

**Royal University of Law and Economics**

English Language Based Bachelor of Law Program

**Teaching Handbook (Investigation Judge)**

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**Teaching Handbook- Investigation Judge**

**Draft Concept Project and Plan**

**I. Course Descriptions**

* To provide a guideline and critical knowledge for legal practitioners on the criminal procedure, specifically investigation judge as one of the most important courses of action in criminal proceeding.
* To provide the legal justification on the rule which control how a criminal case will be handle in the court
* To provide the crucial understanding of why how when and why the appeal to be made against the investigation judge’s decision

**II. Course Objective**

* To provide the understanding of jurisdiction of the investigation judge
* To explain the type of act that investigation judge does in order investigate a criminal case
* To explain how when and why the investigation act come to an end
* To explain what the party could do when investigation judge’s decision occurs an error in case of law or fact

**III. Expect Learning Outcomes**

* Student will be able to understand the jurisdiction of the investigation judge
* Student will be able to identify act of the investigation judge that could carry out according to criminal procedure code in order to investigate a case
* Student will be able to understand how when and why the investigation act of investigation judge comes to an end
* Student will be able to understand and aware about the whole process of the appeal against the investigation judge’s decision

**IV. Mode of delivery**

* The teacher will give the instruction, presentation and lecture
* The teacher will closely communicate with the students by asking them the question relate to the lecture
* The teacher will give students the opportunity to share their knowledges and present what they have knew or curious about in the class
* The teacher will initiate and facilitate the students into different groups to discuss on the given issues or topics
* The teacher will hand on the case study based and ask students to brainstorming on how the criminal proceeding works

**V. Course Schedule**

|  |  |  |
| --- | --- | --- |
| **Class** | **Topic** | **Activities** |
| **Class 1**  Module 1 | **Course Introduction**   * Overview of Investigation Judge * Jurisdiction of Investigation Judge * Territorial jurisdiction * Jurisdiction determined by introductory submission | - Ice-breaker  - Lecture  - Q&A Session |
| **Class 2**  Module 2 | **Investigation Acts**   * Placing under judicial investigation * Interrogation * Interview of civil party and witnesses * Search and seizure of exhibits * Expertise * Listening (Wiretapping) * Rogatory letter | - Group discussion on each topic that is given by teacher  - Lecture  - Q&A Session  - Ice-breaker |
| **Class 3**  Module 2 | * Security Measures   + Subpoena   + Order to bring   + Arrest warrant   + Detention order   + Judicial supervision * Request to conduct investigative act | - Group discussion on each topic that is given by teacher  - Lecture  - Q&A Session  - Ice-breaker |
| **Class 4**  Module 3 | **Termination of Investigation** | - Group discussion on each topic that is given by teacher  - Lecture  - Q&A Session  - Ice-breaker |
| **Class 5**  Module 4 | **Appeal Against the Investigating Judge’s Decision**   * Request for Annulment * Appeal * Direct request to the investigation chamber | - Group discussion on each topic that is given by teacher  - Interacting with students for the last class  - Lecture  - Q&A Session  - Ice-breaker |

**VI. Resources**

1. Criminal Procedure Code of Kingdom of Cambodia, 2007

2. AMS Central News

3. Cambodia Annotated Code of Criminal Procedure, 2014

4. The Cambodia Daily News

**Module 1. Activity 1: Ice-breaker Session**

The very first thing before teaching the student is to divide all the students into group and have an ice-breaking session through Kahoot game in order to test their overall understanding toward the criminal procedure code, at same time to create an interaction between student,

The Kahoot should be around 10 to 20 minutes.

**Module 1: Jurisdiction (Class 1)**

**Learning outcome**

This chapter aims to:

* To identify the scope limitation of the power of investigation Judge
* To provide an illumination about the cause which lead to open the investigation

The investigation judge is the important part of the criminal case due to his/her ability is to find the evidence, witnesses and try to prove the truth about the case and the perpetrator who committed the crime. In this chapter, we will provide the readers with the scope of the investigation act, investigation area, permission to grain investigation, limitation of the investigation act. To conclude, the first chapter of this handbook will guide you to gain knowledge about investigation procedures of investigation judges in our Cambodia law in TWO main parts such as territorial jurisdiction and jurisdiction determined by introductory submission.

**Lecture Content**

**1.1 Territorial Jurisdiction**

Jurisdiction is the official power of the court to make a legal decision based on the law by making a judgement on a case to find solutions for the citizen who seek their justice. Thus, territorial jurisdiction means a place or scope of an area where the court within that place has the power to make legal decisions or judgement. Territorial jurisdiction is important to determine the limits of the jurisdiction of competent authority.

According to Criminal Procedural Code Cambodia, article 123 “Territorial Jurisdiction” set out about the jurisdiction scope of investigation judge and provide the judge who has competence over the case to enforce their duty. It means that, investigation judge must know their position that provides by law to determine their competence. Under this article the investigation judge who has competence over the case is the judge whom in:

* The place or area that the offense existed
* The location where the perpetrator was suspected committed crime
* The location where the suspected offender was arrested.[[1]](#footnote-1)

Moreover, this article is also set out the solution if the conflict raised between the investigation judge from different court and different investigation chamber. It means that, criminal procedural code itself is trying to prevent the pre-issue already before it happened by allow the chamber to make the decision which investigation judge has competent over the case and by the head of the supreme court decision which investigation chamber has competent over the case, and it the last decision, cannot be appealed.

For instance, there is a real case that happened in Cambodia on 13 November 2020 and the news published that “Ministry of Interior Said that: unclear demarcation of capital-provincial border leads to competitive for competent territory authority”.[[2]](#footnote-2) According to this news, due to the unclear boundary if the criminal case happened, which investigation judge has competent over the case? So, it is very complicated for us to answer which investigation judge has authority, even if the investigation judge itself also has territorial jurisdiction conflict with investigation judge from the different courts. However, there is another way, the investigation chamber can decide which investigation judge has authority and if the chamber cannot, the head of the supreme court will decide.

**1.2. Jurisdiction Determined by Introductory Submission**

Introductory submission is the permission from the prosecutor to allow the investigation judge to open an investigation on a case provided by that prosecutor. Introductory submission must briefly describe the facts and accusation. The investigation judge makes an opening investigation after receiving the introductory submission from the prosecutor and only investigates the fact that provided clearly in the filing complaint.[[3]](#footnote-3) The prosecutor has the power to request the investigation judge to perform a specific investigation.

According to criminal procedural code, article 124 “Introductive Requisition” set out about the investigation is open by the prosecutor and submit it to the investigation judge compliance with article 44 “commencement of investigation” in this code. It means that, the prosecutor must follow the conditions provided by the law under article 44 before filing the investigation case to the investigation judge such as:

* Summarize the facts
* Identification of the offense
* Relevant law or suppression of offense
* Name of suspected persons.[[4]](#footnote-4)

After obeying these rules and make a filing to the investigation judge, the investigation judge may launch the investigation compliance to that facts. The investigation judge may investigate every people who have been listed in the introductive requisition. In case, the investigation judge has received the civil complaint, the investigation judge must follow article 139 by filing the complaint to the prosecutor and article 140 to make a payment deposit for the investigation judge to conducting as a plaintiff of the civil complaint.

For example, on July 26, 2019, the news in Cambodia published “Investigation judge detains 3 police officers who bribed to release 18 kidnapper offenders in Kampong Speu province.”  
Phnom Penh Municipal Court deputy prosecutor was charged those 3 police officers with bribes, corruption and declare detention by the investigation judge.[[5]](#footnote-5) In this actual case, the prosecutor has filed to investigation judge already about Introductory submission or introductive requisition, and after that investigation judge may launch the investigation on that case to find the truth or any relevant evidence.

**Summary**

The investigation judge has duty to perform the investigating act in order to find the truth behind the case and stable justice in society. Everything has its limit, the investigation act also has its territory determined by territorial jurisdiction under article 123, Criminal Procedural code Cambodia. The investigation judge must know their boundary, do not breach other competent authority territories. If the conflict of territorial jurisdiction happened, the investigation chamber and the head of the supreme court seeking solutions. One more important thing, investigation judge cannot make a move on his own decision, they should get permission from the prosecutor first under 124 of the criminal procedural code and its call “introductive requisition” or we know as “Jurisdiction determined by introductory submission”. The investigation judge has the power to investigate everyone who has their name in the filing complaint.

**Module 1. Activity 2: Q&A Session**

After students have gone through the lecture, in case they have any question this is an opportunity for them to ask question to the teacher.

**Module 2: Investigation Acts (Class 2)**

**Learning Outcome**

This chapter aims to:

* To identify how the investigation judge collect the evidence
* To explain how the investigation judge conveys his power to another competent authority on his behalf

**Module 2. Activity 1: Group Discussion**

The very first before teaching the student is to divide all the students into group and give difference topic that listed in lecture content, after the discussion ends student will present their knowledge and understand toward the topic and share into the whole class.

The discussion period should be around 15 to 20 minutes.

**Lecture Content**

**2.1 Placing under judicial investigation**

An investigating judge has the power to place any person specified by the introductory submission under judicial investigation. Moreover, an investigating judge may place any person under judicial investigation against whom there is precise and coherent evidence showing that such person is involved in the commission of the offense, even where that person is not indicated in the introductory submission. The investigating judge may place such persons under judicial investigation as perpetrators, instigators or accomplices of the offense.[[6]](#footnote-6)

Placement under judicial investigation is made when a charged person appears for the first time before investigation judge.[[7]](#footnote-7) In this case, investigation judge asks a court clerk to make a written record of first appearance. In accordance with article 143 investigation judge shall:

1. check identity of the charged person,

2. inform him of the imputed act and its legal qualification,

3. receive his statement after informing him of the right to remain silent

4. If the charged person is willing to answer, the investigating judge shall take the statement immediately, and

5. Inform the charged person of his rights to choose a lawyer or to have a lawyer appointed according to the Law on the Bar.[[8]](#footnote-8)

**2.2 Interrogation**

The interrogation must be made in the presence of a charged person’s lawyer. However, if the lawyer was properly summonsed but does not show up on the specified date and time, the investigation judge can question the charged person without the presence of his lawyer.[[9]](#footnote-9)

In case of urgency, the investigation may interrogate the charged person without summonsing the lawyer. Ex. Danger of death. During interrogation of a charged person, the Royal Prosecutor and the lawyers may ask questions with authorization of the investigation judge.[[10]](#footnote-10)

The criminal procedure code provides to a charged person the right to ask for a confrontation. If the investigation judge does not call the charged person within one month after his request, he may directly seize the investigation chamber who shall then take the charged person’s statement. In this case, the written record of the statement shall then be sent to the investigation judge.[[11]](#footnote-11)

**2.3 Interview of civil party and witnesses**

The investigation judge summons a civil party to appear before him and invites his lawyer to participate in the civil party’s interview. The investigation judge interviews a civil party in the presence of his lawyer, if any. A Royal Prosecutor can participate in the interview.

In case of urgency, the investigation may interview the civil party without summonsing the lawyer.[[12]](#footnote-12) The investigation judge may question any person whose response is deemed useful to the revelation of the truth. Before being interviewed, a witness must take an oath. But some witnesses are exempt from oath.[[13]](#footnote-13) False testimony is a criminal offense (Article 545 of criminal code). If the witness is sick or cannot travel, the investigation judge and the clerk may visit his residence or the place where the witness stays to take the statement of the witness.[[14]](#footnote-14)

**2.4 Search and seizure of exhibits**

An investigation judge may conduct a search. The search must follow the rules stated in articles 159 to 160. There shall have the presence of the occupant or 2 witnesses.[[15]](#footnote-15) The search cannot be conducted from 6:00 am to 6:00 pm, except, a place that is open to the public, and a place where drugs are produced, stored, circulated, distributed or consumed.

Only with the presence of the president of bar association or his representative in case of search in a lawyer’s office. The exhibits taken shall be affixed with official seal. After showing the exhibits to the occupant or to the 2 witnesses, the investigation judge shall establish a written record on the seizure, including an inventory list.[[16]](#footnote-16)

**2.5 Expertise**

In case of technical questions, an investigation judge may issue an order to ask for an expert report either on his own motion or at the request of a Royal prosecutor, a charged person or a civil party. Ex. Prohibited drugs, mental disorder. The order shall be made within 5 days if the request is from the prosecutor and within 1 month if the request is from the charged person or a civil party.

If an investigation judge appoints an expert who is not registered in a national list of experts, he (expert) shall take an oath swearing to assist the court honestly toward seeking for justice.[[17]](#footnote-17) At the completion of his tasks, the expert shall make a report. When the report has been submitted, the investigation judge shall inform the Royal Prosecutor and summons the charged person, the civil party and their lawyer to inform them about the conclusion of the expert.

The investigation judge shall set a time limit (not less than 10 days) within which the Royal Prosecutor, the charged person and the civil party can request for additional expertise or the appointment of a counter-expert. If the investigation judge does not grant the request for additional expertise or counter-expertise, he shall make a decision with a statement of reasons. If this decision is not made within 5 days (for request from Prosecutor) or 1 month (for request from charged person or civil party), the applicant can file a request directly to the investigation chamber who shall decide instead of the Investigation judge.[[18]](#footnote-18)

**2.6 Listening (Wiretapping)**

Criminal procedure code permits an investigation judge to issue an order authorizing the listening to (eavesdropping) and recording of telephone conversations or of all other telecommunications.[[19]](#footnote-19) When the assignment has been completed, the authorized public institution or civil servants shall transcribe all recorded voices into written transcripts.[[20]](#footnote-20) The investigation judge may proceed as well by way of rogatory letter.[[21]](#footnote-21)

