

SUHAKAM'S RECOMMENDATIONS AND ITS APPLICATION IN THE PEACEFUL ASSEMBLY ACT 2012

Haslinda Mohd Anuar, Senior Lecturer, School of Law,
UUM COLGIS, Universiti Utara Malaysia, Malaysia.
E-mail: haslinda@uum.edu.my

Mazita Mohamed, Lecturer, UUM COLGIS,
Universiti Utara Malaysia, Malaysia,
E-mail: mazita@uum.edu.my

Azlin Namili Mohd Ali, Lecturer, School of Law,
UUM COLGIS, Universiti Utara Malaysia, Malaysia.
E-mail: azlin@uum.edu.my

Muhammad Firdaus Bidin, Lecturer, School of Law,
UUM COLGIS, Universiti Utara Malaysia, Malaysia.
E-mail: firdausbidin@uum.edu.my

Rohana Abdul Rahman, Senior Lecturer, School of Law,
UUM COLGIS, Universiti Utara Malaysia, Malaysia.
E-mail: hana@uum.edu.my

Rusniah Ahmad, Associate Professor, School of Law,
UUM COLGIS, Universiti Utara Malaysia, Malaysia.
E-mail: rusniah@uum.edu.my

Abstract: Prior to the enactment of Peaceful Assembly Act 2012, SUHAKAM did make some recommendations to improve the quality of individual rights pertaining to peaceful assembly. In Malaysia, a provision on peaceful assembly 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 was implemented to govern a public assembly, and the enactment of the Peaceful Assembly Act 2012 (PAA 2012), then, gives some light to the right of assemble peacefully. The objective of this article is to examine the SUHAKAM's recommendations

on peaceful assembly which later on lead to the enactment of the Peaceful Assembly Act 2012. To achieve the objective, the doctrinal legal research has been used, specifically the analytical method.

Keywords: *Peaceful Assembly Act, Police, SUHAKAM, Recommendation.*

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.’ By taking this inspiration, Peaceful Assembly Act 2012 (PAA) was enforced on 23rd April 2012 to replace section 27 of the Police Act 1967. This article discusses the Suruhanjaya Hak Asasi Manusia Malaysia’s (SUHAKAM) recommendations in 2002 and 2011 and its application on peaceful assembly.

SUHAKAM’S RECOMMENDATIONS IN 2002

Earlier in 2002, SUHAKAM had made a recommendation on peaceful assembly based on the findings and best practices in other countries, and through discussions with the Police and other interested parties like the political parties and NGOs. This recommendation was divided into two part; short term measures and long term measures (SUHAKAM, 2002). In short terms, SUHAKAM suggested some improvements in granting the police permit; a clear guideline to the organiser; a good communication between the police and organiser; a clear procedure of dispersal of an assembly. The summary of those recommendations are listed in Table 1 below.

Table 1: Short terms measures

Measures	Items
Grant of police permit	a) Applications for permits to hold static assemblies to be approved without restrictions on freedom of expression. b) The procedure for applying for permits to be simplified by using a standard form. c) The organisers to sign a declaration to assume responsibility for the assembly to be peaceful, orderly, and that cleanliness be restored; and identify and appoint “marshals” to ensure orderliness. d) A “Speakers’ Corner” to be designated by the authorities and located at a populous spot in every state capital. e) Applications for permits to hold static assemblies to be approved without restrictions on freedom of expression. f) The procedure for applying for permits to be simplified by using a standard form. g) The organisers to sign a declaration to assume responsibility for the assembly to be peaceful, orderly, and that cleanliness be restored; and identify and appoint “marshals” to ensure orderliness. h) A “Speakers’ Corner” to be designated by the authorities and located at a populous spot in every state capital.
Guideline for organiser	A guideline for organisers of public assemblies and processions to be prepared, setting out the responsibilities of organisers, in: a) Ensuring the safety of members of the public; b) Avoiding damage to property; c) Avoiding fear or alarm to the public; d) Avoiding disruption to the local community; e) Appointing marshals to help ensure that the event goes according to plan; and f) The use of banners and public address system
Line of Communication between the Police and Organiser	A line of communication between the Police and organisers of public assemblies and processions should be established and be kept open to enable friendly negotiations to take place, particularly in relation to conditions to be imposed on organisers.

