



Film censorship in Malaysia: Key issues and challenges of the system

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ABSTRACT

The Malaysian film censorship system is “state-based” in which censorship of films is done by entities established under the federal legislation and operates within the purview of the Executive. Censorship of films in Malaysia is governed by the Film Censorship Act 2002 and the decision to alter or ban a particular movie is decided by the Board of Censors, Appeal Committee, and the Minister of Home Affairs. The Act came into force on April 1, 2002, repealing and replacing the Film (Censorship) Ordinance 1952. Censors use the Film Censorship Guidelines 2010 to supplement their powers when exercising their authority. No substantial amendments were made to the legislation since its introduction in 1952. Although Malaysia has a proud history of filmmaking, in the last few decades, film censorship has become much stricter, leading in some cases to inconsistent and seemingly harsh decisions. In fact, there have been persistent calls from the film industry to relax censorship rules for the Malaysian cinema to become more artistically vibrant and commercially viable; however not much has changed to date. This study identifies five key issues with regard to the design and implementation of film censorship and evaluates film practitioners’ opinions and experiences in dealing with film censorship to gauge the perception and experience of those most affected by the system. The five key issues are the ability and suitability of censors; matters taken into account by censors in applying the censorship guidelines; alteration to films and classifications; provision of reasons for censorship decisions and their subsequent appeals; and availability of judicial review. Ultimately this study recommends, based on the film practitioners’ experiences, proposals for reform in each of the areas.

Keywords: **Film censorship, Film Censorship Act, film industry, freedom of expression, media**

INTRODUCTION

Since the first local movie *Laila Majnun* produced in 1933, Malaysia's film industry has proudly produced a number of films that have received international recognition, as illustrated by the success of *Anak-ku Sazali* (1956) at the 4th Asia Film Festival in Tokyo in 1957 or more recently, *Bunohan*, which won the Network for the Promotion of Asian Cinema (NETPAC) award at the 2011 Taipei Golden Horse Film Festival. Notwithstanding such success, and always with notable exceptions worthy of praise (Abdul Latif & Abu Hassan, 2020), the current film industry in Malaysia is seen to be suffering from a crisis of declining film quality and variety, which is often linked to censorship, piracy, stereotypical storylines, and lack of originality. Compared to neighbouring countries such as Thailand, Indonesia, and Singapore, most of the locally produced films are not of international standard and their distribution is usually confined within the country.

A frequent criticism of the declining artistic quality and variety of local films is the censorship system. The censorship system in Malaysia is “state-based” in which censorship of films is done by entities established under legislation and under the purview of government ministries or departments. The censorship of films in Malaysia is governed by the Film Censorship Act 2002 and the decision to alter, ban, and classify a particular movie is decided by the Board of Censors, Appeal Committee, and the Minister of Home Affairs (MOHA). The Act came into force on April 1, 2002, repealing and replacing the Film (Censorship) Ordinance 1952. However, no substantial amendments were made to the legislation since its introduction in 1952 (except for few minor amendments and updates to the names and composition of entities involved in censorship). There have been persistent calls from the film industry to relax censorship rules and in response to this, in 2010, MOHA announced that it would consider the introduction of “industry self-censorship”, however nothing much has developed in furtherance of this idea.

Although there is a valid and obvious rationale for censorship to protect the community from offensive material (material that can cause controversy and protests, and films that encourage violence or immoral behaviour) (Ponnan, 2018), there are nevertheless concerns about the extent to which the censorship system unduly restricts the creative freedom of filmmakers.

A few examples are illustrative of the problems faced by the industry:

- a. The strictness and inconsistency of censorship is epitomised by the banning of Aziz M. Osman's *Fantasia* in 1992 because the film was found to promote superstitious belief, but the same Board allowed screening of foreign movies, and subsequently local movies, with similar themes and portrayals.
- b. The financial costs as exemplified by Amir Muhammad's *Lelaki Komunis Terakhir* and *Apa Khabar Orang Kampung* which were banned by the authorities, depriving the filmmakers from recouping production costs, and served as a deterrent to discourage other filmmakers from being more critical and experimental with their creative works.
- c. As for foreign examples, in 2010, *Black Swan* was refused approval due to its sexual content and in 2014, Hollywood epic *Noah* was banned for its religious content and depiction of the prophets. In 2019, Indian film *Kadaram Kondan* was banned for portraying the Royal Malaysian Police in a bad light within the storyline and *Dhadha 87* was in the same year disallowed for depicting a transgender character.

Malaysian filmmakers are thus not only struggling to compete with the influx of foreign movies and illegal downloads of films and piracy, but they also face the risk of their films being banned by the Board of Censors. Both are huge burdens on their financial livelihood.