**2.7 Rogatory Letter**

In some cases, an investigating judge may not conduct some procedures by himself due to hardship situations and the law gives the rights to an investigating judge to dominate his power to others to carry out the investigating acts instead of him. Pursuant to Article 173 of Criminal Procedure Code, an investigating judge can issue a rogatory letter to any judge in the same or in another court or to any judicial police officers or judicial police units. A rogatory letter specifies the nature of investigative work to be done and shall provide clear and specific guidelines.[[22]](#footnote-22) The investigating judge shall set a time limit for the execution of a rogatory letter and he may revoke it at any time.[[23]](#footnote-23) In general all kinds of investigative acts can be subject to a rogatory letter. For example, witness’s interview, search, listening to, identification of charged person or seizure of exhibits.

When a rogatory letter is issued to any judge in the same or in another court, the judge may use all of the powers of an investigating judge.[[24]](#footnote-24) On the other hand, the Criminal Procedure Code limited some investigating acts to judicial police officers. Via rogatory letter, judicial police officers cannot interview a charged person or a civil party.[[25]](#footnote-25) For instance, a witness who is interviewed by judicial police officers in executing a rogatory letter may take an oath, except for the witnesses listed in Article 156 of Criminal Procedure Code.[[26]](#footnote-26)

**Module 2. Activity 2: Q&A Session**

After students have gone through the lecture, in case they have any question this is an opportunity for them to ask question to the teacher.

**Module 2. Activity 3: Ice-breaker Session**

After the teaching the students will be divided into different groups and have an ice-breaking session through Kahoot game in order to test their overall understanding toward the lesson, at same time to create an interaction between student.

The teacher also will hand on the case study based and ask students to brainstorming on how the criminal proceeding works inside of the Kahoot game.

The Kahoot should be around 15 to 30 minutes.

**(Class 3)**

**Module 2. Activity 1: Group Discussion**

The very first before teaching the student is to divide all the students into group and give difference topic that listed in lecture content, after the discussion ends student will present their knowledge and understand toward the topic and share into the whole class.

The discussion period should be around 15 to 20 minutes.

**Lecture Content**

**2.8 Security Measures**

An investigating judge can render security measures such as subpoena, order to bring, arrest warrant, detention order.[[27]](#footnote-27)

**2.8.1 Subpoena**

A subpoena is an order to a charged person or any person against whom there is evidence of guilt to appear before an investigating judge.[[28]](#footnote-28) A judicial police officer, a judicial police agent or bailiff shall deliver the subpoena to the cited person.[[29]](#footnote-29)

**2.8.2 Order to bring**

An order to bring is an order to public forces to arrest and bring a person before the investigating judge.[[30]](#footnote-30)An order to bring may be issued against a charged person or any person against whom there is evidence of guilt.[[31]](#footnote-31)​ An investigating judge can issue an order to bring immediately when he thinks necessary. An order to bring shall include the following informations[[32]](#footnote-32):

* Identity of the individual cited in the order
* Charged offense and the law which defines and punishes the offense
* Name and position of the judge issuing the order
* Date, judge’s signature and seal

In case of urgency, an order to bring shall be published by all means to police units or military police units.[[33]](#footnote-33) In case of having order to bring, a judicial police officer can enter into the involved person’s residence without a search warrant. However, a judicial police officer cannot enter into the residence of an involved individual before 6 o’clock in the morning or after 6 o’clock in the evening.[[34]](#footnote-34)

If, due to the circumstances, the cited individual cannot be brought before an investigating judge after the arrest, that person shall be brought to the police unit or military police office, in the detention center or prison.[[35]](#footnote-35) That person shall be presented to an investigating judge on the following day at the lease. Otherwise, the cited person shall be released in liberty.[[36]](#footnote-36) When a person who has been arrested in the execution of an order to bring, is imprisoned, the duration of imprisonment shall be included into the duration of provisional detention.[[37]](#footnote-37)

**2.8.3 Arrest warrant**

An arrest warrant is an order to the public security forces to search for, arrest and bring a charged person to a prison or detention center, to the head of a prison or detention center to receive and detain that person.[[38]](#footnote-38) An investigating judge may issue an arrest warrant against a charged person or any individual against whom there is evidence proving his guilt and the offense in question is a felony or misdemeanor punishable by imprisonment and the suspect has fled or his whereabouts are unknown or is staying outside Cambodia territory.[[39]](#footnote-39) An investigating judge shall ask for the opinion of the Royal prosecutor before issuing the arrest warrant. This opinion has no binding effect for an investigating judge.[[40]](#footnote-40)​ The Royal prosecutor guarantees the dissemination of the arrest warrant.[[41]](#footnote-41)

