



## Highlights On Moral Offences In The Malaysian Sharia Criminal Enactment: The Analysis Of Prosecution Implementation

Sharia  
Criminal  
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### *Kesalahan Tatasusila dalam Enakmen Kesalahan Jenayah Syariah di Malaysia: Analisis Terhadap Pelaksanaan Pendakwaan*

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### ABSTRACT

Moral offences are an important offence classification mentioned in the Malaysian sharia criminal offence enactment. There are a number of moral offences provided under the said classification such as improper close proximity (*khalwat*), incest, prostitution, acts of encouraging amoral behaviour, indecent behavior in public, pimping and others. The question that arises involves the extent of the prosecution executed toward the offences committed in the sharia court. This study is conducted through the means of library research, legal documentation and structured interviews with the sharia authorities from selected states. For the purpose of writing this article, the Kedah state is chosen as a representative of the Sharia Courts in the northern zone, Johor is representing the southern zone, Selangor for the central zone, Terengganu for the eastern coastal zone and Sabah is chosen to represent East Malaysia. The results of this study showed that although the Sharia Criminal Code has provisions for various moral offences, but in terms of implementation, the prosecution process only focused on a few provisions only. Besides, it is also found that there are various constraints that cause the ineffectiveness in the implementation of the prosecution. This article aimed to explain the reality in implementing sharia criminal law and to open the minds of many parties in order to be able to move toward a common goal of stabilizing and strengthening the implementation of the sharia criminal law.

**Keywords:** Ethics, Morality, Prosecution, Sharia Criminal Law, Restraints





## ABSTRAK

Kesalahan berhubung dengan kesusilaan merupakan salah satu klasifikasi kesalahan yang penting dalam enakmen kesalahan jenayah syariah di Malaysia. Terdapat beberapa kesalahan berkaitan moral diperuntukkan di bawah klasifikasi kesalahan ini seperti khalwat, sumbang mahram, pelacuran, galakan maksiat, berkelakuan tidak sopan di khalayak ramai, muncikari dan sebagainya. Persoalannya, sejauh mana pendakwaan dilakukan terhadap kesalahan-kesalahan tersebut di Mahkamah Syariah? Penulisan ini merupakan dapatan kajian yang dilakukan melalui metod kajian kepustakaan dan literatur, menerusi dokumentasi perundangan dan temu bual bersama pihak berautoriti mewakili negeri-negeri yang terpilih. Bagi tujuan penulisan ini, penulis memilih negeri Kedah mewakili zon utara, negeri Johor mewakili zon selatan, Selangor mewakili zon tengah, Terengganu mewakili zon pantai timur dan Sabah mewakili zon Sabah dan Sarawak. Dapatan kajian mendapati sungguhpun kanun jenayah syariah mempunyai peruntukan kesalahan moral yang pelbagai, namun realitinya, dari segi pelaksanaannya, pendakwaan hanya tertumpu kepada beberapa peruntukan sahaja. Kajian turut mendapati terdapat pelbagai kekangan menyebabkan pendakwaan tidak dapat dilakukan dengan berkesan. Penulisan ini diharap mampu menjelaskan tentang kedudukan sebenar dalam pelaksanaan undang-undang jenayah syariah dan membuka minda ramai pihak ke arah bersama-sama memantapkan dan memperkasakan pelaksanaannya.

**Kata Kunci:** Tatasusila, Moral, Pendakwaan, Jenayah Syariah, Kekangan

## INTRODUCTION

Mohd Azhar (2015) interpreted the meaning of "offense" as an act that is considered as wrong due to it opposing the values uphold in a community as a guide or rules. In other words, the word "offense" is the violation of good social norms that have been set as life ethics by a group of people living together at a specific location. Therefore, the complicated question regarding the usage of the word "offense" in the linguistic sense has not arised since it covers all types of offense that violate the moral principles of a community in the aspects of religion, customs, culture, rules, procedures or legislation, both light and serious. In the legal sense, an "offense" is given a specific connotation of whether an act is committed or being left out that opposes the law. This shows that the term "offense" in the legal sense is specified as subjected to the body of laws that has the enforcing power and specific sentences as a remedial, preventive and requital measures.

