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Segala puji bagi Allah SWT kerana dengan limpah kurnia-Nya, kita diberi kesempatan untuk menerbitkan edisi ke-5 JUU LEX READ e-Bulletin. Dengan penuh rasa syukur dan rendah hati, saya mewakili seluruh pasukan editorial mengalu-alukan kehadiran warga intelek sekalian ke ruangan ilmu dan wacana yang kami sajikan kali ini.

Dalam era yang serba mencabar ini, maklumat berkembang dengan pantas dan capaian kepada sumber yang sahih menjadi semakin kritikal. Justeru, penerbitan buletin ini merupakan antara gagasan usaha daripada pensyarah Jabatan Undang-Undang UiTM Kampus Seremban untuk menyediakan platform yang bukan sahaja menjadi wadah menyebarkan maklumat, tetapi turut menggalakkan pemikiran kritis. JUU LEX READ e-Bulletin diharapkan dapat menjadi akar yang dapat memperkasa wacana intelektual, selain memupuk budaya ilmu dalam kalangan komuniti akademik serta profesional.

Edisi ke-5 kali ini memuatkan pelbagai artikel dan perkongsian yang merangkumi aspek perundangan, akademik, serta pengalaman praktikal yang pastinya bermanfaat. Kami percaya bahawa ilmu yang dikongsikan bakal mencetus kepada perbincangan yang lebih luas, sekaligus mendorong kepada penghasilan pemikiran baharu yang lebih segar dan relevan dengan perkembangan semasa.

Saya juga ingin merakamkan setinggi-tinggi penghargaan kepada semua penulis, penyumbang artikel, serta ahli jawatankuasa editorial yang telah mencurahkan masa, tenaga dan idea dalam memastikan kualiti buletin ini sentiasa dipelihara pada tahap tertinggi. Tanpa sokongan, kerjasama, dan semangat berpasukan yang utuh, usaha ini tidak mungkin dapat direalisasikan.

Buletin kali ini amat bertuah kerana menerima kesudian Cik Fatin Hayati Binti Abdul Rahman, seorang peguam jenayah berpengalaman yang beramal di negeri Perlis, untuk berkongsi ilmu, pengalaman serta pandangan beliau di ruangan penulis jemputan. Kehadiran beliau dalam edisi ini diharapkan dapat memperkasakan kandungan buletin, seterusnya menambah nilai ilmu pengetahuan pembaca dalam memahami isu jenayah.

Akhir kata, saya mengajak semua pembaca untuk bersama-sama kita terus menyemarakkan budaya menulis, membaca dan berdiskusi secara aktif. Diharapkan JUU LEX READ e-Bulletin terus dilestarikan, agar menjadi sumber inspirasi dan menyemai benih aspirasi dalam setiap insan yang dahagakan ilmu.

Selamat membaca dan semoga bermanfaat.

Sekian, terima kasih.

Ketua Editor

Muhammad Azril Roslan

1 Oktober 2025

KANDUNGAN

1

Sidang Redaksi

3

Kata Alu-Aluan

4

Kandungan

6

Celik Faraid! Bahagian 2: Prosedur Pelaksanaan Faraid

Noorsaliza Amin Nudin & Nor Laila Ahmad

11

Echoes of Despair: The Haunting Legacy of Gloomy Sunday: Hungarian Suicide Song, Its Psychological Impact on University Students, and Implications for the Educational Learning Environment and State Response

Siti Nasyrah Abdul Hisam & Norashikin Shariffuddin

14

Kekeliruan Pelaksanaan Hibah: Merungkai Status Hibah Harta Bercagar

Amylia Fuziana Azmi & Farihana Abdul Razak

18

Romantik Atau Risiko: Pergaulan Kampus Di Bawah Lensa Undang-Undang

Farihana Abdul Razak & Amylia Fuziana Azmi

23

Why Government Effectiveness Makes or Breaks the Cooperative Movement

Leviana Andrew & Norashikin Shariffuddin

26

Pension Adjustment Showdown: Tripartite between Aminah Ahmad vs Pensions Adjustment (Amendment) Act 2013: The Parental Act v Art. 147 of the Federal Constitution

Norashikin Shariffuddin & Mimi Sofiah Ahmad Mustafa

30

TikTok Shadows: Unveiling the Abang Bas Sekolah Grooming Scandal

Norashikin Shariffuddin & Norsyazrah Zulkifli

PENAFIAN: Sebarang maklumat yang terkandung dalam majalah ini merupakan pengetahuan dan pendapat peribadi penulis. Pembaca dinasihatkan untuk mendapatkan pandangan profesional sebelum mengikuti mana-mana maklumat dalam majalah ini. Pihak universiti, penerbit dan sidang redaksi tidak bertanggungjawab dan menanggung sebarang risiko atas kerugian secara langsung atau tidak langsung atas maklumat yang dipaparkan. @2025 Hak Cipta Terpelihara

KANDUNGAN

34
The Fine Print Matters: The Gaps in Malaysia's Cosmetic Labelling Regulations and What Consumers Need to Know
Muhammad Azril Bin Roslan & Ku Mohd Amir Aizat Ku Yusof

38
AI Meets Beauty: The Future of Skincare and the Battle for Legal Accountability
Muhammad Azril Bin Roslan & Ku Mohd Amir Aizat Ku Yusof

44
Pemasaran Affiliate Menurut Perspektif Undang-Undang di Malaysia
Nor Laila Ahmad & Noorsaliza Amin Nudin

48
Environmental Law and Human Behaviour
Nor Syamaliah Ngah & Azlina Mohd Hussain

51
Food Reviews and Their Influence On Malaysian Restaurants: An Analysis Of Legal And Ethical Considerations
Mohd Syahril Ibrahim & Anie Farahida Omar

55
Ulasan Drama One Cent Thief Analisis Undang-Undang: Antara Fiksyen dan Realiti
Anie Farahida Omar & Mohd Syahril Ibrahim

59
Euthanasia – Right To Die With Dignity
Azlina Mohd Hussain & Nor Syamaliah Ngah

63
Nafkah Isteri: Beras Aku Beli
Hazlina Mohd Padil

68
Santai Harum Manis: Literasi Undang-Undang Jenayah
Fatin Hayati Binti Abdul Rahman & Muhammad Azril Bin Roslan

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Tiada mana-mana bahagian daripada majalah ini yang boleh diubah, disalin, diedar, dihantar semula, disiarkan, dipamerkan, diterbitkan, dilesenkan, dipindah dalam apa jua bentuk sekalipun tanpa mendapat kebenaran bertulis daripada penulis artikel dan/atau Jabatan Undang-Undang, UiTM Cawangan Negeri Sembilan, Kampus Seremban.

Celik Faraid!

Bahagian 2: Prosedur Pelaksanaan Faraid

Oleh: Noorsaliza Amin Nudin & Nor Laila Ahmad
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PENGENALAN

Faraid ialah suatu sistem pengurusan harta yang dilaksanakan di dalam Islam selepas kematian seorang muslim. Faraid adalah hukum yang berlandaskan kepada Al Quran dan Hadith.

Jika pada edisi yang lepas kita telah melihat kepada pengertian faraid dan waris-waris sah yang layak menerima harta mengikut hukum faraid, maka kali ini kita akan merungkai prosedur pelaksanaan faraid di Malaysia. Di Malaysia mengikut kepada Perlembagaan Persekutuan, bidang kuasa berkaitan hal ehwal agama Islam adalah di bawah pentadbiran kerajaan negeri termasuk pengurusan harta pusaka atau faraid.

PROSES PENTADBIRAN SEBELUM PELAKSANAAN FARAID

Sistem pembahagian harta pusaka atau faraid mengikut Islam adalah sangat teratur tetapi jika seseorang tidak mengambil tahu mengenai prosedur pelaksanaan maka perkara ini akan menjadi sukar. Berikut adalah perkara-perkara yang perlu selesaikan sebelum pembahagian harta mengikut faraid, iaitu:

- i Menyelesaikan kos pengurusan jenazah
- ii Menyelesaikan hutang- hutang si mati
- iii Menyelesaikan tuntutan sepencarian
- iv Pelaksanaan wasiat

Setelah semua perkara yang dinyatakan di atas selesai, maka barulah proses pembahagian baki harta yang tinggal mengikut faraid dapat dimulakan.

PROSES PELAKSANAAN FARAID

Secara umumnya seseorang boleh menyerahkan segala urusan berkaitan pelaksanaan faraid kepada peguam syariah, walaubagaimanapun adalah dinasihatkan agar kita perlulah mengetahui sedikit sebanyak prosedur pelaksanaan faraid ini supaya tidak mudah ditipu oleh mana-mana pihak yang cuba mengambil kesempatan. Proses pelaksanaan faraid adalah seperti berikut:

- i Mengenalpasti harta dan liabiliti si mati di Malaysia dan luar negara
- ii Mengenalpasti waris yang berhak ke atas harta faraid
- iii Memohon sijil faraid dari pihak yang berkuasa
- iv Mendapatkan surat kuasa mentadbir
- v Membayar segala hutang dan liabiliti si mati
- vi Membayar cukai
- vii Pengagihan baki harta mengikut faraid
- viii Menyediakan penyata akaun dan segala dokumen yang berkaitan

PROSEDUR PELAKSANAAN PEMBAHAGIAN FARAID / HARTA PUSAKA

Harta pusaka adalah harta peninggalan si mati iaitu harta yang diperolehi semasa hidupnya, segala bentuk sewaan, hutang dijelaskan oleh sesiapa selepas kematian, dividen dari harta si mati, simpanan KWSP, takaful, barang yang tertib dari usaha si mati semasa hidupnya dan binatang ternakan. Oleh itu kesemua harta-harta ini akan di bahagikan mengikut faraid kepada waris-waris yang layak seperti yang telah dijelaskan di dalam article Celik Faraid!, bahagian satu sebelum ini.

Harta pusaka (faraid) terbahagi kepada dua, iaitu:

Harta tidak alih seperti rumah dan tanah

Harta alih seperti duit simpanan, saham, KWSP, kenderaan, barang kemas dan sebagainya.

Manakala harta yang tidak termasuk dalam harta pusaka ialah khairat kematian, hibah, dijual atau diwakafkan oleh si mati, pampasan, hasil pemberian mereka yang menziarahi si mati, pencen dan bayaran yang diterima dari Akta keselamatan Sosial Pekerja 1969 (PERKESO).

BERIKUT ADALAH PROSEDUR PEMBAHAGIAN HARTA PUSAKA (FARAID)

i- Permohonan Harta Pusaka Kecil

Harta tidak alih yang mempunyai nilaian di bawah RM 2 juta adalah harta pusaka kecil maka pengurusan harta pusaka kecil ini adalah tertakluk kepada Akta Harta Pusaka Kecil. Permohonan perlulah dibuat di Unit Pembahagian Pusaka di Jabatan Ketua Pengarah Tanah dan Galian (JKPTG) atau Pejabat Tanah mengikut Dimana terletaknya harta si mati.

Sekiranya si mati mempunyai tanah di daerah atau negeri yang berlainan maka permohonan boleh dilakukan di salah satu daerah atau negeri untuk menyelesaikan kesemua harta pusaka si mati walaupun harta pusaka si mati berada di daerah atau negeri lain. Permohonan akan melalui perbicaraan waris-waris si mati akan diberikan notis perbicaraan dan pemohon adalah wajib hadir ke perbicaraan. Dokumen-dokumen asal juga perlu dibawa ke perbicaraan.

Setelah selesai perbicaraan dan mahkamah telah mengeluarkan perintah maka perintah tersebut perlu didaftarkan ke Pejabat Tanah yang berkenaan. Bagi harta alih perlu dirujuk kepada institusi yang berkaitan seperti Jabatan Pengangkutan Jalan (JPJ) untuk hak milik kenderaan dan wang simpanan di bank yang berkaitan. Walaubagaimanapun, terdapat tiga sebab yang menghalang waris menerima faraid iaitu membunuh untuk mendapatkan harta pusaka, murtad dan berlainan agama.

Pembahagian Faraid

Surah An-Nisa', ayat 11

Pembahagian faraid telah diperincikan berdasarkan firman Allah S.W.T dalam Surah An-Nisa', ayat 11 yang bermaksud:

"Allah perintahkan kamu mengenai (pembahagian harta pusaka untuk) anak-anak kamu, iaitu bahagian seorang anak lelaki menyamai bahagian dua orang anak perempuan. Tetapi jika anak-anak perempuan itu lebih dari dua, maka bahagian mereka ialah dua pertiga dari harta yang ditinggalkan oleh si mati.

Dan jika anak perempuan itu seorang sahaja, maka bahagiannya ialah satu perdua (separuh) harta itu. Dan bagi ibu bapa (si mati), tiap-tiap seorang dari keduanya: satu perenam dari harta yang ditinggalkan oleh si mati, jika si mati itu mempunyai anak.

Tetapi jika si mati tidak mempunyai anak, sedang yang mewarisinya hanyalah kedua ibu bapanya, maka bahagian ibunya ialah satu pertiga. Kalau pula si mati itu mempunyai beberapa orang saudara (adik-beradik), maka bahagian ibunya ialah satu perenam. (Pembahagian itu) ialah sesudah diselesaikan wasiat yang telah diwasiatkan oleh si mati, dan sesudah dibayarkan hutangnya.

Ibu-bapa kamu dan anak-anak kamu, kamu tidak mengetahui siapa di antaranya yang lebih dekat serta banyak manfaatnya kepada kamu (Pembahagian harta pusaka dan penentuan bahagian masing-masing seperti yang diterangkan itu ialah) ketetapan dari Allah; sesungguhnya Allah adalah Maha Mengetahui, lagi Maha Bijaksana."

Surah An-Nisa', ayat 12

Allah S.W.T berfirman lagi dalam Surah An-Nisa', ayat 12 yang bermaksud:

"Bagimu (para suami) seperdua dari harta yang ditinggalkan oleh isteri-isterimu, jika mereka tidak mempunyai anak. Jika mereka (isteri-isterimu) itu mempunyai anak, kamu mendapat seperempat dari harta yang ditinggalkannya setelah (dipenuhi) wasiat yang mereka buat atau (dan setelah dibayar) hutangnya.

Bagi mereka (para isteri) seperempat harta yang kamu tinggalkan jika kamu tidak mempunyai anak. Jika kamu mempunyai anak, bagi mereka (para isteri) seperdelapan dari harta yang kamu tinggalkan (setelah dipenuhi) wasiat yang kamu buat atau (dan setelah dibayar) hutang-hutangmu.

Jika seseorang, baik lelaki-lelaki mahupun perempuan, meninggal dunia tanpa meninggalkan ayah dan anak, tetapi mempunyai seorang saudara lelaki-lelaki (seibu) atau seorang saudara perempuan (seibu), bagi masing-masing dari kedua jenis saudara itu seperenam harta.

Akan tetapi, jika mereka (saudara-saudara seibu itu) lebih dari seorang, mereka bersama-sama dalam bagian yang sepertiga itu, setelah (dipenuhi wasiat) yang dibuatnya atau (dan setelah dibayar) hutangnya dengan tidak menyusahkan (ahli waris). Demikianlah ketentuan Allah. Allah Maha Mengetahui lagi Maha Penyabar"

Berdasarkan firman Allah S.W.T di atas, pembahagian faraid dapat diringkaskan seperti dalam jadual di bawah:

SI MATI	LELAKI	PEREMPUAN
Waris dan bahagian faraid	Ibubapa (jika arwah tiada isteri dan anak): Ibu (1/3) Bapa (2/3)	Ibubapa (jika arwah tiada suami dan anak): Ibu (1/3) Bapa (2/3)
	Ibubapa dan adik beradik (jika arwah tiada isteri dan anak): Ibu (1/6) Bapa mendapat selebihnya (5/6)	Ibubapa dan adik beradik (jika arwah tiada suami dan anak): Ibu (1/6) Bapa mendapat selebihnya (5/6)
	Ibubapa, adik beradik dan isteri (jika arwah tiada anak): Isteri (1/4) Ibu (1/6) Bapa (1/6 dan baki)	Ibubapa, adik beradik dan suami (jika arwah tiada anak): Suami (1/2) Ibu (1/6) Bapa (1/6 dan baki)
	Ibubapa, adik beradik dan isteri (jika arwah tiada anak): Isteri (1/4) Ibu (1/6) Bapa (1/6 dan baki) Anak lelaki (semua baki)	Ibubapa, adik beradik, suami dan anak lelaki: Suami (1/4) Ibu (1/6) Bapa (1/6) Anak lelaki (semua baki)
	Ibubapa, adik beradik, isteri dan anak perempuan: Isteri (1/8) Ibu (1/6) Bapa (1/6) Anak perempuan (1/2 jika anak tunggal atau 2/3 jika anak perempuan lebih dari seorang)	Ibubapa, adik beradik, suami dan anak perempuan: Suami (1/4) Ibu (1/6) Bapa (1/6) Anak perempuan (1/2 jika anak tunggal atau 2/3 jika anak perempuan lebih dari seorang)
	Ibubapa, adik beradik, isteri, anak lelaki dan perempuan: Isteri (1/8) Ibu (1/6) Bapa (1/6) Anak lelaki dan perempuan (baki mengikut nisbah 2:1)	Ibubapa, adik beradik, isteri, anak lelaki dan perempuan: Suami (1/4) Ibu (1/6) Bapa (1/6) Anak lelaki dan perempuan (baki mengikut nisbah 2:1)

PENUTUP

Kesimpulan, faraid ialah kaedah pembahagian harta pusaka peninggalan si mati di mana pembahagian ini telah ditentukan dari sudut waris dan haknya. Faraid turut memberi hak kepada waris-waris perempuan dan ibu di mana sebelum kedatangan Islam hak-hak mereka dinafikan.

Kurang kefahaman mengenai pembahagian harta pusaka mengikut faraid akan mengakibatkan pergaduhan dan penafian hak-hak waris. Oleh itu, sebagai seorang Muslim kita perlulah celik faraid! Kita juga perlu mengetahui prosedur pengurusan faraid mengikut undang-undang di mana topik ini akan diketengahkan dalam buletin seterusnya. Nantikan!

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ECHOES OF DESPAIR:

THE HAUNTING LEGACY OF GLOOMY SUNDAY:

HUNGARIAN SUICIDE SONG, ITS PSYCHOLOGICAL IMPACT ON UNIVERSITY STUDENTS, AND IMPLICATIONS FOR THE EDUCATIONAL LEARNING ENVIRONMENT AND STATE RESPONSE

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The song Gloomy Sunday (Szomoru Vasarnap), composed in 1933 by Hungarian pianist and composer Rezso Seress, remains one of the most haunting pieces in modern music history. Initially penned during the interwar period of political instability and rising depression in Hungary, the melancholic composition acquired infamy not merely for its somber tone but due to its alleged association with a wave of suicides in Hungary and beyond.

HISTORICAL BACKGROUND AND CHRONOLOGY

Rezso Seress wrote Szomoru Vasarnap at a time of personal and national despair. Hungary, reeling from the economic aftermath of World War I and the punitive Treaty of Trianon (1920), faced growing poverty and political turmoil. The lyrics, later revised by poet Laszlo Javor, centered on themes of mourning and the loss of a beloved, eventually evolving into a metaphor for existential despair (Ziegler, 2015).

The song reportedly became linked to more than 100 suicides in Hungary during the late 1930s and early 1940s (Stack & Lester, 1989). Victims were said to have left lyrics of the song behind or died with it playing nearby. Internationally, the English version, popularised by Billy Holiday in 1941, further cemented its morbid legacy. Although the statistical link between the song and suicides is still speculative, the psychological phenomenon known as suicide contagion or the Werther effect might have played a role in creating its eerie pattern (Phillips, 1974).

HISTORICAL AND GOVERNMENT RESPONSE

Amid public concern and sensationalist media coverage, Hungarian authorities responded by placing restrictions on the song's broadcast. Although exact legal records are scarce, anecdotal evidence and media reports suggest that Hungarian radio stations unofficially banned the airing of Szomoru Vasarnap during the height of its notoriety. The BBC followed suit, refusing to broadcast Billie Holiday's version during wartime, citing its "disturbing nature" (BBC Archive, 2004).

While no formal Hungarian legislation explicitly outlawed the song, the response illustrates early 20th-century tendencies toward moral panic and censorship in response to media-linked social anxieties. The case mirrors later legal approaches toward regulating potentially harmful content in media, including suicide portrayal, as reflected in modern mental health policies and media ethics codes (World Health Organisation, 2017).

THE EFFECT OF A SONG FROM AN EDUCATIONAL PERSPECTIVE

IMPLICATIONS FOR STUDENT MENTAL HEALTH

Today's students face various pressures, from academic demands to social and financial problems. In this context, music may seem like a "companion", but it can also be a "mirror" that reflects their disappointment and despair. Songs like Gloomy Sunday, filled with sadness and loss, may reinforce feelings of loneliness and meaninglessness in struggling students.

Without strong emotional support systems, students may find it difficult to distinguish between artistic expression and real life. They may see the song as a "call to surrender" rather than a form of creative expression. Therefore, it is crucial for educational institutions to detect early signs of emotional disorders and provide appropriate interventions.

MUSIC AS A REFLECTIVE AND THERAPEUTIC TOOL

Although some music can have negative effects, it can also be used positively. In arts or counselling classes, a song like Gloomy Sunday can be used for reflection by helping students understand how art represents human emotional reality. It can also be used to build empathy, analyse lyrics, and discuss social issues such as depression and loss.

Music therapy is also proven to help manage stress and anxiety. Hence, it is important to educate students on how to choose music that fits their emotional needs, rather than just following trends.

THE ROLE OF EDUCATORS

Educators play a major role in guiding students to perceive art and music in a balanced manner. They need to be sensitive to emotional changes in students and provide safe spaces to voice their feelings. Educators can also help build students' emotional intelligence so they can critically assess musical content rather than passively absorbing the messages.

RECOMMENDATIONS

To address the challenges of exposure to negative-themed music such as Gloomy Sunday, several educational steps can be taken:

1. Integrate mental health modules into the curriculum —subjects like Moral Education, Islamic Education, or Arts can include topics on emotional awareness and responsible media consumption.
2. Guided reflection and discussion sessions – Teachers and lecturers can facilitate post-listening discussions to help students process their emotions.
3. Training for educators and counsellors – Provide training on identifying signs of depression and using art for emotional support.
4. Campaigns on healthy music choices – Schools and universities can organise awareness campaigns on choosing music that supports emotional well-being.

CONCLUSION

Gloomy Sunday has become a symbol of how powerfully music can affect human emotions. Though its association with suicides may be exaggerated, the song remains relevant as a subject of study in education and psychology. In the educational world, such a song should not be feared but understood—as an entry point to discuss important issues such as mental health, emotional expression, and the role of art in human life.

With proper guidance and a holistic educational approach, students can be taught to appreciate art critically and responsibly and manage their emotions in a healthier way. Education is not just about delivering knowledge but also nurturing the heart—and in this, music plays an important role.

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Kekeliruan Pelaksanaan Hibah: Merungkai Status Hibah Harta Bercagar

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Pengenalan

Pengurusan harta orang Islam sememangnya memerlukan perhatian yang khusus daripada semua pihak kerana terdapat banyak implikasi yang timbul akibat daripada kegagalan menguruskan harta ini. Pengurusan harta yang sistematik ini amat penting bagi memastikan harta yang dimiliki dapat dimanfaatkan bagi tujuan pembangunan individu dan masyarakat Islam. Allah SWT telah menyebut dengan jelas di dalam Al-Quran, dari Surah Al Ankabut, ayat 57, bahawa setiap yang bernyawa pasti akan menemui mati. Justeru, sebagai orang Islam, perancangan awal bagi pengurusan harta ketika masih hidup adalah perlu bagi menjamin keharmonian dan kesejahteraan legasi atau waris yang akan ditinggalkan kelak.

Selain itu, pengurusan harta ini juga turut memenuhi maqasid syariah itu sendiri, iaitu hifzu mal/protection of property. Antara lain juga, pengurusan harta ini amat perlu sebagai langkah penyelesaian bagi masalah peningkatan harta beku atau permasalahan harta tidak dituntut orang Islam. Terdapat pelbagai kaedah pengurusan harta yang dianjurkan oleh Islam seperti faraidh, wasiat, hibah, waqaf dan sebagainya. Namun, penulisan pada kali ini memfokuskan kaedah hibah sebagai instrumen pengurusan harta orang Islam. Hibah diklasifikasikan sebagai salah satu bentuk pengurusan harta yang dianjurkan Islam selari dengan matlamat dan objektif pelaksanaan hibah iaitu untuk tujuan kebajikan, memupuk rasa kasih dan sayang serta mencegah permusuhan serta pertelingkahan sesama manusia.

Definisi & Rukun-Rukun Hibah

Dari sudut pendefinisian, hibah ditafsirkan di dalam Seksyen 2(1), Enakmen Hibah Kelantan 2022 sebagai satu bentuk pemberian atau pindah milik harta oleh seseorang secara sukarela semasa hayatnya tanpa balasan kepada sesiapa yang dikehendakinya melalui sighah dan didaftarkan di bawah Enakmen tersebut. Menurut Al-Khatib al-Syaribini dalam kitabnya Mughni al-Muhtaj, hibah merupakan pemindahan hak milik tanpa sebarang balasan ('iwad) berlaku ketika masih hidup dan dilakukan secara sukarela.

Ulama' telah memberi pendefinisian yang pelbagai terhadap terma hibah ini, namun maksudnya adalah lebih kurang sama. Oleh itu, hibah dapat disimpulkan sebagai suatu akad pemberian harta yang dilakukan seseorang secara sukarela ketika tempoh hidupnya tanpa mengharapkan sebarang bentuk balasan. Perbezaan hibah dan instrumen pengurusan harta yang lain adalah hibah berkuatkuasa ketika pemberi hibah masih hidup. Dari segi hukum, hibah adalah amalan sunat dan digalakkan dalam Islam terutama sekali kepada kaum keluarga yang terdekat.

Bagi rukun hibah pula, ianya boleh diklasifikasikan kepada 4 iaitu:

1- Pemberi hibah (al-wahib)

2- Penerima hibah (al-mauhub lahu)

3- Harta yang dihibahkan (*al-mauhub*)

4- Deklarasi akad (Sighah ijab & qabul)

Kekeliruan Mengenai Hibah Harta Bercagar

Harta yang dimiliki oleh seseorang individu biasanya bersifat harta yang bercagar kepada sesebuah institusi kewangan atau Lembaga Pembiayaan Perumahan Sektor Awam (LPPSA) untuk pembiayaan jangka waktu yang panjang. Jadi, persoalan yang timbul adalah bolehkah pemilik harta berdaftar dalam tempoh gadaian itu menghibahkan harta tersebut kepada pihak yang lain sedangkan baki bagi keseluruhan pinjaman kewangan bagi harta tersebut masih belum dilunaskan? Bagi merungkai persoalan ini, rujukan kepada beberapa dalil peruntukan perundangan perlu dilakukan.

Maksud Cagaran

Definisi cagaran dalam Islam boleh dilihat berdasarkan konsep al-rahn sepertimana pensyariatan al-rahn yang disebut di dalam surah al-Baqarah ayat 282-283. Selain itu, rujukan kepada Seksyen 5 Kanun Tanah Negara 1965 turut memberi pentakrifan kepada terma cagaran. Secara amnya, akad cagaran sering digunakan dalam institusi perbankan dan kewangan bagi memudahkan urusan pinjaman di samping mengatasi masalah yang mungkin timbul sekiranya penghutang tidak dapat melunaskan sesuatu hutang tersebut.

Ia boleh disimpulkan sebagai instrumen untuk mengikat dan menjamin pulangan bayaran balik wang pinjaman kepada pemegang gadaian seperti bank. Dalam erti kata lain, pemilik hartanah bercagar tidak boleh melakukan transaksi pindah milik ke atas hartanah bercagar sehinggalah tempoh pembiayaan pinjaman tersebut berjaya diselesaikan. Halangan kepada transaksi ini bertepatan dengan tujuan cagaran iaitu bagi menjamin keselamatan gadaian atau penerima serah hak.

Status Hibah Bercagar

1 PANDANGAN FUQAHA

Mazhab Syafie dan Hanbali menganggap hibah hartanah bercagar adalah tidak sah lantaran elemen penerimaan harta hibah (qabd), dan kebebasan melakukan transaksi (tasarruf) juga gagal dipenuhi dalam syarat yang mengikat (luzum) hibah bersama ijab dan qabul. Oleh itu, hibah yang dilakukan ke atas hartanah bercagar dianggap sebagai sesuatu yang tidak memenuhi syarat pembentukan akad kerana dilakukan oleh orang yang tiada kelayakan untuk berbuat sedemikian.

Mazhab Hanafi & Maliki membenarkan pemberian hibah bagi harta yang menjadi milik orang lain sekiranya terdapat izin daripada pemilik harta/pemegang cagaran walaupun izin tersebut selepas berlakunya ijab qabul dan di luar majlis akad hibah.

2 FATWA SELANGOR

Fatwa Hibah Negeri Selangor telah diwartakan pada tahun 2021, di mana ianya memutuskan bahawa hibah bagi harta dalam gadaian (yang masih ada pinjaman bank) sah dihibahkan dengan syarat mempunyai Mortgage Reducing Term Takaful (MRTT) dan Mortgage Level Term Takaful (MLTT) atau keizinan daripada pemegang gadaian.

Fatwa Selangor ini menjelaskan bahawa hibah ke atas harta yang masih dalam pembiayaan adalah boleh dihibahkan jika syarat-syarat di atas dipenuhi.

3 ENAKMEN HIBAH KELANTAN 2022

Seksyen 7(e) Enakmen Hibah Kelantan (2022) menyatakan:

“Dalam hal harta yang tertakluk kepada gadaian, pajakan, sewa beli atau apa-apa halangan lain, hendaklah mendapat persetujuan daripada orang atau pihak yang mempunyai hak dan kepentingan ke atas harta itu”.

Enakmen ini telah menetapkan bahawa harta dalam cagaran boleh dihibahkan sekiranya mendapat persetujuan daripada pihak yang berkepentingan kepada harta tersebut.

4 KANUN TANAH NEGARA (KTN) 1965

Seksyen 215(3) Kanun Tanah Negara 1965 menyebutkan:

"Penerima pindah milik mana-mana tanah beri milik hendaklah memegang tanah beri milik tertakluk kepada": Apa-apa pajakan, gadaian, atau kepentingan berdaftar yang sedia ada mengenainya pada masa pindah milik itu didaftarkan".

KTN telah menetapkan bahawa bebanan terhadap sesebuah tanah seperti gadaian hanya akan dilepaskan setelah hutang dilunaskan sepenuhnya. Walau bagaimanapun, terdapat klausa dalam KTN yang membenarkan harta yang masih dalam cagaran dipindah milik di mana segala bebanan termasuklah liabiliti, pajakan, gadaian dan lain-lain hendaklah turut berpindah kepada penerima milik yang baru.

Keputusan Mahkamah Syariah Berkaitan Kes Hibah Harta Bercagar

Mahkamah Tinggi Syariah Kuala Terengganu di dalam kes Raihanah Binti Mohd Ali v Kamarudin Bin Mohd Nor Dan Tiga Yang Lain [2008] JH 26(2) telah memutuskan untuk menolak pengesahan hibah yang dilakukan. Di dalam kes tersebut, didapati status barang yang dihibahkan itu masih di bawah pembiayaan harga tangguh iaitu Bay' Bithaman Ajil (BBA), di mana keizinan pemegang cagaran hendaklah dibuktikan secara jelas, dan pemohon dalam kes ini telah gagal membuktikan elemen tersebut.

Walau bagaimanapun, hakim syarie dalam alasan penghakimannya menyebut bahawa hibah ini boleh menjadi sah jika kebenaran daripada pemegang cagaran mampu diperolehi. Justeru, mahkamah memutuskan hibah yang dibuat itu adalah tidak sah. Jelaslah di sini bahawa hakim dalam kes ini sependapat dengan mazhab Hanafi dan mazhab Maliki bahawa hibah harta bercagar dibolehkan sekiranya ianya mendapat keizinan pemilik harta semasa akad.

Selain itu, penghakiman di dalam kes Yati Suraya v Supiah binti Abu (Kes No. 05000-044-013-2011) melibatkan keputusan Mahkamah Syariah Negeri Sembilan yang membenarkan hibah hartanah bercagar walaupun tanpa izin pemegang gadaian asalkan hartanah bercagar tersebut dilindungi sepenuhnya oleh takaful atau insurans.

Berdasarkan kes-kes yang diputuskan oleh Mahkamah seperti di atas, dapat disimpulkan bahawa Mahkamah Syariah mempunyai beberapa kecenderungan di dalam mengeluarkan keputusan sama ada hibah harta bercagar itu berstatus sah atau pun tidak sebagaimana pendapat yang telah disebutkan oleh Mazhab Shafie, Hanbali, Hanafi dan Maliki.

Kepentingan & Manfaat Hibah

Menyentuh mengenai manfaat hibah, hibah adalah merupakan satu instrumen pengagihan harta yang mampu menyelesaikan pelbagai bentuk pertikaian dan masalah yang timbul. Hibah mampu merancang masa depan seseorang dengan lebih baik serta memastikan nasib orang yang tersayang terbela selepas berlakunya kematian.

Secara tidak langsung, pelaksanaan hibah mampu memastikan keterjaminan emosi si waris berdasarkan sifat hibah yang berkuatkuasa dengan serta merta. Jelaslah di sini bahawa instrumen hibah ini berperanan penting di dalam mengurangkan ketegangan dikalangan ahli waris serta mampu menjadi solusi kepada konflik yang berpanjangan diantara mereka.

Hal ini kerana harta yang dihibahkan boleh diagihkan kepada penerima hibah dengan kadar yang segera, sekaligus memastikan kelangsungan hidup penerima hibah lebih terjamin tanpa perlu melalui proses pembahagian harta yang rumit.

Imam Bukhari dan Muslim:

"Sesungguhnya meninggalkan para waris dalam keadaan kaya & berharta itu lebih baik dari meninggalkan mereka dalam keadaan miskin & meminta-minta".

Kesimpulan & Solusi

Konklusinya di sini, pemilik harta yang berhasrat untuk menghibahkan harta yang dimiliki tetapi masih berstatus dalam cagaran perlu menitik beratkan beberapa aspek penting, seperti tempoh perlindungan takaful yang dimiliki oleh aset tersebut. Perlulah difahami bahawa pihak insurans tidak akan menjelaskan baki pinjaman kepada aset atau harta yang telah pun melepasi tempoh perlindungan MRTT. Justeru, sebagai pemilik aset, setiap individu perlu memahami setiap tindakan dan pelan yang bakal diambil sebelum memenuhi sesebuah tuntutan komitmen pembelian sesuatu aset. Justeru, kefahaman mengenai konsep dan aplikasi instrumen hibah adalah penting bagi membolehkan pelaksanaan pembahagian harta yang dapat diagihkan secara adil dan saksama.

Setiap golongan masyarakat perlu lebih cakna dan bijak dalam merancang kewangan melalui instrumen hibah yang sememangnya menawarkan pelbagai bentuk faedah bagi mempertingkatkan perlindungan harta orang Islam. Bagi mengelakkan polemik yang melibatkan pertikaian harta bercagar ini, pemilihan hibah sebagai instrumen pengurusan harta dilihat sebagai satu langkah perlindungan dan persediaan yang berkesan terutama bagi harta jenis tak alih seperti rumah dan hartanah meskipun terdapat perselisihan pendapat di kalangan para fuqaha mengenai status menghibahkan harta yang masih berada dalam tempoh cagaran.

Lazimnya, majoriti masyarakat Islam dewasa ini membiayai aset seperti pembelian tanah dan rumah melalui pembiayaan pinjaman bank berdasarkan konsep cagaran. Rata-rata masyarakat melakukan pembiayaan kewangan ini berdasarkan inisiatif pihak kerajaan yang sememangnya ingin membantu mereka untuk memiliki aset dengan lebih mudah. Oleh itu, pengetahuan dan kesedaran mengenai status hibah harta bercagar ini perlu difahami sebaiknya bagi membolehkan sistem tadbir urus hibah dapat dilakukan dengan lebih tersusun dan sistematik, sekaligus dapat mengelakkan sebarang kesulitan serta mempengaruhi keadaan ekonomi negara.

Akhir kalam, jom hibah sama-sama!

Romantik atau Risiko : Pergaulan Kampus Di Bawah Lensa Undang- Undang

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PENGENALAN

Dunia kampus sering dilihat sebagai medan untuk menimba ilmu, membina jati diri, dan mempersiapkan diri ke alam dewasa. Namun, tidak dapat dinafikan bahawa fasa ini juga membuka ruang kepada pergaulan sosial antara lelaki dan perempuan yang adakalanya sukar dikawal. Hubungan yang bermula dengan niat yang murni seperti persahabatan dan kerjasama akademik, boleh bertukar kepada situasi yang melibatkan pelanggaran tatatertib jika tidak berhati-hati.

