

## **Standing in Solidarity with Malaysiakini : Apex Court's Decision Sets Worrying Precedent**

The Civil Society Cluster on Freedom of Expression [and the endorsing organizations] is extremely concerned at the implications of the Malaysian Federal Court decision on 19 February 2021 holding *Malaysiakini* guilty of contempt of court in relation to third party comments on their news site.

While the court acquitted Malaysiakini's editor-in-chief Steven Gan, the Court fined *Malaysiakini* RM500,000, more than double the amount suggested by the federal prosecutors from the Attorney General's Chambers. The Court stated that the fine reflected the gravity of the offence and the case should be a reminder to the public not to use online comments to attack the judiciary. The contempt of court case was filed against *Malaysiakini* and its editor-in-chief Steven Gan in June 2020 in relation to reader comments relating to the judiciary.

The Federal Court's decision also highlights the problematic nature of section 114A of the Evidence Act, which was passed in 2012. This section allowed the Court to presume that *Malaysiakini* was the publisher of the third party comments, simply by the comments appearing on their website. This places a disproportionate burden on internet intermediaries to disprove that they were not the publisher of any offending comments.

This decision will have a wide-reaching impact on news sites in Malaysia and in fact, any site that allows reader comments. Despite evidence proffered that *Malaysiakini* had no knowledge of the comments in question, the majority (6-1) in the Federal Court deemed the site to have had notice of them, given their editorial structure and the related safeguards they have in place. It also found *Malaysiakini* guilty despite evidence that the site had immediately removed the comments once they had been flagged by the police.

This precedent, where a site is deemed to have knowledge of the content of third party comments, will prove especially challenging for news sites. Online portals, that are already facing financial pressure and challenges, will now have to decide whether to expend significant resources to moderate every comment on their sites, or risk being held liable for third party content.

Any actions taken to regulate how internet intermediaries deal with third party comments must take into account the importance of the right to freedom of expression and the right of individuals to express their views online. We are of the view that imposing legal liability on internet intermediaries for reader comments that they did not have knowledge of, contravenes international human rights standards, which require that any restrictions on the human right to freedom of expression be necessary and proportionate.

It is especially chilling for such action to be taken against a media outlet, during a time when the flow of information and the ability of the media to act as a check and balance against the government, are more important than ever.

We stand in solidarity with Malaysiakini and we call upon the Malaysian government to repeal section 114A of the Evidence Act and to refrain from any further actions that could threaten media freedom in Malaysia.

**Issued by the *Civil Society Coalition on Freedom of Expression*:**

1. Gerakan Media Merdeka (Geramm)
2. Centre for Independent Journalism
3. Suara Rakyat Malaysia (SUARAM)
4. Justice for Sisters
5. Sinar Project
6. Freedom Film Network
7. Sisters in Islam
8. Kryss Network

**Endorsed by:**

1. Association of Women Lawyers (AWL)
2. Women's Aid Organisation (WAO)
3. Tenaganita
4. Projek Wawasan Rakyat (POWR)
5. Beyond Borders Malaysia
6. Our Journey
7. Bersih 2.0
8. Women's Centre for Change (WCC)
9. Family Frontiers
10. Persatuan Promosi Hak Asasi Manusia (Proham)
11. G25
12. ENGAGE
13. Community Action Network (CAN).
14. EMPOWER Malaysia
15. Gabungan Bertindak Malaysia (GBM)
16. Persatuan Sahabat Wanita Selangor (PSWS)
17. Penang Forum
18. Persatuan Patriot Kebangsaan (PATRIOT)
19. Agora Society Malaysia
20. Pusat Komus

21. Citizens Against Enforced Disappearances, (CAGED)
22. North South Initiative
23. Pergerakan Tenaga Akademik Malaysia (GERAK)
24. Aliran
25. Centre to Combat Corruption & Cronyism (C4)
26. The KL & Selangor Chinese Assembly Hall Youth
27. Teoh Beng Hock Trust for Democracy
28. Hara Mekar Initiative
29. WISDOM Foundation
30. Jaringan Kampung Orang Asli Semenanjung Malaysia (JKOASM)
31. Sabah Women Action-Resource Group (SAWO)
32. Advancing Knowledge in Democracy and Law Initiative
33. Childline Foundation
34. Partners of Community Organisations (PACOS)
35. Pertubuhan IKRAM Malaysia
36. The KL & Selangor Chinese Assembly Hall Women Division
37. Women Development Organisation of Malaysia PJ Branch
38. All Women's Action Society (AWAM)

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*The Freedom of Expression Cluster is a group of civil society organisations working to promote freedom of expression in Malaysia. The cluster is co-chaired by the Centre for Independent Journalism and ARTICLE 19 Malaysia.*