

## MUSLIM ADOPTION ENACTMENT 2024

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Sabah Lawnet

## STATE OF SABAH

I assent,

*Yang di-Pertua Negeri.*

19 DECEMBER, 2024.

### **No.17 of 2024**

An Enactment to provide for the muslim adoption, the registration of adoption and for matters relating thereto.

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

### PART I

### PRELIMINARY

#### **Short title and commencement**

1. (1) This Enactment may be cited as the Muslim Adoption Enactment 2024.
- (2) This Enactment shall come into operation on the date of its publication in the *Gazette*.  
[26.12.2024]

#### **Interpretation**

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

“adopted child” means a child who has been allowed by the Court to be adopted or re-adopted;

“calamity” means a disaster or accident befalling the adopter causing death or permanent disability to continue the responsibility of caring for the adopted child;

“child” means an unmarried child under the age of eighteen years;

“Committee” means a Committee established under section 37 of this Enactment;

“Court” or “Syariah Court” has the same meaning assigned to it under section 2 of the Syariah Courts Enactment 2024;

“Director” means the Director of Sabah State General Welfare Services or any officer of the Department who is authorized to act on his behalf;

“guardian” means the mother or any person other than the natural parents of the child who is legally appointed by the Court or any court as the guardian of the child’s person and property;

“*hibah*” has the same meaning assigned thereto under section 2 of the Wakaf (State of Sabah) Enactment 2018;

“Islamic Law” means Islamic Law according to *Mazhab Syaf’ie* or any one of *Mazhab Hanafi, Maliki or Hanbali*;

“judgement” means the written decision or order of the Court including the grounds of judgement;

“*mahram*” means a person who is forbidden to be married forever or for a certain period of time for the reasons stipulated by Islamic Law;

“*nasab*” means lineage based on legal blood relations according to Islamic Law;

“notice” means any written notice unless in any case otherwise ordered by the Court;

“person responsible for providing maintenance” means the heir of the child or any person appointed or recognized as the legal guardian of the child in accordance with the requirements of the provisions of any law in force;

“*rabibah*” means the daughter of the wife, the daughter of the wife’s daughter or the daughter of the wife’s son and below, whether from the *nasab* lineage or breastfeeding, are *mahram* to the mother’s husband (stepfather) on the condition that there has been sexual intercourse between the stepfather and the mother;

“Registrar of the Syariah Court” means a registrar appointed under subsection 13(1) and (2) of the Syariah Courts Enactment 2024;

“Registrar” means the Regional Registrar of Births and Deaths appointed under subsection 3(1) of the Registration of Births and Deaths Ordinance (Cap.123);

“resident” means a citizen who resides in Sabah for a period of not less than five years;

“Sabah connection” means any person who —

(a) is born in Sabah, resides in Sabah and one of his parents is related to a local resident of Sabah through a marriage; or

(b) is a resident in the state of Malaysia which —

(i) have a relationship with the local residents of Sabah through a marriage, and living in Sabah; or

(ii) has resided in this state continuously for a period of not less than five years;

“single man” or “single woman” means a man or a woman who has never been married or has been married but has been divorced or his or her partner has died;

“wali” means a person who has the authority according to Islamic Law to marry off a woman; and

“will” has the same meaning assigned thereto under section 2 of the Muslim Wills (State of Sabah) Enactment 2018;

(2) All words and expressions used in this Enactment and not herein defined but defined in Part I of the Interpretation and General Clauses Enactment 1963 shall have the meanings assigned thereto in that Part 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 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.

## PART II

### ADOPTION

#### **Power to make adoption orders**

3. Upon an application, either made by two spouses jointly or a single woman or a single man, who intends to adopt the child as in the prescribed manner, the Court may, subject to this Enactment, make an adoption order, authorizing them to adopt the child.

