

No. S 9

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

SYARIAH COURTS CRIMINAL PROCEDURE CODE ORDER, 2018

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

SYARIAH COURTS CRIMINAL PROCEDURE CODE ORDER, 2018

In exercise of the power conferred by Article 83(3) 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 Syariah Courts Criminal Procedure Code Order, 2018 and shall commence on such date or dates 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 provisions in respect of criminal procedure for Syariah Courts”.

Interpretation

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

“*adil*” has the same meaning assigned to it under the Syariah Courts Evidence Order, 2001 [S 63/2001];

“*arsy*” has the same meaning assigned to it under section 121 of the Syariah Penal Code Order, 2013 [S 69/2013];

“bailable offence” means an offence shown as bailable in the First Schedule or which is made bailable by any other written law for the time being in force;

“*baligh*” has the same meaning assigned to it under the Syariah Courts Evidence Order, 2001 [S 63/2001];

“Chief Religious Enforcement Officer” means the Chief Religious Enforcement Officer appointed under section 26 of the Syariah Courts Act [Chapter 184];

“Chief Syar’ie Judge” has the same meaning assigned to it under the Syariah Courts Act (Chapter 184);

“Chief Syar’ie Prosecutor” has the same meaning assigned to it under the Syariah Courts Act (Chapter 184);

“Commissioner of Police” means the Commissioner of Police of the Royal Brunei Police Force appointed under the Royal Brunei Police Force Act (Chapter 50);

“complaint” means the allegation made orally or in writing to a Religious Enforcement Officer, police officer or Syar’ie Judge with a view to the Religious Enforcement Officer, police officer or Syar’ie Judge taking action under this Order that a person whether known or unknown has committed or is guilty of an offence;

“*hadd*” has the same meaning assigned to it under section 52(1) of the Syariah Penal Code Order, 2013 (S 69/2013);

“*Hukum Syara’*” means the laws of any sect which the Syariah Court considers valid;

“inquiry” includes every inquiry conducted before a Syar’ie Judge under this Order;

“Judge”, for the purposes of sections 122 and 249, means a Syar’ie Judge or Judge of the Supreme Court, as the case may be;

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

“medical officer” means a person registered under the Medical Practitioners and Dentists Act (Chapter 112), and includes a Medical Officer appointed under section 14 of the Prisons Act (Chapter 51);

“Minister” means the Minister of Religious Affairs;

“*mukalla’*” has the same meaning assigned to it under the Syariah Penal Code Order, 2013 (S 69/2013);

“*mumaiyiz*” has the same meaning assigned to it under the Syariah Courts Evidence Order, 2001 (S 63/2001);

“non-bailable offence” means an offence shown as non-bailable in the First Schedule or which is made non-bailable by any other written law for the time being in force;

“non-seizable offence” means an offence for which a Religious Enforcement Officer or a police officer may not ordinarily arrest without warrant according to the third column of the First Schedule or under the provisions of any other written law for the time being in force;

“offence” means any act or omission made punishable by this Order or any other written law for the time being in force;

“officer in charge of prison” means the Officer-in-Charge of any prison as defined under the Prisons Act (Chapter 51);

“officer in charge of a police district” means the officer appointed to perform the duties of that office and when such officer is absent therefrom or unable from illness to perform his duties, the police officer present and acting in the police district who is next in rank below such officer;

“officer in charge of a police station” means the officer appointed to perform the duties of that office and when such officer is absent therefrom or unable from illness to perform his duties, the police officer present and acting in the police station who is next in rank below such officer;

“Permanent Secretary” means the Permanent Secretary to the Office of the Prime Minister;

“place” includes a house, building, tent and vessel;

“police district” has the same meaning assigned to it under the Royal Brunei Police Force Act (Chapter 50);

“police officer” means any member of the Royal Brunei Police Force, and includes a special police officer when mobilised or deemed to be mobilised for active service and any person vested under any written law with the powers of a police officer;

“postal article” means any letter, postcard, book, document, pamphlet or sample parcel or package or other article whatsoever transmitted by post or courier service;

“public servant” has the same meaning assigned to it under the Syariah Penal Code Order, 2013 (S 69/2013);

“Registrar” means the Chief Registrar of the Syariah Appeal Court, the Deputy Chief Registrar of the Syariah Appeal Court, the Registrars of the Syariah High Court or the Assistant Registrars of the Syariah

Subordinate Courts, as the case may be, appointed under section 13 of the Syariah Courts Act (Chapter 184);

“relative” has the same meaning assigned to it under the Islamic Adoption of Children Act (Chapter 206);

“Religious Enforcement Officer” has the same meaning assigned to it under the Syariah Courts Act (Chapter 184);

“seizable offence” means an offence for which a Religious Enforcement Officer or police officer may ordinarily arrest without warrant according to the third column of the First Schedule or under the provisions of any other written law for the time being in force;

“summons case” means a case relating to an offence not being a warrant case;

“Syariah Court” means the Syariah Courts established under section 6(1) of the Syariah Courts Act (Chapter 184);

“Syar’ie Judge” has the same meaning assigned to it under the Syariah Courts Act (Chapter 184);

“Syar’ie Lawyer” has the same meaning assigned to it under the Syariah Courts Act (Chapter 184);

“Syar’ie Prosecutor” means a Syar’ie Prosecutor appointed under section 25(4) of the Syariah Courts Act (Chapter 184), and includes the Chief Syar’ie Prosecutor;

“*wali-ad-dam*” has the same meaning assigned to it under the Syariah Penal Code Order, 2013 (S 69/2013);

“warrant case” means a case relating to an offence punishable with *hadd*, *qisas* or imprisonment for a term exceeding one year;

“*yamin*” has the same meaning assigned to it under the Syariah Courts Evidence Order, 2001 (S 63/2001).

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

(4) The Chief Syarie Judge may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, amend the Schedules to this Order.

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

Jurisdiction

3. Subject to the provisions of this Order, Syariah Court shall have jurisdiction in respect of offences committed —

(a) wholly or partly within Brunei Darussalam;

(b) on board any ship registered in Brunei Darussalam;

(c) on board any aircraft registered in Brunei Darussalam;

(d) on the high seas if the offence is piracy by the law of nations;

(e) by any person outside Brunei Darussalam who abets, or enters a conspiracy to commit, an offence within Brunei Darussalam, whether or not any overt act in furtherance of such conspiracy takes place within Brunei Darussalam; or

(f) by a subject of His Majesty the Sultan and Yang Di-Pertuan or permanent resident of Brunei Darussalam whether the offence was committed within or outside Brunei Darussalam.

Trial of offences by Syariah Court

4. All offences over which the Syariah Court has jurisdiction shall be inquired into and tried according to the provisions contained in this Order.

Saving of prerogative

5. 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 official religion of Brunei Darussalam.

Saving of powers of Syariah Court

6. Nothing in this Order shall be construed as derogating from the powers or jurisdiction of the Syariah Court.

PART II

GENERAL PROVISIONS

Courts

7. The courts for the administration of syariah criminal justice in Brunei Darussalam to which this Order applies shall be the Syariah Courts established in accordance with the Syariah Courts Act (Chapter 184).

Syariah Court to be open

8. Subject to section 9, the place in which any Syariah Court is held for the purpose of trying any offence shall be deemed an open court to which the public generally may have access.

Sitting in camera

9. A Syar'ie Judge shall have power to hear any proceeding or any part thereof in camera if he is satisfied that it is expedient in the interests of justice, public security or propriety or for any other sufficient reason so to do:

Provided that he shall record in every such case on the record of the proceedings the grounds on which it is made.

Power of Syar'ie Judge to sentence to imprisonment in default of fine

10. (1) The Syariah Court may award such term of imprisonment in default of payment of fine as authorised by section 195:

Provided that the term is not in excess of the powers of the Syar'ie Judge under this Order.

(2) The imprisonment awarded under subsection (1) shall be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Syar'ie Judge.

Power of Syar'ie Judge to sentence to imprisonment in default or failure to pay *diyat*, *badal-al-sulh*, *arsy* or compensation

11. (1) The Syariah Court may award such term of imprisonment in default or failure of payment of *diyat*, *badal-al-sulh*, *arsy* or compensation as provided in section 193.

(2) The imprisonment awarded under subsection (1) shall be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Syar'ie Judge.

Sentence in case of conviction of several offences at one trial

12. (1) When a person is convicted at one trial of two or more distinct offences, the Syariah Court may, subject to the provision of any other written law relating to syariah criminal law which limits the punishment of an offence which is made up of several offences, sentence him for such offences to the several punishments prescribed therefor which such Syariah Court is competent to inflict, such punishments to commence the one after the expiration of the other in such order as the Syariah Court may direct unless the Syariah Court directs that such punishments shall run concurrently.

(2) In the case of consecutive sentences, it shall not be necessary for the Syariah Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before the Syariah High Court:

Provided that —

(a) in no case shall such person be sentenced to imprisonment for a longer period than 15 years;

(b) the aggregate punishment shall not exceed three times the amount of punishment which the Syar'ie Judge in the exercise of his ordinary jurisdiction is competent to inflict.

(3) For the purposes of an appeal, aggregate sentences passed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.

Criminal jurisdiction of Syar'ie Judge

13. Subject to the provisions of this Order, every Syar'ie Judge shall have cognisance of and power to —

(a) hear, try, determine and dispose of prosecutions for offences committed wholly or partly;

(b) inquire into complaints of offences, and summon and examine witnesses touching such offences, and summon and apprehend and issue warrants for the apprehension of criminals and offenders and deal with them according to law;

(c) issue warrant to search or to cause to be searched places wherein any article or things with which or in respect of which any offence has been committed are alleged to be kept or concealed and require persons to furnish security for their good behaviour according to law;

(d) hold inquests; and

(e) do all other matters and things which a Syar'ie Judge is empowered to do by this Order or any other written law.

PART III

OTHER GENERAL PROVISIONS

Chapter I

Information to Syar'ie Judge, Religious Enforcement Officer and police officer

Assistance to Syar'ie Judge, Religious Enforcement Officer and police officer

14. (1) Every person is bound to assist a Syar'ie Judge, Religious Enforcement Officer and police officer reasonably demanding his aid —

(a) in the arrest or preventing the escape of any other person from the arrest whom such Syar'ie Judge, Religious Enforcement Officer or police officer is authorised to arrest; or

(b) in the prevention of a breach of the peace arising from the act of arrest and detention.

(2) Every person failing to give such assistance as is required by this section is guilty of an offence under section 243 of the Syariah Penal Code Order, 2013 (S 69/2013).

Aid to persons other than Religious Enforcement Officer or police officer executing warrant

15. When a warrant is directed to a person other than a Religious Enforcement Officer or police officer, any other person may aid in the execution of such warrant if the person to whom the warrant is directed is near at hand and acting in the execution of his warrant.

Religious Enforcement Officer and police officer bound to report certain matters

16. Every Religious Enforcement Officer and police officer shall forthwith communicate to the nearest Hakim Syar'ie or police officer in charge of a police station any information which he may have or obtain in respect of —

(a) the occurrence of any sudden or unnatural death or of any death under suspicious circumstances;

(b) the finding of the dead body of any person without it being known how such person came by his death.

Chapter II

Arrest, escape and re-arrest

How arrest is made

17. (1) In making an arrest, the Religious Enforcement Officer, police officer or other person making the arrest shall touch the body of the person or confine the person to be arrested, unless there is a submission to the custody by word or action.

(2) If such person forcibly resists the endeavour to arrest him or attempts to evade the arrest, such officer or other person may use all means necessary to effect the arrest.

(3) Nothing in this section gives a right to cause the death of any person to be arrested who is not accused of an offence punishable with death.

(4) The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

Illustration

A, a Religious Enforcement Officer, arrests B, a suspect in an offence punishable with death. When A is making the arrest, B forcibly resists the endeavour of arrest or attacks or threatens to attack A. A has the right to cause death of B if he cannot otherwise make his arrest.

Search of place entered by person sought to be arrested

18. (1) If any person acting under a warrant of arrest or any Religious Enforcement Officer or police officer having authority to arrest has reason to believe that any person to be arrested has entered into or is within any place, the person residing in or in charge of such place shall, on demand of such person acting as aforesaid or of such Religious Enforcement Officer or police officer, allow him free ingress thereto and afford all reasonable facilities for a search therein.

(2) If ingress to such place cannot be obtained in accordance with subsection (1), it shall be lawful in any case for a person acting under a warrant, and in any case in which a warrant may be issued but cannot be obtained without affording the person to be arrested an opportunity to escape, for a Religious Enforcement Officer or police officer to enter such place and search therein, and in order to effect an entrance into such place, to break open any outer or inner door or window of any place whether the place is owned by the person to be arrested or of any other person if, after notification of his authority and purpose

and after demand of admittance duly made, he cannot otherwise obtain admittance.

Search of person in place searched under warrant

19. When a search for anything is or is about to be lawfully made in any place in respect of any offence, all persons found in the place may be lawfully detained until the search is completed, and they may, if the thing sought is in its nature capable of being concealed upon the person, be searched for it by or in the presence of a Religious Enforcement Officer or police officer not below the rank of Inspector or a police officer in charge of a police station.

Power to break open any place for liberation

20. Any Religious Enforcement Officer, police officer or other person authorised to make an arrest may break open any place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.

Mode of searching a person

21. When it is necessary to search a person, the search shall be made by a person of the same gender with strict regard to decency.

Search of persons arrested

22. (1) When a person is arrested —

(a) by a Religious Enforcement Officer or police officer under a warrant which does not provide for the taking of bail or under a warrant which provides for the taking of bail but the person arrested cannot furnish bail; or

(b) without warrant and the person arrested cannot legally be admitted to bail or is unable to furnish bail,

the Religious Enforcement Officer or police officer making the arrest may search such person and seize all articles found on him other than the necessary wearing apparel and place them in safe custody, and any of such articles which there is reason to believe were used in committing the offence or the fruits or other evidence of the crime may be detained until his discharge or acquittal.

(2) A list of all articles seized shall be prepared by the officer making the arrest and shall be signed by him.

Power to seize offensive weapon

23. The Religious Enforcement Officer, police officer or other person making any arrest under this Order may take from the person arrested any offensive weapon which he has on him and shall deliver all weapons so taken to the Syariah Court, Religious Enforcement Officer or police officer before which or whom the Religious Enforcement Officer, police officer or person making the arrest is required by law to produce the person arrested.

Search of person for name and address

24. Every person lawfully in custody, who by reason of incapacity from intoxication, illness, mental disorder or infancy is unable to give a satisfactory account of himself, may be searched for the purpose of ascertaining his name and place of abode.

Arrest without warrant

25. (1) Any Religious Enforcement Officer or police officer may, without an order from a Syar'ie Judge and without a warrant, arrest —

(a) any person committing or attempting to commit or abetting the commission of any seizable offence in Brunei Darussalam or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been so concerned;

(b) any person committing or attempting to commit in the presence of such officer any offence involving a breach of the peace;

(c) any person who commits in the presence of such officer an offence and who refuses, on demand of such officer, to give his name and residence, or gives his name or residence which the officer has reason to believe to be false, or his residence is not within Brunei Darussalam;

(d) any person against whom a warrant has been issued under this Order and is still in force, although such warrant is not in his possession;

(e) any person who obstructs a Religious Enforcement Officer or police officer while in the execution of his duty or who has escaped or attempts to escape from lawful custody;

(f) any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement for committing a seizable offence;

(g) any person in whose possession anything is found which may reasonably be suspected to be the fruits of *sariqah*, *hirabah* or *ghasab* or

fraudulently obtained property and who may reasonably be suspected of having committed an offence with reference to such thing;

(h) any person taking precautions to conceal his presence under circumstances which afford reason to believe that he is taking such precautions with a view to committing a seizable offence; or

(i) any person who by repute habitually commits *sariqah*, *hirabah* or *ghasab*, or habitually receives *sariqah*, *hirabah* or *ghasab* property knowing it to be so.

(2) If any person liable to be arrested under this Order is not arrested at the time of committing the offence for which he is so liable, or after arrest makes his escape, he may at any time thereupon be arrested and be dealt with as if he has been arrested at the time of committing the offence.

Arrest without warrant by officer of customs

26. (1) An officer of customs may arrest without warrant any person committing or attempting to commit or abetting the commission of an offence under section 104 of the Syariah Penal Code Order, 2013 (S 69/2013) and shall bring the person to a Religious Enforcement Officer or police officer or to the nearest police station.

(2) In this section, “officer of customs” has the same meaning assigned to it under the Customs Order, 2006 (S 39/2006).

Refusal to give name and residence or naming residence outside Brunei Darussalam

27. (1) When any person in the presence of a Religious Enforcement Officer or police officer commits or is accused of committing a non-seizable offence and refuses on the demand of the Religious Enforcement Officer or police officer to give his name and residence or gives his name and residence which the Religious Enforcement Officer or police officer has reason to believe to be false, he may be arrested by such officer in order that his name and residence may be ascertained, and he shall, within 24 hours of the arrest, exclusive of the time necessary for the journey, be brought before the nearest Syar’ie Judge unless before that time his true name and residence are ascertained, in which case such person shall be forthwith released on his executing a bond for his appearance before a Syar’ie Judge if so required.

(2) When any person is brought before a Syar’ie Judge, such Syar’ie Judge may either require him to execute a bond, with or without surety, for his appearance before a Syar’ie Judge if so required or may order him to be remanded in custody until he can be tried.

(3) When any person in the presence of a Religious Enforcement Officer or police officer commits or is accused of committing a non-seizable offence and on the demand of the Religious Enforcement Officer or police officer to give his name and residence, gives as his residence a place outside Brunei Darussalam, he may be arrested by the Religious Enforcement Officer or police officer and shall forthwith be brought before the nearest Syar'ie Judge who may require him to execute a bond, with or without surety, for his appearance before a Syar'ie Judge if so required or may order him to be remanded in custody until he can be tried.

Pursuit of offenders

28. For the purpose of arresting any person whom he has power to arrest without a warrant under this Order, a Religious Enforcement Officer or police officer may pursue any of such person into any part of Brunei Darussalam.

Arrest by private persons

29. (1) Any private person may arrest any person who, in his view, commits a seizable offence or who has been proclaimed under section 45 and shall without unnecessary delay bring the person to a Religious Enforcement Officer or police officer or to the nearest police station.

(2) If there is reason to believe that such person comes under the provisions of section 25, a Religious Enforcement Officer or police officer shall re-arrest him.

(3) If there is reason to believe that he has committed a non-seizable offence and he refuses on the demand of a Religious Enforcement Officer or police officer to give his name and residence or gives a name or residence which such officer has reason to believe to be false or his residence is not within Brunei Darussalam, he shall be dealt with under section 27.

(4) If there is no reason to believe that he has committed an offence, he shall be at once released.

(5) Any person who commits an offence on or with respect to the property of another may, if his name and address are unknown, be apprehended by the person injured or by any person who is using the property to which the injury is done, or by the servant of either of such persons or by any person authorised by or acting in aid of either of such persons, and may be detained until he gives his name and address and satisfies such person that the name and address so given are correct or until he can be delivered into the custody of a Religious Enforcement Officer or police officer.

How person arrested is to be dealt with and detention exceeding 48 hours

30. (1) A Religious Enforcement Officer or police officer making an arrest without a warrant under this Order shall without unnecessary delay and subject to the provisions of this Order as to bail or previous release, bring or send the person arrested before the Syariah Court.

(2) No Religious Enforcement Officer or police officer shall detain in custody a person arrested without a warrant for a longer period than under all the circumstances of the case is reasonable.

(3) Such period shall not ordinarily exceed 48 hours, exclusive of the time necessary for the journey from the place of arrest to the Syariah Court.

(4) When a person arrested is brought before the Syariah Court, the Syariah Court shall immediately hear the charge against him or adjourn the case.

(5) When any Syar'ie Judge before whom the accused person is brought under this section, whether he has jurisdiction or not to try the case, he may authorise the remand of the accused person in any such custody as the Syar'ie Judge thinks fit on reasonable grounds and for a reasonable period. If he has no authority to try the case and considers that it is unnecessary to detain the accused, he may order that the accused be sent before a Syar'ie Judge having authority to try the accused or, if the case is triable only by the Syariah High Court, before the Syariah High Court Judge.

(6) A Syar'ie Judge authorising under this section the remand of any person in the custody of the police shall record his reasons for so doing.

(7) If the case against the accused is adjourned, the person shall, unless he is released on bail, be remanded in prison or police custody under a warrant of remand issued by a Syar'ie Judge.

Release of person arrested

31. No person who has been arrested by a Religious Enforcement Officer or police officer under this Order shall be released except on his own bond or on bail or under the order in writing of a Syar'ie Judge or the Chief Religious Enforcement Officer or an officer in charge of a police station.

Offence committed in presence of Syar'ie Judge

32. When any offence is committed in the presence of a Syar'ie Judge, he may himself arrest or authorise any person to arrest the offender, and may thereupon, subject to the provisions of this Order as to bail, detain the offender.

Arrest by or in presence of Syar'ie Judge

33. Any Syar'ie Judge may at any time arrest, or authorise the arrest in his presence, any person for whose arrest he has power to issue a warrant.

Power to pursue and re-arrest

34. If a person in lawful custody escapes or is rescued, the person detaining him may immediately pursue and arrest him at any place and deal with such person as he ought to have done on the original arrest.

Sections 18 and 20 apply to arrest under section 34

35. Sections 18 and 20 apply to arrests under section 34 although the person making the arrest is not acting under a warrant and is not a Religious Enforcement Officer or police officer having authority to arrest.

Chapter III

Processes to compel appearance

Summons

Form of summons and by whom served

36. (1) Every summons to appear issued by a Syariah Court under this Order shall be in writing and signed by a Syar'ie Judge or Registrar and shall bear the seal of the Syariah Court.

(2) The summons shall state in general the offence charged and the section and the law under which it is punishable.

(3) Such summons shall ordinarily be served by a Religious Enforcement Officer or police officer but the Syariah Court issuing the summons may, if it thinks fit, direct it to be served by any other person.

Mode of service of summons

37. (1) The summons shall, if possible, be served personally on the person summoned by showing him the original summons and by tendering or delivering to him the summons or a copy thereof under the seal of the Syariah Court.

(2) Every person on whom a summons is so served shall, if so required by the serving officer, sign a receipt for the summons or its copy at the back of the original summons.

(3) In the case of a corporation, the summons may be served on the secretary or other like officer authorised by the corporation.

(4) Where the person to be summoned refuses to sign the receipt and refuses to accept the summons or its copy, it may be left near him and his attention be brought to it.

(5) Where the person to be summoned cannot by the exercise of due diligence be found, the summons may be served by leaving the summons or a copy thereof for him with an adult member of his family or with his servant residing with him.

(6) Where the person summoned is in the service of the Government, the Syariah Court issuing the summons shall ordinarily send it or a copy thereof to the head of the office in which such person is employed, and such head shall thereupon cause the summons to be served in the manner provided by this section, and shall return it to the Syariah Court under his signature and duly indorsed by the person on whom the summons was served as required by subsection (2).

Procedure when personal service cannot be effected

38. Where the person to be summoned cannot by the exercise of due diligence be found and service cannot be effected as directed by section 37(5), the officer serving the summons shall affix the summons or a copy thereof at a conspicuous part of the house or other place in which the person summoned ordinarily resides, and in such case, the summons, if the Syariah Court so directs either before or after such affixing, shall be deemed to have been duly served.

Proof of service

39. When a summons issued by a Syariah Court is served, an affidavit of such service of the summons made in the presence of the Registrar may be admitted as evidence that the summons for the purpose of section 37 has been duly served.

Warrant of arrest

Form of warrant of arrest

40. (1) Every warrant of arrest issued by a Syariah Court under this Order shall be in writing and signed by a Syar'ie Judge or Registrar and shall bear the seal of the Syariah Court.

(2) Every such warrant shall remain in force until it is cancelled by the Syariah Court which issued it or until it is executed.

Syariah Court may by indorsement on warrant direct security to be taken

41. (1) Any Syariah Court issuing a warrant for the arrest of any person may, in its discretion, direct by indorsement on the warrant that if such person execute a bond with sufficient sureties for his attendance before the Syariah Court at a specified time and thereafter until otherwise directed by the Syariah Court, the officer to whom the warrant is directed shall take such security and shall release such person from custody.

(2) The indorsement shall state —

(a) the number of sureties;

(b) the amount in which they are to be respectively bound; and

(c) the place, time and date at which he is to attend before the Syariah Court.

(3) When security is taken under this section, the officer to whom the warrant is directed shall forward the bond to the Syariah Court.

Warrant, to whom directed

42. (1) A warrant of arrest shall ordinarily be directed to all Religious Enforcement Officers and all police officers and any such officer may execute the warrant in any part of Brunei Darussalam.

(2) The Syariah Court issuing a warrant may direct it to any person or persons by name not being a Religious Enforcement Officer or police officer and all or any one or more of such persons may execute the warrant.

Notification of substance of warrant

43. Any warrant of arrest lawfully issued may be executed by any Religious Enforcement Officer, police officer or other person at any time notwithstanding that the warrant is not in his possession at the time, but a Religious Enforcement Officer, police officer or other person executing a warrant of arrest shall notify the substance of the warrant to the person arrested and shall, if so required by the person arrested, show him the warrant or a copy thereof under the seal of the Syariah Court issuing the warrant as soon as practicable after the arrest.

Person arrested to be brought before Syariah Court without delay

44. The Religious Enforcement Officer, police officer or other person executing a warrant of arrest shall, subject to section 41 as to security, without unnecessary delay bring the person arrested before the Syariah Court before which he is required by law to produce such person.

Proclamation and attachment

Proclamation for person absconding

45. (1) If a Syariah Court has reason to believe, whether after taking evidence or not, that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Syariah Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than 30 days from the date the proclamation is published.

(2) The proclamation shall be published as follows —

(a) through current mass media such as print or electronic media;

(b) it shall be fixed to some conspicuous part of the house or other place in which such person ordinarily resides; and

(c) a copy thereof shall be affixed to some conspicuous part of the Syariah Court house.

(3) A statement in writing by the Syariah Court issuing the proclamation to the effect that the proclamation was duly published on a specified day shall be conclusive evidence that the requirements of this section have been complied with and that the proclamation was published on such day.

Attachment of property of person proclaimed

46. (1) The Syariah Court issuing a proclamation under section 45 may at any time order the attachment of any property belonging to the proclaimed person.

(2) In exercising the power conferred by subsection (1), the Syariah Court shall have regard to the type of offence and sentence that could be imposed on the person proclaimed if he is convicted of the offence charged.

(3) If the property ordered to be attached consists of debts or other movable property, the attachment shall be made by —

(a) seizing the property;

(b) the appointment of a receiver;

(c) an order in writing prohibiting the delivery of such property to the proclaimed person or to any one of his behalf; or

(d) all or any two of the methods mentioned in paragraphs *(a)*, *(b)* and *(c)* as the Syariah Court thinks fit.

(4) If the property ordered to be attached is immovable property, the attachment under this section shall be made through the Land Officer of the district in which the property is situate; and on the receipt of an order of attachment, the Land Officer shall execute the same by —

(a) taking the property;

(b) the appointment of a receiver;

(c) an order in writing prohibiting the payment of rent or delivery of property to the proclaimed person or to any one on his behalf; or

(d) all or any two of the methods mentioned in paragraphs (a), (b) and (c) as he thinks fit.

(5) No such attachment of any land held under a title required by law to be registered shall take effect until the order of attachment is duly registered under the law for the registration of dealings with such land for the time being in force.

(6) If the proclaimed person does not appear within the time specified in the proclamation, the property shall be at the disposal of the Government, but it shall not be sold until the expiration of 6 months from the date of the attachment unless it is subject to speedy and natural decay, or the Syariah Court considers that the sale would be for the benefit of the owner, in either of which cases the Syariah Court may cause it to be sold whenever it thinks fit.

(7) Any person other than the person proclaimed may appear before the Syariah Court which made the order of attachment and claim, stating his title thereto, the property or any part thereof attached or ordered to be attached. Such claim shall be made within 3 months from the date of the order of attachment.

(8) The Syariah Court shall record the claim so made and shall cause a copy thereof to be served on the prosecutor together with a notice requiring him to attend before the Syariah Court on a day and at a time to be stated therein to show cause why such property, if attached, should not be released, or why such order of attachment should not be cancelled so far as it relates to the property so claimed.

(9) At the hearing, the Syariah Court shall proceed to inquire into the truth and justice of the claim so made and to take such evidence as may be necessary.

(10) Such inquiry shall be made, as nearly as may be practicable, in the manner prescribed by Chapter V of Part V for conducting trials.

(11) The Syariah Court shall, if satisfied of the truth and justice of the claim, direct such property to be released or such order to be cancelled, or is

satisfied as aforesaid as to part only of the claim shall direct such part to be released or so much of the order as relates thereto to be cancelled.

(12) The Syariah Court may, in its discretion, award to the claimant costs and such expenses as it thinks proper which shall be paid by the Government.

Restoration of attached property

47. If within 2 years from the date of the attachment any person whose property is or has been at the disposal of the Government under section 46 appears voluntarily or is apprehended and brought before the Syariah Court by whose order the property was attached and proves to the satisfaction of such Syariah Court that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant, and that he had no such notice of the proclamation as to enable him to attend within the time specified therein, such property or, if the same has been sold, the nett proceeds of the sale or, if part only thereof has been sold, the nett proceeds of the sale and the residue of the property shall, after satisfying thereout all costs incurred in consequence of the attachment, be delivered to him.

Other rules regarding summons to appear and warrant of arrest

Issue of warrant *in lieu* of or in addition to summons

48. A Syariah Court may in any case in which it is empowered to issue a summons for the appearance of any person issue, after recording its reasons in writing, a warrant for his arrest —

(a) if either before the issue of the summons or after the issue of the summons but before the time fixed for his appearance, the Syariah Court has reason to believe that the person has absconded or will not obey the summons; or

(b) if at such time he fails to appear and the summons is proved to have been duly served in time to enable him to appear in accordance with the summons and no reasonable excuse is offered for such failure.

Service or execution in Brunei Darussalam

49. All summonses to appear and warrants of arrest issued by the Syariah Court may be served or executed, as the case may be, in any part of Brunei Darussalam.

Power to take bond for appearance

50. When any person for whose appearance or arrest any Syariah Court is empowered to issue a summons or warrant is present in such Syariah Court, the

Syariah Court may require such person to execute a bond with or without sureties for his appearance in the Syariah Court.

Arrest on breach of bond for appearance

51. When any person who is bound by any bond taken under this Order to appear before the Syariah Court does not so appear, such Syariah Court may issue a warrant directing that such person be arrested and produced before it.

Chapter IV

*Process to compel production of documents and other movable property
and for discovery of persons wrongfully confined*

Summons to produce document or other things

52. (1) Notwithstanding any other written law for the time being in force, when any Syariah Court, Religious Enforcement Officer or police officer making an investigation under this Order considers that the production of any property or document is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceedings under this Order, by or before such Syariah Court or officer, the Syariah Court may issue a summons or the officer may issue a written order to the person in whose possession or power such property or document is believed to be, requiring the person to attend and to produce it or produce it at the time and place stated in the summons or order.

(2) In the case of banker's books, no Religious Enforcement Officer not authorised in writing by the Chief Religious Enforcement Officer or police officer below the rank of Superintendent shall exercise any power conferred by this section or order the production of such books except at the place of business of the bank.

(3) Any person required under this section merely to produce any property or document shall be deemed to have complied with the requisition if he causes such property or document to be produced instead of attending personally to produce it.

(4) Nothing in this section shall be deemed to apply to any postal article or other document in the custody of the postal authority.

(5) In this section, "banker's books" include ledgers, day books, cash books, account books and all other books used in the ordinary business of a bank, whether these records are in written form or are kept on microfilm, magnetic tape or any other form of mechanical or electronic data retrieval system.

Procedure as to postal articles etc.

53. (1) If any such postal article or other document is in the opinion of the Syariah Appeal Court or the Syariah High Court wanted for the purpose of any investigation, inquiry, trial or other proceedings under this Order, such Syariah Court may require the postal authority to deliver such postal article or other document to such person as it may direct.

(2) In this section, "postal authority" includes institutions which give similar services and any person providing courier services.

Sections 36 to 39 to apply

54. Sections 36, 37, 38 and 39 shall apply in relation to summons under this Chapter.

Search warrants

When search warrant may be issued

55. (1) Where —

(a) any Syariah Court has reason to believe that a person to whom a summons or order under section 52 has been or might have been addressed will not or would not produce the property or document as directed in the summons or order;

(b) such property or document is not known to the Syariah Court to be in the possession of any person;

(c) the Syariah Court considers that the purpose of justice or any inquiry, trial or other proceedings under this Order will be served by a general search or inspection;

(d) a Syar'ie Judge, after receiving information and after such inquiry as he thinks necessary, has reason to believe that an offence has been committed; or

(e) any evidence or thing which is necessary for the conduct of an investigation into any offence under which the Syariah Court has jurisdiction may be found in any place,

the Syariah Court may issue a search warrant and the person to whom such warrant is directed may enter with such assistance as may be required, search and inspect the place for any such evidence or thing, and if anything searched for is found, it may be taken and brought before the Syar'ie Judge issuing the

warrant, or other Syar'ie Judge to be dealt with in accordance with the provisions of this Order.

(2) A search warrant shall ordinarily be directed to any Religious Enforcement Officer or police officer to be designated by name in the warrant, and all or any of such Religious Enforcement Officer or police officer may execute the warrant.

Power to restrict search warrant

56. The Syariah Court may, if it thinks fit, specify in the warrant the particular place or part thereof to which only the search or inspection shall extend, and the person charged with the execution of such warrant shall then search or inspect only the place or part so specified.

Form of search warrant

57. (1) Every search warrant issued by a Syariah Court under this Order shall be in writing and signed by a Syar'ie Judge or Registrar and shall bear the seal of the Syariah Court.

(2) Every such warrant shall remain in force for a reasonable number of days to be specified in the warrant.

(3) Search warrant issued under this Order may be executed in any part of Brunei Darussalam.

Search for person wrongfully confined

58. If any Syar'ie Judge has reason to believe that any person is wrongfully confined, he may issue a search warrant, and the person to whom the warrant is directed may search for the person confined. The search shall be made in accordance with the warrant and the person, if found, shall immediately be brought before a Syar'ie Judge who shall make any order as in the circumstances of the case seems fit.

Person in charge of closed places to allow search

59. (1) When any place liable to search or inspection under this Chapter is closed, any person residing in or being in charge of such place shall, on demand of the officer or other person executing the warrant and on production of the warrant, allow him free ingress thereto and afford all reasonable facilities for a search therein.

(2) If ingress to such place cannot be so obtained, the officer or other person executing the warrant may proceed in the manner provided by section 18(2).

Syar'ie Judge issuing search warrant may attend at its execution

60. The Syar'ie Judge by whom a search warrant is issued may attend personally for the purpose of seeing that the warrant is duly executed.

Syar'ie Judge may direct search in his presence

61. Any Syar'ie Judge may orally direct a search of any place to be made in his presence, the search of which he is competent to issue a search warrant.

Powers of search and seizure without warrant

62. When it appears to any Religious Enforcement Officer or police officer of or above the rank of Inspector that there is reasonable cause to believe that in any place there is concealed or deposited any evidence of the commission of an offence under which the Syariah Court has jurisdiction, and the Religious Enforcement Officer or police officer has reasonable grounds to believe that by reason of the delay in obtaining a search warrant, the purpose of the search is likely to fail, such Religious Enforcement Officer or police officer may exercise in and in respect of the place all the powers mentioned in section 55(1) fully and adequately as if he was empowered to do so by warrant issued under the section.

List of all things seized to be made and signed

63. A list of all things seized in the course of a search made under this Chapter and of the places in which the things are respectively found shall be prepared by the officer or other person making the search and signed by him.

Occupant to be present at search

64. The occupant of the place searched or a person on his behalf shall in every instance attend the search, and a copy of the list prepared and signed under section 63 shall be delivered to such occupant or person.

PART IV

**INFORMATION TO RELIGIOUS ENFORCEMENT OFFICERS AND POLICE OFFICERS
AND THEIR POWERS TO INVESTIGATE**

Powers of Religious Enforcement Officers and police officers

65. A Religious Enforcement Officer and a police officer shall —

(a) receive information as to the commission of an offence and make any necessary investigation;

(b) examine or arrest any person committing an offence or suspected of committing an offence;

(c) require the attendance of and question a witness connected with the investigation;

(d) require a bond for the appearance of any person arrested; and

(e) carry out other powers and duties as prescribed by any syariah law in force for the time being.

Information of offences

66. When information is received relating to the commission of an offence, the Religious Enforcement Officer or police officer whose duty it is to receive reports shall proceed according to one of the following manner —

(a) if the information is in writing, he shall forthwith mark on the information the date and time he received such information and, if possible, the name and address of the person by whom the information was delivered and if it purports to be signed by the informant, he shall file it as a report and record the facts in a book kept for this purpose;

(b) if the information is given orally and if it appears to him practicable to reduce such information to writing forthwith, he shall record or cause to be recorded in a book kept for this purpose a report containing the name and address of the informant, the date and time of his arrival, the substance of the information and such other particulars as the nature of the case may require and the report shall be signed by the informant, or if he refuses to sign, a note of his refusal to sign such report shall be made with any reason given for such refusal, by the recording officer and by the interpreter, if any;

(c) if the information is given orally and it appears to him impracticable to proceed forthwith under paragraph (b), he shall immediately make a note of first information in a book kept for this purpose, and if an investigation is to proceed as soon thereafter as circumstances permit, a fuller statement by the informant shall be recorded under the provisions of paragraph (b).

Duty of Religious Enforcement Officers and police officers to investigate offences

67. (1) Subject to the provisions of any other written law and to any lawful order or direction given to him in that behalf, every Religious Enforcement Officer and police officer shall investigate any offence the commission of which he has reason to suspect and to take such action as he deems necessary to prevent the repetition or aggravation of any offence.

(2) The Chief Syar'ie Prosecutor may direct that the investigation of such non-seizable offences as may be specified in such direction need not be

undertaken by the Religious Enforcement Officer or police officer but nothing in this Order shall be deemed to preclude any Religious Enforcement Officer or police officer from making such investigation as may be necessary to satisfy himself that the offence is an offence to which such direction relates.

Body samples

68. (1) A Religious Enforcement Officer or police officer making an investigation under this Chapter may cause a body sample of a person to be obtained for forensic analysis if he has reasonable cause to believe that the body sample may support whether or not that person was involved in an offence.

(2) If a person's appropriate consent for a body sample to be taken is refused without good cause or cannot be obtained despite all reasonable efforts, that person may be taken before a Syar'ie Judge who may, if satisfied that there is reasonable cause to believe that the body sample may support whether or not that person was involved in an offence, order that that person provide the body sample required.

(3) Where it is shown that such person's appropriate consent was refused without good cause, the Syariah Court, in determining whether —

(a) there is a case to answer against him; or

(b) he is guilty of the offence with which he has been charged,

may draw such inference from that refusal as it thinks proper and, based on such inference, may treat that refusal as corroboration or as amounting to corroboration of any relevant evidence against him.

(4) A body sample under this section is *qarinah*.

Persons permitted to take body samples

69. (1) A body sample may only be taken by —

(a) a person registered under the Medical Practitioners and Dentists Act (Chapter 112); or

(b) any Religious Enforcement Officer or police officer suitably qualified or trained who is authorised by the Chief Religious Enforcement Officer or Commissioner of Police for that purpose.

(2) Before taking a body sample, the person permitted under subsection (1) to take it must satisfy himself that such taking will not endanger the person from whom it is to be taken.

(3) The fact that a body sample has been taken under this section shall be recorded by the person taking it in such form or manner as may be required by the Chief Religious Enforcement Officer or Commissioner of Police.

(4) A person from whom a body sample is lawfully required under section 68 who refuses, without reasonable excuse, to give a body sample or to allow it to be taken from him, or who otherwise hinders or obstructs the taking of a body sample is guilty of an offence under section 231 of the Syariah Penal Code Order, 2013 [S 69/2013].

Interpretation, re sections 68 and 69

70. In sections 68 and 69 —

“appropriate consent” means —

(a) in relation to a person who is *mukallaf*, his consent in writing; or

(b) in relation to a person who is *mumaiyiz* but has not attained the age of *mukallaf*, the consent in writing of both that person and of his parent or guardian,

given to the Religious Enforcement Officer or police officer in charge of the case after the person concerned or his parent or guardian, as the case may be, has been informed by the Religious Enforcement Officer or police officer of the purpose for which a body sample is required and the manner by which it is to be taken;

“body sample” means —

(a) a sample of head hair, including the roots thereof;

(b) a sample taken from a nail or from under a nail;

(c) a swab taken from any part, other than a private part, of a person's body but not any other body orifice;

(d) a swab taken from a person's mouth;

(e) saliva;

(f) an impression of any part of a person's body other than an impression of a private part or an impression of the face;

(g) an intimate sample, being a body sample that is obtained by means of any invasive procedure;

“intimate sample” means —

(a) a sample of blood, semen or any other tissue fluid, urine or hair other than head hair;

(b) a dental impression; or

(c) a swab taken from a private part of a person’s body or from a person’s body orifice other than the mouth;

“private part”, in relation to a person’s body, means the genital or anal area and includes the breasts in the case of a woman.

Breath tests

71. (1) Where a Religious Enforcement Officer or police officer has reasonable cause to suspect that a person has committed an offence under section 104(3) or (5) of the Syariah Penal Code Order, 2013 [S 69/2013], such Religious Enforcement officer or police officer may forthwith require the person for a specimen of his breath for breath test.

(2) A person may be required under subsection (1) to provide a specimen of his breath either at or near the place where he is required to do so.

(3) A breath test required under subsection (1) shall be conducted by a Religious Enforcement Officer or police officer.

(4) A Religious Enforcement Officer or police officer may arrest any person without warrant if —

(a) as a result of the breath test he has reasonable cause to suspect there is alcohol in that person’s breath or blood;

(b) such person fails to provide a specimen of his breath for breath test when required to do so under this section and the Religious Enforcement Officer or police officer has reasonable cause to suspect that he has alcohol in his body; or

(c) he has reasonable cause to suspect that that person is under the influence of alcohol or any intoxicating drink.

Provision of specimen for analysis

72. (1) In the course of an investigation whether a person arrested under section 71(4) has committed an offence under section 104(3) or (5) of the Syariah Penal Code Order, 2013 [S 69/2013], a Religious Enforcement Officer or police officer may, subject to this section, require him —

(a) to provide a specimen of his breath for a breath test, for analysis;
or

(b) to provide at any hospital a specimen of his blood or urine for laboratory test, notwithstanding that he has already been required to provide a specimen of his breath for a breath test under section 71.

(2) A breath test required under this section shall be conducted by a Religious Enforcement Officer or police officer.

(3) A Religious Enforcement Officer or police officer shall, on requiring any person under this section to provide blood specimen or urine for laboratory test, warn him that failure to provide a specimen of blood or urine may make him liable under section 231 of the Syariah Penal Code Order, 2013 (S 69/2013).

(4) A person who, without reasonable excuse, fails to provide a specimen when required to do so in pursuance of this section is guilty of an offence and liable on conviction under section 231 of the Syariah Penal Code Order, 2013 (S 69/2013).

Evidence in proceedings for offences under section 104 of S 69/2013

73. (1) In proceedings for an offence under section 104(3) or (5) of the Syariah Penal Code Order, 2013 (S 69/2013), proof of alcohol in a specimen of breath or blood, as the case may be, provided by the accused shall be taken into account.

(2) Proof of alcohol in a specimen of breath may be given by the production of a document or documents purporting to be either a statement automatically produced by the breath-analyser or other device and a certificate signed by a Religious Enforcement Officer or police officer to the effect that the statement relates to a specimen provided by the accused at the date and time shown in the statement.

(3) Proof of alcohol in a specimen of blood may be given by the production of a document purporting to be a certificate signed by an authorised analyst that alcohol found in a specimen of blood identified in the certificate.

(4) A document purporting to be such a statement or certificate, or both, as is mentioned in subsection (2) or (3) is admissible in evidence on behalf of the prosecution in pursuance of this section only if a copy of it has been handed to the accused when the document was produced or has been served on him not later than 7 days before the hearing.

(5) A document purporting to be a certificate is not so admissible if the accused, not later than 3 days before the hearing or within such further time as the Syariah Court may in special circumstances allow, has served notice on the

prosecution requiring the attendance at the hearing of the person by whom the document purports to be signed.

(6) A copy of a certificate required by this section to be served on the accused or a notice required by this section to be served on the prosecution may be served personally or sent by registered post.

(7) Evidence of the alcohol in a specimen of breath or blood under this section is *qarinah*.

Public not to have right to compel Religious Enforcement Officer or police officer to investigate alleged offences

74. Nothing in this Chapter shall be deemed to confer any right on any member of the public to compel any Religious Enforcement Officer or police officer to investigate whether or not an offence has been committed, but it shall be the duty of any Religious Enforcement Officer or police officer making an investigation under this Chapter on request in that behalf by the informant to inform him whether the prosecutor propose to prosecute and, if so, in respect of what offences.

Admission of certified copy of information as evidence

75. In any proceedings under this Order, a copy of an entry relating to an information reduced to writing under section 66 and purporting to be certified as a true copy by a Religious Enforcement Officer or police officer may be admitted in Syariah Court as evidence of the contents of the original information and of the time, place and manner in which the information was so recorded.

Procedure where seizable offence suspected

76. (1) If from the information received or otherwise, a Religious Enforcement Officer or police officer has reason to suspect the commission of a seizable offence, he shall, unless the offence is of a nature which the Chief Syar'ie Prosecutor has directed as unnecessary to be reported to him, forthwith send a report of the information to the Chief Syar'ie Prosecutor and shall proceed in person or depute one of his subordinate officers to proceed to the place the offence is committed to inquire into the facts and circumstances of the case and to take such measures as may be necessary for the discovery and, where appropriate, arrest of the offender:

Provided that —

(a) when any information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the Religious Enforcement Officer or police officer receiving the

information need not proceed in person or depute a subordinate officer to make an inquiry at the place where the offence is committed;

(b) if it appears to the Religious Enforcement Officer or police officer receiving the information that there is no sufficient ground to proceed or proceed further in the matter, he need not do so.

(2) In each of the cases mentioned in subsection (1)(a) and (b), the Religious Enforcement Officer or police officer receiving the information shall state in his report, if any, his reasons for not complying with subsection (1).

Power to require attendance of witnesses

77. (1) A Religious Enforcement Officer or police officer making an investigation under this Chapter may by order in writing require the attendance before himself of any person who from the information given or otherwise appears to be acquainted with the circumstances of the case, and such person shall attend as so required.

(2) If any such person refuses to attend as so required, such Religious Enforcement Officer or police officer may report such refusal to a Syar'ie Judge who may, thereupon in his discretion, issue a summons or warrant to secure the attendance of such person as required by the order mentioned in subsection (1).

Examination of witnesses by Religious Enforcement Officers or police officers

78. (1) A Religious Enforcement Officer or police officer making an investigation under this Chapter may examine orally any person supposed to be acquainted with the facts and circumstances of the case and shall reduce into writing any statement made by the person so examined.

(2) Such person shall be bound by law to answer all questions which are related to such case which are raised to him by the officer.

(3) Any person who makes a statement under this section shall be bound by law to state the truth, whether or not the statement is made wholly or partly as answers to the questions.

(4) A Religious Enforcement Officer or police officer who examines any person under subsection (1) shall in first instance inform such person of subsections (2) and (3).

(5) A statement made by any person under this section shall, whenever possible, be reduced to writing and signed or affixed with a thumbprint by the person making it in the presence of two witnesses, as the case may be, after the statement is read over to him in a language in which he made it and after he has been given an opportunity to make any correction he may wish.

Statement to Religious Enforcement Officer or police officer

79. (1) Except as provided in this Order or any other written law, no statement made before a Religious Enforcement Officer or police officer in an investigation made under this Chapter shall be used as evidence in the Syariah Court.

(2) When any witness is called to give evidence in the Syariah Court other than the accused, the Syariah Court may, on request of any party to the trial, allow the witness to refer to any statement made by the witness in the course of an investigation by the Religious Enforcement Officer or police officer under this Chapter and, if it thinks necessary in the interests of justice, directs the accused to be furnished with a copy of such statement to allow him to impeach the credibility of the witness in the manner provided by the Syariah Courts Evidence Order, 2001 [S 63/2001].

