

PENGHUJAHAN

1. Pengenalan

- a) Rumusan atau penggulungan fakta atau keterangan yang menyokong kes pihak-pihak tertentu di dalam satu perbicaraan.
- b) Biasanya dikaitkan dengan penghujahan di akhir kes pendakwaan atau di akhir kes pembelaan.

2. Peringkat Penghujahan

- a) Penghujahan berkaitan bantahan awal
 - i) Peguam mempersoalkan locus standi pegawai pendakwa
Repro Holdings Bhd v PP (1997) 2 MLJ 681
 - ii) Peguam mempersoalkan mengenai pertuduhan
-pertuduhan cacat/defektif

b) Penghujahan semasa perbicaraan

i) Pendakwa ingin memasukkan kenyataan beramaran

Lee Weng Sang v Public Prosecutor (1978) 1 MLJ 168

“ It is the clear duty of counsel to indicate to the trial court his objection as to the admission of any statement by an accused if on the instructions given to him the statement was unlawfully induced or obtained, and the proper time to do this would be when the prosecution seek to introduce the statement. In this case, notwithstanding the failure to challenge it directly but in view of the nature of the cross-examination of the police witnesses, a trial within a trial should have been held to determine the admissibility or otherwise of the first cautioned statement.”

ii) Bantahan semasa saksi memberi keterangan
- Soalan memimpin, keterangan dengar cakap

iii) Menerima pakai ekshibit
- Keterangan dokumentasi primer/sekunder

c) Penghujahan diakhir kes pendakwaan

S 174(iii) Kanun Tatacara Jenayah – Pengucapan Pegawai yang menjalankan pendakwaan adalah berhak menjawab berkenaan keseluruhan kes itu apabila orang yang dituduh telah memberi keterangan.

*** Mahinder Singh vs PP (1941) MLJ 230**

The appellant in this case was charged with voluntarily causing hurt to Gurbachan Singh by means of a Khanda, which used as a weapon of offence was likely to cause death, and thereby committing an offence punishable under section 324 of the Penal Code. He was convicted and sentenced to a fine of \$75 or one month's rigorous imprisonment.

He appealed on the ground, inter alia, that the learned Magistrate did not give his counsel an opportunity to address the court.

Terrel, Ag. C.J. – *This was an appeal by the accused who was found guilty of an offence under section 324 of the Penal Code and sentenced to a fine of \$75 or one month's rigorous imprisonment. The eight ground of appeal alleges that the accused's counsel was never given an opportunity of addressing the Court at the close of the case. This is admitted by the learned Deputy Public Prosecutor and constitutes a serious irregularity. In view of this there is no necessity to enter into the merits of the conviction. The appeal will be allowed, the conviction set aside and a new trial ordered.*

***PP v Parnaby (1953) MLJ 163**

***PP v Low Thiam Fatt v PP (1989) 1 MLJ 304**

3. Kandungan penghujahan di akhir kes pendakwaan

Penghujahan pihak pendakwa buktikan 'prima facie' kes terhadap OKT.

i. Intipati

a. Pengenalan

- Pertuduhan terhadap OKT

- Intipati pertuduhan perlu dibuktikan – senaraikan satu persatu

b. kenal pasti fakta/keterangan saksi-saksi dan dokumen yang membuktinya.

- Tonjolkan kekuatan kes pendakwa

c. Peruntukan undang-undang dan Nas

d. Rumusan

e. Prayer (saranan) – memohon pembelaan dipanggil diatas pertuduhan.

f. Ambil peluang menjawab hujah peguambela untuk elak kekeliruan mahkamah dan mematahkannya.

g. Tekankan pembelaan gagal menimbulkan sebarang keraguan.

- Tekankan apakah kegagalan tersebut.
- Kemukakan undang-undang dan nas
- Ambil peluang menjawab hujah peguambela untuk elak kekeliruan kepada mahkamah.

ii. Kandungan penghujahan di peringkat hukuman

a. Tekankan perlu hukuman yang setimpal dan alasan.

- Faktor-faktor pemberatan

- Statistik kekerapan dan peningkatan kesalahan tersebut.

* **Lee Chow Meng (1976) 1 MLJ 287**

Abdul Hamid J. *agreed that the learned President had acted correctly when she took into account the rampancy of armed robberies when she sentenced the offender. The prosecuting officer had submitted that there were 677 robberies within a period of four months in Kuala Lumpur alone and half of them were armed robberies.*

* **PP v Zulkifli bin Omar (1998) 6 MLJ 65, 77**

Vincent Ng J '..... According to a report by the Economic and Social Commission of Asia Pacific (ESCAP), Malaysia has the third highest accident rate I the world – indeed, for five consecutive years from 1992 – to 1996 - with a fatality rate of 8.28 for every 10,000 cars on the road as compared to Finland's 1.80 for every 10,000 cars.'

Latar belakang tentang undang-undang tersebut.
Con. Seksyen 379 Kanun Keseksaan dipinda
Seksyen 379A Kanun Keseksaan
Sabitan lampau

PP v Jafa bin Daud (1981) 1 MLJ 315

' List of previous convictions of the probation reports may be appended to the court record.'

Contoh : dadah – ekonomi dan masalah sosial

b.Kemukakan nas.

c.Ingatkan mahkamah tentang penalty maksima, minima dan rampasan.

TIPS

1. Buat persediaan yang cukup dan lengkap.
 - Mahirkan diri dengan undang-undang
 - Mahirkan diri dengan fakta kes sebelum dan semasa perbicaraan.
2. Jelas (clarity)
3. Ringkas, padat dan berurutan
4. Nada suara tegas tapi bukan mengarah
5. Jangan menunjuk-nunjuk.
6. Jangan bantah jika hakim bertegas (berkeras)
7. Akur dengan keputusan mahkamah.
8. Berhemah dengan Mahkamah dan peguam OKT

9. Berpandukan keterangan yang telah dikemukakan
10. Kejujuran. Do not mislead the court.
11. Gunakan bahasa yang mudah, tidak meleret dan tidak berulang.
12. Jangan rujuk keterangan yang tidak diterima atau telah ditolak oleh mahkamah.
13. Menjawab bantahan di semua peringkat perbicaraan

d) Hujah di akhir kes pembelaan

a. Sarankan pendakwa berjaya buktikan kes melebihi keraguan yang munasabah dan seharusnya OKT disabit di atas pertuduhan.

b. Hujah pihak pembelaan hendaklah dipatahkan.

c. Bandingkan dan bezakan kes pendakwaan dengan kes pembelaan.