Walaupun kehidupan kampus sering dikaitkan dengan kebebasan bersosial dan perkembangan emosi, namun hubungan yang bersifat romantik tanpa pengawalan boleh mengundang perlakuan sumbang yang menjurus kepada tingkah laku yang bertentangan dengan norma moral dan ajaran agama.

Di Institusi Pengajian Tinggi (IPT), pastinya terdapat undang-undang yang memperuntukkan tentang disiplin para pelajar khususnya. Namun begitu, masih terdapat pelajar yang kurang faham atau tidak sedar tentang batas-batas undang-undang dan implikasi tatatertib terhadap pergaulan bebas di kampus

Ketidakfahaman ini menimbulkan keperluan untuk memberikan pendedahan yang jelas berkenaan garis panduan perundangan berkaitan tingkah laku sosial dalam kalangan pelajar IPT, agar mereka dapat menjalani kehidupan kampus dengan lebih beretika, berdisiplin, dan selari dengan nilai budaya serta agama.

PERLAKUAN SUMBANG DAN KONTEKS PERGAULAN KAMPUS

Perlakuan sumbang merujuk kepada tingkah laku yang bertentangan dengan nilai moral, etika sosial, dan adab ketimuran. Selain itu, ia juga berkait rapat dengan unsur kesopanan dan kesusilaan seseorang dalam pergaulan harian. Dalam konteks di IPT, pergaulan bebas antara pelajar lelaki dan perempuan boleh mencetuskan persepsi negatif serta menjejaskan nama baik individu dan institusi.

Antara contoh perlakuan sumbang termasuk berdua-duaan di tempat sunyi (berkhalwat); memasuki bilik kolej kediaman pelajar berlainan jantina; berkelakuan tidak sopan secara fizikal di tempat awam; serta membuat kandungan media sosial yang tidak senonoh. Walaupun ramai yang menganggap bahawa perbuatan ini dianggap 'hal peribadi', hakikatnya pelajar IPT terikat dengan peraturan tatatertib dan tanggungjawab menjaga imej institusi.

Sekilas Kandungan Akta 174

Akta 174 merupakan Akta Institusi-Institusi Pelajaran (Tatatertib) 1976 yang memperuntukkan perkara berkaitan dengan tatatertib dalam institusi pelajaran, dan mengenai perkara yang berkenaan dengannya. Secara keseluruhan, Akta 174 mengandungi enam (6) bahagian utama, iaitu:

i

Bahagian I : Permulaan
Menjelaskan definisi istilah penting dan skop pemakaian akta ini.

ii

Bahagian II : Pihak Berkuasa Tatatertib
Memperuntukkan kuasa kepada Pegawai Hal Ehwal Pelajar dan pihak universiti untuk mengambil tindakan terhadap pelajar yang melanggar disiplin.

iii

Bahagian III : Jawatankuasa Perwakilan Pelajar Dan Badan Pelajar Lain
Menyentuh mengenai organisasi pelajar dan syarat-syarat pengurusan serta kawal selia aktiviti mereka.

iv

Bahagian V : Peralihan
Berkaitan pelaksanaan dan keberterusan penguatkuasaan undang-undang.

v

Bahagian IV : Kesalahan
Menjelaskan bentuk-bentuk salah laku pelajar yang boleh dikenakan tindakan tatatertib.

vi

Jadual Kedua: Perincian tentang Kaedah-kaedah Tatatertib Pelajar seperti larangan terhadap perlakuan tidak senonoh, kehadiran kuliah, pakaian, plagiarisme, dan lain-lain.

Selain itu, Akta ini turut mengandungi tiga (3) Jadual penting, iaitu:

Jadual Pertama: Senarai institusi-institusi pengajian yang tertakluk kepada akta ini (termasuk UiTM).

Bahagian VI : Am
Merangkumi perkara pelbagai seperti kuasa membuat peraturan tambahan dan pemakaian akta ini di pelbagai institusi.

Jadual Ketiga: Berkenaan urusan pentadbiran dan perwakilan pelajar.

Bahagian II, Jadual Kedua: Tatatertib Am

Bahagian II dalam Jadual Kedua memperuntukkan tentang perkara berikut:

i - Larangan am – Kaedah 3

ii - Kehadiran di kuliah – Kaedah 4

iii - Latihan amali – Kaedah 5

iv - Pakaian dan penampilan diri – Kaedah 6

v - Masuk peperiksaan – Kaedah 7

vi - Kelakuan semasa peperiksaan – Kaedah 7A

vii - Sekatan mengenai penggunaan teks kuliah, dsb. – Kaedah 8

viii - Larangan terhadap plagiarism - Kaedah 8A

ix - Mengatur, dsb., perhimpunan - Kaedah 9

x - Pemunyaan, milikan dan penggunaan pembesar suara, dsb. - Kaedah 10

xi - Membuat, mengguna, menunjukkan, mempunyai, dsb., panji, pelekat, dsb. – Kaedah 11

xii - Menerbitkan, dsb., dokumen – Kaedah 12

xiii - Aktiviti pelajar di luar kampus – Kaedah 13

xiv - Pelajar bertugas dalam pekerjaan, dsb. – Kaedah 14

xv - Representasi berhubung dengan Institusi, dsb. – Kaedah 15

xiv - Pelajar bertugas dalam pekerjaan, dsb. – Kaedah 14

xvi - Bantahan pelajar terhadap kemasukan, ketidakmasukan, dsb., orang daripada kampus – Kaedah 16

xvii - Judi dalam kampus – Kaedah 17

xviii - Minum atau memiliki minuman keras dan mabuk – Kaedah 18

xix - Bahan lucah – Kaedah 19, dsb. – Kaedah 14

xx - Dadah dan racun – Kaedah 20

xxi - Kebersihan di dalam kampus – Kaedah 21

xxii - Membuat bunyi yang menggusarkan dan mengganggu – Kaedah 22

xxiii - Tempat tinggal atau tempat tidur di kampus – Kaedah 23

xxiv - Memasuki bahagian larangan kampus atau bangunan – Kaedah 24

xxv - Kad pelajar – Kaedah 25

xxvi - Keingkaran – Kaedah 26

xxvii - Hukuman tatatertib terus oleh pihak berkuasa tatatertib – Kaedah 26A

Antara Cinta dan Tatatertib: Romantik yang Mengundang Risiko

Isu hubungan romantik antara pelajar sering menjadi topik yang mencabar kerana ramai yang beranggapan bahawa cinta kampus adalah satu perkara biasa dan tidak salah selagi tidak melibatkan hubungan fizikal. Namun begitu, hubungan yang bermula secara tidak rasmi ini sering kali membawa kepada situasi berisiko seperti berdua-duaan di tempat sunyi, berkongsi bilik atau kediaman, serta interaksi yang tidak bermoral di media sosial.

Tindakan-tindakan ini bukan sahaja bertentangan dengan norma agama dan budaya, malah turut membuka ruang kepada pelanggaran Kaedah 3(a) dan 3(b) Akta 174 yang memperuntukkan larangan terhadap kelakuan yang mencemarkan nama baik institusi atau melanggar undang-undang bertulis. Oleh itu, pelajar perlu sentiasa diingatkan bahawa dalam konteks undang-undang kampus, "romantik" tanpa batas boleh membawa risiko besar.

Hubungan yang kelihatan manis dan tidak berbahaya boleh berubah menjadi kes tatatertib, disiasat oleh pihak berkuasa dan secara tidak langsung mampu menjejaskan masa depan akademik seseorang, terutama apabila disabitkan bersalah serta dikenakan hukuman.

Implikasi Kaedah 3(a) Dan 3(b) Akta 174

Kaedah 3 di bawah Jadual Kedua, Bahagian II memperuntukkan tentang larangan am kepada seseorang pelajar. Menurut Kaedah 3(a) dan 3(b), seseorang pelajar adalah tidak boleh

"(a) berkelakuan, sama ada di dalam atau di luar kampus, secara yang boleh merosakkan atau mendatangkan mudarat kepada kepentingan, kesentosaan atau nama baik Institusi, atau kepada kepentingan, kesentosaan atau nama baik mana-mana pelajar, kakitangan, pegawai, atau pekerja Institusi, atau kepada ketenteraman atau keselamatan awam, atau kepada akhlak, kesopanan atau tatatertib"

"(b) tidak boleh melanggar mana-mana peruntukan mana-mana undang-undang bertulis, sama ada di dalam atau di luar kampus."

Peruntukan Kaedah 3(a) bertujuan memastikan bahawa pelajar sentiasa menjaga adab dan nilai moral dalam setiap tindakan. Ia mencerminkan tanggungjawab kolektif untuk memelihara nama baik universiti dan masyarakat secara keseluruhan.

Kelakuan sumbang seperti berdua-duaan di tempat sunyi, berkhalwat, menyebar kandungan tidak senonoh di media sosial, atau mencetuskan kekacauan semasa aktiviti kampus merupakan antara contoh yang boleh mencemarkan nama baik institusi dan menyalahi Kaedah 3(a) Akta 174 ini.

Kaedah 3(b) memberi maksud yang menyeluruh bahawa pelajar yang melakukan kesalahan jenayah, termasuk kesalahan syariah seperti khalwat, atau kesalahan lalu lintas, masih boleh dikenakan tindakan tatatertib oleh universiti walaupun kes tersebut ditangani oleh pihak berkuasa luar. Peruntukan ini menegaskan bahawa status sebagai pelajar tidak mengecualikan mereka daripada tanggungjawab terhadap undang-undang negara.

Kedua-dua kaedah dalam Akta 174 ini mencerminkan prinsip bahawa pelajar perlu memainkan peranan sebagai individu yang berdisiplin, beretika dan bertanggungjawab. Kehidupan kampus tidak boleh dijadikan alasan untuk berkelakuan bebas tanpa batas. Sebaliknya, ia perlu menjadi ruang untuk membentuk integriti dan nilai murni sebagai persediaan menghadapi dunia sebenar selepas tamat pengajian.

Kaedah 3(a) dan 3(b) memberikan asas perundangan yang kukuh kepada pihak universiti untuk mengambil tindakan terhadap salah laku pelajar yang menjejaskan nama baik institusi atau melanggar undang-undang. Oleh itu, pelajar wajar memahami dan menghayati peruntukan ini agar mereka tidak tersasar dalam pergaulan dan tingkah laku, serta dapat menjadi warga universiti yang cemerlang dalam sahsiah dan akademik.

Penutup dan Saranan: Undang-Undang Sebagai Benteng Disiplin

Akta Institusi-Institusi Pelajaran (Tatatertib) 1976 atau lebih dikenali sebagai Akta 174 bukan diperkenalkan untuk menghukum, tetapi sebagai satu mekanisme pendidikan dan pembentukan sahsiah pelajar agar mereka menjadi insan yang berakhlak mulia, berdisiplin, dan mampu memberi manfaat kepada diri sendiri, masyarakat dan negara. Dalam dunia kampus, pelajar menikmati lebih banyak kebebasan berbanding zaman persekolahan.

Namun, kebebasan tanpa bimbingan mudah membawa kepada salah laku, pergaulan bebas, serta pencemaran imej institusi. Justeru, peruntukan tatatertib di bawah Akta 174 berperanan sebagai garis panduan moral dan undang-undang bagi memastikan pelajar tidak menyimpang daripada landasan yang sepatutnya. Ia membantu membentuk pelajar yang bukan sahaja cemerlang akademik, tetapi juga berakhlak dan bertanggungjawab.

Sebagai solusi, beberapa pendekatan proaktif boleh dilaksanakan. Pertama, pihak universiti perlu memperkasakan program kesedaran tatatertib, bukan hanya semasa minggu orientasi, tetapi secara berkala sepanjang pengajian pelajar. Penerangan secara jelas berkenaan Akta 174, peraturan kolej kediaman, serta implikasi kesalahan moral perlu dijadikan sebahagian daripada budaya kampus.

Kedua, pelajar perlu dididik untuk menghayati nilai etika dan disiplin, bukan sekadar takutkan hukuman. Pendidikan melalui pendekatan seperti usrah, kaunseling, program mentor-mentee dan aktiviti pembangunan sahsiah boleh membantu membentuk jati diri yang seimbang dari segi intelek dan emosi.

Ketiga, universiti perlu mewujudkan sistem rehabilitasi atau pemulihan bagi pelajar yang melakukan salah laku ringan, bukannya terus menghukum. Dengan pendekatan ini, pelajar akan lebih menghargai peluang kedua dan belajar daripada kesilapan.

Kesimpulannya, Akta 174 ialah undang-undang yang bersifat mendidik lebih daripada menghukum. Ia menjadi benteng pencegahan awal agar pelajar tidak terpesong daripada tanggungjawab mereka sebagai warga intelektual. Apabila undang-undang disokong oleh nilai moral dan kesedaran diri, barulah kampus menjadi tempat yang benar-benar melahirkan insan yang seimbang dari segi ilmu, akhlak dan integriti.

RUJUKAN

Akta 174 – Akta Institusi-Institusi Pelajaran (Tatatertib) 1976

WHY GOVERNMENT EFFECTIVENESS MAKES OR BREAKS the Cooperative Movement

By: Leviana Andrew & Norashikin Shariffuddin (leviana141@uitm.edu.my) & (norashikin586@uitm.edu.my)

Cooperatives — those member-owned, mission-driven collectives — have always stood for something bigger than profit. They're about people. About shared goals, economic democracy, and lifting communities together. But behind every successful cooperative, there's often a silent partner: an effective government. Let's get one thing clear — government policies matter. But not all policies are created equal, and good intentions don't always guarantee good outcomes. Around the world, cooperatives flourish or flounder depending on how well governments understand their needs, align regulations with reality, and create the space for them to grow. That's where government effectiveness becomes a game-changer.

WHEN GOVERNMENTS GET IT RIGHT

In countries like China, Nepal, and India, strategic interventions have helped cooperatives become real engines of growth. Think financial subsidies, market access support, and laws tailored to cooperative realities — not copy-pasted from corporate rulebooks. China has invested heavily in rural co-ops, helping small farmers plug into larger agro-food chains. It's more than just money — the government provides training, builds infrastructure, and aligns national priorities with local needs.

In Nepal, co-ops are seen as part of the fight against poverty. Market access programs and legal safeguards have given farming communities a real shot at stability. India's cooperative banks, supported by solid regulations and capacity-building efforts, have helped small entrepreneurs get credit when traditional banks wouldn't even open the door. These governments didn't just set policies and walk away. They stayed engaged, adaptive, and proactive — the three hallmarks of what experts call "government effectiveness."

Legal Frameworks and Their Efficacy in Malaysia

The efficacy of governmental institutions is crucial in determining the success or failure of the cooperative movement in Malaysia. Cooperatives, as community-focused entities, depend significantly on a strong legal and regulatory framework for their success. The Co-operative Societies Act 1993 (Act 502) serves as the principal legal framework for the registration, administration, and financial regulation of co-operatives, whereas the Malaysia Co-operative Societies Commission Act 2007 (Act 665) established the Suruhanjaya Koperasi Malaysia (SKM) to oversee and advance the sector. The extent of enforcement and backing of these legal mechanisms by effective governance dictates the sustainability of cooperatives.

The efficacy of the government is notably manifest in the execution of the Malaysian Cooperative Transformation Plan 2011–2020, which sought to improve cooperative competitiveness, governance, and economic contribution. The efficacy of these initiatives mostly depends on the ability of public institutions to provide prompt assistance, maintain transparency, and uphold accountability. Inconsistent policies or bureaucratic inefficiencies may hinder cooperative development and erode public faith in the initiative (Abdullah et al., 2017).

Additionally, the cooperative sector is incorporated into national development plans, such as the Shared Prosperity Vision 2030, which emphasises the government's dedication to equitable wealth distribution. Nonetheless, in the absence of a robust institutional structure and effective inter-agency cooperation, these policy objectives may remain merely aspirational. The state's legislative and regulatory efficacy, as evidenced by SKM and the Ministry of Entrepreneur Development and Cooperatives, is crucial for fostering an inclusive and resilient cooperative environment in Malaysia.

When Good Policy Falls Short

Unfortunately, some governments still struggle to bridge the gap between vision and execution. In Vietnam, government training programs didn't match the real-world needs of cooperatives. In China, only 11% of co-ops received the subsidies they were promised. And in places like India's Nagaland, co-ops have been left behind due to a lack of localized policy support. It's not that governments don't care — it's that the implementation is patchy, the feedback loops are missing, and sometimes policies are designed without talking to the very people they're meant to help.

Corruption: The Elephant in the Room

Let's talk about what really messes up even the best-laid plans — corruption. In some parts of the world, starting a business means navigating red tape with a little extra "grease." Research has shown that in corrupt environments, bribery can feel like the only way to make things happen — but that's not sustainable. Corruption erodes trust, skews policy outcomes, and discourages the kind of transparent governance that cooperatives thrive on. Whether it's through dodgy procurement or politically driven funding, corruption kills momentum.

The Institutional Lens: Why the Rules Around the Rules Matter

To understand why some cooperatives thrive and others don't, scholars turn to Institutional Theory— the idea that organizations operate within a web of formal rules and informal expectations. Cooperatives, unlike big corporations, often feel institutional pressures more acutely. They're subject to laws, but also to cultural norms, social expectations, and their members' trust. Governments that recognize this and design policies accordingly — flexible, context-aware, and community-driven — tend to see stronger cooperative outcomes.

Lessons for Malaysia (and Others Watching)

Despite decades of support and the presence of regulatory bodies like the Malaysia Cooperative Societies Commission, the sector hasn't quite reached its potential. Why? The research points to implementation gaps, outdated legal frameworks, and a lack of targeted policies. That's a lesson not just for Malaysia, but for any country trying to supercharge its cooperative sector. If cooperatives are to be a real tool for sustainable and inclusive growth, governments need to do more than just issue guidelines — they need to listen, adapt, and deliver.

What Can Be Done?

The answer lies in a few key moves:

- Tailored Policies: One-size-fits-all doesn't work. Support must match the stage, size, and sector of each cooperative.
- Capacity Building: Training, yes. But the right kind — need-based, practical, and ongoing.
- Better Infrastructure and Access: From internet access for digital co-ops to roads for rural ones — infrastructure matters.
- Zero Tolerance for Corruption: Clean, accountable governance is non-negotiable.

Final Thoughts

Cooperatives represent more than just an alternative business model. They reflect a society's ability to work together for the common good. But they can't do it alone. Behind every thriving cooperative is a government that didn't just make the rules, but made the rules work. As governments rethink their economic playbooks in a post-pandemic, digitally transforming world, one truth remains: real effectiveness isn't about how many policies you pass, but how many lives you improve.

