



**Majlis Peguam
Bar Council Malaysia**

www.malaysianbar.org.my

15 Leboh Pasar Besar
50050 Kuala Lumpur, Malaysia
Tel : +603-2050 2050
Fax : +603-2026 1313, 2034 2825, 2072 5818
Email : council@malaysianbar.org.my

**Circular No 067/2018
Dated 9 Mar 2018**

To Members of the Malaysian Bar

**Amendments to Rules of Court 2012, Rules of the Court of Appeal 1994,
and Rules of the Federal Court 1995**

Please be informed of the following Rules, which came into operation on **1 Mar 2018** (**Thursday**):

- (1) Rules of Court (Amendment) 2018 [P.U. (A) 24/2018], which amend the Rules of Court 2012 [P.U. (A) 205/2012];
- (2) Rules of the Court of Appeal (Amendment) 2018 [P.U. (A) 26/2018], which amend the Rules of the Court of Appeal 1994 [P.U. (A) 524/1994]; and
- (3) Rules of the Federal Court (Amendment) 2018 [P.U. (A) 25/2018], which amend the Rules of the Federal Court 1995 [P.U. (A) 376/1995].

Copies of P.U. (A) 24/2018, P.U. (A) 26/2018, and P.U. (A) 25/2018 are attached for your reference.

Thank you.

**Roger Chan Weng Keng
Secretary
Malaysian Bar**



RAISING THE BAR
Innovate • Integrate • Emulate
imlc2018@malaysianbar.org.my

INTERNATIONAL MALAYSIA LAW CONFERENCE 2018
14-17 August 2018 | The Kuala Lumpur Convention Centre, Kuala Lumpur





7 Februari 2018
7 February 2018
P.U. (A) 24

WARTA KERAJAAN PERSEKUTUAN

FEDERAL GOVERNMENT GAZETTE

KAEDAH-KAEDAH MAHKAMAH (PINDAAN) 2018

RULES OF COURT (AMENDMENT) 2018

DISIARKAN OLEH/
PUBLISHED BY
JABATAN PEGUAM NEGARA/
ATTORNEY GENERAL'S CHAMBERS

AKTA MAHKAMAH KEHAKIMAN 1964

AKTA KAEDEH-KAEDEH MAHKAMAH RENDAH 1955

KAEDAH-KAEDEH MAHKAMAH (PINDAAN) 2018

PADA menjalankan kuasa yang diberikan oleh seksyen 17 Akta Mahkamah Kehakiman 1964 [Akta 91] dan seksyen 4 Akta Kaedah-Kaedah Mahkamah Rendah 1955 [Akta 55], dan dengan persetujuan Hakim Besar Mahkamah Tinggi di Malaya dan Hakim Besar Mahkamah Tinggi di Sabah dan Sarawak, Jawatankuasa Kaedah-Kaedah dan Jawatankuasa Kaedah-Kaedah Mahkamah Rendah membuat kaedah-kaedah yang berikut:

Nama dan permulaan kuat kuasa

1. (1) Kaedah-kaedah ini bolehlah dinamakan **Kaedah-Kaedah Mahkamah (Pindaan) 2018.**

(2) Kaedah-Kaedah ini mula berkuat kuasa pada 1 Mac 2018.

Pindaan Aturan 15

2. Kaedah-Kaedah Mahkamah 2012 [P.U. (A) 205/2012], yang disebut “Kaedah-Kaedah ibu” dalam Kaedah-Kaedah ini, dipinda dalam Aturan 15 dengan memasukkan selepas kaedah 17 kaedah yang berikut:

“Petisyen untuk membawa guaman, membela atau meneruskan tindakan sebagai seorang orang papa (A.15, k. 18)

18. (1) Mana-mana orang miskin, sebelum memulakan atau membela apa-apa tindakan atau membawa apa-apa prosiding lain di dalam Mahkamah menurut haknya sendiri, atau menjadi miskin semasa berlangsungnya tindakan atau prosiding itu, boleh memohon kepada Mahkamah atau Hakim melalui saman pemula untuk mendapatkan kebenaran membawa guaman, membela atau meneruskan tindakan sebagai seorang orang papa.

(2) Permohonan itu hendaklah menyatakan dengan sepenuhnya semua fakta material kes itu dan hendaklah menyatakan bahawa pemohon itu tidak mempunyai harta (tidak termasuk pakaian dan hal perkara prosiding itu) yang bernilai melebihi satu ribu ringgit, dan hendaklah ditentusahkan oleh pemohon atas sumpah.

(3) Hakim hendaklah menjalankan apa-apa siasatan yang difikirkannya wajar tentang mata pencarian pemohon dan boleh menghendakinya hadir untuk menjawab soalan atas sumpah atau ikrar.

(4) Suatu salinan permohonan itu hendaklah disampaikan kepada pihak lain dalam tindakan atau prosiding itu, atau kepada bakal pihak lawan dalam tindakan atau prosiding yang dirancangkan itu, mengikut mana-mana yang berkenaan, dan dia hendaklah berhak didengar mengenainya.

(5) Jika berpuas hati bahawa mata pencarian pemohon adalah seperti yang dikatakan dalam permohonan itu, Mahkamah atau Hakim boleh merujukkan permohonan itu kepada seorang peguam yang hendaklah membuat suatu laporan bertulis, yang dialamatkan kepada Hakim, menyatakan sama ada pada pendapatnya pemohon mempunyai kausa tindakan yang baik atau pembelaan yang baik, mengikut mana-mana yang berkenaan.

(6) Setelah menerima laporan itu, Mahkamah atau Hakim boleh membenarkan pemohon (kemudian daripada ini disebut "orang papa") membawa guaman atau membela, mengikut mana-mana yang berkenaan, sebagai seorang orang papa dan selepas itu hendaklah melantik seorang peguam (selepas ini disebut "pegawai orang papa") untuk mewakili orang papa itu.

(7) Peguam orang papa tidak boleh menolak untuk bertindak melainkan dia memuaskan hati Mahkamah atau Hakim bahawa dia mempunyai sebab yang baik untuk menolaknya.

Tiada fi Mahkamah boleh dikenakan (A.15, k. 19)

19. (1) Tiada fi Mahkamah boleh dikenakan berkenaan dengan apa-apa permohonan di bawah kaedah 18, dan juga, kecuali sebagaimana yang diperuntukkan selepas ini, seorang orang papa tidak boleh dikenakan apa-apa fi Mahkamah.

(2) Apabila kos telah diawardkan supaya dibayar kepada orang papa, fi Mahkamah yang tetap kena dibayar olehnya jika dia bukan seorang orang papa hendaklah menjadi gadaian pertama atas apa-apa jumlah wang yang didapatinya dalam tindakan itu.

(3) Apabila apa-apa jumlah wang telah didapatkan kembali olehnya dan tidak digunakan untuk membayar apa-apa fi Mahkamah seperti yang disebut terdahulu, Hakim boleh menolak untuk membenarkan apa-apa prosiding selanjutnya diambil bagi pihak orang papa dalam tindakan itu sehingga jumlah wang yang didapatkan kembali telah digunakan untuk membayar fi itu.

Peguam orang papa tidak boleh mengambil fi (A.15, k. 20)

20. (1) Tertakluk kepada peruntukan kaedah 23 dan 24 Aturan ini, peguam orang papa tidaklah boleh mengambil atau bersetuju mengambil atau berusaha untuk mendapatkan daripada orang papa itu apa-apa fi, keuntungan atau hadiah kerana perjalanan prosiding dalam kausa atau perkara itu.

(2) Jika ternyata kepada Mahkamah atau Hakim bahawa mana-mana orang papa telah memberikan atau bersetuju untuk memberikan apa-apa fi, keuntungan atau hadiah, dia hendaklah dengan serta-merta hilang hak sebagai seorang orang papa dan tidak boleh selepas itu dibenarkan membawa guaman atau membela sebagai seorang orang papa dalam kausa atau perkara yang sama.

Kebenaran Mahkamah atau Hakim memberhentikan, menyelesaikan atau berkompromikan prosiding (A.15, k. 21)

21. (1) Tiada seorang pun orang papa dan tiada seorang pun peguam orang papa dalam mana-mana prosiding boleh memberhentikan, menyelesaikan atau berkompromi dalam prosiding itu tanpa kebenaran Mahkamah atau Hakim.

(2) Tiada seorang pun orang papa boleh melepaskan peguamnya tanpa kebenaran Mahkamah atau Hakim.

(3) Tiada seorang pun peguam orang papa boleh dengan bebas memberhentikan khidmatnya melainkan jika dia memuaskan hati Mahkamah atau Hakim bahawa dia mempunyai sebab yang munasabah untuk memberhentikan khidmatnya yang sedemikian itu.

Saman pemula hendaklah ditandatangani oleh peguam (A.15, k. 22)

22. Tiap-tiap permohonan bagi pihak seorang orang papa (kecuali permohonan untuk melepaskan peguamnya) hendaklah ditandatangani oleh peguamnya.

Kos (A.15, k. 23)

23. (1) Melainkan jika diperintahkan selainnya oleh Mahkamah atau Hakim, tiada seorang pun orang papa boleh bertanggungan membayar kos kepada mana-mana pihak yang lain, atau berhak menerima daripada mana-mana pihak yang lain, apa-apa kos untung atau caj, dan jika kos diperintahkan supaya dibayar kepada seorang orang papa kos itu hendaklah ditetapkan, dan atas penetapan itu Hakim boleh membenarkan apa-apa perbelanjaan hangus (tetapi bukannya perbelanjaan pejabat) yang dilakukan dengan sepatutnya semasa berlangsungnya prosiding.

(2) Jika ternyata kepada Mahkamah atau Hakim bahawa hal keadaan khas kes itu menghendakinya, Mahkamah atau Hakim boleh memerintahkan bahawa kos itu hendaklah termasuk kos untung dan caj, tetapi bukannya fi kepada peguam.

Fi peguam daripada apa-apa wang yang diterima oleh orang papa (A.15, k. 24)

24. Mahkamah atau Hakim boleh memerintahkan pembayaran kepada peguam orang papa, daripada apa-apa wang yang diterima oleh orang papa dalam kausa itu, atau boleh mengenakan caj bagi faedah peguam orang papa mana-mana harta yang didapatkan kembali oleh orang papa, sekian banyak atau sebanyak jumlah sedemikian berkenaan dengan kos itu (tidak termasuk fi bagi peguam) yang akan dibenar diberikan kepada peguam orang papa selepas penetapan antara dirinya dengan kliennya sekiranya dia telah dikekalkan oleh kliennya mengikut cara biasa (dengan ditolak apa-apa amaun yang boleh didapatkan kembali daripada mana-mana pihak lain) atau apa-apa jumlah wang lain berkenaan dengan kos yang difikirkan patut oleh Mahkamah atau Hakim, dengan syarat bahawa jumlah amaun yang hendak dibayar sedemikian untuk kos untung, atau dikenakan caj sedemikian ke atas harta itu untuk kos untung, tidaklah boleh dalam salah satu kes itu melebihi satu perempat daripada amaun atau nilai yang didapatkan kembali dan berbaki selepas ditolak semua pembelanjaan yang wajar yang telah dibuat oleh peguam orang papa.

Rayuan sebagai seorang orang papa (A.15, k. 25)

25. Kaedah-kaedah terdahulu daripada ini yang berhubungan dengan orang papa hendaklah terpakai bagi orang yang, tidak membawa guaman atau membela sebagai seorang orang papa dalam Mahkamah mula-mula sekali, berhasrat hendak merayu sebagai seorang orang papa kepada Mahkamah yang dirayu itu, dan kepada orang papa yang menjadi responden dalam mana-mana rayuan, tetapi tiada seorang pun yang telah dibenarkan membawa guaman atau membela sebagai seorang orang papa dalam mana-mana prosiding boleh dibenarkan merayu sebagai seorang orang papa kepada Mahkamah yang dirayu itu tanpa kebenaran Mahkamah yang dirayu itu, dan dalam hal dia dibenarkan sedemikian, dia tidaklah dikehendaki memberikan jaminan bagi kos rayuan itu.

