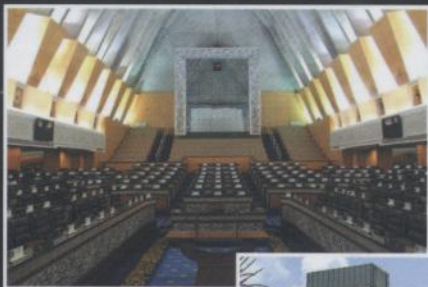


Constitutional Law and Human Rights in Malaysia

Topical Issues and Perspectives

Editor

Khairil Azmin Mokhtar



SWEET & MAXWELL ASIA

Constitutional Law and Human Rights in Malaysia

Topical Issues and Perspectives

Editor

Khairil Azmin Mokhtar

LLB (Hons) (IIUM), Master of Comparative Laws (IIUM),
PhD in Law (Aberystwyth)

Associate Professor

Ahmad Ibrahim Kulliyah of Laws
International Islamic University Malaysia

SWEET & MAXWELL ASIA



THOMSON REUTERS

Published in 2013 by
Thomson Reuters Malaysia Sdn Bhd (464942-H)
(trading as Sweet & Maxwell Asia)
No 17, Jalan PJS 7/19, Bandar Sunway
46150 Petaling Jaya, Selangor, Malaysia

© Khairil Azmin Mokhtar

All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, or stored in any retrieval system of any nature without prior written permission, except for permitted fair dealing under the Copyright Act 1987. Application for permission for other use of copyright material including permission to reproduce extracts in other published works shall be made to the publisher. Full acknowledgement of the authors, publisher and source must be given.

The authors have asserted their moral right under the Copyright Act 1987, to be identified as the authors of this publication.

Perpustakaan Negara Malaysia

Cataloguing-in-Publication Data

Constitutional law and human rights in Malaysia: topical issues and perspectives /
Khairil Azmin Mokhtar editor
Includes index

ISBN 978-967-0498-13-3

1. Public law—Malaysia.
 2. Human rights—Malaysia.
- I. Khairil Azmin Mokhtar, 1969-
342.595

Cover design by Edward Goh

Printed by Print Assist (1901555-V)
7, Jalan Anggerik 5, Bandar Bukit Beruntung, 48300 Rawang, Selangor Darul Ehsan

Contents

<i>Preface</i>	vii
<i>About the Authors</i>	ix
<i>Table of Cases</i>	xxxi
<i>Table of Statutes</i>	xli
<i>Table of International Conventions, Agreements and Treaties</i>	liii

PRINCIPAL ORGANS OF GOVERNMENT

Chapter One

The Doctrine of Separation of Powers: Judicial Review as a Check and Balance Tool.....

1.1	Introduction.....	1
1.2	Constitutionalism, rule of law and judicial review.....	1
1.3	Doctrine of separation of powers, principle of check and balance and judicial review.....	3
1.3.1	Doctrine of separation of powers in Malaysia.....	4
1.3.2	The principle of check and balance.....	7
1.3.3	Judicial review.....	7
1.3.3.1	The scope and nature of judicial review.....	7
1.3.3.2	Relief available in judicial review.....	8
1.3.3.3	Review of primary legislation/check on the Legislature.....	8
1.3.3.4	Review of action and decision/check on the Executive.....	14
1.4	Selected issues and cases.....	15
1.5	Conclusion.....	20

Chapter Two

The Civil Service and the Doctrine of Holding Office at Pleasure.....

2.1	Introduction.....	21
2.2	The constitutional position of a public servant.....	22
2.3	Appointment and security of tenure.....	23
2.4	The contractual nature of the relationship.....	27
2.5	Procedural protections.....	28
2.6	The roles and functions of the Service Commission and Council.....	32
2.6.1	Duty of confidentiality.....	33
2.6.2	Disclosure in the public interest.....	34

2.7	Freedom of association in the public sector	35
2.8	Government transformation plan and the future of the public service	37

Chapter Three

Crown Privilege under the Common Law and the Evidence Act.....

