

Communication law and ethics

1.0 INTRODUCTION

In today's world, social media is a tool that everyone, irrespective of age, gender, or ethnicity, is familiar with. According to the Malaysian Communications and Multimedia Commission (MCMC), as of December 2018, Malaysia has 28.7 million Internet users, accounting for 87.4 percent of the country's total population. This is due to the fact that the globe has been encircled by scientific and technical breakthroughs that can have a large indirect influence on modern human civilization and can have an impact, whether positive or negative, depending on the individual user. As a result, there is no doubting that social media is a communication trend in the Digital age that is becoming increasingly popular at current moment.

Social media is a means for communication and information transmission that has grown popular in today's culture, particularly among youth. According to the results of the 2019 Digital Report research issued by Hootsuit and We Are Social, 3.5 billion people, or 45 percent of the world's population, now utilize social media on a daily basis. Malaysia is the fifth most populous nation and the most socially engaged country in Southeast Asia. According to the 4th Edition Dewan Bahasa Dictionary, media refers to communication instruments or intermediates (communication) such as radio, television, and newspapers, whereas social refers to anything linked to, about, and about society. Facebook, Whatsapp, Messenger, Instagram, and YouTube are the most popular social media platforms among Malaysians. Nowadays, social media has been abused by a few unscrupulous cultures to disseminate fake news and information that can harm people, families, communities, and nations. Such fake information and news contain deceptive aspects, incite racial feelings, and malign a person in order to lower one's dignity and reputation, among other things.

This is a major source of worry since such data and news can have a detrimental influence on reception and use. Datuk Seri Dr Salleh Said Keruak, former Minister of

Communications and Multimedia, has encouraged everyone to use the facility responsibly. The introduction of rapidly developing social media has also altered society's lifestyle and routine. This is due to the increasing sophistication of the facilities, which allow a person to access it not only via the use of mobile computers, but also through cellphones, which are also provided with internet surfing capabilities. As a result, interested parties such as the Malaysian Communications and Multimedia Commission (MCMC), CyberSecurity Malaysia, and the Royal Malaysian Police (PDRM) play an essential part in the process of taking any action against users who have abused the above facility through complex techniques and acts implemented to ensure that the issue of something like the spread of false news and information does not continue to colour the country's current scenario.

The Malaysian Communications and Multimedia Commission (MCMC) considers any type of sharing of fraudulent, obscene, or threatening information to be an infraction under Section 233 of the Communications and Multimedia Act (CMA) of 1998. With the punishment enforced, every individual will be educated that someone who enjoys abusing social media should be held accountable for his or her conduct.

The Malaysian Communications and Multimedia Commission (MCMC)

The Malaysian Communications and Multimedia Commission (MCMC) is a statutory agency formed by the Malaysian Communications and Multimedia Commission Act 1998 (ASKMM) to execute and promote Malaysia's national policy objectives for the communications and multimedia industry. The MCMC controls and encourages the growth of the communications and multimedia industry, which includes telecommunications, broadcasting, internet activities, postal services, and digital certification. The Communications and Multimedia Act assigns the MCMC the task of policy implementation, while the Minister is responsible for policy decision-making.

Case 1

Social Media Misuse: MCMC Seizes 16 Case Items, 3 Individuals Interrogated

In the latest raid operation in several states earlier this week to curb social media abuse, the Malaysian Communications and Multimedia Commission (MCMC) and the Royal Malaysian Police (PDRM) seized a total of 16 case items in the form of sim cards, memory cards, mobile phones, external hard discs, and laptops. Dato 'Mohd Shafie Harun, MCMC's Head of Enforcement and Investigation Division, stated that, in addition to the goods, pornographic photos and sex films relevant to the cases under investigation were discovered during the raid.

According to him, this time's raid operation concentrated on four locations: Bangi, Shah Alam, Kuala Lumpur, and Cameron Highlands. The newest search was carried out after the MCMC received public complaints, and it came barely a week after the identical raid was carried out at 11 sites in many different states. According to Dato 'Shafie, the majority of the suspects' charges involved the act of transmitting obscene information and sex and pornographic movies via the WhatsApp software and Short Message System (SMS) with the goal of harassing and upsetting others.