#### **Conditions of a valid adoption**

4. (1) An adoption order shall not be made unless the conditions specified in the following provisions for a valid adoption are fulfilled —

(a) the child and one of the adoptive parents have a Sabah connection;

(b) the child is below the age of eighteen and not married;

(c) the child has been continuously in the care of the adoptive parents for three consecutive months preceding the date of the order;

(d) the child has a birth certificate or a valid document recognized by the National Registration Department;

- (e) the adopter has attained the age of twenty-five and is at least twenty-one years older than the child in respect of whom the application is made unless the Court is satisfied that there are special circumstances for the making of an order;
- (f) a single male may not adopt a female child unless the Court is satisfied that there are special circumstances which shall not harm the child;
- (g) the natural mother or natural father, the father or stepmother of a *rabibah* child, may not adopt the child their natural child and his *rabibah's* child;
- (h) the biological father either married or not to the natural mother, may not adopt his own illegitimate child; and
- (i) a declaration is made by the adopter that he is capable of providing maintenance, education and adequate care, protection, welfare and supervision of the child and is not convicted of any offence involving sexual crimes and serious crimes.

(2) For the purposes of this Enactment, a person who in accordance with Islamic Law, possesses the rights and responsibilities for the care of a child, as laid down in the Second Schedule in the prescribed order of preference for custodians, include but not limited to educational or other administrative requirements, may be appointed as a guardian to the child, as an alternative to adoption.

### **Consent to adoption**

5. (1) Save as hereinafter provided, an adoption order shall not be made except with the consent of every person in the following —

- (a) natural parents or guardian of the child;
- (b) mother of the illegitimate child; or
- (c) person who is liable to contribute for the support of the child.

(2) If the natural parents or mother of the illegitimate child are minors, consent shall be given by the grandfather or grandmother or both or their guardian.

(3) Persons under subsections (1) and (2), shall give their consent to the child's religion, which shall follow the belief of the adopter, and shall register the child's religion in accordance with the written law in force.

### **Dispense with consent**

6. (1) The Court may dispense with any consent required under subsections 5(1) and (2), if he satisfied that they —

- (a) have abandoned, neglected or persistently ill-treated the child;
- (b) have persistently neglected or refused so to contribute; or

(c) cannot be found or is incapable of giving his consent or that his consent is unreasonably withheld.

(2) For person who cannot be found under paragraph 1(c), the Court may allow substituted service, if it satisfied that attempts to locate the person have been made, but were unsuccessful.

(3) No consent is required for abandoned children under the care of the Sabah State General Welfare Services Department.

(4) The Court may dispense with the consent of the spouse if one of the spouses cannot be found or is incapable of giving such consent or that the spouses have separated and are living apart and that the separation is likely to be permanent.

### **Restrictions on the natural parents, guardian, etc.**

7. The natural parents or guardian or the mother of the illegitimate child or the person responsible for providing maintenance to the child are restricted from withdrawing their consent or reclaiming the child while the Court proceedings are still ongoing or after the issuance of the adoption order has been issued, except with the permission of the Court.

### **Intention for adoption**

8. (1) Any persons under section 3 may express their intention to adopt the child in writing to the Director by a notice as determined by the Court.

(2) The Director may, if satisfied, give his support to their intention, and direct them to file an application for adoption to the Court in the manner prescribed by the Court.

### **Guardian *ad litem***

9. (1) Upon filing of the adoption application, the Court shall appoint the Director as guardian *ad litem* to protect the interest of the child and to perform duties as prescribed by such rules or guidelines made under this Enactment.

(2) The Director may grant permission for the child to be under the care and control of the applicant for a period of three consecutive months, commencing from the date of such permission or until the issuance of adoption order, whichever is earlier.

(3) The Director shall, within such period, conduct an investigation on the applicant and prepare a report for the Court to state his opinion on such investigation which shall be deemed as confidential under the Official Secrets Act 1972 [Act 88] and shall not divulge any part of it to any other person except so far as may be necessary for the proper execution of his duty.

