

**D.R. 18/2012**

**RANG UNDANG-UNDANG**

*b e r n a m a*

Suatu Akta untuk meminda Kanun Keseksaan.

[ ]

**DIPERBUAT** oleh Parlimen Malaysia seperti yang berikut:

**Tajuk ringkas dan permulaan kuat kuasa**

**1.** (1) Akta ini bolehlah dinamakan Akta Kanun Keseksaan (Pindaan) 2012.

(2) Akta ini mula berkuat kuasa pada tarikh yang ditetapkan oleh Menteri melalui pemberitahuan dalam *Warta*.

**Pindaan seksyen 4**

**2.** Kanun Keseksaan [*Akta 574*], yang disebut “Kanun” dalam Akta ini, dipinda dalam subseksyen 4(1)—

(a) dengan menggantikan perkataan “Chapters VI and VIA” dengan perkataan “Chapters VI, VIA and VIB”; dan

(b) dengan menggantikan perenggan (d) dengan perenggan yang berikut:

“(d) by any person against property belonging to, or operated or controlled by, in whole or in part, the Government of Malaysia or the Government

of any State in Malaysia, including diplomatic or consular premises of Malaysia, any citizen of Malaysia, or any corporation created by or under the laws of Malaysia located outside Malaysia;”.

### **Pindaan seksyen 107**

3. Seksyen 107 Kanun dipinda dengan memasukkan selepas perenggan (a) perenggan yang berikut:

“(aa) commands any person to do that thing;”.

### **Penggantian huraian kepada seksyen 120A**

4. Kanun dipinda dalam seksyen 120A—

(a) dengan menggantikan huraian kepada seksyen itu dengan huraian yang berikut:

“*Explanation 1*—It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

*Explanation 2*—Where liability for any offence may be incurred without knowledge on the part of the person committing it of any particular fact or circumstance necessary for the commission of the offence, a person shall nevertheless not be guilty of conspiracy to commit the offence unless he and at least one other party to the agreement intend or know that that fact or circumstance shall or will exist at the time when the conduct constituting the offence is to take place.”; dan

(b) dengan memasukkan selepas huraian kepada seksyen itu misalan yang berikut:

#### *“ILLUSTRATIONS*

(a) If A and B agree to embark on a bombing campaign throughout Malaysia, and either one of them commits an act in furtherance of the agreement such as acquiring Ammonium Nitrate fertilizer or other bomb making components, they will each be guilty of conspiracy to cause explosions even though no bombing targets were identified and no bombing was actually attempted.

(b) A wilfully and knowingly joins an enterprise of persons consisting of B, C and D where they share a common criminal purpose to commit certain offences such as attacking civilian objects, murder and terrorism, and at least one of them acts on the plan by surveilling targets or securing a weapon to be used in the attacks. All four are guilty of conspiracy to attack civilian objects, and commit murder and terrorism the moment any one of them acts on the plan.

(c) A and B agree to cheat the Government on a contract for goods by inflating the price of goods quoted in the tender document. A and B intend to conceal the real price of the goods to the Government. A and B are guilty of conspiring to cheat the Government the moment that one of them drafts the fraudulent tender document or engages in any other act in furtherance of the plan.

(d) A, B and C agree to engage in fraud and misuse of visas, permits or other documents to facilitate a particular act of terrorism in Malaysia. All three are guilty of conspiracy to provide support for the commission of a terrorist act the moment any one of them engages in an act in furtherance of the plan, such as acquiring the visas or other materials necessary to produce the fraudulent documents.”.

## **Pindaan seksyen 120b**

### **5. Seksyen 120B Kanun dipinda—**

- (a) dalam subseksyen (2), dengan menggantikan perkataan “Whoever” dengan perkataan “Subject to subsection (3), whoever”; dan
- (b) dengan memasukkan selepas subseksyen (2) subseksyen yang berikut:

“(3) If the offence, the commission of which is the object of the conspiracy, is a minor offence under the Minor Offences Act 1955 [*Act 336*] the punishment for such conspiracy shall not exceed the maximum punishment provided for such minor offence.”.

**Seksyen baru 124B hingga 124N**

6. Kanun dipinda dengan memasukkan selepas seksyen 124A seksyen yang berikut:

**“Activity detrimental to parliamentary democracy**

**124B.** Whoever, by any means, directly or indirectly, commits an activity detrimental to parliamentary democracy shall be punished with imprisonment for a term which may extend to twenty years.

**Attempt to commit activity detrimental to parliamentary democracy**

**124c.** Whoever attempts to commit an activity detrimental to parliamentary democracy or does any act preparatory thereto shall be punished with imprisonment for a term which may extend to fifteen years.

**Printing, sale, etc., of documents and publication detrimental to parliamentary democracy**

**124d.** (1) Whoever, by any means, directly or indirectly, prints, publicises, sells, issues, circulates or reproduces any document or publication detrimental to parliamentary democracy shall be punished with imprisonment for a term which may extend to fifteen years:

Provided that no person shall be convicted of an offence under this section if he proves to the satisfaction of the court that the document or publication in respect of which he is charged was printed, published, sold, issued, circulated or reproduced, as the case may be, without his authority, consent and knowledge, and without any want of due care or caution on his part, and that he did not know and had no reason to suspect the nature of the document or publication.

**Possession of documents and publication detrimental to parliamentary democracy**

**124E.** (1) Any person who, without lawful excuse, has in his possession any document or publication detrimental to parliamentary democracy or any extract therefrom, shall be punished with imprisonment for a term which may extend to ten years.

(2) The document and publication referred to in subsection (1) shall be presumed to be a document or publication detrimental to parliamentary democracy until the contrary is proved; and where in any prosecution under this section it is proved that a person was carrying or had in his possession or under his control a document or publication detrimental to parliamentary democracy he shall be deemed to have known the contents and the nature of the contents of such document or publication:

Provided that no person shall be convicted of an offence under this section if he proves to the satisfaction of the court—

- (a) that he was not aware of the contents and the nature of the contents of the document or publication detrimental to parliamentary democracy which he was carrying or had in his possession or under his control; and
- (b) that he was carrying or had the document or publication detrimental to parliamentary democracy in his possession or under his control in such circumstances that at no time did he have reasonable cause to believe or suspect that the document or publication was a document or publication detrimental to parliamentary democracy.

**Importation of document and publication detrimental to parliamentary democracy**

**124F.** (1) Any person who imports or attempts to import or abets the importation of any document or publication detrimental to parliamentary democracy or without lawful excuse has in his possession any document or publication shall be punished with imprisonment for a term which may extend to five years.

(2) The document and publication referred to in subsection (1) shall be presumed to be a document or publication detrimental to parliamentary democracy until the contrary is proved; and where in any prosecution under this section it is proved that a person was carrying or had in his possession or under his control a document or publication detrimental to parliamentary democracy he shall be deemed to have known the contents and the nature of the contents of such document or publication:

Provided that no person shall be convicted of an offence under this section if he proves to the satisfaction of the court—

- (a) that he was not aware of the contents and the nature of the contents of the document or publication detrimental to parliamentary democracy which he was carrying or had in his possession or under his control; and
- (b) that he was carrying or had the document or publication detrimental to parliamentary democracy in his possession or under his control in such circumstances that at no time did he have reasonable cause to believe or suspect that the document or publication was a document or publication detrimental to parliamentary democracy.

### **Posting of placards, etc.**

**124g.** Any person who posts or distributes any placard, circular or other document containing any incitement to violence, or counselling violent disobedience to the law or to any lawful order, or likely to lead to any breach of the peace, shall be punished with imprisonment for a term which may extend to five years.

### **Dissemination of information**

**124h.** Any person who by word of mouth or in writing or in any newspaper, periodical, book, circular, or other printed publication or by any other means including electronic means incites violence, or counsels violent disobedience to the law or to any lawful order, shall be punished with imprisonment for a term which may extend to five years.

**Dissemination of false reports**

**124i.** Any person who, by word of mouth or in writing or in any newspaper, periodical, book, circular, or other printed publication or by any other means including electronic means spreads false reports or makes false statements likely to cause public alarm, shall be punished with imprisonment for a term which may extend to five years.

**Receipt of document and publication detrimental to parliamentary democracy**

**124j.** (1) Any person or any office bearer of any association or any responsible member or agent of any organization who receives any document or publication detrimental to parliamentary democracy shall deliver the same without delay to a police officer; and any person, office bearer, member or agent who fails to do so, or who, unless authorized so to do by a police officer not below the rank of Superintendent of Police, communicates to any other person, or publishes or causes to be published the contents of any such document or publication, shall be punished with imprisonment for a term which may extend to ten years.

(2) The document and publication referred to in subsection (1) shall be presumed to be a document or publication detrimental to parliamentary democracy until the contrary is proved; and where in any prosecution under this section it is proved that a person was carrying or had in his possession or under his control a document or publication detrimental to parliamentary democracy he shall be deemed to have known the contents and the nature of the contents of such document or publication:

Provided that no person shall be convicted of an offence under this section if he proves to the satisfaction of the court—

- (a) that he was not aware of the contents and the nature of the contents of the document or publication detrimental to parliamentary democracy which he was carrying or had in his possession or under his control; and

- (b) that he was carrying or had the document or publication detrimental to parliamentary democracy in his possession or under his control in such circumstances that at no time did he have reasonable cause to believe or suspect that the document or publication was a document or publication detrimental to parliamentary democracy.

### **Sabotage**

**124k.** Whoever, by any means, directly or indirectly, commits sabotage shall be punished with imprisonment for life.

### **Attempt to commit sabotage**

**124l.** Whoever attempts to commit sabotage or does any act preparatory thereto shall be punished with imprisonment for a term which may extend to fifteen years.

### **Espionage**

**124m.** Whoever, by any means, directly or indirectly, commits espionage shall be punished with imprisonment for life.

### **Attempt to commit espionage**

**124n.** Whoever attempts to commit espionage or does any act preparatory thereto shall be punished with imprisonment for a term which may extend to fifteen years.”.

## **Pindaan seksyen 130A**

7. Kanun dipinda dengan menggantikan seksyen 130A dengan seksyen yang berikut:

“**130A.** In this Chapter—

- (a) “activity detrimental to parliamentary democracy” means an activity carried out by a person or a group of persons designed to overthrow or undermine parliamentary democracy by violent or unconstitutional means;



- (b) “document or publication detrimental to parliamentary democracy” means any document or publication having in part or in whole a tendency—
- (a) to excite organized violence against persons or property in Malaysia;
  - (b) to support, propagate or advocate any act prejudicial to the security of Malaysia or the maintenance or restoration of public order therein or inciting to violence therein or counselling disobedience to the law thereof or to any lawful order therein; or
  - (c) to invite, request or demand support for or on account of any collection, subscription, contribution or donation, whether in money or in kind, for the direct or indirect benefit or use of persons who intend to act or are about to act, or have acted, in a manner prejudicial to the security of Malaysia or to the maintenance of public order therein, or who incite to violence therein or counsel disobedience to the law thereof or any lawful order therein;
- (c) “espionage” means an activity to obtain sensitive information by ulterior or illegal means for the purpose that is prejudicial to the security or interest of Malaysia;
- (d) “essential services” includes—
- (a) water services;
  - (b) electricity services;
  - (c) public health services;
  - (d) banking and financial services;
  - (e) fire services;
  - (f) prison services;

- (g) postal services;
  - (h) telecommunication services including the communication infrastructure;
  - (i) telegraph services;
  - (j) radio communication services including broadcasting and television services;
  - (k) port, dock and harbour services and undertakings;
  - (l) public transport services by land, sea or air;  
or
  - (m) bulk distribution of fuel and lubricants;
- (e) “harbour” includes supplying a person with shelter, food, drink, money or clothes; or, except by a person employed in a Government hospital, medicines, bandages, surgical dressings or any other form of aid to a person wounded; or arms, ammunition or means of conveyance, or assisting a person in any way to evade apprehension;
- (f) “imprisonment for life” means (subject to the provisions of any written law conferring power to grant pardons, reprieves or respites or suspension or remission of punishments) imprisonment until the death of the person on whom the sentence is imposed;
- (g) “publication” includes all written, pictorial or printed matter, and everything of a nature similar to written or printed matter, whether or not containing any visible representation, or by its form, shape or in any other manner capable of suggesting words or ideas, or an audio recording and every copy, translation and reproduction or substantial translation or reproduction in part or in whole thereof;

- (h) “sabotage” means—
- (a) an act or omission intending to cause harm—
    - (i) for the interests of foreign powers or foreign organizations;
    - (ii) to premises or utilities used for national defence or for war; or
    - (iii) to the maintenance of essential services; or
  - (b) knowingly producing defective materials, premises or utilities used for national defence or for war;
- (i) “sensitive information” means any document, information and material—
- (a) relating to the Cabinet, Cabinet committees and State Executive Council; or
  - (b) that concerns sovereignty, national security, defence, public order, essential public interest of Malaysia and international relations,
- whether or not classified as “Top Secret”, “Secret”, “Confidential” or “Restricted” by a minister, the Menteri Besar or Chief Minister of a State or any public officer appointed by a minister.”.

### **Seksyen baru 130kA**

**8.** Kanun dipinda dengan memasukkan selepas seksyen 130k seksyen yang berikut:

#### **“Member of a terrorist group**

**130kA.** Whoever is a member of a terrorist group shall be punished with imprisonment which may extend to imprisonment for life and shall also be liable to a fine.”.

**Bab baru VI B**

9. Kanun dipinda dengan memasukkan selepas Bab VIA Bab yang berikut:

**“CHAPTER VI B****ORGANIZED CRIME****Interpretation in relation to this Chapter**

**130u.** In this Chapter—

“organized criminal group” means a group of two or more persons, acting in concert with the aim of committing one or more serious offences, in order to obtain, directly or indirectly, a material benefit, power or influence;

“serious offence” means any offence punishable with imprisonment for a term of ten years or more.

**Member of an organized criminal group**

**130v.** Whoever is a member of an organized criminal group shall be punished with imprisonment for a term which may extend to five years.

**Assisting an organized criminal group**

**130w.** Whoever assists an organized criminal group to further the interest of that group shall be punished with imprisonment for a term which may extend to ten years.”.

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**HURAIAN**

Rang Undang-Undang ini bertujuan untuk meminda Kanun Keseksaan [Akta 574] sejajar dengan penggubalan Akta Kesalahan Keselamatan (Langkah-Langkah Khas) 2012. Pindaan yang dicadangkan kepada Kanun Keseksaan memperkatakan jenayah terancang, aktiviti yang menjejaskan demokrasi berparlimen, sabotaj dan pengintipan.

2. *Fasal 1* mengandungi tajuk ringkas dan peruntukan mengenai permulaan kuat kuasa Akta yang dicadangkan.

3. *Fasal 2* bertujuan untuk meminda seksyen 4 tentang peluasan Kanun kepada kesalahan luar wilayah. Bab baru VIb berkenaan dengan jenayah terancang telah ditambah sebagai kesalahan luar wilayah di bawah Kanun dan perenggan baru (*d*) telah dimasukkan untuk menggantikan perenggan yang sedia ada. Dalam perenggan baru (*d*), kesalahan yang dilakukan terhadap harta yang dikendalikan atau dikawal secara keseluruhan atau sebahagiannya oleh Kerajaan Malaysia atau mana-mana Kerajaan Negeri atau mana-mana warganegara Malaysia atau mana-mana perbadanan yang diwujudkan oleh atau di bawah undang-undang Malaysia yang bertempat di luar Malaysia hendaklah dianggap sebagai dilakukan di Malaysia. Ini merupakan peluasan bidang kuasa jenayah berbanding dengan perenggan (*d*) yang sedia ada. Peluasan ini adalah selaras dengan kedudukan terkini undang-undang antarabangsa.

4. *Fasal 3* bertujuan untuk menangani situasi yang dihadapi sekarang oleh pihak polis berkenaan dengan dalang yang memerintahkan orang lain untuk melakukan perbuatan jenayah. Kedudukan sekarang mengenai persubahatan tidak meliputi mereka yang memberikan arahan. Dalam senario jenayah terancang, sukar untuk mengaitkan orang yang memberikan arahan dengan keterangan mengenai jenayah yang dilakukan. Oleh yang demikian, peruntukan baru yang dicadangkan ini bertujuan untuk menjadikan mana-mana orang yang memerintahkan orang lain untuk melakukan tindakan jenayah sebagai seorang pensubahat.

5. *Fasal 4* bertujuan untuk memperjelas seksyen 120A dengan memperuntukkan huraian tambahan berkenaan dengan komplot jenayah.

6. *Fasal 5* bertujuan untuk menambah satu subseksyen baru kepada seksyen 120B berkenaan dengan hukuman komplot jenayah. Subseksyen baru ini memperkatakan formula bagi hukuman jika kesalahan itu, yang pelakuan kesalahan itu menjadi objek komplot, merupakan kesalahan kecil di bawah Akta Kesalahan Kecil 1955 [*Akta 336*].

7. *Fasal 6* bertujuan untuk memasukkan tiga belas kesalahan baru ke dalam Bab VI (Kesalahan terhadap Negara). Tujuh kesalahan tersebut merupakan kesalahan baru, iaitu aktiviti yang menjejaskan demokrasi berparlimen, cubaan untuk melakukan aktiviti yang menjejaskan demokrasi berparlimen, penyebaran maklumat, sabotaj, cubaan untuk melakukan sabotaj, pengintipan dan cubaan untuk melakukan pengintipan. Walau bagaimanapun, seksyen 124b, 124e, 124f, 124g, 124i dan 124j yang dicadangkan memperkatakan kesalahan yang dahulunya terdapat dalam Akta Keselamatan Dalam Negeri 1960 [*Akta 82*] tetapi dengan ubah suaian.

8. *Fasal 7* bertujuan untuk memasukkan takrif baru ke dalam Bab VI untuk memenuhi keperluan bagi kesalahan baru di bawah *fasal 6*. Takrif baru itu ialah “activity detrimental to parliamentary democracy”, “document or publication detrimental to parliamentary democracy”, “espionage”, “essential services”, “publication”, “sabotage” dan “sensitive information”.

9. *Fasal 8* bertujuan untuk memasukkan kesalahan baru menjadi anggota kumpulan penganas ke dalam Bab VIa.

10. *Fasal 9* bertujuan untuk memasukkan seksyen baru VIb berkenaan dengan jenayah terancang. Dua kesalahan baru diwujudkan, iaitu menjadi anggota kumpulan jenayah terancang yang membawa hukuman pemenjaraan sehingga lima tahun dan membantu kumpulan jenayah terancang yang membawa hukuman pemenjaraan sehingga sepuluh tahun.

*IMPLIKASI KEWANGAN*

Rang Undang-Undang ini tidak akan melibatkan Kerajaan dalam apa-apa perbelanjaan wang tambahan.

[PN(U<sup>2</sup>)2839]