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STATE OF SABAH

I assent,

TUN DATUK SERI PANGLIMA (DR) HAJI JUHAR BIN DATUK
HAJI MAHIRUDDIN, Yang di-Pertua Negeri.

30 JULY, 2024.

No. 5 of 2024

An Enactment to provide for the establishment and jurisdiction of the Syariah Court.

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

PART 1
PRELIMINARY

Short title and commencement

1. (1) This Enactment may be cited as the Syariah Courts Enactment 2024.

(2) This Enactment shall come into operation on the date of its publication in the *Gazette*.
[c.i.f. 01.08.2024].

Interpretation

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

"Chief *Syar 'ie* Judge" means the Chief *Syar 'ie* Judge appointed under subsection 5(1);

"civil court" means any court established under Article 121 of the Federal Constitution;

"Court" or "Syariah Court" means the Syariah Supreme Court, Syariah Appeal Court, Syariah High Court or Syariah Subordinate Court, as the case may be, established under section 4;

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

"Judge" means the Chief *Syar 'ie* Judge, Syariah Supreme Court Judge, Syariah Appeal Court Judge, Syariah High Court Judge or Syariah Subordinate Court Judge, as the case may be, appointed under subsections 5(1), 6(1), 7(1), 8(1) or section 9;

"Majlis" means the Majlis Ugama Islam Negeri Sabah established under the Majlis Ugama Islam Negeri Sabah Enactment 2004 [No. 5 of 2004];

"Mufti" has the meaning assigned to it in section 2 of the Fatwa Enactment 2004 [No. 7 of 2004];

"remote communication technology" means a live video network, live television network or any other means of digital or electronic communication;

"Repealed Enactment" means the Syariah Courts Enactment 2004 [No. 6 of 2004];

"syariah officer" means any syariah officer under the scheme of judicial service and syariah legislations; and

"*Syar 'ie* Lawyer" means a person who has been admitted as a *Syar 'ie* Lawyer under section 34.

(2) All words and expressions used in this Enactment and not defined in this Enactment but defined in the Interpretation and General Clauses Enactment 1963 [No. 34 of 1963] shall have the meanings assigned to them respectively to the extent that such meanings do not conflict with *Hukum Syarak*.

Saving of prerogative

3. Save as expressly provided in this Enactment, nothing contained in this Enactment shall derogate from or affect the prerogative rights and powers of the Yang di-Pertuan Agong as the Head of the religion of Islam in Sabah as declared and set forth in the Constitution of the State of Sabah.

PART II
ESTABLISHMENT OF SYARIAH COURTS

Establishment of Syariah Courts

4. The Yang di-Pertua Negeri may, on the recommendation of the Chief *Syar'ie* Judge, by notification in the *Gazette* constitute —

- (a) Syariah Subordinate Court for Sabah at such places as he considers fit;
- (b) Syariah High Court for Sabah;
- (c) Syariah Appeal Court for Sabah; and
- (d) Syariah Supreme Court for Sabah.

PART III
APPOINTMENT AND REVOCATION

Appointment of Chief *Syar'ie* Judge

5. (1) The Yang di-Pertua Negeri shall, on the recommendation of the Majlis, appoint a Chief *Syar'ie* Judge.

(2) A person is qualified for appointment under subsection (1) if he —

- (a) is a citizen;
- (b) has held any post for a period of not less than ten years, either as —
 - (i) the Syariah High Court Judge;
 - (ii) the Syariah Appeal Court Judge;
 - (iii) the Syariah Supreme Court Judge; or
 - (iv) the Chief Registrar of the Syariah Supreme Court; and

(c) has Sabah connection.

(3) A person shall be deemed to have Sabah connections for the purpose of subsection (2) if he is a Malaysian citizen who -

- (a) was born in Sabah;
- (b) has been ordinarily resident in Sabah for a continuous period of five years or more; and

- (c) satisfies the Yang di-Pertua Negeri that he is, at the time when the question whether he has Sabah connection is relevant, domiciled in Sabah.

(4) Without prejudice to paragraph (2)(b), before a person under subparagraph (2)(b)(iv) is qualified for such appointment, he must have held either post under subparagraphs (2)(b)(i), (ii) or (iii) for a period of not less than one year.

