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SYARIAH CIVIL PROCEDURE ORDINANCE, 2001

SYARIAH CIVIL PROCEDURE (DECLARATION OF ISLAMIC RELIGIOUS STATUS)
RULES, 2018

(Made under section 247(1)(a))

In exercise of the powers conferred under section 247(1)(a) of the Syariah Civil Procedure Ordinance, 2001 [*Cap. 44*], the Syariah Court Rules Committee has made the following Rules:

Short title

1. This Rules may be cited as the **Syariah Civil Procedure (Declaration of Islamic Religious Status) Rules, 2018**.

Interpretation

2. In these Rules, unless the context otherwise requires—

“*Jawatankuasa Akidah*” means the committee established by the Majlis Islam Sarawak under section 76, Majlis Islam Sarawak Ordinance, 2001 [*Cap. 41*];

“Court” means the Syariah High Court established under subsection 3(2), Syariah Courts Ordinance, 2001 [*Cap. 42*];

“Ordinance” means Syariah Civil Procedure Ordinance, 2001 [*Cap. 44*];

“Plaintiff” means the party who commences an action;

“Defendant” means the Director of Islamic Religious Department of Sarawak as the Registrar of the Muslim Converts appointed under section 70 of the Majlis Islam Sarawak Ordinance, 2001 [*Cap. 41*], or any person allowed by the Courts;

“*Peguam Syarie*” shall have the same meaning assigned to that expression under the Ordinance;

“Registrar” shall have the same meaning assigned to that expression under the Ordinance;

“Hearing” means any proceedings in open Court or in chambers.

Application

3.—(1) These Rules shall apply to—

(a) a Plaintiff who was born and is residing in the State of Sarawak. However, this provision is not applicable to a person who has converted to Islam outside Sarawak; or

(b) a person who has converted to the religion of Islam in the State of Sarawak and registered with the Registrar of the Muslim Converts appointed under section 70 of the Majlis Islam Sarawak Ordinance, 2001 [*Cap. 41*].

(2) For the purpose of Rule 3(1)(a), “residing” means permanently living or ordinarily residing in the State of Sarawak for at least six (6) consecutive *qamariah* months at the time the action is filed.

Mode of commencement of proceedings

4.—(1) Civil Proceeding for a declaration of Islamic religious status under these Rules shall be commenced by summons.

(2) Every summons shall comply with the procedures provided under the Ordinance.

Jurisdiction of the Court

5. The Syariah High Court shall have the exclusive jurisdiction to hear the action for a declaration of Islamic religious status.

Peguam Syarie

6. The Plaintiff may appoint a *Peguam Syarie* to represent him in a proceeding for a declaration of Islamic religious status.

Filing and Service

7. Every summons shall be—

(i) filed in the Syariah High Court; and

- (ii) served to the Defendant or any other person directed by the Court.

Mention and Hearing

8.—(1) During the mention of the case, the Court may consider the application of the Defendant for the Court to advise the Plaintiff to repent. If the Court is satisfied that the Plaintiff has repented in accordance with Islamic law, the Court shall record the repentance of the Plaintiff, and make an order as it deems fit.

(2) If the Plaintiff refuses to repent, the Defendant may either verbally or in writing, apply to the Court for the Plaintiff to be referred to the *Jawatankuasa Akidah* to undergo the counseling process or any other process as prescribed by the *Jawatankuasa Akidah* and the Court may allow the said application and adjourn the hearing of the summons for a period of 180 days.

(3) If the counseling process or any other process prescribed by the *Jawatankuasa Akidah* under subrule (2) has not been completed within the stipulated period, the Defendant may apply to the Court for an extension of time of 90 days or a maximum of 180 days to complete the said process.

(4) The *Jawatankuasa Akidah* shall prepare a report to be submitted to the Court after each period of the counseling process or any other process prescribed by the *Jawatankuasa Akidah* under subrule (2) and (3) is completed and the copy of the report shall be given to the Plaintiff and the Defendant respectively.

(5) If the Plaintiff repented after being referred to the *Jawatankuasa Akidah*, the Court shall record the repentance of the Plaintiff, and make an order as it deems fit.

(6) Upon the completion of the counseling process or any other process prescribed by the *Jawatankuasa Akidah* under these Rules and if the Plaintiff still refuses to repent, the Court shall fix a trial date.

Trial

9. Every trial under these Rules shall be conducted in accordance with the Ordinance.

Judgment and Order

10. Every judgment and order under these Rules shall be made in accordance with the Ordinance.

Appeal

11. Any party who is not satisfied with the judgment and order of the Court may file an appeal against such judgment and order in accordance with Part XVII of the Ordinance.

Miscellaneous

12. Before the Court makes a declaration on the religious status of the Plaintiff, the Court may consider and ensure that any action or application on the following matters involving the Plaintiff, if any, is settled:

- (i) dissolution of marriage;
- (ii) distribution of matrimonial property;
- (iii) *wali's* right;
- (iv) inheritance;
- (v) guardianship; and
- (vi) any other rights under Islamic law.

Y.A.A. TUAN HAJI AWANG SUHAILI BIN LEDI
*Chief Syariah Judge,
Sarawak Syariah Judiciary Department*

Y.A. TUAN ABDUL KARIM BIN HAJI MOHD NULI
*Chief Registrar
Sarawak Syariah Judiciary Department*

Y.A. TUAN ROSIDI BIN MASLI
Syariah High Court Judge

TUAN HISYAMUDIN BIN ROSLAN
Representative of the State Attorney-General's Chambers

TUAN HAJI HAZIMIN SHAKIR BIN SAID
Representative of the Majlis Islam Sarawak

TUAN MAHIDEN BIN HAJI SAH
Chief Syarie Prosecutor

PUAN HARIZAN BINTI HAMZAH
Representative of Peguam Syarie

ORDINAN TATACARA MAL SYARIAH, 2001

KAEDAH-KAEDAH TATACARA MAL (PENGISYTIHARAN STATUS AGAMA ISLAM),
2018

(Dibuat di bawah seksyen 247(1)(a))

Pada menjalankan kuasa yang diberikan di bawah seksyen 247(1)(a) Ordinan Tatacara Mal Syariah, 2001 [*Bab. 44*], Jawatankuasa Kaedah-Kaedah Mahkamah Syariah membuat kaedah-kaedah yang berikut:

Tajuk ringkas

1. Kaedah-kaedah ini bolehlah dinamakan sebagai **Kaedah-Kaedah Tatacara Mal (Pengisytiharan Status Agama Islam), 2018**.

Tafsiran

2. Dalam Kaedah-kaedah ini, melainkan jika konteksnya menghendaki makna yang lain—

“Jawatankuasa Akidah” ertinya Jawatankuasa yang ditubuhkan oleh Majlis Islam Sarawak di bawah seksyen 76, Ordinan Majlis Islam Sarawak, 2001 [*Bab. 41*];

“Mahkamah” ertinya Mahkamah Tinggi Syariah yang ditubuhkan di bawah subseksyen 3(2) Ordinan Mahkamah-Mahkamah Syariah, 2001 [*Bab. 42*];

“Ordinan” ertinya Ordinan Tatacara Mal Syariah, 2001 [*Bab. 44*];

“Plaintif” ertinya pihak yang memulakan sesuatu tindakan;

“Defendan” ertinya Pengarah Jabatan Agama Islam Sarawak selaku Pendaftar Pemeluk Agama Islam yang dilantik dibawah seksyen 70 Majlis Islam Sarawak Ordinan, 2001 [*Bab. 41*], atau mana-mana pihak yang dibenarkan oleh Mahkamah;

“Peguam Syarie” ertinya seperti mana tafsiran di bawah seksyen 3 Ordinan;

“Pendaftar” ertinya seperti mana tafsiran di bawah seksyen 3 Ordinan;

“Pendengaran” ertinya apa-apa prosiding dalam Mahkamah terbuka atau dalam Kamar.

Pemakaian

3.—(1) Kaedah-Kaedah ini hendaklah terpakai bagi—

(a) Plaintiff yang dilahirkan dan bermastautin di dalam Negeri Sarawak. Walau bagaimanapun, peruntukan ini tidak terpakai bagi seseorang yang memeluk Islam di luar Sarawak; atau

(b) seseorang yang telah memeluk Islam di dalam Negeri Sarawak dan telah berdaftar dengan Pendaftar Pemeluk Agama Islam yang dilantik di bawah seksyen 70 Ordinan Majlis Islam Sarawak, 2001 [*Bab. 41*].

(2) Bagi maksud kaedah 3(1)(a), “bermastautin” ertinya telah tinggal dalam Negeri Sarawak sekurang-kurangnya enam (6) bulan qamariah berturut-turut semasa tuntutan difailkan.

Cara memulakan prosiding

4.—(1) Prosiding mal bagi pengisytiharan status agama di bawah kaedah-kaedah ini hendaklah dimulakan dengan saman.

(2) Tiap-tiap saman hendaklah mematuhi tatacara yang diperuntukkan di bawah Ordinan.

Bidangkuasa Mahkamah

5. Mahkamah yang berbidangkuasa eksklusif untuk mendengar tuntutan pengisytiharan status agama Islam adalah Mahkamah Tinggi Syariah.

Peguam Syarie

6. Pihak-pihak kepada prosiding boleh melantik Peguam Syarie untuk mewakilinya dalam prosiding pengisytiharan status agama Islam.

Pemfailan dan Penyampaian

7. Saman hendaklah—

(i) difailkan di Mahkamah Tinggi Syariah; dan

(ii) disampaikan kepada Defendan atau mana-mana orang lain yang diarahkan oleh Mahkamah.

Sebutan dan Pendengaran

8.—(1) Mahkamah, semasa sebutan kes boleh mempertimbangkan permohonan Defendan untuk Mahkamah menasihati Plaintif supaya bertaubat. Jika Mahkamah berpuas hati bahawa Plaintif telah bertaubat mengikut undang-undang Islam, Mahkamah hendaklah merekodkan taubat Plaintif itu, dan membuat perintah yang difikirkan sesuai.

(2) Sekiranya Plaintif enggan bertaubat, Defendan boleh, secara lisan atau bertulis, memohon kepada Mahkamah agar Plaintif dirujuk ke Jawatankuasa Akidah untuk proses runding cara atau apa-apa proses yang ditetapkan oleh Jawatankuasa Akidah dan Mahkamah boleh membenarkan permohonan tersebut dan menangguhkan pendengaran tuntutan itu untuk tempoh 180 hari.

(3) Sekiranya proses runding cara atau apa-apa proses yang ditetapkan oleh Jawatankuasa Akidah dalam subkaedah (2) belum selesai dalam tempoh yang telah ditetapkan, Defendan boleh memohon kepada Mahkamah lanjutan masa selama 90 hari atau maksimum 180 hari untuk menyelesaikan proses tersebut.

(4) Jawatankuasa Akidah hendaklah menyediakan suatu laporan untuk dimajukan ke Mahkamah setelah setiap tempoh runding cara atau apa-apa proses yang ditetapkan oleh Jawatankuasa Akidah dalam subkaedah (2) atau (3) tamat dan salinan laporan hendaklah dibekalkan kepada Plaintif dan Defendan masing-masing.

(5) Sekiranya setelah dirujuk ke Jawatankuasa Akidah, Plaintif bertaubat, Mahkamah hendaklah merekodkan taubat Plaintif itu, dan membuat perintah yang difikirkan sesuai.

(6) Setelah tamat proses rundingcara di bawah kaedah ini dan sekiranya Plaintif masih enggan bertaubat, Mahkamah hendaklah menetapkan tarikh perbicaraan.

Perbicaraan

9. Semua perbicaraan di bawah kaedah-kaedah ini hendaklah dikendalikan berdasarkan kepada Ordinan.

Penghakiman dan Perintah

10. Semua penghakiman dan perintah di bawah kaedah-kaedah ini hendaklah dibuat berdasarkan kepada Ordinan.

Rayuan

11. Mana-mana pihak yang tidak berpuashati terhadap penghakiman dan perintah Mahkamah bolehlah memfailkan rayuan terhadap penghakiman dan perintah itu mengikut Bahagian XVII, Ordinan.

Pelbagai

12. Mahkamah, sebelum mengisytiharkan status agama Plaintif, bolehlah mempertimbang dan memastikan apa-apa permohonan atau tuntutan berhubung perkara-perkara berikut telah diselesaikan, jika ada:

- (i) pembubaran perkahwinan;
- (ii) pembahagian harta sepencarian;
- (iii) hak perwalian;
- (iv) hak pusaka;
- (v) hadhanah; dan
- (vi) hak-hak lain di bawah undang-undang Islam.

Y.A.A. TUAN HAJI AWANG SUHAILI BIN LEDI
*Ketua Hakim Syarie,
Jabatan Kehakiman Syariah Sarawak*

Y.A. TUAN ABDUL KARIM BIN HAJI MOHD NULI
*Ketua Pendaftar
Jabatan Kehakiman Syariah Sarawak*

Y.A. TUAN ROSIDI BIN MASLI
Hakim Mahkamah Tinggi Syariah

TUAN HISYAMUDIN BIN ROSLAN
Wakil Jabatan Peguam Besar Negeri

TUAN HAJI HAZIMIN SHAKIR BIN SAID
Wakil Majlis Islam Sarawak

TUAN MAHIDEN BIN HAJI SAH
Ketua Pendakwa Syarie

PUAN HARIZAN BINTI HAMZAH
Wakil Peguam Syarie

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