



SYARIAH CIVIL PROCEDURE

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PART XI-DISCOVERY

- **Discovery is the process of finding out materials facts, documents from an adversary in order**
- **-to know and to ascertain the nature of the case**
- **-in order to support his own case**
- **-in order to narrow the points in issue**
- **- to avoid proving admitted facts.**

Cont....

- **It enables all the parties to an action to ascertain all the material facts constituting the case.**
- **Every party to an action is entitled to know the nature of his opponent's case so that he may know before hand what case he has to meet at the hearing.**
- **The process of discovery operates in 3 stages namely:- Disclosure, Inspection and Production.**

SECTION 85

- The court may order any party to state on oath orally or by affidavit what document he has or has had in his possession or power relating to the matters in question.
- To produce any document in his possession or power.
- If a company or body , officers of the co. may be ordered to comply with the order.
- The Ct may stay the proceedings pending compliance of the order.

SECTION 86

- **Any party shall be entitled to inspect and copy any document in the possession or power of another party and referred to in any pleading, affidavit filed by him in the proceedings or on oral examination.**

SECTION 87

- **Production and inspection of documents shall be subject to the provisions of law relating to privilege communication and documents.**

SECTION 88

- **There shall be no appeal against any order of the court under this part except in an appeal against the judgment as a whole.**

SETTLEMENT, WITHDRAWAL AND DISCONTINUANCE

- Before the hearing the court will advise the parties to settle the case through settlement.
- Settlement can be either through:-
 - (1) Settlement outside court (sulh)
 - (2) Withdrawal

Section 94

- **Settlement of action**

Where by agreement of the parties an action has been settled the court may at any time , by consent of the parties record the fact of such settlement with the terms thereof and the record of the settlement shall afford a defence by way of res judicata to subsequent proceedings

Section 95

- **The Pt may with leave of the court at any time before judgment withdraw any proceedings wholly or in part by giving notice in Form MS 19 to the court and serving a copy of the notice to the defendant.**
- **Where the Pt withdraws any proceedings under subsection 1 the DT shall be entitled to the cost of the proceedings.**

Section 96

- **Effect of withdrawal on future proceedings.**
- **Where the Pt has withdraws any proceedings under s95 he shall not thereafter bring an action for the same or substantially the same cause of action unless the court has granted leave to institute fresh proceedings.**

Section 97

- Where the PT. Has withdrawn any proceedings under s 95, and he is liable to pay any other's party costs if the action, then if before payment of such cost he subsequently brings an action for the same the court may order the proceedings to be stayed until such costs are paid.

Section 98

- **A Dt. May at any time by giving notice to the Pt. Withdraw his defense or any part thereof and shall in such event be precluded from defending the proceedings or any part thereof as the case may be.**

SULH-S99

- Surah Al-Hujurat:9-10
- “If two parties among the believers fall into fight make peace between them.....”
- “ The believers are brothers to one another, therefore make reconciliation between your brothers and fear Allah, so that you may be shown mercy”

Condition for sulh

- (1) Sulh can only be permissible in matters involving right of man.
- (2) Court shall not order the the case to be settled by sulh if it is apparent that one party is right in dispute.
- (3) It shoud not contravene with the principle of syariah.
- (4) Sulh is not applicabile in the case already been decide by the court.

Cont.....

Functions of Sulh

- To solve problems of backlog cases in the court- In Selangor Sulh has decreased about 65% cases in Court.
- As an arbitrator, to provide settlement on win win basis.
- Majlis sulh will be attended by the disputed parties only and not in open court.

Section 99

■ The parties to any proceedings may at any stage of the proceedings hold sulh to settle their dispute in accordance with such rules as may be prescribed or in the absence of such rules in accordance with hukum syarak.

Manual Kerja Sulh provided by JKSM.

Cases

- Semek bt Mamat v Zubaidah Bt Yassin
- Mother claimed for harta sepencarian against her daughter.
- Defendant agreed to settle by way of sulh.

Subpoenas

- An order from the court to any party (witness) to come to the court to give explanation on certain issue.
- 2 types:
 - (1) Subpoenas Ad Testificandum
 - (2) Subpoenas duces tecum.

Section 102

- Request for issue of subpoenas
- Form MS20
- Filed in court
- Contained name, address or name of the firm
- Being sealed in by an officer of the court.

Section 104

- Subpoenas to produce documents
- He shall sufficiently comply.

Section 105

- Amendment of subpoenas
- Resealed and endorsed amended and resealed.

Section 106

- **Shall be served personally**
- **Service shall be done within 12 weeks after the date of the issue of the subpoena.**

Section 109

- Attendance of prisoners as witness or party
- Exparte by notice in Form MS 24.
- The cost of conveying of the witness in safe custody and from the court shall paid in the first instance.
- Order in Form MS25.

Section 110

- Tender of expenses
- Shall not be compelled to attend
- Unless reasonable sum to cover his expenses.

Section 111

- Affidavit of service.

“Justice must not only be done but must be seen to be done”.

Thank You



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