

PCA is vague, but it's no ISA, note lawyers

MalaysiaKini.com

Aug 20, 2013

By Nigel Aw & Aidila Razak

The spotlight is on the Prevention of Crime Act 1959 (PCA) with police using the law to arrest hundreds of people under a crackdown dubbed Ops Cantas, which began several days ago.

Lawyers are blowing the dust off their copy of the Act, a law that is older than the repealed Internal Security Act 1960 (ISA) and Emergency (Public Order and Prevention of Crime) Ordinance 1969 (EO).

Several lawyers who spoke to Malaysiakini declined to go on record while they study the Act, and those who did speak are actively debating the law on social media.

Confusion arose yesterday when Inspector-General of Police Khalid Abu Bakar said the law allows for 72 days of detention, while Malaysiakini's calculation of the total remand period allowed was 71.

NONEBut criminal lawyer Edmund Bon (left) says it is 70 days.

"By convention, the first 24 hours of arrest are included in the 14-day remand," he said when contacted.

The PCA requires a person, within 24 hours of his or her arrest, to be produced before a magistrate for a 14-day remand order to be issued.

After that, with the consent of a deputy public prosecutor, applications can be made to the magistrate for two more 28-day extensions.

The PCA has been likened to the dreaded and now defunct ISA and EO that allowed for detention without trial for two years, after a 60-day remand period for investigations.

However, Bon said that comparing the PCA to the ISA and EO is wrong, as the PCA is not a detention law at all.

"To be fair to the government, it is in fact an expanded investigative tool for the police. All the 70 days are remand days and there is no detention," he said.

In fact, the law does not punish for any crime, but is meant to help facilitate an inquiry that will decide if the name of an arrested person should be included in an offender's register that would allow for banishment or house arrest.

A person may be arrested for an inquiry if he or she is believed to be involved in crime that is spelled out in the 'registrable categories' under the Act, including drug trafficking and involvement in secret societies.

'Human rights concerns'

But what are the exact criteria to say that someone is involved in the 'registrable categories' and deserves to be arrested?

This is a concern on the mind of human rights lawyers such as Bon, because the PCA has not been used in recent times and thus there are no recent case laws to refer to.

azlan "You need to set out the criteria for someone to be arrested under the law but, for now, there is no guide for that. Also, how will the magistrate decide whether remand should be granted or refused?" he said.

Without a proper guideline, Bon said the concern is that the magistrate may just rubber-stamp the remand application.

This was echoed by human rights lawyer Syahredzan Johan in his preliminary reading of the law.

When contacted, he pointed out that the law does not mention whether the magistrate has the power to ascertain the justification for remand.

NONE "It may appear that there is court oversight but the wording suggests that it is more procedural and does not give the magistrate power to exercise discretion," he said.

If the magistrate rubber-stamps the remand application, then it would defeat the purpose of judicial oversight against police abuse.

"Civil rights lawyers will argue that, regardless of the wording of the law, there is no point providing the courts (the power of) oversight if the magistrate cannot exercise discretion objectively," said Syahredzan (left).

"But the authorities may argue the other way, and we will have to see how this will

be decided."

Both Syahredzan and Bon are also concern about the power and nature of the inquiry as these are not set out in the PCA and allows the home minister discretion.

However, Baljit believes that the PCA's check and balance is real and it appears that the police are falling back to the law after the EO repeal.

"The process under this Act is finer and there is a proper review process," he said.

He added the ability of the police to restrict registered offenders under the Act behind doors can also help with the rehabilitation of suspected members of organised crime by confining them to their family circle.

But whether the Act will prove effective in combating crime, and if legal problems may arise is yet to be seen, said Baljit who is a member of the Bar Council crime committee.

"This Act has been dormant for some time, so let's put it into play. Let's try to use this first and decide later (on the effectiveness and problems)," said Baljit, who is also an adjunct professor at Univeristi Zainal Abidin, Terengganu.