

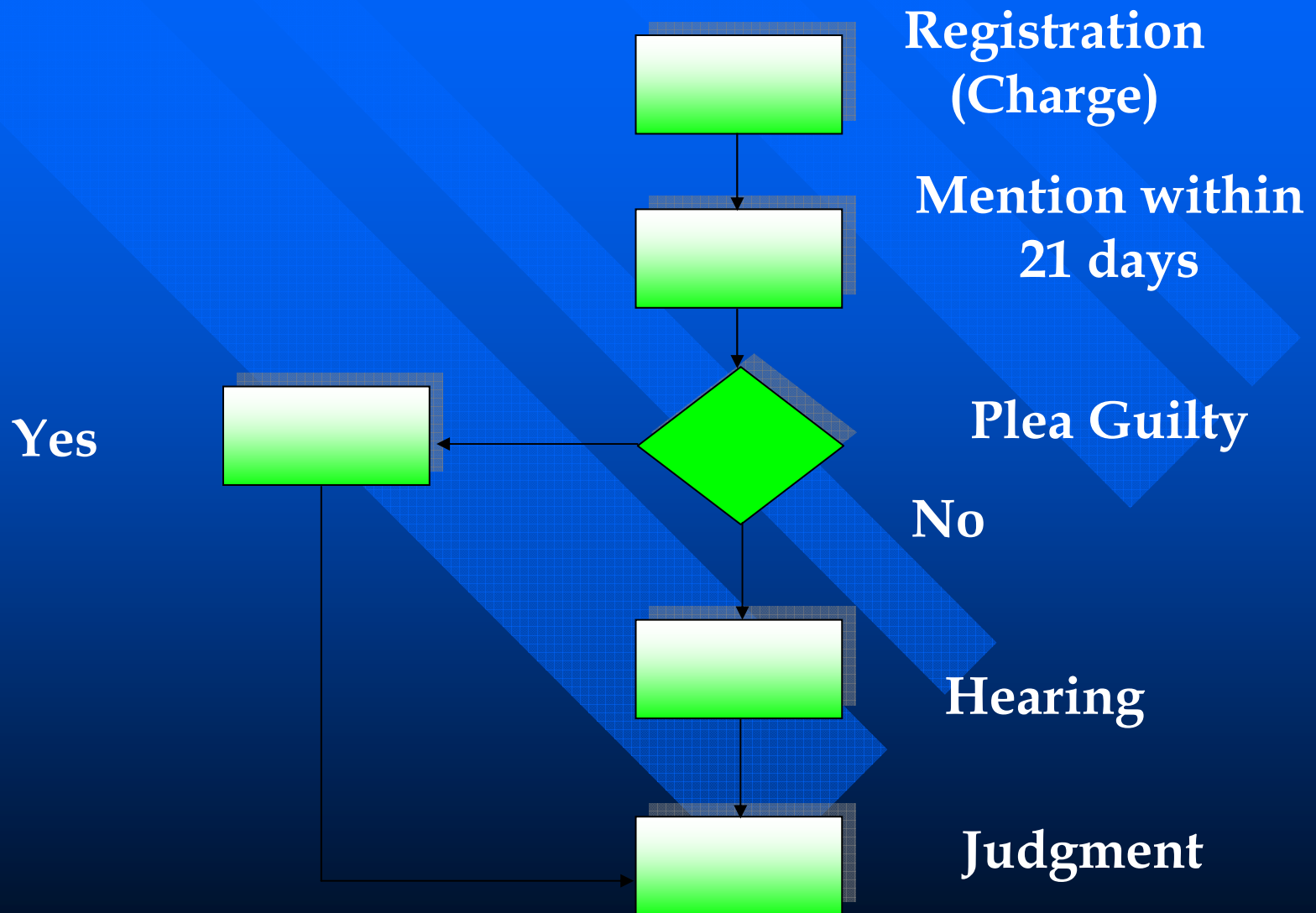


**SYARIAH COURT
CRIMINAL PROCEDURE
ENACTMENT OF SELANGOR
(AMENDMENT) 2003.**

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Flow Chart For Criminal Procedure



INTRODUCTION

- Criminal procedure enactment was adopted from the CPC.
- It consists of procedures of arrest, summon, warrant of arrest, search warrant, information to REO, charges, trial, judgments, sentence, appeal, revision, bail and etc.

