

An Initial Exploration of Malaysians' Perceptions of SOSMA 2012

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Abstract

The Security Offences (Special Measures) Act 2012 (SOSMA) was passed by Parliament to replace the old Internal Security Act 1960 (ISA) and was given the royal assent on 18 June 2012. Since SOSMA came into play, it has not laid to rest the ongoing debate of its predecessor the ISA which was contended to be in contravention not only of the Federal Constitution but also the basic principles upheld under the Rule of Law (RoL). SOSMA has been scrutinised and debated upon at various levels both locally and internationally. This study examines the perception of SOSMA by a selected group, focusing on its implication with reference to the ISA, the Malaysian Federal Constitution and the principles upheld under the RoL. The study was conducted by survey questionnaire using a 5-point Likert Scale. Since the whole study was to evaluate perceptions specifically related to the laws in Malaysia, a non-probability purposive sample was selected comprising of lawyers, law lecturers, law students and those who are working in other sectors but with a legal background. The findings indicate that on the whole the respondents were of the opinion that an Act dealing with internal security is essential and required. However, the consensus is that SOSMA needs to be amended as there is a clear indication that it contravenes basic human rights as upheld under the RoL, and that it infringes rights protected under the Federal Constitution. The study ends with a recommendation for the survey to be carried out amidst a larger population and should the findings be similar, the government is then advised to re-examine the SOSMA with a view to retain, amend or repeal the said Act.

I INTRODUCTION

As reported by Malaysia Defense and Security Report 2012¹, although Malaysia has not felt the full presence of international terrorist groups unlike some of its neighbours, there are still some local insurgents such as Kumpulan Mujahidin Malaysia (KMM), al-Ma'unah (Brotherhood of Inner Power), Barisan Nasional Pembebasan Pattani (BNPP) and the Barasi Revolusi Nasional (BRN) that the government faces. The report went on to highlight that the government also faces a long-running dispute over the Spratly Islands

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¹ Security Overview' 2012, Malaysia Defence & Security Report, 3, pp. 42-45, Business Source Complete, EBSCOhost. <<http://edsb.bebcohost.com.ezproxy.taylors.edu.my/eds/pdfviewer/pdfviewer?vid=19&sid=c0787800-2d83-4343-afff-c8da26582b58%40sessionmgr113&hid127>> Site accessed on 26 December 2014.

in the South China Sea, which are claimed by China, Vietnam, the Philippines, Malaysia and Brunei (with the military presence on Spratly by all the claimants except Brunei) which also caused considerable regional tension with these groups. This has been made more critical with the insurgent and terrorist activity from the Thai Muslim Insurgency which has the potential to destabilise the border areas of Malaysia, in the state of Kedah. In addition, Thai groups, such as the Gerakan Mujahideen Islam Pattani (GMIP), the Pattani United Liberation Organisation (PULO), and the National Revolutionary are widely believed to have links with KMM as well as have the most extensive grassroots network and ties to Malaysia². The report went on to state that piracy in South East Asia is still a major security issue where attacks are dispersed throughout the South East Asian water lanes which presents difficulties in monitoring piracy³. The report asserts that despite all these threats, the stringent use of the ISA – with more than 100 insurgents arrested since May 2001 – and close observation of suspects by the government makes any major non-State violent activity on Malaysia’s territory an improbability⁴.

As a result, in the past the ISA has been criticised extensively for its violation of human rights. According to Kee Thuan Chye⁵, Malaysians have fought hard to get the ISA repealed where many have risked arrest to demonstrate against it. He cited the August 1, 2009 incident where about 15,000 took to the streets in Kuala Lumpur to call for the law’s repeal, and nearly 600 were arrested. Due to the continuous criticism, the Prime Minister, Najib Abdul Razak issued a statement on September 15 announcing that the government will abolish the ISA and ease media controls. Subsequently, the ISA was repealed and replaced with SOSMA. However, the Malaysian government’s decision to abolish the Internal Security Act has attracted a mixed response among international observers and human rights groups⁶.

SOSMA has not laid to rest the multiple debates surrounding the ISA as SOSMA too has flaws, with provisions contrary to basic human rights upheld in the Federal Constitution, the RoL and laws of other nations. At a recent law conference, the then Attorney-General, Tan Sri Abdul Gani Patail⁷, pointed out that section 4(3) SOSMA expressly provides that no person is to be arrested under the Act solely for his political belief or political activity. The Bar Council president, Lim Chee Wee⁸ has stressed that the definition of ‘security offence’ being acts that are prejudicial to national security or public

² *Ibid.*

³ *Ibid.*

⁴ Security Overview’ 2011, Malaysia Defence & Security Report, 3, pp. 42-45, Business Source Complete, EBSCOhost, <<http://eds.b.ebscohost.com.ezproxy.taylors.edu.my/eds/pdfviewer/pdfviewer?vid=19&sid=c0787800-2d83-4343-affc-c8da26582b58%40sessionmgr113&hid=127>> Site accessed 26 December 2014.

⁵ Chye, KT 2011, ‘How did we tolerate the ISA for so long?’, Penang Economic Monthly, 13, 11, pp. 36-37, Academic Search Complete, EBSCOhost, <<http://blog.limkitsiang.com/2011/11/10/sell-one-law-get-two-free/>>. Site assessed 26 December 2014.

⁶ Political Overview’ 2012, Malaysia Defence & Security Report, 1, pp. 68-74, Business Source Complete, EBSCOhost. <<http://eds.b.ebscohost.com.ezproxy.taylors.edu.my/edspdfviewer/pdfviewer?vid=20&sid=c0787800-2d83-4343-affc-c8da26582b58%40sessionmgr113&hid=117>?> Site assessed 26 December 2014.

⁷ Himanshu Bhatt, 2013, “The Heat is on SOSMA”: http://www.malaysianbar.org.my/legal/general_news/the_heat_is_on_sosma.html. Site accessed on 15 December 2012.

⁸ *Ibid.*

safety, is too wide. He went on to assert that there needs to be a more precise and better definition, such as that found in the United Nations Convention for the Suppression of the Financing of Terrorism. According to Lim⁹ “the radical departure from the ordinary rules of evidence may negatively impact on the accused’s right to a fair trial and counter-terrorism laws, policies as well as decisions must not usurp the very rights and freedoms that the terrorists themselves are threatening”. Among the other recommendations proposed by the Bar Council is that the power to intercept communications should be exercised by a judge, and for solicitor-client communication to be protected.

In line with this, the international human rights research and advocacy group, Human Rights Watch (HRW) has said in its annual World Report that Malaysia is “backsliding on human rights”¹⁰. HRW Asia Deputy Director, Phil Robertson said despite several reforms, protections for basic liberties in Malaysia have not significantly improved. Among other things, HRW criticised SOSMA for permitting police to authorise communication intercepts and for allowing prosecutors to bring up evidence without disclosing its source. Furthermore, acquitted suspects in the midst of an appeal may still be detained in prison or tethered to a monitoring device until the appeal is settled. Despite these serious criticisms, the HRW did recognise the reduction in days for initial detention without charge (from 60 to 28 days), and the requirement that a suspect be charged in court or released thereafter, as positive points¹¹. As a result of these apprehensions raised under SOSMA, there is much debate between the authorities and human rights activists over the merits of such concerns. It is due to these concerns that this study was conducted to investigate the perceptions of Malaysians about SOSMA, with a view to add clarity to the issues being raised. However, the paper labours under a limitation, in that the samples selected for the study were limited to those who were well versed with the law, as laymen would not be able to give proper insights into the law.

