D.R. 17/2010

RANG UNDANG-UNDANG

b e r n a m a

Suatu Akta untuk meminda Kanun Tatacara Jenayah.

[ ]

DIPERBUAT oleh Parlimen Malaysia seperti yang berikut:

Tajuk ringkas dan permulaan kuat kuasa

1. (1) Akta ini bolehlah dinamakan Akta Kanun Tatacara Jenayah (Pindaan) 2010.

(2) Akta ini mula berkuat kuasa pada tarikh yang ditetapkan oleh Menteri melalui pemberitahuan dalam *Warta*, dan Menteri boleh menetapkan tarikh-tarikh yang berlainan bagi permulaan kuat kuasa peruntukan yang berlainan Akta ini.

Bab baru XVIIIA

2. Kanun Tatacara Jenayah [*Akta 593*], yang disebut "Kanun" dalam Akta ini, dipinda dengan memasukkan selepas Bab XVIII dalam Bahagian VI Bab yang berikut:

"CHAPTER XVIIIA

PRE-TRIAL PROCESSES

Pre-trial conference

172A. (1) An accused who is charged with an offence shall, by an advocate representing him, participate in a pre-trial conference with the Public Prosecutor before the commencement of the case management.

(2) A pre-trial conference shall commence within thirty days from the date the accused was charged in court or any reasonable time before the commencement of the case management.

(3) A pre-trial conference may be conducted by any means and at any venue as may be agreed upon by the advocate representing the accused and the Public Prosecutor.

(4) During the pre-trial conference, an advocate representing an accused may discuss with the Public Prosecutor the following matters relating to the case:

(a) identifying the factual and legal issues;

(b) narrowing the issues of contention;

(c) clarifying each party's position;

(d) ensuring the compliance with section 51A;

(e) discussing the nature of the case for the prosecution and defence, including any alibi defence that the accused may rely on;

(f) discussing any plea bargaining, and reaching any possible agreement thereto; and

(g) any other matters as may be agreed upon by the advocate representing the accused and the Public Prosecutor that may lead to the expeditious disposal of the case.

(5) All matters agreed upon in the pre-trial conference by the advocate and the prosecutor shall be reduced into writing and signed by the accused, the advocate and the Public Prosecutor.

Case management

172B. (1) The Court shall commence a case management process within sixty days from the date of the accused being charged.

(2) At the case management, the Court shall—

(a) take into consideration all matters that have been considered and agreed to by the accused and his advocate and the Public Prosecutor during the pre-trial conference;

(b) where no pre-trial conference has been held on the ground that the accused is unrepresented, discuss with the accused and the Public Prosecutor any matter which would have been considered under section 172A;

(c) assist an accused who is unrepresented to appoint an advocate to represent the accused;

(d) determine the duration of the trial;

(e) subject to subsection (3), fix a date for the commencement of the trial; and

(f) give directions on any other matter as will promote a fair and expeditious trial.

(2) A subsequent case management, if necessary, may be held not less than two weeks before the commencement of the trial.

(3) The trial shall commence not later than ninety days from the date of the accused being charged.

(4) Notwithstanding the provisions of the Evidence Act 1950, all matters that have been reduced into writing and duly signed by the accused, his advocate and the Public Prosecutor under subsection 172A(5) shall be admissible in evidence at the trial of the accused.

Plea bargaining

172C. (1) An accused charged with an offence may make an application for plea bargaining in the Court in which the offence is to be tried.

(2) The application under subsection (1) shall be in Form 28A of the Second Schedule and shall contain—

(a) a brief description of the offence that the accused is charged with;

(b) a declaration by the accused stating that the application is voluntarily made by him after understanding the nature and extent of the punishment provided under the law for the offence that the accused is charged with; and

(c) information as to whether the plea bargaining applied for is in respect of the sentence or the charge for the offence that the accused is charged with.

(3) Upon receiving an application made under subsection (1), the Court shall issue a notice in writing to the Public Prosecutor and to the accused to appear before the Court on a date fixed for the hearing of the application.

(4) When the Public Prosecutor and the accused appear on the date fixed for the hearing of the application under subsection (3), the Court shall examine the accused *in camera*—

(a) where the accused is unrepresented, in the absence of the Public Prosecutor; or

(b) where the accused is represented by an advocate, in the presence of his advocate and the Public Prosecutor,

as to whether the accused has made the application voluntarily.

