

STATE OF SABAH

I assent,

TAN SRI DATUK SERI PANGLIMA HAJI SAKARAN BIN DANDAI,
Yang di-Pertua Negeri.

29TH JUNE, 1995.

No. 3 of 1995

An Enactment to make provisions for the Syariah criminal offences and related matters.

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 Offences Enactment 1995 and applies only to Muslims in the State of Sabah.

(2) This Enactment shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint. [01.01.1996]

Interpretation.

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

“*Ahli Sunnah Waljama’ah*” means the majority of Muslim who adhere to the Qur’an and Sunnah and who holds to -

- (a) *Aqidah and Tauhid of Imam Abu Hassan al-Ash'ari and Imam Mansur al-Maturidi;*
- (b) *Fiqh and Syariah of Mazhab Syafie and also of Mazhab Hanafi, Maliki and Hanbali and other qualified scholars views; and*
- (c) *Tasawwuf of manhaj qualified sufi such as Imam Junaid al-Baghdadi and Imam al-Ghazali;*

"attempt forbidden sexual intercourse" means acts between a male and a female person leading to *zina*;

"Court" means the Syariah Court established under the Syariah Courts Enactment 1992 [En. No. 14 of 1992.];

"*Hudud*" means punishment prescribed by Allah or *Hadith*;

"*Hukum Syarak*" has the same meaning as assigned thereto in the Administration of Islamic Law Enactment 1992 [En. No. 13 of 1992.];

"Judge" means a Syarie Judge appointed under the Syariah Courts Enactment 1992 [En. No. 14 of 1992.];

"*liwat*" means sexual intercourse between a man and a man;

"Majlis" has the same meaning as assigned thereto in the Administration of Islamic Law Enactment 1992 [En. No. 13 of 1992.];

"*muncikari*" means a person who acts as a procurer between a female and a male for the purpose which is contrary to *Hukum Syarak*;

"*muquaddimah zina*" means acts between a man and a woman that would culminate in *zina*;

"*musahaqah*" means sexual intercourse between a woman and a woman;

"*qazaf*" means allegation of *zina* against a person;

"religion of Islam" means religion of Islam *Ahli Sunnah Waljama'ah*;

"*syubhah* intercourse" means sexual intercourse between a male and a female person believing that they are lawful husband and wife which later is proved otherwise under *Hukum Syarak*;

"*takfir*" means to turn a Muslim into a non-believer of Islamic religion;

"*taz'ir*" means an offence not prescribed by *Al-Quran* or *Hadith*;

"*zina*" means forbidden sexual intercourse other than rape and *syubhah* intercourse between a male and a female person who are not husband and wife;

(2) If any question or dispute arises as to the interpretation of the words, expressions and terms relating to *Hukum Syarak*, the Court trying the case shall have jurisdiction to determine the definitions of such words, expressions and terms.

Saving of prerogative.

3. Nothing in this Enactment contained 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 the State of Sabah as declared and set forth in the State Constitution.

PART II
GENERAL EXCEPTIONS

Act done by a person bound, or by mistake of fact believing himself bound, by law.

4. Nothing is an offence which is done by a person who is, or who, by reason of a mistake of fact and not by reason of a mistake of law, in good faith believes himself to be, bound by law to do it.

ILLUSTRATION

A., an officer of a Court, being ordered by that Court to arrest Y., and, after due enquiry, believing Z. to be Y., arrests Z. A. has committed no offence.

Act of Judge when acting judicially.

5. Nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law.

Act done pursuant to the judgment or order of a Court.

6. Nothing which is done in pursuance of, or which is warranted by the judgment or order of a Court, if done whilst such judgment or order remains in force, is an offence, notwithstanding the Court may have no jurisdiction to pass such judgment or order provided the person doing the act in good faith believes that the Court had such jurisdiction.

Act done justified by law or by mistake of fact believing himself justified by law.

7. Nothing is an offence which is done by any person who is justified by law, or who, by reason of a mistake of fact and not by reason of a mistake of law, in good faith believes himself to be justified by law, in doing it.

Accident in the doing of a lawful act.

8. Nothing is an offence which is done by accident or misfortune and without any criminal intention or knowledge, in the doing of a lawful act in a lawful manner by lawful means, and with proper care and caution.

9. (*There is no s. 9*).

Act of child who has not attained puberty.

10. Nothing is an offence which is done by a child who has not attained puberty.

Explanation – A person under twelve years of age shall be presumed as not having attained puberty.

