
RIGHT TO ASSEMBLE PEACEFULLY UNDER ARTICLE 10 OF THE FEDERAL CONSTITUTION

MAZITA MOHAMED

LECTURER, UNIVERSITY UTARA MALAYSIA

HASLINDA MOHD ANUAR

SENIOR LECTURER, UNIVERSITY UTARA MALAYSIA

RUSNIAH AHMAD, DR

ASSOCIATE PROFESSOR, UNIVERSITY UTARA MALAYSIA

AZLIN NAMILI MOHD ALI@ RAMLI

SENIOR LECTURER, UNIVERSITY UTARA MALAYSIA

ROHANA ABDUL RAHMAN, DR

SENIOR LECTURER, UNIVERSITY UTARA MALAYSIA

MUHAMMAD FIRDAUS BIDIN

CONTRACT LECTURER, UNIVERSITY UTARA MALAYSIA

AHMAD MOHSEIN AZMI

CONTRACT LECTURER, UNIVERSITY UTARA MALAYSIA

ABSTRACT: *Article 20(1) of Universal Declaration of Human Rights and Article 21 of International Covenant on Civil and Political Rights provide that everyone has the right to freedom of peaceful assembly. In Malaysia, such provision is stipulated under Article 10 of the Federal Constitution which combines the freedom of speech, peaceful assembly and association. However, these freedoms have restrictions which are usually justified under the broad stroke of maintaining racial harmony and public order. Prior to 23 April 2012, section 27 of the Police Act 1967 was implemented to govern a public assembly. After that date, the Peaceful Assembly Act 2012 became enforceable. It seeks to strike a balance between acknowledging the individual's right to assemble peacefully as a fundamental human right and maintaining security and public order. The objective of this paper is to discuss the provisions under the Peaceful Assembly Act 2012 (Act 736) that are said to have embraced the spirit of Article 10 of the Federal Constitution. A critical comparison will be also made with section 27 of the Police Act 1967. Recommendations will also be pointed out, where necessary, in order to enhance the application of the present Act 736.*

KEYWORDS: *right to assemble peacefully, Article 10, Peaceful Assembly Act 2012, Police Act 1967*

INTRODUCTION

The National Key Result Areas 1 (NKRA 1) under the Government Transformation Plan (GTP) has been introduced in 2009 by the Prime Minister of Malaysia to reduce crime. Among others, the focus areas are improving the justice system and increasing public satisfaction with the Royal Malaysian Police performance. In conjunction with this effort, the Prime Minister had announced on 15 September 2011, during the Malaysian Day Message, that 'The Government will also review section 27 of the Police Act 1967, taking into consideration Article 10 of the Federal Constitution regarding freedom of assembly and so as to be in line with international norms on

the same matter.¹ This move is considered timely as freedom of assembly granted by Article 10 of Federal Constitution has long been curtailed by the Police Act 1967.² The objective of this paper is to discuss the provisions under the Peaceful Assembly Act 2012 (Act 736) that are said to have embraced the spirit of Article 10 of the Federal Constitution.

THE RIGHT TO ASSEMBLE UNDER THE FEDERAL CONSTITUTION

Article 10 of the Federal Constitution provides freedom of speech, assembly and association in Part 2 Fundamental Liberties. In practice, Malaysia experienced on many counts of people's right to exercise their freedom of expression is being limited and selectively based on the discretion of the executive and enforcement agencies such as the police force. Restrictions are usually justified under the broad stroke of maintaining racial harmony and public order.