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1. Co-operative Societies Act 1993 (Act 502)
2. Malaysia Co-operative Societies Commission Act 2007 (Act 665)

PENSION ADJUSTMENT SHOWDOWN:

TRIPARTITE BETWEEN AMINAH AHMAD VS PENSIONS ADJUSTMENT (AMENDMENT) ACT 2013: THE PARENTAL ACT V ART. 147 OF THE FEDERAL CONSTITUTION

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A Struggle for Justice: The Pension Adjustment Battle of Aminah Ahmad

In Malaysia, retired civil servants once enjoyed pensions that rose in tandem with the salaries of current federal employees. This mechanism provided financial stability and recognised their years of dedicated service. Among these retirees is Aminah Ahmad, one of 57 individuals who stood up against the government's 2013 pension policy changes that altered this system.

Prior to 2013, the pensions of retirees adjusted in direct proportion to salary increments of active civil servants. However, this changed with the Pensions Adjustment (Amendment) Act 2013, which introduced a fixed annual 2% increase to pensions, breaking the link between pension adjustments and current salary scales. This policy shift raised concerns among retirees, who feared reduced income over time and questioned its fairness.

Legal Challenge: Aminah Ahmad's Case

Aminah Ahmad filed a lawsuit, representing herself and 56 other retirees, asserting that the 2013 amendments were unconstitutional. Her challenge centered on Article 147 of the Federal Constitution, which protects pensioners from laws that retroactively alter or reduce their benefits. The retirees argued that the fixed 2% annual increment led to less favourable pension adjustments compared to the previous system, thereby infringing on their constitutional rights.

The courts agreed with Aminah's stance. In a significant ruling, the court determined that even the potential for a pensioner to be worse off was enough to render the amendment inconsistent with the Constitution. The ruling emphasised that the term "may" in the amendment—giving discretion to the Yang di-Pertuan Agong to increase the increment—did not guarantee protection against financial loss. As a result, the court invalidated the amendment and ordered the previous pension system to be reinstated from January 13, 2022, moving forward, but not retroactively.

Government's Reaction and Interim Measures

Despite the court's decision, the government remained hesitant to apply it retrospectively. While it agreed to reinstate the previous pension formula for future calculations, it refused to compensate retirees for losses between 2013 and 2022. The government's justification was the absence of significant financial hardship among retirees, though critics argued this undermined the spirit of the judgement. In an attempt to ease tensions, the government offered one-time financial assistance to retirees.

Nevertheless, these payments were viewed as temporary solutions that failed to address the broader issue of justice and fairness. The government announced it would review the overall salary and pension schemes, with findings expected by the end of 2024. In the meantime, limited payments were issued to meet retirees' immediate needs. This development not only raised legal and political questions but also captured public attention. It illustrated the complex interaction between civil rights, policy reform, and constitutional law in Malaysia.

Judicial Review and Its Importance

Aminah's legal battle exemplifies how judicial review serves as a vital tool to challenge public authority decisions that may be illegal or unconstitutional. Judicial review allows the courts to assess whether public bodies have acted within their legal authority, followed fair procedures, and respected individual rights.

The foundational case of Council of Civil Service Unions v Minister for the Civil Service (1985) laid out four grounds for judicial review:

1- Illegality – When a public body acts outside its legal powers or misuses its authority.

2- Irrationality (Wednesbury unreasonableness) – When a decision is so unreasonable that no reasonable authority could have made it.

3- Procedural Impropriety – When the decision-making process violates the principles of natural justice, such as failing to give someone a fair hearing.

4- Proportionality – Particularly relevant when human rights are involved, it assesses whether actions taken are necessary and balanced in relation to the goal pursued.

In Aminah's case, the main argument rested on the claim that the amended law was unconstitutional, thereby falling under the doctrine of ultra vires—a legal principle meaning "beyond the powers."

The Ultra Vires Doctrine

The ultra vires doctrine assesses whether a public body has exceeded the powers granted to it under law. In legislative contexts, this principle applies to both the Parent Act and its subsidiary legislation. If either of these contradicts the Federal Constitution, they can be declared invalid. Aminah's case raised the argument that the Parent Act itself—specifically the amended Pensions Adjustment Act 2013—was unconstitutional because it conflicted with Article 147. If a Parent Act is invalid under the Constitution, then any subsidiary laws made under it are also void.

Historically, Malaysian courts have upheld the validity of Parent Acts in cases like Johnson Tan Han Seng v Public Prosecutor (1977) and Eng Keock Cheng v Public Prosecutor (1966), where emergency-related legislation remained enforceable. However, more recent judgments such as Nik Elin Zurina v Kelantan State Government (2022) show a shift, with the court's ruling that state-level laws overstepping federal jurisdiction were ultra vires. This evolving judicial approach reflects a growing readiness among courts to protect constitutional boundaries and ensure that legislation complies with the supreme law of the land, i.e., the Federal Constitution.

Broader Impact and Lessons

The legal battle led by Aminah Ahmad is more than a personal quest; it has become a national symbol of resilience and the struggle for justice in public administration. It has prompted critical conversations around the rights of retirees, the constitutional limits of legislative amendments, and the role of the judiciary in upholding these limits.The government's delayed and partial compliance with court rulings has also highlighted the tension between political expediency and legal obligation.

While interim relief has been provided, a full resolution is still pending. The outcome of the government's comprehensive pension review, expected by the end of 2024, remains to be seen. This case has sparked widespread interest among legal scholars, policymakers, and citizens alike. It underscores the importance of safeguarding civil rights and demonstrates how judicial mechanisms can serve as effective checks on executive power.

Conclusion

The case of Aminah Ahmad vs. the Government of Malaysia is a landmark in Malaysian constitutional law and public policy. It underscores the fundamental principle that laws must align with the Constitution, especially when they affect the livelihood and welfare of citizens. Aminah's perseverance has shed light on the challenges faced by retirees and the significance of judicial review in holding public authorities accountable. Her struggle stands as a testament to the power of legal advocacy and the enduring quest for justice within a democratic society.

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TIKTOK SHADOWS : UNVEILING THE ABANG BAS SEKOLAH GROOMING SCANDAL

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Social media platform interaction introduced new avenues for inappropriate and harmful behaviour. In September 2024, on TikTok as "Abang Bas," showed a significant child grooming and sexual harassment incident. The driver shared videos on social media showcasing pupils, especially young girls, and referred to one girl as his “crush” and “darling,” prompting concerns around inappropriate conduct and possible sexual grooming.

He was arrested and charged under Section 15(a)(iii) of Sexual Offences Against Children Act 2017 for various offences, including physical sexual assault (kissing his four-year-old niece) and repeated sexualized observation of a nine-year-old girl and Section 15(2) of Child Act 2001 for publishing images of children without consent. Additional charges under Section 233(1)(a) of the Communications and Multimedia Act 1998 were instituted for derogatory remarks made in TikTok videos featuring minors. The defendant entered a plea of not guilty and was granted bail.

The incident heightened the dangers of online grooming and prompting demands for enhanced child protection legislation. The public response was outraged, with numerous individuals asking how such conduct could transpire without oversight and condemning the accused's family for their efforts to solicit bail monies through crowdfunding. This controversy highlighted the conflict between safeguarding equitable judicial procedures and shielding children from harm.

TIKTOK SHADOWS OF CHILD GROOMING

Child grooming is a process of establishing a relationship between offender and child in terms of trust and emotion to manipulate or abuse them. There is a hidden danger of using the TikTok platform, especially for child grooming issues. TikTok enables grooming risks by exposure and facilitating direct engagement between offender and minor. The algorithm of social media allows :

i) FYP (For You Page) to recommend content based on users' video preferences

ii)Direct messaging to build trust with minors and escalating interactions

iii) Live streaming and virtual gifts that may exploit minor to inappropriate action or activities in exchange for gifts.

The incident of Abang Bas Sekolah highlights serious concerns about the misuse of social media, endangering child safety in digital spaces and the normalisation of inappropriate behaviour online. The content virality for instance, allows groomers to use manipulative narratives that normalise inappropriate behaviour. Groomers may also role as influencers and use popular hashtags related to children's interests to step into their digital spaces.

Child activist Roland Edward, stating that grooming does not only about physical contact but about building trust, manipulating, or even blackmailing children online. However, the understanding of showing affection towards children is viewed as normal based on cultural or religious biases. The Ministry of Women, Family and Community Development, under the leadership of Minister Nancy Shukri, asserted a zero-tolerance policy against such conduct and advocated for vigorous awareness efforts to inform parents and children about the dangers of grooming and exploitation. Legal authorities recognized that although Malaysia's legislation is adequate for prosecuting such offences, the enforcement and community awareness demand improvement.

WIDESPREAD OUTRAGE AND BACKLASH: PUBLIC REACTION

Child grooming on TikTok appears normalized due factors of FYP that curates based on user interactions which groomers may repeatedly engage with minors and reinforcing harmful behavior. The trendy challenges of viral content also blur the line between the playful content and inappropriate behaviour as groomers are influencers who use social validation to manipulate minors.

The "Abang Bas" case has emerged as a turning point in Malaysia's persistent struggle against child grooming and internet sexual exploitation. It reveals weaknesses in the monitoring of adults who engage with children, particularly those in positions of trust, such as school bus drivers. The incident highlights the essential requirement for thorough child safety policies that address both offline and online environments. Experts and activists demand for more public education regarding digital threats, increased parental vigilance, and stricter implementation of current child safety legislation. The case acts as a catalyst for Malaysian society to address uncomfortable realities regarding child exploitation and to allocate resources and implement legislation to protect children's rights and welfare.

Several laws in Malaysia may address child grooming issues and related offences, as shown by the table below:

Act	Provision	Offence	Penalty
Sexual Offences Against Children Act 2017 (SOACA)	Section 12	Child grooming	Imprisonment up to **5 years** and/or a fine.
	Section 11	Sexually communicating with a child Meeting a child following grooming	Imprisonment up to **3 years** and/or a fine.
	Section 13	Meeting a child following grooming	Imprisonment up to **10 years** and/or a fine.
	Section 14	Physical Sexual Assault on Child	Imprisonment for a term not exceeding twenty years and whipping.
	Section 15	Non-Physical Sexual assault on Child	Imprisonment for a term not exceeding **10 years** or to a fine not exceeding twenty thousand ringgit or to both.
	Section 15A	Criminalizes sexual performance by a child.	Imprisonment up to **30 years** and minimum **6 strokes of whipping**.
	Section 15B	Introduces penalties for sexual extortion of a child.	Imprisonment up to **15 years** and/or fine.
	Section 16	Establishes liability for persons in a position of trust who exploit children.	Imprisonment up to **30 years** and mandatory whipping.
	Section 19	Requires individuals to report sexual offences against children.	Imprisonment up to **2 years** and/or fine.
Penal Code	Section 509	Criminalizes words or gestures intended to insult a person's modesty, including minors.	Imprisonment up to **5 years**, fine, or both
Child Act 2001 (Act 611)	Section 31	Criminalizes neglect, abuse, or exposure of a child to harm.	Imprisonment up to **20 years** and fine up to RM50,000
	Section 27-29	Requires individuals (e.g., medical officers, family members) to report suspected child abuse.	Imprisonment up to **2 years** and fine up to RM5,000

THE WAKE-UP CALL

The alarming revelations regarding "Abang Bas" show a wider issue confronting numerous societies in the digital age in safeguarding minors from exploitation in an environment where social media disguises boundaries and predators can utilize technology to manipulate victims.

New amendment of Section 233 of Communications and Multimedia Act 1998 which prevents the "grossly offensive" content on social media, sets a higher threshold for child grooming offences, taking into account expressions or actions that surpass considerations of morality, norms, and the cultural decorum of Malaysia's harmonious society concerning online content. Furthermore, Social Media Service Providers must implement appropriate, proportionate, and effective age verification measures protecting the privacy of child users or age assurance mechanisms to prevent child users from accessing harmful content or any content which is not appropriate for their age and potentially containing harmful interactions.

In conclusion, the "Abang Bas" case exceeds individual inappropriate conduct, serving as a compelling demand for systemic reform in child protection frameworks, highlighting the necessity of prevention, enforcement, and awareness to address the ongoing menace of child grooming and exploitation.

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STATUTE

1. Section 11,12,13,14,15, 15A, 15B, 16 and 19 of Sexual Offences Against Children Act 2017
2. Section 509 of Penal Code
3. Section 27, 28,29 and 31 of Child Act 2001
4. Section 233(1)(a) of Communications and Multimedia Act 1998

THE FINE PRINT MATTERS:

THE GAPS IN MALAYSIA'S COSMETIC LABELLING REGULATIONS AND WHAT CONSUMERS NEED TO KNOW

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The Control of Drugs and Cosmetics Regulations (CDCR) 1984 under Regulation 2 defines a "cosmetic" as any substance or preparation intended to clean, perfume, change appearance, correct body odours, protect, or preserve the epidermis, hair system, nails, lips, and external genital organs, or the teeth and oral cavity. Cosmetics differ from drugs in that they neither change physiological processes nor have a therapeutic impact.

The CDCR 1984, overseen by the Ministry of Health through the National Pharmaceutical Regulatory Agency (NPRA), establishes the requirements for cosmetic labelling in Malaysia. With these regulations, consumers have the confidence to get information that is both accurate and transparent on cosmetic products, thereby avoiding fraudulent claims and ensuring that products can be traceable.

Labels must include essential details such as the product name and function, full ingredient list, name and address of the Cosmetic Notification Holder (CNH), manufacturing batch number, and necessary warnings or precautions as required by CDCR 1984. In Malaysia, a CNH is the formally liable person or business for a cosmetic product. They thus guarantee that the product satisfies all the necessary safety, quality, and legal criteria before it is sold and have informed the authorities about it. They basically answer for the product's compliance to local regulations.

Regulation 18A(1)(e) mandates that a cosmetic product must be labelled only with the name approved by the Director of Pharmaceutical Services (DPS), preventing misleading branding that could suggest medicinal or therapeutic properties. Regulation 18A(1)(f) reinforces transparency in ingredient labelling by requiring compliance with directives or guidelines issued by the DPS, which typically mandate the use of the International Nomenclature of Cosmetic Ingredients (INCI) to ensure consistency in ingredient disclosure. Simply put, this means that cosmetic items supplied in Malaysia indicate their components under standardised labels that are accepted internationally.

To enhance traceability, Regulation 18A(1)(b) stipulates that only the notified cosmetic's responsible person or an authorized entity may place the product on the market. Additionally, NPRA guidelines require the CNH to include their name and address on the product label, ensuring consumer protection in cases of adverse reactions or recalls. Furthermore, Regulation 18A(1)(h) prohibits false or misleading symbols, marks, or figures, reinforcing the necessity of including manufacturing batch numbers for effective product tracking and quality control.

Failure to comply with these labelling requirements constitutes an offence under Regulation 30 of the CDCR 1984, which is punishable under Section 12(1) of the Sale of Drugs Act 1952. A first-time offender may face a fine not exceeding RM25,000, imprisonment for up to three years, or both. For a second or subsequent offence, the penalty increases to a fine not exceeding RM50,000, imprisonment for up to five years, or both. These stringent measures deter misleading labelling practices that could compromise consumer safety.

In 2023, the NPRA conducted 130 inspections of domestic cosmetic manufacturers to assess compliance with Good Manufacturing Practice (GMP) standards. Among these, 125 manufacturers met the required standards, while 5 were found to be non-compliant. Hence, regulatory measures have been taken against two non-compliant producers, reflecting NPRA's dedication to safeguarding the safety and quality of cosmetic products in Malaysia.

Despite these regulations, Malaysia's cosmetic labelling framework has notable gaps compared to international standards. Key flaws include the absence of mandatory allergen disclosure, nanomaterial identification, sustainability labelling, universal expiry date requirements, digital traceability systems, and stricter controls on misleading "free-from" claims. These shortcomings limit consumer access to critical product information that could influence purchasing decisions and personal safety.

For example, under the European Union (EU) Cosmetic Regulation (EC) No. 1223/2009, all nanomaterials in cosmetics must be clearly identified in ingredient lists, with "[nano]" indicated beside the relevant substance. This requirement addresses concerns about the long-term health effects of nanoparticles, particularly their ability to penetrate the skin barrier. Malaysia's CDCR 1984 does not include nanomaterial labelling provisions, preventing consumers from making informed decisions about products that may contain such substances.

Moreover, Malaysian cosmetics lack sustainability labelling, a growing legislative trend. Manufacturers in France must declare package recyclability, biodegradability, and carbon footprint. The AGEC Law, effective 2022, requires cosmetics to have the Triman logo and sorting instructions to promote responsible waste disposal. Malaysia's CDCR 1984 does not require sustainability labelling, falling behind global efforts to promote eco-friendly consumer choices.

Another aspect of Malaysian cosmetics that appears to be lacking is manufacturing or expiration dates. South Korea requires all cosmetics to have a manufacturing or expiration date to alert consumers about their freshness and usability. This is distinct from Malaysia, where only sunscreens and cosmetics with active chemicals and a shelf life of less than 30 months are required to have expiration dates. For cosmetics that will last longer, the manufacturing date will be used. This approach causes anomalies; thus, lipstick and eyeshadow purchasers may be unaware of product longevity and degeneration.

Digital traceability is an increasingly significant element in international cosmetic regulations. The National Medical Products Administration (NMPA) of China has established a system enabling consumers to scan product QR codes to obtain verified information on manufacturers, safety data, and ingredient origins. This system improves openness and fosters consumer trust. Conversely, Malaysia's CDCR 1984 currently lacks requirements for digital traceability methods, consequently limiting consumer access to verified product safety information.

Malaysia's regulations do not prohibit misleading 'free-from' claims such as 'paraben-free'. The FDA and the EU have regulations prohibiting deceptive 'free-from' marketing claims, particularly when similar preservatives are used. These claims may suggest that specific components are harmful, while products free of them are considerably safer. The lack of such regulations in Malaysia allows firms to adopt marketing strategies that mislead consumers about product safety and efficacy.

Malaysia's CDCR 1984 does offer a fundamental framework for cosmetic labelling; nevertheless, its regulations do not meet those standards that have been established as best practices in leading worldwide markets. The lack of required allergen disclosure, labelling of nanomaterials, sustainability regulations, uniform expiration dates, digital traceability, and tougher supervision over misleading advertisements all contribute to an impairment in consumer safety.

In order to enhance transparency, bolster consumer confidence, and ensure industry accountability, regulatory authorities should consider revising the CDCR 1984 to incorporate more rigorous labelling requirements. Aligning Malaysia's regulations with global standards would not only strengthen consumer rights but also enhance the country's competitiveness in the evolving international cosmetics market.

