

CLOSE PROXIMITY: A CASE STUDY IN JABATAN AGAMA
ISLAM PERAK (JAIPK)

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**CLOSE PROXIMITY: A CASE STUDY IN JABATAN AGAMA
ISLAM PERAK (JAIPk)**

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AUTHOR DECLARATION

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

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

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

In the name of Allah, Lord of universe and all praises to Him that blessed me with physical and spiritual strength, which with His guidance this academic project finally accomplished. Blessing and peace be upon the Prophet Muhammad S.A.W, his family and companions.

First of all, I would like to express my gratitude and appreciation to En. Arif Fahmi bin Md. Yusof, supervisor of this research project for his continued support and guidance during the research.

Further, thanks are due to the Vice President of Enforcement Department (JAIPk), Ustaz Hj. Zakaria bin Abdul Razak, Ustaz Firdaus bin Hj. Salleh as the Officer at the Department of Enforcement (JAIPk) and also to all staffs at the Department for the valuable information given in order to write this academic research.

An appreciation is due to the lecturers of Faculty of Syariah and law for the knowledge given in order to complete this academic writing and to all staffs and librarians of USIM for their cooperation and their kindness in helping me to gather information.

Finally, with lots of love and gratitude due to my beloved parents, En. Soaed bin Ibrahim and Puan Rokiah binti Mohamed, to my family and to all my friends for their support and encouragement to strengthen me to accomplish this research. I am truly grateful for the sacrifice and contribution given. May Allah bless all of you. Thank you.

ABSTRAK

Khalwat merupakan satu kesalahan yang dilaporkan sebagai kes jenayah syariah yang mencatat angka tertinggi di negeri Perak. Kajian ini bertujuan untuk mengetahui sejauh mana masalah ini timbul dan untuk mendapatkan penjelasan terperinci proses kes ini berlansung bermula dari maklumat yang diterima oleh Pegawai Penguatkuasa Agama sehingga kes ini dibawa ke mahkamah seterusnya keputusan yang dibuat oleh hakim. Untuk memperolehi data, beberapa teknik kajian telah diguna pakai iaitu temubual, pemerhatian dan meneliti dokumen yang berkaitan. Dapatan dari hasil kajian ini mendapati bahawa masalah khalwat hanya boleh diselesaikan melalui ajaran agama Islam dan disertai oleh semua pihak dalam masyarakat.

ABSTRACT

Close Proximity is an offence which reported as the highest amount of Syariah Criminal cases in Perak. This academic project sought to know to what extent this problem arise and to clarify the flow of the case from the information first given to the Religious Enforcement Officer (REO) until it was brought to the court and finally the judgment which made by the judge. Interviews, observation and reviewing documents were the tools employed in data gathering purposes. The findings indicate that Close Proximity only can be solved through Islamic teachings participated and supported by all parties in the society.

ملخص البحث

الخلوة ذُكرتْ كالكلمة الأعلى لقضايا الشريعة الجرمية في فراق. هذا المشروع الأكاديمي أرادَ المعرفة إلى الذي يُمددُ هذه المشكلة تَظهرُ ولتوضيح تدفقِ الحالة من المعلومات أعطى أولاً إلى ضابط التنفيذ الديني (REO) حتى هو جُلبَ إلى المحكمة وأخيراً الإيجاد الذي جعلَ من قبل القاضي. المقابلات، ملاحظة وتراجع الوثائق كانت الأدوات إستخدمتُ البيانات التي تجمع الأغراض. تُشير النتائج بأن الخلوة فقط يُمكنها الحلّ خلال التعليمات الإسلامية شاركتُ بجميع الأطراف في المجتمع.

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GLOSSARY

Allah S.W.T	: The Arabic word for the One True God
Al-Ghaddu	: Overlook, glance aside, avert
Al-Quran	: The Book of Allah sent to the Prophet Muhammad PBUH through the angel, Gabriel for men
Ar-rizqu	: Livelihood, source of living
Aurat	: Intimate part of body, privacies
Bai'at	: Declaration of fealty
Fahishah	: Anything that transgressing its limits
Hadith	: Saying of the Prophet PBUH
Halal	: Lawful
Haram	: Unlawful
Hijab	: Veil
Hira'	: A cave
Hukum	: Legal ruling
Imam	: A leader, particularly of the public prayer
Iqrar	: Admission
Khalwat	: Close Proximity
Mahram	: Relation within prohibited degree of marriage
Makhluk	: Allah's creatures
Maksiat	: Sin
Maslahah	: Interest
Mufti	: Muslim consultant jurist, a canon lawyer authorized to promulgate a fatwa
Muslim	: A believer of Islam
PBUH	: Peace be upon him, it is compulsory to the Muslim to utter this blessing whenever he hears the Prophet Muhammad name being mentioned

Prima Facie case	: A case that has been supported by sufficient evidence
Qarinah	: Presumption
Qawaid Fiqhiyyah	: The Islamic legal maxim
Sirah	: History
Surah	: Chapter of the Qur'an. The number of preceding colon denotes the chapter number while the number after the colon denotes the number of verse
Syak	: Doubtful, Uncertainty
Taubah	: Repentance, Compunction
Tajassus	: Watch secretly or surreptitiously
Ultra Vires	: Beyond the power
Ummah	: The global Muslim community