(5) The Yang di-Pertua Negeri may, on the recommendation of the Majlis, appoint temporarily the most senior Judge of the Syariah Supreme Court to act as the Chief *Syar 'ie* Judge for the period -

- (a) when the office of the Chief *Syar 'ie* Judge is vacant;
- (b) when the Chief *Syar 'ie* Judge is absent from duty or from Sabah; or
- (c) when the Chief *Syar 'ie* Judge is, for any other reason, unable to perform the duties of his office

Appointment of the Syariah Supreme Court Judge

6. (1) The Yang di-Pertua Negeri may, on the recommendation of the Majlis, appoint nine Syariah Supreme Court Judges.

(2) A person is qualified for appointment as a Syariah Supreme Court Judge under subsection (1) if he is a citizen and -

- (a) has held position as Syariah Appeal Court Judge; or
- (b) for a period of fifteen years before his appointment —
 - (i) has served in legal and judiciary services; or
 - (ii) has engaged in syariah or legal field and knowledgeable in *Hukum Syarak*.

(3) A person who is appointed under subsection (1) shall hold office for a period of three years and is eligible for reappointment.

Appointment of Syariah Appeal Court Judge

7. (1) The Yang di-Pertua Negeri may, on the recommendation of the Majlis, appoint seven Syariah Appeal Court Judges.

(2) A person is qualified for appointment under subsection (1) if he is a citizen and -

- (a) has held position as a Syariah High Court Judge for a period of eight years; or

(b) has held, for a period of not less than ten years either as a Syariah Subordinate Court Judge or Registrar of the Syariah Appeal Court or Chief Registrar of the Syariah Supreme Court.

(3) The Chief *Syar 'ie* Judge shall appoint a person from amongst the Syariah Appeal Court Judges as the Chairman of Syariah Appeal Court.

Appointment of Syariah High Court Judge

8. (1) The Yang di-Pertua Negeri may, on the recommendation of the Majlis, appoint Syariah High Court Judges.

(2) A person is qualified for appointment under subsection (1) if he is a citizen and, for a period of ten years before his appointment, has served as a syariah officer.

Appointment of Syariah Subordinate Court Judge

9. The Yang di-Pertua Negeri may, on the recommendation of the Chief *Syar 'ie* Judge, appoint Syariah Subordinate Court Judges among the syariah officer.

Tenure of office of Chief *Syar 'ie* Judge, Syariah Supreme Court Judge, Syariah Appeal Court Judge and Syariah High Court Judge

10. (1) Subject to subsection 12(1), a Chief *Syar 'ie* Judge, a Syariah Supreme Court Judge, a Syariah Appeal Court Judge and a Syariah High Court Judge appointed under subsections 5(1), 6(1), 7(1) and 8(1) shall hold office until the age of sixty five years or until such later time, as may be approved by the Yang di-Pertua Negeri.

(2) A Chief *Syar 'ie* Judge, Syariah Supreme Court Judge, Syariah Appeal Court Judge or Syariah High Court Judge may, at any time, resign from his office by notifying his intention to the Majlis and send a letter of resignation under his hand to the Yang di-Pertua Negeri and shall only be removed from the office with the approval of the Yang di-Pertua Negeri.

Precedence of Judges

11. (1) The Judges shall take precedence in the following order:

- (a) the Chief *Syar 'ie* Judge;
- (b) the Syariah Supreme Court Judge;
- (c) Syariah Appeal Court Judge;

- (d) the Syariah High Court Judge; and
- (e) the Syariah Subordinate Court Judge.

(2) The Judges of the Syariah Supreme Court, Syariah Appeal Court and Syariah High Court according to the priority of their respective appointments as Judges on their respective Court and where they are appointed on the same date, in such order as may be assigned to them by the Yang di-Pertua Negeri.

(3) The Judges of the Syariah Subordinate Court according to the priority of their respective appointments as Judges and where they are appointed on the same date, in such order as may be assigned to them by the Yang di-Pertua Negeri.

Revocation of appointment of Judges

12. (1) The Yang di-Pertua Negeri may, on the recommendation of the Majlis, revoke the appointment of the Chief *Syar 'ie* Judge under section 5 and any Judge appointed under sections 6, 7 and 8 of this Enactment.

(2) The Yang di-Pertua Negeri may, on the recommendation of the Chief *Syar 'ie* Judge, revoke the appointment of any Judge of the Syariah Subordinate Court appointed under section 9.

