

**SESI PENDENGARAN AWAM JAWATANKUASA PILIHAN KHAS  
MENIMBANG RANG UNDANG-UNDANG MENGENAI  
RANG UNDANG-UNDANG  
SURUHANJAYA BEBAS ADUAN SALAH LAKU POLIS 2019  
BIL.3 TAHUN 2019**

**8 NOVEMBER 2019 (JUMAAT)**

**BILIK GERAKAN DEWAN NEGERI  
BANGUNAN SULTAN ISMAIL  
KOTA ISKANDAR, ISKANDAR PUTERI  
JOHOR DARUL TAKZIM**

NO : 5

**NAMA PEMBENTANG**

Datuk Datu' Shahamudin b. Datuk Hj. Ali

**PERSATUAN / PERTUBUHAN / INDIVIDU**

Peguam

JAWATANKUASA PILIHAN KHAS MENIMBANG RANG UNDANG UNDANG  
MENGENAI SURUHANJAYA BEBAS ADUAN SALAHLAKU POLIS (IPCMC)  
2019

8 November 2019

Bilik Gerakan Dewan Negeri Bangunan Sultan Ismail

Kota Iskandar, Iskandar Puteri

Johor Darul Takzim

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Pandangan daripada:

Dato' Shahrudin B. Datuk Hj Ali, Peguambela & Peguamcara - Hadir  
Tetuan Azam Aziz Shahrudinali & Co  
Advocates and Solicitors  
No. 8-1 Jalan Sinar Sentul 1, Sentul, 50110 Kuala Lumpur.

Email: [shahrudinali@outlook.com](mailto:shahrudinali@outlook.com)

**PART A - Various parts of the Bill**

I shall first consider the various aspects of the IPCMC Bill that touch on the following sections:

- i. Sections 24, 4 b, c, e.
- ii. Section 4 vs. s.5
- iii. Section 5 (2) (b), section 5 (2) (d) visitations to lock up and detention centers
- iv. Death in custody - meaning of
- v. Section 22
- vi. Section 25, s.25 (d) strange.
- vii. Section 26, what section 26 (2) does not contain.
- viii. Findings of investigation, s. 28 (1), s.24.
- ix. "Relevant authority" not defined

- x. Section 25 – referred to ‘any officer’.
- xi. Section 28 (b)
- xii. Section 28 (c)
- xiii. No separate body, no clear separation of power
- xiv. Section 29 – task force – actual people involved in investigation
- xv. Part VI – Disciplinary authority – section 31
- xvi. Section 31 (2) Disciplinary authority versus Disciplinary jurisdiction
- xvii. Article 132 – must be delegated by the Police Force Commission.
- xviii. Section 31 (3) – DB is not a legal entity – cannot sue and be sued
- xix. Judicial review redress missing
- xx. Section 32 ‘after considering findings under section 28’ but s28 deals with complaints committee
- xxi. Section 32 (1) very dangerous and against the rule of law.
- xxii. Section 32 (2), (3).
- xxiii. Section 33 (1)(g) dismissal
- xxiv. Section 33 (2) – Regulations is missing, not ready.
- xxv. Section 33 power to punish with contempt – not a court of record, but enforcement agency. Enforcement agency has NO power to punish for contempt in law
- xxvi. Section 45 – written consent of PP must be produced.
- xxvii. Section 50 – why Regulations to be made by PM?
- xxviii. Section 53 – to delete

## PART B – POLICY AND OVERVIEW OF BILL

### Regulations under the IPCMC Bill

1. The Committee should advise Parliament that in view of the overwhelming overhaul of the disciplinary system triggered by an event or a complaint from the public, it is vital that the regulations made under IPCMC Act are formulated, prepared and drafted early.

2. The reason is that Regulations cover legal rules for the purpose of carrying out or giving effect to the provisions of the IPCMC Act and such regulations may prescribe the procedure for the handling of complaints and the procedure relating to the conduct of proceedings to deal with a misconduct case, in addition to any other matter required to be prescribed under the Act.

3. Such regulations may well cover a substantial part of the substantive law itself relating to disciplinary proceedings faced by police officers.

Power to appoint is with the Police Force Commission (PFC)

#### Article 140 Constitution

4. PFC has the exclusive power for the appointment and confirmation of police officers. The appointment is then subject to the Government terms and conditions of service, the Police Act, and disciplinary process set out under existing government regulations and procedures, including perhaps the IGPSO.

5. I say that a third party cannot take away that power. Disciplinary control can be argued to be different from disciplinary enforcement.

Article 140 only allows an Act creating a new agency in connection with *disciplinary control*.

Article 140 provides that the jurisdiction of the PFC includes the **appointment**, confirmation, emplacement on the permanent or pensionable establishment, promotion, transfer and exercise of **disciplinary control** over members of PDRM. I will submit on *disciplinary control* below.

#### Article 135 Constitution



6. Further if one looks at Article 135 of the Constitution, on "Restriction on dismissal and reduction in rank", it is stipulated clearly that **no member of any of the services** (police force included) "shall be dismissed or reduced in rank by an authority subordinate to that which, at the time of the dismissal or reduction, has power to appoint a member of that service"

7. I would observe also that IPCMC must have received the **delegation of disciplinary control power** (that excludes dismissal) from the PFC itself in because (quote) a member of PDRM mentioned may only be dismissed or reduced in rank by an authority **in pursuance of a power delegated to it by a Police Force Commission**, see Article 135 (1) proviso.

8. However, it is noted that under the proposed IPCMC Bill carries no such legal authority as expressed above and may run into conflict with the law.

#### Disciplinary control

9. The proviso to Article 140 says that parliament may by law provide for the exercise of such **disciplinary control** over members of PDRM in such manner and by such authority as may be provided in that law. I think 'such authority' means IPCMC here.

#### Interpretation Act

10. It is settled law that power to appoint includes power to remove, see section 47 of Interpretation Acts 1967. I would submit that where a power to make an appointment is conferred by the constitution, ie. on the PFC, then only PFC alone has a valid power to remove or suspend an officer of PDRM, and not IPCMC.

See for example the Indian Supreme Court case of Pradyat Kumar Bose vs The Hon. The Chief Justice 1955 SCR (2)1331 where the rule about power to dismiss lies in the hands that appoints was canvassed.

11. I would further add that a dismissal (of civil servants) is a matter which falls within conditions of service of a public servant as held by the Privy Council in the case of *North-West Frontier Province v. Suraj Narain Anand*. Here, that power of making rules relating to conditions of PDRM service is vested in the PFC, PSD etc. I would have no knowledge about the IGPSO. I would have no knowledge about certain sensitive terms that may be applicable to members of Malaysia's intelligence services. IPCMC is treading on thin ice if all these are not considered.

12. Due to time constraints, I can surmise that the Parliament would take into consideration the Disciplinary proceeding set out under the Public Officers (Conduct and Discipline) (Chapter D) General Orders or its present-day equivalent.

*"For the constitutional protection to be effective and meaningful, the Court must be empowered to question any decision of the disciplinary authority that it considers to be unreasonable and to remedy any injustice occasioned by such unreasonable decision by applying established administrative and constitutional law principles".* See Court of Appeal,

Civil Appeal no. p-01-27-2007 Zulkifli bin Hashim v. Officer in charge of Police District, Barat Daya (2) Inspector General of Police and GOM.

13. I would observe that "...any decision of any disciplinary authority" could be questioned by the court today as long as the court considers it "unreasonable".

14. The taking away of PFC's power of dismissal by IPCMC, in my view, is even worse. In my view, the **power of dismissal** cannot be legally wrested from PFC, unless the Constitution is amended.

15. Article 140 speaks of the power of disciplinary control. PFC exercises the power of **disciplinary control** over members of PDRM. PFC can do that because s.47 of the Interpretation Act 1967 says that "where a power to make

an appointment is conferred by the constitution" on the PFC, then only PFC alone has the power to remove an officer of PDRM.

16. PFC has, among others, the following authority under the constitution.

"To provide for the duties and responsibilities of... the police force or ...and of the force of its *powers or duties...*" (see Article 140 (6) (b) )

17. I am unable to comment critically if the powers contained in the IPCMC Bill overlaps with the above provision, namely whether through the interplay of an array of duties and responsibilities of a police officer, IPCMC inadvertently usurps the power of the PFC under the Constitution.

18. On this point, I would respectfully submit that since the power to appoint does not belong to the proposed IPCMC, it cannot lawfully dismiss an officer of PDRM.

**Nemo Judex rule is an established rule of natural justice**

19. *Nemo judex in causa sua* is a Latin phrase that means, literally, "no-one is judge in his own cause." It is a principle of natural justice that no person can judge a case in which they have an interest.

20. IPCMC cannot, in my respectful submission, be a judge in its own cause. For now, it receives complaints, it investigates, it initiates the disciplinary process, it prosecutes and also makes decision appertaining thereto.

21. The Bill's preamble is loud.

*"...matters relating to complaints of misconduct, investigation of misconduct, proceedings to deal with misconduct, etc., and for related matters"*



## Misconduct under the IPCMC Bill

22. Scope of misconduct is set out in section 22.

- (a) any act or inaction which is contrary to any written law;
- (b) non-compliance of rules and standard operating procedure of the police;
- (c) any act or inaction which is unreasonable, unjust, oppressive or improperly discriminatory;
- (d) any act or inaction which is committed on improper motives, irrelevant grounds or irrelevant consideration;
- (e) omission to provide grounds in cases where grounds should have been provided; and (f) the commission of any criminal offence by a member of the police force.

