

The Home Minister's Authority in Book Banning: A Legal Contextual Analysis

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Abstract:

The banning of books by government authorities raises critical questions about the balance between freedom of expression and the protection of public order, morality, and public interest. This issue becomes particularly contentious when decisions to ban books are challenged by authors or publishers, prompting courts to evaluate the legality and reasonableness of such actions. This paper examines the issue of whether the Minister possesses the authority to ban books and explores the implications if an author or publisher challenges such a decision. The study employs a qualitative methodology, analysing relevant literature from both primary and secondary sources on book banning. The findings reveal that under the Printing Presses and Publications Act (PPPA), specifically section 7(1), the Home Minister is empowered to ban books. Notably, no prior court cases have deemed section 7(1) unconstitutional. In one case study, the Home Minister exercised this power to ban a book, prompting the affected party to challenge the decision in court. The analysis shows that courts are tasked with objectively determining whether the Minister's satisfaction that the book's content is "prejudicial to public order," morality, or public interest is reasonable. The High Court may nullify the Minister's decision if it violates principles of natural justice. However, in the Court of Appeal, if the majority of judges conclude that a reasonable Minister could find the book's content and title likely to harm public order, morality, or public interest, the ban may be upheld. In conclusion, the term "prejudicial to public order" plays a pivotal role in the Home Minister's decision-making process regarding book bans.

Keywords: Book banning, Home Minister, morality, prejudicial to public order, public interest.

INTRODUCTION

The power to ban books in Malaysia is granted to the Home Minister under the Printing Presses and Publications Act 1984 (PPPA). This authority is intended to prevent publications deemed harmful to public order, morality, or public interest. However, the exercise of such power often sparks debates about its scope, implementation, and potential conflicts with constitutional principles, particularly freedom of expression. This paper examines the legal context of the Home Minister's authority in book banning and its implications for Malaysian society.

When a book ban is challenged, the judiciary assesses whether the Home Minister's decision was made within the bounds of the law. Courts evaluate the evidence presented, the rationale behind the decision, and whether the Minister acted reasonably. These reviews often focus on whether the publication genuinely threatens public order or merely restricts legitimate expression. In judicial reviews, courts might consider several key factors:

- Legitimacy of the Concern – Courts determine whether the alleged threat posed by the book is real or speculative.
- Proportionality – Courts assess whether the ban is a proportionate response to the alleged threat or whether less restrictive measures could be applied.
- Procedural Fairness – Courts examine whether the Minister followed due process, including consideration of counterarguments before enforcing the ban.

From the legal history related to book banning was *Titular Roman Catholic Archbishop of Kuala Lumpur v Menteri Dalam Negeri* (2014). The case involved the prohibition of the usage of the word "Allah" in Christian publications. The courts upheld the government's decision, citing public order concerns, but the case remains controversial as many viewed it as an infringement on religious freedoms and expression.

MATERIALS AND METHODS

This study adopts a qualitative research methodology, emphasizing a thorough examination of both primary and secondary sources concerning book banning. Content analysis, as defined by Krippendorff (2004), can vary from simple word frequency counts to more complex conceptual interpretations. Accordingly, this research employs both content analysis and critical analysis techniques to assess the gathered data (Ramalingam Rajamanickam et al., 2019). Primary sources, such as legal texts and official documents from Malaysia and other nations, form the basis of this study (Mohd Zamre Mohd Zahir et al., 2021; Mohd Zamre Mohd Zahir et al., 2019a; Mohd Zamre Mohd Zahir et al., 2019b). The careful collection of these materials is essential for ensuring the precision and depth of the research process (Ramalingam Rajamanickam et al., 2019) and contributes to a comprehensive literature review (Nurul Hidayat Ab Rahman et al., 2023; Nurul Hidayat Ab Rahman et al., 2022; Mohd Zamre Mohd Zahir et al., 2022). The outcomes of this detailed analysis are presented and discussed in the paper's final section, offering a critical assessment of the findings.

LEGAL FRAMEWORK OF BOOK BANNING

Section 7(1) of the PPPA provides the Home Minister with the power to ban publications considered prejudicial to public order or morality. This provision forms the foundation of the Minister's authority, offering broad discretion to prohibit publications (PPPA, 1984). Despite this legal basis, the lack of precise definitions for key terms like "prejudicial to public order" creates ambiguity, raising concerns about subjective or arbitrary decision-making.

