

CONSTITUTION OF BRUNEI DARUSSALAM
(Order under section 83{3})

ISLAMIC ADOPTION OF CHILDREN ORDER, 2001

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No. S 14

CONSTITUTION OF BRUNEI DARUSSALAM
(Order under section 83(3))

ISLAMIC ADOPTION OF CHILDREN ORDER, 2001

In exercise of the power conferred by subsection (3) of section 83 of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Order —

PART I

PRELIMINARY

Citation, commencement and long title.

1. (1) This Order may be cited as the Islamic Adoption of Children Order, 2001 and shall commence on such date or dates as to be appointed by the Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by notification in the *Gazette*.

(2) Different dates may be appointed under subsection (1) for different provisions of this Order or for different purposes of the same provision.

(3) The long title of this Order is "An Order to make certain provisions on the laws of adoption of children according to Islam".

Interpretation.

2. (1) In this Order, unless the context otherwise requires —

"adopter" means a person authorised by this Order to adopt a child to be his adopted child;

"adoption" means to bring up, maintain and educate the child of another person like one's own child without becoming a natural child of the adopter;

"child" means an unmarried person who has not attained the age of 18 years *qamariah*;

"Court" means the Syariah Subordinate Court, the Syariah High Court or the Syariah Appeal Court, as the case may be, established under section 6(1) of the Syariah Courts Act (Chapter 184);

"guardian" means a person having the legal right as the guardian of the child according to law;

"*Hukum Syara'*" means the laws of any sects which the Court considers valid;

"Minister" means the Minister of Religious Affairs;

"*nasab*" means descent based on lawful blood relationship;

"parent" means the natural mother or father of the adopted child;

"relative" includes the brother, sister, grandparents on the side of the father and the mother, uncle on the side of the mother and the father and aunt on the side of the father and the mother whether by *nasab* or affinity;

"Syar'ie Judge" means a Syar'ie Judge appointed under sections 9(1), 10(1) and 11 of the Syariah Courts Act (Chapter 184) and includes the Chief Syar'ie Judge;

"year *qamariah*" means a year according to the Islamic calendar.

(2) All words and expressions used in this Order and not defined therein but defined in the Interpretation and General Clauses Act (Chapter 4) shall have the same meanings respectively assigned thereto to the extent that they do not conflict with *Hukum Syara'*.

(3) The Chief Syar'ie Judge may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, amend the Schedule.

(4) References in this Order to the date of commencement of this Order are references to the date of commencement of the main substantive provisions of this Order.

Text in Malay language shall prevail.

3. If any conflict or doubt arises as to the meaning or requirement of a provision under this Order, the text in the Malay language shall prevail.

Saving of prerogative.

4. Nothing contained herein shall derogate from or affect the prerogative rights and powers of His Majesty the Sultan and Yang Di-Pertuan as the Head of the Religion of Brunei Darussalam.

Application.

5. (1) Notwithstanding the provisions of any other written law to the contrary, this Order shall apply in any matter where at least one of the parties professes the Islamic religion.

(2) For the avoidance of any doubt it is hereby declared that no person or court other than a court established under Part II of the Syariah Courts Act (Chapter 184) shall have jurisdiction to hear or determine any claims or proceedings where at least one of the parties professes the Islamic religion and relating to any matter which arises in this Order.

Saving.

6. Nothing in this Order shall affect the validity of an adoption which has been made under any law wheresoever before the date of commencement of this Order.

PART II

ADOPTION ORDERS

Power to make adoption orders.

7. (1) Upon an application made by any person wishing to be authorised to adopt a child in the prescribed manner, the Syar'ie Judge may, after being satisfied, make an adoption order authorising the applicant to adopt the child and keep the child in his custody.

(2) An application for an adoption may be made in the prescribed form in the Schedule and sent to the Court. In certain cases, the Syar'ie Judge may, if he is satisfied, dispense with any particulars in the application available in the prescribed form.

(3) The Syar'ie Judge shall, before making an adoption order, be satisfied that the order, if made, is for the *maslahah* of the child.

(4) In considering the *maslahah* of the child, the Syar'ie Judge shall have regard to —

(a) the wishes of the parent, if any, or the guardian or the person who is responsible for the maintenance of the child; and

(b) the wishes of the child, if he is in the age capable of expressing his own opinion.