		39
3.1	Introduction.....	39
3.2	Crown privilege.....	40
3.3	Expanding scope of public interest immunity	41
3.4	Court withholding evidence in the public interest.....	44
3.5	Test applied for claim to withhold evidence	46
3.5.1	Class claims and content claims	46
3.5.2	Balancing competing interests	47
3.5.3	Court's power to inspect documents.....	48
3.6	Crown privilege under the Evidence Act 1950	49

Chapter Four

Accountability and Integrity of the Judiciary

		57
4.1	Introduction.....	57
4.2	Maintaining judicial ethics	58
4.3	Judicial ethics in Malaysia	59
4.4	Judicial delinquents.....	60
4.5	Methods of supervising judges' conduct	63
4.5.1	Tribunal	63
4.5.1.1	Criticisms on the process of judges' removal....	65
4.5.1.2	Did the working party really intend to free Article 125(3) and (4) from political influence?	66
4.5.2	Judges' ethics committee.....	68
4.5.2.1	Background of the Malaysian Judges' Code of Ethics	68
4.5.2.2	The scope of the Judges' Code of Ethics 2009 ...	72
4.5.2.3	Issues on the Judges' Code of Ethics 2009	74
4.5.2.4	Disciplinary procedure on breach of Code	76
4.6	Conclusion.....	77

Chapter Five

Contempt of Court vs Freedom of Speech and Expression: Rethinking the Courts' Attitude

		79
5.1	Introduction.....	79
5.2	The Malaysian courts' approaches in striking a balance	80
5.3	Rethinking the Malaysian courts' approaches in striking a balance.....	87
5.4	Concluding remarks.....	94

Chapter Six.....97

Access to Justice: Adversarial Costs in Public Interest

Litigation..... 97

6.1	Introduction.....	97
6.2	Judicial discretion in awarding costs.....	97
6.3	Costs in the United Kingdom	101
6.4	Costs in Malaysia.....	106
	6.4.1 Specific statutory provisions for order of costs	106
6.5	The position in Canada.....	107
6.6	Different kinds of costs mechanisms	109
6.7	The Aarhus Convention.....	109
6.8	Conclusion.....	110

Chapter Seven

Functions and Privileges of Parliament: An Overview 111

7.1	Introduction.....	111
7.2	What is Parliament?.....	111
	7.2.1 Parliament building	112
	7.2.2 Parliament as an institution.....	112
7.3	The structure and main components of Parliament	113
	7.3.1 Constitutional and legal framework of parliamentary privileges in Malaysia	115
	7.3.2 Parliament as the central organ of Malaysian democracy	115
7.4	Definition and purpose of parliamentary privileges.....	116
	7.4.1 The sources and legal framework of parliamentary privileges in Malaysia	117
	7.4.2 Types of parliamentary privileges.....	118
7.5	Privileges of the Houses of Parliament as a collectivity	118
	7.5.1 Rights of the House to regulate its own composition and have exclusive cognizance of matters arising within the House.....	119
	7.5.2 The power to discipline.....	121
7.6	Rights and immunities of individual members of Parliament	122
	7.6.1 Freedom of speech	123
	7.6.2 Exemption from court attendance	125
	7.6.3 Freedom from arrest.....	125
7.7	A comparison of two cases on power to punish for contempt: A distinction between the power of the State Legislative Assembly and the Federal Parliament.....	126
7.8	Conclusion.....	129

Chapter Eight

The Election Commission: History and Functions..... 131

8.1	Introduction.....	131
8.2	Historical background	131

8.3	The 1955 election: successful experiment of the elections in Malaya.....	139
8.4	The Election Commission since independence.....	140
8.4.1	The organisation of Election Commission.....	140
8.4.2	Functions of the Election Commission.....	143
8.5	Demands for electoral reform.....	145
8.6	Conclusion.....	147

Chapter Nine

Elected Members and the Right to Change Party..... 149

9.1	Introduction.....	149
9.2	Elections and the party system.....	150
9.3	Concept of an elected representative.....	151
9.4	Islamic theory of democratic government and the role of elected representatives.....	152
9.5	Anti-defection law: Legal position in Malaysia.....	154
9.5.1	Anti-defection laws: Legal position in India.....	157
9.5.2	Is there a need to enact an anti-defection law in Malaysia?.....	158
9.6	Overcoming legal hurdles.....	161
9.6.1	The advantages and disadvantages of anti-defection laws.....	162
9.7	Conclusion.....	162

Chapter Ten

Islamic Law within the Federal Framework and Legal System of Malaysia and Nigeria..... 165

10.1	Introduction.....	165
10.2	The nature of the Malaysian and Nigerian states.....	166
10.3	Status and scope of Islamic law.....	169
10.3.1	Civil law (<i>Muamalat</i>).....	169
10.3.2	Criminal law.....	170
10.3.3	Harmonisation of Islamic law.....	173
10.4	Application of Islamic law.....	175
10.4.1	Jurisdiction of Islamic courts.....	175
10.4.2	Jurisdiction of civil courts (English courts) in Islamic law matters.....	178
10.4.3	Harmonisation of Islamic law in Malaysia and Nigeria.....	180
10.4.4	Obstacles to the application of full Islamic law.....	181
10.5	Conclusion.....	181

