

# **LAWS OF BRUNEI**

## **CHAPTER 184**

### **SYARIAH COURTS**

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**CHAPTER 184**  
**SYARIAH COURTS**

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## SYARIAH COURTS ACT

**An Act to make specific provisions in respect of the establishment of Syariah Courts, appointments, powers of Syar'ie Judge and jurisdiction of Syariah Courts and other matters connected with the proceedings of Syariah Courts, and for the determination and confirmation of the new moon**

*Commencement : [ ]*

### PART I

#### PRELIMINARY

##### **Citation.**

1. This Act may be cited as the Syariah Courts Act.

##### **Interpretation.**

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

“Chief Syar'ie Judge” means the Chief Syar'ie Judge appointed under section 8(1);

“Chief Syar'ie Prosecutor” means an officer appointed under section 25(1);

“Judge” means a Syar'ie Judge appointed under sections 9(1), 10(1) and 11 and includes the Chief Syar'ie Judge;

“Kadi” means a kadi appointed under section 45(1) (repealed by this Act) of the Religious Council and Kadis Courts Act (Chapter 77) and includes the Chief Kadi and the Deputy Chief Kadi;

“Majlis” means Majlis Ugama Islam constituted under section 5 of the Religious Council and Kadis Courts Act (Chapter 77);

“President of the Majlis” means a person appointed under section 13 of the Religious Council and Kadis Courts Act (Chapter 77);

“Religious Enforcement Officer” means an officer appointed under section 26 and includes the Chief Religious Enforcement Officer;

“Syariah Appeal Court Judge” means a Judge of Syariah Appeal Court appointed under section 9(1);

“Syariah Courts” means the Syariah Subordinate Courts, the Syariah High Court or the Syariah Appeal Court, as the case may be, established under section 6(1);

“Syariah High Court Judge” means a Judge of Syariah High Court appointed under section 10(1);

“Syariah Subordinate Court Judge” means a Judge of Syariah Subordinate Court appointed under section 11;

“Syar’ie Judge” means a Syar’ie Judge appointed under sections 9(1), 10(1) and 11 and includes the Chief Syar’ie Judge;

“Syar’ie Lawyer” means a person admitted as Syar’ie Lawyer under section 27(1).

(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 in that Act to the extent that they do not conflict with *Hukum Syara’*.

(3) If any conflict or doubt arises when interpreting any word or expression relating to *Hukum Syara’*, it shall be the discretion of the Syariah Courts to decide the meaning of such word or expression.

**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.

**Exclusive jurisdiction of Syariah Courts.**

5. For the avoidance of doubt, it is hereby declared that no court other than a court established under Part II shall hear or determine any claim or proceeding under the jurisdiction of the Syariah Courts.

**PART II****SYARIAH COURTS****Constitution and Jurisdiction****Syariah Courts.**

6. (1) There are hereby established Syariah Courts consisting of Syariah Subordinate Courts, the Syariah High Court and the Syariah Appeal Court, with such jurisdiction, powers, duties and authority as are conferred and imposed by this Act and by any other written law.

(2) The Syariah Subordinate Courts, Syariah High Court and Syariah Appeal Court shall have jurisdiction throughout Brunei Darussalam.

(3) Notwithstanding subsection (2), the Syariah Courts shall have criminal jurisdiction in respect of offences committed outside Brunei Darussalam by a citizen or permanent resident of Brunei Darussalam.

**Court's seal, language and record.**

7. (1) Every Syariah Court shall have and use where necessary a seal of such form and format as may be approved by the Majlis.

(2) (a) The Malay language shall be the language of the Syariah Courts but the Syariah Courts may in the interests of justice allow the use of any other language.

(b) All documents or records of proceedings may be written in jawi or rumi script.

(c) Every Syariah Court shall keep and maintain full and proper records relating to all actions or proceedings before it, full and proper accounts relating to all financial matters of the Syariah Court

and shall account for all monies received in a manner provided by the Financial Regulations or in such other manner as His Majesty the Sultan and Yang Di-Pertuan may direct.