"Section 233 of the Communications and Multimedia Act (CMA) of 1998 is being used to examine the instances. If found guilty, the penalty is an RM50,000 fine or a year in prison, or both "he said.

The material obtained in the complainant's phone, sim card, and mobile phone should be turned over to the MCMC Digital Forensic Department for digital forensic investigation. 710 case goods were confiscated between 2018 and March 30, 2019. Meanwhile, the agency received 237 instances in 2018, and 110 cases have been received this year as of March 30, 2019.

Priority 1 cases, such as insults to the Prophet Muhammad SAW or royal institutions, must be settled within 2 to 4 weeks, whereas priority 2 cases must be fixed within 12 weeks, and priority 3 cases must be resolved within 24 weeks. Meanwhile, Dato 'Shafie stated that the Click Wisely program's advocacy campaign throughout the nation would be strengthened in order to inculcate sensible Internet use among the country's social media users.

Social media users are also advised to make a complaint to the MCMC if they have any information regarding the issue of social media misuse. Such complaints can be channeled to the following platforms:

- a. Email: aduanskmm@mcmc.gov.my
- b. Complaint line: 1800-188-030
- c. WhatsApp: 016-2206 262
- d. SMS: 15888
- e. Twitter: @MCMCReact

Case 2

UNDERSTANDING OF THE ITE Law

The Electronic Information and Transaction Law is a piece of legislation that governs electronic information and transactions. Electronic information is defined as one or more sets of electronic data, including but not limited to text, music, images, maps, drawings, photos, electronic data exchange (EDI), electronic mail (electronic mail/e-mail), telegraph, telex, telecopy, or the like, processed letters, signs, numbers, Access Codes, symbols, or perforations that have meaning or can be understood by persons who can interpret them. Meanwhile, Digital Transaction are legal activities conducted using computers, computer systems, and/or other digital information.

Law No. 11 of 2008 on Electronic Information and Transactions

Law No. 11 of 2008 on Electronic Information and Transactions was approved in March 2008. Through many breakthroughs and expansions in terms of their principles and criminal consequences, the law governs several criminalizations of criminal actions of defamation through social media that were previously not criminal activities. In addition to fundamental criminal regulations, Law Number 11 of 2008 concerning Electronic Information and Transactions controls extended processes and evidence, namely the introduction of new evidence pertaining to electronic media.

Furthermore, if it is alleged that someone has violated the terms of Article 27 paragraph (3). As a result, the unlawful nature has an exception value if it is connected to Article 310 paragraph (3), which provides that it is not a written contamination or contamination if the conduct is clearly carried out in the public interest or because it is obliged to protect itself. With the enactment of Legislation No. 11 of 2008 on Information and Electronic Transactions, it has the potential to become a societal umbrella law. In terms of implementing the evidence against the article, care must be taken not to allow arrogant parties to turn this article into a rubber article. Article 27 paragraph (3) of Law Number 11 of 2008 on Electronic Information and Transactions must be interpreted more generally,

not just in black and white through the Electronic Information and Transactions Law and the Criminal Code, but must be complete and not partial.

Guidelines for the Implementation of Article 27 Paragraph (3) of the ITE Law on Defamation. Article (27) paragraph (3) of Law NO.11 of 2008 as amended by Law No.19 of 2016 reads:

“Every person intentionally and without rights distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents containing insults and/or defamation.

The threat: Article 45 paragraph (3) reads:

"Everyone who intentionally and without permission distributes, transmits, and/or makes available Electronic Information and/or Electronic documents containing insults and/or defamation as defined in Article 27 paragraph (3) shall be subject to imprisonment for a maximum of 4 (four) years and/or a maximum fine of Rp. 750,000,000.00 (seven hundred and fifty million rupiah).

- I. For Article 27 (3) of the ITE Law, it cannot be separated from the provisions of Articles 310 and 311 of the Criminal Code. (according to the Constitutional Court Decision No. 50/PUU – VI/2008);
- II. It should be noted that Article 310 of the Criminal Code is a criminal offense that regulates attacking someone's honor by accusing something to be known to the public, while Article 311 of the Criminal Code deals with accusing someone whose accusation is known to be untrue by the perpetrator;
- III. Thus, if the material (content) that is sent, distributed, and/or accessible is in the form of insults comprising taunts, mockery, and/or improper language, the information/electronic document is in the form of insults. The offence is then classified as a light insult offence under Article 315 of the Criminal Code, and it is not classified as an offence under Article 27 (3) of the ITE Law.
- IV. If the content (content) of the information/electronic document that is sent, distributed, and/or made available comprises an assessment, opinion, evaluation

result, or a truth (fact), the conduct is not an infraction linked to the content under Article 27 (3) UU ITE.