Appointment of Registrars

13. (1) The Yang di-Pertua Negeri may, on the recommendation of Chief *Syar 'ie* Judge, appoint a Chief Registrar and Deputy Chief Registrar of the Syariah Supreme Court, Registrar and Deputy Registrar of the Syariah Appeal Court, Registrar and Deputy Registrar of the Syariah High Court and Assistant Registrar of the Syariah Subordinate Courts from amongst syariah officer.

(2) A person who, immediately before the commencement of this Enactment, was holding the post of Chief Registrar of the Syariah Appeal Court under the Repealed Enactment and was performing judicial functions shall, on the commencement of this Enactment, continue to hold office as the Chief Registrar of the Syariah Supreme Court as if he had been appointed under subsection (1).

Appointment of *Sulh* Officer

14. The Yang di-Pertua Negeri may, on the recommendation of the Chief *Syar 'ie* Judge, appoint any syariah officer as a *Sulh* Officer to settle a dispute in Court.

Gazette

15. Every appointment under this Part shall be published in the *Gazette*.

PART IV
SYARIAH SUBORDINATE COURT

Jurisdiction of Syariah Subordinate Court

16. (1) A Syariah Subordinate Court shall have jurisdiction throughout Sabah where it is constituted and shall be presided over by a Judge of the Syariah Subordinate Court.

(2) The Syariah Subordinate Court shall -

- (a) in its criminal jurisdiction, try any offence committed by a Muslim under any written law which prescribes offences against the precepts of the religion of Islam for which the maximum punishment provided by such written law does not exceed three thousand ringgit, or imprisonment for a term not exceeding two years or both, and may impose any punishment provided for such offences; and
- (b) in its civil jurisdiction, hear and determine all actions and proceedings as a Syariah High Court is authorised to hear and determine, if the amount or value of the subject-matter in dispute does not exceed three hundred thousand ringgit or is not capable of estimation in terms of moneys.

(3) The Yang di-Pertua Negeri may, on the recommendation of Chief *Syar 'ie* Judge, by notification in the *Gazette*, extend the jurisdiction of the Syariah Subordinate Court.

PART V
SYARIAH HIGH COURT

Jurisdiction of Syariah High Court

17. (1) A Syariah High Court shall have jurisdiction throughout Sabah and shall be presided over by a Syariah High Court Judge.

(2) Notwithstanding subsection (1), the Syariah High Court may be presided over by the Chief *Syar 'ie* Judge.

(3) The Syariah High Court shall —

- (a) in its criminal jurisdiction, try any offence committed by a Muslim and punishable under any written law prescribing offences against the precepts of the religion of Islam for the time being in force, and may impose any punishment provided therefor; and
- (b) in its civil jurisdiction, hear and determine all actions and proceedings, pertaining to —

- (i) betrothal, marriage, dowry, divorce, ruju', annulment of marriage (*fasakh*), *nusyuz*, judicial separation (*faraq*) or any other matter relating to the relationship between husband and wife;
- (ii) any disposition of or claim to property arising out of any of the matters set out in subparagraph (b)(i);
- (iii) legitimacy or guardianship or custody (*hadhanah*) of infants;
- (iv) guardian of child property;
- (v) the maintenance of dependants;
- (vi) *nasab*;
- (vii) the division or claim of *harta sepencarian*;
- (viii) wills or gifts (*hibah*) or settlements made without adequate consideration in money or money's worth by a Muslim;
- (ix) nazar or matters relating thereto;
- (x) succession off estate, testate or intestate, and matters relating thereto including appointment of Wali Harta and Wasi;
- (xi) the determination of the persons entitled to share in the estate of a deceased Muslim or the shares to which such persons are respectively entitled and matters relating thereto;
- (xii) a declaration that during a person's lifetime or death, he is a Muslim or otherwise;
- (xiii) adoption of child and for matters relating thereto;
- (xiv) a charitable and religious trusts and noncharitable trusts;
- (xv) zakat, fitrah and baitulmal or similar Islamic religious revenue;
- (xvi) mosques or any public places of worship for Muslim;
- (xvii) funeral arrangement and burial grounds for Muslim subject to any other written law; and
- (xviii) other matters in respect of which jurisdiction is conferred by any written law.

(4) For the purpose of this section, "*Wali Harta*" and "*Wasi*" means *Wali Harta* and *Wasi* in accordance with *Hukum Syarak*.

Appeal to Syariah High Court

18. (1) An appeal shall lie to the Syariah High Court from any decision of a Syariah Subordinate Court -

(a) in its criminal jurisdiction, by the prosecutor or by the person convicted, and such appeal may be against an acquittal, a conviction or a sentence or any of them;

(b) in its civil jurisdiction —

(i) by any person aggrieved by the decision, if the amount claimed is not less than three thousand ringgit;

(ii) in all cases involving any decision as to personal status, by any person aggrieved by the decision; and

(iii) in all cases relating to maintenance of dependants, by any person aggrieved by the decision,

but no appeal shall lie against a decision made by consent; and

(c) in any other case, if the Syariah High Court gives leave to appeal.

(2) In any appeal, the Syariah High Court may

(a) in a criminal matter, dismiss the appeal, convict and sentence the appellant, order the trial Court to call for the defence or make further inquiry, enhance or alter the nature of the sentence, order a retrial, or alter or reverse any order of the trial Court; and

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

Application for leave to appeal to the Syariah High Court

19. (1) An appeal or application for leave to appeal under paragraph 18(1)(c) shall be made to the Syariah High Court —

(a) within fourteen days from the date of the judgment, order or decision in respect of which the application was made; or

(b) in the event that the applicant was not on that date aware thereof and could not by the exercise of reasonable diligence have become so aware, within fourteen days from the date such judgement, order or decision came to his knowledge.

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

Supervisory and revisionary jurisdiction of Syariah High Court

20. (1) The Syariah High Court shall have supervisory and revisionary jurisdiction over all Syariah Subordinate Courts and may, if it appears desirable in the interest of justice, either of its own motion or at the instance of any party or person interested, at any stage in any matter or proceeding, whether civil or criminal, in any Syariah Subordinate Court, call for and examine any records thereof and may give such directions as justice may require.

(2) Whenever the Syariah High Court calls for the records of any matter or proceeding under subsection (1), all proceedings in the Syariah Subordinate Court on the matter or proceeding in question shall be stayed pending further order of the Syariah High Court.

PART VI SYARIAH APPEAL COURT

Jurisdiction of Syariah Appeal Court

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

(2) When an appeal from a decision of a Syariah Subordinate Court has been determined by the Syariah High Court, the Syariah Appeal Court may on the application of any party before a Syariah Appeal Court Judge, 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 result of the appeal.

(3) 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 order as the Syariah High Court might have made and as it considers just for the disposal of the appeal.

(4) In any proceeding pending before the Syariah Appeal Court any direction incidental thereto not involving the decision of the proceeding, any interim order to prevent prejudice to the claims of parties pending the hearing of the proceeding, any order for security for costs and for the dismissal of a proceeding for default in furnishing security so ordered may at any time be made by a Syariah Appeal Court Judge.

(5) Every application under subsection (4) shall be deemed to be a proceeding in the Syariah Appeal Court.

(6) Every order made under subsection (4) may, upon application by the aggrieved party made within ten days after the order is served, be affirmed, varied or discharged by the Court.

Application for leave to appeal to Syariah Appeal Court

22. (1) An appeal or application for leave to appeal under subsection 21(2) shall be made to the Syariah Appeal Court ____

- (a) within fourteen days from the date of the judgment, order or decision in respect of which the application was made; or
- (b) in the event that the applicant was not on that date aware thereof and could not by the exercise of reasonable diligence have become so aware, within fourteen days from the date such judgement, order or decision came to his knowledge.

(2) The Syariah Appeal Court, on hearing any application for leave to appeal, may on special ground extend the time for appealing, notwithstanding that it may have expired.

Supervisory and revisionary jurisdiction of Syariah Appeal Court

23. (1) The Syariah Appeal Court shall have supervisory and revisionary jurisdiction over the Syariah High Court and may, if it appears desirable in the interest of justice, either on its own motion or at instance of any party or person interested, at any stage in any matter or proceeding, whether civil or criminal, in the Syariah High Court, call for and examine any records of such matter or proceeding and may give such directions as justice may require.

(2) Whenever the Syariah Appeal Court calls for the records of any matter or proceeding under subsection (1), all proceedings in the Syariah High Court on the matter or proceeding shall be stayed pending the further order of the Syariah Appeal Court.

Composition of Syariah Appeal Court

24. (1) An appeal and revision in the Syariah Appeal Court shall be heard and disposed of by a chairman and two other Judges of the Syariah Appeal Court appointed under subsection 7(1) as determined by the Chief *Syar'ie* Judge.

