

No. S 17

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

SYARIAH COURTS ACT (AMENDMENT) ORDER, 2005

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SYARIAH COURTS ACT (AMENDMENT) ORDER, 2005

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

Citation.

1. This Order may be cited as the Syariah Courts Act (Amendment) Order, 2005.

Amendment of section 2 of Chapter 184.

2. Section 2 of the Syariah Courts Act, in this Order referred to as the Act, is amended by repealing subsection (3) and by substituting the following new subsection therefor —

"(3) If any conflict or doubt arises when interpreting any word or expression relating to *Hukum Syara'*, the meaning of such word or expression shall be decided according to the accepted views (*qaul muktamad*) of the Mazhab Syafie."

Insertion of new sections 7A, 7B and 7C.

3. The Act is amended by inserting the following 3 new sections immediately after section 7 —

"Sitting of Syariah Courts.

7A. (1) The Chief Syar'ie Judge may appoint such places as he thinks fit as court houses for the Syariah Courts.

(2) Any place in which a Syariah Court is held is deemed to be an open court to which the public generally may have access:

Provided that —

(a) a Syariah Court shall have power to hear any proceeding or any part thereof in camera if the court is satisfied that it is expedient in the interests of justice, public security or propriety or for any other sufficient reason so to do;

(b) a Syariah Court shall ordinarily exclude a witness until he has given evidence in proceedings where the court is exercising a criminal jurisdiction.

(3) A Syariah Court may at any time order that no person shall publish the name, address or photograph of any witness in any proceeding or any evidence or any other thing liable to lead to the identification of any such witness; and any person who acts in contravention of any such order shall, notwithstanding any other written law, be liable to a fine not exceeding \$5,000, imprisonment for a term not exceeding one year or both.

Subordinate officers.

7B. (1) There shall be attached to the Syariah Courts such interpreters, clerks, bailiffs, process-servers and other officers as, from time to time, appear to the Chief Syar'ie Judge to be necessary for the administration of justice and the due execution of all powers and duties which are vested in the Syariah Courts.

(2) Bailiffs, process-servers and any person generally or specially authorised by the Chief Syar'ie Judge to do so shall execute all writs, summonses, warrants, orders, notices and other mandatory processes of a Syariah Court given to them, and shall make a return of the same together with the manner of the execution thereof to the court from which the process issued, and shall arrest and receive all such persons and property as are committed to the custody of a Syariah Court.

(3) A bailiff or other person in executing any writ of seizure and sale or any other writ of execution or of distress may effect an entry into any building, and for that purpose, if necessary, may break open any outer or inner door or window of the building or any receptacle therein, using such force as is reasonably necessary to effect an entry.

Decision and reasons.

7C. (1) A Syariah Court shall pronounce a decision at the conclusion of the hearing or at some time thereafter.

(2) A Syariah Court may give reasons for its decision, if it so wishes, at the conclusion of the hearing or at any time thereafter.

(3) The decision, and reasons if any, may be given orally or in writing.

(4) Such decision, and reasons if any, may be sent to the parties and it shall not be necessary for them to appear in person or by counsel."

Amendment of section 13.

4. Section 13 of the Act is amended —

(a) in the sub-heading, by inserting "Chief" immediately after "Deputy";

(b) by deleting "Deputy Registrar and" from the third line and by substituting "Deputy Chief Registrar of the Syariah Appeal Court," therefor.

Amendment of section 15.

5. Section 15 of the Act is amended by repealing paragraph (ix) and by substituting the following new paragraph therefor —

"(ix) determination of persons entitled to all or any part of the estate of a deceased Muslim and the parts thereof which such persons are respectively entitled to; or".

Amendment of section 16.

6. Section 16 of the Act is amended, in paragraph (a) of subsection (1), by inserting "and any written law relating to Islamic family law" immediately before the comma in the second line.

Insertion of new section 20A.

7. The Act is amended by inserting the following new section immediately after section 20 —

"Appeals and applications for leave to appeal.

20A. (1) An appeal or application for leave to appeal under subsection (2) of section 20 shall be made to the Syariah Appeal Court in accordance with the prescribed procedure, but shall, in any case, be within 30 days from the date of the judgment, order or decision in respect of which the appeal or application is made.

(2) The Syariah Appeal Court, on hearing any application for leave to appeal may, on special ground, extend the period of appeal, notwithstanding that the time has expired."

Insertion of new sections 21A and 21B.

8. The Act is amended by inserting the following 2 new sections immediately after section 21 —

"No revision at instance of party who could have appealed.

21A. Where an appeal lies from any decision in any civil matter and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of a party who could have appealed.

