

**MESYUARAT JAWATANKUASA PILIHAN KHAS MENIMBANG RANG UNDANG-UNDANG  
BILIK MESYUARAT JAWATANKUASA 2, BLOK UTAMA  
BANGUNAN PARLIMEN, PARLIMEN MALAYSIA**

**KHAMIS, 21 NOVEMBER 2019**

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**AHLI-AHLI JAWATANKUASA**

**Hadir**

YB. Tuan Ramkarpal Singh a/l Karpal Singh [Bukit Gelugor] - *Pengerusi*  
YB. Dr. Su Keong Siong [Kampar]  
YB. Tuan Larry Soon @ Larry Sng Wei Shien [Julau]  
YB. Dato' Sri Azalina Othman Said [Pengerang]  
YB. Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar [Santubong]  
YBhg. Datuk Roosme binti Hamzah - *Setiausaha*

**Tidak Hadir [*Dengan Maaf*]**

YB. Puan Rusnah binti Aluai [Tangga Batu]  
YB. Datuk Seri Panglima Wilfred Madius Tangau [Tuaran]

**URUS SETIA**

Encik Amisyahrizan bin Amir Khan [Setiausaha, Bahagian Pengurusan Dewan Rakyat]  
Encik Wan Ahmad Syazwan bin Wan Ismail [Ketua Penolong Setiausaha, Seksyen Pengurusan Kamar Khas, Bahagian Pengurusan Dewan Rakyat]  
Encik Norzuhlilmi bin Nozir Ahmad [Penolong Setiausaha Kanan Seksyen Perundangan dan Prosiding, Bahagian Pengurusan Dewan Rakyat]  
Cik Aiza binti Ali Raman [Penasihat Undang-undang II, Pejabat Penasihat Undang-undang, Pejabat Ketua Pentadbir]  
Puan Wan Noor Zaleha binti Wan Hassan [Pegawai Penyelidik, Seksyen Antarabangsa dan Keselamatan, Bahagian Penyelidikan dan Perpustakaan]

**HADIR BERSAMA**

**Suruhanjaya Integriti Agensi Penguatkuasaan (SIAP)**

YBrs. Tuan Mohamad Onn bin Abd. Aziz [Setiausaha]  
Puan Eda Mazuin binti Abdul Rahman [Penasihat Undang-undang]  
Muhammad Musawwir Kamal bin Hashim Kamal [Pegawai Undang-undang]  
Mohd Abd. Shukor bin Yong [Pegawai Undang-undang]  
Nurul Atiqah binti Mohamad Alias [Pegawai Undang-undang]  
Mohd Hakeem bin Buang [Penolong Pegawai Undang-undang]

*samb/-*

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**HADIR BERSAMA** (*samb/-*)**Pusat Governans, Integriti dan Anti-Rasuah (GIACC)**

Encik Noor Rosidi bin Abdul Latif [Pengarah Bahagian Undang-undang]

**Polis Diraja Malaysia (PDRM)**

YBhg. SAC Dato' Mohd Azman bin Ahmad Sapri [Ketua Urusetia KPN (Perundangan)]

**Kementerian Dalam Negeri (KDN)**

Puan Helina binti Dato' Sulaiman [Penasihat Undang-undang]

Puan Shamzarina binti Abdul Razak [Ketua Penolong Setiausaha (Bahagian Keselamatan)]

**Bahagian Hal Ehwal Undang-undang (BHEUU)**

Encik Yusof bin Ali [Ketua Penolong Pengarah (Seksyen Dasar)]

**Pejabat Penasihat Undang-undang JPM**

YBhg. Datuk Almalena Sharmila binti Dato' Dr. Johan [Penasihat Undang-undang]

**Jabatan Peguam Negara**

Encik Peh Suan Yong [Timbalan Penggubal Undang-undang Parlimen I]

Puan Farah Azlina binti Latif [Penolong Kanan Penggubal Undang-undang Parlimen]

Cik Nurhafiza binti Marsidi [Penolong Kanan Penggubal Undang-undang Parlimen]

Puan Shukriah Hamidah binti Mohamad [Ketua Unit Pembangunan Sosial dan Ekonomi]

**Pejabat Ahli Parlimen**

Encik Hezry Hashim [Setiausaha Sulit Ahli Parlimen Pengerang]

Encik Zarif Jumaat [Pegawai Khas Ahli Parlimen Pengerang]

Encik Abdul Hadi bin Khalid [Pegawai Ahli Parlimen Julau]

Encik Shamsuddin Abdullah [Pegawai Ahli Parlimen Santubong]

## LAPORAN PROSIDING

### MESYUARAT JAWATANKUASA PILIHAN KHAS MENIMBANG RANG UNDANG-UNDANG PARLIMEN KEEMPAT BELAS, PENGGAL KEDUA

Khamis, 21 November 2019

Bilik Jawatankuasa 2, Tingkat 2 Blok Utama, Parlimen Malaysia, Kuala Lumpur

Mesyuarat dimulakan pada pukul 3.18 petang

[Yang Berhormat Tuan Ramkarpal Singh a/l Karpal Singh *mempengerusikan Mesyuarat*]

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**Tuan Pengerusi:** Selamat petang kepada semua. *My apologies for being slightly delayed. Thank you for attending this very important meeting. This is the final meeting that we will be having between all the members of the committee and other members who have been present with us in all the sessions.* Jadi saya ingin mengambil kesempatan ini untuk mengucapkan terima kasih kepada kesemua pasukan yang telah pun bertungkus-lumus dalam penyediaan laporan ini. Terima kasih kepada Dato' Roosme yang telah pun mengambil bahagian dalam kesemua sesi bukan sahaja di Kuala Lumpur tetapi di keseluruhan negeri— Encik Syazwan dan pasukan.

*So today, hari ini kita perlu membincangkan draf laporan and also isu-isu lain yang mungkin timbul dan yang mungkin perlu dibincangkan pada masa ini. Oleh sebab laporan ini adalah diperlukan untuk diserahkan pada hari Isnin depan, so we have these next few days untuk mengemas kini laporan tersebut.*

*So, saya difahamkan laporan itu baru diserahkan kepada semua. I don't know sekiranya semua telah pun sempat membaca laporan tersebut. It is very— job well done, agak komprehensif. Akan tetapi of course ada isu-isu lain yang mungkin perlu ditambah ataupun dikeluarkan. Itulah tujuan mesyuarat hari ini. So, I think...*

**Datuk Roosme binti Hamzah [Setiausaha]:** Yang Berhormat, *can I just give a content and then we can go further* Yang Berhormat?

**Tuan Pengerusi:** *Sure, sure.*

**Datuk Roosme binti Hamzah:** Terima kasih Tuan Pengerusi. Saya pun ingin mengucapkan *teams* lain daripada GIACC, SIAP dan lain-lain yang telah membantu Parlimen juga untuk menyediakan draf laporan ini. Untuk makluman Ahli-ahli Yang Berhormat, ini adalah Draf Laporan Jawatankuasa Menimbang Rang Undang-undang Suruhanjaya Bebas Aduan Salah Laku Polis 2019. *It is going to be called our penyata is D.R.10 tahun 2019, Yang Berhormat. We have given the D.R. number of 10 tahun 2019.*

Dalam laporan ini Yang Berhormat, *this is the* kandungan dan kandungan laporan ini mempunyai bahagian pengenalan, *then we have* latar belakang Suruhanjaya Bebas Aduan Salah Laku. Bahagian III adalah sesi konsultasi dan libat urus. Sesi konsultasi dan libat urus ini Yang Berhormat *this is actually all our meetings the one that we have* daripada 10 hari bulan, 14 hari bulan, 15 hari bulan, 23 hari bulan, 30 hari bulan, 12 hari bulan, 21 hari bulan. *All these are* kita kira sebagai Mesyuarat Jawatankuasa Yang Berhormat *which* nanti kalau Yang Berhormat tengok dalam senarai ini *these are the hard copies. But later on, when we present the report it will be soft copy,* Yang Berhormat.

*Then,* sesi pendengaran awam *pun the same.* Sesi pendengaran awam *from the* 26 hari bulan, 2 hari bulan, 8 Hari bulan, 10 hari bulan, 16 hari bulan *all the proceedings in verbatim, hard copy is here but at the same time when we present, it will be in the CD form and also available on site.*

*For* Bahagian V adalah isu-isu semasa prosiding Jawatankuasa Pilihan Khas Menimbang Rang Undang-undang mengenai rang undang-undang suruhanjaya. *These are general,* perkara yang dibangkitkan. *Then,* Bahagian VI barulah pemerhatian dan penelitian yang mempunyai siapa bangkit berkenaan dengan apa. *Then,* Bahagian VII barulah pandangan dan syor jawatankuasa yang akhirnya rumusan jawatankuasa.

Kesembilan, penghargaan. Akan tetapi kalau Yang Berhormat tengok lampiran— dalam laporan ini Lampiran 1 adalah rang undang-undang itu sendiri. Lampiran 2 kita mencadangkan pindaan yang *earlier which the government has proposed.* Dalam CD cakera padat nanti ada laporan prosiding Mesyuarat Jawatankuasa Menimbang Rang Undang-undang dan sesi pendengaran awam. Kita juga ada memorandum Yang Berhormat. *All the memorandum that we received dah* berapa *total* sekarang?

**Seorang Ahli:** 34.

**Datuk Roosme binti Hamzah:** Sebanyak 34 memorandum *that we have received* termasuk IGP punya *list* akan berada di bawah memorandum nanti. *Hard copy is on the way. Soft copy will be* dalam CD. Kita ada juga ringkasan Laporan Suruhanjaya Diraja Penambahbaikan Perjalanan Pengurusan Polis Diraja Malaysia 2005. *This one is the summary of the* Suruhanjaya RCI dulu Yang Berhormat, 2005.

*Then also inclusive in the CD will be the rights of the Rights of Police Regulation 2019,* draf cadangan *which IGP has given.* Yang Berhormat, *the one that you have received here is also going to be part and parcel of the report.*

*So, basically that is the content of the report that we are going to present,* Yang Berhormat. Dalam sebarang syor-syor jawatankuasa dalam senarai ini *we have*— kalau setiap perkara itu *it*

*is highlighted in bold Yang Berhormat basically. So, Yang Berhormat that is how it is going to be presented kalau dipersetujui oleh jawatankuasa.*

**Tuan Pengerusi:** *Okay, I have gone through the report. Of course, the report I believe has been modified a bit and this is the final product as of now.*

**Datuk Roosme binti Hamzah:** *Yes.*

**Tuan Pengerusi:** *So, as Datuk has gone through the content with you, if you were to look at the— I think we can divide.*

**Datuk Roosme binti Hamzah:** *Contents.*

**Tuan Pengerusi:** *We can divide the contents into a few parts. Firstly, is the what we have been doing over this past six weeks to seven weeks, who we have met, our session, the speakers, the penghujah, their names, they are all identified that, together with what they had proposed. I think that is the most important. So, we have the cadangan of each and every speaker that has spoken. Now, we have various issues which I think we should of course start with— I think for me the most important one is which is the constitutionality point. So, it is something which also is covered in this report. Let me see. I got it here.*

**Datuk Roosme binti Hamzah:** *Page 45 Yang Berhormat.*

**Tuan Pengerusi:** *Yes, Page 45. Ya, Bahagian V. Is everybody? So, maybe— I proposed we can start with that before we move on to other issues. So, now in page 45— let me just get my one out, my computer because I made some amendments.*

**Datuk Roosme binti Hamzah:** *It's Bahagian V, Yang Berhormat.*

**Tuan Pengerusi:** *Ya. This is what happen when you are not good at computer.*

**Datuk Roosme binti Hamzah:** *[Ketawa] We have assistant, over there assistant.*

**Tuan Pengerusi:** *I have to learn also. Ya, okay. So, okay page 45.*

**Datuk Roosme binti Hamzah:** *Shukor kah? Siapa nak monitor itu? Zul kah? Okey, boleh mereka pun sama.*

**Tuan Pengerusi:** *Ya, Bahagian V. So, I think if you look at the paragraph A, we have here— I think if you were to read the entire thing, one of the major concerns here from my understanding is the proviso under section Article 140. Now, Article 140 is stated here and reproduced here in paragraph A. Of course, the proviso is the part in the second paragraph dengan syarat. So, the issue here— one of the main issues here is the hire and fire principle.*

*Now, under Article 135(2) there is a provision which list down the principle of the right to appoint includes the right to dismiss which is the hire and fire principle. Now, whereas in Article 140, you have the first part and the second part. The first part relates to the Suruhanjaya Pasukan Polis, the commission which has the power to appoint. But the second part allows for the*

*incorporation of the IPCMC or any other body like IPCMC which will take over the powers of the Suruhanjaya Pasukan Polis (SPP). It is not clear because they have the powers to exercise disciplinary control, IPCMC. But it is not clear if they have the power to appoint which has given rise to the issue here, which is whether or not they are— it is constitutional for them to exercise disciplinary control particularly to reduce in rank and dismiss.*

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*So that is the issue here. So, we have heard the views, various views from the stakeholders. I think if we go to the following page. I think in paragraph (d), may I proposed just this because I think— Fungsi Kawalan Tatatertib IPCMC di bawah Perkara 140 Perlembagaan Persekutuan adalah terikat dengan *principal natural justice*. I think, maybe you can add, khususnya hak untuk didengar.*

**Seorang Ahli:** *After di bawah is it?*

**Tuan Pengerusi:** *After natural justice ‘,’ khususnya hak untuk di dengar atau the right to be heard. In bracket it is a “audi alteram partem”. So that is the issue here. So, if you look at subsection 135(2) which is set out there. Particularly to the second part (b). I think we start with subsection 135(2), “Tiada seorang pun anggota sesuatu perkhidmatan yang disebut terdahulu boleh dibuang kerja atau diturunkan pangkat tanpa diberi peluang yang munasabah untuk didengar”. So that, is the general principal of the right to be heard. But there of course, dengan syarat. So, the conditions are set out there.*

*So, we go down further to...*

**Seorang Ahli:** *[Bercakap tanpa menggunakan pembesar suara]*

**Tuan Pengerusi:** *Yes, at the bottom. So we go to the paragraph (g), further down. This is where the concern has been raised which is, “Kekhuatiran siasatan berhubung dengan aduan kes jenayah oleh IPCMC adalah tidak berperlembagaan”. I have added here. Actually, I think it is there. Is there right? Kekhuatiran bahawa penubuhan— oh, it is not there. I have added, “Kekhuatiran bahawa penubuhan IPCMC adalah tidak berperlembagaan.” So that, is the issue.*

*Maybe if I can just go back up to paragraph (e). Maybe you can just add— this is just cosmetic. “Tiada takrifan” you have to put there, exercise of disciplinary control. Maybe you can put it the Malay version first. “...perjalanan kawalan tatatertib”.*

**Tuan Su Keong Siong [Kampar]:** *Perjalanan kawalan tatatertib?*

**Tuan Pengerusi:** *Ya, that is the Malay version. Is just the Malay version. It is the same thing.*

**Dato’ Sri Azalina Othman Said [Pengerang]:** *It is a translation.*

**Tuan Pengerusi:** *Yes, yes. I took it from the actual article. So, the English one you can put in bracket. Ya, bracket and then close bracket after “control”. Just for completeness.*

*So, of course in paragraph (h), we have another concern which is as we will see later if we go further down. This is actually the concern that there is no separation of powers to put it loosely. Separation of powers as we know, is actually it refers to the division between the judiciary, executive and legislature. But I am not referring to that here, not in this context. What they mean here is that the IPCMC is all encompassing. That means it is the investigator...*

**Dato’ Sri Azalina Othman Said:** *Judge jury.*

**Tuan Pengerusi:** *Judge jury prosecutor and also menjatuhkan hukuman. So, they do all the jack of all trades. So, that is what they mean by there should be separated. Separation of powers is mend in that context, not the context that we usually refer to. Okay?*

**Tuan Su Keong Siong:** *Okay. Is it possible to still explain in the bracket the or something like that the pengasingan...*

**Tuan Pengerusi:** *No, that later when we come down...*

**Tuan Su Keong Siong:** *[Bercakap tanpa menggunakan pembesar suara]*

**Tuan Pengerusi:** *I think – no, because it is...*

**Tuan Su Keong Siong:** *[Bercakap tanpa menggunakan pembesar suara]*

**Tuan Pengerusi:** *It is not necessary at this stage. Later, we will come to that because the actual words separation of powers is use later. So, maybe there we can explain it a bit.*

*In paragraph 2(d). Okay, what is stated here is, “Cadangan supaya SPP sebagai pihak berkuasa melantik menurunkan kuasanya untuk membuang kerja dan menurunkan pangkat mana-mana anggota PDRM kepada Lembaga Tatatertib IPCMC”. So, this is the problem with the hire and fire issue just now. So, the issue here is – the issue, IPC tiada kuasa melantik tetapi boleh membuang kerja bercanggah dengan prinsip the right to hire and fire. Okay, there have been views for and against this. I think it is okay and I’ll expressed my reason shortly.*

*So, further down I think the rest are fine. So, before we go in to B, does anybody has any concerns of questions with A? Because that is the main issue on constitutionality. Does anybody want to make any observations or comments on A? Yang Berhormat Pengerang, what do you think?*

**Dato’ Sri Azalina Othman Said:** *No, I just – actually I am confuse on – I just move forward because of your 45...*

**Tuan Pengerusi:** *Which page? 46?*

**Dato’ Sri Azalina Othman Said:** *45, perenggan lima.*

**Tuan Pengerusi:** *Paragraph (a)?*

**Dato' Sri Azalina Othman Said:** *You not putting a conclusion below that, right?*  
*[Bercakap tanpa menggunakan pembesar suara]*

**Tuan Pengerusi:** *No, no, no. That all comes later.*

**Dato' Sri Azalina Othman Said:** *You want to separate...*

**Tuan Pengerusi:** *Yes, yes, yes.*

**Dato' Sri Azalina Othman Said:** *I am only talking about...*

**Tuan Pengerusi:** *Only the issue first. They are highlighting and...*

**Dato' Sri Azalina Othman Said:** *106, Bahagian 8, Rumusan Jawatankuasa. You just jumping to the conclusion of all in here? You don't want like...*

**Tuan Pengerusi:** *No, there also syor-syorlah which we'll come...*

**Dato' Sri Azalina Othman Said:** *Akan tetapi – then you...*

**Tuan Pengerusi:** *That will come later. You will see it along the way.*

**Dato' Sri Azalina Othman Said:** *Because I am afraid some people may not understand the paragraph immediately. Itu sahaja. It just my – the drafting skills. You put below there rumusan. I don't know whether you want debate paragraph or...*

**Tuan Pengerusi:** *We can rearrange here and there. I am sure that shouldn't be a problem.*

**Dato' Sri Azalina Othman Said:** *Then, better you put at 10 – At the last page, tend to jump then that can be debatable on all this. Because on rumusan means the conclusion kan?*

**Datuk Roosme binti Hamzah:** *Akan tetapi Yang Berhormat, ada juga dekat pemerhatian nanti, ia ada perkara-perkara yang jawatankuasa mencadangkan.*

**Dato' Sri Azalina Othman Said:** *Fasal the subject it is very technical. Saya – bukan semua MPs itu peguam. Saya sahaja hendak highlight-kan concern. Jadi, kalau kita paragraph-kan sekali dengan bawah, jadi topic by topic itu dia baca dia akan faham? That is just a suggestion, drafting.*

**Tuan Pengerusi:** *I think never mind, we go through the issue first. We go through everything. Maybe later we can rearrange. Just to make it clearer. I think the more important part now is to get the issues out and trash them out.*

*So, the first part is Bahagian A, just now, which is to do with the – that particular constitutionality issue. The right to hire and fire, whether the IPCMC has the right to fire when it doesn't have the right to hire. Which goes back to 135(2) just now. All right.*

*So, I think if you look further down – okay. Again, if you come to page 59.*

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*Bahagian VI, these are the pandangan on the issue of constitutionality. So the first part just now was the issue itself. Now, we go into the pandangan of the penghujah. Whoever who*



came and spoke on the issue, these are their views. So you will find them in page 59 onwards under Bahagian VI. So, we can start with paragraph 1, page 60, which is the first issue just now, fungsi kawalan tatatertib (*disciplinary control*) oleh IPCMC adalah dikhuatiri bertentangan dengan Perlembagaan Persekutuan (PP). So, we have the Solicitor General II, Yang Berbahagia Datuk Siti Zainab binti Omar who gave her view which is in paragraph 1.1 (a). So, her view was that ...

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar [Santubong]:** Tuan Pengerusi ...

**Tuan Pengerusi:** *It is there* lah.

**Datuk Rosmee binti Hamzah:** Tuan Pengerusi, *paragraph 1 also includes the IGP.*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** Balik pada ...

**Tuan Pengerusi:** *Oh, I see. That is the new one, is it?*

**Datuk Rosmee binti Hamzah:** *Yes. It starts on here because we have inserted IGP ...*

**Tuan Pengerusi:** *IGP's view?*

**Datuk Rosmee binti Hamzah:** *Yes.*

**Tuan Pengerusi:** *I think that was...*

**Datuk Rosmee binti Hamzah:** *1.2.*

**Tuan Pengerusi:** *Further down.*

**Datuk Rosmee binti Hamzah:** *Yes, we have prepared also.*

**Tuan Pengerusi:** *Okey, okey. We come to that. Yes, Dato'.*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** Balik pada *what Yang Berhormat Pengerang said just now. I think for the purpose of clarity, for the purpose of the report, there is nothing substantive because substance of all the report is already inside here. The method arrangement, easy reference. After every issue, we come up with the answer. Then perhaps people read the issue and then the answer, the comment follows that. Then, I think when we come every issue there is an answer, there is a comment and then what is the conclusion of the Committee. Rather than all the issues on one side and then go to the ...*

**Tuan Pengerusi:** *So you are proposing the issue together with the ulasan?*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *Yes.*

**Tuan Pengerusi:** *Together with the conclusion?*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *Yes.*

**Tuan Pengerusi:** *And pengesyoran? I think that can be rearranged with the ...*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *Just a matter of arrangement.*

**Dato' Sri Azalina Othman Said:** *Do you have to justify your ...*

**Tuan Pengerusi:** *Pengesyoran?*

**Dato' Sri Azalina Othman Said:** *You have to justify in the paper?*

**Tuan Pengerusi:** *Yes. I agree, disagree.*

**Dato' Sri Azalina Othman Said:** *Because here under your page 65, which I am jumping to the next point for example, your 3, 4 and 5 is your conclusion.*

**Tuan Pengerusi:** *Page?*

**Dato' Sri Azalina Othman Said:** *Page 65. Am I correct to say this is your conclusion for...*

**Tuan Pengerusi:** *The bold ones?*

**Dato' Sri Azalina Othman Said:** *Yes. For the constitutional ...*

**Tuan Pengerusi:** *The bold ones are the pengesyoran.*

**Dato' Sri Azalina Othman Said:** *That is why I am saying that for the 3, 4 and 5, do you have justification for each of your conclusion on this? Do you add on justification or we are going to leave it as conclusions on that issue of constitutionality?*

**Tuan Pengerusi:** *I do not...*

**Dato' Sri Azalina Othman Said:** *Because this is the answer bukan?*

**Tuan Pengerusi:** *I do not understand what do you mean.*

**Dato' Sri Azalina Othman Said:** *This is the conclusion of the constitutional issue. Am I right? Page 65.*

**Tuan Pengerusi:** *Yes.*

**Dato' Sri Azalina Othman Said:** *All right. So if that is the point, do we have further justification for all the answers of 3, 4 and 5...*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *To explain.*

**Dato' Sri Azalina Othman Said:** *To explain for the MPs to understand why 3, 4 and 5 was the conclusion of the Committee.*

**Tuan Pengerusi:** *No, I do not think— I have note that I have come across but we can add that. But for example, I just give you an example. Let me just take it to – I have quite a few questions myself which I have put here to be discussed now. That is the purpose of this meeting now. So that those questions can be brought up. So, like what you have just said, is explanation for your conclusion, right? Where is that? So I have got a few explanations that I want to include. That is what we want to discuss now.*

*If you go to page 61, under paragraph— sorry. This is different. I think this is a slightly different page. Page 60 on your 1. So Dato' Shaharuddin bin Datuk Haji Ali and so on, “Berpendangan bahawa berdasarkan peruntukan proviso fasal (1) Perkara 140 berkenaan bidang kuasa IPCMC yang membenarkan IPCMC untuk mengenakan hukuman turun pangkat atau buang kerja terhadap semua anggota adalah tidak selaras”. So, the question here is, the IPCMC or the bodies set up under the proviso under Article 140 only gives power to exercise disciplinary*

control. The question is, does discipline control and this has been brought up a number of times include the power to terminate or reduce in rank given just now I said Article 135(2) and also the Section 29 of the 11<sup>th</sup> Schedule of the Federal Constitution. I think maybe we have to refer to that. These are the two provisions which are feared to be interfered with or contravened.

So, if you were to look at the Perlembagaan Persekutuan, you look at the 11<sup>th</sup> Schedule at the back. I'll just read it out. Section 29, which is "Power to appoint includes power to dismiss – where a return law confers upon any person or authority a power to make appointments to any office or place, the power shall, unless the contrary intention appears, be construed as including a power to dismiss or suspend any person appointed and to appoint another person temporarily in the place or any person so suspended or in place of any sick or absent holder of such office or place".

So again, that illustrates the principle of the higher, fire principle, right. So, these are the considerations to be taken into account when deciding this issue. So, I think there is – if we were to go down, there are those who said that – okey, paragraph (e), page 61. Yang Berbahagia Tan Sri IGP, Datuk Sabapathy and Prof. Madya Dr. Shamrahayu binti Ab. Aziz who spoke on this quite at length, raised various views. So, the first one is frasa "disciplinary control" whether or not that would include the powers under the CPC and whether or not there will be overlaps between the CPC and the IPCMC in terms of investigation. That I think is also a concern which needs to be addressed.

On separation of powers you go to paragraph (f). that is very clearly. That i where it is stated. Again, the separation of powers referred to here is not as we know it. It is quite different in this context as I explained earlier.

Okey, we go to paragraph 2.1 on the following page. This is the argument or view in favour of the constitutionality. So, here we have the views which is under paragraph 2, the heading proviso pada "Fasal (1) Perkara 140 PP secara jelas memberikan pengecualian bagi suatu badan selain SPP untuk menjalankan kawalan tatatertib". So, here we had the views of Solicitor General II, Dato' Ambiga, Prof. Shad and so on who concluded "Bahawa berdasarkan peruntukan Fasal (1) Perkara 140, SPP mempunyai bidang kuasa yang meliputi semua anggota PDRM dan SPP juga bertanggungjawab bagi menjalankan ataupun penjalanan kawalan tatatertib ke atas anggotanya. Namun, proviso pada fasal (1) Perkara 140 PP secara jelas memberikan pengecualian bagi satu badan lain selain SPP untuk menjalankan kawalan tatatertib ke atas anggota PDRM. Dalam hal ini, Parlimen boleh melalui undang-undang membuat peruntukan bagi penjalanan apa-apa kawalan tertib ke atas semua atau mana-mana anggotanya mengikut apa-apa cara dan oleh mana-mana pihak berkuasa yang diperuntukkan dalam undang-undang itu".

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*So that in a nutshell, is their view that SPP can clearly delegate its powers to a new body which is in this case is the IPCMC. So, in their view that would include the power to dismiss which comes under disciplinary control. So, there is nothing unconstitutional about it because the power to dismiss has always been in the hands of SPP. So, when the SPP delegates that power to a different third party which is the IPCMC, it follows that the IPCMC adopts that power as well lah. Okay.*

**Dato' Sri Azalina Othman Said:** *But this is just the submission by those in favor.*

**Tuan Pengerusi:** *Yes, yes. These are submissions, of course.*

**Dato' Sri Azalina Othman Said:** *Those against be also...*

**Tuan Pengerusi:** *Of course, they all there. Do not worry. Both sides.*

**Dato' Sri Azalina Othman Said:** *But then the one in bold is the conclusion?*

**Tuan Pengerusi:** *Which one?*

**Dato' Sri Azalina Othman Said:** *The one page 65.*

**Tuan Pengerusi:** *The bold one is the syor, syor. Which is what we are supposed to do lah. Of course, this is the draft first lah. So, we are now going to go through it lah.*

*Now, if you look at paragraph 2.2(a), this is the view of Datuk Siti Zainab binti Omar. Proviso fasal 1 against secara jelas memperuntukkan bahawa sekiranya pihak berkuasa yang menjalankan kawalan tatatertib itu bukan SPP, maka SPP akan terhenti daripada menjalankan fungsi kawalan tatatertib terhadap anggota PDRM. Namun SPP masih bertanggungjawab dalam hal berkaitan dengan pelantikan, pengesahan, kemasukan dalam perjawatan tetap atau perjawatan, pencen, kenaikan pangkat dan pertukaran. Can I confirm, that is the view, right? [Disampuk] Mr. Peh. [Disampuk] Yes. So, unlike— because if any mistakes maybe you can just point out.*

**Encik Peh Suan Yong [Timbalan Penggubal Undang-undang Parlimen I, Jabatan Peguam Negara]:** *Yes, that is the view.*

**Tuan Pengerusi:** *Okay. On the issue of IPCMC having jurisdiction only for police taking over the EAIC comes to an end. Meaning the other 20 are not dealt with— that is peculiar in the proviso under 140, only refers to the police.*

**Encik Peh Suan Yong:** *Tuan Pengerusi, the proviso under 140 only refers the police. EAIC is something different lah because it covers 21 agencies. Whether we want to revoke or repeal the act, that is a policy decision.*

**Tuan Pengerusi:** *Yes, so I think that is quite— that does not really— correct me if I am wrong lah. That does not affect the incorporation of the IPCMC, does it? It does not make it unconstitutional?*

**Encik Peh Suan Yong:** *The repealing of the EAIC does not affect the setting up of the IPCMC.*

**Tuan Pengerusi:** *Yes. So, what am I saying is with the coming into force of the IPCMC and the how would it affect the EAIC?*

**Encik Peh Suan Yong:** *The IPCMC the disciplinary control. With regard to IPCMC, is set up based on 140(1)— the proviso to 140(1). As for EAIC, if it involves the police, the police will have to be taken out from EAIC.*

**Tuan Pengerusi:** *Because the EAIC have...*

**Encik Peh Suan Yong:** *It is because you cannot have two bodies supervising the police.*

**Tuan Pengerusi:** *Correct, I think that is the issue.*

**Encik Peh Suan Yong:** *Okay. So, now I think the government have decided to repeal the EAIC. So, it is non-issue lah.*

**Tuan Pengerusi:** *When you say repeal you mean Akta 700 lah?*

**Encik Peh Suan Yong:** *Yes. I think Akta 700 is going to be repeal isn't it, EAIC. Maybe SIAP can confirm.*

**Tuan Pengerusi:** *So, that will have to be done first, isn't it? Before this can be done.*

**Encik Peh Suan Yong:** *I think it is done simultaneously under the bill. The bill when they setup the IPCMC also will revoke the EAIC at the same time. [Disampuk] No, I think the whole act.*

**Tuan Pengerusi:** *The entire act.*

**Encik Peh Suan Yong:** *The entire act.*

**Dato' Sri Azalina Othman Said:** *But you'll bring in ombudsman in this session?*

**Tuan Pengerusi:** *So, you will have a gap lah where the other 20 are not taken care of, is it? Can the EAIC be amended to exclude the police but still be in force to take care of the rest?*

**Encik Peh Suan Yong:** *Yes. First thing Tuan Pengerusi about the gap, there will be a gap in the sense that there will be no monitoring body lah like the EAIC. But the disciplinary function is still taken care of by the individual body. It is because they will have their Lembaga Tatatertib. So, it will still going on except that there will be no EAIC to oversee them. So, if there is someone in those 20 bodies commit a misconduct, action will still be taken against them. Okay. [Disampuk] Yes. Then— sorry Tuan Pengerusi, the second question.*

**Tuan Pengerusi:** *No, I just— the question is can the EAIC Akta 700 be amended to exclude the police therefrom?*

**Encik Peh Suan Yong:** *Yes.*

**Tuan Pengerusi:** *So that it can still operate against the other 20.*

**Encik Peh Suan Yong:** *Yes, can.*

**Tuan Pengerusi:** *So, would that not be an option to propose to overcome the problem or the complaint that which has happen so many times, so many complaints have been concerned, have been raised that if you bring in the IPCMC, there is no oversight body for the rest.*

**Encik Peh Suan Yong:** *I think legally it is an option that can be considered but maybe I think I may want to also refer to the legal advisor of SIAP as to why the proposal to memansuhkan SIAP.*

**Tuan Mohamad Onn bin Abd. Aziz [Setiausaha, Suruhanjaya Integriti Agensi Penguatkuasaan (SIAP):** Tuan Pengerusi, *if I may Tuan Pengerusi. Since operational, kami difahamkan bahawa dari dasarnya bersetuju supaya IPCMC ditubuhkan dan 20 agensi yang lain itu akan diletakkan kepada agensi lain untuk kawal selia. So, untuk menjawab soalan Tuan Pengerusi dan lain-lain, dari segi number statistik kita dapati memang 78 percent adalah PDRM dan kalau EAIC kekal sebagai oversight body untuk kawal selia 20 yang baki itu, dari segi statistiknya EAIC akan kendalikan dalam lapan kes sahaja sebulan Tuan Pengerusi. So, dengan kos...*

**Tuan Pengerusi:** *So, that means majority ini as polis lah ya?*

**Tuan Mohamad Onn bin Abd. Aziz:** *Polislah, ya. So, di sini kerajaan perlu buat keputusan sama ada yang 20 agensi lain itu apakah kaedah terbaik bagi membolehkan pemantauan diteruskan. Ini kerana tentunya bila 20 agensi lain dikeluarkan, mungkin pihak polis pula rasa kenapa mereka sahaja yang dipantau. Apa jadi kepada agensi lain? Itu satu pandangan yang valid. Perkara ini perlu diambil perhatian oleh pihak kerajaan lah. As far as EAIC is concern kami telah mendapat keputusan dasar supaya kami dibubarkan, diperkasakan menggantikan IPCMC.*

**Tuan Pengerusi:** *Akan tetapi ia bukan diperkasakan. Ia akan dibubarkan.*

**Tuan Mohamad Onn bin Abd. Aziz:** *Dibubarkan. Kita enhance-lah.*

**Tuan Pengerusi:** *IPCMC hanya akan mempunyai application kepada polis.*

**Tuan Mohamad Onn bin Abd. Aziz:** *Polis sahaja, betul.*

**Tuan Pengerusi:** *Bukan kepada 20 yang lain. So, that means itulah lacuna-nya kan?*

**Tuan Mohamad Onn bin Abd. Aziz:** *Ya, saya.*

**Tuan Pengerusi:** *So, apa akan terjadi dalam masa antara— I do not know ombudsman kah apa later, we don't know. But in that period of time, siapa yang akan mengadakan oversight terhadap customs, imigresen dan sebagainya?*

**Tuan Mohamad Onn bin Abd. Aziz:** Okey, sekarang ini Tuan Pengerusi, amalan kami sama ada PDRM dan 20 agensi lain, bila kami buat siasatan, kami akan rujuk dapatan kami itu bersama syor *command* kepada *respective unit integrity* di setiap agensi. *So, sekali pun EAIC dibubarkan nanti, unit integriti masing-masing boleh menjalankan tugas itu yang mana mereka terus menjalankan siasatan dan rujuk apa-apa tatatertib kepada pihak tatatertib di agensi berkenaan. Cuma tinggal lagi tidak ada badan bebas lah yang boleh membuat pengesyoran.*

**Tuan Pengerusi:** Itu isunya lah.

**Tuan Mohamad Onn bin Abd. Aziz:** Ya.

**Tuan Pengerusi:** *I mean the issue here is oversight body. Semua badan ada internal Lembaga Tatatertib. Itu tidak— even polis adakan peraturan 1993, I think.*

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*That is their internal. Akan tetapi isu di sini adalah oversight. Siapa akan mempunyai oversight?*

**Tuan Mohamad Onn bin Abd. Aziz:** Dia antara sebab tertubuhnya IPCMC adalah mengapakah syor-syor yang dikemukakan – perkara ini *to be fair* kepada PDRM, bukan sahaja sebab dari PDRM. Agensi-agensi lain pun bila EAIC mengemukakan syor, hukuman dan dapatan, syor itu majoritinya tidak dipatuhi. *So, akhirnya oversight body* itu kami bekerja bersungguh-sungguh mendapatkan dapatan dan di pihak agensi yang menerima kami punya syor itu mereka mempunyai pertimbangan yang berbeza. Saya hormati yang itu, tetapi pada *public* mereka merasakan itu suatu yang tidak boleh terima.

Di sinilah perlu ada keseimbangan dalam kita menilai. Akan tetapi saya faham apabila tiadanya lagi EAIC, nampaknya seolah-olah yang lain itu tiada *oversight body* lah. Akan tetapi dari segi amalan praktikalnya, syor-syor yang kami buat dapatan itu tidak diambil tindakan. Tidak diambil tindakan sepertimana yang kami harapkan lah. Kami pernah maklumkan benda ini pada 21 September yang lepas kepada IGP. Bagaimana EAIC ini, sebenarnya kalau JIPS itu, kawal selia itu sangat serius dalam menangani kes tatatertib, tak perlu pun sebenarnya IPCMC ini. Kita semua tahu kalau JIPS boleh – kalau kita tengok Tuan Pengerusi, 80,000 adalah anggota PDRM berpangkat rendah. Yang selebihnya adalah inspektor *and above*.

Akan tetapi kalau kita tengok *record* daripada pasukan polis, yang banyak kena buang kerja, turun pangkat adalah pegawai berpangkat rendah. Yang ASP, DSP ke atas tak sampai sepuluh orang Yang Berhormat, sepanjang tahun ini. Kalau kita ambil berapa tahun yang sudah,

*not even 10*. Jadi dekat situ, saya rasa kerisauan itu lebih kepada peringkat atas. Dia risau dengan IPCMC. Dekat bawahan ini memang mereka selalu kena buang kerja dan turun pangkat. Statistik menunjukkanlah. Kalau Tuan Pengerusi boleh tengok sendiri statistik dengan SPP— mungkin SPP boleh *share the numbers*, kurang dari 10 orang. Untuk tempoh *last ten years*.