TRANSLITERATION

1. Alphabet

<u>Arabic</u>	<u>Latin</u>	<u>Example</u>	<u>Transliteration</u>
ء	'	النساء	An-Nisā'
ب	B	بدري	Badri
ت	T	تفكر	Tafakkur
ث	Th	مباحث	Mabāhith
ج	J	جيلاني	Jālānī
ح	ḥ	حديد	Hadīd
خ	Kh	خليل	Khalīl
د	D	داعي	Dā'i
ذ	Dz	ذكر	Dzikh
ر	R	رابطة	Rābiṭah
ز	Z	زكير	Zakīr
س	S	سيد	Said
ش	Sy	شيخ	Syeikh
ص	ṣ	صبر	Sabr
ض	ḍ	ضعيف	Dai'f
ط	ṭ	الطور	At-Tur
ظ	ẓ	عظيم	'Aẓīm
ع	ʿ	عمّان	'Ammān
غ	Gh	غافر	Ghāfir
ف	F	فتح الله	Fethullah
ق	Q	القسطون	Al-Qāsītūn
ك	K	كثير	Kathīr
ل	L	لم	Lam
م	M	مسلم	Muslim

ن	N	نطفة	Nutfah
و	W	وجودية	Wujūdiah
هـ	H	هريرة	Hurayrah
ي	Y	يوسف	Yūsuf

2. Short Vowel

<u>Arabic Vocal</u>	<u>Latin Vocal</u>	<u>Example</u>	<u>Transliteration</u>
-----	A	أمر	Amr
-----	I	عاصم	‘Aṣim
-----	U	صبر	Sabr

3. Long Vocal

<u>Arabic Vocal</u>	<u>Latin Vocal</u>	<u>Example</u>	<u>Transliteration</u>
ا	Ā	مذاكرة	Muzākarah
و	Ū	المُتَّقُونَ	Al-Muttaqūn
ي	Ī	علمين	‘Ālamīn

4. Diphthong

<u>Arabic Vocal</u>	<u>Latin Vocal</u>	<u>Example</u>	<u>Transliteration</u>
و	Ww	مَنَوَّرَة	Munawwarah
ي	Yy	تَيْمِيَّة	Taimiyyah
يَّ	Iyy	البخاري	Al-Bukhāriyy

5. Exemption

5.1. Arabic letter ء (hamzah) found at the beginning of a word is transliterated to the letter “a” not to ‘, example:

<u>Example</u>	<u>Transliterated</u>
أحمد	Ahmad

ABBREVIATION

Anor : Another

Dr : Doctor

HR : Honourable

INTIM: Institut Tadbiran Agama Islam (Perak)

JAIPk : Jabatan Agama Islam Perak

JAIS : Jabatan Agama Islam Selangor

n.a : No author

n.d : No date

S.W.T : Subhanahu wa ta'ala

OKT : Orang kene tangkap

PBUH : Peace be upon him

r.a : Radhi Allahu 'Anhu

REO : Religious Enforcement Officer

UKM : University Kebangsaan Malaysia

UM : University of Malaya

USIM : Islamic Science University of Malaysia

CHAPTER 1

CHAPTER 1

RESEARCH BACKGROUND

1.1 Introduction

((ولا تقربوا الزنى. إنه كان فحشة وساء سيلا))

It is clear in this verse that adultery is prohibited and even to get close to it is also a sin. Therefore, close proximity is prohibited because it is an action that leads to adultery. According to Malaysian law, this action is an offence and can be charged. In Perak, the statute use in criminal cases is Syariah Criminal Enactment (Perak) 2004. The close proximity offence is provided in section 54 which stated that “ *any man who is found together with one or more women, not being his wife or mahram; or any woman who is found together with one or more men, not being her husband or mahram, in any secluded place or in a house or room under circumstances which may give rise to suspicious that they were engaged in immoral acts shall be guilty for an offence and shall on conviction be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or to both*”.

Currently, this offence happens everywhere, at anytime and become the most famous issue clearly visible in the media embroiled artists, politician, adults and teenagers. It is questionable situation when this offence is committed by every level of ages where they are all Muslims and majority of them were taught about Islamic basic since primary school and even from childhood. It seems to be very serious problem when it would bring bad impact to the Islamic society, the country and to the next generation.

Islam highlights the prohibition of close proximity and its dangers in the authorities. According to Hadith Abdullah ibn Abbas r.a, from the Prophet PBUH, "*it is prohibited to a man sit together with a woman except with her mahram*". Due to this problem, there should be a research to found out the factors that leads people to commit this offence and there shall be solution to figure out to decrease and lastly to vanish this problem away.

1.2 Problem Statement

This research is necessary and important to find out to what extend these phenomena arises among the Muslims, specifically in Perak and which level of ages involve most in this illegal action. There are people who are not aware about this phenomena and do not clearly understand the meaning of khalwat itself. For them sitting together without any legal relationship in a close place to talk about or to discuss about work without any intention to do sex, it is nothing to do with close proximity. The worst is where they do not even care about law and sin and they do it without feeling guilty. In other situation, the problem arise when parents are not aware about this problem and give freedom to their children to do anything they want without any restriction which finally caused so many social problems among them including close proximity. When it is happen, everyone will point to each other claim whose fault that it happen. We thought that this problem will only effect to small group like family or teenagers, but we are wrong because if these problems increase time to time, it will affect to the moral of the society and the next generation and the worst it will pollute Islam.

1.3 Research Objectives

The objectives of this research are as follow:

- i. To get the exact statistic of close proximity offence among Muslims in Perak.
- ii. To make the society realize the problem arises is serious.
- iii. To make all parties take part in solving this problem.

- iv. To show that this problem against not only law, morality, but the main thing is, it against Islamic religion.

1.4 Hypothesis

There are three hypotheses that the writer will try to answer through the findings of this study, which are:

- i. Close proximity arise is because of lack Islamic education.
- ii. The charge for close proximity offence is too low to prevent this problem from happen.
- iii. Close proximity is an offence that effects the civilization of the society.

1.5 Scope of Research

This research will cover the cases happened in Perak. It is to know to what extend the Muslims involved in close proximity. This research will take about six months and the venue is Jabatan Agama Islam Perak (JAIPk), Perak.

1.6 Literature Review

((ولا تقربوا الزنى. إنه كان فحشة وساء سبيلا))

“And come not near to the unlawful sexual intercourse, verily it is a fahishah [i.e anything that transgresses its limits (a great sin)], and an evil way (that’s leads one to Hell unless Allah forgive him)”¹

This Quranic verse pointed or highlighted about the prohibition to get close to adultery which close proximity is one of an action that leads to close proximity. It is crystal clear that this action is forbidden in Islamic religion.

¹ *Al-Quran. Al-Isra’ 17:32*

((يكره للمرأة أن تخلو مع الرجل ليس بينه وبينها حرمة))

Rasullah PBUH also says in this hadith that khalwat or close proximity is prohibited in islam unless the women bring her mahram to accompanied her.

According to Malaysian law, close proximity is one of Syariah offence that bound under Syariah Criminal Law of each state. It is provided in section 54(1) (2): “ *any man who is found together with one or more women, not being his wife or mahram; or any woman who is found together with one or more men, not being her husband or mahram, in any secluded place or in a house or room under circumstances which may give rise to suspicious that they were engaged in immoral acts shall be guilty for an offence and shall on conviction be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or to both*”.²

In an article from Harian Metro, 2005, there was a statistic of close proximity or Khalwat case in states. Majority of people who are involved in close proximity are factory workers, university’s student and secondary students. In Penang, factory workers is the largest amount that committed this offence, and 187 from 630 cases were involved universities’ students and 44 cases of secondary students. The same situation happened in Johor, Kedah, and Federal Territories of Kuala Lumpur, Kelantan, Negeri Sembilan and Perak. Students are the group that had been caught for committed this offence. In perak, the cases are decrease in 2005 that is 460 cases from 528 cases in 2004. According to Vice President of Enforcement Department, JAIPk, Hj. Zakaria bin Abdul Razak, the most group involved in close proximity is among teenagers whom age 18 to 35 years old. This fact was declared by ex Minister of High Education, Datuk Dr. Shafie Mohd Salleh in parliament.³

In Sunday Mail, 2005, there was an article informed about the authorities that have the power to enforce the law related to close proximity. They are the Enforcement

² Dewan Undangan Negeri Perak. 2004. Syariah Criminal Enactment (Perak). Section 54(1) and (2).

³ n.a.2005. “Tangkapan Khalwat di Malaysia”. Harian Metro. Malaysia.

officers from the Unit Penguatkuasaan Pejabat Agama (the Enforcement Unit of the Religious Office), Religious Officer or Public Officer (e.g the police) and Nazir and Imam if the Religious Office is geographically inconvenient due to distance. There can be no citizen's arrest made for close proximity. However, the public can make a formal complaint to the religious Office if they have any suspicious of close proximity or khalwat.⁴

Another book referred was "Child Education in Islam" by Abd-Allah Nasih Ulwan. The book explained about the exact methodology that shall be used by parents in giving knowledge to their children. Parents should have the responsibility in giving sexual education to their children. It means to teach a child, enlighten him, and be frank with him ever since he reaches puberty so that when he becomes a responsible person and understands life, he will know what is lawful and what is not and is not driven or led to debauchery. It consists of the following stages:

- i. At the age of 7-10 years, which is the age of recognition, a child is taught the rules of permission to enter and looking at women.
- ii. At the age of 10-14 years, which is called the age of adolescence, a child should be kept away from forms of sexual arousal.
- iii. At the age of 14-16 years, which is called the age of puberty, a child is taught the manners of sexual intercourse if he ready to get married.
- iv. At the post-puberty age, which is called the age of youth, a child is taught to be chaste if he is not able to get married.

However this education must be given in good manners and accordance to Hukum Syara'.⁵

⁴ n.a. 2005. "Caught in Close Proximity for Immoral Acts (Khalwat)", Sunday Mail. Malaysia.

⁵ Abd-Allah Nasih Ulwan. 2001. *Child education in Islam*. Dar El Salam, Egypt.179

1.7 Research Methodology

The research is done through library based where the writer read magazine, journal, newspaper, books and articles. Besides that, the information got from the internet. The research also done by empirical based where the writer interviewed some officers and staffs from Jabatan Agama Islam Perak (JAIPk) and also the lecturers of law In Islamic Science University of Malaysia (USIM).

1.8 Conclusion

Close proximity is one of immoral acts that lead to adultery. This problem is not a new phenomenon, but it happened since a long time ago. This act is prohibited in Islam as Allah command in Surah Al-ISra', verse 32. In Malaysia, close proximity is an offence and it's enforcement is bind under Syariah Criminal Enactment (Perak) 2004 in section 54 (1) (2). The main thing that has to be examine and to be solve is majority were caught committed close proximity are among teenagers. What solution do we have to decrease this problem and the best is to prevent it?. Who are responsible to doit? This question leads to the desire to do this research on close proximity specifically in Perak.

CHAPTER 2

CHAPTER 2

CLOSE PROXIMITY AND ITS ENFORCEMENT IN THE STATE OF PERAK

2.1. The Background of Jabatan Agama Islam Perak (JAIPk)

2.1.1. The Establishment of Jabatan Agama Islam Perak (JAIPk)⁶

On 10th August 1984, there was a meeting held among the Muslims' scholar from every part of Perak produced a resolution of the importance of "Majlis Agama Islam" in Perak and the peninsular of Malaysia. The administration of Islamic religion was started and known as "Balai Syarak" venue at Kuala Kangsar.

