

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

تضمن المادة 10 من الدستور الفدرالي الحق في حرية الصحافة في ماليزيا، مع مراعاة العديد من القيود. وبغض النظر عن ذلك، فقد اعتُبرت هذه القيود قمعية، مما يعيق حرية الصحافة في ماليزيا. في غضون ذلك، وعلى الرغم من أن هذه القيود التي تملأها القوانين، إلا أن هناك حالات حقيقية تفيد بتجاوز الصحافة في وظيفتها مما يهدد المصلحة العامة. إن معضلة تحقيق التوازن بين النقيضين تبدي الحاجة إلى إنشاء آلية تنظيمية جديدة؛ والتي كان الهدف الرئيسي من هذا البحث. يحدد الباحث أن مجلس الصحافة آلية مناسبة لهذا الدور. بغض النظر، فإن مجلس الصحافة لم يصبح حقيقة واقعة في ماليزيا على الرغم من اقتراحه لأول مرة في السبعينات والذي يُعزى إلى حد كبير إلى الخلافات بين أصحاب المصلحة حول استقلاليته وإطاره التنظيمي. في هذا البحث، لقد أجرى الباحث العديد من دراسات الحالة حول النماذج التنظيمية الحالية التي تتألف من التنظيم الذاتي والتشريعي والتنظيمي المشترك. وبناءً على ذلك، اختار الباحث العديد من مجالس الصحافة والإعلام القائمة التي تستخدم تلك النماذج التنظيمية المعنية كمعيار للدراسة بما في ذلك على سبيل المثال لا الحصر؛ الإطار التنظيمي للصحافة في المملكة المتحدة، ومجلس الصحافة في الهند، ومجلس الصحافة الدنماركي كجزء من هدف بحث لهذه الأطروحة. بالإضافة إلى ذلك، يبحث الباحث أيضاً في الهيئات التنظيمية المحلية مثل لجنة الاتصالات والوسائط المتعددة الماليزية، ومعايير الإعلان الاستشارية في ماليزيا وغيرها. ويستخدم هذا البحث منهجية نوعية، والتي تعتمد في الغالب على المقابلات المكتبية وشبه الهيكلية لتحقيق الأهداف المذكورة أعلاه. وجدت هذه الدراسة أن هناك حاجة ماسة لإنشاء مجلس للصحافة في ماليزيا وحددت أن نموذج التنظيم المشترك وصفه إطاراً مثالياً للمجلس. وخلصت الدراسة أيضاً إلى أن هناك العديد من الإصلاحات القانونية التي يجب القيام بها لتمهيد الطريق لتأسيسها

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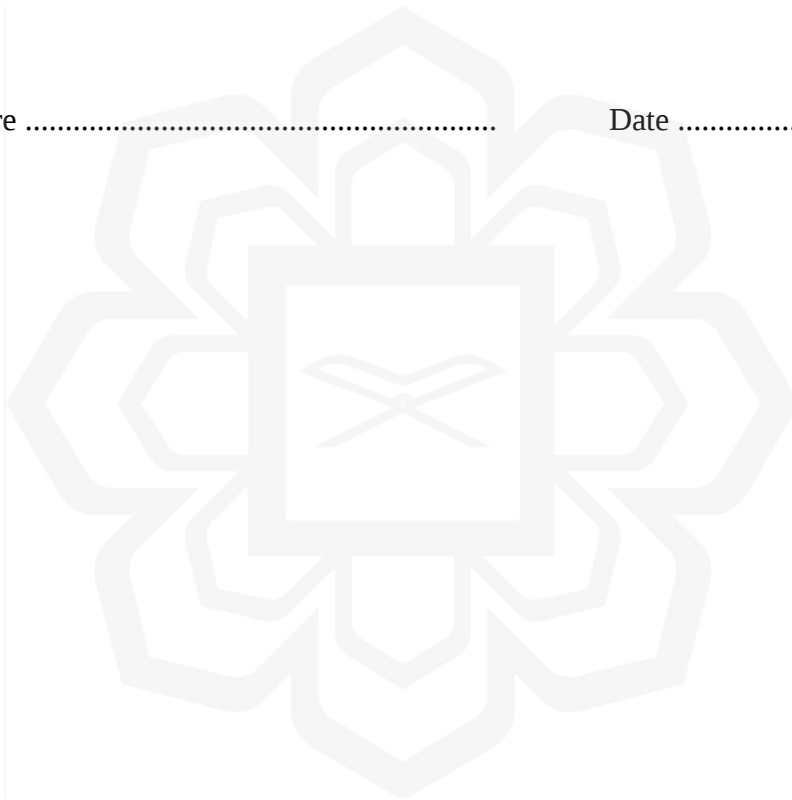
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DECLARATION