So, ada yang bertanya kepada kami, adakah ASP, DSP, dia tidak terlibat dengan salah laku? Saya tak ada jawapan untuk itulah. Akan tetapi di situ ada perkara yang mengundang persoalan tetapi setakat itu sahaja. Saya tidak akan membuat apa-apa *presumption*. Jadi dekat situ ada menimbulkan persoalanlah. Terima kasih Tuan Pengerusi.

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** Akan tetapi persoalan di sini tadi ialah mengatakan soalnya kalau kita sudah laksanakan IPCMC dan secara automatik undang-undang EAIC itu bubar ya? Mansuh. Bila dia termansuh, persoalan polis kata kenapa pula ini *go scot-free*? Macam itu sahajalah. Itu persoalannya. Jadi persoalan yang ditanya di sini sama ada boleh atau tidak, *the question of drafting* sama ada *we just curb out* polis daripada EAIC supaya EAIC itu masih *continue to function* sementara IPCMC berfungsi sendirinya secara *independent*.

Jadi dengan keadaan itu, selepas ini nanti barulah EAIC membuat kajian sama ada *you remain relevant* ataupun tidak. Ataupun *you have to relook at your* undang-undang sama ada *your* pemantauan itu *is sufficient* ataupun tidak. *I think that is the question here. It is not the question of* sama ada *lower rank of file* kena buang kerja, yang naik pangkat tinggi, yang tinggi-tinggi pangkat tidak buang kerja. Persoalannya ialah supaya polis juga terasa bahawa ada pemantauan kepada agensi-agensi lain. Jadi soalnya saya ingat daripada AGC punya *drafting* itulah. Sama ada *can be just...*

**Encik Peh Suan Yong:** *I think* Yang Berhormat, *from the drafting point of view, we can do that. That is why I said it is a legal option that can be considered but the reason why EAIC Act is going to be repealed, based on the blue bill is a policy decision. That why I asked the view of PUU of SIAP to give its view. Very much the policy decision by the government.*

**Tuan Mohamad Onn bin Abd. Aziz:** Kalau saya boleh berkongsi, sewaktu penyediaan memorandum Pejabat Perdana Menteri yang untuk memohon supaya EAIC di perkasa sebagai IPCMC, cadangan pada waktu itu adalah 20 agensi terletak di bawah *Ombudsman*. Selepas itu saya tak ada maklumat apa yang berlaku selepas itulah. Maksudnya ada cadangan untuk meletakkan dia di bawah satu agensi.

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** Terima kasih Tuan Pengerusi. *I think*— oleh sebab ada pengalaman jadi Menteri. Apabila satu-satu *policy decision is being made and AGC received the policy decision, they cannot by themselves alter the policy decision. So, this is why they cannot independently say it can be done but it cannot be done until they alter the*



*policy decision. So, this is why as far as we are concerned, the policy decision fixed, repealed.* Lepas itu kalau ada *other time then other agency* itu diletak di bawah mungkin *Ombudsman* kah ataupun yang lain. Macam itulah sebab dia.

**Tuan Pengerusi:** *Please.*

**Encik Noor Rosidi bin Abdul Latif [Pengarah Bahagian Undang-undang, Pusat Governans, Integriti dan Anti-Rasuah (GIACC)]:** Saya Rosidi daripada GIACC. Berkenaan dengan polisi kerajaan untuk meletakkan 20 agensi lain di bawah Ombudsman. Saya boleh memaklumkan status sekarang berkenaan dengan Ombudsman. Kami, GIACC telah pun menghantar rang undang-undang berkenaan Ombudsman Malaysia kepada AGC untuk semakan.

Cadangannya memang awalnya untuk sesi ini, serentak dengan IPCMC. Akan tetapi kita mendapati terdapat beberapa perkara yang kita perlu perelaskan terutama dengan peranan Biro Pengaduan Awam yang mana kami rasa secara realistiknya bulan Mac tahun depan kita sudah boleh bentang satu rang undang-undang yang komprehensif berkenaan dengan pengawalseliaan terhadap 20 agensi yang lain.

Berkenaan dengan polisi yang mula-mula untuk membentuk IPCMC, saya sebenarnya bersetuju dengan apa yang dinyatakan oleh *secretary* kepada SIAP yang menyatakan kerajaan berpendapat bahawa terdapat keperluan untuk *carve-out* polis daripada SIAP dan membentuk satu Suruhanjaya yang lain bagi mengawal selia disiplin polis. Dalam masa yang sama memandangkan statistik menunjukkan bahawa bilangan kes yang dirujuk kepada SIAP berkenaan agensi lain sangat rendah, maka terdapat *cost-effective* sekiranya kita memansuhkan EAIC dan meletakkan agensi yang lain itu di bawah Ombudsman.

**Tuan Pengerusi:** *So, itu dijangka akan dalam bulan Mac?*

**Encik Noor Rosidi bin Abdul Latif:** Bulan Mac Tuan Pengerusi.

**Tuan Pengerusi:** *Because* dalam keseluruhan sesi-sesi kami, banyak aduan telah pun ditimbulkan berkenaan isu ini. *So, itu sebabnya saya tanya tadi if we can amend the current Akta 700, then we would not have this problem, bukan? So, it will still continue to have oversight* untuk semua 20 yang lain melainkan polis. *Then* bila-bila masa, bila Ombudsman itu *comes in, at least you still have an oversight body in the form of EAIC.*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** Itulah tadi Tuan Pengerusi, dia punya *policy decision* itu *is the direction to AGC.* Jadi AGC *cannot by themselves amend the policy decision. It has to go back to the originator of the policy.*

**Tuan Pengerusi:** *That is why we can make the syor lah...*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *So, unless you want to make that recommendation.*

**Tuan Pengerusi:** *That is why I am raising this. Whether or not that recommendation would be worthwhile in light of— because we can make the recommendation.*

**Dato' Sri Azalina Othman Said:** *[Bercakap tanpa menggunakan pembesar suara] ...Still a policy decision but it is okay to just put the recommendation. Then it can go back and make the decision.*

**Tuan Pengerusi:** *Yes. I think it is a— because no harm exactly, because I think nobody loses, right? Because you still have the EAIC. So, mungkin boleh cadangkan agar EAIC itu ataupun Akta 700 dipinda untuk mengecualikan dari akta tersebut, pihak polis.*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *[Bercakap tanpa menggunakan pembesar suara] ...Senarai.*

**Tuan Pengerusi:** *Yalah. Whatever lah. Pindaan perlu dibuat bagi tujuan tersebut dan meneruskan dengan pemakaian Akta 700 tersebut untuk agensi-agensi lain, 20 agensi lain. Sekarang ada 21 bukan? So, tolak polis will be 20 yang lain, sehingga undang-undang baharu dibentangkan di masa depan. Sekiranya ada undang-undang baharu, mungkin Ombudsman or whatever it is dan pada masa itu, Akta 700 ini boleh dimansuhkan. You know what I mean?*

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**Encik Peh Suan Yong:** *Sorry Tuan Pengerusi, just to interject. I think after hearing the legal advisor from SIAP and legal advisor of GIACC, I think one of the main considerations why they want to repeal the EIAC Act is because of cost. This is because, there are already a lot people in that set up and then you got only eight cases, they will be sitting there and hardly doing anything. Then, we will be still paying their salary and maybe paying for the building and all that. I suspect that because after hearing that.*

**Datuk Roosme binti Hamzah:** *Have an initiative.*

**Tuan Pengerusi:** *Ya. Itu satu cadanganlah. You know, I think of course itu boleh— It will be up to them sekiranya diterima atau tidak. Akan tetapi ini adalah satu cadangan yang boleh mengatasi aduan-aduan yang telah pun ditimbulkan oleh banyak pihak dalam sesi-sesi kami berkenaan dengan isu ini. You know, itu pandangan sayalah.*

**Dr. Su Keong Siong:** *Tuan Pengerusi, boleh saya bagi sikit pandangan? Daripada apa yang kita dengar sini, memang isu the gap apabila SIAP dibubarkan akan menimbulkan satu isu mana badan-badan yang lain tidak ada oversight body. Akan tetapi memandangkan kerajaan telah membuat satu keputusan...*

**Tuan Pengerusi:** *Dasar.*

**Dr. Su Keong Siong:** Pada dasar, memang mereka sudah ada satu rancangan untuk menggantikan SIAP dengan ombudsman. *So, whatever shortfall or weakness* kita akan ada daripada sekarang hingga Mac, iaitu satu langkah yang perlu kerajaan kaji saja. Bukan— *I think not for us to—My humble opinion, it's not for us to say we must accept it.*

**Tuan Pengerusi:** *In a way, in a...*

**Dr. Su Keong Siong:** *Just for the temporary six months or so.*

**Tuan Pengerusi:** *In a way* untuk menggalakkan undang-undang baharu seperti ombudsman di masa depan adalah untuk mengekalkan EAIC, kan? *If that happened then* sudah tentu dia orang tidak mahu kosnya meningkat. *So,* dia akan mempercepatkan pembentangan undang-undang ombudsman tersebut. *Otherwise, they might sit on it forever. You understand?*

**Seorang Ahli:** *It's their commitment-lah*

**Tuan Pengerusi:** *So,* itu mungkin satu cadanganlah, *you know.* Satu pengesyoran yang boleh dibuat. *I think it's worthwhile.*

**Tuan Mohamad Onn bin Abd. Aziz:** Tuan Pengerusi, kalau saya *got it right,* sementara menunggu IPCMC, suatu badan baharu mengambil-alih 20 agensi itu— 20 agensi yang dimaksudkan tadi. Katalah pada hari ini 1 Januari IPCMC ditubuhkan dan berlaku *gap* dalam tempoh empat bulan, tiga bulan. Pada waktu itu, terdapat cadangan interim supaya EAIC terus dikekalkan, sementara menunggu satu entiti baharu mengambil-alih 20 agensi itu. Itukah yang dimaksudkan?

**Tuan Pengerusi:** *Yes— No, because* sekarang mengikut pemahaman saya, *I think* apa yang dikatakan oleh JPA tadi, *is* kedua-dua IPCMC ini dan EAIC pemansuhannya akan dibuat serentak. *So, that's means* bila sekiranya— okey, dalam sesi ini, Parlimen ini, *bill* ini, rang undang-undang ini diluluskan, *then that's means* IPCMC akan ditubuhkanlah.

Pada masa yang sama, EAIC itu akan di-*repeal.* *So, that's means* pada masa yang sama, EIAC juga akan dihentikanlah. *So,* memang akan ada *gap* itu. Seperti yang Encik Noor Rosidi kata tadi sekiranya— okey, dalam bulan Mac dia bentangkan undang-undang baharu untuk agensi lain, *then okay.* Akan tetapi *if that doesn't happen, at least* ada EAIC ini yang masih kekal.

**Encik Noor Rosidi bin Abdul Latif:** Tuan Pengerusi, kalau saya boleh tambah sedikit. Berkenaan dengan kawalan, sebenarnya kawalan yang kita bercakap ini, kalau disiplin ini— Kawalan disiplin masih ada. Tidak ada masalah, hanya *monitoring* saja.

**Tuan Pengerusi:** Ya, ya.

**Encik Noor Rosidi bin Abdul Latif:** *So,* untuk *part ombudsman,* apa yang saya boleh nyatakan ialah terdapat peruntukan dalam Rang Undang-undang Ombudsman yang akan

membolehkan ombudsman untuk menerima kes-kes yang dua tahun. So, tempoh *limit*-nya ialah dua tahunlah daripada tarikh ini.

So, kalau kata tiga bulan, daripada bulan Januari sampai bulan Mac, so dalam tempoh dua tahun itu lagi. Jadi, apa-apa rujukan kes masih boleh dibuat kepada ombudsman. Kalau kita mansuhkan akta SIAP pada masa sekarang ini pun, daripada bulan Januari sampai bulan Mac, kita masih lagi boleh rujuk kes-kes tersebut kepada ombudsman sebab ia ada tempoh dua tahun, *time limit*-nya.

**Seorang Ahli:** Tidak ada *limitation*?

**Encik Noor Rosidi bin Abdul Latif:** *Limitation period*-nya dua tahun.

**Tuan Pengerusi:** Untuk merujuk kes sekarang?

**Encik Noor Rosidi bin Abdul Latif:** Ya.

**Tuan Pengerusi:** Kepada ombudsman?

**Encik Noor Rosidi bin Abdul Latif:** Ya. Ini sebab ombudsman *put limitation*. Ia kata secara amnyalah, apa-apa saja kes yang pada saat dihantar kepada ombudsman, ia ada tempoh hayatnya dua tahun *but must not exceed two years from the date of the...*

**Tuan Pengerusi:** *What must not exceed two years?*

**Encik Noor Rosidi bin Abdul Latif:** Kejadian itu berlaku.

**Tuan Pengerusi:** *It must be referred within two years?*

**Encik Noor Rosidi bin Abdul Latif:** Yes, refer to...

**Tuan Pengerusi:** *From the* kejadian?

**Encik Noor Rosidi bin Abdul Latif:** Ya.

**Tuan Pengerusi:** *Okay.*

**Encik Noor Rosidi bin Abdul Latif:** So kata bulan Januari jadi, bulan Januari hingga bulan Mac, kita masih lagi boleh rujuk kepada ombudsman.

**Tuan Pengerusi:** So, ombudsman itu ada bidang kuasa? Sekarang?

**Encik Noor Rosidi bin Abdul Latif:** Ia boleh memantau, Tuan Pengerusi. Katakanlah berlaku pada bulan Januari satu kes. Ada pelanggaran-perlanggaran kepada— pelanggaran yang dilakukan oleh satu-satu agensi. Contohnya, agensi penguatkuasaan. Apa yang jadi ialah ombudsman— dalam Rang Undang-undang Ombudsman, kita membenarkan bahawa pengadu itu— walaupun dia *second tier*, tetapi pengadu itu selepas melaporkan kepada agensi tersebut, agensi tersebut tidak mengambil tindakan.

Contohnya, dia melaporkan bahawa seorang pegawai ini melakukan satu kesalahan— melakukan salah laku SOP. Dia tidak mengikut SOP. So, apa yang dibuat adalah kemudian pengadu ini apabila mendapati bahawa dalam bulan Februari, tidak apa tindakan dibuat. Bulan

Mac pun tidak ada apa tindakan. Dia boleh mengadu kepada ombudsman untuk ombudsman mengambil tindakan. Ombudsman boleh siasat adakah aduan yang dibuat oleh pengadu tadi telah diambil tindakan oleh agensi.

Sekiranya tindakan telah diambil oleh agensi, jadi apa yang ombudsman boleh memanjangkan semula keputusan kepada pengadu. Akan tetapi sekiranya agensi tidak mengambil tindakan, so ombudsman boleh menggunakan kuasa-kuasanya untuk membolehkan agensi tersebut melaksanakan proses-proses yang patut diambil di bawah peruntukan kuasa tatatertib.

**Tuan Pengerusi:** So, apa yang akan dibentangkan dalam bulan Mac?

**Seorang Ahli:** Rang Undang-undang Ombudsman.

**Datuk Roosme binti Hamzah:** *Ombudsman Bill.*

**Seorang Ahli:** *[Bercakap tanpa menggunakan pembesar suara]*

**Tuan Pengerusi:** Rang undang-undang, yalah. So, undang-undang berkenaan ombudsman, kan?

**Encik Noor Rosidi bin Abdul Latif:** Akan berkuat kuasa dalam— bila kita bentangkan dalam bulan Mac, kemungkinan besar ia akan kuat kuasa dalam bulan Mac jugalah. Ia akan luluskan dalam bulan Mac.

**Tuan Pengerusi:** So sekarang— apa status ombudsman sekarang?

**Datuk Roosme binti Hamzah:** *[Bercakap tanpa menggunakan pembesar suara]*

**Tuan Pengerusi:** *Yeah, so that's why you understand.*

**Beberapa Ahli:** *[Bercakap tanpa menggunakan pembesar suara]*

**Tuan Pengerusi:** *No, apa maksud— Sekarang kita boleh refer kepada ombudsman?*

**Encik Noor Rosidi bin Abdul Latif:** *No, no.* Bukan sekarang. Sekiranya, *that three months lacuna* Tuan Pengerusi— kes-kes yang kejadian bulan Januari, bulan Februari dan bulan Mac ini boleh juga dirujuk nanti kepada ombudsman.

**Tuan Pengerusi:** *Oh, I see, I see. Okay, okay.*

**Dr. Su Keong Siong:** Selepas penubuhan ombudsmanlah.

**Tuan Pengerusi:** *Oh, even* sebelum penubuhan ombudsman?

*[Ahli-ahli berbincang sesama sendiri]*

**Tuan Pengerusi:** *Right, right. Okay, okay.* Yalah, itu *of course* tertakluk kepada ombudsman itu ditubuhkan dalam bulan Mac atau dalam dua tahun itulah.

*[Ahli-ahli berbincang sesama sendiri]*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** Satu soalan. Sebelum ombudsman itu ditubuhkan, selepas SIAP ini sudah bubar, ada arahan penyimpanan fail-fail itu. Sebab itu, yang di-refer dengan ombudsman nanti. Sebab itu kritikal juga.

**Tuan Mohamad Onn bin Abd. Aziz:** Memang ada Yang Berhormat, sebabnya kalau ikut akta dalam Rang Undang-undang IPCMC, kami ada lebih kurang enam bulan untuk selesaikan. Kami telah pun sejak enam bulan lepas, kami buat sistemlah untuk kita boleh senang kenal pasti fail-fail. So, *insya-Allah* kita akan— benda-benda itu adalah di dalam simpanan EAIC.

**Tuan Pengerusi:** *So, okay. I think on that issue, mungkin kita boleh buat recommendation tersebut. Itu recommendation saja. Itu dasar semua itu lainlah. It's up to them* sekiranya diterima atau tidaklah. *Yes, Mr. Peh?*

**Encik Peh Suan Yong:** Tuan Pengerusi, *looking at the IPCMC Bill, looks like you know, there will be more amendments. There could be more amendments. So, if we cannot pass it this time, maybe we can pass it in March, together with the Ombudsman Bill. Then, we can repeal EAIC at the same time. So, there will be no gap and there will be no issue-lah. Then, the government will not have to spend so much money, just maintain the EAIC with no cases.*

**Tuan Pengerusi:** *That is on assuming that it is not pass this round-lah. [Disampuk] So, if we are going on the assumption that it will. It might be. So you know, assuming it is passing this month, this sitting. Then, this might be a solution-lah. Of course, if it's not, it will spill over to the next sitting or even the sitting after that. Then, obviously the scenario is different.*

*Okay, I think we can go on or move on to the other issue.*

**Datuk Roosme binti Hamzah:** *We agree to get the regulation.*

**Tuan Pengerusi:** *Ya, I think we can— can we agree to that recommendation?*  
*[Ahli-ahli berbincang sesama sendiri]*

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**Tuan Pengerusi:** *Okay, now we go to paragraph 2.3 and 2.4. I think this— what you say just now, Yang Berhormat Pengerang, I think it's keeps here and comes back again and that kind of— yeah. I think, maybe the arrangement can be rearrange-lah. Because now, we are coming back to the constitutional issue.*

**Seorang Ahli:** *[Bercakap tanpa menggunakan pembesar suara]*

**Tuan Pengerusi:** *I think maybe we can see how we can be better arrange later-lah. So, can we go to the paragraph 2.3 and 2.4.*

*Okay, now this is on the issue against of constitutionality. This issue was raised by SAC in Kuantan Dato' Allaudeen bin Abd Majid, I think I must say put up a very good submission when we went to Terengganu. He raises this concern bahawa proviso pada fasal (1), Perkara 140*

Perlembagaan Persekutuan hendaklah di lihat secara keseluruhan dan harmoni dengan mengambil kira peruntukan fasal (1), Perkara 135— prinsip kebebasan diri dan kesamarataan sebagai mana yang diperuntukkan di bawah Perkara 5 dan Perkara 8, *which is liberty and equality*.

*So, what he is saying there is that there is contravention of particularly Article 8 on equality in that— there are not treated equally as 135(2) gives them the right to be heard. So, I am not to sure whether he meant that with the coming in of the IPCMC, they don't have a right to be heard compared to the other agencies under 135(2).*

*But we have the view of Datuk Dr. Shad Saleem Faruqi in paragraph 2.4, who says, I think this is quite important to note— that I think this is his view on how the issue of hire to fire can be overcome.*

*So, he says; "Bahawa dari sudut perundangan proviso pada fasal 1, Perkara 140 membenarkan mana-mana pihak berkuasa untuk menjalankan fungsi kawalan tatatertib terhadap anggota PDRM dan frasa tiada peruntukan undang-undang itu boleh menjadi tidak sah atas ketidakselarasan dengan mana-mana peruntukan, bahagian ini mempunyai maksud yang sangat luas". But this is important. "Namun sebagai langkah berhati-hati dicadangkan supaya SPP sebagai pihak berkuasa yang melantik menurunkan kuasanya untuk membuang kerja dan menurunkan pangkat mana-mana anggota PDRM kepada Lembaga Tatatertib IPCMC."*

*What he's saying here I think is to make it express in one way that there is a delegation of the power to dismissed or reduced in ranked by the SPP to the IPCMC. That would make it express that power, although the IPCMC does not have the power to appoint, has been delegated the power to dismissed. You'll understand. So, that I think is necessary. Otherwise there is going to be this issue of hire to fire, you know.*

**Encik Peh Suan Yong:** *Yang Berhormat, actually 140(1) the proviso to 140(1) provide for disciplinary authority which according to AGC opinion that include the power to fire. Even though, it doesn't include the power the hire.*

**Tuan Pengerusi:** *Why do you said that?*

**Encik Peh Suan Yong:** *Yes, because 140, because I think the two provisions which Professor Shamrahayu raises to say that, that can not be done 135(1) of the Federal Constitution.*

**Tuan Pengerusi:** *Ya.*

**Encik Peh Suan Yong:** *But, 140 the proviso to 140(1) says that if there is any other provision which is inconsistent in Part X, the law may under the proviso to 140(1) were supersede. So, it would supersede 135(1). That is the position. Then, of course there is the other argument which is in the schedule which is in the section 29, Schedule Eleventh.*

*Okay, it's said; "power to appoint includes power to dismiss, where a written law confers upon any person or authority power to make appointments to any office or place, the power shall..." but there is this word here, "...unless the contrary intention appears".*

**Tuan Pengerusi:** *To where does the contrary intention appear now?*

**Encik Peh Suan Yong:** *So, the contrary intention would appear in the law make under the proviso 140(1).*

**Tuan Pengerusi:** *Okay, also if you look at 135, anybody got it— I think the power— I think the issue of hire and fire, appointing and dismissing is at 135(1), right?*

**Encik Peh Suan Yong:** *Yes.*

**Tuan Pengerusi:** *Okay, you have two provisos there after 135(1). Can we look at the second proviso? I am a bit confuse myself, maybe you can assist me, whether the second proviso overcome the problem.*

**Encik Peh Suan Yong:** *Second proviso is when there is delegation if I'm not mistaken.*

**Tuan Pengerusi:** *So, there is delegation here right as what has been proposed by Datuk Dr. Shad?*

**Encik Peh Suan Yong:** *Datuk Dr. Shad says sebagai langkah berjaga-jaga, I think berhati-hati. So, he is being conscious.*

**Tuan Pengerusi:** *So, that's why I think he means to come under this proviso, isn't? So, if we were to— you see it says here, and provided further that this clause shall not apply to a case where a member of any of the services mentioned in this clause is dismissed or reduced in rank by an authority in pursuance of a power delegated to it by a commission. In pursuance of a power delegated to it by a commission to which this part of course this particular part applies.*

*So, to my mind that means by an authority which is IPCMC-lah, right? In pursuance over power delegated to it by a commission which is SPP-lah, in this part. So, I think if we expressly state that the SPP is delegating its power to terminate or reduce in rank to the IPCMC. Then you come squarely within this proviso, isn't? Without even they need to look at the 11 schedules. Would that be a better option?*

**Encik Peh Suan Yong:** *I think what my understanding or what Prof Shad Saleem Faruqi suggest is that, this is a safer approach. He's no saying that you can't do it under 140(1) proviso, but why not we take a safer approach, means double safe guard. Although, we believe that 140(1) the proviso to 140(1) is sufficient but at the same time we also use 135(1) the second proviso. What is basically saying that-lah. Of course I have no argument with him.*

**Tuan Pengerusi:** *I think, he's right in that— we should take the safe option and expressly state in the bill that the SPP— can we go to 140, just very quickly, 140. Okay, 140, if we expressly*



state that the Police Force Commission (PFC) is delegating its power of dismissal and or reduced in ranked to the IPCMC. Just that, then I think we will be able to get advantage of the second proviso of 135(2). Would you agree to that suggestion, Mr. Peh?

**Encik Peh Suan Yong:** I take note of that suggestion.

**Tuan Pengerusi:** Would you think that is...

**Encik Peh Suan Yong:** I think that suggestion can be considered. I that suggestion can be put forward.

**Dato' Sri Azalina Othman Said:** Just for clarification. So, in conclusion they would be two bodies that can talked about appointment because you have SPP or you want to take everything up.

**Tuan Pengerusi:** No, no. Appointment is in the SPP.

**Dato' Sri Azalina Othman Said:** So, we have two organization, discipline...

**Tuan Pengerusi:** Discipline— you see, the appointment— now as we stand, appointment and dismissal is SPP. But if you bringing the IPCMC, you going to have this problem about appointment include dismissal, that issue, which can be argued later, saying that unconstitutional.

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So, what the Prof Shad is suggesting is that you expressly stated somewhere in the bill that the SPP is delegating its power to dismiss and or reduce in rank to the IPCMC. Then you come within second proviso or 135(2) which allows that to be done. So, then they won't be any problem anymore-lah.

**Dr. Su Keong Siong:** And hiring is still with...

**Tuan Pengerusi:** The hiring still remains with the SPP.

**SAC Dato' Mohd Azman bin Ahmad Sapri [Ketua Urusetia KPN (Perundangan), Polis Diraja Malaysia (PDRM)]:** Yang Berhormat, if I may. I mean the issue here the SPP 140, you mean the power— Parliament may by law provide on this disciplinary control. The function of SPP number one, appointment. It does not say that include dismissal but it was defined in 29, Eleventh Schedule and section 47 of Interpretation Acts.

So, if you want to give the power— delegate the power to the IPCMC for the dismissal, and it was not expressly stated in the 140, just say appointment. So, it's quite— that is general issue also.

**Tuan Pengerusi:** Sorry sir, can you just repeat that again. I didn't...

**SAC Dato' Mohd Azman bin Ahmad Sapri:** No. In the function of SPP, six functions do not say— expressly said on the power of dismissal but it comes together with an appointment, include dismissal.

**Tuan Pengerusi:** *So, you are saying is the SPP doesn't have the power of dismissal?*

**SAC Dato' Mohd Azman bin Ahmad Sapri:** *No, if you want to said...*

**Tuan Pengerusi:** *No, at this point of time, does the SPP have the power of dismissal?*

**SAC Dato' Mohd Azman bin Ahmad Sapri:** *Yes, impliedly under appointment because it comes together with appointment.*

**Tuan Pengerusi:** *So, that has been practice, isn't?*

**SAC Dato' Mohd Azman bin Ahmad Sapri:** *Yes.*

**Tuan Pengerusi:** *All these while?*

**SAC Dato' Mohd Azman bin Ahmad Sapri:** *Because appointment and then appointment, it's said dismissal in the 29, appointment includes dismissal.*

**Tuan Pengerusi:** *Correct.*

**SAC Dato' Mohd Azman bin Ahmad Sapri:** *Okay, if you want to— not expressly stated the power of SPP for dismissal. It's said appointment. So, if you want to delegate power of appointment.*

**Tuan Pengerusi:** *But include dismissal-lah?*

**SAC Dato' Mohd Azman bin Ahmad Sapri:** *Include dismissal. So, appointment— so, we give to the IPCMC. The IPCMC have the power also appointment. How you want to separate...*

**Tuan Pengerusi:** *No, no. You are saying expressly that only the power to dismiss is delegated.*

**SAC Dato' Mohd Azman bin Ahmad Sapri:** *The delegated how...*

**Tuan Pengerusi:** *That's the purpose of expressly stating it. So, there is no other interpretation. You understand?*

*So, the SPP still has the power to appoint but has delegated its power to dismiss and or reduce in rank to the IPCMC.*

**SAC Dato' Mohd Azman bin Ahmad Sapri:** *Furthermore, what the Professor Shad saying that the SPP to delegate the power because issue on 140 on the 135, the status of the composition members of SPP including Minister, IGP and the members of this IPCMC is appoint by the suruhanjaya. So, the issue of seniority in rank. That's why I said that the SPP have to delegate to IPCMC.*

*Another issues from Dato' Allaudeen said that no law serving inconsistent invalid. So, he is talking about this part. This part is Part X, 132 up to 148. So, Dato' Allaudeen is referring to Article 5 and Article 8 which is under Part II.*

**Tuan Pengerusi:** *But Article 8 if you look at it— Article 8 yes, I think then he related to livelihood, right. So, I think— Article 8 applies to like person in a like class. So, if you apply the*

*equality principal, it would apply like say for example you cannot compare a disabled man to an able man, right. So, different considerations will apply.*

*So, in this case in 140, you have classified the entire police force under 140, under IPCMC. So, they cannot be compared with the different class to come under Article 8.*

**SAC Dato' Mohd Azman bin Ahmad Sapri:** *I do agree Yang Berhormat. Even you can exclude Article 8 but Article 5 still subject to this issue because it says Part II. Then, inconsistent only Part X. It's Part II covers Article 5. Even you can exclude Article 8, the how about the Article 5 talking about livelihood?*

**Tuan Mohamad Onn bin Abd. Aziz:** *Yang Berhormat, if I may. I am not trying to argumentative, I just want to share an opinion written by the late Tun Mohamed Suffian Hashim dalam bukunya An Introduction to the Constitution of Malaysia, whereby the late Tun Mohamed Suffian discussed on the effect of amendment to proviso 140. So, in summary if I may quote, "If there any further arguments as to which authority's power to dismiss, the answer will have to be not the Police Force Commission, but the authority granted disciplinary power by the law."*

*So, mungkin buku ini kalau kita luangkan masa, kita baca kita akan nampak bahawa Surinder Singh Kanda yang mengatakan bahawa hanya pihak yang melantik boleh dismiss, telah pun over taken by pindaan kepada proviso 140, in 1976.*

**Tuan Pengerusi:** *So in other words, I think the Surinder Singh's principle no longer applies. So, now you have Article 140 which expressly gives that power to the authority. So, I don't see any problem, particularly with expressly clarified.*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *Akan tetapi satu lagi Yang Berhormat Tuan Pengerusi, soalan the police commission punya authority itu. The authorization daripada Police Force Commission for dismissal or downgrading in rank. How Parliament actually— Once the bill is passed in Parliament, can Parliament take the authority at the Police Force Commission to give that authorization?*

**Tuan Pengerusi:** *Yeah, under 140.*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *Ya?*

**Tuan Pengerusi:** *Yeah, 140 allows it.*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *If Parliament can give that on behalf of Police Force Commission, only then there is no argument about it in the validity of that authorization, is it?*

**Tuan Pengerusi:** *Yeah.*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *Because here my concern is about the authorization of the Police Force Commission to give to the IPCMC the power to dismiss and the power to demotion.*

**Tuan Pengerusi:** *But the proviso gives that power to the SPP.*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *So, how the power can be given to IPCMC? Whether through statute incorporating under the IPCMC law or separate statute as authorization from Police Force Commission.*

**Tuan Pengerusi:** *No, I don't think. I think it's clear from the proviso here itself. Otherwise, the proviso is meaningless. That's the purpose having this proviso.*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *No, because if you look at this one proviso is giving disciplinary control. Disciplinary control doesn't— how could the interpretation from AG Chambers, disciplinary control? Is removing everything from the Police Force Commission include dismissal as well as demotion of rank. That is what the interpretation from AG Chambers, isn't?*

*But Shad Faruqi says, in order to be safe, there must be— we should have the authorization from Police Force Commission. So, how the authorization from Police Force Commission?*

**Tuan Pengerusi:** *No, authorization, delegation. It's very different.*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *Oh, delegation. Okay, delegation.*

**Tuan Pengerusi:** *So, once you delegate your powers, you are not authorizing. You're delegating your powers. So, then you come under 135 the second proviso. Yeah, Mr. Peh.*

**Encik Peh Suan Yong:** *Yang Berhormat, I think I understand what Yang Berhormat Santubong mentioned. You see, what AG Chambers stand is that the proviso to 140(1) is sufficient but according to Professor Shad Saleem, we need to play safe and add another delegation under 135(1) second proviso.*

*I think what Yang Berhormat Santubong saying is that, does Parliament have the power to delegate. Can Parliament delegate the power of the Police Force Commission? It should be the Police Force Commission themselves who delegate, not Parliament. That is the reason why Yang Berhormat, I did not dare to agree with Yang Berhormat when you mentioned that I say I just take note because these are things we need to study. If we don't go through the Parliament, we can go through by way of an instrument of delegation. We can also look into this. So, the police commission themselves...*

**Tuan Pengerusi:** *Separate statute.*

**Encik Peh Suan Yong:** *A statute no need, maybe don't even need a statute. Maybe need only a **subsede**, a peraturan, signed by the Police Force Commission to say that they will delegate.*

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*But these are the procedure that we have to look into and study carefully.*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *Because when it come to delegation of this one, if Parliament were able to do all these delegations, then Parliament can really supreme. Delegate everything. Can you imagine? This is why if Parliament want to create a law to delegate the— without the Police Force Commission, I refused the Police Force Commission say to delegate. So, what happen? And yet, Parliament said okay never mind, we give because under Article 140(1), proviso we can do it. So, this is just an argument.*

*But if we follow the AG Chambers idea or opinion, that is sufficient. There is no longer required. That delegation is no longer required because the moment they takeover, the whole thing is given to them, the power to discipline. [Disampuk] Implied. The discipline meaning include dismissal as well as downgrading in rank.*

**Tuan Pengerusi:** *You want to say something? Bukan? Oh, I see.*

**Dato' Sri Azalina Othman Said:** *[Bercakap tanpa menggunakan pembesar suara] You want to give us an opinion on this. Legal opinion. All these allegations. Mic.*

**Encik Peh Suan Yong:** *I think we had already— Datuk Siti have already come and said that, that is AG's stand, that it is valid. It's just that I don't think that Prof. Shad Saleem also say it's not valid. He just say that sebagai langkah berhati-hati— he wants a double safeguard.*

**Tuan Pengerusi:** *No, I think he wants— if to narrow down the issue now, it's whether or not the Police Force Commission (PFC)— whether Parliament can order the Police Force Commission to delegate its power to dismiss to the IPCMC. Does Parliament have the power to do that? Or must the Police Force Commission do it on its own. That's the issue, isn't it? I think that's what you are saying. So, what are your comments on that?*

**Encik Peh Suan Yong:** *My view is that Parliament is a law-making body. So, they make laws. They cannot be ordering people to do things, you know delegate and all that. But they can do it indirectly in the sense that they amend the law. They can amend the Constitution if there is 2/3 majority, and they can even set up a new body within the Perlembagaan who said that this body will take care of police discipline including the dismissal and demotion. They can do that provided that they have the 2/3 majority to amend the Constitution. But I don't think Parliament should order and...*

**Tuan Pengerusi:** *So, are you saying then that the proviso is unconstitutional?*

**Encik Peh Suan Yong:** *No, the proviso is not unconstitutional Yang Berhormat. I think that proviso itself is sufficient. That is AG's view, it's sufficient for the Parliament to make a law with regards to the disciplinary control of the police force. That itself is sufficient.*

**Tuan Pengerusi:** *In order to make that disciplinary control effective, that delegation must be done, isn't it?*

**Encik Peh Suan Yong:** *No, not necessary. According to AG's stand it's not necessary, but according to— but we take note of the Eminent Professor Shad Saleem who thinks that in order to be safe, we should also have another instrument to delegate. I think we can have another instrument to delegate. We can study into that.*

**Tuan Pengerusi:** *I think we can suggest that, isn't it? That will overcome the problem, isn't it? When you say another instrument, what do you mean?*

**Encik Peh Suan Yong:** *An instrument of delegation.*

**Tuan Pengerusi:** *Like?*

**Encik Peh Suan Yong:** *Like **subsede**. We can do a subsidiary legislation, a P.U. (B) which says that the Police Force Commission will delegate.*

**Tuan Pengerusi:** *I think that will be the best option, isn't it? Then I think Yang Berhormat Santubong is concern is addressed.*

**Encik Noor Rosidi bin Abdul Latif:** *Yang Berhormat. If I may add something Yang Berhormat. Delegation is something that you give, boleh tarik balik bila-bila masa sahaja. That is something that we need to think. Kita bagi sekarang, pada masa depan boleh tarik balik. That is the power of PFC. Kalau mereka bagi, tiba-tiba tarik balik what would happen to IPCMC?*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *Because Tuan Pengerusi, apabila we finished the meeting the other day when Prof. Shad Faruqi came up with the idea of delegation, one of the things that stuck into my mind is the nature of delegation to be meant. What is the nature of delegation? Should it be a like wakil from AGC says, just delegation from Police Force Commission signed by the Police Force Commission, something like that. Of course, it's transcended in nature, according to him or it's a statute to we pass or table in Parliament. So, that bothers me what nature of delegation. Otherwise, we have to rely on what the AGC is saying. The disciplinary control under the proviso is sufficient, removing everything, but of course one day the police if he's affected, he may bring case to court and challenge.*

**Tuan Pengerusi:** *What if from the list of disciplinary offences, I mean hukuman— I think there is seven or eight, right? Which includes reduction of rank and dismissal. What if reduction of rank and dismissal are removed from that list? Would this issue arise?*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *No more.*

**Tuan Pengerusi:** *No, right? It wouldn't arise because there is no longer that the issue of reduction of rank or dismissal.*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *That's under 135.*

**Tuan Pengerusi:** *So, it only concerns these two particular hukuman, right? So, if that's the case, then how do you— if just let's say, I just speaking aloud. If police officer is guilty of misconduct, and let say he's not terminated or anything like that. He's given a lesser sentence. So, the IPCMC will have no problem doing that, right? But if he's either reduce in rank or dismiss, or the IPCMC is of that view that he should be reduce in rank or dismiss, is the Police Force Commission bound to dismiss him? Is there any way that mechanism to provide for that? Since the power to dismiss or reduce in rank only lies in the hands of Police Force Commission. Is there any way of achieving that end?*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *Because under the circumstances, the power to dismiss and to demote a police officer still with the Police Force Commission. So, the IPCMC end up making recommendation to the Police Force Commission like previous monitoring body.*

**Tuan Pengerusi:** *The reason I ask this because when we come to the IOPC later, the UK version, their version is slightly different. In that— their main exercise is pertaining to the investigation. Then, they come up with their findings and then they send it back. But when it sends back, they are bound to take action. They are bound to act on those findings. So, there is that enforcement element. Unlike the EAIC now, where it just recommendation where it can— they can choose not to act on it.*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *But then again the punishment awarded by the tribunal is subject to the tribunal, not by the IOPC.*

**Tuan Pengerusi:** *Of course, of course. Punishment will all come under the tribunal.*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *So, if the same thing we maintain, then it will be no problem at all. It will be no problem at all. Of course, there's must— once I think it submitted to the discipline body of the police, the police have no choice but they must carry out tribunal, institute the tribunal...*

**Tuan Pengerusi:** *Yes.*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *...And commence the proceeding, and then conduct the proceeding.*

**Tuan Pengerusi:** *Who will then conduct the disciplinary proceeding, resulting in possible...*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *Based on the whatever recommendation, it's still based to be decided by tribunal.*

**Tuan Pengerusi:** *Recommendation is just to prosecute.*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *Yes.*

**Tuan Pengerusi:** *Then, they will prosecute. He might be found not guilty. That's the separate matter. But if he's found guilty, then he will be sentenced.*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *Based on the degree of the...*

**Tuan Pengerusi:** *So, the IOPC has got nothing to do with that. It's the disciplinary authority will sentence him.*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *Yes, yes.*

**Tuan Pengerusi:** *You see. So, that's why they don't have this issue.*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *Yes, they don't have the issue.*

**Tuan Pengerusi:** *They don't have this issue which the IPCMC seems to have. And the issue is only in relation to those two sentences, which is reduction in rank and dismissal.*

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*Not for the rest. So, if we were to take Prof. Shad Faruqi view, then he thinks just an express provision to delegate is enough. But the AG Chambers is not willing to commit, I think. To that extent.*

**Encik Peh Suan Yong:** *Yang Berhormat, another thing is that even now if I'm not mistaken, I could be wrong, the disciplinary control of the PFC has been delegated to the Royal Malaysian Police Force. I don't think they are exercising the disciplinary control. They have actually delegated to the police force and the police force has set up their lembaga tata tertib.*

**Tuan Pengerusi:** *Oh, I see.*

**Encik Peh Suan Yong:** *So, actually it is now— even now in practice the delegation. So, I don't see why— it must be PFC who appoint the only who can also dismiss.*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *I think this is an execution of practicality, Tuan Pengerusi. Because there are a lot of breach of discipline all over the country. And then I'm not too sure whether the Police Force Commission has got the manpower, the set up to hear all the cases. That's why they go down, right down to even district level.*

**Tuan Pengerusi:** *That I think we have few recommendations later. Manpower will come to that.*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *Because— anyway, I'm just talking about the police, because he's talking about the police. The police are delegating right down to the district level. When the offences committed in the district level, then the district officer, the*



most senior of them will be appointed to hear the case. And of course, there will be hearing, even lawyer presentation, all allowed. And then they appeal will always go up to either the commissioner or the IGP and then direct to the Police Force Commission.