Jurisdiction

- Syariah Court Criminal Jurisdiction Act 1965.
- 3 years / 6 strokes/ RM5,000.00
- 1) Sexual offences- khalwat, sodomy etc.
- 2) Intoxicating drinks- drink, sell, buy liquor.
- 3) Related with 5 pillars of Islam- do not fasting in Ramadhan, do not pay zakat.
- 4) Aqidah- deviant teaching, apostacy.
- 5) matrimonial offences- do not pay maintenance, polygamy without consent.
- 6) Miscellaneous- cross dressing, indecent dressing and behaviour.

Sh. High Court-S 46 of AILFTA 1993.

- Any offence committed By muslim and –
(Hj Laungan Tarki Mohd Noor vs
Mahkamah Anak Ngeri Penampang. J.
Hashim Yeop Sani)
- Punishable under the Enactment or any
written law against precepts of the Islam
- May impose any punishment provided.

Cont...

- **Subordinate Court-s 47-AILFTA 1993.**
- Any offence committed
- By muslim and
- Punishable under the Enactment or any written law
- Against precepts of the Islam
- RM2,000.00 or 1 year imprisonment and
- May impose any punishment provided.

INTERPRETATION

- **Complaint**
- **Offence**
- **seizable offence-PC- Less than 3 years or punishable with fine only.**
- **non-seizable offence- PC arrest without warrant**
- **Youthful offender**
- **REO-s 31 AILFT 1993-to enforce the law**
- **Police officer- any member of the PDRM**
- **Beyond reasonable doubt**
- **Mens rea and actus reus**

GENERAL PROVISION

- Section 5
- In open court exception in section 6.
- Section 6.
- Exclusion of public in certain cases
- Special grounds of public policy or
- Expediency in his discretion

SECTION 7

- **Criminal jurisdiction of judge**
- **1. Hear, try, determine and dispose prosecutions for offences committed**
- **2. Inquire into complaints of offences and summon and examine witnesses touching such offences and summon and apprehend and issue warrants for the apprehension of criminal and offenders and deal with them according to law**

Cont...

- 3. Issue warrants to search or cause to be searched places wherein any articles or things with which or in respect of which any offence has been committed are alleged to be kept or concealed.
- 4. Require persons to furnish security for their good behaviour according to law and
- 5. Do all matter and things which a judge is empowered to do by any written law.

Section 8

- Public when to assist, judge etc.
- Every person is bound to assist a judge, REO or Police officer reasonably demanding his aid
- In the taking or preventing the escape of any other person whom J, REO, PO is authorized to arrest or
- In the prevention of a breach of the peace arising from the arrest and detention of such person.
- Hadith . If you see an evil deeds prevent it with your hands.....

SECTION 9

- **Public to give certain information of certain matters.**
- **Every person**
- **Aware of the commission of or the intention of any other person to commit any offence**
- **Shall forthwith give information to the nearest REO or PO of such commission or intention.**

ARREST, ESCAPE AND RE-ARREST

- **Article 5 (1) FC. No person is to be deprived of his personal liberty save in accordance with law,**
- **Arrest- seizure or touching of a person's body with a view to his restraints,**
- **words may, however amount to an arrest if in the circumstances of the case they are calculated to bring and do bring to a person's notice that he is under compulsion and he therefore submits to the compulsion.**

Section 10

- In making the arrest the REO, PO or other person shall touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.
- If such person forcibly resist the endeavor to arrest him or attempts to evade the arrest, such officer or other person may use all means necessary to effect the arrest.
- No right to cause death of any person.

Section 11

- Search of place entered by person sought to be arrested.
- If any person acting under WOA, or any REO or PO having authority to arrest
- Has reason to believe that any person to be arrested
- Has entered into or is within any place,
- The person residing in or in charge of such place shall on demand of the person acting under warrant or REO OR PO allow him free ingress and afford all reasonable facilities for a search therein.

Cont....

- If ingress to such place cannot be obtained it shall be lawful,
- in any case for a person acting under a warrant and in any case in which a warrant may be issued but cannot be obtained without affording the person to be arrested an opportunity to escape
- For such REO or PO to enter such place and search therein, and, in order to effect an entrance into such place,
- To break open any outer or inner door or window of any person if,
- After notification of his authority and purpose demand admittance duly made, he cannot otherwise obtain admittance.

Section 12

- Search of persons in place searched under warrant.
- Search is about to be lawfully made in any place in respect of any offence, all persons found may be detained until the search is completed
- And if the thing sought is in its nature capable of being concealed may be searched in the presence of REO or PO not below the rank of Inspector.

- Section 13

- Power to open any place for purposes of liberation- Any REO or person authorised may break, open any place in order to liberate himself or any other person, having lawfully entered the place for the purpose of making an arrest is detained therein.