On 2nd August 1949, "Jabatan Hal Ehwal Agama Islam Perak" was formed and after that on 23rd October 1949, "Majlis Agama Islam and Adat Istiadat Melayu Perak" was formed in order to advise the Ruler on Islamic and Malay custom matter as contained in "Undang-Undang Tubuh Kerajaan Negeri". This rule passed on 1st May 1952.

According to rules enactment under section 4 (1) of Administration of Islamic Law Enactment (Perak) 1982: There should be a body known as the "Majlis Agama Islam dan Adat Istiadat Melayu Perak" to aid and advise Duli Yang Maha Mulia Sultan in matters relating to the religion of Islam.

Jabatan Agama Islam Perak (JAIPk) currently situated in 3rd floor, Kompleks Islam Perak, Jalan Panglima Bukit Gantang Wahab, 30000, Ipoh, Perak.

2.1.2. Vision of Jabatan Agama Islam Perak (JAIPk)

⁶ <http://www.jaip.com>

“Jabatan Agama Islam Perak Peneraju Kegemilangan Ummah”

2.1.3. Mission of Jabatan Agama Islam Perak (JAIPk)

“To establish Islamic services to the society in Perak through education, cultural and control”

2.1.4. The Roles of Jabatan Agama Islam Perak (JAIPk)

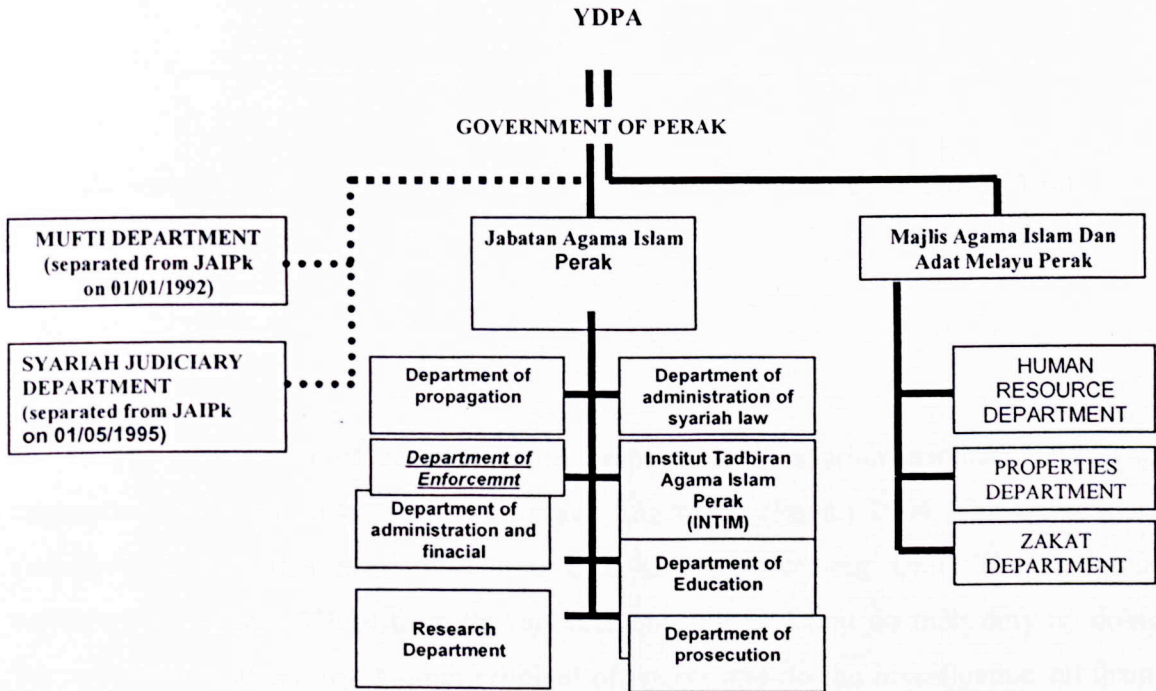
Jabatan agama Islam Perak (JAIPk) was established with its own vision and mission to ensure it can exercise its role systematically and successfully. The main role of JAIPk is to manage Islamic matters involving Muslims in Perak. Other roles of this organization include to rank Islamic religion in first place.

2.1.5. The Administration System of Jabatan Agama Islam Perak (JAIPk)

Jabatan Agama Islam Perak comprised eight departments that are department of propagation, enforcement, administration and financial, research, administration of syariah law, “Institut tadbiran Agama Islam Perak (INTIM) education and prosecution. Before this, there are two more departments under JAIPk that are Syariah judiciary department and mufti department. On 1st January 1999, Mufti department was separated from JAIP and on 1st Mei 1995, the Department of Syariah judiciary separated from JAIP. This entire department situated in the same building sharing with Majlis Agama Islam and Adat Istiadat Melayu Perak. The chart below shows the organization flow in JAIPk:

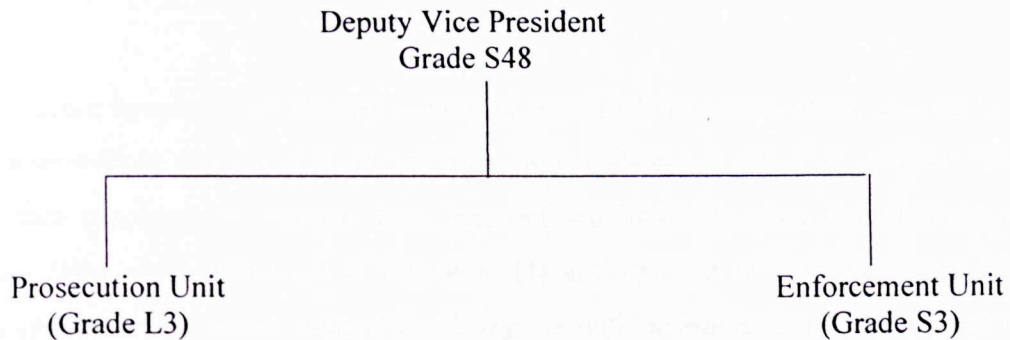
2.1.6. Organization Chart⁷

INSTITUTION OF ISLAMIC RELIGION IN PERAK



⁷ *ibid*

DEPARTMENT OF SHARIAH LAW ENFORCEMENT



The department of enforcement is responsible in syariah criminal field. This department is bound under Syariah Criminal Enactment (Perak) 2004. The Department consist tow units that are Prosecution Unit and Enforcement Unit. The Religious Enforcement Officer (REO) from the enforcement unit will first do their duty by doing the operation to arrest any syariah criminal offenders and do the investigation on them. The second unit that is prosecution willll then brings the case to court and proved to court whether there is Prima Facie case so that the court will make its own finding to either charger or acquit the accused. In the other words, there are three outputs of this department in executing their responsibility which are process of arresting, investigation process and finally prosecution process.

2.2. Close Proximity

2.2.1. Definition

Close proximity or *khalwat* means an action where a man or more, seats together with a woman or more which do not have any relation according to *Hukum Syara'* in place that can leads to slander. It is best defined in the Syariah Criminal Enactment (Perak) 2004 which provided in section54 (1) and (2) that is “*any man who is found together with one or more women, not being his wife or mahram; or any woman who is found together with one or more men, not being her husband or mahram, in any secluded place or in a house or room under circumstances which may give rise to suspicious that they were engaged in immoral acts*”. *Khalwat* in arabic language bring another meaning that is an action to be alone in a place and do worship to Allah like what Prophet Muhammad PBUH did at *Hira'* cave before he got the first divine from God. The word *Khalwat* that define as close proximity is in Malay language.

2.2.2. Authorities

Al-Quran

((ولا تقربوا الزنى. إنه كان فحشة وساء سبيلا))

“*And come not near to the unlawful sexual intercourse, verily it is a fahishah [i.e anything that transgresses its limits (a great sin)], and an evil way (that’s leads one to Hell unless Allah forgive him)*”⁸

⁸ Al-Quran. Al-Isra’ 17:31

((قل للمؤمنين يغضوا من أبصرهم ويحفظوا فروجهم. ذلك أزكى لهم. إن الله خبير

بما يصنعون))⁹

“Tell the believing men to lower their gaze and be modest. That is purer for them Lo! Allah is aware of what they do.”

Hadith

a) ((يكره للمرأة أن تخلو مع الرجل ليس بينه وبينها حرمة))¹⁰

“Rasullah PBUH also says in this hadith that khalwat or close proximity is prohibited in islam unless the women bring her mahram to accompanied her”.

b)

حدثني محمد بن بشار حدثنا غندر حدثنا شعبة عن محمد بن زياد عن أبي هريرة رضي الله عنه عن النبي صلى الله عليه وسلم أو قال أبو القاسم صلى الله عليه وسلم لو أن الأنصار سلكوا واديا أو شعبا لسلكت في وادي الأنصار ولولا الهجرة لكنت امرأ من

الأنصار فقال أبو هريرة ما ظلمبأي وأمي آووه ونصروه أو كلمة أخرى¹¹

“Do not enter to women’s place. Then somebody that is Ansar asked: “Oo Prophet, what is your opinion of brother/ sister in law?” The Prophet answered:” brother/ sister in law is death”.

⁹ Al-Quran. An-Nur 24:29

¹⁰ Muatta’ malik, al-jami’

¹¹ Bukhari. (Internet). *Sahih Bukhari* .<http://hadith.al-islam.com/Display/Display.asp?Doc=0&ID=7666>

- c) “Those who believe Allah and hereafter day, Do not be alone with woman which do not has her mahram, because there will be the third party which is evil”¹²

2.3. The Legal Ruling of Close Proximity

2.3.1. Close Proximity according to Islamic Law

Love between man and woman who is not being husband and wife in any kind of situation is not allowed in Islam. The reason is because this kind of relationship involves lust that finally will leads to immoral act. There are loves that allow in Islam that are:¹³

- loves of slave (*makhluk*) to Allah S.W.T
- loves of society (*ummat*) to Prophet PBUH
- loves of student to their teacher
- loves of society to the leaders
- loves of wife to her husband
- Loves of children to their parents

In Surah An-Nur, 24:29, the literal meaning of the word “*alqhaddu*” is gaze, heading down. Conceptually, it means a person must not look at something that is not *halal* to him. He must look down or look at other side. However, if someone look at that thing accidentally or if there is an emergency case such as in medical or a man who want to marry a woman that he never seen before, it is not count but he is not allow to look with lust and keep looking at the same thing even though the first look is coincident. There are some *hadith* from the Prophet that talked about looking at non *mahram*:

¹² At-thabrany

¹³ Ustaz Abdul Salim. 1997. *Menjawab Masalah Anda*. Kuala Lumpur. Era Ilu Sdn. Bhd. Volume 2. 271

حدثنا وكيع حدثنا الأعمش عن عمارة بن عمير عن عبد الرحمن بن يزيد عن
عبد الله قال : قال لنا رسول الله صلى الله عليه وسلم يا معشر الشباب من استطاع منكم
الباءة فليتزوج فإنه أغض للبصر وأحصن للفرج ومن لم يستطع فعليه بالصوم فإنه له

وجاء¹⁴

Narrated by Waki'. The prophet said to us "O youth, who are able to get marry, marry then, and he must take care of his eyes and his dignity and who are not able to do that, he must fasting."

Narrated by Jarir bin Abdillah: "I asked Rasulullah about unintentional look, and then the prophet asked me to redirect the look¹⁵.

The main reason of prohibition of looking between man and woman who is not mahram is to prevent ones to look at other person's 'aurat. There are also a lot of *hadith* that prohibit muslims to look at other person's 'aurat. There is a *hadith* from Prophet PBUH about the prohibition:

حدثنا محمد بن يحيى حدثنا عبد الله بن رجاء أنبأنا عكرمة بن عمار عن يحيى بن أبي
كثير عن هلال بن عياض عن أبي سعيد الخدري أن رسول الله صلى الله عليه وسلم قال
لا يتناجى اثنان على غائطهما ينظر كل واحد منهما إلى عورة صاحبه ...

From the two action prohibited in Islam, we can see how Islam gives serious attention to the relationship between a man and woman to prevent any immoral act. Even

¹⁴ Ahmad. *Musnad Ahmad* (Internet).<http://hadith.al-islam.com/Display/Display.asp?Doc=6&ID=36401>

¹⁵ Dr. Abdullah Azzam. 1994. *Larangan Khalwat*. Kuala Lumpur. Penerbitan al-Kautsar. 9-25

these two actions are not allowing in Islam, what is more such as close proximity. In Surah An-Nur, Allah says:

((وتوبوا إلى الله جميعا أية المؤمنون لعلكم تفلحون))

“..and turn unto Allah together, O believers, in order that ye may succeed”¹⁶

This verse commands us to “taubah” from all sins that we’ve done. After the descend of this verse, the prophet PBUH had command five things that are¹⁷:

- i) The Prophet PBUH prohibit a man doing close proximity with a woman without her *mahram* because there will be the third party that is an evil.
- ii) The prophet prohibits a man touch a woman who is not being his *mahram* including in *Bai’at*.
- iii) The Prophet PBUH prohibits man date a woman who is not being his wife.
- iv) The Prophet PBUH prohibits mixture between man and woman in a place.
- v) The Prophet PBUH only allow woman to wear perfume and beauty for necessary and with good intention.

Adultery is forbidden and it is sin. When it comes to something that is prohibited or *haram*, therefore, any actions that leads to it is also prohibited. Close proximity is one of the actions that may leads to adultery; therefore it is prohibited in Islam. The main authority that forbid this action is a verse from surah Al-Isra’ 17:31.

Nowadays, there are so many problems occurred regarding to immoral acts and it is involved Muslims. The issue is broadcast anywhere in media either mass media or electronic media. The actions are done by Muslims whether the teenagers or adults. This phenomena leads to so many question about what exactly the *hukum* of those acts. There

¹⁶ Al-Quran. An-Nur 24:30

¹⁷ Dr. Abdullah Azzam. 1994. *Larangan Khalwat*.48-57

are question occurred to determine whether such situation are *Khalwat* or not and what is the *hukum* of this actions. The situations are as follow:

- a) Talking to a person who is not being his/her *mahram* through the phone or internet on unnecessary topic. The intention is just for fun. The *Hukm* of this act is *Haram* by holding to the *qawa'id usuliyyah* that is *saddul az-zara'i* because in the beginning, talking through the phone is permissible in Islam, but this situation will leads to something forbidden, for example talking about something vulgar or the conversation will leads to a date between that to person and they might be involve in Close Proximity. There is also a method from *qawa'id Fiqhiyyah* which is under the method of "something that leads to haram is *haram*".¹⁸
- b) A taxi driver who drove a woman to the destination that she want. If we look at *hadith* from the Prophet which prohibits a man to be alone with a woman who is not being his wife except with *mahram*. But in this case, it is referred to the *maslahah*. The ulama' use *Qawaid Fiqhiyyah* under the method :

"مشقة تجلب التيسير". It means this act is permissible.¹⁹

In each Allah's command, there must be the reason why it is permitted or not. Sometimes we can find that reason but sometimes not. In the case of prohibition of *Khalwat* or in general, in the case of immoral acts, there are the reasons that we can think of. The reasons are as followed²⁰:

- i. Immoral act caused distance between creatures and Allah.

¹⁸ <http://darulnuman.com>

¹⁹ Syeikh Abdul Aziz bin Abdullah bin Baz. 1991. *Serangan Terhadap Pemikiran Islam & Soal Jawab Agama*. Kuala Lumpur. Pustaka Al-Mizan. 47

²⁰ Mohd Asrof Jalaluddin. 1996. *Pengaruh & Bahaya Maksiat*. Johor Bharu. Perniagaan Jahabersa. 1-47

When there is a distance between the creatures and the Creator, it is all because of sins made by the creature. Allah will keep distance to His creatures that disobey Him. However, the barrier to close to Allah can be overcome by refrain from wrong doing.

- ii. Sins hinder reward (الرزق) from Allah S.W.T

Narrated by Imam Ahmad :

إن العبد ليحرم الرزق بالذنب يصيبه

“A man is hindered from getting Ar-rizqu because of the sin that he did”

If faith or *taqwa* is the reason of getting the reward from Allah, it means by leave it; man will be rewarded poorness by Allah. Only by leaving all the sins, man will get good reward from Allah.

- iii. Sins darken the heart.

The person who does sins will always in the dark. Only faith may lighten the heart.

