

A LEGAL STUDY OF PRE-MARITAL HIV TEST AND ITS APPLICATION
IN MALAYSIA

By

Norhafizah binti Mahrer (2007294188)

Nazirah binti Ahmad Tajuddin (2007294236)

Nurul Farrahuda binti Omar Bakhi (2007294296)

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

Universiti Teknologi MARA

Faculty of Law

October 2009

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

ACKNOWLEDGEMENT

Writing this project paper requires support from many people and institution. First and foremost, we would like to thank our lecturers for Legal Research & Methodology (LAW 557), Prof. Madya Norha bt Abu Hanifah and Pn. Siti Hafsyah bt Idris, for the basic guidelines in preparing the project paper and the approval of the proposal.

It is a pleasure to express gratitude for the assistance and guidance by our supervisor, Prof. Dr. Lim Heng Gee who has been supportive and gives academic assistance for the achievement of the research objectives.

We would also want to acknowledge Pn. Jamilah bt Jamil, the Assistant Director in Jabatan Agama Islam Selangor (JAIS) for her willingness to be interviewed and for providing the information about the procedures on premarital HIV test required by state religious departments. Similar appreciation goes to Dr. Junaidah bt. Abdul Wahab, a doctor from the HIV/AIDS Unit of Penang Health Department for the information on how the test had been conducted and the medical perspective on the issue of pre-marital HIV Test.

Further appreciation is given to the lecturers of University Science Malaysia (USM), Dr Sivamurugam Pandian and Dr Azlinda Azman from the Social Science Faculty for the cooperation given by them and their willingness to be interviewed through email.

ABSTRACT

The infection of HIV has been increasing every year. Many measures had been taken to overcome this problem and to prevent the virus from spreading. The Johor religious department was aware on this issue and took steps to prevent this problem from getting serious. They were the first state which introduces the pre-marital HIV test. As we feel that this test should be implemented as a legal obligation in Malaysia, we conducted a research on this matter. “A Legal Study of pre-marital HIV test and Its Implication in Malaysia” is the title for this project paper. The scope of this study focuses on Muslim couples who are getting married. This paper analyses and evaluates the current position on the policies of pre-marital HIV test in several states. The procedures of getting married in State that require HIV testing are highlighted. The objectives of this research are to determine what is the legal basis for requiring the compulsory testing for states implementing the requirement for pre-marital HIV test, to examine the effectiveness of mandatory pre-marital HIV test in reducing the spread of AIDS in states which have made such tests compulsory, to examine the viability of making the requirement for pre-marital HIV test to be compulsory in Malaysia, to recommend that the mandatory requirement of pre-marital HIV tests be standardize throughout Malaysia and this test be offered to or required for non-Muslims and to propose a new law be implemented regarding the pre-marital HIV test. The approach adopted in this paper is based on a qualitative research and mainly library based.

TABLE OF CONTENTS

Acknowledgement	ii
Abstract	iii
Contents	iv
CHAPTER 1: INTRODUCTION	
1.0: Title of the Research	1
1.1: Background of the Study	1
1.2: Problem Statement	6
1.3: Objectives of the Study	7
1.4: Methodology	8
1.5: Scope and Limitation	9
1.6: Significance of the Research	9
1.7: Conclusion	10
CHAPTER 2: LITERATURE REVIEW	
	11

CHAPTER 3: THE LEGAL BASIS FOR THE COMPULSORY PREMARITAL HIV TEST

3.0:	Introduction	27
3.1:	Circular on premarital HIV test in Selangor.	28
3.2:	Statute	29
3.3:	Marriage Procedure	31

CHAPTER 4: PERCEPTION OF THE RELEVANT PARTIES

4.0:	Introduction	33
4.1:	First Interview	34
4.2:	Second Interview	35
4.3:	Third Interview	37
4.4:	Findings for Statistics	
	4.4.1: Statistic of pre-marital HIV test in Selangor.	39
4.5:	Conclusion	50

CHAPTER 5: RECOMMENDATIONS AND CONCLUSION

5.0:	Introduction	51
5.1:	Islamic Perspective	51
5.2:	Weaknesses not having law regarding pre-marital HIV test.	54
5.3:	Bureaucracy	55
5.4:	State v Federal	58
5.5:	Relevant article to support	59