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BANNING BOOKS IN MALAYSIA: THE LEGAL PERSPECTIVE

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Abstract

Publication of books is an effective method of disseminating ideas and thought. Many scholars publish books in their area of expertise to equip the society with knowledge. However, there are circumstances where books can be banned from public reading on certain grounds. This situation also occurs in Malaysia. The Government of Malaysia has banned some books under the Printing Presses and Publications Act 1984. This paper intends to examine the legal basis to justify such banning in Malaysia. The paper also examines some cases of book banning in Malaysia and has found that the government banned some books on the grounds of “prejudicial to public order” by virtue of the Printing Presses and Publications Act 1984. The paper suggests that the phrase “prejudicial to public order” must be specifically illustrated in the statute in order to hinder misinterpretation of the legislation.

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Keywords: Banning books, Printing Presses and Publications Act 1984, prejudicial to public order, Malaysia.



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1. Introduction

Freedom of expression is a vital human right (Ramachandran & Mathialagan, 2018). This freedom has been recognised under the local and international legal systems. The fundamental rights of an individual in Malaysia are assured not by ordinary laws but by the *grundnorm*¹ i.e. the Malaysian Federal Constitution (New Straits Times, 2015). Even though the Malaysian Federal Constitution assures freedom of expression under Article 10, it allows for a host of limitations to this right. The Printing Presses and Publications Act 1984 (PPPA) (Act 301) has long been viewed as a hindrance to the exercise of free speech and free flow of information in Malaysia (Ramachandran & Mathialagan, 2018). The right of freedom of expression and the government's control of the printing and publication through the legislations must be balanced.

One way of expressing ideas and thoughts is through publication of books. A book is a written or printed work consisting of pages glued or sewn together along one side and bound in covers (Oxford Dictionaries, 2018). In the academic world, books are one of the most valuable sources of knowledge. Authors express their ideas in the form of books. The right to express ideas is a fundamental right of a person or body. Although books contribute to the development of knowledge and critical thinking to the readers, there are situations where books are being banned. In fact, in Malaysia, book banning is not a peculiar situation. Books are normally banned by virtue of the Printing Presses and Publications Act 1984.

2. Problem Statement

There are many books banned by the Ministry of Home Affairs in Malaysia on the ground that the content of those books are “prejudicial to public order” by virtue of section 7(1) of Printing Presses and Publications Act 1984. However, the problem arises when there is no proper illustration of the phrase “prejudicial to public order” in the statute in order to hinder misinterpretation of the legislation.

3. Research Questions

3.1.What is the legal basis to justify banning books in Malaysia?

3.2.What are the factors taken into consideration by the authorities in deciding whether to ban a book in Malaysia?

3.3.Should be the law pertaining to banning books in Malaysia be improved?

4. Purpose of the Study

The purpose of this paper is to:

4.1. identify and analyse the provision of law relating to banning books in Malaysia;

¹ New Straits Times, Drafting of the Constitution, <https://www.nst.com.my/news/2015/09/drafting-constitution> (2 May 2019). Sultan Azlan Shah stated that it is fundamental in this regard that the Federal Constitution is the supreme law of the land and constitutes the *grundnorm* (basic norm) to which all the other laws are subject. *Grundnorm* means a basic norm of the state.

- 4.2. analyse the legal basis justifying banning books in Malaysia; and
- 4.3. suggest legal improvements on book banning in Malaysia.

5. Research Methods

This paper adopted the qualitative method in exploring the issue relating to banning books in Malaysia using the method of pure legal research in explaining the issue by referring to the Printing Presses and Publications Act 1984 (Act 301). Some of the relevant cases related to the issue of banning books will be quoted to explain the issue.

6. Findings

The paper found that there are many books have been banned in Malaysia until April 2018. The books were banned on the basis that they contravened section 7(1) of Printing Presses and Publications Act 1984.