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AI MEETS BEAUTY:

THE FUTURE OF SKINCARE AND THE BATTLE FOR LEGAL ACCOUNTABILITY

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OVERVIEW OF AI-ENHANCED SKINCARE

AI-powered skincare revolutionises beauty by offering customised solutions through skin analysis tools, AI-driven recommendations, and virtual dermatologist consultations. Found in apps and smart devices, this technology helps consumers make informed choices but raises legal concerns. Issues like product liability and false advertising fall into a regulatory grey area. While brands like L'Oréal's Skin Genius and Neutrogena's Skin360 use AI, their legal reliability remains uncertain. This article examines Malaysia's legal gaps compared to the EU, US, and South Korea.

PRODUCT LIABILITY IN AI-POWERED SKINCARE

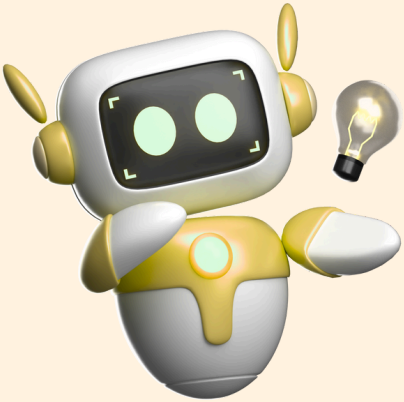
Product liability is the legal duty of manufacturers, sellers, and distributors for damages resulting from defective or hazardous products. Liability in AI-powered skincare becomes complex when adverse outcomes occur due to AI-generated advice. Unlike conventional skincare, which is subject to well-defined liability standards, AI-driven recommendations blur the line between a product and a service, thus creating challenges about who should take on accountability: software developers, skincare firms, or merchants.

The Consumer Protection Act 1999 (CPA), which regulates product liability in Malaysia, mostly covers faulty goods but leaves AI-generated suggestions unchecked. When a skincare product causes adverse effects, its manufacturer or seller is usually held liable. However, current rules do not clearly identify responsibility if an AI system provides an incorrect product or misdiagnoses a skin problem.

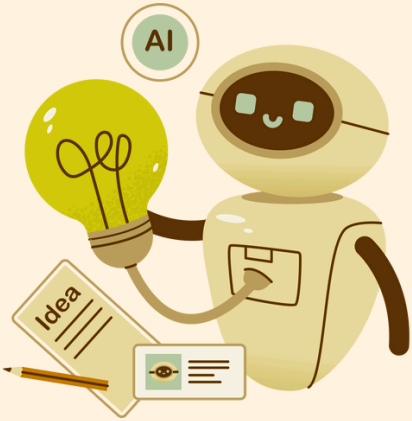
AI-powered skincare solutions like L'Oréal's Skin Genius and Neutrogena Skin360, which examine skin and suggest products, are especially affected by this issue. Notwithstanding their claims to improve skincare, Malaysia lacks legal precedent for holding these tools responsible for its skin-related issues. Clearer regulatory advice on AI liability in skincare applications is essential since consumers may find it challenging to seek legal redress if an AI-driven recommendation causes damage rather than a defective product.

However, the EU's Product Liability Directive holds manufacturers strictly liable for AI-powered skincare tool faults that cause harm without fault. AI decision-making has to be transparent under the proposed AI Act, which might influence cosmetics applications. Based on product liability, negligence, or misrepresentation statutes, US courts evaluate liability for AI-powered skincare tools as products or services. Traditional product liability rules apply to AI tools that are products, while negligence or misrepresentation laws apply to services.

AI-specific liability legislation is currently under development in South Korea, which is renowned for its innovative beauty industry. Customers can pursue claims against manufacturers and distributors for defective products under the current Product Liability Act; however, artificial intelligence-driven skincare gadgets remain in legal ambiguity. Lawmakers are looking into the possibility of integrating accountability for artificial intelligence into consumer protection laws.



Malaysia does not currently have specific legislation addressing the liability of AI-driven skincare. If an AI-powered skincare application provides erroneous suggestions, resulting in negative reactions or worsening skin problems, those impacted may struggle to hold anyone responsible. There are no clear limits on AI's liability, which creates legal uncertainty and forces consumer protection laws to change how they deal with AI-generated advice.



UNMASKING THE HYPE: FALSE CLAIMS IN AI BEAUTY TECH

Another significant legal problem in the field of AI-powered skincare is the likelihood of false advertising. Exaggerated promises are made by several brands related to artificial intelligence-powered skincare technologies. Examples of these claims include "100% accurate skin analysis" and "personalised solutions for flawless skin". In general, the statements that are made are not supported by scientific evidence, which means that they could potentially mislead customers.

In Malaysia, misleading marketing is prohibited by the Consumer Protection Act 1999 and the Communications and Multimedia Act 1998. These laws prohibit fraudulent advertising strategies and require advertisements to be accurate and tested. However, no explicit restrictions regulate AI-powered skincare promises. This gap allows companies to offer AI-powered skincare tools with minimal oversight, making it challenging to hold them accountable for overstated claims.

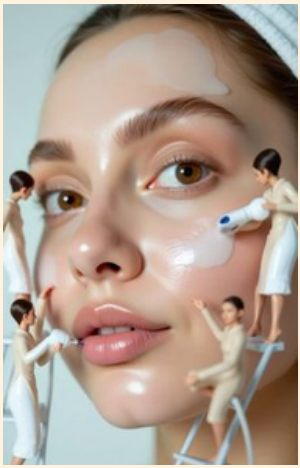
Skin Genius from L'Oréal and Skin360 from Neutrogena are two examples of products that employ artificial intelligence to deliver tailored skincare advice. However, these products make claims of accuracy and efficacy that have not been verified by independent research. In Malaysia, there is a lack of oversight by the government, which raises concerns about the reliability of skincare products driven by artificial intelligence as well as the possibility of misleading advertising.

The EU enforces higher standards through the Unfair Commercial Practices Directive, which calls for all marketing claims to be supported by scientific evidence. Companies that make unsupported assertions about their AI-powered skincare products might face fines or be compelled to offer proof of efficiency. The proposed AI Act boosts transparency requirements, ensuring that AI-driven consumer product judgements are transparent and verified.

In the United States, the Federal Trade Commission (FTC) enforces truth-in-advertising regulations, forcing businesses to provide evidence to back up representations. Brands that make misleading AI-based skincare promises may risk legal action, as demonstrated in incidents where companies were punished for erroneous anti-ageing claims. Similarly, the Food and Drug Administration (FDA) regulates AI-powered skincare tools only if they have been classified as medical devices, ensuring that users are not deceived into believing they provide medical-grade accuracy.

South Korea has strong regulations on advertising claims for beauty and skincare goods. The Korea Fair Trade Commission (KFTC) enforces false advertising rules, requiring scientific proof of functional cosmetic claims, including those associated with AI-powered apps. Korean regulations restrict AI-powered skincare gadgets from suggesting medical-grade precision unless they surpass medical regulatory criteria.

Malaysia's lack of AI-specific advertising legislation results in loopholes in consumer protection against deceitful promises. While misleading marketing is prohibited by standard consumer regulations, there are no specific limitations for AI-powered skincare promises. To combat this, Malaysia might take the same approach to the EU and South Korea, obligating scientific validation for AI-powered skincare claims and implementing more rigid fines for fraudulent marketing.



CONCLUSION

The emergence of AI-driven skincare presents both potential and challenges for consumer safety. Malaysia lacks specific legislation regarding AI-driven skincare, resulting in a legislative hole concerning product liability and misleading advertising. Conversely, the EU, US, and South Korea adopt more stringent regulations. Malaysia should revise its consumer protection legislation by improving advertising standards and expanding liability to encompass AI-generated recommendations, thus safeguarding consumer welfare while fostering innovation in the beauty industry.

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PEMASARAN AFFILIATE MENURUT PERSPEKTIF UNDANG-UNDANG DI MALAYSIA

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PENGENALAN

Pemasaran affiliate melalui platform Tiktok, Shopee dan Lazada merupakan salah satu bentuk pemasaran digital yang tidak asing lagi di Malaysia. Ia semakin mendapat tempat terutamanya dalam kalangan usahawan kecil mahupun besar, pempengaruh media sosial dan juga selebriti tanah air. Pemasaran affiliate ialah dimana seseorang individu atau syarikat mempromosikan produk atau perkhidmatan pihak ketiga dan memperoleh komisen berdasarkan hasil jualan yang dijana melalui pautan khas yang dikongsikan oleh mereka.

Walaupun pemasaran affiliate menawarkan peluang keuntungan yang menarik, namun masih ramai lagi yang tidak menyedari aktiviti ini juga sebenarnya tertakluk kepada pelbagai peruntukan undang-undang. Kegagalan mematuhi aspek perundangan ini boleh mengundang pelbagai risiko seperti penipuan atas talian, penyebaran maklumat yang tidak tepat, serta pelanggaran terhadap privasi dan data peribadi pengguna.

Justeru, artikel ini akan membincangkan perspektif undang-undang yang melibatkan tanggungjawab pihak affiliate, kepentingan kontrak yang jelas, dan juga pematuhan terhadap akta-akta utama seperti Akta Perlindungan Pengguna 1999, Akta Komunikasi dan Multimedia 1988 dan Akta Perdagangan Elektronik 2006.

TANGGUNGJAWAB PEMASAR AFFILIATE

Sebagai pemasar affiliate, terdapat beberapa persetujuan mahupun perjanjian dengan penjual atau syarikat yang menawarkan pemasaran affiliate. Perjanjian ini kebanyakannya tertakluk kepada syarat-syarat yang telah dipersetujui bersama termasuk tawaran komisen menerusi setiap hasil jualan.

Sebagai contoh, program affiliate menerusi Lazada telah menetapkan bahawa pemasar affiliate tidak boleh mengubah bahan iklan tanpa kebenaran, tidak boleh menggunakan kandungan yang melanggar undang-undang atau norma masyarakat, dan tidak boleh mencipta kekeliruan antara media affiliate dengan platform rasmi Lazada. Oleh itu adalah penting untuk pemasar affiliate memahami dan mematuhi terma dan syarat yang telah ditetapkan dalam perjanjian affiliate tersebut.

Selain itu, terdapat juga keperluan bagi menzahirkan hubungan komersial di antara pemasar affiliate dan penjual sesuatu produk. Di Malaysia khususnya, belum mempunyai garis panduan khusus mengenai penzahiran hubungan antara pemasar affiliate dan penjual, namun ini merupakan amalan terbaik bagi memastikan ketelusan dan mengukuhkan kepercayaan pengguna sesuatu produk.

Pemasar affiliate juga dipertanggungjawabkan untuk mencipta kandungan yang menarik dan informatif supaya ianya dapat menarik perhatian pengikut di laman media sosial seterusnya membuat pembelian melalui pautan yang disediakan. Kandungan seperti video beserta ulasan yang jujur dapat memberikan nilai tambah kepada pengguna dan secara tidak langsung meningkatkan hasil jualan melalui pemasaran affiliate. Kandungan yang dicipta juga perlulah mengikut etika dan peraturan dalam pemasaran affiliate.

Oleh itu, pemasar affiliate tidak boleh menggunakan teknik penipuan atau scam kerana ini boleh merosakkan reputasi pemasar affiliate dan juga menjejaskan kepercayaan bakal pembeli. Oleh hal yang demikian, sebelum berhasrat untuk mendaftarkan diri sebagai affiliate, seseorang itu haruslah memahami tanggungjawab yang bakal digalas sebagai pemasar affiliate. Pematuhan terhadap undang-undang sedia ada amat membantu untuk melindungi hak-hak pengguna dan seterusnya memastikan integriti dalam pemasaran.

PEMASARAN AFFILIATE MELALUI PERSPEKTIF UNDANG-UNDANG

Pemasaran affiliate boleh dianggap sebahagian daripada rantaian perniagaan. Oleh itu, sebarang kandungan promosi yang dilakukan oleh pemasar affiliate mestilah tidak mengelirukan, palsu atau menipu pengguna. Sebagai contoh, pemasar affiliate yang menyatakan kandungan sesuatu produk seperti "produk ini dijamin dapat menyembuhkan penyakit kronik" tetapi tiada bukti saintifik yang sah. Sudah tentu kenyataan ini boleh mengelirukan pengguna.

Walaupun Akta Perlindungan Pengguna 1999 tidak menyebut pemasar affiliate secara spesifik, namun tanggungjawab yang berkait secara tidak langsung tetap wujud. Seksyen 10 daripada Akta tersebut menyatakan "adalah menjadi suatu kesalahan jika mana-mana pihak membuat representasi palsu atau mengelirukan dalam apa-apa iklan, promosi atau kenyataan bertulis berkaitan barang atau perkhidmatan." Justeru, pemasar affiliate tidak seharusnya menghasilkan kandungan yang mengandungi maklumat palsu tentang produk atau menyembunyikan fakta penting demi mengaut komisen yang besar.

Tambahan lagi, Seksyen 10 Akta Perlindungan Pengguna 1999 juga menjelaskan "tiada sesiapa boleh dalam menjalankan perdagangan, membuat atau menyebabkan dibuat sebarang pengiklanan yang mengelirukan atau palsu." Ini termasuk kandungan yang dicipta oleh pemasar affiliate mengandungi testimoni palsu, penggunaan gambar yang tidak menggambarkan produk sebenar, atau harga yang mengelirukan.

Selain itu, pemasar affiliate perlu mematuhi semua garis panduan dan piawaian etika yang telah ditetapkan oleh Suruhanjaya Komunikasi dan Multimedia Malaysia (SKMM) kerana semua kandungan iklan dan promosi yang dibuat adalah menerusi media sosial. Larangan terhadap kandungan dan iklan palsu atau tidak sesuai juga perlu diberi perhatian. Ini bertujuan untuk mengelakkan penyebaran maklumat yang tidak tepat demi memastikan komunikasi melalui elektronik tidak melanggar mana-mana undang-undang sedia ada.

Oleh itu, pematuhan kepada peruntukan di bawah Akta Komunikasi dan Multimedia 1988 adalah menjadi tanggungjawab semua pemasar affiliate yang menggunakan platform digital bagi tujuan pengiklanan produk. Merujuk kepada Seksyen 211 Akta tersebut, "tiada pemberi perkhidmatan aplikasi kandungan yang boleh memberikan kandungan yang sumbang, lucah, palsu, mengancam atau jelik sifatnya dengan niat untuk mengacau, mendera, mengugut atau mengganggu mana-mana orang".

Berdasarkan peruntukan ini, SKMM amat melarang keras penyebaran kandungan yang mempunyai unsur palsu, mengelirukan, penipuan serta kandungan yang mempunyai unsur lucah, sumbang dan jelik.

Justeru, pemasar affiliate perlulah menghasilkan kandungan yang berkualiti demi mengelakkan kandungan yang boleh menimbulkan ketidakharmonian kaum, agama dan ketenteraman awam. Sekiranya berlaku pelanggaran kepada peruntukan tersebut, seseorang itu boleh disabitkan dengan denda tidak melebihi RM50,000 atau dipenjarakan selama tempoh tidak melebihi satu tahun atau kedua-duanya dan juga boleh didenda selanjutnya satu ribu ringgit bagi setiap hari atau sebahagian daripada sehari kesalahan itu diteruskan selepas pensabitan.

Di samping itu, Akta Perdagangan Elektronik 2006 juga berperanan untuk mengawal selia urusan transaksi yang dijalankan atas talian atau melalui medium elektronik. Maka, Akta ini akan memberi kesan langsung kepada pemasaran affiliate yang melibatkan kandungan berbentuk promosi, komunikasi dan transaksi melalui medium digital seperti media sosial.

Seksyen 8 Akta tersebut menyatakan bahawa komunikasi komersial yang dihasilkan perlulah benar, tidak mengelirukan dan setiap kandungan boleh disahkan kesahihannya. Oleh itu, dalam konsep pemasaran affiliate, setiap kandungan yang dihasilkan perlu jelas khususnya apabila pemasar berkongsi pautan affiliate mengenai sesuai produk tersebut.

Seterusnya, bagi pemasar affiliate yang beragama Islam, adalah penting untuk memastikan bahawa aktiviti pemasaran affiliate yang dilakukan adalah selaras dengan prinsip Syariah. Kajian oleh Sulthonuddin dan Rahayu (2024) mendapati bahawa sistem affiliate yang dilaksanakan dalam platform seperti Shopee adalah dibenarkan menurut hukum Islam, dengan syarat bahawa akad antara pihak terlibat adalah jelas, tidak berlaku unsur penipuan atau ketidakpastian (gharar), dan maklumat yang disampaikan kepada pengguna mestilah telus.

Oleh itu, komisen yang diperoleh melalui pautan affiliate dianggap halal, selagi mana pemasar affiliate mematuhi prinsip kejujuran dan ketelusan dalam menyampaikan maklumat produk atau perkhidmatan.

RUMUSAN

Pemasaran affiliate sudah pastinya menawarkan peluang komisen yang tinggi dalam dunia digital. Walau bagaimanapun setiap pemasar affiliate perlu sentiasa peka akan tanggungjawab yang digalas serta mematuhi aspek undang-undang dan etika sedia ada. Pematuhan kepada undang-undang ini bukan hanya melindungi para pengguna media sosial, malah ianya akan turut menjaga reputasi pemasar affiliate itu sendiri. Sebagai pemasar affiliate, adalah wajar untuk mendapatkan pandangan dan nasihat daripada pakar undang-undang digital sebelum melibatkan diri secara serius dalam aktiviti pemasaran atas talian.

Selain itu, cadangan untuk mewujudkan garis panduan yang jelas bagi mengawasi kegiatan pemasar affiliate wajar diberikan perhatian serius oleh pihak berkepentingan. Perbincangan lebih mendalam mengenai bentuk garis panduan yang sesuai serta pelaksanaannya dalam konteks perundangan Malaysia juga amat diperlukan. Maka, sudah sampai masanya kajian khusus dijalankan bagi meneliti keperluan ini secara menyeluruh demi memastikan pemasaran affiliate berkembang secara mampan dan beretika.

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ENVIRONMENTAL LAW AND HUMAN BEHAVIOUR

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INTRODUCTION

Environmental law is the area of law practice that covers a wide range of laws, rules, guidelines, and authorizations pertaining to environmental protection. These consist of:

Laws governing pollution control: compliance guidance, granting, and enforcement

natural resource legislation: Environmental impact assessment, endangered species protection, and habitat preservation.

