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ANALYSING MINISTERIAL REASONS FOR BANNING BOOKS UNDER THE PRINTING PRESSES AND PUBLICATIONS ACT 1984

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ABSTRACT

The publication of books reflects the advancement of a country's civilisation. This right is affirmed by Article 10(1) of the Federal Constitution (FC), which guarantees every person the right to freedom of speech and expression. However, this right is subject to certain limitations that may be imposed by Parliament, as prescribed in Article 10(2) of the FC. Among the laws governing this freedom is the Printing Presses and Publications Act 1984 (Act 301) (PPPA 1984). Section 7(1) of the PPPA 1984 empowers the Minister to prohibit publications whose content is, or is likely to be, prejudicial to public order, morality and security or other specified interests. An issue arises from Section 7 of the PPPA 1984, which lacks clarity regarding the requirement for the Minister to provide reasons when banning a publication. This research adopts a doctrinal approach, involving detailed analysis of the FC, the PPPA 1984, relevant case law, and scholarly writings in this area. The research finds that, although Section 7(1) of the PPPA 1984 does not explicitly require the Minister to provide reasons for issuing a ban, judicial decisions have established the necessity of doing so when executive discretion is exercised. The research proposes amending the section, considering the Court of Appeal's case of *Menteri Dalam Negeri & Anor v Chong Ton Sin (t/a Gerakbudaya Enterprise) & Anor* (2024) 1 MLJ 611, where not only must the Minister state the reason for a ban as provided in section 7 of the Act, but also briefly explain it. Such a requirement would enhance transparency in governance by ensuring that ministerial decisions are clear and comprehensible, thereby aligning with the principles of natural justie.

Introduction

The publication of books in a country often reflects its culture and values, thereby contributing to the advancement of its civilisation (Shalini & Samundeswari, 2017). The dissemination of diverse forms of information enables individuals to express their thoughts to a wider audience through both traditional and internet platforms, fostering the exchange of knowledge and perspectives. Recognising the importance of expressing one's thoughts through publication, Article 10(1)(a) of the Federal Constitution (FC) guarantees every citizen the right to freedom of expression. Accordingly, citizens are entitled to voice their rights (Mohd Zahir et al., 2019a; Mohd Zahir et al., 2019b). According to the United Nations (UN) Human Rights Committee (2011), the term "expression" includes all forms of expressions, including spoken, written and sign language. Thus, the right to publish books—whether online or offline— arguably falls within the scope of this constitutional protection. The right to freedom of speech and expression is fundamental to the functioning of any democratic country (Sani & Shah, 2011). It is considered as "… indispensable conditions for the full development of the person. They are essential for any society. They constitute the foundation stone for every free and democratic society" (UN Human Rights Committee, 2011). This right empowers individuals to voice opinions and share information (Howie, 2018). Additionally, it serves as a mechanism for holding government power accountable, enabling citizens to provide feedback, challenge injustices and human rights violations, and advocate for the public good (Kenny, 2020). However, this right—while powerful—can have adverse societal impacts if left unchecked, such as inciting hatred, spreading misinformation, or fostering division, particularly in multi-racial and multi-religious societies with unique sensitivities (Bell, 2021). Therefore, freedom of expression is not absolute and must be exercised within certain boundaries. As such, it is subject to certain limitations as may be imposed by Parliament, as prescribed in Article 10(2) of the FC. This provision authorises Parliament to enact laws that restrict freedom of expression when such restrictions are deemed necessary or expedient in the interest of security, public order, or morality (Thomas, 2004). For instance, the Sedition Act 1948 (Act 15) curtails speech that incites hatred, contempt, or disaffection against the Ruler or government. The Sedition Act 1948 is a pre-Merdeka law, originally enacted as the Sedition Ordinance 1948 by the Federal Legislative Council. After independence, the Ordinance was revised and renamed the Sedition Act 1948 in 1969 under the Revision of Laws Act 1968. The Act remains valid today by virtue of Article 162 of the FC, which preserves pre-Merdeka laws subject to necessary modifications for consistency with the FC as ruled by the Federal Court in *Public Prosecutor v Azmi Sharom* (2015) 8 CLJ 921.

The PPPA 1984 is one of the laws that governs the right to freedom of expression. In addition to this right, concerns have been raised regarding the banning of books (Mohd Zahir et al., 2024). Section 7(1) of the PPPA 1984 empowers the Minister to prohibit, either completely or subject to conditions, any publication if the Minister is satisfied that its content 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". However, the PPPA 1984 is silent on whether the Minister is required to provide reasons for such prohibitions. This absence raises concerns about transparency, as it prevents affected parties from understanding the rationale behind the decision, thereby undermining the integrity of the administrative decision-making process. Accordingly, this research aims to examine the courts' approach to this issue and to evaluate the justification for the Minister's restriction of the right to freedom of expression under Section 7 of the PPPA 1984.

Literature Review

The banning of books is a contentious issue, as it directly intersects with the right to freedom of expression. It revolves around two primary legal instruments; the FC and the PPPA 1984. The former guarantees the right to freedom of expression, while the latter grants the Minister the authority to ban publications under specific conditions outlined in the Act. The term used in Article 10(2)(a) of the FC is "expression" which is general in nature and does not explicitly refer to spoken or published forms. However, according to the UN Human Rights Committee (2011), the term "expression" includes all forms of expressions, including spoken, written, and sign language. Therefore, it can be argued that the freedom to publish books—whether online or offline—falls within the scope of this right and is thus protected by the FC. The right to freedom of expression is fundamental to the functioning of any democratic nation

(Sani & Shah, 2011). It empowers individuals to express their views and exchange information (Howie, 2018). Furthermore, it plays a crucial role in holding the government accountable by enabling citizens to provide feedback and voice their perspectives (Kenny, 2020).

The topic of freedom of expression in Malaysia has been the subject of academic discussion for decades. One of the earliest scholars to address this issue was Lent in 1979, who observed that the media's alignment with government developmental goals has historically shaped press content to support national policies— an approach rooted in the concept of journalism for freedom of expression. However, this alignment has significant implications for freedom of expression, as the government enforces laws such as the PPPA 1984 and the Internal Security Act 1960 (Act 82) (now repealed) to regulate media content. Much of the existing literature focuses on the scope of freedom of speech and expression in Malaysia under Article 10 of the FC, acknowledging its constitutional recognition while also highlighting its limitations, particularly in the interests of public order and national security (Sani & Shah, 2011; Singh, 2020). For instance, the article titled "Realising Accepted UPR Recommendations: Challenges and Realities in Malaysia's Commitment to Enforce Freedom of Expression" discussed the current state of freedom of expression in Malaysia. It emphasises the legal framework, addresses recent challenges—especially those related to media freedom—and underscores the constitutional provisions that safeguard this fundamental right (Nor et al., 2023).

The right to expression, as outlined in Article 10(2) of the FC, may be subject to particular restrictions enacted by Parliament if deemed necessary or expedient in the interests of national security, morality, or public order (Thomas, 2004). Among the laws enacted for this purpose is the PPPA 1984. Although this law imposes restrictions, it remains constitutionally valid. Much of the criticism has focused on the application of Section 7 of the PPPA 1984. A key concern is that the Act lacks clarity regarding the procedure for justifying a book ban and fails to provide a transparent mechanism for publishers to challenge the Minister's decision (Hin, 2017). Moreover, the PPPA 1984 is silent on whether the Minister is required to provide reasons for prohibiting a publication under this Section (Mohd Zahir et al., 2024). The absence of such a requirement raises concerns, as it contradicts the principles of natural justice.

Natural justice is a common law doctrine that provides important procedural rights in administrative decision-making (Groves, 2013). This is to ensure fairness, impartiality and procedural integrity. The doctrine is founded on two key principles: *audi alteram partem* (hear the other side), which guarantees the right to be heard, and *nemo judex in re sua* (no one should be a judge in their own cause), which ensures an unbiased decision-maker (Schauer, 1976). The doctrine of natural justice has served as a safeguard against the arbitrary exercise of administrative authority (Crook, 1996). Recognising the importance of natural justice, any non-compliance with its principles can affect the validity of an administrative decision. This is evident in the Federal Court case of *Maria Chin Abdullah v Ketua Pengarah Imigresen & Anor* (2021) 2 CLJ 579, where court held that a decision made in violation of the right to be heard (*audi alteram partem*) was void. Natural justice is not only confined to these two principles. Kushner (1987) argued that there is a third principle of natural justice, namely, that a party is entitled to know the reason for a decision. This view has been echoed by other scholars, who argued that reasoned decisions are a fundamental facet of natural justice (Singh, 2015; Ali et al., 2022). Duffy (2018) further emphasised that the requirement for agencies to engage in reasoned decision-making is a central tenet of modern administrative law. The importance of providing reasons lies in its ability to help affected parties understand the rationale behind a decision. Additionally, requiring decision-makers to give reasons ensures that all relevant factors are considered, serving as a safeguard against arbitrary decisions while promoting accountability.

