ICLAF 2023, 05 September 2023

INTERNATIONAL CONFERENCE OF LAW, ACCOUNTING & FINANCE 2023

Social Innovation: Transition towards new economies

CONFERENCE PROCEEDINGS

JOINTLY ORGANISED BY

The Department of Law and The Faculty of Accountancy, Universiti Technologi MARA, Cawangan Negeri Sembilan, Malaysia

International Conference on Law, Accounting & Finance

Universiti Teknologi MARA
Cawangan Negeri Sembilan, Kampus Seremban
5 September 2023

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Department of Law & Faculty of Accountancy Universiti Teknologi MARA
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Published by:
UiTM Cawangan Negeri Sembilan, Kampus Seremban,
Persiaran Seremban 3/1, Seremban 3, 70300 Seremban,
Negeri Sembilan,
MALAYSIA.

International Conference on Law, Accounting & Finance 2023

e ISBN 978-629-97586-6-2

Universiti Teknologi MARA Cawangan Negeri Sembilan

(online)

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A REVIEW ON CRIME OF GENOCIDE IN HOLOCAUST: A BRIEF COMPARISON WITH HUMAN RIGHTS VIOLATIONS IN PALESTINE

Atifah Othman*[1], Muhammad Farhan Adlan Mohd Fadzli , Nurin Batrisyia Shahalan Ariff , Muhamad Faris Amzar Fadzli

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Abstract

This paper takes an analytical approach to look at a crime of genocide, the holocaust. The word genocide itself was coined after the Holocaust. The Holocaust was a systematic persecution and death of six million Jews, which commenced in 1933 and ended in May 1945, when the Allies occupied Nazi Germany in World War II. It is one of the most offensive violations of human rights in the history of the modern world. This paper focused on three objectives: understanding the legal context of the Holocaust, evaluating legal responses, and studying reparations efforts. Historical evidence will be examined to understand the legal framework during the Holocaust, the effectiveness of legal mechanisms in achieving justice afterwards assessed, and ethical considerations for reparations explored. A brief comparison as to whether the historical Holocaust has similarity with violations of human rights occurring in Palestine will be discussed. Some research stated that what is happening in Palestine is genocide, while others concluded that it is an act of war. The methodology used in this paper is purely doctrinal. This study is significant because in both occurrences, gross violations of human rights have been committed unto defenseless humans.

Keywords: Historical approach; Human Rights Violations; Nazi Germany; World War II

1. INTRODUCTION

The Holocaust, one of the darkest chapters in human history, was a genocidal event that unfolded during World War II. Initiated and executed by Adolf Hitler's Nazi regime, it aimed to systematically exterminate over six million Jews, along with millions of other targeted groups, including Romani people, disabled individuals, Poles, Soviet's prisoner of wars, and others. The Holocaust epitomized the horrifying consequences of anti-Semitism, prejudice, and racial theories that propagated differences between various groups.

The Holocaust's historical significance is profound and far-reaching, representing the depths of human cruelty and the consequences of unchecked hatred and prejudice. It sparked a shift in international legal norms, leading to the development of the concept of crimes against humanity and the establishment of the International Criminal Court. Additionally, the Holocaust served as a catalyst for the formation of the State of Israel, providing a homeland for the Jewish people.

The establishment of the State of Israel on Palestinian land led to significant tensions and conflicts between Israelis and Palestinians in May 14, 1948. The displacement of Palestinians and the arrival of Jewish settlers resulted in a complex and deeply rooted issue, known as the Israeli-Palestinian conflict. This historical event sparked ongoing struggles for both communities, challenging the prospects of peace and harmony in the region akin to the Holocaust (Mikel Arieli, 2020).

The statement of the problem is that there seems to be a tendency to equate whatever that is happening in Palestine with Holocaust. The gross and prevailing violation of human rights by Israel goverment unto the people of Palestine and their sympathisers seems to echo the history specifically Holocaust.

Objectives of this paper are first, to look at the difference between the human rights violations in Palestine and the Holocaust and second, to analyst whether what is happening in Palestine tantamount to genocide. This study delves into comparing between the Holocaust and human rights violations in Palestine. While some researchers contend that the events in Palestine constitute genocide, others argue for the label of war or occupation.

The importance of this study transcends historical exploration. By critically analyzing the Holocaust's legal context and subsequent responses, as well as the ongoing human rights violations in Palestine, this paper endeavors to shed light on the pressing need for justice and accountability. Through an understanding of past failures and successes in confronting genocide and human rights violations, we can glean valuable insights for shaping a more just and compassionate future.

2. LITERATURE REVIEW

2.1 HISTORICAL OVERVIEW OF THE HOLOCAUST

The Holocaust stands as a chilling reminder of the horrors of unchecked hatred and prejudice. This genocidal campaign, orchestrated by Nazi Germany during World War II under the leadership of Adolf Hitler, targeted not only Jews but also other minority groups, including Romani people, disabled individuals, homosexuals, political dissidents, and Jehovah's Witnesses (Johns et al, 2022).

The Nazis' ultranationalistic beliefs and pursuit of establishing a master race were key elements of Nazi ideology, leading to the persecution and mass murder of innocent people. Hitler's infamous book "Mein Kampf," published in 1925, emphasized his fundamental ideologies, including anti-Semitism, fanatical German nationalism, and the concept of lebensraum, or "living space" for the German community. This concept served as the basis for the Nazis' policy of territorial expansion, fueling the Holocaust's scope and devastation.

The rise of Nazi Germany began in the early 1930s, culminating in Hitler's appointment as Chancellor in 1933. The regime quickly propagated a radical ideology, blaming Jews for the country's woes and promoting virulent anti-Semitism. Anti-Jewish policies and propaganda were rapidly implemented, leading to the Nuremberg Laws of 1935, which institutionalized discrimination against Jews, stripping them of their citizenship and rights.

As the 1930s progressed, the persecution of Jews intensified, culminating in the violent pogrom known as Kristallnacht in 1938. This brutal event marked a clear escalation of anti-Semitic policies and foreshadowed the horrifying atrocities that would follow.

During the war, the Holocaust escalated dramatically with the implementation of the "Final Solution" in 1941. This monstrous plan aimed to exterminate European Jews en masse, leading to the establishment of extermination camps such as Auschwitz, Sobibor, and Treblinka. These camps became the sites of unspeakable suffering and death, where millions of innocent lives were brutally extinguished through gas chambers, forced labor, and starvation.

The Holocaust came to an end as the Allied forces, including Britain, the United States, and the Soviet Union, advanced through Nazi-controlled territories in Europe and discovered the concentration camps. Despite the Nazis' attempts to hide evidence of their crimes, the enormity of the Holocaust could not be concealed, and the world learned of its horrors.
The Wannsee Conference in 1942 marked a turning point in the Holocaust's scope and brutality. It brought Nazi officials together to coordinate the systematic extermination of European Jews, leading to the implementation of death camps and further amplifying the tragedy (Gerlach, 2002).
Throughout this dark period, there were courageous acts of resistance and compassion. Jewish fighters valiantly resisted the Nazis in various ghettos and camps, displaying the indomitable human spirit in the face of unimaginable suffering. Moreover, many non-Jewish individuals risked their lives to hide and

protect Jews, earning the title "Righteous Among the Nations" and showcasing the power of empathy and goodness during the darkest times (Bejski, 1989).

The Holocaust's demographic impact was devastating, wiping out entire communities and leaving an enduring scar on the fabric of European society. However, this tragedy also prompted international efforts to establish institutions like the United Nations and develop international laws to prevent such atrocities from ever happening again which is UN's Genocide Convention (Bassiouni,1979).

The crime of genocide, coined by Holocaust is defined in Article II of the United Nations' Genocide Convention or Convention on the Prevention and Punishment of the Crime of Genocide 1948, refers to acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial, or religious group. Analyzing the legal and ethical dimensions of genocide in the Holocaust reveals a disturbing failure of international law and ethics during that time. The Holocaust demonstrated the inadequacy of existing legal frameworks to prevent such atrocities, leading to the establishment of international courts and tribunals to prosecute war crimes and crimes against humanity. The perpetration of genocide in the Holocaust can be attributed to a confluence of factors. Key drivers include the rise of anti-Semitism, fueled by deep-rooted prejudice and scapegoating of Jews as a societal problem. The Nazi regime's totalitarian control over Germany and occupied territories allowed for the implementation of state-sanctioned discrimination and violence against targeted groups. Additionally, the systematic dehumanization and propaganda campaigns against these groups laid the groundwork for widespread public acceptance of their persecution (Finkelstein, 2000).

Moreover, the complicity and indifference of some bystanders and other nations allowed the Holocaust to continue unchecked for an extended period. The absence of timely and decisive intervention from the international community exemplified the consequences of indifference in the face of genocide (Mehta, 2023).

2.2 HISTORICAL OVERVIEW OF THE ISRAELI-PALESTINIAN CONFLICT

The Israeli-Palestinian conflict is a deeply rooted and complex dispute over land, identity, and sovereignty in the Middle East. Its origins can be traced back to the late 19th and early 20th centuries when waves of Jewish immigration to Palestine, then under Ottoman rule, intensified amid growing nationalist movements. After World War I, the British Mandate period began, and promises of a "national home for the Jewish people" in Palestine further fueled tensions between the Jewish and Arab communities (Dowty, 2022).

The conflict intensified with the establishment of the State of Israel in 1948, following the United Nations' partition plan that allocated land to both Jewish and Arab states. This led to a war between the newly formed Israel and neighboring Arab countries, resulting in a significant number of Palestinian refugees and the displacement of many Arab communities. Subsequent wars and territorial disputes, notably the Six-Day War in 1967, further complicated the situation and resulted in Israel's occupation of the West Bank, Gaza Strip, and East Jerusalem (Salaam Abdel-Malek, 2023).

Key events and milestones, such as the Oslo Accords in the 1990s, aimed to bring about a peace process and establish a framework for Palestinian self-governance. However, the failure to reach a final resolution, issues of settlements, security, and the status of Jerusalem have kept the conflict alive, leading to sporadic outbreaks of violence and frequent diplomatic impasses (Rudnitzky, 2023).

The human rights implications of the Israeli-Palestinian conflict have been severe and far-reaching. Both Israelis and Palestinians have endured violence, loss of life, and trauma. Palestinian communities living in the occupied territories have faced restrictions on movement, home demolitions, and collective punishment. Additionally, the Israeli security measures and settlement policies in the occupied territories have drawn international criticism for their impact on Palestinian human rights. Likewise, Israeli civilians

have been subjected to attacks and fear for their safety, resulting in psychological distress and fear (David, & Shalhoub-Kevorkian, 2023).

The Israeli-Palestinian conflict has had a profound and lasting impact on human rights in the region, with countless lives affected, and a resolution remains a challenging yet essential goal for lasting peace and stability. Among the types of human rights abuses prevalent in Palestine, are violations related to civil and political rights. These include arbitrary arrests, detention without trial, and the excessive use of force by Israeli security forces against Palestinian protesters and civilians. Furthermore, restrictions on freedom of movement, particularly through the Israeli-imposed barrier and checkpoints in the West Bank, have severely limited Palestinians' ability to access basic services and livelihood opportunities, exacerbating their vulnerability to further rights abuses (Kuper, 2023).

The discussion of violations related to civil and political rights would be incomplete without addressing the issue of settlement expansion. Israeli settlements in the occupied Palestinian territories have been a major point of contention, as they are considered illegal under international law and have led to widespread dispossession and forced evictions of Palestinians from their homes and lands. These actions infringe upon Palestinians' right to self-determination and their right to a viable, contiguous state. Additionally, economic, social, and cultural rights have also been significantly affected in Palestine. The ongoing blockade on the Gaza Strip, which has been in place since 2007, has severely restricted the movement of goods and people, resulting in dire humanitarian conditions, limited access to essential services, and high unemployment rates. The blockade has hindered economic development and obstructed Palestinians from fully enjoying their right to work, health, education, and a decent standard of living (Kuper, 2023).

Furthermore, the Israeli settlements and separation barrier in the West Bank have led to the fragmentation of Palestinian communities, disrupting access to essential resources and cultural sites. This has undermined Palestinians' cultural rights, including their right to preserve their heritage, language, and traditions.
One such case is the 2014 Israeli military offensive in Gaza, known as Operation Protective Edge. During this 50-day campaign, numerous violations of human rights were reported, including indiscriminate airstrikes, attacks on civilian infrastructure, and alleged war crimes. According to the United Nations, over 2,200 Palestinians were killed, of whom a significant portion were civilians, including hundreds of children. The operation also resulted in extensive damage to homes, schools, hospitals, and other civilian properties, leading to a grave humanitarian crisis.

Furthermore, there have been reports of excessive use of force by Israeli security forces during protests in the West Bank. Palestinian demonstrators, including children, have been subjected to live ammunition, rubber bullets, and tear gas, resulting in fatalities, injuries, and long-lasting trauma.

Palestinian communities in the occupied territories also face the daily struggle of living under military occupation, enduring restrictions on movement, land confiscation, and home demolitions. These practices have severe consequences for their livelihoods, access to resources, and overall well-being.

The human rights abuses in Palestine have drawn widespread condemnation from various international actors and human rights organizations. Calls for accountability and justice for the victims have been made, demanding thorough investigations into alleged war crimes and violations of international law.

The United Nations and the International Criminal Court (ICC) have expressed concerns about the situation in Palestine and have initiated investigations into potential war crimes committed by all sides. Additionally, some countries and international organizations have taken measures to impose economic and diplomatic pressure on Israel to halt settlement expansion and respect human rights (Selamat et al, 2023).

However, the issue remains deeply contentious, with contrasting views on the appropriate responses and solutions. Diplomatic efforts to bring about a peaceful resolution to the Israeli-Palestinian conflict and ensure the protection of human rights continue to face significant challenges.

3. METHODOLOGY

Drawing from a purely doctrinal methodology, this paper uses in historical and analytical approach to examine events, legal frameworks, and ethical considerations to discern parallels and distinctions between these two complex and tragic contexts.

4. RESULTS AND DISCUSSIONS

The Holocaust and the Israeli-Palestinian conflict are two historical tragedies that involve egregious human rights violations, but they differ in their historical context, root causes, intent, methods, affected populations, scale of atrocities, and lasting impact on affected communities.

The Holocaust, which occurred during World War II, was a state-sponsored genocide carried out by Nazi Germany and its collaborators. The root causes can be traced back to deep-seated anti-Semitic sentiments, economic hardships, and the rise of Adolf Hitler's fascist regime. The intent behind the Holocaust was the systematic extermination of European Jews, along with other marginalized groups such as Romani people, disabled individuals, and LGBTQ+ individuals. The methods employed included mass shootings, forced labor, concentration camps, and gas chambers. The Holocaust resulted in the genocide of approximately six million Jews and millions of others, leaving a profound scar on humanity's history.

On the other hand, the Israeli-Palestinian conflict is a long-standing territorial dispute rooted in the aftermath of World War II and the establishment of the state of Israel in 1948. The conflict revolves around competing claims to land and self-determination, with both Israelis and Palestinians asserting historical connections to the same territory. While the conflict involves violent incidents and human rights abuses from both sides, it is crucial to differentiate it from the Holocaust, as it is not a genocide, but rather an ongoing political and territorial struggle. Some term it as war.

Regarding affected populations and scale of atrocities, the Holocaust had a much larger scope in terms of the number of victims and the brutality of the crimes committed. Millions of people were systematically exterminated solely based on their ethnicity or perceived differences. In the Israeli-Palestinian conflict, both Israelis and Palestinians have suffered losses and endured human rights violations, but the numbers, though significant, do not compare to the Holocaust’s horrific scale as of yet.

Finally, the lasting impact on affected communities is profound in both cases. The Holocaust left a lasting trauma on Jewish communities worldwide, with its memory serving as a reminder of the horrors of unchecked prejudice and hatred. The Israeli-Palestinian conflict continues to result in human suffering and displacement, fostering animosity and deep-rooted grievances among the populations involved.

While both the Holocaust and the Israeli-Palestinian conflict involve human rights violations, they differ significantly in their historical context, root causes, intent, methods, affected populations, scale of atrocities, and lasting impact on affected communities. Recognizing these distinctions is crucial to understanding and addressing the complexities and nuances of each historical tragedy (Afana, 2023).

Regarding relevant international legal instruments, the Holocaust is well-documented as a genocide under international law, and its condemnation led to the establishment of the Genocide Convention in 1948. The Genocide Convention defines genocide and obligates states to prevent and punish this heinous crime. On the other hand, the human rights violations in Palestine have been scrutinized under various international legal instruments, including the Fourth Geneva Convention, which prohibits the displacement, transfer, and colonization of occupied territories. However, the applicability of these instruments to the situation in Palestine remains a contentious issue due to different interpretations by involved parties and international actors.

Assessing the adequacy and limitations of legal frameworks in addressing genocide and human rights violations reveals significant challenges. While international law explicitly condemns genocide, its effectiveness in preventing and prosecuting perpetrators remains debatable. The establishment of international tribunals, such as the International Criminal Court (ICC), aims to address these crimes, yet political and jurisdictional obstacles often impede their efficacy. In the case of Palestine, the lack of a comprehensive and universally accepted legal framework exacerbates the difficulties in seeking accountability for human rights violations, leaving victims with limited recourse (Browne, 2023).

Ethical dilemmas arise when confronting and preventing these atrocities. The Holocaust serves as a harrowing reminder of the consequences of inaction and the moral duty to prevent mass atrocities. However, ethical complexities emerge when addressing the Israeli-Palestinian conflict. On one hand, there is a legitimate concern for Israel's security, while, on the other hand, there are pressing ethical questions surrounding the treatment and rights of Palestinians. Striking a balance between these competing concerns presents a profound ethical dilemma for the international community in finding a just and sustainable resolution.

The examination of international responses and accountability between the genocide in the Holocaust and the human rights violations in Palestine reveals stark contrasts and deep complexities. During the Holocaust, the international community's actions were largely characterized by a failure to intervene in a timely and meaningful manner. Many nations were aware of the atrocities perpetrated by the Nazi regime against Jews and other marginalized groups, yet they hesitated to take decisive action to prevent or stop the genocide. This inaction was a result of political, economic, and strategic interests, as well as prevalent anti-Semitic sentiments in some countries.

In the context of Palestine, the international community's response has been marked by heated debates and divided stances. While some nations have shown solidarity with the Palestinian cause, others have sided with Israel, further complicating the situation. Critics argue that measures taken to address human rights violations in Palestine have been insufficient and have failed to bring about meaningful change. The continued expansion of Israeli settlements in the occupied territories and the use of excessive force against Palestinian civilians have raised concerns about the lack of effective international intervention (Browne, 2023).

One key critique revolves around the inconsistency of accountability mechanisms. During the Holocaust, efforts to hold Nazi war criminals accountable were established through the Nuremberg Trials and subsequent international conventions on genocide. However, similar mechanisms have not been consistently applied to address human rights violations in Palestine. The lack of accountability has perpetuated cycles of violence and contributed to a sense of impunity among perpetrators (Barghouti, 2011).

5. CONCLUSION

The examination of international responses and accountability between the Holocaust and the human rights violations in Palestine highlights the need for more robust and consistent measures to prevent and address genocide and human rights abuses. The international community must learn from past failures and prioritize the protection of vulnerable populations, ensuring that accountability mechanisms are effectively employed to uphold justice and deter future atrocities. Only through genuine cooperation and commitment to human rights principles can we hope to break the cycle of violence and promote lasting peace in the region.

Comparing the genocide in the Holocaust and the human rights violations in Palestine highlights the importance of international legal instruments, their limitations, and the ethical dilemmas faced by the global community in confronting and preventing such atrocities. Addressing these challenges requires a comprehensive and nuanced approach that upholds human rights, justice, and accountability on a global scale. Perhaps, concerted international political will and intervention may solve this issue?

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COMPARATIVE ANALYSIS OF EMPLOYMENT LAWS IN PROTECTING FOOD RIDERS: A PATH TO FAIRNESS AND BALANCE

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Abstract

The emergence of online platforms has led to the proliferation of the gig economy. It allows food riders the flexibility to choose when and where they work, and they are responsible for managing their own work arrangements. The freedom accorded to these riders is different from traditional full-time employment arrangements. Full-time employment status or an independent contractor is essential to determine the protection under the law. The paper poses the question of whether the amendment to the Employment Act 1955 in 2023 provides protection to food riders. To answer the question, the provisions of the Act will be analysed and as a basis of comparison the law in the UK and Australia will be referred. As such, the decision in *Franco* v *Deliveroo Australia Pty Ltd* (2021) and *Uber BV and Others* v *Aslam and Others* (2021) will be looked into. The paper's finding indicates that even with the amendment to the Employment Act 1955, the court's reliance on the traditional definitions of the employee remains crucial for obtaining legal protection. With the emergence of the gig economy, it is advisable to establish a clear provision that offers protection to these riders.

Keywords: Gig economy, Food riders, Legal, protection, interest

1. INTRODUCTION

The term 'gig' is defined in the Oxford Dictionary as "a live performance by a musician or group playing popular or jazz music". It is believed that the word 'gig' was first invented by the jazz communities in 1915 to refer to their performances or engagements (Zen, 2021). The musicians, during those times, were freelancers and moving from one gig to another. On the other hand, the gig economy refers to the definition of the labour market in which workers are engaged under short-term contracts or as independent contractors. The advancement of technology with the emergence of digital platforms facilitates the connection between gig workers and clients have sharpened the gig economy as it is today. Digital platforms such as Amazon Mechanical Turk and Airbnb were one of the pioneers that contributed significantly to the development of the gig economy. Over time, many other digital platforms began to appear and some of those platforms such as Uber, Grab, and Food Panda became synonymous with to gig economy. These platforms provide an opportunity for an individual to offer their services such as food and groceries delivery, ride-hailing, freelancing and task-based work.

The gig economy's rapid expansion draws both employees and employers companies who can benefit from the labour market's preference for flexible scheduling and the latter's need to cut expenses (Javits & Luby, 2022). In Malaysia, the COVID-19 pandemic in March 2020 has seen an increasing trend in the demand for meal delivery (Statista Market Insight, 2023). While flexibility continues to attract individuals to flock to the gig economy, concerns have been raised regarding these workers' welfare. Mohd Salleh et al., (2022) identified low pay, lack of insurance coverage, poor safety, lack of maintenance allowance, and lack of late-night allowances amongst the concerns raised by the p-hailers or food riders. In order to highlight the issue and raise public attention as well as the government's over their plight, these food riders have resorted to strikes (Adib & Kalbana, 2022; Mohd Salleh et al., 2022).

The paper argues that the legal mechanism could be used as a social tool to address the welfare of food riders. To date, there is no specific law for p-hailers and therefore they have to rely on the existing employment legislation. There are many employment legislation in Malaysia that aim to provide protection provided they are deemed to the employees. However, one of the main obstacles faced by p-hailers is the need to pass the threshold test, i.e. is p-hailer an employee of the company? The debate about whether food riders are employees and hence protected under the employment legislation is an ongoing issue in many countries including Malaysia, the UK and Australia. The aim of this paper is to examine how the courts construe the relationship between p-hailers and the company since the nature of employment of-hailers is different from traditional employment. Case law on traditional employment has established that there is a difference between those employed under a contract of service and a contract for service. As such, this paper asked a specific question whether the courts, in interpreting the contract make any distinction between p-hailers and traditional employment. Since the amendment to the Employment Act 1955 came into force in January 2023, no cases have been brought to the court to determine the employment status of p-hailers. Therefore, reference to the decision in the UK, Australia and New Zealand is made due to their persuasive nature in order to gauge how the courts in Malaysia will decide. The outcome of the case analysis will contribute to the body of knowledge and will assist the policymakers in improving the existing law or whether the introduction of specific legislation is necessary.

2. LITERATURE REVIEW

The survey on the literature is divided into three main themes. The first theme focuses on the welfare, or lack of welfare of food riders. The second theme looks at the definition of employees and their effect thereof from a legal perspective.

The advancement of technology and the rise in demand for food delivery has provided an opportunity for flexible working time for many. The demand for the service has particularly increased during the COVID-19 pandemic (Ali et al., 2021). While the gig economy provides opportunity and flexibility to workers as never before, it also presents challenges in terms of workers' rights, income stability and social protection. Many have written to highlight the food riders' predicament such as poor working conditions, lack of regulation and absence of job security (Mehta, 2020; Nguyen-Phuoc et al., 2022). P-hailers are not entitled to employee benefits such as the Employees Provident Fund (E.P.F) and benefits provided under Social Security Organisation (SOCSO), unlike traditional workers who are considered employees by the law (Mohd Salleh et al., 2022). Chaisse & Banik (2021) stated that those who consider gigs as their full-time job are not even employees of the company, so they do not receive any other benefits provided to employees, like health insurance, paid time off, family leave protection, etc. A recent study by Nguyen et al., (2023) found that the delivery sector especially during the health crisis in 2020 provides stability to the supply chain and ensures urban residents have sufficient provisions. Nevertheless, the key actors in the delivery chain have seen their working conditions deteriorating and income reduced. The study also found that the majority of Vietnamese delivery riders, especially young and less experienced ones, lack full social and health insurance. The same findings were found by Mohd Salleh et al. (2022 where the majority of these riders are young and very concerned about their income. Since they are paid by the number of delivery made, there is a tendency for them to rush and ignore the traffic law resulting in accidents. As cited by Bernama (2022) in Mohd Salleh et al., (2022), Malaysia has one of the highest motorcycle accidents, primarily p-hailing or riders carrying packages or food.

There are many benefits accorded to employees under the Employment Act 1955. The latest amendment to the Act was in 2022 which came into force in January 2023 and aims to provide greater protection and welfare for employees. The amendment was also to ensure that the labour law in Malaysia is aligned with International Standard and cater to the needs of changing nature of the workforce. Apart from Employment Act 1955, there is other legislation that provides benefits to employees. Unfortunately, none of these benefits is available to food riders because there are not by definition, an employee. The case of *Arun Kumar Bag* v *Hospital Pantai Indah Sdn Bhd* [2015] 3 ILR 580 illustrated the principle. It provides that the Industrial Court has jurisdiction over only one type of employment contract, namely the contract of service. The existence of a vast flexible workforce with very limited workplace protection poses potentially troubling consequences for economic security (Javits & Luby, 2022). Gig workers are not

covered under the standard employment contract because their payments are based on the work they undertake and complete. There is no scope of compassion for the workers should they fail to perform the job due to something such as falling sick or if a broader downturn in the economy causes a decline in business. (Chaisse & Banik. 2021).

In the case of *Tekun Concrete (M) Sdn Bhd* v *Zulkafah Norazri* [2021] MLJU 2535, defines a contract of service as "an agreement whereby one person agrees to employ another as an employee and the other agrees to serve his / her employer as an employee. The employer would need to contribute EPF and comply with relevant statutory benefits such as annual leave, sick leave and et cetera for its employees engaged under a contract of service. On the other hand, a contract for service is an agreement whereby a person is engaged as an independent contractor, such as a self-employed person or vendor engaged for a fee to carry out an assignment or a project for the company." The High Court emphasised the important distinction between a "contract of service" and a "contract for service." The judge's ruling highlighted that an individual employed under a contract for service lacks an employer-employee relationship, thus falling outside the scope of the Employment Act. This legal differentiation determines whether an individual is entitled to employment benefits and protections provided by labour law. The case underscores the importance of correctly categorising the nature of employment relationships to ensure proper legal treatment.

Due to the benefits of being deemed as an employee, many app-based riders from various countries are now fighting to be recognised as employees rather than independent contractors (Nguyen et al., 2023; Defossez, 2022; Dolber, 2020). As an employee, the worker, for example, is accorded the security of tenure, equating the right to employment with the right to property and could only be dismissed with just cause and excuse (*Hong Leong Equipment Sdn Bhd* v *Liew Fook Chuan & Anor*, [1997] 1 CLJ 665).

3. METHODOLOGY

The paper adopts doctrinal legal research which analyses and interprets legal principles, rules and case law on Employment law. As such, a comprehensive examination involving Employment and other related statutes; decided cases in Malaysia and other Commonwealth countries such as the UK and Australia as well as other legal sources to understand the law. This method will only focus on the law itself and not on the application of the law. The epistemological analysis of common law doctrinal legal methodology seeks to address the fundamental question in employment law, i.e. who is an employee? The answer to this is important because it will determine whether a food rider is entitled to the protection accorded by the Employment legislation. The method delves into the way judges decide cases and is bound by official legal texts. Any uncertainties in the legislation and legal texts are resolved by the courts whose utterances will become official legal texts. Knowledge and reality of employment law could be used as a social construct to improve the plight of food riders in Malaysia.

4. RESULTS AND DISCUSSION

There is still uncertainty in the law as to whether food riders fall under the interpretation of a contract of service and contract for service. Though the general consensus is that they do not, courts in different jurisdictions have come to different conclusions. In the appeal decision of the UK case of *Uber BV & Others* v *Aslam & Others* [2021] UKSC 5, the Supreme Court had to consider the main question of whether an Uber driver is a "worker" for the purposes of employment legislation which gives "workers" rights to be paid at least the national minimum wage, to receive annual paid leave and to benefit from certain other protections. In reaching the decision in the affirmative, that the drivers were working and under the contract with UBER, the court looked at five important aspects such as:

a) Uber set the fare and the drivers were not allowed to be charged more than calculated by the app
b) the contract terms on which drivers perform their services are imposed by Uber and drivers have no say in them

c) once a driver has logged onto the Uber app, the driver's choice about whether to accept requests for rides is constrained by Uber
d) Uber also exercises significant control over the way in which drivers deliver their services. (using the rating system)
e) Uber restricts communications between passengers and drivers to the minimum necessary to perform the particular trip and takes.

Lord Clarke acknowledged the difference in the nature between employment contracts and other ordinary commercial contracts is that in the latter, parties are often of equal bargaining power. As such, a purposive approach in interpreting the contracts to determine the reality of the situation and reliance should not be placed solely on the written agreement. This case, however, does not represent the position of the food riders.

In contrast, the Court of Appeal in *The Independent Workers Union of Great Britain* v *Roofoods Ltd t/a Deliveroo* [2021] EWCA Civ 952*,* the case concerning the rights of food riders to form a Union, concluded that the food riders were not in an employment relationship with Deliveroo. The decision was based on the findings of the court that the riders are genuinely not under an obligation to provide their services personally and have unlimited rights of substitution. The riders' ability to substitute themselves during work was incompatible in the opinion of the Court with the obligation to provide personal service, the necessary requirement for them to fall within the purview of the Trade Union and Labour Relations Act 1992. It seemed that the Court of Appeal was of the view that this was the material factor to determine employment status. It should be noted that both cases involved different types of legislation in respect of different rights.

In the Australian case of Diego *Franco* v *Deliveroo Australia Pty Ltd* [2021] FWCFB 5015, a case where a food rider claimed for unfair dismissal remedy under the Fair Work Act 2009. The court considered both decisions of the UK cases and concluded that the decisions were made in respect of particular statutory provisions which are quite distinct from the Australian common law position. The court found that the dichotomy of the common law principle has produced ambiguity, inconsistency and contradiction to the ordinary meaning of employee. The Fair Work Commission has found that a food delivery worker riding a bicycle was an employee and entitled to the unfair dismissal remedy while dismissing a similar claim from a food delivery worker driving a motor vehicle on the basis that he was an independent contractor (Barbaschow, 2018).

In *Franco*, the High Court decided that the question of the employment status of a person should be addressed by adopting the multifactorial approach which involves consideration of various factors with no single factor in particular being decisive. The judge further commented in para [102]:

"*Further, the multilateral approach has been identified to not involve any "universally accepted understanding of how many indicia, or what combination of indicia must point towards a contract of service, the balancing exercise is necessarily impressionistic. Further, it has been described as a smell test or a level of intuition. In addition, the appreciation of the totality of the picture that is presented includes an element of practical reality, and it must also avoid the formation of a view derived from any notion that it would be appropriate or desirable for the person to be classified as an employee, as opposed to a determination that the individual is an employee"*

The indicators used by the court in *Franco* were:
a) Control- the indicium which the court considered important where it involves not just actual control but the capacity to exercise control. The Court concluded that Deliveroo, in the economic reality of the situation would compel a rider to undertake delivery work despite there being no requirement that requires a rider to work for a particular length of time or even to accept the delivery work once they logged in.

b) Work performed for competitor-despite express permission for a rider to work for any of its competitors, the court compared the proposition similar situation where casual or part-time employees might work for multiple employers. Nevertheless, the court acknowledged the phenomenon of change that makes it possible for an employee to multi-apping due to technological advancement which allows them to be simultaneously present in two different workplaces.
c) The terms and terminology of the Supply/Supplier Agreements- another important factor but need to be read cautiously due to the inequality of bargaining power of the parties.
d) Provision of equipment- Capital Outlay and expertise. The rider provided his own vehicle and did not have a substantial investment in the capital equipment. There was no high degree of skill or training required to use or operate the vehicle in performing the delivery service. The delegation or subcontracting to another person while an indicator of an independent contractor, the court looked at the reality that a casual employee may need to find a replacement if he could not work at a predetermined engagement.
e) Presentation as part of the business-the rider wearing Deliveroo attire and used the equipment displaying the Deliveroo brand logo indicated the company encouraged the riders to present themselves as part of the business.
f) Other factors including mode of remuneration, taxation, holiday and sick leave, distinct profession or trade and potential goodwill.

In Malaysia, the amendment to the Employment Act 1955 by inserting the new section 101C which was thought to provide a silver lining to the food riders. The section provides a rebuttable presumption in the absence of a written contract of service that a person is an employee if any of the following factors exist:
a) where his manner of work is subject to the control or direction of another person;
b) where his hours of work are subject to the control or direction of another person;
c) where he is provided with tools, materials or equipments by another person to execute work;
d) where his work constitutes an integral part of another person's business;
e) where his work is performed solely for the benefit of another person; or
f) where payment is made to him in return for work done by him at regular intervals and such payment constitutes the majority of his income.

Section 101C establishes guidelines for determining employment status, particularly for riders or workers engaged in gig economy platforms. It states that the section only comes into play when there is no written agreement between the parties. In cases where there is a written agreement, section 101C does not apply, and the terms of the agreement will govern the employment relationship. In the circumstance where there is a written contract, the p-hailer's employment status would depend on the court's interpretation of the terms of the contract. As noted by the judge in *Uber BV & Others* v *Aslam & Others* [2021] UKSC 5, due to the unequal bargaining position in an employment relationship, the interpretation of the employment contract is not to be determined by the ordinary principle of contract law. Courts need to be mindful of the unequal bargaining position between gig workers and the platforms they work for and adopt a purposive approach to protect the workers; rights effectively. In addition, the factors listed in section 101C bear similarities to common law considerations used by the courts to determine employment status. As such, when faced with disputes or cases involving gig economy workers, the courts will carefully examine the factual circumstances of each case to determine whether an individual should be classified as an employee or not.

One notable benefit of section 101C is that it presumes the workers to be employees unless proven otherwise. This presumption lessens the burden on riders or gig workers to demonstrate that they should be considered employees rather than independent contractors. It is a positive step to protect the rights of workers and ensure they receive appropriate employment benefits and protection. It needs to be emphasised, however, that until and unless a case is brought before the court, there is no precedent by the Malaysian courts. Thus, as it is, the employment status of p-hailers in Malaysia remains unclear. From the analysis of cases, it can be concluded that the courts in determining whether a p-hailer is an employee scrutinised the facts of each case and one of the main factors used by the courts was the element of control exercised by the company on p-hailers The courts also acknowledged that there is the need to take into

account the reality of the working relationship and the potential for exploitation by the company in gig economy arrangements. In addition, the courts acknowledged that the nature of the work arrangement in the gig economy is different from traditional employment.

5. CONCLUSION

While section 101C provides some clarity on the status of gig workers as employees in the absence of a written agreement, the extent of its implications will largely depend on how courts interpret and apply the provision. The decisions by the courts have shown inconsistencies in the status of employment of workers in the gig economy; an Uber driver has been accorded an employee status by the court in the UK while a food rider is denied the status as an employee. Meanwhile, in Australia, a food rider is regarded as an employee and could claim remedies for unfair dismissal. Since the cases highlighted that there is a thin-line distinction between employees and freelancers, there is a need for legislators to enact specific legislation on p-hailers that offer benefits to food riders or gig economy workers without requiring them, to prove their employee status explicitly. Research on the need to have specific legislation could be a topic to be explored in the future. The enactment of a specific legislation could further strengthen workers' rights and provide greater protection in the evolving landscape of employment relationships.

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ONLINE DISSEMINATION OF FAKE NEWS: AN ANALYSIS OF THE EXISTING LEGAL FRAMEWORK IN MALAYSIA

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Abstract

The development of digital technology encourages the significant impact of using social media as the primary source of information. However, the development can also be regarded as a breeding ground for spreading false information, even though it has a huge positive effect on the digital economy. The authorities have responded with different regulatory frameworks in an effort to control the online dissemination of fake news in Malaysia, including the Penal Code (Act 574), the Printing Presses and Publication Act 1984 (Act 301) and the Communications and Multimedia Act 1998 (Act 588). Nevertheless, it seems to have failed to adequately address the issue of combating the dissemination of fake news. Thus, the main objective of this paper is to review Malaysia's existing law to deal with the issue of online dissemination of fake news and to recommend several suggestions to curb the issue of fake news in the present and future. Therefore, in order to achieve the objective of the research, this study adopts qualitative research methodology mainly through textual analysis of some related legislations in providing research findings and secondary sources such as reported case law, textbooks, academic writing, online resources and other related secondary sources. The findings of the research indicate that the existing laws are still inadequate and hence, the research is deemed beneficial to the authorities such as legislators in improving the existing laws in order to combat this issue.

Keywords: digital technology, fake news, online dissemination, legal framework

1. INTRODUCTION

The term fake news is understood broadly as false information, regardless of content categories, disseminators' intentions, or affected interests (Schuldt, 2021). Micro Trend in its 2017 research defines 'fake news' as "the promotion and propagation of news articles via social media which are promoted in such a way that they appear to be spread by other users and in this manner, true stories may be misinterpreted to favour one side which later reported as inaccurate" (Daud, 2020). Fake news can also mean fabricated information that lacks the news media's editorial norms and processes for ensuring the accuracy and credibility of information (Lazer et al., 2018).

News reporting is traditionally based upon facts, however with the development of the Internet and social media, fake news has become a phenomenon and the phrase fake news was used repeatedly (Hussain, 2018) during the United States (US) presidential election when news emerged on the website managed by a Romanian youngster that Pope Francis endorsed Donald Trump as the president of the US (Figueira & Oliveira, 2017). Fake news can be disseminated using any form or medium of communication such as stories, video content, audio content, and social media content (Seman et al., 2019) on Facebook, YouTube, Twitter, and Instagram. These social media platforms are the main sources of disseminating fake news since Malaysians can easily gain internet access in the workplace, home or mobile data subscriptions offered by internet service providers such as Telekom Malaysia, Astro, Maxis, Celcom and Digi.

Moreover, Internet access has become easier as many of the public places such as libraries and food outlets in Malaysia provide free Wi-Fi services to their customers, thus with these technologies fake news can easily be spread.

The phenomenon of dissemination of fake news in Malaysia revealed that at least there were 270 cases investigated in the year 2020 and 35 have been charged in court (Balakrishnan et al., 2021). Studies found that correction to wrong information only works for some individuals (Tandoc Jr., 2019). The Malaysia Communications and Multimedia Commission (MCMC) discovered that the top five most common fake news were mostly related to governance, crime, health, consumerism, and security (Daily Express, 2022). MCMC has set up a portal called "SEBENARNYA.MY", a one-stop centre to check on the authenticity of news content received online through social media platforms with the intention of curbing the spread of false news online (MyGovernment, n. d.). Ministry of Communication and Digital will collaborate with the Royal Malaysian Police (RMP) and the Attorney General to investigate cases relating to fake news and to subject the accused to strict action according to the law since sharing false, objectionable, and threatening content is an offence under section 233 of the Communications and Multimedia Act 1998 (Ahmed, 2023).

There are other legislations such as the Penal Code (Act 574) and the Printing Presses and Publication 1984 (Act 301) to curb the increasingly serious situations, but those laws still fail to adequately address the issue of combating the dissemination of fake news. Resisting disinformation and fake news culture should be promoted and encouraged (Khan et al., 2021). Past studies on the regulatory framework in combating fake news are also scarce. Thus, this paper aims to review the existing laws in Malaysia on the online dissemination of fake news and will recommend suggestions to improve the existing laws and regulations. This study will contribute to the literature on the issue of fake news as well as recommend the legislators to improve the current laws.

