MOHD KHAIRIANWAR JAILANI & ANOR

v.

MENTERI DALAM NEGERI & ANOR

Court of Appeal, Putrajaya
Ismail Brahim, Ong Chee Kwan, Ahmad Shahrir Mohd Salleh JJCA
[Civil Appeal No: W-01(A)-41-01-2025]
12 August 2026

Constitutional Law: *Fundamental liberties — Freedom of speech and expression — Appeal against decision of High Court dismissing application for judicial review of Minister's order (Prohibition Order) under s 26 of the Film Censorship Act 2002 ("FCA") prohibiting exhibition, display, distribution, possession, circulation and sale of the film directed and produced by appellants and its publicity material — Whether s 26 of the FCA fell within permitted restrictions in art 10(2)(a) of the Federal Constitution ("Constitution") and was constitutionally valid — Whether the phrase 'public interest' in s 26 was confined to security of Federation, public order and morality — Whether doctrine of proportionality applied in determining constitutionality of a restriction on the right to freedom of speech and expression under art 10(1)(a) of the Constitution — Whether Prohibition Order validly made and free from illegality and irrationality — Whether Minister's decision beyond judicial review — Whether appellants entitled to be heard before Prohibition Order made — Whether Prohibition Order was legislative rather than adjudicative in character such that the audi alteram partem rule did not apply*

The 1st appellant directed, and the 2nd appellant produced, a film titled Mentega Terbang ("the Film") which was screened privately from 2021, shown publicly at Universiti Malaya on 13 January 2023, and released on the streaming platform Viu on 19 January 2023, without ever being submitted to the Lembaga Penapisan Filem ("LPF") for approval. The Film attracted little public attention until 25 February 2023, when a review of it went viral on social media, precipitating a sustained public controversy in which statements critical of the Film were issued by various religious authorities and bodies, and 30 police reports were lodged against it by members of the Muslim community. The Ministry of Home Affairs ("Ministry") responded by monitoring public premises to prevent conventional screening of the Film, obtaining an evaluation report from the LPF, JAKIM being directed to review its content, and obtaining an opinion from the Special Branch of the Royal Malaysia Police ("Special Branch"). The 1st respondent, the Minister of Home Affairs ("Minister"), also viewed the Film himself. On 21 August 2023, the Minister made an order under s 26 of the Film Censorship Act 2002 ("FCA") prohibiting the exhibition, display, distribution, possession, circulation and sale of the Film and its publicity material throughout Malaysia ("Prohibition Order"), which was gazetted on 1 September 2023 as PU(A) 266/2023. The appellants applied

for judicial review, seeking *certiorari* to quash the Prohibition Order and a declaration that s 26 of the FCA was void for inconsistency with arts 10(1) and 10(2) read with art 8(1) of the Federal Constitution ("Constitution"), and leave was granted on 31 January 2024. Prior thereto, on 17 January 2024, after the Prohibition Order had been made and after the judicial review proceedings had been commenced, the appellants were charged in the Magistrates' Court at Kuala Lumpur with an offence under s 298 of the Penal Code ("Code"). The High Court dismissed the application on 6 January 2025, with no order as to costs, and delivered its grounds on 31 July 2025. Hence, the instant appeal by the appellants. The issues before the Court of Appeal were whether s 26 of the FCA was constitutionally valid and if so, whether the Prohibition Order was validly made in the exercise of that power; and whether the appellants were entitled to be heard before the Prohibition Order was made.

Held (dismissing the appeal):

(1) 'Public interest' in s 26 of the FCA meant, and only meant, the security of the Federation or any part thereof, public order, and morality. Properly construed, s 26 of the FCA fell within the permitted restrictions in art 10(2)(a) of the Constitution and was constitutionally valid. That construction accorded with the approach of the Federal Court in *The Government of Malaysia v. Heidy Quah Gaik Li ("Heidy Quah")* which confirmed that it remained open to a court to review an impugned provision to ascertain whether it fell within the grounds specified in art 10(2)(a) of the Constitution. 'Public interest' in s 26, left unconfined, had an uncertain penumbra reaching commercial, reputational and political concerns which art 10(2)(a) of the Constitution did not touch; its core, traced through the 1980 Hansard and the words 'akhlak, ketenteraman awam, keselamatan negara', was the security of the Federation, public order and morality. A Minister purporting to exercise the s 26 power upon some other conception of 'public interest', be it commercial, reputational or political, would be acting outside the section. (paras 35, 36, 37, 38, 39, 40, 41, 55 & 103)

(2) The Court of Appeal was bound by the Federal Court's decision in *Heidy Quah,* which was handed down after the High Court's decision in this instance, wherein the Federal Court held that the doctrine of proportionality played no part in deciding whether a law was constitutional. The said doctrine added nothing that the Constitution's own structure did not already provide and could not be used as a substitute for it. Article 4(2) of the Constitution, which limited the court's power to question certain laws including a speech restriction under art 10(2)(a) of the Constitution on the ground that Parliament wrongly thought the restriction 'necessary or expedient', could not be stretched so far that it defeated art 4(1) which made the Constitution the supreme law. In any event, even if proportionality had applied to whether s 26 of the FCA was constitutional, the said provision would have passed that test. The underlying aim of s 26 of the FCA, which was protecting national security, public order and morality, was plainly important enough to justify some restriction on speech. (paras 51-53)

(3) It was not enough that the Minister thought he had good reason to make the Prohibition Order. The Minister must actually have had a good reason. The word 'absolute' in s 26 of the FCA did not mean that the decision was beyond challenge but that the Minister did not need anyone else's agreement before acting. The question was whether a reasonable Minister, based on the material before him, would objectively have reached the same view. Although s 26 of the FCA provided that the Minister 'need only be of the opinion' and acting 'in his absolute discretion', such subjective wording would not keep the Minister's decision beyond judicial review. (paras 60-63)

(4) The charge against the appellants under s 298 of the Code some five months after the Prohibition Order was made and the prosecution of which remained pending, could not have informed an opinion that had already been made by the Minister and ought to be disregarded. Also, the Special Branch's exemplary rationale for the Film to be prohibited was not a s 26 purpose but a deterrent purpose directed at persons and films not before the Minister, and the Prohibition Order did not rest upon it. Excluding those two matters, the material properly before the Minister, comprising the LPF's evaluation report, the Special Branch's opinion shorn of its exemplary rationale, JAKIM's review, the scholarly and religious reviews, the 30 police reports, and the Minister's own viewing of the Film, were sufficient for a reasonable Minister to conclude, objectively, that unrestricted exhibition of the Film would be contrary to public order. (paras 65, 66, 67, 68, 69, 70 & 79)

(5) The absence of actual disorder during the seven months the Film was in public circulation did not show that the Minister's assessment was unreasonable, since s 26 of the FCA was a preventive rather than a remedial power. Accordingly, the Prohibition Order was made in the exercise of the s 26 power and could not be characterised as irrational in the *Wednesbury* sense. (paras 71-84)

(6) The right to be heard did not attach to law-making in the same way it attached to a decision about an individual. A Minister making a general order under a delegated law-making power was not obliged to hear from everyone the order would bind. The Prohibition Order was legislative in character rather than adjudicative and was not a decision directed at the appellants. The fact that one person, by reason of what he had made or done, bore the sharpest edge of a general measure would not convert that measure into a decision made about that person individually. The appellants therefore had no right to be heard before the Prohibition Order was made. (paras 89, 90, 91, 92, 93, 94, 95 & 99)

(7) Although the court did not rest its decision on this ground, it was not persuaded that a hearing would have made no difference to the Minister's decision, since the Minister's central finding, that the Film's protagonist 'finally chose to believe in reincarnation', was an inference drawn from a deliberately ambiguous ending which representations from the film-makers might have displaced or qualified; had a duty to hear been found, its breach would not

have been excused on the footing that a hearing could have made no difference. (paras 96-98)

Case(s) referred to:

