

Chapter 4

CONTROL UPON THE MALAYSIAN PRESS

Introduction

Press freedom is the people's fundamental right of freedom of expression, of having the right to say what one thinks, with honesty and bravery to tell the truth, and have the ability to prove it. The right to know includes the right of the general public to have access to information regarding governmental actions and the right of the individual to have information on matters affecting his own rights and interests.¹

Press freedom and the state

Today, newspapers serve the democratic society by vigilantly protecting the people's right to know. Nobody should be deprived of his opinions, however different the opinions are from the mainstream thoughts and ideology. An independent and responsible press is essential to disseminate these ideas and to assure the public of a medium that is affordable for any member of the society. The public

¹ This idea was stated in "The Right to Know", a speech addressed by Sultan Azlan Shah on 19 December 1986 at University of Science Malaysia. Sultan Azlan, the then Sultan of Perak and a former Lord President, noted that the press had always been a convenient vehicle for the propagation of governmental policies and that "the temptations for placing together controls on the press are most appealing to the administration". However, he admitted that too much control would not only muzzle the press, but also affect 'the right to know' of the entire society.

should be well informed to exercise their rights knowledgeably, to make decisions intelligently, to form his opinions independently and to make accurate judgements based on accessible information. The people have the power to decide what is right and what is wrong. This power should not fall into the hands of the political authorities who make policies, or a few media barons who disseminate the information. The power, ideally speaking, should be in the hands of the people.

Press freedom is a commonly accepted barometer of political democracy of many nations (Lowenstein, 1976:136). Researchers at the University of Missouri defined within the realm of press freedom, i.e., a completely free press and a completely controlled press:

A completely free press is one in which newspapers, periodicals, news agencies, books, radio and television have absolute independence and critical ability except for minimal libel and obscenity laws. The press has no concentrated ownership, marginal economic units or organized self-regulation.

A completely controlled press is one with no independence or critical ability. Under it, newspapers, periodicals, books, news agencies, radio and television are completely controlled directly and indirectly by government, self-regulatory bodies or concentrated ownership.²

² In 1966, a worldwide survey of press freedom was undertaken by the Freedom of Information Center of the School of Journalism, University of Missouri. See Ralph Lowenstein's (1976). "Press Freedom as a Barometer of Political Democracy" in Fischer and Merrill (eds.). *International and Intercultural Communication*, p.136-147. The Press Independence and Critical Ability (PICA) survey listed 23 criteria to measure press freedom where 20 of them were either governmental or government-related control.

The Press Independence and Critical Ability (PICA) survey conducted by the above mentioned university in 1976 was based on 23 factors as criteria for measuring press freedom, out of which 19 factors were closely related to state intervention. The remaining four factors were self-regulation, concentrated ownership, pressure from labour unions and number of less competitive press units. The survey showed that of the 94 independent nations considered, 55 had comparatively 'free' press systems, 29 had comparatively 'controlled' press systems and 10 were undergoing transitional period from 'controlled' to 'free' press system.

In the PICA survey, none of the nations had allowed its press system to develop unfettered by some forms of regulation and control. The U.S., Australia, Belgium, Canada, Denmark, Sweden, Switzerland and the Philippines, have high degree free press systems. On the other hand and predictably, communist countries having state-owned press, such as Republic of China, North Korea, Czechoslovakia and East Germany have highly controlled press systems. Asian countries such as Japan, Malaysia and Singapore were considered to have 'free-moderate controls', falling into the same ranking as Austria, France, Ireland, United Kingdom, West Germany and New Zealand.

The ranking of countries in the survey undertaken 30 years ago may have changed, but not the substance of governmental control in

most of these nations. State intervention over information flow and sources via press laws, licencing, subsidies, loans and taxation are among provisions for the state to further exert control over the press system. Ironically, while the state and press owners do have autonomy in publishing or broadcast businesses, press freedom has become an ideology much cherished by the state for the image of democracy that they confer (Barrat, 1986).

In the region of Southeast Asia comprising Malaysia, Singapore, the Philippines, Thailand, Myanmar, Vietnam, Laos, Indonesia and Brunei, the development of press systems varies from country to country. There are, however, common communication barriers in these countries such as illiteracy and poverty, diversity in education, language and culture, post-independence experiences; dependence on foreign news agencies, and stringent press laws passed by the authoritarian local governments that are sensitive to criticisms. The most significant barrier to press freedom in Asian countries, however, is the governmental control over printing presses, journalists and media content. Control exerted upon printing presses are eviction of licence, suspension of permit and closure of the publishing company concerned. Control upon journalists could be in the forms of threats, arrests, violence, harassment and imprisonment of journalists by the political authority. Control over media content is clearly

reflected in the editorials of the mainstream press that are supportive of government policies at all times.

Looking at the different levels of national development and the heterogeneity of these nations, it is therefore difficult to measure press freedom of each nation using the same yardstick. Thus, the press systems in Malaysia's neighbouring countries are mentioned separately without making any integration with or comparison between them. The Singapore government led by the People's Action Party (PAP) has regulated stiff press laws to keep the government stable. The Newspapers and Printing Presses Act was amended in August 1974 to allow only the people approved by the Ministry of Culture to own the 'management shares' of local newspapers. This amendment allows the government to be the sole owner of print media and impelled media institutions to become public corporations (Ramaprasad and Ong, 1990:42). In April 1982, the Singapore government created a print media monopoly when the Straits Times Group and Times Publishing were directed by the PAP government to merge into a single company, the Singapore News and Publications Limited (SNPL). The Singapore's press policy "to tame the mischievous tendencies of newspapers for constructive ends" (Tan, 1990:3) clearly puts national development above other priorities.

