

Spinning the Web of Hate Online: A Critical Review from the Malaysian Laws

Syahirah Abdul Shukor¹, Nazura Abd Manap² & Maryam Rafiei²

¹ Faculty of Syariah and Law, Universiti Sains Islam Malaysia, Nilai, Malaysia

² Faculty of Law, Universiti Kebangsaan Malaysia, Malaysia

Correspondence: Syahirah Abdul Shukor, Faculty of Syariah and Law, Universiti Sains Islam Malaysia, Nilai, Malaysia. E-mail: syahirah@usim.edu.my

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Abstract

In a multi-cultural society, living in peace and tolerance are keys to development and sustainable economy. Undeniably, the efforts taken by all stakeholders are essential in materializing the future and dream of a peaceful country. Since its independence, Malaysia has been struggling to maintain the unity and integration of the three main ethnics, the Malays, the Chinese and the Indians. Matters pertaining to media especially publications of printed presses are strictly supervised by the Ministry of Home Affairs. However, with the inception of the Internet, regulating content of the Internet might be impossible for the law makers. This paper examines how the emergence of social networking website such as *Facebook*, *MySpace* and even *Tweeting* have been misused by irresponsible Internet users in Malaysia. Spinning the web of hate online is like spreading virus to the netizens and yet, its impact if it is not well tackled by members of society, it might spark serious problem to the unity and harmony of ethnics in Malaysia. Next, this paper examines how law responds to problems arose on the Internet. Finally, this paper suggests that supervision and monitoring content of the Internet which promote hate online might be challenging but such problem needs to be tackled by the authorities with extra vigilant and full coordination with all authorities.

Keywords: internet law, regulate content and media law

1. Introduction

In the era of communication and technology, the access to the Internet is not as difficult as in the early inception of the Internet. The advancement of technology has significantly affected the daily and social life of almost every social person in all around the globe. In line with complying the technology improvement with the human's legal and social life having proper and applicable regulations seems necessary and prominent. However, regulating the content of the Internet might also be a nightmare for law enforcement and legislators. In Malaysia, the Communications and Multimedia Act 1998 guarantees that there is no censorship on the Internet (Section 3(3)), which is a deep contrast to the existing media such as newspaper and printing as provided in the Printing and Presses Act 2012. With the emergence of social networking such as *Facebook*, *Tweeter* and *MySpace*, the tendency to write whatever the users feel right might jeopardize the relationship with others. There number of actions on the social networks recently which might damage and harm not only individuals but also it might have some negative effects on government actions or performances as well. For instance, there have been wild speculations on the missing flight MH370 and the tragic flight MH17 on the Internet which not only saddened the family of the victims but also it might jeopardize the reputation of the government, as if no action is being taken by the government. Hence, at beginning, issues arise as what are the rights of the Internet users when it comes to freedom of expression on the Internet? Secondly, what are the existing laws on regulating the content of the Internet especially websites which promote hate? This paper replies to these two questions and comes up with suggestion that taking legal actions against what is being published might not be the way forward, as it involves more than awareness, but also the sense of respect and harmony in using media such as the Internet.

2. Freedom of Speech on the Internet

Article 10(1) of the Federal Constitution guarantees the freedom of speech and expression, however, such freedom has its limitation, when the government passes law to protect the public. In other words, such freedom is

not absolute. Recently, collecting information in any fields via the Internet, smart phones, tablets and etc... is as easy as dialing up a call. With the advance of mobile phone, the public can now easily access what is written or expressed online. Thus, Daud (2014) questions whether making speculation is part of freedom of expression as can be seen in the wild speculations on the missing flight MH370. Even though the Constitution is silent on digital expression via computers and mobile devices, established treaties provide for recognition of digital expression over the Internet, which are the Universal Declaration of Human Rights (UDHR) and International Covenant on Civil and Political Rights (ICCPR) (Daud, p. 2). Mills (2015) raised the question of whose law governs standards of free speech on social media platforms-an important part of the question of whose law rules 'Facebookistan'. Such question is not easily reconciled as the case depends on various factors. There has been suggestion that hate speech is best regulated on a local level (Shaw, 2011). Therefore, the necessity of having a united regulations for common social networks which everybody from anywhere around the world, loges on and uses it is undeniable. Local courts and the Internet Service Providers (ISPs) should try to come out with certain standards in supervising and monitoring content of the Internet. History has proven that there is a relationship between hate speech and violence incidents in the society. In other words, it can be stated that the more the Internet and its usage is widely open and unprotected the more people are in subject to commit crime and their social life.

