



NATIONAL CHAPTER
BRUNEI DARUSSALAM



Top 3 Winners

ALSA Brunei Legal Writing Competition 2019/2020

Theme : Law & Contemporary Issues in the 21st Century

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GREETINGS

From ALSA Brunei Darussalam



Greetings from ALSA Brunei,

As we embark on this exploration of "Law & Contemporary Issues in the 21st Century," we are reminded of the vital role that leadership plays in shaping the discourse and direction of academic pursuits. It is with profound gratitude and admiration that we acknowledge our former President for the term 2020/2021, Amirah Aziyah, who has provided invaluable contributions to this publication and to our academic community as a whole.

This publication, with its rich collection of articles, stands as a testament to the lasting impact of her leadership. Within these pages, we navigate the intricate intersections of law, technology, ethics, and society, inspired by her vision for a legal community that remains at the forefront of the 21st-century dialogue.

In honouring her legacy, we invite you to delve into the legal publications, to absorb the insights and perspectives it offers, and to join us in our continued pursuit of excellence and enlightenment in the realm of law and contemporary issues. May these contributions and publications be beneficial to all of us.

With my deepest gratitude and respect,
ALSA, Always Be One!

Dayang Syabiah

President

ALSA Brunei Darussalam 2023/2024

Greetings from ALSA Brunei,

I am especially excited to present to you the articles from the winners of ALSA Brunei Legal Writing Competition 2019/2020, with the theme of 'Law & Contemporary Issues in the 21st Century'. These articles are the compilation from the tenure of our former Vice President of Academic Activities in 2019/2020, Billah Ali.

With that being said, I would like to extend our gratitude to Billah and her officers for their hard work and contribution in successfully conducting this competition during their tenure. Without their efforts, we would not have been able to compile and publish this publication today.

I am confident that these articles serve as valuable references to our readers for law students seeking to enhance their knowledge, so to my fellow law students, have a read!

ALSA, Always Be One!

Azizul Sabwan

Vice President of Academic Activities

ALSA Brunei Darussalam 2023/2024



GREETINGS

From ALSA Brunei Darussalam



VPAA of the Term 2020/2021

The introduction of the Legal Writing Competition was to provide fellow law students multifaceted learning experience that enhances legal skills, particularly in writing, and fosters critical thinking all while contributing to personal growth.

The law continues to evolve to address complex and ever-changing challenges, reflecting the dynamic nature of our modern world. The theme 'Law and Contemporary Issues in the 21st Century' provides an intellectual exploration where that encourages participants to delve into pressing legal matters that are shaping our world today.

This exploration allows participants to gain a deeper understanding of these issues and the legal frameworks that surround them. In essence, the theme serves as a platform for participants to deepen their legal knowledge, refine their skills, promote awareness and engage with the challenges society faces today.

The Academic Activities department hopes that this will encourage and peak fellow students' interest in participating in the future.

Respectfully yours,

A handwritten signature in black ink that reads 'Billah Ali'.

Vice President of Academic Activities

ALSA Brunei Darussalam 2019/2020



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OUR

AUTHORS

AUTHOR 1

Article Writing Competition 2019/2020



How Free is Free Speech? : **An analysis of the limitations to freedom of speech and expression.**

Written by : Arif Azhan bin Awang Besar



Background

'Freedom of speech is not a licence to abuse. It is a responsibility.' As free as we are to speak up, we must ensure that we are not harming anyone in the process. Sadly, this basic idea still escapes many people, stuck in their delusions that freedoms are absolute and that individual rights trump collective rights. One of such people is President Macron who recently supported the French publication Charlie Hebdo's decision to reprint Prophet Muhammad caricatures by reason of 'freedom of the press'. In the past, such portrayals have not only offended Muslim sensitivities around the globe, but they have also caused widespread societal disharmony and national security disturbance, including the closedown of French embassies and schools in more than 20 countries in 2012 as well as the office shooting and supermarket siege in 2015.

Not shifting the blame away from the attackers, individuals regardless need to realise that every action has consequences which affect not only themselves but also others. Terror attacks aside, Charlie Hebdo's persistence to post the caricatures serves nothing but to stoke the fires of France's long-standing, rampant racism and Islamophobia and to normalise such behaviour—further harming Arab and Muslim residents' safety and standing in French society. Acknowledging the importance of free speech in civil society, this essay also acts as a reminder that the right to freedom of speech and expression, like every other right, has certain limitations.

Analysis

This essay will discuss three of the most common exceptions to free speech : hate speech, defamation and sedition.

HOW FREE IS
FREE SPEECH?

First Limitation : Hate Speech

Hate speech is defined as 'public speech that expresses hate or encourages violence towards a person or group based on something such as race, religion, sex, [etc.]' Given this definition, some lawyers would classify Charlie Hebdo's Prophet Muhammad caricatures as hate speech in that they make a mockery of a religion and ethnic group and are thus adversely impacting (i.e. enabling existing discrimination against) those groups. Considering this, the right to free speech should not protect hatred and prejudice. As the European Commission against Racism and Intolerance reported, hate speech 'can lead to acts of violence and conflict on a wider scale' and this is true: a 2019 study showed '[an] increase in hate speech on social media leads to more crimes against minorities in the physical world'.

Under Bruneian law, there is no explicit legislation outlawing hate speech. However, s153A of the Penal Code (Cap. 22) criminalises the use of words, visual representations (e.g. drawings), etc. to promote or attempt to promote 'feelings of enmity or hatred between different classes of His Majesty's subjects'. Similarly, under s3(1)(e) of the Seditious Act (Cap. 24), it is seditious 'to promote feelings of ill-will and hostility between different classes of the population'. In *PP v Mohamed Nor & Ors*, involving an offence under the Malaysian equivalent of s153A, the Supreme Court stated that the purpose of the section is to protect the public interest of maintaining unity and harmony between different social groups. Therefore, society should not blindly support all speech when it can have a really terrible impact on everyday people.



Second Limitation : Defamation

Defamation is the action of damaging a person's good reputation by publishing (libel) or saying (slander) a false statement about them. In Brunei, defamation is criminalised under ss 499-502 of the Penal Code which outline the statutory definition of defamation, exceptions to this law, the punishment as well as the prohibition on printing and selling defamatory materials. There is also the Defamation Act (Cap. 192) which elaborates upon the law on defamation. Additionally, *Silkin v Beaverbrook Newspapers Ltd* was the landmark House of Lords case that discussed free speech in relation to false statements. In this case, the plaintiff alleged that the defendants had defamed him by publishing an article that called him insincere, hypocritical and thus unfit for the House of Lords.

In the judgement, Lord Diplock stated that freedom of speech, like any other freedom, is subject to the law which strives to maintain a balance between individual rights (including the right to a clean reputation) and public rights (including the right to question public figures). This affirms the importance of the right of free speech which allows individuals to fairly hold those in power accountable while forbidding anyone from fabricating lies that can damage someone's reputation, affect their livelihood and even endanger their life. For instance, in 2018 India saw a series of incidents where at least 22 men were brutalised and even killed by village mobs over false child abduction rumours spread on WhatsApp. This illustrates why free speech does not protect falsehoods.

Third Limitation : **Sedition**

Sedition is '[the] speaking or writing of words that are likely to incite ordinary people to public disorder or insurrection.' In other words, a person commits sedition when his action might provoke others to rebel against the government or cause civil unrest. In Brunei, this is a crime punishable by a fine and imprisonment under the Sedition Act. The case of PP v Shahransheriffuddin bin Shahrani Muhammad was a 2019 local sedition case where two years prior the defendant published a Facebook post criticising the government's halal certification policy. In the post, he directed a profanity at the Ministry of Religious Affairs and urged Bruneians to 'dissent'. Accordingly, he was convicted. His statement was unnecessarily offensive, counter-productive and clearly not meant to legitimately raise a public concern.

