



CIVIL PROCEDURE IN THE SYARIAH COURT

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Parties to an action/proceeding

- Parties must be :-
 - 1. Sui Juris
 - 2. Compos Mentis
 - 3. Acting personally or in a representative capacity.
- Interpretation (s 17)
- Plaintiff includes an applicant
- And defendant includes a respondent.

Joinder of parties (s18)

- Two or more persons may be joined in one action as plaintiffs or as defendants with the leave of the court or where:
- (a) separate actions were brought by or against each of them/and some common question of law or fact
- (b) arise out of the same transaction.

Change of parties (s 19)

- At its own motion or on the application of any parties
- strike out, substitute or add any party
- No person shall be made plaintiff without his consent. If PUD- Consent of his representatives.

Misjoinder or non-joinder of parties (s20).

- At any stage-
- Order any party who has been improperly made a party to cease to be a party.
- Non joinder- presence is necessary

Amendment and service (s 21)

- Where any change of parties occur :-
- Title-amended
- Added or substituted defendant- shall be served with the documents

Abatement of action (s 22)

- If the cause of action does not survive in accordance with IL- Proceedings shall abate.
- If the COA survives in accordance with hukum syarak- shall not abate
- In case of death before judgment- shall not abate.

Devolution of interest (s23)

- In the case of assignment, creation, devolution of interest
- The person to or upon whom the interest estate, title or liability has come may apply to be added as party.

Person Under Disability.

- S 24- May sue or be sued by his guardian litem.
- S 25-A consent or waiver of GAL shall be binding.
- S 26- where Pt is a PUD:
- No settlement or compromise shall be valid without court's sanction.
- All money or property recovered shall be paid in court unless the court order otherwise.

Cont...

- Irregular proceedings (s27)
- Any proceedings taken by or against PUD otherwise than in accordance with this enactment or hukum syarak shall be dismissed
- Any judgment may be set aside.

Removal of guardian ad litem (s 28).

- Sufficient reason in accordance with hukum syarak
- remove any GAL
- and replace him by another
- being fit and proper person and willing to act.

Minor Plaintiff attaining majority

- Either withdraw or adopt the proceedings
- Part xiii shall apply
- If minor pt withdraws- not personally liable for cost.
- If more than one PT, may apply to withdraw.

Minor Defendant Attaining Majority

- He or his GAL may file an affidavit in proof
- The proceedings shall be amended and the GAL shall be discharged

PEGUAM SYARIE

PART V-S 34-39

- Who is a Peguam Syarie?
- Members of the Bar and non members of the Bar. Peguam syarie refers to those who practice in *Syariah* courts in Malaysia and is governed by the respective states peguam *syarie* rules.
- Peguam syarie is a person who is given the right by rules enacted by any state to appear and represent his client in every shariah court case within the confines of such state or federal territories, respectively.

SECTION 34

- Peguam syarie retained to represent a party in any proceedings shall file a memorandum of his retainer in form ms 5 before taking any step and declare it before the court.

SECTION 35

- Where more parties than one are represented by the same peguam syarie in any proceedings, service of a single copy of any document on the peguam syarie shall be sufficient service on all such parties.

SECTION 36

- If a party desires to change his peguam syarie he shall file a memorandum in form MS 6 and serve all other parties and shall comply with section 34.

SECTION 37

- If a party desires to discharge his obligation here he shall file a memorandum in form MS 7 provided and serve all other parties.

SECTION 38

- If a peguam syarie representing any party applies in form ms 8 to be discharged the court may discharge him.
- Notice of the application shall ordinarily be given to the party furnish a new address for service.

SECTION 39

- The death of either party or his peguam syarie determines the retainer.

Service

- A *hadith* narrated by Ali r.a. is as follows:
- *“That the wife of al-Walid bin ‘Uqbah met the Prophet s.a.w. to lodge a complaint against her husband. Upon receiving the complaint, The Prophet s.a.w. conveyed the complaint to al-Walid. The wife of al-Walid came to meet the Prophet s.a.w. for the second time and informed the Prophet s.a.w that her husband refused to come along. Upon hearing this, the Prophet s.a.w. gave her a piece of cloth in the form of a series of number. She then gave it to al-Walid”*

SERVICE

PART VI-SS 40-55

- There are four types of services:-
- (i) Personal Service;
- (ii) special Service/ person under disability;
- (iii) substituted service
- (iv) service out of jurisdiction
- Section 40- Every plaintiff and person filing any document in any proceedings shall give an address for service either plaintiff or his lawyer's address.

Personal service

- Section 41-Service of summons and SOC shall be made personally because the summons and statement of claim is served to initiate the case.
- Inspection
- Seal of the court
- Signature of its proper officer
- Service shall be effected by an officer of the court.
- Other person may serve the summons and SOC with permission of the court.

Section 42

- If the person to be served refuses to be accept the document or copy it may be left near him and his attention directed to it.

Section 43

- A document may be served on the peguam syarie of any party who has filed a memorandum of retainer in accordance with section 34.

Section 44

- Any document delivered at the address for service of any person shall be deemed to be served on the said person.
- Provided that in the case of address not within the local authority limits of the place where the court is situated, any document may be served by dispatching the same by prepaid registered post addressed.

Section 45

- A summons commencing an action shall be served not less than 7 clear days before the return date, unless the court shall otherwise order. Return dates may be altered by the Registrar if necessary.
- Notice of all other proceedings shall be clear days' notice subject to the provisions of any written law to the contrary and the court otherwise order.

Section 46

- Service may be effected at any place on any day and at any time of the day or night.
- Service after 4.00pm shall ordinarily be deemed to have been effected on the following day.
- After noon on the day of proceeding or at any time on, the weekly holiday or on any public holiday shall be deemed to have been effected on the after such holiday.

Service for Special Case Section 47

- Service on a PUD shall be made on his guardian ad litem.
- If there is no GAL, on the person with whom he resides or under whose care he is.
- The court may order that service upon PUD shall be deemed to be good service.
- A person in prison shall be served on the officer in charge of the prison-transmitted to him.
- Member of the armed forces- the commanding officer or adjutant of his unit- transmitted to him.

Substituted Service-Section 48

- The court is satisfied that a party who has not given any address for service at the date of the summons or other documents to be served resident within selangor:-
 - (i) If he is keeping out of the way for the purpose of avoiding service
 - (ii) sufficient reason cannot be served in ordinary way.
- The court may order the summons/ documents to be served: - (i) by affixing a copy in some conspicuous place in the court house;
- (ii) in part of the building last resided
- (iii) advertisement in local newspapers

Cont....

- Substituted service shall be as effectual as personal service.
- The court shall fix the time of appearance in court .
- Exception: No order for SS shall be made in respect of:-
 - (i) a subpoena
 - (ii) any document initiating proceedings for the arrest or committal of any person.

Section 49

- Proof of service.
- (i) By affidavit of the person who effected service
- (ii) where the service was personal and the person was not personally known to him by that affidavit and the affidavit of the person who identified the person to be served.
- The person served shall sign an acknowledgement of service but refusal or inability to sign shall not affect the validity of the service.

Section 50

- Any order for service or for SS may be varied by the Court.

Section 51

- A court may issue a warrant for his arrest:-
- (i) seems to believe that he has absconded or will not obey the summons:
- (ii) he fails to appear and the summons is proved to have been duly served in time and no reasonable excuse is offered for such failure.

Thank You



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