



**THE PROBLEMS AND CHALLENGES IN THE
IMPLEMENTATION OF COMPULSORY
ATTENDANCE ORDER IN MALAYSIA**

BY

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ABSTRACT

This research analyses the problems and challenges in the implementation of Offenders Compulsory Attendance Order (“the Order”) under the Offenders Compulsory Attendance Act 1954 (“the Act”) in Malaysia. In doing so, the researcher discusses the reasons on why the Act was forgotten after the year of 1972 and was only revived about three decades later i.e. in 2010. The disappearance for a very significant period begs the question as to its efficiency, the problems, limitations, and shortfall in the application of the Act. This research also discusses the problems and challenges in the implementation of the Order after its revival in 2010. The question that follows is whether it will continue to be used alongside other non-custodial sentences available in the current Malaysian penal system. Since the Order is strikingly similar to the application of suspended sentence in other jurisdictions for example the United Kingdom and Australia, therefore this research explores about the application of suspended sentence in those countries so that Malaysia can learn from their experience on how this kind of Order can be implemented successfully. For the purpose of this qualitative research, data and information are collected from the libraries and internet resources. However, due to scarcity of academic literatures on the topic especially pertaining to the application of the Order, the researcher opts to conduct interviews and online survey among the Compulsory Attendance Offenders, Prison Officers, and Magistrates to gather the first-hand data and information. Comparative study is also used in order to discuss and determine how the Order differs from other forms of non-custodial sentences as provided in the Criminal Procedure Code such as Community Service Order and Bond of Good Behaviour Order. This research finds that the Order is not only able to achieve the goal of sentencing but it is indeed cost-effective, sustainable, and correlation in reducing the prison congestion problem. However, since the Act itself contains lacunae and weaknesses, it makes the efficacy of its implementation easier said than done. Therefore, this research is concluded with recommendations such as to make amended to the Act to ensure that the imposition of the Order will benefit not only the offenders, but also the government and the society.

خلاصة البحث

لقد قام هذا البحث بتحليل المشكلات والتحديات في تنفيذ أمر الحضور الإلزامي للجنة ("الأمر") بموجب قانون الحضور الإلزامي للجنة لعام 1954 ("القانون") في ماليزيا. عند القيام بذلك، يناقش الباحث الأسباب التي أدت إلى نسيان القانون بعد عام 1972 ولم يتم إحيائه إلا بعد مرور ثلاثة عقود تقريبًا أي في عام 2010. ويؤدي الاختفاء لفترة مهمة للغاية إلى إثارة السؤال حول كفاءته، والمشاكل، والقيود، والنقص في تطبيق القانون. ويناقش هذا البحث أيضًا المشكلات والتحديات التي تواجه تنفيذ الأمر بعد إحيائه في عام 2010 السؤال التالي هو ما إذا كان سيستمر استخدامه إلى جانب الأحكام الأخرى غير الاحتجازية المتوفرة في نظام العقوبات الماليزي الحالي. نظرًا لأن الأمر يشبه بشكل مذهل تطبيق الجملة المعلقة في ولايات قضائية أخرى، على سبيل المثال المملكة المتحدة وأستراليا، فإن هذا البحث يستكشف تطبيق العقوبة المعلقة في تلك البلدان حتى يمكن لماليزيا أن تتعلم من خبرتها في كيفية هذا النوع من تنفيذ الطلب بنجاح. لغرض هذا البحث النوعي، يتم جمع البيانات والمعلومات من المكتبات وموارد الإنترنت. ومع ذلك، نظرًا لندرة الأدبيات الأكاديمية حول هذا الموضوع خاصة فيما يتعلق بتطبيق الأمر، يختار الباحث إجراء المقابلات والمسح عبر الإنترنت بين اللجنة الإلزامي الحضور وضباط السجون والقضاة لجمع البيانات والمعلومات المباشرة. تُستخدم الدراسة المقارنة أيضًا لمناقشة وتحديد كيفية اختلاف الأمر عن الأشكال الأخرى من الأحكام غير الاحتجازية كما هو منصوص عليه في قانون الإجراءات الجنائية مثل الأمر بخدمة المجتمع والأمر بضمان حسن السلوك. يجد هذا البحث أن الأمر ليس فقط قادرًا على تحقيق هدف إصدار الأحكام ولكنه أيضًا فعال من حيث التكلفة، والاستدامة، والارتباط في الحد من مشكلة ازدحام السجون. ومع ذلك، نظرًا لأن القانون نفسه يحتوي على ثغرات ونقاط ضعف، فإنه يجعل فعالية تنفيذه أسهل من الفعل. لذلك، تم الانتهاء من هذا البحث بتوصيات مثل تعديل القانون لضمان أن فرض الأمر لن يفيد المجرمين فحسب، بل الحكومة والمجتمع أيضًا

APPROVAL PAGE

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DECLARATION

I hereby declare that this thesis is the result of my own investigation, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

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DEDICATION

*Dedicated to judicial and legal service,
a small contribution with greatest hope to benefit all.*

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Glory and gratitude be to Allah (SWT) who hath ordained law and guidance, may the peace and blessings of Allah be upon Prophet Muhammad (SAW), members of his household, his companions and the rest of the believers till the day of Judgement.

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LIST OF ABBREVIATIONS

| | |
|--------------|--|
| CLJ | Current Law Journal |
| CPC | Criminal Procedure Code |
| DDA | Dangerous Drugs Act 1952 |
| DPP | Deputy Public Prosecutor |
| e.g. | <i>(exempligratia)</i> ; for example |
| ed./eds. | editor / Editors |
| edn. | edition |
| etc. | <i>(et cetera)</i> and so forth |
| Ibid. | (Ibidem): in the same place |
| MLJ | Malayan Law Journal |
| OCAA | Offenders Compulsory Attendance Act 1954 |
| Ors. | Others |
| P./PP. | Page / Pages |
| PBUH | Peace Be Upon Him |
| PKW | Perintah Kehadiran Wajib (Compulsory Attendance Order) |
| Pt. | Part |
| SAW | <i>Sallal Allahu Alayhi wa-sallam</i> (Blessings and Peace of Allah be upon Him) |
| v | versus |
| Vol. / Vols. | Volume/Volumes |
| YAB | Yang Amat Berhormat |
| YDPA | Yang di-Pertuan Agong |
| YDPN | Yang di-Pertua Negeri |

CHAPTER ONE

INTRODUCTION

1.1 BACKGROUND OF THE STUDY

In response to the question posted orally by Seputeh Member of Parliament, Mrs. Theresa Kok Suh Sim during the Parliamentary Debate on 24 October 2013, the Deputy Minister at the Ministry of Home Affairs, Datuk Dr Hj Wan Junaidi Tuanku Jaafar (as he then was) disclosed that, the government spent an average of RM 655.96 million every year from the year of 2010 to 2012 for the administration and management of the prisons as well as the prisoners. RM 7.98 is spent only on food for one prisoner per day. The rest are used for clothing, daily needs, security, and general cleanliness, the total of which comes close to RM 35 a day per prisoner.¹ Based on the statistics provided by the Prison Department, as at 1 June 2016, there are 36, 783 prisoners in Malaysian prisons.²

Apart from establishment of the new prison facilities, either a prison or a correctional centre, continuous efforts have been done by the government of Malaysia to control the committal numbers into prison by promoting non-custodial measure which is in line with the spirit of the United Nations Standard Minimum Rules for the Treatment of Prisoners (1955) or “Tokyo Rule”³. In 2007, an order for community

¹ Rahimy Rahim, “Parliament: It Costs RM35 Per Prisoner Per Day,” The Star Online, <http://www.thestar.com.my/news/nation/2013/10/24/parliament-it-costs-rm35-per-prisoner-per-day/> (assessed 10 November, 2015). See also “Laporan Jawatankuasa Kerja Cadangan Probation dan Community Corrections,” Ministry of Home Affairs, September, 2018 where it reported that as at 2017, the cost had increased to RM 41.10 per prisoner per day.

² Additional information post viva: As at 15 December 2017, there are 54, 855 prisoners in 36 prison institutions throughout Malaysia according to “Laporan Jawatankuasa Kerja Cadangan Probation dan Community Corrections,” Ministry of Home Affairs, September, 2018.

