

D.R. 21/93

Naskhah Sahih—Bahasa Inggeris

RANG UNDANG-UNDANG

b e r n a m a

Suatu Akta untuk meminda Kanun Keseksaan (N.M.B. Bab 45).

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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 (Pindaan) 1993. Tajuk ringkas
2. Kanun Keseksaan, yang disebut "Kanun" dalam Akta ini, adalah dipinda dengan menggantikan seksyen 24 dengan seksyen yang berikut: Pindaan seksyen 24. N M B. Bab 45

"Dis-
honestly". 24, Whoever does anything with the intention of causing wrongful gain to one person, or wrongful loss to another person irrespective of whether the act causes actual wrongful loss or gain, is said to do that thing "dishonestly".

Explanation—In relation to the offences of criminal misappropriation or criminal breach of trust it is immaterial whether there was an intention to defraud or to deceive any person,'.

Pindaan
seksyen 29

3. Kanun adalah dipinda dengan menggantikan seksyen 29 dengan seksyen yang berikut:

"Docu-
ment"

29. (1) The word "document" means any matter expressed, described, or howsoever represented, upon any substance, material, thing or article, including any matter embodied in a disc, tape, film, sound track or other device whatsoever, by means of—

- (a) letters, figures, marks, symbols, signals, signs, or other forms of expression, description, or representation whatsoever;
- (b) any visual recording (whether of still or moving images);
- (c) any sound recording, or any electronic, magnetic, mechanical or other recording whatsoever and howsoever made, or any sounds, electronic impulses, or other data whatsoever;
- (d) a recording, or transmission, over a distance of any matter by any, or any combination, of the means mentioned in paragraph (a), (b) or (c),

or by more than one of the means mentioned in paragraphs (a), (b), (c) and (d), intended to be used or which may be used for the purpose of expressing, describing, or however representing, that matter.

(2) For the purposes of this section—

- (a) "film" includes a microfilm and any negative;
- (b) "microfilm" means any transparent material bearing a visual image in reduced size either singly or as a series and includes a microfiche;

- (c) "negative" means a transparent negative photograph on any substance or material, and includes any transparent negative photograph made from the original negative photograph.

ILLUSTRATION

A writing is a document.

Words printed, lithographed or photographed are documents.

A map, plan, graph or sketch is a document.

An inscription on wood, metal, stone or any other substance, material or thing is a document.

A drawing, painting, picture or caricature is a document.

A photograph or a negative is a document.

A tape recording of a telephonic communication, including a recording of such communication transmitted over distance, is a document.

A photographic or other visual recording, including a recording of a photographic or other visual transmission over a distance, is a document.

A matter recorded, stored, processed, retrieved or produced by a computer is a document.

Explanation—Whatever is expressed by means of letters, figures, or marks as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures, or marks within the meaning of this section, although the same may not be actually expressed.

ILLUSTRATION

A. writes his name on the back of a bill of exchange payable to his order. The meaning of the endorsement, as explained by mercantile usage, is that the bill is to be paid to the holder. The endorsement is a document, and must be construed in the same manner as if the words "pay to the holder", or words to that effect, has been written over the signature.'

Pindaan
seksyen 43

4. Kanun adalah dipinda dengan menggantikan seksyen 43 dengan seksyen yang berikut:

"Illegal" 43. The word "illegal" or "unlawful" is
"Unlawful" applicable to everything which is an offence,
and or which is prohibited by law, or which
"legally furnishes ground for a civil action.
bound
to do"

And in respect of the word "illegal", a person is said to be "legally bound to do" whatever it is illegal in him to omit.¹.

Seksyen
ham 402A.

5. Kanun adalah dipinda dengan memasukkan selepas sahaja seksyen 402 dan di bawah tajuk "Of Criminal Misappropriation of Property" seksyen yang berikut:

"Definition of "agent", "company", "director", "olteer" 402A. For the purposes of sections 403, 403A, 403B and 403C, 404, 405, 406, 407, 408, 409, 409A, 409B, 415, 416, 417. 418, 419 and 420 of this Chapter, unless the contrary appears from the context:

"agent" includes any corporation or other person acting or having been acting or desirous or intending to act for or on behalf of any company or other person whether as agent, partner, co-owner, clerk, servant, employee, banker, broker, auctioneer, architect, clerk of works, engineer, advocate and solicitor, accountant, auditor, surveyor, buyer, salesman, trustee executor, administrator, liquidator, trustee within the meaning of any Act relating to trusteeship or bankruptcy, receiver, director, manager or other officer of any company, club, partnership or association or in any other capacity either alone or jointly with any other person and whether in his own name or in the name of his principal or not;

"company" means a company incorporated under any relevant law for the time being in force or pursuant to any corresponding previous enactment and includes any statutory corporation;

"director" includes any person occupying the position of director of a company by whatever name called, and includes a person who acts or issues directions or instructions in a manner in which directors of a company are accustomed to issue or act, and includes an alternate or substitute director, notwithstanding any defect in the appointment or qualification of such person;

"officer" in relation to a company includes—

- (a) any director, secretary or employee of the company;
- (b) a receiver and manager of any part of the undertaking of the company appointed under a power contained in any instrument; and
- (c) any liquidator of a company appointed in a voluntary winding up, but does not include—
 - (i) any receiver who is not also a manager;
 - (ii) any receiver and manager appointed by the Court; or
 - (iii) any liquidator appointed by the Court or by the creditors."

6. Seksyen 403 Kanun adalah dipinda—

Pindaan
seksyen 403.

- (a) dengan memasukkan selepas sahaja perkataan "misappropriates" koma;
- (b) dengan menggantikan perkataan-perkataan "any movable" dengan perkataan-perkataan ", or causes any other person to dispose of, any"; dan
- (c) dengan menggantikan perkataan-perkataan "may extend to two years with fine, or with both" dengan perkataan-perkataan "shall not be less than six months and not more than five years and with whipping, and shall also be liable to fine".

Pindaan
seksyen 404.

7. Seksyen 404 Kanun adalah dipinda—

- (a) dengan memasukkan selepas sahaja perkataan "misappropriates" koma;
- (b) dengan memasukkan selepas sahaja perkataan "use" dengan perkataan-perkataan ", or causes any other person to dispose of,";
- (c) dengan menggantikan perkataan-perkataan "may extend to three years" dengan perkataan-perkataan "shall not be less than six months and not more than five years and with whipping, and shall also be liable to fine"; and
- (d) dengan menggantikan perkataan-perkataan "may extend to seven years" dengan perkataan-perkataan "shall not be less than one year and not more than ten years and with whipping, and shall also be liable to fine".

Pindaan
seksyen 405

8. Section 405 Kanun adalah dipinda—

- (a) dengan memasukkan selepas sahaja perkataan-perkataan "over property" yang terdapat di hujung baris kedua perkataan-perkataan "either solely or jointly with any other person";
- (b) dengan memasukkan selepas sahaja perkataan "misappropriates" koma;
- (c) dengan memasukkan selepas sahaja perkataan "use" koma; dan
- (d) dengan memasukkan selepas sahaja Gambaran-gambaran Huraian baru yang berikut:

"Explanation—Upon any prosecution for any offence of criminal breach of trust, an employer who deducts the employee's contribution from the wages payable to the employee for credit to any employee fund, by whatever name called established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law within the meaning, of this section."

9. Seksyen 406 Kanun adalah dipinda dengan menggantikan perkataan-perkataan "may extend to three years, or with fine, or with both" dengan perkataan-perkataan "shall not be less than one year and not more than ten years and with whipping, and shall also be liable to fine".

Pindaan
seksyen 406.

10. Seksyen 407 Kanun adalah dipinda dengan menggantikan perkataan-perkataan "may extend to ten years, and shall also be liable to fine" dengan perkataan-perkataan "shall not be less than one year and not more than ten years and with whipping, and shall also be liable to fine".

Pindaan
seksyen 407

11. Seksyen 408 Kanun adalah dipinda dengan menggantikan perkataan-perkataan "may extend to ten years, and shall also be liable to fine" dengan perkataan-perkataan "shall not be less than one year and not more than ten years and with whipping, and shall also be liable to fine".

Pindaan
seksyen 408.

12. Seksyen 409 Kanun adalah dipinda—

Pindaan
seksyen 409.

- (a) dengan menggantikan perkataan-perkataan "in the way of the business as a banker, merchant, factor, booker, attorney or" perkataan "an"; dan
- (b) dengan menggantikan perkataan-perkataan "may extend to twenty years, and shall also be liable to fine" dengan perkataan-perkataan "shall not be less than two years and not more than twenty years, and with whipping, and shall also be liable to fine".

13. Kanun adalah dipinda dengan memasukkan selepas sahaja seksyen 409, seksyen-seksyen yang berikut:

Seksyen-
seksyen baru
409 a. 409B.

"Delence
not
available. 409A. It is no defence for any offence prescribed in sections 403, 404, 405, 406, 407, 408 and 409 to show that the property was openly appropriated or that the appropriation was duly recorded and entered in the books and accounts of any company or association or body of person whether incorporated or not.

Explanation—The property of a company shall be regarded as belonging to the company notwithstanding that the directors of the said company are, either singly or jointly, entitled to the entire beneficial interest, of the shareholding in the said company.

Pre-
sumption.

409B. (1) Where in any proceeding it is proved—

- (a) for any offence prescribed in sections 403 and 404, that any person had misappropriated any property; or
- (b) for any offence prescribed in sections 405, 406, 407, 408 and 409, that any person entrusted with property or with dominion over property had—
 - (i) misappropriated that property; or
 - (ii) used or disposed of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged or of any legal contract, express or implied which he had made touching the discharge of such trust; or
 - (iii) suffered any person to do any of the acts described in subparagraph (i) or (ii) above,

it shall be presumed that he had acted dishonestly until the contrary is proved.

(2) The presumption under subsection (1) of this section shall apply *mutatis mutandis* to the offences prescribed in sections 109 and 511 of the Code in relation to any of the offences referred to in that section."

