

A BUSINESS CONTINUITY PLAN: RISK ASSESSMENT AND STRATEGIES TO MITIGATE RISK OF PEACEFUL ASSEMBLY IN MALAYSIA

Noor Azreen Hasni¹, Jamaludin Ibrahim²

Kulliyyah of Information & Communication Technology

International Islamic University of Malaysia

¹sharadzeea@gmail.com, ²jamaludinibrahim@iium.edu.my

Abstract: The impact of uncontrollable peaceful assembly in a nation may impact on the economic growth, nation's reputation, as well as public order. A peaceful assembly is an assembly that has been approved by the authorities for individuals or group of people from Non-Government Bodies (NGO) or Political Party to demonstrate their perspective and emotions with respect to any issues. These assemblies are aimed at curbing activities of street protests that bring more damage or vandalism to property and sometimes endanger the safety and lives of the people surround. In conjunction with this matter, any nation including Malaysia ought to dependably be prepared for the national business continuity plan. In Malaysia, this peaceful assembly is a string of street protest BERSIH activities from year 2007 until 2016 that have brought many losses to the country's economy in terms of tourism sector, foreign investment and national security. Thus, this paper will outline and identify the risk mitigation to overcome or control any kind of the uncontrollable peaceful assembly event particularly in Malaysia.

Keywords: Peaceful Assembly, Act, Constitution, Business Continuity Plan, Risk Assessment, Risk Mitigation.

I. INTRODUCTION

Peaceful Assembly can be defined as an action by a stack group or assemblage of groups of citizenry for political or different grounds hold public meetings and form associations without interference by the government and the authorities' bodies. It normally comprises of sometimes used interchangeably with the freedom of association, is the individual right or ability of people to come together and collectively express, promote, pursue, and defend their collective or shared ideas. The action can be nonviolent or violent or can commence as nonviolent and become violent dependent on conditions. The uncontrollable can leads to violent action which can trigger riot and unpredictable situation.

In Malaysia, the citizen is given the right to express his opinion under Article 10 of the Federal Constitution. However, the right is subject to any limitation imposed by any legislation enacted in Malaysia. As far as public assembly concern prior to the enforcement of Peaceful Assembly Act 2012 (PAA 2012), the law that govern matters pertaining to the public assembly was governed by the virtue of section 27 of the Police Act 1967 (Act 344). Basically, this new legislation is meant to regulate matters pertaining to a public assembly; therefore such assembly can be conducted peacefully. Therefore, this assembly requires the organizer and participant to consent the regulations stated in this act. Nevertheless, there is still an infringement of the law in spite of the adaptability have been conceded.

II. LITERATURE REVIEW

The year 2011 was widely viewed as one of mass social protest around the world. People took to the streets to voice their grievances and aspirations in the unexpected Arab Spring, the anti-austerity backlash in Europe, and the occupation of public spaces and financial districts in the United States. Seen on the streets of Hong Kong today, citizens choose mass public assembly to press their governments for change. In democracies and non-democracies alike, citizens have courageously assembled in peaceful assembly on issues including climate change, land use, education, wages, elections, corruption and financial influence on politics, increased poverty, and dictatorship. Disturbingly, as mass public protest is increasingly used as a means of participation in political life, a number of authoritarian regimes have responded with violence, new legal restrictions, and blatant violations of the rule of law, all on the pretence of maintaining public order and stability.

A. Malaysia BERSIH Rally

The main purpose of establishing the Peaceful Assembly Act (PAA) 2012 is to ensure that an assembly held is peaceful. For that reason, the Act requires the organiser and the participants to comply with the procedures laid out before permission is given to hold an assembly. BERSIH is the coalition of 62 non-governmental organizations founded in November 2006 demanding for Clean and Fair Elections. Since its founding, BERSIH has been supported by the main opposition parties during that time and involvement of social organizations. The BERSIH 3.0 rally was the largest democratic protest in Malaysia estimated 250 000 – 300 000 participation. BERSIH 3.0 incident in 28 April 2012 showed that non-compliance on the conditions during assembly did occur. The non-compliance includes participants acted violently and some had brought their children along during the assembly which is contrary to the PAA 2012. The violent act resulted with persons were injured and properties damaged. Additionally, traders businesses were affected. Consequently, both the public and private sector suffered losses in person, properties and business. Not only that, this situation had turned into an unsecured environment for the public and tourist.

III. THE GLOBAL INCIDENT IN VIOLATION OF PEACEFUL ASSEMBLY LAW

A. Chilean Winter in Chile

The 1980 Political Constitution of the Republic of Chile generally complies with international norms on freedom of assembly, including Article 20 of the Universal Declaration of Human Rights, Article 21 of the International Covenant on Civil and Political Rights, and Article 15 of the American Convention on Human Rights. The Constitution protects the right of all citizens to assemble peacefully and without prior permission including assembly and rally. Chilean protests in year 2011 to year 2013 which known as the Chilean Winter or the Chilean Education Conflict were a series of student-led protests rally across Chile, demanding a new framework for education in the country, including more direct state participation in secondary education and an end to the existence of profit in higher education.⁽¹⁾

B. Lebanese Protests 2019

According to the Article 13 in the Lebanese Constitution states the freedom to express one's opinion orally or in writing, the freedom of the press, the freedom of assembly, and the freedom of association shall be guaranteed within the limits⁽²⁾. The Beirut's streets for anti-government protest is mass protests swept across Lebanon shortly after the government announced new tax measures on 17 October 2019. In unprecedented scenes tens of thousands of peaceful protesters from different religious and class sectors of society assembled peacefully in cities across the country accusing the political leadership of corruption and calling for social and economic reforms. However, on 18 October 2019 in downtown Beirut, shortly after the speech of Prime Minister Hariri, security forces used excessive force to disperse protesters firing huge amounts of tear gas into crowds and chasing protesters down streets and alleys at gunpoint and beating them.⁽³⁾

C. New regulations on protest laws in Myanmar

In Myanmar, the ability to protest legally is less a right than a privilege bestowed on some and not on others seemingly for political reasons. Although, in Article 354 Section (B) of the Union Republic of Myanmar Constitution Law, prescribed that if not contrary to the laws enacted for Union security, rule of law, community peace and tranquillity, or public morality, every citizen shall be at liberty to assemble and hold a procession peacefully without arms.⁽⁴⁾ In The Right to Peaceful Assembly and Peaceful Procession Act 2011 for Myanmar states the citizens or organizations that want to exercise the right to peaceful assembly and peaceful procession and express themselves must apply for the permission at least five days in advance by using the form, including the following information, to the Chief of the Township Police Force.⁽⁵⁾

However hundreds of protesters took to the streets of Yangon on Monday to demonstrate against proposals being discussed in parliament to amend and introduce new regulations on public protests in 5 March 2018. Under the suggested amendments to the 2011 Peaceful Assembly and Peaceful Procession Law, a three-year prison sentence plus fines could be handed down to anyone who “instigates, tempts or persuades others, intentionally or knowingly” to join a protest by providing financial or other support. Further changes to the bill state that demonstrators must inform authorities 48 hours in advance of any planned protest and provide details of its sources of funding. In the incident, individual who speaking critically of the government, military, or their officials have been arrest and prosecution.

IV. RISK ASSESSMENT FOR PEACEFUL ASSEMBLY

The purpose of this paper is to discuss how police departments from various country develop their risk management plan and how the departments addresses the challenges faced and opportunities created by IR4.0 technologies. This paper will also formulate and develop the business model options of RMP-of-the-Future by utilising the business model canvas (BMC) framework. This BMC will facilitate and help RMP-of-the-Future in identifying the key assets, and thus from these key assets the formulation of an effective enterprise risk management system.