³ Adopted by General Assembly resolution 45/110 on 14 December 1990.

service was introduced in subsection (e) Section 293(1) of Criminal Procedure Code (CPC) for youthful offender.⁴ Section 293(1)(e) of CPC provides:

“to make an order requiring the offender to perform community service, not exceeding 240 hours in aggregate, of such nature and at such time and place and subject to such conditions as may be specified by the Court.”

Community service, by virtue of this section means any work, service, or course of instruction for the betterment of the public at large and includes, where any work performed involves payment to the prison or local authority under the Minister charge with the responsibility for women, family and community i.e. Ministry of Development of Women, Family and Society. Community Service Order is initiated to avoid our youngsters from the ‘iron bar’ which expose them to criminogenic associations of prison, and to avoid public negative sentiment against them. The Community Service Order will also save the public fund from spending for someone who are supposed to contribute to the economic growth of the country. This kind of correctional device is seen as more practical to induce additional chance upon the youthful offender to have a crime- free life.

Corresponding to section 293 of the CPC, laxity is also being given to first offenders i.e. under section 294. After taking into consideration the character, antecedent, age, health or mental condition of the offender or to the trivial nature of the offence or to any extenuating circumstances, the court may, instead of sentencing him to any punishment, order him to be released on his entering into a Bond of Good Behaviour with or without sureties. Under this section, no order to perform a community service is provided in contrast to section 293(1)(e) of the Code.

⁴ Section 27 of Criminal Procedure Code (Amendment) Act 2006 (Act A1274).

For a child under the age of 18, the Child Act 2001 provides for in section 91(1) (e), the power for the Court for Children to make a probation order specified under section 98 of the Child Act 2001. Not only that section 98 stipulates the manner on how the order shall be made, it also prescribes the procedure to be complied with, if the probationer fail to comply with the probation order. It is worth note that a warrant of arrest may be issued to secure his attendance to the court.⁵

Another mechanism to avoid the imprisonment sentence available in Malaysia is by suspending the sentence. This kind of order sounds so alien in Malaysia even though it has been given recognition by our CPC and Federal Constitution. Just a few sections after section 294, the phrase ‘suspension of sentence’ appears in Section 300, under Chapter XXVII of the CPC. Section 300 vests in the Ruler of the State, the power for suspending, remitting, and commuting the sentence, by virtue of Article 42 of the Federal Constitution. This power is wide enough to cover not only the imprisonment sentence but also the death penalty. However instead of suspending the sentence, the most practical approached taken under this section is by remitting or commuting the sentence, which are always overshadowed by the phrase ‘power of pardon’ or ‘royal pardon’.

For example, on 18 June 2015, 11 prisoners convicted for the offence of unlawful assembly in front of Masjid Ubudiah Kuala Kangsar in 2009, received the royal pardon from the Sultan of Perak, Sultan Nazrin Muizzudin Shah in conjunction with the auspicious fasting month.⁶ All the 11 activists, were supposed to be released on October 2, 2015 after being sentenced to 10 months’ imprisonment from March 18, 2015. In

⁵ Section 100 of the Child Act 2001.

⁶ Amanda Yeap, “Perak Sultan Pardons 11 Activists,” The Star Online, <[http:// www.thestar.com.my/ News/Nations](http://www.thestar.com.my/News/Nations)> (assessed 10 November, 2015).

Johor, the Sultan of Johor has shown mercy to 10 death row inmates by commuting their sentences to life imprisonment which carries a maximum term of 20 years in conjunction with his coronation as the fifth Sultan of modern Johor. A child offender who was found guilty of murder committed in 2004 received a full pardon and released on 19 March 2015 after an audience with His Royal Highness.⁷ In Kelantan, following a meeting by the Kelantan Pardons Board on 26 October 2015, Sultan Muhammad V had consented to reduce a death sentence of a prisoner and allowed him to be released a year early. His Royal Highness had also commuted the death sentence of six (6) other prisoners who were convicted under the Dangerous Drugs Act 1952 to life imprisonment in conjunction with his 46th birthday celebration on 11 November 2015.⁸