3. Regulating the Content of the Internet

We are living a world which is compared as a global village which all people in it are in touché and connected to gather via a space named "Internet". Of late, sharing, posting and spreading news on websites, blogs and social networks are getting done in an eye blink. With the click of a mouse, news available online might be easily speculated and exposed to manipulation by irresponsible parties. In terms of legal matter, Section 3(3) of the Malaysian Communications and Multimedia Act 1998 provides that there is no censorship on the Internet. Compared to printing and publication media, Internet provides freedom to its users in expressing views and comments on the Internet. This can be seen from many digital resources available such as blogging and social networking website such as *Facebook* and *Twitter*. The impact of what is being written or displayed on someone's blog or in their *Facebook* might offend others and thus, create tensions to others too. Although there is no specific word which mentions about hate speech, Section 211(1) of the Communications and Multimedia Act 1998 prohibits on provision of offensive content, content which is indecent, absence, false, menacing or offensive in character with intent to annoy, abuse, threaten or harass any person. In some circumstances, different viewers might interpreted differently of what actually amounts to offensive content. It seems that there are four categories of prohibition outlined from Section 211, namely, content that is indecent, secondly, absence content, thirdly false content and finally, menacing or offensive content. Hate speech can be considered as one of the examples of offensive content. This raises the question as whether there is any legal action available to offensive content such hate speech or the law is silent on this matter? The main question here is what amounts to offensive content?

3.1 Offensive Content?

The issue of what amounts to offensive content is not clearly defined in the Act. Thus, it might involve different interpretation and perception of what actually amounts to offensive. The initial intention by some of the Internet users are perhaps for thrill or fun, but at the end of the day, such actions might not be seen as a joke but it can be also as a threat to the stability of the society. Being careless and unresponsive to what is happening in human's social life by means of the Internet and advanced technology will bring up a huge amount of crimes, incidents and irrevocable damages. There have been several cases reported in Malaysia pertaining to online content. For example, the case of Alvin and Vivian sparked furious among the Malaysian Muslims as it ridiculous Muslims during the holy month of Ramadan. Both were charged under Section 298A of the Penal Code. Lee was accused of uploading a picture of them eating 'bak kut teh', accompanied by a caption, '*Selamat Berbuka Puasa* with bak kut teh' (fragrant, delicious and appetizing) which was likely to stir interfaith conflict at a restaurant in Dang Wangi between July 11 and 12, 2013. Despite warnings that media should not sensational this news, however, such incident should be an eye-opener that it might arise again in the future. In another case, a couple were also jointly charged under the Incitement Act 1948 with publishing inciting content, namely the same picture and caption on their Facebook (Note 1) at the swingers at Kompleks Mutiara Jalan Ipoh, Batu 3 1/2 here. The third charge is regarding the Film Censorship Act 2002 which involves the posting of pornographic pictures (Note 2), between July 6 and 7 at the same place. This case has put pressures on the government to bring legal actions against the parties involved. Misunderstanding can easily sparked between ethics if it is not properly handled by the authorities. In some occasion, face to face conversations might lead to enemy and tension between two parties. The case of Alvin was not the first case brought to the court. In recent years, cases involving politicians

who are being badly represented or talked on the social networks are increasing dramatically and even governments or its members are not safe in terms of security and safety in the Internet space. For instance a case which was brought by the Singaporean President to the High Court of Singapore to answer false claims by a blogger can be taken as an example. From the above analysis, it seems that public figure such as politician and artists are prone to be the target of hate speech.

4. What Laws Is Available to Govern Online Content?

There is no straightforward answer as which law suits best as regard to online content of the Internet. Many aspects need to be examined when it comes to regulating the content of the Internet. Sabrina Mohamed (2007) in her article rises that there is possibility for bloggers to face legal risks that carry civil or criminal liabilities in the areas such as copyright, trademark, defamation and sedition. In some circumstances, a blogger must consider other legal risks such as fraud, breach of confidentiality and misrepresentation. Thus, at the first glance, it seems that the existing laws are still relevant to be applied on the digital environment; however, the issue of burden of proof might come into picture if legal action is taken against the accused in the court of law.

In *PP v Muslim bin Ahmad* [2013] 1 AMR 436, the accused was charged under Section 233 of the CMA for allegedly posting offensive comments on the Sultan of Perak's website. However, at the end of the trial the respondent was subsequently acquitted and discharged on all counts, due to the prosecution had apparently failed to prove that the accused is the person who posted the offensive comments. Similarly in *PP v Rutini bin Suhaimin* [2013] 2 CLJ 427, the first defendant failed to prove that he was not the one who posted the defamatory statement and therefore according to the Section 114A (2) of the Evidence Act 1950, he was charged and liable for a payment of RM600,000 as damages to the Plaintiffs. In *National Union of Bank Employees v Noorzeela binti Lamin* (Kuala Lumpur High Court Suit No S 23-NCV-14-2011), in this unreported case, the plaintiff took a legal action against the defendant for posting alleged defamatory comments in her Facebook page. The defendant denies such comments and his sister claimed that 'maybe someone hacked my Facebook account'. The High court held that the comments on the Facebook would point to the defendant as the author and the person who published the comments and it unbelievable that the defendant's sister would be interested in posting comments on the plaintiff.

