

× isbah in Malaysia: Preventing vices and immoralities

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Abstract: This paper analyses the role of the × isbah institution, the Religious Enforcement Division at the State Religious Department in Malaysia, in curbing immoral activities as well as other contemptible acts according to sharf'ah. In the division, there are Religious Enforcement Officers who warn the potential offenders and also arrest anyone for the violation of rules incorporated in the Islamic enactments. The objectives of establishing the division as well as the department are to protect the sanctity of Islam as a way of life and to prevent Muslims from immoral activities. Each state in Malaysia has its own Department. These Departments carry different names but they perform similar functions of prohibiting vice and preventing ma'īah i.e. transgression. Based upon documentary evidence and court cases, this paper highlights the current developments in the Division and the challenges it faces in protecting Muslim's faith in Malaysia.

Keywords: × isbah, Islam, enforcement, Malaysia, Sharf'ah.

Introduction

Calling people to do good and forbidding evil is enshrined in the Qur'an and is a religious obligation for all Muslims. The following verses of the Qur'an indicate a precise injunction to command virtue and forbid vice.

And let there be [arising] from you a community inviting to [all that is] good, enjoining what is right and forbidding what is wrong, and those will be prosperous (al-Qur'an, 3:104).

You are the best community produced [as an example] for mankind. You enjoin what is right and forbid what is wrong and believe in Allah (al-Qur'an, 3: 110).

The believing men and believing women are allies of one another. They enjoin what is right and forbid what is wrong and establish

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prayer and give zakah and obey Allah and His Messenger (al-Qur'an, 9: 71).

Enjoining what is right and forbidding what is wrong is thus a divinely sanctioned duty to be carried out by all believers. This expression is the base of the Islamic institution of *Íisbah*. The term *Íisbah* does not occur in the Qur'an. It was popularized by scholars like Abul Hassan al-Mawardi (972-1058), Taqi al-din Ahmad Ibn Taymiyyah (1263-1328) and others. Imam Abu Hamid al-Ghazali (1058-1111) explains that a person performing *Íisbah* is called *mustaÍisib*, the person who is the target of *Íisbah* is called *al muÍtasib'alayhi*, and the matter over which *Íisbah* is carried out is called *al-muÍtasab fñhi*.

Even though the duty of enjoining good and forbidding wrong is required of all Muslims, the state is empowered to make arrangements to oversee the implementation of this obligation. This appears to be the idea behind the establishment of Religious Enforcement Division (RED) in the State Religious Department in each state in Malaysia as one of the functions of RED is to curb immoral activities or *ma'siyāt* by enforcing the *sharf'ah* provisions as prescribed. After a brief discussion on the importance of *al-amr bi al-ma'ruf wa an-nahy 'an al-munkar* (enjoining virtues and forbidding vice) and the role of state authorities in this respect, this study examines the functions or roles of RED in Malaysia and the challenges it faces in carrying out its responsibilities.

Al- amr bi al-Ma r f wa Nahy an al-Munkar

The injunction, *al-amr bi al-ma r f wa an-nahy an al-munkar*, contains four important terms warranting brief explanation: 1) *al-amr* means to invite, to order or to encourage, and refers to the enforcement function of the government in an Islamic state; 2) *al-ma r f* literally means acts that are socially approved and are religiously sanctioned to be performed by Muslims, 3) *al-nahy* means to forbid others from committing immoral acts, and 4) *al-munkar* literally means acts that are forbidden and unlawful according to Islamic law or *sharf'ah*. As stated, this obligation is Qur'anic in origin. In contrast, those who enjoin evil and promote wrong-doings are termed hypocrites, as revealed in a verse,

The hypocrites, be they men or women, are all alike. They enjoin what is evil, and forbid what is good, and withhold their hands from doing good. They forgot Allah, so Allah also forgot them. Surely the hypocrites are wicked (al-Qur'an, 9: 67).

The Prophet (SAW) has, therefore emphasized the necessity of changing *al-munkar* by all possible means. Ab Sa d al-Khudr heard the Prophet (SAW) saying: “He who amongst you sees something evil should change it with his hand; and if he has not the strength to do it, then he should do it with his tongue, and if he has not the strength to do it, then he should abhor it in his heart, and that is the weakest of faith.” “Enjoining goods” and “forbidding evil” in the society are inextricably intertwined in preaching the religion of Islam.

The institution of *Ísbah* has received good deal of attention from Muslim scholars including Ibrahim Dasuqi al-Shihawi (1962), Imam al-Mawardi, (1966), and Muhammad Ibn Ukhuwwa (1966). According to Ibn Manzur (1966: 304-307), the term *×isbah* comes from the word *ihtisab*, which means retribution from Allah (SWT) or seeking wages. Imam al-Ghazali (1998: 398) looked at it from a *sharf’ah* perspective and explained that *×isbah* is a comprehensive expression inviting people to do good and abstain from bad. Ibn Taimiyyah defined *×isbah*’s functions as “to check harmful market practices, to promote what is good and forbid what is evil, particularly in those areas where the authority of other public officials could not reach” (Ibn Taymiyah, 1976: 18). According to Ibn Khaldun, *Ísbah* is a religious duty enshrined in the Qur’an and supplemented by the sayings of the Prophet (SAW). Despite differences in wordings, *Ísbah* is conceived by all Muslim scholars as a religious duty of “commanding right and forbidding wrong”. Contemporary Muslim scholars, like Abdul Karim Zaidan (2002), concur with the above definition.

Imam al-Ghazali, argued that the *×isbah* practice must be seen as a *fard kifayah* for Muslims. Every Muslim is expected to be active in the propagation of good (*ma’ruf*) and suppression of evil (*munkar*). However, it has been made an obligation on a section of society to remain engaged in it. *×isbah* is an agency of the government established to monitor the activities of individuals related to morality, religion and economy (the general social life) to uphold justice and honor as required by *shri’ah* (Mohamad Syafiqe Abdul Rahim, 2010). The major functions of the *Ísbah* institution are as follows:

1. To encourage the people to fulfil their religious duties as prescribed by the *sharf’ah*.
2. To cultivate high moral standards by combating immoral behaviour in the society.
3. To monitor people’s activities, support positive acts and prevent corrupt ones.

The muftasib is the official appointed by the ruler to implement *ʿisbah* on behalf of the state. The muftasib, characterized by sincerity and impartiality, knowledge and wisdom, performs the following functions.

1. To ensure that the rights of Allah (SWT) such as punctuality of prayers, organization of *Jum'ah* congregations, and maintenance of mosques are duly performed.
2. To ensure that people do not introduce deviation and corruption in Islam.
3. To defend the rights of people in the community and in markets.
4. To oversee Municipal administration, such as keeping the roads and streets clean, preventing the construction of buildings or dwelling places that could harm the community interests, and similar other works.

ʿisbah, therefore, essentially deals with safeguarding the limits of Allah from being violated, protecting the honour of people and ensuring public safety. In addition, it also includes monitoring marketplaces, craftsmanship and manufacturing to make sure that the laws of Islam are upheld by these entities.

To perform above functions, the muftasib is required to be in the field or in the marketplace looking into everything to ensure the observance of the *sharf'ah*; to inspect the weights and measures to prevent cheating; to listen to the complaints of the public and to attend to them on the spot, paying special attention to children and women. The muftasib, is to act only on those forbidden acts that are committed in public. As explained by Al-Mawardi, "It is the commanding of right when it is openly neglected (*idh ahara tarkuhu*) and the forbidding of wrong when [the] action is committed in the open (*idh ahara fi luhu*)" (Al-Mawardi, 1990: 391). Ibn al-Ukhuwwa concurs with al-Mawardi and stresses that the *muftasib* should look for "apparent wrong-doings or "wrongdoings seen in public" (*munkar tahirah*) (Ibn al-Ukhuwwa, 1976: 91). Later in his work, he argues that the *muftasib* "should rely only on what is apparent to him (*ma ya haru lahu*) and what he sees for himself" (Ibn al-Ukhuwwa, 1976: 320). Similarly, al-Ghazali, in *Iyul m al-d n*, argues that the *isbah* is applied only to a wrongdoing (*munkar*) that takes place in the present and is apparent to the *muftasib* "without spying" (*kull munkar mawj d f l- l hir li-l-muftasib bi-ghayr tajassus*) (Al-Ghazzali, 1998: 515). In other words, there is no room for the muftasib to punish someone on mere suspicion and is forbidden to spy on someone to find the wrong-doing.

In short, promoting virtue and prohibiting vice is a duty to be shouldered by individual Muslims and particularly by the state. The Mu'tasib monitors, controls and prevents, among others, fraudulent exploitations of consumers in the marketplace. This role was first dawned by Prophet Muhammad (SAW) who acted as the first mu'tasib. Subsequently, he appointed some of his companions to perform this duty, including Said b. al-'As in Makkah and Umar b. al-Khattab in Madinah. This practice was followed by khulafÉ al-rashidÉn, the first four rightly guided Caliphs.

The institution of Ísbah moved along with Muslims into the Western provinces of Spain and remained an integral part of the state. Overtime, most of the Muslim institutions underwent drastic decline. The institution of Ísbah also declined in effectiveness and virtually disappeared. The advent of Western colonialism made this institution as an ineffective appendage of the state organs. Some Muslim countries have retained the religious wing of the Ísbah although it has distributed the secular functions to different departments and ministries. A similar situation prevails in Malaysia and the religious function is performed by the State Religious Department.

Malaysia and Islam

Malaysia is a federation of 13 states and three federal territories of Kuala Lumpur, Lebuan and Putrajaya. It is a Southeast Asian country and consists of two geographical regions divided by the South China Sea: the peninsular Malaysia (or West Malaysia) and Malaysian Borneo (or East Malaysia) located on the northern part of the island of Borneo. According to September 2016 estimate, Malaysia has a population of 30, 876,845. Malaysia is a multicultural society with Malays, Chinese and Indians living side by side in peace. The Malays are the largest community, comprising about 60 per cent of the population. By constitutional definition, all Malays are Muslim and they follow the Shafi'ite school of jurisprudence.

Article 3 of the Constitution declares Islam as the religion of the Federation; other religions may be practiced in peace and harmony in any part of the Federation. Article 12(2) permits the Federation or a State to establish or maintain "Islamic institutions" or facilitate "instructions in the religion of Islam and incur such expenditure as may be necessary for the purpose." Article 74(2) empowers the Legislature of a State to make laws with respect to any of the

matters enumerated in the State List (the Second List set out in the Ninth Schedule) or the Concurrent List. Thus, Islam is a state matter. In other words, the power to administer Islamic law and the establishment of syariah court as well the administration of Islamic criminal justice fall within the jurisdiction of the state. The word Islamic law has been defined as personal laws which includes, according to the 9th Schedule, List II of the Federal *Constitution of Malaysia*, the laws relating to betrothal, marriage, divorce, dower, maintenance, adoption, legitimacy and guardianship of children as well as property matters such as *waqf* and succession.

As per the 9th Schedule of the Federal constitution, the “creation and punishments of offences by persons professing the religion of Islam against *precepts* of that religion, except in regard to matters included in the Federal List”. Three conditions must be fulfilled to constitute the *syariah* criminal offence in Malaysia. One, the offence must be committed by a Muslim. Two, the offence is related to Islamic religion, and three, the offence must not be within the scope of the Federal List. The word “precepts” in the 9th Schedule has been defined by Razali Nawawi as within the ambit of the 5 pillars of Islam (Nordin Bin Salleh v Kerajaan Negeri Kelantan & Anor, 1993). However, there is no harm in extending the meaning of precepts beyond the pillars of Islam or *ḥukm* (Farid Sufian Shuaib, 2015). Islamic law in the Federal Territory of Kuala Lumpur, Putrajaya and Labuan are enacted by the Parliament at the federal level. The state governments also have the authority to create their own body to regulate any Islamic law matters (Farid Sufian Shuaib, 2012).

The government has established institutions to carry out similar roles of *al-ʿisbah* such as Jabatan Kemajuan Islam Malaysia (JAKIM), Majlis Mufti Kebangsaan and all religious institutions at the state level such Jabatan Agama Islam (JAIS), Majlis Agama Islam Negeri Sembilan (MAINS), and Majlis Agama Islam Pahang (MAIP) In Selangor, there is the Enforcement Division whose duty is to take care of any immoral activities in the state (W. Muhammad, 2015: 34). The duties of the Religious Enforcement Officer, regarded as *muʿtasib*, are to take actions against the Muslims who are involved in such crimes or sins. Taking actions does not mean arresting the wrongdoers and charging them in the courts. In most cases, they are to warn those who have committed or about to commit indecent acts. For example, religious enforcement officers warned Mohd Juzaili that dressing or posing as women in public is an offence for a Muslim male. On

arrest, Juzaili challenged the validity of section 66 of the Syariah criminal Enactment Negeri Sembilan 1992 and claimed that he was suffering from Gender Identity Disorder (GID) and that section 66 did not make any exception to that.

In another case, *Ketua Pendakwa Jabatan Undang-Undang dan Pendakwaan Majlis Agama Islam dan Adat Melayu Terengganu v Fauzi bin Mamat & Anor* (2014) where the first and second accused were charged under s. 29 of the Syariah Criminal Offences (Takzir) (Terengganu) Enactment 2001 for committing an act preparatory to zinÉ (sex). Both the accused were said to have committed the offence in a car and during the arrest, the first accused, a male, had his belt and zipper down. The accused persons sought for a lenient sentence as they had pleaded guilty; had repented; it was their first offence; they both had social stand in the society and that the sentence would adversely affect their services as civil servants. In opposing the accused's mitigation, the *syarie* prosecutor contended that the offence committed by the accused was a serious one as it was a *muqaddimmah* (prelude) to zinÉ and that the sentence prescribed for the accused's offence under s. 29 of the Enactment and the offence of *khalwat* prescribed under s 31(a) and (b) of the same Enactment was the same in terms of amount when in actual fact, the gravity and enormity between the two offences were not the same and very different under *hukum syarak*. The *syarie* prosecutor further contended that there were a few factors that made the case a serious one namely, the place and the time of the incident which was in the afternoon and in a public place, in addition to the acts of both the accused persons. It may be noted that zinÉ which is a criminal offence in the context of Malaysian Islamic law. The accused persons were found guilty by the *syariah* court and sentenced to RM 2,100.00 fine or 3 months imprisonment. The punishment given here is not severe, but it serves as a warning as well as to caution the offenders from committing such crimes.

Institutions of ×isbah in Malaysia

Islam, it may be noted, was once the law of the land in Tanah Melayu (Malay land). After gaining independence, the leaders felt it necessary to continue the legacy left by their ancestors to uphold the Islamic values so that the faith of the Muslims are protected, free from any form of distortions. It was also argued that the institutions of ×isbah would bring out the beauty of Islam so that Muslims and non Muslims alike look at Islam as the religion of humanity which brings peace to the community. Since Islam is a state matter, each state has its own department in

preventing immoral activities. These institutions may carry different titles but the nature of the work are the same i.e., to curb activities contrary to Islamic law. The immoral activities, according to the Syari'ah Criminal Offences Enactment, are more or less 42 in number listed under four categories: sanctity of the religion of Islam and its institutions, 'aqdāh, indecency and miscellaneous. The mandates given to the Religious Enforcement Officer in exercising the functions are basically governed by the statutory law. For example, the *Syariah* Criminal Procedures (Federal Territories) Act 1997 expressly gives power to the Religious Enforcement Officer to arrest the person by reasonably and physically touching the body of that person (section 9) either under warrant or without warrant (section 18). In addition, the Act gives power to the Religious Enforcement Officer to search the place entered by the person sought to be arrested with or without warrant (Section 12), as well as to seize articles that are believed to have been used in committing the *Syariah* offence (section 15).

The function of the Department of Religious Affairs in each state in enjoining virtue and forbidding evil is generally similar, particularly through the establishment of the Religious Enforcement Division (RED). Among the functions of the Religious Enforcement Division are to receive information of the immoral activities committed in the society either in public or private and accordingly take actions in accordance with the laid down procedures, to implement or enforce the law related to *Syariah* criminal offences, as well as to investigate the cases related to such offences before the arrested person can be prosecuted by the *Syariah* Prosecutor.

In Selangor, the Religious Enforcement Division was established under the Department of Islamic Religious Affairs in 1945. Initially the department was established for the purpose of defending and protecting Muslims' faith from communist's ideology. However, after the passing of the Administration of Islamic Law Enactment in 1952 and Tanah Melayu gained independence in 1957, the objective of the Division has become wider. The noble objective of the Department is to defend the Islamic faith through research, monitoring activities and enforcement of Islamic laws in the state.

In Kelantan, Jabatan Hal Ehwal Agama Islam Kelantan, the Department of Religious Affairs, was established on 1st January 1980 with the purpose of assisting the Council of Islamic Religion in spreading *da'wah* and the development of Islamic affairs in the state. In fact, the office was formed in 1950

under the name of Pejabat Pencegah Maksiat (Office of Prohibiting Vice) with specified functions i.e. to curb immoral activities, to arrest and to prosecute the person who have been found violating the laws. The office was popularly known as the office of preventing vice and immoral activities in Kelantan.

In Terengganu, Sultan Zainal Abidin III has established the Office of Religious Commission and Justice in 1912. Its function was to administer Islamic affairs among the Muslims for the purpose of assisting the Muslims to live in accordance with Islamic way of life. Additionally, the Religious Commission also dealt with matters pertaining to Syariah courts (Tuan Ruhani Tuan Shariff, 1984-1985: 126-127). In 2000, a ×isbah Commission was established by the state government after the State Legislative Assembly approved ×isbah Enactment 2000 on 11th January 2001 and came into effect on 15th March 2001. It was led by Idris bin Othman, a Commissioner and former Magistrate. The Commission was placed under the supervision of ×isbah Committee and Special Task chaired by Mohd Salleh bin Abbas, a former Chief Justice of Malaysia (Auni Bin Abdullah, 2000: 17-39). According to Salleh Abbas, Terengganu was the first new millennium Islamic governance that applied ×isbah laws after the fall of Ottoman Islamic Empire in Turkey in 1924. During 2000 to 2003, 179 cases were received by ×isbah Commission and 52 were successfully resolved.

In Kedah, between 1854-1879, under the leadership of Sultan Abdul Hamid, there was Religious Affairs Office in Limbung Kapal, Alor Setar, Kedah. The office was to cater the need of Muslim in Kedah pertaining to Islamic law matters. In 1963, there was an establishment of Council of Islamic religion by virtue of the Administration of Islamic Law 1962. The establishment of the Council also includes Department of Religious Affairs which is under the purview of the Council. In 2008, the Department was separated from the Council and established on its own headed by the Director General of Religious Department (Mukhrizmahathir, 2015).

In addition to the above, each state has its own religious affairs departments. The names of these departments differ but they perform more or less similar functions. Table 1 lists the name of religious affairs departments in the thirteen states in Malaysia and in the Federal Territory. The second column provides the year of the establishment of the Islamic Religious Affairs Department and the final column provides the approximate number of officers serving in respective state department as at 2008.

Table 1: List of Jabatan Agama Islam, the year of establishment and the number of officers serving in these departments

Departments	Year	No. of Religious Enforcement officers
Jabatan Agama Islam Selangor	1945	122
Jabatan Agama Islam Wilayah Persekutuan	1974	33
Jabatan Agama Islam Johor	1925	75
Jabatan Hal Ehwal Agama Islam Negeri Kedah	1962	9
Jabatan Hal Ehwal Agama Islam Negeri Kelantan	1950/1980	86
Jabatan Agama Islam Melaka	1960	23
Jabatan Hal Ehwal Agama Islam Negeri Sembilan	1950	39
Jabatan Agama Islam Pulau Pinang	1959	17
Jabatan Agama Islam Pahang	1926	16
Jabatan Agama Islam Perak	1949	44
Jabatan Agama Islam Perlis	1964	5
Jabatan Hal Ehwal Agama Terengganu	1912	44
Jabatan Agama Islam Sarawak	1996	41
Jabatatan Hal Ehwal Agama Islam Negeri Sabah	1996	20

Source: State Religious Department; Siti Zubaidah Ismail (2008). "The implementation of shariah offences in Malaysia: Issues, challenges and the way forward". Paper presented at the 5th Asian Law Institute Conference, May 22-23, 2008, Singapore, p. 4.

Religious enforcement division in Malaysia

Religious enforcement Division is part of the divisions in the Department of Religious affairs in all states in Malaysia. The main objective of the department is to strengthen and defend the Islamic faith and Muslims in totality through research, monitoring and enforcement. The Religious Enforcement Division in the department is tasked with the moral policing of the Muslims by taking pre-emptive measures against immoral actions which have been made triable offences under sharf'ah state enactments. In delivering this task, the division is empowered to receive any reports, complaints and conducting any raids and thorough

investigations which will result in the preparation of complete investigation papers (IP) for purposes of prosecution.

The immoral activities or indecent behaviors criminalized in the Malaysian Islamic law include close proximity, drinking liquor, indecent acts such as prostitution, sexual intercourse out of wedlock, any acts preparatory to sexual intercourse, homosexuals and lesbianism, male posing as woman, encouraging vice, false allegation of committing zina and instigating husband/wife to divorce or neglect their respective duties in the marriage (Syariah Criminal offences Act 1997 (Federal Territories), Sections, 19-41). These indecent acts have been incorporated into the Syariah Criminal Offences enactments in all states in Malaysia as well in the Act which is applicable for the Federal Territories in Kuala Lumpur, Putrajaya and Labuan.

The roles and functions of the Religious Enforcement Division in preventing vices are crucial at the preliminary and investigation stage before the arrested person can be prosecuted or acquitted. It can be seen in the case of *Pendakwa Syarie Kelantan lwn Yusundy bin Josan dan Seorang Lagi* where the accused persons were charged and found guilty (Section 25, Syariah Criminal Code 1985) of consuming intoxicant drink. Apart from the statement by the witnesses, the case was supported with the evidence gathered by the Religious Enforcement Officer which includes Carlsberg branded wine bottle, two glasses used by the offender as well as payment receipt that formed as *qarinah* in that case. Similarly, in the case of *Norazlisham bin Ramli lwn Ketua Pendakwa Jabatan Hal Ehwal Agama Islam Negeri Sembilan* where the Appellant was charged (as per Section 78 of Syariah Criminal (Negeri Sembilan) 1992) and found guilty of consuming intoxicant drink at a disco. He pleaded guilty and was liable to 30 days imprisonment. As compared to the former case, the offender made an appeal to the Syariah High Court of Negeri Sembilan giving reasons, among others, that he had learnt the lesson, repents for the sinful act, and promised never to commit such an act again. The Court granted the appeal and he was fined RM 2,500.00.

In addition, the case of *Pendakwa Syarie lwn Muhammad Fauzullah bin Ahmad Basheer* demonstrates the role of Religious Enforcement Division in bringing the accused to the court for sexual intercourse out of wedlock case. The accused pleaded guilty, convicted, and was fined RM 3,000.00; four months of imprisonment; and four strokes of caning. Equally important to the punishment,

the Court ordered the offender to repent to Allah (SWT) and to avoid the sinful act in future. This type of gesture from the judge aims at reminding the offender about the seriousness of the act committed as well as to show that Allah (SWT) is merciful and oft forgiving.

A similar example is found in the case of *Ketua Pendakwa Syarie WP lwn Junaizulhisham bin Juhari & Seorang Lagi*. The accused in this case was charged with the offence of committing sexual intercourse out of wedlock against Section 23 of the Syariah Criminal (Federal Territories) Act 1997. After hearing the appeal and considering all the mitigation factors as well as the efforts made by the parties to get married in consequence of the act, both respondents were fined RM1,500.00.

Problems and challenges

While carrying out their responsibilities, the religious enforcement officers face criticism not merely from the public but also from those who are in authority. In 1997, three contestants in the Miss Malaysia Petite beauty contest were arrested for indecent dressing for wearing leotards and swimsuit. The women were fined RM 400.00 or two months jail term in default. This arrest led to a barrage of criticism. The officers also raided nightclubs and arrested Muslims for indulging in anti-sharf'ah activities. There were allegations that officers were selective in raiding the places and that the arrested women were mistreated which brought wide condemnation by many quarters including government ministers. The Sultan of Perk, Sultan Nazrin Muizzuddin Shah, has called on religious officers to carry out their duties prudently. He asked the officers to be courteous, orderly and polite and not to act in a way that "could cause people to feel humiliated and disgraced" (The Star Online, September 27, 2016).

In January 2006, the Department of Religious Affairs (territories) or JAWI announced that it had formed a team of volunteers to patrol Putrajaya, the administrative capital of Malaysia, to prevent "indecent behavior" among Muslims. These volunteers were meant to approach people in a polite manner and advise them against creating social problems. These volunteers were not empowered to arrest anyone. However, the Volunteer squad was dissolved immediately upon receiving the directive from the Malaysian cabinet. The cabinet felt that Malaysians are mature enough with moral values and there is no need to have the squad to keep them on line (*New straits Times*, January 21, 2006, p.8). The officers saw no harm in reminding the people to follow the moral conduct.

There are many who consider the activities of the religious enforcement officers as a gross interference into the personal affairs of an individual. The religious enforcement officers have been labelled as “moral policemen”, “spies” or even “Peeping Toms” (Siti Zubaidah & Muhammad Zahiri, 2007). On the other hand, there are others who desire the Religious Department to be more proactive in their enforcement. Azizah, Noradha and Norul Huda (2015) argued that more needs to be done to stem the declining moral standards among the Muslims in Malaysia and blamed the inefficiency of the religious enforcement department for inordinate delays and simply lack of enforcement. As a result, the enforcement officers have been labelled ineffectual, harsh, unprofessional, and the like. It is apparent that the enforcement of Shari’ah criminal offences is not an easy task. The division faces a number of problems ranging from non-uniformity of the Shari’ah laws to more practical issues relating to lack of manpower and resources. Some of these challenges are enumerated below.

To begin with, one, since Shari’ah falls within the jurisdiction of the states, the list of Shari’ah offences varies from one state to another. This leads to the non-uniformity of laws among states in Malaysia (Zulkifli Hassan, 2007) giving rise to conflicts of laws between one state to another in Malaysia.

Two, there is a dearth of quality religious enforcement officers which poses a major constraint towards the effectiveness of the Islamic law enforcement in Malaysia. The root of such weakness lies in the poor planning and coordination of the enforcement process prior to its full execution. It is found that the total number of the religious enforcement officers is highly disproportionate to the total number of the Muslim population in the country. Per head ratio, for example in Selangor, stands at 1:28,400. This may be compared with the ratio of one policeman to 272 citizens in Malaysia (Ramizah wan Muhammad, 2015). Indeed, the job scope of the police force is considerably much larger than the religious enforcement agencies. However, drawing such a comparison brings to the fore the challenge faced by the religious enforcement officers in carrying out their duties.

Three, a significant number of the Religious Enforcement officers are civil servants in the Religious Office/Officer of Islamic Affairs scheme. Like other civil servants, they are subject to unilateral transfer to other division such as Dakwah, Mosque Management, Education, Research and the like (Siti Zubaidah, 2008). As a result, there is difficulty in retaining experienced officers. Since it takes time to recruit and train new officers, the effective running of the division is significantly

affected. The problem is worsened by the fact that the new recruits to the Division are not required to possess a degree in sharf'ah. As such, the recruited officers have to be given the basic knowledge of sharf'ah, the knowledge of the various sharf'ah offences under the Syariah Criminal Offences Enactment, and the Syari'ah Criminal Procedure Enactment.

Four, the Religious enforcement Division suffers from lack of resources and equipment needed to assist them in their enforcement duties. They suffer from the lack of opportunities for promotion and small pay making the officers vulnerable to the abuse of power and corruption in order to make ends meet. The Malaysian Anti Corruption Commission (MACC) detained three religious enforcement officers of JAIS in 2013 for allegedly accepting bribe and releasing a couple who were guilty of close proximity. The officers do not wear uniforms and do not carry arms to protect them in case of attacks. The Chief of the Religious Enforcement Officer of Pahang was murdered in November 2013. He could not defend himself from the attack of miscreants.

Finally, the field work conducted for this study found a lack of devotion, zeal and commitment on the part of officers in the work force. This is due to the poor environment they work in, poor pay, lack of respect and non-availability of insurance coverage in case anything happen to them.

Conclusion

×isbah as an institution has its roots in the Qur'an, in the sunnah and in the activities carried out during the earlier phases of Muslim history. Muslim scholars and theologians have underscored the importance of this institution. They considered it essential for Muslims to be engaged in promoting virtue and prohibiting vice. The institution of Íisbah, though began during the time of the Prophet (SAW), it has not lost its significance in contemporary times. In fact, the existing situations made it imperative for muÍtasibs to be appointed to ensure the functioning of a sane society with strong moral and universal values. Consequently, many Muslim countries have established the institution of Íisbah including Malaysia.

It is found that the institution of Íisbah in Malaysia is within the purview of state governments. These states, with different nomenclatures, have established institutions that fulfill the obligation of enjoining good and forbidding bad. In fulfilling their responsibilities, the Religious Enforcement Officers faced serious

opposition from various quarters. It is, therefore, necessary for the state authorities to enlighten the general public on the roles of Religious Enforcement Division in creating a good and tranquil society. The institution of *Ísbah* needs to be strengthened by furnishing it with shari'ah trained manpower to act as *muÍtasibs* and to equip them well in terms of pay and perfect working environment to enable these officers to carry out their responsibility of forbidding evil and enjoining all that is good.

References

- Abdul Karim Zaidan. (2002). *Islam dan Dakwah*. Kuala Lumpur: Pustaka Salam Sdn. Bhd.
- al-Ghaz l , Ab mid. (1998). *I y ul m al-d n*, vol. 2. Aleppo: D r al-W f , 1998.
- Al-Mawardi, Abu al-Hassan `Ali Muhammad Habib al-Basri. (1966). *Al-Ahkam al-Sultaniyyah*. Beirut: Dar al-Kutub al-`Ilmiyyah.
- Al-M ward , Ab l- asan Al b. Mu ammad. (1990). *Al-A k m al-sul niyya wa-l-wil y t al-d niyya*, ed. Kh lid Abd al-La f al-Sab Al m . Beirut: D r al-Kit b al- Arab , 1990.
- Auni Bin Abdullah. (2000). ×isbah *Dan Pentadbiran Negara*, Kuala Lumpur: IKDAS: 17-39.
- Azizah bt. Mat Rashid and Noradha Abdul Hamid, Norul Huda bt. Bakar. (2015). “Krisis Akhlak: Penguatkuasaan Undang-undang sebagai Benteng menanganinya. *E-Jurnal Penyelidikan dan Inovasi*. III(1): 1-18.
- Farid Sufian Shuaib. (2015) “Isu Perlembagaan dan Hak asasi manusia dalam pentadbiran keadilan jeanyah di Malaysia”. *KANUN*, 27(1) Januari.
- Farid Sufian Shuaib. (2012). “Islamic Legal system in Malaysia”, *Pacific Rim Law & policy Journal*, 21(1): 133-161.
- Ibn Manzur. (1997). *Lisan al-‘Arab*. Beirut: Dar Ihya’ al-Turath al-‘Arabi, juz 4, hal. 283.
- Ibn Taimiyah. (1976). *Al-×isbah fi al-Islam* (Public Duties in Islam) ed. Salah Azzam. Cairo: Dar al-Shaab.
- Ketua Pendakwa Jabatan Undang-Undang dan Pendakwaan Majlis Agama Islam dan Adat Melayu Terengganu v Fauzi bin Mamat & Anor. (2014) 1SHLR (*The Shariah Law Reports*) 101.

- Mohamad Syafiqe Abdul Rahim. (2010). Institusi *×*isbah dan pengamalannya menurut konteks semasa di Malaysia. Diakses dari http://mahmoodzuhdi.com/index.php?option=com_content&task=view&id=46&Itemid=131 pada 20 Mac 2013.
- Mu ammad Ibn al-Ukhuwwa, *Ma lim al-qurba f a k m al- isba*, ed. Muḥammad Maḥmūd Sha b n et al. Cairo: al-Hay a al-Mi riyya al- mma li-l-Kit b, 1976.
- Mukhriz Mahathir. (2015). <http://www.mukhrizmahathirfc.com/2015/01sejarah-penubuhan-majlis-agama-islam.html> (Accessed 12 Feb. 2016).
- Nordin Bin Salleh v Kerajaan Negeri Kelantan & Anor. (1993) 3 *MLJ (The Malayan Law Journal)* 344.
- Ramizah Wan Muhammad. Abdul Shukor Abdul Hamid, Abdul Rahman Thobroni and Nasimah Hussin. (2015).” Challenges in the enforcement of shariah criminal offences in Selangor: Between perception and Reality”, *PERTANIKA Journal of Social sciences and Humanities*. 23(S): 31-42.
- Siti Zubaidah Ismail. (2008). The implementation of shariah offences in Malaysia: Issues, challenges and the way forward (Paper presented at the 5th Asian Law Institute Conference, May 22-23, 2008, Singapore).
- Siti Zubaidah Ismail & Mat, M. Z. A. (2007). Polis Moral dan Masyarakat Sifar Jenayah: Cabaran Bahagian Penguatkuasaan dan Pendakwaan Jabatan Agama Islam Dalam Usaha Pencegahan Jenayah Syariah. (2007). Dlm H. Hussain, J. Awang, & S. Jaafar (Eds.), *Islam dan Isu-Isu Kontemporer: Respon Islam Terhadap Problematika Global dan Kearifan Lokal*. Indonesia: Jabatan Usuluddin dan Falsafah dan IAIN Sunan Ampel, Surabaya.
- Tuan Ruhani Tuan Shariff. (1984-85). “Pentadbiran agama Islam di Terengganu dari tahun 1911 hingga 1930-an”. *JEBAT: Malaysian Journal of History, Politics and Strategic Studies*, 1984-1985. Vol. 13, Pp. 126-127.
- Zulkifli Hasan. (2016). Isu Undang-undang Jenayah Islam di Malaysia dan Sejauh Mana Perlaksanaannya. Retrieved from <https://zulkiflihasan.files.wordpress.com/2008/06/isu-undg-jnyh-msia.pdf> (Accessed September 15, 2016).