

Freedom of Photography – the Malaysian Scenario: A Vital Element of Press Freedom

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Abstract

Freedom of photography will be discussed in line with ethics, rules and regulations. This research will elaborate the freedom of photography (mainly) focused on freedom of the press that is present in Malaysian scenario. The research will determine two aspects of Freedom of Photography based on Press Freedom. The two aspects are rules and regulations and ethics. These criteria's are used to understand what has been applied in the Malaysian Press. This research will show us the point of view from government regulations that the scenario is practiced by the Malaysian Press industry. Journalistic Principles (Code of Ethics) will be taken as a consideration to show that most decision making for press and photography are related to these principles. Press Freedom also affected the Freedom of Photography in the way of that decision making. This research will discuss the reason of why the Malaysian government plays a role in imposing some rules and law to the press and photography. In conclusion, this research found that Malaysian presses have their freedom in Photography and a degree of toleration of Freedom of Photography within the Journalistic Principle (Code of Ethics), Rules and Regulations. The situation is in line with Malaysia's media rules and ethics or practicing democracy.

Keywords: Visual communication, Ethics, Press freedom, Media law, Freedom of photography, Journalism

1. Introduction

It is to our belief that freedom of photography should, and must be, enclaved by the very least, rules and regulations set by governments and the relevant authorities, and universally, by ethics. These rules outline the least and the most minimum criteria and characteristics of doings that human beings should and should not do in order for them to be ethical. In situations where no rules or laws are available or enforced, when faced with an ethical dilemma, one has to come back to oneself and ask what is best to be done. What is good, and what is bad. What is right, and what is wrong. Personal ethics is the best consultant to turn to in these situations (Raboy & Dagenais, 1992).

Previous scholars define ethics as a set of principles, rules or ways of thinking that guide the action of an individual or a group (Velasquez & Rostankowski, 1985), an effort to identify principles that constitute values and rules of life recognized by us as individuals or a group or culture (Fink, 1995) and is a concern for distinguishing between right and wrong for journalism in the public interest (Clarke, 2004). According to Merrill (1975), ethics should provide the journalist certain basic principles or standards by which he can judge actions to be right or wrong, good or bad, responsible or irresponsible.

Freedom of photography generally refers to photographs made in public places — not only streets, but parks, beaches, malls, political conventions and myriad other settings — often but not always featuring people, usually in candid situations, going about their everyday lives (Harris & Lester, 2001).

2. Press Freedom and Photography

It is quite true that words and terms can mean whatever any person wants them to mean, and certainly this is true with “press freedom and photograph”. But it is what the person wants it to mean that is important, and it is

intellectual cowardice to write the concept off as “really inconsequential” or “simply relative” (Kirtley, 2010). The concept is important; in fact, it is basic to all other journalistic considerations. And it must be dealt with – at least on a personal, individual basis. Fundamental question must be answered; for example ; does freedom of photography belong to the press in any aspects related to freedom of the press as long as there are picture values? Does press freedom imply some kind of press responsibility, and if so, what about photography? Or does press freedom mean freedom to the press to have access on photograph to individual privacy?

3. The Malaysian Scenario: Why Government Imposes Rules and Regulations On Presses and Photography in Malaysia?

The Malaysian constitution assures the right of every citizen to express their opinions, to organize and attend gatherings, etc. However, this freedom is immediately ruled by the various laws and regulations that are imposed on the public and especially the media practitioners. There are reasons why the government does this (Yassin, 1986). Southeast Asian nations, like any others, have economic, political, social, strategic and other interests that they wish to protect (Faridah Ibrahim, Normah Mustaffa, Chang Peng Kee & Fauziah Ahmad, 2011).

3.1 Multi-racial Society

Malaysia is a country with a multi-racial society, with the Malays, the Chinese and the Indians forming the largest groups respectively. In such situation, the government has to be extra careful by taking into consideration the sensitivities of each ethnic group which has particular interests such as political, economic, religion, and social benefits to be upheld and preserved. This will assure that social harmony can be reached at and maintained. Most of the rules and regulations are imposed on Malaysian press and photography on this ground.

3.2 Economic Background

These different economic groups are also identified with different economic background, due to the economic system practiced by the British colonial. The Malays have been known to be the least progressed community while the Chinese the wealthiest. This economic imbalance between the ethnic groups was the main cause that triggered the 13 May 1969 incident, the worst riot Malaysia ever experienced since independence (Abdul Aziz Bahari, 2009).

Therefore, the government introduced the New Economic Policy to protect the rights and opportunities of the Malays and other Bumiputeras in economic participation. This policy has influenced the reporting and photograph in most Malay newspapers in form of encouragement for Malay entrepreneurs to venture into the economic and business activities.

3.3 Political Background

Malaysia is also unique in the sense that even though the Malays form the majority of the population but the governing power is shared proportionately between the different ethnic groups. This practice has proven to help maintaining the political stability in this country. Therefore, reporting and photograph also have a must for a press to consider this unique situation to maintain peace in the country.

3.4 International Relations

Controls on the media are also carried out to enhance and maintain good ties with neighboring countries and further to project a good image of Malaysia internationally. This combination of factors will and had proven to be successful in attracting foreign investors into this country.

3.5 Manipulation of the media

Another reason why rules are imposed on the media is to curb misuse of media for individual benefits. For instance, business enterprises, corporations, or individuals with large fortunes can manipulate the news reporting and photograph for their own benefits and to protect their interests. These irresponsible parties could also carry out unethical and immoral advertising. Therefore, rules and regulations are imposed on the press and other media.

3.6 National Security

National security is another concern. Laws are enforced to prohibit the outflow of government and official secrets which can externally affect the national security. Propaganda and distribution of undesired materials such as those promoting communism and the Shiite teachings, are also considered as threatening the national security and therefore should be wiped out.

4. Freedom of Photography and Press in Malaysia

Malaysian press is controlled by the government in two ways: through ownership and regulations (Zaharom Nain & Mustafa K. Anuar, 1998). While the regulation aspect seems to be apparent and transparent, the ownership control by the government is rather hidden from public knowledge. The information pertaining to the ownership of Malaysian media by the government is not readily available; therefore, it will not be discussed in depth in this paper.

The constitution of Malaysia does not mention the freedom of photography to the press specifically among guarantees of fundamental rights. According to governmental authorities, a specific mention to freedom of photography to the press is not necessary because the constitution does guarantee freedom of speech. However, the research felt that it should be inclusive of freedom of photography as photography is also referred to a sign of speech.

Figure in a photograph can be cropped out if they are central to the story. But cropping of individuals must not in any way alter the character of the group. There are some guidelines for using photographs. Newspapers are well aware of two ground rules that prohibit them from using misleading pictures. The two rules are:

- *A composite photograph in which images of individuals on separate prints are placed together as though they had appeared on a single photograph.*
- *A cutout photograph in which the images of individual persons are eliminated from a group in such a way as to change the relationship.*

(Smith, Robbin & Callender, 1978)

Besides misleading pictures, photo editors are cautioned about using pictures of dead bodies. Dead is a common occurrence and dead bodies are not a strange phenomenon. Portraying the dead in times of war is complicated by the fact that the media is being used for propaganda purposes (Merril, 1974). Several questions that ought to be asked before using images of war are; what consequences do you foresee from depicting such images? Will the audience be more knowledgeable about an event on seeing such images? What purpose would you have in showing such images? And what do you know about the source of the images?

Printing images of dead bodies is a matter of taste, thus you will find no one correct answer. It all depends on the moral norms of our society (Kirtley, 2010). You would have to ask yourself. A good test whether to print an image is looking at it and see whether you are comfortable looking at it. If you feel sick all inside looking at such images, I guess your audience would too. Dead bodies border on issues of privacy, taste, news value and potential-harm to your audience.

There are several pieces of legislations that are dubbed as media or press laws but in reality, every individual and entity in Malaysia are subjected to it. With an understanding of these laws, media practitioners will be conscious of the legal environment that they are working in. To journalists, these laws will make them more conscientious and aware of the implications of their actions.

Media laws refer to a set of laws that regulate media and practitioners alike. These federal laws are legal documents that have been enacted by Parliament as provided by Article 10(2)-(4) of the Federal Constitution. As Federal laws, every citizen of this country and the various organizations are also subject to its content. The set of legislations dubbed media laws are Printing Presses and Publication Act 1984 (Act 301), Official Secrets Act 1972 (Act 88), The Sedition Act 1948 (Act 15), Internal Security Act 1960 (Act 82), The Defamation Act 1957 (Act 286) and Penal Code (Kamal Halili Hassan, 1990).

4.1 Printing Presses and Publication Act 1984 (Act 301)

The Printing Presses and Publication Act 1984 was enacted to regulate the use of printing presses and the printing, importation, production, reproduction, publishing and distribution of publications and for matters connected therewith. With the enactment of this Act, the Printing Presses Act 1948 and the Control of Imported Publications Act 1958 are repealed. The current Act covers three important areas; the printing presses, permits for publishing newspapers and controlling undesirable publication.

4.2 Official Secrets Act 1972 (Act 88)

The Official Secrets Act is enacted to revise and consolidate the law relating to the protection of official secrets. With the enforcement of this act, three related legislations have been repealed; the Official Secrets Ordinance 1950 of the State of Malaya, the Official Secrets Ordinance of Sabah and the Official Secrets Act 1911 and Official Secrets Act 1920 both of the United Kingdom that are both effective for the state of Sarawak.

The main objective of the Act is to ensure that government secrets do not fall into the wrong hands. The Act makes it an offence for anyone to receive, retain, release, transfer, publish, copy, collect, record or use any document whether fully or partially, that is labeled as official secret without prior authorization. Members of the media should be aware of this particular provision of this Act because it prohibits them from communicating content obtained from an official secret document whether in full or partially. In other words, writing a news item or broadcasting its content on television, radio or over the Internet is a direct violation of the Act. Even though the information contained in an official secret document may be newsworthy, it would be an offence to use even part of it for a news item.

Even though media practitioners should be aware of the consequences of such action but this does not mean that the Act is directed solely at them. In fact, the Act is applied to all persons whether citizens and non-citizens, former and present government officials or employees, directors of companies and corporations having dealings with the government. Everyone is prohibited from doing any of the above acts and everyone should report if they receive any official secret documents to the police and surrender it to them.

4.3 The Sedition Act 1948 (Act 15)

The Sedition Act 1948 is enacted to provide for the punishment of sedition. Section 2 of the Act defines "seditious" as any act, speech, words, publication or other things qualifies the act, speech, words, publication or other thing as one having a seditious tendency. In other words, hostility, ill-will and dissatisfaction need not occur before action for sedition can be taken. The prosecutors need only to prove that the words has seditious tendency.

4.4 Internal Security Act 1960 (Act 82)

This Act can be used to limit freedom of speech on everyone in Malaysia. Curtailing the various freedoms as guaranteed by Article 10 of the Federal Constitution, does this mean that this Act is not consistent with the Constitution and thus void? The answer is NO. Article 149 of the Federal Constitution makes provision for such a law to be enacted and enforced regardless of any inconsistencies. This Act was enacted, as stated in the preamble of the Sedition Act, because Parliament considers it necessary to stop and prevent any action that causes or to cause a substantial number of citizens to fear organized violence against persons and property. It is also to prevent the procurement of the alteration of the lawful Government of Malaysia except by lawful means. In other words, it is not an offence to campaign for a change of the government through an election. There are two provisions of interest to media practitioners in this country which are preventive detention and subversive publication or document. For the current moment, this act has been repeal and will be replaced accordingly through another two new act that will be announced soon by Malaysian Government (Utusan Malaysia, 16 Sept).

4.5 The Defamation Act 1957 (Act 286)

The Defamation Act is enacted to act as law of libel and slander and other malicious falsehoods. Defamation can in certain circumstances be considered a crime. Prosecution for criminal defamation is provided for in the Penal Code. Criminal defamation is instituted when the state is defamed. Defamation only occurs when the words used are defamatory in the natural and ordinary meaning or by reason of an innuendo. An innuendo refers to a special meaning understood by people having knowledge of a particular extrinsic fact. Vulgar abuse is not enough to constitute defamation. The defamatory words used must refer to the plaintiff whether directly or indirectly through an innuendo. The plaintiff needs to show also that the defamatory words are published to a third party. The third party should be a reasonable person who is capable of regarding the words as defamatory. Two forms of defamation are libel and slander.

Libel is to defame someone in a permanent form. Section 3, of the Act makes provision for treating broadcasting of words by means of radio communication shall be considered as publication in a permanent form while slander is defaming someone not in a permanent form. In other words, it is by way of mouth. Slander is different from libel because to succeed in an action for slander, the plaintiff must prove special damages.

4.6 Penal Code

The Penal Code is a comprehensive legislation that provides for consolidation of laws relating to criminal offences. The Code covers a broad spectrum of criminal offences but we shall focus on a few key sections that are related to the workings of media practitioners and their organizations alike. These sections are:

a. Section 131

Section 131 refers to abetting mutiny. The law states that whoever abets in the committing of mutiny shall be liable upon conviction with imprisonment for a term up to twenty years and liable to fine. If mutiny occurs as a

consequence of that abetment, the death sentence may be imposed on those convicted or imprisonment not exceeding twenty years and fine.

b. Section 292

Section 292 refers to various offences in relation to obscene materials. It is an offence to sell, hire, distribute, exhibit, import or export of obscene materials in the form of a book, pamphlet, paper, drawing, painting representation or figure or any other obscene object whatsoever. Those convicted can be punished with imprisonment for a term not exceeding three months or with fine or both.

c. Section 298

Section 298 makes it an offence to utter words, make any sound or make gesture with deliberate intent to wound the religious feelings of any person. Upon conviction, the court can impose imprisonment for a term not exceeding one year, fine or both.

d. Section 298A

Section 298A refers to acts that cause disharmony, disunity, enmity and hatred on religious grounds either through words spoken or written; or by signs; or visible representations are punishable upon conviction with imprisonment not less than two years but not exceeding five years.

e. Section 299

Section 299 provides for action to be taken against those who commit criminal defamation. Defamation can be in the form of words either spoken or intended to be read **or by signs**, or any visible representations. Upon conviction, those found guilty of criminal defamation can be sentenced to imprisonment for a term not exceeding two years, or with fine or both.

Besides government control, ownership control has also hampered news coverage in the country. To majority Malaysians, it is a 'known secret' that Malaysian newspapers are owned vastly by the ruling political parties. The New Straits Times group of papers and Utusan Malaysia's are controlled by the ruling coalition leader, UMNO. While UMNO's ally, the MCA, owns another influential English daily, The Star. Likewise are the other vernacular dailies. They are controlled either directly or indirectly by either of the ruling coalition member parties. That is why photographers have to consider portraying pictures that will not tarnish their feeder. Or that is why the photographs chosen portraying pictures will be carefully considered so it will not tarnish the feeder.

5. Ethics and Photography

5.1 How Ethical Decision Making is Made Within the Freedom of Photograph According to Freedom of the Press?

- Truth-telling – Honesty is fundamental to any workable societal mechanism; indeed without truth-telling no moral framework exists.
- Justice – Fair treatment for all is essential in a civilized society. Justice promises reward or punishment as deserved, not based arbitrarily on race, color, creed, or social or economic status.
- Humaneness – It is basic to ordered, civilized conduct; not to harm people, help them when you can and particularly, assist the needy – the weak and vulnerable members of the society.
- Freedom – Woven into social fabric. Freedoms, independence, autonomy – liberty – for the individual are essential.
- Stewardship – Requires citizens to respect and guard the rights of others

5.2 Factors Intruding Into Ethical Decision Making in Photography

- Fear – Fear of losing a job often is a reality in newsrooms. "My editors said to portray it that way – or else, my job was at stake, so I did what they said".
- Desire for reward – It's easy to calculate what your editors want, then capture and show in conformity with their expectations. Reward for being a team player can be salary increases or promotion. Those who buck the system can become known as difficult to work with, and their career future can become dark.
- The herd instinct – We all like to be a part of a group accepted by colleagues. In journalism this can create the herd instinct, with photographer mindlessly following the lead of reporters, with editors accepting the photos values and judgments of other editors.

- The rules – Many photographer/journalists avoid personal responsibility in ethics and justify decision on grounds that ‘this is company policy’ or absent a policy ‘well that’s the way things are done around here’. As federally regulated media, both radio and TV matured in a belief that what’s “right” is meeting government’s regulations.
- The marketing concept – Increasingly, news judgments are based on what the market wants, not what trained journalists think the market need. Reader opinion surveys have supplanted editors’ judgments at some newspapers.

5.3 Methodology

Based on the areas of the study, this research uses content analysis to analyze in depth the picture published by the Utusan Malaysia on December 21, 2009. The analysis includes the entire appearing picture through views between media practitioner (editors, photographers and reporters) and audiences (employers). In some circumstances, editors, photographers and reporters assume that some pictures really have a very high news value. On the other hand–employers–believe that the same pictures demonstrate that the employees has not perform the job to the professional standard required.

5.4 Danger Arising From Unethical Photography

A picture published by the Utusan Malaysia on December 21, 2009 showing a groom (Hasrul Afandi) is chosen for the case study. The picture shows the scene of a two fire fighters helping the groom by lifting his hand for his wedding ceremony.

The same picture depicts another firefighter but without the helping gestures. These fire fighters were assigned to assist a rescue operation due to a flood catastrophe in Kampung Labi, Kuala Nerang, Kedah.

