

**(11) PROCEEDINGS IN CASES OF CERTAIN  
OFFENCES AFFECTING THE  
ADMINISTRATION OF JUSTICE**

CONTENTS

PARA

- [400.540] Procedure as to offences in court  
 [400.541] Record of facts constituting the offence  
 [400.542] Alternative procedure  
 [400.543] Power to remit punishment  
 [400.544] Refusal to give evidence  
 [400.545] Appeal

**[400.540] Procedure as to offences in court** When particular offences<sup>1</sup> are committed in the view or presence of any court<sup>2</sup>, the court may cause the offender to be detained in custody and at any time before the rising of the court on the same day may, if it thinks fit, take cognisance<sup>3</sup> of the offence and sentence the offender to a fine not exceeding RM500 or to imprisonment for a term which may extend to six months or to both<sup>4</sup>.

- 1 See [400.566]-[400.571].
- 2 As to syariah courts see [400.024] and following.
- 3 As to cognisance of offences by a judge see [400.523].
- 4 Syariah Criminal Procedure (Federal Territories) Act 1997 (Act 560) s 173; Syariah Criminal Procedure (State of Malacca) Enactment 2002 (No 9 of 2002) s 173; Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 (No 13 of 2003) s 177; Syariah Criminal Procedure (State of Selangor) Enactment 2003 (No 3 of 2003) s 173.

**[400.541] Record of facts constituting the offence** In specified cases<sup>1</sup>, the court<sup>2</sup> must record the facts constituting the offence, with the statement, if any, made by the offender as well as the finding and sentence<sup>3</sup>. Where there has been an intentional insult or interruption to a religious officer<sup>4</sup> sitting in any stage of a judicial proceeding<sup>5</sup>, the record must show the nature and stage of the judicial proceedings in which the court interrupted or insulted was sitting, and the nature of the interruption or insult<sup>6</sup>.

- 1 Ie the cases under [400.566]-[400.571].
- 2 As to syariah courts see [400.024] and following.
- 3 Syariah Criminal Procedure (Federal Territories) Act 1997 (Act 560) s 174(1); Syariah Criminal Procedure (State of Malacca) Enactment 2002 (No 9 of 2002) s 174(1); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 (No 13

of 2003) s 178(1); Syariah Criminal Procedure (State of Selangor) Enactment 2003 (No 3 of 2003) s 174(1).

- 4 For the meaning of 'religious officer' see [400.567] note 1.
- 5 Ie see the Syariah Criminal Procedure (Federal Territories) Act 1997 s 217; the Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 217; the Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 221; the Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 217.
- 6 Syariah Criminal Procedure (Federal Territories) Act 1997 s 174(2); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 174(2); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 178(2); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 174(2).

**[400.542] Alternative procedure** If the court<sup>1</sup>, in any case, considers that a person accused of any of the specified offences<sup>2</sup>, and committed in its view or presence, may be better dealt with by ordinary process of law, such court, after recording the facts constituting the offence and the statement of the accused, may direct the accused to be prosecuted, and may require security to be given for the appearance of such accused person before a judge<sup>3</sup> or, if sufficient security is not given, may forward such person under custody to another judge for trial<sup>4</sup>.

1 As to syariah courts see [400.024] and following.

2 Ie the offences referred to in [400.566]-[400.571].

3 As to Syariah court judges see [400.038]-[400.046].

4 Syariah Criminal Procedure (Federal Territories) Act 1997 (Act 560) s 175; Syariah Criminal Procedure (State of Malacca) Enactment 2002 (No 9 of 2002) s 175; Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 (No 13 of 2003) s 179; Syariah Criminal Procedure (State of Selangor) Enactment 2003 (No 3 of 2003) s 175.

**[400.543] Power to remit punishment** When the court<sup>1</sup> has under the relevant provision<sup>2</sup> adjudged an offender to punishment for refusing or omitting to do anything which he was lawfully required to do or for any intentional interruption or insult, the court may, in its discretion, discharge the offender or remit the punishment on the offender submitting to the order or requisition of such court or an apology being made to its satisfaction<sup>3</sup>.

1 As to syariah courts see [400.024] and following.

2 As to the relevant provision see [400.540] note 4.

3 Syariah Criminal Procedure (Federal Territories) Act 1997 (Act 560) s 176; Syariah Criminal Procedure (State of Malacca) Enactment 2002 (No 9 of 2002) s 176; Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 (No 13 of 2003) s 180; Syariah Criminal Procedure (State of Selangor) Enactment 2003 (No 3 of 2003) s 176.

**[400.544] Refusal to give evidence** Where a witness before a court<sup>1</sup> refuses to give evidence or answer such questions as are put to him or to produce any document in his possession or power which the court requires him to produce, and does not offer any reasonable excuse for such refusal, the court may, for reasons to be recorded in writing, sentence him to imprisonment for any term not exceeding seven days, unless in the meantime such person consents to give evidence or to be examined and to answer such questions or to produce the document. However if the offender persists in his refusal, he may be dealt with accordingly<sup>2</sup> notwithstanding any sentence he may have undergone under this provision<sup>3</sup>.

- 1 As to syariah courts see [400.024] and following.
- 2 Ie according to the Syariah Criminal Procedure (Federal Territories) Act 1997 (Act 560) s 173 or 175; the Syariah Criminal Procedure (State of Malacca) Enactment 2002 (No 9 of 2002) s 173 or 175; the Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 (No 13 of 2003) s 177 or 179; the Syariah Criminal Procedure (State of Selangor) Enactment 2003 (No 3 of 2003) s 173 or 175. See [400.540] and [400.542].
- 3 Ie under the Syariah Criminal Procedure (Federal Territories) Act 1997 s 177; the Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 177; the Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 181; the Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 177.

**[400.545] Appeal** All sentences passed<sup>1</sup> by the Syariah Subordinate court are appellable to the Syariah High Court and in the case of sentences passed by the Syariah High Court to the Syariah Appeal Court<sup>2</sup>.

- 1 Ie passed under the Syariah Criminal Procedure (Federal Territories) Act 1997 (Act 560) Pt VI Ch 4 (ss 173-179); the Syariah Criminal Procedure (State of Malacca) Enactment 2002 (No 9 of 2002) Pt VI Ch 4 (ss 173-179); the Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 (No 13 of 2003) Pt VI Ch 4 (ss 177-183); the Syariah Criminal Procedure (State of Selangor) Enactment 2003 (No 3 of 2003) Pt VI Ch 4 (ss 173-179).
- 2 Syariah Criminal Procedure (Federal Territories) Act 1997 s 178(1); Syariah Criminal Procedure (State of Malacca) Enactment 2002 (No 9 of 2002) s 178(1); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 (No 13 of 2003) s 182(1); Syariah Criminal Procedure (State of Selangor) Enactment 2003 (No 3 of 2003) s 178(1).

The general provisions relating to appeals to the Syariah High Court, are, so far as they are applicable, apply to appeals under these provisions, and the appellate court may alter or reverse the finding or reduce, alter or reverse the sentence appealed against: see the Syariah Criminal Procedure (Federal Territories) Act 1997 s 178(2); the Syariah Criminal Procedure (State of Malacca) Enactment 2002 (No 9 of 2002) s 178(2); the Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 (No 13 of 2003) s 182(2); the Syariah Criminal Procedure (State of Selangor) Enactment 2003 (No 3 of 2003) s 178(2). See also [400.560]; [400.561].

The general provisions relating to appeals to the Syariah Appeal Court also apply to all proceedings by a judge under the provisions stated in note 1 above:

see the Syariah Criminal Procedure (Federal Territories) Act 1997 s 178(3); the Syariah Criminal Procedure (State of Malacca) Enactment 2002 (No 9 of 2002) s 178(3); the Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 (No 13 of 2003) s 182(3); the Syariah Criminal Procedure (State of Selangor) Enactment 2003 (No 3 of 2003) s 178(3). See also [400.562].

## (12) IRREGULARITIES IN PROCEEDINGS

### CONTENTS

#### PARA

- [400.546] Proceedings in wrong place
- [400.547] Omission to frame charge
- [400.548] Irregularities not to vitiate proceedings

**[400.546] Proceedings in wrong place** Any finding, sentence<sup>1</sup> or order of any court<sup>2</sup> will not be set aside merely on the ground that the trial or other proceedings in the course of which it was arrived at, passed or made, took place in a wrong local area or before a wrong court, unless it appears that such error occasioned a failure of justice<sup>3</sup>.

- 1 As to sentences see [400.550]-[400.555].
- 2 As to syariah courts see [400.024] and following.
- 3 Syariah Criminal Procedure (Federal Territories) Act 1997 (Act 560) s 205; Syariah Criminal Procedure (State of Malacca) Enactment 2002 (No 9 of 2002) s 205; Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 (No 13 of 2003) s 209; Syariah Criminal Procedure (State of Selangor) Enactment 2003 (No 3 of 2003) s 205.

**[400.547] Omission to frame charge** Any finding or sentence<sup>1</sup> pronounced or passed will not be deemed invalid merely on the ground that no charge was framed unless, in the opinion of the appellate court, a failure of justice has been occasioned thereby<sup>2</sup>. If the appellate court thinks that a failure of justice has been occasioned by the omission to frame a charge, the court must order that a new trial be had<sup>3</sup>.

- 1 As to sentences see [400.550]-[400.555].
- 2 Syariah Criminal Procedure (Federal Territories) Act 1997 (Act 560) s 206(1); Syariah Criminal Procedure (State of Malacca) Enactment 2002 (No 9 of 2002) s 206(1); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 (No 13 of 2003) s 210(1); Syariah Criminal Procedure (State of Selangor) Enactment 2003 (No 3 of 2003) s 206(1).

As to charges see [400.513]-[400.517].

- 3 Syariah Criminal Procedure (Federal Territories) Act 1997 s 206(2); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 206(2); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 210(2); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 206(2).

**[400.548] Irregularities not to vitiate proceedings** Subject to the provisions of the Syariah Criminal Procedure (Federal Territories) Act 1997 and the state enactments<sup>1</sup>, any finding, sentence<sup>2</sup> or order passed or made by a court<sup>3</sup> of competent jurisdiction will not be reversed or altered on account:

- (1) of any error, omission or irregularity in the complaint<sup>4</sup>, summons<sup>5</sup>, warrant<sup>6</sup>, charge<sup>7</sup>, judgment or other proceedings before or during the trial under the Act and the state enactments;
  - (2) of the want of any sanction required by law; or
  - (3) of the improper admission or rejection of any evidence,
- unless such error, omission, improper admission or rejection of evidence, irregularity, want of sanction or misdirection has occasioned a failure of justice<sup>8</sup>.

1 Ie the Syariah Criminal Procedure (Federal Territories) Act 1997 (Act 560) Pt VII Ch 8 (ss 205-207); the Syariah Criminal Procedure (State of Malacca) Enactment 2002 (No 9 of 2002) Pt VII Ch 8 (ss 205-207); the Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 (No 13 of 2003) Pt VII Ch 8 (ss 209-211); the Syariah Criminal Procedure (State of Selangor) Enactment 2003 (No 3 of 2003) Pt VII Ch 8 (ss 205-207). See also [400.546]; [400.547].

2 As to sentences see [400.550]-[400.555].

3 As to syariah courts see [400.024] and following.

4 As to complaints see [400.497].

5 As to summonses see [400.510]-[400.512].

6 Eg arrest or search warrants.

7 As to charges see [400.513]-[400.517].

8 Syariah Criminal Procedure (Federal Territories) Act 1997 (Act 560) s 207; Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 207; Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 211; Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 207.

## (13) JUDGMENT

**[400.549] Mode of delivering judgment** Delivering a judgment constitutes the final stage of proceedings. The court will deliver its decision on the matter in dispute and pass appropriate sentences on a person found guilty in respect of an offence.

A case has to be adjudged and decided as soon as all matters involved have been settled and submitted to the court's attention. The judgment must be pronounced in open court<sup>1</sup>, either immediately<sup>2</sup> or

at some subsequent time<sup>3</sup> of which due notice has been given to the parties or their *peguam Syarie*<sup>4</sup>, and the accused will, if in custody, be brought up or, if not in custody, be required to attend to hear judgment delivered<sup>5</sup>. The judgment must be explained to the accused<sup>6</sup> and the original judgment must be entered on, and if written filed with, the record of proceedings<sup>7</sup>. The accused can apply for a copy of the judgment and it must be given to him free of charge<sup>8</sup>.

- 1 This means the public is allowed access. As to syariah courts see [400.024] and following.
- 2 Eg in a simple case where the court is able to easily identify the issues involved.
- 3 In a complicated case where the court needs time before it can deliver its decision.
- 4 As to *peguam Syarie* see [400.052]-[400.057].
- 5 Syariah Criminal Procedure (Federal Territories) Act 1997 (Act 560) s 118; Syariah Criminal Procedure (State of Malacca) Enactment 2002 (No 9 of 2002) s 118; Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 (No 13 of 2003) s 119; Syariah Criminal Procedure (State of Selangor) Enactment 2003 (No 3 of 2003) s 118.
- 6 Syariah Criminal Procedure (Federal Territories) Act 1997 s 119; Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 119; Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 120; Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 119.
- 7 Syariah Criminal Procedure (Federal Territories) Act 1997 s 120; Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 120; Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 121; Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 120.
- 8 Syariah Criminal Procedure (Federal Territories) Act 1997 s 119; Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 119; Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 120; Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 119.

## (14) EXECUTION OF SENTENCES

### CONTENTS

#### PARA

- [400.550] Power of the court to impose sentences
- [400.551] Imprisonment
- [400.552] Fine
- [400.553] Whipping
- [400.554] Sentences imposed on youthful offenders
- [400.555] Sentences imposed on first offenders

**[400.550] Power of the court to impose sentences** The Syariah courts<sup>1</sup> in Malaysia have the power to impose a sentence of

imprisonment<sup>2</sup> up to three years, a fine<sup>3</sup> not exceeding RM 5,000 and whipping<sup>4</sup> of not more than six strokes<sup>5</sup>.

- 1 As to syariah courts see [400.024] and following.
- 2 As to imprisonment see [400.551].
- 3 As to fines see [400.552].
- 4 As to whipping see [400.553].
- 5 See the Syariah Courts (Criminal Jurisdiction) Act 1965 (Act 355) s 2.

**[400.551] Imprisonment** When a person is sentenced to imprisonment, a warrant must be forwarded by the court passing the sentence to the officer in charge of the prison where the person will be confined<sup>1</sup> and the sentence will take effect on the date it was passed unless the court orders otherwise<sup>2</sup>.

- 1 See the Syariah Criminal Procedure (Federal Territories) Act 1997 (Act 560) s 121(a), (b); the Syariah Criminal Procedure (State of Malacca) Enactment 2002 (No 9 of 2002) s 121(a), (b); the Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 (No 13 of 2003) s 125(a), (b); the Syariah Criminal Procedure (State of Selangor) Enactment 2003 (No 3 of 2003) s 121(a), (b).
- 2 Syariah Criminal Procedure (Federal Territories) Act 1997 s 121(d); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 121(d); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 125(d); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 121(d).

**[400.552] Fine** Where a sentence of fine is imposed, the court<sup>1</sup> may allow time for payment of the fine<sup>2</sup>, direct the fine to be paid by instalments<sup>3</sup>, issue a warrant for the levy of the amount by distress and sale of any property belonging to the offender<sup>4</sup>, or direct that in default of payment of the fine, the offender must suffer imprisonment for a certain term<sup>5</sup> which will be terminated whenever the fine is either paid or levied by process of law<sup>6</sup>. If, before the expiration of the time of imprisonment fixed in default of payment of a fine, such a proportion of the fine be paid or levied that the time of imprisonment suffered in default of payment is not less than proportional to the part of the fine still unpaid, the imprisonment will terminate<sup>7</sup>.

The fine or any part of it, which remains unpaid, may be levied at any time within six years after the passing of the sentence, and death of the offender will discharge him from the fine<sup>8</sup>. If the offender is sentenced to a fine only and to imprisonment in default of payment of the fine and the court issues a warrant under the above provision<sup>9</sup>, it may suspend the execution of the sentence of imprisonment and may release the offender on his executing a bond<sup>10</sup>, with sureties as the court thinks fit, conditioned for the offender's appearance before the court within 15 days from the time of the bond being executed; and in the event of the fine not being paid, the court may direct the execution of the sentence of imprisonment at once<sup>11</sup>.

- 1 As to syariah courts see [400.024] and following.
- 2 Syariah Criminal Procedure (Federal Territories) Act 1997 (Act 560) s 122(1)(a)(i); Syariah Criminal Procedure (State of Malacca) Enactment 2002 (No 9 of 2002) s 122(1)(a)(i); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 (No 13 of 2003) s 126(1)(a)(i); Syariah Criminal Procedure (State of Selangor) Enactment 2003 (No 3 of 2003) s 122(1)(a)(i).
- 3 Syariah Criminal Procedure (Federal Territories) Act 1997 s 122(1)(a)(ii); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 122(1)(a)(ii); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 126(1)(a)(ii); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 122(1)(a)(ii).
- 4 Syariah Criminal Procedure (Federal Territories) Act 1997 s 122(1)(a)(iii); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 122(1)(a)(iii); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 126(1)(a)(iii); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 122(1)(a)(iii).
- 5 See the Syariah Criminal Procedure (Federal Territories) Act 1997 s 122(1)(a)(iv); the Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 122(1)(a)(iv); the Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 126(1)(a)(iv); the Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 122(1)(a)(iv). The period that the court can impose imprisonment for default of payment of the fine will be the scale as provided by the statutory provisions: see the Syariah Criminal Procedure (Federal Territories) Act 1997 s 122(1)(b)(i), (ii); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 122(1)(b)(i), (ii); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 126(1)(b)(i), (ii); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 122(1)(b)(i), (ii). As to imprisonment see [400.551].
- 6 See the Syariah Criminal Procedure (Federal Territories) Act 1997 s 121(c); the Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 121(c); the Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 126(c); the Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 121(c).
- 7 Syariah Criminal Procedure (Federal Territories) Act 1997 s 121(d); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 121(d); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 126(d); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 121(d).
- 8 Syariah Criminal Procedure (Federal Territories) Act 1997 s 122(e); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 121(e); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 126(e); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 121(e).
- 9 Ie under the Syariah Criminal Procedure (Federal Territories) Act 1997 s 122; Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 122; Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 126; Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 122.
- 10 As to the meaning of 'bond' see [400.506] note 6.
- 11 Syariah Criminal Procedure (Federal Territories) Act 1997 s 123; Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 123; Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 127; Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 123.

**[400.553] Whipping** The following provisions must be followed when executing the sentence of whipping<sup>1</sup>:



- (1) before execution of the sentence, the offender must be examined by a Government medical officer to certify that the offender is in a fit state of health to undergo the sentence<sup>2</sup>;
- (2) if the offender is pregnant, the execution must be postponed until the end of two months after delivery or miscarriage, as the case may be<sup>3</sup>;
- (3) the sentence must be executed before a Government medical officer in such place as the court<sup>4</sup> may direct or in a place fixed by the Government for the purpose<sup>5</sup>;
- (4) the person appointed to execute the sentence must be an 'adil and mature person<sup>6</sup>;
- (5) the person must use the whipping rod<sup>7</sup> with average force without lifting his hand over his head so that the offender's skin is not cut<sup>8</sup>;
- (6) after inflicting a stroke, he must lift the rod upward and not pull it<sup>9</sup>;
- (7) whipping may be inflicted on all parts of the body except the face, head, stomach, chest or private parts<sup>10</sup>;
- (8) the offender must wear clothes according to *Hukum Syara'*<sup>11</sup>;
- (9) if the offender is a male, the whipping will be inflicted in a standing position, and if a female, in a sitting position<sup>12</sup>;
- (10) if during the execution of the whipping the Government medical officer certifies that the offender can no longer receive the strokes, the whipping must be postponed until the medical officer certifies that the offender is fit to undergo the balance of the sentence<sup>13</sup>.

