



PARLIMEN MALAYSIA



RANG UNDANG-UNDANG

**Kanun Keseksaan dan Kanun Prosedur Jenayah (Pindaan)
1982**

DR.23/1982

Naskhah sahih—Bahasa Inggeris

RANG UNDANG-UNDANG

bernama

Suatu Akta untuk meminda Kanun Keseksaan (N.M.B. Bab 45) dan Kanun Prosedur Jenayah (N.M.B. Bab 6).

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MAKA INILAH DIPERBUAT UNDANG-UNDANG oleh Duli Yang Maha Mulia Seri Paduka Baginda Yang di-Pertuan Agong dengan nasihat dan persetujuan Dewan Negara dan Dewan Rakyat yang bersidang dalam Parlimen, dan dengan kuasa daripadanya, seperti berikut:

1. Akta ini bolehlah dinamakan Akta Kanun Keseksaan dan Kanun Prosedur Jenayah (Pindaan) 1982.

Tajuk ringkas.

2. Seksyen 225 Kanun Keseksaan adalah dipinda dengan—

Pindaan bagi seksyen 225.

(a) memotong perkataan-perkataan “to imprisonment for life, or” dalam paragraf 4; dan

N.M.B. Bab 45.

(b) menggantikan perkataan-perkataan “life or imprisonment for a term not exceeding ten years,” dalam paragraf 5, dengan perkataan-perkataan “a term which may extend to twenty years,”

Seksyen
baru 298A.

3. Kanun Keseksaan adalah dipinda dengan memasukkan di dalam Bab XV seksyen baru 298A yang berikut selepas sahaja seksyen 298 :

"Causing, etc., disharmony, disunity, or feelings of enmity, hatred or ill-will, or prejudicing, etc., the maintenance of harmony or unity, on grounds of religion. 298A. (1) Whoever by words, either spoken or written, or by signs, or by visible representations, or by any act, activity or conduct, or by organising, promoting or arranging, or assisting in organising, promoting or arranging, any activity, or otherwise in any other manner—

- (a) causes, or attempts to cause, or is likely to cause disharmony, disunity, or feelings of enmity, hatred or ill-will; or
- (b) prejudices, or attempts to prejudice, or is likely to prejudice, the maintenance of harmony or unity,

on grounds of religion, between persons or groups of persons professing the same or different religions, shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

(2) Whoever commits an offence specified in subsection (1) in or in the proximity of any place of worship or any assembly engaged in the performance of religious worship or religious ceremony, shall be punished with imprisonment for a term which may extend to five years, or with fine, or with both.

(3) Where any person alleges or imputes in any manner specified in subsection (1)—

(a) that any other person, or any class, group or description of persons, professing any particular religion:

(i) has ceased to profess that religion; or

(ii) should not be accepted, or cannot be accepted, as professing that religion; or

(iii) does not believe, follow, profess, or belong to, that religion; or

(b) that anything lawfully done by any religious official appointed, or by any religious authority established, constituted or appointed, by or under any written law, in the exercise of any power, or in the discharge of any duty, or in the performance of any function, of a religious character, by virtue of being so appointed, established or constituted, is not acceptable to such person, or should not be accepted by any other person or persons, or does not accord with or fulfil the requirements of that religion, or is otherwise wrong or improper,

he shall be presumed to have contravened the provisions of subsection (1) by having acted in a manner likely to cause disharmony, disunity or feelings of enmity, hatred or ill-will, or likely to prejudice the maintenance of harmony or unity, between persons or groups of persons professing the religion referred to in the allegation or imputation.

(4) (a) Where, on any ground of a religious character, any person professing any particular religion uses for burial or cremation of any human corpse a place other than one which is lawfully used for such purpose by persons professing that religion, he shall be presumed to have contravened the provisions of subsection (1) by having acted in a manner likely to cause disharmony, disunity or feelings of enmity, hatred or ill-will, or likely to prejudice the maintenance of harmony or unity, between persons or groups of persons professing that religion.

(b) Where any person, on any ground of a religious character, counsels, advises, instigates, urges, pleads with, or appeals or propagates to, or in any manner or by any means calls upon, whether directly or indirectly, any

other person or persons professing any particular religion—

(i) to use for burial or cremation of any human corpse a place other than one which is lawfully used for such purpose by persons professing that religion; or

(ii) not to use for burial or cremation of any human corpse any place which is lawfully used for such purpose by persons professing that religion; or

(iii) not to use for worship any place which is lawfully used for such purpose by persons professing that religion,

he shall be presumed to have contravened the provisions of subsection (1) by having acted in a manner likely to cause disharmony, disunity or feelings of enmity, hatred or ill-will, or likely to prejudice the maintenance of harmony or unity, between persons or groups of persons professing that religion or different religions.

(5) Where any person who is not a religious official appointed, or a religious authority established, constituted or appointed, by or under any written law purports to exercise any power, or to discharge any duty, or to perform any function, of a religious character, being a power, duty or function which can be lawfully exercised, discharged or performed only by a religious official appointed, or a religious authority established, constituted or appointed, by or under any written law, he shall be presumed to have contravened the provisions of subsection (1) by having acted in a manner likely to cause disharmony, disunity or feelings of enmity, hatred or ill-will, or likely to prejudice the maintenance of harmony or unity, between persons or groups of persons professing the same or different religions.

(6) The foregoing provisions of this section shall not apply to—

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

(7) It shall not be a defence to any charge under this section to assert that what the offender is charged with doing was done in any honest belief in, or in any honest interpretation of, any precept, tenet or teaching of any religion.

(8) If in any proceedings under this section any question arises with regard to the interpretation of any aspect of, or any matter in relation to, any religion, the court shall accept the interpretation given by any religious authority referred to in subsection (6), being a religious authority in respect of that religion.”.

4. Kanun Prosedur Jenayah adalah dipinda dengan—

- (a) memasukkan selepas perkataan-perkataan “section 108A” dalam seksyen 130 perkataan “, 298A”; dan
- (b) memasukkan butir-butir yang berikut di bawah ruangan-ruangan masing-masing dalam Jadual Pertama selepas sahaja seksyen 298 di bawah kepala “CHAPTER XV—OFFENCES RELATING TO RELIGION”;

Pindaan
kepada
Kanun
Prosedur
Jenayah.
N.M.B.
Bab 6.

1	2	3	4	5	6	7
"298A	Causing, etc., disharmony, disunity, or feelings of enmity, hatred or ill-will, or prejudicing, etc., the maintenance of harmony or unity, on grounds of religion	May arrest without warrant	Warrant	Not bailable	Not compoundable	Imprisonment for three years, or with fine, or with both
298A	If committed in or in the proximity of any place of worship or any assembly engaged in the performance of religious worship or religious ceremony	May arrest without warrant	Warrant	Not bailable	Not compoundable	Imprisonment for five years, or with fine, or with both

HURAIAN

Rang Undang-Undang ini bertujuan untuk meminda Kanun Keseksaan dan juga membuat beberapa pindaan yang berbangkit di dalam Kanun Prosedur Jenayah.

2 *Klausula 2* bertujuan untuk meminda Kanun Keseksaan dengan mengelak rujukan-rujukan kepada penjara seumur hidup dalam paragraf 4 dan 5 seksyen 225. Ini adalah perlu kerana di bawah seksyen 3 Criminal Justice Ordinance 1953 apa-apa hukuman penjara seumur hidup adalah dianggap sebagai suatu hukuman selama tempoh dua puluh tahun.

Dengan yang demikian di dalam ungkapan "imprisonment for life, or to imprisonment for a term of ten years or upwards" dalam paragraf 4 seksyen 225 perkataan-perkataan "imprisonment for life" telah menjadi lebih daripada yang diperlu dan yang demikian telah dipotong.

Di dalam paragraf 5 seksyen tersebut ungkapan "imprisonment for life or imprisonment for a term not exceeding ten years" dipinda menjadi "imprisonment for a term which may extend to twenty years" kerana dua puluh tahun adalah tempoh hukuman penjara yang maksimum yang boleh dijatuhkan di bawahnya oleh sebab "imprisonment for life" dianggap sebagai hukuman penjara selama dua puluh tahun.

3. *Klausula 3* bertujuan mengemukakan suatu seksyen 298A yang baru ke dalam Kanun Keseksaan yang menjadikan suatu kesalahan bagi mana-mana orang menyebabkan atau cuba menyebabkan, di atas alasan-alasan ugama, suasana tidak harmoni, perpecahan, atau perasaan permusuhan, benci membenci atau niat jahat antara orang-orang atau kumpulan-kumpulan yang menganut ugama yang sama atau yang berlainan ugama, atau melakukan sesuatu yang berkemungkinan menyebabkan perkara yang sama. Seksyen ini juga bertujuan menjadikan suatu kesalahan bagi mana-mana orang, di atas alasan-alasan ugama, memudaratkan atau cuba memudaratkan atau melakukan sesuatu yang berkemungkinan memudaratkan, pemeliharaan keadaan harmoni atau perpaduan di antara orang-orang atau kumpulan-kumpulan yang menganut ugama yang sama atau yang berlainan ugama.

Penalti yang diperuntukkan oleh seksyen itu ialah hukuman penjara selama tempoh yang boleh sampai tiga tahun, atau denda, atau kedua-duanya. Tetapi, sekiranya kesalahan itu dilakukan dalam atau berhampiran dengan sesuatu tempat ibadat atau sesuatu perhimpunan yang sedang menjalankan kerja ibadat atau upacara ugama, penalti itu dinaikkan ke suatu tempoh penjara yang boleh sampai lima tahun, atau denda atau, kedua-duanya.

Pindaan ini juga bertujuan memperuntukkan anggapan kepada, dan pengecualian daripada, peruntukan-peruntukan seksyen 298A (1) seperti yang dinyatakan di dalam subseksyen (3) hingga (6). Subseksyen (7) menghindarkan pembelaan bahawa apa yang dilakukan oleh yang dituduh adalah dilakukan di atas kepercayaan atau

pentafsiran yang jujur terhadap apa-apa petua, prinsip atau pengajaran sesuatu agama. Subseksyen (8) pula memperuntukkan perkara-perkara berhubung dengan keterangan.

4. *Klausula 4* bertujuan untuk membuat beberapa pindaan kepada Kanun Prosedur Jenayah berbangkit daripada seksyen 298A yang baru di dalam Kanun Keseksaan. Jadual Pertama kepada Kanun Prosedur Jenayah akan dipinda menjadikan kesalahan di bawah seksyen 298A sebagai satu kesalahan yang boleh ditangkap dan tidak boleh dijamin, dan seksyen 130 akan dipinda membuat peruntukan supaya kesalahan ini hanya akan diambil ketahu oleh mahkamah di atas aduan Pendakwa Raya atau mana-mana pegawai yang diberi kuasa olehnya.

IMPLIKASI KEWANGAN

Rang Undang-Undang ini tidak akan melibatkan Kerajaan dalam apa-apa perbelanjaan wang tambahan. [PN. (U²) 1207.]