

**AN ANALYTICAL REVIEW ON THE ANNULMENT OF INTERNAL SECURITY
ACT 1960 AND ITS EFFECTS ON THE RISE OF FIREARM CRIMES IN
MALAYSIA**

By:

Hawa Hidayah Binti Abdul Ghani (2012692698)

Najwa Bt Ab. Rahman (2012230208)

Nor 'Ain Karina Binti Marzuki (2012281198)

Nurshahira Binti Ramli (2012222648)

Submitted in Partial Fulfilment of the Requirements for the Bachelor of Laws (Hons)

Universiti Teknologi MARA

Faculty of Law

December 2014

The students/authors confirm that the work submitted is their own and that appropriate credit has been given where reference has been made to the work of others.

ABSTRACT

The Internal Security Act 1960 which was originally used to combat communist invasion during the Emergency period had been used by the government to combat subversive action and organized violence against persons and property under Article 149 of the Federal Constitution. The law however has been replaced by the Security Offences (Special Measures) Act 2012 due to concerns of infringement of human rights. Despite the existence of strict laws, crime rates continue to increase. In most situations, the weapons owned by the offenders were obtained illegally. Therefore, the questions that arise here are; whether the repeal of the ISA has undesirable effects to the security of the country, where there has been an increase in the crimes related to firearms between the abolishment of ISA and the introduction of SOSMA, and to compare preventive detention laws in Malaysia with Singapore and to find out steps to be taken to overcome the problems despite having stringent laws. This research study will focus on the efficiency of the law and enforcement of the authority. The abolishment of ISA will be analysed thoroughly to improve SOSMA. This research would also be helpful to legislators to evaluate the effectiveness of the strict law, specifically SOSMA, in order to determine whether this law truly protects public safety. To conclude, it is reasonable to examine the laws of SOSMA and ISA to improve Malaysia's preventive detention laws to protect Malaysia's national security and public order.

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CHAPTER 1: INTRODUCTION

1.0 Introduction

In the light of abolition of the Internal Security Act 1960 in 2012, there has been an upsurge of crimes involving firearm in Malaysia, be it within the nation and also from the outside of the State. The rise of the crime takes place right after the government decided to annul the law and consequently replaced it with the newly enacted Special Offences (Security Measures) Act 2012. Many arguments arise from the event, contending that the abolition is the main factor on rise of firearm crimes which threatens the public at large. The question arise is whether the main cause for the upsurge of the crime rates involving firearm was caused directly by the abolition itself or by the ineffective enforcement by the enforcement personnel. Therefore, this research will consists of the background of research, problem statement, research objectives, research methodology, scope of the research, limitations and also the significance of the research.

1.1 Research Background

The Internal Security Act 1960 ('ISA') is a preventive detention law and was enacted originally after Malaysia's independence from Britain. It was originally used to combat the communist insurgency during the period of Emergency starting from 12 July 1948 to 1960,¹ but has been continuously been used by the government to combat subversive action and organized violence against persons and property under Article 149 of the Federal Constitution.

It has, however, been repealed and replaced by the Security Offences (Special Measures) Act 2012 ('SOSMA') due to concerns regarding to the matter of the infringement of human rights, namely the rights to life and personal liberty, right to a fair trial, and right to be presumed innocent until proven guilty. These rights are entrenched in the Federal Constitution under Article 5(1), 5(2), 5(4) and Articles 3, 10 and 11(1) of the Universal Declaration of Human Rights (UDHR).

Section 8(1) ISA states that the period of detention of a detainee cannot exceed the period of two years, yet this provision is overridden by Section 8(7) which states that the Minister of Home Affairs has the power to renew the two year time limit indefinitely, and the extension of the detention period may be made on the same ground used to arrest the detainee or a new ground of arrest. Section 73(1) provides the power for the police to detain a person without a warrant up to 60 days on the grounds of suspicion that a person is acting in prejudice to the nation's security and public order². These sections have been criticized as the power of the Home Minister and the police to detain a person has no safeguard against arbitrary use of the powers conferred under the ISA, as the power to detain and renew the detention period is entirely subject to the Home Minister's discretion³.

In the case of *Lau Kee Hoo v Public Prosecutor*⁴, the court held that Section 57(1) of the ISA, which carried the mandatory death penalty for unlawful possession of firearms is

¹ Ramdas Tikandas. (2003, September). National Security and Constitutional Rights - The Internal Security Act 1960. *The Malaysian Bar*. Retrieved June 14, 2014. http://www.malaysianbar.org.my/human_rights/national_security_and_constitutional_rights_the_internal_security_act_1960.html

² (2009). ISA- Internal Security Act. *Malaysian Civil Liberties Movement*. Retrieved June 15, 2014. <http://www.mclm.org.uk/health/382-isa-internal-security-act.html>

³ Nicole Fritz and Martin Flaherty. (2003). Unjust Order: Malaysia's Internal Security Act. *Fordham International Law Journal*.

⁴ *Lau Kee Hoo v Public Prosecutor* (1983) 1 MLJ 157