

Drawn into Controversy: The Comic Book Banned by the Authority?

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ABSTRACT

*The problem lies in determining whether the Minister's decision was an appropriate exercise of discretion or an overreach that infringed on constitutional rights. The High Court of Malaya, Kuala Lumpur case of *Hew Kuan Yau v Menteri Dalam Negeri & Ors* [2024] 5 MLRH addresses the intersection of executive power and constitutional freedoms in Malaysia. The applicant, Hew Kuan Yau, authored a comic book distributed to schools, which was subsequently banned by the Minister of Home Affairs through a prohibitory order (PO) issued under section 7(1) of the Printing Presses and Publications Act 1984 (PPPA). The PO was based on claims that the publication had the potential to prejudice public order by inciting racial conflict. The issue in this case revolves around the balance between safeguarding public order and protecting the fundamental right to freedom of expression. The applicant challenged the PO through a judicial review, seeking an order of certiorari to quash it. The objective of this study was to analyse the legal principles applied in evaluating the legitimacy of the Minister's actions under the PPPA, as well as their broader implications for administrative law and constitutional rights in Malaysia. The qualitative methodology used focuses on the statutory interpretation of section 7(1) of the PPPA, the scope of executive discretion, and the application of administrative law principles such as reasonableness. Relevant precedents and legal doctrines were also examined to contextualise the findings. It has been found that the High Court dismissed the applicant's judicial review application, holding that the Minister acted within the bounds of discretion provided by the PPPA. The court determined that ensuring public order justified the PO and emphasised that the judiciary's role in such matters is limited unless there is clear evidence of the misuse of the law, irrationality, or procedural impropriety. This case highlights the exercising of executive powers under the PPPA. It is recommended that legislative reforms be considered to ensure a more transparent and balanced approach to censorship or publication banning, safeguarding public order without unduly restricting constitutional freedoms.*

Keywords: publication banning; executive discretion; freedom of expression; judicial review; Printing Presses and Publications Act 1984 (PPPA); prohibitory order (PO).

INTRODUCTION

There is a concern about banning books. The applicant in *Hew Kuan Yau v Menteri Dalam Negeri & Ors* [2024] 5 MLRH wrote a comic book that reportedly described and endorsed the "Belt and Road Initiative" (BRI) of the People's Republic of China. Released on April 18, 2019, the comic book was primarily distributed to

schools. However, six months later, on October 23, 2019, the Minister of Home Affairs issued a prohibitory order under section 7(1) of the PPPA to ban the publication. Following this order, the comic books were confiscated from schools and other organisations where they had been distributed.

The ban was explained in a press statement, citing the following reasons: (a) the comic book was created with the aim of promoting communist and socialist ideologies; (b) it disseminates inaccurate and misleading information about communism while attempting to garner support and sympathy for the communist movement; and (c) it encourages readers, particularly the youth, to challenge Malaysia's historical narrative and undermines the contributions of past leaders and icons in the country's fight for independence and efforts in nation-building.

The appellant appealed to the Court of Appeal. For its importance, the grounds of appeal for determination were listed by the Court of Appeal as follows:

- (i) whether the decision of the Minister under section 7 of the PPPA is subject to judicial review;
- (ii) if so, to what extent can it be examined on the merits?
- (iii) whether the High Court is correct in holding that there was a proper exercise of ministerial discretion on the facts;
- (iv) whether a right of hearing must be accorded before banning the book; and
- (v) whether section 7 of the PPPA should be struck down as unconstitutional.

Regarding the third ground, the Court of Appeal, after objectively reviewing the facts available to the Minister and examining the content of the comic book, found no evidence indicating that the publication posed a risk to public order or had the potential to do so, which would justify the use of power under section 7(1) of the PPPA. The fact that the comic book had been in circulation for approximately six months without any incidents further undermined the Minister's concern that it

could threaten public order. The Court of Appeal concluded that the Minister's exercise of discretion was unreasonable, as a Minister in similar circumstances would not have made the same decision to ban the comic book.