Chapter Eleven

Enforcing the Law against Enforcers: The Enforcement Agency Integrity Commission..... 183

11.1	Introduction.....	183
------	-------------------	-----

11.2	The Ombudsman.....	184
11.3	Formation of the "Malaysian Ombudsman" – the EAIC.....	187
11.4	The Enforcement Agency Integrity Commission Act 2009.....	190
11.5	Conclusion.....	196

BASIC CONCEPTS AND FEATURES OF THE CONSTITUTION

Chapter Twelve

General Principles of Good Governance in Public

Administration: A Judicial Approach..... 199

12.1	Introduction.....	199
12.2	Public authority defined.....	200
12.2.1	Multiple powers.....	201
12.3	Judicial approaches on good governance.....	201
12.3.1	Jurisdiction <i>versus</i> no jurisdiction.....	201
12.3.2	Bona fides <i>versus</i> mala fides.....	202
12.3.3	Proper purpose <i>versus</i> improper purpose.....	203
12.3.4	Relevant facts <i>versus</i> irrelevant facts.....	204
12.3.5	Non-dictation <i>versus</i> abdication.....	205
12.3.6	Mechanical decisions.....	205
12.3.7	Non-restraint.....	206
12.3.8	Reasonable delay <i>versus</i> undue delay.....	207
12.3.9	No discrimination.....	208
12.3.10	Rationality (reasonableness) <i>versus</i> irrationality (unreasonableness).....	208
12.3.11	Procedural propriety (procedural fairness) <i>versus</i> procedural impropriety.....	210
12.3.12	Right of hearing (<i>audi alteram partem</i>).....	211
12.3.13	No bias (<i>nemo iudex in causa sua</i>).....	212
12.3.14	Reasoned decision.....	213
12.4	Conclusion.....	214

Chapter Thirteen

Malaysian Constitution, Political Parties and the

Party System..... 215

13.1	Introduction.....	215
13.2	Political parties and party system.....	215
13.3	Political parties and party system in the Malaysian Constitution.....	218
13.4	Political parties and party system in Malaysia.....	220
13.5	Conclusion.....	224

*Chapter Fourteen***Living in Limbo: Constitutional and Legal Issues of****Unregistered Births..... 225**

14.1	Introduction.....	225
14.2	The importance of birth registration.....	225
14.2.1	Right to education.....	226
14.2.2	Right to health and a family environment	226
14.2.3	Juvenile justice.....	227
14.2.4	Entitlement to state benefits and participation in society.....	227
14.2.5	Right to a name and nationality.....	228
14.2.6	Right to be exempted from certain laws.....	228
14.3	Factors of non-registration of birth.....	230
14.3.1	Political barriers.....	230
14.3.2	Administrative barriers.....	230
14.3.3	Legislative barriers.....	230
14.3.4	Economic barriers	231
14.3.5	Geographical barriers.....	231
14.3.6	Social cultural barriers.....	232
14.4	Registration of birth in Malaysia.....	232
14.5	Registration of birth and the right to citizenship in Malaysia	233
14.5.1	Proof of citizenship.....	234
14.5.2	Registration of a child born overseas.....	235
14.6	Conclusion.....	237

*Chapter Fifteen***Effective Federal-State Coordination Mechanism for Good****Governance and Sustainable Land Administration..... 241**

15.1	Introduction.....	241
15.2	Good governance in land administration systems	243
15.3	Malaysian land policy framework	248
15.4	Legal regulatory framework	250
15.5	Institutional and administrative framework	252
15.5.1	The National Land Council.....	253
15.5.2	Department of Director General of Land and Mines (DGLM)	254
15.6	Analysis of the effectiveness of the functions of the federal agencies in coordinating the land administration system.....	256
15.6.1	Lack of powers for coordinating the federal and state land administration relationship	257
15.6.2	Lack of powers for DGLM in coordinating land administration for country	258
15.6.3	Federal and state jurisdictional issues	258
15.6.4	Lack of coordination between government agencies	260
15.7	Globally emerging initiatives in nationalising management of land administration	261