II. BACKGROUND OF THE INTERNAL SECURITY ACT OF MALAYSIA

The first Act enacted for the purpose of protecting internal security in Malaysia was the ISA 1960. It is a preventive detention law originally enacted during a national state of Emergency as a temporary measure to fight communist rebellion. Under Section 73 (1) of the ISA, police may detain any person for up to 60 days, without warrant or trial and without access to legal counsel, on suspicion that “he has acted or is about to act or is likely to act in any manner prejudicial to the security of Malaysia or any part thereof or to the maintenance of essential services therein or to the economic life thereof¹².” After 60 days, the Minister of Home Affairs can then extend the period of detention without trial for up to two years, without submitting any evidence for review by the courts, by

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Supra* n 7.

¹² Malaysia’s Internal Security Act and Suppression of Political Dissent, A Human Rights Watch Backgrounder: <http://www.hrw.org/legacy/backgrounder/asia/malaysia-bck-0513.htm>. Site accessed on 15 December 2012.

issuing a detention order, which is renewable indefinitely. Such provisions are the reason for the criticism against the Act.

Thus, the Act has repeatedly been criticised by Malaysian human rights groups, the Malaysian Bar Council, the Malaysian Human Rights Commission, and international human rights groups, which called for its repeal¹³. The ISA's provisions violate fundamental international human rights standards, including prohibitions on arbitrary detention and guarantees of the right to due process and the right to a prompt and impartial trial¹⁴. According to Sunil Lopez¹⁵, it seemed inconceivable that even in these 'enlightened times', there exists a patch of the past, a throwback, if you will, to the bygone era of tyrannical monarchs where the word of one is sufficient to affix guilt to a human being and as inconceivable it may be but the continued existence of legislation like the ISA was such a 'patch' and an unjust one at that. After such strong criticism came the much awaited decision to repeal ISA.

The Security Offences (Special Measures) Act 2012 was gazetted on 22 June 2012 to provide for special measures relating to security offences for the purpose of maintaining public order and security and for connected matters¹⁶. SOSMA was regarded by many as a direct replacement of the ISA. Prime Minister Datuk Seri Najib Razak¹⁷ said the reform, including the rescinding of three emergency proclamations, ushers in a "new era" for Malaysia. He went on to add that the government would no longer limit individual freedoms but would instead ensure that their basic constitutional rights were protected. He also hoped other promised reforms, including the introduction of the Peaceful Assembly Act and amendments to the Universities and University Colleges Act, would herald a "golden democratic age in Malaysia".

However, the enactment of SOSMA has brought to surface some major issues in the Malaysian legal sphere. It is stated that there can be no grey areas as to the Law and the Act in question will have to be stringently monitored to ensure it serves only to uphold peace, liberty and freedom¹⁸. The Human Rights Watch for Asia-Pacific denotes that it perhaps allows for the government to add limits to previously unrestrained activities for crucially, the amendment also does away with the core principle of Criminal Law, presumption of innocence whereby in future cases, the onus will be on the defendant to prove his innocence¹⁹. The Malaysian Bar Council is of the opinion that the fact that SOSMA serves to further erode citizen rights and individual protection by ceding to the police force rather than the judges the power to intercept communications and at trial,

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ Sunil Lopez, 2008, "*The Internal Security Act 1960: A Throwback to the Era of Tyranny*", Malaysian Bar Council: http://www.malaysianbar.org.my/members_opinions_and_comments/the_internal_security_act_1960_a_throwback_to_the_era_of_tyranny.html. Site accessed on 15 December 2012.

¹⁶ Law Today: Security Offences (Special Measures) Act 2012 [SOSMA]: <http://www.kpum.org/2014/03/law-today-security-offences-special-measures-act-2012-sosma/> Last accessed on 17 December 2012.

¹⁷ Ding Jo-Ann, 2012, "*False Hope in Security Offences Act*": <http://www.thenutgraph.com/false-hope-in-security-offences-act/>. Last accessed on 27 December 2012

¹⁸ *Supra* n 16.

¹⁹ *Ibid.*

keeping the identity of prosecution witnesses classified thus negating cross-examination²⁰. Suruhanjaya Hak Asasi Manusia (SUHAKAM) in its 2012 Annual Report highlighted further problems in relation to the Act whereby section 4 SOSMA does not provide for judicial oversight owing to the detention without trial being allowed to be extended to twenty-eight days²¹. Furthermore, section 5 gives the police the permit to deny immediate access to legal representation for up to forty-eight hours.

According to a recent report by The Malay Mail Online²², the Home Ministry proposed a new law to combat terrorism in Malaysia, amid criticism that existing laws were unable to prosecute cases involving acts of terrorism committed beyond the country's borders. This is supported by the former Inspector-General of Police (IGP), Tan Sri Musa Hassan who said that anti-terror enforcement is hampered by the lack of power afforded to the authorities under SOSMA, as it requires that investigators gather sufficient evidence before they can proceed with prosecution²³. Musa, who currently chairs the anti-crime NGO Malaysian Community Crime Care (MCCC), was quoted by Malay daily *Utusan Malaysia* as saying that too much time is spent collecting evidence and that it is difficult to prove the involvement of suspected terrorists recruited overseas.²⁴ On the other extreme, senior criminal lawyer, Datuk N. Sivananthan²⁵ said SOSMA might be effective in certain situations as it allowed the police to detain a suspect for up to 28 days when there was a real threat to public order or to the security of the country, provided that it was used properly, only in relation to offences against the State and/or offences relating to terrorism and nothing else. He went on to add that normal criminal trials were governed by the Criminal Procedure Code (CPC) and Evidence Act, but security offences would be tried under SOSMA and "the provisions in SOSMA are not the same as in the CPC as the latter has more safeguards and is fair to an accused person whereas provisions in SOSMA are lopsided in favour of the State". According to a report on Borneo Post Online²⁶, almost a year after SOSMA was gazetted to replace the repealed the ISA, arguments persist as to whether the new law provides the appropriate balance between safeguarding the national security and the rights of the accused. This study aims to identify the perception of a selected category of respondents on the provisions in SOSMA in line with the concerns raised with ISA, RoL and principles upheld in the laws of other states with regards to basic human rights.

²⁰ *Ibid*

²¹ *Ibid*

²² The Malay Mail Online, 2014, "In view of Sosma 'Weaknesses', Home Ministry to Moot New Anti-Terror Law": <https://my.news.yahoo.com/view-sosma-weaknesses-home-ministry-moot-anti-terror-090100636.html>. Last accessed on 27 December 2014.

²³ *Ibid*.

²⁴ *Ibid*.

²⁵ Borneo Post Online, 2013, "Introduction of Sosma to replace ISA draws mixed reaction from law Practitioners": <http://www.theborneopost.com/2013/05/27/introduction-of-sosma-to-replace-isa-draws-mixed-reaction-from-law-practitioners/#ixzz3N6Zq11lf>. Last accessed on 21 December 2014.

²⁶ *Ibid*.

III. METHODOLOGY

McConville and Wing²⁷ divided legal research into doctrinal and non-doctrinal research. Non-doctrinal research can be qualitative or quantitative while doctrinal is qualitative since it does not involve statistical analysis of the data. This research used a non-doctrinal research where a quantitative method was adopted. A survey questionnaire was used to gain insight of selected Malaysians' perceptions on the internal security laws in Malaysia. For the purpose of this study, a non-probability purposive sampling was used. A survey was conducted among 152 people comprising of representatives from legal practitioners, academicians, law scholars and other legal professionals. This is to obtain a clearer picture of the real issues surrounding internal security laws in Malaysia, to determine whether there is a need for SOSMA, and if so, does the Act meet the need, or are amendments required.

IV. FINDINGS

A. Demographic Information of Survey Samples

The survey questionnaire has 5 parts comprising of Part A which was designed to obtain key personal information, Part B which is on respondents' knowledge about the conditions in Malaysia, Part C which is on the respondents' knowledge of the laws in Malaysia, Part D which is on the perceptions of the respondents towards the provisions in SOSMA and Part E which is on respondents' perception of the ISA and SOSMA. Firstly, descriptive statistic was used to analyse part of the data such as demographic background which includes gender, nationality, highest level of education and current position. These data were converted in many forms to provide a clearer view of the findings. The data is presented in various forms such as charts, tables, and histogram. Table 4.1 represents the summary of the respondents' demographic profile. A total of 400 survey questionnaires were distributed and 175 were returned. Out of these, 152 were useable while 23 were rejected as they were incomplete.

Table 4.1: Percentage of Respondents' Gender

		Percentage
Valid	Female	66.4
	Male	33.6

Based on Table 4.1, the result shows that males and females do not have equal proportion, where 66.4% of the respondents were female while 33.6% were males. Since it was a non-probability purposive sampling (representatives from legal practitioners, academicians, law scholars and other legal professionals), a balanced distribution between

²⁷ McConville M and Wing H. C, (eds.), *Research Methods for Law*, Edinburgh University Press: Edinburgh, 2007.

both genders could not be obtained. Table 4.2 shows the findings of the respondents' nationality.

Table 4.2: Percentage of Respondents' Nationality

		Percentage
Valid	Malaysian	96.7
	Non Malaysian	3.3

As indicated in Table 4.2, 96.7% of the respondents are Malaysians while only 3.3% are non-Malaysians. One of the reasons for the small percentage of non-Malaysian is because the study is based on Malaysian legislations which are not within the ambit of knowledge of non-Malaysians. When data was collected, most of the respondents who were expatriates refused to answer the survey questionnaire due to inadequate knowledge on the laws. Table 4.3 gives the data on the respondents' educational background.

Table 4.3: Percentage of Respondents' Educational Background

		Percentage
Valid	Degree	73
	Masters	10.5
	PhD	4.6
	Professional Qualification	11.8

In terms of educational background, 73% of the respondents were law degree holders, followed by 10.5% who had masters in law, 4.6% with PhD in law and 11.8% had professional qualification which is a Certificate in Legal Practice. Table 4.4 provides the findings of the respondents' current position.

Table 4.4: Percentage of Respondents' Current Position

		Percentage
Valid	CLP Student	63.2
	Masters Student	2
	Lawyer	12.5
	Law Lecturer	12.5
	Others	9.9

63.2 % of the respondents were currently pursuing the Certificate in Legal Practice in a private institution in Kuala Lumpur where the data was collected, 2% were pursuing masters in a public university in Malaysia while 12.5% are currently working as lawyers in Malaysia. Another 12.5% are lecturing law in private universities in Malaysia. Lastly 9.9% of the respondents were employed in other professions such as legal executive, legal consultant, contracts manager, in house legal counsellor, legal advocate and IP consultant.

B. Malaysians' Perceptions of the Conditions in Malaysia

A total of 21 statements were given to the respondents in the survey questionnaire and respondents were asked to indicate their level of agreement or disagreement. A frequency count was carried out and table 4.5 shows the findings.

Table 4.5: Perceptions of the Conditions in Malaysia (%)

		DISAGREE	NEUTRAL	AGREE
B 1	Malaysia is a peaceful country.	23.7	25	51.3
B 2	Malaysia is a developed country.	29.6	38.8	31.6
B 3	Malaysia upholds freedom of speech.	70.4	21.7	7.9
B 4	Malaysia upholds freedom of assembly.	69.1	21.7	9.2
B 5	There are no internal conflicts in Malaysia.	82.2	12.5	5.3
B 6	There is no threat from terrorist in Malaysia.	43.4	34.9	21.7
B 7	There are no racial problems in Malaysia.	82.9	11.8	5.3
B 8	The political condition in Malaysia is stable.	63.8	26.3	9.9
B 9	Our rights are protected.	55.3	32.9	11.8
B 10	There is freedom of movement.	32.9	34.3	32.8
B 11	There is freedom to practice my religion.	17.8	28.9	53.3
B 12	There is equal distribution of wealth amongst all races.	73.1	19.7	7.2
B 13	All races are treated fairly.	79.6	15.1	5.3
B 14	Minority groups are protected adequately.	68.4	24.3	7.3
B 15	Malaysia is an Islamic country.	41.4	21.1	37.5
B 16	There is harmony amongst all races.	36.2	42.8	21
B 17	There is law and order in the country.	25.7	38.8	35.5
B 18	There are fair elections in the country.	72.4	19.1	8.5
B 19	The judiciary is independent.	21.7	36.8	41.5
B 20	Our rights are equivalent to international standards.	71.7	17.1	11.2
B 21	Malaysia is free of corruption.	93.4	5.3	1.3

As shown in Table 4.5, a majority of respondents disagreed with 14 out of the 21 statements inclusive of B3, B4, B5, B6, B7, B8, B9, B12, B13, B14, B15, B18, B20 and B21. The highest percentage of disagreement was with the statement B21 [Malaysia is free of corruption]. This finding is consistent with Ramon Navaratnam²⁸ who cited the

²⁸ Ramon Navaratnam, 2014, "Malaysia Seen as Seriously Corrupted", Free Malaysia Today: <<http://www.freemalaysiatoday.com/category/nation/2014/12/03/malaysia-still-seen-as-seriously-corrupt/>> Site assessed on 20 November 2014.

announcement by the Transparency International Headquarters in Berlin stating that the Corruption Perception Index (CPI) for Malaysia registered only minimal improvement in 2014 and is still ranked low as number 50 out of 175 countries. Further, 93.4% of the respondents disagreed with the statements B7 [There are no racial problems in Malaysia] and B5 [There are no internal conflicts in Malaysia] with a high level percentage of disagreement, 82.9% and 82.2% respectively. These findings are consistent with past literature. According to Jeya Seelan²⁹, in Malaysia "...the skewed implementation of affirmative action or positive action policies as some may call it, contained in Article 153 of the Federal Constitution has resulted in discrimination against the non-Bumiputra minority communities". With regards to conflicts, Lai Fong Yang and Md Sidin³⁰ claimed that a number of researchers have identified inter-ethnic relations as one of the challenges to the social stability of the country³¹. They also stated that in the last three years a number of ethnic and religious tensions has continued to impact the life of Malaysians such as Kampung Medan clashes, Suqiu, the keris polemics, Negaraku incident, controversy over a tertiary education textbook on ethnic relations, controversy over freedom of faith and body snatching, Hindraf, cow head protest, Biro Tata Negara debacle, *pendatang* issue, disputes over the use of the word "Allah," arson attacks, etc³². Thus, it is not surprising that the respondents disagreed with the statements that there are no racial problems or internal conflicts in Malaysia.