Pelucutan keistimewaan sebagai seorang orang papa (A.15, k. 26)

26. (1) Mana-mana orang yang dibenarkan di bawah Kaedah-Kaedah ini untuk membawa guaman atau membela sebagai seorang orang papa dalam

mana-mana Mahkamah boleh atas apa-apa sebab yang mencukupi dilucutkan segala keistimewaan daripada kebenaran itu oleh Mahkamah yang dihadapannya prosiding itu belum selesai lagi.

(2) Apa-apa perintah sedemikian boleh dibuat atas usul Mahkamah sendiri atau atas permohonan oleh pihak lain dalam prosiding itu.”.

Aturan 31A baharu

3. Kaedah-Kaedah ibu dipinda dengan memasukkan selepas Aturan 31 Aturan yang berikut:

“Aturan 31A SISTEM e-LELONG

Takrifan (A. 31A, k. 1)

1. Dalam Aturan ini—

“kod pengesahan” ertinya apa-apa kod pengenalan atau kenal pasti, kata laluan atau apa-apa cara atau tatacara pengesahan lain yang diberikan oleh Pendaftar bagi maksud mengenal pasti dan mengesahkan akses kepada dan pengguna Sistem e-Lelong;

“nama pengenalan” ertinya nama pengenalan yang diberikan oleh Pendaftar menurut subkaedah 5(1);

“pengguna berdaftar” ertinya mana-mana orang atau entiti yang didaftarkan oleh Pendaftar untuk mendapatkan akses kepada dan menggunakan Sistem e-Lelong menurut kaedah 4;

“Pusat Operasi e-Lelong” ertinya Unit Pentadbir Sistem yang diketuai oleh Pendaftar yang diberikan kuasa yang diwujudkan menurut kaedah 3 bagi maksud pentadbiran Sistem e-Lelong;

“Sistem e-Lelong” ertiinya suatu sistem lelongan awam berpusat secara elektronik bagi jualan harta tak alih yang diwujudkan menurut kaedah 2.

Pewujudan Sistem e-Lelong (A. 31A, k.2)

2. Pendaftar boleh, dengan kelulusan Ketua Hakim Negara, mewujudkan suatu sistem lelongan awam berpusat secara elektronik yang dikenali sebagai Sistem e-Lelong bagi jualan harta tak alih dan bagi perkara yang berkaitan dengannya.

Pewujudan Pusat Operasi e-Lelong (A. 31A, k.3)

3. Suatu pusat operasi bagi jualan harta tak alih yang dikenali sebagai Pusat Operasi e-Lelong diwujudkan.

Pengguna Berdaftar (A.31A, k.4)

4. (1) Mana-mana orang atau entiti boleh memohon kepada Pendaftar untuk menjadi pengguna berdaftar mengikut apa-apa tatacara dan atas pembayaran apa-apa fi sebagaimana yang ditetapkan dalam apa-apa arahan amalan yang dikeluarkan oleh Pendaftar.

(2) Permohonan untuk menjadi pengguna berdaftar adalah tertakluk kepada terma dan syarat serta apa-apa sekatan yang berkaitan dengan Sistem e-Lelong.

Kod Pengesahan (A.31A, k.5)

5. (1) Sebelum menggunakan Sistem e-Lelong, pengguna berdaftar hendaklah memohon kepada Pendaftar untuk nama pengenalan dan kod pengesahan yang diberikan kepadanya.

(2) Pengguna berdaftar hendaklah mendaftarkan butir-butirnya dengan Pendaftar dan mengakui secara bertulis penerimaan selamat nama pengenalan dan kod pengesahan yang diberikan kepadanya oleh Pendaftar.

(3) Pengguna berdaftar hendaklah memaklumkan Pendaftar secara bertulis tentang apa-apa perubahan dalam butir-butirnya.

Keselamatan kod pengesahan (A.31A, k.6)

6. Pengguna Berdaftar hendaklah memastikan kerahsiaan dan keselamatan kod pengesahannya dan tidak boleh—

- (a) mendedahkan kod pengesahannya kepada mana-mana orang lain; atau
- (b) membenarkan mana-mana orang lain untuk menggunakan kod pengesahannya.

Sistem e-Lelong (A.31A, k.7)

7. (1) Jika dalam apa-apa kausa atau perkara yang berhubungan dengan apa-apa harta tak alih yang ternyata perlu atau suai manfaat bagi maksud kausa atau perkara harta tak alih atau mana-mana bahagiannya yang patut dijual, Mahkamah boleh memerintahkan agar jualan hendaklah melalui Sistem e-Lelong.

(2) Mana-mana pihak yang terikat dengan perintah Mahkamah di bawah subkaedah (1) dan harta tak alih atau sebahagian daripada harta tak alih itu dalam milikannya, atau dalam menerima sewa dan keuntungannya, boleh dipaksa untuk menyerahkan milikan itu atau penerimaan kepada pembeli atau kepada mana-mana orang lain sebagaimana yang diperintahkan oleh Mahkamah.

(3) Jika perintah Mahkamah dibuat, sama ada di dalam Mahkamah atau di dalam Kamar, memerintahkan mana-mana harta tak alih dijual, Mahkamah boleh memerintahkan harta tak alih itu dijual dalam apa-apa cara sebagaimana yang boleh diperintahkan atau diarahkan kemudiannya oleh Mahkamah bagi harga terbaik yang boleh didapatkan, dan semua pihak yang patut hendaklah menyertai dalam penjualan dan pemindahhakan sebagaimana yang diperintahkan atau diarahkan oleh Mahkamah.

(4) Tanpa menjelaskan keluasan perkataan jualan harta tak alih melalui Sistem e-Lelong, Mahkamah boleh memberikan apa-apa perintah atau arahan sebagaimana yang difikirkannya patut untuk melaksanakan jualan itu, termasuk—

- (a) menetapkan cara jualan;
- (b) menetapkan harga rizab atau harga minimum;
- (c) menghendaki pembayaran wang belian ke dalam Mahkamah atau kepada pemegang amanah atau orang lain;
- (d) menyelesaikan butir-butir dan syarat jualan;
- (e) mendapatkan keterangan tentang nilai harta; dan
- (f) menghendaki hakmilik yang dirujuk kepada peguam untuk pendapatnya mengenai hakmilik itu dan menyelesaikan butir-butir dan syarat jualan.

(5) Melainkan jika Pendaftar mengarahkan selainnya, semua jualan hendaklah dibuat melalui Sistem e-Lelong antara jam 9.00 pagi hingga 4.00 petang dan suatu notis mengenai hari, waktu dan tempat bagi apa-apa jualan yang diniatkan hendaklah tujuh hari sebelum jualan—

- (a) dimuat naik ke laman sesawang e-Lelong; dan
- (b) diiklankan sekali dalam surat khabar tempatan dan setakat yang praktik di lokasi harta yang diniatkan untuk dijual.

(6) Bentuk atau format apa-apa dokumen tertentu yang berkaitan dengan Sistem e-Lelong hendaklah sebagaimana yang ditetapkan dalam arahan amalan yang dikeluarkan oleh Pendaftar, dan dalam ketiadaan apa-apa

preskripsi itu hendaklah dalam borang yang ditetapkan dalam Aturan 1, kaedah 7.

Fi pelaksanaan (A.31, k.8)

8. Plaintiff hendaklah membayar fi pelaksanaan bersamaan dengan tiga peratus daripada harga rizab harta tak alih itu atau pada kadar tertentu sebagaimana yang boleh ditentukan oleh Ketua Hakim Negara dari semasa ke semasa.”.

Pindaan Aturan 55 Kaedah 3

4. Aturan 55 Kaedah-Kaedah ibu dipinda dalam kaedah 3 dengan memotong subkaedah (3).

Aturan baharu 69A

5. Kaedah-Kaedah ini dipinda dengan memasukkan selepas Aturan 69 Aturan yang berikut:

“Aturan 69A

PROSIDING ADJUDIKASI

Tafsiran (A.69A, k. 1)

1. (1) Dalam Aturan ini, “Akta” erti Akta Pembayaran dan Adjudikasi Industri Pembinaan 2012 [Akta 746].

(2) Ungkapan yang digunakan dalam Aturan ini yang digunakan dalam Akta mempunyai erti yang sama dalam Aturan sebagaimana dalam Akta.

(3) Aturan ini terpakai bagi prosiding di Mahkamah Tinggi.

Permohonan di bawah Akta (A.69A, k.2)

2. (1) Suatu permohonan yang Aturan ini terpakai boleh dibuat melalui saman pemula dalam Borang 5 yang hendaklah—

- (a) menyatakan dalam huraiannya mana-mana peruntukan Kaedah-Kaedah ini dan mana-mana peruntukan Akta di bawah mana Mahkamah sedang usulkan;
 - (b) termasuk suatu pernyataan ringkas yang lengkap bagi—
 - (i) remedi yang dituntut; dan
 - (ii) apa-apa persoalan yang pemohon meminta keputusan Mahkamah;
 - (c) menyatakan alasan yang menyokong saman pemula;
 - (d) menunjukkan bahawa apa-apa keperluan statutori telah dipenuhi;
 - (e) menyatakan seksyen dalam Akta yang di bawahnya permohonan itu dibuat;
 - (f) menyatakan responden yang kepadanya saman pemula itu hendak disampaikan, menyatakan peranan mereka dalam adjudikasi; dan
 - (g) mengenal pasti terhadap mana-mana, jika ada, responden bagi suatu perintah untuk kos yang dipohon.
- (2) Pemohon hendaklah memfailkan melalui afidavit, keterangan bertulis yang di atasnya dia bercadang untuk bergantung kepada apabila dia memfailkan saman pemulanya.

(3) Melainkan jika Mahkamah memerintahkan selainnya, suatu saman pemula dan afidavit hendaklah disampaikan kepada responden yang dinyatakan dalam subperenggan (1)(f), dalam masa tiga puluh hari dari tarikh dikeluarkan.

(4) Jika berkaitan, kaedah 3 hingga 5 hendaklah juga terpakai.

Permohonan untuk mengetepikan keputusan adjudikasi (A. 69A, k. 3)

3. (1) Dalam tiap-tiap permohonan untuk mengetepikan suatu keputusan adjudikasi di bawah seksyen 15 Akta, saman pemula hendaklah, sebagai tambahan kepada perkara yang dinyatakan dalam subkaedah 2(1)—

(a) memberikan butir-butir keputusan adjudikasi yang dicabar;

(b) mengenal pasti bahagian atau bahagian-bahagian keputusan adjudikasi yang dicabar; dan

(c) menyatakan alasan kepada perkara yang dipertikaikan bahawa keputusan adjudikasi itu perlu diketepikan.

(2) Pemohon hendaklah memfailkan melalui afidavit, keterangan bertulis yang dia bercadang hendak bergantung apabila dia memfailkan saman pemulanya, termasuk sesalinan keputusan adjudikasi.

(3) Saman pemula dan afidavit hendaklah disampaikan kepada responden dan notis hendaklah diberi kepada Pengarah KLRCA dan adjudikator di bawah kaedah 7.

(4) Suatu permohonan untuk mengetepikan keputusan adjudikasi hendaklah difailkan dalam Mahkamah sebelum permohonan bagi penguatkuasaan keputusan adjudikasi di bawah kaedah 5 telah selepas dilupuskan oleh Mahkamah Tinggi.

Permohonan bagi penggantungan keputusan adjudikasi (A.69A, k. 4)

4. (1) Suatu permohonan bagi penggantungan keputusan adjudikasi di bawah seksyen 16 Akta hendaklah disokong oleh suatu afidavit yang hendaklah—

- (a) mengekhibitkan kepadanya sesalinan keputusan adjudikasi dan apa-apa dokumen lain yang kepadanya pemohon bergantung;
- (b) menunjukkan bahawa suatu permohonan untuk mengetepikan keputusan adjudikasi di bawah seksyen 15 telah dibuat atau hal perkara keputusan adjudikasi sedang menunggu penentuan oleh timbang tara atau Mahkamah;
- (c) menyatakan alasan di mana ia menegaskan bahawa keputusan adjudikasi hendaklah digantung; dan
- (d) menyatakan keterangan yang kepadanya pemohon bergantung.

(2) Suatu permohonan yang kaedah ini terpakai adalah—

- (a) jika suatu tindakan di bawah kaedah 3 belum selesai, melalui notis permohonan; dan
- (b) bagi mana-mana kes lain, melalui saman pemula.

