

Challenges in the Enforcement of Shari'ah Criminal Offences in Selangor: Between Perception and Reality

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ABSTRACT

The enforcement of Shari'ah criminal offences in Selangor has always been subjected to public scrutiny. The commission of selected Shari'ah criminal offences has been rigorously enforced against by the Religious Enforcement Division of the Department of Islamic Affairs. Alas, there are times that the manner in which the enforcement has been carried out has led to public criticism. This article studies the power of the enforcement officers, the modus operandi of enforcement and the challenges faced by the Selangor Religious Enforcement Division. Using a mixed mode of content analysis and personal observation, the article argues that there is still much that needs to be done to improve the image and modus operandi of the enforcement of Shari'ah criminal offences in Selangor specifically and in Malaysia generally.

Keywords: Shari'ah criminal offences, Enforcement, Selangor, Religious Enforcement Officer

INTRODUCTION

Armed with the power to enforce Shari'ah criminal offences, the Islamic Religious Divisions have acquired a rather hostile

and negative perception among the public. Some of their actions have been the subjects of public scrutiny and heavy criticism. Many quarters question the necessity of having moral policing as it gives the idea of encroachment on the personal liberty of individuals by the state, which is frowned against in modern liberal democracy. The state may only encroach into the private lives of individuals if it can be shown

ARTICLE INFO

Article history:

Received: 21 April 2015

Accepted: 10 September 2015

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that such act can cause harm to others. The polemic here in Malaysia is “what constitutes harm to others?”

While modern liberals tend to look at individuals’ rights as the right to be left alone and the right to privacy, as well as personal space to do what ever one wishes, the Islamic position has a slight twist. Although the Shari’ah respects the privacy of individuals, there is also the responsibility of every Muslim to enjoin others to do good and forbid anyone from committing evil. Therefore, in certain circumstances, some personal acts may be “curtailed” in order to ensure that these acts do not harm the public and are not taken as a norm as they are prohibited in Islam.

It is at this juncture that the need for enforcing the Shari’ah becomes a necessity. However, due to the lack of understanding amongst the public and the existence of executive intervention, this has led to some ‘highly’ publicised and criticised enforcement actions taken by the Department. This includes the raid on popular night clubs like The Ship in Subang Jaya, Selangor, in 1997 and the Zouk in Kuala Lumpur in January 2005¹ to preempt Muslim women from participating in beauty contests²; the issuance of an investigation order against a well-known and respected Muslim cleric, Dr. Mohd Asri Zainal Abidin, the then Mufti of Perlis, for conducting unlicensed religious

sermons in 2009³; the mass arrest of the Shi’ite faith followers among the Malays in Gombak, Selangor, and “the detention of Al-Arqam sect leaders in 2012.”⁵

Due to the negative image portrayed by the media on the enforcement of Shari’ah criminal offences in Malaysia by the Religious Enforcement Division, an elucidation on the ‘make up’, ‘legal basis’, ‘powers’, as well as ‘challenges’ of the Division is therefore crucial. This article begins with an introduction of Shari’ah criminal offences in Malaysia. The article then moves into the historical setup of the Religious Enforcement Division, a look into its inherent power, as well as laying out the challenges it faces in the actual execution and implementation of the Shari’ah Enactment.

SHARI’AH CRIMINAL SYSTEM IN MALAYSIA

Despite the negative media reports that highlight the encroachment of personal rights and liberties by enforcement officers of the Selangor Islamic Religious Department, in reality, only a limited number of acts are categorised as Shari’ah offences in Malaysia. This is because the Federal Constitution vests the power to regulate criminal offences under the civil courts [Federal Constitution, Schedule 9, List I (Federal List), item 1]. The state is given a limited power to regulate “offences by persons professing the religion of Islam

¹ <http://news.bbc.co.uk/2/hi/asia-pacific/4276077.stm>

² News Straits Times, 15th July 1997.

