

Mitigating Negligence in Regulatory Enforcement: Analyzing the Communications and Multimedia Act 1998 and the Criminal Procedure Code

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Abstract: The Communications and Multimedia Act 1998 is pivotal in regulating Malaysia's communications and multimedia industry. While the Act gives Malaysian Communications and Multimedia Commission officers enforcement rights, it excludes the ability to make arrests, which is a privilege reserved for police officers under the Criminal Procedure Code. This paper examines the practical implications of this division of arrest authority, focusing on potential negligence in enforcement. The study examines the intersection of regulatory enforcement and the tort of negligence by reviewing relevant laws and case studies. The study found that incorporating accountability measures into the enforcement process can help maintain transparency and uphold the integrity of regulatory actions. Recommendations based on the findings suggest strategies for mitigating negligence in enforcement actions. Understanding this intersection is crucial for ensuring lawful and responsible law enforcement actions in the communications and multimedia industry.

Keywords: *Law enforcement, negligence, arrest of power, communication, multimedia*

1. Introduction

The Communications and Multimedia Act 1998 forms the backbone of Malaysia's communications and multimedia industry regulatory framework. The Act establishes a comprehensive regulatory framework to ensure compliance with licensing requirements and enforce industry standards. A significant feature of the Act is its delegation of enforcement powers to the Malaysian Communications and Multimedia Commission (MCMC) officers. The Criminal Procedure Code only grants the police the authority to make arrests, which places the MCMC in a limited position despite its significant role. This restriction poses significant challenges, mainly when evidence of wrongdoing exists and the MCMC cannot take immediate action.

Given the critical role of enforcement in maintaining industry standards and legal compliance, this paper examines the interplay between the regulatory powers outlined in the Communications and Multimedia Act 1998 and the arrest powers stipulated by the Criminal Procedure Code. Furthermore, it investigates instances of potential negligence during enforcement and the resulting legal implications. Through a comprehensive review of legislative texts and case law, this study examines the practical implications of this division of arrest authority, focusing on potential negligence in enforcement. Consequently, this paper contributes to the broader discourse on regulatory enforcement and legal responsibility within Malaysia's communications and multimedia industry. The scope of this study is confined to the examination of legislative texts and their practical enforcement implications.

2. Method

This study employs a qualitative research approach, namely a doctrinal analysis, to investigate the application of arrest powers under Malaysia's Criminal Procedure Code within the communications and multimedia industry. Doctrinal research involves an examination of existing legal frameworks and statutes. This study's primary focus is analyzing the Communications and Multimedia Act 1998 and the Criminal Procedure Code to understand the legal provisions governing arrest powers in Malaysia. A thorough review of legal textbooks and journal articles was carried out. Key legal sections relevant to the communications and multimedia industry were identified and interpreted. In addition, a comprehensive literature review was conducted to place the results within the framework of existing academic discussions. This review included scholarly articles, legal commentaries, and previous research on enforcement practices and regulatory frameworks in Malaysia.

3. Results and Discussion

Enforcement Mechanisms under The Communications And Multimedia Act 1998 and The Criminal Procedure Code

The enforcement mechanisms under the Communications and Multimedia Act 1998 and the Criminal Procedure Code are pivotal for maintaining regulatory compliance within Malaysia's communications and multimedia industry. While the Communications and Multimedia Act 1998 does not explicitly grant arrest powers to its authorized officers, it includes several sections for enforcement. Specifically, sections 245 and 246 outline the powers and responsibilities of officers in enforcing the Communications and Multimedia Act 1998.

Section 245 of the Communications and Multimedia Act 1998 provides for the appointment of authorized officers, typically from the Malaysian Communications and Multimedia Commission (MCMC), to enforce the Act. These officers are vested with the authority to investigate offenses under the Communications and Multimedia Act 1998, ensuring adherence to regulatory standards and compliance within the communications and multimedia industry. Section 246 of the Communications and Multimedia Act 1998 further elaborates on the investigative powers of these authorized officers. It grants them the authority to enter premises, inspect documents, and seize equipment related to offenses under the Communications and Multimedia Act 1998. These provisions are fundamental in enabling officers to conduct thorough investigations and gather necessary evidence to support enforcement actions. However, it's important to note that the powers conferred by sections 245 and 246 of the Communications and Multimedia Act 1998 have their limitations, as they stop short of granting arrest powers (Daud & Abd. Jalil, 2017; Hassan, Abdelhameed, & Ismail, 2018).

