

## COMBATING HATRED DISCOURSE VIA MALAYSIAN SEDITION ACT: A SHARING PROSPERITY

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### Abstract

*Maintenance and preservation of peace and prosperity are one of the contemporary challenges confronted by the world community. Among the most apparent threat to the maintenance of peace and prosperity is the rising of hatred discourse and hate speech. It commonly takes place when involving matters of categorising people according to religion, ethnic, gender and colour of skin. Legal rules are regarded as one of methods addressing the issue. This paper discusses a Malaysian legislation namely Sedition Act 1948 (Act 15) as of how it tackles the hatred discourse. It highlights and elaborates some laws prescribed in the Act particularly on the meaning of seditious tendency, punishments and arrest without warrant. The paper explains the legal effect of the law to the Malaysian community in combating the hate speech with reference made to some relevant cases. It expounds some controversial issues regarding the Act. The methodology used is by analysing certain laws prescribed in the Sedition Act 1948. The paper concludes with suggestion that even though the Sedition Act 1948 seems harsh and strict, but it can be an effective and effectual way in realising the sharing prosperity among the nations.*

*Keywords: Malaysian Sedition Act 1948, seditious tendency, hatred discourse, peace and prosperity.*

### INTRODUCTION

The rise of hatred discourse among the members of society is one of the most apparent threat to the maintenance of peace. At present, it seems to be a contagious disease in the society with sophisticated technology. Such technology has indeed contributed to the fast spreading of the hatred discourse tremendously. The discourse will commonly be ranging on matters of classifying people according to religion, ethnicity, gender and colour of skin. Such classification accompanied with hate speech will absolutely lead to chaos and tension in the society. Thus, legal rules are regarded as one of the modes of controlling and confronting the situation as well preserving the sharing prosperity among nation.

This paper discusses the Malaysian experience in combating hatred discourse issues. It focusses on the Malaysian legislation namely Sedition Act 1948 (Act 15) on how it confronts the hate speech happening in the country. This is done by exploring the Malaysian experiences in dealing with the issues. It takes into account some selected laws prescribed in the Sedition Act 1948 which relevant to the hatred discourse.

In achieving such goals, the discussion firstly starts with pointing out some legal rules provided in the Sedition Act 1948. At this point, some legal terms will be explained and elucidated as to justify how it relates to the issue of hate speech. Secondly, the writing explicates the legal effects of the law to the Malaysian society in combating the hate speech and achieving the sharing prosperity. This is done with reference made also to the Federal Constitution of Malaysia. It explains how the Federal Constitution should be read together with the Sedition Act 1948. Thirdly, the paper expounds on some controversial issues surrounding the Seditions Act 1948. It is done with the hope that some lessons will be learned from the problems. Lastly, it ends with suggestions and concluding remarks.

### **SEDITION ACT 1948 (ACT 15): SELECTED LEGAL TERMS**

Sedition Act 1948 was enforced in the West Malaysia on 19th July 1948. On 28 May 1964, it was applied in Sabah and on 20 November 1969 in Sarawak. It has eleven sections altogether. The objective of the Sedition Act 1948 is to provide for the punishment of the sedition.<sup>1</sup> Thus, the Act (hereafter referred to as the 'Sedition Act 1948 (Act 15) was established mainly to punish the offender who committed the sedition action.

Hence, this paper aims to highlight a selected legal clause prescribed in the Act with specific reference made to the relevant legal terms that relate to the hatred discourse. It focuses particularly on the meaning of seditious, seditious tendency, offences and arrest without warrant.

#### **Seditious**

In the Interpretation Part, Section 2 of the Sedition Act 1948, the term 'seditious' refers to 'when applied to or used in respect of any act, speech, words, publication or other thing qualifies the act, speech, words, publication or other things as one having a seditious tendency'.<sup>2</sup> Therefore, based on the Act, seditious would happen when it is applied to or used in regards of either any act, speech, words, publication, or other things that qualifies of having seditious tendency. When certain acts, speeches, words, publications or other things are appropriate to be a seditious tendency, thus, it would be interpreted as seditious according to the Act.