By forbidding expressions like this, anti-sedition laws aim to maintain societal stability and harmony. However, such laws have been condemned for allowing governments to arbitrarily silence legitimate criticism against it. This is a fair assessment given that certain governments have certainly abused these laws to suppress justified dissent. That said, the Bruneian government has proven itself to be fair in hearing out the public's concerns. Further, s3(1) of the Sedition Act provides exceptions whereby one is allowed to point out mistakes or defects in the country's governance. All in all, the public may suggest improvements to the government in a proper and civil manner without resorting to expressions that can incite violence and unrest.



Conclusion

In addition to prejudice, falsehoods and sedition, free speech also does not protect incitement, obscenity, pornography, threats and intellectual property violations. The law definitely affirms an individual's right to free speech and expression, but this right must be balanced against the rights of others and the public interest. There is a fine line that the public, legislature, executive and judiciary must work together to respect in order to preserve social harmony and advance society forward. As Eleanor Roosevelt said: 'With freedom comes responsibility'.

AUTHOR 2

Article Writing Competition 2019/2020



Law & Contemporary Issues in the 21st Century Covid-19 : **Freedom of Movement and Equality.**

Written by : Amal Amiratun Nazihah Binti Muhammad Shahrin

I would like to express my deepest gratitude to ALSA Brunei for giving me the chance to present my article titled "Covid-19: Freedom of Movement and Equality." The article aims to raise awareness on how COVID-19 has affected our ability to move freely and how this has worsened existing inequalities. I hope that this article will inspire others, spark meaningful discussions, and contribute to the ongoing conversations in our field.

Thank you for the support!

ALSA, Always Be One!





Around December 2019, the world has dropped a bombshell by the announcement regarding the spread of COVID-19 infection. According to the World Health Organisation (“WHO”), COVID-19 also known as Coronavirus disease is an infectious disease, transmitted via droplets of saliva or discharge from the nose or mouth when an infected person coughs or sneezes. One of the most evident impacts of COVID-19 is the imposition of movement restrictions. The implementation of this order affects human rights, namely: freedom of movement and exacerbation of inequalities.

Modern life has acknowledged the importance of freedom of movement that it gave benefits in terms of socioeconomic. Article 9 of the Malaysian Federal Constitution demonstrates that freedom of movement includes the right to move freely within a country, leave any country and to return to one’s country. In the context of COVID-19, the government has imposed an order to restrict the movement of people within the country, leaving the country and to return to the country.

The issue is whether the implementation of movement restrictions is against one’s human rights and can be said to be unconstitutional. To answer this, we shall refer to Article 9(2) of Malaysian Federal Constitution, which provides the exceptions to the above rule that freedom of movement shall not be subject to any restriction except under four situations; (1) to protect national security, (2) public order, (3) public health or (4) punishment of offenders. From this, we can see that there are certain limitations imposed on the right to freedom of movement by the government.

Consequently, if one is challenging the order imposed by the government on the ground that it deprived them of their human rights to freedom of movement, the chances of winning are very slim. This is because the COVID-19 situation falls under one of the exceptions mentioned under Article 9(2). In fact, The Prevention and Control of Disease Act 1988 (“PCDA 1988”) governs the Movement Control Order (“MCO”) in Malaysia. PCDA 1988 provides that the Director is empowered to create new regulations and offences enforceable with the assistance of police in response to the threat. This is further supported by Article 4(2) of the Malaysian Federal Constitution, which provides that no law can be challenged if it imposes restriction on the rights mentioned in Article 9(2) but does not relate to the matters mentioned therein. Therefore, the Parliament is supreme that his power is unchallengeable in a court of law. The public has no choice but to obey the said rules to maintain public safety and health. Thus, the implementation of MCO is not against human rights.

As people are forced to work from home due to the movement restrictions, inequality among people is exacerbated, especially in areas such as access to healthcare and technologies, and gender inequality. Research in Europe showed that, even in well-developed healthcare systems, inequality in access to health services persists. Not only the lowest income groups are affected, but also women who are unable to get proper access to health services including sexual, reproductive and maternal health services. This proves that the law may guarantee equality, however, it is impossible to achieve it.