Regarding the fourth and fifth grounds of appeal, the Court of Appeal ruled that they were not inclined to annul the decision to issue the prohibitory order on the basis that the right to be heard had been denied or that section 7(1) of the PPPA was unconstitutional. Consequently, on 6 July 2022, the Court of Appeal granted prayers (1), (2), (3), (5), and (6) in the judicial review application (encl 1). Prayer (5) sought the return of the comic books, while prayer (6) requested that damages be assessed.

The right to be heard is a fundamental principle of natural justice, meaning individuals should be given a fair opportunity to present their case before a decision is made. The Court's decision suggests that, in this case, the process followed by the Minister did not violate this principle, or there may have been procedural safeguards in place, despite the claim of denial.

While the Court upheld the constitutionality of the PPPA, the granting of relief, including the return of books and potential damages, reflects a limitation on the Minister's unchecked discretionary power. It emphasizes the need for fairness and reasonableness in the exercise of administrative powers.

METHODOLOGY

When conducting research and producing this paper, a qualitative approach was prioritised with a focus on both primary and secondary sources. This paper used a legal research method by utilising a qualitative analysis. It focused on the area of study that discusses legal issues regarding book banning using, cases and focusing on the statutory interpretation of section 7(1) of

the PPPA. The authors analyse the literature, scrutiny the content of the literature and discuss the findings in this paper. Data was collected mainly from primary sources, such as statutes and documents from Malaysia and other countries (Mohd Zamre et al., 2021; Mohd Zamre et al., 2019a; Mohd Zamre et al., 2019b). The collection of data is significant (Ramalinggam et al., 2019) for the research and the reviewing process (Nurul Hidayat et al., 2023; Nurul Hidayat et al., 2022; Mohd Zamre et al., 2022). Based on the analysis, the authors discuss the findings and suggestions in the final part of this paper.

ANALYSIS OF THE CASE

In *Hew Kuan Yau v Menteri Dalam Negeri & Ors* [2024] 5 MLRH, the applicant had previously sought a judicial review in the High Court to contest the prohibitory order, arguing the following: (i) the decision was unreasonable, as the comic book's content did not fall within the scope of section 7(1) of the PPPA; (ii) there was inadequate evidence to justify the conclusion that the comic book could pose a threat to public order, security, or cause public alarm; along with other reasons.

However, the Minister stated that he reached the conclusion that the book was likely to, or had the potential to, harm public order by inciting racial tensions based on the materials presented to him, which he detailed in his affidavit opposing the application. After an objective review of the facts, the High Court Judge determined that there was sufficient evidence to support the Minister's view that the book could jeopardize public order. The Judge also found that the applicant had failed to establish any of the recognised grounds for challenging the decision, such as illegality, irrationality, disproportionality, or procedural impropriety, including claims of bad faith or bias. Furthermore, the Judge noted that under section 7(1) of the PPPA, the Minister holds "absolute discretion" to

issue a prohibitory order, meaning the decision did not constitute a legal error. Section 7(1) also mandates the issuance and gazetting of the prohibitory order.

By referring to section 7 (1), of the PPPA, "if the Minister is satisfied that any publication contains any article, caricature, photograph, report, notes, writing, sound, music, statement or any other thing which is in any manner prejudicial to or likely to be prejudicial to public order, morality, security, or which is likely to alarm public opinion, or which is or is likely to be contrary to any law or is otherwise prejudicial to or is likely to be prejudicial to public interest or national interest, he may in his absolute discretion by order published in the Gazette prohibit, either absolutely or subject to such conditions as may be prescribed, the printing, importation, production, reproduction, publishing, sale, issue, circulation, distribution or possession of that publication and future publications of the publisher concerned."

The language of section 7(1) of the PPPA, i.e. "if the Minister is satisfied...he may in his absolute discretion," convenes a power and certainly nothing that resembles a duty. In spite of that, if a statutory duty exists and is breached, then two other ingredients must be proven according to the case of *X (Minors) v Bedfordshire County Council* [1995] 2 AC 633 as follows:

However, a private law cause of action will arise if it can be shown, as a matter of construction of the statute, that the statutory duty was imposed for the protection of a limited class of the public and that Parliament intended to confer on members of that class a private right of action for breach of the duty.

