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Defamation Law in Malaysia Focusing on Internet and Blog and Social Media

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Dedication

I dedicate this research to my family, especially to my Parents. Their time, energy, and assistance were essential to the completion of my study. I wish to thank all of my class fellows who supported me in completing this paper. I learned about the enthusiasm, energy, and inspiration that one can acquire from achievement of someone else. I hope to perform this research with me long after current study has expanded our understanding of incidental education. Particular thanks to my educational professor, [Dr____Name____], for his/her support and dedication throughout the study.

Declaration

I [], make sure that this paper and its complete material has been personal, unsupported attempt and has not been submitted or published earlier. Moreover, it defines my perception and take on the issue and is does not give the perception of the University.

Signature: _____

Dated: _____

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Abstract

This research paper aims to explain defamation laws in Malaysia. Within this research, defamation laws in Malaysia have been discussed by especially focusing on internet, blogs and social media like Facebook and Twitter. This research has been completed with the help of qualitative research methodology. All the data was collected from secondary sources. It has been analysed that there have been many cases of defamation since the arrival of internet and cyber. Blogs, internet and social media increase the rate of defamation cases. So it is needed to focus more and more on defamation laws and policies.

Defamation Law in Malaysia Focusing on Internet and Blog and Social Media

Chapter I – Introduction

1.1 Background

Defamation is when a person is involved in a crime and is guilty or suspect. It is crime against the honour of the people. Defamation in Malaysia is defined as the dissemination of a written or oral message, which has the effect of unfairly prejudice the reputation of the person who is the subject¹. The origins in the common law of defamation are grievances (harmful statement in a transitory form, especially as spoken) and libel (harmful statement in a fixed medium, especially writing but also a picture, sign, or electronic broadcast), each of which gives a right of action.

1.2 Problem Statement

Defamation is to communicate intent to one or more persons, the complaint is made to another, a fact true or false, definite or indefinite, which may cause dishonour or discredit or expose some contempt. Defamation is a criminal offense and therefore, it should be reported in any police station or in court. Another thing about this is that there is an investigation progresses. The complaint for defamation can be done in writing or orally. In both cases, people can sign it at the end and take a copy for their house. They should save it to show that they filed. Defamation is one of the main issues in Malaysia. Malaysia has laws regarding this issue of

¹ Buang, Salleh. Law of defamation in Malaysia and Singapore. (Central Law Book Company, 1992). 56-60

defamation. This defamation can be said as one of the main problems by focusing on the use of internet, blogs and social media for this. This issue is of great importance, people should know all about the defamation and laws in Malaysia. So, this research paper aims to discuss this issue and examine different cases to better understand defamation and its laws in Malaysia.

The offense of defamation and slander is a penalty that is considered when a person understands that certain information or opinion damaged his honour. The law provides a number of exceptions that exempt from punishment but never exclude the crime. The main claim in this is the elimination of criminal defamation, not any law of defamation. The goal is decriminalization, i.e. which is not considered a crime and therefore has no imprisonment.

Buang² said that the criminalization of defamation is a disproportionate and unnecessary response to the need to protect reputations. The civil defamation laws provide adequate redress for those who claim of being defamed. In addition, there should be no liability unless the defendant acts with disregard for the truth. Civil defamation laws do not provide special protection for public figures. In cases of public interest, the plaintiffs must prove that the defamatory information is false. Any reparation ordered in civil cases should be proportionate to the harm caused by demonstrable³.

People are facing a delicate case that opposes two fundamental rights: freedom of expression and information, and the right to honour. Both are recognized in the national and international regulations to which Malaysia is a signatory. Its judiciary has advanced solution to the dilemma: the right to inform and be informed are rights, so transcendent that can be placed on a higher place than the other civil as this depends on the structure of power and freedom. In

² Buang, Salleh. Law of defamation in Malaysia and Singapore. (Central Law Book Company, 1992). 56-60

³ Cottrell, Jill. Law of defamation in Commonwealth. (Ashgate, 2005). 113-121

democratic states, this right is one of the foundations of the constitutional system. In this sense, the limitations to freedom of expression should be minimal, necessary and legitimate. According to this criterion, in case of public officials or persons with notorious and voluntary public activity, it protects journalists still giving false or inaccurate as long as the author creates real information and its purpose has been to illustrate the public opinion of the issue tried in good faith and without malice.

1.3 Aim and Objectives of the Research

The main aim of this piece of research is to examine the defamation law of Malaysia. The research is to examine this law by focusing on internet, blog and social media. Social media plays one of the main roles in defamation. Within this research, especially Facebook and Twitter have been taken to take social media as whole. This research is to look at the defamation law, and to examine how it developed in Malaysia.

1.4 Research Questions

The research questions which are going to be answered with the help of this research are as follows:

- What is defamation law in Malaysia?
- How does defamation law in Malaysia focus on internet, blog and social media?
- What are the effects and laws governing this defamation law?
- How did the defamation law develop in Malaysia?

- What is the comparison between Australian and Malaysian defamation law?

Chapter II – Literature Review

2.1 Introduction

This chapter of the research aims to review the literature from different sources. Within this chapter, different topics and concepts related to the main research questions will be discussed to better understand the concepts and cases.

2.2 Defamation

Defamation consists of words, spoken or written publications, false and non-confidential, that put any living person to hatred, contempt, ridicule, or give rise to shun or avoid them, or they are prone to damage in his trade or occupation⁴. For example, if a person or the news media says or writes something about people that tend to diminish their reputation or to avoid that people associate with them, then there has been a libel⁵. However, if someone says something wrong about someone who has died, as reprehensible as it may be, in most states it is not considered defamatory. No legal action can be exercised on behalf of a dead person. Only a living person can be defamed.

The fundamental difference between libel and slander is only in the "manner" in which the defamatory matter is published. If the offending material is published in some fleeting form, as in spoken or sounds, sign language, gestures etc., then this is slander. If it is published in a more durable form, for example, documents, movies, CDs and others, then it is considered as a

⁴ Stuckey, Kent D. Internet and Online Law. (Law Journal Press, 2001). 246-253

⁵ National Council of State Boards of Nursing. White paper: a nurse's guide to the use of social media. (Chicago: National Council of State Boards of Nursing, 2011)

libel⁶. Defamation, when it comes through written, and nonverbal, is also known as "libel", which can be done through the Internet, or long-term media like movies or books⁷. In the case of damage caused voluntarily, the complaint can progress and the accused or defendant will be liable for damage or restore compensate him, usually cheaply. Nobody is going to take care of the damage, if the offense occurs by chance. In these cases; the victim is left with their own damages, defamation and not progress. It is said that the liability on image requires a general rule and causal link between the damage and the act of the author⁸.

2.3 Internet, Blogs and Social Media

The Internet is a system that allows different networks to connect with each other, so that anyone who is connected to one of the networks can communicate with anyone connected to any of the other. Today, in practice, the internet is a system that allows people to connect with any person, organization or "site" that has an address on one of the many related networks, and in doing so, play one of the many different activities permitted not only by technology, but the services that are provided⁹.

The term "blog" is short term for weblog, which can be translated as "Internet newspaper". It is often defined as a personal site. It is an individual space of expression, created to give a voice to all users (individuals, businesses, artists, politicians, associations ...). A blog allows people to interact with other users, but also delivers information on what they want. So many bloggers talk about their passions, news of which affect or interest them. A blog is a real

⁶ Faruqui, Shad Saleem, and Ramanathan, Sankaran. Mass media laws and regulations in Malaysia. (Asian Media Information and Communication Centre, 1998). 217-221

⁷ Cooke, George Wingrove. A treatise on the law of defamation: with forms of pleadings. (O. Richards, 2003). 271-286

⁸ Cottrell, Jill. Law of defamation in Commonwealth. (Ashgate, 2005). 113-121

⁹ Smolla, Rodney A. Law of Defamation. (West Group, 1999). 79-84

space for communication. Items (or tickets) are published in chronological order-ante (before the last post in the home) and allow all visitors to react to the issue raised by posting comments on the article, creating a privileged relationship between the author and his readers¹⁰.

