

Public University Student Autonomy in the Malaysian Legal Framework: An Overview

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DOI: <https://dx.doi.org/10.47772/IJRISS.2024.803405S>

Received: 30 October 2024; Accepted: 07 November 2024; Published: 11 December 2024

ABSTRACT

The government often regulates university activities and causes the erosion of academic freedom. Students' rights are curtailed in participating in political parties. Students at universities are also limited by a variety of other factors, such as their inability to express opinions about subjects unrelated to their field of study. Additionally, it is also forbidden for students to raise money for extracurricular activities like associations unless the vice chancellor gives prior consent. Section 15 and section 15A which were respectively introduced in 1971 and 1975 to restrict student mobility. Such policy setting causes students' rights to speech and mobility be systematically controlled. However, the 2024 amendment of Section 15A has given more freedom to students in collecting and receiving money. This paper adopts the qualitative doctrinal approach where the analysis of the provisions in Universities and University Colleges Act 1971 (Act 30). This paper suggests for the amendments to Act 30 to include a provision stating that universities incorporated under the Act have autonomy and academic freedom. In addition, it is necessary to include a provision stating that Statutory Bodies (Discipline and Surcharge) Act 2000 (Act 605) does not apply to universities established under Act 30.

Keywords: student autonomy, Act 30, higher education, freedom, politics.

INTRODUCTION

Public universities in Malaysia operate under government oversight, which impacts the level of autonomy granted to students. The key laws governing this area include Universities and University Colleges Act 1971 (Act 30), Malaysia's Federal Constitution, and Education Act 1996 (therein referred as EA 1996). These legislations provide guidelines and framework on matters related to Malaysia's educational institutions and administrations. Malaysia highly emphasizes the importance of quality education and knowledge to its citizen. In the preambles of EA 1996, it is evident that Malaysia enacted EA 1996 because it recognizes the significance of education in achieving the nation's vision, determining key for the nation's destiny and survival, and developing a world-class quality education among others. In establishing an education system, student autonomy is an element that is essential and impactful for students' development. Student autonomy is an element that involves the control that learner possess over his learning process (Jaafar & Thang, 2013).

In public universities, student autonomy can be seen through various aspects. One of the most recognizable forms of autonomy can be seen in student representation and embodiment. Public universities typically have a student councils or unions for diverse purposes such as sports, committees, and clubs. Nevertheless, these unions often operate under the administration of the universities leading to limited power and independence.

In the context of academic freedom, the Federal Constitution have protected its fundamental principle under Article 12. Though, this does not hinder the possible practical limitation on discussing certain sensitive topics. Public universities uphold its reputation, which requires the campuses to maintain its expression on several matters by adhering certain standard of procedures set by the universities. For example, universities often require approval for student events, publications, and invited speakers. Beyond that, universities have broad powers to discipline students for various infractions, including those related to expression or conduct deemed detrimental to the university's reputation. The overall trend in recent years has been towards granting more autonomy to students, but significant constraints remain compared to some other countries.

Act 30 does not contain clear provisions regarding autonomy and academic freedom and there are various acts, regulations, circulars, and administrative instructions which restricts university freedom. In addition, there is government intervention in the internal affairs of the university. Existing government policies are not translated in line with the spirit of the constitution that recognizes fundamental rights of the people when existing laws are not clear about university autonomy and academic freedom. In addition, the method of establishing a public university as federal statutory bodies also hinder the exercise of autonomy and freedom university academics in Malaysia.

Furthermore, academic freedom gives rise to a significant issue for both scholars and students. Without academic freedom, academics are unable to perform their duties to the best of their abilities because they frequently fear disciplinary action from the university administration because of pressure from the government. The same holds true for students who are inundated with diverse views, particularly considering the globalization of information technology and the lack of national boundaries. Students' rights cannot be curtailed because they want to be exclusively involved in one political party. Students at universities are also limited by a variety of other factors, such as their inability to express opinions about subjects unrelated to their field of study. Additionally, it is also forbidden for students to raise money for extracurricular activities like associations unless the vice chancellor gives prior consent. This clause was added in 1975 to restrict student mobility. However, in 2024, section 15A of the Act 30 was amended to allow the Students' Representative Council and student body of the university, subject to any written law, make, organize or take part in any collection of money or receive money or any other contributions from any person or body of persons. This new development in Act 30 allows for more autonomy to the student representative committee in collecting and receiving money for their activities.

