

Freedom of Speech: A Comparative Study between Islam and Malaysian Laws

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Abstract

Freedom of speech is one of an individual expression method in expressing a person's view. However the right is restricted due to Malaysian's Legal Provisions which have been set by the Government. According to Islamic teaching, human is given right and freedom to act in order to preserve their rights. Therefore, this study highlights the extent comparison between Islamic Law and Malaysian Law. There are two objectives of this study which are to identify the freedom of speech's concept in Islam and Malaysian Law as well as to analyze the comparison between both laws through Islamic perspective. This study adapts content analysis methodology based on library data collection. As the result, the findings show that Islam do promote the freedom of speech and it is also constituted in Article 10 of the Malaysia's Federal Constitution which allows it's citizen to practice it. However, this freedom whether in Islamic Law or Malaysian's Law is not absolute as there are limitations in certain matters which need to conform.

Keywords: *Freedom of Speech, Islamic Law, Malaysian Law, Fatwa, Hurriyah al-Ra'y*

INTRODUCTION

Freedom of speech is recognized as a form of freedom for individual or groups in expressing their opinions (Peter, 1976). Today, the reality is detrimental as when an issue arisen, the society will instantly speak out unhesitatingly before issuing an argument or opinion.

Nevertheless, in Islamic point of view, freedom of speech is a principle that can be expressed by an individual to state the truth whether it implies common or religious matters (al-Hawli, 2008; al-Basyar, 2009). According to al-Mawdudi (1980:26), this freedom is granted to Muslim as it relates to the concept of enjoining the lawful and forbidding the unlawful (*al-'amr bi al-ma'ruf*

wa al-nahyan al-munkar) and through this concept, Muslims are permitted to freely expressing their opinions.

Apart from that, it has been discussed from the perspective of Malaysian's Constitution. Hashim (2001) stated that the freedom of rights in the constitution is defined as a symbol of courage in voicing out ideas and it is parallel with democratic living. However, according to Azizuddin (2002:184) in Malaysia, the freedom of speech issue has provoked ideologies and values collision among Malaysian citizens. Consequently, it causes people to start arguing on the individual's authority and credibility pertaining their ideas, opinions and perspectives.

The study first discussed freedom of speech from the perspective of Islam and the laws of Malaysia. Then, analyzing both to conclude the position of freedom of speech, especially in Malaysia.

RESEARCH METHODOLOGY

This study applies document analysis method to get a clear picture regarding the concept and definition of freedom of speech by an unauthoritative person in Islam. The detail explanation about the concept and definition has been studied and compiled from both classical and contemporary sources. Next, the result of the data collection will be analyzed by using content analysis method. One of the ways to conduct the method is by reviewing and clarifying the text contents in a document. Yusof (2004:34) and Krippendorff (2004:18) said content analysis is a research technique to draw conclusions systematically and objectively through the data which found in a document. While Merican (2005:170) and Lebar (2009:146) defined content analysis as an explanation obtained by systematically examining the content of a written text. This coincides with data collected from a particular document which includes the research related to freedom of speech in Islam.

FINDINGS

This study discusses the freedom of speech from two aspects. Firstly, freedom of speech from the perspective of Islam and second is freedom of speech from Malaysian's Law perspective.

FREEDOM OF SPEECH IN ISLAMIC PERSPECTIVE

In Islam, there are some liberties which have been recognized to human, including freedom of speech regardless the religion one professes as long as it does not surpass to the religious matters scope especially in the matter of creed, faith or belief. This is in accordance with the statement by Shamsudin (2007) who quoted the view of al-Zuhayli which is describing of speech is one of the set of natural rights of human being. Any individual leaders and communities who practice this freedom must abide with the boundaries of Shariah law as to avoid any negative impacts on Muslim and Islam itself (Mahmood, Mahmood & Mohd Kashim, 2010: 44).

Specifically, al-Qasimi (n.d.: 287) stated that Islam also emphasizes the freedom of speech in several decent manners. Firstly, do not raise your voice on something which are unbeneficial towards your own self, religion and nation. Secondly, do not assemble or gather just to simply talk about illegal things against Islam and thirdly, this freedom of speech must be silent from any vulgar, harsh and obscene words including an insult, humiliation, etc. which can trigger contention among each other.

According to al-Mawdudi (1980), the core of the freedom of speech in Islam is derived from the concept of *al-'amr bi al-ma'rufwa al-nahy an al-munkar*. The essence of this concept can be seen from the saying of the Prophet PBUH:

Whosoever of you sees an evil, let him change it with his hand; and if he is not able to do so, then [let him change it] with his tongue; and if he is not able to do so, then with his heart — and that is the weakest of faith."

(Narrated by Muslim, 184)

FREEDOM OF SPEECH FROM THE LAW OF MALAYSIA PERSPECTIVE

On the issue of freedom of speech that is often discussed, it is explicitly enshrined in the Federal Constitution that the people of Malaysia has been allocated their rights to practice freedom of speech. This is based on Part 2 of Article 10 (1) which explains that:

- 1- Every citizen has the right to free speech and expression.
- 2- All citizens have the right to assemble peacefully and unarmed.
- 3- All citizens have the right to form associations.

(Federal Constitution, 1999).

According to the constitution, it is intended solely to give people an opportunity to carry out the responsibility as Malaysians. However, the provisions of Article 10 (1) contained in the constitution, it has faced sanctions after the existence of the act that requires people do not to be too much talk and express opinions. Factors of restrictions on people are even set out in Article 10 (4) of the Federal Constitution which states that:

"To impose restrictions of this is in the interest of safety, federal or any part thereof or public order under clause (2) (a), Parliament may pass law prohibiting the questioning of any matter related rights, standards, position, privilege, sovereignty designated as contained in the provisions of Part 3, Article 152, 153 and 182 in relation to anything but dealing with its implementation as specified in the law. "

(Federal Constitution, 1999).

As the discussion above, it is also stated here that freedom of opinion has been suspended by the provisions of Article 149 of the Federal Constitution. This clearly shows the existence of contradictions in the constitution, namely the provisions of Article 10 (1) and Article 149.

Although Article 10 (1) has assured the people to free speech and expression, but Article 149 is clearly limiting the freedom of the (Wan Muda, 1996: 59). The proof has declared five acts that restrict freedom of speech is as follows:

Internal Security Act (ISA) 1960

The Act aims to combat threats that would disrupt the planned safety and security in the country. Anyone who is engaged in the activities that are characterized as the activities of this threat, you can take preventive detention for two years without trial. Even prisoners can be continued if the authorities believe the individual is still considered as a source of threat to any country.

Official Secrets Act (OSA) 1972

The Act aims to control the dissemination of information or in other word is called as official secrets. Section 2 of this act is to categorize documents and materials as Top Secret, Secret Confidential and Restricted. Any important government documents are official secrets. While the whistleblower may be the next to be charged under Section 8 of this Act for revealing the secret without valid.

Sedition Act 1948

Based on history, this act has been introduced to fight the communist terrorists who carried out the uprising in 1948. The Act provides a number of offenses in more aspects of incitement. Under Section 3 (1) (a) to Section 3 (1) (f) explains the element of incitement is viewed through the word, words, deeds or any publications. Even seditious can also be specified in a variety of conditions. The situation has been referred to as the Constitution, namely through the provisions of Article 152 (national language), Article 153 (rights of the Malays and natives of Sabah, Sarawak, Article 181 (Exemptions Regarding Rule of the Kings) and Section 3 (Citizenship). Likewise is also a mistake when in Section 4 (1) (c) explain the existence of seditious through printing, sell, distribute or manufacture repeatedly on any issue. Whereas in Section 4 (1) (d) also specializes in all forms of import publications which are more prone to incitement are also considered as an offense.

Printing Presses and Publications Act (AMCP) 1984

The focus of this act is intended to control the printed materials like magazines, newspapers and pamphlets. In its history, the existence of this act is also to insulate and strengthen control of the printing machine so it is difficult for people to issue any opinions toward the government.

Universities and University Colleges Act (UCCA) 1971

Historically, the existence of the Universities and University Colleges Act (UCCA) was because the onset of the students in the 1960s. The involvement of those who are more inclined towards the involvement of the political world, showing them to be critical against the government. Even in 1969, there were groups of students as an example of the Student

Association of the University of Malaya (PMUM) had begun to actively participate in the general election at that time (Milne & Mauzy, 1982: 287). In summary, this book is aimed for the provision to restrict students' involvement in the political world as the restrictions set forth in Section 15. In Section 15, embodied the students are not allowed to be members of any political party, society or organization in or outside Malaysia. However, if the student participation is allowed, it is subject to authorization and approvals made by the vice-chancellor of a university.

DISCUSSION

Freedom of speech through the laws of Malaysia is limited although the Federal Constitution 1999, Part 2 Article 10 (1) has declared freedom of speech to every Malaysian. It shows the significant differences between the laws of Malaysia with the Federal Constitution. The concept contained in the Federal Constitution coincides with Islamic principles that give freedom to every believer to speak in expressing their views. However, freedom of expression in Islam and the laws of Malaysia is not an absolute. This freedom has limitations intended to prevent from any greater harms.

In Malaysia, many of the events that have taken place resulting in the issue of freedom of speech have been prevented entirely. According Kamarudin (2013), among the events that used to be speculation and public provocations such as the May 13 riots, The Teaching and Learning of Science and Mathematics in English (PPSMI), Video Negarakuku by Namawee and "Listen! Listen! Listen phenomena". These are among the cases that had been hot issues in Malaysia until certain acts mentioned previously enacted.

In fact, issues related to freedom of speech are not only emphasizing on the importance of individual rights alone. In fact the essence of the issues that occur entirely are stressing many aspects related such as communal rights, the defense of the rights of citizens and ect (Lee, Hasim & Basrah, 2011). However, these kinds of tragedies have caused the government to set up various initiatives sanctions against the people.

From the perspective of Islam, the rights or freedom of speech may be associated with freedom of giving opinions on the Islamic law. Individuals who voice their opinions known as the mujtahid (one who ijthihad). Islamic scholars put very strict conditions for ijthihad (al-Zuhayli, 1996: 1043-1051). The purpose of the requirement is to prevent bad views which might not in line with Islamic law. The mufti or persons who have authority are the only responsible in explaining and interpreting matters related to religion.

According to Muhammad (2008) and Buang (2006), weakness in ijthihad nowadays leads to a method of *ijthihad jama'i* (issued opinions in a group of experts) or *fatwa jama'iyyah* (fatwa by groups of experts). This is none other than to avoid wrong or bad views towards Islam. This also shows that Islam does not allow concept of freedom of speech openly. The concept of freedom of speech in Islam is a general nature as long as it does not violate the Quran and al-Hadith, and

do not oppress the rights of others or interfere with the freedom of others ('Abd al-Jalil, 2009; Ibrahim Syauqar, 2002). Wahib (2007: 37) argues that the individuals need to be bold and forthright in expressing their opinions. Moreover it involves rights and justice.

The concept of freedom of speech in Islam is one of the general natures as long as it does not violate the Quran and Hadith as well as does not oppress and interfere the rights and freedom of others. Generally, the freedom of speech proclaimed by Malaysian Law is complimentable. Restrictions made are meant for the country's security and stability. It coincides with Islamic teaching to avoid things which can trigger slander and threats (Bhat, 2014). However, according to Azizuddin (2002), the evaluation of these laws are also need to be done because there are some acts which seem to be bias and partial to an individual or some parties. If left unreview and unevaluated, this will affect people's confidence and credibility towards the country. It is also supported by Ramadan (2006) that stated, there is no legal limits on the law for freedom of speech, however civic limits exist in this case.

CONCLUSION

In conclusion, the freedom of speech is a concept which is brought together by Islam and the Laws of Malaysia. It is stated in Islam as well as in Islamic Law in Malaysia constitutional acts which is intended to provide a mutual opportunity for every Muslim Malaysian or Non-Muslim Malaysian to contribute ideas and opinions one another for the betterment of the country.

However, freedom of speech has certain limits. The limitations placed are aimed to maintain the country's stability as well as to sustain and preserve the sanctity of Islam.

Malaysia for instance puts five special acts of freedom of speech include UCCA, AMCP, OSA, and ISA. Special justification has been implemented in enacting the legislation. However an evaluation which highlights the concept of freedom of speech in Islam as the main core must also be carried out in order to eradicate any partiality elements and simultaneously it can restore people's confidence and their respect towards the law system.

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