Protective actions have been taken by the Singapore government to disallow foreign press to engage in domestic politics. For instance, the government restricted circulation of *The Asian Wall Street Journal*, a foreign newspaper published by Dow Jones Publishing Company (Asia). The Newspaper and Printing Presses (Amendment Act) 1990 was amended by inserting a new clause requiring offshore newspapers to obtain a permit for sale and distribution in Singapore. It has often been said that the Singapore government would not sacrifice public interest and political stability at the expense of press freedom. However, the Singapore government insisted that it did not want the country to be a switching station, but a centre of journalistic excellence (*Far Eastern Economic Review*, 3/7/1986).³

In Indonesia, the state's most effective means to control the press is through the control over publishing permits, where the Ministry of Information is solely responsible for the issuance and evocation of these permits. Application for permits must be supported by two candidates from official bodies, i.e. the Indonesian Journalists'

³ The success of the Asian Media and Information and Communication Centre (AMIC), formerly known as the Asian Mass Communication Research and Information Centre, as an established media research centre in the Asia-Pacific is a step towards the realization of this vision since 1971. A Silver Jubilee Conference was held in Singapore recently to commemorate AMIC's 25 years of service to the development of mass communications in Asian countries.

Association (PWI) and the Association of Newspaper Publishers (SPS). In June 1994, the banning of three newspapers, *Tempo*, *Detik* and *Editor* by the government marks a turning point in the Indonesian press. Journalists realized that the government could terminate a publication despite guarantees of freedom of expression in the country's constitution. Pudjomartono (1996:151) noted that due to legal constraints and lack of openness in political leadership, the press in Indonesia has eventually lost its ideal goals to serve the common people and to promote human dignity.

Authoritarian state often implies control over press content via official censorship, release of government news, as well as forced corrections and retractions. For instance, strict laws imposed by the Thai government are the Press Laws of 1941 and 1952 that empowered police officers to judge whether a newspaper should be seized or suspended. As a result, the press had to conform its operations and ideas to prevailing government policies, which made the Thai press a political instrument of propaganda, exploitation of sex and sensationalism (Sangchan, 1976).

Compared with other Southeast Asian countries, there is a relatively free press in the Philippines, which is the result of a continuous power struggle between the state and its press since 1980s. The demand for a fearless free press culminated when thousands of

altruistic journalists took risks to mobilize the people in the Philippines to rise against Ferdinand Marcos, the leader of the corrupt government. Corazon Aquino attributed the overthrowing of the Marcos government to investigative journalism that portrayed the truth of the situation prevailing in the country and provided impetus for the people to act against injustice (*New Straits Times*, 16/6/1990).

The review of press freedom in the Southeast Asian countries shows that there are differences in the pursuit of press freedom and their struggles for an independent press, which are attributed to their former colonial governments, except for the Thai government. It was due to the repression or indignation on the local people that the press in these countries became an important channel for the nationalists to disseminate political ideologies against the colonial forces. Today, press freedom of these countries has become a barometer of democracy in their respective self-rule governments.

Mechanism of governmental control

This section reviews the extent and nature of state intervention and discusses its bases in and implications for the Malaysian press freedom. State or governmental control upon the Malaysian vernacular press is deliberate, as the press is subservient to the executive power due to their dependency on the state for official news sources, as well as renewal of printing permits and licences. The press are 'silent watchdogs' towards issues deemed sensitive by the state in the sense that the journalists would watch political issues taking place but do not practise investigative journalism.⁴ Instead of playing an active role to discover and uncover events that are generally swept under the carpet, the local media remain passive and subservient. This is because the state takes protective measures by exerting legislative control over local press and limiting the importation of foreign publications into the country. These moves have proven to be capable of keeping the publishers docile and the journalists suppressed. Few have ever dared to invite the state's wrath by crossing the boundary. This 'play safe'

⁴ There is perhaps one exception where a national language daily owned and controlled by UMNO, *Utusan Malaysia* first reported a sex scandal concerning the UMNO National Youth chief and the Chief Minister of Malacca, Rahim Tamby Chik with an under-aged 15 year-old schoolgirl. When the investigation was taking place, Rahim was forced to resign from the Chief Minister and other party posts due to public opinions pressure in all local media. In January 1996, when the Attorney General announced that Rahim would not be prosecuted for statutory rape, Rahim reacted by criticizing the mass media as having "their own agenda on how the party leadership should look like" (*Star*, 26/1/96).

attitude is practised by most journalists who then describe the press laws as being unfair and threatening. Newspapers, as a result of accepting the governmental guidance principle, generally become unofficial government spokesmen (Lent, 1978:157). Laws which restrict media on access to information as well as on publications further make the press subservient to the state authority and servile towards governmental power (Chandra, 1986). The media control by the government in Malaysia raised the consternation of the opposition almost at all times and this became a major issue brought up by the opposition parties during the general elections in 1990 and 1995.

Today, the state still enjoys the continuing support of the press due to various levels of control exerted by the executives in the highest hierarchy of government bureaucracy. Since Independence, the state has exerted control over the Malaysian press via laws and court actions, regulatory agencies and other pressurizing techniques upon journalists.⁵

⁵ John A Lent (1974) classified three types of governmental control on Malaysian media: legislation, ownership and utilization. K. Das (1990) categorized three ways on how the government imposed its control: ownership, legislation and escape journalism. Despite the time difference between these two publications, both critics highlighted the same principal factors affecting Malaysian media: legislation and ownership. The latter, however, found that journalists attempting to get away from these control began to focus on 'development journalism' where foreign, business and sports news were given more coverage compared to local, political and socio-economic news. In other words, journalists allowed self-regulation to play a crucial role to avoid getting themselves in trouble under the strict supervision of the state.

The firm enforcement of laws and subsequent court actions imposed upon journalists and printing presses shows that the politicization of the Malaysian press is remarkable. The revoke of printing permits of three dailies, *The Star*, *Sin Chew Jit Poh* and *Watan* was a step taken by the state to put a political-cum-ethnic crisis to an end in October 1987.⁶

Since then, there has been an increasing use of local media for political purposes, for instance, the illegality of UMNO which led to the formation of UMNO Baru,⁷ followed by the suspension of the Lord President Salleh Abas in 1988; the immunity of the Malay rulers in 1991; and the sex scandal involving the former Chief Minister of

⁶ Following the crackdown in 1987, the Parliament made amendments to coercive laws, particularly the Printing Presses and Publication Act (PPPA) and the Police Act. After the amendment, publishers of printing presses were required to apply for new licences annually instead of renewing their licences by the end of every. When a printing permit is revoked, publishers cannot challenge the actions of the Minister of Home Affairs in a court of law (*New Straits Times*, 4/12/1987 and 5/12/1987). Under the amended Police Act, any political rally or gathering without police permission is banned (*New Straits Times*, 5/12/1987).