The PPPA provides the legal framework for regulating publications in Malaysia. Under this Act, the Home Minister has broad discretion to prohibit any publication that is deemed prejudicial to public order, morality, security, or the national interest. Section 7(1) of the PPPA states that if the Minister is satisfied that any publication contains any matter which is prejudicial to public order, morality, security, the relationship with any foreign country, or which is otherwise against the public interest, he may, 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. The Act provides no explicit requirement for the Minister to justify the decision to ban a book beyond the broad terms mentioned. This lack of transparency has raised concerns about the potential for arbitrary or politically motivated censorship.

THE MINISTER'S POWER, JUDICIAL CHALLENGES AND REVIEWS

While the PPPA grants significant powers to the Home Minister, these are not absolute. Legal principles, such as natural justice and proportionality, impose limits on the Minister's authority. The courts play a critical role in ensuring that decisions to ban books adhere to constitutional and procedural standards, preventing potential abuses of power.

When a book ban is challenged, the judiciary assesses whether the Home Minister's decision was made within the bounds of the law. Courts evaluate the evidence presented, the rationale behind the decision, and whether the Minister acted reasonably. These reviews often focus on whether the publication genuinely threatens public order or merely restricts legitimate expression. Upholding justice is a major duty for all judges (Venugopal & Hassan, 2012). Every litigant goes to court seeking justice, regardless of who puts the case before the court, what concerns are at stake, or how many individuals are impacted by the disagreement (Venugopal & Hassan, 2012).

Case studies reveal that courts in Malaysia have historically upheld the Minister's authority under section 7(1) of the PPPA, provided the decision is supported by reasonable grounds. However, some cases highlight instances where courts quashed bans due to procedural violations or lack of substantive justification. These precedents underscore the judiciary's role in maintaining a balance between state power and individual rights.

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

"... Where an administrative power is granted as a subjective discretion, courts will subject its exercise to review based on an objective assessment (*Mohamad Ezam Mohd Noor v Ketua Polis*

Negara & Other Appeals [2002] 4 CLJ 309; *Minister of Home Affairs, Malaysia v Persatuan Aliran Kesedaran Negara* [1990] 1 CLJ 699; [1990] 1 CLJ (Rep) 186; [1990] 1 MLJ 351; *Darma Suria Risman Saleh v Menteri Dalam Negeri, Malaysia & Ors* [2010] 1 CLJ 300; [2010] 3 MLJ 307). The test is whether a reasonable minister similarly situated would have acted in the same manner. The courts can test the exercise of subjective discretion against objective facts to determine whether the discretion has been fairly and justly exercised ...”.

In the case of *Menteri Dalam Negeri & Anor v Chong Ton Sin (t/a Gerakbudaya Enterprise) & Anor* [2024] 1 MLJ 611, the first respondent (‘R1’) had in September 2013 published and distributed a book entitled ‘Gay is OK! A Christian Perspective’ (‘the book’) authored by the second respondent. In November 2020, the first appellant issued an order under section 7(1) of the Printing Presses and Publications Act 1984 (‘the PPPA’) banning the printing, importation, production, reproduction, publication, sale, issue, circulation, distribution and possession of the book on the ground that it contained matters which were likely to prejudice public order, morality and public interest. The home minister’s prohibition on the book was overturned on February 22, 2022, by High Court judge Datuk Noorin Badaruddin, who decided in favour of the book’s publisher and author. The book, according to the judge, is divided into two sections: ten chapters by Ngeo discussing homosexuality and the Bible, the sacred book of Christians, and a collection of Ngeo’s pieces that were published by a local news outlet between 2010 and 2011. The Court of Appeal’s majority judgment then examined whether Ngeo’s book would fall under any of the home minister’s book bans’ three reasons (likely to be prejudicial to public order, morality and public interest). Judge Wong said the majority of the Court of Appeal’s panel had read the book’s title and its entire contents, adding that their objective assessment was that the book conveys the general message or impression that homosexuality is not objectionable and is permissible in Christianity.

Hence, from a legal perspective, the term “prejudicial to public order” is crucial. Additionally, it is essential to protect someone’s rights as stated in the Federal Constitution. Even though the Minister can decide to ban any book, the injured party of the said banned book can bring the case to court to ask for a certain order or prayer.

IMPLICATIONS FOR FREEDOM OF EXPRESSION

The broad powers under the PPPA have significant implications for freedom of expression. Critics argue that the potential for misuse of these powers could lead to censorship and stifling of diverse viewpoints. The challenge lies in ensuring that the law protects public interest without unduly infringing on constitutional rights. The right to freedom of expression in Malaysia is guaranteed under Article 10 of the Federal Constitution (Suhakam, 2024). The findings denote that the Constitution does promote the right to freedom of speech and expression, and it is included in Article 10 of the Federal Constitution of Malaysia (Md. Tuhin Mia, Md. Zahidul Islam & Md. Norullah, 2021). Freedom of speech is also a part of personal satisfaction (Faruqi, 2018). The protection of this right is integral not only to Malaysia’s progress as a democratic country, but also to the survival and development of every individual citizen. While the enjoyment of one’s freedom of expression may be restricted, such restrictions must always be grounded in law, and necessary and proportionately enforced to

achieve legitimate aims. Thus, expressions that propagate war and advocate the incitement to national, racial and religious hatred, violence and discrimination must also be prohibited (Suhakam, 2024).

While Malaysia's censorship laws are stringent, it is not alone in regulating publications. Many countries impose restrictions on books, though the extent and rationale vary. For instance, in the United States, the First Amendment protects freedom of speech and expression, making book banning rare at the federal level. However, local authorities and schools sometimes challenge books based on moral concerns. While in China, the government exercises strict control over published materials, especially those that criticise the Communist Party or discuss sensitive topics such as relating to Tiananmen Square. Further, in the United Kingdom, the focus is on the laws against hate speech and defamation, which serve as indirect restrictions on publications. Comparing Malaysia's approach to other countries highlights the balance between national interests and freedom of expression. While some level of regulation exists worldwide, the level of transparency and judicial oversight varies significantly.

Banning books is nothing new. For centuries, it has existed. For instance, in 1637, in what is now Quincy, Massachusetts, there was what is regarded as the first book ban in the United States (Harvard University, 2024). The Puritan administration later banned Thomas Morton's *New English Canaan* because it was viewed as a scathing and heretical indictment of Puritan traditions and authority systems (Harvard University, 2024). The practice continues, according to the American Booksellers for Free Expression (ABFE). A list of books challenged annually by public libraries and schools in the United States is maintained by ABFE, a group that battles book bans nationwide from its headquarters in White Plains (Amy Brady, 2016). *The Kite Runner* by Khaled Hosseini, *Beloved* by Toni Morrison, and *The Miseducation of Cameron Post* by Emily M. Danforth are among the books on that list from 2016. Most of the titles are by LGBTQ authors and authors of color who write about life beyond white, straight, middle-class America (Amy Brady, 2016). The challenge lies in safeguarding that the law protects public interest without unduly disregarding on constitutional rights.

THE NEED FOR REFORM

To address the concerns surrounding book banning, legal reforms could provide clearer guidelines on what constitutes "prejudicial to public order." Strengthening protections against abuse and implementing more open decision-making procedures could help guarantee that authority is used sensibly and equitably. It must be acknowledged that the most important fundamental right is the freedom of speech and expression, upon which all other rights rely (Md. Tuhin Mia, Md. Zahidul Islam & Md. Norullah, 2021). Additionally, it must be acknowledged that to preserve public order, such freedom must be subject to some limitations (Venugopal & Hassan, 2012).

A fundamental aspect of the majority of contemporary countries is the formal legal system. The system is just a complicated set of steps and practices in and of itself. The actual structure and stature of the judicial system are mostly found in its staff, not only in its offices or buildings. Of all its employees, the judge is possibly the position that the public sees the most

as representing the judicial system (Venugopal & Hassan, 2012).

The Printing Presses and Publications Act 1984 (PPPA) is a law that regulates publications, including books, newspapers, and magazines, in Malaysia. One of its key provisions is Section 7(1), which grants the Home Minister the authority to ban any publication that is deemed to be detrimental to public order, morality, or public interest. This means that the Home Minister has the discretion to decide whether a particular book, or any publication, should be prohibited based on its content. The law allows the Minister to act unilaterally, without needing parliamentary approval or public consultation, which places significant power in the hands of the executive branch of government.

The law intends to prevent the spread of materials that could incite violence, disrupt societal harmony, or undermine national security. For example, a book that promotes hate speech, incites racial or religious conflict, or threatens public safety could be considered a threat to public order. Likewise, materials that are considered morally inappropriate, such as those that promote obscene or indecent content, could fall under the morality category. Finally, publications that undermine the public interest, including those that are seen to be politically subversive or contrary to the national ideology, might be subject to a ban.

Despite the PPPA's intentions, the broad nature of the Minister's authority has led to significant debate. Critics argue that the law is overly vague, giving the Home Minister significant discretion in determining what is prejudicial to public order, morality, or public interest. This vagueness can lead to arbitrary decisions, where certain books may be banned without clear justification. For instance, some may argue that political or dissenting viewpoints are being silenced under the guise of maintaining public order, which could infringe on the fundamental right to freedom of expression.

Further, there are concerns about transparency and accountability. The Home Minister's decision to ban a book is not always subject to a public review process, meaning that citizens may not fully understand the rationale behind such decisions. In a democratic society, such lack of transparency can undermine trust in the government and the fairness of its actions.

One of the most significant debates surrounding the Home Minister's power to ban books relates to its potential conflict with constitutional rights, particularly the freedom of expression guaranteed under the Federal Constitution of Malaysia. The Constitution guarantees the right to freedom of speech, assembly, and association, but this right is not absolute. It is subject to certain limitations that are necessary to safeguard national security, public order, and morality. However, the broad nature of the PPPA's provisions has raised concerns that it may be used to limit freedom of expression beyond what is constitutionally justified.

For example, a book that criticises government policies or highlights social issues may be seen as threatening public order, yet it could be argued that such criticism is an essential component of a democratic society. The power to ban such works could, therefore, be seen as an overreach that undermines the very freedoms that the Constitution seeks to protect.

The power to ban books has significant implications for Malaysian society, particularly in terms of cultural and intellectual diversity. When certain books are banned, it can have a chilling effect on the freedom of authors, publishers, and even citizens who wish to express their views. Writers may self-censor their works to avoid government scrutiny, and publishers may be hesitant to publish controversial material, leading to a narrowing of public discourse.

Moreover, the practice of book banning can also limit access to knowledge and the free flow of ideas. It can prevent people from learning about different perspectives, both from within the country and internationally. In a society where certain topics are considered sensitive or taboo, such as political dissent or discussions on race and religion, the banning of books may further entrench societal divides and hinder the growth of a more open, democratic society.

The Home Minister's power to ban books, as set out in the Printing Presses and Publications Act 1984, is a contentious issue in Malaysia. While intended to protect public order and morality, it raises serious questions about abuses of power and limitations on freedom of expression. The broad and often vague criteria for banning publications have led to concerns about subjective decision-making, where the boundaries of what constitutes a threat to public order or morality can be blurred. These issues have sparked debates about whether the law is being used to suppress dissenting views or to protect the public from genuinely harmful materials. As such, the exercise of this power must be carefully examined in light of constitutional rights and the values of a democratic society. Balancing governmental authority with the protection of constitutional rights is essential to uphold both societal stability and individual freedoms.

CONCLUSION

The Home Minister's authority to ban books under the PPPA remains a significant matter. While intended to protect public interest, its broad scope and potential for misuse highlight the need for careful judicial oversight and possible legal reforms. Balancing governmental authority with the protection of constitutional rights is essential to uphold both societal stability and individual freedoms. The power to ban books under the PPPA is a significant governmental authority that has far-reaching implications for Malaysian society. While national security and public morality are legitimate concerns, the exercise of this power must be transparent, reasonable, and subject to judicial oversight. A more balanced approach would involve:

Table 1: Three Significant Aspects (illustrations given by the authors)



- **Greater Transparency:** The government should provide clear justifications when banning books and allow for public discourse on the matter.
- **Stronger Judicial Review:** Courts should actively scrutinise bans to ensure they are not arbitrary or politically motivated.
- **Promotion of Media Literacy:** Instead of outright bans, efforts should be made to educate the public on critical reading and media analysis.

Eventually, the right to access diverse ideas and perspectives is fundamental to a progressive and informed society. While the state has a role in maintaining public order, it should also uphold the spirit of democracy by ensuring that censorship does not become a tool for undue suppression. Upholding justice and ensuring a fair balance between security, and freedom is essential for Malaysia's legal and cultural progress.

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