Act of a person of unsound mind.

11. Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is wrong and contrary to law.

Intoxication when a defence.

12. (1) Save as provided in this section and in section 13, intoxication shall not constitute a defence to any criminal charge.

(2) Intoxication shall be a defence to any criminal charge if by reason thereof the person charged at the time of the act or omission complained of did not know that such act or omission was wrong or did not know what he was doing and the state of intoxication was caused without his consent by the malicious or negligent act of another person.

Effect of defence of intoxication when established.

13. (1) Where defence under subsection (2) of section 12 is established, the accused person shall be acquitted.

(2) For the purposes of this section and the preceding section "intoxication" shall be deemed to include a state produced by narcotics or drugs.

14-16. *(There are no ss.14-16).*

Consent known to be given under fear or misconception and consent of a child or person of unsound mind.

17. A consent is not such a consent as is intended by any section of this Enactment –

- (a) if the consent is given by a person under fear or injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or
- (b) if the consent is given by a person who, from unsoundness of mind, is unable to understand the nature and consequence of that to which he gives his consent; or unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

18-20. *(There are no ss.18-20).*

Act to which a person is compelled by threats.

21. Nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause the apprehension that instant death to the person will otherwise be the consequence: Provided that the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.

Explanation 1 - A person who, of his own accord, or by reason of a threat of being beaten, joins gang-robbers knowing their character, is not entitled to the benefit of this exception on the ground of his having been compelled by his associates to do anything that is an offence by law.

Explanation 2 - A person seized by gang-robbers, and forced by threats of instant death to do a thing which is an offence by law - for example, a smith compelled to take his tools and to force the door of a house for the gang-robbers to enter and plunder it - is entitled to the benefit of this exception.

Act causing slight harm.

22. Nothing is an offence by reason that it causes, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

23-33. (*There are no ss. 23-33*).

PART III
ABETMENT

Abetment of a thing.

34. A person abets the doing of a thing who –

- (i) instigates any person to do that thing; or
- (ii) engages with one or more other person or persons in any conspiracy for the doing of that thing, if any act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or
- (iii) intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1 - A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

ILLUSTRATION

A., a public officer is authorised by a warrant from a Court to apprehend Z. B., knowing that fact and also that C. is not Z., wilfully represents to A. that C. is Z., and thereby intentionally causes A. to apprehend C. Here B. abets by instigation the apprehension of C.

Explanation 2 - Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

Abettor.

35. A person abets an offence who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

Explanation 1 - The abetment of the illegal omission of an act may amount to an offence, although the abettor may not himself be bound to do that act.

Explanation 2 - To constitute the offence of abetment, it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

ILLUSTRATIONS

- (a) A. instigates B. to murder C., B. refuses to do so. A. is guilty of abetting B. to commit murder.
- (b) A. instigates B. to murder D. B., in pursuance of the instigation stabs D. D. recovers from the wound. A. is guilty of instigating B. to commit murder.

Explanation 3 - It is not necessary that the person abetted should be capable in law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

ILLUSTRATIONS

- (a) A., with a guilty intention, abets a child or a lunatic to commit an act which would be an offence if committed by a person capable in law of committing an offence, and having the same intention as A. Here A., whether the act be committed or not, is guilty of abetting an offence.
- (b) A., with the intention of murdering Z., instigates B., a child who has not attained puberty, to do an act which causes Z.'s death. B., in consequence of the abetment, does the act, and thereby causes Z.'s death. Here, though B. was not capable by law of committing an offence, A. is liable to be punished in the same manner as if B. had been capable in law of committing an offence and had committed murder, and he is therefore subject to the punishment of death.
- (c) A. instigates B. to set fire to a dwelling-house. B., in consequence of the unsoundness of his mind, being incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law, sets fire to the house in consequence of A.'s instigation. B. has committed no offence, but A. is guilty of abetting the offence of setting fire to a dwelling-house, and is liable to the punishment provided for that offence.
- (d) A., intending to cause a theft to be committed, instigates B. to take property belonging to Z. out of Z.'s possession. A. induces B. to believe that the property belongs to A. B., takes the property out of Z.'s possession in good faith believing it to be A.'s property. B., acting under this misconception, therefore, does not commit theft. But A. is guilty of abetting theft, and is liable to the same punishment as if B. had committed theft.

Explanation 4 - The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

ILLUSTRATION

A. instigates B. to instigate C, to murder Z. B., accordingly instigates C. to murder Z., and C. commits that offence in consequence of B.'s

instigation. B. is liable to be punished for his offence with the punishment for murder; and as A. instigated B. to commit the offence, A. is also liable to the same punishment.

Explanation 5 - It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed.

ILLUSTRATION

A. concert with B. a plan for poisoning Z. It is agreed that A. shall administer the poison. B. then explains the plan to C., mentioning that a third person is to administer the poison, but without mentioning A.'s name. C. agrees to procure the poison, and procures and delivers it to B. for the purpose of its being used in the manner explained. A. administers the poison; Z. dies in consequence. Here, though A. and C. have not conspired together, yet C. has been engaged in the conspiracy in pursuance of which Z. has been murdered. C. has therefore committed the offence defined in this section, and is liable to the punishment for murder.

Abetment in Sabah of offences outside Sabah.

36. A person abets an offence within the meaning of this Enactment if he abets the commission of any act outside Sabah which would constitute an offence if committed in Sabah.

Punishment of an abetment if the act abetted is committed in consequence, and where no express provision is made for its punishment.

37. Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Enactment for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation - An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

Punishment of abetment if the person abetted does the act with a different intention from that of the abettor.

38. Whoever abets the commission of an offence shall, if the person abetted does the act with a different intention or knowledge from that of the abettor, be punished with the punishment provided for the offence which would have been committed if the act had been done with the intention or knowledge of the abettor and with no other.

Liability of abettor when one act is abetted and a different act is done.

39. When an act is abetted and a different act is done, the abettor is liable for the act done, in the same manner, and to the same extent, as if he had directly abetted it: Provided that the act done was a probable consequence of the abetment, and was committed under the influence of the instigation, or with the aid or in pursuance of the conspiracy which constituted the abetment.

ILLUSTRATIONS

- (a) A. instigates a child to put poison into the food of Z., and gives him poison for that purpose. The child, in consequence of the instigation, by mistake puts the poison into the food of Y., which is by the side of that of Z. Here, if the child was acting under the influence of A.'s instigation, and the act done was under the circumstances a probable consequence of the abetment, A. is liable in the same manner, and to the same extent, as if he had instigated the child to put the poison into the food of Y.
- (b) A. instigates B, to burn Z.'s house. B. sets fire to the house, and at the same time commits theft of property there. A., though guilty of abetting the burning of the house, is not guilty of abetting the theft; for the theft was a distinct act, and not a probable consequence of the burning.

Abettor, when liable to a cumulative punishment for act abetted and for act done.

40. If the act committed is in addition to the act abetted, and constitutes a distinct offence, the abettor is liable to punishment for each of the offences, if the abettor knew the additional act is likely to happen.

ILLUSTRATION

A. instigates B. to resist by force a distress made by a public servant. B., in consequence, resists that distress. In offering the resistance, B. voluntarily causes grievous hurt to the officer executing the distress. As B. has committed both the offence of resisting the distress, and the offence of voluntarily causing grievous hurt, B. is liable to punishment for both these offences; and if A. knew that B. was likely voluntarily to cause grievous hurt in resisting the distress, A. will also be liable to punishment for each of the offences.

Liability of abettor for an offence caused by the act abetted different from that intended by the abettor.

41. When an act is abetted with the intention on the part of the abettor of causing a particular effect, and an act for which the abettor is liable in consequence of the abetment causes a different effect from that intended by the abettor, the abettor is liable for the intended effect caused, in the same manner, and to the same extent, as if he had abetted the act with the intention of causing that effect, provided he knew that the act abetted was likely to cause that effect.

ILLUSTRATION

A. instigates B. to cause grievous hurt to Z. B., in consequence of the instigation, causes grievous hurt to Z. Z. dies in consequence. Here, if A. knew that the grievous hurt abetted was likely to cause death, A. is liable to be punished with the punishment provided for murder.

Abettor present when offence committed.

42. Whenever any person who, if absent, would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence.

43. (*There is no s. 43.*)

Abetment of an offence punishable with imprisonment.

44. Whoever abets an offence punishable with imprisonment shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Enactment for the punishment of such abetment, be punished as *takzir* with imprisonment for

a term which may extend to one-fourth of the longest term provided for that offence, or with such fine as is provided for that offence, or with both; and if the abettor or the person abetted is a public servant, whose duty it is to prevent the commission of such offence, the abettor shall be punished as *takzir* with imprisonment for a term which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

ILLUSTRATIONS

- (a) A. offers a bribe to B., a public servant, as reward for showing A. some favour in the exercise of B.'s official function. B. refuses to accept the bribe. A. is punishable under this section.
- (b) A. instigates B. to give false evidence. Here, if B. does not give false evidence, A. has nevertheless committed the offence defined in this section, and is punishable accordingly.
- (c) A., a police officer, whose duty is to prevent robbery, abets the commission of robbery. Here, though the robbery be not committed, A. is liable to one-half of the longest term of imprisonment provided for that offence, and also to fine.
- (d) B. abets the commission of a robbery by A., a police officer, whose duty is to prevent that offence. Here, though the robbery be not committed, B. is liable to one-half of the longest term of imprisonment provided for the offence of robbery, and also to fine.

Abetting the commission of an offence by the public, or by more than ten persons.

45. Whoever abets the commission of an offence, other than offences of *Hudud* and *Qisas*, committed by the public generally, or by any number or class of persons exceeding ten, shall be punished as *takzir* with imprisonment for a term which may extend to three years, or with fine, or with both.

ILLUSTRATION

A. affixes in a public place a placard, instigating a sect consisting of more than ten members, to meet at a certain time and place for the purpose of attacking the members of an adverse sect while engaged in procession.
A. has committed the offence defined in this section.

A public servant concealing a design to commit an offence which it is his duty to prevent.

46. Whoever, being a public servant, intending to facilitate, or knowing it to be likely that he will thereby facilitate, the commission of an offence other than offences of *Hudud* and *Qisas*, the commission of which it is his duty as such public servant to prevent, voluntarily conceals, by any act or illegal omission, the existence of design to commit such offence, or makes any representation which he knows to be false respecting such design, shall, if the offence be committed, be punished with imprisonment for a term which may extend to one-fourth part of the longest term provided for the offence, or with such fine as is provided for the offence, or with both.

Concealing a design to commit an offence punishable with imprisonment.

47. Whoever, intending to facilitate, or knowing it to be likely that he will thereby facilitate, the commission of an offence punishable with imprisonment, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design, shall, if the offence be committed, be punished with imprisonment for a term which may extend to one-eighth of the longest term provided for the offence, or with such fine as is provided for the offence, or with both.

PART IV
OFFENCES

Failure to perform Friday prayer or prayer five times a day.

48. (1) Any male who has attained puberty and who fails to attend Friday Prayer in the mosque of his *kariah* for three consecutive occasions without *uzur syarie* 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.

(2) Any Muslim who without *uzur syarie* intentionally disregards his obligation to perform prayer five times a day, 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.

Religious teaching without *tauliah*.

49. (1) Whoever, save in his own residence and in the presence only of members of his own household, teaches or professes to teach any doctrine of the Islamic religion without a written permission in that behalf of the Majlis, shall, unless exempted by the Majlis under this Enactment, be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both.

(2) Whoever fails to surrender any written authorisation which has been revoked by the relevant authority 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.

Unlawful *fatwa*.

50. Whoever gives and professes *fatwa* to be followed by the public on any question of Islamic doctrines or *Hukum Syarak*, contrary to any *fatwa* issued by the Mufti and published in the *Gazette*, 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 and the *fatwa* if written shall be forfeited and destroyed as directed by the Court.

Religious publication contrary to *Hukum Syarak*.

51. Whoever prints, publishes or distributes for sale or otherwise, or in any other manner has in his possession any religious publication giving or purporting to give instruction on any matter contrary to *Hukum Syarak* 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 both and all publications including tape recordings and parcels shall be forfeited and destroyed as directed by the Court.

False doctrine.

52. (1) Any person who teaches or expounds in any place, whether private or public, any doctrine or performs any ceremony or act relating to the religion of Islam shall, if such doctrine or ceremony or act is contrary to Islamic Law or any *fatwa* for the time being in force in the State of Sabah, shall be guilty of an offence and shall, on conviction, be liable 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 to any combination thereof.

(2) The Court may order that any document or thing used in the commission of or related to the offence referred to in subsection (1) be forfeited and destroyed, notwithstanding that no person may have been convicted of such offence.

Propagation of religious doctrine, etc.

52A. Any person who propagates religious doctrines or beliefs other than the religious doctrines or beliefs of the religion of Islam among persons professing the Islamic faith shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Deriding verses of *Al-Quran* and *Hadith*.

53. Whoever derides, criticizes or mimics by words or deed or insults or performs an act which causes any verses of the *Quran* or *Hadith* to be put under situation or place which tarnishes the said Holy *Quran* or *Hadith* or word connected to the religion of Islam 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.

Teasing the religion of Islam.

54. Whoever by words or deed teases, mimics or makes fun of the teaching or rites relating to the religion of Islam shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Contempt of religion of Islam.

55. (1) Whoever by words spoken or written or by visible representation or in any other manner which insults or brings into contempt or ridicule the religion of Islam or the tenets of any lawful school or any lawfully appointed religious officer, religious teacher, Imam, any lawfully issued *fatwa* by the Majlis or the Mufti under the provisions of any law or 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.

(2) A Muslim who claims that he is not a Muslim shall be guilty of an offence under subsection (1) and shall, on conviction, be liable to the punishment thereunder provided.

Contempt of religious authority.

56. Whoever denies, goes against, opposes or derides (otherwise than in exercising the right of appeal) the lawful authority of His Majesty the Yang di-Pertuan Agong in his capacity as the Head of religion of Islam, order of the Yang di-Pertua Negeri or of the Majlis, any committee of the Majlis or any officials of any Court, or any other religious official 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.

Intoxicating drinks.

57. (1) Whoever drinks liquor or any intoxicating substance shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or to both.

(2) Whoever makes, sells, presents, exhibits for sale, keeps or buys any liquor or intoxicating substance shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Selling and consuming food in *Ramadan*.

58. (1) Whoever, during the hours of fasting in the month of *Ramadan*, purchases for immediate consumption or sells or offers food or drink to a person professing the Islamic religion for immediate consumption 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 month and for a second or subsequent offence to a fine not exceeding two thousand ringgit or imprisonment for a term not exceeding one year or to both.

(2) Whoever consumes any food or drink or smokes any tobacco during the hours of fasting in the month of *Ramadan* shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five hundred ringgit or imprisonment for a term not exceeding three months and for a second or subsequent offence to a fine not exceeding one thousand ringgit or imprisonment for a term not exceeding six months or to both.

Forbidden food.

59. (1) Whoever consumes any kind of food forbidden by Islamic religion shall be guilty of an offence.

(2) Whoever sells or provides or distributes any kind of forbidden food or meat not in accordance with Islamic religion shall be guilty of an offence.

(3) Whoever displays *halal* sign on forbidden or not *halal* food or drink shall be guilty of an offence.

(4) Whoever does any act which amounts to an offence under subsection (1), (2) or (3) shall, on conviction, be liable to a fine not exceeding five hundred ringgit or to imprisonment for a term not exceeding six months or to both.

(5) Whoever slaughters, in contravention of *Hukum Syarak*, any kind of animal permitted by *Hukum Syarak* 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.

(6) Whoever slaughters *halal* animal for the purpose of sale without a written approval or certification of the Majlis 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.

(7) Whoever abuses or causes to be abused the certification or approval to slaughter *halal* animal 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.

Abuse of *halal* sign.

60. Whoever abuses the *halal* sign or emplaces the *halal* sign on food or drink prohibited by *Hukum Syarak* 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.

False worship.

61. Whoever worships the spirits of any beach, plant, field, grave, forest, mountain or any person, object or thing in any manner whatsoever contrary to *Hukum Syarak* 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 and the Court may order any device, building or structure used for such worship to be destroyed.

Possessing or display of statue of living kind.

62. Whoever makes or sells or purchases or distributes or possesses or displays any statue of a living kind other than toys for female children or any non-Muslim religious insignia shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five hundred ringgit or to imprisonment for a term not exceeding three months or to both.

Attempted *murtad*.

63. (1) Whenever a Muslim person by his word or conduct whatsoever intentionally claims to cease to profess the religion of Islam or declares himself to be non-Muslim, the Court shall, if it is satisfied that such person attempts to change *iktikad* and belief on the Islamic religion either by his word or conduct, order that the person be detained in the Islamic Rehabilitation Centre for a term not exceeding thirty-six months for rehabilitation purposes and such person be asked to repent in accordance with *Hukum Syarak*.

(2) If any person ordered to be detained under subsection (1) –

(a) repents immediately, the Court shall, after confirmation of his repentance, release him; or

(b) repents at anytime while in detention, the Officer In-Charge shall report the matter to the Court and the Court shall make an order for his release after the person is called and his repentance is confirmed.

(3) The Officer In-Charge shall deliver to the Court a weekly progress report relating to the person detained in custody.

(4) The Islamic Rehabilitation Centre shall be declared a detention centre by notification in the *Gazette*.

***Takfir*.**

64. Whoever alleges or imputes by words, either spoken or written, or by sign, or by visible representation, any activity or conduct or by organising, promoting or arranging any activity, or otherwise, in any manner, that any person professing the religion of Islam, or persons

belonging to any group, class or description of persons professing the religion of Islam –

- (i) is or are *kafirs* ; or
- (ii) has or have ceased to profess the religion of Islam; or
- (iii) should not be accepted, or cannot be accepted as professing the religion of Islam; or
- (iv) does not or do not believe, follow, profess or belong to the religion of Islam,

shall be guilty an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both:

Provided that this section shall not apply to –

- (a) anything done by any Court or religious authority established, constituted or appointed by or under any written law and conferred by written law with power to give or issue any *fatwa* or decision on any matter pertaining to the religion of Islam; and
- (b) anything done by any person which is in pursuance of or in accordance with any *fatwa* or decision given or issued by such Court or religious authority, whether or not such *fatwa* or decision is in writing, or if in writing, whether or not published in the *Gazette*.

Bid'ah and furu'.

65. (1) Whoever orally or in writing or by deed wilfully commits *bid'ah* or argues in matters relating to *bid'ah* or argues in matter of *furu'* concerning Islamic piety to the extent of causing an argument or disunity or breach of the peace within the local Muslim community 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.

(2) Whoever abets the commission of an offence under subsection (1) 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.

Slander.

66. Whoever wilfully slanders or professes any false slander 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.

Breach of betrothal.

67. (1) Whoever, being a male or female, breaches betrothal without reasonable cause within the meaning of *Hukum Syarak* shall be guilty of an offence and may be ordered by the Court to pay or replace whatever amount as assessed by the Court, and shall, on conviction, be liable to a fine not exceeding three hundred ringgit.

(2) Whoever abets in the commission of an offence under subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding three hundred ringgit.

To solemnise invalid marriage.

68. (1) Whoever solemnises a marriage ceremony not in compliance with the condition or principle rendering the marriage invalid within *Hukum Syarak* 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.

(2) Whoever abets in the commission of an offence under subsection (1) 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.

(3) The Court may make an order to *faraq* an invalid marriage and, with the consent of both parties, order the marriage to be solemnised.

Marriage during the period of *iddah*.

69. (1) Any woman who, during the period of *iddah*, wilfully marries another man shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding one year or to both.

(2) Whoever wilfully solemnises a marriage, which is an offence under subsection (1), shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Muncikari.

70. Whoever acts as a *muncikari* 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.

Prostituting wife or child.

71. (1) A man who prostitutes his wife or allows her to become a prostitute shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or to both.

(2) Any parent or guardian who prostitutes his child or a child under his guardianship or allows his child under his care to become a prostitute shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Prostituting oneself.

72. Any woman who prostitutes herself shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Cohabitation of husband and wife of different religions.

73. (1) Any man or woman who, after converting to Islamic religion, cohabits with the former wife or husband who is not converted to Islamic religion shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding one year or to both.

(2) Whoever wilfully commits an offence under subsection (1) knowing that it is an offence under Islamic religion shall be deemed to have committed an offence of sexual intercourse out of wedlock.

Concealing pregnancy.

74. Any woman who conceals her pregnancy so as to enable her to marry another man shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Muhallil and Muhallalah.

75. (1) Any male person who marries a '*talaq tiga*' divorcee either with or without consuming the said marriage with the divorcee after marriage for the purpose of making it lawful for the said divorcee to marry her former husband shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding one year or to both.

(2) Any male person who abets the commission of an offence under subsection (1) for the purpose of making it lawful for the husband to marry his former wife shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Intercourse against the order of nature.

76. Whoever has sexual intercourse against the order of nature with any man, woman or animal, shall be liable to *takzir* and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to caning not exceeding six strokes or to any combination of such punishment.

Musahaqah.

77. Any woman who wilfully commits *musahaqah* with another woman 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.

Incest.

78. Whoever commits incest under *Hukum Syarak* shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years.

Pregnancy out of wedlock.

79. (1) Any woman who becomes pregnant or delivers a child out of wedlock 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.

(2) A fully developed child delivered by a woman within six months of her marriage, shall be deemed to have been born out of wedlock for the purpose of this Enactment.

(3) The burden of proving that the woman had sexual intercourse under *syubhat* or in like manner or was married within the period acceptable under *Hukum Syarak* lies on the woman.

Forbidden sexual intercourse.

80. (1) Any male person who commits forbidden sexual intercourse with another female person shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years, or to canning not exceeding six strokes or any combination of such punishments.

(2) Any female person who commits forbidden sexual intercourse with another male person shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to canning not exceeding six strokes or any combination of such punishments.

Taqarrub zina.

81. Whoever attempts to commit any preparatory act to the commission of *zina* with another woman who is not his wife or another man who is not her husband shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Qazaf.

81A. Except in circumstances which require *li'an*, whoever accuses any person of committing *zina* without producing four witnesses or *ikrar* of the accused person in accordance with *Hukum Syarak* shall be guilty of an offence of *qazaf* and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment not exceeding three years or to both.

Liwat.

82. Any male person who wilfully commits an act of *liwat* shall be guilty of an offence and shall, on conviction, be liable to a fine not, exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Indecent acts in public.

83. (1) Whoever in a public place wilfully commits any act or behaves in an indecent manner which is contrary to *Hukum Syarak* 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.

(2) Any male person who in any place is found flirting with any female person other than his wife 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.

(3) Any female person who is found in any place flirting with any male person other than her husband 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.

Khalwat.

84. (1) Any male person who is found living together or cohabiting or confining or hiding in any place with a female person who is not his *mahram* other than his wife which arouses suspicion that they are committing a sinful act shall be guilty of an offence of *khalwat* 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.

(2) Any female person who is found living together or cohabiting or confining or hiding in any place with a male person who is not her *mahram* other than her husband which arouses suspicion that they are committing a sinful act shall be guilty of an offence of *khalwat* 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.

(3) Any male person who is found together with more than one female person who are not his wives nor his *mahram* in a deserted place or inside a room of any building or in an isolated place in a circumstance which gives rise to suspicion that they are committing a sinful act 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.

(4) Any female person who is found together with more than one male person who are not her husbands nor her *mahram* in a deserted place or inside a room of any building or

in an isolated place in a circumstance which gives rise to suspicion that they are committing a sinful act 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.

(5) The Court shall order that any female person found guilty of an offence under this section be committed to a welfare home for a period of three years.

Aborting or killing the unborn child.

85. Whoever wilfully commits an act to intentionally abort or kill an unborn child of a lawful marriage or out of wedlock, except by an action of a Government Medical Officer who deemes it necessary and unavoidable as it endangers the life of the pregnant woman, shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Enticing other person's wife.

86. Whoever entices or causes other person's wife to abscond her matrimonial home determined by the husband 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 and the Court shall order the said wife to return to her husband.

Abducting a female child.

87. Whoever abducts or influences or persuades a female child to run away from the custody of her parents or guardian 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.

Maiden escaping from custody.

88. A maiden who, without reasonable cause under *Hukum Syarak*, escapes from the custody of her parents or guardian or person who has her care shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five hundred ringgit or to imprisonment for a term not exceeding three months or to both.

To encourage sin.

89. Whoever promotes, coaxes or persuades any person to commit any sinful act shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both.

Gambling.

90. (1) Whoever indulges in any kind of gambling including betting shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding one year or to both.

(2) Whoever operates a gambling shop or gambling place or the like shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding one year or to both.

(3) Whoever abets the commission of an offence under subsection (1) or (2) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Beauty contest.

91. (1) Whoever, except children under the age of twelve, involves oneself in any beauty contest or modelling or the like 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 three months or to both.

(2) Whoever promotes or abets an offence under subsection (1) 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 three months or to both.

Male posing as woman or vice versa.

92. Any male person who, in any public place, wears a woman's attire and poses as a woman or vice versa 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.

Unlawful occupation, etc. of Majlis land.

93. Whoever, without lawful authority –

- (a) occupies, or erects any building on any Majlis land; or
- (b) clears, ploughs, digs, encloses or cultivates on any such land or part thereof; or
- (c) cuts or removes any timber or produce on or from such land,

shall be guilty of an offence, and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Unlawful use of air space above the Majlis land.

94. Whoever without lawful authority, uses or occupies the air space above Majlis land by erecting, maintaining or occupying a roof, canopy, bridge or any other structure 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 six months or to both.

Erecting a mosque, *surau* or religious school without a permit from the Majlis.

95. (1) Whoever, without the permission of the Majlis, erects a mosque or *surau* or religious school or the like or makes use of, as or for the purpose of a mosque or *surau* or religious school, any existing building shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding one year or to both.

(2) The Court may order that the usage of any building which contravenes the provision of subsection (1) be terminated and that the building be demolished.

(3) For the purpose of sections 93, 94 and this section, Majlis land means land registered or vested in the name of the Majlis.

To tarnish or damage mosque or *surau*.

96. (1) Whoever, without the permission in writing of the Majlis, damages, demolishes, alters or removes any mosque or *surau* shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding four thousand ringgit or to imprisonment for a term not exceeding two years or to both.

(2) Whoever, without the permission in writing of the Majlis, sticks any advertisement, bill, notice, banner, flag or poster, or writes, marks, paints or smudges by any means on any part of the mosque or *surau* or its vicinity, shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or to both.

(3) Whoever, without the permission in writing of the Majlis, takes or steals any belongings of the mosque or *surau* shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Sermon not prepared or approved by Majlis.

97. Whoever delivers any Friday sermon which was not prepared or approved by the Majlis 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.

Dealing with corpse.

98. (1) Whoever wilfully deals with any corpse whether to wash or to *kafan* or to pray for or to bury it in contravention of *Hukum Syarak* shall be guilty of an offence.

(2) Whoever wilfully buries a Muslim corpse in a non-Muslim cemetery shall be guilty of an offence.

(3) The Court shall order the corpse to be excavated, removed and be dealt with in accordance to Islamic custom.

(4) Whoever commits an offence under subsection (1) or (2) shall, on conviction, be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Unlawful extraction or removal of rock material.

99. (1) Whoever, without lawful authority, extracts, removes or transports, or permits the extraction, removal or transportation of rock material from any Majlis land shall be guilty

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

(2) Whoever has in his custody or possession, or under his control, any rock material otherwise than in the form in which it constitutes a natural part of the land on which it is found, shall be presumed to have extracted, removed or transported, or permitted the extraction, removal or transportation of rock material without lawful authority.

(3) Any person convicted of any offence under this section may be ordered to pay the Majlis, in addition to the fine imposed on the conviction, compensation equal to the value of the rock material in question and of any timber felled or damaged in the course of extraction of the rock material.

(4) For the purpose of subsection (3), the value of any rock material or timber shall, in the absence of evidence to the contrary, be taken as such amount as the Government Land or Forest Officer may certify, and any sum ordered to be paid by virtue of that subsection shall be recoverable as if it were a fine imposed on the conviction.

(5) For the purpose of this section, Majlis land shall have same meaning assigned to it under section 95(3).

Molesting.

100. Any male person who molests a female person or vice versa with an action which may lower her or his modesty 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.

Giving false evidence.

101. Whoever gives false evidence or falsifies any statement either orally or in writing which relates to the Syariah Courts Enactment 1992 [*En. No. 14/1992.*], the Administration of Islamic Law Enactment 1992 [*En. No. 13/1992.*] and any other written law relating to *Hukum Syarak* 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.

Attempts and abetments.

102. Whoever attempts to commit or abets the commission of any offence against this Enactment shall be punished, unless otherwise provided, with the same punishment as if he had committed the said offence.

Taz'ir.

103. Without prejudice to the provisions of any other written law, the Court may impose the punishment for *taz'ir* on any person who commits an offence under *Hukum Syarak* not specially provided for in this Enactment and, on conviction, such person shall be liable to a fine not exceeding five hundred ringgit or to imprisonment for a term not exceeding six months or to both.

Contempt of Court order.

104. Whoever disobeys, opposes, disputes, disgraces, humiliates or refuses to comply any order of Court 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.

PART V
REPEAL

Repeal.

105. On commencement of this Enactment, Part X of the Administration of Muslim Law Enactment 1977 [*En. No. 15 of 1977.*] is hereby repealed and shall cease to have effect in the State of Sabah.

CERTIFIED by me to be a true copy of the Bill passed by the Legislative Assembly on Tuesday, the 16th May, 1995.

DATUK HJ. HASSAN ALBAN HJ. SANDUKONG,
Speaker,
State Legislative Assembly.