According to Shad Faruqi (2012), the constitutional right to freedom of speech and expression; to assemble peaceably and without arms; and to form associations are heavily dependent on each other. The proper constitutional approach to the right to speech, assembly and association is to view them as integral part of a single scheme of things so that their streams may merge to constitute a grand flow of unimpeded justice. Article 10(1) (a), (b), and (c) of the Constitution treat these rights as separate and exclusive. However, this provision is subject to clauses (2), (3) and (4) of the article where under clause (2), Parliament may impose law on the right in order to give restriction as it deems necessary or expedient in the interest of the security of the Federation or any part thereof, friendly relations with other countries, public order or morality and restriction designed to protect the privileges of parliament or of any legislative assembly or to provide against contempt of court, defamation or incitement of any offence. Speech is subjected to eight restrictions; assembly to two limitations; and associations to three enumerated fetters. The Peaceful Assembly Act 2012 complies with this compartmentalization of human rights approach.

THE PEACEFUL ASSEMBLY ACT 2012

The Peaceful Assembly 2012 (PAA 2012 (Act 736)) which was enforced on 23 April 2012, consists of VI Parts, namely, Part I - Preliminary; Part II – Right to assemble peaceably and without arms; Part III – Responsibilities of organisers, participants and police; Part IV – Requirements on organising of assembly; Part V – Enforcement; and Part VI – Miscellaneous. This Act is relating to the right to assemble peaceably and without arms, and to provide restrictions deemed necessary or expedient relating to such rights in the interest of the security of the Federation or any part thereof or public order, including the protection of the rights and freedoms of other persons, and to provide for related matters.

THE POLICE ACT 1967 VERSUS THE PEACEFUL ASSEMBLY ACT 2012

According to Shad Faruqi (2012), fifteen points have been used to compare between section 27 of the Police Act 1967 and the Peaceful Assembly 2012. The following are the comparative analysis:

1. Police Permit

Section 27 to section 27C of the Police Act 1967 (PA 1967) provide for citizens to apply for a police permit for gatherings of more than three people. In *Chai Choon Hon v. Ketua Polis*

¹ The spirit of the review was mentioned by the Prime Minister at Parliament on 16 April 2012 during tabling the new Peaceful Assembly Bill.

² Section 27 of The Police Act 1967 provides for a wide police discretion whether to give or refuse a permit and they can add conditions without any limitations if a permit is granted.

Kampar,³ the police has more or less unfettered discretion to grant or withhold a permit and also has wide power to impose conditions. However such discretion is still subject to judicial review. With regards to an application by Parti Islam SeMalaysia (PAS) Kawasan Muar on 21st August to hold a ceramah on 15 September 2000, on the occasion of the Prophet Mohamad's Birthday at private premises, the police refused a licence on the ground to preserve public order and national security. On appeal, PAS requested explanation as how a talk could constitute a breach of public order and a threat to security. However, the reply merely reiterated the reason given earlier without further explanation. (SUHAKAM, Freedom of Assembly.) This shows that the police's discretionary power is not used for the purpose it was granted.

Under PAA 2012, organizers are not required to obtain a police permit. However, section 9 states that they shall notify the Officer in Charge of the Police District (OCPD) where the assembly is to be held 10 days in advance unless they are meeting in designated places or the assembly is exempted from the notification requirement as provided in 3rd Schedule (religious assemblies, funeral processions, wedding receptions, open houses during festivities, family gatherings, family day held by an employer for the benefit of his employees and their families and general meetings of societies or association). The OCPD can impose conditions and restrictions including date, time, duration, place, manner, conduct or any other matters that deems necessary or expedient in relation to the assembly or etc. (Section 15 of PAA 2012). The OCPD shall respond within five days of the receipt of the notification regarding the restrictions but if he remains silent after the notification, then it is deemed as consent (Section 14(2) of PAA 2012).

Even though the assembly is generally permitted, the police are given vast power to impose restrictions and conditions under section 15. However, on the question of legality, the restrictions must fall within one of the grounds allowed by the law and it must be reasonable. (Shamrahayu, (2012), Right to Assemble: A Global Comparison.) Restrictions must consider a fair balance between rights of the protesters and the general interest of the community. So in both Acts, the police are provided with wide discretionary power. The discretionary power must be used for the right purpose and thus it must not be abused. To what extent the police are able to impose such conditions and restrictions are clearly a cause for concern. The provisions in the PAA 2012 are in line with the spirit under Article 10(1) (b) of the Federal Constitution where the peaceful assembly has been regarded as a fundamental liberty unless such assembly is against public order and national security. In contrast, under section 27 of the PA 1967 the police may prohibit any assembly unless so permitted.