Environmental law services are frequently used by government agencies and departments to safeguard their interests. The same is true for companies, advocacy groups, and individual client legal firms. Environmental law is a developing field with a wide range of activity that includes concerns about the protection of natural resources, curbing pollution, and the quality of the air and water.

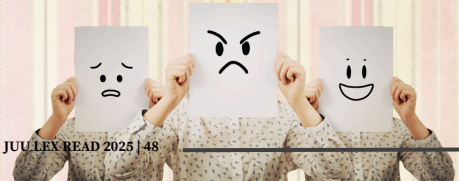
Governments all over the world have been stepping up environmental oversight and introducing environmental regulation policies to increase regulatory effectiveness in order to prevent environmental problems from getting worse and achieve sustainable development (Cai et al., 2016, Kraus et al., 2020). According to earlier studies, environmental control by the government is becoming more and more important to the growth of businesses. In particular, it can increase the amount of foreign capital available to businesses, encourage businesses to increase their energy efficiency, and motivate businesses to make green investments (Elliott and Zhou, 2013, Bi et al., 2014, Liao, 2018).

LEGISLATION - ENVIRONMENTAL QUALITY ACT (EQA) OF 1974

The Environmental Quality Act (EQA) of 1974, which sought to prevent and manage pollution and set up a framework to punish individuals who carelessly destroy the environment, is the keystone of Malaysia's national environmental policy. Even so, some officials and detractors claim that the 46-year-old law has been significantly outclassed by Malaysia's economy and society's growing awareness of environmental issues. According to them, creating a new, more comprehensive code is essential to preventing more pollution problems.

The EQA was designed from the beginning to halt pollution issues. Its regulations defined pollution across a range of chemicals and environments and established licensing and environmental effect assessment methods. The majority of decisions about land use and enforcement against infringers are taken at the state level, but it continues to serve as the foundation of Malaysia's environmental law at the federal level.

More than 20 years after its passage, the EQA didn't really start to have any teeth against violators until 1996. Similar to other laws in the nation, the environmental law was developed through five-year development plans. The third of these "Malaysia Plans," covering the years 1976 to 1980, was the first to incorporate environmental concerns.



ISSUES

More than a million homes in Malaysia's heavily populated Klang Valley experienced prolonged water outages in September 2020 as a result of unlawful chemical dumping that rendered the area's ageing water filtration facilities inoperable. During the outbreak, locals lined up to fill buckets with water while donning masks.

Before the September 2020 incident's perpetrators could be found and charged a month later, a similar chemical spill again caused more than a million homes to experience days without water. A groundswell of citizens began to demand stronger enforcement against industrial polluters and policies that could stop water cuts from becoming the new normal as a result of what continued happening.

There are signs that the current government, inspired by the recent power transitions and the increasingly dynamic competition among political parties, is taking note and is making a concerted effort to reform the country's environmental policies. As pollution seeps more deeply into Malaysians' daily lives, this surge of incensed consumers is amplifying a call long made by civil society organisations that have demanded better environmental stewardship and heftier fines for violators.

HUMAN BEHAVIOUR IN RELATION TO PRESERVING THE ENVIRONMENT

Environmental degradation has been brought on by rapid urbanisation and the public's ambition to pursue a luxurious modern lifestyle. The environmental calamities that lower the standard of living include harmful waste generation, climate change, environmental degradation, and ecosystem collapse, to name a few. Numerous scholars from diverse scientific fields have long expressed these (Dominick et al., 2012; Asmuni, Khalili & Zain, 2012).

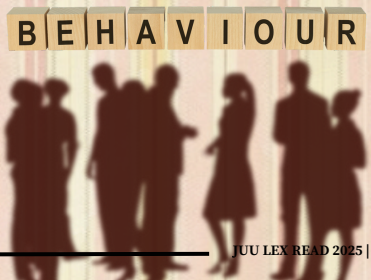
Fulfilling human greed through aggressive economic activity without sufficient consideration of environmental effects is the primary cause of these catastrophes. Given that anthropogenic activities are the primary contributors to environmental degradation, social and psychological aspects relating to the environment have an impact on quality of life both directly and indirectly.

Understanding the context of environmental awareness is crucial to understanding the importance of researching Malaysians' environmental consciousness. Environmental awareness, according to Hassan, Noordin, and Sulaiman (2010), contains three concepts: emotional, attitude, and practice of sustainable awareness. The desire to carry out a sequence of ecologically friendly behaviours is stimulated by psychological and emotional influences.

Environmental awareness and commitments are less studied and reported, despite various environmental events and campaigns about anthropogenic pollution that have been implemented by government and non-government entities in an effort to change public environmental behaviour. Different levels of public concern and awareness about environmental issues affect the corresponding environmental conduct.

According to Altin et al.'s (2014) study, environmental awareness is defined as being aware of environmental problems and actively participating in environmental organisations. Despite this, environmental awareness serves as a catalyst for the development of favourable attitudes and appreciation for pro-environmental activity (Karatekin, 2014).

It should be emphasised that data on public environmental knowledge and behaviour can be a useful guide for policies aimed at improving the environment and, by extension, the quality of life. This article examines the performance level of environmental awareness and behaviour among Malaysians as a result of a nationwide survey. It discusses public environmental awareness and behaviour performance in terms of four (4) categories: water pollution, air pollution, waste management, and climate change.



Therefore, it is important to quantify environmental awareness in a setting that takes into account both the causes and negative effects of environmental challenges (Karatekin, 2014). The level of purposeful environmental conduct increases as an individual's cognitive sensitivity to environmental issues and cause-and-effect theories increases.

Lack of environmental awareness to the massive environmental issues, urbanisation, industrialization, deforestation, rising global temperature, and destruction of biodiversity obstruct policymakers' attempts to deal with the environmental stressors (Keles, 2012). Life quality suffers as a result, and things are getting out of hand (Keles, 2012). From the perspectives of economic, ecological, social, and human factors, life quality can have several facets (Marans, 2012; Keles, 2012).

Ultimately, the idea of quality of life has always been connected to environmental concerns; as a result, policymakers give it their full attention when planning and managing our living environment (Marans, 2012). Assessing Malaysians' environmental awareness is crucial to the effectiveness of policy planning since policymakers are worried about the lowered quality of life.

Without the assistance of public environmental awareness consideration, the design of policy may result in the environmental protection programme not producing the desired results. Environmental behaviour is a requirement for preventing environmental catastrophes (Klöckner, 2013), with a focus on the main factor that shapes people's attitudes towards environmentalism.

Given that behavioural patterns can greatly affect the environmental quality and the efficacy of environmental initiatives, environmental behaviour and the relevant factors that influence environmental behaviour should be assessed (Singhirunnusorn et al., 2012). Given that environmental challenges are a worldwide problem, understanding or anticipating environmental behaviour might assist reduce environmental risks in social and political situations (Harth, Leach, & Kessler, 2013). In other words, policymakers can identify their efforts to enhance public environmental conduct by evaluating changes in attitude and behaviour among the general public (Owens & Driffill, 2008).

CONCLUSION

This endeavour to be informed is crucial when it comes to the formulation of environmental laws and regulations. Instead of the other way around, a change in attitude may make a change in behaviour more likely. As a result, for an environmental policy to be effective, the government must comprehend why and how the public engages in environmentally friendly activity.

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FOOD REVIEWS AND THEIR INFLUENCE ON MALAYSIAN RESTAURANTS:

AN ANALYSIS OF LEGAL AND ETHICAL CONSIDERATIONS

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The rise of social media has revolutionized marketing, leading companies to increasingly leverage influencer marketing to reach broader audiences. Social Media Influencers (SMIs), perceived as authentic and relatable, use platforms like Instagram and TikTok to promote products, particularly in the food and beverage sector (Perumal, Krisnan, & Abdul Halim, 2019). Their endorsements are often perceived as more trustworthy than conventional brand advertisements, especially among millennials.

In Malaysia, these influencers often command significant trust from younger consumers, who regard their opinions as authentic and relatable compared to traditional advertising (Suhaimi & Ahmad Tajuddin, 2024). Consequently, Malaysian restaurants actively engage SMIs to promote their food quality, ambiance, and overall dining experience, leveraging these reviews to attract and retain customers (Che Wan Mohd Khair, 2023). As influencer marketing continues to grow, it raises important questions about legal responsibilities, the ethical transparency of paid promotions, and the authenticity of reviews (Nawi & Faizol, 2021).

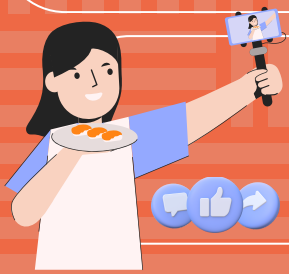
When authenticity speaks, voices like Jason Chen and Janna Nick become the tastemakers that truly matter. But how far can restaurant owners accept honest criticism? Can these reviewers be legally silenced for telling the truth? This paper examines the legal frameworks related to food reviews in Malaysia and discusses the ethical issues that both reviewers and restaurant owners need to consider.

THE LEGAL LANDSCAPE OF FOOD REVIEWS IN MALAYSIA

The regulation of food reviews in Malaysia involves several laws aimed at promoting fair business practices, protecting consumers, and building public trust. The Consumer Protection Act (CPA) 1999 is a key statute that aims to safeguard consumers by preventing misleading or false information in marketing and advertising. It prohibits false or deceptive representations about goods or services, which would include dishonest reviews about food quality or restaurant services (Section 10).

Evans et al. (2017) found that clear disclosure of paid promotions on Instagram helps consumers recognize sponsored content and build trust. This emphasizes the need for transparency in influencer marketing to avoid misleading audiences. Proper disclosure supports both legal compliance and ethical practices in digital advertising.

Besides consumer protection laws, the Communications and Multimedia Act (CMA) 1998 also regulates content shared on digital platforms. Specifically, Section 233 makes it an offense to misuse network services by spreading false information or offensive content online. Since food reviews are often posted on social media, influencers and reviewers need to be careful that their posts comply with these rules. A negative review containing false claims that damage to a restaurant's reputation could potentially attract legal consequences under CMA 1998.



In September 2022, a woman posted a video on TikTok expressing her dissatisfaction with a Pattaya fried rice dish she ordered online from Asmani Tomyam Seafood in Alor Setar. The restaurant owner discovered the video and lodged a police report against her for defamation. The incident sparked amusement among social media users, highlighting the sensitivity of businesses to online reviews and the potential for legal repercussions.

The Defamation Act 1957 may also be relevant when food reviews contain statements that may harm the reputation of restaurants or individuals. Defamation law protects businesses from unfair attacks, requiring that any critical review be based on facts and not exaggerations or untruths. For instance, the Nasi Kandar Line Clear restaurant filed a defamation suit against The Star newspaper in 2020 over a report stating it was fined for cross-contamination and improper food handling.

The case, however, was settled out of court, but it underscores the potential legal implications of publishing information that could harm a business's reputation. Therefore, we need to exercise caution and honesty, ensuring our opinions are fair and substantiated.

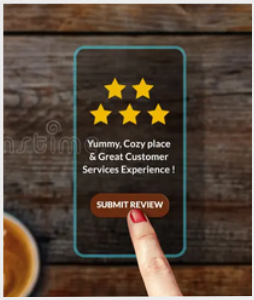
ETHICAL CONSIDERATIONS IN FOOD REVIEWING

Food reviews play a significant role in the food and beverage (F&B) industry. Whether shared by regular diners, media outlets, or social media influencers, these reviews function as a form of check and balance, encouraging restaurants to maintain quality and accountability. The example of the 2023 incident reported by one of the diners in a fine dine in the restaurant questioned that she was banned from expressing her feedback as a customer. In fact, restaurants cannot legally prevent diners, including influencers and reviewers, from sharing their honest opinions if the meals were paid for. Attempting to do so may infringe on freedom of expression (Lee, K. Y., 2023).

In February 2025, an article shared by Forward Malaysia regarding food reviewer Jason Chen when he defended his honest review practices after being criticized by a TikTok creator. He argued that transparency builds consumer trust and that restaurants should focus on improving quality instead of silencing critics. Jason also stressed that all diners have the right to share their experiences and called out racial bias in the backlash he received.

Understandably, food reviewers and influencers carry an ethical responsibility to ensure that their content is honest, fair, and based on actual experiences. Misleading or exaggerated reviews, particularly when influenced by undisclosed sponsorships, can harm public trust and damage a business's reputation. Transparency about any benefits received, such as free meals or payments, is crucial to maintaining the credibility of both the reviewer and the review itself. These ethical practices are not only important for audience trust but also serve as a safeguard against potential legal challenges related to false or biased claims.

In the Malaysian context, where food is closely tied to cultural and religious values, ethical considerations must also include sensitivity towards halal standards and other religious practices. A careless remark or inaccurate statement about halal status, for instance, can trigger public backlash and unjust harm to a restaurant's image. At the end of the day, honest food reviews not only can help to build consumer trust, but they must be shared responsibly and fairly. Legal and ethical guidelines play an important role in protecting both reviewers and businesses from harm or misinformation. Striking this balance encourages a culture of accountability, where freedom of expression is respected without compromising integrity or reputation.



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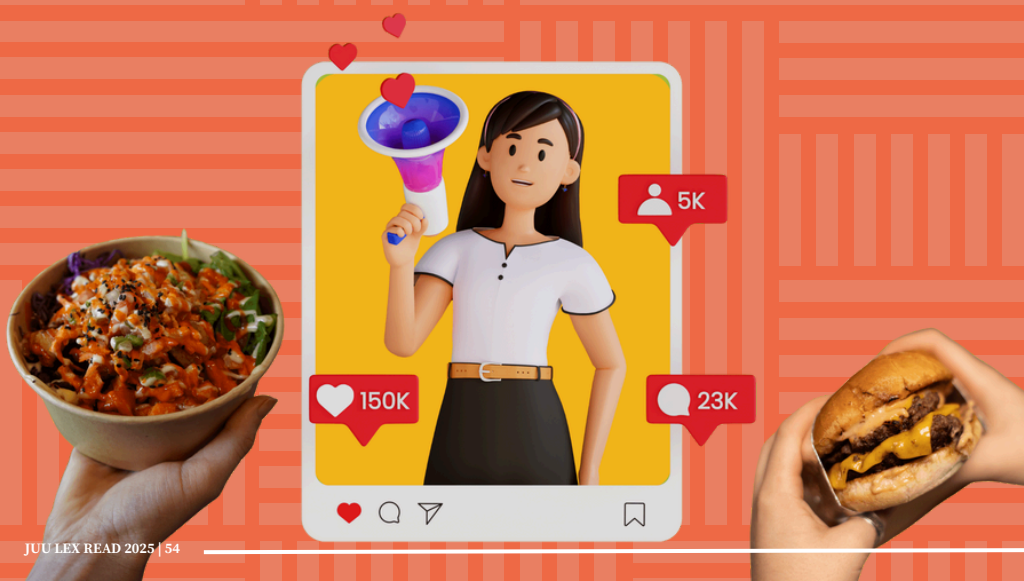

SUMBER : WATCH ONE CENT THIEF | NETFLIX

ULASAN DRAMA ONE CENT THIEF

ANALISIS UNDANG-UNDANG: ANTARA FIKSYEN DAN REALITI

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1 SINOPSIS

Drama One Cent Thief (2022–2025) mengisahkan Iman Shah, seorang pekerja di Bintang Bank yang pada mulanya mencuri satu sen daripada setiap akaun pelanggan di tempat beliau bekerja, untuk membiayai rawatan jantung bapanya dan melangsaikan hutang dengan ceti haram. Kelebihan yang dimiliki oleh Iman akhirnya mendapat perhatian ketua kartel dadah, yang dikenali sebagai Ibu Zara. Ibu Zara mahu Iman untuk bekerjasama dengannya demi kepentingan peribadi.

Bermula daripada satu bank, Iman telah berjaya mencuri satu sen daripada kesemua bank di dalam negara dan berkongsi keuntungan yang bernilai jutaan ringgit bersama Ibu Zara. Tindakan Iman pada awalnya sukar dikesan, tetapi lama-kelamaan mula menimbulkan kecurigaan Ketua Keselamatan di Bintang Bank juga merangkap kawan baiknya, Intan, dan Digital Karma, sebuah organisasi pengggodam elit.

Siri ini diinspirasikan daripada kes benar Aman Shah, bekas eksekutif Hock Hua Bank (dulu dikenali sebagai International Bank Malaysia dan seterusnya bergabung menjadi satu entiti di bawah Alliance Bank Malaysia Bhd) yang telah mencuri RM4.1 juta melalui kaedah yang hampir serupa pada tahun 1990.

Drama ini membuka ruang perbincangan tentang jenayah kewangan, kerentanan sistem perbankan, dan konflik antara keadilan sosial dengan kepatuhan hukum. Dengan merujuk kepada kerangka perundangan Malaysia, artikel ini menganalisis apakah tindakan undang-undang yang boleh diambil ke atas Iman Shah dan Ibu Zara, serta mengupas nilai etika yang digarap dalam drama ini.

2 KERANGKA UNDANG-UNDANG JENAYAH KEWANGAN

A Pecah Amanah Jenayah (CBT: Criminal Breach of Trust)

Dalam kes sebenar Aman Shah, beliau didakwa dan didapati bersalah di bawah Seksyen 408 Kanun Keseksaan iaitu kesalahan pecah amanah jenayah oleh kerani atau orang gaji kerana menyalahgunakan jawatannya untuk memindahkan dana pelanggan ke akaun fiksyen, iaitu ke akaun Bistro Advertising Agency, syarikat miliknya sendiri.

Peruntukan seksyen menyatakan sekiranya seseorang didapati bersalah, hukuman yang bakal dihadapi adalah penjara minimum satu tahun dan maksimum 14 tahun dan sebatan, serta boleh didenda. Hakim Mahkamah Sesyen, Haji Muhammad Noor Abdullah, telah menjatuhkan hukuman penjara 5 tahun ke atas Aman Shah.

SUMBER : WATCH ONE CENT THIEF | NETFLIX

Dalam drama One Cent Thief, Iman Shah turut melakukan jenayah yang hampir serupa, tetapi motifnya digambarkan lebih simpatik —untuk menyelamatkan nyawa bapanya. Elemen "niat" (mens rea) dan "perbuatan" (actus reus) menjadi titik penting dalam menentukan liabiliti jenayah seseorang. Walaupun Iman bertindak atas desakan hutang dan tekanan menyelamatkan nyawa bapanya, perbuatannya tetap memenuhi elemen mens rea dan actus reus kerana wujudnya pemindahan dana tanpa kebenaran secara sengaja. Di Malaysia, isu-isu kecemasan seperti desakan hutang atau masalah perubatan, sukar diterima mahkamah sebagai alasan untuk membatalkan kesalahan jenayah.

B Jenayah Siber

Drama ini turut menyentuh isu penggodaman sistem bank oleh Iman. Tindakan ini boleh didakwa di bawah Seksyen 3 Akta Jenayah Komputer 1997 kerana mengakses sistem komputer tanpa kebenaran, yang membawa hukuman penjara maksimum 5 tahun atau denda tidak melebihi RM50,000.

C Penipuan dan Pemalsuan (Fraud and Forgery)

Perbuatan Iman yang menyamar sebagai petugas kebersihan untuk mengakses ke server room dan menyalahguna persahabatannya dengan Intan hingga menyebabkan beliau percaya Iman tidak bersalah, boleh juga dianggap sebagai suatu bentuk penipuan di bawah Seksyen 415 Kanun Keseksaan. Hukuman bagi jenayah menipu adalah penjara maksimum 5 tahun atau denda, seperti yang termaktub di bawah Seksyen 417.

Selain itu, Iman juga telah memanipulasi jap cari rakan sekerja, Shemad, bagi memecah masuk ke bilik Admin PC kerana mahu mencipta kad palsu di bawah nama Ash Lee (memegang jawatan sebagai Assistant Vice President bagi unit Cybersecurity) dan seterusnya meletak kad tersebut di meja Shemad untuk mengelirukan pihak berkuasa. Akibatnya, Shemad telah dikenakan tindakan dan dibuang kerja oleh Bintang Bank.

Selain kesalahan menipu di bawah Seksyen 415, jenayah yang dilakukan oleh Iman juga boleh diklasifikasikan sebagai jenayah di bawah Seksyen 468 iaitu "pemalsuan bagi maksud hendak menipu" dan Seksyen 469 iaitu "pemalsuan bagi maksud hendak merosakkan nama baik seseorang". Jika didapati bersalah, hukuman bagi setiap kesalahan tersebut masing-masing adalah penjara maksimum 7 dan 3 tahun, beserta denda.

SUMBER : ONE CENT THIEF DRAMA BERSIRI TERBAIK | SUARA SARAWAK

D Pengubahan Wang Haram (Money Laundering)

Selain Iman, Ibu Zara juga turut terlibat dengan pelbagai jenayah yang lebih berat, termasuklah membunuh. Beliau sebenarnya merupakan mastermind dalam dunia kartel dadah yang berselindung di sebalik Yayasan Zara, yang kononnya melindungi wanita-wanita daripada keganasan rumah tangga dan anak-anak jalanan.

Ibu Zara dilihat menyembunyikan hasil jenayahnya melalui pelbagai saluran. Antaranya Ibu Zara telah bersubahat dengan Alex Pereira, seorang peguam, dengan memindahkan wang dari hasil dadah ke mata wang kripto agar sukar dikesan oleh pihak berkuasa. Perbuatan ini bersesuaian dengan kesalahan jenayah di bawah Akta Pencegahan Pengubahan Wang Haram, Pencegahan Pembiayaan Keganasan Dan Hasil Daripada Aktiviti Haram 2001 (AMLA: Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001).

Seksyen 4 AMLA memperuntukkan bahawa mana-mana individu yang terlibat secara langsung atau tidak langsung dalam transaksi yang melibatkan hasil daripada aktiviti haram telah melakukan kesalahan pengubahan wang haram. Sekiranya didapati bersalah, si pelaku boleh dipenjarakan maksimum 15 tahun dan boleh didenda tidak kurang daripada lima kali ganda jumlah atau nilai hasil daripada aktiviti haram itu pada masa kesalahan itu dilakukan atau RM 5 juta, yang mana yang lebih tinggi.

Terlalu banyak jenayah yang dilakukan oleh Ibu Zara di dalam drama ini, contohnya melakukan jenayah peras ugut (Seksyen 506 Kanun Keseksaan), jenayah membunuh (Seksyen 302 Kanun Keseksaan), jenayah menerima rasuah dan memberi suapan (Seksyen 16 dan 17 Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009)

SUMBER : ONE CENT THIEF (2022)

3 KONFLIK ETIKA DAN KEADILAN SOSIAL

A Dilema Moral: Keadilan lwn. Kepatuhan Undang-Undang

One Cent Thief mengemukakan persoalan etika: adakah jenayah kewangan boleh dibenarkan jika dilakukan untuk tujuan mulia? Dalam drama ini, Iman digambarkan sebagai "penjahat simpatik" atau antiwira yang terperangkap antara keperluan keluarga dan kepatuhan undang-undang. Sekiranya Iman berhujah mengatakan dia tidak tahu bahawa tindakannya itu salah, tetapi dari perspektif perundangan, prinsip ignorantia juris non excusat (kejahilan undang-undang bukan alasan) tetap terpakai. Walaupun motif Iman boleh difahami, tindakannya tetap melanggar undang-undang

Namun demikian, meskipun dari sudut undang-undang beliau bersalah dan telah dipenjarakan, ia membuka perbahasan mengenai keperluan sistem keadilan restoratif yang lebih sensitif dengan melihat kepada konteks sosial dan ekonomi si pelaku. Sebagai contoh, adakah adil sekiranya kita mengenakan hukuman yang berat kepada si pelaku yang mencuri kerana lapar atau terlalu miskin? Isu ini harus diperhalusi bersama-sama.

SUMBER : ONE CENT THIEF (2022): RATINGS AND RELEASE DATES FOR EACH EPISODE

B Kritikan terhadap Sistem Kewangan

Drama ini menyoroti kelemahan sistem perbankan dalam mengawal selia transaksi digital. Mengambil pengajaran daripada kes sebenar Aman Shah, beliau telah mengeksploitasi kelemahan sistem keselamatan bank yang gagal mengesan pemindahan wang tersebut dengan cepat. Begitu juga dengan Iman, oleh kerana beliau telah memahami selok belok sistem keselamatan di Bintang Bank, Iman telah menyalahguna maklumat ini bagi kepentingan diri.

Meskipun terdapat syak wasangka bahawa serangan godaman itu dilakukan oleh orang dalam, namun Ketua Pegawai Teknologi Bintang Bank, Irene De Costa telah mengambil sikap menutup sebelah mata bagi menjaga imej dan nama baik bank. Hal ini mencerminkan kegagalan institusi kewangan untuk mematuhi Akta Perkhidmatan Kewangan 2013 atau Akta Perkhidmatan Kewangan Islam 2013, yang mewajibkan audit berkala untuk mengelakkan penyelewengan.

4 IMPLIKASI TERHADAP UNDANG-UNDANG

A Keperluan Penguatkuasaan Undang-Undang Siber

One Cent Thief mendedahkan keperluan agar kerajaan Malaysia perlu memperkukuh kerangka undang-undang siber, contohnya Akta Keselamatan Siber 2024. Akta ini digubal bagi tujuan untuk meningkatkan keselamatan siber negara dengan menghendaki pematuhan terhadap langkah-langkah, standard dan proses tertentu dalam pengurusan ancaman keselamatan siber dan insiden keselamatan siber terhadap infrastruktur maklumat kritikal negara.

Selain itu, latihan khusus untuk para hakim dalam kes berkaitan teknologi kewangan juga perlu diadakan seiring dengan isu semasa. Bagi kakitangan bank pula, latihan mengenai pematuhan undang-undang dan etika juga perlu diadakan secara berkala.

B Pendidikan Kesedaran Terhadap Jenayah Kewangan

Drama ini telah berjaya meningkatkan kesedaran awam tentang risiko penyelewengan wang di dalam institusi kewangan. Penulis mencadangkan agar pihak berkuasa seperti Bank Negara Malaysia (BNM) dan Suruhanjaya Sekuriti Malaysia (SSM) dapat bekerjasama dengan industri kreatif untuk melancarkan kempen pendidikan berdasarkan kisah sebenar.

SUMBER : ONE CENT THIEF | ASIAN DRAMA WIKI | FANDOM

5 KESIMPULAN

One Cent Thief bukan sekadar drama thriller dan jenayah fiksyen, tetapi juga merupakan sebuah kritikan sosial terhadap sistem perundangan dan kewangan Malaysia. Drama ini mencabar penonton untuk mempertimbangkan semula konsep keadilan dalam konteks ketidaksamaan ekonomi. Ia membongkar isu kepercayaan, ketelusan, dan tanggungjawab, sambil mencetuskan kesedaran tentang peri pentingnya penguatkuasaan dan pendidikan undang-undang.

Di penghujung episod akhir, musim kedua, Iman akhirnya telah berjaya ditangkap dan menerima hukuman di penjara. Apa yang menarik, pihak polis dari Unit Khas Jenayah, telah bertemu Iman di penjara dan meminta kepakaran beliau untuk membantu mereka menyelesaikan sesuatu kes. Persoalannya, adakah One Cent Thief akan muncul di musim ketiga? Adakah Iman Shah akan menyertai pihak berkuasa bagi menangkap penjenayah siber sepertinya pula? Sama-sama kita nantikan.

¢ RUJUKAN

Akta Jenayah Komputer 1997

Akta Keselamatan Siber 2024

Akta Pencegahan Pengubahan Wang Haram, Pencegahan Pembiayaan Keganasan Dan Hasil Daripada Aktiviti Haram 2001

Akta Perkhidmatan Kewangan 2013

Akta Perkhidmatan Kewangan Islam 2013

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Kanun Keseksaan

SUMBER : ONE CENT THIEF :: BEHANCE

SUMBER : ONE CENT THIEF (7) | IMAGES :: BEHANCE

EUTHANASIA – RIGHT TO DIE WITH DIGNITY

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INTRODUCTION

Assisted dying is the general term used to describe procedures to end life for a person by compassionately letting, promoting, or causing the death of a dying person. It is most often used for a person who has a life-ending illness and is in extreme pain. It includes the provision of medication to a person for self-administration (assisted suicide) as well as administration of medication by a health practitioner (euthanasia), in both cases causing death. (n.d.)

The terms "euthanasia" and "assisted suicide" are often used interchangeably, but there are key differences between the two i.e. while with euthanasia, a healthcare provider, friend, family member, caregiver, or any other person takes action to cause a person's death, usually in the form of a drug injection, assisted suicide, on the other hand, is when the healthcare provider prescribes a lethal drug, but the subject who wants to die takes the medication themselves.

Because there is no specific provision for it in most legal systems, assisted dying is usually regarded as either suicide (if performed by the patient himself) or murder (if performed by another).

In jurisdictions where it is legal, assisted dying is an end of life choice for people who meet the eligibility criteria established by the law in their jurisdictions. Each jurisdiction requires the request to be voluntary. The terms used to refer to legal assisted dying vary from country to county viz; Assisted Dying (New Zealand), Assisted Suicide (Switzerland, Austria and the Netherlands), Death with Dignity (USA), Dignity in dying (United Kingdom), Euthanasia (Netherlands, Belgium and Luxembourg), Medical Assistance in Dying (MAiD) (Canada), Voluntary Assisted Dying (VAD) (Australia).

CLASSIFICATION OF EUTHANASIA

Active vs. Passive Euthanasia

Active euthanasia sometimes referred to as "aggressive" euthanasia is when a medical professional or another person performs a deliberate act to cause a person to die, such as an injection of a lethal dose of a drug or an overdose of a drug.

Passive euthanasia is when an action is withheld or stopped to cause or hasten a person's death, such as the removal of a feeding tube or ventilator, refusal to perform a life-extending operation or provide life-extending drugs, or withholding of food, hydration (water), and oxygenation.

Voluntary vs. Involuntary Euthanasia

Voluntary euthanasia is committed by a medical professional or other person with the willing and knowledgeable consent of the subject, usually with the administration of lethal drugs.

Involuntary euthanasia is done when the person is unconscious or unable to give consent, usually when the person is permanently incapacitated. It can be performed based on permission from a court or family members and usually involves an act such as withdrawing life support from a person with no signs of brain activity.

In Malaysia, all forms of euthanasia, encompassing active, passive, voluntary, non-voluntary, and involuntary euthanasia, regardless of whether conducted with or without the individual's consent and often aimed at mitigating suffering or pain, are prohibited. (Isaacs, n.d.)

The current regulatory framework in Malaysia regarding euthanasia is referred to as end-of-life care. As of the legal position in 2021, there are no authoritative standards that officially regulate end-of-life care in Malaysia, which includes, inter alia, the management of end-of-life decisions, issues on active euthanasia, withholding and withdrawal of life-sustaining treatment (passive euthanasia), as well as palliative sedation and terminal sedation.

In November 2024, lawmakers in the United Kingdom voted in favour of making assisted dying legal in the United Kingdom. The Terminally Ill Adults (End of Life) Bill, when and if, it eventually passes, would legalize physician-assisted suicide, meaning doctors can prepare a substance designed to end patients' lives, but the patients must take it themselves.

Undoubtedly, the decision-making process must comply with legal standards in order to protect the interests of medical practitioners, patients and health care providers. To date, no local judicial decisions on the matter are available, as issues pertaining to end-of-life care are treated as purely medical decisions and have yet to be brought before the Malaysian courts. (Fadhlina & Bachelor, 2021)

Australia, Belgium, Canada, Colombia, Ecuador, Luxembourg, The Netherlands, New Zealand, Portugal, Spain have legalized assisted dying, or "active euthanasia,". In the United States, starting with Oregon, in 1997, followed by 10 other states, have legalized assisted dying, viz; California, Colorado, Hawaii, Maine, Montana, New Jersey, New Mexico, Oregon, Vermont and Washington.

Decisions on euthanasia are never easy nor straightforward as they are deeply rooted in law, ethics, morality and religion. It continues to be a divisive issue in most countries. Reason being euthanasia violates the fundamental constitutional right to live and the prohibition of intentional killing, which is the cornerstone of law and of social relationships.

The law protects each one of us impartially, embodying the belief that all are equal (Jones, 2024). Euthanasia also raises serious questions on ethics, morality and religion as none of these advocate the taking of any life, on any ground. Most advocate that death should come naturally and not superficially by human intervention.

Issue

Another worrying aspect, is the potential of abuse of euthanasia laws (Jones, 2024); viz;

a. Patients seeking medical care are refused and offered euthanasia instead, thus limiting their choices to seek medical care and treatment;

b. The elderly, dying and those suffering from chronic illnesses are pressured to choose euthanasia over life;

c. It encourages greater increase in self-initiated deaths (assisted plus unassisted suicides) among people with serious physical diseases;

d. If unchecked and uncontrolled, euthanasia will expand to include far beyond what was originally intended, the restrictions and definition of suffering become blurry and will start to encompass other than end-of-life cases, viz dementia, anorexia etc. which are not deemed as life-threatening diseases;

e. The right, ability and requirement to give consent by the dying patient maybe bypassed by a healthcare provider, friend, family member, caregiver, or any other person that takes action to cause the patient's death;

f. The right, ability and requirement to give consent by the dying patient maybe bypassed by a healthcare provider, friend, family member, caregiver, or any other person that takes action to cause the patient's death;

g. It encourages reduced funding and research towards palliative care as more and more terminally ill patients will choose euthanasia as they can't afford to live;

h. Euthanasia increases the lack of protection for those already suffering from discrimination e.g. persons with disability may be persuaded or influenced to choose euthanasia to ease their difficulties in managing their disabilities.

All Islamic scholars, in all schools of Islamic jurisprudence, regard active euthanasia as forbidden (haram). Islam teaches that the control of life and death is in Allah's hands, and cannot be manipulated by human beings. Life itself is sacred, and it is therefore forbidden to end life deliberately, either through homicide or suicide.

The Quran says:

"... take not life, which Allah has made sacred, except by way of justice and law. (Quran 6:151)

However, if a patient is declared brain-dead or clinically dead by doctors and when it is clear that there is no treatment left available to cure a terminally ill patient, Islam advises only the continuation of basic care such as food and drink. It is not considered homicide to withdraw other treatments in order to allow the patient to die naturally, and no artificial support functions need to be provided. (Huda, 2021)

The Islamic Perspective

Conclusion

Euthanasia will always be a conflicted issue. We must thread carefully lest by advocating it, we are subconsciously, in actual effect, legalizing the taking of life which would otherwise be classified as clear suicide or homicide, both punishable by law. Also bearing in mind, unmonitored practice of euthanasia may, instead of giving relief to dying patients, may be used to potentially abuse them i.e. the overriding of their decisions to live by healthcare providers, friends, family members, caregivers etc. especially in involuntary euthanasia where the dying patients are unable to give their consent to end their lives.

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Nafkah Isteri: BERAS AKU BELI

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Termeterainya akad nikah, maka bermulalah tanggungjawab suami kepada isteri. Tanggungjawab utama adalah memberi nafkah zahir dan batin kepada isteri. Kali ini penulis ingin menyentuh bab nafkah isteri yang kadangkala dipandang ringan oleh para suami terutamanya apabila isteri bekerja.

Nafkah dari segi bahasa adalah berasal daripada perkataan 'infaq' yang bermaksud mengeluarkan dan membelanjakan. Hukum memberi nafkah kepada isteri adalah wajib ke atas suami seperti mana menurut istilah ahli fiqh, nafkah adalah mengeluarkan belanja yang wajib seperti suami menyediakan makanan, pakaian dan tempat tinggal untuk isteri.

Allah SWT berfirman di dalam ayat 6 Surah At-Talaq:

أَسْكِنُوهُنَّ مِنْ حَيْثُ سَكَنْتُم مِن وُجْدِكُمْ وَلَا تُضَآرُّوهُنَّ لِتُضَيِّقُواْ عَلَيْهِنَّ وَإِن كُنَّ أُوْلَٰتِ حَمْلٍ فَأَنفِقُواْ عَلَيْهِنَّ حَتَّىٰ يَضَعْنَ حَمْلَهُنَّ فَإِنْ أَرْضَعْنَ لَكُمْ فَئَاتُوهُنَّ أُجُورَهُنَّ وَأْتَمِرُواْ بَيْنَكُم بِمَعْرُوفٍ وَإِن تَعَاسَرْتُمْ فَسَتُرْضِعُ لَهُ أُخْرَىٰ (٦)

yang bermaksud "Tempatkanlah isteri-isteri yang menjalani iddahnya itu di tempat kediaman kamu sesuai dengan kemampuan kamu; dan janganlah kamu adakan sesuatu yang menyakiti mereka di tempat tinggal itu dengan tujuan hendak menyusahkan kedudukan mereka. Dan jika mereka berkeadaan sedang mengandung maka berikanlah kepada mereka nafkahnya sehingga mereka melahirkan anak yang dikandungnya".

