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Understanding the Legal Framework of Extremism in Malaysia

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Abstract

Malaysia has been no stranger to extremist events that lead to terrorism. Since before independence and into the 21st century, violent extremism that typically occurs in the name of religion has been reported in newspapers, online, and on social media. However, the nation does not remain dormant and is actively engaged in combating and defeating terrorists. In terms of the history of terrorism in Malaysia, the majority of plots were vanquished in their earliest stages. The authorities in Malaysia, the Royal Malaysian Police with two specialized units in combating violent extremism, the Criminal Investigation Division and the Special Branch Unit, accomplished the mission with unwavering commitment. Additionally, these two interdependent units collaborate with other government agencies to prevent the spread of domestic terrorism. In addition, the existence of three acts, the Security Offences (Special Measures) Act of 2012 (SOSMA), the Prevention of Crime Act of 2013 (POCA), and the Prevention of Terrorism Act of 1959 [Act 769] (POTA), which have been enacted to combat terrorism, gives the country the ability to protect public safety effectively. Depending on a person's understanding and knowledge, the detention of those who have been accused of terrorism can be viewed from a variety of perspectives. The understanding of the act that protects national security should be disseminated so that the public does not misunderstand the country's authorities. The authorities who enact and approve the use of these acts must ensure that they do not violate human rights and are applied appropriately. Besides legal approach, educational approach by the authorities is one of the best solution to encounter the terrorism phenomenon in Malaysia especially to those in Higher Education Institution (HEI).

Keywords: Extremism, Legal, SOSMA, POTA, POCA, Malaysia

Introduction

Acts and laws enacted in Malaysia to combat extremism are primarily geared toward violent extremism. The most important aspect of determining any extremist act is defining the terms it relates to (Grewal, 2015). The significance of this definition of violent extremism is that a person can only be prosecuted if he or she plans, prepares, and commits illegal acts. Malaysia, which has always been committed to preventing violent extremism, was a co-sponsor of the United States' Resolution 2178 in 2014 (Govindaraju et al., 2020). In response to the resolution, former UN Secretary-General Ban Ki-moon presented a plan for Action to Prevent Violent Extremism, also known as the PVE Action Plan, which confirms that the definition of violent extremism refers to a variety of situations or phenomena for which there is no single, clear definition. Paragraph 4 of the plan explains that the definition of violent extremism is extremely broad, while paragraph 5 states that the plan gives member states the flexibility to provide their own definition of "violent extremism" but is subject to the International Human Rights Law (UN Security Council, 2014).

The National Security Council (MKN) of Malaysia, which is the highest body of policy makers for national security, has defined terrorism in MKN Directive No. 18 as:

Intimidation, coercion, violence or any attack carried out by a person, group or country on a country, people, property and basic facilities with the intention of creating fear of forcing a government or organization to support their request directly or indirectly (Hamidi, 2016).

In the interpretation of MKN, the definition includes not only the actions of an individual or group, but also those of a sovereign country. According to Lim and Kuga Thas (2018), who defined violent extremism in Malaysia, it is an ideology that accepts the use of violence to achieve social, racial, religious, and political goals. Establishing a definition of violent extremism is necessary in order to create an effective action plan to prevent extremism and adapt to newly enacted laws.

The global spread of COVID-19 does not prevent extremism in any form or circumstance, particularly violent extremism (Marone, 2022; Davies et al., 2021; Sinatra, 2020). There are predictions that terrorist groups' activities are becoming as limited and halted as the daily activities of other individuals, but these are all false, and they are still active with the methods they adopted in the current and post-pandemic phase, which is to increase the dissemination of propaganda online (Phelan, Veronika, Stenger & Gayatri, 2020; Sinatra, 2020). Terrorist groups are quick to exploit a crisis to achieve their goals; when restrictions are in place in the majority of areas, they utilize online channels as much as possible. Pro-IS groups, for instance, disseminate English-language propaganda online, while al-Qaeda uses the same platform to promote the Western conversion to Islam (Action on Armed Violence, 2022).