(2) The Chairman of the Syariah Appeal Court shall be the chairman for every proceeding of the Syariah Appeal Court, except -

- (a) if the appeal before the Syariah Appeal Court is against the decision of the Chairman of the Syariah Appeal Court who sat as a Judge of the Syariah High Court; or
- (b) if the Chairman of Syariah Appeal Court is unable to be the chairman of the proceeding for any other reason,

the Chief *Syar'ie* Judge shall appoint the most senior Judge amongst the Syariah Appeal Court Judges to be the chairman.

(3) Notwithstanding subsection 7(1), the Chief Syar'ie Judge may appoint any Syariah High Court Judges to be a member of the Syariah Appeal Court for any particular proceeding if the Chief Syar'ie Judge considers it desirable to do so.

Decision of Syariah Appeal Court by majority

25. The appeal shall be decided in accordance with the majority opinion of the Judges composing the Syariah Appeal Court.

Sittings of Syariah Appeal Court

26. (1) The Court shall sit on such dates and at such places as the Chairman of Syariah Appeal Court may from time to time determine.

(2) The Chairman of Syariah Appeal Court may, when he deems it expedient, direct that any appeal be heard at any time and in any place in Sabah.

(3) The Chairman of Syariah Appeal Court may cancel or postpone any sitting of the Court which has been determined under subsection (1).

Continuation of proceedings in Syariah Appeal Court notwithstanding absence of Judge

27. (1) If, in the course of any proceeding in an appeal or at any time before the judgment is delivered, any Syariah Appeal Court Judge hearing the proceeding is unable, through illness or any other cause, to attend and complete the proceeding or otherwise exercise his function as a Judge of that Court; then, if both parties consent, the Court shall continue the hearing and judgment or reserved judgment, as the case may be, shall be given by the remaining two Judges of the Court, and for the purposes of the appeal, the Court shall be deemed to have been properly constituted.

(2) In any such case as is mentioned in subsection (1), if there is no unanimous decision by both of the remaining Judges, the appeal shall be reheard.

(3) If under subsection (1) both parties do not give their consent, or more than one judge are unable, through illness or any other cause, to attend and complete the proceeding or otherwise exercise their functions as Judges of that Court, the appeal shall be reheard.

PART VII
SYARIAH SUPREME COURT

Jurisdiction of Syariah Supreme Court

28. (1) A Syariah Supreme Court shall have jurisdiction to hear and determine any appeal against any decision of the Syariah Appeal Court in its appellate jurisdiction in respect of any matters decided by the Syariah High Court in its original jurisdiction.

(2) When an appeal from a decision of a Syariah High Court has been decided by the Syariah Appeal Court, the Syariah Supreme Court may on the application of any party before a Syariah Supreme Court Judge 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 Appeal Court has affected the result of the appeal.

(3) When leave to the application under subsection (2) has been granted by the Syariah Supreme Court, the Court shall hear and determine the question allowed to be referred for its determination and make such order as the Syariah Appeal Court might have made and as it considers just for the disposal of the appeal.

(4) In any proceeding pending before the Syariah Supreme Court, any direction incidental thereto not involving the decision of the proceeding, any interim order to prevent prejudice to the claims of parties pending the hearing of the proceeding, any order for security for costs and for the dismissal of a proceeding for default in furnishing security so ordered, may at any time be made by a Judge of the Syariah Supreme Court.

(5) Every application under subsection (4) shall be deemed to be a proceeding in the Syariah Supreme Court.

(6) Every order made under subsection (4) may, upon application by the aggrieved party made within ten days after the order is served, be affirmed, varied or discharged by the Court.

Application for leave to appeal to Syariah Supreme Court

29. (1) An appeal or application for leave to appeal under subsection 28(2) shall be made to the Syariah Supreme Court -

- (a) within thirty days from the date of the judgment, order or decision in respect of which the application was made; or
- (b) in the event that the applicant was not on that date aware thereof and could not by the exercise of reasonable diligence have become so aware, within thirty days from the date such judgement, order or decision came to his knowledge.

(2) The Syariah Supreme Court, on hearing any application for leave to appeal, may on special ground, extend the time for appealing, notwithstanding that it may have expired.

Composition of Syariah Supreme Court

30. (1) An appeal in the Syariah Supreme Court shall be heard and disposed of by a chairman and two other Syariah Supreme Court Judges or such greater uneven number as the Chief *Syar'ie* Judge may determine from amongst the Syariah Supreme Court Judges appointed under section 6(1).