Social Media is all online platforms through which users interact with others and share multimedia files. Allowing the contents has great influence within the network. These platforms have the ability to expand the disclosure of the information people publish, give them the ability to measure its impact, which is viral and pays. For this reason, companies are beginning to take stock of these means for positioning their brand image and to reach more users, offer services and economic growth, while starting to create an identity¹¹. The two most important and famous social networks are Facebook and Twitter. Facebook and Twitter have become the most popular social networks of the world. Even the 'Smartphone' and 'tablets' stay connected to these networks 24 hours a day. It has become as common everyday actions to enter into the Facebook profile, to see if anyone has commented a state, has published a photo or changed their status and verify the entries on Twitter or 'tweets' from fans,¹².

2.4 Defamation Laws

Generally, the term 'libel law' is used in reference to any law related to the protection of the reputation or feelings of individuals. All countries have laws on defamation, even if a number of different terms are used to describe them, including libel, slander, insult, lack of respect, etc. The form and content of these laws vary widely from one country to another. In some places,

¹⁰ Smolla, Rodney A. Law of Defamation. (West Group, 1999). 79-84

¹¹ Faruqui, Shad Saleem, and Ramanathan, Sankaran. Mass media laws and regulations in Malaysia. (Asian Media Information and Communication Centre, 1998). 217-221

¹² Stuckey, Kent D. Internet and Online Law. (Law Journal Press, 2001). 246-253

there is a specific code or 'code of defamation', but in most countries, the articles on this topic are part of more general laws, as the civil code or criminal code¹³.

2.4.1 Good defamation law

Good defamation law is a law that sets the stage to establish an appropriate balance between the protection of reputation and freedom of individual's expression. It could be defined as follows: a law on defamation is a law that seeks to protect people against false statements relating to cause harm to their reputation. This definition contains four elements. To be defamatory, a statement must: be false; be factual in nature; cause harm, and is wrong to affect the reputation of the person concerned, which in turn means that the statement in question must have been read, heard or seen by others. There are many in the world of libel laws that are not consistent with this definition¹⁴.

2.4.2 Distinguish between defamation and other concepts

Many countries have other types of laws that may be confused with defamation laws, which should be clearly distinguished, even if defamation is generally understood. Among these are; laws on hate speech, blasphemy and privacy¹⁵.

Hate Speech Laws: Laws on hate speech are laws that prohibit statements inciting discrimination, hostility or violence against a group with a shared identity, as nationality, race or

¹³ Evans, Keith R. The law of defamation in Singapore and Malaysia. (Malayan Law Journal, 1988). 135-139

¹⁴ Conway-Jones, Danielle M. Defamation In The Digital Age: Liability In Chat Rooms, On Electronic Bulletin Boards, And In The Blogosphere. (2005)

¹⁵ Smith, Graham J. H. Internet Law and Regulation. (Sweet & Maxwell, 2007). 375-384

religion. In some cases, the term 'Group defamation' is used in reference to such laws¹⁶. There are two major differences with the libel laws. First, hate speech laws are intended to protect the security and social equality of vulnerable groups rather than their reputation. Secondly, the speech laws protect hate groups of people identified by certain common characteristics rather than individuals or legal person (as a business or non-profit organizations)¹⁷.

Blasphemy Laws: The blasphemy laws are laws that prohibit the denial of religion or ridicule towards religion. Here again, the difference with the defamation Act is based on the fact that the blasphemy laws do not try to protect specific individuals or even the reputation of the religion, they seek to protect the sensitivity of adherents of that religion¹⁸.

Privacy Laws: Laws on privacy are laws that prohibit unauthorized intrusion into private life of individual or the unauthorized publication of details concerning this privacy. In contrast with the libel laws, the laws of privacy can be used to prevent the movement of true facts, like a real photo taken the knowledge of those concerned in a private place. More, the effect that these events may have on the reputation of the concerned person is not taken into account. The decisive factor is whether the plaintiff could prove an impermissible intrusion into his private life. This is possible in some situations that the laws of privacy and defamation overlap. This may be the case, for example, if someone draws erroneous conclusions from photos taken illegally, as an indication that the person photographed is in a relationship with another¹⁹.

¹⁶ Price, David., and Duodu, Korieh.. Defamation: Law, Procedure & Practice. (Sweet & Maxwell, 2004). 362-378

¹⁷ Liu, Huan., Salerno, John J., and Young, Michael J. Social Computing, Behavioral Modeling, and Prediction. (Springer, 2008). 138-143

¹⁸ Price, David., and Duodu, Korieh.. Defamation: Law, Procedure & Practice. (Sweet & Maxwell, 2004). 362-378

¹⁹ Cooke, George Wingrove. A treatise on the law of defamation: with forms of pleadings. (O. Richards, 2003). 271-286

2.5 Defamation Statement in Malaysia – Legal Implications

The courts have defined the defamatory statement as follows: "A statement is defamatory if it has the effect of undermining the reputation of the person, that is to say when it tends to belittle the person in the esteem of good citizens and to look with hatred, contempt, ridicule or fear one"²⁰. There are two types of defamation: libel and slander. In the case of a libel, defamatory are communicated in a visible and permanent form. In the case of slander, the message is communicated orally²¹. To succeed in a defamation action, people must establish three elements of proof:

2.5.1 Meaning of the message itself

If the ordinary meaning of the words or images used has the effect of undermining the reputation of the person concerned. These words or images may be defamatory, even if the respondent said they did not have this intention.

2.5.2 About the unreasonableness or lack of just cause the message

This suggests that the message must be false or unfounded one way or another. Irrefutable proof that a person accused of defamation told the truth can be a complete defence.

2.5.3 Spreading the message

In defamation law, the term broadcast defamatory communication or a third party, and not just the victim. In this regard, takes care when using electronic means of communication, this makes it easy to broadcast messages to a large number of people.

²⁰ Smith, Graham J. H. Internet Law and Regulation. (Sweet & Maxwell, 2007). 375-384

²¹ Smith, Graham J. H. Internet Law and Regulation. (Sweet & Maxwell, 2007). 375-384

2.6 Defamation Law in Malaysia

Defamation is the publication of a statement about a person that tends to lower his reputation in the opinion of right thinking members of the community or to make prototypes shun or avoid him. In other words, it refers to the publication of the statement (oral or written) which results in falling person's reputation in the eyes of others²². In Malaysia, the tort of defamation exists in civil and criminal claims. Like other branches of the law of any other tort, the principles of defamation law or defamation can be seen in the common law. However, in Malaysia, people also have the Defamation Act 1957 that regulates the defamation claim under civil law. While for defamation in criminal law, people refer to the Penal Code, Section 499 to Section 502²³.

Defamation can be categorized into two, namely libel and slander²⁴. Libel is libel-slander being thrown in a permanent form such as in books, magazines, videos, films, monuments and so on, while slander refers to defamatory presented in the form of words or style movement (gestures). It is quite important to identify that which one is slander and which is libel, because the law imposes different obligations on both. A claim for defamation incurs slander, and it can only be made if the claimant may indicate special losses (special damages, except in certain cases). But in libel law, it is considered that the loss was suffered and claims can be made when only required to make a defamatory libel²⁵.

There are three questions that should be seen and asked in determining whether a defamation claim can be made or not. Three questions are:

²² Recalde, Maria E. The need for a social media policy. (2010)

²³ Cooke, George Wingrove. A treatise on the law of defamation: with forms of pleadings. (O. Richards, 2003). 271-286

²⁴ Conway-Jones, Danielle M. Defamation in The Digital Age: Liability In Chat Rooms, On Electronic Bulletin Boards, And In The Blogosphere. (2005)

²⁵ Recalde, Maria E. The need for a social media policy. (2010)

- Is there statement defamation?
- Does that statement refer to claimant?
- Do statement that has been published are up to knowledge third party?