2. LITERATURE REVIEW

Fake news is a type of propaganda that delivers false, distorted or bizarre information through traditional media and social media with the purpose of misleading and creating a social imbalance by lowering public confidence in state institutions resulting a confusion, distraction and social disturbances that can influence the public policy and foreign policies of a state (Rusu and Herman, 2019). The maker of fake news imitates the 'real news' to leech off the journalism's authority and convince readers that the material presented to them is authentic (Tandoc Jr. et al., 2021). Mukerji (2018) was of the opinion that the maker of fake news does not care whether what was said or printed is true and that includes the publishers who may misrepresent the reader and hide their actual motive.

It is undeniable that there is freedom of speech in Malaysia and every citizen has the freedom to express opinions and criticism. However, such freedom given by Article 10 of the Malaysia Federal Constitution is not absolute and citizen does not have the freedom to lie and incite (Ahmed, 2023), worst if disseminating fake news online. The dissemination process of fake news would not be very effective if the traditional method of conveying information was engaged since they were costly, however, social media has become an easier alternative that allows users from any part of the world to connect anonymously in order to promote fake news and people tends to get more excited over viral news disseminated by users involving celebrities and politicians (Daud, 2020). Social media such as Instagram, TikTok, Facebook etc. contributed to the rise of fake news (Yatid, 2019) since they provide the platform for the dissemination of fake news, particularly during the COVID-19 pandemic (Balakrishnan et al., 2021; Apuke & Omar, 2021, Isa et al., 2022). Fake news has increased in numbers due to the common misconception that news that has been shared multiple times is legitimate (Mahamad et al., 2021).

There are about three legislations in Malaysia that the authorities regularly use when taking action against the maker of fake news such as the Penal Code (Act 574), Printing Presses and Publications Act 1984 (Act 301) and Communications and Multimedia Act 1998 (Act 588). However, in 2018, the Malaysia Parliament have approved a new legislation referred to as the Anti-Fake News Act 2018 (Act 803) which was gazetted by the Malaysian government in April 2018. Fake news is interpreted in Section 2 of the

Anti-Fake News Act 2018 (Act 803) to include "any news, information, data, and reports, which is or are wholly or partly false, whether in the form of features, visuals or audio recordings or in any other form capable of suggesting words or ideas". The Anti-Fake News Act 2018 (Act 803) covered too wide of offences such as creating, offering, publishing, printing, distributing, circulating, or disseminating any fake news or publication containing fake news and the fine of RM500,000 is too high.

The Anti-Fake New Act 2018 (Act 803) was repealed since there were criticisms that the aforementioned Act was draconian, anti-democratic, and viewed as the instrument of State control over free speech (Haron et al., 2021). The Anti-Fake News (Repeal) Act 2020 (Act 825) which came into operation on 31 January 2020 repealed the Anti-Fake News Act 2018. Thus, the authorities have to make use of the existing laws which were mostly legislated in 1990s. Although the abolishment of the Act gives Malaysian and journalists hope for the practice of free speech and reporting, it is difficult to ignore the fact that those rights are still restricted by the government through overlapping legislations (Wan et al., 2023).

3. METHODOLOGY

This study employed a qualitative doctrinal research design. Data was collected from the reading of cases, newspapers, statutes and other legal documents to support the research. The qualitative research involves data collected from journals, newspapers and other documents on fake news. This research also involves the research of the aspects of law such as principles, procedure of the law, legal theories, cases and statutory provisions. Most data for this study were obtained from secondary sources which is the online information using a library-based approach of synthesising legal information from legal websites such as LexisNexis, Current Law Journal and Google Scholar.

4. RESULTS AND DISCUSSION

4.1 Penal Code (Act 574)

In Malaysia, there are few legislations enacted which aim to combat the dissemination of fake news. The Penal Code (Act 574) generally prohibits the dissemination of false information, both offline and online. Section 505(b) of the Penal Code (Act 574) provides, “Whoever makes, publishes or circulates any statement, rumour or report… with intent to cause, or which his likely to cause, fear or alarm to the public, or to any section of the public where by any person may be induced to commit an offence against the State or against the public tranquillity… shall be punished with imprisonment which may extend to two years or with fine or with both”. Section 505(b) has been regularly applied as a weapon to stop the spread of false news in Malaysia. It criminalises the dissemination of false information, news, and reports, whether it is made orally or in writing, irrespective of any medium.

According to Sukumaran et al. (2023), Section 505(b) must not only prove the dissemination of false information, but it also causes public fear in order for a person to be charged under the particular provision. Besides that, Haron (2022) stressed that the provision is not dependent on the truthfulness of the said information, but it depends on the creator of such information whether they do it with the intention to disturb the public's tranquillity or not. In addition, the fundamental criteria for conviction under this provision are not only focused on the dissemination of fake news, but that information must cause public fear or alarm. Thus, the criminality of such offences under Section 505(b) of the Penal Code is based on the response of the person receiving the fake news (Haron et al., 2021).

4.2 Printing Presses and Publications Act 1984 (Act 301)

The other instrument that is regularly used to combat the dissemination of fake news in Malaysia is the Printing Presses and Publications Act 1984 (Act 301). Section 8A(1) of the Printing Presses and Publications Act 1984 (Act 301) provides, “Where in any publication there is maliciously published any false news, the printer, publisher, editor and the writer thereof shall be guilty of an offence”. The provision further highlights the punishment upon conviction, which a person shall be liable to imprisonment for a term not exceeding three years or to a fine not exceeding twenty thousand ringgit or to both. The aforesaid

Act was passed with the intention to regulate the use of printing presses and the printing, importation, production, reproduction, publishing, and distribution of publications and for matters connected therewith. The main idea behind the enactment of the Printing Presses and Publications Act 1984 (Act 301) is to be a tool to control the dissemination of 'malicious' false information in the printed press industry (Haron et al., 2021). 'Malice' is an important requirement to be proved prior to publication, and the accused took reasonable measures to verify the truth of the news (Printing Presses and Publications Act 1984 s. 8A(2), n.d.). The 'malice' element is shown to be a significant barrier for genuine whistle-blowers to demonstrate whether the publisher has taken all necessary steps to confirm the veracity of the news (Haron et al., 2021; Sukumaran et al., 2023).

Like other legislation which aimed at regulating the content of the news or disseminated information, the Printing Presses and Publications Act 1984 (Act 301) was also criticised for its inadequacy in defining what amounts to 'false information' or fake news under the aforementioned Act and thus, it has received criticisms over the abuse of law (Haron et al.,2021). Seman et al. (2019) posit that the Printing Presses and Publications Act 1984 (Act 301) can also limit the freedom of the media and freedom of speech.

4.3 Communications and Multimedia Act 1998 (Act 588)

Another broader legislation that also regulates various aspects of communications and multimedia, including telecommunications, broadcasting, and digital content is the Communications and Multimedia Act 1998 (Act 588). In general, there are provisions that relate to content that is deemed offensive, false, or harmful and therefore the aforesaid Act also prohibits communication of such content (Daud and Zulhuda, 2020). There are two provisions that have been frequently used to criminalise or combat the dissemination of online fake news, namely Sections 211 and 233 of the Communications and Multimedia Act 1998 (Act 588).

Section 211(1) provides, "No content applications service provider, or other person using a content applications service, shall provide content which is indecent, obscene, false, menacing, or offensive in character with intent to annoy, abuse, threaten or harass any person". Section 211(2) states, "A person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding one year or to both and shall also be liable to a further fine of one thousand ringgit for every day or part of a day during which the offence is continued after conviction". A person may be sentenced to a maximum fine of RM50,000, or imprisonment for a term not more than a year or both if convicted under Sections 211 or 233 of the Communications and Multimedia Act 1998 (Act 588). Daud and Zulhuda (2020) asserted that Section 211 identifies 'fake news' under a broad categorisation known as 'offensive content'.

Section 233 of the Communications and Multimedia Act 1998 (Act 588) addresses the improper use of network facilities or network services, including the creation or dissemination of offensive or false content. Specifically, the provision in Section 233(1)(b) provided that a person who knowingly initiates a communication using any applications service, whether continuously, repeatedly, or otherwise, during which communication may or may not ensue, with or without disclosing his identity and with intent to annoy, abuse, threaten or harass any person at any number or electronic address, commits an offence. Section 233(3) of the same Act further gives the sanction for a person who commits the offence, upon conviction shall be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding one year or to both and shall also be liable to a further fine of one thousand ringgit for every day during which the offence is continued after conviction.

According to Seman et al. (2019), the provisions in the Communications and Multimedia Act 1998 (Act 588) also apply to both online media as well as individual users who spread fake news using social media. Therefore, when fake news circulates online, the suspect can be charged under Section 233 for using the internet to disseminate false information which could threaten national security (Urus and Yahya, 2023). Based on the consideration of Section 233 of the Communications and Multimedia Act 1998 (Act 588), the court in the case of *Rutinin Suhaimin v PP* (2015) has established a three-part test that must be fully satisfied for a prosecution to be successful: did the accused use a network facility to communicate? was

the communication regarded as 'obscene, indecent, false, menacing or offensive'? and was the communication intended to 'annoy, abuse, threaten or harass another person? (Smith et al., 2021). The study further revealed that there is no definition as to what constitutes 'false information' or 'fake new's in the Communications and Multimedia Act 1998 (Act 588).

The terminology used in Sections 211 and 233 of the Communications and Multimedia Act 1998 (Act 588) is ambiguous, especially the usage of the word 'false' and 'offensive' (Sukumaran et al., 2023). Haron et al. (2021) believed that both provisions can be read together with the Content Code, which has the same approach adopted by the Communications and Multimedia Content Forum (CMCF). The Content Code defines 'false content' as material "likely to mislead, due to amongst others to incomplete information" where it has advised Internet users to avoid contents which are unverified and false. Article 7.3 of the same Code provides for an exception where false content is not prohibited when it is satire, parody and fictional in nature. Even though it may not be in-depth, Article 7.0 of the Content Code (the Code) expressly addresses false content online (Daud and Zulhuda, 2020).

4.4 Anti-Fake New Act 2018 (Act 803) and Anti-Fake News (Repeal) Act 2020 (Act 825)

The Malaysian government has previously attempted to introduce legislation specifically targeting fake news, which is known as the Anti-Fake News Act 2018 (Act 803) which was passed in April 2018. The Anti-Fake News Act 2018 (Act 803) covers actions on sharing information on social media platforms as well as traditional print publications and republications (Santuraki, 2020). Section 3 of the Anti-Fake News Act 2018 (Act 803) provides that the legislation has an extra-territorial application to persons outside Malaysia so long as the fake news affects Malaysia or a Malaysian citizen. Thus, a person could be charged under the law regardless of his or her nationality or location within or outside Malaysia, so long as the 'fake news' concerns Malaysia or Malaysians (Yatid, 2019). One Danish citizen was charged under the Anti-Fake News Act 2018 (Act 803) within the first month of its passage for knowingly posting fake news on the time taken by police to respond to the assassination of a private university lecturer in the YouTube video and he was sentenced to a week in prison and a fine of RM10,000 after pleaded guilty to the offence (Anbalagan, 2018)

The Anti-Fake News Act 2018 (Act 803) criminalises any act of "creating, offering, publishing, printing, distributing, circulating, or disseminating any fake news or publication containing fake news". The same provision also provides categories of offences, which carry maximum fine of RM500,000 or ten years imprisonment or to both, and in the case of a continuing offence, to a further fine not exceeding three thousand ringgit per day. However, the Act does not explain why such harsh penalties were applied, as though it was akin to crimes against the state (Daud and Zulhuda, 2020). Furthermore, Section 6(1) of the Act, requires a person to take down publications that contain fake news and failure to do so amounts to an offence. Nevertheless, the provisions do not provide a deadline for the purported offender to remove fake news. In addition, Section 7(1) of the Act also gives power to the Court to grant an order for the removal of fake publications. Thus, any person affected by a publication containing fake news may apply *ex parte* to the Court. The Anti-Fake News Act 2018 (Act 803) was introduced by the Barisan Nasional government to stifle and regulate online political engagement among citizens of Malaysia (Seman et al.,2019). The Act caused great controversy and faced criticisms from various quarters, including concerns about potential abuse and restrictions on freedom of expression, hence, the Act was repealed by the Anti-Fake News (Repeal) Act 2020 (Act 825).

4.5 Summary of Discussion

The provisions of the legislation discussed in the preceding paragraphs are summarised in Table 1.

Table 1. Summary of Legislations

Legislation	Meaning of Provisions	Penalty Upon Conviction
Penal Code (Act 574)	Section 505(b) - any statement, rumour or report causes fear or alarm to State or public tranquillity.	Imprisonment can be extended to 2 years or with a fine or both.

Printing Presses and Publications Act 1984 (Act 301)	Section 8A(1) - maliciously published any false news	Imprisonment for a term not exceeding 3 years or to a fine not exceeding RM20,000 or to both.
Communications and Multimedia Act 1998 (Act 588)	Section 211(1) - using a content applications service which is indecent, obscene, false, menacing, or offensive in character with intent to annoy, abuse, threaten or harass any person.	Fine not exceeding RM50,000 or to imprisonment for a term not exceeding 1 year or to both and shall also be liable to a further fine of RM1,000 for every day or part of a day during which the offence is continued after conviction.
	Section 233(1)(b) - knowingly initiates a communication using any applications service - with or without disclosing his identity and with intent to annoy, abuse, threaten or harass any person at any number or electronic address.	Fine not exceeding RM50,000 or to imprisonment for a term not exceeding 1 year or to both and shall also be liable to a further fine of RM1,000 for every day during which the offence is continued after conviction.
Anti-Fake New Act 2018 (Act 803) and Anti-Fake News (Repeal) Act 2020 (Act 825)	Section 2 - any news, information, data, and reports, which is or are wholly or partly false, whether in the form of features, visuals or audio recordings or in any other form capable of suggesting words or ideas	Maximum fine of RM500,000 or 10 years imprisonment or to both, and in the case of a continuing offence, to a further fine not exceeding RM3,000 per day.

From the above discussion, there are three existing legislation which are being used to combat the dissemination of fake news. This further support the contention by Ahmed (2023) that the freedom given by Article 10 of the Malaysia Federal Constitution is not absolute and citizen does not have the freedom to lie and incite. The preceding statutory provisions overlap with each other, and this supports the argument by Wan et al. (2023).

There was no proper definition of 'fake news' unlike the definition given by the repealed Anti-Fake News Act 2018. Section 505(b) of the Penal Code (Act 574) only mentions causing fear to the recipient of the statement or the rumour. The maker of the statement could still be found guilty if the statement affects public tranquillity even though the statement given is accurate and truthful (Zainul, 2020). The provisions of the Penal Code (Act 574) are insufficient since it does not cover the online dissemination of information but concentrates more on the effects on public tranquillity. There was no mention of online dissemination of fake news in detail. As for the Printing Presses and Publications Act 1984 (Act 301), the law concentrates on the element of 'malice', to which the 'malice' or 'bad intention' must be proven in order to prove false news. It is worth noting that both these legislations fail to mention the use of 'online' platforms as the medium to disseminate fake news.

The Communications and Multimedia Act 1998 (Act 588) has defined "applications service" to mean a service provided by means of one or more network services. Section 6 of the same Act has also defined 'content to mean any sound, text, still picture, moving picture or other audio-visual representation, tactile representation or any combination of the preceding which is capable of being created, manipulated, stored, retrieved, or communicated electronically. Compared to the three legislations i.e., Penal Code (Act 574), Printing Presses and Publications Act 1984 (Act 301) and Communications and Multimedia Act 1998 (Act 588), only the Communications and Multimedia Act 1998 (Act 588) mention "communicated electronically", which is submitted to mean via online dissemination of information.

While admittedly these preceding statutory provisions are regularly used by authorities in combatting dissemination of online fake news, it is submitted that the more appropriate provisions should be Section

124I of the Penal Code (Act 574) which provides, "Any person who, by word of mouth or in writing or in any newspaper, periodical, book, circular, or other printed publication or by other means including electronic means spreads false reports or make false statements likely to cause public alarm, shall be punished with imprisonment for a term which may extend to five years". Section 124I mention "any other means including electronic means" can be interpreted as 'using online'. Section 124I can be a pilot provision that can be further argued and elaborated.

5. CONCLUSION

All the existing legislation governing the issue of the online dissemination of fake news in Malaysia is still limited and does not guarantee success in combating internet transmission regarding false information. The best way to regulate the online dissemination of fake news would be to constantly monitor social needs and to amend the relevant laws to give the greatest respect to individual rights and interests and go as far as possible to achieve the greatest social interest. The current legal framework is insufficient to lessen or fix the issue of dissemination of fake news. The internet service provider should be given the right to eliminate online fake news as an immediate action to prevent the spreading of fake news.

The government must educate the citizens through strategic anti-fake news awareness programs in order to create public awareness of the existing anti-fake news laws in Malaysia. More efforts are required by the government authorities and mass media to inform the public about the consequences of spreading fake news so that the public will be aware that the dissemination of fake news is an offence that comes with heavy punishment. The current study finds that more research should be done before legislators can come out with new legislation to combat fake news. Future research should look into the perceptions of the public of what fake news really means and the appropriate punishments for convicted persons. It is suggested that quantitative research would be appropriate to find the relationship between public awareness of the anti-fake news law and the dissemination of fake news.

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ISU DAN CABARAN PERUNDANGAN PEMBANGUNAN LOT LIDI BAGI TUJUAN KEDIAMAN MENGIKUT KATEGORI TANAH

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Abstrak

Pembangunan lot lidi sering dilaporkan menimbulkan pelbagai isu perundangan tanah. Ketiadaan takrifan rasmi lot lidi membolehkan ianya dilihat daripada pelbagai perspektif dan telah menyebabkan kekeliruan di kalangan masyarakat mahupun pihak berkuasa. Kajian ini mengkaji isu dan cabaran dalam pembangunan lot lidi bagi tujuan kediaman dari perspektif perundangan tanah mengikut tiga (3) kategori tanah yang terdapat di dalam Kanun Tanah Negara iaitu pertanian, bangunan dan industri termasuk syarat nyata tanah dengan indikasi *First Grade*. Kajian ini tertumpu di negeri Pulau Pinang kerana kupasan kajian ini melibatkan dokumen hakmilik dengan syarat nyata berindikasi *First Grade* yang hanya terdapat di negeri Pulau Pinang dan Melaka. Kajian ini merupakan kajian kualitatif dengan menggunakan kaedah pengumpulan data melalui kajian kepustakaan ke atas artikel, jurnal, kertas prosiding, buku-buku, statut, pekeliling, kes-kes mahkamah dan bahan-bahan bacaan lain yang berkaitan. Pengumpulan data juga dibuat melalui kaedah temubual separa berstruktur melibatkan responden-responden daripada pentadbiran tanah di negeri Pulau Pinang. Terdapat dua (2) penemuan utama isu-isu melibatkan pembangunan lot lidi mengikut kategori tanah iaitu ketuanpunyaan berdaftar dan pelanggaran syarat tanah. Hasil dapatan kajian juga mendapati bahawa pembangunan lot lidi di atas tanah berkategori pertanian berdepan dengan isu-isu yang lebih serius berbanding dengan tanah berkategori bangunan dan industri termasuk tanah dengan syarat nyata berindikasi *First Grade*. Dapatan kajian ini penting di dalam membantu pihak berkuasa untuk merencana jalan penyelesaian terhadap isu-isu yang berbangkit.

Kata kunci: Lot lidi, kategori tanah, tanah *First Grade*, pemilikan berdaftar, pelanggaran syarat tanah

1. PENGENALAN

Ismail, Zakaria, dan Samsudin (2023) menyatakan bahawa tiada takrifan khas bagi istilah lot lidi dari kaca mata undang-undang tanah di Malaysia tetapi istilah lot lidi diterima pakai oleh masyarakat. Penerimaan ini dapat dilihat melalui liputan meluas di dalam media arus perdana yang membincangkan isu yang berbangkit daripada penjualan lot lidi. Sebagai contoh, akhbar Berita Harian melaporkan satu kes penipuan pembelian lot lidi melibatkan sejumlah wang RM 140,000.00 yang dibayar oleh sepasang warga emas kepada penjual lot lidi (Mohd Khalid, 2023). Malah, Jabatan Ketua Pengarah Tanah dan Galian juga dilihat cakna dengan isu lot lidi apabila jabatan tersebut, menerusi kenyataannya di dalam Berita Harian menyatakan bahawa lot lidi melanggar tiga (3) undang-undang iaitu Kanun Tanah Negara (KTN), Akta Perancangan Bandar dan Desa serta Akta Jalan, Parit dan Bangunan 1974 (A Rosly, 2023). Ketiadaan takrifan ini menjadikan isu lot lidi dibincang daripada pelbagai perspektif. Menurut Ismail et al. (2023), lot lidi boleh dilihat melalui dua (2) perspektif iaitu perancangan pembangunan dan perundangan tanah di bawah KTN. Kajian ini memfokuskan kepada lot lidi dari kaca mata perundangan tanah di bawah KTN dengan memberikan pengkhususan kepada isu dan cabaran pembangunan lot lidi mengikut kategori tanah. Dua (2) objektif kajian yang digariskan di dalam kajian ini iaitu pertamanya, mengenalpasti isu-isu melibatkan pembangunan lot lidi mengikut kategori tanah dan keduanya, mengenalpasti kategori tanah yang berdepan dengan isu-isu yang lebih serius melibatkan pembangunan lot lidi. Kajian ini tertumpu di negeri Pulau Pinang kerana kupasan kajian ini melibatkan dokumen hakmilik dengan syarat nyata berindikasi *First Grade* yang hanya terdapat di negeri Pulau Pinang dan Melaka.

2. SOROTAN KAJIAN LEPAS

Kepelbagaian pemahaman tentang lot lidi membuatkan kupasan isu-isu yang berkait dengan lot lidi dibuat di dalam pelbagai perspekstif. Hashim (2022); Mohsin dan Abu (2022); PLANMalaysia dan Rancang Bistari (2020) membincangkan isu lot lidi melalui perspektif perancangan bandar dengan mendefinisikan lot lidi berdasarkan kepada keadaan fizikal lot melibatkan keluasan dan bentuk lot. Manakala, Abd Sukor (2021); Mohd Saad et al. (2020); Taha et al. (2022) mengupas lot lidi dari segi perundangan tanah yang utama iaitu KTN melibatkan isu pemilikan, kategori tanah dan dokumentasi penjualan lot lidi. Selain itu, Ahmad (2021) membincangkan penyelesaian lot lidi dari sudut KTN tetapi melibatkan pemilikan bersama pembeli-pembeli lot lidi yang telah didaftarkan di dalam dokumen hakmilik. Kepelbagaian ini disebabkan ketiadaan takrifan yang khusus berkaitan dengan istilah lot lidi dari sudut perundangan negara. Namun begitu, di sebalik kepelbagaian takrifan ini, terdapat satu persamaan yang dibincangkan oleh setiap pengkaji di dalam kajian-kajian yang lepas iaitu pembangunan lot lidi ini dibuat bagi tujuan kediaman. Menurut Dewan Bahasa dan Pustaka, kediaman boleh difahami sebagai tempat tinggal atau rumah. Secara adatnya, rumah akan merujuk kepada struktur bangunan yang didirikan di atas tanah. Oleh itu, perbincangan mengenai isu lot lidi berkait rapat dengan KTN kerana melibatkan struktur bangunan kediaman yang didirikan di atas tanah.

Oleh kerana lot lidi terikat dengan isu-isu berkaitan dengan tanah, perbincangan tentang lot lidi tidak boleh lari dari perundangan tanah yang utama iaitu KTN. KTN menggunapakai sistem *Torrens* yang dibawa oleh *Sir Robert Torrens* di Australia (Maidin, 2007; Sufian & Mohamad, 2015; Yong, 2004). Teras utama sistem *Torrens* adalah berpaksikan kepada konsep *"Register is everything"* yang memperkenalkan dua (2) prinsip asas iaitu tirai dan cermin (Kok, 1994; Syed Abdul Kader & Mohamed, 2014). Penulis-penulis tersebut menghuraikan bahawa prinsip tirai menjadikan maklumat sedia ada yang berdaftar adalah maklumat yang sah tanpa perlu melihat selain daripadanya sehingga menyingkap tirai di sebalik dokumen hakmilik. Orang awam hanya perlu berpegang kepada apa-apa maklumat yang didaftarkan di dalam dokumen hakmilik. Seterusnya, Kok (1998) menyatakan bahawa prinsip cermin pula menunjukkan bahawa apa sahaja maklumat terdaftar di dalam dokumen hakmilik adalah cerminan kepada tanah tersebut. Kedua-dua prinsip ini menjadikan sistem *Torrens* lebih mudah dan segala bentuk pendaftaran maklumat adalah dijamin oleh kerajaan (Buang, 2005). Maklumat yang sah dan diterima pakai adalah maklumat yang didaftarkan di dalam dokumen hakmilik yang mana orang awam boleh membuat sebarang urusniaga berpandukan kepada maklumat tersebut. Maklumat-maklumat yang terkandung di dalam dokumen hakmilik adalah melibatkan maklumat asas hakmilik, maklumat pihak-pihak berkepentingan dan maklumat urusan yang terkandung di dalam hakmilik (Kadouf, 2011; Moosdeen, 2002; Wu and Zul Kepli 2011). Bersandarkan kepada maklumat di dalam dokumen hakmilik, orang awam boleh mengetahui pemilik berdaftar bagi tanah yang terkandung di dalam dokumen hakmilik. Orang awam juga boleh mengetahui urusan-urusan seperti pindahmilik tanah, gadaian atau pajakan tanah. Sehinga kini, KTN masih relevan dan digunapakai di seluruh pentadbiran tanah negeri dan Persekutuan. KTN telah melalui pelbagai pindaan bagi memastikan ianya terus relevan dan boleh digunapakai seiring dengan pembangunan.

Seterusnya, pengkaji meneliti peruntukan di bawah sekyen 79 KTN yang menyatakan bahawa Pihak Berkuasa Negeri hendaklah menimbangkan kategori dan syarat-syarat penggunaan tanah semasa kelulusan pemberimilikan tanah kerajaan. Pertimbangan tersebut adalah tertakluk kepada seksyen 52 KTN yang menggariskan tiga jenis kategori tanah iaitu pertanian, bangunan atau industri yang boleh dikenakan ke atas tanah berimilik. Menurut Sihombing (2021), setiap dokumen hakmilik yang didaftarkan hendaklah mempunyai endorsan yang mencerminkan salah satu kategori tanah yang dinyatakan di dalam seksyen 52 KTN. KTN juga mensyaratkan tanah berimilik tersebut juga adalah tertakluk kepada syarat nyata di bawah seksyen 121 atau 122 KTN. Sekyen 120 KTN memberikan kuasa kepada Pihak Berkuasa Negeri untuk mengenakan syarat nyata dan penentuan syarat nyata tersebut dibuat semasa kelulusan pemberimilikan. KTN memberi panduan kepada Pihak Berkuasa Negeri dalam menetapkan syarat nyata tanah, melalui seksyen 121 bagi tanah pertanian dan seksyen 122 bagi tanah bangunan dan industri, dengan menyenaraikan perkara-perkara yang boleh dipertimbangkan sebagai syarat nyata sesuatu tanah. Selain daripada syarat nyata yang ditetapkan, setiap tanah berimilik adalah tertakluk kepada syarat tersirat yang

dinyatakan di dalam seksyen 115 bagi tanah pertanian, seksyen 116 bagi tanah bangunan dan seksyen 117 bagi tanah industri. Setelah diteliti keseluruhan seksyen-seksyen 52 dan 120 KTN, dapat difahami bahawa syarat nyata penggunaan tanah adalah terikat dengan kategori tanah. Kedua-dua perkara ini tidak boleh dipisahkan dan mesti diteliti secara seiringan.

Bagi tanah yang telah diberimilik sebelum berkuatkuasanya KTN dan tiada pengenaan kategori tanah, syarat tersirat tanah tersebut ditentukan melalui peruntukan seksyen 53 KTN. Berdasarkan kepada seksyen tersebut dapat difahami bahawa terdapat dua (2) jenis syarat penggunaan tanah yang boleh dikenakan iaitu pertanian dan bangunan. Cara untuk menentukan syarat tersirat adalah seperti berikut:

i. bagi tanah desa atau tanah bandar/tanah pekan yang dipegang di bawah hakmilik Pejabat Tanah, syarat kegunaan tanah adalah pertanian,

ii. bagi tanah bandar atau tanah pekan, syarat kegunaan tanah adalah bangunan.

Di negeri Pulau Pinang, terdapat dokumen hakmilik dengan syarat nyata tanah berindikasi *First Grade*. Menurut Ahmad dan Samsudin (2023) mana-mana hakmilik *in fee simple* yang dikeluarkan sebelum tahun 1886 hendaklah ditukarganti kepada dokumen hakmilik di bawah KTN dengan tiada penetapan sebarang kategori tanah dan dikenakan syarat nyata *First Grade*. Indikasi *First Grade* boleh dilihat di dalam syarat nyata tanah yang terzahir di dalam dokumen hakmilik seperti yang dikehendaki oleh Perenggan 5, Jadual Ketiga, seksyen 45 Akta Kanun Tanah Negara (Hakmilik Pulau Pinang dan Melaka) 1963 seperti berikut:

> *"The land comprised in this title –*
>
> *(a) shall not be affected by any provision of the National Land Code limiting the compensation payable on the exercise by the State Authority of a right of access or use conferred by Chapter 3 of Part Three of the Code or on the creation of a Land Administrator's right of way; and*
>
> *(b) subject to the implied condition that land is liable to be re-entered if it is abandoned for more than three years, shall revert to the State only if the proprietor for the time being dies without heirs,*
>
> *and the title shall confer the absolute right to all forest produce and to all oil, mineral and other natural deposits on or below the surface of the land (including the right to work or extract any such produce or deposit and remove it beyond the boundaries of the land)."*

Hakmilik dengan syarat nyata *First Grade* adalah tidak tertakluk dengan seksyen 53 KTN sebagaimana yang dinyatakan di dalam Pemberitahuan Undang-Undang No. 478 Tahun 1965. Ini bermakna, hakmilik ini adalah tidak tertakluk dengan sebarang kategori pertanian atau bangunan atau industri. Kawalan pembangunan di atas hakmilik ini adalah melalui Akta Perancangan Bandar dan Desa (Buletin Mutiara, 2019) dan tiada kawalan jenis pembangunan yang ditetapkan melalui KTN.

Rational di sebalik penetapan syarat dan kategori tanah adalah untuk membantu kerajaan negeri di dalam menyediakan pembangunan yang terancang. Ini adalah untuk memastikan setiap tanah dapat dimanfaatkan secara menyeluruh dan optimum (Sihombing 2021; Suliman 2022) bagi menjamin kestabilan ekonomi, sosial dan politik negeri.

Setiap tuan punya tanah berimilik adalah bertanggungjawab untuk memastikan tiada pelanggaran syarat berlaku pada setiap masa selagi mana syarat-syarat yang dikenakan terpakai dan berkuatkuasa ke atas sesuatu tanah (Nik Mohamed 2007; Suliman 2022). Menurut Mei (2006), pelanggaran syarat tanah akan menyebabkan tanah tersebut boleh dirampas oleh pihak berkuasa negeri walaupun KTN menjamin hak tidak boleh disangkal di bawah seksyen 340 KTN. Terdapat dua (2) bentuk pelanggaran syarat di dalam KTN iaitu melalui perbuatan (*act*) atau peninggalan (*omission*) yang dilaksanakan oleh tuan tanah (Ismail et al., 2023). Sebagai contoh, perbuatan menjalankan sewaan rumah inap oleh tuan tanah bagi tanah bersyarat nyata kediaman terjumlah kepada pelanggaran syarat tanah sebagaimana yang dinyatakan oleh

Hua Siong (2020). Selain itu, Kok (1997) memberikan contoh peninggalan (*omission*) iaitu sekiranya tuan tanah tidak membina apa jua bentuk bangunan dalam tempoh yang ditetapkan di atas tanah berkategori bangunan akan menyebabkan berlakunya pelanggaran syarat. Pelanggaran syarat akan memberi kesan kepada perampasan tanah sebagaimana yang digariskan oleh seksyen 127 KTN. Pihak berkuasa negeri berhak untuk merampas tanah-tanah yang melanggar syarat nyata yang ditetapkan semasa pemberimilikan atau syarat tersirat yang terkandung di dalam KTN. Ini adalah bagi memastikan tanah-tanah yang telah dilupuskan oleh Pihak Berkuasa Negeri masih dapat dikawal dari segi penggunaannya supaya tidak bertentangan dengan kehendak pembangunan yang terancang.

3. METODOLOGI KAJIAN

Kajian ini merupakan kajian kualitatif dengan kaedah pengumpulan data melalui kajian kepustakaan dan temubual separa berstruktur. Kajian kepustakaan dibuat untuk mendapatkan data-data sekunder. Sumber-sumber data ini adalah bersandarkan kepada maklumat-maklumat yang diperolehi melalui buku-buku, artikel, jurnal, kertas prosiding, kes-kes mahkamah dan pelbagai sumber lain yang berkaitan dengan kajian. Data-data yang dikumpul diperolehi samada secara digital atau salinan keras daripada beberapa perpustakaan yang ada di Malaysia seperti Perpustakaan Tun Abdul Razak, Perpustakaan Universiti Teknologi Malaysia, Perbadanan Perpustakaan Awam Pulau Pinang untuk mencapai objektif pertama kajian ini. Temubual separa berstruktur pula dibuat untuk mendapatkan data-data primer dengan menjalankan temubual ke atas lima (5) responden yang dipilih berdasarkan kriteria perjawatan, tempoh berkhidmat dan bidang tugas yang ditetapkan oleh jabatan. Kesemua responden berkhidmat di lima (5) Pejabat Tanah Daerah yang terletak di negeri Pulau Pinang iaitu Pejabat Tanah Daerah Seberang Perai Utara, Pejabat Tanah Daerah Seberang Perai Tengah, Pejabat Tanah Daerah Seberang Perai Selatan, Pejabat Tanah Daerah Timur Laut dan Pejabat Tanah Daerah Barat Daya dan telah berkhidmat di dalam jabatan kerajaan di dalam julat masa sepuluh (10) ke duapuluh satu (21) tahun. Kesemua responden yang dipilih mempunyai bidang tugas yang berhubung secara langsung dengan pentadbiran tanah. Soalan temubual dibuat separa berstruktur supaya responden bebas untuk memberi maklumbalas tetapi mengikut rangka sebenar kajian. Kesemua responden yang ditemubual diwakili dengan kod responden iaitu R1 hingga R5 untuk meringkaskan huraian di bahagian dapatan dan perbincangan. Kaedah temubual ini dilaksanakan untuk mencapai objektif kedua kajian ini.

Data-data terkumpul telah dianalisa melalui kaedah analisa kandungan dan deskriptif. Data-data dibahagikan kepada tema-tema yang bersesuaian dengan kajian yang memfokuskan kepada pemilikan berdaftar pembeli dan pelanggaran syarat mengikut kategori tanah. Di peringkat akhir kajian, pengkaji mengeluarkan satu rumusan hasil kajian ke atas data-data yang telah dianalisa.

4. DAPATAN KAJIAN DAN PERBINCANGAN

Dapatan kajian dan perbincangan diulas berdasarkan kepada objektif kajian iaitu pertamanya, mengenalpasti isu-isu melibatkan pembangunan lot lidi mengikut kategori tanah dan keduanya, mengenalpasti kategori tanah yang berdepan dengan isu-isu yang lebih serius melibatkan pembangunan lot lidi.

Objektif pertama kajian iaitu mengenalpasti isu-isu melibatkan pembangunan lot lidi mengikut kategori tanah dicapai melalui kajian kepustakaan. Hasil daripada kajian kepustakaan, terdapat dua (2) isu utama lot lidi yang dibangunkan bagi tujuan kediaman yang dikelaskan berdasarkan kategori tanah yang terlibat dengan pembangunan lot lidi. Dua (2) isu tersebut adalah melibatkan isu pemilikan berdaftar dan pelanggaran syarat tanah. Di dalam isu pemilikan berdaftar, pengkaji melihat kepada pendaftaran nama pembeli lot lidi sebagai tuan punya tanah di dalam dokumen hakmilik. Ini adalah asas utama yang perlu dilihat di dalam setiap transaksi tanah di Semenanjung Malaysia yang mengamalkan sistem *Torrens*. Sistem ini menjadikan rekod daftar yang disimpan di pejabat adalah satu-satunya sumber yang perlu dirujuk di dalam menentukan pendaftaran dokumen hakmilik dan sebarang urusan di dalam hakmilik (Kok, 1998, 2003; Maidin & Mobarak Ali, 2009). Pendaftaran nama pembeli di dalam dokumen hakmilik akan memastikan hak-hak pembeli dijamin oleh seksyen 340 KTN. Manakala, di dalam isu pelanggaran syarat, pengkaji memfokuskan kepada aspek pelanggaran syarat pembangunan lot lidi bagi tujuan

kediaman di atas setiap kategori tanah yang dikenalpasti. Setiap kategori tanah mempunyai syarat-syarat yang perlu dipatuhi samada syarat nyata atau tersirat. Kajian ini melihat samada pembangunan lot lidi tersebut melanggar syarat tanah atau sebaliknya.

Melalui kajian ini, isu-isu pembangunan lot lidi bagi tujuan kediaman berdasarkan kategori tanah dapat dikenalpasti seperti yang dijelaskan di dalam Jadual 1 di bawah dan dihuraikan di dalam perenggan seterusnya.

Jadual 1. **Isu pembangunan lot lidi bagi tujuan kediaman berdasarkan kategori tanah (Olahan Pengkaji, 2023)**

BIL	KATEGORI TANAH	PEMILIKAN BERDAFTAR ATAS NAMA PEMBELI (YA /TIDAK)	LANGGAR SYARAT (YA/TIDAK)
1.	Pertanian	Tidak	Ya
2.	Bangunan	Ya	Tidak
3.	Industri	Ya	Ya
4.	Syarat nyata *First Grade*	Ya	Tidak

Di dalam isu pemilikan berdaftar atas nama pembeli, dapatan kajian menunjukkan bahawa pembeli yang membeli lot lidi dengan kategori tanah pertanian tidak dapat mendaftarkan atas nama pembeli. Kajian mendapati bahawa urusan pindahmilik tanah kepada nama pembeli terhalang oleh batasan undang-undang di bawah subseksyen 205 (3) KTN yang tidak membenarkan tanah berkategori pertanian untuk dipindahmilik atau dipajak, yang mana kesan urusniaga tersebut menghasilkan bahagian yang tidak dipecahkan kurang daripada dua perlima (2/5) hektar sekiranya tanah tersebut dipecah bahagi. Halangan ini menyebabkan urusniaga lot lidi dibuat menggunakan surat ikatan amanah dan perjanjian jual beli. Bagi tanah-tanah dengan kategori bangunan, industri dan bersyarat nyata *First Grade*, nama-nama pembeli boleh didaftarkan di dalam dokumen hakmilik dan status pegangan pembeli-pembeli adalah secara pemilikan bersama dengan bahagian-bahagian tidak dipecahkan.

Penelitian dapatan kajian mendapati bahawa berlaku pelanggaran syarat di dalam pembangunan lot lidi dengan maksud kediaman di atas tanah berkategori pertanian dan industri. Pelanggaran syarat ini berlaku apabila kedua-dua kategori tanah ini tidak membenarkan aktiviti selain daripada maksud pertanian atau industri seperti yang digariskan di bawah seksyen-seksyen 115 dan 117 KTN sedangkan pembangunan lot lidi secara jelasnya dibuat untuk tujuan kediaman. Manakala, tiada pelanggaran syarat berlaku di atas tanah berkategori bangunan dan tanah dengan syarat nyata *First Grade.* Ini adalah kerana seksyen 116 KTN dan syarat nyata *First Grade* tidak menghalang pembinaan bangunan.

Seterusnya, objektif kedua kajian iaitu mengenalpasti kategori tanah yang berdepan dengan isu-isu yang lebih serius melibatkan pembangunan lot lidi dicapai melalui temubual separa berstruktur dengan lima (5) responden. Hasil temubual mendapati bahawa kesemua responden (R1 hingga R5) bersetuju bahawa pembangunan lot lidi di atas tanah berkategori pertanian berdepan dengan isu-isu yang lebih serius berbanding dengan tanah berkategori bangunan dan industri serta tanah bersyarat nyata *First Grade*. Faktor-faktor yang menyebabkan tanah berkategori pertanian berdepan dengan isu-isu yang lebih serius

adalah seperti berikut:

i. nama pembeli tidak boleh didaftarkan di dalam dokumen hakmilik. R1, R2 dan R4 menyatakan bahawa subseksyen 205 (3) KTN membataskan pendaftaran nama pembeli lot lidi di dalam dokumen hakmilik. R2, R3, R4 dan R5 bersetuju bahawa kegagalan ini menyebabkan pemilikan pembeli boleh disangkal dan tidak dijamin di bawah seksyen 340 KTN. Hal ini akan membawa kepada penafian hak-hak pembeli di bawah seksyen 44 dan 92 KTN.

ii. pembinaan kediaman di atas tanah berkategori pertanian terjumlah kepada pelanggaran syarat tanah. R1, R2 dan R4 menyatakan bahawa pembinaan tersebut bertentangan syarat tersirat tanah yang dikategorikan sebagai pelanggaran syarat di bawah seksyen 125 KTN. Kesemua responden bersetuju bahawa pelanggaran syarat ini tertakluk kepada perampasan tanah di bawah seksyen 127 KTN.