LITERATURE REVIEW

Academic Freedom Among Students

The fact that academic freedom extends to students has long been disregarded in the majority of the current discussion surrounding it (Bissell 1969). Students, not just academics, are scholars, and academic freedom is about their independence. They belong to a group of academics (Monypenney 1963). This is a key component of the Humboldtian tradition, which defines scholarship as the pursuit of knowledge and understanding as a shared objective that inevitably involves both professors and students (Karran 2009). In essence, both are students. It was also found that the degree to which students may express academic freedom in practice is negatively impacted by capacity deprivation, and a liberal education that empowers rather than domesticates students can increase student capability.

Freedom of association among Higher Educational Students in Malaysia

Freedom of association for higher education students in Malaysia has been a topic of significant discussion and legal evolution. Originally, Act 30 placed strict boundaries on student associations, particularly regarding political participation (Mohd Zain et al., 2023). For most universities, students were barred from participating in political parties or showing support for political movements within the university environment. This trend took a turn after an amendment was made to Act 30 back in 2012, where it allows students to involve themselves in political activities off-campus and forbids them to stand for any campus

selections or hold any designations in any bodies or group of students within the campus if they hold positions in any political parties (Mujani, Muttaqin & Khalid, 2014). However, further amendments made in 2019 removed additional restrictions, allowing students to engage in more political activities. The implementation of UNDI18 on December 15, 2021 added an estimated 5.8 million new voters aged 18-years-old and above (Ling & Puyok, 2024). This number includes students from public universities since the average age of students enrol in university is 18. Additionally, Ling & Puyok (2024) identified that education exposure to politics helps youths for their readiness to vote. This significantly gives more autonomy for students to associate themselves with politics and bear their civic responsibility as a citizen of the nation. The effect of this amendment now is students are free to join political parties and participate in political activities both on and off campus hence revived students' political freedom (Zain et al., 2023).

Despite the current legal framework being lenient on this matter, certain restrictions still apply, particularly regarding the use of university facilities for political purposes. These restrictions can also be seen in official student organizations bodies such as clubs and societies. For example, students have the autonomy to form various clubs and uniform bodies, but these often require approval from university administration. Wan (2019) stated that with the current Act 30 in place, public universities remained less self-directed as compared to the institutions that established before 1975. Despite legal reforms, arguments on the practical limitations on freedom of association persist. From an international perspective, Malaysia's approach to student association rights has been criticized by some international organizations as still being more restrictive than global norms. Until today, there are continuing debates about further liberalizing student association rights, where some argue for complete autonomy, while others advocate for maintain certain oversight.

Student representation

Student representation and autonomy are important aspects of higher education in Malaysia. Universities typically have student representative bodies or councils that advocate for student interests and participate in some decision-making processes. The level of autonomy granted to these bodies can vary between institutions. Rou, Musa & Kamis (2017) proposed that having a strong student representative body with high qualities of leadership is imperative, as it reflects the overall quality of the university. Most Malaysian universities have official student representative bodies such as Student Representative Council and Faculty Representative Committee. While student bodies exist, their autonomy is often restricted compared to some Western countries. Hilliard (2010) noted in her study that, despite participating in elections and other activities, university students often have limited opportunities for meaningful involvement in decision-making. In Malaysia's public universities, the Ministry of Higher Education maintains significant control over university policies and governance. The governmental oversight directly affects students' representation to self-governing and autonomous association. This goes against the real aim of the student movement, which was not to acquire political power, but to restore the universities' autonomy, which had been lost in the 1970s (Fadzil & Samsu, 2015). Current developments have shown ongoing discussions and some initiatives to increase student autonomy and representation in recent years. For instance, *Gerakan Mahasiswa 13* (GM13) organized multiple street protests to apply pressure on the ruling government for students' autonomy.