2.6.1 Is there defamation statement?

It should be remembered that fact alone does not bring the basis for a claim in defamation torts. It should bring down the reputation of a person in society or have resulted in loss of one's profession. Therefore, it is identified as a defamatory statement, the question asked is: can it degrade the reputation and dignity of the person defamed in the eyes of society? Will the statement cause the person defamed exposed to hatred, or humiliation? A defamatory statement is also unlikely to be bright. It may be defamatory in implicit form of the letter. However, the implicit meaning should be understood by ordinary people that the word used is a slander. Defamation in these is also known as innuendo²⁶.

2.6.2 Does that statement refer to Claimant?

When defamation claim is successful, the claimant must show that the addressed defamatory statement. If the defamatory statement was not referring to any person or organization making the claim, the claim will not be successful. However, this does not mean that if people did not name specific individuals, they will escape from this liability. In any case, NCSBN decided that the defamatory statement was referring to the claimant even though his name is not mentioned²⁷. This is because there are strong features that refer to the claimant in the defamatory statement. The court also said that the average person who read the statement would

²⁶ Collins, Matthew. *The Law of Defamation and the Internet*. Publisher. (Oxford University Press, 2001). 312-333

²⁷ National Council of State Boards of Nursing. *White paper: a nurse's guide to the use of social media*. (Chicago: National Council of State Boards of Nursing, 2011)

have been felt that the statement refers to the claimant. In a case, the court found the claimant that limits and had not been named, the description was so detailed and the resemblance was so strong that a reasonable person reading the article who knew the claimant would “assume” that the article was about the claimant)²⁸.

Distinguish cases of Scott-Bayfield with this situation are following: If the parties can claim showing that the statement refers to other people who resemble the claimant, the claim of claimant may be waived by the court, particularly if the person who resembles claimant has good faith by allowing a written statement about himself²⁹.

2.6.3 Do statement that has been published are up to third party knowledge?

For a successful defamation claim, it should also be issued or reached to the third party. If it is brought to claimant without being heard by any other person, the claimant cannot make in court. Similarly, when the claimant may know (not possibly foresee) that whatever is published in any form or any other publication is about him³⁰.

2.7 Types of Defamation Laws in Malaysia

2.7.1 Slander and libel

In Malaysia, the law draws a distinction between slander (defamation) and libel. Because the printed word has a much broader extent, libel is generally regarded as the most serious offense. For the same reason, defamatory statements communicated through modern mass media

²⁸ Gillooly, Michael. The law of defamation in Malaysia. (The Federation Press, 2008). 131-143

²⁹ Scott-Bayfield, Julie A. Defamation: law and practice. (FT Law & Tax, 2006). 124-136

³⁰ Collins, Matthew. The Law of Defamation and the Internet. Publisher. (Oxford University Press, 2001). 312-333

such as radio or television, are usually classified as libel, even if they are not words of written in the strict sense³¹.

2.7.2 Reputation against feelings

In the broader context of the legislation, they are commonly known as libel laws. An important distinction can be made between laws whose purpose is actually to protect the reputation, defined as the esteem in which other members of the company take the person and those whose aim is rather to prevent attacks the feelings of a person, regardless of whether the social position of that person is likely to be reduced. The key difference lies in the fact that the laws seek to protect the feelings, try to protect something that has a purely subjective³². There is no external factor to prove if someone was actually injured by a note - the only evidence available is the testimony of the person itself about his feelings.

By cons, reputation is an objective concept: it is possible to prove the damage inflicted on someone's reputation due to external factors. For example, a company can prove that its profits fell due to the publication of a false accusation regarding, or an individual might have demonstrated lost friends providing angry letters from these people. Laws that protect the feelings put the plaintiff in a position of strength - all that person has to do is persuade the court that the statement in question was offended and it will be virtually impossible for the defendant to provide evidence of otherwise. Inevitably, such laws are frequently used by powerful figures to attack those who criticize³³.

³¹ National Council of State Boards of Nursing. White paper: a nurse's guide to the use of social media. (Chicago: National Council of State Boards of Nursing, 2011)

³² Buang, Salleh. Law of defamation in Malaysia and Singapore. Publisher. (Central Law Book Company, 2005). 27-35

³³ Jones, Thomas David. Human Rights: Group Defamation, Freedom of Expression, and the Law of Nations. (Martinus Nijhoff Publishers, 2005). 197-215

In order to ensure the existence of an open debate essential for there to be democratic, many countries have abandoned laws that sought to protect the feelings in favour of true laws on reputation. This does not mean that individuals have the possibility to sue statements that offend. However, the plaintiffs will demonstrate that the statement in question has reduced beliefs that other people have on them to succeed. Whether a law protects reputations rather than feelings, it is necessary to make a concrete analysis of the text and the implications of a statute. In many cases, a careful interpretation of the terms of the law provides the answer, and then in other cases, it will be necessary to consider how the law is applied in practice. The terminology used in national laws varies widely in the practice and determines what type a particular law will not always belong obvious immediately. The term 'honour' recurs frequently in certain national laws instead the 'reputation'³⁴.

2.7.3 Civil defamation against criminal defamation

In Malaysia, defamation is both, a civil wrong and a criminal offense. The distinction between civil and criminal laws on defamation reflects the wider division between civil law and criminal law in all developed and legal systems. Criminal law deals with acts that are generally assumed to affect the public interest as a whole, such as assault or theft. While such acts may take place between two individuals, they are considered a threat to all society to the extent that everyone is at risk of being attacked or robbed if type of action is not sanctioned. Usually authorities carry plaintiff behalf of the public, and use of public funds. If convicted, the defendant must compensate the community by paying a fine to the state, shall be punished by a sentence of prison or undergo other types of sanctions.

³⁴ Gillooly, Michael. The law of defamation in Malaysia. (The Federation Press, 2008). 131-143

On the other hand, civil law involves disputes between private individuals or organizations. It covers issues such as contracts, property, work relationships and family disputes, which all are considered issues involving only the concerned individuals. Persons involved in a dispute civil law can be brought before a court, but they must do so at their own costs. The purpose of civil law is not to punish the company name, but to redress unduly harm inflicted on the injured party³⁵.

The civil courts may impose compensation but cannot give fines or impose prison sentences. Criminal law and civil law are not mutually exclusive categories; something that is prohibited by the criminal law may also be considered a tort in civil law, and vice versa. Aggression is usually considered as a criminal offense but many legal systems provide all the same civil law remedies to allow the recovery of private losses resulting assault, such as medical expenses or loss of profits³⁶. Criminal laws on defamation are increasingly seen as an unjustifiable limitation to freedom of expression and for this reason are rarely or never used in the majority of today's democracies. From few years, a number of countries have decided to formally abolish their codes of criminal defamation³⁷.

2.8 Effects and Laws Governing Defamation in Malaysia

In the history of the development of national legislation, Malaysia is no exception to face defamation case. Claimed defamation cases in the courts of Malaysia are mainly categorized as tort offense. Defamatory libel cases presented by Black Moses against the author of the book

³⁵ National Council of State Boards of Nursing. White paper: a nurse's guide to the use of social media. (Chicago: National Council of State Boards of Nursing, 2011)

³⁶ Buang, Salleh. Law of defamation in Malaysia and Singapore. Publisher. (Central Law Book Company, 2005). 27-35

³⁷ Flaherty, Gerald A. Defamation Law in Malaysia. (Bar Foundation, 2004). 43-56

“The Challenge - Who’s Fighting Who” are some of the defamation case received wide coverage³⁸. Another defamation case is a case involving Anwar Ibrahim, saying that the charges levelled at him is simply slander. Defamation is a serious offense. In Islamic history, the events shown in the story of Sayyidatina slandering Aisha (RA) who was defamed by Safwan bin Mu'attal. In this case, while Sayyidatina Aisha own, as victims who bear the shame defamation, his Prophet, the husband also bear disgrace and shame in front of the public³⁹. Effect of defamation had caused him confined to public consultation while praying to Allah SWT to be true Guidance for conserving the disgrace.