**Tuan Pengerusi:** So, coming back to our issue now. I think on this issue, like Mr. Peh you just pointed out which I didn't know that now in practice is the PFC doesn't actually do it, right?

**Encik Peh Suan Yong:** Because I think they have so many police. They are 130 over thousand police and PFC is just handful of persons. They are so many cases, I think it's almost impossible for them to hear all the cases.

**Tuan Pengerusi:** So, in other words the delegation has been working in practice? So, it shouldn't have post a problem if applied here, isn't it? So, I don't know. This is my view again is that we adopt what Prof. Shad has recommended in that— it has expressly been stated that the delegation is made to the IPCMC from the PFC. Your views?

**Encik Noor Rosidi bin Abdul Latif:** Yang Berhormat Sir, again— our concern is about delegation for time period whether it would last... [Disampuk] Atau ditarik balik? Once it tarik balik, IPCMC has no function.

**Tuan Pengerusi:** But even if say there is a regulation, like you suggested just now, would that be regular? Would that mean that delegation is law?

**Encik Peh Suan Yong:** Okay Yang Berhormat. I think that is something that we have to study because at the moment when we drafted the law, we think that 140(1) proviso is sufficient so we never even consider all these instrument of delegation. When I talked about instrument of delegation, I looked into the current practice now. The current practice is that PFC have delegated their disciplinary authority to the police force, by way of an instrument of delegation which is a subsidiary legislation. So, we may look, we may study this option. I would say that we can study this option which is actually the current practice.

**Tuan Pengerusi:** I think maybe that's what we can recommend here that the view of Prof. Shad is adopted, that the PFC delegates it to the IPCMC and further recommended that the delegation be reflected in an instrument of some sort, such as like in a way it has been done in currently where the PFC has delegated its power to the police force. Maybe that might be can – so, mungkin pengesyorannya adalah bahawa SPP menurunkan kuasa, how we say reduction in rank? Nak turun pangkat— menurunkan kuasa turun pangkat dan buang kerjanya kepada IPCMC dan penurunan kuasa tersebut dicerminkan di dalam satu instrumen dan atau peraturan seperti mana yang diamalkan sekarang di mana SPP— I think we can get the particular name of that instrument, right?

**Encik Peh Suan Yong:** Yang Berhormat, *actually for the moment I would recommend that one of the reasons is that usually when you have a delegation, after you delegate the power, you still actually can exercise the power. Whereas if you go under the proviso 140(1), they give up the power totally. Meaning that once the law is enforced, that's it. PFC has no more power. When you delegate the problem is that there is also this argument that the person whom delegated has the power, you also have the power.*

**Tuan Pengerusi:** *But then— that is why Prof. Shad recommended it expressly been stated.*

**Encik Peh Suan Yong:** *That is why we recommend that we just go on 140(1).*

**Tuan Pengerusi:** *But I think you know 140(1) they might rise a challenge isn't it on this issue of hire and fire.*

**Encik Peh Suan Yong:** *I think even if you follow Prof. Saleem's proposal there will also be challenged. I think anyone who get sacked probably he would take it to court.*

**Dr. Su Keong Siong:** *Mr. Chairman, can I just share my thought by expressing— having an express provision for delegation. Does it mean that we concede that proviso 140 is insufficient for Parliament to set up the IPCMC? I think that is very in pertinent question we have to take and be careful here. You concede SPP power to delegate, that means 140 proviso is not sufficient.*

**Tuan Pengerusi:** *Okay.*

**Dr. Su Keong Siong:** *So, maybe my recommendation is I think we do a recommendation based on power as Mr. Peh said, then we have a caveat to say that we should look into the powers of delegation. That's all. No suggest that we use that. Let the AG go into the detail then it would be better.*

**Encik Peh Suan Yong:** Yang Berhormat, *once we do it, the other side is going to submit that – look, even AG got no confidence in Article 140(1).*

**Tuan Pengerusi:** *Ya, I think it's valid concern. [Ketawa] No, no which means that you just go straightly on 140. [Disampuk] Then, we will go and makes it easier, isn't it? Instead of going around the bush, you just go under 140. I don't know whether that is already— ada syor kan? I think. [Disampuk] No, I think it's already there. Can we just double check. Ada?*

*So, this part— you look at 2.4. No, this is the recommendation of Prof. Shad. What I mean is there a syor by us— the bold one.*

**Beberapa Ahli:** *[Bercakap tanpa menggunakan pembesar suara]*

**Tuan Pengerusi:** 62.

**Seorang Ahli:** 3, 4, 5 lah. 3 we said we proceed with it, we didn't touch on the...

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**Tuan Pengerusi:** *Page what are you looking at now?*

**Dr. Su Keong Siong:** *Page 65 the old one.*

**Tuan Pengerusi:** *Number?*

**Dr. Su Keong Siong:** *Number 3.*

**Tuan Pengerusi:** *Oh, I see. I think the first number 3, isn't it?*

**Dr. Su Keong Siong:** *Ya, number 3.*

**Tuan Pengerusi:** *Mr. Peh, what do you think page 65 paragraph 3. Does that cover it?*

**Encik Peh Suan Yong:** *I think generally, it covers it.*

**Tuan Pengerusi:** *It is a general statement.*

**Encik Peh Suan Yong:** *It's a general statement. We just go forward and take into consideration all the other views.*

**Tuan Pengerusi:** *But I think we also should raise the concern isn't it for the AGC chambers to study. Isn't it?*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *[Bercakap tanpa menggunakan pembesar suara] But then the thing it is already in the report.*

**Tuan Pengerusi:** *What is in the report?*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *[Bercakap tanpa menggunakan pembesar suara] I mean about the concern. It is already in the report.*

**Tuan Pengerusi:** *Yes, yes. Correct, correct.*

**Dr. Su Keong Siong:** *[Bercakap tanpa menggunakan pembesar suara] It is already highlighted exactly 2.4.*

**Tuan Pengerusi:** *Yes, yes, actually ya that is right. So, I think selesai that issue. I wonder maybe if anybody wants to take a short break. This might be a good time. [Ketawa] Because I think there is a lot more. Maybe we can comeback in 15 minutes. I want to go to the Dewan for a while. Maybe about five...*

**Dr. Su Keong Siong:** *[Bercakap tanpa menggunakan pembesar suara] Maybe we finish off 4 or 5, then we go to B.*

**Tuan Pengerusi:** *No, we already done with this one.*

**Datuk Roosme binti Hamzah:** *Okey, we take until...*

**Dr. Su Keong Siong:** *Okay, break 15 minutes.*

**Tuan Pengerusi:** *5.20 p.m.*

**Datuk Roosme binti Hamzah:** *[Bercakap tanpa menggunakan pembesar suara] 5.20 p.m. come back.*

**Tuan Pengerusi:** *About 15 minutes. Now... [Disampuk] Quite a bit more.*

**Dr. Su Keong Siong:** *[Bercakap tanpa menggunakan pembesar suara] A lot more. B...*

**Tuan Pengerusi:** *There is quite a lot of issues.*

**Datuk Roosme binti Hamzah:** *[Bercakap tanpa menggunakan pembesar suara] We come back 5.20 Tuan Pengerusi? 5.20 p.m. or 5.30 p.m.?*

**Tuan Pengerusi:** *Okay, 5.30.*

**Datuk Roosme binti Hamzah:** *5.30 Yang Berhormat.*

**Tuan Pengerusi:** *Okay, 5.30.*

**Dato' Sri Azalina Othman Said:** *[Bercakap tanpa menggunakan pembesar suara] But for our position we assign dulu.*

**Tuan Pengerusi:** *That is why I want to get some— now, they are going to redo it, right?*

**Dato' Sri Azalina Othman Said:** *[Bercakap tanpa menggunakan pembesar suara] Sorry. Certain thing with objecting and...*

**Tuan Pengerusi:** *Ya, ya. Of course, you have to put on record.*

**Datuk Roosme binti Hamzah:** *[Bercakap tanpa menggunakan pembesar suara] Down there. Kita tengok yang...*

**Tuan Pengerusi:** *Let say for example you have— we have differing views among committee members. That must be reflected.*

**Datuk Roosme binti Hamzah:** *Yes.*

**Tuan Pengerusi:** *That must be reflected.*

**Datuk Roosme binti Hamzah:** *[Bercakap tanpa menggunakan pembesar suara] But we have to point out what yang mana yang...*

**Tuan Pengerusi:** *Like say you say A and I say B, then it has to be stated there. You know.*

**Datuk Roosme binti Hamzah:** *[Bercakap tanpa menggunakan pembesar suara] Then, we can just highlight that this matter all agree except...*

**Dr. Su Keong Siong:** *Can I just threw out aloud as a suggestion, whether maybe the dissenting view put in a report by the minority.*

**Datuk Roosme binti Hamzah:** *Usually the procedure is we have to agree on one report. However, within the report...*

**Dr. Su Keong Siong:** *Ya. Within the report there have the dissenting view.*

**Datuk Roosme binti Hamzah:** *No, no.*

**Dr. Su Keong Siong:** *No?*

**Datuk Roosme binti Hamzah:** *Kalau dissenting view, there is two reports. What I am saying is kalau within the report, there is which elements which is not being agreed upon.*

**Dr. Su Keong Siong:** *Oh, I see.*

**Datuk Roosme binti Hamzah:** Kata macam fasal-fasal yang ini tidak agree. *If not, we don't have any more time to put in...*

**Dato' Sri Azalina Othman Said:** *[Bercakap tanpa menggunakan pembesar suara] Because our position [Tidak jelas] clear. The PDRM points, all the points that we have visit.*

**Tuan Pengerusi:** *So, you are...*

**Dato' Sri Azalina Othman Said:** *[Bercakap tanpa menggunakan pembesar suara] So, every paragraph you can take their letter, the paragraph I put below the subject matter because their position the same....*

**Tuan Pengerusi:** *[Bercakap tanpa menggunakan pembesar suara] No. But you are going to put your agreement to that view as well, right.*

**Dato' Sri Azalina Othman Said:** *[Bercakap tanpa menggunakan pembesar suara] To all their views because instruction I've got...*

**Tuan Pengerusi:** *[Bercakap tanpa menggunakan pembesar suara] Then, maybe you can do a blanket kind of flaws.*

**Dato' Sri Azalina Othman Said:** *[Bercakap tanpa menggunakan pembesar suara] Ya, then you can put for I don't know...*

**Tuan Pengerusi:** *[Bercakap tanpa menggunakan pembesar suara] You don't have to do one by one. You can do a blanket...*

**Dato' Sri Azalina Othman Said:** *[Bercakap tanpa menggunakan pembesar suara] Then you put and say we are in support of PDRM.*

**Datuk Roosme binti Hamzah:** *So, maybe Tuan Mohamad Onn you discuss on matters—now mungkin Yang Berhormat Santubong pun sama, kan?*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *Dia macam inilah Tuan Pengerusi. Saya daripada awal lagi saya hendak yang macam IOPC, bukan yang macam IPCMC macam yang ada sekarang ini. Jadi our stand still remain the same. Jadi dia monitoring body dan ada hak untuk memaksa polis untuk menjalankan disiplin selepas diselidik oleh pihak IPCMC. Jadi, tahap itu. Jadi itulah pada saya, all the reports it doesn't matter for us...*

**Datuk Roosme binti Hamzah:** *So bermakna Yang Berhormat Santubong...*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *...Because we can accept the report just like that.*

**Datuk Roosme binti Hamzah:** *Macam mana?*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *Without accepting the method or rather your suggestion.*

**Datuk Roosme binti Hamzah:** Tidak. Maksudnya dari segi *report* ini, kira macam Yang Berhormat Santubong *is not agreeable*, berkecuali daripada...

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *No*. Kalau *substantive* itu masih kita tidak boleh bersetujulah sebab dia...

**Tuan Pengerusi:** [*Bercakap tanpa menggunakan pembesar suara*] Mungkin itu boleh dibetulkan dalam satu perenggan, *then you can say that is your stand. That's fine what*.

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** Ya.

**Datuk Roosme binti Hamzah:** *Maybe Chairman, at the end* dekat rumusan kita akan mengatakan Yang Berhormat Santubong tidak bersetuju kepada...

**Tuan Pengerusi:** *No, it must be reflected your particular stand. It must be reflected*.

**Datuk Roosme binti Hamzah:** *Overall, overall*.

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *Our stand* macam ini, *very simple* kalau dapat *take note*.

**Datuk Roosme binti Hamzah:** Taip *please*. Taip, taip, taip. Sebenarnya nanti kita senang nak...

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** Kita punya *stand* adalah kita hendak modul macam Hong Kong punya, macam UK punya iaitu *it is a monitoring body then...*

**Datuk Roosme binti Hamzah:** *Monitoring body*.

**Tuan Pengerusi:** [*Bercakap tanpa menggunakan pembesar suara*] *You come to the UK one*.

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *Yalah. I know that. That is why I am not objecting seriously on your report. It is just a report, your recommendation. So, doesn't matter to us. But as far as our stand is concern, that remain the same. We would like it to be like Hong Kong and like a ...*

**Datuk Roosme binti Hamzah:** *Just a monitoring body only*.

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *Yes, monitoring body*.

**Datuk Roosme binti Hamzah:** *Okay*.

**Dato' Sri Azalina Othman Said:** *DN lain. DN is exactly what PDRM suggesting*.

**Datuk Roosme binti Hamzah:** *Okey, kalau macam...*

**Dato' Sri Azalina Othman Said:** *Poin PDRM itu, poin yang kita samalah*.

**Datuk Roosme binti Hamzah:** *Okey, bermakna Yang Berhormat Pengerang agree* kepada *points* PDRM sahaja yang seperti yang dikemukakan oleh...

**Dato' Sri Azalina Othman Said:** [*Bercakap tanpa menggunakan pembesar suara*] *...Constitutional, if you want to break down, you can exert it out*.

**Datuk Roosme binti Hamzah:** Seperti yang telah dikemukakan oleh Ketua Polis Negara.

**Dato' Sri Azalina Othman Said:** *[Bercakap tanpa menggunakan pembesar suara] No, PDRM.*

**Datuk Roosme binti Hamzah:** *Overall?*

**Dato' Sri Azalina Othman Said:** *[Bercakap tanpa menggunakan pembesar suara] Which is the better?*

*[Ahli-ahli berbincang sesama sendiri]*

**Dato' Sri Azalina Othman Said:** *[Bercakap tanpa menggunakan pembesar suara] ...Constitutional, all the paragraph the same point Yang Berhormat. The same point we will bring it in debate.*

**Tuan Pengerusi:** *[Bercakap tanpa menggunakan pembesar suara]*

**Dato' Sri Azalina Othman Said:** *This is an objecting view.*

**Datuk Roosme binti Hamzah:** *There are many objecting views.*

**Dr. Su Keong Siong:** *[Bercakap tanpa menggunakan pembesar suara] PDRM is not objecting to IPCMC...*

**Dato' Sri Azalina Othman Said:** *[Bercakap tanpa menggunakan pembesar suara]*

**Datuk Roosme binti Hamzah:** *You have to look at it, clause by clause.*

**Dr. Su Keong Siong:** *[Bercakap tanpa menggunakan pembesar suara] No, they are not objecting. They only saying hanya...*

**Tuan Pengerusi:** *[Bercakap tanpa menggunakan pembesar suara] Dengan syarat.*

**Dr. Su Keong Siong:** *[Bercakap tanpa menggunakan pembesar suara] Ya.*

**SAC Dato' Mohd Azman bin Ahmad Sapri:** *No, no. The last paragraph 10. This is the IGP said PDRM terima— we accept the IPCMC as oversight body as what have been applied by IOPC. That mean oversight body only.*

**Datuk Roosme binti Hamzah:** *Oversight.*

**Dato' Sri Dr. Haji Wan Junaidi bin Tuanku Jaafar:** *Macam saya katalah...*

**SAC Dato' Mohd Azman bin Ahmad Sapri:** *They do not have disciplinary power, only have the disciplinary control. The investigation will refer— the findings of investigation will refer to IPCMC.*

**Dato' Sri Azalina Othman Said:** *So, they want to take out just for discipline. Manakala yang lain itu dia hendak bagi balik. I think that is the elaboration PDRM kan as an oversight body, kan?*

**Tuan Pengerusi:** *[Bercakap tanpa menggunakan pembesar suara] Okay, we'll come back at 5.30.*

**Dato' Sri Azalina Othman Said:** *KDN shares the same thing. KDN.*

*[Ahli-ahli berbincang sesama sendiri]*

**Datuk Roosme binti Hamzah:** *This won't be agreeable for the Yang Berhormat kalau ayat macam ini Yang Berhormat Pengerang because Yang Berhormat Santubong dah nak pergi.*

**Tuan Pengerusi:** Yang Berhormat Pengerang. *Question.*

**Dato' Sri Azalina Othman Said:** Ya, ya. *Sorry what?*

**Datuk Roosme binti Hamzah:** Kalau letak macam itu sahaja, isu. Ini secara *overall* nanti kalau *part* rumusan.

**Tuan Pengerusi:** *What is it mean* mengambil pendirian berkecuali?

**Encik Wan Ahmad Syazwan bin Wan Ismail [Ketua Penolong Setiausaha, Seksyen Pengurusan Kamar Khas, Bahagian Pengurusan Dewan Rakyat, Parlimen Malaysia]:** *Not support the...*

**Datuk Roosme binti Hamzah:** Tidak berkecualilah. Tidak bukan. Tidak berkecuali.

**Dato' Sri Azalina Othman Said:** *[Bercakap tanpa menggunakan pembesar suara]* Bukan tidak berkecuali. Menyokong dengan bersyarat....

**[Mesyuarat ditempokkan pada pukul 5.08 petang]**

*[Mesyuarat disambung semula pada pukul 5.43 petang]*

**Tuan Pengerusi:** *The next* bahagian is on the...

**Seorang Ahli:** B.

**Tuan Pengerusi:** *Wait, let me just go further down. I think for this next* bahagian which is at page 66 or 65, Kajian Model Badan Pemantau Luar Negara. *Again, this are the* pandangan of all the various stakeholders. *And I think, I don't see any problem with that. Maybe we can go to the syor at page 69. Paragraph 7 to 12.*

*So, the first para 7 is the "Jawatankuasa setuju dan mengesyorkan supaya para pegawai IPCMC diberi kursus latihan asas siasatan wajib bagi setiap pengambilan pegawai siasatan baharu, pertambahan sumber tenaga manusia dan ruang pejabat yang bersesuaian." I think there is no issue with that. That is more to do with training.*

*The next one...*

**Seorang Ahli:** *[Bercakap tanpa menggunakan pembesar suara]*

**Tuan Pengerusi:** *Yes, the next one refers to the IOPC which we will come to shortly. Paragraph 9, "Jawatankuasa bersetuju dan mengesyorkan supaya IPCMC mewakili kuasanya untuk menolak aduan di bawah subfasal 25(d) kepada mana-mana pegawai IPCMC bagi*



*mengelakkan anggapan orang awam berhubung dengan keterlibatan pesuruhjaya dalam proses siasatan. Melalui perwakilan kuasa itu, tempoh penyelesaian aduan dapat disingkatkan dan pesuruhjaya boleh memberikan tumpuan kepada pendengaran kes-kes tatatertib salah laku anggota PDRM sekali gus meningkatkan...". This I don't really understand. This particular syor.*

**Tuan Mohamad Onn bin Abd. Aziz:** Kalau di UK, *they don't have commissioner anymore*. Oleh sebab sebelum itu, IPCC *they have commissioner*. So, untuk kes itu didengar oleh *commissioner*, dibawa di hadapan *commissioner*. *Commissioner* ini adalah lantikan luar. Jadi, di situ akan berlaku – pertamanya, dari segi kebebasan dan yang kedua, dari segi kelewatan. Oleh sebab di situ berlaku kelewatan yang sangat ketara. Oleh sebab itu apabila IOPC diperkasakan pada tahun 2018, mereka tiada lagi *commissioners*.

So, dalam konteks kita di IPCMC ini, subfasal 25(d) itu menyatakan bahawa pegawai-pegawai siasatan IPCMC apabila membuat keputusan untuk menolak sesuatu aduan, kami perlu *refer* kepada *commissioner*, untuk *commissioner* putuskan. So, *commissioner* kalau dia mesyuarat sebulan sekali atau dua minggu sekali, secara tidak langsung pengadu akan berlaku kelewatan.

Satu lagi kita kuarir *commissioner* ini akan— *independence* dia itu akan menjadi persoalan. Oleh sebab apa? Siasatan kami yang buat. Katakanlah kami tolak sesuatu siasatan itu, *commissioner* kata *no*, dia hendak *proceed* tetapi atas sebab-sebab yang berbeza itu berlaku di UK. Apabila kami mengadakan perbincangan dengan mereka, dia kata di UK sudah tidak ada lagi.

So, di sini apa yang kami cadangkan adalah bukanlah untuk memotong ataupun menidakkan kuasa *commissioner*, tetapi kami minta supaya kuasa-kuasa di-*delegate*-kan kepada *committee*. Itu berlaku di UK juga pun. Mana-mana kuasa yang melibatkan *optional*, kuasa itu dijalankan oleh pesuruhjaya tetapi awal-awal lagi telah pun di-*delegate*, turunkan kuasa kepada pegawai-pegawai IOPC.

Dalam konteks ini, ia punya proses perjalanan operasi itu akan lebih cepat dan efisien.

**Tuan Pengerusi:** *Okay, so...*

**Tuan Mohamad Onn bin Abd. Aziz:** Maklumat itu saya dapat daripada IOPC dan saya yakin itu mungkin boleh membantu IPCMC nanti Yang Berhormat.

**Tuan Pengerusi:** *So, that means delegation* ataupun penurunan kuasa ini adalah kepada mana-mana pegawai IPCMC?

**Tuan Mohamad Onn bin Abd. Aziz:** Ya, saya. Akan tetapi untuk yang ini kami *refer* kepada subfasal 25(d), kuasa untuk menolak aduan. Sebagai contoh, kes-kes yang melibatkan— contoh sekarang ini katakanlah IPCMC akan kendalikan kes PDRM, kes melibatkan PBT.

**Tuan Su Keong Siong:** Jadi, daripada subfasal 25(d) itu...

**Tuan Pengerusi:** *Subsection 25(d).*

**Tuan Su Keong Siong:** Satu hingga empat itu, skop aduan-aduan yang ditolak itu tidak perlu dirujuk kepada suruhanjaya? Pegawai itu yang boleh terus buat. Jadi, yang “*Jawatankuasa aduan hendaklah mengesyorkan kepada Suruhanjaya untuk menolak...*”, kita ambil keluar klausa itulah.

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**Tuan Pengerusi:** Ambil keluar klausa (d).

**Dr. Su Keong Siong:** *(d) the last paragraph.*

**Tuan Mohamad Onn bin Abd. Aziz:** Kita *delegate* kan, kita turun kuasa.

**Dr. Su Keong Siong:** ... Pegawai IPCMC *can check and decide* lah.

**Datuk Roosme binti Hamzah:** *[Bercakap tanpa menggunakan pembesar suara]*

**Tuan Mohamad Onn bin Abd. Aziz:** Betul itu.

**Tuan Pengerusi:** Ini untuk...

**Seorang Ahli:** *To define (d)...*

**Tuan Pengerusi:** Ya. Untuk aduan bersifat remeh.

**Tuan Mohamad Onn bin Abd. Aziz:** Ya.

**Datuk Roosme binti Hamzah:** *The whole thing?*

**Tuan Mohamad Onn bin Abd. Aziz:** *The whole thing.*

**Datuk Roosme binti Hamzah:** *The whole thing. (b) 105.*

**Tuan Mohamad Onn bin Abd. Aziz:** Ini sebab apa berlaku? Berdasarkan pengalaman kami di IC, kes-kes yang begini, kadang-kadang kami tidak boleh hendak tolak untuk masa – jadi pengadu *complained* kenapa hendak tolak pun ambil masa yang lama. Dia tunggu, tunggu, tunggu, akhirnya dia dapat tahu tolak. Sedangkan kami boleh buat cara yang lebih mudah dan satu lagi cara yang kita fikirkan ialah bila kita mengambil yang syor nombor 8 itu Tuan Pengerusi, kita mengambil mekanisme daripada IOPC, *Statutory Guidance* yang mana seperti mana syor daripada PDRM, kita ada *notifiable complaint, reportable complaint*, itu di Hong Kong. Kalau di IPC, *referrals* dengan *conduct*. So, macam kalau polis lambat jalankan siasatan, tidak akan IPCMC hendak siasat kes macam itu. So, kami boleh terus buat *referrals*. Ini contoh yang ini untuk syor nombor 8 lah. So mana-mana yang kami boleh mempercepatkan, kami akan mempercepatkan. Kalau tidak jumlahnya akan terlampau banyak. Saya rasa mungkin bagi ketidakadilan kepada anggota PDRM.

**Tuan Pengerusi:** Akan tetapi ini hanyalah untuk aduan remeh.

**Tuan Mohamad Onn bin Abd. Aziz:** Ya, saya. Remeh. 25 (d) (i), (ii),(iii), (iv) itu. Kadang-kadang yang *dispose*, mahkamah sudah *dispose* pun, tetapi kes-kes yang *very straightforward* lah.

**Tuan Pengerusi:** Okey.

**Tuan Mohamad Onn bin Abd. Aziz:** Apa kami akan buat Tuan Pengerusi, setiap bulan, perkara ini kami akan buat *report*, kami akan hantar kepada *commissioner* untuk dia tengok semula dan dia boleh panggil semula kes itu, tidak ada masalah.

**Tuan Pengerusi:** Okey, so 10 juga, untuk meminda fasal 13, *which is...*

**Tuan Mohamad Onn bin Abd. Aziz:** Itu pindaan dalam jawatankuasa, Tuan Pengerusi. Sebelum ini fasal 13 tiada perundangan kuasa kepada mana-mana pegawai IPCMC. Sebaliknya dia sebut anggota. Jadi, anggota situ mungkin boleh bermaksud pesuruhjaya, *commissioners*.

**Tuan Pengerusi:** Sini ada tiga, bukan. Mana-mana anggota suruhanjaya, mana-mana jawatankuasa atau mana-mana anggota pasukan polis; subfasal (b) dan (c) itu, *I think* suruhanjaya bermaksud *commission* lah. Itu tidak ada masalah tetapi dengan jawatankuasa, mana jawatankuasa yang dirujuk?

**Tuan Mohamad Onn bin Abd. Aziz:** Kita ada *Complaints Committee*. Kita ada jawatankuasa yang ditubuhkan di bawah Akta IPCMC nanti. Akan...

**Tuan Pengerusi:** Adakah itu ditakrifkan...?

**Tuan Mohamad Onn bin Abd. Aziz:** ...Boleh menubuhkan jawatankuasa. Yang ada yang spesifik ada, *Complaints Committee*. [Disampuk] Halaman 18 Yang Berhormat. Seperti saya katakan tadi, dia boleh menubuhkan tetapi nama spesifik tidak ada lagilah.

**Tuan Pengerusi:** *Which one?*

**Tuan Mohamad Onn bin Abd. Aziz:** Dia bergantung kepada keperluan.

**Dr. Su Keong Siong:** ...*The commissioner, the power to set up the committee*. Seperti Jawatankuasa Aduan ini, hanya akan ditubuhkan di bawah fasal 18? *Am I right or no?*

**Tuan Mohamad Onn bin Abd. Aziz:** Dia ada spesifik *provision* Yang Berhormat. *Complaints Committee*. Fasal 23 Yang Berhormat.

**Tuan Pengerusi:** Jawatankuasa ini, *just* untuk *clarification, composition*-nya, ahli-ahlinya akan terdiri daripada ahli-ahli suruhanjaya. *Is that right?* Adakah itu *clear?*

**Encik Peh Suan Yong:** [Bercakap tanpa menggunakan pembesar suara]

**Tuan Pengerusi:** *Who are the officers of the commission?*

**Encik Peh Suan Yong:** *Officers of the commission means their staff. It can be anyone....*  
[Bercakap tanpa menggunakan pembesar suara]

**Tuan Mohamad Onn bin Abd. Aziz:** *Relating to fasal 18(2) kah?*

**Tuan Pengerusi:** Ya. “*Suruhanjaya boleh melantik mana-mana anggotanya untuk menjadi pengerusi suatu jawatankuasa*”. Mana-mana anggotanya.

**Tuan Mohamad Onn bin Abd. Aziz:** So, anggota ini *commissioner*, yes.

**Tuan Pengerusi:** *The commission may elect any of its members to be the chairman. Any of its members, not staff. Must be members, right, of the commission. That means the jawatankuasa terdiri daripada anggota, members sahaja lah. So, we go back just now to clause 13.*

**Tuan Mohamad Onn bin Abd. Aziz:** Kalau tadi dia boleh dianggotai oleh pegawai IPCMC tetapi daripada segi pengurusinya adalah *board members*.

**Tuan Pengerusi:** Kepada (c), fasal 13(1)(c). *I think* ini mungkin ada bantahan. “*The Commission may delegate its function and powers to any member of the police force*”. *That means you are delegating it back to the police. That defeats the purpose of the IPCMC, isn't it?*

**Tuan Mohamad Onn bin Abd. Aziz:** Tuan Pengerusi, tujuan utama kami, penggubalan peruntukan sedemikian adalah untuk membolehkan siasatan kes-kes salah laku kecil disiasat oleh...

**Tuan Pengerusi:** Akan tetapi itu tidak di— tidak jelas, kan?

**Tuan Mohamad Onn bin Abd. Aziz:** *It is not clearly spelled out* dalam perkara ini.

**Tuan Pengerusi:** *That is what I am saying.*

**Tuan Mohamad Onn bin Abd. Aziz:** Oleh sebab itu, dalam pindaan 24 itu, 24 pindaan dalam Jawatankuasa itu, kita telah spesifik beritahu bahawa kita boleh merujuk kepada ketua jabatan untuk dia mengambil tindakan kes salah laku kecil. Kita akan pergi kepada pindaan nanti, Tuan Pengerusi. Akan tetapi di sini saya akui memang tidak jelas tetapi yang dimaksudkan, yang diniatkan, itulah dia.

**Tuan Pengerusi:** Akan tetapi, *so in other words*, kes-kes kecil boleh dirujuk balik kepada polis.

**Tuan Mohamad Onn bin Abd. Aziz:** Sahih, Tuan Pengerusi.

**Tuan Pengerusi:** *I think that...*

**Dato' Sri Azalina Othman Said:** *Defeats the purpose.*

**Tuan Pengerusi:** *Defeats the purpose. That is the issue, isn't it?*

**Tuan Mohamad Onn bin Abd. Aziz:** Macam di UK pun, di IOPC, dia ada *referrals*. Kalau kes-kes kecil— macam dia cuma kendalikan kes yang *serious injury*, yang penjara tujuh tahun ke atas, itu dia klasifikasi *whatnot*. Kalau kes-kes yang kecil-kecil Tuan Pengerusi, dia serah semula kepada...

**Dato' Sri Azalina Othman Said:** Akan tetapi masalahnya yang kecil-kecil itu, yang nakal itu kadang-kadang. *[Ketawa] I do not know because probably the public will question.*

**Tuan Mohamad Onn bin Abd. Aziz:** Ya, ya.

**Dato' Sri Azalina Othman Said:** *I do not know.*

**Tuan Pengerusi:** *There might be a...*

**Dato' Sri Azalina Othman Said:** *They will have a question mark.*

**Tuan Pengerusi:** *Because that* itu masalah lah. *Because I understand* kalau even kecil, say for example tidak mengambil tindakan terhadap laporan, itu adalah satu aduan yang common. So, adakah itu satu kesalahan kecil?

**Tuan Mohamad Onn bin Abd. Aziz:** Setakat ini kita belum kategorikan lagi tetapi kalau kita hendak buat *comparative study*— di UK itu adalah dalam konteks kesalahan kecil tetapi sekarang ini kita kena siasat. Perkara itu dia *cover* banyak daripada aduan yang kami terima sebenarnya, aduan kes-kes kelewatan siasatan ini.

**Tuan Pengerusi:** *Because* macam kes-kes di mana laporan tidak disiasat atau di – *you know, not done anything.* Itu menyebabkan banyak aduan dibuat. So, kalau kita hantar balik kepada polis untuk siasat perkara itu, *then, I think ...*

**Tuan Mohamad Onn bin Abd. Aziz:** Tuan Pengerusi, kalau saya hendak beritahu kenapa. Sebenarnya daripada segi, kita ada masalah— bukan masalah. Kita menghadapi isu *manpower*. Kalau kita *compare* di UK, dia ada 1,000 anggota yang *cover* 120,000 anggota polis di sana. Daripada 1,000 ahli-ahli IOPC itu, 448 adalah *investigators*. Sedangkan kami sekarang ini cuma ada seramai 18 orang, 130,000 dan bila kami mohon pertambahan jawatan pun, kami cuma tekan tambah jadi 45 orang. *Not even 10 percent* daripada jumlah yang ada di UK. Akan tetapi tidak apa, sebab kita kena bermula.

Sebab itu maknanya kes-kes kami cuma hendak cuba kalau boleh yang paling utama IPCMC ini adalah menjalinkan hubungan yang baik dengan JIPS tadi dan juga PDRM. So, *instead of* kita berpersepsi antara satu sama lain, saya tengok di UK, dia mempunyai hubungan yang baik antara PDRM dengan juga IOPC. So, bila hubungan baik itu dapat berjalan, so masalah untuk dapatkan dokumen tidak bangkit, semua tidak bangkit Tuan Pengerusi. So, di situ yang saya nampak perlu kita semai, jalinkan hubungan yang baik antara IPCMC dengan PDRM. Kalau kita dapat *tackle* isu itu walaupun jumlah pegawai kita ini tidak ramai, kita boleh *delegate* dan kita boleh pantau. Macam di IOPC, dia boleh *direct* dan dia boleh *observe*. Itu kuasa-kuasa tidak ada dalam akta kita ini. Kita cuma hendak jadi *[Tidak jelas]* sahaja tetapi kalau itu dikatakan tidak berperlembagaan, kita serahkan kepada kerajaan.