A. Risk and Vulnerabilities

The risk assessment for the public assembly is based on the purposed of the peaceful assembly and it's also based on who organised the assembly. The strategies and planning for the event usually can be done only after the organiser informed the event detail to the local authorities. The risk and impact for the peaceful assembly also can be determined by how it being promoted in the social media. There is a various common risk for the peaceful assembly as discussed below:-

i) Human Behavioural

The unpredictable human behaviour is a major risk in ensuring that a peaceful assembly is achieved. This is because human nature is challenging and easy to be manipulated which often causes them to act beyond expectations. With regard to this peaceful assembly, attitude does not only involve the participants, it also refers to the organizers of the assembly and the enforcement bodies. The organizers' stance in delivering speeches on the issues brought to the rally can add more dissatisfaction among the participants. Organiser must not include any sensitive issue and using proper tone when deliver the speech. Organiser also must make sure the speech content is related and suitable to the assembly's purpose. Unnecessarily content of the speech that not related can create miss conception on the participant mind. This will trigger the negative spark which potential to welcome havoc/ riot situation.

In addition, there are elements of sanctions or provocations by third parties from the media or the police force. The act of blocking the participants in a safe place from one place to another made them angry because they felt they were not free and were hindered from achieving the objectives of the rally. Naturally, they will fight and act outside the law if this situation continues. Eventually the peaceful assembly held not only failed to achieve its objectives but violated the boundaries of the law. Related to this, media also play roles in reporting the event. All media content must show good or “peaceful” image of the assembly. Thus, the media should focus on reporting about the main objective of the event not focus on searching the accident happen in the assembly. Therefore, co-operation between the enforcement body, organizers and participants is important for reaching a win-win situation for everyone.

ii) Improper location and time

The improper location of the gathering place was also one of the contributors to a peaceful assembly became insecure. The appropriate venue should be determined according to the needs of the organizer as well as the expectations of the participants. Places such as fields, stadiums are encouraged as they are away from important facilities such as hospitals, fire stations, police stations and government buildings. This is to prevent the functioning of these important facilities affected in the event of an uncontrollable incident.

How important is location determination? The location of the assembly is important in ensuring that the organizers and participants are comfortable enough and not in a crowded. The narrowness of the large number of rally participants will invite more risks such as health problems (shortness of breath, heart disease, and faint) and even collisions among participants. The worst scenario is that stampede in the assembly. Organizers should also make sure that the location of the peaceful assembly is complete with essential amenities such as sufficient amount of toilets and appropriate seating covered from sun heat to make sure the place not too hot. Apart from location, the time of peaceful assembly to be held also very important to ensure that the assembly runs smoothly. The organiser must avoid planning the peaceful assembly

during working days and working hours. This is considered important as it avoids congestion in the city centre due to the overflow of the participants. In addition to avoiding problems such as extreme hot weather symptoms, it also enables the enforcement body to determine alternative routes suitable for organizers and participants to gather march and disperse.

iii) Failure to plan well

The failure of the police force in producing strategic planning and also regulating the forces to control the situation during the peaceful assembly would have a huge impact. Details planning must be made by collecting basic information regarding purpose of the assembly, location, time and the total of participant either from the organizer or from the intelligence. All information must be analyzed in terms of risk and impact to get a true picture before the peaceful assembly takes place. Good planning can determine the amount of strength needed to control a situation when it is in motion. The strength must go beyond the presence of the organizer and the participants. Police should also provide emergency plans in the event of an incident outside of control or beyond what is planned.

In this plan, every action and directive of a senior officer is essential to ensure that the assembly remains in peace. The ground officer must reported progression of the event to the control centre activated due to this assembly. This plan is also important as a guideline for the regulatory body to plan for the future.

Planning also involves cooperation from the organizers. The failure of the organizer in controlling the participants of the assembly will make matters worse. Organizers should cooperate with the police in providing information on the movement of participants and also reporting on each incident. The organizer should also constantly remind the participants to abide by the rules and conditions set for the peaceful assembly. In addition, the organizer should also advise the participants not to act outside their control until they violate the law.

B. The impact

These are few of the risk that can be considered happen in the peaceful assembly. The most important is not how the incidents happen but it's more to how to prevent it from happen. The impact of the incident happen will determine either the situation can be recovered or not. There is few impact can be view after the incident such as the individual safety and security will affected due to violent act from the participants or from the police which can bring injured and casualties.

