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Fake News and COVID-19:
Malaysian legal perspective

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Abstract
The outbreak of the COVID-19 pandemic has been accompanied by fake news which is as dangerous as the virus itself. This paper considered the criteria for fake news offences and the regulatory and non-regulatory measures put in place in Malaysia to counter fake news especially related to COVID-19. Employing a doctrinal approach, it scrutinizes the authoritative legal texts on fake news offences. The findings show that there is an overlap of provisions for fake news offences as well as inconsistencies in terms of criteria and punishments provided under the relevant statutes which could impede Malaysia's effort to combat fake news.

Keywords**:** Fake news; COVID-19; regulatory, infodemic.

1.0 Introduction

The novel coronavirus disease (known as COVID-19) was first detected in Wuhan, China in December 2019, and rapidly spread to other countries across the world including Malaysia raising global health concerns. In January 2020, the World Health Organization (WHO) declared the disease a Public Health Emergency of International Concern (PHEIC) and later categorized it as a pandemic in March 2020 (WHO, 2020). As of July 2023, it has over 767 million cases and 6.9 million deaths worldwide. 2022. In Malaysia, 5,118,689 cases were recorded with 5,067,662 cured and 37,160 deaths reported (Our World in Data). Although in May 2023, COVID-19 has been declared by the WHO as no longer falls under the PHEIC list, it is still considered a global health threat. (WHO, 2023).

Nevertheless, the COVID-19 pandemic is not the only threat faced by the world, where fake news about the virus spread faster and wider than the virus itself through various internet and social media platforms. The disastrous effects of fake news have led to what WHO labelled as an "infodemic" as a result of how the outbreak of COVID-19 has led to so much misinformation on the internet and social media platforms leading to inaccurate information (Thomas, 2020). Misinformation related to the COVID-19 pandemic has proliferated on various social media platforms (Pennycook et al., 2020) and has gained much popularity and amplified the threat facing

humanity due to the continuous spread of the virus. Although some of the influx of this false information may be harmless, others might pose a serious threat by misleading the general population to depend on baseless and dangerous claims for remedies and protection (Ahinkorah et al., 2020). In addition, the fight against COVID-19 was also hindered by the spread of fake news. Although fake news is not new in the digital age, the phenomenon of the spread of fake news is alarming and it is very easy to produce and share fake news, where internet and social media platforms are found to be the main cause of this phenomenon (Raja, 2020). Where true information helps to alleviate the crisis, false information exacerbates it, and the lack of understanding and uncertainty in identifying fake news provide challenges in providing solutions to the dangers it poses (Verstraete et al., 2017, Zhou & Zafarani, 2020).

Based on this background, this paper aims to determine the adequacy and efficacy of the current regulatory measures put in place to combat fake news, in particular fake news related to COVID-19 in Malaysia which has brought serious threats to humanity in general, and to the government's effort in tackling the pandemic. Hence, the objectives of this paper are to identify the various forms of fake news, especially fake news related to COVID-19 before proceeding with a detailed analysis of the regulatory and non-regulatory measures implemented by the government to combat fake news in Malaysia.

2.0 Literature Review

2.1 Fake News

Fake news has been described by many as 'mimics news media content in the form' (Lazer et al., 2018 in Mohammad et al, 2022). The term 'fake' is defined as 'not genuine; appearing to be something it is not (counterfeit) or made to look like something else (imitation)' (Oxford Learner's Dictionaries). It is also defined as 'one that is not what it purports to be; a worthless imitation passed off as genuine' (Merriam-Webster Dictionary). Hence, fake news does not simply mean false news, but it can also mean an imitation or a counterfeit of news. Lim et al. (2021) described fake news as manufactured or fabricated news produced for financial, political, harmful, or entertainment purposes that could lead to inaccurate judgments that could cause people to be misled. Fake news has also been referred to as misinformation that is false and inaccurate and occasionally results from honest mistakes. Wardle & Derakhshan (2017) in their study have identified three types of information disorders namely, misinformation, disinformation, and mal-information. Here, Wardle & Derakhshan (2017) described fake news as a part of 'misinformation' and 'disinformation'. The difference between these types of false information is as follows: Misinformation is false or inaccurate information that is distributed, whether it is intended to mislead, whereas disinformation is intentionally misleading or biased information, manipulated contents, or facts. Fake news can be either misinformation, disinformation, or both, where it has been defined as purposely crafted, sensational, misleading, or fabricated information that mimics the form of mainstream news. Their similarities lie in the fact that they involve widespread dissemination.

2.2 Fake News and COVID-19

Fake news about COVID-19 comes in many forms on social media platforms, ranging from conspiracy theories about the virus as a biological weapon to reduce the human population to claims that certain foods or traditional medicines kill the virus. Such fake news may cause people to turn to ineffective or dangerous remedies, act carelessly and inadvertently spread the virus, or avoid proper treatment (Ahinkorah et al., 2020; Pennycook et al., 2020). The details of the conspiracy theories on COVID-19 have reached more than 20 million views worldwide via various social media platforms (Mian & Khan, 2020). In Malaysia, there was fake news about the lockdowns, the Movement Control Orders (MCOs), and social distancing regulations, claims that the vaccines harm the body and are non-halal for Muslims, false statements on fake remedies, and doubts about health strategies introduced by the government that causes confusion and fear to the public (Mohammad et al., 2022). Fake news about COVID-19 shared on social media platforms has affected the work of the authorities and government campaigns in combating the virus. In addition to the misinformation crisis, false and inaccurate information regarding the virus has contributed to misconception and unjustified reasoning that has aggravated the pandemic outbreak, thus seriously challenging the public's health, mentally and physically (Tasnim et al., 2020).

Hence, the dangers of fake news are unmistakable, especially during the pandemic. The uncertainty of what constitutes fake news has caused problems in providing methods to counter the dangers of fake news. Hence, understanding the various ways in which fake news is spread, as well as the motivations and attractions for it, is critical in combating fake news. Therefore, efforts to tackle fake news should be acted upon, especially from the regulatory aspect to eradicate the spread of fake news that could jeopardize the security and harmony of the country.

3.0 Methodology

The study employs the doctrinal legal approach, a process of identifying, analysing, and synthesizing legal content where it critically studies the main features of jurisprudence and case law while summarizing the relevant elements to establish a legal statement that can be said to be correct and complete on the issue in question (Watkins & Burton, 2018). It contains a deep analysis of law principles the development process and the reason behind the existence of the law (Kharel, 2018). Doctrinal legal research, also known as the 'black letter' research, aims to systematically correct and explain the law on any given topic by employing its analysis of authoritative texts consisting of primary and secondary sources (McConville & Wing, 2012). The primary sources for this study are the statutes, such as the Malaysian Communications and Multimedia Act 1998, the Malaysian Penal Code, the Malaysian Emergency (Necessary Powers) (No.2) Ordinance 2021, as well as the provisions of other relevant statutes and judicial decisions. The study also refers to secondary sources, such as textbooks, articles in academic journals, legal reports, and newspaper reports for discussion. The data

collected in this research are published data and have been scrutinised to attain the primary objectives of the study, i.e. to determine the adequacy and efficacy of the current regulatory measures put in place to combat fake news related to the COVID-19 pandemic in Malaysia. The study, however, emphasizes the discussion on fake news regarding the COVID-19 pandemic and hence, focuses on the relevant law in dealing with fake news related to the pandemic. It also excludes the discussion of the provisions of the Anti-Fake News Act 2018 (Act 803) which was repealed on 19 December 2019.

4.0 Discussion

4.1 Regulatory framework to combat fake news in Malaysia
In Malaysia, offences about fake news, in particular, fake news on COVID-19 and related matters in Malaysia are provided for and punished under the following statutes, namely:

4.1.1 Communications and Multimedia Act 1998 (CMA)
One of the main statutes governing fake news in Malaysia is the Communications and Multimedia Act 1998 (CMA) which was enacted to regulate the communications and multimedia industry, in particular, section 211 and section 233 CMA in regulating offensive content on the Internet. Section 213 CMA provides that the CMA should be read together with the Content Code adopted by the Communications and Multimedia Content Forum (FPCM).

   Regarding fake news, section 211 CMA is used to curb the spread of fake news on the Internet. Section 211(1) prohibits a person (whether an applications service provider or a user of a content applications service) from providing content that is indecent, obscene, false, menacing, or offensive to annoy, abuse, threaten, or harass another person. The punishment for a breach of section 211 includes a fine not exceeding RM50,000 or imprisonment for a term not exceeding one year or both, and a further fine of RM1000 for every day or part of a day during which the breach continues after conviction. Section 211 CMA has categorized false content under a general classification known as 'offensive content'. Although the CMA is silent on the meaning of 'offensive content' or 'false content', the Content Code by Article 7.1, explains that 'false content' is material that is "likely to be misleading, among others due to incomplete information". Article 7.2 of the Code further states that the content is false where reasonable steps to verify its veracity before communication have not been taken or carried out. Article 7.3 of the Code, however, provides several exceptions where false content is not prohibited, namely where it is satirical, parody, and fictional. However, the Content Code is not a statute but an industry self-regulatory guideline (Daud & Zulhuda, 2020).

