

UNIVERSITI TEKNOLOGI MARA

**A CRITICAL STUDY ON THE
LEGAL FRAMEWORK OF
ELECTRONIC MONITORING OF
OFFENDERS IN THE PREVENTION
OF CRIME IN MALAYSIA**

CHE AUDAH HASSAN

Thesis submitted in fulfillment
of the requirements for the degree of
Doctor of Philosophy
(Law)

Faculty of Law

December 2020

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 : Che Audah binti Hassan

Student I.D. No. : 2015837418

Programme : Doctor of Philosophy – LW951

Faculty : Law

Thesis Title : A Critical Study on the Legal Framework of
Electronic Monitoring of Offenders in the Prevention
of Crime in Malaysia

Signature of Student :

Date : December 2020

ABSTRACT

Electronic monitoring of offenders by way of tagging or devices fitted to the ankle of an offender for the purpose of supervision and monitoring is an advancement in the enforcement of criminal justice system in Malaysia. However, the fitting of an EMD to a body of a person for twenty-hours per day for a certain period ordered by the authority with no possibility of removing may attract an issue of fundamental liberty of the person fitted with the device. Hence, this study will examine the legal framework underlying the provisions of electronic monitoring of offenders in Malaysia under various legislation, the impact that it has on the fundamental liberty of the person tagged with the device, and the effectiveness of the device in the prevention and rehabilitation of offenders.

Apart from applying the doctrinal methodology, the researcher has also conducted an interview with many respondents being persons directly involved in the implementation of the law on electronic monitoring. These persons are, police officers, Chairman of Board of Prevention of Crime Act 1959 and Prevention of Terrorism Act 2012, inquiry officers, head of prosecuting officer and the offenders fitted with the device. The main finding of this study supports the crime control model of criminal justice system as the legal framework underlying the objectives of introducing the electronic monitoring of offenders through a device attach to the ankle of the person. Nevertheless, there are some recommendations proposed to improve the implementation of the electronic monitoring devices on offenders such as the data protection laws and the type of device to be attached to the body of the person. Besides, it is suggested that the application of the device is not only used as a tool for monitoring, rather a combination with a program that may encourage in the rehabilitative elements as well as longer resistance of recidivism. Hence, this study will contribute to the literature on electronic monitoring of offenders in the criminal justice and the compliance with the international covenants on the use of the device.

ACKNOWLEDGEMENT

Firstly, I wish to thank Allah for giving me the opportunity to embark on my PhD and for completing this long and challenging journey successfully. I would also thank UiTM for the staff scholarship that enabled me to pursue this research.

No one is more deserving of my greatest gratitude and appreciation than my main supervisor Associate Professor Dr Haidar Dziauddin, who has encouraged and guided the road to my PhD until the final destination, and to my co-supervisor Associate Professor Dr Abdul Rani Kamaruddin who provided the much needed support.

To my beloved parents Haji Hassan bin Musa and Hajjah Rahmah binti Muhammed, whom I dedicate my fruits of labour, kindly accept my humble gratitude for your unspoken spiritual encouragement and prayers to almighty Allah. May His blessings to guide us in this world and hereafter. To my beloved family, Mohd Azhan, Aisyah, Afiff, Adliena, Amaaney Sofea and Aliff for the sources of inspiration and strength to keep on going and finally completing my thesis.

To those few that have directly and indirectly contributed to my career as an academician and as PhD student, from the beginning and until the completion of my PhD journey on criminal justice, I have owed you my gratitude. The area of criminal justice was initially assigned to me by the then Co-ordinator of Law Associate Professor Rohani Sahak as my teaching subject. That provided the impetus for my interest.

I have but my utmost appreciation to my senior colleague, Tuan Lee Chong Fook for his guidance and sharing of knowledge and experience in the teaching of the subjects related to criminal justice. To Associate Professor Dr Zaiton Hamin, I owe you my gratitude for the inspiration of Electronic Monitoring Device as my PhD topic.

I wish to thank all my colleagues for the support throughout the duration of this research. Your contribution matters in whatever ways. Finally, to all my students wherever they are who have benefited in a way from the subject, may Allah bless you always.

Above all, I thank Allah for His blessings and for His rewards, in particular of health, knowledge, ability and prosperity, to complete this research.

Alhamdulillah.

TABLE OF CONTENTS

	Page
CONFIRMATION BY PANEL OF EXAMINERS	ii
AUTHOR'S DECLARATION	iii
ABSTRACT	iv
ACKNOWLEDGEMENT	v
TABLE OF CONTENTS	vi
LIST OF TABLE	xi
LIST OF ABBREVIATIONS	xii
CHAPTER ONE: INTRODUCTION	13
1.1 Introduction	13
1.2 Research Background	13
1.3 Problem Statement	14
1.4 Research Questions and Objectives	15
1.5 Scope and Limitations of Study	15
1.6 Significance of Study	16
1.7 Literature Review	17
1.7.1 Infringement of Fundamental Liberty	18
1.7.2 Legal Issues on Procedures of the Attachment of Electronic Monitoring Device	25
1.7.3 Theories of Punishment	28
1.7.4 Electronic Monitoring and Theories of Punishment	31
1.8 Research Methodology	40
CHAPTER TWO: MODELS OF CRIMINAL JUSTICE SYSTEM	43
2.1 Introduction	43
2.2 Models of Criminal Justice System	43
2.2.1 Crime Control (CCM)	44
2.2.1.1 <i>Public Interest and Crime Control</i>	46
2.2.1.2 <i>Public Interest under Utilitarianism and Syariah</i>	54