On the other hand, the Criminal Procedure Code outlines the overall authority granted to police officers in Malaysia to make arrests, stating the extent and circumstances in which this authority may be exercised. According to section 23 of the Criminal Procedure Code, police officers have the power to arrest individuals involved in a seizable offense without requiring a warrant. This authority extends to individuals against whom a reasonable complaint has been made, credible information has been received, or a reasonable suspicion exists of their involvement in such an offense. This provision allows for the immediate detention of individuals against whom credible complaints have been made or reasonable suspicions exist regarding their involvement in criminal activities (Shamsuddin, Rahamad, & Zanuddin, 2022). Furthermore, as per section 2(1) of the Criminal Procedure Code, seizable offenses are defined as those for which a police officer has the authority to arrest without a warrant. This definition is crucial as it guides police officers in identifying offenses that necessitate immediate action, contributing to the maintenance of public order and safety within society (Farrar, 2009; Shamsuddin, Rahamad, & Zanuddin, 2022).

The way enforcement powers are divided between the Communications and Multimedia Act 1998 and the Criminal Procedure Code shows how important collaboration is for effective regulatory oversight. While MCMC officers possess comprehensive investigative powers under the Act, the authority to make arrests is exclusively reserved for police officers as outlined in the Criminal Procedure Code. This division highlights the need for MCMC and police officers to work together to ensure that enforcement is both effective and legally sound, reinforcing the importance of cooperation in upholding standards within the communications and multimedia industry (Daud & Abd. Jalil, 2017; Shamsuddin, Rahamad, & Zanuddin, 2022). This collaboration, when executed within the legal framework, provides reassurance about the soundness of the enforcement process.

The Intersection of Enforcement Powers and The Tort of Negligence

The enforcement mechanisms under the Communications and Multimedia Act 1998 and the Criminal Procedure Code play a crucial role in ensuring regulatory compliance within Malaysia's communications and multimedia industry. The Communications and Multimedia Act 1998 provides the legal framework for regulating the communications and multimedia sector, while the Criminal Procedure Code outlines procedures for law enforcement actions, including arrest powers vested solely in police officers. This dynamic intersection between the Communications and Multimedia Act 1998 and the Criminal Procedure Code raises important considerations regarding the responsibilities and liabilities of both MCMC and police officers during enforcement actions.

The exclusive allocation of arrest powers to police officers under the Criminal Procedure Code introduces a crucial intersection with negligence law. In the context of enforcement actions within the communications and multimedia industry, this allocation prompts important considerations regarding the potential liabilities of MCMC officers involved in operations alongside police officers. Although MCMC officers do not possess arrest powers, their responsibilities in coordinating and supporting enforcement efforts necessitate a clear understanding of their roles and potential exposure to liability under negligence law. In Malaysia, establishing liability for negligence in enforcement actions under the Communications and Multimedia Act 1998 and the Criminal Procedure Code involves four key elements: duty of care, breach of duty, causation, and damages.

Duty of Care: Establishing a duty of care is a fundamental element in negligence law. MCMC officers and police officers owe this duty to the public and the entities they regulate. This duty mandates that MCMC officers perform thorough investigations, preserve evidence, and ensure regulation of the Communications and Multimedia Act 1998. Based on the evidence that MCMC officers have provided, police officers must make arrests legally and promptly. In the case of enforcement actions within the communications and multimedia industry, MCMC and police officers must act by the law and ensure regulatory compliance to safeguard the public interest (Hassan, Abdelhameed, & Ismail, 2018).

A landmark case in tort law, *Donoghue v Stevenson [1932] UKHL 100*, introduced the “neighbor principle”, which is essential for understanding the duty of care in negligence law. This principle requires individuals to take reasonable care to avoid actions or omissions that could foreseeably cause harm to those who are closely and directly affected by their conduct. In regulatory enforcement, MCMC and police officers have a duty of care towards individuals and entities affected by their actions. For MCMC officers, this duty involves ensuring that their enforcement practices do not negligently harm businesses or individuals by failing to apply regulations fairly and effectively. For police officers, it entails taking reasonable care in their investigative and enforcement activities to prevent causing undue harm or injustice to individuals or the public.

