

TUGAS DAN PERANAN PENDAKWA

SISTEM DI MALAYSIA

- Berasaskan kepada adversarial system,
bukan inquisitorial system
- Mengandungi 3 komponen :
 - a) hakim
 - b) pendakwa
 - c) pembela (OKT)

SUMBER KUASA UNTUK MENJALANKAN PENDAKWAAN

- 1. Perkara 145 (3) Perlembagaan Malaysia**
- 2. s. 376 (1) KTJ**
- 3. s. 376 (3), s. 376 (3A) dan s. 377 (a) KTJ
(bagi TKPR, TPR dan PPR)**
- 4. s. 377 (b) KTJ (bagi pegawai polis dan pegawai kerajaan)**
- 5. Undang-Undang yang dikuatkuasakan oleh jabatan berkenaan**

1. Perkara 145 (3) Perlembagaan Malaysia

“Peguam Negara adalah mempunyai kuasa, dan kuasa itu hendaklah dijalankan menurut budi bicaranya, bagi membawa, menjalankan atau memberhentikan apa-apa perbicaraan mengenai sesuatu kesalahan, lain daripada perbicaraan di hadapan Mahkamah Syariah, Mahkamah Bumiputra atau Mahkamah Tentera.”

- Long b. Samad & Ors v PP [1974] 2 MLJ 152

“In our view, this clause from the supreme law clearly gives the Attorney-General very wide discretion over the control and direction of all criminal prosecutions. Not only he may institute and conduct any proceedings that he has instituted, and the courts cannot compel him to institute any criminal proceedings which he does not wish to institute or to go on with any criminal proceedings which he has decided to discontinue. Still less than would the court have power to compel him to enhance a charge when he is content to go on with a charge of a less serious nature...”

“Anyone who is dissatisfied with the Attorney General’s decision not to prosecute or not to go on with a prosecution or his decision to prefer a charge for a less serious offence when there is evidence of a more serious offence which should be tried in a higher court, should seek his remedy elsewhere, but not on courts.”

- Repco Holdings Bhd. v PP [1997] 3 MLJ 681

“... the exercise of discretion by the Attorney-General in the context of Art. 145 (3) is put beyond judicial review. In other words, the exercise by the Attorney-General of his discretion, in one way or another, under Art. 145 (3) cannot be questioned in the courts by way of certiorari, declaration or other judicial review proceedings.”

2. S. 376 (1) KTJ

“Peguam Negara adalah menjadi sebagai Pendakwa Raya dan hendaklah mempunyai kawalan dan arahan dalam semua pendakwaan jenayah dan prosiding di bawah kanun ini.”

- Semua kes hendaklah dimulakan atas nama Pendakwa Raya
- Contoh : Pendakwa Raya v. ABC

- PP v Datuk Hj. Harun b. Hj. Idris & Ors
[1976] 2 MLJ 116

“Control and direction” in s. 376(i) of the Code is in respect of all criminal prosecutions and proceedings, and not of criminal procedure or the jurisdiction of the courts.”

3. S. 376 (3) KTJ

“Pendakwa Raya boleh melantik orang yang layak menjadi Timbalan Pendakwa Raya yang akan tertakluk di bawah kawalan dan arahan am Pendakwa Raya dan boleh menjalankan semua atau mana-mana hak dan kuasa yang ada atau yang boleh dijalankan oleh Pendakwa Raya dengan atau di bawah Kanun ini atau mana-mana undang-undang bertulis kecuali apa-apa hak atau kuasa yang dinyatakan wajar dilakukan oleh Pendakwa Raya sendiri dan dia boleh menetapkan mana-mana Timbalan Pendakwa Raya itu sebagai Timbalan Kanan Pendakwa Raya.”

- S. 376 (3A) KTJ

“Pendakwa Raya boleh melantik orang yang layak dan sesuai menjadi Penolong Pendakwa Raya yang hendaklah di bawah kawalan dan arahan am Pendakwa Raya dan, tertakluk kepada apa-apa batasan dan sekatan sebagaimana yang dinyatakan oleh Pendakwa Raya, hendaklah mempunyai segala kuasa Timbalan Pendakwa Raya.”