When decision-makers provide reasons, it enables the courts to exercise their supervisory powers by allowing them to assess the basis of the decision (Kushner, 1987). If the requirement to provide reasons is explicitly or impliedly mandated by statute—or especially by the Constitution—then compliance becomes mandatory, and non-compliance may affect the validity of an administrative body's decision. An implicit requirement to provide reasons arises when there is a statutory right of appeal, as reasons are often necessary to enable the affected individual to effectively exercise that right (Paterson, 2006). According to Ali et al., (2022), a reasoned decision should be a clear and concise statement that explains the key factors behind the decision. Merely using vague or general words is insufficient. While the explanation need not be lengthy or overly detailed, it must be both clear and reasonable. Hence, the two

aforementioned principles—*audi alteram partem* and the right to be informed of reasoned decisions—are essential. Although distinct, they are closely related in ensuring fairness and the attainment of justice. The former concerns participation before the decision is made, guaranteeing individuals the opportunity to present their arguments and submit evidence. The latter pertains to transparency after the decision, requiring decision-makers provide clear and reasoned justifications, thereby enabling affected individuals to understand the rationale and, if necessary, challenge the decision.

Previous studies have examined the Minister's power to ban books on various grounds, such as content deemed prejudicial to public order and security (Sani & Shah, 2011). Tengku Zainudin et al., (2018) argued that the absence of clear guidelines on what constitutes prejudice to public order raises concerns about potential misuse of this discretionary power. However, these studies have not specifically addressed the requirement for the Minister to provide reasons for banning of a book, particularly in light of the absolute discretion granted under Section 7 of the PPPA 1984. Notably, in the case of *Chong Ton Sin (Doing Business As Gerakbudaya Enterprise) & Anor v Menteri Dalam Negeri & Anor* (2022) MLJU 2245, the High Court held that it is a settled principle of public law and natural justice that the Respondents must provide reasons for their decisions. However, this decision was overturned by the Court of Appeal, which found that the High Court Judge (HCJ) had made a factual error in concluding that the first Appellant had failed to provide any justification for the ban. This case raises the critical issue of what constitutes a reasoned decision. Based on the foregoing discussion, this research identifies a gap in the literature concerning the requirement for the Minister to provide reasons for banning publications under the PPPA 1984. This highlights the need for further scholarly inquiry into the legal and procedural standards governing such decisions.

Methodology

This research adopts a doctrinal legal methodology, involving a detailed analysis of the FC, the PPPA 1984 and relevant case law as primary sources (Hutchinson & Duncan, 2012). In addition, it draws on secondary sources such as textbooks, journal articles, and scholarly writings related to the issue. Both primary and secondary legal materials were retrieved from UiTM's online databases, including CLJ Prime and Lexis Advance Malaysia. Furthermore, a comparative analysis method was employed to examine the similarities and differences in the scope of the right to freedom of expression as provided under Article 10(1)(a) of the Federal Constitution, Article 19 of the Universal Declaration of Human Rights (UDHR) and Article 19 of the International Covenant on Civil and Political Rights (ICCPR). The data collected were examined analytically and critically, with a focus on the requirement for the Minister to provide reasons for prohibiting the publication of a book, as well as the justification for restricting the right to freedom of expression under Section 7 of the PPPA 1984.

Findings and Discussion

Publication plays a vital role in enabling individuals to express their thoughts. Protecting the right to publish is essential not only for individual development and autonomy but also the progress and sustainability of a democratic nation (Gunatilleke, 2020). In light of its significance, it is important to understand the legal framework governing the right to publication.

Right to Freedom of Expression under Article 10(1)(a) of the FC and International Law

The right to freedom of expression is guaranteed under Article 10(1)(a) of the FC. This right is recognised not only at the national level but also at the international level. This can be seen in Article 19 of the UDHR and Article 19 of the ICCPR. For clarity, the relevant provisions are compared as follows:

Table 1. Comparison of the Right to Freedom of Expression in the FC, the UDHR and the ICCPR

Article 10(1)(a) of the FC	Articles 19 of the UDHR	Article 19(2) of the ICCPR
"Subject to Clauses (2), (3) and (4)— (a) every citizen has the right to freedom of speech and expression".	"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers".	"Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice".