⁷ In 1987, eleven members of UMNO in Team B who favoured Razaleigh Hamzah and opposed Mahathir Mohamad petitioned the High Court concerning the legality of UMNO as a society. They alleged that certain party members of some unregistered branches participated at a divisional meeting in nominating candidates, thus making the recent party leadership election null and void. When UMNO was declared an unlawful society by the Supreme Court on 4 February 1988, the Prime Minister, Mahathir Mohamad immediately set up a new political party, UMNO Baru or the New UMNO, to continue the party struggle under another name. See Rais Yatim (1995). *Freedom under Executive Power in Malaysia*. Kuala Lumpur: Endowment, p.319-326.

Malacca, Rahim Tamby Chik in 1994.⁸ The many politicized issues since 1987 indicate that politicians are aware of the political gains to manipulate the press for political purposes. This has helped to form the dominance of the mainstream press and shadow the attempt of journalists to promote investigative reporting.

⁸ Rahim was then the Chief Minister of Malacca and the chief of UMNO Youth when he was accused of being in close proximity with an underaged school girl. Rahim stepped down from his party and government posts following the scandal. However, all charges against Rahim were dropped by the Attorney-General's office in December 1995 (*Aliran Monthly* 15(12)). All major newspapers, including *Utusan Malaysia* which first highlighted the issue, reported the Supreme Council's decision on the 'innocent' former Chief Minister.

Laws and court actions

As a former British colony, Malaysia attributes her systematic statutory system to the British laws and convention. The British, however, did not pay much attention to the development of local press or provide clear principles to guarantee freedom of the press in their colonies (Onyedike, 1984:93). Local colonial officials who received little instruction on press attitudes of the British government initiated restrictive press laws to exert control over the press in these colonies. This is the reason for the many statutory limitations imposed on the current Malaysian press (Shad Faruqui, 1991; Chandra Muzaffar, 1990; Mohd Hamdan, 1988).

Among statutory acts that were passed in the Parliament to restrain publication are:

- Printing Presses and Publications Act of 1984 (Act 301) and Amendment (Act A684)
- Official Secrets Act of 1972 (Act 88) and Amendment (Act A 573)
- Internal Security Act of 1960 (Act 82)
- Sedition Act of 1948 (Act 15 of 1970)
- Defamation Act of 1957 (Act 286)

Printing Presses and Publication Act of 1984 & Amendment Act A 684

The original Printing Presses Act of 1948 required newspaper publishers to hold documents, a licence to use a printing press and a permit authorising the printing and publication of a newspaper. It was amended after the incident of May 1969 to prevent publications of incidents that are likely to inflame communal feelings or prejudice the security of the nation. Today, PPPA and its amendment act still serve the same purpose but far more stringent compared to 50 year ago. For instance, PPPA has empowered the Minister of Home Affairs to have the absolute discretion to refuse an application for a licence or the permit as well as the renewal of such documents.

The press laws of Malaysia have continuously been tightened via four amendments -- Printing Presses Act was amended in 1969 and 1974, whilst the PPPA in 1984 and 1987. These laws are regulated by the government to exert control over freedom of speech via the national press policies. The PPPA and the Amendment Act regulate the use of printing presses, the printing production, reproduction and distribution of publications, and the importation of publications from abroad. The Acts impose a number of prior restraints on the above activities and prescribe strong penalties, including mandatory jail sentences (Shad Faruqi, 1991:129).

Licences and permits granted in the First Schedule contain some conditions that are specified or endorsed by the Minister of Information. Under the PPPA, the Minister of Home Affairs is empowered to revoke or suspend a licence if he finds any printing permit that is used for printing materials prejudicial to public order or national security.⁹ Amendment made in December 1987 and enforced in January 1988 stated that the Home Minister's discretion in the grant, refusal, revocation, suspension, determination of the period of licence is conclusive and not subject to any action in any court of law.¹⁰ The right to be heard when a licence or permit is revoked or suspended is denied by the PPPA Amendment Act.¹¹

The introduction of these amendments aroused controversy among politicians and the press people. However it has been asserted

⁹ Section 13 of PPPA.

¹⁰ Section 13A of PPPA. In 1988, the decision of the Home Minister in refusing to grant a permit was squashed by the High Court, in *Persatuan Aliran Kesedaran Negara (Aliran) v. Minister of Home Affairs* (1 MLJ 442). Aliran obtained an order of certiorari for its application for a publication permit to print and publish a magazine, *Seruan Aliran*, in the national language. However, when the Minister of Home Affairs appealed to the Supreme Court, the decision of the High Court was revised in *Minister of Home Affairs v. Aliran* (1 MLJ 351). The Supreme Court's decision on 4 January 1990 was based on two reasons. First, the minister has the right in his absolute discretion, to refuse an application for a licence or permit to print and publish a magazine in any language in Malaysia. Second, the minister had not acted with any impropriety, such as in a prejudiced or biased manner or in bad faith, in exercising his discretion in rejecting the permit (*Mallal's Digest Yearbook*, 1990:258). Ajaib Singh, a Supreme Court Judge, determined that ministerial power under section 12(2) of the PPPA could not be revised by the court (Rais, 1995:175). This episode indicates the court is subject to decisions made by the minister when he refuses an application for a printing permit.

by the Parliament that "only publishers and creditors who fail to keep to the facts in their publications and reports need have anything to fear".¹² Mahathir Mohamad, the Prime Minister cum Minister of Home Affairs justified that the amendments were necessary to define the government's power in written laws, and to prevent certain sectors from manipulating unwritten laws to obstruct functions of the government (*New Straits Times*, 4/12/1987).

Among others, the conditions of Printing Press Licence imposed on printing companies are that the licence holder (usually the owner of a printing press) be fully responsible for all materials printed by him or his company. The printing press shall not be used to print any publication that is likely to be prejudicial to public order, morality, security, relationships with any foreign country or government, or which is likely to be contrary to any law, public interest or national interest.¹³ In the interest of 'national security', laws have been constituted by the Parliament to prohibit the discussion and the questioning of four sensitive issues -- citizenship rights, the status of *Bahasa Melayu* as national language, the special position of the

¹¹ Section 13B of PPPA Amendment Act.

