



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

CONTENTS

- **SUMMONS**
- **WARRANT OF ARREST**
- **SEARCH WARRANT**
- **CHARGE**

Summons

- Show cause letter given to the accused asking him to appear before the court.
- Two types of summons:-
 - Summon to compel appearance.- s28
 - Summon to produce documents.- s 42

SUMMONS

- S 28 Shall be in writing in Form 2 and signed by the judge and shall bear the seal of the court.
- Shall state the general nature of the offence charged and the provision of the law under which it is punishable.
- Shall ordinarily be served by an officer of the ct or any other person directed by the Ct..

How Served?

- Be served personally by showing him the original summons and by tendering or delivering him a copy thereof.
- Person on whom summons is served shall if so required by the serving officer sign a receipt for the copy thereof on the back of the original summons.
- Where the person cannot be found, may be served by leaving a copy thereof for him with some adult member of his family or his servant residing with him.

PS Cannot Be Effected

- s 30. The service officer shall affix a copy of the summons to some conspicuous part of the house or other place in which the person summoned ordinarily resides.
- S 31- Proof of service.
- Affidavit of service to be made b4 registrar shall be made admissible in evidence.

Warrant of Arrest

- S 32- Shall be in form 3 signed by the judge and shall bear the seal of the court.
- Shall remain in force until it is cancelled by the court or until it is executed.

Court may direct by endorsement on warrant security to be taken

- S 33- any ct issuing WOA may in its discretion direct by endorsement on the warrant that if such person executes a bond with sufficient sureties, the officer to whom the warrant is directed shall take such security and shall release such person from custody.
- Indorsement- number of sureties, amount, place and time.
- Bond be forwarded to the ct.

To whom directed

- S 34-Be directed to CREO and all REO and any such officer.
- The ct issuing a WOA may direct it the IGP and all other PO or any person by name not being REO or PO and all or any one or more of such persons may execute the warrant.
- The REO shall notify the substance of the warrant s 35.
- S 36. Person arrested to be brought b4 ct without delay. Federal Const Article 5 (4)- 24 hours.

Procedure on Arrest of Person against whom warrant is issued

- S 37 (1)- when WOA is executed outside local limit of the ct's jurisdiction, the person arrested shall be brought b4 the nearest judge.
- 2. the judge shall direct his removal in custody to the court named in the warrant.
- 3. If the offence is bailable and the person ready and willing to give bail, the judge shall take such bond or security.

Warrant in lieu of summons

- S 38-the ct has reason to believe that he has absconded or will not obey the summons.
- Fails to appear and the summons is proved to have been duly served in time and no reasonable excuse is offered for such failure.

Summons to Produce Documents

- S 42- REO or PO making investigation considers that the production of the document is necessary for the purpose of any investigation before such ct, such ct may issue a summons to the person possessed the document to attend and produce it at the time and place stated in the summons.

SEARCH WARRANT

- Power to do a search given to the PO or REO for the investigation of criminal offences.
- SW is a written document issued by a judge to do a search of :-
 - 1) the body of persons or
 - 2) premises.

Section 44

- When SW may be issued. (1) if
- a) has reason to believe that a person to whom a summons under s 42 has been or might have been addressed will not or would not produce the property or documents as required.
- b) such property or document is not known to the court to be in the possession of any person.

Cont...

- c) the Ct considers that the purposes of justice or of any inquiry, trial or other proceedings under this enactment will be served by a general search or inspection: or
- d) the Ct upon information and after such inquiry as he thinks necessary has reason to believe that an offence has been committed in any place.
- The Ct may issue SW and the person to whom such warrant is directed may search and inspect in accordance with the enactment.

Cont.....

- (2) A SW shall ordinarily be directed to the CREO and to other REO to be designated by name therein and all or any of such officers may execute such warrant.
- (3) The Ct issuing SW may direct it to the IGP and to other PO to be designated by name therein and all or any of such officers may execute such warrant.

Section 45

- The Ct may if it thinks fit specify in the SW the particular place or part thereof to which only the search or inspection shall extend and the person charged with the execution of such warrant shall then search or inspect only the place or that part so specified.

Section 46

- Judge upon information and after such inquiry as he thinks necessary has reason to believe that any thing upon, by or in respect of which an offence has been committed
- Any evidence or thing which is necessary to the conduct of an investigation into any offence, may be found in any place,
- He may by warrant authorize the person to whom it is directed to enter, with such assistance as may be required and search the place for any such evidence or thing and,
- If anything searched for is found, to seize it and bring it b4 the judge issuing the warrant or other judge.

