

STATE OF SABAH

I assent,

TUN DATUK SERI PANGLIMA HAJI AHMADSHAH BIN ABDULLAH,
Yang di-Pertua Negeri.

30TH AUGUST, 2004.

No. 9 of 2004

An Enactment to make provisions relating to syariah criminal procedure for Syariah Courts.

ENACTED by the Legislature of the State of Sabah as follows:

PART I PRELIMINARY

Short title, application and commencement

1. (1) This Enactment may be cited as the Syariah Criminal Procedure Enactment 2004.

(2) This Enactment shall come into force on a date to be appointed by the State Authority by notification in the *Gazette*. [01.06.2005]

Interpretation

2. (1) In this Enactment, unless the context otherwise requires –

"Chairman" has the meaning assigned thereto in the Enactment;

"Chief Religious Enforcement Officer" and "Religious Enforcement Officer" have the respective meanings assigned thereto in the Court Enactment;

"Chief *Syar'ie* Judge" has the meaning assigned thereto in the Court Enactment;

"Chief *Syar'ie* Prosecutor" has the meaning assigned thereto in the Court Enactment;

"complaint" means the allegation made orally or in writing to a Judge with a view to his taking action under this Enactment that some person whether known or unknown has committed or is guilty of an offence;

"Court" or "Syariah Court" has the meaning assigned thereto in the Court Enactment;

"Court Enactment" means the Syariah Court Enactment 2004;

"Enactment" means Majlis Ugama Islam Negeri Sabah Enactment 2004;

"Islamic Law" means Islamic Law according to *Mazhab Syafie* or any one of *Mazhab Hanafi, Maliki, or Hanbali*;

"Judge" means a Judge appointed under section 6(1), 7(1) or 9(1) of the Court Enactment;

"Majlis" has the meaning assigned thereto in the Enactment;

"Mufti" has the meaning assigned thereto in the Fatwa Enactment 2004;

"non-seizable offence" means an offence punishable with imprisonment for less one year or with fine only for which a Religious Enforcement Officer or Police Officer may not ordinarily arrest without warrant;

"offence" means any act or omission made punishable by any written law prescribing offences against precepts of the religion of Islam and over which the Court has jurisdiction;

"*Pegawai Masjid*" has the meaning assigned thereto In the Enactment;

"*Syar'ie* Lawyer" has the meaning assigned thereto in the Court Enactment;

"Prosecutor" means the Chief *Syar'ie* Prosecutor or the *Syar'ie* Prosecutor;

"Registrar" means the Chief Registrar of the Syariah Appeal Court, the Registrar of the Syariah High Court, or Assistant Registrars of the Syariah Subordinate Court, as the case may be, appointed under the Court Enactment;

"seizable offence" means an offence punishable with imprisonment for one year or more, for which a Religious Enforcement Officer or Police Officer may ordinarily arrest without warrant;

"*Syar'ie* Prosecutor" has the meaning assigned thereto in the Court Enactment;

"witness" does not include an accused person;

"youthful offender" means an offender above the age of ten and below the age of sixteen years.

(2) All words and expressions used in this Enactment and not herein defined but defined in the Interpretation and General Clauses 1963 shall have the meaning thereby assigned thereto to the extent that such meanings do not conflict with Islamic Law.

(3) For the avoidance of doubt as to the identity or interpretation of the words and expressions used in this Enactment that are listed in the First Schedule, reference may be made to the Arabic script for those words and expressions as shown against them therein.

Trial of offences by the Court

3. All offences over which the Court has jurisdiction shall be inquired into and tried according to the provisions in this Enactment.

PART II
GENERAL PROVISIONS AS TO CRIMINAL COURT

Courts

4. The Courts for the administration of Syariah Criminal justice in the State of Sabah shall be those constituted under the Court Enactment.

Courts to be open

5. Subject to section 6, the place in which any Court is held for the purpose of trying any offence shall be an open and public Court to which the public generally may have access.

Exclusion of public in certain cases

6. A Judge hearing any matter or proceeding may on special grounds of public policy or expediency in his discretion exclude the public at any stage of the hearing from the Court but he shall record in every such case at the time on the record of the proceedings the grounds upon which such order is made.

Criminal jurisdiction of Judge

7. Subject to this Enactment, every Judge shall have cognisance of and power and authority to –

- (a) hear, try, determine and dispose of prosecutions for offences committed wholly or in part within the local jurisdiction of such Judge and cognisable by such Judge;
- (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 warrants to search or to cause to be searched places wherein any articles or things with which or in respect of which any offence has been committed are alleged to be kept or concealed;

- (d) require persons to furnish security for their good behaviour according to law; and
- (e) do all other matters and things which a Judge is empowered to do by any written law.

PART III
OTHER GENERAL PROVISIONS

CHAPTER 1
OF AN INFORMATION TO SYAR'IE JUDGE AND RELIGIOUS
ENFORCEMENT OFFICER

Public, when to assist, Judge, etc.

- 8.** Every person is bound to assist a Judge, Religious Enforcement Officer or Police Officer, reasonably demanding his aid -
- (a) in the taking or preventing the escape of any other person whom such Judge, Religious Enforcement Officer or Police Officer is authorized to arrest; or
 - (b) in the prevention of a breach of the peace arising from the arrest and detention of such person.

Public to give information of certain matters

- 9.** Every person aware of the commission of or the intention of any other person to commit any offence shall forthwith give information to the nearest Religious Enforcement Officer or Police Officer of such commission or intention.

CHAPTER 2
OF ARREST, ESCAPE AND RE-ARREST

Arrest: how made

10. (1) In making an arrest the Religious Enforcement Officer, Police Officer or Other Person making the arrest shall actually touch or confine body of the person to be arrested, unless there be 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.

Search of place entered by person sought to be arrested

11. (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 the person acting under the warrant or 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 under 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 such 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 that of the person to be arrested or of any other person if, after notification of his authority and purpose and demand of admittance duly made, he cannot otherwise obtain admittance.

Search of persons in place searched under warrant

12. Whenever a search for any thing is or is about to be lawfully made in any place in respect of any offence, all persons found therein 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 a Police Officer not below the rank of Inspector.

Power to break open any place for purposes of liberation

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

No unnecessary restraint and mode of searching a person

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

(2) Whenever it is necessary to cause a person to be searched, the search shall be made by a person of the same sex as the person being searched with strict regard to decency.

Search of persons arrested

15. (1) Whenever 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 is unable to furnish bail, the Religious Enforcement Officer or Police Officer making the arrest may search such person and seize all articles other than the necessary wearing apparel found upon him and place them in safe custody, and any of such articles which there is reason to believe were used in committing the offence may be detained until his discharge or acquittal.

(2) The list of all articles seized under subsection (1) shall be prepared by the officer making the arrest and shall be signed by him.

Power to seize offensive weapons

16. The Religious Enforcement Officer or Other Person making any arrest under this Enactment may take from the person arrested any offensive weapons which he has about his person and shall deliver all weapons so taken to the police.

Search of persons for name and address

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

Arrest without warrant

18. Without prejudice to the provisions of any other written law, any Religious Enforcement Officer, Police Officer or *Pegawai Masjid* may, without an order from a Judge and without a warrant, arrest -

- (a) any person who has been concerned in any seizable offence in the State Sabah or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists that he has been so concerned;
- (b) any person who has committed or attempted to commit in his presence any offence involving a breach of the peace;
- (c) any person against whom a warrant issued under this Enactment is still in force, although such warrant is not in his possession.

Refusal to give name and residence

19. (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 such officer, to give his name and residence or gives a name or residence which such 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 twenty-four hours of the

arrest, exclusive of the time necessary for the journey from the place of arrest, be taken before the nearest Judge of the Syariah Subordinate Court 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 Syariah Judge if so required.

(2) When any person is taken before a Judge of a Syariah Subordinate Court under subsection (1), such Judge may either require him to execute a bond, with a surety, for his appearance before a Judge if so required, or may order him to be detained 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 such officer to give his name and residence gives as his residence a place outside the State of Sabah, he may be arrested by such officer and shall be taken forthwith before the nearest Judge of a Syariah Subordinate Court who may require him to execute a bond, with a surety, for his appearance before a Judge if so required, or may order him to be detained in custody until he can be tried.

Persons arrested by *Pegawai Masjid*: how to be dealt with

20. A *Pegawai Masjid* making an arrest without a warrant shall without unnecessary delay hand over the person so arrested to the nearest Religious Enforcement Officer or Police Officer or, in the absence of such officer, take such person to the nearest police station, and a Religious Enforcement Officer or Police Officer shall re-arrest every person so arrested.

Pursuit of offenders

21. For the purpose of arresting any person whom he has power to arrest without a warrant under this Enactment, a Police officer may pursue such person in any part of Malaysia.

How person arrested is to be dealt with and detention for more than twenty-four hours

22. (1) A religious Enforcement Officer or Police Officer making an arrest without a warrant under this Enactment shall without unnecessary delay and subject to the provisions

in this Enactment as to bail or previous release, take or send the person arrested before a Judge of a Syariah Subordinate Court.

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

(3) Such period shall not exceed twenty-four hours, exclusive of the time necessary for the journey from the place of arrest to the Court.

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

(5) If the case against the accused is adjourned, the accused shall, unless he is released on bail, be remanded in prison or police custody under a remand warrant issued by a Judge in Form I of the Second Schedule.

Release of person arrested

23. No person who has been arrested by a Religious Enforcement Officer or Police Officer under this Enactment shall be released except on bond or bail or under the order in writing of a Judge or Chief Religious Enforcement Officer or of a Police Officer not below the rank of Inspector.

Offence committed in the presence of a Judge

24. When any offence is committed in the presence of a Judge within the local limits of his jurisdiction, he may himself arrest or authorize any person to arrest the offender and may thereupon, subject to the provisions of this Enactment as to bail, commit the offender to custody.

Arrest by or in presence of Judge

25. Any Judge may at any time arrest or authorize the arrest in his presence within the local limits of his jurisdiction of any person for whose arrest he is competent to issue a warrant.

Power in pursue and re-arrest

26. If a person in lawful custody escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and arrest him in any place, either within or without the jurisdiction where he was so in custody, and deal with such person as he might have done on the original arrest.

Provisions of sections 11 and 13 to apply to arrest under section 26

27. The provisions of sections 11 and 13 shall apply to arrests under section 26 although the person making the arrest is not acting under a warrant and is not a police officer having authority to arrest.

CHAPTER 3
OF PROCESSES TO COMPEL APPEARANCE
Summons

Form of summons and service

28. (1) Every summons to appear issued by a Court under this Enactment shall be in writing in Form 2 of the Second Schedule and signed by the Judge and shall bear the seal of the Court.

(2) The summons shall state the general nature of the offence charged and the provision and the law under which it is punishable.

(3) The summons shall ordinarily be served by an officer of the Court but the Court issuing the summons may, if it sees fit, direct it to be served by any other person.

Summons: how served

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

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

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

Procedure when personal service cannot be effected

30. When the person to be summoned cannot by the exercise of due diligence be found and service cannot be effected as directed by subsection 29(3), the serving officer shall affix a copy of the summons to some conspicuous part of the house or other place in which the person summoned ordinarily resides, and in such case the summons shall be deemed to have been duly served.

Proof of service

31. When a summons issued by a Court is served, an affidavit of such service purporting to be made before a Registrar shall be admissible in evidence.

Warrant of Arrest

Form of warrant of arrest

32. (1) Every warrant of arrest issued by a Court under this Enactment shall be in Form 3 of the Second Schedule and signed by the Judge and shall bear the seal of the Court.

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

Court may direct by indorsement on warrant security to be taken

33. (1) Any Court issuing a warrant for the arrest of any person may, in its discretion, direct by indorsement on the warrant that if such person executes a bond with sufficient sureties for his attendance before the Court at a specified time and thereafter until otherwise directed by the 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 and the person for whose arrest the warrant is issued are to be respectively bound; and
- (c) the place and time at which and date on which he is to attend before the Court.

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

Warrants: to whom directed

34. (1) A warrant of arrest shall ordinarily be directed to the Chief Religious Enforcement Officer and all other Religious Enforcement Officers, and any such officer may execute such warrant in any part of the State of Sabah.

