

THE LEGISLATION OF SECURITY OFFENCES (SPECIAL MEASURES) 2012 FOR TERRORISM PREVENTION IN MALAYSIA

Hanif Md Lateh, Universiti Sultan Zainal Abidin
Rahimah Embong, Universiti Sultan Zainal Abidin, Malaysia
Muhammad Firdaus Hadi, Universiti Teknologi MARA, Malaysia
Mohd Irman Abd Nasir, Universiti Sultan Zainal Abidin, Malaysia
Aman Daima Md Zain, Universiti Sultan Zainal Abidin, Malaysia

ABSTRACT

Terrorism is a critical issue that has spread in Malaysia since her independence and this happens at the national level. In the last ten years, Malaysia is also involved in international threats. Therefore, this article aims to explore the issue of terrorism in this country and review the legislation of the 2012 Security Offences (Special Measures) for preventing the cases of terrorism. The study also considers the transition of a new Malaysian government that intends to repeal this act. This review found that the enforcement of the 2012 Security Offences (Special Measures) has been based on the current situation in Malaysia. In addition, this article revealed some related cases applying this act as the preventative measure of terrorism. This study is qualitative that using a content analysis method. The data obtained from primary sources of government gazettes, acts and the House of Representative Hansards. The obtained data had been analyzed with deductive and comparative approaches. The study found that the enactment of the Security Offences (Special Measures) 2012 has several motives that include repealing and replacing the Internal Security Act 1960. Moreover, within 2 years of enactment, this act gave holistic focus on cases involving terrorism. Based on the reason of legislation of the Security Offences (Special Measures) 2012, the article supports its annulment the context of focusing on the prevention of terrorism and extremism activities. The reason of this support is due to the legislation of a more focused act namely the Prevention of Terrorism Act 2015. This article recommends further studies should be done in comparing Security Offences (Special Measures) 2012 with the Prevention of Terrorism Act 2015 as well as their application in related cases.

Keywords: Security Offences, Terrorism, Special Measures.

INTRODUCTION

The Security Offences (Special Measures) Act 2012 or better known as SOSMA is an act enacted to replace the previous Act of the Internal Security Act (1960) (ISA). Najib (2011) in his official message during the Malaysia Day, September 15, 2011, pronounced several matters regarding ISA abolishment, as follows:

“Pursuant to that, as I have promised in my maiden speech after first assuming the post of Prime Minister on 3 April 2009, that the Internal Security Act 1960 (ISA) would be reviewed comprehensively, it is now my pleasure to announce on this historic night, that the Internal Security Act 1960 (ISA) will be

repealed entirely. To prevent subversive action, organised violence and criminal acts in order to preserve public order and security, legislation will be enacted under the umbrella of Article 149 of the Federal Constitution. In essence, the legislation will have the aim of maintaining peace, well-being, tranquillity and order in the lives of the people and the country.”

This message towards the specific prevention of terrorism activities was in line with international developments. Among them is through a series of cases in Indonesia as highlighted by Mardenis & Hilaire (2018). In addition, the precautionary wave also is happening in other countries focusing on preventative law (Iryna et al., 2018).

On April 10, 2012, the SOSMA Bill was first read in the House of Representatives to be debated and approved by its members (Hansard of Parliament, 2012). Subsequently on April 16, 2012 the second and the third time of reading had been done in Parliament. SOSMA was approved by the House of Representatives on April 17, 2012 and received the Royal consent on April 18, 2012 and be enacted on June 22, 2012. On July 31, 2012, SOSMA began to be enforced throughout the country and it contained eight sections with the following thirty two sections (Federal Government Gazette, 2012; Faridah & Munzil, 2016). Along with it, the repeal of the Restricted Residence Act 1933, the State Banishment Act 1959, and discontinued three Emergency Proclamations (1966, 1969 and 1977) (Hansard of Parliament, 2012).

Thus, the main objective of this study is to showcase the issue of terrorism in this country and review the legislation of the 2012 Security Offences (Special Measures) for preventing the cases of terrorism. The study also considers the transition of a new Malaysian government that intends to repeal this act. And the study is centrally structured on the prevention of terrorism with special measures.

LITERATURE REVIEW

Terrorism Prevention Act Prior to SOSMA

The specific act relating to terrorism was first introduced in the Federation of Malaya under the British administration was 1933 through the Restricted Residence Act. The Restricted Residence Act 1933 was formulated with the aim to meet the needs of facing subversive movements' activities in Malay Land since the invasion of Malaya Communist Party. The Restricted Residence Act 1933 is also enforced on offenders who threaten the peace of the people, such as the triad groups or mafia and criminals who threaten the British colonial rule (Federal Government Gazette No.16, 1993)

Then, in year 1948 the Emergency Ordinance was enacted by British Commissioner Sir Edward Gent in order to prevent the influences and threats of the Malayan Communist Party which intended to take over the colonial rule of British in Malaya (Ramdas, 2003).