Permohonan untuk menguatkuasakan keputusan adjudikasi (A.69A, k. 5)

5. (1) Suatu permohonan untuk menguatkuasakan keputusan adjudikasi, sama ada sepenuhnya atau sebahagiannya, dengan cara yang sama sebagaimana suatu penghakiman atau perintah oleh Mahkamah Tinggi di bawah seksyen 28 Akta boleh dibuat melalui saman pemula dalam Borang 5.

(2) Saman pemula hendaklah, sebagai tambahan kepada perkara yang dinyatakan dalam subkaedah 2(1)—

(a) menyatakan nama dan tempat perniagaan yang biasa atau tempat perniagaan terakhir yang diketahui bagi pemohon dan responden terhadap siapa ia hendak menguatkuasakan keputusan adjudikasi, masing-masing; dan

(b) menyatakan sama ada keputusan adjudikasi itu masih belum dipatuhi atau setakat mana ia masih belum dipatuhi pada tarikh permohonan.

(3) Pemohon hendaklah memfailkan melalui afidavit, keterangan bertulis yang dia bercadang untuk bergantung apabila dia memfailkan saman pemulanya, termasuk mengekhibitkan keputusan adjudikasi yang asal atau salinan yang telah diakui sah dan sekiranya keputusan adjudikasi adalah dalam bahasa selain daripada bahasa kebangsaan atau bahasa Inggeris, suatu terjemahannya dalam bahasa Inggeris, yang diperakui sebagai suatu terjemahan yang betul oleh penterjemah bersumpah.

(4) Saman pemula dan afidavit hendaklah disampaikan kepada responden.

Penyampaian di luar bidang kuasa (A.69A, k. 6)

6. (1) Mahkamah boleh memberikan kebenaran untuk menyampaikan suatu saman pemula di luar bidang kuasa berkenaan apa-apa permohonan yang dibuat di bawah Akta.

(2) Suatu permohonan untuk mendapatkan kebenaran di bawah subkaedah (1) hendaklah disokong dengan keterangan bertulis—

(a) menyatakan alasan permohonan itu dibuat; dan

(b) menyatakan tempat atau negara mana orang yang hendak disampaikan itu dapat dijumpai atau mungkin boleh dijumpai.

(3) Aturan 11, kaedah 5, 6 dan 8 hendaklah terpakai berhubung dengan penyampaian bagi saman pemula di luar bidang kuasa yang dibuat di bawah Akta, atau apa-apa perintah yang dibuat dalam permohonan itu.

Notis (A.69A, k. 7)

7. Jika notis hendak diberi kepada seorang adjudikator atau Pengarah KLRCA, notis itu boleh diberikan dengan menghantar kepadanya sesalinan—

(a) saman pemula; dan

(b) apa-apa afidavit atau keterangan bertulis sokongan.”.

Penggantian Lampiran C

6. Kaedah-Kaedah ibu dipinda dengan menggantikan Lampiran C dengan lampiran yang berikut:

“LAMPIRAN C
SENARAI UNDANG-UNDANG YANG DIKECUALIKAN

(1) No.	(2) Prosiding	(3) <i>Undang-Undang bertulis</i>
1.	Prosiding kebankrapan	Akta Insolvensi 1967 [Akta 360]
2.	Prosiding yang berhubungan dengan penggulungan syarikat dan pengurangan modal	Akta Syarikat 2016 [Akta 777]
3.	Prosiding jenayah	Kanun Tatacara Jenayah [Akta 593]

(1) No.	(2) <i>Prosiding</i>	(3) <i>Undang-Undang bertulis</i>
4.	Prosiding di bawah Akta Kesalahan Pilihan Raya 1954	Akta Kesalahan Pilihan Raya 1954 [Akta 5]
5.	Prosiding hal ehwal suami isteri	Akta Membaharui Undang-Undang (Perkahwinan dan Perceraian) 1976 [Akta 164]
6.	Rujukan tanah	Akta Pengambilan Tanah 1960 [Akta 486]
7.	Penerimaan masuk ke Bar	Akta Profesional Undang-Undang 1976 [Akta 166] Ordinan Peguam Bela Sabah [Sabah Bab. 2] Ordinan Peguam Bela Sarawak [Sarawak Bab. 110]
8.	Prosiding di bawah Akta Cukai Pendapatan 1967	Akta Cukai Pendapatan 1967 [Akta 53]
9.	Prosiding di bawah Ordinan Pemegang Amanah (Perbadanan) 1951 Sabah	Ordinan Pemegang Amanah (Perbadanan) 1951 Sabah [Bab. 148]
10.	Prosiding di bawah Ordinan Probet dan Pentadbiran 1947 Sabah	Ordinan Probet dan Pentadbiran 1947 Sabah [Bab. 109]
11.	Prosiding di bawah Akta Cukai Keuntungan Harta Tanah 1976	Akta Cukai Keuntungan Harta Tanah 1976 [Akta 169]
12.	Prosiding di bawah Akta Petroleum (Cukai Pendapatan) 1967	Akta Petroleum (Cukai Pendapatan) 1967 [Akta 543]
13.	Prosiding di bawah Akta Institusi Kewangan Pembangunan 2002	Akta Institusi Kewangan Pembangunan 2002 [Akta 618]
14.	Prosiding di bawah Akta Syarikat Amanah 1949	Akta Syarikat Amanah 1949 [Akta 100]
15.	Prosiding di bawah Akta (Larangan) Kumpulan Wang Kutu 1971	Akta (Larangan) Kumpulan Wang Kutu 1971 [Akta 28]

Dibuat 7 Februari 2018
[PKPMP.BD/100-1/4/5; PN(PU2)119/III]

Jawatankuasa Kaedah-Kaedah:

TUN MD RAUS BIN SHARIF
Ketua Hakim Negara, Malaysia

TAN SRI DATO' SERI ZULKEFLI BIN AHMAD MAKINUDIN
Presiden Mahkamah Rayuan, Malaysia

TAN SRI DATUK WIRA AHMAD BIN HJ. MAAROP
Hakim Besar Mahkamah Tinggi di Malaya

TAN SRI DATUK SERI PANGLIMA RICHARD MALANJUM
Hakim Besar Mahkamah Tinggi di Sabah dan Sarawak

TAN SRI DATO' SRI HAJI MOHAMED APANDI BIN ALI
Peguam Negara, Malaysia

TAN SRI ZAHARAH BINTI IBRAHIM
Hakim Mahkamah Persekutuan

DATO' SETIA HAJI MOHD ZAWAWI BIN SALLEH
Hakim Mahkamah Rayuan

DATUK HAJAH AZIZAH BINTI HJ. NAWAWI
Hakim Mahkamah Tinggi di Malaya

TUAN RAVINTHRAN N.PARAMAGU
Hakim Mahkamah Tinggi di Sabah dan Sarawak

TUAN AHMAD KAMAR BIN JAMALUDIN
Hakim Kanan Mahkamah Sesyen, Kuala Lumpur

ENCIK GEORGE VARUGHESE
Peguam bela, Semenanjung Malaysia

ENCIK BRENNDON KEITH SOH
Peguam bela, Sabah

ENCIK RANBIR SINGH SANGHA
Peguam bela, Sarawak

Jawatankuasa Kaedah-Kaedah Mahkamah Rendah:

TUN MD RAUS BIN SHARIF
Ketua Hakim Negara, Malaysia

TAN SRI DATO' SERI ZULKEFLI BIN AHMAD MAKINUDIN
Presiden Mahkamah Rayuan, Malaysia

TAN SRI DATUK WIRA AHMAD BIN HJ. MAAROP
Hakim Besar Mahkamah Tinggi di Malaya

TAN SRI DATUK SERI PANGLIMA RICHARD MALANJUM
Hakim Besar Mahkamah Tinggi di Sabah dan Sarawak

TAN SRI DATO' SERI HAJI MOHAMED APANDI BIN ALI
Peguam Negara, Malaysia

TAN SRI ZAHARAH BINTI IBRAHIM
Hakim Mahkamah Persekutuan

DATO' SETIA HAJI MOHD ZAWAWI BIN SALLEH
Hakim Mahkamah Rayuan

DATUK HAJAH AZIZAH BINTI HJ. NAWAWI
Hakim Mahkamah Tinggi di Malaya

TUAN RAVINTHRAN N. PARAMAGU
Hakim Mahkamah Tinggi di Sabah dan Sarawak

TUAN AHMAD KAMAR BIN JAMALUDIN
Hakim Kanan Mahkamah Sesyen, Kuala Lumpur

ENCIK GEORGE VARUGHESE
Peguam bela, Semenanjung Malaysia

ENCIK BRENNDON KEITH SOH
Peguam bela, Sabah

ENCIK RANBIR SINGH SANGHA
Peguam bela, Sarawak

[*Akan dibentangkan di Dewan Rakyat menurut subseksyen 17(5) Akta Mahkamah Kehakiman 1964 dan seksyen 8 Akta Kaedah-Kaedah Mahkamah Rendah 1955*]

COURTS OF JUDICATURE ACT 1964

SUBORDINATE COURTS RULES ACT 1955

RULES OF COURT (AMENDMENT) 2018

IN exercise of the powers conferred by section 17 of the Courts of Judicature Act 1964 [Act 91] and section 4 of the Subordinate Courts Rules Act 1955 [Act 55], and with the consent of the Chief Judge of the High Court in Malaya and the Chief Judge of the High Court in Sabah and Sarawak, the Rules Committee and the Subordinate Courts Rules Committee make the following rules:

Citation and commencement

1. (1) These rules may be cited as the **Rules of Court (Amendment) 2018**.

- (2) These Rules come into operation on 1 March 2018.

Amendment of Order 15

2. The Rules of Court 2012 [P.U. (A) 205/2012], which are referred to as the “principal Rules” in these Rules, is amended in Order 15 by inserting after rule 17 the following rule:

“Petition to sue, defend or proceed as a pauper (O. 15, r. 18)

18. (1) Any poor person, before commencing or defending any action or instituting any other proceeding in the Court in his own right, or becoming poor during the progress thereof, may apply to the Court or a Judge by originating summons for leave to sue, defend or proceed as a pauper.

- (2) The application shall set forth fully all the material facts of the case and shall state that the applicant is not possessed of property (excluding wearing apparel and the subject matter of the proceedings) exceeding one thousand ringgit in value, and shall be verified by the oath of the applicant.

(3) The Judge shall make such enquiry as he may think proper as to the means of the applicant and may require him to attend to answer questions on oath or affirmation.

(4) A copy of the application shall be served on the other party to the action or proceeding, or on the intended opposite party to the projected action or proceeding, as the case may be, and he shall be entitled to be heard thereon.

(5) If satisfied that the applicant's means are as alleged in the application, the Court or a Judge may refer the application to a solicitor who shall make a report in writing, addressed to the Judge, stating whether in his opinion the applicant has a good cause of action or a good defence, as the case may be.

(6) On receipt of such report, the Court or a Judge may admit the petitioner applicant (hereinafter called the "pauper") to sue or defend, as the case may be, as a pauper and shall thereupon appoint a solicitor (hereinafter called the "pauper's solicitor") to represent such pauper.

(7) A pauper's solicitor shall not refuse to act unless he satisfies the Court or a Judge that he has good reason for refusal.

No Court fees to be charged (O. 15, r. 19)

19. (1) No Court fees shall be charged in respect of any application under rule 18, nor, except as is hereinafter provided, shall any pauper be liable for any Court fees.

(2) When costs have been awarded to be paid to a pauper, the fees of the Court which would have been payable by him if not a pauper shall be a first charge upon any sums recovered by him in the action.

(3) When any sum has been recovered by him and not applied in payment of such fees of Court as aforesaid, the Judge may refuse to allow any

further proceedings on behalf of such pauper to be taken in such action until the sum recovered has been applied in payment of such fees.

Pauper's solicitor not to take fees (O. 15, r. 20)

20. (1) Subject to the provisions of rules 23 and 24 of this Order, a pauper's solicitor shall not take or agree to take or seek to obtain from the pauper any fee, profit or reward for the conduct of the proceedings in the cause or matter.

(2) If it appears to the Court or a Judge that any pauper has given or agreed to give any such fee, profit or reward, he shall be forthwith dispaupered and shall not afterwards be admitted to sue or defend as a pauper in the same cause or matter.