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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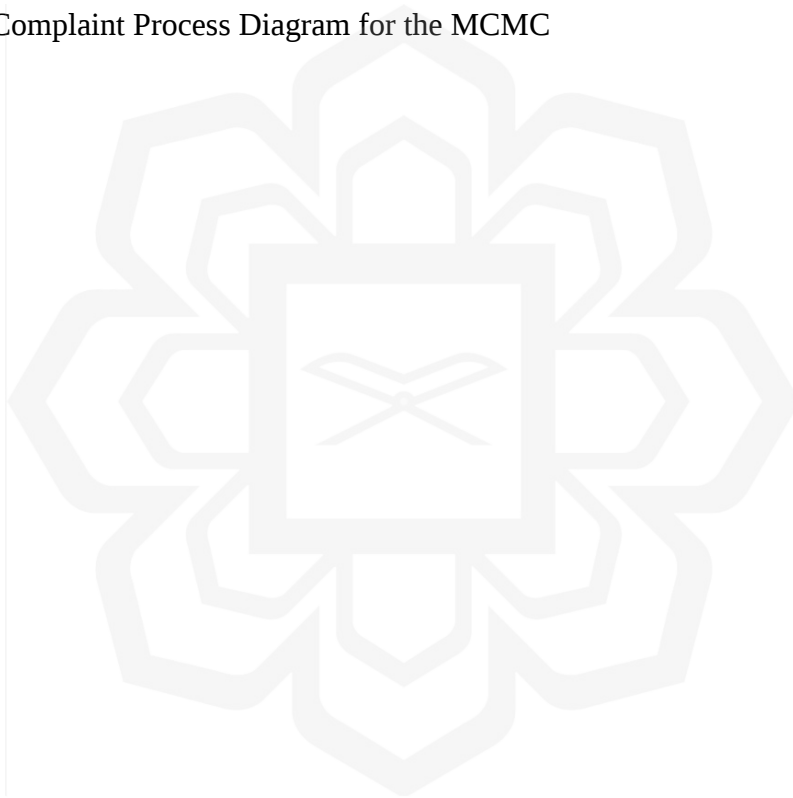
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Ajay Goswami v. Union of India (2007) 1 SCC 143
Asma Jilani v. Government of Punjab Pak LD (1972) SC 139 (SC)
Bennet Coleman v Union of India AIR 1973 SC 106
Bhupal Chandra Ghosh v. Arif Ali, A.I.R. 1974 S.C. 255
Boucher v. The King [1951] S.C.R. 265 (SC).
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
Chief Editor, Sainik v. Police Official of Fatehabad, Agra, (1989-90) A.R.40
Corbett v. Corbett [1970] 2 All ER 33 (Divorce Ct)
Dato Menteri Othman Baginda & Anor. v. Dato Ombi Syed Alwi Syed Idrus [1981] 1 MLJ 29 (FC)
Dow Jones Publishing Company (Asia) Inc v. AG [1989] 2 MLJ 385
Dr. S. V. Charupure v. Midday (1989-90) A.R. 181
Garuda Oil Industries Sdn. Bhd & Ors v. Kuala Lumpur Commodity Exchange & Anor [1988] 1 MLJ 174
German Federal Constitutional Court, Case 1 BvR 586/62, 610/63 and 512/64 [1966] *Der Spiegel*
Haig v. Agee (1981) 453 US 280
Hamdard Dawakhana v. Union of India 1960 2 SCR 671 (SC)
Haryana v. State of Punjab and Anor [2004] 12 SCC 673
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
Kaye v. Robertson [1991] FSR 62
Kerajaan Malaysia v. Mat Shuhaimi Bin Shafiei [2018] 2 MLJ 133
Lau Dak Kee v. Public Prosecutor [1976] 2 MLJ 229 (FC)
Liew Yew Tiam & Ors v. Cheah Cheng Hoc & Ors (2001) 2 CLJ 385 CA.
Lim Guan Eng v. PP [1988] 3 MLJ 14 (COA).
Lingens v. Austria, 8 July 1986, Application No. 9815/82
Loh Kooi Choon v. Government Of Malaysia [1977] 2 MLJ 187 (FC)
Madhu Limaye v. Sub Divisional Magistrate, Manghyr, A.I.R. 1971, S.C. 2486
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).
Melan Abdullah v. Public Prosecutor [1971] 2 MLJ 280.
MGG Pillai v. Vincent Tan [1995] 1 MLJ 39.
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)
Mohamed Ibrahim v. Public Prosecutor [1963] 29 MLJ 289 at 291 (FC).
Mukong v. Cameroon, 21 July 1994, Communication No. 458/1991
Normala Samsudin v. Keluarga Communication Sdn Bhd [1999] 2 MLJ 654
Ong Ah Chuan v. PP [1981] 1 MLJ 64 (PC)
OSK & Partners Sdn. Bhd v. Tengku Noone Aziz & Anor [1983] 1 MLJ 179 (FC)
Papachristou v. City Jacksonville 405 U.S. 156 (1972). No. 70-5030 (SC).
Perera v. Attorney General & Ors, [1992] 1 Sri L.R. 199
President, AISMN v. Delhi Administration (1989-90) A.R.29
Printers (Mysore)Ltd v. Asst. Commercial Tax Officer 1994 SCR (1) 682, 1994 SCC (2) 434
Procurier v. Martinez 416 US 396,427 (1974)
Public Prosecutor v. Khong Teng Khen [1976] 2 MLJ 166 (FC)
Public Prosecutor v. Oh Keng Seng [1979] 2 MLJ 174
Public Prosecutor v. Ooi Kee Saik [1971] 2 MLJ 108 (FC).
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
Ram Manohar Lohia v. State of Bihar A.I.R. 1966, S.C. 740
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
Tae-Hoon Park v. Republic of Korea, 20 October 1998, Communication No. 628/1995
Tang Kwor Ham v. Pengurusan Danaharta Nasional Bhd. [2006] 4 AMR 89
Teh Cheng Poh v. PP [1978] 1 MLJ 30
The Attorney General, Malaysia v. Chiow Thiam Guan [1983] 1 MLJ 51 (FC)
The Edge Communication Sdn Bhd v. Ketua Setiausaha Kementerian Dalam Negeri & Anor [2016] MLJU 1842 (HC)
Thorgeirson v. Iceland, Application No. 13778/88
Tun Datuk Patinggi Haji Abdul Rahman Ya'kub v. Bre Sdn Bhd [1996] 1 MLJ 393
Utusan Melayu (Malaysia) Berhad v. Dato' Sri DiRaja Haji Adnan Bin Yaakob [2016] 1 MLJU 302 (FC)