(2) The Chief *Syar'ie* Judge shall be the chairman for every proceeding of the Syariah Supreme Court, except –

- (a) if the appeal before the Syariah Supreme Court is against the decision of the Chief *Syar'ie* Judge who sat as a Judge of the Syariah Appeal Court; or
- (b) if the State Chief *Syar'ie* Judge is unable to be the chairman of the proceeding for any other reason,

the most senior Judge of the Syariah Supreme Court shall be the chairman.

(3) Notwithstanding subsection 6(1), the Chief *Syar'ie* Judge may appoint any Syariah Appeal Court Judge to be a member of the Syariah Supreme Court for any particular proceeding if the Chief *Syar'ie* Judge considers it desirable to do so.

Decision of Syariah Supreme Court by majority

31. The appeal shall be decided in accordance with the majority opinion of the Judges composing the Syariah Supreme Court.

Sittings of Syariah Supreme Court

32. (1) The Court shall sit on such dates and at such places as the chairman may from time to time determine.

(2) The chairman may, when he deems it expedient, direct that any appeal be heard at any time and in any place in Sabah.

(3) The chairman may cancel or postpone any sitting of the Court which has been determined under subsection (1).

Continuation of proceedings in Syariah Supreme Court notwithstanding absence of Judge

33. (1) If, in the course of any proceeding or at any time before the judgment or reserved judgment is delivered, the Syariah Supreme Court Judge hearing the proceeding is unable, through illness or any other cause, to attend and complete the proceeding or otherwise exercise his function as a Judge of that Court, then, if both parties consent, the Court shall continue the hearing and the judgment or reserved judgment, as the case may be, shall be delivered by not less than two

remaining Judges of the Court, and for the purposes of the proceeding, the Court shall be deemed to have been properly constituted.

(2) In any such case as mentioned in subsection (1), proceeding shall be decided in accordance with the majority opinion by the remaining Judges of the Court, and, if there is no majority, the proceeding shall be reheard.

PART VIII
SYAR 'IE LAWYER

Syar 'ie Lawyer

34. (1) The Chief *Syar 'ie* Judge may at his discretion, on payment of a prescribed fee, admit any person having sufficient knowledge of *Hukum Syarak* and laws in force in Sabah relating to Islamic affair, to be *Syar 'ie* Lawyer to represent parties in any proceeding before a Syariah Court.

(2) The Chief *Syar 'ie* Judge may make rules to___

- (a) provide for the procedure, qualification and fees for the admission of *Syar 'ie* Lawyer; and
- (b) regulate, control and supervise the conduct of *Syar 'ie* Lawyer.

(3) Notwithstanding subsection (1) -

- (a) any member of the Judicial and Legal Service;
- (b) any officer of the State Attorney-General's Chambers;
- (c) any person appointed under section 3 of the Legal Aid Act 1971 [Act 26];
- (d) any legal officer of the Majlis; or
- (e) any person deemed eligible by the Chief *Syar 'ie* Judge,

may act as *Syar 'ie* Lawyer representing any party in any proceeding in the Syariah Courts if the party could have been represented by him in the civil court by virtue of the Legal Profession Act 1976 [Act 166] or the Advocates Ordinance [Cap. 2] or the Sarawak Advocates Ordinance [Cap.110] without such member or person having admitted as an advocate and solicitor under that Act or Ordinance.

(4) Notwithstanding anything contained in this section, the Chief *Syar 'ie* Judge may, upon application by or on behalf of any *Syar 'ie* Lawyer of other states or Federal Territories in Malaysia, grant permission to such person to practise in any case subject to any conditions as specified in the rules made under this Enactment and on the payment of the prescribed fee.

(5) Notwithstanding anything contained in any other written law, no person, other than a *Syar'ie* Lawyer or a person mentioned in subsection (3), shall be entitled to appear in any Syariah Court on behalf of any party to any proceedings before it.

(6) Any person who contravenes subsections (4) and (5) commits an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding six months or to both.

PART IX GENERAL

Seal of Syariah Court

35. Every Syariah Court shall have and use, where necessary, a seal of such form and format as the Chief *Syar'ie* Judge may by notification in the *Gazette*, determine.

Exercise of powers by Judges

36. Notwithstanding anything contained in this Enactment—
- (a) the Chief *Syar'ie* Judge and a Syariah Supreme Court Judge may exercise all or any power of a Syariah Court of Appeal Judge and a Syariah High Court Judge; and
 - (b) the Chairman of the Syariah Appeal Court or a Syariah Appeal Court Judge may exercise all or any of the powers of a Syariah High Court Judge.