In July 2008, another form of suspended sentence was introduced in Malaysian penal system, namely the Parole System. The system was aimed at, among others, to curb the problem of congested prison. This system is implemented under the Prison Act (Amendment) 2008⁹ and modelled after the Australian Parole System.¹⁰ This system allows the prisoners who are sentenced to more than one-year imprisonment and having served half of the sentencing period, will be considered for early release after taking into consideration few factors such as seriousness of the offence, remorseful level of the prisoners, attitude showed throughout the imprisonment sentence, and willingness

⁷ “Johor Sultan Grants Full Pardon to One Prisoner, Commutes Death Sentence to Life Imprisonment for 10 Others,” Astro Awani, <<http://english.astroawani.com/malaysia-news/johor-sultan-grants-full-pardon-one-prisoner-commutes-death-sentence-life-imprisonment-10-others-56190> /> (assessed 28 February, 2018).

⁸ “Sultan Kelantan Pardons Death Row Prisoners in Conjunction With 46th Birthday,” New Straits Times, <<http://www.nst.com.my/news/2015/11/sultan-kelantan-pardons-death-row-prisoners-conjunction-46th-birthday>> (assessed 15 February, 2017).

⁹ The amendment of the Act received Royal Assent on 24 January 2008 and gazetted on 7 February 2008.

¹⁰ “Parole Board Secretariat,” Ministry of Home Affairs, <http://www.moha.gov.my/index.php/en/ulp-pengenal> (assessed 30 December, 2015).

of the family members to accept them.¹¹ All these requirements will be considered by the Parole Board Committee. The Committee comprises of a legal officer from the judicial and legal service, a senior Prison Officer, a senior Police Officer, an officer from the Welfare Department, and three (3) members of the community.¹² Upon being released under parole, a parolee will be observed by a Parole Officer who would give phone call, pay a house visit, etc. to ensure the parolee's good behaviour in the community. A parolee's breach of the conditions of his parole will warrant him to be sent back to prison.

For example, very recently, the former Selangor Chief Minister, Mohamad Khir Toyo, whose sentence of 12 months' imprisonment was upheld by the Federal Court on 29 September 2015, was released on parole after serving six (6) months' imprisonment in Kajang Prison. He was charged for corruption by using his position to obtain for himself two (2) bungalow lots worth RM 3.5 million. After being qualified for 1/3 remission of his 12 months' imprisonment, the Parole Board, which was convened on March 29, had considered and passed Mohamad Khir's parole application. He served the remaining two (2) months term outside prison with 41 conditions attached, inter alia, he was required to report to the Parole Board's Office in Klang every week, to remain in the area of Shah Alam and Petaling Jaya over a period of two (2) months, to be home between 7pm and 7am, and refrained from issuing any statement to the media.¹³

However, many of the legal practitioners, legal officers, law lecturers and even Judges are oblivious of the existence of a specific Act which confers power not to the

¹¹ Mohamad Salehudin bin Shuib, Interview by Author, Kajang, Selangor, 3 June 2016.

¹² Ibid.

¹³ Amar Shah Mohsen, "Khir Toyo Granted Remission and Parole for Good Behaviour," The Sun Daily, <<http://www.thesundaily.my/news/1744193>> (assessed 1 April, 2016).

ruler, but to the court to ‘suspend a sentence’ namely the Offenders Compulsory Attendance Act 1954 (the Act). Even though there is no such word of ‘suspended’ or ‘suspension’ mentioned in the Act, but from this research, it can be seen that the word ‘suspended’ or ‘suspension’ carries with it the spirit of suspending a sentence in term of the operation compared to other non-custodial sentences. Though the power conferred to the court is not as wide as that of to the Ruler, but power conferred to the court seems to be more practical not only in reducing the number of prisoners, but also to release them with some added value without having to go through a complicated process like the royal pardon.

Containing only nine (9) sections, the Offenders Compulsory Attendance Act 1954 came into force on 1 January 1957. The Act was enacted with the spirit to provide for the performance, in certain circumstances, of compulsory work by offenders convicted of certain offences and liable to be sentenced to imprisonment or by persons liable to be committed to prison for failure to pay a fine or debt, in lieu of being so sentenced or committed; and for purposes connected therewith.¹⁴

The Act is one of the laws enacted during pre-independence days. However, it was ‘abandoned’ for a long time due to certain circumstances and problems until its existence was highlighted around 2010. Since then, efforts have been put by the Ministry of Home Affairs in collaboration with the Prison Department to rejuvenate the Order of Compulsory Attendance (the Order) under the Act and to ensure the enactment of the Act was not done in vain. It is submitted that the implementation of this Order would not only be beneficial to the offender, but also to the government, benefit of which will be discussed thoroughly in this research.

¹⁴ Preamble of the Offenders Compulsory Attendance Act 1954 (Act 461).

Based on the information provided by Prison Department, 2, 084 offenders were ordered by the court throughout Malaysia, to undergo the Compulsory Attendance Order as at 12 January 2015.¹⁵ Despite the figure, the researcher found that the number decreases from year to year.¹⁶ Among other problems identified are (1) lack of confidence among the judicial and legal officers on the efficacy of the Order in turning the offender into a good citizen (2) the hesitation of the court officer to comply with the procedural requirements laid down by the Act before passing the Order (3) limited number of suitable cases to be the Order, and (4) the problems that need to be faced in executing the order especially when breach occurs.¹⁷

Therefore, this research will analyse the problems and challenges in the implementation of Compulsory Attendance Order under the Offenders Compulsory Attendance Act 1954, from the perspective of the court and/or other government agencies especially after its rejuvenation. After analysing the current position of its implementation in Malaysia, this research will offer recommendations for its betterment, inter alia, by amending the Act to suit it with the current situation to ensure that the Order is not only practical but also extendable to other misdemeanour cases in optimum.

In this opening chapter, discussion will be on the introductory part consisting of the Statement of Problems, Research Objectives, Research Questions, Hypothesis, Literature Review, Scope and Limitation in conducting this research, Research Methodology, and Chapterisation.

¹⁵ *PP v. Mohd Rezza Muslim Mohd Asri* [2015] 2 CLJ 1013.

¹⁶ Statistic of Compulsory Attendance Order from 2010 until June 2017 from Malaysian Prison Department.

¹⁷ "Perintah Kehadiran Wajib," Google, https://docs.google.com/forms/d/1nMx3O1_tmj7_Mp5zuB0zh_YzoAhh3hDOXXcmn5R9O89pY/edit#responses (assessed 31 December, 2017).

1.2 STATEMENT OF THE PROBLEM

As mentioned before, the Offenders Compulsory Attendance Act 1954 is promulgated since the pre-Independence Day. It used to be implemented between 1957 until 1972 before it disappeared for more than three decades. The Act was only resuscitated in 2010 with certain rebranding especially in terms of its application. The resuscitation has given new impetus to the Malaysian penal system and it is hoped to solve problem of prison congestion and unnecessary spending of public fund. However, the new brand Compulsory Attendance Order under the Offenders Compulsory Attendance Act 1954 is still alien among most of the legal fraternity.¹⁸ This research identifies certain problems leading to this obliviousness such as no reference available, and less cases be imposed Compulsory Attendance Order. Many judicial officers opt out this Order due to the hassle of the procedure, the worry of an appeal, and lack of confidence in the efficacy of the Order in achieving the objective of sentencing in Malaysia.¹⁹ The Act itself contains lacunae and weaknesses, which make the efficacy of its implementation easier said than done.²⁰ If these problems are not tackled in time, may result in another demise of the Act in Malaysian penal system. Thus, efficient approach must be taken to enhance operation of the Act and Order, and to ensure both can be equally implemented along with other non-custodial sentences in the system.

1.3 RESEARCH OBJECTIVES

Based on the background of the study, the following objectives were developed:

¹⁸ Azian Aziz, "PKW: Gantian Kepada Hukuman Penjara," Utusan Online, <http://www.utusan.com.my/rencana/utama/pkw-gantian-kepada-hukuman-penjara-1.8050> (assessed 23 February, 2017).

¹⁹ "Perintah Kehadiran Wajib," Google, https://docs.google.com/forms/d/1nMx3O1_tmj7_Mp5zuB0zh_YzoAhh3hDOXXcmn5R9O89pY/edit#responses (assessed 31 December, 2017).

²⁰ Ibid.