Blogger Papagomo is reading law books in his bid to win his appeal against a court order to pay RM850,000 to Datuk Seri Anwar Ibrahim for defamation. The man identified as Wan Muhammad Azri Wan Deris in two High Courts said he has been buying law books to learn about his rights and how to argue in the appellate court. On Feb 28 last year (2014), Anwar was awarded RM850,000 in his suit against Papagomo over postings that implied he had engaged in indecent acts with another man. (The Star, 2015). In *Stemlife Berhad v Mead Johnson Nutriant (Malaysia) Sdn Bhd* ([2013] 1 LNS 1446), the High Court held that Mead Johnson was liable for posting defamatory posts sent by users of Mead Johnson's Internet forum and website. The Court, refered to Section 114A of the Evidence Act 1950, stated that the introduction of Section 114A is the Malaysian legislature's response to address, amongst others, the issue of anonymity on the Internet in order to ensure users do not exploit the anonymity that the Internet can provide to escape the consequences of their actions. as a result, the Court held that the Defendants failed to rebut the presumptions cast by Section 114A. (Note 3) More recently, the increasing numbers of cases brought to the court due to statements in social networking show the seriousness of what is being written or distributed online to offline world. There are many Facebook defamation cases. For instance, In *Amber Court Management Corporation & Ors v Hong Gan Gui & Anor* ([2014] 1 LNS 1384), the management corporation of Amber Court Condominium and its council members sued two unit owners of the condominium for allegedly defaming them on Facebook. The High Court struck out the case after finding that a management corporation has no powers to do so under the Strata Titles Act 1985 and common law. (Note 4) It is timely that some standards might be drawn by the judiciary in facing claims on sedition and defamation online in the court of law. Without any guideline, it is difficult to ascertain whether the content has reached the legal definition as offensive content.

5. Discussion and Conclusion

Despite the technological developments over the last five decades, the arrival of the internet has probably had the most significant effect on our social daily life especially in terms of social networks. This upward trend should be effectively controlled in order to have the less damages and harms in various fields. One of the latest Internet issues is Spinning hate speech online which seems very rampant in today's society. If it is not being supervised closely by the law enforcement, it might not only create tensions among members of society, but it also may create riot and disruption in the society. There has been recent suggestion to shut down Facebook for Malaysian due to spread of news in Facebook about the Prime Minister. However, this action looks as a temporary solution and such attempt

may not be materialized as many of us think that it is a backward step in moving this country toward a developed country. Issues like spinning hate speech online, freedom of speech in online space, censorship on online materials and social networks and many other new-fangled technology issues which are coming to appear day after day, should be taken care properly in a form of long time solutions. Creating legal awareness and consistent campaigns might be seen as continuous efforts taken, which is hoped to instill sense of responsibility among the Internet users. Criminalizing the creators of hate speech might not solve the roots of the problems. Instilling awareness in the early days of childhood through schools and printing media must be consistent and not seasonal due to some incidence.

There have been also suggestions to regulate the Internet for responsibility, especially among the social media users (Mangan, 2014). Social media should feel responsible and be liable for their statements, so that, they would be more careful and cautious in matter of publishing or sharing news about any individuals or even when they wish to accuse governments without any authenticity. Promoting responsible publication on the Internet must also come from the state government as well as social responsibility of the Internet Service Providers (ISPs). The author also agrees that by having specific law on online defamation as suggested by (Murni & Shamrahayu, 2011). By that, in one hand, people, courts and jurisdictions could be able to find out about the verifiable facts, falls facts or malice easier and more accurate. On the other hand, it helps website's owners, bloggers and social network users to be more conscious and aware of their statements as well as consequences. In addition of having a suggestion for enacting new related laws in matter of online defamation, It is also suggested that there is possibility to explore online dispute resolution rather than bringing to the court of law. Resolving consumer tribunal dispute through online dispute resolution as suggested by (Yusoff et al., 2013) should not be limited to commercial issues but in the author's view should also applicable to social problems that might arise from 'social regulation' on the Internet. The online dispute resolution which can be held via online mechanisms such as the Internet or some form of technology that allows for virtual communication without requiring the parties to be in a room together. This method not only will help in reducing the number of cases in physical courts, but also will speed up the process of resolving the issues among clients. Offensive content including hate speech might be resolved by way of online dispute rather than legal action. Finally, it comes as a suggestion that users now days are more informed about the legal issues and legal approaches comparison to the last time. They are more aware of their rights either as an end user or an Internet Service Provider. However there are some users who are not aware of their wrongful actions in social networks which should be informed about it. Technology has penetrated into our life and it is not going to pause for a second, therefore, we cannot cope with it unless we move on the same speed with it. The more the technology brings significant advantages into our social life, the more new issues and loopholes will be appeared as result. We should keep our life updated by upgrading our legal aspects and sources. All countries should act upon this issue as Internet is not limited to one area or few countries. Malaysia is among those countries which need to take action to sort out the current problems and be prepared for the further issues and problems which might be encounter in the future.

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Notes

Note 1. Retrieved June 7, 2015, from <https://www.facebook.com/alvivi>

Note 2. Retrieved June 10, 2015, from <http://alviviswingers.tumblr.com/>

Note 3. Retrieved November 1, 2015, from <http://foongchingleong.com/tag/pp-v-rutin-in-bin-suhaimin/>

Note 4. Retrieved November 1, 2015, from <http://foongchingleong.com/tag/pp-v-rutin-in-bin-suhaimin/>

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