Based on section 7 (1), of the PPPA, it provides a wide scope of authority; prevention of harm; absolute discretion; implications for freedom of expression; and requirement for gazetting.

i. Wide Scope of Authority. The provision covers a broad range of content types, from articles and reports to music and photographs, granting the Minister discretion to act against anything perceived as harmful to public order or interests.

ii. Prevention of Harm. The clause allows the Minister to act on potential harm (likely to be prejudicial), emphasising preventive measures rather than responding to proven consequences.

iii. Absolute Discretion. The phrase "absolute discretion" provides significant autonomy to the Minister in decision-making, limiting judicial oversight. However, this discretion must still align with principles of reasonableness and fairness under administrative law.

This can be seen in *Menteri Dalam Negeri & Anor v Chong Ton Sin (t/a Gerakbudaya Enterprise) & Anor* [2024] 1 MLJ 611, the first respondent ('R1') had in September 2013 published and distributed a book entitled 'Gay is OK! A Christian Perspective' ('the book') authored by the second respondent. In November 2020, the first appellant issued an order under section 7(1) of the PPPA banning the printing, importation, production, reproduction, publication, sale, issue, circulation, distribution and possession of the book on the ground that it contained matters which were likely to prejudice public order, morality and public interest. The home minister's prohibition on the book was overturned on February 22, 2022, by High Court judge Datuk Noorin Badaruddin, who decided in favour of the book's publisher and author. The book, according to the judge, is divided into two sections: ten chapters by Ngeo discussing homosexuality and the Bible, the sacred book of Christians, and a collection of Ngeo's pieces that were published by a local news outlet between 2010 and 2011. The case went to the Court of Appeal, and according to Judge Wong's ruling, section

7(1) of the legislation indicates that Parliament intended for the courts to have the authority to examine the home minister's use of "absolute discretion" in enforcing the book prohibition. On September 25, 2023, two judges in a three-person panel at the Court of Appeal, Datuk Azizah Nawawi, the chair, and Datuk Wong Kian Kheong, the member decided to overturn the High Court's decision to revoke the book ban. Judge Azizah concurred with Judge Wong's written ruling (Ida Lim, 2024). The majority judgment said it was satisfied that the book's general message is likely to prejudice morality, as "the moral values of Malaysian society do not condone" or accept homosexuality.

iv. Implications for Freedom of Expression. Expressions that propagate war and advocate the incitement to national, racial and religious hatred, violence and discrimination must also be prohibited (Suhakam, 2022). The broad and subjective criteria such as "likely to alarm public opinion" or "prejudicial to public interest" that may pose risks to freedom of expression, as they leave room for interpretation and potential misuse.

v. Requirement for Gazetting. Publishing the order in the Gazette ensures transparency and official notification, although it does not provide a mechanism for direct public or judicial review.

While section 7(1) aims to safeguard public order and national interests, its expansive language and emphasis on "absolute discretion" could lead to challenges regarding overreach or conflicts with constitutional rights, such as freedom of speech and expression. It highlights the delicate balance between preserving societal stability and upholding democratic freedoms.

The case outlines the rationale for banning the comic book, focusing on ideological, historical, and societal

concerns. Academically, here is an analysis of the reasoning presented:

1. Promotion of Communist and Socialist Ideologies

The claim is that the comic book intentionally advocates for communism and socialism. This suggests a perceived threat to the existing ideological framework or governance structure. Thus, promoting specific ideologies, particularly communism and socialism, may be sensitive in a country like Malaysia, where historical events (e.g., the Malayan Emergency) have shaped negative perceptions of these ideologies. However, the extent to which the book explicitly promotes such ideologies is not detailed, leaving room for debate on whether the claim is substantiated.

2. Spreading Misleading and Confusing Information

The statement alleges that the comic book contains incorrect and misleading representations of communism, framing it in a way that generates sympathy for the communist struggle. Hence, this critique suggests that the publication conflicts with official narratives about communism. If the book challenges established accounts of communism's role in Malaysia, it could be seen as revisionist or propagandistic. The accusation of spreading "wrong and confusing facts" could hinge on subjective interpretation, as historical and ideological perspectives are often contested.