Importantly, Article 10(1)(a) of the Federal Constitution states that every citizen has the right to freedom of speech and expression and there is a real issue whether the provisions of the legislation and the decisions made by the Board curtails this fundamental right. Indeed, this right should not be taken lightly as there is a long history worldwide of the development of the right to freedom of expression from such sources as the Bill of Rights (USA) 1791 (art 1), the European Convention on Human Rights (1950) (art 10) and more recently, the Human Rights Act UK (1998). All these legal documents concern the universal importance placed upon freedom of expression, which Malaysia has committed to since its inception over sixty years ago (Bingham, 2011; Loveland, 2018).

On the other hand, there are laws that have the effect of restricting free speech within Malaysia, and all these restrictions purportedly come within the permissible restriction on the right to free speech within the Federal Constitution (*vide. art 10(2)(a) and 10(4)*). Examples include the Official Secrets Act 1972 (Act 88), Multimedia and Communication Act 1998 (Act 588) and the Penal Code. The urgency of censorship issues in Malaysia is therefore critical. Despite this seriousness, there is little research on the issue. Most comments are found in media such as newspapers, magazines and websites and are typically confined to arguments for or against the censorship of films in general. The objectives of this article are to investigate the concerns and issues that arise from the design and implementation of the film censorship law in Malaysia and to propose changes to the system that are likely to improve the artistic vibrancy and commercial viability of the film industry in Malaysia.

LITERATURE REVIEW

This is purely an empirical socio-legal study where the main sources are the Film Censorship Act 2002, the Film Censorship Guidelines, and data from interviews. The central focus of the research is applicable by the law and regulations in action and their adverse effects on the industry. Moreover, as adverted to above, literature on film censorship in Malaysia from the legal-regulatory perspective is relatively sparse.

Wan Mahmud et al. (2009) presented a historical and theoretical approach to filmmaking and censorship in Malaysia, and how it is intertwined with the cultural norms within the nation. Rao (2013) was in support of film censorship in Malaysia, concluding that the censorship board must consist of those who are competent and have the right calibre to implement an unbiased level of censorship.

In comparing three Asian jurisdictions, Saw (2013) identified several problems and made suggestions of ways in which the jurisdictions of Australia, Hong Kong and Malaysia could learn from each other. In a more recent piece, Zahidul (2019) included the views of several stakeholders, although issues were not explored in detail with interviewees, whilst Saw (2020) commented on the main film censorship issues impacting the right to liberty of speech and expression guaranteed under Article 10 (1) (a) of the Federal Constitution. Further, in a recent study on film censorship, Sim (2021) explored the relationship between film violence and violent behaviour of youths in the context of film censorship in Malaysia.

MATERIALS AND METHODS

This research was undertaken using two methods. Empirical data was obtained from interviewing censors and industry practitioners, whilst legal data was obtained from library research. The researchers used library research to obtain the relevant literature

pertaining to related laws, policies, and practices on censorship. Semi-structured interviews were conducted with a member of the Board of Censors, the Secretary of the Board of Censors and the Appeal Committee to clarify on censorship principles and day-to-day operation. In this way, a number of key issues relating to the laws, procedures, guidelines, and processes were identified.

To confirm the key censorship issues identified through paper research which adversely affect the artistic vibrancy and commercial viability of the Malaysian film industry, ten in-depth interviews were conducted with selected directors, producers, exhibitors, and distributors who represent a cross-section of film practitioners in the country. These individuals were accessed through professional and academic contacts. They were then informed of the nature and purpose of the paper. The semi-structured interview method was chosen to capture a range of views and experiences from these film practitioners while maintaining some form of uniformity of issues between them. Seven interviews were conducted in person, each lasting between 35–45 minutes. These interviews were audio-recorded with the consent of the film practitioners and later transcribed for comparison and further analysis. Three interviews were done via e-mail due to restricted movement as a result of the movement control orders (MCOs) imposed to curtail the COVID-19 pandemic. As most of the film practitioner-interviewees have requested to remain anonymous, no references were made to any of their names throughout this paper.

RESULTS AND FINDINGS: THE APPLICABLE LAW, THE GUIDELINES AND THE PROCESS

The Film Censorship Act 2002 (Act 620)

The Film Censorship Act 2002 stipulates in the long title that it is to be an Act relating to censorship of films and matters related thereto. Its first effect, as stated in Part VIII is to repeal the Film (Censorship) Ordinance 1952 and dissolve the Board of Film Censors, the Assessment Committee and the Committee of Appeal established under that former law. This was to legally clear the way for the new Act's immediate operation.