From the point of etymology, the word slander is a derivative (Masdar) to root fatana, which is derived from Arabic. Son of al-Arabi and al-Azhari was of the view that defamation in language is a test, trials, and inspection. "Temptations" also means test or torture by fire, stunned or mesmerized by something; ecstasy with something; mental disorder or thought; torture, and distraction. Meanwhile, defamatory meaning alleged Hall (news, stories, etc.) that was innovated (far-fetched) to worsen person⁴⁰. So, weight matters defamation cause defamation case linked to hudud laws, known as qazaf crime. In fact, this crime category is fixed and cannot be given ample discretion to the judge in determining the kind of punishment. By 'Abd al-Qadir' Awdah, defamation can be divided into two types, namely the division based on the type of punishment.

³⁸ Jones, Thomas David. Human Rights: Group Defamation, Freedom of Expression, and the Law of Nations. (Martinus Nijhoff Publishers, 2005). 197-215

³⁹ Amponsah, Peter Nkrumah. Libel Law, Political Criticism, and Defamation of Public Figures. (LFB Scholarly Pub., 2004). 64-82

⁴⁰ Morris, Clarence. Modern defamation law. (Bar Association Committee on Continuing Professional Education, 2004). 31-46

The first is qazaf, the hudud, punishment against perpetrators, which was 80 strokes of the cane, and the second is ta'zir qazaf, which is punishable⁴¹.

2.9 Legal Implications in Libel, Slander and Defamation

Legal implications in libel, slander and defamation can be better understood with the help of an example from Malaysia. Suppose a person accuses another of having done something no other evidence than the accuser's imagination. Is this a libel, slander or defamation? Well, let's see: The injury is when the word or deed giving publicity is injured dignity, honour or reputation of another person. Similar definition can be attributed to defamation, while slander nuance (public discredit someone doing something against their good opinion and reputation) is that defamation in which there is expressed intention of damaging the reputation of another⁴². For there to be defamation, it is not important whether the facts have been true or not, since what matters is that the intention to go public has been to hurt the other person. Thus, for example, the allocation made style infidelity, prostitution or denigrates someone else. Slander goes further because it is falsely attributed to another crime (something very concrete and outlaws) knowing that people have not done.

What action should be insulted or defamed? Ballot is a very difficult, no doubt. Virtually there is no defence for receiving the injury. In such cases, it seems over the burden of proof and has to provide the insulted himself, that is, besides who insult you have to prove that the insult is a lie. This results in a feeling of frustration, anger and helplessness, enormously damaging. The slanderer has got what he wanted.

⁴¹ Jones, Thomas David. Human Rights: Group Defamation, Freedom of Expression, and the Law of Nations. (Martinus Nijhoff Publishers, 2005). 197-215

⁴² Holst, Frederik. Ethnicization and Identity Construction in Malaysia. (CRC Press, 2012). 123-126

What should be the attitude of the listeners of the injury? In theory, it should lean toward the injury, since by definition no evidence of the accusation is made. Right is pity the injured, neglected to support him and he has insulted. But to think that all people act righteously would be too naive, if not pure stupidity. When human love, people spread rumours, fabrications, add scraps of harvest, fanning the embers of an old grudge being bearer of good (bad) news⁴³.

Slander is like counterfeit money. Many had coined the unscrupulous circulate. The injuries have a great advantage over the reasoning and are to be accepted without proof of a multitude of readers. The popular "wisdom" consoles consciences with that of "where there's smoke ..."⁴⁴. Halpern adds that it is between those who work outside the moral a group of individuals who choose equidistance⁴⁵. There are those who say "I do not get, I am a friend of the two and I will not be me who say who is right". Here, perhaps unwittingly, is giving validity to defamation, giving credibility to the insulting and therefore really positioned for the slanderer.

2.10 Malaysian Defamation Cases focusing on Internet, Blogs and Social Media

There are several forms of defamation in Malaysia; virtual writing can be an example. Among them is like writing a blog, website, social media that is Facebook. Forms of communication developed by the structure of language have sociolinguistic values that are influenced by elements of culture, gender, social context, and social class⁴⁶. So, no wonder if the statements smack of libel or gossip often appears in the current cyber writing, especially in

⁴³ Flaherty, Gerald A. Defamation Law in Malaysia. (Bar Foundation, 2004). 43-56

⁴⁴ Holst, Frederik. Ethnicization and Identity Construction in Malaysia. (CRC Press, 2012). 123-126

⁴⁵ Halpern, Sheldon W. The law of defamation, privacy, publicity, and "moral rights": cases and materials on protection of personality interests. (Anderson Pub. 2001). 143-158

⁴⁶ Rolph, David. Reputation, Celebrity and Defamation Law. Publisher. (Ashgate Publishing, Ltd. 2008). 97-121

entertainment, as authors make writing as a one-dimensional space to express their views and personal opinions, which are necessarily influenced by the sociolinguistics elements.

2.10.1 Case of Writing Blog

One of the hottest issues of cyber defamation in 2010 was the writings of a blogger who calls himself Aduka Taruna. Writings enraged enough to have many parties and are involved in the death of the late Sultan of Johor, Sultan Iskandar who died on January 22, 2010 at the age of 77 years⁴⁷. Although the bloggers who submitted himself, he will be charged under Section 233 (3) of the Communications and Multimedia Act 1998, and if convicted could be fined RM50,000 or imprisonment not exceeding one year or both, in addition to a further fine of RM1,000 per day during the offense⁴⁸. Aduka cadets with melulunya had been cursing and insulting the departed who were just died⁴⁹. Although he issued an apology on his blog itself, that error has been committed cannot be closed and generally accepted that most of the support that he received on the punishment he deserved. This shows clearly the proverb, "overshoot boat may be moved, said overshoot, bad consequences".

2.10.2 Case of a Website

There are several examples of defamation contained in such cyber writing website in Malaysia. Writing is titled 'EMPOWER promises' thousands sandals response 'to Blair', i.e. Indigenous Organization Perkasa Malaysia strongly objected to the invitation of the former President of England Tony Blair by Success Resources Company, to give a talk at a business congress in the upcoming Putrajaya. It is the role of Blair in support of military occupation in

⁴⁷ Rolph, David. Reputation, Celebrity and Defamation Law. Publisher. (Ashgate Publishing, Ltd. 2008). 97-121

⁴⁸ Graham, N., & Moore, P. The Dangers of Facebook. (Stud BMJ, 2008). 8: 10, 354-355.

⁴⁹ Evans, Keith R. The law of defamation in Singapore and Malaysia. (Malayan Law Journal, 1988). 135-139

Iraq in 2003, led by the United States. Therefore, to reflect the seriousness of Perkasa protest against Success Resources, the author of this article has included a quote that smells defamatory attack on Blair's personal.

Based on this passage, the author has labelled Tony Blair as war criminal is based on evidence of his involvement in support of the U.S. military occupation in Iraq in 2003. This is a thoughtful speculation as writer only draw conclusions based on one perspective only. Furthermore, this passage can affect the image of the leader, thus driving toward negative thoughts among the readers. For example, this gives rise to speculation that the Westerners cruel. Right now, not all western people are so; they first engaged in global security settings organizations and human rights organizations from Malaysian community⁵⁰.

However, absolutely no doubt that Blair was involved in the U.S. military occupation in Iraq, but that action had to be done on the basis of national security for the sake of politics that leads. Furthermore, the motif Company Success Resources invited Tony Blair to Putrajaya is to give a lecture in conjunction with the congress business, which can help the country's economic development and has nothing to do with political issues⁵¹. Therefore, this passage is an example of writing in cyber defamation, since it was written based on purely emotional factors, which can affect an individual image, and give rise to negative speculation among readers.