4. S. 377 KTJ

“Tiap-tiap pendakwaan jenayah di hadapan mana-mana mahkamah serta tiap-tiap siasatan di hadapan majistret, tertakluk kepada seksyen berikut, hendaklah dijalankan –

- (a) *oleh Pendakwa Raya, Timbalan Kanan Pendakwa Raya, Timbalan Pendakwa Raya atau Penolong Pendakwa Raya*

- (b) *tertakluk kepada kawalan dan arahan Pendakwa Raya, oleh orang yang berikut yang diberi kuasa secara bertulis oleh Pendakwa Raya:*

- (1) *seorang peguambela;*
- (2) *seorang pegawai polis yang berpangkat tidak kurang daripada Inspektor;*
- (3) *seorang pegawai mana-mana jabatan kerajaan;*
- (4) *seorang pegawai mana-mana pihak berkuasa tempatan;*
- (5) *seorang pegawai mana-mana pihak berkuasa atau badan berkanun;*
- (6) *mana-mana orang yang diambil kerja atau digajikan oleh mana-mana pihak berkuasa tempatan atau mana-mana pihak berkuasa atau badan berkanun:*

SURAT KUASA MENDAKWA

- Surat Kuasa Mendakwa adalah kuasa yang diberikan oleh Pendakwa Raya kepada mereka yang dinyatakan di bawah s. 377 (b) KTJ untuk menjalankan pendakwaan di mahkamah
- Surat Kuasa tidak perlu dimasukkan sebagai keterangan
- Jika OKT membantah mengenai pendakwa tidak mempunyai kuasa menjalankan pendakwaan, pendakwa hanya perlu menunjukkan Surat Kuasa Mendakwa kepada mahkamah dan OKT
- S. 114 (e) Akta Keterangan 1950 – mahkamah akan menganggap bahawa tindakan kehakiman dan tindakan rasmi telah disempurnakan menurut peraturan

SANKSI (SANCTION) DAN IZIN (CONSENT)

- **Adalah persetujuan bertulis daripada Pendakwa Raya untuk sesuatu kes didakwa di mahkamah.**
- **Siapa yang ada kuasa untuk mengeluarkan sanksi/izin?**
- **Sanksi/izin mesti dikemukakan di mahkamah dan ditandakan sebagai ekshhibit P. Jika tiada sanksi/izin, kes yang dijalankan tidak sah.**
- **Bila sanksi/izin boleh dikemukakan di mahkamah?**

- Abdul Hamid v PP [1956] MLJ 231

“There is an essential difference to my mind between a sanction and a consent. A prosecution can be sanctioned without any deep consideration of the particular case : full consideration is required for consent since “consent is an act of reason, accompanied with deliberation, the mind weighing, as in a balance, the good and evil on each side” (Stroud 3rd Edition vol 1 page 582). The sanction was therefore no evidence of consent.”

OBJEKTIF PENDAKWAAN

1. Menegakkan keadilan setiap masa
2. Menjaga kepentingan awam
3. Melindungi hak asasi manusia
4. Memberi keadilan kepada yang teraniaya / mengalami kerugian
5. Mematuhi dasar/polisi kerajaan
6. Memastikan samada OKT bersalah atau tidak mengikut lunas undang-undang
7. Memastikan hukuman setimpal mengikut undang-undang

TUGAS PEGAWAI PENDAKWA

- 1. Mengetahui fakta kes sepenuhnya**
- 2. Mengetahui undang-undang yang berkaitan**
- 3. Dapat mengaitkan fakta kes dengan undang-undang yang berkaitan**
- 4. Menyediakan pertuduhan berdasarkan kepada fakta kes dan undang-undang yang berkaitan**
- 5. Samada OKS dituduh secara berseorangan atau bersama dengan OKS lain atau sebagai pensubahat atau sebagai syarikat**
- 6. Di mahkamah mana OKS perlu dituduh**

7. Samada sanksi/izin untuk mendakwa telah diperolehi
8. Menulis minit, ulasan dan cadangan dalam Kertas Siasatan dengan jelas, tepat dan terperinci
9. Sedia kes secara rapi
10. *Study the judge*
11. Peka kepada otoriti undang-undang yang ulung dan terkini
12. Berbincang dengan PUU atau TPR jika terdapat sebarang kemusykilan

1. Menderaf pertuduhan

**PP v LKI Holidays Leisure Sdn. Bhd.
[1998] 1 MLJ 315**

“Prosecuting officers should not take the task of drafting charges lightly. The attitude that drafting charges merely a mechanical task ought to discarded. Prosecuting officers must be meticulous and ensure that the provisions of ss. 152, 153 and 154 of the CPC are strictly adhered to and should from time to time seek the advice of the DPP especially when it comes to the drafting of less common offences.”

2. Memastikan kes didaftar di mahkamah yang betul

PP v Tengku Hitam [1962] MLJ 414

“Before a case is presented in court the prosecution must first satisfy itself whether the maximum punishment which such court can impose is adequate. If it thinks that such sentence is inadequate the case should be brought before another court. Ordinarily a case should be brought before the court which has jurisdiction to try it. For example, a case which is ordinarily triable in magistrate’s court should be brought in the sessions’s court if the prosecution in of the opinion that upon conviction the maximum sentence which can be imposed by the magistrate is in adequate.”

3. Mendedahkan kesalahan lalu OKT (jika ada)

Abdul Wahab v PP [1970] 2 MLJ 203

“In a case like this and in the interest of the community the prosecution ought, having regard to the previous criminal record and history of the accused to see that he is charged in a proper court where he can be properly and adequately dealt with. The magistrate before whom the charge is brought is not entitled to have a record of the previous convictions of the accused until after the accused has been convicted, but the investigating officer and all those responsible for the prosecution of the accused cannot be said not to possess the right or not to have knowledge if investigations are carried out properly.”

4. Membawa izin/sanksi semasa perbicaraan di mahkamah

Lyn Hong Yap v PP [1956] 22 MLJ 226

“Want of consent under section 12 of the Prevention of Corruption Ordinance is not an omission that can be cured by reason of s. 422 of the CPC.”

“Difficulties of this kind might arise in cases where a consent or sanction is required, could be avoided if the practice were adopted of accompanying every application for a summons or a warrant of arrest with the consent or sanction in writing.”

CIRI-CIRI PEGAWAI PENDAKWA

1. Reputasi baik dan adil
2. Jangan sembunyikan kelemahan kes
3. Hormat mahkamah
4. Persediaan sempurna, memastikan semua saksi hadir dan memastikan semua dokumen/barang kes ada
5. Terima/hormat keputusan mahkamah
6. Kemukakan keterangan secara adil mengikut turutan, ringkas dan beras
7. *Justice should not only be done but seen to be done*

6. BEBAN BUKTI

Pendakwaan

- Kes pendakwaan (kes prima facie)
- Kes pembelaan (melampaui keraguan munasabah / *beyond reasonable doubt*)
- Perlu buktikan kesalahan OKS/OKT

Pembelaan

- Menimbulkan keraguan munasabah (*cast a reasonable doubt*)
- Tidak perlu buktikan apa-apa

- Tan Foo Su v PP [1967] 2 MLJ 19

“It is the duty of the court to consider the defence story which may produce one of three results, namely, that if the court is convinced of the truth of the accused story or that it created a reasonable doubt as to the guilt, the court must acquit the accused person. Sometimes the defence story strengthens the prosecution case and in that case the court has to find the accused guilty. But it is not the duty of the accused to prove his innocence, far less to produce or to bring a particular witness to support his story.”

- Roslan Karim & Ors v PP [1975] 1 MLJ 84

“It is a cardinal principle in criminal law that the prosecution must prove the guilt of the accused, and there is no duty cast on an accused person to establish his innocence.”

“There is no duty cast upon the defence in a criminal trial to call any witness and no adverse presumption should arise against an accused person for failure to call any particular witness”

ANGGAPAN KETAKBERSALAHAN

- **Tidak bersalah sehingga dibuktikan bersalah**
- **Lebih baik membebaskan 10 orang yang bersalah daripada mensabitkan 1 orang yang tidak bersalah**

ADVOCACY YANG TINGGI

1. Persediaan yang rapi

- mengetahui fakta kes *inside-out*
- memastikan pertuduhan/izin/sanksi ada dan tidak cacat
- menyoal saksi dengan teliti dan adil
- memastikan rantai keterangan tidak terputus

2. Integriti

- jujur
- berterus terang
- tidak *withold* atau *suppress* keterangan

3. Hormat kepada semua

- sopan apabila bercakap
- tidak bertelagah dengan majistret
- tidak mengganggu majistret/pegawai yang sedang bercakap
- terima keputusan mahkamah dengan hormat

4. Reputasi yang baik

- adil dan saksama
- bertolak ansur
- *sound knowledge of facts and law*
- *ability to identify, analyse, handle and reproduce all the facts of the case*

Sekian. Terima kasih