abdul Razak in 1973,12 and has been resurfacing again in the later years, including in the early 2000’s where the Draft of Media Council Act 2002 failed to be presented in Parliament due to oppositions to its

12 Ibid.:66
establishment. Regardless, the idea to establish the Council has been resurfaced again after the General Election in 2018, as it was part of the promise made by the winning party, Pakatan Harapan. However, despite the promise, the idea is yet to be fully materialized. Perhaps it is due to the fact that the idea of establishment of the Malaysian Media Council have been unjustifiably viewed as a political instrument of the government to control the press and the media rather than ensuring its freedom.\textsuperscript{13} In addition to that, despite there are in existence of various means for the public to address their grievances against the misconduct of the press, such as through litigation or other alternate dispute resolution means, however it is viewed as ineffective, and excessively cost consuming. This further necessitates the establishment of a body that can mediate those related press ethical breach problems, however in a more efficient way.

Despite the Press or Media Council can comes in various forms and names, however its function remains similar, which is to protect the interest of the press, the nation and its people while at the same time being a referral body in things regarding to press laws and public complaints against the breach of press ethics.\textsuperscript{14} Nevertheless, its legal and governing framework may be different, which would determine the extent of powers as well as the independence enjoyed by the Council. The Council in terms of governing structure may be a self-regulatory; which is purely administered by the press industry, or statutory; of which controlled by the state, or a hybrid or known as co-regulatory that incorporates both characters of previously mentioned regulatory spectrum. The question to determine as to what is the most suitable legal framework of the Press Council in Malaysia is important as it would have solved many

\textsuperscript{13} Ibid.