

Procedures of Commencing a Civil Suit: A Comparative Analysis Between Malaysia and India

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ABSTRACT

Generally, the civil suit is when Plaintiff can seek to hold Defendant liable for a few types of harm or wrongful act. Before commencing a civil suit or advising the client on filing a civil suit, there are five factors that need to be considered. The five factors include cause of action, limitation period, parties to the suit, jurisdiction and mode of commencement. Next, there are two modes of commencement of civil suits in Malaysia. The modes are the Writ and Originating Summons. The Writ must be filed by the Plaintiff either by their Solicitor or personally in court. This is the first step in commencing a civil proceeding. Writ is one of the examples in the originating process and a formal document that will be addressed to the defendant, which serves to notify them of the proceedings. It is a letter of demand in setting out the claims against the recipient. Next, the Originating Summons is suitable for the Plaintiff or Applicant who intends to make an application under statutory provisions. There are a few differences between the mode of commencement by Writ and Originating Summons. The objective of the article is to understand the procedures for commencing a civil suit. Hence, qualitative writing is based on primary and secondary sources. A comparative analysis has been conducted to compare the procedures for commencing a civil suit between Malaysia and India. The comparative analysis compares and highlights the mode of commencement in Malaysia and India and recommends ways to improvise the mode of commencement in Malaysia. Hence, this paper suggests that more comprehensive and detailed modes of commencement must be included in Malaysia.

Keywords: Civil suit; Writ; Originating Summons; civil proceeding; mode of commencement

INTRODUCTION

A civil suit is a legal dispute between two or more parties. Generally, a civil lawsuit is a court-based process in which Person A (Plaintiff) can seek to hold Person B (Defendant) liable for some harm or wrongful act. Usually, if Person A is successful, he or she will be awarded compensation for the harm that resulted from Person B's action or inaction. Civil lawsuits can also be brought against businesses, contract disputes, residential eviction after a broken lease, injuries sustained in a car accident, or countless other harms or disputes.¹ Hence, the purpose of a civil suit is to resolve a dispute between the person who files the case to another person or organization. One of the main aims of a civil suit is to redress a private wrong committed by one party (Defendant) against the other (Plaintiff). Moreover, it is often suggested that civil proceedings are taken for the purpose of obtaining compensation for an injury. These may thus be distinguished from criminal proceedings, where the purpose is to inflict punishment. However, exemplary, or punitive damages may be awarded in

civil proceedings.² Generally, the procedures in filing a civil case in Malaysia are administered by the act of Rules of Court 2012 (ROC).³ The purpose of the enactment of ROC is to facilitate and standardize civil procedures in the courts as well as to improve the quality of the justice system in Malaysia.

There are several types of civil lawsuits in civil litigation that may require legal representations. Each litigation lawyer has his areas of expertise. Therefore, it is important for a client to know their cause of action and consult civil litigation lawyers who have expertise in specific types of civil cases. Some of the most common types of civil cases to appear in civil court are contract disputes, tort claims, representative action, complaints against the city, family law disputes and equitable claims.⁴

Besides, there are five fundamental factors that need to be considered before commencing a civil suit or advising the client on filing a civil suit. Firstly, there must be a valid cause of action. If someone decides to proceed to court without a valid cause of action, the court will likely dismiss the claim and order to pay costs. In the *Lim Kean v. Choo Koon* case, it

was stated that a cause of action exists whenever there is a connection between a party that can file a lawsuit and a party that can be sued. All the facts that must be proven for the plaintiff to succeed have occurred.⁵ There are several numbers of specific causes of action, such as contract-based actions, statute-based causes of action, and tort actions such as assault, battery, fraud, and negligence.⁶

Secondly, after determining a valid and actionable cause of action, it is important to ascertain whether the action falls within the prescribed limitation period. It is important to see whether the cause of action is statute-barred due to the expiration of the limitation period.⁷ Generally, the law of limitation in Malaysia's civil law system is governed under the Limitation Act 1953 (Act 254). It is an act that provides for the limitation of actions and arbitrations. The period can vary according to the cause of action and cases. For example, in contract lawsuits, the limitation period is six years from the date the contract was breached, and actions cannot be taken after six years have passed from the date the cause of action arose.⁸