Akan tetapi saya hendak menjawab soalan Tuan Pengerusi tadi, kita ada masalah *manpower*. Itu sahaja.

**Tuan Pengerusi:** Bukankah— boleh kita *recommend* agar meningkatkan *manpower*?

■1800

**Tuan Mohamad Onn bin Abd. Aziz:** Saya rasa JPA nanti mempunyai polisi mereka sendiri. Kerajaan hendak mengurangkan saiz dan kita pun tidak mahu Tuan Pengerusi nanti kalau kita ramai-ramai sangat pegawai, kita tidak boleh hendak *control*. Kalau boleh kita hendak— *we want to start slow* dahulu. Bagi *impact and then from that* kita *move on*.

**Tuan Pengerusi:** *But, how to move on, to pindah nanti?*

**Tuan Mohamad Onn bin Abd. Aziz:** Bukan, kita *slowly* kita buat. Pertama Tuan Pengerusi, bila IPCMC ini ada, saya yakin *perception of being caught* to akan bermain dalam kalangan anggota polis. *So, hopefully they try to reduce their punya numbers. Means that IGP* pun saya rasa serius dalam tindakan untuk mengurangkan tatatertib. *So, mungkin itu pun juga* boleh membantu.

**Tuan Pengerusi:** *What do you think? What are your views?*

**Tuan Larry Soon @ Larry Sng Wei Shien [Julau]:** *Chairman, my view on this issue is that respect to this issue on 13(c), I think it is best to remove it actually. For the reason why is because it leads to ambiguity.*

**Tuan Pengerusi:** *Leads to...*

**Tuan Larry Soon @ Larry Sng Wei Shien:** *I mean it leads to interpretation actually. But of course, we take into view of what has been mentioned by our friend from SIAP. I think in terms of practicality issue and the lack of police force or personnel, that would be address in the separate issue. But in terms of law, I think it is best that we remove 13(c), so there is no room for ambiguity or misinterpretation.*

**Tuan Pengerusi:** Yang Berhormat, *what do you think?*

**Dr. Su Keong Siong:** *I think I tend to agree because if you refer back to the police again, the independence is gone as if we recommend that the punishment part is taken out. So, the investigation part must be solely handled by I think the commissioner.*

**Tuan Pengerusi:** Apakah pindaan Encik Onn? Pindaan kepada— tadi ada pindaan untuk klausa ini kan?

**Tuan Mohamad Onn bin Abd. Aziz:** Ya, ya.

**Tuan Pengerusi:** *What is the pindaan? Can we have a look to it?*

**Tuan Mohamad Onn bin Abd. Aziz:** Oh, yang itu kita tambah. Penurunan kuasa kepada pegawai IPCMC. Sebelum ini anggota yang merujuk kepada pesuruhjaya. *Yes.*

**Dato' Sri Azalina Othman Said:** *[Bercakap tanpa menggunakan pembesar suara]* Tetapi *you* tolak kes kepada polis.

**Tuan Pengerusi:** Ya. *It does not make sense to me* lah.

**Dato' Sri Azalina Othman Said:** *[Bercakap tanpa menggunakan pembesar suara]* ... *On one hand* *you* kata tak boleh ada polis, IGP dengan *retired* tidak boleh.

**Datuk Roosme bint Hamzah:** *Mic, mic.*

**Dato' Sri Azalina Othman Said:** Tidak ada polis, IGP dengan *retired*, tak boleh. *Then, I raised this thing* kenapa *you have this clause?* Although I understand your justification lah sebab *you want to push all the kes-kes* yang dianggap kecil ini kan, itu satu lah. Nombor dua, saya rasa tidak ada kes yang boleh dianggap kecil. *I think that is the wrong perception* lah. Mungkin rakyat hendakkan IPCMC *on the basis that they want it to be really independent. That is my view.*

**Tuan Pengerusi:** Akan tetapi— *sorry. I am looking at the pindaan.* Adakah pindaan kepada klausa (c)? *To any officer, is it?*

**Tuan Mohamad Onn bin Abd. Aziz:** Ada, ada di saya.

**Tuan Pengerusi:** Tidak ada kan?

**Tuan Mohamad Onn bin Abd. Aziz:** Ada, ada. Fasal 13.

**Tuan Pengerusi:** *By renumbering the existing paragraph* (c) kepada (d).

**Tuan Mohamad Onn bin Abd. Aziz:** *After that.*

**Tuan Pengerusi:** So, (d) tidak ada apa pindaan kan? So, (c) sekarang jadi (d) dan itu sahaja pindaan kan? Tidak ada pindaan substantif kepada (d) kan?

**Tuan Mohamad Onn bin Abd. Aziz:** *No,* dengan memasukkan selepas perenggan (b), perenggan yang berikut, *the new* (c).

**Tuan Pengerusi:** *Okay, fair enough* tetapi berkenaan dengan *our current* (c) *now, which is— I look at the Malay version* lah. Okey, kalau kita lihat kepada *the current* (c) sekarang, 13(1)(c) sudah sekarang dipinda kepada (d), *right?* So, (d) itu— yang dipinda itu— so, ada empat klausa lah? (a), (b), (c), dan (d) lah? *So, this* (c) *becomes the last one,* (d) kan? So, (d) ini tidak ada apa-apa pertukaran kan? Sama juga kan? *So, that means* tidak ada pindaan kepada mana-mana anggota pasukan polis lah. So, itu masalahnya.

**Tuan Mohamad Onn bin Abd. Aziz:** Kalau saya boleh *reply* kepada Tuan Pengerusi dan Yang Berhormat Pengerang tadi, kenapa *delegation* ini nampak macam— betul lah, mungkin kalau kita tidak hendak IGP dan *ex-police* terlibat, kenapa sekarang ini kita hendak wakikan kuasa pula? Ini kerana sekarang berbangkit sewaktu pihak PDRM mengatakan apa akan jadi

dengan JIPS. So, bila IPCMC ambil alih semua kuasa, so JIPS sudah tidak relevan lagi. So, JIPS sudah tidak boleh buat siasatan kes tatatertib, semua tidak boleh, habis. As *good as* tidak ada.

Oleh sebab itu dalam konteks ini, kami cuba hendak mengimbangi dan cadangkan supaya kes-kes yang bersifat kecil itu, *with due respect*, mungkin ada pandangan yang berbeza, *it is okay*, kita bagi semula kepada PDRM. Dia okey pada waktu itu tetapi itulah dia punya punca kenapa kita *delegate*-kan kepada itu. Kalau tidak JIPS memang tidak relevan.

**Tuan Pengerusi:** Saya sedar bahawa di bawah IOPC ada *definition* berkenaan kes berat, *seven years and above and so on* lah kan? Adakah kita ada *definition* seperti itu dalam *bill* ini?

**Tuan Mohamad Onn bin Abd. Aziz:** Tidak ada.

**Tuan Pengerusi:** So, kalau tidak ada *then* macam mana kita akan tahu apa dia kes kecil dan kes besar?

**Tuan Mohamad Onn bin Abd. Aziz:** Oleh sebab itu, dalam pindaan fasal 22(2) itu nanti, Yang Amat Berhormat Perdana Menteri akan klasifikasikan kes-kes yang bersifat kecil. Untuk itu, kami memang perlu berbincang dengan PDRM untuk kita kenal pasti.

**Tuan Pengerusi:** *That means* andai katalah kita terima (c) ini sekarang, mana-mana anggota pasukan polis, *I think first and foremost*, ianya menunjukkan bahawa fungsi IPCMC pergi balik kepada polis. Boleh menunjukkan itu kan?

**Tuan Mohamad Onn bin Abd. Aziz:** Yes, betul. Untuk yang kecil...

**Tuan Pengerusi:** So, sekiranya kita hendak terima ini memandangkan masalah JIPS jadi relevan dan sebagainya, *then* perlu dinyatakan secara ekspres kan bahawa hanya untuk kes-kes kategori A. *Then*, itu perlu diberi definisi kan? *If at all we accept this clause*.

**Tuan Mohamad Onn bin Abd. Aziz:** Saya minta pandangan dari AG Chambers lah.

**SAC Dato' Mohd Azman bin Ahmad Sapri:** Tuan Pengerusi, *explain* sikit ya Tuan Pengerusi. *I think the original provision 22(2) says that*, walau apa pun kesalahan yang *not in the scope of misconduct, will be monitored by IGP under the IG Standing Order 1996 and 97 of Police Act where the Yang di-Pertuan Agong can make a regulation and IGP can make the IGP Standing Order*. So, *in that standing order, we have the administrative misconduct. It shall be monitored by IGP*. So, *that is why if the 13(c) have been removed, so the police have no power at all to function as disciplinary control*.

**Tuan Pengerusi:** *My concern is, if you just leave it as it is now, its look as though any offence can go back that to the police isn't it? I think that— we cannot accept that, otherwise there is no point having the IPCMC*.

**Dr. Su Keong Siong:** *I agree. I think I agree here because when you delegate the powers of the commission to anggota polis, it defeats the whole set thing ready. Even section 6 you said,*



no anggota pesara will— now you said that you can delegate any powers to them. I mean even though the intention adalah untuk salah laku kecil but it's not mentioned.

**Dato' Sri Azalina Othman Said:** I think for PDRM argument is that police do not have power at all. Then no point even having IGP and all that because there is no power. See, it is a dilemma, I think. Unless you describe-lah what kind of kesalahan. That is one option.

**Tuan Pengerusi:** It has to be-lah. There has to be some kind of definition like the IOPC where there is.

**Dato' Sri Azalina Othman Said:** You will say this and then okay-lah.

**Tuan Pengerusi:** So, how do we overcome this now?

**Dato' Sri Azalina Othman Said:** There is a good point between— dia kata administrative and— there are two kinds of failures, kan? They break it up. That is quite good because it is much easier to understand.

**Tuan Mohamad Onn bin Abd. Aziz:** Macam contoh kalau polis rambut panjang, kasut dan datang lewat, *that one* kita tidak perlulah.

**Dato' Sri Azalina Othman Said:** Kacau bini orang kah.

**Tuan Mohamad Onn bin Abd. Aziz:** [Ketawa]

**Tuan Pengerusi:** Itu *just* dapat tukang rambut datang lah.

**Dato' Sri Azalina Othman Said:** Potong rambutlah.

**Tuan Pengerusi:** Selesai. [Ketawa]

**Tuan Pengerusi:** I think for purposes of the pengesyoran sekarang, we have to – if this is to be— I think we have to state that it has to be deleted— this is my view— but if accepted then there must be qualification of some sort. Otherwise it does not make sense.

**Dato' Sri Azalina Othman Said:** Sorry Chairman, I think KDN representative is here, a legal advisor kan? KDN. Can I just ask a question regarding your position on this? It is because we heard PDRM on the oversight but what about KDN? Thank you.

**Tuan Pengerusi:** So, I think— sorry...

#### ■1810

**Dr. Su Keong Siong:** Can I just make a suggestion here, 13(1)(d) as amended. I think we have to take it out. Why cannot we put that into the fasal 29, the new one where— I just read here, “Jika aduan melibatkan mana-mana salah laku kecil, aduan itu hendaklah dirujuk kepada ketua jabatan ataupun anggota-anggota pasukan polis.” I think that will settle everything.

**Tuan Pengerusi:** Which one? Seksyen?

**Dr. Su Keong Siong:** Seksyen 25(d), new one, amended. Because it does give power to refer to ketua jabatan for salah laku kecil. We just add on to it for anggota pasukan...

**Dato' Sri Azalina Othman Said:** *[Bercakap tanpa menggunakan pembesar suara] ...Ya, I know but then again if you debate again, you request it again because...*

**Dr. Su Keong Siong:** *[Bercakap tanpa menggunakan pembesar suara] ...At least it is clear that...*

**Dato' Sri Azalina Othman Said:** *[Bercakap tanpa menggunakan pembesar suara] ...I think that is where the conflict is lah because I think basically on your side because there is still the purpose of separating that kind of complaints, kan? Kalau tidak I think their problem manpower, I think basically on...*

**Dr. Su Keong Siong:** *[Berucap tanpa menggunakan pembesar suara] ...That is why under 25, we...*

**SAC Dato' Mohd Azman bin Ahmad Sapri:** *Yang Berhormat Kamar, your suggestion, we are questioning where is the source of power. Source of power comes from 13(1)(c). Source of power from the IPCMC. If you do not have source of power, how come you refer the report complaint to IGP? So, we cannot do anything.*

**Tuan Pengerusi:** *So, the jurisdiction of the IGP whether he has any power to hear it. So, you need to have 13(1)(c) or (d)?*

**Dr. Su Keong Siong:** *So, we cannot also refer to ketua jabatan lah, if there is no source of power. Am I right? How can you refer to ketua jabatan untuk penyiasatan but not to the police? Isn't it? I mean your argument was hole-proof. You cannot even refer to ketua jabatan for salah laku kecil. You got no source of power.*

**Tuan Mohamad Onn bin Abd. Aziz:** *[Bercakap tanpa menggunakan pembesar suara] ...That is why kita ada 13(1)(d) ini.*

**Tuan Pengerusi:** *Ya lah. That gives the power.*

**Dr. Su Keong Siong:** *Sorry, for me 13(1)(d) is too general. It is too general, I think. At least it is specific like what the Chairman is suggested on the salah laku kecil and I think we have no problem to that-lah, I think.*

**Tuan Larry Soon @ Larry Sng Wei Shien:** *Chairman, the IOPC as you mentioned, they have the definition of the salah laku, is that correct? Because I was not at the meeting.*

**Tuan Pengerusi:** *Which one, the IOPC?*

**Tuan Larry Soon @ Larry Sng Wei Shien:** *IOPC, yes?*

**Tuan Pengerusi:** *Yes, yes. They have.*

**Tuan Larry Soon @ Larry Sng Wei Shien:** *Do you think it is wise to adopt the definition?*

**Tuan Pengerusi:** *Ada, ada. We are coming to that shortly. The IOPC position on the matter but there I think they have "kesalahan berat" and "kesalahan ringan", kan? So, kesalahan*

berat *is I think seven years and above and then they classify it that way. Here we do not have that. So, if you look at this clause, it looks as if any complaint can go back to the police. I think that in principle if we were to agree to that then I think there is no point having this bill, you know, because it defeats the purpose of the bill.*

**Datuk Roosme binti Hamzah:** *[Berucap tanpa menggunakan pembesar suara] ...Independance.*

**Tuan Pengerusi:** *Yes, independent. So, I think the most important thing is to – I think we have to at this stage mengesyorkan ia dikeluarkan.*

**Seorang Ahli:** *[Berucap tanpa menggunakan pembesar suara] ...Which one?*

**Tuan Pengerusi:** *13(1), after pindaan is (d).*

**Seorang Ahli:** *Mana-mana anggota... [Bercakap tanpa menggunakan pembesar suara]*

**Tuan Pengerusi:** *13(1)(d) selepas pindaan, dikeluarkan.*

**Dr. Su Keong Siong:** *[Bercakap tanpa menggunakan pembesar suara] ...Ada fasal 13(d), 'd' for Denmark.*

**Tuan Mohamad Onn bin Abd. Aziz:** *We requote that phrase. "Mana-mana anggota polis". To make it safe.*

**Tuan Pengerusi:** *Okey. We can go to the next one.*

*[Ahli-ahli berbincang sesama sendiri]*

**Tuan Pengerusi:** *Just now was at page 69, bukan?*

**Beberapa Ahli:** *Yes.*

**Tuan Pengerusi:** *So, number 11. Jawatankuasa mengesyorkan supaya peruntukan berbentuk penal bagi ketidakpatuhan mengemukakan— sebagai satu bentuk. Ya, *this one I think is to do with the removal of the penal clauses in 26 and 27.**

*[Ahli-ahli berbincang sesama sendiri]*

**Tuan Pengerusi:** *This one is the removal of the penal clauses.*

**Dr. Su Keong Siong:** *Penal clause and also the right to silent... [Bercakap tanpa menggunakan pembesar suara]*

**Tuan Pengerusi:** *Ya, ya. That I – so, I think this is...*

**Dr. Su Keong Siong:** *In here, our recommendation the right to silent. Here 26 is...*

**Tuan Pengerusi:** *That one yes but now what about this one?*

**Dr. Su Keong Siong:** *This one...*

*[Ahli-ahli berbincang sesama sendiri]*

**Tuan Pengerusi:** *Kalau kita rujuk kepada perenggan 11, page 69. Ini adalah berkenaan dengan pengeluaran seksyen 26(4) dan 27(4), betul?*

**Tuan Mohamad Onn bin Abd. Aziz:** *[Bercakap tanpa menggunakan pembesar suara]*  
Yes.

**Tuan Pengerusi:** *Which is the penal clause. So, itu I think is untuk digantikan sebagai satu bentuk kesalahan salah laku yang boleh dikenakan tindakan tatatertib. I think that is fair lah. Itu I think is okay. And then...*

**Encik Peh Suan Yong:** Tuan Pengerusi, *sorry to interject. I think the wording is a bit not correct. It is not "mana-mana anggota" isn't it? It is "mana-mana anggota pasukan polis".*

**Dr. Su Keong Siong:** *[Bercakap tanpa menggunakan pembesar suara] ...Yes, you should put in the "pasukan polis" also.*

**Encik Peh Suan Yong:** *It is "namun Jawatankuasa mengesyorkan perkataan 'mana-mana anggota pasukan polis' di potong". Bukan?*

**Tuan Pengerusi:** *Which one ya? Paragraph?*

*[Ahli-ahli berbincang sesama sendiri]*

**Encik Peh Suan Yong:** *Or just delete the whole paragraph, the 13(1)(d).*

**Seorang Ahli:** *[Bercakap tanpa menggunakan pembesar suara] ...Need the 13(1)(d).*

**Datuk Roosme binti Hamzah:** *Ya lah, apa dia? Akan tetapi kalau you don't mention what is it...*

*[Ahli-ahli berbincang sesama sendiri]*

**Encik Peh Suan Yong:** *Sorry, because Tuan Pengerusi, this is not drafting. So, it is okay to put it in to make it clear. Because this is just a paper, of course if we are doing drafting nanti, we will just potong, we will just translate it into drafting and just potong the whole (d). So, I think this is okay.*

**Datuk Roosme binti Hamzah:** *This is okay.*

**Dr. Su Keong Siong:** *Just mengesyorkan fasal 13(1)(d) pindaan dipotonglah.*

**Datuk Roosme binti Hamzah:** *[Bercakap tanpa menggunakan pembesar suara] ...Ya but Yang Berhormat, nanti kalau itu you have to make reference. Kalau sini you terus nampak what is it.*

**Tuan Pengerusi:** *"Namun Jawatankuasa mengesyorkan perkataan..."*

**Seorang Ahli:** *Because this is just a paper, so that...*

**Datuk Roosme binti Hamzah:** *This is a paper...*

**Dr. Su Keong Siong:** *This is our recommendation.*

**Seorang Ahli:** *And then we have to look at...*

*[Ahli-ahli berbincang sesama sendiri]*

**Tuan Pengerusi:** *I think it makes no difference, right? No difference, right? So, I think lets move on. Otherwise we will go back tomorrow morning. [Ketawa]*

**Tuan Pengerusi:** Okey. So...

**Dr. Su Keong Siong:** Tuan Pengerusi.

**Tuan Pengerusi:** Yes.

**Dr. Su Keong Siong:** *On the perenggan 11, salah satu isu yang dibangkitkan adalah hak untuk diam diri. I think whether we should address this issue as well.*

**Tuan Pengerusi:** *Which one?*

**Dr. Su Keong Siong:** *On the klausa 26. Salah satu isu yang dibangkitkan oleh polis adalah mereka dinafikan hak untuk berdiam diri. The right to silence, klausa 26 compelled them to hadir...*

**Tuan Pengerusi:** *I will come to that later.*

**Dr. Su Keong Siong:** *Oh! Not in here is it?*

**Tuan Pengerusi:** *Because that has been left out. I have a few...*

**Dr. Su Keong Siong:** Okey, okey.

**Tuan Pengerusi:** *Which I think easier if I do it at the end. Otherwise we lose the flow. Okay, so now we go to paragraph 12.*

#### ■1820

*Okay now, ini adalah satu isulah. Jawatankuasa mengesyorkan supaya IPCMC dan JIPS menjalinkan kerjasama dan hubungan kerja yang kukuh sebagaimana amalan antara IOPC and polis PSD bagi memastikan perjalanan fungsi kedua pihak dioptimumkan dan so on. So with this, kalau JIPS relevan lagilah. Itu isunya, kan?*

**SAC Dato' Mohd Azman bin Ahmad Sapri:** *Yes, Tuan Pengerusi. Since we want to remove 13(1)(c) or 13(1)(d), so I don't know whether this relevant at all. Only in what sense kerjasama because JIPS pun— when refer to JIPS, JIPS would not do anything because they have no source of power to conduct investigation.*

**Datuk Almalena Sharmila binti Dato' Dr. Johan [Penasihat Undang-undang, Pejabat Penasihat Undang-undang JPM]:** *Sorry, Tuan Pengerusi, can I just ask a question for clarification, because I think the issue at paragraph 10 is between disciplinary misconduct and administrative misconduct, as I understand from EAIC. The suggestion was that for certain offences like— Sorry, for certain disciplinary— I don't know they call it disciplinary. Maybe it's administrative misconduct like long hair and all that, that would still retain with the police.*

*So, the question that I would like to ask is would those administrative misconduct, can they be categorized as minor disciplinary misconduct or are they totally separate from disciplinary*

*misconduct. Otherwise Tuan Pengerusi, they may be a need to put a categorization between a minor— what is minor or what is major. So, that IPCMC will not be brought down by looking at, you know very minor thing like whether somebody has got long hair. Yeah thanks.*

**Tuan Pengerusi:** *Yes I think— correct. I completely agree because that's why I said earlier, that it is important to have a definition or category or whatever you want to call it. Of what amounts to various kind of misconduct. So, you will have maybe your minor misconduct. What constitute minor misconduct? There must be a definition of it or the tafsiran. You know, what is major misconduct or what is administrative misconduct.*

*Then, only we will know whether what is IPCMC's job is or what is jurisdiction comprises of. So, I think that should be one of our syor also because I think to be fair, you can't expect minor-minor things to go to the IPCMC. I think to be fair-lah. I think things like you know, dress code and things like that. Obviously, should not brought the IPCMC down.*

*So, I think maybe we should— This is my suggestion, which will make JIPS relevant also, to introduce a definition of what amounts to minor and major of misconduct and whether or not the IPCMC will retain jurisdiction for minor misconduct. That is something that they can consider. So, kalau dia kata no, for minor misconduct, it will go to the JIPS or whatever it is. Then, they can consider that-lah.*

**Tuan Mohamad Onn bin Abd. Aziz:** *We already have that in the proposed amendment itu. Pindaan 24 itu Tuan Pengerusi, there is provision.*

**Tuan Pengerusi:** *Where is it?*

**Tuan Mohamad Onn bin Abd. Aziz:** *22(2), the new 22(2).*

**Tuan Pengerusi:** *Okay, 22(2). Yang Amat Berhormat Perdana Menteri boleh atas nasihat suruhanjaya melalui perintah yang disiarkan dalam warta, menetapkan apa-apa tatalaku kelakuan yang boleh dikategorikan sebagai salah laku kecil. So, how is that? Does that— So that will come under section 22? 22— This is the new (2) lah. Ini juga meletakkan kuasa dalam tangan Yang Amat Berhormat Perdana Menteri, kan? Untuk you know, membuat—to dictate— Well I don't like to use the word 'dictate' but to categorized what amounts to what kind of offence.*

**Datuk Roosme binti Hamzah:** *Minor.*

**Tuan Pengerusi:** *I think that also can be a bit objectionable because I think the whole purpose is to— is for the definition to be done now, isn't it? As to what amounts to major and minor offences or misconduct.*

**Tuan Larry Soon @ Larry Sng Wei Shien:** *Can we give the definition to the power of the commission? To let them determine from time to time. Would that be possible?*

**Tuan Pengerusi:** *That, maybe...*

**Tuan Larry Soon @ Larry Sng Wei Shien:** *Based on the workload and also the practicality on the ground, they may feel that from time to time, it might be better to delegate powers accordingly, you know or— sorry. Not delegate power but to reclassify certain offences which may be seen as a minor to become— what do we call it? I don't want to say major-lah but certainly one step-up from minor, you know. Administrative wise.*

**Tuan Pengerusi:** *I think obviously this won't apply to the major offences. I think that would be very obvious.*

**Tuan Larry Soon @ Larry Sng Wei Shien:** *No, of course.*

**Tuan Pengerusi:** *Nobody will say robbery or rasuah is a minor offences but it will apply to what the smaller offences are. You know things like failure to investigate, all this— You know. Are they minor? Are they considered minor because say for example, if Yang Amat Berhormat Perdana Menteri gazettes that failure to investigate is a minor offence, then it goes back to the police, most likely. And that's going to be— there will be an uproar if that were to happen because that constitutes the bulk of complaints or to which I think need to be considered. So, I think if we— Just now, we have taken out 13(1)(c). So, if we have recommended to take out 13(1)(c), I think all this doesn't arise, right? Does it? Does it arise?*

**Encik Peh Suan Yong:** *13(1)(c) is about delegation of the commission power to the relevance body or people. This one also arises because this one is about the Prime Minister determining what are minor offences and here as it is now 25— I think 25. The 25(d) mentioned that for minor offences, the investigation is to be referred to the head of department. So, the head of department, I presume will be the police, kan? So, the police can do the investigation for minor offences. Notwithstanding the removal of the delegation of power because the punca kuasa will come from 25(d).*

**Tuan Pengerusi:** *So, now we go back to the question of the Prime Minister's power, right, in making that classification which is just now in the pindaan. 22(b)...*

**Encik Peh Suan Yong:** *Sorry Tuan Pengerusi. If we do not want the Prime Minister to determine like what Yang Berhormat mentioned just now, we can always ask the commission to do the determination, kan? It's a policy decision, it's a policy call. Instead of the Prime Minister prescribing, we can always say the commission.*

**Tuan Pengerusi:** *Yeah, I think that is what you suggested just now. [Pelayan menghidangkan makanan kepada Tuan Pengerusi] Oh, thank you. Terima kasih. That is what you suggested just now. Maybe that can be recommended.*

■1830

*That means bahawa if we go back to the pindaan fasal 22(b). That mean not Perdana Menteri, boleh lah. Just Suruhanjaya boleh lah. Right? "Suruhanjaya boleh menetapkan apa-apa tata kelakuan yang boleh dikategorikan sebagai salah laku kecil daripada semasa ke semasa". Would that be acceptable?*

*[Ahli-ahli berbincang sesama sendiri]*

**Encik Noor Rosidi bin Abdul Latif:** Yang Berhormat.

**Tuan Pengerusi:** Yes.

**Encik Noor Rosidi bin Abdul Latif:** *If I may direct the Chair to muka surat 85 iaitu (j). Perenggan (j). Muka surat 85, perenggan (j). There is a suggestion coming SUHAKAM saying that the Prime Minister's power should be transferred to suruhanjaya.*

**Tuan Pengerusi:** *Sorry. What page was it just now?*

**Encik Noor Rosidi bin Abdul Latif:** *Page 85.*

**Tuan Pengerusi:** *Page 85.*

**Encik Noor Rosidi bin Abdul Latif:** Perenggan (j).

**Tuan Pengerusi:** Pandangan SUHAKAM.

**Encik Noor Rosidi bin Abdul Latif:** Yes.

**Tuan Pengerusi:** *"Supaya kuasa Perdana Menteri menetapkan kelakuan..." Ya, same. That's the one.*

**Encik Noor Rosidi bin Abdul Latif:** *[Bercakap tanpa menggunakan pembesar suara] So we may add something.*

**Tuan Pengerusi:** *I think we can adopt this one what. Isn't it? That is what we are saying.*

**Tuan Mohamad Onn bin Abd. Aziz:** *We will amendment paragraph 62 of our recommendation, of the syor to include that one, to add that one. Okey.*

**Tuan Pengerusi:** Ya.

*[Ahli-ahli berbincang sesama sendiri]*

**Tuan Pengerusi:** Okey.

**Encik Peh Suan Yong:** Yang Berhormat, *just one...*

**Tuan Pengerusi:** *You all want to eat, please feel free. Don't – ya.*

**Encik Peh Suan Yong:** Yang Berhormat, *just one concern raise by my officers who thinks that if the suruhanjaya is also the one who is going to prescribe the minor offenses. Is the suruhanjaya becoming too powerful? [Ketawa] Just one concern.*

**Tuan Pengerusi:** *But somebody have to determine the offenses, kan? From time to time. So, I mean who else could be empowered to do so?*

**Seorang Ahli:** *A Minister. Just a Minister.*



**Tuan Pengerusi:** *We go back to the executive is it? I got same issue. [Ketawa] I think, I feel maybe just adopt the SUHAKAM recommendation. After all its a recommendation. Let's— if they become too powerful. No, because I am going to propose at the end of this that they will be accountable to Parliament. [Disampuk] This wish is my separate proposal after this. So, the Suruhanjaya itself is accountable to Parliament.*

*So, things like this if abuse, he will have to answer in Parliament. I think maybe that might be one solution. Okay and the...*

**Encik Noor Rosidi bin Abdul Latif:** *Chairman, if I may direct to page 76.*

**Tuan Pengerusi:** *Page 76.*

**Encik Noor Rosidi bin Abdul Latif:** *Yes. Perenggan 28.*

**Tuan Pengerusi:** *28. Ya.*

**Encik Noor Rosidi bin Abdul Latif:** *Perenggan 28(a). We have already put some suggestion there.*

**Tuan Pengerusi:** *Setuju peranan JIPS...*

**Encik Noor Rosidi bin Abdul Latif:** *Subfasal 22(2) untuk memberikan Perdana Menteri kuasa atas nama suruhanjaya untuk meletakkan mana-mana tata kelakuan yang boleh dikategorikan sebagai salah laku. This is a syor coming from the jawatankuasa. So, can we just delete the words 'Perdana Menteri' and put the word 'Suruhanjaya'?*

**Tuan Pengerusi:** *Suruhanjaya, ya.*

**Encik Noor Rosidi bin Abdul Latif:** *Alright.*

**Tuan Pengerusi:** *Okey, I think we can do that. Did you get that Syazwan? So, take out the word 'Perdana Menteri' replace with 'Suruhanjaya'. Okay, maybe what we can do is for whatever that we propose you just highlight it. So, we able to distinguish it later. So just highlight the word 'Suruhanjaya' because that is what we change. Ya, something like that. [Merujuk pada slaid]*

**Tuan Larry Soon @ Larry Sng Wei Shien:** *Tuan Pengerusi, coming back to — going back to the original point of deleting the police, you know. That one has a point, I don't know, the police we just see, something with respect the power of where the police can actually do the determination on the discipline. So, I was actually— I was just wondering whether this is a view that can be consider or not. That with the respect to the Commission that were now determine the classification of the...*

**Tuan Pengerusi:** *Offences.*

**Tuan Larry Soon @ Larry Sng Wei Shien:** *Offences. They can also determine at the stage whether they were like to give powers back to the police. Let the commission decide*

because for us, we are not determine to remove the power from the police. Remove the police from ABC but for them to decide, whether the commission to decide, whether at any stage in the future they were like to put the police back on. You think that is something can be consider?

**Tuan Pengerusi:** *Why would you want to do that?*

**Tuan Larry Soon @ Larry Sng Wei Shien:** *For actual implementation purposes. Whether there is actually function, whether the...*

**Dr. Su Keong Siong:** *So, you are saying retaining the 13(1)(d)?*

**Tuan Larry Soon @ Larry Sng Wei Shien:** *No. I am not saying we...*

**Dr. Su Keong Siong:** *It's the same.*

**Tuan Larry Soon @ Larry Sng Wei Shien:** *Not to retaining in that format but to put it as a clause whereby should let the commission decide.*

**Dr. Su Keong Siong:** *Yes, 13(1)(d) is suruhanjaya boleh mewakilkan fungsi dan power. It's clear.*

**Tuan Larry Soon @ Larry Sng Wei Shien:** *My apologies ya. I will drop my earlier statement. Ya, sorry.*

**Tuan Pengerusi:** *Okay, I think we can move on. So, I think we go to page 70 to "Keadilan kepada Anggota Pasukan PDRM". I think this is very important to recommend according the concern of the police and their issues particularly in relation to their welfare. I think this must be emphasize in the report to a certain extend. So, here we have in paragraph 13. The entire one to five, various issues that were raised and one of the main things is that, issues of natural justice. So, here issues such as the right to be heard, the right to counsel, right to be represented, the right to appeal had been raised.*

#### ■1840

So, in syor number 14, "Jawatankuasa bersetuju bahawa prinsip naturalisasi perlu dipatuhi, namun, tiada keperluan untuk menggubal 'Bill of Rights' sebagai sebahagian RUU..."—oleh sebab it's already incorporated in the 1993 peraturan. I think that is correct. So, because you don't need to reproduce it here. It is already adopted.

The second, is paragraph 15. "Jawatankuasa bersetuju dengan pengesyoran supaya fasal..."

**SAC Dato' Mohd Azman bin Ahmad Sapri:** *Tuan Pengerusi. I'm sorry to interrupt.*

**Tuan Pengerusi:** *Sorry. Ya.*

**SAC Dato' Mohd Azman bin Ahmad Sapri:** *Even jawatankuasa have to agree that we shouldn't produce, introduce Bill of Rights. But I would like to register the IGP's concern in the letter in para 428.*

**Tuan Pengerusi:** *Paragraph?*

**SAC Dato' Mohd Azman bin Ahmad Sapri:** *IGP's letter paragraph 428.*

**Tuan Pengerusi:** *Paragraph 428. Cadangan untuk memasukan suatu peruntukan yang dikenali sebagai Bill of Rights yang mengandungi klausa bagi melindungi hak-hak Perlembagaan. But, is the Bill of Rights already incorporated in the 1993 rules? I think it is right?*

**SAC Dato' Mohd Azman bin Ahmad Sapri:** *It is okay but this is a consensus of the Bukit Aman that it must be put in the bill.*

**Tuan Pengerusi:** *Okey.*

**Encik Peh Suan Yong:** *Tuan Pengerusi. I just want to make an observation. They mentioned yang mengandungi klausa bagi melindungi hak-hak Perlembagaan pegawai. Hak-hak Perlembagaan memang the Federal Constitution still apply and I think just because they have this law doesn't mean the Federal Constitution doesn't apply to them. And if it points a file of the Federal Constitution, the court will surely go on their side.*

**Tuan Pengerusi:** *Sure. I agree. I think all the basic human rights which reflect natural justice, they enjoy all those rights without question. I don't think there is any doubt about that. So, I don't think there is a necessity to include. Because if you include the Bill of Rights, it might imply that those are the only rights. Maybe you know some other things are excluded or you know some kind of argument like that. So, I think best they be treated like any other citizen who are subject to natural justice. So, I think there is no problem with 14.*

*So, 15 is "Jawatankuasa bersetuju dengan pengesyoran supaya fasal 35, 36, dan 37 baharu dimasukkan bagi memberikan hak kepada mana-mana anggota PDRM yang terkilan dengan keputusan PBT PDRM untuk merayu." What is 35, 36 and 37?*

**Puan Eda Mazuin binti Abdul Rahman [Penasihat Undang-undang]:** *24 pindaan. Dia berkenaan dengan rayuan.*

**Tuan Pengerusi:** *Perenggan 17 kan? Page 7.*

**Puan Eda Mazuin binti Abdul Rahman:** *Perenggan 17, fasal 35, 36 dan 37 baharu. Pindaan. Sebanyak 24 pindaan dalam jawatankuasa.*

**Datuk Roosme binti Hamzah:** *[Bercakap tanpa menggunakan pembesar suara]*

**Tuan Pengerusi:** *Ada. Ada. Mana-mana rayuan. I think that is okey.*

**Dr. Su Keong Siong:** *Ya, it is okay. I think fasal 36— I mean fasal 35, 37 adalah okey. Akan tetapi, isu salah laku yang serius macam mana? Tidak disebutkan rayuan dia. Ini fasal 35, 36 dan 37 hanya terhadap salah laku kecil. Salah laku yang lain, adakah mereka ada hak untuk merayu?*

**Tuan Mohamad Onn bin Abd. Aziz:** Mereka seperti mana amalan PBT PDRM sekarang, SPP akan failkan melalui semakan kehakiman Yang Berhormat. Sekarang ini, *as it is they go through judicial review. So, we just* meneruskan amalan sedia ada.

**SAC Dato' Mohd Azman bin Ahmad Sapri:** Akan tetapi, saya rasa salah laku kecil itu *we are talking about* salah laku kecil *but we never define*. So, kita tidak perlu sebut salah laku kecil pada masa sekarang ini. *Because* kita tidak *define* lagi salah laku kecil.

**Tuan Mohamad Onn bin Abd. Aziz:** Yakni yang di peruntukan adalah *enabling provision* sekiranya berlaku tidak— terkilang dengan keputusan *so enabling provision* ini itu adalah fasal 35 sampai 38— sampai ke 37.