R2 dan R4 menyatakan bahawa pembangunan lot lidi di atas dua (2) kategori tanah iaitu tanah berkategori bangunan dan tanah bersyarat nyata *First Grade* tidak terkesan dengan isu pemilikan berdaftar di atas nama pembeli dan isu pelanggaran syarat. Nama pembeli boleh didaftarkan di dalam dokumen hakmilik sekaligus menjamin hak pembeli yang tidak boleh disangkal di bawah seksyen 340 KTN. Pembeli juga tidak berdepan dengan isu pelanggaran syarat kerana membina kediaman di atas tanah-tanah tersebut. Manakala, bagi pembangunan lot lidi di atas tanah berkategori industri, R1, R2, R4 dan R5 menyatakan bahawa pembeli hanya berdepan dengan isu pelanggaran syarat yang mana isu ini boleh diselesaikan melalui permohonanan tukar syarat di bawah seksyen 124 KTN oleh pembeli-pembeli selaku tuan tanah berdaftar. Di dalam pembangunan lot lidi di atas tanah industri, hak pembeli tidak boleh disangkal kerana nama-nama pembeli boleh didaftarkan di dalam dokumen hakmilik dan tidak tertakluk kepada mana-mana batasan di dalam KTN.

5. KESIMPULAN

Hasil dapatan kajian ini mendapati bahawa pembangunan lot lidi di atas tanah berkategori pertanian berdepan dengan isu-isu yang lebih serius melibatkan pendaftaran pemilikan di dalam dokumen hakmilik dan pelanggaran syarat tanah. Kedua-dua isu ini melibatkan hak pembeli boleh disangkal seterusnya tidak menjamin pemilikan yang sah di pihak pembeli. Pembeli berdepan dengan kerugian apabila pembelian yang dibuat tidak menjamin sebarang hak yang sah di sisi undang-undang. Melalui kajian ini, pembangunan lot lidi di atas tanah pertanian dilihat memberikan kesan yang buruk kepada pembeli apabila pembangunan sebegini tidak patuh kepada perundangan tanah berbanding dengan tanah berkategori bangunan dan tanah bersyarat nyata *First Grade*.

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SEMAKAN LANDSKAP KAWALAN PERUNDANGAN FASAL PENGECUALIAN DI MALAYSIA

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Abstrak

Pasaran globalisasi menyaksikan fenomena pengecualian liabiliti yang merupakan sebahagian daripada evolusi perdagangan tidak adil abad ke-21. Alat paling utama yang digunakan bagi melepaskan diri peniaga daripada liabiliti adalah melalui fasal pengecualian dalam kontrak pengguna. Senario yang berpunca daripada kegagalan pasaran yang membiarkan fasal pengecualian semakin berleluasa menagih penyelesaian segera. Keperluan masyarakat moden merupakan sesuatu yang kompleks dengan pelbagai isu rumit dan sukar ditafsirkan mengikut acuan perundangan lama berdasarkan *common law*. Penyelidikan ini dijalankan bertujuan untuk mengupas beberapa perundangan sedia ada di Malaysia iaitu, Akta Kontrak 1950, Akta Jualan Barangan 1957, dan Akta Pelindungan Pengguna 1999. Ketiga-tiga akta ini dibimbangi tidak berupaya menangani ketidakadilan fasal pengecualian dalam kontrak pengguna kerana fasal ini bersifat manipulatif dan digunakan sebagai senjata penindasan memandangkan terma-terma fasal ini tidak tertakluk pada rundingan antara pihak-pihak yang berkontrak.. Penyelidikan ini merupakan penyelidikan doktrinal yang mengguna pakai metode analisis kandungan, berpaksikan tiga pendekatan utama iaitu sejarah, jurisprudens, serta analitis dan kritis. Kertas kerja ini mengupas beberapa peruntukan yang terdapat dalam empat akta sedia ada, bagi mengenalpasti sejauh mana kawalan perundangan fasal pengecualian dalam kontrak pengguna diperlukan. Permasalahan kajian menunjukkan terdapatnya kelompangan kawalan perundangan yang minimum dan terhad walaupun ada peruntukan terma tidak adil dalam Bahagian IIIA Akta Pelindungan Pengguna 1999. Ketiadaan peruntukan perundangan yang spesifik mencetuskan keperluan perundangan yang signifikan dalam menangani krisis ledakan fasal pengecualian. Hasil dapatan penyelidikan ini jelas menunjukkan bahawa penambahbaikan peruntukan kawalan perundangan yang spesifik dengan menghasilkan satu kerangka perundangan yang khusus berupaya mengatasi ketidakadilan fasal pengecualian dalam kontrak pengguna di Malaysia. Kajian akan datang wajar mengambil kira intervensi kehakiman dalam menginterpretasikan konsep keadilan dan kesamarataan kuasa berundingan serta tidak semata-mata bergantung kepada konsep kebebasan berkontrak.

Katakunci: Fasal pengecualian, terma tidak adil, Akta Kontrak 1950, Akta Jualan Barangan 1957, Akta Pelindungan Pengguna 1999

1. Pengenalan

Dasar atau polisi sesebuah negara menentukan pembentukan statut dan perundangan melalui penggubalan akta. Polisi awam dan kebergantungan kepada *common law* memberikan kesan kepada sesuatu kontrak yang akan diberi pertimbangan sewajarnya oleh Mahkamah. Ketiadaan peruntukan perundangan spesifik menangani fasal pengecualian di Malaysia menyebabkan mahkamah mengaplikasi *common law* yang merupakan sebahagian dari sistem perundangan English (Baksh & Arjunan, 2005).

Keunikan fasal pengecualian ini adalah kerana fasal ini tiada peruntukan kawalan perundangan secara khusus dan hanya mahkamah yang menentukan kesahan fasal ini (Vaqari, 1998). Bahkan di kebanyakan negara yang mengamalkan *common law* mengakui bahawa peruntukan sedia ada tidak memadai

melindungi kepentingan pengguna yang sememangnya mempunyai kedudukan ketidakseimbangan kuasa perundingan (Vohrah & Wu, 2000).

2. Kajian Literatur

A) Pendekatan Kawalan Perundangan Fasal Pengecualian: Akta Kontrak 1950 [Akta 136]

Ketiadaan kawalan fasal pengecualian dalam Akta Kontrak (AK) 1950 (*Contracts Act 1950*) yang merupakan sumber primer perundangan negara berasaskan prinsip *common law* di mana Akta ini tidak mengawal terma-terma kontrak. AK 1950 bukanlah merupakan satu kodifikasi kerana tidak menyentuh setiap aspek undang-undang kontrak (Vohrah & Wu, 2000) tetapi sekadar akta penyatuan. Justeru, AK 1950 tidak lengkap kerana terdapatnya lakuna di dalam akta ini yang perlu diremedikan dengan penggubalan statut oleh Parlimen selain adat dan undang-undang tempatan ke dalamnya. AK 1950 tidak memperihalkan atau mengawal fasal pengecualian dan interpretasi terma tidak adil (Yusoff & Abdul Aziz, 2009)

B) Pendekatan Kawalan Fasal Pengecualian: Akta Jualan Barangan 1957 [Akta 382]

Akta Jualan Barangan (AJB) 1957 bukanlah sebuah Akta yang menyeluruh merangkumi kesemua prinsip-prinsip Undang-undang kontrak am berkaitan dengan jualan barang-barang (Yusoff, 2000). AK 1950 terpakai menurut Seksyen 3, sekiranya terdapat kelompangan dan tidak bercanggah dengan mana-mana peruntukan yang terkandung dalam AJB 1957 (Lee et al., 2020).

Dalam era globalisasi, AJB 1957 yang berpaksikan *market individualism* dan bukan berlandaskan *consumer welfarism* gagal mengambilkira ketidakseimbangan kuasa di antara peniaga dan pengguna dengan menggunapakai seksyen 62 AJB 1957 yang menjadi immuniti dan kekebalan kepada peniaga untuk melepaskan liabiliti terhadap terma tersirat yang terkandung dalam seksyen 14-17 AJB 1957. Faktor terpenting dalam doktrinal undang-undang kontrak moden adalah ujian 'kemunasabahan' sebagai kayu pengukur penerapan keadilan dalam kontrak (Yusoff, 2000). Bahkan, seksyen 62 membenarkan para peniaga menggunakan fasal pengecualian terma tersirat dan syarat dengan "perjanjian tersurat" (Yusoff & Abdul Aziz, 2009). Dalam konteks jualan barangan, fasal pengecualian dibenarkan di bawah seksyen 62 AJB 1957.

C) Akta Pelindungan Pengguna 1999 [Akta 599]

Akta Pelindungan Pengguna (APP) 1999 bermatlamatkan perlindungan pengguna, digubal bertujuan memenuhi kelompangan yang ada dalam akta-akta sebelumnya berhubung dengan aspek-aspek perlindungan pengguna secara komprehensif. Seksyen 24B menyatakan bahawa pemakaiannya masih tertakluk kepada AK 1950, Akta Relief Spesifik 1950 [Akta 137] dan AJB 1957 [Akta 382] yang masih belum mengalami perubahan seiring dengan kepentingan pengguna. Memandangkan pindaan ini untuk kepentingan pengguna, maka seharusnya definisi 'kontrak pengguna' diperuntukkan selepas definisi kontrak dalam seksyen 24A.

Selain itu, "Terma tidak adil" ditakrifkan di bawah seksyen 24A(c) sebagai:
Terma dalam kontrak pengguna, dengan mengambilkira semua hal keadaan, menyebabkan ketidakseimbangan yang signifikan dalam hak dan tanggungjawab pihak-pihak di bawah kontrak itu sehingga merugikan pengguna.

Cadangan Abdul Aziz (2008), adalah dengan memasukkan definisi terma-terma tak saksama dalam perundangan kontrak bentuk seragam. Ini kerana terma-terma tak saksama yang lazim wujud dalam kontrak bentuk seragam termasuklah fasal-fasal pengecualian dan terma-terma lain yang boleh dikategorikan sebagai terma tak saksama dalam kontrak serta pihak yang bertanggungjawab dalam menguatkuasakan terma-terma tak saksama dalam kontrak bentuk seragam.

Jika bersandarkan semata-mata kepada definisi 24A(c), menyulitkan Tribunal untuk mengenal pasti apakah yang ditakrifkan dengan mengambilkira *semua keadaan*, apakah yang dimaksudkan dengan *ketidakseimbangan yang signifikan* dan sejauh mana *kerugian yang dialami oleh pengguna* dinilai dan

diiktiraf. Ternyata, definisi yang terlalu umum ini sukar untuk dibuktikan oleh Tribunal atau mahkamah. Maka definisi seksyen 24A(c) berhubung 'terma tidak adil' yang kurang jelas disebabkan terlalu umum tanpa diperihalkan melalui nota kaki atau bidai seperti contoh dan penerangan terperinci dibimbangi sukar untuk dibuktikan kepincangan kontrak pengguna yang merugikan pengguna.

Peruntukan seksyen 24C (1) yang mendefinisikan sebagai:

"Sesuatu kontrak atau terma kontrak adalah tidak adil dari segi tatacaranya sekiranya kontrak atau terma kontrak itu menyebabkan kelebihan yang tidak adil kepada pembekal atau kerugian yang tidak adil kepada pengguna akibat perlakuan pembekal atau cara atau hal keadaan bila mana kontrak atau terma kontrak telah dibuat atau dicapai antara pengguna dan pembekal."

Di sini, penilaian ketidakadilan prosedur bergantung kepada sama ada kelebihan yang tidak adil kepada pembekal atau kerugian yang tidak adil dialami oleh pengguna. Seksyen 24C(1) secara amnya tidak memberikan garispanduan bagaimana ujian menentukan ketidakadilan dari segi tatacara seperti yang diperuntukkan dalam seksyen 24C(1) di mana ianya tidak dinyatakan elemen suci hati dan ketidakseimbangan yang signifikan.

Terdapat sebelas keadaan dalam seksyen 24 (2) (a) – (k) disenaraikan sebagai ketidakadilan dari segi tatacara. Di sini terdapat penekanan statut menzahirkan enam keadaan yang lebih tertakluk kepada pengguna iaitu terhadap sejauh mana pengetahuan pengguna [Seksyen 24C(2)(a)], kekuatan tawar menawar pengguna [Seksyen 24C(2)(b)], kuasa perundingan penguna terhadap kontrak atau terma kontrak [Seksyen 24C(2)(e)], tahap kekompeten pengguna berdasarkan keupayaan dan kewarasan akal fikiran pengguna samada mampu melindungi kepentingannya sendiri atau mengalami kerugian yang serius disebabkan faktor fizikal: umur lanjut, keuzuran, ketidakupayaan fizikal, mental, pendidikan atau linguistik sehingga ke tahap tekanan emosi atau kejahilan dalam urusan perniagaan [Seksyen 24C(2)(g)], sama ada pengguna menerima nasihat perundangan sebelum memasuki kontrak [Seksyen 24C(2)(h)], sama ada pengguna dijelaskan secara terperinci oleh mana-mana orang, dan pengamatan dan kebergantungan pengguna kepada kemahiran, pengurusan dan nasihat pembekal [Seksyen 24C(2)(k)].

Justeru, langkah paternalisme dianggap sebagai keprihatinan kerajaan terhadap keterbatasan keupayaan pengguna menilai sesuatu maklumat, terma kontrak dan kontrak dalam keadaan kegagalan pasaran (*market failure*), monopoli peniaga serta kebanjiran peniaga yang tidak beretika, semata-mata mengejar keuntungan tanpa memikirkan kepentingan dan kebajikan bersama-sama dengan pengguna (Abdullah et al., 2021).

3. Metodologi

Penyelidikan ini menggunakan tiga pendekatan penyelidikan undang-undang, iaitu, pendekatan sejarah, pendekatan falsafah, dan pendekatan analitis serta kritis (Walker, 1997). Mengguna pakai pendekatan analisis kandungan *(content analysis),* penyelidikan ini menggunakan dua jenis data, iaitu data primer yang terdiri daripada perundangan (statut) serta undang-undang kes dan data sekunder yang meliputi dokumen perundangan seperti jurnal atau rencana dalam laporan undang-undang, kertas kerja seminar, buku rujukan undang-undang dan sebarang dokumen undang-undang berkaitan (Hutchinson, 2006).

Dalam konteks penyelidikan ini, pendekatan sejarah digunakan untuk mengkaji perkembangan undang-undang kontrak dan perlindungan pengguna. Pendekatan falsafah digunakan untuk mengkaji dasar konsep undang-undang kontrak dan perlindungan pengguna dalam kawalan terma tidak adil dan fasal pengecualian. Metodologi perbincangan adalah bergantung pada pendekatan analitis dan kritis. 'Analitis' bermaksud menilai sesuatu kes, konsep, peraturan atau institusi undang-undang dan 'kritis' pula bermaksud mengadili sesuatu perkara itu secara berhati-hati, melahirkan pendapat berhubung sesuatu isu dan mengiyakan atau menolak sesuatu itu berdasarkan autoriti dan asas yang rasional (Yaqin, 2007). Susulan itu, mencadangkan, mengganti, menarik balik undang-undang, konsep atau institusi yang lepas. Justeru, pada hakikatnya, analitis dan kritis ini boleh disatukan sebagai satu pendekatan undang-undang yang saling berkaitan dalam menghasilkan satu penyelidikan yang mantap dan praktikal. Pendekatan

sebegini digunakan dalam mengenal pasti permasalahan-permasalahan fasal pengecualian dalam kontrak peniaga-pengguna. Pendekatan ini merupakan pendekatan yang penting dalam setiap penyelidikan undang-undang.

4. Dapatan dan Perbincangan

Setiap perubahan dalam korpus undang-undang, berdasarkan penambahbaikan layanan perundangan melalui penggubalan akta khusus dan spesifik menangani terma tidak adil khususnya fasal pengecualian yang bersifat umum merangkumi kedua-dua jenis atau kategori kontrak iaitu kontrak antara peniaga dan pengguna dan kontrak sesame peniaga memandangkan fasal pengecualian umumnya bersifat holistik. Maka, adalah menjadi kewajaran membuat pindaan akta sedia ada dengan meminda perundangan yang sedia ada yang ternyata mempunyai kelompangan (Abdullah, 2019).

Kedua-dua pihak yang berkontrak bebas merundingkan terma-terma kontrak yang mereka persetujui kerana mereka yang akan melaksanakan kontrak tersebut mengikut persetujuan terma yang telah termeterai. Amalan sebegini berleluasa dengan kewujudan fasal pengecualian dalam kontrak peniaga-pengguna dalam pasaran yang mana fasal ini dirangka oleh satu pihak sahaja iaitu peniaga. Pengguna yang mempunyai kuasa rundingan yang rendah, sukar memperoleh kebebasan dalam memilih terma kontrak yang menjadikan kontrak dimasuki berat sebelah atau lebih memihak kepada peniaga (Zulhafiz & Abdul Rahman, 2020). Pengguna tidak mempunyai kebebasan yang sama seperti peniaga, yang mana pengguna sukar untuk membantah atau mempersoalkan fasal pengecualian dalam kontrak peniaga-pengguna. Justeru itu, peniaga mendominasi terma kontrak termasuk fasal pengecualian (Abdul Razak & Abd Ghadas, 2020).

Ciri dan sifat fasal pengecualian memaparkan kewujudan elemen ketidakseimbangan kuasa perundingan. Dalam kontrak peniaga-pengguna, apabila pengguna tidak mempunyai pilihan lain dalam kontrak selepas diberi kata dua atau terima atau tolak (‘*take it or leave it’*), pengguna berada dalam dilema untuk menerima segala terma kontrak termasuk fasal pengecualian sama ada diketahui akan akibatnya atau sebaliknya. Justeru, daripada peruntukan AK 1950 yang tidak menyentuh kandungan kontrak, terma dan ketidakadilan substantif, AK 1950 bukan benteng pelindung kepada pengguna semasa berdepan dengan amalan fasal pengecualian yang menafikan hak dan remedi pengguna terhadap peniaga (Abdullah, 2019). AK 1950 ini juga tidak memperuntukkan sebarang proviso berkenaan fasal pengecualian. Ketiadaan peruntukan perundangan spesifik menangani kontrak tidak adil di Malaysia, terutama yang melibatkan penyalahgunaan fasal pengecualian mengundang penyelesaian segera. Ini disebabkan AK 1950 tidak memperuntukkan sebarang proviso berkenaan isu-isu spesifik terutama pertikaian melibatkan keadilan substantif seperti isi kandungan kontrak yang tidak adil atau pengawalan fasal pengecualian.

AK 1950 mengkoordinasi pembentukan kontrak dan prinsip asas dalam undang-undang kontrak. Justeru, ia tidak mempunyai peruntukan yang khusus menangani isi kandungan kontrak atau terma kontrak itu sendiri. Oleh itu, tidak timbul klausa mana yang menghadkan atau mengelakkan liabiliti, klausa-klausa yang mengintegrasikan terma-terma dalam dokumen ke dalam kontrak. Kekangan ini telah menjustifikasikan intervensi kehakiman Malaysia yang telah mengangkat kesahan klausa-klausa yang dianggap tidak adil kepada pengguna telah dilihat sebagai satu pendekatan yang wajar. Walaupun AK 1950 dianggap sebagai sumber primer yang mengawal kontrak, namun AK 1950 mempunyai kelompangan menangani terma tidak adil terutama fasal pengecualian dan kontrak bentuk seragam. Hakikatnya, Malaysia tiada peruntukan khusus menangani fasal pengecualian, maka prinsip *common law* Inggeris masih terpakai (Abdullah, 2019).

Mahkamah di Malaysia berkecenderungan menggunapakai prinsip-prinsip common law yang berusaha mengimbangi kebebasan berkontrak dan perlindungan pihak yang kurang dominan seperti para pengguna, mengenalpasti fasal pengecualian yang munasabah atau keterlaluan apabila berhadapan dengan kemelut fasal pengecualian serta penafsirannya dalam kontrak (Yusoff & Abdul Aziz, 2009). Prinsip *common law* yang mengawal fasal pengecualian dengan memperkenalkan liabiliti utama bagi mengawal ledakan fasal pengecualian secara ketat. Seksyen 62 AJB 1957 ternyata bercanggah dengan aspirasi dan pengamatan *common law* yang enggan membenarkan pihak berkontrak mengecualikan liabiliti melalui pendekatan

memasukkan fasal pengecualian di dalam kontrak. Cadangan Yusoff & Abdul Aziz (2009) bahawa seksyen 62 AJB 1957 supaya dibatalkan kerana bercanggah dengan aspirasi kepentingan pengguna ternyata ada kewajarannya. Kaitan antara kesan fasal pengecualian dengan peruntukan seksyen 62 AJB 1957 membenarkan peniaga untuk berkontrak keluar daripada peruntukan-peruntukan di bawah AJB dengan membenarkan penggunaan fasal-fasal pengecualian. Justeru, AJB 1957, telah membuka ruang seluas-luasnya kepada pembekal dan peniaga untuk melepaskan diri daripada liabiliti dalam fasal pengecualian yang memihak kepada mereka. Kesempatan seumpama ini bagaimanapun tidak terpakai kepada pengilang kerana AJB 1957 hanya terpakai kepada perjanjian kontrak di antara peniaga dan pengguna, bukannya pengilang.

Kesimpulannya berhubung penggunaan fasal pengecualian dalam skop AJB 1957 adalah, walaupun tujuan utama penguatkuasaan perundangan adalah untuk merungkaikan dan menyelesaikan persoalan berhubung jualan barang-barang, AJB 1957 bukanlah suatu perundangan yang berorientasikan perlindungan pengguna. Peruntukan seksyen 62 AJB 1957 jelas memperlihatkan satu bukti jelas anti kepenggunaan dan menyebelahi kepentingan peniaga sekaligus bersifatkan penindasan pengguna (Abdul Aziz & Yusoff, 2010). AJB 1957 di bawah seksyen 62 membenarkan penjual di bawah terma nyata kontrak untuk mengelakkan semua syarat tersirat yang distatutorikan. Perlindungan pengguna mengkehendaki seksyen 62 ini dimansuhkan. AJB 1957 telah membenarkan penggunaan fasal-fasal pengecualian yang menjadi amalan kontrak pengguna dan kontrak komersial. Ini menunjukkan bahawa pelaksanaan fasal pengecualian masih memerlukan kepada satu layanan perundangannya yang tersendiri bagi mengenalpasti terma-terma fasal pengecualian yang yang melampau, sekaligus melarang penggunaan fasal-fasal pengecualian yang kerapkali disalahgunakan oleh peniaga (Yee & Abdul Razak, 2019).

Dalam APP 1999, masih tidak lekang daripada kelemahan, terutamanya yang melibatkan perlindungan pengguna menangani kemelut fasal pengecualian yang melepaskan liabiliti peniaga dalam kontrak pengguna. Walaupun bahagian 6 APP 1999 melarang pengecualian liabiliti peniaga, ianya gagal untuk merangkumi spektrum yang luas dari klausa pembebasan yang ada dalam kontrak pengguna. Kekangan statututori ini memperlihatkan kelemahan yang ketara. Kerana tertakluk kepada seksyen 2 (4) bahawa APP 1999 adalah bersifat tambahan tanpa mengurangkan undang-undang lain berkaitan dengan hubungan kontrak (Abdullah, 2019).

APP 1999 hanya tertumpu kepada aspek perdagangan seperti produk, perkhidmatan dan mekanisme penyelesaian pertikaian perdagangan tanpa melindungi aspek penting perlindungan pengguna seperti terma tak saksama seperti fasal pengecualian dan kontrak bentuk seragam. Ini mengakibatkan penguatkuasaannya yang terhad dan tidak menyeluruh dalam usaha melindungi pengguna gagal dalam menerapkan kemelut terkini global yang seharusnya menjadi paksi utama dalam penggubalannya (Abdul Aziz, 2008). Manakala seksyen 24A (c) mendefinisikan 'terma tidak adil' sebagai terma dalam kontrak peniaga-pengguna, dengan mengambil kira semua hal keadaan, menyebabkan ketidakseimbangan yang signifikan dalam hak dan tanggungjawab pihak-pihak di bawah kontrak itu sehingga merugikan pengguna (Che Hashim, 2019). Persoalannya, apakah yang dimaksudkan dengan "…dengan mengambil kira semua hal keadaan" dan sejauah mana "ketidakseimbangan yang signifikan" sampai ke tahap "…sehingga merugikan pengguna"? Definisi yang terlalu umum antara salah satu kelemahan Akta ini (Abdullah, 2019). Ini merupakan antara persoalan-persoalan yang tidak dijawab oleh Bahagian IIIA APP 1999.

Keadaan ini akan mendedahkan kepada pelbagai tafsiran dalam tuntutan Tribunal akan menyukarkan pemahaman dan perlaksanaan pada peringkat penguatkuasaan. Menurut Yee & Abdul Razak (2019), hakim perlu mengambil kira doktrin ketidakseimbangan kuasa berunding antara peniaga dan pengguna dalam menentukan kesahan klausa dalam kontrak dimasukkan dalam perundangan kerana konsep kebebasan berkontrak memasuki kontrak tidak lagi relevan pada marcapada ini.

Ketidakadilan fasal pengecualian terhadap pengguna telah menyebabkan pindaan APP 1999 pada 2010 dengan memasukkan Bahagian IIIA Terma Tidak Adil mengandungi 10 seksyen yang terdiri daripada seksyen 24A-24J. Walaupun Bahagian IIIA baik kepada perlindungan pengguna tetapi terdapat pelbagai permasalahan dalam interpretasi dan pengamalannya seperti yang dinyatakan di bawah ini. Daripada segi

peruntukannya, Bahagian IIIA APP 1999 ini kelihatan tidak mengawal penyalahgunaan fasal pengecualian dalam bentuk notis. Walaupun layanan perundangan dalam kontrak bentuk seragam wujud, namun fasal pengecualian yang wujud dalam notis-notis turut memerlukan campur tangan perundangan. Pasaran memanipulasi terma bukan sahaja dalam kontrak bentuk seragam, bahkan dalam notis kepada pengguna. Bahagian IIIA Terma Tidak Adil, APP 1999 masih belum berupaya menangani fasal pengecualian secara keseluruhan. Oleh itu, kepincangan perundangan memerlukan kepada inti pati perundangan sebagai penyelamat kepada ketempangan yang ditonjolkan dalam inti pati kontrak sejajar dengan aspirasi yang dibawa oleh ideologi kebajikan pengguna. Analisis seterusnya adalah berdasarkan seksyen-seksyen yang terkandung dalam APP 1999 yang disusun berdasarkan aspek-aspek penting Bahagian IIIA.

Seksyen 24A membincangkan tentang tafsiran bagi pemakaian Bahagian IIIA. Dua kepincangan yang jelas ialah berhubung tafsiran kontrak bentuk seragam dan terma tidak adil. Berkenaan tafsiran kontrak bentuk seragam, realitinya kontrak peniaga-pengguna tidak terhad kepada kontrak bentuk seragam sahaja (Abdul Razak et al., 2022). Sebahagian besar kontrak peniaga-pengguna merupakan kontrak tidak formal yang mana terma-terma tidak adil terkandung dalam notis dan resit. Bahagian IIIA tidak membincangkan notis dan kontrak yang bukan bentuk seragam seperti kontrak lisan. Persoalannya, adakah Bahagian IIIA terpakai dalam situasi begini? (Abdul Razak et al., 2022).

Selepas dikenal pasti terma tidak adil, maka beban pembuktian terletak di pihak pembekal yang bersandar kepada ’ketiadaan peruntukan atau penghadan membuktikan bahawa ketiadaan peruntukan atau pengehadan tidak dibuat tanpa melainkan justifikasi yang kukuh’ seperti diperuntukkan di bawah seksyen 24E, APP (Pindaan 2010). Kaedah ini mengambil prinsip contra proferentum di mana mahkamah akan mengamalkan prinsip interpretasi tegas menginterpretasi perkataan dokumen bertulis terhadap pihak yang menggubal terma kontrak itu dalam situasi tidak jelas (*ambiguity*) atau terdapat keraguan, maka mahkamah akan menginterpretasi frasa yang meragukan itu terhadap pihak yang bergantung kepada fasal pengecualian bagi kebaikan satu pihak lain dalam kontrak (Alsagoff, 2003).

Secara amnya, penggubalan APP (Pindaan 2010) dilihat tepat pada masanya. Seksyen 24J memperuntukkan bidang kuasa kepada Menteri bagi membuat sebarang peraturan-peraturan berkaitan dengan terma kontrak tidak adil yang difikirkan perlu atau suai manfaat berkenaan Bahagian ini. Namun, dari sudut pemahaman dan penguatkuasaan pengecualian liabiliti, ianya masih belum berupaya memerangi penggunaan fasal pengecualian dalam kontrak-kontrak pengguna yang dianggap sebagai satu ketidakadilan yang substantif (Abdullah et al., 2021). Maka, kebajikan pengguna dalam era globalisasi perlu dikaji dengan mengambil kira scenario perdagangan moden dengan lebih kritis dan analitis dari segi keadilan tatacara kdan substantif (Abdul Razak & Abd Ghadas, 2023) secara spesifik. Sehubungan itu, kawalan fasal ini memerlukan satu undang-undang khusus untuk menangani pengecualian liabiliti (Abdullah, 2019).

5. Kesimpulan

Polemik fasal pengecualian yang berat sebelah dan anti-pengguna dilihat sebagai satu halangan dan kekangan kepada perlindungan pengguna dalam era globalisasi. Dalam menggubal undang-undang yang dikhususkan untuk fasal pengecualian, takrifan beberapa terma dan perkataan haruslah dibuat dengan teliti dan diterjemahkan dengan berkesan bagi menjamin keberkesanan perundangan yang dicadangkan. Tafsiran yang tepat juga dapat mengelak daripada timbulnya isu-isu yang diakibatkan oleh kekaburan dan kesamaran sesuatu terma atau perkataan yang ditakrifkan. Justeru, semakan lanskap perundangan yang sedia ada harus dikaji demi memberikan keadilan dalam berkontrak. Pengubalan perundangan khusus bagi menangani permasalahan fasal pengecualian dalam kontrak pengguna dilihat sebagai satu penambahbaikan yang amat relevan dalam membanteras terma tidak adil khususnya, fasal pengecualian. Perundangan berperanan sebagai perisai yang digunakan bagi memperoleh keadilan substantif dan tatacara. Justeru, dalam mengatasi dilema ini, penambahbaikan melalui perundangan sedia ada amat diperlukan sebagai pemangkin yang berupaya menyeimbangkan perbezaan jurang kuasa perundingan.

Sumber undang-undang utama, AK 1950, sepatutnya boleh menangani semua isu berkaitan liabiliti kontrak kerana ia bersifat umum. Walau bagaimanapun, hakikatnya AK 1950 tidak merangkumi semua tuntutan, seperti tuntutan pengecualian liabiliti. Sementara itu, akta-akta sampingan yang lain masih tertakluk kepada kelompangan perundangan yang lebih komprehensif berkenaan dengan fasal pengecualian. Penguatkuasaan perundangan yang efektif berperanan sebagai salah satu mekanisme yang signifikan dalam mempengaruhi keberkesanan penggubalan perundangan. Penggubalan suatu perundangan spesifik menangani permasalahan kawalan perundangan fasal pengecualian ini merupakan penyelesaian bertujuan melindungi hak kontraktual pengguna kesan daripada ketidakadilan pemakaian fasal pengecualian.

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AN OVERVIEW OF THE PRINCIPLE OF SEPARATE LEGAL ENTITY FROM ISLAMIC PERSPECTIVE

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Abstract

The incorporation of a company is the result of an association between a few people (shareholders) who contribute a certain sum of money with the same objective of maximising profits through a platform called "company". Upon incorporation, there will be a separate entity of a company different from the original members who associated themselves to be the shareholders of the company. Although common law recognises the principles of separate legal entity in a company, the same is not recognised from the Islamic point of view since Islamic teaching only recognises the 'real' entity, a natural person contrary to common law which recognises a legally fictitious person. Research on the principle of separate legal entity from the Islamic perspective is sparse. This paper aims to explore the principle of separate legal entity from the Islamic point of view. This research found that although the principle of separate legal entity is not recognise under Islamic law, there is evidence that modern Muslim jurists have accepted the principle in Islam with careful treatment, and adherence to certain conditions to be in line with the Shariah Law. The outcome of this study adds valuable insights into legal knowledge, particularly in corporate law and Islamic Law.

Keywords: the principle of separate legal entity, Shariah law, company, legal *persona*,

1. INTRODUCTION

The incorporation of a company is the result of an association between a few people (shareholders) who contribute a certain sum of money with the same objective of maximizing profits through a platform called "company". The company is a statutory creation, and registration of such body corporate is made at the Registrar of Companies. A company is a recognised body under the law and is able to commence business subject to the provision of the Malaysia Companies Act 2016 (CA 2016), a revamped statute from the previous Malaysia Companies Act 1965. Section 9(c) of the CA 2016 allows companies to be incorporated with a minimum of one person. The moment a company is incorporated, there will be a shield known as the 'corporate veil' which protects the members and officers of the company from the company's debts and obligations (Hameed, 2012; Ng & Chang, 2021).

Upon incorporation, a company has its own legal entity. This means that once a company is formed, there will be a separate entity of a company different from the original members who associated themselves to be the shareholders of the company. The principle of separate legal entity is derived from a United Kingdom (UK) common law case *Salomon v Salomon Co. Ltd.* (1897) where the House of Lords established a principle that a company and its members are separate persons. Lord MacNaghten in the case stated:

> The company is at law a different person altogether from the subscribers to the memorandum; and, though it may be that after incorporation the business is precisely the same as it was before, and the same persons are managers, and the same hands receive the profits, the company is not in law the agent of the subscribers or trustee for them. Nor are

> the subscribers as members liable, in any shape or form, except to the extent and in the manner provided by the Act (p. 51)

The aforesaid principle propounded by Lord MacNaghten was codified in section 20 of the Malaysia CA 2016 which provides that the moment a company is incorporated, the company has a distinct personality, separate from its members and continues to exist until it is removed from the register.

Lord Buckley LJ in the case of *Continental Tyre & Rubber Company (Great Britain) Limited v Daimler Company Limited* (1915) stated:

> "The artificial legal person called the corporation has no physical existence. It exists only in contemplation of law. It has neither body, parts, nor passion. It cannot wear weapons nor serve in the wars. It can be neither loyal nor disloyal. It cannot compass treason. It can neither friend nor enemy. Apart from its corporators, it can have neither thoughts, wishes, nor intentions, for it has no mind other than the minds of the corporators" (p. 916).

Lord Buckley's statement proved that although a company does not physically exist, a company has a legal *persona* in line with section 21 of the CA 2016 which amongst others the ability of the company to sue and be sued, to own and dispose of property and to be able to enter transactions with rights and obligations. The recognition of the principle of separate legal entity has continued since its inception until today. The principle of separate legal entity refers to companies or corporations which are incorporated pursuant to the legislation, i.e. CA 2016. Quite a number of companies in Malaysia have adopted Shariah Compliance principles in their business, especially Islamic banks and this raises the question of the reconciliation between the principles and the adaptation of Shariah law in the business. A lot of studies and cases have referred to the principle of separate legal entity, however, studies on the principle of separate legal entity from the Islamic perspective are sparse. Hence, this paper aims to explore the principle of separate legal entity from the Islamic point of view. The outcome of this study adds valuable insights into legal knowledge, particularly in corporate law and Islamic Law.

2. LITERATURE REVIEW

Different types of companies are provided under sections 10 and 11 of the CA 2016. Despite various types of companies, the legal concept for all remains the same, i.e. the principle of separate legal entity. The law in Malaysia recognises the principle of separate legal entity in a company based on the landmark case of *Salomon v Salomon Co. Ltd.* (1897). The same concept of company does not exist in Shariah Law. Shariah Law only recognises *Shirkah,* an arrangement between two or more people for participation in a capital and its profit (Hafeez, 2013b). The concept of *Shirkah* can be said to be similar to a partnership, i.e., the association of partners among themselves to have a business in order to make profits and such profits are distributed among the contracting parties as dividends of shares.

An author, Hafeez (2013a) opined that in Islam, the concept of a company is not against the injunctions of Islam, which means that it is not prohibited by Islam. The author contended that the principles of Islamic law of contract and partnership provide the comprehensive framework for commercial practice and the concept of liability had been adopted by the early jurist and not repugnant to any injunction of the Holy Qur'an and Sunnah. The author elaborated that *Bait-ul-Mal*, *Waqf* and *Masjid* are examples of Islamic incorporation and formation of legal persons since all three institutions have the characteristics of legal persons. Hasan (2013) stated that the concept of a corporation existed in the form of a limited partnership or *Syarikah al-Inan,* where the shareholders may sell their shares in the market and their liability is limited. Limited liability in *Syarikah al-Inan* is similar to section 192 of the CA 2016 where the statutory provision provides that the liability of a shareholder of a company limited by shares is limited to the unpaid amount of shares held by the shareholders. Another Islamic concept of *mudharabah* reflects many similarities with the corporation such as the transfer of shares by one shareholder to another person and the separation of ownership and control (Azrae et al., 2009)

Modern Muslim jurists have accepted the principles of separate legal entity based on the concept of *dhimmah,* the capacity to acquire and exercise rights and obligations (Hafeez, 2013a, Cheong, 2020). The modern jurists based their reasoning on the existence of *Bait-ul-Mal*, *Waqf* and *masjid* (mosque), wherein the *waqf* is an Islamic institution accepting properties from persons who gave it for charitable purposes. Once a property has been donated and declared as *waqf*, the donor is the longer the owner of the property but belongs to the *waqf* institution, which means that the *waqf* institution may own the property, thereby creating a separate legal entity (Cheong, 2020). Whilst *Bait-ul-Mal* is the treasury for the Muslim community which accepts and keeps all of the proceeds of donations, *zakah is* paid to the State. One of the Islamic jurists, Hanafi stated that *Bait-ul-Mal* has rights and obligations towards people in need and can act on its own, contrary to the beliefs of the Hanafiyyah who argued that institutions such as *Bait-ul-Mal*, *Waqf* and *masjid* are not eligible to rights and obligations (Busari et al., 2019).

3. METHODOLOGY

This study utilised doctrinal legal research which involves an analysis of legal propositions or legal concepts (Gawas, 2017). The objective of the doctrinal research for this study is to analyse the application of legal doctrines and the authoritativeness of relevant laws, cases, and principles before deriving the right decisions based on evidence extracted from the legal documents (Pradeep, 2019). The process of this study involves online library-based data collection from legal precedents and legislative interpretation, mostly obtained from readings of cases, statutory provisions, rules, regulations and other legal documents relevant to common law companies and also in relation to Shariah Law

4. RESULTS AND DISCUSSION

4.1 Common Law Perspective

An English jurist (Savigny, n.d, as cited in Abd Ghadas & Aziz, 2018) stated that the law recognised 'natural persons' and also fictitious, artificial or juristic persons such as corporations. This is contrary to the teaching of Islam, where Islamic law does not recognise corporate personality (Schacht, 1964 as cited in Busari et al., 2019), which further shows that there is no such thing as an Islamic company having a separate legal entity. Hafeez (2013a) was of the opinion that the word 'person' (which can also mean legal *persona*) referred to an individual human being, but in law, it has technical meaning in the sense of 'rights' and 'duties'.

One of the effects of incorporation of companies is the continuous existence of companies despite the death of shareholders, and the companies will continue in existence until shareholders decide to wind up the companies or the Registrar of Companies strikes off the companies' names from the register (*Re Noel Tedman Holding Pty Ltd.,* 1967; *Tan Lai v Mohamed bin Mahmud & Ors,* 1982). The continuous existence of a company is contrary to the Islamic point of view since Islam accept human beings, who can die and human can have *aql* (intellectual) and have the will to perform their own duties and obligations (Azrae et al., 2009). From the Islamic perspective, a corporation or company does not exist since Islamic law does not recognise fictitious persons compared to common law where the principle of separate legal entity has given recognition of individualism to companies as stated by Cave J in the case of *Re Sheffield & South Sheffield Yorkshire Permanent Building Society* (1889) where he said, "A corporation is a legal *persona* just as much as an individual" (p.476). Such recognition of legal *persona* can mean that the company can be treated as an individual and may enter a valid contract with anyone including its own members and officers. Companies incorporated under CA 2016, even with one member, have a separate legal entity or legal *persona*.