15.7.1	Australian initiatives	261
15.7.2	European Union initiatives.....	261
15.7.3	United States initiatives	261
15.8	Malaysian initiatives in meeting global needs	262
15.9	Proposed reforms to enhance the land administration System to meet the global challenges	263
15.9.1	Enhance role of the National Land Council in coordinating land administration between federal and state authorities	264
15.9.2	Establish National Centre for Developing and Maintaining Electronic land administration system (MyeLAS)	265
15.9.3	Elevate position of Department of Director General of Land and Mines to National Agency for Land Administration and Management.....	266
15.9.3.1	Review of the legal and institutional framework for land administration.....	267
15.9.3.2	Improve procedures in land administration to enhance service delivery	267
15.9.3.3	Advisor to federal and state governments on land policy, law and administration matters	268
15.9.3.4	Establish think tank for land administration and management at federal level.....	268
15.9.3.5	Capacity building of land administration organisation and staff.....	268
15.10	Conclusion.....	269

Chapter Sixteen

Eviction of Unlawful Occupiers of Land: Judicial Responses and Policies		271
16.1	Introduction.....	271
16.2	General concepts.....	272
16.2.1	The squatter phenomenon in Malaysia	273
16.2.2	Judicial responses to the position of squatters on state and private land	275
16.3	Emergency (Clearance of Squatters) Regulations 1969	280
16.4	Forced eviction under the international human rights dimension	283
16.4.1	An alternative to forced eviction?.....	285

Chapter Seventeen

Legal Status of the States in Malaysia before Independence: Were we Colonised?.....		289
17.1	Introduction.....	289
17.2	The British and the Malay States: Policy of non-annexation and treaty of protection	290
17.2.1	The British and the Straits Settlements	294

17.3	The British and the Borneo States	295
17.4	Distinction between Protected State, Protectorate State and Crown Colony	296
17.4.1	The Malay States as Protected States	298
17.4.2	The protected Malay States: British influences over government and administration of the States.....	301
17.4.3	The Crown Colony of the Malay Peninsula: British Government in the Straits Settlements.....	302
17.5	British direct rule after World War II: The Unitary Malayan Union.....	305
17.5.1	British direct and indirect rule after World War II: The Federation of Malaya 1948	306
17.5.2	The root of confusion: Protectorate State and the status of states under East India Company and the British North Borneo Chartered Company	308
17.6	Conclusion	310

HUMAN RIGHTS

Chapter Eighteen

	Religious Rights and Freedom: Comparative Perspectives	313
18.1	Introduction.....	313
18.2	Islam as the religion of the Federation under Article 3(1) of the Federal Constitution (FC)	314
18.2.1	Adoption of official faith: Greece.....	314
18.2.2	Adoption of official faith: Ireland.....	315
18.2.3	Secular constitution: Australia	315
18.2.4	Secular constitution: Nigeria.....	316
18.3	The first argument: Religious rights and freedoms guaranteed in the States' Constitutions.....	316
18.3.1	States with official religion: Malaysia	316
18.3.2	States with official religion: Greece	317
18.3.3	States with official religion: Ireland.....	317
18.3.4	Other secular states: Australia	318
18.3.5	Other secular states: Nigeria	318
18.4	Freedom of religion in Malaysia under Article 11 and the restriction on religious rights under the FC	319
18.5	The second argument: Democratic and secular constitutions	322
18.5.1	International human rights instruments	322
18.5.2	The Universal Declaration of Human Rights.....	322
18.5.3	United Nations Declarations.....	322
18.5.3.1	The 1981 Resolution.....	322
18.6	The practice of the European Court of Human Rights (ECHR).....	324
18.6.1	Freedom of religion under the European Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention).....	324

18.6.2	The restriction of religious rights and freedom under the doctrine of "margin of appreciation": the jurisprudence of the ECHR.....	325
18.7	Conclusion.....	329

Chapter Nineteen

Right to Development as a Human Right: A Challenge for Malaysia..... 331

19.1	Introduction.....	331
19.2	Human rights and development in perspective	332
19.3	Globalisation and human rights.....	333
19.4	The right to development: a controversial concept	334
19.4.1	Historical background.....	334
19.4.2	The evolving concepts.....	335
19.4.3	Specifying the content of the right to development.....	336
19.4.3.1	Comprehensive development	336
19.4.3.2	Respect for all human rights	336
19.4.3.3	Participation.....	337
19.4.3.4	Social justice.....	337
19.4.3.5	Self-determination	337
19.4.4	Clarifying the nature of the right to development.....	337
19.4.4.1	A human right	338
19.4.4.2	Right-holders	338
19.4.4.3	Duty-holders.....	339
19.4.4.4	National implementation.....	339
19.5	Human rights-based approaches to development	340
19.6	Challenges for Malaysia	342
19.6.1	The challenge of enforcing constitutionalism and rule of law	342
19.6.2	Challenge of promoting popular participation and participatory democracy	343
19.6.3	The challenge of strengthening capacity of public service	344
19.7	Conclusion.....	346

