

Minister misleading us on new terrorism law

MalaysiaKini.com

March 4, 2015

By Kua Kia Soong

COMMENT The government's attempt to bring back detention without trial in the guise of the proposed Prevention of Terrorism Act (Pota) - purportedly to contain terrorists - is as disingenuous as it is misleading.

Home Minister Ahmad Zahid Hamidi is misleading the country on fundamental issues. My first point is that Pota is gross, compared with anti-terrorism laws in other countries.

Zahid announced, as quoted by The Malay Mail Online on Jan 27 this year, that Malaysia needs to enact new legislation to fight terrorism because the existing laws do not have sufficient preventive measures to stop such terrorist acts.

Zahid is also quoted as declaring that although the preventive element will be the main component of this new law, Pota, "it will not be abused for the arbitrary detention of individuals".

The home minister also tried to give the impression that other countries have introduced detention without trial under their anti-terrorism laws.

This, to me, is far from the truth. The citizens of the United Kingdom and the United States, for example, would never accept detention without trial as part of their Prevention of Terrorism Act, for it is a complete abomination of the rule of law.

In the UK, there is no detention without trial but rather, cancellation of passports of suspected terrorists and restricting such persons to geographical areas, very much like our restricted residence law.

In 2004, although the UK House of Lords accepted that there was a 'public emergency', it found this state of emergency did not justify discriminatory, counter-terrorism measures under which foreign nationals, (although not British nationals), could be detained without trial.

The US does detain foreigners without trial in camps such as Guantanamo Bay, but no US citizen can be subject to detention without trial. The US Homeland Security Act 2002 was clearly a response to the Sept 11, 2001, attack on the New York World Trade Centre.

However, the US did not introduce detention without trial against US citizens. The Act has been criticised by defenders of civil liberties for its Operation TIPS (Terrorism Information and Prevention System), a setback to civil liberties protections such as the right to privacy and obstructing public access to information.

40-plus counter-terrorism laws in Australia

In Australia, the Australian government has introduced more than 40 new counter-terrorism laws since 2001.

These laws have created new criminal offences, new detention and questioning powers for police and security agencies, new powers for the attorney-general to proscribe (ban) terrorist organisations, and new ways to control people's movement and activities without criminal convictions.

The Anti-Terrorism Act 2004 introduced special powers for the Australian federal police to question terrorism suspects without charge. These powers mean that, upon arrest for a terrorism offence, a person can be detained without charge for the purpose of investigating whether the person committed the terrorism offence for which he or she was arrested and/or another terrorism offence that an investigating official reasonably suspects the person committed.

A person can only be detained for four hours, unless a magistrate extends the period of detention. However, the magistrate cannot extend the period of detention for more than 20 hours.

Therefore, the maximum period of time that a person can be detained for questioning is 24 hours. Thus, there is no detention without trial of Australian citizens in the way proposed under Pota, which is for two years!

Right of every person to a free trial

The right of every person to a fair trial is protected under international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Cruel, Inhuman and Degrading Treatment or Punishment (CAT).

Countries that have ratified these treaties are bound to protect this fundamental right to a free trial. Malaysia has still not ratified these treaties!

By cloaking detention without trial in the proposed Pota under the misleading tag that "Malaysia will join the ranks of other countries that have in place anti-terrorism laws", the home minister is guilty of grossly misleading the country.

Let us not forget that we already have detention without trial laws, including the Security Offences (Special Measures) Act 2012 (Sosma) and the Prevention of Crime Act 1959 (PCA) as well as the Penal Code that was crafted through the years when the country underwent an Emergency from 1948 to 1960.

Detention without trial will surely be abused

As if with a guilty conscience, Zahid felt obliged to add that "the Act would not be used as a

political tool to silence critics". For the thousands of victims of detention-without-trial in Malaysia who number more than 10,000 since 1960, his assurance in an interview rings hollow.

We remember when second prime minister Abdul Razak Hussein gave the assurance in Parliament during the passage of the Internal Security Act in 1960 that the Act would only be used against "communist terrorists".

Our fourth prime minister Dr Mahathir Mohamad certainly did not care to refer to his copies of the Hansard or care very much about the assurance Razak had given in 1960 when Mahathir unleashed Operation Lalang in 1987.

Does the home minister's word today carry more gravitas than Razak's in 1960?

Do not try to cover up incompetence

Zahid should not try to cover up the incompetence of our police and intelligence services by bringing in convenient laws to provide for detention without trial.

When we bear in mind that the alleged Malaysian terrorists who have been killed recently in Indonesia and the Philippines had never been detained without trial in Malaysia, it points to a shocking oversight by our police and intelligence services.

On the other hand, when we ask how many of the more than 10,000 ISA detainees through the years have been charged with crimes of terrorism, the case for Pota fails miserably.

DR KUA KIA SOONG is adviser to human rights NGO Suaram.