6.1. List of books banned in Malaysia

There are several books banned in Malaysia as at April 2018 (Ministry of Home Affairs, Malaysia, 2018). Those books are:

- Hidden Agendas by Lora Leigh;
- *Mengenal Allah Melalui Agama-Agama Purba: Gautama Buddha Seorang Nabi?* [Knowing Allah Through Ancient Religions: Gautama Buddha a Prophet?] by Kamaludin Endol;
- Confessions: A Secret Diary by Amber Stephens;
- *Islam Dan Teologi Pembebasan* [Islam and the Liberation Theology] by Asghar Ali Engineer and Agung Prihantoro
- The Road To Muhammad by Jalaluddin Rakhmat;
- *Mutiara Sastra Ali: Muhammad Hashem Edisi Surat & Aforisme* [Mutiara Sastra Ali: Muhammad Hashem Letters & Aforism Edition] by Muhammad Hashem;
- *Perjalanan yang Cemerlang 1930 - 1980* [Outstanding Travels 1930 - 1980] by PKM;
- *Agama Masa Depan: Perspektif Filasafat Perennial* [Future Religion: Perennial Philosophical Perspective] by Komaruddin Hidayat and Muhammad Wahyuni Nafis;
- Intense Pleasure by Lora Leigh; and
- It's All about Muhammad: A Biography of The World's Most Notorious Prophet by F.W Burleigh.

Meanwhile, according to a local newspaper *Kosmo* dated 29 December 2017, there are 21 books banned in Malaysia (Kosmo, 2017). The books are as follows:

- *Assalamualaikum: May Peace Be upon You Observations on the Islamisation of Malaysia;*
- *Qun Jiao Wang Shi;*

- 36F *Da Bo Mei De You Huo*;
- *Gou Nan Nv* No. 2;
- Antithesis;
- Loaded (*No. Keluaran 242*);
- 100 *Keajaiban di Dunia* [100 Wonders in the World];
- *Amalan Mustajab dan Murah Rezeki* [Efficacious Practice and Good Fortune];
- *Senjata & Pendinding Mukmin* [Weapon & Protector of Mukmin];
- *Asma Ul-Husna: Rahsia dan Amalan 99* [*Asma Ul-Husna: Secrets and the Practices of the 99 Names of Allah*];
- *Nama Allah* [Names of Allah];
- *Rahsia dan Kelebihan Kayu Kokka: Jenis Kayu Bahtera Nabi Nuh AS - Tongkat Nabi Musa AS* [The Secrets and Benefits of Kokka Wood: The Type of Wood for The Prophet Noah's Ark - The Stick of the Prophet Moses];
- *Perjalanan yang Cemerlang 1930 - 1980 Mempromosi Fahaman Komunisme* [Outstanding Travels 1930 - 1980 Promoting Communism Ideology];
- Intense Pleasure;
- *Warisan Ilmu Tok Kenali Kelantan - Hampir Tidak Kesampaian Berakhir Tiada Kesudahan* [Heritage of Knowledge of Tok Kenali Kelantan – Almost Unattainable and Without Ending.];
- *Warisan Ilmu Tok Kenali Kelantan - Dimanakan Ku Cari Ganti* [Heritage of Knowledge of Tok Kenali Kelantan – How Can I Replace You];
- *Warisan Ilmu Tok Kenali Kelantan - Jangan Sampai Terlihat Adanya Diri* [Heritage of Knowledge of Tok Kenali Kelantan – Thou Shall Not Find the Existence of One's Self];
- *Warisan Ilmu Tok Kenali Kelantan - Pencarian Ilmu Di Penghujung Rasa* [Heritage of Knowledge of Tok Kenali Kelantan – The Search of Knowledge for the Ultimate Bliss.];
- *Agama Masa Depan: Perspektif Filsafat Perennial* [Future Religion: Perennial Philosophical Perspective];
- *25 Kisah Mukjizat Rasulullah* [25 Miracles of the Messenger of Allah]; and
- *Meneladani Rasulullah & Cerita Lain* [Emulating the Messenger of Allah & Other Stories].

The abovementioned lists show that the government of Malaysia has banned many books written by many authors. The question that arises is pertaining to the legal basis relied upon in deciding to ban those books. On what ground or basis is the government allowed to legally ban a book? Is there any specific law that addresses this issue?