If the Government medical officer certifies that the offender, due to old age<sup>14</sup>, illness or any other reason is unable to undergo the whipping sentence wholly or partly, the case must be referred to the court which may order the execution of the sentence in a manner as it thinks reasonable<sup>15</sup>. Where the offender is sentenced to whipping only, he will be dealt with as if he is sentenced to imprisonment until the sentence is executed<sup>16</sup>.

When the accused is sentenced to whipping in addition to imprisonment, the whipping will not be inflicted if an appeal is made and until the sentence is confirmed by the appropriate appeal court<sup>17</sup>. The whipping must be inflicted as soon as practicable and in case of an appeal, as soon as practicable after the receipt of the order of the appropriate appeal court confirming the sentence<sup>18</sup>.

1 See the Syariah Criminal Procedure (Federal Territories) Act 1997 (Act 560) s 125(1), (3); the Syariah Criminal Procedure (State of Malacca) Enactment 2002 (No 9 of 2002) s 125(1), (3); the Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 (No 13 of 2003) s 129(1), (3); the Syariah Criminal Procedure (State of Selangor) Enactment 2003 (No 3 of 2003) s 125(1), (3).

2 Syariah Criminal Procedure (Federal Territories) Act 1997 s 125(3)(a); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 125(3)(a); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 129(3)(a); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 125(3)(a).

- 3 Syariah Criminal Procedure (Federal Territories) Act 1997 s 125(3)(b); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 125(3)(b); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 129(3)(b); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 125(3)(b).
- 4 As to Syariah courts see [400.024] and following.
- 5 Syariah Criminal Procedure (Federal Territories) Act 1997 s 125(3)(c); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 125(3)(c); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 129(3)(c); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 125(3)(c).
- 6 Syariah Criminal Procedure (Federal Territories) Act 1997 s 125(3)(d); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 125(3)(d); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 129(3)(d); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 125(3)(d). As to the meaning of 'adil' see [400.593].
- 7 The whipping rod, excluding its holder, must be of the same type and make either from rattan or small branch of a tree without segment or joint and its length not more than 1.22 metres and its thickness not more than 1.25 centimetres: Syariah Criminal Procedure (Federal Territories) Act 1997 s 125(2); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 125(2); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 129(2); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 125(2).
- 8 Syariah Criminal Procedure (Federal Territories) Act 1997 s 125(3)(e); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 125(3)(e); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 129(3)(e); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 125(3)(e).
- 9 Syariah Criminal Procedure (Federal Territories) Act 1997 s 125(3)(f); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 125(3)(f); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 129(3)(f); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 125(3)(f).
- 10 Syariah Criminal Procedure (Federal Territories) Act 1997 s 125(3)(g); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 125(3)(g); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 129(3)(g); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 125(3)(g).
- 11 Syariah Criminal Procedure (Federal Territories) Act 1997 s 125(3)(h); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 125(3)(h); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 129(3)(h); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 125(3)(h). For males it must be clothes that cover the region between the navel and the knee while for females it must be clothes that cover her entire body except her face and the palm of her hands.  
As to the meaning of *Hukum Syara'* see [400.009]. See also [400.197] note 1.
- 12 Syariah Criminal Procedure (Federal Territories) Act 1997 s 125(3)(i); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 125(3)(i); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 129(3)(i); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 125(3)(i).
- 13 Syariah Criminal Procedure (Federal Territories) Act 1997 s 125(3)(j); Syariah Criminal Procedure (State of Malacca) Enactment 2002 s 125(3)(j); Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003 s 129(3)(j); Syariah Criminal Procedure (State of Selangor) Enactment 2003 s 125(3)(j).