- Section 14

- Necessary restraint to prevent escape.
- The search shall be made of the same sex.

Section 15

- Search of persons arrested.
- By REO or PO under warrant which does not provide for bail/ or warrant with bail but cannot furnish bail or
- Without warrant and unable to furnish bail
- REO or PO may search person and seize all articles other than necessary wearing apparel found upon him and place them in safe custody and
- Any articles –reason to believe –used in the committing the offence may be detained until discharge or acquittal.
- List of articles seized-officer making the arrest and shall be signed by him.

Section 16

- The REO or other person making any arrest may take from the persons arrested any offensive weapon which he has about his person and shall deliver all weapons so taken to the police.

Section 17

- Every person lawfully in custody, who by reason of incapacity from intoxication, illness, mental disorder or infancy is unable to give a reasonable account of himself, may be searched for the purpose of ascertaining his name and place of residence.

Arrest Without warrant.

- REO, PO or PM may without warrant arrest:-
 - (a)
 - 1. Any person who has been concerned in any Seizable offence in Selangor or
 - 2. against whom a reasonable complaint (s2) has been made or

Cont...

- Credible information has been received (any information in which in the judgment of the PO or REO appears entitled to credit in the particular case.
- A reasonable suspicion exists that he has been so concerned.(*Shaaban ors vs Chong Kam Anor*, Lord Devlin- Suspicion is a state of conjecture or surmise where proof is lacking,. Before prima facie or proof has been obtained. It is not admissible evidence)

Cont...

- (b) any person who has committed or attempted to commit in his presence any offence involving a breach of the peace.
- (c) any person against whom a warrant issued is still in force although such warrant is not in his possession.

Section 19

- Refusal to give name and residence
- 1) when any person- in the presenece of REO or PO –commits or is accused of non-seizable offence and refuses on demand to give name and residence/ or gives name or residence has reason to be false-
- He may be arrested and shall within 24 hours be taken before the nearest judge Sh. Sub Ct
- Unless his true name and residence be ascertained – such person shall be released on his executing a bond for his appearance b4 a sh judge if so required.

Cont...

- 2) when any person taken b4 judge of sy. Sub ct judge may either require him to execute a bond with a surety for his appearance before a judge if so required or May order him to be detained in custody until he can be tried.

Cont...

- 3) when any person- in the presence of REO or PO –commits or is accused of non-seizable offence and refuses on demand to give name and residence a place outside Sleangor he may be arrested and shall be taken before the nearest judge Sh. Sub Ct
- who may require him to execute a bond with a surety, or may order him to be detained in custody until he can be tried.

Person arrested by Pegawai Masjid

- s 20. A PM making an AWR shall without unnecessary delay hand over the person so arrested to the nearest REO or PO or
- in the absence of such officer take such person to the nearest police station and
- REO or PO shall re arrest every person so arrested.
- Pursuit of Offenders- S21 PO may pursue such person in any part of Malaysia.

Person arrested and detention for more than 24 hours- s 22

- 1) REO or PO AWR shall without unnecessary delay and subject to bail take or send the person arrested b4 judge of sh sub ct.
- 2) No REO or PO shall detain in custody a person AWR for a longer period than is reasonable.
- 3) Shall not exceed 24 hours exclusive of the time necessary for the journey from the place of arrest to the court.

Cont....

- 4) When the person arrested is brought b4 the court, the Ct shall immediately hear the charge against him or adjourn the case.
- 5) If adjourned, the accused be remanded in prison or police custody under a remand warrant issued by a judge unless he released on bail.

Section 23

- Release of person arrested
- No person –arrested by REO or PO shall be released except on bond or bail or under the order on writing or under order in writing of a judge or CREO or PO not below rank of inspector.

Section 24

- Offence committed in the presence of a judge.
- He may himself arrest or authorise any person to arrest the offender and may commit the offender to custody.
- Section 25- Arrest by or in the presence of judge. At any time may arrest or authorize the arrest.

Section 26

- Power to pursue and re-arrest.
- If person in lawful custody escapes or was rescued , the person whose custody he escaped may immediately pursue and arrest him either with or without jurisdiction and deal with such person as he might have done on the original arrest.
- S 27- s 11 and s 13 shall apply to arrest in s 26.

Learning Outcome

- Students should be able to understand the terms used in criminal procedure, the procedure for arrest with warrant or without warrant, duty of REO or PO or any person or pegawai masjid.
- It is important to know the exact procedure of an arrest and its requirement.

Thank You



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