Judges code of ethics

37. The Yang di-Pertua Negeri may, on the recommendation of the Majlis, prescribe in writing a code of ethics which shall be observed by all Judges appointed under the Enactment.

Protection of Judges and other judicial officers

38. (1) No Judge or other person acting judicially shall be liable to be sued in any Syariah Court or civil court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction, nor shall any order for costs be made against him, provided that he at the time in good faith believed himself to have jurisdiction to do or order the act complained of.

(2) No officer of any Syariah Court or other person bound to execute the lawful warrants or orders or other processes issued by any Judge shall be liable to be sued in any Syariah Court or civil court for the execution of such warrant or order or other process which he would be bound to execute if within the jurisdiction of the person issuing the same.

(3) No bailiff or other officer of the Court charged with the duty of executing any judgment or order, or of attaching any property before judgment, shall be liable to be sued in any Syariah Court or civil court in respect of any property seized by him, or in respect of damage caused to any property in effecting or attempting to effect the seizure, unless it shall appear that he knowingly acted in excess of the authority conferred upon him by the warrant or order in question, and he shall not be deemed to have acted knowingly in excess of his authority merely by reason of knowing of the existence of a dispute as to the ownership of the property so seized.

Directions of Chief Syar 'ie Judge

39. The Chief Syar 'ie Judge may, from time to time, give directions or issue practice directions relating to the administration, conduct or procedure of the Syariah Court as he deems necessary.

Rules Committee of the Syariah Courts

40. (1) There shall be a Rules Committee of the Syariah Courts for the making of rules on the procedure of the Syariah Supreme Court, Syariah Appeal Court, Syariah High Court and Syariah Subordinate Court or other rules for the implementation of the provisions of this Enactment.

(2) The Rules Committee of the Syariah Courts shall consists of -

- (a) the Chief Syar 'ie Judge, as Chairman;
- (b) the State Attorney-General or his representative; and
- (c) persons appointed by the Chief Syar 'ie Judge as follows:
 - (i) a Syariah Supreme Court Judge;
 - (ii) a Syariah Appeal Court Judge;
 - (iii) a Syariah High Court Judge;
 - (iv) a Syariah Subordinate Court Judge;
 - (v) a representative of the Majlis;
 - (vi) a Syar 'ie Lawyer or an advocate and solicitor; and
 - (vii) three persons who may be deemed fit and suitable by the Chief Syar 'ie Judge.

(3) The Chief Registrar of the Syariah Supreme Court shall be the Secretary to the Rules Committee of the Syariah Courts and shall be responsible to carry out the decisions of the Committee.

(4) The Rules Committee of the Syariah Courts may determine its own procedure.

(5) Persons appointed under subparagraphs 2(c)(i), (ii), (iii), (v), (vi) and (vii) shall hold the position for a period of two years and eligible for reappointment.

(6) The Committee may be paid such allowances as the Minister may determine.

(7) All rules made by the Rules Committee of the Syariah Courts shall be published in the Gazette.

Open Court

41. (1) All trials in the Syariah Court shall, subject to any other written law and subsection (2), be open to the public.

(2) Syariah Court may order that the whole or any part of any proceeding before it be held in closed Court if it is satisfied that such order would be in the interest of justice, peace, security or propriety.

Court proceedings through remote communication technology

42. (1) Notwithstanding section 40, the Court may in the interest of justice, hear and decide any cause or matter of civil or crime through a remote communication technology.

(2) The place where the proceedings are heard and decided under subsection (1) shall be deemed to be heard and decided within the jurisdiction of the Court.

(3) For the purposes of subsection (2), the definition of "place" includes cyberspace, virtual space or virtual place.

Electronic service

43. The Chief Registrar of the Syariah Supreme Court may, with the approval of the Chief Syarie Judge, hold an electronic service for the receipt, filing, delivery, acceptance, submission or storage of any documents or particular payment or any other matter using the service.

Language

44. (1) The national language shall be the language for all Syariah Court proceedings but the Syariah Court may in the interest of justice allow the use of any other language.

(2) All documents and notes of proceedings may be in the rumi or jawi script.

Record and account

45. (1) The Syariah Court shall keep and maintain full and proper record relating to all actions or proceedings before it.