¹² "Legislation Governing the Press". *Press Guide 1997*. Kuala Lumpur: WhiteKnight Communications. p.148.

¹³ Fourth condition of Conditions of Printing Press Licence; sixth condition of Conditions of Permit.

Malays, and sovereignty of the Rulers -- which are constituted respectively in Part III of the Federal Constitution, and in Articles 152, 153 and 181.

The PPPA of 1984 requires a publisher to fulfill the Conditions of Publication Permit before obtaining a publication permit from the government. These conditions clearly reflect the state intervention in the content of a local printing press. It is conditioned that major part of the contents of the newspaper shall be limited to the affairs of Malaysia.¹⁴ Furthermore, the newspaper shall not in any manner misrepresent facts relating to incidents of public order and security occurring in Malaysia¹⁵ and the permit holder is required to comply with and not to contravene any directives issued by the Minister of Home Affairs from time to time.¹⁶ For offences under PPPA, Penal Code, Sedition Act and Internal Security Act, the court shall order forfeiture of the press permit even if the conviction has yet to be recorded.

The period for which a permit is granted is 12 months or lesser and there is no provision for renewal. Publishers who wish to continue

¹⁴ Third condition of Conditions of Permit, PPPA.

¹⁵ Seventh condition of Conditions of Permit, PPPA.

¹⁶ Eleventh condition of Condition of Permit, PPPA.

will have to submit a fresh application for a new permit. Despite the strict legal constraints to print and publish, the press and its publishers have not taken an adversary stance towards the state intervention mainly because owners of the Malaysian press are unlikely to risk their businesses for the sake of press freedom. In short, the fear of displeasing the ruling government can be attributed to Printing Presses and Publications Act.¹⁷

¹⁷ In the application for both printing press licences (Form A) and publication permits (Form B), details such as names, addresses of licence or permit holders, scope and contents of newspaper are registered. The licence or permit shall not be transferred, assigned or otherwise placed under the control of another person without the prior permission of the Minister of Home Affairs (fifth condition of Conditions of Printing Press Licence, PPPA and eighth condition of Conditions of Permit). This has put the owner of the printing press as the person solely responsible for the operation and production of the printing press.

Official Secrets Act of 1972 and Amendment (Act A 573)

Another major mechanism for the state to undermine the people's right to know is the classification of information as state secrets. The Malaysian government inherited the much criticized Official Secrets Act (OSA) from the British, which attempted to surround its activities with an impenetrable blanket of secrecy. The OSA allows Ministers, *Menteri Besar* or Chief Ministers, or any public officer appointed by any of these executives to classify and declassify documents as 'official secrets'. This Act applies to citizens and non-citizens with the exception of parliamentary privilege and immunity relating to judicial proceedings.

The OSA stated that 'official secrets' from a government source cannot be received or released without prior authorization. As this Bill was introduced in Parliament in 1972 to equip the government with adequate power to deal with spies from foreign countries, it gave a lot of discretion to the executive, instead of the judiciary court to define what is meant by 'official secrets'.

Today, the OSA is believed to be a deterrent to investigative journalism because many find the meaning of 'official secrets' to be ambiguous enough to become a trap to journalists. Furthermore, if any person is found committing an offence or is reasonably suspected of having committed, or has attempted to commit, or is about to commit

such an offence, he may be arrested without a warrant.¹⁸ Another consequence of this act is to limit the people's resources of information and thus to discourage the flow of information in the society.¹⁹

The most controversial clause in this act is that "It shall not be necessary to show that the accused person was guilty of a particular act tending to show a purpose prejudicial to the safety or interests of Malaysia".²⁰ On the other hand, any person who fails or refuses to disclose such information (for the purpose of investigation), or to produce such accounts or articles or documents to the person so authorized shall be guilty of an offence punishable with a fine not exceeding RM2,000 or imprisonment for a term not exceeding one year or both fine and imprisonment.²¹ Where the person guilty of an offence is a company or corporation, or a member or servant of a partnership or firm, every director and officer of the company or every member of the partnership or firm shall be guilty of the like offence, unless he proves that the act or omission constituting took place without his knowledge, consent or connivance.²²

¹⁸ Section 18 of OSA.

¹⁹ As Azlan Shah described, "The more the lid is kept firmly on the pot, the hotter the steam that escapes". See Azlan Shah's (1986).

²⁰ Section 16(1) of OSA.

²¹ Section 20(2) of OSA.

²² Section 28 of OSA.

Internal Security Act of 1960 (Act 82) and Amendment 1989

This is one of the most obnoxious law pertaining to freedom of the journalists as the Minister of Home Affairs is empowered to exercise preventive detention. If the Minister is satisfied that the detention of any person is necessary, with a will to preventing him from acting in any manner prejudicial to the security of Malaysia, he may make a detention order directing that such persons be detained for any period not exceeding two years.²³ Besides, any judicial review in respect of the Yang Di-Pertuan Agong or the Minister's act and decision is prohibited in the exercise of their discretionary power in accordance with the Act.²⁴

With regard to the PPPA, a person is liable as appears to the Minister responsible for printing materials containing incitement to violence, disobedience to the law, breach of the peace, hostility between different races or classes of the population. A person is also liable if he appears to the Minister as prejudicial to the national interest, public order, or security of Malaysia.²⁵

²³ Section 8(1) of ISA.

²⁴ Section 8B(1) of ISA.

²⁵ Section 22(1) of ISA.

This act also provides special powers to the Minister to prohibit subversive publication. Any person who prints, publishes, sells, circulates or reproduces a document or publication, shall be guilty of an offence. On conviction, that person shall be liable to a fine not exceeding RM2,000 or to imprisonment for a term not exceeding three years, or to both.²⁶

²⁶ Section 24 of ISA.

Sedition Act of 1948 (Act 15 of 1970)

The Sedition Act of 1948 provides for the punishment of any act, speech, words or publication with 'seditious tendency', regardless of the person's intention. In journalistic writings, sedition could be committed by inciting disaffection against any ruler or government, inciting the contempt for the administration of justice, or by producing articles that promote feelings of ill-will and hostility between races or classes, or questions any of these sensitive issues: citizenship rights, the status of the Malay language as the national language, special position of Bumiputeras and the sovereignty of Rulers.

This act imposes serious limitations upon newspaper reportage because investigative and inexperienced journalists are likely to convict 'seditious tendency' in their journalistic writings about the government. On conviction, for a first offence one is liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both.²⁷ Newspapers containing seditious matter will be suspended under Section 9(1). When a writer is convicted of publishing seditious writings in a newspaper, the court may prohibit the future publication of that newspaper absolutely or for a period not exceeding one year. This means not only is the writer

²⁷Section 4 (1) of Sedition Act.

punished but the newspaper he works for will be in jeopardy if it carries news or articles deemed to have 'seditious tendency'.

Defamation Act 1957 (Act 286)

Under this act, it is stipulated that the press shall not lower a person in the estimation of right-thinking members of society generally. Defamatory words in publication is a tort as well as a crime under certain circumstances. Publication in a newspaper is qualifiedly privileged if there is absence of malice and the report is fair and accurate. The aggrieved party is allowed to make a contradiction or explanation. Newspapers can also plead mitigation if the libel was inserted without malice, without negligence and when the seditious article is followed by a full apology (Shad Faruqui, 1991:125). However, there is a prevailing belief that apology or withdrawal of defamation cannot be guaranteed completely to undo the harm which had been done.

It has also become a common understanding among journalists that the more influential and powerful a person is, the heavier the damages for libel because the person most probably holds a public position of considerable responsibility in society or enjoys prominent status in the economic sector. In a court case associated with defamation, Vincent Tan Chee Yioun, a wealthy Chinese businessman

closely associated with UMNO leaders, contended that he was entitled to RM20 million as damages in reputation and claimed that quantum from respective writers, publishers and printer of a magazine.²⁸ The court held that it was a serious libel and the defendants were jointly liable for the seditious publications. The defendants were ordered by the court to pay the sum of RM10 million for general damages, the highest compensation ever in the history of Malaysia's press system.²⁹ The case of *Vincent Tan v. Hasan Hamzah* has alarmed publishers that they should not take risk to keep their readers informed at the expense of their own expenses, prospects and the interests of their publishing companies.

There are various regulations that exert control over the press, for instance, the Copy Right Act of 1987, Contempt of Court, Contempt of Parliament, Penal Code Offences, Broadcasting Act of 1988, Public Order (Preservation) Ordinance 1958, Essential (Newspaper and Other Publications) Regulations 1969, Essential Control of Publications and Safeguarding of Information Regulation

²⁸ On 5 December 1994, a Chinese entrepreneur, Vincent Tan alleged that four articles published in a magazine, *Malaysian Industry* had vilified his person and character and had destroyed his commercial reputation as a businessman.

²⁹ See *Tan Sri Dato' Vincent Tan Chee Yioun v. Haji Hasan bin Hamzah & 6 Ors.* (Civil Case No. S5-23-23-94). *Current Law Journal Vol.1. January-March. Index 1995.* Kuala Lumpur: The Malaysian Current Law Journal Sdn Bhd, p.117-132.

1966, Undesirable Publications (Prohibition of Importation) 1951 and Obscene Publications.

Non-government information, especially that found in commercial businesses are protected by acts that restrict financial reporters' access to information. Among these are Companies Act 1965, National Land Code 1965, Security Industry Act 1983 (Act 280), Banking and Financial Institutions Act 1989, Trade Description Act 1972, Employment Restriction Act 1968 and Commodity Trading Act 1985. Prohibitions in these acts are subtle and not easily identified by inexperienced journalists.

The Malaysian government is also empowered to have direct control over major channels in the provision of information through the Ministry of Information and other regulatory agencies. For instance, the Ministry controls Radio and Television Malaysia (RTM) and National News Agency of Malaysia (*Pertubuhan Berita Nasional Malaysia*, or Bernama), the only local news agency under Act R/1967. The Telecommunications Malaysia Act (Act 296) enables the Cabinet to have control over posts and telecommunications, in other words, to make decisions on the information flow. Foreign news agencies such as Reuter, Associated Press (AP) and United Press International (UPI) are under constant state intervention via official censorship even though these agencies are not directly controlled by the state.

There are numerous instances of suspension of distribution, licence and printing permits since 1969. Among some of the instances are:

- May 1969: two English weeklies, *Newsweek* and *Time* were banned for publishing articles 'offensive' to the Malaysian government. *Time* was then allowed to be distributed with its 'World News' section being torn off, whilst the circulation of *Newsweek* was totally banned (Mohd Safar, 1996:274).
- July 1972: a Chinese daily in Sarawak, *See Hua Daily News* was closed down for a month due to a news item concerning the visit of high-ranking Indonesian military officials to Sarawak.
- September 1972: *Majalah Manja*, a Malay language magazine was seized.
- June 1973: *Far Eastern Economic Review* was banned for reporting the Malaysian Chinese Association crisis
- September 1973: *Far East Economic Review* had two pages deleted for publishing an unacceptable story on the new Deputy Prime Minister.
- October 1973: the licence of a Chinese daily, *The International Times* published in Kuching, Sarawak, was revoked by the Federal Government.

- November 1973: a cultural monthly, *Truth* was suspended for its stand on the Middle East situation that was contrary to Malaysia's peace efforts.
- September 1983: a magazine not associated with any political parties, *Nadi Insan*, was banned after receiving three warning letters for publishing articles that could have effects over Malaysia's diplomatic relations with Brunei and Singapore (Khor, 1991:144-5).
- 1986: *Mimbar Sosialis* was suspended due to an unacceptable poem on farmers entitle "*Kaum Tani*".
- 1986: *National Echo* was suspended.
- September 1986: a foreign English daily, the permit of *Asian Wall Street Journal* was suspended for three months for threatening the national security and other reasons.³⁰
- October 1987: three dailies, *The Star*, *Sin Chew Jit Poh* and *Watan* were suspended from publication for culminating ethnic tensions. *The Star* resumed publication on 25 March 1988, *Sin Chew Jit Poh* on 8 April 1988 and *Watan* on 28 April 1988.