(sambungan)

Measures	Items
Dispersal of Assembly	Review methods of crowd dispersal: 1. The emphasis should be on restraint, particularly in the use of canes and batons, tear gas and water cannons. 2. The order to disperse should be given three times at ten-minute intervals. The order to disperse should be clearly audible. 3. Sufficient time must be given to allow people to move. The larger the crowd, the more time will be required to disperse it. 4. If the crowd starts moving away, they should not be chased and arrested and/or assaulted. 5. Only if there is clearly a resistance to the order to disperse should force be used and even then it should only be such force as is reasonably necessary to overcome the resistance. a) At assemblies and processions, the Police to maintain a discreet presence. b) Establish a monitoring system for ensuring enforcement of set procedures.

With a view to ensure the effectiveness of its implementation, SUHAKAM also recommended a long term measures which involves improvement on the attitudes of authorities as well as amendment to relevant legislations. Table 2 shows the items proposed under long term measures.

Table 2: Long Term Measures

Measures	Items
Attitudes of authorities	a) Dialogue sessions to be held between SUHAKAM and top level police officers; SUHAKAM and policy-makers; The Police and NGOs; and The Police and political parties. b) Training programmes organised by SUHAKAM and/or NGOs to be attended by the Police, decision-makers and policy-makers of all levels.
Amendments to the Police Act, Rules & Regulations	a) To require only notification to the Police on the part of the organisers, rather than application for permit to hold assemblies.

(sambungan)

Measures	Items
	b) Organisers of assemblies to notify the Police of the proposed assembly at least 48hours before the assembly is due to start. c) Assemblies never to be prohibited but conditions may be imposed on organisers to prevent any public disorder, damage to public property or disruption to community life if there is any real threat. d) If there is opposition to the assembly or a counter-demonstration, the original assembly should not be stopped or prevented from taking place, but kept apart to maintain public order. e) A distinction to be drawn between static assemblies and processions as processions require greater effort in traffic and crowd control. f) Organisers of a procession to notify the Police at least ten days before the procession is scheduled to be held.

SUHAKAM'S RECOMMENDATIONS IN 2011

On 29 November 2011, the Peaceful Assembly Bill was passed by the Dewan Rakyat and on 20 December 2011 by the Dewan Negara, after amendments by the government. However these amendments were not in line with the SUHAKAM's earlier suggestions. Therefore, SUHAKAM urged the government to review the Act, taking international human rights principles into account. SUHAKAM's recommendations include:¹

- a) A clearer distinction should be made between the definition of an 'assembly' which includes processions, and of a street protest.
- b) The right to assemble peacefully without arms should be extended to non-citizens as they too have the right to express themselves and to be heard.
- c) There should be a review of the barring of an assembly within 50 metres of a prohibited place as such prohibition would be impracticable and unrealistic in most cities and towns.
- d) The provision on 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, now that the reservation to article 15 has been removed.

¹ SUHAKAM. 2011 Annual Report

- e) Clause 13 should be reviewed to put in place a cooperative model which would allow the police and the organiser of a public assembly to arrive at a consensus on matters relating to the assembly, for the purpose of facilitating the assembly in line with the objectives of the Act.
- f) There should be review of the provision on appeals against restrictions and conditions imposed by the police, to enable these to be made to the Court rather than to the Minister in charge.
- g) Clause 19 – which deems organisers to be persons who promote, sponsor, hold or supervise the assembly, or who invite or recruit participant, or who are speakers for the assembly – should be reviewed. These persons are merely exercising their basic democratic rights and should not be held fully responsible in the event of any non-compliance.
- h) Provisions of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials should be incorporated in Part V of the Act which deals with enforcement.
- i) Clause 24 should allow for full, and not just reasonable, access of the media to public assemblies.
- j) A provision should be included to allow external parties, such as the Commission, the Bar Council and other relevant statutory bodies, to monitor public assemblies.

DISCUSSION

It is discovered that the PAA 2012 complies with only a few of the recommendations made by SUHAKAM in 2002, namely on:

- a) the details to be submitted for applying permits (c.f. notification);
- b) the appointment of ‘marshall’;
- c) guidelines for organiser;
- d) communication between police and organiser;
- e) the requirement of notification instead of permit;
- f) conditions to be imposed on organiser in maintaining public order;
- g) 10 days notification to the police before procession is scheduled;
- h) conditions to be imposed on organiser of procession as for assemblies;
- i) amendment, deletion and reversal of section 27 of the PA 1967.

Comparing the recommendations made in 2011 with PAA 2012, the points relating to definition of assembly and the extension of right to assemble to non-citizen need further clarification. Procession is considered a legal assembly under section 10(e) (viii) of the PAA 2012 whereas street protest is prohibited under section 4(1) (c) of the Act. Article 10 of the Federal Constitution clearly gives the right to assemble specifically to citizens of Malaysia. Thus, recognising non-citizen's right to assemble peacefully is not within the spirit of Article 10 which is meant for Malaysian citizens.