(5) Upon the Court being satisfied that the accused has made the application voluntarily, the Public Prosecutor and the accused shall proceed to mutually agree upon a satisfactory disposition of the case.

(6) If the Court is of the opinion that the application is made involuntarily by the accused, the Court shall dismiss the application and the case shall proceed before another Court in accordance with the provisions of the Code.

(7) Where a satisfactory disposition of the case has been agreed upon by the accused and the Public Prosecutor, the satisfactory disposition shall be put into writing and signed by the accused, his advocate if the accused is represented, and the Public Prosecutor, and the Court shall give effect to the satisfactory disposition as agreed upon by the accused and the Public Prosecutor.

(8) In the event that no satisfactory disposition has been agreed upon by the accused and the Public Prosecutor under this section, the Court shall record such observation and the case shall proceed before another Court in accordance with the provisions of the Code.

(9) In working out a satisfactory disposition of the case under subsection (5), it is the duty of the Court to ensure that the plea bargaining process is completed voluntarily by the parties participating in the plea bargaining process.

Disposal of the case

172D. (1) Where a satisfactory disposition of the case has been agreed upon by the accused and the Public Prosecutor under section 172C, the Court shall, in accordance with law, dispose of the case in the following manner:

(a) make any order under section 426; and

(b) where the satisfactory disposition is in relation to a plea bargaining of the charge, find the accused guilty on the charge agreed upon in the satisfactory disposition and sentence the accused accordingly; or

(c) where the satisfactory disposition is in relation to a plea bargaining of the sentence, find the accused guilty on the charge and—

(i) deal with the accused under section 293 or 294; or

(ii) subject to subsection (2), sentence the accused to not more than half of the maximum punishment under the law for the offence for which the accused has been convicted.

(2) Where there is a minimum term of imprisonment provided under the law for the offence, no accused shall be sentenced to a lesser term of imprisonment than that of the minimum term.

(3) Notwithstanding section 283, where any fine has been imposed under this section and there is a default of payment of the fine, the Court shall direct that the offender shall be imposed a sentence of imprisonment for a term of not less than six months.

Finality of the judgment

172E. When an accused has pleaded guilty and has been convicted by the Court under section 172D, there shall be no appeal except to the extent and legality of the sentence.

Statements of, or facts stated by, accused not to be used for any other purpose

172F. Notwithstanding anything contained in any law, the statements of or facts stated by an accused in an application for a plea bargaining under section 172C shall not be used for any other purpose except for the making of such application.".

Pindaan seksyen 173

3. Seksyen 173 Kanun dipinda dengan memasukkan dalam subperenggan *(m)*(ii) proviso yang berikut:

" Provided that before the Court passes sentence, the Court shall call upon the victim of the offence or a member of the victim's family, if any, to make a statement on the impact of the offence committed against the victim or his family.".

Pindaan seksyen 176

4. Subseksyen 176(2) Kanun dipinda—

(a) dengan memasukkan selepas perenggan *(n)* perenggan yang berikut:

"*(na)* any satisfactory disposition of the case agreed upon by the accused and the Public Prosecutor under section 172C;"; dan

(b) dalam perenggan *(r)*, dengan memasukkan selepas perkataan "evidence of character," perkataan "the victim's or a member of his family's impact statement, if any,".

Seksyen baru 183A

5. Kanun dipinda dengan memasukkan selepas seksyen 183 seksyen yang berikut:

"**Victim's or a member of his family's impact statement**

183A. Before the Court passes sentence according to law under section 183, the Court shall call upon the victim of the offence or a member of the victim's family, if any, to make a statement on the impact of the offence committed against the victim or his family.".

Seksyen baru 254A

6. Kanun dipinda dengan memasukkan selepas seksyen 254 seksyen yang berikut:

"**Reinstatement of trial after discharge**

254A. (1) Subject to subsection (2), where an accused has been given a discharge by the Court and he is recharged for the same offence, his trial shall be reinstated and be continued as if there had been no such order given.

(2) Subsection (1) shall only apply where witnesses have been called to give evidence at the trial before the order for a discharge has been given by the Court.".

Pindaan seksyen 402A

7. Kanun dipinda dengan menggantikan seksyen 402A dengan seksyen yang berikut:

"**Alibi**

402A. (1) The Court shall, at the time the accused is being charged, inform the accused as to his right to put forward a defence of alibi.