(2) The Court issuing a warrant may direct it to the Inspector General of Police and all other Police Officers in the State of Sabah or any person by name, not being a Religious Enforcement Officers or Police Officer, and all or any one or more of such persons may execute the warrant.

Notification of substance of warrant

35. The Religious Enforcement Officer or Police Officer or Other Person executing a warrant of arrest shall notify the substance thereof to the person arrested and if so required shall produce and show him the warrant or a copy thereof under the seal of the Court issuing the warrant.

Person arrested to be brought before Court without delay

36. The Religious Enforcement Officer or Police Officer or Other Person executing a warrant of arrest shall, subject to section 33 as to security, without unnecessary delay bring the person arrested before the Court before which he is required by law to produce such person.

Procedure on arrest of person against whom warrant is issued

37. (1) When a warrant of arrest is executed outside the local limits of the jurisdiction of the Court by which it was issued, the person arrested shall unless security is taken under section 33, be brought before the nearest Judge of a Syariah Subordinate Court.

(2) The Judge shall, if the person arrested appears to be person intended by the Court which issued the warrant, direct his removal in custody to the Court named in the warrant.

(3) Notwithstanding subsection (2), if the offence is bailable and the person arrested is ready and willing to give bail to the satisfaction of the Court before which he is brought, or a direction has been indorsed under section 33 on the warrant and such person is ready and willing to give the security required by such direction, the Judge shall take such bond or security, as the case may be, and forward the bond to the Court named in the warrant.

(4) Nothing in this section shall be deemed to prevent a Religious Enforcement Officer or police officer from taking security under section 33.

Other Rules Regarding Summonses to Appear and Warrant of Arrest

Issue of warrant in lieu of or in addition to summons

38. A Court may, in any case in which it is empowered to issue a summons for the appearance of any person, issue, after recording its reason in writing, a warrant for his arrest if –

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

(b) at such time he fails to appear and summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure.

Summonses to appear and warrants of arrest may be executed in any part of Malaysia

39. (1) All summonses to appear and warrants of arrest issued by a Court may be served or executed, as the case may be, in any part of Malaysia; but no such summons shall be served outside the local limits of the jurisdiction of the Court issuing it unless the summons is indorsed by such Court with the words "For service out of the jurisdiction".

(2) No summons shall be indorsed by a Court issuing it with the words "For service out of the jurisdiction" unless the Court is satisfied that there are special grounds for allowing such service, which grounds shall be recorded before the summons is so indorsed.

Power to take bond for appearance

40. When any person for whose appearance or arrest any Court is empowered to issue a summons or warrant is present in Court, the Court may require such person to execute a bond with sureties for his appearance in Court.

Arrest on breach of bond for appearance

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

CHAPTER 4
OF PROCESSES TO COMPEL THE PRODUCTION OF
DOCUMENTS AND OTHER MOVABLE PROPERTY
AND FOR THE DISCOVERY OF PERSONS
WRONGFULLY CONFINED

Summonses to produce document or other things

42. (1) Whenever any Court or Religious Enforcement Officer or Police Officer making an investigation under this Enactment 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 Enactment by or before such Court or officer, such Court may issue a summons or such officer may issue a written order to the person in whose

possession or power such property or document is believed to be requiring him to attend and produce it or to produce it at the time and place stated in the summons or order.

(2) 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 the property or document.

(3) Nothing in this section shall be deemed to affect the provisions of any law relating to evidence for the time being in force or to apply to any postal article, telegram or other document in the custody of the postal or telegraph authorities.

Provisions of sections 28 to 31 to apply

43. The provisions of sections 28, 29, 30 and 31 shall apply in relation to summonses under this Chapter.

Search Warrants

When search warrant may be issued

- 44.** (1) If –
- (a) any Court has reason to believe that a person to whom a summons under section 42 has been or might have been addressed will not or would not produce the property or document as required;
 - (b) such property or document is not known to the Court to be in the possession of any person;
 - (c) the Court considers that the purposes of justice or of any inquiry, trial or other proceedings under this Enactment will be served by a general search or inspection; or
 - (d) the Court, upon information and after such inquiry as he thinks necessary, has reasons to believe that an offence has been committed in any place,

the Court may issue a search warrant and the person to whom such warrant is directed may search and inspect in accordance therewith and with the provisions of this Enactment.

(2) A search warrant shall ordinarily be directed to the Chief Religious Enforcement Officer and to other Religious Enforcement Officers to be designated by name therein, and all or any of such officers may execute such warrant.

(3) The Court issuing a search warrant may direct it to the Inspector General of Police and to other Police Officers to be designated by name therein, and all or any of such Police Officers may execute such warrant.

Power to restrict search warrant

45. The Court may, if it thinks fit, specify in the search 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 that part so specified.

Judge may issue warrant authorizing search for evidence of offence

46. If a Judge, upon information and after such inquiry as he thinks necessary, has reason to believe that any thing upon, by or in respect of which an offence has been committed, or any evidence or thing which is necessary to the conduct of an investigation into any offence, may be found in any place, he may, by warrant, authorize the person to whom it is directed to enter, with such assistance as may be required, and search the place for any such evidence or thing and, if any thing searched for is found, to seize it and bring it before the Judge issuing the warrant or some other Judge to be dealt with in accordance with law.

Form of search warrant

47. (1) Every search warrant issued by the Court under this Enactment shall be in Form 4 of the Second Schedule and signed by the Judge and shall bear the seal of the Court.

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

Search for persons wrongfully confined

48. If any Judge has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, he may issue a search warrant, and the person to whom such warrant is directed may search for the person confined; such search shall be made in accordance therewith and the person, if found, shall be immediately taken before a Judge who shall make such order as in the circumstances of the case seems proper.

Persons in charge of closed places to allow search

49. (1) Whenever 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 manner provided by section 11(2).

Judge issuing search warrant may attend at its execution

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

Judge may direct search in his presence

51. Any Judge may orally direct a search to be made in his presence of any place for the search of which he is competent to issue a search warrant.

List of all things seized to be made and signed

52. A list of all things seized in the course of a search made under this Chapter and of the places in which they 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

53. The occupant of the place searched, or some person in his behalf, shall in every instance be permitted to attend during the search, and a copy of the list prepared and signed under section 52 shall be delivered to such occupant or person at his request.

PART IV
INFORMATION TO THE RELIGIOUS ENFORCEMENT
OFFICERS AND THEIR POWERS TO INVESTIGATE

Information

54. (1) Every information relating to the commission of an offence, if given orally to a Religious Enforcement Officer, shall be reduced to writing by him or under his direction and be read over to the informant.

(2) Every such information shall be entered in Form 5 of the Second Schedule to be kept by such officer, who shall append to such entry the date and hour on which such information was given, and whether given in writing or reduced to writing as provided in section (1) shall be signed by the person giving it.

Procedure

55. (1) When the information referred to in section 54 relates to the commission of a non-seizable offence, the officer to whom it was given shall refer the informant to a Judge of a Syariah Subordinate Court.

(2) No Religious Enforcement Officer shall, in a case involving a non-seizable offence, exercise any of the special powers in relation to investigations given by this Chapter without the order of the Chief *Syar'ie* Prosecutor.

(3) Any Religious Enforcement Officer receiving such order may exercise the powers in respect of the investigation given under this Chapter except the power to arrest without warrant.

Admission of certified copy of information as evidence

56. In any proceeding under this Enactment, a copy of any entry relating to an information reduced into writing under section 54 and purported to be certified to be a true copy by a Religious Enforcement Officer shall be admitted as evidence of the contents of the original and of the time, place and manner in which the information was so recorded.

Procedure where seizable offence suspected

57. (1) If from information received or otherwise a Religious Enforcement Officer has reason to suspect the commission of a seizable offence he shall, unless the offence is of a character which the Chief *Syar'ie* Prosecutor has directed need not be reported to him, forthwith send a report of the information to the Chief *Syar'ie* Prosecutor, and shall proceed in person or shall depute one of his subordinate officers to proceed to the spot to inquire into the facts and circumstances of the case and to take such measures as may be necessary for the discovery 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 receiving the information need not proceed in person or depute a subordinate officer to make an enquiry on the spot;
- (b) if it appears to the Religious Enforcement Officer receiving the information that there is no sufficient ground for proceeding or further proceeding in the matter he shall not do so.

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

Power to require attendance of witnesses

58. (1) A Religious Enforcement Officer making an investigation under this Chapter may, by order in writing, require the attendance before himself of any person being within the State of Sabah in which he is making an investigation 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 may report such refusal to a Judge who may thereupon in his discretion issue a warrant to secure the attendance of such person as required by the Religious Enforcement Officer.

Examination of witnesses by Religious Enforcement Officer

59. (1) A Religious Enforcement 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 legally bound to answer all questions relating to such case put to him by such officer.

(3) A person making a statement under this section shall be legally bound to state the truth, whether or not such statement is made wholly or partly in answer to questions.

(4) A Religious Enforcement Officer examining a person under subsection (1) shall first inform that person of the provisions of the subsections (2) and (3).

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

Statements to Religious Enforcement Officer not to be admitted in evidence

60. (1) No statement made by any person to a Religious Enforcement Officer in the course of an investigation under this Chapter shall, save as herein provided, be used as evidence.

(2) When any witness is called for the prosecution or for the defence, other than the accused, the Court shall on the request of the accused or the *Syar'ie* Prosecutor refer to any

statement made by such witness to a Religious Enforcement Officer in the course of an investigation under this Chapter, and may then, if the Court thinks it expedient in the interest of justice, direct the accused to be furnished with a copy thereof, and such statement may be used to impeach the credit of such witness.

(3) When any person is charged with any offence in relation to the false statement made by him to a Religious Enforcement Officer in the course of an investigation under this Chapter, such statement may be used as evidence in such prosecution.

No inducement to be offered

61. (1) No Religious Enforcement Officer or person in authority shall offer or make any inducement, threat or promise to any person charged with an offence to induce such person to make any statement having reference to the charge against such person.

(2) No Religious Enforcement Officer or other person shall prevent or discourage by any caution or otherwise any person from making in the course of an investigation under this Chapter any statement which he may be disposed to make on his own free will.

Power to record statements and confessions

62. Any Judge, other than the Judge hearing the case, may record in the presence of two witnesses any statement or confession made to him at any time before the commencement of the trial.

Search by Religious Enforcement Officer

63. (1) Whenever a Religious Enforcement Officer making an investigation considers that the production of any document or other thing is necessary to the conduct of an investigation into any offence which he is authorized to investigate and there is reason to believe that –

- (a) the person to whom a summons or order under section 42 has been or might be issued will not or would not produce such document or other thing as directed in the summons or order; or

- (b) such document or other thing is not known to be in the possession of any person,

such officer may search or cause a search to be made for the document 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 require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing specifying the document or other thing for which search is to be made and the place to be searched, and such subordinate officer may thereupon search for such thing in such place.

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

Religious Enforcement Officer may require bond for appearance of complainant and witnesses

64. (1) If upon an investigation made under this Chapter, it appears to the officer making such investigation that there is sufficient evidence or reasonable ground of suspicion to justify the commencement or continuance of criminal proceedings against any person, such officer shall require the complainant, if any, and so many of the 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 a 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 Court.

(3) If any complainant or witness refuses to execute such bond, such officer shall report such refusal to the 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.

Diary of proceedings in investigation

65. (1) Every Religious Enforcement Officer making an investigation under this Chapter shall, day by day, enter his proceedings in the investigation diary setting forth -

- (a) the time at which the order, if any, for investigation 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 law relating to evidence, an accused person shall not be entitled, either before or in the course of any inquiry or trial, to call for or inspect any such diary:

Provided that if the Religious Enforcement Officer who has made the investigation refers to the diary, such entries only as such officer has referred to shall be shown to the accused, and the Court shall at the request of such officer cause any other entries to be concealed from view or obliterated.

Report of Religious Enforcement Officer

66. (1) Every investigation under this Chapter shall be completed without unnecessary delay, and as soon as it is completed the officer making the investigation shall, unless the offence is of a character which the Chief *Syar'ie* Prosecutor has directed need not be reported to him, forward to the Chief *Syar'ie* Prosecutor a report setting forth the names of the parties, the nature of the information, and the names of the persons who appear to be acquainted with circumstances of the case.

(2) The Chief *Syar'ie* Prosecutor may at any time by order in writing direct that no report need be forwarded to him in cases of a character to be specified in such order, and may at any time vary or revoke such order.

PART V
PROCEEDINGS IN PROSECUTIONS

CHAPTER 1
OF THE JURISDICTION OF SYARIAH COURTS IN TRIALS

Ordinary place of trial

67. Every offence shall ordinarily be tried by a Court within the local limits of whose jurisdiction it was committed.

Accused triable in place where act is done or where consequence ensues

68. When a person is accused of the commission of any offence by reason of anything which has been done or of any consequence which has ensued, such offence may be tried by a Court within the local limits of whose jurisdiction any such thing has been done or any such consequence has ensued.

Place of trial where act is an offence by reason of relation to other offence

69. When an act is an offence by reason of its relation to any other act which is also an offence or which would be an offence if the doer were capable of committing an offence, a charge of the first-mentioned offence may be tried by a Court within the local limits of whose jurisdiction either act was done.

ILLUSTRATION

A charge of abetment may be tried either by the Court within the local limits of whose jurisdiction the abetment was committed or by the Court within the local limits of whose jurisdiction the offence abetted was committed.

Where scene of offence is uncertain

70. Where –

- (a) it is uncertain in which of several local areas an offence was committed;

- (b) an offence is committed partly in one local limit of jurisdiction and partly in another;
- (c) an offence is a continuing one and continues to be committed in more local limits of jurisdiction than one; or
- (d) it consists of several acts done in different local limits of jurisdiction,

the case may be heard by the Court having jurisdiction within any of the said local limits of jurisdiction.

When doubt arises, Chief Syar'ie Judges to decide

71. Whenever any doubt arises as to the Court by which any offence should, under the preceding provisions of this Chapter, be tried, the Chief Syar'ie Judge may decide by which Court the offence shall be tried.

Condition Requisite for Initiation of Proceedings

Cognizance of offences by Syar'ie Judge

72. (1) Subject to this Enactment, a Judge may take cognizance of an offence –
- (a) upon receiving a complaint as defined by this Enactment;
 - (b) upon his own knowledge and with evidence to support that such offence has been committed;
 - (c) upon any person being brought before him in custody without process accused of having committed an offence which such Judge has jurisdiction to try.
- (2) When a Judge takes cognizance of an offence under paragraph (1)(b), the accused or, when there are several persons accused, any one of them shall be entitled to require that the case shall not be tried by such Judge but shall be tried by another Judge.

Sanction prosecute from Chief Syar'ie Prosecutor

73. No prosecution for any offence under sections 51, 52, 53, 55 or 56 of the Syariah Criminal Offences Enactment 1995 shall be instituted except with the sanction of the Chief Syar'ie Prosecutor.

CHAPTER 2
OF COMPLAINTS TO JUDGE

Examination of complainant

74. (1) When a Judge takes cognisance of an offence on complaint, he shall at once examine the complainant upon oath as in Form 6 of the Second Schedule, and the substance of the examination shall be reduced into writing and shall be signed by the complainant and also by the Judge.

(2) This section shall not apply to a complaint of an offence where a summons is applied for in a summons case made by a Religious Enforcement Officer.

Postponement of issue of process

75. If the Judge has reasonable doubt as to the truth of a complaint of an offence of which he is authorized 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 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

76. (1) The 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 75, there is in his judgment no sufficient ground for proceeding.

- (2) The Judge who dismisses the complaint shall record his reasons for so doing.

Issue of process

77. If in the opinion of a Judge taking cognisance of an offence there is sufficient ground for proceeding, he shall issue a summons for the attendance of the accused.

CHAPTER 3 OF THE CHARGE

Form of charge

78. (1) Every charge under this Enactment 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 and provisions of the law 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.

Particulars as to time, place and person

79. 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 it 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

80. When the nature of the case is such that the particulars mentioned in sections 78 and 79 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.

Sense of words used in charge to describe offence

81. In every charge, the 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 error

82. 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 those particulars, shall be regarded, at any stage of the case, as material unless the accused was in fact misled by such error or omission.

Court may amend or add to charge

83. (1) Any Court may amend or add to any charge at any time before judgment is pronounced.

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

When trial may proceed immediately after alteration or addition

84. (1) If an amendment or addition is made to a charge pursuant to section 83, the Court shall forthwith call upon the accused to plead thereto and to state whether he is ready to be tried on such amended or added charge.

(2) If the accused declares that he is not ready, the Court shall duly consider the reasons he may give and if proceeding immediately with the trial is, in the opinion of the Court, not likely to prejudice the accused in his defence or the Prosecutor in the conduct of the case, the Court may, in its discretion, after such amendment or addition has been framed

or made, proceed with the trial as if the amended or added charge had been the original charge.

When new trial may be directed or trial adjourned

85. If the amended or added charge is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the Prosecutor, as mentioned in section 84, the 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 in amended charge requires previous sanction

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

Recall of witnesses when charge amended or added

87. Whenever a charge is amended or added by the 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 such amendment or addition, any witness who may have been examined, and may also call for any further evidence which may be material.

Separate charges for distinct offences

88. For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately except in the cases mentioned in sections 89, 90, 91 and 95.

Three offences of same kind within twelve months may be charged together

89. (1) When a person is accused of committing offences of the same kind within a period of twelve months from the date such offence was first committed, whether in respect

of the same person or not, he may be charged with and tried at one trial for any number of them not exceeding three.

(2) Offences are deemed to be of the same kind when they are punishable under the same provisions of any laws for the time being in force.

Trial for more than one offence

90. (1) If the offences are a series of acts so connected together as to form the same transaction, the person accused of them may be charged with and tried at one trial for every such offence.

(2) If the acts alleged constitute offences falling within two or more separate definitions of offences, the person accused of them 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, constitute when combined a different offence, the person accused of them 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.

Where it is doubtful what offence has been committed

91. 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 such offences, 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 said offences and may be tried at once.

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

92. If, in the case mentioned in the last preceding section 91, 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, he may be convicted of the offence which he is proven to have committed although he was not charged with it.

Person charged with an offence can be convicted of the attempt

93. 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.

When offence proved is included in offence charged

94. (1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a lesser offence, and such combination is proved but the remaining particulars are not proved, he may be convicted of the lesser offence though he was not charged with it.

(2) When a person is charged with an offence and facts are proved which reduce it to a lesser offence, he may be convicted of the lesser offence although he is not charged with it.

When persons may be charged jointly

95. When more than one persons 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 of or attempt to commit the same offence, they may be charged and tried together or separately as the Court thinks fit.

CHAPTER 4
OF TRIALS

Procedure in trials

96. The following procedure shall be observed by Judges in trials –

- (a) when the accused appears or is brought before the Court, a charge containing the particulars of the offence of which he is accused shall be framed, read and explained to him, and he shall be asked whether he is guilty of the offence charged or claims to be tried;
- (b) if the accused pleads guilty to a charge, whether as originally framed or as amended, the plea shall be recorded and he may be convicted thereon:

Provided that before a plea of guilty is recorded, the Court shall ascertain that the accused understands the nature and consequences of his plea and intends to admit, without qualification, the offence alleged against him;

- (c) if the accused refuses to plead or does not plead or claims trial, the Court shall proceed to hear the complainant, if any, and to take all such evidence as may be produced in support of the prosecution;
- (d) when the Court thinks it necessary it shall obtain from the complainant or otherwise the names of any persons 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 it thinks necessary;
- (e) the accused or his *Syar'ie* Lawyer shall be allowed to cross-examine all the witnesses for the prosecution through the Judge;
- (f) if, upon taking all the evidence referred to in paragraphs (c), (d) and (e), the Court finds that no case against the accused has been made out which if unrebutted would warrant his conviction, the Court shall record an order of acquittal;
- (g) nothing in paragraph (f) shall be deemed to prevent the Court from discharging the accused at any previous stage of the case if for reasons to be recorded by the Court it considers the charge to be groundless;
- (h) if, when such evidence has been taken, the Court is of the opinion that there are grounds for presuming that the accused has committed the offence charged or some other offence which such 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 it is sufficient and, if necessary, shall amend the charge;
- (i) the charge if amended shall be read to the accused as amended and he shall be again asked whether he is guilty or has any defence to make;
- (j) if the accused does not plead guilty to the charge as amended or if no amendment is made the accused shall then be called upon to enter upon his

defence and to produce his evidence, and shall at any time while he is making his defence be allowed to recall and cross-examine any witness through the Judge;

- (k) if the accused puts in any written statement, the Court shall file it with the record;
- (l) if the accused applies to the Court to issue a summons for compelling the attendance of any witness, whether he has or has not been previously examined in the case, for the purpose of examination or cross-examination or the production of any document or other thing, the 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; and such ground shall be recorded by it in writing;
- (m)
 - (i) if the Court finds the accused not guilty, the Court shall record an order of acquittal; and
 - (ii) if the Court finds the accused guilty or if a plea of guilty has been recorded and accepted. the Court shall pass sentence according to the law;
- (n) when the proceedings have been instituted upon the complaint of some person upon oath under section 74 and upon any day fixed for the hearing of the case the complainant is absent, the Court may, in its discretion, notwithstanding anything contained in this section, discharge the accused.

Power to discharge conditionally or unconditionally

97. (1) Notwithstanding anything contained in section 96, the Court shall have the powers contained in this section.

(2) When any person is charged before the Court with an offence punishable by such Court, and the 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 other than a nominal

punishment or that it is expedient to release the offender on probation, the Court may, without proceeding to record a conviction, make an order –

- (a) dismissing the charge or complaint after such admonition or caution to the offender as to the Court seems fit;
- (b) order the offender to be detained in a welfare house approved by the Majlis for such period not exceeding six months as the Court considers fit; or
- (c) discharging the offender conditionally on his entering into a bond, with sureties, to be of good behaviour for such period, not exceeding three years, as may be specified in the order, and to appear for the conviction to be recorded and for sentence when called upon at any time during such period.

(3) The Court may, in addition to any such order, order the offender to pay such compensation for injury or for loss, not exceeding the sum of one thousand ringgit, or to pay such costs of the proceedings as the Court thinks reasonable or to pay both compensation and costs.

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

(5) Any offender when apprehended on any such warrant shall, if not forthwith brought before the Court having power to sentence him, be brought before a 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 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 shall be brought before the Court before which he was bound to appear for judgment or to answer as to his conduct since his release.

Addresses

98. In trials under this Chapter –

- (a) the officer conducting the prosecution need not open the case but may forthwith produce his evidence;
- (b) when the accused is called upon to enter on his defence, he or his *Syar'ie* Lawyer may, before producing his evidence, open his case stating the facts or law on which he intends to rely and making 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, may sum up his case;
- (c) the officer conducting the prosecution shall have the right of reply on the whole case when the accused has adduced evidence.

Power to award compensation

99. If in any case the 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 on 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 one thousand ringgit, as the Court thinks fit:

Provided that the Court –

- (a) shall record and consider any objections which the complainant or informant may raise against the making of the order; and
- (b) shall record its reasons for making such order.

Particulars to be recorded

100. (1) In proceedings under this Chapter, the Court shall keep a record of the particulars of each case by using and completing or causing to be completed a charge sheet in accordance with such forms as may be prescribed and, where all necessary particulars cannot conveniently be entered on any such form, by annexing thereto any requisite number of continuation sheets.

- (2) The particulars to be incorporated in the record shall include –
- (a) the name of the Court and the serial number of the case;
 - (b) the name, identity card number, and the sex of the accused;
 - (c) the address of the accused;
 - (d) the charge;
 - (e) the return date of the summons, if any;
 - (f) the date of issue of the summons or warrant, if any;
 - (g) the name and address of the complainant, if any, the date of the complaint and the value of any property involved;
 - (h) the date of arrest;
 - (i) the date of first appearance before the Court;
 - (j) the nationality of the accused,
 - (k) the age of the accused;
 - (l) the particulars of any bail or bond;
 - (m) the plea of the accused;
 - (n) the name and title of the officer or name of the person conducting the prosecution and the name of the *Syar'ie* Lawyer, if any, appearing for the accused;

- (o) the date of each adjournment or postponement and the date to which such adjournment was made and the grounds for making the postponement or adjournment;
- (p) the Court's note of the evidence, if any;
- (q) the findings;
- (r) the Court's notes on previous convictions, evidence of character, and plea in mitigation, if any;
- (s) the sentence or other final order;
- (t) the judgment, if written;
- (u) the date on which the proceedings concluded;
- (v) the particulars of any remand warrant, fine receipt and warrant of committal; and
- (w) in the event of an appeal being lodged –
 - (i) the dates of the notification of appeal, of any request for notes of evidence, of any notice that the notes of evidence can be had on payment, of the service of the Court's grounds of decision and of the transmission of the record to the Syariah High Court or Syariah Appeal Court, as the case may be;
 - (ii) if the judgment was oral, the grounds of decision;
 - (iii) the Syariah High Court or Syariah Appeal Court's serial number of the appeal; and
 - (iv) the result of the appeal and the date on which the Court was informed thereof.

(3) The record shall be authenticated by the signature of the Judge and shall be filed in such manner as the Chief *Syar'ie* Judge may direct.

Transfer of cases

101. In any trial before a Judge of a Syariah Subordinate Court in which it appears at any stage of the proceedings that from any cause the case is, one which in the opinion of such Judge, ought to be tried by a Syariah High Court, or if before or during such trial application is made by the Chief *Syar'ie* Prosecutor, such Judge shall stay the proceedings and transfer the case to the Syariah High Court and shall record such order upon the proceedings.

CHAPTER 5
GENERAL PROVISIONS AS TO TRIALS

Procedure where there are previous convictions

102. Where the accused is charged with an offence committed after a previous conviction for any offence, the following procedure shall be observed –

- (a) the part of the charge stating the previous conviction shall not be read out in Court, nor shall the accused be asked whether he has been previously convicted as alleged in the charge unless and until he has either pleaded guilty to or been convicted of the subsequent offence;
- (b) if he pleads guilty to or is convicted of the subsequent offence, he shall then be asked whether he has been previously convicted as alleged in the charge; and
- (c) if he answers that he has been so previously convicted, the Court may proceed to pass sentence on him accordingly, but if he denies that he has been so previously convicted or refuses to or does not answer such question, the Court shall inquire concerning such previous conviction.

Prosecutor may decline to prosecute further at any stage

103. (1) At any stage of any trial, before the delivery of judgment, the Prosecutor may, if he thinks fit, inform the Court that he does not propose further to prosecute the accused upon the charge; and thereupon all proceedings on such charge against the accused may be

stayed by leave of the Court and, if so stayed, the accused shall be discharged of and from the charge.

(2) Such discharge shall not amount to an acquittal unless the Court so directs.

Right of accused to be defended

104. Every person accused before any Court may of right be defended by *Syar'ie* Lawyer.

Court may put questions to accused

105. (1) For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the Court may at any stage of a trial, without previously warning the accused, put such questions to him as the Court considers necessary.

(2) The answers given by the accused may be taken into consideration in such trial and put in evidence for or against him in any trial for any other offence which such answers may tend to show he has committed.

(3) The examination of the accused shall be for the purposes of enabling him to explain any circumstances appearing in evidence against him and shall not be a general examination.

(4) The discretion given by this section for questioning the accused shall not be exercised for the purpose of inducing him to make statements crimiatory of himself.

(5) Questions shall not be put to the accused merely to supplement the case for the prosecution when it is detective.

(6) Whenever the accused is examined under this section by the Court, the whole of such examination including every question put to him and every answer given by him shall be recorded in full, and such record shall be read to him or, if he does not understand the language used, shall be interpreted to him in a language or gesture which he understands, and he shall be at liberty to explain or add to his answers.

(7) When the whole examination has been made conformable to what the accused declares to be the truth, the record shall be signed by the presiding Judge.

Case for prosecution to be explained by Court to undefended accused

106. (1) At every trial if and when the Court calls upon the accused for his defence it shall, if he is not represented by a *Syar'ie* Lawyer, inform him of his right to take oath and its effect or of his right to give evidence on his own behalf, and if he elects to give evidence on his own behalf, shall call his attention to the principal points in the evidence for the prosecution which tell against him in order that he may have an opportunity of explaining them.

(2) The failure at any trial of any accused to give evidence shall not be made the subject of adverse criticism by the prosecution.

Power to postpone or adjourn proceedings

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

Provided that no Judge shall remand an accused person to custody under this section for a term exceeding eight days at a time:

Provided further that where a Government Medical Officer has certified that the complainant will not be able to give evidence before a certain date, the accused may be remanded until such date notwithstanding that the term of remand may exceed eight days.

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

Explanation - If sufficient evidence has been obtained 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 a remand.

Change of Judge during hearing

108. Whenever any Judge, after having heard and recorded the whole or any part of the evidence in a trial, ceases to exercise jurisdiction therein and is succeeded by another Judge who has and who exercises such jurisdiction, the Judge so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself, or he may re-summon the witnesses and recommence the trial:

Provided as follows –

- (a) in any trial the accused may, when the second Judge commences his proceedings, demand that the witnesses or any of them be re-summoned and re-heard;
- (b) the appropriate appeal Court may, whether there be an appeal or not, set aside any conviction had on evidence not wholly recorded by the Judge before whom the conviction was had, if such Court is of opinion that the accused has been materially prejudiced thereby, and may order a new trial.

Detention of offenders attending in Court

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

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

Weekly or public holiday

110. No proceeding of any Court shall be invalid by reason of its happening on a weekly holiday or public holiday.

CHAPTER 6
OF THE MODE OF TAKING AND RECORDING
EVIDENCE IN TRIALS

Evidence to be taken in the presence of the accused

111. All evidence taken under this Enactment shall be taken in the presence of the accused.

Recording of evidence

112. In trials under this Enactment by or before a Judge, the evidence of the witnesses shall be recorded in the manner provided by this Chapter.

Record in all cases

113. In all trials before any Court, the evidence of each witness shall be taken down in legible handwriting by the presiding Judge and shall form part of the record.

Mode of recording evidence

114. (1) Evidence taken under section 113 shall not ordinarily be taken down in the form of question and answer, but in the form of a narrative.

(2) The presiding Judge may, in his discretion, take down any particular question and answer.

Interpretation of evidence to accused

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

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

Remarks as demeanour of witness

116. A presiding Judge recording the evidence of a witness may record such remarks, if any, as he thinks material respecting the demeanour of such witness whilst under examination.

Other persons may be authorized to take down notes of evidence

117. Nothing in this Chapter shall prevent a Judge in a trial causing verbatim notes to be taken by another person of what each witness deposes in addition to any note of a substance thereof which may be made or taken by the Judge himself, and such note shall form part of the record.

CHAPTER 7
OF THE JUDGMENT

Mode of delivering judgment

118. The Judgment in every trial in any Court shall be pronounced in open Court, either immediately or at some subsequent time of which due notice shall be given to the parties or their *Syar'ie* Lawyer, and the accused shall, if in custody, be brought up or, if not in custody, be required to attend to hear judgment delivered.

Judgment to be explained to accused and copy supplied

119. The judgment shall be explained to the accused and on his application a copy of the judgment shall be given to him free of charge.

Judgment to be filed with record

120. The original judgment shall be entered on, and if written filed with, the record of proceedings.

CHAPTER 8
OF SENTENCES AND THE CARRYING OUT THEREOF

Provisions as to execution of sentences of imprisonment

121. With regard to sentences of imprisonment, the following provisions shall be followed -

- (a) where the accused is sentenced to imprisonment, the Court passing the sentence shall forthwith forward a warrant to the prison in which he is to be confined and, unless the accused is already confined in such prison, shall forward him in the custody of the Police or Religious Enforcement Officer to such prison with the warrant;
- (b) every warrant for the execution of a sentence of imprisonment shall be directed to the officer in charge of the prison or other place in which the prisoner is or is to be confined;
- (c) when the prisoner is to be confined in a prison, the warrant shall be lodged with the officer in charge of the prison; and
- (d) every sentence of imprisonment shall take effect from the date on which the same was passed unless the Court passing such sentence otherwise directs.

Provisions as to sentences of fine

122. (1) Where any fine is imposed then, in the absence of any express provision relating to such fine in the law providing for its imposition, the following provisions shall apply

–

- (a) in every case of an offence in which the offender is sentenced to pay a fine, the Court passing the sentence may, in its discretion, do all or any of the following things –
 - (i) allow time 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 suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may be sentenced;
- (b) the period for which the 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 six months	the maximum term of imprisonment
exceeds six months but does not exceed two years	six months
exceeds two 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 two hundred ringgit	one month
exceeds two hundred ringgit but does not exceed five hundred ringgit	two months
exceeds five hundred ringgit	Six months
- (c) the imprisonment which is imposed in default of payment of a fine shall terminate whenever that fine is either paid or levied by process of law;

- (d) if, before the expiration of the time of imprisonment fixed in default of payment of a fine, such a proportion of the fine be 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; and
- (e) the fine, or any part thereof which remains unpaid, may be levied at any time within six years after the passing of the sentence, and the death of the offender shall discharge him from the fine.

(2) A warrant for the levy of a fine may be executed at any place in Malaysia, but if it is required to be executed outside the State of Sabah, it shall be indorsed for that purpose by a Judge of the Syariah High Court or by a Judge of the Syariah Subordinate Court.

Suspension of execution in certain cases

123. When an offender has been sentenced to fine only and to imprisonment in default of payment of the fine and the Court issues a warrant under section 122, it may suspend the execution of the sentence of imprisonment and may release the offender on his executing a bond, with sureties as the Court thinks fit, conditioned for his appearance before such Court on the day appointed for the return to such warrant, such day not being more than fifteen days from the time of executing the bond; and in the event of the fine not having been realised the Court may direct the sentence of imprisonment to be carried into execution at once.

Warrant: by whom issuable

124. Every warrant for the execution of any sentence may be issued either by the Judge who passed the sentence or by his successor or other Judge acting in his place.

Sentence of whipping

125. (1) The provisions of this section and section 126 shall be applicable when the accused is sentenced to whipping.

(2) The whipping rod, excluding its holder, shall be of the same type and make either from rattan or small branch of a tree without segment or joint and its length not more than 1.22 meters and its thickness not more than 1.25 centimetres.

(3) The following provisions shall be followed when executing the sentence of whipping, that is –

- (a) before execution of the sentence, the offender shall be examined by a Government Medical Officer to certify that the offender is in a fit state of health to undergo the sentence;
- (b) if the offender is pregnant, the execution shall be postponed until the end of two months after delivery or miscarriage, as the case may be,
- (c) the sentence shall be executed before a Government Medical Officer in such place as the Court may direct or in a place fixed by the State Government for the purpose;
- (d) the person appointed to execute the sentence shall be an "*adi*" and mature person;
- (e) the person shall use the whipping rod with average force without lifting his hand over his head so that the offender's skin is not cut;
- (f) after inflicting a stroke, he shall lift the rod upward and not pull it;
- (g) 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 Islamic Law;
- (i) if the offender is male the whipping shall be inflicted in a standing position, and if a female, in a sitting position;
- (j) if during the execution of the whipping the Government Medical Officer certifies that the offender can no longer receive the strokes, the whipping shall be postponed until the Medical Officer certifies that the offender is fit to undergo the balance of the sentence.

(4) In the case where the offender is sentenced to whipping only, then he shall be dealt with as if he is sentenced to imprisonment until the sentence is executed.

(5) If the Government Medical Officer certifies that the offender, due to old age, illness or any other reason is unable to undergo the whipping sentence wholly or partly, the case shall be referred to the Court which may order the execution of the sentence in a manner as it thinks reasonable.

Explanation - Old age means the age of fifty years and above.

Time of executing such sentence of whipping

126. (1) When the accused is sentenced to whipping in addition to imprisonment, the whipping shall not be inflicted if an appeal is made and until the sentence is confirmed by the appropriate appeal Court.

(2) The whipping shall be inflicted as soon as practicable and in case of an appeal, as soon as practicable after the receipt of the order of the appropriate appeal Court confirming the sentence.