In Mohd Azhar (2015), "offense" is usually confused with the word "crime". The confusion sparked the question of whether the two terms refer to one similar context or two different ones. As referred in Mohd Azhar (2015) showed that the appropriate context for the usage of "offense" and "crime" is different even though there are general similarities between the two. In general, "offense" refers to all actions that violate the law, be it major or minor offences. Conversely, "crime" is only used to refer to certain major offences such as murder and rape while "offense" is used in the context of minor offences such as public indecency or influencing someone to get involved into



prostitution. The sharia criminal law, as mentioned by Siti Zubaidah (2008), refers to the provisions of Islamic criminal sentencing under the jurisdiction of the Sharia Courts in Malaysia. In Malaysia, the enforcement of sharia criminal law is under the jurisdiction of every state according to the List II of the 9th Schedule of the Federal Constitutional.

This article discusses the reality of law enforcement related to moral offences in the Malaysian sharia criminal law. The findings of this research are based on the interview conducted with several sharia prosecutors and attorneys in Malaysia. For research purposes, the state of Kedah is chosen to represent the North zone, Johor for the South zone, Terengganu for the East Coast zone, Selangor for the Central Zone and Sabah for the East Malaysia zone.

### **MORAL OFFENCES ACCORDING TO THE CURRENT CONTEXT IN MALAYSIA**

In Malaysia, moral issues involving Muslims are provisioned under the Sharia Criminal Law. A law must be enforced to curb moral offences in order to sustain the cultivation of moral values. The concept of morality in the Sharia Criminal Code Enactments all over the country are no longer being questioned since the whole sharia code enactment based on Muslim law that has been divided into five main sections which are offences related to the sanctity of Islam, morality, other varied offences, abetment and attempt. Based on the five sections of offences in the sharia criminal offense enactment, there is a provision for offences related to morality. Under the morality offense section, offences such as incest, prostitution, pimping, premarital sex foreplay, sodomy, lesbianism, improper close proximity, transvestite, indecent behaviour and covering the aurah (Mohd Azhar, 2015).

Mohd Azhar (2012) concluded that the original concept of criminal law, the terms legal, offense, crime, religion, morality are all inter-related. Consistently, Islam forms a comprehensive and integrated crime concept that involves the creed, law and morality of Islam. Ruzman (2013), stressed that law is crucial in the formation of moral since it is one of the crucial components in Islam besides creed and rules. Therefore, society members cannot claim that their offences are their own private matters that cannot be interfere by the rulers through law enforcement. At the same time, the freedom given to an individual is not absolute. The ruler that represents a society can take action towards these offenders since their actions bring catastrophic consequences to the others. In line with the idea of Islam being a God sent religion to humankind, criminal laws can become a form of mechanism towards achieving this objective.

The interviews conducted with several sharia prosecutors and attorneys have showed that they are aware of the sharia related criminal acts that revolve around the matter of morality. The criminal scenario varied according to states. For example, in Johor, the criminal acts are constantly being reported although many efforts have been made to curb them.



*Okay, sharia criminal offences in Johor are constantly being reported and the number of cases reported is increasing even though many preventive measures, enforcement and educational awareness have been carried out.*

*(Johor Chief Sharia Prosecutor)*

In Kedah, the sharia-related criminal offences trend is unpredictable. For example the cases reported regarding improper close proximity has fluctuated between 2013 and 2015.

*According to this report, the trend fluctuated. There was an increase in the number of cases reported in 2013 and 2014. There is a decrease in 2015. That is the reality of it. You can see it for yourself, madam. I am using the example of cases for improper close proximity that is subjected to section 25 in the enactment. Everything is directly referred to the sharia terms.*

*(Kedah Sharia Prosecutor)*

In describing the criminal acts in Sabah, the Chief Sharia Prosecutor there explained that there is not much of a variety in the offences committed in Sabah compared to Lembah Klang that many called as the city of vices. Therefore, it can be assumed that even though there are provisions for a variety offences in the Sabah sharia criminal law, but at the enforcement level, it has not include many aspects;

*The condition in Sabah is similar to the other states but based on the variety of offences committed here, it is not much compared to Lembah Klang. Lembah Klang is the city of vices. The perfect place to test the law is Lembah Klang, Selangor and Kuala Lumpur. In the other states, the offences committed are not like the ones in Lembah Klang.*

*(Sabah Chief Sharia Prosecutor)*

The statement given by Sabah's Chief Sharia Prosecutor is parallel to the statement given by the Chief Sharia Prosecutor of Selangor. According to him, Lembah Klang is the main city in Selangor and is overrun by many social problems.