PUBLIC INQUIRIES ON PEACEFUL ASSEMBLY

SUHAKAM (2012) has carried out two public inquiries relating to public assembly prior and post the enactment of PAA 2012. The first public inquiry in relation to Bersih 2.0 rally was held from 11 October 2011 to 17 April 2012; and the second public inquiry in relation to Bersih 3.0 rally was held from 5 July 2012 to 10 January 2013.

Public Inquiry into the Incidents Before and During the Public Assembly of 9 July 2011

On 9 July 2011, a public assembly was held in Kuala Lumpur to show support for the demands of the coalition for Clean and Fair Elections (Bersih 2.0). By then, the government had declared Bersih 2.0 to be an illegal movement, leading to the police taking preventive action, including the arrest of several individuals connected to the coalition. However, the assembly proceeded as planned. An unspecified number of people gathered at several locations in Kuala Lumpur from about 8 am to 4 pm, prompting the police to disperse the crowds using water cannon and tear gas. After the assembly, numerous allegations of infringement of human rights were reported to SUHAKAM, which then decided to conduct a Public Inquiry. In response to its request for further information, SUHAKAM received 8 public submissions, 5 of which were from individuals and 3 from organisations which submitted a joint submission. Among others, the Public Inquiry Panel found that,

'While the Panel is fully cognizant of the duty of the police force to safeguard security, it said that police personnel should also take into consideration the rights of individuals. The police should ensure that those arrested are able to exercise the rights stipulated in the Federal Constitution and other laws. As the witnesses had described varying degrees of injury sustained during their arrest, the Panel said the police should make it a matter of practice to see that medical treatment is available to those who need it. Officers or personnel, after making an objective evaluation that the injuries require medical attention, must ensure that such assistance is rendered immediately...The testimony of witnesses convinced the Panel that the use of water cannon, tear gas and other equipment that may pose safety risks to individuals should not be used in and around public places such as hospitals and schools'.

The finding in this public inquiry shows that the SUHAKAM recommendations in 2002 was not heeded by the police. It refers to method of crowd dispersal, procedure for maintaining law and order, and establishing a monitoring system for ensuring enforcement of set procedures.

Public Inquiry into Accidents During and After the 28 April 2012 Public Assembly

On 3 April 2012, Parliament accepted a report tabled by the Parliamentary Select Committee on Electoral Reform, which had been established to study the demands of the Bersih 2.0 Steering Committee for clean and fair elections. The next day, however, Bersih 2.0 expressed its dissatisfaction with the report and announced that it would organise another rally, dubbed 'Duduk Bantah', from 2 pm to 4 pm on 28 April 2012 at Dataran Merdeka, Kuala Lumpur. It was reported in the media that the Home Ministry and Kuala Lumpur City Hall had offered alternative venues and would allow the public to meet at the six assembly points selected by Bersih 2.0 (other than Dataran Merdeka), on conditions that processions or assembly were

not held. However, the organiser had rejected this on the ground that they had been left with too little time to make changes. Nevertheless, the assembly proceeded on 28 April.

The Public Inquiry Panel found that issues relating to which statute (section 27 of the Police Act or Peaceful Assembly Act 2012) applies during the public assembly are not relevant for the purposes of the inquiry. It is argued that this view is taken due to the fact that the public assembly took place 5 days after the enforcement date of the PAA 2012. The issue becomes complicated as the original date of the public assembly is less than the minimum period to notify the Police under the PAA 2012. To avoid injustices, the Panel undertakes to disregard this fact as such does not impinge directly on the main issues dealt by the Public inquiry i.e. human rights. The Panel in its recommendation, however, reiterated that the Police force should have facilitated the BERSIH 3.0 public assembly as provided for under the PAA 2012. The Police force has also been reminded by the Panel that the section 27 of the Police Act is no longer applicable to public assembly.

Within this premise, the authors agree with SUHAKAM's recommendation on the role of police in facilitating Bersih 3.0 rally. This is to be in line with the spirit of PAA 2012 in accommodating freedom of peaceful assembly by virtue of Article 10 of the Federal Constitution.

CONCLUSION

The Peaceful Assembly Act 2012 was enacted to improvise the right to freedom of assembly governed by the Police Act 1967. Ten years before the enforcement of the PAA, 2012 SUHAKAM did made some recommendations to ensure the fundamental right of assembly peacefully been secured by the authority. Some of the recommendations have been reflected in the PAA, however there is a number of lacking that need to be addressed by the authorities.

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