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A BILL
SYARIAH CRIMINAL CODE (II) (1993) 2015

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A BILL

intituled

An Enactment to make provisions for syariah hudud criminal offence, qisas and ta'zir and matters related thereto.

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

PRELIMINARY

1. Short title and commencement.

(1) This Enactment may be cited as the Syariah Criminal Code (II) (1993) 2015 and shall come into operation on a date to be appointed by His Royal Highness the Sultan by notification in the Gazette

(2) Different dates may be appointed under subsection (1) for the commencement of the different provisions of this Code.

2. Application.

This Code shall apply to every Muslim who is *mukalaf* for any offence under this Code committed by him in the State of Kelantan.

3. Interpretation.

In this code unless the context otherwise requires-

‘child’ includes grandchild and descendent underneath or next

“arsy” means a sum of money or property or any part of a diyat to be paid to the victim as prescribed in Schedule II, III, and IV as compensation for the injury (jurh) caused to the victim;

Baitulmal” means Baitulmal established under section 41 of Majlis Agama Islam and Adat Istiadat Melayu Kelantan Enactment 1994 [En. No. 4/94];

“Administration Enactment” means the Syariah Courts Administration Enactment 1982 [En. No. 3/1982];

“Judge” means a judge appointed under Part VI;

“diyat” means a certain amount of money or property that the amount or value equal to the current price of gold weighing 4450 grams or at the rate prescribed by His Royal Highness the Sultan from time to time;

“hukum syarak’ means in Shafi sect or according to any one of the Hanafi, Maliki, or Hanbali

“Jamaah Ulama” means Jamaah Ulama established under section 33 of the Majlis Agama Islam and Adat Istiadat Melayu Kelantan Enactment 1994;

“Court” means the Special Syariah Trial Court and Special Syariah Court of Appeal established under Part VI;

“Council” means Council of the Islam and Malay Custom, Kelantan established under subsection 5 (1) of the Council of the Islam and Malay Custom, Kelantan Enactment 1994;

“Mohsan” and “ghairu mohsan’ have the same meaning as defined in section 12(2)(a) and (b);

“mukalaf ” means a person who has attained 18 years of age and of sound mind;

“nisab” means a sum of money equivalent to the current price of gold weighing 4.45 gram or a sum to be determined by His Royal Highness the Sultan from time to time in accordance with hukum syarak;

“Imprisonment” have the same meaning as provided under section 2 of Prison Act 1995 [Act 537];

“qisas” means equal retaliation punishment or equation for the offence of causing death or bodily injury to any person;

“State Judicial Commission” means the State Judicial Commission established by the State Government;

“wali” means a relative of the victim who is entitled to remit the offence committed by the offender on the victim.

(2) To avoid doubt about the identity of words and expressions used in this Code which are listed in Schedule I, reference may be made to the Arabic script of the said words and phrases as shown against them in the said Schedule.

(3) All words, expressions, interpretations and phrases used in this code but not defined herein, shall be deemed to have the meaning given to them in the Interpretation Acts 1948 and 1967 [Act 388] if not contrary to hukum syarak.

(4) Unless the context otherwise requires any reference in this Kanun in respect of any part or section or subsection or Schedule is a reference to a particular part or section or subsection or a specific schedule in this Kanun.

4. Category of offence

(1) Offences under this Code are divided into three categories as follows:

(a) hudud offenses, are offences specified in section 5, the punishments of which are called hudud punishments and ordained by al-Quran al-Karim or al-Sunnah;

(b) qisas offences, are offences causing death or bodily injury to a person, the punishments of which are called qisas punishments and ordained by al-Quran al-Karim or al-Sunnah; and

(c) ta'zir offences, are offences other than hudud or qisas offences, the punishments of which are called ta'zir and determined by the Legislature of the State under this Code or otherwise and imposed at the discretion of the Court.

(2) Notwithstanding subsection (1), if hudud or qisas offences cannot be punished with hudud or qisas punishments because they do not meet the conditions required for the punishments as prescribed under this Code or in accordance with hukum syarak, then the offences shall become a ta'zir offences and be punished accordingly.

PART I HUDUD OFFENCES

5. Types of hudud offences

Hudud offences are as follows:

- (a) sariqah ;
- (b) hirabah;
- (c) adultery including sodomy;
- (d) qazaf ;
- (e) syurb ; and
- (f) irtidad or riddah

6 Sariqah.

Any person secretly moving a movable property out of lawful custody or possession of the owner without his consent, the act of which is committed with the intention to deprive him of the property from his custody or possession is said to commit Sariqah

7. Punishment for committing sariqah.

Any person who commits sariqah, except in the circumstances set out in section 8, shall be punished with the following hudud punishments:

- (a) for a first offence with amputation of his right hand;
- (b) for a second offence with amputation of his left foot; and
- (c) for third and subsequent offences with which imprisonment for such term as in the opinion of the Court deemed appropriate of not more than fifteen years, to make the offender realize and regret.