3. Undermining Malaysia's Historical Narrative

The comic is accused of encouraging younger readers to question Malaysia's history and diminishing the struggles of leaders who fought for independence and built the nation. Thus, this argument appeals to national pride and the protection of historical integrity. Questioning

historical narratives can indeed influence societal unity or national identity. However, fostering critical thinking about history can also be a constructive way to understand and reconcile differing perspectives. Labeling this questioning as harmful may stifle intellectual exploration, especially among younger generations.

4. Broader Implications:

The ban reflects concerns over maintaining ideological conformity and safeguarding the nation's historical narrative. Furthermore, targeting the comic's potential impact on younger audiences underscores fears of ideological shifts in the next generation. Not only that, the ban raises questions about the balance between regulating content and protecting freedom of expression. Limiting discussions on contentious topics may hinder public discourse and academic exploration.

In conclusion, while the reasons provided align with concerns about preserving national values and historical consistency, the effectiveness and fairness of such measures depend on whether the allegations against the comic book are well-supported. Without additional evidence or specific examples from the book, the justification for the ban may appear more defensive than proactive.

EXERCISING OF DISCRETION

In *Sepakat Efektif Sdn Bhd v Menteri Dalam Negeri & Anor and Another Appeal* [2015] 2 CLJ 328 at page 339, the Court of Appeal remarked that:

"... Where an administrative power is granted as a subjective discretion, courts will subject its exercise to review based on an objective assessment (*Mohamad Ezam Mohd Noor v Ketua Polis Negara & Other Appeals* [2002] 4 CLJ 309; *Minister of Home Affairs, Malaysia v Persatuan Aliran Kesedaran Negara* [1990] 1 CLJ 699;

[1990] 1 CLJ (Rep) 186; [1990] 1 MLJ 351; *Darma Suria Risman Saleh v Menteri Dalam Negeri, Malaysia & Ors* [2010] 1 CLJ 300; [2010] 3 MLJ 307). The test is whether a reasonable minister similarly situated would have acted in the same manner. The courts can test the exercise of subjective discretion against objective facts to determine whether the discretion has been fairly and justly exercised ...”.

In the *Hew Kuan Yau v Menteri Dalam Negeri & Ors* [2024] 5 MLRH, initially, the High Court had dismissed the application for judicial review. The Court of Appeal reversed the High Court in the ensuing appeal and ordered that the prohibitory order issued by the Minister be quashed by an order of certiorari and allowed the prayer that damages be assessed as pleaded in the application for judicial review. The prayer for damages was made pursuant to Order 53 rule 5 of the Rules of Court 2012 (hereinafter all rules mentioned refer to the Rules of Court 2012 unless stated otherwise).

The judge in the High Court (Judicial Review) also refused general damages, aggravated damages, and exemplary damages sought for the following causes of action in private law put forth by the applicant (the applicant’s executive summary encl 58): (i) misfeasance in public office; (ii) defamation; (iii) malicious falsehood; (iv) conspiracy to injure; and (v) breach of statutory duty.

Previously, the Court of Appeal made the following findings. It first held that while greater deference would be paid to the exercise of discretion of the Minister in matters of security of the country and public order, the court nevertheless had the power to scrutinise such decisions under the established grounds of review, including reviewing the decision for substance, ie merits and not only the process. The Court of Appeal recognised that the Minister was exercising a discretionary power well

within his jurisdiction under section 7(1) of the PPPA.

CONCLUSION

In conclusion, when a minister bans a book, the publisher or author can seek judicial review from the High Court. However, this process can be both costly and time-consuming. The requester must navigate the legal system to determine whether the ban on the book is justified. In some cases, the matter may not be fully resolved at the High Court, as dissatisfied parties have the option to appeal to higher courts, such as the Court of Appeal or the Federal Court. If the relevant law clearly outlined specific rules or criteria for assessing whether a book poses a threat to public order, disputes about the justification for banning a book in Malaysia could be minimised. Therefore, this paper suggests amending the Printing Presses and Publications Act 1984 to include either a definition of the term “prejudicial to public order” or detailed criteria to determine what constitutes such a threat.

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