Commencement of sentence of imprisonment on prisoner already undergoing imprisonment

127. (1) When a person who 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 Court passing the sentence may direct.

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

Youthful offenders

128. (1) When any youthful offender is convicted before any Court of any offence punishable by fine or imprisonment, such Court shall instead of awarding any term of imprisonment in default of payment of the fine or passing a sentence of imprisonment –

- (a) order such offender to be discharged after due admonition if the Court shall think fit, or
- (b) order such offender to be delivered to his parent or to his guardian or nearest adult relative or to such other person, as the Court shall designate, on such parent, guardian, relative or other person executing a bond with a surety, as the Court may require, that he will be responsible for the good behaviour of the offender for any period not exceeding twelve months or, 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 two years and containing any directions to such offender in the nature of the condition referred to in paragraphs 130(a), (b) and (c) which the Court shall think fit to give.

(2) The Court before which a youthful offender 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 two hundred ringgit in any case in which such Court, after summary enquiry, is satisfied that such parent or guardian has, by neglecting to take proper care or otherwise, conduced to the misconduct of such offender:

Provided that no parent or guardian shall be fined without his having had an opportunity of being heard and, if he desires it, of adducing evidence in his defence.

First offenders

129. (1) When any person not being a youthful offender has been convicted of any offence punishable with imprisonment before any Court, if it appears to such Court that regard being had 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 Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond with sureties and during such period as the Court may direct to appear and receive judgment if and when called upon and in the meantime be of good behaviour.

(2) If a 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, it may issue a warrant for his apprehension.

(3) Any offender when apprehended on any such warrant shall, if not forthwith brought before the Court having power to sentence him, be brought before a Judge, and such 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 Court having power to deal with his original offence, or may admit him to bail with a sufficient surety conditioned on his appearing for judgement.

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

Conditions of bonds

130. When any person is required by any Court to execute a bond with sureties, and in such bond the person executing it binds himself to keep the peace or binds himself to be of good behaviour, the Court may require that there be included in such bond one or more of the following conditions, namely-

- (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 as the Court may think it desirable to impose;
- (c) such conditions with respect to residence, employment, associations, abstention from intoxicating liquors or drugs or with respect to any other matter as the Court may think it desirable to impose.

Return of warrant

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

CHAPTER 9
OF SUSPENSIONS, REMISSIONS AND
COMMUTATIONS OF SENTENCES

Power to suspend or remit sentences

132. (1) When any person has been sentenced for an offence, Yang di-Pertua Negeri on the advice of the Mufti may at any time, without conditions, or with such conditions which the person sentenced accepts, suspend or remit the whole or any part of the sentence.

(2) Whenever an application is made to Yang di-Pertua Negeri for the suspension or remission of a sentence, Yang di-Pertua Negeri may require the convicting Judge to state his opinion as to whether the application should be granted or refused and such Judge shall state his opinion accordingly.

(3) If any condition on which a sentence has been suspended or remitted is, in the opinion of Yang di-Pertua Negeri, not fulfilled, Yang di-Pertua Negeri may cancel such suspension or remission; whereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any Police Officer or Religious Enforcement Officer without warrant and remanded by a Judge to undergo the unexpired portion of the sentence.

Power to commute punishment

133. Yang di-Pertua Negeri on the advice of the Mufti may, without the consent of the person sentenced, commute any one of the following sentences for any other mentioned after it, namely –

- (a) whipping;
- (b) imprisonment; or
- (c) fine.

CHAPTER 10
OF PREVIOUS ACQUITTALS OR CONVICTIONS

Person once convicted or acquitted not to be tried again for same offence

134. (1) A person who has been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall not, while such conviction or acquittal remains in force, 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 91 or for which he might have been convicted under section 92.

(2) A person acquitted or convicted of any offence may afterwards be tried for any distinct offence for which a separate charge might have been made against him on the former trial under subsection 90(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 Court to have happened at the time when he was convicted.

(4) A person acquitted or convicted of any offence constituted by any acts 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 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.

Plea of previous acquittal or conviction

135. (1) The plea of a previous acquittal or conviction may be pleaded either orally or in writing to the effect that the accused by virtue of section 134 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.

PART VI
OF APPEAL, AND REVISION

CHAPTER 1
OF APPEALS TO THE SYARIAH HIGH COURT

When plea of guilty limits right of appeal

136. When an accused person has pleaded guilty and been convicted by a Judge on such plea, there shall be no appeal except as to the extent or legality of the sentence.

Appeal against acquittal

137. When an accused person has been acquitted by a Judge, there shall be no appeal except by, or with the sanction in writing of, the Chief *Syar'ie* Prosecutor.

Procedure for appeal

138. (1) Subject to sections 136 and 137, any person who is dissatisfied with any judgment, sentence or order pronounced by any Syariah Subordinate Court in a criminal case or matter to which he is a party, may prefer an appeal to the Syariah High Court against such judgment, 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 any sentence, by lodging, within fourteen days from time of such judgment, sentence or order being passed or made, with the Assistant Registrar of such Syariah Subordinate Court a notice of appeal in five copies addressed to the Syariah High Court.

(2) Every notice of appeal shall contain an address at which any notices or documents connected with the appeal may be served upon the appellant or upon his *Syar'ie* Lawyer.

(3) When a notice of appeal has been lodged, the Court appealed from shall make a signed copy of the grounds of decision in the case and cause the ground of decision to be served upon the appellant or his *Syar'ie* Lawyer by leaving that copy at the address

mentioned in the notice of appeal or by posting it by registered post addressed to the appellant at the said address.

(4) Within ten days after the copy of the grounds of decision has been served pursuant to subsection (3), the appellant shall lodge with the Assistant Registrar of the Syariah Subordinate Court at which the trial was held a petition of appeal in five copies addressed to the Syariah High Court.

(5) If the appellant within the period provided in subsection (1) for lodging his notice of appeal has applied for a copy of the notes of the evidence recorded by the Judge at his trial, he shall lodge his petition of appeal as provided in subsection (4) –

- (a) within the period provided by such subsection; or
- (b) within a period of ten days from the date when a notice is left at his address for service specified in subsection (2) that a copy of the notes of evidence can be had free of charge, of whichever period shall be the longer.

(6) Every petition of appeal shall state shortly the substance of the judgement appealed against, and shall contain definite particulars of the points of law or of fact in regard to which the Court appealed from is alleged to have erred.

(7) 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 either orally or in writing notice of appeal and the particulars required to be included in the petition of appeal within the time prescribed by this section and pays the prescribed appeal fee.

(8) The officer in charge of the prison shall forthwith forward such notice and petition or the purport thereof to the Assistant Registrar of the Syariah Subordinate Court at which the trial was held.

(9) If a petition of appeal is not lodged within the time 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 herein contained shall be deemed to limit or restrict the power conferred upon the Judge by section 140.

Transmission of appeal record

139. When the appellant has complied with section 138, the Court appealed from shall transmit to the Syariah High Court and to the Chief *Syar'ie* Prosecutor and to the appellant or his *Syar'ie* Lawyer a signed copy of the record of the proceedings and of the grounds of the decision together with a copy of the notice and of the petition of appeal.

Appeal specially allowed in certain cases

140. The Judge of the Syariah High Court may, on the application of any person desirous of appealing who may be debarred from so doing upon the ground of his not having observed some formality or some requirement of this Enactment, permit an appeal upon such terms and with such directions to the Syariah Subordinate Court and to the parties as such Judge shall consider desirable, in order that substantial justice may be done in the matter, and may, for the purpose, enlarge any period of time prescribed by subsection 138(1) or (4).

Stay of execution pending appeal

141. Except in the case of sentence of whipping, the execution of which shall be stayed pending appeal, no appeal shall operate as a stay of execution, but the Court appealed from 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 to the Court appealed from or the Syariah High Court may seem reasonable.

Setting down appeals on list

142. (1) On receipt of the documents mentioned in section 139, the Registrar of the Syariah High Court shall number the appeal and enter it on the list of appeals to be heard and give notice to the parties that the appeal has been so entered.

(2) As soon as such date has been fixed, the Registrar shall give to the parties notice of the date of hearing of the appeal.

(3) In any case the Judge of the Syariah High Court 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 an appeal.

Procedure at hearing

143. (1) When the appeal comes on for hearing, the appellant shall be first heard in support of the appeal, the respondent shall be heard against it, and the appellant shall be entitled to reply.

(2) If the appellant does not appear to support his appeal, the Court may consider his appeal and may make such order thereon as it thinks fit:

Provided that the Court may refuse to consider the appeal or to make any such order in the case of an appellant who is out of the jurisdiction or who does not appear personally before the Court in pursuance of a condition upon which he was admitted to bail, except on such terms as it thinks fit to impose.

Non-appearance of respondent

144. If, at the hearing of the appeal, the respondent is not present, the 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.

Arrest of respondent in certain cases

145. When an appeal is presented against an acquittal, the Judge of the Syariah High Court may issue a warrant directing that the accused be arrested and brought before him, and may admit him to bail pending the disposal of the appeal.

Decision on appeal

146. At the hearing of the appeal the Syariah High Court may, if it considers there is no sufficient ground for interfering, dismiss the appeal or may –

- (a) in an appeal from an order of acquittal, reverse such order and direct that the accused be re-tried, or find him guilty 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, 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, alter or reverse such order.

Order to take further evidence

147. (1) In dealing with any appeal under this Chapter, the Syariah High Court, if it thinks additional evidence to be necessary, may either take such evidence itself or direct it to be taken by the 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

148. At the end of the hearing of the appeal, the Syariah High Court shall, either at once or later on a date appointed for the purposes of which notice shall be given to the parties, deliver judgment in open Court.

Certificate and consequence of judgment

149. (1) Whenever a case is decided on appeal by the Syariah High Court under this Chapter, it shall certify its judgment or order to the Court by which the finding, sentence or order appealed against was recorded or passed.

(2) Whenever an appeal is not dismissed, such certificate shall state the grounds upon which the appeal was allowed or the decision of the Syariah Subordinate Court was varied.

(3) The Court to which the Syariah High Court certifies its Judgment or order shall thereupon make such orders as are conformable to the judgment or order of the Syariah High Court and, if necessary, the record shall be amended in accordance therewith.

Death of parties to appeal

150. Every appeal under section 137 shall finally abate on the death of the accused, and every other appeal under this Chapter shall finally abate on the death of the appellant.

Costs

151. (1) Subject to the following subsections, in all proceedings under this Chapter and Chapter 3, the Syariah High Court shall have power to award such costs as it may deem fit to be paid by the complainant to the accused or by the accused to the complainant:

Provided that no cost whatsoever shall be awarded in any proceedings brought against an order of acquittal.

(2) Such costs shall be assessed by the Syariah High Court at the time when it gives its decision.

(3) No costs shall in any case be awarded either against or in favour of the Prosecutor.

CHAPTER 2
OF APPEALS TO THE SYARIAH APPEAL COURT

Jurisdiction of the Syariah Appeal Court

152. (1) The Syariah Appeal Court shall have jurisdiction to hear and determine any appeal by any person convicted or otherwise found guilty or by the Chief *Syar'ie* Prosecutor against any decision made by the Syariah High Court in the exercise of its original criminal jurisdiction subject to this Enactment or any other written law regulating the terms and conditions upon which criminal appeals may be brought.

(2) Where an accused person has pleaded guilty and been convicted on the plea, there shall be no appeal except as to the extend or legality of the sentence.

(3) Notice of any appeal by the Chief *Syar'ie* Prosecutor shall be given by, or with the consent in writing of, that officer only.

(4) An appeal may lie on a question of fact or a question of law or a question of mixed fact and law.

(5) The Syariah Appeal Court shall also have jurisdiction to hear and determine matters brought before it in accordance with section 166 or 167.

Notice of appeal

153. (1) Every appeal shall be by notice in writing which shall be filed with the Registrar of the Syariah High Court, at the place where the decision appealed against was given, within fourteen days after the date of the decision.

(2) Every notice of appeal shall state shortly the substance of the judgment appealed against, shall contain an address at which any notices or documents connected with the appeal may be served upon the appellant or upon his *Syar'ie* Lawyer, and, except where the notice of appeal is given orally under section 156, shall be signed by the appellant or his *Syar'ie* Lawyer.

Records of proceedings

154. (1) When a notice of appeal has been filed, the Judge by whom the decision was given shall, if he has not written his judgment, record in writing the grounds of his decision, and the written judgment or grounds of decision shall form part of the record of the proceedings.

(2) As soon as possible after notice of appeal has been filed, the Registrar shall cause to be served on the appellant or his *Syar'ie* Lawyer a copy of such record of the proceedings.

Petition of appeal

155. (1) Within ten days after the date of service of the record referred to in subsection 154(2), the appellant shall file with the Registrar of the Syariah High Court a petition of appeal and five copies thereof addressed to the Syariah Appeal Court.

(2) Every petition of appeal shall be signed by the appellant or his *Syar'ie* Lawyer and shall contain particulars of the matters of law or of fact in regard to which the trial Court is alleged to have erred, and, except by leave of the Syariah Appeal Court, the appellant shall not be permitted on the hearing of the appeal to rely on any ground of appeal other than those set forth 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 of extending time conferred upon the Syariah Appeal Court by section 158.

Procedure where appellant in prison

156. (1) If the appellant is in prison, he shall be deemed to have complied with the requirements of sections 153 and 155 if he gives to the officer in charge of the prison either orally or in writing notice of appeal and the particulars required to be included in the petition of appeal within the times prescribed by those sections.

(2) The prison officer shall forthwith forward the notice and petition or the purport thereof to the Registrar of the Syariah High Court at the place where the decision appealed against was given.

Transmission of records to Syariah Appeal Court

157. (1) When an appellant has complied with sections 153 and 155, the Registrar of the Syariah High Court shall forthwith transmit to the Syariah Appeal Court four copies of the record of the proceedings of the case, together with four copies of the notice of appeal and of the petition of appeal.

(2) The Registrar of the Syariah High Court shall also furnish the respondent or his *Syar'ie* Lawyer with a copy of the record of the proceedings of the case and a copy of the notice of appeal and of the petition of appeal.

Appeals out of time and formal defects

158. The Syariah Appeal Court may in its discretion, on the application of any person desirous of appealing who may be debarred from so doing by reason of his not having observed some formality or some requirement of this Enactment, permit an appeal upon such terms and with such directions as it may consider desirable in order that substantial justice may be done in the matter, and may, for the purpose, enlarge any period of time prescribed by section 153 or section 155.

On appeal against acquittal, accused may be arrested

159. Where an appeal is presented against an acquittal, the Syariah Appeal Court may issue a warrant directing the accused to be arrested and brought before it and may remand him to prison pending the disposal of the appeal or admit him to bail.

Appeal not to operate as a stay of execution

160. (1) Except in the cases mentioned in subsection (3) and section 159, no appeal shall operate as a stay of execution but the trial Court or the Syariah Appeal Court may stay execution of 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 the Judgment, order, conviction, or sentence as to the Court may seem reasonable.

(2) If the appellant is ultimately sentenced to imprisonment, the time during which the execution of the sentence was stayed shall be excluded in computing the term of his sentence unless the Syariah Appeal Court otherwise orders.

(3) In the case of a conviction involving sentence of whipping –

(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 153, or any extension under section 158; and

(b) if notice is so given the sentence shall not be executed until after the determination of the appeal.

Notice of time and place of hearing

161. 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.

Powers of Syariah Appeal Court

162. (1) At the hearing of an appeal, the Syariah Appeal Court shall hear the appellant or his *Syar'ie* Lawyer if he appears and, if it thinks fit, the respondent or his *Syar'ie* Lawyer, if he appears, and may hear the appellant or his *Syar'ie* Lawyer in reply and the Syariah Appeal Court may thereupon confirm, reverse or vary the decision of the trial Court, or may order a retrial or may remit the matter with the opinion of the Syariah Appeal Court thereon to the trial Court, or may 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 might have exercised.

(2) At the hearing of an appeal, the Syariah Appeal Court may, if it thinks that a different sentence should have been passed, quash the sentence passed by the trial Court and pass such other sentence warranted in law, whether more or less severe, in substitution therefor as it thinks ought to have been passed.

Additional evidence

163. (1) In dealing with any appeal in a criminal case, the Syariah Appeal Court may, if it thinks additional evidence to be necessary, 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, with a statement of its opinion on the case considered with regard to the additional evidence, to the Syariah Appeal Court, and the Court shall thereupon proceed to dispose of the appeal.

(3) The parties to the appeal shall be present when additional evidence is taken.

(4) In dealing with any appeal in a criminal case, the Syariah Appeal Court may also, if it thinks fit, call for and receive from the trial Court a report of any matter connected with the trial.

Judgment

164. (1) At the end of the hearing of any appeal, the Syariah Appeal Court shall, either at once or later on a date appointed for the purpose of which notice shall be given to the parties, deliver judgment in open Court.

(2) In criminal appeals and matters the Syariah Appeal Court shall ordinarily give only one judgment which may be pronounced by the Chairman or by such other member of the Syariah Appeal Court as the Chairman may direct but separate judgments shall 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 Judge.

Judgment or order to be certified to trial Court

165. (1) Whenever 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) Upon 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 power of extending time conferred upon the Syariah Appeal Court by section 158.

Point reserved on trial for Syariah Appeal Court

166. (1) When any person has, in a trial before the Syariah High Court in the exercise of its original criminal jurisdiction, been convicted of an offence, the Judge may, if he thinks fit, reserve for the decision of the Syariah Appeal Court any question of law which has arisen in the course of the trial of that person and the determination of which would affect the event of the trial.

(2) The person so convicted shall thereupon be remanded to prison or, if the Judge thinks fit, be admitted to bail.

(3) The Syariah Appeal Court shall review the case, or such part of it as may be necessary, and finally determine the question, and thereupon may alter the sentence passed and pass such sentence or give or make such judgment or order as the Syariah Appeal Court thinks fit.

References to Syariah Appeal Court on appeal from a Syariah Subordinate Court

167. (1) When an appeal from a decision of a Syariah Subordinate Court in a criminal matter has been determined by the Syariah High Court, the Syariah Appeal Court may, on the application of any party, grant leave for the determination by itself of any question of law of public interest which has arisen in the course of the appeal and the determination of which by the Syariah High Court has affected the event of the appeal.

(2) An application for leave under this section shall be made within one month or such longer time as the Syariah Appeal Court may permit of the determination of the appeal

to which it relates; and in the case of an application by the Chief Syariah 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 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 determine the question allowed to be referred for its determination 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 in respect of 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 Enactment shall be deemed to be an appeal from a decision of a Syariah Subordinate Court.

CHAPTER 3 OF REVISION

Power to revise

168. (1) Where any Judge of the Syariah Subordinate Court after delivering his decision is of the opinion that his decision is in error, he may refer his decision to the Syariah High Court for revision; and any Judge of the Syariah High Court may similarly do so, to the Syariah Appeal Court.

(2) Notwithstanding subsection (1), the Syariah High Court may call for and examine the records of any proceedings before a Syariah Subordinate Court for the purpose

of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to any regularity of any proceedings of such Court; and the Syariah Appeal Court shall likewise have such revisionary jurisdiction in respect of any proceedings or matter before a Syariah High Court.

Power to order further inquiry

169. On examining any record under section 168, the Court exercising such revisionary jurisdiction may direct the relevant Court to make, and that Court shall make, such further enquiry as may be directed.

Power on revision

170. (1) Where in the exercise of its revisionary jurisdiction, the Court called for the record of the proceedings or such record is referred to it, the Court may exercise any of the powers conferred by sections 141, 145, 146 and 147.

(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 *Syar'ie* Lawyer, in his own defence.

(3) Nothing in this section shall be deemed to authorize the Court exercising any revisionary jurisdiction to convert a finding of acquittal into one of conviction.

Hearing of parties on revision

171. No party has any right to be heard, either personally or by *Syar'ie* Lawyer, before any Court in the exercise its revisionary jurisdiction but the Court may, if it thinks fit, hear any party either personally or by his *Syar'ie* Lawyer.

Orders on revision

172. When a case is revised under this Chapter, the Court making such revision shall certify its decision or order to the Court by which the finding, sentence or order revised was recorded or passed stating, where such finding, sentence or order has been varied, the grounds for such variation; and the Court to which the decision or order is so certified shall

thereupon make such orders as are conformable to the decision so certified and, if necessary, the record shall be amended in accordance therewith.

CHAPTER 4
PROCEEDINGS IN CASES OF CERTAIN OFFENCES
AFFECTING THE ADMINISTRATION OF JUSTICE

Procedure as to offences in Court

173. When any such offence as is described in sections 211, 212, 213, 214, 215 or 216 is committed in view or presence of any Court, the Court may cause the offender to be detained in custody and at any time before the rising of the Court on the same day may, if it thinks fit, take cognizance of the offence and sentence the offender to a fine not exceeding five hundred ringgit or to imprisonment for a term which may extend to six months or to both.

Record of facts constituting the offence

174. (1) In every such case the 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 217, the record must show the nature and stage of the judicial proceedings in which the Court interrupted or insulted was sitting, and the nature of the interruption or insult.

Alternative procedure

175. If the Court, in any case, considers that a person accused of any of the offences referred to in section 173 and committed in its view or presence may be better dealt with by ordinary process of law, such Court, after recording the facts constituting the offence and the statement of the accused, may direct the accused to be prosecuted, and may require security to be given for the appearance of such accused person before a Judge or, if sufficient security is not given, may forward such person under custody to another Judge for trial.

Power to remit punishment

176. When any Court has, under section 173, adjudged an offender to punishment for refusing or omitting to do anything which he was lawfully required to do or for any intentional interruption or insult, the Court may, in its discretion, discharge the offender or remit the punishment on his submission to the order or requisition of such Court or an apology being made to its satisfaction.

Refusal to give evidence

177. If any witness before a Court refuses to give evidence or answer such questions as are put to him or to produce any document in his possession or power which the Court requires him to produce, and does not offer any reasonable excuse for such refusal, such Court may, for reasons to be recorded in writing, sentence him to imprisonment for any term not exceeding seven days, unless in the meantime such person consents to give evidence or to be examined and to answer such question or to produce the document; but if his persisting in his refusal, he may be dealt with according to the section 173 or section 175 notwithstanding any sentence he may have undergone under this section.

Appeal

178. (1) All sentences passed under this Chapter shall be appealable to the Syariah High Court, in the case of sentences passed by the Syariah Subordinate Court, and to the Syariah Appeal Court, in the case of sentences passed by the Syariah High Court.

(2) Chapter 1 shall, so far as they are applicable, apply to appeals under this section and the appellate Court may alter or reverse the finding or reduce, alter or reverse the sentence appealed against.

(3) Chapter 2 shall also apply to all proceedings by a Judge under this Chapter.

Judge not to try certain offences committed before himself

179. Except as provided in sections 173 and 178, no Judge shall try any person for any offence when such offence is committed before himself or in contempt of his authority, or with his knowledge in the course of a judicial proceedings.

PART VII
SUPPLEMENTARY PROVISIONS

CHAPTER 1
PERSONS OF UNSOUND MIND

Procedure where accused is suspected to be of unsound mind

180. (1) When a Judge holding or enquiry of 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 the Fact of such unsoundness.

(2) At such investigation it shall not be necessary for the accused person to be present and the Judge may receive as evidence a certificate in writing signed by a Government 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 mental hospital, or if he sees fit such Judge may take oral evidence from a Government Medical Officer on the state of mind of such accused person.

(3) If the Judge is not satisfied that such person is capable of making his defence, such Judge may postpone the inquiry or trial and shall remand such person for a period not exceeding one month to be detained for observation in any mental hospital in Malaysia.

(4) The Medical Superintendent of the mental hospital shall keep such person under observation during the period of his remand and, before the expiry of such period –

(a) he shall certify under his hand to the Court his opinion as to the state of mind of such person; or

(b) if he is unable within the period to form any definite conclusion, he shall so certify to the Court and shall ask for a further remand which may extend to a period of two months.

(5) The *Syar'ie* Prosecutor may at any stage of any proceedings prior to the trial, order that any accused person whom he suspects to be of unsound mind be sent to a mental hospital for observation for a period not exceeding one month; and the Medical

Superintendent of such mental hospital shall keep such person under observation during such period and before the expiry of such period shall certify under his hand to the *Syar'ie* Prosecutor his opinion as to the state of mind of such person; and if the Medical Superintendent is unable within such period to form any definite conclusion, he shall so certify to the *Syar'ie* Prosecutor and the *Syar'ie* Prosecutor may order such person to be detained in such mental hospital for a further period not exceeding two months.

(6) The Medical Superintendent of a mental hospital may, notwithstanding anything in the Lunatic Ordinance 1951 (Chapter 74), detain any accused person in respect of whom an order has been made under subsection (5) for a period not exceeding the period specified in such order.

(7) If the Medical Superintendent certifies that the accused person is of sound mind and capable of making his defence, the Judge shall proceed with the trial.

(8) If the Medical Superintendent certifies that the accused person is of unsound mind and incapable of making his defence, the Court shall, if satisfied of the fact, find accordingly and thereupon the trial shall be postponed.

(9) The certificate of the Medical Superintendent shall be receivable as evidence under this section.

(10) If the accused person is certified to be of unsound mind and incapable of making his defence, it shall not be necessary for him to be present in Court during the proceedings under this section and the Court may order his discharge or acquittal.

(11) In this section, the words "mental hospital" means a mental hospital established or maintained under Lunatic Ordinance 1951 [Chapter 74].

CHAPTER 2 OF PROSECUTION

Chief *Syar'ie* Prosecutor

181. The Chief *Syar'ie* Prosecutor shall have the control and direction of all criminal prosecutions and proceedings under this Enactment.

Chief Syar'ie Prosecutor to appear personally

182. In any appeal the Chief Syar'ie Prosecutor shall appear personally or be represented by the Syar'ie Prosecutor.

Prosecution

183. (1) Any prosecution before the Syariah High Court shall be conducted by the Chief Syar'ie Prosecutor or a Syar'ie Prosecutor.

(2) Prosecution before the Syariah Subordinate Court may be conducted by –

- (a) the Chief Syar'ie Prosecutor or a Syar'ie Prosecutor;
- (b) a Religious Enforcement Officer authorized in writing by the Chief Syar'ie Prosecutor to act on his behalf; or
- (c) a complainant as permitted by the Court.

Employment of Syar'ie Lawyer

184. (1) With the approval of the Majlis, a Syar'ie Lawyer may be appointed by the Chief Syar'ie Prosecutor to conduct any prosecution, or to appear on any appeal on behalf of the Chief Syar'ie Prosecutor.

(2) A Syar'ie Lawyer appointed under subsection (1) shall be paid out of public funds such remuneration as may be sanctioned by the Majlis, and while conducting such prosecution or appeal the Syar'ie Lawyer shall be deemed to be a public servant.

CHAPTER 3
OF BAIL

When person may be released on bail

185. When any person is arrested or detained without warrant by a Religious Enforcement Officer or Police Officer or appears or is brought before a Court and is prepared at any time while in the custody of such officer or at any stage of the proceedings before such Court to

give bail, such person shall be released on bail by a Religious Enforcement Officer or Police Officer in charge of a police station or by any Police Officer not below the rank of Inspector or by such Court.

Amount of bond

186. (1) 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.

(2) The Syariah High Court may, in any case, whether there be an appeal on conviction or not, direct that any person be admitted to bail or that the bail required by a Religious Enforcement Officer or police officer or Syariah Subordinate Court be reduced or increased.

Bond to be executed

187. Before any person is released on bail, a bond for such sum of money as the Religious Enforcement Officer or police officer or Court, as the case may be, thinks sufficient shall be executed by one or more sufficient 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 or Police Officer or Court, as the case may be.

When person to be released

188. (1) As soon as the bond has been executed, the person shall be released and if he is in prison, the 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 section 185 shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which the bond was executed.

When warrant of arrest may be issued against person bailed

189. If, through mistake, fraud or otherwise, insufficient sureties have been accepted, or if they afterwards become insufficient, the 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

190. (1) Any sureties for the attendance and appearance of a person released on bail may at any time apply to a Judge to discharge the bond either wholly or in so far as it relates to the applicants.

(2) On such application being made, the Judge shall issue his warrant of arrest 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 Judge shall direct the bond to be discharged, either wholly or in so far as it 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 prison.

(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 Judge, who shall thereupon discharge such surety's bond and shall call upon such person to find other sufficient surety, and if he fails to do so shall commit him to prison.

Appeal

191. Any person aggrieved by any order or refusal of any Syariah Subordinate Court made under this Chapter may appeal to the Syariah High Court, and to the Syariah Appeal Court in the case of an order made by or a refusal of the Syariah High Court.

CHAPTER 4
SPECIAL PROVISIONS RELATING TO EVIDENCE

Procedure when person able to give material evidence is dangerously ill

192. (1) Whenever it appears to a Judge that any person able to give material evidence either for the prosecution or defence in relation 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 Judge may take the deposition of such person provided such reasonable notice as the case admits has been given to the Prosecutor and the accused of the intention to take it and of the time and place at which the Judge intends to take it.

(2) If the accused is in custody, a Judge may order the officer in charge of the prison to convey him to the place at the time notified and that officer shall convey him accordingly.

(3) 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 it was taken, if it be certified under the hand of the Judge who took it and the contrary be not proved, or if it be shown by extrinsic evidence that the deponent was at the time of his examination dangerously ill as mentioned in subsection (1) and that the deposition was duly taken at the place and time notified and that reasonable notice of the intention to take it was given to the person against whom it is tendered in evidence, so that he or his *Syar'ie* Lawyer might have been present and might have had, if he had chosen to be present, full opportunity of cross-examination.

Where person bound to give evidence intends to leave Malaysia

193. Whenever it is proved to the satisfaction of a Judge that any witness bound to give evidence upon the trial of any seizable offence intends to leave Malaysia and that the ends of justice would be probably defeated if such person were not present at the trial to give evidence, he may, upon the application of the Chief *Syar'ie* Prosecutor or accused and upon due provision being made for his maintenance and for compensating him for his detention and loss of time, commit such person to the civil prison until the trial or until he shall give satisfactory security that he will give evidence at the trial.

Reports of certain persons

194. (1) Any document purporting to be a report under the hand of any of the persons mentioned in subsection (2) upon any person, matter or thing examined or analysed by him or any document purporting to be a report under the hand of the Registrar of Criminals upon any matter or thing relating to finger impressions submitted to him for report may be given in evidence in any trial or other proceedings under this Enactment unless such person or Registrar shall be required to attend as a witness –

- (a) by the Court; or
- (b) by the accused, in which case the accused shall give notice to the Prosecutor not less than three clear days before the commencement of the trial:

Provided that in any case in which a *Syar'ie* Prosecutor intends to give in evidence any such report, he shall deliver a copy thereof to the accused not less than ten clear days before the commencement of a trial.

(2) The following are persons to whom the provisions of this section apply –

- (a) officers of the Institute for Medical Research;
- (b) Government Medical Officers;
- (c) Chemists in the employment of the Government of Malaysia;
- (d) any person appointed by the Minister by notification in the *Gazette* to be a Document Examiner;
- (e) Inspector of Weight and Measures appointed as such under any written law relating to weights and measures in force in Malaysia; and
- (f) any person or class of persons to whom Yang di-Pertua Negeri by notification in the *Gazette* declares that the provisions of this section shall apply.

(3) The person referred to in subsection (2) and the Registrar of Criminals are by this Enactment bound to state the truth in reports made under their hands.

How previous conviction or acquittal may be proved

195. (1) In any trial or other proceedings under this Enactment, a previous conviction or acquittal may be proved in addition to any other mode 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 records of the Court in any State in Malaysia in which such conviction or acquittal was decided; or
- (b) in the case of a conviction, either by a certificate signed by the officer in charge of the prison in Malaysia in which the punishment or any part thereof was inflicted, or by production of the warrant of commitment under which the punishment was suffered,

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 shall state in any certificate signed by him that the finger prints which appear on such certificate are those of the persons to whom the certificate relates, such certificate shall be evidence of the fact so stated.

(3) Every 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 in Malaysia, and shall also presume that the officer by whom such document purports to be signed was when he signed it the officer in charge of the prison mentioned in such document.

Record of evidence in absence of accused

196. (1) If it be proved that an accused person has absented himself so that there is no immediate prospect of arresting him, the 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 at the trial for the offence with which he is charged, if the deponent is dead or incapable of giving evidence or his attendance could be procured without any amount of delay, expense or inconvenience which under the circumstances of the case would be unreasonable.

Notice to be given of defence of alibi

197. (1) Where in any criminal trial the accused seeks to put forward a defence of alibi, evidence in support thereof shall not be admitted unless the accused shall have given notice in writing thereof to the Prosecutor at least ten days before the commencement of the trial.

(2) The notice required by subsection (1) shall include particulars of the place where the accused claims to have been at the time of the commission of the offence with which he is charged, together with the names and addresses of any witnesses whom he intends to call for the purpose of establishing his alibi.

CHAPTER 5
PROVISIONS AS TO BONDS

Deposit instead of bond

198. When any person is required by any Court or officer to execute a bond, such Court or officer may, except in the case of a bond for good behaviour, permit him to deposit a sum of money to such amount as the Court may fix, in lieu of executing such bond.

Procedure on forfeiture of bond

199. (1) Whenever –

- (a) it is proved to the satisfaction of the Court by which a bond under this Enactment has been taken; or
- (b) when the bond is for appearance before a Court, it is proved to the satisfaction of the Court,

that such bond has been forfeited, the 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 or such penalty is not paid, the person so bound shall be liable, by order of the Court which issued the warrant, to imprisonment in the civil prison for a term which may extend to six months.

(3) The Court may, at its discretion, remit any portion of the penalty mentioned, and enforce payment in part only.

(4) Nothing in this section shall be deemed to prevent the penalty, or any portion thereof, of any bond under this Enactment being recovered under the provisions of the law relating to civil procedure for the time being in force.

Appeal from orders

200. All orders made under section 199 by the Syariah Subordinate Court shall be appealable to the Syariah High Court, and to the Syariah Appeal Court in the case of orders made by the Syariah High Court.

CHAPTER 6 OF THE DISPOSAL OF EXHIBITS AND OF PROPERTY THE SUBJECT OF OFFENCES

Court shall consider manner of disposal of exhibits

201. (1) At the conclusion of any proceedings under this Enactment, the Court shall consider in what manner the exhibits shall be disposed of and may make any order for that purpose.

(2) If the Court makes no order as to the disposal of the exhibits, they shall be handed to the Prosecutor in charge of the proceedings and may be dealt with by the Prosecutor in accordance with the provisions of this Chapter as if the Court had made an order or orders to that effect.

(3) If the Prosecutor is at any time in doubt as to the proper manner of disposing of any exhibit, or if any person claims delivery to him of any exhibit and the Prosecutor refuses such delivery, the Prosecutor or such person may apply to the Court which determined the case and the Court shall make such order regarding the disposal of the exhibit as may be proper.

Order for disposal of property regarding which offence committed

202. (1) Any Court may, if it thinks fit, impound any property or document produced before it under this Enactment.

(2) During or at the conclusion of any trial in any Court, the Court may make such order as it thinks fit for the custody or disposal of any property or document produced before it or in its custody, or the custody of any Religious Enforcement Officer or police officer or any public servant, regarding which any offence appears to have been committed or which has been used for the commission of any offence.

(3) The power conferred upon the Court under subsection (2) shall include the power to make an order for the forfeiture or confiscation or destruction of such property or for the delivery to any person of such property, but shall be exercised subject to any special provisions relating to forfeiture, confiscation, destruction or delivery contained in the written law under which the conviction was had.

(4) A Court making an order under this section in respect of any property or document shall direct whether such order is to take effect immediately or at any future date or on the happening of any future contingency and shall, except when the property is livestock or property subject to speedy and natural decay, include in such order all necessary directions and conditions to ensure that such property or document will be produced as and when required for the purposes of the trial during or at the conclusion of which such order is made or for the purposes of any appeal or further criminal proceedings resulting from such trial.