(2) The Syariah Court shall keep and maintain full and proper accounts relating to all financial matters of the Syariah Court and shall account for all moneys received.

Reciprocal action

46. (1) If a Syariah Court in any state or Federal Territories in Malaysia issues a warrant, summons or notice, either civil or criminal, as the case may be, under the provisions of any law in force in that state or Federal Territories, to be executed or served on any person who is or believed to be in Sabah, a Judge may endorse the warrant, summons or notice with his signature and the warrant, summons or notice may be executed or served on such persons as if the warrant, summons or notice had been issued by a Syariah Court in Sabah according to the provisions of this Enactment.

(2) If a Syariah Court in Sabah issues a warrant authorising the arrest of any person, or summons or notice calling any person to appear in a Syariah Court, and such person is or is believed to be in any state or Federal Territories in Malaysia and such warrant, summons or notice are executed or served on such person in accordance with any law in force in that state or Federal Territories, the warrant, or summons or notice shall, for the purpose of this Enactment, be deemed to have been duly executed or served as if the execution or service had been effected in Sabah.

(3) If a Syariah Court in any state or Federal Territories in Malaysia makes an order or a judgment under the provisions of any law in force in that state or Federal Territories against a person and such person is or is believed to be in Sabah, a Judge, if satisfied that the order or judgment was duly issued by a competent Syariah Court in any state or Federal Territories in Malaysia, may endorse the order or judgment and such order or judgment may be executed or served, as the case may be, as if it had been an order or a judgment lawfully made by any Syariah Court in Sabah according to the provisions of this Enactment.

(4) Warrant, summons, notice or order issued or made by the Syariah Court under this section, shall contain the Court seal and the signature of the Judge or an officer which is given such power by the Court.

Scheme of services and remuneration

47. There shall be a scheme of services and remuneration provided for each Judge and syariah officer subject to any other written law or regulation come into force.

Hukum Syarak

48. (1) Any provisions or interpretation of the provisions under this Enactment which is inconsistent with *Hukum Syarak* shall be void to the extent of the inconsistency.

(2) If there is a lacuna or any matters not expressly stated in this Enactment, *Hukum Syarak* shall apply.

PART X

REPEAL, SAVING AND TRANSITIONAL

Repeal

49. The Syariah Courts Enactment 2004 [No. 6 of 2004] is repealed.

Saving and transitional

50. (1) All Court rules and other subsidiary legislation made under, and any action exercised or carried out lawfully under or in accordance with the power of the Repealed Enactment shall, to the extent that the Court rules or the subsidiary legislation are not inconsistent with this Enactment, be deemed have been done under or in accordance to the power of this Enactment, and shall continue to be in force until the same is amended, repealed, resolved, revoked or replaced under or in accordance with power of this Enactment.

(2) On the commencement of this Enactment, every power of the Syariah Court constituted under the Repealed Enactment shall be taken over or exercised by the Syariah Court constituted under this Enactment and any expression in any written law relating to the Syariah Court constituted under the Repealed Enactment, shall be deemed to be the expression which refer to the Syariah Court constituted under this Enactment.

(3) Any Judges, syariah officers and persons appointed under the Repealed Enactment holding office before the coming into operation of this Enactment shall, on the coming into operation of this Enactment, continue to hold office under this Enactment until their term of appointments expire or they resign or their appointments are revoked or varied in accordance with this Enactment and shall have same powers, rights, privileges, liabilities, duties and obligations as if they had been appointed under this Enactment.

(4) Any person who, immediately before the commencement of this Enactment, was admitted as a *Syar 'ie* Lawyer under the Repealed Enactment shall, subject to this Enactment and any rules relating to *Syar 'ie* Lawyer made under this Enactment, be deemed to have been admitted to be a *Syar 'ie* Lawyer and shall be entitled to appear in any Syariah Court on behalf of any party to any proceedings before the Syariah Court.

(5) Any proceeding, action, claim or liability made, originated, filed, exercised or carried out in or before the Syariah Court established under the Repealed Enactment before the date of commencement of this Enactment, shall be deemed to have been resumed or carried out as if the Syariah Court had been properly constituted under this Enactment.

CERTIFIED by me to be a true copy of the Bill passed by the Legislative Assembly on Wednesday, the 10th day of July, 2024.

DATUK SERI PANGLIMA HAJI KADZIM BIN HAJI M. YAHYA,
Speaker,
State Legislative Assembly.

Sabah Lawnet