

THE IMPLEMENTATION OF ISLAMIC CRIMINAL
LAW IN MALAYSIA: CHALLENGES AND
PROSPECTS

BY

AHMAD TERMIZI BIN ABDULLAH

A THESIS SUBMITTED IN FULFILMENT OF THE
REQUIREMENT FOR THE DEGREE OF MASTER OF
COMPARATIVE LAWS

AHMAD IBRAHIM KULLIYYAH OF LAWS
INTERNATIONAL ISLAMIC UNIVERSITY
MALAYSIA

FEBRUARY 2005

ABSTRACT OF THE THESIS

This research entitled "The implementation of Islamic criminal law in Malaysia: challenges and prospects" is written in order to find out the real problems of enforcing the Islamic criminal law in Malaysia and also to give some recommendations on the appropriate approach of implementing it in Malaysia.

The concept of Islamic criminal law is explored in brief in order to give the clear framework of the concept of crime in Islam. The researcher further discussed the attempts made by the State of Kelantan and Terengganu in implementing the Islamic criminal law in this country. The comments from various parties are studied in order to identify the problems in implementing the law. The research also discusses some of the issues raised in other countries which had implemented the Islamic criminal law.

The research is also embarked in order to know in detail the current situation of Islamic law in Malaysia. This is necessary because the knowledge of the current law practised in Malaysia is important in order to know the appropriate approach to implement the Islamic criminal law.

The research then discussed the barriers in implementing Islamic criminal law in this country and proposed some suggestions on the amendment of the Malaysian laws including the Federal Constitution to make them in line with Islamic law.

Besides, this research also examined the weaknesses of Islamic judiciary system in Malaysia and the ways of its improvement. This is including the discussion on the suggestion on appointment of women as Syariah Court judge in Malaysia in order to improve the administration of Syariah Court as well as to improve the good reputation of the court.

Finally, it also discussed some of the efforts made by the Malaysian government in implementing Islam in this country.

ملخص البحث

كتب هذا البحث تحت عنوان "تطبيق القانون الجنائي الإسلامي في ماليزيا: التحديات والتطلعات" وهو يهدف لمعرفة العقبات في سبيل تطبيقه، وطرح بعض الاقتراحات المدروسة عن أفضل كيفية لتطبيقه في ماليزيا.

في بداية هذا البحث يتكلم الباحث باختصار عن فلسفة القانون الجنائي الإسلامي لإعطاء صورة واضحة عنها، ثم يتكلم عن التجربة لتطبيق القانون الجنائي الإسلامي التي قامت بها حكومتا كلنتان وترنجانو، ويبحث سبل معالجة الانتقادات الموجهة إليها. ويناقش القضايا المطروحة حول القانون الجنائي الإسلامي المطبق في بعض البلدان الإسلامية.

ويقوم البحث بتحديد طبيعة القانون الإسلامي المطبق في ماليزيا في الوقت الراهن. وهذا مطلوب لأن معرفة نوعية القانون المعمول به الآن في ماليزيا يؤدي إلى اختيار أفضل خطوة نحو تطبيق القانون الجنائي الإسلامي.

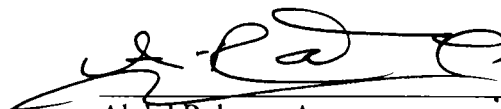
ثم يتحدث البحث عن العقبات التي تواجه تطبيق القانون الجنائي الإسلامي في هذا البلد. ويقدم الاقتراحات البناءة والتعديلات المطلوبة في القانون الماليزي. وهذا يشمل بعض التعديلات في نص الدستور الفيدرالي الماليزي لكي تكون موافقة للشريعة الإسلامية الغراء.

وبجانب ذلك، يفحص البحث الخلل في النظام القضائي الإسلامي بماليزيا وسبل إصلاحه. كما يشمل البحث اقتراح تعيين المرأة كقاضية في المحاكم الشرعية في سبيل رفع مستواها الإداري وتحسين سمعتها.

وأخيرا يدرس البحث أيضا بعض الجهود التي بذلتها حكومة ماليزيا في سبيل تنفيذ المشروع الإسلامي في هذا البلد.

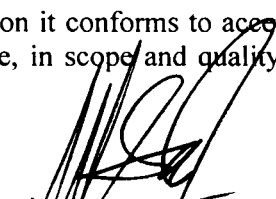
APPROVAL PAGE

I certify that I have supervised and read this study and that in my opinion it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a thesis for the degree of Master of Comparative Laws.



Abdul Rahman Awang
Supervisor

I certify that I have read this study and that in my opinion it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a thesis for the degree of Master of Comparative Laws.




Mahmood Bantasi
Internal Examiner

I certify that I have read this study and that in my opinion it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a thesis for the degree of Master of Comparative Laws.


Nik Rahim Nik Wajis
External Examiner

This thesis was submitted to the Department of Islamic Law, Ahmad Ibrahim Kulliyah of Laws and is accepted as a fulfilment of the requirements for the degree of Master of Comparative Laws.



Aznan Hassan
Dean, Department of Islamic
Law, Ahmad Ibrahim Kulliyah
of Laws

This thesis was submitted to the Ahmad Ibrahim Kulliyah of Laws and is accepted as a fulfilment of the requirements for the degree of Master of Comparative Laws.

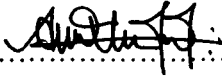


Nik Ahmad Kamal Nik Mahmod
Dean, Ahmad Ibrahim Kulliyah
of Laws

DECLARATION

I hereby declare that this thesis is the result of my own investigations, except where otherwise stated. Other sources are acknowledged by footnotes giving explicit references and a bibliography is appended.

Name: Ahmad Termizi bin Abdullah

Signature:  Date: 17th February 2005

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The implementation of Islamic criminal law in Malaysia: challenges and prospects

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Dedicated to my parents

who taught me

to love

knowledge and truth

ACKNOWLEDGEMENTS

Praise be to Allah (s.w.t.), with His Grace and Mercy that I am finally able to complete my Master of Comparative Laws (MCL) research.

I would like to express my appreciation to Prof. Dr. Anwarul Yaqin who taught me the subject 'Law Research Methodology'. Through this important subject and with his brilliant way of teaching, gave me idea to do a deep research on this topic.

I wish also to express my appreciation to International Islamic University Malaysia (IIUM) Library, Ahmad Ibrahim Kulliyah of Laws (AIKOL) Research Centre, Malaysia National Library and Stamford College Petaling Jaya Library where I spent hours getting materials and analysing the issues.

I take this opportunity to express my heartiest appreciation to Associate Prof. Dr. Abdul Rahman Awang and Associate Prof. Ibrahim Ismail for their endless efforts in assisting me to make this research a dream comes true.

I would also like to thank my beloved wife for her support of my research efforts and her helpful comments. I am also appreciative of the contributions of my colleagues, such as Joharee, Azmi, Zawawi, Hassan, Nasrin and Shaharudin (just to mention some of them), whom I have frequently discussed matters of mutual interest on the Islamic laws as well as Malaysian laws.

My gratitude also goes to Mdm. Azian, Mdm. Juhanis, Dr. Uzaimah, Dr. Ismail and all of the others with AIKOL especially for its Post Graduate Unit who made this research possible.

Finally, I thank my loving parents for motivating me to complete this research. Throughout my life they have been and still always supporting me in my various endeavours – for which I am truly grateful.

I hope that this research will be a contribution in the field of Malaysian legal literature and it is hope that the knowledge derived from this research will open up the path for further discussion and elaboration in this area.

I pray to Allah (s.w.t.) to accept this efforts as a good deed (*`amal ṣāliḥ*) to be utilised in the near future.

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Subang Jaya

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ABIM	<i>Angkatan Belia Islam Malaysia / Muslim Youth Movement of Malaysia</i>
AC	Appeal Cases
A.D.	<i>(Anno Domini)</i> : of the Christian era
A.H.	After Hijrah
AIR	All Indian Reports
Anor.	Another
AWAM	All Women's Action Society
BBMB	Bank Bumiputra Malaysia Berhad
BCBB	Bumiputra-Commerce Bank Berhad
BIMB	Bank Islam Malaysia Berhad
BMMB	Bank Muamalat Malaysia Berhad
BNM	Bank Negara Malaysia
BOCMB	Bank of Commerce Malaysia Berhad
CA	Court of Appeal
CLJ	Current Law Journal
Cr App R	Criminal Appeal Reports
DAIJ	Diploma in Law and Administration of Islamic Judiciary
DSLPL	Diploma in Shari'ah Law and Practice
Ed.	Edition
edit.	editor(s)
e.g.	<i>(exempligratia)</i> : for example
etc.	<i>(et cetera)</i> : and so forth
F.C.J.	Federal Court Judge
FSC	Federal Shariat Court
FMS	Federated Malay State
FMSLR	Federated Malay State Law Report
GEGAR	<i>Gerakan Bertindak Umat Selamatkan Sekolah Agama Rakyat</i>
HC	High Court
ibid.	<i>(ibidem)</i> : in the same place
i.e.	<i>(id est)</i> : that is to say
IIUM	International Islamic University Malaysia
IKIM	<i>Institut Kefahaman Islam Malaysia / Institute of Islamic Understanding Malaysia</i>
Ins.	Inside
J.	Judge
JAKIM	<i>Jabatan Kemajuan Islam Malaysia / Department of Islamic Development Malaysia</i>
JKSM	<i>Jabatan Kehakiman Syariah Malaysia / Department of Syariah Judiciary Malaysia</i>
KIAS	<i>Kolej Islam Antarabangsa Sultan Ismail Petra / Sultan Ismail Petra International Islamic College</i>
KLSE	Kuala Lumpur Stock Exchange
LL.B	<i>(legum baccalaureus)</i> Bachelor of Laws
L.P.	Lord President
LTH	<i>Lembaga Tabung Haji</i>
LUTH	<i>Lembaga Urusan dan Tabung Haji</i>

MBRAS	Malaysian Branch of the Royal Asiatic Society
MC	Malayan Cases
MLJ	Malayan Law Journal
n.d.	no date
n.p.	no publisher
NGO	Non Government Organisation
No.	Number
OIC	Organisation of Islamic Conference
Ors.	Others
PAS	<i>Parti Islam Semalaysia</i> / Islamic Party of Malaysia
PSCR	Pakistan Supreme Court Reports
PERKIM	<i>Pertubuhan Kebajikan Islam Malaysia</i>
PLD	All Pakistan Legal Decisions
p.	page
pp.	pages
PPZ	<i>Pusat Pungutan Zakat</i> / Zakat Centre
PUK	<i>Persatuan `Ulama' Kedah</i> / Muslim Scholars Association of Kedah
PUM	<i>Persatuan `Ulama' Malaysia</i> / Muslim Scholars Association of Malaysia
s.	section
SAR	<i>Sekolah Agama Rakyat</i>
s.a.w.	<i>ṣallallāhu `alayhi wasallam</i> / peace be upon him
SC	Supreme Court
S.C.J.	Supreme Court Judge
SCMR	Supreme Court Monthly Review
SIS	Sisters in Islam
SISPEN	<i>Sistem Pengurusan Personel</i> / Department's Personnel Management System
SPI	<i>Skim Perbankan Islam</i> / Islamic Banking Scheme
SPTF	<i>Skim Perbankan Tanpa Faedah</i> / Interest-free Banking Scheme
SSLR	Straits Settlements Law Report
STMB	Syarikat Takaful Malaysia Berhad
s.w.t.	<i>subhānahu wata`ālā</i> / Praise be to Allah and the Most High
Trans.	Translator
UMNO	United Malay National Organisation
v.	versus / against
Vol.	volume
YdPA	<i>Yang di-Pertuan Agong</i>
YPEIM	<i>Yayasan Pembangunan Ekonomi Islam Malaysia</i>

TRANSLITERATION

Letters of the Alphabet

<u>Arabic</u>	<u>Romanisation</u>	<u>Vowels and Diphtongs</u>	
ا	-	اَ	a
ب	b	اِ	i
ت	t	اُ	u
ث	th	آ	ā
ج	j	إِ	ī
ح	h	أُ	ū
خ	kh	إِ	ā
د	d	أِ	ī
ذ	dh	أُ	ū
ر	r	إِ	ā
ز	z	أِ	ī
س	s	أُ	ū
ش	sh	إِ	ā
ص	ṣ	أِ	ī
ض	ḍ	أُ	ū
ط	t	إِ	ā
ظ	ẓ	أِ	ī
ع	'	أُ	ū
غ	gh	إِ	ā
ف	f	أِ	ī
ق	q	أُ	ū
ك	k	إِ	ā
ل	l	أِ	ī
م	m	أُ	ū
ن	n	إِ	ā
هـ	h	أِ	ī
و	w	أُ	ū
ي	y	إِ	ā

CHAPTER ONE:

INTRODUCTION

1.1 Issues

Several attempts have been made to implement the whole Islamic criminal law in Malaysia. For instance, in 1993, the Kelantan State Legislative Assembly passed a bill known as *Syariah Criminal Code (II) Enactment, Kelantan, 1993*. This was later followed by Terengganu State Legislative Assembly, which passed the *Syariah Criminal Offences (Hudud and Qisas) Enactment, Terengganu, 2002*¹. Both of these enactments aim at introducing the Islamic criminal law in the country.

The above-mentioned states are currently governed by an opposition party known as the Islamic Party of Malaysia (*Parti Islam Semalaysia – PAS*).² It appears that *PAS* will introduce their versions of Islamic criminal law in all the states that they govern. This shows how serious they are in struggling to establish Malaysia as an Islamic state.³

The problems arise when it comes to the enforcement of the laws. The federal government had warned those two states not to enforce the Islamic criminal law because it is contrary to the Federal Constitution.⁴ Similarly, Messrs. Zaid Ibrahim and Co., one of the most established and prestigious legal firms in Malaysia has filed an injunction to the High Court⁵ to prevent both states from implementing the Islamic

¹ (En. 4/2002)

² This research was conducted prior to the 2004 General Election. The position after the election may not be covered.

³ According to *PAS*, our country is not an Islamic state. However, there are also views saying that Malaysia is an Islamic state. The researcher does not discuss about this matter because it will lead to another long academic discussions.

⁴ See *News Straits Times*, 10 September 1994, pp. 1-2.

⁵ See *Berita Harian*, 17 October 2003, p. 6.

criminal law on the grounds that it is against the Federal Constitution which is the supreme law of the federation.⁶

Instead of amending the Federal Constitution to enable the state of Kelantan and Terengganu to implement the Islamic criminal law, the federal government is in the process of upgrading and improving the status of the Syariah Court by restructuring them and establishing the Federal Syariah Court of Appeal. The government had also established the Department of Syariah Judiciary Malaysia (*Jabatan Kehakiman Syariah Malaysia - JKSM*). It seems that the government and the opposition party possessed different views on the best way to implement Islamic criminal law in Malaysia.

Considering the above, this research is done in good faith to uncover the real problems of enforcing the Islamic criminal law in Malaysia and also to give some recommendations on the appropriate approach of implementing the Islamic law in particular, the Islamic criminal law.

1.2 Objectives of the research

Among the objectives of this research are as follows:

- (a) To identify the appropriate approach to implement Islamic criminal law **in Malaysia;**
- (b) To discover the actual barriers towards the enforcement of Islamic criminal law in Malaysia;
- (c) To outline the weaknesses of Islamic judiciary system in our country and the ways of improvement;

⁶ Article 4 (1) of the Federal Constitution says: "This Constitution is the supreme law of the Federation and any law passed after Merdeka Day which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void."

- (d) To know in detail the current situation of Islamic law in Malaysia; and
- (e) To create awareness about the importance of upgrading the status of Syariah Courts in Malaysia.

1.3 Methodology to be used

This research is a library-based research. The researcher will adopt the combination of analytical and critical approach in completing this legal research. This means that the researcher will not only sum up the points that he had compiled from the research, but he will analyse the issues, try to find out the inadequacies of the laws, the root of the issues arose as well as suggest on the reform required to be done.

For example, the researcher will make a thorough research on the appropriate approach to implement Islamic criminal law in Malaysia; whether we should firstly amend the Federal Constitution, or we should firstly improve the status of the Syariah Courts. The researcher will make his own and original comments based on his reading, analysis and observation.

This research will also include the researcher critics against the attempts done by the State of Kelantan and Terengganu as well as comments on the seriousness of the Federal government towards improving and upgrading the Syariah Courts in **Malaysia.**

1.4 Scope of research and delimitation

Firstly, this research will discuss in brief the concept of crime in Islam. This is important in order to give a clear picture on the definition and scope of Islamic criminal law compared to man-made law. In chapter two, the researcher will explain the classification of crimes in Islam. This would include the explanation on the