

## **Countering Fake News in Malaysia: Islamic and Malaysian Legal Perspectives**

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### ***ABSTRACT***

Sustainable Development Goals (SDGs) aims to produce common goals that would tackle critical environmental, political and economic challenges. Among others, SDG 16 which promotes peaceful and inclusive societies for sustainable development and provides access to justice for all, is related with freedom of expression. Freedom of speech is one of the fundamental liberties protected under the Federal Constitution, which is the supreme law in Malaysia and at the same time, the Federal Constitution allows certain limitations attached to such freedom. Hence, various laws have been enacted by Parliament to draw the limits of such freedom. Fake news is regarded as a threat to freedom of speech and expression which may cause unrest among the public and cause various adverse effects. The spread of fake news through various communication mediums is one of the serious issues in Malaysia. Based on library research method, this paper aims at examining the perspectives of Islamic Law and the relevant laws in Malaysia in countering fake news. The findings indicate that fake news under whatever reason is a crime that goes completely against the teachings of Islam and may cause public outrage and unrest in the country. Malaysian laws in this respect show several developments which are intended to counter fake news and at the same time safeguard the freedom of speech in line with the Federal Constitution and SDGs.

*Keywords: Freedom of Speech, Fake News, Islamic Perspective, Federal Constitution, Malaysia*

### **INTRODUCTION**

Sustainable Development Goals (SDGs) aim to produce common goals that would tackle critical environmental, political and economic challenges. Among others, SDG 16 which promotes peaceful and inclusive societies for sustainable development and provides access to justice for all, is related with freedom of expression particularly right to press freedom and

information. The Goal is the result of the world community's recognition that peace is a prerequisite for development (Sule & Nathaniel, 2022). Freedom of speech and expression is a combination of several different types of rights which include communication by word of mouth, signs, symbols and movements and by the work of the arts, music, sculpture, photos, films, images, books, magazines and newspapers, and its protections cover political, cultural and aesthetic fields (Shad Saleem Faruqi, 2019).

Fake news is a serious issue in regard to freedom of speech in which its dissemination is seen as having a huge effect on people's harmony and security (Bernama, 2017). According to Kanekar AS, Thombre A. (2019), fake news is the intentional spread of misinformation by traditional print and online media, or on social media.

Malaysian Communications and Multimedia Commission (MCMC) highlighted that the number of malicious and false statements spread through SMS and social media has increased in recent times (Official Website of MCMC) especially during the covid-19 pandemic. At that point of time, everyone was in desperate of information regarding the current situation on covid-19 and hence news on the situation of covid-19 and the government announcement in response towards it had been spread throughout the social media including fake information.

In respect of this matter, the responsible ministry in Malaysia is the Ministry of Communications and Multimedia and the relevant agency is the Communications and Multimedia Commission, whose task is to regulate the communications and multimedia industries on the basis of the powers provided for in the Malaysian Communications and Multimedia Commission Act 1998 and the Communications and Multimedia Act 1998. It is therefore the aim of this paper is to examine the perspectives of Islamic Law and the relevant laws in Malaysia in countering fake news.

## **FREEDOM OF SPEECH UNDER THE FEDERAL CONSTITUTION**

Freedom of speech and expression of every citizen in Malaysia is expressly provided in Article 10 (1) (a) of the Federal Constitution. The restrictions on freedom of speech and expression are provided under Clauses (2) and (4) of the Federal Constitution. Article 10 (2) (a) provides that "Parliament may by law impose 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". Based on this provision, the grounds on which Parliament may impose restrictions on freedom of speech are security of the country, friendly relations with other countries, public order, morality, privileges of Parliament or Legislative Assembly, contempt of court, defamation or incitement to any offence.

Further details on restrictions in the interest of the security of the Federation or any part thereof or public order are provided in Article 10 (4) whereby Parliament may pass law to prohibit the

questioning of any matter, right, status, position, privilege, sovereignty or prerogative established or protected by the provisions of Part III, Article 152, 153 or 181.

The Parliament's power to restrict freedom of speech is well illustrated in *Lau Dak Kee v Public Prosecutor* [1976] 2 MLJ 229. In this case, Mohamed Azmi J (later SCJ) opined: "I need only add that Article 10 (1) of the Federal Constitution guarantees the rights of every citizen to freedom of speech, assembly and association. These rights are, however, subject to any law passed by Parliament. Such law can, *inter alia*, impose such restrictions as Parliament may deem necessary or expedient in the interest of security of the Federation or in the interest of public order".

## **FREEDOM OF SPEECH AND FAKE NEWS FROM THE ISLAMIC PERSPECTIVE**

Freedom, both as a concept and as a value, has been denied of many individuals, groups and nations. It has been misunderstood and abused. The fact is that in no human society can man be free in the absolute sense of the word. There must be some limitations of one sort or another, if the society is to function at all (Hammudah Abdalati, 1998).

Apart from this general idea, Islam teaches freedom, cherishes it and guarantees it for the Muslims as well as for the non-Muslims. The Islamic concept of freedom applies to all voluntary activities of man in all walks of life. His right of freedom is sacred as long as he does not deliberately violate the law of Allah or violate the rights of others (Hammudah Abdalati, 1998).

In Islam, every individual is given freedom of speech in all matters whether about the world or matters pertaining to religion. The objective of this freedom of speech is to promote social harmony and tolerance within the society which is essential for living a life. Allah SWT says in Surah An Nisa' 4:59:

فَإِنْ تَنَزَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ ذَلِكَ خَيْرٌ وَأَحْسَنُ تَأْوِيلًا

Meaning: "And if you disagree over anything, refer it to Allah and the Messenger, if you should believe in Allah and the Last Day. That is the best [way] and best in result".

In addition to the freedom given, for the purpose of maintaining the harmony of society, Islam also provides the details on the prohibition of fraud and the spreading of fake news. This is because the effects of both can be devastating and threaten the security of a country.

In Islamic Law, producing lies and disseminating lies or fake news are both sinful. In fact, both are categorised as major sin in Islam. It is also one of the characteristics of hypocrites (*al-Munafik*). The people who lie and disseminating fake news in any way are sharing with the hypocrites in term of the characteristics. (Ahmed M. Raba 2001) The Quran in many verses condemns the people who lie in their word and actions are those who have no faith. Allah SWT says in Surah Al-Munafiqun 63: 1

إِذَا جَاءَكَ الْمُنْفِقُونَ قَالُوا نَشْهَدُ إِنَّكَ لَرَسُولُ اللَّهِ وَاللَّهُ يَعْلَمُ إِنَّكَ لَرَسُولُهُ وَاللَّهُ يَشْهَدُ إِنَّ الْمُنْفِقِينَ لَكَاذِبُونَ

Meaning: “When the hypocrites come to you, [O Muhammad], they say, "We testify that you are the Messenger of Allah." And Allah knows that you are His Messenger, and Allah testifies that the hypocrites are liars”.

In another verse, Allah SWT says in Surah Al-Nahl 16: 116

وَلَا تَقُولُوا لِمَا تَصِفُ أَلْسِنَتُكُمُ الْكَذِبَ هَذَا حَلَلٌ وَهَذَا حَرَامٌ لِيَتَفَتَرُوا عَلَى اللَّهِ الْكَذِبَ إِنَّ الَّذِينَ يَفْتَرُونَ عَلَى اللَّهِ الْكَذِبَ لَا يَفْلِحُونَ

Meaning: “And do not say about what your tongues assert of untruth, "This is lawful and this is unlawful," to invent falsehood about Allah. Indeed, those who invent falsehood about Allah will not succeed”.

In the above verse, Allah SWT describes another characteristic beside the previous one, that they ascribe to false things which they really do not know. The Quran uses two terms to describe the liar and the one who disseminate lies, one is ‘kazib’ and the second is ‘affak’ which means, in addition to lying the effort and positive actions to change other’s belief and ideas by using falsehood and lying (Ahmed M. Raba, 2001). The word ‘affak’ in Arabic means: liar, lying. The word ‘ifk’ means to lie and to tell a lie (Ahmed M. Raba, 2001). In describing this, Allah SWT says in Surah Al-Shu’ara 26:221-223:

هَلْ أُنَبِّئُكُمْ عَلَىٰ مَن تَنَزَّلُ الشَّيَاطِينُ تَنَزَّلُ عَلَىٰ كُلِّ أَفَّاكٍ أَثِيمٍ يُلْقُونَ السَّمْعَ وَأَكْتَرُهُمْ كَاذِبُونَ

Meaning: “Shall I inform you upon whom the devils descend? They descend upon every sinful liar. They pass on what is heard, and most of them are liars”.

The event of Al-Ifki is one of the incidents in Islam's history that relates to the consequences of disseminating incorrect news. The event of al-Ifki occurred at the end of the Bani Mustoliq war in the sixth year of hijrah. It is an episode in which the hypocrites accused Saidatina Aisyah RA of adultery with Sofwan bin Mu'attol, a companion of the Prophet SAW. This episode caused significant division and discontent in Medina society at the time. Some companions are adamantly opposed to the fitnah or fake news. While some of the companions choose to remain silent, others, such as Mistoh bin Uthathah and Hamnah binti Jahsyi and Hasan bin Thabit, believe the malicious claims and disseminate them. This situation continues for a month before Allah SWT revealed verse 11 of surah al-Nur to free and clear Aisyah RA from this dreadful accusation (Wahbah al-Zuhaily, 1991). Allah SWT states:

إِنَّ الَّذِينَ جَاءُوا بِالْإِفْكِ عُصْبَةٌ مِّنْكُمْ ۗ لَا تَحْسَبُوهُ شَرًّا لَّكُم ۚ بَلْ هُوَ خَيْرٌ لَّكُمْ ۗ لِكُلِّ امْرِئٍ مِّنْهُمْ مَا اكْتَسَبَ مِنَ الْإِثْمِ ۗ وَالَّذِي تَوَلَّىٰ كِبْرَهُ مِنْهُمْ لَهُ عَذَابٌ عَظِيمٌ

Meaning: “Indeed, those who came with falsehood are a group among you. Do not think it bad for you; rather it is good for you. For every person among them is what [punishment] he has earned from the sin, and he who took upon himself the greater portion thereof - for him is a great punishment”. (Surah An-Nur 24:11)

In his book *Tafsir fi Zilal al-Quran*, Sayyid Qutb explains the aforementioned verse by saying, "It signifies that the fitnah (slander)/fake news is manufactured by a cohesive group of people with the same aim." Abdullah ibn Ubay ibn Salul is not the only one who spreads fitnah, but he plays a key role, representing Jews and hypocrites who are unable to publicly criticise Muslims. They hide behind the facade of being a Muslim and work silently to destroy Islam (Sayyid Qutb, 1996).

This slanderous incident is one of their destructive plans, but some Muslims, such as Hamnah binti Jahsy, Hassan ibn Thabit, and Mistah ibn Uthathah, are deceived by their di'ayah (slander and lie) and are also responsible for spreading these slanderous claims, whereas the source of the slander is a group led by Abdullah ibn Ubay ibn Salul. He never openly or personally participated in the spread of the fitnah, making it impossible for him to be condemned by hudud. He whispered the fitnah to his trusted people, knowing that they would never testify against him (Sayyid Qutb, 1996).

There are numerous lessons to be learned from Saidatina Aisyah RA's experience. It has a lot to do with what is going on in the world right now. Especially at a time when technological advancements make it easier for anybody to manipulate and circulate fake news. This episode, according to Wahbah al-Zuhaily in *Tafsir al-Munir fi al-Aqidah wa al-Syariah wa al-Manhaj*, has teachings and wisdoms from which people might learn which include: to make a decision based on the evidence; have only positive feelings and assumptions about other Muslims, particularly those who are known for their piety and good character, such as Aisyah and Sofwan bin Mu'attal; ignore blatant deception and lies perpetrated or alleged by some people, as most Muslims did when Aisyah was accused; the story also teaches those who are accused to surrender all their affairs to Allah SWT; verify the issue/news with reputable sources; avoid making snap judgments about others, as this will harm oneself, his family, society, and country; and remember and return to Allah SWT, for it is the best solution for all human beings' problems.

Some of the wisdoms from the Quran regarding fake news include (Zulkifli bin Mohamad al-Bakri, 2019):

**Before spreading any news, verify it and give evidence.** In this regard, Allah SWT states:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِن جَاءَكُمْ فَاسِقٌ بِنَبَأٍ فَتَبَيَّنُوا أَن تُصِيبُوا قَوْمًا بِجَهَالَةٍ فَتُصْحَبُوا عَلَيَّ مَا فَعَلْتُمْ نَادِمِينَ

Meaning: “O you who have believed, if there comes to you a disobedient one with information, investigate, lest you harm a people out of ignorance and become, over what you have done, regretful. Surah Al-Hujurat” (49:6)

لَوْلَا جَاءُوا عَلَيْهِ بِأَرْبَعَةِ شُهَدَاءَ ۚ فَإِذْ لَمْ يَأْتُوا بِالشُّهَدَاءِ فَأُولَٰئِكَ عِنْدَ اللَّهِ هُمُ الْكَاذِبُونَ

Meaning: “Why did they [who slandered] not produce for it four witnesses? And when they do not produce the witnesses, then it is they, in the sight of Allah, who are the liars”. (Surah An-Nur 24:13)

### **Advise others to refrain from discussing or spreading the defamation/fake news**

This is also an important attitude to have if someone is in an environment where defamation is being disseminated. The responsibility of a believer's tongue is significant. He was not easily persuaded to believe whatever he heard. He would also urge others to avoid becoming involved in the promotion of defamation, whose legitimacy and provenance are uncertain. This includes spreading the news through mass media without verifying and validating the news with reliable sources.

### **Punishment/ Warning Against Those Who Spread Fake News**

Allah says in the Holy Quran:

إِنَّ الَّذِينَ يُحِبُّونَ أَنْ تَشِيعَ الْفَاحِشَةُ فِي الَّذِينَ آمَنُوا لَهُمْ عَذَابٌ أَلِيمٌ فِي الدُّنْيَا وَالْآخِرَةِ ۗ وَاللَّهُ يَعْلَمُ وَأَنْتُمْ لَا تَعْلَمُونَ

Meaning: “Indeed, those who like that immorality should be spread [or publicized] among those who have believed will have a painful punishment in this world and the Hereafter. And Allah knows and you do not know”. (Surah An-Nur 24:19)

إِنَّ الَّذِينَ فَتَنُوا الْمُؤْمِنِينَ وَالْمُؤْمِنَاتِ ثُمَّ لَمْ يَتُوبُوا فَلَهُمْ عَذَابُ جَهَنَّمَ وَهُمْ فِيهَا فِي الحَرِيقِ

Meaning: “Indeed, those who have tortured the believing men and believing women and then have not repented will have the punishment of Hell, and they will have the punishment of the Burning Fire”. (Surah al-Buruj 85:10)

The Prophet SAW said:

إِنَّ الْعَبْدَ لَيَتَكَلَّمُ بِالْكَلِمَةِ مَا يَتَّبِعُ فِيهَا يَرِلُّ بِهَا فِي النَّارِ أَبْعَدَ مِمَّا بَيْنَ الْمَشْرِقِ

Meaning: “A slave of Allah may utter a word without thinking whether it is right or wrong, he may slip down in the Fire as far away a distance equal to that between the east”. Sahih al-Bukhari (6477)

## **RELEVANT LAWS TO COUNTER FAKE NEWS IN MALAYSIA**

There are various laws which aims at restricting and at the same time regulating freedom of speech in Malaysia. For example, the Communications and Multimedia Act 1998 (Act 588) which aims at regulating the converging communications and multimedia industries, and for incidental matters. Although this statute seems to provide general provisions regarding communications and multimedia, it however provides specific provisions on false news. According to this Act, dissemination of false information via SMS or social media is an offence under sections 211 and 233 of the Communications and Multimedia Act 1998. Besides that, the Act also regards the improper use of network facilities or network service as an offence under its section 233 which includes the act of creating or soliciting and initiating the transmission of communication which is false which the intent to annoy, abuse, threaten or harass another person.

Another statute created during the British era is the Sedition Act 1948, whose purpose is to provide for the punishment of sedition. In other words, it criminalises speech, words, publication and acts which contain seditious tendency. According to the said Act, seditious is defined as “when applied to or used in respect of any act, speech, words, publication or other thing qualifies the act, speech, words, publication or other thing as one having a seditious tendency”. Actions which may amount to seditious tendency is listed in section 3(1) of the said Act.