Chapter Twenty

Balancing Business and Human Rights: Conflicts, Challenges and Prospects 347

20.1	Introduction.....	347
20.2	Business and human-rights: a multi-dimensional relationship.....	348
20.2.1	Business as violators of human rights	349
20.2.2	Corporate complicity in human rights abuses committed by states	352
20.2.3	Business as promoters and protectors of human rights.....	352

20.3	Understanding business-related human rights abuses in Malaysia	353
20.3.1	Overview	353
20.3.2	Contributing factors.....	355
20.3.2.1	Regulatory vacuum in regards to business conduct	355
20.3.2.2	Misconceptions about CSR.....	356
20.4	Regulatory and voluntary-based solution mechanisms	358
20.4.1	Regulatory approaches	358
20.4.2	Voluntary approaches	361
20.5	Findings of the study and some recommendations	362
20.5.1	Harmonising the regulatory and voluntary approaches	362
20.5.2	Human rights as business and states responsibilities	364
20.5.3	Human rights principles are good for business	364
20.6	Conclusion.....	365

Chapter Twenty One

Rights of the Orang Asli under the Federal Constitution..... 367

21.1	Introduction.....	367
21.2	Legal definition of indigenusness	368
21.2.1	Orang Asli	368
21.2.2	Native of Sabah and Sarawak.....	370
21.2.3	Malay	372
21.3	The Orang Asli rights under the Federal Constitution	373
21.3.1	Article 8(5)(c)	374
21.3.2	Articles 13(1) and (2).....	377
21.4	Law as a tool for the advancement of the Orang Asli.....	379
21.5	Conclusion.....	381

Chapter Twenty Two

Right to Health: International Human Rights Law and the Experience of Other Countries

22.1	Introduction.....	383
22.2	Brief concept of health	383
22.3	Health and human rights	385
22.4	International human rights instruments on the right to health... 387	
22.4.1	Regional instruments on the right to health	392
22.4.1.1	Europe.....	392
22.4.1.2	American continent	393
22.4.1.3	Africa	394
22.4.2	Scope of the right to health.....	394
22.4.3	Constitutional rights to health	395
22.5	Implementing the right to health: examples of selected countries.....	397
22.5.1	Position in Malaysia.....	406
22.6	Conclusion.....	408

*Chapter Twenty Three***Rights of Persons with Disabilities (PWD): The "Almost Forgotten" Protection under the Federal Constitution 411**

23.1	Introduction.....	411
23.2	International human rights law for PWD position in UN, CRPD	414
23.3	Laws governing PWD in Malaysia	419
23.4	Position in Federal Constitution for PWD	423
	23.4.1 Article 5 – Personal liberty	423
	23.4.2 Article 8 – Equality	426
	23.4.3 Article 12 – Education	428
23.5	Conclusion.....	430

*Chapter Twenty Four***Freedom of Information: Principles and Challenges Towards Vision 2020 431**

24.1	Introduction.....	431
24.2	History.....	431
24.3	Freedom of information as a human right under the umbrella of freedom of expression	432
24.4	Movement toward freedom of information legislation	433
24.5	Concept and scope of freedom of information.....	434
24.6	Principles under freedom of information and challenges	436
24.7	Conclusion.....	442

*Chapter Twenty Five***Right to Privacy: Development, Cases and Commentaries 445**

25.1	Introduction.....	445
25.2	Definition and scope of right to privacy.....	446
	25.2.1 Right to privacy in the common law	448
	25.2.2 Right to privacy in the islamic perspective	450
25.3	Right to privacy in the Malaysian Constitution	452
	25.3.1 Right to privacy as a subset of right to life and liberty	453
	25.3.2 Right to privacy as a subset of the right to property	455
25.4	Recent developments from Malaysian courts	457
25.5	Conclusion.....	465

*Chapter Twenty Six***Slavery and Human Trafficking: Constitutional Provisions and Domestic and International Laws 467**

26.1	Introduction.....	467
26.2	Prohibition of slavery and forced labour in the Federal Constitution and international laws	468
	26.2.1 Slavery, forced labour and human trafficking	472

26.3	The meaning of human trafficking	473
26.3.1	The difference between human trafficking and human smuggling.....	474
26.3.2	Difference between trafficking in persons and smuggling of migrants	475
26.3.3	International laws on the suppression of human trafficking	476
26.4	Malaysian laws used to suppress human trafficking	477
26.4.1	The Penal Code.....	477
26.4.2	The Child Act 2001.....	478
26.4.3	The Immigration Act 1959 (Revised 1963).....	478
26.4.4	Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007	479
26.4.5	Enforcement of the 2007 Act and the Government's national action plan against human trafficking	482
26.5	Conclusion.....	483

Chapter Twenty Seven

Beatrice Fernandez v Sistem Penerbangan Malaysia:

A Constitutional Critique.....	485	
27.1	Introduction.....	485
27.2	Facts of the case: <i>Beatrice Fernandez</i>	486
27.2.1	Review of the court's decision	487
27.2.2	Whether Article 8 of the FC is applicable to terms and conditions of a collective agreement	487
27.2.3	Whether Clause 2(3) of the collective agreement violates Article 8 of the FC as it was discriminatory in nature	491
27.2.4	The applicability of the convention on the elimination of all forms of discrimination against women (CEDAW), to the terms and conditions of the collective agreement	495
27.3	Reception of international treaties within our domestic law	495
27.3.1	Why CEDAW should be applicable to the terms and conditions of the collective agreement.....	498
27.3.2	Other possible arguments.....	500
27.3.2.1	Nullity of contracting out of fundamental rights	500
27.4	Conclusion.....	501

Chapter Twenty Eight

Freedom of Speech on the Internet: Shariah and Malaysian Perspectives

503		
28.1	Introduction.....	503
28.2	Scope of freedom of speech.....	503
28.2.1	Nature of the internet.....	504

28.3	Freedom of speech as an integral part of democracy and the Shariah.....	505
28.4	Freedom of speech: A universal and domestic right.....	507
28.5	Limitation and regulation of freedom of speech in civil society and from the Shariah perspective.....	511
28.6	Limitation and regulation of the freedom in international human rights law.....	513
28.7	Limitation of freedom of speech in the internet: Prohibition and regulation of negative content on the internet.....	515
28.8	Illegal and harmful content on the internet: Initiative taken and approach adopted by the European Union and its institutions.....	516
	28.8.1 Illegal content.....	516
	28.8.2 Potentially harmful content.....	516
28.9	Laws regulating the internet in some countries.....	518
	28.9.1 Internet Code of Practice of Singapore.....	518
	28.9.2 Internet Code of Practice of Brunei Darussalam.....	518
	28.9.3 Communications Decency Act 1996 and Child Pornography Prevention Act 1996.....	518
	28.9.4 Laws restricting and regulating internet content in Malaysia.....	519
	28.9.5 Communication and Multimedia Act 1998 of Malaysia and regulation of internet content in Malaysia.....	519
	28.9.6 Restriction under defamation law.....	522
28.10	Conclusion.....	522
	<i>Index</i>	525

Chapter Twenty Eight

Freedom of Speech on the Internet: Shariah and Malaysian Perspectives

Khairil Azmin Mokhtar¹

28.1 INTRODUCTION

Freedom of speech and expression is a prerequisite to a healthy social and democratic life. It represents the *sine quo non* of a democratic process because it allows members of public to express their say on certain issues of common interest and to discuss matters before decisions are made. The centrality of the role of this freedom to speech and expression transcends over the technology and the medium of communications, thus would still find its significance in today's Information Age driven by the rise of the Internet technology.

The internet, which has been referred as the information super highway, have significant role in many areas such as shaping public opinion and disseminating information. The effectiveness of the Internet as a medium of mass communication is no longer in doubt. The technology available today has created many Internet based services including blogs, chat rooms, instant messaging, news bulletins and virtual libraries. The convergence of traditional forms of broadcasting, telecommunications and online activities and services unsurprisingly gives rise to the question among policy makers in government as to whether there should be more effective means of regulation of the Internet. However the regulation run counter the idea of freedom of speech. This paper seeks to observe the scope of freedom of speech in the Internet and certain types of content which seeks to be regulated and prohibited.

28.2 SCOPE OF FREEDOM OF SPEECH

Freedom of speech, as can be observed from the various human rights law cited later, covers:

1 The writer would like to thank Asst Prof Dr Sonny Zulhuda for his assistance in preparing this chapter.