

**A COMPARATIVE STUDY ON WHIPPING AS PUNISHMENT FOR MUSLIM
WOMEN OFFENDERS**



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NOVEMBER 2011

BAHAGIAN G : ABSTRAK PENYELIDIKAN – Tidak Melebihi 200 patah perkataan

The provisions for the sentence of whipping exist in both Syariah and civil law. The Criminal Procedure Code 1999 contains clear provisions pertaining to whipping on male offenders only because Section 289 of this Code expressly states that female offenders are exempted from it. The Syariah law, however, does not distinguish between male and female offenders in imposing this sentence as all offenders shall suffer the same modes of sentencing when they have committed any crime. Nevertheless, Syariah Court judges in Malaysia have been reluctant to impose whipping sentence on women offenders until recently. In 2009, the Malaysian public was shocked when the Syariah Court handed the whipping sentence to Kartika Seri Dewi Sukarno and Noorazah Baharuddin for consuming intoxicating beer and three other female offenders for sexual intercourse out of wedlock. The Syariah law in Malaysia provides for the punishment of whipping in several offences such as drinking, intoxication, incest and adultery. However, the procedure on whipping female Muslim offenders is ambiguous. Thus, this research shall study and analyse the procedural guidelines on the punishment of whipping for female Muslim offenders by analysing the existing law in Malaysia and comparing the local law of whipping with the law in other countries. It is hoped that this research would provide a clear description, explanation and recommendation in improving the enforcement and practical application of Syariah law in Malaysia on whipping in rehabilitating the convict and deterring the general public from committing similar offences in the future.

Tandatangan Ketua Projek :



Tarikh : 24/11/2011

3. Acknowledgements

Alhamdulillah, we thank Allah s.w.t for the opportunity and health to complete the research paper. We would like to express our heartiest gratitude to all who have been helpful in the process of completing this research;

Firstly, to Dr Roaimah and Research Management Unit of UiTM : thank you for the support by granting the *Dana Kecemerlangan*

Secondly, to TPP Tn Hj Masran (Implementation and Detention Punishment) and staffs of Penjara Kajang : thank you for the kindness and cooperation during our interview sessions

Thirdly, to Pn Juhaidah Binti Omar (Assistant of Syari'e Officer) from the Criminal Unit and the staff of Syariah Court of Federal Territory: thank you for the data and statistics.

To our proof reader, Mr Nazim Ganti Shaari: we appreciate your comments and guidance.

Last but not least, to our beloved family members: thank you for the love and support.

5.2 Enhanced Executive Summary

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5.3 Introduction

In Malaysia, the spread of Islam can be seen during establishment of Malacca Sultanate by Indian traders from Gujarat and Arabs from West Asia. The Malacca Sultanate made Islam as state religion and was applied alongside Malay customary law. During this time, Islamic criminal law was administered according to the Syariah law and the criminal offender was punished based on Islamic punishment.

Civil whipping in Malaysia was introduced by the British and the criminal law applicable was the English Criminal law. In contrast, the administration of Islam was left to the heads of various Malay communities and it was only limited to domestic and religious Muslim affairs. This was the trend under British colonialism in which the Sultan was only free to act in matters regarding Malay custom and Islamic affairs,¹ and it subsequently led to relegation of the status of Islamic law from the main to the margins. After a long period of British colonialism, upon the independence of Malaya, the application and function of Islam in the legal system was continued from how it was done during the times of British colonialism. It adhered to a pattern of continuity, being relegated to the sidelines. Instead of becoming the main and dominant legal system, Islam was only a matter for the State, where according to Article 74 of the Federal Constitution and Second List in the Ninth Schedule, Islamic law is a matter falling within the state list, that is, it is a matter over which the State Legislature has jurisdiction and not the Federal Legislature. Thus, with regards to offences under Islamic Criminal Law, the Federal Constitution goes on to provide that the State Legislature may make laws for the creation and punishment of offences by person professing religion of Islam.² Likewise, the State Legislature has jurisdiction over the constitution, organization and procedure of Syariah courts.³

There are two types of whipping as a punishment for criminal offenders that are firstly, civil whipping and secondly, Syariah. With regard to civil whipping, the relevant procedure is under the *Criminal Procedure Code (Act 593)—(Revised 1999)* (after this referred to as "CPC") and is applicable to both non-Muslims and Muslims. This Act should be read together with the *Prisons Regulations 2000*.⁴ This is because the CPC is silent on how whipping is supposed to be carried out. One of the fundamental differences between

¹ Eg. *Pangkor Treaty 1874, The Federation Agreement 1895*; see "*Perjanjian & Dokumen Lama Malaysia/Old Treaties & Documents of Malaysia (1791-1965)*", Institut Terjemahan Negara, Kuala Lumpur, 2008

² Ninth Schedule of Federal Constitution

³ Ahmad, S. S. (2007). *Malaysian Legal System*. Malaysia: LexisNexis.

⁴ Islamil, S. Z. (2006). *Wooring Whipping Sentence for Shariah Offenders: Situating the Difference, Encouraging the Execution*. *Shariah Law Report*, 35-41.