The case of *Caparo Industries plc v Dickman [1990] UKHL 2* is highly relevant in this context, as it establishes the “Caparo test” for determining the existence of a duty of care. The test involves three criteria: foreseeability, proximity, and whether it is fair, just, and reasonable to impose a duty. To use the Caparo test on MCMC and police officers, one must carefully consider how their actions or inactions could cause harm, whether their duties are close enough to those who will be affected, and whether it is fair and reasonable to impose a duty of care in the regulatory and enforcement setting. This framework helps assess the legitimacy of negligence claims and ensures that the enforcement actions align with established legal principles and public expectations.

However, the case of *Hill v. Chief Constable of West Yorkshire [1988] AC 53* introduces a significant consideration regarding the limitations of police liability. In this case, the House of Lords ruled that the police did not have a responsibility to protect specific members of the public from criminal harm. The reasoning was that imposing such a duty could lead to defensive policing and divert resources from crime prevention. This case highlights the potential limitations and challenges in holding police officers liable for negligence in performing their duties and the need to balance accountability with operational effectiveness in policing.

Breach of Duty: A breach of duty happens when someone fails to meet the standard of care expected from a reasonably prudent person. In the context of enforcement actions, a breach could occur if MCMC officers fail to conduct a proper investigation or delay coordinating with police officers for an arrest. Similarly, if police officers ignore credible information from MCMC officers or delay action, they breach their duty of care. For instance, if MCMC officers identify an illegal broadcasting operation but do not secure the necessary evidence or fail to notify the police promptly, this negligence could lead to continued illegal activities. Similarly, if police officers delay arresting being notified by MCMC officers, the suspect might destroy evidence or continue their illegal operations, thus breaching their duty of care (Olivia Swee Leng, Rossanne, Raphael C. W, Khan, & Khan, 2020).

The case of *Roe v. Minister of Health (1954) 2 All ER 131* is relevant here. In this case, the Court of Appeal emphasized that the standard of care required in negligence cases is based on what was known or should have been known at the time of the alleged breach. This case highlights that a breach of duty cannot be judged by hindsight; instead, it must be assessed based on the information available at the time. If the harm could not have been reasonably anticipated or prevented given the circumstances, a breach of duty may not be

established. When applying the principles to regulatory enforcement, such as the responsibilities of MCMC and police officers, it is essential to recognize that negligence claims must consider what was known or knowable at the time of the enforcement action. For instance, if an enforcement action fails to address an issue due to factors that were not foreseeable or preventable with existing knowledge and resources, a breach of duty may not be established. This means that both MCMC and police officers are judged on their actions based on the standards and information available to them at the time. This perspective helps in understanding that liability for negligence requires a clear demonstration that the breach of duty was avoidable with reasonable foresight and adherence to the standard of care applicable at the time.

The case of *Michael v Chief Constable of South Wales Police* [2015] UKSC 2 revisited critical principles established in *Hill v Chief Constable of West Yorkshire* and explored the circumstances under which police might owe a duty of care, particularly regarding the assumption of responsibility. In *Michael*, the plaintiff, a victim of violent assault, had called the police to report a threat. Due to errors in call handling and prioritization, the police response was delayed, and the victim argued that this delay constituted negligence, contributing to the harm she suffered. The Supreme Court ruled that the police did not owe a duty of care to the victim regarding the delayed response. The court reaffirmed the principles from *Hill*, emphasizing that public authorities, including the police, generally do not owe a duty of care to individuals in the performance of their operational duties unless there is a special relationship or an explicit assumption of responsibility. In the context of regulatory enforcement by bodies like the MCMC and police officers, *Michael* highlights the importance of distinguishing between operational duties and the assumption of specific responsibilities. The ruling suggests that unless a regulatory or enforcement body explicitly undertakes a duty to protect or act in a particular manner, it may not be held liable for negligence. For example, if MCMC or police officers are involved in enforcement actions, their potential liability for negligence would depend on whether they have assumed a specific duty of care towards individuals. General operational failures or delays are unlikely to result in negligence claims unless there is clear evidence of an assumption of responsibility and a breach of that duty.

