Pertanika J. Soc. Sci. & Hum. 24 (3): 923 - 935 (2016)

PERTANIKA JOURNALS

SOCIAL SCIENCES & HUMANITIES

Journal homepage: http://www.pertanika.upm.edu.my/

The Legal Perspective of *Khalwat* (Close Proximity) as a Shariah Criminal Offence in Malaysia

Siti Zubaidah Ismail

Department of Shariah and Law, Academy of Islamic Studies, University of Malaya, 50603 Kuala Lumpur, Malaysia

ABSTRACT

The original meaning of the word *khalwat* refers to a pious act of being connected to God. It was later given a technical meaning referring to an offence. When the Shariah Criminal Offences Enactment introduced the offence of close proximity or *khalwat*, it was not a new invention because *kheluat* – as it was used to be spelt – can be traced back as far as 1909. *Khalwat* is one of the 'moral offences' classified among the other offences against the precepts of Islam codified under the Enactment. The law relating to *khalwat* has attracted interest from many quarters, particularly due to claims that it encroaches on personal freedom and privacy. On the other side of the spectrum, the role and function of religious enforcement officers are also questioned, particularly surrounding the power they have when conducting investigations. This article seeks to examine how *khalwat*, originating from an act of piety, was then formulated into an offence involving a man and a woman being together in a private place to commit an indecent act. It also analyses the legal requirements that constitute *khalwat* and the challenges of its enforcement in Malaysia.

Keywords: Khalwat, morality, close proximity, moral offence, Islamic criminal law

INTRODUCTION

In a country like Malaysia where Islam plays an important role in shaping the norm, culture, and practices of the Muslim-Malay community, the issue of morality, its transgression and intervention are matters of great debate. Among the questions raised are whether to have legal intervention or leave it to society to regulate their moral behaviour. Under the Penal Code which is the main criminal law statute for general application in Malaysia, there is no statutory provision criminalising moral wrongdoing except of those related to unnatural sexual activities. For example, there are offences

ARTICLE INFO

Article history:
Received: 15 September 2015
Accepted: 23 March 2016

E-mail address:
szubaida@um.edu.my (Siti Zubaidah Ismail)

ISSN: 0128-7702

of committing carnal intercourse against the order of nature (under Section 377A) and committing outrages of indecency (as in Section 377D). Furthermore, there are several other provisions prohibiting public indecency and disorderly behaviour under the Local Government Act 1976 and Park By-Laws 1981 (Federal Territory).

Since Malaysia has a dual-legal system of civil and shariah operating in parallel (Ismail, 2015), there is another set of statutes administered and applied specifically for Muslims. The Shariah Criminal Offences Enactment has numerous provisions with regard to decency and morality. This category of offences concerning morality and decency, also known as moral offences, attracts most public attention despite the fact that there are three other categories of offences provided under the statute, namely (i) offences against belief, (ii) offences against the sanctity of religion and its institution, and (iii) miscellaneous offences. Moral offences are said to take centre-stage in an attempt to allegedly limit certain acts or behaviours seen as falling within the purview of private domain. A particularly controversial issue is the alleged limitation of personal freedom involved in the offence of *khalwat* or close proximity. When a man and a woman are together in public places attracting onlookers, attention may normally be given to their looks, dress, and behaviour. Other than that, nothing is deemed as wrong, because being together does not simply turn the act into a *khalwat*. However, when a man and a woman who are not *mahram* (those who can be married to one another) are together in any private place under circumstances that may give rise to suspicion that they might engage in immoral activity, then it can constitute *khalwat*. This has led to the accusation that the law pertaining to *khalwat* is an attempt to invade privacy and personal freedom. This article elaborates on the development of the terminology "*khalwat*" which originally meant an act of piety to enhance the relationship with Allah s.w.t. Then, it subsequently assumes a technical meaning referring to a specific action involving two or more *ajnabis* (people without a blood relationship) being together in a secluded place aiming to commit a sexual offence. This article also seeks to examine the legal context in which *khalwat* is framed as an offence, focusing in particular on the religious framework, elements that constitute an offence and the various issues related to the enforcement of this offence by the state's religious enforcement unit.