2.10.3 Cyber Defamation in Writing

At present, the issue is not only defamatory nature of conversations between the two parties, but also in writing. For example, in mass communication, particularly in the blog also, there is slander. Blog 'Raja Petra', for example, not only has an impact on readers who visit his

⁵⁰ Graham, N., & Moore, P. The Dangers of Facebook. (Stud BMJ, 2008). 8: 10, 354-355.

⁵¹ Ossian, Kathryn L. Legal Issues in Social Networking. (Institute of Continuing Legal Education, N.D.). 1-9

blog, but also had a negative effect on Malaysia. Where the least, what is written by irresponsible people can destroy long established unity at different times. Defamation is an act of the damned and is reprimanded by any religion. Allah says, which means: "O you who believe, if a wicked person comes to you with any news, then the questionnaire (to determine) the truth, lest ye harm people with unwanted things, and afterwards you (about) to cause you regret the things you do" (Surat al-Hujurat, verse 6)⁵².

This passage gives the impression that every word that is delivered to be scrutinized and examined in advance so that the truth can be ascertained and newspapers do not contain defamatory. This is to avoid the adverse effects that would befall on an individual or member of the community. Prophet Muhammad also said: "Not in heaven who loves to slander" (Hadith narrated by Bukhari and Muslim)⁵³. Tradition, the Prophet shows that defamation is a great sin and who they have, they cannot enter in heaven. Thus, Islam forbids and prohibits the hard act of defamation. Slander is a very bad effect and can be harmful to the individual, family, community or country.

2.11 How to Deal with Online Defamation Policy in Malaysia

With the era of the Internet, policymakers not only had to say goodbye to their privacy, but also had to accept a fact beyond dispute: anyone can get him into trouble. The voter disappointed, a political opponent incorrectly, the scoundrel on duty, the one that has not been done a favour... anyone can defame anyone's name with impunity behind the most complete anonymity. The places where every day these episodes happen are many: internet, forums, Q &

⁵² Ossian, Kathryn L. Legal Issues in Social Networking. (Institute of Continuing Legal Education, N.D.). 1-9

⁵³ Rolph, David. Reputation, Celebrity and Defamation Law. Publisher. (Ashgate Publishing, Ltd. 2008). 97-121

A sites, blog comments, social networks... Especially in this period, in which the politicians are the sacrifices of the whole system, it is easy to lose one's reputation.

If people do a good thing, positive word of mouth is slow to spread, but if they make a mistake (or anyone presumes that they did), negative word of mouth spreads with frightening speed. Who would give their vote to a politician mentioned evil on the Net? Nobody would. So how defamation online is combated. To cope with these painful incidents in recent years, Malaysian companies that have arisen through the joint work of lawyers and experts in SEO (Search Engine Optimization) has been able to limit the damage caused by the defamation on the internet, blogs and social media⁵⁴. In general, the approaches to be adopted are essentially two:

2.11.1 Technical Approach

An expert positioning in search engines (SEO) produces huge amounts of material containing people's name so that the sites they defame be thrown in the back pages of Google and the likelihood that someone will find them are reduced drastically. In fact, the majority of users do not go beyond the second page of Google and very few exceed the third.

2.11.2 Legal Approach

The technical approach, however, is not conclusive because only alleviates the problem. The best way to clear every negative comment of internet, blogs and social media is through lawyers. These contact the website owners and ask to remove the defamatory statements. If they refuse they are threatened legal action, if the junk and still they go to court.

⁵⁴ Rolph, David. Reputation, Celebrity and Defamation Law. Publisher. (Ashgate Publishing, Ltd. 2008). 97-121

2.12 Avoid Political Slander, Revenge

The lawsuit-sued involving politicians are seen experiencing a sharp increase in the past five years that could undermine democracy. All politicians have to solve political problems through political criticism approach without involving legal action. Politicians must accept the risk and criticism from any party and should defend stance through thoughtful argument. Connection with that, some people takes advantage of the legal approach to prevent people from giving criticism freely, thus preventing the process of democracy. According to current trends, politicians are to prevent the democratic process. There are those who try to use the law to restrict freedom of criticism. This could retard the democratic system in the country.

Research shows that many politicians involved in the legal action and a suit of millions of dollars. Most are involved in defamation suit. In serious cases involving defamation, politicians can take legal action after giving the parties an opportunity to make defamatory apologize. If the opportunity is given, but they refuse and do defamation seriously, government of Malaysia can take legal action by filing a lawsuit. Taking legal action against the defamation case is a good thing in order to protect the credibility and integrity of the politician. However, politics in this country is seen to show political slander and hate. Taking action to sue or laws related to defamation cases that's fine, but do not make it as practice and culture, besides the country, it involves political slander and political revenge⁵⁵.

2.13 Comparison between Australian and Malaysian Defamation Law

Comparison between Australian and Malaysian defamation laws can be better done with the help of examples and cases.

⁵⁵ George, Patrick. Defamation Law in Malaysia. (LexisNexis Butterworths, 2011). 234-261

2.13.1 Case of Defamation on Facebook against the centre of child's studies

A Malaysian court has sentenced a man to pay 100,000 ringgit (about \$ 31,000 or € 23,000) for defaming via Facebook to the training centre where his son was studying⁵⁶. It was reported by local media. The penalty imposed by Leong Yook Kong for spreading rumours of corruption on the centre, where his son was studying, lower mechanical after stopping an examination of the social network. Leong said that the centre was guilty of fraud and corruption in their Facebook profile, so the court has sentenced the centre to compensate for the damages caused. According to official data from 2010, Malaysia has 16.9 million Internet users (64.6% of the total population) and 7.4 million phone users of third generation (28%)⁵⁷.

2.13.2 Case of An Australian sues Twitter for defamation

An Australian man began legal action against Twitter after he was wrongly accused in the social network offensive blogging. Joshua Meggitt's lawyers filed the defamation complaint against Twitter, and looked for payment for damages and remove the updates pertaining to him in the social network. Observers believe that the case could force social networking sites to reconsider its future in Australia, or push lawmakers to change the laws against defamation in the country. The tweet was originally published in November by the Australian writer Marieke Hardy, and it contains a link to the blog of Hardy, where Meggitt accused of writing offensive things about her. The blog contains a series of personal attacks against Hardy⁵⁸.

⁵⁶ Dolan, A. Captured on Facebook: the food-fighting nurses at hospital where 1200 died. (Mailonline, 2010)

⁵⁷ George, Patrick. Defamation Law in Malaysia. (LexisNexis Butterworths, 2011). 234-261

⁵⁸ National Council of State Boards of Nursing. White paper: a nurse's guide to the use of social media. (Chicago: National Council of State Boards of Nursing, 2011)

The update with the link was retweeted several times by some of the 61,000 followers of Hardy⁵⁹. Meggitt's lawyer, Stuart Gibson, described his client as "a music journalist and family man" whose priority is that the tweets are deleted. He stated that there is no difference between that Hardy published a link to a blog where he made his accusations, without explicitly naming Meggitt in his Twitter account. Gibson said the two sides reached to an agreement, but declined to confirm media reports that indicated that Hardy Meggitt paid 16,000 U.S. dollars⁶⁰. If Meggitt wins libel case against Twitter, the payment could be higher.

Defamation law in the Australian state of Victoria imposes a maximum fine of 335,000 U.S. dollars, but Gibson refused to comment on whether his client will seek the widest possible. Gibson said his client did not join Twitter, and did not accept their terms of service, which state that "under no circumstances will Twitter be liable in any way for any content, including but not limited to errors or omissions in any content, or any loss or damage of any kind as a result of any content posted, emailed, transmitted and made available through its services or transmitted anywhere. It means that if people use Twitter and publish something defamatory, they agree that Twitter is not responsible. The terms and conditions are very explicit. If people are not users, they are not obligated to them⁶¹.

