

Islam and Freedom of Religious Expression in Malaysia

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Abstract

In Malaysia, Islam is the religion of the Federation, and the Islamic law system runs parallel to the civil law system. This triggers a political debate in defining Malaysia as either an Islamic or a secular state which makes the non-Muslims uneasy. The purpose of this paper is to study about the practices of Islam and religious expression in Malaysia particularly during the era of Najib Razak's premiership before the regime collapsed on 9 May 2018. It used qualitative method via discourse analysis by assessing the legal documents and political decisions on religious expression and private speech in Malaysia. This includes in-depth expert interview with expert in Malaysian law and government leaders. This paper found that Malaysia is also a multireligious society prone to inter-group conflict. As such, care is taken not to publish articles that cast a slur on any religions in the country. Although the purposes of restriction are for political stability and national security, the ruling government has indeed manipulated the religious expression for political domination and regime security. This paper will definitely give the overview on the situation of Malaysia involving Islam and the limit of religious expression and religious freedom as well.

Keywords: Freedom of expression; Religious expression; Private speech; Malaysia; Najib razak; Islam religious freedom; religious expression; Malaysia; Islam; Blasphemy; Dress code; The press.



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1. Introduction

Religious sensitivities are seen to be one of the main obstacles to the implementation of religious freedom in Malaysia (Mohd Azizuddin and Mohd Sani, 2010). Great care is taken not to impinge on the religious sensitivities of various groups. Given the fact that Islam is the religion of the Federation as stated in the Federal Constitution, care is taken not to publish articles that cast a slur, intended or otherwise, on the religion or its adherents. All media, including those operated by the opposition, follow this policy. No media can carry articles that question the faith or ridicule it Moses (2002). Thus, religious expression has always been monitored by the government in order to protect the racial harmony in multiracial-multicultural society in Malaysia. This protection is covered in the constitution and it can clearly be seen in practice in certain issues such as religious expression in the press, blasphemy, religious authority, inter-faith commission, and dress codes. Can religious expression harm the society? What is allowed and disallowed? This paper will examine each of these issues and explain how both the government and society tackle the issue of religious expression.

Malaysia imposes some additional restrictions onto civil liberties. Under the banner of 'national security', the Malaysian government limits free expression by arguing from the context of safeguarding race relations and national stability. While democracy as a political ideal is sought, restrictions may be imposed on political processes as necessary to protect other fundamental values. In Malaysia, unlike in the West, it is not the restriction of free expression that is being questioned but rather government domination of the channels of political expression to weaken opposition and eliminate criticism. The problem with freedom of expression in Malaysia is that the ruling government exploits the fragile political situation to benefit its interests. Through policies and the exercise of power, it was able to suppress dissent and criticism from political opposition, NGOs and the public.

However, the claim of government's political suppression on freedom of expression was rebuffed by the Prime Minister Najib Razak, who ruled Malaysia from 2009 until 2018, saying that his government was opened to any criticism. In fact, he blamed fake news and false information that really undermined the government. While criticizing the opposition leaders and foreigners who he claimed of spreading falsehood and fake news, Najib said in the Publish Asia event and the 16th Asian Media Awards on April 19, 2017 that the media have a duty to:

fight to the last this tide of fake and false news that threatens to turn truth into a purely subjective matter, with little relation to the actual facts....The government of Malaysia will be on your side....All we ask in return is the opportunity to remind you to rely in your reporting and sourcing – in whichever country that may be – not on rumours, not on unsourced anonymous quotes, and not on invented propaganda, no matter how persuasively it may be presented, but on verified facts. We have no fear of the facts: for they are undisputed. For the future of newspapers, both in print and online, to be as healthy as we all want and need it to be, I am sure (Channel News Asia, 2017).

Najib even argued that 'free speech is thriving in Malaysia', more than other nations in the region, but false and fake news have become a tyranny of social media and plague in the country.