The respondents also disagreed with statement B13 [All races are treated fairly] with a percentage of 79.6%. The other statements where more than 50% disagreed are B12 [There is equal distribution of wealth amongst all races], B18 [There are fair elections in the country], B20 [Our rights are equivalent to international standards], B3 [Malaysia upholds freedom of speech], B4 [Malaysia upholds freedom of assembly], B14 [Minority groups are protected adequately], B8 [The political condition in Malaysia is stable] and B9 [Our rights are protected]. The high percentage of disagreement to these statements indicates that the respondents have a lot of concern with regards to the conditions in Malaysia. Some of these findings are consistent with previous findings. For example, in the report given by the People's Tribunal stated that they had received many allegations and complaints about electoral misconduct of the general elections of 2013 not only from

²⁹ Jeya Seelan, 2013, "*Racial Discrimination in Malaysia: Perspectives from the Constitution and International Covenants*", The Malaysian Insider: <<http://www.themalaysianinsider.com/opinion/jeya-seelan/article/racial-discrimination-in-malaysia-perspectives-from-the-constitution-and-in#sthash.j5xzghSb.dpuf>> Site assessed on 20 November 2014.

³⁰ Lai Fong Yang and Md Sidin Ahmad Ishak, "Framing Interethnic Conflict in Malaysia: A Comparative Analysis of Newspaper Coverage on the Hindu Rights Action Force (Hindraf)", *International Journal of Communication*, 2012, Vol. 6, pp. 166–189.

³¹ See generally, Abdul Rahman E, *The Culture and Practice of Puralism in Post-independence Malaysia*, Institute of Malaysian and International Studies (IKMAS), Univeristi Kebangsaan Malaysia, Bangi, 2000; S. A. Baharuddin, 'Making Sense of National Unity in Malaysia: 'Break-down' versus 'Break-out' Perspective', *Readings on Ethic Relations in a Multicultural Society*, M. K. Kabilan and Z. H. (eds.), COLLA Research Group, Kuala Lumpur, 2005, pp. 25-37; and Brown D, *The State and Ethnic Politics in Southeast Asia*, Routledge, London, 1994.

³² *Ibid.*

the losers but also from several independent observer groups, including those specially appointed by the Election Commission (EC)³³.

There were only 4 statements which respondents agreed to but the percentage of agreement is average. These are B1 [Malaysia is a peaceful country], with 51.3% of respondent agreeing, B11 [There is freedom to practice my religion] with 53.3% agreeing and B19 [The judiciary is independent] with 41.5% agreeing. An analysis of the findings in Section B indicates that as a whole, the respondents have a lot of concern as to the conditions in Malaysia in relation to fairness and justice as well as equality and peace.

C. *Malaysians' Perceptions of the Laws in Malaysia*

In this section of the survey questionnaire, the respondents were asked to state their level of agreement or disagreement to 23 statements that described the legal environment in Malaysia. For the purposes of clarity and depth of understanding, the 152 respondents were grouped into 2 categories, students and legal professionals (lawyers, lecturers and other legal professions). The groups are indicated in Figure 1.

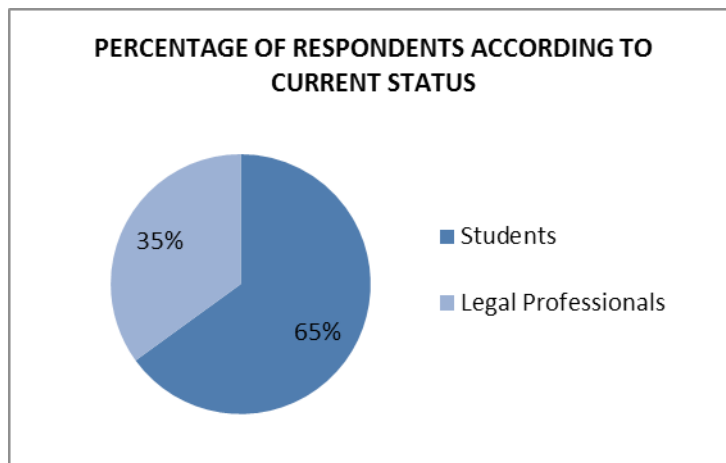


Figure 1: Percentage of Respondents According to Current Status

A total of 65% of the respondents were students currently pursuing either masters or CLP. On the other hand, 35% were lawyers, law lecturers and working in other legal professions. The reason for dividing them into two categories is due to the nature of the statements used in Section C. A large number of statements were related to SOSMA and the researchers knew from the pilot study carried out that students' knowledge of SOSMA is limited and they tend to take up a neutral stand in some cases. As such, combining

³³ Tribunal Rakyat, 2014, "*The People's Tribunal on Malaysia's 13th General Elections: Summary of the Report*": <<http://www.globalbersih.org/2014/04/08/the-peoples-tribunal-on-malaysias-13th-general-elections-summary-of-the-report/>> Site assessed on 29 November 2014.

their responses with the second group whose knowledge of SOSMA is greater as they deal with it in their professions would skew the results. Figure 4.6 shows the findings of the respondents' perceptions of the laws in Malaysia.

Table 4.6: Perceptions of the Laws in Malaysia According to Current Status

Questions	STUDENTS (100%)			LEGAL PROFESSIONALS (100%)		
	DA	N	A	DA	N	A
C1 The Federal Constitution (FC) is the highest law in Malaysia.	7.1	19.1	73.8	0	11.4	88.6
C2 There are no laws that contravene the provisions in the FC	44.5	26.2	29.3	37.8	17.1	45.1
C3 SOSMA 2012 is an important law.	19.3	52.5	28.2	16.8	49	34.2
C4 SOSMA 2012 is a law which is necessary.	22.3	49.5	28.2	32	41.4	26.6
C5 SOSMA 2012 is better than ISA 1960.	26.2	60.7	13.1	26.5	54.7	18.8
C6 Basic human rights are infringed by SOSMA 2012.	9.1	55.6	35.3	9.8	39.5	50.7
C7 The powers of the courts are restrained by the provisions in SOSMA 2012.	9.2	56.5	34.3	11.7	39.3	49
C8 The police are given excessive power in SOSMA 2012.	8.1	42.5	49.4	5.7	31.8	62.5
C9 The Executive is given excessive powers to intervene in judicial matters related SOSMA 2012.	4.2	42.4	53.4	9.7	33.7	56.6
C10 SOSMA 2012 is an adequate replacement for ISA 1960.	37.4	54.5	8.1	41.3	49	9.7
C11 Rule of Law issues are dealt with satisfactorily by SOSMA 2012.	37.4	58.4	4.2	52.7	43.3	4
C12 The independence of judiciary is upheld under SOSMA 2012.	39.4	53.4	7.2	49	45.3	5.7
C13 Judges in Malaysia rule without fear or favour.	56.5	27.3	16.2	49	37.8	13.2
C14 In Malaysia, there is separation of powers between the legislative, executive and judiciary.	62.6	18.3	19.1	50.7	26.7	22.6
C15 Minority groups are adequately protected under the Federal Constitution.	49.5	30.3	20.2	41.4	30.3	28.3
C16 There is freedom of assembly under SOSMA 2012.	40.4	50.4	9.2	45.1	52.9	2
C17 There is freedom of speech under SOSMA 2012.	38.3	53.5	8.2	45.3	47	7.7
C18 ISA 1960 was an oppressive piece of legislation.	7.1	39.4	53.5	3.8	26.2	70
C19 SOSMA 2012 ensures human rights are protected in Malaysia.	34.4	56.4	9.2	49	35.8	15.2