**Duties of guardian *ad litem***

**10.** It shall be the duty of the guardian *ad litem* to investigate as thoroughly as possible, all matters concerning child and the applicant, as well as other matters related to the proposed adoption, in order to protect the interests of the child before the Court, and specifically, it shall be his duty to include in the investigation the following matters —

- (a) whether the statements in the form of application required by subsection 11(1) are true and complete, particularly as regards to the date of birth and the identity of the child;
- (b) whether any financial support for the welfare of the child has been made as agreed;
- (c) the applicant's ability or status that allows them to financially support and raise the child properly, as well as any rights or interests related to the child's property;
- (d) whether it is desirable for the welfare of the child that the Court should be asked to make an interim order or, in the case of an adoption order, to impose specific terms or conditions or to require the adopter to make provision for the welfare and care of the child, for the best interest of the child; and
- (e) any other responsibility according to any written law take into force.

**Application**

**11.** (1) Every application for adoption, shall be filed before the Court, by a notice of application together with an affidavit in support as determined by the Court and other relevant documents as required by the Court.

(2) Every notice shall be served to the Director and any person under section 5, as the case may be.

**Court proceedings**

**12.** (1) Except as otherwise provided in any other written law, every proceeding in this Enactment shall be heard in camera.

(2) For every proceeding of adoption, the Court —

- (a) shall require the attendance of the applicant and the Director;
- (b) may require the attendance of the parent or guardian of the child and the child, if the Court deem it is necessary; or
- (c) may determine its procedure in accordance with such rules or guideline as may be prescribed.

(3) For the purpose of this section, if the parent or guardian is required to attend the proceeding, but their whereabouts are unknown, the Court may issue an order for substituted service for a period deemed appropriate by the Court.

### **Matters to be satisfied by the Court**

13. Matter that the Court must be satisfied with, including but not limited to -

- (a) that the person consenting to the adoption and the person adopting fully understand the effect of the adoption under section 20;
- (b) the order, if made, must be for the welfare of the child, taking into account the wishes of a discernible (*mumayyiz*) child who understand and can express their own opinion;
- (c) that neither the applicant nor the parent or guardian has received or agreed to receive, and that no person has made or given, or agreed to make or give to the applicant or the parent or the guardian any payment or other reward in consideration of the adoption except such as the Court may sanction;
- (d) the close relative of the applicant has given consent before the Director for the child to be placed under his control temporarily, should the applicant face calamity; and
- (e) there has been a substantial change in the circumstances, if it appears that the applicant has made a previous application under this Enactment in respect of the same child.

### **Sealed copy of the adoption order**

14. (1) The Court shall issue a sealed copy of the adoption order in the manner prescribed by the Court and, shall subject to the payment by the adopter of the prescribed fees, deliver the order to the adopter.

(2) The adopter shall, within one year from the date of issuance of the order, submit to the Registrar a certified copy of the sealed order, failure which the Court may, on an application, extend the validity of such order for another one year, if he thinks reasonable.

(3) For the purpose of this section, a sealed copy of the adoption order shall be issued, upon registration of the child's religion under subsection 5(3).

### **Amendment of orders and rectification of Registers**

15. (1) The Court may, on the application of the adopter, whether the adoption order has been executed or yet to be executed, amend the order on any changes of fact or correction of any error or any necessary changes in the particulars contained therein and where an adoption order is so amended, the Court shall cause the amendment to be communicated to the

Registrar, and any necessary changes or correction of or addition to the Registry of the Muslim Adoption shall be made accordingly.

(2) Where an adoption order is quashed or an appeal against an adoption order allowed, the Court which made the order shall give directions to the Registrar to cancel any marking of an entry in the registers of births, and any entry in the Registry, which was effected in pursuance of the order.

(3) A copy or extract of an entry in any register, being an entry the marking of which is cancelled under this section, shall be deemed to be an accurate copy if and only if both the marking and the cancellation are omitted therefrom.

### **Withdrawal and replacement of adopter**

**16.** (1) The adopter shall not withdraw himself and be replaced by other person except with reasonable justification.

(2) The Court may, on an application made by the adopter, allow the withdrawal or replace the adoption to another person, if he thinks it is for the best interest (*maslahah*) and welfare of the child, and the child shall be handed over, within seven days from the order, to the new guardian as determined by the Court.

(3) The adopter shall be restricted from re-adopting the same child except with the permission of the Court.

### **Cancellation of adoption**

**17.** (1) The Court, upon the application of any person or enforcement body, shall have the power to cancel an adoption after being satisfied that —

(a) the adopter has deliberately neglected, abandoned, or has continuously ill treated the child which affect the life of the child or has been proven to have abused the child;

(b) the adopter is no longer capable to continue or fulfill his responsibility for the adoption;

(c) the adopter has been convicted of any offence involving sexual crimes and serious crimes; or

(d) there are inappropriate changes to the adoption, which cause harm (*darar*) and is irreparable.

(2) For the purpose of this section, every notice of application shall be served to the Director.

### Death of adopter

18. (1) The adoption shall not cease on the death of the adopter but continue to the surviving spouse.

(2) Where both adopters die, the child shall be under the care and control of the close relative as mentioned in paragraph 13(d) and he may continue the adoption as he wishes or give his consent to any other person to adopt the child.

(3) If the close relative wishes to continue the adoption, he shall, on an application to the Court, amend and rectify the adoption under his name.

### Responsibility of the close relative

19. (1) For the purpose of this Enactment, the close relative of the adopter is responsible to —

- (a) care for the child temporarily, in the event of a calamity be falling to the adopter;
- (b) inform the natural parent or guardian of such calamity;
- (c) carry out the registration of adoption as the adoptive parents are responsible for, if the registration has not been made;
- (d) apply for an adoption order on the child, if he wishes to adopt; and
- (e) refer the child to the Director, if he or the natural parent or guardian have no intention of adopting or reclaiming the child.

(2) For the purposes of this section, the natural parent or guardian may, apply for the cancellation of the adoption order and reclaim the custody of the child.

### Effect of adoption order

20. (1) The adopter shall be responsible to give protection, maintenance, education, welfare and any other responsibility as though the adopted child was a child born to the adopter in lawful wedlock.

(2) Notwithstanding the adopter's responsibilities under subsection (1), nothing herein shall affect —

- (a) the child's lineage (*nasab*), with his natural father or mother. The child shall not bear the name of his adoptive father to replace the name of his natural father but may change his name to a suitable Muslim name, if necessary;
- (b) the inheritance rights of the child with his natural family; and
- (c) the *wali* for women in marriage.

(3) The adopter shall bear the legal consequences for any wrong doings committed in relation to the welfare of the adopted child.

(4) The adopted child shall be raised according to the religious beliefs, practices, and traditions of the adoptive parents.

#### **Property rights of an adopted child**

21. The adopter may, during his lifetime, transfer his immovable or movable property to the adopted child as *hibah* or by a will not more than one third of his entire property.

#### **Custody and maintenance of an adopted child**

22. Where a divorce has taken place between the adoptive parents, the Court shall determine and make an order on the custody and the maintenance of the adopted child.

#### **Preservation of *mahram***

23. The adopted mother may breastfeed the adopted child who is under the age of two years with five times full for the preservation of *mahram* in accordance with Islamic Law.

### **PART III**

## **REGISTRATION OF ADOPTION**

#### **Registration of adoption and issuance of Certificate of Adoption**

24. (1) The Registrar shall maintain a register, to be called the Registry of Muslim Adoption, in which shall be made such entries as may be directed to be made therein by adoption orders.

(2) The adopter is responsible to register the adoption before the Registrar by submitting the certified copy of the adoption order annexed with schedule as prescribed by the Court and the original birth certificate of the child.