The third factor is the parties to the suit. Parties in a lawsuit are the people or organizations whose name a case is brought. In every civil action in court, two parties are involved: A Plaintiff and a Defendant. The party who brings a lawsuit is called the Plaintiff, and the party against whom the case was brought is called the Defendant. In Family Law cases, the party who starts the lawsuit is called the petitioner, and the party against whom the case was brought is called the respondent.⁹ It is necessary to determine whether the party suing (Plaintiff) or the party being sued (Defendant) has the capacity to sue or to defend. The Plaintiff or Defendant must be of the age of majority, in his or her right mind and acting personally or in a representative capacity.¹⁰

The fourth factor that needs to be considered is the jurisdiction in which the case will be filed. The jurisdiction for the civil courts is provided in Subordinate Courts Act 1948 and the Courts Judicature Act 1964. Monetary jurisdiction, subject-matter jurisdiction and territorial jurisdiction are the factors that should be considered in order to determine the jurisdiction of a civil court. Monetary jurisdiction is the power of the court to hear cases depending on the amount in dispute. Meanwhile, subject-matter jurisdiction of a court denotes the type of claims and relief that can be heard and granted by the court. Lastly, territorial jurisdiction refers to the geographical area over which the

authority of a court extends. It is important to ensure that the Plaintiff files their case in the right court. If not done, Defendant may be able to strike out the pleadings or set aside the originating procedure because the plaintiff is abusing the legal system.¹¹

After deciding in which court the case should be filed, the next factor you should consider is the mode of commencement of proceedings. Order 5, Rule 1 of the ROC stated that there are two general modes to initiate court proceedings which are either by originating summons or by writ. There are few differences between the mode commencement by originating summons and writ. It is important for a lawyer which mode he will use to file a case because different modes of beginning will bring you to a different route and different outcome.¹²

This article will be divided into several parts. First, the writer will discuss the procedures for commencing a civil suit in Malaysia. Then, the differences between commencing a civil suit via Writ and Originating Summons will be discussed. Next, the writer will compare the mode of commencement between Malaysia and India. Fourthly, the writer will recommend and conclude how we can improvise and adapt the mode of commencement used in India to the mode of commencement in Malaysia.

PROCEDURES OF COMMENCING A CIVIL SUIT IN MALAYSIA

The mode of commencement is one of the factors that need to be considered by a lawyer before filing a civil suit. A lawyer needs to know the most suitable originating process to be used in their case. The mode of beginning civil proceedings is the method in which the court proceedings are started and conducted. Thus, it is important since different originating processes will bring you different routes and outcomes. According to Order 5, Rule 1 of the ROC 2012, there are two main originating processes in Malaysia which are the Writ and Originating Summons. However, in accordance with Order 94, Rule 2 states that the Order 5, Rule 1 shall not apply to the procedures under the written laws specified in Appendix C, except as permitted under these Rules. As a result, in the event of a conflict, the regulations under the stated laws in Appendix C shall take precedence over these Rules. Therefore, if there is any inconsistency, then the rules under the written laws in Appendix C shall prevail over these Rules.

COMMENCING A CIVIL SUIT BY WRIT

Generally, Writ is one example of an originating process. It is a formal document that acts as notice of the proceedings and is addressed to the defendant. The Writ is an instrument to provide notice of the lawsuit to the defendant. It is a document that commences the legal proceedings. The Writ is inherited from the English common law system.¹³ It can be defined as a written command issued in the name of the reigning crown, the Court or other legal authority, which commands a person to whom it is addressed, such as the defendant, to perform a specific action or to abstain from acting in a particular way.¹⁴ The writ is available for commencing an action in the Subordinate and High Courts.¹⁵ The provision regarding mode of commencement of proceedings has been stated in Order 5, Rule 2 of ROC 2012 that it shall be begun by Writ.¹⁶

A letter of demand stating the claims against the recipient frequently precedes a Writ. If the defendant wants to contest the claim, he must enter an appearance. There are a few examples of civil action that must begin with Writ, such as tort actions that involve claiming damages of property, claims for damages resulting from defamation, and claims resulting from road accidents and negligence. Besides that, the intellectual property actions also include the claims for damages that result from the infringement of copyright, trademark, or patent¹⁷ are examples of civil actions that are needed for the Plaintiff to begin the civil action by Writ.