Table 1 shows that one similarity between Article 10(1)(a) of the FC, Article 19 of the UDHR and Article 19(2) of the ICCPR is that all three affirm the fundamental human right to freedom of expression. According to the UN Human Rights Committee (2011), the term "expression" arguably includes the right to publish books, whether online or offline. The primary distinction between the FC and the two international instruments lies in the broader scope of the latter, which explicitly includes the rights to hold opinions, and to seek, receive and impart information through any form or medium of expression. It is important to highlight that the right to freedom of expression under both the UDHR and the ICCPR is not absolute. This is evident in Article 29(2) of the UDHR and Article 19(3) of the ICCPR, both of which allow for certain restrictions. Notably, it functions as a form of soft law, setting out human rights standards that states are encouraged to follow. While not legally binding, the UDHR serves as a valuable guide for addressing human right issues and has been cited as an example of how a soft law can subsequently turn into binding treaties (Cronin-Furman, 2010). Indeed, the principles of the UDHR have inspired numerous human rights treaties, including the ICCPR. The ICCPR is a key international human rights treaty that provide a range of protections for civil and political rights. However, Malaysia has yet to ratify either the ICCPR or its Optional Protocol (Nordin, 2010).

Similarly, the FC does not provide absolute freedom of expression, as clearly stated in Article 10(2)(a) of the FC. The Article states as follows:

> "Parliament may by law impose— (a) on the rights conferred by paragraph (a) of Clause (1), such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof, friendly relations with other countries, public order or morality and restrictions designed to protect the privileges of Parliament or of any Legislative Assembly or to provide against contempt of court, defamation, or incitement to any offence;".

Article 10(2)(a) of the FC grants Parliament the authority to enact laws that impose limits on freedom of expression when deemed necessary or expedient, particularly in matters concerning security, morality, or public order. This right is a powerful tool, but if misused or left unchecked, it can negatively impact society by fostering hatred, spreading false teachings and causing division—particularly in diverse, multi-racial and multi-religious communities with distinct sensitivities (Bell, 2021). Therefore, freedom of expression cannot be exercised without limitation and is subject to restrictions imposed by Parliament, as outlined in Article 10(2) of the FC. For instance, the Sedition Act 1948 (Act 15) curtails freedom of speech to prevent actions that incite hatred, insult, or disloyalty toward any Ruler or government, while the PPPA 1984 regulates publications to safeguard public order and morality.

Printing Presses and Publications Act 1984

The PPPA 1984 is the principal legislation governing the publication in Malaysia. It originated from the Printing Press Ordinance 1948, which was enacted by the British government prior to Malaysia's independence. Following the tragic events of 13 of May 1969, the government revised it into the Printing Press Act 1948 (PPA 1948) (Revised 1971). Eventually, in 1984, the PPA 1948 (Revised 1971) and the Control of Imported Publications Act 1958 (CIPA 1958) were repealed and consolidated into the PPPA 1984 (Nawang et al., 2020). Among the provisions that may restrict the freedom of publication is Section 7(1) of the PPPA 1984, which states that:

> "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 term "publication" is defined under Section 2 of the PPPA 1984, which carries the following meaning:

(a) a document, newspaper, book and periodical;

(b) all written or printed matter and everything whether of a nature familiar to written or printed matter or not containing any visible representation;

(c) anything which by its form, shape or in any manner is capable of suggesting words or ideas; and

(d) an audio recording.

In light of this provision, the term "publication" is broadly defined to include various forms, including documents, newspapers, books, periodicals, written or printed matter, any representation capable of suggesting words or ideas, and audio recordings. This Section empowers the Minister, at his sole discretion, to issue an order—published in the Gazette—either to completely bans or to impose conditions on a publication. Such action may be taken if the Minister is satisfied that the content of the publication, such as newspapers or books, is or is likely to be harmful for any of the following specified reasons:

(a) Public Order;

(b) Morality;

(c) Security;

(d) Public Opinion;

(e) Contrary to Any Law;

(f) Public Interest; or

(g) National Interest.