(d) Any process issued by the Syariah Courts shall bear its seal and shall be signed by an authorised officer.

(e) All summonses, warrants, orders, regulations, notices and processes whatsoever, whether civil or criminal, issued or made by any Syariah Court having power in relation to matters within its jurisdiction shall have full power and effect and may be served or executed anywhere within Brunei Darussalam.

### **Appointment of Chief Syar'ie Judge.**

8. (1) His Majesty the Sultan and Yang Di-Pertuan may, on the advice of the President of the Majlis and after consultation with the Majlis, appoint a Chief Syar'ie Judge.

(2) A person is qualified to be appointed under subsection (1) if —

(a) he is a citizen of Brunei Darussalam; and

(b) he —

(i) has, for a cumulative period of not less than 7 years prior to his appointment, served as either a Judge of a Syariah Court, or Kadi, or in both capacities; or

(ii) is a person learned in *Hukum Syara'*.

### **Appointment of Syariah Appeal Court Judges.**

9. (1) His Majesty the Sultan and Yang Di-Pertuan may, on the advice of the President of the Majlis and after consultation with the Majlis, appoint and re-appoint, for a period of not exceeding 3 years, not more than 5 Muslims to form a standing panel of Judges, and the Chief Syar'ie Judge shall elect 2 of them to constitute a quorum of Judges in the Syariah Appeal Court for each proceedings.

(2) A person is qualified to be appointed under subsection (1) if —

(a) he is a citizen of Brunei Darussalam; and



(b) he —

(i) has, for a cumulative period of not less than 7 years prior to his appointment, served as either a Judge of a Syariah Court, or Kadi, or in both capacities; or

(ii) is a person learned in *Hukum Syara'*.

### **Appointment of Syariah High Court Judges.**

10. (1) His Majesty the Sultan and Yang Di-Pertuan may, on the advice of the President of the Majlis and after consultation with the Majlis, appoint Judges of the Syariah High Court.

(2) A person is qualified to be appointed under subsection (1) if —

(a) he is a citizen of Brunei Darussalam; and

(b) he —

(i) has, for a cumulative period of not less than 7 years prior to his appointment, served as either a Judge of a Syariah Subordinate Court, or Kadi, or Registrar, or Syar'ie Prosecutor, or in more than one of such capacities; or

(ii) is a person learned in *Hukum Syara'*.

### **Appointment of Syariah Subordinate Courts Judges.**

11. His Majesty the Sultan and Yang Di-Pertuan may, on the advice of the President of the Majlis and after consultation with the Majlis, appoint Judges of the Syariah Subordinate Courts.

### **Tenure of office, termination and removal of service of Syariah Courts Judge.**

12. (1) The Chief Syar'ie Judge and Syar'ie Judges appointed under sections 8(1) or 10(1) respectively shall hold office until the age of 65 years or until such later time as may be approved by His Majesty the Sultan and Yang Di-Pertuan.

(2) The Chief Syar'ie Judge and any Syar'ie Judge appointed under sections 8(1), 9(1) and 10(1), as the case may be, may at any time resign from his office by sending to His Majesty the Sultan and Yang Di-Pertuan a letter of resignation under his hand, through the Majlis or the Chief Syar'ie Judge, as the case may be, but he may not be removed from office or his service terminated except in accordance with the provisions of subsections (3), (4) and (5).

(3) Where the Majlis or the Chief Syar'ie Judge refers a representation to His Majesty the Sultan and Yang Di-Pertuan that the Chief Syar'ie Judge, or any Syar'ie Judge appointed under sections 8(1), 9(1) and 10(1), as the case may be, should be removed or his service terminated on grounds of —

(a) misconduct; or

(b) disability, due to mental or bodily weakness or other causes, to properly perform his duty,

His Majesty the Sultan and Yang Di-Pertuan shall appoint a tribunal in accordance with subsection (4) and refer the representation to it, and may on the recommendation of the tribunal terminate the service of the Chief Syar'ie Judge or the Syar'ie Judge, as the case may be.