In 2019, the government took the initiative to establish a National Action Plan (NAP) to combat violent extremism by referring to recommendations supplied by international organizations such as the United Nations to create uniformity with the plans to be developed (Muhammad, 2019). Previously, the prevention of violent extremism in Malaysia was separated into three measures, with law enforcement being one of them. The country's approach to law enforcement is governed by the anti-terrorism statute and the Penal Code, which permit the police to hold terror suspects, their supporters, and anybody in possession

of terrorism-related materials like as publications, flags, etc., without an arrest warrant (Jani, 2017).

The Main Legal Background of Violent Extremism

Among the actions involving extremism thoughts and actions that can be convicted in reference to Malaysian law are as follows:

Table 1

Penal Code Related to Violent Extremism or Terrorism. Source: Awang et al (2021)

No.	Penal Code	Purposes
1.	Section 130C	for offences related to committing terrorist acts
2.	Section 130D	for related offenses providing equipment support to terrorists to act in various ways
3.	Section 130E & 130F	for offences related to recruiting people as members of terrorist groups to participate, acts of individuals related to being terrorists
4.	Section 130G	for offences relating to the act of recruiting participation and membership in a terrorist group, inciting, encouraging or searching property for the occurrence of a terrorist act.
5.	Section 130H	to provide facilities as a supporter of terrorist acts
6.	Section 130I	for related offenses giving instructions and directing the activities of terrorist groups
7.	Section 130JA	for cases out of the country to commit acts of terrorism
8.	Section 130JB	for cases of conviction with possession and so on in relation to terrorists
9.	Section 130JC	for building offences and so on for terrorists
10.	Section 130JD	for cases related to preparation for acts of terrorism
11.	Section 130K	for the authorities to protect people committing acts of terrorism
12.	Section 130KA	for cases related to membership to terrorist groups
13.	Section 130L	for cases related to criminal evil alliances
14.	Section 130M	for circumstances related to the act of intentionally leaving from providing information about acts and terrorists

The three main legal conviction or act that related with violent extremism in Malaysia are the Security Offences (Special Measures) Act of 2012 (SOSMA), the Prevention of Crime Act of 1959 (POCA), and the Prevention of Terrorism Act of 2015 [Act 769] (POTA).

a) SOSMA

The Security Offences (Special Measures) Act of 2012 (SOSMA) was enacted in order to provide special procedures for investigating and prosecuting security offenses,

including all terrorism-related offenses. SOSMA aims, among other things, to prohibit Malaysia from serving as a shelter for terrorists. Consequently, SOSMA 2012 has a number of regulations governing the admissibility of evidence that are not governed by any written statute or strong norms of common law. In the case of the Public Prosecutor against Abu Hasan Chan bin Abdullah (2020), for instance, the accused's confession to the police that he is the owner of a Facebook account is admissible as evidence under section 18A of SOSMA 2012, despite being in conflict with section 113 of the Code of Criminal Procedure.

SOSMA 2012 was adopted in consideration of the nature of current security threats and the difficulty of proving terrorism and national security crimes (Walker & Mat Rus, 2018). There is a unique provision, section 14 of SOSMA 2012, pertaining to protected witnesses, which allows the identity of court-testifying witnesses to be kept secret from the accused. In the case of the Public Prosecutor against Jusninawati Abdul Ghani (2016), for instance, the trial judge examined potential witnesses to determine the need for protection. Additionally, Section 4 of SOSMA outlines particular protocols and techniques for the submission of sensitive material (Rus, 2021).

b) POTA

The Prevention of Terrorism Act of 2015 [Act 769] (POTA) was passed on April 7, 2015 following 12 hours of debate in the parliament. The POTA 2015 submission is intended for (BERNAMA, 2015a; BERNAMA, 2015b):

- i. A law to prevent the treatment or support of acts of terrorism involving a terrorist organization from a foreign country as well as for the control of persons involved in such acts.
- ii. Ensure that no individual escapes any legal action if they engage in terrorism activities.
- iii. The Act ensures that the people and the security of the country are not interfered with by parties involved in militant activities.