*We are facing cases that are brought into prosecution for these few years. Therefore, we cannot deny that the fluctuation in the number of cases reported for a certain offense is influenced by this factor, the social development in a state. For example, in Selangor, in cities such as Lembah Klang, it has become the city of dreams to many people. When a city is filled with people, surely it will be overrun with social ills.*

*(Selangor Chief Sharia Prosecutor)*

Even though, it is admitted that the fact that Selangor attracts job-seekers which causes the state to be overrun with social ills, but the prosecution of cases so far in the Sharia Courts are mainly involving cases of improper close proximity, gambling and drinking alcoholic drinks.



*In the perspective of the type of criminal acts committed, most moral offences committed are involving cases of close proximity, gambling and drinking alcoholic drinks. These three offences are the top three offences reported in Selangor, especially improper close proximity. I relate these happenings to the high number of people coming to work here. When there are a lot of social interactions involving men and women, there will be an increase in the number of criminal cases reported.*

(Selangor Chief Sharia Prosecutor)

In Terengganu, although there is an increase in the number of sharia criminal acts, but it is interpreted as a positive development from the perspective of public sensitivity and awareness toward channeling the effort of channeling information to the authorities.

*To me, the sharia criminal acts are a moral misconduct that happened in every era. However, the increase in the number of cases prosecuted every year is due to the increase in public awareness. Before this, the public might not know the way to channel information to the correct authorities but with the announcements made by the Religious Affairs Departments, especially the enforcement department through posters, circulations and other means. So, these efforts may make the public more aware and able to give information to the correct authorities and ultimately, lead to an increase in the number of cases prosecuted every year.*

(Terengganu Sharia Prosecutor)

Based on the current scenario involving sharia criminal acts in the five states, it can be concluded that the sharia criminal acts committed are not an issue that can be easily solved. Effort to conserve morality must be started through solid basic cultivation via campaigns and early sustainable education. However, enforcement must be done when there is still violation of certain rules. It must be prevented continuously.

## **PROSECUTION: ITS FUNCTION AND EXECUTION**

According to Shamrahayu (2016), enforcement is not an easy task because it can affect the freedom and rights of the individuals involved. However, it must be done in order to protect the victim of a crime. The prosecution is conducted according to the appropriate procedure that is related to the prosecution. There are three important laws that are related which are the sharia criminal law, sharia criminal procedural law and the Islamic Evidence Law.

In Ahmad 'Azam (2011), after an investigation conducted by a religious enforcement officer is completed and successfully collected solid evidence to connect the accused to the prosecution besides requiring the investigation documents to be sent to the state sharia prosecutor. The chief sharia prosecutor will examine the investigation papers from every angle before deciding whether an accusation or prosecution is proceeds or not. If the sharia prosecutor is not satisfied with the evidence presented, he can command the religious enforcement officer to continue with investigation in order to collect more



evidence so that it can strengthen the existing evidence. If the chief sharia prosecutor is satisfied with the investigation papers and the strength of the evidence collected during investigation, the chief sharia prosecutor will begin the prosecution charges against the accused. This is seen to be in line with the data collected from the interview conducted with a few sharia prosecutors as shown below:

*If there is enough evidence collected for the prosecuted case, the court or the prosecuting officer will proceed to register the case at court and our jurisdiction is to decide whether a case has enough evidence or to ask the enforcement department to reinvestigate or conduct further investigation. If there is no evidence, the case will be closed or put under NFA.*

(Kedah Chief Sharia Prosecutor)

*The jurisdiction of the prosecution department begins when investigation papers are accepted from the sharia authorities. Once we received the papers, our work as prosecutors begins. We will study the IP, the investigation papers and see if there is any case for us to prosecute or requires further investigation.*

(Terengganu Sharia Prosecutor)

Cautious and diligence in ensuring the strength of the evidence at the investigation level besides the strictness of the prosecutors in ordering for investigation to recommend or not through prosecution so that they can collect evidence according to the Islamic law. Justice is not being evaluated only at the judicial level but the effort to ensure justice is achieved can be evaluated since the earliest level where in the right of an accused will be preserved even though the case is still at the investigation level.

