

UNIVERSITI TEKNOLOGI MARA

**SEDITION ACT 1948: A LEGAL STUDY ON THE
RELEVANCY OF THE ACT**

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CHAPTER ONE: INTRODUCTION

1.1 Research Title

Sedition Act 1948: A Legal Study on the Relevancy of the Act

1.2 Research Outline

This paper aims to embark on a research to examine the relevancy of the Sedition Act 1948 in Malaysia. The paper is organised into five chapters to achieve this goal. This research is also structured in a way that we would not have a specific literature review and findings chapter as it is incorporated into all the other chapters.

Chapter one is the introduction of this paper which includes the research background and the problems this study seek to address. This chapter also highlights the research questions, research objectives, methodology, scope, limitations and the significance of the research.

The second chapter touches on the origins of sedition and its adoption as a Malaysian law. This chapter would also look to dissect the wordings of the act and discuss on the two major amendments to the act.

Chapter three will delve into the implementation of the act and issues that arises from it. Several cases will be discussed to clearly determine the extent of the use of the act and the conflicts that accompanies it. Criticisms and scholarly discussions from various sources are included to supplement the views.

Chapter four will look at the alternative local laws and also international practices. This will serve as a tool for comparison with the act, from the choice of legal terms and its implementations within Malaysia and jurisdictions abroad.

The fifth and final chapter includes the recommendations and conclusion to the research. Here we will answer the research questions to fulfil the research objectives as a conclusion to this research.

1.3 Research Background

Sedition Act 1948 was adopted by the British rulers from existing 19th Century legislation from colonial India into the then Malaya before independence. Its purpose was to combat threats from Communists insurgency.¹ The Sedition Act originated as an Enactment (Enactment 13/1939), then as an Ordinance (Ordinance 14/1948) and later amended and passed as the Sedition Act (Act 15/1970), which was enforced on 14th April 1970.² The act since then has gone through two major amendments. The first amendment introduced provisions relating to the protection of Bumiputera's special position under the Federal Constitution, the monarchy and the preeminent position of the national language. The second amendment both restricted and expanded the seditious definition by removing seditious acts against the government and judiciary while adding seditious act relating to religion and talks of secession.

Throughout the colonisation of Malaysia there were no prosecution under the Sedition Act and only after independence from the British in 1957 was the act used to prosecute. Ironically the act was never used against communist sympathisers or its

¹ SUARAM & ARTICLE 19 2005. Freedom of Expression and The Media in Malaysia. London.

² SHAMRAHAYU ABDUL AZIZ. 2014. *Hujah Mansuh Akta Hasutan Tidak Konkrit* [Online]. Kuala Lumpur. Available: ikimfm.my/v2/hujah-mansuh-akta-hasutan-tidak-konkrit/.

rulers, whom all later laid down their arms in the year 1989; instead it has been mainly used against members of opposition political parties, journalists, and social activists.³

There are strong oppositions against the Sedition Act mainly by opposition political leaders, social activist, SUARAM and even the Bar Council of Malaysia. The current Prime Minister, Dato' Seri Najib Tun Razak has spoken on abolishment of the act on 11th of July 2012 to be replaced by National Harmony Act,⁴ but he later declared on 27th November 2014 to strengthen the act instead amidst strong calls by his ruling party to retain the act.⁵ Tun Abdullah Ahmad Badawi, the former Prime Minister concurs with the current Prime Minister's statement to maintain the act but he also cautions that the act itself is not a tool or means to maintain power. The power comes from the people and their support for the particular government.⁶

Among the other supporters of the act, Former Law Minister Syed Hamid Albar spoke in support of the act citing the need for containment of 'domestic aggression'.⁷ Others argue that the Sedition Act does not deny the right of the accused to be presumed innocent; hence, it does not conflict with the philosophy of the administration of justice.⁸

³ ANTHONY, J. 2009. *Seditious Tendency? Political Patronisation of Free Speech and Expression in Malaysia*, Kuala Lumpur, ERA Consumer Malaysia.

⁴ SHAGAL, L. K. & RAZAK AHMAD. 2012. PM: National Harmony Act to replace Sedition Act. *The Star Online*, 11 July.

⁵ AKIL YUNUS. 2014. Najib: Sedition Act to stay. *Ibid.*, 27 November.

⁶ 2014. Don't rely on Sedition Act for power, Pak Lah says. *The Malay Mail Online*, 27 November.

⁷ SHAMIM ADAM. 2014. Malaysia's Sedition Law Needs to Stay, Former Minister Says. *Bloomberg.com*, 29 October.

⁸ SHAMRAHAYU ABDUL AZIZ. 2014. *Hujah Mansuh Akta Hasutan Tidak Konkrit* [Online]. Kuala Lumpur. Available: ikimfm.my/v2/hujah-mansuh-akta-hasutan-tidak-konkrit/.

The parties calling for repeal of the Act has labelled the act as too broad and vague in the definition of 'sedition'. The central notion of sedition is defined broadly and could be anything which, 'when applied or used in respect of any act, speech, words, publication or other thing qualifies the act, speech, words, publication or other thing as having a seditious tendency.'

Arguments have also been raised against using an act formed by the Colonial Authorities to subjugate any challenge to its rule and as an act of bondage of the population. In addition, the charges against a wide cross section of the population for comments made on the country's affairs subvert the democratic process and the freedom of speech guaranteed by the Federal Constitution.⁹

There have been calls that it undermines academic and other legitimate freedoms. The act is said to hinder independent thought, enquiry and expression and will create a servile and subjugated society ill-equipped to meet the country's future challenges in a globalised world.¹⁰

To conclude, there are supporters and oppositions to the Sedition Act, both parties raise claim for their decisions. These claims need to be analysed and reviewed on merit, as well as the concerns of both parties need to be addressed. The end result should be a balance of both the needs of the parties in determining whether the Sedition Act should be reviewed, strengthened or repealed.

⁹ GURDIAL SINGH NIJAR. 2014. Why should the Sedition Act be repealed? *freemalaysiatoday.com*, 30 September.

¹⁰ Ibid.