

# Appraising Concepts, Conditions, Justifications and Implications of Chain Remand Practices

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Remand for investigation by the enforcement authorities is an important stage in the process of gathering evidence before a suspect is charged for any offence. This is also known as pre-trial detention. However, under certain circumstances, the suspect can be remanded repeatedly depending on the number of police reports filed against him or her. Such a practice is also known as chain remand and is said to infringe on the rights of the arrested suspect. However, this practice is technically permissible under the law, as provided under section 117 of the Criminal Procedure Code (“CPC”). This article aims to study the application of the law with regards to chain remand and identify weaknesses in the existing legal provisions. Furthermore, this study also seeks to explore the justifications for practicing chain remand in Malaysia and its implications on the detainees at large. Through its findings, this study highlights the existing loopholes in the law that need to be addressed to ensure that justice is upheld.

**Keywords:** *Criminal Law, Chain Remand, Criminal Procedure Code, Human Rights*

## Background

The issue of chain remand has been under the radar of the Human Rights Commission of Malaysia (Suruhanjaya Hak Asasi Manusia, SUHAKAM) for quite some time (Ainaa Aiman, 2019). During a round table discussion held at Renaissance Hotel in Kuala Lumpur, SUHAKAM disclosed that it has received about 18 complaints from 2015 until 2019 (Abdul Rahman, 2019). Meanwhile, a total of 13 complaints had been lodged to Suara Rakyat Malaysia (SUARAM) concerning the practice of chain remands from 2011 until 2019 (Sevan, 2019). Besides these two organisations, the Enforcement Agency Integrity Commission (EAIC) also received one complaint in 2019 regarding this practice (Hanisah, 2019). Although the number of complaints received is not outrageous, the impact can be deleterious and harmful to individuals and all their family members. In fact, the actual number of those who have been

harm is higher, but most (including the families of detainees) prefer not to make a complaint due to certain reasons, such as fear that making complaints would cause detainees to be further held in detention (Shashi, 2020). Due to being held in police lockups for long periods of time, pre-trial detainees may also suffer physical and psychological damage (Inqilab Shahbazov et al., 2019) Thus, this study seeks to examine the application of the law with regards to chain remand practices and to explore possible ways to regulate such practices.

Remand or detention of any individual in Malaysia can be divided into two categories, namely remand for investigation and remand upon being charged with any offence by the Court of Justice. Application for remand by the police can be made through a court order under section 117 of the Criminal Procedure Code (CPC) for the purpose of completing investigations after receiving the first information report (FIR) from the complainant. Meanwhile, remand upon being charged applies to the custody of an accused who is somehow refused bail; the accused will thus be kept in court custody pending trial. In all cases, the accused will be in custody until the trial comes to an end or until the accused has sufficient funds to pay the bail sum as set by the court, depending on the type of offence he or she is charged with.

The term "remand" does not appear in any provision under the CPC. What is explicit seems to be usage of the word "detention". The meaning of remand will be discussed in the second part of this article. This article takes a close look at the concept of remand during investigation by the police, more specifically when the investigation cannot be completed within twenty-four hours. Authorities must not detain a suspect for more than twenty-four hours without obtaining leave from a Magistrate. Section 28 of the CPC provides that a police officer arresting a person without a warrant shall not unnecessarily delay, and subject to the provisions of bail and previous release, bringing or delivering the person arrested before the Magistrate. A police officer cannot detain a person arrested without a warrant for more than a reasonable period of time considering all the circumstances of the case. The period of detention must not exceed twenty-four hours, excluding the time required to travel from the place of arrest to the Magistrate.

## **Research Method**

Accordingly, this article will assess the justifications for remand for purposes of investigation and the amendment of remand laws in 2007, as well as its relationship with the practice of chain remand. Focus will be given to the definition and concept of remand, the justifications for remand, and the implications of chain remand on individuals. To achieve this objective, qualitative methods have been adopted, such as collecting information through round table discussions, library research, and references to journals, articles, statutes, case law, legislation, and online resources.



## Results and Discussion

### The Law in Malaysia on Remand for Investigation

Remand for investigation is one of the main procedures to assist the police in gathering information and evidence before a suspect is charged in court. An investigation will be difficult when there is no physical evidence gathered such as fingerprints, camera wire identification, DNA proof, and others that can be obtained from the suspect (Abdul Razak, 1998). The length of remand period has been a controversial subject since certain parties will dispute the legality of the detention if the suspect is detained for a long time (Muhammad Sabri, 2018). This article will focus on remand for purposes of police investigation, since the police is the main law enforcement agency in Malaysia. In fact, there are other agencies that can also exercise investigative powers, such as the Malaysian Immigration Department, the National Anti-Drug Department, the Malaysian Maritime Enforcement Agency, and the Malaysian Anti-Corruption Commission (MACC). The powers given to the police in relation to investigations are found in the CPC, whilst Part VII of the Police Act 1967 also lists out the duties and powers of police officers.

Section 107 of the CPC states that all information relating to a criminal offence supplied verbally to the police at the police station must be recorded in writing. Typically, a first information report (FIR) is taken soon after an incident happens. This report is significant because the complainant still has a clear recollection of the incident at the time the report was taken. However, in certain cases, police reports are not made immediately after the occurrence of an event. Sometimes the complainant may only appear a few days after the incident, some complainants may even take a month or more to make a police report. It is important to note that there is no fixed deadline for the complainant to file a police report in criminal cases, although a long delay may affect his or her credibility in court proceedings later (Gan Kim Seang v. PP, 2017).

Application for a remand order will be made if the investigation cannot be completed within twenty-four hours. The period of detention for further remand depends on the type of crime reported. For offences punishable by penalty of less than fourteen years of imprisonment, the total duration of remand permissible shall be seven days. For crimes punishable by penalty of not less than fourteen years of imprisonment or carrying the death sentence, the total duration of remand permissible shall not exceed fourteen days (section 117 of the CPC). It needs to be borne in mind that the investigating officer should be able to strongly argue that the information obtained against the suspects is strong enough to justify further detention. This is important in order to avoid any misuse of power that can lead to miscarriages of justice. As such, as shown in the case *Police Di Raja Malaysia v. Keong Mei Cheng Aundrey* (1994), it is necessary for the investigating officer to provide the Magistrate with a copy of the investigation diary that records the details of the investigation against the suspect from the beginning until the end. The

investigation diary should be given to the Magistrate for perusal when the remand application is made, namely before the Magistrate makes a ruling on the application.

Section 117 of the CPC is an important provision because it safeguards the interests of suspects through supervision done by the courts, and does not give investigators full authority to determine the duration of a suspect's detention. In addition, the court can also ensure that the authorities abide by the legal provisions in place, which should be strictly followed without fail. This is because the 24-hour time frame given is the period of investigation that should be conducted by the investigating officer and this 24-hour time also determines whether the court will allow further application for remand.

### **The Definition of Chain Remand**

No clear definition of remand is given under section 117 of the Criminal Procedure Code in Malaysia. The word 'remand' can be defined as 'to send back to custody, to be kept until the hearing is resumed or the trial comes on' (Saadan MH et al., 2017). According to Dr. Hamid Sultan, remand is 'custody pending investigation and trial' (Backer, 2005). Meanwhile, Singh aptly explains that remand is the process by which the continued detention of a person is authorised by a judicial order (Saadan MH et al., 2017). The main features of remand are that an order of remand can be made only by a court, it should be made for a specific period, and although it may authorise detention by the police or the jail authorities, the detention is the responsibility of the court (Saadan MH et al., 2017).

Remand can also be defined as sending back to custody, to be kept until the trial begins or is resumed (Black Dictionary, 2017). Referring to the Institute of Language Dictionary (Institute of Language, 2016) remand is defined as - (i) an action to detain a person for a certain period of time after obtaining a court order for the purpose of investigation: the person will be released after the period of detention expires, and (ii) a person detained for a period of time after obtaining a court order for the purpose of investigation, remand detaining a person accused of committing a criminal offense or sending a person back into custody (jail or lock-up) for further investigation pending trial; they are not allowed bail and remanded until their case is mentioned again in court. Therefore, in essence, remand for investigation is the process of detaining a person for a specified time to gather enough evidence before the person is arrested in court. In other words, the detainee may be arrested on suspicion of committing the crime, but he is not guilty until proven guilty by the court. Based on the above interpretation, it can be concluded that remand is a form of detention for a person suspected of committing a crime. Its main purpose is to enable the conduct of further investigation on persons suspected of committing criminal offences by order of a judge.

## Chain Remand in Practice

There are many cases where suspects are detained for more than fourteen days, and some for several months (Jalil, 2019). This extended period of detention is also known as chain remand. An example of chain remand is described below:

It has been a four-day remand period at the Dang Wangi police station. At the end of the fourth day, A was released and later detained again at the Jinjang police station, where he received a second remand. At the end of this second remand, A was released and remanded again at Brickfields police station for another four days.

This is a chain remand where the police arrests someone, then apply for remand and once the remand expires, they rearrest the individual saying there has been another police report against him, which allows them to circumvent the safeguards under the CPC (NMT, 2019). This practice exploits the existing ambiguities and abuses of the remand proceedings to illegitimately detain a person under the veil of legality. In its 2019 report, SUHAKAM had listed chain remand practices as one of the issues of concern which infringe human rights. SUHAKAM suggested that the police should conduct initial investigations before making an arrest. Arrests should only be made when there is reasonable suspicion that a person has committed an offence or when it is considered reasonably necessary to prevent a person from committing an offence or from fleeing. The problem of chain remand has existed since 2002 (SUHAKAM, 2002). In 2006, a committee was formed to evaluate and look into remand issues raised by legal practitioners and the public. According to the Minister of Home Affairs at the time, Datuk Seri Radzi Sheikh Ahmad, problems arose because former investigators could not complete the investigation in time, so there was a need for further remand to complete the investigation. The entire section 117 of the CPC has since then been revised and amended to become more stringent in its application.

However, it appears that the amendments made to section 117 of the CPC in 2006 have largely been ineffective in addressing the problem of chain remand, as dissatisfaction and complaints regarding this practice have continued to persist (Mei Lin, 2016) despite suggestions by SUHAKAM on ways to resolve the problem. From 2013 until 2018, issues relating to chain remand practices were still being reported and considered as ongoing issues that needed to be dealt with. One of the most frequently raised issues is the right to personal liberty (Soong et al., 2016). It is important to ensure that this issue is resolved and that there are adequate legal provisions to safeguard individuals from any form of arbitrary imprisonment. In 2016 (Soong et al., 2016) a SUHAKAM committee highlighted the issue of abuse of remand process, where the accused is detained at various police stations for investigation. In 2017, this issue cropped up again and in 2018, the same problem persisted (Soong et al., 2018). The 2018 SUHAKAM report stated that chain remand practices were becoming worse, with suspects being remanded for Penal Code offences and then remanded again under preventive detention laws such as the

Prevention of Terrorism Act (POTA) 2015 and the Prevention of Crime Act (POCA) 2013, even when there is no evidence against them. The remand period under these specific laws is much longer, where suspects can be detained for up to 59 days. In 2018 also, a committee was set up to tackle the problems within the legislation in Malaysia including enforcement issues and chain remand practices, with the hope that the police will put a stop to this practice (Shafwan, 2019). However, the problem is still ongoing and has not been satisfactorily resolved.

A lot of criticism has been thrown at the government for failing to control chain remand practices by the police (Mei Lin, 2016). Jerald Gomez criticised the actions of a police officer who remanded an accused for up to 100 days (Gomez, 2003). The investigation officer justified the action by saying that chain remand practices are lawful and in accordance with principles of the law as long as the suspect is remanded in different places and for different cases. However, Jerald disagreed with the explanation given. In his view, section 117 of the CPC has not been correctly interpreted by the investigating officer. Suspects can be released on police bail and be required to come back to the police station at any time for whatever reason as the police may feel necessary. Jerald also pointed out that nowadays, the police are equipped with computers, cutting-edge technology, and forensic ability. As the police are in communication with each other throughout the country, they should be much more efficient in law enforcement. Chain remand is seen as clearly going against the principles of law as it allows a suspect to be detained for a long time even when it is unnecessary. The police should first begin collecting documentary evidence before moving in to arrest suspects (Mohd, 2018). Similarly, a request for remand of up to several days is unnecessary and unjustified for offences that do not take long to investigate, and where clear evidence can be obtained without much difficulty (Liang, 2019).

The problems of chain remand have also been raised based on several legal cases. In the case of *Datuk Sri Saanjevan Ramakrishnan v ASP Poonam E Keling* (2016), Chairman Sanjeevan, an anti-crime activist, was first arrested on June 22 over allegations of criminal intimidation and extortion. He was later re-arrested and remanded a total of nine times pursuant to various police reports under section 384 and section 506 of the Penal Code. He was initially held in detention for 18 days.<sup>[26]</sup> After the expiry of the 18 days detention period under the CPC, Sanjeevan was further remanded under POCA 2013 for 21 days, and then for a further 38 days. Meanwhile in *Selvakumar Subramaniam v Penguasa Pusat Pemulihan Akhlak Simpang Renggam, Johor Darul Takzim & Ors* (2013), the plaintiff was detained for a total of 826 days in remand. This is among the classic cases of chain remand, where in the end, the plaintiff was awarded damages of RM 997,000.00 for wrongful imprisonment.

Remand is an important stage of investigation for the enforcement bodies to obtain solid evidence based on the reported offences as alleged in the FIR. The investigation will be more complicated if the report made is long overdue, as this will make it difficult for investigators to obtain evidence linking the accused to the offence. In this context, remand for investigation provides an opportunity for the investigating officer to interrogate the suspects involved (Emily



Berg et al., 2008). In addition to being interrogated, certain evidence such as the suspect's DNA samples and fingerprints will be taken to see if there is any link or association with any case items discovered at the scene. As per section 27 of the Evidence Act (1950), the suspect may drive to the place where the case items were disposed of, such information can be gathered from a suspect to be one of the reasons that can allow the police to investigate before a suspect is charged in court. How much information can be gathered from a suspect has been one of the reasons that can allow the police to investigate before a suspect is charged in court.

In certain circumstances, the police have resorted to remand for investigation to prevent the suspect from disturbing the witnesses or tampering with evidence. Therefore, it can be said that remand of a suspect is also important to protect available witnesses and to potentially secure evidence in court (Evidence Act 1950). Legally, pre-trial detention is only permitted if there is a risk that the suspect will abscond or pose a danger to the public (Terpstra et al., 2016). Having a previous criminal record can be a factor that contributes to further detention of a suspect during investigation. If the suspect has a previous criminal record or has previously been detained before, there is high risk that the suspect may abscond and once he has disappeared, he will be difficult to trace by the police. This may then lead to a non-feasible prosecution (St Bernad et al., 2005). There is also the risk that the suspect would destroy or hide evidence from the authorities if they are released before investigation is completed. This will make it difficult for the Investigating Officer to strengthen the prosecution's case.

