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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 (Semana 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 News 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**

<b>Legislation</b>	<b>Meaning of Provisions</b>	<b>Penalty Upon Conviction</b>
<i>Penal Code (Act 574)</i>	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.

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<i>Printing Presses and Publications Act 1984 (Act 301)</i>	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.
<i>Communications and Multimedia Act 1998 (Act 588)</i>	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.
<i>Anti-Fake News Act 2018 (Act 803) and Anti-Fake News (Repeal) Act 2020 (Act 825)</i>	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.

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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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