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# STUDENT DISCIPLINE UNDER ACT 174:

## SOME ISSUES

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### INTRODUCTION

Discipline issues always catch the limelight. Tackling indiscipline has become more challenging these days because students nowadays are quite willing to challenge the university's powers on discipline issues. Students are becoming more vocal in demanding their fundamental rights. They are acquiring knowledge of the Constitution and of other laws and the scope these laws cover. Some students have everything on their fingertips, where they can just browse nearly every aspect of law through the internet. At the same time many students suffer from lack of legal literacy.

As before, our universities are unrelenting in emphasising the need for discipline. Types of student offences are expanding e.g. internet related offences. There are times when students commit acts without

knowing that such acts are offences listed under the laws of universities. This happens frequently due to environmental influence and peer pressure without aforethought of the consequences.

### THE EDUCATIONAL INSTITUTIONS (DISCIPLINE) ACT 1976 (ACT 174)

**Applicable law:** UiTM students as well as staff need to understand that our university is applying *Educational Institutions (Discipline) Act 1976 (Act 174)* as our law and we are not subject to the *Universities and University Colleges Act 1971 (AUKU)*. There are still a large number of students who are confused about the application of both Acts even though explanations about Act 174 have been given to them during their orientation session. Even our staff are sometimes confused about which law to apply.

**Discipline officer:** Before we discuss the issue of offences under Act 174, we should

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first discuss the jurisdiction and capacity of the legally authorized Students' Affairs Officers for Shah Alam campus as well as for all other campuses. According to Section 5(1) Part II of Act 174, the Minister may designate the Students' Affairs Officer. By virtue of this section of Act 174 read together with section 20(6) of the University Teknologi MARA Act (Act 173), we can conclude that the Students' Affairs Officer is none other than our Vice Chancellor.

The Students' Affairs Officer under Section 5(3) of Act 174 may delegate his disciplinary functions, powers or duties to any member of the staff or any board of members of the staff. In UiTM, this section empowers the Vice Chancellor to delegate his function to a different Disciplinary Committee of UiTM.

**Quasi-judicial function:** As regard disciplinary matters, we must note that the function of adjudicating disciplinary matters is quasi-judicial one rather than like a strict court hearing. However, the university must respect the principles of *Natural Justice*. As a quasi-judicial body the disciplinary committee should be well versed with the principles of Natural Justice before they sit to try students in the disciplinary proceeding. The rules of hearing and the rule against bias must be observed. The disciplinary proceeding must be fair and transparent so as not to leave any room for errors

**Declaration of interest:** The Disciplinary Committee members should announce or declare their interest, if any, in any case where they sit to hear the case before the proceeding starts. For example, in the case of cheating during examination, a person who caught the student cheating in the examination cannot be allowed to be a committee member during the disciplinary proceeding of that particular student. If it happens, the proceeding is considered to be conducted in bias and therefore the appeal tribunal may reverse the finding or the courts may issue certiorari to declare the entire trial to be null and void.

**Standard of proof:** The standard of proof required is "*balance of probability*" and not "*beyond reasonable doubt*". For disciplinary cases, it is not necessary for the university to prove that the students involved are guilty beyond any doubt. The committee decides on the totality of the circumstances whether the student is guilty or innocent; and what is the suitable punishment available if the student is found guilty based on the facts of the case, statements by the student and witnesses as well as other evidence as a whole.

**Multiplicity of committees:** At UiTM Shah Alam, each faculty has its own Disciplinary Committee to handle academic cases. As for non-academic cases, they fall

under the jurisdiction of the disciplinary unit under the Legal Office. For branch campuses, they have their own Disciplinary Committee for non-academic and academic cases.

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Despite the detailed list of punishments in Act 174, the university is having difficulties to standardise the punishments between campuses and faculties. The main reason for this is that UiTM has a multiplicity of different committees both in Shah Alam and in its multiple campuses. Each committee has its own independent power to decide on the punishments.

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**Academic discipline:** Examples of academic cases under Act 174 are conduct during the examination, plagiarism, attendance during classes and examination and forgery of medical certificate. Misconduct during examination is the most common case before the Academic Disciplinary Committees under the faculty or the branch campuses.

In academic misdemeanours like cheating in the examination, there is a flaw in the law. The disciplinary committee has no power to fail the student in the subject in which he cheated. For this reason, in each academic case referred to the Academic Disciplinary Committee, the results of the committee findings will be referred to University Senate. For example, in a case where the student is convicted for cheating or taking their notes to examination hall, the student's score for that particular course will be sent to the University Senate for approval. Only the University Senate can decide whether the student involved passes or fails for that course.

**Non-academic cases:** Meanwhile, for non-academic cases in Shah Alam, such as drugs, khalwat, smoking in the campus, gambling, obscene articles and other non-academic offences, the Disciplinary Committee is chaired by the Deputy Vice Chancellor of HEP. The UiTM Auxiliary Police will investigate these non-academic cases and the reports will be sent to Disciplinary Unit for the purpose of drafting a charge.

**Political offences:** In August 2012, Section 10 of Act 174 was amended pertaining to political issues. Before the amendment, students were not allowed to join any political party in or outside the campus. After the amendment, students are allowed to become a member of any political party and to participate in politics but only outside the campus.

## PUNISHMENTS

For all type of offences that we discussed above, there are seven types of punishments stated under Rule 48, Second Schedule of Act 174.

A student who is found guilty of a disciplinary offence shall be liable to any one or any appropriate combination of two or more of the following punishments:

- (a) reprimand;
- (b) a fine not exceeding five hundred ringgit;
- (c) suspension from using any or all of the facilities of the Institution for a specified period;
- (d) suspension from following course of study at the Institution for a specified period;

- (e) barred from sitting for a part or all of the examinations at the Institution;
- (f) exclusion from any part of the Institution for a specified period;
- (g) expulsion from the Institution, by the disciplinary authority.

Despite the detailed list of punishments in Act 174, the university is having difficulties to standardise the punishments between campuses and faculties. The main reason for this is that UiTM has a multiplicity of different committees both in Shah Alam and in its multiple campuses. Each committee has its own independent power to decide on the punishments.

The challenges are many but our university is progressing in trying to overcome obstacles that exist in the handling of disciplinary cases under Act 174. Our hope is that everyone will have better knowledge of disciplinary matters in the future, which will definitely help in minimising errors in disciplinary proceedings.



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