Leave of Court or Judge to discontinue, settle or compromise proceeding (O. 15, r. 21)

21. (1) No pauper and no pauper's solicitor in any proceedings shall discontinue, settle or compromise such proceedings without the leave of the Court or a Judge.

(2) No pauper shall discharge his solicitor without the leave of the Court or a Judge.

(3) No pauper's solicitor shall be at liberty to discontinue his services unless he satisfies the Court or a Judge that he has reasonable grounds for so discontinuing.

Originating summons to be signed by solicitor (O. 15, r. 22)

22. Every application on behalf of a pauper (except an application for the discharge of his solicitor) shall be signed by his solicitor.

Costs (O. 15, r. 23)

23. (1) Unless the Court or a Judge shall otherwise order, no pauper shall be liable to pay costs to any other party, or be entitled to receive from any other party any profit costs or charges, and where costs are ordered to be paid to a pauper they shall be taxed, and on such taxation the Judge may allow any out-of-pocket expenses (but not office expenses) properly incurred in the course of the proceedings.

(2) Where it appears to the Court or a Judge that the special circumstances of the case require it, the Court or a Judge may order that such costs shall include profit costs and charges, but not fees to counsel.

Solicitor's fees out of any money received by pauper (O. 15, r. 24)

24. The Court or a Judge may order payment to the pauper's solicitor, out of any money received by the pauper in the cause, or may charge in favour of the pauper's solicitor any property so recovered by a pauper, of or with such sum in respect of costs (not including fees of counsel) as would have been allowed to the pauper's solicitor on taxation between himself and his client if he had been retained by his client in the ordinary manner (less such amount as may be recovered from any other party) or such other sum in respect of costs as to the Court or a Judge may seem fit, provided that the total amount so to be paid out for profit costs, or so charged upon the said property for profit costs, shall not in either case exceed one fourth of the amount or value recovered and remaining after the deduction of all proper disbursements made by the pauper's solicitor.

Appeal as a pauper (O. 15, r. 25)

25. The preceding rules relating to paupers shall apply to persons who, not having sued or defended as paupers in a Court of first instance, desire to appeal as paupers to the appellate Court, and to paupers who are respondents to any appeal, but no person who has been admitted to sue or defend as a pauper in any proceedings shall be admitted to appeal as a pauper to the appellate Court without the leave of a appellate Court, and in case of his being so admitted, he shall not be required to give security for costs of the appeal.

Deprivation of privilege as a pauper (O. 15, r. 26)

26. (1) Any person admitted under these Rules to sue or defend as a pauper in any Court may for any sufficient reason be deprived by the Court before whom the proceedings are pending of all the privileges of such admission.

(2) Any such order may be made of the Court's own motion or on application by another party to the proceedings.”.

New Order 31A

3. The principal Rules are amended by inserting after Order 31 the following Order:

“Order 31A

e-LELONG SYSTEM

Definition (O. 31A, r. 1)

1. In this Order—

“authentication code” means any identification or identifying code, password or any other authentication method or procedure which has been assigned by the Registrar for the purpose of identifying and authenticating the access to, and use of the e-Lelong System;

“identification name” means the identification name assigned by the Registrar pursuant to subrule 5(1);

“registered user” means any person or entity who has been registered by the Registrar to gain access to and to use the e-Lelong System pursuant to rule 4;

“e-Lelong Operation Centre” means a System Administrator Unit headed by the Registrar authorized to be established in pursuance of rule 3 for the purpose of administration of the e-Lelong System;

“e-Lelong System” means a centralized system of electronic public auction for the sales of immovable property established in pursuant to rule 2.

Establishment of e-Lelong System (O. 31A, r.2)

2. The Registrar may, with the approval of the Chief Justice, establish a centralized system of electronic public auction to be known as e-Lelong System for sales of immovable property and for matters connected therewith.

Establishment of e-Lelong Operation Centre (O. 31A, r.3)

3. An operation centre for the sales of immovable property to be known as e-Lelong Operation Centre is established.

Registered User (O.31A, r.4)

4. (1) Any person or entity may apply to the Registrar to be a registered user in accordance with any procedures and on payment of such fees as may be prescribed in any practice directions issued by the Registrar.

(2) An application to become a registered user is subject to terms and conditions and any restrictions relating to e-Lelong System.

Authentication Code (O.31A, r.5)

5. (1) Before using the e-Lelong System, the registered user shall apply to the Registrar for identification names and authentication codes to be assigned to him.

(2) The registered user shall register his particulars with the Registrar and acknowledge in writing safe receipt of the identification name and authentication code assigned to him by the Registrar.

(3) The registered user shall inform the Registrar in writing of any change of his particulars.

Security of authentication code (O.31A, r.6)

6. The Registered User shall ensure the confidentiality and security of his authentication code and shall not —

- (a) divulge his authentication code to any other person; or
- (b) permit any other person to use his authentication code.

e-Lelong System (O.31A, r.7)

7. (1) In any cause or matter relating to any immovable property where it appears necessary or expedient for the purposes of the cause or matter that the immovable property or any part thereof should be sold, the Court may order that the sale shall be by way of e-Lelong System.

(2) Any party bound by the Court's order under subrule (1) and in possession of that immovable property or part of that immovable property, or in receipt of the rents and profits thereof, may be compelled to deliver up such possession or receipt to the purchaser or to such other person as the Court may order.

(3) Where the Court's order is made, whether in Court or in Chambers, ordering any immovable property to be sold, the Court may order that the immovable property be sold in such manner as the Court may order or direct subsequently for the best price that can be obtained, and all proper parties shall join in the sale and conveyance as the Court may order or direct.

(4) Without prejudice to the generality of the words sale of immovable property by way of e-Lelong System, the Court may give such orders or directions as it thinks fit for the purpose of effecting the sale, including—

- (a) fixing the manner of sale;
- (b) fixing a reserve or minimum price;

- (c) requiring payment of the purchase money into Court or to trustees or other persons;
- (d) settling the particulars and conditions of sale;
- (e) obtaining evidence of the value of the property; and
- (f) requiring the title to be referred to a solicitor for his opinion thereon and to settle the particulars and condition of sale.

(5) Unless the Registrar otherwise directs, all sales shall be by way of e-Lelong System between the hours of 9 a.m. to 4 p.m. and a notice of the day, hour and place of any intended sale shall be seven days before the sale —

- (a) uploaded on the e-Lelong website; and
- (b) advertised once in the local newspaper and so far as practicable at the place of the intended sale.

(6) The form or format of any specified documents relating to e-Lelong System shall be as prescribed in the practice directions issued by the Registrar, and shall in the absence of such prescription, be in the form as prescribed by Order 1, rule 7.

Execution fee (O.31A, r.8)

8. The Plaintiff shall pay an execution fee equivalent to three per centum of the reserved price of the immovable property or at such rate as the Chief Justice may from time to time determined.”.

Amendment of Order 55 rule 3

4. Order 55 of the principal Rules is amended in rule 3 by deleting subrule (3).

New Order 69A

5. The principal Rules are amended by inserting after Order 69 the following Order:

**"Order 69A
ADJUDICATION PROCEEDINGS**

Interpretation (0.69A, r. 1)

1. (1) In this Order, "Act" means the Construction Industry Payment and Adjudication Act 2012 [Act 746].

(2) Expressions used in this Order which are used in the Act have the same meanings in this Order as in the Act.

(3) This Order applies to proceedings in the High Court.

Application under the Act (0.69A, r.2)

2. (1) An application to which this Order applies may be made by originating summons in Form 5 which shall—

(a) state in its intitulement any provision of these Rules and any provision of the Act under which the Court is being moved;

(b) include a concise statement of—

(i) the remedy claimed; and

(ii) any question on which the applicant seeks the decision of the Court;

(c) state the grounds in support of the originating summons;

(d) show that any statutory requirements have been met;

- (e) specify the section of the Act under which the application is made;
 - (f) specify the respondents on whom the originating summons is to be served, stating their role in the adjudication; and
 - (g) identify against which, if any, respondents an order of costs is sought.
- (2) The applicant shall file by affidavit, written evidence on which he intends to rely when he files his originating summons.
- (3) Unless the Court orders otherwise, an originating summons and the affidavit shall be served on the respondents specified in subparagraph (1)(f), within thirty days from the date of issue.
- (4) Where relevant, rules 3 to 5 shall additionally apply.

Application to set aside an adjudication decision (O. 69A, r. 3)

3. (1) In every application to set aside an adjudication decision under section 15 of the Act, the originating summons shall, in addition to the matters stated in subrule 2(1)—

- (a) give details of the adjudication decision challenged;
- (b) identify which part or parts of the adjudication decision are challenged; and
- (c) specify the grounds on which it is contended that the adjudication decision should be set aside.

(2) The applicant shall file by affidavit, written evidence on which he intends to rely when he files his originating summons, including a copy of the adjudication decision.

(3) The originating summons and affidavit must be served on the respondent and notice shall be given to the Director of the KLRCA and the adjudicator under rule 7.

(4) An application to set aside an adjudication decision shall be filed in Court before the application for enforcement of the adjudication decision under rule 5 has been disposed of by the High Court.

Application to stay an adjudication decision (0.69A, r. 4)

4. (1) An application for a stay of an adjudication decision under section 16 of the Act must be supported by an affidavit which must—

(a) have exhibited to it a copy of the adjudication decision and any other document relied on by the applicant;

(b) show that an application to set aside the adjudication decision under section 15 has been made or the subject matter of the adjudication decision is pending determination by arbitration or the Court;

(c) state the grounds on which it is contended that the adjudication decision should be stayed; and

(d) set out the evidence relied on by the applicant.

(2) An application to which this rule applies must be made —

(a) where an action under rule 3 is pending, by way of notice of application in the action; and

(b) in any other case, by originating summons.

Application for the enforcement of an adjudication decision (0.69A, r. 5)

5. (1) An application for permission to enforce an adjudication decision, either wholly or partly, in the same manner as a judgment or an order of the High Court under section 28 of the Act may be made by originating summons in Form 5.

(2) The originating summons shall, in addition to the matters stated in subrule 2(1)—

(a) state the name and the usual or last known place of business of the applicant and the respondent against whom it is sought to enforce the adjudication decision, respectively; and

(b) state either the adjudication decision has not been complied with or the extent to which it has not been complied with at the date of the application.

(3) The applicant shall file by affidavit, written evidence on which he intends to rely when he files his originating summons, including exhibiting the original adjudication decision or a certified true copy and if the adjudication decision is in a language other than the national language or in English language, a translation of it in the English language, duly certified as a correct translation by a sworn translator.

(4) The originating summons and affidavit must be served on the respondent.

Service out of the jurisdiction (0.69A, r. 6)

6. (1) The Court may give permission to serve an originating summons out of the jurisdiction in respect of any application made under the Act.

(2) An application for permission under subrule (1) shall be supported by written evidence—

(a) stating the grounds on which the application is made; and

(b) stating the place or country the person to be served is to be found or probably may be found.

(3) Order 11, rules 5, 6 and 8 shall apply in relation to the service out of jurisdiction of the originating summons made under the Act, or any order made in such application.

Notice (O.69A, r. 7)

7. Where notice shall be given to an adjudicator or the Director of KLRCA, the notice may be given by sending him a copy of—

(a) the originating summons; and

(b) any affidavit or written evidence in support.”.