Background of POTA:

- i. On 26th Nov 2014, Prime Minister Datuk Seri Najib Tun Razak presented a white paper entitled "Towards Addressing the Threat of Islamic State (IS) Group" in Parliament to acknowledge the ongoing threat of terrorism at home and abroad.
- ii. The white paper reaffirms the government's commitment to combating the threat posed by IS with the international community.
- iii. Based on the recommendations in paragraph 59 of the white paper, a new law will be put in place to specifically address the threat of IS.

Power elements in POTA

- i. A police officer can without a warrant arrest any person if he has reason to believe there are grounds that justify an investigation being held regarding the person's case.
- ii. When a person is arrested, the case shall be referred by the police officer to the Public Prosecutor for instructions not later than seven days from the date of arrest.

- iii. Any person arrested shall, unless released first, be brought before a Magistrate within 24 hours.
- iv. No one should be arrested and detained solely for his political beliefs or his political activities.

POTA should not be considered legal on its own, but as a preventative against violent extremists. According to statistics, the same recovery element was also present in the previous ISA, which is now also present in POTA and has resulted in the rehabilitation of 90% of inmates (BERNAMA, 2015b).

c) POCA

The Prevention of Crime Act of 1959 (POCA) is used for offenses including triad activity, fights, and major felonies. The POCA (1959) authorizes the Minister (in this context, the Minister of Home Affairs) to authorize the Registrar of Criminals in Malaysia and Singapore to register offenders under this Act and place them under police surveillance for a maximum of five years. Since time immemorial, the allotment of powers to the Minister in the POCA (1959) has been widely disputed by opposition political parties and the Bar Council.

POCA (1959) was revised beginning in July 2013 to achieve a compromise between human rights and national security. POCA was amended five times to the latest amendment, POCA (Amendment and Expansion) 2017. In addition, the amended act is intended to improve existing laws to prevent and manage gangsterism, severe crime, and organized crime more effectively and appropriately in light of recent events (MOHA, 2017). From January to March 2022, a total of 83 persons were arrested under POCA for offenses involving robbery and the procurement of drug supplies. Twelve individuals were ordered to be imprisoned, while the remaining individuals were subject to surveillance orders. 1190 people were detained under POCA in 2021, with 286 individuals subject to detention orders and 904 individuals subject to surveillance orders (Wahid, 2022).

Detention Cases of Offenders Under Violent Crime

The case in concern refers to cases after the Internal Security Act 1960 was repealed on July 31st, 2012 and replaced by the Security Offences (Special Measures) Act 2012 (SOSMA), which was passed by the parliament on April 17th, 2012, granted Royal assent on June 18th, 2012, and gazetted on June 22nd, 2012 of the same year (BERNAMA, 2018).

Siti Noor Aishah, a former postgraduate student who was first prosecuted in 2016 under the Prevention of Crime Act (POCA) 1959 for carrying 12 books linked to Daesh, Al-Qaeda, and Jemaah Islamiyah (JI), was arrested in 2017 (INITIATE MY, 2022; Abdul Patah, 2017). After being found guilty, she was subsequently released before being remanded in custody under the Security Offences (Special Measures) Act 2012 (SOSMA). Aishah was arraigned in Kemaman Magistrates Court on April 19th, 2016, on charges of possessing 12 books related to terrorist organizations. Prior to that, on March 22nd, 2016, a police squad from the Counter-Terrorism Division's Bukit Aman Special Branch arrested Aishah at her home and sent her to a detention center for 28 days. The Court of Appeal ordered the accused, represented by Mohd Kamaruzaman A Wahab, to defend herself on March 27th after granting the prosecution's motion against the High Court's release and acquittal order. The High Court acquitted Aishah of the allegations on September 29th, 2016, after concluding that the

prosecution had failed to establish a prima facie case against her. The same day, however, Aishah was remanded under POCA and held for sixty days. No bail is permitted until the trial date. In accordance with SOSMA, the Kuala Lumpur High Court sentenced Aishah to five years in prison during her trial on April 26th, 2017. The Putrajaya Court of Appeal reduced Aishah's prison sentence from five years to three years on December 7th, 2017, in addition to placing her under home arrest for two years and requiring her to wear an electronic monitoring device (EMD) (Zolkipli, 2019; Abdul Patah, 2017; Abd. Hadi, 2017a; Malaysia Now, 2017). Table 2 shows the list of books related to terrorists allegedly owned by Aishah.

