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INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA
بَوْتِنَبْرِوَسِيَّتِي اِسْلَامَرُ اِنْبَارَا اِيْجِنَا مِلْدِيْسِيَا

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ABSTRACT

This study attempts to highlight the ruling on refusal to take the oath in Islamic Jurisprudence in comparison with the Malaysian Law and the Procedures of *Sharī'ah* Courts in the South of the Philippines. The study is divided into five parts: a) the nature on refusal to take the oath, b) the application of the oath, c) the ruling immediately after refusal to take the oath (except for retaliation cases and punishments (*Qīāāā and Āūdūd*)), d) the retortion of the oath to the suspect, and, e) the imprisoning or taking oath within the time of refusing. This study also attempts to discuss the issues among the Muslim jurists and lawmakers pertaining to the issue in question, and the position of the Malaysian Law and the procedures of *Sharī'ah* Courts in the south of the Philippines. The researcher uses analytical, descriptive and comparative methods, by referring to books on Islamic Law dealing with the related issues and discussions with various authorities including cases from the Malaysian Courts and the *Sharī'ah* Courts, which are under the Philippine government. Opinions of different Muslim jurists are compared and examined. The researcher utilizes classical and modern sources most of which are written in English language rather than Arabic to find legal Islamic views on issues related to this study. Through the demonstration of the previous jurists' opinions and proofs and discussion of the strengths of their justification, the study concludes that the ruling on refusal to take the oath is a disputed issue among the Muslim jurists. However, the predominant opinion is that the ruling on refusal to take the oath, depends on the merits of each separate case. As such, returning the oath back to the plaintiff is for the purpose of settlement (*Āulā*).

APPROVAL PAGE

I certify that I have supervised and this study and that in my opinion it confirms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a thesis for the degree of Master of Islamic Revealed Knowledge and Heritage (Fiqh and Usul al-Fiqh).

Arif Ali Arif
Supervisor

I certify that I have read this study and that in my opinion it confirms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a thesis for the degree of Master of Islamic Revealed Knowledge and Heritage (Fiqh and Usul al-Fiqh).

Mohd. Fuad Md. Sawari
Examiner

This thesis was submitted to the Department of Fiqh and Usul al-Fiqh and is accepted as partial fulfillment of requirements for the degree of Master of Islamic Revealed Knowledge and Heritage (Fiqh and Usul al-Fiqh).

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DECLARATION

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

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Signature _____

Date _____

(Major (Rtd) Hj. Ismail Hj. Hashim RMAF)

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