

Contempt of Court in the *Syari'ah* Courts

Kamal Halili Hassan^{1*}, Vijayalakshimi Venugopal² and Jasri Jamal¹

¹*Faculty of Law, Universiti Kebangsaan Malaysia,
43600 Bangi, Selangor, Malaysia*

²*Inti International College Subang,
No. 3, Jalan SS15/8, 47500 Subang Jaya, Selangor, Malaysia*

**E-mail: k.halili@ukm.my*

ABSTRACT

The purpose of this article is to examine the *Syari'ah* courts' power to punish for contempt. In the last nineteen years, the state authorities have recognised the importance of expressly providing the *Syari'ah* courts with the power to punish for contempt. There are specific categories of contempt of court before the *Syari'ah* courts specified in the relevant statutes, though these categories are not consistently specified in terms of the categories themselves, how the categories are defined and to what extent a party can be punished for committing these categories of contempt. Cases of the *Syari'ah* Courts examined here showed consistency with contempt before the civil courts, with majority of the contempt cases being committed are disobeying a court order and the contempt in the face of the court. Statutes applicable to the *Syari'ah* courts have provided different sentencing limits for different categories of contempt. This article explores the scope of contempt of court in the *Syari'ah* Courts, their sentencing limit and weaknesses. The research methodology adopted in this article is doctrinal research.

Keywords: Contempt of court, *Syari'ah* Court, federal constitution, state enactments

INTRODUCTION

A basic definition of contempt of court can be when a legal persona (be it a natural person or a company) interferes, by act or omission, with the administration of justice. This may be committed by anyone, anywhere, and in any context. It is a power given to every court, expressly by statute, or through the inherent jurisdiction of courts. In the context of the Malaysian Court, contempt can occur both in the civil courts as well as the *Syari'ah* Courts. It is instructive to refer to Common Law in tracing the history of contempt of court. Contempt of Court is capable of great diversity of form and in fact, the many forms of contempt have unnecessarily complicated the understanding of this judicial power.

Bhag Singh (2007) wrote that defining 'contempt of court' continues to be an issue of current concern. There are many definitions of this concept, but the versatility of its forms makes it difficult to encompass all these forms into a single definition, other than a broad one. A definition that is quite specific may neglect to include the full scope of the various forms, and a definition that is quite broad may only provide a general idea of the concept, but be lacking in specific details. The law on the contempt of court has a rich history, stemming from the United Kingdom from centuries ago, and extending to a number of the country's former colonies, many of which, still have such laws based on the same source. In the United Kingdom, this can historically be traced to

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*Corresponding Author

the auspices of the King and the courts as His channel of justice. V.R. Krishna Iyer (2002) wrote, “this branch of vintage jurisprudence is of Anglo-Saxon heritage and regal mintage, the King being the fountain of justice and the Judges lions under the throne...” Steve Shim CJ of the Malaysian Federal Court in *Zainur bin Zakaria v. Public Prosecutor* observed that contempt of court is a “... means whereby the courts may act to prevent or punish conduct which tends to obstruct, prejudice or abuse the administration of justice either in relation to a particular case or generally.” This highlights the important dual perspective that a judge has to often be mindful of, that of ensuring a smooth and fair process in the case before the court at the time, but also giving a warning to others about what is expected of them in the conduct of a trial generally as illustrated by the courts’ using contempt of court to hold accountable various parties in a case for improper conduct, from lawyers and their clients failing to attend trial without a valid excuse, such as in *Lai Cheng Chong v. Public Prosecutor*; litigants not fulfilling the terms of court orders expeditiously as in *Hardial Singh Sekhon v. PP*; witnesses giving false testimony, as in *Jaginder Singh & Ors. v. Attorney-General*; and members of the audience disrupting the proceedings, as in *Public Prosecutor v. Lee Ah Keh & Ors.* A great deal is expected of a judge, perhaps too much. C.K.G. Pillay (1985) wrote that a judicial officer’s life is by no means easy because too much is expected of him. Whether such expectations are fair or not, judges too are subject to scrutiny regarding their professional behaviour. Judicial decisions and comments are often reported and highlighted by the media. Therefore, judicial remarks can affect the public’s regard and respect for the legal system. Since the law on the contempt of court is intended to uphold the integrity of the legal system, judges exercising this power should be all the more concerned that their decisions and comments in such cases do not invite public ridicule. Another common description of the contempt of court is that it is intended to ‘protect’ the administration of justice such as so described by Balia Yusof Wahi J. of

the High Court in *Perbadanan Pembangunan Pulau Pinang v. Tropiland Sdn. Bhd.* that “the court has an inherent jurisdiction to ensure the due administration of justice and to protect the integrity of the judicial process...” Lowe and Sufrin (1996) wrote that contempt of court plays “... a key role in protecting the administration of justice”, whereas Rashid (2002) says that “the law of contempt of court plays a key role in protecting the administration of justice.”

Islam recognises offences related to contempt of court. Since courts are the mechanism for dispensing justice, Islam requires respect towards the judiciary which implements justice according to the Islamic law. Allah SWT says in Surah *Al-A’Raaf*, verse 3, “follow what has been revealed to you from your Lord and do not follow guardians besides Him how little do you mind.” Thus, disobeying the Prophet SAW could be regarded as a contempt against the judicial authority.

LITERATURE REVIEW

There are not many writings on the contempt of court in *Syari’ah* Court in Malaysia. Basir Mohammad (2005) discussed the definition of contempt of court, the history of contempt in Islam, the contempt of the *Syari’ah* Court, the suitability of contempt of court with Islamic law and the various forms of contempt of court. The word ‘contempt’ in Arabic means *ihthiqar*, *imtihan*, *intihak hurmah*, *istirdhal* and *qillat al-ihthiram*. All those words when combined together (*intihak al-mahkamah*, *ihthiqar al-mahkamah* and *imtihan al-mahkamah*) carry the same meaning, i.e. the contempt of court. Contempt of court is defined as any act which can be construed as ridiculing or weakening the process of the court or disobeying the court order. According to him, the contempt of court (*intihak al-mahkamah*) can be divided into two categories, i.e. direct (*mubashir*) and indirect (*ghayr al-musabshir*). The direct contempt is an act of contempt committed in the court or before the judge presiding in court. A similar contempt also refers to refusal to be a witness. It may include disobeying the court’s order.

An indirect contempt of court (*intihak al-mahkamah al-ghayr al-mubashir*) refers to an act of contempt outside the court premises and not seen by the judge.

Basir outlines six forms of contempt of court as follows: (i) refusal to attend court trial, (ii) making false charges, (iii) refusal to be a witness, (iv) giving false testimony, (v) making false oath and (vi) defaming a judge. Meanwhile, A. Mukhti (2007) examined contempt of court in the *Syari'ah* courts, although the author also compared this particular law as it applies to civil courts as well. In more specific, the author examined the Malaysian authorities; about 11 Malaysian cases and 11 Malaysian statutes related to the *Syari'ah* statutes applying to the federal territories and the state of Selangor. This presents an instructive review of the contempt of law in the civil and the *Syari'ah* courts. Mukhti also analysed the concept of contempt of the *Syari'ah* Court in the context of the *al-maqasid al-Syari'ah*. *Al-maqasid al-Syari'ah* is the primary objective of the *Shari'ah* in the realization of benefit to the people, concerning to their affairs both in this world and the hereafter. It is generally held that the *Shari'ah* in all of its parts aims at securing a benefit for the people or protecting them against corruption and evil. Thus, contempt of court was viewed from the principle of *maqasid al-Syari'ah*, in which the ultimate purpose is to achieve respect and adherence to the judicial authority. Similarly, N. Yaakub (2000) discussed contempt of court in the *Syari'ah* Court and its effects on journalists. The article focuses more on the threat of contempt which could befall on journalists while carrying out their work.

RESEARCH METHODOLOGY

The research methodology chosen for this article is doctrinal research. A.A. Razak (2009) defines this particular research methodology in the following way; "doctrinal research asks what the law is on a particular issue. It is concerned with analysis of the legal doctrine and how it has been developed and applied." What is attempted is a thorough examination of the current law on

the contempt of court in Malaysia, as evidenced from statutory provisions and judicial principles. This is typical of the doctrinal research as commented by Hutchinson who writes that doctrinal research is library research based on primary materials - the actual sources of the law (legislation and case law), and secondary materials - including commentaries on the law (from textbooks and legal journals) (Hutchinson, 2002). Chynoweth (2009) similarly writes that "the methods of doctrinal research are characterised by the study of legal texts and, for this reason, it is often described colloquially as 'black-letter law'". This detailed review of existing law will then be used as a platform to consider proposals for reform. The Pearce Committee labels this part as reform-oriented research." This is described as "research which intensively evaluates the adequacy of existing rules and which recommends changes to any rules found wanting" (Pearce *et al.*, 1987). In short, the academic legal writing is based on the analysis of law on a given problem which this article has adopted. The authors relied heavily on the various States' enactments which contained provisions on the contempt of court and analyse them accordingly. The cases of the *Syari'ah* Courts that pertained to the contempt of court are also referred to in order to examine the approaches adopted by the courts in dealing with such offences. This review is intended to highlight that while many statutes and some cases have specific provisions for the contempt of court before the *Syariah* courts in the territories and states, there are still a number of uncertain and inconsistent issues in the law of contempt of court before the *Syariah* courts.

LEGAL ANALYSIS STATUTORY PROVISION OF CONTEMPT POWER

The *Syari'ah* courts' power to punish for contempt seems to have been expressly provided by statutes in all the territories and states (Farid, 2003). All the *Syari'ah* courts have been given the power to generally punish for contempt, except in the state of Sabah, although even in this State, as will be discussed below, the power to

punish for specific categories of contempt have been provided. This general power, however, has been granted in slightly different words. The *Syari'ah* courts in the Federal Territories of Kuala Lumpur, Putrajaya and Labuan (1998), the States of Kelantan (2002), Pahang (2002), Selangor (2003), Terengganu (2001), Malacca (2002), Penang (1999), Perak (2004), Perlis (2006), Negeri Sembilan (2003) and Sarawak (2001) have the jurisdiction to commence proceedings against any person for the contempt of court. The *Syari'ah* courts in the State of Johor (1993) shall have the power to punish any contempt of itself, while each *Syari'ah* court in the State of Kedah (1993) has the power to impose a penalty for any act, omission or conduct that is deemed to be a contempt of court. Strangely in the State of Sabah (1993), there is a corresponding statute, but it does not seem to be a corresponding provision on this particular issue.

Considering that the express statutory power to punish for contempt is less consistently given to the civil courts, it is surprising why this issue seems to have been so consistently recognised by the State authorities for the *Syari'ah* courts. Having statutes providing rules of procedure for cases before the *Syariah* courts of every territory and state does not fully explain why the power of contempt is so consistently included as rules of procedure have been provided for many non-*Syari'ah* courts such as the Special Court, Court for Children and Labour Court without including a contempt power for these courts. Yet, the contempt power seems to have been specifically included in these statutory rules of procedure for all the *Syari'ah* courts.

CATEGORIES OF CONTEMPT IN STATUTES INCONSISTENTLY SPECIFIED, DEFINED AND PUNISHABLE

There are specific categories of contempt of court before the *Syari'ah* courts specified in the relevant statutes, though these categories are not consistently specified in terms of the categories themselves, how the categories are defined

and to what extent a party can be punished for committing these categories of contempt. In particular, there are four categories specified in these statutes. The first category specified is the contempt of a court order. This category is specified for the *Syari'ah* courts in the territories and all the states, except for the states of Pahang, Malacca, Perak, and Perlis. This appears to be a common category of contempt specified, yet has been defined differently, with quite different maximum sentences provided. For the *Syari'ah* courts in the federal territories of Kuala Lumpur, Putrajaya and Labuan (S.10, 1997), the states of Terengganu (S.11, 2001), Penang (S.10, 1996), Johor (S.10, 1997) and Sarawak (S.10, 2001), this category is defined as any person who defies, disobeys, disputes, degrades or brings into contempt any court order and is punishable with a fine not exceeding RM3,000, an imprisonment for a term not exceeding 2 years, or both. Yet, in the state of Sabah (S.104, 1995), this category refers to any person who disobeys, opposes, disputes, disgraces, humiliates or refuses to comply with any court order and is punishable with a fine not exceeding RM1,000, an imprisonment for a term not exceeding 6 months, or both.

This category for the *Syari'ah* courts in the states of Kelantan (S.31, 1985) and Kedah (S.31, 1998) is defined as any person who fails to comply with, contravenes, objects to, derides or refuses to obey a court order and is punishable with a fine not exceeding RM1,000, an imprisonment for a term not exceeding 1 year, or both. Yet, in the state of Selangor (S.15, 1995), this category relates to any person who defies, disobeys, degrades or brings into contempt a court order and is punishable with a fine not exceeding RM3,000, an imprisonment for a term not exceeding 2 years, or both. This particular category is defined in the most detailed for the state of Negeri Sembilan (S.109, 1992). Here, this category involves any person who knowingly disobeys an order promulgated by a public servant lawfully empowered to do so directing him to abstain from a certain act or to take a certain order with certain property in his possession or under his management. If

the disobedience causes or tends to cause (or risks causing) any obstruction, annoyance, injury to any person lawfully employed, this is punishable with a fine not exceeding RM500, an imprisonment for a term not exceeding 3 months, or both. If the disobedience instead causes or tends to cause danger to human life, health or safety, a riot or affray, it shall be punishable with a fine not exceeding RM1,000, an imprisonment for a term not exceeding 6 months, or both.

It should be noted that these definitions are broader than just failing to fulfil a court's order, which is the most common form of contempt appearing in the civil courts. It is unclear why the scope of the this category of contempt is much broader than its counterpart before the civil courts, or why this category is so commonly specified for the *Syari'ah* courts, yet defined in such different terms and the same category being punishable to such a different extent, ranging from a fine of RM500 to RM3,000 and an imprisonment for a term not exceeding 3 months to 2 years. The civil courts have different sentencing limits for contempt, which are according to the level of court, not to the specific category of contempt, as appears to be the case for contempt of court before the *Syari'ah* courts.

The second category of contempt specified for the *Syari'ah* courts is contempt of law. This category is specified for the *Syari'ah* courts in the territories and states, except for the states of Pahang, Malacca, Perak and Perlis. This particular category is also variously defined and punishable under the *Syariah* criminal offences statutes ranging from RM1,000 to RM5,000 and an imprisonment for a maximum of 6 months to 3 years. For the *Syari'ah* courts in the Federal territories of Kuala Lumpur, Putrajaya and Labuan (S.7(c)), the states of Terengganu (S.8(c)), Penang (S.7(c)), Johor (S.7(c)) and Sarawak (S.7(c)), this category refers to any person who orally, in writing, by visible representation or in any other manner degrades or brings into contempt any binding law related to the religion of Islam and is punishable with a fine not exceeding RM3,000, an imprisonment for a term not exceeding 2 years, or both. Yet, in the states of Kelantan (S.28) and Kedah (S.28),

this category relates to any person who derides or despises any binding law and is punishable with a fine not exceeding RM1,000, an imprisonment for a term not exceeding 6 months, or both.

In the state of Selangor (S.10(c)), this category is where any person who, by words that are capable of being heard or read, by drawings, marks or other forms of representation that are visible or capable of being visible, or in any other manner degrades or brings into contempt any binding law related to the religion of Islam in this state. This category is punishable with a fine not exceeding RM5,000, an imprisonment for a term not exceeding 3 years, or both. In the state of Negeri Sembilan, this category involves any person who, by spoken or written words, signs, visible representations, by any act, activity or conduct or otherwise in any other manner (insults or puts into contempt) any fatwa legally issued by the Mufti under the Administration of the Islamic Law (Negeri Sembilan) Enactment 1991. Those penalized under this category is punishable with a fine not exceeding RM5,000, an imprisonment for a term not exceeding 3 years, or both. In the state of Sabah, this category is where any person who, by spoken or written words, visible representation or in any other manner insults or brings into contempt or ridicule any lawfully issued *fatwa* by the *Majlis* or the *Mufti* under the provisions of any law or this Enactment. This category is punishable with a fine not exceeding RM2,000, an imprisonment for a term not exceeding 1 year, or both.

This category is inconsistently defined and punishable between the *Syari'ah* courts in the territories and states, not typically recognised in statutes or cases involving the contempt of court in the civil courts, and inconsistently punishable with contempt of a court order before the *Syari'ah* courts. The third category of contempt specified before the *Syari'ah* court appears to be acting or taking proceedings on behalf of another without lawful authority. This category relates to any person doing any act or taking any proceedings in the name or on behalf of another person, knowing himself not to be lawfully authorised by that person to do so, shall be guilty of contempt of court. This

category is specified for the *Syari'ah* courts in all the territories and states, except for the states of Kedah and Sabah. This category appears to be quite consistently defined, but no maximum punishment is specified. It is unclear why this category is similarly common as contempt of a court order and contempt of law before the *Syari'ah* courts, yet unlike these categories, more consistently defined and without a maximum punishment specified for this category of contempt. This category is also not typical of the statutes and cases for civil courts.

The fourth category of contempt specified before the *Syari'ah* courts relates to the contempt of a court officer. However, the only state that seems to have a specific provision on this issue is the state of Sabah. This particular category is defined as any person who denies, goes against, opposes or derides the lawful authority of any officials of any court and is punishable with a fine not exceeding RM1,000, an imprisonment for a term not exceeding 6 months, or both. This category is not commonly specified for the *Syari'ah* courts, and limited to officials of any court, which is not clear if it extends to Official Assignees and Receiver/Manager as in the contempt cases before the civil courts, and although the State authorities recognise this particular category of contempt as being sufficiently significant to specifically provide for, but not deserving of a particularly harsh sentence limit. The categories of contempt specified for the *Syari'ah* courts do not appear to be consistently provided, defined or punishable between the *Syari'ah* courts of different territories and states, and in comparison to the contempt cases before the civil courts. It is also unclear why these categories have been specifically provided by statute when, as courts, *Syari'ah* courts would also arguably have the inherent discretion to

punish any form of contempt. These inconsistent patterns do not seem to have been explained in any judicial or academic forum. Perhaps, they indicate different priorities and a lack of cross-referencing between the state authorities drafting such legislation.

In a more general perspective, not limited to the *Syari'ah* courts in specific states or categories, the *Syariah* Judiciary Department issued Practice Direction No. 13 of 2004 regarding contempt of court outside of *Syariah* Courts. In this document, it is stated that contempt of court outside of the *Syari'ah* court includes a refusal to comply with any order issued by the *Syari'ah* Court or the issuance of a statement by any person or body or an association or an organization either orally or in writing that makes a mockery of the *Syari'ah* Court. Contempt proceedings outside the Court may be initiated by either a *Syari'ah* Prosecutor or any interested person. The court shall hear the application to register contempt of court under the provided law. If the Court is satisfied that the person who commits contempt of court should be imprisoned, an order of committal to imprison on the offender shall be imposed on him until he apologizes unconditionally to the Court and others who have interests. These provisions appear to give some categories 'included' in contempt of court, but still allow other categories to be recognised in other statutes and cases.

UNCERTAIN PRINCIPLES AND RULES OF PROCEDURE TO BE APPLIED IN CONTEMPT CASES

The categories of contempt that have appeared before the 6 reported *Syari'ah* cases are 4 cases on disobeying a court order (*Azman Abdul Talib lwn. Suhaila Ibrahim*¹, *Roslaili bt Abdul Ghani v. Ahmad Azman b Yaacob*², *Zainip bte Ahmad*

¹ In this case, the plaintiff applied to commit the respondent to prison for contempt of court for disobeying an interim custody order requiring the respondent to hand over their child to the plaintiff. This court order was granted by the *Syariah* High Court. The court found the respondent not guilty of contempt of court as the plaintiff failed to comply with a number of procedural rules.

² In this case, the plaintiff contended that a husband failed to comply with a court order to hand over their children to the wife. The court accepted the defendant's defence that the court order was unclear and rejected the plaintiff's committal notice.

*v. Abdul Aziz bin Hussain*³ and *Hasnan Yusof lwn. Yasmin Mohd Jacob*⁴, 1 case on providing false testimony in court (*Ahmad Shapiai lwn. Hani Itam Ali Husin & Yang Lain*⁵ and 1 case on abusing the legal process (*Hasnah bte Mohd Ali v. Bukhari bin Kahar*⁶). These cases are consistent with contempt before the civil courts in terms of most of the contempt cases (the first 4 cases) being committed by disobeying a court order and the second most common category being contempt in the face of the court (the latter 2 cases). To use the terms in the statutes for *Syari'ah* courts, these categories would be contempt of a court order and contempt of law. The court only imposed a sentence for contempt in 1 of these cases, and that was imprisonment for 4 months. The cases of contempt before the *Syari'ah* and civil courts appear to involve similar categories, though the categories provided for these parallel courts do not seem to share this similar approach.

Kamaluddin Maamor A.J. of the *Syari'ah* Appeal Court at Perak in *Ahmad Shapiai lwn. Hani Itam Ali Husin & Yang Lain* held that the charge should be read and explained to the contemnor until he gives his verbal plea of guilty or not guilty. The court concluded that the appellant was not given an opportunity to defend himself before being convicted by the lower court which was an injustice. As such, the court unanimously agreed to allow this appeal, overturn the conviction of contempt of court and set aside the lower courts' decisions. The court relied on 3 cases of civil courts as authority for the principle above that the charge should be read

and explained before a verbal plea is given. The court noted that these cases were not binding, but still relied on these authorities. As such, the *Syari'ah* courts, even the *Syari'ah* Appeal Court, have been willing to refer to cases from the civil courts to clarify the law. There is a similar problem of having uncertain rules of procedure for contempt cases before the *Syari'ah* courts.

The only rules of procedure provided for contempt proceedings before the *Syari'ah* courts are on the issue of the service of a notice to show cause in contempt proceedings before all the *Syari'ah* courts, except in the state of Kedah. Nonetheless, there are no further rules of a procedure specific to contempt proceedings provided in the statutes. It is unclear why the procedure provided is so woefully incomplete. The incomplete procedure has been noted by the judges in the *Syari'ah* courts. Abdul Rahman Yunus J. of the *Syari'ah* High Court in Pahang in *Azman Abdul Talib lwn. Suhaila Ibrahim* noted that the rules of procedure for contempt proceedings before the *Syari'ah* courts were not provided by statute. As such, the court elected to use the relevant rules of procedure in the Rules of the High Court 1980. The court found the respondent not guilty of contempt of court for a number of points, including that the plaintiff did not attach a fair copy of the court order. Rules of the procedure, thus, have been significant in the case, even though, as noted by the court, not fully provided by statute.

Hj Saarani Ismail J. of the Shariah High Court in Shah Alam in *Roslaili bt Abdul Ghani v. Ahmad Azman b Yaacob* found that since a

³ In this case, the applicant contended that the respondent was in breach of court orders to make child support payments. The court held the respondent guilty of contempt of court and imposed imprisonment for 4 months.

⁴ In this case, the plaintiff alleged that the respondent committed contempt of court by failing to obey the terms of a court order. The respondent succeeded in showing the cause why he was not in contempt of court as he did not breach the court order.

⁵ In this case, the appellant was found guilty of contempt of court for deceiving the court and giving false evidence in his divorce proceedings. The *Syariah* Appeal Court in Perak allowed the appeal and overturned the conviction and sentence due to procedural errors done in the lower court.

⁶ This case involved divorce proceedings. The husband had told the court that he would submit written responses to the issues in the proceedings. The court, therefore, postponed the case for for 4 months to allow him time to submit his written response. He did not submit this response and did not appear on the date of the next hearing. The court found this to constitute contempt of court for failing to fulfil his promises to the court. The court then granted the wife's application for divorce.

proper procedure for a notice to show cause was not clear from the relevant statute, the court could adopt the procedures in Order 34, rule 1 of the Subordinate Courts Rules 1980. The court proceeded to accept the defendant's defence that the court order was unclear and rejected the plaintiff's committal notice. In this case again, the court noted the procedural rules to be incomplete, adopted the relevant rules for non-*Syari'ah* courts and found failing to adhere to these procedural rules to be significant. In this case, this failure resulted in the court dismissing the committal proceedings. Zulfikri Yaso J. of the *Syari'ah* High Court in Kuala Lumpur in *Hasnan Yusof lwn. Yasmin Mohd Yacob* noted that the relevant statute did not contain rules of procedure for notice to show cause and referred to the guidelines explained by the court in *Roslaili bt Abdul Ghani v. Ahmad Azman b Yaacob*. The court noted that it is not bound by the case from Selangor, but it is appropriate to refer to these guidelines. This case illustrates that the *Syari'ah* courts seem to be willing to refer to cases before the civil courts and the *Syari'ah* courts in other states, even though both these cases are not binding to clarify uncertainty in the applicable statutes.

Applying the principles from the civil contempt cases requires the *Syari'ah* judges to be well-versed with the contempt cases before the civil courts or at least be able to easily identify such cases. *Syari'ah* judges may be less involved with the lawyers, judges and cases before the civil courts and as such, may not be aware of the relevant cases before these courts. With many different key words being used in the law reports for contempt cases in the civil and *Syari'ah* cases, identifying relevant civil case law could also be difficult. The *Syari'ah* judges have found the incomplete rules of procedure for contempt cases before these courts to be a problem. Since these rules of procedure have been significant in contempt cases before the *Syari'ah* courts, rather than referring to such rules for civil cases, it may better protect the rights of the parties to have more complete rules of the procedure for contempt cases before the *Syari'ah* courts, especially since these courts

have been entrusted by the statute to use their contempt powers, which they have so used.

INCONSISTENT SENTENCING LIMITS FOR CONTEMPT CASES

Statutes applicable to the *Syari'ah* courts have provided different sentencing limits for different categories of contempt. These statutes also have further sentencing limits for contempt of court cases in general (where no specific category is specified for these limits). Interestingly, these sentencing limits differ, not just by territory or state, but also by which statute has been breached. The *Syari'ah* civil procedure statutes for the *Syari'ah* courts in all the territories and states, except for Kedah and Sabah, specify a sentencing limit for contempt of court before the *Syari'ah* courts. The limit specified is consistent that the *Syari'ah* courts can impose imprisonment for a term not exceeding 6 months or a fine not exceeding RM2,000 for contempt of court.

Meanwhile, the *Syari'ah* criminal procedure statutes for *Syari'ah* courts are more consistent in that a limit is specified for the *Syari'ah* courts in all the territories and states. However, the limits specified are not consistent. These limits are a fine not exceeding RM100 for Kedah, a fine not exceeding RM1,000 for the Federal territories of Kuala Lumpur, Putrajaya and Labuan and the states of Kelantan, Pahang, Terengganu, Malacca, Penang, Perak, Negeri Sembilan, Perlis, Sabah and Sarawak, and a fine not exceeding RM2,000 or imprisonment for a term not exceeding 1 year or both for the states of Selangor and Johor. These differing sentencing limits can be very confusing to apply with the sentencing limits differing by category, definition of category, territory or state and statute. The rationale for this convoluted pattern is not evident from these statutes or reported cases. This pattern is not consistent with the statutory provisions of sentencing limits for the contempt of court before the civil courts, where greater statutory limits are provided for the courts of superior jurisdiction. It is unclear why the sentencing limits for contempt cases before the

Syari'ah courts are given in a different approach than such cases before the civil courts and why the sentencing limits for such cases before the *Syari'ah* courts differ so much according to so many criteria. The *Syari'ah* courts of different levels in a territory or state are given the same sentencing limits. Is the contempt of court considered to be more serious according to the form and category of contempt, statute being breached and geographical boundary of where the offence was committed? This seems to be difficult to rationalise or justify.

CONCLUSION

The law for the *Syari'ah* courts is expressly provided by statute for all the courts, and the same power is given to the courts at all levels in a territory or a state and the categories of contempt are defined differently for many territories or states. The principles and rules of the procedure applicable to contempt proceedings have been held to be significant in contempt cases before the *Syari'ah* courts. The *Syari'ah* courts have resorted to relying on the *Syari'ah* cases from other states and civil cases on contempt law. The courts are often bound by very few other courts (limited to the courts of higher jurisdiction in that territory or state alone). The *Syari'ah* courts have adopted points from the *Syari'ah* cases from other states and civil cases. Relying on the *Syari'ah* cases from other states may be difficult since very few cases have been reported, and even those appear under different key words in the law reports. The *Syari'ah* courts have also relied on the contempt cases before the civil courts. There do not seem to be any non-*Syari'ah* court deciding a contempt case that has relied on a *Syari'ah* case on contempt so far. Thus, the *Syari'ah* courts seem to be more reliant on the civil courts' explanations of contempt law, rather than vice versa. In which case, the uncertainties and inconsistencies in the contempt law before civil courts are more likely to extend to the *Syari'ah* courts, rather than the other way around.

The sentencing limits for contempt cases seem to be a hotchpot of different rules,

depending on the how a category of contempt is defined, the territory or state involved, and the statute applicable to the case. All levels of the *Syari'ah* courts in a territory or a state is entrusted with the same applicable sentencing limit. It is clear that all levels of the *Syari'ah* courts, in all the territories and states, are given the power to punish for contempt of court and that some of these courts are using this power. As such, it is submitted that it is critical that this law to be made clear and consistent for cases of similar facts. Suggesting that greater clarity and consistency is desirable is in line with the current reforms being suggested for the *Syari'ah* law, i.e. to make these laws more consistent between the territories or states, and with those of the civil laws.

REFERENCES

- Abdul Basir Mohammad (2005). Penghinaan Mahkamah di Mahkamah Syari'ah dalam Kaedah Perundangan Bidang Kuasa dan Tatacara Mahkamah Syari'ah. Kuala Lumpur: Dewan Bahasa dan Pustaka.
- Abdullah bin Mukhti (2007). A Study on the Law of Contempt in the Syariah Court (Degree of a Bachelor of Syariah and Judiciary Project Paper). Islamic Science University of Malaysia, Malaysia.
- Ahmad Shapiai lwn. Hani Itam Ali Husin, & Yang Lain (2005) 1 CLJ (Syah) 381.
- Ahmad Shapiai lwn. Hani Itam Ali Husin, & Yang Lain (2005) 1 CLJ (Syah) 381.
- Azman Abdul Talib lwn. Suhaila Ibrahim (2004) CLJ (Syah) 391.
- Azman Abdul Talib lwn. Suhaila Ibrahim (2005) 1 CLJ (Syah) 381.
- Bhag Singh (2007, July 24). Defining Contempt. The Star, T9.
- Charlottesville, Va.: Butterworths; Michie.
- Chynoweth, P. (2009). Legal Research. In A. Knight, & L. Ruddock (Eds.), *Advanced Research Methods in the Built Environment* (p. 29). London: John Wiley & Sons Inc.

- Farid Sufian Shuaib (2003). Powers and Jurisdiction of Syari'ah Courts in Malaysia. LexisNexis, 29.
- Hardial Singh Sekhon v. PP (2009). 5 CLJ 101.
- Hasnah bte Mohd Ali v. Bukhari bin Kahar (2007) 4 ShLR 141.
- Hasnan Yusof lwn. Yasmin Mohd Jacob (2008) 1 CLJ (Sya) 406.
- Hasnan Yusof lwn. Yasmin Mohd Jacob (2008) 1 CLJ (Sya) 406.
- Hutchinson, T. (2002). Researching and Writing in Law. New South Wales: Lawbook Co.
- Jaginder Singh & Ors. v. Attorney-General (1983) 1 MLJ 71.
- Koshy, S. (2011, May 1). Making the Law Work for All. Sunday Star, p.41.
- Krishna, I. V. R. (2002). In V. K. Mehrotra, & V. G. Ramachandran. Contempt of Court (6th Eds.). India: Eastern Book Company.
- Lai Cheng Chong v. Public Prosecutor (1993) 3 MLJ 147.
- Lowe, N. V., Sufirin, B. E., & Borrie, G. J. (1996). The law of contempt (3rd ed.). London.
- Noor Inayah Yaakub (2000). Penghinaan Mahkamah Syariah: Kesan terhadap Profesion Kewartawanan. IKIM Law Journal, 4, 2.
- Pearce, D., Campbell, E., & Harding, D. (1987). Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission, A Summary. Canberra: AGPS, 6.
- Perbadanan Pembangunan Pulau Pinang v. Tropiland Sdn. Bhd. (2009) 3 AMR 738.
- Pillay, C. K. G. (1985). Judiciary At Work (Re-Examined). Insaf, 18(3), 46.
- Public Prosecutor v. Lee Ah Keh & Ors (1968) 1 MLJ 22.
- Rashid, Harun (2010, November 17). Contempt of Court. The Daily Star (Bangladesh).
- Roslaili bt Abdul Ghani v. Ahmad Azman b Yaacob (2006) 1 ShLR 135.
- Roslaili bt Abdul Ghani v. Ahmad Azman b Yaacob (2006) 1 ShLR 135.
- Syariah Civil Procedure Enactment 1993 (Sabah).
- Syariah Court (Terengganu) Enactment 2001.
- Syariah Court Civil Procedure (Federal Territories) Act 1998.
- Syariah Court Civil Procedure (Negeri Sembilan) Enactment 2003.
- Syariah Court Civil Procedure (Perak) Enactment 2004.
- Syariah Court Civil Procedure (State of Malacca) Enactment 2002.
- Syariah Court Civil Procedure (State of Penang) Enactment 1999.
- Syariah Court Civil Procedure (State of Selangor) Enactment 2003.
- Syariah Court Civil Procedure (Terengganu) Enactment 2001.
- Syariah Court Civil Procedure Enactment 2002 (Kelantan).
- Syariah Court Civil Procedure Enactment 2002 (Pahang).
- Syariah Court Enactment 1993 (Johor).
- Syariah Courts Enactment 1992 (Sabah).
- Syariah Courts Enactment 1993 (Kedah).
- Syariah Criminal (Negeri Sembilan) Enactment 1992.
- Syariah Criminal Code 1985 (Kelantan).
- Syariah Criminal Code Enactment 1998 (Kedah).
- Syariah Criminal Offences (Federal Territories) Act 1997.
- Syariah Criminal Offences (Selangor) Enactment 1995.
- Syariah Criminal Offences (State of Penang) Enactment 1996.
- Syariah Criminal Offences (Takzir) (Terengganu) Enactment 2001.
- Syariah Criminal Offences Enactment 1995 (Sabah).
- Syariah Criminal Offences Enactment 1997 (Johor).
- Syariah Criminal Offences Ordinance 2001 (Sarawak).
- Syariah Criminal Procedure (Federal Territories) Act 1997.

Contempt of Court in the Syari'ah Courts

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|----------------------------------------------------------------|---------------------------------------------------------------------------------|
| Syariah Criminal Procedure (Negeri Sembilan) Enactment 2003. | Syariah Criminal Procedure Enactment 2002 (Kelantan). |
| Syariah Criminal Procedure (Perak) Enactment 2004. | Syariah Criminal Procedure Enactment 2002 (Pahang). |
| Syariah Criminal Procedure (State of Johor) Enactment 2003. | Syariah Criminal Procedure Enactment 2006 (Perlis). |
| Syariah Criminal Procedure (State of Malacca) Enactment 2002. | Syariah Criminal Procedure Enactment 2006 (Perlis). |
| Syariah Criminal Procedure (State of Penang) Enactment 1996. | Syariah Criminal Procedure Ordinance 2001 (Sarawak). |
| Syariah Criminal Procedure (State of Selangor) Enactment 2003. | Wan Azhar Wan Ahmad (2011, April 12). Malaysian Legal Transformation. The Star. |
| Syariah Criminal Procedure (Terengganu) Enactment 2001. | Zainip bte Ahmad v. Abdul Aziz bin Hussain (2008) 1 ShLR 105 |
| Syariah Criminal Procedure Enactment 1988 (Kedah). | Zainip bte Ahmad v. Abdul Aziz bin Hussain (2008) 1 ShLR 105 |
| Syariah Criminal Procedure Enactment 1993 (Sabah). | Zainur bin Zakaria v. Public Prosecutor (2001) 3 MLJ 604 |