

# **Fake News Crime: A Comparative Study Between Shari'ah and The Law**

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## **Abstract**

This article examines the criminal distinction between shari'ah and the law in the spread of fake news. There have been numerous instances of fake news spreading recently, particularly on the internet. The power of the viral in social media is growing over time. The rise in these cases has sparked public concern about the security of personal data and personal reputations, as fake news spreads quickly and unnoticed. This study's goal in this regard was to discuss the crime of spreading fake news in the context of Shari'ah Islamiyyah. The second goal is to identify the role of SKMM, Malaysian legal procedures, and related issues. Furthermore, this study compares Shari'ah to relevant laws in Malaysia and abroad, and proposes solutions deemed appropriate to protect the interests and rights of all parties involved. This is a qualitative study using content analysis methods, and the materials used are primarily drawn from a library of primary and secondary data. The main data is gathered from the book Shari'ah to explain how the shari'ah principle was applied. The Act, the Penal Code, and related legal cases are all detailed in the statute. Secondary data comes from published sources such as textbooks, journal articles, online databases, and the Internet. The study employs a combined method of data analysis, which is a descriptive, critical, and comparative approach, for analysis. The statements of the judges in each case are carefully checked; gaps are highlighted and rational justification is provided. The findings show that the crime of spreading fake news during the heyday of Islam was more in line with the philosophical and moral meaning than the current day, which is more punitive, particularly in terms of penalties and long-term consequences. Furthermore, a review of Malaysia's legal framework on this subject reveal that appropriate safeguards must be strengthened to ensure that victims of the spread of fake news receive justice. The phenomenon that occurs between these two epochs reveals a significant separatist gap as the Islamic mold is lost as a guide to life in the surf of community life.

**Keywords:** Crime, Spread, Fake News, Comparison, Shari'ah, Law.

## **Introduction**

There have been numerous instances of fake news spreading recently, particularly on the internet. The power of the viral in social media is growing over time. The rise in these cases

has sparked public concern about the security of personal data and personal reputations, as fake news spreads quickly and unnoticed.

In this regard, the goal of this study was to discuss the crime of spreading fake news in the context of Shari'ah Islamiyyah. The second goal is to identify the role of SKMM, legal procedures in Malaysia, and related issues. Furthermore, this study compares Shari'ah and relevant laws in Malaysia and abroad, and proposes solutions that are deemed appropriate to protect the interests and rights of all parties involved.

This study employed a content analysis method, with materials drawn primarily from a library of primary and secondary data. The main data is gathered from the book of shari'ah to explain how the shari'ah principle is applied. Legal provisions in penal code statutes and related legal cases Secondary data is derived from published materials such as textbooks, journal articles, online databases, and the Internet. The study employs a combined method of data analysis, which is a descriptive, critical, and comparative approach, for analysis. The statements of the judges in each case are carefully checked; gaps are highlighted and rational justification is provided.

### **The Crime of Spreading Fake News from Syari'at Glasses**

The basis for criminalizing the spread of fake news can be applied using two fiqah methods: 'La Darara wa La Dirar' (لا ضرر ولا ضرار) and 'al-Darar Yuzal' (الضرير يزال).

In the face of fake news, Islam has outlined several methods of Islam. To begin, instill the value of sincerity to Allah SWT in all of your words and actions. Second, genuine knowledge derived from legitimate sources. Third, maintain Allah SWT's bond (hablun). Fourth, refer to the distinction between Allah's Book and the Sunnah of the Prophet PBUH. Fifth, when confronted with questions, clarity, hidden, and suspicious of news, consult a scientist. Sixth, be kind to Muslims and trust the news. Seventh, creating accountability. The eighth commitment is to accurate methodology, and the ninth is to admirable morals.

### **A Comparative Study Between Shari'ah and The Law**

If the news is discovered to be false, it will be thoroughly investigated by the Malaysian Communications and Multimedia Commission (MCMC), CyberSecurity Malaysia, and the Royal Malaysian Police (PDRM) using detailed methods that may include forensic computer methods and others.

Following the collection of evidence, the prosecution may file charges against the suspect in court in accordance with the applicable law. The problem they face is fake news spread via fake social media accounts or anonymous accounts.

Even if the investigation takes a long time in this case, the prosecution must be absolutely certain that the evidence obtained is genuine. The court cannot rule on the case of falsifying and spreading false news without solid evidence.

Suspects may face charges under the Printing Machines and Publications Act of 1984, the Slander Act of 1957, the Sedition Act of 1948 (revised 1969), the Penal Code involving criminal defamation, and the Communications and Multimedia Act of 1998. The Security Offences (Special Preventive Measures) Act of 2012 (SOSMA) can also be used to combat the spread of fake news.

If fake news is spread on the internet, the suspect is usually charged under Section 233 of the Communications and Multimedia Act 1998 for using broadband or the internet to spread untruthful news or spreading news that could jeopardize national security.

The 1998 Act allows the government to restrict news that may cause public confusion, but the Malaysian bar body stated in 2016 that 'raising doubt or confusion' is not harmful and the suspect cannot be charged under Section 233 of the act.

In the case of *City Team Media Sdn Bhd v Saravanan a/l Murugan [2020] MLJU 1315*, The court mentioned three conditions for proving the case of fake news spread:

*In line with the provisions of Section 101 of the Evidence Act 1950, the burden of proving of the 3 requirements stated at paragraph [2] above is on the Plaintiff. This Court is satisfied the Plaintiff has proof all 3 requirements in a cause of action for defamation for the 1st and 3rd statements. Firstly, that the article concerned was made by the Defendant. There was indeed publication and this was recorded in the report published by Malaysia Kini and in "1Tamilan Sanggam". Secondly, the article does refer to the Plaintiff and thirdly, that the statements are defamatory of the Plaintiff. In this regard, the statement complained of does in my judgment tend to lower the Plaintiff's reputation in the eyes of the right-thinking members of the public i.e. the reasonable man.*

In other case of *Mohamad Ezam Bin Mohd Nor & Ors V Tan Sri Norian Mai & Ors [2013] 3 MLJ 110*, The first defendant, the Inspector General of the Royal Malaysian Police, issued a press release revealing the plaintiffs' arrest. The second, third, and fourth plaintiffs contended that the first defendant's claims about them engaging in militant activities were false; the publication was defamatory about them and published in bad faith; and the first defendant lacked reasonable grounds to support their conditional protection defense.

It has been determined that the press release and 'news' contained in the press report are defamatory to the second, third, fourth, and sixth plaintiffs but not to the fifth plaintiff. It is an objective test for which an ordinary reader should have rational reasons to believe that such words refer to the plaintiff and do not allow for unreasonable suspicion or genuine speculation. As a result, the plaintiff's argument that the words in question are defamatory to the fifth plaintiff is untenable.

Offenders who commit the crime of spreading fake news face penalties under the law. Section 75 of the Communications and Multimedia Act of 1998 lists some of them: Notwithstanding Section 53, a person who fails to disclose or fails to provide any relevant information, evidence, or documents, or who provides information, evidence, or documents that he knows or has reason to believe is false or misleading, commits an offence and is liable to a fine not exceeding 20,000 ringgit on conviction.

Also provided under section 4 of the Seditious Act 1948

*(1) 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, 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 for a first offence to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both, and, for a subsequent offence, to imprisonment for a term not exceeding five 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.*

*(2) Any person who without lawful excuse has in his possession any seditious publication shall be guilty of an offence and shall, on conviction, be liable for a first offence to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding eighteen months or to both, and, for a subsequent offence, to imprisonment for a term not exceeding three years, and the publication shall be forfeited and may be destroyed or otherwise disposed of as the court directs.*

Section 7B of the Printing Machines and Publications Act 1984 provides for:

*(1) Any person who publishes, sells, offers for sale or distributes or abets the sale, offer for sale or distribution of any newspaper contrary to section 7A (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding one year or to both:*

*Provided that no person shall be convicted of any offence under the said subsection if he proves that the newspaper in respect of which he is charged was published, sold, offered for sale or distributed, as the case may be, without his authority, consent and knowledge and without any want of due care on his part.*

*(2) Any person who, without lawful excuse, has in his possession, custody or control for the purpose of publication, sale or distribution any newspaper the printing, publication, sale or distribution of which is unlawful under this Act shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months or to both.*

*(3) It shall be presumed until the contrary is proved that any person found in possession, custody or control of any such newspaper had the same for the purpose of the publication, sale or distribution thereof.*

*(4) Where any person is convicted of any offence under this section, any newspaper to which the proceedings relate shall be forfeited and shall be destroyed or otherwise disposed of as the court directs.*

The study discovered that it was difficult for prosecutors to prove cases of fake news spread committed in fake social media accounts. And, depending on the Court's discretion, there are various forms of punishment for the spread of fake news under civil law.

The case of *Norhayati bt Onn v Mohd Sufian bin Abdul Aziz* [2008] 4 SHLR 122 explains that it is permissible for the religion of Allah to refrain from defamatory acts, as stated in surah al-Baqarah verse 191:

*And kill them wherever you find them, and drive them out of the place where they have driven you away; and slander is more dangerous than murder; and do not fight them near Al-Haram Mosque until they fight you there. So, if they attack you, kill them. That is the punishment for those who do not believe.*

For example, in the context of working as a journalist who is entrusted to publish or report on a specific matter or issues, it is certainly advisable that before a report is published in the press, we ensure that the veracity of the story and the authenticity of the news source are first ascertained. Before publishing news obtained from untrustworthy sources, it should be thoroughly investigated and verified.

If the news is untrue and false, it is defamatory, and we can be considered killers because our religion considers defamatory people to be more dangerous than murderers. The Court believes that in order to perform a good journalistic duty, we must be fair when writing or broadcasting news so that a person can be considered guilty or evil before the court renders its decision. If that is the case, we have wronged our own brothers, regardless of skin color, race, or religion.

According to the teachings of Islam, there are three types of crime: qisas, hudud, and ta'zir, as stated in the case of Chief Prosecutor of the Terengganu Religious Affairs Department v Nor Thuraya bt Salleh [2014] 2 SHLR 130. Each section has its own set of rules that have been guided by syarak and explained by scholars. The syarak evidence and the scholars' interpretation of it distinguishes one part of the crime from the other. Hudud, qisas, kaffarah, diyah, or ta'zir are all forms of punishment. This is mentioned by (Yaacob, 2005).

Ta'zir is defined by Zaidan (1989), as sanctioned retribution for a vice or criminal offense for which there is no provision of retribution of limits and kaffarah, whether it is related to Allah's rights or human rights. Allah's right is, for example, eating during the day during the month of Ramadan without justification, leaving prayer according to the Jumhur, practicing usury, throwing filth and the like on human-passed streets, and many other things.

Human rights such as, in relation to an unmarried couple, stealing goods at an insufficient rate of nisab (for the purpose of limitation), stealing property in reserve, betraying trust and corruption, throwing reckless accusations at someone other than adultery consisting of various types of use rude words, beatings and insults in any way. As in, 'O fasiq,' 'O filth,' 'O thief,' 'O disbeliever,' 'O wicked,' 'O usury eater,' 'O liquor drinker,' and so on.

Regarding ta'zir, it is stated by Al-Syirbini (959H), that nas-nas related to imposing ta'zir punishment on all vices (offenses) that have no punishment of Hadd and Kaffarah, whether the offence is the right of Allah or human rights, whether the offence is discrediting ajnabi women other than vagina, stealing something for which Hadd does not impose a hand cut, reproaching something that is not included in Qazaf such as forgery, false testimony, beating without rights, a husband does not exercise his wife's rights while he is capable

The researchers discovered that there was no specific provision in Sharia Law governing the offense of spreading fake news. Although there is no specific provision for it, it has been recognized as a type of ta'zir offense.

### **The Spread of Fake News in the Virtual World: Investigational Issues.**

Fake news is now widely disseminated through cyberspace. It is difficult to investigate a criminal case involving the spread of fake news in cyberspace. This is due to its lack of borders. Makkai (2007), expressed agreement on this point:

*Cross-border investigations present numerous practical challenges. This includes investigators who need to contact people all over the world, documents that need to be translated, and witnesses from non-English-speaking countries who require the assistance of an interpreter. All of these challenges can be overcome by globalizing laws and procedures and improving investigators' technical capabilities.*

It is a bit of a stretch to say that spreading fake news through cyberspace becomes a global issue. As a result, the best way to address issues in the investigation of such offenses is to globally coordinate laws and procedures while also improving the technical capabilities of investigators. Datuk Seri Mohd Bakri Omar, Deputy Inspector General of Police, stated unequivocally that the current force requires more officers skilled in computer forensics to better investigate and analyze computer-related crimes. This is to ensure that the team is always prepared to combat the growing number of crimes available on the internet. As a result, to further strengthen the law enforcement unit, Inspector General of Police ('KPN') Tan Sri Ismail Omar promised that the cybercrime unit's officers would be outfitted with cutting-edge technology to combat online crimes. They will also develop new mechanisms and procedures to deal with internet-related cases, particularly those involving Facebook.