The sharia principle related to the prosecution procedure stresses on the existence of a solid evidence before continuing with the prosecution is seen to be in line with the context of surah Al Nisa', verse 581 that says, "Allah orders you to give your trust to those who deserves it and when you establish rules for mankind, you must be fair in implementing them." In verse 42 of surah Al-Maidah, it says, "And if you punish (the acts) committed that punish (the acts) committed by them fairly because Allah favours those who are fair." Both Quranic quotes clearly show that justice must prevail and executed in a prosecution process. It must be understood that the whole prosecution procedure against the accused is to obtain justice for the prosecutors and the defense attorneys of the accused.

In order to ensure that the legal implementation process adheres to the principles and procedures as mentioned in Siti Zubaidah (2008) and Ahmad 'Azam (2011), Melaka and Selangor are the two pioneer states in establishing the Enforcement Fixed Order before the enforcement procedure is coordinated. However, in the prosecution context, it is discovered that Sabah is the first state to establish the Chief Sharia Prosecutor Order since 2000. The order is placed in a small guidebook that is prepared by the Islamic Affairs Prosecuting Department of Sabah. Now, it is the Enforcement Prosecution Department of JAKIM that is responsible to issue the Chief Sharia Prosecutor



Order and it has been accepted by the other states. For example, Sarawak has named the order as the Chief Sharia Prosecutor Order of Sarawak and has been in use since early 2008. Other states have accepted this guideline that includes the workflow chart and explanatory actions for the use of the Chief Sharia Prosecutor and the Sharia Attorneys. It involves rules, starting from the preparation of the register book since the acceptance of Investigation Papers from the Enforcement Department, followed by the examination procedure of the Investigation Papers, preparations of the criminal accusation draft and every procedure involving the prosecution proceedings and during trial sessions.

The existence of such guidelines showed that the government is committed in ensuring the implementation of law, especially related to sharia crimes that must be coordinated in all states even though the implementation is under the jurisdiction of each respective state. In the implementation of the sharia crime law, every level of execution is important and is related to one another. As mentioned by Ibrahim & Hanifah (2015), the success of prosecuting a case depends on the extent of the investigation conducted by the enforcement department. The extent of investigation is needed to complete the elements of the prosecution section. Every investigation must be conducted by assuming that the case will be on trial when the accused does not admit guilty and does not put any expectation for the suspect to admit guilty during the first hearing of the case. The extent of the investigation must be partially supported by the information obtained during the examination of the enforcement operation that has been carried out. This is important because in a prosecution involving takzir offences such as for improper close proximity and other such cases or hudud-related offences that are punishable as provided such as premarital sex, the prosecutor is responsible to find evidence for the case that goes "beyond reasonable doubt" just as described in Zulfakar (2015).

Furthermore, in order to achieve the prosecution objectives of a case, Ahmad Azam (2011) argued that a judge in a Sharia court should be objective and open-minded when it comes to evaluating each argument and evidence adduced. He should not favour any party in order to achieve justice. Instead, he should focus on the evidence presented by both parties that will help him to make a fair judgment. This 'fair' justice is the real objective set when implementing the Islamic criminal prosecution procedure. Obviously, the three stages of implementation have its own respective interests and complement each other to achieve the legislative objectives. Once an understanding of the types of offences classified as moral offences and the implementation process of prosecution are achieved, this article will describe in detail the extent of prosecution conducted in Sharia Courts against these offences.

### **MORAL OFFENCES: THE EXTENT OF PROSECUTION**

There are various offences that are listed under moral-related offences. The list begins with the minor ones and ends with the major offences. Based on the list of offences inherent in this provision, it seems insufficient to address the worsening social problems in the community, especially the ones related to morality. However, the main question



here is the extent of the prosecution process under that provision that is made in court. Is this the current reality in the Malaysian sharia law? To answer these questions, interviews are conducted with some of the enforcing authorities in selected states to see the extent to which the enforcement is carried out based on that provision. In Johor, in addition to premarital sex offense, public indecency and profanities besides other offences that are rarely and never be prosecuted.

*Rarely cases under sections 20 and 21 are reported. Cases of pimping are reported under section 23. But none for section 24, a few under sections 27 and 29. No reports under sections 35 and 40. Most cases reported are under sections 23, 27 and 29. Cases under section 24 are rarely reported.*

(Johor Chief Sharia Prosecutor)

In Kedah, most popular cases are usually prosecuted in court is for improper close proximity offense under section 9 of the 1988 Sharia Crime Enactment (old) and section 25 of the 2015 Sharia Criminal Code Enactment (new).

*Since 2014, we have seen 149 cases reported under Section 9(1) of the '88 Sharia Crime offense Enactment. After that, about 173 cases are reported under section 9(2) for the cases involving improper close proximity. This trend keeps increasing.*

(Kedah Chief Sharia Prosecutor)

Based on interviews with the chief sharia prosecutor of Sabah, it is found that in Sabah, the cases involving pregnancy out of wedlock and improper close proximity are the most prosecuted. However, for other offences, based on the past records, only a small number are being prosecuted. Certain offences such as the one involving pimps only occurs during the 90's.

*There are reported cases of procurement or pimping but now, no more cases involving that offense is reported. Regarding offences involving men who sold off their wives for prostitution, we have seen two cases of it during the early 90's. There are also cases of hidden pregnancy, cohabitation with a non-Muslim husband. However, not many cases are reported for men who sold off their children and wives for prostitution. The ones who went into prostitution willingly are the hardest prosecute. There is one case involving incest. I was not in court during the prosecution though. It involved a woman and her brother in law. Regarding cases involving women bearing child out of wedlock, adultery are two of the most common cases reported. Not much of them are reported since we charged them for premarital sex offense. We recorded the admission made by the accused during the oath-taking session. For cases involving public indecency, not many are reported but cases of improper close proximity are usually reported in abundance.*

(Sabah Chief Sharia Prosecutor)



As in most other states in Malaysia, Sabah has no record of cases reported for acts that encourage vices to be committed even though there are people committing the offense. This is because it is difficult to find evidence to prosecute those who commit this offense.

*For the offense involving acts that encourage vices to be committed, there are none reported even though there are people committing because it is hard for us to detect them.*

(Sabah Chief Sharia Prosecutor)

In Selangor, offences involving incest, prostitution, selling off or giving children away to non-Muslim families and pimping have never been charged before. However, the state has seen many cases reported involving illicit sexual relationship, foreplay in committing premarital sex, improper close proximity and public indecency.

*So far, cases involving offences under sections 22, 23, 24 are not reported. We only received cases for offences under sections 25, 26, 29, 31. Besides, there is no offense reported under section 35 too. Just as I mentioned earlier, there are no cases reported under these sections but there are still specific procedures that need to be adhered when a case is reported under those sections where we will examine the description or elements that are taken into consideration for us to prosecute them or not in court.*

(Selangor Chief Sharia Prosecutor)

It is the same in Terengganu when the Sharia prosecutor said that these offences are under the provisions related to offences of forcing wives and children into prostitution, pimping and preparations to prostitute wives and children. However, for cases involving fornication and improper close proximity are the two most reported offences in Selangor. Among the cases that have been prosecuted are oral sex and acts that encourage vices to be committed.

*We have prosecuted cases under section 25 at the high court. For sections 26, 27 and 28, there are no investigation carried out for offences under these sections in my 8 years of service. The most cases reported are involving improper close proximity under section 31, fornication under section 29, oral sex under section 36, be it between a man or a woman or people from the same gender. There are also the prosecutions of cases under section 42 which is acts that encourage vices to be committed.*

(Terengganu Sharia Prosecutor)

It is clearly indicated that in the implementation of sharia criminal law today, the prosecution process can only be done if strong evidence is found during investigation conducted by the enforcement department. It should be understood that if there is no inquiry being made or there is not sufficient evidence to prosecute any of these cases, the the prosecution process cannot be taken place. This is one factor that causes only



certain offences to be prosecuted. This assumption can be supported based on the interview excerpt below:

*Regarding the issue of enforcement, I did say that enforcers do not play their roles well and our system is weak. But, the main question here is, why are we weak? I have written a paper discussing the weaknesses of enforcers and the enforcing system. There are many factors that caused the situation to happen. The lack of officers in the enforcement department is one of the main factors. Even though, many cases are reported, for example in Selangor, but still the system is still weak. The lack of officers, training, equipment, budgets and so on caused our system to stay incompetent and nothing has been done to change this.*

(Selangor Chief Sharia Prosecutor)

Apart from the problems mentioned above, the main factor that causes weak enforcement among enforcement officers is their position in the Islamic Religious Department that causes them not to be able to perform their duties freely and they are always been reassigned to other departments.

*Another obvious weakness that I can see is the position of these enforcement officers under the religious departments. They are not free to enforce their power since they are required to do other tasks that are unrelated to their job scope. For example, an officer who is supposed to conduct an operation is asked to join a religious program instead. Besides, they do not have permanent postings. They can be sent to other divisions and departments even though they are trained to become enforcement officers. It is indeed a loss because after working so hard training them, they will be transferred and a new batch will come in to replace them. We wasted time training these newbies and the cycle continues.*

(Selangor Chief Sharia Prosecutor)

## **RESTRAINTS FACED BY THE PROSECUTORS**

Undoubtedly, the implementation of the sharia criminal law, as done by the authorities, the prosecution officers are facing various problems when carrying out their duties. The challenges arise from the prosecutors themselves or due to the involvement of certain parties. Among the challenges faced by the prosecutors is the lack of exposure in handling trial sessions of the trial among themselves because most of the accused pleaded guilty to the charge put against them and cause the cases to be able to be resolved easily. This is explained by the Terengganu Sharia prosecutor:

*Firstly, the exposure experienced by the prosecutors in handling trial cases. That is one challenge that we faced. In 100 cases prosecuted, 98 cases will be solved amicably and only two will need further hearing sessions.*

(Terengganu Sharia Prosecutor)



In contrast to the authorities that require a higher budget for them to carry out enforcement works, prosecutors do not need a higher budget to do so. However, they do face shortage in the number of officers in service.

*Prosecutors do not need a lot of money to function. However, we do need a lot of man power. It is up to the State Service Commission or the SUK to provide officers. We are always asking for more officers. It is not only the prosecution division that is facing this problem. In fact, the courts are facing the same problem too. We cooperate with the courts by dividing the number of officers provisioned to us equally.*

(Terengganu Sharia Prosecutor)

Furthermore, there are other challenges that are more important and require attention such as the enforcement officers' and prosecutors' positions in an integrated department that causes difficulties in performing their respective duties. This is due to the enforcement officers and sharia prosecutors are under the command of the same head of department. This causes the prosecutors to not be able to fully utilize their freedom to act.

*We are having difficulties when the prosecution division is placed under the same department as the enforcement division. The task becomes twofold because the same departments are doing both the enforcement and prosecution task. Before, even the courts are placed under the same department. Every officer would be doing three different roles at the same time. Due to this, it restricts the prosecutors from having the freedom to act openly. Prosecutors are under the command of a department head. In reality, the prosecutors are under the command of a chief sharia prosecutor that has the power to determine whether the prosecution process of a case should be brought into court or not.*

(Selangor Chief Sharia Prosecutor)

It is found that there are efforts being made to separate the prosecution department from the religious affairs department in order to create a more independent department that is under the direction and administration of its very own department director.

*Alhamdulillah, there are efforts being made to establish a separate prosecution department. Even the state of Kedah is going through the process to establish its very own prosecution department with its very own department director.*

(Kedah Chief Sharia Prosecutor)

The integration of tasks and jurisdiction between these two departments not only occurs in Selangor but in all the states used as research subjects in this article. This problem should be taken seriously and immediate action must be taken by the highest



administrative body to prevent this matter from inhibiting the enforcement of law in the future.

*We are already facing shortage of officers and now we are required to take up another role from a different division. This matter must be alerted to the central authorities.*

(Selangor Chief Sharia Prosecutor)

In addition, the prosecution department is now facing problems involving unsettled cases due to the inability for the department to prosecute the accused.

*If you want to talk about the difficulties faced by the prosecution department, usually the main difficulty faced involves unsettled cases. This is due to the inability of the department to prosecute the accused. We filed a case against the accused but we are unable to charge him. If the accused is present for the hearing, we can proceed with the prosecution process. The ones that are unable to be settled involve those who are absent during the court hearing.*

(Johor Chief Sharia Prosecutor)

Based on the factors that cause failure in prosecuting a case, it showed that the enforcement department plays an important role in ensuring the success in the implementation of the sharia criminal law whereby the enforcement department is responsible of finding and giving out the arrest warrant to the accused. It becomes a challenge when there is a shortage of staff that causes the enforcement department to handle cases out of their respective state. These challenges will cause the charges to be dropped by the prosecutors.

*The court will issue an arrest warrant to the accused who does not attend the court hearing. The warrant is enforced or be given out by the enforcement department. The prosecutor is only responsible in bringing the case into court. Other tasks are carried out by the enforcement officers. In many cases, the arrest warrant cannot be issued. This is because there are not many enforcement officers to give out the warrant or there are criminal cases that occur in other states, for example in Johor Bahru. There are people who are not from Johor, who stay there for work etc. If one of these people committing the offense, maybe they are charged under improper close proximity. If they quit their jobs and move to another state, the enforcement officer cannot locate them and the case must be dropped.*

(Johor Chief Sharia Prosecutor)

Based on the interviews conducted, it can be concluded that the prosecutors have to face many challenges and constraints when carrying out their prosecuting duties, it due to their own incompetencies or caused by another party. For example, the constraints faced by the enforcement department during the collection of strong evidence due to logistical problems, lack of personnel and employee efficiency



challenge the credibility of the prosecutors handling a case. In the end, the prosecution department is seen as weak and cannot function well in the implementation of the sharia criminal law. This is the real answer to the question of why there only a few popular offences that are charged in Sharia Courts although we have legal provisions for other moral offences committed in the society.

## CONCLUSION AND SUGGESTION

This study concluded that in the Malaysian sharia criminal law, there are various provisions related to moral offences that are referred to specifically by some states as an offense in respect to decency, honour and other offences. Although the administration of this law is according to each respective state, but the similarities found in every state is that the spirit of the legislation still emphasises on the protection of moral values and ethics as its main objective. The diversified provision of the moral offences in the sharia criminal offense enactment is to prove that its intention is to prevent and deal with the treatment of the epidemic spreading in the community.

However, the existence of some offences such as the act of encouraging prostitution and vices to be committed cannot be prevented from occurring in the community leads to the question of the absence of such cases from being prosecuted in court. Besides the incompetencies of the prosecution department itself, the constraints faced by the enforcement department should be taken seriously and be given proper attention by the authorities at the highest level.

Hopefully with these efforts and with the establishment of a separate department, the enforcement and prosecution at the state-level that possesses its very own independent administrative authority that is and not tied to any party, can bring about a new impetus and effectiveness in the execution of tasks and responsibilities of the two departments. Both departments are established to eradicate such issues and moral-related offences from becoming widespread in Malaysia. The proposed recommendations and opinions would not be successfully realized without the dedication and the will of the authorities at the highest level itself, particularly in the field of sharia prosecution, as quoted during interview with the Johor Chief Sharia Prosecutor.

*The sharia criminal legislation requires immediate improvement. From the perspective of the three important entities in the sharia legislation body, it is possible that the courts have deviated from their own jurisdiction of prosecuting and enforcing the law. There are still rooms for improvement. It must be given the proper attention because this situation, if not remedied, will affect the implementation of the sharia criminal legislation in the country.*

(Johor Chief Sharia Prosecutor).

Thus, it is advised that all parties at various levels to be more alert towards the problems and constraints that hinder the implementation of the sharia criminal law in order to restore public confidence and in the administration of the institution of Islamic law.



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## Statute

Perlembagaan Persekutuan

Interview conducted with Tuan Sakaria Samela, Sabah Chief Sharia Prosecutor on 28/6/2016.

Interview conducted with Tuan Zulfahmi Bunaim, Johor Chief Sharia Prosecutor on 16/6/2016.

Interview conducted with Tuan Abdul Shukor Bin Abd Hamid, Selangor Chief Sharia Prosecutor on 9/6/2016.

Interview conducted with Tuan Syeikh Kamaruslan Hj. Mustafa, Kedah Chief Sharia Prosecutor on 13/6/2016.



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Interview conducted with Tuan Muhammad Khaznizam bin Abdullah, Terengganu  
Sharia Prosecutor on 23/5/2016.