Meanwhile, many criticized onto the Najib's statement that 'free speech is thriving in Malaysia'. One of the criticisms came from an NGO called ARTICLE 19, who found astonished with the statement because it is in stark

contrast with, according to them, “the repressive laws and policies facing Malaysians who wish to exercise their rights to freedom of speech, opinion or expression, particularly on issues deemed sensitive to the ruling government, with hundreds arrested and charged during his term”. ARTICLE 19 is concerned that Najib, in his speech, seemed to blame ‘foreign activists’ for making the perception of ‘crackdowns on free speech in Malaysia’. In fact, it is not only ‘foreign activists’ but also many vocal civil society organizations, independent journalists and members of the public that criticized the government after seeing the condition of free expression in Malaysia (ARTICLE 19, 2017).

2. Research Questions

In his first term as the Prime Minister from 2009 till 2013, Najib showed the slightly open policy of free expression by amending the Printing Presses and Publications Act (PPPA) and abolishing the Internal Security Act (ISA) and Emergency Ordinance (EO). Najib also reminded people about his open policy saying that:

We recognize the vital role that newspapers play in free societies, and my Government has opened up the space for the democratic scrutiny they rightfully bring to bear. We eliminated the bans on opposition party newspapers; we removed the annual renewal requirement for printing licenses from the 1984 Printing Presses and Publications Act; and we opened up the Home Ministry’s authority to block, allow or revoke licenses to judicial review (New Straits Times, 2017).

However, since his second term in administration after the 13th General Election in 2013, Najib actually imposed more restrictions on free expression by introducing laws such as the Prevention of Terrorism Act (POTA), Security Offences (Special Measures) Act (SOSMA) and retaining and strengthening the Sedition Act (SA). Many criticized the Prime Minister as he seems moving backward rather than forward toward democratization in Malaysia. These actions gravely impede the opposition’s, within and outside of his party, effectiveness in contesting equally in the political arena. The use of the SA has been mainly prevalent, with individuals such as politicians, artists, human rights defenders, lawyers, journalists, students and the general public having been arrested, investigated or charged for expressing an opinion deemed detrimental to the country. As mentioned in the Human Rights Watch’s 40-page report entitled *Deepening the Culture of Fear: The Criminalization of Peaceful Expression in Malaysia*, that documented ‘the government’s use of broad, vaguely worded laws to criminalise peaceful speech and assembly’. This raises the question of the future of free expression in Malaysia. Human Rights Watch urged ‘the Malaysian government to cease using criminal laws against peaceful speech and protests, and to bring its laws and policies into line with international human rights law and standards for the protection of freedom of expression and assembly’. (Hunt, 2016). Najib is becoming more repressive after the 1MDB scandal erupted in 2014 and challenged for power by his former mentor Mahathir Mohamad and his former deputy premier Muhyiddin Yassin. Mahathir and Muhyiddin collaborated with the opposition leaders such as Anwar Ibrahim, Wan Azizah Wan Ismail, Lim Kit Siang and Mohamad Sabu to form an opposition front call Pakatan Harapan (PH). PH managed to defeat Najib’s party Barisan Nasional (BN) for the first time since Malaysia’s independence in 1957.

This paper will analyse the practice of religious expression in Malaysia and how did the administration of Najib deal with this issue legally and politically. This will include an in-depth review on the implementation of private speech in Malaysia. This paper will definitely give the overview on the situation of Malaysia involving Islam and the limit of religious expression and religious freedom as well.

3. Literature Review: Religious Expression in Malaysia

Religion is an integral component of cultural values in Malaysia. Former Prime Minister, Mahathir Mohamad explains that the Malaysian values are based on Malay-Islamic culture and should be protected against the invasion of Western liberal values. He urges the three most basic elements of ‘Malayness’ – feudalism, Islam, and *adat* (traditional customs) as he saw it in 1970 in his book, *The Malay Dilemma*, should all be classed as features to be merely accepted as realities and perhaps adapted to modern needs Barr (2002). Mahathir accuses the Western liberals of practising unfettered free speech which, he believes, can corrupt Malaysian religious beliefs (Mahathir and Shintaro, 1995).