Properties damaged related to violent action that damaging public properties and vandalise the infrastructure such as vehicle near the location of the assembly and also nearest building. All of this action will bring impact to the local economic involving local business due to business need to temporary closed because of the owner refuse to take any risk during the assembly. In national context, this will also risk to investment by foreign investor especially traders business because when the peaceful assembly turn to be un-peaceful, foreign investor will withdraw investment funds in a country to protect their assets and profits.

Tourism industry also affected and the media especially foreign media will reported bout bad country image and reputation. Moreover, the world will have an ideas regarding current political situation in this country if the peaceful assembly organised by the political parties. Tourist also will question the safety of people to come and visit this country.

V. ROLES AND RESPONSIBILITIES IN RISK MITIGATION

When it comes to reducing the risk of peaceful assembly, we must first identify those involved in the assembly. Among those directly involved are the enforcement body, the organizing body and the participants. Therefore, to ensure that the risk of accidental incidents is minimized; each party not only has to work together, but they have to play their part. Next we will discuss methods that can be applied in the context of situations before, during, and after peaceful assemblies by those who involved.

A. Pre-crisis / Before the essembly

i. Enforcement body

In order to mitigate the risk of peaceful assembly, the enforcement body must play important roles based on authority in accordance with the provisions of law. In Malaysia, Police is the 1st layer that be responsible to protect the peace and prosperity not only for the citizen but for the nation. Therefore, the decision making to mitigate risk is based on the command structure in the organization and the planning rely on the risk assesment for the purpose of the peaceful assembly.

In command structure, the police must ensure that the right to peaceful assembly is protected and that assemblies are able to take place in an orderly manner. The command level is divided by three levels based on the responsibilities which are senior, middle and junior as shown in Figure 1.

Command Level	Responsibility
Senior	Strategic
Middle	Operational
Junior	Tactical

Figure 1 : Command Level of the command structure.⁽⁶⁾

Total of man power and timing of police involvement will be dependent on the law and procedures in place in each jurisdiction. The command principle each person who has command or supervisory functions knows:

- To whom the person reports;
- The person's role, responsibilities and objectives;
- What resources are allocated and available; and The person's geographical or functional area of operation

In order to prepare for an assembly, the next step is the written planning based on the risk assessment and the impact and vulnerabilities. In the written plan, the strategic intentions must consist of four core strategic principles: knowledge, facilitation, communication and differentiation. The definition of the strategic plan is a concise document that provides the overarching framework for developing subsequent operational and tactical practice⁽⁶⁾ which consists of planning and preparation processes and any eventual debriefing activities. In some cases, such as a spontaneous assembly or a flash mob, the police may have no, or little, prior warning of an intended assembly and will need to be able to respond at short notice.

ii. Organiser

The organizer should provide information on the upcoming rally to the police to assist the police in preparing the action plan for the peaceful assembly. Notwithstanding the repeal of section 27 of the Peaceful Assembly Act 2012, the organizer does not need to obtain permission from the head of the district police to organize any peaceful assembly; however, the organizer should notify the assembly to be held within the next 10 to 5 days before the assembly start. Failure of the organizer to take such action may result in the organizer being fined by the court or compensated by the head of the district police.

B. During The Assembly

i. Enforcement body

The police must facilitate Peaceful Assemblies which police must have knowledge regarding exact location and time the peaceful assembly start. The police must have good communication with the organizer to get fact information. This information can be used as actual implementation regarding alternative routing and man power to deploy at the location. Information such as range and diversity of the participants also would help police to ensure they have enough resources to control the assembly if any incident occurs.

Senior command of police also should remind the ground office to control the police behaviours such as not to provoke or use force to the participants. Police must be prepared of element of surprise when other spontaneous assemblies suddenly exist in the peaceful assembly. In managing disorder and violence, police should use the democratic approach which they can give a few warnings to the organizer or participants before taking any physical action. More or less, the police must enable participants to leave if any major incidents occur during the peaceful assembly.

ii. Organiser

The organizer should provide updates from time to time throughout the assembly to the police. Information such as the movement of the participants and the locations to which the march took place should be disseminated to help police arrange the alternative route and regulate traffic. It is also the responsibility of the organizer to ensure that all participants comply with the requirements. In addition, the organizer should always consult with the police in reporting any incident

or incident of interest identified. The organizer should always consult the police before taking any action or decision. If the police find that the rally has exceeded the initial planning of participation given by the organizer, the police have the right to advise the organizer to change the location, cancel or disperse the assembly.

iii. Participants

The participants of the assembly shall follow all instructions given by the organizer and the police. Participants are required to follow the gathering location and the special route set by the police during the peaceful assembly. This is to facilitate the gathering of the assembly and not to interfere with the day-to-day activities of the business or the surrounding community. Participants are required to control their behaviour and also to refrain from doing things that are against the law.