14. Kanun adalah dipinda—Pindaan
seksyen 415.

- (a) dengan menggantikan seksyen 415, tidak termasuk Huraian-huraian dan Gambaran-gambaran dengan seksyen yang berikut:

'415. Whoever by deceiving any person, whether or not such deception was the sole or main inducement,—

- (a) fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property; or
- (b) intentionally induces the person so deceived to do or omit to do anything which he would not do or omit to do if he were not so deceived and which act or omission causes or is likely to cause damage or harm to any person in body, mind, reputation, or property,

is said to "cheat".'; dan

- (b) dengan memasukkan selepas sahaja Huraian 2 Huraian yang berikut:

"Explanation 3—Whoever makes any representation through any person acting as an agent, or otherwise, for him, shall be deemed to have made the representation himself."

15. Seksyen 420 Kanun adalah dipinda—Pindaan
seksyen 420.

- (a) dengan memasukkan selepas sahaja perkataan "deceived" perkataan-perkataan ", whether or not the deception practised was the sole or main inducement,"; dan
- (b) dengan menggantikan perkataan-perkataan "may extend to ten years and shall also be liable to fine" dengan perkataan-perkataan "shall not be less than one year and not more than ten years and with whipping, and shall also be liable to fine."

HURAIAN

Rang Undang-Undang ini bertujuan meminda Kanun Keseksaan (N.M.B. Bab 45).

2. *Fasal 2* bertujuan meminda seksyen 24 bagi memperuntukkan bahawa seorang yang membuat sesuatu dengan niat mendapat keuntungan salah atau menyebabkan kerugian salah masih dikatakan membuatnya "dishonestly" suiigguhpun tidak ada keuntungan salah atau kerugian salah yang berlaku.

3. *Fasal 3* bertujuan meminda seksyen 29 bagi memperuntukkan takrif "dokumen" yang selaras dengan pindaan yang dibuat pada takrif perkataan yang sama di dalam Akta Keterangan 1950.

4. *Fasal 4* dan *fasal 5* bertujuan memperuntukkan takrif bagi perkataan-perkataan "unlawful", "agent", "company", "director" dan "officer" dalam konteks beberapa peruntukan dalam Kanun.

5. *Fasal 6* bertujuan meminda skop kesalahan pelepasan harta dalam seksyen 403 bagi mengadakan peruntukan bahawa kesalahan itu dilakukan jika seseorang itu dengan curang menyebabkan seorang lam melupuskan harta kepunyaan orang lain. Pindaan bagi seksyen 403 juga bertujuan menaikkan hukuman bagi kesalahan pelepasan harta.

6. *Fasal 7* bertujuan meminda seksyen 404 bagi menaikkan hukuman kesalahan pelepasan harta bagi harta kepunyaan seorang yang telah meninggal, dan juga membuat pindaan berbangkit dan pindaan kepada seksyen 403.

7. *Fasal 8* bertujuan meminda seksyen 405 bagi mengadakan peruntukan bahawa jika seseorang itu diamanahkan dengan harta bersama seorang yang lain dan dengan curang melesapkan atau menggunakan atau melupuskan harta tersebut tiap-tiap seorang dari mereka melakukan pecah amanah jenayah.

S. *Fasal-fasal 9. It)* dan *II* bertujuan menaikkan hukuman-hukuman bagi seksyen-seksyen 406. 407 dan 408.

9. *Fasal 12* bertujuan meminda seksyen 409 bagi memperuntukkan hukuman bagi kesalahan pecah amanah jenayah yang dilakukan oleh seorang ejen dan juga memperuntukkan hukuman minima bagi kesalahan itu.

10. *Fasal 13* bertujuan memperuntukkan peruntukan-peruntukan seksyen 409A dan 409B baru. Seksyen 409A memperuntukkan bahawa adalah tidak boleh menjadi pembelaan bagi kesalahan pelepasan harta atau pecah amanah jenayah jika ditunjukkan bahawa pelepasan dibuat secara terbuka atau dicatatkan secara terbuka dalam buku-buku atau rekod-rekod. Seksyen 409B

memperuntukkan satu anggapan bahawa jika sekiranya di dalam satu prosiding berkaitan dengan kesalahan pelesapan harta atau pecah amanah jenayah, dibuktikan yang tertuduh telah melesapkan harta, atau menggunakan seorang lain untuk melakukannya, adalah dianggap orang itu telah berlaku dengan curang melainkan ada bukti lain sebaliknya. Anggapan ini juga terpakai bagi kesalahan pensubahatan (abetment) dan pencubaan (attempt) dalam hubungannya dengan kesalahan pelesapan harta atau kesalahan pecah amanah jenayah.

II. *Fasal 14* bertujuan meminda seksyen 415 untuk memperbaiki takrif perkataan "cheating" dengan memperuntukkan bahawa kesalahan "cheating" dilakukan sama ada pedayaan menjadi dorongan utama atau tidak dalam melakukannya.

12. *Fasal 15* bertujuan menaikkan hukuman bagi penipuan.

IMPLIKASI KEWANGAN

Rang Undang-Undang ini tidak akan melibatkan Kerajaan dalam apa-apa perbelanjaan wang tambahan. 1PN. (U) 1723.