Furthermore, Ismail Ibrahim admits that all positive values are Islamic values, e.g. respect to elderly people and good work ethics (Interview with Ismail Ibrahim, 2001). He also stresses that all societies have their own measurements of human rights, which are based on local values, religious practices and traditions. Freedom of speech should be used in as appropriate a manner as possible without undermining sensitive issues such as national security, religious beliefs and multiracial harmony. Some Southeast Asian leaders such as Mahathir have argued that the aggressive separation of church and state in the West – in effect limiting religion to the private sphere – and the consequent process of secularisation have contributed to a moral void in public life and accentuated the negative impulses of individualism (Mahathir and Shintaro, 1995). In Malaysia, despite the obvious diversity of religions – chiefly Islam, Buddhism, Hinduism and Christianity – and a similar process of secularisation, it has been argued that religion still plays an important part in everyday life and contributes to group identity and orientation. In fact, according to Joseph Lo, most East and Southeast Asians would prefer some constraints onto free speech, perhaps in the form of libel laws to protect religions from various forms of defamation and hate speech (Bell, 2000).

In Malaysia generally, political decision-making is arrived at through processes of consensus rather than confrontation. According to Chandra Muzaffar, “None of the major Asian philosophies regards the individual as the ultimate measure of all things” (Chandra, 1996). Still another important value is “the preference for consultation and consensus...to take the middle path, the Confucian *Chun Yung* or the Islamic *awsatuha*...This spirit of consensual *musyawarah* (or *muafakat*) is very much at play as we progress towards a cohesive regional community” (Anwar,

1996). However, a strong bureaucracy and an absence of the separation of powers are still characteristics of Malaysian states. In fact, there has been practically a fusion of the state, the leading political party and the bureaucracy. This appears to conform to the Malaysian emphasis on harmony and consensus, which could obstruct the free exchange of ideas and rigorous political debate (Mahathir and Shintaro, 1995).

Therefore, Malaysia as a democratic state (Zakaria, 2003). Is willing to suppress religious expression in order to ensure the Malay-Sunni Islam majority remains dominant. It is contended that such political stability will also buttress the political position of ruling party BN or United Malays National Organisation (UMNO) before it was toppled by PH in the 14th General Election on 9 May 2018.

4. Research Methodology

This research uses qualitative method via discourse analysis by assessing the legal documents and political decisions on religious expression in Malaysia. This includes an in-depth review on the implementation of private speech in Malaysia. This paper found that Malaysia is also a multireligious society prone to inter-group conflict. This article also utilises the instrument of expert interview to answers the research questions. This method was chosen because the information received directly through expert interviewing informants is more credible and reliable. Thus, this research employed in-depth face-to-face and email, plus semi-structured interview focusing on the issue of Islam and religious expression in Malaysia. This face-to-face interview is implemented in-depth with informants who comprise of experts in Malaysian law and leaders of the Malaysian government.

5. Result and Discussions

The Constitution definitely gives special attention to Islam and envisages *Syariah* laws would be enacted to fulfil the personal law requirements of Muslims, but manifestly recognises that the *Syariah* would not be made the supreme law (Zakaria, 2003). In the landmark case of *Che Omar bin Che Soh v. Public Prosecutor*, (Che Omar bin Che Soh, 1988). The Supreme Court was called upon to determine the meaning of article 3. The Court stressed that the British colonial in Malaya separated Islam into the public and private aspects, where Islamic law is limited to matters of marriage, divorce, and in heritance only (Thomas). It is only in this sense of dichotomy that the framers of the constitution understood the meaning of the word Islam in article 3. Scholars like Ahmad Ibrahim also observed that the intention in making Islam the official religion of the Federation was primarily for ceremonial purposes, (Thomas), while Shad Faruqi stressed that “the implication of Islam as religion of the Federation is that Islamic education and way of life can be promoted for Muslims. Islamic institutions can be established. Islamic courts can be set up, Muslims can be subjected to *Syariah* laws in certain areas provided by the Constitution” (Faruqi, 2006).

Having said that, the Constitution also devotes an entire section to detailing fundamental liberties guaranteed for the citizens. Freedom of speech is formally assured by Part II of the Federal Constitution under Article 10. Article 10(1) allows: a) every citizen has the right to freedom of speech and expression; b) all citizens have the right to assemble peaceably and without arms; and c) all citizens have the right to form associations. However, article 10(2) limits the right where Parliament may by law impose:

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

Article 11 provides for the freedom of religion.¹ On its face, this provision appears broad enough to guarantee religious freedom for the plural Malaysian society. A citizen reserves the right to profess, practice and – subject to article 11(4) – to propagate his religion. It is also suggested that this freedom can be construed to mean that one is free to relinquish or change a religious belief (albeit with limitations for Muslims under specific religious laws), and even to not be religious (Thomas). Article 11 is further supported by other Constitutional provisions. For instance, article 149 provides that Parliament may enact laws which would be inconsistent with the fundamental liberties under articles 5, 9, 10 or 13 only if action has been taken or threatened by a substantial body of persons against the nation. Thus, laws which would impinge on article 11 are unconstitutional. Even if a state of emergency is declared as in the article 150 (6A) of the Constitution, any emergency laws enacted thereafter cannot curtail freedom of religion. Article 8 also prohibits discrimination on the grounds of religion against public sector employees; in the acquisition or holding of property; and any trade, business or profession. In its relationship with article 3, it is worth

¹ Article 11 reads:

- (1) Every person has the right to profess and practice his religion and, subject to Clause (4), to propagate it.
- (2) No person shall be compelled to pay any tax the proceeds of which are specially allocated in whole or in part for the purposes of religion other than his own.
- (3) Every religious group has the right –
 - (a) to manage its own religious affairs;
 - (b) to establish and maintain institutions for religious or charitable purposes; and
 - (c) to acquire and own property and hold and administer it in accordance with law.
- (4) State law and in respect of the Federal Territories of Kuala Lumpur, Labuan and Putrajaya, federal law may control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam.
- (5) This article does not authorize any act contrary to any general law relating to public order, public health or morality.

noting that the freedom of religion is in no way affected by the status of Islam as religion of the Federation. Article 3(4) explicitly states that nothing in article 3 derogates from any other provision in the Constitution.

Freedom of religion is nonetheless subject to several important restraints. A clear example would be article 11(5) which gives deference to public order, public health or morality. Therefore, any religious act which is contrary to general laws relating to public order, health or morality cannot be sustained under article 11. Another seemingly controversial provision is subsection 4's limitation on the propagation of religion among Muslims. It appears that this strikes against the 'freedom' idea, especially for those who view proselytising as an integral part of religious practice. However, one view is that subsection 4 does not restrict propagation per se. Sheridan and Groves argue that it merely renders it constitutional for state law (or federal law in the case of the Federal Territories) to control or restrict propagation (Sheridan and Harry, 1987). In other words, as long as there are no state laws restricting propagation among Muslims, one may still propagate, unless their acts violate Article 11(5). On the other hand, Shad Faruqi justifies these restrictions in order to protect Muslims against well-organised and well-funded international missionary activities, and to preserve public order and social harmony (Faruqi, 2001). Former Lord President of the Federal Court, Mohamad Salleh Abas also argues:

This limitation is logical as it is necessary consequence that follows naturally from the fact that Islam is the religion of the Federation. Muslims in this country belong to the *Sunni* Sect which recognises only the teachings of four specified schools of thought and regards others school of thought as being contrary to true Islamic religion. It is with a view to confining the practice of Islamic religion in this country within the *Sunni* Sect that State Legislative Assemblies and Parliament as respects the Federal Territory are empowered to pass laws to protect Muslims from being exposed to heretical religious doctrines, be they of Islamic or non-Islamic origin and irrespective of whether the propagator are Muslim or non-Muslim. (Mohamed Salleh, 1984),

The restraints on religious freedom are also developed through case laws – especially on the scope of the word 'practise' in article 11 – culminating in the 'non-mandatory practices' doctrine. In essence, this means that freedom of religion extends only to those practices and rituals that are essential and mandatory (Ahmad, 2009). In *Hjh Halimatussaadiah bte Hj Kamaruddin v. Public Services Commission, Malaysia & Anor*, (Anonymous, 1994). The court rejected a woman's contention to be allowed to wear 'purdah' (a headdress covering a woman's entire face except the eyes) to work because the government was entitled to forbid a religious tradition that was non-essential and optional in the interests of the public service. Similarly, in *Meor Atiqulrahman bin Ishak & Ors v Fatimah Sihi & Ors*,² the court rejected demands by Muslim boys to be allowed to wear turbans to school.

In the matter pertaining state jurisdiction, Article 74(2) of the Federal Constitution reads:

Without prejudice to any power to make laws conferred on it by any other Article, the Legislature of a State may make laws with respect to any of the matters enumerated in the State List (that is to say, the Second List set out in the Ninth Schedule) or the Concurrent List.

Further, item 1, State List, Ninth Schedule of the Federal Constitution the power shall evolved under matters pertaining:

... Islamic law and personal and family law of persons professing the religion of Islam, the control of propagating doctrines ..., and the determination of matters of Islamic law and doctrine and Malay custom. (Emphasis added).

In regards to our constitutional supremacy, states hold power to make laws subject to Article 74(1) and State List of Federal Constitution. However, the power shall not be in violation of other provisions laid in the constitution. Here, religion has been one of the many powers of state legislative assembly. Examples are laid in the judgement of *Che Omar Che Soh vs. PP* (1988), *Mamat bin Daud vs. Government of Malaysia* (1988) and several others.

Governing religious matter, the power then vested to *Majlis Agama Islam Negeri* (State Islamic Council), *Mufti* (State Religious Head), and Shariah Court. Recently, major response received on regards of States' Shariah Criminal Enactment (Shariah Criminal Enactment, 1992), which underlines that *tauliah* (a qualified approval) is a prerequisite before one can propagate Islam publicly or conducting religious talk. In the case of *Fathul Bari bin Mat Jaya & Anor vs. Majlis Agama Islam Negeri Sembilan & Ors* (2012), Court of Appeal in Putrajaya affirms that:

It was commonly accepted that deviant teachings were an offence against the precepts of Islam. Therefore, there was merit in the respondents' contention that, by necessary implication, the teaching of Islam without a *tauliah* could similarly be construed an offence against the precepts of Islam.

In this case, the petitioner contended that State Legislature had exceeded its legislative authority in enacting Section 53(1) under which any person who engaged in the teaching of the religion without *tauliah* from the Approval Committee, except to members of his family at his place of residence only, was guilty of an offence punishable by a fine or jail or both. However, upon delivering the judgment, the Federal Court accepted that the term 'precepts of Islam' covered the three main domains of creed or belief, law and ethics or morality and that those precepts were derived from the *al-Quran* and the *Sunnah* as contended.

The Najib's government was trying to monitor liberals. Liberal Muslims has been deemed as deviants by the government. Minister in the Prime Minister's Department Jamil Khir Bharom, who was in charge of the religious affairs, in reply to Nik Abdul Nik Abdul Aziz's, an Islamic Party (PAS) leader, wish to curb liberalism stated that:

²Current Law Journal 4 (2006), 1.

The government made its stance against liberalism clear in a 2006 declaration, during the 74th National Fatwa Council's discussion. Cooperation between religious authorities and security agencies would be increased to monitor deviant beliefs (Yunuj, 2016).

The government even considered to censor their publication and control the spread of deviant beliefs nationwide. On the other hand, former Minister Mohd Zaid Ibrahim in his statement against Jamil Khir Bharom said that he should be charged under Section 124 Penal Code (Free Malaysia Today, 2016). He further elaborated that as a minister, Jamil should not publicly pronounce such statement when it may cause prejudice to our democracy.

Given that the citizens of Malaysia are governed by parliamentary democracy, freedom to profess any religion is an absolute right that should not be deprived with. However, as laid in Article 3 of Federal Constitution with conjunction to Article 74(2) and State List, Islam shall be the religion of the federation and both, parent and subsidiary authority shall have the power to enact any laws on that regards. Despite the fact that it shall go against the fundamental rights of expression, it is their statutory power. But again, there is a big question mark as to what extent the power to make such law can limit society's freedom to express; for example does Department of Islamic Development in Malaysia (JAKIM) have all the powers given on regards to Islamic Matters? Looking at the entire constitutional landscape, it is obvious that the Malaysian Federal Constitution gives special treatment to Islam but it can be summarized that JAKIM has no absolute power on this issue. The law is somehow tries to separate between civil and Shariah matters but loopholes are everywhere. Nonetheless, political turmoil brewed the issue even worse.