(3) Any statement made by any person in the presence of, or in the hearing of, a Religious Enforcement Officer or police officer in the course of an identification parade may be admitted as evidence.

(4) Where any accused had made a statement during the course of an investigation by a Religious Enforcement Officer or police officer, such statement may be admitted in evidence in support of his defence during the course of the trial.

(5) A statement that amounts to an *ikrar* made by an accused person before two witnesses who are '*adil*' in the course of an investigation under this Chapter may be admitted as evidence in the Syariah Court.

(6) The two witnesses who are '*adil*' mentioned in subsection (5) shall not include the Religious Enforcement Officer or police officer carrying out the investigation on the accused or the officer recording such statement.

(7) The conditions of *ikrar* as provided in section 23 of the Syariah Courts Evidence Order, 2001[S 63/2001] shall be applicable to the extent as they relate to criminal proceedings.

No inducement etc. to be used

80. (1) No Religious Enforcement Officer, police officer or person having authority shall use any inducement, threat, promise, oppression or violence on any accused person to induce such person to make any statement in the course of an investigation under this Chapter.

(2) No Religious Enforcement Officer, police officer or other person shall prevent or hinder any person from making, in the course of an investigation under this Chapter, any statement which he might be disposed to make on his own free will.

Proof by written statement

81. (1) In any criminal proceedings, a written statement by any person may, subject to the conditions provided in subsection (2), be admissible as evidence to the like extent as oral evidence to the like effect by that person.

(2) A statement may be tendered in evidence under subsection (1) if —

(a) the statement purports to be signed by the person who made it;

(b) the statement contains a declaration by that person to the effect that it is true to the best of his knowledge and belief; and

(c) before the hearing at which the statement is tendered in evidence, a copy of the statement is served, by or on behalf of the party proposing to tender it, on each of the other parties to the proceedings:

Provided that paragraph (c) shall not apply if the parties agree before or during the hearing that the statement shall be so tendered.

(3) If a statement tendered in evidence under subsection (1) —

(a) is made by a person under the age of 15 years *qamariah*, it shall give his age;

(b) is made by a person who cannot read it, it shall be read to him before he signs it and shall be accompanied by a declaration by the person who so read the statement to the effect that it was so read;

(c) refers to any document as an exhibit, the copy served on any other party to the proceedings under subsection (2)(c) shall be accompanied by a copy of that document or by such information as may be necessary in order to enable the party on whom it is served to inspect that document or a copy thereof.

(4) Notwithstanding that the written statement of a person may be admissible as evidence by virtue of this section —

(a) the party by whom or on whose behalf a copy of the statement was served may call the person making the statement to give additional evidence in the case which may include matters which are not contained in the statement; and

(b) the maker of the statement shall attend the trial for cross-examination and re-examination.

(5) So much of any statement as is admitted in evidence by virtue of this section shall, unless the Syariah Court otherwise directs, be read aloud at the hearing and where the Syariah Court so directs, an account shall be given orally of so much of any statement as is not read aloud.

(6) Any document or object referred to as an exhibit and identified in a written statement admitted in evidence under this section shall be treated as if it had been produced as an exhibit and identified in the Syariah Court by the maker of the statement.

(7) A document required by this section to be served on any person may be served —

(a) by delivering to him or to his Syar'ie Lawyer; or

(b) in the case of a body corporate, by delivering it to the secretary of the body or any person authorised by the body at its registered or principal office or by sending it by registered post addressed to the secretary of that body or any person authorised by the body at that office.

Failure to account for objects, substances or marks

82. (1) Subject to the provisions of any other written law, where a person is arrested by a Religious Enforcement Officer or police officer and —

(a) (i) there is on his person;

(ii) in or on his clothing including any type of headgear or footwear;

(iii) otherwise in his possession; or

(iv) in any place in which he is at the time of his arrest,

any object, substance or mark, or there is any mark on any such object;

(b) that or another Religious Enforcement Officer or police officer investigating the case reasonably believes that the presence of the object, substance or mark may be attributable to the participation of the person arrested in the commission of an offence specified by the Religious Enforcement Officer or police officer;

(c) the Religious Enforcement Officer or the police officer informs the person arrested that he so believes, and requests him to account for the presence of the object, substance or mark; and

(d) the person fails or refuses to do so,

then if, in any proceedings against the person for the offence so specified, evidence of those matters is given, subsection (2) applies.

(2) Where this subsection applies, the Syariah Court in determining whether —

(a) there is a case to answer; and

(b) the accused is guilty of the offence charged,

may draw such inferences from the failure or refusal as appear proper.

(3) Subsections (1) and (2) apply to the condition of clothing or footwear as they apply to a substance or mark thereon.

(4) Subsections (1) and (2) do not apply unless the accused was told in ordinary language by the Religious Enforcement Officer or police officer when making the request mentioned in subsection (1)(c) what the effect of this section would be if he failed or refused to comply with the request.

(5) This section does not preclude the drawing of any inference from a failure or refusal of the accused to account for the presence of an object, substance or mark or from the condition of clothing or footwear which could properly be drawn apart from this section.

Failure to account for presence

83. (1) Subject to the provisions of any other written law, where —

(a) a person arrested by a Religious Enforcement Officer or police officer was found by him at a place at or about the time the offence for which he was arrested is alleged to have been committed;

(b) that or another Religious Enforcement Officer or police officer investigating the offence reasonably believes that the presence of the person at that place and at that time may be attributable to the latter's participation in the commission of the offence;

(c) the Religious Enforcement Officer or police officer informs the person that he so believes, and requests him to account for his presence; and

(d) the person fails or refuses to do so,

then if, in any proceedings against the person for the offence, evidence of those matters is given, subsection (2) applies.

(2) Where this subsection applies, the Syariah Court in determining whether —

(a) there is a case to answer; and

(b) the accused is guilty of the offence charged,

may draw such inferences from the failure or refusal as appear proper.

(3) Subsections (1) and (2) do not apply unless the accused was told in ordinary language by the Religious Enforcement Officer or police officer when making the request mentioned in subsection (1)(c) what the effect of this section would be if he failed or refused to comply with the request.

(4) This section does not preclude the drawing of any inference from a failure or refusal of the accused to account for his presence at a place which could properly be drawn apart from this section.

Circumstances in which inferences may be drawn from accused's failure to mention particular facts when charged etc.

84. (1) Subject to the provisions of any other written law, where in any criminal proceedings against a person for an offence, evidence is given that the accused, on being charged with the offence or officially informed that he might be prosecuted for it, failed to mention any such fact, being a fact which in the circumstances existing at the time he could reasonably have been expected to mention when so charged or informed, as the case may be, the Syariah Court, in determining whether —

(a) to commit the accused for trial or there is a case to answer; and

(b) the accused is guilty of the offence charged,

may draw such inferences adverse to the accused from the failure as appear proper, and the failure may, on the basis of such inferences, be treated as, or as capable of amounting to, corroboration of any evidence given against the accused in relation to which the failure is material.

(2) In subsection (1), “officially informed” means informed by a Religious Enforcement Officer, police officer or any other person charged with the duty of investigating offences or charging offenders.

(3) Nothing in subsection (1) or (2) shall in any criminal proceedings —

(a) prejudice the admissibility in evidence of the silence or other reaction of the accused in the face of anything said in his presence relating to the conduct in respect of which he is charged, in so far as evidence thereof would be admissible apart from those subsections; or

(b) be taken to preclude the drawing of any inference from any such silence or other reaction of the accused which could be drawn apart from those subsections.

Interpretation and savings

85. (1) In sections 82 and 83, “place” includes any building or part of a building, vehicle, vessel, aircraft or hovercraft and any other place whatsoever.

(2) In sections 82 and 83, references to an offence charged include references to any other offence of which the accused could lawfully be convicted on that charge.

(3) A person shall not have a case to answer or be convicted of an offence solely on an inference drawn from such failure or refusal as is mentioned in section 82, 83 or 84.

(4) Nothing in section 82, 83 or 84 prejudices any power of a Syariah Court in any proceedings to exclude evidence whether by preventing questions being put or otherwise at its discretion.

(5) Sections 82, 83 and 84 are applicable only in offences other than those punishable with *hadd* or *qisas*.

Power to record statement and *ikrar*

86. Any Syar'ie Judge other than the Syar'ie Judge hearing the case may record in the presence of two witnesses who are *'adil*, any statement or *ikrar* made to him at any time before the commencement of the trial.

Search by Religious Enforcement Officers or police officers

87. (1) When a Religious Enforcement Officer or police officer making an investigation considers that the production of any evidence or other thing is necessary to the conduct of an investigation into any offence which he is authorised to investigate and has reason to believe that —

(a) the person to whom a summons or order under section 52 has been or might have been addressed will not or would not produce any property or document as directed in the summons or order; or

(b) when such property or document is not known to be in the possession of any person,

the officer may search or cause search to be made to find the evidence or other thing in any place.

(2) Such officer shall, if practicable, conduct the search in person.

(3) If he is unable to conduct the search in person and there is no other person competent to make the search present at the time, he may direct any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing specifying any evidence or other thing for which search is to be made and the place to be searched, and the subordinate officer may thereupon search for the evidence or other thing in such place.

(4) The provisions of this Order in respect of search warrants shall, so far as may be, apply to a search made under this section.

Religious Enforcement Officer or police officer may require bond for appearance of complainant and witness

88. (1) If on an investigation made under this Chapter it appears to the officer making the investigation that there is sufficient evidence or there is reasonable ground to justify the commencement or continuance of criminal proceedings against any person, such officer may require the complainant, if any, and so many of other persons who appear to such officer to be acquainted with the circumstances of the case, as he thinks necessary, to execute a bond to appear before the Syariah Court therein named and give evidence in the matter of the charge against the accused.

(2) The officer in whose presence the bond is executed shall send it to the Syariah Court.

(3) If any complainant or witness refuses to execute such bond, such officer shall report the same to the Syariah Court which may thereupon in its discretion issue a summons or warrant to secure the attendance of such complainant or witness before itself to give evidence in the matter of the charge against the accused.

Surrender of travel documents

89. (1) A Syariah Subordinate Court Judge may, on the application of a Religious Enforcement Officer or police officer not below the rank of Inspector by written notice, require a person who is the subject of an investigation in respect of an offence alleged or suspected to have been committed by him under this Order to surrender to a Religious Enforcement Officer or police officer not below the rank of Inspector any travel document in his possession.

(2) A notice under subsection (1) shall be served personally on the person to whom it is addressed.

(3) A person on whom a notice under subsection (1) is served shall comply with such notice forthwith.

(4) If a person on whom a notice under subsection (1) has been served fails to comply with the notice forthwith, he may thereupon be arrested and taken before a Syariah Subordinate Court Judge.

(5) Where a person is taken before a Syariah Subordinate Court Judge under subsection (4), the Syariah Subordinate Court Judge shall, unless such person thereupon complies with the notice under subsection (1) or satisfies the Syariah Subordinate Court Judge that he does not possess a travel document, by warrant commit him to prison there to be safely kept until —

(a) the expiry of the period of 28 days from the date of his committal to prison; or

(b) the person complies with the notice under subsection (1) and a Syariah Subordinate Court Judge, by order, directs that the Director of Prisons to discharge the person from prison (which order shall be sufficient warrant for the Director of Prisons so to do),

whichever occurs first.

(6) A travel document which is surrendered to a Religious Enforcement Officer or police officer not below the rank of Inspector under this section may be detained for 6 months from the date on which it was surrendered and may be detained for a further 3 months if a Syariah Subordinate Court Judge, on application by a Religious Enforcement Officer or police officer not below the rank of Inspector, is satisfied that the investigation could not reasonably have been completed before the date of such application and authorises such further detention.

(7) All proceedings before a Syariah Subordinate Court Judge under this section shall be conducted in chambers.

(8) In this section and section 90, “travel document” means a passport or other document establishing the identity or nationality of a holder.

Return of travel documents

90. (1) When a travel document has been surrendered and retained by a Religious Enforcement Officer or police officer not below the rank of Inspector under section 89, a person affected by such order may at any time make an application in writing to a Syariah Subordinate Court Judge for its return, and

every such application shall contain a statement of the grounds on which it is made.

(2) A Syariah Subordinate Court Judge shall not consider an application made under subsection (1) unless he is satisfied that reasonable notice in writing of it has been given to the Religious Enforcement Officer or police officer not below the rank of Inspector.

(3) Before an application is granted under this section, the applicant may be required to —

(a) deposit such reasonable sum of cash money with the Religious Enforcement Officer or police officer not below the rank of Inspector as the Syariah Subordinate Court Judge deems fit;

(b) provide local surety; or

(c) satisfy paragraphs *(a)* and *(b)*.

(4) Any such applicant or surety may be required to deposit a reasonable sum of cash money with the Religious Enforcement Officer or police officer not below the rank of Inspector as the Syariah Subordinate Court Judge deems fit, for retention by the Religious Enforcement Officer or police officer not below the rank of Inspector until such time when the travel document is returned to the Religious Enforcement Officer or police officer not below the rank of Inspector.

(5) Failure of the applicant to return to Brunei Darussalam or to surrender the travel document to the Religious Enforcement Officer or police officer not below the rank of Inspector within the specified time will render the deposit held by the Religious Enforcement Officer or police officer not below the rank of Inspector to be forfeited to the Government and the applicant may be arrested and dealt with in the same way that a person who fails to comply with the requirement under section 89(1) may be arrested and dealt with under section 89(4) and (5).

(6) An application under this section may be granted subject to the conditions that —

(a) the applicant shall further surrender his travel document to the Religious Enforcement Officer or police officer not below the rank of Inspector at such time as may be specified; and

(b) the applicant shall appear at such time and place in Brunei Darussalam as may be specified.

(7) Where a travel document is returned to the applicant under this section subject to the conditions imposed under subsection (6), then after the time

specified under the subsection, the provisions of section 89(6) shall continue to apply in respect of the travel document surrendered by the applicant pursuant to the conditions as if no return had been made to the applicant under this section.

Diary of proceedings in investigation

91. (1) Every Religious Enforcement Officer or police officer making an investigation under this Chapter shall day by day enter his proceedings in the investigation in an investigation diary setting forth —

(a) the time at which the order for investigation, if any, reached him;

(b) the time at which he began and closed the investigation;

(c) the place or places visited by him;

(d) the person or persons questioned by him; and

(e) a statement of the circumstances ascertained through his investigation.

(2) Notwithstanding anything contained in the Syariah Courts Evidence Order, 2001 (S 63/2001), an accused person shall not be entitled, either before or in the course of any inquiry or trial, to call for or inspect the diary.

(3) If the Religious Enforcement Officer or police officer who has made the investigation refers to the diary while giving evidence in an inquiry or a trial, the entries only as such officer has referred to shall be shown to the accused and the Syariah Court shall, on request of the officer, cause any other entry to be concealed from view or obliterated.

Institution of criminal proceedings

92. Every investigation under this Chapter shall be completed without delaying it and if, as a result of the investigation, it is desired to institute criminal proceedings against any person, the Chief Syar'ie Prosecutor may forward to a competent Syariah Court having jurisdiction a draft charge setting out the details of the offence with which such person is to be prosecuted.

PART V

PROCEEDINGS IN PROSECUTION

Chapter I

Jurisdiction of Syariah Courts in trial

Conditions requisite for initiation of proceedings

Syar'ie Judge take cognisance of offences other than offences punishable with *hadd*

93. (1) Subject to this Order, a Syar'ie Judge may take cognisance of an offence —

(a) on receiving a complaint under section 94;

(b) on his own knowledge or with other evidence to support that such offence has been committed; or

(c) on any person being brought before him in custody without process and accused of having committed an offence which the Syar'ie Judge has jurisdiction to try.

(2) When a Syar'ie Judge takes cognisance of an offence under subsection (1)(b), the accused or, when there are more than one accused, any one of them shall be entitled to require that the case shall not be tried by the Syar'ie Judge but shall be tried by another Syar'ie Judge.

Chapter II

Complaint to Syar'ie Judge

Examination of complainant

94. (1) When a Syar'ie Judge takes cognisance of an offence on complaint, the Syar'ie Judge shall immediately examine the complainant on a *yamin* or affirmation and the substance of the examination shall be reduced to writing and shall be signed by the complainant and also by the Syar'ie Judge.

(2) Where the complaint is made in writing by the Syariah Court or by a public officer acting or purporting to act in his official capacity, the Syar'ie Judge need not examine the complainant but he may, if he considers it necessary, examine such public officer on a *yamin* or affirmation or otherwise.

(3) No proceedings shall be initiated in the case of *qazaf* except on a report made to a Religious Enforcement Officer or police officer, or a complaint lodged

with a Syar'ie Judge by the person who is liable to *qazaf* or his representative if he is alive, or by any of his ascendants or descendants if he is dead.

Postponement of issue of process

95. If the Syar'ie Judge has reasonable doubt concerning the truth of a complaint of an offence of which he is authorised to take cognisance, he may, when the complainant has been examined, record his reason for doubting the truth of the complaint and may then postpone the issue of process for compelling the attendance of the person complained against and either inquire into the case himself or direct a Religious Enforcement Officer or police officer to make inquiries for the purpose of ascertaining the truth or falsehood of the complaint and report to him the result of such inquiries.

Dismissal of complaint

96. (1) A Syar'ie judge before whom a complaint is made may dismiss the complaint if, after examining the complainant and recording his examination and considering the result of the inquiry, if any, made under section 95, there is in his judgment no sufficient ground for proceeding.

(2) The Syar'ie Judge dismissing the complaint shall record his reasons for doing so.

Issue of process

97. (1) If in the opinion of a Syar'ie Judge taking cognisance of an offence there is sufficient ground for proceeding and the case appears to be a summons case, the Syar'ie Judge shall issue a summons for the attendance of the accused.

(2) If the case appears to be a warrant case, the Syar'ie Judge may issue a warrant or, if he thinks fit, a summons for causing the accused to be brought or to appear at a certain time before himself or some other Syar'ie Judge having jurisdiction.

(3) Nothing in this section shall be deemed to affect the provisions of section 48.

Personal attendance of accused may be dispensed with

98. (1) Whenever a Syar'ie Judge issues a summons, he may, if he sees reason to do so, dispense with the personal attendance of the accused.

(2) The Syar'ie Judge inquiring into or trying the case may, in his discretion, at any stage of the proceedings direct the personal attendance of the accused, and if necessary enforce such attendance in such manner provided under this Order.

Chapter III

Charges

Form of charge

99. (1) Every charge under this Order shall state the offence with which the accused is charged.

(2) If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

(3) If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.

(4) The law, section of the law and the punishment against which the offence is said to have been committed shall be mentioned in the charge.

(5) The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

Illustrations

(a) *A* is charged with sending or delivering publications relating to religions other than the religion of Islam to Muslims or persons having no religion. This is equivalent to a statement that *A*'s act did not fall within any of the general exception or exceptions in section 214(4) of the Syariah Penal Code Order, 2013 (S 69/2013).

(b) *B* is charged with committing *zina*. The charge may state that *B* committed *zina* without making reference to the definition of *zina* but the charge shall state that the offence is punishable under section 69 of the Syariah Penal Code Order, 2013 (S 69/2013).

(c) *C* is charged with propagation of religion other than the religion of Islam to a Muslim or a person having no religion under section 209 of the Syariah Penal Code Order, 2013 (S 69/2013). The charge should contain the words of section 209 of the Syariah Penal Code Order, 2013 and the punishments must be mentioned in the charge.

Particulars as to time, place and person

100. The charge shall contain such particulars as to the time and place of the alleged offence and the person, if any, against whom, or the thing, if any, in respect of which, the offence was committed as are reasonably sufficient to give the accused notice of the matter with which he is charged.

When manner of committing offence must be stated

101. When the nature of the case is such that the particulars mentioned in sections 99 and 100 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

Illustrations

(a) A is accused of committing *sariqah* of a specific item at a certain time and place. The charge need not set out the manner in which the *sariqah* was effected.

(b) B is accused of practising an act contrary to *Hukum Syara'* at a given time and place. The charge must set out the manner in which B practised that act.

(c) C is accused of giving false evidence at a given time and place. The charge must set out that portion of the evidence given by C which is alleged to be false.

(d) D is accused of obstructing E, a Religious Enforcement Officer, from carrying out his duties at a given time and place. The charge must set out the manner in which D obstructed E from carrying out his duties.

Sense of words used in charge to describe offences

102. In every charge, words used in describing an offence shall be deemed to have been used in the sense attached to them respectively by the law under which such offence is punishable.

Effect of errors

103. No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or the particulars, shall be regarded at any stage of the case as material unless the accused was in fact misled by such error or omission.

Illustrations

(a) A is charged with committing *ghasab* against Johan Samad on 12th February 2012. In fact the name of the person subjected to *ghasab* was Jihan Samad, and the date *ghasab* was committed was on 11th February 2012. A was never charged with committing any *ghasab* but one, and had heard the proceedings before the Syar'ie Judge which referred exclusively to the case of Jihan Samad. The Syariah Court may infer from these facts that A was not misled, and that the error in the charge was immaterial.

(b) *B* was charged with committing *ghasab* against Jihan Samad on 11th February 2012 and committing *ghasab* against Johan Samad on 12th February 2012. When *B* was charged with committing *ghasab* against Jihan Samad, he was tried for committing *ghasab* against Johan Samad. The witnesses present in his defence were witnesses in the case of Jihan Samad. The Syariah Court may infer from this that *B* was misled and that the error was material.

Syariah Court may amend charge

104. (1) Any Syariah Court may amend any charge at any time before judgment is pronounced.

(2) Every such amendment shall be read and explained to the accused.

Procedure when there is imperfect or erroneous charge

105. When any person is arraigned for trial on an imperfect or erroneous charge, the Syariah Court may frame a charge, or amend the charge, having regard to the provisions contained in this Order as to the form of charges.

When trial may proceed immediately after amendment

106. (1) If a charge is framed or an amendment is made under section 104 or 105, the Syariah Court shall forthwith call upon the accused to plead thereto and to state whether he is ready to be tried on the amended charge.

(2) If the accused declares that he is not ready, the Syariah Court shall duly consider the reasons he may give and if, in the opinion of the Syariah Court, proceeding immediately with the trial is not likely to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Syariah Court may, in its discretion, after such charge or amendment has been framed or made, proceed with the trial as if the new charge or amended charge had been the original charge.

When new trial may be directed or trial adjourned

107. If the new charge or amended charge is such that proceeding immediately with the trial is likely to prejudice the accused or the prosecutor as mentioned in section 106, the Syariah Court may either direct a new trial or adjourn the trial for such period as may be necessary.

Stay of proceedings if prosecution of offence on amended charge requires prior sanction

108. If the offence stated in the new charge or amended charge is one for the prosecution of which prior sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has already been obtained for a prosecution on the same facts as the facts on which the new charge or amended charge is founded.

Recall of witness when charge amended

109. When a charge is amended by the Syariah Court after the commencement of the trial, the prosecutor and the accused shall be allowed to recall or re-summon and examine, with reference to the amendment, any witness who have been examined, and may also call any further evidence which may be material.

Effect of material error

110. (1) If any appellate Syariah Court is of opinion that any person convicted of an offence was misled in his defence by the absence of a charge, or by an error or amendment in the charge, it may direct a new trial to be had on a charge framed in whatever manner it thinks fit.

(2) If the Syariah Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.

Separate charge for distinct offences

111. For every distinct offence of which any person is accused, there shall be a separate charge.

Trial of offences

112. Subject to the provisions of this Order, charges for more than one offence may be tried at one trial.

Trial for more than one offence

113. (1) A person may be charged with and tried at one trial on any number of charges which are founded on the same facts or form or are a part of a series of offence of the same or a similar character.

(2) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force by which offences are defined or punished, the person accused of the offences may be charged with and tried at one trial for each of such offences.

(3) If several acts of which one or more than one would by itself or themselves constitute an offence, when combined constitute a different offence, the person accused of the offences may be charged with and tried at one trial for the offence constituted by such acts when combined, or for any offence constituted by any one or more of such acts.

Illustrations

(a) *A* enticed Muslim married woman to leave the matrimonial home determined by her husband and hid her in a house. When a search with warrant was conducted by a Religious Enforcement Officer, *A* obstructed the officer from entering and carrying out his duty. *A* may be charged with and tried for the offence of enticing Muslim married woman to leave the matrimonial home and obstructing the Religious Enforcement Officer.

(b) *B* drank liquor or intoxicating drinks during the fasting hours in public during the month of Ramadhan. *B* may be charged and tried with the offence of drinking liquor or intoxicating drinks and disrespecting the month of *Ramadhan*.

(c) *C* enticed and persuaded *D*, a female Muslim to leave the custody of her parents. *C* delivered *D* to *E*, a man for any purpose that is contrary to *Hukum Syara'* and encouraged any indecent behaviour. *C* may be charged separately and convicted with offences under sections 197(2), 202 and 205 of the Syariah Penal Code Order, 2013 (S 69/2013).

Where it is doubtful what offence has been committed

114. If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of the offence, and any number of such charges may be tried at once, or he may be charged in the alternative with having committed any one of the offences.

Illustrations

A commits an act amounting to propagating religion other than religion of Islam, distributing for the purposes of sale any publication contrary to *Hukum Syara'* and expounding any doctrine relating to the religion of Islam in manner contrary to *Hukum Syara'*. *A* may be charged with propagating religion other than religion of Islam, distributing for the purposes of sale any publication contrary to *Hukum Syara'* and expounding any doctrine relating to the religion of Islam in manner contrary to *Hukum Syara'*, or he may be charged with propagating religion other than Islam, or distributing for the purposes of sale any publication contrary to *Hukum Syara'*, or expounding any doctrine relating to the religion of Islam in manner contrary to *Hukum Syara'*.

When a person charged with one offence may be convicted of another offence

115. If in the case mentioned in section 114 the accused is charged with one offence and it appears in evidence that he committed a different offence for which he might have been charged under the provision of that other offence, he may be convicted of the offence which he is proved to have committed although he was not charged with it.

Illustration

A is charged with instigating a Muslim woman to neglect her duties towards her husband. It is proven that A had caused the wife of a Muslim to leave the matrimonial home determined by her husband. A may be convicted with the offence of causing Muslim married woman to leave the matrimonial home although he was not charged with the offence.

Person charged with offence may be convicted of attempt

116. When the accused is charged with an offence, he may be convicted of having attempted to commit that offence although the attempt is not separately charged.

Person charged with offence may be convicted of another

117. (1) Where a person is charged with an offence and facts are proved which constitute another offence, he may be convicted of that other offence although he was not charged with it.

Illustration

A is charged with the offence of expounding any doctrine relating to the religion of Islam in manner contrary to *Hukum Syara'*. The facts show that A refers to or addresses any person other than the Holy Prophet Muhammad (*Sallallahu 'Alaihi Wa Sallam*) by the title "*Sallallahu 'Alaihi Wa Sallam*". A may be convicted for the offence of misuse of titles for Muslims reserved for specific persons although he was not charged with the offence.

(2) Where a person is charged with an offence which is to be proved either by *ikrar* or *syahadah* in accordance with *Hukum Syara'* and the offence is proved by evidence other than by *ikrar* or *syahadah* in accordance with *Hukum Syara'*, he may be convicted of the offence which he is proved to have committed although he was not charged with it.

Illustrations

(a) A is charged with the offence of *sariqah* under section 55(1) of the Syariah Penal Code Order, 2013 [S 69/2013]. Only the *syahadah* of one *syahid* is admitted in evidence by the Syariah Court. A may be convicted for the offence of *sariqah* punishable under section 55(3) of the Syariah Penal Code Order, 2013 [S 69/2013] although he was not charged with it.

(b) *B* is charged with the offence of *hirabah* under section 63(1) of the Syariah Penal Code Order, 2013 (S 69/2013). During the trial, his *ikrar* was not admitted in evidence by the Syariah Court. The Syariah Court may convict him for the offence of *hirabah* under section 63(2) of the Syariah Penal Code Order, 2013 (S 69/2013) if such offence is proved by other evidence although he was not charged with it.

When persons may be charged jointly

118. When more than one person are accused of the same offence or of different offences committed in the same transaction, or when one person is accused of committing an offence and another of abetment or of attempt to commit the same offence, they may be charged and tried together or separately as the Syariah Court thinks fit, and the provisions contained in this Chapter shall apply to all such charges.

Illustrations

(a) *A* and *B* are accused of committing *qatl*. *A* and *B* may be charged and tried together with the offence of *qatl*.

(b) *C* and *D* are accused of cohabitation in a house and during such time *C* drank liquor. *C* and *D* may be charged and tried together for committing the offence of *khalwat* and *C* may also be charged for drinking liquor.

(c) *E* is charged for the offence of teaching any doctrine relating to the religion of Islam in manner contrary to *Hukum Syara'*. *F* cooperated with *E* by gathering students to be taught by *E*. *E* and *F* respectively may be tried together or separately for the offence of teaching any doctrine relating to the religion of Islam in manner contrary to *Hukum Syara'* and charged for abetment.

Withdrawal of remaining charges on conviction on one of several charges

119. (1) When more than one charge are made against the same person and when a conviction has been had on one or more of them, the prosecutor conducting the prosecution may, with the consent of the Syariah Court, withdraw the remaining charge or charges, or the Syariah Court of its own accord may stay the inquiry into or trial of such charge or charges.

(2) Such withdrawal or stay shall have the effect of an acquittal on such charge or charges, unless the conviction is set aside, in which case the Syariah Court may, subject to the order of the Syariah Court setting aside the conviction, proceed with the inquiry into or trial of the charge or charges so withdrawn or not proceeded with.

Person tried before Syariah High Court

120. All charges on which persons are tried in Brunei Darussalam before the Syariah High Court shall be brought in the name of the Chief Syar'ie Prosecutor.

Chapter IV

Li'an

Li'an

121. (1) Where a husband accuses his wife of *zina*, the Syariah Court shall order him to take an oath of *li'an* against his wife, and the wife shall also take an oath of *li'an* to reject the accusation of *zina* by the husband.

(2) An oath of *li'an* shall be made before the Syariah Court by uttering the following words —

(a) the husband who makes the accusation shall repeat four times consecutively the following utterance —

“Allah is my witness that I speak the truth that I am accusing my wife (name of wife) has committed *zina*.”;

(b) when he has completed repeating those words as contained in paragraph (a) four times, he shall make the fifth utterance by saying —

“The curse of Allah shall fall on me if I have lied.”;

(c) to reject the accusation, the wife shall also repeat four times consecutively the following utterance —

“Allah is my witness that my husband (name of husband) had lied in making this accusation of *zina* against me.”;

(d) when she has completed repeating those words as contained in paragraph (c) four times, she shall make the fifth utterance by saying —

“The wrath of Allah shall fall on me if my husband has spoken the truth.”;

(e) where the wife has given birth or is pregnant as a consequence of the *zina* alleged by the husband, the husband shall deny being the father of the child by adding to the words in paragraph (a), and his wife shall reject her husband's denial by adding to the words in paragraph (c), which each must be repeated four times, the following utterance —

(i) if the child is born, the husband shall utter the following —

“That this child is a child of *zina* and not from my descendant.”,
the wife replies —

“And this child is his child and not a child of *zina*.”;

(ii) if the child is not born, the husband shall utter the following —

“That what is being carried by my wife is a child of *zina* and not from my descendant.”,

the wife replies —

“And what I carry is his child and not a child of *zina*.”.

{3} When both husband and wife goes through an oath of *li'an*, no prosecution can be conducted against both the husband for *qazaf* and the wife for *zina*.

*Trials of offences punishable with death and certain offences
under jurisdiction of Syariah High Court*

Trial of offences punishable with death and certain other offences

122. (1) Notwithstanding any provision in any other written law, in all cases where the accused is charged with an offence of *qatlul-'amd*, *hirabah*, *zina*, *zina-bil-jabar*, *liwat* or *irtidad* punishable with death and in other cases as the Chief Syar'ie Judge may prescribe, the accused shall be tried by the Syariah High Court consisting of —

(a) two Syariah High Court Judges; and

(b) one Muslim Judge of the Supreme Court,

and shall be presided by one of the Syariah High Court Judges as the Chief Syar'ie Judge may determine.

(2) The decision of the Syariah Court as to the guilt of the accused in respect of the charge referred to in subsection (1) shall be arrived at unanimously and where the decision is that the accused is guilty, judgment shall be entered accordingly and the Syariah Court shall proceed to pass sentence on the convicted person according to law.

(3) When a unanimous decision as to the guilt of the accused fails to be reached, he shall not be convicted of that offence but may, if a majority of the Judges agree, be convicted of another offence of which he could have been charged based on the same facts:

Provided that if the failure to reach a unanimous decision as to the guilt of the accused rests on the ground that at least one of the three Judges has made a special finding under section 310, the accused shall be dealt with in accordance with section 311.

(4) The decision of the Syariah Court on all questions relating to the procedures and the admission or rejection of evidence in the course of a trial under this section shall be arrived at unanimously.

Chapter V

Trial

Procedure in trial

123. The following procedure shall be observed by a Syar'ie Judge in a trial —

(a) when the accused appears or is brought before the Syariah Court, a charge containing the particulars of the offence of which he is accused shall be framed and read and explained to him, and he shall be asked whether he wishes to make an *ikrar* of guilt of the offence charged or claims to be tried;

(b) if the accused chooses to make an *ikrar* of guilt to a charge, whether on the original charge or as amended, the *ikrar* of guilt shall be recorded and he may be convicted of such offence:

Provided that before an *ikrar* of guilt is recorded, the Syariah Court may hear the evidence of the complainant and such other evidence as it thinks necessary and shall ascertain that the accused understands the nature and consequences of his *ikrar* of guilt and he intends to admit, without qualification, the offence alleged against him;

(c) if the accused refuses to make an *ikrar* of guilt or does not plead or claims to be tried, the Syariah Court shall hear the complainant, if any, and to take all such evidence as may be produced in support of the prosecution;

(d) when the Syariah Court thinks it necessary, it shall obtain from the complainant or otherwise the names of any person likely to be acquainted with the facts of the case and to be able to give evidence for the

prosecution and shall summon to give evidence before itself such of them as the Syariah Court thinks necessary;

(e) the accused or his Syarie Lawyer shall be allowed to cross-examine all the witnesses for the prosecution;

(f) the Syariah Court may, on behalf of the accused or prosecution or of its own motion, put such question to any witness as it thinks necessary;

(g) if, on taking all the evidence referred to in paragraphs (c) to (f), the Syariah Court finds that no case against the accused has been made out which, if rebutted, would warrant his conviction, the Syariah Court shall record an order of acquittal;

(h) nothing in paragraph (g) shall be deemed to prevent the Syariah Court from discharging the accused at any previous stage of the case if the Syariah Court considers that the charge is groundless and the Syariah Court shall record its reasons for so considering;

(i) if, when such evidence has been taken, the Syariah Court is of the opinion that there are grounds for presuming that the accused has committed the offence charged or other offence which such Syariah Court is competent to try and which in its opinion it ought to try, it shall consider the charge recorded against the accused and decide whether the charge is sufficient and, if necessary, shall amend the charge;

(j) the charge, if amended, shall be read to the accused as amended and he shall be again asked whether he wishes to make an *ikrar* of guilt or has any defence to make;

(k) if the accused does not make an *ikrar* of guilt to the charge as amended or if no amendment is made, the accused shall be called upon to enter on his defence and to produce his evidence and the Syariah Court shall explain to the accused the provisions of section 132 or may proceed in accordance with section 107;

(l) if the accused elects to give evidence, his evidence shall ordinarily be taken before that of other witnesses for the defence;

(m) the prosecutor conducting the prosecution shall be allowed to cross-examine all the witnesses for the defence, and the accused may, if necessary, re-examine them;

(n) at any time when he is making his defence, the accused may be allowed to call and cross-examine any witness present in Syariah Court or its precincts;

(o) an accused person who elects to give evidence may be cross-examined on behalf of any other accused person;

(p) if the accused puts in any written statement, the Syariah Court shall file it with the record;

(q) if the accused applies to the Syariah Court to issue a summons for compelling the attendance of any witness, whether he has or has not been examined in the case, for the purpose of examination or cross-examination or the production of any document or other thing, the Syariah Court shall issue a summons unless it considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice. Such ground shall be recorded by it in writing;

(r) the Syariah Court may at any time adjourn the hearing of the case if satisfied that the adjournment is in the interests of justice;

(s) if the Syariah Court finds the accused not guilty, the Syariah Court shall record an order of acquittal;

(t) if the Syariah Court finds the accused guilty or if an *ikrar* of guilt has been recorded and accepted, the Syariah Court shall pass sentence in accordance with the law;

(u) if an accused is convicted, the Syariah Court may be notified of his previous convictions;

(v) the Syariah Court shall give consideration to any plea for leniency when sentence is passed except for offences punishable with *hadd* or *qisas*;

(w) when the proceedings have been instituted on the complaint of a person taking *yamin* under section 94 and on any day fixed for hearing of the case the complainant is absent, the Syariah Court may, in its discretion, notwithstanding anything contained in this section, discharge the accused at any time before calling on him to enter on his defence.

Power to discharge conditionally or unconditionally

124. (1) Notwithstanding the provisions of section 123, the Syariah Court shall have the powers contained in this section.

(2) When any person is charged before the Syariah Court with an offence punishable by such Syariah Court other than offences punishable with *hadd*, *qisas*, *diyat* or *arsy* and the Syariah Court finds that the charge is proved, but is of the opinion that, having regard to the character, antecedents, age, health or mental condition of the person charged, or to the trivial nature of the offence, or to the extenuating circumstances under which the offence was committed, it is

inexpedient to inflict any punishment or any sentence other than a light sentence or it is expedient to release the offender conditionally, the Syariah Court may, without recording a conviction, issue an order either —

(a) dismissing the charge or complaint after such admonition or caution to the offender as the Syariah Court thinks fit;

(b) order the offender to be detained in a welfare house or such other place as the Syariah Court thinks appropriate for a period not exceeding one year; or

(c) discharging the offender conditionally on his entering into a bond with sureties, to be of good behaviour and to appear for the conviction to be recorded and for sentence when called upon at any time during such period not exceeding 3 years, as may be specified in the order.

(3) The Syariah Court may, in addition to any such order mentioned under subsection (2), order the offender to pay such compensation for injury or loss or to pay such costs of the proceedings as the Syariah Court thinks reasonable or to pay both compensation and costs.

(4) If the Syariah Court is satisfied by information taken on *yamin* that the offender has failed to observe any of the conditions of his bond, it may issue a warrant for his arrest.

(5) Any offender when arrested on any such warrant shall, if not forthwith brought before the Syariah Court having power to sentence him, be brought before a Syar'ie Judge who may —

(a) either remand him by warrant until the time at which he is required by his bond to appear for judgment or until the sitting of a Syariah Court having power to deal with his original offence whichever shall first happen; or

(b) admit him to bail with a sufficient surety conditioned on his appearing for judgment.

(6) The offender, when so remanded, may be committed to prison and the warrant of remand shall order that he be brought before the Syariah Court before which he was bound to appear for judgment or to answer as to his conduct since his release.

Address

125. In trials under this Chapter —

(a) the prosecutor conducting the prosecution may open the case by stating briefly the nature of the offence charged and the evidence by which

he proposes to prove the guilt of the accused or he may forthwith produce his evidence;

(b) when the accused is called upon to enter on his defence, he or his representative may, before producing his evidence, open his case by stating the facts or law on which he intends to rely and make such comments as he thinks necessary on the evidence for the prosecution, and if the accused gives evidence or witnesses are examined on his behalf, he may sum up his case;

(c) the prosecutor conducting the prosecution shall have the right of reply on the whole case whether the accused adduces his evidence or not.

Power to award compensation

126. (1) If in any case the Syariah Court acquits the accused and is of opinion that the complaint, information or charge was frivolous or vexatious, it may, in its discretion, either on the application of the accused or of its own motion, order the complainant or the person on whose information the complaint or charge was made to pay to the accused, or to each or any of the accused where there are more than one, such compensation not exceeding \$1,000, as the Syariah Court thinks fit:

Provided that the Syariah Court —

(a) shall record and consider any objection which the complainant or informant may urge against the order; and

(b) shall record its reasons for making such order.

(2) The sum so awarded shall be recoverable as if it were a fine, provided that if it cannot be realised, the imprisonment awarded *in lieu* thereof shall not exceed 30 days.

(3) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Syariah Court shall take into account any sum paid or recovered as compensation under this subsection on proof of the same.

Particulars to be recorded

127. (1) In proceedings under this Chapter, the Syariah Court shall keep a record of the particulars of each case, so far as practicable, as follows —

(a) the following particulars shall be kept by the Syariah Court officer under the direction of the Syar'ie Judge —

- (i) the serial number;
 - (ii) the date of the commission of the offence;
 - (iii) the date of the complaint, if any;
 - (iv) the name, age, gender, residence and nationality or race of the complainant, if any;
 - (v) the name, age, gender, residence and nationality or race of the accused;
 - (vi) the offence of which he is accused, the offence, if any, proved, and the value of the property in respect of which the offence has been committed;
 - (vii) the date of the issue of the summons or warrant and the return date of the summons, if any, or the day on which the accused was first arrested;
 - (viii) the sentence or final order;
- (b) the following particulars shall be kept by the Syar'ie Judge —
- (i) the *ikrar* of guilt of the accused and his examination, if any;
 - (ii) the date when the accused first appeared or was brought before the Syariah Court;
 - (iii) the name of the prosecutor conducting the prosecution and the name of the Syar'ie Lawyer representing the accused, if any;
 - (iv) the date of each adjournment or postponement and the date to which such adjournment or postponement was made and the grounds of making the same;
 - (v) the date on which the proceedings terminated;
 - (vi) the finding;
 - (vii) the sentence or final order, including the order, if any, made with regard to any exhibits or property produced in connection with the case;
 - (viii) the evidence of the accused and witnesses;

- (ix) a list of the exhibits;
- (x) when a petition of appeal has been lodged, the grounds of the decision or the judgment if written.

(2) The record shall be authenticated by the signature of the presiding officer of the Syariah Court, and shall be filed as the Chief Syari'e Judge may determine.

Transfer of cases

128. (1) In any trial before a Syariah Subordinate Court Judge in which it appears at any stage of the proceedings that from any cause any case is one which, in the opinion of the Syariah Subordinate Court Judge, ought to be tried by a Syariah High Court, the Syariah Subordinate Court Judge shall stay proceedings in respect of such case and transfer such case to such Syariah High Court and shall record such order on the proceedings.

(2) In any trial before a Syariah Subordinate Court Judge in which at any stage of the proceedings it appears to the Chief Syar'ie Prosecutor that from any cause any case is one which ought to be tried by a Syariah High Court, the Chief Syar'ie Prosecutor may apply to such Syariah Subordinate Court Judge to stay proceedings in respect of such case and to transfer such case to such Syariah High Court and such Syariah Subordinate Court Judge shall record and rule on the application.

Chapter VI

General provisions as to trial

Withdrawal of prosecution

129. (1) After hearing the evidence at any stage of any proceedings before the delivery of judgment, the prosecutor may, if he thinks fit, inform the Syariah Court that he does not propose further to prosecute the accused on the charge, and thereupon all proceedings on such charge against the accused may be stayed by leave of the Syariah Court and if so stayed, the accused shall be discharged of and from the same.

(2) Such discharge shall not amount to an acquittal unless the Syariah Court orders so after examining the evidence, except in cases under section 119.

Accused may be defended

130. (1) Every person accused before any Syariah Court may be defended by a Syar'ie Lawyer.

(2) For the purposes of subsection (1), the person accused of an offence punishable with *hadd*, *qisas* or other offences as may be determined by the Chief Syar'ie Judge may seek for legal aid subject to such conditions as the Chief Syari'e Judge may determine.

Assistance to undefended accused

131. Without prejudice to section 132, if the accused is undefended, the Syariah Court may, in its discretion at the close of the evidence of any prosecution witness or at any stage prior to the closure of the case of the prosecution, question the accused as to his defence and as to whether or not he wishes to challenge or supplement any part of the prosecution evidence for the following purposes —

(a) assisting him to cross-examine the witnesses for the prosecution;
or

(b) to enable the Syariah Court on behalf of the accused to put to any of such witnesses —

- (i) any defence advanced by the accused;
- (ii) any challenge as to the accuracy of the evidence; or
- (iii) any particulars modifying or supplementing the evidence adduced:

Provided that no entry shall be made in the record of any answer made by the accused and that any such answer shall be disregarded except for the purposes mentioned in paragraph (a) or (b).

Procedure if accused is called to defend himself

132. (1) At every inquiry or trial if and when the Syariah Court calls on the accused for his defence, the Syariah Court shall inform and explain to the accused that he may give evidence on his own behalf on *yamin* or affirmation to tell the truth and he is liable to be cross-examined and he may in any case call such witnesses on his behalf as he considers fit.

(2) The Syariah Court may also in its discretion, which shall be exercised with due regard to any previous exercise of its discretion under section 131, direct the attention of the accused to such of the evidence of the prosecution which appears to the Syariah Court to call for an explanation from the accused.

Procedure where accused does not understand proceedings

133. If the accused, though not insane, cannot be made to understand the proceedings, the Syariah Court shall stay the proceedings until such time the accused understands thereof.

Power to postpone or adjourn inquiry or trial

134. (1) If from the absence of a witness or any other reasonable cause, it becomes necessary or advisable to postpone or adjourn any inquiry or trial, the Syariah Court may postpone or adjourn the same on such terms as it thinks fit and for such period as it considers reasonable and may, by warrant, remand the accused if he is in custody:

Provided that the Syar'ie Judge shall not remand an accused person under this section for a term exceeding 15 days at a time.

(2) Every order made under this section by the Syariah Court shall be in writing, signed by the presiding Syar'ie Judge, and shall state the reasons therefor.

Explanation — If the evidence obtained is sufficient to raise a suspicion that the accused may have committed an offence and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for remand.

Change of Syar'ie Judge during inquiry or trial

135. (1) When any Syar'ie Judge, after having heard and recorded the whole or any part of the evidence in an inquiry or trial, ceases to exercise jurisdiction therein and is succeeded by another Syar'ie Judge who has and who exercises such jurisdiction, the Syar'ie Judge so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by himself, or he may re-summon the witnesses and recommence the inquiry or trial:

Provided that —

(a) in any inquiry or trial, when the second Syar'ie Judge commences his proceedings, the accused may demand that the witnesses or any of them be re-summoned and heard;

(b) the Syariah Appeal Court or Syariah High Court, as the case may be, may, whether there be an appeal or not, set aside any conviction had on evidence not wholly recorded by the Syar'ie Judge before whom the conviction was had, if such Syariah Court is of opinion that the accused has been materially prejudiced thereby, and may order a new inquiry or trial.

(2) Notwithstanding subsection (1), in an offence punishable with *hadd*, *qisas*, *diyat* or *arsy*, where there is a change of Syar'ie Judge during an inquiry or trial, the Syar'ie Judge succeeding the previous Syar'ie Judge shall re-summon the witnesses and recommence the inquiry or trial.

Detention of offenders attending in Syariah Court

136. (1) Any person attending a Syariah Court, although not under arrest or on a summons, may be detained by such Syariah Court for the purpose of examination for any offence of which such Syariah Court can take cognisance and which, from the evidence, he may appear to have committed the offence, and may be proceeded against as though he had been arrested or summoned.

(2) When the detention takes place after an inquiry or trial has been begun, the proceedings in respect of such person shall be commenced afresh and the witnesses re-heard.

Power to view

137. (1) Any Syar'ie Judge may, at any stage of any inquiry, trial or other proceedings, after due notice to the parties, visit and inspect any place in which an offence is alleged to have been committed, or any other place which it is in his opinion necessary to view, for the purpose of properly appreciating the evidence given at such inquiry or trial, and shall without unnecessary delay record a memorandum of any relevant facts observed at such inspection.

(2) The Syar'ie Judge may direct that the accused shall be present, and he shall take evidence at such place or places.

(3) Such memorandum shall form part of the record of the case.

General holiday or public holiday

138. No proceedings of any Syariah Court shall be invalid by reason of its happening on a general holiday or public holiday.

Chapter VII

Mode of taking and recording evidence in inquiry or trial

Evidence to be taken in presence of accused

139. Except as otherwise expressly provided, all evidence taken under Chapters V and VI of Part V and this Chapter shall be taken in the presence of the accused.

Recording evidence of witness

140. In an inquiry or trial under this Order by or before a Syar'ie Judge, the evidence of the witnesses shall be recorded in the manner provided by this Chapter.

Record in all cases

141. In all inquiries or trials before any Syariah Court, the evidence of each witness shall be taken down in jawi or rumi script by the presiding Syar'ie Judge in legible handwriting and shall form part of the record mentioned in section 140.

Mode of recording evidence

142. (1) Evidence taken down under section 141 shall not ordinarily be taken down in the form of question and answer, but in the form of a narrative.

(2) The presiding Syar'ie Judge leading the inquiry or trial may, in his discretion, take down any particular question and answer.

Interpretation of evidence to accused

143. (1) When any evidence is given in a language or gesture not understood by the accused, and he is present in person, the evidence shall be interpreted to him in open court in a language or gesture which he understands.

(2) When documents are put in for the purpose of formal proof, it shall be in the discretion of the Syariah Court to interpret as much thereof as appears necessary.

Observation as to demeanour of witness

144. A presiding Syar'ie Judge recording the evidence of a witness may record such observation, if any, as he thinks material in respect of the demeanour of such witness whilst under examination.

Other person may also be authorised to take down notes of evidence

145. Nothing in this Chapter shall prevent a Syar'ie Judge in an inquiry or trial directing complete notes to be taken or recorded officially by other person as to the evidence of a witness in addition to the evidence taken down by the Syar'ie Judge himself and such note shall form part of the record.

Evidence through live video or live television links

146. (1) Notwithstanding any provision of this Order or any other written law, but subject to the provisions of this section, a person other than an accused may,

whether within or outside Brunei Darussalam, with the leave of the Syariah Court, give evidence through a live video or live television link in any inquiry, trial, appeal or other proceedings for an offence other than an offence punishable with *hadd* or *qisas* if the Syariah Court is satisfied that it is expedient in the interests of justice to do so.

{2} Notwithstanding any provision of this Order or any other written law, the Syariah Court may order an accused to appear before it through a live video or live television link while in remand in Brunei Darussalam in proceedings for any of the following matters –

- (a) an application for bail or release on personal bond;
- (b) an extension of the remand of an accused under section 134.

{3} The Syariah Court may, in exercising its powers under subsection (1) or {2}, make an order on all or any of the following matters –

- (a) the persons who may be present at the place where the witness is giving evidence;
- (b) the persons who may be excluded from the place while the witness is giving evidence;
- (c) the persons in the courtroom who must be able to be heard, or seen and heard, by the witness and by the persons with the witness;
- (d) the persons in the courtroom who must not be able to be heard, or seen and heard, by the witness and by the persons with the witness;
- (e) the persons in the courtroom who must be able to see and hear the witness and the persons with the witness;
- (f) the stages in the proceedings during which a specified part of the order is to have effect;
- (g) any other order that the Syariah Court considers necessary in the interests of justice.

{4} The Syariah Court may revoke, suspend or vary an order made under this section if –

- (a) the live video or live television link system stops working and it would cause unreasonable delay to wait until a working system becomes available;

(b) it is necessary for the Syariah Court to do so to comply with its duty to ensure fairness in the proceedings;

(c) it is necessary for the Syariah Court to do so in order that the witness can identify a person or a thing or so that the witness can participate in or view a demonstration or an experiment;

(d) it is necessary for the Syariah Court to do so because part of the proceedings is being heard outside a courtroom; or

(e) there has been a material change in the circumstances after the Syariah Court has made the order.

(5) Evidence given by a witness, whether within or outside Brunei Darussalam, through a live video or live television link by virtue of this section or any other written law is deemed for the purposes of section 234 of the Syariah Penal Code Order, 2013 (S 69/2013) as having been given in the proceedings in which it is given.

(6) Where a witness gives evidence in accordance with this section or any other written law, he is deemed for the purposes of this Order to be giving evidence in the presence of the Syariah Court.

(7) Where leave is given under subsection (1) in the case of any proceedings for evidence to be given through a television link, a Syariah Court may sit, for the purpose of the whole or part of those proceedings, at a Syariah Court or at such other place as has been appointed for the purposes of this section by a Syarie Judge or Registrar.

(8) In subsections (3), (5) and (6), a reference to a witness includes a reference to an accused who appears before a Syariah Court through a live video or live television link under subsection (2).

Video recordings of evidence from child witnesses

147. (1) In proceedings to which section 146 applies, a video recording of an interview which —

(a) is conducted between an adult and a child who is not an accused, which child is in this section referred to as the child witness; and

(b) relates to any matter in issue in those proceedings,

may, with the leave of the Syariah Court, be given in evidence in so far as it is not excluded under subsection (2).

(2) Where a video recording is tendered in evidence under this section, the Syariah Court shall (subject to the exercise of any power to exclude evidence which is otherwise admissible) give leave under subsection (1), unless it is empowered to refuse such leave under subsection (3).

(3) The Syariah Court shall refuse leave under subsection (1) if –

(a) it appears that the child witness will not be available for cross-examination, either in person or through a live television link under section 146;

(b) any rules of Syariah Court requiring disclosure of the circumstances in which the video recording was made have not been complied with to its satisfaction; or

(c) the Syariah Court is of the opinion, having regard to all the circumstances of the case, that in the interests of justice the video recording ought not to be admitted.

(4) The Syariah Court may, if it gives leave under subsection (1) and is of the opinion that in the interests of justice any part of the video recording ought not to be admitted, direct that such part shall be excluded.

(5) In considering whether any part of a video recording ought to be excluded under subsection (4), the Syariah Court shall consider whether any prejudice to an accused, which might result from the admission to that part, is outweighed by the desirability of showing the whole or substantially the whole of the video recording.

(6) Where a video recording has been admitted in evidence under this section –

(a) the child witness shall be called by the party who tendered it in evidence, either in person or through a live television link under section 146; and

(b) the child witness shall not be examined-in-chief on any matter which, in the opinion of the Syariah Court, has been dealt with in his video recording evidence.

(7) Where a video recording has been given in evidence under this section, any statement made by the child witness which is disclosed by the video recording shall be treated as if made by him in direct oral evidence; and accordingly –

(a) such statement shall be admissible evidence of any fact of which such evidence from him would be admissible;

(b) no such statement shall be capable of corroborating any other evidence given by him,

and in estimating the weight, if any, to be attached to such a statement, regard shall be had to all the circumstances from which any inference can reasonably be drawn, whether as to its accuracy or otherwise.

(8) Nothing in this section prejudices the admissibility of any video recording which would be admissible apart from this section.

(9) In this section —

“child” means a person who is not *mukallaf* when the video recording was made;

“statement” includes any representation of fact, whether made in words or otherwise;

“video recording” means any recording, on any medium, from which a moving image may by any means be produced, and includes the accompanying sound track.

Cross-examination of alleged child victim

148. Notwithstanding any provision of this Order or of any other written law, no person who is charged with an offence to which section 146(1) applies shall in person cross-examine any witness who —

(a) is alleged —

- (i) to be the person against whom the offence was committed; or
- (ii) to have witnessed the commission of the offence; and

(b) (i) is not *mukallaf*, or

- (ii) is to be cross-examined following the admission under section 147 of a video recording of evidence from him.

Rules of Syariah Court for sections 146 and 147

149. The Chief Syar'ie Judge may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make rules of Syariah Court for the purposes of sections 146 and 147.

Chapter VIII

Judgment

No sentence of death on person who is not *mukallaf* or has not attained age of *baligh*

150. (1) Sentence of death shall not be pronounced on or recorded against a person convicted of an offence if it appears to the Syariah Court that at the time when the offence was committed he was not *mukallaf* or has not attained the age of *baligh*; but *in lieu* thereof the Syariah Court shall sentence such person to be detained during the pleasure of His Majesty the Sultan and Yang Di-Pertuan and, if so sentenced, he shall be liable to be detained in such place and under such conditions as His Majesty the Sultan and Yang Di-Pertuan may direct, and whilst so detained shall be deemed to be in legal custody.

(2) Subject to the powers of His Majesty the Sultan and Yang Di-Pertuan under this Order and any other written law, if a person is ordered to be detained under subsection (1), the Board of Visiting Justices for the prison or the board of visitors for any other place —

(a) shall review that person's case at least once a year; and

(b) may recommend to His Majesty the Sultan and Yang Di-Pertuan on the early release or further detention of that person,

and His Majesty the Sultan and Yang Di-Pertuan may thereupon order him to be released or further detained, as the case may be.

Mode of delivering judgment

151. (1) The judgment in every trial in any Syariah Court shall be pronounced in open court, or the substance of such judgment shall be explained in open court, either immediately or at some subsequent time of which due notice shall be given to the parties or their Syar'ie Lawyers, and the accused shall, if in custody, be brought up or, if not in custody, required to attend to hear judgment delivered, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only or if acquitted in either of which cases the judgment may be delivered in the presence of his Syar'ie Lawyer.

(2) Every such judgment shall be delivered in Malay language, and if necessary interpreted in a language understood by the accused. It shall contain the point or points for determination, the decision thereon, and the reasons for the decision. If the judgment is in writing, it shall be signed by the Syar'ie Judge delivering it and filed with the record of the proceedings. If the judgment is delivered orally, the substance of it shall be reduced to writing and filed with the record.

(3) It shall specify the offence, if any, the provision of the law under which the accused is convicted, and the punishment to which he is sentenced.

(4) If it is a judgment of acquittal, it shall state the offence of which the accused is acquitted, and direct that he be set at liberty.

(5) If the accused is convicted of an offence punishable with *qisas* for *qatl* or injury, and the Syariah Court with the consent of *wali-ad-dam*, *wali* or victim, as the case may be, sentences him to any punishment other than *qisas*, the Syariah Court shall in its judgment state the reason why sentence of *qisas* was not passed.

Judgment not to be altered

152. No Syariah Court shall, having once recorded its judgment, alter or review the same unless there is a clerical error which may be rectified at any time before the Syariah Court ends the trial.

Judgment to be explained and copy supplied

153. The judgment shall be translated or explained to the accused in a language which he understands and on his application a copy of the judgment or, when he so desires, a translation in his own language, if practicable, shall be given to him without delay. Such copy shall, in any case other than a summons case, be given free of cost.

Chapter IX

Confirmation of sentence

Confirmation of sentence before execution

154. Notwithstanding any appeal, every *hadd*, *qisas*, *diyat* or death sentence or any other sentence as prescribed by the Chief Syari'e Judge shall be forwarded by the Syariah Court which has passed such sentence to the higher Syariah Court for confirmation, and the punishment pronounced shall not be executed before the confirmation is obtained.

Syariah Court decision on confirmation

155. (1) In any case under section 154, the higher Syariah Court may confirm, reverse or amend the decision of the Syariah Court which has passed such sentence or order for retrial or make any order as it thinks fit.

(2) Any decision of the higher Syariah Court shall be unanimous.

Submission of record of proceedings for purpose of confirmation

156. Any Syariah Court which has passed *hadd*, *qisas*, *diyat* or death sentence or any other sentence as prescribed by the Chief Syari'e Judge shall, in 14 days after the end of the appeal period, submit the record of proceedings for the purpose of confirmation to the higher Syariah Court.

Additional evidence

157. (1) After examining any record of proceedings under section 156, if the higher Syariah Court is of the opinion that the additional evidence is necessary or any witness should be called upon, the higher Syariah Court may take the evidence itself or order the Syariah Court which has passed the sentence to take such additional evidence.

(2) When the additional evidence is taken by the Syariah Court which has passed the sentence, the Syariah Court shall certify such evidence to the higher Syariah Court which shall thereupon, as soon as possible, proceed to complete the confirmation.

(3) The accused or Syar'ie Lawyer shall be present when additional evidence is taken unless the higher Syariah Court directs otherwise.

Order on certified decision

158. When a case has been decided by the higher Syariah Court, and the higher Syariah Court has either confirm, reverse or amend the decision of the Syariah Court which has passed the sentence, the higher Syariah Court shall certify its decision to the Syariah Court which has passed the sentence stating, if the sentence is amended, the reasons for the amendment; and the Syariah Court which has passed the sentence shall thereupon make such orders as are conformable to the decision of the higher Syariah Court and, if necessary, the record of the proceedings shall be amended in accordance therewith.

Chapter X

Submission of sentences of death and qisas to His Majesty the Sultan and Yang Di-Pertuan

Submission of sentence of death

159. (1) In every case where death sentence as *hadd* or *qisas* is confirmed by the Syariah Appeal Court or after the appeal against such sentence has been dismissed, the Chief Syar'ie Judge shall transmit to His Majesty the Sultan and Yang Di-Pertuan a report regarding the conviction and death sentence.

(2) In the case of death sentence as *qisas*, His Majesty the Sultan and Yang Di-Pertuan may, after receiving the report, graciously advice, directly or through any person authorised by His Majesty the Sultan and Yang Di-Pertuan, to the *wali-ad-dam* or his *wali*, either to pardon *qisas* on the offender with or without *diyat* or compound *qisas* with *badal-al-sulh*.

(3) If His Majesty the Sultan and Yang Di-Pertuan becomes *wali* for the offence which is punishable with death sentence as *qisas*, His Majesty the Sultan and Yang Di-Pertuan may pardon *qisas* on the offender with *diyat* or compound *qisas* with *badal-al-sulh*.

Submission of sentence of death other than sentence of death under section 159

160. (1) In every case in which sentence of death other than sentence of death under section 159, the presiding Syar'ie Judge shall forward to the Chief Syar'ie Judge for transmission by the Chief Syar'ie Judge to His Majesty the Sultan and Yang Di-Pertuan the record of the case, together with a written report under seal stating whether, in his opinion, there are any reasons, and if so what reasons, why the sentence of death should not be carried out.

(2) On the expiration of the time prescribed for instituting an appeal or, if an appeal has been instituted upon the dismissal of the appeal, the Chief Syar'ie Judge shall, as soon as conveniently may be, forward the record and the report to His Majesty the Sultan and Yang Di-Pertuan together with, if there has been an appeal, the decision of the Syariah Appeal Court, and such report, if any, on the case as the Syariah Appeal Court, or if there has been no appeal, the Chief Syar'ie Judge, may think fit to make.

(3) His Majesty the Sultan and Yang Di-Pertuan may cause the presiding Syar'ie Judge to be summoned to attend the meeting of the Privy Council at which the sentence of death is to be considered and to produce his notes thereat.

(4) His Majesty the Sultan and Yang Di-Pertuan, after considering the report or reports and if the presiding Syar'ie Judge has been summoned to attend the meeting of the Privy Council, after hearing the presiding Syar'ie Judge, shall communicate to the Syariah Appeal Court a copy of an order signed and sealed by His Majesty the Sultan and Yang Di-Pertuan.

Submission of *qisas* sentence for hurt

161. In the case of hurt punishable with *qisas*, if His Majesty the Sultan and Yang Di-Pertuan becomes *wali*, the Chief Syar'ie Judge shall transmit to His Majesty the Sultan and Yang Di-Pertuan a report regarding the conviction and *qisas* sentence and His Majesty the Sultan and Yang Di-Pertuan may pardon *qisas* with *arsy* or compound *qisas* with *badal-al-sulh*.

Direction by His Majesty the Sultan and Yang Di-Pertuan shall not be called in question

162. Any direction issued by His Majesty the Sultan and Yang Di-Pertuan under sections 159 and 160 shall not be called in question in or be subject to any judicial review by, or appeal to, any Syariah Court.

His Majesty the Sultan and Yang Di-Pertuan not compellable to attend Syariah Court

163. (1) For the avoidance of doubt, it is hereby declared that His Majesty the Sultan and Yang Di-Pertuan shall not be compellable to attend any proceedings in, or be summoned before, any Syariah Court.

(2) In exercise of the powers conferred under this Chapter, His Majesty the Sultan and Yang Di-Pertuan may issue a direction in writing to the Chief Syar'ie Judge.

Chapter XI

Sentences and execution thereof

Death sentence

164. (1) Where an offender is sentenced to death, the sentence shall direct that he be hanged by the neck or his neck be lopped off until he is dead or by using any other methods which can cause immediate, painless and respectable death.

(2) If death sentence is carried out by other methods other than hanged by the neck according to subsection (1), the punishment shall be carried out according to the prescribed methods.

Warrant of commitment

165. After the sentence of death, stoning, whipping, amputation of hand or foot or *qisas* in case of hurt has been pronounced, a warrant under the seal of the Syariah Court shall be made out for the commitment of the person sentenced to the custody of the officer in charge of prison, and the warrant shall give full authority to the officer, or any officer appointed for that purpose, to receive into his custody and to detain the person so sentenced until further warrant or order of the Syariah Court.

Warrant of execution of death sentence or stoning in offences of *hadd* or *qisas*

166. After His Majesty the Sultan and Yang Di-Pertuan has issued his acknowledgement with regard to the conviction and sentence of death or stoning in the offences of *hadd* or *qisas*, the Chief Syar'ie Judge shall, after receiving such acknowledgement, issue a warrant of execution under the seal of the Syariah Court and forward such warrant to the Director of Prisons.

Presence of *wali-ad-dam* of victim during execution of death sentence

167. (1) The Syariah Court shall, before death sentence as *qisas* is executed, issue an order to appear to the *wali-ad-dam* in not less than 30 days before the execution.

(2) Where any *wali-ad-dam* of the victim fails to be informed of the execution of death sentence, the Syariah Court shall postpone the execution of such sentence and shall issue a notice of the execution as the Syariah Court thinks appropriate in not less than 15 days before the execution.

(3) Death sentence shall not be executed until all *wali-ad-dam* of the victim are present at the time of execution of such sentence, whether personally or through their representatives duly authorised by them and where the *wali-ad-dam* is not *mukallaf*, his *wali* shall be present on his behalf.

(4) Before the death sentence is executed, the *wali-ad-dam* or his representative or *wali* who are present may pardon or compound *qisas*.

(5) Where the *wali-ad-dam* or his *wali* does not pardon or compound *qisas*, the death sentence shall be executed.

(6) If a *wali-ad-dam* or his representative or *wali* of the victim fails to attend on the date, time and place of the execution of sentence after having been informed of such date, time and place by the Syariah Court, the Chief Syar'ie Judge may give permission for the death sentence to be executed or postpone the execution of death sentence to such date as he thinks fit.

Presence of *wali-ad-dam* of victim who is *ghaib* during execution of sentence

168. (1) Where the *wali-ad-dam* of the victim is *ghaib* but his residence is known and the Syariah Court believes that an order to appear may be served on him, the Syariah Court shall in such manner as it thinks reasonable —

(a) send a letter to the *wali-ad-dam* of the victim requiring his presence before the Syariah Court within a period of 180 days of the letter normally sent to the address, to give him an opportunity to give an opinion on the death sentence, to pardon *qisas* with or without *diyat* or compound *qisas* with *badal-al-sulh*. He may inform the Syariah Court either personally or by any other means acceptable to the Syariah Court;

(b) the Syariah Court shall, in the letter, as far as reasonably possible in its opinion state the offence committed and its sentence and the condition of the offender.

(2) Where the *wali-ad-dam* of the victim is *ghaib* and his residence is unknown and the Syariah Court is of the opinion that it is not possible for an

order to appear to be served on him, the Syariah Court shall issue a notice as required by section 167(2), with such modifications as it thinks appropriate.

(3) Where the *wali-ad-dam* of the victim who is *ghaib* is present before the sentence is executed, he may state his right of *qisas* according to *Hukum Syara'*.

(4) If the *wali-ad-dam* of the victim who is *ghaib* fails to attend on the date, time and place of the execution of sentence after having been informed of such date, time and place by the Syariah Court, the Chief Syar'ie Judge may postpone the execution of death sentence to such date as he thinks fit.

Pardon in *qatlul-'amd*

169. (1) In the case of *qatlul-'amd*, a *wali-ad-dam* who is *mukallaf* may, at any time before the execution of the sentence, pardon *qisas* on the offender either with or without *diyat*.

(2) If a *wali-ad-dam* is not *mukallaf*, his *wali* may pardon *qisas* on the offender with *diyat*.

(3) If His Majesty the Sultan and Yang Di-Pertuan becomes *wali*, His Majesty the Sultan and Yang Di-Pertuan may pardon *qisas* on the offender with *diyat*.

(4) If a victim has more than one *wali-ad-dam*, any one of them may pardon *qisas* on the offender with or without *diyat*.

(5) For the purpose of subsection (4), the *wali-ad-dam* who does not pardon *qisas* or does not compound his right of *diyat* against the offender shall be entitled to his share of *diyat*.

Illustration

A and *B* are *wali-ad-dam* to *C* who was killed by *D*. *D* has been convicted of the offence of *qatlul-'amd* and is liable to *qisas*. *A* has pardoned *D* while *B* refuses to pardon him or has not compound his right of *diyat*. *B* has a right to one-half of the *diyat* liable to *D*.

(6) If there are more than one victim, the pardon of *qisas* by the *wali-ad-dam* or *wali* of any one of the victims shall not affect the right of *qisas* of the *wali-ad-dam* or *wali* of the other victims.

Illustration

A caused *B* and *C*'s death and has been convicted of the offence of *qatlul-'amd* and is liable to *qisas*. *B*'s *wali-ad-dam* or *wali* has pardoned *A* but *C*'s *wali-ad-dam* or *wali* does not pardon him. *A* shall remain liable to *qisas* because *C*'s *wali-ad-dam* or *wali* does not pardon him although *B*'s *wali-ad-dam* or *wali* pardons him.

(7) If there are more than one offender, the pardon of *qisas* on any one of the offenders shall not affect the right of *qisas* on the other offenders.

Illustration

A and *B* caused *C*'s death and have been convicted of the offence of *qatlul-'amd* and are liable to *qisas*. *C*'s *wali-ad-dam* has pardoned *qisas* on *A* and does not pardon *qisas* on *B*. *B* shall remain liable to *qisas*.

(8) Any pardon in *qatlul-'amd* shall be made before the Syariah Court and after the Syariah Court is satisfied that the offender has the means to pay *diyat* in the case of pardon of *qisas* with *diyat* as agreed between the offender and *wali-ad-dam*, the Syariah Court shall confirm it.

(9) If the *wali-ad-dam* or *wali* has pardoned *qisas* on the offender and has been confirmed by the Syariah Court, the pardon shall not be withdrawn.

(10) The *diyat* shall be paid immediately by the offender to the *wali-ad-dam* of the victim by cash and in certain circumstances, the Syariah Court may order the payment to be made in instalments over a period of not exceeding 3 years, provided that there is a guarantee of payment acceptable by the *wali-ad-dam* of the victim.

Compounding of *qisas*

170. (1) In the case of *qatlul-'amd*, a *wali-ad-dam* who is *mukallaf* may compound *qisas* with *badal-al-sulh* and such compounding of *qisas* shall be made after receiving *badal-al-sulh* with an amount which may be less or more than the value of full *diyat*.

(2) If a *wali-ad-dam* is not *mukallaf*, his *wali* may compound *qisas* with *badal-al-sulh* and such compounding of *qisas* shall be made after receiving *badal-al-sulh* with an amount which shall be the same as the value of full *diyat*.

(3) If His Majesty the Sultan and Yang Di-Pertuan becomes *wali*, His Majesty the Sultan and Yang Di-Pertuan may compound *qisas* with *badal-al-sulh* and such compounding of *qisas* shall be made after receiving *badal-al-sulh* with an amount which shall be the same as the value of full *diyat*.

(4) Any compounding of *qisas* in *qatlul-'amd* shall be made before the Syariah Court and after the Syariah Court is satisfied that the offender has the means to pay *badal-al-sulh* as agreed between the offender and *wali-ad-dam*, the Syariah Court shall confirm it.

(5) *Badal-al-sulh* may be paid or given on demand by cash or on a fixed date as may be agreed between the offender and *wali-ad-dam* of the victim.

Warrant of execution of death sentence in offences other than *hadd* or *qisas*

171. (1) After His Majesty the Sultan and Yang Di-Pertuan has ordered the execution of death sentence in offences other than *hadd* or *qisas*, the Chief Syar'ie Judge shall, after receiving the order signed by His Majesty the Sultan and Yang Di-Pertuan, issue a warrant of execution of death sentence under the seal of the Syariah Court and forward such warrant to the Director of Prisons.

(2) His Majesty the Sultan and Yang Di-Pertuan may order for a postponement of the execution of such warrant and thereafter fix another date or place for the execution of the warrant.

Procedure of execution of death sentence or stoning

172. (1) Muslim offenders shall be ordered to repent and given an opportunity to make a *wasiat* before the execution of death sentence or stoning.

(2) After the execution of death sentence or stoning, a medical officer shall examine the body of the person executed and shall ascertain the fact of death and shall sign a certificate thereof on the back of the warrant of execution of death sentence or stoning and deliver the same to the Director of Prisons.

(3) The Syar'ie Judge present during the execution of death sentence or stoning shall be satisfied that such execution has been duly carried out and he shall confirm such warrant.

(4) The Director of Prisons shall return the warrant of execution of death sentence or stoning duly indorsed to the Chief Syar'ie Judge.

Additional procedures on execution of stoning

173. (1) Without prejudice to the provisions of section 172, the sentence of stoning shall be executed according to the following procedures —

- (a) the stoning shall be executed in an open area;
- (b) the stones used during the stoning shall be the size of a fist;
- (c) the offender shall wear clothes that covers the *aurat*;
- (d) the officer in charge of prison shall ensure that there is no disturbance during the execution of the stoning;
- (e) the offender shall be standing without being tied, whether his offence is proved by the *syahadah* of four *syahid* or by his own *ikrar*;

(f) the persons present during the execution of sentence shall commence the stoning on the offender from all sides and in the course of the stoning, the offender may be shot to death by an officer appointed by the Director of Prisons upon the order of the Syar'ie Judge present;

(g) where the offence of the offender is proved by the *syahadah* of four *syahid* and he tries to escape at the time when he is undergoing the sentence of stoning, he shall be detained and the sentence of stoning shall be resumed and he may be shot to death;

(h) where the offence of the offender is proved by his own *ikrar* and he withdraws his *ikrar* or tries to escape at the time when he is undergoing the sentence of stoning, he shall be considered to have withdrawn his *ikrar* and the sentence of stoning shall forthwith cease;

(i) where the offence of the offender is proved by the *syahadah* of four *syahid* and one of the *syahid* withdraws his evidence when the offender is undergoing the sentence of stoning, the sentence of stoning shall forthwith cease.

(2) Where the sentence of stoning ceases under subsection (1)(h) or (i), the Syariah Court may –

(a) pass sentence on the offender for any other offence if there is sufficient evidence for that purpose; or

(b) make an order of acquittal of sentence on the offender.

(3) An offender in respect of whom subsection (2) applies shall continue to be detained in custody pending the determination of the Syariah Court.

Expenses for handling of body of offender

174. The expenses for bathing, enshrouding (*kafan*) and handing over the body of the offender to his heirs, personal representative or representative of his country shall be borne by the Government.

Execution of sentence of amputation of hand and foot

175. (1) Before the execution of amputation of hand or foot as *hadd* for *sariqah* or *hirabah*, the medical officer shall ensure that –

(a) the body part to be inflicted with *hadd* is functional;

(b) the equipments to be used in the amputating process are in good condition and functioning properly and will not cause unnecessary harm to the offender.

(2) Where an offender is sentenced for *sariqah* liable to *hadd* for the first time, his right hand shall be amputated from the joint of the wrist as shown in the Third Schedule.

(3) Where an offender is sentenced for *sariqah* liable to *hadd* for the second time, his left foot shall be amputated from the ankle joint as shown in the Fourth Schedule.

Compounding of sentence

176. Where after committing *sariqah*, the offender is convicted of another offence and sentenced with *qisas* by amputation of the right hand, or his right hand is not functional or maimed, the sentence of amputation shall be compounded.

Execution of *qisas* in cases of hurt

177. (1) Before the sentence of *qisas* in cases of hurt is executed, the medical officer shall examine the offender to ensure that the execution of *qisas* will not cause death to the offender or cause less or more hurt than the hurt caused to the victim.

(2) Where the medical officer is of the opinion that the execution of *qisas* may cause death to the offender or cause less or more hurt than the hurt caused to the victim, the Syariah Court may substitute *qisas* with *arsy*.

Postponement of execution of sentence for pregnant woman

178. (1) When a woman convicted of an offence punishable with *hadd*, *qisas*, death or whipping is found to be pregnant, the Syariah Court shall postpone the execution of the sentence during the pregnancy and until 2 years after she gave birth and within that period the woman may be released on bail after she has given a surety to the satisfaction of the Syariah Court or, if the woman is not released, she shall be detained in a suitable place of detention.

Explanation — For the purpose of subsection (1), “detained in a suitable place of detention” shall not constitute a sentence of imprisonment passed by the Syariah Court.

(2) When a woman convicted of an offence punishable under subsection (1) is found to be pregnant and later miscarried, the Syariah Court shall postpone the execution of the sentence until the expiration of 105 days after she miscarried, and she is in good health to undergo the sentence.

(3) When a woman convicted of an offence punishable under subsection (1) alleges that she is pregnant, the matter shall be determined by a medical officer.

Sentence of whipping

179. The sentence of whipping shall be executed in accordance with the following procedures —

(a) the whipping rod, excluding its holder, shall be of the same type and made either from rattan or small branch of a tree without segment or joint and its length shall not exceed 1.22 metres and its diameter shall not exceed 1.25 centimetres as prescribed in the Fifth Schedule;

(b) the diameter of the whipping rod for female or non-*mukallaf* offenders shall be less than as specified in paragraph (a);

(c) before the execution of the sentence, the offender shall be examined by the medical officer to certify that the offender is in a fit state of health to undergo the sentence;

(d) the whipping sentence shall be executed by an officer of the same gender as the offender with strict regard to decency;

(e) the officer executing the sentence shall use the whipping rod with moderate force without lifting his hand over his head so as not to break the bones or cut the skin of the offender as shown in the Sixth Schedule;

(f) after inflicting each stroke, the officer executing the sentence shall lift the whipping rod upwards and not pull it as shown in the Sixth Schedule;

(g) the whipping may be inflicted on all parts of the body except the face, head, stomach, chest or private parts;

(h) the offender shall wear clothes according to *Hukum Syara'*;

(i) the whipping shall be inflicted when the offender is standing;

(j) the sentence of whipping shall be executed as soon as practicable after the expiration of 14 days or 30 days, as the case may be, from the date of the sentence passed, or in the case of an appeal, as soon as practicable after the receipt of the order of the appellate Court confirming the sentence;

(k) where the offender is sentenced to whipping only, he shall be dealt with as if he has been sentenced to imprisonment until the sentence of whipping is executed;

(l) if the medical officer certifies that the offender, due to illness or any other reason, is unable to undergo the sentence of whipping wholly or

partly, the case shall be referred to the Syar'ie Judge who may order the execution of the sentence in a manner permissible by *Hukum Syara'*, taking into account the type of whipping rod used.

Execution of sentence

180. Sentences other than stoning shall be executed by an officer appointed by the Director of Prisons.

Postponement of sentence other than death or stoning

181. Where an offender when undergoing a sentence other than death or stoning is unable to undergo part of the execution of such sentence and the medical officer has confirmed or certified that if the continuation of such sentence would cause death to the offender or more or unnecessary harm to the offender, the sentence shall be postponed to avoid such death or harm and shall only resume after obtaining confirmation from the medical officer.

Confirmation of medical officer before execution of sentence

182. Any sentence other than imprisonment or fine to be executed under this Chapter shall obtain confirmation from a medical officer that the offender is in a fit state of health to undergo the sentence.

Medical treatment after sentence

183. The medical officer shall give the necessary medical treatment to the injured part of the body of the offender who has undergone the sentence to avoid other harm and the expenses of such treatment shall be borne by the Government.

Provisions as to execution of sentence of imprisonment

184. Where the offender is sentenced to imprisonment, the following provisions shall apply —

(a) the Syariah Court passing the sentence shall forthwith forward a warrant to the prison in which he is to be confined and, unless the offender is already confined in such prison, shall send him in the custody of the Religious Enforcement Officer or the police to such prison with the warrant;

(b) every warrant for the execution of a sentence of imprisonment shall be forwarded to the officer in charge of the prison or any other place where the offender is to be confined;

(c) when the offender is to be confined in a prison, the warrant shall be handed over to the officer in charge of the prison;

(d) every sentence of imprisonment shall take effect from the date on which it was passed, unless the Syariah Court passing the sentence otherwise directs.

Commencement of sentence of imprisonment on prisoner already undergoing imprisonment

185. (1) When a person who is an escaped convict or is undergoing a sentence of imprisonment is sentenced to imprisonment, such imprisonment shall commence either immediately or at the expiration of the imprisonment to which he has been previously sentenced, as the Syariah Court passing the sentence may direct.

(2) A sentence of death shall be executed notwithstanding the pendency of any sentence of imprisonment.

(3) Nothing in subsection (1) shall be held to excuse any person from any part of the sentence to which he is liable on his former or subsequent conviction.

Who may issue warrant

186. Every warrant for the execution of any sentence may be issued either by the Syar'ie Judge who passed the sentence, or by his successor, or by any other officer authorised to exercise the powers of a Syar'ie Judge.

Return of warrant

187. When a sentence has been fully executed, the officer executing it shall return the warrant to the Syariah Court from which it was issued with an indorsement under his hand certifying the manner in which the sentence has been executed.

Saving for irregularity

188. No omission or error as to time and place and no defect in form in any order or warrant given under this Chapter shall be held to render illegal any execution carried into effect under such order or warrant or intended so to have been carried into effect, or shall render any execution illegal which would otherwise have been legal.

Place of execution of sentence

189. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by notification published in the *Gazette*, declare any place to be

a place of execution of sentences of death, stoning or whipping under this Chapter.

(2) The Minister may at any time direct the closing of any place of execution of sentence.

(3) The officer appointed by the Director of Prisons to execute the sentence, the medical officer, officer in charge of prison and any other persons ordered by the Director of Prisons shall be present during the execution of sentence.

(4) Any sentence of death, stoning or whipping shall be witnessed by at least three Muslims.

(5) In this section, "Minister" means the Minister of Home Affairs.

Diyat, badal-al-sulh, arsy or compensation

Distribution of *diyat*

190. (1) *Diyat* shall be paid to the *wali-ad-dam* of the victim according to their respective shares in inheritance.

(2) Where a *wali-ad-dam* forgoes his share, it cannot be claimed by any other *wali-ad-dam*.

(3) *Diyat* for a victim who is a non-Muslim shall be paid to his personal representative.

Period for payment of *diyat*

191. *Diyat* paid to the *wali-ad-dam* of the victim —

(a) for an offence of *qatlul-'amd* shall be paid immediately in lump sum and in certain circumstances, the Syariah Court may order the payment to be paid in instalments for a period not exceeding 3 years from the date of the final judgment of the Syariah Court;

(b) for an offence of *qatlu syibhil-'amd* and *qatlul khata'* may be paid in instalments for a period not exceeding 3 years from the date of the final judgment of the Syariah Court.

Badal-al-sulh, arsy or compensation to be paid to wali-ad-dam or victim

192. (1) *Badal-al-sulh* shall be paid to the *wali-ad-dam* of the victim according to their respective shares in inheritance.

[2] *Badal-al-sulh* for a victim who is a non-Muslim shall be paid to his personal representative.

[3] In the case of hurt, *arsy*, *badal-al-sulh* or compensation shall be paid to the victim.

Provisions as to sentences of *diyāt*, *badal-al-sulh*, *arsy* or compensation

193. Subject to the provisions of this Order and the Syariah Penal Code Order, 2013 (S 69/2013), in every case in which the offender is sentenced to pay *diyāt*, *badal-al-sulh*, *arsy* or compensation under the Syariah Penal Code Order, 2013 (S 69/2013), the Syariah Court passing the sentence may, in its discretion, make all or any of the following orders —

(a) extend the time for payment of *diyāt*, *badal-al-sulh*, *arsy*, compensation or any part thereof;

(b) direct payment of *diyāt*, *badal-al-sulh*, *arsy*, compensation or any part thereof to be made by instalments during the time extended;

(c) issue a warrant for the levy of the amount by distress and sale of any property belonging to the offender;

(d) direct that in default or failure of payment of *diyāt*, *badal-al-sulh*, *arsy*, compensation or any part thereof, the offender shall undergo imprisonment until the *diyāt*, *badal-al-sulh*, *arsy* or compensation is fully paid, which imprisonment shall be in addition to any other imprisonment to which he may have been sentenced.

Termination of imprisonment when *diyāt*, *badal-al-sulh*, *arsy* or compensation paid

194. (1) The imprisonment which is imposed in default or failure of payment of *diyāt*, *badal-al-sulh*, *arsy*, compensation or any part thereof shall terminate when the *diyāt*, *badal-al-sulh*, *arsy*, compensation or any part thereof is either paid or levied by process of law or pardoned by *wali-ad-dam* or the victim.

[2] If the offender dies before the payment of *diyāt*, *badal-al-sulh*, *arsy*, compensation or any part thereof, the *diyāt*, *badal-al-sulh*, *arsy*, compensation or any part thereof shall be recovered from his estate.

Provisions as to sentences of fine

195. Where any fine is imposed under the authority of any syariah law for the time being in force, and in the absence of any express provision relating to such fine in such law contained, the following provisions shall apply —

(a) in every case of an offence in which the offender is sentenced to pay a fine, the Syariah Court passing the sentence may, in its discretion, make all or any of the following orders —

- (i) direct that time be allowed for the payment of the fine;
- (ii) direct payment of the fine to be made by instalments;
- (iii) issue a warrant for the levy of the amount by distress and sale of any property belonging to the offender;
- (iv) direct that in default of payment of the fine, the offender shall undergo imprisonment for a certain term, which imprisonment shall be in addition to any other imprisonment to which he may have been sentenced;

(b) the period for which the Syariah Court directs the offender to be imprisoned in default of payment of fine shall not exceed the following scale —

- (i) if the offence is punishable with imprisonment —

<i>where the maximum term of imprisonment</i>	<i>the period shall not exceed</i>
does not exceed 6 months	the maximum term of imprisonment
exceeds 6 months but does not	
exceed 2 years.....	6 months
exceeds 2 years.....	one-quarter of the maximum term of imprisonment;

- (ii) if the offence is not punishable with imprisonment —

<i>where the fine</i>	<i>the period shall not exceed</i>
does not exceed \$100.....	30 days
exceeds \$100 but does not exceed \$250.....	2 months
exceeds \$250 but does not exceed \$500.....	4 months
exceeds \$500.....	6 months.

Termination of imprisonment when fine paid

196. (1) The imprisonment which is imposed in default of payment of a fine shall terminate when the fine is either paid or levied by process of law.

(2) If, before the expiration of the time of imprisonment fixed in default of payment of fine, such a proportion of the fine is paid or levied that the time of imprisonment suffered in default of payment is not less than proportional to the part of the fine still unpaid, the imprisonment shall terminate.

(3) The fine, or any part thereof which remains unpaid, may be levied at any time within 6 years after the passing of the sentence.

(4) The death of the offender shall discharge him of the fine.

Suspension of execution in certain cases

197. When an offender has been sentenced to fine only and to imprisonment in default of payment of the fine and the Syariah Court issues a warrant under section 184, the Syariah Court may suspend the execution of the sentence of imprisonment and may release the offender on his executing a bond, with or without sureties, as the Syariah Court thinks fit, conditioned for his appearance before such Syariah Court on the day appointed for the return of such warrant, such day not being more than 15 days from the time of executing the bond; and in the event of the fine not having been realised, the Syariah Court may direct the sentence of imprisonment to be forthwith executed.

Child offender who is *mumaiyiz* but not *baligh*

198. (1) When any child offender who is *mumaiyiz* but not *baligh* is convicted before any Syariah Court of any offence punishable with whipping, fine or imprisonment, such Syariah Court may instead of passing a sentence of whipping, fine or imprisonment —

(a) order such offender to be discharged after due admonition, if the Syariah Court thinks fit;

(b) order such offender to be delivered to his parent or to his guardian or nearest adult heir or to such other person as the Syariah Court shall designate, on such parent, guardian, heir or other person executing a bond with sureties as the Syariah Court may require, that he will be responsible for the good behaviour of the offender for any period not exceeding 12 months;

(c) without requiring any person to enter into any bond, make an order in respect of such offender ordering him to be of good behaviour for any period not exceeding 2 years and containing any direction to such

offender in accordance with the conditions mentioned in section 200(a), (b) and (c) as the Syariah Court thinks fit; or

(d) deal with the offender in the manner provided by the Children and Young Persons Act (Chapter 219).

(2) The Syariah Court before which an offender under subsection (1) is convicted may, in addition to or instead of punishing such offender in the manner provided in this section, inflict on his parent or guardian a fine not exceeding \$5,000 in any case in which such Syariah Court, after summary inquiry, is satisfied that such parent or guardian has, by neglecting to take proper care or otherwise of the offender, conduced to the misconduct of such offender:

Provided that the parent or guardian shall not be fined without his having had an opportunity of being heard and, if he desires it, of adducing evidence in his defence.

(3) This section shall apply to all offences, whether or not a minimum sentence has been prescribed for any offence.

Release of offender on probation

199. (1) When any person not being an offender under section 198 has been convicted of any offence punishable with whipping, imprisonment or fine before any Syariah Court, if it appears to such Syariah Court that, having regard to the character, antecedents, age, health or mental condition of the offender, or to the trivial nature of the offence or to any extenuating circumstances under which the offence was committed, it is expedient that the offender be released on probation of good conduct, the Syariah Court may, instead of sentencing him immediately to any punishment, direct that he be released upon his entering into a bond with sureties and during such period as the Syariah Court may direct, to appear and receive judgment if and when called upon and in the meantime to be of good behaviour.

(2) If a Syariah Court having power to deal with the offender in respect of his original offence is satisfied that the offender has failed to observe any of the conditions of his bond, the Syariah Court may issue a warrant for his arrest.

(3) Any offender when arrested on any such warrant shall, if not forthwith brought before the Syariah Court having power to sentence him, be brought before a Syar'ie Judge and such Syar'ie Judge may either remand him by warrant until the time at which he is required by his bond to appear for judgment or until the sitting of a Syariah Court having power to deal with his original offence, or may admit him to bail with a sufficient surety conditioned on his appearing for judgment.

(4) The offender, when so remanded, may be committed to prison and the warrant of remand shall order that he be brought before the Syariah Court before which he was bound to appear for judgment or to answer as to his conduct since his release.

(5) This section shall apply to all offences, whether or not a minimum sentence has been prescribed for any offence, other than offences liable to *hadd* or *qisas*.

Conditions of bond

200. When any person is required under section 198 or 199 by any Syariah Court to execute a bond with any surety, and in such bond, the person executing it binds himself to be of good behaviour, the Syariah Court may require that there be included in such bond one or more of the following conditions —

(a) a condition that such person shall remain under the supervision of some other person named in the bond during such period as may be therein specified;

(b) such conditions for securing such supervision mentioned under paragraph (a) as the Syariah Court may think it desirable to impose;

(c) any condition with respect to residence, employment, associations, abstention from intoxicating liquors or drugs or with respect to any other matter whatsoever as the Syariah Court may think it desirable to impose.

Sentence of Religious Enforcement Officer or police supervision

201. (1) When a person having previously been convicted of an offence punishable with imprisonment for a term of 2 years or upwards is convicted of any other offence also punishable with imprisonment for a term of 2 years or upwards, the Syariah Court may, in addition to any other punishment to which it may sentence him, direct that he be subject to the supervision of the Religious Enforcement Officer or the police for a period of not more than 3 years commencing immediately after the expiration of the sentence passed on him for the last of such offences.

(2) When any person subject to the supervision of the Religious Enforcement Officer or the police is, while still subject to such supervision, sentenced to a term of imprisonment within Brunei Darussalam, any term spent in prison shall be excluded from the period of supervision.

Requirements from persons subject to supervision

202. (1) Every person subject to the supervision of the Religious Enforcement Officer or the police who is at large within Brunei Darussalam shall —

(a) notify the place of his residence to the Religious Enforcement Officer or the officer in charge of the police district in which such place is situated;

(b) whenever he changes his place of residence within Brunei Darussalam, notify such change of residence to the Religious Enforcement Officer or the officer in charge of the police district which he is leaving and to the Religious Enforcement Officer or the officer in charge of the police district into which he goes to reside;

(c) whenever he changes his place of residence to a place outside Brunei Darussalam, notify such change of residence to the Religious Enforcement Officer or the officer in charge of the police district which he is leaving.

(2) Every person who is subject to the supervision of the Religious Enforcement Officer or the police, while within Brunei Darussalam, shall once in each month report himself at such time as is prescribed by the Religious Enforcement Officer or the officer in charge of the police district in which he resides either to such Religious Enforcement Officer or police officer himself or to such other person as that officer directs, and such officer or other person may, on each occasion of such report being made, take or cause to be taken the fingerprints of the person so reporting.

Penalty for non-compliance with section 202

203. If any person subject to the supervision of the Religious Enforcement Officer or the police who is at large within Brunei Darussalam —

(a) remains in any place for 48 hours without notifying the place of his residence within such period to the Religious Enforcement Officer or the officer in charge of the police district;

(b) fails to comply with the requirements of section 202 on the occasion of any change of residence; or

(c) fails to comply with the requirements of section 202 as to reporting himself once in each month,

he shall in every such case, unless he proves to the satisfaction of the Syariah Court before which he is tried that he did his best to act in conformity with the law, be guilty of an offence under this Order, and may be liable on conviction to a

fine not exceeding \$4,000, imprisonment for a term not exceeding one year or both.

Chapter XII

Procedure of repentance

Order to repent and order of acquittal of sentence

204. When the Syariah Court has ordered an offender to repent and the offender is desirous to repent, the Syariah Court shall —

(a) after being satisfied that the offender has fulfilled the conditions and *lafaz* of repentance as provided in the Seventh Schedule, confirm and record his repentance; and

(b) make an order of acquittal of sentence on the offender.

Order of detention for repentance, acquittal and execution of sentence

205. When the Syariah Court has ordered an offender to repent and the offender refuses to repent —

(a) the offender shall be detained in such place as may be determined by the Syariah Court under a warrant of detention issued by the Syariah Court;

(b) the period of detention for repentance shall not exceed 60 days and if the offender refuses to repent within such period, the Syariah Court shall extend the detention for repentance for a period not exceeding one year;

(c) if the offender refuses to repent after the expiration of the extended period under paragraph (b), the Syariah Court shall order the offender to be further detained for such period as the Syariah Court thinks reasonable;

(d) in any period of detention for repentance under paragraph (b) or (c), the offender is desirous to repent, the officer in charge of place of detention shall as soon as possible furnish a report to the Syariah Court and bring the offender before the Syariah Court;

(e) when the Syariah Court receives the report under paragraph (d) and the offender is brought before the Syariah Court, if —

- (i) the offender repents, the Syariah Court shall act according to section 204; or
- (ii) the offender refuses to repent after the expiration of the extended period under paragraph (c), the Syariah Court shall order the sentence to be executed.

Postponement of order of execution of death sentence

206. (1) Notwithstanding section 205(e)(ii), the Syariah Court may, in the case of death sentence, postpone its execution and extend the period or periods of repentance for such period as the Syariah Court thinks reasonable.

(2) In any extended period of repentance under subsection (1), the officer in charge of place of detention shall as soon as possible furnish a report to the Syariah Court whether the offender is desirous to repent or not and bring the offender before the Syariah Court.

(3) When the Syariah Court receives the report under subsection (2) and the offender is brought before it, if —

(a) the offender is desirous to repent, the Syariah Court shall act according to section 204; or

(b) the offender refuses to repent after the expiration of the extended period under subsection (1), the Syariah Court shall order the offender to be further detained for such period as the Syariah Court thinks reasonable.

Repentance while undergoing sentence and order of acquittal

207. (1) If an offender is undergoing a sentence of imprisonment and during such period, the offender is desirous to repent, the officer in charge of prison shall as soon as possible furnish a report and bring the offender before the Syariah Court.

(2) After receiving the report under subsection (1), the Syariah Court shall act according to section 204 and make an order of acquittal of sentence on the offender.

Counselling

208. While undergoing any period of detention for repentance, the Syariah Court shall order the offender to undergo counselling.

Chapter XIII

Previous acquittal or conviction

Person once convicted or acquitted not to be tried again for same offence

209. (1) A person who has been tried by a Syariah Court having jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence nor on the same facts for any other offence for which a different charge from the one made against him might have been made under section 114 or for which he might have been convicted under section 115.

(2) A person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under section 113(1).

(3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened or were not known to the Syariah Court to have happened at the time when he was convicted.

(4) A person acquitted or convicted of any offence constituted by any act may, notwithstanding such acquittal or conviction, be subsequently charged with and tried for any other offence constituted by the same acts which he may have committed, if the Syariah Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) The dismissal of a complaint or the discharge of the accused is not an acquittal for the purposes of this section.

Illustrations

(a) A is tried on a charge of *qatl* and acquitted. There is no charge of *hirabah* but it appears from the facts that A committed *hirabah* at the time when the *qatl* was committed; he may afterwards be charged with and tried for *hirabah*.

(b) B is tried for causing *itlaf-al-udhw* and convicted. The person injured afterwards dies because of such injury. B may be tried again for committing *qatl*.

(c) C is tried on a charge of propagation of religion other than religion of Islam to a Muslim and acquitted but it appears from the facts that C possessed publication contrary to *Hukum Syara'*. C may afterwards be charged with the offence of possessing publication contrary to *Hukum Syara'*.

(d) *D* is tried for omission to assist public servant when bound by law to give assistance and convicted. Afterwards, it appeared that the public servant had demanded such assistance of him. *D* may be tried again for omission to assist public servant after being demanded by such public servant to give him such assistance.

Plea of previous acquittal or conviction

210. (1) The plea of a previous acquittal or conviction may be pleaded either orally or in writing, and may be in the following form or to the following effect —

“The defendant says that by virtue of section 209 of the Syariah Courts Criminal Procedure Code Order, 2018, he is not liable to be tried.”

(2) Such plea may be pleaded together with any other plea, but the issue raised by such plea shall be tried and disposed of before the issues raised by the other pleas are tried.

(3) On the trial of an issue on a plea of a previous acquittal or conviction, the proceedings of the Syariah Court on the former trial on the previous or subsequent charge shall be admissible in evidence to prove or disprove the identity of the charges.

PART VI

APPEAL AND REVISION

Chapter I

Appeals to Syariah High Court

Dissatisfied party may appeal

211. Subject to section 212, an accused person or the prosecutor who is dissatisfied with any judgment, conviction, acquittal, sentence or order pronounced by any Syariah Subordinate Court in a criminal case may make an appeal to the Syariah High Court against such judgment, conviction, acquittal, sentence or order in respect of any error in law or in fact or on the ground of the alleged excessive severity or of the alleged inadequacy of the sentence.

When *ikrar* of guilt limits right of appeal

212. When an accused person has made an *ikrar* of guilt and been convicted of an offence other than an offence punishable with *hadd* or *qisas* by a Syar'ie Judge on such *ikrar*, there shall be no appeal except as to the extent or legality of the sentence.

Leave to appeal

213. In any case not provided for in section 211, an appeal may be made if the Syariah High Courts grants leave to appeal.

Procedure for appeal

214. (1) An appeal or an application for leave to appeal under section 213 shall be made by filing, within 14 days from the time of such judgment, conviction, acquittal, sentence or order being passed or made, a notice of appeal with the Assistant Registrar of such Syariah Subordinate Court addressed to the Syariah High Court and by paying the prescribed fee.

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

(3) Every notice of appeal shall contain an address at which any notice or document connected with the appeal may be served on the appellant or on his Syar'ie Lawyer and shall be signed by the appellant or his Syar'ie Lawyer.

(4) When a notice of appeal has been filed, the Syariah Court appealed from shall make a certified copy of the grounds of decision in the case and cause the same to be served on the appellant or his Syar'ie Lawyer by leaving the copy at the address mentioned in the notice of appeal or by posting it by registered post addressed to the appellant at the address.

(5) Within 14 days of the copy of the grounds of decision has been served as provided in subsection (4), the appellant shall file a petition of appeal with the Assistant Registrar of the Syariah Subordinate Court at which the trial was held addressed to the Syariah High Court.

(6) If the appellant within the period provided in subsection (1) for filing his notice of appeal has applied for a copy of the notes of the evidence recorded by the Syar'ie Judge at his trial, he shall file his petition of appeal as provided in subsection (5) —

(a) within the period provided by such subsection; or

(b) within a period of 14 days from the date when a notice is left at his address for service specified in subsection (3) that a copy of the notes of evidence can be had free of charge,

whichever period shall be the longer.

(7) Every petition of appeal shall state briefly the substance of the judgment appealed against, and shall contain definite particulars of the points of law or fact in respect of which the Court appealed from is alleged to have erred.

(8) (a) If the appellant is in prison, he shall be deemed to have complied with the requirements of this section if he gives to the officer in charge of the prison a notice of appeal either orally or in writing and the particulars required to be included in the petition of appeal within the period prescribed by this section and pays the prescribed fee.

(b) Such officer shall forthwith forward such notice and petition or the purport thereof together with the prescribed fee to the Assistant Registrar of the Syariah Subordinate Court at which the trial was held.

(9) If a petition of appeal is not filed within the period prescribed by this section, the appeal shall be deemed to have been withdrawn and the trial court shall enforce its sentence or order if any stay of execution has been granted, but nothing contained in this subsection shall be deemed to limit or restrict the powers conferred on a Syar'ie Judge by section 217.

(10) No fee shall be payable when the appeal is made by a Syar'ie Prosecutor.

Transmission of appeal record

215. (1) When the appellant has complied with the provisions of section 214, the Syariah Court appealed from shall forthwith transmit to the Syariah High Court, Chief Syar'ie Prosecutor and the Syar'ie Lawyer of the appellant a certified copy of the record of the proceedings and of the grounds of the decision together with a copy of the petition of appeal.

(2) The originals of any document which were put in at the trial shall, together with certified copies and if necessary, translations thereof, be forwarded with the record, and the Syariah Court shall also forward any other exhibits which it considers desirable.

Summary rejection of appeal

216. (1) On receiving the documents mentioned in section 215, the Syariah High Court Judge shall peruse the same, and if he considers that there is no sufficient ground for interfering, he may reject the appeal summarily:

Provided that no appeal shall be rejected summarily except in the case mentioned in subsection (2) unless the appellant has had a reasonable opportunity of being heard either personally or in writing in support of the same.

(2) Where an appeal is brought on the ground that the conviction is against the weight of the evidence or that the sentence is excessive and it appears to the Syariah High Court Judge that the evidence is sufficient to support the conviction and that there is nothing in the circumstances of the case which could raise a reasonable doubt whether the conviction was right or lead him to consider that the sentence ought to be reduced, the appeal may, without being set down for hearing, be summarily rejected by an order certifying that the appeal has been lodged without any sufficient ground of complaint.

(3) If an appeal is dismissed summarily, any appeal fee paid shall be refunded to the appellant.

Appeal specially allowed in certain cases

217. The Syariah High Court Judge may, on the application of any person desirous of appealing who may be debarred from so doing on the ground of his not having observed some formality or requirement of this Order, permit an appeal on any such condition and with any such direction to the Syariah Subordinate Court and to the parties as he may consider desirable, in order that substantial justice may be done in the matter, and may, for such purpose, extend any period of time prescribed by section 214(1) or (5).

Stay of execution pending appeal

218. (1) Subject to the provisions of this Order and except in sentences for offences which impose sentence of whipping, the execution of which shall be stayed pending appeal, no appeal shall operate as a stay of execution, but the Syariah Court passing the sentence or the Syariah High Court may stay execution on any judgment, order, conviction or sentence pending appeal, on such terms as to security for the payment of any money or the performance or non-performance of any act or the suffering of any punishment ordered by or in such judgment, order, conviction or sentence as the Syariah Court passing the sentence or the Syariah High Court thinks reasonable.

(2) Offenders who are sentenced to whipping only shall be remanded in prison pending the determination of the appeal and the provisions in section 184(a), (b) and (c) apply.

Setting down appeals on list

219. (1) If the Syariah High Court Judge does not reject the appeal summarily, the documents mentioned in section 215 shall be forwarded to the Registrar of the Syariah High Court who shall number the appeal and enter it on the list of appeals to be heard and give notice to the parties concerned that the appeal has been so entered.

(2) The Registrar shall, as soon as a date has been fixed, give to the parties notice of the date of hearing of the appeal.

(3) In any case a Syariah High Court Judge may, of his own motion or on the application of a party concerned and with reasonable notice to the parties, accelerate or postpone the hearing of the appeal.

Procedure at hearing

220. (1) At the hearing of the appeal, the appellant shall be first heard in support of the appeal, the respondent shall afterwards be heard against the appeal, and the appellant shall be entitled to reply.

(2) If the appellant does not appear to support his appeal, the Syariah Court may consider the appeal, and may make such decision thereon as it thinks just.

Respondent not present

221. (1) Where, at the hearing of the appeal, the respondent is not present and the Syariah Court is not satisfied that the notice of appeal was duly served on him, the Syariah Court shall not make any order in the matter of the appeal adverse to or to the prejudice of the respondent, but shall adjourn the hearing of the appeal to a future day for his appearance, and shall issue the requisite notice to him for service through the Registrar.

(2) If the service of such last-mentioned notice cannot be effected on the respondent, the Syariah Court shall proceed to hear the appeal in his absence.

Arrest of respondent in certain cases

222. When an appeal is presented against an acquittal, the Syariah High Court Judge may issue a warrant directing that the accused be arrested and brought before it, and may admit him to bail or commit him to prison pending the disposal of the appeal.

Decision on appeal

223. At the hearing of an appeal the Syariah High Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal or may —

(a) in an appeal from an order of acquittal —

- (i) reverse the order and direct that further inquiry be made or that the accused be retried on the same or an amended charge or that the accused be called to enter his defence, as the case may be; or

- (ii) find him guilty of any offence of which the Syariah Subordinate Court might have convicted him and pass sentence on him according to law;
- (b) in an appeal from a conviction or in an appeal as to sentence —
- (i) reverse the finding and sentence and acquit or discharge the accused or order him to be retried; or
 - (ii) alter the finding by maintaining the sentence or, with or without altering the finding, reduce or enhance the sentence or alter the nature of the sentence;
- (c) in an appeal from any other order, vary or reverse such order.

Order to take further evidence

224. (1) In dealing with any appeal, the Syariah High Court may, if it thinks additional evidence to be necessary or any witness should be recalled, either take such evidence itself or direct it to be taken by a Syariah Subordinate Court.

(2) When the additional evidence is taken by the Syariah Subordinate Court, it shall certify such evidence to the Syariah High Court which shall thereupon, as soon as may be, proceed to dispose of the appeal.

(3) Unless the Syariah High Court otherwise directs, the accused or his Syar'ie Lawyer shall be present when the additional evidence is taken.

Judgment

225. (1) When the appeal has been heard, the Syariah High Court shall either immediately or on some other day deliver the judgment of which notice shall be given to the parties.

(2) The judgment shall ordinarily be delivered in open court but in the absence of the appellant or for other just cause, the Syariah Court may deliver judgment by service of a written copy or may direct that the judgment be read out in the Syariah Subordinate Court.

Certificate and consequence of judgment

226. (1) When a case is decided by the Syariah High Court on appeal under this Chapter, it shall certify its judgment or order to the Syariah Subordinate Court by which the finding, sentence or order appealed against was recorded or passed.

(2) When an appeal is not dismissed, such certificate shall state the grounds on which the appeal was allowed or the decision of the Syariah Subordinate Court was varied.

(3) The Syariah Court to which the Syariah High Court certifies its judgment or order shall thereupon make such order as is conformable to the judgment or order of the Syariah High Court and, if necessary, the record shall be amended in accordance therewith.

Death of accused

227. (1) Every appeal other than appeal against acquittal under section 211 shall not abate on the death of the accused.

(2) An appeal under subsection (1) —

(a) which might have been made by the accused if he were alive;

(b) which was made by him when he was alive, any further step which he might have taken in connection with the appeal if he were alive;

may be made or taken, as the case may be, by a person approved by the Syariah High Court.

(3) The Syariah High Court may give an approval to appeal to —

(a) heirs of the deceased;

(b) a personal representative of the deceased;

(c) any person appearing to the Syariah High Court to have a family or similar relationship with the deceased; or

(d) any person appearing to have a substantial financial or other interest in the determination of a relevant appeal relating to him.

(4) An application for an approval under subsection (3) shall be made within 30 days from the date of death of the deceased.

Grounds for reversal of judgment of Syariah Subordinate Court

228. No judgment or order of a Syariah Subordinate Court shall be reversed or set aside unless it is shown to the satisfaction of the Syariah High Court that such judgment or order was either wrong in law or against the weight of evidence or, in the case of a sentence, inappropriate in the circumstances of the case.

Costs

229. (1) In all proceedings under this Chapter and Chapter III of this Part, the Syariah High Court or Syariah Appeal Court, as the case may be, shall have power to award such costs or expenses as the Syariah Court thinks fit, to be paid by or to the parties thereto.

(2) Costs awarded to be paid by the Syar'ie Prosecutor shall be payable by the Government and the Syar'ie Prosecutor shall not be personally liable therefor.

(3) Costs awarded to be paid to the Syar'ie Prosecutor shall be paid by the party ordered to pay the same to the Government.

Chapter II

Appeals to Syariah Appeal Court

Jurisdiction of Syariah Appeal Court

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

(2) An appeal can be made on a question of fact or a question of law or both.

When *ikrar* of guilt limits right of appeal

231. When an accused person has made an *ikrar* of guilt and been convicted of an offence other than an offence punishable with *hadd* or *qisas* by a Syariah High Court Judge on such *ikrar*, there shall be no appeal except as to the extent or legality of the sentence.

Appeal by Chief Syar'ie Prosecutor against acquittal

232. The Chief Syar'ie Prosecutor may appeal to the Syariah Appeal Court against any acquittal of any person by the Syariah High Court in the exercise of its original criminal jurisdiction.

On appeal against acquittal, accused may be arrested

233. When an appeal is presented against an acquittal, the Syariah Appeal Court may issue a warrant directing that the accused be arrested and brought before it, and may remand him in prison or admit him to bail pending the disposal of the appeal.

Appeal against sentence

234. (1) A person convicted of any offence after trial in the Syariah High Court may appeal to the Syariah Appeal Court against any sentence (not being a sentence fixed by law) passed on him for the offence.

(2) The Chief Syar'ie Prosecutor may appeal to the Syariah Appeal Court against any sentence passed on any person by the Syariah High Court (not being a sentence fixed by law) in the exercise of its original criminal jurisdiction.

(3) This section shall also provide rights of appeal against sentence when a person is dealt with by the Syariah High Court (otherwise than on appeal from a Syariah Subordinate Court Judge) for an offence of which he was not convicted by the Syariah High Court.

(4) An appeal against sentence lies under this section if an offender is committed for sentence by a Syariah Subordinate Court Judge under this Order or any other written law.

Notice of appeal

235. (1) An appellant who wishes to appeal to the Syariah Appeal Court shall give notice of appeal in such manner as provided by rules and orders made under section 271.

(2) Every appeal shall be by notice in writing and shall be filed with the Registrar of the Syariah High Court by paying the prescribed fee within 30 days from the date of the conviction, acquittal, verdict or finding appealed against or, in the case of an appeal against sentence, from the date on which the sentence was passed or, in the case of an order made or treated as made on conviction, from the date of the making of the order.

(3) If sentence was passed more than 7 days after the date of the conviction, verdict or finding, notice of appeal against the conviction, verdict or finding may be filed within 30 days from the date on which the sentence was passed.

(4) The period for filing a notice under this section may be extended on application by the appellant with leave from the Syariah Appeal Court.

(5) Every notice of appeal shall state briefly the substance of the judgment appealed against and shall contain an address at which any notice or document connected with the appeal may be served on the appellant or his representative and shall be signed by the appellant except where the notice of appeal is given orally under section 238.

(6) Notice of any appeal by the Chief Syar'ie Prosecutor shall be given by, or with the sanction in writing of, the officer himself.

(7) No fee shall be payable when the appeal is made by the Chief Syar'ie Prosecutor.

Record of proceedings

236. (1) When a notice of appeal is filed, the Syariah High Court Judge who gave the decision shall, if he has not written his judgment, record the grounds of his decision and the written judgment or the grounds of the decision shall be part of the record of proceedings.

(2) The Registrar of the Syariah High Court shall forthwith cause to be transmitted to the appellant a copy of the record of the proceedings.

Petition of appeal

237. (1) Within 21 days after the date of service of the record mentioned in section 236(2), the appellant shall file with the Registrar of the Syariah High Court a petition of appeal addressed to the Syariah Appeal Court.

(2) Every petition of appeal shall be signed by the appellant and shall contain particulars of the matters of law or fact in respect of which the trial court is alleged to have erred and, except by leave of the Syariah Appeal Court, the appellant shall not at the hearing of the appeal rely on any ground of appeal other than those specified in the petition.

(3) If a petition is not filed within the time prescribed by this section, the appeal shall be deemed to have been withdrawn, but nothing in this subsection shall be deemed to limit or restrict the powers conferred on the Syariah Appeal Court by section 240.

Procedure where appellant in prison

238. (1) If the appellant is in prison, he shall be deemed to have complied with the requirements of sections 235 and 237 if he gives to the officer in charge of the prison a notice of appeal either orally or in writing and the particulars required to be included in the petition of appeal within the time prescribed by such sections and pays the prescribed fee.

(2) Such officer shall forthwith forward the notice and petition or the purport thereof together with the prescribed fee to the Registrar of the Syariah High Court.

Transmission of appeal record

239. (1) When the appellant has complied with the provisions of sections 235 and 237, the Registrar of the Syariah High Court shall forthwith transmit to the Syariah Appeal Court, Chief Syar'ie Prosecutor and the Syar'ie Lawyer of the appellant a certified copy of the record of the proceedings and of the grounds of the decision of the case, together with a copy of the petition of appeal.

(2) The originals of any document which were put in at the trial shall, together with certified copies and, if necessary, translations thereof be forwarded with the record, and the Syariah High Court shall also forward any other exhibits which it considers desirable.

Appeal specially allowed in certain cases

240. The Syariah Appeal Court may, on the application of any person desirous of appealing who may be debarred from so doing on the ground of his not having observed some formality or requirement of this Order, permit an appeal on any such condition and with any such direction to the Syariah High Court and to the parties as it may consider desirable, in order that substantial justice may be done in the matter, and may, for such purpose, extend the period of time prescribed in section 235 or 237.

Groundless appeals

241. (1) Except in appeals in respect of cases punishable with *hadd*, *qisas* or *diyat*, if it appears to the Chief Registrar of the Syariah Appeal Court that a notice of an appeal does not show any substantial ground of appeal, he may refer the appeal to the Syariah Appeal Court for summary determination.

(2) If a case is referred to it under subsection (1), the Syariah Appeal Court may, if it considers that the appeal is frivolous or vexatious and can be determined without any full hearing, dismiss the appeal summarily without calling on anyone to attend the hearing.

Preparation of case

242. (1) The Chief Registrar of the Syariah Appeal Court shall —

(a) take all necessary steps for obtaining a hearing of any appeal of which notice is given to him and which is not dismissed summarily under section 241; and

(b) obtain and lay before the Syariah Appeal Court in proper form all documents, exhibits and other things which appear necessary for the determination of the appeal.

(2) Rules and orders made under section 271 may enable an appellant to obtain from the Chief Registrar of the Syariah Appeal Court any document or things, including copies or reproductions of documents, required for his appeal.

Setting down appeals on list

243. (1) On receipt of the documents mentioned under section 239, the Chief Registrar of the Syariah Appeal Court shall number the appeal and enter it on the list of appeals to be heard and give notice to the parties concerned that the appeal has been so entered.

(2) If the Syariah Appeal Court does not reject the appeal summarily, the documents mentioned in section 239 shall be forwarded to the Chief Registrar of the Syariah Appeal Court who shall number the appeal and enter it on the list of appeals to be heard and give notice to the parties concerned that the appeal has been so entered.

(3) The Chief Registrar of the Syariah Appeal Court shall cause notice of the time and place for the hearing of the appeal to be given to the parties thereto.

(4) In any case the Syariah Appeal Court may, of its own motion or on the application of a party concerned and with reasonable notice to the parties, accelerate or postpone the hearing of the appeal.

Appellant may be present

244. (1) Except as provided by this section, in the case of appeal made by the accused, an appellant shall be entitled to be present, if he wishes it, on the hearing of his appeal, although he may be in custody.

(2) A person in custody shall not be entitled to be present —

(a) on any proceedings preliminary or incidental to an appeal; or

(b) where he is in custody in consequence of a verdict of not guilty by reason of insanity or of a finding of disability,

unless the Syariah Appeal Court gives him leave to be present.

(3) The power of the Syariah Appeal Court to pass sentence on a person may be exercised although he is for any reason not present.

Respondent not present

245. Where, at the hearing of the appeal, the respondent is not present and the Syariah Appeal Court is not satisfied that the notice of appeal was duly served on him, the Syariah Appeal Court shall not make any order in the matter of the

appeal adverse to or to the prejudice of the respondent, but shall adjourn the hearing of the appeal to a future day for his appearance, and shall issue the requisite notice to him for service.

Powers of Syariah Appeal Court

246. (1) At the hearing of an appeal, the Syariah Appeal Court shall hear the appellant, if he appears, and if it thinks necessary hear the respondent in reply.

(2) Without prejudice to the provisions of this Order, the Syariah Appeal Court may –

(a) dismiss the appeal;

(b) either confirm, reverse or vary the decision of the trial court;

(c) order a retrial;

(d) remit the matter with the opinion of the Syariah Appeal Court thereon to the trial court; or

(e) make such other order in the matter as to it may seem just, and may by that order exercise any power which the trial court could have exercised.

Additional evidence

247. (1) In dealing with any appeal, the Syariah Appeal Court may, if it thinks additional evidence to be necessary or any witness should be recalled, either take such evidence itself or direct it to be taken by the trial court.

(2) When the additional evidence is taken by the trial court, it shall certify the evidence to the Syariah Appeal Court, and the Syariah Appeal Court shall thereupon proceed to dispose of the appeal.

(3) Unless the Syariah Appeal Court otherwise directs, the accused or his Syarie Lawyer shall be present when the additional evidence is taken.

(4) In dealing with any appeal, the Syariah Appeal Court may also, if it thinks necessary, call for and receive from the trial court a report of any matter connected with the trial.

Judgment

248. (1) When an appeal has been heard, the Syariah Appeal Court shall, either immediately or on some other day of which notice shall subsequently be given to the parties, deliver its judgment in open court.

(2) The Syariah Appeal Court shall ordinarily give only one judgment which may be delivered by the chairman or by such other member of the Syariah Appeal Court as the chairman may direct:

Provided that separate judgments may be delivered if the chairman so determines.

(3) The judgment of any member of the Syariah Appeal Court who is absent may be read by any other member.

Judgment of appeal for offences punishable with death and certain other offences

249. (1) Notwithstanding any provision in any other written law, for the purposes of an appeal in respect of offences of *qatlul-'amd*, *hirabah*, *zina*, *zina-bil-jabar*, *liwat* or *irtidad* punishable with death and of other offences as the Chief Syar'ie Judge may prescribe, the Syariah Appeal Court shall consist of five members to form a panel of Judges as follows —

(a) the Chief Syar'ie Judge as the chairman; and

(b) at least —

(i) two Syariah Appeal Court Judges; and

(ii) one Muslim who is —

(A) a Judge of the Supreme Court;

(B) a retired Judge of the Supreme Court; or

(C) a suitable and qualified person to be appointed as a Judge of the Supreme Court.

(2) An appeal under subsection (1) shall be determined in accordance with a unanimous decision of the members of the Syariah Appeal Court.

(3) When a unanimous decision as to the guilt of the accused fails to be reached, the accused shall not be sentenced for that offence but may, if a majority of the members of the Syariah Appeal Court agree, be sentenced for any other offence and the Syariah Appeal Court shall pass such sentence if there is sufficient evidence for that purpose.

Grounds for allowing appeal

250. (1) Except as provided by the provisions of this Order, the Syariah Appeal Court shall allow an appeal against conviction or acquittal if it thinks that —

(a) the conviction or the acquittal should be set aside on the ground that it is unsafe or unsatisfactory;

(b) the conviction or the acquittal should be set aside on the ground of a wrong decision on any question of law; or

(c) there was a material irregularity in the course of the trial,

and in any other case shall dismiss the appeal.

(2) The Syariah Appeal Court may dismiss the appeal if it considers that no miscarriage of justice has actually occurred.

(3) The Syariah Appeal Court shall, if it allows the appeal, quash the conviction or acquittal.

(4) Except if a trial is ordered to be retried according to section 254, an order of the Syariah Appeal Court quashing —

(a) a conviction shall operate as a direction to the trial court to enter a judgment and verdict of acquittal instead of the record of conviction; or

(b) an acquittal shall operate as a direction to the trial court to enter a judgment and verdict of conviction instead of the record of acquittal.

Supplementary provisions as to appeal against sentence

251. (1) Where the Syariah High Court has passed on an appellant two or more sentences in the same proceedings, an appeal against any one of those sentences shall be treated as an appeal in respect of both or all of them.

(2) On an appeal against sentence, the Syariah Appeal Court, if it considers that the appellant or respondent should be sentenced differently for an offence for which he was dealt with by the Syariah High Court, may —

(a) quash any sentence or order which is the subject of the appeal; and

(b) in place of it pass such sentence or make such order as it thinks appropriate for the case (whether more or less severe) and as the Syariah High Court had power to pass or make when dealing with the appellant or respondent for the offence.

Where appeal allowed

252. (1) This section applies where, on an appeal against conviction or acquittal after trial in the Syariah High Court on two or more charges, the Syariah Appeal Court allows the appeal in respect of one or some of the charges only.

(2) The Syariah Appeal Court may in respect of any charge on which the appellant or respondent remains convicted pass such sentence, in substitution for any sentence passed thereon at the trial, as it thinks proper and is authorised by law for the offence of which he remains convicted on that charge (whether the sentence so substituted is more or less severe).

Alternative offence

253. (1) This section applies on an appeal against conviction, where the appellant has been convicted of an offence and the Syar'ie Judge could have found him guilty of some other offence, and on the finding of the Syar'ie Judge it appears to the Syariah Appeal Court that the Syar'ie Judge must have been satisfied of facts which proved the appellant guilty of the other offence.

(2) The Syariah Appeal Court may, instead of allowing or dismissing the appeal, substitute for the verdict found by the Syar'ie Judge a verdict of guilty of the other offence, and pass such sentence in substitution for the sentence passed at the trial as may be authorised by law for the other offence.

Retrial

254. (1) Where the Syariah Appeal Court allows an appeal against conviction or acquittal and it appears to the Syariah Appeal Court that the interests of justice so require, it may order the appellant or respondent to be retried.

(2) The appellant or respondent shall not under this section be ordered to be retried for any offence other than —

(a) the offence of which he was convicted or acquitted at the original trial and in respect of which his appeal is allowed as mentioned in subsection (1);

(b) an offence of which he could have been convicted at the original trial on a charge for the first-mentioned offence;

(c) an offence charged in an alternative count in respect of which the Syar'ie Judge did not give a verdict in consequence of convicting him of the first-mentioned offence; and

(d) any other offence which may have been disclosed by evidence adduced at the original trial.

Supplementary provisions as to retrial

255. (1) A person who is to be retried for an offence in pursuance of an order under section 254 shall be tried on a fresh charge preferred by the Chief Syar'ie Prosecutor before the Syariah High Court.

(2) The Syariah Appeal Court may, on ordering a retrial, make such orders as appear to it to be necessary or expedient —

(a) for the detention in custody or admission to bail of the person ordered to be retried pending his retrial; or

(b) for the retention pending retrial of any property or money forfeited, restored or howsoever paid by virtue of the original conviction or acquittal or any order made on that conviction or acquittal.

(3) If the person ordered to be retried was, immediately before the determination of his appeal, liable to be detained in pursuance of an order made under Chapter II of Part VII —

(a) that order shall continue in force pending the retrial as if the appeal had not been allowed; and

(b) any order made by the Syariah Appeal Court under this section for his detention in custody or admission to bail shall have effect subject to the order.

Special finding

256. (1) This section applies on an appeal against conviction or acquittal in which the Syariah High Court Judge has made a special finding.

(2) If the Syariah Appeal Court considers that a wrong conclusion has been arrived at by the Syariah High Court Judge, it may, instead of allowing the appeal, order such conclusion to be recorded as appears to it to be required in law, and pass such sentence in substitution for the sentence passed at the trial as may be authorised by law.

Finding of insanity or disability

257. (1) Where, on an appeal against conviction or acquittal, the Syariah Appeal Court is of opinion that —

(a) the proper verdict would have been one of not guilty by reason of insanity; or

(b) the case is not one where there should have been a verdict of acquittal, but that there should have been a finding that the appellant or respondent was under disability,

the Syariah Appeal Court shall make an order that the appellant or respondent be admitted to prison or other suitable place of safe custody as the Syariah Appeal Court may direct.

(2) On making an order under this section, the Syariah Appeal Court may give such directions as it thinks fit for the detention of the appellant or respondent pending his admission to prison or other suitable place of safe custody.

Appeal against finding of insanity

258. A person in whose case there is returned a finding of not guilty by reason of insanity may appeal to the Syariah Appeal Court against the finding.

Appeal under section 258

259. (1) Subject to the provisions of this section, the Syariah Appeal Court shall allow an appeal under section 258 if it is of opinion that —

(a) the verdict should be set aside on the ground that it is unsafe or unsatisfactory;

(b) the order of the Syariah Court giving effect to the verdict should be set aside on the ground of a wrong decision of any question of law; or

(c) there was a material irregularity in the course of the trial,

and in any other case shall dismiss the appeal.

(2) Notwithstanding subsection (1), the Syariah Appeal Court may dismiss an appeal under section 258 if it is of opinion that no miscarriage of justice has actually occurred.

(3) Where apart from this subsection —

(a) an appeal under section 258 would be allowed; and

(b) none of the grounds for allowing it relates to the question of the insanity of the appellant,

the Syariah Appeal Court may dismiss the appeal if it is of opinion that, but for the insanity of the appellant, the proper verdict would have been that he was guilty of an offence other than the offence charged.

(4) Where an appeal under section 258 is allowed, the following provisions apply —

(a) if the ground, or one of the grounds, for allowing the appeal is that the finding as to the insanity of the appellant ought not to stand and the Syariah Appeal Court is of opinion that the proper verdict would have been that he was guilty of an offence (whether the offence charged or any

other offence of which the Syar'ie Judge could have found him guilty), the Syariah Appeal Court shall –

- (i) substitute for the verdict of not guilty by reason of insanity a verdict of guilty of that offence; and
- (ii) have the like powers of punishing or otherwise dealing with the appellant, and other powers, as the trial court would have had if the Syar'ie Judge had come to the substituted verdict; and

(b) in any other case, the Syariah Appeal Court shall substitute for the verdict of not guilty by reason of insanity a verdict of acquittal.

Order on disposal of appeal under section 258

260. (1) Where, on an appeal under section 258, the Syariah Appeal Court is of opinion that the case is not one where there should have been a verdict of acquittal but that there should have been a finding that the accused person was under disability, the Syariah Appeal Court shall make an order that the appellant be admitted to prison or other suitable place of safe custody as the Syariah Appeal Court may direct.

(2) Where in accordance with section 259(4)(b) the Syariah Appeal Court substitutes a verdict of acquittal and it is of opinion that –

(a) the appellant is suffering from mental disorder of a nature or degree which warrants his detention in a suitable place of safe custody (with or without medical treatment); and

(b) he ought to be so detained in the interests of his own health or safety or with a view to the protection of other persons,

the Syariah Appeal Court shall make an order that the appellant be admitted to such prison or other suitable place of safe custody as may be specified.

(3) On making an order under this section, the Syariah Appeal Court may give such directions as it thinks fit for his detention pending his admission to prison or other suitable place of safe custody.

Right of appeal if person found incapable of making defence

261. Where there has been a finding by a Syariah High Court Judge under Chapter II of Part VII of the question of a person's fitness to make his defence, the person or Chief Syar'ie Prosecutor may appeal to the Syariah Appeal Court against that finding.

Disposal of appeal under section 261

262. (1) The Syariah Appeal Court shall allow an appeal under section 261 if it is of opinion that —

(a) the finding should be set aside on the ground that it is unsafe or unsatisfactory;

(b) the order giving effect to the finding should be set aside on the ground of a wrong decision on any question of law; or

(c) there was a material irregularity in the course of the determination of the question of fitness to be tried,

and in any other case (except one to which subsection (3) applies) shall dismiss the appeal.

(2) Notwithstanding subsection (1), the Syariah Appeal Court may dismiss the appeal if of opinion that no miscarriage of justice has actually occurred.

(3) An appeal under section 261 may, where the question of fitness to be tried was determined later than on the accused being charged, be allowed by the Syariah Appeal Court (notwithstanding that the finding was properly come to) if before the question of fitness to be tried was considered, the Syariah Appeal Court is of opinion that the case is one in which —

(a) the accused person should have been acquitted; or

(b) in the case of an appeal by the Chief Syar'ie Prosecutor, the respondent should not have been acquitted,

and, if an appeal is allowed under this subsection, the Syariah Appeal Court shall quash the finding and direct —

(i) in relation to paragraph (a), a verdict of acquittal to be recorded (but not a verdict of not guilty by reason of insanity);

(ii) in relation to paragraph (b), that a new trial be ordered.

(4) Subject to subsection (3), where an appeal under section 261 is allowed, the appellant or respondent may be tried for the offence with which he was charged, and the Syariah Appeal Court may make such orders as appear to it to be necessary or expedient pending any such trial for his detention in custody or admission to bail.

Effect of appeal on sentence

263. (1) The term during which an appellant or respondent is in custody pending the determination of his appeal shall, subject to any direction which the Syariah Appeal Court may give to the contrary, be reckoned as part of the term of any sentence of imprisonment which the Syariah Appeal Court may impose.

(2) Where the Syariah Appeal Court gives a contrary direction under subsection (1), it shall state its reasons for doing so.

(3) In the case of an appeal made by the accused, where an appellant is admitted to bail, the time during which he is at large after being admitted to bail shall be disregarded in computing the term of any sentence to which he is for the time being subject.

(4) The term of any sentence passed by the Syariah Appeal Court shall, unless the Syariah Appeal Court otherwise directs, begin to run from the time when it would have begun to run if passed in the proceedings from which the appeal lies.

Appeal not to be allowed on certain grounds

264. Except where, in the opinion of the Syariah Appeal Court, a miscarriage of justice has actually occurred, no appeal shall be allowed because of any —

(a) defect which, if pointed out during the progress of the trial, might have been amended by the trial court; or

(b) informality in the taking of *yamin* of a witness.

Stay of execution pending appeal

265. (1) Subject to the provisions of this Order and except in the cases mentioned in subsection (2) and section 233, no appeal shall operate as a stay of execution but the trial court or Syariah Appeal Court may stay execution on any judgment, order, conviction or sentence pending appeal, on any such terms as to security for the payment of any money or the performance or non-performance of any act or the suffering of any punishment ordered by or in the judgment, order, conviction or sentence as the Syariah Court thinks reasonable.

(2) In the case of a conviction involving sentences of death, stoning, whipping, amputation of hand or foot or *qisas* in hurt —

(a) the sentence shall not in any case be executed until after the expiration of the time within which notice of appeal may be given under section 235, or any extension of time under section 240;

(b) if such notice has been filed, the sentence shall not be executed until after the determination of the appeal; and

(c) the offender shall be remanded in prison pending the determination of the appeal and the provisions in section 184(a), (b) and (c) apply.

Bail

266. Subject to section 265(2), the Syariah Appeal Court may, if it thinks fit on the application of an accused person, admit him to bail pending the determination of his appeal.

Restitution

267. (1) The operation of an order for the restitution of property to a person made on a conviction or acquittal by the Syariah High Court shall, unless the trial court directs to the contrary in any case in which, in its opinion, the title to the property is not in dispute, be suspended —

(a) in any case, until the expiration of 30 days from the date of conviction or acquittal; and

(b) where notice of appeal is given within 30 days from the date of conviction or acquittal, until the determination of the appeal.

(2) In cases where the operation of such an order is suspended until the determination of the appeal, the order shall not take effect as to the property in question if the conviction or acquittal is quashed on appeal.

(3) Provision may be made by rules and orders made under section 271 for securing the safe custody of any property, pending the suspension of the operation of any such order.

(4) The Syariah Appeal Court may by order annul or vary any order made by the trial court for the restitution of property to any person, although the conviction is not quashed; and the order, if annulled, shall not take effect and, if varied, shall take effect as so varied.

Judgment to be certified to trial court

268. (1) When a criminal case is decided on appeal, the Syariah Appeal Court shall certify its judgment or order to the trial court.

(2) The trial court shall thereupon make such orders as are conformable to the judgment or order of the Syariah Appeal Court and, if necessary, the record shall be amended in accordance therewith.

(3) On the withdrawal or discontinuance of any appeal, the Chief Registrar of the Syariah Appeal Court shall notify the trial court accordingly, and if any stay of execution has been granted, the sentence or order of the trial court shall forthwith be enforced, but nothing in this subsection shall be deemed to limit or restrict the powers of extending time conferred on the Syariah Appeal Court by section 240.

Death of accused

269. (1) Every appeal other than appeal against acquittal under section 232 shall not abate on the death of the accused.

(2) An appeal under subsection (1) —

(a) which might have been made by the accused if he were alive;

(b) which was made by him when he was alive, any further step which he might have taken in connection with the appeal if he were alive,

may be made or taken, as the case may be, by a person approved by the Syariah Appeal Court.

(3) The Syariah Appeal Court may give an approval to appeal to

(a) heirs of the deceased;

(b) a personal representative of the deceased;

(c) any person appearing to the Syariah Appeal Court to have a family or similar relationship with the deceased; or

(d) any person appearing to have a substantial financial or other interest in the determination of a relevant appeal relating to him.

(4) An application for an approval under subsection (3) shall be made within 30 days from the date of death of the deceased.

Reference to Syariah Appeal Court on appeal from Syariah Subordinate Court on grounds of public interest

270. (1) When an appeal from a decision of a Syariah Subordinate Court in a criminal matter has been decided by the Syariah High Court, the Syariah Appeal Court may, on the application of any party to the appeal, grant leave for the decision by itself of any question of law of public interest which has arisen and the determination of which by the Syariah High Court has affected the outcome of the appeal.

(2) An application for leave under this section shall be made within 30 days, or such longer time as the Syariah Appeal Court may permit, of the decision of the appeal to which it relates and, in the case of an application by the Chief Syar'ie Prosecutor, shall be made by or with the consent in writing of that officer only.

(3) When leave has been granted by the Syariah Appeal Court under this section, the Syariah High Court may make such orders as it may see fit for the arrest, custody or release on bail of any party to the appeal and the Registrar of the Syariah High Court shall forward the record of the proceedings in the Syariah High Court to the Chief Registrar of the Syariah Appeal Court who shall thereupon appoint and notify to the parties to the appeal the time and place for the hearing of the matter.

(4) When leave has been granted by the Syariah Appeal Court, it shall hear and decide the question allowed to be referred for its decision and make such orders as the Syariah High Court might have made as it may consider just for the disposal of the appeal.

(5) For the purpose of this section but without prejudice to the generality of its provisions —

(a) any question of law regarding which there is a conflict of judicial authority shall be deemed to be a question of public interest; and

(b) the exercise by the Syariah High Court of any power of revision under this Order shall be deemed to be an appeal from a decision of a Syariah Subordinate Court.

Rules and orders

271. (1) The Chief Syar'ie Judge may make rules and orders governing the practice and procedure to be followed under this Chapter.

(2) Such rules and orders may provide for —

(a) regulating and prescribing forms to be used in the Syariah Appeal Court;

(b) the times within which documents must be filed or notice given;

(c) the duties of the officers of the Syariah Appeal Court;

(d) the manner in which cases and arguments are to be presented; and

(e) generally for the better carrying out of the provisions of this Order in relation to criminal matters in the Syariah Appeal Court.

Chapter III

Reference and revision

Reservation of points of law

272. (1) Any Syariah Subordinate Court may, if it thinks fit, at the conclusion of the proceedings or at any time within 7 days from the time of the judgment, acquittal, sentence or order passed or made therein, reserve for the consideration of the Syariah High Court any questions of law arising in such proceedings, setting out briefly the facts on which the law is to be applied and the questions of law to be determined thereon.

(2) Every question of law so reserved shall be submitted to the Syariah Court in the shape of a special case in the form set out in the Second Schedule.

(3) Every such special case shall be drawn up by the Syariah Subordinate Court Judge before which the proceedings are held and shall —

(a) set out briefly the facts which are considered by the Syariah Subordinate Court Judge to be proved;

(b) state the question of law which has been reserved for the opinion of the Syariah Court;

(c) be sent by the Syariah Subordinate Court Judge to the Registrar of the Syariah High Court; and

(d) be set down for argument in such manner as the Syariah High Court directs.

Determination and power thereon

273. (1) The Syariah High Court shall hear and determine the question of law arising on such special case and shall thereupon affirm, amend or reverse the determination in respect of which the special case has been stated or remit the matter to the Syariah Subordinate Court Judge with the opinion of the Syariah High Court thereon or may make such order in relation to the matter as the Syariah High Court seems just.

(2) The Syariah Subordinate Court Judge who states and delivers a special case in pursuance of this Order shall not be liable to any costs in respect thereto.

Power to call for records of Syariah Subordinate Courts

274. A Syariah High Court Judge may call for and examine the record of any proceedings of any Syariah Subordinate Court for the purpose of satisfying

himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of such Syariah Subordinate Court.

Power to order further inquiry

275. On examining any record under section 274 or otherwise, the revising Syariah High Court Judge may direct the Syariah Subordinate Court Judge to make, and the Syariah Subordinate Court Judge shall make, further inquiry into any complaint which has been dismissed under section 96, or into the case of any accused person who has been discharged.

Powers on revision

276. (1) A revising Syariah High Court Judge may, in any case the record of the proceedings of which has been called for by himself, or which otherwise comes to his knowledge, in his discretion, exercise any of the powers conferred by sections 218, 222, 223, 224 and 229 or may make such order as the Syariah High Court may deem fit.

(2) No order under this section shall be made to the prejudice of the accused unless he has had an opportunity of being heard, either personally or by his Syar'ie Lawyer in his own defence.

(3) Nothing in this section shall be deemed to authorise the Syariah High Court to convert a finding of acquittal into one of conviction except in offences of causing hurt punishable with *qisas* or *arsy muqaddar*.

Permission for parties to appear

277. Except in offences of causing hurt punishable with *qisas* or *arsy muqaddar*, no party has any right to be heard before the Syariah High Court when exercising its powers of revision:

Provided that such Court may, if it thinks fit, when exercising such powers hear any party and that nothing in this section shall be deemed to affect section 276(2).

Order on revision

278. When a case is revised under this Chapter by the Syariah High Court Judge, he shall certify his decision or order to the Syariah Court that recorded or passed the finding, sentence, punishment or order stating, where such finding, sentence or order has been varied, the grounds for such variation; and the Syariah Court to which the decision or order is so certified shall thereupon make such order as are conformable to the decision so certified and, if necessary, the record shall be amended in accordance therewith.

Chapter IV

Reference

Interpretation of this Chapter

279. In this Chapter, unless the context otherwise requires, “reference” means a reference of a point of law to the Syariah Appeal Court under this Chapter.

Reference to Syariah Appeal Court

280. (1) If a person (in this Chapter referred to as the respondent) has been acquitted of any charge in a trial before the Syariah High Court in the exercise of its original criminal jurisdiction, the Chief Syari'e Prosecutor may, if he desires the opinion of the Syariah Appeal Court on a point of law which has arisen in the case, refer the point to the Syariah Appeal Court which shall, in accordance with this Chapter, consider the point and give its opinion on it.

(2) A reference shall —

(a) be in writing signed by the Chief Syari'e Prosecutor;

(b) specify the point of law referred and, where appropriate, such facts of the case as are necessary for the proper consideration of the point of law;

(c) summarise the arguments intended to be put to the Syariah Court;

(d) specify the authorities intended to be cited;

(e) be entitled “Reference under the Syariah Courts Criminal Procedure Code Order, 2018” together with the year and number of the reference; and

(f) be filed with the Registrar of the Syariah High Court within 21 days, or on the application of the Chief Syari'e Prosecutor, within such further time as the Syariah Appeal Court may allow, after the date on which the respondent was acquitted.

(3) No mention shall be made in the reference of the proper name of any person or place which is likely to lead to the identification of the respondent.

Notice of reference to be served on respondent

281. (1) The Registrar of the Syariah High Court shall cause to be served on the respondent notice of the reference which shall also —

(a) inform the respondent that the reference will not affect the trial in relation to which it is made or any acquittal in that trial;

(b) invite the respondent, within such period as may be specified in the notice (being not less than 28 days from the date of service of the notice), to inform the Registrar of the Syariah High Court if he wishes to present any argument to the Syariah Appeal Court and, if so, whether he wishes to present such argument in person or by his Syari'e Lawyer.

(2) The Syariah Appeal Court shall not hear argument by the Chief Syari'e Prosecutor until the period specified in the notice has expired, unless the respondent agrees or has indicated that he does not wish to present any argument to the Syariah Court.

Withdrawal or amendment of reference

282. (1) The Chief Syari'e Prosecutor may withdraw or amend the reference at any time before the Syariah Appeal Court has begun the hearing. After that, the Chief Syari'e Prosecutor may withdraw or amend the reference by leave of the Syariah Appeal Court.

(2) The Chief Syari'e Prosecutor shall cause notice of such withdrawal or amendment to be served on the respondent.

Hearing

283. For the purposes of its consideration of a point referred to it under this Chapter, the Syariah Appeal Court shall hear argument —

(a) by the Chief Syari'e Prosecutor;

(b) if the respondent desires to present any argument, by his Syari'e Lawyer or the respondent himself; and

(c) if the Syariah Court so directs, by a Syari'e Lawyer appointed as *amicus curiae* by the Registrar.

Costs

284. Where, on a point being referred to the Syariah Appeal Court under this Chapter, the respondent appears by a Syari'e Lawyer for the purpose of presenting any argument to the Syariah Court, he shall be entitled to his costs of such sums as are reasonably sufficient to compensate him for any expenses properly incurred by him for the purpose of being represented on the reference; and any amount recoverable under this section shall be ascertained as soon as practicable by the Registrar.

Reference not to affect trial

285. A reference shall not affect the trial in relation to which the reference is made or any acquittal in that trial.

Reservation by Syariah High Court Judge

286. (1) A Syariah High Court Judge may reserve for the consideration of the Syariah Appeal Court any question of law which may arise on the trial of any charge.

(2) In exercising his power under subsection (1), the Syariah High Court Judge may act either of his own motion or on the application of the Chief Syari'e Prosecutor or defence.

(3) A Syariah High Court Judge may, if he reserves a question of law under subsection (1) and the accused person has been convicted —

(a) postpone judgment until the question has been considered and decided; and

(b) commit the person convicted to prison or admit him to bail, with or without one or more sufficient sureties, and in such sum as he may think fit, conditioned to appear at such time or times as the Syariah High Court Judge may direct and receive judgment.

(4) On consideration of a question reserved under subsection (1), the Syariah Appeal Court may —

(a) affirm or quash the conviction or order a new trial; and

(b) make such other orders as may be necessary to give effect to its decision.

(5) The Syariah Appeal Court may affirm the conviction if it considers that no miscarriage of justice has actually occurred.

Powers of His Majesty the Sultan and Yang Di-Pertuan

287. (1) Where a person has been convicted by any Syariah Court of an offence other than an offence punishable with *hadd* or *qisas* or has been found not guilty by reason of insanity, or has been found to be under disability, His Majesty the Sultan and Yang Di-Pertuan or by a person authorised by His Majesty the Sultan and Yang Di-Pertuan may, at any time either —

(a) refer to the Syariah Appeal Court the whole case, which shall then be treated for all purposes as an appeal to the Syariah Appeal Court by the person; or

(b) refer to the Syariah Appeal Court for its opinion any point arising in the case, and the Syariah Appeal Court shall consider the point so referred and furnish His Majesty the Sultan and Yang Di-Pertuan with its opinion thereon.

(2) A reference by His Majesty the Sultan and Yang Di-Pertuan under this section may be made by His Majesty either on an application by the person referred to in subsection (1), or without any such application.

Chapter V

Proceedings in cases of certain offences affecting administration of justice

Summary procedure for offences committed in Syariah Court

288. Where any such offence as is described in sections 242, 245, 246, 247 and 248 of the Syariah Penal Code Order, 2013 [S 69/2013] is committed in its view or presence of any Syariah Court in the course of a judicial proceeding, the Syariah Court may cause the offender to be detained in custody and at any time before the rising of the Syariah Court on the same day may, if it thinks fit, take cognisance of the offence and sentence the offender —

(a) in the case of the Syariah Subordinate Court, with 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 Syariah Appeal Court, with a fine not exceeding \$10,000, imprisonment for a term not exceeding one year or both.

Record of facts constituting offence

289. (1) In every such case, the Syariah Court shall record the facts constituting the offence, with the statement, if any, made by the offender as well as the finding and sentence.

(2) If the offence is an offence punishable under section 242 of the Syariah Penal Code Order, 2013 [S 69/2013], the record must show the nature and stage of the judicial proceedings in which the Syariah Court interrupted or insulted was sitting, and the nature of the interruption or insult.

Alternative procedure

290. If the Syariah Court, in any case, considers that a person accused of any of the offences referred to in section 288 and committed in its view or presence may be better dealt with by ordinary process of law, such Syariah Court, after recording the facts constituting the offence and the statement of the accused as provided in section 289, may direct the accused to be prosecuted and may require security to be given for the appearance of such accused person before a Syar'ie Judge or, if sufficient security is not given, may forward such person, under custody, to another Syar'ie Judge for trial.

Power to remit punishment

291. When any Syariah Court has, under section 288, adjudged an offender to punishment for refusing or omitting to do anything which he was lawfully required to do or for any intentional insult or interruption, the Syariah Court may, in its discretion, discharge the offender or remit the punishment on his submission to the order or requisition of such Syariah Court or on apology being made to the satisfaction of the Syariah Court.

Refusal to give evidence

292. If any witness before a Syariah Court refuses to give evidence or answer such question as are put to him or refuses to produce any document in his possession or power which the Syariah Court requires him to produce, and does not offer any reasonable excuse for such refusal, such Syariah Court may, for reasons to be recorded in writing, sentence him to imprisonment for any term not exceeding 14 days unless in the meantime such person consents to give evidence or be examined and to answer or to produce the document. In the event of his persisting in this refusal, he may be dealt with according to section 288 or 290 notwithstanding any sentence he may have undergone under this section.

Appeal

293. (1) Any person sentenced by the Syariah Subordinate Court or Syariah High Court under the provisions of this Chapter may appeal to the Syariah High Court or Syariah Appeal Court respectively.

(2) The provisions of Chapters I and II of this Part shall, so far as they are applicable, apply to appeals under this section.

(3) The provisions of Chapters III and IV of this Part shall also apply to all proceedings by a Syar'ie Judge under this Chapter.

PART VII

SPECIAL PROCEEDINGS

Chapter I

Inquests

Meaning of “cause of death”

294. In this Chapter, the words “cause of death” include not only the apparent cause of death as ascertainable by inspection or *post-mortem* examination of the body of the deceased, but also all matters necessary to enable an opinion to be formed how the deceased came by his death and whether his death resulted in any way from, or was accelerated by, any unlawful act or omission on the part of any other person.

Duty of Religious Enforcement Officer or officer in charge of police station

295. (1) If a Religious Enforcement Officer or an officer in charge of a police station receives information that —

(a) a person has committed suicide;

(b) a person has been killed by another, or by an animal, or by machinery, or by an accident;

(c) a person has died under circumstances in which some other person may have committed an offence; or

(d) a person has died or has disappeared in circumstances which raise reasonable presumption that he has died, and the cause of such death or presumed death is not known,

he shall immediately give information thereof to a Syariah Subordinate Court Judge and shall himself immediately proceed or shall direct some other Religious Enforcement Officer or police officer immediately to proceed to the place where the body of such deceased person is, or, if the body has disappeared, to the place where the deceased person was last seen alive, and there shall make an investigation and draw up a report of the apparent cause of death, describing, if the body is available, such wounds, fractures, bruises, and other marks as may be found thereon, and stating in what manner or by what weapon or instrument (if any) the same appear to have been indicted, and, whether the body is available or not, giving an account of such objects and circumstances as in his opinion may relate to the cause of death or the person (if any) who caused the death.

(2) If no Religious Enforcement Officer or police officer is available to make the investigation required by subsection (1), a Syariah Subordinate Court Judge may direct a fit and proper person (hereinafter referred to as an authorised officer) to carry out such investigation and to draw up the report and forward it to the Chief Religious Enforcement Officer or officer in charge of the police station.

(3) If the Syariah Subordinate Court Judge is satisfied that no useful purpose would be served by any person proceeding to the place where the body is or, if the body has disappeared, to the place where the body was last seen alive, he may by order in writing under his hand dispense with such requirement.

(4) Any Religious Enforcement Officer, police officer or authorised officer making an investigation under this section may exercise all the powers granted to a Religious Enforcement Officer or police officer under the provisions of Part IV.

(5) A report of such investigation shall be made and signed by the Religious Enforcement Officer or officer in charge of the police station and forwarded by him to the Syariah Subordinate Court Judge.

(6) If as a result of the investigation such officer drafts a charge under section 92 in respect of the death of such person, he shall forward the report to the Chief Syar'ie Prosecutor and shall inform the Syariah Subordinate Court Judge in writing of the commencement of such proceedings.

Duty of officer to arrange for *post-mortem* examination in certain cases

296. (1) Every officer making an investigation under section 295 shall, if there appears to him any reason to suspect that the deceased came by his death in a sudden or unnatural manner or by violence, or that his death resulted in any way from, or was accelerated by, any unlawful act or omission on the part of any other person, at once inform the nearest medical officer, and shall take or send the body to the nearest Government hospital or other convenient place for the holding of a *post-mortem* examination of the body by a medical officer.

(2) If such officer is satisfied as to the cause of death and that the deceased came by his death by accident, or that in all the circumstances of the case including the state of the body and the difficulties of communication he is of the opinion that no useful purpose would be served by a further examination, he may order the body to be dealt with according to *Hukum Syara'*.

(3) The officer making the investigation shall not remove the body if it appears to him that it should be viewed by a Syariah Subordinate Court Judge in the place where it was found.

Post-mortem examination of body

297. (1) On receiving the information referred in section 296, a medical officer shall, as soon as practicable, make *post-mortem* examination of the body of the deceased.

(2) The medical officer shall, if it is necessary in order to ascertain the cause of death, extend the examination to the dissection of the body and an analysis of any portion thereof, and may cause any portion thereof to be transmitted to the Director General of Medical Services.

Report of medical officer

298. The medical officer making any such examination shall draw up a report of the appearance of the body and of the conclusion which he draws therefrom, and shall certify as to the cause of death and shall date, sign the report and transmit it to the Syariah Subordinate Court Judge, Chief Religious Enforcement Officer or officer in charge of a police station who shall attach it to the report forwarded under section 295.

Duty of Syariah Subordinate Court Judge on receipt of report

299. (1) If the Syariah Subordinate Court Judge is satisfied as to the cause of death and that the death did not result in any way from, or was not accelerated by, any unlawful act or omission without holding an inquest under this Chapter, he shall report to the Chief Syar'ie Prosecutor the cause of death as ascertained to his satisfaction, with his reasons for being so satisfied, and shall at the same time transmit to the Chief Syar'ie Prosecutor all reports and documents in his possession connected with the matter.

(2) A Syariah Subordinate Court Judge may in his discretion hold an inquest if there is no body available in the circumstances mentioned in section 295(1).

(3) A Syariah Subordinate Court Judge shall not hold any inquest under this Chapter if he has reason to believe that criminal proceedings against any person for having caused the death of the deceased have been or are about to be commenced.

(4) In all other cases, the Syariah Subordinate Court Judge shall proceed as soon as may be to hold an inquest under this Chapter.

Death of person in custody of Religious Enforcement Officer or police officer or in any psychiatric facility

300. (1) Notwithstanding the provisions of section 299, when any person dies while in the custody of the Religious Enforcement Officer or police officer or in a

psychiatric facility or prison, the officer who had the custody of such person or was in charge of such psychiatric facility or prison, as the case may be, shall forthwith give intimation of such death to the nearest Syariah Subordinate Court Judge, and such Syariah Subordinate Court Judge or some other Syariah Subordinate Court Judge shall, in the case of death in the custody of the Religious Enforcement officer or police officer, and in other cases may, if he thinks expedient, hold an inquest into the cause of death and for such purpose may designate any person to make the investigation and report referred to in section 295 and such person shall for the purposes of such investigation be deemed to be a Religious Enforcement Officer or police officer.

(2) In this section, "psychiatric facility" includes rehabilitation center, detention center or any place which may be determined by the Chief Syariah Judge.

Powers of Syariah Subordinate Court Judge

301. (1) A Syariah Subordinate Court Judge holding an inquest under this Chapter shall have all the powers which he would have in holding an inquiry into an offence.

(2) A Syariah Subordinate Court Judge holding an inquest under this Chapter if he considers it expedient that the body of the deceased person should be examined by a medical officer in order to discover the cause of death may, whether a *post-mortem* examination has been made under section 297 or not, issue his order to a medical officer to make a *post-mortem* examination of such body, and may for such purpose order such body to be exhumed.

Syariah Subordinate Court Judge may view body

302. (1) The Syariah Subordinate Court Judge holding an inquest shall ordinarily view the body of the deceased and may for that purpose cause such body to be exhumed.

(2) A Syariah Subordinate Court Judge may, in his discretion, dispense with viewing the body if for a reason which he shall record he considers it to be unnecessary.

Inquiries to be made by Syariah Subordinate Court Judge

303. A Syariah Subordinate Court Judge holding an inquest shall inquire when, where, how and after what manner the deceased came by his death and also whether any person is criminally concerned in the cause of such death.

Evidence and finding to be recorded

304. (1) The Syariah Subordinate Court Judge holding an inquest under this Chapter shall record the evidence and his finding thereon, and shall forthwith transmit to the Chief Syar'ie Prosecutor the original of such evidence and finding duly authenticated by his signature, or a copy of such evidence and finding certified under his hand as correct.

(2) The place in which any inquest under this Chapter is held shall be a place open to the public, but a Syariah Subordinate Court Judge conducting an inquest may, on special grounds of public policy or expediency, in his discretion, exclude the public or any person or persons in particular at any stage of the inquest from the place in which the inquest is being held.

Powers of Chief Syar'ie Prosecutor as to inquests

305. (1) Notwithstanding anything in section 299, the Chief Syar'ie Prosecutor may at any time direct a Syariah Subordinate Court Judge to hold an inquest under this Chapter into the cause of, and the circumstances connected with, any death such as is referred to in sections 295 and 300, and the Syariah Subordinate Court Judge to whom such direction is given shall thereupon proceed to hold an inquest and shall record his finding as to the cause of death and also as to any of the circumstances connected therewith with regards to which the Chief Syar'ie Prosecutor may have directed him to make inquiry.

(2) When the proceedings at any inquest under this Chapter have been closed and it appears to the Chief Syar'ie Prosecutor that further investigation is necessary, the Chief Syar'ie Prosecutor may direct the Syariah Subordinate Court Judge to reopen such inquest and to make further investigation, and thereupon the Syariah Subordinate Court Judge shall have full power to reopen the inquest and make further investigation and thereafter to proceed in the same manner as if the proceedings at such inquest had not been closed.

(3) Subsection (2) shall not apply to any inquest at which a finding of *qatlul-'amd* or *qatlu syibhil-'amd* has been returned against any person.

(4) When giving any direction under this section, the Chief Syar'ie Prosecutor may also direct whether the body shall or shall not be exhumed.

(5) All directions given under this section shall be complied with by the Syariah Subordinate Court Judge to whom they are addressed without unnecessary delay.

(6) If it is made to appear to the Chief Syar'ie Prosecutor that it is expedient that an inquest commenced by one Syariah Subordinate Court Judge should be continued by another Syariah Subordinate Court Judge, he may direct

both such Syariah Subordinate Court Judges accordingly and such Syariah Subordinate Court Judges shall comply with such direction.

Admissibility of medical report in certain cases

306. (1) The medical officer who made the *post-mortem* examination of the body of the deceased shall, when possible, be called as a witness but in his absence for reasonable cause the written report of such medical officer shall be admissible as evidence.

(2) Such written report shall be subject to such deduction from its weight as the Syariah Court deems proper to make by reason of such report not having been made on *yamin* and the accused person not having any opportunity of cross-examination.

Chapter II

Persons of unsound mind

Procedure where accused is suspected to be of unsound mind

307. (1) When a Syar'ie Judge holding an inquiry or a trial has reason to suspect that the accused person is of unsound mind and consequently incapable of making his defence, he shall in the first instance investigate into the fact of such unsoundness.

(2) At such investigation it shall not be necessary for the accused person to be present and the Syar'ie Judge may receive as evidence a certificate in writing by a medical officer to the effect that such accused person is in his opinion of unsound mind or is a proper person to be detained for observation in a suitable place of safe custody or, if he sees fit, such Syar'ie Judge may take oral evidence from a medical officer on the state of mind of such accused person.

(3) If the Syar'ie Judge is satisfied that such person is incapable of making his defence, he may postpone the inquiry or trial and shall remand him for a period not exceeding 30 days to be detained for observation in any suitable place of safe custody.

(4) The medical officer of the place of safe custody shall keep such person under observation during the period of his remand and before the expiry of such period shall certify under his hand to the Syariah Court his opinion as to the state of mind of such person. If he is unable to form any definite conclusion as to the state of mind of such person, he may certify so to the Syariah Court and ask for a further remand. Such further remand may extend to a period of 2 months.

(5) The Syar'ie Prosecutor may, at any stage of the proceedings prior to the trial, apply to the Syar'ie Judge to hold an inquiry in accordance with the

procedure of this section on any accused person suspected to be of unsound mind.

(6) If the medical officer shall certify that the accused person is of sound mind and capable of making his defence, the Syar'ie Judge shall proceed with the inquiry or trial, as the case may be.

(7) If the medical officer shall certify that such person is of unsound mind and incapable of making his defence and the Syariah Court is satisfied of the fact, it shall not be necessary for the Syariah Court to call for such person to be present in Syariah Court and thereupon the inquiry or trial, as the case may be, shall be postponed.

(8) The certificate of the medical officer may be receivable as evidence under this section.

Release of person of unsound mind pending investigation or trial

308. (1) Whenever an accused person is found to be of unsound mind and incapable of making his defence the Syariah Court may, if the offence charged is bailable, in its discretion release him on sufficient security being given that he shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, and for his appearance when required before the Syariah Court or such officer as the Syariah Court appoints in that behalf or —

(a) in the case of a Syariah Subordinate Court, remand him to a prison or suitable place of safe custody and refer the case to a Syariah High Court Judge who may —

- (i) release him on security being given as provided in this subsection;
- (ii) make further inquiry or direct that further inquiry be made;
or
- (iii) order him to be confined in a prison or suitable place of safe custody and report the case to the Permanent Secretary;

(b) in the case of the Syariah High Court, order him to be confined in a prison or hospital or other suitable place of safe custody and report the case to the Permanent Secretary but without prejudice to the provision of section 313.

(2) If the offence charged is non-bailable, the Syariah Court —

(a) in the case of a Syariah Subordinate Court, shall remand the accused person to a prison or other suitable place of safe custody and refer the case to a Syariah High Court Judge who may –

- (i) release him on security being given as provided in subsection (1);
- (ii) make further inquiry or direct that further inquiry be made; or
- (iii) order him to be confined in a prison or suitable place of safe custody and report the case to the Permanent Secretary;

(b) in the case of the Syariah High Court –

- (i) release him on security being given as provided in subsection (1); or
- (ii) order him to be confined in a prison or other suitable place of safe custody and report the case to the Permanent Secretary.

(3) Subject to subsection (4), where any case is reported to the Permanent Secretary under subsection (1) or (2), the Permanent Secretary shall direct the accused person to be confined in a prison or suitable place of safe custody during the pleasure of His Majesty the Sultan and Yang Di-Pertuan.

(4) Where a case reported to the Permanent Secretary under subsection (1) or (2) involves any *qatl* offence, the Permanent Secretary shall direct the accused person to be confined in prison or suitable place of safe custody until any *wali-ad-dam* of the victim desires for him to be released, taking into consideration the consequences of such release.

Inquiry or trial

309. When the accused has been released under section 308, the Syariah Court may at any time require him to appear or be brought before it and may again proceed under section 307.

Defence of insanity on trial

310. Where any act or omission is charged against any person as an offence, and it is given in evidence on the trial of such person for that offence that he was insane so as not to be responsible for his action at the time when the act or omission was done, then if it appears to the Syariah Court before which such person is tried that he did the act or omission charged but was insane as aforesaid at the time when he did the same, the Syariah Court shall make a special finding to the effect that the accused was not guilty of the act or omission charged

because of insanity as aforesaid when he did the act or omission and the Syariah Court may order the accused to pay *diyat*, *arsy* or compensation for the act or omission.

Order for detention

311. (1) When a special finding under section 310 is made by any Syariah Subordinate Court, it shall report the case for the order of a Syariah High Court Judge and shall meanwhile order the person in respect of whom it has made such a finding to be kept in custody in any prison or in such place and in such manner as the Syariah Subordinate Court shall direct.

(2) If the Syariah High Court Judge is satisfied with such special finding, he shall order that such person be confined in a prison or suitable place of safe custody pending the direction of the Permanent Secretary under subsection (5).

(3) If, after such inquiry as he considers necessary, the Syariah High Court Judge is not satisfied with such special finding, he may make further inquiry or direct that further inquiry be made or order a new trial on the same or an amended charge with such direction to the Syariah Subordinate Court as he shall think fit.

(4) When a special finding under section 310 is made by the Syariah High Court, it shall report the case to the Permanent Secretary and direct the person in respect of whom it has made such finding to be confined in a prison or suitable place of safe custody pending the direction of the Permanent Secretary under subsection (5).

(5) Where any case has been reported to the Permanent Secretary under subsection (2) or (4), the Permanent Secretary shall direct the person in respect of whom a special finding has been made to be confined in a prison or suitable place of safe custody during the pleasure of His Majesty the Sultan and Yang Di-Pertuan.

Visiting of prisoners of unsound mind

312. When any person is confined under section 308 or 311, two medical officers shall visit him in order to ascertain his state of mind, once at least in every 6 months, and they shall thereupon make a report to the Permanent Secretary on the state of mind of such person.

Procedure when prisoner of unsound mind reported able to make defence

313. If such person is confined under section 308, and —

(a) such medical officers shall certify that in their opinion such person is capable of making his defence; and

(b) the Chief Syar'ie Prosecutor shall certify that in his opinion it is in the public interest that the trial of such person shall proceed,

he shall be taken before the Syariah Court at such time as the Syariah Court appoints, and the Syariah Court if satisfied that such person is capable of making his defence shall proceed with the trial.

Procedure where person of unsound mind appears to be fit for discharge

314. (1) If it appears to His Majesty the Sultan and Yang Di-Pertuan through a medical report under section 312 or otherwise that a person detained or confined under section 308 or 311, in this section referred to as the patient, may have recovered his sanity and that his discharge may be warranted then, if His Majesty the Sultan and Yang Di-Pertuan is of opinion that the discharge of the patient either unconditionally or under sections 315 and 316 is warranted, His Majesty the Sultan and Yang Di-Pertuan shall proceed to order his discharge.

(2) If the patient is confined under section 308, this section applies only if the Chief Syar'ie Prosecutor have informed His Majesty the Sultan and Yang Di-Pertuan that he has declined to certify to the effect mentioned in section 313(b).

(3) For the purpose of assisting His Majesty the Sultan and Yang Di-Pertuan in forming an opinion under subsection (1), His Majesty the Sultan and Yang Di-Pertuan may, in His Majesty's discretion, appoint a Commission consisting of a Syar'ie Judge and such number of suitable persons or other suitable persons, as His Majesty the Sultan and Yang Di-Pertuan shall deem fit, to inquire formally into the question whether the discharge of the patient is justified.

(4) A Commission appointed under subsection (3) shall sit in camera.

(5) For the purpose of subsection (4), the patient or his representative and the Chief Syar'ie Prosecutor shall have the right, without leave, to appear and be heard by the Commission.

Delivery of person of unsound mind to care of relative

315. (1) Whenever any relative of any person confined under section 308 or 311 desires that he shall be delivered over to his care and custody, the Permanent Secretary, on the application of such relative and on his giving security to the satisfaction of the Permanent Secretary that the person delivered shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, direct such person to be delivered to such relative.

(2) Whenever such person is so delivered, it shall be on condition that he shall be produced for the inspection of such officer and at such times as the Permanent Secretary directs.

(3) Section 312 or 314 shall, in accordance with the appropriate amendment, apply to persons received under the provisions of this section, and the certificate of the inspecting officer determined under this section shall be receivable as evidence.

Conditional discharge of person who have been of unsound mind

316. (1) Whenever the Permanent Secretary, with the approval of His Majesty the Sultan and Yang Di-Pertuan, directs the discharge of a person confined under section 308, 311 or under the provisions of this section, it shall be lawful for him to make such discharge conditional on the compliance by such person with such conditions relating to the further medical observation, care control or supervision of such person or in the public interest.

(2) The Syar'ie Judge may, if he has any reason to believe that there has been a relapse in the mental condition of such person, order such other person to be confined in prison or in such other place as the Syar'ie Judge shall think fit.

(3) When any person is confined under the provision of subsection (2), he shall be visited by two medical officers who shall make a report to the Permanent Secretary on the state of mind of such person.

(4) On the receipt of report under subsection (3), the Permanent Secretary may, on recommendation by such medical officers, revoke the order by which such person was discharged whereupon such person shall be liable to be dealt with in like manner as if he had never been discharged or order that such person be discharged.

Chapter III

Prosecution

Chief Syar'ie Prosecutor

317. The Chief Syar'ie Prosecutor shall have the control and direction of all criminal prosecutions and proceedings under this Order or under any other written law in respect of which the Syariah Court has jurisdiction.

No person to appear for Chief Syar'ie Prosecutor

318. No person shall appear on behalf of the Chief Syar'ie Prosecutor on any criminal appeal other than the Chief Syar'ie Prosecutor or a Syar'ie Prosecutor.

Conduct of prosecutions

319. (1) Any prosecution before the Syariah Court shall be conducted by —

(a) the Chief Syar'ie Prosecutor or a Syar'ie Prosecutor;

(b) any person expressly authorised in writing by the Chief Syar'ie Prosecutor to act on his behalf; or

(c) a *wali-ad-dam*, *wali* or the victim in offences punishable with *qisas*, with the leave of the Syariah Court.

(2) The person mentioned in subsection (1)(c) may either appear in person or by a Syar'ie Lawyer.

Power of Chief Syar'ie Prosecutor to enter *nolle prosequi*

320. (1) In any criminal case involving an offence other than an offence punishable with *hadd* or *qisas* and at any stage thereof before judgment, the Chief Syar'ie Prosecutor may, either personally or in writing, inform the Syariah Court that he intends that the proceedings shall not continue, and thereupon the accused shall be at once discharged in respect of such charges as may be specified, and if he has been committed to prison shall be released or, if on bail, his bond and that of his sureties, if any, shall be discharged.

(2) Such discharge shall not operate as a bar to any subsequent proceedings against him on account of the same facts.

When Chief Syar'ie Prosecutor may require Syariah Subordinate Court Judge to take further evidence

321. (1) If the Chief Syar'ie Prosecutor is of opinion that a criminal offence is disclosed and that further proceedings should be taken against the accused but that the evidence already obtained or taken is in any particular or respect defective and is not sufficient to afford a foundation for a full and proper trial, he may by an order in writing signed by himself require the Religious Enforcement Officer or police officer to make further investigation or require the Syariah Subordinate Court Judge to hold an inquiry or, if an inquiry has been held, to take such further evidence as may be specified or indicated in the order either by way of examining any witness who have already given their testimony, or otherwise to continue the inquiry.

(2) On the order of the Chief Syar'ie Prosecutor being received by the Syariah Subordinate Court Judge, he shall cause the accused person to appear before him and shall hold or resume and proceed with the inquiry in pursuance of such order.

{3} If an inquiry or supplemental inquiry is required to be held, the accused person, if at large on bail, shall be called upon by written notice to appear before the Syariah Subordinate Court Judge, and if in prison shall by an order of the Syariah Subordinate Court Judge be brought before the Syariah Court on a day appointed therefor.

{4} All the provisions in respect of the original inquiry shall be applicable, so far as may be, to the supplemental inquiry.

{5} The Syariah Subordinate Court Judge shall at the termination of the inquiry or supplemental inquiry forthwith transmit a copy of the record to the Chief Syar'ie Posecutor.

{6} A supplemental inquiry may be continued by a Syariah Subordinate Court Judge other than the Syariah Subordinate Court Judge who conducted the original inquiry.

{7} The Chief Syar'ie Prosecutor may *in lieu* of or in addition to requiring the Syariah Subordinate Court Judge to take further evidence under subsection (1) give notice to the accused that the prosecution intends to call further evidence at the trial and indicating the nature thereof:

Provided that failure to give such notice or that the notice does not indicate with sufficient clarity the nature of the evidence to be called shall not render such evidence inadmissible but shall entitle the accused to such adjournment, if any, as the Syariah Court shall consider may in the interests of justice be required.

Chief Syar'ie Prosecutor may alter charge and give instructions

322. In addition to the powers conferred on him by sections 319, 320 and 321, the Chief Syar'ie Prosecutor on receiving a copy of the report of a police investigation or the record of an inquiry may —

(a) frame, alter or re-draw the charge or charges against the accused or frame an additional charge or charges against the accused having regard to the provisions of this Order as to the form of charges; and

(b) give such instructions with regard to the inquiry as he may consider desirable and the Syariah Subordinate Court Judge shall, subject to this Order, carry into effect such instructions and shall conduct the inquiry accordingly.

Chapter IV

Bail

Bail may be discretionary or obligatory

323. (1) Bail shall be discretionary for the purpose of this Chapter when —

(a) it is provided by any written law to be discretionary in respect of any offence;

(b) the offence is provided in the First Schedule as non-bailable; or

(c) the offence alleged against the person arrested or detained is punishable with imprisonment for a term of 2 years or more whether or not the offence is also punishable with fine.

(2) Bail shall be obligatory in any case in which the Syariah Court has no authority to use its discretion.

Duty and discretion to admit bail

324. (1) When any person other than a person accused of an offence punishable with *hadd*, *qisas*, death, imprisonment for life or with imprisonment for 15 years or more is arrested or detained without warrant by a Religious Enforcement Officer or police officer or on a warrant under which there is no indorsement under section 41 that a security may be taken for his appearance or appears or is brought before the Syariah Court, and is prepared at any time while in the custody of such officer or at any stage of the proceedings before such Syariah Court to give bail, such person —

(a) shall, if the case is one in which bail is obligatory, be entitled subject to the provisions of this Chapter to be admitted to bail by any Religious Enforcement Officer, police officer not below the rank of Inspector or by the Syariah Court; and

(b) may, if the case is one in which bail is discretionary, be admitted to bail in the discretion of such Syariah Court or any Religious Enforcement Officer or police officer not below the rank of Inspector:

Provided that it shall be lawful for any such officer in exercising this discretion to have regard to any instruction in connection therewith which may be issued by the Chief Syar'ie Prosecutor for the guidance of the Religious Enforcement Officers or police officers:

Provided further that such officer or Syariah Court may instead of taking bail from such person, release him on his executing a bond without sureties for his appearance as is hereinafter provided.

(2) Notwithstanding anything contained in subsection (1), the Syariah High Court may, in any case direct that any person be admitted to bail irrespective of the offence of which he is accused, except a person accused of an offence punishable with death or life imprisonment.

(3) Any Syariah Court may at any subsequent stage of any proceedings under this Order —

(a) cause any person who has been released under this section to be arrested and may commit him to custody; or

(b) direct that any bail required by any Religious Enforcement Officer, police officer or any Syariah Subordinate Court be reduced or increased:

Provided that the Syariah Appeal Court may exercise the powers conferred as if the words “Syariah Subordinate” in paragraph (b) had been deleted.

(4) Where any Religious Enforcement Officer or police officer exercises the power of granting bail under this section, he shall immediately make a report of the details of the bail allowed to a Syariah Subordinate Court Judge.

Amount of bond

325. The amount of every bond executed under this Chapter shall be fixed with due regard to the circumstances of the case as being sufficient to secure the attendance of the person arrested but shall not be excessive.

Bond to be executed

326. Before any person is released on bail, or released on his own bond, a bond for such sum of money as the Religious Enforcement Officer, police officer or Syariah Court, as the case may be, thinks sufficient shall be executed by such person, and when he is released on bail, a bond shall also be executed by one or more sureties, conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the Religious Enforcement Officer, police officer or Syariah Court, as the case may be.

Person to be released

327. (1) As soon as the bond has been executed, the person for whose appearance it has been executed shall be released and when he is in prison, the

Syariah Court admitting him to bail shall issue an order of release to the officer in charge of the prison, and such officer, on receipt of the order, shall release him.

(2) Nothing in this section or in section 323 or 324 shall be deemed to require the release of any person liable to be detained for a matter other than that in respect of which the bond was executed.

When warrant of arrest may be issued against person bailed

328. If, through mistake, fraud or otherwise, insufficient sureties have been accepted, or if the sureties afterwards become insufficient, the Syariah Court admitting him to bail may issue a warrant of arrest directing that the person released on bail be brought before it, and may order him to find sufficient sureties, and on his failing so to do may commit him to prison.

Sureties may apply to have bond discharged

329. (1) All or any sureties for the attendance and appearance of a person released on bail may at any time apply to a Syariah Subordinate Court Judge to discharge the bond either wholly or so far as relates to the applicants.

(2) On such application being made, the Syariah Subordinate Court Judge shall issue a warrant for the arrest of such person released on bail directing that the person so released be brought before him.

(3) On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Syariah Subordinate Court Judge shall direct the bond to be discharged, either wholly or so far as relates to the applicants, and shall call upon such person to find other sufficient sureties, and if he fails to do so may commit him to custody.

(4) A surety may at any time arrest the person for whose attendance and appearance he is a surety and forthwith bring him before a Syariah Subordinate Court Judge, who shall thereupon discharge such surety's bond and shall call upon such person to find other sufficient sureties, and if he fails to do so shall commit him to custody.

Appeal

330. Any person aggrieved by any order or refusal of any Syariah Court made under this Chapter may appeal to the Syariah Court to which an appeal ordinarily lies.

Chapter V

Provisions as to bond

Deposit instead of bond

331. When any person is required by any Syariah Court or officer to execute a bond, with or without sureties, such Syariah Court or officer may permit or require him to deposit a sum of money to such amount as the Syariah Court or officer may fix, *in lieu* of the penalty in such bond.

Procedure on forfeiture of bond

332. (1) When it is proved to the satisfaction of the Syariah Court by which a bond under this Order has been executed or, when the bond is for appearance before a Syariah Court, when it is proved to the satisfaction of such Syariah Court that such bond has been forfeited, the Syariah Court shall record the grounds of such proof and may call upon any person bound by such bond to pay the penalty thereof or to show cause why it should not be paid.

(2) If sufficient cause is not shown and the penalty is not paid, the Syariah Court may proceed to recover the same by issuing a warrant for the attachment and sale of the property belonging to such person.

(3) If such penalty is not paid and cannot be recovered by such attachment and sale, the person so bound shall be liable, by order of the Syariah Court which issued the warrant, to imprisonment for a term which may extend to 6 months.

(4) The Syariah Court may, in its discretion, remit any portion of the penalty mentioned and enforce payment in part only.

Appeal

333. Any person aggrieved by any order of any Syariah Court made under this Chapter may appeal to the Syariah Court to which an appeal ordinarily lies.

Chapter VI

Special provisions relating to evidence

Procedure where person able to give material evidence is dangerously ill

334. (1) When it appears to a Syar'ie Judge that any person able to give material evidence, either for the prosecution or defence, relating to a seizable offence is so dangerously ill that it is not practicable to take his evidence according to the usual course of law, the Syar'ie Judge may take the deposition of such person provided such reasonable notice as the case admits of has been given to the prosecutor and

the accused of his intention to take the deposition and of the time and place at which the Syar'ie Judge intends to take it.

(2) If the accused is in custody, a Syar'ie Judge may order the officer in charge of the prison to convey the accused to the place at the time notified and such officer shall convey him accordingly.

(3) Except in offences punishable with *hadd*, *qisas*, *diyat*, death or other sentences as prescribed by the Chief Syar'ie Judge, when it is proved at the trial of the accused for any offence to which such deposition relates that the deponent is dead or that for any sufficient cause his attendance cannot be procured, the deposition may be read either for or against the accused, notwithstanding his absence when the deposition was taken, if the deposition be certified under the hand of the Syar'ie Judge who took it and the contrary is not proved or if it is shown by other evidence that —

(a) the deponent was at the time of his examination dangerously ill as mentioned in subsection (1);

(b) the deposition was duly taken at the place and time notified; and

(c) reasonable notice of the intention to take it has been given to the person against whom the deposition is tendered in evidence so that he or his Syar'ie Lawyer may be present and may have, if he had chosen to be present, full opportunity of cross-examination.

(4) A deposition under this section is *qarinah*.

When witness not required to attend

335. (1) Except in offences punishable with *hadd*, *qisas*, death or other sentences as prescribed by the Chief Syar'ie Judge, any document purporting to be a report under the hand of any person mentioned in subsection (2) on any person, matter or thing examined or analysed by him may be given in evidence in any inquiry, trial or other proceeding under this Order unless such person shall be required to attend as a witness by —

(a) the Syariah Court; or

(b) the accused, in which case the accused shall give notice to the Syar'ie Prosecutor not less than 7 clear days before the commencement of the trial:

Provided that in any case in which the Syar'ie Prosecutor intends to give in evidence any such report, he shall deliver a copy of the report to the accused not less than 14 clear days before the commencement of the trial, unless the Syariah Court otherwise allows.

(2) The following are persons to whom the provision of subsection (1) applies —

(a) medical officers of the Government of His Majesty the Sultan and Yang Di-Pertuan or those recognised by the Government of His Majesty the Sultan and Yang Di-Pertuan, Malaysia or Singapore;

(b) any person recognised in analytical work by the Government of His Majesty the Sultan and Yang Di-Pertuan, Malaysia or Singapore;

(c) any chemist recognised by the Government of His Majesty the Sultan and Yang Di-Pertuan, Malaysia or Singapore;

(d) any person recognised as a document examiner by the Government of His Majesty the Sultan and Yang Di-Pertuan, Malaysia or Singapore;

(e) any inspector of weights and measure duly appointed under the provisions of any other written law;

(f) Registrar of Criminals appointed under the Criminals Registration Act (Chapter 202);

(g) any person declared by the Chief Syar'ie Judge, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by notification published in the *Gazette*, to whom this section may apply.

(3) Persons referred to in subsection (2) shall by this Order be bound to state the truth in reports made under their hands.

(4) A report under this section is *qarinah*.

How previous conviction or acquittal may be proved

336. (1) In any inquiry, trial or other proceedings under this Order, a previous conviction or acquittal may be proved in addition to any other manner provided by any law for the time being in force —

(a) by an extract of the sentence or order certified under the hand of the officer having the custody of the record of the Syariah Court in which such conviction or acquittal was determined; or

(b) in case of a conviction, either by a certificate signed by the officer in charge of the prison in which the punishment or any part thereof has been inflicted, or by the production of the warrant of commitment under which the punishment has been conducted,

together with, in each of such cases, evidence as to the identity of the accused person with the person so convicted or acquitted.

(2) In case the officer in charge of any prison states in any certificate signed by him that the finger prints which appear on such certificate are the finger prints of the person to whom the certificate relates, such certificate shall be evidence of the fact so stated.

(3) Every Syariah Court shall presume to be genuine every document purporting to be a certificate of conviction and purporting to be signed by the officer in charge of any prison, and shall also presume that the officer by whom such document purports to be signed was when he signed the document, the officer in charge of the prison mentioned in such document.

(4) A certificate under this section is *qarinah*.

Record of evidence in absence of accused

337. (1) Except in offences punishable with *hadd* or *qisas*, if it is proved that an accused person has absented himself and there is no immediate prospect of arresting him, the Syariah Court competent to try such person for the offence complained of may, in his absence, examine the witnesses, if any, produced on behalf of the prosecution and record their depositions.

(2) Any deposition recorded under subsection (1) may, on the arrest of such person, be given in evidence against him on the trial for the offence with which he is charged, if the deponent is dead or incapable of giving evidence or his attendance cannot be procured without an amount of delay, expense or inconvenience which under the circumstances of the case would be unreasonable.

(3) A deposition under this section is *qarinah*.

Notice of alibi

338. (1) In any trial, the accused shall not without the leave of the Syariah Court adduce evidence in support of an alibi unless, before the end of the prescribed period, he gives notice of particulars of the alibi.

(2) Without prejudice to subsection (1), on any such trial the accused shall not without the leave of the Syariah Court call any other person to give evidence in support of an alibi unless —

(a) the notice under subsection (1) includes the name and address of the witness or, if the name and address is not known to the defendant at the time he gives the notice, any information in his possession which might be of material assistance in finding the witness;

(b) if the name or the address is not included in that notice, the Syariah Court is satisfied that the accused, before giving the notice, took and thereafter continued to take all reasonable steps to secure that the name or address would be ascertained;

(c) if the name or the address is not included in that notice, but the accused subsequently discovers the name or address or receives other information which might be of material assistance in finding the witness, he shall forthwith gives notice of the name, address or other information, as the case may be;

(d) if the accused is notified by or on behalf of the Syar'ie Prosecutor that the witness has not been traced by the name or at the address given, he shall forthwith gives notice of any such information, which is then in his possession if any or, on subsequently receiving any such information, he shall forthwith gives notice of it.

(3) The Syariah Court shall not refuse leave under this section if it appears to the Syariah Court that the accused was not informed of the requirements of this section.

(4) Any evidence tendered to disprove an alibi may, subject to any direction by the Syariah Court as to the time the evidence is to be given, be given before or after evidence is given in support of the alibi.

(5) Any notice purporting to be given under this section on behalf of the accused by his Syar'ie Lawyer shall, unless the contrary is proved, be deemed to be given with the authority of the accused.

(6) A notice under subsection (1) shall either be given in Syariah Court during or at the end of the committal proceedings or be given in writing to the Syar'ie Prosecutor, and a notice under subsection (2)(c) or (d) shall be given in writing to the Syar'ie Prosecutor.

(7) A notice required by this section to be given to the Syar'ie Prosecutor may be given by delivering it to the Chief Syar'ie Prosecutor or by leaving it at the Chief Syar'ie Prosecutor's office or by sending it by registered post addressed to the Chief Syar'ie Prosecutor at his office.

(8) In this section —

“evidence in support of an alibi” means evidence tending to show that by reason of the presence of the accused at a particular place or in a particular area at a particular time he was not, or was unlikely to have been at the place or area where the offence is alleged to have been committed at the time of its alleged commission;

“the prescribed period” means the period expiring not less than 10 days prior to the commencement of the trial.

(9) In computing the prescribed period there shall be disregarded any day which is a public holiday.

Chapter VII

Disposal of property subject of offences

Order for custody and disposal of property in certain cases

339. (1) When any property regarding which any offence appears to have been committed, or which appears to have been used for the commission of any offence, is produced before any Syariah Court during any inquiry or trial, the Syariah Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and if the property is subject to speedy or natural decay, may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

(2) When an inquiry or a trial in any Syariah Court is concluded, the Syariah Court may make such order as it thinks fit for the disposal by return to any person claiming to be entitled to possession thereof, destruction, confiscation, or otherwise of any property or document produced before it or in its custody or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

(3) When the Syariah High Court makes such order and cannot through its own officers conveniently return the property to the person entitled thereto, such Syariah High Court may direct that the order be carried into effect by a Syariah Subordinate Judge.

(4) Nothing in this section shall be deemed to prohibit any Syariah Court from returning any property under the provision of subsection (2) to any person claiming to be entitled to the possession thereof, on his executing a bond with or without sureties to the satisfaction of the Syariah Court, engaging to restore such property to the Syariah Court if the order made under this section is modified or set aside on appeal.

Explanation — In this section, the term “property” includes in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the property may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

Direction *in lieu* of order

340. *In lieu* of itself making an order under section 339, the Syariah Court may direct the property to be delivered to a Syariah Subordinate Court Judge who shall, in such cases, deal with it as if it had been seized by the Religious Enforcement Officer or police officer and the seizure had been reported to him in the manner hereinafter mentioned.

Payment to innocent person of money found on accused

341. When any person is convicted of any offence which includes or amounts to *sariqah*, *hirabah* or *ghasab* and it is proved that any other person has bought the *sariqah*, *hirabah* or *ghasab* property from him without knowing or having reason to believe the property is from the outcome of *sariqah*, *hirabah* or *ghasab* and that any money has, on his arrest, been taken out of the possession of the convicted person, the Syariah Court may, on the application of such purchaser and on the restitution of the *sariqah*, *hirabah* or *ghasab* property to the person entitled to the possession thereof, order that out of such money a sum not exceeding the price paid by such purchaser be delivered to him.

Stay of order

342. The Syariah High Court may direct any order under section 339 or 341 made by a Syariah Subordinate Court to be stayed pending its consideration and may modify, alter or annul such order.

Forfeiture and destruction of document or thing

343. The Syariah Court may order any document, publication, thing, object or structure and other which is similar, as the case may be, used during the commission of or related to the offences under sections 98, 100, 101, 102, 103, 104, 105, 106 and 208 of the Syariah Penal Code Order, 2013 (S 69/2013) to be forfeited and destroyed, notwithstanding that no person may have been convicted of such offence.

Restoration of possession of immovable property

344. (1) When a person is convicted of an offence attended by criminal force and it appears to the Syariah Court that by such force any person has been dispossessed of any immovable property, the Syariah Court may, if it thinks fit,

order such property to be restored to the possession of the person who has been dispossessed.

(2) Such order shall not prejudice any right or interest to or in such immovable property which any person is able to establish in a civil suit.

Procedure by Religious Enforcement Officer or police officer on seizure of property

345. (1) The seizure or finding by any Religious Enforcement Officer or police officer of property taken under section 22 or alleged or suspected to have been *sariqah, hirabah or ghasab* property or found under circumstances which create suspicion of the commission of any offence shall be forthwith reported to a Syariah Subordinate Court Judge, who shall make such order as he thinks fit respecting the return of such property to the person entitled to the possession thereof or, if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person so entitled is known, the Syariah Subordinate Court Judge may order the property to be returned to him on such conditions, if any, as the Syariah Subordinate Court Judge thinks fit.

(3) If such person is unknown, the Syariah Subordinate Court Judge may detain it, and shall in such case issue a public notification specifying the articles of which such property consists and requiring any person who may have a claim thereto to appear before him and establish his claim within 12 months *qamariah* from the date of such notification.

(4) Such notification shall be published in such manner as may be determined by the Syariah Subordinate Court Judge.

Procedure where no claim established

346. (1) If no person within such period establishes his claim to such property, and if the person in whose possession such property was found is unable to show that it was legally acquired by him, such property shall be at the disposal of the Government and may be sold under the order of a Syariah Subordinate Court Judge.

(2) In the case of an order made under this section, an appeal may lie to the Syariah Court to which an appeal ordinarily lies.

Procedure where owner unknown

347. If the person entitled to the possession of such property is unknown or absent and the property is subject to speedy and natural decay, or the Syariah Subordinate Court Judge to whom its seizure or finding is reported is of opinion that its sale would be for the benefit of the owner, the Syariah Subordinate Court

Judge may at any time direct it to be sold, and the provisions of sections 345 and 346 shall, as nearly as may be practicable, apply to the nett proceeds of such sale.

Order suspended pending appeal

348. No order made under this Chapter shall come into force until after the expiration of the time prescribed for instituting an appeal or, if an appeal has been instituted, until the dismissal of the appeal, in the proceedings in respect of which such order was made unless the property is subject to speedy or natural decay in which case the Syariae Judge may, after recording such evidence as he thinks necessary, order the disposal of the property immediately.

Chapter VIII

Transfer of criminal cases

Power of Syariah High Court to transfer cases

349. (1) When it is made to appear to the Syariah High Court that —

(a) a fair and impartial inquiry or trial cannot be had in any Syariah Subordinate Court;

(b) some question of law of unusual difficulty is likely to arise;

(c) a view of the place in or near which any offence has been committed may be required for the satisfactory inquiry into or trial of the same;

(d) an order under this section will tend to the general convenience of the parties involved or witnesses; or

(e) such an order is expedient for the ends of justice, or is required by any provision of this Order,

the Syariah High Court may order that any offence be inquired into or tried by any specified Syariah Subordinate Court competent to inquire into or try such offence, or that any particular criminal case be transferred to and tried before the Syariah High Court, or that a person committed for trial in one place be tried in another place.

(2) The Syariah High Court may exercise any of its powers under this section either on the report of the Syariah Subordinate Court, or on the application of a party interested, or on its own initiative.

Application for transfer to be supported by affidavit

350. (1) Every application for the exercise of the power conferred by section 349 shall be made personally or in writing and when required shall be supported by affidavit.

(2) Every such application shall be made before the inquiry into or trial of the offence has been concluded.

(3) Every accused person making any such application shall give to the Chief Syar'ie Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made and no order shall be made on the merits of the application unless at least 24 hours have elapsed between the giving of such notice and the hearing of the application.

Chapter IX

Irregularities in proceedings

Procedure when *ikrar* or statement irregularly taken

351. If any Syariah Court before which an *ikrar* or other statement of an accused person recorded under section 86 or 131 is tendered or has been received in evidence finds that any of the provisions of such section have not been complied with by the Syar'ie Judge recording the statement, it shall take evidence that such person duly made the statement recorded and, if it is satisfied of the same, such statement shall be admitted if the error has not prejudiced the accused as to his defence on the merits.

Omission to frame charge

352. (1) No finding or sentence pronounced or passed shall be deemed invalid merely on the ground that no charge was framed unless in the opinion of the appellate Court or revising Syariah Court thinks a failure of justice has been occasioned thereby.

(2) If the appellate Court or revising Syariah Court thinks that a failure of justice has been occasioned by the omission to frame a charge, the Syariah Court shall order that the accused be acquitted or a new trial be held.

Irregularities not to vitiate proceedings

353. Subject to the provisions of sections 351 and 352, no finding, sentence or order passed or made by a Syariah Court of competent jurisdiction shall be reversed or altered on account of —

(a) any error, omission or irregularity in the complaint, summons, warrant, charge, judgment or other proceedings before or during trial or in any other inquiry or proceeding under this Order;

(b) the want of any sanction required by law;

(c) the omission to inform an accused person of his rights under section 132; or

(d) the improper admission or rejection of any evidence,

unless such error, omission, improper admission or rejection of any evidence, irregularity, or want has occasioned a failure of justice.

Power of Chief Syar'ie Judge to dispense with provisions of this Order

354. Where owing to the illiteracy or lack of understanding of any person against whom any proceedings under this Order are being taken, or for other valid reason, it is not in the opinion of the Chief Syar'ie Judge reasonably necessary or practicable to carry out any provision of this Order, the Chief Syar'ie Judge may authorise any Syariah Court or Syar'ie Judge to dispense with such provision, and may direct either generally or in any particular case or class of case that any Syariah Court or Syar'ie Judge shall, notwithstanding any of the provisions of this Order, proceed in such manner as the Chief Syar'ie Judge shall direct.

Unlawful distress: irregularity no trespass

355. (1) Distress made under this Order shall not be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, writ of distress or other proceedings relating thereto, but all persons aggrieved by such irregularity may recover full satisfaction for the special damage caused thereby in any Syariah Court of competent jurisdiction.

(2) The Syariah Court may in its discretion order for the payment of a sum by way of compensation to any person for any irregularity in executing a writ of distress.

Chapter X

Relations between Syariah Court and civil court

Persons not to be tried for offences already disposed of by civil court

356. (1) Where a person has been tried for an offence by a competent civil court or has had an offence committed by him taken into consideration by a competent civil court in sentencing him, a Syariah Court shall be disbarred from

trying him subsequently for an offence substantially the same as that offence; but nothing aforesaid shall be construed as restricting the jurisdiction of any Syariah Court to try a person for an offence.

(2) For the purposes of this Chapter, “civil court” means a court of ordinary criminal jurisdiction in Brunei Darussalam.

Proof of outcome of civil trial

357. (1) Where a person has been tried before a civil court, a certificate signed by a competent official of the civil court and stating all or any of the following matters —

(a) that the said person has been tried before the civil court for an offence specified in the certificate;

(b) the result of the trial;

(c) what judgment or order was given or made by the civil court;

(d) that other offences specified in the certificate were taken into consideration at the trial,

shall, for the purposes of this Order, be evidence of matters stated in the certificate.

(2) A competent official of the civil court shall, if required by a Syariah Court, furnish a certificate under this section.

(3) A document purporting to be a certificate under this section and to be signed by a competent official of the civil court shall, unless the contrary is shown, be deemed to be such certificate.

(4) References in this section to a competent official of the civil court are references to any official of the civil court authorised for the purposes of this section having the lawful custody of the records of the civil court.

PART VIII

GENERAL

Affidavit

358. (1) Subject to any rule made by the Syariah Court, any affidavit may be used in Syariah Court if it is taken on *yamin* or affirmed —

(a) in Brunei Darussalam, before any Syar'ie Judge, Registrar, Magistrate or any Muslim Commissioner of Oaths;

(b) elsewhere, in the following order of preference, before any —

- (i) Syar'ie Judge or Kadi;
- (ii) Muslim officer exercising consular functions on behalf of the Government of His Majesty the Sultan and Yang Di-Pertuan;
- (iii) Judge, Court, Notary Public or person lawfully authorised to administer oaths.

(2) The Syariah Court shall take judicial notice of the seal or signature of any Syar'ie Judge, Kadi, Registrar, Consul, Judge, Court, Notary Public, person lawfully authorised to administer oath or other Muslim person written or named in any affidavit.

Power of Syariah Court to summon and examine persons

359. Any Syariah Court may, at any stage of any inquiry, trial or other proceedings under this Order, summon any person as a witness or examine any person in attendance though not summoned as a witness, or recall and re-examine any person already examined, and the Syariah Court shall summon and examine or recall and re-examine any such person if his evidence appears to it essential to the just decision of the case.

Order for payment of compensation

360. (1) The Syariah Court before which a person is convicted of any offence may in its discretion order for the payment by him of compensation to any person, or to the representatives of any person, injured in respect of his character, damaged or lost of property by the offence for which the sentence is passed.

(2) The Syariah Court shall specify the person to whom any sum in respect of compensation as referred in subsection (1) is to be paid and the provisions of section 361 shall be applicable to any order made under this section.

(3) To the extent of the amount which has been paid to a person or to the representative of a person, under an order for compensation, any claim of such person or representative for damages sustained by reason of the offence shall be deemed to have been satisfied, but the order for payment shall not prejudice any right to a civil remedy for the recovery of any property or for the recovery of damages beyond the amount of compensation paid under the order.

(4) In the case of an order made under this section, an appeal shall lie to the Syariah Court to which an appeal ordinarily lies.

Provisions as to compensation

361. (1) Subject to this Order, where any person is, under this Order, for any reason whatsoever, ordered to pay any sum of money by way of compensation, the Syariah Court making such order may in its discretion do all or any of the following things —

(a) allow time for the payment of the compensation;

(b) direct payment of the compensation to be made by instalments;

(c) direct that such person be searched and that any money found on him when so searched or which in the event of his being committed to prison may be found on him when taken to prison shall be applied towards the payment of the compensation and the surplus, if any, being returned to him:

Provided that such money shall not be so applied if the Syariah Court is satisfied that the money does not belong to that person.

(2) Any money payable by virtue of any order made under subsection (1) shall be recoverable as if it were a fine.

Copies of proceedings

362. (1) If any person affected by a judgment or order passed or made by a Syariah Court desires to have a copy of any order or deposition or other part of the record, he shall on applying for such copy be furnished therewith by the Syariah Court:

Provided that he pays for the copy such reasonable sum as the Syariah Court may direct unless the Syariah Court for some special reason thinks fit to furnish it free of cost.

(2) Notwithstanding the provisions of subsection (1), an accused person committed for trial shall be entitled to receive on request copy of the depositions of the witnesses recorded by the Syariah Court for free.

Payment of expenses of witnesses

363. In every criminal case, the Syariah Court may in its discretion order payment by Government to the witnesses both for the prosecution and for the defence, or to such of them as it thinks fit, of the expenses incurred by them in and about attending the Syariah Court, and also compensation for their trouble and loss of time, subject to such rules as are prescribed.

Rules as to rates etc.

364. The Chief Syar'ie Judge may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make rules for the following matters —

(a) the rates or scales of payment of the expenses and compensation to be ordered as aforesaid;

(b) the form of the certificates for the purposes of section 365 and the details to be inserted therein.

Certificate of Syariah Subordinate Court Judge

365. (1) The Syariah Subordinate Court Judge who commits a case for trial shall certify under his hand in the prescribed form the amount of expenses and compensation allowable to each witness in respect of his attendance before the Syariah Subordinate Court Judge.

(2) The amount of any other expenses and compensation to the witnesses to whom the Syariah High Court orders payment shall be ascertained by the Registrar of the Syariah High Court.

Reward for unusual exertion

366. When it appears to any Syariah Court that a private person has shown unusual courage, diligence or exertion in the apprehension of a person accused of having committed, attempted to commit or abetted an offence punishable with *hadd*, *qisas*, *diyat*, death or imprisonment, such Syariah Court may order payment to him by Government of any sum not exceeding \$1,000.

Compensation for family of person killed in arresting

367. If any person is killed in endeavouring to arrest or to keep in lawful custody a person accused as mentioned in section 366, His Majesty the Sultan and Yang Di-Pertuan may order payment by Government to the wife, husband, parent or child of the deceased of such reasonable sum or sums as compensation for the loss sustained.

Recovery of money payable under order

368. Except as provided by this Order, any money payable by virtue of any order made under this Order shall be recoverable as if it were a fine.

Superior police officer may exercise powers of subordinate officers

369. Any police officer to whom an officer in charge of a police station is subordinate may exercise the same powers as may be exercised by the officer in

charge of the police station and any police officer to whom an officer in charge of a police district is subordinate may exercise the same powers as may be exercised by the officer in charge of the police district.

Power of Religious Enforcement Officer and police officer to seize property suspected as outcome of *sariqah*, *hirabah* or *ghasab*

370. (1) Any Religious Enforcement Officer may seize any property which is alleged or suspected to be the outcome of *sariqah*, *hirabah* or *ghasab*, or which is found under circumstances which create suspicion that an offence has been committed, and the Religious Enforcement Officer shall forthwith report such seizure to the Chief Religious Enforcement Officer.

(2) Any police officer may seize any property which is alleged or suspected to be the outcome of *sariqah*, *hirabah* or *ghasab*, or which is found under circumstances which create suspicion that an offence has been committed, and the police officer, if subordinate to the officer in charge of the nearest police station, shall forthwith report such seizure to such officer.

Person released on bail to give current address for service

371. (1) When a person is released on bail, or on his own bond, he shall give to the Syariah Court or officer allowing such bail or bond a current address at which service on him of all notices and process may be made, and in any case where such person cannot be found, or for other reasons such service on him cannot be effected, any notice or process left for such person at his last known address shall be deemed to have been duly served on him.

(2) A person released under subsection (1) shall inform any changes to his address to the Syariah Court or officer allowing such bail or bond.

Compensation for giving in charge groundlessly

372. (1) When any person causes a Religious Enforcement Officer or police officer to arrest another person, if it appears to the Syar'ie Judge that there was no sufficient ground for causing such arrest, the Syar'ie Judge may award such compensation, not exceeding \$1,000, to be paid by the person so causing the arrest of each person so arrested for his loss of time and any expenses incurred by him in the matter as the Syar'ie Judge shall think fit.

(2) All compensation awarded under this section may be recovered as if it were a fine.

(3) Such compensation shall be no bar to an action for false imprisonment.

Syar'ie Judge not to act where interested

373. No Syar'ie Judge shall try any case in which he is a party or personally interested.

Public servant not to bid at sales under this Order

374. A public servant having any duty to perform in connection with the sale of any property under this Order shall not purchase or bid for the property.

Forms

375. The forms set forth in the Second Schedule, with such variations as the circumstances of each case may require, may be used for the respective purposes therein mentioned.

Application of fines

376. Any Syariah Court imposing any fine under the authority of any law for the time being in force may award any part thereof not exceeding half of its amount to the informer.

Rules

377. The Chief Syar'ie Judge may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make rules for carrying out this Order and in particular, but without prejudice to the generality of the foregoing, such rules may provide for —

(a) the practice and procedure of the Registrar and Syariah Court;

(b) the fees that may be prescribed under this Order;

(c) the form, book of accounts, report and other documents to be used in respect of any act or thing done under or in accordance with this Order;

(d) the conduct of Syariah Court, the forms and the method of execution of any instrument and the appointment of officer or agent of the Syariah Court; and

(e) other matters for the purpose of implementing this Order.

Hukum Syara' to be applied if no provision

378. If there is a lacuna or if any matter which does not exist, or is not expressly provided for in this Order or in any rule made under this Order, the Syariah Court shall apply *Hukum Syara'* or the provisions of the Criminal Procedure Code (Chapter 7) with the necessary modifications to the extent that they do not conflict with *Hukum Syara'*, in which case *Hukum Syara'* applies.

Temporary application in pending cases

379. For the disposal of cases and matters pending before any Syariah Court at the commencement of this Order, the provisions under this Order may be applicable to the extent that it does not cause injustice.

Savings

380. All rules, orders, notices and forms issued or made under or in accordance with the Religious Council and Kadis Courts Act (Chapter 77) which is repealed under section 381 shall continue to be in force to the extent that they are not inconsistent with or not replaced by the provisions of this Order, until revoked or replaced by the provisions of this Order.

Repeal

381. Sections 56, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 69, 70, 71, 72, 73, 74, 76, 77 and 79 of the Religious Council and Kadis Courts Act (Chapter 77) are hereby repealed.

FIRST SCHEDULE
(sections 2(1) and 323(1)(b))

SCHEDULE OF OFFENCES UNDER SYARIAH PENAL CODE ORDER, 2013 (S 69/2013)

PART III						
ABETMENT						
1	2	3	4	5	6	7
SECTION	OFFENCE	WHETHER THE RELIGIOUS ENFORCEMENT OFFICER OR POLICE OFFICER MAY ORDINARILY ARREST WITHOUT WARRANT OR NOT	WHETHER A WARRANT OR A SUMMONS SHALL ORDINARILY ISSUE IN THE FIRST INSTANCE	WHETHER BAILABLE OR NOT	PUNISHMENT UNDER SYARIAH PENAL CODE ORDER, 2013 (S 69/2013)	BY WHAT SYARIAH COURT TRIABLE
41	Abetment and if act abetted is committed in consequence and where no express provision is made for its punishment	May arrest without warrant if arrest for the offence abetted may be made without warrant, but not otherwise	According as a warrant or summons may issue for the offence abetted	According as the offence abetted is bailable or not	The same punishment as for the offence abetted	The Syariah Court by which the offence abetted is triable
42	Abetment and if person abetted does act with different intention from that of abettor	May arrest without warrant if arrest for the offence abetted may be made without warrant, but not otherwise	According as a warrant or summons may issue for the offence abetted	According as the offence abetted is bailable or not	The same punishment as for the offence abetted	The Syariah Court by which the offence abetted is triable

FIRST SCHEDULE – (Continued)

43	Liability of abettor when one act abetted and different act done	May arrest without warrant if arrest for the offence abetted may be made without warrant, but not otherwise	According as a warrant or summons may issue for the offence abetted	According as the offence abetted is bailable or not	The same punishment as for the offence abetted	The Syariah Court by which the offence abetted is triable
45	Liability of abettor for effect caused by act abetted different from that intended by abettor	May arrest without warrant if arrest for the offence abetted may be made without warrant, but not otherwise	According as a warrant or summons may issue for the offence abetted	According as the offence abetted is bailable or not	The same punishment as for the offence abetted	The Syariah Court by which the offence abetted is triable
46	Abettor present when offence is committed	May arrest without warrant if arrest for the offence abetted may be made without warrant, but not otherwise	According as a warrant or summons may issue for the offence abetted	According as the offence abetted is bailable or not	The same punishment as for the offence abetted	The Syariah Court by which the offence abetted is triable
47	Abetment of offence punishable with death or life imprisonment	May arrest without warrant if arrest for the offence abetted may be made without warrant, but not otherwise	According as a warrant or summons may issue for the offence abetted	Not bailable	Fine not exceeding \$28,000 and imprisonment not exceeding 7 years	The Syariah Court by which the offence abetted is triable

FIRST SCHEDULE – (Continued)

48(1)	Abetment of offence punishable with imprisonment if offence is not committed	May arrest without warrant if arrest for the offence abetted may be made without warrant, but not otherwise	According as a warrant or summons may issue for the offence abetted	According as the offence abetted is bailable or not	Fine provided for the offence, imprisonment not exceeding a quarter of the longest term provided for the offence or both	The Syariah Court by which the offence abetted is triable
48(2)	If abettor or person abetted is public servant whose duty is to prevent offence	May arrest without warrant if arrest for the offence abetted may be made without warrant, but not otherwise	According as a warrant or summons may issue for the offence abetted	According as the offence abetted is bailable or not	Fine provided for the offence, imprisonment not exceeding one-half of the longest term provided for the offence or both	The Syariah Court by which the offence abetted is triable
49	Abetting commission of offence by public or by more than ten persons	May arrest without warrant if arrest for the offence abetted may be made without warrant, but not otherwise	According as a warrant or summons may issue for the offence abetted	According as the offence abetted is bailable or not	Fine not exceeding \$12,000, imprisonment not exceeding 3 years or both	The Syariah Court by which the offence abetted is triable
50(a)	Public servant concealing design to commit offence which it is his duty to prevent, if the offence is committed	May arrest without warrant if arrest for the offence abetted may be made without warrant, but not otherwise	According as a warrant or summons may issue for the offence abetted	According as the offence abetted is bailable or not	Fine provided for the offence, imprisonment not exceeding one-half of the longest term or both	The Syariah Court by which the offence abetted is triable

FIRST SCHEDULE – (Continued)

50(b)	Public servant concealing design to commit offence which it is his duty to prevent, if the offence is not committed	May arrest without warrant if arrest for the offence abetted may be made without warrant, but not otherwise	According as a warrant or summons may issue for the offence abetted	According as the offence abetted is bailable or not	Fine provided for the offence, imprisonment not exceeding a quarter of the longest term provided for the offence or both	The Syariah Court by which the offence abetted is triable
51(a)	Concealing design to commit offence punishable with imprisonment, if the offence is committed	May arrest without warrant if arrest for the offence abetted may be made without warrant, but not otherwise	According as a warrant or summons may issue for the offence abetted	According as the offence abetted is bailable or not	Fine provided for the offence, imprisonment not exceeding to a quarter of the longest term provided for the offence or both	The Syariah Court by which the offence abetted is triable
51(b)	Concealing design to commit offence punishable with imprisonment, if the offence is not committed	May arrest without warrant if arrest for the offence abetted may be made without warrant, but not otherwise	According as a warrant or summons may issue for the offence abetted	According as the offence abetted is bailable or not	Fine provided for the offence, imprisonment not exceeding one-eighth of the longest term of such imprisonment or both	The Syariah Court by which the offence abetted is triable

FIRST SCHEDULE – (Continued)

PART IV						
OFFENCES						
Chapter I						
<i>SARIQAH, HIRABAH, ZINA, ZINA BIL-JABAR, LIWAT, QAZAF, DRINKING INTOXICATING DRINKS AND IRTIDAD</i>						
<i>SARIQAH</i>						
1	2	3	4	5	6	7
SECTION	OFFENCE	WHETHER THE RELIGIOUS ENFORCEMENT OFFICER OR POLICE OFFICER MAY ORDINARILY ARREST WITHOUT WARRANT OR NOT	WHETHER A WARRANT OR A SUMMONS SHALL ORDINARILY ISSUE IN THE FIRST INSTANCE	WHETHER BAILABLE OR NOT	PUNISHMENT UNDER SYARIAH PENAL CODE ORDER, 2013 (S 69/2013)	BY WHAT SYARIAH COURT TRIABLE
55(1)	<i>Sariqah</i> and is proved by <i>ikrar</i> of the accused or <i>syahadah</i> of at least two <i>syahid</i>	May arrest without warrant	Warrant	Not bailable	<p>(a) For a first offence, amputation of his right hand from the joint of the wrist</p> <p>(b) For a second offence, amputation of his left foot up to the ankle</p> <p>(c) For a third or subsequent offence, imprisonment not exceeding 15 years</p>	Syariah High Court

FIRST SCHEDULE – (Continued)

55(2)	<i>Mukallaf</i> commits <i>sariqah</i> in a group	May arrest without warrant	Warrant	Not bailable	The same punishment as provided under section 55(1)	Syariah High Court
55(3)	<i>Sariqah</i> – <i>(a)</i> is proved by evidence other than that provided under section 55(1); or <i>(b)</i> in any circumstances stated in sections 56 and 57	May arrest without warrant	Warrant	Not bailable	<i>(a)</i> For a first offence, fine not exceeding \$40,000, imprisonment not exceeding 10 years or both <i>(b)</i> For the second or subsequent offence, fine not exceeding \$56,000, imprisonment not exceeding 14 years or both	Syariah High Court
58	Commit <i>qatl</i> or cause hurt to person during the commission of <i>sariqah</i>	May arrest without warrant	Warrant	Not bailable	In addition to punishment of <i>sariqah</i> , liable to punishment of <i>qisas</i> , <i>diyat</i> or <i>arsy</i>	Syariah High Court
59	Attempt to commit or cause the commission of <i>sariqah</i>	May arrest without warrant	Warrant	Not bailable	Fine not exceeding \$20,000, imprisonment not exceeding 5 years or both	Syariah High Court
60(1)	Abetting commission of <i>sariqah</i> under section 55(1)	May arrest without warrant	Warrant	Not bailable	Fine not exceeding \$40,000, imprisonment not exceeding 10 years or both	Syariah High Court
60(2)	Abetting commission of <i>sariqah</i> under section 55(3)	May arrest without warrant	Warrant	Not bailable	Fine not exceeding \$28,000, imprisonment not exceeding 7 years or both	Syariah High Court

FIRST SCHEDULE – (Continued)

HIRABAH						
1	2	3	4	5	6	7
SECTION	OFFENCE	WHETHER THE RELIGIOUS ENFORCEMENT OFFICER OR POLICE OFFICER MAY ORDINARILY ARREST WITHOUT WARRANT OR NOT	WHETHER A WARRANT OR A SUMMONS SHALL ORDINARILY ISSUE IN THE FIRST INSTANCE	WHETHER BAILABLE OR NOT	PUNISHMENT UNDER SYARIAH PENAL CODE ORDER, 2013 (S 69/2013)	BY WHAT SYARIAH COURT TRIABLE
63(1)(a)	<i>Hirabah</i> and is proved by <i>ikrar</i> of the accused or <i>syahadah</i> of at least two <i>syahid</i> and if, during the commission of <i>hirabah</i> , <i>qatl</i> has been committed	May arrest without warrant	Warrant	Not bailable	Death	Syariah High Court
63(1)(b)(i)	<i>Hirabah</i> and is proved by <i>ikrar</i> of an accused or <i>syahadah</i> of at least two <i>syahid</i> and if, during the commission of <i>hirabah</i> , the value of property taken amounts to or exceeds <i>nisab</i>	May arrest without warrant	Warrant	Not bailable	Amputation of the right hand from the wrist and of the left foot from the ankle	Syariah High Court
63(1)(b)(ii)	<i>Hirabah</i> and is proved by <i>ikrar</i> of an accused or <i>syahadah</i> of at least two <i>syahid</i> , and when the offence of <i>hirabah</i> has been committed jointly by more than one person and the value of the share of each one of them amounts to or exceeds <i>nisab</i>	May arrest without warrant	Warrant	Not bailable	Amputation of hand and foot	Syariah High Court

FIRST SCHEDULE – (Continued)

63(1)(c)	<i>Hirabah</i> and is proved by <i>ikrar</i> of an accused or <i>syahadah</i> of at least two <i>syahid</i>	May arrest without warrant	Warrant	Not bailable	<i>Qisas</i> or <i>arsy</i> in accordance with the nature of the hurt as specified in the Second, Third and Fourth Schedules to the Syariah Penal Code Order, 2013 [S 69/2013] or as determined by the Syariah Court	Syariah High Court
63(2)	<i>Hirabah</i> – (a) is proved by evidence other than that provided under section 63(1); or (b) in any circumstances provided under section 64	May arrest without warrant	Warrant	Not bailable	Imprisonment not exceeding 30 years and whipping not exceeding 40 strokes	Syariah High Court
65	Attempt to commit or cause the commission of <i>hirabah</i>	May arrest without warrant	Warrant	Not bailable	Imprisonment not exceeding 15 years and whipping not exceeding 30 strokes	Syariah High Court
66(1)	Abetting commission of <i>hirabah</i> under section 63(1)	May arrest without warrant	Warrant	Not bailable	Imprisonment not exceeding 30 years and whipping not exceeding 40 strokes	Syariah High Court
66(2)	Abetting commission of <i>hirabah</i> under section 63(2)	May arrest without warrant	Warrant	Not bailable	Imprisonment not exceeding 15 years and whipping not exceeding 20 strokes	Syariah High Court

FIRST SCHEDULE – (Continued)

ZINA						
1	2	3	4	5	6	7
SECTION	OFFENCE	WHETHER THE RELIGIOUS ENFORCEMENT OFFICER OR POLICE OFFICER MAY ORDINARILY ARREST WITHOUT WARRANT OR NOT	WHETHER A WARRANT OR A SUMMONS SHALL ORDINARILY ISSUE IN THE FIRST INSTANCE	WHETHER BAILABLE OR NOT	PUNISHMENT UNDER SYARIAH PENAL CODE ORDER, 2013 (S 69/2013)	BY WHAT SYARIAH COURT TRIABLE
69(1)	Muslim commits <i>zina</i> and is proved by <i>ikrar</i> of the accused or <i>syahadah</i> of at least four <i>syahid</i>	May arrest without warrant	Warrant	Not bailable	(a) If <i>muhsan</i> , stoning to death witnessed by a group of Muslims (b) If <i>ghairu muhsan</i> , whipping with 100 strokes witnessed by a group of Muslims and imprisonment for one year	Syariah High Court
69(2)	Muslim commits <i>zina</i> and is proved by evidence other than that provided under section 69(1)	May arrest without warrant	Warrant	Not bailable	(a) If <i>muhsan</i> , whipping not exceeding 30 strokes and imprisonment not exceeding 7 years (b) If <i>ghairu muhsan</i> , whipping not exceeding 15 strokes and imprisonment not exceeding 3 years	Syariah High Court

FIRST SCHEDULE – (Continued)

69(3)	Non-Muslim commits <i>zina</i> with Muslim and is proved <i>ikrar</i> of the accused or <i>syahadah</i> of at least four <i>syahid</i>	May arrest without warrant	Warrant	Not bailable	The same punishment as provided under section 69(1)	Syariah High Court
69(4)	Non-Muslim commits <i>zina</i> with Muslim and is proved by evidence other than that provided under section 69(3)	May arrest without warrant	Warrant	Not bailable	The same punishment as provided under section 69(2)	Syariah High Court
70(a)	<i>Zina</i> committed by person who is not <i>mukallaf</i> or has not attained the age of <i>baligh</i> , and is proved by <i>ikrar</i> of the accused or <i>syahadah</i> of at least four <i>syahid</i>	May not arrest without warrant	Summon	Bailable	Whipping not exceeding 30 strokes and detention in any rehabilitation centre not exceeding 3 years	Syariah Subordinate Court
70(b)	<i>Zina</i> committed by person who is not <i>mukallaf</i> or has not attained the age of <i>baligh</i> , and is proved by evidence other than that provided under section 70(a)	May not arrest without warrant	Summon	Bailable	Whipping not exceeding 15 strokes and detention in any rehabilitation centre not exceeding 3 years	Syariah Subordinate Court
71(a)	Attempt to commit or cause the commission of <i>zina</i> , if <i>muhshan</i>	May arrest without warrant	Warrant	Not bailable	Fine not exceeding \$14,000, imprisonment not exceeding 3 years or both, and whipping not exceeding 20 strokes	Syariah Subordinate Court
71(b)	Attempt to commit or cause the commission of <i>zina</i> , if <i>ghairu muhshan</i>	May arrest without warrant	Warrant	Bailable	Fine not exceeding \$8,000, imprisonment not exceeding 2 years or both, and whipping not exceeding 10 strokes	Syariah Subordinate Court

FIRST SCHEDULE – (Continued)

72	Attempt to commit or cause the commission of <i>zina</i> by person who is not <i>mukallaf</i> or has not attained the age of <i>baligh</i>	May not arrest without warrant	Summon	Bailable	Whipping not exceeding 10 strokes and detention in any rehabilitation centre not exceeding one year	Syariah Subordinate Court
73(1)	Abetting commission of <i>zina</i> under section 69(1)	May arrest without warrant	Warrant	Not bailable	Fine not exceeding \$28,000, imprisonment not exceeding 7 years or both, and whipping not exceeding 40 strokes	Syariah High Court
73(2)	Abetting commission of <i>zina</i> under section 69(2) or (4)	May arrest without warrant	Warrant	Not bailable	Fine not exceeding \$16,000, imprisonment not exceeding 4 years or both, and whipping not exceeding 20 strokes	Syariah High Court
74	Abetment to commit <i>zina</i> by person who is not <i>mukallaf</i> or has not attained the age of <i>baligh</i>	May not arrest without warrant	Summon	Bailable	Whipping not exceeding 15 strokes and detention in any rehabilitation centre not exceeding 3 years	Syariah Subordinate Court

FIRST SCHEDULE – (Continued)

ZINA-BIL-JABAR						
1	2	3	4	5	6	7
SECTION	OFFENCE	WHETHER THE RELIGIOUS ENFORCEMENT OFFICER OR POLICE OFFICER MAY ORDINARILY ARREST WITHOUT WARRANT OR NOT	WHETHER A WARRANT OR A SUMMONS SHALL ORDINARILY ISSUE IN THE FIRST INSTANCE	WHETHER BAILABLE OR NOT	PUNISHMENT UNDER SYARIAH PENAL CODE ORDER, 2013 (S 69/2013)	BY WHAT SYARIAH COURT TRIABLE
76(1)	<i>Zina bil-jabar</i> and is proved by <i>ikrar</i> of the accused or <i>syahaadah</i> of at least four <i>syahid</i>	May arrest without warrant	Warrant	Not bailable	(a) If <i>muhsan</i> , stoning to death witnessed by a group of Muslims (b) If <i>ghairu muhsan</i> , whipping with 100 strokes witnessed by a group of Muslims and imprisonment for one year	Syariah High Court
76(2)	<i>Zina bil-jabar</i> and is proved by evidence other than that provided under section 76(1)	May arrest without warrant	Warrant	Not bailable	(a) If <i>muhsan</i> , imprisonment not exceeding 30 years and whipping not exceeding 40 strokes (b) If <i>ghairu muhsan</i> , imprisonment not exceeding 15 years and whipping not exceeding 20 strokes	Syariah High Court

FIRST SCHEDULE – (Continued)

77(a)	<i>Zina bil-jabar</i> committed by person who is not <i>mukallaf</i> or has not attained the age of <i>baligh</i> , and is proved by <i>ikrar</i> of the accused or <i>syahadah</i> of at least four <i>syahid</i>	May not arrest without warrant	Summon	Bailable	Whipping with 40 strokes and detention in any rehabilitation centre not exceeding 5 years	Syariah High Court
77(b)	<i>Zina bil-jabar</i> committed by person who is not <i>mukallaf</i> or has not attained the age of <i>baligh</i> , and is proved by evidence other than that provided under section 77(a)	May not arrest without warrant	Summon	Bailable	Whipping with 20 strokes and detention in any rehabilitation centre not exceeding 5 years	Syariah High Court
78	Attempt to commit or cause the commission of <i>zina bil-jabar</i>	May arrest without warrant	Warrant	Not bailable	(a) If <i>muhshan</i> , imprisonment not exceeding 15 years and whipping with 20 strokes (b) If <i>ghairu muhshan</i> , imprisonment not exceeding 7 years and whipping with 20 strokes	Syariah High Court
79	Attempt to commit or cause the commission of <i>zina bil-jabar</i> by person who is not <i>mukallaf</i> or has not attained the age of <i>baligh</i>	May not arrest without warrant	Summon	Bailable	Whipping with 20 strokes and detention in any rehabilitation centre not exceeding 4 years	Syariah High Court
80(1)	Abetting commission of <i>zina bil-jabar</i> under section 76(1)	May arrest without warrant	Warrant	Not bailable	Imprisonment not exceeding 30 years and whipping with 40 strokes	Syariah High Court

FIRST SCHEDULE – (Continued)

80(2)	Abetting commission of <i>zina-bil-jabar</i> under section 76(2)	May arrest without warrant	Warrant	Not bailable	Imprisonment not exceeding 15 years and whipping with 20 strokes	Syariah High Court
81	Abetment to commit <i>zina bil-jabar</i> by person who is not <i>mukallaf</i> or has not attained the age of <i>baligh</i>	May not arrest without warrant	Summon	Bailable	Whipping with 20 strokes and detention in any rehabilitation centre not exceeding 5 years	Syariah High Court

FIRST SCHEDULE – (Continued)

<i>LIWAT</i>						
1	2	3	4	5	6	7
SECTION	OFFENCE	WHETHER THE RELIGIOUS ENFORCEMENT OFFICER OR POLICE OFFICER MAY ORDINARILY ARREST WITHOUT WARRANT OR NOT	WHETHER A WARRANT OR A SUMMONS SHALL ORDINARILY ISSUE IN THE FIRST INSTANCE	WHETHER BAILABLE OR NOT	PUNISHMENT UNDER SYARIAH PENAL CODE ORDER, 2013 (S 69/2013)	BY WHAT SYARIAH COURT TRIABLE
82	<i>Liwat</i>	May arrest without warrant if arrest for the offence of <i>zina</i> may be made without warrant, but not otherwise	According as a warrant or summons may issue for the offence of <i>zina</i>	According as the offence of <i>zina</i> is bailable or not	The same punishment as provided for the offence of <i>zina</i>	Syariah High Court
84	Attempt to commit or cause the commission of <i>liwat</i>	May arrest without warrant	Warrant	Not bailable	The same punishment as provided under section 71(a)	Syariah High Court
84	Attempt to commit or cause the commission of <i>liwat</i>	May arrest without warrant	Warrant	Bailable	The same punishment as provided under section 71(b)	Syariah High Court
84	Attempt to commit or cause the commission of <i>liwat</i>	May not arrest without warrant	Summon	Bailable	The same punishment as provided under section 72	Syariah High Court

FIRST SCHEDULE – (Continued)

85	Abetting commission of <i>liwat</i>	May arrest without warrant	Warrant	Not bailable	The same punishment as provided under section 73	Syariah High Court
85	Abetting commission of <i>liwat</i>	May not arrest without warrant	Summon	Bailable	The same punishment as provided under section 74	Syariah High Court

FIRST SCHEDULE – (Continued)

OFFENCES RELATING TO <i>ZINA</i> , <i>ZINA BIL-JABAR</i> OR <i>LIWAT</i>						
1	2	3	4	5	6	7
SECTION	OFFENCE	WHETHER THE RELIGIOUS ENFORCEMENT OFFICER OR POLICE OFFICER MAY ORDINARILY ARREST WITHOUT WARRANT OR NOT	WHETHER A WARRANT OR A SUMMONS SHALL ORDINARILY ISSUE IN THE FIRST INSTANCE	WHETHER BAILABLE OR NOT	PUNISHMENT UNDER SYARIAH PENAL CODE ORDER, 2013 (S 69/2013)	BY WHAT SYARIAH COURT TRIABLE
90	<i>Ityan al-mayyitah</i>	May arrest without warrant	Warrant	Not bailable	Fine not exceeding \$40,000, imprisonment not exceeding 10 years, whipping not exceeding 40 strokes or combination of any two of the punishments	Syariah High Court
91	<i>Ityan al-bahimah</i>	May arrest without warrant	Warrant	Not bailable	Fine not exceeding \$40,000, imprisonment not exceeding 10 years, whipping not exceeding 40 strokes or combination of any two of the punishments	Syariah High Court
92(1)	Muslim woman commits <i>musahaqah</i>	May arrest without warrant	Warrant	Not bailable	Fine not exceeding \$40,000, imprisonment not exceeding 10 years, whipping not exceeding 40 strokes or combination of any two of the punishments	Syariah High Court

FIRST SCHEDULE – (Continued)

92(2)	Non-Muslim woman commits <i>musahaqah</i> with Muslim woman	May arrest without warrant	Warrant	Not bailable	Fine not exceeding \$40,000, imprisonment not exceeding 10 years, whipping not exceeding 40 strokes or combination of any two of the punishments	Syariah High Court
93	Refusal to perform <i>li'an</i>	May arrest without warrant	Warrant	Not bailable	Imprisonment until – (a) the husband has agreed to perform <i>li'an</i> or be punished with <i>hadd</i> punishment for committing <i>qazaf</i> ; or (b) the wife has agreed to perform <i>li'an</i> or accepted the husband's accusation of <i>zina</i> and if the wife accepted the husband's accusation, she is liable to <i>hadd</i> punishment for committing <i>zina</i>	Syariah High Court
94(1)	Muslim woman pregnant or gives birth out of wedlock, if <i>muhshan</i>	May arrest without warrant	Warrant	Bailable	Fine not exceeding \$8,000, imprisonment not exceeding 2 years or both	Syariah Subordinate Court
94(1)	Muslim woman pregnant or gives birth out of wedlock, if <i>ghairu muhshan</i>	May not arrest without warrant	Summon	Bailable	Fine not exceeding \$4,000, imprisonment not exceeding one year or both	Syariah Subordinate Court
94(5)	Man impregnates Muslim woman out of wedlock, whether or not such woman has given birth to a child	May arrest without warrant	Warrant	Bailable	Fine not exceeding \$8,000, imprisonment not exceeding 2 years or both	Syariah Subordinate Court

FIRST SCHEDULE – (Continued)

QAZAF						
1	2	3	4	5	6	7
SECTION	OFFENCE	WHETHER THE RELIGIOUS ENFORCEMENT OFFICER OR POLICE OFFICER MAY ORDINARILY ARREST WITHOUT WARRANT OR NOT	WHETHER A WARRANT OR A SUMMONS SHALL ORDINARILY ISSUE IN THE FIRST INSTANCE	WHETHER BAILABLE OR NOT	PUNISHMENT UNDER SYARIAH PENAL CODE ORDER, 2013 (S 69/2013)	BY WHAT SYARIAH COURT TRIABLE
98(1)	<i>Qazaf</i> and is proved by <i>ikrar</i> of the accused or <i>syahadah</i> of at least two <i>syahid</i>	May arrest without warrant	Warrant	Not bailable	Whipping with 80 strokes	Syariah Subordinate Court
98(2)	<i>Qazaf</i> committed before the Syariah Court and fails to be proven	May arrest without warrant	Warrant	Not bailable	Whipping with 80 strokes	Syariah Subordinate Court
98(4)	(a) <i>Qazaf</i> is proved by evidence other than that provided under section 98(1) (b) Person liable to <i>qazaf</i> does not fulfill the conditions provided under section 96 (c) <i>Qazaf</i> in cases mentioned under section 99	May arrest without warrant	Warrant	Not bailable	Fine not exceeding \$20,000, imprisonment not exceeding 5 years, whipping not exceeding 40 strokes or combination of any two of the punishments	Syariah Subordinate Court

FIRST SCHEDULE – (Continued)

100	Issuing documents deemed to contain meaning of <i>qazaf</i>	May arrest without warrant	Warrant	Not bailable	Fine not exceeding \$20,000, imprisonment not exceeding 5 years, whipping not exceeding 40 strokes or combination of any two of the punishments	Syariah Subordinate Court
101	Sale of document deemed to contain meanings of <i>qazaf</i>	May arrest without warrant	Warrant	Not bailable	Fine not exceeding \$20,000, imprisonment not exceeding 5 years, whipping not exceeding 40 strokes or combination of any two of the punishments	Syariah Subordinate Court
102	Attempt to commit or cause the commission of <i>qazaf</i>	May arrest without warrant	Warrant	Bailable	Fine not exceeding \$8,000, imprisonment not exceeding 2 years, whipping with 10 strokes or combination of any two of the punishments	Syariah Subordinate Court
103(1)	Abetting commission of <i>qazaf</i> under section 98(1)	May arrest without warrant	Warrant	Not bailable	Fine not exceeding \$20,000, imprisonment not exceeding 5 years, whipping with 20 strokes or combination of any two of the punishments	Syariah Subordinate Court
103(2)	Abetting commission of <i>qazaf</i> under section 98(4)	May arrest without warrant	Warrant	Not bailable	Fine not exceeding \$12,000, imprisonment not exceeding 3 years, whipping with 10 strokes or combination of any two of the punishments	Syariah Subordinate Court

FIRST SCHEDULE – (Continued)

INTOXICATING DRINKS						
1	2	3	4	5	6	7
SECTION	OFFENCE	WHETHER THE RELIGIOUS ENFORCEMENT OFFICER OR POLICE OFFICER MAY ORDINARILY ARREST WITHOUT WARRANT OR NOT	WHETHER A WARRANT OR A SUMMONS SHALL ORDINARILY ISSUE IN THE FIRST INSTANCE	WHETHER BAILABLE OR NOT	PUNISHMENT UNDER SYARIAH PENAL CODE ORDER, 2013 (S 69/2013)	BY WHAT SYARIAH COURT TRIABLE
104(1)	Muslim drinks liquor or any intoxicating drink and is proved by <i>ihrar</i> of the accused or <i>syahadah</i> of at least two <i>syahid</i>	May arrest without warrant	Warrant	Not bailable	(a) For a first offence, whipping with 40 strokes (b) For a second offence, whipping with 80 strokes (c) For a third or subsequent offence, whipping with 80 strokes and imprisonment not exceeding 2 years	Syariah Subordinate Court
104(3)	Muslim – (a) drinks liquor or any intoxicating drink and is proved by evidence other than that provided under section 104(2); or (b) consumes liquor or any intoxicating drink	May arrest without warrant	Summon	Bailable	(a) For a first offence, fine not exceeding \$4,000, imprisonment not exceeding one year or both (b) For a second or subsequent offence, fine not exceeding \$8,000, imprisonment not exceeding 2 years or both	Syariah Subordinate Court

FIRST SCHEDULE – (Continued)

104(4)	Muslim makes, sells, advertises, serves, offers, gives as present, exhibits, owns, keeps, buys or possesses any liquor or intoxicating drink	May arrest without warrant	Summon	Bailable	Fine not exceeding \$8,000, imprisonment not exceeding 2 years or both	Syariah Subordinate Court
104(5)	Non-Muslim drinks liquor or any intoxicating drink in public place	May arrest without warrant	Summon	Bailable	Fine not exceeding \$8,000, imprisonment not exceeding 2 years or both	Syariah Subordinate Court
104(6)	Non-Muslim sells, advertises, serves, offers, gives as present or exhibits any liquor or intoxicating drink to a Muslim	May arrest without warrant	Warrant	Bailable	Fine not exceeding \$8,000, imprisonment not exceeding 2 years or both	Syariah Subordinate Court
105(1)	Muslim attempts to commit or cause the commission of the offence under section 104(1), (3) or (4)	May arrest without warrant	Summon	Bailable	Fine not exceeding \$4,000, imprisonment not exceeding one year or both	Syariah Subordinate Court
105(2)	Non-Muslim attempts to commit or cause the commission of the offence under section 104(5) or (6)	May arrest without warrant	Summon	Bailable	Fine not exceeding \$4,000, imprisonment not exceeding one year or both	Syariah Subordinate Court
106(1)	Abetting commission of offence under section 104(1)	May arrest without warrant	Warrant	Bailable	Fine not exceeding \$8,000, imprisonment not exceeding 2 years or both	Syariah Subordinate Court
106(2)	Abetting commission of offence under section 104(3), (4), (5) or (6)	May arrest without warrant	Summon	Bailable	Fine not exceeding \$4,000, imprisonment not exceeding one year or both	Syariah Subordinate Court

FIRST SCHEDULE – (Continued)

IRTIDAD						
1	2	3	4	5	6	7
SECTION	OFFENCE	WHETHER THE RELIGIOUS ENFORCEMENT OFFICER OR POLICE OFFICER MAY ORDINARILY ARREST WITHOUT WARRANT OR NOT	WHETHER A WARRANT OR A SUMMONS SHALL ORDINARILY ISSUE IN THE FIRST INSTANCE	WHETHER BAILABLE OR NOT	PUNISHMENT UNDER SYARIAH PENAL CODE ORDER, 2013 (S 69/2013)	BY WHAT SYARIAH COURT TRIABLE
108(1)	Muslim declares himself or other person as god and is proved by <i>ikrar</i> of the accused or <i>syahadah</i> of at least two <i>syahid</i>	May arrest without warrant	Warrant	Not bailable	Death	Syariah High Court
108(2)	Muslim declares himself or other person as god and is proved by evidence other than that provided under section 108(1)	May arrest without warrant	Warrant	Not bailable	Imprisonment not exceeding 30 years and whipping not exceeding 40 strokes	Syariah High Court
109(1)	Muslim declares himself or other person as <i>Rasul</i> or <i>Nabi</i> and is proved by <i>ikrar</i> of the accused or <i>syahadah</i> of at least two <i>syahid</i>	May arrest without warrant	Warrant	Not bailable	Death	Syariah High Court

FIRST SCHEDULE – (Continued)

109(2)	Muslim declares himself or other person as <i>Rasul</i> or <i>Nabi</i> and is proved by evidence other than that provided under section 109(1)	May arrest without warrant	Warrant	Not bailable	Imprisonment not exceeding 30 years and whipping not exceeding 40 strokes	Syariah High Court
110(1)	Muslim contempts or brings into contempt <i>Nabi Muhammad Sallallahu 'Alaihi Wa Sallam</i> or any <i>Nabi Allah</i> and is proved by <i>ikrar</i> of the accused or <i>syahadah</i> of at least two <i>syahid</i>	May arrest without warrant	Warrant	Not bailable	Death	Syariah High Court
110(2)	Muslim contempts or brings into contempt <i>Nabi Muhammad Sallallahu 'Alaihi Wa Sallam</i> or any <i>Nabi Allah</i> and is proved by evidence other than that provided under section 110(1)	May arrest without warrant	Warrant	Not bailable	Imprisonment not exceeding 30 years and whipping not exceeding 40 strokes	Syariah High Court
111(1)	Muslim – (a) derides, mocks, mimics, ridicules or insults any verse of the Al-Qur'an or <i>hadith</i> of <i>Nabi Muhammad Sallallahu 'Alaihi Wa Sallam</i> ; (b) denies the <i>hadith</i> of <i>Nabi Muhammad Sallallahu 'Alaihi Wa Sallam</i> as a source or authority (<i>hujjiyyah</i>) of the teachings of the religion of Islam; or	May arrest without warrant	Warrant	Not bailable	Death	Syariah High Court

FIRST SCHEDULE – (Continued)

	(c) denies obligatory matters with <i>ijma'</i> , and is proved by <i>ikrar</i> of the accused or <i>syahadah</i> of at least two <i>syahid</i>					
111(2)	Muslim derides etc. verses of the Al-Qur'an, <i>hadith</i> or obligatory matters with <i>ijma'</i> , and is proved by evidence other than that provided under section 111(1)	May arrest without warrant	Warrant	Not bailable	Imprisonment not exceeding 30 years and whipping not exceeding 40 strokes	Syariah High Court
112(1)	Muslim declares himself as non-Muslim and is proved by <i>ikrar</i> of the accused or <i>syahadah</i> of at least two <i>syahid</i>	May arrest without warrant	Warrant	Not bailable	Death	Syariah High Court
112(2)	Muslim declares himself as non-Muslim and is proved by evidence other than that provided under section 112(1)	May arrest without warrant	Warrant	Not bailable	Imprisonment not exceeding 30 years and whipping not exceeding 40 strokes	Syariah High Court
113	Muslim attempts to commit or cause the commission of <i>irtidad</i>	May arrest without warrant	Warrant	Not bailable	The same punishment as provided for the offence	Syariah High Court
114	Abetting commission of <i>irtidad</i>	May arrest without warrant	Warrant	Not bailable	Imprisonment not exceeding 30 years and whipping not exceeding 40 strokes	Syariah High Court

FIRST SCHEDULE – (Continued)

Chapter II						
<i>QATL</i> AND CAUSING HURT						
<i>QATLUL-'AMD</i>						
1	2	3	4	5	6	7
SECTION	OFFENCE	WHETHER THE RELIGIOUS ENFORCEMENT OFFICER OR POLICE OFFICER MAY ORDINARILY ARREST WITHOUT WARRANT OR NOT	WHETHER A WARRANT OR A SUMMONS SHALL ORDINARILY ISSUE IN THE FIRST INSTANCE	WHETHER BAILABLE OR NOT	PUNISHMENT UNDER SYARIAH PENAL CODE ORDER, 2013 (S 69/2013)	BY WHAT SYARIAH COURT TRIABLE
126(1)	<i>Qatlul-'amd</i> and is proved by <i>ikrar</i> of the accused or <i>syahadah</i> of at least two <i>syahid</i>	May arrest without warrant	Warrant	Not bailable	Death	Syariah High Court
126(2)	<i>Qatlul-'amd</i> – (a) is proved by evidence other than that provided under section 126(1); (b) is committed by person who is not <i>mukallaf</i> ; or (c) is committed by a mother or father against her or his own child	May arrest without warrant	Warrant	Not bailable	Fine not exceeding \$100,000, imprisonment not exceeding 25 years or both	Syariah High Court

FIRST SCHEDULE – (Continued)

127(1)	<i>Qatlul-'amd</i> due to <i>ikrah tam</i>	May arrest without warrant	Warrant	Not bailable	(a) Imprisonment not exceeding 10 years (b) The person causing <i>ikrah tam</i> shall be punished with death	Syariah High Court
127(2)	<i>Qatlul-'amd</i> due to <i>ikrah naqish</i>	May arrest without warrant	Warrant	Not bailable	(a) Death (b) The person causing <i>ikrah naqish</i> shall be punished with imprisonment not exceeding 10 years	Syariah High Court
128	<i>Qatl</i> caused by being hired	May arrest without warrant	Warrant	Not bailable	The person who commits <i>qatl</i> and the hirer is liable to death punishment	Syariah High Court
135	Acquittal or punishment after pardon or compound of <i>qisas</i>	—	—	—	(a) Acquittal; or (b) imprisonment not exceeding 15 years	Syariah High Court
136	<i>Wali-ad-dam</i> commits <i>qatlul-'amd</i> on the offender against whom <i>qisas</i> has been pardoned under section 133 or compound under section 134	May arrest without warrant	Warrant	Not bailable	(a) Death, if he himself had pardoned or compound <i>qisas</i> on the offender or he had knowledge of such pardon or compound of <i>qisas</i> by other <i>wali-ad-dam</i> (b) <i>Diyat</i> and imprisonment not exceeding 5 years, if he had not pardoned or compound <i>qisas</i> on the offender and had no knowledge of such pardon or compound of <i>qisas</i> by other <i>wali-ad-dam</i>	Syariah High Court

FIRST SCHEDULE – (Continued)

137	Attempt to commit or cause the commission of <i>qatlul-'amd</i>	May arrest without warrant	Warrant	Notailable	Fine not exceeding \$40,000, imprisonment not exceeding 10 years or both	Syariah High Court
138(1)	Abetment of <i>qatlul-'amd</i> under section 126(1)	May arrest without warrant	Warrant	Notailable	Fine not exceeding \$100,000, imprisonment not exceeding 25 years or both	Syariah High Court
138(2)	Abetment of <i>qatlul-'amd</i> under section 126(2)	May arrest without warrant	Warrant	Notailable	Fine not exceeding \$60,000, imprisonment not exceeding 15 years or both	Syariah High Court

FIRST SCHEDULE – (Continued)

QATLU SYIBHIL-'AMD						
1	2	3	4	5	6	7
SECTION	OFFENCE	WHETHER THE RELIGIOUS ENFORCEMENT OFFICER OR POLICE OFFICER MAY ORDINARILY ARREST WITHOUT WARRANT OR NOT	WHETHER A WARRANT OR A SUMMONS SHALL ORDINARILY ISSUE IN THE FIRST INSTANCE	WHETHER BAILABLE OR NOT	PUNISHMENT UNDER SYARIAH PENAL CODE ORDER, 2013 (S 69/2013)	BY WHAT SYARIAH COURT TRIABLE
140(1)	<i>Qatlu syibhil-'amd</i> and is proved in manner provided under section 141	May arrest without warrant	Warrant	Not bailable	<i>Diyat</i> and imprisonment not exceeding 15 years	Syariah High Court
140(2)	<i>Qatlu syibhil-'amd</i> and is proved by evidence other than that provided under section 141	May arrest without warrant	Warrant	Not bailable	Fine not exceeding \$60,000, imprisonment not exceeding 15 years or both	Syariah High Court
143	Acquittal or punishment after pardon of <i>diyat</i>	—	—	—	(a) Acquittal; or (b) imprisonment not exceeding 5 years	Syariah High Court
144	Attempt to commit or cause the commission of <i>qatlu syibhil-'amd</i>	May arrest without warrant	Warrant	Not bailable	Fine not exceeding \$40,000, imprisonment not exceeding 10 years or both	Syariah High Court

FIRST SCHEDULE – (Continued)

145(1)	Abetment of <i>qatlu syibil'-amd</i> under section 140(1)	May arrest without warrant	Warrant	Not bailable	Fine not exceeding \$60,000, imprisonment not exceeding 15 years or both	Syariah High Court
145(2)	Abetment of <i>qatlu syibil'-amd</i> under section 140(2)	May arrest without warrant	Warrant	Not bailable	Fine not exceeding \$28,000, imprisonment not exceeding 7 years or both	Syariah High Court

FIRST SCHEDULE – (Continued)

<i>QATLUL -KHATA'</i>						
1	2	3	4	5	6	7
SECTION	OFFENCE	WHETHER THE RELIGIOUS ENFORCEMENT OFFICER OR POLICE OFFICER MAY ORDINARILY ARREST WITHOUT WARRANT OR NOT	WHETHER A WARRANT OR A SUMMONS SHALL ORDINARILY ISSUE IN THE FIRST INSTANCE	WHETHER BAILABLE OR NOT	PUNISHMENT UNDER SYARIAH PENAL CODE ORDER, 2013 (S 69/2013)	BY WHAT SYARIAH COURT TRIABLE
147(1)	<i>Qatlul-khata'</i> without any apparent rash, negligent or wrongful act or default on his part, and is proved in manner provided under section 148	May not arrest without warrant	Summon	Bailable	<i>Diyat</i> and fine not exceeding \$5,000	Syariah High Court
147(2)	<i>Qatlul-khata'</i> by any rash or negligent act and is proved in manner provided under section 148	May arrest without warrant	Warrant	Not bailable	<i>Diyat</i> and imprisonment not exceeding 10 years	Syariah High Court
147(3)	<i>Qatlul-khata'</i> without any apparent negligent or wrongful act or default on his part and is proved by evidence other than that provided under section 148	May not arrest without warrant	Summon	Bailable	Fine not exceeding \$10,000	Syariah High Court

FIRST SCHEDULE – (Continued)

147(4)	<i>Qatlul-khata'</i> by any rash or negligent act and is proved by evidence other than that provided under section 148	May arrest without warrant	Warrant	Not bailable	Imprisonment not exceeding 5 years	Syariah High Court
150	Acquittal or punishment after pardon of <i>diyat</i>	—	—	—	(a) Acquittal; or (b) imprisonment not exceeding 5 years	Syariah High Court

FIRST SCHEDULE – (Continued)

QATL BY BLACK MAGIC						
1	2	3	4	5	6	7
SECTION	OFFENCE	WHETHER THE RELIGIOUS ENFORCEMENT OFFICER OR POLICE OFFICER MAY ORDINARILY ARREST WITHOUT WARRANT OR NOT	WHETHER A WARRANT OR A SUMMONS SHALL ORDINARILY ISSUE IN THE FIRST INSTANCE	WHETHER BAILABLE OR NOT	PUNISHMENT UNDER SYARIAH PENAL CODE ORDER, 2013 (S 69/2013)	BY WHAT SYARIAH COURT TRIABLE
152(1)	<i>Qatl</i> by black magic which in the ordinary course of nature may cause death and is proved by <i>ikrar</i> of the accused	May arrest without warrant	Warrant	Not bailable	Death	Syariah High Court
152(2)	<i>Qatlul-'amd</i> by black magic – (a) is proved by evidence other than that provided under section 152(1); (b) is committed by person who is not <i>mukallaf</i> ; or (c) is committed by person against his own child	May arrest without warrant	Warrant	Not bailable	Fine not exceeding \$100,000, imprisonment not exceeding 25 years or both	Syariah High Court
152(3)	<i>Qatl</i> by black magic which – (a) sometimes or rarely causes death;	May arrest without warrant	Warrant	Not bailable	<i>Diyat</i> and imprisonment not exceeding 15 years	Syariah High Court

FIRST SCHEDULE – (Continued)

	(b) intended to cause the death of a particular person but caused the death of another person, whose death he does not intend to cause, and is proved by <i>ikrar</i> of the accused					
152(4)	<i>Qatlu syibhil-'amd</i> by black magic and is proved by evidence other than that provided under section 152(3)	May arrest without warrant	Warrant	Not bailable	Fine not exceeding \$60,000, imprisonment not exceeding 15 years or both	Syariah High Court
153	Attempt to commit or cause the commission of <i>qatlul-'amd</i> or <i>qatlu syibhil-'amd</i> by black magic	May arrest without warrant	Warrant	Not bailable	Fine not exceeding \$40,000, imprisonment not exceeding 10 years or both	Syariah High Court
154(1)	Abetment of <i>qatl</i> by black magic under section 152(1)	May arrest without warrant	Warrant	Not bailable	Fine not exceeding \$100,000, imprisonment not exceeding 25 years or both	Syariah High Court
154(2)	Abetment of <i>qatl</i> by black magic under section 152(2)	May arrest without warrant	Warrant	Not bailable	Fine not exceeding \$60,000, imprisonment not exceeding 15 years or both	Syariah High Court
154(3)	Abetment of <i>qatl</i> by black magic under section 152(3)	May arrest without warrant	Warrant	Not bailable	Fine not exceeding \$60,000, imprisonment not exceeding 15 years or both	Syariah High Court
154(4)	Abetment of <i>qatl</i> by black magic under section 152(4)	May arrest without warrant	Warrant	Not bailable	Fine not exceeding \$28,000, imprisonment not exceeding 7 years or both	Syariah High Court

FIRST SCHEDULE – (Continued)

QATL BY POISON						
1	2	3	4	5	6	7
SECTION	OFFENCE	WHETHER THE RELIGIOUS ENFORCEMENT OFFICER OR POLICE OFFICER MAY ORDINARILY ARREST WITHOUT WARRANT OR NOT	WHETHER A WARRANT OR A SUMMONS SHALL ORDINARILY ISSUE IN THE FIRST INSTANCE	WHETHER BAILABLE OR NOT	PUNISHMENT UNDER SYARIAH PENAL CODE ORDER, 2013 (S 69/2013)	BY WHAT SYARIAH COURT TRIABLE
155(1)	<p><i>Qatl</i> –</p> <p>(a) by coercing a person into taking poison or poisonous substance which in the ordinary course of nature may kill; or</p> <p>(b) by administering food or drinks which he knows to contain poison which in the ordinary course of nature may kill, to a person who has no knowledge that the food or drinks contain poison, and causes the death of the person</p>	May arrest without warrant	Warrant	Not bailable	The same punishment as provided under section 126(1) or (2)	Syariah High Court

FIRST SCHEDULE – (Continued)

155(2)	<p><i>Qatl</i> –</p> <p>(a) by coercing a person into taking poison or poisonous substance which in the ordinary course of nature may not kill; or</p> <p>(b) by administering food or drinks which he knows to contain poison which in the ordinary course of nature may not kill, to a person who has no knowledge that the food or drinks contain poison, and causes the death of the person</p>	May arrest without warrant	Warrant	Not bailable	The same punishment as provided under section 140(1) or (2)	Syariah High Court
155(3)	<p><i>Qatl</i> by using poison or poisonous substance intended to cause the death of a particular person but caused the death of another person, whose death he does not intend to cause</p>	May arrest without warrant	Warrant	Not bailable	The same punishment as provided under section 140(1) or (2)	Syariah High Court
156(1)	Attempt to commit or cause the commission of the offence under section 155(1)	May arrest without warrant	Warrant	Not bailable	Fine not exceeding \$40,000, imprisonment not exceeding 10 years or both	Syariah High Court

FIRST SCHEDULE – (Continued)

156(2)	Attempt to commit or cause the commission of the offence under section 155(2) or (3)	May arrest without warrant	Warrant	Not bailable	Fine not exceeding \$40,000, imprisonment not exceeding 10 years or both	Syariah High Court
157(1)	Abetment of <i>qatl</i> by using poison or poisonous substance under section 155(1)	May arrest without warrant	Warrant	Not bailable	The same punishment as provided under section 138(1) or (2)	Syariah High Court
157(2)	Abetment of <i>qatl</i> by using poison or poisonous substance under section 155(2) or (3)	May arrest without warrant	Warrant	Not bailable	The same punishment as provided under section 145(1) or (2)	Syariah High Court

FIRST SCHEDULE – (Continued)

QATL BY MISCARRIAGE OF FOETUS						
1	2	3	4	5	6	7
SECTION	OFFENCE	WHETHER THE RELIGIOUS ENFORCEMENT OFFICER OR POLICE OFFICER MAY ORDINARILY ARREST WITHOUT WARRANT OR NOT	WHETHER A WARRANT OR A SUMMONS SHALL ORDINARILY ISSUE IN THE FIRST INSTANCE	WHETHER BAILABLE OR NOT	PUNISHMENT UNDER SYARIAH PENAL CODE ORDER, 2013 (S 69/2013)	BY WHAT SYARIAH COURT TRIABLE
158(1)(a)	<i>Qatl</i> on a foetus by intentionally causing its miscarriage and as a result, the foetus dies	May arrest without warrant	Warrant	Not bailable	One-twentieth of <i>diyat</i> and imprisonment not exceeding 15 years	Syariah High Court
158(1)(b)	<i>Qatl</i> on a foetus by intentionally causing its miscarriage and as a result, the foetus lives and later dies	May arrest without warrant	Warrant	Not bailable	<i>Diyat</i> and imprisonment not exceeding 15 years	Syariah High Court
158(1)(c)	<i>Qatl</i> on a foetus by pregnant woman herself by intentionally causing its miscarriage and the foetus is in a condition as mentioned in section 158(1)(a) or (b)	May arrest without warrant	Warrant	Not bailable	The same punishment as provided under section 158(1)(a) or (b), and imprisonment not exceeding 15 years	Syariah High Court
159	Attempt to commit or cause the commission of <i>qatl</i> by miscarriage of foetus	May arrest without warrant	Warrant	Not bailable	Fine not exceeding \$20,000, imprisonment not exceeding 5 years or both	Syariah High Court

FIRST SCHEDULE – (Continued)

160(1)	Abetment of <i>qatl</i> by miscarriage of foetus under section 158(1)(a)	May arrest without warrant	Warrant	Not bailable	Fine not exceeding \$20,000, imprisonment not exceeding 5 years or both	Syariah High Court
160(2)	Abetment of <i>qatl</i> by miscarriage of foetus under section 158(1)(b)	May arrest without warrant	Warrant	Not bailable	Fine not exceeding \$40,000, imprisonment not exceeding 10 years or both	Syariah High Court
161	Miscarriage of pregnancy	May arrest without warrant	Warrant	Not bailable	Fine not exceeding \$12,000, imprisonment not exceeding 3 years or both	Syariah Subordinate Court
162	Attempt to commit or cause the commission of miscarriage of pregnancy	May not arrest without warrant	Summon	Bailable	Fine not exceeding \$4,000, imprisonment not exceeding one year or both	Syariah Subordinate Court
163	Abetment to cause miscarriage of pregnancy	May arrest without warrant	Warrant	Bailable	Fine not exceeding \$8,000, imprisonment not exceeding 2 years or both	Syariah Subordinate Court

FIRST SCHEDULE – (Continued)

SUICIDE						
1	2	3	4	5	6	7
SECTION	OFFENCE	WHETHER THE RELIGIOUS ENFORCEMENT OFFICER OR POLICE OFFICER MAY ORDINARILY ARREST WITHOUT WARRANT OR NOT	WHETHER A WARRANT OR A SUMMONS SHALL ORDINARILY ISSUE IN THE FIRST INSTANCE	WHETHER BAILABLE OR NOT	PUNISHMENT UNDER SYARIAH PENAL CODE ORDER, 2013 (S 69/2013)	BY WHAT SYARIAH COURT TRIABLE
165	Attempt to commit or cause the commission of suicide	May not arrest without warrant	Summon	Bailable	Fine not exceeding \$4,000, imprisonment not exceeding one year or both	Syariah Subordinate Court
166(1)	Abetment to commit suicide	May arrest without warrant	Warrant	Not bailable	Fine not exceeding \$4,000 and imprisonment not exceeding 10 years	Syariah High Court
166(2)	Abetment to commit suicide where the person abetted is not <i>mukallaf</i>	May arrest without warrant	Warrant	Not bailable	Fine not exceeding \$100,000 and imprisonment not exceeding 25 years	Syariah High Court

FIRST SCHEDULE – (Continued)

HURT						
1	2	3	4	5	6	7
SECTION	OFFENCE	WHETHER THE RELIGIOUS ENFORCEMENT OFFICER OR POLICE OFFICER MAY ORDINARILY ARREST WITHOUT WARRANT OR NOT	WHETHER A WARRANT OR A SUMMONS SHALL ORDINARILY ISSUE IN THE FIRST INSTANCE	WHETHER BAILABLE OR NOT	PUNISHMENT UNDER SYARIAH PENAL CODE ORDER, 2013 (S 69/2013)	BY WHAT SYARIAH COURT TRIABLE
169(1)	Causing hurt and is proved in manner provided under section 170	May arrest without warrant	Warrant	Not bailable	<i>Qisas</i>	Syariah High Court
169(2)	Causing hurt — <i>(a)</i> is proved by evidence other than that provided under section 170; <i>(b)</i> by a person who is not <i>mukallaf</i> ; <i>(c)</i> by a mother or father to his own child; or <i>(d)</i> where the part of the body for which <i>qisas</i> is to be imposed is not functional or otherwise incapacitated	May arrest without warrant	Warrant	Not bailable	<i>(a)</i> <i>Arsy muqaddar</i> and imprisonment prescribed in the Second Schedule to the Syariah Penal Code Order, 2013 (S 69/2013) for committing <i>itlaf-al-udhw</i> or <i>itlaf-salahiyyat-al-udhw</i> ; <i>(b)</i> <i>arsy</i> and imprisonment prescribed in the Third Schedule to the Syariah Penal Code Order, 2013 (S 69/2013) for committing <i>syajjah</i> ;	Syariah High Court

FIRST SCHEDULE – (Continued)

					<p>(c) <i>arsy muqaddar</i> and imprisonment prescribed in the Fourth Schedule to the Syariah Penal Code Order, 2013 [S 69/2013] for committing <i>jurh jaefah</i>;</p> <p>(d) <i>arsy ghairu muqaddar</i> and imprisonment specified by the Syariah Court as prescribed in the Fourth Schedule to the Syariah Penal Code Order, 2013 [S 69/2013] for committing <i>jurh ghairu jaefah</i>; or</p> <p>(e) <i>arsy ghairu muqaddar</i> and imprisonment specified by the Syariah Court for committing hurt other than that provided under section 168(a), (b), (c) and (d)</p>	
175	Acquittal or punishment after pardon or compound of <i>qisas</i>	—	—	—	<p>(a) Acquittal; or</p> <p>(b) imprisonment not exceeding 5 years</p>	Syariah High Court
176	Causing hurt to a person against whom <i>qisas</i> or <i>arsy muqaddar</i> punishment cannot be executed	May arrest without warrant	Warrant	Not bailable	<i>Arsy ghairu muqaddar</i>	Syariah High Court

FIRST SCHEDULE – (Continued)

179	Hurt to another person by rash or negligent act	May arrest without warrant	Warrant	Not bailable	(a) <i>Arsy muqaddar</i> and imprisonment not exceeding 5 years; or (b) <i>arsy ghairu muqaddar</i> and imprisonment not exceeding 5 years	Syariah High Court
180	Hurt to another person by mistake	May not arrest without warrant	Summon	Bailable	(a) <i>Arsy muqaddar</i> ; or (b) <i>arsy ghairu muqaddar</i>	Syariah High Court
182	Attempt to cause or cause the commission of hurt	May arrest without warrant	Warrant	Not bailable	One-half of the punishment provided under section 169(2)	Syariah High Court
183(1)	Abetting commission of causing hurt under section 169(1)	May arrest without warrant	Warrant	Not bailable	The same punishment as provided under section 169(2)	Syariah High Court
183(2)	Abetting commission of causing hurt under section 169(2)	May arrest without warrant	Warrant	Not bailable	One-half of the punishment provided for the offence	Syariah High Court

FIRST SCHEDULE – (Continued)

WITHDRAWAL OF SYAHADAH						
1	2	3	4	5	6	7
SECTION	OFFENCE	WHETHER THE RELIGIOUS ENFORCEMENT OFFICER OR POLICE OFFICER MAY ORDINARILY ARREST WITHOUT WARRANT OR NOT	WHETHER A WARRANT OR A SUMMONS SHALL ORDINARILY ISSUE IN THE FIRST INSTANCE	WHETHER BAILABLE OR NOT	PUNISHMENT UNDER SYARIAH PENAL CODE ORDER, 2013 (S 69/2013)	BY WHAT SYARIAH COURT TRIABLE
184	<i>Syahid</i> withdraws his <i>syahadah</i> before pronouncement of punishment or making order or judgment	May not arrest without warrant	Summon	Bailable	Fine not exceeding \$2,000, imprisonment not exceeding 6 months or both	The Syariah Court where the <i>syahadah</i> was given
185	<i>Syahid</i> in a <i>mal</i> case withdraws his <i>syahadah</i> after order or judgment is made	May not arrest without warrant	Summon	Bailable	Fine not exceeding \$2,000 or imprisonment not exceeding 6 months, and damages for the loss incurred by <i>mahkum 'alaihi</i>	The Syariah Court where the <i>syahadah</i> was given
186(1)	<i>Syahid</i> in cases of <i>qisas</i> and <i>hadd</i> , except in cases of <i>zina</i> , <i>zina bil-jabar</i> or <i>liwat</i> , withdraws his <i>syahadah</i> after sentence passed and before execution of the punishment	May not arrest without warrant	Summon	Bailable	Fine not exceeding \$4,000, imprisonment not exceeding one year or both	The Syariah Court where the <i>syahadah</i> was given

FIRST SCHEDULE – (Continued)

186(2)	<i>Syahid</i> in cases of <i>hirabah</i> and <i>qatlul-'amd</i> withdraws his <i>syahadah</i> after sentence passed and the punishment has been executed, causing death to <i>mahkum 'alaihi</i>	May arrest without warrant	Warrant	Not bailable	(a) <i>Diyat</i> , if the <i>syahid</i> confesses that he gives his <i>syahadah</i> in good faith and he does not lie (b) Death, if the <i>syahid</i> confesses that he gives his <i>syahadah</i> with the intention to lie	The Syariah Court where the <i>syahadah</i> was given
186(3)	<i>Syahid</i> in cases of <i>qatlu syibhil-'amd</i> or <i>qatlul-khata'</i> , or cases punishable with <i>qisas</i> or <i>hadd</i> except in the case of <i>zina</i> , <i>zina bil-jabar</i> or <i>liwat</i> , withdraws his <i>syahadah</i> after sentence passed and the punishment has been executed, but did not cause the death of <i>mahkum 'alaihi</i>	May arrest without warrant	Warrant	Not bailable	(a) Fine not exceeding \$28,000, imprisonment not exceeding 7 years or both, if the <i>syahid</i> confesses that he gives his <i>syahadah</i> in good faith and he does not lie (b) The same punishment sentenced for <i>mahkum 'alaihi</i> as <i>qisas</i> or the payment of <i>diyat</i> or <i>arsy</i> , if the <i>syahid</i> confesses that he gives his <i>syahadah</i> with the intention to lie	The Syariah Court where the <i>syahadah</i> was given
187(1)	Some or all <i>syahid</i> in the case of <i>zina</i> , <i>zina bil-jabar</i> or <i>liwat</i> withdraw their <i>syahadah</i> before the conviction	May arrest without warrant	Warrant	Not bailable	Whipping with 80 strokes	The Syariah Court where the <i>syahadah</i> was given
187(2)(a)	Some or all <i>syahid</i> withdraw their <i>syahadah</i> after conviction and the punishment has not been executed	May arrest without warrant	Warrant	Not bailable	Whipping with 80 strokes	The Syariah Court where the <i>syahadah</i> was given

FIRST SCHEDULE – (Continued)

187(2)(b)	Some or all <i>syahid</i> withdraw their <i>syahadah</i> after conviction and the punishment of whipping has been executed	May arrest without warrant	Warrant	Not bailable	Whipping with 80 strokes, fine not exceeding \$4,000 and <i>arsy</i> for hurt to <i>mahkum 'alaihi</i>	The Syariah Court where the <i>syahadah</i> was given
187(2)(a)	Some or all <i>syahid</i> withdraw their <i>syahadah</i> after conviction and the punishment has not been executed	May arrest without warrant	Warrant	Not bailable	Whipping with 80 strokes	The Syariah Court where the <i>syahadah</i> was given
187(3)	Some or all <i>syahid</i> withdraw their <i>syahadah</i> after conviction and the punishment of stoning has been executed, causing death to <i>mahkum 'alaihi</i>	May arrest without warrant	Warrant	Not bailable	(a) <i>Diyat</i> , if the <i>syahid</i> confesses that he gives his <i>syahadah</i> in good faith and he does not lie (b) Death, if the <i>syahid</i> confesses that he gives his <i>syahadah</i> with the intention to lie	The Syariah Court where the <i>syahadah</i> was given
188(1)	<i>Syahid</i> who has given his <i>syahadah</i> for conviction of <i>zina</i> , <i>zina bil-jabar</i> or <i>liwat</i> and at the same time has also given his <i>syahadah ihshan</i> withdraws his <i>syahadah ihshan</i> at the time the punishment of stoning is being executed, and <i>mahkum 'alaihi</i> is still alive	May arrest without warrant	Warrant	Bailable	(a) (i) If <i>mahkum 'alaihi</i> is found to be a <i>ghairu muhshan</i> , he is liable to whipping with 100 strokes (ii) The <i>syahid</i> who withdraws his <i>syahadah ihshan</i> is liable to fine not exceeding \$8,000, imprisonment not exceeding 2 years or both, and <i>arsy</i> for hurt to <i>mahkum 'alaihi</i>	The Syariah Court where the <i>syahadah</i> was given

FIRST SCHEDULE – (Continued)

					<p>(b) (i) If <i>mahkum 'alaihi</i> is found to be a <i>muhshan</i>, punishment of stoning continues</p> <p>(ii) The <i>syahid</i> who withdraws his <i>syahadah ihshan</i> is liable to fine not exceeding \$8,000, imprisonment not exceeding 2 years or both</p>	
188(2)(a)	When <i>syahadah zina, zina bil-jabar</i> or <i>liwat</i> and <i>syahadah ihshan</i> is given by different <i>syahid</i> , and <i>syahid ihshan</i> or <i>syahid zina, zina bil-jabar</i> or <i>liwat</i> and <i>syahid ihshan</i> withdraw their <i>syahadah</i> at the time the punishment is being executed	May arrest without warrant	Warrant	Bailable	<p>If <i>syahid ihshan</i> withdraws his <i>syahadah ihshan</i> –</p> <p>(a) (i) if <i>mahkum 'alaihi</i> is found to be a <i>muhshan</i>, he is liable to whipping with 100 strokes</p> <p>(ii) the <i>syahid ihshan</i> who withdraws his <i>syahadah ihshan</i> is liable to fine not exceeding \$8,000, imprisonment not exceeding 2 years or both, and <i>arsy</i> for hurt to <i>mahkum 'alaihi</i></p> <p>(b) (i) if <i>mahkum 'alaihi</i> is found to be a <i>muhshan</i>, punishment of stoning continues</p>	The Syariah Court where the <i>syahadah</i> was given

FIRST SCHEDULE – (Continued)

					(ii) the <i>syahid ihshan</i> who withdraws his <i>syahadah</i> is liable to fine not exceeding \$8,000, imprisonment not exceeding 2 years or both	
188(2)(b)	When <i>syahadah zina, zina bil-jabar</i> or <i>liwat</i> and <i>syahadah ihshan</i> is given by different <i>syahid</i> , and <i>syahid zina, zina bil-jabar</i> or <i>liwat</i> withdraws his <i>syahadah</i> at the time the punishment is being executed	May arrest without warrant	Warrant	Not bailable	Whipping with 80 strokes, fine not exceeding \$8,000 and <i>arsy</i> for hurt to <i>mahkum 'alaihi</i>	The Syariah Court where the <i>syahadah</i> was given
188(2)(b)	When <i>syahadah zina, zina bil-jabar</i> or <i>liwat</i> and <i>syahadah ihshan</i> is given by different <i>syahid</i> , and <i>syahid ihshan</i> withdraws his <i>syahadah</i> at the time the punishment is being executed	May not arrest without warrant	Summon	Bailable	Fine not exceeding \$8,000 and <i>arsy</i> for hurt to <i>mahkum 'alaihi</i>	The Syariah Court where the <i>syahadah</i> was given
188(3)	<i>Syahid</i> withdraws his <i>syahadah zina, zina bil-jabar</i> or <i>liwat</i> and <i>syahadah ihshan</i> at the time the punishment of stoning is being executed and <i>mahkum 'alaihi</i> has died	May arrest without warrant	Warrant	Not bailable	(a) <i>Diyat</i> , if the <i>syahid</i> confesses that he gives his <i>syahadah</i> in good faith and he does not lie (b) Death, if the <i>syahid</i> confesses that he gives his <i>syahadah</i> with the intention to lie	The Syariah Court where the <i>syahadah</i> was given
189(a)	<i>Syahid</i> in cases liable to punishment other than <i>hadd, qisas, diyat</i> or <i>arsy</i> withdraws his <i>syahadah</i> after conviction and sentence passed but the punishment has not been executed	May not arrest without warrant	Summon	Bailable	Fine not exceeding \$2,000, imprisonment not exceeding 6 months or both	The Syariah Court where the <i>syahadah</i> was given

FIRST SCHEDULE – (Continued)

189(b)	<i>Syahid</i> in cases liable to punishment other than <i>hadd</i> , <i>qisas</i> , <i>diyat</i> or <i>arsy</i> withdraws his <i>syahadah</i> after conviction and sentence passed and the punishment is being executed, and the case is referred to a superior Syariah Court for revision	May not arrest without warrant	Summon	Bailable	(a) If no conviction is made – (i) <i>mahkum 'alaihi</i> is released; and (ii) the <i>syahid</i> who withdraws his <i>syahadah</i> is liable to fine not exceeding \$8,000 or imprisonment not exceeding 2 years, and damages for the loss incurred by the <i>mahkum 'alaihi</i> (b) If conviction is made – (i) punishment is upheld; and (ii) the <i>syahid</i> who withdraws his <i>syahadah</i> is liable to fine not exceeding \$8,000 or imprisonment not exceeding 2 years	The Syariah Court where the <i>syahadah</i> was given
190	Withdrawal of <i>syahadah</i> by <i>syahid furu'</i> and is proved by way of <i>syahadah ala al syahadah</i>	May not arrest without warrant	Summon	Bailable	Fine not exceeding \$2,000 or imprisonment not exceeding 6 months and damages for the loss incurred by <i>mahkum 'alaihi</i>	The Syariah Court where the <i>syahadah</i> was given
191	False information by <i>muzakki</i>	May arrest without warrant if arrest for offence of <i>mahkum 'alaihi</i> can be made without warrant, but not otherwise	According as a warrant or summons may issue for the offence of <i>mahkum 'alaihi</i>	According as the offence of <i>mahkum 'alaihi</i> is bailable or not	The same punishment as judgment made or sentencing to a <i>syahid</i> who has given false <i>syahadah</i> as provided under section 233(3)	The Syariah Court where the <i>syahadah</i> was given

FIRST SCHEDULE – (Continued)

Chapter IV						
GENERAL OFFENCES						
1	2	3	4	5	6	7
SECTION	OFFENCE	WHETHER THE RELIGIOUS ENFORCEMENT OFFICER OR POLICE OFFICER MAY ORDINARILY ARREST WITHOUT WARRANT OR NOT	WHETHER A WARRANT OR A SUMMONS SHALL ORDINARILY ISSUE IN THE FIRST INSTANCE	WHETHER BAILABLE OR NOT	PUNISHMENT UNDER SYARIAH PENAL CODE ORDER, 2013 (S 69/2013)	BY WHAT SYARIAH COURT TRIABLE
192	<i>Ghasab</i>	May arrest without warrant	Warrant	Not bailable	Fine not exceeding \$20,000, imprisonment not exceeding 5 years or both	Syariah Subordinate Court
194	Male <i>mukallaf</i> who fails to perform Friday prayer	May not arrest without warrant	Summon	Bailable	(a) For a first offence, fine not exceeding \$200 (b) For a second offence, fine not exceeding \$300 (c) For a third or subsequent offence, fine not exceeding \$1,000	Syariah Subordinate Court
195(1)	Consume in public any food, drink or tobacco during the fasting hours of <i>Ramadhan</i>	May not arrest without warrant	Summon	Bailable	Fine not exceeding \$4,000, imprisonment not exceeding one year or both	Syariah Subordinate Court

FIRST SCHEDULE – (Continued)

195(2)	Sell or serve any food, drink or tobacco for immediate consumption at that spot, in a public place, during the fasting hours of <i>Ramadhan</i>	May not arrest without warrant	Summon	Bailable	Fine not exceeding \$4,000, imprisonment not exceeding one year or both	Syariah Subordinate Court
196(1)	Muslim commits <i>khalwat</i>	May not arrest without warrant	Summon	Bailable	Fine not exceeding \$4,000, imprisonment not exceeding one year or both	Syariah Subordinate Court
196(2)	Non-Muslim commits <i>khalwat</i> with a Muslim	May not arrest without warrant	Summon	Bailable	Fine not exceeding \$4,000, imprisonment not exceeding one year or both	Syariah Subordinate Court
197(1)	Act of indecent behaviour in any public place	May not arrest without warrant	Summon	Bailable	Fine not exceeding \$2,000, imprisonment not exceeding 6 months or both	Syariah Subordinate Court
197(2)	Organising, persuading or encouraging any other person to commit any act of indecent behaviour	May arrest without warrant	Warrant	Bailable	Fine not exceeding \$8,000, imprisonment not exceeding 2 years or both	Syariah Subordinate Court
198(1)	Man dresses and poses as a woman or woman dresses and poses as a man in any public place without reasonable excuse	May not arrest without warrant	Summon	Bailable	Fine not exceeding \$1,000, imprisonment not exceeding 3 months or both	Syariah Subordinate Court
198(2)	Man dresses and poses as a woman or woman dresses and poses as a man in any public place for immoral purposes	May not arrest without warrant	Summon	Bailable	Fine not exceeding \$4,000, imprisonment not exceeding one year or both	Syariah Subordinate Court
199	Instigating Muslim married man or woman to divorce or neglect duties	May not arrest without warrant	Summon	Bailable	Fine not exceeding \$4,000, imprisonment not exceeding one year or both	Syariah Subordinate Court

FIRST SCHEDULE – (Continued)

200	Preventing Muslim married couple from cohabiting	May not arrest without warrant	Summon	Bailable	Fine not exceeding \$4,000, imprisonment not exceeding one year or both	Syariah Subordinate Court
201	Enticing or causing Muslim married woman to leave matrimonial home	May arrest without warrant	Warrant	Bailable	Fine not exceeding \$8,000, imprisonment not exceeding 2 years or both	Syariah Subordinate Court
202	Enticing female Muslim to leave custody of her parents or guardian	May arrest without warrant	Warrant	Bailable	Fine not exceeding \$8,000, imprisonment not exceeding 2 years or both	Syariah Subordinate Court
203	Unmarried Muslim female who leaves custody of parents or guardian	May not arrest without warrant	Summon	Bailable	Fine not exceeding \$1,000, imprisonment not exceeding 3 months or both	Syariah Subordinate Court
204(1)	Muslim parent or guardian gives away or surrenders his child or a minor under his custody who has not attained the age of 18 years to a non-Muslim	May arrest without warrant	Warrant	Not bailable	Fine not exceeding \$20,000, imprisonment not exceeding 5 years or both	Syariah Subordinate Court
204(2)	Muslim gives away or surrenders any other Muslim under his custody to a non-Muslim	May arrest without warrant	Warrant	Not bailable	Fine not exceeding \$20,000, imprisonment not exceeding 5 years or both	Syariah Subordinate Court
205	Acting as procurer	May arrest without warrant	Warrant	Not bailable	Fine not exceeding \$12,000, imprisonment not exceeding 3 years or both	Syariah Subordinate Court
206	False claim	May arrest without warrant	Warrant	Not bailable	Imprisonment not exceeding 10 years and whipping with 40 strokes	Syariah Subordinate Court

FIRST SCHEDULE – (Continued)

207(1)	Muslim – <i>(a)</i> teaches or expounds any doctrine relating to the religion of Islam in manner contrary to <i>Hukum Syara'</i> ; or <i>(b)</i> teaches, expounds any doctrine or carries out, performs or practices a ceremony or act contrary to <i>Hukum Syara'</i>	May arrest without warrant	Warrant	Not bailable	Fine not exceeding \$20,000, imprisonment not exceeding 5 years or both	Syariah Subordinate Court
207(2)	Non-Muslim teaches or expounds to, or carries out or performs on, any Muslim a ceremony or act contrary to <i>Hukum Syara'</i>	May arrest without warrant	Warrant	Not bailable	Fine not exceeding \$20,000, imprisonment not exceeding 5 years or both	Syariah Subordinate Court
208(1)	Practising or advertising black magic	May arrest without warrant	Warrant	Not bailable	Fine not exceeding \$20,000, imprisonment not exceeding 5 years or both	Syariah Subordinate Court
208(2)	Seeking help from person who practices black magic	May arrest without warrant	Warrant	Bailable	Fine not exceeding \$8,000, imprisonment not exceeding 2 years or both	Syariah Subordinate Court
209	Propagation of religion other than religion of Islam	May arrest without warrant	Warrant	Not bailable	Fine not exceeding \$20,000, imprisonment not exceeding 5 years or both	Syariah Subordinate Court
210	Persuading etc. Muslims to change religion	May arrest without warrant	Warrant	Not bailable	Fine not exceeding \$20,000 and imprisonment not exceeding 5 years	Syariah Subordinate Court

FIRST SCHEDULE – (Continued)

211	Persuading etc. person having no religion to become believer of etc. religion other than religion of Islam etc.	May arrest without warrant	Warrant	Not bailable	Fine not exceeding \$20,000 and imprisonment not exceeding 5 years	Syariah Subordinate Court
212	Exposing beliefs and practices of religion other than religion of Islam to Muslim child, or child whose parents have no religion, who is under 18 years	May arrest without warrant	Warrant	Not bailable	Fine not exceeding \$20,000 and imprisonment not exceeding 5 years	Syariah Subordinate Court
213	Publication contrary to <i>Hukum Syara'</i>	May arrest without warrant	Warrant	Bailable	Fine not exceeding \$8,000, imprisonment not exceeding 2 years or both	Syariah Subordinate Court
214	Delivering or giving publications relating to religion other than religion of Islam to Muslims or persons having no religion	May not arrest without warrant	Summon	Bailable	Fine not exceeding \$2,000, imprisonment not exceeding 6 months or both	Syariah Subordinate Court
215	Giving in public places publications relating to religion other than religion of Islam to Muslims or persons having no religion	May not arrest without warrant	Summon	Bailable	Fine not exceeding \$1,000, imprisonment not exceeding 3 months or both	Syariah Subordinate Court
216	Worship	May arrest without warrant	Warrant	Bailable	Fine not exceeding \$8,000, imprisonment not exceeding 2 years or both	Syariah Subordinate Court

FIRST SCHEDULE – (Continued)

217(1)	Using any word listed in Part I of the Fifth Schedule to the Syariah Penal Code Order, 2013 [S 69/2013], or any derivative or its variation, to state or express any fact, belief, idea, concept, act, activity, matter or instances of or relating to a religion other than the religion of Islam	May arrest without warrant	Warrant	Not bailable	Fine not exceeding \$12,000, imprisonment not exceeding 3 years or both	Syariah Subordinate Court
217(2)	Non-Muslim in instances mentioned in section 217(1), uses any expression listed in Part II of the Fifth Schedule to the Syariah Penal Code Order, 2013 [S 69/2013], except as a citation or reference	May arrest without warrant	Warrant	Not bailable	Fine not exceeding \$12,000, imprisonment not exceeding 3 years or both	Syariah Subordinate Court
218(1)	Referring to or addressing – <i>(a)</i> any person, other than the <i>Nabi Muhammad Sallallahu 'Alaihi Wa Sallam</i> , by the title " <i>Sallallahu 'Alaihi Wa Sallam</i> "; or <i>(b)</i> any person, other than a <i>Rasul</i> or <i>Nabi</i> , by the title " <i>Alaihis Salam</i> " or " <i>Alaihis Shalatu Wassalam</i> "	May arrest without warrant	Warrant	Not bailable	Fine not exceeding \$12,000, imprisonment not exceeding 3 years or both	Syariah Subordinate Court

FIRST SCHEDULE – (Continued)

218(2)	Referring to or addressing – (a) any person, other than a <i>sahabat</i> of <i>Nabi Muhammad Sallallahu 'Alaihi Wa Sallam</i> , as or by the title “ <i>Sahabi</i> ”; (b) any person, other than a wife of <i>Nabi Muhammad Sallallahu 'Alaihi Wa Sallam</i> , as or by the title “ <i>Ummul Mu'minin</i> ”; or (c) any person, other than a family member of <i>Nabi Muhammad Sallallahu 'Alaihi Wa Sallam</i> , as or by the title “ <i>Ahli Bait</i> ”	May arrest without warrant	Warrant	Bailable	Fine not exceeding \$8,000, imprisonment not exceeding 2 years or both	Syariah Subordinate Court
219	Accusing etc. Muslim as <i>kafir</i>	May arrest without warrant	Warrant	Bailable	Fine not exceeding \$8,000, imprisonment not exceeding 2 years or both	Syariah Subordinate Court
220	Contempt or brings into contempt etc. religion of Islam	May arrest without warrant	Warrant	Not bailable	Fine not exceeding \$12,000, imprisonment not exceeding 3 years or both	Syariah Subordinate Court
221(1)	Non-Muslim contempts or brings into contempt <i>Nabi Muhammad Sallallahu 'Alaihi Wa Sallam</i> or any <i>Nabi Allah</i> and is proved by <i>ikrar</i> of the accused or <i>syahadah</i> of at least two <i>syahid</i>	May arrest without warrant	Warrant	Not bailable	Death	Syariah High Court

FIRST SCHEDULE – (Continued)

221(2)	Non-Muslim contempts or brings into contempt <i>Nabi Muhammad Sallallahu 'Alaihi Wa Sallam</i> or any <i>Nabi Allah</i> and is proved by evidence other than that provided under section 221(1)	May arrest without warrant	Warrant	Not bailable	Imprisonment not exceeding 30 years and whipping not exceeding 40 strokes	Syariah High Court
222(1)	Non-Muslim derides, mocks, mimics, ridicules or contempts any verse of Al-Qur'an or <i>hadith</i> and is proved by <i>ikrar</i> of the accused or <i>syhadah</i> of at least two <i>syahid</i>	May arrest without warrant	Warrant	Not bailable	Death	Syariah High Court
222(2)	Non-Muslim derides, mocks, mimics, ridicules or insults any verse of Al-Qur'an or <i>hadith</i> and is proved by evidence other than that provided under section 222(1)	May arrest without warrant	Warrant	Not bailable	Imprisonment not exceeding 30 years and whipping not exceeding 40 strokes	Syariah High Court
223	Attempt to commit or cause the commission of offence under section 221 or 222	May arrest without warrant	Warrant	Not bailable	The same punishment as provided for the offences	Syariah High Court
224	Abetting commission of offence under section 221 or 222	May arrest without warrant	Warrant	Not bailable	Imprisonment not exceeding 30 years and whipping not exceeding 40 strokes	Syariah High Court
228	<i>Fatwa</i>	May arrest without warrant	Warrant	Bailable	Fine not exceeding \$8,000, imprisonment not exceeding 2 years or both	Syariah Subordinate Court
229	Religious teaching without written approval	May arrest without warrant	Warrant	Bailable	Fine not exceeding \$8,000, imprisonment not exceeding 2 years or both	Syariah Subordinate Court

FIRST SCHEDULE – (Continued)

230(1)	Contempts, neglects, contravenes, opposes or insults any <i>titah</i> of His Majesty the Sultan and Yang Di-Pertuan with respect to religion in his capacity as the Head of the official religion of Brunei Darussalam	May arrest without warrant	Warrant	Not bailable	Imprisonment not exceeding 5 years	Syariah Subordinate Court
230(2)	Contempts – (a) the Majlis or Members of the Majlis; (b) any committee of the Majlis or its members; (c) Syariah Court; or (d) the administration of the Syariah justice	May arrest without warrant	Warrant	Bailable	Fine not exceeding \$8,000, imprisonment not exceeding 2 years or both	Syariah Subordinate Court
231	Obstructing Religious Enforcement Officer	May not arrest without warrant	Summon	Bailable	Fine not exceeding \$2,000, imprisonment not exceeding 6 months or both	Syariah Subordinate Court
232(1)	False report before judgment of the Syariah Court or after the judgment of the Syariah Court but before the execution of the punishment	May arrest without warrant	Warrant	Bailable	Fine not exceeding \$8,000, imprisonment not exceeding 2 years or both	Syariah Subordinate Court

FIRST SCHEDULE – (Continued)

232(2)	False report after the execution of the punishment	May arrest without warrant if arrest for offence of <i>mahkum 'alaihi</i> can be made without warrant, but not otherwise	According as a warrant or summons may issue for the offence of <i>mahkum 'alaihi</i>	According as the offence of <i>mahkum 'alaihi</i> is bailable or not	The same punishment as that of the <i>mahkum 'alaihi</i>	Syariah Subordinate Court
233(1)	Giving false <i>syhadah</i> before the judgment or conviction is made by the Syariah Court	May arrest without warrant	Warrant	Not bailable	Fine not exceeding \$28,000, imprisonment not exceeding 7 years or both	The Syariah Court where the <i>syhadah</i> was given
233(2)	Giving false <i>syhadah</i> after the Syariah Court has made the judgment or conviction and the punishment has not been executed	May arrest without warrant	Warrant	Not bailable	Fine not exceeding \$28,000 or imprisonment not exceeding 7 years, and damages for the loss incurred by <i>mahkum 'alaihi</i>	The Syariah Court where the <i>syhadah</i> was given
233(3)	Giving false <i>syhadah</i> after the Syariah Court has made the judgment or conviction and the punishment has been executed	May arrest without warrant if arrest for offence of <i>mahkum 'alaihi</i> can be made without warrant, but not otherwise	According as a warrant or summons may issue for the offence of <i>mahkum 'alaihi</i>	According as the offence of <i>mahkum 'alaihi</i> is bailable or not	The same punishment as that of the <i>mahkum 'alaihi</i>	The Syariah Court where the <i>syhadah</i> was given
234(1)	Giving false evidence or fabricating evidence for the purpose of being used in any stage of a judicial proceeding	May arrest without warrant	Warrant	Not bailable	Fine not exceeding \$28,000, imprisonment not exceeding 7 years or both	Syariah Subordinate Court

FIRST SCHEDULE – (Continued)

234(3)	Giving any information relating to offence under the Syariah Penal Code Order, 2013 (S 69/2013) or any other written law to which the Syariah Courts have jurisdiction which he knows or believes to be false	May arrest without warrant	Warrant	Bailable	Fine not exceeding \$8,000, imprisonment not exceeding 2 years or both	Syariah Subordinate Court
234(4)	Furnishing, as true, information, statement or declaration on the matter which he knows or has reason to believe to be false on any matter required by any public servant in the exercise of his lawful duty	May arrest without warrant	Warrant	Bailable	Fine not exceeding \$8,000, imprisonment not exceeding 2 years or both	Syariah Subordinate Court
235	Incitement to neglect religious duty	May not arrest without warrant	Summon	Bailable	Fine not exceeding \$4,000, imprisonment not exceeding one year or both	Syariah Subordinate Court
236	Non-payment of <i>zakat</i> or <i>fitrah</i>	May arrest without warrant	Warrant	Bailable	Fine not exceeding \$8,000, imprisonment not exceeding 2 years or both	Syariah Subordinate Court
237	Collection of <i>zakat</i> or <i>fitrah</i> without authority	May arrest without warrant	Warrant	Bailable	Fine not exceeding \$8,000, imprisonment not exceeding 2 years or both	Syariah Subordinate Court
238	Payments of <i>zakat</i> or <i>fitrah</i> to unauthorised person	May not arrest without warrant	Summon	Bailable	Fine not exceeding \$4,000, imprisonment not exceeding one year or both	Syariah Subordinate Court

FIRST SCHEDULE – (Continued)

239(1)	'Amil issues receipt for collection of <i>zakat</i> or <i>fitrah</i> but does not surrender the amount collected to Majlis	May arrest without warrant	Warrant	Bailable	Fine not exceeding \$8,000, imprisonment not exceeding 2 years or both	Syariah Subordinate Court
239(2)	'Amil does not issue receipt for collection of <i>zakat</i> or <i>fitrah</i> or issues false receipt	May arrest without warrant	Warrant	Bailable	Fine not exceeding \$8,000, imprisonment not exceeding 2 years or both	Syariah Subordinate Court
240	Build etc. mosque without permission	May not arrest without warrant	Summon	Bailable	Fine not exceeding \$10,000	Syariah Subordinate Court
241	Breach of secrecy	May not arrest without warrant	Summon	Bailable	Fine not exceeding \$2,000, imprisonment not exceeding 6 months or both	Syariah Subordinate Court
242	Intentional insult or interruption to public servant sitting in any stage of judicial proceeding	May arrest without warrant	Warrant	Bailable	Fine not exceeding \$8,000, imprisonment not exceeding 2 years or both	Syariah Subordinate Court
243(1)	Omission to assist public servant in the execution of his duty when bound by law to give assistance	May not arrest without warrant	Summon	Bailable	Fine not exceeding \$1,000, imprisonment not exceeding 3 months or both	Syariah Subordinate Court
243(2)	Omission to assist public servant when bound by law to give assistance, for the purpose of executing summons lawfully issued by the Syariah Court, preventing the commission of any offence, suppressing a riot or affray at a public place,	May not arrest without warrant	Summon	Bailable	Fine not exceeding \$4,000, imprisonment not exceeding one year or both	Syariah Subordinate Court

FIRST SCHEDULE – (Continued)

	or of apprehending any accused person or person who commits an offence or of having escaped from lawful custody					
244	Public servant disobeying direction of law with intent to cause injury to any person	May arrest without warrant	Warrant	Not bailable	Fine not exceeding \$12,000 and imprisonment not exceeding 3 years	Syariah Subordinate Court
245	Omission to produce document to public servant by person legally bound to produce it	May not arrest without warrant	Summon	Bailable	(a) Fine not exceeding \$2,000, imprisonment not exceeding 6 months or both (b) If the document is to be produced or delivered up to a Syariah Court, fine not exceeding \$4,000, imprisonment not exceeding one year or both	Syariah Subordinate Court
246	Refusal to make oath or declaration by public servant when duly required	May not arrest without warrant	Summon	Bailable	Fine not exceeding \$4,000, imprisonment not exceeding one year or both	Syariah Subordinate Court
247	Refusal to answer public servant authorised to question	May not arrest without warrant	Summon	Bailable	Fine not exceeding \$4,000, imprisonment not exceeding one year or both	Syariah Subordinate Court
248	Refusal to sign statement	May not arrest without warrant	Summon	Bailable	Fine not exceeding \$2,000, imprisonment not exceeding 6 months or both	Syariah Subordinate Court
249	Voluntarily causing hurt to extort confession or to compel restoration of property	May arrest without warrant	Warrant	Not bailable	Fine not exceeding \$28,000, imprisonment not exceeding 7 years or both	Syariah Subordinate Court

FIRST SCHEDULE – (Continued)

250	Attempt to commit offences under the Syariah Penal Code Order, 2013 (S 69/2013) or any other written law to which Syariah Courts have jurisdiction punishable with fine, imprisonment or whipping or with a combination of such punishments and in such attempt does any act towards the commission of the offences	May arrest without warrant if arrest for the offence attempted may be made without warrant, but not otherwise	According as a warrant or summons may issue for the offence attempted	According as the offence attempted is bailable or not	Imprisonment not exceeding one-half of the longest term provided for the offence and fine and whipping	The Syariah Court by which the offence attempted is triable
251(1)	Contravenes or fails to comply with any provision of the Syariah Penal Code Order, 2013 (S 69/2013) or any direction given or requirement imposed thereunder for which no special penalty is provided	May not arrest without warrant	Summon	Bailable	Fine not exceeding \$2,000, imprisonment not exceeding 6 months or both	Syariah Subordinate Court

SECOND SCHEDULE
(sections 272(2) and 375)

FORMS

FORM 1

SYARIAH COURTS CRIMINAL PROCEDURE CODE ORDER, 2018

IN THE COURT AT

Remand Warrant

No.:

To the officer in charge of prison/police station at

.....

Criminal Case No.:..... of

Whereas

IC No./Passport No. [hereinafter called the accused] was this day brought before this Syariah Court charged with having committed the offence of and it is necessary to remand the accused.

This is to authorise and require you to receive the accused into your custody together with this warrant and to keep him safely in prison/police lock-up until the H corresponding to the M when you shall cause him to be brought before the Syariah Court at o'clock in the fore/afternoon on the day unless you shall be otherwise ordered in the meantime.

Given under my hand and the seal of the Syariah Court this day of H corresponding to the M.

[SEAL]

.....
Signature of Syar'ie Judge

FORM 2

SYARIAH COURTS CRIMINAL PROCEDURE CODE ORDER, 2018

Summons to accused person

To IC No./Passport No.
of

Whereas your attendance is necessary to answer to a charge of
and you are hereby required to appear on the H corresponding
to the M at o'clock in the fore/afternoon [or
by a Syar'ie Lawyer, as the case may be] before the Syariah High Court / Syariah
Subordinate Court at

Date: H
..... M

[SEAL]

.....
Signature of Syar'ie Judge/Registrar

.....
Signature of accused/recipient

Name:

FORM 3

SYARIAH COURTS CRIMINAL PROCEDURE CODE ORDER, 2018

Summons to witness

In the Court

vs

To IC No./Passport No.
of

Whereas your attendance is required in Syariah Court as it is understood that you are likely to be able to give material evidence in the above case:

You are hereby summoned to appear before the Court on H corresponding to the M, at o'clock in the fore/afternoon, to testify what you know concerning the matter of the case, and not to depart thence without leave of the Syariah Court; and you are hereby warned that if you shall, without just excuse, neglect or refuse to appear on the date, a warrant will be issued to compel your attendance.

And you are further required to bring with you and produce to the Syariah Court the following documents which are believed to be in your possession —

Given under my hand and the seal of the Syariah Court this day of H corresponding to the M.

[SEAL]

.....
Signature of Syar'ie Judge

.....
Signature of witness

Name:

FORM 4

SYARIAH COURTS CRIMINAL PROCEDURE CODE ORDER, 2018

Warrant of arrest

To

.....
.....

Whereas IC No./Passport No. of
..... stands charged with the offence of
.....

You are hereby directed to arrest
and to produce him on the H corresponding to
the M, o'clock in the fore/
afternoon before the Syariah High Court / Syariah Subordinate Court at
.....

Date: H
..... M

[SEAL]

.....
Signature of Syar'ie Judge/Registrar

This warrant may be indorsed as follows —

If shall give bail himself in the sum of dollars with one surety or two sureties each in the sum of dollars to attend before the Syariah High Court / Syariah Subordinate Court on the H corresponding to the M and to continue so to attend until otherwise directed by me, he may be released.

Date: H
..... M

[SEAL]

.....
Signature of Syar'ie Judge/Registrar

FORM 5

SYARIAH COURTS CRIMINAL PROCEDURE CODE ORDER, 2018

Proclamation requiring appearance of accused

Whereas complaint has been made before me that
of IC No./Passport No. has
committed [or is suspected to have committed] the offence of
punishable under section of the
and it has been returned to a warrant of arrest thereupon issued that the
..... cannot be found; and whereas it has been shown to my
satisfaction that the has absconded [or
is concealing himself to avoid the service of the warrant, as the case may be]:

Proclamation is hereby made that of
..... is required to appear before the
Court at to answer the complaint within
days from this date.

Date: H
..... M

[SEAL]

.....
Signature of Syar'ie Judge

FORM 6

SYARIAH COURTS CRIMINAL PROCEDURE CODE ORDER, 2018

Proclamation requiring attendance of witness

Whereas complaint has been made before me that of
..... IC No./Passport No.
has committed [or is suspected to have committed the offence of
and a warrant has been issued to compel the attendance
of of before the Syariah
Court at to be examined touching the matter of the
complaint; and whereas it has been returned to the Syariah Court as it cannot be
served; and it has been shown to my satisfaction that he has absconded [or is
concealing himself to avoid the service of the warrant];

Proclamation is hereby made that is
required to appear before the Court at
on the H corresponding to the M
at o'clock, to be examined touching the offence complained of.

Date: H
..... M

[SEAL]

.....
Signature of Syar'ie Judge

FORM 7

SYARIAH COURTS CRIMINAL PROCEDURE CODE ORDER, 2018

Order of attachment to compel attendance of accused

To

.....
.....

Whereas a warrant has been duly issued to compel the attendance of IC No./Passport No. of has committed or suspected of committing an offence punishable under section from, and such warrant has been returned to the Syariah Court as it cannot be served; and whereas it has been shown to the satisfaction of the Syariah Court that he has absconded [or is concealing himself to avoid the service of the warrant]; and thereupon a Proclamation was duly issued and published requiring..... to appear and give evidence at the time and place mentioned therein, and he had failed to appear.

This is to authorise and require you to attach by seizure the movable property belonging to to the value of dollars which you may find within Brunei Darussalam and to hold the property under attachment pending the further order of this Syariah Court, and to return this warrant with an indorsement certifying the manner of its execution.

Date: H
..... M

[SEAL]

.....
Signature of Syar'ie Judge

FORM 8

SYARIAH COURTS CRIMINAL PROCEDURE CODE ORDER, 2018

Order of attachment to compel attendance of witness

To

.....
.....

Whereas a warrant has been duly issued to compel the attendance of IC No./Passport No. of to testify concerning a complaint pending before this Syariah Court, and it has been returned to the Syariah Court as it cannot be served; and whereas it has been shown to the satisfaction of the Syariah Court that he has absconded [or is concealing himself to avoid the service of the warrant]; and thereupon a Proclamation was duly issued and published requiring to appear and give evidence at the time and place mentioned therein, and he had failed to appear.

This is to authorise and require you to attach by seizure the movable property belonging to to the value of dollars which you may find within Brunei Darussalam and to hold the property under attachment pending the further order of this Syariah Court, and to return this warrant with an indorsement certifying the manner of its execution.

Date: H
..... M

[SEAL]

.....
Signature of Syar'ie Judge

FORM 9

SYARIAH COURTS CRIMINAL PROCEDURE CODE ORDER, 2018

Warrant to bring up witness

To

.....
.....

Whereas complaint has been made before me that
of has [or is suspected to have]
committed the offence of and it appears
likely that IC No./Passport No.
..... of can give evidence concerning
the complaint; and whereas the Syariah Court has good and sufficient reason to
believe that he will not attend as a witness on the hearing of the complaint unless
compelled to do so:

This is to authorise and require you to arrest of
..... and on the H
corresponding to the M, to bring him before the
..... Court at to be examined touching
the offence complained of.

Given under my hand and the seal of the Syariah Court this day of
..... H corresponding to theM.

[SEAL]

.....
Signature of Syar'ie Judge

FORM 10

SYARIAH COURTS CRIMINAL PROCEDURE CODE ORDER, 2018

Bond and bail-bond after arrest under warrant

Whereas I IC No./Passport No.
..... of being
brought before the Court at under a
warrant issued to compel my appearance to answer to a charge of
..... do hereby bind myself to attend in the
..... Court at on the
..... H corresponding to the M
to answer to the charge, and to continue so to attend until otherwise directed by
the Syariah Court; and, in case of my making default herein, I bind myself to
forfeit to the Government of Brunei Darussalam the sum of
dollars [which I hereby deposit].

Date: H
..... M

.....
Signature

Whereas I [or We] do hereby declare myself [or ourselves] surety [or sureties] for the abovenamed of , that he shall attend before the Court at , on the H corresponding to the M to answer to the charge on which he has been arrested, and shall continue so to attend until otherwise directed by the Syariah Court; and, in case of his making default therein, I [or we] hereby bind myself [or ourselves, jointly and severally] to forfeit to the Government of Brunei Darussalam the sum of dollars [which I [or we] hereby deposit].

Date: H

..... M

.....

(i) Signature of surety

.....

(ii) Signature of surety

FORM 11

SYARIAH COURTS CRIMINAL PROCEDURE CODE ORDER, 2018

Search warrant

To

.....
.....

Whereas information has been laid [*or* complaint has been made] before me, and on due inquiry thereupon it has been made to appear to me that the issuance of a search warrant is essential to any inquiry, trial or other proceedings.

This is to authorise and require you within the period of days from the date hereof to enter the house [*or* place of premises] situated at..... with such assistance as shall be required, and to search and inspect such place for any evidence or thing, and if found, produce the same forthwith before me or the Syariah Court.

Given under my hand and the seal of the Syariah Court this day of H corresponding to the M.

[SEAL]

.....
Signature of Syar'ie Judge/Registrar

FORM 12

SYARIAH COURTS CRIMINAL PROCEDURE CODE ORDER, 2018

Information to Religious Enforcement Officer or police officer

No.:

Date: H

..... M

Time: am/pm

Name:

IC No./Passport No.: Age:

Occupation:

Address:

I hereby give the following information —

.....
.....
.....
.....
.....
.....
.....
.....
.....
.....

.....
Signature of informant

BRUNEI DARUSSALAM GOVERNMENT GAZETTE

The above information is given in writing/orally and was written and signed by the officer below and read over to the informant.

Date: H

..... M

.....
Signature of Religious Enforcement Officer/police officer

FORM 13

SYARIAH COURTS CRIMINAL PROCEDURE CODE ORDER, 2018

Application for approval for taking of body sample

To Syar'ie Judge

I, [name and post of the applicant],
apply for an order of a Syar'ie Judge to the taking of a body sample, namely
..... [description of sample] from
..... [name of the suspect] on the following grounds –

- (i) the person is suspected of having committed an offence punishable with imprisonment contrary to section of the; and
- (ii) it is believed that the sample may confirm or disprove the commission of the offence by the person.

Date: H
..... M

.....

Name:

Post:

FORM 14

SYARIAH COURTS CRIMINAL PROCEDURE CODE ORDER, 2018

Approval for taking body sample

To:

An application has been made to the undersigned, by a Syar'ie Judge, by [name of the applicant] on [date] and the undersigned Syari'e Judge is satisfied that there are reasonable grounds –

- (i) for suspecting that the person has committed an offence punishable with imprisonment contrary to section of the; and
- (ii) for believing that the sample may confirm or disprove the commission of the offence by the person.

I hereby order that the suspect provide the body sample required, namely [description of sample] to

Date: H
..... M

[SEAL]

.....
Signature of Syar'ie Judge

FORM 15

SYARIAH COURTS CRIMINAL PROCEDURE CODE ORDER, 2018

Bond to give evidence

Whereas I, IC No./Passport No.
..... of do hereby bind myself to
attend at the Court at, at o'clock on
the H corresponding to the M,
and then and there to give evidence in the matter of a charge of
against; and in case of my making default herein, I bind
myself to forfeit to the Government of Brunei Darussalam the sum of
dollars [which I hereby deposit].

Date: H
..... M

.....
Signature

FORM 16

SYARIAH COURTS CRIMINAL PROCEDURE CODE ORDER, 2018

Information to Syar'ie Judge

No.:

Date: H
..... M

Time: am/pm

Name:

IC No./Passport No.: Age:

Occupation:

Address:

I hereby give the following information —

.....
.....
.....
.....
.....
.....
.....
.....
.....
.....

I hereby solemnly declare that the above information is true and nothing but the truth.

.....
Signature of informant

Date: H
..... M

[SEAL]

.....
Signature of Syar'ie Judge

FORM 17

SYARIAH COURTS CRIMINAL PROCEDURE CODE ORDER, 2018

Warrant of commitment on sentence of imprisonment or fine

To the officer in charge of prison at

Whereas on the H corresponding to the M,
[name of prisoner] was convicted in the Court, of the offence of
..... under section [or sections
.....] of the, and was sentenced to

This is to authorise and require you to receive into
your custody, together with this warrant, and carry the aforesaid sentence into
execution according to law.

Given under my hand and the seal of the Syariah Court this day of
..... H corresponding to theM.

[SEAL]

.....
Signature of Syar'ie Judge

Whereas I hereby declare myself that has
undergone the sentence as mentioned inside this warrant.

.....
Officer in charge of prison

FORM 18

SYARIAH COURTS CRIMINAL PROCEDURE CODE ORDER, 2018

Warrant of imprisonment on failure to recover amends by distress

To the officer in charge of prison at

Whereas IC No./Passport No. of has brought against of the complaint that, and the same has been dismissed as frivolous [or vexatious], and the order of dismissal awards payment by of the sum of dollars as amends; and whereas the sum has not been paid and cannot be recovered by distress of the movable property of and an order has been made for his imprisonment for the period of days, unless the aforesaid sum be sooner paid:

This is to authorise and require you to receive into your custody, together with this warrant, and to keep him safely in prison for the period subject to the provisions of the unless the sum be sooner paid; and on the receipt thereof forthwith to set him at liberty, returning this warrant with an indorsement certifying the manner of its execution.

Given under my hand and the seal of the Syariah Court this day of H corresponding to the M.

[SEAL]

.....
Signature of Syar'ie Judge

Whereas I hereby declare myself that has undergone the sentence as mentioned inside this warrant.

.....
Officer in charge of prison

FORM 19

SYARIAH COURTS CRIMINAL PROCEDURE CODE ORDER, 2018

Warrant of execution on sentence of death

To the officer in charge of prison at

Whereas in the Syariah High Court at on H corresponding to the M, IC No./Passport No. has been convicted of the offence of under section [or sections] of the and has been sentenced with death [and whereas an appeal to the Syariah Appeal Court was dismissed on the H corresponding to the M], and whereas His Majesty the Sultan and Yang Di-Pertuan has not seen fit to exercise the Prerogative of Mercy.

This is to authorise and require you, the Officer, to carry the sentence of death into execution by causing to be hanged by the neck or stoned until he is dead or by other means [state] as punishment for, at such time being prescribed by the Syariah Court and to return this warrant to the Syariah Court with an indorsement certifying that the sentence has been carried into effect, together with a certificate of death under the hand of a medical officer.

Given under my hand and the seal of the Syariah Court this day of H corresponding to theM.

[SEAL]

.....
Signature of Chief Syar'ie Judge

5th. MARCH, 2018

I hereby certify myself that is dead due to hanging by the neck or stoning until he is dead or other means [state].

.....
Medical officer

I hereby certify myself that has been sentenced to death as mentioned inside this warrant.

.....
Officer in charge of prison

FORM 20

SYARIAH COURTS CRIMINAL PROCEDURE CODE ORDER, 2018

Warrant of committal

To the officer in charge of prison at

Whereas IC No./Passport No.
on H corresponding to theM,
was duly convicted of the offence in the Court
at under section [or sections]
of the, and is punished with/sentenced to

This is to authorise and require you to receive into
your custody, together with this warrant, and to keep him safely there until you
shall receive the further warrant or order of this Syariah Court.

Given under my hand and the seal of the Syariah Court this day of
..... H corresponding to theM.

[SEAL]

.....
Signature of Syar'ie Judge

FORM 21

SYARIAH COURTS CRIMINAL PROCEDURE CODE ORDER, 2018

Warrant of execution on sentence of *hadd* or *qisas*

To the officer in charge of prison at

Whereas IC No./Passport No. at
has been convicted in the Court at on H
corresponding to the M, of the offence of under
section..... [or sections] of the
and has been sentenced with

Whereas an appeal to the Syariah Appeal Court was dismissed on the H
corresponding to the M or where there is no appeal, an indorsement has
been made by the Syariah Appeal Court on H corresponding to
the M.

This is to authorise and require you, the Officer, to carry the *hadd* [namely
.....] or *qisas* [namely] against
..... at such time being mentioned by the
Syariah Court and to return this warrant to the Syariah Court with an
indorsement certifying that the sentence has been carried into effect.

Given under my hand and the seal of the Syariah Court this day of
..... H corresponding to the M.

[SEAL]

.....
Signature of Chief Syar'ie Judge

BRUNEI DARUSSALAM GOVERNMENT GAZETTE

I hereby certify myself that has been sentenced as mentioned inside this warrant.

.....
Officer in charge of prison

FORM 22

SYARIAH COURTS CRIMINAL PROCEDURE CODE ORDER, 2018

Warrant to levy fine by distress and sale

To of

Whereas IC No./Passport No. of was on the H corresponding to the M, convicted before me of the offence of and sentenced to pay a fine of dollars, and whereas although required to pay the fine, has not paid the same or any part thereof:

This is to authorise and require you to make distress by seizure of any property belonging to which may be found within the District of and, if within after such distress the sum shall not be paid [or forthwith], to sell the property distrained, or so much thereof as shall be sufficient to satisfy the fine, returning this warrant, with an indorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Syariah Court this day of H corresponding to the M.

[SEAL]

.....
Signature of Syar'ie Judge

Form of Indorsement

Whereas I hereby certify that the warrant has been executed by way of
..... [state].

.....
Signature of Syar'ie Judge

FORM 23

SYARIAH COURTS CRIMINAL PROCEDURE CODE ORDER, 2018

Bond to appear and receive judgment

Whereas I IC No./Passport No.
of have been called upon to enter into
a bond to appear before the Syariah Court of at if
and when called upon to receive the judgment of the Syariah Court for the
offence of whereof I have been convicted, and
in the meantime to keep the peace and to be of good behaviour, I hereby bind
myself to appear on the H corresponding to the M
in the Syariah Court or whenever I shall be thereto required, and in the meantime
to be of good behaviour and to keep the peace towards His Majesty the Sultan and
Yang Di-Pertuan and to all his subjects; and in case I make default in any of
the conditions herein, I bind myself to forfeit to the Government of Brunei
Darussalam the sum of dollars [which I hereby deposit].

Date: H
..... M

.....
Signature

Where a bond with sureties is to be executed, add —

We do hereby declare ourselves sureties for the abovenamed
that he will appear in the Syariah Court of at on the
..... H corresponding to the M or
whenever he shall be thereto required, and that he will in the meantime be of
good behaviour and keep the peace towards His Majesty the Sultan and Yang
Di-Pertuan and towards all his subjects; and in case of his making default in any
of the conditions herein, we bind ourselves, jointly and severally, to forfeit to the
Government of Brunei Darussalam the sum of dollars [which we
hereby deposit].

Date: H

..... M

.....
(i) Signature of surety

.....
(ii) Signature of surety

FORM 24

SYARIAH COURTS CRIMINAL PROCEDURE CODE ORDER, 2018

Form of petition of appeal

To Chief Syar'ie Judge or Syariah High Court Judges [as the case may be]

The petition of

Showeth as follows:

1. Your petitioner the abovenamed was charged with
and convicted at the Court held at
on the H corresponding to the M,
and the following order was made thereon
[here state shortly the substance of the judgment or sentence].
2. Your petitioner is dissatisfied with the judgment on the grounds following:
[here state the particular grounds of appeal on which the appellant relies].
3. Your petitioner prays that such judgment or sentence may be reversed or that
such order may be thereon as justice may require.

.....
Appellant

FORM 25

SYARIAH COURTS CRIMINAL PROCEDURE CODE ORDER, 2018

Special case

In the Syariah High Court of Brunei Darussalam

At a Syariah Court held at before the undersigned on the H corresponding to theM, the abovenamed accused was charged as follows:

At the hearing of the charge it was proved before me that: [*here set out so much of evidence and admitted facts of the case as is necessary to raise the question or questions of law intended to be submitted*].

It was thereupon contended on the part of the accused [*or Syari'e Prosecutor, as the case may be*]: [*here state the legal objection taken*].

But [*or And*] I being of opinion that: [*here state the ground on which the Syariah Court decided the case*]

and held that: [*here state the decision and judgment of the Syariah Court*].

The question for the opinion of the Syariah High Court is whether the determination was correct in point of law and what should be done in the premises.

Date: H
..... M

[SEAL]

.....
Signature of Syar'ie Judge

FORM 26

SYARIAH COURTS CRIMINAL PROCEDURE CODE ORDER, 2018

Warrant of commitment in certain cases of contempt when fine is imposed

To the officer in charge of prison at

Whereas at a Syariah Court holden before me on this H corresponding to the M, in the presence [or view] of the Syariah Court committed wilful contempt:

And whereas for such contempt has been adjudged by the Syariah Court to pay a fine of dollars, or in default to suffer imprisonment for the term of

This is to authorise and require you to receive into your custody, together with this warrant, and to keep him safely in prison for the period of unless the fine be sooner paid; and, on the receipt thereof, forthwith to set him at liberty, returning this warrant with an indorsement certifying the manner of its execution.

Given under my hand and the seal of the Syariah Court this day ofH corresponding to theM.

[SEAL]

.....
Signature of Syarie Judge

Whereas I hereby certify that has undergone the imprisonment as mentioned in this warrant.

.....
Officer in charge of prison

FORM 27

SYARIAH COURTS CRIMINAL PROCEDURE CODE ORDER, 2018

Warrant of commitment of witness refusing to answer

To the officer in charge of prison at

Whereas IC No./Passport No. of being summoned [or brought before this Syariah Court] as a witness and on this day required to give evidence on an inquiry into an alleged offence, refused to answer a certain question [or certain questions] put to him touching the alleged offence, and duly recorded, without alleging any just excuse for such refusal, and for this contempt has been adjudged detention in custody for

This is to authorise and require into custody, and to keep him safely in your custody for the term of days, unless in the meantime he shall consent to be examined and to answer the questions asked of him, and on the last of the said days, or forthwith on such consent being known, to bring him before this Syariah Court to be dealt with according to law; returning this warrant with an indorsement certifying the manner of its execution.

Given under my hand and the seal of the Syariah Court this day of H corresponding to the M.

[SEAL]

.....
Signature of Syar'ie Judge

Whereas I hereby certify that has undergone the sentence as mentioned in this warrant.

.....
Officer in charge of prison

FORM 28

SYARIAH COURTS CRIMINAL PROCEDURE CODE ORDER, 2018

Warrant to discharge person imprisoned on failure to give security

To the officer in charge of prison at

Whereas IC No./Passport No.
of was committed to your custody under warrant of this Syariah
Court, dated the H corresponding to the M,
and has since with his surety [*or* sureties] duly executed a bond under the Syariah
Courts Criminal Procedure Code Order, 2018:

This is to authorise and require you forthwith to discharge from
your custody, unless he is liable to be detained for some other matter.

Given under my hand and the seal of the Syariah Court this day of H
corresponding to the M.

[SEAL]

.....
Signature of Syar'ie Judge

FORM 29

SYARIAH COURTS CRIMINAL PROCEDURE CODE ORDER, 2018

Notice to surety on breach of bond

To

.....
.....

Whereas on the H corresponding to the M, you became surety for IC No./Passport No. of that he should appear before this Syariah Court on the H corresponding to the M, and bound yourself in default thereof to forfeit the sum of dollars to the Government of Brunei Darussalam and whereas has failed to appear before this Syariah Court, and by reason of such default you have forfeited the aforesaid sum of dollars:

You are hereby required to pay the penalty or show cause, within days from this date, why payment of the sum should not be enforced against you.

Given under my hand and the seal of the Syariah Court this day of H corresponding to the M.

[SEAL]

.....
Signature of Syar'ie Judge

FORM 30

SYARIAH COURTS CRIMINAL PROCEDURE CODE ORDER, 2018

Notice to surety of forfeiture of bond for good behaviour

To

.....
.....

Whereas on the H corresponding to the M, you became surety by a bond for IC No./Passport No. of that he would be of good behaviour for the period of and bound yourself in default thereof to forfeit the sum of dollars to the Government of Brunei Darussalam and whereas has been convicted of the offence of committed since you became such surety, whereby your security bond has become forfeited:

You are hereby required to pay the penalty of dollars, or to show cause within days why it should not be paid.

Given under my hand and the seal of the Syariah Court this day of H corresponding to the M.

[SEAL]

.....
Signature of Syar'ie Judge

FORM 31

SYARIAH COURTS CRIMINAL PROCEDURE CODE ORDER, 2018

Warrant of attachment against surety

To

.....
.....

Whereas IC No./Passport No.
of has bound himself as surety for the
appearance of [*state the condition of the bond*],
and has made default, and thereby forfeited to
the Government of Brunei Darussalam the sum of dollars.

This is to authorise and require you to attach any movable property of the
..... which you may find by seizure and
detention; and, if the amount be not paid within 3 days, to sell the property so
attached, or so much of it as may be sufficient to realise the amount aforesaid,
and make return of what you have done under this warrant immediately upon its
execution.

Given under my hand and the seal of the Syariah Court this day of H
corresponding to the M.

[SEAL]

.....
Signature of Syar'ie Judge

FORM 32

SYARIAH COURTS CRIMINAL PROCEDURE CODE ORDER, 2018

Warrant of commitment of surety of accused admitted to bail

To the officer in charge of prison at

Whereas IC No./Passport No. of has bound himself as surety for the appearance of [state the condition of the bond], and has therein made default whereby the penalty mentioned in the bond has been forfeited to the Government of Brunei Darussalam and whereas has, on due notice to him, failed to pay the sum or show any sufficient cause why payment should not be enforced against him, and the same cannot be recovered by attachment and sale of movable property of his, and an order has been made for his imprisonment for [specify the period]:

This is to authorise and require you to receive into your custody with this warrant, and to keep him safely in prison for [term of imprisonment] and to return this warrant with an indorsement certifying the manner of its execution.

Given under my hand and the seal of the Syariah Court this day of H corresponding to the M.

[SEAL]

.....
Signature of Syar'ie Judge

FORM 33

SYARIAH COURTS CRIMINAL PROCEDURE CODE ORDER, 2018

Notice to principal of forfeiture of bond to keep peace

To

.....
.....

Whereas on theH corresponding to theM,
you entered into a bond not to commit etc. [*as in the bond*], and proof of the
forfeiture of the same has been given before me and duly recorded:

You are hereby called upon to pay the penalty of dollars or to
show cause before me within days why payment of the same should
not be enforced against you.

Date:H
.....M

[SEAL]

.....
Signature

FORM 34

SYARIAH COURTS CRIMINAL PROCEDURE CODE ORDER, 2018

Warrant of imprisonment on breach of bond to keep peace

To the officer in charge of prison at

Whereas proof has been given before me and duly recorded that IC No./Passport No. of has committed a breach of the bond entered into by him to keep the peace, whereby he has forfeited to the Government of Brunei Darussalam the sum of dollars; and whereas has failed to pay the sum or to show cause why the sum should not be paid, although duly called upon to do so, and payment thereof cannot be enforced by attachment of his movable property, and an order has been made for the imprisonment of..... for the period of

This is to authorise and require you to receive into your custody, together with this warrant, and to keep him safely in prison for the period of; and to return this warrant with an indorsement certifying the manner of its execution.

Given under my hand and the seal of the Syariah Court this day of H corresponding to the M.

[SEAL]

.....
Signature of Syar'ie Judge

Whereas I hereby certify that has undergone the sentence of imprisonment as mentioned in this warrant.

.....
Officer in charge of prison

FORM 35

SYARIAH COURTS CRIMINAL PROCEDURE CODE ORDER, 2018

Warrant of attachment and sale on forfeiture of bond for good behaviour

To

.....
.....

Whereas IC No./Passport No. of
..... did on the H corresponding to the
..... M, give security by bond in the sum of dollars for
the good behaviour of, and proof has been given
before me duly recorded of the commission by of
the offence of whereby the bond has been forfeited;
and whereas notice has been given to
calling on him to show cause why the sum should not be paid, and he has failed
to do or to pay the sum:

This is to authorise and require you to attach by seizure the property
belonging to to the value of dollars,
which you may find, and if the sum is not paid within to sell
the property so attached, or so much of it as may be sufficient to realise the same,
and to make return of what you have done under this warrant immediately upon
its execution.

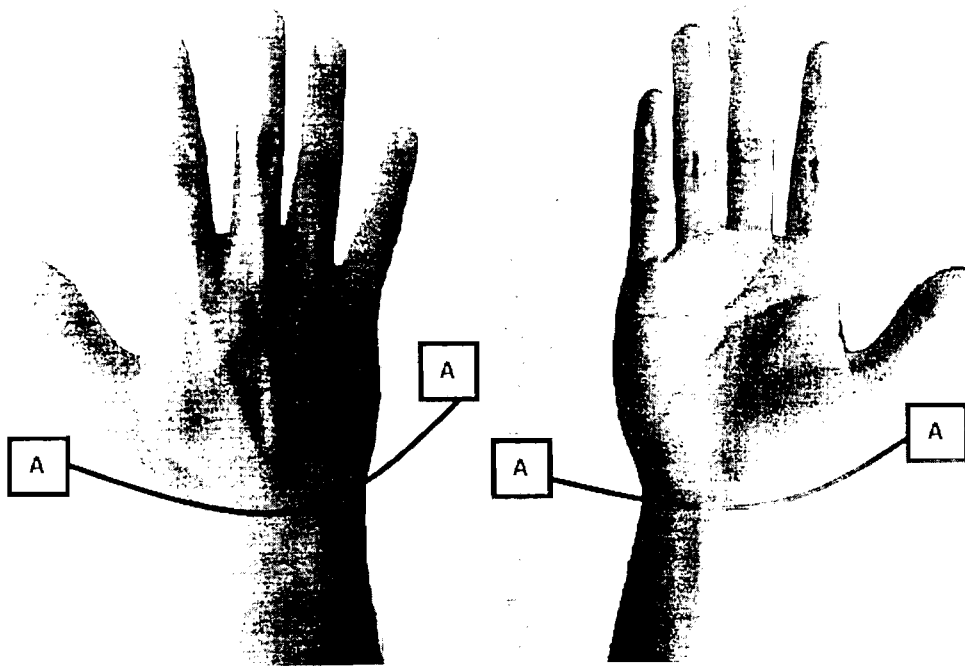
Given under my hand and the seal of the Syariah Court this day of H
corresponding to the M.

[SEAL]

.....
Signature of Syar'ie Judge

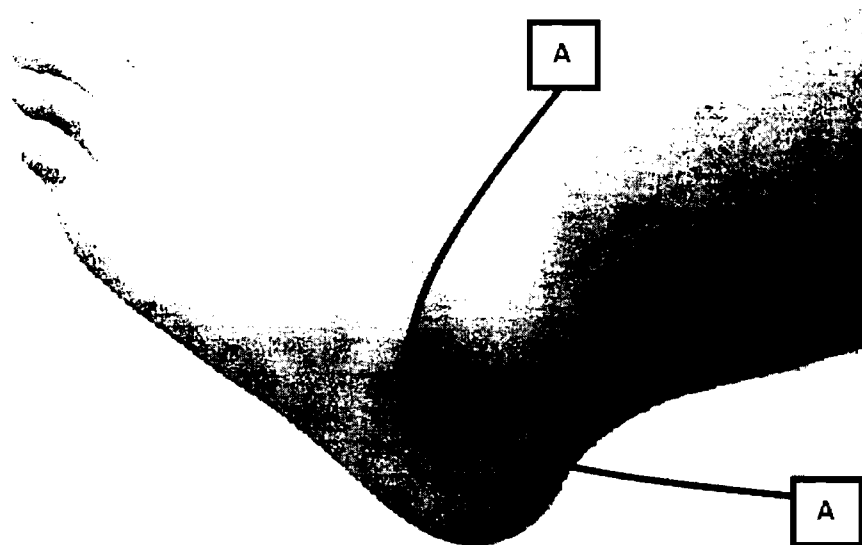
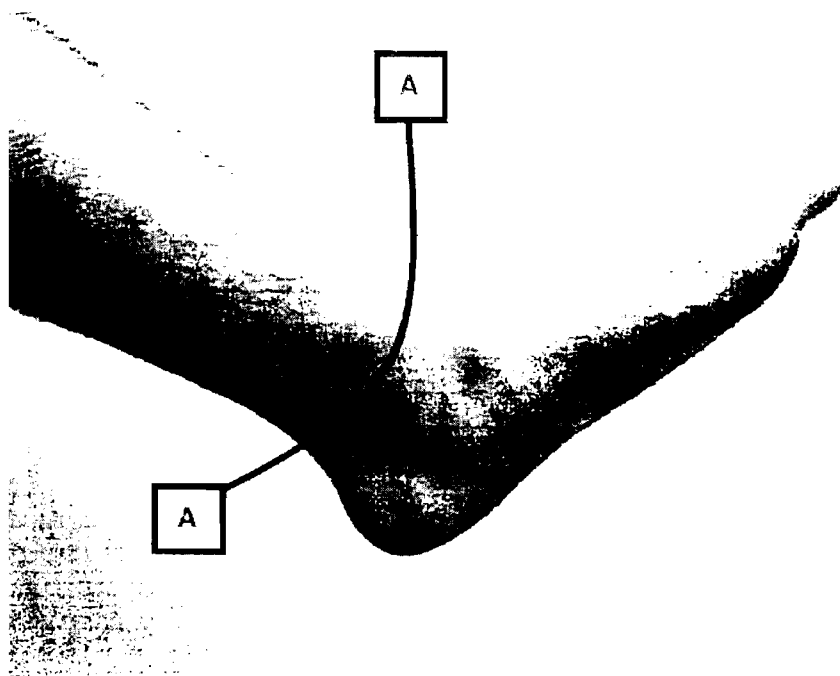
THIRD SCHEDULE
(section 175(2))

AMPUTATION OF RIGHT HAND



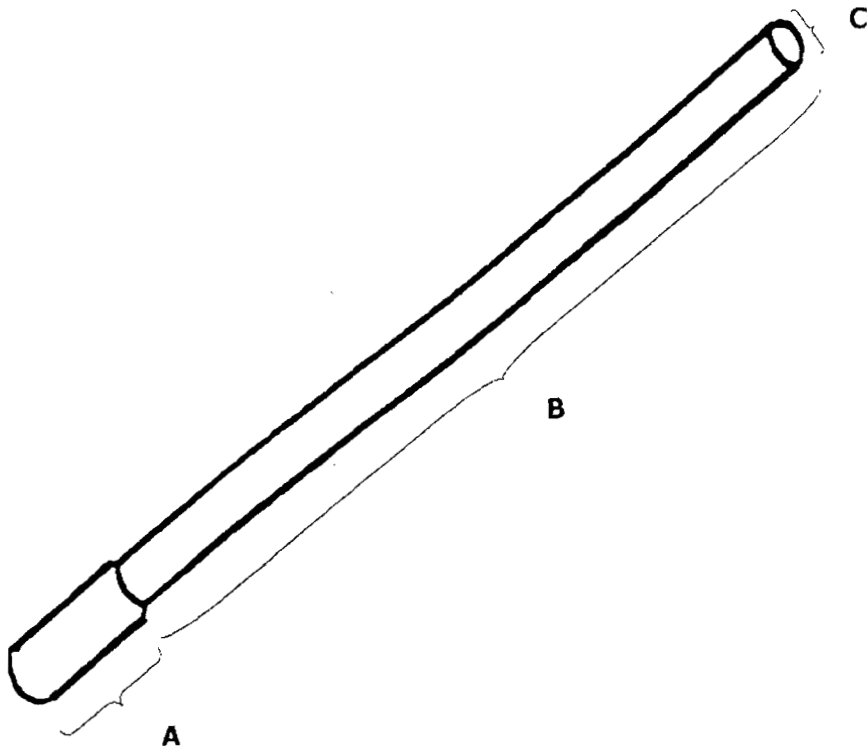
FOURTH SCHEDULE
(section 175(3))

AMPUTATION OF LEFT FOOT



FIFTH SCHEDULE
(section 179(a))

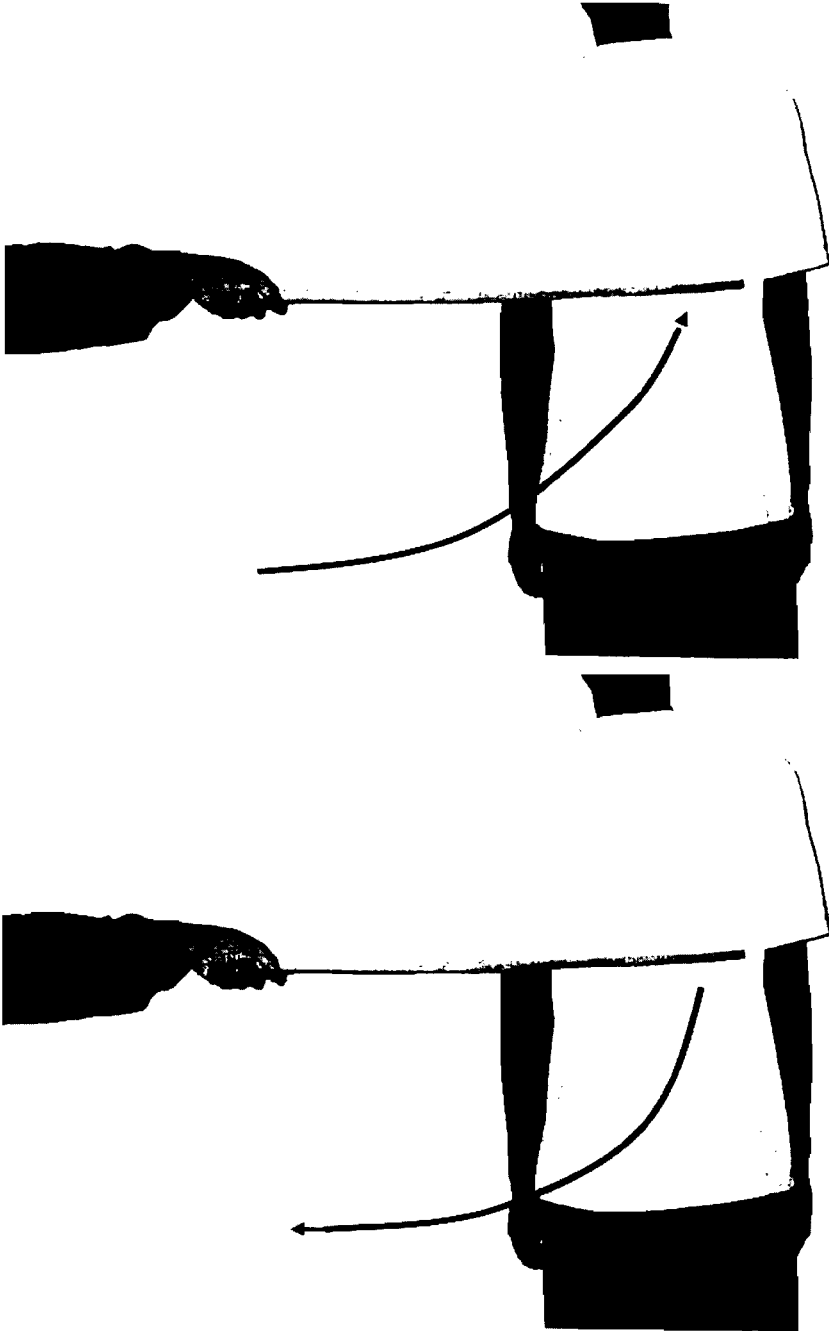
WHIPPING ROD



- A. WHIPPING ROD HOLDER
B. LENGTH OF WHIPPING ROD — not exceeding 1.22 metres
C. DIAMETER OF WHIPPING ROD — not exceeding 1.25 centimetres

SIXTH SCHEDULE
(section 179(e) and (f))

EXECUTION OF SENTENCE OF WHIPPING



SEVENTH SCHEDULE
(section 204(a))

CONDITIONS AND *LAFAZ* OF REPENTANCE

Conditions for offender who desires to repent, whether Muslim or non-Muslim

1. An offender who desires to repent shall —

- (a) show his determination to repent;
- (b) be sincere and on his own will;
- (c) regret the act done or words stated;
- (d) undertake not to repeat the act done or words stated;
- (e) admit the true facts relating to the matter which constitute the offence (for Muslims only); and
- (f) withdraw the act done or words stated which constitute the offence [for non-Muslim only].

Lafaz of repentance for Muslims

2. *Lafaz* of repentance shall consist of —

- (a) *lafaz* of *Istighfar* for three times as follows —

أَسْتَغْفِرُ اللَّهَ الْعَظِيمَ الَّذِي لَا إِلَهَ إِلَّا هُوَ الْحَيُّ الْقَيُّومُ وَأَتُوبُ إِلَيْهِ

“I ask forgiveness of Allah the Most Glorious, no god but Him, who is the Eternal Living, the Self-Subsisting, and I repent to Him”;

- (b) the admission that the act done or words stated that caused his apostacy is wrong;
- (c) remorse and undertaking not to repeat the act or words that caused his apostacy;
- (d) the admission of the true facts relating to the matter which constitute the offence; and
- (e) “*lafaz* of *Kalimah Syahadah* which shall be pronounced in Arabic language as follows —

أَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَشْهَدُ أَنَّ مُحَمَّدًا رَسُولُ اللَّهِ

“I bear witness that there is no god but Allah, and I bear witness that the Prophet Muhammad Sallallahu ‘Alaihi Wa Sallam is the Messenger of Allah”.

Illustrations

(a)

أَسْتَغْفِرُ اللَّهَ الْعَظِيمَ الَّذِي لَا إِلَهَ إِلَّا هُوَ الْحَيُّ الْقَيُّومُ وَأَتُوبُ إِلَيْهِ

“I ask forgiveness of Allah the Most Glorious, no god but Him, who is the Eternal Living, the Self-Subsisting, and I repent to Him”

I declare that my statement which contempts *Nabi Muhammad Sallallahu ‘Alaihi Wa Sallam* as not the last of the Prophets which caused me to commit *irtidad* is wrong.

I am truly remorseful and I repent of my statement which contempts *Nabi Muhammad Sallallahu ‘Alaihi Wa Sallam* as not the last of the Prophets and I sincerely undertake not to repeat it again.

I truly admit that *Nabi Muhammad Sallallahu ‘Alaihi Wa Sallam* is the last of the Prophets.

I hereby pronounce —

أَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَشْهَدُ أَنَّ مُحَمَّدًا رَسُولُ اللَّهِ

“I bear witness that there is no god but Allah, and I bear witness that the Prophet Muhammad Sallallahu ‘Alaihi Wa Sallam is the Messenger of Allah”.

(b)

أَسْتَغْفِرُ اللَّهَ الْعَظِيمَ الَّذِي لَا إِلَهَ إِلَّا هُوَ الْحَيُّ الْقَيُّومُ وَأَتُوبُ إِلَيْهِ

“I ask forgiveness of Allah the Most Glorious, no god but Him, who is the Eternal Living, the Self-Subsisting, and I repent to Him”.

I declare that my act of worshipping a grave which caused me to commit *irtidad* is wrong.

I am truly remorseful and I repent of my action of worshipping a grave and I sincerely undertake not to repeat it again.

I truly admit that there is no god but Allah.

I hereby pronounce —

أَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَشْهَدُ أَنَّ مُحَمَّدًا رَسُولُ اللَّهِ

“I bear witness that there is no god but Allah, and I bear witness that the Prophet Muhammad Sallallahu ‘Alaihi Wa Sallam is the Messenger of Allah”.

Lafaz of repentance for non-Muslims

3. *Lafaz* of repentance shall contain —

- (a) the admission that the act done or words stated is wrong;
- (b) remorse and undertaking not to repeat the act or words that constitute the offence; and
- (c) a withdrawal of the act or words that constitute the offence.

Illustration

I declare that my statement which contempts *Nabi Muhammad Sallallahu ‘Alaihi Wa Sallam* is wrong.

I am truly remorseful and I repent of my statement which contempts *Nabi Muhammad Sallallahu ‘Alaihi Wa Sallam* and I sincerely undertake not to repeat it again.

I hereby withdraw my statement that constitutes the offence.

Lafaz of repentance for offence of abetment for Muslims

4. *Lafaz* of repentance shall contain —

- (a) *lafaz* of *Istighfar* for three times as follows —

أَسْتَغْفِرُ اللَّهَ الْعَظِيمَ الَّذِي لَا إِلَهَ إِلَّا هُوَ الْحَيُّ الْقَيُّومُ وَأَتُوبُ إِلَيْهِ

“I ask forgiveness of Allah the Most Glorious, no god but Him, who is the Eternal Living, the Self-Subsisting, and I repent to Him”;

- (b) the admission that abetting the act done or words stated which constitutes an offence is wrong;
- (c) remorse and undertaking not to repeat the offence of abetment;

(d) the admission of the true facts relating to the matter which constitute the offence; and

(e) *lafaz* of *Kalimah Syahadah* which shall be pronounced in Arabic language as follows —

أَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَشْهَدُ أَنَّ مُحَمَّدًا رَسُولُ اللَّهِ

“I bear witness that there is no god but Allah, and I bear witness that the Prophet Muhammad Sallallahu ‘Alaihi Wa Sallam is the Messenger of Allah”.

Illustration

أَسْتَغْفِرُ اللَّهَ الْعَظِيمَ الَّذِي لَا إِلَهَ إِلَّا هُوَ الْحَيُّ الْقَيُّومُ وَأَتُوبُ إِلَيْهِ

“I ask forgiveness of Allah the Most Glorious, no god but Him, who is the Eternal Living, the Self-Subsisting, and I repent to Him”

I declare that my action of abetting the offence of contempt of *Nabi Muhammad Sallallahu ‘Alaihi Wa Sallam* as not the last of the Prophets is wrong.

I am truly remorseful and I repent of my action of abetting the offence of contempt of *Nabi Muhammad Sallallahu ‘Alaihi Wa Sallam* as not the last of the Prophets and I sincerely undertake not to repeat it again. I truly admit that *Nabi Muhammad Sallallahu ‘Alaihi Wa Sallam* is the last of the Prophets.

I hereby pronounce —

أَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَشْهَدُ أَنَّ مُحَمَّدًا رَسُولُ اللَّهِ

“I bear witness that there is no god but Allah, and I bear witness that the Prophet Muhammad Sallallahu ‘Alaihi Wa Sallam is the Messenger of Allah”.

***Lafaz* of repentance for offence of abetment for non-Muslims**

5. *Lafaz* of repentance shall contain —

(a) the admission that abetting the act done or words stated which constitutes an offence is wrong;

(b) remorse and undertaking not to repeat the offence of abetment; and

(c) a withdrawal of the act or words which is abetted.

Illustration

I declare that my action of abetting the offence of contempt of *Nabi Muhammad Sallallahu 'Alaihi Wa Sallam* is wrong.

I am truly remorseful and I repent of my action of abetting the offence of contempt of *Nabi Muhammad Sallallahu 'Alaihi Wa Sallam* and I sincerely undertake not to repeat it again.

I hereby withdraw my action or words which I abetted.

Made this 17th. day of Jamadilakhir, 1439 Hijriah corresponding to the 5th. day of March, 2018 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM