THEORETICAL FRAMEWORK OF EVIDENTIARY RULES AND PUNISHMENTS FOR SEXUAL OFFENCES IN ISLAMIC LAW: THE EXTENT OF ITS APPLICATION IN BRUNEI DARUSSALAM

WIDAD BINTI HAJI ABDUL AZIZ
09P0006

Faculty of Syariah and Law
Sultan Sharif Ali Islamic University
Negara Brunei Darussalam

Jamād al-Awwal 1436 / March 2015
SUPERVISION

THEORETICAL FRAMEWORK OF EVIDENTIARY RULES AND PUNISHMENTS FOR SEXUAL OFFENCES IN ISLAMIC LAW: THE EXTENT OF ITS APPLICATION IN BRUNEI DARUSSALAM

WIDAD BINTI HAJI ABDUL AZIZ
09P0006

Supervisor:________________________________________________________

Signature:_________________________ Date:__________________________

Faculty Dean:_____________________________________________________

Signature:_________________________ Date:__________________________
DECLARATION

I hereby declare that the work in this academic exercise is my own except for quotations and summaries which have been duly acknowledged.

Signature : 

Name : Widad Binti Haji Abdul Aziz 

Registration Number : 09P0006 

Date of submission : 28 Jamād al- Awwal 1436 / 19th March 2015
DECLARATION OF COPYRIGHT AND AFFIRMATION OF FAIR USE OF UNPUBLISHED RESEARCH

Copyright © 2013 by Widad Binti Haji Abdul Aziz. All rights reserved.

THEORETICAL FRAMEWORK OF EVIDENTIARY RULES AND PUNISHMENTS FOR SEXUAL OFFENCES IN ISLAMIC LAW: THE EXTENT OF ITS APPLICATION IN BRUNEI DARUSSALAM

No part of this unpublished research may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise without prior written permission of the copyright holder except as provided below:

1. Any material contained in or derived from this unpublished research may only be used by others in their writing with due acknowledgment.

2. UNISSA or its library will have the right to make and transmit copies (print and electronic) for institutional and academic purposes.

3. The UNISSA library will have the right to make, store in retrieval system and supply copies of this unpublished research if requested by other universities and research libraries.

Affirmed by Widad binti Haji Abdul Aziz.

................................. 28 Jamād al- Awwal 1436 / 19th March 2015
ACKNOWLEDGEMENT

First and foremost, I am grateful to Almighty Allāh Subḥānhahu Wa Taʿālā for granting me faith and strength to complete the thesis writing.

I am also indebted to the patience, skillful and critical supervision and examination of Assoc. Prof. Dr. Naamane Djeghimm, Prof. Dr. Mohd. Altaf Hussain Ahangar and Dr. Sulaiman Dorkoh who have guided me in materializing the thesis.

My greatest appreciation is also extended to all UNISSA lecturers, UNISSA library officers and attendants who gave continuous support and cooperation.

I would also like to express my gratitude to the Brunei Shari’ah Courts and Judiciary, the Shari’ah Prosecution Unit, the Criminal Division and Library of Attorney General Chambers Office, the Criminal Investigation Department of Royal Brunei Police Force, the library of Dār al-Iftā’, and the Jerudong Prison for being kind and helpful in giving valuable exposure of theory and practice on issues related to the topic of this thesis writing.

My special thanks goes to the fatherly figure, Sir Ali Kanan, who I would always look up to for not only a mere thesis proofreading but also for a ‘heart-to-heart’ consultation.

The writing of this thesis owes an exceptional sacrifice, patience, support and prayer of beloved husband Fahmi, daughter Iman, Baba Aziz, Mama Khuzaimah, Mama Normah, Mak Rogayah and all family members, teachers and friends who are not listed here, whose precious prayers for the success of this thesis writing are persistently witnessed by Allāh Subḥānhahu Wa Taʿālā. All of you deserve more than a written acknowledgement for your inspiring encouragement and motivation for the naïve me to complete the challenging journey.

Last but not least, may this humble work be counted and rewarded by Allāh Subḥānhahu Wa Taʿālā in seeking His vast knowledge and pleasure, and may this work be utilized as a piece of small contribution towards implementing the Sharī’ah law in the country.
ABSTRACT

THEORETICAL FRAMEWORK OF EVIDENTIARY RULES AND PUNISHMENTS FOR SEXUAL OFFENCES IN ISLAMIC LAW: THE EXTENT OF ITS APPLICATION IN BRUNEI DARUSSALAM

This research focuses on the evidentiary rules and punishments for sexual offences under Islamic law. Basically, sexual offences under Islamic law stem from the transgression of the prescribed decency and social etiquettes found in the Qur’ān and Sunnah. A mere act of gazing between the non-mahram without justifications is considered as sinful in Islam, and zinā is the most vastly elaborated sexual offence by the Muslim jurists. Sexual acts under the man-made law are also made punishable according to the enforced legislations. Nevertheless, the nature of the sexual offences, hence the evidentiary rules and punishments, may differ from those found under the Islamic law. Sexual offences in the Laws of Brunei Darussalam are dealt both by the Shari’ah and Civil courts in accordance with the prescribed jurisdictions. The limited jurisdiction of the Shari’ah courts and the significant jurisdiction of the Civil courts to try most of the sexual offence cases thus raise question as to the extent of the application of Islamic law of evidentiary rules and punishments in the existing laws. This research examines the nature of sexual offences under Islamic law, the evidentiary rules and punishments and to observe such in the existing Laws of Brunei Darussalam. The research methodology involves a library-based research, attachments at relevant agencies and interviews with the authorized officers. The researcher makes reference to classical and contemporary Islamic law literatures to trace the views and theories of evidence and punishment of sexual offences by Muslim scholars. This research finds that the evidentiary rules and punishments under Islamic law in relation to sexual offences are – for the time being – not fully observed in the laws of Brunei Darussalam. The practice of dual legal system in the administration of justice somehow affects the observation and application of Islamic evidentiary rules and punishments in the country. Therefore, this research will conclude the comparative study of evidentiary rules and punishments under both laws in order to provide an overview on the theory and practice in Brunei Darussalam which are to be considered for the prospect implementation of Islamic law in the country.
# TABLE OF CONTENT

<table>
<thead>
<tr>
<th>CONTENT</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supervision</td>
<td>iii</td>
</tr>
<tr>
<td>Declaration</td>
<td>iv</td>
</tr>
<tr>
<td>Copyright</td>
<td>v</td>
</tr>
<tr>
<td>Acknowledgement</td>
<td>vi</td>
</tr>
<tr>
<td>Abstract</td>
<td>vii</td>
</tr>
<tr>
<td>ملخص البحث</td>
<td>viii</td>
</tr>
<tr>
<td>Abbreviation</td>
<td>xv</td>
</tr>
<tr>
<td>Table of Statutes</td>
<td>xvi</td>
</tr>
<tr>
<td>Table of Cases</td>
<td>xvii</td>
</tr>
<tr>
<td>Transliteration</td>
<td>xxvi</td>
</tr>
</tbody>
</table>

**CHAPTER ONE: INTRODUCTION**

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1 Introduction</td>
<td>1</td>
</tr>
<tr>
<td>1.2 Statement of Problem</td>
<td>2</td>
</tr>
<tr>
<td>1.3 Rationale of Research</td>
<td>3</td>
</tr>
<tr>
<td>1.4 Research Question</td>
<td>4</td>
</tr>
<tr>
<td>1.5 Objectives of Research</td>
<td>4</td>
</tr>
<tr>
<td>1.6 Scope of Research</td>
<td>5</td>
</tr>
</tbody>
</table>
CHAPTER TWO : SEXUAL OFFENCES UNDER ISLAMIC LAW

Introduction 26

2.1 Legality of Sexual Relationship in Islam 26

2.2 Sexual Offences: The Root Sanction 28
   i. Gazing at non- *mahram* 31
   ii. Gazing at wife 33
   iii. Looking at *mahram* 33
   iv. Gazing for marriage purpose 33
   v. Gazing for medical purpose 34
   vi. Gazing for *shahādah* purpose 34

2.3 Categories of Sexual Offences 35
   2.3.1 *Khalwah* 35
      2.3.1.1 *Khalwah* with wife’s sister or husband’s brother 36
      2.3.1.2 *Khalwah* with divorced spouse 37
   2.3.2 Preliminary acts of *zinā* 38
   2.3.3 *Zinā* 39
      A. THE ELEMENTS OF ZINA 34
         i. Penile vagina penetration 41
         ii. Forbidden penetration under Islamic law 43
         iii. Natural penetration for sexual gratification 44
         iv. Absence of *shubhah* 45
      v. Criminal intention 51
   B. REQUIREMENTS OF ZINA PUNISHABLE WITH ḤADD 51
      i. Offenders regulated by Islamic law 52
      ii. *Mukallaf* 53
iii. Knowledge of prohibition of zinā 
vi. Consent to zinā 

2.3.4 Zinā bi al-ikrāh 
2.3.5 Unnatural Sexual Offences 
i. Liwāt 
ii. Musāhaqah 
iii. Ityān al-Bahīmah 
iv. Istimnāʿ 
v. Zinā bi al-mayyit 

2.4 Observation of Sexual Offences in Pakistan 

CHAPTER THREE: SEXUAL OFFENCES UNDER BRUNEI LAWS 

Introduction 

3.1 Sexual Offences Under Brunei Shari‘ah Laws 
3.1.1 Religious Council and Kadis Court Act 1984 
3.1.1.1 KHALWAT 
3.1.1.2 Illicit intercourse 
3.1.2 Emergency (Islamic Family Law) Order 1999 
3.2 Sexual Offences Under Brunei Civil Laws 
3.2.1 Penal Code 
3.2.1.1 Obscenity 
3.2.1.2 Sexual Grooming 
3.2.1.3 Prostitution and Commercial Sex 
3.2.1.4 Outraging Modesty 
3.2.1.5 Rape 
3.2.1.6 Unnatural Offences 
3.2.1.7 Incest 
3.2.1.8 Sex in the presence of person under 16 
3.2.1.9 Voyeurism
3.2.1.10 Cohabitation by deception of lawful marriage 129

3.2.2 Unlawful Carnal Knowledge Act 1984 130

Unlawful carnal intercourse with a girl under 16

3.2.3 Women and Girls Protection Act 1984 134

Selling and hiring woman for prostitution

CHAPTER FOUR: EVIDENTIARY RULES OF SEXUAL OFFENCES

Introduction 139

4.1 General Rules 139

4.1.1 Doubt remits ḥudūd 139

4.1.2 Retraction of evidence 146

4.1.3 Innocence of accused until proven otherwise 148

4.1.4 Rule of proof 149

4.1.4.1 Burden of proof 149

4.1.4.2 Standard of proof 151

4.1.4.3 Methods of Proof 164

4.1.5 Rule of Corroboration 165

4.1.6 Rule of Innocence of the Offence Charged and Guilty of Minor Offence 178

4.1.7 General Exceptions to Liability 181

4.2 Common Devices of Evidence in Sexual Offences 190

4.2.1 Confession 195

4.2.2 Statement of Witness 238

4.2.3 Evidence through Media 284

4.2.4 Hearsay Evidence 286

4.2.5 Medical Evidence 290

4.2.6 Evidence of Alibi 302

4.2.7 Identification of suspect 304

4.2.8 Police Investigation Diary 306

CHAPTER FIVE: PUNISHMENTS FOR SEXUAL OFFENCES

Introduction 308

5.1 Principles of sentencing under Islamic law 309
5.1.1 Hudūd punishments are fixed
5.1.2 Concurrent and consecutive sentences
5.1.3 Punishments of Muslim and non-Muslim
5.1.4 Age of offender
5.1.5 Punishments in the light of Shariah’s objectives
5.1.6 Ta’zīr punishments: The basic features
5.1.7 Rule of Attempt
5.1.8 Rule of Abetment
5.1.9 Application of qiyās

5.2 Principles of sentencing under Brunei Laws
5.2.1 Rule of double jeopardy
5.2.2 Doctrine of judicial precedent and stare decisis
5.2.3 Rule of attempt to commit an offence
5.2.4 Rule of abetment
5.2.5 Rule of complicity
5.2.6 Brunei Shari’ah Court practices ta’zīr
5.2.7 Principle of totality in sentencing

5.3 Types of punishments and affecting factors under Islamic law
5.3.1 Whipping and banishment
5.3.2 Death punishment
5.3.3 Compensation
5.3.4 Ta’zīr punishment
5.3.5 Factors affecting punishments
5.3.5.1 Age
5.3.5.2 Offence gravity
5.3.5.3 Deterrence and public revulsion in ta’zīr
5.3.5.4 Delay
5.3.5.5 Marriage
5.3.5.6 Retraction of evidence in Hudūd
5.3.5.7 Repentance
5.3.5.8 Health condition 363
5.3.5.9 Shubhah 364
5.3.5.10 Repetition in committing crime 365

**5.4 Types of punishments and affecting factors under Brunei Laws** 365

5.4.1 Types of punishments under Brunei Shari’ah Laws 367
5.4.2 Types of punishments under Brunei Civil Laws 370
5.4.3 Factors affecting punishments of sexual offences under Brunei Laws 387
5.4.3.1 Plea of Guilty 388
5.4.3.2 Age 391
5.4.3.3 Criminal Record 395
5.4.3.4 Family Welfare 398
5.4.3.5 Trust Relationship 399
5.4.3.6 Offence Gravity 407
5.4.3.7 Consent 411
5.4.3.8 Deterrence, Public Revulsion and Interest 413
5.4.3.9 Delay 418
5.4.3.10 Marriage 419
5.4.3.11 Muslim Converts 419
5.4.3.12 Retraction 419
5.4.3.13 Health Condition 420

**Conclusion** 422

Bibliography
# ABBREVIATION

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chap.</td>
<td>Chapter</td>
</tr>
<tr>
<td>Ed.</td>
<td>Editor</td>
</tr>
<tr>
<td>ed.</td>
<td>Edition</td>
</tr>
<tr>
<td><em>ibid</em></td>
<td>ion beam induced deposition</td>
</tr>
<tr>
<td>n.d.</td>
<td>no date / no year</td>
</tr>
<tr>
<td>No.</td>
<td>Number</td>
</tr>
<tr>
<td>n.pl.</td>
<td>no publisher</td>
</tr>
<tr>
<td><em>Op. cit.</em></td>
<td>opere citato</td>
</tr>
<tr>
<td>p.</td>
<td>page</td>
</tr>
<tr>
<td>pp.</td>
<td>pages</td>
</tr>
<tr>
<td>RCKCA 1984</td>
<td>Religious Council and Kadis Court Act 1984</td>
</tr>
<tr>
<td>SCE Order 2001</td>
<td>Shari'ah Courts Evidence Order 2001</td>
</tr>
<tr>
<td>v.</td>
<td>verse</td>
</tr>
</tbody>
</table>
TABLE OF STATUTES

<table>
<thead>
<tr>
<th>Statute</th>
</tr>
</thead>
<tbody>
<tr>
<td>Criminal Procedure Code 1951</td>
</tr>
<tr>
<td>Emergency (Islamic Family Law) Order 1999</td>
</tr>
<tr>
<td>Evidence Act 1950</td>
</tr>
<tr>
<td>Islamic Adoption of Children Act 2001</td>
</tr>
<tr>
<td>Offence of <em>Zina</em> (Enforcement of Hudood) Ordinance 1979</td>
</tr>
<tr>
<td>Penal Code 1951</td>
</tr>
<tr>
<td>Penal Code (Amendment) Order 2012</td>
</tr>
<tr>
<td>Public Order Enactment 1982</td>
</tr>
<tr>
<td>Religious Council and Kadis Court Act 1955</td>
</tr>
<tr>
<td>Religious Council and Kadis Court Act 1984</td>
</tr>
<tr>
<td>Shari’ah Courts Evidence Order 2001</td>
</tr>
<tr>
<td>Unlawful Carnal Knowledge Act 1984</td>
</tr>
<tr>
<td>Women and Girls Protection Act 1972</td>
</tr>
</tbody>
</table>
# TABLE OF CASES

_A bin M v. Public Prosecutor_ (Criminal Appeal No. 2 of 2009, Attorney General Library’s Copy.)

_Abdullah bin Ibrahim v. Public Prosecutor_ (Criminal Appeal No. 18 of 1996, Judgments of Courts of Brunei Darussalam.)

_Abdullah bin Hj. Ya’kub v Public Prosecutor_ (Criminal Appeal No. 1 of 1991, Judgments of Courts of Brunei Darussalam.)

_Ahmad bin Yahya v. Pendakwa Mahkamah-Mahkamah Kadi_ (Laporan Undang-Undang Syariah Brunei (1980), p. 45.)

_Aleem Al-Fateh bin Hj. Abd. Hamid v. Public Prosecutor_ (High Court Criminal Revision No. 2 of 2000, Judgments of Courts of Brunei Darussalam.)

_Augustine Foong Boo Jang v Public Prosecutor_ (Criminal Appeal No.8 of 1989. Brunei Law Reports.)

_Awang Abdullah bin Mohammad Yusof v. Pendakwa Mahkamah-Mahkamah Kadi_ (Laporan Undang-Undang Syariah Brunei (1980), p. 42.)

_Awang Mohammad bin Haji Abdullah v. Pendakwa Mahkamah- Mahkamah Syarie_ (Laporan Undang-Undang Syariah Brunei (1994), p. 87.)
Awang Mohammad Satri bin Omar lwn. Pendakwa Mahkamah-Mahkamah Kadi (Laporan Undang-Undang Syariah Brunei (1983), p. 60.)

Awang Mohd. Deli bin Perak lwn. Pendakwa Mahkamah-Mahkamah Kadi (Laporan Undang-Undang Syariah Brunei (1975) p. 32.)

Baharuddin bin Awang Aman v. Public Prosecutor (Criminal Appeal No. 25 of 2000, Judgments of Courts of Brunei Darussalam, p. 176.


Dayangku Norsiah binti Pengiran Talib lwn. Pendakwa Mahkamah Syariah (Laporan Undang-Undang Syariah Brunei (2001), p. 71.)


Hajah Syarkiah binti Utal lwn. Pendakwa Mahkamah-Mahkamah Kadi (Laporan Undang-Undang Syariah Brunei (1979), p.49.)


Haji Rosli bin Haji Ibrahim lwn. Pendakwa Syar’ie (Laporan Undang-Undang Syariah Brunei (2006), p. 257.)


Haughton v Smith (1974) 58 Cr App R 198

Haw Tua Tau v. Public Prosecutor ([1981] 2 MLJ 49.)
Haji Rosli bin Haji Ibrahim lwn. Pendakwa Syar ‘ie (Laporan Undang-Undang Syariah Brunei (2006), p. 257.)

Hj. Muhammad Nasiruddin bin DP DR Hj. Abdul Latif v. Public Prosecutor (Criminal Appeal No.3 of 2011).


Hj. Tahamit bin Hj. Jamudin v. Public Prosecutor (Criminal Appeal No. 15 of 2010.)

Hussain bin Hj. Hassan v Public Prosecutor (Criminal Appeal No. 4 of 1989, Brunei Law Reports.)


Juffrey bin Hashim v Public Prosecutor (High Court Criminal Appeal Nos. 2, 3 and 4 of 1985, Brunei Law Reports.)

Jumut bin Hassan v. Public Prosecutor (Criminal Appeal No. 27 of 1994, Judgments of Courts of Brunei Darussalam.)

Junit bin Besar v. Public Prosecutor (Criminal Appeal No. 17 of 1994, Judgments of Courts of Brunei Darussalam.)
Kamaruddin bin Kamis v. Public Prosecutor (Criminal Appeal No. 24 of 2010, [2011] BLR 131.)


Karim bin Petra and Public Prosecutor (Criminal Appeal No. 3 of 1981, Brunei Law Reports.)

Khoo Kwoon Hain v. Public Prosecutor ([1995] 2 SLR)

Lim Hoc Hin Kevin v. Public Prosecutor [1998] 1 SLR 801

M. S bin H. I v. Public Prosecutor (Criminal Appeal No. 7 of 2005, Brunei Law Reports, p. 201.)

Mahdini bin Mustapa Mohamad v Public Prosecutor (High Court Criminal Appeal No. 4 of 1984. Brunei Law Reports.)

Matassan bin Hj. Serudin & Others v Public Prosecutor (Criminal Appeal No. 10 of 1986, [1987] 1 MLJ 524)
Mohd Musa Bin Mohammad v. Public Prosecutor (Criminal Appeal No. 19 of 1994, Judgments of Courts of Brunei Darussalam, p. 314.)


Muhammad bin Haji Alikhan lwn. Pendakwa Mahkamah-Mahkamah Kadi (Laporan Undang-Undang Syariah Brunei (1975) p. 19.)

Muhammad Abbas & Anor. v. The State (PLD 2003 Supreme Court 863.)


Nordin bin Kamis lwn. Pendakwa Syar’ie (Laporan Undang-Undang Syariah Brunei (2002), p. 133.)

Pendakwa Mahkamah-Mahkamah Kadi lwn. Dayang Tiwa binti Samad (Laporan Undang-Undang Syariah Brunei (1989), p. 69.)


Pendakwa Syar’ie lwn. Nurdayanah binti Abdullah @ Dolly Anak Laman (Laporan Undang-Undang Syariah Brunei (2002), p. 111.)


Pendakwa Syar’ie lwn. Rosnah binti Gani (Laporan Undang-Undang Syariah Brunei (2006), p. 289.)

Pendakwa Syar’ie lwn. Sulastri binti Haji Basri & Abd. Latif bin Jumaat @ Jamahat (Laporan Undang-Undang Syariah Brunei (2002), p. 225.)

Pendakwa Syar’ie lwn. Zainudin bin Abdul Latif & Norhashimah binti Abdullah (Laporan Undang-Undang Syariah Brunei (2001), p.20.)

Public Prosecutor v Abdul Rahim bin Hj. Ahmad & Others (High Court Criminal Trial No. 7 of 1988.)
Public Prosecutor v A bin A K (High Court Criminal Trial No. 4 of 1990, Judgments of Courts of Brunei Darussalam.)

Public Prosecutor v Abdullah bin Hj. Ya'kub. (High Court Criminal Trial No. 13 of 1991, Judgments of Courts of Brunei Darussalam.)

Public Prosecutor v Abdul Rashid bin Awang Besar (High Court Criminal Trial No. 26 of 1986, Brunei Law Reports.)

Public Prosecutor v. ABT (High Court Criminal Trial No. 1 of 2009, Judgments of Courts of Brunei Darussalam. p. 50.)

Public Prosecutor v. A. H. S bin A H (High Court Criminal Trial No. 206 of 1999, Judgments of Courts of Brunei Darussalam.)

Public Prosecutor v. Aan Junaedi & Iswahyudi (High Court Criminal Trial No. 2 of 2007, Attorney General Library Copy.)

Public Prosecutor v. Aminor bin Hj. Naidi (High Court Criminal Trial No. 12 of 1990, Judgments of Brunei Darussalam.)

Public Prosecutor v. Ariffin bin Hj. Salleh (High Court Criminal Trial No. 2 of 1992, Judgments of Courts of Brunei Darussalam.)

Public Prosecutor v. Asing Anak Sabai @ Bonnie (High Court Criminal Trial No. 42 of 2004, Brunei Law Reports, p. 115.)

Public Prosecutor v. Aslan bin Hassan (High Court Criminal Trial No. 5 of 2005, Attorney General Library Copy.)
Public Prosecutor v. ASP Ariffin bin Hj. Jafaruddin (Criminal Appeal No. 8 of 2005, Brunei Law Reports, p. 191.)

Public Prosecutor v. Bahrin bin Rejab (High Court Criminal Trial No. 20 of 2005, [2007] Brunei Law Reports.)

Public Prosecutor v. Besar bin Ahmad (Intermediate Court Criminal No. 9 of 1993, Judgments of Courts of Brunei Darussalam)

Public Prosecutor v. Billy Metussin (High Court Criminal Trial No. 2 of 1993, Judgments of Courts of Brunei Darussalam.)
Public Prosecutor v. Cpl 6690 M bin T (High Court Criminal Trial No. 10 of 2005, Judgments of Courts of Brunei Darussalam, p. 1.)

Public Prosecutor v. CPL 731 Abd. Rahman bin Moksin & Another (High Court Criminal Trial No. 10 of 1997, Judgments of Courts of Brunei Darussalam.)
Public Prosecutor v. Darsono Seno (High Court Criminal Trial No. 3 of 2006, Attorney General Library Copy.)

Public Prosecutor v. Emran bin Nasir (High Court Criminal Trial No. 4 of 1986, Brunei Law Reports.)


Public Prosecutor v. Hj. Yusuf bin Abu Harbid (High Court Criminal Trial No. 2 of 1995, Judgments of Courts of Brunei Darussalam.)

Public Prosecutor v. Hishamuddin bin Hj. Chuchu (High Court Criminal Trial No. 45 of 1994, Judgments of Courts of Brunei Darussalam.)

Public Prosecutor v. Intol bin Langgar (High Court Criminal Trial No. 8 of 1993, Judgments of Courts of Brunei Darussalam)

Public Prosecutor v. J. B. H. J (High Court Criminal Trial No. 12 of 2007, Attorney General Chambers Library Copy.)

Public Prosecutor v. Jamil bin Zainal (High Court Criminal Trial No. 11 of 1999, Judgments of Courts of Brunei Darussalam, p. 91.)

Public Prosecutor v Kabul bin Omar (High Court Criminal Trial No. 11 of 1982, Brunei Law Reports.)


Public Prosecutor v. Krishna Kumar Devan [HCCT No. 5 of 2005]


Public Prosecutor v. H.N bin H.M.Z (High Court Criminal Trial No. 21 of 2006, Brunei Law Reports, p. 35.)

Public Prosecutor v. Hj. Sahak bin Hj. Anis (High Court Criminal Trial No. 36 of 2004, Judgments of Courts of Brunei Darussalam, p. 58.)


Public Prosecutor v. Ibrahim bin Haji Anggas (High Court Criminal Trial No. 6 of 2007).


Public Prosecutor v. Jamil bin Zainal (High Court Criminal Trial No. 11 of 1999, Judgments of Courts of Brunei Darussalam, p. 74.)

Public Prosecutor v. Jamlong Manmool (High Court Criminal Trial No. 4 of 1992, Judgments of Courts of Brunei Darussalam.)

Public Prosecutor v. M B L (High Court Criminal Trial No. 21 of 2008, Attorney General Chamber Library’s Copy.)

Public Prosecutor v. M. S bin M (High Court Criminal Trial No. 14 of 2004, Brunei Law Reports, p. 233)

Public Prosecutor v. Marani bin Hj. Ibrahim & Others (High Court Criminal Trial No. 8 of 1993) Judgments of Courts of Brunei Darussalam.

Public Prosecutor v. M.D bin H.A (High Court Criminal Trial No. 3 of 2006, Brunei Law Reports, p. 239.)

Public Prosecutor v. Md. Shamri bin Mohd. Alias @ Talih bin Pintol (High Court Criminal Trial No. 10 of 1992) Judgments of Courts of Brunei Darussalam.

Public Prosecutor v. Mohamad Salleh bin Damit (Intermediate Court Criminal Trial No. 20 of 2007, Brunei Law Reports, p. 307),

Public Prosecutor v. Mohammad Jalaluddin bin Abdullah (High Court Criminal Trial No. 17 of 2009, Attorney General Library’s Copy.)

Public Prosecutor v. Mohd. Noh bin Abdullah @ Ting Chi Uui (High Court Criminal Trial No. 40 of 1998, Judgments of Courts of Brunei Darussalam, p. 43.)
Public Prosecutor v. Mohd. Tamin bin Hj. Ahmad (Intermediate Court Criminal Trial No. 34 of 1995, Judgments of Courts of Brunei Darussalam.)

Public Prosecutor v. Mohammad Noorashikin bin Amba (Intermediate Court Criminal Trial No. 5 of 2002, Brunei Law Reports, p.419.)

Public Prosecutor v. MT bin AG (High court Criminal Trial No. 7 of 2005, Judgments of Courts of Brunei Darussalam, p. 1)

Public Prosecutor v. Mohamad Salleh bin Damit (Intermediate Court Criminal Trial No. 20 of 2007, Brunei Law Reports, p. 307.)

Public Prosecutor v. Muhammad bin Serudin (Criminal Appeal No. 2 of 2001, Brunei Law Reports, p. 416.)

Public Prosecutor v. Muhammad Helmi bin Awang Tamid (Intermediate Court Criminal Trial No. 7 of 2001, Judgments of Courts of Brunei Darussalam, p. 555.)

Public Prosecutor v. Muhammad Rosanan bin Abdullah Samak (High Court Criminal Trial No. 3 of 2007, Brunei Law Reports)
Public Prosecutor v Nasar bin Ahmad & Others (High Court Criminal Trial No. 15 of 1984, Brunei law Reports.)