The pendulum shifted as for the discussion made as regards to cross dressing. In the case of *Muhammad Juzaili bin Mohd Khamis & Ors vs. State Government of Negeri Sembilan & Ors* (2015), there are three Appellants, all Muslim men. Medically, however, they are not normal males. This is because they have a medical condition called the 'Gender Identity Disorder' (GID). Because of this medical condition, since a young age the Appellants have been expressing themselves as women and showing the manners of the feminine gender such as wearing women's clothes and using makeups. Indeed, they feel natural being such.

Justice Mohd Hishamuddin Mohd Yunus while delivering his judgment said that 'We hold Section 66 of the Negeri Sembilan Shariah Criminal Enactment 1992 as invalid and unconstitutional with Articles 5(1), 8(1), 8(2), 9(2) and 10(1)(a). The appeal is therefore allowed' (Zurairi, 2014). The coram, which included Justices Aziah Ali and Lim Yee Lan, was unanimous in its decision. The court ruled that the Shariah law contravened constitutional provisions that guarantee personal liberty, equality, freedom of movement, and freedom of expression. It stressed that while the state is empowered to enact laws even involving the matters of Islam, it must not contravene the Federal Constitution that is the supreme law of the land. This case was brought to Court by three transgender men who challenged the law after they were repeatedly charged under Section 66. In his judgement, Hishamuddin had described Section 66 with words such as 'degrading', 'oppressive', 'inhuman' and 'depriving' the Appellants of their dignity. He also lashed out the Seremban High Court, which declared on 11 October 2012 that the law is needed to prevent homosexuality and the spread of HIV. There is medical reason behind transgenderism (Zurairi, 2014).

However, the Federal Court on 8 October 2015 overturned the Court of Appeal's decision that the Shariah law on anti-cross dressing was unconstitutional and void. The court viewed that the Respondents had failed to follow specific procedures as laid in Clause (3) and (4) of Article 4 of Federal Constitution (Raus Sharif PCA referred to the case of *Abdul Karim bin Abdul Ghani vs. Legislative Assembly of Sabah*, 1988). That was a grave error while entertaining Respondents' application as to Section 66. It is trite that any proceeding heard without jurisdiction or power to do so is null and void *ab initio*. Therefore, the Court of Appeal had no jurisdiction to declare the law unconstitutional and added the three transgenders had used the wrong legal procedure to start their action (Suganthi Suparmaniam, 2015).

Meanwhile, the term private speech is synonymous with non-political speech. Non-political, this is also known as unpolitical or apolitical, is defined by the Oxford Dictionaries as subject matter that neither is related nor motivated by politics. For this part of the paper which speaks of the banning of the non-political expression, the argument may be insubstantial as it has no relativity with that of one's political view if it is published based on contents of religious, economy, social studies even negative contents such as sexual or profane materials, if it is seen as mere ideas that should be manipulated. Nevertheless in Malaysia, the lawmakers take this issue seriously that laws are made and upheld to protect the society towards these materials. The law governed the banning of publications in Malaysia is the PPPA. This Act under Section 2 defines a publication as any documents, newspapers, books, periodicals, all written or printed matter that is naturally written or not containing any visible representation, anything which by its form, shape or in any manner is capable of suggesting words or ideas and an audio recording. Further, the publication that may amounts to be banned is called the undesirable publications in which Section 7(1) of the PPPA mentions:

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, 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.

This provision signifies that the Minister of the Home Ministry may ban any publication as he thinks fit, if these materials, to his view contains any elements that will affect the public security and national security.

Other than that, Section 8 of the Act conveys the punishment for the offence mentioned beforehand in Section 7(1) of the Act. Section 8(1) portrays that any person who without lawful excuse is found in possession of any prohibited publication shall be guilty of an offence and shall be liable to a fine not exceeding MYR5,000 upon conviction. This suggests that any person who buys, reads or keep such undesirable publications is possible to be charged, convicted and fined to an amount up to MYR5,000. Subsequently, Section 8(2) applies to any person who prints, imports, produces, reproduces, publishes, sells, issues, circulates, offers for sale, distributes or has in his possession for such purpose any prohibited publication shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine not exceeding MYR20,000 or to both. This provision relies solely on the persons who are the publishers of these undesirable publications.

For instance, among the religious themed books that has been banned in 2014 by the Home Ministry includes 'Akhirnya Ku Temui Kebenaran' by Dr Muhammad Al-Tijani Al-Samawi, 'Agama Politik Nalar Politik Islam' by Ahmad Vaezi and Ali Syahab, '99 Wariat Imam Ja'far Ash-Shadiq Lentera Ilahi' by Imam Ja'far Ash-Shadiq and Rahmani Astuti, 'Saling Memberi Saling Menerima' by Sayyid Mahdi As Sadr and Ali Bin Yahya, 'Fatwa-Fatwa 2 Soal-Jawab Seputar Muamalah Ahlulbair' by Ayatullah Al-Uzhma Imam Ali Khamenei and Mubsin Labib, 'Teladan Abadi Ja'far Shadiq Sang Mahaguru' by Husain Nahrawi, 'Teladan Abadi Hasan Askari Tumpuan Kaum Papa' by M. Ilyas and Hasan Al-Habsyi, 'Teladan Abadi Husain Syahid' by Abdullah Beik, 'Fatimah Az-Zahra & 9 Keturunannya Yang Mulia' by Tarikuddin Bin Haji Hassan, 'Imamul Muhtadin Ali Bin Abi Thalib' by H.M.H Al-Hamid Al-Husaini, 'Meniti Titian Kebenaran' by Khairlzzah and 'Memories Of Muhammad: Why The Prophet Matters' by Omid Safi (The Malaymail Online, 2014).

Clearly, it is difficult to differentiate between public/political expression and private/non-political expression because, based on cases explained above, private speech has been politicized for certain political gains. Most cases were related to religious and morality issues which are in line with the practice of *Sunni* Islam in Malaysia. Hence, the division between public and private expression were rather blur in the eyes of Malaysian society. The most important thing is that the term of public morality in the constitution needs to be clearly defined. In order to define public morality, these diverse multicultural and multireligious values and standards practised by the multiracial population of Malaysia must be taken into consideration particularly when it is codified into law. Through education, deliberation, civil society engagement, family involvement and role modeling, the government should construct and implement policies to ensure individuals, families and communities promote positive moral behavior. (Malaysiakini, 2005).

6. Findings and Conclusion

It is obvious that the right to free expression has been limited by the government, not just to protect national security, but to also insulate it from criticism and to preserve political power and self-interests. The civil society groups look very skeptical on the future of free expression in Malaysia because the current government does regulate and suppress more on the right to free expression. The banning of G25 book on 27 July 2017, for instance, entitled *Breaking the Silence: Voices of Moderation – Islam in a Constitutional Democracy*, even though the book was originally published in 2015 without any problem, saying it of promoting liberalism and pluralism, is one of the examples that free expression is difficult to progress in Malaysia. As freedom of expression is vital for democracy, denying constructive and peaceful expression will hamper the democratic process and democratization. In this matter, Malaysia seems regressive rather than progressive in protecting freedom of expression. Therefore, Razali Ismail, Chairman of SUHAKAM explained that freedom of opinion and expression is the foundation for every democratic society because "the exercise of the right to freedom of opinion and freedom of expression are indispensable conditions for the full development of a person" (The Star Online, 2017). He urged on the government to ratify the International Covenant on Civil and Political Rights (ICCPR). Despite of legality and validity in restricting hate speech and obscenity, there is still no clear future for freedom of expression. Unless, legitimate democratic values are responsibly allowed to be practised and the government has political wills to promote and implement the values, then we can see freedom of expression is flourished in civility for the common good in Malaysia.

Acknowledgement

This article was the output of an ERGS research grant awarded by Ministry of Higher Education, Malaysia

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