Substitution of Appendix C

6. The principal Rules are amended by substituting for Appendix C the following appendix:

“APPENDIX C LIST OF EXEMPTED LAWS

<i>(1) No.</i>	<i>(2) Proceedings</i>	<i>(3) Written Law</i>
1.	Bankruptcy proceedings	Insolvency Act 1967 [<i>Akta 360</i>]
2.	Proceedings relating to the winding up of companies and capital reduction	Companies Act 2016 [<i>Act 777</i>]

(1) No.	(2) <i>Proceedings</i>	(3) <i>Written Law</i>
3.	Criminal proceedings	Criminal Procedure Code [<i>Act 593</i>]
4.	Proceedings under the Elections Offences Act 1954	Elections Offences Act 1954 [<i>Act 5</i>]
5.	Matrimonial proceedings	Law Reform (Marriage and Divorce) Act 1976 [<i>Act 164</i>]
6.	Land reference	Land Acquisition Act 1960 [<i>Act 486</i>]
7.	Admission to the Bar	Legal Profession Act 1976 [<i>Act 166</i>] Advocates Ordinance of Sabah [<i>Sabah Cap. 2</i>] Advocates Ordinance of Sarawak [<i>Sarawak Cap. 110</i>]
8.	Proceedings under the Income Tax Act 1967	Income Tax Act 1967 [<i>Act 53</i>]
9.	Proceedings under the Sabah Trustees (Incorporation) Ordinance 1951	Sabah Trustees (Incorporation) Ordinance 1951 [<i>Cap. 148</i>]
10.	Proceedings under the Sabah Probate and Administration Ordinance 1947	Sabah Probate and Administration Ordinance 1947 [<i>Cap. 109</i>]
11.	Proceedings under the Real Property Gains Tax Act 1976	Real Property Gains Tax Act 1976 [<i>Act 169</i>]
12.	Proceedings under the Petroleum (Income Tax) Act 1967	Petroleum (Income Tax) Act 1967 [<i>Act 543</i>]
13.	Proceedings under the Development Financial Institutions Act 2002	Development Financial Institutions Act 2002 [<i>Act 618</i>]
14.	Proceedings under the Trust Companies Act 1949	Trust Companies Act 1949 [<i>Act 100</i>]
15.	Proceedings under the Kootu Funds (Prohibition) Act 1971	Kootu Funds (Prohibition) Act 1971 [<i>Act 28</i>]

Made 7 February 2018
[PKPMP.BD/100-1/4/5; PN(PU2)119/III]

Rules Committee:

TUN MD RAUS BIN SHARIF
Chief Justice, Malaysia

TAN SRI DATO' SERI ZULKEFLI BIN AHMAD MAKINUDIN
President of the Court of Appeal, Malaysia

TAN SRI DATUK WIRA AHMAD BIN HJ. MAAROP
Chief Judge of the High Court in Malaya

TAN SRI DATUK SERI PANGLIMA RICHARD MALANJUM
Chief Judge of the High Court in Sabah and Sarawak

TAN SRI DATO' SRI HAJI MOHAMED APANDI BIN ALI
Attorney General, Malaysia

TAN SRI ZAHARAH BINTI IBRAHIM
Judge of the Federal Court

DATO' SETIA HAJI MOHD ZAWAWI BIN SALLEH
Judge of the Court of Appeal

DATUK HAJAH AZIZAH BINTI HJ. NAWAWI
Judge of the High Court in Malaya

TUAN RAVINTHRAN PARAMAGU
Judge of the High Court in Sabah and Sarawak

TUAN AHMAD KAMAR BIN JAMALUDIN
Senior Sessions Court Judge, Kuala Lumpur

ENCIK GEORGE VARUGHESE
Advocate, Peninsular Malaysia

ENCIK BRENNDON KEITH SOH
Advocate, Sabah

ENCIK RANBIR SINGH SANGHA
Advocate, Sarawak

Subordinate Courts Rules Committee:

TUN MD RAUS BIN SHARIF
Chief Justice, Malaysia

TAN SRI DATO' SERI ZULKEFLI BIN AHMAD MAKINUDIN
President of the Court of Appeal, Malaysia

TAN SRI DATUK WIRA AHMAD BIN HJ. MAAROP
Chief Judge of the High Court in Malaya

TAN SRI DATUK SERI PANGLIMA RICHARD MALANJUM
Chief Judge of the High Court in Sabah and Sarawak

TAN SRI DATO' SRI HAJI MOHAMED APANDI BIN ALI
Attorney General, Malaysia

TAN SRI ZAHARAH BINTI IBRAHIM
Judge of the Federal Court

DATO' SETIA HAJI MOHD ZAWAWI BIN SALLEH
Judge of the Court of Appeal

DATUK HAJAH AZIZAH BINTI HJ. NAWAWI
Judge of the High Court in Malaya

TUAN RAVINTHRAN N.PARAMAGU
Judge of the High Court in Sabah and Sarawak

TUAN AHMAD KAMAR BIN JAMALUDIN
Senior Sessions Court Judge, Kuala Lumpur

ENCIK GEORGE VARUGHESE
Advocate, Peninsular Malaysia

ENCIK BRENNOND KEITH SOH
Advocate, Sabah

ENCIK RANBIR SINGH SANGHA
Advocate, Sarawak

[To be laid before the Dewan Rakyat pursuant to subsection 17(5) of the Courts of Judicature Act 1964 and section 8 of the Subordinate Courts Rules Act 1955]



7 Februari 2018
7 February 2018
P.U. (A) 26

WARTA KERAJAAN PERSEKUTUAN

FEDERAL GOVERNMENT GAZETTE

KAEDAH-KAEDAH MAHKAMAH RAYUAN (PINDAAN) 2018

RULES OF THE COURT OF APPEAL (AMENDMENT) 2018

DISIARKAN OLEH/
PUBLISHED BY
JABATAN PEGUAM NEGARA/
ATTORNEY GENERAL'S CHAMBERS

AKTA MAHKAMAH KEHAKIMAN 1964

KAEDAH-KAEDAH MAHKAMAH RAYUAN (PINDAAN) 2018

PADA menjalankan kuasa yang diberikan oleh seksyen 17 Akta Mahkamah Kehakiman 1964 [Akta 91] dan dengan persetujuan Ketua Hakim Negara, Jawatankuasa Kaedah-Kaedah membuat kaedah-kaedah yang berikut:

Nama dan permulaan kuat kuasa

1. (1) Kaedah-kaedah ini bolehlah dinamakan **Kaedah-Kaedah Mahkamah Rayuan (Pindaan) 2018.**

(2) Kaedah-Kaedah ini mula berkuat kuasa pada 1 Mac 2018.

Pindaan am

2. Kaedah-Kaedah Mahkamah Rayuan 1994 [P.U. (A) 524/1994], yang disebut “Kaedah-Kaedah ibu” dalam Kaedah-Kaedah ini, dipinda dengan menggantikan perkataan “Kuala Lumpur” di mana-mana juga terdapat dengan perkataan “Putrajaya”.

Pindaan kaedah 12

3. Kaedah 12 Kaedah-Kaedah ibu dipinda dengan menggantikan perkataan “satu bulan” dengan perkataan “tiga puluh hari”.

Pindaan kaedah 17

4. Kaedah 17 Kaedah-Kaedah ibu dipinda dengan menggantikan subkaedah (1) dengan subkaedah yang berikut:

“(1) Notis rayuan boleh diberikan dengan memfailkan dalam masa yang dihadkan untuk membuat rayuan itu empat salinan notis rayuan dalam Pejabat Pendaftaran Mahkamah Tinggi di tempat yang penghakiman, perintah atau keputusan yang diadukan itu telah dibuat atau diberikan dengan membayar fi yang ditetapkan.

Mahkamah boleh atas permohonan oleh responden, dalam mana-mana hal yang difikirkan patut olehnya, memerintahkan supaya jaminan kos diberikan, dan boleh memerintahkan supaya jaminan diberikan bagi pembayaran kos yang lalu yang berhubungan dengan perkara yang berkenaan dalam rayuan itu:

Dengan syarat bahawa tiada perintah bagi pembayaran jaminan kos boleh dibuat jika rayuan itu dibuat oleh Kerajaan Malaysia atau mana-mana Kerajaan Negeri.”.

Pindaan kaedah 18

5. Kaedah 18 Kaedah-Kaedah ibu dipinda—

(a) dalam perenggan (4)(e), dengan memotong perkataan “, dengan syarat bahawa jika Mahkamah mengarahkan sedemikian, ketiadaan penghakiman bertulis, alasan keputusan atau nota yang dipersetujui tidak boleh menghalang perayu daripada meneruskan rayuannya”;

(b) dengan menggantikan subkaerah (7) dengan subkaerah yang berikut:

“(7) Memorandum dan salinan yang disebut dalam subkaerah (4), yang kedua-duanya sekali hendaklah dipanggil rekod rayuan, hendaklah difailkan dalam Pejabat Pendaftaran dalam masa sembilan puluh hari dari tarikh keputusan yang dirayukan itu diberikan.”;

(c) dalam subkaerah (7A), dengan menggantikan perkataan “lapan minggu selepas kemasukan rayuan” dengan perkataan “masa sembilan puluh hari dari tarikh keputusan yang dirayukan itu diberikan”; dan

(d) dengan memasukkan selepas subkaerah (7A) subkaerah yang berikut:

“(7B) Walau apa pun subkaerah (7) dan (7A), sekiranya mana-mana salinan dokumen yang dinyatakan dalam perenggan (4)(b) atau (e) tidak

boleh didapati selepas sembilan puluh hari dari tarikh keputusan yang dirayukan itu diberikan, mahkamah boleh membenarkan perayu untuk meneruskan rayuannya.”.

Pemotongan kaedah 26

6. Kaedah 26 Kaedah-Kaedah ibu dipotong.

Pindaan kaedah 28A

7. Kaedah-Kaedah ibu dipinda dengan menggantikan kaedah 28A dengan kaedah yang berikut:

“Permohonan meminta kebenaran untuk merayu.

28A. (1) Semua permohonan meminta kebenaran untuk merayu kepada Mahkamah hendaklah dibuat melalui usul dan difaiklan dengan Pendaftar.

(2) Afidavit menyokong sesuatu permohonan meminta kebenaran untuk merayu hendaklah mengandungi perkara-perkara yang berikut:

(i) mahkamah yang di dalamnya guaman atau prosiding itu bermula;

(ii) perihalan ringkas tindakan itu atau prosiding lain;

(iii) tarikh dan perihalan ringkas perintah yang dibuat oleh mahkamah yang mula-mula itu;

(iv) jika prosiding itu bermula daripada mahkamah rendah, maka tarikh dan

perihalan ringkas perintah yang dibuat oleh Mahkamah Tinggi; dan

- (v) pernyataan ringkas alasan-alasan yang berdasaskannya pemohon meminta kebenaran untuk merayu.

(3) Tanpa menjelaskan subkaedah (2), afidavit menyokong sesuatu permohonan meminta kebenaran untuk merayu boleh mengandungi apa-apa perkara lain yang perlu dan berkaitan dengan permohonan itu.

(4) Jika kebenaran untuk merayu diberikan perayu hendaklah memfailkan—

- (a) notis rayuan dalam tempoh empat belas hari dari tarikh kebenaran untuk merayu diberikan; dan

- (b) memorandum dan salinan dokumen yang dinyatakan dalam subkaedah 18(4), di Pejabat Pendaftaran dalam masa sembilan puluh hari dari tarikh kebenaran untuk merayu diberikan atau dalam apa-apa masa lanjutan yang mahkamah benarkan.

(5) Jika kebenaran untuk merayu diberikan mahkamah boleh—

- (a) memberikan responden kebenaran untuk memfailkan rayuan balas pada bila-bila masa selepas kemasukan rayuan tetapi tidak lewat daripada sepuluh hari selepas penyampaian rekod rayuan kepadanya;
- (b) menentukan persoalan atau isu yang akan didengar dalam rayuan itu; dan
- (c) memberikan apa-apa arahan dalam perkara sebagaimana dikehendaki demi keadilan kes.”.

Kaedah baharu 28B

8. Kaedah-Keadah ibu dipinda dengan memasukkan selepas kaedah 28A kaedah yang berikut:

“ Permohonan semakan perintah mahkamah.

28B. (1) Jika Mahkamah Rayuan adalah mahkamah tertinggi, pihak-pihak boleh memfailkan permohonan meminta kebenaran untuk menyemak keputusan yang tidak memberikan kebenaran untuk merayu.

(2) Semua permohonan bagi semakan keputusan yang tidak memberikan kebenaran untuk merayu itu hendaklah dibuat melalui Notis Usul dengan pembayaran fi yang ditetapkan.

(3) Keputusan Mahkamah mengenai permohonan untuk semakan kebenaran untuk merayu adalah muktamad dan mengikat pihak-pihak.”.

Pindaan kaedah 32

9. Kaedah-Kaedah Ibu dipinda dengan menggantikan kaedah 32 dengan kaedah yang berikut:

"Permohonan untuk meneruskan tindakan sebagai seorang orang papa.

32. (1) Mana-mana orang miskin yang tidak diterima sebagai seorang orang papa di bawah kaedah 31 boleh pada bila-bila masa memohon kepada Mahkamah meminta kebenaran untuk meneruskan tindakan dalam apa-apa rayuan sebagai seorang orang papa.

(2) Permohonan itu hendaklah disokong dengan afidavit. Afidavit tersebut hendaklah menyatakan dengan sepenuhnya semua fakta material kes itu dan hendaklah menyatakan bahawa pemohon itu tidak mempunyai harta tidak termasuk pakaian dan hal perkara prosiding itu, yang bernilai melebihi satu ribu ringgit, dan hendaklah ditentusahkan dengan mengangkat sumpah atau ikrar oleh pemohon.

(3) Pendaftar hendaklah menjalankan apa-apa siasatan yang difikirkan wajar olehnya tentang mata pencarian pemohon dan boleh menghendakinya hadir untuk menjawab soalan atas sumpah atau ikrar.

(4) Suatu salinan permohonan itu hendaklah disampaikan kepada tiap-tiap pihak lain dalam rayuan itu atau pihak yang dicadangkan dalam rayuan itu.

(5) Apabila didengar permohonan itu dan selepas menimbangkan laporan Pendaftar mengenai siasatan yang dijalankan olehnya di bawah subkaedah (3)

Mahkamah boleh membenarkan pemohon meneruskan tindakan sebagai seorang orang papa dan hendaklah dengan itu melantik seorang peguam cara untuk mewakili orang papa itu.

(6) Seseorang peguam cara yang dilantik di bawah subkaedah (5) tidak boleh menolak untuk bertindak mewakili orang papa itu melainkan jika dia memuaskan hati Mahkamah atau Hakim bahawa dia mempunyai sebab yang baik untuk menolaknya.”.

Pindaan kaedah 36

10. Kaedah-Kaedah ibu dipinda dalam kaedah 36 dengan menggantikan perkataan „, saman atau petisyen” dengan perkataan “atau apa-apa permohonan”.

Bahagian V Bab Empat baharu

11. Kaedah-Kaedah ibu dipinda dalam Bab Empat dengan memasukkan selepas Bahagian IV Bahagian yang berikut:

“BAHAGIAN V

Kuasa sedia ada Mahkamah

“ Kuasa sedia ada
Mahkamah.

105. Bagi mengelakkan keraguan, adalah diisytiharkan bahawa tiada apa-apa jua dalam Kaedah-Kaedah ini boleh disifatkan sebagai mengehadkan atau menjelaskan kuasa sedia ada Mahkamah untuk membuat apa-apa perintah sebagaimana yang perlu untuk mencegah ketidakadilan atau untuk mencegah suatu penyalahgunaan proses Mahkamah.”.

Pindaan Jadual Pertama

12. Kaedah-Kaedah ibu dipinda dalam Jadual Pertama dengan memotong Borang 4A.

Pindaan Jadual Kedua

13. Kaedah-Kaedah ibu dipinda dengan menggantikan Jadual Kedua dengan Jadual yang berikut:

"JADUAL KEDUA
Fi Mahkamah
(kaedah 56)

	RM
1. Notis Rayuan dan Notis Rayuan Balas	1,000.00
2. Apa-apa permohonan interlokutori	200.00
3. Memorandum Rayuan	150.00
4. Atas permohonan penyediaan Indeks	100.00
5. (a) Perintah terhadap apa-apa permohonan interlokutori	150.00
(b) Perintah muktamad mengenai rayuan	300.00
6. Notis Usul	200.00
7. Notis Usul terpinda	100.00
8. Fi carian	30.00
9. Notis Usul bagi kebenaran untuk merayu	1,000.00
10. Notis Usul untuk semakan terhadap permohonan kebenaran merayu—	
(a) Permohonan pertama	1,000.00
(b) Permohonan selanjutnya	2,000.00
11. Notis Usul untuk semakan terhadap keputusan rayuan penuh—	
(a) Permohonan pertama	2,000.00
(b) Permohonan selanjutnya	4,000.00
12. Fotostat (salinan/setiap muka surat)	4.00

RM

13.	Afidavit	20.00
14.	Rekod Rayuan Tambahan	50.00
15.	Notis Pemberhentian	20.00
16.	Sijil Perakuan Segera	100.00
17.	Salinan diakui sah	4.00".

Dibuat 7 Februari 2018
[PKPMP.BD/100-1/4/5; PN(PU2)323]

Jawatankuasa Kaedah-Kaedah:

TUN MD RAUS BIN SHARIF
Ketua Hakim Negara, Malaysia

TAN SRI DATO' SERI ZULKEFLI BIN AHMAD MAKINUDIN
Presiden Mahkamah Rayuan, Malaysia

TAN SRI DATUK WIRA AHMAD BIN HJ. MAAROP
Hakim Besar Mahkamah Tinggi di Malaya

TAN SRI DATUK SERI PANGLIMA RICHARD MALANJUM
Hakim Besar Mahkamah Tinggi di Sabah dan Sarawak

TAN SRI DATO' SRI HAJI MOHAMED APANDI BIN ALI
Peguam Negara, Malaysia

TAN SRI ZAHARAH BINTI IBRAHIM
Hakim Mahkamah Persekutuan

DATO' SETIA HAJI MOHD ZAWAWI BIN SALLEH
Hakim Mahkamah Rayuan

DATUK HAJAH AZIZAH BINTI HJ. NAWAWI
Hakim Mahkamah Tinggi di Malaya

TUAN RAVINTHRAN N. PARAMAGURU
Hakim Mahkamah Tinggi di Sabah dan Sarawak

TUAN AHMAD KAMAR BIN JAMALUDIN
Hakim Kanan Mahkamah Sesyen, Kuala Lumpur

ENCIK GEORGE VARUGHESE
Peguam bela, Semenanjung Malaysia

ENCIK BRENNDON KEITH SOH
Peguam bela, Sabah

ENCIK RANBIR SINGH SANGHA
Peguam bela, Sarawak

[Akan dibentangkan di Dewan Rakyat menurut subseksyen 17(5) Akta Mahkamah Kehakiman 1964]

COURTS OF JUDICATURE ACT 1964
RULES OF THE COURT OF APPEAL (AMENDMENT) 2018

IN exercise of the powers conferred by section 17 of the Courts of Judicature Act 1964 [Act 91] and with the consent of the Chief Justice, the Rules Committee makes the following rules:

Citation and commencement

1. (1) These rules may be cited as the **Rules of the Court of Appeal (Amendment) 2018.**

(2) These Rules come into operation on 1 March 2018.

General amendment

2. The Rules of the Court of Appeal 1994 [P.U. (A) 524/1994], which are referred to as the “principal Rules” in these Rules, are amended by substituting for the words “Kuala Lumpur” wherever appearing the word “Putrajaya”.

Amendment of rule 12

3. Rule 12 of the principal Rules is amended by substituting for the words “one month” the words “thirty days”.

Amendment of rule 17

4. Rule 17 of the principal Rules is amended by substituting for subrule (1) the following subrule:

“(1) Notice of appeal may be given by filing within the time limited for bringing the appeal four copies of the notice of appeal in the Registry of the High Court at the place where the judgment, order or decision complained of was made or given by paying the prescribed fee.

The Court may on the application by the respondent, in any case where it thinks fit, order security for costs to be given, and may order security to be given for the payment of past costs relating to the matters in question in the appeal:

Provided that no order for the payment of security for costs shall be made if the appeal is brought by the Government of Malaysia or any State Government.”.

Amendment of rule 18

5. Rule 18 of the principal Rules is amended—

(a) in paragraph (4)(e), by deleting the words “, provided that if the Court so orders, the absence of the written judgment, grounds of decision or agreed notes shall not prevent the appellant from proceeding with his appeal”;

(b) by substituting subrule (7) the following subrule:

“(7) The memorandum and copies referred to in subrule (4), which together shall be called the record of appeal, shall be filed at the Registry within ninety days from the date on which the decision appealed against was given.”;

(c) in subrule (7A), by substituting for the words “eight weeks after the entry of the appeal” the words “ninety days from the date on which the decision appealed against was given”; and

(d) by inserting after subrule (7A) the following subrule:

“(7B) Notwithstanding subrules (7) and (7A), if any copy of the documents specified in paragraph (4)(b) or (e) is not available after ninety days from the date on which the decision appealed against was given, the court may order the appellant to proceed with his appeal.”.

Deletion of rule 26

6. Rule 26 of the principal Rules is deleted.

Amendment of rule 28A

7. The principal Rules are amended by substituting for rule 28A the following rule:

“ Application for leave 28A. (1) All application for leave to appeal to the Court shall be made by motion and filed with the Registrar.

(2) An affidavit in support of an application for leave to appeal shall contain the following matters:

- (i) the court in which the suit or proceeding originated;
- (ii) a brief description of the action or other proceeding;
- (iii) the date of and a brief description of the order made by the court of first instance;
- (iv) if the proceedings originated in a subordinate court, then the date of and a brief description of the order made by the High Court; and
- (v) a brief statement of the grounds upon which the applicant relies in seeking the leave to appeal.

(3) Without prejudice to subrule (2), an affidavit in support of an application for leave to appeal may contain any other matter which is necessary and relevant to the application.

(4) Where leave to appeal is granted the appellant shall file—

(a) notice of appeal within a period of fourteen days from the date the leave to appeal is granted; and

(b) the memorandum and copies of the documents specified in subrule 18(4), at the Registry within ninety days from the date on which leave to appeal was granted or within such further time as the court may allow.

(5) Where leave to appeal is granted the court may—

(a) give the respondent leave to file a cross-appeal at any time after the entry of the appeal but not later than ten days after the service on him of the record of appeal;

(b) determine the questions or issues which ought to be heard in the appeal; and

(c) give such other directions in the matter as the justice of the case may require.”.

New rule 28B

8. The principal Rules are amended by inserting after rule 28A the following rule:

“Application to review Court’s order.

28B. (1) Where the Court of Appeal is the apex court, parties may file an application for leave to review the decision of refusing leave to appeal.

(2) All application for review of the decision of refusing leave to appeal shall be made by Notice of Motion with a payment of the prescribed fee.

(3) The Court’s decision on the application to review leave to appeal shall be final and binding on the parties.”.

Amendment of rule 32

9. The principal Rules are amended by substituting for rule 32 the following rule:

“Application to proceed as a pauper.

32. (1) Any poor person who has not been admitted to be a pauper under rule 31 may at any time apply to the Court for leave to proceed in any appeal as a pauper.

(2) The application shall be supported by an affidavit. The affidavit shall set forth fully all the material facts of the case and shall state that the applicant is not possessed of property excluding wearing apparel and the subject matter

of the proceedings, exceeding one thousand ringgit in value, and shall be verified by the oath or affirmation of the applicant.

(3) The Registrar shall make such enquiry as he may think proper as to the means of the applicant and may require him to attend to answer questions on oath or affirmation.

(4) A copy of the application shall be served on every other party to the appeal or proposed party to the appeal.

(5) On the hearing of such application and after consideration of the report of the Registrar on the enquiry made by him under subrule (3) the Court may admit the applicant to proceed as a pauper and shall thereupon appoint a solicitor to represent such pauper.

(6) A solicitor appointed under subrule (5) shall not refuse to act unless he satisfies the Court or a Judge that he has good reason for refusal.”.

Amendment of rule 36

10. The principal Rules are amended in rule 36 by substituting for the word „summons or petition” the words “or any application”.

New Part V of Chapter Four

11. The principal Rules are amended in Chapter Four by inserting after Part IV the following Part:

“PART V

Inherent powers of the Court

“Inherent powers of the Court.

105. For the avoidance of doubt, it is declared that nothing in these Rules shall be deemed to limit or affect the inherent powers of the Court to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court.”

Amendment of the First Schedule

12. The principal Rules are amended in First Schedule by deleting Form 4A.

Amendment of the Second Schedule

13. The principal Rules are amended by substituting for Second Schedule the following Schedule:

“SECOND SCHEDULE

Court Fees

(rule 56)

RM

1.	Notice of Appeal and Notice of Cross-Appeal	1,000.00
2.	Any interlocutory application	200.00
3.	Memorandum of Appeal	150.00
4.	On application preparing the Index	100.00
5.	(a) Order on any interlocutory application	150.00
	(b) Final order on appeal	300.00
6.	Notice of Motion	200.00

RM

7.	Amended Notice of Motion	100.00
8.	Search Fee	30.00
9.	Notice of Motion for leave to appeal	1,000.00
10.	Notice of Motion for review against leave application to appeal—	
	(a) First application	1,000.00
	(b) Subsequent application	2,000.00
11.	Notice of Motion for review against decision in full appeal—	
	(a) First application	2,000.00
	(b) Subsequent application	4,000.00
12.	Photostat (copy/per pages)	4.00
13.	Affidavit	20.00
14.	Supplementary Appeal Record	50.00
15.	Notice of Discontinuance	20.00
16.	Certificate of Urgency	100.00
17.	Certified true copy	4.00 ”.

Made 7 February 2018
 [PKMP.BD/100-1/4/5; PN(PU2)323]

Rules Committee:

TUN MD RAUS BIN SHARIF
Chief Justice, Malaysia

TAN SRI DATO' SERI ZULKEFLI BIN AHMAD MAKINUDIN
President of the Court of Appeal, Malaysia

TAN SRI DATUK WIRA AHMAD BIN HJ. MAAROP
Chief Judge of the High Court in Malaya

TAN SRI DATUK SERI PANGLIMA RICHARD MALANJUM
Chief Judge of the High Court in Sabah and Sarawak

TAN SRI DATO' SRI HAJI MOHAMED APANDI BIN ALI
Attorney General, Malaysia

TAN SRI ZAHARAH BINTI IBRAHIM
Judge of the Federal Court

DATO' SETIA HAJI MOHD ZAWAWI BIN SALLEH
Judge of the Court of Appeal

DATUK HAJAH AZIZAH BINTI HJ. NAWAWI
Judge of the High Court in Malaya

TUAN RAVINTHRAN N. PARAMAGURU
Judge of the High Court in Sabah and Sarawak

TUAN AHMAD KAMAR BIN JAMALUDIN
Senior Sessions Court Judge, Kuala Lumpur

ENCIK GEORGE VARUGHESE
Advocate, Peninsular Malaysia

ENCIK BRENNDON KEITH SOH
Advocate, Sabah

ENCIK RANBIR SINGH SANGHA
Advocate, Sarawak

[*To be laid before the Dewan Rakyat pursuant to subsection 17(5) of the Courts of Judicature Act 1964*]



7 Februari 2018
7 February 2018
P.U. (A) 25

WARTA KERAJAAN PERSEKUTUAN

FEDERAL GOVERNMENT GAZETTE

KAEDAH-KAEDAH MAHKAMAH PERSEKUTUAN (PINDAAN) 2018

RULES OF THE FEDERAL COURT (AMENDMENT) 2018

DISIARKAN OLEH/
PUBLISHED BY
JABATAN PEGUAM NEGARA/
ATTORNEY GENERAL'S CHAMBERS

AKTA MAHKAMAH KEHAKIMAN 1964

KAEDAH-KAEDAH MAHKAMAH PERSEKUTUAN (PINDAAN) 2018

PADA menjalankan kuasa yang diberikan oleh seksyen 17 Akta Mahkamah Kehakiman 1964 [Akta 91] dan dengan persetujuan Ketua Hakim Negara, Jawatankuasa Kaedah-Kaedah membuat kaedah-kaedah yang berikut:

Nama dan permulaan kuat kuasa

1. (1) Kaedah-kaedah ini bolehlah dinamakan **Kaedah-Kaedah Mahkamah Persekutuan (Pindaan) 2018.**

(2) Kaedah-Kaedah ini mula berkuat kuasa pada 1 Mac 2018.

Pindaan am

2. Kaedah-Kaedah Mahkamah Persekutuan 1995 [P.U. (A) 376/1995], yang disebut "Kaedah-Kaedah ibu" dalam Kaedah-Kaedah ini, dipinda dengan menggantikan perkataan "Kuala Lumpur" di mana-mana juga terdapat dengan perkataan "Putrajaya".

Pindaan kaedah 3

3. Kaedah 3 Kaedah-Kaedah ibu dipinda dengan memasukkan sebelum perkataan "Court of Appeal" perkataan "the".

Pindaan kaedah 12

4. Kaedah 12 Kaedah-Kaedah ibu dipinda dengan menggantikan perkataan "affected" dengan perkataan "effected".

Pindaan kaedah 20

5. Kaedah 20 Kaedah-Kaedah ibu dipinda—

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

“(1) The petitioner, shall within fourteen days after the filing of the written statement of defence, take out a summons in Form 2A (in these Rules referred to as a summons for directions) returnable in not less than fourteen days.”; dan

- (b) dalam subkaedah (3), dengan menggantikan perkataan “paragraph” dengan perkataan “subrule”.

Pindaan kaerah 21A

6. Kaerah 21A Kaerah-Kaerah ibu dipinda dengan menggantikan perkataan “this Order” di mana-mana juga terdapat dengan perkataan “these Rules”.

Pindaan kaerah 21B

7. Kaerah 21B Kaerah-Kaerah ibu dipinda—

- (a) dalam subkaedah (1)—

(i) dengan menggantikan perkataan “properly to” dengan perkataan “to properly”; dan

(ii) dengan menggantikan perkataan “paragraph” di mana-mana juga terdapat dengan perkataan “subrule”;

- (b) dengan menggantikan subkaedah (2) dengan subkaedah yang berikut:

“(2) Where the Court has required any information to be given or documents to be produced under subrule (1), the Court may, if it appears proper so to do in the circumstances, authorize any such information or documents to be given or produced to the Court without being disclosed to the other parties but, in the absence of such authority, any information or document given or produced under subrule (1) shall

be given or produced to all the parties present or represented on the hearing of the summons as well as to the Court.”;

(c) dalam subkaedah (3)—

(i) dengan menggantikan perkataan “paragraph” dengan perkataan “subrule”; dan

(ii) dengan menggantikan perkataan “these rules” dengan perkataan “this Part”; dan

(d) dalam subkaedah (4), dengan menggantikan perenggan (b) dengan perenggan yang berikut:

“(b) if it appears to the Court to be just so to do, order the whole or any part of the pleadings of the party concerned to be struck out and, if the party is the petitioner or the claimant under a counterclaim, order the action or counterclaim to be dismissed on such terms as may be just.”.

Pindaan kaedah 31

8. Kaedah 31 Kaedah-Kaedah ibu dipinda dengan menggantikan subkaedah (1) dengan subkaedah yang berikut:

“(1) Where in any proceedings in any court subordinate to a High Court a question arises as to the effect of any provision of the Constitution the presiding officer of such Court shall forthwith stay the proceedings and shall send the record to the Registrar of the High Court.”.

Pindaan kaedah 33

9. Subkaedah 33(3) Kaedah-Kaedah ibu dipinda dengan menggantikan perkataan “the Rule” dengan perkataan “this rule”.

Pindaan kaedah 34

10. Subkaedah 34(1) Kaedah-Kaedah ibu dipinda dengan menggantikan perkataan “rule 34” dengan perkataan “rule 33”.

Pindaan kaedah 36

11. Subkaedah 36(1) Kaedah-Kaedah ibu dipinda dengan menggantikan perkataan “this rule” dengan perkataan “these Rules”.

Pindaan kaedah 39

12. Kaedah 39 Kaedah-Kaedah ibu dipinda dengan memotong perkataan “which shall not be subject to any stamp duty.”.

Pindaan kaedah 47

13. Kaedah 47 Kaedah-Kaedah ibu dipinda dengan menggantikan subkaedah (1) dengan subkaedah yang berikut:

“(1) An appeal to the Court shall be brought by giving notice of appeal which shall be filed—

(a) within thirty days from the date on which the decision appealed against was given in cases where leave to appeal is not required; or

(b) within fourteen days from the date leave to appeal was granted in cases where leave to appeal is required,

or within such further time as the Court may allow under rule 108.”.

Pindaan kaedah 49

14. Kaedah 49 Kaedah-Kaedah ibu dipinda dengan menggantikan subkaedah (1) dengan subkaedah yang berikut:

“(1) Notice of cross-appeal shall be substantially in Form 4 in the First Schedule to these Rules, and must be filed at the Registry within fourteen days from the date on which the notice of appeal was served on the respondent or within such further time as the Court may allow under rule 108.”.

Pindaan kaedah 56

15. Kaedah 56 Kaedah-Kaedah ibu dipinda—

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

“(1) Notice of appeal may be given by filing within the time limited for bringing the appeal six copies of the Notice of Appeal in the Registry of the Court of Appeal and a copy in the Registry, and by paying the prescribed fee.”;

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

“(1A) The Court may, on the application by the respondent, in any case where it thinks fit, order security for costs to be given, and may order security to be given for the payment of past costs relating to the matters in question in the appeal:

Provided that no order for the payment of security for costs shall be made if the appeal is brought by the Government of Malaysia or any State Government.”; dan

(c) dalam subkaedah (3), dengan memotong perkataan “and on the security required by paragraph (1) of this rule being lodged in Court”.

Pindaan kaedah 57

16. Kaedah 57 Kaedah-Kaedah ibu dipinda dengan menggantikan subkaedah (6) dengan subkaedah yang berikut:

"(6) The memorandum and copies referred to above, which, together shall be called the record of appeal, shall be filed at the Registry within ninety days—

- (a) from the date on which the decision appealed against was given in cases where leave to appeal is not required; or
- (b) from the date leave to appeal was granted in cases where leave to appeal is required,

or within such further time as the Court may allow.".

Pindaan kaedah 66

17. Kaedah 66 Kaedah-Kaedah ibu dipinda dengan menggantikan subkaedah (2) dengan subkaedah yang berikut:

"(2) A notice of motion shall be substantially in Form 6 in the First Schedule to these Rules and must be supported by an affidavit.".

Pindaan kaedah 75

18. Kaedah 75 Kaedah-Kaedah ibu dipinda dengan memotong koma selepas perkataan "appeal".

Pindaan kaedah 76

19. Kaedah 76 Kaedah-Kaedah ibu dipinda—

- (a) dengan memotong koma selepas perkataan "application"; dan
- (b) dengan memasukkan koma selepas perkataan "summons".

Pindaan kaedah 79

20. Kaedah 79 Kaedah-Kaedah ibu dipinda dengan menggantikan perkataan “thereby. But” dengan perkataan “thereby; but”.

Pindaan kaedah 80

21. Kaedah 80 Kaedah-Kaedah ibu dipinda dengan memasukkan sebelum perkataan “or” perkataan “adjourn”.

Pindaan kaedah 90

22. Kaedah 90 Kaedah-Kaedah ibu dipinda dengan menggantikan perkataan “to the Registrar of the Court” dengan perkataan “to the Registrar”.

Pindaan kaedah 91

23. Kaedah 91 Kaedah-Kaedah ibu dipinda—

- (a) dalam subkaedah (1), dengan menggantikan perkataan “to the Registrar of the Court” dengan perkataan “to the Registrar”; dan
- (b) dalam subkaedah (2), dengan menggantikan perkataan “by the Registrar of the Court” dengan perkataan “by the Registrar”.

Pindaan kaedah 96

24. Kaedah 96 Kaedah-Kaedah ibu dipinda dengan menggantikan perkataan “Registrar of the Court” dengan perkataan “Registrar”.

Pindaan kaedah 99

25. Subkaedah 99(2) Kaedah-Kaedah ibu dipinda dengan menggantikan perkataan “Registrar of the Court” di mana-mana juga terdapat dengan perkataan “Registrar”.

Pemotongan subkaedah 107(4)

26. Kaedah 107 Kaedah-Kaedah ibu dipinda dengan memotong subkaedah (4).

Penggantian Jadual Kedua

27. Kaedah-Kaedah ibu dipinda dengan menggantikan Jadual Kedua dengan Jadual yang berikut:

“SECOND SCHEDULE
Court Fees
 (rule 86)

	RM
1. Notice of Appeal and Cross-Appeal	1,500.00
2. Any interlocutory application	200.00
3. Memorandum of Appeal	200.00
4. On application to prepare an Index	50.00
5. (a) Order on any interlocutory application	200.00
(b) Final order on appeal	300.00
6. Petition	500.00
7. Notice of Petition	200.00
8. Notice of Motion for leave to appeal	1,500.00
9. Notice of Motion other than for leave to appeal	200.00
10. Summons for Direction	100.00
11. Amended Petition or Notice of Motion	100.00
12. Search Fee	30.00
13. Photostat Copy (per pages)	4.00
14. Affidavit	20.00
15. Supplementary Appeal Record	50.00
16. Notice of Discontinuance	20.00
17. Certificate of Urgency	100.00
18. Certified true copy of order (one set)	4.00

RM

19.	Motion for review application against an order refusing leave—	
	(a) First motion	2,000.00
	(b) Subsequent motion against the same decision	4,000.00
20.	Motion for review against decision in full appeal—	
	(a) First motion	3,000.00
	(b) Subsequent motion against the same decision	6,000.00 ”.