A photographer from BERNAMA, who witnessed the incident, shot the scene of the three fire fighters and that picture was displayed to the front page of the Utusan Malaysia.

By making it to the front page, it is believed that the picture carries high news value which reflects humanity factors as desired by audience and government.

<Insert Figure 1 Here>

However, the follow up story on the January 6, 2010 of same picture creates another implication. The fire fighter without the helping gestures was asked to produce a show cause letter under the impression of not performing his duties as required.

Based on the picture and the implication surrounding the issue, it can be said that the picture has not done any justice and the fire fighter is a victim of press freedom. While he is carrying out his duty and upholding the fifth principal of *Rukunegara*, he is also seen as failing to perform what is required of him as a fire fighter.

6. Conclusion

<Insert Figure 2 Here>

From the diagram above, it is clear that freedom of photography, in any system, no matter how ‘democratic’, or free, or open it is (e.g. in the United States or Western European countries) is limited at the very least by government regulations. And as a matter of fact, rules and regulations are drafted, enacted, and enforced out of the awareness that all human beings should and must be ethical in everything they do, and the press system is not excluded (Belsey & Chadwick, 1992).

Malaysian press is controlled by the government in two ways, one through ownership and the other regulations. Complementing control by the government through ownership and legislation is the idea that all aspects of information and entertainment in the Malaysian press must be guided by the government. The premise is that Malaysia, a newly-emergent nation, needs time to develop. The mass media must provide this time by not touching upon sensitive issues, by stressing positive and conversely, ignoring negative societal characteristics.

Goals which the press is implored to promote is written in the five-year development plans and the *Rukunegara*. The former, calling for a restructuring of a society, is meant to upgrade Malays economically and to eradicate poverty nationwide. The *Rukunegara* is based on the belief of a united nation, democratic, just, liberal and progressive society, and the principle of belief in God, loyalty to King and country, upholding of the constitution, rule of Laws and good behavior and morality.

Thus, with stringent legislation, as well as the national policy guidelines of the economic plans and *Rukunegara*, Malaysia’s mass media practice strict self-restraint. All newspapers and televisions, for instance, steer away from investigative reporting, fill pages with government speeches and campaigns and generally ignore the opposition

(Baran & Davis, 2010). As one Bahasa Melayu newspaper editor said, "It is not the newspapers' role to check on government. The papers here are not pro or anti-government, but supporters of government."

Print and electronic media, operating under virtually a guided press concept, stress developmental news through statements made by officials and press releases issued by Department of Information, press agents of various ministries and BERNAMA news agency.

Every Malaysian media practitioner needs to write and report based on the understanding and practicing the principles of *Rukunegara*. The addition of any applicable law is not required if all media practitioners understood and cultivate this attitude as ethics in carrying out their duties. Thus, the ethics of journalism itself is based on the principles of *Rukunegara*.

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PEINGANTIN BANJIR... Raja sehari, Hasrul Afandi, 26, terpaksa diusung oleh anggota-anggota Jabatan Bomba dan Penyelamat untuk menghadiri majlis akad nikahnya di Masjid Kampung Labi, Kuala Nerus, semalam. - Gambar Bernama [Berita di muka 4]

Figure 1. News Clipping

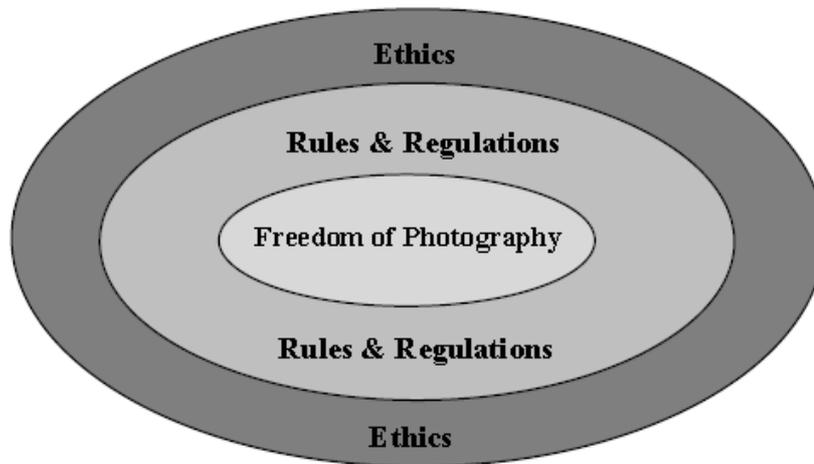


Figure 2. The System of Photography's Freedom