

**REGULATING HATE CRIMES IN MALAYSIA:
A LEGAL STUDY**

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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.

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Abstract

Much as we desire not to have hate crime, we cannot avoid it from spreading, but we can certainly minimise its occurrence. This is a research in discussing the legal approach in current law in Malaysia in dealing with hate crimes. It analyses the needs for specific hate crime legislation by providing legal insight from hate crime legislation in United States and United Kingdom.

The focus of the research is on the ability and suitability of Penal Code and Sedition Act in coping with hate crimes in Malaysia. The researchers also enlighten readers with the significance of hate crime legislation as well as the complication in enforcing such law. The hate crime legislation has developed tremendously in some countries in addressing hate crimes as more severe compared to ordinary crimes. Current law in Malaysia is inadequate in imposing punishment on hate crime perpetrators since the crime itself has not been acknowledged. Thus, the law does not provide necessary protection towards the victims who are attacked based on their perceived membership in the society.

The research concludes with the findings that current law in Malaysia does not recognise the existence of hate crimes. This is because it is inadequate to deal with hate crimes and does not provide proportionate punishment towards the crime. As such, the recommendations are for the enactment of an Act to establish a committee in collecting data of hate crime cases and another Act to specifically regulate offences related to hate crimes and also judges to include bias motive as aggravating factor in delivering sentences for bias crime perpetrators.

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CHAPTER ONE: PROPOSAL

1.0 Introduction

Hate crimes are defined as threats, harassment, or physical harm and are motivated by prejudice against someone's race, colour, religion, national origin, ethnicity, sexual orientation or physical or mental disability.¹ However, hate crimes are not limited to these particular categories only. Normally, states that have hate crimes statutes provide harsher penalties for such offences. Justifications for harsher punishment for hate crimes focus on the notion that hate crimes cause greater individual and societal harm. The law pertaining to hate crimes has become increasingly prominent among policymakers in many nations and at all levels of government in recent years. Nevertheless, with regards to the situation in Malaysia, there is no specific hate crimes law provided under any statutes. This leads to several complications.

Firstly, there is no specific law to govern hate crimes in Malaysia. Hate crimes are governed by different laws. Such example is when offences which fall in the same category but governed by different laws can be seen in numerous disputes. The issues involve religion like church burning in late 2009 and political affiliation like torching of Democratic Action Party (DAP) headquarter in August 2011 were governed by Section 436 of Malaysian Penal Code (Act 574) pertaining to mischief by fire.² Hate remarks of hostility between different races or classes made by person in terms of verbally or in publication are governed by the Sedition Act. Other than that, the beating of transsexual by the enforcement officer from Malacca Islamic Religious Department (JAIM)³ falls under offence for voluntarily causing hurt⁴.

¹ Jack Levin, *Hate Crimes: The Encyclopedia of Peace, Violence, and Conflict* (London 4th edn 2008).

² Himanshu Bhatt, Bernard Cheah and Husna Yusop, "Fire at Penang DAP Complex Splashed With Red Paint" available at <http://www.thesundaily.my/news/115387> assessed on 18 November 2011.

³ D'cruz, F., "Being Frank: Off With Your Panties and bra!" available at <http://www.mmail.com.my/content/69708-being-frank-your-panties-and-bra> assessed on 18 November 2011.

⁴ Section 321 of Penal Code (Act 574).