8. A circumstances where sariqah hudud punishment shall not be imposed.

Hudud punishment for sariqah offences shall not be imposed in the following circumstances:

- (a) when the value of the stolen property is less than the nisab;
- (b) when the owner of the stolen property has not taken sufficient precaution to guard it from being stolen, given the condition of the property and where it is stored or abandoned;
- (c) if the offender has not yet received the full possession of stolen property, even though its owner no longer has custody or possession of the property;
- (d) if the stolen property is of the type that is not worth of value and can be found in abundance all over the place or of the type that is perishable;
- (e) when the stolen property does not have any value in accordance with hukum syarak;
- (f) when a theft was committed by the creditor on the property of the debtor who refused to pay the debt, provided that the value of the stolen property does not exceed the amount of debt or the value of the stolen property exceed the amount of the debt but not exceeding the nisab;
- (g) when the offence is committed in extreme conditions, including war, famine, disease and natural disasters and the like;
- (h) when the offence occurred within the family, such as a wife stealing from her husband and vice versa or a child stealing from his father and vice versa;
- (i) when the offence is committed by a group of people where the proportion of every one of them after dividing the stolen property or the proceeds thereof is less than the nisab;
- (j) when the offender returns the stolen property before the execution of hudud ;
- (k) when the owner of the stolen property denies that his property had been stolen, even if the offender has made a confession to stealing it;
- (l) when the offender has made an objections against the witnesses that can be accepted by hukum syarak;
- (m) when the offender legally owns the stolen property after the theft and before the punishment is carried out;
- (n) when the execution of amputating hand harms or threatens the life of offender;
- (o) when the offender's left hand is not functioning, maimed or truncated;
- (p) when the offender stole a property or items belonging to the baitulmal ; or
- (q) when the stolen property or circumstances in which the offence is committed in accordance with hukum syarak and there is no hudud punishment that can be imposed on him.

9. Hirabah.

A person or a group of persons confiscate the property of another with violence or wrongful restrain or making threat is said to commit hirabah.

10 Hirabah sentence.

Any person who commits hirabah shall be punished with following hudud punishments:

- (a) death and thereafter crucified, if the victim of the offence is killed and his property or the property of others under his custody is taken;
- (b) death only, if the victim of the offence is killed but no property has been taken;
- (c) amputation of right hand and left foot, if only a property is taken without causing death or injury to victim; but if the property is taken and an injury is caused to the victim, then the diyat or arsy shall be paid in addition to amputating hand and foot

where the total diyat or arsy shall be subject to what is reasonable having regard to the nature and circumstances of the injuries caused as specified in Schedule II, III, IV; and
(d) imprisonment for a period deemed appropriate by the Court, not exceeding five years to make the offender realize and regret, if only a threat is uttered to take any property or no injury caused.

11. A circumstances where amputating hand and foot in hirabah offences shall not be imposed.

- (1) The punishment of cutting of hand and foot shall not be imposed in cases of punishments that will not be imposed for sariqah provided by section 8, whichever appropriate.
- (2) The hudud punishment of hirabah shall not be imposed in when the offender voluntarily submit himself before the legal process is being commenced provided that the offender declares his repentance before a Judge or syariah and surrender the seized property to the authority or the owner from whom the property is robbed.

12. Adultery.

- (1) Except in the case of wati' syubhah as specified in subsection (3), whoever has a sexual intercourse between a man or a woman whom are not her or his legally spouse is committing adultery.
- (2) For the purposes of subsection (1):
 - (a) where the offender is already lawfully married and have enjoyed sexual intercourse in the marriage, then offender is named *mohsan* ; and
 - (b) where the offender is unmarried or married but has yet to experience a sexual intercourse in marriage then the offender is named *ghairu mohsan*.
- (3) *Wati' syubhah* is a sexual intercourse committed by a man with a woman who is not his wife and the intercourse is done:
 - (a) in dubious circumstances in which he thought that the woman he had the sexual intercourse was his wife, when in fact the woman was not his wife; or
 - (b) in dubious circumstances in which he thought that his marriage to the woman with whom he had the sexual was valid according to hukum syarak, when in fact the marriage was invalid.

13. Punishment for adultery.

- (1) If the offender who commits adultery is a mohsan , the offender shall be punished by stoning, which is stoned until death with a medium size stones. (2) If the offender who commits adultery is a ghairu mohsan, the offender shall be punished with whipping of one hundred lashes and in addition shall be liable to imprisonment for one year.

14. Sodomy.

A man who having carnal intercourse with another man and another man or a man who having an intercourse with woman by anus is committing sodomy.

15. Punishment for sodomy.

- (1) Subject to subsection (2), any person who commits the offence of sodomy shall be punished with the same punishment as prescribed for adultery. (2) A husband who commits the offence of sodomy against his wife shall be punished with ta'zir punishment. (2) A husband who commits the offence of sodomy against his wife shall be punished with ta'zir punishment.

16. Proof of sodomy.

Sodomy offences shall be proved by the manner required to prove adultery.

17. Qazaf.

- (1) A person is committing qazaf if he—
- (a) makes an accusation of adultery or sodomy, which is not substantiated by four witnesses, against an aqil baligh muslim and who is known as chaste of the behavior of adultery or sodomy; or
 - (b) subject to subsection (2), who expressly or impliedly makes a statement that a particular person has committed adultery or sodomy or expressly or impliedly alleged that a particular person is not a father or a child to another particular person.
- (2) A statement under paragraph 1(b) is regarded as qazaf unless it is proven by four male witnesses, and if the statement cannot be proved then the person making the allegation shall be guilty of qazaf offence; but if it has been proved, then the person against whom the statement is made is guilty of adultery or sodomy.
- (3) A statement under paragraph 1(b) is deemed not proven, if one or more of the four witnesses withdraw or refuse to testify or if the evidence is inconsistent with the statement; and in that case any witness who commit any of the acts mentioned above shall be deemed to have committed a qazaf offence and shall be punishable with hudud punishment.
- (4) Any person who claims and witnesses who testify in good faith, either with syahadah or bayyinah before the Court, to prove the offence of adultery or sodomy but the evidence does not meet the requirements of hukum syarak for the accused to be imposed with hudud punishment, then the claimant and the witnesses shall not be guilty of qazaf offence.

18. Punishment for qazaf.

- (1) Any person who commits a qazaf offence shall be punished with whipping of eighty lashes and his testimony shall not be accepted by the Court until he repented of his wrongdoings.
- (2) Hudud punishment for qazaf shall not apply in the following circumstances:
- (a) when a person has committed qazaf against any of his descendants;
 - (b) when the complainant withdraws the allegation of qazaf;
 - (c) when the complainant pardons the person who commits qazaf before the execution.

19. Al-li'an.

- (1) Al-li'an is an accusation of adultery by oath made by a husband against his wife, while his wife by an oath rejected the accusation, and both the accusation and rejection are made before a judge by uttering the words as specified under subsection (2), (3), (4), (5) and (6) as the case may be.
- (2) A husband who had made the accusation should repeat four times in a row following utterance:
“Allah is my witness that I speak the truth that I accuse my wife has committed adultery”.
- (3) At the end of the four times he repeats the words contained in subsection (2), he shall make the fifth utterance by saying
“The curse of Allah shall fall on me if I have lied.”
- (4) To reject the accusation, then his wife shall also repeat four times in a row following pronouncement:
“Allah is my witness that my husband had lied in making the adultery accusation against me.”
- (5) At the end of the fourth times she repeats the words specified in subsection (4), she shall make the fifth utterance by saying
“The wrath of Allah shall fall on me if my husband has spoken the truth.”
- (6) If the wife has given birth or is pregnant, considered as the result of zina as accused by her husband, the husband shall deny being the father of the child who has been given birth or is still being conceived by adding to the pronouncement under subsection (2) that must be repeated four times a syllable, pronouncing the following:
“The child/what is being conceived by my wife is not from me.”

20. Refusal to do li'an.

A husband who accuses his wife of adultery and he or his wife refused to resort to li'an after being ordered by the Court to do so, then—

- (a) he husband shall be punished with hudud punishment for committing qazaf; or
- (b) the wife shall on conviction of offence be punished with hudud punishment for committing the offence of adultery.

21. Consequence of al-li'an.

Where a married couple resort to al-li'an to settle an accusation of adultery between them neither the husband shall be guilty of qazaf, nor the wife of adultery, and both of them shall be free from punishment for such offence; but the marriage shall be dissolved forthwith and the Judge shall make an order accordingly; and the couple shall forever not be capable of marrying each other again and if they thereafter having a sexual intercourse such act is prohibited and the intercourse is considered as an adultery.

22. Syurb.

Whoever drinking liquor or any intoxicating drinks whether he is intoxicated or not, irrespective of the quantity he consumed, is committing a syurb offence and upon conviction shall be punished with whipping of not more than eighty lashes and not less than forty lashes.

23. Irtidad or riddah.

- (1) Whoever voluntarily, deliberately and aware of making an act or uttered a word affects or against against the aqidah (belief) in Islamic religion is committing irtidad. Provided that such act is done or such word is uttered intentionally, voluntarily and knowingly without any compulsion by anyone or by circumstances.

(2) For the purpose of subsection (1) the acts or the words which affect the ‘aqidah (belief) are those which concern or deal with the fundamental aspects of Islamic religion which are deemed to have been known and believed by every Muslim as part of his general knowledge for being a Muslim, such as matter pertaining to Rukun Islam, Rukun Iman and matters of halal (the allowable or the lawful) or haram (the prohibited or the unlawful).

(3) Whoever is found guilty of committing the offence of irtidad shall, before a sentence is passed on him, be required by the court to be imprisoned within such period deemed suitable by the Court for the purpose of repentance.

(4) Where he is reluctant but there is still hope for his repentance then the Court shall consider for continuance until no hope of repentance then the court shall pronounce the hudud sentence on him and order the forfeiture of his property irrespective of whether such property was acquired before or after the commission of the offence to be held for the Baitulmal :

Provided that when he repents whether the repentance is done before the death sentence is pronounced or after such pronouncement but before the sentence is carried out, he shall be free from the hudud sentence and his property ordered to be forfeited shall be returned to him.