Movement restrictions also made the digital divide more apparent, as billions of people do not have access to the Internet. For working adults, results from Stanford economist Nicholas Bloom's research regarding 'societal impact of working from home' suggests that more educated, higher-earning employees are far more likely to benefit from it. However, those unable to work from home, either because of the nature of their jobs or because they lack suitable space or internet connections, are left behind. As for school children, an upper class society can maintain to get proper education while that is not the case for lower class society. This was the case in Sabah, Malaysia where an eighteen-year-old Veveonah Mosibin, went out on a limb to ensure she had a good internet connection. She has prepared for her tests a fortnight by building a small shelter on a hill where 3G reception for the area is good. This again proves that COVID-19 has deepened the inequalities among different social groups.

Furthermore, lockdown measures have exacerbated tensions in the home leading to increased levels of domestic violence, while restrictions on movement are creating barriers for women seeking to escape abuse. It was reported in Malaysia that the Women and Family Development Ministry's Talian Kasih hotline has received a 57 percent increase in calls from distressed women. The Women's Aid Organisation ("WAO") has seen 44 percent increase in its hotline calls and WhatsApp messages between February to March. As we can see from the statistics, reported cases of domestic abuse have incredibly increased, what more for the unreported case.



In Malaysia, the Domestic Violence Act provides three forms of protection for the victims such as Emergency Protection Order ("EPO"), Interim Protection Order ("IPO") and Protection Order ("PO"). Some procedures have been set by the said Act to conquer this issue. In the context of MCO, EPO is the easiest and most accessible form of protection in which it can be made to the Social Welfare Department without prior complaint to police officers, unlike IPO and PO. In an application for the aforementioned protection, it is recommended that the hearing should be made speedily despite the reduction in court's operation in order to preserve justice for these victims. Moreover, under Section 18 of the said Act, citizens are obliged to inform any enforcement officer for this matter if he has the reason to believe that the said offence has been committed. No liability for defamation if such information is given in bona fide.

In conclusion, regulations on freedom of movement are imposed to control the spread of infectious diseases and protect public health. These restrictions are not unconstitutional or a violation of human rights. However, they have resulted in limited access to healthcare and technology, widened the digital divide, and increased domestic violence rates. The government needs to ensure equal access to essential services and support victims of domestic violence. While COVID-19 restrictions have negative effects on human rights, they are necessary for public safety. The government should address these issues and find a balance between protecting human rights and controlling the spread of COVID-19.

AUTHOR 3

Article Writing Competition 2021/2022



Assessing the Criminalization of Attempted Suicide.

Written by : Ahmad Muqri Marhain

I'm delighted to introduce this article, which delves into a pressing issue: the criminalization of attempted suicide. In the last half of the 20th century, many countries abolished anti-suicide laws, but over 20, including Brunei and Malaysia, still enforce them. In this article, we'll explore the reasons behind this controversial stance and examine the arguments for and against it.

The article discusses how attempted suicide, a deeply distressing manifestation of despair, is criminalized in some countries. We'll look at the historical context, legal provisions, and how such laws affect individuals and society. While some argue that criminalization acts as a deterrent, others advocate for a more compassionate approach that prioritises mental health care over punishment. To encourage thoughtful consideration, the article presents both perspectives.

I hope this article enables you to delve deeper into this complex issue and prompts you to consider whether a more compassionate approach is needed in addressing the challenges of suicide and mental health.





Suicide attempts are a serious problem that requires mental health interventions. However, it is treated in altercate with different jurisdictions undertaking conflicting attitudes in tackling it as an issue. A fairly controversial one is the treatment of its survivors as an offender. In the last half of the 20th century, many countries have already abolished anti-suicide laws but there are still over 20 countries that adopt them including Brunei and Malaysia. In light of this, further elaboration on the issue is required to understand the contextual arguments for and against the legalization of punishing attempted suicide. This assessment is necessary in deciding whether the response to the continuing punishment of its commission is truly effective and just in its practical application.

Attempted suicide as a criminal offence is when an individual tries to harm himself with the intention to die but would consequently fail, and then finds himself possibly subjected to criminal sanctions. In Brunei and Malaysia, as per the Criminal Penal Code, Article 309 provides that :

“Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both.”

Its criminalization is believed to be reflecting the perception of a more brutal age, where suicide was believed to be a vindictive act until up to the 19th century. However, as society progresses to the mindset of mental health awareness, one would now think that a person who has attempted to kill himself would be beyond any sanction of the law. Which is why there has been a rise of activities for advocating the decriminalization of attempted suicide in recent years by virtue of, the increasingly prevalent significance of mental health issues along with a progressively rationalized thinking that attempted suicide should be a matter for treatment and not punishment. As it is alleged that criminal law should serve no purpose in encroaching one’s personal tragedy. The question then arises on the rationale of why it is still considered an offence in certain countries. In general, the primary purpose for its criminalization is said to serve as an act of deterrent, the idea that potential offenders will be intimidated by the punishment and therefore deter them from committing to the act.

There are several consequences brought about in defending the need for its criminalization. The first one being the harm to the state's health protection. It has been argued that attempts at self-injury is a form of "harm" to others under the Harm Principle because of their indirect financial effect on the state's rescue and health-protection system.⁴ The person who jumps off the bridge affects others adversely because he draws upon these costly, tax-supported services.

Second point brought forward is on "Remote" harms. It is sometimes suggested that many seemingly paternalistic prohibitions, such as those related to drug possession, actually generate long-run harmful effects because they initiate a chain of bad consequences that lead to the victimization of other people. In the context of attempted suicide, its decriminalization may cause a chain of reaction that induces potential offenders, due to the ease of its execution and lack of consequences.

Lastly is the argument of legal moralism. Richard Arneson asserts that we ought to "make something worthwhile of our life, something good for ourselves and others", and hence a person may be discouraged from attempting suicide for trivial and purely self-regarding reasons.

It invokes the idea that an individual may act upon a destructive spontaneous thinking of their current circumstances that can be reasonably predicted would have disappeared, had the individual been given time to realize and rationalize the severity of their decision i.e their death.

On the contrary, a majority is in view that the act of attempted suicide is ipso facto an act of distress, an indication that the person requires psychological assistance in his personal life, instead of punishment by fine and/or imprisonment. Administering penal deterrents are said to be better suited to criminal acts, and not acts of distress. It does not prevent people from committing suicide nor does it deter their attempts at on it. In addition, there is no justification for treating people with suicidal tendencies as if they were criminals as the committing of such acts is an obvious cry for help or despair, and a plea for help should certainly not be classed as a criminal activity. Which is why, those with suicidal potential should be encouraged to seek assistance from professionals by way of rehabilitation rather than imposing punishment and instilling fear of being prosecuted in them.

Furthermore, decriminalizing attempts of suicide would most likely lead to a better and productive outcome in the frustrated and psychologically traumatized suicide seeker, who would not only be spared from the most unkind social stigma but also be in a better position to freely and without fear of judgement seek medical and psychiatric treatment. This in turn would lead to a better and more socially acceptable way of dealing with the problem than through the criminal law, as Delhi High Court judge notably said in his judgment :

"Instead of society hanging its head in shame that there should be such social strains that a young man should be driven to commit suicide, it compounds its inadequacy by treating the boy as a criminal. Instead of sending him to the psychiatric clinic it gleefully sends him to mingle with criminals, as if trying its best to see that in future he does fall foul of the punitive section of the Penal Code".



To conclude, although the rationales for criminalizing attempted suicide may seem justifiable in protecting the public's interest, it is also worth recognising that the legal consequences of suicide and its attempt clearly does not discourage the act itself. Rather it increases the stigma against mental health issues and discourages affected individuals from seeking the help they truly need and further worsen their already fragile mental-well being.



For more information

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[alsabrunei](#)



www.alsabrunei.org



brunei.alsa@gmail.com
aadept.alsa@gmail.com