Narrated by Ibnu Abbas r.a, Rasulullah PBUH says:

“A good Act will lighten the face and heart, easy to get Ar-rizqu, strengthens the body and love. Compare to sins, it will makes the face look sad, darken the grave and heart, weaken the body and it will be hard to get the Rizqu, and the person who do it will be hate by people”

- iv. Sins will disappeared it wickedness

When the wickedness of the sins disappeared, it will become usual things to the society and people will make the sins without feeling anything. Furthermore, they will tell what they did to others without feeling ashamed of it. The impact of this, the way to the right path is closed from them. The Prophet PBUH says:

كل أمي معافي إلا المهاجرون وإن من الإجهار: أن يستر الله على العبد ثم يصح يفضح

نفسه ويقول: يا فلان عملت يوم كذا وكذا فيهتك نفسه وقد بات يستره ربه.²¹

“Each of my man is forgiven except who is showing of his wrong doing. Apart of those sins is a man, who tells his sins to others proudly, while Allah had closed it. He says “ oo brother, last day I had done ..this and that..” it’s actually decrease his dignity, while Allah has already close it.”

2.3.2. Close Proximity according to Malaysian Law

a) A review of the Law of Khalwat or Close Proximity.²²

The offence of Khalwat requires at least a participation of two persons of the opposite sex. If both the participants are of Islamic religion, both are guilty of the offence. If one participant only is a Muslim and other is not, the Muslim participant is guilty of the offence under State law whilst the non-Muslim participant whatever may be the sex is not guilty under this law. However, there is an issue whether the non-Muslim participant can be guilty as an abettor.

The law before Independent, in *Re Bar than Kunju*²³ the non-Muslim accused was convicted by the Magistrate’s Court for abetting the offence of Close Proximity under section 197 of the Kelantan Enactment 1953. The conviction was quashed on revision by the judge on the ground that there was no evidence to show that the female partner, though admittedly a Malay, was a Muslim and that the charge was wrong and meaningless. Whilst it was undoubtedly correct that the learned judge quashed the conviction, the reason given by him is irrelevant. The real reason which he should have

²¹ Hadith. Bukhari. *Fathul Bari*. 10/486

²² Hashim bin Mehat. *Malaysian Law&Islamic Law on Sentencing*. Kuala Lumpur. *International Law Book Services* 146-151

²³ Kota Bharu Criminal Revision No.6 of 1962& M.L.J (1963)xv.

offered as the ground of quashing the conviction should have been the unconstitutionality of section 197 of the Enactment. This section reads as follows:

“197. any person not professing Islamic religion who abets any person who to his knowledge professes the Islamic religion in the commission of any offence against this Enactment, other than an offence against sections 172,173and 178 thereof, shall be guilty of an offence triable by a Magistrate’s Court and shall be punished in accordance with the provisions of Chapter V of the Penal Code”.

The Enactment of which this section formed part was passed in 1953 at a time when the country was governed under the Federation of Malaya Agreement 1948. Under the Agreement, the legislative competence of the Federal Legislative Council was limited to matters expressed in the second Schedule to the Agreement, whilst the State Legislature had the residuary powers. Regarding powers to create offence, the Federal Legislative Council had competence to create “offences against laws with respect to any of the matters”, contained in the Schedule. Since matters pertaining to Muslim Law were not included, the creation of offences under Muslim law belonged to the competence of the State Legislature which alone could make such law. There was nothing therefore in the Federation Agreement which would make section 197 of the Kelantan Enactment to be *ultra vires* the Agreement. It was then a perfectly good law.

After Independent, when the Federation of Malaya Agreement was replaced by the present Constitution in 1957, the whole picture changed completely. According to the Second List of the Ninth Schedule to the Federal Constitution, State Legislative Assemblies, among other things, have powers for the

“Creation and punishment of offences by persons professing the Muslim religion against precepts of that religion”.

This phrase undoubtedly restricts the legislative competence of the State Legislative Assemblies in that:

- i. The offence which they can create are those against the precepts of the Muslim religion; and
- ii. Even then, only Muslims can be made liable to punishment under state laws for committing these offences.

Any state law which purports to make a non –Muslim liable for offences against the precepts of the Islamic religion will therefore be *ultra vires* the Constitution and such null and void. This was the real issue in Kunju’s case which somehow escaped the attention of the learned judge. Since the decision in Kunju’s case in 1962 there has not been any prosecution against non-Muslim for abetting the offence of *Khalwat*. Further, Kelantan Enactment 1953 was repealed and replaced by two separate Enactments-Enactment No. 1 of 1966²⁴ and Enactment No.1 of 1966.²⁵

Khalwat or Close Proximity is an offence under Syariah Criminal Enactment in every state. The term used in the section is quit same but when it comes to the definition of the section, there are some States interpret it in different ways. In the beginning, when law of *Khalwat* or Close Proximity first gazetteer, it was defined as a man and a woman who is not being husband and wife who are found together. However, the law which enforced lately, the interpretation of *khalwat* change by including the situation where either a person or more man and woman which are caught in the same situation²⁶. The term of “*syak*” in the section also give different interpretation. In Perak, the word *syak* means, anything or any situation that makes one will think about something bad. There are actions which have the element of *syak* such as:

- i. A man and a woman who is not *mahram* found in secluded place.
- ii. A man or a woman who are found in secluded place does not close him/her *aurat*.
- iii. A man or a woman who are found in secluded place at the time the couple are doing any action that seems to be immoral act.

²⁴ Syariah Courts and Muslim Matrimonial Causes Enactment 1966.

²⁵ Kelantan Council of Religion and Malay Customs Enactment 1966.

