

UNIVERSITI TEKNOLOGI MARA

**THE EXTENT OF THE
CRIMINALISATION OF
CYBERSTALKING IN MALAYSIA
AND ENGLAND & WALES**

WAN ROSALILI BINTI WAN ROSLI

Thesis submitted in fulfillment
of the requirements for the degree of
Doctor of Philosophy

Faculty of Law

March 2019

AUTHOR'S DECLARATION

I declare that the work in this thesis was carried out in accordance with the regulations of Universiti Teknologi MARA. It is original and is the results of my own work, unless otherwise indicated or acknowledged as referenced work. This thesis has not been submitted to any other academic institution or non-academic institution for any degree or qualification.

I, hereby, acknowledge that I have been supplied with the Academic Rules and Regulations for Post Graduate, Universiti Teknologi MARA, regulating the conduct of my study and research.

Name of Student : Wan Rosalili Binti Wan Rosli

Student I.D. No. : 2015803778

Programme : Doctor of Philosophy – LW951

Faculty : Law

Thesis Title : The Extent of the Criminalisation of Cyberstalking in Malaysia and England & Wales

Signature of Student :

Date : March 2019

ABSTRACT

Of late, cyberstalking has become a rampant computer-related crime worldwide. The transition of such crime to cyberspace is due to technological advancement. Previous research has not addressed the risks of cyberstalking and the adequacy of its laws. Given the risks and deficiency of the law, the central thesis of this research is two-fold. Firstly, the transformation of communications and interactions in cyberspace by the use of the internet and the new social media will create new risks through stalking. Secondly, in light of the existing situation on the legal framework in governing cyberstalking tends to suggest that the said laws will become less important albeit not irrelevant, and other governing modalities, in particular, technology and netiquette will become more significant. Guided by this thesis, this study aims at examining the extent of criminalisation of cyberstalking in Malaysia and England and Wales, to elicit lessons to be learned. Further, this research seeks to propose for the reformation of the existing laws to govern cyberstalking more effectively than before. Finally, at the theoretical level, this research analysed how the Routine Activity theory and the Risk-Society theory would mediate the understanding of cyberstalking and the legal modalities to govern such crime. This research adopts a qualitative method, in which primary data is obtained from eighteen semi-structured interviews from various stakeholders, including the regulators and enforcement officers. Such data is triangulated with the Ministry of Communications and Multimedia and the Ministry of Women, Family and Community Development. Secondary data involves the use of the current cyber legislation, the Penal Code and library-based online sources. The evidence of this research is reported in Chapter Five. The legal analysis of the anti-stalking legislations in both jurisdictions is presented in Chapter Three and Four respectively. This research reveals that cyberstalking risks are often manufactured by the victims themselves which may lead to individual responsibility towards managing and mitigating such risks. The research also found that the existing laws in Malaysia would need to be reformed to include specific provisions on cyberstalking and provide adequate protection for the victims. Future research on such crime can involve a quantitative study, or the analysis of female victimisation, or profiling of male stalkers and a comparative legal analysis between Malaysia and other jurisdictions such as Japan, India, and Singapore.

ACKNOWLEDGEMENTS

All praises are to Allah, the Almighty, for it is for His compassion and mercifulness that I can complete this thesis. I am indebted to the following parties, who have helped me tremendously towards completing this research journey.

First and foremost, I am thankful to my sponsors, Universiti Teknologi MARA and the Ministry of Higher Education of Malaysia for granting me the scholarship to undertake this research. Above all, I am greatly indebted to both my supervisors, Assoc. Prof. Dr. Zaiton Hamin and Dr. Hartini Saripan for their continuous guidance, inspiring supervision and generous encouragement throughout my research journey, without whom, I would not have come to this stage of my research. Also, I would like to extend my gratitude to my respondents who have kindly participated in providing information for the purpose of this research.

I am eternally grateful for the prayers and support from my beloved parents, the late Haji Wan Rosli Bin Wan Abdullah and Hajjah Sabaria Hassan and my in-laws the late Zahidin Mahmud and Mazenah Mahmood. I am internally indebted to my loving husband, Mohd Nur Fadhlly Zahidin for his continuous support, and our children Adam Zuhair and Ayra Zakira for their understanding and inspiration especially when both their parents undertook doctoral study at the same time. To my siblings, Lisa, Alia, Azrai and Nim, I bid special thanks to each of them for their unconditional love and support. Not forgetting, I am also thankful to the other faculty members at the Faculty of Law UiTM Shah Alam for their continuous support and company.

TABLE OF CONTENTS

	Page
CONFIRMATION BY PANEL OF EXAMINERS	Error! Bookmark not defined.
AUTHOR'S DECLARATION	Error! Bookmark not defined.
ABSTRACT	iv
ACKNOWLEDGEMENTS	v
TABLE OF CONTENTS	vi
LIST OF TABLES	xiii
LIST OF ABBREVIATIONS	xiv
LIST OF CASES	xvi
LIST OF STATUTES	xviii
CHAPTER ONE: INTRODUCTION TO THE RESEARCH	1
1.1 Introduction	1
1.2 Background of the Study	1
1.2.1 The Legal Position in England and Wales	3
1.2.2 Cyberstalking and the Legal Position in Malaysia	5
1.3 Problem Statement	7
1.4 Thesis of the Research	10
1.5 Research Questions	10
1.6 Research Objectives	11
1.7 Scope	11
1.8 Research Methodology	11
1.8.1 The Justification for Qualitative Analysis	11
1.8.2 Data Collection	13
1.8.3 Data Management	15
1.8.4 Data Analysis	16
1.8.5 Data Quality	18
1.9 Limitation of the Research	19
1.10 Significance of the Research	20
1.11 Outline of the Research Structure	20
1.12 Conclusion	23