Table 4.6: Perceptions of the Laws in Malaysia According to Current Status (continue)

Questions	STUDENTS (100%)			LEGAL PROFESSIONALS (100%)		
	DA	N	A	DA	N	A
C 20 SOSMA 2012 should be repealed as it is similar to ISA 1960.	14.1	57.5	28.4	20.9	33.8	45.3
C 21 SOSMA 2012 is in conformity with international human rights standards.	34.4	57.5	8.1	41.7	39.4	18.9
C 22 SOSMA 2012 is in conformity with international democratic standards.	35.4	57.4	7.2	47.3	45.3	7.4
C 23 SOSMA 2012 protects the security and public order of Malaysia.	24.4	59.5	16.1	22.7	56.7	20.6

From the 23 statements, 12 statements revealed similar responses from both students and professionals. There are C1 [The Federal Constitution (FC) is the highest law in Malaysia], C3 [SOSMA 2012 is an important law], C4 [SOSMA 2012 is a law which is necessary], C5 [SOSMA is better than the ISA], C8 [The police are given excessive power in SOSMA 2012], C9 [The Executive is given excessive powers to intervene in judicial matters related SOSMA 2012], C10 [SOSMA 2012 is an adequate replacement for ISA 1960], C13 [Judges in Malaysia rule without fear or favour], C14 [In Malaysia, there is separation of powers between the legislative, executive and judiciary], C15 [Minority groups are adequately protected under the Federal Constitution], C18 [ISA 1960 was an oppressive piece of legislature]. These responses can be further categorised into three groups, statements with high percentage of agreement (C1, C8, C9 and C18), statement with high percentages of disagreement (C13, C14, and C15) and lastly, statements with high percentage of neutral responses (C3, C4, C5, C10, and C23).

With regards to those with high level of agreement among the professionals is the statement that the FC is the highest law in Malaysia (C1). This statement showed the highest percentage of 88.6% of agreement. This is followed by the statement that ISA 1960 was an oppressive price of legislation with 70% agreeing. The statement that excessive power is given to the police under SOSMA and the executive is given excessive power to intervene in judicial matter under SOSMA had 62.5% and 56.6% agreeing respectively. In the case of students, the highest percentage of agreement was also for the statement C1 (73.8%) and the second highest too is also similar which is C18 (53.5%). However, the third and fourth highest percentage of agreement is C9 (53.4%) and C8 (49.4%) while the responses for the professionals, the third is C8 (62.5%) and fourth is C9 (56.6%). Although the 4 statements which showed similar responses in terms of agreements are same for students and professionals, the percentage is lower in the case of students. This is because a large percentage of respondents from the students had chosen neutral for most of the statements related to SOSMA. The researchers randomly asked a few respondents as to why they have chosen neutral as their stand and the answer was that they are not very knowledgeable about SOSMA and preferred not to choose the other two options; agree or disagree.

It must be noted that C13 and C14 are linked in a way where it deals with separation of powers between the Legislature, Executive and Judiciary. Both groups of respondents disagreed and thus the conclusion that can be arrived at is that there is no true justice in Malaysia as for this to exist, there must be separation of power and room for judges to rule without fear and favour. In the case of C15 which states that minority groups are protected adequately, further analysis was done and the findings indicated that 65.8% of Indians and 69.8% of Chinese disagreed that minority rights are protected. The reason why this analysis was done was to identify specifically the perceptions of these two groups as they are considered as minorities in Malaysia. Thus, their responses are crucial as they feel that their rights are not protected adequately. However, to make a firm overall conclusion, a larger sample must be used.

It must be noted that for the students C3 [SOSMA 2012 is an important law], C4 [SOSMA 2012 is a law which is necessary], C5 [SOSMA 2012 is better than ISA 1960], C10 [SOSMA 2012 is an adequate replacement for ISA 1960], and C23 [SOSMA 2012 protects the security and public order of Malaysia], respondents from both groups choose neutral as their option. When selected respondents were asked to explain the reason for this, most of them indicated a common response which is these statements require responses which does not permit a firm answer be it to agree or disagree as SOSMA is an Act which is at its infancy level and only with more time can they give firm views on it.

The researchers found the responses to C6 [Basic human rights are infringed by SOSMA 2012], C7 [The powers of the courts are restrained by the provisions in SOSMA 2012], C11 [Rule of Law issues are dealt with satisfactorily by SOSMA 2012], C16 [There is freedom of assembly under SOSMA 2012], C17 [There is freedom of speech under SOSMA 2012], C19 [SOSMA 2012 ensures human rights are protected in Malaysia], C20 [SOSMA 2012 should be repealed as it is similar to ISA 1960], C21 [SOSMA 2012 is in conformity with international human rights standards] and C22 [SOSMA 2012 is in conformity with international democratic standards] very interesting.

This is because the respondents from the first group comprising of students took up a neutral stand while respondents from the second group either agreed or disagreed to the statements. An analysis of these 9 statements indicate that all of them are related specifically to SOSMA 2012 which according to the students interviewed for further clarification on unclear issues, they are yet to receive detailed knowledge on this Act.

Thus, the researchers in their recommendation section call for the nation to take steps to educate the public via schools or campaigns on the implication of key acts including SOSMA on their lives. The researchers also carried out further analysis to identify the responses from the second group to these 9 statements to gain a better insight into their perceptions of the law. This is because the researchers are of the opinion that this group's perceptions are crucial in understanding how Malaysians perceive the state of law in Malaysia as the respondents in this group deal with the laws in Malaysia in their daily work life. Figure 2 shows the findings.

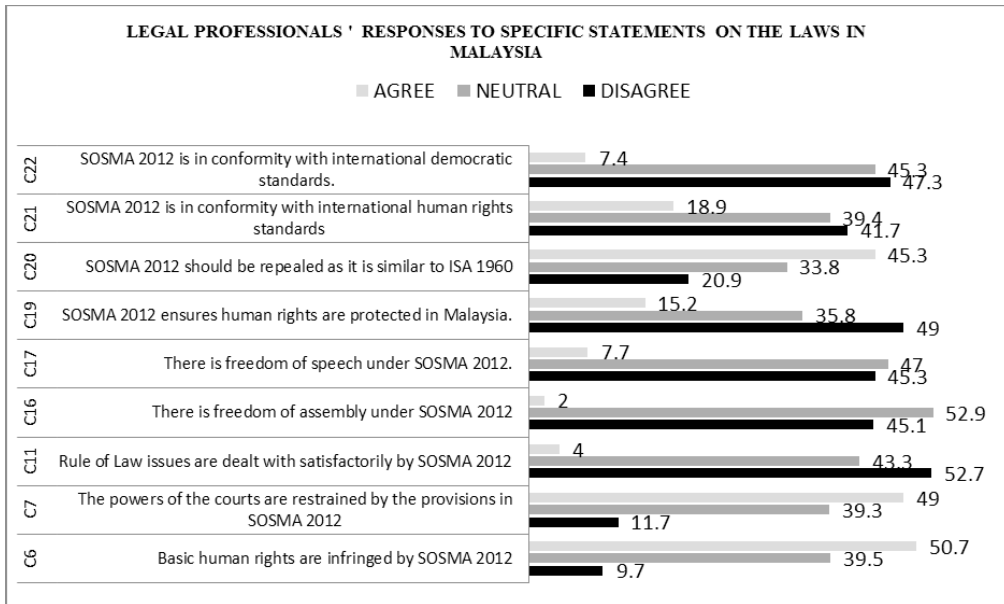


Figure 2: Legal Professionals' Responses to Specific Statements on the Laws in Malaysia