The Act further explains the term 'words' as it includes 'any phrase, sentence or other consecutive number or combination of words, oral or written'.<sup>3</sup> Thus, the Act stresses the words that are regarded as seditious under the Act which would comprise

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<sup>1</sup> Refer to Preamble, Sedition Act 1948.

<sup>2</sup> Section 2 (Interpretation), Sedition Act 1948.

<sup>3</sup> Section 2 (Interpretation), Sedition Act 1948.

also either any phrases, sentences, other consecutive numbers, combination of words, oral or written. The scope of the meaning of 'words' is broadened under the Act.

In relation to the publication, the Sedition (Amendment) Act 2015 has indeed inserted the term 'by electronic means' by which it refers to any publication '(a) broadcasted so as to be available for reception by members of the public or of a section of the public; or (b) communicated through network services to members of public or of a section of the public'.<sup>4</sup> Hence, any seditious publication made by electronic means by way of broadcasting for reception by the members of public or a group of them, or communicating via network services to the public or a group of them will be covered under the Act.

### **Seditious Tendency**

The Act explains six types of seditious tendency.<sup>5</sup> The first, 'seditious tendency' refers to a tendency 'to bring into hatred or contempt or to excite disaffection against any Ruler'.<sup>6</sup> At this point, any acts, speeches, words, publications, or other things that have tendency to bring into hatred or contempt or excite disaffection against any Rulers can be considered as seditious tendency under the Sedition Act 1948.

Such legal clause was in fact amended in 2015 by deleting the word 'or against any Government'.<sup>7</sup> Thus, any acts, speeches, words, publications, or other things that have tendency to bring into hatred or contempt or excite disaffection against Government would not amount to seditious tendency anymore under this Act.

The second, 'seditious tendency' refers to a tendency 'to excite the subjects of any Ruler or the inhabitants of any territory governed by any Government to attempt to procure in the territory of the Ruler or governed by the Government, the alteration, otherwise than by lawful means, of any matter as by law established'.<sup>8</sup> Any acts, speeches, words, publications, or other things that have tendency to bring into hatred or contempt or excite the subjects of any Malaysian Rulers or inhabitants who live in Malaysia in attempting to procure or gain in the country the alteration of any matters as by law established, otherwise than by lawful means.<sup>9</sup>

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<sup>4</sup> Section 2 (Amendment of Section 2), Sedition (Amendment) Act 2015 (Act A1485).

<sup>5</sup> Section 3 (Seditious Tendency), Sedition Act 1948.

<sup>6</sup> Section 3(1)(a), Sedition Act 1948.

<sup>7</sup> Section 3(a)(i) (Amendment of Section 3), Sedition (Amendment) Act 2015 (Act A1485).

<sup>8</sup> Section 3(1)(b), Sedition Act 1948.

<sup>9</sup> Section 3(1)(c) of Sedition Act 1948 that prescribed 'A "seditious tendency" is a tendency to bring into hatred or contempt or to excite disaffection against the administration of justice in Malaysia or in any State;' is deleted (Section 3(a)(ii) Sedition (Amendment) Act 2015 (Act A1485). Thus, any tendency that bringing into hatred, contempt or excite disaffection against the administration of justice in Malaysia or any State is not amounted to seditious tendency anymore.

The third, 'seditious tendency' refers to a tendency 'to raise discontent or disaffection amongst the subjects of the Yang di-Pertuan Agong or of the Ruler of any State or amongst the inhabitants of Malaysia or of any State'.<sup>10</sup> Thus, any acts, speeches, words, publications, or other kinds that have tendency to promote discontent or disaffection amongst the subjects of the King of Malaysia or the Malay Rulers of any state or the inhabitants of Malaysia can be regarded as seditious tendency.

The fourth, 'seditious tendency' refers to a tendency 'to promote feelings of ill will, hostility and hatred between different races or classes of the population of Malaysia'.<sup>11</sup> Therefore, any acts, speeches, words, publications, or other kinds that have tendency to encourage ill feelings, hostility and hatred between the different races or classes of population in Malaysia can be viewed as seditious tendency under the Act.

The fifth, 'seditious tendency' refers to a tendency 'to promote feelings of ill will, hostility and hatred between different persons or groups of persons on the ground of religion'.<sup>12</sup> Thus, any acts, speeches, words, publications, or other kinds that have tendency to inspire ill feelings, hostility and hatred between the different persons or groups of people that relate to matters of religion will be interpreted as seditious tendency under the Sedition Act 1948.

The sixth, 'seditious tendency' refers to a tendency 'to question any matter, right, status, position, privilege, sovereignty or prerogative established or protected by the provisions of Part III of the Federal Constitution or Article 152, 153 or 181 of the Federal Constitution'.<sup>13</sup> Hence, any acts, speeches, words, publications, or any kinds that have tendency to query any matter, right, status, position, privilege, sovereignty that protected by Part III of the Federal Constitution of Malaysia or Article 152, 153 or 181 of the Constitution. Part III of the Federal Constitution deals with matters of Malaysian citizenship. Whereas Article 152 of the Federal Constitution is about national language, Article 153 relates to reservation of quotas in respect of services, permits etc for Malays and natives of Sabah and Sarawak, and Article 181 is about Rulers' sovereignty.

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<sup>10</sup> Section 3(1)(d), Sedition Act 1948.

<sup>11</sup> Section 3(1)(e), Sedition Act 1948. The term 'and hostility' has been deleted and replaced with 'hostility and hatred' (Section 3(a)(iii)(A) Sedition (Amendment) Act 2015 (Act A1485).

<sup>12</sup> Section 3(1)(ea), Sedition Act 1948. This clause had been inserted after paragraph (e) of Section 3(1)(e), Sedition Act 1948 according to Section 3(a)(iv) Sedition (Amendment) Act 2015 (Act A1485).

<sup>13</sup> Section 3(1)(d), Sedition Act 1948.

In proving the commission of the above offences, the Act prescribes that there is no need to prove the intention of the offender. Section 3(3) mentions 'For the purpose of proving the commission of any offence against this Act the intention of the person charged at the time he did or attempted to do or made any preparation to do or conspired with any person to do any act or uttered any seditious words or printed, published, sold, offered for sale, distributed, reproduced or imported any publication or did any other thing shall be deemed to be irrelevant if in fact the act had, or would, if done, have had, or the words, publication or thing had a seditious tendency'.<sup>14</sup>

The law states in order to prove the offence of seditious tendency is committed under the Act, it is unnecessary or irrelevant for the prosecutor to prove the defendant or offender (person charged) as having 'an intention of committing the seditious tendency' at the time he or she committed, attempted to commit, prepared to commit, or conspired with other person to commit the offence. Or any other kinds as interpreted under the Act, with the condition that, the acts, words, publications and any other related matters if it is committed would have evidence of a seditious tendency.

### **Offences**

The Act divides the offender, who did offences of seditious tendency, into four categories. They are namely:<sup>15</sup> (1) Any person who does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act which has or which would, if done, have a seditious tendency; (2) Any person who utters any seditious words; (3) Any person who prints, publishes, or causes to be published, sells, offers for sale, distributes or reproduces any seditious publication; or (4) Any person who imports any seditious publication.<sup>16</sup>

In matter of punishment for such offender, the Act explains it in the same legal clause that is in Section 4.<sup>17</sup> For the punishment, the Sedition Act 1948 divides it into two situations. The first, when the case does not involve bodily injury and damage to the property. The second is when it involves bodily injury and damage to the property. For the first type, if the offence of seditious tendency is committed by the offender without resulting to bodily injury and damage to the property, the Act imposes that the offender who commits the seditious tendency and proving guilty by the court shall be liable to imprisonment for a term of not less than three years but not exceed than seven years (3-7 years imprisonment). Indeed, any seditious publication

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<sup>14</sup> Section 3(3), Sedition Act 1948.

<sup>15</sup> Section 4 (Offences), Sedition Act 1948.

<sup>16</sup> Section 4(1)(a)(b)(c)(d), Sedition Act 1948.

<sup>17</sup> Section 4 (Offences), Sedition Act 1948.

found in the possession of such offender or used in evidence of the trial in the court must be forfeited and may be destroyed or otherwise as directed by the court.<sup>18</sup>

It is written in the Act,<sup>19</sup> 'Any person who— (a) does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act which has or which would, if done, have a seditious tendency; (b) utters any seditious words; (c) prints, publishes, or causes to be published, sells, offers for sale, distributes or reproduces any seditious publication; or (d) imports any seditious publication, shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term of not less than three years but not exceeding seven years and any seditious publication found in the possession of the person or used in evidence at his trial shall be forfeited and may be destroyed or otherwise disposed of as the court directs.'

It is noted that prior to 2015, the punishment imposed by the Act for this type of offence was a fine not exceed five thousand ringgit or imprisonment for a term not exceed three years or both. However, this law had been repealed and amended by Section 4(a)(iii), Sedition (Amendment) Act 2015 (Act A1485). At this juncture, it is interesting to note that the current type of punishment seems harsher than before based on two reasons. Firstly, the period of imprisonment has been extended from less than three years (before 2015) to between three until seven years (present law).

Secondly, there are no more alternatives given by the Act to the court to impose the punishment to the offender in term of monetary fine unless imprisonment only. Prior to 2015, the court had a discretionary power either to punish offender with a fine or an imprisonment. However, based on the current law, the court can impose the punishment of imprisonment or imposing jail sentence only.

For the second type, the offence of seditious tendency is committed by the offender by which it results to bodily injury and damage to the property. The Act then imposes that the offender who commits the offence and proving guilty by the court shall be liable to imprisonment for a term of not less than five years but not exceed twenty years (5-20 years imprisonment).<sup>20</sup>

It is noted that due to the nature of the offence done, there is no alternative of fine monetary punishment provided by the Act to the offender under this clause

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<sup>18</sup> However, prior to 2015 (Sedition (Amendment) Act 2015 (Act A1485), the punishment imposed by the Act for this type of offence was a fine not exceed five thousand ringgit or to imprisonment for a term not exceed three years or both.

<sup>19</sup> Section 4(1), Sedition Act 1948.

<sup>20</sup> Section 4(b)(1A) Sedition (Amendment) Act 2015 (Act A1485).

except by imposing the imprisonment punishment only. It is written in the Act,<sup>21</sup> 'Any person who— (a) does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act which has or which would, if done, have a seditious tendency; (b) utters any seditious words; (c) prints, publishes, or causes to be published, sells, offers for sale, distributes or reproduces any seditious publication; or (d) imports any seditious publication, and by such act causes bodily injury or damage to property shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term of not less than five years but not exceeding twenty years.

### **Arrest Without Warrant**

The person who commits the offence of seditious tendency can be arrested without warrant by the police officer under the Sedition Act 1948. Section 11 imposes 'Any police officer not below the rank of Inspector may arrest without warrant any person found committing or reasonably suspected of committing or of having committed or of attempting to commit or of procuring or abetting any person to commit any offence against this Act, or reasonably suspected of the unlawful possession of anything liable to forfeiture thereunder'.<sup>22</sup>

Thus, any person who is found of committing or reasonably suspected of committing or having committed of attempting to commit the offence or procuring or abetting any person to commit the seditious tendency can be arrested by the police officer who is not below the rank of inspector without any warrant. The same situation applies to the person who is reasonably suspected of the unlawful possession of anything that related thereto under the Act.

### **LEGAL IMPACTS TO COMMUNITY: THE SHARING PROSPERITY**

It is observed that the establishment of the Sedition Act 1948 provides some legal impacts to the Malaysian community. The most obvious and important is it provides legal assurance of harmony life and sharing prosperity to the community of Malaysia. The population of the Malaysian community comprises of three main races which are Malays, Chinese and Indians. Thus, it is very much vital to observe and take care of the sensitive issues relating to the races and religions. Hatred discourse is the major challenge that faced by the current society including the Malaysian society. It can easily lead to disharmony, disunity, and chaos of life among the races.

Therefore, by having the Sedition Act 1948, people will be more careful and cautious in terms of their actions, speeches, writings, drawings and everything related thereto. It is especially in the event of it will result to hatred discourse to the other

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<sup>21</sup> Section 4(b)(1A) Sedition (Amendment) Act 2015 (Act A1485).

<sup>22</sup> Section 11(Arrest without warrant), Sedition Act 1948.

group. This is evidenced especially when the Sedition Act 1948 imposes a severer punishment to the offender by which he or she cannot simply escape from the liability by paying the monetary fine. Thus, this could be a 'legal warning' to the people who live in Malaysia as to avoid and evade the hate discourse at their daily life.

The Act also provides some legal protections for certain people for instances, among others, the King of Malaysia, Rulers of the states, inhabitants of Malaysia from being affected by the offence of seditious tendency and so forth, regardless of any races or religions. Hence, with the establishment of the Act, such person will have the feeling of security and being legally protected by the law of the country. Anyone who makes the hate speech against another, in the manner that prescribed by the Act, can be viewed as seditious tendency under the Act and can be arrested without warrant by the police. This is carried out as to avoid further chaos that may happen to the society, if the matter has not been stopped and curbed by the authority. It is indeed important as to maintain the peace and sharing prosperity in the society.

There was a famous case of Alvin Tan (2013) by which he was charged under the Sedition Act 1948 for inciting religious enmity in Malaysia. Alvin had posted an offensive photo to Muslims on his facebook page featuring eating pork stew namely 'bah kut teh' while greeting fasting Malaysian Muslims for Ramadhan. It happened during the month of Ramadhan. He wrote "Happy Breaking Fast with *Bak Kut Teh*, aromatic, tasty and appetizing". This post/statement was considered as highly offensive as the fact that pork is regarded as strictly forbidden under the religion of Islam.

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This post/statement was considered as highly offensive as the fact that pork is regarded as strictly forbidden under the religion of Islam. One of the examples of recent case that was charged under the same Act is the owner of facebook account namely Iswardy Morni. He was believed to have made a statement of mocking and insulting the Yang Dipertuan Agong of Malaysia which disturbing the public order.<sup>23</sup>

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<sup>23</sup> Maisarah Sheikh Rahim. *Iswardy Morni Disiasat Bawah Akta Hasutan 1948*. Utusan Online. 30 May 2021. <https://www.utusan.com.my/nasional/2021/05/iswardy-morni-disiasat-bawah-akta-hasutan-1948/> (accessed on 15 June 2021).

## SOME CONTROVERSIAL ISSUES

There are some controversial issues with regard to the Sedition Act 1948. The first is the Act is viewed as against the freedom of speech as prescribed under Part II of Fundamental Liberties in the Malaysian Federal Constitution. With the enactment of the Sedition Act 1948, some claim that the liberty to speak has been limited and restricted in Malaysia. People cannot express and say whatever they like, as they have been threatened with the laws imposed by the Act. Therefore, they allege that the Sedition Act 1948 was indeed in contradiction with the spirit of freedom of speech provided in the Federal Constitution of Malaysia.

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It should be noted that not all liberties are absolute, as some are qualified other provisions. It is similar to Article 10 (freedom of speech) of the Federal Constitution which is subjected to other legal clauses. It must be read together with other clauses. Article 10(1) of the Federal Constitution provides, ‘Subject to Clauses (2), (3) and (4)— (a) every citizen has the right to freedom of speech and expression’.<sup>24</sup> Therefore, the general rule is that every citizen has right to freedom of speech and expression. However, there has some restrictions imposed on that general rule, for instance, that is subject to clause 2 and so forth.

At this point, one example of restriction is provided in Article 10(2). It states that Parliament may ‘by law’ impose restrictions as it deems necessary in the interest of security of Federation or any part thereof.<sup>25</sup> Thus, it is stressed that the enactment of Sedition Act 1948 cannot be regarded as against the freedom of speech as it evolves under the virtue of Article 10(2) of the Federal Constitution. With the enactment of the Act, it can legally impose certain restriction as it deems necessary to secure the interest of security of the public who live in Malaysia. Thus, there is no issue of its enactment being in contradiction with the freedom of speech under the Federal Constitution.

Based on the above similar argument, some strongly suggest that the Sedition Act 1948 should be repealed. Furthermore, some claim that certain laws provided in the Act are quite severe and tough. For instance, the way that it provides the offender does not need to have the intention of seditious tendency to be liable under the Act, no

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<sup>24</sup> Article 10(1)(a), Federal Constitution.

<sup>25</sup> Article 10(2), Federal Constitution.

need for a warrant to arrest the offender, and the term of imprisonment seems too harsh and so forth. Even, some argue that the term of seditious tendency is not well-defined, and it can lead to injustice to others.

Other issue includes the claim that the Sedition Act 1948 is purposely used for the political agenda. Some allege and accuse that the government purposely use the Act for the sake of their political purpose which then cause injustice to others. It is, for instance, the political persons will apply and use the Act when they intend to prevent others from making criticism against themselves.

## CONCLUSION

After scrutinising all the above facts and discussions, even though the fact that the Sedition Act 1948 has been claimed as a tough Act by some groups, indeed, it is observed that the Act has provided various benefits and assistance to the community. By having the enactment of the Act, the Malaysian community seems to be more cautious and careful in term of their speeches, actions, writings, postings and whatever related thereto, especially when it involves the sentiment of other races or groups of community.

Furthermore, it is particularly when related to religion, belief, colour of skin, language, ethnicity, gender and so forth. As a matter of fact, the community are, indeed, reminded and warned as to not simply throw their statements or thoughts as they like without thinking of the consequences to the society and surrounded people at large. This is very much a concern as we live with current sophisticated technology by which the message and information can be delivered and reach the people in one click only.

In such circumstances, the establishment of the Sedition Act 1948, can be considered as one of the ways of combating hatred discourses<sup>26</sup> among the community. Even though, it is agreed that by having such Act, there is no complete assurance that the matter or issue of hate speeches can be stopped or abolished in total. But at least, such problem of hatred discourse in the society can be controlled and monitored by the legal authority professionally and effectively.<sup>27</sup>

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<sup>26</sup> Che Zuhaida Saari. *Akta Hasutan Pastikan Maklumat Berhemah Era Medsos*. Berita Harian Online. 7 March 2020. <http://ddms.usim.edu.my:80/jspui/handle/123456789/19434> (accessed on 10 July 2021).

<sup>27</sup> Hadi Abd Manap. *Akta Hasutan Masih Relevan Jaga Perpaduan*. Utusan Online. 13 August 2020. <https://www.utusan.com.my/berita/2020/08/akta-hasutan-masih-relevan-jaga-perpaduan/> (accessed on 10 July 2021). See also, Ismail Sualman. *Akta Hasutan Masih Relevan*. Sinar Harian Online. 20 January 2019. <https://www.sinarharian.com.my/article/8564/KOLUMNIS/Akta-Hasutan-masih-relevan> (accessed on 10 June 2021). Mohamad Fadli. *Akta Hasutan Masih Relevan Kata Menteri KDN*. Free

Hence, whatever the argument is, it should be stressed that it is not the best way to repeal or revoke the Act, as suggested by certain groups.<sup>28</sup> Nevertheless, what should be done is to apply and implement the Sedition Act 1948 in accordance with fairness and justice. In fact, it can be improved and upgraded from time to time if it is relevant and necessary.<sup>29</sup> It is absolutely immoral and erroneous for those who execute the Act for the purpose of political thought and sentiment, as well for their own benefits. This should indeed be condemned intensely.

With the enactment of the Act, as well the current amendment of the laws, it is observed that the Act is one of the best ways that can control and monitor the hatred discourse from happening and spreading in the country. The Act can turn out to be the most effective legal means to curb and combat the problem of hatred discourse if the authority can ensure its enforcement and application is in accordance to justice. Thus, it is the efficacious means in accomplishing the peaceful life and sharing prosperity among the Malaysian society.

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<sup>28</sup> Nurul Huda Husain & Khairil Anwar Mohd Amin. *Kerajaan Tidak Akan Mansuh Akta Hasutan 1948*. Sinar Harian Online. 27 July 2020. <https://www.sinarharian.com.my/article/94159/BERITA/Nasional/Kerajaan-tidak-akan-mansuh-Akta-Hasutan-1948> (diakses pada 15 June 2021).

<sup>29</sup> Umavathi Ramayah. *Akta Hasutan Relevan Namun Perlu Dimodenkan – Timbalan Menteri*. Astro Awani Online. 17 August 2020. <https://www.astroawani.com/berita-malaysia/akta-hasutan-relevan-namun-perlu-dimodenkan-timbalan-menteri-255584> (accessed on 10 June 2021).

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