

LAWS OF BRUNEI

CHAPTER 206
ISLAMIC ADOPTION OF CHILDREN

S 14/2001

2010 Edition, Chapter 206

Amended by
S 7/2012

REVISED EDITION 2014

LAWS OF BRUNEI
REVISED EDITION 2014

CHAPTER 206
ISLAMIC ADOPTION OF CHILDREN

ARRANGEMENT OF SECTIONS

Section

PART I

PRELIMINARY

1. Citation.
2. Interpretation.
3. Text in Malay language shall prevail.
4. Saving of prerogative.
5. Application.
6. Saving.

PART II

ADOPTION ORDERS

7. Power to make adoption orders.
8. Restrictions on adoption orders.
9. Prohibition against taking back child.

- 9A. Child custody.
- 9B. Application to revoke adoption order.
10. Non-Muslim child.
11. Conditions of adoption order.
12. Grant of property.
13. Guardian *ad litem*.
14. Interim orders.
15. Attendance before Syar'ie Judge.
16. Effect of failure to comply with conditions of adoption or interim order.
17. *Nasab* of adopted child, rights and obligations.
18. Beneficiary rights.

PART III

GENERAL

19. Procedure.
20. Appeal.
21. Penalty.
22. Registration.
23. *De facto* adoptions.
24. Power to make rules.
25. *Hukum Syara'* to be applied if no provision.

SCHEDULE — FORM

ISLAMIC ADOPTION OF CHILDREN ACT

An Act to make provision on the laws of adoption of children according to Islam

Commencement (except section 3): 26th March 2001
[S 24/2001]

PART I

PRELIMINARY

Citation.

1. This Act may be cited as the Islamic Adoption of Children Act.

Interpretation.

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

“adopter” means a person authorised by this Act 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 sect 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 father and the mother 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 Act 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 Act to the date of commencement of this Act are references to the date of commencement of the main substantive provisions of this Act.

Text in Malay language shall prevail.

3. If any conflict or doubt arises as to the meaning or requirement of a provision under this Act, 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 Act 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 Act.

Saving.

6. Nothing in this Act shall affect the validity of an adoption which has been made under any law wheresoever before 26th March 2001, being the date of commencement of this Act.

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, 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 when both of whose parents are not known shall, until the contrary is proved, be deemed to be a Muslim for the purposes of this Act.

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

(a) the applicant or in the case of an application by two 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, 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;

[S 7/2012]

(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; or

[S 7/2012]

(c) the applicant or the child is not ordinarily resident in Brunei Darussalam.

[S 7/2012]

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

(11) An adoption order shall not be made unless the child has been continuously in the custody and care of the applicant for a period of at least 6 months before the application of an adoption order is made.

[S 7/2012]

Prohibition against taking back child.

9. (1) Where an adoption order by the Syar'ie Judge is still pending, any parent, if any, 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, 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.

Child custody. [S 7/2012]

9A. (1) The Court may, at any time, by order, place a child in the custody of the adopter or return the child to his parent.

(2) If special circumstances exist which render it unfit for the child to be placed in the custody of any person referred under subsection (1), the Court may order that the child be placed in the custody of any other person or any institution as the Syar'ie Judge thinks fit.

(3) In determining in whose custody the child shall be placed, the Court shall take into account the *maslahah* of the child.

Application to revoke adoption order. [S 7/2012]

9B. (1) An adopter who wishes to discontinue the adoption of a child shall make an application, in such form and manner as the Court may determine, for the adoption order to be revoked.

(2) Notwithstanding subsection (1), the Syar'ie Judge shall have the power to revoke an adoption order if he is satisfied that, in the particular circumstances, it is reasonable for the *maslahah* of the child to do so.

Non-Muslim child.

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

Conditions of adoption order. [S 7/2012]

11. (1) The Syar'ie Judge in making an adoption order may impose such conditions as in the opinion of Syar'ie Judge is necessary and expedient.

(2) Without prejudice to generality of subsection (1), the Syar'ie Judge may impose the following conditions —

(a) make provisions for the custody, maintenance, education and supervision of the welfare of the child and may require the adopter to give a bond otherwise; and

(b) subject to section 9B, require the adopter to make an application to revoke the adoption order if he so wishes to discontinue with the adoption.

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 —

(a) if he thinks necessary for the *maslahah* of the child, postpone the determination of the application; and

(b) make an interim order, which shall not be deemed to be an adoption order for the purposes of this Act, 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 —

(a) the applicant;

(b) the child to be adopted; and

(c) the parent, if any, 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, child or parent, if any, the 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, 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, 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 or interim order.

16. When —

(a) an adoption order or an interim order is made by a Syar'ie Judge in respect of a child under this Act; and

(b) thereupon the adopter or the person to whom an interim order is made persistently ill-treats the child or fails to comply with any condition imposed in the adoption order or any term in respect of the interim order which may affect adversely the *maslahah* of the child,

the Court shall —

- (i) after being satisfied, order the child to be taken from him; and
- (ii) may order that the child be handed over either to his parent, any other person or any institution as the Syar'ie Judge thinks fit, taking into account the *maslahah* of the child.

[S 7/2012]

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

GENERAL

Procedure.

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

(2) All disputes relating to this Act 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 Act may appeal in the prescribed procedure in any law relating to the civil and criminal procedure in the court.

Penalty.

21. Any person who —

(a) 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 Act;

(b) fraudulently or dishonestly uses as genuine any such certified copy which he knows or has reason to believe to be false; or

(c) fails to comply with any condition imposed in the adoption order or the interim order made under this Act,

is 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 Act.

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

***De facto* adoptions.**

23. Where at 26th March 2001, being the date of commencement of this Act, any child —

(a) 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

(b) has for a period of not less than 2 years before the commencement of this Act 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 Act, including the prescription of fees; and

(b) generally for giving effect to the objects and purposes of this Act 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 Act 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 Act or in any rules made under this Act, the Syar'ie Judge or the Court shall follow *Hukum Syara'*.

SCHEDULE

(section 7(2))

FORM

ISLAMIC ADOPTION OF CHILDREN ACT (CHAPTER 206)

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)
- hereby state that I wish to be authorised to adopt a child under the Islamic Adoption of Children Act (Chapter 206).

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 Act (Chapter 206).
3. I/We have dependants.
- (1) Age Male/Female
- (2) Age Male/Female
- (3) Age Male/Female

SCHEDULE

FORM — (continued)

- (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, 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.

SCHEDULE

FORM — (continued)

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).