The execution of an arrest warrant shall be done by judicial police officers. In case of urgency, the arrest warrant shall be published by all means to police units or military police units.[[42]](#footnote-42) Judicial police officers can enter into the involved person’s residence without a search warrant, before 6 o'clock in the morning or after 6 o’clock in the evening.[[43]](#footnote-43) The arrest warrant may be disseminated internationally through the Ministry of Justice.[[44]](#footnote-44)

The arrested person shall be brought before the investigating judge or his substitute immediately if the case is still under judicial investigation. If he/she is not brought before the investigating judge on the day following his arrest, the Royal prosecutor at the place of the arrest shall take his statement by establishing a written record and send it to an investigating judge.[[45]](#footnote-45) If an arrested person is detained, the duration of the detention shall be included into the duration of provisional detention.[[46]](#footnote-46)

**2.8.4 Detention Order**

According to Article 203 of the Criminal Procedure Code stated the charged person shall remain at liberty. Exceptionally, the charged person may be provisionally detained. After placing a charged person under judicial investigation, the investigating judges have two options which are to deny provisional detention or provisional detention.

When an investigating judge decides not to provisionally detain the charged person, he sets him free without issuing any order.[[47]](#footnote-47) If the Royal prosecutor has requested provisional detention and the investigating judge decides not to order the detention, he shall issue an order not to detain which does not have to contain reasons, within 5 days.[[48]](#footnote-48) The Royal prosecutor shall be notified of the order without delay. If the investigating judge fails to decide within 5 days, the prosecutor may directly seize the investigating chamber who will decide instead of investigating the judge.[[49]](#footnote-49)

In the case of provisional detention, an investigating judge may issue two orders which are provisional detention order and detention order. Provisional detention order can be subject to appeal. But the detention order cannot be subject to appeal because it is just an order to the head of a prison or detention center to receive and detain that person. Detention order can be carried out only in the case the charged offense is a felony or misdemeanor involving a punishment of imprisonment of one year or more.[[50]](#footnote-50) Minor under 14 years old may not be temporarily detained.[[51]](#footnote-51)

Pursuant to Article 205 of Criminal Procedure Code, the reason for provisional detention is to:

* Stop the offense or prevent it from happening again
* Prevent any harassment of witnesses or victims or prevent any collusion between the charged person and accomplices
* Preserve evidence or exhibits
* Guarantee the presence of the charged person during the proceeding against him
* Protect the security of the charged person
* Preserve public order from any trouble caused by the offense

**The duration of provisional detention for felony**:

* Adult: 6 months and can be extended twice[[52]](#footnote-52)
* Minor under 16 years old: 4 months
* Minor of 16 years old to less than 18 years old: 6 months

The duration of provisional detention for felony:

* Adult: 4 months and can be extended once for another 2 months[[53]](#footnote-53)
* Minor under 16 years old: 2 months
* Minor of 16 to less than 18 years old: 4 months

This duration may not exceed half of the minimum sentence set by law for the charred misdemeanor.[[54]](#footnote-54) If an investigating judge envisages to extend provisional detention, he shall inform the charged person accordingly and ask for his observation and if he is assisted by a lawyer, his lawyer presents means of defense.[[55]](#footnote-55) The extension shall be by an order with a statement of reasons.[[56]](#footnote-56)

**2.8.5 Judicial supervision**

An investigating judge may place a charged person under judicial supervision if he is under investigation for an offense punishable by imprisonment.[[57]](#footnote-57) There are 12 obligations of judicial supervision stated under article 223 of criminal procedure code. The investigating judge may issue an order for judicial supervision at his own initiative or after a request by the prosecutor.[[58]](#footnote-58) After receiving a request from the prosecutor, the investigating judge shall decide within 5 days. If not, the prosecutor may directly seize the investigation chamber.[[59]](#footnote-59) The judicial supervision can be dropped or changed at the investigating judge’s initiative or upon the request of the prosecutor or the charged person.[[60]](#footnote-60)

If the charged person intentionally evades the obligations of judicial supervision, the investigating judge can decide to provisionally detain the charged person regardless of the prescribed term of imprisonment for the offense and even though the charged person has already been provisionally detained for the maximum period. Provisional detention decided may not exceed 4 months for an adult and 2 months for a minor.[[61]](#footnote-61)

**2.9 Request to make investigative actions**

Investigative acts can be asked to be made by a prosecutor, civil party or charge person.[[62]](#footnote-62)

When the investigating judge refused the request to make an investigation action from the prosecutor, the investigating judge must write a refusal order within 15 days.[[63]](#footnote-63) In the case that an investigating judge refuses the request made by a civil party or a charged person, an investigating judge shall write a refusal order within 1 month.[[64]](#footnote-64) If any act is not taken within the period above, the investigation chamber can be seized directly.

**Module 2. Activity 3: Ice-breaker Session**

After the teaching the students will be divided into different groups and have an ice-breaking session through Kahoot game in order to test their overall understanding toward the lesson, at same time to create an interaction between student.

The teacher also will hand on the case study based and ask students to brainstorming on how the criminal proceeding works inside of the Kahoot game.

The Kahoot should be around 15 to 30 minutes.

**Module 2. Activity 2: Q&A Session**

After students have gone through the lecture, in case they have any question this is an opportunity for them to ask question to the teacher.

**Module 3: Termination of Investigation (Class 4)**

**Learning Outcome**

This chapter aims to:

* To explain the procedure before issuing the termination of investigation
* To explain how the closing order works which is decided by the investigation judge

**Module 3. Activity 1: Group Discussion**

The very first before teaching the student is to divide all the students into group and give difference topic that listed in lecture content, after the discussion ends student will present their knowledge and understand toward the topic and share into the whole class.

The discussion period should be around 15 to 20 minutes.

**Lecture Content**

When an investigation judge consider that the judicial investigation is terminated, the investigation judge shall notify the prosecutor, the charged person and the civil party and the lawyers of the termination.[[65]](#footnote-65) Moreover, the investigation judge shall be sending the case file to prosecutor for examination, 2 days later.

After receiving it, the prosecutor may ask for further investigation and if not, the prosecutor shall return the case file to investigation judge together with his final submission (within 15 days from the date the prosecutor received the case file if a charged person is detained or one month if not). Moreover, in the written final submission, the prosecutor shall state if he requests the investigation judge to issue an indictment or a non-suit order.

The investigation judge terminates the judicial investigation by a closing order[[66]](#footnote-66) (investigation judge is no obliged to conform with the final submission of prosecutor):

* **Indictment:**
* If the facts constitute a felony, a misdemeanor or petty offense, it shall state the facts being charged and their legal qualification.
* When the perpetrator is unidentified or dead and there are exhibits to be confiscated by the court.
* **Non-suit order:**
  + The facts do not constitute a crime
  + The perpetrator of the committed act remains unidentified
  + There is insufficient evidence for a conviction of the charged person
  + Cases of criminal action extinction

In one case file, the investigation judge can order an indictment for certain facts and a non-suit order for other facts. The investigation judge can issue a closing order for certain facts and continue the investigation for other facts. He can issue a non-suit order for certain charged persons and continue investigation on the others.

In a closing order, the investigation judge decides whether any seized property be returned to the owner.[[67]](#footnote-67) A closing order terminates the investigation judge’s duties. So, it terminates provisional detention and judicial supervision.[[68]](#footnote-68) But by a separate decision issued together with the closing order, the investigation judge may order to keep the charged person in provisional detention or under judicial supervision until the time of trail.

In the order keeping the charged person in provisional detention, the investigation judge must satisfy the conditions of provisional detention defined in article 205 of Criminal Procedure Code of Cambodia. This detention cannot exceed 4 months.

**Module 3. Activity 2: Q&A Session**

After students have gone through the lecture, in case they have any question this is an opportunity for them to ask question to the teacher.

**Module 4: Appeal Against the Investigating Judge’s Decision (Class 5)**

**Module 3. Activity 3: Ice-breaker Session**

After the teaching the students will be divided into different groups and have an ice-breaking session through Kahoot game in order to test their overall understanding toward the lesson, at same time to create an interaction between student.

The Kahoot should be around 10 to 20 minutes.

**Learning outcome**

This chapter aims to:

* Provide the basic understanding of the purpose of the appeals and it reasoning to be legally conducted
* Obtain the knowledge of the procedure to be taken and how many members involve in the proceeding
* Understand the critical step of how to be successfully appeal against the investigation judge’s decision

The right of appeal ensures that, as far as possible, courts arrive at correct decisions without violating someone’s right. It is vital the right exists as it ensures that if a judge does make an error of law or fact, they have to correct it. In this way the losing party is able to have the decision reviewed by another independent chamber. Like any other procedure, investigation judge’s decision can also be appealed.

**Module 4. Activity 1: Group Discussion**

The very first before teaching the student is to divide all the students into group and give difference topic that listed in lecture content, after the discussion ends student will present their knowledge and understand toward the topic and share into the whole class.

The discussion period should be around 15 to 20 minutes.

**Module 4. Activity 2: Interacting with students**

* Create comfortable Atmosphere for student to engage in the last part of the lesson.
* Students would find it is new so the teacher should approach with the students more frequently in order to avoid students from losing track.
* The teacher can ask students on few questions before get start to wake them up:
* Whether they think the investigation judge’s decision can be appealed?
* Does it have the same procedure of appeal as other kind of appeal?
* Who has the responsibility or in charge in the procedure?

**Lecture Content**

**4.1 Request for Annulment**

Proceedings of the investigation is mandatory followed, if not it shall be null and void when there is a violation of any important rules or procedures stated in this Code or any provisions of regulations concerning criminal procedure, which affects the interests of the parties as a result of the violation. The important rules and procedures are those which aim to guarantee the respect of the right to self-defense.[[69]](#footnote-69) Only the Investigation Chamber shall have the authority to examine the nullification documents of the procedures.[[70]](#footnote-70)

*Who can bring the complaint?[[71]](#footnote-71)*

* Investigation Judge
* Prosecutor
* Charged person
* Civil party
* Lawyer

*How can you file the complaint?*

* the request must be registered with the court clerk
* the court clerk shall immediately request the IJ to provide him with the case file

*What are the subject matter for the annulment request?*

* Order against which an appeal may not be made. E.g arrest warrant
* Any part of the proceeding. E.g record of the judicial police, record of prosecutor, …(art. 252, 109,117)

*What are the request for annulment is inadmissible or cannot be subject to appeal?*

* the request does not contain reasons
* the request is related to an order that is subject to the appeal
* the request is obviously unfounded

*What are the procedure if the annulment is inadmissible?*

* return the case file to the IJ
* revoke investigation judge power of the IJ in charge and transfer it to another investigation judge
* continue to investigate the case by itself[[72]](#footnote-72)
* the request can be submitted at any time before the closing order becomes final and binding.[[73]](#footnote-73)

**4.2 Appeal**

Appeal is another method in which can make the investigation judge’s decision becomes invalid. investigation chamber is the competent chamber.

The characteristic of appeal can be listed as below diagram:

|  |  |
| --- | --- |
| Can be made by | Period of appeal |
| General Prosecutor | 1 month |
| Royal Prosecutor | 5 days |
| Charge Person | 5 days |
| Civil Party | 5 days |
| Person who has request the return of seize item | 5 days |

*What is the procedure for the appeal?*

* the request shall be submitted to the office of the clerk of the court of first instance
* the court clerk of the IJ send the case file to the clerk of the investigation chamber within 5 days after the appeal except in circumstance which cannot be overcome
* in case there is an appeal, the IJ may continue his investigation except there is an appeal against a closing order.[[74]](#footnote-74)

**4.3 Direct request to the investigation chamber**

*What is the procedure?*

* the request shall be submitted to the office of the clerk of the investigation chamber
* after receiving this request, the court clerk shall request the clerk of the the IJ to deliver the case file or a safeguard copy to him.[[75]](#footnote-75)
* the investigation chamber decides on the application instead of the IJ.

**Module 4. Activity 3: Q&A Session**

After students have gone through the lecture, in case they have any question this is an opportunity for them to ask question to the teacher.

**Module 4. Activity 4: Ice-breaker Session**

After the teaching the students will be divided into different groups and have an ice-breaking session through Kahoot game in order to test their overall understanding toward the lesson, at same time to create an interaction between student.

The Kahoot should be around 10 to 20 minutes.

1. Criminal Procedure Code of the Kingdom of Cambodia, Article 123. . [↑](#footnote-ref-1)
2. *Ministry of Interior says unclear demarcation of capital-provincial border leads to competitive for competent territory authority.* (2020, November 14). The Cambodia Daily News. <https://www.cambodiadaily.com/2020/11/14/16/32/50748/?amp_markup=1> [↑](#footnote-ref-2)
3. *The Explanation of Criminal Procedural Code Cambodia.* (2014, March). USAID; OHCHR-Cambodia; England Embassy; EWMI-PRAJ. [↑](#footnote-ref-3)
4. Criminal Procedure Code of the Kingdom of Cambodia, Article 44. [↑](#footnote-ref-4)
5. *Investigation judge detains 3 police officers who bribed to release 18 kidnapper offenders in Kampong Speu province.* (2019, July 26). AMS Central News. <https://ams.com.kh/central/detail/102901> [↑](#footnote-ref-5)
6. Criminal Procedure Code of the Kingdom of Cambodia, Article 126. [↑](#footnote-ref-6)
7. Ibid, Article 143. [↑](#footnote-ref-7)
8. Ibid, Article 143. [↑](#footnote-ref-8)
9. Ibid, Article 145. [↑](#footnote-ref-9)
10. Ibid, Article 146. [↑](#footnote-ref-10)
11. Ibid, Article 148. [↑](#footnote-ref-11)
12. Ibid, Article 150. [↑](#footnote-ref-12)
13. Ibid, Article 156. [↑](#footnote-ref-13)
14. Ibid, Article 158. [↑](#footnote-ref-14)
15. Ibid, Article 159. [↑](#footnote-ref-15)
16. Ibid, Article 160. [↑](#footnote-ref-16)
17. Ibid, Article 163. [↑](#footnote-ref-17)
18. Ibid, Article 170. [↑](#footnote-ref-18)
19. Ibid, Article 172. [↑](#footnote-ref-19)
20. Ibid. [↑](#footnote-ref-20)
21. Ibid. [↑](#footnote-ref-21)
22. Ibid, Article 174. [↑](#footnote-ref-22)
23. Ibid. [↑](#footnote-ref-23)
24. Ibid, Article 175. [↑](#footnote-ref-24)
25. Ibid, Article 180. [↑](#footnote-ref-25)
26. Ibid, Article 179. [↑](#footnote-ref-26)
27. Ibid, Article 185. [↑](#footnote-ref-27)
28. Ibid, Article 186. [↑](#footnote-ref-28)
29. Ibid, Article 188. [↑](#footnote-ref-29)
30. Ibid, Article 190. [↑](#footnote-ref-30)
31. Ibid, Article 190. [↑](#footnote-ref-31)
32. Ibid, Article 191. [↑](#footnote-ref-32)
33. Ibid, Article 192. [↑](#footnote-ref-33)
34. Ibid, Article 192. [↑](#footnote-ref-34)
35. Ibid, Article 193. [↑](#footnote-ref-35)
36. Ibid. [↑](#footnote-ref-36)
37. Ibid, Article 194. [↑](#footnote-ref-37)
38. Ibid, Article 196. [↑](#footnote-ref-38)
39. Ibid. [↑](#footnote-ref-39)
40. Ibid, Article 197. [↑](#footnote-ref-40)
41. Ibid. [↑](#footnote-ref-41)
42. Ibid, Article 199. [↑](#footnote-ref-42)
43. Ibid. [↑](#footnote-ref-43)
44. Ibid, Article 200. [↑](#footnote-ref-44)
45. Ibid, Article 201. [↑](#footnote-ref-45)
46. Ibid, Article 202. [↑](#footnote-ref-46)
47. Ibid, Article 207. [↑](#footnote-ref-47)
48. Ibid. [↑](#footnote-ref-48)
49. Ibid. [↑](#footnote-ref-49)
50. Ibid, Article 204. [↑](#footnote-ref-50)
51. Ibid, Article 212. [↑](#footnote-ref-51)
52. Ibid, Article 208. [↑](#footnote-ref-52)
53. Ibid, Article 209. [↑](#footnote-ref-53)
54. Ibid. [↑](#footnote-ref-54)
55. Ibid, Article 211. [↑](#footnote-ref-55)
56. Ibid. [↑](#footnote-ref-56)
57. Ibid, Article 223. [↑](#footnote-ref-57)
58. Ibid, Article 226. [↑](#footnote-ref-58)
59. Ibid. [↑](#footnote-ref-59)
60. Ibid, Article 227-229. [↑](#footnote-ref-60)
61. Ibid, Article 230. [↑](#footnote-ref-61)
62. Ibid, Article 132-134. [↑](#footnote-ref-62)
63. Ibid, Article 132. [↑](#footnote-ref-63)
64. Ibid, Article 133&134. [↑](#footnote-ref-64)
65. Ibid, Article 246. [↑](#footnote-ref-65)
66. Ibid, Article 247. [↑](#footnote-ref-66)
67. Ibid, Article 248. [↑](#footnote-ref-67)
68. Ibid, Article 249. [↑](#footnote-ref-68)
69. Ibid, Article 252. [↑](#footnote-ref-69)
70. Ibid, Article 253. [↑](#footnote-ref-70)
71. Ibid. [↑](#footnote-ref-71)
72. Ibid, Article 281. [↑](#footnote-ref-72)
73. Ibid, Article 256. [↑](#footnote-ref-73)
74. Ibid, Article 275. [↑](#footnote-ref-74)
75. Ibid, Article 257. [↑](#footnote-ref-75)