(4) The tribunal shall consist of not less than 3 Muslims who are or have been a Syar'ie Judge or Supreme Court Judge or who have been appointed as a member of the Judicial Committee of the Majlis under section 44 of the Religious Council and Kadis Courts Act (Chapter 77), and the tribunal shall be presided by the member who is the most senior:

Provided that His Majesty the Sultan and Yang Di-Pertuan may appoint any other person as he thinks fit or who is learned in *Hukum Syara'* to be a member of the tribunal.

(5) Pending any reference and report under subsection (3), His Majesty the Sultan and Yang Di-Pertuan may, on the recommendation of the Majlis or the Chief Syar'ie Judge, suspend the Chief Syar'ie Judge or the Syar'ie Judge, as the case may be, from performing his duties.

(6) Notwithstanding the provisions of subsection (1), the validity of anything done by a Syar'ie Judge shall not be questioned on ground that the Syar'ie Judge has reached the retiring age limit.

**Appointment of Chief Registrar, Deputy Registrar, Registrar and Assistant Registrars.**

**13.** His Majesty the Sultan and Yang Di-Pertuan may, on the advice of the Chief Syar'ie Judge, appoint a Chief Registrar of the Syariah Appeal Court, a Deputy Registrar and Registrars of the Syariah High Court and Assistant Registrars of the Syariah Subordinate Courts.

**Appointments to be notified.**

**14.** Notice of all appointments under this Part shall be published in the *Gazette*.

**Jurisdiction of Syariah High Court.**

**15.** The Syariah High Court shall —

(a) in its criminal jurisdiction, try any offence punishable under any written law which provides for syariah criminal offences, under any written law relating to Islamic family law or under any other written law which confers on the Syariah High Court jurisdiction to try any offence, and may impose any punishment provided therein; and

(b) in its civil jurisdiction, hear and determine all actions and proceedings which relate to —

- (i) betrothal, marriage (including *ta'at balik*), divorce, *khulu'*, *fasakh*, *cerai ta'liq*, determination of turns, *li'an*, *illa* or any matrimonial matter;
- (ii) any disposition of or claim to any property arising out of any matter set out in subparagraph (i) of this paragraph;
- (iii) maintenance of dependants, legitimacy (*ithbatun nasab*) or guardianship or custody (*hadanah*) of infants;
- (iv) division of or claims to *harta sepencarian*;
- (v) wills or gifts during *maradal-maut* of a deceased Muslim;

- (vi) gift *inter vivos* (*hibah*), or settlement (*sulh*) made without adequate monetary consideration or value by a Muslim;
- (vii) *waqaf* or *nazar*;
- (viii) division of and inheritance of property, testate or intestate;
- (ix) determination of persons entitled to part of the estate of a deceased Muslim or the part thereof which such persons are respectively entitled to; or
- (x) other matters in respect of which jurisdiction is conferred by any written law.

### **Jurisdiction of Syariah Subordinate Courts.**

#### **16. (1) The Syariah Subordinate Courts shall —**

(a) in their criminal jurisdiction, try any offence punishable under any written law which provides for syariah criminal offences, prescribing offences where the maximum punishment provided for does not exceed \$10,000 or imprisonment for a period not exceeding 7 years or both and may impose any punishment provided therefor;

(b) in their civil jurisdiction, hear and determine all actions and proceedings which the Syariah High Court is empowered to hear and determine, where the amount or value of the subject-matter in dispute does not exceed \$500,000 or is not capable of estimation in terms of money.

(2) His Majesty the Sultan and Yang Di-Pertuan may, on the recommendation of the Chief Syarie Judge from time to time, by notification in the *Gazette* increase the civil jurisdiction of the Syariah Subordinate Courts.

### **Appeal to Syariah High Court.**

**17. (1)** An appeal shall lie to the Syariah High Court from any decision of the Syariah Subordinate Courts.

(2) In its criminal jurisdiction, an appeal may be made by a Syarie Prosecutor or by a person convicted and sentenced to imprisonment or fined and such appeal may be made against an acquittal, or against a conviction or sentence or both, or any part of it.

(3) In its civil jurisdiction, an appeal may be made —

(a) by any person aggrieved by or dissatisfied with any decision;

(b) in all cases involving any decision as to personal status, by any person aggrieved by or dissatisfied with the decision; and

(c) in all cases relating to maintenance of dependants, by any person aggrieved by or dissatisfied with the decision:

Provided that no such appeal shall lie against a decision made by consent.

(4) In any case not provided for in subsection (2) or (3), an appeal may be made if the Syariah High Court grants leave to appeal.

(5) On any appeal, the Syariah High Court may —

(a) in a criminal matter, dismiss the appeal, convict and sentence the appellant, order the trial Court to call for the defence or order further investigation, enhance or vary the sentence, order a re-trial, or vary or reverse any order of the trial Court;

(b) in a civil matter, confirm, reverse or vary the decision of the trial Court, exercise any such power as the trial Court could have exercised, make such order as the trial Court ought to have made, or order a re-trial.

### **Appeals and applications for leave to appeal.**

**18.** (1) An appeal or application for leave to appeal under section 17(4) shall be made to the Syariah High Court in accordance with the prescribed procedure, but shall, in any case, be within 14 days from the date of the judgment, order or decision in respect of which the appeal or application is made.

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

### **Supervisory and revisionary jurisdiction of Syariah High Court.**

**19.** (1) The Syariah High Court shall have supervisory and revisionary jurisdiction over all Syariah Subordinate Courts and may, if it appears necessary, in the interests of justice, either on its own motion or on application by any party or interested person, at any stage in any matter or proceedings, whether civil or criminal, in any Syariah Subordinate Court, call for and examine any record relating to it and may make any order necessary in the interests of justice.

(2) Whenever the Syariah High Court calls for the record under subsection (1), all proceedings in the Syariah Subordinate Courts relating to the matter or proceedings shall be suspended pending further order from the Syariah High Court.

### **Jurisdiction of Syariah Appeal Court.**

**20.** (1) The Syariah Appeal Court shall have jurisdiction to hear and determine any appeal against any decision made by the Syariah High Court in the exercise of its original jurisdiction.

(2) Whenever an appeal against a decision of the Syariah Subordinate Court has been determined by the Syariah High Court, the Syariah Appeal Court may, on application by any party, grant leave for any question of law in the public interest which has arisen in the course of the appeal, and where the decision of the Syariah High Court has affected the determination of the appeal, to be referred to the Syariah Appeal Court for its decision.

(3) Whenever leave is granted by the Syariah Appeal Court, it shall hear and determine the questions allowed to be referred for its decision and make any order which the Syariah High Court might have made, and as it thinks just for the disposal of the appeal.

### **Supervisory and revisionary jurisdiction of Syariah Appeal Court.**

**21.** (1) The Syariah Appeal Court shall have supervisory and revisionary jurisdiction over the Syariah High Court and may, if it appears necessary in

the interests of justice, either on its own motion or on application by any party or interested person, at any stage in any matter or proceedings, whether civil or criminal, in the Syariah High Court, call for and examine any record relating to it and may give any direction necessary in the interests of justice.

(2) Whenever the Syariah Appeal Court calls for the record under subsection (1), all proceedings in the Syariah High Court relating to the matter or proceedings shall be suspended pending further order from the Syariah Appeal Court.

### **Membership of Syariah Appeal Court.**

**22.** (1) An appeal in the Syariah Appeal Court shall be heard and determined by a Chairman and any 2 of the Syariah Appeal Court Judges as specified by the Chief Syar'ie Judge.

(2) The Chief Syar'ie Judge may appoint any Syariah High Court Judge to become a member of the Syariah Appeal Court in any specific proceeding if the Chief Syar'ie Judge thinks necessary to do so.

(3) The 2 persons appointed to be members of the Syariah Appeal Court under subsections (1) and (2) shall not include the Syar'ie Judge who tried or made decision on the case appealed against.

(4) The Chief Syar'ie Judge shall be the Chairman in every proceeding in the Syariah Appeal Court, and in case he is unable to perform his duty, the Chief Syar'ie Judge shall appoint the most senior amongst the Syariah Appeal Court Judges to become the Chairman.