C. After The Assembly

i. Enforcement body

After assembly, the post-mortem toward the incident during the peaceful assembly is discussed with the senior officers. Discussion is more to find a way to prevent the same incident happen for the next peaceful assembly. In the end of this de-briefing session, written lesson learn order by the senior officer will be published as guidelines for next event. These are few issues that normally discussed in the post-mortem:-

- a. Resource Management
- b. Recording Use of Force
- c. Police Injuries
- d. Return of Equipment
- e. Detained Persons

ii. Organiser

The organizer should be held responsible for any damage done by the participants during the peaceful assembly. The organizer is also required to make sure the location of the rally is as good as it was before the assembly. The organizer should also make positive comments when dealing with the media especially on social media.

VI. RECOMENDATION

In particular, the responsibility imposed and the requirement to commencing a peaceful assembly. This recommendation is not only based on the weaknesses but in order to improving ways of mitigate the risk of peaceful assembly.

Enhancing Responsibility and Penalties

Firstly, enhancing organiser responsibility in the spirit of PAA 2012, to guarantee the assembly held is peaceful, it is vital to impose restriction and conditions including the responsibility of organizers.

Secondly, by enhancing participants' responsibility and more provisions to any participants in committing the followings:

- i. Disrupt or prevent any assembly; or
- ii. Behave offensively or abusively towards any person; or
- iii. Make any provocation towards public at large and disturb public tranquillity; or
- iv. Commit any offence under any written law at any assembly; or
- v. Cause any damage to property; or Fail to adhere to any order given by the police, organiser or person appointed to oversee the orderly conduct of the assembly liable to any type

Police Approaches regarding the responsibility of the police to arrest for an offence under PAA 2012 is the Act permits an arrest without warrant. Revisit Conditions on Organizing peaceful assembly by limiting maximum number of participants and the designation of location for the assembly.

VII. CONCLUSION

The conclusion is that peaceful assembly in Malaysia are still under control. Although the country's biggest incident was during the BERSIH 3.0 rally, the original purpose of the rally was to demand a clean election. But the situation of the assembly was unmanageable because there were other groups in the assembly which also brought other issues not related to the original purpose of the assembly. However, no incidents involving death were reported as in other countries. Strictly from the BERSIH rally, the Peaceful Assembly Act was introduced in year 2012. The rate of peaceful assembly in Malaysia is well regulated. This is because most of the issues has been brought are not very sensitive and the police succeed in properly planning the risk mitigation plan by taking into account the risks and impacts before the rally.

Police is the first layer in protecting the internal security and national safety. So that, the Business Continuity Plan (BCP) for Malaysian is more to roles and responsibilities of enforcement bodies such as Police. Although, this paper discuss more to how police mitigation of peaceful assembly risk can be implement by the Malaysian police. However from this paper also, we can see how organiser and participant can play roles to help mitigate the risk of peaceful assembly. The recommendation given also is for suggestion in amendments of peaceful assembly law and improving the awareness of the participant.

REFERENCES

- [1] https://freedomhouse.org/sites/default/files/03202015_updated_Freedom_of_Assembly_report.pdf
- [2] <https://www.wipo.int/edocs/lexdocs/laws/en/lb/lb018en.pdf>
- [3] <https://www.amnestyusa.org/press-releases/lebanon-must-investigate-alarming-use-of-force-on-largely-peaceful-protests/>
- [4] <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/93087/108730/F1805590198/MMR93087%20Eng.pdf>
- [5] <https://shwe.net/law/myanmar-laws-in-myanmar/50-myanmar-laws>
- [6] Human Rights Handbook on Policing Assemblies