Apart from the abovementioned statutes, the Printing Presses and Publications Act 1984 (Act 301) has been used by the government to regulate the use of printing presses and the printing, importation, production, reproduction, publishing and distribution of publications. Based on section 2 of the Act, it defines “publication” as to include “a document, newspaper, book and periodical; all written or printed matter and everything whether of a nature familiar to written or printed matter 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”. This Act makes it an offence to publish false news as enunciated in section 8A where this provision under subsection (1) reads “Where in any publication there is maliciously published any false news, the printer, publisher, editor and the writer thereof 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 twenty thousand ringgit or to both”.

The prohibition on publication of an untrue statement about a person without lawful justification is generally provided by the Defamation Act 1957 (Act 286). This Act particularly concerns with the action of damaging the good reputation of someone, by way of intentional

false communication in either written or spoken which harms a person's reputation. From the preamble of the said Act, it can be known that there are two types of defamation, slander and libel, both of which are prohibited under the said statute. Slander is a defamatory statement made not in a permanent form, for instance by means of spoken words, gestures or some form of acts and addressed to the 'ears'. Libel on the other hand is a defamatory statement made in a permanent form such as books, newspapers, drawings, paintings or cartoons and mostly addressed to the 'eyes'. It is also to be noted that in case of libel, slander is made against women, slander which affects official, professional, business reputation or slander of title, no proof of special damage is required. However, slander other than the abovementioned requires proof that such action has caused special damage (actual finance or material loss) and not merely loss of reputation before a person can be caught under the said Act.

In addition to that, the Penal Code also provides for the offences in relation to defamation particularly under sections 499, 500 and 501. For example section 499 provides "Whoever, by words either spoken or intended to be read or by signs, or by visible representations, makes or publishes any imputation concerning any person, intending to harm, or knowing or having reason to believe that such imputation will harm the reputation and shall also be liable to fine of such person, is said, except in the cases hereinafter excepted, to defame that person".

In 2018, Malaysia has taken a proactive measure in countering fake news by introducing the Anti-Fake News Act 2018 despite critics by the public against its existence. Although the Act was seen by some as a creature to camouflange certain political activities, the Act may be regarded as a saviour to those affected by the spread of fake news as it deals specifically only on fake news. According to the said Act under its section 2, fake news means news, information, data and reports, which is or are wholly or partly false, whether in the form of features, visuals or audio recordings or in any other form capable of suggesting words or ideas. Any person who maliciously publishes or disseminate fake news or publication which contain fake news commit an offence and fine not exceeding RM500,000 or to imprisonment not exceeding six years or both may be imposed to the offender. However, this Act survives only for a year when Dewan Negara approved the repeal of the Act in December 2019 (The Sun Daily, 19 December 2019).

In early 2021, a proclamation of emergency was issued by the Yang di-Pertuan Agong under Article 150 of the Federal Constitution due to the grave emergency arising from epidemic of COVID-19. The Emergency (Essential Powers) (No 2) Ordinance 2021 was then promulgated by the Yang di-Pertuan Agong in order to safeguard and preserve the security, economic life and public order. Among others, this Ordinance defines fake news as to include any news, information, data and reports, which is or are wholly or partly false relating to COVID-19 or the proclamation of emergency. The Emergency Ordinance was later revoked by the Parliament (Nuradzimmah & Teh Athira, 2021).



## CONCLUSION

The discussion above shows that there are various laws which tackle the issue of fake news in Malaysia and at the same time safeguard the freedom of speech in line with the Federal Constitution and SDGs. Not only the existing laws in Malaysia prohibits fake news, Islam also recognizes the fact that every news should be verified before spreading it. The act of spreading fake news in Islam is a great sin and is prohibited by Allah SWT and his Messenger. This is because the act will cause chaos and threaten the harmony in the community. Hence, strict enforcement of the existing laws to combat fake news is necessary. Besides, the government also should promote news literacy in order to educate people on the difference between real and fake news, and to encourage people to verify the authenticity of information they are reading or receiving.

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