6.2. Legal Basis for Banning Books in Malaysia

In banning a book, there must be justification to do so. In Malaysia, a book can be banned if it is prejudicial to public order. It is extremely concerned with the manner in which the allegations were made against the publication (Sisters in Islam, 2008). The law relating to this issue is enshrined in the Printing Presses and Publications Act 1984, particularly section 7(1). The section states that:

If the Minister is satisfied that any publication contains any article, caricature, photograph, report, notes, writing, sound, music, statement, or any other thing which is in any manner prejudicial to or likely to be 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 or is likely to be contrary to any law or is otherwise prejudicial to or is likely to be prejudicial to public interest or national interest, he may in his absolute discretion by order published in the Gazette prohibit, either absolutely or subject to such conditions as may be prescribed, the printing, importation, production, reproduction, publishing, sale, issue, circulation, distribution or possession of that publication and future publications of the publisher concerned.

Section 7 (1) empowers the Minister to use his power by way of absolute discretion to prohibit any books, fully or partly (Rachagan, 1993). Under section 7(1) of the Printing Presses and Publications Act 1984, an undesirable publication could only be prohibited by order of the minister published in a gazette (Anbalagan, 2015). The only permissible restrictions to the right to freedom of speech and expression are if it was in the interest of the security of the federation, friendly relations with other countries and public order and morality; and to protect the privileges of Parliament (Anbalagan, 2015). If there is no breach of permissible restriction, therefore, section 7 (1) of the Printing Presses and Publications Act 1984 should not be applied (Anbalagan, 2015).

The question here is what is the meaning of “prejudicial to public order”? The phrase “prejudicial to public order” does not necessarily refer to the existence of an actual public disorder, but includes anything which has the “potential to disrupt public order” (Mohd Faizal Musa v Menteri Keselamatan Dalam Negeri [2018] 1 LNS 81). The said statute does not explicitly define what is meant by “prejudicial to public order.” Even though the Ministry of Home Affairs has its own guidelines which consist of a general illustration on what publication amounts to “prejudicial to public order”, it is only a soft law with no legal bite. Non-compliance of the guidelines would not cause any legal implication and/or repercussion.

Although the law was meant to maintain genuine publications, create a regulated publication sector and provide legal guidelines to the writer of the books and publishers, the Act might be criticized for restricting the constitutional freedom of speech in Malaysia which is provided in Article 10 of Federal Constitution of Malaysia.

7. Conclusion

The National Security Policy was introduced as a major reference document to all Federal and state agencies in drafting existing policies in order to ensure that the state is able to prevent and address numerous dynamic and complex security threats (Rajamanickam, Zainudin, Abd. Rahman, & Zahir, 2018). In conclusion, any books containing information which is prejudicial to public order may be banned pursuant to section 7(1) of the Printing Presses and Publications Act 1984. The right to ban books is given to the Minister in the Ministry of Home Affairs of Malaysia. The problem in the exercise of the power given to the Minister arises when the said provision uses the phrase “absolute discretion.” It means that the Minister is given total discretion to decide whether a book should be banned or not. Although

section 7(1) states that a book may be banned because it is prejudicial to public order, the said statute does not properly define what is meant by “public order” or what amounts to “prejudicial to public order.” This issue becomes crucial in situations where the Minister used his discretion to ban many books without observing proper guidelines.

Although when a book is banned by the Minister, the author or the publisher may review the decision of the Minister by applying for judicial review to the High Court, this process is time and cost consuming. The applicant has to go through the court process to determine whether the book should be banned or not. In some cases, the issue will not just stop at the High Court level. The party dissatisfied with the decision of the High Court may appeal to the higher courts i.e. the Court of Appeal and the Federal Court.

If the relevant law has provided specific guidelines or criteria to be taken into account when deciding whether the book is prejudicial to public order, no issue will arise regarding the basis of why a book should or should not be banned in Malaysia. Therefore, the paper suggests that proper guidelines must be included in the Printing Presses and Publications Act 1984 either in the form of defining the term “prejudicial to public order” or setting specific criteria as to what amounts to “prejudicial to public order”.

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