23. Here are my comments:

- 1) section 22 is too wide.
- 2) paragraphs (c) and (d) would definitely cause a lot of uncertainty and anxiety. It places an unreasonably heavy burden on PDRM to comply when other enforcement or semi-enforcement agency (eg. local authorities!) are laughing away.
- 3) paragraphs (c) and (d) also in effect, imported the familiar \*Wednesbury principle in administrative law. It would pave way to frivolous complaints and open the gates for all sorts of multi-faceted vague allegations.

\* Associated Provincial Picture Houses Ltd. v Wednesbury Corporation [1948] 1 KB 223 is an English law case that sets out the standard of unreasonableness of public-body decisions that would make them liable, popularly known as *Wednesbury unreasonableness*.



## Police Act 1967

24. We should not lose sight of the Police Act 1967.

## Police Regulations

25. For example, section 96 provides that the Yang di-Pertuan Agong may make regulations to be called "Police Regulations". And such Police Regulations have covered areas on police promotions and reductions in rank and matter on discipline, including the definition of disciplinary offences and this have included *disciplinary control* procedure and the regulation and the carrying out of punishment etc.

## IGPSO

26. I do not have access to IGP Standing Orders but I have my worries about the IPCMC Bill colliding with the IGPSO and police regulations.

27. Section 97 of Police Act gives power to The Inspector General to issue administrative orders for the **general control, direction and information** of PDRM and ...for **police duties** under the Act.

## Hong Kong

28. Please note that in Hong Kong, the power of the "police complaints body" is one of oversight and not enforcement. This is to safeguard the morale and integrity of the police force there and I commend this approach.

29. Under Independent Police Complaints Council Ordinance. No. 33 of 2008 A1479 the functions of Council there are merely to **observe, monitor and review the handling and investigation the police**, and only to make

recommendations to the police or the Chief Executive or both of them in respect of the handling or investigation of complaints.

30. In HK, the Council is tasked to *monitor* actions taken in respect of any member of the police force.

31. Further the HK Council is to identify any fault or deficiency in any practice or procedure adopted by the police force that has led to or might lead to complaints, and to make recommendations.

32. The oversight characteristics of the Council in HK is quite apparent.

33. Under section 9 in the HK Ordinance, the police commissioner shall submit lists of complaints "at such intervals, and in such manner... (a) a list of reportable complaints; and (b) a list of notifiable complaints".

34. There are extensive but effective mechanisms put in place whereby the police complaints body can compel compliance on the part of HK police.

See for example sections 22, 24, 26, 27 and 29.

35. Under section 29 of the HK Ordinance, the **police must comply** with the requirements of unless [Minister] for Security certifies that compliance with the requirement would be likely to prejudice—

- (a) the security of Hong Kong; or
- (b) the investigation of any crime.

36. The same approach would, in my view, safeguard the integrity and morale of PDRM.

### 37 MORALE OF PDRM

Dwight D. Eisenhower once said of the military, "Morale is the greatest single factor in successful wars."

Unlike the military, PDRM is at war with criminal elements on daily basis. PDRM is also the no.1 intelligence agency in this country – for now.

38 Several studies and companies have found that when morale is up, employees are more productive, use less sick time, and are less likely to leave even if offered more money elsewhere. Many of the world's most successful military units and Fortune 500 companies trust their success to the members of the organization. It would be reasonable to assume that for the police – PDRM – rigid in structure and in its command and control and highly service oriented— morale is an extremely significant factor.

39. Was there a study carried out to determine the morale of PDRM once this Bill becomes law?

40. The IPCMC Bill is generally welcome by the police. But the Committee should be aware that the proposed IPCMC Bill may not have the support from most police officers in the country. Most importantly PDRM's top management.

41. Police officers should be given the proper support and tools they need to do effective internal policing.

42. Police may or may not become increasingly intimidated. Will they be less likely to "go the extra mile" as low morale and lost faith and distrust of the Executive continue to weigh on PDRM.

43. The police need to know that the Executive supports their law enforcement efforts and that PDRM does not feel like they are out there all by themselves.

44. I commend the article "Recognizing the True Cost of Low Morale" published in the September 2012 edition of Police Chief Magazine (the official magazine of the International Association of Chiefs of Police).

By David Cruickshank, Chief Executive Officer, Law Enforcement Research Group, New Britain, Connecticut, USA.

Thank you.

This 8<sup>th</sup> day of November 2019

BY

DATUK SHAHARUDIN B. DATUK HJ ALI

ADVOCATE AND SOLICITOR

KUALA LUMPUR