While the term "absolute discretion" may appear to grant the Minister sole authority to make decisions without being subject to judicial review, the Court of Appeal in *Hew Kuan Yau v Menteri Dalam Negeri & Ors* (2022) 8 CLJ 880 held that such discretion is not immune from judicial scrutiny. Although the provision cites public order as a justification and describes the Minister's discretion as "absolute", this does not preclude judicial review. As established in the House of Lords case of *Council of Civil Service Unions & Ors v Minister for the Civil Service* (1985) 1 AC 374, Ministerial decisions may still be challenged on recognised grounds such as illegality, irrationality, or procedural impropriety. Similarly, in *Mohd Faizal Musa v Menteri Keselamatan Dalam Negeri* (2018) 9 CLJ 496, the Court of Appeal reaffirmed that even "absolute" discretion is subject to legal limits to prevent abuse. Zaleha Yusof JCA referred to the landmark case of *Pengarah Tanah Dan Galian, Wilayah Persekutuan v Sri Lempah Enterprise Sdn Bhd* (1979) 1 MLJ 135, emphasising that discretionary power must be exercised within legal boundaries. This principle was also applied in *Dato' Seri Syed Hamid Bin Sayed Jaafer Albar (Menteri Dalam Negeri) v Sis Forum (Malaysia)* (2012) 6 MLJ 340, where the Respondent successfully obtained a judicial review to overturn the Appellant's decision to ban a book under Section 7(1) of the PPPA 1984, despite the use of the term "absolute discretion" in the provision.

This Section grants the Minister broad authority to prohibit publication of a book, not only when its content is prejudicial to any of the seven specified grounds, but also when it is likely to be prejudicial to any of them. In *Menteri Dalam Negeri & Anor v Chong Ton Sin (t/a Gerakbudaya Enterprise) & Anor* (2024) 1 MLJ 611, the Court applied the standard of whether a reasonable Minister, possessing full knowledge of the relevant facts, would reasonably conclude that the book's content posed a threat to any of the statutory grounds. This principle was similarly affirmed in *Sepakat Efektif Sdn Bhd v Menteri Dalam Negeri & Anor and Another Suit* (2014) MLJU 1874, where the Court of Appeal stated: "*Where an administrative power is granted as a subjective discretion, courts will subject its exercise to review based on an objective assessment*". Furthermore, any prohibition must be formalised through an order published in the Gazette.

It is important to note that Section 7 of the PPPA 1984 does not clarify what amounts to "prejudicial" or "likely to be prejudicial" under any of the seven grounds stated in subsection (1) of Section 7 of the PPPA 1984. To better understand the scope and meaning of each ground, reference should be made to the Guidelines for the Publication under the PPPA 1984. These Guidelines, effective from 2 February 2017, provide further explanation of what constitutes each specified reason. However, they are considered non-binding law (soft law), and do not expressly bind the courts in their decision-making (Tengku Zainudin et al., 2018). The details are outlined as follows:

Table 2. Explanation of what constitutes seven (7) reasons under Section 7 of the PPPA 1984

Paragraph	Reasons	Explanation
1.1.1	Publications that are "prejudicial to" or "likely to be prejudicial" to public order	3.1.1 Contains elements that propagate violence against persons or property. 3.1.2 Propagation of an act and conduct that leads to a breach of the peace. 3.1.3 Propagation of feelings of malice, enmity, hostility, hatred and prejudice towards another person or race. 3.1.4 Dissemination of deviant teachings or misconceptions, that mislead or insult Islam or other religions practiced in Malaysia. 3.1.5 Propagation or dissemination of teachings or containing elements that contradict the Islamic creed, laws and principles of the *Sunnah wal-Jamaah*. 3.1.6 To ridicule or question the authority or spread deviations of the main sources of Islamic law, which are the *Quran*, *al-Hadith*, *Ijma'* and *Qiyas*.
1.1.2	Publications that are "prejudicial to" or "likely to be prejudicial" to morality	3.2.1 Contains any matter that is in appearance, form and conduct or in any way that may imply obscenity, offensive or otherwise contrary to public decency, good values, societal decency and religious beliefs.
1.1.3	Publications that are "prejudicial to" or "likely to be prejudicial" to security	3.3.1 Publications that raise sensitive matters including those concerning the rights, status, position, and privileges that are preserved and enshrined in the FC. 3.3.2 Instigating discontent towards the sovereignty and monarchical institutions in Malaysia or contrary to the *Rukun Negara* and national security. 3.3.3 Dissemination of beliefs or ideologies that are contrary to the democratic practices of this country. 3.3.4. False and wrongful statements and the distortion of statements concerning an incident in Malaysia that could threaten national security.
1.1.4	Publications that may provoke public opinion	3.4.1 Contains any news, articles, or information that is exaggerated, hyped, or that confuses or provokes misunderstanding. 3.4.2 Dissemination of unsubstantiated news, false or factual stories that create confusion, doubt, anxiety or fear among the public.
1.1.5	Publications that are contrary or may be contrary to any law	3.5.1 Contains elements contrary to and in opposition to the Federal Constitution, any applicable Federal and State laws and includes any rules, regulations and conditions made thereunder. 3.5.2 Contains matters contrary to the official *fatwa* issued by the authorities.
1.1.6	Publications that are "prejudicial to" or "likely to be prejudicial" to public interest	3.6.1 Contains any form of report, article, story, photograph, illustration or statement that is contrary to the interests of society or religious beliefs.
1.1.7	Publications that are "prejudicial to" or "likely to be prejudicial" to national security	3.7.1 Contains elements that can be harmful to the country politically, economically and socially.