As shown in Figure 2, 50.7% of the respondents agreed to the statement that basic human rights are infringed by SOSMA 2012 (C6), 49% of the respondents agreed that the powers of the courts are restrained by the provisions in SOSMA 2012 (C7), 45.3% of the respondents agreed to the statement that SOSMA 2012 should be repealed as it is very similar to ISA 1960 (C20). On the other hand, 52.7% of respondents disagreed with the statement that the Rule of Law issues are dealt with satisfactorily by SOSMA 2012 (C11). 45.1%, 45.3%, 49%, 20.9%, 41.7% and 47.3% respectfully disagreed with statements C16 [There is freedom of assembly under SOSMA 2012], C17 [There is freedom of speech under SOSMA 2012], C19 [SOSMA 2012 ensures human rights are protected in Malaysia], C20 [SOSMA 2012 should be repealed as it is similar to ISA 1960], C21 [SOSMA 2012 is in conformity with international human rights standards] and C22 [SOSMA 2012 is in conformity with international democratic standards] respectively.

An unusual finding was found in the response to statement C2 [There are no laws that contravene the provisions in the FC] as shown in Table 4.6 where the highest percentage (52.5%) of students indicated disagreement while highest percentage (45.1%) of professionals indicated agreement. This contradiction was expected for as indicated earlier, the articles in FC are worded in such a way that it allows for new laws to be enacted which contravene the FC but yet permitted by FC. Thus, it is expected that people will be confused over the issue of whether there are provisions that contravene the FC. An example would be the enactment of SOSMA 2012 under Article 149 of FC which is questionable and at the same time defensible.

D. Malaysians' Perceptions of the Provisions in SOSMA 2012

In this section of the survey questionnaire, the respondents were asked to indicate the level of agreement or disagreement on whether the provisions conform to basic human rights upheld by the Rule of Law. A total of 9 main sections with 5 subsections from SOSMA 2012 were given to the respondents. The respondents were categorised into 2 groups; students and legal professionals to ensure clarity of findings. Table 4.7 shows the findings.

Table 4.7: Perceptions of the Provisions in SOSMA 2012

Questions	STUDENTS (100%)			LEGAL PROFESSIONALS (100%)		
	DA	N	A	DA	N	A
D 1 S 4 (4) The person arrested and detained under subsection (1) may be detained for a period twenty-four hours for the purpose of investigation.	8.2	26.2	65.6	19.2	35.5	45.3
D 2 S 4(5) Notwithstanding subsection (4), a police officer of or above the rank of Superintendent of police may extend the period of detention for a period of not more than twenty-eight days, for the purpose of investigation.	45.6	18.1	36.3	58.4	17.1	24.5
D 3 S 4 (11)-Subsection (5) shall be reviewed every five years and shall cease to have effect unless, upon the review, a resolution is passed by both Houses of parliament to extend the period of operation of the provision.	19.2	39.4	41.4	26.9	39.4	33.7
D 4 S 5 (2) A police officer not below the rank of Superintendent of police may authorise a delay of not more than forty-eight hours for the consultation under paragraph (1)(a) if he is of the view that— there are reasonable grounds for believing that the exercise of that right will interfere with evidence connected to security offence	27.5	31.2	41.3	43.3	26.5	30.2
D 5 S 5 (2) A police officer not below the rank of Superintendent of police may authorise a delay of not more than forty-eight hours for the consultation under paragraph (1)(b) it will lead to harm to another;	18.1	34.4	47.5	47.3	30.1	22.6
D 6 S 5 (2) A police officer not below the rank of Superintendent of police may authorise a delay of not more than forty-eight hours for the consultation under paragraph (1)(c) it will lead to the alerting of other person suspected of having committed such an offence but who are not yet arrested;	22.2	36.4	41.4	51	24.5	24.5
D 7 S 5 (2) A police officer not below the rank of Superintendent of police may authorise a delay of not more than forty-eight hours for the consultation under paragraph (1)(d) it will hinder the recovery of property obtained as a result of such an offence.	22.2	34.4	43.4	47.3	31.9	20.8
D 8 S 5 (3) This section shall have effect notwithstanding anything inconsistent with Article 5 of the Federal Constitution.	38.4	27.3	34.3	51	28.2	20.8

Table 4.7: Perceptions of the Provisions in SOSMA 2012 (Continue)

Questions	STUDENTS (100%)			LEGAL PROFESSIONALS (100%)		
	DA	N	A	DA	N	A
D 9 S 6 (3) Notwithstanding subsection (1), a police officer not below the rank of Superintendent of police may—intercept, detain and open any postal article in the course of transmission by post; intercept any message transmitted or received by any communication; or intercept or listen to any conversation by any communication, without authorisation of the public prosecutor in urgent and sudden cases where immediate action is required leaving no moment of deliberation.	33.4	35.3	31.3	43.2	43.6	13.2
D 10 S 6 (4) If a police officer has acted under subsection (3), he shall immediately inform the public prosecutor of his action and he shall then be deemed to have acted under the authorisation of the public prosecutor.	25.3	34.3	40.4	41.5	32.1	26.4
D 11 S 8 (1) Notwithstanding section 51A of the Criminal procedure code, if the trial of a security offence involves matters relating to sensitive information the public prosecutor may, before the commencement of the trial, apply by way of an ex parte application to the court to be exempted from the obligations under section 51 A of the criminal procedure code.	25.2	40.5	34.3	45.3	20.8	33.9
D 12 S 8 (20) The public prosecutor shall disclose to the court the intention to produce sensitive information as evidence against the accused during the trial and the court shall allow the application under subsection (1).	17.2	42.4	40.4	30.1	26.3	43.6
D 13 S 9 (1) If an accused reasonably expects to disclose or to cause the disclosure of sensitive information in any manner, in his defense, the accused shall give two days' notice to the public prosecutor and the court in writing of his intention to do so.	13.1	33.3	53.6	37.9	30.2	31.9
D 14 S 23 The non-production of the actual exhibit protected under section 8 and 11 shall not be prejudicial to the prosecution's case.	18.3	52.5	29.2	47	26.6	26.4
D 15 S 24 Where a person is charged for a security offence, any information obtained through an interception of communication under section 6 shall be admissible as evidence at his trial and no person or police officer shall be under any duty, obligation or liability or be in any manner compelled to disclose in any proceedings the procedure, method, manner or any means or devices, or any matter whatsoever with regard to anything done under section 6.	32.4	44.4	23.2	49	33.8	17.2
D 16 S 30 (1) Notwithstanding Article 9 of the Federal Constitution, if the trial court acquits an accused of a security offence the public prosecutor may make an oral application to the court for the accused to be remanded in prison pending a notice of appeal to be filed against his acquittal by the public prosecutor.	35.3	42.5	22.2	37.9	31.9	30.2
D 17 S 31 The Minister may make regulations as may be necessary or expedient for giving full effect to or for carrying out the provisions of this Act.	33.4	42.5	24.1	45.1	37.8	17.1

As shown in Table 4.7, the students took a neutral stand for 6 of the sections, namely; s6(3) – “Notwithstanding subsection (1), a police officer not below the rank of Superintendent of police may—intercept, detain and open any postal article in the course of transmission by post; intercept any message transmitted or received by any communication; or intercept or listen to any conversation by any communication, without authorisation of the public prosecutor in urgent and sudden cases where immediate action is required leaving no moment of deliberation”, s8(1) – “Notwithstanding section 51A of the Criminal procedure code, if the trial of a security offence involves matters relating to sensitive information the public prosecutor may, before the commencement of the trial, apply by way of an ex parte application to the court to be exempted from the obligations under section 51A of the criminal procedure code”, s23 – “The non-production of the actual exhibit protected under Section 8 and 11 shall not be prejudicial to the prosecution’s case”, s24 – “Where a person is charged for a security offence, any information obtained through an interception of communication under section 6 shall be admissible as evidence at his trial and no person or police officer shall be under any duty, obligation or liability or be in any manner compelled to disclose in any proceedings the procedure, method, manner or any means or devices, or any matter whatsoever with regard to anything done under section 6”, s30(1) – “Notwithstanding Article 9 of the Federal Constitution, if the trial court acquits an accused of a security offence the public prosecutor may make an oral application to the court for the accused to be remanded in prison pending a notice of appeal to be filed against his acquittal by the public prosecutor”, and s31 – “The Minister may make regulations as may be necessary or expedient for giving full effect to or for carrying out the provisions of this Act”.

As in the findings for Section C, the respondents gave the same reasons for adopting the neutral stand. Thus, the researchers adopted the responses of the legal professionals as an indication on the perceptions of the Malaysians on SOSMA with regards to the six sections that students took a neutral stand. However, the legal professionals disagreed that the sections conformed to the basic human rights upheld in RoL with 43.6% (D9) disagreeing to s6(3); 45.3% (D11) disagreeing to s8(1); 47% (D14) disagreeing to s23; 49% (D15) disagreeing to s24; 37.9% (D16) disagreeing to s30 and lastly 45.1% (D17) disagreeing to s31. For all these 6 sections, the legal professionals considered them to be violating basic human rights upheld in RoL.

There was a similarity in findings for s4(4) and s4(5) where for the first, the highest percentage of respondents agreed that detaining a person for a period of 24 hours does not contravene basic human rights. The percentage for students is 65.6% and for legal professionals is 45.3%. For s4(5), both groups of respondents disagreed where 45.6% of students and 58.4% of legal professionals claimed that this section which allows a police officer of or above the rank of Superintendent of Police to extend the period of detention for a period of not more than twenty-eight days for the purpose of investigation is a breach of human rights according to RoL. Similar responses were also indicated for s5(3) – “This section shall have effect notwithstanding anything inconsistent with Article 5 of the Federal Constitution”, where both groups disagreed with 38.4% of students and 51% of legal professionals. They found that s5(3) contravene basic human rights advocated in RoL.

The findings for sections 4(11) – “Subsection (5) shall be reviewed every five years and shall cease to have effect unless, upon the review, a resolution is passed by both Houses of parliament to extend the period of operation of the provision”, s 5(2) – “A police officer not below the rank of Superintendent of police may authorize a delay of not more than forty-eight hours for the consultation under paragraph (1) (a) if he is of the view that— there are reasonable grounds for believing that the exercise of that right will interfere with evidence connected to security offence”, s5(2)– “A police officer not below the rank of Superintendent of police may authorize a delay of not more than forty-eight hours for the consultation under paragraph (1)(b) it will lead to harm to another”, s5(2) – “A police officer not below the rank of Superintendent of police may authorize a delay of not more than forty-eight hours for the consultation under paragraph (1)(c) it will lead to the alerting of other person suspected of having committed such an offence but who are not yet arrested”, s5(2) – “A police officer not below the rank of Superintendent of police may authorize a delay of not more than forty-eight hours for the consultation under paragraph (1) (d) it will hinder the recovery of property obtained as a result of such an offence”, s6(4) – “If a police officer has acted under subsection (3), he shall immediately inform the Public Prosecutor of his action and he shall then be deemed to have acted under the authorization of the public prosecutor”, s8(20) – “The public prosecutor shall disclose to the court the intention to produce sensitive information as evidence against the accused during the trial and the court shall allow the application under subsection (1)” and s9(1) – “If an accused reasonably expects to disclose or to cause the disclosure of sensitive information in any manner, in his defense, the accused shall give two days’ notice to the public prosecutor and the court in writing of his intention to do so” were contradictory and as a result, the researchers had to carry out further analysis to gain perceptions which are valid and acceptable. The responses were reanalysed and responses which showed neutral were removed from the overall calculation and the new data was reanalysed using frequency count. Table 4.8 shows the findings.

Table 4.8: New Analysis of Data Excluding ‘Neutral’ Response

Sections	Questions	Students		Legal professionals	
		Disagree	Agree	Disagree	Agree
S4(11)	S 4 (11)-Subsection (5) shall be reviewed every five years and shall cease to have effect unless, upon the review, a resolution is passed by both Houses of parliament to extend the period of operation of the provision.	31.7	68.3	44.4	55.6
S5(2)(1)a	S 5 (2) A police officer not below the rank of Superintendent of police may authorize a delay of not more than forty-eight hours for the consultation under paragraph (1) (a) if he is of the view that— there are reasonable grounds for believing that the exercise of that right will interfere with evidence connected to security offence	40.0	60.0	58.9	41.1
S5(2)(1)b	S 5 (2) A police officer not below the rank of Superintendent of police may authorize a delay of not more than forty-eight hours for the consultation under paragraph (1) (b) it will lead to harm to another;	27.6	72.4	67.7	32.3

Table 4.8: New Analysis of Data Excluding 'Neutral' Response (Continue)

Sections	Questions	Students		Legal professionals	
		Disagree	Agree	Disagree	Agree
S5(2)(1)c	S 5 (2) A police officer not below the rank of Superintendent of police may authorize a delay of not more than forty-eight hours for the consultation under paragraph (1) (c) it will lead to the alerting of other person suspected of having committed such an offence but who are not yet arrested;	34.9	65.1	67.5	32.5
S5(2)(1)d	S 5 (2) A police officer not below the rank of Superintendent of police may authorize a delay of not more than forty-eight hours for the consultation under paragraph (1) (d) it will hinder the recovery of property obtained as a result of such an offence.	33.8	66.2	69.5	30.5
S6(4)	S 6 (4) If a police officer has acted under subsection (3), he shall immediately inform the public prosecutor of his action and he shall then be deemed to have acted under the authorization of the public prosecutor.	38.5	61.5	61.1	38.9
S8(20)	S 8 (20) The public prosecutor shall disclose to the court the intention to produce sensitive information as evidence against the accused during the trial and the court shall allow the application under subsection (1).	29.9	70.1	40.8	59.2
S9(1)	S 9 (1) If an accused reasonably expects to disclose or to cause the disclosure of sensitive information in any manner, in his defense, the accused shall give two days' notice to the public prosecutor and the court in writing of his intention to do so.	19.6	80.4	54.3	45.7

Through this analysis, it was found that respondents from both groups agree that s4 (11) and s8 (20) are correct; 68.3% of students and 55.6% of legal professionals agree that s4 (11) which allows for section 4(5) to be reviewed every 5 years and shall cease to have effect when upon review, a resolution is passed by both Houses of Parliament to extend the period of operation of the provision as complying with the basic human rights upheld by the Rule of Law. In addition, 70.1% of students and 62.5% of legal professionals also agree that s8 (20) which calls for the prosecution to disclose to the court the intention to produce sensitive information as evidence against the accused during the trial and the court shall allow the application as conforming to the basic human rights upheld by the Rule of Law. Respondents' responses to section 5(2)(1)(a)-(d), s6(4) and s9(1) were totally contradictory for the students respondents agreed that these sections conform with RoL while the respondents from the legal profession group disagreed claiming that these sections breach the basic human rights upheld in RoL. The percentage of legal professionals agreed to s5(2)(1)(a) were 58.9%; s5(2)(1)(b) with 67.7%; s5(2)(1)(c) with 69.5%, s5(2)(1)(d) with 69.5%; s6(4) with 61.1%; and s9(1) with 54.3%. The researchers are of the opinion that the data obtained from those in the second group, comprising of law lecturers, lawyers and those in other legal positions to be more valid as these people are constantly dealing with the laws including SOSMA 2012 in their daily work unlike the respondents who are still students and are not exposed to the laws on a daily basis.

E. *Malaysian's View on the Future of SOSMA 2012*

In this section of the survey questionnaire, the respondents were asked to indicate their agreement or disagreement to a set of questions given with reference to SOSMA 2012. Figure 3 indicates the findings.

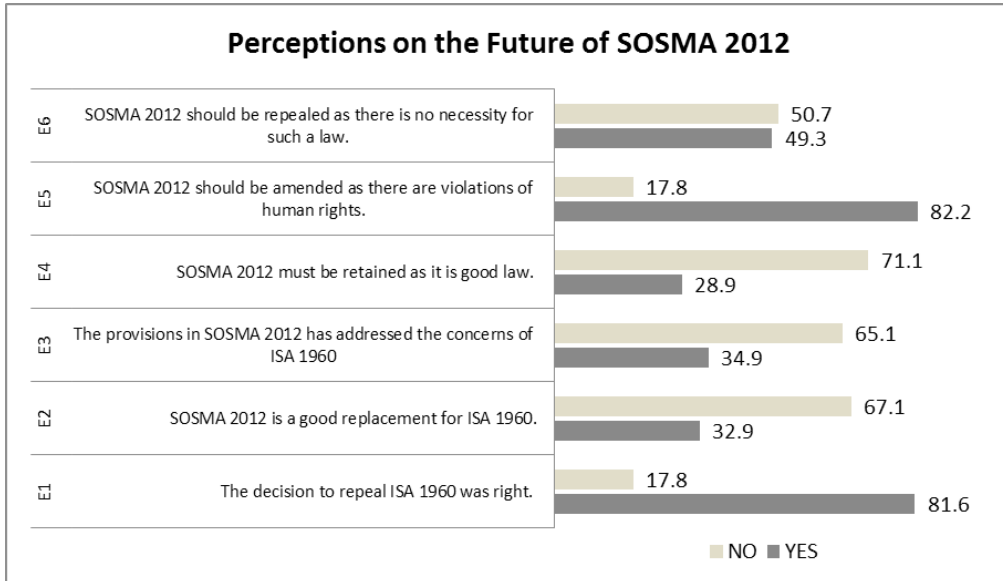


Figure 3: Perceptions on the Future of SOSMA 2012

As shown in Figure 3, the respondents' responses are very interesting. A large percentage of respondents (81.6%) agreed that the decision to repeal ISA 1960 was right. A large percentage of respondents (82.2%) also agreed that SOSMA 2012 should be amended as there are violations of human rights. However, the respondents disagreed to 3 of the statements which are E2 [SOSMA 2012 is a good replacement for ISA 1960], E3 [The provisions in SOSMA 2012 have addressed the concerns of ISA 1960], and E4 [SOSMA 2012 must be retained as it is good law]. A majority of respondents (67.1%) disagreed that SOSMA 2012 is a good replacement for ISA 1960 (E2) and a large percentage of respondents (65.1%) also disagreed with the statement that the provisions in SOSMA 2012 has addressed the concerns of ISA 1960. Further, with regards to the statement that SOSMA 2012 must be retained as it is good law (E4), a total of 71.1% disagreed. It must be noted that the differences in percentage between the respondents who agreed and disagreed to the statement that SOSMA 2012 should be replaced as there is no necessity for such law is only 1.4%. This shows that the respondents are not absolutely certain as to whether there is a necessity for such a law. This lack of certainty is probably due to the fear that the country would experience problems if there were no such stringent laws to address the current terrorists' incidents happening around the world.

V. CONCLUSION

Recent terrorist attacks around the world such as of the United States (US) World Trade Center on September 11, 2001; Bali bombings in 2002 and 2005; London Bombing in 2005; and the Mumbai bombing in 2008 has increased the concerns with regards to internal security. This has resulted in debates as to the enactment of the recent SOSMA 2012 with some claiming that the law is as bad as ISA 1960 where basic human rights are being violated while others stating that SOSMA 2012 is not restrictive enough to cater to threats of terrorism. This study aimed to get an insight into Malaysians' perceptions on this new Act with the purpose of creating a deeper awareness into the implication of the Act. It is found that a majority of the respondents in the study are of the opinion that the Act violates basic human rights and should not be retained. They also claimed that it has not addressed the serious concerns raised on its predecessor, ISA 1960. There is also consensus that the decision to repeal ISA 1960 was right and SOSMA 2012 is not a good replacement for ISA 1960. However, the interesting point is that an average percentage of respondents are of the opinion that there is a necessity for a law catering to the protection of the country's internal security amidst the increase in number of terrorist incidents throughout the world. The researchers are of the opinion that a more in depth survey comprising of a larger sample should be done prior to any action by the government to either retain, amend or repeal SOSMA.

Section 375 Exception, Explanations and Section 375A Malaysian Penal Code –Legitimising Rape within Marriage: A Call for Reform¹

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Abstract

This paper's objective is to consider the constitutionality and defensibility of exception and explanations under s375 of the Malaysian Penal Code (Penal Code) which legitimises the offence of rape committed by a husband on his wife. Section 375A will also be considered to see if it provides a cure for the contravention. The current law legitimises rape committed within marriage. The rationale for the differentiation in treatment of rape within and outside marriage is explored and discussed. The justification for maintaining the provision in the current day setting considering the development of society, particularly with respect to women, who have gone from being treated as chattels or possessions to legal persona having rights and entitlements including the right to vote and rights under local laws, and international and regional conventions, is discussed. The relevance of the provision today and the need for reform of the Penal Code provisions to ensure compliance with the Malaysian Federal Constitution (Federal Constitution) in spirit and form and with current policies, regional and international conventions and the Islamic perspective are discussed. The relevance of local legislation such as the Malaysian Domestic Violence Act 1994 (Domestic Violence Act) and the effectiveness of the same in achieving the outcome of the policy and objective of the Act from the perspective of a rape offence are also discussed. The movement for reform to update outdated concepts currently reflected in present laws and to embody the current spirit and form of women's status and rights as humans within society is a call much repeated and yet still ignored. This paper strives to keep alive the call for reform reminding all concerned of the jarring discrepancies between the Penal Code and the Federal Constitution and Malaysian State responsibility under regional, international human rights instruments and Islamic principles. The recommendation is to delete the s375 Penal Code exception, explanations and s375A.

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