2. Power to Ban

Section 27 (2) of PA 1967 gives power to OCPD to refuse or cancel a licence to assemble if it is prejudicial to the interest of security of Malaysia or to excite a disturbance of the peace; or the application jointly made by three individuals is actually intended to be convened by an organization; or application of an organization that is not registered in Malaysia.

However under section 15 of PAA 2012, the OCPD has no power to refuse an assembly. He can, then, impose restrictions and conditions on the date, time, duration, place, manner, conduct, payment of clean-up cost of the assembly, inherent environmental factor, cultural or religious sensitivity, historical significance of the place of assembly, concerns or objections of persons who has interests and any other matters that are deemed necessary or expedient in relation to the assembly. SUHAKAM proposed a co-operative model where the police and the organizer of public assemblies discuss and arrive at a consensus on matters relating to assembly for the purpose of facilitating the assembly in line with the objectives of PAA 2012.

So both Acts grant vast power to the police to regulate the assembly. Even though police cannot prohibit the assembly in PAA 2012 yet it has power to impose restrictions and conditions so as to disallow the assembly.

³ (1986) 2 MLJ 203; see also *Patoo v. CPO Perak* (1986)

3. Time Limit

Under section 27(2) of the PA 1967, any person shall apply for a licence to hold assembly. No statutory time limit has been provided. In practice, an application for licence must be submitted seven days prior to the proposed assembly. However, any person aggrieved by the refusal of the OCPD to issue a license, may appeal in writing to Commissioner or Chief Police Officer (CPO) within forty-eight hours of such refusal and the decision of the Commissioner or CPO is final (s27(7) of the PA 1967).

Under PAA 2012, citizens are required to give notification ten days in advance of the assembly (section 9) and OCPD must communicate response within five days of the receipt of the notification to inform of the restrictions and conditions imposed under section 15 or silence is deemed as consent (section 14). An appeal shall be made to the Minister within 48 hours after receipt of restrictions and conditions and Minister shall give decision within 48 hours of the receipt of the appeal (section 16).

The time limit for notification under the PAA 2012 has been clearly specified. This is in contrast to the PA 1967 where time limit for application for licence is not stated but is only administratively provided in the application form itself. SUHAKAM, however, submitted that a reasonable time limit would be two weeks before the proposed assembly (SUHAKAM, Freedom of Assembly).

Under PA 1967, the Commissioner or CPO can hear the appeal and his decision is final. However, the length of time taken to consider the appeal is not stated in the Act. Whilst PAA 2012 on the other hand allows the appeal be made to Minister and allocates 48 hours for him to give decision.

4. Designated Places

PAA 2012 permits the Minister to designate places where assemblies can be held without notification to the CPO (section 9(2) (a)). Further, section 11 provides that the organizer must obtain the consent of the owner or occupier of the designated place. It means that consent must be given by State Government if it is a State Land and Local Council if it is a Local Council land. Many owners would not want to get involved even though they do not mind people exercising their right to peaceful assembly. If they give consent for their place to be used for the purpose of the assembly, then they are likely to be involved and to have agreed to such assembly. It means that the organiser of the assembly almost might not get consent from the owners. Obtaining consent from owner or occupier of the designated places is a new requirement that was not needed in PA 1967.