LIST OF STATUTES

Civil Law Act 1956 (Act 67)(Revised 1972)(Reprint 2006)
Communications and Multimedia Act 1998 (Act 588) (Reprint 2006)
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)
Equality Act 2010 (United Kingdom)
Federal Constitution
Film Censorship Act 2002 (Act 620)(Reprint 2004)
Freedom of Information (State of Selangor) Enactment 2011 (Enactment 8)
Indecent Advertisement Act 1953 (Act 259)(Revised 1981)(Reprint 2006)
International Covenant on Civil and Political Rights (ICCPR)
Law of The Republic of Indonesia No. 11/1966 (Indonesia)
Law of The Republic of Indonesia No. 21/1982 (Indonesia)
Law of the Republic of Indonesia No. 40/1999 (Indonesia)
Malaysian Aviation Commission Act 2015 (Act 771)
Malaysian Communications and Multimedia Commission Act 1998 (Act 589)(Reprint 2002)
Media Liability Act (Consolidating Act 2014-08-11 no. 914) (Denmark)
Medicines (Advertisement and Sale) Act 1956 (Act 290)(Revised 1983)
Official Secret Act 1972 (Act 88)(Revised 2006)(Reprint 2006)
Penal Code (Act 574)(Revised 2014)(Reprint 2015)
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)
Printing Presses and Publications Act 1984 (Act 301)(Revised 2012)(Reprint 2012)
Security Offences (Special Measures) Act 2012(Act 747)(Revised 2015)(Reprint 2015)
Sedition Act 1948 (Act 15)(Revised 1969)(Reprint 2015)
Statutory Bodies (Accounts and Annual Reports) Act 1980(Act 240)(Reprint 2006)
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

¹ Martin Carvalho, "Muhyiddin: Malaysia Practises Media Freedom", *The Star*, 2012, July 17. (assessed 15 August 2017).

side, people argued that such restraints are necessary since Malaysia is built on multi and 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. PP*⁴ 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 Bebas", *The Malaysian Insider*, 2013, December 28.

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 1948⁵ 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 3rd 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

⁴ Read *Melan Abdullah v. Public Prosecutor* [1971] 2 MLJ 280.

⁵ Sedition Act 1948 (Act 15)(Revised 1969)(Reprint 2015), s 9.

⁶ Mohd Safar Hashim, *Mengenal Undang-Undang Media dan Siber*, (Kuala Lumpur: Utusan Publication & Distributors Sdn Bhd, 1st Editio edn., 2002). : 28.

⁷ Sedition Act 1948 (Act 15)(Revised 1969)(Reprint 2015), s 10.

⁸ See "Budaya Kebebasan dan Tugas Wartawan" *Utusan Malaysia*, 12 Mei 2002, <http://www.utusan.com.my/utusan/info.asp?y=2002&dt=0512&pub=Utusan_Malaysia&sec=Rencana&pg=re_06.htm> (accessed on 28 September 2014)

⁹ Syed Danial Syed Azahar, "Utusan to Cease All Operations this Wednesday", *The Sun Daily*, 2019, August 19.

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

¹⁰ Jan Oster, "Theory and Doctrine of 'Media Freedom' as a Legal Concept", *Journal of Media Law*, vol. 5, no. 1 (2013): 57–78.

¹¹ Mohd Safar Hasim and Ahmad Murad Merican, "The Formation of A Media Council: The Experience of Malaysia", *Jurnal Komunikasi*, vol. 18 (2002): 65–78.

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.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.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

¹³ Ibid.

¹⁴ Please read Chamil Wariya, *Isu-Isu Semasa Kewartawanan & Media: Krisis dan Strategi*, (Kuala Lumpur: Malaysian Press Institute, 2017). : 209 - 229