Ayat 6 Surah At-Talaq ini menunjukkan bahawa

Suami mempunyai tanggungjawab memberi nafkah kepada isteri bukan sahaja sewaktu hidup bersama tetapi juga selepas bercerai dengan isteri. Berdasarkan hadis sahih Muslim, Rasulullah SAW pernah bersabda semasa khutbah Hajj al-Wida' seperti berikut, "Dan takutlah kamu akan Allah SWT dalam perkara perempuan-perempuan kerana sesungguhnya kamu telah mengambil mereka dengan amanah Allah, kamu telah menghalalkan kemaluan mereka dengan kalimah Allah dan bagi mereka atas kamu rezeki mereka dan pakaian mereka dengan cara yang baik". Dalil Al-Quran dan Hadith membuktikan kewajipan dalam memberi nafkah oleh suami kepada ister yang dibawah tanggungannya.

Sebanyak manakah kadar nafkah yang perlu diberikan oleh suami? Terdapat hadith Rasulullah SAW yang menyatakan bahawa "Ya Rasulullah, sesungguhnya Abu Sufyan seorang laki-laki yang kedekut. Dia tidak memberi kepada saya belanja yang cukup untuk saya dan anak saya kecuali jika tidak, saya ambil dengan tidak diketahuinya. Rasulullah SAW menjawab, ambillah oleh mu daripada hartanya sekadar yang mencukupi keperluanmu dan anakmu dengan cara yang baik". Oleh itu, kewajipan memberi nafkah oleh suami kepada isteri adalah suatu tanggungjawab yang berterusan.

Allah SWT berfirman di dalam ayat 7 Surah At-Talaq yang membawa maksud, "Hendaklah orang yang mampu memberi nafkah menurut kemampuannya. Dan sesiapa yang disempitkan rezekinya maka hendaklah ia memberi nafkah dari apa yang diberikan Allah. Allah tidak memberati seseorang melainkan (sekadar kemampuan) yang diberikan Allah kepadanya. Orang-orang yang dalam kesempitan hendaklah ingat bahawa) Allah akan memberikan kesenangan sesudah berlakunya kesusahan". Ayat ini jelas maksudnya bahawa Allah tidak membebani suami dalam menyediakan nafkah melainkan mengikut kemampuan dan rezeki kurniaan Allah SWT (Ali, 2016).

Seksyen 61 Akta Undang-Undang Keluarga Islam (Wilayah Persekutuan) 1984 (Akta 303) memperuntukkan bahawa dalam menentukan kemampuan memberi nafkah, kadar nafkah yang perlu diberi adalah mengambilkira pendapatan suami sebagai pemberi nafkah. Walau bagaimanapun, ianya tidak mudah untuk menentukan kadar nafkah. Terdapat perbezaan pendapat ulama dalam menentukan kadar nafkah. Menurut mazhab Syafie, nafkah merangkumi tiga perkara iaitu makanan, pakaian dan tempat tinggal.

Nafkah untuk makanan dan pakaian hendaklah dikira mengikut kedudukan suami sama ada kaya atau pun miskin. Manakala tempat tinggal hendaklah bersesuaian dengan keadaan isteri. Berbeza dengan mazhab Hanafi, jika suami kaya dan isteri miskin, wajiblah kepada suami memberi nafkah secara pertengahan iaitu lebih kepada keadaan isteri dan kurang daripada keadaan suami.

Tetapi jika isteri kaya dan suami miskin, suami memberi nafkah mengikut kadar orang miskin dan terdapat baki yang menjadi hutang suami kepada isteri. Bagi mazhab Maliki pula, penentuan kadar nafkah dikira mengikut keadaan kedua-dua suamidan isteri bukan hanya kepada keadaan suami sahaja.

Nafkah oleh pemberi nafkah hendaklah memenuhi kriteria kifayah (kecukupan) dan ma'ruf (baik yang diterjemahkan oleh uruf atau amalan setempat) (Ahmad, Azahari & Ab Rahman, 2013; Ahmad, 2019). Hakim di dalam kes Nor Bee lwn Ahmad Shanusi JH 1981 menyatakan bahawa kadar nafkah isteri adalah menurut kelas sosioekonomi masyarakat di mana kedudukan isteri sama ada nisbah kaya, sederhana atau miskin.

Beliau selanjutnya menyatakan bahawa dari sudut menyediakan makanan adalah mengikut ikhtiar dan kebiasaan, iaitu bagi orang Melayu makanannya ialah 2 kali ringan dan 2 kali berat. Bagi empat kali makan untuk peringkat pertengahan diperlukan tidak kurang dari RM6 sehari. Kadar RM6 sehari tersebut dibuat pada tahun tersebut dan bagi penentuan masa kini hendaklah berdasarkan kepada keadaan semasa (Ahmad, Azahari & Ab Rahman, 2013).

Di dalam kajian yang pernah dijalankan hasil kajian mendapati bagi kriteria kifayah, kadar kecukupan semakin besar dengan peningkatantaraf sosioekonomi. Ia juga menepati kriteria ma'ruf kerana kebiasaan bagi masyarakat atau huruf ialah mereka yang berada dalam golongan yang berpendapatan lebih tinggi selalunya berhak berbelanja dengan lebih besar dan selesa berbanding dengan pendapatan yang lebih rendah.

Kajian yang sama juga mendapati kadar perbelanjaan oleh isteri perlu menepati kecukupan asas atau kifayah adna isteri tersebut. (Ahmad, 2019). Di dalam kajian itu, kadar nafkah kifayah adna atau kadar minima seorang isteri yang tinggal di kawasan bandar Lembah Klang tidak boleh dikurangi daripada RM773 sebulan dan ianya termasuk kadar sewa rumah atau kos tempat tinggal isteri tersebut.

Walau bagaimanapun, bagi mazhab Syafie, jika suami telah memberikan nafkah asasi tetapi tidak menyediakan kemudahan yang bersifat tambahan sebagai pelengkap atau kemewahan kepada kehidupan isterinya, permohonan fasakh oleh isteri adalah tidak dibenarkan. Seksyen 59(1) Akta Undang-Undang Keluarga Islam (Wilayah Persekutuan) 1984 memberi kuasa kepada mahkamah untuk memerintahkan seseorang lelaki supaya membayar nafkah kepada isterinya.

Walau bagaimanapun, penulis tidak bersetuju dengan jumlah minima RM773 dan berpendapat sekiranya kadar nafkah tersebut termasuk sewa rumah atau kos tempat tinggal isteri, ianya adalah tidak munasabah dalam keadaan ekonomi semasa. Penulis bersetuju dengan Ahmad (2019) bahawa kajian tersebut perlu dinilai semula supaya dapat menjamin nafkah isteri.

Persoalan seterusnya apakah tindakan yang boleh diambil oleh isteri sekiranya suami tidak memberi nafkah. Mengikut mazhab Syafie, Hanbali dan Maliki, isteri boleh mengambil tindakan menamatkan perkahwinan tersebut. Manakala mengikut pendapat mazhab Hanafi dan Zahiri, isteri tidak dibenarkan untuk menamatkan perkahwinan tersebut (Hashim & Kusrin, 2023). Mengikut pendapat pertama, kajian oleh Hashim dan Kusrin (2023) mendapati isteri boleh menamatkan perkahwinan walaupun isteri tahu kedudukan suami dan redha dengan suami yang miskin kerana nafkah adalah kewajipan suami.

Walau bagaimanapun, hak isteri kepada nafkah itu gugur apabila nusyuz atau enggan mengikut kemahuan sah suaminya tanpa sebab yang munasabah melainkan isteri itu bertaubat dan ia tidak lagi nusyuz (Zin dan Aziz, 2020).

Nafkah merupakan hak yang wajib dipenuhi oleh seorang suami terhadap isterinya. Isteri juga tidak seharusnya mendiamkan diri sekiranya suami tidak menunaikan tanggungjawabnya kerana nafkah itu hak isteri yang melibatkan tiga keperluan asas iaitu, makanan, pakaian dan tempat tinggal.

Oleh itu suami janganlah terlalu bangga dengan kata-kata 'beras aku dibeli' sepertimana yang begitu popular di masa ini kalau keperluan asas masih tidak dipenuhi kerana Mahkamah boleh menetapkan perintah bahawa suami perlu membayar sejumlah nafkah kepada isteri kerana memberi nafkah adalah tanggungjawab suami dan juga untuk melindungi kesejahteraan isteri.

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SANTAI HARUM MANIS:

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Penulisan ini merupakan satu transkrip temubual dengan seorang peguam jenayah yang beramal di negeri Perlis, yang bertujuan meningkatkan literasi undang-undang jenayah di kalangan masyarakat. Ia menghimpunkan penjelasan terhadap pelbagai persoalan lazim berkenaan prinsip asas undang-undang jenayah, hak-hak individu ketika ditahan polis, perbezaan jenis kesalahan, standard pembuktian di mahkamah, serta prosedur berkaitan pertuduhan dan pembelaan di Malaysia.

Terlebih dahulu, terima kasih Cik Fatin atas kesudian ditemubual untuk membicarakan isu-isu dalam perundangan jenayah. Baik, secara ringkas, apakah elemen utama yang perlu dibuktikan untuk mensabitkan seseorang bersalah dalam sesuatu kes jenayah?

★ Sama-sama En. Azril. Dalam kes jenayah di Malaysia, pendakwaan mesti membuktikan actus reus (perbuatan jenayah) dan mens rea (niat jenayah) bagi mensabitkan seseorang bersalah. Actus reus merujuk kepada tindakan atau kegagalan bertindak yang menyebabkan jenayah. Mens rea pula adalah niat atau kesedaran melakukan kesalahan tersebut. Kedua-dua elemen ini mesti dibuktikan melampaui keraguan munasabah (beyond reasonable doubt) dan kegagalan membuktikannya akan menyebabkan tertuduh dibebaskan.

Apakah yang dimaksudkan dengan prinsip 'beyond reasonable doubt', dan bagaimana standard pembuktian ini diterapkan dalam kes jenayah di Malaysia.

★ Prinsip "beyond reasonable doubt" bermaksud pendakwaan mesti membuktikan kesalahan tertuduh tanpa sebarang keraguan munasabah. Jika wujud kemungkinan tertuduh tidak bersalah, mahkamah mesti membebaskannya seperti diperuntukkan dalam Seksyen 173(m) Akta 593.

Boleh terangkan kriteria utama untuk seseorang dianggap tidak bertanggungjawab secara jenayah akibat penyakit mental?

★ Seseorang tidak bertanggungjawab secara jenayah akibat penyakit mental jika mereka tidak memahami perbuatan mereka semasa jenayah dilakukan (Seksyen 84 Akta 574). Contohnya, jika penghidap skizofrenia berasa paranoid dan telah membunuh kerana delusi ancaman, mereka mungkin tidak dipertanggungjawabkan dan boleh diperintahkan menjalani rawatan di hospital mental.

Jika tertuduh mempertahankan diri daripada serangan tetapi mencederakan seseorang, adakah dia masih boleh dipertanggungjawabkan secara jenayah?

★ Tidak, selagi tindakan mempertahankan diri adalah sepadan dengan ancaman, seperti diperuntukkan dalam Seksyen 96–106 Akta 574. Jika tertuduh hanya menggunakan kekerasan yang munasabah untuk melindungi diri, dia tidak akan dipertanggungjawabkan secara jenayah. Namun, jika tindak balas yang dilakukan adalah berlebihan, tertuduh masih boleh didakwa.

Bolehkan dijelaskan perbezaan antara DNAA (Discharge Not Amounting to Acquittal) dan DNA (Discharge and Acquittal)?

★ Discharge Not Amounting to Acquittal (DNAA) merujuk kepada pelepasan tertuduh tanpa pembebasan, yang membolehkan pendakwaan mengemukakan semula pertuduhan pada masa akan datang, manakala Discharge and Acquittal (DNA) merupakan pelepasan dan pembebasan sepenuhnya, yang menghalang pertuduhan semula kecuali dengan kebenaran mahkamah. Hal ini diperuntukkan di bawah Seksyen 254 dan Seksyen 173(g) Akta 593.

Bagaimana pula dengan kesalahan jenayah boleh tangkap (seizable offence) dan tidak boleh tangkap (non-seizable offence)?

★ Kesalahan boleh tangkap membolehkan polis menangkap seseorang tanpa waran kerana ia melibatkan jenayah serius dengan hukuman lebih dari 3 tahun atau mati, seperti membunuh (Seksyen 302 Akta 574) dan rogol (Seksyen 376 Akta 574). Sebaliknya, kesalahan tidak boleh tangkap memerlukan waran kecuali jika dilakukan di hadapan polis, biasanya melibatkan hukuman penjara bawah 3 tahun atau denda, seperti mencederakan secara sengaja (Seksyen 323 Akta 574) dan fitnah (Seksyen 499 Akta 574).

Ada yang mengatakan, rekod jenayah kekal sepanjang hayat. Bagaimana pesalah boleh memohon untuk memadamkan rekod jenayah mereka?

★ Rekod jenayah di Malaysia tidak semestinya kekal sepanjang hayat, tetapi ia bergantung kepada jenis kesalahan dan langkah undang-undang yang diambil. Seseorang boleh memohon pemadaman rekod melalui Seksyen 9 Akta 7 kepada Ketua Polis Negara. Bagi kesalahan kecil, sesetengah rekod boleh dipadam selepas tempoh tertentu mengikut dasar pihak berkuasa.

★ Benar. Tahanan polis merujuk kepada penahanan sehingga 24 jam untuk siasatan awal tanpa memerlukan perintah mahkamah (Seksyen 28A(8) Akta 593). Tahanan reman pula memerlukan perintah mahkamah di bawah Seksyen 117 Akta 593 dan boleh dilanjutkan sehingga 14 hari bagi kes serius jika siasatan belum selesai.

Benarkah terdapat perbezaan antara tahanan polis dan tahanan reman di Malaysia?

Jika tertuduh disoal siasat oleh polis, adakah tertuduh berhak untuk menolak menjawab soalan tanpa kehadiran peguam?

★ Ya, di bawah Seksyen 28A(2) Akta 593, seseorang yang ditahan berhak untuk mendapatkan peguam sebelum menjawab soalan polis. Jika polis menyoal siasat tanpa kehadiran peguam, tertuduh boleh memilih untuk berdiam diri, dan sebarang kenyataan yang diberikan tanpa kerelaan boleh dicabar di mahkamah.

★ Mahkamah boleh menolak bukti yang diperoleh secara haram jika ia melanggar hak tertuduh atau diperoleh secara tidak sah. Namun, di bawah Seksyen 90A Akta 56, bukti elektronik seperti rakaman tersebut masih boleh diterima jika ia relevan dan boleh dipercayai. Akan tetapi, ini masih tertakluk kepada budi bicara mahkamah.

Bolehkah mahkamah menerima bukti yang diperoleh secara haram seperti rakaman suara tanpa kebenaran?

Adakah tertuduh boleh menolak untuk menyerahkan telefon bimbit kepada polis untuk menyiasat mesej peribadi yang ada dalam telefon bimbit tersebut?

★ Ya, tertuduh boleh menolak kecuali polis mempunyai waran geledah di bawah Seksyen 54 Akta 593. Sekiranya tiada waran, polis tidak boleh memaksa mana-mana individu menyerahkan telefon bimbit atau mengakses mesej peribadi tanpa kebenaran.

★ Saya kurang bersetuju. Perbualan WhatsApp atau mesej media sosial masih boleh digunakan sebagai bukti jenayah di bawah Seksyen 90A Akta 56, selagi ia disahkan ketulenannya dan tidak dimanipulasi. Mahkamah akan menilai sama ada bukti tersebut relevan dan boleh diterima berdasarkan keaslian serta cara ia diperoleh.

Ada yang mendakwa perbualan WhatsApp atau mesej media sosial tidak boleh digunakan sebagai bukti jenayah. Bersetuju?

Bagaimanakah seseorang boleh mendapatkan khidmat peguam secara percuma dalam kes jenayah?

★ Seseorang boleh mendapatkan khidmat peguam secara percuma melalui Yayasan Bantuan Guaman Kebangsaan (YBGK) di bawah Akta 26, yang menyediakan peguam bagi mereka yang tidak mampu. Selain itu, Biro Bantuan Guaman juga menawarkan perkhidmatan guaman percuma atau pada kadar minimum untuk kes jenayah tertentu.

Perlukah tertuduh digari setiap kali dibawa ke mahkamah?

★ Tidak semestinya. Gari boleh digunakan jika terdapat risiko tertuduh melarikan diri, bersikap ganas, atau mengancam keselamatan. Jika tiada keperluan, polis tidak wajib menggari tertuduh semasa dibawa ke mahkamah.

Adakah rakyat Malaysia boleh diekstradisi ke negara lain untuk dibicarakan bagi kes jenayah yang dilakukan di luar negara?

★ Ya, rakyat Malaysia boleh diekstradisi ke negara lain jika terdapat perjanjian ekstradisi antara Malaysia dan negara tersebut, seperti yang diperuntukkan di bawah Akta 479. Walau bagaimanapun, ekstradisi tidak dibenarkan jika kesalahan itu bersifat politik atau jika tertuduh berisiko menghadapi hukuman yang melanggar hak asasi manusia.

Benarkah terdapat perbezaan antara hukuman penjara seumur hidup dan penjara sepanjang hayat di Malaysia?

★ Benar, memang terdapat perbezaan antara kedua-duanya. Penjara seumur hidup bermaksud hukuman maksimum 30 tahun, bergantung kepada budi bicara mahkamah. Penjara sepanjang hayat, pula, bermaksud tertuduh dipenjara sehingga kematian dan tidak layak untuk pembebasan awal.

Merujuk kepada kes kemalangan jalan raya yang berlaku di Sendayan, Negeri Sembilan baru-baru ini, bolehkah pihak Puan menjelaskan mengapa pertuduhan tidak dibuat di bawah Seksyen 304 Akta 574, sebaliknya didakwa di bawah Seksyen 41(1) Akta 333? Apakah faktor utama yang menentukan pemilihan seksyen pertuduhan dalam kes sebegini?

★ Seksyen 304 Akta 574 digunakan untuk pembunuhan tanpa niat, tetapi pada pandangan saya, dalam kes kemalangan jalan raya seperti di Sendayan tersebut, tiada niat membunuh, hanya kecuaian. Oleh itu, pertuduhan dibuat di bawah Seksyen 41(1) Akta 333, yang menghukum pemanduan melulu atau berbahaya sehingga menyebabkan kematian.

★ Terima kasih juga atas peluang ini. Saya harap perkongsian ini dapat memberi manfaat kepada semua pembaca. Sebarang permasalahan berkaitan undang-undang jenayah, boleh ajukan kepada saya di fatinhayatico@gmail.com.

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