A reading of Section 7 of the PPPA 1984 reveals that there is no statutory requirement for the Minister to provide reasons when prohibiting a publication. Under a literal interpretation, this provision permits the Minister to ban books if he is satisfied that the publication's contents are prejudicial or likely to be prejudicial to any of the specified reasons. To assess the legal stance on the Minister's obligation to provide reasons, it is necessary important to refer to case law. In *Kesatuan Pekerja-Pekerja Bukan Eksekutif Maybank Bhd v Kesatuan Kebangsaan Pekerja-Pekerja Bank & Anor* (2018) 2 MLJ 590, the Federal Court underscored the duty of public decision-making bodies to furnish reasons for their decisions. The Court emphasised that "… *it is settled principle that a public decision-making body must afford reason, and the failure to give any reason for any decision made, offends the principle of natural justice*". This principle was similarly applied in earlier decisions such as *Rohana bt Ariffin & Anor v Universiti Sains Malaysia* (1989) 1 MLJ 487 and *Kelab Lumba Kuda Perak v Menteri Sumber Manusia, Malaysia & Ors* (2005) 5 MLJ 193. In both cases, the courts emphasised that reasoned decisions are integral to fairness and good governance. Thus, even in the absence of explicit statutory provisions requiring the Minister to provide reasons, the courts have recognised that such a requirement is essential to uphold the principles of fairness, good governance, and natural justice—consistent with the doctrinal foundations established in the literature review.

The most pressing question at this juncture is: what constitutes a reasoned decision? Is it sufficient for the Minister to merely state the reason for the ban as provided under Section 7 of the PPPA 1984? Or must the Minister go further and offer explanation of what specifically constitutes the stated reason? To address this this issue, reference to the High Court case of *Chong Ton Sin (Trading as Gerakbudaya Enterprise) & Anor v Minister of Home Affairs & Anor* (2022) MLJU 2245 is essential.

The High Court case of Chong Ton Sin (Trading as Gerakbudaya Enterprise) & Anor v Minister of Home Affairs & Anor (2022) MLJU 2245

This case involved a judicial review initiated by the Applicants to challenge the decision of the Minister (first Respondent) to prohibit the publication of the book titled, "*Gay is OK!: A Christian Perspective*". Published in September 2013, the book was authored by the second Applicant and released by the first Applicant. The Minister's directive banned all activities related to the book—including printing, distribution, importation, sale, possession, production, publishing, reproduction, issue, or circulation—throughout Malaysia, on the grounds that it could disrupt morality, public order, and public interest. This decision was made pursuant to Section 7 of the PPPA 1984. The Applicants subsequently requested the Minister to revoke the order, but received no response.

Among the issues raised by the Applicants was whether the Minister is required to provide a reasoned decision when banning a publication. The High Court allowed the application with costs. On the issue of whether the Minister must provide reasons for such a ban, the Court emphasised the importance of public decision-making bodies offering justifications for their decisions. This reflects the fundamental aspect of the law, as grounded in Articles 5(1) and 8(1) of the FC.

A key question was whether the Minister had stated the reasons for the ban in the Banning Gazette. To answer this, reference must be made to the prohibition order published in the Gazette—P.U.(A) 340 dated 27.11.2020. The content of the Gazette is reproduced for clarity:

> ***Preamble***
>
> IN exercise of the powers conferred by subsection 7(1) of the Printing Presses and Publications Act 1984 [Act 301], the Minister makes the following order:
>
> **Section 1: Citation**
>
> This order may be cited as the Printing Presses and Publications (Control of Undesirable Publications) (No. 3) Order 2020.

Section 2: Prohibition

The printing, importation, production, reproduction, publishing, sale, issue, circulation, distribution or possession of the publication described in the Schedule which is likely to be prejudicial to public order, which is likely to be prejudicial to morality and which is likely to be prejudicial to the public interest is absolutely prohibited throughout Malaysia.

Schedule

Title of Publication	Author	Publisher	Printer	Language
Gay is Ok! A Christian Perspective	Ngeo Boon Lin	Gerakbudaya Enterprise No. 11, Lorong 11/4E, 46200 Petaling Jaya, Selangor, Malaysia	Vinlin Press Sdn. Bhd. 2, Jalan Meranti Permai 1, Meranti Permai Industrial Park, Batu 15, Jalan Puchong, 47100 Puchong, Selangor, Malaysia	English

Referring to the Gazette, Section 2 states that the prohibition of the publication listed in the Schedule—namely, "*Gay is OK! A Christian Perspective*"—was imposed on the grounds that was likely to be prejudicial to public order, morality, and public interest. As such, the publication was absolutely prohibited throughout Malaysia. Notwithstanding the contents of Section 2 of the Gazette, the High Court ruled that no adequate reason was provided to justify the banning of the book. This is evident from the following excerpt of the judgment:

> "…the time had come for the public decision-making body to accept and realise that it was a settled principle of public law and natural justice for them to give reasons for their decisions. Procedural fairness was part of our law because of the terms of arts 5(1) and 8(1) of the FC".

However, the decision in *Chong Ton Sin (Trading as Gerakbudaya Enterprise) & Anor*, which was decided by the High Court, was short-lived, as it was subsequently overturned by the Court of Appeal in *Menteri Dalam Negeri & Anor v Chong Ton Sin (t/a Gerakbudaya Enterprise) & Anor* (2024) 1 MLJ 611.

The Court of Appeal case of Menteri Dalam Negeri & Anor v Chong Ton Sin (t/a Gerakbudaya Enterprise) & Anor (2024) 1 MLJ 611

In deciding this matter, the Court of Appeal proved several reasons for its judgment. However, not all of these reasons will be discussed in this research. The analysis is limited to issues related concerning the Minister's obligation to provide reasons for banning the publication of the book. At the High Court, it was held that there was procedural non-compliance, as no reason had been given for the ban. However, upon examining the Gazette, the Court of Appeal reached a different conclusion, finding that the Minister had expressly provided three (3) reasons for the prohibition. This is evident in Section 2 of the Gazette, which states: "*which is likely to be prejudicial to public order, which is likely to be prejudicial to morality and which is likely to be prejudicial to public interest is absolutely prohibited throughout Malaysia*". Accordingly, the Court of Appeal determined that the HCJ had made a clear factual error in concluding that the first Appellant had failed to provide any justification for the ban.

It is important to note that this was a split decision, with a majority of 2-1. Justices Azizah and Wong Kian Kheong allowed the appeal, while Justice M. Gunalan dissented. Justice M. Gunalan concurred with the HCJ's findings, noting that there was no evidence to show the book had negatively impacted public order in the seven years since its publication. Consequently, he found it improbable that the book would have such an effect. Additionally, he supported the finding that the Minister had failed to present evidence demonstrating that the views of religious bodies or cultural groups in the country had been taken into account. His reasoning suggests that the Minister's decision should be based on clear evidence that the book had, in fact, prejudiced public order during that period.

