

**CRITICAL ANALYSIS ON THE SYARIAH LAW THAT PROHIBITS THE  
CONSUMPTION OF ALCOHOL AMONG MUSLIMS.  
THE POSITION OF LAW IN MALAYSIA WITH SPECIAL REFERENCE TO  
BRUNEI LAW.**

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## ABSTRACT

Malaysia, with twenty eight billion populations comprises sixteen per cent majority Malays, who are Muslims, has been ranked the tenth biggest consumer of alcohol in 2011 by the World Health Organization (WHO) despite the Syariah law that we have to combat such offence among the Muslims.

Cases where Muslim youngsters are being caught consuming alcohol in public increase day by day, resulting to declination of health and morality. Being a country with majority of its population embraced the religion of Islam and with the existence of various legislations among the states to curb this offence, this problem should not have arisen.

Hence, this research sought to study the efficiency of the law governing the said offence in Pahang, Kelantan, Selangor and Federal Territories as well as the possibility of enforcing a more severe punishment under Hudud law, which forms an integral part of Islamic criminal law as a solution to this problem.

The research found that there is a possibility of such enforcement in Malaysia without having any constitutional issue arising. Nevertheless, in order for this solution to be possible the Syariah Courts (Criminal Jurisdiction) Act 1965, which does not have sentencing power of more than 3 years or with whipping exceeding six strokes or with fine for more than five thousands or with any combination of both, must be amended so as to increase the sentencing power of the states and subsequently, allow the states to enforce punishment of eighty strokes of whipping as has been prescribed under Hudud law.

In conclusion, we recommend that such amendment should be made so that the law would not only be punitive in nature but also work as deterrence for the repeated offenders as well as future offenders.

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# CHAPTER ONE: INTRODUCTION

## 1.0 INTRODUCTION

Application of Hudud law in Malaysia has been widely criticized, fought for and debated over by many scholars, politicians and legal practitioners alike but this prolonged disagreements have not been answered or put to stop due to its complex and sensitive nature to the Muslims, which form majority of the population in Malaysia.

Nevertheless, the research sought to study its feasibility by focusing only on the crimes of consumption of alcohol by Muslims, which form part of Hudud offence. The prohibition of consumption of alcohol has been banned since the day of Prophet Muhammad saw and this position has been followed keenly by Syariah law in all states of Malaysia with less severe law and punishments.

## 1.1 RESEARCH BACKGROUND

Hudud has been defined by some scholars as 'separation between two things, the permissible and the impermissible.<sup>1</sup> This is in support of Quranic statements: "Those are the limits set by Allah, approach not nigh thereto"<sup>2</sup> and "these are the limits ordained by Allah, so do not transgress them".<sup>3</sup> Hence, such separation is to forbid the commission of unlawful acts, as concluded by many other scholars from Shafie,<sup>4</sup> Maliki<sup>5</sup> and Hanafi<sup>6</sup> schools of thoughts.

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<sup>1</sup> Abul al Fadl Gamal al Din al Afriqi al Misri, *Lisan Al 'Arab* (Dar Sadir Publication Beirut Vol. 3 1955), p 140. See also: Al Sayed Muhammad Murtada al-Zubaidi, *Taq Al Arous* (Al Khairiyah Press Egypt Vol. 2 1306) p 331.

<sup>2</sup> Surah al-Baqarah (2): 187

<sup>3</sup> Surah al-Baqarah (2): 229

<sup>4</sup> Muhammad b. Ahmad b. Battal al-Rakbi and Abi Ishaq Al-Shirazi, *Al-Nazm Al-Musta'zab Fi Sharh Gharib Al-Muhadhdhab*, (Dar Ihya Al-Kutub Al-Arabia Egypt Vol. 2) pp 265-266.

<sup>5</sup> Abu 'Abd Allah Muhammad b. Ahmad al-Ansari al-Qurtubi, *Al-Jami' Li Ahkam al-Qur'an* (Maktabat al-Riyad al-Hadithah Al-Riyad Vol. 2 1952) p 337

<sup>6</sup> Al-Dur Al-Mukhtar Sharh Tanwir Al-Absar and Ibn 'Abdin, *Hashiat Radd Al-Muhtar* (Dar al Fikr Egypt Vol. 4 1979) p 3.