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## **ACADEMIC FREEDOM IN MALAYSIAN PUBLIC UNIVERSITIES**

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### **ABSTRACT**

*Academic freedom is probably one of the most misunderstood concepts in academia, but is a fundamental pre-requisite to achieve the purpose of a university in becoming a knowledge and truth-seeking institution in our society. This paper specifically examines academic freedom in Malaysian public universities, by first, unpacking the concept of academic freedom as well as the complementary concept of institutional autonomy. Having made clear of the definition and concept of academic freedom, the paper highlights three major impediments of academic freedom in Malaysian public universities resulting from legislation, lack of institutional autonomy and influence of external agencies. The understanding of these impediments is vital for the future development of public universities to fulfil their purpose as public authorities for knowledge and truth in Malaysia.*

**Keywords:** academic freedom, university autonomy, public universities, academic profession, Malaysia

## **INTRODUCTION**

“There is no academic freedom in Malaysian public universities”. This is the proposition. While this paper explores a fundamental and important concept in the domain of higher education, academia, and the pursuit for knowledge and truth, the concept of academic freedom is also one of the most misunderstood and a difficult and complex concept to comprehend meaningfully in the current context of higher education. For the rest of this paper, I shall attempt to test the boundaries of this freedom while exercising my academic responsibility and authority to explain and argue why there is no academic freedom in Malaysian public universities.

## **THE CONCEPT OF ACADEMIC FREEDOM**

Academic freedom refers to the individual rights and freedoms of those in academia and undertaking academic work. The individuals are not only scholars, academics, researchers, lecturers and instructors, but also students who are pursuing knowledge and truth. As UNESCO (1997) defines the rights and freedoms specifically dedicated to teaching personnel in higher education as having the right to teach without interference, to carry out research work without interference or suppression, and to undertake professional activities outside of their employment. The American Association of University Professors (AAUP), in its first declaration of the principles of academic freedom in 1915, outlined the freedom for students and teachers, and specifically for the teachers are freedom of inquiry and research, freedom of teaching and freedom of extramural utterance and action. Importantly, the rights and freedoms articulated by UNESCO and AAUP are over and above the recognised civil, political, social and cultural rights that are applicable to all citizens.

The freedom for enquiry in academia is not a new concept. It existed and was challenged, perhaps, for as long as learning and the university existed in our societies. As Stone (2015) highlighted that dating back to the time of Socrates in the Ancient Greek era, Socrates had to defend himself against the charge that he corrupted the youth of Athens through his teaching. In today’s context, Socrates’ rights to teach has been interfered and challenged, and clearly what he was teaching had been deemed not aligned to the authorities of his generation.

Moving forward as the concept of university emerged in the Middle Ages, the infringement on academic freedom continued. Famous scientists like Nicholas Copernicus and Galileo Galilei were challenged and persecuted for their scientific work by the authorities of their time, the Catholic Church (Leveille 2011). In the case of the latter, he was tortured, compelled publicly to disavow his views and imprisoned for the rest of his life (Stone 2015). Hence, the infringement on academic freedom has been a long-standing challenge to academia and university.

However, to meaningfully discuss the concept of academic freedom, its purpose needs to be clarified (Fischer 1977). Dewey (1902) argues that the purpose of academic freedom is to create disciplined inquirers rather than disciples, and a distinction between the two purposes must be made clear. On the one hand, the freedom of inquiry is required for the development of disciplined inquirers, where the purpose of such persons is to seek the truth. The freedom is therefore essential “to investigate truth, to verify fact critically, to reach conclusions by means of the best methods at command, untrammelled by external fear or favour, to communicate the truth, to interpret to him its bearing on the questions he will have to face in life” (Dewey 1902, 3).

Importantly, Dewey elaborated that the freedom of inquiry is not only for disciplined inquirers, but the most fundamental principle that distinguish a university from other higher education institutions. A university proper, as Dewey (1902) described, has its purpose “to discover and communicate truth and to make its recipients better judges of truth and more effective in applying to the affairs of life” (p.1). In other words, a university is a truth-seeking institution in our society to advance knowledge, and academic freedom is “the breath in the nostrils of all scientific activity” (AAUP 1915) and truth-seeking endeavours undertaken by those in the university.