Academic Freedom

Academic freedom for university students typically refers to their right to engage in intellectual inquiry, express ideas, and pursue knowledge without undue restriction or censorship. This includes:

1. Freedom of speech and expression on campus;
2. Right to choose courses and areas of study;
3. Ability to conduct research on various topics; and
4. Protection from discrimination based on academic views.

UNESCO (1997) stated the definition of academic freedom as “the right, without constriction by prescribed doctrine, to freedom of teaching and discussion, freedom in carrying out research and disseminating and publishing the results thereof, freedom to express freely their opinion about the institution or system in which they work, freedom from institutional censorship and freedom to participate in professional or representative academic bodies”. In summary, the concept of academic freedom in universities refers to the right of faculty, students, and institutions to pursue knowledge, teach, and express ideas freely without interference. Traditionally, modern institutions integrate teaching, research, and service, along with a degree of faculty or professorial self-governance (Marginson, 2014). The study also stated that there are human practices rooted in history and continually evolving over time and across different contexts. However, studies have questioned how universal the academic freedom should be. Da (2022) argued that academic freedom is an old concept that has existed and been challenged throughout the history of universities dating back to the Ancient Greek era.

In Malaysia, the issue of academic freedom, particularly in public universities, has been a subject of ongoing debate due to government regulations and socio-political influences. For a historical context, higher education in Malaysia was established with the founding of the University of Malaya in 1961, followed by the University of Science Malaysia and Tunku Abdul Rahman College in 1969 (Chang & Hau, n.d.). Academic freedom in Malaysian public universities has been limited since the 1970s, particularly after the enactment of the Act 30. The initial Act 30 has curb student activism and government criticism within universities and struggle students’ role in playing an effective and meaningful part of society (Fadzil & Samsu, 2015). The Act 30 restricted student and faculty involvement in political activities, which directly impacted the level of academic freedom within higher education institutions.

The Ministry of Higher Education holds substantial influence over universities, including the appointment of key administrative figures such as vice-chancellors (Nain et al., 2018). This government control creates a dynamic where universities may face limitations in openly challenging government policies or pursuing politically sensitive research. Another challenge is the governmental influence causes lack of transparency for academic freedom in an institution. As a result, researches have suggested several reforms to be implemented to the current legal framework to achieve academic freedom. Nain et al. (2018) have proposed several recommendations in their study such as replacing all Vice Chancellors, Deputy Vice Chancellors, Chairpersons, and Boards of Directors who were appointed through political means. Academic freedom in Malaysian public universities has evolved over the decades, but it remains constrained by legal frameworks and political influence. While some improvements have been made, significant challenges still exist, limiting the extent to which faculty and students can fully exercise their academic independence.

Campus Expression

Historically, the Act 30 imposed significant limitations on student political activities, but amendments in 2012 and 2019 have somewhat relaxed these restrictions. Weiss (2005) explore how these legal changes have opened up space for student expression, although challenges such as self-censorship and administrative pushback remain prevalent. Student activism in Malaysia manifests through various forms, including protests, social media, and academic writing. Loh (2018) studied the historical analysis underscores the critical role students played in early nation-building, while Sinpeng (2020) examination of social media activism reveals the increasing use of digital platforms for organizing and dissent. Alongside political engagement, student activism has expanded to address social justice and environmental issues, with works like ‘Mobilizing for Democracy’ noting growing participation in these causes.

Despite recent trends toward greater openness, constraints on academic freedom persist. Da (2022) illustrated the ongoing tension between freedom of expression and state control. While the use of online platforms has offered students new avenues for activism, traditional concerns such as criticism of government policies and sensitive ethnic or religious issues continue to pose challenges. As noted in Weiss (2005) university students face restrictions, but the political landscape is slowly changing.

