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Research paper

Reconceptualization of Property in the Era of Digitalization: an Analysis of the Malaysian Anti-Fake News Bill 2018

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Abstract

Fake news has dominated the social media. In response, the Malaysian Anti-Fake News Bill has been passed swiftly and it brought about awareness as well as other issues like the spread of unverified news and information. Clause 6 of the Bill imposes a duty on the person who is found in 'possession' of fake news or such publication that contains fake news. However, the word 'possession' is not defined. The objective of this paper is to critically examine the appropriate meaning of 'possession' under Clause 6. News in the era of digitalisation is essentially made out of information and digital resources intangible, transferable, shareable and non-exhaustive. The notion of possession which derived from the traditional concept of property is not applicable to the unique nature of 'news' in digital form. There is a need for a reconceptualization of property and the notion of 'possession'. Such new concept of property should not only describe 'property' as things but rather as 'rights'. The meaning of 'possession' should refer to owner's control, dominance and influence over news and information. This paper further examines how the new notion of possession ought to be applied in the context of Malaysian Anti-Fake News laws.

Keywords: *Fake news; possession; property.*

1. Introduction

Modern digitalization has changed the way of our lives in every aspect. Rapid dissemination of information over social media platforms has made the social media become a constitutive part of online news distribution and consumption. The traditional print news reporting are no longer the only and preferred way to delivering news to the readers. In fact, newspaper is the least popular medium of delivering news and current affairs according to news research conduct by Ofcom [1]. This research also unsurprisingly reflects the increasing popularity of our younger generation resorting to the convenient and assessible digital sources for the latest news.

For example, the BBC website or app remains the third most-used news source (23%), in the fourth place is BBC News channel (at 14%), Facebook is the joint fifth most popular source of news in terms of accessibility and Sky News at 12%. [1]. News dissemination and sharing in social media has numerous advantages. First, online news distribution is ever convenient and user friendly. Secondly, social media mechanics has simplified and facilitated news sharing [2].

Research has shown that, in comparison with other broadcasters, newspapers and online sites, BBC is the most trusted and impartial news provider in United Kingdom on the basis that BBC emphasises on strengthened trust and transparency. Their reported news are accurate, impartial, independent and fair. We are not concern with the standard of news reporting from these traditional news reporting agencies because they uphold their professional reporting standards. The problem lie when people other than these news reporting agencies share news online via the social media and WhatsApp because these news are not verified. These "news" may be unsubstantiated and may even be fake news. The journal *Science* has published a study concluded after studying millions of tweets circulated between 2006 and 2017 that "Falsehood [is] diffused significantly farther, faster, deeper, and more broadly than the truth in all categories of information."[3]. The threat of fake news bringing down democracies will eventually undermine confidence and trust in media reporting in general. The negative implication of fake news is that it manipulates the emotions of social media users on sensitive issues like religion and the economy and the end result is that the users feel bound and compelled to share the news the users have just received thus spreading such fake news or lies to even wider audiences. That is the real danger of online news sharing and rightly we should pay serious attention.

2. Current Situation

To address the issue of fake news in the era of digitalization, Governments of various countries are passing legislations to regulate the sharing of fake news. In Germany, Network Enforcement Act was passed targeted at social media platforms and websites such as Facebook, Twitter and YouTube (which have more than two million users) [4]. The Network Enforcement Act requires them to remove and block fake news which are potentially laced with hate-inciting contents and other illegal contents prohibited by the Criminal Code, within 24 hours of being notified of the same by a user or the Government (in the case of manifestly unlawful content) [4]. In Singapore, the Government published a Green Paper on the challenges and implications of deliberate online falsehoods in January 2018. A Parliamentary Select Committee has conducted public hearings and will soon submit its recommendations to the Government on a possible new law against fake news [5]. The recommendation possibly will include new legislation and implementation of suggested measures ranging from blocking of offend-

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ing websites to the balancing of national security interest with that of freedom of speech.

Malaysia has adopted similar measures. Malaysia has passed the Anti-Fake News Bill, 2018 in Parliament showing the Government's seriousness in dealing with fake news by anyone from within and outside Malaysia. The Anti-Fake News Bill, 2018 is needed because the existing laws namely, The Malaysian Penal Code, the Printing Presses and Publications Act, 1984 and The Communications and Multimedia Act, 1998 were drafted on or before 1990s which are not equipped to deal with the current situation and the type of offences in line with the latest technological developments. Malaysia is faced with various challenges in relation to the spread of fake news which 'confuse the public' and are capable of 'threatening the security, economy, prosperity and wellbeing of the public and country'.

There are mixed feelings among Malaysians over the passing of the Malaysian Anti-Fake News Bill, 2018. Concerns were raised as to whether the design of the 2018 Bill is to protect the country's citizens or is it just a way for the Government to clamp down on the medias' news reporting and to stifle free speech. Setting aside those issues, for the purpose of the present discussion, our focus is to examine whether the Malaysian Anti-Fake News, 2018 Act ["2018 Act"] has provided a clear and specific definition in relation to situations of the spreading of fake news.

3. Clause 6

The 2018 Act created three offences. Clause 4 provides that it is an offence of "creating, offering, publishing", etc … fake news or such publication containing fake news; Clause 5 provides it is an offence of "providing financial assistance" for purposes of committing or facilitating commission of offence under Clause 4 and Clause 6 states failing to carry out "duty to remove publication" containing fake news. Our present discussion is to focus on Clause 6 which reads as follows:

(1) It shall be the duty of any person having within his ***possession***, custody or control any publication containing fake news to immediately remove such publication after knowing or having reasonable grounds to believe that such publication contains fake news. (emphasis added)

The word 'possession' in Clause 6 has not been defined under the 2018 Act. Without a clear definition under the Act, it is difficult to legally ascertain the exact meaning of possession under Clause 6. References may be made to other legislations in Malaysia. The word 'possession' is also used under the Malaysian Penal Code. Section 378 states therein "Whoever, intending to take dishonestly any moveable property out of the *possession* of any person without that person's consent, moves that property in order to such taking, is said to commit theft." Moveable property is defined under Section 22 of the Malaysian Penal Code as follows:

"The words "movable property" were intended to include corporeal property of every description except land and things attached to earth or permanently fastened to anything which is attached to earth.

Illustration: Writings, relating to real or personal Property or rights are moveable property.

By examining at the meaning of moveable property under the Penal Code, the phrase " moveable property out of the *possession* of any person … moves that property in order to such taking …" implicates the physical nature and characteristic associated with possession, which refer to that of physical possession.

Relying on the above analysis, it is submitted that the word 'possession' refers to an act which is physical and possessory in nature. We can see the consistency between the Penal Code and 2018 Act with regards to the meaning of 'possession' on the basis that under the 2018 Act " duty of any person having within his *possession*, custody or control any publication containing fake news …" likewise indicates a physical act of possessing fake news or any publication containing fake news. However, the notion of physical possession has always been associated with physical object or property. The question is how will the notion of possession, that is physical possession be applied to fake news or any publication containing fake news. Does 'possession' means possess in the form of hard drive, thumb drive, Google Drive, internet cookies, internet archive, email, appears in ones' social media network or account due to linking, tag and so on?

There are two propositions that can be derived from this point. The first proposition is that news which is essentially made out of information or data is not to be regarded as tangible property and therefore the notion of physical possession is incompatible with the intangible nature of fake news or any publication containing fake news.

The second proposition is that fake news or any publication containing fake news cannot be considered as tangible object or property simply because they exist in a tangible form such as newspaper or report. It only refers to the medium that the fake news or publication containing fake news affixed to: the physical copy of the newspaper or report and not the actual fake news or any publication containing fake news itself. This is inapplicable to the intangible, transferable, shareable and non-exhaustive nature of fake news or any publication containing fake news found in online social media.

A comparison can be drawn from other countries which has passed similar legislation in relation to fake news. In Philippines, The Anti-Fake News Act of 2017 has a similar provision as Clause 6 of the Malaysian 2018 Act. Section 3 of The Anti Fake News Act of 2017 states:

"Failure to Remove False News.
It shall be unlawful for any mass media enterprise or social media platform to fail, neglect or refuse to remove false news or information within a reasonable period after having knowledge, or having reasonable grounds to believe, of its falsity. Any person violating this provision shall be punished by a fine ranging from Ten Million Pesos (P10,000,000) to Twenty Million Pesos (P20,000,000) and imprisonment ranging from ten (10) to twenty (20) years. If the offender is a corporation, the President, Chief Executive Officer and other responsible officers shall suffer the penalty of imprisonment."

In Germany, The Network Enforcement Act of 2017 requires large social media platforms, such as Facebook, Instagram, Twitter, and YouTube, to promptly remove "illegal content," as defined in the 22 provisions of their Criminal Code, ranging widely from insult of public office to actual threats of violence. Failure to do so faced will be punishable with fines up to 50 million euros, companies have already started removing content to comply with the law [6]

Both Philippines and Germany legislations have a provision under their respective Acts to deal with the removal of fake news or illegal content. If one refers to the explanatory statement of the Malaysian Anti-Fake News Act, 2018, the objective of Clause 6 is to basically impose a duty on any person to remove fake news or any publication containing fake news which is similar to Section 3 of the Philippines 2017 Act as well as the German's Network Enforcement Act 2017. However, neither Philippines nor Germany used the word 'possession' in their respective legislations.

4. The Right to Exclude, the Notion of Exclusivity and the Common Property Institution

In order to ascertain and examine the appropriate meaning of 'possession' under Clause 6 of the 2018 Act, it is necessary to refer to the in-depth detail analysis of the formation of the concept of property and its evolution over time as the notion of possession is derived from the concept of property.

The concept of property was established during the period of Agrarian and is based on the theory of 'physicalist' in which property refers to physical and real things and the notion of absolute dominion, the exclusive right of possession, enjoying and disposing are essential components. The Right of possession which relates to the right to exclude is the essential condition to identify ownership in property. However, as the society developed from the period of industrialization and commercialization, a system was needed to be established to manage the common resources and to transform them into property.(Dinh) In order to facilitate the transition in this era, property or its rights must be capable of being assigned and transferred. Many believed that private services and operations would in principle enhance efficiency and quality when taken private because private owners cared more for cost reduction and profitability [7]. People perceived property as a subject of trade and business transaction. Furthermore, the integration of industrialisation, creation and development of information technology in the period of e-commerce and knowledge economy, and with the invention of internet it has changed the mode of production, adjusting the industrial structure, changing the modes of resource allocation and facilitated economic growth [8]. It was necessary to have a proper institution to encourage such technological progress. Intellectual property is recognised as one of the most important corporate assets of many companies in the world and it is the foundation to maintain market dominance and continuing profitability in modern society [9]. From there we can see the transition and evolution of the concept of property, from physical property to the recognition of intangible property.

The transition and evolution can equally be seen in the notion of possession as well. The notion of possession goes hand in hand with the exclusion because when one in possession of a thing, it excludes the other from the use and enjoyment of it. The definition and meaning of 'possession' can be traced back to the concept of property in land. Cultivation had made human relationship to the land more concentrated. Tilling the land, making permanent settlements were all direct investments in land. Possession would remain in him by the principle of universal law until he did some act to abandon it. The formation of the conception of exclusive and permanent dominion over property allowed man to maintain a kind of permanent property in land and cattle for his family and young [10]. When a person finds a piece of land or thing, that person occupies the land and takes possession of the thing and control. The notion of dominion, the exclusive right of possession, enjoying and disposing were the basic notions and concept of property.

Hume explained that people made association in their minds between themselves and the 'things' they possessed physically [11]. The convention of respecting possession is based on the people's mutual expectation of their rights to control their property [11]. To violate such mutual expectation, the act would essentially consist of 'taking' and 'carrying away' the property of the victim with the intent of permanently depriving the victim of it. The phrase 'permanently deprives the victim of it' meant that the victim (owner) of the property was no longer able to possess and enjoy the property [12]. Hence, the rule against 'taking or carrying away' of property was designed to prohibit and to punish those disturbing public order by interfering with the right to 'own' something or the right to possess and use it [12].

In the thing-based concept of property, the notion of exclusion is important because in order for an owner to have the absolute right in property, all others must be excluded from the property. There are various writers as well as court decisions to support the notion that the "*right to exclude"* is considered as the most essential right in property and such right is the fundamental condition for a person to become an owner of property. In the Supreme Court case of Kaiser Aetna vs United States of America, the United States' Government filed a suit in the Federal District Court against the Petitioners for a ruling as to whether the Petitioners were required to obtain the Corps of Engineers' authorisation in accordance with § 10 of the Rivers and Harbors Appropriation Act of 1899 for future improvements in the marina. Furthermore, this case also decided as to whether the Petitioners could legally deny the public from accessing the pond on the basis of the improvements executed which had then made the pond navigable as a navigable waterway of the United States.

In examining the scope of the United States Congress's regulatory authority under the Commerce Clause, the District Court held that the pond was a 'navigable water of the United States', which was subjected to be regulated by the Corps of Engineers. However, it was further held that the Government lacked the authority to open the navigable pond to the public without any payment of compensation to the owner. The Court of Appeal agreed that the pond fell within the scope of United States Congress's regulatory authority, but reversed the District Court's decision and further held that when the Petitioners converted the pond into a marina and thereafter connected it to the bay, it thus became subjected to the 'navigational servitude' of the Federal Government. In giving the public a right of access to what was once the Petitioners' private pond when the pond was connected to the navigable water in a manner approved by the Corps of Engineers, the owner had lost one of the most essential sticks in the bundle of rights that were commonly characterised as property — the right to exclude others. It was further stated in this case that the 'right to exclude', was held to be a fundamental element of the property right, which fell within this category of interests in that the Government cannot take without compensation. The Court considered the 'right to exclude' as one of the most essential stick in the bundle of rights that would commonly characterised the subject-matter as property.

However the right to exclude cannot be applied to intangible, transferable, shareable and non-exhaustive nature of online material. Online materials such as information and data can be shared and transferred to different parties at the same time. For example, an e-book can be shared among many readers and every reader can read and possess a copy of the e-book simultaneously. Contrast this with the physical hard copy of a book, if A has a book thus is capable of reading it, A is in possession and no one else can read or possess the book simultaneously with A. Therefore, in the thing-based concept of property, the notion of possession and exclusion is very important. However, the notion of possession and exclusion is inapplicable to the intangible, transferable, shareable and non-exhaustive nature of online materials. Hence, the applicable notion for online materials is the notion of exclusivity.

They "exclusivity and exclusion" may sound similar but the notion of exclusivity defers significantly from the notion of exclusion. The notion of exclusion is to exclude the others from the property. However, the notion of exclusivity, on the other hand allow multiple users who have property interest to use or enjoy the property together. The purpose of notion of exclusivity under the property law is not to exclude other users but to harmonise *the interests of the others with the owner's special position of agenda-setting authority so that other users' interests are subservient to the owner right in property*.(Heller, 2001) In essence, exclusivity rules regulates relationships of multiple users who have property interests in the property owned by others. The rules are for the purpose of rendering those interests consistent with the owner's

position [13]. Exclusivity rules also protect ownership in property not through the exclusion of the others but through the principles of harmonising the interests of the others together with the owner's supreme position of agenda-setting authority [13].

The biggest threat to the owner's exclusive position is not the use of property by the others but is the use that is inconsistent with the owner's plan. Therefore, in order to preserve the owner's plan, it is not by ordering the other to stay out of the property but rather ensure the use and access of property is consistent with the owner's own plan and agenda [13]. With that, it maintains the owner's supreme and exclusive position without excluding the others from using and accessing the property [13] Furthermore it requires the law to protect the supreme and exclusive position of an owner by craving out all the possible rights and interests in property. The law protects the owner from potential usurpers of his or her agenda-setting authority [13].

The other issue that arises is whether by allowing and encouraging the others to use and access the property concerned for productive purposes - would that in any way affect the owners' absolute freedom in property. Traditionally the right to exclude the others is often seen as a form a freedom and such freedom is the key to justify ownership. However, the word 'freedom' does not simply mean only the freedom to choose anything from among all the adequate range of valuable options – personal autonomy. Freedom in the true sense connotes freedom from manipulation, freedom to determine one's own values and interests and to sort through and prioritise these values and interests in deciding how to act – moral autonomy [13].

Once there is a freedom to determine one's own values and interests, a person can pursue further and seek what he or she so desires. In doing so, property or ownership in property would ensure substantive moral autonomy by allowing a person to determine how he or she wants to deal with his or her property in the most beneficial and advantageous way. By deploying his or her property to productive uses it will not affect the owner's freedom in property. On the contrary, such productive uses further enhance the means to pursue one's desire or goal by the exchange of the property and benevolent compromise. As such, one's property is not limited to a set of options but may expand this very set of option even further. Therefore, based on the above analysis, by encouraging owners to deploy his or her property to productive uses it will not affect the owners' absolute freedom in property. In fact, it even expands owner's freedom in property to a greater degree.

Property confers upon an owner the right to exclude, however its exclusivity is configured in relation to a more fundamental interest in deciding how to use the property [14]. This normative domain of use determination leaves each owner of property with the greatest discretion to use the property. This normative domain of use determination is exactly what is needed in dealing with online materials.

The assertion here is that it's time to reconceptualize property in the era of digitalization. The reconceptualisation should occur in various aspects. First, the progression from the thing-based conception to right-based conception of property took place from the period of Agrarian to the period of e-commerce and knowledge economy. Secondly, further progression is needed from private property institution to common property institution on the basis that the conception of property to be adopted in the era of digitalization should strongly encourage and facilitate sharing of online materials and resources and not to be over protected of what one owes in the name of property conception.

In James Wilson's words, the essential element in commons was that people had symmetrical freedoms and not that those freedoms are total [15]. Hence, a system of law was needed to be established in order to manage the commons effectively. The problem lies in the common resources was that no one owned the resources and because of that no one would have the initiative to protect the resources. To resolve this, a common property regime was introduced which resulted in the resources being owned by number of individuals [16]. Common property allowed the distribution of property rights in resources in which a number of owners were co-equal in their rights to use the resources. It changed the users' perception with regards to the use and access of resource collectively. [16] explained common property as follows:

'Common property is not "everybody's property". The concept implies that potential resource users who are not members of a group of co-equal owners are excluded. The concept 'property' has no meaning at all without this feature of exclusion of all who are not either owners themselves or have some arrangement with the owners to use the resource in question [16].

The term 'common property' refers to a distribution of property rights in resources in which a number of owners who are co-equal in their rights to use the resource. The concept of common property means resources subject to the rights of common use and not to a specific use right held by several owners [16].

The concept of "property" has no meaning without this feature of exclusion of all who are not either owners themselves or have some arrangement with owners to use the resource in question. The common property concept gave incentives to the co-equal owners by empowering them with the authority to decide on access, use and exclusion of resources. Others who were not members of the group of co-equal owners would be excluded from using the resources. Common property owners shared benefits and enforcement [17]. However, when resources are commonly and concurrently owned, it may create conflicts among the co-owners of resource. Therefore, it is important to manage the relationship between the co-equal owners of common property resources through an 'institution'.

It is important to draw a distinction between common property and public goods as many have the understanding that they are the same. Public goods theory defined public goods as both non-excludable and non-rivalrous in that individuals cannot be effectively excluded from use and where use by one individual does not reduce its availability to others [18]. One may distinguish public goods from common property based on the degree of rivalry of use and excludability. Public goods has low degree of rivalry of use and low degree of excludability. Common property has low degree of excludability too but a relatively higher degree of rivalry of use than public goods.

One of the examples of public goods is Bill Gates microcomputer software in the mid 1990s. Once the software program is written, additional users can copy the program, making it available to other users at no cost to the existing users. It can be too costly to prevent such copying hence it is also non-excludable. Yet Bill Gates became one of the richest men in the world selling a public good. This real world example illustrate that public goods that are non-rivalrous and non-excludable and not necessarily produce less profit compare to private goods. In fact, many digital resources found in cyberspace shares similar characteristics with public goods that are non-rivalrous and non-excludable. For example, works created by the online creative communities. However, disputes often arise in these online creative communities which related to copyright issues in the areas of remix and reuse works. Perhaps one should consider applying the public goods theory or Common Property Institution and that should be able to resolve a lot of outstanding issues created by the application of copyright laws in these communities.

The above provide an analysis of the concept of property and its evolution over the periods of time. A similar evolution is required

in relation to the notion of exclusion, which was once considered as the most essential right of a property owner, the right to exclude. The right to exclude need to evolve into a more liberal notion, the notion of exclusivity in which allow multiple users who have property interest to use or enjoy the property together and it also harmonizes the interests of the others with the owner's special position of agenda-setting authority so that other users' interests are subservient to the owner right in property. In view of the rapid development of information technology, Common Property Institution is able to provide the delicate balance between the owner's dominion of over his/her property and at the same time allow co-equal owners of the property to manage the use of property by empowering them with the authority to decide on access, use and exclusion of property.

5. The Meaning of 'Possession' in Clause 6 of the 2018 Act

This paper does not intend to discuss whether fake news or any publication containing fake news is to be classified as property. The elaborations in relation to the concept of property as stated above is to facilitate the process of ascertaining the meaning of 'possession' under Clause 6 as the word 'possession' is best understood in the context of property concept.

How does the concept of property, its evolution, the progression from the notion of exclusion to the notion of exclusivity and the Common Property Institution have influence over the notion of possession? First, it is clear that the notion of possession is no longer limited to physical or actual possession. The notion of possession that one should emphasise is known as legal possession or constructive possession. Legal possession or constructive possession is often used in criminal prosecutions for possession crimes, such as possession of illegal drugs. Generally, for a Court to decide that a person had constructive possession of an object, the person must have had knowledge of the existence of the object and he has the ability to control it. For example, someone with keys to a safe deposit box may have constructive possession to the contents of the box which the keys will unlock.

Actual possession refers to a direct physical control over an object. Constructive possession on the other hand refers to the power and intent of an individual to control a particular object, even though it is not physically in that person's control. If this interpretation is accepted, then it can be argued that the word 'possession' not only means holding, have in one's possession the object or property but rather means some form of control, dominion and influence over the object or property. If the above argument is to be applied in the context of the 2018 Act, it is submitted that the word 'possession' state in Clause 6 does not refer to physical possession of fake news but some form of control, dominion and influence over the fake news or any publication containing fake news.

An observation that can be made from the comparison between the Malaysian Anti-Fake News Act 2018 and other legislations such as from Philippines and Germany is that the Malaysian 2018 Act imposes duty on any person while the Philippines and Germany legislations impose duty only on mass media enterprise or social media platforms such as Facebook, Instagram, Twitter, and YouTube. The possible explanation on this is that the Malaysian Anti-Fake News Act, 2018 is intended to impose duty to remove fake news or any publication contain fake news directly to an individual. If we try to impose such duty on an individual under Clause 6 and together with the meaning of 'possession' as proposed in this present paper, the possible explanation of Clause 6 would be as follows:

It shall be the duty of any person having within *his/her control, dominion and influence* over fake news or any publication containing fake news to immediately remove such publication after knowing or having reasonable grounds to believe that such publication contains fake news. (emphasis added)

If we read Clause 6 (1) carefully after inserting what ought to the meaning of word 'possession', the phrase " … having within *his/her control, dominion and influence* over fake news or any publication containing fake news …" it would in fact be more appropriate to impose this clause to mass media enterprise or social media platforms rather than any individual on the basis that these social media platforms are the ones that has control, dominion and influence over the fake news or any publication containing fake news. Any individual who being a user of these social media platforms are just sharing or 'repost' the fake news or any publication containing fake news. For example, A shares a piece of fake news over his Facebook page with his Facebook friends. A only have control, dominion and influence over his own Facebook account. Once the news are being shared by A's Facebook friends, A practically lose control, dominion and influence over what is going to happen to the fake news outside his media account. Hence, the duty impose from Clause 6 (1) on an individual such as A can only be confined within his 'possession', which means his control, dominion and influence in his own media account(s). If a piece of fake news has been shared by 50 individuals, is the Court of Malaysia by virtue of this Anti-Fake News Act 2018 impose such duty on each and every 50 individuals to remove such fake news or any publication containing such fake news? If an individual fail to comply with Clause 6(1) of the 2018 Act it will attract liability upon conviction of a fine not exceeding one hundred thousand ringgit [RM 100,000.00], the question is whether each individual who failed to remove the fake news is equally liable to such fine imposed under Clause 6. The issue of selective prosecution may be raised because it is quite difficult for the Court to prosecute each and every single individual in relation to the sharing of fake news over their media accounts.

Furthermore, there is also a high possibility of multiple prosecutions occurring. In this case, a single criminal act or transaction may constitute a number of different prosecutions and when this occurs, there is a real danger for defendants to be subjected to separate multiple prosecutions for the criminal offence arising out of his own act and to serve separate or consecutive sentences for each and every offence that has been committed [19]

6. Conclusion

To conclude, the purpose of the Anti-Fake News Act 2018 in Malaysia has been passed with the objective of bringing awareness as well as other issues like the spread of unverified news and information over the mass media and social platforms. Clause 6 of the 2018 Act imposes a duty on an individual and the word 'possession' stated in Clause 6 has created much confusion in the absence of clear definition from the 2018 Act itself. If the word 'possession' is given it most common and logical meaning, it will refer to a traditional notion of physical possession in which is incompatible with the intangible, shareable, transferable and non-exhaustive nature of fake news or any publication containing fake news.

In search for the most appropriate meaning of possession under the 2018 Act, it is asserted that the notion of possession should go beyond the traditional physical possession and custody. The notion of possession should be in tandem with the rapid development of information technology in the era of digitalization. There is a need to reconceptualize the concept of property. Property should not be confined to things but as rights, property rights. Online materials and resources are meant to be shared. Apart from reconceptualise property as rights, governments or legislative bodies

should adopted Common Property Institution instead of private property institution to regulate the use of online materials or resources in cyberspace. The notion of possession should likewise evolve along with the progression in the concept of property and other related theory. The notion of possession should go beyond physical possession and it should refer to control, dominion and influence over the online materials and in the present context, the fake news share on online media.

The Malaysian Anti-Fake News Act 2018 in a way is a well-intended piece of legislation with the purpose of regulating unverified news or information shared over the mass media and social platforms. However, without the clear definition and explanation of legal terms used in the 2018 Act it will incapacitate its application and effectiveness of such Act. This present paper only discusses and raises issues concerning to the use of the word 'possession' in Clause 6(1) in relation to concept of property. There are many other issues that have been by raised by many parties pertaining to the effectiveness in controlling the problem of fake news in Malaysia. Fake news legislations have been passed in other countries such as Philippines and Germany. Our neighbour, Singapore has been preparing the anti-fake news legislation since 2017. Effective control over sharing of fake news is a collective effort from all nations. A well drafted legislation to combat sharing of fake news is crucial and such legislation must reflect the values and the delicate balance of the various parties such as news reporting agents as well as users' interests in the mass media and social platforms.

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