On the other hand, academic freedom and the freedom of inquiry may not be fully compatible with the development of disciples in other higher education institutions, although these institutions may well carry the term ‘university’ in its name. Particularly in institutions that are more teaching oriented, where the purpose is for “the perpetuation of a certain way of looking at things current among a given body of persons” and the development of loyalty of disciplines (Dewey 1902, 1), the freedom of inquiry is bounded to conserve what is

considered as truth by disciplined inquirers in a university. Yet, this freedom should not be at the expense of truth.

The purpose of academic freedom provides the basis for further exploration of the concept in different contexts and situation in academia. The quest for truth can differ considerably across disciplines (Dewey 1902). For instance, disciplines such as mathematics, chemistry and physics, which have established scientific techniques that are more objective and grounded with scientific facts to define truth in its knowledge, may not encounter the degree of challenges to the freedom of inquiry as compared to colleagues in other disciplines. Conversely, those in disciplines that are in the state of transition to establish the scientific status, especially social sciences and humanities, academic freedom can be a challenge on the academic endeavours to search for truth. In addition to the epistemological and ontological underpinnings of knowledge in a discipline, challenges to the freedom of inquiry within a discipline can also vary due to the politics, ideology and school of thoughts, as well as power dynamics (Scott 2015).

## **BOUNDARIES OF ACADEMIC FREEDOM**

However, it is important to recognise one of the major misconceptions about academic freedom, which is “there are no limitations to such freedom” (Fischer 1977). On the contrary, there are limitations and boundaries to academic freedom that instead of subjecting to the laws and rules prescribed by authorities in our society, academic freedom is subjected to the norms, rules and cultures of academia. The precedence that we can learn from the example of Galileo Galilei is that the freedom of inquiry should be governed by the rules, norms and ethics of science, and not by external authority of the Catholic Church. In our current context, the authority may no longer be the Catholic Church, but has emerged in different forms and shapes including the State, laws, professional bodies, guilds, religious authorities and even the general public at large.

As early as 1900, the founding President of the University of Chicago in his Convocation Address, had aptly described five violations or abuses of academic freedom by academics. The following was taken from the University Record in President Harper’s address and quoted by Dewey (1902, 8-9):

1. A professor is guilty of an abuse of privilege who promulgates as truth ideas or opinions which have not been tested scientifically by his colleagues in the same department of research or investigation.
2. A professor abuses his privilege who takes advantage of a classroom exercise to propagate the partisan view of one or another of the political parties.
3. A professor abuses his privilege who in any way seeks to influence his pupils or the public by sensational methods.
4. A professor abuses his privilege of expression of opinion when, [although] a student and perhaps an authority in one department or group of departments, he undertakes to speak authoritatively on subjects which have no relationship to the department in which he was appointed to give instruction.
5. A professor abuses his privilege in many cases when, [although] shut off in large measure from the world and engaged within a narrow field of investigation, he undertakes to instruct his colleagues or the public concerning matters in the world at large in connection with which he has had little or no experience.

The five abuses have importantly outlined the parameters and boundaries of academic freedom. While an academic has the freedom to inquiry and research, this freedom is limited to an area of expertise in which he or she professes. For example, there is a limit to what an expert in mathematics can express his or her opinion on matters of politics. The mathematics professor is not an expert on politics and therefore the freedom is limited only to the field of expertise.

Additionally, the freedom to disseminate and share the knowledge developed through research can only be considered as truth after which the body of knowledge has been tested scientifically. In other words, the academic cannot speak and write based on hearsays or mere opinions, but the knowledge must be grounded with facts and evidences, and conducted and verified scientifically through methods that are governed by the norms, ethics and integrity of the academic and scientific community of the body of knowledge. As one of the important characteristics of scientific process is that the facts and evidences must be able to be verified by other experts.

Although an academic has the freedom to teach, this freedom is also bounded. As Harper (cited by Dewey 1902) pointed out, an academic should not propagate and enforced his views on the students, but that point seemed directly addressed to

political views. UNESCO (1997) further provided a clearer boundary to the freedom to teach, whereby this freedom is subjected to professional responsibility and intellectual rigour. These boundaries implied that freedom to teach are connected to the freedom of inquiry and research, and concurrently governed by the same sets of norms and ethics of the academic and scientific community. The AAUP (1915) further outlines the duties that come together with the rights of a teacher, in which he or she has the “obligation to avoid hasty or unverified or exaggerated statements, and to refrain from intemperate or sensational modes of expression”.

Another misconception about academic freedom is that academic freedom is meant to protect the individual teacher (Fischer 1977). Instead, the boundary of the freedom to teach should be drawn to ensure the freedom of students as co-participant in the process of learning is not curtailed. In line with Dewey’s idea of learning and education, this process must be geared towards the development of disciplined inquirers (Fischer 1977). A necessary condition therefore is that the student and learner is an active participant with the freedom to explore the knowledge with open-mindedness and a critical reflective disposition. Hence, the freedom of an academic to teach must exist alongside the freedom of the students, especially in the context of higher education where students can be considered mature and should be accountable for their own learning. Hence, the boundary of freedom to teach must not curtailed the freedom of the students to learn and pursue knowledge and truth.

## **THE OTHER TWIN: INSTITUTIONAL AUTONOMY**

It is incomplete to discuss academic freedom without extending the discussion on the concept of institutional autonomy. The joint statement by All European Academies, the European University Association and Science Europe (ALLEA, EUA & SC 2019) described institutional autonomy as the underpinning enabler for academic freedom to be exercised. Institutional autonomy acts as a shield and protection for a university from external interference in providing a neutral space for academic discourse and debate, and importantly, ensures the academic and scientific community in the university can self-governance on academic matters. In short, without institutional autonomy, academic freedom cannot be exercised fully and meaningfully.

The concept of institutional autonomy, arguably, is as old as academic freedom. They are Siamese twins that cannot be separated. The autonomy of a university has to be measured in terms of the extent to which the university is able to be self-governed without interferences from the State, political, economic and religious authorities. The university is therefore an authority to govern and safeguard academic freedom. These external interferences had posed serious challenges to university autonomy, and continue to exert pressure in today's universities.

The encroachment into academic freedom in the case of Socrates was the interference from the State and other political actors in society. Conversely, the experience of Galileo Galilei was an example of infringement on the freedom of inquiry and research from the religious authorities. Universities that was established by religious groups, as Dewey (1902) highlighted, have to grapple with conflict that arose between truth and knowledge and the supposed interest of the religious group. The example, as highlighted by Dewey to illustrate this conflict with the Christian church, is with the teaching of geology and formation of the earth which may contradict with the statements in the book of Genesis in the Bible. How does such contradiction affects academic freedom?

More recent with the marketisation of higher education where universities have developed closer links with the industry, there are potential encroachment into the freedom of inquiry and research. For instance, in areas such as medical and pharmaceutical sciences, the interest of industry and the financial contribution can stifle academic freedom in the search for knowledge and truth (Bok 2004). With the increasing emphasis on employability, industry and companies may have greater say on what should be taught in the university, and the freedom to teach and learn has been dictated by external parties instead of the teachers and students.

However, similar to academic freedom, infringement on institutional autonomy of universities also come from various directions and vary considerably by the nature and types of institutions. Universities that were established and funded by the State may receive interference politically, those by the private donors and corporations may have interference due to economic considerations, while those setup by religious groups may receive pressure to conform to the doctrine or interest of the group. While these interferences may be unavoidable, the ability to self-govern by the institution is pivotal to strike a balance between the individual



freedom of academics and the responsibility and authority that co-exist with the freedom.

Importantly, in an era where universities are moving towards managerialism, the self-governing ability of a university should not neglect the importance of academic governance and its structure. A bicameral system of governance in a university is commonly practised, where the administrative governance is usually led by the Board or Council and the academic governance is the Senate or an equivalent entity. In such a governance system, the balance between administrative and academic governance, as well as boundaries of their respective authorities on various matters of the university, are important not only for good governance of institution but equally crucial to protect the sanctity of academic freedom within a university from non-academic pressures.

### **THE RELATIONSHIP BETWEEN AN ACADEMIC AND INSTITUTION**

Between the concepts of academic freedom and institutional autonomy also lies an important consideration of the relationship between the institutions that employs the academic. In a typical workplace setting, this is a form of contractual arrangement between an employer and employee, and therefore, it is reasonable that the employee has to adhere to the instruction and direction of the employer.

However, two important characteristics of the academic profession needs to be considered in the case of university. The role and nature of a university is knowledge development and truth-seeking (Dewey 1902). Without academic freedom for individual to research, teach and initiate change, as well as without institutional autonomy to safeguard academic freedom, a university cannot uphold its fundamental purpose as a truth-seeking knowledge institution in society. In other words, if the society or anyone who wish for the university to live up to its true calling, these rights and freedom are a must and shall be exercised with no compromise.

Furthermore, the independence of academics and the nature of academic profession should be put into context when examining the relationship between academic and institution. As AAUP (1915) pointed out, a certain level of independence should be seen as essential as well as the perks of being in the job as an academic. The responsibility that comes from academic freedom is beyond

the contractual responsibility of an employee to the employer. Instead, the responsibility of knowledge development and truth-seeking extends to society and humankind.

Thus, a parallel that can be drawn to illustrate the relationship of an academic and institution is the appointment of judges in the judiciary. For instance, in the United States, whereby although the Executive (President) appoints the judges, these judges upon appointment are independent and no more held responsible to the Executive. In the case of Commonwealth countries, whereby judges are appointed by the Sovereign or President on the advice of the Executive (Prime Minister), yet judges are independent and have been entrusted to preside over all cases in a fair and transparent manner including those that involved the Executive who had recommended their appointment. The professional functions and responsibility of judges mandated that once the authority had appointed these judges, the authority will cease to have the competency and moral right to intervene into the affairs of the judiciary (AAUP 1915). The doctrine of separation of powers in most governmental system around the world also have similar arrangements to ensure the independence and integrity of the judiciary in providing check-and-balance to the government.

In the same light, the relationship between an academic with the university needs to be considered. The concept of tenure.<sup>1</sup> is an expression of guarantee to academic freedom and independence of academics, as advocated by AAUP (AAUP n.d.; Hertzog 2017). Importantly, the parallel of the judges also illustrated it is the responsibility of the university, just like the State, to ensure the important nature and characteristics of academic profession should be upheld and safeguarded once these academics are appointed.

## **HIGHER EDUCATION IN MALAYSIA**

Malaysia is a constitutional monarchy and a federation of fourteen states. Higher education is under the purview of the federal government. The present setup of the Executive branch of the government has put higher education under the Ministry of Higher Education, and within this ministry, there is the Department of Higher Education that oversees the higher education sector. There were

instances (1957-2003, 2013-2015 and 2018-2020) where higher education existed as a division in the Ministry of Education.

Higher education in Malaysia is made up of public and private higher education institutions. There are 20 public universities, where 19 of them are established under the Universities and University Colleges Act 1971 (Act 30) and the Universiti Teknologi MARA is the exception where it was established under its own Act of Parliament. As of 2018, there were 552,702 students enrolled and 31,528 academic staff employed across the 20 public universities (MoE 2019). Public universities are federal statutory bodies, and therefore the staff across these universities are subjected to the Statutory Bodies (Surcharge and Discipline) Act 2000 (Act 605).

The higher education in Malaysia also has an equally sizeable private sector. There are currently 48 universities, 10 foreign branch campuses, 33 university colleges and 345 colleges. There were 668,689 students enrolled across the private higher educations and staffed by 22,980 academic staff (MoE 2019). However, unlike those in public universities, academic staff in the private institutions are not subjected to Act 605 and they maintain a purely contractual arrangement of employer-employee with the institution. Private higher education institutions are required to be setup under the structure of a company within the framework of the Companies Act 1965 (Act 125), and the company then established the private higher education institution under the Private Higher Educational Institutions Act 1996 (Act 555).

Apart from public universities and private higher education institutions that are overseen and regulated by the Department of Higher Education, Ministry of Education, there are several other authorities that are directly involved in regulating the higher education sector. The Malaysia Qualifications Agency (MQA) is a statutory body established under the Malaysian Qualifications Agency Act 2007 (Act 679) to accredit higher education programmes and qualifications and to supervise and regulate the quality and standard of higher education.

The following section will focus on three impediments to support the claim I made at the beginning about academic freedom in Malaysian public universities.

### **Impediment 1: Act 605**

Act 605 is the legislation intended to consolidate all the regulations and rules governing the discipline and code of conduct of employees of statutory bodies. It was also aimed at harmonising the disciplinary and surcharge procedures of statutory bodies to be in line with the federal civil service.

The Act covers more than 130 institutions that are established by different legislations, including the Central Bank of Malaysia, Employees Providence Fund, Bank Simpanan Nasional, Malaysian Oil Palm Board, Companies Commission of Malaysia, Institute of Accountants Malaysia, Communication and Multimedia Commission, as well as the 19 public universities.<sup>2</sup> Although the structure, focus, function and subject area of statutory bodies vary considerably, Act 605 does not consider the diversity involved, instead defines all staff of statutory bodies in a broad and generic manner as public servants.

Furthermore, it is important to note that throughout the parliamentary debates in Dewan Rakyat (*Hansard* 10 July 2000) and *Dewan Negara* (*Hansard* 31 July 2000) leading to the passing of Act 605, there was no mention nor consideration given to the different types of statutory body. More so, there was no specific discussion about the nature of university as an academic institution. Hence, it is safe to infer that the enactment of Act 605 was never targeted at public universities, and instead, public universities were swept into the jurisdiction of this act in an overarching way given their status as statutory bodies.

Act 605 consists of 29 sections and three schedules. The first schedule lists statutory bodies that are exempted from this Act, and public universities are not one of the 11 statutory bodies in this schedule. The unwritten rule, gathered from personal communications with officials from the Public Service Department, Ministry of Finance and Treasury, is that these exempted statutory bodies are entities who can self-finance, generate its own income and do not receive financial allocation from the government. As public universities continue to receive yearly allocation in the form of operational expenditure, these institutions cannot be considered in the exemption list of the first schedule.

The second schedule contains 54 rules and third schedule outlines the membership and authority of disciplinary and appeal committees in the statutory bodies.

Apart from defining academic staff in public universities as public servant, the impediment from Act 605 on academic freedom lies in the 54 rules of the second schedule. Specifically Rules 17, 18 and 19 are provisions that directly contradicting to the nature of academic work in universities, which are:

- Rule 17: Book Publication  
An officer is not allowed to publish or write any books or publication based on official classified information.
- Rule 18: Making Public Statement  
An officer is not allowed, either verbally or written or in any way,
  - (a) Make public statement that can be harmful to any policy, plan or decision of the statutory body or Government on any issue;
  - (b) Make public statement that can embarrass or damage the name of the statutory body or Government;
  - (c) Make commentary on weakness of any policy, plan or decision of the statutory body or Government;
  - (d) Distribute statement or commentary, either made by the officer or any other person;
  - (e) Make commentary on strength of any policy, plan or decision of the statutory body or Government;
  - (f) Provide information according to fact concerning the operative function of the statutory body;
  - (g) Provide explanation on incident or report involving the statutory body or Government; or
  - (h) Distribute commentary, information or explanation, either made by the officer or any other person.

(The only exemption to this rule is a written permission from the Minister)

- Rule 19: Prohibition as Editor in any Publication  
An officer cannot be an editor, or take part directly or indirectly in the management, or financially contribute to, any publication including newspaper, magazine or journal, without considering the mode of publication, except for:
  - (a) Departmental publication
  - (b) Professional publication
  - (c) Publication by non-political voluntary organisation
  - (d) Publication with written approval from the Director General

Rule 18 is arguably the most explicit form of infringement to academic freedom, especially for academics who research and teach on subjects that relate to various policies, such as political science, economics, public policy, social policy, sociology and developmental studies. Even students in sciences, engineering or medical related field, will also need to understand the national policies, plans or decisions of the government in relation to their field of study.

Moreover, not only that negative criticism is prohibited, making commentary in whatever form on the strength and positive points about any policy, plan or decision of the government is similarly prohibited. In other words, a public servant, including academics in public universities, are not allowed to comment anything regarding the government or the university. Such a prohibition directly contradicted the freedom to teach, whereby this prohibition can be extended into lectures, conferences or talks. Although exemption can be acquired from the Minister, it is impractical for more than 31,000 academics in the country to individually request for a written exemption from a Minister on every occasion to speak, write or make a statement.

Interestingly, in an era where universities and government are obsessed with global university rankings and Malaysia is no exception, publication in indexed journal has been regarded as the gold standard for academic publication. Many public universities in Malaysia have made it almost mandatory for academics to publish in these journals, and financial incentives were generously given especially successful publication in the higher tier journals (Norzaini & Faridah, 2016; Wan et al., 2017). Some of the universities have even made publication in indexed journal as pre-requisite for submission of thesis at Master's and doctoral levels. However, the biggest irony underlying this obsession is the fact that academics in public universities are prohibited to act as editors to these journal publications.

On a lesser note, while Rule 17 is mainly concerned with book publication using official classified information, it is a double prohibition as there is also the Official Secret Act 1972 (Act 88) that govern the access and usage of classified information.

As mentioned earlier, Act 605 is a relatively new legislation that was enacted at the turn of the millennium. In addition, public universities are included into this legislation by an overwhelmingly wide definition of statutory body, rather than it

was a deliberate attempt to curtail academic freedom in public universities. Important to note that prior to Act 605, public universities under Section 16A and 16C of the Act 30 were given the authority to have a committee to exercise disciplinary authority on staff, officers and employees as well as to develop its own disciplinary rules that have to be gazetted. These two sections (Section 16A and 16C) were added when Act 30 was amended in 1975, and some public universities such as Universiti Malaya, Universiti Kebangsaan Malaysia and Universiti Putra Malaysia had gazetted their respective staff disciplinary rules in 1979. These rules and Section 16A of Act 30 ceased to apply following the enactment of Act 605, and this was verified by the decision of the court on the jurisdiction and applicability of Act 605 and Act 30 on staff matters (*Universiti Utara Malaysia v. Mutiara bt Mohamad & Ors*, 2011). Section 16A and 16C were subsequently repealed when Act 30 was amended in 2009.

Hence, as it stands, Act 605 remains the authority on disciplinary matters on academics in public universities, and the rules and prohibition particularly Rule 17, 18 and 19 in the second schedule are regarded as the major impediment of academic freedom in public universities. The prohibition has to a large extent violated the freedom to teach, freedom to inquiry and research as well as freedom of extramural utterance and action, which are fundamental to academic freedom of academics in universities.

### **Impediment 2: Institutional Autonomy**

Given that academic freedom can only be fully exercised when a university has the institutional autonomy to self-govern, the lack of institutional autonomy therefore is an impediment to the academic freedom. Although by the end of 2018, all 20 public universities have been granted the status of autonomous universities, the status cannot be translated into real and practical capabilities that enabled these institutions to self-govern without significant amendment to the legislations and reform to the governance structure at the system level (Wan 2017; 2019).

The autonomous status was operationalised into four aspects – institutional, academic, finance and human resources (see Fauziah & Ng 2013; Wan & Abdul Razak 2015). First, in terms of institutional autonomy, despite the fact that public universities are asked to develop their own succession plan and identify future

institutional leaders, Act 30, since the amendment made in 1996, has given sole authority to the Minister to appoint institutional leaders. The institutional autonomy on appointment will mean nothing if this provision under Act 30 remains firmly in place. Second, while universities are supposed to have academic autonomy, introduction of new programmes continue to require the approval of the Department of Higher Education under the pretext that these programmes having financial implication to the government. Likewise, the closure of programmes across these universities were also announced by the Director General of Higher Education, and not the respective head of institutions (Soo, 2019). This incident reflected who is in charge of academic matters where clearly the central agency superseded the authority of universities. Third, as long as public universities receive allocation from the government, these institutions have to subscribe fully to the financial procedure and audits of the government. Fourth, although public universities can decide on who to hire for a specific position, policy decisions on human resource planning, hiring and firing have to abide strictly with the instruction and decision of the Public Service Department. Even on matters that concern staff attachment and secondment, public universities have to obtain permission from the central agency.

As Wan (2017) pointed out, when Act 30 was enacted in 1971, the legislation was drafted to ensure public universities were autonomous and the governance setup was meant to enable self-governance without external interference even from the government. The subsequent amendments in 1975 and 1996 had dismantled the administrative self-governing capacity of public universities and replaced with a governance system that is directly appointed by the Minister. Since the 1996 amendment, the academic governance in the public universities (i.e. the Senate), which was democratic and representative of the various groups of academics, is replaced by consolidating the authority solely into the hands of the Vice Chancellor.

Hence, the lost of the capability to self-governance without external interference of the government, has rendered a lost of autonomy to public universities in Malaysia. Furthermore, Act 30 has also been instrumental in mandating all public universities to use the template constitution provided in the First Schedule of Act 30 to be the constitution of the university. This requirement has therefore further restricted the autonomy of public universities to design and chart a constitution that allow the institution to develop in its own unique ways. Universiti Sains



Malaysia, after having received the Accelerated Programme for Excellence (APEX) status in 2012, began to draft its own constitution that is significantly different from the template. Yet, even the APEX constitution that is gazetted with the authority of the Yang di-Pertuan Agong, can only have additional items on top of the prescribed template.

The lack of institutional autonomy and a strong and direct influence from the government on the governance of public universities, have further prohibited the exercise of academic freedom in Malaysia. Administrative governance is dictated by the government through appointments and heavy reliance on public monies channelled to the university in the form of operational expenditure, as well as the academic governance dominated by those appointed by the government, the university cannot be the neutral ground for academic freedom to be fully exercised. Thus, the freedom to teach, to inquiry and research as well as extramural utterance and action, have been affected and cannot be safeguarded, as a result of the lack of institutional autonomy in Malaysian public universities.

### **Impediment 3: External Agencies**

While the first two impediments directly relate to public universities, this impediment affects both public and private higher education institutions. Along with the rise of managerialism culture into higher education, there has also been an increasing emphasis on quality and standards in the provision of higher education. Furthermore, with the global trend of mobility in both academics and graduates in the labour market, the articulation and harmonisation of higher education becomes an important matter. Hence, the trend of quality assurance and accreditation became a central feature of today's higher education.

In Malaysia, the National Accreditation Board (LAN) was established under the Lembaga Akreditasi Negara Act 1996 (Act 556) at the same period when Act 555 was enacted to establish private higher education institutions in Malaysia. LAN was intended to focus on accrediting programmes in these private institutions and to ensure minimal standards were adhere to in these programmes. Quality assurance in public universities, at that period of time, was under the purview of the Department of Higher Education in the ministry.

By 2007, the Malaysian Qualifications Agency (MQA) was established by merging LAN and the division in the ministry through the enactment of the Malaysian Qualifications Agency Act 2007 (Act 679). With the establishment of MQA as a statutory body that is directly accountable to the Minister, matters of quality assurance and accreditation across both public and private institutions are placed in this agency. Act 679 also provided the legal authority for MQA to develop the Malaysian Qualifications Framework (MQF) as the basic structure to articulate the different levels of programmes in the Malaysian higher education system.

Apart from articulating the different levels and the progression within MQF, MQA is also responsible to ensure quality and standards of the programmes. In this respect, every programme in a Malaysian higher education institution, regardless of public or private, has to be accredited by MQA. Among the implications of not having MQA accreditation may result in students not being able to obtain loan from the National Higher Education Loan Fund (PTPTN) as well as institutional license being revoked. Progressively, some universities have been deemed as matured, and they are given the status of self-accrediting, which allowed the university with this status not having required to go to MQA for accreditation of every single programme, and collectively done in the institution.

Under the pretext of ensuring quality and standards, MQA has authority over the programmes in the higher education institutions. The jurisdiction of MQA extends beyond the institution and programme, but further to the extent of every single courses within the programme, the details learning outcomes, assessment methods and weightage, mapping of course and programme learning outcomes, as well as reading lists. Furthermore, apart from the extensive paperwork involved to acquire accreditation and long duration needed, amendment and revision to the curriculum of more than 30 percent will require permission from MQA.

Thus, academic freedom has been impeded in two ways. First, the freedom to teach of academics has been severely restricted. Teaching has to be done according to what is in the programme submitted to MQA for accreditation. While it is ideal that both the lecturer and students are guided by the same mechanism prescribed, however the bureaucratic nature has hindered changes to be made to the teaching and conduct of the class. The lecturer is not allowed to

teach topics that are not covered in the prescribed lists of topics without obtaining permission to amend the curriculum.

Second, as prescribed by the legislation as well as in its traditional sense, the Senate has been recognised as the highest academic body in the academic governance of the university. The sanctity of this academic body is having the authority over all academic matters. This includes having the authority to ensure academic freedom to teach and research is safeguarded. However, in reality, the authority of the Senate in Malaysian public universities has been curtailed by external agencies such as MQA and the Department of Higher Education. When the highest academic authority decides to have an academic programme in a specific discipline, for instance philosophy, and decides to teach the programme not in the form of a lecture but in a Socratic-like seminars, this academic programme may not be allowed to run. On the one hand, the Department of Higher Education may deem the graduates of such programme as irrelevant to the job market and hence unemployable. On the other hand, MQA may not accredit the programme for not having a conventional approach as learning outcomes cannot be clearly articulated. Either one of these agencies not giving the go-ahead, the programme will not take off despite having approved by the highest academic authority in the university.

## **CONCLUSION**

“There is no academic freedom in Malaysian public universities” is not a rhetorical statement. From the three impediments discussed, it is clear that the freedom to teach, freedom to inquiry and research as well as freedom to extramural utterance and action of an academic in public universities in Malaysia has been curtailed. Act 605, which has disregarded academic norms, cultures and traditions, have impeded the academic freedom of individual academics. The lack of institutional autonomy, then, has further restricted the role and authority of the university to uphold and protect this form of individual freedom. Furthermore, the strong influence and authority on external agencies like MQA and Department of Higher Education has limited the authority of universities to self-govern even on academic matters and consequently restrict academic freedom of academics even further.

Understanding the impediments is crucial to restore academic freedom in Malaysia. Only through identifying how these impediments had effectively curtailed the freedom of academics and students, rectification can take place to dismantle structures that impede and to replace them with structure that supports academic freedom. For instance, to exclude public universities from Act 605 is necessarily the first step. However, replacing Act 605 with another code of conduct that has the same underpinnings will mean nothing, and instead, this must be followed by introducing a code of conduct for academics in public universities that ensure and uphold academic freedom. Likewise, institutional autonomy through granting of status without amending the legislation and reforming the governance structure, will not equip public universities with capacity for them to self-govern and to be free from external influence and interference. Redefining the scope and jurisdiction of external agencies that ensure quality and standards, while fully respecting institutional autonomy and academic freedom is equally vital.

Although our public universities may continue to operate with a lack of institutional autonomy and academic freedom, the future implication is that these institutions will be hindered from unleashing their potential from being knowledge-producing and truth-seeking institutions. Consequently, this will deprive our society to advance knowledge, to discover and communicate truth, and to develop the next generation of Malaysians and global citizens to be better judges of truth and more effective in applying knowledge and truth to the affairs of life.

## **NOTES**

1. The concept and purpose of academic 'tenure' has evolved in different contexts and time period of universities in Germany and United States. Tenure refers to economic stability, job security, contractual right of employment, as well as crucially, freedom of speech, and freedom to teach controversial topics and conduct research. See Hertzog (2017) for a comprehensive overview. It is beyond the scope of this paper to discuss 'tenure' but important to emphasise that although permanent staff in Malaysian public universities enjoy job security privileges from civil service, the academic dimension of tenure relating to freedom of speech, to teach and research is limited and curtailed by Act 605.

2. International Islamic University of Malaysia (IIUM) is a public university established under Act 30 but registered as a company under the Companies Act 1965 (Act 125). Therefore IIUM is governed by its own constitution including having its own discipline and code of conduct, and does not subscribe to Act 605.

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