

TECHNICAL ISSUES IN SARF/BAH/UNDER THE BRUNEI SHARIAH
PENAL CODE ORDER, 2013: A COMPARATIVE ANALYSIS WITH
THEFT UNDER THE BRUNEI PENAL CODE CHAPTER 22

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

TECHNICAL ISSUES IN *SARIQAH* UNDER THE BRUNEI SHARIAH
PENAL CODE ORDER, 2013: A COMPARATIVE ANALYSIS WITH
THEFT UNDER THE BRUNEI PENAL CODE CHAPTER 22

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SUPERVISION

TECHNICAL ISSUES IN SARAQAH UNDER THE BRUNEI SHARIAH PENAL CODE ORDER, 2013: A COMPARATIVE ANALYSIS WITH THEFT UNDER THE BRUNEI PENAL CODE CHAPTER 22

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**TECHNICAL ISSUES IN 5.68(2)(4) UNDER THE BRUNEI SHARIAH PENAL
CODE ORDER, 2012: A COMPARATIVE ANALYSIS WITH THEFT UNDER
THE BRUNEI PENAL CODE CHAPTER 22**

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I pray that this research work will be beneficial for its readers. Aamin.

ABSTRACT

TECHNICAL ISSUES IN *SARIQAH* UNDER THE BRUNEI SHARIAH PENAL CODE ORDER, 2013: A COMPARATIVE ANALYSIS WITH THEFT UNDER THE BRUNEI PENAL CODE CHAPTER 22

The research analyzed the technical issues in *sariqah* under the Brunei Shariah Penal Code Order, 2013 using the qualitative legal-library based method. Those technical issues involve around two main aspects: the ingredient of surreptitious taking and the special and essential condition where the taking must be done illicitly from the possession of the owner of the property. In order to properly understand these technical issues, the researcher examined the ingredients of both *sariqah* under the Brunei Shariah Penal Code Order, 2013 and theft under the Brunei Penal Code Chapter 22. At the same time, the special and essential condition of both *sariqah* under the Brunei Shariah Penal Code Order, 2013 and theft under the Brunei Penal Code Chapter 22 was studied. It was found that both ingredient and the special and essential condition must be fulfilled before an alleged theft can be charged and be convicted with any of those two offences. In other words, the non-fulfilment of this ingredient and the special and essential condition will make it legally impractical to charge a person accused of committing *sariqah* under the Brunei Shariah Penal Code Order, 2013 and theft under the Brunei Penal Code Chapter 22. Alternatively, it is still important to understand the general conditions which determine the punishment despite having no significance in determining the charge and conviction of *sariqah* under the Brunei Shariah Penal Code Order, 2013 and theft under the Brunei Penal Code Chapter 22.

ABSTRAK

ISU-ISU TEKNIKAL DI DALAM SERIQUAH DI BAWAH PERINTAH KANUN HUKUMAN JENAYAH SYARIAH 2013: SEUATU PERBANDINGAN DENGAN CURI DI BAWAH KANUN KESEKSAAN IBRAHIMI BAB 22

Kajian ini menganalisa isu-isu teknikal di dalam seriquah di bawah Perintah Kanun Hukuman Jenayah Syariah, 2013 dengan menggunakan kaedah kualitatif penyediaan perbandingan. Isu-isu teknikal ini berpanca daripada dua aspek utama, iaitu dari segi rakan (mengambil barang secara sembunyi) dan dari segi syarat khas dan penting yang mana pengambilbarang itu mesti dilakukan secara ikhtisad daripada pemilik barang. Untuk memahami isu-isu teknikal ini dengan tepat, pengkaji telah meneliti nikan bagi kedua-dua kesalahan iaitu kesalahan seriquah di bawah Perintah Kanun Hukuman Jenayah Syariah, 2013 dan kesalahan curi di bawah Kanun Keseksaan Ibrahimi Bab 22. Hasil kajian ini mendapati bahawa mana-mana kes seriquah atau kes curi yang tidak memenuhi nikan setiap kesalahan seriquah atau curi, akan menyebabkan tidak praktikal secara perundangan untuk membuat suatu perundangan terhadap seseorang dengan kesalahan-kesalahan itu. Pengkaji juga telah meneliti syarat khas dan penting di bawah kesalahan seriquah di bawah Perintah Kanun Hukuman Jenayah Syariah, 2013 dan kesalahan curi di bawah Kanun Keseksaan Ibrahimi Bab 22. Hasil kajian mendapati meskipun syarat khas dan penting itu bukan dianggap suatu nika bagi kesalahan seriquah di bawah Perintah Kanun Hukuman Jenayah Syariah, 2013 dan kesalahan curi di bawah Kanun Keseksaan Ibrahimi Bab 22, akan tetapi ia mesti juga diambili kira sebelum sesuatu kes curi boleh dipersehkan dan diubahkan. Oleh kerana itu, jika tidak memenuhi semua rakan dan syarat (syarat khas dan penting) menyebabkan ia tidak praktikal secara perundangan untuk membuat perundangan terhadap terdoh yang melibatkan kesalahan seriquah di bawah Perintah Kanun Hukuman Jenayah Syariah, 2013 dan kesalahan curi di bawah Kanun Keseksaan Ibrahimi Bab 22. Di samping itu, sangat penting untuk memahami syarat-syarat utama dalam memastikan sesuatu hukuman walaupun syarat-syarat utama tersebut kurang berkepentingan dalam memastikan pertidahan dan pembalasan kesalahan seriquah di bawah Perintah Kanun Hukuman Jenayah Syariah, 2013 dan kesalahan curi di bawah Kanun Keseksaan Ibrahimi Bab 22.

ملخص البحث

لنائل النخبة في السرقة في ضوء قانون العقوبات الجنائية الفرنسي سنة 2013 في بروناي دار السلام.
تحليل مقارنة مع السرقة في ضوء قانون العقوبات رقم 12 في بروناي دار السلام

هذا البحث يهدف من خلال المصادقة القضائية في السرقة في ظل قانون متطورة الجنائية الفرنسي سنة 2013، دور النكاح القهري بين المدعى الرئيسي والمتضرر أساساً جنياً والقرابة الخامس حيث يجب أن يتم اعتقاد الجنائية بعد أن سرقة مناسبات التي في السرقة في ظل قانون متطورة الجنائية الفرنسي سنة 2013. لم أجد سهولة فهم القضايا القضائية بشكل صحيح، مع الاستناد إلى الأركان التي تشكلت في السرقة بموجب قانون متطورة الجنائية الفرنسي سنة 2013 والسرقة بموجب قانون المتطورة رقم 22 في بروناي. وقد توسلنا بالاستناد إلى أن مدعى الجنائية في الأركان التي تشكلت بموجب قانون المتطورة رقم 22 في بروناي. كما تم الاستناد إلى أن مدعى الجنائية في السرقة بموجب قانون متطورة الجنائية الفرنسي سنة 2013 والسرقة بموجب قانون المتطورة رقم 22 في بروناي. وقد توسلنا أيضاً على الرغم من أنه القدر الخامس من قانون في جرائم السرقة بموجب قانون متطورة الجنائية الفرنسي سنة 2013 والسرقة بموجب قانون المتطورة رقم 22 في بروناي. إذاً يجب التأكيد أيضاً على أنه يمكن الجمع بين عناصر السرقة على التوالي. لذلك، إذاً مدعى الجنائية يجب الأركان والقرابة الخامس بين المدعى والسرقة غير أن يكون. هدفنا من هذا البحث هو التأكيد على أن الشروط التي في قانون المتطورة وليس لها أهمية جوهرية في تحديد إذاً السرقة بموجب قانون متطورة الجنائية الفرنسي سنة 2013 والسرقة بموجب قانون المتطورة رقم 22 في بروناي.