PART II QISAS

24. Qisas and diyat.

The punishment of qisas and diyat shall be imposed to offences of homicide and causing bodily injuries.

25. Type of homicide.

Homicide shall be divided into three categories—

- (a) qatl al-‘amd ;
- (b) qatl syibhi al-‘amd ; and
- (c) qatl al-khata’.

26. Qatl al-‘amd.

(1) Any person who causes the death of a person by doing an act with the intention of causing death or bodily injury which in the ordinary course of nature is likely or sufficient to cause death; or doing an act knowingly that his act is so imminently dangerous that it strongly in probability to cause death, is committing qatl al-‘amd.

(2) Any person who by doing an act with the intention or knowingly that the act is likely to cause death, unintentionally causes the death of any person or have no knowledge that it can cause a death, is also committing qatl-al-‘amd.

27. Punishment for qatl-al-‘amd.

(1) Except as provided in subsection (2), any person who commits qatl-al-‘amd shall be punished with death as qisas punishment.

(2) The punishment of qisas in subsection (1) shall not be imposed:

- (a) the offence is not proved by the evidence required under Part III; or
- (b) notwithstanding such proof, the wali had pardoned

28. Pardon.

A *wali* may at any time before the execution of the punishment of death as the qisas punishment, pardon the offender either with or without a diyat; and if the pardon is with a diyat, this shall be paid either in a lump sum or by installment within a period of three years from the date of final judgement; and in the meantime the offender dies the diyat shall be recoverable from his estate. In case of no estate available the diyat is borne by Baitulmal.

29. Substitute to qisas punishment.

When the punishment of death as qisas punishment is not imposed, the offender shall be liable to the ta'zir punishment of imprisonment for life or having regards to the circumstances of the case to such term of imprisonment as in the opinion of the Court would lead the offender to repentance or with such compensation fixed by the court.

30. Qatl syibhi al-'amd.

Any person who with the intention of causing injury to the body or mind of any person causes the death of that person or any other person by doing an act with or without an act with or without a weapon which in the ordinary cause of nature is not likely to cause death is said to commit qatl-syibhi-al-'amd.

31. Punishment for qatl syibhi-al-'amd.

Any person who commits qatl syibhi-al'am d shall pay diyat to the victim's wali and in addition thereto shall be punished with the ta'zir of imprisonment for a term not exceeding fourteen years that would lead the offender to repentance.

32. Qatl al-khata'.

Any person without an intention of causing death or injury causes the death of a person by doing an act which is not anticipated to cause the death of such person or any person or by doing an unlawful act which later becomes the cause for the death of such person is said to commit qatl-al-khata'

33. Punishment for qatl-al-khata'.

Any person who commits qatl-al-khata shall pay diyat to the victim's wali and in addition thereto may be liable to the ta'zir ta'zir of imprisonment for a term not exceeding ten years that would lead the offender to repentance.

34. Causing bodily injury.

Any person who causes harm, pain or disease, infirmity or injury to a person or impairs or causes the loss of function of any organ of the body of any person or part thereof without causing his death is committing an offence of causing bodily injury.

35. Punishment for causing bodily injury.

(1) Any person who causes bodily injury to a person shall be punished with the qisas punishment, that is with similar bodily injury as that which he has inflicted upon his victim and where qisas punishment cannot be imposed or executed because the conditions required by the Syariah law are not fulfilled, the offender shall pay *arsy* to his victim and may be liable to ta'zir punishment of imprisonment.

(2) The amount of arsy payable and the term of imprisonment to be imposed shall be as provided by Schedule II and Schedule III or hukum syarak and shall vary according to the nature and gravity of the injuries caused to the victim, and the circumstances in which the offence is committed.

36. Types of injuries.

For the purpose of awarding punishment, bodily injuries shall be classified as follows:

- (a) itlaf al-udhw (causing dismemberment of any organ of the body or injury to a part of or organ of the body);

- (b) itlaf solahiyyatu al-udhw (causing destruction or permanent impairment of the function, use of an organ of the body, or permanently disfiguring such organ);
- (c) syajjah (causing injury on the head or face which injury does not amount to itlaf-al-udhw or itlaf-solahiyyatu-al-udhw);
- (d) jurh (causing injury on any part of the body save the head and the face which injury leaves a marks or wound whether temporary or permanent); and
- (e) all other bodily injury.

37. A circumstances where qisas punishment shall not be imposed.

Qisas punishment shall not be imposed in the following cases:

- (a) where the offender who has committed the qisas offence is dead;
- (b) where the limb or the organ for which qisas punishment is to be applied is already non-functional or incapacitated;
- (c) where pardon is given by the victim or his wali; or
- (d) where the settlement sulh or agreement between the victim and the offender has been made.

38. Consequence when qisas punishment is not imposed.

When qisas punishment is not imposed:

- (a) the term of imprisonment as ta'zir punishment for causing itlaf-al-udhw and itlafsolahiyyatu-al-udhw is ten years; and the arsy payable for causing the injury shall be specified in Schedule II;
- (b) the term of imprisonment as ta'zir punishment and the arsy payable for causing syajjah shall be specified in Schedule III;
- (c) the term of imprisonment as ta'zir punishment and the arsy payable for causing jurh shall be specified in Schedule IV.

**PART III
EVIDENCE**

39. Proving an offence.

- (1) This Part shall apply for offences under this Code.
- (2) The provisions under the Evidence Enactment of the Syariah Court 2002 [En. No 9/2002] shall apply to any matter which was not specifically provided in this part.
- (3) All offence under this Code, whether hudud offences or qisas offences or ta'zir offences shall be proved by oral testimonies or by confession made by the accused or syahadah of witness.

40. Number of witnesses.

- (1) The minimum number of witnesses required to prove all offence under this code except for adultery and sodomy shall not less than two witnesses and taking into consideration the requirement of tazkiyyah-al-shuhud.
- (2) The minimum number of witnesses required to prove an offence of adultery and sodomy shall be four with the consideration to the requirement of tazkiyyah-al-shuhud.

41. Qualification to be a witness.

- (1) Each witness must be an adult male Muslim who is aqil baligh and just.
- (2) A person shall be considered as just if he does what is required of him by Islam and avoids committing great sins and does not continuously commit lesser sins and protecting al-muruah that is a sense of honour.
- (3) A person shall be deemed to be just, until the contrary is proved.

42. Nature of testimony.

(1) To prove the charge against the accused and render him liable to hudud or qisas punishment the evidence given shall be one of absolute certainty and free from any ambiguity or doubt.

(2) Each witness shall state clearly that he has actually seen the act complained of and in the case of adultery the four witnesses shall state that they have actually seen the act of penetration of the male sexual part into the female sexual part and further they shall neither be contradiction nor inconsistency among the witness in such testimony.

43. Withdrawal of testimony.

To make the accused liable to *hudud* punishment each witness shall maintain his testimony against the accused not only during the trial and thereafter but also during the execution of the punishment because such testimony is withdrawn before the execution of the punishment the accused shall cease to be liable to the *hudud* punishment, and if it is withdrawn at the time when the accused is undergoing the punishment, the punishment shall forthwith cease.

44. Confession.

(1) The best evidence to convict the accused and make him liable to *hudud* punishment is his own confession.

(2) The confession must be made voluntarily and without any force before a Judge and shall afterwards be repeated before the trial Judge during the course of the trial, and if the trial is one of adultery the confession shall be repeated four times before the Judge during the course of the trial: Provided that both the making and the repetition of the confession must be without any threat, promise or inducement and must clearly prove in detail that the accused has actually committed the offence with which he is charged and that he understands that he will be punished for making such confession.

(3) The confession shall only be admissible against the accused that makes it, and cannot be used against any other person; and to be valid the confession must not be retracted confession.

PART IV

IMPLEMENTATION OF THE PUNISHMENT

48. *Hudud* punishment not to be varied.

The hudud punishment imposed under this Code shall not be suspended, substituted for any other punishment, reduced or pardoned or otherwise varied or altered.

49. *Hudud* punishment not to be varied.

Every hudud punishment, a death sentence imposed as qisas or ta'zir punishment under this Code shall be referred by the Special Syariah Trial Court which has passed the sentence to the Special Syariah Court of Appeal for confirmation and punishment imposed shall not be carried out before such confirmation is obtained.

50. Medical examination before execution of punishment

A hudud punishment imposed, other than the punishment of death and stoning shall not be executed unless the offender is medically examined by a Muslim medical officer and certified to be fit by that officer.

51. Implementation of several punishments.

If an offender is guilty of several offences, the punishment that shall be carried out on him shall be as follows:

(a) if the punishment are of the same kind and graveness, only one punishment shall be carried out;

(b) if the punishment are of the same kind, but of different graveness, only the severest punishment shall be carried out;

- (c) if the punishment are of different kinds, all shall be carried out; and
- (d) if one of the punishment is death all other punishment shall be set aside.

52. Implementation of amputation of hand and foot.

For the purpose of this Code-

- (a) the punishment of amputation of a hand shall mean an amputation of the hand at the wrist; that is the joint between the palm and the forearm,
- (b) the punishment of amputation of a foot shall mean an amputation of the foot in the middle of the foot in such a way that the heel may be still be usable for walking and standing.

53. Execution of whipping punishment.

The punishment of whipping shall be carried out in accordance with the provisions in sections 125 and section 126 of Syariah Criminal Procedure Enactment 2002 [En. No. 8/2002].

54. Postponement of stoning punishment for a pregnant woman and breast-feeding.

The punishment of stoning shall not be carried out on a pregnant female offender until she has delivered her child and thereafter become clean of blood and is fit again to undergo the punishment; and the event the child is being breast feed by her, the stoning shall not be executed until the completion of two year of breastfeeding unless there is a wet nurse who is willing to breastfeeding the child during the said period.

55. Punishment of whipping on a pregnant woman.

The punishment of whipping shall not executed on a pregnant female offender until she has delivered her child, and thereafter become clean of blood and is fit again to undergo the punishment without hazard.

**PART VI
GENERAL PROVISION**

56. Abetment and conspiracy.

Where an offence is committed as a result of or in furtherance of an abetment, assistance, plot or conspiracy, every person who abets, assists, plots or conspires for the commission of such offence shall be guilty of that offence and shall be liable to be punished with imprisonment as ta'zir punishment for a term not exceeding ten years.

57. Common intention.

When an offence is committed by several persons in furtherance of a common intention of all, each of such person is liable for that offence in the same manner as if the offence was done by him alone and shall be liable to be punished with the ta'zir punishment of imprisonment not exceeding ten years.

58. Sariqah by several offenders.

Where several offenders commit sariqah , each of them shall be punished with the hudud punishment as if each offender has committed it all alone: Provided that the share obtained from the stolen property by each of them when divided equally amongst them, is equal to or exceeds the amount of nisab.

59. Attempt to commit an offence.

Any person who attempts to commit an offence under this Code shall be punished with the ta'zir punishment of imprisonment for a term not exceeding ten years.

60. Proceeding under the Penal Code not to be taken.

Where a person has been tried or faced any proceeding for an offence under this Code, he shall not be tried and no proceeding shall be taken against him under the Penal Code [Act 574] in respect of the same or similar offence provided in the Code.

61. Application of hukum syarak.

(1) Any provision of this Code which is inconsistent with hukum syarak is void to the extent of the inconsistency.

(2) If there is a lacuna or matters not expressly prescribed in this Code, the Court shall apply the hukum syarak.

62. Ruler.

His Royal Highness the Sultan on the advice of the Council may, by notification in the Gazette make rules for carrying out the provisions of this Code and the Court process as well as the appointment of officer and agent of the Court.

**PART VI
COURT**

63. The Special Syariah Trial Court and The Special Syariah Court of Appeal.

(1) There shall be established the Special Syariah Trial Court and the Special Syariah Court of Appeal.

(2) The Special Syariah Trial Court shall have jurisdiction to try offence under this Code.

(3) The Special Syariah Court of Appeal shall have jurisdiction to hear appeals from the decision of the Special Syariah Trial Court.

64. Special Syariah Trial Court and Special Syariah Court of Appeal are additional to Syariah court.

The Courts established under section 63 shall be in addition to the Syariah courts established under the Administration of the Syariah Court Enactment 1982, and the provisions of that Enactment shall in appropriate matters apply to the Courts unless they are in conflict with the provision of this Code or are not intended by the provisions of this Code.

65. Application of Syariah Criminal Procedure Enactment 2002.

The Syariah Criminal Procedure Enactment 2002 [En. No 8/2002] shall apply to all proceedings of the Courts with or without such modifications which the court think fit in the course of justice.

66. The Special Syariah Trial Court.

When the court is sitting to try an offence under this Code the Special Syariah Trial Court shall consist of three Judges, two of whom shall be ulama, and the session shall be presided over by any of the said Judges.

67. The Special Syariah Trial Court of Appeal.

When the court is sitting to hear an appeal from the decision or order of the Special Syariah Trial Court, the Special Syariah Court of Appeal, shall consist of five Judges, three of whom shall be a ulama and the session shall be presided over by any one of the said Judges.

68. Qualification to be Judges.

A person who holds or has held office as a Judge of the High Court of Malaya or Sabah and Sarawak or the Appeal Court of Malaysia or the Federal Court of Malaysia or any person who

has the qualification to be appointed as a Judge of any of these Court may be appointed be a Judges; whilst an ulama who may be appointed a Judge shall be a person who holds or has held office a Qadhi Besar or Mufti Kerajaan or who has the qualification to hold any of those offices and is to known have a deep knowledge of hukum syarak.

69. Appointment of Judges.

(1) These judges shall be appointed by His Royal Highness the Sultan by an Instrument of Appointment under His Sign Manual and Seal after consulting the State Service Commission and the Jamaah Ulama and in addition His Highness may consult any other authority or body or individual whom in His Highness opinion is considered fit and proper and such appointment shall be published in the Gazette.

(2) In making of the appointment under subsection (1) His Royal Highness the Sultan shall signify whether the appointee is the President of the Special Court of Appeal or the Chief Judge of the Special Syariah Trial Court or a Judge of the Special Court of Appeal or a Judge of the Special Syariah Trial Court.

70. Tenure of Office.

(1) Every judge is entitled to hold office until he voluntarily resigns from his office, unless in the meantime he is required to leave the service because of unsound mind or ill health which has to be certified by not less than three medical experts or he is found by an independent Tribunal to have committed an offence which renders him unfit to be judge.

(2) Both the medical experts and members of the independent Tribunal which is consist of a chairperson and not less than 4 members shall be appointed by His Royal Highness the Sultan after consulting such authority, body or individual whom His Highness thinks fit and proper.

71. Salaries, allowance and other privileges of judges.

(1) The salaries, allowance and other privileges of the judges shall be a charge on the Consolidated Fund of the State and shall not be less than those enjoyed by a judge of the High Court of Malaya or Sabah and Sarawak or of the Federal Court of Malaysia.

(2) The Legislative Assembly of the State may make law to fix the salaries, allowance and other privileges of the judges of Courts established by this Code.

**SCHEDULE I
SECTION 3**

GLOSSARY OF ARABIC WORDS

Adil	عادل
Akibat	عاقبة
Aqidah	عقيدة
Aqil Baligh	عاقل بالغ
Aurat	عورة
Arsy	أرش

Al-Quran al-Karim	القرآن الكريم
Al-Li'an	اللعان
Al-Muruah	المروءة
Bayyinah	بينة
Badhia'h	باضعة
Baitulmal	بيت المال
Damiyah	دامية
Diyat	دية
Dubur	دبر
Faraj	فرج
Ghairu Jaifah	غير جانفة
Hadd	حد
Halal	حلال
Haram	حرام

Hashimah	هاشمة
Hirabah	حراية
Hudud	حدود
Hukum syarak	حكم شرع
Iqrar	إقرار
Iman	إيمان
Irtidad	ارتداد

Itlaf-solahiyyatul-al-udhw	اتلاف صلاحية العضو
Itlaf-al-udhw	اتلاف العضو
Jaifah	جانفة
Jenayah	جناية
Jurh	جرح
Khafifah	خفيفة
Lafaz	لفظ
Laknat	لعنة
Liwat	لواط
Mohsan	محسن
Mudhihah	موضحة
Mukalaf	مكلف
Munaqqilah	منقلة

Mutalahimah	متلاحمة
Nisab	نصاب
Qadhi	قاضي
Qarinah	قرينة
Qatl-syibhi-al-amd	قتل شبه العمد
Qatl-al-khata'	قتل الخطاء
Qazaf	قذف
Qisas	قصاص

Rejam	رجم
Riddah	ردة
Sariqah	سرقة
Sulh	صلح
Sunnah	سنة
Syajjah Damighah	شجة دامغة
Syajjah Hashimah	شجة هاشمة
Syajjah Ma'mumah	شجة ماء مومه
Syajjah Mudhihah	شجة موضحة
Syajjah Munaqqilah	شجة منقلة
Syarak	شرع
Syarat	شرط
Syahadah	شهادة
Syariah	شرعية
Syurb	شرب
Taubat	توبة
Ta'zir	تعزير
Tazkiyyah-al-shuhud	تزكية الشهود
Wali	ولي
Wati' Syubhah	وطيء شبيهة
Zina	زنا

SCHEDULE II
(Section 38(a))

The amount of arsy payable for causing itlaf al-udhw and itlaf-solahiyatu-al-udhw shall be as follows:

No	Type of injuries	Amount of Diyat
1.	Loss of single organ, such as nose or tongue	A diyat
2.	Loss of organ which is in pairs such as hands, feet, eye, lips, breast and ears	Adiyat if a pair is injured, but ½ of a diyat if only one is injured.
3.	Loss of organ which is in fours such as eyelashes or eyelids	1/4 of a diyat if only one is injured, ½ of a diyat if two are injured, ¾ of a diyat if three are injured, and a diyat if all four are injured
4.	A finger of a hand or a foot	1/10 of a diyat
5.	A joint of a finger	1/30 of a diyat
6.	A joint of a thumbs	1/20 of a diyat
7.	A tooth other than milk tooth	1/20 of a diyat
8.	Twenty teeth	A diyat
9.	A milk tooth	1/50 of a diyat
10.	Uprooting all the hairs of the head, beard, moustaches, eyebrows, eyelash or any other part of the body	A diyat

SCHEDULE III
(Section 38(b))

The amount of arsy and the term of imprisonment for causing syajjah (injuries to the head or face)

No	Type of injuries	Amount of Arsy	Term of imprisonment
1.	Syajjah Khafifah (injury which exposes no bone)	1/40 of a diyat	Not exceeding two years
2.	Syajjah mudhihah (injury which exposes a bone without causing fracture)	1/20 of a diyat	Not exceeding ten years
3.	Syajjah hashimah (injury which involves a fracture of a bone without dislocation)	1/10 of a diyat	Not exceeding ten years
4.	Syajjah munaqqilah (injury which involves a fracture and a dislocation of bone)	1/4 of a diyat	Not exceeding ten years
5.	Syajjah ma'mumah (injury which involves fracture of the skull but wound just touches the brain membranes without tearing it)	1/3 of a diyat	Not exceeding ten years
6.	Syajjah damighah (injury which involves a fracture of the skull, and the wound tears the brain membrane)	1/2 of a diyat	Not exceeding fourteen years

SCHEDULE IV
(Section 38(c))

The amount of arsy and the term of imprisonment for causing jurh (injuries to parts of the body other than the head or face which leave marks of the wounds)

No	Type of injuries	Amount of Arsy	Term of imprisonment
1.	Jaifah (wound extending to body cavity of the trunk)	1/3 of a diyat	Not exceeding Ten years
2.	Ghairu jaifah (wound other than jaifah) these are:-		
	(a) damiyah (tear of the skin and bleeding)	As determined by the Court	Not exceeding Three years
	(b) badhia'h (wound which exposed no bone)	As determined by the Court	Not exceeding Three years
	(c) mutalahimah (laceration of the flesh)	As determined by the Court	Not exceeding Three years
	(d) mudhihah (wound exposing bone)	As determined by the Court	Not exceeding Five years
	(e) hashimah (fracture without dislocation)	As determined by the Court	Not exceeding Five years
	(f) munaqqilah (fracture with dislocation)	As determined by the Court	Not exceeding Seven years

EXPLANATORY STATEMENT

This Bill seeks to make provisions for syariah hudud criminal offence, qisas and ta'zir and matters related thereto.

PRELIMINARY

2. Preliminary Part of this Bill contains the preliminary matters.
3. Clause 1 contains the short title of the proposed Code and empowers the His Royal Highness the Sultan to appoint the commencement of the proposed Code.
4. Clause 2 contains the provision relating to the application of the proposed Code.
5. Clause 3 contain the definition of certain words used in the proposed Code.
6. Clause 4 deals with the division of offences under the Code into hudud, qisas and ta'zir offences.

PART I

7. Part I contains the provision on hudud offences.
8. Clause 5 deals with the types of hudud offences.
9. Clause 6, 7 and 8 deal with the offence of sariqah, the punishment therefor and the exception to *sariqah hudud* punishments.
10. Clause 9, 10 and 11 deals with the offence of hirabah, the punishment therefor and the exception to *hirabah hudud* punishments.
11. Clause 12 and 13 deal with the offence of adultery and the punishment therefor.
12. Clause 14, 15 and 16 deal with offence of sodomy and the punishment therefor.
13. Clause 17 and 18 deal with offence of qazaf, the punishment therefor and the proof.
14. Clause 19, 20 and 21 deal with al-li'an and the consequences therefor.
15. Clause 22 deal with offence of syurb and the punishment therefor.
16. Clause 23 deal with offence of *irtidad* or riddah and the punishment therefor.

PART II

17. Part II contains the provision on qisas.
18. Clause 24 seeks to provide for the application of *qisas* and *diyat* in cases of homicide and bodily injuries.
19. Clause 25 deals with the type of homicide.
20. Clause 26 and 27 deals with the offence of *qatl al-'amd* and the punishment therefor.
21. Clause 28 seeks to make provision for pardon for the punishment of qisas.
22. Clause 29 seeks to provide for the punishment of *ta'zir* as an alternative to the punishment of qisas.
23. Clause 30 and 31 deals with the offence of *qatl syibhi al'amd* and the punishment therefor.
24. Clause 32 and 33 deals with *qatl al-khata'* and the punishment therefor.
25. Clause 34 and 35 deals with offence of causing injury and the punishment therefor.
26. Clause 36 seeks to classify the types of injuries for the purpose of awarding punishment.
27. Clause 37 seeks to provide for cases when *qisas* punishment shall not be imposed.
28. Clause 38 deals with consequences where *qisas* punishments are not imposed.

PART III

29. Part III contains the provision on the evidence.
30. Clause 39 seeks to make provision on how to prove the offences under this Code.
31. Clause 40 deals with the number of witnesses required to prove offences under this Code.
32. Clause 41 deals with the qualification to be a witness.
33. Clause 42 and 43 deals with the testimony.
34. Clause 44 and 45 deals with confession.
35. Clause 46 deals with the circumstantial evidence.
36. Clause 47 seeks to make provision for *ta'zir* as an alternative punishment to hudud where the evidence do not fulfill the conditions required to prove a hudud offence.

PART IV

37. Part IV contains the provision on the implementation of punishment.
38. Clause 48 seeks to provide that hudud punishment shall not be varied.
39. Clause 49 deals with confirmation of hudud punishment and death sentences by the Special Syariah Court of Appeal before execution.
40. Clause 50 deals with medical examination before execution of punishment
41. Clause 51 seeks to make provision on the implementation of several punishments.
42. Clause 52 deals with the punishment of amputation of hand and foot.
43. Clause 53 deals with implementation of punishment of whipping.
44. Clause 54 seeks to provide for postponement of stoning punishment on a pregnant woman and breast-feeding.
45. Clause 55 deals with the punishment of whipping on a pregnant woman.

PART V

46. Part V contains the provision on general provisions.
47. Clause 56 and 57 deals with the abetment and conspiracy.
48. Clause 58 deals with the commission of sariqah by several offenders.
49. Clause 59 deals with attempt to commit an offence.
50. Clause 60 deals with the circumstances in which proceeding under Penal Code shall not be taken.
51. Clause 61 seeks to provide that offences under this Code shall be interpreted according to Syariah law.

52. Clause 62 seeks to empower His Royal Highness the Sultan on the advice of the Council to make rules on the provision of this proposed Code, the ruling of Court and also the appointments of officers and agent of the court.

PART VI

53. Part VI contains the provision relating to Court.

54. *Clause 63 ,64, 65, 66, 67, 68, 69, 70 and 71* deals with the Special Syariah Trial Court, Special Syariah Court of Appeal, appointment of judges and other matters relating thereto.

FINANCIAL IMPLICATION

This Bill will involve the Government in extra financial expenditure the amount of which cannot at present be ascertained.

8 February 2015

[PU.KN.1/G/40]

SHAHIDANI BIN ABD AZIZ

State Legal Adviser Kelantan