Part II establishes the Board of Censors which consists of a Chairman, Vice-Chairman and not less than two other persons all appointed by the Minister responsible for censorship of films (s4). Clause 4 of the Schedule limits the term of appointment for a member to three years or less, Clause 6 allows the Minister in power to revoke an appointment without any reason whereas Clause 8 directs that a quorum of all meetings of the Board shall be three, meaning that a minimum of three members must consider each film submitted for censorship. There is a practice now in place to appoint members on a one-year contractual basis, renewed generally up to a maximum of five years, or when the appointee turns 65 years old. The member is required to be a Malaysian citizen, have mastery of the Malay language, and is encouraged to be proficient in English or one other language, especially the common languages spoken in Malaysia eg. Cantonese, Tamil, Mandarin. Generally, the Board consists of mostly retired civil servants who are familiar with government policies due to their long years of service.

Part III “Control of Films and Film Publicity Material” establishes the process for regulation of films in Malaysia. Section 9(1) stipulates that in the case of a film made or produced in Malaysia and intended to be exhibited in Malaysia, the owner of a film shall submit the film for censorship to the Board within 14 days of completion. Under s9(2), a person who contravenes s9(1) commits an offence and is liable to a fine or imprisonment or both.

When assessing a film, s10(1) empowers the Board to make one of three decisions. It may approve the film for exhibition without any alteration, approve the film for exhibition with alterations or refuse to approve the film. In the cases where the Board requires alteration, or refuses permission, it must furnish written reasons for its decision. If alteration is required by the Board, s11 allows either the Board or the owner of the film to make them. Section 15 empowers the Board to classify the film in such manner as prescribed. These classifications, prescribed under the Film Censorship Guidelines, are discussed below.

Part IV prescribes the appeal process for any film owner who is dissatisfied with any decision by the Board. Section 22 establishes an Appeal Committee consisting of a Chairman and Vice-Chairman appointed by the Minister, four ex-officio members and 13 other members appointed by the Minister. These appointees must be retired from the industry to prevent the possibility of conflict of interest. Clauses 4 and 6 of the Schedule contain similar rules on appointment and revocation to those of the Board. In practice, like members of the Board, members of the Appeal Committee are appointed for one-year contracts to a maximum of five years, and members include representatives from the police, Ministry of Home Affairs, Ministry of Communications, Ministry of Education and National Film Development Corporation Malaysia (FINAS). Many are retired public servants. There are currently two members of the Committee from the film industry, although none on the Board of Censors. (Secretary of the Board of Censors and Appeal Committee, personal communication, December 16, 2019). Further, clause 9 of the Schedule stipulates that a quorum for meetings of the Committee shall be six.

Section 21 allows the owner 30 days to appeal to the Appeal Committee and allows the owner to include written representations in the Notice of Appeal. Section 23 allows the Committee the power to confirm, vary or reverse the decision of the Board. By s23(2), the decision of the Committee shall be final and shall not be questioned in any court of law.

Part V grants special powers to the Minister. Most significantly, s26 allows the Minister to prohibit the permission to exhibit a film in his absolute discretion if it would be contrary to the public interest. Section 28 allows the Minister to exempt any film, including those sponsored by the Federal Government from the provisions of the Act.

Part VI “Powers relating to enforcement, seizure, arrest etc.” gives strong powers to enforcement officers or police for carrying out search, seizure and forfeiture operations, arrest, attendance, and examination. Notably, Section 48 directs that no decision of the Minister, Board or Appeal Committee shall be subject to appeal or review by any court on any ground, and in fact, there has never been any court challenge.

Film Censorship Guidelines 2010

The Film Censorship Guidelines were published in 2010 and again in 2011, in English and Malay. Although not formally made pursuant to Act 620, they best represent the censorship policy of the Government relating to the public exhibition and distribution of films in Malaysia. The Guidelines are divided into seven parts. In the introduction (on page ix), it is stated that the Board will evaluate films “in the best possible manner so that it will not restrict the creativity of the film maker and so that it could be interpreted and evaluated in the context of the storyline that is being conveyed.”

The Guidelines further state that the Board is prepared to offer pre-production advice including script and storyboard scrutiny and film makers have the option of submitting a film earlier during the editing stage for pre-screening. This policy indicates a potentially cooperative and proactive attitude of the Board that it is open to providing services in addition to its legislative mandate.

The introduction also introduces four significant areas for censorship: security and public order, religion, socio-culture, and decorum and morality. The guidelines then state (on page x) that they “have the objective of building the nation’s identity by depicting and displaying the noble values and good societal practices through the medium of film.” It demonstrates a firm belief in good values in society, a facet that can potentially be used to impose a firm hand when implementing censorship policy. All these parts of the introduction contain strong statements although they are not part of the substantive guidelines.