Discretion of Syariah High Court or Syariah Appeal Court as to hearing parties.

21B. (1) Subject to the provisions of any written law, no party shall have any right to be heard before the Syariah High Court or the Syariah Appeal Court when exercising its powers of revision and supervision.

(2) No final order shall be made to the prejudice of any person unless that person has had an opportunity of being so heard."

Insertion of new section 24A.

9. The Act is amended by inserting the following new section immediately after section 24 —

"Authority of Courts.

24A. For the purposes of and incidental to the hearing and determination of any appeal, the Syariah High Court and the Syariah Appeal Court, as the case may be, shall have the powers and jurisdiction of the court, person or tribunal from which or from whom the appeal was brought, in addition to any power which may be conferred upon it by this Act or by any written law."

Insertion of new section 27A.

10. The Act is amended by inserting the following new section immediately after section 27 —

"Right of audience.

27A. Subject to any written law which provides for syariah criminal procedure, in any proceeding in a Syariah Court, whether in the exercise of

its criminal or civil jurisdiction, any of the following may address the court —

(a) any party to the proceedings;

(b) any Syar'ie Lawyer and any person deemed to be a Syar'ie Lawyer;

(c) any other person allowed by leave of the court to appear instead of a party to the proceedings."

Amendment section 28.

11. Section 28 of the Act is amended —

(a) by inserting the following new paragraph immediately after paragraph (a) —

"(aa) prescribing the scales of allowances, costs and fees to be taken, paid or refunded to any party or witness in any proceedings in the Syariah Courts, and to regulating any matters relating to the costs of such proceedings;"

(b) in paragraph (b), by deleting "and" from the last line;

(c) in paragraph (c), by deleting the fullstop and by substituting";" therefor;

(d) by adding the following new paragraph —

"(d) generally as he considers necessary or expedient for carrying into effect the provisions of this Act."

Insertion of new sections 28A, 28B and 28C.

12. The Act is amended by inserting the following 3 new sections immediately after section 28 —

"Contempt.

28A. Notwithstanding any other written law, where any contempt is committed in the face of a Syariah Court, the court may at any time before rising on the same day, take cognisance of the offence, record the facts constituting the offence and the statement, if any, made by the offender and sentence the offender —

(a) in the case of a Syariah Subordinate Court, to a fine not exceeding \$2,000, imprisonment for a term not exceeding 6 months or both;

(b) in the case of the Syariah High Court and the Syariah Appeal Court, to a fine not exceeding \$10,000, imprisonment for a term not exceeding one year or both:

Provided that the court may —

- (i) discharge the offender or remit the punishment on his making an apology to the satisfaction of the court;
- (ii) in lieu of taking cognisance of the offence, authorise a prosecution.

Remuneration of Judges.

28B. (1) The remuneration of the Syar'ie Judges shall be prescribed by His Majesty the Sultan and Yang Di-Pertuan and such remuneration shall be charged upon the Consolidated Fund.

(2) Remuneration for the purposes of subsection (1) shall include any monies which may become payable in respect of the services of the Syar'ie Judges under any agreement entered into by Brunei Darussalam for the provision of such Syar'ie Judges and of their services.

Protection of judicial and other officers.

28C. (1) A judicial officer shall not be liable to be sued in any court for any act done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction, provided that at the time in good faith he believed himself to have jurisdiction to do that act.

(2) No officer of a Syariah Court or other person charged with the duty of executing any writ, summons, warrant, order, notice or other mandatory process of a Syariah Court shall be liable to be sued for the execution of or attempting to execute such writ, summons, warrant, order, notice or other mandatory process, or in respect of any damage caused to any property in effecting or attempting to effect execution, unless he knowingly acted in excess of the authority conferred upon him by such writ, summons, warrant, order, notice or other mandatory process in question, and he shall not be deemed to have acted knowingly in excess of his authority merely by reason of the existence of a dispute as to the ownership of any property seized under any writ or order or execution."

Amendment of Chapter 77.

13. The Religious Council and Kadis Courts Act is amended by repealing sections 92 and 197.

Amendment of S 12/2000.

14. Section 134 of the Emergency (Islamic Family Law) Order, 1999 is repealed and the following new section substituted therefor —

"Contempt of Court.

134. Without prejudice to the provisions of any other written law, failure to comply with an order of the Court made under this Order shall be regarded as contempt of Court and liable on conviction to a fine not exceeding \$2,000, imprisonment for a term not exceeding 6 months or both."

Made this 13th. day of Safar, 1426 Hijriah corresponding to the 24th. day of March, 2005 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM