

ACADEMIC FREEDOM: A PARADIGM SHIFT AND COMPARATIVE STUDY IN DEVELOPING A KNOWLEDGE SOCIETY

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Academic freedom is one of the basic fundamental rights towards the founding of a democratic country. This freedom should be maintained, safeguarded and upheld by giving the rights and opportunities to those who involved in the field of education for the sake of future generation. It can be considered as a catalyst towards the development of education in a country that emphasizes the development of a quality education to all members of the society. The development of a quality human capital depends on the expression impartiality according to the scope and level of professionalism of the respective person. The authorities should provide adequate platform and avoid implementing any unreasonable restrictions on this freedom. Islam regards the rights and academic freedom in this solemn academic openness aimed at improving the quality of education of the society. Arbitrary restrictions only lead to stagnation and downsize the evolution and progress of new good ideas and thoughts of the individual that may be benefitted the society in facing the complicated problem nowadays. Good thoughts and opinions should be used in generating the knowledge society. Such concepts also adopted and implemented in the legislation of a country. However, despite giving a wide freedom, a mechanism in controlling and preventing the violations of the law should be monitored and observed in ensuring the stability of society as a whole. In creating a harmonious legal situation by adhering the principle of the rule of law, the concept of harmonization of laws, between the Islamic legal principles and national law, is one of the appropriate and pertinent mechanism in ensuring justice to all people.

Keywords: Academic freedom, comparative, Islamic legal principles; national law, harmonization.

I. INTRODUCTION

Academic freedom is an important issue, especially those involved directly in the education sector. It is one of the important issues in academic development that should be considered by all parties for the academic development in achieving a knowledge society in a democratic country with a strong foundation in every aspect of life. Thoughts and ideas should be given the opportunity to be represented and expressed freely without interruption in order to improve knowledge as long as they adhere to the rule of law in the country. Educational institutions, academics and students should have their own autonomy to make decisions, teach and discuss the scope and nature of the respective subject matter by complying the guidelines approved and provided by the Ministry of Education for the purpose of teaching and learning processes.

Matured ideas and freedom of thought can only be achieved and implemented if they are given the rights and autonomy, and free to discuss the topics in their

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classroom in an ‘open-minded’ discussion. Academic freedom will act as the nature of teaching and learning colors. The importance of academic freedom, responsibility and autonomy of educational institutions are closely linked. But, there are some obstacles in terms of the legal provisions that act as a ‘red line’ to limit it from being practiced freely.

Legal Research Methodology is adopted in this study. The review will include a study on statutes, principles, concepts, doctrine, judicial decisions, legal problems and issues, Al-Quran Al-Kareem, the Sunnah of the Prophet Muhammad (*Sallallahu ‘Alaihi Wasallam*), and the opinion of Muslim and non-Muslim scholars and legal experts. Generally it will be carried out through the search and research conducted in the libraries and online (internet or website).

II. SCOPE AND CONCEPT OF ACADEMIC FREEDOM

Allah (*Subhanahu Wata’ala*) has mentioned about knowledge approximately about 750 times¹ in Al-Quran Al-Kareem which shows that Islam is very concerned about the development of knowledge among society. The importance of knowledge to human has been clearly stated by Allah (*Subhanahu Wata’ala*) in Surah Al-Alaq (96): 1-5:

“Proclaim! (or read!) in the name of thy Lord and Cherisher, Who created (1) Created man, out of a (mere) clot of congealed blood (2) Proclaim! And thy Lord is Most Bountiful (3) He Who taught (the use of) the pen (4) Taught man that which he knew not (5)”.

Allah (*Subhanahu Wata’ala*) has appointed human as leaders in this world because of his or her capability to seek, learn and practice the knowledge sent down by Him (*subhanahu wata’ala*) through Prophet Muhammad (*Sallallahu ‘Alaihi Wasallam*). Knowledge can be obtained in the form of writing, voice or sound, and even signs². Al-Maraghi said that knowledge makes a man knows how to deal with his daily life accordingly³. Professor Dr. Hamka said that the word ‘read’ in Al-Quran Al-Kareem shows the importance of seeking knowledge in our lifetime. Islam gives a telling affirmation of the importance of reasonable and legitimate research in developing existing knowledge⁴. Allah (*Subhanahu Wata’ala*) encourage the people to observe, study and think whatever that has been created by Him in this world as stated in:

“Say: Behold all that is in the heavens and on earth”; but neither Signs nor Warners profit those who believe not”.⁵

“And how many Signs in the heavens and the earth do they pass by? Yet they turn (their faces) away from them!”.⁶

“Behold! in the creation of the heavens and the earth, and the alternation of night and day,- there are indeed Signs for men of understanding”.⁷

“Do they not look at the sky above them?- How We have made it and adorned it, and there are no flaws in it? (6) And the earth- We have spread it out, and set thereon mountains

standing firm, and produced therein every kind of beautiful growth (in pairs) (7) To be observed and commemorated by every devotee turning (to Allah) (8) And We send down from the sky rain charted with blessing, and We produce therewith gardens and Grain for harvests (9) And tall (and stately) palm-trees, with shoots of fruit-stalks, piled one over another (10) As sustenance for (Allah's) Servants;- and We give (new) life therewith to land that is dead: Thus will be the Resurrection (11)".⁸

Allah (*Subhanahu Wata'ala*) commands that if anybody wants to argue, he or she should bring any valid evidence to support his or her arguments. Islam never block or freeze the people's minds⁹.

According to Ralph F. Fuchs, academic freedom is a mean in making the effectiveness of the process of teaching, learning, practicing, and even conducting any research of any subject matter¹⁰. The roles of the faculty in developing the respective areas are very important, and this situation will be meaningless if there is no of academic freedom. According to him also, there are three foundation of academic freedom, namely¹¹:

- i) The philosophy of intellectual freedom;
- ii) The idea of scholars' autonomy; and
- iii) Freedom guaranteed by the law of the nation.

The justification of the academic freedom can be laid down under the following elements¹²:

- i) To pursuit and defend the truth; and
- ii) To develop the new knowledge or ideas that can benefit the people.

Professor Friedrich Paulsen emphasized that the scope of academic freedom should cover to investigate and to tell the truth about the facts of the subject matters¹³. As such, this statement is in conformity with the American Association of University Professors (AAUP) that the purpose of promoting the academic freedom is to acknowledge the importance of teaching, learning and conducting research by the educational institutions' players¹⁴.

Scope and concept of academic freedom can be adopted from the University of Berlin guidelines, namely, the concept of *Lehrfreiheit* and *Lernfreiheit* (freedom to teach and learn). It is a basic understanding of academic freedom as a right in the education field¹⁵. The right to teach, discuss, debate and explore all areas of knowledge is an important aspect of academic freedom. With reference to the said general definition of academic freedom, we can say that the scope and concept of academic freedom should include¹⁶:

- i) Institution¹⁷;
- ii) Academician¹⁸;
- iii) Students¹⁹; and
- iv) Librarians.

Institutions is a key in producing the future generation. Therefore, it is an anomaly when academic freedom is ignored by the authorities. It is a responsibility that must be borne by the authorities to ensure that the rights and freedom are not blocked without any valid reason according to the rule of law. As such, the rights and freedom of every people in seeking, learning and expressing their opinions should be maintained and preserved carefully in order to develop a knowledge society. Intellectualism and academic excellence depend on the extent of the protection of the rights and freedom of the academicians by giving them the opportunity in maintaining the fact-based ideas or opinions.

III. FINDINGS OF THE RESEARCH

Among the related statutes that restrict freedom of expression are as follows:

- i) Federal Constitution (Article 10);
- ii) Universities and University Colleges Act 1971 [Section 15 (3) (a) and (b), and 15 (4)(a) and (b)];
- iii) The Sedition Act 1948 (Section 3 and 4);
- iv) Defamation Act 1957 (Section 2-12);
- v) Official Secrets Act 1972 (Section 2 and 2C); and
- vi) Penal Code (Act 574) (Sections 298, 298A, and 499-502).

All series of statutes should be interpreted and outlined the scope and context carefully to ensure that there will be no act of abuse of power and/or violations in carrying out the provisions of the law. The above statutes suggest that academic freedom is still at a low level and need to be improved, enhanced and developed in line with the national development plans and policies in order to strengthen the implementation and developing the knowledge society and maintain the freedom of expression (especially academic freedom) in Malaysia.