Part I contains the statement of “general policy” which includes six strong and clear policies with regards to protecting various facets of the Malaysian society. First, to protect the public from material that can induce them to engage in immoral activities that can threaten security and public order or promote ideologies contrary to *Rukun Negara* (the five principles and five objectives that are to guide Malaysia and its people to promote unity and success) (Faruqi, 2019).

Second, to protect the country from negative or anti-government sentiment, or material that discredits a government of another country. Third, to prevent films that promote deviationist teachings and degradation of any religion. Fourth, to preserve harmonious relations among the multiple races. Fifth, to preserve and develop national values and culture. Sixth, to avoid physical or moral loss caused by false claims or wild accusations in a film.

In the section “General Principles”, it is stated that a film should be widely distributed to viewers consistent with its theme and message and that adults should be given the freedom to choose any content so long as it is permissible and not potentially detrimental. However, it must be taken into account if film content is contrary to law, potentially detrimental to a target group or clearly contrary to public opinion. In such situations, films with content relating to sex, superstition, violence, and uninhibited lifestyles can be restricted.

In the following heading “Evaluation Policy”, it is highlighted that the Board needs to consider the type or genre of film and particularly the theme, message, lesson to be gained, potential influence on any age groups, glorification of or offence to any clan, race, religion, nation, or belief, and whether the film is suitable to the aspirations of the government and national vision.

Part II of the Guidelines (pp. 5–14) contains the substantive aspects of the four main areas of censorship. The overarching statement in Part II is to “preserve the harmonious relations among the communities and regions as well as to curb the expansion of negative influences...” (page 5). The first aspect in 2.1 “Security and Public Order” introduces 15 matters which “need to be given attention and scrutinized so that they do not create any controversy and doubt among the general public” (page 5) and include matters contrary to the Federal Constitution and *Rukun Negara*, criticism or negative impression of a government or leader, advocating violence, anarchy, promotion of social unrest, victory of evil, promotion of criminal offences including contravention of traffic laws, action causing serious injury or destruction of property, use of destructive weapons in a shocking manner, close-up of repeated violence against a person, torture of humans or animals, drug abuse, and absence of action by legal authorities.

In the next aspect, 2.2 “Religion”, two matters are highlighted as needing attention, being any teaching against God and religion and a confusing message and interpretation of *jihad* equating it with violence. Particularities are then given in 2.2.2 with regard to the Islamic religion so that 17 matters are listed that require attention. Paragraph 2.2.3 then identifies 36 matters that require attention with respect to polytheism, noting further that such portrayal is allowed if the objective is to redress the faith and prevent polytheism so that the character gains awareness and repents or suffers retribution.

Under 2.3 “Socio-culture”, it is recommended that a film has content reflecting the cultures and art of Malaysia and that a local film based on legends, myths, oral tales, and Malay folk tales are allowed so long as it does not glorify matters contrary to the Islamic faith. Further, there are 30 matters listed that require attention including negative content regarding the rulers or national issues, matters inconsistent with the Federal Constitution and *Rukun Negara*, unrestrained lifestyle, content contrary to religious teachings and culture, horror films, worship of the devil, mocking of Malaysian customs, cruelty to children, oppression of races or society, glorification of certain races, tribes and religions so that others are slighted, a Muslim man with earrings or tattoos, children using substances, inappropriate singing and dancing against backdrop of a mosque, any sexual part of the body or sexual activity or suggestion of the same.

In 2.4 “Decorum and Morality”, films with a theme of decorum or morality need to be given attention particularly in 11 areas that include a character committing a wicked deed, derision of the disabled, scenes of contemptible, discourteous, and despicable actions, uncivil and obscene language, disrespectful behaviour towards parents, senior citizens, women, children and the disabled, transgender behaviour, and polluting the environment with no bearing on the storyline. At 2.4.4, films that show universal noble values are recommended and 24 examples of noble values are listed including belief in God, mutual respect, love, kindness, honesty, a happy family, moderation, patriotism, and environmental conservation.

Part IV deals with the use of language in film. It states the dialogue that is obscene or coarse is discouraged, but that such language should be viewed in the context of the film. So is speech with negative meanings regarding religion, race, nation, customs and taboos, and there are listed 11 examples of prohibited words and phrases in the Malay language, 12 in the English language, 24 in Tamil and Hindi and nine in Chinese.

In Part V, it is stated that certain films are not approved for screening which include films that are:

- contrary to socio-culture or noble values
- seditious
- anti-religious
- insulting to the beliefs or customs of a particular community
- contradictory of the policies of the government
- displaying excessive violence and cruelty
- with an illogical theme or plot that may lead citizens astray and cause a poor perception of Malaysia
- showing a lack of respect of Malaysia as a sovereign nation
- smearing the image of Malaysia and its people
- contravening decorum and *Rukun Negara*

It is apparent that some of the elements in Part V overlap with those in Part II. It is unclear how these should interact and take priority given that Part II refers to many matters that may require attention, presumably meaning that censors are given discretion, whereas Part V enjoins censors to outright reject films should any of the elements of the theme or plot have any of the qualities referred to therein.

Part VII “Classification of Films” contains the classifications to which films can be categorised as enjoined by s15 of the Act (Table 1).

Table 1. Film classifications in Malaysia (Film Censorship Guidelines 2010)

CLASSIFICATION	DESCRIPTION
U	This category is suitable for viewing by all levels of society without any age restrictions. The film displays noble values, is decent, imparts positive messages and is entertaining.
PG 13	This category is suitable for viewing by those aged 13 years and above. Viewers aged below 13 years require the guidance of their parents or guardian. The film has some scenes of violence or horror.
18	This category is suitable for viewing by those aged 18 years and above. The film contains elements of violence, horror and sex that are not excessive or may touch on aspects of religion, socio-culture, and politics.

The process

The process of film censorship within Malaysia follows the procedures and mechanisms outlined above within Act 620. Notably, the process is the same for Malaysian and foreign films. In the case of a film intended to be exhibited or distributed in Malaysia, the owner shall submit the film for censorship to the Board. If imported, the film must be submitted within the time period previously specified by the Board, and if made in Malaysia, within 14 days of completion. Once it is received by the secretariat, the Chairman will convene a meeting of at least three members of the Board to consider the film and the Chairman will choose a panel appropriate for a film.

However, members are expected to be able to watch all types of movies, for example, although it is preferable that someone with a religious background be chosen to watch a film that touches on religion, this is not a necessity. Given there are a limited number of people that are members of the Board, it is not always possible to choose a panel ideally suited to the nature of the film (Member of Board of Censors, December 16, 2019). One of the three members will be the lead or head the panel and that person will write the report and submit it to the Chairman. After the panel watches the film, they will discuss the censorship and classification issues. For any scenes or dialogue that needs to be censored or muted, a clerk will record the views of the panel (Member of Board of Censors, December 16, 2019).

When assessing a film, the Board may make one of three decisions specifically; it may approve the film for exhibition without any alteration; approve the film for exhibition with alterations; or refuse to approve the film. It must furnish its decision in writing and in the cases where the Board requires alteration or refuses permission, it must furnish written reasons for its decision. If alteration is required by the Board, either the Board or with its permission, the owner of the film, may make them.

The Board may classify the film in such manner as prescribed under the Film Censorship Guidelines discussed above, into one of the three categories prescribed therein. If the film is approved, then the film owner must affix on the film the Boards' mark of approval as well as certificate of approval, classification given and the film owner's details.

For any film owner who is dissatisfied with any decision by the Board, they may within 30 days, appeal to the Appeal Committee. The owner may include written representations in the Notice of Appeal. A quorum for meetings of the Committee shall be six, although sometimes it can be more than that if more members are available and can include all 12 members if available.

After watching the film, Committee members will discuss the movie and decide, sometimes it will be a clear majority, but sometimes more closely decided. The applicant will usually be notified the same day or the next day (Secretary of the Board of Censors &

Appeal Committee, December 16, 2019). The Committee also has the power to confirm, vary or reverse the earlier decision made by the Board. The decision of the Committee shall be final and shall not be questioned in any court of law, however further appeal may be made to the Minister.

RESULTS AND FINDINGS: INTERVIEW RESPONSES, KEY ISSUES AND DISCUSSION

Five key issues pertaining to the Malaysian film censorship system were identified as potentially affecting the artistic vibrancy and commercial viability of the Malaysian film industry. These issues are as follows:

1. The decision-making entities
2. The matters taken into account by censors in accordance with the censorship guidelines
3. Alteration to films and film classification
4. Provision of reasons for censorship decision and the appeal against it; and
5. Availability of judicial review.

The issues are presented in the order in which film makers would encounter the steps in the film censorship process.

Decision-making entities

The issue of concern is the independence of the Board of Censors and the Appeal Committee in discharging their duties. As noted above, Clause 4 of the Schedule limits the term of membership of the Board and Appeal Committee to three years or less whereas Clause 6 allows the Minister in power to revoke an appointment without any reason. These clauses assign to the Minister too much power and may tend to influence the members to make decisions to improve their prospects of tenure.

A member of the Board interviewed for this study noted that Malaysia is more conservative than western countries and that the current system is responsive to the needs of Malaysian society in which certain matters are taboo in cinema, making vetting more closely monitored and controlled by the government justified. There would be too much of a risk of community backlash if a more liberal independent censor operated in Malaysia (Member of Board of Censors, December 16, 2019). Another interviewee thought that having an independent censorship body was a good idea, but not anytime soon, given that certain groups in Malaysia are still very conservative (Secretary of the Board of Censors & Appeal Committee, December 16, 2019).

All the interviewees were of the view that the composition of the Board of Censors should be representative of a cross section of society consisting of members of different backgrounds, gender, and age groups. Most of the interviewees also think that some of the censors should be individuals with knowledge and experience in filmmaking as well as the ability to appreciate the artistic values in films.

On the issue raised as to whether the film censorship and classification matters could be better handled by an independent entity, most interviewees agreed with this proposition. 80% of the interviewees were of the opinion that it should be done by an independent entity. A film producer cum director noted that if the Board of Censors are being funded by the government, there would be a tendency for political leaning and biasness. A senior film maker who has been in the industry for more than 55 years opined that the existing Board of Censors should be abolished all together and censorship should be left to the industry itself.

Matters to be taken into account by censors

Although the Guidelines encourage censors to consider various matters in making decisions, such as the theme or context of the storyline and public attitudes, these are not matters prescribed by law. Further, although the introduction to the Guidelines suggests the use of evidence from research and field experts, there is no system in place to make use of such materials or ascertain whether the Board or Appeal Committee does in fact ever make such use of it. In fact, no extensive research has ever been carried out to gauge community attitudes and standards on film censorship matters.

Most of the interviewees opined that artistic merits should be considered a key factor in determining censorship decisions whereby films with a high level of artistry should be allowed to be released although they may contain censorship elements prescribed in the Guidelines. The interviewees strongly support the idea that censorship of films should be made based on current community standards and tolerance as opposed to censors' subjective views, pointing out that "what the censor doesn't like, does not mean it is bad for the people!".

The Film Censorship Guidelines 2010

The 2010 Guidelines replaced the Film Censorship Guidelines 1993. Although the format and structure were changed in the update, much of the content was not, as outlined in the Film Censorship Guidelines 2010 discussed above. The 2010 Guidelines are problematic in various areas:

1. There is almost no guidance given as to the type of film contents which would be classified within each of the available classification categories thus creating uncertainties for filmmakers.
2. Although the Guidelines specifies the type of content that require censors' scrutiny, there is no indication given when specific examples would be allowable and when they would be banned.
3. There is no reference to context, degree, or realism in the portrayal of censorship elements as being relevant considerations in decision-making; and
4. Most of the provisions are vague and open to a wide range of interpretations depending on the subjective view of the censors.

Interviewees described the Guidelines as "vague", "general", "restrictive", "confusing", "outdated" and "detrimental to the creative side of things". They were unable to know with certainty what film-contents would run foul with the Censors when they submit their films for censorship. This made production planning extremely difficult and frustrating. The vagueness of the Guidelines also caused inconsistent censorship decisions where 70% of the interviewees pointed out numerous examples of inconsistencies in decisions relating to excision requirements and classification categories. Inconsistencies in decisions not only occur between local films and foreign ones whereby kissing scenes are not allowed in the former but permissible in the latter, they also occur amongst Malaysian films as well. For example, *KL Gangster* contains numerous violent action scenes which were allowed to be released but milder action sequences in *Psiko Pencuri Hati* were not. An even more surprising discovery from the interviews was that within the same film itself, censorship is inconsistent. For example, in *Sangkar*, a particular cussword in the Malay language was spoken a few times throughout the film but censors only required producers of the film to delete one.

This research finds inconsistent censorship decisions have their root cause in vague guidelines applied by censors with varying degree of ability to appreciate and analyse films as well as their own personal prejudices. One of the interviewees pointed out that

there is “double standard” in censorship where local Malay films are subjected to stricter examination compared to Malaysian films in other languages as well as imported films. The extensive number of prohibited contents and portrayals inhibit film practitioners’ expression. Almost all interviewees pointed out that they felt constrained (one director-producer stressed “*my freedom of expression is restricted; I cannot express what I want!*”) and it affects the quality of their films. Three interviewees admitted that they had to practice “self-censorship” due to the restrictive nature of the Guidelines.

Alterations to films and film classifications

As adverted to above, the Board and Appeal Committee have full authority to order those alterations be made to a film, even if it is put in the “18” category, and to decide which classification a film should be placed.

Alterations can have a hugely detrimental effect on the emotional impact and even the storyline of the film, and the classification can have an impact on the type of audience which will view the film. These can influence the success and revenue that the film will likely garner. The interviewees reported that they have no choice but to abide by the censorship decision in order to release their films. All the directors interviewed for this research were of the opinion that the choice as to whether to alter their film should be left to the filmmakers and not the censors. If they are willing to have a smaller pool of audience and opt for the “18” category, their films should be released intact without any cuts. Otherwise, “*there is no use of having the “18” category and yet films are still subjected to excision or deletion,*” lamented an award-winning director-screenwriter-producer with more than two decades of experience in the industry.

However, it must be highlighted that informal discussions have on occasion taken place between film practitioners and the Chairman for compromises on the nature of scene censoring and classification. This will take place where the Board finds an issue with the film it is censoring. This can be particularly financially important if the film maker is seeking to obtain a “P13” classification, when the Board or Appeal Committee is initially inclined to the “18” category (Member of Board of Censors, December 16, 2019; Secretary of the Board of Censors & Appeal Committee, December 16, 2019).

All interviewees agreed that the classification category a film receives, affects its commercial viability. The producers, exhibitors and distributors all prefer the “P13” classification as teenagers make up a substantial portion of the film market in Malaysia. According to an exhibitor interviewed for this research, if a film is classified in the “18” category, “*40% of the sales will be cut-off*”, and thus severely affect the box office revenue.

The provision of reasons for censorship decisions and appeals

Although s10 enjoins the Board to furnish written reasons for its decision when it requires an alteration to a film, or refuses to approve a film, it is not required to furnish reasons for its decision to classify a film into a particular category. There is no legal requirement for the Committee or the Minister to furnish reasons for any of the decisions that they are empowered to make under the Act. Such decisions that are made without any explanation could potentially provoke mistrust, misunderstanding and disappointment amongst the film makers affected.

The 2010 Guidelines are clear indicators for censors to consider various matters in making decisions to classify a film into a particular category. Although these matters are not prescribed by law, it is incumbent upon the censors to furnish reasons for its decision. Generally, the interviewees hoped the censors would be more frank, open, and transparent in their decision-making process and provide reasons for any decision made. To express

his frustration, a producer said, “...unfortunately this is a problem because anyone can say something without using a specific law, and using that as a justification to cut things...” Another director lamented, “... they (censors) are powerful, they can cut everything without giving any reason, unfortunately these filmmakers cannot meet them personally, you have to wait for the report, once you have the report, you can only re-cut...”.

Although the film owner has an indisputable right to appeal the decision of the Board to the Appeal Committee, there are two issues here. First, they are only allowed to make written representations to the Committee but not allowed to make an oral representation. This can disadvantage a film maker by depriving him of the opportunity of making a clearer explanation of any matters in the film relevant to the censorship, particularly given that film is a visual and not a written medium. During interviews, filmmakers were very much in favour of having and to have a right to an oral representation. They agreed that engaging in discussions with the authorities would influence the outcome of the process. For example, a producer and film distributor stated that in one of her experiences of engaging in discussions with the Board, led to reduction of nearly half the cuts.

Second, members of the public who may be aggrieved by the decision of the Board although having no right to make an appeal set down in law, may write to the Board to complain and on occasions, such complaints have resulted in the Board reviewing and altering its own decision. This happened notably to the movie *Lelaki Komunis Terakhir* (*The Last Communist*) (2006) and *Bruce Almighty* (2003).

Interviewees had mixed views on whether this “right” should be retained or not. Just over half of the interviewees supported citizens having this right, for the following reasons: that the films are made for the public, that they are the ones who support the film-making industry or that it is appropriate in a democracy for people to voice out and object. Interviewees who opposed this right said that practically, it is too late and too disruptive for a citizen to complain after a film has already been released; and that if anyone disapproves of a film’s content, then they can simply avoid watching it.

Although it is fair-minded of industry workers to support citizens having this right, it is very unfair for a filmmaker whose work has been lawfully approved by the appropriate authority to then have it subsequently banned by disruptive and noisy citizens at the last moment. It could also be financially shocking and devastating.

Availability of judicial review

Judicial review has been recognised since the 17th century in the United Kingdom, as an important way in which the courts maintain supervision of the government of the day (Wade & Forsyth). Its foundation has always been based principally upon the Latin phrase *ultra vires*, translated as beyond the power. This simple principle maintains that any decision by a governmental body made in excess of its jurisdiction or power, or with flawed procedure is therefore legally invalid. Any such error made can be corrected by the courts upon proper application being made. Hence it is necessary for the courts to fulfil a role to adjudicate when such errors have been made by the executive (Wade & Forsyth, 2014; Barnett, 2020).

Sections 23 and 48, both purport to ouster any appeal or review to a court of law. Indeed, in Malaysia, there has never been a court case on film censorship decisions. Without the possibility of such judicial review, it leaves the administrative bodies and authorities with a relatively free hand to make decisions on censorship without any likelihood that their actions may be subjected to further scrutiny. In fact, it is inherently dangerous for a government to enact law and then prohibit the courts from interpreting and adjudicating

upon that law once made. As succinctly put by Lord Denning, “*the rule of law would be at an end*” (Wade & Forsyth, 2014, pp. 611, 614).