   Section 233 CMA also deals with fake news on the internet. Section 233 covers improper use of network facilities or network services to transmit any communication that is obscene, false, threatening, or offensive. Under section 233(1), it is unlawful for anyone (a) using any network facilities or network service or applications service to knowingly make, create, solicit, and initiate the transmission of any comment, request, suggestion, or other communication that is obscene, indecent, false, menacing or offensive with intention to annoy, abuse, threaten or harass another person; or (b) initiates a communication using any applications service, with intention to annoy, abuse, threaten or harass any person at any number or electronic address. Section 233(2) further prohibits a person who knowingly (a) uses a network service or applications service to provide any obscene communication for commercial purposes to any person, or (b) permits a network service or applications service under the person's control to be used for an activity described in paragraph (a). The punishment for an offence section 233(2) includes a fine of up to RM50,000 or imprisonment for a term not exceeding one year, or to both, and a further fine of RM1,000 for each day or part of the day on which the offence continues after conviction.

   To secure a conviction under sections 211 and 233, the content must be obscene, indecent, false, threatening, or offensive with intent to offend, abuse, threaten or harass any person. In addition, both sections require the *actus reus* and the *mens rea* (guilty mind) for offensive content offences, which is the intention to annoy, abuse, threaten, or harass any person. Concerning fake news, the offender may be liable for creating, soliciting, or initiating the transmission of such false content. To secure an offence under section 233, three ingredients must be proven and these were highlighted in a local case, *Rutinin Bin Suhaimin v PP* [2015] 3 CLJ 83, where the defendant must initiate the communication in question; the communication is indecent, obscene, false, menacing, or offensive; and the defendant had intended to annoy, abuse, threaten or harass another person. In curbing the spread of fake news related to COVID-19 in Malaysia, the MCMC has conducted hundreds of investigations where several persons have been charged with distributing fake news related to the COVID-19 pandemic and movement control orders, or regulations related to virus control and vaccination (Thomazios et al., 2021).

4.1.2 Penal Code
Fake news offences are also provided for and punished under the Penal Code (PC). Section 124I PC provides for offences relating to the dissemination of false reports or false statements that cause public concern and provides the punishment for those convicted under that section. Fake news is also covered and punished under section 505(b) PC, where a person is prohibited from making, publishing, or circulating statements, rumours, reports, or contents to cause, or is likely to cause fear or alarm to the public or any section of the public. An offence under the said section is punishable with imprisonment up to two years or with a fine or both. Here, the term 'fake news' is not defined in the Penal Code. However, both section 124I and section 505 require *mens rea* in addition to the *actus reus*. Hence, a person may be liable if it can be proved beyond reasonable doubt that he intends to cause or is likely to cause fear or concern to the public by the spread, publication, or distribution of false reports or false statements under section 124I, or statements or rumours or reports under section 505 PC. In 2020, a renowned journalist was charged with three counts of causing public fear under section

505(b) due to her alleged fear-mongering posts concerning COVID-19 on her Facebook. In a separate case, a WhatsApp user was charged and punished under section 505b where he was fined RM5,000 instead of imprisonment for a term of up to 10 months upon entering a guilty plea for circulating a false statement on WhatsApp about a prisoner dying from COVID-19 (The Malaysian Insight, 2020).

4.1.3 Emergency (Essential Powers) (No. 2) Ordinance 2021 (P.U.(A) 110/2021)
In combating fake news during the COVID-19 pandemic, the Government of Malaysia has passed the Emergency (Essential Powers) (No.2) Ordinance 2021 (PU(A) 110/2021) (the Ordinance) that came into force on 12 March 2021. Unlike the other two statutes, the Ordinance specifically made it a criminal offence to create, publish, or spread false news related to COVID-19 or the proclamation of emergency in the country. Fake news is defined in section 2 of the Ordinance as news, information, data, and reports which is or are wholly or partly false relating to COVID-19 or the proclamation of emergency, and which can be in the form of features, visuals or audio recordings or in any other form capable of suggesting words or ideas. Section 4(1) of the Ordinance provides that it is an offence for a person to create, offer, publish, print, distribute, circulate, or disseminate fake news or publications containing fake news to cause or likely to cause fear or alarm to the public. Upon conviction, the person will be liable to a fine not exceeding RM100,000, or imprisonment of not exceeding three years or both, and in the case of a continuing offence, a further fine not exceeding RM1000 for every day during which the offence continues after conviction. To secure a conviction under the said section 4, three elements must be proven, namely, the accused must create, offer, publish, print, distribute, circulate, or disseminate false information; the information must be false and related to COVID-19 or the declaration of an emergency; and the accused must have the intent to incite fear or alarm among the general public. Section 5 of the Ordinance makes it an offence for any person providing financial assistance, directly or indirectly, knowing or having reasonable grounds to believe that the financial assistance is used in committing or facilitating the commission of an offence under section 4. Upon conviction, the person will be liable to a fine not exceeding RM500,000 or imprisonment for a term not exceeding six years or both. Section 6 of the Ordinance also provides that individuals, companies, and internet platforms must remove the offending content within 24 hours after a police officer or other authorized officer notifies them to do so. Failure to remove such content can result in fines up to RM100,000 and, in the case of ongoing offences, up to RM300,000 for each day where the material is still available.

Unlike the CMA and the PC, the Ordinance is the only statute that provides a clear definition as to what constitutes a fake news offence concerning COVID-19. Nevertheless, the Ordinance is not free from being criticized by many non-governmental organizations (NGOs) regarding human rights for failing to establish standards for determining what is wrong, and therefore, increases the risk that it could be used to cover up reproach of the government, and for allowing a conviction of a criminal sentence without *mens rea* (guilty mind), which is an element necessary to establish a criminal offence in addition to *actus reus* (guilty act). In this sense, an offender may be punished for spreading false news without requiring him to know that it is false, thus putting at risk those who share information but believe it as true, or based on a misunderstanding (Human Rights Watch, 2021). The penalties imposed under the Ordinance are also harsher than those imposed under the other statutes. However, the Ordinance has now lapsed and is no longer in force starting 1 February 2022, six months after the expiry of the Emergency Proclamation (Tee, 2021).

From the above discussion, it is clear that the relevant provisions from the CMA, PC, and the Ordinance are adequate in combating fake news related to COVID-19 in Malaysia by providing the required criteria for a secured conviction and punishment. However, there are overlapping provisions for fake news offences and discrepancies in the required criteria and punishment provided under the three statutes. It is also clear that the relevant provisions under the Ordinance focus on fake news offences regarding COVID-19 and emergency proclamations, while the provisions under the CMA and the PC are more general and can include fake news involving issues other than COVID-19 and emergency proclamations. These overlaps and inconsistencies may hinder the government's efforts to combat fake news. Amendments to the law on fake news are also a must to ensure effective regulation in dealing with fake news that can threaten the public safety and stability of the country.

4.2 Non-regulatory measures implemented by the government in tackling fake news in Malaysia
It is no longer enough to rely on existing regulatory authorities to curb the spread of fake news. The government has set up separate bodies to support the existing regulatory authorities. In March 2017, the MCMC launched the 'Sebenarnya.my' portal, a fact-checking website with the tagline "Tidak pasti jangan kongsi" (Do not share if you are unsure). The public can also use the available fact-checking websites to verify the authenticity of information before posting or sharing it, such as *Medical Mythbusters Malaysia, Schicheck, Snopes.com, fakenewswatch.com, AP Fact Check, FactCheck.org, Politifact.com, and Quoteinvestigator.com*. (The Star, 2020). These non-regulatory measures can help curb the spread of fake news by providing the correct channels where social media users, and the public in general, can ensure authentic news or information before sharing it with others.

5.0 Conclusion
The spread of fake news can result in a real threat to public safety and harmony, thus reflecting irresponsible actions. To prevent this action from being done by the public, especially among social media users, ethical constructs among the community must be implemented so that everyone can ensure that any information or news is correct, factual, and informative and can be equally shared before disseminating it. The public needs to be educated through various platforms on the danger of spreading fake news via social media and mainstream media in the country. Public awareness of the legal implications of making and spreading fake news must be enhanced. Finally, adequate and effective regulatory and non-regulatory measures are a must to combat fake news about COVID-19 that challenges the security and safety of the country. These include changes to the relevant provisions in defining the offence of fake

news and the punishment imposed for such offence. In addition, the definition of fake news is only provided for under the Ordinance where the definition specifically refers to fake news regarding COVID-19 or the declaration of emergency. Hence, a precise description of what constitutes fake news related to COVID-19 must be included in the existing statutes to prevent ambiguity after the lapse of the Ordinance.

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Paper Contribution to Related Field of Study

This paper contributes to the field of law and public policy.

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