- V. If the stated fact is an act that is presently in legal procedure, the truth must first be verified before Law Enforcement Officials process the complaint for insulting and/or defaming the ITE Law.
- VI. Infraction of law Because Article 27 (3) of the ITE Law is an absolute complaint offence, the victim must report the violation to Law Enforcement Officials, unless the victim is under the age of 18.
- VII. As a reporter, the victim must be a subject (person) with a distinct identity, not an institution, company, profession, or position.

Case examples

Musician Dhani Ahmad Prasetyo — or better known as Ahmad Dhani — was sentenced to one year in prison in a case of defamation by saying 'idiot' in the Surabaya District Court

According to the panel's chairman, Ahmad Dhani "was legally and conclusively proven guilty of performing a criminal conduct willfully and without the right to disseminate and make accessible electronic information and electronic documents comprising insults and slander." The singer instantly indicated that he will submit an appeal after the panel of judges read out the decision and asked Ahmad Dhani to confer with a lawyer to determine his next actions. Ahmad Dhani, a musician and politician, is frequently embroiled in court proceedings. The hate speech against Basuki Tjahja Purnama, or Ahok, was one of the legal issues that entrapped him. Ahmad Dhani has apparently been reported to the police multiple times for his statements and conduct.

Ahok's Hatred Speech

According to Ahmad Dhani, Jack Lapian, the founder of the Basuki Tjahaja Purnama (BTP) Network, reported on Thursday, March 9, 2017. This revelation is in relation to Dhani's message on his Twitter account, @AHMADDHANIPRAST, which is thought to be promoting animosity ahead of the DKI Jakarta regional head election's second round. Dhani often used the word 'blasphemer of religion' on his Twitter account @AHMADDHANIPRAST in February and March. Dhani, for example, commented on March 5, 2017, "Anyone who supports blasphemy is a bastard who ought to be spit in the face -ADP." This account also shared on March 7, 2017 "First and foremost, GOD, a religious blasphemer as governor...are you insane? -ADP."

According to Jack Lapian, in some of the tweets presented as proof for reporting to the police, Ahmad Dhani did allude to the phrase "blasphemy of religion" to former DKI Jakarta governor Basuki Tjahaja Purnama. Jack cited Dhani's tweet from February 7, 2017: "The one who insulted Ahok's religion...who was tried by KH. Ma'ruf Amin... -ADP."

The Public Prosecutor is currently seeking two years in jail for Dhani in the prosecution trial, which began on Monday, November 26th, 2018 at the South Jakarta District Court. Dhani had met the elements of hate speech, according to the prosecution, through postings on his personal Twitter account. Dhani received a two-year jail term. He was accused under Article 45A paragraph (2), Article 28 paragraph 2 of Law Number 19 of 2016 on Information and Electronic Transactions (ITE), and Article 55 paragraph (1) of the First Criminal Code (KUHP). Prosecutors charged Ahmad Dhani with violating Article 45 paragraph 3 of the Electronic Information and Transactions Law (UU ITE) and Article 27 paragraph 3 of the Electronic Information and Transactions Law (UU ITE) for remarks allegedly containing insults and defamation during the presidential Change Declaration, which was cancelled in Surabaya on August 26, 2018. The musician has been charged under the ITE Law for the second time. Under the ITE Law, he was sentenced to one year and six months in jail by the South Jakarta District Court on January 28. When Dhani intended to join the #2019ChangePresident statement in Surabaya on August 26, 2018, he recorded a video in which he used the terms "idiot."

Dhani was stranded in the hotel lobby at the time and was unable to attend a gathering hosted by supporters of the change of presidency campaign. Dhani used the term "idiot" in his vlog to refer to anyone who oppose the presidential change campaign. Dhani was

subsequently reported to the East Java Regional Police by Coalition to Defend the Republic of Indonesia activists (Polda Jatim). One of the forces protesting the #2019ChangePresident proclamation is the whistleblower.