Restrictions on adoption orders.

8. (1) An adoption order shall not be made in the case where a non-Muslim applies for the adoption of a child if —

- (a) both parents of the child or one of them is a Muslim; or
- (b) both parents of the child are not known.

(2) Notwithstanding the provisions of any other written law to the contrary, a child both of whose parents are not known shall, until the contrary is proved, be deemed to be a Muslim for the purposes of this Order.

(3) An adoption order shall not be made unless —

- (a) the applicant or in the case of an application by 2 spouses, one of them has attained the age of 25 years *qamariah* and is at least 18 years *qamariah* older than the child in respect of whom the application is made unless the Syar'ie Judge is satisfied that there are special circumstances for the making of the order; or
- (b) the applicant is a relative of the child and has attained the age of 18 years *qamariah*.

(4) An adoption order shall not be made except with the consent of both parents, if any, or the guardian or the person who is responsible for the maintenance of the child.

(5) The Syar'ie Judge may dispense with any consent required by subsection (4) if the Syar'ie Judge is satisfied that the person whose consent is to be dispensed with —

- (a) has abandoned, neglected or persistently ill-treated the child;
- (b) has persistently neglected or refused to provide maintenance; or
- (c) is unfit to take care of the child by reason of physical or mental incapacity and most likely the unfitness to take care of the child continues for an indefinite period.

(6) Notwithstanding subsection (5), the Syar'ie Judge may dispense with any consent required by subsection (4) if he is satisfied that, in the particular circumstances, it is reasonable for the *maslahah* of the child to do so.

(7) An adoption order shall not be made unless, in the case of an application made by a husband or a wife, the consent of the wife or the husband, as the case may be, has been obtained.

(8) The Syar'ie Judge may dispense with the consent required by subsection (7) if the Syar'ie Judge is satisfied that the person whose consent is to be dispensed with cannot be found or is incapable of giving his consent or that his consent is unreasonably withheld.

(9) An adoption order shall not be made if —

(a) the applicant is a male and the child in respect of whom the application is made is a female or the applicant is a female and the child is a male unless the applicant and the child have connections by *nasab* under which they are *haram* to marry forever; or

(b) the child has already been adopted under an earlier adoption order unless the Syar'ie Judge is satisfied that the earlier adoption order has been revoked by the Syar'ie Judge or the Court or requires change accordingly.

(10) An adoption order shall not be made by authorising more than one applicant to adopt the child. For the purpose of this Order, 2 spouses wishing to apply for authorisation to adopt a child shall be deemed as one applicant.

Prohibition against taking back the child.

9. (1) Where an adoption order by the Syar'ie Judge is still pending, any parent, if any, or guardian or person who is responsible for the maintenance of the child who has submitted the child to the applicant for adoption shall not separate the child from the custody of the applicant except with the leave of the Court; and in considering whether to accept or reject the application, the Court shall take into account the *maslahah* of the child.

(2) When an adoption order is made by the Syar'ie Judge and thereupon the parent or the guardian or the person who is responsible for the maintenance of the child applies for the return of the child, the child shall not be returned to them unless the Court permits.

Non-Muslim child.

10. A non-Muslim child who is adopted by a Muslim shall be considered Muslim.

Conditions of adoption orders.

11. The Syar'ie Judge in making an adoption order may impose such conditions as he thinks fit, in particular may require the adopter to give a bond or otherwise, if any, as in the opinion of the Syar'ie Judge is necessary and expedient.

Grant of property.

12. The adopter may, during his lifetime, transfer his immovable property to the adopted child and may grant his movable property as a gift and grant his property by a will of not more than one third of his whole property.

Guardian *ad litem*.

13. The Syar'ie Judge may, if he thinks necessary in respect of an application for an adoption order, appoint a guardian *ad litem* of the child in respect of whom the application is made. The guardian shall investigate the circumstances of the child and the applicant and all other matters relevant to the proposed adoption in order to safeguard the interests of the child by providing the requisite information to the Syar'ie Judge.

Interim orders.