Subsequently, several laws had been approved by the government of Singapore and Malaya to restrict the workers' unions manipulated by the communists. The Trade Unions Ordinance No. 9 of 1948 was approved on May 31, 1948 (Second Supplement to Federation of Malaya Government Gazette: 850) and Trade Unions (Amendments No.2) Ordinance 1948 which had been enforced on June 12, 1948 (Annual Report of The Federation of Malaya, 1948).

The next relevant act is Internal Security Act (ISA) 1960 that had been enacted under Article 149 of the Federal Constitution. It was first debated on June 21, 1960 by the late Tun Abdul Razak in the House of Representatives. The stated purpose of ISA was to combat communist threats as mentioned in the ISA bill debated on 21 and 22 June 1960 (Suhakam,

2009; Dewan, 1960). According to the former Malaysian Prime Minister, Najib Tun Razak during the House of Representatives Debates on 16 April 2012, ISA was enacted to equip the country with the necessary legal equipment in order to defend the Constitutional Monarchy System, Parliamentary Democracy, supremacy of the Constitution and the Rule of Law after the end of emergency period (Hansard House of Representative, 2012). Initially, the focus of ISA is the attempts of managing communist threats. However, after the end of the communist threat in 1989, ISA was still applied and extended on other offenses. Such offenses include cases of the impeachment of Islamic militant groups, money laundering and document forgery syndicates (Suhakam, 2009).

SOSMA Offences and Related Cases

The security offenses outlined in the SOSMA jurisdiction are as follows:

1. Chapter VI offenses towards the country under the Penal Code (Act 574).
2. Chapter VIA offenses related to terrorism under the Penal Code (Act 574) (Prior to the amendment to SOSMA, in 2015).
3. Chapter VIB an organized crime under the Penal Code (Act 574).
4. Part IIIA (Migrant Smuggling) under the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 (Act 670).
5. Special Measures Act against Violence in Foreign countries 2015 (Act 770). (After amendments in 2015), (Official Statement by House of Representatives, DR04042017).

The special authority provided under SOSMA is as follows:

1. Under section 4 (4), for the purpose of inquiry, any police officer may arrest and detain without a warrant any suspected person involved in a security offense for a period of 24 hours.
2. Under subsection 4 (5), persons arrested and detained pursuant to subsection 4 (4) may extend his detention for period up to 28 days by any police officer with a minimum of police authority (Hansard House of Representatives, 2017).

Case studies of arrests under the jurisdiction of SOSMA began in 2013 on a former ISA detainee. The arrestment made on an al-Qaeda operative known as Tanzim al-Qaeda Malaysia (Malaysiakini, 2015), Yazid Sufaat who was rearrested in 2013 after being released from ISA detention for seven years.

In February 2013, Yazid Sufaat had being detained under the jurisdiction of SOSMA and was charged under section 130 of the Penal Code (Act 574) under the clause of promoting violence in Syria. Muhammad Hilmi and Halimah Hussin were charged with abetting Yazid Sufaat (2015). The three of them are the first detainees of SOSMA to be punished under section 130G (a) of the Penal Code (Act 574) for promoting violence in Syria. All those three were acquitted after Justice Kamardin Hashim allowed an advocate application led by Amer Hamzah Arshad to cancel the SOSMA charge under Article 149 of the Federal Constitution. The reason for the release of the accused by Hakim Kamardin is that Article 149 of the Federal Constitution applies only to the threat of action in Malaysia. He gave statement in Free Malaysia Today (2013) that this releases because the allegation was against those who had involved in terrorism in Syria. Hence, Article 49 and SOSMA that enacted under Article 149 of the Federal Constitution, could not be applied to prove allegations against them,

In year 2014, a trial of the Court of Appeal was between Public Prosecutor v Yazid bin Sufaat & Ors, the court judges involving three panels namely Abu Samah, Azahar Mohamed and

Mohd Zawawi. They decided that from the Court's view, SOSMA enacted under Article 149 of the Federal Constitution shall not be applied as a procedure in the trial to prove the accusations against the applicants of this case. If this is done, this means that this case of applicants, SOSMA has been applied in ultra vires for Article 149 of the Federal Constitution itself. This should not be the case. This court disagrees with the argument of a wise Deputy Public Prosecutor, Tan TPR that SOSMA has an extra territorial application or extra territorial jurisdiction, similar to Security Offense when involving a citizen or Malaysian citizen's property (Yazid, 2015).

In 2015, they were once again arrested under SOSMA and the trial is still ongoing. Yazid is facing two allegations which are promoting terrorism with the intention of threatening the civilians in Syria and being a member of the Malaysian al-Qaeda Tanzim group. Meanwhile a restaurant assistant named Muhammad Hilmi Hasim had abetted him. They allegedly committed such action in a house at Taman Bukit Ampang, between 1 August 2012 and 7 February 2013 in accordance with section 130KA of the Penal Code (Act 574). Penalties will be imposed on conviction with imprisonment for life and may also be penalized (Mstar Online, 2015). In a Malaysiakini portal report dated 5 May 2015, the trial of Yazid Sufaat and Muhammad Hilmi Hasim required five unknown witnesses to testify against this case as permitted under section 14 of SOSMA.

Subsequently, the Lahad Datu incident was also managed by using SOSMA. The trial under SOSMA against the Lahad Datu intrusion case in February 2013 against thirty suspects that comprised 27 Filipinos and three Malaysians. Suspects were charged for protecting terrorists, becoming members of terrorist groups, recruiting terrorists and launching war on Yang di-Pertuan Agong (Bureau Counterterrorism, 2015). During a trial conducted at the Kota Kinabalu High Court earlier this year (45SO-1/3-2013 & 29 Ors), judged by Justice Stephen Chung Hian Guan on July 25, 2016 to 30 accused persons. The judgment decisions on the charge of some accused were as follows:

1. Nine accused who were Filipinos namely Atik Hussin Abu Bakar; Basad H Manuel, Ismail Yasin; Virgilio Nemar Patulada; Crossing Akhmad Emal, Al Wazir Osman, Tani Lahad Dahi, Julham Rashid and Datu Amirbahar Hushin Kiram. The accused were charged under Section 121 of the Penal Code and being sentenced to life imprisonment.
2. Atik Hussin Abu Bakar; Ismail Yasin and Virgilio Nemar Patulada were sentenced to 13 years in prison under Section 130 of the Penal Code due to committing with terrorist group.
3. Akhmad Emal Cross, Al Wazir Osman, Lahad Dahi Farmers, Julham Rashid and Datu Amirbahar Hushin Kiram were sentenced to 18 years in prison under Section 130 of the Penal Code.
4. The punishment for the other three Filipinos namely Aiman Radie, Lin Mad Salleh and Holland Kalbi were jailed for 13 years under Section 130 of the Penal Code.
5. Timhar Hadir and a local resident named Abdul Hadi Mawan were both jailed for 15 years under Section 130 of the Penal Code.
6. Norhaida Ibhani was a Filipina citizen was been jailed under Section 130 of the Penal Code for 10 years because found guilty for protecting terrorists.
7. Pablo Alie was jailed for 15 years under Section 130 G (c) of the Penal Code for an offense of sedition or getting properties for terrorist use.
8. Mohd Ali Ahmad was charged under Section 130 J (1) (a) and has been jailed for 15 years due to offenses of supporting terrorist groups (Berita, 2016).

In addition, there was a case related to the Sulu terrorist attack on Kampung Tanduo, Sabah. That case was a case between Public Prosecutor vs. Hassan bin Hj. Ali Basri (2014) 7 MLJ 153. The case was dealt with under section 130M of the Penal Code and section 130C of the same code due to the negligence of informing his officers during the invasion of the village.

The fact of the case is: The accused is a police officer with corporal post who had been assigned in Lahad Datu, under the Special Branch of the Royal Malaysian Police Force. The accused was charged for not delivering information on armed intrusion, despite being claimed to have such information since January 2013. The judge's decision convicted the accused with a jail for seven years and a fine. The seven-year sentence was calculated starting from the date when the accused had been arrested, although the offense was classified as the first offense due to the concealment of intelligence to the superior causing harm to national security.

Latest arrestment involving SOSMA were imposed on Siti Noor Aishah Binti Atam, undergraduate of Usuluddin programme from University of Malaya who had been detained under SOSMA on 22 March 2016. She was arrested and had trial under Section 130JB (1) (a) of the Penal Code. (45SO-7-5/2016). SOSMA after the "New Malaysia" era had witnessed the change of government under the governance of the Pakatan Harapan party proposed to abolish SOSMA and will be presented in Parliament in October 2018 (Berita, 2018).