(2) Where the accused seeks to put forward a defence of alibi, he shall put forward a notice of his alibi during the case management process.

(3) Notwithstanding subsection (2), where the accused has not put forward a notice of his alibi during the case management process, he may adduce evidence in support of an alibi at any time during the trial subject to the following conditions:

(a) the accused has given a notice of the alibi to the Public Prosecutor; and

(b) the Public Prosecutor is given a reasonable time to investigate the alibi before such evidence can be adduced.

(4) The notice required under this section shall include particulars of the place where the accused claims to have been at the time of the commission of the offence with which he is charged, together with the names and addresses of any witnesses whom he intends to call for the purpose of establishing his alibi.".

Seksyen baru 402B dan 402C

8. Kanun dipinda dengan memasukkan selepas seksyen 402A seksyen yang berikut:

"**Proof by written statement**

402B. (1) In any criminal proceedings, a written statement by any person shall, with the consent of the parties to the

proceedings and subject to the conditions contained in subsection (2), be admissible as evidence to the like extent as oral evidence to the like effect by that person.

(2) A statement may be tendered in evidence under subsection (1) if—

(a) the statement purports to be signed by the person who made it;

(b) the statement contains a declaration by that person to the effect that it is true to the best of his knowledge and belief; and

(c) a copy of the statement is served, by or on behalf of the party proposing to tender it, on each of the other parties to the proceedings not later than fourteen days before the commencement of the trial unless the parties otherwise agree.

(3) Notwithstanding paragraph (2)*(c)*, a party proposing to tender a statement in evidence under subsection (1) may not serve the statement to any other parties to the proceedings where the parties to the proceedings agree before or during the proceedings that the statement shall be so tendered.

(4) If a statement proposed to be tendered in evidence under subsection (1)—

(a) is made by a person who cannot read, the statement shall be read and explained to him before he signs it and the statement shall be accompanied by a statutory declaration made under the Statutory Declarations Act 1960 [*Act 13*] by the person who so read the statement to the effect that it was so read and explained; or

(b) refers to any other document or object as an exhibit, the copy served on any other party to the proceedings under paragraph (2)*(c)* shall be accompanied by a copy of that document or by a photograph of the object and such information as may be necessary in order to enable the party on whom it is served to inspect the document or object, as the case may be, unless it is not expedient to do so.

(5) Notwithstanding that the written statement of a person may be admissible as evidence by virtue of this section—

(a) the party by whom or on whose behalf a copy of the statement was served may call the person making the statement to give additional evidence which may include matters which are not contained in the statement; and

(b) the maker of the statement shall attend the trial for cross-examination and re-examination, if so requested.

(6) So much of any statement as is admitted in evidence by virtue of this section shall, unless the Court otherwise directs, be read aloud at the trial and where the Court so directs an account shall be given orally of so much of any statement as is not read aloud.

(7) Any document or object referred to as an exhibit and identified in a written statement admitted in evidence under this section shall be treated as if it was produced as an exhibit and identified in the Court by the maker of the statement.

(8) A document required by this section to be served on any person may be served—

(a) by delivering the document to the person himself or to his advocate; or

(b) in the case of a corporation, by delivering the document to the secretary or other like officer of the corporation at its registered or principal office or by sending the document by registered post addressed to the secretary or other like officer of the corporation at that office.

Proof by formal admission

402C. (1) Notwithstanding any other written law, and subject to the provisions of this section, any fact of which oral evidence may be given in any criminal proceedings may be admitted for the purpose of those proceedings by or on behalf of the Public Prosecutor or accused and the admission by any party of any such fact under this section shall as against that party be conclusive evidence in those proceedings of the fact admitted.

(2) An admission under this section—

(a) may be made before or during the proceedings and shall be in writing and signed by both parties;

(b) if made otherwise than in the Court, shall be in writing;

(c) if made in writing by an individual, shall be signed by the person making it and, if so made by a body corporate, shall purport to be signed by a director or manager, or the secretary or clerk, or some other similar officer of the body corporate;

(d) if made on behalf of an accused who is an individual, shall be made by his advocate;

(e) if made at any stage before the trial by an accused who is an individual, shall be approved by his advocate (whether at the time it was made or subsequently) before or during the proceedings in question.

(3) An admission under this section for the purpose of any proceedings relating to any matter shall be treated as an admission for the purpose of any subsequent criminal proceedings relating to that matter (including any appeal or trial).

