

A BILL

i n t i t u l e d

An Act to amend the Penal Code.

[]

ENACTED by the Parliament of Malaysia as follows:

Short title and commencement

1. (1) This Act may be cited as the Penal Code (Amendment) (No. 2) Act 2022.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

Amendment of section 115

2. The Penal Code [*Act 574*], which is referred to as the “Code” in this Act, is amended in section 115 by inserting after the words “with death” the words “or imprisonment for natural life”.

Amendment of section 118

3. Section 118 of the Code is amended by inserting after the words “with death” the words “or imprisonment for natural life”.

Amendment of section 119

4. Section 119 of the Code is amended by inserting after the words “with death” the words “or imprisonment for natural life”.

Amendment of section 121

5. Section 121 of the Code is amended by substituting for the words “imprisonment for life, and if not sentenced to death shall also be liable to fine” the words “imprisonment for natural life and if not sentenced to death, shall also be punished with whipping of not less than fifteen strokes”.

Amendment of section 121A

6. Section 121A of the Code is amended by substituting for the words “with death and shall also be liable to fine” the words “with death or imprisonment for natural life and if not sentenced to death, shall also be punished with whipping of not less than twelve strokes”.

Amendment of section 121B

7. Section 121B of the Code is amended by substituting for the words “imprisonment for life” the words “imprisonment for natural life”.

Amendment of section 122

8. Section 122 of the Code is amended by substituting for the words “imprisonment for life” the words “imprisonment for natural life”.

Amendment of section 124K

9. Section 124K of the Code is amended by substituting for the words “imprisonment for life” the words “imprisonment for natural life”.

Amendment of section 124M

10. Section 124M of the Code is amended by substituting for the words “imprisonment for life” the words “imprisonment for natural life”.

Amendment of section 125

11. Section 125 of the Code is amended by substituting for the words “imprisonment for life” the words “imprisonment for natural life”.

Amendment of section 125A

12. Section 125A of the Code is amended by substituting for the words “imprisonment for life” the words “imprisonment for natural life”.

Amendment of section 128

13. Section 128 of the Code is amended by substituting for the words “imprisonment for life” the words “imprisonment for natural life”.

Amendment of section 130

14. Section 130 of the Code is amended by substituting for the words “imprisonment for life” the words “imprisonment for natural life”.

Amendment of section 130A

15. Section 130A of the Code is amended by deleting paragraph (f).

Amendment of section 130B

16. Subsection 130B(1) of the Code is amended by deleting the definition of “imprisonment for life”.

Amendment of section 130c

17. Subsection 130c(1) of the Code is amended—

(a) in paragraph (a), by inserting after the words “with death” the words “or imprisonment for natural life and if not sentenced to death, shall also be punished with whipping of not less than twelve strokes”; and

(b) in paragraph (b), by substituting for the word “fine” the word “whipping”.

Amendment of section 130D

18. Section 130D of the Code is amended by substituting for the words “imprisonment for life” the words “imprisonment for natural life”.

Amendment of section 130i

19. Section 130i of the Code is amended—

(a) in paragraph (a), by inserting after the words “with death” the words “or imprisonment for natural life, and if not sentenced to death, shall also be punished with whipping of not less than twelve strokes”; and

(b) in paragraph (b), by substituting for the word “fine” the word “whipping”.

Amendment of section 130J

20. Section 130J of the Code is amended by substituting for the words “imprisonment for life” the words “imprisonment for natural life”.

Amendment of section 130K

21. Section 130K of the Code is amended by substituting for the words “imprisonment for life” the words “imprisonment for natural life”.

Amendment of section 130KA

22. Section 130KA of the Code is amended by substituting for the words “imprisonment for life” the words “imprisonment for natural life”.

Amendment of section 130N

23. Section 130N of the Code is amended—

(a) in paragraph (a), by inserting after the words “with death” the words “or imprisonment for natural life and if not sentenced to death, shall also be punished with whipping of not less than twelve strokes”; and

(b) in paragraph (b), by substituting for the word “fine” the word “whipping”.

Amendment of section 130o

24. Subsection 130o(1) of the Code is amended—

(a) in paragraph (aa), by inserting after the words “with death” the words “or imprisonment for natural life and if not sentenced to death, shall also be punished with whipping of not less than twelve strokes”; and

(b) in paragraph (bb), by substituting for the word “fine” the word “whipping”.

Amendment of section 130QA

25. Section 130QA of the Code is amended—

- (a) in paragraph (a), by inserting after the words “with death” the words “or imprisonment for natural life and if not sentenced to death, shall also be punished with whipping of not less than twelve strokes”; and
- (b) in paragraph (b), by substituting for the word “fine” the word “whipping”.

Amendment of section 130ZB

26. Section 130ZB of the Code is amended—

- (a) in paragraph (a), by inserting after the words “with death”, the words “or imprisonment for natural life and if not sentenced to death, shall also be punished with whipping of not less than twelve strokes”; and
- (b) in paragraph (b), by substituting for the word “fine” the word “whipping”.

Amendment of section 195

27. Section 195 of the Code is amended by inserting after the words “punishable with” the words “imprisonment for natural life,”.

Amendment of section 201

28. Section 201 of the Code is amended by substituting for the words “and if the offence is punishable with imprisonment for life” the words “and if the offence is punishable with imprisonment for natural life or imprisonment for life”.

Amendment of section 211

29. Section 211 of the Code is amended by inserting after the words “punishable with death,” the words “imprisonment for natural life,”.

Amendment of section 212

30. Subsection 212(1) of the Code is amended by substituting for the words “and if the offence is punishable with imprisonment for life” the words “and if the offence is punishable with imprisonment for natural life or imprisonment for life”.

Amendment of section 213

31. Section 213 of the Code is amended by substituting for the words “and if the offence is punishable with imprisonment for life” the words “and if the offence is punishable with imprisonment for natural life or imprisonment for life”.

Amendment of section 214

32. Section 214 of the Code is amended by substituting for the words “and if the offence is punishable with imprisonment for life” the words “and if the offence is punishable with imprisonment for natural life or imprisonment for life”.

Amendment of section 216

33. Subsection 216(1) of the Code is amended by substituting for the words “and if the offence is punishable with imprisonment for life” the words “and if the offence is punishable with imprisonment for natural life or imprisonment for life”.

Amendment of section 221

34. Paragraph 221(b) of the Code is amended by substituting for the words “imprisonment for life” the words “imprisonment for natural life or imprisonment for life”.

Amendment of section 302

35. Section 302 of the Code is amended by inserting after the words “with death” the words “or imprisonment for natural life and if not sentenced to death, shall also be punished with whipping”.

Amendment of section 304

36. Paragraph 304(a) of the Code is amended by substituting for the word “fine” the word “whipping”.

Amendment of section 307

37. Section 307 of the Code is amended by deleting subsection (2).

Amendment of section 364

38. Section 364 of the Code is amended by substituting for the words “death or imprisonment for a term which may extend to thirty years and shall, if he is not sentenced to death, also be liable to whipping” the words “imprisonment for a term of not more than thirty years and shall also be punished with whipping of not less than twelve strokes”.

Amendment of section 374A

39. Section 374A of the Code is amended—

(a) in paragraph (a), by inserting after the words “with death” the words “or imprisonment for natural life and if not sentenced to death, shall also be punished with whipping”; and

(b) in paragraph (b), by substituting for the word “fine” the word “whipping”.

Amendment of section 450

40. Section 450 of the Code is amended by inserting after the words “punishable with” the words “imprisonment for natural life or”.

Transitional

41. Upon the coming into operation of this Act, if a person is convicted by any court for the commission of an offence under section 121A, 302 or 364 or paragraph 130C(1)(a), 130I(a), 130N(a), 130O(1)(aa), 130QA(a), 130ZB(a) or 374A(a) of the Code, the person, whether at a trial or on an appeal, shall be sentenced in accordance with the provisions of the Code as amended by this Act even though the offence was committed before the date of coming into operation of this Act.

EXPLANATORY STATEMENT

The Penal Code (Amendment) (No. 2) Bill 2022 (“the proposed Act”) seeks to abolish the mandatory death penalty for offences under the Penal Code [Act 574] (“the Code”). The amendments in the proposed Act seek to substitute the mandatory death penalty with the discretionary death penalty for the offences under sections 121A, 130C, 130I, 130N, 130O, 130QA, 130ZB, 302 and 374A of the Code.

With these amendments, the court now has the discretion whether to impose the death penalty or impose the sentence of imprisonment for natural life with whipping of not less than twelve strokes for offences against the person of the Yang di-Pertuan Agong, Ruler or Yang di-Pertua Negeri under section 121A, committing terrorist acts under section 130C, directing activities of terrorist groups under section 130I, providing or collecting property for terrorist acts under section 130N, providing services for terrorist purposes under section 130O, accepting gratification to facilitate or enable terrorist acts under section 130QA and accepting gratification to facilitate or enable organized criminal activity under section 130ZB.

These amendments also seek to vary the sentence of fine to the sentence of whipping under paragraphs 130C(1)(b), 130I(b), 130N(b), 130O(1)(bb), 130QA(b), 130ZB(b) and 374A(b) of the Code.

Amendment to section 121 of the Code seeks to vary the sentence for the offence of waging or attempting to wage war or abetting the waging of war against the Yang di-Pertuan Agong, a Ruler or Yang di-Pertua Negeri.

Amendment to section 302 of the Code seeks to vary the sentence for the offence of murder. This amendment is to abolish the mandatory death penalty and to give discretion to the judge with regard to the imposition of the death penalty.

Amendment to section 304 of the Code seeks to vary the sentence for the offence of culpable homicide not amounting to murder in paragraph (a) by substituting for the sentence of fine with the sentence of whipping.

Amendment to section 307 of the Code seeks to delete subsection (2) for the offence of attempt to murder if the person committing the offence is under the sentence of imprisonment for life or for a term of twenty years.

Amendment to section 364 of the Code seeks to vary the sentence for the offence of kidnapping or abducting in order to murder. This amendment is to abolish the death penalty.

Amendment to section 374_A of the Code seeks to vary the sentence for the offence of hostage-taking. This amendment is to abolish the death penalty in paragraph (a) and to substitute for the punishment of fine in paragraph (b) with the punishment of whipping.

Other amendments not specifically dealt with in this Explanatory Statement are minor or consequential in nature.

FINANCIAL IMPLICATIONS

This Bill will involve the Government in extra financial expenditure the amount of which cannot at present be ascertained.

[PN(U2)3135]