Alam Venture Sdn Bhd & Anor v. Abdul Aziz Abdul Majid & Ors [2015] 3 MELR 1; [2015] 4 MLRA 371 (refd)

Arumugam Kalimuthu v. Menteri Keselamatan Dalam Negeri & Ors [2013] 5 MLRA 365 (refd)

Associated Provincial Picture Houses Ltd v. Wednesbury Corp [1948] 1 KB 223 (refd)

Darma Suria Risman Saleh v. Menteri Dalam Negeri Malaysia & Ors [2012] 6 MLRA 607 (folld)

Datuk Seri Anwar Ibrahim v. Kerajaan Malaysia & Anor [2021] 6 MLRA 42 (refd)

Harpers Trading (M) Sdn Bhd v. National Union Of Commercial Workers [1990] 1 MELR 34; [1990] 1 MLRA 536 (refd)

Iszuree Ibrahim v. Majlis Mesyuarat Kerajaan Negeri Pulau Pinang & Ors And Another Case [2016] MLRHU 9 (not folld)

Ketua Pengarah Kastam v. Ho Kwan Seng [1975] 1 MLRA 586 (distd)

Kumpulan Perangsang Selangor Bhd v. Zaid Mohd Noh [1996] 2 MLRA 398 (refd)

Malloch v. Aberdeen Corporation [1971] 1 WLR 1578 (refd)

Menteri Dalam Negeri & Anor v. Chong Ton Sin & Anor [2024] 2 MLRA 67 (refd)

Merdeka University Bhd v. Government Of Malaysia [1981] 1 MLRH 75 (refd)

Michael Lee Fook Wah v. Menteri Sumber Tenaga Manusia Malaysia & Anor [1997] 1 MELR 28; [1997] 2 MLRA 91 (refd)

Petroliam Nasional Bhd v. Nik Ramli Nik Hassan [2003] 1 MELR 21; [2003] 2 MLRA 114 (refd)

Pihak Berkuasa Negeri Sabah v. Sugumar Balakrishnan & Another Appeal [2002] 1 MLRA 511 (refd)

PP v. Azmi Sharom [2015] 6 MLRA 99 (refd)

PP v. Datuk Harun Haji Idris & Ors [1976] 1 MLRH 611 (refd)

PP v. Leong Keen Lan [2009] 10 MLRH 942 (refd)

PP v. Pung Chen Choon [1994] 1 MLRA 507 (refd)

R Rama Chandran v. Industrial Court Of Malaysia & Anor [1996] 1 MELR 71; [1996] 1 MLRA 725 (refd)

Ranjit Kaur S Gopal Singh v. Hotel Excelsior (M) Sdn Bhd [2012] 1 MELR 129; [2010] 5 MLRA 696 (refd)

S Kulasingam & Anor v. Commissioner Of Lands Federal Territory & Ors [1981] 1 MLRA 184 (folld)

Sepakat Efektif Sdn Bhd v. Menteri Dalam Negeri & Anor And Another Appeal [2014] 6 MLRA 412 (refd)

The Government Of Malaysia v. Heidy Quah Gaik Li [2026] 3 MLRA 350 (folld)

Legislation referred to:

Cinematograph Films (Censorship) Act 1952, s 26A(1)

Federal Constitution, arts 3(1), 4(1), (2)(b), 8(1), 10(1)(a), (2)(a), 11(4)

Film Censorship Act 2002, ss 21, 26, 40(5), (6), (7)

Interpretation Acts 1948 and 1967, s 17A

Penal Code, s 298

Printing Presses and Publications Act 1984, ss 7(1), (3), 8A, 13B

Sedition Act 1948, s 4(1)

Counsel:

For the appellants: N Surendran (Latheefa Koya, Zaid Abd Malek, Wan Nabilah Dina Wan Zamri, Sharifah Rania Aljunied & Mahajoth Singh with him); M/s Daim & Gamany

For the respondents: Mohammad Sallehuddin Md Ali; AG's Chambers

JUDGMENT

Ong Chee Kwan JCA:

A. Introduction

[1] This appeal asks a question that arises whenever a Government decides that something may not be shown, that is: where does the line fall between what the Executive may forbid and what the Constitution protects?

[2] The 1st Appellant directed, and the 2nd Appellant produced, a film called Mentega Terbang ("the Film"). On 21 August 2023 the Minister of Home Affairs ("the Minister") made an order under s 26 of the Film Censorship Act 2002 [Act 620] ("the FCA") prohibiting the exhibition, display, distribution, possession, circulation and sale of the Film and its publicity material throughout Malaysia. The order was gazetted on 1 September 2023 as P.U.(A) 266/2023 ("the Prohibition Order").

[3] The Appellants applied for judicial review. They sought *certiorari* to quash the Prohibition Order, and a declaration that s 26 of the FCA is void for inconsistency with art 10(1) and 10(2) read with art 8(1) of the Federal Constitution ("the FC"). Leave was granted on 31 January 2024. On 6 January 2025, the learned High Court Judge dismissed the application with no order as to costs. Grounds were delivered on 31 July 2025.

[4] We heard the appeal on 16 July 2026 and now give our full grounds for dismissing it. We have not found the case an easy one, and we have not accepted every argument the Respondents put to us. But when the extraneous matter is set aside, what remains is sufficient to sustain the opinion the Minister formed, and the order of the learned Judge must stand.

B. The Background

[5] The essential facts are not in serious dispute and may be shortly stated.

[6] The Film was screened privately from 2021. On 13 January 2023, it was shown to the public at Universiti Malaya. On 19 January 2023 it was released on the streaming platform Viu. It was never submitted to the Lembaga Penapisan Filem ("the LPF") for approval. That much is common ground.

[7] For the first weeks of its public life, the Film attracted little notice. That changed on 25 February 2023, when a writer, Zabidi Mohamed, posted a review of it on Facebook. The review went viral, and what followed over the succeeding weeks was a sustained public controversy. Statements were issued by the Minister in the Prime Minister's Department (Religious Affairs) on 1 March 2023, by the Persatuan Pengeluar Filem Malaysia on 3 March 2023, by the LPF also on 3 March 2023, and by FINAS on 6 March 2023. Reviews critical of the Film were published by Datuk Dr Zulkifli Mohamad Al-Bakri on 6 March 2023, by the Pejabat Mufti Wilayah Persekutuan on 10 March 2023 and by Pertubuhan IKRAM Malaysia on 16 March 2023. Thirty police reports were lodged against the Film by members of the Muslim community across the country.

[8] The Ministry of Home Affairs ("the Ministry") responded in stages. It conducted monitoring at public premises to prevent conventional screening of the Film. The LPF viewed the Film and prepared an evaluation report. JAKIM was instructed to review its content. The Bahagian Cawangan Khas of the Polis Diraja Malaysia ("Special Branch") furnished an opinion. The Minister viewed the Film himself.

[9] On 21 August 2023, some seven months after the Film first became publicly available, and some six months after the controversy began, the Minister made the Prohibition Order.

[10] On 17 January 2024, after the Prohibition Order had been made and after these proceedings had been commenced, the Appellants were charged in the Magistrates' Court at Kuala Lumpur with an offence under s 298 of the Penal Code. We say something at para [65] below about that charge, and about the use the Respondents sought to make of it.

C. The Statutory Provision

[11] The impugned statutory provision is reproduced below:

> "26. Notwithstanding any other provisions of this Act, if the Minister is of the opinion that the exhibition, display, distribution, possession, circulation or sale of any film or any film-publicity material would be contrary to public interest, he may, in his absolute discretion, by order published in the Gazette, prohibit the exhibition, display, distribution, possession, circulation or sale of that film or film-publicity material".

Three features of the section deserve notice at the outset, because they shape everything that follows.

[12] First, the section looks forward. The Minister must form an opinion about what would be contrary to public interest. He is not required to wait for harm to occur. The power is preventive rather than remedial.

[13] Secondly, the section opens with the words "[N]otwithstanding any other provisions of this Act". Section 26 therefore stands apart from the ordinary machinery of the Act. It operates regardless of whether a film has been submitted to the LPF, regardless of what the LPF decided, and regardless of whether any appeal to the Appeal Committee under s 21 has been taken or is available. It is, in substance, a reserve power vested in the Minister alone.

[14] Thirdly, the exercise of the power produces not a decision addressed to a named person but an order published in the Gazette. The Prohibition Order is P.U.(A) 266/2023. It prohibits the exhibition, possession and circulation of the Film by anyone, anywhere in Malaysia. Its legal character matters, and we return to it at paras [89]-[93].

D. The Decision Of The High Court

[15] The learned Judge held, in summary:

(a) that "public interest" in s 26 encompasses the security of the Federation, public order and morality, so that s 26 falls within the permitted restrictions in art 10(2)(a) of the FC and is constitutionally valid (grounds, paras 11-23);

(b) that s 26 passes the proportionality test under art 8(1) read with art 10(1)(a) and 10(2)(a) (paras 36-39);

(c) that although s 26 confers a subjective discretion, its exercise is reviewable on an objective assessment, and that on such an assessment there were facts before the Minister on which he could conclude that the Film would be prejudicial to public order and national security, so that no irrationality was made out (paras 24-29, 40-46); and

(d) that the right to be heard was impliedly excluded by the statute (paras 48-51).

[16] We agree with the outcome. We agree with most, though not all, of the reasoning. Where we differ, we say so.

E. The Issues

[17] The grounds in the memorandum of appeal dated 2 April 2025 and the Supplementary memorandum of appeal dated 3 September 2025 raise three questions:

Issue 1 — Is s 26 of the FCA constitutionally valid?

Issue 2 — If it is, was the Prohibition Order validly made in the exercise of that power?

Issue 3 — Were the Appellants entitled to be heard before the Prohibition Order was made?

[18] The learned Senior Federal Counsel invited us to compress these into a single question, namely whether the Prohibition Order is tainted with illegality, irrationality or procedural impropriety. We decline the invitation. The three questions are distinct; they attract different tests, and to collapse them is to risk the very error we identify at [58] below.

F. A Preliminary Word: What This Court Is Doing

[19] Because the subject matter of this appeal is a film, and because films invite opinions, it is as well to be clear at the outset about what this Court is not doing.

[20] We are not film critics. We are not asked whether Mentega Terbang is a good film or a bad one, whether it is fair to those it depicts, or whether we would ourselves have banned it. We express no view on any of those questions, and nothing in this judgment should be read as expressing one.

[21] Judicial review is not an appeal. It is a review of the manner in which a decision was made, and not of the decision itself [See: *Harpers Trading (M) Sdn Bhd v. National Union Of Commercial Workers* [1990] 1 MELR 34; [1990] 1 MLRA 536; *Michael Lee Fook Wah v. Menteri Sumber Tenaga Manusia Malaysia & Anor* [1997] 1 MELR 28; [1997] 2 MLRA 91]. The High Court sits in its supervisory, not its appellate, jurisdiction.

[22] That principle has been softened but not abandoned. *R Rama Chandran v. Industrial Court Of Malaysia & Anor* [1996] 1 MELR 71; [1996] 1 MLRA 725 permits a reviewing court in an appropriate case to scrutinise a decision for substance as well as for process. But *Rama Chandran* is not a licence. As the Federal Court held in *Petroliam Nasional Bhd v. Nik Ramli Nik Hassan* [2003] 1 MELR 21; [2003] 2 MLRA 114 at para [14], that not every case is amenable to the *Rama Chandran* approach and in *Kumpulan Perangsang Selangor Bhd v. Zaid Mohd Noh* [1996] 2 MLRA 398 the Court contemplated that there may be cases in which, for reasons of public policy, national interest, public safety or national security, the approach is wholly inappropriate. [See also: *PP v. Leong Keen Lan* [2009] 10 MLRH 942 at [16]-[17] and *Alam Venture Sdn Bhd & Anor v. Abdul Aziz Abdul Majid & Ors* [2015] 3 MELR 1; [2015] 4 MLRA 371].

[23] The question for us, then, is not whether the Minister was right. It is whether he was entitled. Those are different questions, and the difference between them is the whole of administrative law.

G. Issue 1 — The Constitutionality Of Section 26

(i) The Starting Point

[24] Article 10(1)(a) of the FC guarantees every citizen the right to freedom of speech and expression. That right is not a courtesy which the State extends. It is a constitutional guarantee, and it is where we begin.

[25] The guarantee, however, is not absolute. Article 10(1) itself begins with the words "subject to cls (2), (3) and (4)" of the same Article. Clause 10(2)(a) allows Parliament, and only Parliament, to place restrictions on that right, but only for specific reasons the Constitution itself lists, namely, the security of the country, friendly relations with other countries, public order, or morality, among a few other matters not relevant here.

[26] Put simply, the structure works like this. Every citizen has a broad right to free speech, but Parliament may cut that right back, provided it does so only for one of the reasons the Constitution itself allows, and no others. So, in a case like this one, everything usually comes down to a single question, which is this: is the real purpose of the challenged law one of the reasons on that short list, or is it something else entirely?

(ii) The Presumption

[27] The starting point favours Parliament. Courts presume that a law Parliament has passed is constitutional, and the burden of proving otherwise rests on the party attacking it, the Appellants. [See: *PP v. Datuk Harun Haji Idris & Ors* [1976] 1 MLRH 611 (Abdoolcader J); *PP v. Pung Chen Choon* [1994] 1 MLRA 507; *Pihak Berkuasa Negeri Sabah v. Sugumar Balakrishnan & Another Appeal* [2002] 1 MLRA 511; *Datuk Seri Anwar Ibrahim v. Kerajaan Malaysia & Anor* [2021] 6 MLRA 42 at [145]].

[28] That presumption, however, has a limit. Abdoolcader J was careful to explain that it cannot be stretched so far as to rescue a genuinely unconstitutional law. Where art 8(1), the guarantee that everyone is equal before the law, truly stands against a challenged provision, the presumption must give way. It is self-evident or incontrovertible that a presumption that could never be displaced would not really be a presumption at all, as it would simply be an absolute rule, and that is not the law.

(iii) The Test

[29] The test is settled. It was laid down by the Supreme Court in *Pung Chen Choon* at pp 511-512, and adopted by the Federal Court in *PP v. Azmi Sharom* [2015] 6 MLRA 99 at para [43]:

> "... the scope of the court's inquiry is limited to the question whether the impugned law comes within the orbit of the permitted restrictions ... the objects of the impugned law must be sufficiently connected to the subjects

enumerated under art 10(2)(a). The connection contemplated must be real and proximate, not far-fetched or problematical."

[30] In plain terms, the quoted passage simply means this: a court does not ask whether a challenged law is wise, fair, or the best way of achieving its aim. It asks only one narrow question: whether there is a real and close link between what the law is actually trying to achieve and one of the specific reasons art 10(2)(a) allows. If that link exists, the law survives this test, whether or not the court would have written the law differently itself. Two things follow from this.

[31] The first is that the inquiry is directed at the objects of the law, not at its vocabulary. A statute need not recite the words "security of the Federation", "public order" or "morality" in order to fall within art 10(2)(a). Section 8A of the Printing Presses and Publications Act 1984, which creates an offence of maliciously publishing false news, uses none of those words. It was nonetheless held in *Pung Chen Choon* to fall within the permitted restrictions. Similarly, s 4(1) of the Sedition Act 1948, which is directed at acts of seditious tendency, uses none of them either. It was also nonetheless held in *Azmi Sharom* to fall squarely within the ambit of art 10(2)(a). Thus, the Appellants' argument that "public interest" is not an art 10(2)(a) head therefore proves too little. Neither is "false news". Neither is "seditious tendency".

[32] The second is that the connection must be real and proximate. Those two words do separate work, and it is worth being precise about what each demands because the Appellants' argument turns upon exactly this distinction. "Real" excludes a connection that is merely pretextual or asserted. In other words, the object relied upon must genuinely be the law's object, and not a label attached after the fact to dress up some other purpose in constitutional clothing. "Proximate" excludes a connection that is available only upon a chain of inference. This means that the link between what the law does and the constitutional ground it is said to serve must be direct and immediate, not one reached only by passing through several intervening steps of reasoning, however plausible each step might individually appear. Read together with their contrast in the passage quoted at [29] — "not far-fetched or problematical" — the phrase guards against two distinct failure modes, namely (i) a far-fetched connection is one that is invented or strained to fit, whatever its apparent proximity and (ii) a connection that is problematical may or may not hold up on examination, a matter of doubt rather than of demonstration by evidence or sound reasoning. A restriction survives only if the law's true object can be shown to sit close to, and not merely somewhere in the vicinity of, one of the art 10(2)(a) heads. It is here that the Appellants' argument has force, and we deal with it directly.

(iv) "Public Interest"

[33] The Appellants' point, at its strongest, is this. "Public interest" is not merely a synonym for the art 10(2)(a) heads. It is a phrase of great width. It could embrace the economic interest, the interest of the tourism industry, or

the interest of the Government of the day in avoiding embarrassment. If s 26 permits prohibition upon any ground capable of being labelled "*public interest*", it is a restriction wider than art 10(2)(a) permits, and to that extent void under art 4(1).

[34] The argument is not frivolous. It would succeed if "public interest" in s 26 bore its widest possible meaning. With respect, it does not.

[35] Section 26 has a long lineage. There was no prohibition power in the original Cinematograph Films Ordinance 1952. Section 26A was inserted by the Cinematograph Films (Amendment) Ordinance 1953, conferring the power on the High Commissioner in Council. In 1958, the power passed to the Yang di-Pertuan Agong by the Federal Constitution (Modification of Laws) (Ordinances and Proclamations) Order 1958. In 1971, the Ordinance was revised as the Cinematograph Films (Censorship) Act 1952 [Act 35]. In 1980, by Act A490, the power passed from the Yang di-Pertuan Agong to the Minister. In 2002, the FCA was enacted and the 1952 Act repealed. Section 26 of the FCA reproduces, in substance and very nearly in words, s 26A(1) of its predecessor.

[36] When Parliament transferred the power to the Minister in 1980, the Minister moving the amendment told the Dewan what the power was for:

> "Bahawa Kerajaan juga adalah bercadang untuk mengadakan satu peruntukan baru di s 26A iaitu bagi memberi kuasa kepada Menteri mengharamkan sesebuah filem ataupun *pita vidio* yang pada pendapatnya akan merosakkan akhlak, ketenteraman awam ataupun memudaratkan keselamatan negara."
>
> (Hansard, 2 April 1980.)

[37] "Akhlak", "Ketenteraman awam" and "Keselamatan negara" mean "Morality", "Public order" and "National security" respectively. The three purposes Parliament identified are precisely three of the heads in art 10(2)(a).

[38] We are conscious that this is the legislative history of a predecessor provision in a repealed Act, deployed to construe a 2002 enactment. The Appellants may fairly say that Parliament in 2002 was a different Parliament, legislating afresh. But s 17A of the Interpretation Acts 1948 and 1967 directs a construction that promotes the purpose underlying the Act, and where Parliament re-enacts a provision in substantially identical terms, it is legitimate to take it as re-enacting the purpose along with the words. Section 26 is not a new power. It is an old power carried forward, and we see no reason to suppose that Parliament silently enlarged it in the act of transcription.

[39] We therefore hold that "public interest" in s 26 of the FCA means, and means only, the security of the Federation or any part thereof, public order, and morality. So construed, the section is not merely connected to the art 10(2)(a) heads. It *is* those heads. The connection is not far-fetched. It could not be closer.

[40] That construction accords with the approach of the Federal Court in *The Government Of Malaysia v. Heidy Quah Gaik Li* [2026] 3 MLRA 350, a decision handed down since the learned Judge delivered his grounds. *Heidy Quah* confirms at para [80] that it remains open to a court to review an impugned provision to ascertain whether it falls within the grounds specified in art 10(2)(a) and the Federal Court's own treatment of the statutory language before it proceeded by reading that language in the light of the constitutional grounds rather than at large. The method is the one we have adopted. Where the words of a restriction are capable of a meaning which keeps the provision within art 10(2)(a), and capable also of a meaning which would carry it beyond, the court prefers the former and holds the Executive to it. Our construction of s 26 is consistent with *Heidy Quah*, and we take that decision as confirming that a provision of this kind is not to be struck down for the width of a phrase which, read in its statutory setting and against its history, was never intended to travel beyond the constitutional grounds. The parallel is not merely one of outcome but of a named technique. *Heidy Quah* did not derive its saving construction from first principles alone. The Federal Court applied what it termed the vagueness avoidance doctrine and a core-penumbra narrowing construction: identifying the constitutionally sound core of an indeterminate statutory phrase, and excising its uncertain penumbra, so that the provision is confined to what Parliament may validly be taken to have intended rather than struck down for the width of its language (*Heidy Quah* at paras [200]-[213]). That is precisely the exercise we have undertaken at [35]-[39] above. "*Public interest*" in s 26, left unconfined, has an uncertain penumbra reaching commercial, reputational and political concerns which art 10(2)(a) does not touch; its core, traced through the 1980 Hansard and the words "*akhlak, ketenteraman awam, keselamatan negara*", is the security of the Federation, public order and morality. We have retained that core and excised the penumbra, in exactly the manner *Heidy Quah* describes and approves. We do not, therefore, invoke *Heidy Quah* as a convenient authority standing at one remove from our reasoning. On the contrary, its named technique is the technique we have applied to a different statute presenting the same interpretive choice.

[41] We record, because it matters for the future, that this is a holding and not an observation. A Minister purporting to exercise the s 26 power upon some other conception of "public interest", be it commercial, reputational or political, would be acting outside the section. In other words, the reading that saves s 26 also confines it.

(v) The Respondents' Wider Arguments, Which We Do Not Accept

[42] The Respondents advanced two further arguments in support of s 26. We decline both.

[43] The first is drawn from *Heidy Quah*. The Respondents say, relying on [146] and [163], that speech which offends religious sensitivities is not free speech at all, contending that it falls outside the protective perimeters of art 10(1)(a)

and accordingly, that restraints upon it need not be traceable to art 10(2)(a) at all. Applied to this appeal, the argument runs as follows. The Film's storyline centres upon a Muslim protagonist's engagement with questions of apostasy and reincarnation, precisely the subject-matter which, on the Respondents' case, offended the religious sensitivities of the Muslim community, as the reviews of the religious authorities referred to at [7] above, and the thirty police reports that followed, are said to demonstrate. If speech of that character falls outside art 10(1)(a) altogether, the Respondents say, the Film never engages the guarantee in the first place, and the constitutional inquiry the Appellants ask us to undertake never begins.

[44] The argument is put too high, and we decline to decide the appeal upon it, for three reasons.

[45] The passages relied upon cannot be read in isolation from those around them. The Federal Court keyed the inherent limitation to *purpose and intention*. What falls outside art 10(1)(a) is the utterance or expression of words intended to offend, insult, annoy and cause harm or injury ([129]). The Constitution protects speech as a social good, and not as a tool the dominant purpose of which is disruption or harm ([130]). And the Federal Court said, in terms, that discontent or anger arising from speech or the expression of political views, and more controversial issues, do **not** constitute harm as envisaged in art 10(1)(a) ([129]). The distinction the Federal Court drew is between the provocateur and the artist, however uncomfortable the artist's work may be.

[46] Next, there is nothing in the material before us that establishes that the Appellants' purpose in making the Film was to offend the Muslims in this country. On the contrary, there is evidence to the contrary. The Pejabat Mufti Wilayah Persekutuan, whose review the Respondents themselves rely upon, concluded that while the Film was quite problematic in its themes, it is not denied that there are good messages presented in terms of love and racial tolerance. That is not a description of a work whose dominant purpose is disruption or harm. The Film itself clearly did not change in the weeks after its release. It had been publicly available, without incident, from 13 January 2023 until Encik Zabidi Mohamed's review of 25 February 2023 ignited the public debate we describe at [7] above. What altered was not the Film but the intensity of the audience's reaction to it, mediated through commentary, review and republication. Put differently, the controversy was a function of reception and amplification, not of anything the Film's makers did or intended. We stress that *Heidy Quah*'s inherent-limitation test is addressed to the character of the speech itself, not to the character of the reaction it provokes. A work does not migrate outside art 10(1)(a) merely because its reception, once amplified, becomes intense. Were it otherwise, the reach of the constitutional guarantee would be dictated by the volume of public reaction rather than by anything intrinsic to the speech itself, and the more successfully a controversial work provoked debate, the more readily it would forfeit the protection art 10(1)(a) exists to give it. That cannot be the law, and *Heidy Quah* does not say that it is.

[47] Lastly, to hold that a film is not speech at all is a large step. It removes the work from the Constitution's protection at the threshold, so that no question of justification, connection or restraint ever arises. A court should not take that step where a narrower and sufficient ground is available. One is.

[48] We therefore assume in the Appellants' favour that the Film is expression protected by art 10(1)(a), and ask whether the restriction upon it is one Parliament was entitled to impose. That is the harder question for the Respondents, and it would require an investigation into the merits of the justification sought by s 26 rather than resolving the dispute based on the antecedent question of whether the Film was protected speech in the first place.

[49] The Respondents also argued that art 4(2)(b) stops this Court from examining s 26 at all. We reject that too, and it is best explained by setting out what the provision actually says and why it exists. Article 4(2)(b) provides that the validity of a law shall not be questioned on the ground that it imposes restrictions of the kind mentioned in art 10(2), "but those restrictions were not deemed necessary or expedient by Parliament for the purposes mentioned in that Article". Its object is a narrow one. It takes off the table a single ground of challenge, namely, that Parliament misjudged the necessity or expediency of a restriction it otherwise had the power to impose. Parliament, not the courts, decides whether a restriction is necessary or expedient. Put it differently, art 4(2)(b) simply says the courts may not re-open that judgment call. It does not say that the courts cannot examine whether a particular restriction comes within that judgment call. That is the question that the Appellants ask us to answer. The Appellants do not say Parliament misjudged whether the restriction was necessary. They say the restriction is not, in truth, a restriction imposed under art 10(2)(a) at all — that "public interest" was never really about security, public order or morality in the first place. Article 4(2)(b) has nothing to say about that anterior question, because a court must first know whether a restriction falls within art 10(2) before it can ask whether Parliament's necessity-or-expediency judgment about it is open to challenge. The Federal Court confirmed as much in *Heidy Quah* at paras [79]-[80]. We have only asked and answered that anterior question, at [39] above: is s 26, properly read, actually about security, public order and morality? We have never asked whether Parliament was right to think the restriction necessary. Article 4(2)(b) therefore has no work to do here. This sequencing is implicit in the very structure *Heidy Quah* itself adopted. The Federal Court there first identified what the impugned language actually restricted, and only then considered whether art 4(2)(b) barred further inquiry into Parliament's necessity-or-expediency judgment. Had the Federal Court proceeded in the reverse order, that is, treating art 4(2)(b) as foreclosing scrutiny before that anterior characterisation was undertaken, the very exercise recorded at para [80] of that judgment could never have occurred at all. The order of inquiry we have followed is, in that sense, compelled by *Heidy Quah*'s own method, and not merely consistent with its result. The Federal Court said as much in terms that the starting point for determining the constitutionality of a provision said to infringe art 10(1)(a) is art 4(1) read with art 4(2), and it is

only after the limits art 4(2) imposes are appreciated that arts 10(1)(a) and 10(2)(a) fall to be considered at all (*Heidy Quah* at paras [111]-[115]).

(vi) Proportionality

[50] The Appellants had one further argument on this issue. They said that arts 10(1), 10(2) and 8(1), the last being the guarantee of equality before the law, read together, mean that a restriction on free speech is only constitutional if it is "proportionate", that is, if it goes no further than necessary to achieve its aim. On that footing, they argued that s 26, which gives the Minister very wide power with almost no express limits, is disproportionate and therefore invalid.

[51] With respect, this argument no longer survives, following the Federal Court's decision in *Heidy Quah*, handed down after the High Court decided this case. At [276]-[281], the Federal Court held that proportionality plays no part in deciding whether a law is constitutional. The reasoning is this. Article 4(1) makes the Constitution the supreme law: any inconsistent law is void. Article 4(2) limits the court's power to question certain laws, including a speech restriction made under art 10(2)(a), on the ground that Parliament wrongly thought the restriction "*necessary or expedient*". But art 4(2) cannot be stretched so far that it defeats art 4(1) itself. A provision limiting review cannot override the supremacy clause that gives the Constitution its force ([277]-[279]). In the same way, art 10(2)(a) cannot be read so widely that it lets Parliament abolish the art 10(1)(a) right altogether. In other words, it permits a restriction, not an abolition ([277]-[278]). Once those two points are settled, the constitutional text itself already supplies the answer, namely, is the restriction connected to a permitted ground, and does it stop short of extinguishing the right? Because the text does that work unaided, the Federal Court held there is "no necessity to have recourse to the doctrine of proportionality" ([280]-[281]). Proportionality is a tool borrowed from elsewhere. It adds nothing the Constitution's own structure does not already provide, and cannot be used as a substitute for it. We are bound by that holding, and it disposes of the Appellants' argument on this point. The point bears directly on s 26's own design. Section 26 does not purport to abolish the right to make or exhibit films. It authorises the Minister to prohibit a particular film, upon an opinion we have confined at [39] to security, public order and morality, while leaving the general freedom to produce and exhibit cinematic works in Malaysia entirely intact. It is, in *Heidy Quah*'s own terms, a restriction operating within a permitted ground, not an abolition of the underlying right, and for that reason too it survives the test the Federal Court laid down.

[52] We should note that this represents a change in the law. The learned Judge below, who did not have the benefit of *Heidy Quah*, applied a proportionality test at paras 36-39 of his grounds, following *PP v. Azmi Sharom* [2015] 6 MLRA 99 at para [43] and *Datuk Seri Anwar Ibrahim v. Kerajaan Malaysia & Anor* [2021] 6 MLRA 42 at [200]-[202]. He cannot be faulted for that. The law on this point simply moved after he delivered his grounds.

[53] In any event, nothing turns on this for present purposes. Even if proportionality had applied to whether s 26 is constitutional, s 26 would have passed that test too. Its underlying aim, which is protecting national security, public order and morality, is plainly important enough to justify some restriction on speech. The means chosen, allowing the Minister to prohibit a film he considers contrary to that aim, is rationally connected to that aim. And, as we have already explained at [39], the power itself is narrower than it first appears, because we have confined "*public interest*" to those three specific grounds and no others.

[54] It is important to be precise about what *Heidy Quah* does, and does not, decide, because the same point recurs later in this judgment. *Heidy Quah*'s holding at paras [276]-[281] answers only the first-stage question, namely, is the law itself, as written, constitutional? It says nothing about a second and different question that arises later, that is, once a law is accepted as constitutional, must the Minister still exercise the power it grants in a manner that is not excessive or arbitrary in the individual case? That is a separate inquiry, arising at a later stage of the analysis, and we return to it at [59] below.

(vii) Conclusion On Issue 1

[55] Thus, in our view, s 26 of the FCA, construed as at [39], falls squarely within the permitted restrictions in art 10(2)(a) of the FC. It is constitutionally valid. Issue 1 is answered against the Appellants.

H. Issue 2 — The Validity Of The Prohibition Order

(i) A Valid Power May Be Invalidly Exercised

[56] Before turning to the merits we must address an argument which the Respondents pressed upon us, because if it were left standing it would dispose of this issue by a route we regard as unsound.

[57] The Respondents put the argument this way: because the Prohibition Order was made under s 26, and s 26 is constitutionally valid, the Order itself cannot contravene art 10(1)(a) at all.

[58] That reasoning does not work. A law can be perfectly constitutional and still be applied wrongly in a particular case. Whether the power exists, and whether it was properly used on this occasion, are two separate questions, not one. If they were the same question, then any Minister holding a valid power would hold an unreviewable one, and the reasoning would go in a circle, which is that the Order is said to be valid because it was made under a valid section, and the section is said to have been properly used because the Order was made under it. That circularity cannot be right. The Appellants' claim for relief targets the Order itself, at para 4(b) of their Statement, and that claim requires its own, separate answer.

[59] It follows, too, that *Heidy Quah* at paras [276]-[281] does not close this door either. As explained at [54] above, that part of *Heidy Quah* concerns only whether the words of a statute are constitutional. It does not hold that once a Minister acts under a valid power, his individual decision escapes all further scrutiny for excess or arbitrariness. In our view it does not escape such scrutiny at all. An order made under a perfectly valid section can still, in a given case, be arbitrary or excessive, and art 8(1)'s guarantee of equal protection is not used up simply because the underlying section already satisfies art 10(2)(a). This is not a qualification we import from outside. It follows from the ordinary structure of public law that *Heidy Quah* leaves entirely undisturbed. The constitutionality of an enabling provision and the lawfulness of its exercise have always been treated as analytically distinct questions. The first asks what Parliament was entitled to authorise, the second asks whether the delegate stayed within what was authorised and exercised the power rationally. *Heidy Quah* addressed only the first question, and upon different statutory language altogether. Nothing in its reasoning purports to collapse the second question into the first, and we decline to read into it a holding the Federal Court was never asked to give. We need not develop this point further here, however, because for the reasons given at [75]-[82] below, the Order in this case was, on the facts, neither arbitrary nor excessive.

(ii) The Test

[60] Section 26 is written in the most subjective language available to a parliamentary draftsman. The Minister need only be "*of the opinion*", acting "*in his absolute discretion*".

[61] However, they do not shut the courts out. The modern position is settled. In *Darma Suria Risman Saleh v. Menteri Dalam Negeri Malaysia & Ors* [2012] 6 MLRA 607 at paras [4]-[5], the Federal Court held that this kind of subjective wording no longer keeps a decision beyond judicial review where objective facts must first be established before the Minister can honestly reach his "opinion". The Minister must genuinely have reasonable grounds. It is not enough that he merely believes he does. Translated into a workable test, the question is this: would a reasonable Minister, looking at the same material, objectively have reached the same view?

[See also *Arumugam Kalimuthu v. Menteri Keselamatan Dalam Negeri & Ors* [2013] 5 MLRA 365 at paras [11] and [13]; *Sepakat Efektif Sdn Bhd v. Menteri Dalam Negeri & Anor And Another Appeal* [2014] 6 MLRA 412 at 419; *Menteri Dalam Negeri & Anor v. Chong Ton Sin & Anor* [2024] 2 MLRA 67 at para [41]].

[62] It is therefore not enough that the Minister thought he had good reason. He must actually have had good reason. The word "absolute" in s 26 does not mean the decision is beyond challenge. It means only that the Minister does not need anyone else's agreement before acting. It does not mean he may act on nothing at all, or on the wrong material entirely.

[63] Applied to s 26, the question becomes this: would a reasonable Minister, looking at the material actually before him, objectively conclude that showing the Film would be contrary to national security, public order or morality?

(iii) What We Exclude From The Material

[64] Before answering that question we must decide what the material is. Two matters relied upon by the Respondents are, in our judgment, inadmissible for that purpose, and we put them aside.

[65] The first relates to the s 298 charge. The Respondents say that the charge of 17 January 2024 fortifies the fact that the content of the Film insults the religion of Islam, and thereby further supports the basis of the 1st Respondent's opinion. It does no such thing, for three reasons, each of them sufficient. The charge postdates the Prohibition Order by nearly five months, and cannot conceivably have informed an opinion formed on 21 August 2023. To reason backwards from it is to rationalise the decision after the event, whereas the objective test looks to the material before the decision-maker at the time. Further, a charge is not a conviction but an allegation, and the Appellants are presumed innocent of it. And the prosecution is, so far as we are told, still pending, so that for this Court to treat the charge as fortifying anything would risk trespassing upon proceedings not before us. We disregard it entirely.

[66] The other fact has to do with the Special Branch's exemplary rationale. The Special Branch opinion concludes that the Film should be prohibited because a prohibition serves as a lesson to all local and foreign film producers who plan to screen their films in this country to be more sensitive to controversial content. That is a deterrent purpose, directed at persons and films not before the Minister. It is not a s 26 purpose. Section 26 authorises the Minister to prohibit this film because its exhibition would be contrary to the public interest. It does not authorise him to make an example of it. Had that consideration formed part of the Minister's own reasons, we would have had to consider whether the Order was vitiated by an extraneous purpose.

[67] It did not. The Minister's reasons are set out at para 14 of his affidavit in reply, and the exemplary rationale appears nowhere in them. It appears in an opinion furnished to him. A Minister does not adopt every proposition in every document he reads, and there is no evidence that he adopted this one. We are satisfied that the Order does not rest upon it.

[68] We note in passing that the Special Branch opinion does not itself appear to be exhibited, though the affidavit is deposed to its effect. Where a court is asked to accept that a reasonable Minister could rely upon a document, the ordinary course is that the court should see the document. Nothing turns on it here, because the Order survives without it. It may turn on it in another case.

(iv) What Remains

[69] Stripping out those matters, the material before the Minister on 21 August 2023 was:

(a) the evaluation report of the LPF, which had viewed the Film and concluded that it should not be screened, finding its theme, storyline, scenes and dialogue contrary to the FCA and to the Garis Panduan Penapisan Filem 2010, particularly in their religious and socio-cultural aspects;

(b) the opinion of the Special Branch, shorn of its exemplary rationale, that the Film's content was in clear contradiction to the akidah of Muslims in Malaysia and contained elements capable of disturbing the public mind and affecting national order in a plural society;

(c) the review by JAKIM, instructed by the Minister in the Prime Minister's Department (Religious Affairs), finding that the Film clearly contradicted the beliefs and way of life of Muslims in Malaysia following the Mazhab Syafie;

(d) the reviews of Datuk Dr Zulkifli Mohamad Al-Bakri, the Pejabat Mufti Wilayah Persekutuan and Pertubuhan IKRAM Malaysia;

(e) thirty police reports lodged by members of the Muslim community throughout Malaysia; and

(f) the Minister's own viewing of the Film, from which he made twenty-three scene-by-scene findings.

[70] The Appellants say that the LPF evaluation, the Special Branch opinion, the scholars' views and the police reports are all irrelevant. We cannot accept that. A Minister forming an opinion about the effect of a film upon public order in a plural society would be failing in his duty if he formed it in a vacuum. The LPF is the body Parliament created to evaluate films. The Special Branch is the body charged with assessing threats to public order. The police reports are the most direct evidence available of how the community was in fact reacting. That the Minister sought these materials out and considered them is not a defect in his decision. It is the reason his decision is reviewable at all, because there is something to review.

(v) Public Order And The Seven Months

[71] We come to the point which has given us the most difficulty and which the Respondents' submission did not satisfactorily confront.

[72] Public order means the even tempo of the life of the community, or public safety and tranquillity. [See: *Darma Suria* at para [12]; *Sepakat Efektif*]. An act prejudices public order if it disrupts, or has the potential to disrupt, those things.

[73] The Appellants' point is a simple one, and it is a good one. On the Respondents' own chronology, the Film was publicly available from 13 January 2023. The controversy erupted on 25 February 2023. The Prohibition Order came on 21 August 2023. That is seven months of availability and six months of loud and sustained public controversy, and in all that time, on this record, there was no riot, no affray, no disturbance. Thirty police reports were lodged. We note, in passing, that a number of these reports, though not all, are couched in strikingly similar, at points near-identical, language, a feature which raises the possibility that at least some were coordinated or templated rather than independently composed. The remainder, however, are not so similar, and vary in their wording and emphasis. Thus, any inference of orchestration cannot be extended across the whole batch on this record. But even taking the reports at their most favourable to the Respondents, thirty police reports, whether wholly spontaneous or in part coordinated, are evidence that thirty people were offended enough to walk into a police station. They are not evidence that the even tempo of community life was disrupted, or was about to be. If anything, they are evidence of the opposite; it is of a community expressing its anger through the lawful, orderly and institutional channel which the law provides. That is the even tempo of community life working.

[74] We have considered the argument with care. It fails, for three reasons.

[75] The first is that the counterfactual is not what happened but what would have happened, and two things are to be noticed about the seven months. The Film attracted minimal public attention in its early months. It was only when Zabidi Mohamed's review went viral in late February 2023 that it gained traction, and it was in consequence of that traction, rather than of the mere fact of its release, that it came to the Minister's attention at all. For much of the period upon which the Appellants rely there was, in truth, very little to prohibit. Nor, once the Film had come to notice, did the Ministry stand idle. It conducted monitoring at public premises to prevent conventional screening of the Film to the general public. The Film's public exposure during those months was, in short, contained, and the absence of disorder in a period of active containment tells us nothing about the presence of risk absent the containment. The Appellants' argument, pressed to its conclusion, would mean that the more effectively an authority contains a risk, the less entitled it is to address it. That cannot be right.

[76] The second is that s 26 is prospective. The Minister's statutory question is what would be contrary to the public interest. He is not required to wait for a riot to be permitted to prevent one. A power to prevent harm which may be exercised only after the harm has occurred is not a power to prevent anything.

This is the ordinary logic of preventive jurisdiction, and it is why *Darma Suria* speaks of the potential to disrupt.

[77] The third concerns the intensity of review. This Court is being asked to substitute its own assessment of communal risk for the Minister's. Questions of public order and national security involve, by their very nature, a predictive assessment of what may happen rather than a finding about what has happened, and in respect of such an assessment a reviewing court ought to accord an appropriate degree of deference to the Executive, while ensuring that the statutory power is exercised within its lawful limits. The authorities recognise as much. *Kumpulan Perangsang Selangor* contemplates that in matters of public order and national security the *Rama Chandran* approach may be wholly inappropriate. *Sepakat Efektif* at para [52], quoted with approval by the learned Judge, acknowledges that there are areas, national security among them, where greater deference will be given to the executive. We are conscious that the same paragraph warns that the exceptions should not be elevated as the norm, and we do not elevate them. For the avoidance of any doubt, we do not say that the Minister's assessment of risk is unreviewable. We say only that where a Minister, having viewed a film himself, having taken the assessment of the police body charged with communal intelligence, and having before him thirty formal complaints from the affected community, forms the view that unrestricted public exhibition carries a risk to communal tranquillity, this Court is in a poor position to say that he was not entitled to form it.

[78] The seven months without disorder show that the Minister's fear was not realised. They do not show that it was unreasonable. A fire that is prevented is not evidence that there was never a risk of fire.

[79] Having considered all the admissible material, we are satisfied that a reasonable Minister could objectively have concluded that unrestricted exhibition of the Film would be contrary to public order.

(vi) Irrationality

[80] The remaining question under this head is whether the Order was irrational in the *Wednesbury* sense, that is, so outrageous in its defiance of logic or of accepted moral standards that no sensible person applying his mind to the question could have arrived at it [See: *Associated Provincial Picture Houses Ltd v. Wednesbury Corp* [1948] 1 KB 223, as adopted in *R Rama Chandran*].

[81] It plainly was not. The Minister had material. He considered it. He viewed the Film himself. He reached a conclusion open to him upon that material. That other minds, including conceivably, our own, might have weighed the same material differently is neither here nor there. [See: *Ranjit Kaur S Gopal Singh v. Hotel Excelsior (M) Sdn Bhd* [2012] 1 MELR 129; [2010] 5 MLRA 696 at para [17], where it was said that a reviewing judge ought not to disturb findings even where the reviewing judge might not have come to the same conclusion].

[82] We would add one caution for the future. The Minister's stated reasons range widely, being over *akidah*, blasphemy, pluralism, apostasy, and arts 3(1) and 11(4) of the FC. Yet the Order is now defended, "in particular", upon the ground of public order. We accept that public order was among the Minister's reasons. It is expressly stated at para 14(c) of his affidavit. But art 11(4) is a provision conferring legislative competence upon the States to control the propagation of doctrine among Muslims. It is not a head of restriction under art 10(2)(a), and the Minister is not exercising it. A decision under s 26 must stand or fall upon national security, public order or morality, the heads at [39] and not upon some free-floating appeal to religious orthodoxy. This Order stands upon public order. That is enough.

(vii) Conclusion On Issue 2

[83] Accordingly, we conclude that the Prohibition Order was validly made in the exercise of the s 26 power, and it cannot be characterised as irrational or unreasonable in the *Wednesbury* sense. In coming to that conclusion we stress, because the point is capable of being misunderstood, that the test is not whether this Court would or would not have issued the Prohibition Order. It is whether the Minister was entitled to do so upon the objective facts placed before him, including his own viewing of the Film. He was.

[84] Accordingly, issue 2 is answered against the Appellants.

I. Issue 3 — The Right To Be Heard

(i) The Principle And Its Reach

[85] The Appellants say that they were never given a chance to answer before their film was banned. Stated in that way, the complaint has an obvious moral force.

[86] The general rule is what lawyers call *audi alteram partem*, Latin for "hear the other side". In *Ketua Pengarah Kastam v. Ho Kwan Seng* [1975] 1 MLRA 586 at p 588, the Federal Court described the rule broadly:

> "the rule of natural justice that no man may be condemned unheard should apply to every case where an individual is adversely affected by an administrative action, no matter whether it is labelled "judicial", "*quasi*-judicial", or "administrative" or whether or not the enabling statute makes provision for a hearing."

[87] The Respondents met this with *Iszuree Ibrahim v. Majlis Mesyuarat Kerajaan Negeri Pulau Pinang & Ors And Another Case* [2016] MLRHU 9, a decision of the High Court, and with the maxim *expressio unius est exclusio alterius*. We must say plainly that a decision of the High Court cannot qualify a decision of the Federal Court, and that the *expressio unius* argument, as put, does not persuade us. The Respondents point to s 21 (appeal to the Appeal Committee) and s 40(5)-(7) (forfeiture claims before a Magistrate) as instances in which

Parliament conferred a hearing, and invite the inference that its silence in s 26 was deliberate. But s 21 is addressed to decisions of the Board, not of the Minister; and s 40 is addressed to a Magistrate upon a forfeiture claim. Neither concerns the s 26 power. In *Chong Ton Sin* the comparison was between s 7(1) of the PPPA and ss 7(3) and 13B of the same Act, provisions within the same regime, addressed to the same Minister, upon the same subject. The comparison here is looser. And s 26 opens with the words "[N]otwithstanding any other provisions of this Act", which, if anything, insulates it from inferences drawn from the rest of the Act.

[88] So we do not dismiss this ground upon the Respondents' reasoning. We dismiss it upon a narrower and firmer one, which was not argued but which we cannot ignore.

(ii) The Character Of The Act

[89] *Ho Kwan Seng* is concerned with a decision aimed at a particular person. A customs penalty, a dismissal from a job, the cancellation of a licence, a deportation, which are all acts directed at one identified individual, deciding that person's rights, and the law rightly insists he be given a chance to answer before it happens to him.

[90] The Prohibition Order is a different kind of act altogether. It is subsidiary legislation. It is a form of law-making delegated by Parliament to the Minister, made by an order published in the Government Gazette, P.U.(A) 266/2023. It does not name the Appellants, and it does not decide their individual rights as such. It simply prohibits everyone in Malaysia from exhibiting, displaying, distributing, possessing, circulating or selling the Film. Any citizen who keeps a copy breaks the same rule. The Appellants are certainly affected by it, and heavily so, but they are affected as the people who made the thing being legislated about, not as the specific target of a decision made about them personally.

[91] The right to be heard does not attach to law-making in the same way it attaches to a decision about an individual. Parliament does not hear from every person a new Bill will affect before passing it. In the same way, a Minister making a general order under a delegated law-making power is not obliged to hear from everyone the order will bind. If it were otherwise, every gazetted order of general application would first require a hearing of every single person it might touch, and the power would become impossible to use in practice.

[92] This, in our judgment, is the real distinction between this case and *Ho Kwan Seng*, and it also explains *Chong Ton Sin*, in which this Court upheld a similar general prohibition order made under s 7(1) of the PPPA without any prior hearing. The point is not that natural justice was excluded from a process that would otherwise deserve it. The point is that the process here was never the kind of individual, decision-directed process natural justice protects in the first place. It was legislative, not adjudicative, in character. The Appellants press

a further point on this score. They say that although the Prohibition Order is, in form, directed at the Film and not at them by name, it is, in substance, addressed to them. They are its author and its producer. The Order strikes at the very thing they made, and no one is more directly affected by it than they are. On that footing, they say, they ought at the very least to have been given the right to be heard, being the persons most immediately and acutely impacted by the decision. We do not accept it, and for the same reason already given. The premise of the argument is that the degree of impact upon a person is what generates the right to a hearing. With respect, it is not. What generates the right, on the authorities we have discussed, is the character of the act. Was it a decision directed at an identified person's rights, or an act of general application which happens, in the course of governing everyone, to bear most heavily upon some? The Appellants undoubtedly feel the Prohibition Order's effect more acutely than any other person in Malaysia, because it is their work that is banned. But the same could be said of the author whose book is banned under other legislation, or the broadcaster whose licence conditions are tightened by a general regulation. The fact that one person, by reason of what he has made or done, bears the sharpest edge of a general measure does not convert that measure into a decision made about him individually. Put it differently, intensity of effect is not the touchstone. The touchstone is whether the act was adjudicative or legislative in character. We have held it to be the latter. It follows that the Appellants' being the persons most affected, though we accept the fact, does not supply the right they claim.

[93] One further matter requires an answer. The Appellants contend that *S Kulasingam & Anor v. Commissioner Of Lands Federal Territory & Ors* [1981] 1 MLRA 184, a decision of the Federal Court which stands in the way of the case they advance, has been impliedly overruled by the later authorities. We are not persuaded that it has. Implied overruling is not a proposition to be established by assertion. It requires the identification of a later decision, of a court of at least co-ordinate authority, whose ratio cannot stand together with the earlier one, and it requires that the inconsistency be demonstrated rather than announced. Nothing of that kind was shown to us. A principle of the importance of that which *S Kulasingam* states cannot simply be dealt with by the bare submission that time has passed it by. Until the Federal Court says otherwise, *S Kulasingam* binds this Court, and it points in the same direction as the reasoning we have set out at paras [89]-[92].

(iii) The Design Of The Power

[94] That conclusion is reinforced by the design of s 26 itself. The words "[N]otwithstanding any other provisions of this Act" mark s 26 out as a reserve power, exercisable free of the Act's ordinary machinery — irrespective of whether a film was submitted to the LPF, irrespective of what the LPF decided, irrespective of any appeal. Parliament's evident purpose was to leave the Minister able to act upon films which had escaped the ordinary scheme altogether.

[95] This Film had escaped it. It was never submitted to the LPF. It was screened at Universiti Malaya and released on Viu without ever entering the system Parliament built. The Respondents made much of that, and invited us to hold that the Appellants, having declined the statutory forum in which their film's content would have been evaluated and in which they would have had the s 21 right of appeal with representations, are in no position to complain that they were denied a hearing under the reserve power which exists precisely because films such as theirs bypass the scheme. We do not rest our decision upon that consideration. It shades into the discretion to refuse relief rather than into the existence of the duty, and the two ought not to be confused. Our conclusion is founded upon the legislative character of the s 26 prohibition order itself.

(iv) The "No Difference" Argument

[96] The Respondents' final argument was that a hearing would have made no difference. The Minister had sufficient material, and the court does not act in vain. [See: *Merdeka University Bhd v. Government Of Malaysia* [1981] 1 MLRH 75 (Abdoolcader J), citing Lord Wilberforce in *Malloch v. Aberdeen Corporation* [1971] 1 WLR 1578 at p 1595].

[97] We do not accept this, and we say so because the Respondents should not think it a safe argument. A hearing might well have made a difference. The Minister's central factual finding is that Aisyah finally chose to believe in reincarnation, an inference drawn from the title, from the closing image of the mother's reclining chair with a butterfly, and from the soundtrack. That is a reading of a deliberately ambiguous ending, and reasonable viewers might read it otherwise. It is exactly the kind of finding which representations from the film-makers might have displaced or qualified. *Malloch* permits the discretion to be exercised where whatever the appellant said could make no difference. We are not persuaded that nothing the Appellants said could have made a difference. Had we found a duty to hear, we would not have excused its breach upon this ground.

[98] But we have found no duty to hear, for the reasons at paras [89]-[93]. The question of excusing a breach does not arise.

(v) Conclusion On Issue 3

[99] In the premises, we hold that the Appellants had no right to be heard before the making of the Prohibition Order, because the Prohibition Order is legislative in character and is not a decision directed at them. Issue 3 is answered against the Appellants.

J. A Closing Observation

[100] We are conscious that this judgment will disappoint the Appellants, and that it will be read by some as a judgment against artistic freedom. It is not. It is a judgment about who decides.

[101] Article 10(1)(a) is a real guarantee, and this Court would enforce it against a Minister who prohibited a film out of pique, or to spare the Government embarrassment, or upon a conception of "public interest" wider than the one we have held s 26 to bear. We have narrowed the section in order to save it, and the narrowing binds. We have refused to hold that a film ceases to be speech because it offends. We have excluded from the Minister's material a criminal charge laid five months after his decision, and an exemplary rationale which s 26 does not authorise. Those are not the actions of a court indifferent to the right.

[102] But the constitutional design places the assessment of communal risk with the Executive, subject to review, and not with the judiciary at first instance. Where a Minister has viewed the work himself, has taken the advice of the bodies which Parliament and practice have assigned to the task, and has before him the formal complaints of the affected community, and where upon that material he forms the opinion that unrestricted exhibition would endanger public order, the question for us is not whether we share the opinion. It is whether he was entitled to reach it. He was.

K. Conclusion

[103] For the reasons given above, we hold that:

(a) section 26 of the Film Censorship Act 2002, properly construed as being confined to the security of the Federation, public order and morality, falls within the permitted restrictions in art 10(2)(a) of the Federal Constitution and is constitutionally valid;

(b) the Minister validly exercised the statutory power under s 26 in issuing the Prohibition Order, and the Order is not tainted by illegality or irrationality; and

(c) the Appellants were not entitled to a prior hearing before the Prohibition Order was made, the Order being legislative rather than adjudicative in character.

[104] The learned Judge was right to dismiss the application for judicial review, and we affirm His Lordship's order, though not in every respect for His Lordship's reasons.

[105] The appeal is dismissed. As to costs, the learned Judge made no order below. Having regard to the constitutional importance of the questions raised, and to the fact that the Appellants have succeeded upon two subsidiary points of reasoning ([57]-[58] and [96]-[97]), we take the same course. We make no order as to costs.