A CRITICAL STUDY ON THE IMPLEMENTATION OF HUDUD LAW IN CURBING SEXUAL OFFENCES IN MALAYSIA

By

Mohd Farid Zuhri bin Ismail (2009984001) Muhammad Abbad bin Abdul Wahid (2009720013) Muhammad Khairi Aizuddin bin Hamsar (2009553151) Nor Ikhwan bin Nor Ikhsan (2009126365)

Submitted in Partial Fulfillment of the Requirements for the Bachelor in Legal Studies (Hons)

> Universiti Teknologi MARA Faculty of Law

> > June 2012

The students/authors confirm that the work submitted is their own and that appropriate credit has been given where reference has been made to the work of others.

ABSTRACT

This project paper discusses about the issues and challenges in implementing Hudud law in Malaysia specifically on curbing sexual offences. The project paper outlines our research proposal which consists of basic layouts in conduct of our research. This project paper also comprises the explanation of Hudud law pertaining sexual offences and the problems of its enforcement in Malaysia. Furthermore this project paper also explains the legal issue in implementing Hudud law in Malaysia and compares with Hudud law applicable in Saudi Arabia. Besides, this project paper focuses on research finding based on knowledge of several parties in this topic and they had been interviewed to analyze on this matter which comprises of separate opinions and comments generated by legal and Hudud expertises. Last but not least, this project paper discusses on the recommendation on implementing Hudud law into our Malaysian legal system.

TABLE OF CONTENTS

Acknowledgement	ii
Abstract	iii
Contents	iv
List of Cases	vi
List of Statutes	vii

CHAPTER ONE: INTRODUCTION

1.0	Introduction	1
1.1	Background	2
1.2	Problem Statements	5
1.3	Research Questions	7
1.4	Research Objectives	7
1.5	Significance of the Research	7
1.6	Research Scope	8
1.7	Research Methodology	8
1.8	Limitation of the Research	9
1.9	Outline of the Research Paper	9
1.10	Conclusion	10

CHAPTER TWO: HUDUD LAW PERTAINING TO SEXUAL OFFENCES AND THE PROBLEMS OF ITS ENFORCEMENT IN MALAYSIA

2.1	Introd	uction		11
2.1	Criminal Offences in Islam			11
	2.2.1	Definition	of Sexual Offences	14
	2.2.2	The Sexua	l Offences	15
	2.2.3	Extent of L	osses from Sexual Offences	21
	2.2.4	The Uncon	trollable of Sexual Offences	22
2.3	Huduc	l Law		23
	2.3.1	Enforcing l	Hudud Law Pertaining Sexual Offences	25
	2.3.2	The Enforc	ement and Prosecutors in accordance with Hudud law	26
		2.3.2.1	Methods of Proving Hudud law	29
		2.3.2.2.	Types of Hudud Punishment of Sexual Offences in	1
			Islam	33
2.4	Concl	usion		35

CHAPTER THREE: THE LEGAL ISSUE IN IMPLEMENTING HUDUD LAW IN MALAYSIA

3.0	Introduction	36		
3.1	Legislative Setting	37		
3.2	Power of Federal and States			
3.3	Jurisdiction of Syariah Courts			
3.4	Malaysia as Secular State			
3.5	Fundamental Liberties			
3.6	Hudud in Saudi Arabia	45		
	3.6.1 Saudi Arabia Legal System	45		
	3.6.2 Saudi Arabian Courts System	46		
	3.6.3 Hudud Crimes in Saudi Arabia	47		
	3.6.4 Procedure	47		
3.7	Conclusion	48		

CHAPTER 4: RESEARCH FINDINGS

4.1	Introduction			
4.2	.2 Sexual Offences in Malaysia			
	4.2.1 Morality and Law in Relation To Sexual Offences	50		
	4.2.2 The Effectiveness of the Punishment of Sexual Offences			
	in Malaysia	51		
4.3	Hudud Law and Its Understanding	53		
4.4	.4 Suitability of Hudud Law in Addressing the Sexual Offences'			
	Problems in Malaysia	54		
	4.4.1 Acceptableness of Society towards Hudud Law	54		
4.5	Hudud Law as Alternatives to Curb Sexual Offences in			
	Malaysia, its Challenges and Effects	55		
	4.5.1 The Challenges of Implementing Hudud Law	55		
	4.5.2 The Effects of Implementing Hudud Law	56		
4.6	The Consistency of Hudud Law with the Federal Constitution	57		
4.7	The Other Alternatives to Curb Sexual Offences besides Hudud law	58		
4.8	Conclusion			

CHAPTER ONE

INTRODUCTION

1.0 Introduction

This research paper aims to provide a critical study on the implementation of Hudud law in curbing sexual offences in Malaysia. The structure of this paper begins with a background that gives an insight upon the issue that is going to be discussed. Later it is followed by explanation concerning the problems faced by Malaysia in the context of curbing sexual offences. Next, we will highlight the research questions, the research objectives and the significance of the research will also be touched. Then, we would then go to the scope of this research paper whereby the scope will define the context that this research paper wishes to address. This will be followed by methodology of this research where we explain the methods used by us in completing this research paper. We would then go to the next part of the paper concerning the limitation of the research. Next, we will be explaining the outline of the research paper. Lastly, it will be followed by the conclusion concerning the first chapter.