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LIST OF TRANSLITERATION

Transliteration Table

Arabic / الحروف العربية	Roman / الكلمة بالحروف الرومانية	Example / الأمثلة	Transliteration / الكلمة بالحرف
أ	ʾ	عشاء	ʿaṣāʾ
ب	B	البحر	al-baḥr
ت	T	التمر	al-tamr
ث	Th	الثلج	al-thalj
ج	J	الجوز	al-jauz
ح	H	الحب	al-hab
خ	Kh	الخود	al-khūd
د	D	الدراجة	al-daraj ʾa
ذ	Dh	الذئب	al-dhāʾib
ر	R	الراية	al-raʾiʾ
ز	Z	الزهر	al-zahar
س	S	السهم	al-saḥm
ش	Sh	الشعر	al-shaʿr
ص	Ṣ	الصوت	al-ṣawṭ
ض	D	الضلع	al-ḍalʿ
ط	T	الطير	al-ṭayr
ظ	Ẓ	الظن	al-ẓan
ع	ʿ	العش	al-ʿaṣh
غ	Gh	الغزل	al-ghazl
ف	F	الفردوس	al-fardus
ق	Q	القلم	al-qalam
ك	K	الكلمة	al-kalima
ل	L	اللحم	al-lahm
م	M	الماء	al-māʾ

ā	a	أَ، آ	أَبِي
i / e	i	إِ، عِ، آيْ، أَيْ	أَبِيهِ / عَمِّيهِ
u	u	أُ، أُيْ	أَبِيهِ

Short Vow el

Arabic	Roman	Example	Transliteration
اَ	a	كُتِبَ	Kuṭiba
اِ	i	كُتِبَ	Ḳuṭiba
اُ	u	كُتِبَ	Ḳuṭiba

Long Vow el

Arabic	Latin	Example	Transliteration
أَ، آ	ā	أَبِي، أُمِّي	ābī / āmmī
إِ، عِ، آيْ، أَيْ	ī	أَبِي، أُمِّي	ābī
أُ، أُيْ	ū	أَبِي	ābī

Diphthong

Arabic	Latin	Example	Transliteration
أَيْ، آيْ	Ay	أَيُّهُ	Qayyuh
أَيْ، آيْ	Ay	أَيُّهُ	Layl
أَيُّ، آيُّ	yy	أَيُّهُ	Shayyayyuh
أَيُّ، آيُّ	Uyy	أَيُّهُ	Qayyayyuh

Exceptions

- Arabic letter (ay) found at the beginning of a word is transliterated to the letter (a) and not to [ʔ]. Example: أَلْبَابُ transliterated to al-bāb (not ʔal-bāb).
- Arabic letter (ay) found in a word without (ay) which is coupled with another word that contains (ay) at the beginning of it is transliterated to the letter (i) and not (y). Example: (أَيُّهُ) أَبِيهِ transliterated to ābīyah al-ābīyah (NOT āyīyah al-āyīyah).
- If the Arabic letter (ay) found in a word with (ay) in a single word or in the last word in a

sentence, it is transliterated to the letter (h) and not (h). Example:

• مكبأا (Makbūh) transliterated to: al-Makbūh al-Abīyyah (not al-Makbuha al-Abīyyah)

• قأا (Qāh) transliterated to: Qāh (not Qāh)

• رابأا (Rābā) transliterated to: Rābāh (not Rābāh)

d. Arabic word which refers to a country or a place is exempted from transliteration

Example: إربأا (Irāq) transliterated to Iraq (not Irāq)

ABBREVIATION

Ed.	edited by
et al.	and others
n.d.	no date / no year
n.pl.	no publisher
No.	number
p.	page
pp.	pages
trans.	translated by
v.	version
Vol.	volume

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CHAPTER ONE INTRODUCTION

1.0 Background of the Research

There are some technical issues in *suriqah* under section 53 of the Brunei Syariah Penal Code Order, 2013. One of the technical issues is the issue of taking not by stealth. A taking which is not by stealth cannot be charged with *suriqah* by virtue of section 53 of the Brunei Syariah Penal Code Order, 2013. The said provision essentially requires a taking to be committed stealthily from any knowledge of the victim at the time it is done by the accused. Comparatively, this technical issue is covered under section 378 of the Brunei Penal Code (Chapter 22) where under the said provision a taking is not essentially required to be committed by stealth; it could be where the victim saw the taking took place.