**Encik Peh Suan Yong:** Tuan Pengerusi, *I think one of the reasons why there is no appeal board is to save time. Because if there's an appeal board, after the Lembaga Tatatertib hears about it, you appeal. After you appeal, you still can go again to the high court. You know, because judicial review is a right. So, they rather that you know after the sentencing, you just straight go to the high court for judicial review. So, instead of delaying the matter further. I think that is the rationale for it.*

**SAC Dato' Mohd Azman bin Ahmad Sapri:** *I think we should consider also what have been explained by Professor Shad Faruqi, You are— he has expressed a provision for salah laku kecil, Lembaga Rayuan. But not the Lembaga serious misconduct. I know the avenues there for judicial review. But we have to consider also what have been said by the Shad Faruqi. There must be a balance. Salah laku kecil you have the Lembaga Rayuan but the serious misconduct you don't express in the provision about the Lembaga Rayuan and straightaway go the court for judicial review.*

**Encik Peh Suan Yong:** Tuan Pengerusi, *another of course another option is we remove the appeal from minor offences too. So, we can make it same. So, they can straight go to judicial review.*

**Tuan Pengerusi:** Ya, *so— to the high court.*

**Encik Peh Suan Yong:** *But high court, they put it in because the police wants the appeal for the minor offenses.*

**Tuan Pengerusi:** *What about the major offenses? Surely that...*

**Tuan Mohamad Onn bin Abd. Aziz:** Tuan Pengerusi. *If I may.* Kalau untuk, kita kena tahu rasional kenapa. Sebab bila kita faham rasional so kita boleh berbincang secara ilmiah. Apa yang berlaku adalah untuk pegawai-pegawai pangkat rendah ini, dia akan diadili oleh *respective* pihak tatatertib di setiap negeri. So, untuk satu kesalahan yang sama mungkin hukuman berbeza. Sedangkan untuk *serious offenses*, dia akan diadili oleh IPCMC. Orang yang sama. Jadi, di situ

dia punya kepelbagaian itu minimum. Mungkin akan *minimize* dia punya perbezaan. Sekarang ini pun kita dapati di kementerian-kementerian, kita ambil yang kes biasa pun berlaku perbezaan untuk kesalahan yang sama.

So, sebab itu untuk kesalahan yang terlalu kecil walaupun kita bagi pada PDRM tetapi kita *monitor*. Kita tidak mahu nanti untuk anggota yang berbeza, kesalahan yang sama, tetapi hukuman dikenakan berbeza. So dia ada *avenue* untuk *appeal* kepada kita. Sebab itu, kita benarkan. Untuk kesalahan serius, dia akan pergi pada IPCMC. Panelnya sama. So, *consistency* itu, kita berkeyakinan, *insya-Allah* kita boleh minimumkan perbezaan dalam bentuk hukuman. Sekadar pandangan Tuan Pengerusi.

**Tuan Pengerusi:** *So, what do you think?*

**Dr. Su Keong Siong:** *I think what* apa yang penjelasan ini memang bernas juga. Kalau salah laku kecil kita pergi kepada Ketua Jabatan dahulu. Dia buat keputusan lepas itu datang ke Lembaga Rayuan. Kalau salah laku yang serius terus kepada IPCMC. *Then, the next step the appeal process. It is just like magistrate court, we go to high court. You know, high court, enable. I think that is the rationale. I can see the rationale.*

**Encik Peh Suan Yong:** *Because Yang Berhormat for information as at it is now with the new amendment, clause 34(1) mentioned this, "Any member of the police force appointed under subsection 31(5) may impose anyone or more punishment under subsection (1) except punishment under paragraph 1 (f) and (g)". So actually, police actually can impose punishment. It is quite very what you call quite a great power given to the police. That is why maybe they need the appeal board. Whereas for the serious offences, it is heard by this board which is in the akta which consist of three commissioners and the police representative as well as the Police Force Commission representative.*

*So, there would be more— I think more consideration.*

*[Ahli-ahli berbincang sesama sendiri]*

**Tuan Pengerusi:** *Okay. So, anyway coming back to paragraph 15. I think the— it makes, I don't think there is any harm in having these clauses there.*

#### ■1850

*Only thing is, it might be compared with serious offences which might post some issues. But having the 35, 36 and 37, which have to do with the rayuan for kesalahan kecil without there being any kesalahan kecil define, also is seem a bit peliklah, right? It is because what kesalahan kecil are you referring to. So, that is why earlier, I just thought of the possibility of mooted the idea of the definition of kesalahan kecil to be made clear like I have been raised just now. Then only this will become I think relevant, isn't it? Clause 35, 36 and 37.*

*But I think— So, if we are to accept paragraph 15, I think we have to add maybe you know, dengan syaratlah, apa pun definisi kesalahan salah laku kecil you know, dibuat. Something like that. Jawatankuasa bersetuju dengan pengesyoran supaya fasal 35, 36 dan 37 baharu dimasukkan bagi memberikan hak kepada mana-mana anggota PDRM yang terkilan dengan keputusan PBT PDRM untuk merayu kepada Lembaga Rayuan Tatatertib Salah Laku Kecil IPCMC dengan syarat salah laku kecil tersebut ditakrifkan ataupun diberi tafsiran yang nyata dan jelas. Is it okay? Did we pass the IOPC... [Disampuk] Dengan syarat salah laku kecil itu— Yes, that's I think okay. Just now what page was it, Thomas? Just now what page?*

**Datuk Roosme binti Hamzah:** *Page 71.*

**Tuan Pengerusi:** *Page 71.*

**Datuk Roosme binti Hamzah:** *Now we have going 72.*

**Datuk Almalena Sharmila binti Dato' Dr. Johan:** *Yang Berhormat, sorry.*

**Tuan Pengerusi:** *Yes.*

**Datuk Almalena Sharmila binti Dato' Dr. Johan:** *We were discussing just now, the two of us and we just wanted to seek clarification on paragraph 14 because it was stated here that there is no need to gubal Bill of Rights because kita menerima pakai Peraturan-peraturan Pegawai Awam (Kelakuan dan Tatatertib) 1993. As we all know, in the Peraturan-peraturan Pegawai Awam (Kelakuan dan Tatatertib) 1993, there is an appeal process for both kesalahan yang untuk tujuan buang kerja dan bukan untuk tujuan buang kerja dan turun pangkat. So, just a question because here and the next paragraph, we are just giving the right for salah laku kecil sahaja for appeal. There is no appeal for the other issue of dismissal and reduction in rank. But, P.U.(A) 395/1993 provided for both, the appeal process.*

**Tuan Pengerusi:** *So even for minor misconduct?*

**Datuk Almalena Sharmila binti Dato' Dr. Johan:** *Everything. It is because they have whether you have for misconduct for tujuan buang kerja atau bukan tujuan buang kerja dan turun pangkat. So if we quote that, there will be a question.*

**Tuan Pengerusi:** *Then I think, then...*

**Datuk Almalena Sharmila binti Dato' Dr. Johan:** *That part on paragraph 14. Just go back to paragraph 14 because we are saying in paragraph 14 that we are not going use Bill of Rights, okay. That is a policy called, but we are saying because of we are using P.U.(A) 395/1993.*

**Tuan Pengerusi:** *Which mean paragraph 15 become redundant? Is it right? It is because you don't need paragraph 15, anymore right?*

**Datuk Almalena Sharmila binti Dato' Dr. Johan:** *I don't know. I would like— It is just a question for clarification. We are asking because we used the term 395.*

**Encik Peh Suan Yong:** *My understanding is this Yang Berhormat. They are going to adopt. That is my understanding. They are going to adopt 395 with modification, dengan ubahsuaian yang wajar. Not necessary the whole 395 because they cannot take it wholesale.*

**Datuk Almalena Sharmila binti Dato' Dr. Johan:** *I understand. Sorry, I still have to raise this. I understand, but the issue is then they will say why are different civil servant we put differently because other civil servant has appeal process under 395. That question we will need to answer. I mean I do understand that now police don't have it. I mean as has been explained, that they go straight for juridical review. But here, because we giving the powers to IPCMC, we have to have some clarity.*

**Dr. Su Keong Siong:** *So, whether it is serious offences or not, it is 395 you have appeal process, is it?*

**Datuk Almalena Sharmila binti Dato' Dr. Johan:** *Yes. This is what happening normal civil service. So, maybe can I have some clarification from EAIC or SIAP.*

**Tuan Pengerusi:** *No. If the 1993 regulation are adopted, let just say as they are, then that would mean that that it applies to all sort of misconduct, isn't it? Which mean paragraph 15 become redundant. You don't need paragraph 15. Would that be right?*

**Dr. Su Keong Siong:** *Sorry, Mr. Chairman, unless it is made clear, 395 certain part of it is accepted, other than the whole in toto.*

**Tuan Pengerusi:** *No, at the moment you going into that, then it is very complicated.*

**Dr. Su Keong Siong:** *No. On the appeal process— I mean 35, 36, 37 is still relevant. If you adopt the whole 395, then I think, I agree that can be, we got it overlap and confusion.*

**Encik Peh Suan Yong:** *Unless it said menerima pakai that peraturan dengan ubahsuaian yang wajar.*

**Tuan Pengerusi:** *I mean we can say that but the...*

**Dr. Su Keong Siong:** *We going to decide what is the ubahsuaian. As it is I think...*

**Tuan Pengerusi:** *Why can't we adopted wholesale?*

**Dr. Su Keong Siong:** *It is because there is appeal process for even serious offences.*

**Tuan Pengerusi:** *No, no...*

**Dr. Su Keong Siong:** *And small offences.*

**Tuan Pengerusi:** *1993 regulation, you said won't be adopted wholesale. Why is that?*

**Puan Farah Azlina binti Latif [Penolong Kanan Penggubal Undang-undang Parlimen, Jabatan Peguam Negara]:** *It is because in 395, it encompasses of - the composition members of the board and everything. So, if we want to adopt it as Encik Peh Suan Yong correctly*

says, you need to adopt it with modification. Otherwise, it would not be— It is very hard to read it in tandem because...

**Tuan Pengerusi:** *But the misconduct section and the sentencing section I think can be adopted, right?*

**Puan Farah Azlina binti Latif:** *Yes, 395 included the process as well as the sentencing.*

**Tuan Pengerusi:** *So I don't think that is problem with those sections right? Those parts.*

**Puan Farah Azlina binti Latif:** *You mean Yang Berhormat, without the new...*

**Tuan Pengerusi:** *To be adopted here.*

**Puan Farah Azlina binti Latif:** *Yes, without the new amendment? Without the new amendment, yes, we can adopt it in toto. Without the amendment of the new inserted section 35...*

**Tuan Pengerusi:** *I don't understand. What do you mean?*

**Puan Farah Azlina binti Latif:** *Without the new insertion of the new— The new inserted section 35, 36 and 37.*

#### ■1900

**Tuan Pengerusi:** *Yes. So, if— no. That gives a right of appeal for salah laku kecil but for 1993 regulations, all salah laku has a right to appeal.*

**Puan Farah Azlina binti Latif:** *Yes, correct. It is because they do have any demarcation between a serious misconduct and also minor misconduct. There is only one category of misconduct in 395.*

**Tuan Pengerusi:** *So, what is the purpose of saying in paragraph 14 that the 1993 regulations are being adopted? Is it any purpose of that to be included here?*

**Tuan Mohamad Onn bin Abd. Aziz:** *Yang Berhormat, kalau kita tengok prinsip natural justice itu, as Yang Berhormat rightly pointed out earlier, dia refer kepada right to be heard dan konsep itu yang kalau kita nampak dalam regulation pun, itu yang ditekankan. Dia pergi semula kepada Artikel 135(2) of the Federal Constitution dan dikaitkan dengan Bill of Rights itu. Kami sudah baca sudah Bill of Rights itu.*

*So, prinsip natural justice sebenarnya telah embodied dalam peraturan-peraturan 395/1993 itu. In fact, macam Tuan Peh beritahu tadi, benda itu pun enshrine dalam Federal Constitution. So, we are not going to go against atau whatever rights yang preserve under Federal Constitution. What more, in fact, peraturan ini pun digubal oleh Yang di-Pertuan Agong [Tidak jelas] Federal Constitution. So, there is no way we are going to go against Federal Constitution.*

**Tuan Pengerusi:** *So, it's a checkmate situation. No, I think— now I think what we have to do is basically look at 14 and 15, I think either you take out 15 entirely because on the*



*assumption that 1993 regulations will be adopted for all kind of misconduct, right? Can you make that— Can we go on that basis or— No?*

*[Ahli-ahli berbincang sesama sendiri]*

**Dr. Su Keong Siong:** *Sorry, can I just raise it? The problem with that, I mean regulations 395 is only lets to do the appeal process kan? Alright. So, we have no problem within, I mean, definition in this act, IPCMC kesalahan kecil, we can appeal, no problem with that. So, what we need to do, I think my suggestion is that we just had to make sure that 395 relevant section adopted into the IPCMC. That's all.*

**Tuan Pengerusi:** *Maybe we can make it clearer, paragraph 14.*

**Dr. Su Keong Siong:** *The relevant section.*

**Tuan Pengerusi:** *I think we...*

**Encik Peh Suan Yong:** *[Bercakap tanpa menggunakan pembesar suara] ...Ayat.*

**Tuan Pengerusi:** *Can lah. Something, then it becomes...*

**Encik Peh Suan Yong:** *It is because otherwise, it will be repetition you know, 395 got all the punishment, here we got all the punishment. I think it be repeatedly. So, what we have here is only to put in.*

**Tuan Pengerusi:** *Okeylah, then we can put it like that, dengan ubahsuaian yang sewajarnya. Is it okay? Okay. Then we move on to 17. Okay, the paragraphs 17. This one, "Jawatankuasa mengesyorkan agar latihan bagi pegawai-pegawai penyiasat IPCMC dijalankan secara intensif untuk meningkatkan lagi kemahiran pegawai baharu dan sedia ada sebagaimana yang dilaksanakan oleh IOPC".*

*This is a – Okay, fair enough. This is a to do with the training and the qualification of the members but there was a suggestion in Kuantan, where the suggestion was that one of the members should be a bekas polis. I don't think it is a bad idea because the rational for that or the explanation that he gives for that, I think SAC Dato' Allaudeen bin Abd Majid is that— Because a lot of cases under EAIC, the EAIC will make a recommendation and then it will go back to a police, police will then siasat and come out with the different conclusion.*

*Simply because people in the know, know how to approach the problem. You understand? So, I asked him, if that the case, that mean EAIC is a— conclusion are inconclusive. So, it has to be reinvestigated. So, there is no point having the EAIC. So, can the problem be overcome with one bekas polis in the IPCMC?*

**Tuan Mohamad Onn bin Abd. Aziz:** *Yang Berhormat, apabila kita diperkasakan, strengthen from EAIC to IPCMC, kita punya landskap sudah berubah, yang mana kalau sekarang ini betul, board members akan decide. IO akan present kita punya siasatan, board members akan*

*decide. Board members* itu ada lima orang atau enam orang. *So, they will make a recommendation.* Dalam itu, *there is no police personnel as we are now.*

Akan tetapi bila kita berubah menjadi IPCMC, segala bentuk aduan itu kami akan muktamadkan dan kami akan terus serah kepada urus setia tatatertib, dia akan pergi kepada Jawatankuasa Tatatertib terus sebab kita *straightaway*. Dalam siasatan, polis tidak terlibat. *Board members* tidak terlibat, *sorry*. Akan tetapi dalam konteks penentuan *prima facie* nanti, masa itu anggota polis akan terlibat. Di situ ada wakil IGP, wakil SPP dan tiga *commissioners*.

So, di situ, saya nampak relevannya. Kalau di mesyuarat suruhanjaya, *board members* sudah tidak ada lagi. Dia cuma terlibat dengan dasar, terlibat dengan laporan audit, itu sahaja. Untuk siasatan, tiada lagi sudah penglibatan pesuruhjaya atau *board members* dalam siasatan, tiada lagi. Kita telah berubah daripada EAIC kepada IPCMC. Sama seperti model di UK.

**Tuan Pengerusi:** *So, okay. I think that 17* tiada masalah, *right? Then 18...*

**Dr. Su Keong Siong:** *Just the recommendation to go for...*

*[Ahli-ahli berbincang sesama sendiri]*

**Tuan Pengerusi:** Ya. *Paragraph 19*, jawatankuasa bersetuju dengan keanggotaan wakil PDRM dan SPP di dalam Lembaga Tatatertib IPCMC sebagaimana diperuntukkan *under 31*.

**Datuk Roosme binti Hamzah:** Yang baharu atau lama?

**Tuan Pengerusi:** Ada baharu? Lama kan?

**Datuk Roosme binti Hamzah:** Lama ya.

*[Ahli-ahli berbincang sesama sendiri]*

**Tuan Pengerusi:** Lembaga tatatertib di dalam 31, *it the seat have— who are the members?* *[Disampuk]* Jadual.

**Tuan Mohamad Onn bin Abd. Aziz:** Ada lima orang, tiga *commissioner*. Lagi dua itu adalah seorang IGP atau wakil dan seorang wakil SPP yang bukan anggota polis.

**Tuan Pengerusi:** *Oh, I see.*

**Dr. Su Keong Siong:** IGP atau wakil Suruhanjaya dan wakil SPP, pasukan polis dengan IGP atau ada dalam...

**Tuan Pengerusi:** Wakil PDRM, *so this is including— includes the IGP.*

**Dr. Su Keong Siong:** *IGP and the two— one more from the police force.*

#### ■1910

**Tuan Mohamad Onn bin Abd. Aziz:** Menjawab persoalan daripada Kuantan itulah yang perlunya wakil polis dalam *commissioner*. Apa yang penting sebenarnya dalam segi *authority* itu lebih utama.

**Dr. Su Keong Siong:** Yang akan membuat...

**Tuan Mohamad Onn bin Abd. Aziz:** Membuat keputusan. Yes. Dia akan menimbang faktor-faktor yang berada di luar kawalan yang tiada dalam pengetahuan. *They are expert.*

**Tuan Pengerusi:** So, bukan dalam *commission*, dalam lembaga tata tertib?

**Datuk Roosme binti Hamzah:** *Disciplinary board.*

**Tuan Pengerusi:** *You see, I think the issue here* adalah bahawa akan adanya penglibatan polis dalam proses tata tertib.

**Tuan Mohamad Onn bin Abd. Aziz:** Dalam penyatuan. Ya, saya.

**Dr. Su Keong Siong:** [*Bercakap tanpa menggunakan pembesar suara*] *At the final stage-*lah?

**Tuan Mohamad Onn bin Abd. Aziz:** *At the final stage.*

**Tuan Pengerusi:** *After investigation?*

**Tuan Mohamad Onn bin Abd. Aziz:** *After investigation* Yang Berhormat, IO akan serahkan kes bersama dapatan untuk, pertama, penentuan *prima facie*. Kalau *prima facie*, ada pertuduhan akan dikeluarkan. Itu pun akan ada wakil daripada PDRM. So, bukan IPCMC terus bagi kepada dan terus dengar, tidak. Ia akan melalui satu proses *filter* yang mana *filter* itu di dalam kalangan PBT. Lembaga Tata tertib IPCMC dalam itu ada wakil polis dan ada wakil SPP. So, *at the earlier stage* pun dah ada penglibatan daripada wakil PDRM dan juga SPP untuk penentuan *prima facie* untuk mula-mula.

Oleh sebab lembaga tata tertib ini ia berbeza. Kita urus setia, IO akan menjalankan siasatan. Siasatan lengkap akan diserahkan kepada pihak berkuasa tata tertib. Tata tertib akan tentukan ada *prima facie* ataupun tidak. So, yang itu— yang tentukan adalah lembaga tata tertib, bukannya *commissioner*. Lembaga tata tertib itu ada wakil daripada PDRM dan SPP.

So, dari segi penglibatan anggota polis sejak awal lagi sudah ada dah. Jadi kalau pihak polis, IGP kata tidak ada kes, dah terus buang. So, kami dipihak IO, kita terikat macam di kementerian lain pun sama. Kita terikat dengan keputusan daripada pihak berkuasa tata tertib. So, kalau pihak berkuasa tata tertib itu berkata ada kes *prima facie*, so pertuduhan akan dikeluarkan, lepas itu proses lain akan berlaku. Dia akan buat surat representasi *and* proses *hearing* akan berlakulah. *Hearing* maksudnya *hearing* dalam konteks tata tertib.

So, sebab itu saya hendak jelaskan di sini kalau kita teliti semula, penglibatan anggota polis dalam tata tertib ini, ia sama seperti yang ia ada sekarang. Tinggal lagi ia cuma dikendalikan oleh IPCMC dan jumlah anggota polis itu kurangnya. Kalau dulu semua anggota polis. Sekarang ini ia ada wakil SPP seorang dan wakil IGP seorang dan tiga itu adalah daripada IPCMC.

**Tuan Pengerusi:** Lima kan total?

**Tuan Mohamad Onn bin Abd. Aziz:** Lima.

**Tuan Pengerusi:** Tiada bezakan buang kerja atau tidak buang kerja?

**Tuan Mohamad Onn bin Abd. Aziz:** Sewaktu IO sediakan kertas pertimbangan, di situ nanti pihak berkuasa tatatertib akan tentukan sama ada pertamanya ada kesalahan atau tidak, di bukti atau tidak. Kalau tidak ada, terus tolak dan kalau ada, *another stage* sama ada untuk bawah buang kerja atau untuk buang kerja. Itu semua ditentukan oleh pihak berkuasa tatatertib. Bukannya pegawai penyiasat, bukan kami. *Members* yang akan tentukan. Kami cuma menjalankan siasatan sahaja. Kami tidak terlibat dalam penentuan apa-apa keputusan pun. *Prima facie*, hendak tuduh 36 atau dibuang kerja atau turun pangkat. Selain daripada turun pangkat dan buang kerja, itu bukan tugas IO. Itu kami serah semua kepada PBT dan IPCMC yang mana dalam itu ada wakil polis sendiri. Oleh sebab itu bila kita kata kita terima pakai P.U. (A) 395 itu, ramai yang ingatkan IPCMC ini sama dengan EAIC sekarang. Tidak, berbeza. Ia memang melindungi...

**Tuan Pengerusi:** Oh, ya, ya. Sekarang *prayer time* kan. *We can stop for a while. We can stop for a while for the prayer. We can come back later.*

**Encik Peh Suan Yong:** Yang Berhormat, *can I just raised one issue? Just now of course I explained the rational for not having an appeal for the more serious misconduct. But after I say that, my officers at the back are asking me that they are concern if there is no appeal, that would be a difference between minor misconduct and serious misconduct. So, they also think that there should be an appeal for serious misconduct. Maybe the legal advisor of JPM can also...*

**Datuk Almalena Sharmila binti Dato' Dr. Johan:** *I think this was actually the issue I raised just now. There shouldn't be differentiation between two groups of people just because one is minor and one is major misconduct. So, I think that is something we need to look at.*

**Tuan Pengerusi:** *I think that's why she said just now. Basically, what she saying is that you should applied across the board. The right to appeal should be applied across the board for all offences. It doesn't seem very clear here. Here it look as though it just berat sebelah for the minor offences. The major ones don't have that right. Is that right? That is the concern, isn't it? So, I think that is the issue. But I think if you have the pindaan ubah suaian sewajarnya, it should be okay.*

**Encik Peh Suan Yong:** *No, I think if we want to consider having an appeal board, we should make it clear here and not just say that pindaan sewajarnya. I mean we don't have to say for certain there must be an appeal board because after all it just a recommendation and leave it to Parliament.*

**Tuan Pengerusi:** *Just now the 35, 36 and 37 is a only...*

**Encik Peh Suan Yong:** *Only minor misconduct.*

**Tuan Pengerusi:** *Minor, minor right*

**Tuan Mohamad Onn bin Abd. Aziz:** Kalau kami boleh tambah— ini bergantung kepada keputusan ini. Kami tambah selepas yang mana tadi 15 itu. Walau bagaimanapun, jawatankuasa pandangan suatu mekanisme berkaitan dengan rayuan bagi kes-kes kesalahan yang selain daripada kecil, diberikan ruang untuk merayu.

**Tuan Pengerusi:** *Is that okay?*

**Seorang Ahli:** Yes.

**Tuan Pengerusi:** *Maybe you can put that in at the pindaan. We come back after the prayers. 20 minutes?*

**Datuk Roosme binti Hamzah:** 7.30?

*[Ahli-ahli berbincang sesama sendiri]*

**Tuan Pengerusi:** 7.45 p.m. okay.

**Datuk Roosme binti Hamzah:** 7.45 p.m. okay.

**[Mesyuarat dtempohkan pada pukul 7.18 petang]**

**[Mesyuarat disambung semula pada pukul 7.57 malam]**

**Tuan Pengerusi:** *Where were we just now? Fasal...*

*[Ahli-ahli berbincang sesama sendiri tanpa menggunakan pembesar suara]*

**Tuan Pengerusi:** Ya. So, okay. Boleh kita teruskan? *Just now we stop at— we finish 16, page 72. Now we— I think 17 and 18 no problem. Number 19 was what I think we was discussed just now, berkenaan keanggotaan lembaga tata tertib.*

**Datuk Roosme binti Hamzah:** 19?

**Tuan Pengerusi:** *Did we make an amendment just now? Tidak ada? No?*

**SAC Dato' Mohd Azman bin Ahmad Sapri:** Yang Berhormat, dengan izin. Yang Berhormat...

**Tuan Pengerusi:** Sure.

**SAC Dato' Mohd Azman bin Ahmad Sapri:** *Just would like to refer to our letter, page 8. Paragraph 4.22. We would like to propose that IGP will be remove by the tribunal.*

**Tuan Pengerusi:** 4.20...?

**SAC Dato' Mohd Azman bin Ahmad Sapri:** 4.22, page 8.

**Tuan Pengerusi:** 22?

**SAC Dato' Mohd Azman bin Ahmad Sapri:** Ya.

**Tuan Pengerusi:** *Okay, this is a— berkenaan fasal 31(4). Is it a— sorry, Dato' Mohd Azman. I think this is a— you are saying it should be tribunalised?*

**SAC Dato' Mohd Azman bin Ahmad Sapri:** *Yes, by virtue of 140(4), this is special post appointed by Yang di-Pertuan Agong. So, maybe to show the independence rather than a Special Disciplinary Board chaired by the Ketua Setiausaha Negara, why not we remove by the tribunal.*

**Tuan Pengerusi:** *How is the IGP remove – just for my knowledge under the Federal Constitution, like a judge is tribunalise. So, what about the IGP? Is there a similar provision?*

**SAC Dato' Mohd Azman bin Ahmad Sapri:** *No, no. No provision. But this – on this the original 31(4) is by the Special Disciplinary Board.*

**Dr. Su Keong Siong:** *Currently what is the procedure?*

**SAC Dato' Mohd Azman bin Ahmad Sapri:** *Currently is no, according to PPA.*

**Tuan Pengerusi:** *Is there a tribunal procedure?*

**SAC Dato' Mohd Azman bin Ahmad Sapri:** *No, because we don't have any case before the IGP has been removed.*

**Tuan Pengerusi:** *Not fair enough, but I mean what— that doesn't mean it can't be— if it were to happen. So, if that were to happen, what is the process? Is it by way of tribunal like a judge? Because that is expressly stated for judge. So, for the IGP, what is the position? Mr. Peh do you know?*

**Encik Peh Suan Yong:** *Yang Berhormat, I think IGP could be, the same like AG. Its act a pleasure Yang di-Pertuan Agong. So, I think if they are appointed— he is appointed by Yang di-Pertuan Agong on the advice of Prime Minister, so, I think logically he can be removed by Yang di-Pertuan Agong based on the advice of the Prime Minister. And also, maybe now the IGP is also on contract. Maybe we also need to look at the provision of the contract.*

**Tuan Pengerusi:** *What are the implication in terms of misconduct if they were? On the part of the IGP. If...*

**Dr. Su Keong Siong:** *Any procedure...*

**Tuan Pengerusi:** *Like a judge is tribunalise. That is why the misconduct is heard.*

**Encik Peh Suan Yong:** *IGP is not tribunalise.*

**Tuan Pengerusi:** *So, where is the misconduct be heard?*

**Encik Peh Suan Yong:** *Probably by the Police Force Commission.*

**Tuan Pengerusi:** *Must be, right?*

**Encik Peh Suan Yong:** *Must be because Police Force Commission were appoint and remove all police.*

**Tuan Pengerusi:** *So, if the IPCMC comes in, would that be delegated to the IPCMC? It should be, isn't it?*

**Encik Peh Suan Yong:** *Only problem with the IPCMC is that one of the wakil of the disciplinary board, is a wakil polis. His rank will surely be lower than that of the IGP. That is why we need to set up this special tribunal by the— you know, someone who is equal or higher status than IGP to hear.*

**Tuan Pengerusi:** *You want to say something?*

**Dr. Su Keong Siong:** *I think says has no specific procedure provision to remove – I mean to handle IGP complaint. Clause 31(4), I mean there is mention to set up special tribunal. I think that is more than sufficient in fact, it is better than what is existing now. With KSN to chair the special lembaga tata tertib.*

**Tuan Pengerusi:** *But who will comprise the Lembaga...*

**Dr. Su Keong Siong:** *Ketua Setiausaha Negara, Lembaga Tata tertib Khas in section 31(4).*

**Tuan Pengerusi:** *Who are the members of the Lembaga Tata tertib Khas?*

**Encik Peh Suan Yong:** *At this moment is not mention. So, when the time comes, we hope it will never happen... [Ketawa]*

**Tuan Pengerusi:** *Of course, of course.*

**Encik Peh Suan Yong:** *Then we will have to look at it. It has to be someone of the same status as that of the IGP or higher. Maybe a Minister or somebody like that but it is not stated here. So, the Chief Secretary will be decided. But the police wrap is adjusting instead of the Chief Secretariat appointing, he wants the Yang di-Pertuan Agong to appoint.*

**Tuan Pengerusi:** *Okay. Because this I think is one of the major criticisms. Whether we like or not of the IPCMC Bill, they did exclude the— doesn't have jurisdiction over the IGP. In fact, I think I asked this in Parliament, and the Deputy Minister, Tuan Mohamed Hanipa, he replies was that the IGP was also be a subject to the IPCMC. I think that was in the Hansard. I don't know what he means by that. Maybe he is not aware of this particular issue. But I don't know, that seems to be— is that the— can I ask the KDN representative? Is that the stand of the KDN? Because that was an official reply. Not KDN sorry, by Tuan Mohamed Hanipa.*

**Seorang Ahli:** *[Bercakap tanpa menggunakan pembesar suara]*

**Tuan Pengerusi:** *JPM, sorry. That was the official reply. Sorry, I am looking at you. Everyone is looking at you. [Ketawa] So, is that— basically, a question— I asked the question in Parliament, as whether the IGP is subject to the IPCMC. And his reply was yes, Tuan Mohamed Hanipa reply.*

**Datuk Almalena Sharmila binti Dato' Dr. Johan:** *I am apologies. I wasn't part of the reply. But normally, when the replies prepared for the Minister, they were having been consultation with the agency concern. And also, because that will be the official reply. So, it would have been consultation.*

**Encik Peh Suan Yong:** *I think Yang Berhormat, I think what he may have meant is not a subject to— under IPCMC but under the IPCMC Act. Because IPCMC Act has a provision to take care of the IGP which is under section 31(4). So, he is subject to the IPCMC Act.*

*So, in a way IPCMC the set up can receive complaints against IGP. But instead of the disciplinary board seating to the side on the faith of the IGP, the Chief Secretary will have to appoint another board. But it is still within the provision of the IPCMC Act.*

**Dr. Su Keong Siang:** *Do you think it would sort of like make it clearer in this subsection (4) itself with name who are the board in Lembaga Tatatertib Khas ini? I mean, you just naming the Chief Secretary.*

**Tuan Pengerusi:** *But the only problem with IPCMC here is that it has anggota polis, right? The lembaga. That is the only reason why it cannot have jurisdiction over the IGP. Is that correct?*

**Encik Peh Suan Yong:** *That could be one of the reason.*

**Tuan Pengerusi:** *So, if the same lembaga were to have an exercise jurisdiction over him, minus that police officer. Would that suffice? That police officer replaces by somebody of equal or higher rank. Then it would suffice isn't it?*

**Encik Peh Suan Yong:** *Can look into that.*

**Tuan Pengerusi:** *Because if you to – like in a case of judge, there is a specific procedure to discipline the judge. So, there's unlike that position, there is no specific procedure in the case of the IGP. So, that is why there should be something specifically said, I feel.*

#### ■2010

*Otherwise, it would be as though the IPCMC has no jurisdiction over the IGP.*

**Encik Peh Suan Yong:** *Another way is to have another tribunal, have another Lembaga Disciplinary Board specifically for the IGP and now we have to decide on who are the members and put it in the Schedule. That is another way of going about it if you want to have certainty.*

**Tuan Pengerusi:** *I think that is important. This is quite an issue.*

**Tuan Mohamad Onn bin Abd. Aziz:** *Kalau Tuan Pengerusi tengok Tuan Pengerusi, sekarang isu ini adalah sama ada kalau kita baca fasal 31(1), (2), (3), (4) ini, sama ada IGP tertakluk atau tidak kepada IPCMC. Sebab kalau tengok fasal 31(1) itu, "Suruhanjaya hendaklah memberi kuasa tatatertib ke atas apa-apa salah laku yang dilakukan oleh mana-mana anggota pasukan polis". So, dalam itu tidak jelas. Maksudnya, bukan orang awam, anggota polis itu*



termasuklah IGP. Kalau kita buka balik taksiran anggota pasukan polis, di situ dijelaskan siapakah anggota polis tersebut iaitu mana-mana anggota pasukan polis yang ditubuhkan di bawah Perkara 132 Perlembagaan Persekutuan termasuklah IGP.

So, yang ini memang kita sengaja diamkan IGP sebab bila sudah sebut Perkara 132 itu, IGP sudah dapat of itu. Dia sebahagian daripada anggota pasukan polis. Oleh sebab itu kita tidak nyatakan IGP *specifically* dalam 31 ini. Sebab saya faham. Kita pernah berjumpa dengan NGO beberapa kali, bila mereka melihat pada fasal 31(4) ini, seolah-olah kalau untuk IGP, ada satu Lembaga Tatatertib Khas, *nothing to do* dengan IPCMC. Akan tetapi sebenarnya siasatan masih kita lakukan lagi. Cuma daripada segi bila hendak buat rujukan, kita perlukan satu *special* lembaga sebab apa IGP ini dia Turus 1. So bila hendak perlukan yang lebih tinggi, di Malaysia ini tidak silap saya ada empat orang sahajalah yang Turus 1. IGP Turus III ya?

**Tuan Pengerusi:** *“Lembaga Tatatertib Khas untuk mendengar aduan itu dan prosiding”.*  
*So even the complaint...*

**Tuan Mohamad Onn bin Abd. Aziz:** Yes.

**Tuan Pengerusi:** Dari mulanya, perlu disalurkan kepada satu...

**Tuan Mohamad Onn bin Abd. Aziz:** Itu saya rasa, daripada situlah saya nampak dia punya penjelasan yang kami perlu jelaskan. Bila kita *refer* kepada Tatatertib itu, siasatan kita telah buat. Cuma lagi, sebab apa, Lembaga Tatatertib Khas ini dia tidak ada IO. Dia cuma mendengar sahaja seperti mana Lembaga yang dalam jadual yang sebelum ini. So apa kami buat ialah IPCMC akan jalankan siasatan dan memandangkan subjek ataupun yang diadu ialah IGP, kita akan rujuk kepada KSN supaya KSN tubuhkan satu lembaga. Itu sahaja. Siasatan semua kami jalankan, IPCMC akan jalankan. Bukan Lembaga Tatatertib Khas jalankan. Lembaga Tatatertib Khas itu adalah kalau saya boleh katalah, satu lagi lembaga seperti mana dalam Jadual kepada kita punya akta, rang undang-undang itu. Tinggal lagi sebab dia adalah IGP, sebab itu kita letakkan di bawah subfasal 4 ini.

**Tuan Pengerusi:** *No, if the concern is that the IGP cannot be investigated by IPCMC because of the member, one of the whom is the officer, then even the deputy IGP can't be investigated, can he? Or even a high-ranking officer? Is not it? It is not just the IGP, that's the concern.*

**Encik Peh Suan Yong:** *My understanding, I do not know whether it is correct or not. My understanding is that the IPCMC set up. It is not the Commissioner themselves. Sometime it is an officer of the Commissioner and of the Commission and all that. IPCMC set up. They can receive complaint about the IGP. They can also investigate about the IGP. It is just that the disciplinary body, the discipline board is not stated in the act.*

**Tuan Pengerusi:** *But it says mendengar aduan.*

**Encik Peh Suan Yong:** *No, the mendengar aduan is to hear the complaint, it is not to receive the complaint.*

**Tuan Pengerusi:** *No, receiving is one thing but the main thing is mendengar aduan.*

**Encik Peh Suan Yong:** *To hear the complaint and then to carry out the disciplinary proceeding, you need to have a special disciplinary body appointed by the chief secretary to the government.*

**Tuan Mohamad Onn bin Abd. Aziz:** *Saya rasa mendengar aduan itu yang mungkin mendatangkan confusion. So, apakah mendengar itu termasuk sebagai sebahagian daripada siasatan? Jadi, saya rasa mungkin di situlah Tuan saya rasa Tuan. Kalau bersidang, mungkin dia berbeza. Bersidang sebagai Lembaga Tatatertib. Saya serah pada...*

**Encik Peh Suan Yong:** *But I think the intention was to actually to carry out the disciplinary hearing. So, I think if there is an ambiguity as to the wording, we can correct it-lah. No problem because we can do an amendment.*

**Tuan Pengerusi:** *What do you propose? So that I can understand it a bit clearer.*

*[Ahli-ahli berbincang sesama sendiri]*

**Encik Peh Suan Yong:** *Tuan Pengerusi, under the new amendment, clause 31, the insertion (4), they say, "The Disciplinary Board shall have the jurisdiction to deal with misconduct clearer other than minor misconduct." The new clause 31(4).*

*[Ahli-ahli berbincang sesama sendiri]*

## ■2020

**Datuk Almalena Sharmila binti Dato' Dr. Johan:** *Mr. Peh, you are looking at the word 'bidang kuasa untuk mendengar aduan ini'? Is that the word you are looking at? To deal. I think the deal maybe the word 'menangani'.*

**Encik Noor Rosidi bin Abdul Latif:** *Saya ada cadanganlah tuan. Instead of ini, tambah kita rasa kita boleh delete terus perkataan tuan. We are proposing that— kita buat macam ini saja. Notwithstanding subsection (3), where the complaints of misconduct is against Inspector General Police, the Chief Secretary General of the Government shall establish a Special Disciplinary Board and the proceedings before the disciplinary board shall be conducted in accordance with regulation made under ini. So, the words 'to hear the complaints and' kita delete. Word 'to hear the complaint' kita delete.*

**Datuk Roosme binti Hamzah:** *[Bercakap tanpa menggunakan pembesar suara]*

**Encik Noor Rosidi bin Abdul Latif:** *Kalau inilah Datuk.*

**Encik Peh Suan Yong:** *'to deal with the complaint', then comma, and 'the proceedings before the special disciplinary board shall be conducted in accordance with regulations'. Because I think 'to deal with the complaint' probably approve somewhere kan by...*

**Tuan Pengerusi:** *One of the issue here is the transparency of investigation against the IGP because here you have the Chief Secretary of the Government establishing special board to hear or to deal or whatever it is with that complaint. So, in other words it is not in the hands of IPCMC at all. It is in the hands of the government. Any complaint against the IGP will go into the hands of the government which is the Chief Secretary of the Government, to the government. Who will establish the board and all that lah?*

**Encik Peh Suan Yong:** *I take note of that. But it is not fully so because the complaint will still be received by the IPCMC and the investigation will still be carried out by the IPCMC. It is just that when you come to the setting up of the board, it would be the Chief Secretary of the Government.*

**Tuan Pengerusi:** *But it does not say that, does it? If it does not say that, then it will go to the court. The court can imply that. It does not say that anywhere.*

**Encik Peh Suan Yong:** *It just say that the commission shall has disciplinary authority over any misconduct committed by any member of the police force. Dia tidak exclude IGP. So...*

**Tuan Pengerusi:** *Yes, but then subject to 31(4) lah which deals with IGP lah?*

**Encik Peh Suan Yong:** *Which has to do only with the board lah. The others should be under the commission.*

**Tuan Mohamad Onn bin Abd. Aziz:** *Tuan Pengerusi, kalau Tuan Pengerusi baca subseksyen (4) tu, ia subject to subsection (3). Dia bukan subject to subsection (1) and (2). So, (1) and (2) still remain as it is. Oleh sebab apabila kita baca subseksyen (3), dia refer pada composition of a board members, disciplinary board yang mana IGP adalah part of the board members. Oleh sebab itu ia subject kepada subsection (3).*

**Tuan Su Keong Siong:** *Subsection (4) is more of in the event.*

**Tuan Mohamad Onn bin Abd. Aziz:** *Yes.*

**Tuan Su Keong Siong:** *In the event-lah. I think that will clearer...*

**Tuan Mohamad Onn bin Abd. Aziz:** *In the event, okay.*

**Tuan Su Keong Siong:** *I mean if we put the word 'in the event' then the complaint of misconduct against IGP, then the Chief Secretary can setup a special disciplinary board to deal with the complaint. I think then it was...*

**Tuan Mohamad Onn bin Abd. Aziz:** *For example, if...*

*[Ahli-ahli berbincang sesama sendiri]*

**Tuan Pengerusi:** *Now, you see— if you look at 31 tuan, 31(2) you see “the commission may exercise”, it uses the word ‘may’. “It may exercise disciplinary decision over any complaint concerning the misconduct of any member of the police”. Okay, that is quite clear. Now, you go, jump to subsection (4). Subsection (4) is still subject to subsection (2), right? Now, but subsection (2) is only, is a discretion, it is not mandatory. Meaning that there is mandatory procedure to deal with the IGP specifically under (4). So, in other words, (2) that cannot arise because (2) only uses the word ‘may’ whereas (4) uses the word ‘shall’. The government or the Secretary to the government shall establish. So, in other words, you have a specific procedure for the IGP in (4), which is not subject to (2). So, when you talk about to the commission may exercise disciplinary jurisdiction over any complaint concerning the misconduct of any member of the police force that would not apply to IGP because the IGP is dealt with in (4), right?*

■2030

*So, in other words, the IPCMC has got no jurisdiction over the IGP.*

*[Ahli-ahli berbincang sesama sendiri]*

**Tuan Pengerusi:** *Because in (4), okay, “Notwithstanding subsection (3)”. Never mind, I think that one is a separate matter. “Where the complaint or misconduct is against the IGP, the Chief Secretary to the Government shall establish a disciplinary board.” So, that must be done, it is mandatory. So, in other words, other provisions do not apply, including (2). So, the commission cannot exercise disciplinary jurisdiction over a complain concerning misconduct of the IGP.*

**Tuan Mohamad Onn bin Abd. Aziz:** *If I may Yang Berhormat, if we with another way of reading the subsection (2) or clause (2), if we use the word ‘Commission shall exercise’. Let’s say then there will be two— if the complaint is against the IGP then we cannot proceed with subsection (4).*

**Tuan Pengerusi:** *Ya lah that is the other way of looking at it.*

**Tuan Mohamad Onn bin Abd. Aziz:** *[Ketawa] Okey.*

**Tuan Pengerusi:** *But then, okay. You look at paragraph (4), “Notwithstanding subsection (3), where the complaint of misconduct is against the IGP, the Chief Secretary to the Government shall establish...” Can the commission establish Special Disciplinary Board to hear the complaint and proceeding for the IGP? And then you can identify who the members of this Special Disciplinary Board would be?*

**Encik Peh Suan Yong:** *Again Tuan Pengerusi, I think this is a policy decision of the government. So, let say we draft it according to what the government wants. If that is the policy of the decision, then we will look into drafting something to say that it is the commission going to appoint the board...*

**Tuan Pengerusi:** *No, no. Fair enough.*

**Encik Peh Suan Yong:** *Or even we put the board at the schedule.*

**Tuan Pengerusi:** *No, fair enough. But, I mean the policy aside, it can read the commission can establish the board, right? The commission can do that right?*

**Tuan Mohamad Onn bin Abd. Aziz:** *[Bercakap tanpa menggunakan pembesar suara] ...The commission can, yes.*

**Tuan Pengerusi:** *I think there is nothing to prevent that.*

**Tuan Mohamad Onn bin Abd. Aziz:** *Nothing to stop the commission, yes.*

**Tuan Pengerusi:** *Yes.*

**Tuan Mohamad Onn bin Abd. Aziz:** *But in terms of composition Tuan Pengerusi? Are you suggesting...*

**Tuan Pengerusi:** *Of course composition is something quite different.*

**Tuan Mohamad Onn bin Abd. Aziz:** *Okey.*

**Tuan Pengerusi:** *So, let's just assume it reads this way. Paragraph 4. "Notwithstanding subsection (3), where the complaint of misconduct is against the IGP, the Commission shall establish a Special Disciplinary Board to hear the complaint" or you can put it this way, "The Commission shall establish a Special Disciplinary Board, the members are which are set out in Schedule 2..." or something like that. "To hear the complaint and the proceedings before the Special Disciplinary Board and..."*

*So, in another words, is the Commission which appoints the Special Disciplinary Board and the members or it composition is also specified. Which means there would not be any issue about the rank. That is also— in that way, the IPCMC retains some jurisdiction over the IGP, isn't it? And not the government because the IPCMC supposed to be independent. So, if you give the power to the government to establish a body and all that, to investigate the IGP, then where is the independence? Then the IGP is treated differently from any other police officers. Again, that goes against Article 8.*

**Datuk Roosme binti Hamzah:** *[Berucap tanpa menggunakan pembesar suara] ...The ordinary.*

**Tuan Pengerusi:** *I think that is the concern of the...*

**Tuan Mohamad Onn bin Abd. Aziz:** *We take note Tuan Pengerusi, and we can propose for the amendment.*

**Tuan Pengerusi:** *I think we have to put it here lah. I propose that.*

**Tuan Mohamad Onn bin Abd. Aziz:** *Okey.*

**Tuan Pengerusi:** *I think that has to be stated...*

**Tuan Mohamad Onn bin Abd. Aziz:** *From Jawatankuasa.*

**Tuan Pengerusi:** *You know, with regard to 31(4), to be amended, to read as follows. I just read lah. Want the English version or yang Malay version? Malay, I am sure, I think can. Because we are doing in Malay. So, macam ini; “31(4) Walau apa pun subseksyen (3)...” Is that correct, walau apa pun subseksyen (3)? Is that “Notwithstanding subsection (3)”?* *It is correct ya? Okay, alright.*

*“Walaupun subseksyen (3), jika aduan salah laku itu terhadap Ketua Polis Negara”, delete perkataan ‘Ketua Setiausaha Negara’. Delete that and replace with ‘Suruhanjaya’. “Hendaklah menubuhkan suatu Lembaga Tatatertib Khas yang terdiri daripada Ahli-ahli”...*

**Tuan Mohamad Onn bin Abd. Aziz:** *We can follow subclause (3) Tuan Pengerusi.*

**Tuan Pengerusi:** *Which one is it?*

**Tuan Mohamad Onn bin Abd. Aziz:** *Terdiri daripada anggota, sebagaimana yang dinyatakan dalam jadual.*

**Tuan Pengerusi:** *Ya. Okey. “Yang terdiri daripada anggota sebagaimana yang dinyatakan dalam Jadual”. I think the Jadual has to be number, whatever it is lah. “Yang terdiri daripada anggota sebagaimana yang dinyatakan dalam Jadual X untuk mendengar aduan itu dan prosiding di hadapan Lembaga Tatatertib Khas itu hendaklah di jalankan mengikut peraturan-peraturan yang dibuat di bawah Perkara 132 Perlembagaan Persekutuan.” Then the Jadual X, can specify the members. In fact, it can be the same members of the commission, say for that one police officer, isn’t it?*

**Tuan Mohamad Onn bin Abd. Aziz:** *Yang itu, NGO brought up the issues. Akan tetapi kita berpandangan sebaik-baiknya kita elakkan sebabnya board members itu telah bersama-sama dengan IGP dalam PBT sebelum ini. Jadi mungkin ada conflict of interest nanti. Oleh sebab they have been together for the last— for example IGP jadi board members dalam itu dan dalam itu ada lagi tiga orang lagi commissioners. Akan tetapi tiba-tiba commissioners yang sama akan adili juga IGP. So, dia punya conflict of interest itu kita kuarir, bias itu kita kuarir Tuan Pengerusi.*

*Oleh sebab itu kita hendak betul-betul independent. Tak ada siapa pun yang— akan tetapi tapi this policy call kalau rasa yakin boleh kekal, tapi itu kerisauan kami lah. They have been there together, menduduki Ahli Jawatankuasa Lembaga Tatatertib. Itu sahaja, tetapi polisi boleh dipertimbangkan.*

**Tuan Pengerusi:** *But what about— so, macam mana then? With the composition.*

**Tuan Mohamad Onn bin Abd. Aziz:** *Composition dia, suruhanjaya yang menentukan tetapi ahli-ahlinya saya tak tahu mungkin boleh pengerusinya seorang daripada IPCMC. Saya tak*

tahu, saya serahkan pada cadangan daripad— kalau ikut cadangan asal adalah KSN dan juga KSP. Siapa lagi? AG, dan juga KPPA. Empat orang.

**Datuk Roosme binti Hamzah:** *[Bercakap tanpa menggunakan pembesar suara]* ...Macam yang pegawai tinggi pengurusan lah?

**Tuan Mohamad Onn bin Abd. Aziz:** Ya.

**Datuk Roosme binti Hamzah:** *[Bercakap tanpa menggunakan pembesar suara]* ...*That one like other high ranking.*

**Seorang Ahli:** *In charge of the...*

**Tuan Pengerusi:** *Former Chief Judge, Chief Justice. It has to be of that rank, kan?*

**Dr. Su Keong Siong:** *[Bercakap tanpa menggunakan pembesar suara]* ...*Charge of certain ranking.*

**Tuan Mohamad Onn bin Abd. Aziz:** Akan tetapi *as it is*, yang *servicing as government servants* Tuan Pengerusi.

**Dr. Su Keong Siong:** *You mean the current serving one?*

**Tuan Mohamad Onn bin Abd. Aziz:** Sehingga hari inilah, tetapi terpulanglah kepada keputusan dasar.

*[Ahli-ahli berbincang sesama sendiri]*

**Encik Peh Suan Yong:** *There is something wrong with the wording.* Dua kali perkataan "Terdiri daripada".

**Tuan Pengerusi:** *Which one is it? [Merujuk kepada slaid]*

**Encik Peh Suan Yong:** *The underlined part. 'Terdiri daripada anggota'. I think we have to delete one of the perkataan 'terdiri daripada'. [Ketawa]*

**Tuan Pengerusi:** *I think dalam Jadual X, maybe we can state here, to be comprised of high ranking officials, of some sort, whether in service or retired.*

#### ■2040

*There has to be what— I think. there must be that sort of like level afforded to the IGP but again I think will this not offence the equality rule with other members of the force?*

**Encik Peh Suan Yong:** *I think it is can go under reasonable classification because IGP, people in the lembaga has to be of the same or equal rank. I think this is something quite established because we cannot have for the others, people of that rank sitting in the lembaga. I don't think they have the time.*

**Tuan Pengerusi:** *The current one there is no list, right? Of members?*

**Encik Peh Suan Yong:** *No, only said that KSN to establish.*

**Tuan Pengerusi:** *If we take out yang terdiri daripada the list and all that pun boleh, kan? That mean it's not specified.*

**Encik Peh Suan Yong:** *Can.*

**Datuk Roosme binti Hamzah:** *[Bercakap tanpa menggunakan pembesar suara]*

**Tuan Pengerusi:** *I think that will better. This is because the moment you put this in yang terdiri and then it becomes very subjective. So, I think just leave it like that-lah. Wait, wait. Let me see. Suruhanjaya...*

**Datuk Almalena Sharmila binti Dato' Dr. Johan:** *Just a question to ask.*

**Tuan Pengerusi:** *Yes.*

**Datuk Almalena Sharmila binti Dato' Dr. Johan:** *When we have Lembaga Tatatertib Khas, can that be done administratively or do you need to it by way of regulation because it's a special board composition and all that. This is because for the other lembaga tatatertib, kita specify-kan. So, just— This is a drafting question.*

*[Ahli-ahli berbincang sesama sendiri]*

**Datuk Almalena Sharmila binti Dato' Dr. Johan:** *This is because ia kata dijalankan mengikut peraturan-peraturan yang dibuat di bawah perkara 132, Perlembagaan Persekutuan. Normally, you will be referring to P.U. (A) 395 but here, we are doing specific disciplinary board, yeah. So, will there be a special regulation or subsidiary legislation that is required?*

*[Ahli-ahli berbincang sesama sendiri]*

**Datuk Almalena Sharmila binti Dato' Dr. Johan:** *This is because if not, we may need to put the membership as what Tuan Pengerusi was suggesting earlier, as a jadual or schedule to the law. Otherwise, how do we put it in?*

**Tuan Pengerusi:** *I think that is a valid point. Cannot just come out thin air like...*

**Datuk Almalena Sharmila binti Dato' Dr. Johan:** *Yes.*

**Tuan Pengerusi:** *It has to be something. Then maybe you can go back the Jadual X just now-lah.*

**Datuk Almalena Sharmila binti Dato' Dr. Johan:** *For me it's still Tuan Pengerusi, is that they will ask what is the membership. We're not, I mean...*

**Tuan Pengerusi:** *I know, I know. It has to be of equal rank-lah, at least. Maybe that can be stated. Can you go back to just now the...*

**Beberapa Ahli:** *Yang terdiri tadi...*

**Tuan Pengerusi:** *Yang terdiri dari Jadual X. Put it back there. [Merujuk kepada slaid pembentangan] Yes. Yang terdiri daripada anggota. How many anggota? I think it should*



comprise X amount of members of equal or at least of equal rank of the IGP. Then, at least there will be— then, they can decide who it is. Does that make sense?

**Dr. Su Keong Siong:** Sorry. If we put it, I mean the anggota in the jadual, it would have the number with you, right? Do we have to be so specific to see how many anggota? It just like the clause (3), is it. Above, also the same thing. No, the clause 31(3), “Consists of members as specified in the Schedule”. Also, it’s that general enough, I think.

**Tuan Pengerusi:** No, the jadual in the 31(3) is already specific.

**Dr. Su Keong Siong:** Ya. So, if you put there as jadual, X also specific what, isn’t it? The other jadual is for Lembaga Tatatertib Khas, the anggota that is specific tadi.

**Tuan Pengerusi:** This the jadual for 31(3).

[Ahli-ahli berbincang sesama sendiri]

**Tuan Pengerusi:** But the— Oh, Tuan Mohamad Onn is gone outside. I’ll wait for him to come.

[Ahli-ahli berbincang sesama sendiri]

**Tuan Pengerusi:** Sorry, Tuan Mohamad Onn, just wanted to ask you. You see the membership of this one under 31(3) is pengerusi, dua anggota suruhanjaya, IGP and seorang wakil Suruhanjaya Pasukan Polis. So, five. Five anggota, kan?

**Datuk Roosme binti Hamzah:** One, two, three...

**Tuan Mohamad Onn bin Abd. Aziz:** Empat, yes.

**Tuan Pengerusi:** Ya. So, that should be the number as well for this lembaga khas, kan?

**Datuk Roosme binti Hamzah:** For IGP.

**Tuan Mohamad Onn bin Abd. Aziz:** Tidak semestinya Tuan Pengerusi. Ia bergantung pada dia punya rank yang ada itulah. Kalau setakat ini, kita ada dan yang kita tahu empatlah, yang lebih atas daripada IGP sendiri.

**Tuan Pengerusi:** But I think the pengerusi anggota should be a member as well.

**Tuan Mohamad Onn bin Abd. Aziz:** Ya, saya serahkan kepada— kalau berpandangan Tuan Pengerusi boleh begitu, sewajarnya dicadangkan, kita boleh pertimbangkan. Kita boleh bawa kepada kerajaanlah untuk pertimbangkan.

**Tuan Pengerusi:** Can we go back just now to the ‘red’ one. Yang terdiri daripada— No, just now is the one. [Merujuk kepada slaid] Ya, ya.

## ■2050

Terdiri daripada— no ‘x’. Anggota sebagaimana yang dinyatakan dalam Jadual X. I think we can specify in the Jadual X, pengerusi suruhanjaya, dua anggota suruhanjaya. There is the same, just now.

**Datuk Roosme binti Hamzah:** *Something like disciplinary board. Chairman.*

**Tuan Pengerusi:** *We'd follow back the same as just now-lah. Pengerusi suruhanjaya, and next one is dua anggota suruhanjaya. Okey. And then— I think the rest can be “dan anggota-anggota lain yang setaraf ataupun”— how do we say it in— what is...*

**Dr. Su Keong Siong:** *How many you want to be?*

**Tuan Pengerusi:** *No. Don't need to state the figure-lah. Setaraf atau of equal rank or equal or higher rank? Setaraf atau...*

*[Ahli-ahli berbincang sesama sendiri]*

**Tuan Pengerusi:** *Sekurang-kurangnya setarافلah. “Dan anggota-anggota lain yang sekurang-kurangnya setaraf dengan Ketua Polis Negara”— but at least-lah. It could be more-lah. Setaraf dengan Ketua Polis Negara.*

**Datuk Roosme binti Hamzah:** *Setaraf dengan Ketua Polis Negara.*

**Tuan Pengerusi:** *That could include Chief Justice and so on.*

**Datuk Roosme binti Hamzah:** *[Bercakap tanpa menggunakan pembesar suara] The current holding post.*

**Tuan Pengerusi:** *I think that's the best after six hours, that's the best I can do.*

*[Ketawa]*

**Datuk Roosme binti Hamzah:** *[Bercakap tanpa menggunakan pembesar suara]*

**Tuan Pengerusi:** *Okay, shall we move on to the other? Where were we just now?*

**Seorang Ahli:** 23.

*[Ahli-ahli berbincang sesama sendiri]*

**Tuan Pengerusi:** *Okay, so next one is status persaraan polis, polis bantuan dan simpanan. Ya, this is to do with the sama ada pesara polis juga akan tertakluk kepada IPCMC and pegawai bantuan and so on. I think it cannot apply to pesaralah. That is quite clear. I think that is recommended in paragraph 23.*

Jawatankuasa bersetuju bahawa pesara polis, polis bantuan— polis bantuan and polis simpanan, *are they not part of the force? I don't know, I am asking. How are they dilantik and so on?*

**Tuan Mohamad Onn bin Abd. Aziz:** *Polis bantuan, correct me if I am wrong, dilantik oleh Ketua Polis Negara. Selalunya, dia serve— betul ya? Mungkin wakil polis boleh explain.*

**Tuan Pengerusi:** *Pegawai polis bantuan and polis simpanan. What is their status?*

**SAC Dato' Mohd Azman bin Ahmad Sapri:** *They were appointed by the IGP and on duty they have the same powers and privilege, on duty.*

**Tuan Pengerusi:** *So, are they police officer for the purpose of salary and all that?*

**SAC Dato' Mohd Azman bin Ahmad Sapri:** *Yes, they are police officer but when they are on duty only. So, maybe the definition of this auxiliary police and this polis bantuan, they were not consider as a public servant, 132— public office.*

**Tuan Pengerusi:** *Oh, I see.*

**Tuan Mohamad Onn bin Abd. Aziz:** *Pertamanya, betullah. Bagi maksud menjalankan tugas kepolisian, mereka adalah polis. Okey, bagi maksud perjawatan mereka bukanlah penjawat awam seperti mana diputuskan oleh 132 of the Federal Constitution.*

Isu yang berbangkit ialah bagaimana pula status *auxiliary police* atau pegawai-pegawai sukarela yang mana mereka ini adalah kalangan yang telah pencen, telah bersara. Kemudian dipanggil untuk berkhidmat. Adakah mereka tertakluk kepada IPCMC? So jawapannya, statusnya masih sama walaupun dulu pernah bertugas sebagai polis tetapi *once* dia telah bersara, status pesara kekal dan juga status sebagai *auxiliary police* itu kekal juga, masih lantikan IGP. So, mereka tidak tertakluk kepada perkara 132 dan mereka bukanlah penjawat awam dan IPCMC tidak terpakai kepada mereka.

**Tuan Pengerusi:** *Okeylah. Then the recommendation in 23 is okay. So, the next one is bahagian E, which is perjawatan, kelengkapan, kemudahan dan keperluan kepolisian. So, this is to do with the kebajikan which is very important and the pengesyoran— the syor is mengesyorkan— I think this is okay.*

*So, we go on to 26.*

*[Ahli-ahli berbincang sesama sendiri]*

**Datuk Roosme binti Hamzah:** *[Bercakap tanpa menggunakan pembesar suara] Actually this is a form of financial procedure to improve the way of getting allocation.*

**Tuan Mohamad Onn bin Abd. Aziz:** *Kalau saya boleh jelaskan Yang Berhormat. Perkara ini berbangkit setelah kita lihat bagaimana saluran kewangan— peruntukan kewangan disalurkan itu mengambil proses yang panjang. Cadangan ini sebenarnya datang daripada KDN pun waktu kita buat sesi libat urus. Ia mencadangkan konsep PTJ. PTJ ini di setiap negeri kita PTJ supaya cepat, seseorang itu tidak payah pergi pada KDN, pergi kepada itu— so, lambat. Sebab kadang-kadang benda ini kereta rosak dia perlukan duit yang segera. Kadang-kadang tandas pecah, bumbung pecah. So, bila ada PTJ ini— konsep PTJ diperkenalkan di setiap negeri. Kita berharap masalah ini dapat diatasi supaya segala bentuk pembaikan yang memerlukan tindakan segera dapat diambil tindakan dengan cepat.*

**Tuan Pengerusi:** *Ini akan mempercepatkan penyaluran dana?*

**Tuan Mohamad Onn bin Abd. Aziz:** *Ya, saya.*

**Datuk Roosme binti Hamzah:** *So, we'll need Treasury punya approval?*

**Tuan Mohamad Onn bin Abd. Aziz:** Tidak perlu. Ini cuma dia punya — sebab dari segi kewangan, MOF dah bagi. Cuma dari segi kalau saya boleh kata birokrasilah, banyak sangat *stage*, banyak sangat peringkat. Konsep ini saya rasa di mahkamah pun dilaksanakan.

**Seorang Ahli:** *[Bercakap tanpa menggunakan pembesar suara]*

**Tuan Mohamad Onn bin Abd. Aziz:** Yes, maknanya *approved already*, cuma *allocation* diletakkan dekat PTJ.

**Datuk Roosme binti Hamzah:** *So, within control of pegawai pengawal?*

**Tuan Mohamad Onn bin Abd. Aziz:** Ia akan pergi kepada *respective states*. Saya rasa— saya dapat makluman daripada KDN sendiri. Saya rasa cadangan ini sebahagiannya dipertimbangkan dikaji supaya masalah kelewatan mendapatkan sumber kewangan bagi membaik pulih apa-apa kerosakan yang memerlukan perhatian segera dapat diatasi.

**Datuk Roosme binti Hamzah:** Sekarang ini maknanya, perwujudan PTJ itu memang sudah sedia ada atau belum?

**Tuan Mohamad Onn bin Abd. Aziz:** Belum lagi, Datuk.

**Datuk Roosme binti Hamzah:** *So, yang ini ada memerlukan Ministry of Finance* punya input jugalah ini? Tidak?

**Tuan Mohamad Onn bin Abd. Aziz:** Saya rasa KDN sudah memadai sebab duit itu sudah ada, Datuk. Cuma saluran sahaja, ia punya kaedah itu.

**Datuk Roosme binti Hamzah:** *This is government procedure.*

**Tuan Mohamad Onn bin Abd. Aziz:** *Government procedure.*

**Datuk Roosme binti Hamzah:** *This is government of setting up— this is pusat tanggungjawab is money to be disburse.*

**Tuan Pengerusi:** *But, is it...*

**Tuan Mohamad Onn bin Abd. Aziz:** KDN ini boleh membantu Yang Berhormat Tuan Pengerusi.

**Tuan Pengerusi:** *Is it an improvement of the current system?*

**Tuan Mohamad Onn bin Abd. Aziz:** Ya, saya.

**Tuan Pengerusi:** *It is?*

**Tuan Mohamad Onn bin Abd. Aziz:** Yes, yes.

**Tuan Pengerusi:** *Then okay-lah, I think it's fine. Next is the peranan dan pemeraksanaan JIPS serta kuasa kawalan tatatertib PDRM. The concern here* menjadikan JIPS tidak relevan. PDRM mempunyai mekanisme yang mencukupi untuk menjalani penyiasatan.

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IPCCM sepatutnya *oversight body*, terlalu *rigid*. *I think paragraph 27.6, "Pandangan SUHAKAM selaras dengan fungsi IPCCM menjalankan..." This I think we went through just now bukan? I think we adopted this clause 31(5). Is that right? Jawatankuasa bersetuju peranan JIPS masih relevan. And I think this one, it was suggested just now 28(a) subfasal 22(2) untuk memberikan Suruhanjaya kuasa atas nama Suruhanjaya untuk menetapkan mana-mana tata kelakuan. Fasal 25 dipinda dengan memasukkan perenggan (d) ke dalam fasal 25.*

**Dr. Su Keong Siong:** *This is all in the amendment one?*

**Datuk Roosme binti Hamzah:** *Yes, the current amendment.*

**Tuan Pengerusi:** *Did we go through this just now? We did, right? Fasal 25 dipinda. I think (b) has to be taken out kan? Clause 25 (d). This is the same issue as a... [Disampuk]*

**Tuan Mohamad Onn bin Abd. Aziz:** *Clause 18, 13 (d). The other day.*

**Tuan Pengerusi:** *Ya, tetapi but fasal 25 also ada kan? I think that is already dipinda kan?*

**Dr. Su Keong Siong:** *Just now we were talking about the power to the Commissioner kan?*

**Tuan Mohamad Onn bin Abd. Aziz:** *Yes.*

**Tuan Pengerusi:** *And not back to the police?*

**Tuan Mohamad Onn bin Abd. Aziz:** *Not to the police. That is why Tuan Pengerusi proposed to delete paragraph 13 (d). So, there is no more delegation.*

**Tuan Pengerusi:** *What about clause 25?*

**Tuan Mohamad Onn bin Abd. Aziz:** *Clause 25 (d) ialah kuasa yang kita akan jalankan or kita akan berikan – kuasa IPCCM diberikan kepada PDRM untuk menjalankan siasatan kes-kes yang salah kecil macam contohnya rambut panjang tadi itulah. Rambut panjang atau datang lewat. Nanti IPCCM akan dihujani dengan semua jenis aduan.*

**Tuan Pengerusi:** *Ya. Saya setuju. So, itu akan ditetapkan oleh Suruhanjaya lah apa yang definisi salah laku kecil. That's what we— I think. Fasal 31 dipinda dengan memasukkan...*

*[Ahli-ahli berbincang sesama sendiri]*

**Tuan Pengerusi:** *Just now Clause 31(5)...*

*[Ahli-ahli berbincang sesama sendiri]*

**Tuan Pengerusi:** *So, sorry. Paragraph 28(b), (c) and (d). This is an amended one, right?*

*[Ahli-ahli berbincang sesama sendiri]*

**Tuan Pengerusi:** *This— fasal 31(5) yang baharu is "Suruhanjaya boleh melantik mana-mana anggota pasukan polis untuk menjalankan bidang kuasa tatatertib ke atas apa aduan-aduan salah laku kecil." That I think follows from (a) right here? Okey. And finally clause 34 memasukan perenggan subfasal baharu (2) which is... [Merujuk kepada slaid]*

[Ahli-ahli berbincang sesama sendiri]

**Tuan Pengerusi:** Okey. *I think that's okey lah. All right. Okey. Then, we go to the EAIC. That's the thing. I don't understand this part. EAIC akan di-repeal-kan?*

**Tuan Mohamad Onn bin Abd. Aziz:** Yes.

**Tuan Pengerusi:** So, bagaimana ia diperkasakan? *What does that mean ya? I don't— it will be repealed what.*

**Seorang ahli:** [Bercakap tanpa menggunakan pembesar suara]

**Tuan Pengerusi:** *So, how does it become— how does the question of Pemerksaan rise?*

**Tuan Mohamad Onn bin Abd. Aziz:** Ia begini Tuan Pengerusi. Ia agak...

**Dr. Su Keong Siong:** *...It change coding. [Bercakap tanpa menggunakan pembesar suara]*

**Tuan Mohamad Onn bin Abd. Aziz:** Yes. *Thank you.*

**Datuk Roosme binti Hamzah:** Jadi IPCMC.

**Dr. Su Keong Siong:** *SPAD become— dahulu SPAD kita tukar kepada... [Bercakap tanpa menggunakan pembesar suara]*

**Tuan Pengerusi:** *But IPCMC is completely different.*

**Tuan Mohamad Onn bin Abd. Aziz:** Dia begini Tuan Pengerusi. EAIC dahulu fungsi dia boleh buat *recommendation*. *Members* sama sejumlah 78 orang pegawai dan kakitangan. So, bila kami diperkasakan, EAIC yang pertama tukar nama. Fungsi kami diperkasakan lah. Itu yang penting itu. Ya, saya. Nama sebagai IPCMC. *Staff* masih sama, tenaga sumber manusia sama. Cuma, fungsi itu diperkasakan. *We are no longer known as EAIC tetapi now known as IPCMC.* Dengan fungsi baharu.

**Dr. Su Keong Siong:** *Mr. Chairman, is it just like on the EAIC, they can recommend but unlike IPCMC, they can take disciplinary action. That's the difference now. Memperkasakan.*

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**Tuan Pengerusi:** Yalah. *It's IPCMC, not EAIC yang diperkasakanlah. So right...*

**Tuan Mohamad Onn bin Abd. Aziz:** Belum ada lagi Tuan Pengerusi.

**Dr. Su Keong Siong:** Diperkasakan sebagai IPCMC.

**Tuan Pengerusi:** *No it is— no EAIC has change this name to IPCMC bukan, kan? This syor sounds like that.*

**Tuan Mohamad Onn bin Abd. Aziz:** Ini adalah...

**Tuan Pengerusi:** Syor 31, muka surat 78.

**Tuan Mohamad Onn bin Abd. Aziz:** Okey, dekat perenggan dekat para (g) ini 29 dan 30 ini, ini adalah pandangan daripada wakil-wakil meminta supaya IPCMC tidak ditubuhkan. Sebaliknya EAIC sedia ada diperkasakan.

**Tuan Pengerusi:** Okey.

**Tuan Mohamad Onn bin Abd. Aziz:** Di sinilah dia punya *story board* lah.

**Datuk Roosme binti Hamzah:** *To justify again. So otherwise... [Bercakap tanpa menggunakan pembesar suara]*

**Tuan Mohamad Onn bin Abd. Aziz:** *So they are saying that why...*

**Tuan Pengerusi:** *I think this I just don't want confusion lah that's all. But I think no issue, right? Okay then...*

**Datuk Almalena Sharmila binti Dato' Dr. Johan:** *Sorry, Tuan Pengerusi because I wouldn't agree with you, Tuan Pengerusi. I think there is some confusion here because what is being said in 29 and 30 is to retain EAIC but improve it, give it more powers. But now bila kita kata setuju means, we agree with that.*

**Tuan Pengerusi:** Ya setuju *you know*.

**Datuk Almalena Sharmila binti Dato' Dr. Johan:** Patutnya kita kata kita mengesyorkan dia dijenamakan semula *that one is* betul. Akan tetapi kalau kata setuju, saya susah hati sikitlah, dia bukan setuju, kan.

**Datuk Roosme binti Hamzah:** Setuju untuk menjenamakan semula.

**Tuan Pengerusi:** *Can't — shouldn't it be— I'm sorry.* Jawatankuasa mengesahkan bahawa EAIC dimansuhkan dan digantikan oleh IPCMC yang lebih kuat *or something like that*.

**Datuk Roosme binti Hamzah:** Ya, lebih *transparent*.

**Tuan Pengerusi:** *I think maybe 31 should be change, just to avoid confusion.* Jawatankuasa mengesahkan bahawa EAIC akan dimansuhkan dan digantikan dengan IPCMC. *That's it. I think that will make it easy. Okay and then (h), I think this is just general, its general. (i) I think no issue,* ini sudah dipersetujui.

Okey, *composition*, keanggotaan suruhanjaya. *I think this also* sudah dibuat dalam pindaan kan, pindaan pada fasal 6. *Basically,* anggota Suruhanjaya hendaklah mempunyai pengetahuan, kemahiran dan pengalaman atau menunjukkan keupayaan dan profesionalisme dalam perkara yang berhubung dengan undang-undang pentadbiran kewangan atau apa-apa perkara lain yang berkaitan dengan fungsi Suruhanjaya. *At the moment it is what? This is 6. But is this not a bit vague? I don't know. I'm just my—* agak luas, kan.

*Do you think it will post problems with the interpretation later or challenges?*

**Datuk Roosme binti Hamzah:** *Initially* yang propose pindaan itu, siapa? Ramai? *A lot of feedback for this* mana-mana, *must be upon discussion* dengan stakeholder.

**Tuan Mohamad Onn bin Abd. Aziz:** Kami macam pertama...

**Tuan Pengerusi:** Macam anggota Suruhanjaya hendaklah mempunyai pengetahuan, kemahiran dan pengalaman. Pengetahuan, kemahiran dan pengalaman, dalam apa? *I think that has to be specify*, kan? Sekarang...

**Datuk Roosme binti Hamzah:** Dalam perkara yang berhubung dengan undang-undang, dia...

**Tuan Pengerusi:** *Oh I see*, pentadbiran kewangan. Undang-undang, pentadbiran kewangan...

**Datuk Roosme binti Hamzah:** Atau apa-apa perkara lain.

**Tuan Pengerusi:** Atau apa-apa perkara lain. *I think it should be okay* lah. *Why are your views?* [Ketawa]

**Datuk Roosme binti Hamzah:** Okey, okeylah hendak habis sudah. Tuan Pengerusi habis, kita orang belum habis lagi. [Ketawa]

**Tuan Pengerusi:** Okey, *so I think that is okay 42, now 40*— keanggotaan di dalam...

**Seorang Ahli:** *Not in 45* ya?

**Tuan Mohamad Onn bin Abd. Aziz:** Tuan Pengerusi, cadangan daripada yang berbangkit ialah supaya kehadiran wakil yang di undang daripada polis itu tetap. Setiap kali mesyuarat panggil sekali tetap sedangkan dalam peruntukan 10(7) ini dicadangkan secara undangan, maksudnya kalau ada keperluan kita undang. So kalau memerlukan apa-apa pandangan nasihat atau polis atau wakil daripada polis atau pun pihak lain, kalau ikut 10(7) ini kita melalui undangan sahaja, bila perlu kita panggil. Cadangan yang dikemukakan ialah supaya keahlian itu tetap. Jadi ia akan *contradict*-lah dengan Suruhanjaya, Suruhanjaya kita tidak ada wakil polis.

**Tuan Pengerusi:** Okey. Kewajaran...

**Datuk Roosme binti Hamzah:** Ya, 53.

**Tuan Pengerusi:** *I think this is more general* lah, *I think*.

**Datuk Roosme binti Hamzah:** Ya, *mere existence*...

**Tuan Pengerusi:** *I think it's okay, 53, 54 okay*.

**Dato' Mohd Azman bin Ahmad Sapri:** Tuan Pengerusi, Tuan Pengerusi *refer to 45* ya.

**Tuan Pengerusi:** 40?



**SAC Dato' Mohd Azman bin Ahmad Sapri:** 45 ya. *The composition of the members of the commission. So, we would like to refer to our letter. Page 5, para 4.11 based on our concern that we don't want the ex-police to be appoint as members of the commission.*

**Tuan Pengerusi:** Para berapa?

**Seorang Ahli:** 4.5.

**Tuan Pengerusi:** *This is for the anggota suruhanjaya to have— bekas polis. It is out of the 10 ahli, kan?*

**Seorang Ahli:** Ya.

**Tuan Pengerusi:** *I think that is okay. Is quiet okay suggestion. It can be incorporated kepada— that is what section is that?*

**Tuan Mohamad Onn bin Abd. Aziz:** Tuan Pengerusi, ini fasal 6 Tuan Pengerusi, yang tadi kita bincang adalah...

**Tuan Pengerusi:** Anggota suruhanjaya.

**Tuan Mohamad Onn bin Abd. Aziz:** Anggota suruhanjaya yang tadi adalah mengundang ahli. Ia berbeza Yang Berhormat.

**Tuan Pengerusi:** Minta maaf.

**Tuan Mohamad Onn bin Abd. Aziz:** Ini tadi kita bercakap tentang perenggan 45 tentang mesyuarat suruhanjaya mengundang ahli penasihat. Fasal 6 ini ialah keahlian keanggotaan.

**Tuan Pengerusi:** *Mesyuarat Suruhanjaya.....>>>Lala*

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**Tuan Pengerusi:** Mesyuarat suruhanjaya itu di dalam...

**Tuan Mohamad Onn bin Abd. Aziz:** Fasal 10.

**Tuan Pengerusi:** Fasal 10.

**Datuk Roosme binti Hamzah:** *The meetings can invite.*

**Tuan Mohamad Onn bin Abd. Aziz:** *The meetings can invite.*

**Datuk Roosme binti Hamzah:** *The meetings can invite, 10(7). Section 10(7) can invite police, section 6 is membership.*

**Tuan Mohamad Onn bin Abd. Aziz:** Isu yang dibangkitkan fasal 6 tadi itu telah dibincangkan dalam perenggan 38 Yang Berhormat.

**Datuk Roosme binti Hamzah:** *Section 10(7) "Commission may invite any person..."*

**Tuan Pengerusi:** *"The commission may invite any person or any representative..." I think that is okay, kan? Tiada masalah.*

**Beberapa Ahli:** *[Bercakap tanpa menggunakan pembesar suara]*

**Tuan Pengerusi:** *That is fine, tiada masalah. I think what he referring to is to the six.*

**Tuan Mohamad Onn bin Abd. Aziz:** *Six, yes.*

**Tuan Pengerusi:** *Section 6, bukan? Which is to include a bekas anggota polis, which I think is acceptable. So, I think that can be incorporated somewhere here in anggota...*

**Datuk Roosme binti Hamzah:** *Members of the commission.*

**Tuan Pengerusi:** *Yes.*

**Dr. Su Keong Siong:** *Sorry Chairman, if I understand correctly, the police wants at least one of the members to be in the suruhanjaya, is it?*

**SAC Dato' Mohd Azman bin Ahmad Sapri:** *We are talking about fasal 6(2) ya, "No person shall be appointed as a member of the commission if he is or was a member of the police". So, we wanted to be members rather than invite, on invitation to attend the meeting.*

**Dr. Su Keong Siong:** *But I think we already discuss this.*

**Tuan Pengerusi:** *Subsection (2) has been taken out, kan?*

**Dr. Su Keong Siong:** *That why, I think we already discuss about it. We take it out then it will be no longer independent as like what we tend it to be because there will be a police in the commission.*

**Tuan Pengerusi:** *Bekas police officer.*

**Dr. Su Keong Siong:** *This is what they asking, at least the member of the Commission is from the police...*

*[Ahli-ahli berbincang sesama sendiri]*

**Dr. Su Keong Siong:** *But section 6(2) doesn't really just say one. It just says none, I mean it should not any of them from the police appointed into the Commission. So, if we take out section 6(2)...*

**Tuan Pengerusi:** *Serving...*

*[Ahli-ahli berbincang sesama sendiri]*

**Dr. Su Keong Siong:** *Sorry, Tuan Mohamad Onn. Mungkin can you explain the rational untuk kita ada fasal 6(2) ini.*

**Tuan Pengerusi:** *It is actually recommendation for IGP.*

**Dr. Su Keong Siong:** *Can you have your ulasan on it?*

**Tuan Mohamad Onn bin Abd. Aziz:** *Tuan Pengerusi dan Yang Berhormat Kamar, draf tahun 2005 lagi telah ada cadangan struktur yang sama yang mana bagi meningkatkan keinginan rakyat terhadap kebebasan, badan penyiasat bebas, tiada wakil daripada polis yang akan menganggotai suruhanjaya yang disebut. Amalan yang sama juga diamalkan di IOPC di UK, sewaktu ditubuhkan IPPC pun sama amalannya.*

Perkara ini bila berbangkit, turut berbangkit sebab itu Emeritus Profesor Datuk Dr. Shad Saleem Faruqi hari itu, ditanya soalan yang sama. Kemudian, beliau menekankan bahawa untuk memastikan IPCMC ini benar-benar bebas, sewajarnya tiada wakil polis menduduki dalam Lembaga IPCMC.

Namun, bagi kes mesyuarat-mesyuarat yang memerlukan input daripada IPCMC, kita ada ruang boleh menjemput konsultan. Satu konsultan yang kita boleh jemput anggota PDRM, satu lagi kalau ada *task force* pun kita boleh jemput perunding dan satu lagi waktu ada *meeting* suruhanjaya, kita pun boleh jemput wakil daripada PDRM.

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So, untuk mengatakan bahawa IPC terus menutup peluang untuk wakil polis hadir dalam mana-mana perjalanan operasi yang IPCMC pun tidak tepatlah. Akan tetapi tujuan utama – saya jawab soalan balik, supaya kebebasan mutlak dan dapat meningkatkan keyakinan orang ramai terhadap kebebasan IPCMC. Kebebasan itu perlu jelas dipisahkan antara polis dan juga *independence* tersebut. Itu niat dia yang sebenarnya.

**SAC Dato' Mohd Azman bin Ahmad Sapri:** *Chairman*, pendapat *Syed Faruqi's just an opinion. I think we don't have any absolute independence in anybody. So, in this sense, you are talking about 2005, now 2005— so, SIAP in on 2009. Now 2019 for this IPCMC Bill. With the announcement of power, a disciplinary control and disciplinary power, and yet we don't have any members as a commission compare to other Majlis Buruh Kebangsaan, they have the members, majikan and the pekerja. It is not issue as we will invite for the meeting or for the consultant. We want the permanent members as a commission out of 10. So, if you do not agree, we have registered our concern, para 4.11 page 5.*

**Tuan Pengerusi:** *Sorry.* Lembaga sudah ada kan?

**Tuan Mohamad Onn bin Abd. Aziz:** *In saying yes, yes.* Oleh sebab itu saya hendak minta penjelasan di sini, maksud suruhanjaya ini ia tidak sama macam EIAC dahulu. EIAC sekarang ini adalah kita dengar aduan. Sekarang masalahnya, kita tidak dengar aduan lagi sudah. Ia akan— kalau Yang Berhormat tengok, fungsi-fungsi dalam kita punya ini, kita lebih kepada isu-isu dasar, isu-isu siasatan, itu semua dikendalikan oleh pegawai sendiri. Apabila lembaga itu yes. Itu PDRM. Ia beza sedikit. Bukan beza sikit, sangat besar perbezaannya.

**Dr. Su Keong Siong:** Jadi sekarang— maknanya dengan IPCMC, pengasingannya— *I mean the procedure*, tahap status itu ada berlainanlah?

**Tuan Mohamad Onn bin Abd. Aziz:** Berlainan, sangat berlainan. Amalan kita buat ini pun sama seperti mana diamalkan di— saya tidak pasti di Hong Kong bagaimana. Akan tetapi IPC di UK pun sama keadaannya, sebelum jadi IOPC dahulu.

**Tuan Pengerusi:** *Okay. Then we just accept 45 but we will recognize the IGP's concern at page 5, 4.11.*

*Okay, then we go on to K, Cadangan Penubuhan IPCMC. Ini sudah buat tadi? Ulasan peruntukan— I think this is the final one before the— what is this? Ya, ini adalah isu-isu berkenaan dengan wording and so on. A lot of weakness, some ambiguity and so on. So, saya ingat ini dalam perenggan fasal 49, apa itu? Page 56. I think this is okay, 56 (a) and (b) is fine. Okay? And then 57...*

*[Ahli-ahli berbincang sesama sendiri]*

**Dr. Su Keong Siong:** *So, ulasan ini kena sinambung dengan apa yang kita telah buat macam...*

**Tuan Mohamad Onn bin Abd. Aziz:** *Selaraskan, selaraskan.*

**Dr. Su Keong Siong:** *Selaraskan dengan apa yang telah kami buat keputusan macam potong Perdana Menteri daripada – all this will be in the ulasan.*

**Tuan Mohamad Onn bin Abd. Aziz:** *Yes, yes.*

**Tuan Pengerusi:** *Ini lebih menjurus kepada frasa-frasa and so on kan?*

**Dr. Su Keong Siong:** *The wordings.*

**Tuan Pengerusi:** *Is there anything— any comments regarding perenggan 58 and 59? Saya rasa tidak ada kan? Anything? Okay. And then Bahagian 7. Is this macam repetition kan? Because it's the same— that is why I went through yesterday.*

*Are they any new points here which— because I didn't go through this. Because I saw it as a repetition. Akan tetapi, any other new issues here which has not been covered? Because I don't think it necessary Bahagian VII, sebab sudah ada. Or is it going to be— going to put it in again?*

**Encik Noor Rosidi bin Abdul Latif:** *[Bercakap tanpa menggunakan pembesar suara]*

**Datuk Roosme binti Hamzah:** *Boleh. Boleh...*

**Tuan Pengerusi:** *I think kena arrange balikkah. Arrange in such a way that...*

**Datuk Roosme binti Hamzah:** *[Bercakap tanpa menggunakan pembesar suara]*

**Tuan Pengerusi:** *Because this is clear repetition.*

**Dr. Su Keong Siong:** *To the relevant section, it need more or less like penjelasan. It just incorporates in side depan rather than after hoping then comes belakang. Then you read through again.*

**Datuk Roosme binti Hamzah:** *[Bercakap tanpa menggunakan pembesar suara]*

**Tuan Pengerusi:** *So, I think that itu sahaja kan? Until the end. Bahagian VIII is Rumusan Jawatankuasa.*

**Datuk Roosme binti Hamzah:** *It is the extraction of the syor-syor tadi, kan?*

*[Ahli-ahli berbincang sesama sendiri]*

**Tuan Pengerusi:** *I think number three kena tukarlah, tadi punya kan?*

**Datuk Roosme binti Hamzah:** *Bawah rumusan. [Bercakap tanpa menggunakan pembesar suara]*

**Tuan Pengerusi:** *Page 105.*

*[Ahli-ahli berbincang sesama sendiri]*

**Tuan Pengerusi:** *Page 105 has to change. Because macam tadi yang kita kata, “Jawatankuasa bersetuju atau mengesahkan bahawa EAIC dimansuhkan,” and then digantikan dengan IPCMC.*

**Tuan Mohamad Onn bin Abd. Aziz:** *Apa tadi pindaan yang ada telah ada di depan kami akan selaraskan.*

**Tuan Pengerusi:** *Apa yang telah pun kita bincang...*

**Datuk Roosme binti Hamzah:** *[Bercakap tanpa menggunakan pembesar suara] ...In bold just now, we put it back.*

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**Tuan Pengerusi:** *We have to incorporate-lah. Is there anything else here yang lain daripada what we discuss? I think— I have a few issues. Can I just tambah beberapa isu. I think pertamanya, right to remain silence and the privilege against self-incrimination. Ini I think just now you pointed out which section is it?*

**Dr. Su Keong Siong:** 28.

**Tuan Pengerusi:** 28.

**Dr. Su Keong Siong:** *No, no. Sorry. 26, 27.*

**Tuan Pengerusi:** *Okay, under 26 I think Mr. Peh you can also assist. See under 26 and – No. Which one?*

**Dr. Su Keong Siong:** 26 lah. 26(1)(b).

**Tuan Pengerusi:** *26 and 27 on the issue of investigation. It is— you see under 26. Kuasa untuk memeriksa seseorang. Paragraph 2; “Seseorang yang telah diberikan suatu notis bertulis di bawah perenggan (1)(a) hendaklah hadir mengikut terma notis untuk diperiksa dan hendaklah terus hadir...” and so on. “Semasa pemeriksaan...” and this is (b) ya, “...menzahirkan semua maklumat yang diketahuinya, atau yang tersedia untuknya, berkenaan dengan perkara yang berhubungan dengannya dia diperiksa...” and so on. If he fails to comply with that, in paragraph 4, boleh disabitkan dengan denda and so on. Is not that against his right to remain silence?*

**Encik Peh Suan Yong:** Yang Berhormat, *I am wondering because usually if he is the subject matter of the investigation, he would have a right to remain silence. But if he is asked to assist with the investigation, I think he should assist...*

**Tuan Pengerusi:** *Fair enough. He should assist but your imposing penal consequences on him.*

**Encik Peh Suan Yong:** *Okay, I think we ...*

**Tuan Mohamad Onn bin Abd. Aziz:** *Kita ada propose...*

**Tuan Pengerusi:** *[Ketawa] Very serious.*

**Tuan Mohamad Onn bin Abd. Aziz:** *Kita ada propose Yang Berhormat. Kalau kita tengok perenggan 14 itu...*

**Tuan Pengerusi:** *Which one is it?*

**Tuan Mohamad Onn bin Abd. Aziz:** *14.*

**Tuan Pengerusi:** *Of the pindaan?*

**Tuan Mohamad Onn bin Abd. Aziz:** *Yes.*

**Tuan Pengerusi:** *Jawatankuasa bersetuju— Page? Sorry. Which page is it?*

**Seorang Ahli:** *94.*

**Datuk Roosme binti Hamzah:** *Oh, selepas itu kita tidak bawa ke depan. Rumusan kita tidak masuk.*

**Puan Farah Azlina binti Latif:** *Rumusan, item 9. Item 9.*

**Datuk Roosme binti Hamzah:** *Nombor?*

**Puan Farah Azlina binti Latif:** *Item 9.*

**Tuan Pengerusi:** *No, I know. Ya, ini saya faham. So I think this one adalah menggantikan penal clause dengan salah laku tatatertib. But you are still denying his right to remain silence, isn't it? I think that is fundamental, you know. That is fundamental and the privilege against the self-incrimination.*

**Encik Peh Suan Yong:** *Yang Berhormat, can I read to you our 112 of...*

**Tuan Pengerusi:** *The 112 there is proviso.*

**Encik Peh Suan Yong:** *That is proviso. That 112 of our CPC.*

**Tuan Pengerusi:** *CPC, ya.*

**Encik Peh Suan Yong:** *Okay. It is about the examination of witness by police. "A police officer making a police investigation under this chapter may examine orally any person supposed to be acquainted with the facts and circumstances of the case and shall reduce into writing any statement made by the person so examined". That is one.*

*Okay, number two, "Such person shall be bound to answer all questions relating to the case put to him by that officer: provided that such person may refuse to answer any question the answer to which would have a tendency to expose him to a criminal charge or penalty or forfeiture". I think this is a right against self-incrimination*

**Tuan Pengerusi:** *Yes, correct.*

**Encik Peh Suan Yong:** *But that is if his answer would incriminate him.*

**Tuan Pengerusi:** *But he does not have the privilege here.*

**Encik Peh Suan Yong:** *Than maybe we can insert something...*

**Tuan Pengerusi:** *You have to incorporate. Otherwise...*

**Encik Peh Suan Yong:** *We can look – yes.*

**Tuan Pengerusi:** *I am a criminal lawyer; I cannot defend this. I think you have to give them that right because they have a right to privilege against [Tidak jelas] self-incrimination.*

**Encik Peh Suan Yong:** *Self-incrimination but if it is just to produce say the CCTV, the log book and to give evidence which is not about themselves...*

**Tuan Pengerusi:** *But then maybe it is quite different lah.*

**Encik Peh Suan Yong:** *I do not think he should be bound to answer.*

**Tuan Pengerusi:** *Maybe what we can propose is to follow the CPC. I think that is fair, I think it has to apply lah across the board. You have to give them the privilege*

**Dr. Su Keong Siong:** *The proviso...*

**Encik Peh Suan Yong:** *Yes.*

**Dr. Su Keong Siong:** *We are no choice about it because otherwise you know, there are no right to remain silent if I answer yes.*

**Tuan Pengerusi:** *No. even...*

**Dr. Su Keong Siong:** *I ada pukul itu. So that finish.*

**Tuan Pengerusi:** *Ya. So if there are going to be subject to some kind of punishment whether penal or disciplinary, the fact is there will be punish for exercising their right to remain silence. So maybe I cadangkan mungkin we can follow the CPC. In fact, even the exact wording what.*

**Encik Peh Suan Yong:** *Yes. We can follow 112 lah, guide.*

**Tuan Pengerusi:** *I think we can put it and then it also I think applies in subsequent section.*

**Dr. Su Keong Siong:** *27. 27 also.*

**Tuan Pengerusi:** *27. This is for documents. Subsection 4. "Mana-mana orang yang telah diserahkan notis di bawah seksyen ini yang tidak mematuhi notis tersebut atau yang memberikan*

apa-apa maklumat yang diketahuinya adalah palsu”. *That is quite different. (b) is very different. That is giving false evidence. I think it is more with the first one, 26(4), 26(2)(b).*

26(2)(b) “Seseorang yang telah diberikan suatu notis bertulis di bawah perenggan (1)(a), hendaklah semasa pemeriksaan itu menzahirkan semua maklumat yang diketahuinya atau yang tersedia untuknya berkenaan dengan perkara dengan hubungan dengan dia diperiksa adalah benar”. *Then I think after that we can adopt the CPC proviso, which the one you just write it out. Maybe we can, that is come after (b). We can – read it out here. Do you have the Malay version?*

**Encik Peh Suan Yong:** *CPC does not have Malay version.*

**Tuan Pengerusi:** *Got. Kanun Tatacara Jenayah.*

**Encik Peh Suan Yong:** *That one is... [Bercakap tanpa menggunakan pembesar suara] ...ILBS. The one is not the authority.*

**Tuan Pengerusi:** *Oh, I see. [Ketawa] I have been using it all this while in court. All the judgement will overrule now.*

**Beberapa Ahli:** *You can still use lah.*

**Dr. Su Keong Siong:** *You can use it as a guideline.*

**Datuk Roosme binti Hamzah:** *To put it inside here.*

**Seorang Ahli:** *Boleh, boleh.*

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**Tuan Pengerusi:** *No, just to get the wording correct. I think that particular part— just now the one that— can you just read out again just now?*

*[Ahli-ahli berbincang sesama sendiri]*

**Tuan Pengerusi:** *Yes, that must come here after (b). I think that is a must be Encik Syazwan. After 2(b), we have to masukkan the apa yang dibaca oleh Encik Peh tadi but the Malay version. The proviso under section 112 of the CPC atau Kanun Tatacara Jenayah. Proviso to section 112, CPC. Section 112(2).*

*[Ahli-ahli berbincang sesama sendiri]*

**Tuan Pengerusi:** *Never mind, you can email to me. I will have a look at it, I can get the Malay version, no problem. I think it does not have apply for 27— 27 is to do with giving false evidence.*

**Puan Farah Azlina binti Latif:** *Tuan Pengerusi, how do you read 27(4)(a)?*

**Tuan Pengerusi:** *(4)(a)?*

**Puan Farah Azlina binti Latif:** *Ya.*

**Tuan Pengerusi:** *Mana-mana orang yang telah diserahkan notis di bawah.*

**Puan Farah Azlina binti Latif:** *Fail to comply...*



**Tuan Pengerusi:** *Sorry. That is another one.*

**Puan Farah Azlina binti Latif:** *Who fail to comply with the notice. Is it in the same situation as 26? It is because we have the word 'or' at the end of paragraph 4(a). So...*

**Tuan Pengerusi:** *So, this could be like document which incriminating.*

**Puan Farah Azlina binti Latif:** *That is my reading— that is my reading Tuan Pengerusi. It could like denying the rights to remain silent on the document itself.*

*[Ahli-ahli berbincang sesama sendiri]*

**Tuan Pengerusi:** *Yes, yes. It would be. If he has like a photo of him doing whatever, then that incriminate him. Is he oblige to disclose that? I think the same proviso can apply, is not it? No? I think can.*

**Dr. Su Keong Siong:** *I think the proviso is more on presumption of innocents until proven guilty. So, they used to maintain that right even though, it is up to that.*

**Tuan Pengerusi:** *What are you think Mr. Peh? Of course, it does not apply to (b)- (b) is deliberately giving false evidence. I think that is quite different. That is out. But for (a)- which (a) refers to a notice under which he has to give documents. So, which and those documents can incriminate him like a statement he makes. So, does he have a right to disclose or not disclose that?*

*So, under the CPC for example, if under criminal investigation, if the police ask you to produce certain document in your possession which may incriminate you, do you have the right not to produce that?*

**Tuan Mohamad Onn bin Abd. Aziz:** *Tuan Pengerusi, before that Tuan Pengerusi, let say we put that proviso under subclause 26(b), as far as criminal case concern, we are okay. But what if it's a tatatertib or misconduct? You are giving them a blanket shield saying that okay for other services they are oblige to give all the documents. But for police this proviso provided under 112 so that for tatatertib also mereka adalah terlindung di bawah proviso 112 itu, sedangkan...*

**Tuan Pengerusi:** *But tatatertib can result in dismissal.*

**Tuan Mohamad Onn bin Abd. Aziz:** *Yes, akan tetapi kalau penjawat awam yang biasa, kita tidak ada rights ini. We do not have these rights or tatatertib per se. Criminal ya, I can agree tetapi takut kesannya kepada tatatertib sekali.*

**Dr. Su Keong Siong:** *Sorry Tuan Pengerusi. I draw comparison with let's say for example tatatertib against lawyers. When the lawyers been given this show cause letter, let say misappropriation money, their stakeholder fund. The lawyer cannot— I mean he get a choice even refuse to reply to the show cause letter but it does not stop the our Disciplinary Board to proceed. So...*

**Tuan Pengerusi:** *I think in the lawyer's case, if you refuse to answer, an inference can be made against you. But an inference cannot be made against you if you exercise your right to remain silent under the CPC. I think that is the difference.*

*So, in other words they cannot assume that you are guilty or make such inference merely because you refuse to answer something which may incriminate you. That is why they give you the caution before they question you. So, I think that is the difference lah between the criminal and the civil aspect.*

*So, what Encik Onn is saying is this is more- this is not criminal, this is not criminal. I think I will need to do some research on this.*

*I think this a point which is fundamental because to my mind obviously criminal there is no doubt about it lah. But for whether it should apply to a situation which on disciplinary issues control, I have to check whether the right applies or not. So, I think can we reserve that one issue? Tomorrow I will just have a quick look and see.*

*So, I think for that, maybe when you email to me, I will let you know also lah. By tomorrow I can do it.*

*And then, there are some other issues...*

**Puan Farah Azlina binti Latif:** *Sorry Tuan Pengerusi, I am still- sorry Tuan Pengerusi, I am still not clear on the parts of recommendation made— yes, this one that we will somehow replace the penal provision in subsection (4) as well as subsection— I mean to both subsection 4 in 26 and 27 with tindakan tatatertib, disciplinary proceeding, that one... [Merujuk kepada slaid] It is because as we can see, 26 also could apply to any person which is not penjawat awam. So, how do we like impose tindakan tatatertib to any person?*

**Tuan Pengerusi:** *26 is a...*

**Puan Farah Azlina binti Latif:** *26 just now order any member of the police force- one category, or any officer of a public body— second category.*

**Tuan Pengerusi:** *So, it could not— it does not necessarily to be a suspect.*

**Puan Farah Azlina binti Latif:** *Yes.*

**Tuan Pengerusi:** *It can be a witness also.*

**Puan Farah Azlina binti Latif:** *Correct. So, my point is how do you like, if the witness somehow refuses to give any evidence or any testimony to the IPCMC, so how do we deal with that kind of situation. It cannot be deal with proceeding tatatertib. So, I am just like wondering why we have such apa recommendation just now.*

**Tuan Pengerusi:** *Okay, this recommendation...*

**Puan Farah Azlina binti Latif:** Boleh digantikan sebagai satu bentuk kesalahan salah laku yang boleh dikenakan tindakan tatatertib.

■2200

*If we want to delete dia punya provision under 26(4) and 27(4). So how do we apply to any person. I do agree for a member of the police force, or an any officer of the public body, we can be accountable for any tindakan tatatertib. But how do we deal with any person.*

**Tuan Pengerusi:** Any person— who else can be subject to this?

**Puan Farah Azlina binti Latif:** I do not know, that is stated in 26(1)(a).

**Tuan Pengerusi:** Seseorang. 26(1)(a), “Seseorang pegawai boleh menjalankan penyiasatan di bawah akta ini melalui notis memerintah mana-mana anggota pasukan polis” Mana-mana anggota, right?

**Puan Farah Azlina binti Latif:** Yes, mana-mana anggota pasukan polis...

**Tuan Pengerusi:** Atau mana-mana pegawai badan awam.

**Puan Farah Azlina binti Latif:** Yes.

**Tuan Pengerusi:** Atau mana-mana orang.

**Puan Farah Azlina binti Latif:** Yes. *The ‘mana-mana orang’.* So, you know— how do you read the recommendation with ‘mana-mana orang’.

**Tuan Pengerusi:** Is that the same as in the other section?

**Puan Farah Azlina binti Latif:** Yes.

**Tuan Pengerusi:** Ya. So, ‘mana-mana orang’ would not be subject to disciplinary control or penalties?

**Puan Farah Azlina binti Latif:** [Berucap tanpa menggunakan pembesar suara]

**Tuan Pengerusi:** So in other words, this will apply to anybody- the non-police officer as well?

**Beberapa Ahli:** Yes.

**Tuan Pengerusi:** So, anybody can be subject to be called under this siasatan to give assist in investigations. So, if let say a non-police officer is called to assist in investigation by the Commission, and he refuses to cooperate, wouldn’t he still has the right to remain silent?

**Puan Farah Azlina binti Latif:** Ya but my point is Tuan Pengerusi...

**Tuan Pengerusi:** Ya, ya I know. I think you are saying that the police officers will be subject to disciplinary control but not him?

**Puan Farah Azlina binti Latif:** Ya.

**Tuan Pengerusi:** Disciplinary penalties, but not him?

**Puan Farah Azlina binti Latif:** Ya.

**Tuan Pengerusi:** *So, in other way he gets off court-free?*

**Puan Farah Azlina binti Latif:** Yes.

**Dr. Su Keong Siong:** *Mr. Chairman, can I just- if we have the proviso in there to refuse, to remain silent in the event of an incriminating the evident, then I think it does not matter even we do not have to make it a salah laku (offence)— if you refuse to cooperate. Everyone has a right to remain silence when there is an incriminating evidence. Otherwise you are subject to Criminal Law. Am I able to...*

**Tuan Mohamad Onn bin Abd. Aziz:** Yang Berhormat, kes-kes jenayah, betul. Akan tetapi kes tatatertib- sebab sekarang ini kami akan mengguna pakai PUA 395 di mana kita- minta rujuk kepada Artikel 138.

Sebab kami penjawat awam yang lain, kami tidak ada proviso seperti mana yang dicadangkan nanti. Secara tidak langsung ia akan memberikan satu perbezaan— *different treatment*. As far tatatertib is concern, kalau untuk kami penjawat awam, kami tidak dapat *treatment* orang-orang itu walaupun kes tatatertib, sedangkan pergi pada IPCMC, anggota polis mendapat *treatment* tersebut. Kalau tengok ya. Artikel 136, sorry.

Kalau saya boleh rujuk. *“Impartial treatment of all Federal employees; All persons of whatever race in the same grade in the service of the Federation shall, subject to the terms and conditions of their employment, be treated impartially.”* So di sini kalau kita ada masukkan peruntukkan proviso itu, so telah ada satu *treatment* yang berbeza lah untuk anggota PDRM dan kami penjawat awam yang lain. Untuk kes tatatertib Tuan Pengerusi. Kalau kes jenayah, semua *treatment* sama, tapi untuk tatatertib kalau kita masukkan dalam ini— sebab IPCMC ini kawal tatatertib juga, sebenarnya.

**Dr. Su Keong Siong:** Jadi kawal kes-kes yang lain yang melibatkan penjawat awam, tatatertib ini macam mana mereka ambil tindakan untuk penyiasatan? *I mean...*

**Tuan Mohamad Onn bin Abd. Aziz:** Kalau ada keperluan untuk beri, kami beri.

**Dr. Su Keong Siong:** Kalau tak beri, apa *penal cause* dia?

**Tuan Mohamad Onn bin Abd. Aziz:** Kalau dia tak beri, kita boleh *assume* dia...

**Encik Peh Suan Yong:** *Adverse interference against him.*

**Dr. Su Keong Siong:** *So it applies also lah?*

**Encik Peh Suan Yong:** Yes.

**Datuk Almalena Sharmila binti Dato' Dr. Johan:** *This is adverse interference but it will not be a criminal offence, you do not go to jail. It is an adverse inference because it is a disciplinary proceeding. I would share the view- the concern raised because my concern would also be- here, a person who is an outside person, a layman would not be subject to disciplinary action for failure*

to give the information. But the right to self-incrimination is I understand from literature is not only limited to criminal. To certain extent it applies to civil as well.

**Tuan Pengerusi:** Ya, I think so.

**Datuk Almalena Sharmila binti Dato' Dr. Johan:** So— ya. I am a bit worried that if it goes to court, we are taking a chance here. Maybe it should be a bit more study or something.

**Tuan Pengerusi:** So basically, I think we go back to question- if a person with a non-police officer, a non-police officer is asked to give a statement and he refuses to give. He would not be subject to any penalty at all, right? According to this.

*But I supposed that is just too bad isn't it? Because he is not the police officer. The others are, and they are subject to the rules and regulation- disciplinary control. But orang awam isn't lah. You know what I mean? But it does not detract from the fact that all- both of them the police officer and the orang awam have that privilege, the right to remain silent.*

**Encik Peh Suan Yong:** Tuan Pengerusi, yes true orang awam also have the right to remain silent provided it is incriminating the evidence against them- self-incrimination. But in this particular case, it will not be applied at all because this lembaga tata tertib has nothing to do with orang awam. Orang awam will only come as a witness, unless they are being investigated by the police for something else.

**Tuan Pengerusi:** No, but it is being investigated by police for something else, you won't come under IPCMC. It will come under Penal Code.

**Encik Peh Suan Yong:** ...So, this one only applies against the police.

**Tuan Pengerusi:** So he would not be subject to any prosecution as such under this IPCMC or disciplinary control. So it is just a saksi.

*So I think it does not make a difference because- yes, he would not be subject to disciplinary control but he has the right to remain silent. Isn't it?*

**Encik Peh Suan Yong:** Right to remain silent means he will not cooperate with the- I think as long as we do not have a penal sanction here, I think it is implied that he has the right to remain silent because we cannot take action against him. We even do not have to mention it here. You call him, he does not want to come. You cannot do anything. We even do not have to...

**Tuan Pengerusi:** No, can you compel him to come as a witness to give a statement?

**Encik Peh Suan Yong:** ...Cannot. Unless you...

**Tuan Pengerusi:** Can?

**Encik Peh Suan Yong:** ...Give a penal sanction.

*[Ahli-ahli berbincang sesama sendiri]*

**Tuan Pengerusi:** Can, can. Actually can.

**Encik Peh Suan Yong:** *Now as it is can lah but if you take out the penal sanction, how to do?*

**Dr. Su Keong Siong:** *Once the penal sanction is removed, then you can refuse to come already.*

**Tuan Pengerusi:** *If removed, makes no different lah? If he does not come, because there is no penalty for not coming.*

*[Ahli-ahli berbincang sesama sendiri]*

**Puan Farah Azlina binti Latif:** *But Tuan Pengerusi, it will hamper the investigation if the layman refuses to come and to give the evidence. If he has the material evidence to help the investigation. I am just worried about the investigation part for IPCMC. The only way we can sort-of compel the layman or a witness to come, because there will be a consequence of failing to do so.*

■2210

*Otherwise, I tidak tahulah kalau you all hendak bagi reward kah, maybe it is another way of compelling people to come. [Ketawa] By giving reward but in this case, it is not so.*

**Dr. Su Keong Siong:** *Sorry, I look at it this way. If we under 26(1) itu, criminalize an offence. Making any criminal offence. Then, the right to remain silent in term of committing, I mean in committing situation, I have to have the right. You cannot have both. I think it double, apa itu...*

**Tuan Pengerusi:** *No but the right to remain silent is applicable to somebody who's faces the consequences of not remaining silent. So, in other word, somebody who may be open to being charged. So, it doesn't apply to a witness, does it?*

**Dr. Su Keong Siong:** *Yeah, this 26, it's applies.*

**Tuan Pengerusi:** *It would apply?*

**Dr. Su Keong Siong:** *The 26 is applied because once I received the notice, I have to comply. Otherwise, I am who found of the 26, will be subject to RM10,000 and imprisonment. That is why, I must have the right to remain silent.*

**Encik Peh Suan Yong:** *If there is a penal sanctions as it is now, you don't comply, you can be charge. Then, you have to pay the penalty whether it's a fine or imprisonment. Usually, the right against self-incrimination will not apply. I say usually because the case is not against you. You are as a witness but what you produce may incriminate the accused person. You know, like the CCTV and all that. Unless, it happened that you are also involved and they are not aware-lah.*

**Dr. Su Keong Siong:** *Then, your 26...*

**Encik Peh Suan Yong:** *They are not actually investigating you but there are some documents which is...*

**Dr. Su Keong Siong:** *Then, the 26 has to draw the distinction between a person under investigation and a witness. Just like 112 and 113.*

**Datuk Almalena Sharmila binti Dato' Dr. Johan:** *I think 26, you need to have clarity because what you need is basically to say in situation of self – I mean the privilege of self-incrimination is protected as per the CPC, that's it. In another situation, yes. The person is compelled but then it also the policy called, it being the disciplinary matter. Do you really want to charge, put a person to jail even it's a witness that refuses to come. That's a bigger policy call. It's not a criminal offence, it's a disciplinary offence. I think that is another aspect that need to be looked at.*

**Tuan Pengerusi:** *But you know, I think for a witness to be compel to come is necessary, isn't it? Otherwise, investigation will be hampered. So, I think, there should be a provision here with providing consequences for a witness. A non-police officer who fail to assist in investigation. There's must be, right? There has to be some consequence, right? Otherwise, you just don't want to show up, what?*

**Datuk Almalena Sharmila binti Dato' Dr. Johan:** *Yeah but the issue is that gravity of the offence lah. I mean, is it fair to charge RM10,000 and two years jail, things like that which we have to justify in terms of proportionality of sentencing. That's the only issue.*

**Encik Peh Suan Yong:** *Tuan Pengerusi, if we compare with the IOPC is it? The IOPC which came here to share their experience, for witnesses and subject of investigation who refuse to comply, they are not subject to penal sanctions, if I am not mistaken. They are not subject to penal sanctions. They are only subject to disciplinary action.*

*So, because this is a disciplinary case, I think it would be rather harsh to say that you don't cooperate with a disciplinary case, you have to go to jail. [Ketawa] I think it is an unprecedented as far as I know.*

**Tuan Pengerusi:** *Yeah, it would be. I am never heard of such thing also. [Ketawa] That's why but it's a good point that you raise. At least you have woken us up. [Ketawa] I think this part because it's different from a criminal case where semua orang, it applies to everybody. Whereas, this applies to only those who are subject to— What about other laws which maybe we can compare with? Are there any other— What about the disciplinary of the armed forces? How does it work? Court-martial, right? They also, saksi awam is involved what?*

**Puan Farah Azlina binti Latif:** *They'll get the subpoena. Subpoena, right?*

**Tuan Pengerusi:** *They'll get the subpoena? So, in other words, the— Who in...*

**Puan Farah Azlina binti Latif:** Tuan Pengerusi, *they'll get a subpoena.*

**Tuan Pengerusi:** *Yeah. So, it's like a normal criminal? So...*

**Puan Farah Azlina binti Latif:** *Exactly.*

**Seorang Ahli:** *I think court-martial...*

**Tuan Pengerusi:** *The police investigate?*

*[Ahli-ahli berbincang sesama sendiri]*

**Tuan Pengerusi:** *No, but the principal is the same, isn't it? If a saksi awam is called to become a witness. Is there any other comparable?*

**Encik Peh Suan Yong:** *I think under the Armed Forces Act, you can actually go to jail or fined. This is because there are a lot of offences like— that even you, even have death sentences, if I am not mistaken, you know. It's quite different from these police who is tatatertib and because these police is tatatertib and if they commit more serious offences, they would go under the...*

**Tuan Pengerusi:** *Penal Code.*

**Encik Peh Suan Yong:** *The Penal Code. You see, whereas the armed forces they can also go right up to court-martial, right up to life imprisonment or death sentence. So, it's quite different.*

**Tuan Pengerusi:** *So, how do you— the question is how do you compel saksi awam to give evidences in this before the IPCMC? Can that be done? Can you compel him to do so?*

**Encik Peh Suan Yong:** *I would think, if you want to compare with the public service, instead of comparing with the armed forces, court-martial, you compare with the public service, I don't think you can compel the saksi awam to come and give evidences. It's up to them.*

**Tuan Pengerusi:** *This is quite an issue, isn't it? I think. Maybe I can reserve this. Let me see and I'll have a look at it. This is related to the first one. Okay, I just have a few, just one or two more.*

*[Ahli-ahli berbincang sesama sendiri]*

**Tuan Pengerusi:** *Yeah, there's a surcharge, there's a provision for surcharge. What is that about? What is surcharge for?*

**Dr. Su Keong Siong:** 36.

**Tuan Pengerusi:** *This one, 36.*

**Dr. Su Keong Siong:** 36.

**Tuan Pengerusi:** *What this is about? Surcharge?*

**Encik Noor Rosidi bin Abdul Latif:** Bayar balik Tuan Pengerusi, senang cerita.

**Tuan Pengerusi:** Bayar balik?



**Encik Noor Rosidi bin Abdul Latif:** Bayar balik. *If someone loses— if public servant loses macam komputer kah, laptop belongs to the government, then you need to pay back.*

**Tuan Pengerusi:** Okey.

*[Ahli-ahli berbincang sesama sendiri]*

■2220

**Tuan Pengerusi:** *So, why is it here?*

**Encik Noor Rosidi bin Abdul Latif:** *Because we need to make a provision to enable the IPCMC to take surcharge against member of the police. If not, there is no power on the IPCMC to take surcharge. Because surcharge is basically on part of the suruhanjaya yang melantik. If I am not mistaken.*

**Dr. Su Keong Siong:** *Adakah ia boleh dijelaskan dengan lebih terperinci surcaj untuk— macam kehilangan kepada harta benda kah? You know, it's too wide in a sense boleh kenakan surcaj terhadap mana-mana pihak. I mean...*

**Encik Peh Suan Yong:** *I think Yang Berhormat, when it comes to surcharge, we have to read together with the Financial Procedure Act. It's all there. You know, when you lose your computer, when you lose the government car or when you are supposed to collect something you didn't collect, you know you can be surcharged for all that.*

**Seorang Ahli:** *[Bercakap tanpa menggunakan pembesar suara] ...Financial Procedure Act.*

**Datuk Almalena Sharmila binti Dato' Dr. Johan:** *Yang terhormat, maybe it's possible if we can shows section 18 of the Financial Procedure Act because that will explain how surcharge operates. [Disampuk] Financial Procedure Act, section 18. It's Act 61.*

*[Ahli-ahli berbincang sesama sendiri]*

**Tuan Pengerusi:** *Are we there?*

*[Ahli-ahli berbincang sesama sendiri]*

**Tuan Pengerusi:** *So, all police officers are subject to this, isn't it? Would it make a difference if it's in the bill or not? They are still subject to it, right?*

**Dr. Su Keong Siong:** *I mean this act can still be applied even without the provision this IPCMC-kan?*

**Seorang Ahli:** *[Bercakap tanpa menggunakan pembesar suara] ...Lembaga Tatatertib.*

**Datuk Almalena Sharmila binti Dato' Dr. Johan:** *Yes, it's actually with the service commission. So, if SPP is no longer handling it and we have IPCMC, so how will— then who is going to undertake the surcharge because it's not a disciplinary matter. Yet, they would be certain circumstances where surcharge is advised where there's loss of assets and things like that.*

**Tuan Pengerusi:** *So, is it necessary to be included in the bill?*

**Seorang Ahli:** *Better to have, Yang Berhormat.*

**Dr. Su Keong Siong:** *It's more of like empowering certain section to allow IPCMC to collect.*

**Datuk Almalena Sharmila binti Dato' Dr. Johan:** *The only thing is that the criticism by the various speakers who have come is that they say it's not disciplinary action. They say surcharge is something else.*

**Tuan Pengerusi:** *Yes.*

**Datuk Almalena Sharmila binti Dato' Dr. Johan:** *Yes, so they say it's not appropriate to be place there.*

**Tuan Pengerusi:** *So, I think it's not an issue now-lah but there— just one more. Yes, I think the criminal— the threats and contempt. The section on threats and contempt. This was raised by a few police officers— again, it attracts penal consequences, right? So, will that be amended? Which section is that?*

**Seorang Ahli:** *35.*

**Tuan Pengerusi:** *35 and 36, right?*

**Seorang Ahli:** *34, 45.*

**Tuan Pengerusi:** *I think the issue here is ugutan is a Penal Code offence. And the penghinaan (contempt)— not so much the contempt. The contempt... [Disampuk] Yes. It can be perhaps but I think the threats. Are the threats are appropriate to be included as a misconduct? Penghinaan yes, maybe, might be in contempt of the proceeding, I don't know. Maybe not... [Ketawa] But threats, I don't know. Threat is I think 505 I think or something, of the Penal Code.*

**Encik Peh Suan Yong:** *I think if it come to threat, we can go under the Penal Code.*

**Tuan Pengerusi:** *Yes, you just lodge a police report.*

**Encik Peh Suan Yong:** *You just lodge a police report, go under Penal Code. Contempt also, I think the civil society some of them also have reservation because sometimes they may want to use temperate language to criticize a certain decision.*

**Tuan Pengerusi:** *I think, I don't know.*

**Encik Peh Suan Yong:** *And suddenly, they are contempt.*

**Tuan Pengerusi:** *I feel both should go-lah, 34 and 35 because I don't see how there are misconduct. The appropriate remedy would be under the Penal Code if at all. So, maybe that can be included agar seksyen 34 dan 35 dikeluarkan.*

*[Ahli-ahli berbincang sesama sendiri]*

**Tuan Pengerusi:** *Okay, and the final one I have is— on the accountability of the IPCMC itself. Is the IPCMC accountable to anybody according to this bill? Not that I know of. So, I think it is important for them to be accountable to Parliament because if there is any issues or anything with regard to the running of the IPCMC, ketelusan and so on. The Pengerusi should be accountable to Parliament.*

**Datuk Roosme binti Hamzah:** *Do they have to produce a report to the Parliament? [Disampuk] Yes? Before...*

**Seorang Ahli:** *[Bercakap tanpa menggunakan pembesar suara] Favor only but they are not accountable.*

**Tuan Pengerusi:** *No, accountable meaning that he can be summoned to Parliament to answer questions by— in Parliament. Yeah, sure.*

**Encik Noor Rosidi bin Abdul Latif:** *Yang Berhormat, at this moment, kalau hendak panggil seseorang ahli yang— orang yang bukan Ahli Parlimen datang, then it should be done usually by select committee yang panggilkan.*

**Tuan Pengerusi:** *Ya select committee, sorry.*

**Encik Noor Rosidi bin Abdul Latif:** *So kalau macam itu, if the select committee sudah ada dalam Dewan, then we can— mereka akan panggil, then we can come— IPCMC akan hadir. Tidak perlu undang-undang pun hendak cakap macam. That is coming by the power of the Parliament itself.*

**Tuan Pengerusi:** *I think it should be stated that they are accountable. It's important otherwise they might— I don't know.*

**Encik Noor Rosidi bin Abdul Latif:** *Then, that would be the first time that we put some provision macam itulah.*

**Tuan Pengerusi:** *Always the first time. [Ketawa] Unless it's wrong. I don't think it's wrong.*

**Encik Noor Rosidi bin Abdul Latif:** *It's not wrong but it's something which is very peculiar to dispute.*

**Tuan Pengerusi:** *Because that will give some sort of form of transparency in itself, isn't it? That the— he will be accountable, he has to answer in Parliament. Whether it's in select committee or whatever is a separate matter but at least I think that cadangan should be included.*

**Dr. Su Keong Siong:** *It's just a recommendation that we made this commission accountable to Parliament. I think it's interesting to open up for the first time.*

■2230

*Let the Parliament debate on it. I mean the executive, Cabinet may not want to accept it. But at least you know, we do our part.*

**Tuan Pengerusi:** *Okay. I think maybe we can include that...*

**Dr. Su Keong Siong:** *As a recommendation.*

**Encik Noor Rosidi bin Abdul Latif:** *Sir, before that if I may add something sir.*

**Tuan Pengerusi:** *Sure.*

**Encik Noor Rosidi bin Abdul Latif:** *Usually apa yang kita buat ialah we put the laporan to be tabled and to be debated untuk membolehkan that certain matters been brought up and the IPCMC itself must be dia kena reply. So, it is one way of instead of calling the pengerusi itself, we can use the laporan as a basis to understand or to questions the activity done by the IPCMC.*

**Tuan Pengerusi:** *What do you mean? So, when we table it?*

**Encik Noor Rosidi bin Abdul Latif:** *When we table itself.*

**Tuan Pengerusi:** *Sorry, I don't understand your point.*

**Encik Noor Rosidi bin Abdul Latif:** *Usually, kita tidak panggil pengerusi ataupun sesiapa untuk hadir di Dewan. So, what we do is kita minta laporan dia. So bila laporan di-table-kan, we can use that. Ahli Parlimen semasa berbahas boleh menggunakan laporan tersebut untuk tanya kepada Menteri isu-isu yang berbangkit. So, Menteri akan bertanya kepada IPCMC, IPCMC kena beri jawapan. That is the official reply. Then the official reply is something yang kerajaan akan terikat. Kita terikat dengan official reply kepada Parlimen.*

**Dr. Su Keong Siong:** *Ya. Sometimes I mean apa yang kita hendak adalah bila kita tubuhkan commission ini, at least this accountable to Parliament. Maknanya apa-apa isu yang berbangkit, mungkin Ahli Parlimen akan dapat bahaskan laporan tersebut. Buat sekarang, banyak commission, even SUHAKAM report that not debated at all. It is just table on the table, that's it. So, I think we have to move from there, at least make it accountable, like laporan-laporan itu dibahaskan. That is something that I mean you think it should be good at least, we move from the previous practice that you know, hanya kita table laporan sahaja. Semua laporan kita table, banyak pun tidak hendak tengok because there is no berbahas.*

**Tuan Pengerusi:** *Okey. So boleh Encik Syazwan? We got the last part.*

**Encik Wan Ahmad Syazwan bin Wan Ismail:** *Boleh.*

**Dr. Su Keong Siong:** *Rekomenlah, rekomen.*

**Encik Wan Ahmad Syazwan bin Wan Ismail:** *To remove.*

**Tuan Pengerusi:** *No, no. The...*

**Datuk Roosme binti Hamzah:** *No, accountable. IPCMC is accountable to Parliament.*

**Tuan Pengerusi:** *I think we put accountable in brackets. Anything you want to raise? Anybody else wishes to raise? I have no more. Yes.*

**Datuk Almalena Sharmila binti Dato' Dr. Johan:** *Sorry, I just last point. It is because when I look at paragraph 15 at page 94 of the report, it is stated that, "Jawatankuasa mengesyorkan supaya IPCMC dan JIPS menjalinkan kerjasama dan hubungan kerja yang kukuh". So, we are saying that they have a very closed relationship.*

*The question that I would like to ask is that if we do not allow them to come in for the meetings as a permanent member, how do you have that closed relationship? It is because there will be no trust, there will be no, you know that, they wouldn't know each other. I can understand the position if you say for the suruhanjaya you don't want to have tempt, but even that, it is only one member if I understand. Dato', you were saying just one member isn't it? Ya, under fasal 6 and fasal 10, but fasal 10 is just mesyuarat.*

*If we look at the fungsi suruhanjaya, if we look at the fungsi under fasal 4, is menggalakkan integriti, melindungi kepentingan, I mean membentuk mekanisme, menasihati kerajaan on syor, on how to improve integrity. So, if they don't sit in the meeting that has done on monthly basis or twice a month, how is that going to be done?*

**Tuan Pengerusi:** *Ya.*

**Datuk Almalena Sharmila binti Dato' Dr. Johan:** *That I am not very sure it can be done because you are not trying to build up a rapport, you are pushing them away. That may not be a good solution.*

**Tuan Pengerusi:** *But, if they are always invited, then is okay.*

**Datuk Almalena Sharmila binti Dato' Dr. Johan:** *Ya, provided. The way it is worded is some – If we look at section 10(7), the way its worded is...*

**Tuan Pengerusi:** *May.*

**Datuk Almalena Sharmila binti Dato' Dr. Johan:** *Not very positive, it is negative.*

**Tuan Pengerusi:** *Where is that? Section 10...*

**Datuk Almalena Sharmila binti Dato' Dr. Johan:** *Section 10(7).*

**Tuan Pengerusi:** *This one?*

**Datuk Almalena Sharmila binti Dato' Dr. Johan:** *No, no. Sorry, subsection (6).*

**Tuan Pengerusi:** *May invite any person...*

**Datuk Almalena Sharmila binti Dato' Dr. Johan:** *It is because what it saying is just for purposes of advising the commission, but actually when you want to build up the esprit de corps to a certain extends, so that you have you know, you can ask for documents. Because as we understand from IOPC, they have a very good relationship. They don't even have to invoke provisions of the law. They can just ask and that would be given. So, that is a relationship that*

needs to be build over times. So, if we don't have a mechanism where they can come in, I am not sure.

**Tuan Pengerusi:** *But, there is a relationship between JIPS and the commission isn't it? There has to be isn't it? It is because JIPS still exist. So obviously you know, our recommendation is for them to works as closely and as best as possible. But, how they do that, it is up to them isn't it? Unless you want to make this mandatory. The commission shall invite any person which I don't think it goes against the spirit of the— So, I think that is the best we can do, hopefully they get along. [Ketawa]*

**Puan Farah Azlina binti Latif:** *Sorry Yang Berhormat. Last question from me, I hope. Can I refer yourself and the floor to page 93, for pandangan number 7, "Jawatankuasa mengesyorkan supaya IPCMC diberi kuasa menyelia dan memberikan arahan kepada PDRM untuk menyiasat aduan bersifat jenayah yang dilakukan oleh anggota PDRM". So...*

**Tuan Pengerusi:** *Which one are you reading? Sorry, 7?*

**Puan Farah Azlina binti Latif:** *Page 93, ya. Point number 7. It is because the power of the commission is in section 5. I mean currently in section 5 and then, I am just like wanted to know, how do IPCMC somehow gives instruction to PDRM to investigate aduan bersifat jenayah, whereas their scope is about disciplinary. So, I am just like trying to make sense on how to gives direction to PDRM. It's is because as I know now, when you talk about direction to PDRM, only DPP can do that through the IPs. If you ada investigation paper, then the DPP will minute out what the direction and investigation that should be done by the police. So now, are we saying that IPCMC also have the power you know, equivalent to DPP? Are we saying that by having this clause, by having this number 7? Thank you.*

**Puan Eda Mazuin binti Abdul Rahman:** *Dalam pengesyoran keenam itu, perenggan keenam, jawatankuasa mengesyorkan untuk kuasa siasatan jenayah dikaji semula. Jadi berikutan itu, kita mencadangkan agar IPCMC diberi kuasa untuk menyelia dan memberikan arahan sekiranya— Kita tidak ada kuasa siasatan jenayah, at least kita boleh pantau dan kita boleh memberi arahan sebagaimana IOPC sudah jalankan dia punya— Sudah menjadi amalan kepada IOPC. So at least, ada some sort of pemantauan dibuat ke atas apa-apa siasatan yang berkepentingan awam.*

**Puan Farah Azlina binti Latif:** *So, in matter of criminal matters, correct me if I am wrong, so polis kena dengar DPP or do they need to listen to IPCMC?*

**Dr. Su Keong Siang:** *I think under clause 25(b) adalah jelas. Bila aduan bersifat jenayah, memang polis akan investigate. So I think, I agree in the sense that we have at least supervising ataupun you know, pemantauan. It is because 25(b) is very clear you know, di mana aduan itu*

bersifat jenayah, *you have to refer to the relevant authority which is the police. So, you know that...*

■2240

**SAC Dato' Mohd Azman bin Ahmad Sapri:** *I think Yang Berhormat, you have to rephrase the sentence because we are getting instructions from DPP and then 29 and 47 of course this is talking about death in custody and the grievous hurt. So how come the IPCMC give instruction to the PDRM to menyasat. If you want to rephrase the word you see to get the monitoring or somewhere other than give instruction to PDRM. Because this is matter of CPC where this issue rise. Of course investigation will done by chapter 22. Sudden death.*

**Tuan Mohamad Onn bin Abd. Aziz:** Tuan Pengerusi, kalau saya berkongsi saya bukan hendak *to be argumentative*, just hendak bagi tahu pengalaman dengan negara luar. Di *Northern Island* pegawai-pegawai di *ombudsmen Northern Island* dia boleh terlibat sama dalam siasatan. Contohnya kes-kes berprofil tinggi, dia pun sama dia *part of the team*. Sedangkan mereka itu bukanlah polis.

Di IOPC di UK mereka boleh memberi arahan seperti mana yang ada di sini walaupun dia ada dia pun *principal act* yang dipakai oleh polis- dia seakan-akan CPC kitalah. Polis juga membuat siasatan berdasarkan kepada *principal act* dan IOPC boleh membuat penyiasatan menggunakan *principal act*. Pada masa yang sama dia boleh memberikan arahan kepada...

**Tuan Pengerusi:** Itu IOPC kan? Ya.

**Tuan Mohamad Onn bin Abd. Aziz:** Ya saya. Beri arahan. Sebab apa- kadang *public* ini kita hendak *balance* kan. Saya hendak maklum sahaja *I'm not trying to be argumentative*.

Di UK bila ada satu perkara macam contoh kalau kes *terrorism*- kalau berlaku tembakan okey. Tembakan itu- memang polis ambil tindakan tetapi *still* IOPC akan siasat sama ada tembakan itu wajar atau tak wajar.

Begitu juga dengan kes-kes yang lain saya beritahu tadi. So bila ada berlaku satu perkara macam polis tak siasat dia boleh arahkan, dia boleh pantau. Itu yang berlaku di UK, untuk makluman Tuan Pengerusi.

**Dato' Mohd Azman bin Ahmad Sapri:** *Ada comparison UK Island dengan Malaysia different because IPCMC- here IPCMC we have disciplinary control and disciplinary power. To compare to others their only disciplinary control. So, they come in and involve in the investigation, so doesn't matter because they want to be look independent. But here, they want to be independent and yet you have a power to give an instruction, and you have the power to punish. So, you have to think about it.*

**Tuan Pengerusi:** Sorry...

**Tuan Mohamad Onn bin Abd. Aziz:** Saya tak ada apa-apa hendak cakap, saya cuma maklum sahaja.

**Tuan Pengerusi:** Ya, ya. *Okay.*

**Puan Farah Azlina binti Latif:** Ya, *sorry.*

**Tuan Pengerusi:** *Your question again just now you were saying.*

**Puan Farah Azlina binti Latif:** *Ya because if we want to rewards the syor itu to say that kuasa ini- I'm okay with it, but when you have the phrase that memberikan arahan, unless you were saying that we will station one DPP in IPCMC just to look on the IP then you know I'm open to it. But to say that IPCMC to give instruction to the police— I think something is wrong there Tuan Pengerusi. Because you somehow you exceed the power of DPP as well because you know, you have an IP and then IP bersifat I don't know, Rahsia kah, Sulit kah, Terhad, you give it to IPCMC to get instruction.*

*I have some issue on that Tuan Mohamad Onn. I tak tahu which part DPP akan datang dan akan tengok kes kematian mengejut...*

**Tuan Mohamad Onn bin Abd. Aziz:** Saya rasa ini tidak ada kaitan dengan IP tak ada ini cuma beri arahan untuk siasat sahaja.

**Puan Farah Azlina binti Latif:** *But then kata...*

**Tuan Mohamad Onn bin Abd. Aziz:** *Saya— I'm referring to UK punya experience berdasarkan apa yang disampaikan. In detail saya tidak tahu kan mungkin saya terlepas mana— mana fakta. Akan tetapi saya difahamkan amalannya begitu. Itu sahaja. Macam mana kaedahnya, saya tak boleh cakap dengan pasti tetapi yang berlaku adalah, dia boleh beri arahan sahaja. Itu sahaja.*

**Tuan Pengerusi:** Boleh beri arahan.

**Tuan Mohamad Onn bin Abd. Aziz:** *Minta IP panggil semua itu bukan not to that extend.* Cuma beri arahan untuk siasat dan pantau siasatan tersebut.

**Tuan Pengerusi:** *DPP normally has a arahan.*

**Puan Farah Azlina binti Latif:** *We do, we do give arahan memanglah...*

**Tuan Pengerusi:** *Fair enough but does is mean that he the only one who have the arahan?*

**Puan Farah Azlina binti Latif:** DPP?

**Tuan Pengerusi:** Ya.

**Puan Farah Azlina binti Latif:** *Yes, for cases apart from SIO and also senior rank in the police itself apart from that apabila the investigation paper has been completed ataupun dia hendak further instruction, OTI kah for that matter, they need to come to DPP.*



**Tuan Pengerusi:** *I think arahan yang dimaksudkan di sini is not to the extent of DPP's power, is it?*

**Puan Farah Azlina binti Latif:** *Ya, but the way you know- arahan so memang kita- I don't know if you have another words to replace the word "arahan", then I'm okay with it. Like macam- saya tak tahulah. At this moment, I cannot think of any words to replace that word but if we stick to "arahan" dan my fear would be, the one who read the recommendation akan kata, IPCMC punya power is as good as DPP, and that is not the intention of the select committee lah.*

**Tuan Pengerusi:** *IPCCM— but okay sekiranya IPCCM ini tidak ada arahan tersebut untuk direct the police right, would that hamper the powers of IPCCM? It must be given that's sort of ruang, is it?*

**Puan Farah Azlina binti Latif:** *Sorry Tuan Pengerusi I just like— I cannot see at this moment how IPCCM will interject in giving direction to the police, when it comes to criminal investigation lah kan. I don't see in which part. Be prior to apa ini- ada IP kah, prior to— I mean— I extend guided by Tuan Onn— dekat mana itu Tuan? I just cannot imagine in which.*

**Tuan Mohamad Onn bin Abd. Aziz:** *Kita cuma dapat maklumat secara umum sahaja. Pelaksanaan itu saya rasa sudah ada dalam dia punya Police Reform Act— Police Reform Act 2002 (Revise) 2017, dan statutory apa itu— guidance.*

*So kalau untuk dapatkan bukti yang lanjut itu saya rasa mungkin di sana sudah advance dia boleh menerima siasatan oleh IPCCM dan juga oleh pihak polis bersesama. So, di sini kita masih lagi merasakan bahawa polis sahaja boleh siasat jenayah sedangkan di UK mereka telah berganjak ke satu platform yang baharu. Akan tetapi untuk detil ini saya tidak tahu cuma kalau saya boleh beritahu, kalau saya ingat slide dia lagi, dia tulis situ dia boleh direct, dia boleh monitor, dan dia boleh pantau. So dia yang terperinci, saya tidak ada maklumat.*

**Puan Farah Azlina binti Latif:** *In addition to that Tuan Pengerusi, sorry Tuan Pengerusi in addition to that, let say if the Parliament agreeable to our recommendations 7— then we need somehow apa tu, pinda atau amend the existing section 5.*

*So how would the wording, you know, when it comes to direction, arahan? Yes. Section 5, talks about power of the commission. So, if you say that the IPCCM should have somehow supervisory and also can give direction to the PDRM, so we need to do something with section 5— the power of the IPCCM lah— power of commission. So that why I'm asking, I'm just like to be clear on how we would like to approach on our recommendation number 7, sorry.*

*When that's my position because the power to the right the police on the part of investigation lies with the DPP. It's in the CPC. And I'm not sure whether it is what we want to depart from CPC kan, taklah.*

■2250

*We still want the CPC to apply. So, the power to give direction must be with PP.*

**Tuan Pengerusi:** *Direct investigation. You want to say something?*

**Dr. Su Keong Siong:** *No, I am just thinking in the sense kenapa kita perlu bagi IPCMC kuasa untuk menyelia dalam memberi arahan? Bagi saya ini berbangkit bukan untuk aduan terhadap individual polis. Akan tetapi kadang-kadang ada aduan terhadap pasukan polis yang gagal mengambil tindakan. So, kalau polis tidak siasat, you know- IPCMC kalau tidak ada power untuk arahkan then it is- sorry to say it, its toothless commission. I think that have to be balance to me, I think.*

*I am more thinking of situation mana- bukan kata semua kes lah. Ada kala ada aduan terhadap the police force failure to investigate a criminal offence. So, that kind of case- if I can just give as an example. Okay, kes Indra Gandhi you know, and all these di mana mahkamah telah bagi satu arahan untuk— to produce and refuse, and the police is in act. So, it is not individual punya kes but the police force.*

*So, if I adu to the IPCMC, this is cause of “misconduct”, that failure pro at. So, I think to balance that kind of a situation.*

*So, I don’t know— I mean by look at it, in necessary in a way to give the IPCMC some credence. But also, of course I share the isu yang dibangkitkan, adakah go into investigation? Then, I think it would be wrong. So, maybe we have just to fine tune on the word of the “arahan” to- I think if you ask the police to interfering in the investigation of the police, and I think that would be over. I don’t know. We need to have a balance, at least you know. Then only, the police and the IPCMC can work together... [Ketawa]*

**Tuan Pengerusi:** *I think we just leave it in. That is what IOPC also...*

**Dr. Su Keong Siong:** *They have the trouble.*

**Tuan Pengerusi:** *They have that. I can’t— I don’t think its arahannya doesn’t mean in the sense of, you know prosecution. But in the sense of untuk menyiasat, to investigate. Can the court order the police to investigate? Does the court have the power to order the police to investigate? No?*

**Seorang Ahli:** *[Bercakap tanpa menggunakan pembesar suara]*

**Dr. Su Keong Siong:** *[Bercakap tanpa menggunakan pembesar suara]*

**Datuk Almalena Sharmila binti Dato’ Dr. Johan:** *Yang Berhormat, the case of IOPC, they have the police powers equivalent to the constable or something, isn’t it? As the presentation that was given. So, they actually to certain extent has police powers.*

**Tuan Pengerusi:** *No, I think that was previous— the commission before this. Now, I think no more. if I am not mistaken.*

**Tuan Mohamad Onn bin Abd. Aziz:** *Yang Berhormat, they still has the power.*

**Tuan Pengerusi:** *Still have the power? Yes. Okay.*

**Tuan Mohamad Onn bin Abd. Aziz:** *So, dia boleh siasat kes-kes jenayah. In fact, kalau kes- contoh, kalau serious injury, pihak yang akan siasat adalah IOPC. Polis langsung tidak siasat.*

*So, dia gunakan kuasa di bawah Police Reform Act. Nanti saya check balik ia punya provision- di bawah provision berapa. Itu yang agak luar biasa sikitlah, dia boleh buat benda itu. They are doing it right now.*

**Tuan Pengerusi:** *I think...*

**SAC Dato' Mohd Azman bin Ahmad Sapri:** *Chairman, I got a concern on this section 22- scope of misconduct. It has been raised in the few public enquiries that section 22(1)(c) and (d) is very general- unreasonable, unjust, oppressive. We have put our argument in the letter- in the IGP letter. Page 5, paragraph 4.13 to be consider. I don't see any improvement on these two provisions- (c) and (d).*

**Tuan Pengerusi:** *Is there any amendments to this particular one, (c) and (d)? Any amendment?... Tidak ada?... [Menyemak dokumen] Billing, isn't it? You should require these two, (c) and (d)...*

**Dr. Su Keong Siong:** *[Bercakap tanpa menggunakan pembesar suara]*

**Tuan Pengerusi:** *Which one?*

**Dr. Su Keong Siong:** *On the 22(1)(d) is it? Wait ya. The 22(1)(c), I think the only word is weak is only that isu tidak munasabah.*

#### ■2300

*I think tidak adil menindas with berdiskriminasi secara tidak wajar. The only thing is that tindakan yang diambil atau tidak diambil yang tidak munasabah. That is the issue on 22(1)(c). So macam mana atau can we take out the word "tidak munasabah"? That will solve the issue. Basically, the police are concern dengan apa itu tidak munasabah. So...*

**Dato' Mohd Azman bin Ahmad Sapri:** *[Bercakap tanpa menggunakan pembesar suara]*

**Tuan Mohamad Onn bin Abd. Aziz:** *Just want to put on record, sebenarnya Yang Berhormat ruang lingkup yang ada di bawah fasal 22(1)(c) dengan (d) ini adalah sama dengan yang kita ambil dalam Akta 700. [Disampuk] Sama, Akta 700.*

**Tuan Pengerusi:** *So actually EAIC, bukan?*

**Tuan Mohamad Onn bin Abd. Aziz:** *Bawah 24(b) dan juga (d)...*

**Dato' Mohd Azman bin Ahmad Sapri:** Yang Berhormat, *it's not a matter of copy from Akta 700.*

**Tuan Mohamad Onn bin Abd. Aziz:** *[Berucap tanpa menggunakan pembesar suara]* ...Kalau tidak dapat cadangan untuk potong perkataan "munasabah" itu, kita serahkan kepada jawatankuasa untuk putuskan.

**Dato' Mohd Azman bin Ahmad Sapri:** *So, our concern here is a copy of Akta 700 but the function Akta 700 and this IPCMC is different. The function of Akta 700 is oversight body, recommendation but here, it is different. So, you have to consider because all the wordings unreasonable, unjust, irrelevant, is very subjective. Anyway, I leave it to the Chairman. We have put our concern. Thank you.*

**Tuan Pengerusi:** *[Bercakap tanpa menggunakan pembesar suara]* ...Leave it as it is. Okay, I think that is the best we can do for now because Farah, right?

**Puan Farah Azlina binti Latif:** Yes, Yang Berhormat?

**Tuan Pengerusi:** *Your concern is the only one that has not been answered unless you want to stay until 6 o'clock in the morning. [Ketawa] But I think the arahan. There must be that arahanlah. Otherwise, there must be the direction that they can give. Otherwise there is a lot of cases which would not have any impact, the IPCMC would not have any impact in directing action be taken. That is my view lah. So, mesti ada some form of direction, is not it? Directive or whatever.*

**Puan Farah Azlina binti Latif:** *It is just suggestion, Yang Berhormat.*

**Tuan Pengerusi:** *Sure.*

**Puan Farah Azlina binti Latif:** *Can IPCMC, if they have any concern about siasatan, criminal investigation, they can direct the concern to PP?*

**Tuan Pengerusi:** *To?*

**Puan Farah Azlina binti Latif:** *To PP or Public Prosecutor. [Disampuk] Yes. So, Public Prosecutor will take up the matter. It could be like very— the impartiality would be theirs. Instead of having "memberi arahan". I am very worried about the word "memberi arahan" Yang Berhormat.*

**Dr. Su Keong Siong:** *I am just thinking kalau kita tidak boleh mengarahkan PDRM, if we put there to arahan DPP nanti lagi more...*

**Puan Farah Azlina binti Latif:** *No, it is not ...*

**Dr. Su Keong Siong:** *Heavy.*

**Puan Farah Azlina binti Latif:** *Yang Berhormat, it is not mengarahkan...*

**Dr. Su Keong Siong:** *When you direct DPP lagi...*

**Puan Farah Azlina binti Latif:** *No, no, no. It is not...*

**Tuan Pengerusi:** Arah DPP, you arah AG, is not it?

**Beberapa Ahli:** [Ketawa]

**Puan Farah Azlina binti Latif:** No, no, no. That is not what I am saying. What I am saying is if they have any concern they can channel their concern to PP. I did not say to give direction to PP. That would be absurd.

**Tuan Pengerusi:** So, memberikan cadangan.

**Dr. Su Keong Siong:** Cadangan.

**Puan Farah Azlina binti Latif:** Refer lah, merujuk. I mean merujuk kepada pendakwa raya? Instead of they themselves to give the direction.

**Tuan Mohamad Onn bin Abd. Aziz:** Kalau merujuk, kita sudah ada kuasa itu. Bawah – ini just maklum sahaja apa berlaku di UK. Itu sahaja.

**Dr. Su Keong Siong:** Just thinking kalau you read it, IPCMC diberi kuasa menyelia dan mengusulkan kepada PDRM untuk menyiasat. Is that is too soft or is it something better than arahan. I do not know. [Ketawa]

**Tuan Pengerusi:** The effect is the same, is not it?

**Seorang Ahli:** Same lah.

**Puan Eda Mazuin binti Abdul Rahman:** Yang Berhormat, the issue is kalau katakanlah ada satu-satu balai itu, pengadu datang dan report tidak hendak diambil, so siapa yang hendak beri arahan kalau pengadu datang kepada kami. So, how IPCMC boleh bantu selain daripada beri arahan kepada...

**Dr. Su Keong Siong:** [Bercakap tanpa menggunakan pembesar suara] ...Betullah. Ini I agree. Oleh sebab itu saya kata bila ada aduan terhadap pasukan polis yang failure to do on the criminal offences. There is no direction then macam mana?

**Tuan Pengerusi:** No. DPP memang ada arahan, ada kuasa untuk beri arahan. Does that mean orang lain tidak ada kuasa?

**Puan Farah Azlina binti Latif:** As far as I know...

**Tuan Pengerusi:** No. CPC gives the DPP arahan.

**Puan Farah Azlina binti Latif:** Yes.

**Tuan Pengerusi:** Kuasa untuk arahkan.

**Puan Farah Azlina binti Latif:** Legally, ya.

**Tuan Pengerusi:** So, this give the IPC kuasa like the CPC does to DPP.

**Puan Farah Azlina binti Latif:** That is why I am asking, Yang Berhormat. Are we...

**Tuan Pengerusi:** So, two parties have a kuasa untuk mengarahkan PDRM?

**Puan Farah Azlina binti Latif:** *Are we saying that IPCMC is equivalent as PP? If you say yes, then I stand guided on this but...*

**Tuan Pengerusi:** *No, arahan untuk menyiasat sahaja, bukan arahan untuk mendakwa.*

**Puan Farah Azlina binti Latif:** *I understand. OTI kita selalu DPP yang bagi. You know order to investigate (OTI). So, are we saying that IPCMC has the power...*

**Tuan Pengerusi:** *I think the IPCMC must have the power. Otherwise they become a toothless tiger. The PDRM will just say "Look here, I am not going to listen to you" and that is the problem, is not it of – that is a whole reason of having the IPCMC. They must have a power. I think I will propose to leave it there. Okay, anything else?*

**Dr. Su Keong Siong:** *[Berucap tanpa menggunakan pembesar suara]*

**Tuan Pengerusi:** *Sure, sure, carry on.*

**Puan Farah Azlina binti Latif:** *I am a little bit concern for AGC as well because now we are saying that the arahan will not include arahan to prosecute (OTP).*

**Tuan Pengerusi:** *Of course not.*

**Puan Farah Azlina binti Latif:** *Order to prosecute but when you have an open – I mean we wanted to amend section 5 as I said before. So, if I put the words "to give direction", that would include order to prosecute. So, how do we cap?*

**Tuan Pengerusi:** *No. Arahan untuk menyiasat, not mendakwa.*

**Puan Farah Azlina binti Latif:** *Ya, but when you say that arahan untuk menyiasat, so after that, it must be arahan untuk mendakwa. So, are we saying that the other party give arahan untuk OTI and then the other party which is PP give arahan to prosecute? It's how – I mean how that we will come into place. I cannot imagine to— but because now currently only DPP will give. PP will give the direction. Then PP will have all the information when they give the OTI. So, tiba-tiba bila hendak beri OTP, back to...*

**Tuan Pengerusi:** *There is where I think, you see, if you look at it, it brings the question of in a criminal case. Where, not other misconduct, in a case which there is criminal elements. I think the IPCMC in order to make it effective, should be able to give arahan and should be able to recommend prosecution, is not it?*

**Puan Farah Azlina binti Latif:** *[Berucap tanpa menggunakan pembesar suara] ...IP will go back to them. After the completion of the investigation, the IP will go back to IPCMC and then the IPCMC will minute in the IP to say that they recommend for a prosecution. Is that how things work?*

**Tuan Pengerusi:** *No, I think the IOPC, dia punya cara macam mana the other day?*

**Tuan Mohamad Onn bin Abd. Aziz:** Saya rasa sudah melangkaui amalan yang kita cuba sampaikan.

■2310

Apa yang diamalkan di IOPC adalah mereka menjalankan— ini untuk yang kes arahan ini— mereka memberikan arahan dan selepas arahan itu bila apa-apa sahaja keputusan, dia akan *proceed* macam seperti biasalah, masuk di bawah polis terus, polis terus ambil alih. Dia ada dua fakta berbeza-beza. Untuk fakta arahan yang tanpa siasatan, arahan yang polis sampai habis. *So*, bila *public complaint* dia ada kuasa untuk arahkan *please investigate and then* dia akan pantau pastikan *investigation* itu berjalan hingga selesai. Itu satu keadaan.

Satu keadaan lagi apabila dia sendiri siasat kes jenayah— ini IOPC ya— selepas dia sudah siap selesai siasat, dia akan *refer paper* itu kepada *Crown Prosecution* untuk pendakwaan, itu sahaja.

**Tuan Pengerusi:** *Refer* tetapi dia juga boleh hadir kan?

**Tuan Mohamad Onn bin Abd. Aziz:** Kalau untuk kes-kes tatatertib, *yes*. Untuk Februari tahun hadapan pindaan kepada *regulation* dia, selain daripada *prepare* kes tatatertib, *complete* siasatan, dia sendiri hadir *present* untuk pertuduhan di hadapan dia punya tribunal, *disciplinary board* di UK untuk tatatertib.

Akan tetapi untuk jenayah tidak, jenayah dia serah kepada *Crown Prosecution*. Dia siasat *then* serahkan kepada *Crown Prosecution*. Akan tetapi untuk kes-kes yang serius lah. Kalau kes yang tidak serius, dia akan pantau, dia akan arahan *and the* polis akan terus jalankan siasatan, polis akan *refer* pada *prosecution*, dia pantau saja. *So*, bila *public* buat aduan, dia akan pastikan perkara itu berlaku lah. *So*, tidak ada lah siasatan ambil masa yang lama contohnya lah, tidak ambil tindakan, itu yang saya difahamkan begitu Tuan Pengerusi.

**Tuan Pengerusi:** Kalau jenayah dilakukan, masih boleh dibuang kerja kan? *Misconduct* masih boleh diambil tindakan oleh IPCMC?

**Tuan Mohamad Onn bin Abd. Aziz:** *Yes, yes*.

**Tuan Pengerusi:** Akan tetapi *of course criminal prosecution* itu dibuat oleh AG lah, *like a normal criminal case*. *So*, itu akan diserahkan kepada DPP lah untuk tindakan *prosecution*. *Whether the DPP prosecute its up— that is AG's prerogative 145. So, you cannot put it anywhere here to force a prosecution. So, I think it can only go as far as that unless prosecutions— unless the AG's powers amended in the Constitution.*

*But for the moment, you cannot question his right to prosecute or not to prosecute. That is just a— so, we can only go as far as memberi arahan untuk menyiasat. You cannot go further than that. Okay?*

*Okay, anything else before we conclude? Semua sudah tidur, eyes are closing. [Ketawa] So, I think that is all, that is all. Thank you very much, terima kasih kepada semua. We started at 3.15 petang dan sekarang 11.15 malam, lapan jam. They will stay back to night.*

***[Mesyuarat ditangguhkan pada pukul 11.13 malam]***