(4) An admission under this section may with the leave of the Court be withdrawn in the proceedings for the purpose of which it is made or any subsequent criminal proceedings relating to the same matter.".

Seksyen baru 407A

9. Kanun dipinda dengan memasukkan selepas seksyen 407 seksyen yang berikut:

"**Disposal of seized articles**

407A. (1) Notwithstanding any other provisions, the Public Prosecutor may apply to the Court for the disposal of any articles specified in subsection (2) at any time after the case management.

(2) The following seized articles may be disposed of under this section:

(a) dangerous drugs seized under the Dangerous Drugs Act 1952 [*Act 234*];

(b) clandestine drug laboratories or premises;

(c) valuable goods;

(d) cash money;

(e) noxious, deleterious, corrosive, explosive, dangerous, toxic, flammable, oxidising, irritant, harmful, poisonous, psychotropic and decay substances;

(f) video compact discs, optic discs, films and other similar devices;

(g) publication, books and other documents;

(h) vehicles, ships and other forms of conveyance;

(i) equipment and machineries;

(j) timber and timber products;

(k) rice, food and other perishable items; and

(l) other articles as may be determined by the Public Prosecutor that may be vulnerable to theft, substitution, constraints of proper storage space, high maintenance costs or any other considerations as the Public Prosecutor deems relevant.

(3) The Court shall make an order for the disposal of the articles specified in the application made by the Public Prosecutor under subsection (1) with the consent of the accused subject to the following procedures being complied with:

(a) an inventory of the articles containing the description, markings and other particulars which clearly identifies the articles has been made by the officer who seized the articles, and the Magistrate or Judge having the trial jurisdiction has certified that the inventory is correct;

(b) photographs of the articles have been taken in the presence of a Magistrate or Judge having the trial jurisdiction, and the Magistrate or Judge has certified that the photographs are true;

(c) where possible, representative samples of the articles have been taken in the presence of a Magistrate or Judge having the trial jurisdiction, and the Magistrate or Judge has certified that the representative samples are the correct samples of the articles; and

(d) where the articles are video compact discs, optic discs, films and other similar devices, the articles have been played for a Magistrate or Judge having the trial jurisdiction so as to ascertain the contents of the articles, and the Magistrate or Judge has certified that the contents of the articles are correct.".

Pindaan seksyen 413

10. Seksyen 413 Kanun dipinda dengan memasukkan selepas subseksyen (4) subseksyen yang berikut:

"(5) Notwithstanding the preceding subsections, where the property is required for the investigation of a case and it is necessary for the property to be detained, the property shall be kept in a safe and proper place by the Officer in charge of a Police District where the offence was committed.".

Pindaan seksyen 426

11. Seksyen 426 Kanun dipinda—

(a) dengan menggantikan subseksyen (1) dengan subseksyen yang berikut:

"(1) The Court before which an accused is convicted of an offence may, in its discretion, make an order for the payment by the convicted accused of the cost of his prosecution or any part thereof as may be agreed by the Public Prosecutor.";

(b) dengan memasukkan selepas subseksyen (1) subseksyen yang berikut:

"(1A) Without prejudice to subsection (1), the Court before which an accused is convicted of an offence shall, upon the application of the Public Prosecutor, make an order against the convicted accused for the payment by him, or where the convicted accused is a child, by his parent or guardian, of a sum to be fixed by the Court as compensation to a person who is the victim of the offence committed by the convicted accused in respect of the injury to his person or character, or loss of his income or property, as a result of the offence committed.

(1B) Where the person who is the victim of the offence is deceased, the order of compensation shall be made to a representative of the deceased person.

(1C) The Court shall, in making an order under subsection (1A), take into consideration the following factors:

(a) the nature of the offence;

(b) the injury sustained by the victim;

(c) the expenses incurred by the victim;

(d) the damage to, or loss of, property suffered by the victim;

(e) the loss of income incurred by the victim;

(f) the ability of the convicted accused to pay; and

(g) any other factors which the Court deems relevant.

(1D) For the purpose of making an order under subsection (1A), the Court may hold an inquiry as it thinks fit."; dan

(c) dalam subseksyen (4), dengan memotong perkataan "crime or".