Table 2

List of Books by Terrorists Owned by Aishah. Source: Abd Hadi (2017b).

No.	Book Title	Author	Translator	Publisher
1.	Visi Politik Gerakan Jihad	Hazim Al-Madani & Abu Mush'ab As-Suri	Luqman Hakim	Jazera
2.	Generasi Kedua Al-Qaeda: Apa Dan Siapa Zarqawi, Apa Rencana Mereka Ke Depan	Fuad Hussein	Ahmad Syakrikin	Jazera
3.	Akankah Sejarah Terulang	Dr. Muhammad Al-Abdah	Abas Mansur Tamam	Jazera
4.	Deklarasi Daulah Islam Iraq	Dewan Syariah Daulah Islam Iraq	Abu Hafsh As-Sayyar & Abu Musa Ath-Thayyar	Islamika
5.	Merentas Jalan Jihad Fisabillah	Shaikh Abdul Qadir Abdul Aziz	Hassan As-Sayyari	Pustaka Al Alaq
6.	Misteri Pasukan Panji Hitam	Muhammad Abu Fatiha Al-Adani	H Muhammad Harun Zein	Jasmin Publication
7.	Turki Negara Dua Wajah	Abdullah Azam	Abdurrahman	Pustaka Al Alaq
8.	Masterplan 2020: Strategi al-Qaeda Menjebak Amerika	Fahmi Suwaidi	-	Jazera
9.	Dari Usama Kepada Para Aktivis	Syaikh Usamah Bin Ladin dan Syaikh Yusuf Al Uyairi	Umar Burhanuddin, Abu Hafs As Sayyar & Syahida Man	Kafayeh
10.	Dari Rahim Ikhwanul Muslimin Ke Pangkuan al-Qaeda	Ayman Az-Zawahiri	Umar Burhanuddin	Kafayeh
11.	Ketika Maslahat dan Dipertuhankan dan Menjadi Taghut Model Baru	Abu Muhammad Ashim Al Maqdisiy	Abu Sulaiman Aman Abdurrahman	-
12.	Siri Materi Tauhid for the Greatest Happiness	-	Abu Sulaiman Aman Abdurrahman	-

Mohd Zulkifli Shafie provided RM200 to former drummer Ukays, who is also a member of Malaysian Islamic State (IS) jihadist Wan Aquil Wan Zainal Abidin, also known as Akel Zainal, according to the next SOSMA case. The incident occurred in 2018, and Akel was in Syria at the time. Zulkifli allegedly used the money as an impetus and advantage to advance the acts and beliefs of the IS terrorist organization. Judge Collin Lawrence Sequerah imposed the sentence after hearing the facts of the case, the defense's arguments, mitigating circumstances, and the prosecution's and defense's weighted arguments. The chronology of this case began on October 30th, 2018, when Zulkifli was arrested in Putrajaya. According to Ayob Khan Mydin Pitchay, the Assistant Director of the Anti-Terrorism Division (E8) of the Special Branch of the Royal Malaysian Police, giving any amount of money to a terrorist organization is illegal. Zulkifli was given a three-year prison term (Azmi, 2019).