5. Exempted Assemblies

PAA 2012 does not apply to election campaigns under the Election Offences Act 1954; strike, lock-out or picket under the Industrial Relations Act 1967 and Trade Unions Act 1959 (section 1(3)). Section 27 of PA 1967 was silent regarding exempted assemblies. According to Shad Faruqi (2012), exempted assemblies includes religious assemblies, funeral procession, wedding receptions, open houses during festivities, family gatherings, family day held by an employer for the benefit of his employees and their families and general meetings of societies or association (S9(2)(b) and Third Schedule). Based on section 9 and Third Schedule, these kinds of assemblies are only exempted in the context of giving notification. As such, the assemblies are still governed under the Act. This is so as section 19 presumed any person who initiates, leads, promotes, sponsors, hold or supervisors those assemblies to be the organisers. As organizers, they are further subject to the responsibilities prescribed by sections 6 and 7.

6. Rights of Persons who have interest

Persons who are likely to be affected by the assembly must have a right to be informed and to raise objection and the OCPD will take into consideration the objections received for the purpose of imposing restrictions and conditions under section 15 (Section 5 and section 12 of

PAA 2012). These rights of persons who have interest have been recognised under the PAA 2012 whereas such rights were not provided under the PA 1967.

7. Counter Assembly and Simultaneous Assemblies

Section 27 of the PA 1967 does not provide for any type of assemblies. It only categorises the assembly as lawful or unlawful.

Counter assembly is defined under the PAA 2012 as an assembly to convey disagreement with the purpose for which another assembly is organized, and held at the same time, date and place or approximately at the same time, date and place as the other assembly. Section 18 of PAA 2012 provides if the organization of the counter assembly will cause conflict between the participants of the assemblies, then the OCPD will provide for an alternative sites so that the assembly be organized at another date, place and time. This is important in order to stop fanatic groups that try to interrupt a lawful assembly by organizing a counter demonstration.

On the other hand, simultaneous assemblies are two or more assemblies to be held at the same time, date and place, but which have no relationship to each other. Section 17 of the PAA 2012 provides three ways in regulating the simultaneous assemblies; first, by allowing simultaneous assemblies with restrictions and conditions; second, by not allowing simultaneous assemblies and give preference to the first organiser who submitted the notification; third, by not allowing simultaneous assemblies and give preference to the organizer whose name is extracted in a draw held by OCPD.

8. Spontaneous Gathering

Spontaneous assembly was neither defined under the PA 1967 nor under the PAA 2012. However such assembly may occur. The PAA 2012 only defines 'assembly' as an intentional and temporary assembly of a number of persons in a public place, whether or not the assembly is at a particular place or moving. Based on section 9(5), any person who fails to submit the ten days notification shall be liable to a fine not exceeding ten thousand ringgit. Therefore spontaneous gathering though not anticipated by the law is presumably illegal.

9. Defence of Involuntary Presence

The defence of involuntary presence exists in section 27 (5B) of PA 1967 but PAA 2012 is silent about it. However Section 3 of PAA 2012 defines 'participant' as a person intentionally or voluntarily present for the purpose of an assembly. So it is unclear whether any person who unintentionally or involuntarily present at an assembly can or not use the defence of involuntary/unintentional presence when subject to prosecution.

10. Street Protest

Street protest has been defined under the PAA 2012 as an open air assembly which begins with a meeting at a specified place and consists of walking in a mass march or rally for the purpose of objecting to or advancing a particular cause or causes. In contrast, street protest was not defined under the PA 1967. Section 27(1) of PA 1967 only allows procession subject to conditions imposed by the police. It is unclear whether street protest falls under the scope of procession.

Section 4(1) (c) of PAA 2012 clearly excludes street protest in reference to the right to organise assembly or participate in assembly. However section 10 (e)(viii) of PAA 2012 provides that if the assembly is a procession, the detail on proposed route, place at which the procession will stop, and the length of time the procession will remain at each place must be produced in the notification. It seems that the PAA 2012 excludes the definition of street protest under the scope of procession. In fact, it is hard to distinguish between a procession and a street protest. For example, a procession may also be 'an open air assembly which begins with a meeting at a specified place and consists of walking in a mass march or rally for the purpose of objecting to or advancing a particular cause or causes'.

11. Police Discretion

Section 27 of the PA 1967 and the PAA 2012 both give the police a wide discretionary power to impose conditions either in granting the permit (section 27(1)) or after receiving the notification (the PAA 2012). The police also has discretionary power to arrest and order to disperse assembly. Sections 27A (5) and 27(6) of the PA 1967 generally provide the power of police to arrest any person reasonably suspected of committing any offence under sections 27 and 27A. In contrast, section 20 of the PAA 2012 specifically provides that the police may arrest any organiser or participant who refuses or fails to comply with restrictions imposed; who has in his possession any arms; or who brings a child to an assembly.

Section 27 (3) of PA 1967 provides for any police officer to stop and disperse any unlawful assembly that is assembly without licence or where the licence has been cancelled. They may do all things necessary and use force reasonably necessary for overcoming any resistance (section 27B). Under section 21 of PAA 2012, the police may issue an order to disperse and use all reasonable force in exercising the power. The word 'stop' is not stipulated under the PAA 2012. The police only has power to order to disperse under any of the six circumstances; (a) the assembly is held at a prohibited place or within fifty metres from the limit of a prohibited place; (b) the assembly is/has become a street protest; (c) any person at the assembly does an act to promote feeling of ill-will or hostility or disturb public tranquility; (d) any person at the assembly commits any offence under any written law; (e) the participants did not comply to the restrictions imposed; or (f) the participants are engaging in unlawful or disorderly conduct or violence towards persons or property.

The phrase 'reasonable use of force' in both Acts is very subjective. SUHAKAM recommended that the police maintains a discreet presence at assemblies, concentrating on minimizing disruption to traffic, commercial life and business and ensures free movement of other users of public spaces. Further, SUHAKAM also suggested the incorporation of the provisions of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials under Part V that deals with enforcement. The use of force should follow five stages that are verbal persuasion, unarmed physical force, force using non-lethal weapon, force using impact weapons and lastly deadly force. Riot police (Federal Reserve Unit (FRU) and Public Order and Riot Unit (PORU)) can be on standby, if necessary, but should be out of sight. It is advisable to allow external parties such as SUHAKAM and other statutory bodies to monitor the assemblies in order to deter human rights violations (Khaw Lake Tee, 2012).

12. No External Control

Section 27(7) of PA 1967 allows the aggrieved party to appeal to Commissioner or CPO regarding the issuance of permit for assembly and his decision shall be final. However, PAA 2012 provides the appeal to be made to Minister (section 16) within stipulated time. Both Acts provide an appeal from executive to a higher executive authority. Further, both Acts do not subject police discretion to external, non-executive control. SUHAKAM recommended an appeal against restrictions and conditions imposed by the police to be made to the court rather than to the minister in charge. This recommendation is preferred to balance out the execution of power between the executive branch and the judiciary to the advantage of the aggrieved party.

13. Public Places

PA 1967 required anyone who wants to hold assembly at public place to apply for a licence from OCPD or any police officer authorised by OCPD but it did not define "public place". Under the Interpretation Acts 1948 and 1967, public place includes every public highway, street, road, bridge, square, court, alley, lane, bridle way, footway, parade, wharf, jetty, quay, public garden or open space, and every theatre, place of public entertainment of any kind or other place of general resort to which admission is obtained by payment or to which the public have access.

PAA 2012 defines public place as a road; a place open to or used by the public as of right; or a place for the time being open to or used by the public whether or not; (i) the place is ordinarily open to or used by the public; (ii) by the express or implied consent of the owner or occupier; or (iii) on payment of money. However, the First Schedule lists down prohibited areas for assembly even if they are public places which consist of dam, reservoir and water catchment areas; water treatment plant, electricity generating stations, petrol stations, hospitals, fire stations, airports, railways, land public transport terminals, ports, canals, docks, wharves, piers, bridges and marinas, places of worship, kindergarten and schools.

The PAA 2012 provides a better scope of the definition of 'public places' as it states a general definition and limit it through a list of prohibited places stated in the First Schedule, even though Shad Faruqi (2012) stresses that public places should be defined narrowly.

14. Participants

Section 4 of the PAA 2012 states four categories of organiser or/and participants in the assembly. First, non-citizen shall not participate and organise an assembly; second, organizer must not be below the age of twenty-one years old; third, the participants must not be a child; and fourth, person recruits, brings, or allows a child to participate is committing an offence.

Section 27 of the PA 1967 is silent on non-citizen participation in any assembly. Section 4(1) (a) and section 4(2) (a) of the PAA 2012 clearly state that a non-citizen cannot participate or organize an assembly. These provisions offer an absolute prohibition to the right of peaceful assembly of non-citizens and are considered as too rigid and unfriendly. However, by virtue of Article 10 of the Federal Constitution which provides such right only to citizen of Malaysia, section 4 (1)(a) of the PAA 2012 is precisely drafted.

Section 27 of the PA 1967 is silent regarding the age of organizer and participant. In contrast, section 4(1) (d) of PAA 2012 prohibits any person below 21 years old to be an organizer of the assembly whereas the age of majority under The Age of Majority Act 1971 is 18 years old. It seems that the PAA 2012 has set its own age limit thus the general provision under the Age of Majority Act 1971 is no longer applicable.

Anyone who is below 15 years old is a child under the PAA 2012 and therefore is disallowed in participating in assembly except for assemblies under the Second Schedule. However, the Convention of The Rights of a Child (CRC) to which Malaysia is a signatory provides children have rights to form associations and to assemble peacefully, and a child has been defined under CRC as 'every human being below the age of 18 years old'. SUHAKAM recommended the provision on the participation of children should be reviewed to lower the permissible age of 15 to a more appropriate age in the light of Malaysia's obligations under the CRC. The participation of children in public assemblies is considered unnecessary under the PAA 2012 and that such restrictions to bring them to public assemblies are reasonable and made in the best interest of the children. The CRC however is a document that is more concerned with the rights of children and that they too should enjoy such rights. Children who are of younger age for example below the age of 15 are too vulnerable and should be disallowed to be present at such events. The power to restrict belongs solely to the executive and such restrictions should be accepted in good faith for the best interest of all parties concerned.

Participant who recruits or brings or allows a child to attend an assembly is committing an offence under section 4(2) (f) of the PAA 2012. This kind of provision was not mentioned at all in section 27 of the PA 1967. Those who committed an offence under section 4 (2) (f) of PAA 2012 shall be liable to a fine not exceeding twenty thousand ringgit as compared to other offences (sections 4(2) (a) – (e)) which shall be fined not exceeding ten thousand ringgit only. This shows the seriousness of the offence as the participation of children may expose them to many forms of abuse or unnecessary injury.

15. Constitutionality

Article 10 of Federal Constitution gives everyone the right to freedom of speech, assembly and association. The restrictions provided under Article 10(2) of the Federal Constitution mainly concern with security of the Federation, public order or morality. There are several constitutional issues in the PAA 2012, as below:

- (1) Section 4(1) (c) of the PAA 2012 prohibits street protest. However, it is arguable whether a total ban on street protests without linking it to public order or national security might be against Article 10 of the Federal Constitution. In contrast, section 27 of the PA 1967 is silent on street protest as it only expressly states on lawful and unlawful assembly. It seems that street protest under section 27 can only be banned if it is an unlawful assembly.
- (2) Age of majority for Malaysian citizen is 18 years old. A ban on person under 21 years old to organize assembly may be challenged under Article 10 and Article 8 of Federal Constitution.⁴ For example, in student's participation or organising an assembly, the provision on 21 years old may lead to discrimination. A question arises whether a student who attained 18 years old has a right to organise and participate in the assembly. Section 27 of the PA 1967, however, is silent on the age of organiser and participant.
- (3) Police can exercise power to regulate assemblies on the ground of "the protection of the rights and freedom of other persons" (sections 2, 3 and 15 of the PAA 2012). The restrictions provided under Article 10(2) of the Federal Constitution mainly concern with security of the Federation, public order or morality and do not include "the protection of the rights and freedom of other persons". In *Hajah Halimatussaadiyah bte Hj Kamaruddin v Public Services Commission, Malaysia & anor*,⁵ the court rejected a woman's contention to wear the purdah because the government was entitled to prohibit a religious tradition that was non-essential and optional in 'the interests of the public service'. It shows that although "the protection of the rights and freedom of other persons" is not specifically mentioned in Article 10, a right to assembly can still be subjected to further reasonable restrictions in order to maintain the security of Federation, public order or morality. Further, Article 21 of the International Covenant on Civil and Political Rights recognized the protection of freedom of rights and freedom of others as a ground to restrict the right of peaceful assembly. Section 27 of the PA 1967 does not stipulate such provision on "the protection of the rights and freedom of other persons" as its main object is to ensure assembly is not likely to be prejudicial to the security of Malaysia or to excite a disturbance of peace.
- (4) Section 9(1) of the PAA 2012 which requires an organiser to notify the OCPD 10 days before the date of assembly was challenged in the case of *Nik Nazmi Nik Ahmad*. The Court of Appeal ruled Section 9(5) of the PAA 2012 which punishes citizens who do not give 10 days' notice before they hold an assembly, to be unconstitutional.⁶ Hamid Sultan Abu Backer J. said "The right to peaceful assembly is guaranteed under Article 10(1) (b) of the Federal Constitution and hence, it cannot be criminalized." Indeed Mah Weng Kwai J. in his written judgment declared that section 9 (1) that requires one to give the 10 days' notice is also unconstitutional.⁷ In simple words, it is not a requirement to inform 10 days prior to the assembly as notification is only an administrative procedure. This is followed by the Sessions Court in acquitting one Badrul Hisham Shaharin and two others for failing to report to Dang Wangi Police Chief 10 days prior to the organizing of the

⁴ Article 8 of Federal Constitution on equality before the law.

⁵ [1994] 3 MLJ 61

⁶ <http://www.thestar.com.my/News/Nation/2014/05/07/Court-discharges-Nik-Nazmi-in-rally-case/>

⁷ <http://www.themalaymailonline.com/malaysia/article/assembly-law-cannot-criminalise-public-gatherings-court-rules#sthash.nvcTnK0T.dpuf.>

New Year's Eve assembly to protest the rising prices of goods and the goods and services tax (GST) (Malay Mail Online (2014)).⁸

According to Khaw Lake Tee (2012), the right to exercise right should not be subject to prior authorization by the authorities. Prior notification procedure should only be related to the facilitation of the assembly, protection of public safety and order, rights and freedom of others and traffic disruption for large meetings. Period of notice should not be more than 48 hours and not be too bureaucratic. Restrictions and conditions should relate to the peacefulness of the assembly and not to the right of assembly itself. Section 27 of the PA 1967 requires any person intending to convene any assembly to apply for a licence from OCPD without expressly mentioning about the time limit.

CONCLUSION AND RECOMMENDATION

Under PA 1967, a licence to hold an assembly is required whereby the police has the power to accept or reject such application. In comparison, even though the PAA 2012 only requires notification but it gives unfettered discretion to police to impose conditions such as the date, time, duration and manner. Inevitably, the police are able to control the whole nature of the assembly and the right to assemble peaceably under PAA 2012.