4.2 Islamic Law perspective

Companies in Malaysia can be the types of companies under section 10 of the CA 2016 (a company limited by shares, a company limited by guarantee or an unlimited company) or under section 11 of the CA 2016 (either a private company or a public company). Companies are managed and controlled by the board of

directors (the board) of which the shareholders can also be the directors. The board will have its duties and liabilities towards shareholders and stakeholders and make decisions during general meetings. The board comprises of directors appointed by the shareholders, and they are natural persons. Despite the argument that companies do not exist from the Islamic point of view due to the non-acceptance of 'fictitious' persons or due to the non-existent of natural persons, Hasan (2013) was of the view that Muslim jurists have accepted the concept of a corporation known as *'Shahsiyah I'tibariyah'* (juristic person) based on the principles of *qiyas* (analogy), *istihsan* (equity), *masalih mursalah* (public interest) and *dhimmah*. According to *Madhab* al-Syafie jurists, *al-Dhimmah* is an attribute of human beings with duties (*al-ilzam*) and obligations (*al-iltizam*) (Al-Kabashi, 1989 as cited in Abd Ghadas et al., 2017) which definition is also accepted by jurists of *Madhab* Maliki, Hanafi and Hanbali (Al-Buhuti, 1947 as cited in Abd Ghadas et al., 2017).

Previous studies also found that in the Islamic doctrine of *masalih mursalah* (public interest), the State may consider it essential to accept such principles of separate legal entity and allow the establishment of the corporation as a business organisation as long as it is for the benefit of the society, for example, an Islamic bank. Although *dhimmah* (duties and obligations) is only available through *insanniyyah* (being a natural person) (Ramli & Ghadas, 2019), modern Islamic jurists accept the corporation despite its fictitious legal *persona* since the State accepted corporations due to *masalih musalah*. The fact that corporations neither have heads nor hands but are being managed and controlled by the board of directors, it is submitted that the same concept is similar to *dhimmah*, where there are people who are clothed with duties and obligations.

In Islam, the only type of business that is recognised is the business of partnership or *'shirkah'* (or *sharikah*), which is a partnership between two or more persons (Abd Ghadas et al., 2018) who agree with another for some work for the purpose of profit (Susamto, 2014 as cited in Abd Ghadas et al., 2018). Since Shariah Law only recognises *Shirkah*, Table 1 summarised the characteristics of a company and a *Shirkah.*

Table 1. **Findings**

	Conventional	**Islamic**
Type of business organisation	Company	*Shirkah*
Incorporation	Incorporated pursuant to Malaysia CA 2016.	An agreement between partners to share capital for the purpose of business. In Malaysia, can register partnership with Registrar of Business.
Ownership	Shareholders	Partners
Separate Entity	Companies have a legally separate entity from the shareholders.	The business partnership has no separate entity from the partners.
Management and Control	Directors through the board of directors.	Partners.
Can the business organisation act on its own?	No, it must be done through the board of directors.	No, recognition is only on the partners.
Can the business organisation be Islamic?	No, but the directors can value and exercise the Shariah's practice.	No, but the partners can exercise the Shariah's practice.
Who has the duties and obligations?	Directors	Partners

From Table 1, there are similarities between company and *Shirkah* and one of the differences is the separate legal entity. In *Shirkah*, the partners actively manage the business, and each partner enjoys the contractual rights, benefits, powers and profits as provided under the mutual agreement subject to the customary practice or *'urf*. According to Maliki jurists, the partnership granted each other to do transactions while retaining the rights, which is similar to Hanbali jurists, where the latter defined *Shirkah* as the joining together in entitlement or the right of transaction (Mohiddin et al., 2021). The concept of corporation and *Shirkah* does not make much difference when it comes to practising the business. Both the company and *Shirkah* have the same duties and obligations. Thus, these findings are in line with the modern Muslim jurists who have accepted the principles of separate legal entity based on the concept of *dhimmah,* the capacity to acquire and exercise rights and obligations.

In Malaysia, the recognition of a legal person is only found in *Bait-ul-Mal*, *waqf* and *masjid* (Hafeez, 2013a). An example of a corporation carrying on the values of Islamic teachings in carrying business is the *waqf* corporation of Waqaf An-Nur Corporation established in 2004 by the Johor Corporation. Under this *waqf* corporation, the practice of *Waqf* (endowment) is structured into commercial corporations whereby it is compulsory for the companies to contribute to society and it is a must for them to spend a certain amount of their profit on the community (Abd Ghadas & Abd Aziz, 2017). However, there are certain modifications to be made to the corporation to ensure its compliance with the Shariah principles of business. Modern Muslim jurists are against total acceptance of the common law principle of separate legal entity, although they agree that corporate personality is generally viable, and a balance has to be struck between the non-human fictitious *persona* and the *dhimmah* under the Shariah law (Abd Ghadas & Abd Aziz, 2017). The management of the companies is civil in nature since it is being managed by the board, thus Islamic compliance can only be in the sense of the individual being the directors of the companies who have the *'aql* (intellectual capacity) of following the Islamic teaching. Thus, when the directors decided that the companies should give *zakah,* it showed that the company was following Islamic teachings and was similar to human beings.

Although there are strictly no proper Islamic corporations, there are corporations that will try as much as possible to comply with the Shariah practice. In Malaysia, the Shariah supervisory board has the authority to conduct a Shariah audit of Islamic Financial Institutions (Nidyanti & Siswantoro, 2019) to ensure compliance with the regulations, since there are a lot of Islamic banks in Malaysia. For corporation such as banks which requires Shariah compliance, funds and operations must be "segregated" from other activities of the bank (Gheeraert, 2014). To ensure compliance, organisations must go through the Shariah compliance process which is a standard procedure of ensuring the products and services offered by Islamic Financial Institutions adhere to Shariah's standards (Bin Ismail, 2018). It is submitted that Shariah compliance is only on the practice of running the business, but the main crux of the business is still the typical conventional common law company set up under the CA 2016 or the earlier CA 1965.

5. CONCLUSION

This paper attempts to explore the principle of separate legal entity from the perspective of Islam. The principle of separate legal entity derived from the common law case *Salomon v Salomon & Co. Ltd.* (1897) which had been adopted by the judiciary in court cases and codified in the Malaysian CA 2016. The principle of separate legal entity acknowledges the existence of the company on its own and its ability to do all acts as provided by section 21 of the CA 2016. The common law principle of separate legal entity was not found in the Shariah law, but modern Muslim jurists have accepted the concept of a corporation known as *'Shahsiyah I'tibariyah'* (juristic person) which is similar to the principle of a separate legal entity. Although the principle of separate legal entity is not recognised under Islamic law, there is evidence that modern Muslim jurists have accepted the principle in Islam with careful treatment, and adherence to certain conditions to be in line with the Shariah Law.

Islamic jurists acknowledge similarities of the characteristics of companies and *Shirkah* but the non-existence of the principle of separate legal entity in *Shirkah* makes companies differ. Nevertheless, Islamic values are incalculable through the practice of Shariah compliance in financial institutions such as Islamic

banks. Thus, Islamic banks can practice Shariah values through the Islamic doctrine of *masalih mursalah* (public interest) which establishment of an Islamic financial institution will benefit society. Although the company exists because it has its own legal *persona*, directors of the companies have the *'aql* (intellectual capacity) to follow Islamic values in their companies and also to adhere to the Shariah's standards set by the regulators regardless of the principle of separate legal entity. This study did not explore the governance of companies in detail which have adopted the Shariah Law elements in their business and only explored the principle of separate legal entity from the Shariah perspective, it is suggested to conduct quantitative research on companies that practice Islamic values in order to identify whether the players in the industry understand the principle of separate legal entity.

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THE JUXTAPOSITION OF APOSTASY & ABSOLUTE RIGHTS OF FREEDOM OF RELIGION: THE QUANDARY OF APOSTATE.

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Abstract

Article 11 of the Federal Constitution of Malaysia grants everyone the right to profess and practice his religion. However, Article 11(4) stipulates that federal law may control or restrict the propagation of any religious doctrine or belief among those who practice Islam. Past studies have identified that freedom of religion exists in Malaysia but not absolute. Nonetheless, there is a lack of research on safeguarding the freedom of religion pertaining to the issue of apostasy. This paper aims to explore the scope of freedom of religion pertinent to apostasy. This study employed doctrinal qualitative research using both primary and secondary data such as legislation, cases, articles, and other relevant documents. Researchers found that Malaysia should establish a clear legal framework to settle the issue of apostasy as the freedom of religion is not absolute as it appears. This study is also significant in aiding the legislators to review and revise the law accordingly and thus, will correspond to meet the needs of the citizens of Malaysia especially on the right to apostate.

Keywords: freedom of religion, apostasy, Universal Declaration of Human Rights, Federal Constitution.

1. INTRODUCTION

Article 11 of the Federal Constitution of Malaysia states, "Every individual has the right to profess and exercise his religion, and, subject to Article 11(4), to propagate it," which is a provision that is used to guarantee the freedom of religion in Malaysia. This provision clearly mentions that everyone fundamentally has the right to profess and exercise their religion and may propagate it. This freedom of religion has been given core and central protection as its application extends to every person as stated by Thoma (2004), while restriction provided in Art. 11(4) reflects the delicate balance between Muslim, minority Chinese, Indian and other races who belong to other religions whose understanding of conversion of Muslims is a sensitive matter in Malaysia. Furthermore, Article 11(1) confers personal freedom to every person in Malaysia to choose whichever religion he wishes, change their religion or relinquish religious belief without interference from government or any authority except for Muslims and those rights are absolute, entrenched and alienable.

2. LITERATURE REVIEW

Malaysia Federal Constitution demonstrates great tenderness for religious liberty, even in times of Emergency, Article 150(6A) forbids Parliament from encroaching on religious freedom. The Constitution further strengthens this notion of religious freedom in every aspect such as protection of religious freedom according to Article 3 (1) which confer that Islam is the religion of federation however any other religions may be practiced in peace and harmony.

According to Article 18 of Universal Declaration of Human Right hereinafter refer as "UDHR" which have been accepted by United Nations General Assembly on 10 December 1948 reads:

> *"Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship, and observance."*

Article 18 manifests the right to freedom of religions in the utmost universal intrinsic manner that any human being should deserve and to deny one existence would become a monstrosity violation of human rights, apparently the right of religious belief also includes the rights to change one belief in any manner of their chosen.

Freedom of religion in Islam can be viewed in two ways, either it is not absolute or absolute regarding apostasy issues. Apostasy or *Al- Riddah* means the rejection of Islam by a Muslim in favor of any other religion either through his actions or words of mouth in which it involves an act by someone whom disbelieving the religion of Islam turned for another religion as per discussed by Marican and Adil (2004). Further, Peters and De Vries (1976) viewed that an apostate is understood as a Muslim by birth or by conversion, who renounces his religion irrespective of whether he subsequently embraces another faith.

Article 11(1) and (4) was examined by Marican and Adil (2004) and the role of Islam as a faith and as law are intertwined due to requirements imposed by the Federal Constitution in dealing with the issue of apostasy. Further, the court opined as in the case of *Majlis Agama Islam Negeri Sembilan lwn Hun Mun Weng*, that a Muslim or a convert who has converted to Islam, and later decides to renounce or decided to leave the religion of Islam shall report to the Registrar of Converts in accordance to section 90(3) of Enactment No.1 of 1991 Administration of Islamic Law (Negeri Sembilan) Enactment 1991, hereinafter refer as Enactment 1991. Additionally, the Registrar of Converts shall register the decision of which until the said decision is reported and registered, that person still be treated as a Muslim. The honorable judge, Faiza Tamby Chik decided that the applicant in this case, Miss Nurul Ain Hun is still a Muslim and civil courts have no authority over matters that fall under the purview of Syariah courts.

Human Rights Commission of Malaysia also known as SUHAKAM is the national human rights institution of Malaysia. It was established by Parliament under the Human Rights Commission of Malaysia Act 1999. SUHAKAM made its official statement in 2022, stated that clause (4) of Article 11 empowers state laws and federal laws to control and restrict the propagation of any religious doctrine among persons professing religion of Islam which is deemed to be in line with Schedule 9, List II, Item 1 of Federal Constitution. Mariam Rawan Abdulla (2018) stated that freedom of religion is related to cultural expression and serves as interaction developed from religious motivation manifested in the form of arts and artifacts, which enhances the religious expression. Thus, this becomes the focus of the study as to explore the extent of freedom of religion applicable within the context of apostasy.

3. METHODOLOGY

In this study, a doctrinal research technique is utilized, and secondary sources such as journal articles are reviewed. It is a qualitative work that relies largely on information that is readily available to the public, such as reports, research, publications, case studies, and legal reports. Each source that was received was subjected to in-depth analysis to provide an authentic and accurate evaluation, which was necessary to achieve the goal of the research. Through an analysis of Malaysian Federal Constitution and Syariah law on apostasy, as well as a comparison of these two bodies of law to the Universal Declaration of Human Rights. Secondary sources for this study include reference to books, articles, online journals and newspapers.

4. RESULTS AND DISCUSSION

Article 11 gives constitutional protection of freedom of religion for every person in Malaysia. Propagation of one religion to others is part of the constitutional right guaranteed in the Constitution, however, Muslims are bound to follow the rules that they cannot simply be apostate from the religion of Islam. Such restriction derives from the jurisdiction of the state to control and restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam. According to Adil (2007), The nine state legislatures in Malaysia have passed laws in relation to apostasy which are under the exclusive jurisdiction of the Syariah Courts. Apostates are subject to punishments such as fine, imprisonment and whipping. The states have inherent jurisdiction to control Muslim person faith according to Islamic religious doctrine which held apostasy is an offense known under the Shariah hudud offense as stated by Ong and Zuhair Rosli (2021). The power to control suggested direct involvement by the state authority to control Muslim faith, which would theoretically prevent a Muslim from changing their religion based on their own free will and penalize them for acting contrary to their faith. This is a blatant violation of Article 18 of the 1948 Universal Declaration of Human Rights, which permits anybody who professes a religion to change their faith at any time, place, or under any circumstances. Article 4(1) of the Federal Constitution of Malaysia clearly states that the Constitution is the supreme law of the land, and that any law that is inconsistent with the Constitution is null and void to the extent of the inconsistency. Consequently, the position of Article 18 of UDHR cannot be reconciled with the complexity of Malaysian law, which recognises the supremacy of the Constitution. In the case of a violation of the sovereignty and sanctity of the Federal Constitution, the doctrine of ultra vires shall be applied. Foreign law has no chance against the supreme law of the nation, which has become the heart and soul of the Malaysian legal system. The practise and expression of religion determine the restriction, for what are we if we do not have restrictions? As a result, Article 18 of the 1948 Universal Declaration of Human Rights, which allows anyone who professes a religion to change their faith at any time, place, or under any circumstances, cannot be applied in Malaysia because the Federal Constitution clearly states that those rights are not intended to allow you to do whatever you want. Further, Ong and Zuhair Rosli (2021) stated that some experts believe that the murtad regulations contradict the Universal Declaration of Human Rights (UDHR) of the United Nations, but they do not believe that the UDHR has been effectively incorporated into Malaysia's Federal Constitution. Thus, it is crucial to examine the provision of section 4(4) of the Human Rights Commission of Malaysia Act 1999 [Act597], which states that the 1948 Universal Declaration of Human Rights shall be considered for the purposes of this law to the extent that it does not conflict with the Federal Constitution.

This ultimately supports the main jurisdiction of Article 11(4) to control propagation among Muslim within state authority by virtue of List II, Ninth Schedule of the Federal Constitution of Malaysia that empower the State to legislate any matter in relation with Islamic Law and apostasy subject fall within the subject matter, List II which became the Legislative List of the State, further stated the jurisdiction of Syariah court as the main Islamic Institutions set up by the state shall have the control of propagating doctrines and beliefs among persons professing the religion of Islam. Article 11(4) also mentions restriction and it is broadly interpreted to cover all proselytizing activities that are directed at Muslim whether by non-Muslim or unauthorized Muslims. Harding (1996) believes that the restriction on proselytism intended to preserve public order and social harmony in Malaysia, which in fact majority Muslim live and socialize with other religions.

For instance, in the case of *Soon Singh a/l Bikar Singh v Pertubuhan Kebajikan Islam Malaysia (PERKIM) Kedah* (1999), the appellants application has been dismissed and in delivering the said judgment, fatwa has been relied on and it showed that Syariah court has the exclusive jurisdiction to determine whether or not a person has ceased to be a Muslim. The Federal Court affirmed with such a decision as there is no declaration has been made to the effect that appellant is still a Muslim so such infringement to Article 11(1) has not arisen. In this case, the judge highlighted that Syariah court derives its jurisdiction under a state law and specially for apostasy matters, it is vested in Syariah court jurisdiction which already decided in 1992 through the case of *Majlis Agama Islam Negeri Sembilan Vs Hun Mun Weng* (1992), where the court held that the civil courts have no authority over matters that fall under the purview of Syariah courts.

A steely determination is evident and maintained throughout the case of *Lina Joy Vs Majlis Agama Islam Wilayah Persekutuan & Yang Lain* (2007) where the court decided that apostasy is a matter Islamic Law and civil court shall not interfere with such jurisdiction.

In 2018, Federal court in the case of *Indira Gandhi v Pengarah Jabatan Agama Islam Perak & Other Appeals* (2018) stated that jurisdiction of Syariah court is limited in three situations including limitation on judicial review, confined to persons and subject matters listed in the State List and from provisions under relevant state legislation. So, Clause 1A in Article 121(1A) does not remove the jurisdiction of civil courts concerning the constitutional interpretation. Therefore, the case was decided strictly based on relevant laws, case authorities of both the State and Federal Constitution. This case is in contrast with the case of *Syarifah Noraffyzza Wan Hosen v Director of Jabatan Agama Islam Sarawak & Ors* (2017) the judge stated that Malaysia has unique pluralism for dual system of court; Civil court jurisdiction applies civil law for non-Muslim and Syariah Court applies Shariah Law to Muslim. In dismissing the judicial review, the court agreed with the previous decisions that the matter of apostasy is within the exclusive jurisdiction of Syariah Court, not the civil court.

For the current case of *Rosliza Ibrahim v. Kerajaan Negeri Selangor & Anor* (2021), in which she was raised as a Buddhist by her Buddhist mother and wants to prove that she is not a Muslim. Article 11(1) guarantees the right to "profess and practice" one's religion, but it is more than just "professing" because it entails identifying with a particular religion and one's level of devotion to his or her belief. The court decided that the plaintiff's request for a declaration that she is no longer a Muslim fall under the Syariah Court's jurisdiction.

Based on the above cases, it is evident that the court concentrates solely on jurisdiction and does not investigate or discuss Article 11 of Federal Constitution: Freedom of religion, the right to apostate. Further, the Court does not specify any procedure or process that a person must follow if they wish to renounce from Islam. We can clearly distinguish that both civil and syariah courts did not deal with the right of freedom to apostate. It is recognised that there is no standard and consistent legal provision governing apostasy or leaving the religion (Abdullah, 2007; Adil, 2007; Hasan and Ali, 2007; Hamayotsu, 2012; Zainal and Jamal, 2013; Nasir and Ismail, 2016). This circumstance has led to the view that issues regarding religious conversion applications have not been adequately addressed to as so far. (Masum, 2009). In the state of Selangor, for instance, it is difficult to convert to a different faith because there are no laws forbidding it. The Islamic Religious Administration Enactment (Selangor State) of 2003 makes the assessment of a person's religious status one of the exclusive jurisdictions of the Syariah High Court. Although the Selangor Syariah High Court has the authority to determine a Muslim's religious status, no procedures or criteria exist for making such a declaration to apostate. According to Abdullah and Salim (2014), it is not written in any of the regulations, thus certain situations of requests to apostate are decided based on "discretion" and state authority. Mohamed Shapik (2011) found that instances of petitions for renunciation of religion in Selangor have not yet been processed due to the absence of clear legal guidelines dealing with this issue. Hence, this shows that there is lack of research on freedom of religion and the avenue for potential apostates to practice the said right.

Everyone in Malaysia has the constitutionally guaranteed right to worship according to Article 11 of the Federal Constitution. However, despite such rights, they are not unfettered and are subject to the limitations set forth by statutes and judicial decisions by Article 11(4) of the Federal Constitution, which states that the federal government has the right to regulate and limit the dissemination of non-Muslim religious teachings to Muslims. Since apostasy is forbidden in Islam, such a clause would serve to safeguard the Muslim's faith. It is in accordance with Malaysia's Shariah laws, which forbid apostasy among Muslims. Further, if apostasy is considered an absolute human right, Muslims and those who have rejected Islam could commit an unforgivable sin. Certainly, it contradicts the teachings of Islam. Although Islam is tolerant of religious liberty, yet it does not tolerate apostasy, or leaving Islam. Recognising apostasy as a Muslim's human right could harm the religion of the ummah (Sulaiman et al., 2020). Even though everyone in Malaysia has the right to openly declare and practice their religion of choice, yet delicate issues such as apostasy demand the use of Syariah law to maintain the jurisdiction of the Syariah Court. To preserve the exclusivity of Syariah Court jurisdiction, it would be beneficial to form a

commission to update the Islamic legal framework of apostasy in the country. This is crucial because until there is a clear framework and method for potential apostates to follow, this issue will not be resolved, and only the civil and sharia court jurisdictions will be discussed in depth as happened in previous case studies. Ong and Zuhair Rosli (2021) proposed that other states shall codify a set of clear procedures like those introduced by the Negeri Sembilan State Legislature. Additionally, mandatory detention at a rehabilitation center should also be substituted with a series of counseling sessions aimed at persuading apostates to return to Islam.

In addition, Ghani and Razali (2017) opined that the issue of Islamic legislation in each Malaysian state, that restricts the jurisdiction of Syariah courts demands the establishment of a commission that must include all relevant parties and propose an equitable resolution. Moreover, Husain (2022) is of the opinion that the State Legislature is permitted to enact laws affecting the personal offenses of Muslims. This is because the Federation and Syariah courts are forums to implement and equally enforce Islamic law and its legal principles according to their respective jurisdictions. Even though apostasy is one of the criminal jurisdictions, Husain (2022) believes that the State Legislature is permitted to do so. The relevant authorities have no compelling reason to allow apostasy. It defies logic for a state with Islam as its official religion to allow its citizens to renounce their official religion. This suggests that the laws are in conflict. It is the Federation's duty to safeguard, defend, and to propagate Islam (Ong & Zuhair Rosli, 2021).

5. CONCLUSION

By referring to the above discussions and to answer the question of the extent to which freedom of religion applies in the context of apostasy, the findings indicate that it is difficult to renounce Islam once one has become a Muslim, and that the various rules and regulations in Malaysia do not provide apostates with the proper means to do so. Further, Shariffuddin et al. (2022) added that the court did not dismiss the potential for a Muslim to renounce their faith, but emphasized the importance of adhering to the appropriate procedures before granting an application for apostasy. The circumstances surrounding the renunciation of a converted Muslim differ significantly, as an apostate may potentially be subject to detention at an Islamic Education Centre for a maximum duration of 36 months. This detention serves the objective of providing education to the apostates and requesting them to repent in accordance with Syariah Law. The aforementioned practice has been implemented by the state of Sabah (Nasri & Shiddeq, 2016).

Although Article 11 guarantees the freedom to profess and practice a religion, this right is not absolute, and apostasy is perceived as a complex process. Researchers are of the opinion that Malaysia should establish a clear legal framework to settle the issue of apostasy since the freedom of religion provided under the Federal Constitution is not absolute as it appears. The establishment of a well-defined legislative framework in Malaysia is recommended by researchers to address the matter of apostasy, as it has been determined that the freedom of religion is not an absolute right. This study holds considerable importance in assisting legislators in reviewing and revising the law in a manner that aligns with the demands of Malaysian citizens, particularly in relation to the right to apostasy.

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LEVEL OF TAX KNOWLEDGE AND PERCEPTION OF TAX FAIRNESS AMONG NON-ACCOUNTING STUDENTS

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Abstract

Given the significant increase in digital transactions, the emphasis on the importance of voluntary tax compliance is still prevalent. Taxpayers and future taxpayers need to have tax knowledge to record these transactions on the tax return form. Hence, the objective of this study is to examine the level of tax knowledge and fairness perceptions of non-accounting students. This study was conducted using an online questionnaire with the participation of 112 students who were currently enrolled in diploma programs. The results show the respondents possess a satisfactory level of tax knowledge and perceive the tax system as fair. The outcome of this study could offer valuable insights for the government and tax authority to further enhance the present tax system and promote a higher degree of voluntary tax compliance. It also offers a signal to policymakers of the significance of tax knowledge in facilitating the development of tax education programs, particularly in early childhood education programs.

Keywords: Tax knowledge; Fairness perceptions; Tax literacy; Tax awareness

1. INTRODUCTION

Tax revenue continued to be the main source of income collected by the Malaysian government in 2022. Taxes represent 70.9% of the total revenue, with a sum of RM208.8 billion (Ministry of Finance, 2023). In Malaysia, the largest recipient of government revenue is the social sector, followed by the economic sector, the security sector, and the general administration sector. Thus, to achieve sustainable revenue collection over the long term, one of the initiatives by the government is to enhance voluntary tax compliance by taxpayers. Tax compliance is the willingness of taxpayers to comply in accordance with the word and spirit of the tax rules without the use of strict enforcement tools (James & Alley, 2002). The implementation of the self-assessment system might require taxpayers to have relative tax knowledge to declare all sources of income and expenses incurred for the years of assessment and make a tax payment to the tax authority.

The self-assessment system, together with the growing influence of the digital world, highlights the increasing importance of tax knowledge. The growth was increased further due to the impact of the COVID-19 pandemic, which changed the way people interacted and transformed how businesses operated, shifting most processes towards digitalization (Alagesh, 2022). Although these transactions occurred in the digital economy or settled in online currency, they still had tax implications (Wassermann & Bornman, 2020). Hence, taxpayers need a solid understanding of taxation to properly record these transactions in their tax return form. According to Wassermann & Bornman (2020), individuals require specific tax knowledge to adequately meet their tax obligations in the digital economy. This encompasses three types of knowledge: general, procedural, and legal tax knowledge. However, non-accounting students might have limited knowledge on tax matters, whereas accounting students might have received a formal and structured education on taxation.

Putro & Tjen (2020) discovered that students who have received tax education were categorized within the literate level of tax knowledge, while those without tax education were in the illiterate group. This

finding is also consistent with a study by Mohamad et al. (2013), which indicates that the level of tax knowledge and fairness perceptions among non-accounting students was average, indicating a sense of uncertainty in their responses. This divergence in tax knowledge highlights the significance of educational efforts to enhance tax literacy among non-accounting students, particularly in the constantly changing digital economy. Therefore, the tax course should be a compulsory subject across all disciplines. Thus, the objective of this study is to examine the level of tax knowledge and perception of tax fairness among non-accounting students in Malaysia in the digital economy.

There are two reasons why this study is very significant. This study focuses on the level of tax knowledge and fairness perceptions held by future taxpayers, considering the numerous economic problems that governments are facing after COVID-19. Further, the increase in digital transactions also leads to significant special tax knowledge. The government might use the study's conclusions to further enhance the current tax system and promote voluntary tax compliance. The understanding of taxes and the perception of the fairness of the tax system are very important in shaping tax compliance.

The rest of this paper is structured as follows: The second section briefly reviews and summarizes the relevant literature dealing with tax knowledge and fairness perceptions of the tax system. The third section describes the research method used in this study. The fourth section discusses the results and discussion. Finally, the fifth section presents the conclusion.

2. LITERATURE REVIEW

Tax Knowledge

Tax knowledge refers to complete knowledge and understanding of the tax rules and systems that have been enacted by the government to collect funds for national development. Tax knowledge is the ability of a taxpayer to know tax regulations, both regarding tax rates based on the law that will be paid as well as tax benefits that will be useful for the taxpayer's life (Handoko, Toni, & Simorangkir, 2020). Society is aware of the role of the government to collect taxes and the role of society, which earns income, to pay taxes to the government (Mohd Faizal, Mohd Zaini, & Somasundram, 2021). They consider taxation to be general knowledge and agree that it should be taught as a subject in secondary schools, and the students need to acquire some tax knowledge before they become real taxpayers (Mohd Yusof, Safeei, & Lee, 2022). Various strategies could be implemented through awareness campaigns, awareness of online tax payment, implementation of severe tax laws, development of tax applications, ease of tax payment, incentives for responsible taxpayers' campaigns (Mohd Faizal et al., 2021), formal education in the classroom, and training to increase tax awareness and knowledge.

Tax knowledge has become the most influential factor in the tax self-assessment system (Damajanti & Karim, 2017), and it has led to better tax compliance by the taxpayers, according to tax regulators, authorities, and policymakers (Bhalla, Sharma, & Kaur, 2022). The more tax knowledge is obtained, the better will be the understanding of tax compliance and the consequences of tax evasion (Sanusi, Nik Abdullah, & Chin, 2021). The lack of knowledge and awareness of taxes and the tax systems will encourage society to be non-compliant with the tax system (Saad, 2014) and to be unwilling to pay taxes, intentionally or unintentionally (Kirchler, Niemirowski, & Wearing, 2006).

Fairness Perceptions

The perception of tax fairness has become a focal point in the debate of tax compliance amongst academics and policymakers as it is found to be an important factor in tax morale (Alexender & Orlic, 2022). Defined as negotiable transactions between taxpayers and the government, the interpretation of tax fairness is always related to the capability of taxpayers to fulfill their tax obligations (Nartey, 2023). Therefore, perceptions of tax fairness are undeniably affected and are close to the tax compliance decision. The conceptual framework of tax fairness has highlighted three major dimensions of fairness, which are distributive fairness, procedural fairness, and retributive fairness (Khamis & Mastor, 2021). Distributive justice refers to the concern for equality of outcome, whereby the allocation must be determined according

to individuals' merits, efforts, and needs. In procedural fairness, the legitimacy context must be considered, where the approval and consideration of taxpayers should be engaged in the process of decision-making. Retributive fairness concerns the satisfaction of taxpayers when enforcement power in the form of punishment is implemented against those who are involved in non-compliance tax activities.

Previous studies have given huge attention to the perception of tax fairness due to its significant implication for individual willingness to pay tax. Farrar et al. (2020) claimed that perceptions of fairness hold significance as they influence individuals' inclination to regard authorities as legitimate and trustworthy, thereby deterring retaliatory actions and promoting a shift toward cooperative behaviors. This statement explicitly indicates that taxpayers who feel that the tax system is unfair will be reluctant to comply with tax payments. Hassan, Naem, & Gulzar (2021) noted that perceptions of tax fairness among Pakistani taxpayers play an important role in tax compliance. The study shows that when taxpayers have confidence that their funds will be effectively utilized by the government and result in improved services, their willingness to adhere to tax regulations increases. This is aligned with the study of Hassan et al, (2021), Pui Yee, Moorthy & Keng Soon (2017) that concluded unfair government spending policy causes a decline towards any tax regulation compliance.

The study by Castaneda (2023) also showed a similar effect of tax fairness perception on tax compliance when they found out that people are reluctant to pay tax unless the government can prove equality in tax reduction. At the same time, the perception that the tax system is unfair also triggers the justification of tax evasion, which indirectly manifests literal associations between fairness and tax compliance.

In the digital economy, where cross-border transactions and online activities are prevalent, taxpayers may perceive fairness based on how taxes are applied to digital services, e-commerce, and online platforms (Khamis & Mastor, 2021). Besides, simplified, and user-friendly digital tax reporting mechanisms can also enhance taxpayers' perceptions of fairness by making compliance more accessible and efficient. Nevertheless, such circumstances still lead to the conclusion that tax fairness is agreed upon as an important determinant of tax compliance intentions around the world, irrespective of demographics, coordinates, economic systems, social climates, political regimes, or cultural backgrounds (Batrancea et al., 2019).

3. METHODOLOGY

The research is conducted using a quantitative approach that involves employing descriptive analysis. This study used purposive sampling. This paper uses survey questions that were adapted from Saad (2011) and modified to meet the objectives and samples for this paper. The survey used Malay language to cater to respondents who did not take a taxation subject in their course program. This study used purposive sampling specifically targeting non-accounting students from Universiti Teknologi MARA Cawangan Negeri Sembilan Kampus Seremban. The population of samples for this paper were diploma students from the Faculty of Administrative Science and Policy Studies, the School of Computing and Mathematics, and the Faculty of Sport Science and Recreation. The sample size was determined based on Green's (1991) method. Memon et al. (2020) posited that Green's rule of thumb has been used in many recent studies. Green (1991) stated $N \geq 50+8m$, where m is the total number of independent variables. Therefore, given the presence of two independent variables, a minimum of 66 respondents was required for this study, and a total of 112 respondents was deemed reasonable for this study.

There were two (2) parts of the questions: Part A focused on the demographic or background of respondents, and Part B measured the level of tax knowledge and perceptions of tax fairness among the respondents. There are six (6) statement items in the survey questions that were used to measure the level of tax knowledge and six (6) statement items to measure the level of perceptions of tax fairness. All statement items were measured using a 5-point Likert's Scale ranging from strongly disagree (1) to strongly agree (5). Values between 1 and 2 are categorized as having a fair level of tax knowledge and fairness perceptions; values between 3 and 4 are categorized as having a moderate level of tax knowledge and fairness perceptions; and values of 5 are categorized as having a good level of tax knowledge and fairness perceptions.

The questionnaire was developed using the Google Form application and distributed to the student's WhatsApp group. Google Forms and the group WhatsApp platform were used since they were convenient to administer and effective for data collection. This study used means score analysis, which involved the process of summing up all the values within a set of numbers and subsequently dividing the sum by the total count of values.

4. RESULTS AND DISCUSSION

Table 1 shows that the major respondents of the sample population were female students (75.9%), and the age group was about the same from 18 years old to 21 years old. There was not much difference in terms of age since they are still pursuing their diploma program. The questionnaire also provides information whether the students received any source of income during their study. From the total samples, 7.1% say that they did receive income during their study and mostly were coming from employment income such as working as a part timer.

Table 1. **Demographic Characteristic of Respondents**

Demographic Factors		Respondents (n = 112)	Percentage (%)
Gender	Male	27	24.1
	Female	85	75.9
Age	18-21	111	99.1
	22-25	1	0.9
Source of income	Yes	8	7.1
	No	104	92.9
Types of income	Employment	6	75.0
	Business	2	25.0

The results related to the mean score for tax knowledge are presented in Table 2, which lists the six statements and the mean scores received for each statement. Five (5) indicate strongly agree, while one (1) indicates strongly disagree. To interpret the data, a higher mean value indicates better knowledge and a stronger understanding of taxation. The statement with the highest mean score was 4.28, in which the respondents possess a good level of knowledge regarding the fact that the income tax system is a means for the government to collect tax revenue for the economy's sustainability. The mean was more than 3.94 but less than 4.06 for 3 of the 6 statements, indicating that respondents generally possess a moderate level of knowledge that any tax noncompliance leads to punishment. They are also aware that any individual who earns income in Malaysia needs to register with the tax authority. On the contrary, the mean score for statement number six was 3.65, in which half of the respondents acknowledged their limited knowledge of tax deductions that can be claimed by taxpayers. On the other hand, in one case, the mean was 3.23, which indicates that the average respondent possesses uncertain knowledge about whether individuals are subject to a single flat rate of income tax. The weighted average of 3.87 means that the respondents in general had a moderate level of tax knowledge.

Table 2. **Mean Score on Level of Tax Knowledge of Non-Accounting Students**

No	Statement	Mean
1	The income tax system is a legitimate way for the government to collect revenue to manage an economy.	4.28
2	As far as I am aware, non-compliant taxpayers can be imprisoned, if found guilty of evading tax.	4.06
3	To my knowledge, individuals are subject to a single flat rate of income tax under the current tax system.	3.23
4	As far as I am aware, everyone who earns income sourced in this country needs to register with the Inland Revenue Board, regardless of whether that person is resident or not.	3.94
5	Similar to other criminal offenses, I believe that individuals can also be prosecuted for not complying with the Income Tax Act.	4.06
6	I have little idea about the deductions that I can claim as a taxpayer in the computation of my tax liability.	3.65
	Weighted Average	**3.87**

Table 3 presents the mean score of fairness perceptions of non-accounting students. The higher the mean, the more favorable the perception of the income tax system, while the lower mean reflects a favorable perception. The statement with the highest mean score was 4.08. This suggests that the respondents generally agree that it is fair that middle-income earners are taxed at a lower rate than high-income earners. The mean was more than 3.46 but less than 3.97 for 4 of the 6 statements, indicating that respondents generally agree with the fairness perception of the income tax system in terms of government utilization of tax revenue, the fairness of the amount that should be paid as tax payment, and the fairness of the benefits received by low-income earners. However, the mean score of 3.50 indicates that some of the respondents hold the perception that the government spends too much tax revenue on excessive welfare assistance. The weighted average of 3.81 means that the respondents in general had a moderate level of fairness in their perception of the tax system.

Table 3. **Mean Score on Fairness Perceptions of Non-Accounting Students**

No	Statement	Mean
1	I believe the government utilizes a reasonable amount of tax revenue to achieve social goals, such as the provision of benefits for low-income families.	3.89
2	I believe everyone pays their fair share of income tax under the current income tax system.	3.94
3	It is fair for individuals with similar amounts of income to pay a similar amount of income tax.	3.46
4	It is fair that low-income earners receive more benefits from the government compared to high-income earners.	3.97
5	It is fair that middle-income earners are taxed at a lower rate than high-income earners.	4.08
6	I think the government spends too much tax revenue on unnecessary welfare assistance.	3.50
	Weighted Average	**3.81**

5. CONCLUSION

Tax knowledge and fairness perception are the relevant factors that lead to tax compliance. Several studies have proven that a lack of tax knowledge and an unfair perception of the tax system are detrimental to tax non-compliance. To understand the importance of these two components of the tax system, this study delved into the intricate landscape of tax knowledge and perceptions of tax fairness among non-accounting students in the rapidly evolving digital economy. The findings have revealed that the respondents have demonstrated a good understanding of tax knowledge despite their non-accounting backgrounds, which is similar to the findings of Mohd Faizal et al. (2021). In contrast, Mohamad et al. (2013) reported an average level of tax knowledge and fairness perceptions, which present some uncertainty. Most of the respondents are aware that tax revenue is the government's main source for national sustainability. They also understand that any tax violation is subject to punishment, and taxpayers must be registered with the tax authority. However, only a small number of respondents can clarify tax claims and tax rates.

In terms of perceptions of tax fairness, the finding showed a positive sign, with most of the respondents having favorable perceptions of the tax system. They are satisfied with the range of tax rates and the allocation of the money to different levels of income earners. Nevertheless, overspending on welfare assistance raised some disagreement among the respondents. Policymakers, educators, and tax authorities may draw upon these findings to tailor their strategies, promoting tax literacy and fostering a sense of fairness that resonates with the evolving dynamics of the economic digital era. Future research may focus on the other components of the tax system from the perspective of different educational backgrounds. There is also a need to study the differences in the level of tax knowledge and fairness perceptions among non-accounting students who receive income or not.

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BOARD DIVERSITY AND FIRM PERFORMANCE: ANALYSIS OF MALAYSIAN MEDIA AND TELECOMMUNICATION COMPANIES

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Abstract

This study examines the relationship between Board Diversity and the Firm Performance of Listed Companies in Malaysia, focusing on the telecommunication industry. Few studies have focused on the diversity of corporate boards in Malaysia for the telecommunication industry. This study will focus on the relationship between board diversity, especially gender diversity, ethnic diversity, and national diversity, with firm performance measured by return on assets. This study uses a quantitative approach that uses secondary data from the 15 media and telecommunication companies listed on Bursa Malaysia. The period of 2018 to 2020 annual reports were used for data collection. The independent variables used in this study include gender diversity, ethnic diversity, and national diversity, while the dependent variable is firm performance, which is measured using return on assets. This study shows a positive relationship between national diversity and firm performance. Meanwhile, gender diversity was found not to have any significant relationship with the firm's performance. The same findings go to ethnicity, where this study found no association between ethnic diversity and firm performance.

Keywords: Corporate Governance, Agency Theory, Telecommunication Companies, Board Diversity, Firm Performance.