(5) 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 any thing acquired by such conversion or exchange, whether immediately or otherwise.

CHAPTER 7
OF THE TRANSFER OF CRIMINAL CASES

Power of the Judge of Syariah High Court to transfer cases

203. Whenever it is made to appear to the Judge of the Syariah High Court –

- (a) that a fair and impartial trial cannot be had in any Syariah Subordinate Court;
- (b) that some question of law of unusual difficulty is likely to arise;
- (c) that a view of the place in or near which any offence has been committed may be required for the satisfactory trial of the offence;
- (d) that an order under this section will tend to the general convenience of the parties or witnesses; or
- (e) that such an order is expedient for the ends of justice, or is required by any provision of this Enactment,

the Judge may order –

- (aa) that any particular criminal case be transferred to and tried before the Syariah High Court; or
- (bb) that an accused person be tried in another Syariah Subordinate Court.

Application for transfer to be supported by affidavit

204. (1) Every application for the exercise of the power conferred by section 203 shall be made by motion which shall be supported by affidavit.

(2) Every such application shall be made before the 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 twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

CHAPTER 8 OF IRREGULARITIES IN PROCEEDINGS

Proceeding in wrong place, etc.

205. No finding, sentence or order of any Court shall be set aside merely on the ground that the trial or other proceedings in the course of which it was arrived at, passed or made, took place in a wrong local area or before a wrong Court, unless it appears that such error occasioned a failure of justice.

Omission to frame charge

206. (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, a failure of justice has been occasioned thereby.

(2) If the appellate Court thinks that a failure of justice has been occasioned by the omission to frame a charge, the Court shall order that a new trial be had.

Irregularities not to vitiate proceedings

207. Subject to the provisions contained in this Chapter, no finding, sentence or order passed or made by a Court of competent jurisdiction shall be reversed or altered on account -

- (a) of any error, omission or irregularity in the complaint, summons, warrant, charge, judgment or other proceedings before or during the trial under this Enactment;
- (b) of the want of any sanction required by law; or
- (c) of the improper admission or rejection of any evidence,

unless such error, omission, improper admission or rejection of evidence, irregularity, want of sanction or misdirection has occasioned a failure of justice.

PART VIII
GENERAL

Definition

208. In this Part, "religious officer" means any Judge, *Syar'ie* Prosecutor, Registrar or Religious Enforcement Officer.

Protection of officers

209. No proceedings shall lie against any Judge or other officers for any act done in good faith in any judicial proceedings under this Enactment or any other written law for the time being in force relating to Islamic religion.

Contempt of Court

210. The Court shall have power to punish any person who commits a contempt of the Court with a fine not exceeding one thousand ringgit.

False information, evidence or admission

211. Whoever wilfully gives any information, evidence or admission orally or in writing which is false in any matter where he is required to do so by this Enactment shall be guilty of an offence and shall on conviction be liable to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Religious officer disobeying a direction of the law with the intent to cause injury to any person

212. Whoever, being a religious officer, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such officer, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person shall be guilty of an

offence and shall on conviction be liable to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Omission to produce, etc. a document to a religious officer by person legally bound to produce, etc. such document

213. Whoever, being legally bound to produce or deliver up any document to any religious officer as such, intentionally omits so to produce or deliver up the document shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding six months or to both; or if the document is to be produced or delivered up to a Court, to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Refusing oath when duly required to take oath by a religious officer

214. Whoever refuses to bind himself by an oath to state the truth when required so to bind himself by a religious officer legally competent to require that he shall so bind himself shall be guilty of an offence and shall on conviction be liable to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Refusing to answer a religious officer authorized to question

215. Whoever, being legally bound to state the truth on any subject to any religious officer, refuses to answer any question demanded of him touching that subject by such officer, in the exercise of the legal powers of such officer, shall be guilty of an offence and shall on conviction be liable to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Refusing to sign statement

216. Whoever refuses to sign any statement made by him when required to sign that statement by a religious officer legally competent to require that he shall sign that statement shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding six months or to both.

Intentional insult or interruption to a religious officer sitting in any stage of a judicial proceedings

217. Whoever intentionally insults or causes any interruption to any religious officer while such officer is sitting in any stage of a judicial proceedings shall be guilty of an offence and shall on conviction be liable to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Sworn affidavit

218. (1) Subject to any rules made by the Court, any affidavit may be used in a Court if it is sworn under an oath –

- (a) in Malaysia, before any Judge, *Qadi* or Registrar;
- (b) in Singapore or Brunei Darussalam, before any Judge or *Qadi*; or
- (c) in any other place, before any Muslim officer exercising consular functions on behalf of the Government of Malaysia.

(2) The Court shall take judicial notice of the seal or signature of any Judge, *Qadi*, Registrar or consular officer written or named in any affidavit.

Power of Court to summon and examine persons

219. Any Court may, at any stage of any trial or other proceedings under this Enactment, 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 Court shall summon and examine or recall and re-examine any such person if his evidence appears to be essential to the just decision of the case.

Order for payment of compensation

220. (1) The Court before which a person is convicted of any offence may order for the payment by him of a sum to be fixed by the Court by way of compensation to any person, or to the representatives of any person, injured in respect of his body, character or property by the offence for which the conviction is had.

(2) The Court shall specify the person to whom any sum in respect of compensation as mentioned in subsection (1) is to be paid and the section 221 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 representatives of a person, under an order for compensation, any claim of such person or representatives 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) Every order made under this section shall be appealable to the Syariah High Court in the case of an order made by the Syariah Subordinate Court, and to the Syariah Appeal Court in the case of an order made by the Syariah High Court.

Provisions as to compensation

221. (1) Subject to this Enactment, where any person is under this Enactment, for any reason, ordered to pay compensation, the Court making such order may in its discretion do all or any of the following things, namely –

- (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, but such money shall not be so applied if the Court is satisfied that the money does not belong to that person.

Copies of proceedings

222. (1) If the complainant or the accused or any person affected by a judgment or order passed or made by a Court desires to have a copy of any judgment, order or other part of the

record, he shall, on applying for such copy, be furnished therewith by the Court on payment of such reasonable sum as the Court may direct unless the Court, for some special reason, thinks fit to furnish it free of charge.

(2) An application for a copy of the record may be made at any time by the Prosecutor by whom no fee shall be payable.

Person released on bail to give address for service

223. When any person is released on bail, he shall give to the Court or officer taking such bail an address at which service upon 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 such address shall be deemed to have been duly served upon him.

Compensation where charge is groundless

224. Whenever any person causes a Religious Enforcement Officer or a Police Officer to arrest another person, if it appears to the Judge who takes cognisance of the case that there was no sufficient ground for causing such arrest, the Judge may award such compensation, not exceeding one hundred ringgit, to be paid by the person so causing the arrest to each person so arrested for his loss of time and any expenses incurred by him in the matter as the Judge shall think fit.

Judge not to act where interested

225. No Judge shall try any case to or in which he is a party or personally interested.

Evidence

226. In any proceeding under this Enactment, the Court shall observe all provisions of Islamic Law relating to number, status or quality of witness or evidence required to prove any fact.

Forms

227. The forms set out in the Schedule, with such variation as the circumstances of each case require, may be used for the respective purposes therein mentioned.

Application of fines

228. The Court imposing any fine under the authority of any law for the time being in force may award any portion thereof to all informer.

Rules

229. The Chief *Syar'ie* Judge may, by notification in the *Gazette*, make rules for carrying out the provisions of this Enactment and in particular, but without prejudice to the generality of the foregoing, such rules may provide for –

- (a) the fees that may be prescribed under this Enactment;
- (b) the forms, book of accounts, reports and other documents to be used in respect of any act or thing, done under or in pursuance of this Enactment; and
- (c) the conduct of Court, form and the method of execution of instruments and the appointment of any officer or agent of the Court.

Islamic Law

230. (1) Any provisions or interpretation of the provisions under this Enactment which is inconsistent with the Islamic Law shall, to the extent of inconsistency, be void.

(2) In the event of a lacuna or where any matter is not expressly provided by this Enactment, the Court shall apply Islamic Law.

Repeal

231. (1) The Syariah Criminal Procedure Enactment 1993 is repealed.

(2) Where any case or matter before any Court on the coming into force of this Enactment, the provisions of this Enactment shall apply in respect of the proceeding of such case or matter to the extent that it causes no injustice.

FIRST SCHEDULE
(Subsection 2(3))
ARABIC SCRIPT FOR CERTAIN WORDS
AND EXPRESSIONS

'adil	-	عادل
Qadi	-	قاضي

SECOND SCHEDULE
FORM 1

SYARIAH CRIMINAL PROCEDURE ENACTMENT 2004
(Subsection 22(5))

IN THE COURT AT

WARRANT OF REMAND

NO:

To the Officer-in-Charge of the Prison/Police Station at

.....

Criminal Case No.: of 20

WHEREAS(hereinafter called "the accused")
was this day brought before this Court charged with having committed the offence of
..... and it was necessary to remand the accused.

This is to authorize 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 day
of when you shall cause him to be brought before this Court at
..... o'clock in the forenoon on the day unless you shall be otherwise ordered in
the meantime.

Given under my hand and the seal of the Court this day of
..... 20.....

(SEAL)

.....

Signature of Judge

FORM 2
SYARIAH CRIMINAL PROCEDURE ENACTMENT 2004
(Subsection 28(1))

SUMMONS TO AN ACCUSED PERSON

To.....of.....

WHEREAS your attendance is necessary to answer to a charge of and you are hereby required to appear on the day of at the hour of o'clock in the forenoon in person before the Syariah High Court/Syariah Subordinate Court at

Dated this day of 20.....

(SEAL)

.....
Signature of Judge

FORM 3
SYARIAH CRIMINAL PROCEDURE ENACTMENT 2004
(Subsection 32(1))

WARRANT OF ARREST

To:

.....
.....

WHEREAS of
stands charged with the offence of You are
hereby directed to arrest the said

And to produce him before the Syariah High Court/Syariah Subordinate Court at
.....

Dated this day of 20.....

(SEAL)

.....
Signature of Judge

This warrant may be endorsed as follows:

If the said shall give bail himself in the
sum of ringgit with one surety or
two sureties each in the sum of ringgit
to attend before the Syariah High Court/ Syariah Subordinate Court at
..... on the day of
..... 20 and to continue so to
attend until otherwise directed by me, he may be released.

Dated this day of 20.....

(SEAL)

.....
Signature of Judge

FORM 4
SYARIAH CRIMINAL PROCEDURE ENACTMENT 2004
(Subsection 47(1))

SEARCH WARRANT

To:

.....
.....

WHEREAS written information has been laid before me of the commission (of suspected commission) of the offence of under section of the

This is to authorize and require you within a period of not more than 7 days from the date hereof to enter the house (or place or premises) situated at with such assistance as shall be required, and to search every part of that house (or place or premises) and to arrest the persons found committing the offence aforesaid, and forthwith to bring them before me or the Court.

Given under my hand and the seal of the Court, this day of 20.....

(SEAL)

.....

Signature of Judge

FORM 5
SYARIAH CRIMINAL PROCEDURE ENACTMENT 2004
(Subsection 54(2))

INFORMATION TO RELIGIOUS
ENFORCEMENT OFFICER

No.

Date: Time: a.m./p.m.

Name:

Identity Card No.: Age: Occupation:

Address:

I hereby give the following information:

.....
.....
.....
.....

.....

Signature of Informant

The above information is given in writing/orally and was written and signed by the officer below and read over to the informant.

.....

*Signature of Religious
Enforcement Officer*

Dated this day of 20.....

FORM 6
SYARIAH CRIMINAL PROCEDURE ENACTMENT 2004
(Subsection 74(1))

INFORMATION TO JUDGE

No.

Date: Time: a.m./p.m.

Name:

Identity Card 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

In my presence,

.....

Signature and Seal of Judge

Dated this day of 20.....

CERTIFIED by me to be a true copy of the Bill passed by the Legislative Assembly on Wednesday, the 11th day of August, 2004.

DATUK JAMES ANDREW VITALES,
Deputy Speaker,
State Legislative Assembly.

Sabah LawNet