²⁶ Mahmood Zuhdi Ab. Majid. 2001 *Bidang Kuasa Jenayah Mahkamah Syariah di Malaysia*. Selangor Darul Ehsan. Percetakan Dewan Bahasa dan Pustaka

iv. The information itself also has the element of *syak*.

b) Cases of Khalwat In Malaysia

i. *Public Prosecutor of Negeri Sembilan v Ahmad Rashid & Anor*²⁷

This is an appeal case by Public Prosecutor. Both accused have been discharged by the learned judge in High Court. The fact of the case is both have been caught alone in a house at 4pm. However, during the trial, there were contradictions of evidence by the witnesses of prosecutor. Besides, there was no evidence clarified the existence of suspicious situation showing that they were doing close proximity in that house. Therefore, the learned judge discharged both. In the Appeal Court, the judge, Ahmad Ibrahim HR held that the prosecution failed to give enough evidence to prove that they convict close proximity. Therefore, the court held the declination of the appeal.

ii. *Public Prosecutor v Mahadi & Noridah*²⁸

In this case, the accused was caught in a house alone at 12.30pm. They were caught in the situation that gave rise to suspicious that they were kissing. The prosecution had brought witnesses to prove that the accused are alone in that house. The court held, the prosecution failed to prove the case is *Prima Facie* case. Therefore, both accused were discharged.

²⁷ *Public prosecutor of Negeri Sembilan v Ahmad Rashid & Anor*. 2004. CLJ (sya) 209

²⁸ *Public Prosecutor v Mahadi & Noridah*. Jun 1998. 7 JH

iii. *Abdul Wahab v Deputy Public Prosecutor of Selangor Syariah Court.*²⁹

In this case, the accused were caught in a car at 2 am. The accused made a confession of his guilty and he was charged imprisonment for thirty days. He then made an appeal to decrease the punishment and the court then held, the punishment was a fine RM300 or one month imprisonment.

²⁹ *Abdul Wahab v Deputy Public Prosecutor of Selangor Syariah Court.* 1982. Jilid 22 Bhg 2. JH 281

2.4. Conclusion

In this chapter, the writer explained about the historical background, mission and vision, functions of Jabatan Agama Islam Perak (JAIPk) to clarify the information of this organization before the writer discuss further about close proximity. Then, the writer defined close proximity conceptually and with authorities from *Al-Quran* and *Hadith*. The writer then, divided the *Hukum* of close proximity into two parts; in Islamic Law and Malaysian Law to make the reader understand that this topic can be viewed in many aspects. First, in Islam, the *Hukum* already exists and it is clear that close proximity is prohibited. Same with in our country, where close proximity is an offence that can be charge to fine not exceeding three thousand *Ringgit* and to imprisonment to a term not exceeding two years. However, there are still so many things to discuss about this offence related to the various cases happened in Malaysia. The explanations about cases will be discussed in the next chapter.

CHAPTER 3

CHAPTER 3

CASE STUDY OF CLOSE PROXIMITY CASES IN THE STATE OF PERAK

3.1. A Case Study on Close Proximity

Muslims are prohibited from spying on each other or openly disclosing sins. Therefore in the methodology used by the Religious Enforcement Officer in handling close proximity offence, it is done with tactful approach. The enforcement officers must first verify a complaint about an alleged close proximity case. Raids should not be conducted based on rumors but on guidelines where officers must write down the complaint, investigate and seek a court order before raiding premises, homes and hotel rooms. During the operation, the enforcement officers shall not bring reporter or any person who does not has authority of enforcement because it will embarrass the person caught and again, it is against the legal ruling of Islam. When the person caught found in the situation which fulfill the elements of close proximity, they will be brought to the police station to makes a report and if they do not have anyone to bail them, they have to spend the night at the police station and the next day they will be brought to the enforcement office and will be asked to get anyone to bail them. If still there is nobody can bail, the enforcement officer will contact the court to ask whether the court may mention the case that day. The court then plays its role by mention the case and gives a date to do a trial. The procedure done with the same methodology by the REO in any case of close proximity without any exceptions and biasness.

3.1.1. Statistics³⁰

In the Department of Enforcement in Jabatan Agama Islam Perak, there are three separated units that are operation units, data units and file units. In data units the staffs are responsible in making data such as statistics that combine all cases reported in every district of Perak. These statistics is important to prove the real total of those cases and to make all parties realize to what extend the increase of syariah criminal cases happened in the state.

The chart below shows the total amount of Close proximity cases in Perak is increasing by years. In 2005 the cases reported are 467, whereas in 2006 the total is increasing to 1261 cases. The gap is obvious showing that the problem is become worst time to time.

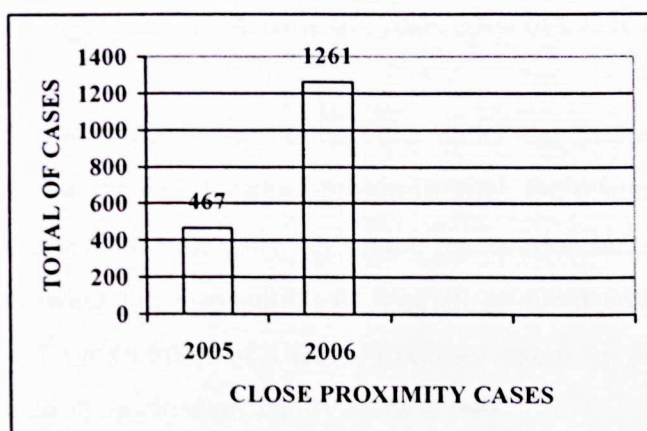


Figure 1: Statistic of Close Proximity Cases in 2005-2006

³⁰ 2006. Department of Enforcement (JAIPk). *Statistics*.