Peter Black, a professor at the law school of the Queensland University of Technology, believes Meggitt had a chance of winning his case against the company. He believed that they have a reasonable chance of success. The content itself was clearly defamatory, it was the first time someone test the scope of defamation law in Australia against a social networking

⁵⁹ National Council of State Boards of Nursing. White paper: a nurse's guide to the use of social media. (Chicago: National Council of State Boards of Nursing, 2011)

⁶⁰ Dolan, A. Captured on Facebook: the food-fighting nurses at hospital where 1200 died. (Mailonline, 2010)

⁶¹ Dolan, A. Captured on Facebook: the food-fighting nurses at hospital where 1200 died. (Mailonline, 2010)

company. It is questionable, if not probable, that have limited defences that do not extend to those platforms, which would lead to the situation where people have a site, like Twitter or Facebook, legally liable for defamatory comments that users can post. If Twitter is found responsible for defamatory content posted on its website, other social networks reconsider their future in the country⁶².

⁶² George, Patrick. Defamation Law in Malaysia. (LexisNexis Butterworths, 2011). 234-261

Chapter III – Methodology

3.1 Introduction

This chapter seeks to explain the research philosophy and approach that have been adopted for the present research and specify the rationale for these choices. The research methodology is an overview of all the methods and research designs, which have been used in the research to get the answers of research questions. Methodology is the philosophical source on which the studies that was performed and assessed which can guide to obtain the research aim⁶³. The common theories of research approaches, research approach; data collection approaches and research tools have been discussed in this chapter.

3.2 Research Method

Social research methods can be broadly categorised into two distinct strands - qualitative and quantitative - with both of these methods having their own ontological, epistemological and methodological considerations and each forming a distinct type of research strategy. The research methods that will be used in this research method are quantitative research and qualitative research which will be the practical part of this thesis. There are different methods of research, like surveys, case studies and experiments. In case studies, research is done through different literatures. There are two ways to get information by survey, using the questionnaire or interview. The questionnaire is a method and / or technique that use an instrument or printed

⁶³ Kothari, C. R. Research Methodology: Methods and Techniques. 2nd Edition. (New Age International, 2009). 108-112

form, designed to get answers about the problem under study where people get information about the variables to be investigated⁶⁴.

3.3 Data Collection

According to Panneerselvam (2004)⁶⁵, data is collected in two different ways, from primary sources and secondary sources. The primary is that information obtained through direct contact with the subjects of investigation. It is done through observation, interview and questionnaire. The secondary data concerns obtaining information through documents, publications, abstracts etc to do research. The collection of data relates to the use of a wide variety of techniques and tools that can be used by the analyst to develop systems of information, which may be interviews, surveys, questionnaires, observations, flowcharts and dictionary data.

In this research, primary method of collecting data has been used. Data has been collected by using case studies. Different articles published by health professionals in books and magazines have been reviewed and electronic information has been tracked by internet.

Searching has been done by using following keywords: defamation, defamation law, defamation law in Malaysia, development of Defamation law in Malaysia, defamation law in Australia, Defamation law focusing on internet, blogs, and social media.

3.3.1 Case Studies

The case study is a research tool or method originating from medical and psychological research. Case studies include a variety of pressure groups as peace movements, social

⁶⁴ Kumar, Rajendar. Research Methodology. (APH Publishing, 2011). 134-139

⁶⁵ Panneerselvam, R. Research Methodology. (PHI Learning Pvt. Ltd. 2004)

movements, women's rights, exiles, international treaties and right-wing extremist groups. The issues addressed include the relationship between public and private spaces in the context of political activity, the relationship between social change and change in the family, and the relationship between the generations in terms of policies and processes that offer motivation for an individual to participate in social movements. This technique attempts to contribute to the paradigm shift in research and social movement. According to Kumar (2011), it is a full review or intense facet, an issue or perhaps the events that take place in a geographic framework over time⁶⁶. Others refer to a review of a case in action. Many others define it as well, but everyone agrees that research is a process-based, systematic and profound of a particular case.

3.4 Data Analysis

Data analysis of the survey aims at detecting groups highly related variables. For this, different tests are used. Descriptive Analysis: helps observing the behaviour of the sample under study, through tables, graphs. The results included in the sample are summarized in a data matrix $N \times M$, where N is the number of analysis units used (number of cases) and M is the number of characteristics of such units, the units of which have information. Exploratory Analysis: the exploratory aims to analyse from a deep and growing data for working inductively, reaching an adjusted model of the data⁶⁷. In this research, all the gathered information has been analysed to get the answers.

⁶⁶ Kumar, Rajendar. Research Methodology. (APH Publishing, 2011). 134-139

⁶⁷ Panneerselvam, R. Research Methodology. (PHI Learning Pvt. Ltd. 2004)

3.5 Limitations of the Research

The focus of this research is not descriptive and sought to examine defamation law in Malaysia focusing on social media, internet and blogs. Its major limitation is that there is no primary source of information. The gathered information just tells about the situation, not all other factors related to it. The main contribution of this research is that people can come to know about the defamation law in Malaysia and concepts related to it.

Chapter IV – Results and Discussion

4.1 Introduction

This chapter aims to analyse the collected data and explain the analysed results. Within this chapter, results and discussion will be done to look at the answers of the research questions. All the research questions have been answered properly. This research can be helpful in understanding defamation law in Malaysia, mainly focusing on internet, social media and blogs.

4.2 Defamation and Its Effects in Malaysia

It has been analysed that defamation is not only an act of the damned and accursed by God, but also a bad effect on individuals and society. Among the disadvantages of the effect is to make the defamation and insulting a person. Good name and a face of an individual may be contaminated or scratched when there is slander levelled against him which could embarrass him. It can thus cause an act of hatred and hostility toward the victims of defamation. With this, the individual will not only face insult and oblique views but also the reputation and credibility will be questioned. Between the onset of impact domestic problems resulting in divorce due to bad stories spread through defamation. In addition, defamation may also affect the victim rice cooker and employment or livelihood of the individual.

Defamation can also indirectly cause someone to suffer from emotional and psychological problems as they arise in stigma, negative views and prejudices against him. Without faith and a strong and resilient, a person will be gripped by a sense of extreme sadness and depression to run or isolating themselves from society. In more severe conditions, the victim may experience agoraphobia, which is a problem when the sufferer to experience fears in public

open place. Not only that, defamation is one thing that can ruin the brotherhood and unity. The effect of the act is not only detrimental to one or two, or even cause animosity, antipathy, and loss of love, respect and trust among the people. When the spirit of brotherhood and then fade away and pulled happiness and sweetness of community⁶⁸.

In addition, defamation is able to threaten national security when the name of the country affected. Elements capable of causing widespread defamation, balance national security of the country and thus cause trouble threatened. When misunderstandings arise due to defamation as racial hatred and religious provocation, critical atmosphere could trigger war and bloodshed. In addition to the adverse effects of social defamation institutions, libel can also bring down the economy. The effect is to create an anti-national and form false and negative perceptions. This is an impact on the economy of Malaysia. Defamation is the act of being despised by any religion as bad impact. Hence, measures to address and curb this problem should be taken seriously and implemented properly.

4.3 Libel, Slander and Defamation in Malaysia

Slander is defined and penalized in Article 131 of the Criminal Code, which reads:

"Whoever falsely attributed to another a crime shall be punished with ninety to one hundred twenty day-fines". Libel is the form of crimes against honour; it is the false accusation of an offense which publishes action wing. It is an aggravated form of discrediting another, so that has to gather all the characters of the injury, which is the kind of crimes have the honour. It is legally protected - Honour is the individual's right.

