

THE RIGHTS OF ~~AN~~ AN ACCUSED PERSON IN A PRELIMINARY INQUIRY
IN MALAYSIA

By

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PREFACE

The objective of this project is to set forth the various rights of an accused person in Malaysia now in force at the preliminary inquiry or pre-trial, to stress on the defects, to explain on their effects and operation by reference, where necessary to decided cases and wherever possible, to suggest reform or amendment to the existing law and practice relating thereto.

Research for this project paper was conducted at Perpustakaan Tun Abdul Razak, MARA Institute of Technology and the University Malaya Law Library.

Lastly, the writer in concluding the paper submitted that the legal position of the accused's rights at a preliminary inquiry stage seems to be far from sufficient for the protection of the accused. It is, however, has not been the writer's intention to provide solutions to problems, but to provoke thought and to provide material from which possible solutions to problem as may be arrived at.

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CHAPTER I

INTRODUCTIONA. OBJECT AND SCOPE OF STUDY

The study is one of the important branches of law in criminal procedure that is the period between arrest and trial. Pre-trial is a stage of criminal procedure where the rights of the accused are being explained, but not proven guilty. These rights need to be emphasised and clearly explained to the accused to enable him to prepare the right defence provided by the law.

This period exerted hardships on the accused. This was shown in the Supreme Court of the United States as:-

"..... the pre-trial period is full of hazards for the accused that if unaided by competent legal advice, he may lose any legitimate he may have long before he is arraigned and put in trial."¹

These hardships were also expressed by Friedland² as a situation where:-

"..... a disturbing relationship between custody pending trial and the outcome of the case, with respect to both the determination of guilt or innocence and the type of sentence imposed."

From the study Friedland again expressed that while in the custody of the police, the accused is exposed to a direct or indirect pressure to confess his guilt on grounds which are not related.³

1. ESCOBEDA V. STATE (1964) 378 U.S. 478

2. Friedland, Detention Before Trial (A Study of Criminal Cases Tried in the Toronto Magistrate Courts); 1965; Chapter 6, p.110.

3. Ibid. p.60

This situation is regrettable considering that the position of the accused, in the point of law, is not guilty until he is proven guilty by the court. At the same time, it is true that certain powers have to be given to the police to prevent crime for the protection of the society. Thus, with the knowledge as to the extent of powers possessed by the police and the rights of the accused will enable him to avoid any discrimination and the abuse of power by the police. In other words, the main objective is;

"..... to achieve a balance between the protection of the accused individual (epitomised by Bentham when he said, "It is better than ten guilty men should be allowed to go free than one innocent man should be convicted") and the protection of society by due conviction of criminal."⁴

In this study, emphasis will be given to the rights of the accused which is provided by the Federal Constitution of Malaysia 1963⁵ and the Criminal Procedure Code⁶, which will be known later on as the Code. Reference will not be made to other statutes considering that the provisions of the statutes are governed by the Federal Constitution and the Code.

The study will not cover the rights of the accused and the procedure provided under the Essential Security and Regulations 1975 and Internal Security Act 1960.

4. J. D. McClean and J. C. Wood, Criminal Justice and Treatment of Offenders; London; 1969, p.39.

5. Part II, Article 5.

6. Federated Malay States, Chapter 6.