There are certain formalities and features of Writ. The Writ must be filed by the Plaintiff by their Solicitor or personally in Court. This is the first step in commencing a civil proceeding. Once the Court has accepted the filing of Writ, then it must be served by Plaintiff on the Defendant. The Writ can be delivered to Defendant, or Defendant can collect it from Plaintiff.¹⁸

Furthermore, each Writ must be submitted in Form 2A of the ROC 2012 and Form 2 of the High Court.¹⁹ The Registrar shall sign and seal each copy of the Writ for service with the seal of the court that issued it. However, if there is any failure to seal the Writ by the Registrar and any mistake of the Registrar, this will not nullify the process. In addition, Plaintiff needs to prepare the prescribed form of the Writ accurately and make the required additions and changes to the prescribed form as are appropriate for the case.²⁰

The plaintiff must include the full names of each plaintiff and defendant as well as each party's addresses in the appropriate locations in the Writ. Next, specify whether a statement claim, or a summary of the claim is to be included with the Writ, and finally, sign the Writ. The Writ of Summons in Malaysia is authorised to be served by a court clerk who signs it, stamps it, and adds the official court seal. The clerk will return copies of the documents to the plaintiff's layer while filing the original copy with the court in this case.²¹

The duration and renewal of Writ is governed in the Rules of Court 2012. In accordance with Order 6, Rule 7(1) of the ROC 2012, it specifies the term and renewal of the Writ, stating that for service, the Writ is effective in the first instance for six months starting on the date of issue.²² Thus, the Writ has a lifespan of six months; therefore, if it is not served within that period, then the Writ is deemed to have lapsed. In the case of *Yap Seng Hock v Southern Finance Bhd*, the Writ has expired, and no application has been made to extend its validity period. It was held in this case by the Court of Appeal that Writ was a nullity, as there was no valid document in court to prove that the Writ had been renewed, and there was also no valid service of the purported Writ.²³

As a result, it's crucial to comprehend that before a writ whose validity has been prolonged is served. It must bear an official stamp to indicate that the Writ's validity time has been extended. The Writ must then be physically served on each defendant or sent to his last known address via prepaid A.R. Registered post. If possible, the first attempt must be made no later than one month after the date the Writ was issued.²⁴

Next, the renewal of Writ depends on whether the limitation period for the cause of action has expired. Plaintiff may issue a fresh Writ or apply to extend an expired Writ if the statute of limitations has not expired. If attempts are made to serve the Writ on a defendant but are unsuccessful, the court may decide that the Writ's validity be extended twice, or for a term not to exceed six months.²⁵

A document may be personally served in compliance with Order 62, Rule 3 of the ROC 2012. This provision states that personal service of a document is completed by leaving a copy with the person who has to receive it, showing him the sealed copy if he asks for it at the time it is left, and, in any case, an office copy if the documents are a writ or other originating process. There are a few services such as service on a solicitor, service on an agent

of overseas principal, service out of jurisdiction, service on a corporation, service on societies registered under the Societies Act 1966, service on the partnership, and service on government and service on persons under disability.²⁶

Besides that, it is important to know how to draft a Writ. Firstly, to draft a Writ, it should consist of the intitlement. The intitlement is the heading or the title of the civil suit. There are a few particulars to be inserted in the intitlement. The particulars include the name of the court where the writ is issued and where the case is heard, the type of the case, case number, names of the parties involved and the parties' identification number.²⁷

Then, the writ must be initiated, such as the Court where the writ is being sealed and issued. It is important to state the full name of the Court, where it includes the area or the local district of the Court. Next, the name of the state of the Court located must be stated, and the country's name follows this. Thirdly, it is important to state the type of case in the third line. Then, the parties' names, Plaintiff and Defendant, must be included.

Next, the word that must be included in between the names of the parties is between and must be in the centre of the document. In the next line, the word and must be stated in the centre of the document. Finally, the description of the parties must be stated in the Writ.²⁸

In Malaysia, the plaintiff's lawyer prepares the Writ and delivers it to the court along with the Statement of Claim form. Therefore, the Writ is just an instrument that notifies a defendant about the action and instructs him to file a response within a certain amount of time, often fourteen days from the day he received the Writ.