³⁰ Chan Tham Seng. 1986. "The Suspension of *Asian Wall Street Journal*" in *Malaysian Journalism Review*, July-September, p.5. The work permits of two journalists of *Asian Wall Street Journal*, Raphael Roy Pura and John Peter Berthelsen were withdrawn due to three reasons. First, they failed to abide by the Immigration Acts and Regulations. Second, their failure to abide by the conditions for work permit and third, they had caused threat to the national security of Malaysia.

- 1994: a Tamil newspaper, *Thoothan Weekly* was suspended.

Judging from the much lesser cases of suspension of distribution, licences and permits after the 1987 crackdown, it is found that publishers have become increasingly conforming to the state. Stringent laws in these amendments have effectively restricted the access of journalists to official information and further suppressed the freedom of editors to publish such information.

Despite the many state intervention on the printing presses, the Prime Minister, Mahathir Mohamad has consistently portrayed the image of a political leader who treasures the press freedom only when it is in compliance with vital interests of the society. He believes that press freedom does not just mean to be free from governmental control, but also from other parties that attempt to exploit the press for their own interests. Like any other heads of governments, Mahathir Mohamad prefers developmental news to news that could be destructive to the country (*Nanyang Siang Pau*, 10/1/1996). The Prime Minister's press policy is to resist foreign media control and its colonization effects on the local press via global news flow.³¹ His resistance towards foreign printing presses is attributed to the

Berthelsen reacted by taking charges against the Government. See *J.P. Berthelsen v. Director of Immigration, Malaysia and Ors.* [1987] 1 MLJ 135.

adversarial role taken against their respective government, which is not to be encouraged in the local press system (*New Straits Times*, 3/2/1990).

Despite stiff regulations imposed by the government, there was only one massive strike in protest of the dominant political and ownership control over newspapers in the history of Malaysia. *Utusan Melayu* is the oldest Malay language newspaper for Malaya and Singapore, which was established on 29 May 1939 in Singapore. Following the buyout of *Utusan Melayu* by UMNO in 1972, the daily has been wholly owned by Utusan Melayu (M) Bhd, or commonly known as Utusan.

On the outset, Utusan had declared to strive in the interests of the nation, religion and the people via its popular daily, *Utusan Melayu*. Twenty years later, on 28 May 1959, the Managing Director of Utusan, Yusof Ishak, introduced four new editorial policies to be followed by *Utusan Melayu* journalists:

- To give full support to the party in power as it would be more profitable from a business point of view;
- To give all factual news but restrict prominent headlines of rival political parties;

³¹ Mahathir Mohamd (1993), "Big Brothers Control the International Media". A speech at the 48th Pleno Session, the Grand Assembly of United Nations on 1 October 1993.

- To give more headline news to Alliance Ministers wherever possible and to give considerable coverage to their important policy statements; and
- To praise the Alliance when good deeds are done and offer constructive criticism if a bad decision has been made.³²

The introduction of these new editorial policies was a remedy for *Utusan Melayu* which had earlier taken an adversary stance towards a government policy regarding the replanting of rubber trees. Realizing the influence of *Utusan Melayu* among the people and in order to secure a two-thirds majority in the on-coming general election, the government ordered the editorial board to censor news and comments unfavourable to the government's action. The order was sent out by Nik Hassan Abdul Rahman, the Confidential Secretary to the first Prime Minister, Tunku Abdul Rahman. The state intervention into the editorial policies of *Utusan Melayu* was deemed undesirable but was nevertheless adhered to by taking careful steps in newsroom decision making. On the other hand, the resolution on the editorial policy was initially rejected and ignored by the editors of *Utusan Melayu*. After a meeting held between editors and directors, Nordin Mohamad Sharif, on behalf of the Board of Directors, withdrew the resolution.

³² Daniel Regan (1978), "The Politics of Malaysian Intellectuals" in *Journal of Asian and African Studies* XIII, 3-4, p. 212-230.

In 1961, UMNO members took over the largest holding bloc in *Utusan Melayu* which allowed them to appoint Ibrahim Fikri, an UMNO affiliate, to hold the posts of managing director and editor-in-chief, and to watch the conducts of Utusan officials. Journalists sympathetic to the leftists in Malaya and Singapore³³ were against this change of ownership. This opposition was reflected in the critical news reporting towards the government headed by UMNO. Despite the opposition of the journalists, the Utusan Melayu (M) Bhd Board Meeting led by Ibrahim Fikri resolved once again the editorial policy for editors and journalists on 12 July 1961. Eight days later, *Utusan Melayu* journalists launched a newspaper strike in protest of UMNO's control over editorial policies. The Malayan government announced that the strike was illegal based on the reason that the employees who went on strike did not give prior notice of two weeks to Utusan. The first newspaper strike in Malaya lasted for 93 days, from 20 July to 20 October 1961. A total of 115 journalists participated in the strike, and only 40 of them rejoined Utusan after the strike was over.

The historic newspaper strike launched by *Utusan Melayu* journalists mirrored the resistance towards political control via ownership and their desire to be autonomous in deciding editorial

³³ Mohd Safar Hasim. 1996. *Mahathir dan Akhbar*. Kuala Lumpur: Utusan Publications and Distributors, p.25-6.

policies. This was the starting point for intervention of political parties in the editorial policies of local newspapers. Since then, *Utusan Melayu* has portrayed itself as a partisan daily which serves the political interests of the UMNO leaders.

Compared to other vernacular newspapers in Malaysia, the Chinese dailies have comparatively greater democratic sphere mainly because the Chinese dailies do not really cater to mainstream authority. However, the Chinese dailies are fully aware of the executive's intolerance of criticism. For instance, after the 1990 General Elections, the Prime Minister warned the Chinese dailies against "excessive sensationalism, inaccurate and slanted reporting" during the election campaign period (*New Straits Times*, 11/12/1990). The Chinese dailies were also said to be the cause of the decline of support from the Chinese community for the *Barisan Nasional* coalition.³⁴ Soon after the election, UMNO leaders realized that the time had come to increase its stranglehold over the Chinese dailies (Gomez, 1992).