Section 47

- Form of search warrant.
- In form 4 of the 2nd Schedule
- Signed by the judge
- Bear the seal of the court
- Such warrant shall remain in force for a reasonable number of days to be specified in the warrant.

Section 48

- If any judge has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence,
- He may issue a search warrant and the person to whom such warrant is directed may search for the person confined,
- Such search shall be made in accordance therewith
- And the person if found shall be immediately taken b4 judge who shall make such order if it seems proper.

Section 49

- **Person in charge of closed places to allow search.**
- **1) whenever any place liable to search or inspection any person residing in or being in charge of such place shall on demand of the officer or other person executing the warrant and on the production of the warrant allow him free ingress thereto reasonable facilities for a search**
- **2) If ingress cannot be obtained the officer executing the warrant may proceed in manner provided in s 11 (2).**

SECTION 50

- Judge by whom a SW is issued may attend personally for the purpose of seeing that the warrant is duly executed.

SECTION 51

- Any judge may orally direct a search to be made in his presence of any place for the search of which he is competent to issue SW.

SECTION 52

- A list of all things seized in the course of a search made under chapter and of the place in which they are respectively found shall be prepared by the officer and signed by him.

SECTION 53

- The occupant of the place searched or some person in his behalf shall in every instance be permitted to attend during the search, and a copy of the list prepared and signed under s 52 shall be delivered to such occupant or person at his request.

Charge

- First step in the criminal prosecution process of an offence. Definite allegation.
- When “charged with an offence”- he is called to appear b4 judge and informed of the charge or complaint against him.
- Notice to the offender.
- The charge is information to the court which is to try the accused of the matters to which evidence is to be directed.

Charge- must be precise

- S 78-Form of Charge- state the offence the accused is charged.
- If specific name- by that name only.eg- Incest, Khalwat
- If no specific name, definition of the offence must be stated- eg- attempt or abetment of.....
- The law and provisions of the law- shall be mentioned.
- The fact that the charge is made equivalent to a statement that every legal condition required by law to constitute the offence charge was fulfilled.

s 79- Particulars time, place and person

- Reasonably sufficient to give the accused notice of the matter with which he is charged.

s 80-When manner committing offence must be stated.

- If no sufficient notice charge shall also contain such particulars of the manner in which the alleged offence was committed.

Example

- That you Asmawi bin Sumawi I/C 830108125060 on 5.3.2006 at about 5.20 am has been found together with Asmah binti Samad in a house No 1, Taman Sutera Indah, Bangsar, Kuala Lumpur under circumstances which give rise to suspicion that you have engaged in immoral acts and that you have hereby committed an offence punishable under section 27 of the Shariah Criminal Offences Act 1997 and shall on conviction be liable to a fine not exceeding RM3000 or to imprisonment for a term not exceeding 2 years or to both..

S 81- Sense of words used in charge to describe offence

- Shall be deemed to have been used in the sense attached to them respectively by the law under which such offence is punishable.

S 82- Effect of errors

- No error shall be regarded at any stage of the case as material unless the accused was in fact misled by such entry or omission.
- PPVS DSAI - In 1999, he was sentenced to six years in prison for corruption and in 2000 to another nine years in prison for sodomy. The PP has amended several times the charge sheet. It is acceptable by the Court.

- S 83- Ct may amend or add to charge S 84- When trial may proceed immediately after alteration or addition.
- *Azizan & Norhayati v PSMelaka* – khalwat and attempt to commit adultery.
- S 85- When new trial may be directed or trial adjourned
- S 86- Stay of proceedings if prosecution of offence in amended charge requires previous sanction
- S 87- Recall of witnesses when charge amended or added-

General principle- S 88- Separate charges for distinct offences.

- Exceptions –
- S 89- Three offences of same kind within 12 months may be charges together- PSP V Shah Pandak Othman-Deviant teaching, do not perform prayer, spiritual marriage.
- PSK V Jaffary- 3 times committed adultery.

Cont...

- S 90- Trial for more than one offence. Charge with all offences at one trial. Abu Talib Harun v PSJohor- married with 10 wives.
- S 91- Where it is doubtful what offence has been committed- all or any of such offences
- S 92- When a person charged with one offence can be convicted for another- may be convicted of the offence which he is proven to have committed.
- S 93- Person charged with an offence can be convicted of the attempt

- S 94- When offence proved is included in offence charged-
- 1. The lesser offence

- S 95- When persons may be charged jointly.
- Accused of the same offence or different offences committed in the same transaction or
- One person is accused and another of abetment or attempt.

Thank You



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