

## NOTES ON LEGISLATION

### *Akta 123 . . . . . Akta Biro Siasatan Negara, 1973. Biro Siasatan Negara Act, 1973.*

A naive observer might be forgiven if he comes to the conclusion that Malaysia subconsciously seeks to emphasise its similarities with the U.S.A.. Both countries are federations, were formerly dominated by the British, revere the common law, fly a flag with 13 Stripes and so on. This superficial similarity seems to be further enhanced with the establishment of the Malaysian equivalent of the F.B.I. — the National Bureau of Investigation which replaces the Badan Pencegah Rasuah, or, Anti Corruption Agency.

By section 3(i) of the Biro Siasatan Negara Act, 1973, there is established, for purposes of this Act, the Prevention of Corruption Act<sup>1</sup> and any other legislation (referred to as "prescribed law")<sup>2</sup> to which the Minister may extend the provisions of the Act, a bureau known officially as "Biro Siasatan Negara" (or in English, the National Bureau of Investigation). Provision is made for the appointment of a Director-General of the Bureau by the Yang DiPertuan Agung acting on the advice of the Prime Minister<sup>3</sup> and for the appointment of officers of the necessary classes or grades<sup>4</sup>. It is further provided that the Director-General shall have all the powers of an officer of the Bureau.<sup>5</sup> This official is also vested with the powers of a Deputy Public Prosecutor under the Criminal Procedure Codes of the Federated Malay States, the Straits Settlements, Sabah and Sarawak.<sup>6</sup> In connection with the Prevention of Corruption Act, 1961, and any prescribed law, officers of the Bureau are given all the powers of a police officer<sup>7</sup> and a customs officer<sup>8</sup> appointed under the Police Act, 1967<sup>9</sup> and the Customs Act, 1967<sup>10</sup>, respectively, and it is

<sup>1</sup> Act 57.

<sup>2</sup> s. 2.

<sup>3</sup> s. 3(2).

<sup>4</sup> s. 4.

<sup>5</sup> s. 5(1).

<sup>6</sup> s. 5(1).

<sup>7</sup> s. 5(2).

<sup>8</sup> s. 5(2).

<sup>9</sup> Act 41/67.

<sup>10</sup> Act 62/67.

expressly provided that the Criminal Procedure Code as may be applicable (i.e. in that particular part of the Federation) shall be construed accordingly.<sup>11</sup> It is submitted, therefore, that unless the relevant legislation expressly makes provisions to the contrary an officer of the Bureau while exercising his functions under any law to which the provisions of this Act apply, would impliedly be subject to the same limitations and duties as are placed on a police (or customs) officer by the relevant Criminal Procedure Code; and that therefore the observations of Ong Hock Sim, F.J. in *Natban v. P.P.*<sup>12</sup> would not be applicable to officers of the N.B. I.

Provision is also made<sup>13</sup> to empower the Minister, from time to time to prescribe (by means of order published in the Gazette) any legislation with respect to which provisions of this Act shall apply. The Minister may specify, in the same or subsequent order, that an officer of a class or grade of the Bureau shall be regarded for the purpose of the law to be equivalent to an officer of a class or grade under the prescribed law.<sup>14</sup>

It seems to be implied that a person who is being investigated or questioned by an officer of the N.B.I. under the Prevention of Corruption Act, 1961,<sup>15</sup> or any prescribed law, can demand that the investigating (or interrogating) officer declare his office and produce such authority card as the officer is directed to carry by the Director-General<sup>16</sup>. Should the officer refuse to declare his office and produce his authority card on demand the person so demanding would not be guilty of an offence if he refuses to comply with any request, demand or order made by such officer of the Bureau.<sup>17</sup> Finally, there is the usual provision that all officers of the Bureau shall be deemed to be public servants within the meaning of

<sup>11</sup> Act 123, s. 5(2), (3).

<sup>12</sup> "I would also note another unsatisfactory aspect of the case, which is the learned president's approach on the question of the credit to be given to Mr. Manickavasagam (PWI). He would reject the evidence of PWI solely by reason of the failure of the Anti-Corruption Agency officers who interviewed Manickavasagam on the 17th-18th February, 1970, to record a "first statement", I may add here that he has thereby misdirected himself in regard to this failure of the Anti-Corruption Agency officers to record that which he termed a first information in writing. . . . The officers, though members of the police force, were not, in my view exercising functions or powers under Cap. XIII Part V, (Criminal Procedure Code), [of the Straits Settlements] "but were acting under directions of the Anti Corruption Agency." [1972] 2 M.L.J. 101, 102.

<sup>13</sup> Act 123, s. 6(1).

<sup>14</sup> Act 123, s. 6(2).

<sup>15</sup> Act 57.

<sup>16</sup> see Act 123, s. 7(1).

<sup>17</sup> Act 123, s. 7(2).

the relevant Penal Code that is in force in that particular part of the Federation.<sup>18</sup>

In conclusion it may be appropriate to make reference to the Bahasa Malaysia text of the Act. By virtue of the provisions of the National Language Act<sup>19</sup> all Acts of Parliament must be in the National Language (Malay) and in English but the Malay text is authoritative unless the Yang DiPertuan Agung otherwise prescribes.<sup>20</sup> It would, therefore, appear to be desirable that a standard terminology be maintained in the Malay text of all laws. It is somewhat unfortunate in this connection that the Akta Biro Siasatan Negara, 1973 refers to the Criminal Procedure Code as "Kanun Acara Jenayah" while in the Malay version of the Penal Code,<sup>21</sup> the Kanun Keseksaan,<sup>22</sup> the Criminal Procedure Code is referred to as "Kanun Peraturan Jenayah"<sup>23</sup> [The writer has also seen "unofficial" versions of the Malay translation of the Criminal Procedure Code itself entitled "Undang-Undang Acara Jenayah"!

I.S.A.

***Akta 206 – Akta Perlembagaan (Pindaan) (No. 2) 1973.  
Constitution (Amendment) (No. 2) Act, 1973.***

While this Act appears to provide, *inter alia*, the machinery for the severance of [Greater] Kuala Lumpur from the State of Selangor and its establishment as "Wilayah Persekutuan", or the Federal Territory, it can be viewed, less prosaically, as another fascinating facet in the panorama of a much amended Constitution.<sup>1</sup>

The setting for this Act was laid by the earlier Constitution (Amendment) Act, 1973<sup>2</sup> which provided,<sup>3</sup> *inter alia*, for the amendment of

<sup>18</sup> i.e. the 'Penal code in force in the States of Malaya or the Penal Code in Sabah or Sarawak as the case may be [s.2].

<sup>19</sup> Act 32 (Revised 1971).

<sup>20</sup> Act 32, s. 6.

<sup>21</sup> F.M.S. Cap. 45.

<sup>22</sup> Translated in the Attorney-General's Chambers.

<sup>23</sup> Kanun Keseksaan (N.M.B. Bab 45) s. 86 (i).

<sup>1</sup> The Constitution of the independent Federation has been amended 17 times, at least, since its promulgation in 1957 and thus averages slightly more than one amendment for each year of independence.

<sup>2</sup> Akta A193.

<sup>3</sup> Akta A193 S. 6.