On commenting the performance of local media, Deputy Home Minister, Megat Junid Megat Ayub said the press must be responsible when confronted with racial and religious issues. The Home Ministry would issue warnings to any newspaper if the reporting was found

³⁴ The results of the 1990 General Election showed that the coalition only obtained a narrow margin of 51 per cent popular vote, which indicated the public's growing support for the Democratic Action Party (DAP), a Chinese-based opposition party.

22/1/1992). The Deputy Prime Minister also pointed out that, in the Western countries, freedom of the press represented critique of government policies. In that case, only the *Harakah*, a party news print published Pan-Malaysian Islamic Party (PAS) and the *Rocket*, a news print by DAP had preserved press freedom in this country because they criticized every policy of the Malaysian government (*Sin Chew Jit Poh*, 22/1/1992).

Less than two months before the 1995 General Elections, three dailies were given a two-week deadline by the Home Ministry to stop publishing articles that could undermine racial harmony in the country, or have their permits revoked (*The Star*, 20/2/1995). Although the dailies were not named, they were said to have published issues relating to racial harmony that undermined the government's efforts in creating a multiracial society. The Deputy Home Minister, Megat Junid Megat Ayob, admitted that strong warning had been issued at a meeting held with the chief editors of these dailies.

Before the Prime Minister dissolved parliament for the on-coming general election, Megat Junid Ayob, the Deputy Home Minister declared that his ministry would not take any action against three Chinese dailies, namely *Sin Chew Jit Poh*, *Nanyang Siang Pau* and *China Press* as reports showed that they no longer carried sensitive issues (*Sin Chew Jit Poh*, 12/3/1995; *Nanyang Siang Pau*, 12/3/1995).

The Parliamentary Opposition Leader and the Secretary General of DAP, Lim Kit Siang protested that the warning issued by the Home Ministry had a negative impact on the press freedom, particularly during the election campaign. He found that news statements and information on DAP had been cut out thoroughly by the local press since then.³⁶ He added that this move had the political intent to exert control over the Chinese dailies (*Yazhou Zhoukan*, 5/3/1995). When asked to comment on the issue after the *Barisan Nasional* government comfortably secured a four-fifths majority in the 1995 General Elections, the Deputy Home Minister said the meeting was just a means of communication and conversation, it should not be seen as an act to restrict press freedom by the ministry (*Yazhou Zhoukan*, 29/10/1995).

Such informal pressurizing techniques that were manipulated from time to time by the Ministry of Home Affairs have instilled fear and apprehension among reporters, editors and publishers. The state control exerted upon the selection of election news during the general elections will be shown in the following chapter.

³⁶ The same issue of not having access to media was brought up by Lim Kit Siang during the election campaign from 16 to 24 April 1995.

Newsroom control and self-regulation

There are, however, some other forms of constraints on the Malaysian press freedom that are non-legislative. Allegations have been made that owners of Chinese dailies ventured into newspaper business to fulfill their own vested interests, both economical and political. It is assumed that these owners lack the time and expertise to run the newspaper and therefore would leave the day-to-day operation to the managerial staff. Moreover, the complicated mechanisms of publishing a newspaper and the rapid expansion of the company's duties would not allow these owners to keep track with the company at the operational level. However, there are many cases where owners with substantial shares are still able to dominate company policies, thus maintaining their influence in newsroom decisions. Owners of these dailies may not determine the day-to-day practice of the newspapers but they do have the power to make decisions on editorial policies or give directives to the management team on how to handle certain issues.

The management team and editors know that in order to succeed and be promoted they must comply with the boundaries laid down for their employers as well. These boundaries eventually become common-sense assumptions of the organization and are rarely

questioned (Barrat, 1986). Despite the reality of intervention, the owners prefer not to be seen as interfering with freedom of the press. The indirect control over editorial policies is often disguised and denied by even the most senior editors in the Chinese dailies. The mechanism thus leads to self-regulation towards the private interests of the owners.

In Malaysia, journalists are believed to have placed restrictions on themselves. The chairman for Human Rights in the Malaysian Bar Council, Cecil Rajendra, claimed that the press was more independent before Operation Lalang in 1987.³⁷ On that occasion, a quick succession took place where three newspapers were closed down for allegedly instigating racial unrest and political tension. The incident paved way for the passing of more restrictive laws. A few months after Operation Lalang, the Parliament amended the Printing Presses and Publications Act of 1984, the Internal Security (Amendment) Act of 1989, the Emergency (Public Order and Prevention of Crime) Ordinance of 1969 and the Dangerous Drugs (Special Preventative Measures) Act of 1985 to disallow judicial reviews of the act of the Minister of Home Affairs (Rais, 1995:185).

³⁷ During the ISA swoop, 97 persons were detained, among others 37 were prominent political readers, 23 were activists or social reformists and 37 individuals others who were educationists, lecturers, researchers, Islamic preachers, Christian evangelists, lawyers and trade unionists. See *The Real Reason: Operation Lallang ISA Arrests October 27, 1987*. Petaling Jaya: DAP, p.116-7.

In the aftermath of Operation Lalang, there was a stricter form of state intervention in the granting of press permits and licences. For instance, the granting of these licences is conditional and based solely on the decision of the Ministry of Home Affairs. Licences are valid for only one year and upon expiry, a new application must be made to enable continuance of operation. Since the state has the absolute power to define what is right and what is wrong in judging the content of a publication, the newspapers have no choice but to conform to the regulations imposed on them.

When asked about the possible political patronage in the local newspapers which could have resulted in excessive self-censorship, an Economic Advisor to the government who is also the former Finance Minister, Daim Zainuddin said the Malaysian government was strong, liberal and intelligent enough to accept criticism, which was why it had granted a lot of newspaper licences to entrepreneurs (*New Straits Times*, 23/7/1994). He has repeatedly criticized the local media for practising too much self-censorship and suggested that they should be more up front in raising issues. He said the media should practise investigative journalism and 'leave the propaganda to the Information Ministry' (*The Star*, 12/12/1995).

The former Deputy Minister, Musa Hitam shared the same view as Daim; he found self-censorship practised by local journalists to be

the greatest restriction that prohibited the dissemination of information related to matter of national interests. The chairman for the United Nations Commission on Human Rights said that journalists imposed self-censorship on issues which they themselves deemed sensitive in addition to adherence to restrictive press laws (*The Star*, 6/10/1995). Musa further pointed out that even before the news regulations were imposed by the Ministry, political ownership of major newspapers had already induced them to practise self-censorship and journalists had thus grown accustomed to paying great attention to indulging and paying attention to the wishes of a "sensitive" government (*Far Eastern Economic Review*, 10/12/1987).

The Deputy Home Minister, Ong Ka Ting denied that his ministry had control over the editorial policies of the Chinese dailies (*Sin Chew Jit Poh*, 9/12/1992). Ong said that he had never instructed the Chinese dailies not to publish news unfavourable to MCA leaders. He added that the governmental control was necessary to ensure responsible news reporting among local journalists. In the same statement, he argued that his ministry issued 118 permits for publication to a 18 million population, compared to Indonesia, 156 permits for publication to a 118 million population, and Singapore only a total of 8 permits to 3 million people.

On the contrary, DAP, the Chinese-based opposition party found that not only state intervention was deliberate, commercialization in the press business had become the overall goal of the local press. In the long run, journalists would be tamed by various fetters of government control and leave behind their mission to serve the society. Chinese journalists, according to the party, were lacking knowledge and professional ethics to keep the society well informed (*Bulletin of Socialist Youth*: August 1994).

However, interviews with journalists working for the Chinese dailies provided insights for the problems facing the local journalists, especially in view of various types of control and self-restraint. A former senior reporter for *Sin Chew Jit Poh* expressed his disappointment towards the journalism profession because journalists failed to exploit the limits drawn by the government to the full. "Our journalists just lack the techniques to present news stories creatively and at the same time do not get caught".³⁸ He argued that the existing acts were not the biggest threat to journalists who were keen on investigative reports. In fact, it was the conservative attitude of Chinese community that did not allow criticism of the state executive power. In

³⁸ Interview with a former reporter of *Sin Chew Jit Poh* at Petaling Jaya on 31 October 1995.

addition, the editorials of most Chinese dailies were clearly pro-establishment and hardly provide insights to the people.

For example, an executive chief editor for the leading *Sin Chew Jit Poh* said that the journalists had to draw their own lines within the limits permitted by laws and other regulations. "In fact, our newspaper would like to achieve a balanced between news reporting on the ruling coalition and the opposition. Every now and then we try our best to provide coverage and editorial space for the opposition parties, but we also know the boundary of what we can publish is relatively small when compared to non-election period."³⁹

An executive editor for *Nanyang Siang Pau* pointed out that it was actually harmless for the local press to report judicial proceedings related to the executive and those concerning the credibility of politicians.⁴⁰ Unfortunately, local journalists hesitated to report certain cases for fear of offend those in power. At the same time, he noticed that Chinese dailies over emphasize the role of Chinese leaders, thus conforming to conventions of Chinese newspapers that viewed issues from a Chinese perspective, rather than from a national perspective.⁴¹

³⁹ Interview with a former reporter of *Sin Chew Jit Poh*.

⁴⁰ Interview with an executive editor for *Nanyang Siang Pau* at Nanyang Siang Pau headquarters, Petaling Jaya on 1 November 1995.

⁴¹ *Ibid.* "For instance, when the recent Amendment Bill for Education Act of 1960 was of the Chinese main concern, instead of opening the discussion ground to all

Indeed, readers of Chinese dailies are very often exposed to the views of these organizations, thus giving an impression that these organizations have the power to act as pressure group to the government, especially in education policy. However, the non-Chinese language dailies pay little attention or show no interest in the Chinese organizations.

According to a news editor of *Sin Chew Jit Poh* who witnessed the closing down of the daily in 1987, Chinese dailies were under tight control after the amendment of the Printing Presses and Publications Act, "When we reported on the 1995 Amendment Bill for Education Act and published the public opinion in the Chinese dailies, it was just an ordinary event. However, the same issue would have been deemed sensitive in the Malay society and when exaggerated we could be accused of giving rise to a racial unrest."⁴² He later cited an instance to show how the Ministry exerted control via meetings with senior editors. On 20 November 1995, the Home Ministry held a meeting with senior editors of the Chinese and Tamil dailies to re-examine excessive discussion on Amendment Bill for the Education Act.

levels, the Chinese dailies chose to 'solve' this problem with the Chinese education organizations such as The United Chinese School Committee Association of Malaysia (UCSCAM) and United Chinese School Teachers' Association of Malaysia (UCSTAM)."

⁴² Interview with a news editor of *Sin Chew Jit Poh* at Sin Chew Jit Poh headquarters, Petaling Jaya on 11 January 1996.

Conclusion

This chapter examines the various media policies, legitimacy and legal actions that are governing the Malaysian press today. Analysis of the many restrictions shows that the Malaysian press is under the control of the state besides political partnership and owners who are closely affiliated with the ruling coalition. Media practitioners including journalists and news editors generally expressed their fear of infringing laws and regulations particularly those pertaining to social harmony and national security. This is probably because they had seen how others suffered from such helplessness when they tried to tell the truth. Even the editors were not spared. Editors were responsible for the mass as well as the press company he works for. They must make sure that the media output is acceptable for the ruling coalition, even though they are given the opportunity to criticize the government based on reliable sources and truthful opinions.

As observed from historical events regarding the infringement of press laws and regulations, the main cause of misery comes from the Printing Presses and Publications Act of 1984. This Act has given the Ministry of Home Affairs discretion to issue warning, detain personnel, and revoke the licence and permit of a printing press as and when necessary. The enforcement of press laws has put editors and journalists under dilemma whether or not to safeguard the people's

right to know at the expense of sacrificing the future of the publishing company they serve.

In conclusion, journalists of Chinese dailies are obviously aware of the threat of legal constraints and informal pressurizing techniques imposed by the Ministry of Home Affairs. The restrictive control upon local printing presses has been intensified with the ambiguity of laws concerning press freedom and the self-restraint attitudes taken by editors and journalists.

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