Causation: To demonstrate causation, one must show that the breach of duty directly caused harm. This element requires proving that the negligence of MCMC or police officers resulted in a specific adverse outcome. Establishing legal causation or proximate cause links the breach of duty to the actual harm suffered. For example, if MCMC officers fail to secure premises and gather evidence, allowing a suspect to destroy crucial evidence, or if police officers delay making an arrest, enabling the suspect to continue illegal activities, these actions can be seen as directly causing harm. Establishing the direct link between the officers' actions (or inactions) and the resultant damage is critical for proving causation (Manique, Ahmad Rajuhan, & Adnan, 2023).

In the case of *Barnett v. Chelsea & Kensington Hospital Management Committee (1969) 2 WLR 422*, the court held that despite the hospital's negligence in failing to diagnose a patient properly, the patient would have died regardless due to arsenic poisoning. This case demonstrates the importance of proving that the breach of duty directly caused the harm. In the case of MCMC and police officers, it must be shown that any negligence in their actions or inactions directly led to negative outcomes. For example, if an MCMC officer fails to investigate a clear regulatory breach, leading to continued non-compliance and harm to the public, it must be demonstrated that this failure was the direct cause of the harm experienced. Similarly, if a police officer fails to arrest an individual despite having the authority and evidence, and this inaction leads to further violations or harm, the causation must be established.

In *Kent v Griffiths [2000] 2 All ER 474*, the court found negligence due to a delayed response by the ambulance service, highlighting the importance of timely action. Similarly, timely action is crucial for MCMC and police officers. MCMC officers must act promptly to address regulatory violations and ensure compliance. Delays in investigating or enforcing regulations can exacerbate issues, leading to increased harm or non-compliance. Police officers, too, must act swiftly when dealing with criminal activities or arrest situations to prevent further offenses or harm.

Another relevant case is *Graham Barclay Oysters Pty Ltd v Ryan [2002] HCA 54*, which examines the liability of public authorities for negligence, and provides valuable insights into causation within regulatory enforcement contexts. The case emphasizes the importance of establishing a direct link between the breach of duty and the harm caused. For MCMC officers, this involves demonstrating how their failure to enforce regulations or

address violations directly leads to adverse outcomes. Similarly, for police officers, it means showing how delays or failures in carrying out their duties result in further harm or offenses. Causation must be proven to establish negligence, which requires a clear connection between the officers' actions or inactions and the resulting harm.

Damages: In negligence claims, the final element is the presence of actual damages resulting from the breach of duty. In the context of enforcement, damages can be both economic and non-economic. Economic damages include financial losses incurred by affected parties due to continued illegal activities or the costs associated with rectifying the breach. For instance, if MCMC and police officers' negligence allows a competitor to continue unfair trade practices, a company may suffer financial losses and reputational damage. Non-economic damages encompass reputational harm or a loss of public trust in the regulatory and enforcement framework. For example, failing to promptly address and rectify the regulatory breach can lead to significant economic and non-economic damages for compliant entities and the public. (Farrar, 2009).

A relevant case that illustrates the significance of damages in negligence claims is *Phelps v Hillingdon London Borough Council [2000] 3 WLR 776*. In this case, a child with special educational needs alleged that the local authority had failed to provide adequate special educational resources and support. The claim was brought against the local authority because their negligence in fulfilling their duty of care led to significant educational and personal harm to the plaintiff. The House of Lords held that the local authority was found liable for negligent educational advice which resulted in significant financial and reputational damages. The case reinforces the principle that damages in negligence claims must be assessed based on the actual harm suffered. The court's decision emphasized that damages are not just about financial loss but also the broader consequences of the breach on the plaintiff's quality of life and well-being. In the context of regulatory enforcement bodies like the MCMC or police officers, the principles from Phelps highlight the importance of ensuring that enforcement actions and regulatory decisions do not cause undue harm.

4. Mitigating Negligence in Enforcement Actions

Numerous strategies can be implemented to enhance the effectiveness and accountability of the Malaysian Communications and Multimedia Commission (MCMC) and police officers' enforcement efforts to address and mitigate negligence in enforcement actions, particularly when the power of arrest is vested in police officers. Drawing from relevant literature, several strategies can be considered to enhance the effectiveness and accountability of enforcement actions while minimizing the risks of negligence.