Declaration for the Prevention of Violent Extremism in Selangor

In the Malaysian state of Selangor, efforts to combat extremism and other ideologies are organized and methodical. This constraint began with the founding of the Selangor Islamic Religious Council (MAIS), which has a role in Islamic issues at the state level. Section 6 of the Islamic Religious Administration (State of Selangor) Enactment 2003 states, "The Council shall assist and advise His Majesty in all matters relating to Islam in the State of Selangor, except for matters of Islamic law and relating to the administration of justice, and in all such matters shall be the principal authority in the State of Selangor after His Majesty, except where otherwise provided by this Act" (MAIS, 2022). MAIS was strengthened by the establishment of the Selangor State Religious Department (JAIS), which serves as the executing agency for Islamic issues at the state level in Selangor. In an effort to shed light on Islam and current issues involving the understanding of Islam, several divisions have been created under JAIS which has a special role in such matters. These sections include the Family Law Division, Dakwah Division, Enforcement Division, Research and Development Division and Mosque Division. These divisions will work with the Royal Malaysian Police (PDRM) in accordance with the established Standard of Procedure which is also referred to as the "Complaint Management Standard Operating Procedure" issued by (JAIS Research and Development Division, 2018). The reporting methods for any suspected deviant activity are as follows:

- i. Complainant attends Islamic Religious Office.
- ii. The complainant made a complaint via phone call.
- iii. The complainant makes a complaint by electronic mail.
- iv. The complainant makes a complaint through an application created in a smartphone.

All complaints received will go through strict procedures as set out below (JAIS Research and Development Division, 2018):

- i. Procedure for receipt of complaints.
- ii. Procedure for the implementation of complaint actions.
- iii. Record management procedure for registering complaints on core religious issues.
- iv. Data collection and statistical preparation procedures.
- v. Procedures for the keeping and disposal of complaint records.

For all complaints that have been certified and undergo the investigation process, the implementation and enforcement of the law will be referred to the following law enactment:

- i. Enactment of Selangor State Islamic Administration.
- ii. Selangor State Syariah Criminal Procedure Enactment 2003.
- iii. Selangor State Syariah Criminal Evidence Enactment 2003.

- iv. Islamic Family Law Enactment 2003.
- v. Selangor State Syariah Criminal Enactment 1995.
- vi. Enactment on the Control of Islamic Schools 1988.
- vii. Selangor State Non-Muslim Religious Enactment (Control of Development among Muslims).
- viii. Director's Standing Instruction.

JAIS also has a division called, the Law Enforcement Management Division that works to meet the objectives:

‘Driving the agenda of preventing default through enforcement management that upholds the principles of *haq* (truth) and *bathil* (falsity) in the linked matter of faith, Sharia, and morality with integrity, professionalism and efficiency’ (Communication & Corporate Division, Islamic Religious Department, n.d.).

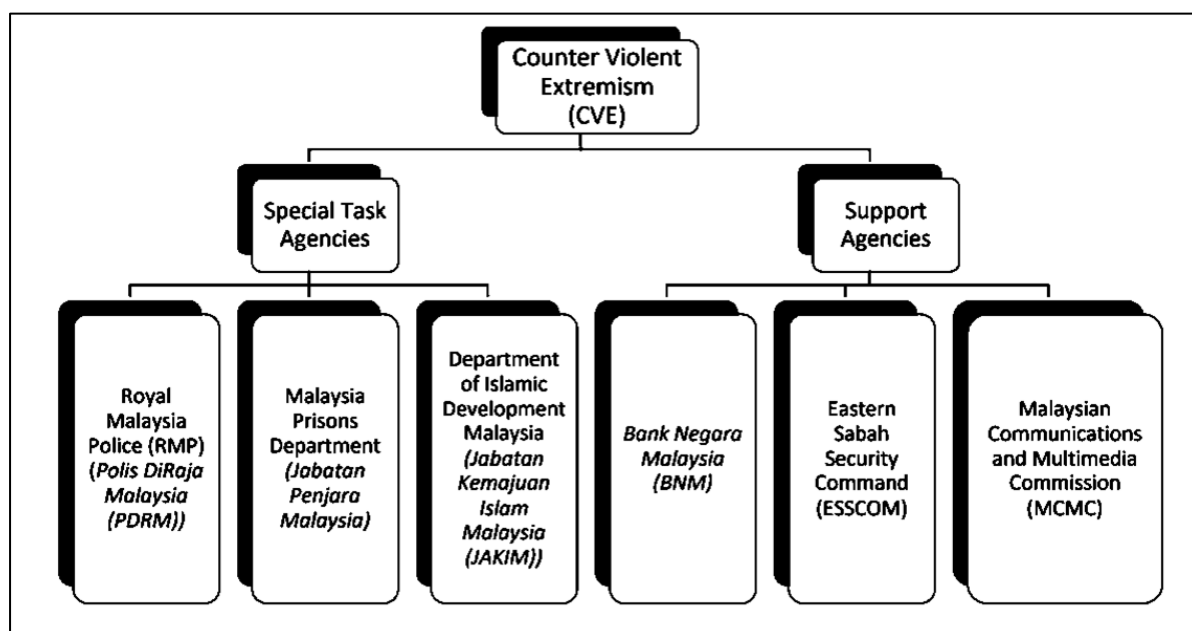
In carrying out the task, there are four main thrusts:

- i. Towards Thoughts and actions.
- ii. Towards implementing *amar ma'ruf nahi mungkar*.
- iii. Towards curbing deviant doctrines.
- iv. Towards adhering to preventive priorities

In 2016, the Division established a toll-free number, 1-800-88-224, and a Mobile Hotline app that may be downloaded by smartphone users. This system enables anyone in Malaysia to file a referral or complaint over alleged participation in deviant religious practices (Mohd Yazid, Shuhairi, & Abdul Wahid, 2020).

In situations involving collaboration with the Royal Malaysian Police, the following three acts will be referred to: the Security Offences (Special Measures) Act of 2012 (SOSMA), the Prevention of Crime Act of 1959 (POCA), and the Prevention of Terrorism Act of 2015 [Act 769] (POTA). These three acts are the primary legislation of Malaysia for managing criminals, triad society members, terrorists, and other undesirables. Additionally, this act is beneficial in supporting authorities in preventing violent acts or actions that contribute to security risks from within or outside the country.

Domestically, Malaysia has embarked on counter-terrorism initiatives in collaboration with various agencies from top agencies to subordinates. The most important part is the



implementation involving the minister and the policy-making agencies. Figure 1 below shows the agencies involved in the implementation of Counter Violent Extremism (CVE):

Figure 1. Agency Framework in the Implementation of CVE (Abdul Aziz, 2021).

Conclusion

Legal framework related to terrorism in Malaysia was advanced and undergone amendment to suit with human rights and natures. Every case was detected early and curb before spreading into the society. Malaysian government is always prepared to maintain national stability through legal action and others. However, there is also other way to guard the society, for example through the educational approach. In order to avoid becoming entangled in an extreme view, it is necessary to gain a thorough grasp of all such beliefs. A clear comprehension must be based on a reliable reference source. The government can play a role in channeling edited materials with authentic community references. The daily occurrence and infiltration of violent extremism into society should not be taken lightly, and the educational approach can begin in the classroom. The need of educating students about the dangers of violent extremism in schools and the role of the media cannot be overlooked. Also implemented by the police and the ministry are restrictions on social media for any bogus news. In addition, the awareness and sensitivity of university students about the definition of extremism should be determined, since they are the ones who are continually exposed to borderless information and social media-active technology. Through research on students' understanding of ISIS (Yaacob et al., 2016), it was discovered that the level of understanding of Higher Education Institution (HEI) students towards ISIS is relatively low, particularly when specific questions about ISIS are posed to them, such as ISIS's relationship with al-Qaeda and the true understanding of ISIS. Most notable is the fact that many HEI students fail to recognize ISIS as a terrorist organization. Sixty percent of respondents referred to the ISIS organization as a Shia sect. In addition, almost all respondents did not comprehend the connection between ISIS and al-Qaeda and believed there was none, despite the fact that ISIS originated from al-Qaeda. Nonetheless, 67 percent of respondents are aware that Malaysians have joined ISIS. The studies also examined the degree to which HEI students accepted the ideology of ISIS, concluding that HEI students could not embrace ISIS as an organization that required support. Due to time constraints, the researchers were unable to perform a comprehensive investigation. In light of this, it is possible to conduct additional research in the current context and to refine the study instruments in order to explore the understanding of HEI students in Malaysia regarding the dangers of the ideology and its significance. In addition, no research has yet been conducted on the sensitivity and comprehension of HEI students towards this inverse understanding.

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