COMMENCING A CIVIL SUIT BY ORIGINATING SUMMONS

Originating Summons is suitable to be used where a Plaintiff or Applicant intends to make an application under statutory provisions. For example, proceedings under the Companies Act and proceedings to repossess land from squatters are initiated by Originating Summons.²⁹ Originating Summons also will be used when there is little or no substantial dispute of facts. According to Order 5, Rule 3 ROC, proceedings by which an application is to be made to the court or a judge under any written law shall begin by originating Summons. In addition, Order 5, Rule 4(1) ROC stated that unless the plaintiff intends to apply for summary judgement or for any

other reason, proceedings where the primary issue is likely to be one of the conceptions of any written law or any instrument made under the law, or any deed, will, contract, or other question of law, are to be initiated by Originating Summons.

Every originating summons must contain a statement on the issues the party is bringing the action to address, a request for the court's decision or direction, or a brief description of the relief or remedy sought in the proceeding.³⁰ Aside from that, an originating summons must be accompanied by an affidavit in support, which lists the materials relied on by the plaintiff. The defendant is not needed to enter a memorandum of appearance after receiving the initial summons. The defendant, on the other hand, has 21 days to prepare and serve a response to the affidavit in support. Any additional affidavits in reply must be filed within 14 days of the affidavit's service date.³¹

Compared to proceedings commenced by writ, proceedings commenced by Originating summons are faster, linear and less complicated. It also costs less, and both parties will have their cases stated in affidavits to facilitate the process. In all proceedings initiated by originating summons, the judge decides merely based on reading the affidavits submitted by both sides. Moreover, no pleadings are required in the process of originating summons, and there will be no witnesses and oral testimonies. Generally, the proceedings initiated by Originating Summons will be held in the chambers.³²

In the case of *Abdul Majid v Har Abdul Razak*, Chang Min Tat J stated that on the authorities, questions of jurisdiction apart, courts would refuse to decide questions of fact on an originating summons as a matter of some inconvenience. Thus, an originating summons would not be suitable for determining the issues raised.³³ Besides that, in the case of *Pesuruhjaya Ibu Kota Kuala Lumpur v Public Trustee & Ors*, the claim was by originating summons for costs and compensation for the removal of squatters from the respondent's land by the applicant. The respondents contended that the action should have proceeded by way of writ and not originating summons because disputed questions of law and fact were involved. As per Raja Azlan Shah J, a writ should be served rather than a summons where a factual issue emerges. It is stated that the issues must be proven through witness examination and cross-examination. In this case, the disputed factual issue would be the number of squatter families evicted from the property. The question is whether

the number of squatter families is a relevant issue that must be established in court through witness examination. As a result, the question of how many squatter families are evacuated is irrelevant to the case's resolution. Thus, the applicants' procedure is appropriate.³⁴ The filing of a case that is initiated by originating summons can be filed at the court registry, depending on your jurisdiction. After filing, you must extract a sealed copy of the same and serve the court papers to the Defendant within 6 months.³⁵

DIFFERENCES BETWEEN WRIT AND ORIGINATING SUMMONS

Based on the discussions above, there are some differences between commencing a civil suit via writ and commencing a civil suit via originating summons. Different modes of beginning will bring you to different routes and outcomes. Firstly, if you start your case with a writ, you will be proving your case via a full trial. Whereas, if you start your case via the originating summons, you won't be proving your case via a trial.

Secondly, for the cases commenced by writ, the parties should present evidence during the trial proceeding in the form of oral evidence sworn by a witness in open court. The evidence presented by the parties will be compiled in the form of a bundle of documents. At the end of the trial, the judge will deliver his judgment or his decision. Whereas, for the cases commenced by originating summons, you will be submitting your case before the judge in an oral hearing, and evidence will be adduced in the form of written statements called affidavits.

Thirdly, cases commenced by writ usually consume more time and cost than Originating Summons. Cases commenced by originating summons can be fast and straightforward. Fourthly, starting a civil suit by writ is suitable for complex cases where there is a substantial dispute of fact between the parties. Without a full trial, it is difficult for the court to conclude. Whereas starting a case by originating summons is suitable for a simpler case that does not involve disputes between the parties.

PROCEDURE OF COMMENCING CIVIL SUIT IN INDIA

Civil lawsuits in India are governed by the Code of Civil Procedure (Amendment Act) 1956 (CPC). It deals with the general principles of jurisdiction and enumerates the orders and rules for the procedures and method of governance of civil proceedings in

India. The CPC was enacted on 21st March 1908 and came into force on 1st January 1909. The main aim of this act is to put a stop to endless litigation.³⁶ In this subtopic, the writer will discuss the mode of commencement of civil suits in India.

PLAINT

The originating process of a civil suit in India is filing the plaint. According to Order 4, Rule 1 of CPC, every civil suit shall be instituted by presenting a plaint in duplicate to the court or such officer as it appoints on this behalf. The entire judicial system under the civil law of India is set in motion by filing the plaint. A statement of claims or another document used to start a lawsuit was also referred to as a "plaint." The primary goal of a plaint is to explain why the plaintiff needs the court's assistance.³⁷ Other than that, a plaint is also known as a pleading which states the plaintiffs' claims. Section 26 of CPC states that every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed.³⁸ A plaintiff's cause of action is divided into two elements, the legal theory and the legal remedy. The legal theory is the factual situation stated upon which the plaintiff's claims are based. In contrast, the legal remedy is the relief that the plaintiff seeks to obtain from the court.³⁹ The procedures for a plaint are provided in Order 7 of CPC. This order contains 18 rules.

According to Order 7, Rule 1 of CPC, there is some important information that the plaint should contain, like the name of the Court in which the suit is brought; the name, description and place of residence of the plaintiff; the name, description and place of residence of the defendant, so far as they can be ascertained; where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect; the facts constituting the cause of action and when it arose; the facts showing that the Court has jurisdiction; the relief which the plaintiff claims; where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished; and a statement of the value of the subject-matter of the suit for jurisdiction and court-fees, so far as the case admits. The party and his pleader must both sign each plaint. The party must verify each paragraph in the plaint to determine which paragraphs he wrote with his knowledge and which paragraphs he wrote with the help of someone else's knowledge. The plaint should include all the documents on which they have relied.⁴⁰

Besides that, Order 7, Rule 2 of CPC, provides money suits. According to this order, if the plaintiff seeks monetary damages, the plaintiff must specify the sum sought. However, if the plaintiff is suing for mesne profits or a sum due to him upon acting, he and the defendant have unresolved accounts. Order 7, Rule 3 of CPC states that if the claim involves immovable property, the plaintiff must include an enough description of the property to identify it. If the property can be identified by borders or numbers in a record of settlement or survey, the plaintiff must mention those bounds or numbers. The plaintiff also must provide that the defendant has an interest in the subject matter or claims to have one and that he is likely to be called upon to respond to the plaintiff's demand.⁴¹ In addition, When a case is brought after the statute of limitations has run out, Order 7, Rule 6 of the CPC mandates that the plaintiff explain the basis for the statute of limits exemption claim.

Order 7, Rule 10 until 10B of CPC states about the return of a plaintiff. If the court feels that the parties to the suit do not have the jurisdiction to try the case, then it will return the plaintiff to the parties. The court shall intimate its decision to the plaintiff before returning the plaintiff when the defendant has appeared. The court of Appeal or Revision has the power to return the plaintiff under this rule after setting aside the decree. The Judge shall, on returning the plaintiff, endorse the date of presentation and return the name of the party presenting it and brief reasons for return. In the case of *ONGC v Modern Construction Co*, the Supreme Court decided that the suit is deemed to have begun when the plaintiff is submitted in the appropriate court.⁴²

Apart from that, Order 7, Rule 11 of CPC, provides the grounds for rejecting a plaintiff. There are some grounds where a plaintiff can be rejected. Firstly, If the complaint does not state a claim, it will be dismissed. The court must conclude that the plaintiff is not entitled to relief even if the allegations in the plaintiff are proven. In the case of *Roop Lal Sathi v Nachhattter Singh Gill*, the Supreme Court held that if no cause of action is disclosed in the plaintiff, it should be rejected as a whole and part of it.⁴³ Besides that, in the case of *Madhav Prasad Aggarwal v Axis Bank*, it was decided that the plaintiff could either be completely dismissed or not. It is unacceptable to dismiss a plaintiff based on the part of it, such as the claims made against one or more defendants, while keeping the rest of the complaint in force. Second, if the plaintiff fails to change the valuation after being instructed by the court to do so within a certain

amount of time and the relief sought is undervalued, the plaintiff may be denied.⁴⁴

Third, the court will dismiss the case if the remedy requested is appropriately valued. Despite this, the plaintiff files the complaint on paper that has not been properly stamped because she fails to deliver the necessary stamp paper by the deadline set by the court. Fourth, a complaint will be dismissed if the activity is illegal according to the statements in the complaint. Fifth, the plaintiff will be disregarded if it is not submitted in duplicate. Sixth, the court may reject the plaintiff if the plaintiff does not serve the summons and pertinent copies of the plaintiff as required by Rule 9 of the rules. The plaintiff only has seven days to serve copies of the plaintiff on each defendant and pay the summons fees. The court did not, however, immediately dismiss the plaintiff. Instead, it offers the plaintiff some opportunity to fix the issues; nevertheless, the court will move through with the denial if the problems are still present.

Apart from that, at any time during the trial, the court has the power to throw out a complaint. An application for the dismissal of a plaintiff may be made at any time, as the Supreme Court ruled in *R.K. Raja v. U.S. Rayadu & Anor*, but once filed, the application must be decided before the trial can begin. The Judge must record the dismissal order and the reasons for it when a plaintiff is dismissed.⁴⁵

Therefore, filing a plaintiff is the first step in initiating a civil suit in India. Without a plaintiff, a person cannot bring a civil lawsuit in the court of India. Thus, it is very important to ensure all the details in a plaintiff are written accurately for a smooth proceeding.

COMPARISON OF THE PROCEDURES OF COMMENCING A CIVIL SUIT BETWEEN MALAYSIA AND INDIA

From the above discussions, the writer believes there are some differences between the procedures for commencing a civil suit in Malaysia and India. Generally, in both jurisdictions, the plaintiff files a civil lawsuit against the defendant in a court of law when there are two or more parties demanding monetary damages or specific performance, but no criminal accusations are made.

Firstly, in Malaysia, two modes of commencement are usually used in commencing a civil suit: The Writ and Originating Summons. A writ is used to resolve the substantial disputes of fact or where they are likely to arise, and the proceedings commenced by a Writ involve a full trial. Whereas,

Plaintiff uses the Originating Summons to make an application by statutory provisions.⁴⁶ In contrast, the mode of commencement used in India is Plaintiff. Presentation of the Plaintiff is the initial step of the pleadings in the case.⁴⁷ Every civil suit in India commences when the Plaintiff files Plaintiff to the Court. The entire judicial system under Civil Law in India is set in motion by filing the Plaintiff.

Secondly, the Rules of Court 2012 govern all the provisions related to lawsuits in Malaysia. In contrast, the Code of Civil Procedure (Amendment Act) 1956 governs all provisions related to civil lawsuits in India. In Order 5, Rule 2, it is specified that the Writ's proceedings shall begin, in accordance with the Rules of Court 2012's regulations governing the mode of commencement. According to this provision, Writ shall commence proceedings in which a substantial dispute of fact is likely to be raised. Next, Order 5, Rule 3 of the ROC 2012 states that a summons must be issued before any procedures may begin. According to this provision, an originating summons must be issued in order to begin the proceedings by which an application must be made to the Court of a Judge under any written legislation. On the other hand, Order 7 of the CPC governs the presentation of the Plaintiff in India. This clause establishes the guidelines for plaintiffs.

Thirdly, in the Rules of Court 2012, there is no clear guideline regarding the particulars that need to be included in a Writ or Originating Summons. It was only stated in the format of the Writ and Originating Summons in the Act. When there is no clear guideline on the particulars to be included in the Act, this will cause difficulties for the parties and the Judge to have a clear view of the case. The provision that governs for the particulars of Writ was only stated generally in accordance to Order 6, Rule 1 ROC 2012 that, every writ shall be in Form 2 for the High Court and Form 2A for the Subordinate Court. In addition, Order 7, Rule 2 ROC 2012 states that on the forms of originating summons.⁴⁸ Every summons must be in Form 5 or Form 6, whichever is appropriate, and every originating summons must state in its intitlement any provision of these Rules and any written law under which the court is being moved. Parties issuing originating summons, aside from *ex parte* ones, must refer to themselves as defendants, while parties issuing *ex parte* summonses must refer to themselves as applicants. Furthermore, Order 7, Rule 3 states the originating summons shall contain a statement of the issues on which the plaintiff seeks the Court's decision or direction or,

as the case may be, a brief statement of the relief or remedy sought in the proceedings commenced by the originating summons, together with sufficient particulars to identify the cause or causes of action with respect to which the plaintiff seeks that relief or remedy. Hence, the provision that governs Writ and Originating Summons in ROC 2012⁴⁹, only explains generally regarding the forms and contents of the respective mode of commencement but the guideline of the contents to be included are vague.

In contrast, in India, CPC provided a clear guideline on the particulars that should be included in a Plaintiff. Order 7, Rule 1 until 8 in CPC India states on the particulars that must include in Plaintiff in India consists of the name of the court in which the suit is brought, the name, description and residence of the Plaintiff, the name description and place of residence of the defendant as far as they can be ascertained, when the Plaintiff or defendant is minor or person of unsound mind, Plaintiff should contain a statement to that effect, Plaintiff should contain those facts that have constituted the cause of action and when it arose, facts that show the court has jurisdiction, the relief that the Plaintiff claims and a statement of the value of subject matter to determine the jurisdiction of the court and the fees as the court admits. Finally, the verification of oath by Plaintiff should be in the Plaintiff.

CONCLUSION AND RECOMMENDATION

In conclusion, the mode of commencement of a civil suit determines the pathway of a civil action. The mode of commencement of proceedings is the initial stage that must be taken by Plaintiff's solicitor to file the case in the court. Hence, it is important to understand this preliminary concept in filing a civil lawsuit in Malaysia. However, different jurisdictions have different modes of commencement in filing a civil lawsuit. It is important to understand the procedures of commencing a civil suit as it assists the young practitioners and students in understanding the entire civil litigation process according to the Rules of Court 2012.

Even though some people may perceive that the procedure of filing a civil suit plays a minor role, it is crucial because this is the initial stage of a civil action. It is important to grasp the details of procedures in commencing a civil suit because this can be treated as mere irregularities. In addition, Order 2, Rule 1 of ROC 2012 states that if any requirement of these Rules has been violated when beginning or purporting to begin any proceedings,

or at any point during the course of or in connection with any proceedings, the violation shall be treated as an irregularity and shall not render the proceedings, any steps taken in the proceedings, or any document, void. Therefore, to avoid being viewed as an irregularity, the process of starting a civil lawsuit through the mode of commencement must be meticulously followed.⁵⁰ Hence, after analysing the mode of commencement in Malaysia and India, the writers would recommend a few suggestions to be adapted in Malaysia.

The Complaint in India is very detailed and comprehensive compared to Writ and Originating Summons in Malaysia. The Complaint has all the particulars governed in Order 7 of CPC India. A civil suit cannot be commenced without a complete Complaint, and there is only one mode of commencement in India. Hence, the writers recommend that the mode of commencement in Malaysia, either the Writ or Originating Summons, can be improvised by having detailed and comprehensive particulars like the Complaint in India. Besides that, a new provision on the details that can add in a writ or originating summons should be included in the ROC 2012, as this will ease the courts to look into the case details in a comprehensive document without referring to any other supporting documents.

In a nutshell, we need to adapt and improvise the mode of commencement of civil suits in Malaysia. We must insert a more detailed provision regarding the particulars that has to be inserted during the drafting of Writ and Originating Summons. A detailed provision will assist, especially young practitioners to have a clear guideline on the particulars to be inserted in Writ or Originating Summons when filing a civil suit. Hence, a more comprehensive model is essential to initiate a case well without any flaws in the procedure of commencement civil suit.

NOTES

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