Dibuat 7 Februari 2018
[PKPMP.BD/100-1/4/5; PN(PU2)323]

Jawatankuasa Kaedah-Kaedah:

TUN MD RAUS BIN SHARIF
Ketua Hakim Negara, Malaysia

TAN SRI DATO' SERI ZULKEFLI BIN AHMAD MAKINUDIN
Presiden Mahkamah Rayuan, Malaysia

TAN SRI DATUK WIRA AHMAD BIN HJ. MAAROP
Hakim Besar Mahkamah Tinggi di Malaya

TAN SRI DATUK SERI PANGLIMA RICHARD MALANJUM
Hakim Besar Mahkamah Tinggi di Sabah dan Sarawak

TAN SRI DATO' SRI HAJI MOHAMED APANDI BIN ALI
Peguam Negara, Malaysia

TAN SRI ZAHARAH BINTI IBRAHIM
Hakim Mahkamah Persekutuan

DATO' SETIA HAJI MOHD ZAWAWI BIN SALLEH
Hakim Mahkamah Rayuan

DATUK HAJAH AZIZAH BINTI HJ. NAWAWI
Hakim Mahkamah Tinggi di Malaya

TUAN RAVINTHRAN N. PARAMAGURU
Hakim Mahkamah Tinggi di Sabah dan Sarawak

TUAN AHMAD KAMAR BIN JAMALUDIN
Hakim Kanan Mahkamah Sesyen, Kuala Lumpur

ENCIK GEORGE VARUGHESE
Peguam bela, Semenanjung Malaysia

ENCIK BRENNDON KEITH SOH
Peguam bela, Sabah

ENCIK RANBIR SINGH SANGHA
Peguam bela, Sarawak

[Akan dibentangkan di Dewan Rakyat menurut subseksyen 17(5) Akta Mahkamah Kehakiman 1964]

COURTS OF JUDICATURE ACT 1964
RULES OF THE FEDERAL COURT (AMENDMENT) 2018

IN exercise of the powers conferred by section 17 of the Courts of Judicature Act 1964 [Act 91] and with consent of the Chief Justice, the Rules Committee makes the following rules:

Citation and commencement

1. (1) These rules may be cited as the **Rules of the Federal Court (Amendment) 2018.**

(2) These Rules come into operation on 1 March 2018.

General amendment

2. The Rules of the Federal Court 1995 [P.U. (A) 376/1995], which are referred to as the “principal Rules” in these Rules, are amended by substituting for the words “Kuala Lumpur” wherever appearing the word “Putrajaya”.

Amendment of rule 3

3. Rule 3 of the principal Rules is amended by inserting before the words “Court of Appeal” the word “the”.

Amendment of rule 12

4. Rule 12 of the principal Rules is amended by substituting for the word “affected” the word “effected”.

Amendment of rule 20

5. Rule 20 of the principal Rules is amended—

(a) by substituting for subrule (1) the following subrule:

“(1) The petitioner, shall within fourteen days after the filing of the written statement of defence, take out a summons in Form 2A (in these Rules referred to as a summons for directions) returnable in not less than fourteen days.”; and

- (b) in subrule (3), by substituting for the word “paragraph” the word “subrule”.

Amendment of rule 21A

6. Rule 21A of the principal Rules is amended by substituting for the words “this Order” wherever appearing the words “these Rules”.

Amendment of rule 21B

7. Rule 21B of the principal Rules is amended—

- (a) in subrule (1)—

(i) by substituting for the words “properly to” the words “to properly”; and

(ii) by substituting for the word “paragraph” wherever appearing the word “subrule”;

- (b) by substituting for subrule (2) the following subrule:

“(2) Where the Court has required any information to be given or documents to be produced under subrule (1), the Court may, if it appears proper so to do in the circumstances, authorize any such information or documents to be given or produced to the Court without being disclosed to the other parties but, in the absence of such authority, any information or document given or produced under subrule (1) shall

be given or produced to all the parties present or represented on the hearing of the summons as well as to the Court.”;

(c) in subrule (3)—

- (i) by substituting for the word “paragraph” the word “subrule”; and
- (ii) by substituting for the words “these rules” the words “this Part”; and

(d) in subrule (4), by substituting for paragraph (b) the following paragraph:

“(b) if it appears to the Court to be just so to do, order the whole or any part of the pleadings of the party concerned to be struck out and, if the party is the petitioner or the claimant under a counterclaim, order the action or counterclaim to be dismissed on such terms as may be just.”.

Amendment of rule 31

8. Rule 31 of the principal Rules is amended by substituting for subrule (1) the following subrule:

“(1) Where in any proceedings in any court subordinate to a High Court a question arises as to the effect of any provision of the Constitution the presiding officer of such Court shall forthwith stay the proceedings and shall send the record thereof to the Registrar of the High Court.”.

Amendment of rule 33

9. Subrule 33(3) of the principal Rules is amended by substituting for the words “the Rule” the words “this rule”.

Amendment of rule 34

10. Subrule 34(1) of the principal Rules is amended by substituting for the words “rule 34” the words “rule 33”.

Amendment of rule 36

11. Subrule 36(1) of the principal Rules is amended by substituting for the words “this rule” the words “these Rules”.

Amendment of rule 39

12. Rule 39 of the principal Rules is amended by deleting the words “which shall not be subject to any stamp duty.”.

Amendment of rule 47

13. Rule 47 of the principal Rules is amended by substituting for subrule (1) the following subrule:

“(1) An appeal to the Court shall be brought by giving notice of appeal which shall be filed—

(a) within thirty days from the date on which the decision appealed against was given in cases where leave to appeal is not required; or

(b) within fourteen days from the date leave to appeal was granted in cases where leave to appeal is required,

or within such further time as the Court may allow under rule 108.”.

Amendment of rule 49

14. Rule 49 of the principal Rules is amended by substituting for subrule (1) the following subrule:

“(1) Notice of cross-appeal shall be substantially in Form 4 in the First Schedule to these Rules, and must be filed at the Registry within fourteen days from the date on which the notice of appeal was served on the respondent or within such further time as the Court may allow under rule 108.”.

Amendment of rule 56

15. Rule 56 of the principal Rules is amended—

(a) by substituting for subrule (1) the following subrule:

“(1) Notice of appeal may be given by filing within the time limited for bringing the appeal six copies of the Notice of Appeal in the Registry of the Court of Appeal and a copy in the Registry, and by paying the prescribed fee.”;

(b) by inserting after subrule (1) the following subrule:

“(1A) The Court may, on the application by the respondent, in any case where it thinks fit, order security for costs to be given, and may order security to be given for the payment of past costs relating to the matters in question in the appeal:

Provided that no order for the payment of security for costs shall be made if the appeal is brought by the Government of Malaysia or any State Government.”; and

(c) in subrule (3), by deleting the words “and on the security required by paragraph (1) of this rule being lodged in Court”.

Amendment of rule 57

16. Rule 57 of the principal Rules is amended by substituting for subrule (6) the following subrule:

"(6) The memorandum and copies referred to above, which, together shall be called the record of appeal, shall be filed at the Registry within ninety days—

- (a) from the date on which the decision appealed against was given in cases where leave to appeal is not required; or
- (b) from the date leave to appeal was granted in cases where leave to appeal is required,

or within such further time as the Court may allow.”.

Amendment of rule 66

17. Rule 66 of the principal Rules is amended by substituting for subrule (2) the following subrule:

"(2) A notice of motion shall be substantially in Form 6 in the First Schedule to these Rules and must be supported by an affidavit.”.

Amendment of rule 75

18. Rule 75 of the principal Rules is amended by deleting a comma after the word “appeal”.

Amendment of rule 76

19. Rule 76 of the principal Rules is amended—

- (a) by deleting a comma after the word “application”; and
- (b) by inserting a comma after the word “summons”.

Amendment of rule 79

20. Rule 79 of the principal Rules is amended by substituting for the words “thereby. But” the words “thereby; but”.

Amendment of rule 80

21. Rule 80 of the principal Rules is amended by inserting before the word “or” the word “adjourn”.

Amendment of rule 90

22. Rule 90 of the principal Rules is amended by substituting for the words “to the Registrar of the Court” the words “to the Registrar”.

Amendment of rule 91

23. Rule 91 of the principal Rules is amended—

- (a) in subrule (1), by substituting for the words “to the Registrar of the Court” the words “to the Registrar”; and
- (b) in subrule (2), by substituting for the words “by the Registrar of the Court” the words “by the Registrar”.

Amendment of rule 96

24. Rule 96 of the principal Rules is amended by substituting for the words “Registrar of the Court” the word “Registrar”.

Amendment of rule 99

25. Subrule 99(2) of the principal Rules is amended by substituting for the words “Registrar of the Court” wherever appearing the word “Registrar”.

Deletion of subrule 107(4)

26. Rule 107 of the principal Rules is amended by deleting subrule (4).

Substitution of Second Schedule

27. The principal Rules are amended by substituting for the Second Schedule the following Schedule:

“SECOND SCHEDULE

Court Fees

(rule 86)

	RM
1. Notice of Appeal and Cross-Appeal	1,500.00
2. Any interlocutory application	200.00
3. Memorandum of Appeal	200.00
4. On application to prepare an Index	50.00
5. (a) Order on any interlocutory application	200.00
(b) Final order on appeal	300.00
6. Petition	500.00
7. Notice of Petition	200.00
8. Notice of Motion for leave to appeal	1,500.00
9. Notice of Motion other than leave to appeal	200.00
10. Summons for Direction	100.00
11. Amended Petition or Notice of Motion	100.00
12. Search Fee	30.00
13. Photostat Copy (per pages)	4.00
14. Affidavit	20.00
15. Supplementary Appeal Record	50.00
16. Notice of Discontinuance	20.00
17. Certificate of Urgency	100.00
18. Certified true copy of order (one set)	4.00
19. Motion for review application against an order refusing leave—	

RM

(a)	First motion	2,000.00
(b)	Subsequent motion against the same decision	4,000.00
20.	Motion for review against decision in full appeal—	
(a)	First motion	3,000.00
(b)	Subsequent motion against the same decision	6,000.00 ”.

Made 7 February 2018
[PKPMP.BD/100-1/4/5; PN(PU2)323]

Rules Committee:

TUN MD RAUS BIN SHARIF
Chief Justice, Malaysia

TAN SRI DATO' SERI ZULKEFLI BIN AHMAD MAKINUDIN
President of the Court of Appeal, Malaysia

TAN SRI DATUK WIRA AHMAD BIN HJ. MAAROP
Chief Judge of the High Court in Malaya

TAN SRI DATUK SERI PANGLIMA RICHARD MALANJUM
Chief Judge of the High Court in Sabah and Sarawak

TAN SRI DATO' SRI HAJI MOHAMED APANDI BIN ALI
Attorney General, Malaysia

TAN SRI ZAHARAH BINTI IBRAHIM
Judge of the Federal Court

DATO' SETIA HAJI MOHD ZAWAWI BIN SALLEH
Judge of the Court of Appeal

DATUK HAJAH AZIZAH BINTI HJ. NAWAWI
Judge of the High Court in Malaya

TUAN RAVINTHRAN N. PARAMAGURU
Judge of the High Court in Sabah and Sarawak

TUAN AHMAD KAMAR BIN JAMALUDIN
Senior Sessions Court Judge, Kuala Lumpur

ENCIK GEORGE VARUGHESE
Advocate, Peninsular Malaysia

ENCIK BRENNDON KEITH SOH
Advocate, Sabah

ENCIK RANBIR SINGH SANGHA
Advocate, Sarawak

[To be laid before the Dewan Rakyat pursuant to subsection 17(5) of the Courts of Judicature Act 1964]