(3) The Registrar shall, upon receiving the certified copy of the adoption order together with the original birth certificate of the child, enter the details into the Registry of Muslim Adoption following the adoption order.

(4) The Registrar shall, upon payment of fee ten ringgit, issue a Certificate of Adoption in replacement of the original birth certificate of the child.

(5) For the purposes of this Part, the Registrar shall upon the prescribed fee be responsible for amending, altering or adding details in the register as ordered by the Court.

### **Extract and replacement of certificate**

**25.** (1) The Registrar may, on the application of the adopter or any person who is eligible to do so, upon payment of fee ten ringgit, issue a copy of the extract or the replacement of the Certificate of Adoption if —

(a) the certificate has been damaged or lost; or

(b) there are any corrections made pursuant to the amended order issued by the Court.

(2) For the purpose of subparagraph (1)(a), it must be supported by a police report and a statutory declaration under Statutory Declarations Act 1960 [Act 783], by the adopter or any person who is eligible to do so.

(3) For the purpose of this section, the original certificate of adoption shall be returned to the Registrar.

### **Cancellation of the Certificate of Adoption**

**26.** (1) If the adoption order has been cancelled by the Court and no further orders are made, the Court shall, make an order to the Registrar to cancel the Certificate of Adoption.

(2) The Registrar shall, upon payment of fee ten ringgit, cancel the certificate and return the original birth certificate in favour of the natural parent or the guardian of the child.

### **Recognition of adoption outside of Sabah**

**27.** An adoption effected abroad or outside Sabah shall, upon application, be recognized by the Court as valid for the purposes of this Enactment, if the adoption was made in accordance with the applicable adoption laws of the place where it was effected, and with due consideration given to the conditions for adoption under section 4 of this Enactment being complied with.

## **PART IV**

### **PENALTY**

#### **Making a false statement in obtaining adoption**

**28.** Any person who makes any false or misleading statements or details in obtaining adoption under this Enactment commits an offence and upon conviction shall be liable to a fine not exceeding four thousand ringgit or to imprisonment for a term not exceeding two years or to both.

**Giving or surrendering the custody of the child or adopted child to a person or institution of another religion**

29. Any natural mother or father or adoptive mother or father who intentionally gives or surrenders the custody of their child or their adopted child to a person or institution of another religion commits an offence and upon conviction shall be liable to a fine not exceeding five thousand ringgit or undergo an alternative punishment as determined by the Court for a term not exceeding three years.

**Giving or receiving or getting in return for adoption**

30. Any person who gives, receives, agrees to receive or makes any payment, reward, remuneration, consolation or gift in return for adoption is committing an offence and upon conviction may be subject to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to whipping not exceeding six strokes or any combination of the said punishments.

**Altering, changing, etc., without lawful authority**

31. Any person who —

- (a) without lawful authority alters or changes or removes any entry or particular or matter in the Registry of Muslim Adoption kept under subsection 24(1),
- (b) alters, changes or removes any particular in a certificate of adoption or destroys or defaces such particular; or
- (c) without reasonable cause, retains or has in his possession, a certificate which is not issued to him by the Registrar under subsection 24(4);

commits an offence and upon conviction shall be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding eighteen months or to both.

**PART V**

**GENERAL**

**Fee**

32. (1) There shall be paid in respect of all causes, matters and proceedings in Court such fees as may be prescribed, which shall be payable in cash, electronically or through digital means.

(2) The Court may, if he deems appropriate, exempt such payment of fee.

### **Computation of age**

**33.** An adoption order can only be issued before the child reach the age of eighteen years of age on the date of the judgement issued.

### **Power to make rules**

**34.** The Committee may make rules, regarding the adoption that shall be published in the *Gazette* 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 procedure relating to the application of adoption;
- (b) the procedure relating to the registration of adoption;
- (c) the fees of causes, matters and proceeding, in Court;
- (d) the form to be used in respect of any act or thing done under or in pursuance of this Enactment; and
- (e) any such other rules in respect of all matters under this Enactment.