The question arises as to whether evidence must be presented to show that the book had actually prejudiced public order. To address this issue, reference should be made to Section 2 of the Gazette. It is important to note that the language used in this Gazette includes the phrase "*prejudicial to or likely to be prejudicial*." Accordingly, the Minister may base the decision to ban a publication on either actual

prejudicial or the likelihood of prejudice to any of the seven specified grounds. In this case, the Minister relied on the latter—namely, that the publication was likely to be prejudicial. The Court of Appeal, through Justice Wong Kian Kheong, clarified the meaning of the term "likely" as follows: "*The purpose of the seven 'likely' limbs was to confer on the Minister a preventive power to ban any publication which had the potential to cause the subject-matter of the seven 'likely' limbs from becoming a reality*". In other words, the harm to public order, morality, or public interest need not have occurred; it is sufficient that such harm is likely to occur. In deciding this matter, the Court referred to the case of *Mohd Faizal bin Musa v Menteri Keselamatan Dalam Negeri* (2018) 3 MLJ 14, in which the term "likely" was interpreted as follows:

> "The order which prohibits the four books, describes the four books as 'is likely to be prejudicial to public order'. The learned High Court judge in para 26 of Her Ladyship's grounds of judgment viewed that the phrase 'prejudicial to public order' does not necessarily refer to the existence of an actual public disorder, but include anything which has the 'potential to disrupt public order'. … In this instant case, the order states that it 'is likely to be prejudicial'. If it is prejudicial to public order, then it must be shown the existence of the actual public disorder. But if it is 'likely to be prejudicial to public order', as in the instant case, then it would cover anything which has the potential to disrupt public order".

The majority in this case accepted the interpretation of "likely" as established in *Mohd Faizal bin Musa*, holding that the term may encompass "*…anything which has the potential to disrupt public order*". In other words, this ban was intended to "*prevent any inflammatory publication from tearing apart the fabric of our multi-racial, multi-religious and multi-cultural society*".

The Court of Appeal adopted the objective test outlined in *Sepakat Efektif Sdn Bhd* to assess whether a reasonable Minister, fully informed of all relevant facts, would objectively conclude that the book's content was likely to threaten public morality, order, or interest. In a majority decision, the Court found that a reasonable Minister, considering all the circumstances, would regard the book's overall message as likely to undermine public order, public interest, and morality for the following reasons:

(a) the Malaysian public generally considered homosexuality to be immoral; and

(b) the book had the potential to disrupt public tranquillity or the even tempo of life in in the country since there would be public disaffection if the authorities allowed the book to be printed, sold and circulated when homosexual acts were criminalised in [S][ection]s 377A and 377B of the Penal Code (Act 574) (emphasis added).

From this case, it can be seen that the Court of Appeal held that the Minister had provided three (3) reasons for banning the book, as stated in Section 7(1) of the PPPA 1984 as specified in the Gazette. But the Court did not stop there; it went further to explain as to why the publication of the book was likely to be prejudicial to public order, morality, and public interest.

Conclusions and Recommendations

In short, the right to freedom of expression—including the right to publish—is guaranteed under Article 10(1)(a) of the FC. However, the right is not absolute and may be restricted under Article 10(2)(a) of the FC. One of the key statutes regulating freedom of expression, including publication, is the PPPA 1984. Through this Act, the Minister may, by order published in the Gazette, prohibit a publication if he or she is satisfied that its contents are, or likely to be, prejudicial to any of the grounds specified Section 7 of the PPPA 1984. Evidently, Section 7 of the PPPA 1984 grants the Minister broad powers to prohibit the publication of a book not only when it has actually prejudiced any of the seven specified grounds, but also when it is likely to do so. Although the Section does not explicitly require the Minister to provide reasons, judicial decisions—such as in *Kesatuan Pekerja-Pekerja Bukan Eksekutif Maybank Bhd*—affirm that administrative bodies must provide reasons for decisions that affect any party. This requirement is grounded in the principles of natural justice and supports good governance.

It is worth noting that in *Minister of Home Affairs & Anor v Chong Ton Sin (t/a Gerakbudaya Enterprise) & Anor*, the Court of Appeal, by a 2-1 majority, allowed the appeal on the basis that the Gazette contained three reasons—namely, that the publication was likely to be prejudicial to public order, morality, and public interest. The Court further explained that this was because the Malaysian public generally considers homosexuality immoral, and homosexual acts are criminalised under Sections 377A and 377B of the Penal Code (Act 574). Adopting the principle established in this case, it is therefore proposed that Section 7(1) of the PPPA 1984 be amended to require the Minister not only to state the statutory ground for the prohibition, but also to provide a brief explanation as to why the publication is considered likely to be prejudicial to public order, morality, security, public opinion, contrary to any law, public interest, or national interest. Such an amendment would enhance transparency in governance by ensuring that ministerial decisions are clear, reasoned, and aligned with the principles of natural justice.

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