Strictly speaking, based on Lord Denning, remand is allowed under the law and it is a prerequisite for maintaining universal peace. Lord Denning that stressed that it must be matched with social security, by which he means peace and the good order of the community in which we live. The freedom of a just man is worth little to him if he can be preyed upon by the murderer or the thief. Every society must have means to protect itself from marauders. It must have powers to arrest, search and imprison those who break its laws. So long as those powers are properly exercised, they are safeguards of freedom. But powers may be abused, and if those powers are abused, there is no tyranny like the power of executive in the government (Jan Terpsatra et al., 2016). Pre-trial detention is also a measure to prevent the return of a suspect to the neighbourhood which can result in social unrest or escalation of social conflict.

The real goal of remand practices is to ensure that the integrity and credibility of the criminal justice system remains intact. The second goal is to protect the community by preventing suspects from threatening witnesses, victims, and others. At the same time, the law must be able to uphold the rights of the various parties involved. The authorities must still preserve the rights of the detainee because the basic principle in the criminal justice system is that a person is innocent until he is proven guilty (Mohamad Radhi Yaakob v. Public Prosecutor, 1991). Suspects cannot be detained arbitrarily without the permission of the court. In addition, they are entitled to receive medical treatment if they are found to be ill and they should not be hurt by the authorities at all. Failure to uphold and protect the rights of detainees can lead to

incidents such as death in custody and this will lead to greater problems as seen in the case of Selvi Narayan & Anor (Administrators Of Estate Of Chandran Perumal; Deceased) v. Corporal Zainal Mohd Ali & Ors (2017). Another relevant case that once shocked the country, namely the case of N Indra Nallathamby V. Datuk Seri Khalid Abu Bakar & Ors (2013), involved the death of a Kugan detainee who was subjected to chain remand practices.

### **The Conditions for Remand Before and After 2007**

The main legal provision on remand is enshrined under section 117 of the CPC. When the remand application is made, the investigating officer must meet the conditions set before a further remand order is given, including whether the investigation was conducted within 24 hours when the suspect was detained at an early stage. The main principle in section 117 CPC is that the application for remand should be made when an investigation conducted by the investigating officer cannot be completed within 24 hours. It must be emphasised that when an investigation has been conducted but cannot be completed within 24 hours, then additional time can be requested. However, what commonly happens in practice is that no investigation has been carried out within 24 hours, but a remand application is still applied for. Therefore, section 117 provides that the Magistrate shall record the reasons for allowing a remand application based on the justifications given by the investigating officer. In addition, the details regarding the investigation conducted within 24 hours and the constraints deemed reasonable by the Magistrate in granting the application, must also be recorded.

In the case of Hassan Masrom and others v. Mohd Hady Ya'akop (2018), a remand application was made although no 24-hour investigation was carried out as required by legislation. This was confirmed by the investigating officer assigned when questioned by the plaintiff's lawyer about the plaintiff's relationship with the report. The investigating officer stated that there was no connection. If a 24-hour investigation had been carried out, the investigating officer can surely associate the plaintiff with the police report made. The key requirement imposed by section 28 (2) and (3) of the CPC is that an investigation must have actually been conducted. This is the main element that needs to be proven before a further remand application can be made.

In the case of Public Prosecutor v. Audrey Keong Mei Cheng (1997), it was specified that three things need to be met before a remand application should be made by the investigating officer: the surrender of the suspect to the Magistrate, the handover of the investigation diary, and reasonable justification connection between the suspect and the offence reported. The last requirement is among the most important conditions to be proved by the investigating officer. Before a remand application is allowed, the Magistrate needs to consider from the facts of the case whether there is reasonable suspicion against the suspect to justify the issuance of a remand order. For example, if the suspect is caught at the time of the incident, then a longer period for remand may be given. However, if the suspect has been arrested based on

information alone, then the remand period granted is shorter. In the case of *Re The Detention of S Sivarasa v Ors* (1997), the investigating officer stated more time was needed to investigate all the suspects detained. In this case, there was failure to submit the investigation diary and there was no valid reason to apply for an extension of the remand period. The statement often used by the investigating officer in the remand application was "to complete the investigation" but this is too general without enough details on what is meant by "to complete the investigation". Furthermore, an application for further remand does not mean that a new investigation has started, but that the investigation is already under way but has not been completed.

