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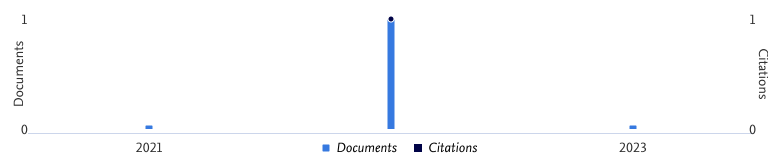
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Received: 16 June 2022
Accepted: 18 July 2022

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LAW, CRIMINOLOGY & CRIMINAL JUSTICE | RESEARCH ARTICLE

The freedom of expression in Indonesia

Zico Junius Fernando^{1,2*}, Pujiyono¹, Umi Rozah¹ and Nur Rochaeti¹

Abstract: The presence of social media, which the directly proportional people love, makes the community's freedom of expression even greater until it becomes uncontrollable. Some people sometimes consider social media as a tool for self-actualization, a place to work, and a place for expression. The right to freedom of expression is a fundamental human right guaranteed and has a strong meaning. However, whether it is recognized, freedom of expression is not an absolute right and can be very limited in certain circumstances. In the era of the industrial revolution 4.0, freedom of expression on social media is now regulated in Law Number 19 of 2016 concerning amendments to Law Number 11 of 2008 concerning Information & Electronic Transactions (UU ITE). The goal is at the theoretical level to limit freedom of expression in the world of social media so that people must be responsible for what they convey and test the level of maturity of the community in responding to the meaning of freedom of expression. However, in its implementation in the community, the arrangements in these rules are considered by the community to be too subjective. It is not impossible to silence creativity and freedom of expression in the era of the industrial revolution 4.0 as it is now to cause harmful things. The community can become victims of the implementation of the rules.

Subjects: Criminal Law & Practice; Criminology - Law; Public Law

Keywords: freedom of expression; human rights; democracy

1. Introduction

The essential thing that is felt by people in Indonesia in the era of the industrial revolution 4.0 today is that all information is increasingly open so that the space for freedom of opinion is more accurate and more abundant. If likened to the era of the industrial revolution, 4.0 is an era where the exchange of information happens very quickly. Every human being can have the freedom to express his opinion through new media platforms, especially social media. (Frayunita Sari, 2019) Indonesia is a state law, so it has regulations protecting human rights (HAM). The state does not give the presence of human rights (HAM). Still, human rights, according to John Locke's hypothesis, are individual natural rights owned by every human being or human since he was born. (El Muhtaj Majda, 2007, p. 29) Freedom of opinion and expression are fundamental rights that contain personal and social dimensions. They are considered "indispensable conditions for the full development of the person "essential for any society" and a "foundation stone for every free and democratic society. (Howie, 2018)

Freedom of expression and opinion in Indonesia, accompanied by access to information and communication via the Internet and social media, changes communication between people. According to data quoted from the Ministry of Communication and Information, as of 2020,



Roles of Human Rights Bodies on Chain Remand Complaints in Malaysia

Ifa Sirrhu Samsudin, Ramalingam Rajamanickam & Rohaida Nordin

To cite this article: Ifa Sirrhu Samsudin, Ramalingam Rajamanickam & Rohaida Nordin (2022) Roles of Human Rights Bodies on Chain Remand Complaints in Malaysia, Cogent Social Sciences, 8:1, 2095079, DOI: [10.1080/23311886.2022.2095079](https://doi.org/10.1080/23311886.2022.2095079)

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Received: 09 March 2022
Accepted: 23 June 2022

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LAW, CRIMINOLOGY & CRIMINAL JUSTICE | RESEARCH ARTICLE

Roles of Human Rights Bodies on Chain Remand Complaints in Malaysia

Ifa Sirrhu Samsudin^{1*}, Ramalinggam Rajamanickam² and Rohaida Nordin²

Abstract: The practice of chain remand would cause human rights violations if the application was granted without reasonable cause and reason. This chain remand problem was tried to be addressed in 2007, which was amongst the factors that led to the amendment of the Criminal Procedure Code (CPC) at that time due to the defilement of human liberty. In Malaysia, there are governmental and non-governmental bodies that are active in ensuring that the human rights of the entire



Ifa Sirrhu Samsudin

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Ifa Sirrhu Samsudin is presently enrolled as a third-year PhD candidate at Universiti Kebangsaan Malaysia (National University of Malaysia). She is currently on study leave, and she is a legal officer at the Attorney General's Chambers of Malaysia. She has experience serving as a Deputy Public Prosecutor and as Senior Federal Counsel. She was offered by government service scholarship to further her studies to the PhD level. During her studies at the master's level, she wrote a mini-thesis entitled *The Role of Chemist as an Expert Witnesses in DNA Proofing Throughout Trial in Court*. Throughout, her PhD studies starting at the end of 2019 until now she has successfully published three articles (Web of Science) and present her paper at several local and international conferences. Ramalinggam Rajamanickam is an Associate Professor in the Faculty of Law, Universiti Kebangsaan Malaysia (UKM) or known as The National University of Malaysia. He started his career as an academician at the Faculty of Law, UKM in 2007. He has obtained Bachelor of Laws, Master of Laws, and Doctor of Philosophy in law from the same institution. Among his areas of expertise is the forensic law, law of evidence, criminal justice system, legal translation as well as Malay language. In terms of publication, he has published more than 100 articles, conference papers and popular writings in his field.

Rohaida Nordin is an Associate Professor at Faculty of Law, National University of Malaysia. Her areas of specialisations are human rights, criminal justice, peace, and security. She received her PhD in Law from Lancaster University, the United Kingdom, in 2008. Before entering the academic field, she was a judicial officer with the Malaysian judiciary and a corporate legal advisor. Throughout her career as an academic, she published over 60 articles in indexed journals and books that mainly focused on human rights related issues.

PUBLIC INTEREST STATEMENT

There are many cases where the suspect is detained for more than days required and some for several months, this extended detention also known as chain remand. It can also indicate that chain remand practices can contribute to human rights abuse if there is no limitation explicitly under the laws to control it. The research also focuses to the need to ensure balance between security of the public at large. The purposes of this article will show the roles of human rights bodies in Malaysia who was experience handling chain remand cases. Drawing on semi-structured interviews with a sample of previously human rights officer represent chain remand detainees in Malaysia. This article discovered even these bodies able to investigate the complaints raised but not having a role to act and implementing further action against the parties involved.

community are protected from being violated. The issue of wrongful detention involving chain remand during an investigation is not a new issue. This issue is constantly highlighted and efforts to address it are often raised by the responsible parties. This study aims to analyse the roles of these bodies in dealing with chain remand complaints in Malaysia using a qualitative research approach by way of in-depth interviews, roundtable discussions, and document analysis. The study discovered that these human rights bodies in Malaysia were able to investigate the complaints, but did not have a role to take any actions. Their role is only to provide recommendations to the complainants to take action. Therefore, this study recommended establishing a legal provision with respect to the power to impose prosecution or disciplinary action on the officers involved in illegal detention without due cause. This study also suggests the function should be given to the prosecution department to take action to curb the problem based on solid evidence.

Subjects: Criminal Law & Practice; Criminal Justice - Criminology; International Law - Law; Policing & Police Law; Regulation; Criminology and Criminal Justice

Keywords: chain remand; liberty; complaints; governmental; non-governmental

1. Introduction

In the process of managing justice, there are several stages through which the person is alleged to have committed the crime. The investigative process is one of these stages. During the investigative process, normally the suspect will be detained. This detention is also known as pre-charge detention, police custody, pre-trial detention, or remand, as part of the procedure in criminal process before the suspect has been charged or released. Pre-trial detention (depriving suspects and accused people of their liberty before the conclusion of a criminal case) is intended to be an exceptional measure, to be used as necessary and in compliance with the doctrine of presumption of innocence and the right to liberty. Its use is only acceptable as a measure of last resort, in very limited circumstances. Unfortunately, these strict limitations are not always respected (A Measure of Last Resort? The practice of pre-trial detention decision-making in the EU Report, 2012). In addition to the loss of liberty, detained suspects experience serious implications and sometimes irreparable impacts on their livelihood, family, and health. Such a process may be necessary under limited circumstances to conduct effective investigation (Harmon, 2016). But there are instances observed that have undermined respect and protection of rights for example, the use of chain remand practice without justifiable reason.

Chain remand practices in Malaysia are prevalent in syndicate cases that involved multiple places and resulted in the detention of a suspect for an extended length of time (Human Rights Commission of Malaysia,). Several cases illustrated that when a suspect is involved in a chain remand inquiry, he or she can be held for hundreds of days. This situation transpired in the case of *Selvakumar a/l Subramaniam v Penguasa, Pusat Pemulihan Akhlak Simpang Renggam, Johor Darul Takzim & Ors* (2013) 1 LNS 1068, whereby the detainee was held for a total of 826 days, including preventive detention. In reality, a detainee was held in chain remand for more than 80 days at several police stations across Peninsular Malaysia (Free Malaysia Today, 2016). According to Syahredzan (2019), the chain remand practice involved the police arresting the suspect and then applying for detention for investigation, also known as remand. Once the detention period expires, the police will rearrest the suspect and state that another police report allows them to bypass the Criminal Procedure Code (CPC) restrictions (Mei Lin, 2019). The chain remand can also be described as follows: A had been in detention for four days at the Seremban Police Station. At the end of the fourth day, A was released and was subsequently detained at the Kepong Police Station, whereby he was detained for another four days before being released. At the end of the second detention,