The Conceptual Meaning of *Khalwat: From Piety to Offence*

Khalwat may be understood as a (moral) offence, but is *khalwat* a socially- constructed offence or is it directly prohibited by the religion of Islam? If we look at the original meaning in Arabic, the word *khalwat* comes from the word *khala*, which linguistically means empty or secluded place (al-Marbawi, 1990). The original meaning of *khalwat* as a term refers to an act of seclusion to increase piety. This is understood from the practice of the Prophet Muhammad (peace be upon him) when he resorted to being alone in the

Cave of Hira to submit himself to Allah. For that matter, the act of being alone in a secluded place for the purpose of *ibadah* is known as *khalwah* or *khalwat*.

In another situation, *khalwat* can also refer to an act of a husband being together with his wife in an intimate situation. When the Islamic criminal law jurisprudence was later developed, it gave birth to the specific context for *khalwat*. The Muslim jurists later made it an offence when two *ajnabis* were together in a close and secluded environment in a suspicious manner (Ibn Abidin, 1966). Al-Qurtubi (1935) defines *khalwat* as being together in a secluded place far from public vicinity and does not confine to *ajnabis*, but also to those who are married. To constitute *khalwat*, al-Jaziri (1969, p.146) states that the place must be secluded and not publicly accessible.

The Basis and Rationale for Criminalising *Khalwat*

The prohibition of this kind of act is derived from a hadith narrated by al-Tirmidhi to the effect: "*Do not be alone or in a close vicinity with a woman not permissible for you, because the third party would be the evil*" (al-Mubarakfuri, 1963, 126). The Arabic word used in the hadith, which is, *la yakhlu* (do not seclude) is the origin of the word *khalwat* as an offence. It can be understood from the hadith that if a man and a woman are alone in a place far from the crowd, it seems that the evil will be there to seduce them into committing an act of enormity, leading to adultery. "A man" in this hadith, as explained by Ibn Hajar al-Asqallani (1986), refers to those who are not legally prohibited to be married to the woman.

In another hadith, Ibn Abbas reported that the Prophet (PBUH) says to the effect: "*Refrain yourself from being together with a woman except with a company of a mahram*" (al-Bukhari, 1950, p.104).

The Holy Qur'an enjoins upon people this reminder: *Do not come any closer to adultery for it is shameful (deed) and an evil, opening outlet (to other evils)* (17:32*)*. In view of this, *khalwat* if not prevented, can lead to adultery. Therefore, it is necessary to forbid and criminalise *khalwat* in order to prevent actions leading to adultery.

Islam places a strong emphasis on ethics because it is part of the pillars of Islam. According to a Muslim thinker, al-Mawdudi (1903-1979), Islam enjoins upon man a way of life that promotes goodness and frees society from evil. One of the values upheld and emphasised by Islam is duties of individuals rather than their rights. Individual interests are regarded as subordinate to social and public interests. Consequently, family, community and even state interventions in private affairs could be tolerated and justified for the sake of their social benefits. This is in line with the Islamic legal maxims: *al-maslahah al-ammah muqaddam 'ala al-maslahah al-khassah*. It means public interest should come first before the personal interest (Al-Suyuti, 1998, p. 124).

As far as Islam is concerned, immoral acts or *maksiat* (vice) can constitute sinful acts. To avoid committing and accumulating sin, Islam encourages its followers to enjoin

good and forbids wrongdoing in public. When a vice is criminalised, the authority seeks to prevent the deed from having a direct consequence on the doer. *Khalwat* is one form of vice that will lead to negative implications if not prevented. Illegitimate sex, pregnancy out of wedlock, abortion, baby-dumping and so on are among the potential related consequences of immoral activities starting with *khalwat*.

Prohibiting *khalwat* will be able to prevent other grievous harm from occurring. If we compare *khalwat* with other social ills plaguing society today such as drug trafficking, alcohol consumption, gambling, prostitution among others, *khalwat* is related to one's morals. When laws are enacted to prohibit such act, they may be an indication of prevalence of immoral acts in society and passed by lawmakers to whom society has given full authority and power. It does not, in any way, invade the private rights of anybody. Furthermore, when it comes to freedom of action, there is no absolute freedom bestowed upon any citizen of a country. Freedom must be seen within the scope and values of the entire system, which in this case, is the Islamic moral system. Therefore, personal freedoms must always be in conformity with Islamic teachings.

Criminalising *khalwat* means that it is to be prevented and curbed from becoming rampant in society. Public moral offences such as obscenity, prostitution and gambling among others are those offences that offend the community's morality and are prohibited because they violate public norms and values. Devlin (1965, p. 55) wrote that the function of the law is to preserve public order and decency, to protect the citizens from offensive actions and to provide sufficient safeguards against exploitation and the corruption of others, particularly those who are vulnerable. Therefore, in order to secure order and peace in society, outrageous acts must be prevented. Islam encourages enjoining rights and forbidding wrongs in public. When *khalwat* is criminalised, the authority is enjoining what is right and forbidding what is wrong for the benefit of the public.

Khalwat and its Place as a Moral Offence

Khalwat is not a new offence created under the current statute. Its existence – originally spelled as *kheluat* – can be traced back as early as 1909 under the pre-independence statute called the Ecclesiastical Court Procedure Enactment 1909, long before the current Shariah Criminal Offences Enactment was enacted. The provision was soon amended to include a fine of RM50 for first time offenders in 1938 through an enactment to amend the Minor Offences Enactment, 1938. In the same year, the Muhammadan (Offences) Enactment 1938 was passed. Section 10 under the 1938 Act provided that any Muslim if convicted of *khalwat* can be fined not more than fifty ringgit or one month imprisonment. For a subsequent offence, the fine would be one hundred ringgit or imprisonment not exceeding two months. The provision stated:

(1) Any male Muslim who is found in retirement with and in suspicious proximity to any woman, whether or not professing the Religion of Islam, other than his wife or a woman whom by reason of consanguinity, affinity or fosterage he is forbidden by Muslim law to marry, shall be guilty of *Kheluat* and shall be liable to be punished with imprisonment for a term not exceeding fourteen days or with fine not exceeding fifty dollars, or, in the case of a second or subsequent offence, with imprisonment for a term not exceeding one month or with fine not exceeding one hundred dollars or with both such imprisonment and fine.

(2) Any female Muslim who is found in retirement with and in suspicious proximity to any male person, whether or not professing the Religion of Islam, other than her husband or a male person whom by reason of consanguinity, affinity or fosterage she is forbidden by Muslim law to marry, shall be guilty of *Kheluat* and shall be liable to be punished with imprisonment for term not exceeding fourteen days or with fine no exceeding fifty dollars, or, in the case of a second or subsequent offence, with imprisonment for a term not exceeding one month or with fine not exceeding one hundred dollars or with both such imprisonment an fine.

(3) The Court may order in lieu of or in addition to any other punishment in this section provided that any female found guilty of an offence under this section shall be committed to a home approved by the Department for such time, not exceeding six months, as to the Court may seem fit.

In 1952, the Administration of Islamic Law enactment was passed, thereby abolishing the 1938 Act. The offence of *khalwat* was inserted under this new Enactment. In 1953, a new development witnessed the merging of all federal Islamic statutes, which were compiled into one statute, namely The Council of Religion and Malay Custom and Kathis Court Enactment 1953. However, some states retained the previous name of the Administration of Islamic Law Enactment. This has become the major statute regarding Islamic law in states, containing more than 200 provisions regulating various matters ranging from the administration of Shariah Courts to marriage, *zakat* and the shariah criminal offences. In 1956 when the Civil Law Act was passed by the British administrator, the Federal Constitution was declared the supreme law of the land while English law and the principle of equity were made sources of the local law. Islam was made the federal religion; however, ironically, Islamic law was not part of the federal law. As a consequence, matters regarding Islam and Islamic law were affirmatively edged out of the federal jurisdiction and thereby relegated under state jurisdiction. State and Federal Lists were created under the Federal Constitution providing separate jurisdictions to administer.

In the 1980s, a more systematic change occurred which witnessed separate statutes being enacted dealing with each aspect of the jurisdiction of Islamic law. Six different enactments were established, namely, Family Law, Criminal Offences, Criminal Procedure, Civil Procedure, Islamic Evidence and Administration of Islamic Law. As far as the Shariah Criminal Offences Enactment is concerned, offences are divided into those relating to: (1) `*aqidah* (creed); (2) the sanctity of the religion of Islam and its institution; (3) decency; (4) miscellaneous; and (5) abetment and attempt. The Shariah Court is the forum to apply these laws where offenders will be charged and tried.

THE CONTEMPORARY SCENARIO OF *KHALWAT* IN MALAYSIA

Table 1 shows the current statistics of *khalwat* cases as registered in the Shariah court throughout the country between 2010 and October 2015. According to Chief Registrar of the Federal Territory Shariah Court, Mr Khairul Nizam, *khalwat* constitutes the highest registered cases compared with other offences. The official statistics from the Shariah Judiciary Department of Malaysia (JKSM), as shown in Table 1 below, shows that the number of *khalwat* cases has fluctuated over the past five years. Within that period, Selangor has recorded the highest number of *khalwat* cases (5696 cases), followed by Johor (5462 cases), Terengganu, Pahang and Penang.

THE LEGAL FRAMEWORK OF *KHALWAT*

As mentioned earlier, like any other Islamic enactments, the Shariah Criminal Offences Enactment (SCOE) are state-based. There are altogether 14 SCOEs in Malaysia according to states, containing more than 40 provisions of offences triable at the Shariah court and, therefore, the provision for *khalwat* exists under each state's Shariah Criminal Offences Enactment. For the purpose of discussion, the provision in Selangor will be used. Section 31 of the Selangor Shariah Criminal Offences Enactment 1995 defines the situation where *khalwat* can occur:

> *Any man who is found together with one or more women, not being his wife or mahram: or woman who is found together with one or more man, not being her husband or mahram, in any secluded place or in a house or room under circumstances which may give rise to suspicion that they were engaged in immoral acts shall be guilty of an offence and shall on conviction be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or to both.*

Based on the above provision, *khalwat* is when two persons of different gender not married to each other meet or are together in a private place away from the public eye, thereby exposing themselves to suspicions for committing *khalwat*. This is subjected

Table 1
Total number of Khalwat *Cases according to States 2010-2015*

STATES	2010	2011	2012	2013	2014	2015	TOTAL
Johor	1472	1390	1126	586	415	473	5462
Kedah	177	152	396	171	327	200	1423
Kelantan	547	622	524	554	493	395	3135
Melaka	181	812	459	269	121	287	2129
Pahang	713	492	471	1085	565	289	3615
Perak	471	420	421	482	656	567	3017
Perlis	73	54	91	49	28	4	299
Penang	494	818	591	521	570	559	3553
Sabah	24	67	32	10	27	21	181
Sarawak	17	9	12	8	1	3	50
Selangor	960	537	999	1191	1292	717	5696
Terengganu	775	1006	814	603	804	609	4611
Federal Territory	460	240	140	174	80	139	1233
TOTAL	6364	6619	6076	5703	5379	4263	34404

(source: JKSM 2015)

to the manner or circumstances they put themselves in. It can be clearly understood that there are specific elements that can constitute *khalwat*. Merely being together in a secluded place is insufficient if lacking in any suspicion of possible advancement of an illegitimate act, as detailed below.

i. The Participation of Man and Woman

The offence of *khalwat* requires the participation of at least two Muslims of the opposite sex. They must not be *mahram* to each other.[1] *Khalwat* can also involve more than two persons. An issue arises when the case involves a non-Muslim as a party to *khalwat*. Previous records show that there were cases where *khalwat* was occasionally committed by a Muslim and a non-Muslim partner. Since the Islamic law is only applicable to Muslims, it would be unlawful to charge, convict, or punish a non-Muslim in a Shariah Court. In that case, the implication is that only Muslim offenders will be charged but the non-Muslim party will not be asked to present him/herself at the Shariah court. This has created unease and seems to be unfair because only Muslims get caught and charge and the non-Muslim is free to go (Hashim, 2006). There should be a provision to prosecute non-Muslims for abetment or incitement for the commission of *khalwat* or any shariah offences.

When the state is given power to enact Islamic law, including powers for the "creation and punishment of offences by persons professing the Muslim religion against precepts of that religion" as provided

[1] *Mahram* means a man and a woman prohibited to marry each other according to Islamic law. When both are not *mahram*, it means that both can marry one another. List of *mahram* is outlined in the Quran 4:23.

by the List 2 of the Federal Constitution, it means that the laws can only be applied to Muslims. This phrase undoubtedly restricts the legislative body. First, the offences which they can create are those against the precepts of the Muslim religion, and second, only Muslims can be made liable to punishment for committing shariah criminal offences. Any state law that purports to make a non-Muslim liable for offences against the precepts of the Islamic religion will therefore be *ultra vires* to the Federal Constitution. It was once decided that a non-Muslim involved with *khalwat* should be tried under the Penal Code for abetment, which was what happened in the case of *Re Barathan Kunju* ([1962] MLJ c1iv) more than 50 years ago.

Under the Shariah Courts and Muslim Matrimonial Causes Enactment of 1966, there used to be a provision penalising abetment for the commission of Islamic criminal law. The prosecution was done in the Magistrate court and punishable under the Penal Code. Tun Salleh Abas (Abas, 1984, pp. 90-95), the then Chief Justice, in his judgement, contended that when dealing with non-Muslim involvement with the shariah offences, it should not be associated with religious law, but should be seen as a violation of a moral conduct and social standards for the purpose of maintaining law and order. Action against all parties involved in a crime must be seen as a fair and just reaction from the authority. A. Aziz (2011, 63) argues that the spirit of this recommendation is not to bind the non-Muslim to Islamic criminal law, but to maintain the effectiveness of the Islamic criminal law.

As explained above, the involvement in *khalwat* requires persons that are not *mahram* to each other. *Mahram* is explained under Surah al-Nisa' in al-Qur'an (4:23), where Allah says to the effect:

> *Prohibited to you (for marriage) are: your mothers, daughters, sisters, father's sisters, mother's sisters, brother's daughters, sister's daughters, your step daughters under your guardianship, born of your wives to whom ye have gone in. No prohibition if ye have not gone in. (Those who have been) wives of your sons proceeding from your loins, and two sisters in wedlock at one and the same time, except for what is past, for Allah is oft-forgiving, most Merciful.* (4:23)

Prohibition of marriage between two persons related by consanguinity or affinity are considered absolute or a permanent prohibition (*mu'abbad*) and are called *mahram* (Md Nadzeri & Ismail, 2010). Consequently, when two persons who are *mahram* to each other are together in a secluded place, it does not constitute a *khalwat*.

ii. Secluded Place

His Lordship Azmi Ahmad in the case of *Mohd Ibrahim bin Mohd Sharif v. Syarie Prosecutor of Penang* ([1999] 13 JH 185) gave examples that secluded places might

include a house, a room, hotel room or any other places which are outside the vicinity of people which can give rise to a suspicion that *khalwat* is or about to take place. Most cases showed that khalwat occurred in a hotel room like in the cases of *Syarie Prosecutor vs. Mohd Naim bin Abu Bakar* (*08012-143-0017-2009, Syariah Court of Perak*) and *Syarie Prosecutor vs. Zawawi Said (08012-143-0041-2008)*. A man and a woman caught in an indecent manner in open space is insufficient to be connected with the offence of *khalwat*.

iii. The Suspicion of Engagement in an Immoral Act

The couple must not only be together, but the manner and circumstances they are in must be capable of showing that sexual activity is about to or have taken place. His Lordship Ismail Yahya in an appeal case of *Mohd Ibrahim bin Mohd Sharif* (above) explained that any conduct that might lead to adultery is prohibited in Islam, and, therefore, being together in a hotel room is highly suspicious that some immoral behaviour is taking place. In most cases, the accused couples are convicted upon confession of being together in a hotel room. This is clearly shown in the case of *Perak Syarie Prosecutor vs. Mohamed bin Abdul Rahman and Norlia* ([1989] *Jurnal Hukum* 143), where the couple were found to be living together in a house and acted as a married couple. However, the fact that a couple was found together is not in itself sufficient to constitute *khalwat*, unless it can be proven that they were going to be involved in an immoral act. In the case of *Syarie Prosecutor vs. Mohamad bin Sabu* ([1997] 10 JH 61) it was argued that being together for a short time "doing nothing", cannot be interpreted as raising suspicion for *khalwat*. Even though they were alone in a hotel room, the circumstances and manner they were in, i.e., fully dressed, swift moment together, and the tidiness of the room meant that it was unlikely any suspicious acts were going to take place. Both the accused were subsequently acquitted by the court. Similarly, in the case of *Syarie Prosecutor of Negeri Sembilan* vs. *Ahmad Rashid and Another* ([1995] 10 JH 113), the couple were in a private house at 4.00 p.m. and were about to discuss a matter pertaining to a business proposal. This failed to raise the issue of *khalwat*. The court held that the Syarie Prosecutor must establish the fact that not only the accused were together behind closed door, but they must also be proven to have committed something suspiciously immoral. Comparing this with the case of *Mohd Ibrahim bin Mohd Sharif* (above), the accused, at the time of the offence, was in a highly suspicious state with a prostitute. He was convicted of *khalwat* after pleading guilty to the charge.

From the above discussion, the conditions needed to constitute an act as *khalwat* have been clearly laid down by the statute. The court interprets the conditions through cases and it helps to further understand the legal requirements of the offence. The next section examines the enforcement agency mandated with the power and authority to enforce the

shariah criminal offences and the challenges they face when establishing the required conditions for *khalwat*.

THE ENFORCEMENT OF *KHALWAT*

While it is understood that the sets of rules regarding *khalwat* and its enforcement have been regulated through the Shariah Criminal Offences Enactment and Shariah Criminal Procedure Code, enforcing such a law is never easy and is not free from criticism. The Religious Enforcement Officers (hereinafter REOs) under the States' Religious Department is entrusted with the task of enforcing the law, including to handle complaints, to investigate, arrest and so on as provided for under the Shariah Criminal Procedure Code. The duty of enforcement will be initiated by the First Information Report (F.I.R), usually lodged by the public on the suspicion of *khalwat*. This is where the challenge lies because the suspicion will have to lead them into encroach into a private space in the name of investigation. In some occasions, they are accused of harsh handling of the *khalwat* suspect (Ismail, 2008, p. 538). Accusations of peeping, harsh raiding and arrest are not uncommon, even though REOs have the power and authority to investigate the offence. Acting on public complaints, the REOs embark on investigation by frequenting the private "crime scene" and conducting interrogations. This does not amount to peeping as they are accused of (Zainul Abidin, 2007).

The issue of invasion of personal freedom has always been used as the basis to criticise the REOs. Accusation has it that there is a conflict of interest between upholding the law and justice and personal interpretations of what constitutes personal freedom, individual privacy and rights. Some Muslims are very particular with the subject of choice and personal rights and come out blatantly criticising the existence of *khalwat* law and its enforcement by the Religious Enforcement Division. Zainah Anwar, an activist, accused *khalwat* as a "religious sin (that) has become a crime against state" (Anwar, 2005) while a group which called itself as G25 want the *khalwat* law to be abolished. For some others, it is not about the law, but arguably, more on the issue of the manner of enforcement. Zainul Abidin (2007) described the investigation procedure by REOs as snooping and spying, but he failed to realise that in order to investigate the public complaint, REOs should go to the alleged location, not simply any private residence as claimed by the former Mufti. Zainul Abidin, the former Mufti also suggested that REOs prioritised their job and one of the examples he gave was regarding the menace created by the so-called *Mat Rempit*, the street-racers, but he clearly failed to understand the law and jurisdiction of REOs, as such a matter is not within REOs area of enforcement.

The REOs have also been accused of being the "moral police" and were urged to leave the policing to the parents. The fact is that they are duty-bound to enforce the law that was passed by the Parliament – signed and sealed by His Royal Highness the *Yang DiPertuan Agong*. Questioning

the law is like criticising the power of the *Yang DiPertuan Agong*, as the ruler of the country (Ismail & Awang Mat, 2007). The good thing is that since 2007, the Standard Operating Procedure (SOP) has been created to facilitate and standardise the proper manner of the enforcement and application of the law by the REOs in their daily operations. Some REOs admit that the real challenge is in establishing the evidence to meet the legal requirement or element of suspicion and not the public perception of them. Another challenge is the capacity of legal understanding among newly-appointed REOs. Most REOs do not have a legal background because it is not required for the position of a REO.

CONCLUSION

The discussion shows that the term *khalwat* in the context of an offence has been given a technical meaning in a legal sense. It is distinctive from the literal meaning of the word *khalwat* as an act of *ibadah* to improve the relationship with Allah. The term *khalwat*, at least in the Malaysian context, is well-known as one of the offences provided for under the Shariah Criminal Offences Enactment and applied to Muslims only. Even though the law outlines the definition of *khalwat* and lays down the ingredients to be fulfilled in order to establish the offence, the challenges in the investigation and the establishment of facts are still there, not to mention the opposition by certain quarters of the public or the so-called the "freedom fighters". The most typical complaint adduced by them is that the *khalwat* law is a violation of personal freedom. If we scrutinise the provision of *khalwat*, we understand that it regulates the moral conduct of the people so as to ensure that society is free from immoral conduct and wrongdoing that jeopardise its value and system. In general, the law is to protect the reputation of Muslims by prohibiting unmarried couples from becoming involved in an intimate relationship in private. The enforcement of this law is in line with the responsibility of the authority as well as society to enjoin the right and prohibit the wrong (*amr ma'ruf nahi munkar*). This is how a Muslim should look at the issue of enforcing moral law. It does not deprive any Muslim of their basic rights but is a means of strengthening and safeguarding them.

The discussion touches on the legal issues of enforcing *khalwat* for Muslims. The provision concerning *khalwat* and other related offences seek to protect the Muslim community from anti-social activities related to morals, beliefs, and the nobility of Islam. In the context of moral offences, challenges revolve not only around its enforcement, but also its existence. As for *khalwat* and indecency in public, their prohibition can be understood from the teachings of Prophet Muhammad. A devout Muslim should understand that it is forbidden to be with any woman alone without a third person, preferably her *mahram*. Regulating *khalwat* is an approach to implement this hadith and therefore, the law of *khalwat* was not enacted to invade one's privacy or violate the basic freedom.

REFERENCES

A. Aziz, S. (2011). *Issues on enforcement of Islamic criminal law in Malaysia*. Brunei: Malik Publisher

al-Asqallani, Ibn Hajar Ahmad ibn Ali. (1986). *Taqrib al-tahdib*. Aleppo, Syria: Dar al-Rashid.

al-Bukhari, Muhammad ibn Ismail. (1950). *Sahih al-Bukhari*. Kaherah: Maktabah al-Jumhuriyyah al-Arabiyah.

al-Jaziri, Abdul Rahman. (1969). *Kitab al-fiqh ala mazahib al-arba'ah,* vol. 4, Beirut: Dar Ihya' al-Turath al-Arabi.

al-Marbawi, Muhammad Idris Abdul Rauf. (1990). *Qamus Idris al-Marbawi Arabi-Malayuwi*. Kuala Lumpur: Darulfikir.

al-Mubarakfuri, Muhammad Abdul Rahman ibn Ahmad Abdul Rahim. (1963). *Tuhfah al-Ahwazi Sharh Jami' al-Tirmizi. Juz.8*. Madinah: al-Maktabah al-Salafiyyah.

al-Qurtubi, Muhammad ibn Ahmad. (1952). *Al-Jami' li ahkam al-Qur'an*. Kaherah: Matba'ah Dar al-Kutub al-Misriyah.

al-Suyuti. (1998). *Al-ashbah wa al-naza'ir fi qawaid wa furu'fiqh al-shafi'iyyah.* Beirut: Dar al-Kutub al-Ilmiyyah.

Anwar, Z. (2005). *Enforcing Public Morality*. Paper presented at the Public Forum organised by Liberal Forum Malaysia and Freidrich Naumann Foundation, Kuala Lumpur, April 27, 2005. Retrieved from http://www.sistersinislam.org.my/news.php?item.470.10

Devlin, P. (1965). *The enforcement of morals*. Oxford: Oxford University Press

Faruqi, S. S. (1997). Beauty contests and syariah law in Selangor. *Current Law Journal*, *4*, 7.

Faruqi, S. S. (2005). *Jurisdiction of Federal and State Authorities to Punish Offences against the Precepts of Islam: a Constitutional Perspective*. Friedrich-Naumann-Foundation website, 30 July. Retrieved on November 14, 2015 from http://www.fnfmalaysia.org/article/Presentation%20paper-%20Prof.%20SHAD%20-%20jurisdiction%20of%20federal%20and%20state%20authorities%20to%20punish1.pdf

Gamson, J. (2001). Normal sins: sex scandal narratives as institutional morality tales. *Social Problems, 48*(2), 185-205.

Hashim, M. D. (2006). Of morality and individualism in Malaysia. *Akademika, 67*(Januari), 103-108. Retrieved on February 2, 2014 from http://pkukmweb.ukm.my/~penerbit/akademika/ACROBATAKADEMIKA67/akademika67%5B06%5D.pdf

Ibn Abidin, Muhammad Amin ibn Umar. (1966). *Hashiyat radd al-mukhtar'ala al-durrr al-mukhtar: sharh tanwir al-absar fi fiqh madhhab al-imam abi hanifah al-nu'man.* Mesir: Mustafa al-Babi al-Halabi.

Isa, R., & Kee, J. (n.d.). Know Your Rights: Caught in Close Proximity for "Immoral" Acts (Khalwat), Women's Aid Organisation website. Retrieved from http://www.wao.org.

Ismail, S. Z. (2008). Dasar penguatkuasaan dan pendakwaan jenayah syariah di Malaysia: satu analisis. *Jurnal Syariah*, *16*(Keluaran Khas), 537-554.

Ismail, S. Z. (2015). At the foot of the sultan: The dynamic application of syariah in Malaysia. *Electronic Journal of Islamic and Middle Eastern Law* (*EJIMEL)*, *3*, 69-81.

Ismail, S. Z., & Awang Mat, M. Z. (2007). Polis moral dan masyarakat sifar jenayah: cabaran bahagian penguatkuasaan dan pendakwaan Jabatan Agama Islam dalam usaha pencegahan jenayah syariah. In Hamadi H., Jaffary A., & Suhermanto, J. (Eds.). *Islam dan isu-isu kontemporer: respon Islam terhadap problematika global dan kearifan local.* PT Sunan Ampel, Surabaya, Indonesia, pp.317-334

Ismail, S. Z., Yusof, Z., & Mohamed Azahari, M. A. A. (2014). Cabaran penguatkuasaan dan pendakwaan kesalahan jenayah syariah dari sudut perundangan. *Jurnal Hukum*, *39*(2), 165-181

Lyons, D. (1984). *Ethics and the rule of law*. Cambridge: Cambridge University Press.

Md. Nadzeri N., & Ismail, S. Z. (2010). Contesting jurisdiction in respect of incest: with particular reference to Malaysia. *The Law Review*, *2*, 247-266

Mellema, G. (2005). Moral dilemmas and offense. *Ethical Theory and Moral Practice*, *8*(3), 291-298.

Menon, T. P. B. (1973). Correspondence re: the law of *khalwat*. *Malayan Law Journal*, xx.

Mohamed, S. A. (1972). A review of law of *khalwat*. *Malayan Law Journal, 2,* xxii-xxiv.

Mohammad, I. (1994). Islamic criminal law in Malaysia: federal-state jurisdictional conflict. *Current Law Journal, 1*(March), xxiii-xxxii.

Parent, W. A. (1983). Privacy, morality and the law. *Philosophy and Public Affairs*, *12*(4), 269-288.

Salleh, A. (1984). *Selected articles and speeches on constitutional law and judiciary*. Kuala Lumpur: Malaysian Law Publishers Sdn. Bhd.

Syed, K. R. (1996). Cohabitation as a crime in Malaysia. *Current Law Journal, 1*, i-xiv.

Thompson, J. B. (1997). Scandal and social theory. In James, L. & Stephen, H. (Eds.), *Media scandals*. New York: Columbia University Press.

Zainul Abidin, M. A. (2007). *Tajassus. Tajassus dalam operasi pencegahan munkar*. Majalah iI (Bil.54), April 2007. (in Bahasa).