### **Majority decision.**

**23.** An appeal shall be determined in accordance with the decision of the majority of the members of the Syariah Appeal Court.

### **Continuation of proceedings in Syariah Appeal Court notwithstanding the absence of Syar'ie Judge.**

**24.** (1) If, in the course of any proceeding in an appeal or at any time before the pronouncement of judgment, any Syariah Appeal Court Judge who hears the case is unable, due to sickness or any other reason, to attend and conclude the proceedings or otherwise carry out his function as a Judge of the Court, then, if both parties agree, the hearing shall be proceeded with

and judgment or reserved judgment, as the case may be, shall be given by the remaining 2 Syar'ie Judges available, and for the purpose of the appeal, the Court shall be deemed to have been duly constituted.

(2) In any such case as mentioned in subsection (1), if there is no unanimous decision, the appeal shall be re-heard.

(3) If under subsection (1), both parties do not give their consent, or more than one Syar'ie Judge is unable, due to sickness or any other reason, to attend and carry out their function as Judges of the Court, the appeal shall be re-heard.

### **PART III**

## **PROSECUTION, INVESTIGATION AND REPRESENTATION**

### **Appointment of Syar'ie Prosecutors.**

**25.** (1) His Majesty the Sultan and Yang Di-Pertuan may, on the advice of the President of the Majlis and after consultation with the Majlis, appoint a person who is qualified to become a Syariah High Court Judge, to be the Chief Syar'ie Prosecutor.

(2) The Chief Syar'ie Prosecutor shall have powers exercisable at his discretion to commence and carry out any proceedings for an offence before a Syariah Court.

(3) In exercise of this power the Chief Syar'ie Prosecutor shall not be subject to the direction or control of any other person or authority.

(4) His Majesty the Sultan and Yang Di-Pertuan may, on the advice of the President of the Majlis and after consultation with the Chief Syar'ie Prosecutor, appoint fit and suitable persons from members of the public service to be Syar'ie Prosecutors who shall act under the supervision and direction of the Chief Syar'ie Prosecutor and may exercise all or any right and power vested in or exercisable by the Chief Syar'ie Prosecutor himself.



**Appointment of Religious Enforcement Officers.**

26. His Majesty the Sultan and Yang Di-Pertuan may, on the advice of the President of the Majlis and after consultation with the Majlis, appoint a fit and suitable person or persons from members of the public service to be —

(a) Chief Religious Enforcement Officer; and

(b) Religious Enforcement Officers,

to conduct an investigation into the offences under this Act or under any other written law which provides for offences against *Hukum Syara'*.

**Syar'ie Lawyer.**

27. (1) The Chief Syar'ie Judge may, on payment of the prescribed fee, admit a person who possesses sufficient knowledge about *Hukum Syara'* and suitable to become a Syar'ie Lawyer to represent the parties in any proceeding before any Syariah Court.

(2) No person other than a Syar'ie Lawyer shall have the right to appear as a *bil-khusumah* representative in any Syariah Court on behalf of any party to any proceeding before it.

**PART IV****GENERAL****Rules of Court.**

28. The Chief Syar'ie Judge may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make Rules of Court —

(a) for regulating the practice and procedure of the Syariah Courts;

(b) to provide for the procedure, qualifications and fees for admission of Syar'ie Lawyers; and

(c) to regulate, control and supervise the conduct of Syar'ie Lawyers.

**Determination and confirmation of new moon.**

**29.** (1) It shall be the duty of the Chief Syar'ie Judge at or about the beginning or end of each lunar month to make the enquiry in determining the dates of new moons on which *rukyah* may occur and also to make the enquiry on any specified day the new moon may be sighted and then to determine and confirm the result of *rukyah* under his hand.

(2) After the enquiries mentioned in subsection (1), the Chief Syar'ie Judge shall forthwith inform the President of the Majlis who shall submit the determination and confirmation of *rukyah* to His Majesty the Sultan and Yang Di-Pertuan.

(3) The determination and confirmation which has been made by the Chief Syar'ie Judge in respect of *rukyah* shall be final.