Legal Challenges

Legal challenges related to autonomy for university students in Malaysia are an important aspect of academic freedom and student rights. According to Article 10 of the Malaysian Federal Constitution guarantees freedom of speech, assembly, and association. In contrast, legal challenges often conjure balancing between these rights with university disciplinary powers and code of conduct. This was highlighted in the case of Muhammad Hilman bin Idham & Ors v Kerajaan Malaysia & Ors [2011] 6 MLJ 507, which challenged the restrictions imposed by the Act 30. The Act 30 has been a frequent target of legal challenges, particularly its provisions limiting student political activities as evident in the notable amendments in 2012 and 2019, which resulted from legal and political pressure. These legal challenges have played a significant role in shaping the landscape of student rights and disciplinary procedures in Malaysian universities. They often reflect broader societal debates about academic freedom, student activism, and the role of higher education institutions.

RESEARCH METHODOLOGY

This research was conducted purely on a doctrinal basis. This was done consistent with the aim of the research, which is to examine, analyse, compare, and contrast the cases decided on in Malaysia. It is qualitative in nature and uses published data, reports, research, articles, law reports and case studies as the source. All sources found were meticulously reviewed and dissected to make an authentic and accurate assessment to fulfil the objective of the research.

FINDINGS AND RECOMMENDATIONS

Definition and Historical Development of Student Autonomy

In the Malaysian context, student autonomy often refers to students' ability to make decisions about their learning, participate in university governance, and express themselves freely within academic settings. A recent study by Cullen & Oppenheimer (2024) stated the definition of autonomy in a more psychological context as, the feeling of having an internal sense of control, where one's actions are driven by personal desires rather than solely by external pressures. Nevertheless, the term students' or learners' autonomy can be subjective according to different perspectives and scholars, but the key themes typically involve taking responsibility or ownership of outcomes (internal locus of control), having confidence in one's abilities to succeed (self-efficacy), and actively participating in self-directed learning (Henri et al., 2018). From the two definitions given, it can be derived that student's autonomy consist of the freedom for students to self-govern their education. It is imperative to note that student's autonomy is not only limited to any particular form of independence, instead it is overarching and all-encompassing, of a greater magnitude than other aims of higher education (Holmes, 2018). Political and educational freedom, as stressed in this paper, are only examples of students' autonomy in higher education institutions.

This paper argued that, previously the autonomy has been an educational aim for many years, perhaps as far back in time as the Roman civilization (Holmes, 2018; Boud, 1988). In the United States, as the concept of "learner autonomy" has become more widespread and globalized from back in the 1990's much of the existing research—particularly that which has not been published in "international" journals or by "major" publishers has often been overlooked (Smith, 2006). This event spiked concerns on students' autonomy in higher education. Thus, it is timely that the government has to formulate strategies and plans to encourage Higher Education Institutions to implement changes and pursue excellence to compete in the global education market (Grapragasem, Krishnan, & Mansor, 2014). Ministry of Higher Education (2007) stated that the goal of these plans is to ensure that Malaysian universities attain world-class status and serve as a hub for higher education in the Southeast Asia region. Unfortunately, this has sometimes limited student autonomy, especially in areas touching on political or sensitive social issues.

Today, there has been a gradual shift towards promoting greater student autonomy, driven by multiple factors such as internationalization of higher education, adoption of student-centred learning approaches, and recognition of the need for graduates with independent thinking skills. Internationalization of higher education made a significant impact towards Malaysian higher education system, particularly on the attraction of foreign students to study in Malaysia (Grapragasem, Krishnan, & Mansor, 2014). Globalization has made an impact towards students' freedom while maintaining national identity. For example, policy efforts to make Malaysia more attractive to international students include improving how things are managed by limiting student enrolment to programs that are officially accredited (Tham, 2013). The establishment of student bodies in public universities has drastically increased student participations for self-governance. This is also one of the goals of an autonomous education system as no learners will ever have their teachers present to guide them throughout their entire lives (Holmes, 2018; Littlewood, 1996).

Public University Student's Autonomy in Education and Activism

In current trends, students' freedom of education can be multifaceted ranging from freedom to choose elective courses, freedom to partake in academic forums, freedom to enrol into educational institutions and others. From an Islamic viewpoint, self-control is also included as one of the traits of an educated individual (Saad, 2023; Yasin & Jani, 2013). In Malaysia, the preambles of EA 1996 stipulate the vast importance of education for the nation's development which includes possessing the knowledge, skills, and values required to thrive in a highly competitive and globalized world, driven by the rapid advancements in science, technology, and information among others. In public universities, an increased availability of elective courses indicates student's choice to tailor their own style of education. This is vital as Xu (2015) argued there is a need to make efforts to diversify elective courses, providing students with a wider range of choices. This implementation of outcome-based education will allow more personalized learning paths to students rather than a compulsory-made education.

On matters in respect to activism among students has been a subject of debate among the public. Consequently, this issue has led to the amendments that is made twice to the Act 30; in 2012 and 2019. Section 15 of the Act 30 governs the matter on activities of students or students' society, organization, body or group in Malaysia's public universities. The initial Act 30 was enforced on the 29th April 1971, and section 15(a) until 15(d) of the Act can be derived that no student or organisation is allowed to have any political participation neither inside the university nor outside the university, whether the political party is in Malaysia or outside Malaysia. The original provision is clearly restrictive on students' involvement in political activism and limits the students' freedom of speech, expression, and association as stated in Article 10 of the Malaysian Federal Constitution. However, Zain et al. (2023) reported despite ongoing suppression by governments and authorities, student involvement in politics remains strong and continues to grow. This contention is supported by Mujani, Muttaqin & Khalid (2014) as their study concluded that student involvement in campus politics at institutions happens consistently, regardless of how tightly it is controlled. As a result, the Malaysian Parliament passed the amendments made in 2012 of the Act 30, which relaxed some restrictions on students' involvement in politics. The amendments in 2012 leisured students' activism within the grounds of the university and colleges rather than hindering all political partaking. Even so, pressure from the public has emerge once again which directed to the amendments made in 2019 of the Act 30. The 2019 amendments in regards to public universities include:

1. To eliminate subsection (c) of Section 15 (2) of Act 30, which had previously prohibited students from participating in political party activities on university and college campuses; and
2. To abolish subsection (c) of Section 10 (2) of the Educational Institutions (Discipline) Act 1976 (Act 174), granting students the right to engage in political activities on campus.

The then Education Minister – Dr. Maszlee Malik stated that the amendments were just the beginning of expanding the democratic space for students in higher learning institutions, with the aim of shaping today's students into future democratic leaders (Rashid, 2018). Legally, students have the freedom to be involved with activism, but the reality may not seem to reflect as stated. There are still challenges in granting students'

full autonomy to partake in various activism, such as balancing autonomy with cultural values and national interests, varying levels of implementation across different institutions and resistance from certain parties.

Striking a balance between students' freedom with social interest can be difficult. As the amendments made to the Act 30 in 2019 have allowed students to involve in activism, the law is blurred on the barriers to which, the issue raised by the students may be sensitive or against the cultural norms. It is notable to mention that albeit the autonomy for student activism, different institutions have varied stages of operation across the country. This is mostly due to the different sets of frameworks provided for students to comply that varies from one university to another. Thus, the diversification of framework among institutions may result in different outcomes of student autonomy. Another issue on implementing students' autonomy is the constant conflict from certain parties that may not be happy to implement the current amendments made in the Act 30. This problem can range from many factors including the typical stereotype of political engagements is a negative influence for students and others.

The latest 2024 amendment to section 15A of the Act 30 effective on 1 October 2024 allows for more autonomy to Students' Representative Council and student body of the university to collect or receive money to carry out their activities. However, this new amendment is still subject to the implementation procedures provided by the university administrators.

CONCLUSION

In conclusion, the issue of amending the Act 30 remains a complex and debated topic within Malaysian higher education policy. On one hand, proponents argue that the Act restricts academic freedom, limits student political participation, and is outdated in addressing the needs of modern education and global standards. On the other hand, opponents maintain that the Act ensures stability within universities, protects students from external influences, and serves to safeguard national interests. Ultimately, the decision to amend the Act 30 must balance the need for academic freedom and student rights with considerations of maintaining order and protecting broader national interests. The debate is far from settled, reflecting the evolving nature of Malaysia's higher education landscape.

ACKNOWLEDGEMENT

The authors would like to thank the Centre of Foundation Studies, Universiti Teknologi MARA and Universiti Kebangsaan Malaysia for providing the supports for this study.

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