Pindaan seksyen 428

12. Seksyen 428 Kanun dipinda dengan memotong perkataan "or compensation".

Pindaan seksyen 432

13. Subseksyen 432(2) Kanun dipinda—

(a) dengan menggantikan perkataan "RM25" dengan perkataan "RM500";

(b) dengan menggantikan perkataan "RM25 but does not exceed RM50" dengan perkataan "RM500 but does not exceed RM1000"; dan

(c) dengan menggantikan perkataan "Four" dengan perkataan "Six".

Pindaan Jadual Kedua

14. Jadual Kedua kepada Kanun dipinda dengan memasukkan selepas Borang 28 Borang yang berikut:

"FORM 28A [Section 172C]

APPLICATION FOR PLEA BARGAINING

To the High Court Judge/Sessions Court Judge/Magistrate,

Whereas a Charge/Charges in respect of an offence/offences has/have been preferred against me/us by the Public Prosecutor as follows:

(A brief description of the offence/offences)
Please attach a copy of the Charge/Charges

I (*state the full name and the Identity Card no.*), hereby apply to this Court for the said Charge/Charges to be set down for hearing for Plea Bargaining (*state whether in respect of the sentence or the charge)* and the Public Prosecutor to be informed of this application.

I solemnly declare that this application is voluntarily made after understanding the nature and extent of the punishment provided under the law for the offence/offences that I am charged with.

Dated this ..... day of ……..20 ……..

…..……
Signature of the Accused Person

Application received by …….
……
……”.

———

HURAIAN

Rang Undang-Undang ini bertujuan untuk meminda Kanun Tatacara Jenayah (“Akta 593”) dengan maksud, antara lain, untuk mengatasi masalah kes-kes tertunggak yang belum selesai di mahkamah jenayah dan untuk menggalakkan pelupusan kes jenayah dengan cepat.

2. *Fasal 1* mengandungi tajuk ringkas dan peruntukan mengenai permulaan kuat kuasa Akta yang dicadangkan.

3. *Fasal 2* bertujuan untuk memasukkan Bab baru XVIIIA ke dalam Bahagian VI Akta 593. Bab baru XVIIIA mengandungi enam seksyen baru, iaitu seksyen 172A, 172B, 172C, 172D, 172E dan 172F. Bab baru ini memperkatakan proses sebelum perbicaraan yang bertujuan untuk memendekkan tempoh perbicaraan dan untuk mempercepat pelupusan perbicaraan jenayah.

Seksyen baru 172A memperkatakan rundingan prabicara. Seksyen ini membolehkan tertuduh, yang diwakili peguam belanya, dan Pendakwa Raya untuk menyelesaikan isu sebelum proses pengurusan kes bermula. Di bawah sistem ini, pihak pendakwaan dan pembelaan dapat membincangkan merit kes masing-masing dan mengehadkan isu yang dipertikaikan atau mencapai persetujuan mengenai rundingan akuan sebelum proses pengurusan kes diadakan. Rundingan prabicara itu diadakan dengan ketiadaan pegawai kehakiman dan boleh diadakan di mana-mana tempat atau dengan apa-apa cara yang dipersetujui oleh peguam bela dan Pendakwa Raya. Rundingan prabicara itu boleh diadakan dalam keadaan yang kurang formal dengan tujuan untuk merasmikan apa-apa hasil rundingan itu semasa proses pengurusan kes. Di akhir rundingan prabicara itu, semua perkara yang dipersetujui hendaklah diubah ke dalam bentuk bertulis dan ditandatangani oleh tertuduh, peguam belanya dan Pendakwa Raya.

Seksyen baru 172B bertujuan untuk membolehkan Mahkamah untuk memulakan proses pengurusan kes bagi sesuatu kes jenayah. Proses pengurusan kes mestilah diadakan dalam masa enam puluh hari dari tarikh tertuduh dipertuduh di mahkamah. Suatu proses pengurusan kes yang berikutnya, jika perlu, boleh diadakan tidak kurang daripada dua minggu sebelum permulaan perbicaraan. Dalam proses pengurusan kes, pihak pendakwaan dan pembelaan dikehendaki, antara lain, untuk mengemukakan kepada Mahkamah apa-apa perkara yang telah dipertimbangkan dan dipersetujui semasa rundingan prabicara. Mahkamah kemudiannya akan menetapkan tarikh perbicaraan dan memberikan apa-apa arahan yang boleh menggalakkan suatu perbicaraan yang adil dan cepat. Mahkamah hendaklah memulakan perbicaraan tidak lewat daripada sembilan puluh hari dari tarikh tertuduh dipertuduh di mahkamah. Semua perkara yang dipersetujui dan diubah ke dalam bentuk bertulis serta ditandatangani oleh tertuduh, peguam belanya dan Pendakwa Raya di bawah seksyen 172A hendaklah boleh diterima sebagai keterangan pada perbicaraan itu.

Kedua-dua rundingan prabicara dan proses pengurusan kes jenayah melengkapkan peruntukan sedia ada dalam Akta 593 mengenai pembekalan dokumen yang pihak pendakwaan berhasrat untuk memberikan kepada tertuduh dan juga membekalkan tertuduh dengan fakta yang lebih baik bagi pihak pembelaan. Perkara ini boleh diselesaikan oleh pihak-pihak semasa rundingan prabicara atau pengurusan kes jenayah untuk memastikan perbicaraan dijalankan dengan licin sekiranya pihak-pihak tidak dapat mencapai "pelupusan kes yang memuaskan" semasa proses rundingan akuan.

Seksyen baru 172C hingga 172F memperkatakan rundingan akuan.

Seksyen 172C bertujuan untuk mengadakan peruntukan mengenai rundingan akuan. Mahkamah mempunyai kewajipan untuk memastikan bahawa tertuduh telah membuat permohonan untuk rundingan akuan secara sukarela. Mahkamah juga mempunyai kewajipan untuk memastikan bahawa proses itu dibuat secara sukarela antara Pendakwa Raya dan tertuduh. Apabila isu sukarela diselesaikan, tertuduh dan Pendakwa Raya kemudiannya hendaklah mencapai persetujuan secara bersama mengenai pelupusan kes yang memuaskan. Jika tertuduh dan Pendakwa Raya tidak dapat bersetuju mengenai pelupusan kes yang memuaskan, kes itu hendaklah dibicarakan di hadapan Mahkamah lain supaya tidak memudaratkan tertuduh.

Seksyen 172D memperkatakan pelupusan kes oleh Mahkamah. Mahkamah hendaklah melupuskan kes itu dengan membuat perintah di bawah seksyen 426 Akta 593, atau jika rundingan akuan itu berhubung dengan pertuduhan, mendapati tertuduh bersalah atas pertuduhan yang dipersetujui dalam pelupusan yang memuaskan itu dan menghukum tertuduh dengan sewajarnya, atau jika rundingan akuan itu berhubung dengan hukuman, mendapati tertuduh bersalah atas pertuduhan dan menghukum tertuduh di bawah seksyen 293 atau 294 Akta 593 atau menghukum tertuduh dengan tidak kurang daripada setengah daripada hukuman maksimum yang dikenakan di bawah undang-undang bagi kesalahan itu. Apabila terdapat tempoh minimum pemenjaraan diperuntukkan, hukuman itu tidak boleh kurang daripada tempoh minimum itu. Dengan itu, terdapat suatu mekanisme untuk mendorong tertuduh untuk mengaku salah dan pada masa yang sama dapat membuat jangkaan yang lebih baik tentang julat penghukuman yang boleh dikenakan.

Seksyen 172E memperuntukkan bahawa penghakiman Mahkamah di bawah seksyen 172D tidak boleh dirayu kecuali mengenai takat dan kesahan hukuman itu.

Seksyen 172F bertujuan untuk melindungi tertuduh dengan melarang penggunaan apa-apa pernyataan yang dibuat atau fakta yang disebut oleh tertuduh semasa rundingan akuan bagi apa-apa maksud lain.

4. *Fasal 3* dan *4* masing-masing bertujuan untuk meminda seksyen 173 dan 176 Akta 593, sementara *fasal 5* bertujuan untuk memasukkan suatu seksyen baru, iaitu seksyen 183A, ke dalam Akta 593. Pindaan ini bertujuan untuk membolehkan Mahkamah untuk menimbangkan pernyataan yang dibuat oleh mangsa sesuatu kesalahan atau seorang anggota keluarganya mengenai impak kesalahan yang telah dilakukan terhadap mangsa sebelum Mahkamah menjatuhkan hukuman. Pindaan kepada seksyen 173 dan 176 adalah berhubung perbicaraan di hadapan mahkamah rendah sementara seksyen 183A adalah berhubung dengan perbicaraan di hadapan Mahkamah Tinggi. Tujuan pindaan ini adalah untuk mengiktiraf hak mangsa jenayah. Pernyataan impak mangsa memberikan maklumat kepada Mahkamah mengenai kesan kesalahan itu terhadap mangsa atau keluarganya. Proses keadilan jenayah mesti adil kepada kedua-dua mangsa dan pesalah. Dengan membolehkan Mahkamah menimbangkan pernyataan impak mangsa sebelum menjatuhkan hukuman, keseimbangan antara pesalah dan mangsa dalam sistem keadilan jenayah (yang selalunya berorientasikan pesalah) dipulihkan.

5. *Fasal 6* bertujuan untuk memasukkan suatu seksyen baru, iaitu seksyen 254A, ke dalam Akta 593. Seksyen baru ini memperkatakan perbicaraan tertuduh yang telah diberikan suatu pelepasan dan kemudiannya dipertuduh semula atas kesalahan yang sama. Jika saksi telah dipanggil untuk memberi keterangan dalam perbicaraan sebelum pelepasan itu diberikan, perbicaraan itu hendaklah dikembalikan ke kedudukan asal dan hendaklah diteruskan seolah-olah tiada pelepasan telah diberikan kepada tertuduh. Memandangkan bahawa perbicaraan baru tidak perlu dimulakan, tempoh perbicaraan dapat dipendekkan dan pelupusan kes itu boleh dipercepat.

6. *Fasal 7* bertujuan untuk meminda seksyen 402A Akta 593. Dengan pindaan ini, jika tertuduh mengemukakan pembelaan alibi, dia tidak lagi perlu untuk memberikan notis bertulis kepada Pendakwa Raya sekurang-kurangnya sepuluh hari sebelum permulaan perbicaraan. Di bawah pindaan yang dicadangkan, tertuduh akan dimaklumkan oleh Mahkamah mengenai pembelaan alibi semasa dia dipertuduh di mahkamah. Tertuduh kemudiannya dikehendaki untuk mengemukakan pembelaan alibinya, jika ada, semasa proses pengurusan kes. Notis awal kepada Pendakwa Raya mengenai pembelaan alibi akan membolehkan Pendakwa Raya untuk menyiasat pembelaan sedemikian sebelum permulaan perbicaraan, dan dengan itu, dapat mengelakkan apa-apa kelengahan yang tidak perlu semasa perbicaraan.

Walau bagaimanapun, sekiranya tertuduh tidak mengemukakan pembelaan alibinya semasa proses pengurusan kes, dia masih boleh mengemukakan pembelaan alibinya pada mana-mana peringkat perbicaraan tertakluk kepada Pendakwa Raya diberikan notis mengenai alibi itu dan diberikan masa yang munasabah untuk menyiasat pembelaan sedemikian. Pindaan ini memberi kedudukan yang lebih baik kepada tertuduh jika dibandingkan dengan peruntukan yang sedia ada.

7. *Fasal 8* bertujuan untuk memasukkan dua seksyen baru, iaitu seksyen 402B dan 402C, ke dalam Akta 593. Seksyen baru 402B bertujuan untuk memudahkan penggantian keterangan berbentuk lisan dengan keterangan berbentuk pernyataan bertulis. Proses ini membolehkan Pendakwa Raya dan pihak pembelaan mengemukakan pernyataan dalam bentuk keterangan semasa pemeriksaan utama. Kemudahan ini akan menjimatkan masa Mahkamah dalam perekodan keterangan kerana pernyataan itu akan mempunyai kesan seolah-olah keterangan itu adalah keterangan lisan yang diberikan semasa mahkamah terbuka dan apa-apa ekshibit yang dikemukakan menurut kuasa seksyen ini dikemukakan seolah-olah dikemukakan dalam penjalanan biasa perbicaraan. Seksyen baru 402C merupakan satu lagi peruntukan untuk menjimatkan masa Mahkamah. Peruntukan ini melengkapkan seksyen baru 402B. Peruntukan ini menyatakan bahawa mana-mana pihak boleh mengakui apa-apa fakta yang keterangan lisan boleh diberikan baginya dan pengakuan fakta sedemikian oleh mana-mana satu pihak adalah muktamad dalam prosiding itu mengenai fakta yang telah diakui. Kemudahan yang diberikan ini akan membolehkan pihak-pihak untuk bersetuju mengenai fakta tertentu supaya dapat mengehadkan isu yang dipertikaikan.

8. *Fasal 9* bertujuan untuk memasukkan suatu seksyen baru, iaitu seksyen 407A, ke dalam Akta 593. Seksyen baru ini membuat peruntukan mengenai pelupusan awal barang sitaan yang tertentu yang, dengan mengambil kira sifat barang itu, merupakan barang yang berbahaya, sukar, mahal dan amat menyusahkan untuk disimpan dalam jagaan pihak polis. Jika hal keadaan menghendaki supaya barang sitaan itu dilupuskan, Pendakwa Raya boleh memohon kepada Mahkamah untuk suatu perintah pelupusan. Mahkamah hendaklah membuat perintah bagi pelupusan barang itu tertakluk kepada tatacara tertentu dipatuhi. Suatu inventori yang lengkap dan terperinci mengenai barang yang hendak dilupuskan mestilah diadakan dan gambar barang itu mestilah diambil. Sampel representatif barang itu hendaklah diambil dan disimpan dan Majistret atau Hakim yang mempunyai bidang kuasa perbicaraan hendaklah memperakukan tentang kesahihan inventori, gambar dan sampel representatif itu. Tatacara tersebut mesti dipatuhi supaya dapat memastikan rantaian keterangan dikekalkan.

Dengan peruntukan ini, pihak polis dapat mengurangkan risiko yang dihadapi mereka dan juga orang awam melalui penyimpanan barang sitaan yang amat berbahaya di premis penyimpanan mereka. Selain itu, pelupusan awal barang sitaan itu akan dapat mengurangkan kos yang tinggi yang ditanggung untuk menyenggarakan dan menyimpan barang sitaan itu dan juga dapat mengatasi masalah ruang simpanan yang terhad.

9. *Fasal 10* bertujuan untuk meminda seksyen 413 Akta 593. Pindaan ini bertujuan untuk memperuntukkan bahawa apa-apa harta yang disita hendaklah ditahan jika harta itu masih lagi dikehendaki bagi maksud penyiasatan, dan harta itu hendaklah disimpan di tempat yang selamat dan sepatutnya oleh Pegawai yang menjaga Daerah Polis di mana kesalahan itu dilakukan.

10. *Fasal 11* bertujuan untuk meminda seksyen 426 Akta 593. Pindaan ini bertujuan untuk menjadikan mandatori bagi Mahkamah, atas permohonan Pendakwa Raya, untuk memerintahkan tertuduh yang telah disabitkan untuk membayar pampasan kepada mangsa kesalahan yang telah dilakukan oleh tertuduh tersebut. Mahkamah hendaklah mengambil kira faktor yang relevan

semasa membuat perintah untuk pembayaran pampasan itu. Pindaan itu juga memberi Mahkamah kuasa untuk mengadakan siasatan jika difikirkannya patut berbuat sedemikian. Dengan pindaan ini, ketidakadilan yang dilakukan kepada seorang mangsa sesuatu kesalahan boleh dibaiki oleh orang yang sebenarnya telah memudaratkan mangsa itu melalui tindakannya yang menyalahi undang-undang.

11. *Fasal 12* bertujuan untuk meminda seksyen 428 Akta 593 untuk menjelaskan bahawa pampasan hendaklah menjadi suatu perkara yang ditetapkan oleh Mahkamah dan bukannya melalui kaedah-kaedah yang dibuat oleh jawatankuasa kaedah.

12. *Fasal 13* bertujuan untuk meminda seksyen 432 Akta 593 untuk memperuntukkan suatu kadar amaun yang lebih munasabah dan realistik yang berdasarkannya suatu tempoh pemenjaraan kerana ingkar membuat pembayaran boleh dikenakan. Pindaan ini juga bertujuan untuk memperuntukkan bahawa dalam kes yang amaunnya melebihi RM1000, tempoh pemenjaraan yang boleh dikenakan kerana ingkar membuat pembayaran telah dinaikkan daripada empat bulan kepada enam bulan.

13. *Fasal 11* bertujuan untuk meminda Jadual Kedua kepada Akta 593 untuk memasukkan suatu Borang baru 28A yang merupakan borang permohonan bagi rundingan akuan. Borang ini perlu berbangkit daripada kemasukan seksyen 172C ke dalam Akta 593.

IMPLIKASI KEWANGAN

Rang Undang-Undang ini tidak akan melibatkan Kerajaan dalam apa-apa perbelanjaan wang tambahan.

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