Public Prosecutor v. Osman bin Haji Sarbini & Others (High Court Criminal Trial No. 4 of 1984, Brunei Law Reports)

Public Prosecutor v. P bin Hj. P (Intermediate Court Criminal Trial No. 7 of 2006, Brunei Law Reports, p. 407.)


Public Prosecutor v. Richard Chia Kok Hiong ([2007] 3 MLJ 129 at p 166).

Public Prosecutor v. Rosyadi bin Abdullah & Ors (Intermediate Court Criminal Trial No. 6 of 2003, Brunei Law Reports, p.312.)

Public Prosecutor v. Rusydi bin OKP Harun (High Court Criminal Trial No. 17 of 2003, Brunei Law Reports, p. 233.)

Public Prosecutor v. Safar bin Mohd. Yassin (High Court Criminal Trial No. 5 of 1992, Judgments of Courts of Brunei Darussalam.)

Public Prosecutor v Safri bin Mohd. Yassin (High Court Criminal Trial No. 5 of 1992, Judgments of Courts of Brunei Darussalam)
Public Prosecutor v. Seleman bin Nawi (Intermediate Court Criminal Trial No. 2 of 1994, Judgments of Courts of Brunei Darussalam)

Public Prosecutor v. SGT 772 Muhammad bin Abdullah @ Tingkah bin Ikas (High Court Criminal Trial No. 3 of 2000, Judgments of Courts of Brunei Darussalam, p. 40-47.)

Public Prosecutor v SLD 8274 Rosli bin Hj. Yusof (Criminal Appeal No. 5 of 1990.)

Public Prosecutor v. Somphong Thonusawang & Thongnak Sophom (High Court Revision No. 5 of 2002. Judgments of Courts of Brunei Darussalam. p. 21.)

Public Prosecutor v. Suhaili bin Elias (High Court Criminal Trial No. 11 of 2003, Brunei Law Reports, p. 165.).

Public Prosecutor v. Suhaili bin Hj. Kassim & Others (High Court Criminal Trial No. 17 of 1981, Brunei Law Reports.)

Public Prosecutor v. Suhaimi bin Nickman (High Court Criminal Trial No. 3 of 1992), Judgments of Courts of Brunei Darussalam.)

Public Prosecutor v. Suhardi bin Samsun Yusra (Intermediate Court Criminal Trial No. 10 of 1998, Judgments of Courts of Brunei Darussalam.)

Public Prosecutor v. Sumardey bin Hj. Jaidin (High Court Criminal Trial No. 12 of 2009 and Criminal Appeal No. 5 of 2010.)

Public Prosecutor v. Supt. Hj. Mohd Mahathir bin Abdullah (High Court Criminal Trial No. 3 of 2002, Judgments of Courts of Brunei Darussalam, p. 326.)

Public Prosecutor v Teo Eng Chan ([1988] 1 MLJ 156)

Public Prosecutor v. U. M. (High Court Criminal Trial No. 4 of 2005, Brunei Law Reports, p. 237.)

Public Prosecutor v. Y bin M (High Court Criminal Trial No. 3 of 1991) Judgments of Courts of Brunei Darussalam.

Public Prosecutor v. Z.M (High Court Criminal Trial No. 5 of 1995, Judgments of Courts of Brunei Darussalam.)

Public Prosecutor v Zainal Abidin bin Ismail & Others (High Court Criminal Case No. 36 of 1986, Brunei Law Reports. Also see [1987] 2 MLJ 741)
Prosecutor v. Zoelaliffin bin Hj. Zaini (High Court Criminal Trial No. 2 of 2001, Brunei law Reports, p. 478.)

Public Prosecutor v. Zulkifli bin Sebang ([ICCT No. 8 of 1993].)

R v Baskerville ([1916] 2 KB 658)


Romsali bin Awang Omar lwn. Pendakwa Syar’ie (Laporan Undang-Undang Syariah Brunei (2002), p. 92.)

Shahrin bin Tarang @ Wahab v. Public Prosecutor (Criminal Appeal No. 40 of 1993), Judgments of Courts of Brunei Darussalam.

Sigat Anak Bakum v. Public Prosecutor (Criminal Appeal No. 23 of 1992, Judgments of Courts of Brunei Darussalam.)

Subki bin Ibrahim v Public Prosecutor (Criminal Appeal No. 13 of 1992, Judgments of Courts of Brunei Darussalam.)

Suhaimi bin Haji Besar & Shamsiniah binti Haji Kifli lwn. Pendakwa Syar’ie (Laporan Undang-Undang Syariah Brunei (2001), p. 148.)


Ya’kub bin Salamat @ Selamat v. Public Prosecutor (Criminal Appeal No. 65 of 2000, Judgments of Courts of Brunei Darussalam, p. 216.)
<table>
<thead>
<tr>
<th>Arabic</th>
<th>Roman / Latin</th>
</tr>
</thead>
<tbody>
<tr>
<td>ء</td>
<td>b</td>
</tr>
<tr>
<td>ب</td>
<td>t</td>
</tr>
<tr>
<td>ت</td>
<td>th</td>
</tr>
<tr>
<td>ج</td>
<td>j</td>
</tr>
<tr>
<td>ح</td>
<td>ḫ/ ḫ</td>
</tr>
</tbody>
</table>
CHAPTER ONE:
INTRODUCTION

1.1 INTRODUCTION

This research primarily examines the nature of sexual offences under Islamic law. Zinā (adultery) is one of the sexual offences which is found to be extensively dealt with in the Islamic literatures by the Muslim scholars. Other sexual offences such as ikrāh ‘alā al-zinā (adultery under duress or force), liwāt (sodomy), musāḥaqaḥ (the sexual act between females), ityān al-
bhīmah (bestiality), ityān al-mayyit (sexual intercourse with dead body), istinmāʾ (masturbation), khālwah (close proximity of man with a woman other than his wife or mahram), preliminary acts of zinā such as kissing or touching the non-mahram, and outraging modesty of a person, are also discussed by the scholars with brief explanation.
The research also examines the evidentiary rules of establishing the above-mentioned sexual offences under Islamic law in the classical and contemporary literatures of Muslim scholars as well as the punishments of such offences under Islamic law.

The research also looks at the nature and types of sexual offences punishable under the Brunei laws. Since Brunei Darussalam is governed by the dual legal system, the categorization of sexual offences, therefore, focuses on the jurisdiction and nature of sexual offences provided under the Brunei Shari’ah laws and the Brunei Civil laws. The study also observes the application of evidentiary rules and punishments of sexual offences under Brunei laws, cases and judgments of the Shari’ah courts and the Civil courts.

The research observes the theoretical framework of evidentiary rules and punishments for sexual offences under Islamic law as elaborated by Muslim jurists and their existence and authoritative operation in the governing Laws of Brunei Darussalam in order to study the extent of its application. The extent of observing the application of such laws includes the study of the relevant provisions, the judgments of related cases and the elaboration of laws by the authorities.

1.2 STATEMENT OF PROBLEM

Brunei Darussalam practises the dual legal system to the effect in which the Islamic law is practised only by the Shari’ah courts, while the civil courts practise the laws based on the British legal system. The Islamic law is not however practiced by the Shari’ah courts in its full sense due to its limited jurisdiction. The Shari’ah courts are to exercise their jurisdiction in accordance with the Islamic law and are also bound for-the-time-being, by the Criminal Procedure Code adopted by the Civil courts. This to some extent, results in confusion as to the appropriate application of Islamic evidentiary rules and punishments in the country. There is a limited jurisdiction for the
Shari’ah courts to exercise the Islamic law as a whole, since the laws on sexual offences are mostly covered by Civil laws of Brunei, though not all Civil laws are in contradiction to the Islamic law. This research will examine the extent of the application of Islamic law in sexual offences in both of the Shari’ah and Civil courts in Brunei Darussalam.

1.3 RATIONALE OF THE RESEARCH

Although there are many studies on Islamic criminal law, based on the researcher’s knowledge and study, there is no exclusive academic research on the application of evidentiary rules and punishments for sexual offences under Islamic law in the Laws of Brunei Darussalam. Therefore, it is justified to examine this topic of research in order to understand the theoretical framework of evidentiary rules and punishments for sexual offences laid down by Muslim scholars, and to observe its application in the dual legal system of Brunei Darussalam.

1.4 RESEARCH QUESTIONS

This research focuses on the following questions:
1. What are the types of sexual offences made punishable under the Islamic law?
2. What are the types of sexual offences made punishable under the Laws of Brunei Darussalam?
3. What are the evidentiary rules in establishing sexual offences under the Islamic law?
4. What are the evidentiary rules in establishing sexual offences under the Laws of Brunei Darussalam?
5. What are the punishments provided for sexual offences under the Islamic law?
6. What are the punishments provided for sexual offences under the Laws of Brunei Darussalam?
7. To what extent the sexual offences and the evidentiary rules and punishments under the Islamic law are observed in the Laws of Brunei Darussalam?
8. What are the findings and recommendations of this research?

1.5 OBJECTIVES OF RESEARCH

This research aims at the following objectives:
BIBLIOGRAPHY

BOOKS OF TAFSİR


BOOKS OF HADĪTH


HANAFĪ SCHOOL LITERATURES


MĀLIKĪ SCHOOL LITERATURES


**SHĀFIʿİSCHOOL LITERATURES**


HANBALĪ SCHOOL LITERATURES


**ZAHIRĪ SCHOOL LITERATURE**


**CONTEMPORARY ISLAMIC LAW LITERATURES**


**THESES AND DISSERTATIONS**


**DICTIONARIES AND ENCYCLOPEDIA**


**ONLINE RESOURCE**