As censorship impacts on the right to freedom of expression and the right to a livelihood, both principles which are protected as Fundamental Liberties in Part II of the Federal Constitution (art 5 and art 10, respectively), there is a justification to make judicial review available as a last resort. In fact, the Board of Censors have agreed that the law should be amended to allow judicial review if film makers and producers are not satisfied with the outcome (Secretary of the Board of Censors & Appeal Committee, December 16, 2019).

At a practical level, the necessary procedures are in place within Malaysia under Order 53 Rules of Court for the courts to readily take on a supervisory role over the legality of film censorship decisions. The judicial powers and procedures are laid out in art 121 of the Federal Constitution, s25 and Schedule to the Courts of Judicature Act 1964 (Act 91) and Order 53 Rules of Court (the latter contains the specific procedures for judicial review applications within the High Courts of Malaysia).

Interviewees had mixed views on whether they would be willing to undertake judicial review of decisions made against their film, with only 50% stating that they would be willing to do so or would consider doing so. Those who were against the option cited the usual concerns that any citizen would have with the prospect of litigation including uncertainty of possible outcomes, delays to resolution and costs involved. One interviewee emphasised the time-sensitive nature of filmmaking and that even a short delay can discourage audiences from attending a film subsequently released. Nevertheless, these are the anxieties that any litigant faces in the courts, so they are probably not valid reasons to withhold such a right. It also probably reflects that Malaysians are generally litigation averse.

CONCLUSION

The key issues of the Malaysian film censorship system as discussed in the preceding section needs to be addressed so that the film industry’s output can achieve higher artistic standards and become more commercially successful. Firstly, the appointment of members of the Board of Censors and Appeal Committee must be transparent, and merit based. These entities should be made up of qualified members of the public from different background and experiences to make sensible and balanced decisions. It is also pertinent that these entities consist of members from the film industry to supply the much-needed artistic perspectives and justifications.

Secondly, the 2010 Guidelines must be revamped to make its provisions clearer and more definite, not only in terms of contents falling under each classification category but also on matters relating to context, degree, and realism of film portrayals. Thirdly, the power to alter films should move from censors to film practitioners. Censors should only indicate the classification category a film will receive but whether a film should be altered to fit a lower category should ultimately be the makers’ choice. Fourthly, reasons for censorship decisions must be provided by censors. This will only serve as a guide to other filmmakers and censors’ future decisions. The requirement of providing reasons will make censors more careful in exercising their powers as the decisions they make needs to be justified. And finally, the ouster clauses in the 2002 Act should be deleted to make judicial review available to film practitioners. The shadow cast by potential court challenges will certainly encourage censorship decisions that are rational, reasonable, and sensible to be made.

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References

- Abdul Latif, R. & Abu Hassan, B. R. (2020). Filmic education of borderland texts in Johor and Bunohan. *SEARCH Journal of Media and Communication Research*, 12(1), 125–139.
- Barnett, H. (2020). *Constitutional & administrative law* (13th Ed.). Routledge.
- Bingham, T. (2011). *The rule of law*. Penguin.
- Faruqi, S. S. (2019). *Our constitution*. Sweet & Maxwell.
- Loveland, I. (2018). *Constitutional law, administrative law and human rights*. Oxford University Press.
- Ponnan, R. D. (2018). Shared causal theories about film violence and violent behaviour: Findings from young Malaysian Indians. *SEARCH Journal of Media and Communication Research*, 10(1), 25–52.
- Rao, A. (2013). Film censorship and its relevance in modern Malaysia. *International Journal of Science Commerce and Humanities*, 1(3), 74–85.
- Saw, T. G. (2013). *Film censorship in the Asia-Pacific Region: Malaysia, Hong Kong and Australia compared*. Routledge.
- Saw, T. G. (2020). *Penapisan filem* [Film censorship]. In T. G. Saw, T. H. Lee, J. C. Lee, & M. L. Lee (Authors), *Undang-undang Media di Malaysia* [Media Law in Malaysia] (pp. 191–206). Sweet & Maxwell.
- Sim, J. K. (2021). Censorship of film violence: Its perceived effect on anti-social youth behaviour. *Berjaya Journal of Services & Management*, 15, 37–51.
- Wade, W., & Forsyth, C. (2014). *Administrative law* (11th Ed.). Oxford University Press.
- Wan Mahmud, W. A., Chang, P. K., & Aziz, J. (2009). Film censorship in Malaysia: Sanctions of religious, cultural and moral values. *Jurnal Komunikasi, Malaysian Journal of Communication*, 25, 42–49.
- Zahidul, I. (2019). Contemporary debate on freedom of speech and expression concerning film censorship laws in Malaysia. *CLJ Legal Network Series*, 1 LNS (A) xlvi.

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