### **Penalties for subsidiary legislation**

**35.** The rules made under section 34 or any other subsidiary legislation made under this Enactment may provide for any act or omission in contravention of the rules or other subsidiary legislation to be an offence and may provide for penalties of a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both.

### **Power to amend Schedules**

**36.** The Committee may, after consultation with the Minister in charge with the responsibility for the relevant written laws, by order published in the *Gazette*, amend the First Schedule and the Second Schedule.

### **Committee**

**37.** (1) There shall be established a Committee of Rules for Muslim Adoption consisting of —

- (a) Chief *Syar'ie* Judge who shall be the Chairman;
- (b) State Attorney General or his representatives;
- (c) a representative of Majlis Ugama Islam Negeri Sabah;

(d) a Syariah High Court Judge;

(e) a *Syar'ie* Lawyer; and

(f) two other persons deemed fit by the Chief *Syar'ie* Judge

(2) The members appointed under subparagraphs (1)(c), (d), (e) and (f) shall hold office for a period of two years and eligible for reappointment.

(3) The Registrar of Syariah Court shall be the Secretary of the Committee and shall be responsible to implement the decision of the Committee.

(4) If the Chairman is unable to attend a meeting, the Committee may appoint another person to take his place at that meeting.

(5) The members of the Committee and the Secretary may be paid such allowances for every meeting.

(6) The Committee may determine his own procedure.

#### **Guideline and direction**

**38.** (1) The Chief *Syar'ie* Judge may, for the benefit and more convenient implementation of the provisions of this Enactment, issue any guidelines or directives he considers necessary or expedient and may publish them in the *Gazette*.

(2) The Chief *Syar'ie* Judge may vary, review or revoke any guidelines or directives.

(3) Non-compliance with any guidelines or directives may render a proceeding void unless the Court order otherwise.

#### **Inherent power of the Court**

**39.** Nothing in this Enactment shall be deemed to limit or affect the inherent power of the Court to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court.

#### **Islamic Law**

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

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

**Savings and transitionals**

**41.** (1) If any case or matter is pending before any Court at the commencement of this Enactment, provisions of this Enactment shall applicable in relation to the proceeding of the case or any matter to the extent it does not cause injustice.

(2) All declaration, order, notification, notice, form, authorization, appointment and registration issued or made under any law, guideline or direction of the Court in relation to matters prior to this Enactment shall continue to be in force, to the extent not inconsistent with this Enactment until it is revoked or replaced by declaration, order, notification, notice, form, authorization, appointment and registration issued or made under this Enactment.

FIRST SCHEDULE

[Subsection 2(3)]

ARABIC SCRIPT FOR CERTAIN WORDS AND EXPRESSIONS

<i>darar</i>	ضرر
<i>asobah</i>	عصبية
<i>mahram</i>	محرم
<i>mumayyiz</i>	مميز
<i>hibah</i>	هبة
<i>maslahah</i>	مصلحة
<i>syarak</i>	شرع
<i>nasab</i>	نسب
<i>rabibah</i>	ربيبة
<i>wali</i>	ولي

## SECOND SCHEDULE

[Subsection 4(2)]

### ORDER OF PREFERENCE FOR CUSTODIAN

1. The maternal grandmother, how-high-soever;
2. The father;
3. The paternal grandmother, how-high-soever;
4. The full sister;
5. The uterine sister;
6. The sanguine sister;
7. The full sister's daughter;
8. The uterine sister's daughter;
9. The sanguine sister's daughter;
10. The maternal aunt;
11. The paternal aunt;
12. The male relatives who could be their heirs *asobah* or residuaries.

Certified by me to be a true copy of the Bill passed by the Legislative Assembly on Thursday, the 21<sup>st</sup> day of November, 2024.

Datuk Seri Panglima Haji Kadzim bin Haji M. Yahya  
*Speaker,*  
*State Legislative Assembly.*