Technically, the practice of chain remand is allowed (Jerald Gomez, 2003) provided that the conditions specified under remand laws have been fulfilled. There is no legal provision limiting the number of remand applications that can be made, even though the suspect has been detained at several different police stations before. The important thing is that the legal procedure is complied with, even for offences committed in different places or involving different police reports. For example, in the case of fraud under section 420 of the Penal Code, if there are 100 reports made against one suspect, technically the suspect can be detained for each of the report lodged against him or her (Hariz Mohd, 2018). The amendment of CPC 2007 helped to curb this practice slightly (Act A1274). However, with the existence of SUHAKAM's annual report up to 2020, it shows that there are still concerns about this problem and that the 2007 amendments have failed to adequately address it. The amendments in 2007 were intended to curb unfairly long remand practices. The amendment to section 117 of the CPC has limited the allowable detention period based on the type of offences. For offences punishable by imprisonment of not less than fourteen years, the detention shall not exceed four days for the first application and three days for the second application. Meanwhile, for offences punishable by imprisonment for at least fourteen years or the death penalty, detention can be granted for up to fourteen days, where the first detention is for seven days and the second is also for seven days. This amendment can be viewed in a positive light as a step taken by the government to improve the Malaysian criminal justice system. Prior to the amendment, the investigating officer could directly apply for remand up to a maximum of fifteen days, regardless of the type of offence the suspect is being investigated for.

Apart from that, new provisions were also created, namely sections 117 (3) and (4) of the CPC. Both clauses require the investigating officer to record the total number of days that the suspect has been detained. Thus, the Magistrate who hears the remand application can offset to only grant the appropriate remand period or completely reject the remand application. This section clearly shows that the Magistrate who hears the application should take into consideration the entire period of detention that the detainee has undergone, and not just the application before him at the material time. However, in implementing this legal provision, it is important for the investigating officers, advocates, and detainees to give their cooperation. If the information provided to the Magistrate is not accurate, then the application for detention involving chain

remand will not be granted. However, sometimes the Magistrates themselves need to take the extra effort to go through all the documents carefully, especially the arrest reports, before making a ruling on the application. The arrest report will show where the suspect has previously been arrested.

For some, the practice of chain remand refers to the detention of suspects in various police stations, also known as "roadshow" remand. However, the author regards this as only one possible chain remand situation. In the author's view, chain remand can occur in four different situations. The first situation involves different police reports being made even in the same place, as decided in the case of *Dasthigeer Mohamed Ali v. Government of Malaysia* (1999) where the application for remand refers to each of the police reports made. In the second situation, chain remand occurs when there is only one police report but that single report involves several criminal offences. For example, a suspect is arrested for driving a stolen vehicle, drug possession, and also causing injury to a police officer who detained the suspect. Third, chain remand can also occur when it involves a police report made at a different location (the common practices). Finally, chain remand can also take place in cases involving specific remand legislation other than the CPC, for example remand under the Immigration Act 1959/1963.

### **Implications of Prolonged Remand Practices**

In general, it is undeniable that remand for investigation is important to the police. Without an adequate remand period, it would be difficult for the police to complete investigations and obtain evidence that can lead to prosecution. However, remand for investigation can be misused, especially when there is not enough time for the authorities to complete their investigation. In most Asian countries, a criminal investigation is mainly the responsibility of the police. The police have to attend to cases reported every day and not all cases can be resolved quickly. It takes some time and the facts of the case also contribute to determining how much time is needed for the investigation to be completed. The aim of criminal investigation is to solve crimes and bring the criminal offenders to justice (Drew et al., 2015; Leo, 2009). At the same time, wrongful remand can lead to miscarriages of justice.

Thus, in dealing with applications for remand of suspects for purposes of investigation, a balance between protecting the safety of the public and upholding individual rights must be struck. This is because depriving a person of his or her liberty in connection with an alleged offence when he has not been convicted and the evidence has not yet been examined represents a possible infringement of several fundamental rights. Suspects may be entitled to compensation and certain legal remedies if they have been adversely affected by this action. Unnecessary use of remand for investigation can interfere with fundamental liberties, negatively affect the health and mental condition of the detainees, bring social harm, and result in greater risk of crime, as further elaborated below.

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**a. Interfering with the Fundamental Rights of Individuals**

In most countries, suspects remanded for investigation are detained in overcrowded, cramped, and unsanitary conditions; they are also at risk of mistreatment and violence. Even short periods of detention can disrupt family and private life and the ability to work and earn a living; all of these come with potential long-term consequences. Individuals who are remanded in custody are perceived negatively by society when they are released, despite not being charged in court. There was even a case of a detainee being fired by his employer due to distrust, even though he was released with no charges imposed (Bottomley et al., 1991). In the case of Mejar Mohd Nazeri Haji Noor v. Sukjit Singh Shabee Singh & Ors (2017), opportunities for promotion and career development are also affected even when a person is detained for one and a half hours. Being remanded often means losing the benefits of protective factors known to support desistance from crime, such as family relationships, work, and home life (Jacobson & Fair, 2016).

A person's detention also affects his or her family; this depends on various factors such as whether the suspect is the sole or main breadwinner of the family, the size of the family, and the ability of the family to earn a living without the suspect (Micheal King, 1973). The effect of remand is greater if it involves poor families, burdensome legal fees, and other consequences (Creasie F.H, 2003). In some cases, family members will have to sell any valuable property or make a loan which will pose more difficulty for them.

**b. Health and Mental Condition of Suspects**

Remand prisoners have a high tendency to contract dangerous diseases when in detention, such as tuberculosis (TB). Their release poses a risk of transmission of the disease to their families and communities (Reena Raj, 2017). They develop TB during incarceration not only due to poor living conditions in remand prison, but also due to certain factors affecting their life before imprisonment. It was found that detention has a negative impact on the mental state of detainees, where factors such as congestion, violence, hygiene, and inadequate health services can contribute to the deterioration of their mental well-being (Tatiana et al., 2007). The World Health Organization (WHO) reported that the suicide rate among remand prisoners is much higher than among those who have been convicted. According to one study, prisoners have said that long periods of isolation with little mental stimulus in detention have contributed to poor mental health and led to intense feelings of anger, frustration, and anxiety (Jo Nurse et al., 2007).

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## Conclusion

In principle, the practice of remand is seen as important in assisting the authorities during their investigations. In fact, the concept of remand as being necessary to protect the safety of the public overrides the rights of the individual (Fred E. Iba, 1999). However, the act of restraining an individual's freedom without strong legal justification would violate his or her fundamental right to self-liberty. Because of this, detainees who are unfairly affected and who have suffered from injustice after being remanded may be entitled to compensation and other legal remedies. Even though being held in detention does not mean that the detainee is an offender, the perception of the community is otherwise. This is further compounded by previous cases of being remanded involving various offences.

It can be concluded that chain remand practices can lead to abuse of human rights if there is no specific limitation provided under the law to regulate the practice. Without proper safeguards, the practices of rearrests and chain remand can lead to blatant abuse of power by enforcement authorities and violate an individual's fundamental human rights both under the Federal Constitution of Malaysia and the Universal Declaration of Human Rights. It can be argued that pre-trial detention constitutes the punishment of individuals not yet convicted of crimes, which can be viewed as inconsistent with the presumption of innocence. Some scholars have attributed this striking practical difference to the lack of a neutral and impartial judicial control system, whilst others have attributed this to the fact that detention has been deliberately used as a tool of punishment. Originally, the suspect is detained to ensure that he or she can attend the subsequent trial, rather than to punish the detainee prematurely without there having been a trial (Lin et al., 2015).

The principle of being innocent until proven guilty is one of the tenets of criminal jurisprudence. Therefore, the principle must be applied with full force during remand proceedings as the guilt of the arrested person has yet to be proven. As discussed above, all necessary procedural protection afforded to suspects by Parliament in its wisdom via section 117 of the CPC and other provisions of the law must be adhered to without any compromise. Any blatant non-compliance with the law will not only render the whole system of law ineffective and open to abuse, but also tarnish the trust and confidence of people towards the criminal justice system in this country. Existing legal loopholes are among the leading causes of chain remand practices. Therefore, the existing law in this regard needs to be further improved so that this issue can be addressed effectively.



## REFERENCES

- Abdul Razak Bin Haji Mohamad Hassan (1998), The Administration of Criminal Justice in Malaysia: The Role and Function of Prosecution, Unafei Work Programme. [https://www.unafei.or.jp/publications/pdf/RS\\_No53/No53\\_25PA\\_Hassan.pdf](https://www.unafei.or.jp/publications/pdf/RS_No53/No53_25PA_Hassan.pdf)
- C R Swanson; N C Chamelin; L Territo. (2003). Criminal Investigation, Good Year Publishing Co, Box 18486, Salt Lake City, UT 84118, United States of America.
- Fred E. Ibaou (1999), Public Safety v Individual Civil Liberties, Journal of Law and Criminology, Vol.89 No.4
- Gerald Gomez (2003), Police Powers and Remand Proceedings, Malay Law Journal. <https://jeraldgomez.com/publications/police-powers-and-remand-proceedings/>
- Inqilab Shahbazov and Elsever Muradov (2019). Excessive use of pre-trial detention in Azerbaijan: Examination of the causes. International Journal of Law, Crime and Justice.
- Jan Terpstra and Jelle Kort, Police officer's trust in Criminal Justice, University of Nijmegen, Faculty of Law, Department of Criminal Law & Criminology, Nijmegen, the Netherlands (2016), International Journal of Law, Crimes and Justice.
- Keith Bottomley, Clive Coleman, David Dixon, Martin Gill, David Wall, (1991) The Detention Of Suspects In Police Custody: The Impact Of The Police And Criminal Evidence Act 1984, , The British Journal Of Criminology, Volume 31, Issue 4, 1991, 347–364, <https://doi.org/10.1093/oxfordjournals.bjc.a048134>
- Mohd Hilmi bin Saadan dan Ramizah Wan Muhammad, (2017) Justifiability of Remand Detention Provision In Syariah Criminal Procedure Enactment (2003): A Case Of Selangor 1 LNS(A) xli
- Morten E.B, Geoff D, Petter G, Jan T.K,(2008) Police Management Roles as Determinants of Knowledge Sharing Attitude In Criminal Investigations, International Journal of Public Sector Management. DOI: 10.1108/09513550810863178.
- Muhammad Sabri Bin Mohd Raziff (2018), Investigation Power: The Ineffectiveness of Police Investigation In Malaysia, Universiti Malaya. <http://ir.uitm.edu.my/id/eprint/21673/>
- Muhd Hilmi Bin Saadan and Ramizah Wan Muhammad. Justifiability of Remand Detention Provision in Syariah Criminal Procedure Enactment (2003): A Case of Selangor, 20017 1 LNSA xli. p 24
- P.H Van Kempen, (2012) Pre-Trial Detention in National and International Law and Practice: A Comparative Synthesis and Analyses, <https://www.researchgate.net/publication/255724571>
- Pramananthan Vasuthevan, “Chain Remand” and its consequences in reality according to Malaysian Criminal Law as comparative studies. , Hatyai University (2018)
- Saadon MH and Ramizah WM, Justifiability of Remand Detention Provision In Syariah Criminal Procedure Enactment (2003): A Case Of Selangor (2017) 1 LNS (A) XLI,
- St Bernad Rao, Sue King (2005), Factors that Influence Remand in Custody, Final Report to the Criminology Research Council, November Social Policy Research Group, University of South Australia, <https://www.aic.gov.au/publications/tandi/tandi310>.



The Rt Hon Lord Denning, *The Due Process of Law* (1980) London, Butterworths.  
Xi Fen Lin and Wei Len, *Reforms to China 's Pre Trial Detention System: The Role of the Procuratorate*, Shanghai Jiao Tony University, Law of School China (2015), *International Journal of Law, Crimes and Justice*.

## Case Law

[1987] CLJ (Rep) 145 (SC)  
Alma Nudo Atenza v. PP & Another Appeal [2019] 5 CLJ 780  
Anti-Human Trafficking and Anti-Smuggling of Migrants 2007 (Act 670)  
Bakri Mohamad Ali v. PP, [2010] 1 CLJ 610  
Che Ani Itam v. Pendakwa Raya [1984] 1 CLJ (Rep) 84 FC; [1984] 1 MLJ 113; [1983] 1 MLRA 351  
Criminal Procedure Code (Act 593)  
Dasthigeer Mohamed Ismail v. Government of Malaysia [1999] 6 CLJ 317  
Datuk Sri Sanjeevan Ramakrishnan v. ASP Poonnam E Keling [2016] 1 LNS 1064  
Gaibidingpao Kabul v. Union Territory of Manipur A.I.R 1963 Manipur 12  
Gan Kim Seang v. PP, [2007] 1 LNS 554  
Hassan Masrom dan yang lain v. Mohd Hady Ya'akop [2018] 7 CLJ 403  
Ho Kim Long and Ketua Polis Negara & Ors, Cham Tian Cher and Ketua Polis Negara & Ors [2020] 1 LNS 1118.  
Immigration Act 1959/63 (Act 155)  
In re The Detention of R Sivarasa & Ors (1996) 3 MLJ 611  
Krishnan Murthy v. Pendakwa Raya [1986] 1 MLRA 239; (1987) 1 MLJ 292 AT 295-296;  
Mohamad Radhi Yaakob v. Public Prosecutor [1991] 1 CLJ Rep 311  
Mohammad Abu Shaleh v. Ketua Pengarah Imigresen Malaysia & Yang Lain Dan Satu Lagi Kes [2019] 8 CLJ 244.  
Muslim Ab Karim & Satu Lagi v. PP [2017] 1 LNS 1502.  
N Indra Nallathamby v. Datuk Seri Khalid Abu Bakar & Ors [2013] 6 CLJ 272.  
Ong Ah Chuan v. Pendakwa Raya [1981] AC 648  
Polis Di Raja Malaysia v. Keong Mei Cheng Aundrey (1994) 3 CLJ 362  
Polis Di Raja Malaysia v. Keong Mei Cheng Aundrey (1994) 3 CLJ 362  
PP v. Goh Jiat Sze & Satu Lagi [2019] 1 LNS 2074  
PP v. Audrey Keong Mei Cheng [1997] 3 MLJ 477, at p.48  
PP v. N (Child) [2004] 2 C.L.J 176.  
PP v. Rahaman Mojibur [2016] 1 LNS 290  
Prevention of Crimes Act 959 (POCA) (Act 82).  
Prevention of Terrorism Act 2015 (POTA) (Act 769)  
Sattiyah Muniandy v. Pengerusi, Lembaga Pencegahan Jenayah & Ors [2018] 1 LNS 1539  
Security Offences Act (Special Measures) (Act 747)



Selvakumar Subramaniam v Penguasa Pusat Pemulihan Akhlak Simpang Renggam, Johor Darul Takzim & Ors [20013] 1 LNS 1068  
Selvi Narayan & Anor (Administrators Of Estate Of Chandran Perumal; Deceased) v. Koperal Zainal Mohd Ali & Ors [2017] 5 CLJ 84.  
Suresh Kumar Velayuthan v. PP [2020] 4 CLJ 270  
Tan Hoo Eng V. PP, [2019] 1 LNS 893  
Waytha Moorthy Ponnusamy & Ors V. Yab Dato Seri Dr Ahmad Zahid Hamidi & Ors; Dato Ibrahim Ali (Intervener) [2018] 1 LNS 2124  
Zafari Md Yunus v. PP [2017] 8 CLJ 249

### News Paper Online

Ainaa Aiman, 'Chain remand' an abuse of law, Suaram complains to Suhakam, 25 th September  
Arrest, Torture, Release, Repeat, POCA: Police use chain remand in Malaysia <http://newmalaysiatime.com/2019/02/25/arrest-torture-release-repeat-poca-police-use-chainremand-in-Malaysia> access on 4 September 2019.  
Aswadi Alias, Berita Harian Online, 3 Oktober 2019. <http://www.google.com.my/amp/beritaharianonline> access on 9th October 2019  
Berita Harian Online. (3 Oktober, 2019). <http://www.google.com.my/amp/beritaharianonline>.  
Arrest, Torture, Release, Repeat, POCA: Police use chain remand in Malaysia <http://newmalaysiatime.com/2019/02/25/arrest-torture-release-repeat-poca-police-use-chainremand-in-Malaysia>.  
Convicted Before Trial: Indefinite Detention Under Malaysia's Emergency Ordinance (2006). <https://www.hrw.org/report/2006/08/23/convicted-trial/indefinite-detention-under-Malysias-emergency-ordinan>.  
FMT, (15 Mac 2016), Six men allege torture during 80-day remand, <https://www.freemalaysiatoday.com/category/nation/2016/03/15/six-men-allege-torture-while-in-80-day-remand/>  
Hariz Mohd, (2018) Lawyers claim client locked up in 'chain remand for 40 days', [malaysiakini.com/news/440393](http://malaysiakini.com/news/440393).  
Mayuri Mei Lin, Chain Remand, more common than you think, lawyers say after crime fighter's detention, [malaymail.com/new/malaysia/2016/07/13](http://malaymail.com/new/malaysia/2016/07/13).  
Tan Yi Liang (2016) sitting in jail, waiting to be charged, the star online, [thestar.com.my/opinion/online-exclusive/in-your-face/2016/05/17-condition-for-remand](http://thestar.com.my/opinion/online-exclusive/in-your-face/2016/05/17-condition-for-remand).  
Suhairi Aznam, Measures to check the "Chain Smoking", The Star Online, [thestar.com.my/opiniom/letters/2006/04/30](http://thestar.com.my/opiniom/letters/2006/04/30).  
Robert Hector, Abolish POCA and detention without trial laws, <https://www.malaysiakini.com/letters/402191> access on 10 October 2019.



2019, <https://www.freemalaysiatoday.com/category/nation/2019/09/25/chain-remand-an-abuse-of-law-suaram-complains-to-suhakam/>, accessed on 10 th December 2019.

## Report

Annual Report Suhakam (2012).<https://www.suhakam.org.my/wp-content/uploads/2013/11/SUHAKAM-BI-2012.pdf>.

Annual Report Suhakam (2018).  
<https://drive.google.com/file/d/1fvvmlSqXJ2ysTdhRrYnSws6Bwz6FQiaG/view>.

Dr Kua Kia Soong dan Dr Yeoh Seng Guan. Human Rights Overview Report on Malaysia 2018

Dr Kuan Kia Soong dan Joyce Ramanathan, Malaysia Human Right report 2017.

Dr Kuan Kia Soong, James Locheaf, Malaysia Human Right report 2016.

Lumpur.

Nik Salida Suhaila Nik Saleh, Dato' Mah Weng Kwai, Jerald Joseph, Godfrey Gregory Joitol, Aishah Bidin, Francis Anak Adam, Tan Sri Razali Ismail, Datuk Lok Yim Pheng, SUHAKAM Annual Report, (2018).

Parliament Hansard, Third Meeting, 24 October 2013 (Bil 28)

Recommendation to the Committee For Institutional Reform (2018),  
<file:///C:/Users/User/Documents/institutional-reforms-updated.pdf> m/s 8-9.

Rights of Remand Prison, SUHAKAM, (2002)

Roundtable Discussion, Chain Remand Detainee, 26 th November 2019, Renaissance Hotel Kuala

Sue King. David Bamford and Rick Sarre. Factors that influence Remand in Custody Final Report to the Criminology Research Council, November 2005. P 85-86.

Zaidi Safwan, Recommendation to the Committee For Institutional Reform (2018),<file:///C:/Users/User/Documents/institutional-reforms-updated.pdf> m/s 8-9 access on 5 September 2019.