14. (1) When an application for an adoption order is made, the Syar'ie Judge may, if he thinks necessary for the *maslahah* of the child, postpone the determination of the application and the Syar'ie Judge may make an interim order which shall not be deemed to be an adoption order for the purposes of this Order, giving the custody of the child to the applicant for a period not less than 3 months and not more than 2 years by way of a probationary period upon such terms as regards provision for the maintenance, education and supervision of the welfare of the child and otherwise as the Syar'ie Judge thinks fit.

(2) If the probationary period has ended satisfactorily, the Syar'ie Judge may, if he thinks fit, make an adoption order authorising the applicant to adopt the child.

Attendance before Syar'ie Judge.

15. (1) An adoption order or an interim order shall not be made unless the applicant, the child to be adopted and the parent, if any, or the guardian or the person who is responsible for the maintenance of the child attends before the Syar'ie Judge.

(2) The Syar'ie Judge may dispense with the attendance of any applicant or child or parent, if any, or guardian or the person who is responsible for the maintenance of the child if he is satisfied that —

- (a) an affirmation from the applicant in respect of the application has been obtained;
- (b) special circumstances exist which render it unnecessary or inexpedient for the child to attend before the Syar'ie Judge;

- (c) the parent, if any, or the guardian or the person who is responsible for the maintenance of the child cannot be found or is unable to attend unless an affirmation in respect of the consent of the parent, if any, or the guardian or the person who is responsible for the maintenance of the child has been obtained; or
- (d) there are other reasons which the Syar'ie Judge may think reasonable.

Effect of failure to comply with conditions of adoption order.

16. When an adoption order is made by a Syar'ie Judge in respect of a child under this Order and thereupon the adopter persistently ill-treats the child or fails to comply with any condition imposed in the adoption order which may affect adversely the *maslahah* of the child, the Court shall, after being satisfied, order the child to be taken from him and may order that the child be handed over either to his parent or any person or any institution as the Syar'ie Judge thinks fit taking into account the *maslahah* of the child.

Nasab of adopted child, rights and obligations.

17. An adoption order shall not transfer the *nasab* of the child to the adopter and the child shall not have the rights and obligations of a natural child of the adopter. The adopted child shall remain the child of his natural parents and shall retain the name given to him by his natural parents or one of them, if it is known.

Beneficiary rights.

18. An adoption order shall not prejudice the beneficiary rights of the child.

PART III

MISCELLANEOUS

Procedure.

19. (1) All applications made under this Order shall be heard and determined by the Syar'ie Judge.

(2) All disputes relating to this Order shall be decided in open Court.

Appeal.

20. Any person aggrieved by or dissatisfied with any decision of the Syar'ie Judge or the Court under this Order may appeal in the prescribed procedure in any law relating to the civil and criminal procedure in the Court.

Penalty.

21. Any person who commits forgery in any entry in the application of adoption or the certified copy of the adoption order or the interim order issued under this Order or who fraudulently or dishonestly uses as genuine any such certified copy which he knows or has reason to believe to be false or fails to comply with any condition imposed in the adoption order or the interim order made under this Order shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding 7 years.

Registration.

22. (1) No child shall be registered as an adopted child unless an adoption order has been made by the Syar'ie Judge or the Court under this Order.

(2) When an adoption order has been made by the Syar'ie Judge or the Court, it shall be registered by a Registrar of Adoptions under the Registration of Adoptions Act (Chapter 123).

***De facto* adoptions.**

23. Where, at the date of commencement of this Order, any child is in the custody of and is being brought up, maintained and educated by any person as his own child under a *de facto* adoption, and has for a period of not less than 2 years before the commencement of this Order been in such custody, and has been so brought up, maintained and educated, the Syar'ie Judge may, upon the application of such person, make an adoption order authorising him to adopt the child without requiring the consent of the parents, if any, the guardian or the person who is responsible for the maintenance of the child after the Syar'ie Judge is satisfied that in all the circumstances of the case it is just and reasonable for the *maslahah* of the child.

Power to make rules.

24. (1) The Chief Syar'ie Judge may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make rules –

- (a) prescribing all matters which are required or convenient to be prescribed by this Order, including the prescription of fees; and

(b) generally for giving effect to the objects and purposes of this Order and for the due administration thereof.

(2) Such rules may make different provision as respect different classes of case to which they apply, and may include such incidental, consequential and supplementary provisions as the Chief Syar'ie Judge considers necessary or expedient.

Hukum Syara' to be applied if no provision.

25. (1) Any provision or the interpretation of any provision in this Order in conflict with *Hukum Syara'* shall be invalid to the extent that they are contrary.

(2) On any matter which is not expressly provided in this Order or in any rule made under this Order, the Syar'ie Judge or the Court shall follow *Hukum Syara'*.

SCHEDULE

FORM

section 7(2)

ISLAMIC ADOPTION OF CHILDREN ORDER, 2001

APPLICATION FOR AN ADOPTION

A. PARTICULARS OF APPLICANT

I,

- 1. Name
- Identity Card/Passport No. Colour
- Date of birth Nationality
- Race Religion
- Address
- Occupation Income per month
- Name of employer
- Address of employer
- Telephone No. (if any)

BRUNEI DARUSSALAM GOVERNMENT GAZETTE

hereby state that I wish to be authorised to adopt a child under the Islamic Adoption of Children Order, 2001.

And I,

2. Name
- Identity Card/Passport No. Colour
- Date of birth Nationality
- Race Religion
- Address
- Occupation Income per month
- Name of employer
- Address of employer
- Telephone No. (if any)

hereby state that I wish to be authorised to adopt a child under the Islamic Adoption of Children Order, 2001.

3. I/We have dependants.
- (1) Age Male/Female
- (2) Age Male/Female
- (3) Age Male/Female
- (4) Age Male/Female
- (5) Age Male/Female
4. I/We *have/have not made previous application under any written law in Brunei Darussalam in respect of the child mentioned in Part B.
5. I/We have not agreed to make any payment to the parents or guardian or person who is responsible for the maintenance of the child.

6. I/We have not received or agreed to receive any payment or other reward
in connection with the adoption of the child except

7. *I,, age years,
am over 25 years *qamariah* of age and not less than 18 years *qamariah*
older than the child to be adopted./

I,, age years,
am not less than 18 years *qamariah* of age and are related to the child to be
adopted as

B. PARTICULARS OF CHILD TO BE ADOPTED

1. Name

Birth Certificate No.

Identity Card/Passport No. (if any) Colour

Date of birth Age years

Place of birth Race

Nationality Religion

Address

2. ** The father of the child is:

Name

Identity Card/Passport No. Colour

Date of birth Nationality

Race Religion

Address

Telephone No. (if any)
whose written permission is enclosed herewith.

3. ** The mother of the child is:

Name

Identity Card/Passport No. Colour

Date of birth Nationality

Race Religion

Address

Telephone no. (if any)
whose written permission is enclosed herewith.

4. ** The guardian of the child is:

Name

Identity Card/Passport No. Colour

Date of birth Nationality

Race Religion

Address

Telephone No. (if any)
whose written permission is enclosed herewith.

5. ** The person who is responsible for the maintenance of the child is:

Name

Identity Card/Passport No. Colour

Date of birth Nationality

Race Religion

Address

Telephone No. (if any)
whose written permission is enclosed herewith.

C. DECLARATION OF APPLICANT

1. I am/We are fit and proper to maintain and bring up the child to be adopted.

2. And I/we do hereby solemnly declare and certify to the best of my/our knowledge that the particulars in this form are true and correct and that I/ we do not conceal, misinterpret, falsify or give particulars which are not true in respect of any material information.

Affirmed by.....}

.....}

.....}

.....
Signature of Applicant

and.....}

.....}

.....}

.....
Signature of Applicant

on..... day of.....H}

corresponding to..... day of.....M}

at a.m./p.m. }

at }

Before me,

.....
SYAR'IE JUDGE

* Delete where not applicable

** Where applicable only

Note:

1. All written permission shall be enclosed with this application.
2. Please enclose a copy of:
 - (i) Identity Card of the applicant.
 - (ii) Birth Certificate of the child to be adopted.
 - (iii) Identity Card of the child to be adopted (if any).
 - (iv) Passport of the child to be adopted (if any).

Made this 18th. day of Zulkaedah, 1421 Hijriah corresponding to the 12th. day February, 2001 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM