

THE STUDY ON THE EXERCISE OF DISCRETIONARY POWER OF THE POLICE
UNDER THE PEACEFUL ASSEMBLY ACT 2012

BY

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ABSTRACT

This paper is basically revolves around the area of the power of police and its discretionary power in policing a peaceful assembly according to the power granted by the Malaysian Peaceful Assembly Act (PAA) 2012. The centre of this project is concerning on section of 21 of the PAA which ambiguously worded the scope of police officers' power to disperse the assembly and immunity conferred to police officers for the force used in dispersing assembly. Further, the statute failed to provide any authority or procedure in scrutinising the decisions and the actions of police officers in exercising their power. Besides, this project paper compares the development and application of laws regarding policing peaceful assembly between Malaysian, United Kingdom and Australian legislation. The end result, we have proposed certain recommendations in respect the problems concerning the weaknesses of the PAA 2012 which have been focused in this paper.

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CHAPTER ONE: INTRODUCTION

1. 1 Introduction

The freedom of assembly is guaranteed under Section 10(1)(b) of the Federal Constitution where it gives rights to the citizen of Malaysia to assemble peacefully without arms. By the same token, Universal Declaration of Human Rights¹ provides that everyone has the right to freedom of assembly and association. Meanwhile Peaceful Assembly Act 2012 focuses on the details of the assembly as to the procedures and rights. In pursuant to the enactment of Peaceful Assembly Act 2012, there have been several assembly held under the Act. The media have reported numerous incidence of conflict between the public and the police officer and when the Peaceful Assembly Act is look into, there is a wide discretionary power given to the police officer in matters related to an assembly. This have causes several problems and conflicts as well as lacuna in the establishment of the Act itself.

1.2 Background

In the year 2013, it marked a year-long celebration of the 56th anniversary of the independence of Malaysia and went along with the development and progress of the protection of civil rights as well as the guarantee of public freedom of assembly in pursuant to Article 10 of the Federal Constitution. The modern trend of democracy increases the awareness among the citizen with regard to the freedom of assembly along with the protections and safeguards. However, due to certain events that did not meet the public expectations, it has tainted the demand of the true application of democracy. For example is the wide statutory power under Section 27 of the Police Act 1967² that conferred the police officers in providing measures and use of force which they think necessary to disperse the crowd, has opened to the possibilities of such power to be exercise abusively. One of the best examples was seen during BERSIH 2.0 in 2011 which received massive criticisms by the foreign media on the

¹ Article 20(1) of Universal Declaration of Human Rights

² Act 344