⁶⁸ Deibert, Ronald. Access Denied: The Practice and Policy of Global Internet Filtering. (MIT Press, 2008). 241-245

Defamation according to Article 132⁶⁹: Whoever, with several people, together or separately, but so that people can spread the news, attributed to a person, an event, a quality or behaviour that might harm his honour or reputation, shall incur a penalty of freedom not more than two years and thirty to one hundred and twenty days' fine. If the defamation refers to the fact under Article 131 °, the penalty is imprisonment of not less than one nor more than two years and ninety to one hundred twenty day-fines. If the offense is committed through the book, the newspaper or other media outlet, the penalty is imprisonment of not less than one nor more than three years and one hundred and twenty to three hundred sixty-five daily fines. It is legally protected: It protects the honour of individuals and legal entities.

4.4 Defamation Culture: A Trend in Malaysia

Defamation is to make false and damaging statement about any person or even a lie without any truth. One of the purposes of defamation is to bring down self-esteem or reputation of a person. This is the main weapon to any interested parties. Defamatory culture seems to be a norm in Malaysian society ... well in life... Even with recent technological advances such as the common slander. Every time there is only slander thrown in the cyber world through social media sites such as Facebook, blog, Twitter and YouTube without any feelings of guilt by the author or the inventor defamation. When defamation is left unanswered, then the designers will strengthen the distribution defamation with various documents known to be false so that it continues to influence the reader's mind to accept defamation as the truth⁷⁰.

⁶⁹ Conway-Jones, Danielle M. Defamation In The Digital Age: Liability In Chat Rooms, On Electronic Bulletin Boards, And In The Blogosphere. (2005)

⁷⁰ Deibert, Ronald. Access Denied: The Practice and Policy of Global Internet Filtering. (MIT Press, 2008). 241-245

Cyberspace war triggered libel and slander trend is very difficult for law enforcement to take action immediately, because sometimes the culprit are difficult to identify with the various programs that can cover the trail perpetrator from being detected by the authorities. It is coupled with a variety of legal bureaucracy cyber complicated to many independent actors perform a variety of slander and provocation. Abuse of social media such as Facebook, Twitter, blogs and YouTube by Cyber soldiers of both parties as drug abuse by drug addicts, i.e. even often given a warning and no action taken, abuse will occur, no matter what action whatsoever⁷¹. Therefore how do people curb the spread and distribution of the occurrence of widespread defamation proceedings of the cyber worldwide? After analysing all the information from the literature, it has been understood that among the approaches that need is each Wi-Fi owner, broadband and smart phones based in Malaysia must register at the Malaysian Communications and Multimedia Commission so their owners can be monitored and adjusted⁷². Maybe it sounds quite draconian act, but it is expected to be cut defamation damaging the reputation of an individual.

4.5 Sources of Turmoil in Writing in Malaysia

Before peeling on the causes of defamation in writing directly, it is important for people to understand some of the key elements that form the basis of the meaning of this question. First of all, people must realize that writing starts from oral language as documented in the form of symbols that appear. Therefore, in answer to personal dismantling this, it is needed to examine the relationship between language and social communication, the entities involved in the world of writing.

⁷¹ Deibert, Ronald. *Access Denied: The Practice and Policy of Global Internet Filtering*. (MIT Press, 2008). 241-245

⁷² Conway-Jones, Danielle M. *Defamation In The Digital Age: Liability In Chat Rooms, On Electronic Bulletin Boards, And In The Blogosphere*. (2005)

As per the literature analysed, language has the properties 'show' (showing) more than 'tells' (Telling). It is proved that the language actually has a personal value or in a more simple approach, language is a medium for reflection of an individual's personality. This statement was supported by Ossian by saying that language is not just a tool to disseminate information, but is merely a reflection of acts and feelings and personal opinions⁷³. Thus, the personality of an individual which concerns matters of emotion, expression of feelings, and opinions will be stated when speaking. It will be taken in writing, especially in the form of personal writing space as diaries, blogs or journals.

In addition, the cyber world itself is the medium of communication services that are global and do not have any static owners. Internet, blogs and social media are global networks that links millions herd business, government agencies, educational institutions and private around the world⁷⁴. This shows clearly that, the internet simply does not have any owners or agencies on the absolute nature of the service. Thus, each individual load the website, blog or journal using the Internet network, are free and less bound by rules lines and protocols. This situation seems to be paving the way for cyber writers to be more involved and active in the expression of their opinions regardless of whether the writing defamatory or not, because the internet is a global communications medium and the cross-border and public nature.

In addition, in terms of cyber laws in the country, it is apparent that Malaysia still has no clear guidelines on defamation in cyberspace, especially in blog writing. This is very alarming because if observed carefully, blog certainly is one of the most public communication channel

⁷³ Ossian, Kathryn L. Legal Issues in Social Networking. (Institute of Continuing Legal Education, N.D.). 1-9

⁷⁴ Dolan, A. Captured on Facebook: the food-fighting nurses at hospital where 1200 died. (Mailonline, 2010)

users. Statistics shown by Deibert⁷⁵, it is clearly revealed that there are over 112 million blogs in the world with a figure of about 175,000 blogs created every day. However, more worrisome thing is that blogs are also a lot of communication channels and fitnah commingled. This is because; the blog is a communication channel that is personal and individual.

4.6 Legal Implications in Freedom of Speech, Internet and Defamation

Freedom of speech is among the important issues and often the debate in Malaysia. This is because although the federal constitution guarantees the right of every citizen of this, there are various laws and acts that restrict people from enjoying it. Malaysia Federal Constitution in Article 10 (1) (a) clearly states that every citizen has the right to speak and express their views openly⁷⁶. However, there are laws and acts directly denied the rights guaranteed by the federal constitution as the Internal Security Act (ISA), the Universities and University Colleges Act (UUCA) and the Media and Printing Presses Act⁷⁷.

Malaysia has a unique history in the issue of freedom of speech. If people compare the freedom of speech since the independence until today, they will find its graph progressively decreased. From time to time, governments curb freedom of expression. Its purpose is none other than to continue to maintain power. The hold order restraints faced by the people of Malaysia even though the country is 54 years of independence⁷⁸. No wonder why Malaysia is still the ruling party has ever changed since the first elections conducted in the country. In developed countries like the United Kingdom, the rule change is the norm and did not occur in chaos. In

⁷⁵ Deibert, Ronald. *Access Denied: The Practice and Policy of Global Internet Filtering*. (MIT Press, 2008). 241-245

⁷⁶ Buang, Salleh. *Law of defamation in Malaysia and Singapore*. (Central Law Book Company, 1992). 56-60

⁷⁷ Buang, Salleh. *Law of defamation in Malaysia and Singapore*. (Central Law Book Company, 1992). 56-60

⁷⁸ Baker, Roy. *Defamation Law and Social Attitudes: Ordinary Unreasonable People*. (Edward Elgar Publishing, 2011). 119-134

fact it caused the country continues to thrive by virtue of the political parties who are working hard to ensure that their programs can be accepted by the people.

4.6.1 Internet Revolution

Internet presence changes the current situation. If at one time, Malaysians only receive information from the side because there are strict restraints on the media. Broke the dominance of the internet for information is controlled by the government. Internet has also become a threat to the despotic countries. Information dominance by despots in countries such as the Middle East can be broken. Facebook, Twitter and blogging is to replace traditional weapons for winning the revolution. In Malaysia, it can be seen that how the Internet has changed the political landscape of the country. Tun Abdullah Ahmad Badawi had to be removed earlier than his reign as the attacks from the Internet, especially blog. Post GE 12 has changed the Internet in Malaysia. Today, many BN politicians also have a blog, Facebook and Twitter respectively. Now there are also many blogs from the support of the government.

This is a good development. That is, the debate in the Internet space in Malaysia is no longer dominated by a single party. Malaysia, especially young people, can evaluate the information they receive from the balance. Soon, traditional media such as Utusan Malaysia bias will be left as not in accordance with the times. Such releases can still survive today because there are still elderly people who read. If not do a drastic change in the pattern of news writing, not impossible newspapers like Utusan Malaysia would perish together the elderly in Malaysia⁷⁹.

⁷⁹ Baker, Roy. Defamation Law and Social Attitudes: Ordinary Unreasonable People. (Edward Elgar Publishing, 2011). 119-134

4.6.2 Be spurious culture

In their enthusiasm to fight in cyberspace, there are very few who abuse the Internet. Internet created to spreading rumours to discredit certain parties. There are also blogs using abusive and obscene to mock their opponents. Defamation designed to sensationalize their writing. More extraordinary, these people are proud of writing using abusive and obscene. A study of such writers usually does not dare to reveal their identity. They take refuge behind the nicknames of strange and sometimes funny too. To defend their political masters, defamation is the charge used to break the opponent's argument⁸⁰. The weirder and when such activities are allowed by political leaders who do not realize that one day they too will fall victim to these writers. Writers and obscene libel continued to be rampant. These activities may well be terminated because it has become a culture of some people. However, as smart-clever squirrel jumping will surely fall to the ground whatsoever. People will not be able to hide forever, nicks that cannot protect themselves forever. Power will not self umbrella forever.

4.7 Social Media and Legal Implications

These days, social media have acted as a means of connection with friends and as a new medium in the business world. Examples of social media tools include Facebook, Twitter, LinkedIn, and MySpace, blogs such as WordPress and Blogger, and Youtube and so on. Ease of social media has changed the way of lives today. However, write and publish articles without inspection alone can cause an individual or company involved in the lawsuit. Laws governing the act in one's life have been extended to cyberspace.

⁸⁰ Amponsah, Peter Nkrumah. Libel Law, Political Criticism, and Defamation of Public Figures. (LFB Scholarly Pub., 2004). 64-82

Formerly, the word and the article written without having checked before being published on social media as well as the responsibility for what is written on the internet is not an issue. However things changed at present. For example, to prove the guilt of slander, one must prove that there are publications to the public about berfitnah words, and now, with the nature of social media is very easy to publish an article, it becomes too easy to meet this element. What has to concern Internet users were restrictions and law enforcement on social media will become a threat to social media users. Users are asked to be responsible for everything written by them and everything written must be verified. Social media is no longer a free press and any written may have legal implications⁸¹.

⁸¹ Baker, Roy. Defamation Law and Social Attitudes: Ordinary Unreasonable People. (Edward Elgar Publishing. 2011). 119-134

Chapter V – Conclusion

Under the facts and evidence that have been described, it can be concluded that the writing is indeed condemned defamation of any religion in Malaysia. Defamation laws in writing mean those deliberately nasty accusations to smear someone. The Internet gives a new dimension to the means of expression. But if they open a communication space they also allow a vector of spreading rumours and possibly defamatory imputations against individuals and businesses. In addition, a virtual writing such slanderous blogging, website and social sites like Facebook and Twitter really happening in Malaysia. In fact, what more frustrating is that these acts are often done at present. In the context of defamation in Malaysia, law is divided into two, namely libel and slander. Libel is defamation in a permanent form as defamation in writing, drawings, photographs, sculptures, printed materials, and any instance involving the sense of sight, while slander is defamation in the form of temporary and usually refers to defamation in oral form such as speech or conversation. Among the causes identified are: the internet simply does not have any owners or agencies on the absolute nature of the service and did not have any clear guidelines about writing cyber law. In addition, the effects of which are available create disadvantages and humiliate someone, damaging brotherhood and solidarity, capable to threaten national security; the adverse effects of social institutions defamation, libel can also bring down the economy and scare foreign investors and businessmen to invest in Malaysia.

References

1. Amponsah, Peter Nkrumah. Libel Law, Political Criticism, and Defamation of Public Figures. (LFB Scholarly Pub., 2004). 64-82
2. Baker, Roy. Defamation Law and Social Attitudes: Ordinary Unreasonable People. (Edward Elgar Publishing, 2011). 119-134
3. Buang, Salleh. Law of defamation in Malaysia and Singapore. (Central Law Book Company, 1992). 56-60
4. Buang, Salleh. Law of defamation in Malaysia and Singapore. Publisher. (Central Law Book Company, 2005). 27-35
5. Collins, Matthew. The Law of Defamation and the Internet. Publisher. (Oxford University Press, 2001). 312-333
6. Conway-Jones, Danielle M. Defamation In The Digital Age: Liability In Chat Rooms, On Electronic Bulletin Boards, And In The Blogosphere. (2005)
7. Cooke, George Wingrove. A treatise on the law of defamation: with forms of pleadings. (O. Richards, 2003). 271-286
8. Cottrell, Jill. Law of defamation in Commonwealth. (Ashgate, 2005). 113-121
9. Deibert, Ronald. Access Denied: The Practice and Policy of Global Internet Filtering. (MIT Press, 2008). 241-245
10. Dolan, A. Captured on Facebook: the food-fighting nurses at hospital where 1200 died. (Mailonline, 2010)
11. Evans, Keith R. The law of defamation in Singapore and Malaysia. (Malayan Law Journal, 1988). 135-139

12. Faruqui, Shad Saleem, and Ramanathan, Sankaran. Mass media laws and regulations in Malaysia. (Asian Media Information and Communication Centre, 1998). 217-221
13. Flaherty, Gerald A. Defamation Law in Malaysia. (Bar Foundation, 2004). 43-56
14. George, Patrick. Defamation Law in Malaysia. (LexisNexis Butterworths, 2011). 234-261
15. Gillooly, Michael. The law of defamation in Malaysia. (The Federation Press, 2008). 131-143
16. Goddard, Wayne., & Melville, Stuart. Research Methodology: An Introduction. 2nd Edition. (Juta and Company Ltd. 2004). 98-102
17. Graham, N., & Moore, P. The Dangers of Facebook. (Stud BMJ, 2008). 8: 10, 354-355.
18. Halpern, Sheldon W. The law of defamation, privacy, publicity, and "moral rights": cases and materials on protection of personality interests. (Anderson Pub. 2001). 143-158
19. Holst, Frederik. Ethnicization and Identity Construction in Malaysia. (CRC Press, 2012). 123-126
20. Jones, Thomas David. Human Rights: Group Defamation, Freedom of Expression, and the Law of Nations. (Martinus Nijhoff Publishers, 2005). 197-215
21. Kothari, C. R. Research Methodology: Methods and Techniques. 2nd Edition. (New Age International, 2009). 108-112
22. Kumar, Rajendar. Research Methodology. (APH Publishing, 2011). 134-139
23. Liu, Huan., Salerno, John J., and Young, Michael J. Social Computing, Behavioral Modeling, and Prediction. (Springer, 2008). 138-143
24. Morris, Clarence. Modern defamation law. (Bar Association Committee on Continuing Professional Education, 2004). 31-46

25. National Council of State Boards of Nursing. White paper: a nurse's guide to the use of social media. (Chicago: National Council of State Boards of Nursing, 2011).
26. Ossian, Kathryn L. Legal Issues in Social Networking. (Institute of Continuing Legal Education, N.D.). 1-9
27. Panneerselvam , R. Research Methodology. (PHI Learning Pvt. Ltd. 2004)
28. Price, David., and Duodu, Korieh.. Defamation: Law, Procedure & Practice. (Sweet & Maxwell, 2004). 362-378
29. Recalde, Maria E. The need for a social media policy. (2010)
30. Rolph, David. Reputation, Celebrity and Defamation Law. Publisher. (Ashgate Publishing, Ltd. 2008). 97-121
31. Scott-Bayfield, Julie A. Defamation: law and practice. (FT Law & Tax, 2006). 124-136
32. Smith, Graham J. H. Internet Law and Regulation. (Sweet & Maxwell, 2007). 375-384
33. Smolla, Rodney A. Law of Defamation. (West Group, 1999). 79-84
34. Stuckey, Kent D. Internet and Online Law. (Law Journal Press, 2001). 246-253