Firstly, establishing clear guidelines and protocols for enforcement procedures can help standardize practices and reduce the likelihood of negligence. This includes defining the roles and responsibilities of MCMC and police officers in enforcing the Act. (Wok & Mohamed, 2017). Providing clear directives on handling different situations and ensuring that all personnel are well-trained on these protocols can minimize the risk of negligent actions. Clear guidelines and protocols should be established to govern the conduct of police officers when enforcing the Act, ensuring that arrests and detentions are carried out lawfully and with proper justification. (Fairgrieve & Squires QC, 2019). Training programs that emphasize the proper application of the law, respect for human rights, and ethical conduct can help equip officers with the necessary knowledge and skills to perform their duties responsibly and effectively. (Claire & Richard, 2022).

Secondly, enhancing collaboration and coordination between the MCMC and law enforcement agencies, such as the police, is crucial for effective enforcement. Effective communication and collaboration among regulatory bodies are essential for streamlining enforcement efforts. (Peng Kee, Suet Nie, Korff, & Sascha, 2015). By promoting information sharing and mutual support, agencies can work together more efficiently to address violations of the Act and prevent oversights that may lead to negligence.

Thirdly, implementing regular training programs and capacity-building initiatives for MCMC and police officers can enhance their knowledge and skills in enforcing the Communications and Multimedia Act 1998. Training sessions on relevant laws, investigative techniques, digital evidence handling, and ethical conduct can equip enforcement personnel with the necessary tools to carry out their duties effectively (Abdul Rahman, Mohamad Fateh, Haq, Mohamed Yusoff, & Abd. Aziz, 2024). Ensuring that police officers are well-versed in the specifics

of the Act and proper arrest procedures is crucial. Comprehensive training programs can enhance officers' understanding of the Act's nuances, evidence preservation, and lawful arrest procedures, thereby reducing the likelihood of errors that could lead to negligence claims. This highlights the importance of police training in enhancing competencies and reducing misconduct (Wood, Tom, & Papachristos, 2020).

Lastly, promoting transparency and accountability in enforcement actions is essential to mitigate negligence. Adhering to rules and regulations is key to ensuring market integrity and preventing misconduct (Velu, Krishnaswamy, Yahya, & Kiumarsi, 2014). By maintaining detailed records of enforcement activities, conducting regular audits, and engaging in public reporting, the MCMC and police officers can demonstrate their commitment to upholding the law and building trust with the public. Officers must ensure that their actions comply with the legal standards outlined in the Communications and Multimedia Act 1998 and the Criminal Procedure Code. This adherence is crucial in preventing unlawful actions that could be seen as negligent. Strictly following legal standards and protocols helps significantly reduce instances of police misconduct (William, Eugene, & Peter, 2003).

5. Conclusion

The enforcement mechanisms established by the Communications and Multimedia Act 1998 (Act 588) and the Criminal Procedure Code (CPC) are crucial for maintaining regulatory compliance within Malaysia's communications and multimedia industry. Nevertheless, the rights of arrest powers to police officers raises concerns about potential negligence, particularly regarding the responsibilities and liabilities of both MCMC and police officers during enforcement actions. This study contributes to addressing these gaps by identifying areas where enforcement responsibilities are unclear, highlighting the risks associated with such ambiguity. To mitigate these risks, it is essential to implement several measures, including comprehensive training, strict adherence to legal standards, thorough investigations, the appropriate use of force, and respect for individual rights. The study's findings suggest that by adopting these measures, MCMC and police officers can improve both regulatory compliance and accountability. This will ensure that enforcement actions are lawful, justified, and respectful of individual rights. Such reforms not only enhance the effectiveness of the regulatory framework but also foster public trust in both regulatory and enforcement bodies.

In conclusion, this study has significant policy implications. It suggests an enhanced collaboration between MCMC and the police officers, and the introduction of accountability measures to ensure responsible enforcement actions. The development of clear guidelines on the division of arrest authority and comprehensive training programs should be developed to mitigate negligence risks. These strategies are essential for ensuring lawful and responsible regulatory actions, ultimately contributing to a more robust and trustworthy regulatory framework in Malaysia's communications and multimedia industry.

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