CONCLUSION

SOSMA enacted in 2012 has provided some guidelines on the terrorism prevention through its jurisdiction. Initially, it could be noted that SOSMA was an amendment from the earlier preventive edition because both SOSMA and ISA are not too different despite the authority delimited in SOSMA. The enforcement of SOSMA in 2012 became highly relevant in the case of Lahad Datu in Sabah, Malaysia. However, the latest detention against Siti Noor Aishah became a controversial debate among Malaysian communities due to their perception towards her status as a student, besides being propagated by some politicians. In conclusion, this article supports in repealing SOSMA due to the existence of the Prevention of Terrorism Act (POTA) 2015 for preventive purposes in the spread of terrorism. Therefore, further studies should be done in comparing SOSMA and POTA as well as their application in related cases.

ACKNOWLEDGEMENT

We express our deepest gratitude to the Centre for Research Management, Innovation & Commercialization (RMIC) as well as Faculty of Islamic Contemporary Studies, Universiti Sultan Zainal Abidin, Terengganu, Malaysia for funding the publication of this article under the special research grant scheme entitled *Indeks Penglibatan Ekstremisme Masyarakat Kelas Bawahan di Malaysia* (UniSZA/2017/SRGS R0019-R008).

REFERENCES

- Ali, B. (2014). *Public prosecutor vs. Hassan bin Hj: MLJ 153*.
- Annual Report of the Federation of Malaya. (1948). *Kuala Lumpur: Government Printer*.
- Berita, H. (2016). *Review of the lahad datu intruder penalties-attorney general*. Retrieved from <https://www.bharian.com.my/node/185612>
- Berita, H. (2018). *Summary of SOSMA's proposal to abolish the final*. Retrieved from <https://www.bharian.com.my/berita/nasional/2018/09/473158/rumusan-cadangan-pemansuhan-sosma-di-peringkat-akhir>
- Bureau Counterterrorism (2015) *Country report on terrorism*. United States: Department of State Publication.
- Dewan, R. (1960). *Parliamentary debates*. Federation of Malaya: Government Press.
- Faridah, J., & Munzil, M. (2016). The security offenses (special measures) act 2012 (Act 747). *The Law Journal of Malaysia*, 2(2), 390-400.
- Federal Government Gazette (2012). *The attorney generals chambers: PU (B) 256/2012*.

- Federal Government Gazette. (1933). *The attorney general's chambers*.
- Free Malaysia Today (2013). *Hilmi charged again under SOSMA*. Retrieved from <http://www.freemalaysiatoday.com/category/nation/2013/05/27/yazid-hilmi-re-arrested-under-sosma/>
- Hansard House of Representative (2012). *Official statement of parliament: Malaysia No DR16042012*.
- Hansard House of Representative (2017). *Official statement of parliament: Malaysia No DR04042017*.
- Hansard House of Representative. (2012). *Official statement of parliament: Malaysia No DR10042012*.
- Internal Security Act (1960). *Internal Security Act 1960 (ISA), Malaysia*.
- Iryna, N.S., Maryna, O.M., Arif, G.G., Sergiy, D.B., Oleksandr, N.B., Dmytro, I.S., & Tetiana, A.T. (2018). International terrorism and mass media. *Journal of Legal, Ethical and Regulatory Issues*, 21(2), 1-10.
- Malaysiakini. (2015). *Witness the mystery of SOSMA Yazid Sufaat case*. Retrieved from <https://m.malaysiakini.com/news/297288>
- Mardenis, H., & Hilaire, T. (2018). Designing a counter-terrorism legal policy complying with human rights and democracy in Indonesia. *Journal of Legal, Ethical and Regulatory Issues*, 21(2), 1-7.
- Mstar Online. (2015). *Yazid suffice to distribute science wrongly*. Retrieved from <http://www.mstar.com.my/berita/berita-mahkamah/2015/10/25/yazid-sufaat/>
- Najib, A.R. (2011). *Malaysia day message*.
- Najib, A.R. (2011). *Prime minister's message for Malaysia day*. Retrieved from <https://www.najibrazak.com/en/official-addresses/perutusan-khas-hari-malaysia/>
- Ramdass, T. (2003). National security and constitutional rights the internal security act 1960. *INSAF: The Journal of the Malaysian Bar*, 32(1), 75-92.
- Suhakam (2009). *Review of the internal security act 1960*. The Human Right Commission of Malaysia Kuala Lumpur.
- Yazid, S., & Ors (2015). *Public prosecutor: Number: 1 MLJ 571 & MLJU 91*.