Further, PAA 2012 totally prohibits street protest but allows processions. The definition of street protest is very broad and unreasonable. This could be said to be not in line with Article 10 of the Federal Constitution that secures the rights to freedom of speech, assembly and association to every citizen of Malaysia. The prohibition of person below 21 years of age to organize an assembly may also be unconstitutional as Article 8 of Federal Constitution states that all persons are equal before the law and entitle for equal protection before the law. This is because age of majority in Malaysia is 18 years old. Moreover, to prohibit a child (less than 15 years of age) to attend an assembly is against The Convention of The Rights of a Child. PAA 2012 also creates a so called designated place and prohibited place which were not so provided in PA 1967. This condition further restricts the freedom of assembly. The above shows that PAA 2012 does not make improvement to the PA 1967 but contains harsher provisions than PA 1967 and many of the provisions can be challenged as unconstitutional. It is recommended that "the role of the police would change from granting permission to safeguarding the law and being facilitators with a clearer framework for accountability" as mentioned by Prime Minister during the second reading of the Peaceful Assembly Bill 2012 in the Dewan Rakyat. Further, the provisions that are considered unconstitutional should be modified. The provisions includes the prohibition of street protest, the prohibition of person below 21 years of age to organize an assembly and prohibition of child below age of 15 to attend an assembly. Provision on judicial review should be included.

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REFERENCES

Ahmad Masum. (2010). Freedom Of Assembly - Is It A Question Of Right Or Privilege In Malaysia?. *Malayan Law Journal*. Vol. 5 liv.

Assembly laws cannot criminalise public gatherings, court rules, (<http://www.themalaymailonline.com/malaysia/article/assembly-law-cannot-criminalise-public-gatherings-court-rules#sthash.nvcTnK0T.dpuf>), as at 20 July 2014

⁸ <http://www.sinarharian.com.my/kes-chegubard-ditangguh-ogor-depan-1.287315>

Court discharges Nik Nazmi in rally case, <http://www.thestar.com.my/News/Nation/2014/05/07/Court-discharges-Nik-Nazmi-in-rally-case/> as at 20 July 2014

Federal Constitution

Kes Chegubard ditangguh Ogos depan, <http://www.sinarharian.com.my/kes-chegubard-ditangguh-og-os-depan-1.287315> as at 20 July 2014

Peaceful Assembly Act 2012

Peaceful Assembly Act Challenged, <http://www.mmail.com.my/story/peaceful-assembly-act-challenged>

Peaceful Assembly Bill 2011: A Further Blow To Democracy, February 2012, <http://penangmonthly.com/peaceful-assembly-bill-2011-a-further-blow-to-democracy/>

Pembentang Rang Undang-undang Baru, retrieved from http://www.pmo.gov.my/?menu=speech&page=1908&news_id=591&speech_cat=2

Perutusan Hari Malaysia, retrieved from http://www.pmo.gov.my/?menu=speech&page=1908&news_id=525&speech_cat=2

Police Act 1967

Shad Saleem Faruqi. (2012). Learn More about New Assembly: Reflecting the Law. retrieved from Learn more about new Assembly Act: Reflecting On The Law <http://thestar.com.my/columnists/story> as at 11 July 2012

Speech By Tan Sri Abdul Gani Patail, Attorney General Of Malaysia, At The Opening Of The Legal Year 2012. (2012). Malayan Law Journal. Vol 1 cxiii

SUHAKAM 2011 Annual Report, retrieved from http://www.suhakam.org.my/html/themes/jpm_skm/images/suhakam/Annual%20Report%202011.pdf

UN expert urges international community to protect freedom of assembly, June 21, 2012 <http://jurist.org/paperchase/2012/06/un-expert-urges-international-community-to-protect-freedom-of-assembly.php>

AUTHOR'S BIOGRAPHY

MAZITA MOHAMED, HASLINDA MOHD ANUAR, RUSNIAH AHMAD, AZLIN NAMILI MOHD ALI@ RAMLI, ROHANA ABDUL RAHMAN, MUHAMMAD FIRDAUS BIDIN & AHMAD MOHSEIN AZMI are currently working under a research grant entitled " Right to assemble: Post Section 27 of the Police Act 1967". They can respectively be contacted via email mazita@uum.edu.my; haslinda@uum.edu.my; rusniah@uum.edu.my; azlin@uum.edu.my; hana@uum.edu.my; firdaus@uum.edu.my; mohsein@uum.edu.my. They can be used as the subject throughout the biography.