³ <http://www.malaysiaharmoni.com/v2/index.php/nasional/3603-dr-maza-bebas-tuduhan-mengajar-agama-tanpa-tauliah>

⁴ The Straits Time, Singapore, 5th January 2011

⁵ New Straits Times Malaysia, 5th November 2012

against precepts of that religion-except in regard to matters in the Federal List (Farid Suffian, 2012). The state's power to enact laws to regulate criminal matters is further delineated by the Syariah Courts (Criminal Jurisdiction) Act 1965, as amended in 1984, which practically limits the maximum sentences imposed to three years imprisonment, or a fine of 5,000 ringgit and six strokes of the cane 2 of the Muslim Courts (Criminal Jurisdiction) (Amendment) Act 1984. Hence, the power of sentencing is lower than the magistrate courts and the range of criminal offences that can be potentially regulated by the Shari'ah criminal system is very much restricted (Abdul Monir, 2009).

For example, the crimes of theft, robbery, false accusation of adultery, fornication, *riddah* and *al-baghyu* (which are also known as hudud crimes) can no longer be based on the Shari'ah. These also include *qisas* crimes such as causing death or bodily injury to others. These crimes, except for taking intoxicants, fornication and *qazaf*, are now governed by the Penal Code and fall squarely under the jurisdiction of the civil courts. Meanwhile, the crimes involving consumption of intoxicants, fornication and *qazaf* no longer maintain the original punishments due to the curtailing of the power of the Shari'ah Courts in all states in Malaysia. Crimes that have been included in the Enactments such as gambling, eating during the month of Ramadhan are regarded as *ta'zir* crimes which aim to protect the public and individuals from harm. This is the justification for criminalising such acts.

These offences are tried under the Shari'ah courts. Unfortunately, unlike the Shari'ah courts that underwent major changes with the establishment of the Department of Syari'ah Judiciary in 1998, the enforcement divisions have been neglected (Ramizah, 2011).

Shari'ah criminal offences are part and parcel of the Islamic legal system in Malaysia. It is therefore imperative that they are properly administered so that the negative image attached to them can be reduced, if not eliminated all together (Lindsey & Steiner, 2013).

RELIGIOUS ENFORCEMENT DIVISION

Enforcement of Shari'ah criminal offences is conducted by the state religious departments. In Selangor, the body that is responsible for these offences is the Selangor Islamic Religious Department, a division under the Selangor Islamic Religious Office. Selangor is one of the pioneering states that introduced the administration of Islamic laws in Malaysia in 1952 (Abdul Monir, 1998). By way of comparison, the prosecution and enforcement department in Kelantan which existed during the reign of Sultan Muhammad 1 (1800-1837) is among the oldest department in that state (Abdullah Alwi, 1996).

From its birth, the Selangor Islamic Religious Department has metamorphosed from a department initially set up to stem the spread of communist ideology to a full-fledged enforcement agency. During its hey days, the Department was birthed

from the vision of the by the late Sultan Hishamuddin Alam Shah Al Haj due to the concern over the fact that the Muslim faith might be corrupted by 'Zeitgeist' influence.

At the time of its inception, i.e. on 1st October, 1945, Yang Mulia Raja Nong bin Raja Hussin was appointed as the Secretary. As the Department was visualised by the Sultan, naturally the whole operation of the office was directly under His Highness's purview. Its temporary administrative office was located at the Sultan's office adjacent to Istana Kota in Klang, and was fully financed by the Royal Highness.

The broad objectives of the Department were to strengthen and defend the Islamic faith and Muslims in totality through research, monitoring and enforcement. With this noble objective, the Religious Department is tasked with the 'moral policing' of the Muslims by taking pre-emptive measures against 'immoral action' which have been made triable offences under the Shari'ah Enactments. In delivering this task, the Department is capable of receiving reports and complaints, and conducting thorough investigations which will result in the preparation of complete investigation papers (IP) for purposes of prosecution.