Furthermore, when it comes to the investigation of criminal cases using computers, the difficulty of determining a suspect's identity is a problem for police investigating officers. This is because the crime could have been committed by anyone using a remote website or WIFI, or by someone using someone else's computer. Despite the fact that the investigating officer was able to conduct an investigation into the personal identification number of the PIN or password, it still caused problems. This situation becomes problematic when the password or PIN number is stolen. As a result, it is very likely that the investigation's findings are incorrect. It is possible that the person who stole the password used the opportunity to gain access to things that are illegal under the law. This makes it difficult for the police to determine who the true perpetrator is and also makes it difficult to prove a criminal case through cyberspace.

Furthermore, when there is no implementation of censorship of dissemination material on the internet, the crime of fake news in cyberspace has become difficult to deal with. Nonetheless, the Ministry of Science, Technology, and Innovation has pledged to assist in the investigation of cybercrime. However, the government must strike a balance between freedom from censorship and the need to mitigate the impact of fake news in cyberspace. Individual privacy is also a concern in other situations. This is because people will raise the issue in order to avoid or delay the investigation process. Even the app companies that provide access to the alleged crimes will protest in order to protect their customers' privacy. However, under Section 249 of the CMA 1998, investigators are permitted to access computerized data, which protects them from claims of unlawful unauthorized access. At the same time, defense attorneys frequently raise concerns about the credibility of police personal computer file logs, falsifying editing after a crime scene and altering evidence, and a lack of transparency regarding investigative methods. As a result, investigators must be able to effectively identify, preserve, and process computer-related evidence. A thorough investigation will lead to a successful prosecution. As a result, the investigator and prosecutor should work well together.

### **The Study's Analysis and Findings**

According to research, spreading false news has a negative impact on others. Islam warns its ummah not to spread false information. In recent years, the spread of fake news has occurred in the virtual realm. This is because the world is undergoing a technological revolution in the field of communication. It should be noted that these changes have a positive impact by simplifying communication and information acquisition. But, when this technology is abused, it has a negative impact.

The study also discovered that the issue presented was related to the process of submitting digital evidence. First, in terms of legal acceptance of this electronic or digital description. This includes the credibility of the evidence presented. The second refers to the information in the digital description. To do so, it is necessary to demonstrate the existence of such facts in advance. This is done so that the evidence presented in court is accepted and serves as the basis for the case's decision.

According to studies, problems can also arise during the evidence collection process. The collection procedure must follow the proper collection mechanism. This means that the investigating officer collects digital evidence in a lawful manner, that it is properly stored and preserved, and that it is presented to the court during the trial without any editing or falsification. This type of crime necessitates training and certification in information technology, as well as evidence collection, research, and trial in a computer environment and on the Internet.

### **Conclusions and Recommendations**

Individuals who frequently spread fake news are unquestionably skilled in cyberspace. They are going to misuse the technology. It is critical to ensure that the process of investigating fake news crime via cyberspace is adequate to effectively address this issue. Although this questioning process is seen as difficult because it involves technology, it should be noted that those who commit crimes must face prosecution.

To accomplish this, the investigating officer must take the initiative to acquire technical skills and knowledge. Investigating officers must also be familiar with the procedures and laws governing cybercrime. Each of these investigative processes should be based on effective laws and standard operating procedures (SOPs). This is because any error during the investigation process will cause the chain of evidence to disrupt the collection of digital evidence. At the same time, the prosecution is responsible for ensuring that the process of presenting evidence collected by the investigating officer is relevant and admissible as evidence in court.

As a result, the procedural aspects of evidence collection and presentation in criminal cases of fake news in cyberspace in particular, and computer crime in general, must be emphasized and, if necessary, reviewed. Finally, to ensure the success of the investigation process, the Malaysian Communications and Multimedia Commission (MCMC), Cybersecurity, RMP, and others must continue to work together to make Malaysia a safe country for all.

The findings show that the crime of spreading fake news during the heyday of Islam is more in line with the philosophical and moral meaning than the current day, which is more punitive, especially in terms of penalties and long-term consequences. Furthermore, a review of Malaysia's legal framework relating to this issue reveals that appropriate safeguards must be strengthened to ensure that victims of the spread of fake news receive justice. The phenomenon that occurs between these two eras reveals a significant separatist gap as the Islamic mold is lost as a guide to life in the surfing of community life.

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