Another technical issue is when for example the accused person took properties after receiving it legally such as taking away the victim's wristwatch after being given the chance to have a look at it. In this circumstance the accused cannot be charged with *suriqah* under section 53 of the Brunei Syariah Penal Code Order, 2013. This is because technically, it was not the accused who has literally taken the wristwatch from the possession of the victim. But it was the victim who had initially given the wristwatch to the accused, hence transferring possession to the accused. The accused then took the wristwatch away with him.

In that circumstance, the accused cannot be charged with *suriqah* under section 53 of the Brunei Syariah Penal Code Order, 2013. As a solution the findings of this research found that the accused can be charged with the offence of criminal breach of trust or criminal misappropriation of property under sections 403 and 405 respectively of the Brunei Penal Code (Chapter 22). These examples show that, problems will arise concerning how to charge persons accused for committing theft where the taking he has done is not in legal context, *suriqah* as per required under section 53 of the Brunei Syariah Penal Code Order, 2013. For example, it is legally impractical to charge a person for committing *suriqah* under section 53 of the Brunei Syariah Penal Code Order, 2013, if he has taken a property non-surreptitiously

from the owner of the property. This is because section 53 essentially requires the taking to be surreptitious. Furthermore, it is also legally impractical to charge a person committing an offence of criminal misappropriation of property or criminal breach of trust with *suriqah* under section 53 of the Brunei Shariah Penal Code Order, 2013.

Through the implementation of the Brunei Shariah Penal Code Order, 2013, the country is fulfilling its obligation towards Allah S.W.T which is to implement the Shariah especially the laws of *Hudud*. As said earlier in this research, there are some technical issues in *suriqah* under section 53 of the Brunei Shariah Penal Code Order, 2013. This research aimed at giving solutions to those technical issues to assist in the proper implementation of the Brunei Shariah Penal Code Order, 2013.

1.1 Reason for the Topic Selection

Looking at *suriqah* under section 53 of the Brunei Shariah Penal Code Order, 2013, there are some technical issues. One of the technical issues is the issue of taking not by stealth. By virtue of section 53 of the Brunei Shariah Penal Code Order, 2013, such taking is not considered as *suriqah* because one of the essential ingredients of *suriqah* is that the taking must have been committed stealthily. Hence, this topic has been chosen to discuss on this and several other technical issues and later in the research provide solutions which is by recourse to sections 378, 403, 405 and 411 of the Brunei Penal Code (Chapter 22). For example, section 378 provides a solution for the technical issue of a non-surreptitious taking. This is because, stealth is not an essential ingredient to constitute theft under section 378 of the Brunei Penal Code (Chapter 22).

Apart from that is where a person legally received a property but then misappropriated it for his own use. This is not *suriqah* under section 53 of the Brunei Shariah Penal Code Order, 2013 because the accused did not literally take the property from the possession of the owner. Technically, he acquired the property legally but has misappropriated it for his own use. Since the accused cannot be charged with *suriqah* under section 53 of the Brunei Shariah Penal Code Order, 2013, section 403 of the Brunei Penal Code (Chapter 22) provides solution where the accused can be charged for committing criminal misappropriation of property. Another example is where a person is only found to be in possession of a stolen property. If the judge decides that it is not legally fit to invoke the presumption that he is the thief, based on the available facts and evidence then he cannot be charged with *suriqah* under section 53 of the Brunei Shariah Penal Code Order, 2013. Alternatively, he can be charged under section 411 for dishonestly receiving stolen property.

These efforts are done to contribute for the proper implementation of the Brunei Syariah Penal Code Order, 2013, especially in respect of dealing with theft offences in the country.

1.2 Research Questions

The research questions that have been dealt with in this research are:

1. Are the ingredients of *suriqah* provided in section 53 of the Brunei Syariah Penal Code Order, 2013 and the ingredients of theft provided in section 378 of the Brunei Penal Code (Chapter 22) similar? What is the importance of fulfilling the ingredients of both offences?
2. Are the conditions (the special and essential condition and as well as the general conditions) of both *suriqah* under section 53 of the Brunei Syariah Penal Code Order, 2013 and theft under section 378 of the Brunei Penal Code (Chapter 22), similar? What is the importance of fulfilling the conditions (the special and essential condition and as well as the general conditions) of both offences?
3. What are the technical issues in *suriqah* under section 53 of the Brunei Syariah Penal Code Order, 2013? How do the technical issues in *suriqah* under section 53 of the Brunei Syariah Penal Code Order, 2013 compared to theft under section 378 of the Brunei Penal Code (Chapter 22)?
4. What can be recommended as solutions to the technical issues in *suriqah* under section 53 of the Brunei Syariah Penal Code Order, 2013?

1.3 Research Objectives

There are four broad objectives of this research:

1. To analyse and compare the ingredients of both *suriqah* under section 53 of the Brunei Syariah Penal Code Order, 2013 and theft under section 378 of the Brunei Penal Code (Chapter 22). This is done to determine whether both offences are similar to each other in terms of the ingredients of offences. Also, to analyse the importance of fulfilling these ingredients of both *suriqah* under section 53 of the Brunei Syariah Penal Code Order, 2013 and theft under section 378 of the Brunei Penal Code (Chapter 22). This is done to show that, non-fulfilment of all the essential ingredients of *suriqah* under section 53 of the Brunei Syariah Penal Code Order, 2013 and theft under section 378 of the Brunei Penal Code (Chapter 22) results in the accused of

theft cannot be charged with both *sariqah* under section 53 of the Brunei Shariah Penal Code Order, 2013 and theft under section 378 of the Brunei Penal Code (Chapter 22).

2. To analyse and compare the conditions - the special and essential condition and as well as the general conditions - of both *sariqah* under section 53 of the Brunei Shariah Penal Code Order, 2013 and theft under section 378 of the Brunei Penal Code (Chapter 22). This is done firstly to show that there are two types of conditions for both offences, which are the special and essential condition and as well as the general conditions. Secondly, to compare the conditions - the special and essential condition and as well as the general conditions - in terms of both offences. Third is to show that the special and essential condition determined the conviction of both *sariqah* under section 53 of the Brunei Shariah Penal Code Order, 2013 and theft under section 378 of the Brunei Penal Code (Chapter 22). Therefore, it is essential to be fulfilled in order to charge and convict a person with both offences. On the other hand, it is not essential to fulfill all the general conditions of both offences. This is because the general conditions only affect or determine the punishment receivable by the accused. In other words, charge and conviction comes first before punishment. The absence of a valid charge means that no conviction can be made and it therefore follows that no question of punishment arises.
3. To analyse the technical issues in *sariqah* under section 53 of the Brunei Shariah Penal Code Order, 2013 and compare them with theft under section 378 of the Brunei Penal Code (Chapter 22). This is done firstly to show that there are four technical issues in *sariqah* under section 53 of the Brunei Shariah Penal Code Order, 2013. Secondly to compare these technical issues with theft under section 378 of the Brunei Penal Code (Chapter 22). Third, to show that the technical issue of suspicious taking under section 53 of the Brunei Shariah Penal Code Order, 2013 can be solved by recourse to section 378 of the Brunei Penal Code (Chapter 22). And fourth, to show that other technical issues cannot be solved by section 378 but are covered under other provisions of the Brunei Penal Code (Chapter 22): sections 405 (dishonest misappropriation of property), 405 (criminal breach of trust) and 411 (dishonestly receiving stolen property).
4. To recommend solutions that theft under section 378 and other provisions (sections 405, 405 and 411) under the Brunei Penal Code (Chapter 22) can be used to charge the offender who cannot be charged with *sariqah* under section 53 of the Brunei Shariah Penal Code Order, 2013 due to the technical issues.

1.4 Literature Review

Most current available literatures are only discussing mainly on the concept of crime and punishment in Islam and how the punishment is carried out. This can be found in journals articles and books especially *fiqh* books.

In an article entitled *Stealing and Holding Stolen Goods*¹ among others, the writing discussed about how Iran is currently using Islamic Criminal law to curb theft for example Iran divides theft crimes into four general groups: theft punishable with *hadd* specific stealing (punishable by *ra'ud*), stealing without *hadd* punishment but causes chaos in social order or threaten citizens and simple stealing punishable by *hadd*. Though the article mentioned the Islamic laws of theft used in Iran, it does not explain the application of those laws further as it is only mainly focusing on the impact of social characteristics leading to the commission of crimes including theft. Therefore, this research is done to analyze the technical issues in *sariqah* under section 53 of the Brunei Syariah Penal Code Order, 2013 and comparing those issues with theft under section 53 of the Brunei Penal Code (Chapter 22).

In the book entitled, *Undang-Undang Jeraqah Islam Jeraqah Madhar*² the author has provided plenty of useful information concerning the *hadd* offences including *sariqah*. Among others the author has discussed the ingredients of *sariqah*, the *hadd* and the issues related to it in *sariqah*, the conditions of the accused and the subject-matter of theft, evidences used in proving *sariqah* liable to *hadd* or *ra'ud*, the manner of cutting off the hands of the offender etc. However, there is no discussions of technical issues of *sariqah*. Therefore, this research aimed at analyzing the technical issues of *sariqah* under section 53 of the Brunei Syariah Penal Code Order, 2013 and comparing them with theft under section 378 of the Brunei Penal Code (Chapter 22).

In another book entitled, *Fiqh & Perundangan Islam Fiqh*³ the author has provided useful information such as the definition of *sariqah*, the definition of surreptitiousness in *sariqah*, the opinions of Muslim jurists regarding some aspects in *sariqah* such as the *hadd*, the condition of the offender and the subject-matter of *sariqah*, discussions on *hadd*,

¹ Rajali, Fatimah, Fat, Majid, *Stealing and Holding Stolen Goods: Asian Social Sciences*. Published by Canadian Center of Science and Education, (2020). 19 (1). 230-7. In 2020. 191 (1-2020). 2013. Retrieved from <https://pdfs.semanticscholar.org/0f6c/5012/5b31d89762c1d1.pdf> (Accessed on September 29th, 2021).

² Mir Said Abd Rahman (1993) *Undang-Undang Jeraqah Islam Jeraqah Madhar*. Waq Al-Islam Pasai: 10:281.

³ Al-Zuhaili, Wahbah. (1997). *Fiqh & Perundangan Islam*. Issues Akhbar Shabbat Salaman, Lari 1037. Vol IV. Kelantan: Darul Uloom Perundangan Deewanah dan Pasaiika.

evidences used in proving *suriyah* etc. However, no discussions have been made concerning the technical issues in *suriyah*. Hence, this research aimed at analyzing the technical issues of *suriyah* especially under the Brunei Shariah Penal Code Order, 2013 and comparing them with theft under the Brunei Penal Code (Chapter 22).

Another article entitled *The Sun'ah Approach to Criminalize Identity Theft*⁴ the article is basically discussing about how by examining and recollecting some of the Shariah rules generally related to the crime of 'identity theft' could be used to create a set of laws to specifically deal with and as a deterrent to the crimes of identity theft. Again, in this article the authors have only analyzed the Shariah rules to suggest a formation of a set of laws which may be used to deal with identity theft. It further states that steps could be taken to enact and create special laws for the offences. The emphasis is only on the Shariah perspectives for ruling and the legislation of the laws rather than technical issues of the laws. Hence, this research is conducted in order to fill the gap in literature concerning the technical issues of *suriyah* under section 53 of the Brunei Shariah Penal Code Order, 2013 and comparing them with theft under section 378 of the Brunei Penal Code (Chapter 22).

In an article, entitled *Sangat Indahlah Jarak Jauh di Antara Kita Sebagai Umat Islam*⁵ the writing is useful to convey the message that the implementation of Brunei Shariah Penal Code Order, 2013 is a sign of faith towards Allah S.W.T and we should not delay its implementation. Among others, the scope of the writing includes the history of Islamic Criminal law implementation in Brunei which dated back to Sultan Jilid al-Akbar where Islamic Criminal law was fully implemented. The *Law of the Land* (ALIM) Tribunal Governs Brunei". The writing continues with explaining why the Brunei Shariah Penal Code Order, 2013 is named as with "Shariah" and not "Islamic" Penal Code 2013, which is due to bad impression of public when they hear the word "Sharia". The writing further proceeds with explaining why should we implement the Brunei Shariah Penal Code Order, 2013; as a manifestation of *imn* as. It is interesting to note that this writing discussed much on the Shariah perspective on why the Brunei Shariah Penal Code Order, 2013 should be implemented. But it is quite general in nature as it does not provide any detail regarding the technical issues of *suriyah* under section 53 of the Brunei Shariah Penal Code Order, 2013, for instance where the theft was committed non-surreptitiously and hence is not chargeable with *suriyah* under

⁴ Zubaida, Nancy Ould Mohamed, Nab Mohamed. *The Sun'ah Approach to Criminalize Identity Theft*. *Perantara Journal of Social Sciences & Humanities*. (ISSN: 0228-7702), October 2013. Retrieved from https://www.anandamu.edu/00098077/the_sun'ah_approach_to_criminalize_identity_theft/ (Accessed on September 29th, 2018).

⁵ *Sangat Indah di Antara Kita (2014) Sangat Indahlah Jarak Jauh di Antara Kita Sebagai Umat Islam*. *ALIM: Jurnal* / *Negeri-Negeri Islam*. State Media Department.

section 53 of the Brunei Shariah Penal Code Order, 2013. Thus, this research is done to analyse these technical issues of *suriyah* under section 53 of the Brunei Shariah Penal Code Order, 2013 and comparing them with theft under section 378 of the Brunei Penal Code (Chapter 22).

In a book entitled *The Brunei Penal Code An Introduction*⁶ in its entirety the chapter on "Punishment in Islam and How to Implement it" generally touched on the aspects of implementation and handling the punishment by discussing among others that *qarib* judges must decide cases justly, whether the case involves Muslims or between Muslims and non-Muslims, to ensure that testimonies of the witness is free from biasness, judges should not receive bribes. It also beneficially discussed on the conduct or ethics of a judge in Islam. However, the book did not discuss matters relating to the technical issues under the Brunei Shariah Penal Code Order, 2013, particularly in *suriyah* under section 53 where for instance, a theft committed non-suspiciously cannot be charged as it negates the first essential ingredient of the offence. This research therefore analysed the technical issues of *suriyah* under section 53 of the Brunei Shariah Penal Code Order, 2013 and comparing them with theft under section 378 of the Brunei Penal Code (Chapter 22).

In a book entitled *Kompentium Hukum Iktisad Syariah Islam Kita*⁷ written by Abdul Nade bin Haji Abdul Rani, the book is interesting and useful as it provides general review on how among others the relationship between *Maqasid Shariah* and the efficiency of the implementation of *hukud*. Like it states that the punishment of *ta'zir* for theft is a pure objective and that implementing such punishment has proven efficient in curbing theft crimes statistics in Arab Saudi and Sudan. But it is still general in nature as it only discusses the offences and its punishments under Islamic criminal law and no technical issues of *suriyah* under section 53 of the Brunei Shariah Penal Code Order, 2013 was touched and discussed. For example, a theft committed non-suspiciously cannot be charged with *suriyah* under section 53 of the Brunei Shariah Penal Code Order, 2013. Hence, this research which aimed and analysed the technical issues and comparing them with theft under section 378 of the Brunei Penal Code (Chapter 22).

⁶ Naze Mulla of Brunei, (2013), *The Brunei Penal Code An Introduction*, Negeri Brunei Darussalam: Kay Printing Services & Trading Co. Sdn Bhd.

⁷ Abdul Naze bin Haji Abdul Rani, (2013), *Kompentium Hukum Iktisad Syariah Islam Kita*, Brunei Darussalam: USMOA Press.

In another book, *Hadaf Hukum dan Perbuatan*⁵ the author has interestingly discussed on the views of the Muslim jurists on *ariqah* in Islamic criminal law. The book is successful in providing the information concerning among others, the definition of *ariqah*, the meaning of surreptitious in *ariqah* etc. However, the book has not mentioned the legal issues especially in *ariqah* under the Brunei Shariah Penal Code Order, 2013. Hence, this research is conducted to discover and solve the technical issues under the said Code.

There are limited literatures which discuss on technical issues that might arise in the course of the implementation of the Brunei Shariah Penal Code Order, 2013 especially in respect of the offence of *ariqah* under section 53.

1.5 Significance of the Research

The basic importance or significance of this research is to assist in the proper administration of justice of the country especially in dealing with and to curb the rate of theft offences. Apart from ascertaining and examining the technical issues of *ariqah* under section 53 of the Brunei Shariah Penal Code Order, 2013, this research also provides solutions for the technical issues. This is done to assist in the proper and efficient administration of justice in implementing the Brunei Shariah Penal Code Order, 2013. An efficient and a better administration of justice will uphold the rule of law and justice and serves as a warning to the crime-prone especially the theft-associated criminals. This would assist the justice and law enforcement departments agencies in Brunei to curb the crime rate of theft. The wider or broader significance is that, this theoretical study will reflect that both the Shariah Law and the Civil Law can co-exist in harmony in Brunei Darussalam.

1.6 Scope and Limitation of the Research

This study is only focusing on the provisions of *ariqah* under the Brunei Shariah Penal Code Order, 2013 and theft under section 378 and several other provisions (sections 380, 403, 405 and 411) of the Brunei Penal Code (Chapter 22). The research is only based on theoretical sources involving legal library-based research and documentation i.e. Books, journals articles and cases. The limitation which the researcher anticipated in this research is that, the limited case law authority for *ariqah* cases in Brunei Darussalam as the

⁵ Fatah Haji Ismail: (2008), *Hadaf Hukum & Perbuatan*, Selangor Darul Ehsan: Dewan Cetak (M) Sdn. Bhd.

implementation is still new. In order to overcome this limitation, the researcher utilized cases of *suriyah* from Pakistan which have implemented Shariah laws pertaining to *hudaib* long before Brunei Darussalam started to implement its Brunei Shariah Penal Code Order, 2013. The second limitation is that it is only using legal library-based methodology. However, the researcher used qualitative content analysis method in order to overcome the limitation. For example, the first research question is to analyse and compare the ingredients of both *suriyah* under section 53 of the Brunei Shariah Penal Code Order, 2013 and theft under section 378 of the Brunei Penal Code (Chapter 22). The content to be analysed is the information regarding the ingredients of both *suriyah* under section 53 of the Brunei Shariah Penal Code Order, 2013 and theft under section 378 of the Brunei Penal Code (Chapter 22), collected from the Acts concerned. The researcher then examined and interpreted the information collected from the sources. The outcome of these processes produced conclusions that there are four ingredients of *suriyah* under section 53 of the Brunei Shariah Penal Code Order, 2013 and four ingredients of theft under section 378 of the Brunei Penal Code (Chapter 22). After attaining this information, the researcher then made a comparison between the ingredients of both *suriyah* under section 53 of the Brunei Shariah Penal Code Order, 2013 and theft under section 378 of the Brunei Penal Code (Chapter 22).

1.7 Research Methodology

The methodology used in this research is legal library-based methodology. This method is chosen because this research involved in the analysis of the provisions of law such as section 53 of the Brunei Shariah Penal Code Order, 2013 and section 378 of the Brunei Penal Code (Chapter 22), cases and legal information from books and journal articles. Therefore, it is the most suitable method to ascertain the answers to the research questions and to achieve the objectives of this research. The research used written references in the form of both primary and secondary sources such as cases, books and journal articles. These written references were collected from Universiti Islam Sultan Sharif AlI (UNISSA), Universiti Brunei Darussalam (UBD), other libraries in the country and International Islamic University of Malaysia (IIUM). Since Brunei Darussalam has just recently enforced the *hudaib* of *suriyah* under the Brunei Shariah Penal Code Order, 2013, this research used cases from Pakistan for cases of *suriyah* as Bruneian *suriyah* cases are still very limited. The researcher used the content analysis method in order to analyse the data collected from the primary and secondary sources.

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