In the case of *Dr. Che Wan Fadhil Bin Che Wan Putra & Ors v Universiti Teknologi Malaysia*²⁰, the court takes into account the opinion of the Canadian judge in deciding the case that universities are autonomous under the law. They are not organs of the government, although the scope of action is limited either by regulation or because of their dependence on the government funds. Each has its own governing body, manages its own affairs, the allocation of funds and own goals within the legal limits. Universities have the power to decide matters relating to the employment of professors. The government does not have the legal authority to control them. Such autonomy is legal and strongly supported by their traditional position in the society. Any attempt by the government to influence the universities' decisions, particularly the decision on the appointment, the appointment and dismissal of academic staff, should be maintained by the university on the basis that this could lead to a violation of academic freedom if it violated.

Academic Freedom's Violation Incidents in Malaysia

<i>Date</i>	<i>Type</i>	<i>Institution</i>
February 15, 2016	Other	University of Malaya
August 13, 2015	Loss of Position	International Islamic University Malaysia
May 13, 2015	Other	International Islamic University Malaysia
April 29, 2015	Other	International Islamic University Malaysia
March 16, 2015	Prosecution	University of Malaya
December 9, 2014	Loss of Position	University of Malaya
October 1, 2014	Prosecution	University of Selangor
September 2, 2014	Prosecution	University of Malaya
June 30, 2014	Loss of Position	University of Malaya
May 26, 2014	Loss of Position	Universiti Malaysia Sabah Labuan (UMSKAL)
May 8, 2014	Loss of Position	University of Malaya
September 6, 2013	Loss of Position	Universiti Pendidikan Sultan Idris (UPSI)
May 21, 2013	Loss of Position	Universiti Sains Malaysia (USM)
May 18, 2013	Loss of Position	Universiti Pendidikan Sultan Idris (UPSI)
May 9, 2013	Loss of Position	Universiti Sains Malaysia (USM)
February 19, 2013	Other	University of Malaya

Table 1 shows that the actions taken against academicians, students and public at large are very crucial and need to be re-checked by the authorities in the process of promoting academic freedom in Malaysia.

IV. CONCLUSION

The government must act collectively and more inclusive in allowing the participation of all people, especially academics and students to voice their opinions based on the true and authentic facts.

Regulations on freedom of expression should be reviewed to improve the efficiency in handling the related issues. In this case there are some documents that can be used as a model in improving and enhancing the implementation process and procedure that include the Declaration of United Nations, the Cairo Declaration on Human Rights in Islam (CDHRI) and a document drafted by the American Association of University Professors (AAUP).

A series of new law on academic freedom should be harmonized with the principles of the Islamic legal principles and the Malaysian laws accordingly. The Judiciary is also responsible in ensuring that freedom of expression is not threatened by civil action for defamation and/or any other freedom of expression by maintaining a balance between freedom of expression, rights and reputation of a person.

Academic freedom does not have to be the absolute freedom that can cause disharmony in society. Any action leading to a breach of law and division among the people is prohibited by Allah (*Subhanahu Wata'ala*)²¹. Prophet Muhammad (*Sallallahu 'Alaihi Wasallam*) also said that every word uttered by a person is recorded by the angels, and will be held accountable for what he has done in this world. Prophet Muhammad (*Sallallahu 'Alaihi Wasallam*) said that every trial or discussions between the two sides is a trust that must be maintained from the spread to people who have nothing to do with it. Al-Hasan Al-Basri (*Radiyahallahu 'Anhu*) said that when a person is talking about secrets or his friends, then it will be categorized as an act of betrayal, false or unfaithful. Rasulullah (*Sallallahu 'Alaihi Wasallam*) said: “*The good thing about this Muslim man, is to leave what is not needed*”²². Therefore, there should be proper guidelines for the purpose of maintaining academic freedom and freedom of expression with the rule of law.

Restrictions imposed by the law is very subjective and vague that leave broad interpretation on the issues in question and this situation need to be analyzed, reviewed and revised accordingly. Restrictions on academic freedom and respect for freedom of expression also need to be studied in two circumstances; the freedom of society and the adoption international standards on human rights.

Notes

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4. *ibid.*
5. Surah Yunus (10): 101.
6. Surah Yusuf (12): 105.
7. 'Aali Imran (3): 190
8. Surah Qaf (50): 6-11.
9. See: Surah Al-Isra: 85 and Surah Ta-Ha: 114. Refer: Salehan bin Ayub. (2012). *Himpunan Risalah Imam Hasan Al-Banna*. Kuala Lumpur: Pustaka Salam Sdn. Bhd. pp. 552-55.
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19. *ibid.*
20. [2010] MLJU 361.
21. Surah An-Nisaa '(4): 114 dan Surah Al-Hujurat (49): 11.
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