The legitimacy to enforce Shari'ah criminal offences in Selangor is derived from a number of State Enactments, which include the Syariah Criminal Procedure (State of Selangor) Enactment, 2003, the Syariah Criminal Offences (State of Selangor) Enactment, 1995, the Administration of the Religion of Islam (State of Selangor) Enactment, 2003, the Islamic Family Law

(State of Selangor) Enactment 2003, the Syariah Court Civil Procedure (State of Selangor) Enactment 2003 and the Non-Muslim Religious (Development Control among Muslims) Enactment, State of Selangor, 1988. A broad range of Shari'ah criminal offences fall within this purview, from matters pertaining to faith, sanctity of Islam, drinking, gambling, sexual offences, as well as offences under relating to family matters (Zulkifli Hasan, 2007). Only criminal offences specified under these enactments will fall under the jurisdiction of the religious enforcement division as the broad power to regulate criminal offences falls under the civil court, as specified under List 2 of the Ninth Schedule of the Federal Constitution (Siti Zubaidah Ismail, 2013; Farid Suffian, 2012).

In the execution of its powers, the religious enforcement officers face public opposition who view their action as a gross interference into the personal affairs of an individual (Ahmad Azam, 2007). For that reason, the religious enforcement officers have been labelled as 'moral policemen', 'spies' or even 'Peeping Toms' for performing their duties (Siti Zubaidah & Muhammad Zahir, 2007).

On the other hand, there are others who viewed that the Religious Department should have been more proactive in their enforcement. Azizah and Noradha (2014) lamented that more needs to be done to stem the declining moral standards among the Muslims in Malaysia and blamed the inefficiency of the religious enforcement department. Inordinate delays and simply

lack of enforcement could have resulted from the lack of understanding of the various constraints faced by them. As a result, the enforcement officers have been labelled as ineffectual, harsh, unprofessional, and the like. The article continues with a deliberation on the various constraints faced by the religious enforcement authorities.

CHALLENGES FACED BY THE RELIGIOUS ENFORCEMENT DIVISION

Enforcement of Shari'ah criminal offences has never been an easy task. The division faces a number of problems ranging from non-uniformity of the Shari'ah laws to more practical issues relating to lack of manpower and resources.

Non-uniformity of the Shari'ah laws

As Shari'ah falls within the jurisdiction of the states, the list of Shari'ah offences

varies from one state to another. This leads to a non-uniformity of laws among states in Malaysia (Zulkifli Hassan, 2007). The non-uniformity of laws gives rise to conflicts of laws between one state to another in Malaysia (Abdul Hamid, 2002). These offences range from conducts deemed to be offending Islam to offences against persons or immoral behaviour (Farid Suffian, 2012).

Acute shortage of manpower

The dearth of quality religious enforcement officers poses a major constraint towards the effectiveness of the Islamic law enforcement in Malaysia. The root of such weakness lies in the poor planning and coordination of the enforcement process prior to its full execution. From the data given by the Enforcement Division, JAIS, in 2011, there is a gross lack of enforcement officers in comparison to the total number of Muslim population (see Table 1).

TABLE 1
The number of Muslim population and religious enforcement officers in Selangor by district⁶

District	Muslim Population	Religious Enforcement Officers
HQ/ Shah Alam/ Petaling	830,125	30
Klang	369,059	9
Sepang	124,449	8
Kuala Langat	132,053	8
Hulu Langat	565,618	9
Gombak	382,774	8
Hulu Selangor	127,783	8
Kuala Selangor	146, 113	8
Sabak Bernam	76,852	9
TOTAL	2,754,826	97
RATIO	28,400	1

⁶ State of Religious Department (2012), unpublished. Data obtained from personal interview with the religious enforcement agency.

Table 1 illustrates that the total number of the religious enforcement officers is highly disproportionate to the total number of the Muslim population. In particular, the per head ratio in Selangor stands at 1:28,400. If we were to draw a comparison to the ideal ratio of policeman to citizens by INTERPOL, i.e. one policeman to two hundred and fifty citizens, there is a serious discrepancy in the number of religious enforcement officers compared to the Muslim population in the country. In Malaysia, the current number of police officers is 122,000. That makes the ratio of policemen to citizen in Malaysia at one to two hundred and seventy-two (1:272)⁷. Of course, some would argue that such comparison cannot be drawn as the job scope of the police force is considerably much larger than the religious enforcement agencies. However, by drawing such comparison, one could not help but understand the burden faced by the religious enforcement officers in carrying out their duties, whereby one enforcement officer is expected to cater to 28,400 Muslims!

⁷ My SinChew. (2008, December 3). Police to have 150,000 Personnel Target By 2011 *My SinChew*. Retrieved from <http://www.mysinchew.com/node/18850>

See also Bernama (2008, December 22). Police Probe Malaysian Passports being Misused Abroad. *Bernama*. Retrieved from <http://www.bernama.com/bernama/v3/printable.php?id=379841>

Specialised training and skills

A significant number of the Religious Enforcement officers are civil servants in the Religious Office / Officer of Islamic Affairs scheme. Like other civil servants, they are subject to unilateral transfer to other division such as Dakwah, Mosque Management, Education, Research and the like (Siti Zubaidah, 2008). As a result, there is difficulty in retaining experienced officers, and as it takes time to recruit and train new officers, the effective running of the division is significantly affected.

Another serious problem is in the issue of recruitment. Currently, the recruitment of new officers is not determined by whether the candidates possess a degree in Shari'ah (Siti Zubaidah, 2008). This makes the training of officers twice as hard as they need to be ingrained with the basic knowledge of Shari'ah first before they can truly grasp the rudimentary knowledge of the various Shari'ah offences under the Syariah Criminal Offences Enactment and Syari'ah Criminal Procedure Enactment.

Like other enforcement agencies, the religious enforcement agencies must develop standard operating procedures (SOP) so that their operations will withstand legal challenges (Ibrahim & Hanipah, 2015). Among the standard procedures that require consideration are receiving complaints, taking statements from the witness, carrying out investigation, conducting operations, arresting, preparing investigation papers for the purpose of instituting prosecution, analysing evidence, collecting evidence for the purpose of court

exhibits and dealing with witness in the Court when the case was finally heard. Siti Zubaidah (2008) alluded to this by stating that despite the positive efforts of the Islamic Religious Department in coming out with SOPs for handling information and complaints, standing instructions on pre-emptive measures on public morality and power of arrests such as Arahan Tetap Pengarah Jabatan Agama Islam Negeri 2007 (Garis Panduan Penguatkuasaan Undang-undang Jenayah Syariah) need to be done to refine them further.

Investigation procedures and the pursuant preparation of evidence are crucial in the effective prosecution of a case (Zulfakar, 2015). The make and break of a case depends on the successful proof of the elements of the offence and the full compliance of all the procedures related to the offence. The inefficiency of the enforcement officers inadvertently affects the prosecution of a case. This further mars the already negative image of the division. As a result, a few cases are prosecuted with the most popular cases being those involving proximity and indecent acts, which are easier in terms of burden of proof compared to cases like *qazaf* or false accusation of zina (fornication) (Zulkifli Hassan, 2007).

Another observable challenge is the lack of devotion, zeal and commitment in the work force. Enforcement requires sacrifice, time and expenses, as well as meticulousness in meeting evidential and procedural rules. The officers frequently face condemnation, verbal abuse, physical

abuse, threats and even physical threat, which may jeopardise retention of talents. The officers further worry over the issue of insurance coverage in case anything happen to them. Aside from that, the lack of opportunities for promotion and small pay have exacerbated the situation further and subjected the officers to be vulnerable to the abuse of power and corruption in order to make ends meet. It is therefore not surprising that, in 2013, three religious enforcement officers of JAIS were detained by the Malaysian Anti Corruption Commission (MACC) for allegedly abusing power by accepting a bribe from a couple who committed the offense of close proximity. It appeared that the officers had been earning tens of thousands of ringgit within a month.⁸ This is indeed a serious problem as the stature of an officer whose duty is to combat Shari'ah offences must be beyond reproach. If they are susceptible to this type of crime, which is declared as a crime in Islam and in the Enactments, the current system therefore needs to be revamped.

Lack of Resources

Proper resources and equipment are essential in the effective execution of Shari'ah enforcement in Malaysia (Mohammad Fathi & Nazri, 2015). Unfortunately, the Religious enforcement Division suffers

⁸ Utusan Malaysia (2013, December 3). Pegawai JAIS didakwa terima suapan lupus fail khalwat. *Utusan Malaysia*. Retrieved from http://ww1.utusan.com.my/utusan/Mahkamah/20130903/ma_05/Pegawai-JAIS-didakwa-terima-suapan-lupus-fail-khalwat

from lack of equipment that is necessary to assist them in their enforcement duties. The use of devices is imperative to prove some offences such as alcohol detection device. Evidence from alcohol testers has formally been accepted by the Shari'ah court as admissible evidence (Amir & Nik Azlan, n.d.).

Another major problem faced by the division is the lack of support in terms of logistics. There is a need to add and improve the necessary transportation needs of the officers and suitable devices for storing evidence to be used in courts as exhibits. Failure to fulfil these needs may render cases to be thrown out of court as they are inadmissible. Aside from that, the lack of temporary detention rooms or lock ups has led to detainees escaping, which in some circumstances has rendered the officers vulnerable to negligence suit.

Other constraints, which are probably minor problems, include the lack of uniforms, which gives the image that these enforcement officers lack both discipline and force. On a more fundamental note, however, the Enforcement Officers are not armed unlike the police officers. This has subjected them to physical harm especially when they are faced with life threatening situations. The cold blooded murder of the Chief of the Religious Enforcement Officer of Pahang in November 2013 is a defining example of how dangerous the task of religious enforcers can be in carrying out their duties. In Malaysia, only the Terengganu Islamic Religious Enforcement officers are allowed to carry firearms in their daily duties.

THE WAY FORWARD

The findings from the field work attest to the fact that the Shari'ah criminal enforcement in Malaysia is in a dire need of a progressive change. The challenges that have been identified are not small feats but this does not mean that they are not insurmountable. Like any other criminal enforcement agencies, the division requires capital, resources and manpower upgrade. Among strategic initiative mooted is the creation of a new scheme of service for Shari'ah enforcement officers. The current officers are on "S" grade which is an ordinary scheme for all the officers in the prosecution and enforcement department. In order to reduce the possibility of corruption and bribery, it is wise to place the enforcement officers at a higher rank with higher pay. In order to further strengthen the division, the enforcement division should be made as independent from the state religious office, free to make decisions on day-to-day operations and prosecution without being subjected to the control of the state religious department.

The realisation that the religious enforcement department should be autonomous has been felt at the highest level. For example, this has been raised by the then Chief Minister of Malacca at the closing ceremony of the Conference for Religious Enforcement Officer and Prosecutor Entire Malaysia held from 6th to 8th December 2009 at Everly Resort Hotel in Tanjung Keling, Malacca. The then deputy minister at the Prime Minister's Department, Datuk Dr. Mashitah Ibrahim,

also agreed with this suggestion, stating that autonomy is the only way forward for the department. In line with that call, Rahimin (2010) espoused for the department to be upgraded into one that is highly regarded for its excellence in enforcement, at par with other enforcement agencies. Farid (2011) also echoed the concern that the enforcement division should be separated from the state religious department.

