

## Analyzing the Islamic and Legal Awareness of the Muslim Male Students in Malaysia of the Prohibition on Cross Dressing

<sup>1</sup>Mardhiyyah Sahri, <sup>2</sup>Khairudin Murad, <sup>1</sup>Mohd Dasuqkhi Mohamad Sirajuddin,  
<sup>1</sup>Mohamed Azam Mohamed Adil and <sup>3</sup>Norzaidi Mohd Daud

<sup>1</sup>Centre for Islamic Thought and Understanding Universiti Teknologi MARA, Malaysia

<sup>2</sup>Faculty of Communication and Media Studies Universiti Teknologi MARA, Malaysia

<sup>3</sup>Community of Research (Humanities and Quality of Life) Arshad Ayub  
Graduate Business School Universiti Teknologi MARA, Malaysia

---

**Abstract:** This study is attempts to analyze the Islamic and legal awareness of the Muslim male in Malaysia of the prohibition on cross dressing. Hence, a study was made upon 115 Muslim male students and findings suggested that while a strong majority of them know that the act of dressing and acting as a woman is prohibited in Islam, half of them do not know that it is an offence in their state and even more so, only slightly than one third of the respondents know the punishment for the offence. Thus, it is recommended that legal awareness should be increased to educate the society and prevent injustice. This study is perhaps the first that concentrate on cross dressing among male Muslim in Malaysia.

**Key words:** Gender • Cross-Dressing • Legal • Islamic Law

---

### INTRODUCTION

The sense of morality of the society can be said to fluctuate with the changes of time. What was perceived as moral then might be immoral today and vice-versa. Today on the issue of transsexuals, we are faced with an open conflict between those who religiously believe that it is against the human nature and those who are for it, by the name of freedom. Can law be used to control what people do in their private lives? How far should the law intervene with private acts of immorality? Gearty and Tomkins for example, argued that firstly, a characteristic as central to a person as their sexual orientation will not be altered by the law and its actual incidence, as opposed to openness about its incidence, is unlikely to be altered dramatically and secondly, that it is not the mere fact that the law has been altered which will bring about a change in the public opinion, i.e. have an educative impact. Thus, they are of the opinion that those who choose to act like the opposite gender should be left doing so [1]. However, Anwarul Yaqin is of the opinion that what may be perceived as victimless crime are in fact harmful to others at least indirectly. Victimless crimes are punished for the

reason that the state has a right to preserve the morals of the citizens in the interest of promoting social stability [2]. Be that as it may, due to the perception of the public that victimless crime are merely minor nuisance, people are relatively unconcerned and thus, making it harder to detect, arrest and prosecute the crime doers. According to Hashim Kamali, freedom should not be enjoyed at the expense of causing harm to others and it is community-oriented as in the event of a conflict between the individual freedom and the social good, the latter is often given priority over the former. Freedom is basically a social concept in that it would have little meaning in a state of total isolation from society [3].

Hence, there need to be a balance in allowing the freedom that a person may exercise as there is no such thing as absolute freedom. The social function of the law itself is to act as a mechanism of social control, social engineering and social welfare of the people. However, it is also the duty of the state not to only make the law, but to properly disseminate information of the law as well as educate the public on the underlying reasons behind it. With regards to legal issues pertaining to transsexualism, currently, there is no clear cut

legislation on the issue of transsexualism in Malaysia. However, there are legal criteria set down by the judges in determining who is legally a male or female. James Foong J in deciding the case of *Re JG*, reiterates that to assess and determine the sex of a person, four basic criteria must be considered namely, chromosomal factor, gonadal factor, genital factor and psychological factor of that particular person. In this case, the transgender succeeded in changing his National Registration Identity Card gender status from male to female [4]. However, in a case prior to that, the applicant was not successful in his application to reflect the change in gender in his birth certificate and identity card after he had undergone a sex reassignment surgery. In the case of *Wong Chiou Yong*, the court had also used the same criteria's for the determination of the gender but reached to a different conclusion. The application was rejected due to the decision that "psychological sex" does not fall under any of those four criteria. Furthermore, there was also no evidence that the applicant acquired all the biological characteristics of the assigned sex after the surgery [5].

Even though the law on transgender is still ambiguous in Malaysia and so far confines to the issue of defining the gender and change of identity card, there is however a law that exist pertaining to cross-dressing of which it applies to the Muslim males according to their respective state laws. What does the act of cross-dressing signifies? Suthrell opined that boundaries highlighted by gender specific dress are seldom crossed lightly or without intention and that issues of gender are clearly illustrated by clothing, sometimes in surprising ways. Hence, it can be concluded that the act of cross-dressing should not be taken lightly, as it is an intentional statement and a declaration of identity [6]. Are all cross-dresser transsexuals? It would be presumptuous to assume as such as they may be effeminate, transvestites or transsexuals of which there are differences to the meaning of each of this term. But, one may say that regardless of who they are, by cross-dressing, it is a statement of conflict of identity. Effeminate or *softists* are mild transsexuals. They are males who adopt the dressing, behavior and styles of females. Whereas transvestites are those who have a recurrent and persistent cross-dressing by a heterosexual male for the purpose of his own sexual arousal without any attempts to invite the sexual attention of other males. On the other hand, the definition of transsexuals is those who have a strong desire to resemble physically the opposite sex and to seek treatment, including surgery towards this end [7]. Having said that, it does not matter

whether he is an effeminate or a transsexual, the act of cross-dressing for Muslims in Malaysia is an offence in most states, depending on their state legislation and this ruling stems from the Shariah law.

Thus, this paper attempts to explore the Islamic as well as the Malaysian legal perspective of the act of cross-dressing and the issues that are related to it. Specifically, the objectives in this research are:

- To assess the Islamic knowledge on the issue of cross-dressing men among the specific audience.
- To analyze the understanding of the legal principles within the cross-dressing men scope
- To identify the legal awareness of the offence and punishment of cross-dressing in the Selangor Syariah Criminal Offences Enactment.

#### Review of Literature

**Islam and Cross Dressing:** Muslims rely on the Quran and Sunnah as the highest source of reference in Islam for guidance in all aspects of life, comprehensively covering matters of belief, law and moral conduct. Pertaining to modesty and chastity of men and women, in Surah An-Nur, verse 31-34 it is prescribed: "Tell the believing men to reduce [some] of their vision and guard their private parts. That is purer for them. Indeed, Allah is Acquainted with what they do. And tell the believing women to reduce [some] of their vision and guard their private parts and not expose their adornment except that which [necessarily] appears thereof and to wrap [a portion of] their headcovers over their chests and not expose their adornment except to their husbands, their fathers, their husbands' fathers, their sons, their husbands' sons, their brothers, their brothers' sons, their sisters' sons, their women, that which their right hands possess, or those male attendants having no physical desire, or children who are not yet aware of the private aspects of women. And let them not stamp their feet to make known what they conceal of their adornment. And turn to Allah in repentance, all of you, O believers, so that you might succeed". In Islam, men and women have guidelines as to how to cover their modesty and generally which areas of the body to be covered and this is called aurah. For the men, the area between the navel and the knees should be covered, whereas for women, when in public, they have to cloth their whole bodies except the face and hands. Bear in mind that this is when the women are with the non-muhrim, people who they can get married to.

However, Islam gives the freedom of choice as to the preference of clothing for man and woman as to the colors and fashion as long as it covers the necessary body parts and it is not made of a see-through material or clothing that are too tight and show the curves of the body. With regards to cross-dressing, the act of it is strictly prohibited in Islam based on hadith which is the primary source of reference in Islam after the Al-Quran. It was narrated that Abu Hurayrah said: The Messenger of Allah cursed the man who wears women's clothing and the woman who wears men's clothing. This hadith was narrated by al-Bukhari, Ibn Majah and Ahmad [8]. Imam An-Nawawi further explained that if the mere act of a man clothing like a woman is prohibited, what more to the act of imitating the movements and the tone of voice of the woman. To him, this is even more abhorrent. This is reiterated in a hadith narrated by al-Bukhaari: Ibn 'Abbaas said that the Prophet cursed men who imitate women and women who imitate men and he said: "Throw them out of your houses" [9]. Among the reasons as according to the 83<sup>rd</sup> National Fatwa Council Resolutions in 2008, is that it is against the human nature that Allah has created for them.

The Department of Islamic Development Malaysia also decreed a fatwa that it is prohibited for man to dress like a woman and vice versa on the 18<sup>th</sup> of December 2008. In elaborating on the decision, they had referred to Dr Wahbah Az-Zuhaili whom in his book *Fiqh Al Islami Wa Adillatuh* explains that it is prohibited for men to imitate women be it from their behavior, tone of voice, ornaments, way of dressing and of things that are specifically associated with women. The scholars had also referred to the book *Fatawa wa Rasai'il Lil Nisa* by Al-Syeikh Muhammad bin Soleh al-Uthaimin [10]. In 1982, during the 4<sup>th</sup> Conference of the Fatwa Committee National Council of Islamic Religious Affairs Malaysia in 1982, the Muslim scholars has decided that sex change from man to woman and vice versa through operation is prohibited in terms of Shariah, unless that individual is *khunsa musykil*, one who has both male and female private parts. This view was reiterated in 1989 during their 25<sup>th</sup> Conference [11].

Another issue pertaining transgenderism was the issue of changing your gender status on the Mykad ID, discussed during the 68<sup>th</sup> Conference in 2005. It was decided that it is permissible if the cause for the transgender operation is also permissible in Islam, however if the operation is prohibited by Islamic law, it is also forbidden to change the gender on the MyKad ID [12].

**Malaysian Legal Perspective:** History tells us that the punishments under Islamic Law were provided for and applied in the Malay States before the coming of the British. This is evident from the punishment inscribed on the Stone Inscription in Terengganu dating to the 12<sup>th</sup> century and the law of Malacca, Pahang and Kedah which signifies the application of Islamic law in areas of hudud, qisas, diyat and ta'zir [13]. Muslims in Malaysia are bound by the Islamic law for their personal matters and it is within the jurisdiction of the state to make and enforce such laws by virtue of Article 73 and 74 of the Federal Constitution, read together with the Ninth Schedule, State List of the Federal Constitution. Examples of the area of laws are marriage, endowment, divorce and distribution of properties [14]. Different states would have different state legislation on Islamic laws, thus, a Muslim would be governed by the Syariah laws of his own state.

Interestingly, Article 160 of the Federal Constitution defines Malay as one who professes the religion of Islam. Thus, inevitably, all Malays are bound by their Syariah state laws. For example in Selangor, among the state legislation which pertains to the Syariah laws are Syariah Criminal Enactment 1995, Syariah Criminal Procedure Enactment 2003 and Islamic Family Law Enactment 2003. The question is whether they are aware of the existence of such law. According to the maxim *ignorantia juris non excusat*, they would still be liable for breaking the law even if they do not know the existence of such law. Ignorance of the law is not an excuse. The act of cross-dressing is an offence under most of the Syariah Criminal Offences Act/Enactment. Thus, Muslims in Malaysia are expected to know and obey this law. It is pertinent to note that since the state legislative has the power to make their respective Shariah laws, what constitutes an offence and what would be the punishment thus, may differ from one state to the other. As of present, there is no uniformity of law between all of the states. A comparison was made on the offence of cross-dressing between the states of Selangor [15], Terengganu [16], Federal Territories [17], Negeri Sembilan [18], Kelantan [19], Johor [20] and Kedah [21].

Differences as to the elements of crime and punishment can be observed from the comparison made in Table 1 below:

Firstly, a study into the elements that constitute the offence would result in the finding that for states such as Selangor, Terengganu, Federal Territories, Johor and Kedah it is important to prove that the act is intentionally done for immoral purposes. Whereas for Kelantan and Negeri Sembilan, it appears that the nature of the crime is

Table 1: State offences of cross-dressing

State and Section of Syariah Criminal Acts/Enactments	Offence	Cross-Dressing Offence	
		Fine (not exceeding)	Imprisonment (not exceeding)
Selangor Section 30	Wear a woman's attire or act like a woman for immoral purposes in public	RM 1,000.00	1 year
Terengganu Section 33	Wear a woman's attire or act like a woman for immoral purposes in public	RM 1,000.00	1 year
Federal Territories Section 28	Wear a woman's attire or act like a woman for immoral purposes in public	RM 1,000.00	1 year
Negeri Sembilan Section 66	Wear a woman's attire or act like a woman in public	RM1,000.00	6 months
Kelantan Section 7	Wear and act like a woman in public	RM1,000.00	6months
Johor Section 28	Wear a woman's attire and act like a woman for immoral purposes in public	RM1,000.00	1 year
Kedah Section 7	Wear a woman's attire and act like a woman for immoral purposes in public	RM1,000.00	1 year

a strict liability offence where you would be held liable even if you lack the intention or bad faith (*mens rea*) to commit an immoral act.

Secondly, based on the states listed above, Johor, Kelantan and Kedah uses the term “and” which signifies that if the offender wear and act like a women at the same time, then only would he be liable. But for other states, either you wear like a women or act like a women, both acts are offences under the state law. Thirdly, with regards to the sentence, pertaining to the fine, all the states imposed the same amount of fine which is RM1000.00 as the maximum amount. Thus, it can be said that there is uniformity as to the fine. However, with regards to the sentence of imprisonment, Negeri Sembilan and Kelantan differs with other states as the punishment would be six months imprisonment, half of the duration of the imprisonment in other states which are two years. The Pahang State Legislative Assembly had recently enacted a provision on the offence of cross-dressing in their own Syariah Criminal Offences Enactment 2012 on 22<sup>nd</sup> May 2012. According to Datuk Mohd. Shafri Abdul Aziz, the public need to realize that such actions have already been declared prohibited by the Muslim scholars and it is wrong for the Lesbians, Gays, Bisexuals and Transsexuals group to demand such recognition by using the name of democracy [22]. Having such provision legislated would also help the Pahang Religious Department with the aspect of law enforcement.

**MATERIALS AND METHODS**

Purposive sampling can be used with both qualitative and quantitative research. The definition of purposive

sampling is a sample in which the individual units are selected by some purposive method. The purposive sampling is also known as judgmental sampling. It deliberates the choice of an informant due to the qualities the informant possesses. It is a non-random technique that does not need underlying theories or a set number of informants. The researchers have to decide what need to be known and find people who can and are willing to provide the information by virtue of knowledge or experience. A study was conducted on 115 respondents who are Muslim male students in Selangor to see whether they are aware of the prohibition of cross-dressing in Islam as well as by the Selangor Syariah Criminal Offences Enactment. Male students that had been chosen are aged between 19 to 26 years old. Their awareness is evaluated based on the questionnaire given. For data collecting, an analytical survey is conducted. An analytical survey tries to describe and explain why the situations exist. In this approach, two or more variables are usually examined to investigate research questions. The results allow researchers to examine the interrelationships among variables and to develop explanatory inferences.

**RESULTS AND DISCUSSION**

Findings indicated that majority of the respondent know and are aware that Islam prohibits the act of dressing up or acting like a women for men (Table 2). When tested on their Islamic knowledge on the act of cross-dressing, a strong majority of 89.56% agreed that cross-dressing is prohibited in Islam and 86.08% strongly agreed that Islam prohibits men from acting like a woman.

Table 2: Iamic Knowledge

	Strongly disagree(f) (%)	Disagree(f) (%)	Neutral(f) (%)	Agree(f) (%)	Strongly agree(f) (%)
Islam prohibits men to dress up as a women	1 0.87	-	2 1.74	9 7.83	103 89.56
Islam prohibits men to act like a women	-	2 1.74	3 2.61	11 9.57	99 86.08

Table 3: Knowledge of the Principle of Law

	Strongly disagree (f) (%)	Disagree (f) (%)	Neutral (f) (%)	Agree(f) (%)	Strongly agree (f) (%)
Even if I do not know the existence of a certain law, I would still be liable if I commit it	3	5	24	45	38
	2.61	4.35	20.87	39.13	33.04

Table 4: Knowledge of the Offence

	Strongly disagree (f) (%)	Disagree (f) (%)	Neutral (f) (%)	Agree (f) (%)	Strongly agree (f) (%)
Man who dress up as a woman is an offence under the Syariah Criminal Offences Enactment (Selangor)	4	6	42	35	28
	3.48	5.22	36.52	30.43	24.35
Man who act like a woman is an offence under the Syarial Criminal Offences Enactment (Selangor)	4	9	36	36	30
	3.48	7.83	31.30	31.30	26.09

Table 5: Knowledge of the Punishment

	Strongly disagree (f) (%)	Disagree (f) (%)	Neutral (f) (%)	Agree (f) (%)	Strongly agree (f) (%)
There is a fine of not exceeding RM1000.00 for committing such offence in Selangor	11	8	54	24	18
	9.57	6.96	46.95	20.87	15.65
There is a punishment of imprisonment not exceeding 6 months for committing such offence in Selangor	9	8	51	29	18
	7.83	6.96	44.35	25.21	15.65

It can also be seen that only 1 respondent disagrees. From the data collected it can be presumed that almost all of them know of this prohibition in Islam.

However, a substantial amount of the respondents are unaware of the principle of *ignorantia juris non excusat*. The principle denotes that you are obligated to follow the law even when you do not know of its existence (Table 3).

Here it shows that, 72.17% of the students know that they would still be punished for committing an offence to a law that they do not know exist. However, 20.87% of the respondents are unsure of such ruling. Thus, although the majority of them know of this principle, they are still a number of them who are unaware of the principle that ignorance of the law is not an excuse. Nearly half of the respondents are unsure on whether cross-dressing is an offence under the Selangor Syariah Criminal Offences Enactment (Table 4).

The percentage of those who know that for them to wear woman's clothes is an offence is quite low at 54.78% whereas only 57.39% of them know that acting like a woman is also an offence. This is quite worrisome as it indicates that half of them are unsure or do not know that both of these are offences in their state. Hence, it warrants the need to instill legal awareness education and dissemination of the knowledge of law.

Findings also indicated that more than half of the respondents do not know the punishment of the offence (Table 5).

The findings show that only 36.52% of the students know that there is a punishment of RM1000.00 for committing such offence but the number of those who know that there is an imprisonment punishment is slightly higher with 40.86%. This percentage is not satisfying as it is equally important for the public not to only know the offence, but the punishment it entails as well as punishment acts as deterrence for the public from committing the crime itself. The fact that majority of the respondents disagree with the statement is worrisome as it shows a total ignorance of the law.

## CONCLUSION AND RECOMMENDATIONS

From the data collected, it can be concluded that while the male students know of the prohibition of cross dressing in Islam, not all of them know that it is an offence under the Selangor state law. Even more so, not even half of them know the punishment that entails the breach of such offence. The application of the maxim *ignorantia juris non excusat* in Malaysia should be further analyzed and reviewed as based on the findings; it appears that the public are unaware of the existence of such law and its punishment. Thus, is it fair to punish those who do not know? Hence, there is a need to educate the public of the reasons behind such prohibition in Islam and equally, a need to educate the public on legal awareness as it is not fair to punish them without disseminating proper information. Talks should also be held between those who

practice cross dressing, the Muslim scholars and policy makers so that a better understanding would be formed. It is always better to educate and enlighten than prohibit and punish. Controversial issues should be addressed and not ignored as it would not solve the issue.

Cross-dressing in Malaysia is regarded as a controversial issue that the public tends to see it as taboo yet offers no help in understanding or raising awareness in this issue. What more to the issues of transsexualism. It is hoped that future research would be done on this issue because as much as we want to safeguard the sanctity and morality of the society, it is also equally important to educate and enlighten the society. Let prohibition and punishment be the last resort if it can be as the basis of why law exists at the first place is itself to educate the public. More study should be done on the cause of such phenomenon, on how to assist this part of the society as well as discovering the means to create legal awareness. There need to be reconciliation between those who have the knowledge of the text but are out of the touch with the public and those who have the knowledge of the context but are ignorant of the text. The lack of uniformity of law between the state laws also should be resolved. From the comparison made of the offence of dressing up or/and acting like a women of various states, it is clear that there is no uniformity with regards to the elements as well as punishment. Therefore, there is a need to review the sections so as not to cause injustice to others.

#### ACKNOWLEDGMENT

Thank you to the Research Management Institute for funding this research.

#### REFERENCES

1. Gearty, C.A. and Thomkins Adam, 1999. Understanding Human Rights. Britain: Biddles Limited, Guildford and King's Lynn
2. Anwarul Yaqin, 2002. Law and Society in Malaysia. Kuala Lumpur: United Press
3. Kamali, M.H, 1999. Freedom, Equality and Justice in Islam, UK: The Islamic Foundation and Malaysia: Ilmiah Publishers.
4. Re, J.G., J.G.V. Pengarah, Jabatan and Pendaftaran Negara, 2006. 1 MLJ 90.
5. Wong Chiou Yong, P.V. Pendaftar, Besarn Ketua, Pengarah Jabatan and Pendaftaran Negara, 2005. 1 MLJ 551.
6. Suthrell, C., 2004. Unzipping Gender: Sex, Cross-Dressing and Culture, UK: Berg.
7. Noor, M.N., J. Farooqui, A.A.I. Rahim, A.A. Nasr, M.D.H. Noon and S. Abdul Rahman, 2005. Sexual Identity: Effeminacy Among University Students. Kuala Lumpur: IIUM Publications.
8. Muhammad bin Ismail al-Bukhari, 1987. Al-Jami' al-Sahih, Beirut, Dar Ibn. Kathir, 3<sup>rd</sup>. Edition, Vol.5, kitab al-Libas, bab: al-Mutasyabbihin bi al-Nisa' wa al-Mutasyabbihat, pp: 2207, nu. 5546, Muhammad bin Yazid al-Qazwayni (n.d) Sunan Ibn. Majah, Kitab al-Nikah, bab: fi al-Mukhannathin, Beirut, Dar al-Fikr, vol.1, pp: 614, nu.1904, Ahmad bin Hanbal al-Syaybani (n.d) Musnad Ahmad, Misr, Muassasah Qurtubah, vol.2, pp: 287, nu.7842.
9. Ibid, pp: 2207.
10. Portal Fatwa Malaysia, 2010. Hukum Wanita Menyerupai Lelaki dan Hukum Lelaki Menyerupai Perempuan. Retrieved from <http://e-fatwa.intranetportal.my> on 1<sup>st</sup> April 2010.
11. Ibid.
12. Ibid.
13. Shuaib, F.S., T.A. Ahmad Bustami and M.H. Mohd Kamal, 2010, Administration of Islamic Law in Malaysia Singapore: Lexis Nexis.
14. Majid, A.M.Z., 2001. Bidang Kuasa Jenayah Mahkamah Syariah di Malaysia. Selangor: DBP.
15. Syariah Criminal Offences Enactment, 1995. (Selangor). Malaysian State Law.
16. Enakmen Kesalahan Jenayah Syariah (Takzir) (Terengganu), 2001. Malaysian State Law.
17. Syariah Criminal Offences, Act 1997. (Kuala Lumpur). Malaysian State Law.
18. Enakmen Jenayah Syariah Negeri Sembilan, 1992. Malaysian State Law.
19. Enakmen Kanun Jenayah Syariah Kelantan, 1993. Malaysian State Law.
20. Enakmen Kesalahan Jenayah Syariah Johor, 1997. Malaysian State Law.
21. Enakmen Kanun Jenayah Syariah Kedah, 1988. Malaysian State Law
22. Utusan Malaysia, 2012. Tindakan terhadap pondan, pengkid tidak bermoral, Retrieved from: [http://www.utusan.com.my/utusan/info.asp?y=2012&dt=0524&pub=Utusan\\_Malaysia&sec=Pahang&pg=wp\\_03.htm](http://www.utusan.com.my/utusan/info.asp?y=2012&dt=0524&pub=Utusan_Malaysia&sec=Pahang&pg=wp_03.htm) on 20 July 2012
23. Kaur, J., 2007. Mak Nyah Cry for Compassion, Kuala Lumpur: Bernama, Retrieved from: <http://www.bernama.com.my/bernama/v3/printable.php?id=261074> on 12 January 2013.