1. INTRODUCTION

Various corporate scandals in companies worldwide have caught public attention and alerted the government about the value of corporate governance (Wong et al., 2019). Previous corporate scandals in the USA, such as Enron and WorldCom, have highlighted that corporate scandals occur due to corporate governance-related issues (Amin & Nor, 2019). As such, corporate governance has become an essential topic in accounting and business management. The emergence of corporate governance issues has indirectly made it a hot topic to be discussed in Malaysia. Among Malaysia's famous and recent corporate governance issues is the 1Malaysia Development Berhad, or the 1MDB scandal (Wong et al., 2019). The poor corporate governance in 1MDB has affected the company's performance and resulted in among the biggest corporate scandals in Malaysia.

All economic sectors are not free from the risk of fraud and corruption. This includes the media and telecommunication sectors. According to the Institute of Corporate Directors Malaysia (2021), Axiata Group Berhad, among the largest telecommunication companies in Malaysia, got the highest score of 32.1 on the Malaysia Board Diversity Index. This shows that Axiata Group Berhad's board of directors is very diverse. However, based on the company's last three years financial highlights, which are reported on its website, its profitability is inconsistent with a RM 5.0 billion loss after tax in 2018, then increased to RM 1.8 billion profit after tax in 2019 and then declined to RM 0.6 billion profit after tax in 2020. The fluctuation in reported profit is quite significant and could signal issues in the financial situation for the company. Hence, one might question the effectiveness of the company's governance. The Star (2019) reported that Maxis is the revenue leader among telecommunication companies in Malaysia, even though Digi.Com has the highest number of subscribers. Besides, it is predicted that there will be more consolidation and collaboration among telecommunication companies in Malaysia in the next few years (New Straits Times, 2021). An issue being raised in the Malaysian telecommunication industry is the merger between two telecommunication giants in Malaysia, Celcom, and Digi, which might lead to a monopoly among telecommunication providers (FMT, 2021). Another recent development regarding the Malaysian telecommunication industry is U Mobile Sdn Bhd, where they plan to raise funding estimated

at around 500 million US dollars via an initial public offering known as IPO (The Star, 2019). The company is set to appoint CIMB Investment Bank as its IPO adviser and is confident of being on track for listing (The Edge Markets, 2020). As corporations expand, governance becomes more vital.

A good board structure can best impact the firm's performance (Hasnan et al., 2018). A diverse board may result in quality decision-making because each member has different skills, experiences, and ideas. Hatane et al. (2023) found that board diversity does not affect firms' performance but increases firms' value. Based on the study by Ilaboya and Ashafoke (2017), board diversity consisted of gender diversity, ethnic diversity, and national diversity. As such, this study will focus on the relationship between board diversity, especially gender diversity, ethnic diversity, and national diversity, with firm performance measured by return on assets. A little study has focused on the corporate board from the perspective of diversity in Malaysia (Chuah & Hooy, 2018). Additionally, it seems like there is a limited prior study related to the board diversity of Malaysian listed companies in the telecommunication industry. Hence, this study is interested in determining whether board diversity is related to firm performance in Malaysian telecommunication companies.

2. LITERATURE REVIEW

Agency theory is first developed by Jensen and Meckling (1976). The theory explains the concept of the firm's ownership structure and the relationship between the principal and agent. Besides, the theory also explains the concept of agency cost. According to this theory, the director is an agent who manages the company's need to protect the principal's interest, which is the shareholders who own the company. As for agency theory, some researchers criticized this theory and argued that this theory has some limitations. According to Panda and Leepsa (2017), agency theory can assume the ability of a contract between an agent and principal, such as a performance bonus, to eliminate agency costs. However, new problems, such as transaction costs and fraud, are inevitable. Due to agency problems, the role of monitoring and governance has increased significantly.

Evaluating the company's performance has always been essential for academicians and top management (Taouab & Issor, 2019). There are several ways to measure firm performance. In their study, Bin Khidmat et al. (2020) use earnings per share to measure firm performance. Meanwhile, in their study, Adams and Ferrerira (2009) use returns on assets to measure firm performance. Many factors influence firm performance. The study conducted by Al-Mamun et al. (2014) found that audit committee independence has a positive relationship with firm performance. Meanwhile, a study by Kaur and Vij (2017) found a negative relationship between board size and firm performance.

The Malaysian Code of Corporate Governance has been updated and revised several times in 2007, 2012, 2017, and recently in 2021 (Securities Commission, 2021). This ensures that the Malaysian Code of Corporate Governance will remain relevant and aligned with international best practices. According to the Securities Commission (2017), the Malaysian Code on Corporate Governance no longer adopts the "comply and explain alternative" method. It has now shifted to the "comprehend, apply, and report" approach, previously used in the 2012 Malaysian Code on Corporate Governance. Several additions and amendments have been made in the 2021 Malaysian Code on Corporate Governance compared to the previous version of the 2017 Malaysian Code on Corporate Governance. Among an addition that has been made in the 2021 Malaysian Code on Corporate Governance is the need to disclose in the annual report about company policy on gender diversity in the board of directors and senior management (Securities Commission, 2021)

Ujunwa et al. (2012) found that the board is considered diverse in gender when there is a presence of women as board members. Most countries worldwide have policies to increase gender diversity on the corporate board. In Spain, a law has been established in which companies are required to have 40% female representatives on the corporate board, and penalties will be imposed if companies do not adhere to this law (Lückerath-Rovers, 2013). Meanwhile, in Malaysia, the government is encouraging the listed companies to have 30% female representatives on the board (Kweh et al., 2019). Abdul Halim et al. (2021) also stated that the unique features of women directors being meticulous would increase monitoring of the

corporate board and ensure that top management does not pursue its interest and continues to protect the interest of shareholders. Thus, it can be said that adding female members to the corporate board has a similar effect as the independent directors described in agency theory. Based on prior studies, the results related to the relationship between board gender diversity and firm performance are varied. The study conducted by Sutrisno and Mohamad (2019) found that gender diversity on the board has a positive relationship with firm performance. Meanwhile, another study by Devi (2018) and Morrone et al. (2022) found no relationship between gender diversity on the board and firm performance. Besides that, another study conducted by Tarigan et al. (2018) found that gender diversity on the board has a negative relationship with firm performance. Hatane et al. (2023) found that gender diversity did not impact firms' performance. Hence, this study hypothesis is.
H1: There is a significant relationship between gender diversity and firms' performance.

According to Ilaboya and Ashafoke (2017), ethnicity refers to people of the same race, language, and tradition. As Malaysia is considered a multi-ethnic country, perhaps there is a need to form corporate boards of various ethnic compositions (Abdullah & Ku Ismail, 2013). However, in the Malaysian Code on Corporate Governance 2021, there is still no requirement regarding ethnic diversity on the board (Securities Commission, 2021). The results related to the relationship between board ethnic diversity and firm performance have been mixed. The study conducted by Sutrisno and Mohamad (2019) found no relationship between ethnic diversity and firm performance. Another study by Shukeri et al. (2012) found a positive relationship between ethnic diversity on the board and firm performance. Meanwhile, another study by Ilaboya and Ashafoke (2017) found a negative correlation between ethnic diversity in corporate boards and firm performance. Thus, due to the contradictory results of past studies, the second hypothesis is:
H2: There is a significant relationship between ethnic diversity and firms' performance.

According to Ujunwa et al. (2012), foreign directors would provide board members with broader industry experience, contributing to better decisions and increasing shareholders' wealth. Globalization significantly impacts the board composition in listed companies worldwide (Harjoto et al., 2018). Currently, in the Malaysian Code on Corporate Governance 2021, there is still no requirement regarding national diversity on the board (Securities Commission, 2021). The results related to the relationship between board national diversity and firm performance have been varied. The study conducted by Assenga (2021) has found that there is a positive relationship between national diversity in corporate boards and firm performance. Another study by Khan and Subhan (2019) found a negative relationship between board diversity regarding nationality and firm performance. In contrast, Morrone et al. (2022) found no relationship between foreign directors and firms' performance in Italy. Therefore, this study hypothesis:
H3: There is a significant relationship between national diversity and firms' performance.

3. METHODOLOGY

This study will use a secondary data collection method. This is where the researcher will collect data on gender diversity, ethnic diversity, national diversity, and firm performance in the annual report for the years 2018, 2019, and 2020 of the listed telecommunication companies. According to the Securities Commission (2017), the Malaysian Code on Corporate Governance 2017 is replacing the Malaysian Code on Corporate Governance 2012, and it adopts a new approach to encourage more internalization of corporate governance culture. For this study, the researcher used the listed companies' annual reports in 2018, 2019, and 2020 to see whether the Malaysian listed telecommunication companies comply with the 2017 Malaysian Code on Corporate Governance. The population selected is the telecommunication and media companies listed in the main market of Bursa Malaysia only. Telecommunication and media companies listed in the ACE market are to be excluded. Currently, 16 companies are involved in the telecommunication and media industry listed in the main market of Bursa Malaysia. However, of 16 companies, one company uses the US Dollar as the presentation currency, which requires the odd one to be excluded. Hence, the sample of this study is 45 companies for the telecommunication and media companies listed in Bursa Malaysia Stock Exchange, specifically 15 telecommunication and media companies listed in Bursa Malaysia Stock Exchange multiplied three years from 2018, 2019, and 2020.

The dependent variable for this research is firm performance. Based on the study by Ujunwa et al. (2017), firm performance is measured using return on assets. The positive value of return on assets indicates good firm performance of a company. Meanwhile, the negative value of return on assets indicates that the firm performance of a company is poor. According to Al-Matari et al. (2014), the most popular accounting measurement for firm performance is the return on assets, as it is used by many researchers worldwide. Hence, to be consistent with many researchers worldwide, this study will use return on assets to measure firm performance. The independent variable of this study is board diversity, that is, gender, ethnic, and national diversity. According to Ujunwa et al. (2012), the board is considered diverse in gender when there is a presence of women as board members. Based on the study by Ujunwa (2012), gender diversity is measured by the ratio of the number of women on the board to the total board size. The higher number of women on the board indicates that the board is diverse in gender. Companies that do not have women on their boards indicate a lack of gender diversity.

According to Rachagan et al. (2015), Malaysia has multi-ethnicity, including Bumiputera, Chinese, and Indian. Abdullah and Ku Ismail (2013) propose a method for measuring ethnic diversity on corporate boards using a dummy variable. This variable takes the value of 1 when all three of Malaysia's main ethnic groups, namely the Bumiputera/Malay, Chinese, and Indian, are represented on the board, indicating a diverse ethnic composition. Conversely, if these three main ethnic groups are missing from the board, the dummy variable takes 0, indicating a lack of ethnic diversity. Ujunwa (2012) study used national diversity measured by the ratio of foreigners on the board to the total board size. The measure of national diversity here is based on the ratio of foreigners on the board to the total board size. A higher ratio of foreigners on the board suggests greater national diversity, indicating representation from different nationalities. Conversely, if no foreigners are on the board, the company is considered to lack national diversity.

A descriptive analysis was carried out to understand the qualitative information collected. Further, reliability, validity, and correlation analysis were performed to ensure that the data fit and the results were reliable. Standard multiple linear regression analyses are used to test the hypotheses developed for this study. The data were analyzed using the SPSS statistical program.

For this study, a linear regression model is adopted from the study of Ilaboya and Ashafoke (2017) and Ujunwa et al. (2012). The multiple linear regression model is expressed as follows:

$$Y = \alpha + \beta 1X1 + \beta 2X2 + \beta 3X3 + \beta nXn + £$$

Based on the multiple linear regression equation above,
Y is the value of the dependent variable, which is firm performance
α is Y-intercept when all the variables are 0
X1 is gender diversity.
X2 is ethnic diversity.
X3 is national diversity.
Xn is a firm size.
£ is the standard error.

4. RESULTS AND DISCUSSION

Table 1. **Outlier Detection using boxplot.**

Constructs	Outlier(s) Cases
Firm Performance	4, *25, *26, *27, *29
Gender Diversity	4, 6
National Diversity	4, 6

This study's outlier detection was done using boxplots, where the variables were categorized. Table 1 shows two outlier observations for both Gender Diversity and National Diversity. However, no influential outliers or extreme cases were detected. Hence, all the outliers were retained for the two variables. Firm

Performance recorded one outlier and four extreme outliers. According to Kwak and Kim (2017), in cases where extreme outliers are detected, Winsorization can rectify the outlier value by using the upper bound in observation or excluding the outliers. Hence, all extreme outliers marked with an asterisk (*) on the boxplot will be removed in this study. Ethnic Diversity is not tested as it is a categorical variable.

The multicollinearity test examines the value of tolerance and VIF (Variation Inflation Factor). Generally, if the tolerance value is below 0.1, then there is a presence of multicollinearity. Meanwhile, values of VIF that exceed ten are often regarded as indicating multicollinearity.

Table 2. **Tolerance and VIF Result**

Variables	Tolerance	Variance Inflation Factors (VIF)
(1) $x1$ (Gender Diversity)	0.772	1.295
(2) $x2$ (Ethnic Diversity)	0.706	1.417
(3) $x3$ (National Diversity)	0.742	1.348

Table 2 shows that the tolerance values for all variables are above 0.1. Hence, this indicates that there is an absence of multicollinearity. Besides, the VIF for all the variables is below 10. This indicates that the multicollinearity issue is not present in this study.

Table 3. **Descriptive Analysis**

Variables	N	Minimum	Maximum	Mean	Std. Deviation
Firm Performance	45	-19.71	0.72	-0.810	3.547
Gender Diversity	45	0.00	0.57	0.210	0.143
Ethnic Diversity	45	0.00	1.00	0.244	0.435
National Diversity	45	0.00	0.57	0.107	0.180

Table 3 above discusses the maximum, minimum, mean, and standard deviation values for 45 companies-year for the telecommunication and media companies listed in the Bursa Malaysia Stock Exchange. The results of descriptive statistics are presented in Table 3. Firm Performance is measured by Return on Assets (ROA). The negative value of ROA indicates that Malaysian Telecommunication Listed Companies are experiencing poor performance, while the positive value of ROA indicates Malaysian Telecommunication Listed Companies are experiencing good performance. From Table 3, the mean value for ROA is -0.810. This indicates that the performance of Malaysian Telecommunication Listed Companies for three years, i.e., 2018, 2019, and 2020, is poor -81.0% on average. The poor performance could result from price competition, mobile market saturation, and OTT services eroding voice and SMS revenues, causing a decline in average revenue per user, in addition to increasing capital expenditure over the years (Industry Performance Report 2020)

From Table 3, the mean for Gender Diversity is 0.210. This indicates that Malaysian Telecommunication Listed Companies have only, on average, 21.0% female members on their corporate board. This shows that male directors dominate Malaysian telecommunication-listed companies on the board and may not adhere to the 2017 Malaysian Code on Corporate Governance (MCC) 2017, which states that large companies need at least 30% women directors on the board (Securities Commission, 2017). The mean for Ethnic Diversity is 0.244. This indicates that, on average, 24.4% of Malaysian telecommunication-listed companies have ethnically diverse board members. This shows that one or two ethnic groups dominate Malaysian telecommunication-listed companies and still lack Ethnic Diversity on the corporate board. The mean for National Diversity is 0.107. This indicates that, on average, Malaysian telecommunication-listed companies have 10.7% foreign nationality on their corporate board. This shows that Malaysian telecommunication-listed companies are dominated by one nationality and still lack National Diversity on the corporate board.

Table 4. **Pearson's Correlations**

Variables	Firm Performance	Gender Diversity	Ethnic Diversity	National Diversity
Firm Performance	1			
Gender Diversity	-0.074	1		
Ethnic Diversity	0.051	0.198	1	
National Diversity	0.713**	-0.227	-0.351	1

*. Correlation is significant at the 0.05 level (2-tailed)
**. Correlation is significant at the 0.01 level (2-tailed)

Pearson Correlation Coefficient gives an overview of the correlation between all the study variables and estimates the strength of the relationship between the variables. From Table 4, the Pearson Correlation Coefficient between Gender Diversity and Firm Performance is -0.074, with a negative and non-significant relationship between Gender Diversity and Firm Performance. Next, the Pearson Correlation Coefficient between Ethnic Diversity and Firm Performance is 0.051, stating that there is a positive and non-significant relationship between Ethnic Diversity and Firm Performance. As shown in Table 4, the Pearson Correlation Coefficient between National Diversity and Firm Performance is 0.713, which states a strong positive significant relationship between National Diversity and Firm Performance.

Table 5. **Multiple Linear Regression Analysis**

Independent Variables	**Firm Performance**	
	β	**Sig.**
Constant	3.718	0.007
Gender Diversity	0.368	0.236
Ethnic Diversity	-0.105	0.338
National Diversity	0.745	0.011**
R	0.936	
R^2	0.876	
Adj R^2	0.805	
Durbin Watson	3.081	
P-value (ANOVA)	0.003	

**P-value significant at 0.05

Based on Table 5, the National Diversity of the Board is significantly positively related to Firm Performance since the p-value is below 0.05. This result is consistent with the study by Assenga (2021). This result shows that foreign nationality on the board improves firm performance. Meanwhile, the Gender Diversity of the Board is not significantly related to Firm Performance since the p-value is above 0.05, consistent with the findings of Ujunwa et al. (2012). This indicates that the appointment of women on the board does not significantly impact the firm performance. Ethnic Diversity is also not significantly related to Firm Performance since the p-value is above 0.05 and is consistent with the study conducted by Sutrisno and Mohamad (2019). The result shows that board members from different ethnicities do not affect the firm performance.

5. CONCLUSION

The study concluded that national board diversity positively correlates with firm performance. Meanwhile, gender and ethnic board diversity has no relationship with firm performance. Due to this, it is recommended that a company employ more foreign directors on the board to improve firm performance. Also, the Malaysian government may need to implement policy and encourage more companies to have more foreign directors on the corporate board. The results and findings from this research will benefit investors, the Malaysian government, and academicians interested in examining whether diversity on board will improve company performance. Besides, the results and findings of this study may also benefit regulators such as Bursa Malaysia and the Securities Commission, which are interested in examining the best corporate governance practices for protecting stakeholders' interests.

Future research could focus on other areas of board diversity, such as religious diversity, education diversity, and diversity of work experience and its relationship with firm performance. Also, in the Malaysian Code on Corporate Governance 2021, it has been highlighted that listed company is discouraged from appointing active politicians to be part of the board of directors (Securities Commission, 2021). As such, it will be good for future researchers to examine the relationship between politicians sitting on the corporate board and the firm performance. Besides, it would be good for future researchers to examine the factors that influenced the firm performance using other measures for firm performance, such as economic value added, EBITDA margin, and earnings per share, which are currently not used by many researchers. Also, it may be suitable for future researchers to examine the relationship between board diversity, which consists of gender diversity, ethnic diversity, and national diversity, and the firm performance that focuses on the telecommunication industry in other countries.

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DEVELOPING AN INSTRUMENT TO AID STUDENTS IN UNDERSTANDING THE TOPIC OF SHARES IN COMPANY LAW COURSE

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Abstract

Teaching law to non-law students is different from teaching law to law students. Learning law in general or specifically learning Company Law is not easy for non-law students because a law course is not their forte nor do they have a total interest in the subject matter. The usual lecture-based learning and problem-based learning might not be suitable in some cases when teaching non-law students, especially topics which are difficult for the students to understand or visualise. Previous studies showed that students have difficulty understanding Company Law since it is a technically complex course and not easy to restate in a few words. There are suggestions that the teaching of law to non-law students should emphasise practical work. Studies on the methods of teaching Company Law to non-law students are sparse. Thus, this study aims to find an effective method to make non-law students understand the topic of shares in the Company Law course by developing an instrument named 'LexGenic Plus' to aid them. Findings revealed that LexGenic Plus managed to develop students' writing skills and exude proper communication by replying to proper emails and becoming very persuasive in their actions. The exercise also enables the students to work in a group, working in collaboration with other students and paying attention to detail. The clear and concise flowchart as visual aid has helped Gen Z students to improve their understanding of the topic of shares in the Company Law course. The teaching instrument will add to the teaching methods of engaging students in the Company Law course, hence will significantly add value to the teaching pedagogy for law courses.

Keywords: Company Law, shares, visual aid, flowchart, non-law students

1. INTRODUCTION

Legal education includes the legal profession, law teaching, law research, administration of different branches of law and all other activities which require legal knowledge and skill (Majhi, 2022). Teaching law to law students is different from teaching law to non-law students. The teaching method to teach non-law students normally has two approaches. Firstly, lecture-based learning (LBL) conducted in mass lectures where students remain passive most of the time but are active listeners (Poon & Kong, 2014). The second teaching method is problem-based learning (PBL) where the students will be given problematic questions to be solved during tutorial hours with their group members (Poon & Kong, 2014). LBL will allow students to facilitate a deep approach to learning by linking a complex chain of problem scenarios through theoretical knowledge and PBL encouraging independent thinking and the acquisition of problem-solving skills (Ewang, 2008).

Although LBL and PBL have been used to teach non-law students, there are situations where the students still face difficulty in understanding the law courses. The difficulty depends on the law courses offered to the students. In this study, the Malaysian Company Law course is offered in the 4th semester of an undergraduate program for the Bachelor of Corporate Administration (Honours) under the Faculty of

Administrative Science and Policy Studies, Universiti Teknologi MARA (UiTM), Malaysia. The Malaysian Company Law course will be taught in 14 weeks for each semester with two hours of lecture and two hours of tutorial each week.

The Malaysian Company Law course is a prerequisite for another Corporate Secretarial Practice course. Graduates of Bachelor of Corporate Administration (Honours) will obtain an exemption from having to undergo the same Company Law course during the qualifying examination for Company Secretary under the Malaysian Institute of Chartered Secretaries and Administrators (MAICSA). Learning law in general or specifically learning Company Law, which is also a part of Corporate Law is not easy for non-law students because a law course is not their forte nor do they have a total interest in the subject matter. There are many topics in the Malaysian Company Law course such as the topics on incorporation of companies, types and formation of companies, promoters, shares and maintenance of share capital, and directors. A previous study showed that students have difficulty understanding corporate law in general since corporate law is technically complex and not easy to restate in a few words (Orts, 1993). The law relating to companies which includes the issuance of shares is also difficult to understand (Hicks & Goo, 2008; Padil et al., 2021).

Nevertheless, Company Law is still the main course that students must learn since it provides a basic understanding of corporate work. Students feel disengaged knowing that the subject is a difficult one (Dobson & Marsh, 2009 as cited in Yoon & Wong, 2018). Since the topic of shares is one of the important topics in the Company Law course, students are expected to understand how shares help the company to increase capital, and hence how the corporators continue their business. Studies on the methods of teaching Company Law to non-law students are sparse. A study conducted on undergraduate nursing, business administration and accountancy students to find the best approach to teaching and learning to non-law students revealed that there ought to be an emphasis on practical work. (Byles & Soetendorp, 2002). Therefore, the effort in teaching law should be to make the law "real" rather than "imitation" (Donohoe, 2007). Thus, this study aims to find an effective method to make non-law students understand the topic of shares in the Company Law course by developing an instrument to aid them. The teaching instrument will add to the teaching methods of engaging students in the Company Law course, hence added value to the knowledge of Company Law.

2. LITERATURE REVIEW

LBL is a teaching method to impart requisite knowledge relevant to the course through lecture-based mostly mass lectures and students are guided for further reading based on the conceptual framework given by the lecturer (Yoon & Wong, 2018). Unlike LBL, during PBL, the students will use the acquired knowledge gathered from the LBL to deal with or solve the problems given by the lecturers (Blunden, 1990; Shalini 2021). Although LBL was perceived as an inactive, passive approach and boring while PBL is considered to be effective in enhancing teamwork and helpful in improving understanding, a combined approach of LBL and PBL is the most preferred method in teaching law students since it increases their knowledge and competence (Yoon & Wong, 2018).

Teaching pedagogy to non-law students should be in line with the objectives and outcome of the syllabus of the law courses. Pedagogy is the combination of teaching methods (what instructors do), learning activities (what instructors ask their students to do), and learning assessments (the assignment, projects, or tasks that measure student learning) (University of Minnesota, 2023). Therefore, Sriprom et al., (2019) suggested that teaching style and classroom management should be suited to law students' traits by providing more interactive activities such as discussion, debate, and so on. However, lecturers have to be creative in their teaching methods since non-law students are non-prepared with legal skills. The teaching pedagogy of teaching non-law students has to be enhanced by understanding the characteristics of the students which relate to the generation groups in Table 1 (Debczak, 2023). Since the students in this present study are under 26 years old, the study will refer to the students of Gen Z.

Table 1. **Generational Groups**

Name of Generation	Year of Birth	Current Age in 2023
Gen Alpha	Early 2010s-2025	0-about 10 years old
Gen Z	1997-2012	11-26 years old
Millennials	1981-1996	27-42 years old
Gen X	1965-1980	43-58 years old
Baby Boomers	1946-1964	59-77 years old
The Silent Generation	1928-1945	78-95 years old

Gen Z are visual learners who prefer active learning activities (McCoy, 2020; Osman et al., 2021b; Gargallo-Camarillas, 2021). Since technology has been incorporated into Gen Z's everyday lives (Schwieger & Ladwig, 2018), learning activities should be technologically inclined (Osman et al., 2021b). A study also found that apart from being technology-oriented, Gen Z students developed learning experiences from collaborative and group-centred work (Schwieger & Ladwig, 2018). Gen Z students should be taught using basic tools which connect digital technology and tangible elements in the classroom such as asking the students to present short scenes, and posing and informing legal questions (Sadowski, 2020). A study showed that students have a strong preference for digital materials where they enjoy learning with the use of digital tools compared to printed materials (Gargallo-Camarillas, 2021). Learning methods can use common tools such as e-mail or digital library (Pascual, 2021).

Apart from digital tools, flowcharts have been proven to enhance the introductory stage of learning. The deductive proof characteristics of flowcharts might challenge the students to construct good and presentable flowcharts (Miyazaki et al., 2017). Researchers of a previous study (Govender & Govender, 2020) found that the student is exposed to the actions of the flowchart through the movement of the robot. Such flowcharts contributed to an increased focus on problem-solving skills and the vital concepts of programming. This showed that flowcharts are visual aids in enhancing students learning ability to understand concepts visually (Govender & Govender, 2020).

3. METHODOLOGY

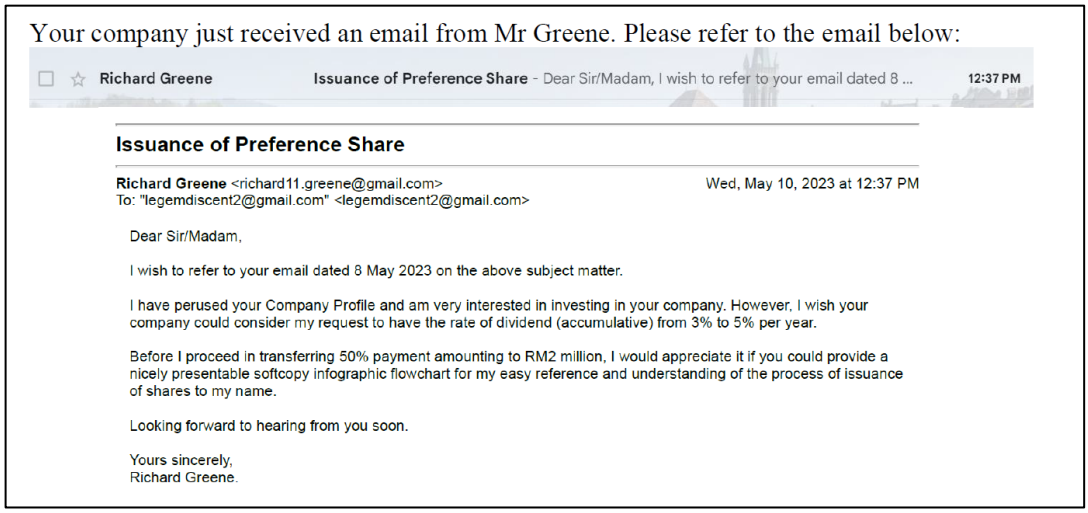
This study employed a qualitative research design to examine the outcome of a tutorial task called "LexGenic Plus", an extension of LexGenic Kit (Padil et al., 2021). All non-law students (the students) attending Company Law classes during the semester from March-August 2023 for the Bachelor of Corporate Administration (Honours) under the Faculty of Administrative Science and Policy Studies, Universiti Teknologi MARA (UiTM), Malaysia were assigned during the tutorials to refer to the instructions in the LexGenic Plus and to respond to a request by a 'potential investor'. A total of 100 students out of 105 students responded to the survey and gave their reflections on the exercise. Their feedback was analysed using the software, Atlas.ti version 23.

3.1 LexGenic Plus

LexGenic Plus is an extension of the LexGenic Kit (Padil et al., 2021). LexGenic Kit was introduced in the year 2021 with the aim of introducing the purpose of the issuance of shares and the maintenance of capital in a company by preparing company profiles. The LexGenic Kit requires students to propose preference shares to a hypothetical potential investor, Mr Greene with the intention of increasing share capital. The students have earlier on during week 5 of their semester prepared their company profiles based on the instructions in the LexGenic Kit. During week 6 of the semester, they were instructed to follow the instructions in the LexGenic Plus by preparing a flowchart informing the potential investor of the process of issuance of shares.

The students worked in a group, either a maximum of three or a maximum of four students. They were given a printout of Mr Greene's email as depicted in Figure 1 who requested a nicely presentable infographic flowchart on the issuance of shares to his name. In the same email, Mr Greene, who intended to transfer RM2 million for the first 50% of the investment, also requested the accumulative rate of dividend to be increased from 3% to 5% per year. Pursuant to the request in Mr. Greene's email, the students were instructed to prepare a flowchart on the issuance of shares. The LexGenic Plus which has

the instructions is attached in Figure 2. Based on the LexGenic Plus, the students are to prepare a completed infographic flowchart and submit it to the hypothetical potential investor, Mr Greene via email. Once the infographic flowchart is completed, the students were supposed to email it to Mr Greene.


Your company just received an email from Mr Greene. Please refer to the email below:

Richard Greene Issuance of Preference Share - Dear Sir/Madam, I wish to refer to your email dated 8 ... 12:37 PM

Issuance of Preference Share

Richard Greene <richard11.greene@gmail.com> Wed, May 10, 2023 at 12:37 PM
To: "legemdiscent2@gmail.com" <legemdiscent2@gmail.com>

Dear Sir/Madam,

I wish to refer to your email dated 8 May 2023 on the above subject matter.

I have perused your Company Profile and am very interested in investing in your company. However, I wish your company could consider my request to have the rate of dividend (accumulative) from 3% to 5% per year.

Before I proceed in transferring 50% payment amounting to RM2 million, I would appreciate it if you could provide a nicely presentable softcopy infographic flowchart for my easy reference and understanding of the process of issuance of shares to my name.

Looking forward to hearing from you soon.

Yours sincerely,
Richard Greene.

Figure 1. **Email from Mr. Greene**.

Based on the above email, a total of RM2 million will be partly paid for the preference shares. You are required to prepare a nicely presentable infographic flowchart of issuance of shares to Mr Greene starting from with the introduction of preference share in your company's constitution until its issuance under Mr Greene's name.

In the flowchart, kindly ensure the following information to be included:

1) Name of your company (should be a non-listed public company).
2) Extract of clause in the constitution which states that your company has different classes of shares pursuant to section 90(1) of the Companies Act 2016 (state the name of shares in your company).
3) Extract of five (5) rights of preference shareholders pursuant to section 90(4) of the Companies Act 2016.
4) The total number of units of shares offered to Mr Greene.
5) Explain allotment.
6) Explain issuance of shares.
7) Price per share

Please prepare the flowchart and email it to Mr Greene at his email address richard11.greene@gmail.com. Your group are advised write a proper email to Mr Greene and attach the flowchart. Email to Mr Greene should reach him before end of your tutorial session. At the end of your email, state the Group No. (the same with Mini Law Dissertation), list of group members and ID as well as class.

(20 marks)

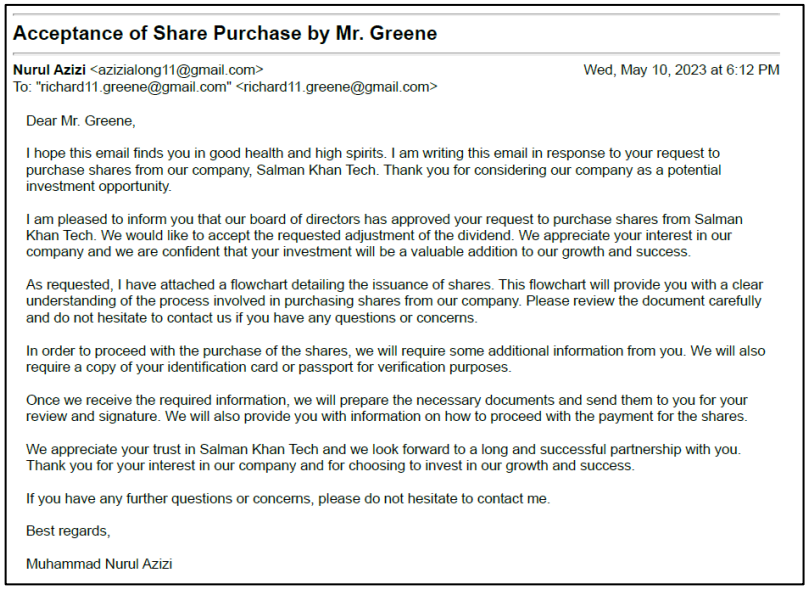
Figure 2. **LexGenic Plus.**

4. RESULTS AND DISCUSSION

4.1 Outcome of LexGenic Plus

The students submitted their flowcharts based on their tutorial groups. A total of 28 groups managed to submit their flowchart within 2 hours of the tutorial. Figure 3 shows a sample of the email sent to Mr Greene by one of the groups of students. Based on the reply email, the students managed to put up a very informative email explaining the basic process before the issuance of shares. From the same email, the students requested further documents from Mr Greene before pursuing the issuance of the shares. Figure 4 is a sample of a flowchart prepared by students. From the flowchart, the lecturer can easily identify

whether the students understand the instructions given and whether the students understand the topic of shares.



Acceptance of Share Purchase by Mr. Greene

Nurul Azizi <azizialong11@gmail.com> Wed, May 10, 2023 at 6:12 PM
To: "richard11.greene@gmail.com" <richard11.greene@gmail.com>

Dear Mr. Greene,

I hope this email finds you in good health and high spirits. I am writing this email in response to your request to purchase shares from our company, Salman Khan Tech. Thank you for considering our company as a potential investment opportunity.

I am pleased to inform you that our board of directors has approved your request to purchase shares from Salman Khan Tech. We would like to accept the requested adjustment of the dividend. We appreciate your interest in our company and we are confident that your investment will be a valuable addition to our growth and success.

As requested, I have attached a flowchart detailing the issuance of shares. This flowchart will provide you with a clear understanding of the process involved in purchasing shares from our company. Please review the document carefully and do not hesitate to contact us if you have any questions or concerns.

In order to proceed with the purchase of the shares, we will require some additional information from you. We will also require a copy of your identification card or passport for verification purposes.

Once we receive the required information, we will prepare the necessary documents and send them to you for your review and signature. We will also provide you with information on how to proceed with the payment for the shares.

We appreciate your trust in Salman Khan Tech and we look forward to a long and successful partnership with you. Thank you for your interest in our company and for choosing to invest in our growth and success.

If you have any further questions or concerns, please do not hesitate to contact me.

Best regards,

Muhammad Nurul Azizi

Figure 3. **Reply email to Mr. Greene.**

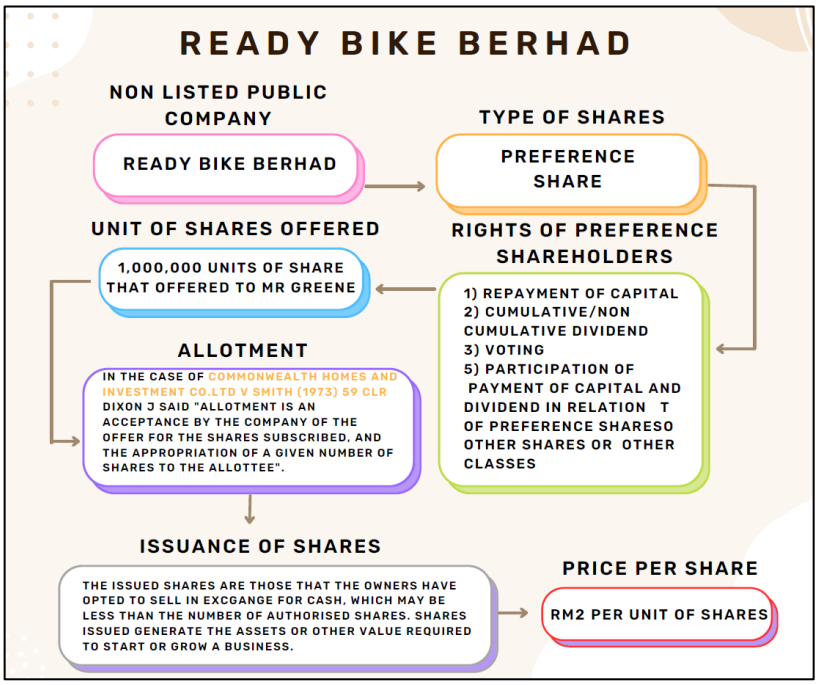


Figure 4. **Flowchart on the information on the issuance of shares**

4.2 Learning Outcome of LexGenic Plus

A total of 22 (22%) and 78 (78%) male and female students, respectively, submitted their feedback on the survey. The open-ended responses were later analysed using Atlas.ti version 23 which the 'artificial intelligence' (AI) managed to summarise 41 codes from the responses. From the total of 41 codes, the codes were later reduced into six themes as depicted in Table 2 after consideration of overlapping codes.

Table 2**. Summary of Themes**

Themes / No.	Teamwork	Acquiring Knowledge	Comprehension	Skills	State of mind	Personal Development
1	Attention to detail.	Corporate Governance	Understand law	Writing	Excitement	Self-improvement
2	Collaboration	Business	Clear instruction	Replying email	Motivation	Self-reflection
3	Positive results	Education	Simplify	Communication	Gratitude	Confidence
4	Lack of understanding	Financial knowledge	Learning the law	Persuasion		Personal Growth
5		Investment	Confusion			
6		Marketing	Visual			

Teamwork is working with a group of people to create or do something. Students gave reflection that when they work in a team, they can work in collaboration with others and pay attention to detail. The results from the combined work can give positive results. This result is in line with the study by Schwieger and Ladwig (2018) which found that Gen Z students developed learning experiences from collaborative and group-centred work.

As for the theme of 'acquiring knowledge', it was found that LexGenic Plus is able to expose students to corporate governance, business, education, financial knowledge, investment, and marketing. From LexGenic Plus, students are able to produce the flowchart required because of clear instruction, and they manage to simplify the information into a flowchart. The flowchart would enable them to understand the law and learn the law at the same time. The visual aid of the flowchart enables the students to understand the topic of shares better. This result supports previous studies (McCoy, 2020; Osman et al., 2021b; Gargallo-Camarillas, 2021) since the students in this present study were all Gen Z, who are also considered visual learners.

LexGenic Plus manage to develop the students' writing skills and proper communication by replying to proper emails and becoming very persuasive in their actions. This skill is intrinsic in nature and can be referred to as 'intrinsic motivation in learning' which is self-inflicted motivation (Joitun & Tati, 2021). This study also discovered another intrinsic nature, which is the state of mind of the students, where the students felt excited, motivated, and grateful for the exercise. In addition, the students can improve their personal development and become confident in themselves. Self-improvement and self-reflection will lead to the student's personal growth.

However, the study discovered two negative traits of lack of understanding and confusion. Some respondents mentioned that they realised their knowledge of the topic was lacking and needed further revision. These negative traits should not outweigh the positive traits that emerged from the LexGenic Plus.

5. Conclusion

The preparation of the visual aid of the flowchart has helped Gen Z students to improve their understanding of the topic of shares. The flowchart was described as a clear and concise way of explaining the topic. LexGenic Plus managed to make the students realise the areas where their knowledge is lacking, prompting them to do further revisions. Students gained a better understanding of the process of issuance of shares through the flowchart exercise. Flowcharts were seen as a pleasant and easy way to explain complex topics and improve understanding. Some students found the exercise easy to understand, while

others found it challenging but learn through the process. The exercise also helped students understand the importance of properly preparing emails and cover letters. Overall, the exercise was seen as a helpful tool and beneficial in learning and understanding the concepts of shares.

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ASSESSING THE EFFECTIVENESS OF LEGAL CAST IN ENHANCING STUDENTS' LEARNING: A STUDENT PERSPECTIVE

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Abstract

Law subject seems to be a difficult subject as the course requires students to read extensively provisions and cases, comprehend legal principles, and doing research. The abundance of reading materials also makes it difficult for them to grasp legal knowledge. Accordingly, an alternative approach to assessment is designed through case-based learning (Legal CaSt) instead of traditional assessment such as pen and paper, which is becoming short-lived. This assessment approach is to develop student-centred active learning through case-based learning. Case-based assessment is based on problem-based questions that demonstrate students' ability to apply the relevant laws and decided cases to legal issues where they will be given hypothetical cases based on real-world scenarios. The objective of this paper is to assess the effectiveness of this newly introduced assessment, 'Legal CaSt' in enhancing students' learning abilities, research skills, and legal knowledge in the hypothetical case. To arrive at findings, a set of questionnaires is designed to gain primary data to know students' perspectives towards the effectiveness of 'Legal CaSt'. Using the online survey method, a total of 439 UiTM Foundation Law students participated in the survey. The findings reveal that Legal CaSt as an innovative assessment enhances law learning abilities and serve the needs of the students. These findings provide important insights into the effectiveness of this new method of assessment, where it is easier for students to understand the relevant laws by relates their knowledge and understanding to legal problems through their involvement in case-based assessment.
Keywords: [Case-based Learning (CBL), active learning, law, assessment method]

1. INTRODUCTION

The traditional method of imparting legal education involves the delivery of lectures followed by immediate post-class engagement through question-and-answer sessions. However, this strategy is not sufficient to facilitate long-term retention of the subject matter by students. The scholarly merit of the legislation discussed in the lecture class is subject to scrutiny, as argued by Smith (1967), who posits that the more the comprehensiveness of the lecture, the lesser the cognitive exertion demanded from the students. Law students typically engage in the practise of reading cases, which serves to enhance their memory rather than develop their legal reasoning skills. They have knowledge regarding the legislation, although lacks proficiency in using the necessary tools (Childs, 1914). Furthermore, the legal profession necessitates a higher level of proficiency from aspiring legal practitioners in the years to come.
(Cepulo, 2005).

Introduction of Legal CaSt as an assessment driven by the need to provide law students with essential legal skills, enabling them to enter the legal profession with a comprehensive and analytical understanding of the law. The primary aim of this study is to evaluate the efficacy of the recently implemented assessment tool, known as 'Legal CaSt', in improving students' learning capabilities, research proficiencies, and legal understanding within a hypothetical case scenario.

Overview of Legal CaSt as innovative form of assessment

The overview of Legal CaSt as innovative method of teaching and learning law is illustrated by the chart below:

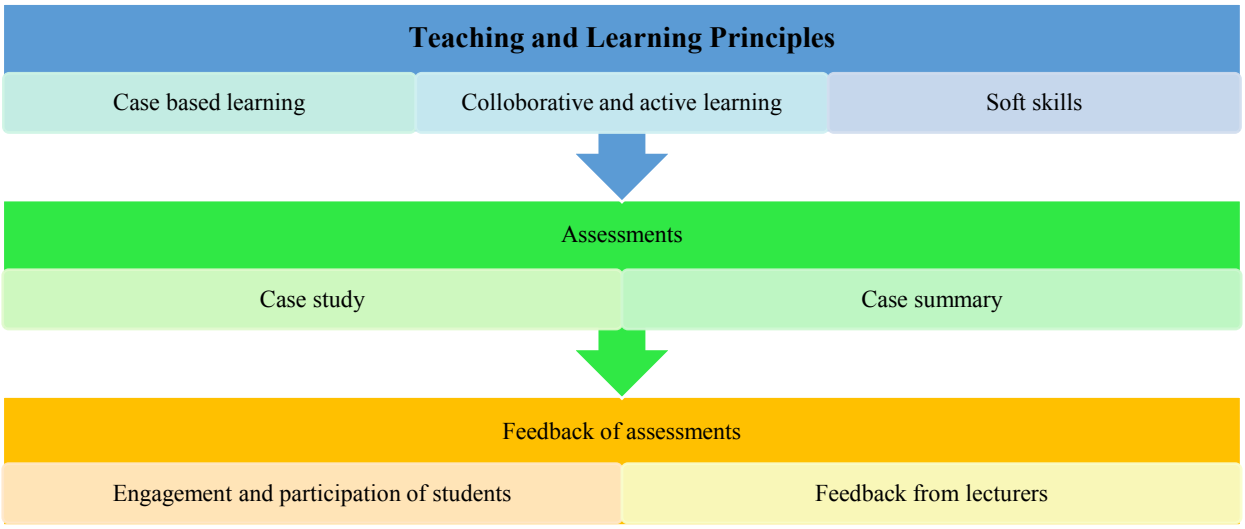

Figure 1. **Legal CaSt innovative assessment**

The implementation of Legal CaSt involves the utilisation of case-based learning. Case-based learning incorporates the problem-based approach within a case study framework, necessitating students to discern the pertinent legal principles. The provision of feedback from lecturers following an assessment aids students in comprehending and enhancing their critical thinking abilities. Students who receive feedback will demonstrate a higher level of engagement in their academic pursuits. During the assessment, students will actively participate in collaborative discussions and engage in cooperative efforts to resolve legal concerns within a predetermined time frame. Engaging in this practise has the potential to enhance students' legal research skills and deepen their comprehension of selecting appropriate sources for the given task. Furthermore, Legal CaSt also facilitates active learning experiences from engagement in problem-solving, project completion, and independent knowledge acquisition. This approach recognises that students learn most effectively through hands-on experiences and self-discovery. It is an effective tool for enhancing students' soft skills, namely in the areas of teamwork, time management, communication, and problem-solving. These abilities are crucial for their ongoing educational development and growth. Following the evaluation conducted by instructors, students will be provided with feedback regarding their assessment.

Apart from that, the originality and creativity of Legal CaSt can be seen from the concept of 3R as can be describe as below:

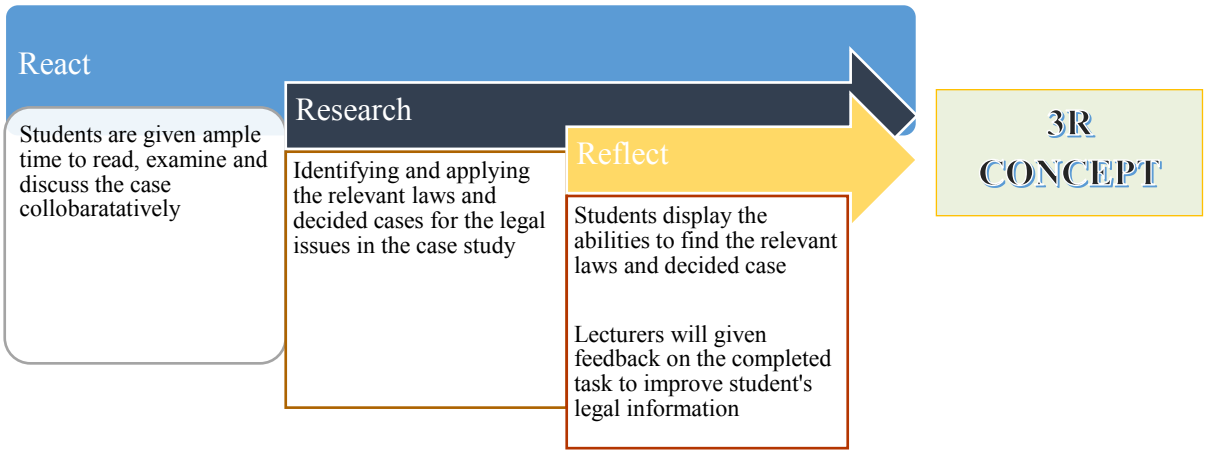

Figure 2. **Originality and creativity of Legal CaSt is based on concept of 3R**

The diagram shows the process of assessment of Legal CaSt from **3R** concept; **R**eact (students will be given the instructions and questions with ample time to read, examine the case collaboratively) before they do the **R**esearch (searching and gathering materials from relevant laws and caselaw to apply in case study given). Lastly is **R**eflect (students will present the outcome of the assessment and lecturers will give feedback for the task).

2. LITERATURE REVIEW

The conventional way of teaching the law is by delivering lecture and getting immediate respond after class by asking question. However, this method does not adequate to enable students remember the subject in the long term. The permanent value of the law that is covered during lecture class is questionable as stated by Smith (1967), the more comprehensive the lecture, the less intellectual effort required of the students. Specifically, law students usually are exposed to case reading practice which it will train the memory not for legal reason. If students have no inquisitive turn of mind, and prone to outside investigations, he may pass his examinations in a creditable manner, they will leave the law school as uninformed as he was when he entered respecting the use of law books. He learned the law, but ignorant usage of the tools (Childs, 1914).

Active learning occurs when students engage in activities that promote reflection on ideas and their application. According to Thyfault and Fehrman (2009), the learning process for students is enhanced through active engagement, such as hands-on activities, as opposed to passive methods like listening or reading. In this approach, the teacher plays a crucial role in facilitating the exploration of students' individual viewpoints and values, while also integrating acquired knowledge. Students are required to engage in decision-making exercises within problem-solving contexts as presented in the case study situations. The objective of assessment is to select the most optimal alternative, with the ultimate outcome being a response or resolution to the issue at hand Chow et.al. (2006). The development of students' soft skills, such as teamwork, time management, communication, and problem-solving, occurs during the learning process, with lecturers providing feedback for assessment purposes. It is important for feedback to be both prompt and specific, as students tend to modify their approach based on the advice provided by their lecturers (Herbert ,2014).

Legal skills are necessary for students and must be developed during their study One way to equip students with such skills is through assessment. From the survey and student's interview, Martin (2003) found that a modified problem-based approach for taxation class had beneficial effects on student learning in terms

of understanding, have better preparation for tutorials and ability to deal with more complex issues including in the exam question. Students preferably choose authentic assessment (students are asked to perform real-world tasks that demonstrate meaningful application of essential knowledge and skills towards task for future employment), because of the real-life task makes they felt it is relevant for their learning and helped increased their knowledge in the subject area (Collins, 2022). Students should be given choice that challenges them to identify options and permits multiple resolutions consist of legal, normative, and practical considerations (Todd & Minow, 2019). Therefore, this research is important as it provides data about the efficacy of implementation newly assessments (Legal CaSt) from student's perspective as only limited research has been conducted in this study area.

3. METHODOLOGY

Research design

A set of questionnaires has been developed with the purpose of evaluating the efficacy of 'Legal CaSt' as perceived by students. The online survey approach was employed to gather data in this study.

Sampling

A sample of 439 students enrolled in the UiTM Foundation Law programme (Part 1) participated in this study. Convenience sampling technique has been used to gain primary data to know students' perspectives towards 'Legal CaSt' as assessment.

Data collection

For the online surveys, a total of 439 questionnaires were collected among UiTM Foundation Law programme (Part 1) students. The participants were divided into two groups: 159 students (36.2%) from the PI005 programme, and 280 students (63.8%) from the PI007 program. The surveys consist of two parts: Part A, which gathers information about the demographics of the students, and Part B, which includes seven items that are answered using a Likert scale. Data was analysed by describing the results of student's perspective towards their learning abilities, skills, and legal knowledge in the hypothetical case.

4. RESULTS AND DISCUSSION

Student's perspective on the effectiveness of Legal CaSt to enhance student's learning

Legal CaSt is a creative alternative to standard forms of assessment. An online survey using Likert-scale was undertaken to evaluate the efficacy of Legal CaSt as assessment.

Participants

The survey was conducted at the Centre of Foundation Studies, UiTM Selangor Dengkil Campus. Participants are Semester 1 Foundation Law students. Law Foundation programme from two programs; PI005 (UiTM Law Foundation) and PI007 (KPTM Law Foundation).

LAW FOUNDATION PROGRAM	PI005 (UiTM Law Foundation Program)	PI007 (KPTM Law Foundation Program)	TOTAL
NUMBER OF PARTICIPANTS	159	280	439

Table 1. **Total number of participants**

Table 1 above shows that a total of the 439 responses has been received from the survey comprises percentage of 159 students from PI005 and 280 students from PI007. The percentages of the participants is shown below:

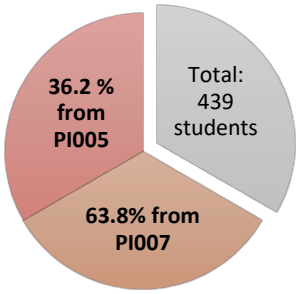

Figure 3. **Percentage number of participants**

Results of the survey

Student's perspective about Legal CaSt is divided into four (4) parts, namely, i)method of assessment, ii) developed skills, iii) engagement during presentation and iv)life-long learning. Below are findings of the survey:

1. **Method of assessment assists students to apply relevant legal knowledge in solving the task**

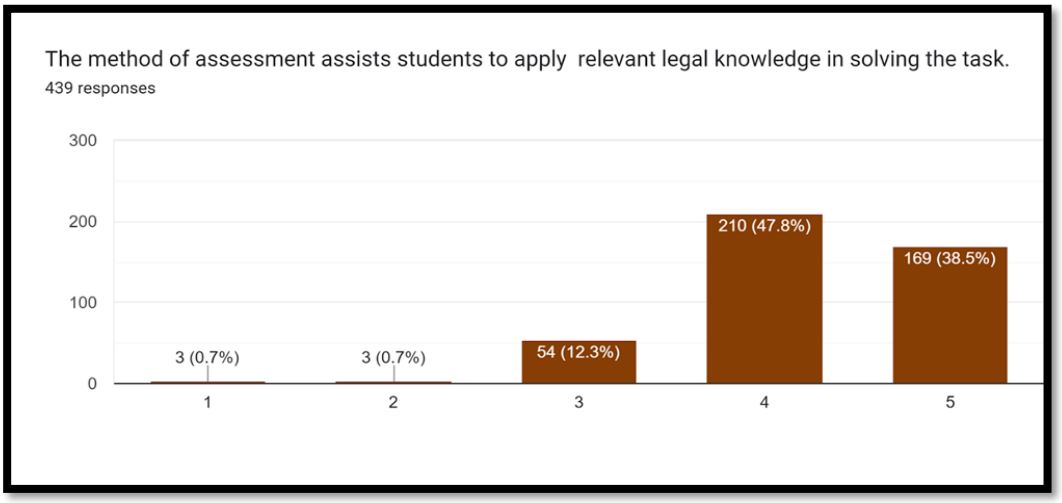

Figure 4. Method of assessment assists students in applying legal knowledge in solving the task

The result in Figure 4 indicates that 38.5% of students strongly agree and 47.8% of students agree that the method of assessment assists students in applying legal knowledge in solving the task. However, 12.3% s neutral and 0.7% of students disagree and strongly disagree that the works for them to apply legal knowledge on the task given. The students' ability to explain the relevant law applicable based on the case study helps them understand the topic and exposes them to legal learning skills.

2. Legal Cast develops skills

From Legal CaSt, students have experienced discussion, exploration of legal knowledge through legal research and ability to display the outcome of the task enables them developed several skills such as legal research skills, practical skills, communication skills and teamwork. The finding is shown as below:

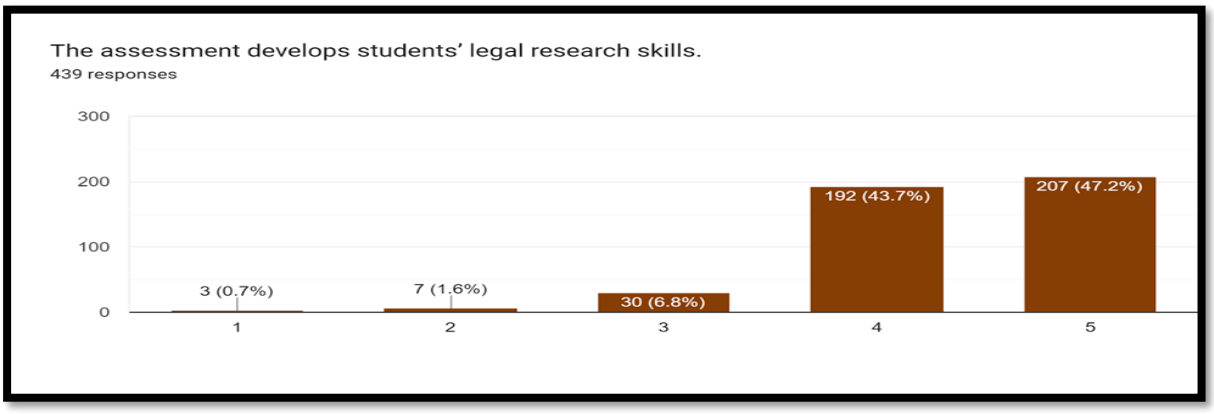

Figure 5. **The assessment develops students' legal research skills**

Figure 5 represents 47.2% of students strongly agree and 43.7% agree that the assessment develops students' legal research skills. Students are required to study the case, research the relevant laws, and apply the law accordingly instead of listening to lecture. It is only 6.8 % students respond that they are neutral, 1.6% disagree and 0.7% strongly disagree. As a result, majority of students are enjoyed preparing, exploring, and presenting this assessment.

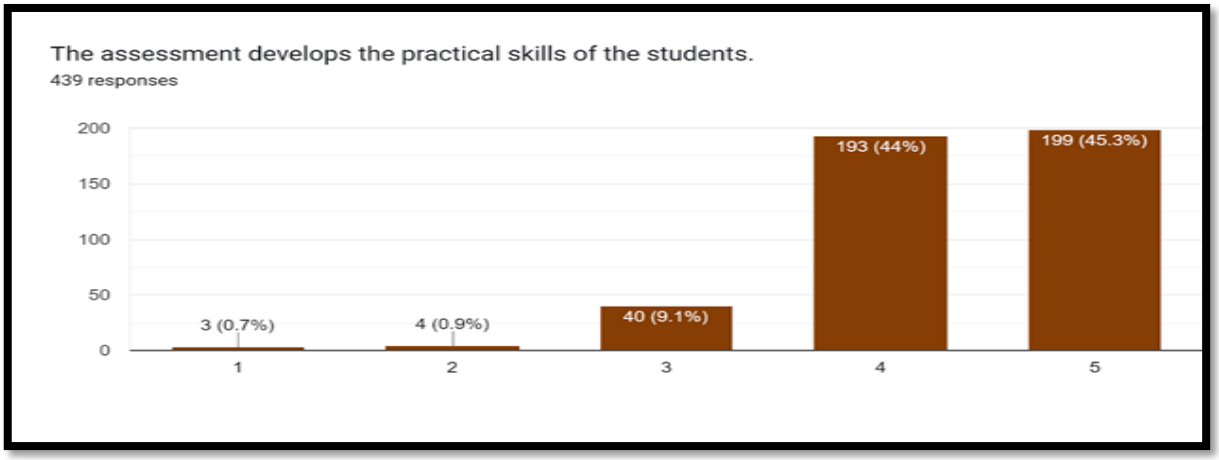

Figure 6. **The assessment develops practical skills and promotes experiential learning.**

The legal case study and case summary help students develop practical skills and promotes experiential learning in Legal CaSt from the above data shows that majority of students in which 45.3% of students strongly agree and 44% agree that the assessment are practical and experimental. Only 9.1% of students neutral and 0.7% students disagree and strongly disagree (0.7%) that it helps them in such aspect.

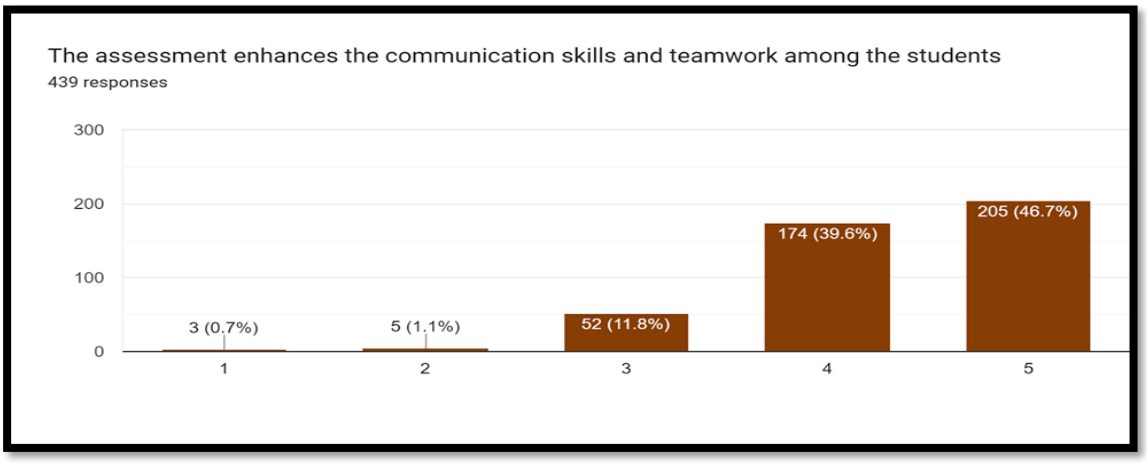

Figure 7. **The assessment enhances the communication skills and teamwork among the students**

The assessment enhances the communication skills and teamwork among the students. Besides, the important factor in successfully completing this case study is the commitment and cooperation of group members. Students need to deliver and relay information in a clear and concise manner. This is supported by the above data, shows that 46.7% of students strongly agree and 39.6% of students agree that the assessment enhances their communication skills and teamwork. However, 11.8% of students is neutral, 1.1% students disagree, and 0.7% students strongly disagree on this particular skill.

3. Engagement of students

One of the challenges of the assessment is engagement. Engagement for the assessment requires involvement of all group members to finish the task and during presentation. The engagement happens when students explore issues and provide a basic legal solution based on the case study given. The data below shown that majority of students strongly agree(39.9%) and agree (48.5%) that assessment enhancing their engagement and able to explore issues in solving the task. Only 10% are neutral while 1.1% disagree and 0.5% strongly disagree with this view.

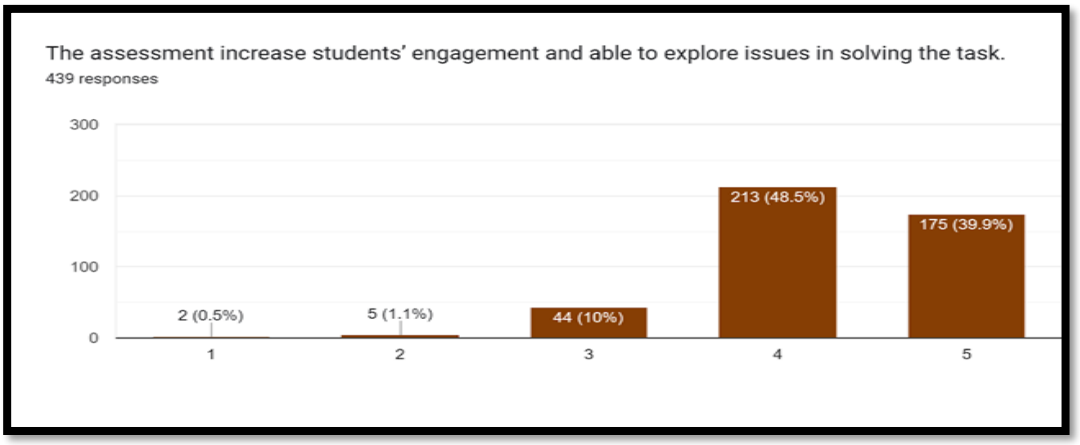

Figure 8. **The assessment helps students actively engage during presentation**

On the presentation, students need to deliver the outcome for the case study and summarize caselaw that they found. By understanding the case and applicable law in providing a solution, students able to interestingly present the task. Thus, it stimulates students' interest in learning as shown above, majority students strongly agree (40%) and of students agree (46.9%) that the assessment helps students actively

engage during presentations. Only 15.3% of students is neutral while 1.6% of students are disagree and 0.9% of students strongly disagree that it helps them actively engage during presentation.

4. Assessment for lifelong learning

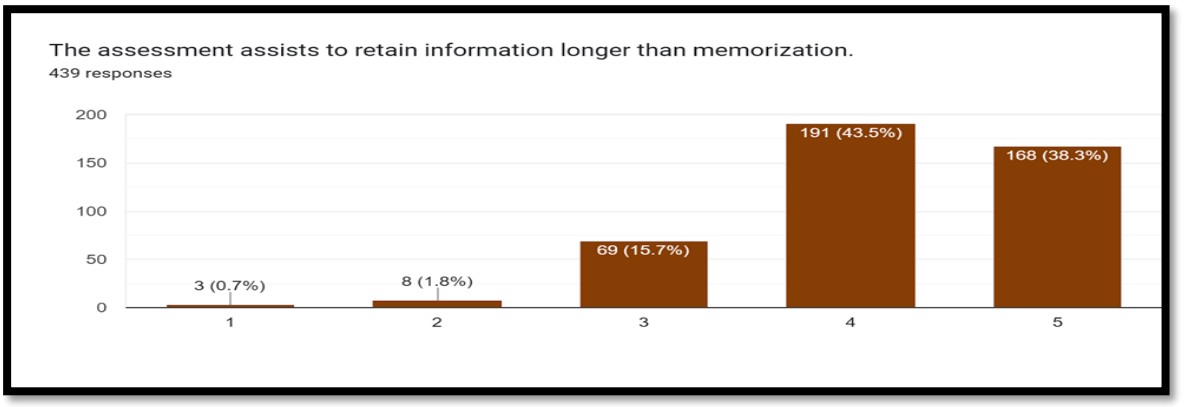

Figure 9. **The assessment as for lifelong learning**

The above data reveals that 38.3% of the students strongly agree and 43.5% students agree that the assessment helps the students retain information longer than through memorization. All of students contributed the completion of this assessment and such experience and skills is useful as lifelong learning. Only 15.7% of students satisfied while 1.8% disagree and 0.7% strongly disagree they may retain the information longer.

5. CONCLUSION

"Legal CaSt," implemented various methods in teaching and learning, notably case-based learning. Students are required to engage in legal research, which entails the identification of primary and secondary sources of law for the purpose of problem-solving in the assignment. It is imperative for students to possess a critical and legal reasoning mindset as they are required to thoroughly analyse the complexities of the given scenario to identify and provide appropriate answers. In addition to this, active learning entails providing students with opportunities to engage in problem-solving, project completion, and independent discovery of knowledge and conclusions. Students can learn by discovering solutions on their own through preparing and performing simulations or written problems assisted by coherent and readily retrievable knowledge base through lectures and discussions (Nathanson, 1994).

Overall, Legal CaSt approach recognises that students learn most effectively through hands-on experiences. Besides, it has the potential to enhance students' interpersonal skills through engaging in active learning, collaborative learning, and case-based learning methodologies. Structured skills development such as suggested by Hughes (2009), should be introduce during the formal education phase that generally precedes work-based learning. Therefore, students have opportunity to use the legal theories to address real-life issues. Hence, Legal CaSt demonstrates efficacy as a learning tool from student's perspective, as evidenced by findings that highlight its effectiveness.

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FINANCIAL LITERACY AMONG WORKING YOUTHS IN KUALA LUMPUR

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Abstract

Financial literacy among working youths is a global concern. This includes alarming problems, such as the high bankruptcy levels among working youths and weaknesses in managing finances, including debt, personal finance, and savings. The OECD has provided a framework that assesses financial attitude, financial behavior, and financial knowledge to determine the level of financial literacy among working youths. This study targeted individuals among working youths in Kuala Lumpur. The study was conducted among 157 working youths using a convenience sampling method. The findings of the study reveal that all variables are significantly associated with financial literacy among working youths. Future research is suggested to focus on expanding the study to include working youths in the greater Klang Valley in order to gain a more comprehensive understanding of financial literacy among this population.

Keywords: financial literacy, financial attitude, financial behaviour, financial knowledge

1. INTRODUCTION

In the aftermath of the Asian Financial Crisis 1998, Global Financial Crisis 2008 and Europe sovereign Debt Crisis 2012, financial literacy has been increasingly recognized as an important individual life skill in various parts of the world. In addition, amidst current economic conditions in the global economy, it is now becoming important for people to be more competent and knowledgeable in making financial decisions. An essential indicator of people's ability to make financial decisions is their level of financial literacy (Lusardi, 2019). According to The Organization for Economic Co-operation and Development (OECD) (2017), financial literacy can be defined as a combination of knowledge skills, attitude and behaviour necessary to make effective decision and confidence to apply such knowledge and understanding in order to make better decisions across a range of financial contexts, to ultimately improve and achieve individuals and society financial wellbeing, and to enable participation in economic life.

In the new millennium, the current issue of financial literacy is addressed at the international or global level (Tomaskova et al., 2011). This can be seen in the survey of adult financial literacy conducted by OECD/INFE 2020 which participated in twenty-six countries and economies across three continents (Asia, Europe and Latin America). From the key survey results, financial literacy is low across the sampled countries and economies. Individuals across the entire sample on average scored only 12.7 or just under 61% of the maximum financial literacy score, which represents a basic set of knowledge concepts and financially prudent behaviours and attitudes (OECD, 2020). The highest score achieved by any country was 14.8 by Hong Kong, China, or 71% of the maximum, and a minimum of 11.1 was scored by Italy (53% of the maximum). The majority of economies scored between 12 and 14. According to OECD (2020), the score obtained from the results showed that plenty of room for improvement across countries is needed for financial literacy.

Moreover, The Standard & Poor's Ratings Services Global Financial Literacy Survey (S&P Global FinLit Survey) in 2014 shows the results are sobering. This is because only about one third of the global population are financially literate on average. This is true not only in developing economies but also in countries with well-developed financial markets. These findings also being supported by the findings from Lusardi and Mitchell (2011). Based on a project called Financial Literacy around the World (FLat World) conducted by Lusardi and Mitchell (2011), findings from the Flat World project, which so far includes data from 15 countries, including Switzerland, highlight the urgent need to improve financial literacy. Financial literacy is at a crisis level across the countries, with the average rate of financial literacy, as measured by those answering correctly all three questions, at around 30%. Moreover, only around 50% of respondents in most countries are able to correctly answer the two financial literacy questions on interest rates and inflation correctly. According to Lusardi and Mitchelle (2011), low levels of financial literacy across countries are correlated with ineffective spending and financial planning, and expensive borrowing and debt management. These low levels of financial literacy worldwide and their widespread implications necessitate urgent effort.

In Malaysian context, the lack of financial literacy among Malaysians is largely unknown. In terms of financial awareness, the national level of financial literacy among Malaysians remains poor. One-third of Malaysians, according to a survey by the Credit Counselling and Debt Management Agency (AKPK), have low levels of confidence in financial management (Aziz & Kassim, 2020). This finding can be supported through a study conducted by Mokhtar, Moga Dass, Sabri & S F Ho (2018), which mentioned that Malaysians, as overall, still do not have enough financial knowledge, skills and understanding. They do not know how to plan for retirement or their estates, and also unsure about the roles of financial institutions such as AKPK. They thought that AKPK's role was to offer financial assistance. They are aware of the presence of BNM, Securities Commission, and Bursa Saham, but lack an in-depth understanding of the tasks and responsibilities of each financial organization.

Besides, the issue of financial literacy among Malaysian can be seen in the context of bankruptcy. This can be seen when The Federation of Malaysian Consumers Associations (Fomca) fully supports Bank Negara Malaysia's concern that there is a lack of financial literacy among Malaysian consumers. More than 290,000 consumers have been declared bankrupt with more than 70 percent of them below the age of 45. Indeed, data from various sources indicate clearly that many Malaysians are not managing their finances optimally. Bank Negara have suggested four reasons why Malaysians get into financial difficulties. The reasons are low financial resilience and thus vulnerability to financial shocks, the tendency for instant gratification, no long-term financial planning, and a lack of understanding of risks and returns making consumers vulnerable to scams and fraud. Secondly, the number of scams in Malaysia is increasing substantially. According to the inspector-general of police, there have been a total of 12,092 online scams between January and July 2022 with losses amounting to RM 414.8 million (The Sun Daily, 2022).

Based on the discussion regarding the issue of financial literacy in the global and Malaysian context, the aim of this study is to identify financial literacy among working youths. Therefore, the three variables of the study which are financial attitude, financial behaviour and financial knowledge will be the independent variable for this study.

2. LITERATURE REVIEW

Theory of Planned Behaviour

The Theory of Planned Behaviour (TPB) began in 1980 as the Theory of Reasoned Action (TRA) created by Icek Ajzen is to foresee an individual's intention to engage in a specific behaviour at a specific time. The purpose of the theory was to explain all behaviours over which individuals can exercise self-control The key component of this model is behavioural intent, which is influenced by the attitude regarding the likelihood that the behaviour will have the desired outcome and the subjective evaluation of the risks and benefits associated with that outcome (Ajzen & Fishbein, 1980). The reason adapting TPB in this study is because based on the theory of planned behaviour (TPB), it can contribute to the existing literature by

examining how financial literacy is developed through the interaction of behavioural components of individuals, such as financial knowledge, attitude, and behaviour, using a sample of working youths in Malaysia (Yong et al., 2018).

Besides, the use of TPB in this study has being supported by other studies that also adapted TPB in financial related subjects. The theory has been used in previous studies and able to yield the prediction of the relationship in financial related subjects such as financial decision making (Koropp et al., 2014) and financial behaviour (Griffin et al., 2012; Rutherford & DeVaney, 2009). Similar Malaysian studies that adopt the theory are by Mat Nawi et al. (2018), Lajuni et al. (2019), Kamel and Sahid (2021) and Kumaraguru et al. (2022). Goyal and Kumar (2021) also suggested that financial attitude and family influence can be studied using the Theory of Planned Behaviour. In general, the theory has been employed to underpin the financial literacy relationships due to its ability to capture the predictive power of financial behaviour change (Ajzen & Madden, 1986; Ozmete & Hira, 2011).

Financial Literacy

There are various past studies that study financial literacy. The past studies are important as it can support and contribute to the improvement and expansion of scientific research and provide the researcher with a firm foundation and substantial information about the ongoing research. The previous studies in international level regarding financial literacy can be seen in a study conducted by Atkinson and Messy (2012) in which it found that there is a positive relation between income and financial literacy. Lower income level is associated with lower financial literacy level. Similarly: students from high income families also have higher financial literacy level compared to those from low-income families (Johnson & Sherraden, 2007). Interestingly, Hastings and Mitchell (2011) provided experimental evidence to sho that financial literacy is related to wealth. Lower income individuals are more likely to contribute to financial illiteracy as a result of dropping out of school earlier Calamato, 2010), However, a study by Bahovec, Barbié and Palié (2015) found no significant difference in financial literacy level and household income of individuals. Due to the sampling technique being conducted using a snowball sample, a limited number of respondents were involved in Bahovec, Barbié and Palic (2015) study.

Other studies provide links between financial literacy and entrepreneurial success. This is particularly relevant for Indonesia since over 50 percent of the workforce identifies as self- employed (World Bank, 2018). A study conducted in Kenya found that business owners who scored higher on a financial literacy test had the most successful businesses, and that those with lower levels of financial literacy typically formed more vulnerable informal businesses (Njoroge, 2013). A World Bank study conducted in Bosnia and Herzegovina found that young entrepreneurs positively changed business practices after weeks of financial literacy training (Bruhn and Zia. 2011).

Agarwalla et. al, (2012), conducted a survey named "A Survey of Financial Literacy among Students, Young Employees and the Retired in India". The study attempted to examine the financial literacy level of three important demographic groups namely young working adults, retired and students in India. A sample of 2,967 was taken, out of which 1001 were students, 983 were employees and 983 were retired. It was found that basic principles of money matter and household finance such as compound interest, inflation rate impact on returns and prices, and the diversification roles are not well understood. The financial behaviour of Indians was found positive. The scores of employed and retired people were high. The retirees and employed borrowed less and were dependent on their savings. The found positive financial behavior appeared to be associated with higher financial knowledge.

Several studies have attempted to find a linkage between financial literacy and worker productivity or absenteeism. Braunstein and Welch (2002) report on a study at a chemical production company that found that financial wellness was positively correlated with worker productivity. as measured by supervisor's performance ratings and worker health. inferred from absentee records. In two additional studies, employers report that when employees experience financial problems their worker productivity decreases and absenteeism increases (Boston College Center for Work and Family, 2011: International Foundation of Employee Benefit Plans, 2016).

In Malaysian context, study conducted by Jeyaram and Musthapa (2015) found that Chinese respondents have significantly higher financial literacy compared to other races. Another study conducted by Lok (2017) revealed that ethnic differences in the levels of financial management behaviour are only found between the Malays and the Chinese. Compared to the Malays, the Chinese have reduced probability of having poor financial management behaviour by 8.5% but increases the probability of having good financial management behaviour by 6.8%. The better financial management behaviour of the Chinese compared to the Malays corroborates with existing local studies that showed Chinese are more financially literate, have less debt repayment problems compared to other ethnic groups (Loke, 2015; Jariah, Husna, Tengku Aizan & Rahimah, 2012). Kimiyaghalam and Yap (2017) in their study on the level of financial literacy in Malaysia found that amongst the three ethnic groups. Chinese have more level of financial literacy even though this difference is not that much with Malay respondents. The study also found that Indians have poor levels of financial literacy in both the basic and advanced levels.

The Influence of Financial Attitude and Financial Literacy

The previous studies that study the relationship between financial attitude and financial literacy can be seen in the study of Financial Literacy Among Malaysia Self-Employed Youth: Proposed Framework by Hassan, Jaafar & Karim (2023). In this study, the proposed framework suggests financial attitudes have a direct relationship to financial literacy. Based on the findings in this study, it shows that financial literacy has a positive influence on financial literacy. The same result also was obtained in the study of financial Knowledge, attitude and behaviour of young working adults in Malaysia by Yong et. al. (2018) which also shows that financial attitude is associated with financial literacy.

Moreover, Rai et. al. (2019) conducted a research about association of financial attitude, financial behaviour and financial knowledge towards financial literacy: A structural equation modelling approach. This study attempted to present an association of financial knowledge, financial behaviour and financial attitude towards the financial literacy level among working women in Delhi, India. The sample size of 394 working women from various public and private organisations of Delhi has been incorporated for the research. Based on the findings, the outcome of the research work explains that the financial attitude of working women is highly associated with financial literacy level. The result of this study has been supported by various past researches (Arora, 2016; Calamato, 2010; Haque & Zulfiqar, 2015; Huston, 2010; McCormick, 2009).

In the study by Ashaari & Md. Yusof (2019) the components of financial literacy which include financial behaviour, financial attitude and financial knowledge are important in order to direct working women to have good spending and investing of their funds. This study suggests that working women tend to be financially literate through empowerment in financial education such as having a strategic direction and by conducting seminars. Working women are one of the country's assets who contribute to economic growth. They will contribute in terms of income, savings and investment habits whereby the money is being circulated into the economy for better accumulation of assets.

Garg and Singh (2017) has conducted research on financial literacy among youth in the world based on previous studies. Based on the findings, it has been evidenced that males generally possess better financial attitudes and overall financial literacy relative to females. In India, the situation is the same except in the female dominated states like Nagaland, Mizoram and Meghalaya (Filipiak and Walle, 2015). Youth tend to score low on financial attitude and financial literacy. In most of the cases, high educational status was also found to be a significant indicator of high financial knowledge, financial attitude, financial behaviour and financial literacy. Usually along with these factors, employment status, family background as well as financial socialization also influence financial knowledge, financial attitude, financial behaviour and financial literacy of an individual. Also, most of the researchers have found an interrelationship between financial behaviour and financial literacy.

The Influence of Financial Behaviour and Financial Literacy

Several studies have suggested that higher levels of financial literacy result in more sophisticated investment behaviour among individuals. Prior studies have found that financial literacy has a direct effect on the amassment of wealth (Van Rooji, Annamaria, & Rob, 2012; Behrman, Mitchell, Soo, & Bravo, 2010), retirement planning (Lusardi & Mitchell, 2006; Van Rooji, Annamaria, & Rob, 2012), participation in the stock market (van Rooji, Lusardi, & Alessie, 2007) and saving behaviour (Klapper, Annamaria, & Panos, 2013). However, Grohmann (2018) finds that levels of financial literacy do not have much effect on investment behaviour among the middle class in Thailand.

Human behaviour that is pertinent to financial decision-making and money management such as constructing appropriate budget programs and controlling it, quick payment of bills and regular saving nature is called financial behaviour (Bhushan & Medury, 2014; Kalekye & Memba, 2015). According to OECD (2013), financial behaviour is very important and a fundamental component of financial literacy For Atkinson and Messy (2012), a positive financial behavior of individuals such as appropriate planning for expenditures and caring financial stability enhances their financial literacy level, whereas negative financial behaviour like largely depending upon credits and loans weaken their financial well-being. Banerjee, Sages and Grabl (2009) produced evidence in their study that individuals with lower level of financial risk tolerance face difficulty in financial decision, and they are unsatisfied with their financial management competency. Bhushan and Medury (2014) concluded that in order to enhance the financial literacy level of individuals, the government should focus on building positive financial behaviour and attitude along with financial education.

There is a well-developed literature trying to link measures of financial literacy with other economic and financial behaviours, going back to Bernheim (1995, 1998) in the US, in response to the increasing shift toward defined-contribution pension plans. This area of research got a further boost after the global financial crisis of 2008-2009. which drew attention to numerous scams inflicted on individual borrowers and investors in the US and other economies. Hilgert, Hogarth, and Beverly (2003) found a strong correlation between financial literacy and daily financial management skills, while other studies found that the more numerate and financially literate are more likely to participate in financial markets and invest in stocks and make precautionary savings (Christelis, Jappelli, and Padula 2010; von Rooij, Lusardi, and Alessie 2011; and de Bassa Schoresberg 2013). The more financially savvy are also more likely to undertake retirement planning, and those who plan also accumulate more wealth (Lusardi and Mitchell 2011). These results have been corroborated in a number of economies. Mahdzan and Tabiani (2013) is an example of this kind of research in Malaysia.

The Influence of Financial Knowledge and Financial Literacy

To handle personal finance systematically and successfully it takes knowledge. Financial knowledge has a close relationship with financial literacy or financial education. Hilgert and Hogarth (2003), states that financial knowledge is the conceptual definition of financial literacy. Financial literacy describes a program of financial education by studying certain skills so that individuals have the ability to contro their financial future. The financial literacy component is defined as the ability to make simple decisions about debt contracts, especially how to apply basic knowledge of' interest' that is measured in the context of everyday financial choices (Lusardi and Tufano, 2008).

Financial knowledge is a particular type of capital acquired in life through learning the ability to manage income, expenditure and savings in a safe way (Delavande et al., 2008). For OECD, financial knowledge is essential to determine whether the individual is financially literate, involving questions related to concepts such as simple and compound interest, risk and return and inflation (Atkinson and Messy, 2012). Financial attitudes are defined as a combination of concepts, information and emotions. about learning, which results in a readiness to react favorably (Shockey, 2002). Financial behaviour is defined as an essential financial literacy element, as well as the most important OECD, 2013). In addition to recent study findings, the financial behavior dimension has been found to be a determinant of financial literacy

(Lusardi and Mitchell, 2013).

According to Parker et al., (2012), both actual and perceived financial knowledge influence investments, retirement planning and credit card behaviours. Moreover, Carpena et al., (201l) found that through an individual's increased awareness and initiative, perceived financial literacy may have an effect on financial decisions. Therefore, financial confidence or perceived financial knowledge plays a significant role in financial decisions and individual financial literacy assessment.

3. METHODOLOGY

Sample

Abdullah and Ahmad (2016) stated that the sample size indicates the number of samples that the researcher should include in the study. The present study targeted 384 respondents consistent with the suggestion of Abdullah and Ahmad (2016). The respondents will be targeted out of the population of youth workers in the various industries and different fields such as economies, accounting, finance, engineering, management, medical, banking, law and secretarial line. However, only 157 respondents participated in the study.

In this study, non-probability sampling where the researcher applied a convenience sampling technique. Additionally, convenience sampling is a specific type of non-probability sampling method that relies on data collection from population members who are conveniently available to participate in study. Convenience sampling is a type of sampling where the first available primary data source will be used fo the research without additional requirements. In other words, this sampling method involves getting participants wherever you can find them and typically wherever is convenient. In convenience sampling no inclusion criteria identified prior to the selection of subjects. All subjects are invited to participate. Hence, we distribute it to all working youths in Kuala Lumpur and if they have free time they can answer.

Data Collection

For this study, the researcher used a questionnaire as a data collection method. The advantages of distributing questionnaires is that firstly it is cost-efficient and secondly it ensures the validity of the feedback from respondents because it has been distributed and collected by the researcher. Furthermore, through questionnaires more respondents can be reached in a shorter period of time which in this case are the working youths. The questionnaire is using English and Malay (Bahasa Malaysia) language as a medium of communication because all youths in the workforce have basic command of the language. Also, it reflects professionalism in the research work.

Data Analysis

As indicated by Sekaran and Bougie (2014), data analyses consist of three objectives which are getting a feel for the data, testing the goodness of data and testing the hypotheses developed for the research in quantitative data analysis. The analysis of this study will be performed by using the Statistical Package for Social Science (SPSS) version 20. The data analyses used in this study are descriptive analysis, and correlation. After the data is collected, the data will be analyzed by using the SPSS software version 20.

4. RESULTS AND DISCUSSION

Research Objective 1: To determine the relationship between financial attitude and financial literacy

The first objective is to determine the relationship between financial attitude and financial literacy. Spearman rank order correlation has been undertaken to check on the relationship between these two variables. According to the rule of thumb, there is a significant relationship between financial attitude and financial literacy, $p<0.01$, $r=0.323$. However, the relationship is weak as it is only 32.3%. Therefore, H1 is accepted.

This finding of study is supported by (OECD, 2013) where it stated that attitude and preferences are treated as the vital components of financial literacy. Moreover, individuals with high financial attitude were more likely to have positive attitude towards planning (Lusardi and Mitchell, 2008, 2011; van Rooij et al., 2009; Remund, 2010; Atkinson and Messy, 2012; Agarwalla et al., 2013).

However, this finding contradicts the findings on the financial attitude of Malaysian individuals, which may be different due to personal traits or demographic factors such as family life cycle (Tang, 1993). The second contradicts was inadequacy of money. People who are financially inadequate are those who worry about their financial situation most of the time, feel that most of their friends have more money than they do and believe other people overestimate their actual financial resources (Furnham & Argyle, 1998).

Research Objective 2: To analyze relationship between financial behaviour and financial literacy

The second objective is to analyze relationship between financial behaviour and financial literacy. Spearman rank order correlation has been undertaken to check on the relationship between these two variables. According to the rule of thumb, there is a significant relationship between financial behaviour and financial literacy, $p<0.01$, $r=0.520$ As for the relationship between two variables, it shows a moderate relationship with 52%. Therefore, H2 is accepted.

This statement is supported by the way in which a person behaves will significantly influence his financial well-being. Therefore, it is imperative to capture evidence of behaviour dimension within the financial literacy measure (OECD, 2013). Individuals with high financial behavior were more likely to participate in stock market and formal financial markets (van Rooij et al., 2007; Klapper et al., 2012; Bucher-Koenen et al., 2016).

Nevertheless, this finding contradicts the findings with Clitheroe (2008) which stated that females seem to be better at short term money management behaviour and attitude compared to male. The results showed that women often tend to maintain a budget for their daily finances periodically than men, and are inclined to consider solutions to minimize their expenses. On a contrary, study done by Walczak and Kamieniecka (2018), showed that men are better in money management as they use the financial products and services more often than women and men have better financial knowledge

Research Objective 3: To investigate relationship between financial knowledge and financial literacy

The third objective is to investigate the relationship between financial knowledge and financial literacy. Spearman rank order correlation has been undertaken to check on the relationship between these two variables. According to the rule of thumb, there is a significant relationship between financial attitude and financial literacy, $p<0.01$, $r=0.347$. However, the relationship is weak as it is only 34.7%. Therefore, H3 is accepted.

This finding of study is supported by Herd et al. (2012) measured financial knowledge as the person's knowledge of his own financial situations, instead of basic financial concepts, and treated it as a prerequisite to take financial decisions effectively. To capture financial knowledge of Indians, Filipiak and Walle (2015) asked them about general financial knowledge questions (regarding government guarantees for deposits in national banks, current value of their investments) and specific financial knowledge questions (regarding credit card, Kisan card).

However, the findings of this study contradict with Willis (2008), which argued an individual will always compare the cost and return when acquiring financial knowledge. In Malaysia, the level of education, type of profession and government pensions scheme have significantly impacted the financial knowledge of working adults (Loke, 2015). However, according to Hung et al. (September 2, 2009) the financial behaviour and the ability of an individual is influenced by his financial knowledge and confidence which may not be correlated to actual knowledge. Therefore, there is a difference between actual and perceived financial knowledge of an individual. Hence, Huston (2010) emphasised a knowledge gap due to the

difference between perceived and actual financial knowledge which may hinder good personal financial management practices.

5. CONCLUSION

This study focuses on the factors that affect financial literacy among working youths. The factors are financial attitude, financial behaviour and financial knowledge. This is quantitative studies using 157 samples and Spearman rank order correlation analysis has been undertaken in order to check the relationship between financial attitude, financial behaviour and financial knowledge towards financial literacy. Overall, all of the study's research objectives and hypotheses were well addressed by the researchers. According to the findings covered in this chapter, the factors that affect financial literacy among working youth are significantly and positively influenced by all three independent variables used. Based on the study, this indicates how using these three variables can influence the financial literacy among working youths in Kuala Lumpur.

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FINANCIAL WELL-BEING AMONG YOUNG ADULT IN KLANG VALLEY

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Abstract

The issue of financial wellbeing is an issue across the globe. According to Malaysian Department of Insolvency, the number of Malaysians that were declared bankrupt is 264,127 up until April 2023. Furthermore, young adults, specifically, according to current Consumer Research and Resource Centre (2012) statistics, have less knowledge and awareness, particularly in terms of personal financial responsibility. Therefore, this study aims to understand the determinants of financial wellbeing among young adults with specific focus in Klang Valley. Three variables were tested against financial wellbeing among young adults, which are financial literacy, financial socialization, and financial behaviour. This study is a quantitative study with 155 respondents involve in this study. The data was analysed using SPSS Version 23. The findings reveal that, all the variables are significantly associated with financial wellbeing among young adults. Future suggestions include implementing financial education in school, financial counselling towards young adult and the utilisation of digital applications for financial managements and improve financial literacy among young adults.

Keywords: financial wellbeing, financial literacy, financial socialization, financial behaviour

1. INTRODUCTION

According to Malaysian Department of Insolvency, the number of Malaysians that were declared bankrupt are 264,127 up until April 2023. Between 2018 and May 2022, nearly 60% of individuals who were declared bankrupt were between the ages of 25 and 44. The rising cost of living in Malaysia has caused individuals and households to be more concerned about their financial management. Recent economic shifts have had an impact on how people spend their money. Save, invest, and manage risks to protect their way of living, particularly in the long run. According to the Malaysian Department of Statistics (2021), the overall population of Malaysia was 32.7 million (including non-Malaysian nationals), with ethnic groups including Bumiputera (69.8%), Chinese (22.4%), Indians (6.8%), and others (1.0%). Malay hold the highest bankruptcy rate with 58.14% as stated in Malaysian Department of Insolvency. This shows that the Malay community financial wellbeing are low. Besides, Selangor and Wilayah Persekutuan hold first and second place for the number of bankruptcies in Malaysia.

Young adults, according to current Consumer Research and Resource Centre (2012) statistics, have less knowledge and awareness, particularly in terms of personal financial responsibility. It is apparent that 15% of young employees did not have any savings and that 37% lived beyond their means. Furthermore, 50% of people seeking financial advice from the Credit Counseling and Debt Management Agency (CCDM or AKPK) are under the age of 40, and 77% of young workers say their ability to manage their own finances is limited. According to Malaysian Department of Insolvency statistics, from 2005 to June 2012, there were 243,823 bankruptcy cases administered, with hire purchase debts being the most common cause of bankruptcy (30.451 cases), followed by personal loans (18,053 cases). Bankruptcy can be defined

as persistent or deteriorating financial difficulties, with some financial difficulties contributing to personal medical or mental disorders, which may limit job productivity. Unlike in the past, the financial system of the twenty-first century has evolved swiftly and become increasingly complicated (Hilgert & Hogarth, 2002).

There are numerous factors that contribute to financial difficulties. Poor financial behaviours are frequently accompanied with personal financial problems, and one of the causes of personal financial problems is the individuals' financial illiteracy (Lusardi & Tufano, 2009). Aside from that, a combination of financial issues such as high debt, low income, and low levels of financial skill can have a negative impact on an individual's financial well-being. The concept of well-being or people's perceptions of well-being can vary and depend on changes in people's lives. Previously, well-being was defined as overall contentment or satisfaction with one's financial situation or assets. However, the concept of well-being has now been enlarged to include both material and non-material components of a person's view, such as their financial situation, ability to meet demands, and feeling safe, comfortable, and content with their income. This is because financial problems caused by living beyond one's means, being inconsistent in saving, and failing to set financial priorities such as putting money aside for an emergency fund, not having life insurance, and not participating in a retirement plan can all have an impact on one's financial well-being.

Therefore, this study is interested to explore the level of financial wellbeing among young adults and to identify the relationship between financial literacy, financial behavior and financial socialization with financial well being among young adults.

2. LITERATURE REVIEW

Theory of Planned Behaviour

Theory of Planned Behavior (TPB) has been widely used in research related to financial behavior. According to Xiao (2008), the TPB is the most suitable theory related to financial behaviour as it predicts and understands human behavior and it explains an individual’s intention to perform given an accepted behavior. TPB highlights the factors of an individual’s real behavioural choices. In short, a person will always assess the outcomes of his or her behaviour and that assessment forms the person’s attitude. TPB is applied in order to examine the deeper beliefs that influence a person’s financial behavior. Thus, it is vital that strategies for assisting individuals in adopting positive financial behaviours be researched and developed (Satsios & Hadjidakis, 2018).

Financial Wellbeing among Young Adult

Finance can be defined as the practice of obtaining and managing money such as investing, borrowing, lending, budgeting, saving, and forecasting (Kolakowski, 2019). Personal finance is known as individual finance. It is the management of a person's assets and debts. Personal finance determines how to manage income, pay off debt, budget the spending, and invest in the markets. Personal finance matters also include taxes, banking, credit, loans, as well as insurance.

Young adults began concentrating on personal financial management without the control from their parents while they started working. In that period, they enter new life experiences at the age of developing their skills and shaping their personal well-being in the present and the future. Young adults’ financial well-being is significant, because the financial well-being of young adults has an important influence on their financial well-being on overall life satisfaction.

Financial well-being on an individual level is known as able to control and manage day-to-day finance. Control here means not having debt and being able to pay the bills within the specific time given. It is when a person feels secure in their financial status and allows them to enjoy life. According to Munohsamy (2015), personal financial management is the process of controlling money coming in, and the use of money to fit expenses in a systematic way and utilizing income. Sabri & Falahati (2012) defines financial

well-being as being in a good financial state, happy, and free from worry, which is based on a subjective appraisal of one's financial situation. They also posited several domains of financial well-being: buying behaviors, perception of current finances and perception of the financial future. It can also be defined as the happiness and life satisfaction that income and wealth provide (Sass et al., 2015).

Other than that, financial well-being is when a person can manage the unexpected events that affect the financial or known as financial shock. It can be in terms of absorbing the financial shock by having financial savings and being able to access family and friends to seek financial support. Financial well-being is also when an individual is able to meet financial goals which are based on the needs of the individual as well as being confident with his or her financial. The well-being of financial also can be said as having financial freedom that allows them to enjoy life to the fullest. Individuals are restrained in having financial freedom when there is a lack of financial resources that limits basic life choices. Freedom comprises the ability to have a proper meal, have more quality time with family and other basic choices to be a component of financial well-being (Collins, 2018).

Based on a study by Zemtsov & Osipova (2016), the term personal well-being is suitable to speak about individual well-being, one of which consists of financial well-being. This study also stated that financial well-being is defined by financial behaviour and income flow generated by basic assets. Financial capability, financial attitudes and financial management can affect individual behaviour towards financial. Personal well-being is closely related with financial behaviour, financial attitudes, financial goals as well as financial management. Financial well-being also refers to a financial status in that an individual has sufficient resources to live a comfortable life. If the financial is properly manage and doing well it will affect to the better financial status (Jing, 2016).

Financial socialization agents could achieve personal financial well-being because skills and knowledge towards managing finance can be obtained from internal and external environments. Meaning that they can get help from parents and colleagues in order to gain attention, learning about finance at seminars about finances, a good friend, and the media to give positive information about personal finance. Positive financial socialization can make young adults pay more attention to the use of money so that they can feel better (Albeerdy & Gharleghi, 2015).

Young adults' perceived economic well-being can be described by how they felt about their level of income, debt and savings, ability to handle financial emergencies, and amount of money available for necessities and future needs. It shows that a good financial situation of young adults can make them able to have good financial health which allows them to meet their wants as well as affordability to spend. They also have savings for any emergency needs (Sabri & Falahati, 2012). Most of the young adults have difficulty with their finances which worries them so much. This is because young adults lack financial management in terms of planning, so it can lead to wasteful behaviour.

According to the Setiyani & Solichatun (2019), people who have poor financial management skills and lack of money to buy daily basic needs tend to have lower financial well-being. So, if nindividuals have a good financial capability in making financial decisions, they tend to achieve financial well-being. If the level of financial capability of young adults is getting better, then the financial well-being of students will also improve. Vice versa, if the level of financial capability of young adults is getting worse, then the financial well-being of students is also getting worse.

This study uses a theoretical approach to describe financial well-being that is the theory of lifespan development and the theory of subjective well-being. Theory of lifespan development lifelong psychological development that involves learning about the constancy and behavioral changes along life, from conception until death (Baltes, 1987). For the indicators of successful development, the theory of lifespan development in this study will focus on cognitive development and influence of non-normative life that forms the behavioral habits of individuals and will provide welfare for individuals' finances.

The theory of subjective well-being can be understood as in a good mental state, including all of the various evaluations, positive and negative, that people make of their lives and the affective reactions of

people to their experiences (Fabian, 2018). It is the general definition of subjective well-being which highlights the good mental condition and the term all the various evaluations that people make of their lives have been broadly defined. Other than that, it also can be defined as a blend of positive and negative effects and life satisfaction is standard in the field. According to Zemtsova & Osipova (2016), there are several types of subjective well-being which are physical well-being, psychological well-being, financial well-being and personal well-being. This study will focus on financial well-being.

The use of market mechanisms to manage life and income is possible with a certain amount of income. There is a level of income that is more focused about survival. The survival of individuals in order to achieve overall life satisfaction. The terms "financial wellness", "financial satisfaction" can be used for the well-being of the finance. It consists of four sub-components: objective status; financial satisfaction; financial behavior; and subjective perception. Financial well-being taps into the broader range of subjective and objective dimensions as financial wellness does, but has invariably been operationalized as a subjective measure only, more in keeping with financial satisfaction. Financial behavior, financial literacy, financial preferences and values and financial management could form the financial well-being. Hence, financial literacy, financial behavior as well as financial socialization could affect the financial well-being of young adults (Setiyani & Solichatun, 2019). This is because financial well- being can be achieved if the individual has a good financial capability in making financial decisions.

Financial Literacy

Many factors affect the financial well-being of the current young adults. The second factor that could affect the financial well-being of young adults is financial literacy. Financial well-being can be realized when the person has a good financial literacy in making financial decisions (Atkinsonn& Messy, 2012).

According to Van Campenhout, De Witte, & De Beckker (2019), financial literacy is defined as to improve and preserve financial well-being, rather than an end goal in itself. It means that having literacy in finance is for self-survival rather than just achieving the results later. The literacy in financial must be learned and adhered to so that an individual can survive in real life situations without only learning how to spend but also how to save or invest. By having good literacy, an individual can have a better financial well-being because he or she can adhere to the attitudes of maintaining financial well-being rather than only finding the end goal.

According to Herrero, Velasco & Campillo (2018), financial literacy is a fundamental understanding of financial concepts. Today, it is globally recognized as a vital life skill since consumers must be able to distinguish among an extensive variety of products, services, and providers of financial products to administer their finances successfully. Understanding how young adults can manage money well remains a crucial life skill that is needed for all aspects of adult life. It is becoming clear that preparation for life requires more than developing the ability to read and write and become technologically knowledgeable.

Financial Behaviour

Financial behaviour can be seen from the attitude of a person in managing the flow of money in and out, managing loans and investments. The concept of financial management at individual level such as planning, controlling and management can relate with the behaviour in finance. Individual's behaviour towards managing their financial can be influenced by good literacy in finance which leads to a positive direction. Other than financial literacy, family's social condition also plays a role in the students' financial behaviour. It means that the young adults develop their skills of behaviour through and based on their parents. The behaviour can be seen in the aspect of financial planning, saving and using the money behaviour (Herawati et al., 2018).

Financial planning can be defined as the fundamental management of the finance that determines what and how it is to be done. It requires thinking before action takes place. It helps to make a financial decision in advance in terms of the way to deal with the situation. Saving is needed for everyone for future use. This is because it is a process of putting aside a certain portion of money for future consumption.

Therefore, saving behavior is important in order to have a better financial well-being in the future. People's attitude on money may be influenced by how they act towards the money. Some people spend excessive amounts of money to buy unnecessary things and some will spend it very carefully to buy basic needs. So, it could reflect on the financial behavior of individuals.

According to Jing (2016), he stated that there are many theories for understanding individual behaviors and assisting a person in developing desirable behaviors. One of them is the theory of planned behavior which has been applied to consumer financial behaviors in recent years. The purpose of theory planned behaviour is to predict and understand human behaviour. It focuses on factors that influence individuals' actual behavioral choices. The theory of planned behavior focuses on a person's motivation and ability, both factors that determine an individual's actual behavioral choices. According to this theory, behavioral intentions are influenced by three antecedents: (1) the positive or negative valence of attitudes about the target behavior, (2) subjective norms, and (3) perceived behavioural control (Ajzen, 1991). The intention is a measure of the strength of one intention to perform a certain behavior. The concept that can be used is, the stronger the intention of a person to perform a particular behavior, the higher the possibility to perform that action (Bruvold, 1990). It is believed that the person's intention to perform or not to perform specific action depends on the function of two basic factors which is the personal factor that can be referred as an attitude towards the behavior, and social influence factor that is referred to as subjective norms.

Financial Socialization

The first factor that has an influence on financial well-being is financial socialization. Albeerdy & Gharleghi (2015) said financial socialization is the process of obtaining the skills, knowledge and attitudes of the inner and exterior environment that is desired to maximize the role of consumers in the financial markets.

Financial socialization is defined as "acquiring and developing values, attitudes, standards, norms, knowledge, and behaviors" that specify the context for an individual's way of practicing their financial (Rea, 2017). It highlights financial socialization is not simply getting knowledge on how to successfully administer economic transactions but rather it includes the development of attitudes, values, and standards that will support or hinder financial capability and well-being (Rea, 2017). Financial socialization influences the financial well-being of individuals.

Scholars believe that the socialization process started in early childhood and continue throughout the life cycle of the individual and most adults learned since childhood. This can be seen especially when individuals obtain behavior and social role in the rest of their lives (Mohamed, 2017). Most individuals obtain financial knowledge and form financial behavior through interaction with socialization agents like parents and peers during their childhood based on a bunch of previous studies. This can clearly be seen through observation as well as through social interaction. Parents and peers play a huge role in influencing financial socialization of an individual which shall lead to financial well-being (Mohamed, 2017).

3. METHODOLOGY

Sample Size

According to the Department of Statistics Malaysia (2021) the total population of young adults in Klang Valley is 3850,900 (Selangor, W.P Putrajaya and WP. Kuala Lumpur). As stated by Sekaran (2010), the author quoted the sample size as proposed by Krejcie and Morgan (1970); the proposed sample size for this study is 384 respondents. The total population of young adults in Klang Valley which is divided into three; Selangor is 3,036,200, Kuala Lumpur 761,700 and Putrajaya 50,000.

Data Collection

The data collection will be obtained through the distribution of questionnaires to the young adults around Klang Valley, specifically Selangor, W.P Putrajaya and WP. Kuala Lumpur. Every questionnaire will be

provided which requires the respondents to answer all questions in the questionnaire within the time period. The questionnaire will be in English language as English is a language that is used by everyone and easy to understand by young adults. As this study is only for academic purposes, all the information will be revealed to any outsiders in order to protect the privacy of the respondents.

Data Analysis
In order to determine the relationship between independent variable and dependent variable, the data was analysed using SPSS Version 25. In order to identify the relationship, Pearson product moment correlation was used to analyzed the data.

4. RESULTS AND DISCUSSION

Level of Financial Wellbeing among Young Adult in Klang Valley

Based on the findings, the mean for financial well-being was moderate at 3.5444. This indicated that the young adults have a moderate level of financial well-being. This finding is supported by Sabri, Cook and Gudmunson (2012) where the researchers found that good financial literacy, good financial behavior and good financial socialization influenced financial well-being of young adults with positive results. All three independent variables affect financial well-being among young adults. This finding is also supported by Setiyani & Solichatun (2019) where high levels of financial literacy, financial behavior and financial socialization can lead to financial well-being among young adults.

Relationship between financial literacy, financial behavior and financial socialization towards financial well-being among young adults in Klang Valley

For this objective, the researchers used Spearman's Correlation Coefficient, which is ranging between -1 r <1 to identify the relationship between independent variables (financial literacy, financial behavior and financial socialization) towards the dependent variable (financial well-being among young adults). The first relationship between financial literacy and financial well-being among young adults displayed a positive and strong relationship between both variables with and there is a significant relationship between financial literacy and financial well-being among young adults since $p=0.000<0.01$. The positive correlation between the variables means that as one variable increased the other variable also increased and vice versa. This means when the financial literacy among young adults increased, the financial well-being also increased. Based on findings, an alternate hypothesis was accepted (Ha1: There is a significant relationship between financial literacy and financial well-being among young adults). As a result, there is a significant relationship between financial literacy and financial well-being among young adults as it showed the value of ($r=0.656$, $p<0.01$). Based on the findings, Mohamed (2017) has stated that financial literacy shows a relationship with financial well-being among young adults. Joo and Grable (2004) indicated that financial literacy had a direct effect on financial well-being. The study also found that there is a positive relationship between financial knowledge and financial well-being and revealed that the participants who received a high score in financial knowledge tend to show a high score in financial well-being (Hogarth et al., 2002; Joo & Grable, 2004).

The second relationship between financial behavior and financial well-being among young adults showed a positive and strong relationship between both variables and there is a significant relationship between financial behavior and financial well-being among young adults since $p=0.000<0.01$. The positive correlation between the variables means that as one variable increased the other variable also increased and vice versa. This means when the financial behavior among young adults increased, the financial well-being among young adults also increased. Based on findings, an alternate hypothesis was accepted (Ha1: There is a significant relationship between financial behavior and financial well-being among young adults). As a result, there is a significant relationship between financial behavior and financial well-being among young adults as it showed the value of ($r=0.608$, $p<0.001$). Based on the findings, Starobin et al. (2013) proves that financial behavior has a significant influence on the financial well-being of young adults. The other study by Gutter & Copur (2011) proved financial behavior has a positive and significant impact on financial well-being.

Next, the third relationship between financial socialization and financial well-being among young adults in Klang Valley showed a positive and moderate relationship between both variables and there is a significant relationship between financial socialization and financial well-being among young adults since $p=0.000<0.01$. The positive correlation between the variables means that as one variable increased the other variable also increased and vice versa. This means when the financial socialization among young adults increased, the financial well-being among young adults also increased. Based on findings, an alternate hypothesis was accepted (Ha1: There is a significant relationship between financial socialization and financial well-being among young adults). Based on these findings, Rea (2017) proved that financial socialization influences financial well-being among young adults. This can be seen where the relationship between financial socialization and financial well-being among young adults showed the value of ($r=0.324$, $p<0.001$). The researcher also stated that parents as agents of socialization who socialize more with their children have a higher tendency for their children to have better financial well-being. Mohamed (2017) found that financial socialization has directly influenced financial well-being.

5. CONCLUSION

In a nutshell, the researchers are focused on examining the financial well-being among young adults in Klang Valley areas. The result of the reliability test for pilot and actual study is on a good range. In addition, the result from a research study showed that financial literacy is the most contributing variable towards financial well-being among young adults in the Klang Valley areas.

From that, all of the objectives in this research study have been achieved by the researchers. The first objectives in this research study indicates the level of financial well-being among young adults in the Klang Valley area. The second objective of this research study has been achieved by using Spearman's correlation in order to examine the relationship between dependent variables and independent variables.

Besides, all of these three hypotheses were accepted because all relationships between independent variables and dependent variables were shown that null hypotheses were rejected with significant relationship. The study, however, encountered limitations, including uncooperative respondents during survey and limited literature directly related to the research topic. Despite these limitations, the research provided valuable insights and knowledge that can aid the young adults in Klang Valley in managing their financial well-being. The findings can also be utilized by the government to enhance the financial well-being of young adults in Malaysia, ultimately benefiting all people
and improving their quality of life.

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PENARAFAN UNIVERSITI BERTARAF DUNIA: TEORI PENGURUSAN PRESTASI

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ABSTRAK

Akses kepada peluang pendidikan yang semakin meningkat telah menyebabkan peningkatan juga kepada keperluan kepada kualiti akademik dan hal ini tidak terkecuali juga kepekaan terhadap isu imej atau reputasi sesebuah universiti. Sehubungan dengan itu, penarafan universiti bertaraf dunia atau World University Ranking (WUR) turut timbul berikutan dengan arus dan tuntutan yang berlaku. Kelebihan WRU sememanganya banyak, antaranya untuk tujuan penilaian kualiti, sebagai penandaarasan, membantu pelajar membuat pemilihan serta kerjasama global. Namun tidak dinafikan penarafan ini juga terdedah kepada kekurangan. Dalam menelesuri penulisan berkaitan sistem penarafan berskala global dalam konteks Malaysia, sumber-sumber banyak tetapi berasingan dan berselerak. Lebih penting lagi, penulisan mengenainya secara akademik iaitu yang menggunakan satu kerangka analisis yang khusus masih terhad. Kajian juga tertumpu hanya kepada satu sisi sahaja iaitu dari sudut inconsistencies atau paradoksnya yang muncul hasil dari perlaksanaan WUR dengan tumpuan kepada simptom kepada permasalahan, punca-punca dan saranan bagi memperkemaskan implementasi WUR. Kajian adalah dalam berbentuk kualitatif, bersumberkan data sekunder seperti buku, keratan akhbar, artikel, jurnal. Dapatan kajian diperteguhkan lagi dengan penglibatan pengkaji dalam mengManapri beberapa siri seminar berkaitan topik perbincangan yang disampaikan oleh beberapa tokoh yang berautoriti, terdiri dari bekas naib canselor, ketua pengarah kementerian dan para profesor yang peka dengan peranan dan perkembangan yang berlaku mutakhir ini di universiti-universiti dalam dan luar negara. Kajian mendapati isu WUR ini bukannyalah sama ada ianya isu berskala lokal atau global, tetapi berbalik kepada isu kepimpinan atau lebih khusus talent leadership, yang antara lain perlu faham terhadap dasar pendidikan yang sedia ada dan kemudian menyusulinya melalui tindakan yang betul dan tepat.

Kata kunci: Penarafan Universiti Dunia, Teori Pengurusan Prestasi, KPI, KRA, kepimpinan

1. PENDAHULUAN

Dalam arus globalisasi yang semakin terbuka dan kompetitif ini, bidang pendidikan dilihat menjadi semakin penting dan mencabar dan lantaran itu amat memerlukan pemeliharaan, pengawasan agar universiti akan sentiasa releven kepada masyarakat dan negara sepanjang zaman. Dalam masa yang sama, memilih universiti yang berkualiti dan terbaik telah menjadi pilihan dan disebabkan itu juga, universiti perlu 'bergelut' untuk mendapatkan kedudukan terbaik dan selesa dalam sistem *ranking* yang diperkenalkan (Fauzi et al., 2020), antaranya menerusi sistem ranking (contohnya Times HigherEducation Supplement (THES) dan Quacquarelli Symond (QS) atau THES-QS). Dalam pada itu, peranan penarafan seperti World University Raking (WUR) juga amat penting, antaranya untuk tujuan penilaian kualiti, sebagai penandaarasan, membantu pelajar membuat pemilihan, international *visibility*, kerjasama dalam bidang penyelidikan, dana dan pelaburan, *employability* serta kerjasama global (Shin, 2011).

Bagaimanapun, Abidin (2020) berhujah sistem *ranking* ini dilihat tidak memberi gambaranyang tepat terhadap keupayaan sebenar sesebuah universiti. Beberapa persoalan telah ditimbulkan. Bagaimana universiti mencapai kedudukan tinggi dalam tempoh yang singkat? Isu profesionalisme dan integriti berbangkit disini. Dengan sistem ranking ini telah menjadikan para pensyarah terpaksa bergelut untuk tujuan penilaian prestasi mereka. Sistem yang ada dilihat lebih menghakimi dan bukannya memandu. Sew (2017) pula mempersoalkan tentang komponen penilaian yang dibuat. Siapa penilai kepada pengukuran rangkin tersebut? Apakah nilai yang sebenarnya diangkat atau ianya hanya satu 'pertandingan popularitI' Altbach & Hazelkorn (2017). Selain itu, dihujahkan juga bidang sains tulen lebih mudah menghasilkan penerbitan berbanding bidang sains sosial. Seakan berlakunya diskriminasi dan sehingga sekarang belum ada jawapan?

2. SOROTAN LITERATUR

Diskusi mengenai sejarah dan evolusi penarafan universiti bertaraf dunia telah dibincangkan oleh ramai penyelidik, antaranya Usher (2016) yang melihat perkembangan sistem penarafan universiti melalui 4 fasa yang berbeza. Fasa pertama penarafan universiti bermula seawal tahun 1900-an sehingga 1950-an di mana penarafan universiti dipengaruhi oleh faktor eugenik serta penekanan kepada asal-usul pendidikan individu terkemuka. Penilaian ketika itu berdasarkan tinjauan reputasi dan keManapran tokoh terkenal dalam bidang tertentu di universiti. Fasa kedua (1960-an sehingga 2000-an) wujud hasil tindak balas kepada penyesuaian ke atas sistem pendidikan, mobiliti pelajar dan pemasaran pendidikan. AS telah memulakan penarafan dan data dari *Social Sciences Citation Indeks* telah diambil kira dalam menentukan indikator yang dipilih.

Fasa ke-3 pula bermula sekitar abad ke-21 di mana penarafan universiti berkembang dipandu oleh faktor globalisasi dan persaingan dalam penyelidikan IPT. Tujuan penarafan adalah untuk meningkatkan kualiti dan pengiktirafan antarabangsa yang memberi kelebihan kepada IPT dalam aspek pasaran buruh profesional dan akademik. Kewujudan *Academic Ranking of World Universities* pada tahun 2003 menandakan permulaan penarafan universiti dunia disusuli dengan beberapa sistem penarafan yang lain seperti Times Higher Education (THE), QS, dan Webometrics. Ranking supra-nasional dikatakan berkembang pada Fasa ke-4 dan ke-5 (2008 dan seterusnya) yang tertumpu kepada aspek memantau, menilai, membanding dan mengawal selia kualiti pendidikan merentas negara. *European Union U-Multirank* dan *OECD Assessment of Higher Education Learning Outcomes (AHELO)* merupakan salah satu contoh penarafan pada ketika itu (Bae, 2021).

Malaysia juga tidak ketinggalan apabila beberapa universiti tempatan juga mula menilai institusi masing-masing iaitu melalui Sistem Penarafan Institusi Pengajian Tinggi Malaysia (SETARA), MalaysiaResearch Assessment (MyRA) dan Malaysian Quality Evaluation System for Private Colleges (MyQuest).Secara umumnya, perkembangan yang berlaku ini bukanlah satu yang asing bagi Malaysia, dan sebenarnya sistem *ranking* universiti dunia sudah lama bertapak di Malaysia sejak merdeka lagi dilihat apabila pelajar tempatan sudah mula mendapatkan tempat di universiti yang berkualiti iaitu di luar negara.

Dalam pada itu, Altbach & Hazelkorn (2017) berhujah tentang kebimbangannya terhadap penarafan institusi akademik dari segi metodologi dan prinsip asasnya. Pertamanya, Altbach & Hazelkorn (2017) meragui dari segi kejituan penarafan dalam mengukur kualiti sesebuah institusi akademik. Bagi beliau, ianya hanya pentas pertandingan popularitI antara institusi akademik, dan bukannya cerminan kualiti sebenar institusi akademik. Kedua adalah aspek kesahihan penggunaan angka dalam sistem penarafan sebagai penunjuk kualiti. Ianya belum lagi mengambil kira institusi akademik yang mempunyai matlamat dan misi yang berbeza, Altbach & Hazelkorn (2017) mengkritik pendekatan "*one size fits all*" yang cenderung memihak kepada universiti tertentu terutamanya universiti penyelidikan tanpa menghiraukan institusi yang lain yang sudah tentu mempunyai matlamat dan fokus yang berbeza.

Penarafan bentuk ini juga didakwa mengutamakan penerbitan dalam bahasa Inggeris dan sumber dari jurnal yang terkenal yang mana ia selaras dengan piawaian akademik di AS dan Britain (Al-Rubaie, 2020). Hal ini merugikan sarjana dan penyelidik yang bukan berbahasa Inggeris terutamanya dalam bidang di mana bahasa Inggeris bukan bahasa utama. Selain itu, Altbach & Hazelkorn (2017) mengkritik amalan kebergantungan kepada pengiktirafan antarabangsa dan jumlah petikan sebagai petunjuk kecemerlangan

pendidikan. Hal ini kerana pendekatan ini mungkin tidak seimbang dan memberi kelebihan kepada bidang sains tulen dan fizikal yang secara tidak langsung juga telah meremehkan bidang lain seperti sains sosial dan kemanusiaan (Altbach & Hazelkorn, 2017). Beberapa ahli sarjana melihat sistem penarafan universiti dunia ini sebagai platform manifestasi kapitalisme global dalam dunia akademik di mana pengetahuan dilihat sebagai komoditi dan secara signifikan mencemar nilai ilmu pengetahuan dan kesarjanaan itu sendiri (Obasi, 2008).

Althbach & Hazelkorn (2017) dalam penerbitan bertajuk "*Why most universities should quit the rankings game*" berpendapat universiti seharusnya berhenti terikut-ikut dengan penarafan dunia. Ia tidak berbaloi berikutan faktor sumber yang perlu diselaraskan mengikut keperluan misi dan tujuan satu-satu program akademik dan tidak sepatutnya mengejar ranking. Universiti adalah institusi yang penting dalam pertumbuhan sosio-ekonomi di mana beberapa fokus penyelidikan boleh dibangunkan, cuma ianya bukan untuk mencapai kemasyhuran global. Selain itu, matlamat utama pendidikan tinggi juga dikatakan telah diputarbelitkan oleh penarafan apabila mereka sepatutnya memberi tumpuan yang jitu kepada mempersiapkan pelajar dan graduan dengan kemahiran dan pengetahuan yang diperlukan untuk kehidupan selepas graduasi.

Penulis mengakui sistem ranking mempunyai kelebihan tersendiri misalnya untuk tujuan reputasi dan promosi. Bagaimanapun, penulisan ini lebih tertumpu kepada sisi yang berbeza iaitu kesan-kesan luar jangka atau *unintended consequences*. Ia bukannya sengaja diada-adakan tetapi sesuatu yang masing-masing telah dan sedang saksikan. Diperteguhkan lagi dengan litratur yang kebanyakannya berasal dari sumber-sumber dari barat yang sudah lama membincangkan sisi paradoks hasil pelaksanaan sistem ranking ini. Sebagai negara yang sedang membangun, yang juga percaya bahawa dengan sistem pendidikanlah yang dapat mengubah destinasi dan nasib bangsanya, sudah semestinya juga neraca pengukuran dalam sistem ranking bukanlah suatu yang boleh diambil mudah. Jadi persoalan yang timbul sejauh manakah praktikalnya ketepatan indikator atau pengukuran sistem ranking bertaraf global ini dalam konteks lokal di Malaysia? Adakah perlu piawaian yang sama merentasi geografi dan sosio ekonomi dan budaya yang berbeza? Kajian akan mengupas dari lensa pentadbiran awam menerusi teori pengurusan pencapaian.

Penarafan Universiti dan Pengurusan Pencapaian: Perbincangan Konsep

Neo-liberalisme adalah ideologi ekonomi dan politik yang menekankan campur tangan kerajaan yang terhad dalam pasaran, menganjurkan kepada penswastaan, penyahkawalseliaan, dan tanggungjawab individu. Dalam konteks universiti, konsep neo-liberalisme sememangnya cukup terkesan (Olssen dan Peters, 2005). Contohnya dari sudut urus tadbir universiti awam sebelum ini, adalah dibawah kuasa dan milik kerajaan tetapi kemudian telah beralih kepada governans di pihak pengurusan universiti yang terdiri dari kalangan ahli akademik (Cardoso et al., 2015).

Impak neo-liberalisme ke atas universiti juga dilihat dari segi bertambahnya aspek-aspek *managerialisme* dan ini termasuk tumpuan pada metrik, penunjuk prestasi, perancangan strategik dan kecekapan dalam peruntukan sumber. Piawaian, penanda aras dan kawalan kualiti telah diwujudkan sebagai tanda aras gerak kerja dan prestasi bagi universiti. Akhirnya, universiti jugalah yang akan dipertanggungjawabkan ke atas operasi dan pembuatan keputusan yang dibuat. Nilai-nilai seperti kecekapan, ekonomi dan keberkesanan ini kini berada di bawah kawalan pentadbir universiti (Camilleri dan Camilleri, 2018) dan sudah tentu mereka jugalah yang akan dipertanggugjawabkan (ke atas nilai-nilai tersebut). (Altbach & Hazelkorn (2017) berhujah bahawa peruntukan sumber kewangan yang besar adalah cabaran bagi universiti untuk terlibat dalam penarafan universiti bertaraf dunia. Kewangan diperlukan untuk terus melabur dalam infrastruktur, pengambilan kakitangan, kemudahan penyelidikan dan perkhidmatan sokongan pelajar. Mengimbangi permintaan kewangan ini dengan keperluan institusi ini menjadi lebih sukar terutamanya bagi universiti yang mempunyai kewangan dan belanjawan yang terhad.

Margison (2006) menekankan bahawa kecemerlangan pengajaran juga aspek yang juga dikaitkan dengan penarafan universiti bertaraf dunia. Walaupun penyelidikan sering menjadi tumpuan utama untuk kedudukan, menyediakan pendidikan berkualiti tinggi juga penting. Mengimbangi komitmen penyelidikan dengan pengajaran yang berkesan dan penglibatan pelajar boleh menjadi cabaran bagi para akademik. Margison (2006) berhujah metodologi penarafan juga menjadi isu yang dihadapi oleh

kebanyakan universiti ketika ini. Sistem pengukuran penarafan selalunya berdasarkan kriteria dan metodologi tertentuyang mungkin tidak mencakupi skop yang penuh seperti sumbangan institusi kepada masyarakat. Obses atau terlalu menumpukan kepada memenuhi kriteria terhadap penarafan boleh menjejaskan misi universitiyang lebih luas (Manap & Sulaiman, 2021).

Pemberat bagi petunjuk sedia ada dalam sistem penarafan QS didakwa kurang telus dari segi sumber data, dan penggunaan metrik yang subjektif. Menurut Fauzi et al. (2020), universiti yang mempunyai skor dan petunjuk yang hampir sama, dengan korelasi yang lemah di mana kesilapan secara rawak turut memberi kesan terhadap ranking universiti. Hanya kerana perubahan yang kecil dalam satu-satu metrik yang berlaku, boleh memberi kesan yang signifikan kepada kedudukan sesebuah universiti. Secara prinsip, sistem penarafan universiti adalah satu kaedah penilaian prestasi yang bersilang, dan perludiseimbangkan dengan objektif institusi yang luas. Namun wujud kebimbangan bahawa beberapa nilai- nilai penting seperti kesarjanaan, akauntabiliti terpaksa dikorbankan demi persaingan dan kedudukan. Bagaimanapun, litratur yang dirujuk kebanyakannya bersumber dari barat dan kajian ini bagaimanapun akan lebih tertumpu hanya kepada sisi permasalahan yang dihadapi oleh universiti-universiti awam terutamanyadi negara sedang membangun, seperti di Malaysia. Selain itu, punca dan implikasi serta saranan kepada permasalahan yang dihadapi oleh universiti awaam di Malaysia juga turut dibincang dan dikenalpasti.

3. METODOLOGI KAJIAN

Kajian ini menggunakan kaedah kualitatif berasaskan kajian pustakaan. Kajian pustakaan ini adalah kaedah menjalankan penyelidikan akademik yang melibatkan penggunaan sumber perpustakaan untuk mengumpul maklumat, data dan pengetahuan mengenai topik tertentu. Ia merupakan pendekatan asas dalam penyelidikan dan sering menjadi titik permulaan untuk pengkajian yang lebih mendalam. Penyelidikan perpustakaan melibatkan akses dan analisis terhadap sumber yang pelbagai seperti sumber cetak dan digital yang terdapat di perpustakaan, termasuk buku, jurnal, akhbar dan pangkalan data elektronik serta konferen. Kaedah yang merentasi sumber-sumber yang pelbagai ini membantu meningkatkan kesahan dan kebolehpercayaan dapatan dengan mengurangkan berat sebelah selain memperkukuhkan lagi perbincangan mengenai sistem penarafan menerusi kerangka teori pengurusan prestasi.

4. ANALISIS DAN DAPATAN

Bahagian ini membentangkan dapatan dan analisis kajian berdasarkan buku, jurnal dan seminar berkaitan tajuk yang dikaji. Dapatan disusun berdasarkan simpton permasalahan yang dihadapi, punca dan seterusnya saranan terhadap amalan ranking ini yang dilaksanakan. Dapatan yang dipersembahkan banyak tercetus dari sebuah forum yang bertajuk "*TEF's Commonwealth Academics In Malaysia Forum. "Commonwealth Academics in Malaysian Universities: Boon or Bane?"* yang telah diadakan di Dewan Taklimat Serdang, Bangunan Canselori Putra, Universiti Putra Malaysia (UPM) pada 6 Januari 2020. Ia dibarisi oleh beberapa panel seperti Emeritus Prof. Dr. Abdul Rashid Moten (Sains Politik, UIA, Prof. Dr. Nasir Shafiq (Kejuruteraan, UTP), Prof. Dr. Jennifer Ann Harikrishna (Biologi, UM), Dr. Wan Chang Da (Pendidikan, USM). Antara hadirin yang turut sumbangan idea adalah Prof Dr Asma binti Islam, bekas Naib Canselor USM dan USIM, mantan ketua pengarah KPT.

Menurut Prof Asma, secara umumnya, sistem pengukuran prestasi ini membantu dan memudahcara tata kelola bekerja, sekurang-kurangnya membantu memacu perjalanan pengurusan universiti selain mengelak warga akademik atau pensyarah daripada terus rasa selesa atau *camplacent* dalam kerja mereka dan atas sebab jugalah mengapa Myra *(Malaysia Research Assessment)* diperkenalkan. Dengan pelan pendidikan iaitu dalam bab 10, universiti ternama seperti Harvard Universiti memandang tinggi negara Malaysia, kerana mengetengah dan mengangkat nilainya yang tersendiri yang berbeza dari universiti-universiti dunia yang lain, iaitu yang menekankan kepada keseimbangan di antara ilmu pengetahuan dan karektor dan ilmu aqli dan naqli. Bermaksud, jika Malaysia melaksanakan seperti yang diharapkan menerusi tujuan and objektif Myra yang dalam masa adalah selari dengan falsafah dan garis panduan yang telah ditetapkan, maka sudah pasti manfaat yang tersurat dalam falsafah dan sistem pendidikan kita akan dicapaidan dirasai oleh warga universiti dan seterusnya masyarakat, sekaligus dihormati oleh dunia luar.

Kepincangan metodologi

Sebelum membincangkan persoalan implementasi dan metodologi, perkara yang lebih mendesak dan mendasar yang perlu dikupas adalah mengenai dasar. Dalam forum yang sama juga, Prof Nasir Shafiq, menekankan bagaimana peranan universiti sebagai tempat persiapan bagi negara. Universiti memainkan peranan yang utama dalam meningkatkan ekonomi negara memandangkan 80-90% graduan universiti akan diterap masuk ke dalam industri. Para pelajar dalam bidang kejuruteraan akan mengisi kelompongan dalam industri. Misalnya, untuk membina bangunan tinggi, jika perunding luar dilantik sedangkan kos melantik boleh dimanfaatkan untuk tujuan kebajikan atau secara khusunya kumpulan B40. Ideologi yang ditanam dalam pemikiran pelajarnya.

Sementara itu, Prof Asma merungkai persoalan dasar dari sudut sistem pendidikan tinggi di Malaysia, apakah yang Malaysia atau sistem pendidikan di Malaysia mahukan? Contohnya, jika Malaysia mahukan persekitaran pendidikan yang hibrid, maka program dan insiaitif yang dilaksanakan oleh universiti-universiti awam juga seharusnya membenarkan suasana yang betul-betul hibrid. Bermakna tindakan yang dilaksanakan perlu selari dasar yang telah ditetapkan. Masyarakat tidak mahu universiti awam sebagai institusi *private* atau yang bersifat terasing dari masyarakat. Menurut Prof Asma lagi, jangkaan rakyat bahawa universiti awam perlu berperanan sebagai *'equalizer'*. Misalnya bagi rakyat yang miskin yang kurang berkemampuan memasuki IPTS, mereka masih berpeluang memasuki IPTA bagi memperolehi pendidikan yang berkualiti. Isunya bagaimana universiti boleh lagi berperanan sebagai *'equalizer'* jika universiti itu sendiri menetapkan yuran yang mahal kepada mahasiswanya.

Secara dasarnya, Malaysia sudah mempunyai falsafah dan garis panduan sistem pendidikan yang jelas, cumanya yang menjadi masalah dari segi tindakan atau pelaksanaan iaitu tidak selari dan mengikut tujuan dan matlamat dasar. Antara lain berpunca daripada kepimpinan universiti, dirisaukan kepimpinan sendiri tidak memahami teras dan dasar falsafah pendidikan yang telah termaktub. Dalam konteks penafaran universiti, Seorang lagi panel dalam forum yang sama, Prof Jennifer menganjurkan sikap bersederhana dalam kerja penarafan, perlu mengambil kira beberapa aspek yang lain termasuklah yang mengukur dan mengambilkira elemen *intangible* dalam mentakrif prestasi universiti. Dalam bidang sains sosial contohnya, ianya mengambil masa yang panjang untuk mengumpulkan dan menghasilkan dapatan. Bagi beberapa negara maju seperti di UK, KPI yang ada bukanlah bersifat tahunan, sebaliknya menganjak kepada 3 tahun hingga 5 tahun. Titik- tolaknya adalah penghasilan dan penyuburan ilmu pengetahuan. Sebenarnya, dalam tempoh masa yang panjang itu, telah menghasilkan beberapa pelajar PhD yang boleh bekerjasama untuk menyelesaikan masalah yang lebih besar dan dalam masa yang sama dapat menghasilkan kertas penulisan yang terbaik.

Di sini, Prof Asma menjelaskan bahawa sebenarnya sistem pengukuran yang ada pada masa kini di Malaysia iaitu MYRA tidak dilaksanakan seperti yang sepatutnya, ia lebih berasaskan KPI dan bukannya *Key ResultArea* (KRA). Dengan pelaksanaannya berasaskan KPI, menjadikan para akademik serta warganya hanya tertumpu dan tertakluk kepada ranking yang ada padahal ia sebenarnya menyempitkan lagi peranan universiti itu sendiri. Disebabkan kesilapan dalam memahaminya, maka terciptalah halangan dan masalah-masalah yang tidak sepatutnya seperti hilang motivasi, resah, tertekan dan melanggar etika, ahnya kerana kesilapan manusia menterjemahkan KPI dalam wajah yang sepatutnya. Memburukkan lagi apabila semua masalah yang tercipta ini adalah berpunca dari sikap '*inward-looking'*. Dengan sebab itu, inisiatif yang diambil hanya menguntungkan sekelompok sahaja dan bukannya dimanfaatkan akhirnya kepada masyarakat.

Lanjutan pada itu, seorang lagi Prof Rashid Moten menekankan bahawa faktor kepimpinan atau ketokohan kepimpinan amat penting dalam menentukan masa depan dan hala tuju pendidikan negara. Kepimpinan yang dimaksudkan disini adalah menteri dan pegawai-pegawai kanannya di kementerian, di peringkat pengurusan universiti iaitu kalangan ahli senat. Bagaimanapun, budaya *top down* yang masih subur di peringkat pengurusan universiti awam di Malaysia dan secara khususnya di universiti tidak boleh diambil ringan. Apapun profesionalisme adalah teras kepada keputusan yang dibuat.

Politik pengukuran: Accountable to whom?

Politik dan pengukuran prestasi sebenarnya berkait erat dan tidak boleh dipisahkan. Penentuan pengukuran bukanlah satu yang objektif atau saintifik seperti yang dirasakan, tetapi sarat dengan tujuan dan kepentingan (Hughes, 2004). Dalam kajian ini, akauntabiliti universiti merujuk kepada pembinaan pengetahuan (*atau wisdom)* yang terhasil daripada aktiviti-aktiviti dalam universiti (pengajaran, penyelidikan, perundingan dsbnya) yang akhirnya pengetahuan yang terhasil itu akan memanfaatkan masyarakat. Universiti dan warga universiti sebenarnya sentiasa diperhatikan sama ada ilmu dihasilkan memberi erit kepada masyarakat. Inilah hubungan timbal balik atau *reciprocal* yang wujud di antara universiti dan masyarakat.

Abidin (2020) mempersoalkan penarafan universiti dengan keperluan dan cabaran semasa masyarakat di Malaysia. Bagi beliau universiti sepatutnya menyelesai dan mengutamakan cabaran utama dalam masyarakat dan bukannya berperanan secara berasingan *(isolated)* melalui inisiatif mengejar ranking ini. Yassin (2003) berhujah keadaan yang berlaku dalam konteks pendidikan berasaskan TVET (Pendidikan dan Latihan Teknikal dan Vokasional) dengan pendidikan di univerisiti awam yang lain. Diskriminasi juga berlaku dalam kalangan ahli akademik. Penarafan telah mendiskrimasi antara dua bidang; sains tulen dengan sains sosial. Hal yang sama dibangkitkan oleh Abidin (2020) yang melihat sistem ranking masih tetap diteruskan tanpa pengenduran langsung, berlaku ketika mana rakyat dan negara berdepan dengan pandemik Covid-19.

Prof Moten juga berhujah bahawa KPI itu adalah satu bentuk perniagaan. Bagi beliau, jika sesebuah universiti mahukan rankingnya lebih tinggi, ia perlu melabur lebih banyak. Begitu juga dengan pensyarah menerbitkan jurnal. Prof Moten berkongsi seorang rakan sekerja memperolehi RM27 ribu setahun kerana berjaya menerbitkan banyak artikel. Perkara yang utama yang sepatutnya difahami dan diangkat adalah tentang semangat *(passion)* iaitu soalbagaimana ingin memajukan diri. Dan jika mengejar ranking atau KPI, mereka sebenarnya dipaksa untukmenulis atau dipaksa untuk menulis. Ini kerana dalam pemikiran apa yang lebih penting ialah ia perlu diterbitkan. Pengurusan universiti perlu bijak bertindak dan menangani perkara ini. Mereka tidak boleh dilihat seperti memaksa terutamanya yang tidak pandai menulis untik menulis sebaliknya bimbinglah mereka dengan cara menyuntik motivasi dan semangat yang betul iaitu kerana ilmu. Apabila mereka sendiri jelas dengantujuan tersebut secara perlahan-lahan mereka akan cuba menghasilkannya. Penghasilan pengetahuan tidakberhenti setakat output disitu tetapi perlu disampaikan dan dimanfaatkan pula kepada masyarakat dan kehidupanmanusia.

Saranan-Suruhanjaya Pendidikan Tinggi

Prof Asma yang merupakan mantan KPT dan mantan Naib Canselor di dua universiti awam menjelaskan pergerakan dan hala tuju yang ada dalam IPTA kini sebenarnya banyak dibentuk dan ditentukan oleh siapa menterinya. Menteri jugalah yang menentukan samaada satu perubahan itu berlaku atau tidak. Diakah juga yang akan mendengar atau tidak pandangan dari pegawai kanannya.Realitinya 'autonomi' sepertimana yang selalu disebut-sebut itu, realitnya tidak wujud. Melihat kepada isu dan permasalahan yang dihadapi oleh universiti-universiti awam sejak kebelakangan ini, beliau mengusulkan kepada keperluan penubuhan suruhanjaya untuk bagi mengalih sistem KPI sediaada kepada yang berpandukan KRA. Peralihan kepada orientasi baru ini menggambarkan bahawa usahaini tidak boleh dicapai melainkan dengan cara mengasingkan pengaruh politik dari kementerian. Jika mengharapkan kementerian sedia ada, KP tidak banyak pilihan yang boleh dibuat.

Bagi Prof Asma, jawatan pentadbir universiti amatlah penting kerana mereka adalah individu yang paling hampir dengan menteri. Mereka adalah penasihat kepada menteri dan oleh itu mereka juga perlu memastikan setiap tindakan yang dilaksanakan selari dengan dasar yang telah ditetapkan. Untuk mencapai kehendak itu, maka mereka juga bebas dari pengaruh politik kerajaan yang memerintah. Tambah beliau lagi, sudah sampai masa pendidikan tinggi diterajui oleh individu yang faham tentang peranan pengajian tinggi dan dalam masa yang sama wujudnya garis jelas yang memisahkan antara pengurusan universiti dan campur tangan politik. Jika tidak, tindakan dan keputusan yang dibuat akan bebas dan tumpuannya tidaklagi dipengaruhi oleh agenda 'politik kerajaan' yang memerintah (OECD, 200). Sesunguhnya, peranan kepimpinan amat-amat penting kerana deengan kepimpinan, ia mampu membawa satu-satu

universiti melonjak ke hadapan. Bagaimanapun, dengan kecatatan kepimpinan *(defect leadership)* juga, universiti tersasar dari dasar yang telah ditetapkan yang kemudian dilihat terus kaku dan hlang taringnya. Dalam konteks pengukuran, universiti tidak sepatutnya mengejar kedudukan sehinggakan menjadikan ia satu matlamat, tetapi yang lebih utama adalah konsistensi iaitu tindakan yang terhasil dari matlamat dasar itu. Sepatutnya dengan autonomi pemimpin universiti tidak menutup dasar atau *unlock the policy*, sebaliknya membuka dan terjemah polisi kepada tindak tanduk yang betul dan tepat.

Sementara itu, Prof Rashid Moten juga berkongsi pandangan berkaitan hubungan politik dan pentadbiran. Pada dasarnya, beliau sendiri tidak bersetuju pengaruh politik dalam pentadbiran universiti dan realitinya ia bukan perkara yang mudah. Apapun keputusan yang lebih penting kemudiannya adalah di pihak pengurusan universiti dan pensyarah sendiri, yang sepatutnya awal-awal lagi punya pendirian yang jelas, jujur dan bertanggungjawab. Ini termasklah kewajaran pensyarah meminta pelajar untuk menerbitkan satu atau beberapa artikel ketika pengajian berlangsung perlu dilihat semula.

Dari KPI ke KRA

Sistem yang dilaksanakan ketika ini yang berasaskan KPI dicadangkan diubahsuai ke KRA. Ini kerana sistem sedia ada tidak menghubungkan peranan dan impak universiti dengan manfaatnya kepada masyarakat. Setakat ini impaknya hanya menjurus kepada output, bilangan penulisan, bilangan enrolmen dan sebagainya. KPI sering dikaitkan dengan operasi yang sedang berjalan dan tidak selalu terikat dengan masa. Bidang Keberhasilan Utama atau Key Result Area (KRA) pula adalah hasil tertentu dan boleh membantu dalam menentukan kemajuan ke arah sesuatu objektif. Kedua-dua rangka kerja adalah saling melengkapi dalam strategi pengurusan prestasi organisasi. Apabila universiti beralih daripada KPI kepada rangka kerja KRA, mereka perlu menjajarkan semula KPI sedia ada dengan objektif yang lebih luas dan membangunkan KRA yang baru bagi memadankan objektif insititusi (Ryan, 2015).

Melaksanakan KRA dalam persekitaran universiti boleh memberikan beberapa kelebihan yang menyumbang kepada kejayaan dan keberkesanan keseluruhan institusi. KRA adalah berdasarkan data dan pengukuran yang boleh diukur, menyediakan pembuatan keputusan berdasarkan data, membantu dalam mengenal pasti bidang untuk pembangunan, membuat pelarasan dan memperuntukkan sumber dengan lebih berkesan. KRA juga melibatkan pelbagai jabatan dan pasukan yang bekerjasama untuk mencapai matlamat yang sama, mempromosikan kerja berpasukan dan institusi yang lebih bersepadu dan koheren. Selain itu, KRA juga menyediakan kaedah yang teratur dan objektif untuk menilai prestasi, membolehkan pemimpin universiti memberikan maklum balas, galakan dan penghargaan melalui daftar masuk dan semakan yang kerap, yang menghasilkan kemajuan yang berterusan (ETHRWorld, 2020).

Sesungguhnya, praktis yang ada di beberapa negara barat (seperti yang dijelaskan di atas) sebenarnya mirip kepada KRA. Pembuat dasar harus faham dan bertindak segera kepada kefahaman dan gerak kerja yang sepatutnya. Menurut Prof Jennifer lagi, sistem pengukuran yang di beberapa universiti di AS sememangnya diakui baik dan sudah sampai masa untuk beralih kepada sistem yang lebih baik.

5. KESIMPULAN

Pernbincangan di atas tidak bermaksud yang kita sudah jauh ketinggalan jauh, hakikatnya ia adalah suatu perjalanan dan dalam melaluinya, kita berhadapan dengan sedikit kemunduran. Isu mengenai ranking ini suatuyang luas sebenarnya, ia adalah mengenai kepimpinan yang punya bakat dan ketokohan. Dan kepimpian yang betul ialah yang akan membawa universiti dalam landasan yang betul dan terus melangkah ke hadapan. Ia mementukan dan memandu ke mana dan pergerakan seterusnya. Atas sebab itu ia bukannya sempit hanya kepada ranking tetapi '*strategic differentiator*'. Ia bukannya mengenai bilangan atau berapa kertas penulisan yang perlu dihasilkan (memandangkan semua ini adalah impak yang sudah tentu akan terhasil secara tidak langsung dari kepelbagaian aktiviti yang diusahakan) tetapi natijahnya yang lebih luas yang menjadikan universiti sebagai *global player*. Dengan keluasan peranan yang dimainkan, bermakna universiti tempatan secara dasarnya lagi, telah berjaya mencipta dan membentuk generasi dan masyarakat sepertimana yang diharapkan hasil daripada penyuburan dan perkembangan ilmu dan pengetahuan.

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ANALYSING ATTITUDE AS A DETERMINANT OF COUNTERFEIT CONSUMPTION AMONG THE MALAYSIAN PUBLIC SECTOR EMPLOYEES

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Abstract

Counterfeiting, which encompasses the production, importation, exportation, distribution, and sale of counterfeit consumer goods that are intentionally designed and branded to resemble authentic products, is essentially a form of theft. It poses a major problem on a global scale as it can severely impact legitimate businesses by reducing sales, profits, brand trust, and overall value. The key factor influencing unethical behaviour, such as purchasing counterfeit goods, is individuals' attitudes, which hold true regardless of the specific product category. The decision to engage in counterfeiting activities depends on whether individuals hold positive or negative attitudes towards such behaviour. While previous studies have examined various factors related to the demand for counterfeits, there has been limited research exploring the emotional aspects of consumer behaviour. Therefore, this study aims to investigate how attitudes influence counterfeit consumption. A quantitative approach was adopted to gather primary data, employing an online questionnaire survey completed by 363 public sector employees who participated in the study. The findings demonstrate a significant correlation between attitudes and counterfeit consumption. This research will contribute to the existing literature on counterfeit consumption, particularly in terms of understanding the impact of attitudes on consumer behaviour. Furthermore, the findings will provide valuable insights to policymakers, regulators, and industry stakeholders, aiding combatting counterfeiting.

Keywords: counterfeiting, attitude, counterfeit products

1. INTRODUCTION

On the 25th of September 2015, world leaders at the United Nations (UN) General Assembly in New York formally endorsed the 2030 Agenda for Sustainable Development (the 2030 Agenda), promising to cooperate to promote more inclusive, resilient, and sustainable development. It is a strategy that promotes prosperity, the environment, and people which includes a set of 17 Sustainable Development Goals (SDGs), that are meant to address the most pressing economic, social, and environmental issues facing the entire world. In order to achieve the SDGs, one strategy is to expand international trade. Trade has a track record of increasing income-generating capacity and enabling poverty reductions that were previously unheard of. Cross-border trade has significantly increased over the past few decades, supporting the rise in living standards around the world. Illegal trade, which includes counterfeiting, poses a serious threat to the SDGs because it displaces legitimate economic activity and causes irreparable harm to ecosystems and people's lives.

Counterfeit trade costs society in terms of employment, crime, and social services. In addition, it also contributes to financial losses, causing legitimate manufacturers to experience intangible losses, a decline in goodwill, and damage to the equity and reputation of the genuine brand (Ting et al., 2016). It is also regarded as an economic problem as unfair competition from imitation goods puts a company's future

investments in R&D and revenue at risk.

The emergence of counterfeit markets is largely a result of consumer demand. As consumers become more aware of the differences between counterfeit and real goods, their attitudes and behaviours become crucial components in the counterfeit market's existence. According to some academics, if people did not buy counterfeits, there would not be any counterfeiting (Fejes, 2016). Counterfeit consumption satisfies consumers' utility needs and hedonic wants, such as pleasure, fun, and excitement (Rosely et al., 2019). Counterfeiting is a significant global trade issue in many nations, including Malaysia (Ting et al., 2016). The growth of e-commerce has given a big impact to the retail industry by providing business to the new opportunity for expansion and resulted customer to enjoy greater convenience and product choices. For example, the e-commerce live stream platform can enhance the sharing and communication methods between enterprises and others viewers, improve consumers' sense of social presence and positively influence their purchase decisions and behaviours (Ming et al., 2021). Specifically, in the internet traditional e-commerce shopping experiment, Wang (2021) found that social presence can effectively promote the generation of traditional e-commerce shopping behaviour. Zafar et al. (2021) found that browsing website can effectively generate consumers' awareness and thus promote consumers' impulsive consumption intention. Hence, counterfeit sellers can easily make profits through various e-commerce such as Shopee, Lazada, and Tokopedia as well as on social media sites like Facebook, TikTok, and Instagram. Due to the anonymity provided by the internet, criminals looking to make money from product counterfeiting now have a more effective platform to work through (Wilson & Kinghorn, 2016).

Consumers consume counterfeits for various reasons. A significant price advantage over genuine counterparts is the main factor driving the purchase (Khandeparkar & Motiani, 2018). Given the current climate of uncertainty and fear especially in a Post Covid-19 world, consumers are unable to spend more due to their higher costs. Unemployment and loss of earnings caused by the pandemic had reduced purchasing power of the consumers and subsequently may increase demand for cheaper products, including counterfeits. Consumers play a crucial role in the counterfeit trade, and willing consumer participation is evident worldwide, especially in developing countries (Kala & Chaubey, 2017). The studies on counterfeiting's demand side had previously examined consumer purchasing intentions, the propensity to purchase, and attitudes toward counterfeit products, which result in positive or negative behaviour (Kenawy, 2014). Penz and Stöttinger (2005) also found that consumer-related drivers have a higher impact on counterfeit consumption than supplier-related drivers, and consumer traits have long been thought to be significant determinants of counterfeit consumption (Fejes, 2016).

In Malaysia, supply-side interventions like economic countermeasures, i.e., the law governing intellectual property and border control enforcement, are common. However, efforts to influence demand by emphasising consumers' emotion and mindset are still lacking (Malik et al., 2020). Understanding the attitude of consumers towards counterfeit products is vital because it influences their behavior and decision-making. By investigating into consumers' attitudes, researchers can identify the underlying reasons behind their choices, such as purchasing counterfeit products, and design targeted strategies to address these motivations. Empirical research on attitude that could affect counterfeit consumption in Malaysia is scarce. Thus, it is important to better understand the attitude factor of counterfeit consumption among Malaysians particularly the public sector employees. Therefore, the objective of this study is to determine whether there is a connection between public sector consumer attitudes and counterfeit consumption.

2. LITERATURE REVIEW

Counterfeit Consumption

The rise in counterfeit product consumption is one aspect of the counterfeiting phenomenon, which has become increasingly complex and aggressive. They mentioned that consumer demand for counterfeits is a significant factor in their existence (Malik et al., 2020). Rosely et al. (2019) in his study further added consumer demand as the primary driver of counterfeit market development had posed difficulties in preventing consumer involvement in counterfeiting activities. As consumers' desire to acquire counterfeit

products grows, it is more important than ever to understand how and why they are driven and have favourable opinions toward doing so.

The counterfeit products acquired by consumers is more often than not appear similar to genuine articles (Teo & Mohd Yusof, 2021). In Malaysia, counterfeiters target a wide range of goods, from high-street beauty products that can cause skin allergies to automotive spare parts. More importantly, food is also being faked, either by being labelled with a specific brand that did not come from that manufacturer or, more insidiously, the food's content may not be what it is claimed to be. In addition, according to the United Nations Office on Drugs and Crime, falsified medicines are among the most dangerous of these counterfeit products, with an increasing amount being produced and sold in Southeast Asia, including Malaysia. Counterfeit medicines are frequently sold in Malaysia in unregulated outlets such as roadside stalls, traditional medicinal halls, and provision shops scattered across the country, from cities to villages. According to Fejes (2016), demand for counterfeits partially drives its manufacture and trade. Many people do not view purchasing and selling counterfeit products or brands as serious crimes compared to other more serious illegal acts (Kassim et al., 2021).

The growing demand for counterfeit goods has resulted in a new consumer behaviour phenomenon (Rosely et al., 2019). Recently, the Covid-19 pandemic has had far-reaching consequences around the world. Many countries have implemented lockdowns and limited people's mobility to halt the spread of this infectious virus (Polas et al., 2022). In Malaysia, the pandemic has caused consumer and business income to fall, increasing the demand for counterfeit or smuggled goods due to their cheaper price point.

Attitude of counterfeit consumers

According to most research, counterfeit consumers are a homogeneous group who will buy or avoid counterfeit products. The decision to buy counterfeit goods is greatly influenced by their attitude towards them (Penz & Stottinger, 2005). Consumers are more likely to buy counterfeit goods if they have a positive attitude toward them. Contrarily, a negative consumer attitude toward counterfeits reduces the likelihood of purchasing counterfeits regardless of the product type (Kassim et al., 2021).

According to Quoquab et al. (2017), consumers with a more positive attitude toward counterfeits will have a higher behavioural intention to buy such goods. Additionally, Fejes (2016) pointed out in his research that people are more likely to adopt unfavourable attitudes toward a product category they have negative beliefs on. Similarly, Penz and Stottinger (2005) noted that there are significant differences between consumer attitudes towards genuine and counterfeit goods. Some people choose to purchase genuine goods because of the symbolic meanings they represent, such as luxury. Others are enticed to buy a counterfeit good at a price much lower than its genuine counterpart by the promise of gaining false prestige (Ahmed et al., 2020).

Along with theoretical justifications, there is also empirical data available. Bian and Mautinho (2009) and Phau et al. (2009) are a few examples of studies that have shown that consumer attitudes towards counterfeits act as a moderator between social, personal, and product-related variables and consumer's intention to consume counterfeit products. It is also critical to note, as Penz and Stöttinger (2005) pointed out, that attitudes toward a behaviour (i.e., counterfeiting) are a better predictor of behaviour than attitudes toward counterfeit items (Fejes, 2016).

Consumers who favour counterfeits and conduct business with their producers often use biased excuses. Consumers release themselves from liability by defending their actions and placing the blame on the manufacturers (Penz & Stottinger, 2005). These situational ethics promote increased counterfeit purchasing, which benefits illegal producers. Because illegal producers have lower profit margins than original manufacturers, the buyers' justification for their actions is that they do not feel "ripped off" (Penz & Stottinger, 2005). Additionally, according to Phau et al., (2009), consumers who want the excitement, status, and image that come with owning such goods but cannot afford the genuine article can fulfil their dreams thanks to the illegal producers.

The objective of this research is to analyse attitude as a determinant of counterfeit consumption among Malaysian public sector employees. According to Huang et al. (2004), attitude is a learned propensity to react favourably or unfavourably to a situation. The attitude construct is often used as a predictor of consumer intentions and behaviours (Phau et al., 2009). Thus, the following hypothesis was developed to execute the objective.

H1: Attitude is associated with counterfeit consumption among consumers from the Malaysian public sector.

3. METHODOLOGY

A quantitative research method was utilized in this research as quantitative methods quantify empirical data. This research employed the online survey technique to gather data from respondents regarding their perception on attitude and counterfeit consumption. The self-administered questionnaire consists of three sections. Section A consists of questions on respondents' profile, while section B and Section C measures the attitude and counterfeit consumption, respectively. The questionnaire was adapted and adopted from Ting et al.'s (2016) previous survey. The questionnaire's constructs were quantified using a using 5-point Likert scale ranging from 1 = strongly disagree to 5 = strongly agree.

The 'snowball' technique was employed in this study. It is a non-probability sampling type with a pattern similar to a pyramid system, where only the early sample participants are selected. They are then tasked with recruiting additional sample participants until the desired sample size is reached, as in the previous method. This technique was accomplished in this research using online tools which allowed sample members to recruit others in their network. The population for this research consisted of consumers from the public sector in Malaysia due to the belief that they uphold the principle of lawfulness. Lawfulness refers to the moral guidelines, expectations, and values that shape their decisions and actions when purchasing, selecting, using, and selling goods and services. According to the data from www.mydata.gov.my, this population was 1,258,088 as of 2021. A total of 363 responses, representing a 94.53% response rate based on the expected 384 sample size suggested by Krejcie and Morgan (1970) for a population of more than 1 million units.

At an earlier stage, a pilot study was carried out randomly to 30 staff members of the Ministry of Domestic Trade and Consumer Affairs (MDTCA) in Selangor before moving on to an investigation with a significantly larger number of participants. The objective of the pilot study was to ensure that the constructs were clear, identify any potential weaknesses, and collect feedback from respondents on the questionnaire. The pilot study was conducted to ensure the validity and reliability of the questionnaire items are consistently based on Cronbach's Alpha value. The results of the reliability test indicate the Cronbach Alpha coefficient size is 0.804 (between 0.7 and 0.8), thus the strength of association between measures are considered as good.

The relationship between attitude and counterfeit consumption were analysed using correlation. Correlation analysis would assist in understanding the strength of the relationship between two continuous variables which could be positive or negative. Prior to testing the correlations, preliminary analyses were performed to ensure that no assumptions of normative, linearity, or homoscedasticity were violated. The normally distributed data served as the basis for deciding which instrument to use. In this research, the correlation between attitude and counterfeit consumption was investigated using the Pearson product-moment correlation coefficient.

4. RESULTS AND DISCUSSION

Results

A total of 363 respondents comprised of civil servants responded to the online survey. Table 1 summarizes the profiles of the respondents, i.e., age, gender and race.

Table 1. **Descriptive Statistics for Demographic Variables**

Variable	**Item**	**N=363**	**%**
Gender	Male	174	47.9
	Female	189	52.1
Age	< 30 years old	29	8.0
	30 < 35 years old	69	19.0
	35 < 40 years old	138	38.0
	> 40 years old	127	35.0
Race	Malay	329	90.6
	Indian	12	3.3
	Chinese	7	1.9

Descriptive statistics were used to investigate the attitudes of consumers in the Malaysian public sector toward the purchase of counterfeit goods. The overall mean response to each question is 2.83. On a scale where 1 denotes 'strongly disagree' and 2 denotes 'disagree' respectively, the mean indicates that the respondents are leaning toward disapproval of the consumption of counterfeit goods. The overall standard deviation is 0.91, indicating that the responses are close to the mean value and are almost similar as shown in Table 2.

Table 2. **Mean Score and Standard Deviation of Attitude (ATT)**

Statement	**Mean**	**Standard Deviation**
1) Considering the price, I prefer counterfeit goods.	3.43	1.12
2) I like shopping for counterfeit of goods.	3.33	0.84
3) Buying counterfeit goods generally benefits the consumer.	2.90	0.86
4) There's nothing wrong with purchasing counterfeit goods.	3.39	0.94
5) Buying counterfeit goods is a better choice.	2.28	0.99
6) I will continue to use counterfeit goods even though I knew many parties will be affected by it.	1.64	0.70
Overall	2.83	0.91

The following table (Table 3) presents the results of the correlation analysis between attitude and counterfeit consumption.

Table 3. **Pearson Correlation Analysis between Attitude (ATT) and Counterfeit Consumption (CC)**

		Attitude (ATT)	**Counterfeit Consumption (CC)**
Attitude (ATT)	Pearson Correlation	1	.707**
	Sig. (2-tailed)		< .001
	N	363	363

** Correlation is significant at the 0.01 level (2-tailed).

The relationship between attitude and counterfeit consumption of Malaysian public sector consumers was investigated, as shown in Table 3. Based on the analysis performed, there was a strong, positive correlation between the two variables, as $r = 0.707$ ($p < 0.001$). Therefore, the counterfeit consumption of consumers from the Malaysian public sector is strongly associated with their attitude. The finding suggests that there is sufficient evidence to conclude that attitude has positive significant effect on the consumption among the public sector workers.

Discussions

The objective of this research was to investigate whether the attitude of consumers from the Malaysian public sector would affect their behaviour toward counterfeit consumption. This research found that the attitude and counterfeiting is associated. The positive value from the correlation test indicated that the consumers are leaning toward disapproval of the consumption of counterfeit goods. The Theory of Reasoned Action (TRA) by Ajzen (1985) suggested that an individual's attitude would influence his behaviour. The same theory was adopted in this research to examine whether the attitude of the consumers from the Malaysian public sector would affect their behaviour toward counterfeit consumption. The results of the analyses demonstrated that attitude is inversely related to counterfeit consumption among consumers from the Malaysian public sector. The outcome of this research is consistent with Tang et al. (2014), which suggested that personality and subjective traits are powerful indicators of attitudes toward counterfeit consumption. Fejes (2016) reported studies that have revealed various aspects of a counterfeit product's attitude and how these attitudes influence counterfeit consumption. Some findings, for example, suggest that attitudes vary greatly not only across the globe but also within countries. In addition, evidence from Toklu and Baran (2017) also disclosed that consumer behaviour does not follow a certain pattern in counterfeit consumption, and behaviour can be changed by education on the detrimental effects of the products (Toklu & Baran, 2017).

Overall, even though some consumers from the Malaysian public sector have been using counterfeit products in the past, the responses received in this research indicate that they prefer not to continue consuming counterfeits despite accessibility to these goods being easy and the cost of counterfeit consumption being lower than the authentic products. Furthermore, these consumers also believe that purchasing and using counterfeit goods would not be a better choice as it would cause more harm than benefits. From the findings, the author suggested that attitude towards lawfulness considerably influenced counterfeit consumption. According to Raz (2009), the concept of lawfulness attitude stems from early studies that the characteristics of law are to uphold and enforce contracts, agreements, rules, and customs of private persons and associations. Laws were thought to be capable of increasing or decreasing various activities, whether as a deterrent or enforcement (Lum, 2019). The present study raises the possibility that the attitude of consumers from the Malaysian public sector was bound with the lawfulness attitude they hold as a civil servant and their responsibility to the government to uphold the law.

5. CONCLUSION

This research attempted to understand the effect of attitude on counterfeit consumption among consumers from the Malaysian public sector. The finding of this research would provide a better view of the consumer behaviour in regards to their personality factors. In view of the above, it is recommended that more activities and awareness programmes be designed for the society about the effect of counterfeit consumption. These programmes will directly help create awareness in the society about the consequences of purchasing counterfeit products. Consumers need to be educated on making rational and sustainable choices as a way of empowerment so that they may recognise their own problems and become prudent in making decisions. In this research, the result showed a significant relationship between the attitude of consumers toward counterfeit consumption.

Counterfeit products are an important global issue because counterfeiting is part of illicit trade that is not only a threat to the global economy but also a social threat. In Malaysia, counterfeit products are in abundance and have gained a stable market., The ease of acquiring counterfeit products have increased its acceptance and encouraged repeat consumption. In relation to the Sustainable Development Goals (SDGs) introduced by the United Nations (UN), counterfeiting as part of illicit trade is known to present a significant deterrence to all seventeen of the SDGs that holds back progress, increases costs, and pushes achievement of its goals further away. Notably, policymakers and the authorities need to be more stringent on those selling counterfeit products and those who purchase them because it impacts not only the

economy but also consumer safety due to their inferior quality.

It is important to acknowledge the limitations of this study. The sample used in this research were limited to respondents exclusively from the public sector. Consequently, the findings may not be applicable to a broader population. To improve the generalizability of future studies, it is advised to include participants from various employment categories, including the private sector and self-employed individuals. Exploring these diverse groups may reveal differences in work-related factors and other variables, enabling meaningful comparisons and facilitating further in-depth analysis. In addition, this study used a questionnaire to gather information from the respondents. Future research may consider the adoption interviews to gather as much information as possible regarding their attitude towards counterfeit consumption.

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e ISBN 978-629-97586-6-2

9786299758662

International Conference of Law, Accounting & Finance 2023 Conference Proceeding