Corollary to the new scheme is to give the officers more professional training so that the new Shariah enforcement agency will be at par with other enforcement agencies such as JAKIM and the Copyright Enforcement Division of the Ministry of Domestic Trade and Consumer Affairs. Like any other scheme of service, there must be opportunities for training, promotion, critical allowance, perks and the like. By upgrading the scheme of service, more talented candidates could be attracted to join the agency's manpower. The welfare of the enforcement officers must also be taken into consideration. Like other enforcement officers, the religious enforcement officers are subjected to ridicule, harassment, as well as physical and bodily threats. The officers must be insured from any impending injury and the family members must be properly compensated in the event of death in the carrying out of official duty.

Security issue is another major concern (Cho, 2013). Arming the enforcement officers has been mooted since 1995, but it was not seriously regarded until the murder of the Religious Enforcement Chief of Pahang, Ahmad Raffli in 1995.

Other than the suggestions mentioned above, Religious enforcers must also equip themselves with any martial arts skills as a form of self defence.

Needless to say, the enforcement officers must also be equipped with state-of-the-art technology which includes breathalysers, audio spy devices, voice recorders, spy cameras, night vision cameras, etc. Enforcement of Shariah criminal offences has become more and more challenging with the rise of deviant teaching such as Rasul Melayu, Syiah, Qadiani and Al-Arqam, which require religious enforcement to infiltrate into groups to gather intelligence.

In addition, continuous training is imperative in order to upgrade the skills of the enforcement officers. The training must also include understanding of the various Shariah Enactments that are applicable to them, procedural rules and relevant court decisions (Najibah, 2012). These include skills required for conducting investigations and arrest, gathering evidence, preparing evidence to be used in courts, preservation of court exhibits, as well as questioning witness in court. Officers could acquire such skills through attachments at the Royal Malaysia Police (PDRM) or *Institut Latihan Kehakiman dan Perundangan* (ILKAP) or mock trials.

Meanwhile, the creation of a professional image, the use of special uniforms should be created to distinguish the Shari'ah enforcement officers from other officers at the Religious Department. There have been initial efforts made by

Jabatan Agama Islam Selangor (JAIS) when the Enforcement Division of JAIS introduced new uniforms for JAIS enforcement officers on 19 July 2011. The event was launched by JAIS Director, Dato 'Hj Marzuki bin Hussin, and it was one of the many initiatives taken to give a professional image to religious enforcement officers.

Much effort has been taken to professionalise the Shari'ah courts in Malaysia. It is now time for the enforcement division to be given the much needed professional outlook. After all, upholding justice is the backbone of the Shari'ah system and in keeping with that, all the agencies involved must be further moulded to make this a reality.

In what way will all these suggestions help to change the public perception? The increase in professionalism will definitely help create a more systematic method of carrying out duties. This will hopefully minimise the negative perception that has long tainted the image of the Department and the officers. However, a mere system and even lucrative incentives will not be enough. The requirements used for selecting enforcement officers must also be increased to include not only academic qualifications but also the possession of the true Islamic *akhlak* (morals).

This is pertinent to ensure that whenever the enforcement of Islamic Criminal offences is carried out, it is done in the most delicate manner, while taking into consideration the issue relating to the right to privacy and the sensitivity of the

situation. As criminals under the Penal Code are informed of the reason for their arrest, similarly, those committing Islamic offences must also be made to understand the reason for their arrest. The Department of Religious Affairs of each state also has the imperative duty to educate the Malaysian public on the necessity of espousing good and preventing evil by the State. Hopefully, with the improvement, the enforcement of Shari'ah crimes will no longer be negatively perceived in the future. Instead, it will help Muslims and non-Muslims in Malaysia to understand that the concept of imposing "harm to others" as it is understood that the common law system is slightly different from the Islamic legal system. This is because what is regarded as causing harm to others in the common law system is decided on a case-to-case basis, whereas in the Shari'ah, it is determined by Allah s.w.t.

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