

D.R. 4/2018

RANG UNDANG-UNDANG

b e r n a m a

Suatu Akta untuk meminda Akta Had Masa 1953.

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DIPERBUAT oleh Parlimen Malaysia seperti yang berikut:

Tajuk ringkas dan permulaan kuat kuasa

1. (1) Akta ini bolehlah dinamakan Akta Had Masa (Pindaan) 2018.

(2) Akta ini mula berkuat kuasa pada tarikh yang ditetapkan oleh Menteri melalui pemberitahuan dalam *Warta*.

Seksyen baharu 6A

2. Akta Had Masa 1953 [*Akta 254*], yang disebut “Akta ibu” dalam Akta ini, dipinda dengan memasukkan selepas seksyen 6 seksyen yang berikut:

“Limitation of actions to claim damages for negligence not involving personal injuries

6A. (1) Notwithstanding subsection 6(1), this section shall apply to any action for damages for negligence not involving

personal injuries, where the starting date for calculating the period of limitation under subsection (2) falls after the date on which the cause of action accrued.

(2) An action to which this section applies shall not be brought after the expiration of three years from the starting date if the period of three years expires later than the period of limitation prescribed in subsection 6(1).

ILLUSTRATIONS

- (a) *C* bought a house from *D* in 2000. In 2010, *C* discovered a crack which damaged the walls badly. A building report made by a consultant revealed that the cracks had appeared in 2002, two years after *C* moved into the house. *C* has three years from 2010 to file an action in court against *D* for damages.
- (b) *C* bought a house from *D* in 2000. In 2006, *C* discovered a crack which damaged the walls badly. A building report made by a consultant revealed that the cracks had appeared in 2002, two years after *C* moved into the house. *C* has three years from 2006 to file an action in court against *D* for damages.
- (c) *C* bought a house from *D* in 2000. In 2005, *C* discovered a crack which damaged the walls badly. A building report made by a consultant revealed that the cracks had appeared in 2002, two years after *C* moved into the house. *C* has three years from 2005 to file an action in court against *D* for damages.

(3) Notwithstanding subsection (2), no action shall be brought after the expiration of fifteen years from the date on which the cause of action accrued.

ILLUSTRATION

C bought a house from *D* in 2000. In 2017, *C* discovered a crack which damaged the walls badly. A building report made by a consultant revealed that the cracks had appeared in 2001, one year after *C* moved into the house. *C* cannot commence an action because he has already exceeded the fifteen-year limitation period.

(4) For the purposes of this section—

- (a) “starting date” means the earliest date on which the plaintiff or any person in whom the cause of action was vested before him first had both the knowledge required for bringing an action for damages in respect of the relevant damage and a right to bring such action;

(b) “knowledge required for bringing an action for damages in respect of the relevant damage” means knowledge of—

(i) the material facts about the damage in respect of which damages are claimed;

(ii) other facts relevant to the current action:

(A) that the damage was attributable in whole or in part to that act or omission which is alleged to constitute negligence;

(B) the identity of the defendant; and

(C) if it is alleged that the act or omission was that of a person other than the defendant, the identity of that person and the additional facts supporting the bringing of an action against the defendant, and

(iii) includes the knowledge which the plaintiff or any person in whom the cause of action was vested before him might reasonably have been expected to acquire—

(A) from facts observable or ascertainable by him; or

(B) from facts ascertainable by him with the help of appropriate expert advice which is reasonable for him to seek,

but the plaintiff or the person in whom the cause of action was vested before him shall not be limited under this subparagraph to knowledge of a fact ascertainable only with the help of expert advice so long as he has taken all reasonable steps to obtain and, where appropriate, to act on that advice.

(5) Knowledge that any act or omission did or did not, as a matter of law, involve negligence is irrelevant for the purposes of subsection (4).”.

Seksyen baharu 24A

3. Akta ibu dipinda dengan memasukkan selepas seksyen 24 seksyen yang berikut:

“Extension of limitation period under section 6A in case of disability

24A. (1) If on the date when any right of action accrued for which a period of limitation is prescribed under section 6A, the person to whom it accrued was under a disability, the action may be brought at any time before the expiration of three years from the date when such person ceased to be under a disability or died, whichever event first occurred, notwithstanding that the period of limitation had expired.

(2) An action may not be brought by virtue of subsection (1) after the end of limitation period prescribed under subsection 6A(3).

(3) Where any such person as is referred to in subsection (1) was on such date under two disabilities or where before the disability which he was under on such date had ceased he was affected by another disability he shall be deemed for the purposes of this section to have continued under a disability until both such disabilities have ceased.

(4) Nothing in subsections (1) and (3) shall affect any case where the right of action first accrued to some person not under a disability through whom the person under a disability claims.

(5) When a right of action which has accrued to a person under a disability accrues, on the death of that person while still under a disability, to another person under a disability, no further extension of time shall be allowed by reason of the disability of the second person.”.

ILLUSTRATIONS

- (a) In 1987, *D* constructs a building in such a way that he is liable in the tort of negligence to *P*, the owner. Actual damage occurs, triggering the cause of action, in 1988. The damage becomes discoverable in 1992, but in 1989 *P* becomes mentally incapable, and does not regain his capacity until 1993. *P* has three years from 1993 to file an action in court against *D* for damages.
- (b) In 1987, *D* constructs a building in such a way that he is liable in the tort of negligence to *P*, the owner. Actual damage occurs, triggering the cause of action, in 1988. The damage becomes discoverable in 1992, but in 1989 *P* becomes mentally incapable, and does not regain his capacity until 2004. *P* cannot commence an action because the fifteen-year limitation period has been exceeded.

Explanation—

- (a) *Illustration (a)* is for the situation where an action may be brought within three years from the date a person under a disability ceased to be under the disability.
- (b) *Illustration (b)* is for the situation where an action cannot be brought after the expiration of fifteen years from the date on which the cause of action accrued.

Pindaan seksyen 29

4. Seksyen 29 Akta ibu dipinda—

- (a) dengan menomborkan semula seksyen yang sedia ada sebagai subseksyen (1); dan
- (b) dengan memasukkan selepas subseksyen (1) yang dinomborkan semula subseksyen yang berikut:

“(2) Section 6A shall not apply to any action to which paragraph (1)(b) applies.”.

Kecualian dan peralihan

5. (1) Jika pada tarikh permulaan kuat kuasa Akta ini apa-apa kausa tindakan bagi suatu tindakan di bawah seksyen 6A telah terakru, peruntukan Akta ibu sebagaimana yang dipinda oleh Akta ini hendaklah terpakai.

(2) Apa-apa tindakan atau prosiding yang telah dimulakan atau belum selesai sebaik sebelum tarikh permulaan kuat kuasa Akta ini hendaklah, selepas tarikh permulaan kuat kuasa Akta ini, diteruskan seolah-olah Akta ibu tidak dipinda oleh Akta ini.

HURAIAN

Rang Undang-Undang ini bertujuan untuk meminda Akta Had Masa 1953 ("Akta 254") untuk mengadakan peruntukan bagi pelanjutan tempoh had masa berhubung dengan tindakan bagi ganti rugi bagi kecuiaan yang tidak melibatkan kecederaan diri.

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

3. *Fasal 2* bertujuan untuk memasukkan seksyen baharu 6A ke dalam Akta 254 untuk membolehkan seseorang untuk mengambil tindakan berasaskan kecuiaan yang tidak melibatkan kecederaan diri dengan membenarkan pelanjutan had masa tiga tahun dari tarikh pengetahuan orang yang mempunyai kausa tindakan itu. Seksyen baharu 6A yang dicadangkan ini mengambil kira kes kecuiaan yang melibatkan kerosakan pendam dalam kes pembinaan, jika kerosakan itu tidak dapat ditemukan melalui pemeriksaan am dan orang yang mempunyai kausa tindakan itu tidak tahu atau tidak dapat semunasabahnya dijangkakan mengetahui tentang kerosakan itu. Walau bagaimanapun, seksyen baharu 6A yang dicadangkan ini menghalang mana-mana orang daripada memulakan tindakan mahkamah lebih daripada lima belas tahun selepas kausa tindakan itu terakru walaupun ia akan mengakibatkan tempoh had masa yang dilanjutkan menjadi kurang daripada tiga tahun atau kerosakan itu ditemui selepas lima belas tahun.

4. *Fasal 3* bertujuan untuk memasukkan seksyen baharu 24A ke dalam Akta 254 untuk mengadakan suatu tempoh had masa khas bagi orang yang tidak berkeupayaan untuk kes di bawah seksyen baharu 6A yang dicadangkan. Tempoh had masa itu ialah tiga tahun dari tarikh orang itu terhenti menjadi hilang upaya atau meninggal dunia tetapi tindakan tidak boleh dibawa selepas lima belas tahun dari tarikh kausa tindakan itu terakru.

5. *Fasal 4* bertujuan untuk memasukkan suatu subseksyen baharu 29(2) ke dalam Akta 254 bagi mengecualikan seksyen baharu 6A yang dicadangkan daripada apa-apa tindakan yang berhubungan dengan hak tindakan yang disembunyikan oleh fraud.

6. *Fasal 5* memperkatakan peruntukan kecualian dan peralihan.

IMPLIKASI KEWANGAN

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

[PN(U2)2718]