

August 23, 2012 13:20 PM

Still Room For Better Definition Of Evidence Act Following Uproar

By Voon Miaw Ping

KUALA LUMPUR, Aug 23 (Bernama) -- The recent online furore by netizens against Section 114A of the Evidence Act has thrust some concerns into the fore, especially over the presumption that a person who is depicted in a publication as owner or administrator is presumed to have published the contents.

The provision under the Evidence (Amendment) (No. 2) Act 2012 has drawn much debate by many, including lawmakers from the government and opposition.

Section 114A, which was passed in Parliament last April and gazetted on July 31, presumes that a person whose name, photograph or pseudonym appears on any publication depicting himself as the owner, host, administrator, editor or sub-editor, or who in any manner facilitates to publish or re-publish the publication is presumed to have published or re-published the contents of the publication unless the contrary is proven.

The amendment also refers to any person who has in his custody or control any computer on which any publication originates from is presumed to have published or re-published the content unless the contrary is proven.

At one end of the spectrum, the negative view is such that the government is trying to curtail Internet freedom to the extent that the introduction of the law may "regress the country into the Middle Ages".

For the proponents of the amendment, they feel that it now shifts the burden of proof to Internet users and this would certainly help law enforcers when tracking the posting of offensive material.

According to Azli Paat, a noted practitioner in the ICT industry, the law was fair as the previous situation did not prevent a person from impersonating someone else in cyberspace.

The absence of such a provision also made it hard for enforcers to detain and prosecute the real culprits as it was obvious that many would not own up to their irresponsible acts, he told Bernama.

Azli believed that if the country did not implement such a law, it would have to do so sooner or later in view of the fact that cyber crime was on the rise.

But, Azli who is also president of the Malaysian Mobile Content Providers Association (MMCP), said there was a need for the authorities to better define the law as it was currently too sweeping or across-the-board.

"It has been viewed negatively by the majority because it is lumping all Internet users under one legislation.

"In fact, it should be more specific because currently Section 114A is seen to be more protective of the so-called victims. How about the account owners who are actually the victims? For instance, those who have had their accounts hacked or devices hijacked?" he asked.

Azli suggested that there should be subsections to the main section to cover owners of social media accounts like blogspots, Twitter or Facebook, commentators (individuals who post comments) and people who repost or retweet content.

He rationalised that this is to protect the rights of the owner of an account as currently a blog owner did not have control over the comments.

Azli said the government must explain to the public more extensively on the need for such a legislation as the uproar by netizens on Aug 14 was due to the lack of understanding among Internet users on Section 114A.

"I think if that was done so that the public understands it better and that their rights are also protected, they will be able to accept it," he said, adding that the people should not be fearful of and refrain from sharing information and their thoughts online because of the law.

Ironically, lawmakers from both sides of the political divide were also responsible for seeing the bill through in both the Dewan Rakyat and Dewan Negara.

Commenting on this, Dewan Rakyat Deputy Speaker Datuk Dr Wan Junaidi Tuanku Jaafar said such an incident could have been avoided if the MPs had seriously gone through the bill when it was tabled for debate.

He reiterated that it was the role and responsibility of MPs to study any bill brought to Parliament.

"Rightly, all Members of the Parliament should make it a point to study thoroughly every bill that is brought to Parliament, discuss it from various aspects outside the Dewan before it is debated.

"They should have seriously looked into the socio-political and economic implications of the bill prior to that (debate and passing of the bill)," he stressed.

Wan Junaidi said that for a law to be amended, the government or ordinary MPs would need to submit a notice and draft amendment to the Secretary of the Dewan Rakyat for it to be tabled.

He also said that a motion moved by the government would usually have priority over one brought by MPs.

Meanwhile, Khaw Veon Szu, the former executive director of a local think tank, Sedar Institute, said that though the amendment had been passed, he was optimistic that it could be opened for review and the necessary adjustments made to improve protection of Internet users' rights.

"I think the concerns raised on this issue are valid. As a government striving for good governance, it should really re-look into it. There is nothing to lose," said Khaw, a lawyer.

He suggested that what the authorities could do now was to set up a parliamentary select committee to re-study the law more holistically besides engaging professional views from the public and other stakeholders.

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