

**SCHIZOPHRENIA AS A DEFENSE IN CRIME: A COMPARATIVE STUDY
BETWEEN ISLAMIC LAW AND MALAYSIAN LAW**

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

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

In The Name of Allah, Most Gracious and Most Merciful

الحمد لله رب العالمين والصلاة والسلام على أشرف الأنبياء والمرسلين وعلى آله وصحبه
أجمعين. أما بعد..

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In particular my thanks are to my parents, my father Ramli Bin Seman and my lovely mother Siti Aisyah Binti Ismail who persuaded me to learn and always emphasized the importance of education as means achieving a happy life (May Allah bless her soul and award her paradise). Praise be to Allah Almighty, when my siblings (Nurul Khairiah, Nurul Huda, Nurul Jamiah, Norhafzan, and Mohd Hasanuddin) come to my life and gives me a moral support to complete it. I should also like to express my thanks to my friend, Nurul Habibah for her support and ever willingness to help me with her expertise.

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May Allah help us all to work together for His sake.

ABSTRAK

Kesihatan Mental adalah merujuk kepada masalah yang berkaitan dengan kejiwaan dan kerohanian. Jiwa yang kosong dan bekecamuk dengan kehidupan yang mencabar dan tanpa keimanan yang teguh akan menjerumuskan seseorang individu terdedah kepada penyakit mental atau penyakit rohani. Menurut kajian ini juga, penulis menyatakan bahawa pembelaan keatas pesakit schizoprenia dalam perkara yang melibatkan kes jenayah, adalah seseorang itu mengalami gangguan mental dan tidak bertanggungjawab atas jenayah yang dilakukannya pada masa itu. Seseorang pesakit schizoprenia, mereka tidak mampu untuk menghargai sifat dan kualiti, atau kesalahan yang menyalahi undang-undang. Kajian ini bertujuan untuk melindungi dan membela pesakit schizoprenia dan penglibatannya dalam kes jenayah dengan berdasarkan bukti-bukti kukuh dan jelas. Untuk menghasilkan kajian ini, penulis telah menggunakan kaedah kajian perpustakaan untuk mendapatkan maklumat yang berhubung kait dengan pembelaan di dalam Undang-undang Syariah dan Undang-Undang Malaysia. Hasil kajian telah menunjukkan bahawa perbuatan salah laku seseorang pesakit schizoprenia dalam perkara yang melibatkan kes jenayah, mereka terlepas daripada mendapat hukuman setelah dibuktikan walaupun perbuatan itu menyalahi bidang perundangan dan haram disisi Agama Islam.

ABSTRACT

Mental Health refers to the problem of physiological and spiritual. The emptiness of soul and furious with the challenges of life and without a strong devout to Allah will make an individual suffer the mental and physical illness. The researcher stated that, defense of schizophrenia and is not responsible for criminal conduct if, at the time of such conduct, as a result of a severe mental disease or defect, he was unable to appreciate the nature and quality or the wrongfulness of his act. This is because willful intent is an essential; part of most offences that is insane is not capable of forming such intent. The study sought to defense of schizophrenia in crime cases, with the based on Mental disease or defect does not defense of schizophrenia by clear and convincing evidence. To gather the data, the writer used the method of Library research. The researcher found that the punishment will not impose to the insanity even their action was forbidden in Islam.

ملخص البحث

الصحة العقلية متعلقة بالمسائل الروحانية والنفسية. هناك أسباب تؤدي إلى الأمراض العقلية والروحانية منها النفس الفارغة وضعف الأمراض، خاصة في الحياة المتحدية الآن. وقد استنتجت الباحثة أن مسألة حماية المجنين هي اوقات جنونهم وهم لا قدرة لمعرفة وتمييز اعمالهم. والمنهج المتبع في هذا البحث، هو عملية المجنين في مسائل القتل بقيادة الدليل الصحيح. واعتمدت الباحثة على المنهج المقارن، وذلك حماية المجنين في الشريعة الإسلامية والقانون الوضعي. والنتيجة من هذا البحث وجدت الباحثة أن المجانين يعتقدون عن العقوبة ولو كانت تلك الأفعال مخالفة بالشريعة الإسلامية.

CONTENT OF PAGES

CONTENT	PAGE
AUTHOR DECLARATION	i
ACKNOWLEDGEMENT	ii
ABSTRAK	iii
ABSTRACT	iv
<i>MULLAKHAHAS AL-BAHTH</i>	v
CONTENT OF PAGES	vi
LIST OF CASES	vii
LIST OF STATUES	ix
ABREVIATION	x
GLOSSARY	xi
CHAPTER 1	
INTRODUCTION	
1.1 Background of Research	1
1.2 Aim of Research	2
1.3 Objectives of Research	3
1.4 Question of Research	3
1.5 Scope of Research	3
1.6 Research Methodology	3
1.7 Literature Review	4
CHAPTER 2	
SCHIZOPHRENIA	
2.1 Definition of Schizophrenia	9
2.2 Schizophrenia's Symptom	11
2.3 Types of Schizophrenia	13
2.4 Schizophrenia Causes	14
CHAPTER 3	
SCHIZOPHRENIA AS A DEFENCE UNDER ISLAMIC LAW	
3.1 The Concept of Crime and its Classification in Islam	
3.1.1 Definition of <i>jarimah</i>	16
3.1.2 Crime's classification in Islam	
3.1.2.1 Crime punishable by fixed punishment	19
3.1.2.2 Crime punishable by retaliation or blood money	19
3.1.2.3 Crime punishable by <i>ta'zir</i>	19
3.2 Dalil from Al-Quran and As-Sunnah That Related To Insanity	20
3.3 Insanity as a Defense in Crime in Islam	

3.3.1 Injunction Relating to Insanity	22
3.3.2 Injunction Relating to Insanity Developed Simultaneously With the Commitment of Offence	22
3.3.3 Limitations of Insane Person's Civil Accountability	22
3.3.4 Injunction Relating to Insanity Developed After Commission of Offence	23

CHAPTER 4

SCHIZOPHRENIA AS A DEFENSE UNDER MALAYSIAN LAW

4.1 The Law which are related to Schizophrenia	
4.1.1 Penal Code	28
4.1.2 Evidence Act 1950	31
4.1.3 Mental Health Act 2001	32
4.1.4 Criminal Procedure Code	36
4.2 The Reported Cases which are related to Schizophrenia	37
4.3 Schizophrenia as a Defense under Malaysian Law	
4.3.1 Insanity before Trial	48
4.3.2 Insanity at the Trial	51
4.3.3 Insanity at the Time of Crime	52

CHAPTER 5

ANALYSIS SCHIZOPHRENIA AS A DEFENSE IN CRIME BETWEEN ISLAMIC LAW AND MALAYSIAN LAW

5.1 Defense of Insanity under Syariah Law Perspective	55
5.2 Defense of Insanity under Civil Law Perspective	57
5.3 Conclusion	59

BIBLIOGRAPY	61
--------------------	----

APPENDIXS	64
------------------	----

LIST OF CASES	PAGE
Azro v PP (1962) MLJ 321	37
Boh Toke v PP (1970) 1 MLJ 70	38
Chu Siew Kim, Straits Times, 1 November 1981	40
Hor Kai Guan, Woodbridge Hospital Records	45
Jusoh v PP (1963) MLJ 84	38
Kong Kun Lim, Woodbridge Hospital Records	46
KW, Straits Times, 19 September 1993	43
Ng Pit Heng, Straits Times, 10 December 1986	44
OCK, Woodbridge Hospital Records	44
Pariah Binti Sidek, Straits Times, 1 April 1988	40
Quek Tian Huat, Straits Times, 19 November 1982	41
Syed Aesa Aljuned, Straits Times, 1 November 1989	39
Tan Cheng Chuan, Woodbridge Hospital Records	47
TPH, Straits Times, 22 August 1981	45
Yeo Ah Seng v PP (1967) 1 MLJ 231	38
Yeo Cheng Wah, Woodbridge Hospital Records	42

LIST OF STATUES	PAGE
Criminal Procedure Code. (Act 593)	36-37
Evidence Act 1950	31-32
Mental Health Act 2001 (Act 615)	32-36
Penal Code (Act 574)	28-31

ABBREVIATIONS

AS	‘alayh al-salām
comp.	comiler/complied by
Def.	Definition
ed.	editor/edition/edited by
MLJ	Malaysian Law Journal
n.a	no author/no artist
narr.	narrated by
n.d	no date
n.pl	no place
n.pb.	no publisher
p.	page
pp.	pages
trans.	translator/translated by
RA	radiya Allāh ‘anhu/ ‘anhā/ ‘anhum
rev.	review/revision of
SAW	salla Allāh ‘alayh wa sallam
SWT	subhāna wa ta ‘ālā
vers.	version
vol	volume

GLOSSARY

Hadd	Fixed punishment without a minimum or maximum limit.
Hudud	Fixed punishment
Jarimah	Any deed that is detested.
Qisas	Retaliation
Schizophrenia	Mental disorder
Ta'zir	Discretionary punishment

CHAPTER 1

INTRODUCTION

1.1. BACKGROUND OF RESEARCH

Every time upon reading incidences such as suicidal jump from buildings or shooting innocent persons, it arise dissatisfaction as to what actually took the committal at such acts.

Such as the case of an ex-student of Technology University of Malaysia (UTM), Skudai, Johor, Saharunizam Omar, 23 years, rampaged and killed 4 peoples including his mother and seriously injured and 5 other peoples had in serious injured in Kampung Lubuk Kawah, Pasir Mas, Kelantan (6 October 2002, Berita Harian). And the other cased, Yusuf Senik, 32 years, who slaughtered and ate his father's heart in rampage in Kampung Mulong, Kota Bharu, Kelantan.

A friend who has undergone psychiatric treatment during one year told that he did not know what really happened, but every time reaching to his workplace it really pressed him and he hate each stay thing around him. He do not want to meet with anybody although his family members, sometimes he has the desire to end his.

There are also stories when the mother sees their young girl talk single-handedly. Became day child state it's became severe and sometimes tense lose one balance. The phenomenon above is part of the phenomenon of schizophrenia or mental disruption. Schizophrenia is not madness. It is not madness because madness is a cruel word, whereas schizophrenia patients only experience mental disorder which is actually curable.

Research shows people in treatment for a mental illness are no more violent or dangerous than anyone else and are most likely to be harmed by others or harm themselves. A schizophrenic is 2,000 times more likely to commit suicide than harm someone else.

Schizophrenia is a severe mental illness characterized by a disorder of thinking, perception, volition, affect and motor behavior and a fundamental disturbance of personality. It is a psychosis, or severe form of mental illness, accompanied by delusional beliefs and frequently by hallucinations, the only controversy from the forensic viewpoint is how severely ill the accused would have been at the time of the offence, whether so psychotic as to be of unsound mind or in a state of mind bordering on, though not amounting to, insanity.

The *insanity plea* is used in less than 1% of all the criminal cases. Only one fourth of those cases were successful and approximately 70% of those insanity acquittals were the result of from out of agreements made between the prosecution and defense prior to the hearing. All murder cases account for 35% of the insanity pleas and the concluded most of the defendants acquitted suffered from schizophrenia or some other major mental illnesses.

Because of that, this research will discuss about the Schizophrenia as a Defence in Crime: A Comparative Study between Islamic Law and Malaysian Law.

1.2. AIM OF RESEARCH

The aim of this research is to give knowledge to the society especially to Malaysian society about Schizophrenia as a defense because they do not actually have the clear exposure about the illness and usually consider it as insanity. The Malaysian society is only exposed to Schizophrenia as an illness but there is still no information and studies that explain future on the consequences and implications of this illness especially in terms of Malaysian and Islamic law.

1.3. OBJECTIVE OF RESEARCH

1. To clarify the meaning of schizophrenia in Islamic perspective, medical perspective and civil perspective.
2. To identify how far schizophrenia act as a defense in Islamic Law and Malaysian law.
3. To explain the procedure that are taken by the court for schizophrenia patient whether in the Islamic Law and Malaysian Law.
4. To identify which law have provision for insanity or schizophrenia.

1.4. QUESTIONS OF RESEARCH

1. What is Schizophrenia and how it affects a person?
2. How far schizophrenia can act as a defense in Malaysian Law?
3. How do we judge a person with Schizophrenia according to the Islamic law?

1.5. SCOPE OF RESEARCH

This research will focus on the interpretation of Schizophrenia and to what extent this mental illness will be a defense in crime cases. This research also will define any legal provisions that are related to Schizophrenia as a defense in law whether in the Islamic law or the Malaysian law.

1.6. RESEARCH METHODOLOGY

Various ways or methods are used by the writer in gaining information and solving this problem study, for example:

- a) Primary Data

This research will refer to the libraries of Islamic Science University of Malaysia, National Library of Malaysia, National University of Malaysia, International Islamic University of Malaysia and Civil and Syariah Court cases.

The purpose of the library research is to find the suitable and relevant book, journal or cases which related to this research. For example, the book that have discussed this topic such as '*A Short Textbook of Medical Jurisprudence and Toxicology with State Medicine and Autopsy Techniques*' written by CC Malik, '*Witnesses in Islamic Law of Evidence*' written by A. Muin A. Rahman, and many more.

b) Secondary Data

The Secondary data that will be used in this study are by interview some of the doctors and professional will be interviewed to gather their opinion and views on Schizophrenia, and via computer and internet to gather information through portal, website, e-mail and such.

1.7 LITERATURE REVIEW

Despite the observation and investigation, the writer has based his reading through internet, magazine, journal and books. However he still encounters a lot of problem by which there is still no exposure about schizophrenia as a defense in Malaysian law and in the Islamic law, but he also find a book or the sources that related to this research.

Such as, '*A Short Textbook of Medical Jurisprudence and Toxicology with State Medicine and Autopsy Techniques*' written by CC Malik. Where he define the term insanity as a 'psychiatric illness' which donates abnormal psychological states in which a patient's behavior or experience are quantitatively or qualitatively beyond the range of socially accepted behavior and experience and requirement. The writer also state others term that related to insanity such delusion, illusion, hallucination, obsession, delirium,

impulse, lucid interval, psychosis, neurosis, and neurasthenia. This book is related to this research because the writer stated that schizophrenia is one of classification of psychiatric disorder under psychoses. He also mentions the type of schizophrenia was divided into four groups, simple schizophrenia, hebephrenic schizophrenia, catatonic schizophrenia or catatonia, and paranoid schizophrenia. This entire four group will be more explain further at this research.

According to the book titled '*Witnesses in Islamic Law of Evidence*' written by A. Muin A. Rahman it explained that one of conditioned for receiving and giving testimony of witnesses is sanity (*'aqil*) otherwise his testimony is not acceptable. This condition has unanimously been agreed by all the Muslims jurists who based their opinion on the following Prophetic tradition, '*the pen has been raised from the juvenile until he reclines puberty, the sleeping person until he awakes and the lunatic until he recovers his mental faculty*'. Therefore, testimony from an intoxicated person is not accepted, because he is considered to be insane or lunatic. An insane person is someone who cannot distinguish between right and wrong. Testimony from child is not acceptable because they do not have ability to know and to understand the nature of event or the prime cause of a dispute. Having the ability to understand means being sane, thus their testimony can not be considered. Here, meaning to say that the accused must be sane to giving the testimony because the testimony will be invalid if they insane.

According to the book titled "*Criminal Law Of Malaysia and Singapore : Principle of Liability*" written by Molly Cheang, Schizophrenia is a severe mental illness characterized by a disorder of thinking, perception, volition, affect and motor behavior and a fundamental disturbance of personality. She also regards this illness as a severe form of mental illness accompanied by delusional belief and hallucination. However, the writer notices that she did not elaborate more on the cases that is related to the Islamic perspective.

On the other hand, it is stated In *Expert Evidence And Opinion Of Third Person (Medical And Non- Medical)* revised by Dr. Rajesh Gupta and Manzar Saeed stated that

Schizophrenia can act as a defense if there is an opinion of experts. The opinions of experts upon the question whether symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders person incapable of knowing the nature of the act which they do or of knowing that what they do is either wrong or contrary to law, are relevant. Nonetheless, it does not really clarify what kind of unsound mind that can be categorized as Schizophrenia.

The book '*Criminal Law of Islam*' Written by A. Q. Qudah Shaheed tells about group exempt than the punishment result crime made by them, between its like insanity and minority based in Islamic perspective. This book is related to this research because the writer explained about the insanity, where he states the definition of insanity as loss of understanding, mental disorder or enervation of understanding. He also states that schizophrenia is one of type of insanity. Here, when someone is insanity, he or she not is able to be charge because they not understand what they had done. The writer also mentioned about the injunction relating to insanity, injunction relating to insanity developed simultaneously with the commitment of offence, and injunction relating to insanity developed after commission of offence.

The other book that talks about insanity is '*Criminal Law*' written by J.C. Smith and Brian Hogan. In chapter 9 it mentions about the general defenses like insanity in the civil perspective. The writer divides the procedure among insanity into two. First, insanity before the trial like the case of *Podola* where that man is fit to plead where an hysterical amnesia prevents him from remembering events during the whole of the period material to the question whether he committed the crime alleged, bur whose mind is otherwise completely normal. The court was prepared to concede that a deaf mute is "insane". Second, insanity at the trial. The writer also mentioned that the M'Naghten Rules that formulated by the judges in 1843. He also explain about the disease of the mind, disease of the mind in combination with other factor, defect of reason, the nature and quality of his act, knowledge that the act is wrong, insane delusions, burden of proof, function of the jury and proposal of form.

According to the book on title of '*Defense of Insanity in Murder Cases: A Syariah and Civil Law Perspective*' written by Noraini Bt Ismail, the researcher stated that, defense of insanity in murder cases, it is a person is insane, and is nor responsible for criminal conduct if, at the time of such conduct, as a result of a serve mental disease or defect, he was unable to appreciate the nature and quality of the wrongfulness of his acts. This is because willful intent is an essential, part of most offences, and a person who is insane is not capable of forming such intent. The study sought to defense of insanity in murder cases, with the based on mental diseases or defect does not defense of insanity by clear and convincing evidence. The researcher found that the punishment will not impose the insanity even their actions were forbidden in Islam.

The book '*Mental Disorder and the Law*' written by Kok Lee Peng, Molly Cheang and Chee Kuan Tsee mention about the civil law which are be used in Malaysia and Singapore for the insanity. They also stated the cases whether from journal, news paper and so on which are related to mental disorder. The writers make a comparison of Singapore and Malaysian Mental Health Laws where the Singapore used Singapore Mental Disorders and Treatment Act 1985 and Malaysia used Mental Health Act 2001.

Article '*Skizofrenia Kerap Serang Orang Muda*' written by Norlaila Hamima Jamaluddin. The writer said schizophrenia considered between mental disorders an ordinary and estimated to involve one per cent of total population or 250,000 people. More shocking, it often overcome youth and many more man of experience schizophrenia at the age of 15 to 30 years compared woman. Writer is also sets out between cause happened schizophrenia between its caused genetic, unbalance brain chemistry called dopamine produced excessively to affect brain function. Writer also be proposed so family to give support to patient because it can help recovery process besides ensuring they taking medicine.

Based to the article '*Skizofrenia atau Gila*' written by Norashikin Md. Nor mention that the schizophrenia is not same with mad, because schizophrenia is chronic mental and one of serious mental disease. It will happen among society without count any

type of culture factor and its influence about 1 of 100 people for the whole of world. Schizophrenia also can damage ability someone to think clearly to manage their emotional, to make a decision and to communicate with other. The writer also mention about the schizophrenia symptoms, such through disturbance, presumption and to sensitive. She also divides the schizophrenia's symptoms into three, positive symptom, negative symptom and cognitive symptom.

CHAPTER 2

SCHIZOPHRENIA

2.1. DEFINITION OF SCHIZOPHRENIA

What is schizophrenia? According to Eugene Bleuler, the term *schizophrenia* is derived from the Greek words 'schizo' (split) and 'phren' (mind) with refer to the lack of interaction between thought processes and perception. Schizophrenia can also be classified as mental illnesses that occur do to insufficient amount of chemical in the brain.¹

Based the Oxford Dictionary of Law, defined that insanity as a defect of reason, arising from mental disease that is severe enough to prevent a defendant from knowing what he did [or what he did was wrong]. A person accused of a crime is presumed sane and therefore responsible for his act, but he can rebut this presumption and escape the conviction if he can prove that at that time of committing the crime he was insane. For purpose of this defense, insanity is defined by the McNaghten Rulers these were formulated by judge after the trial of Daniel McNaghten (1843) who killed the Prime Minister's secretary by mistake for the prime Minister, under the delusion that the government was persecuting him, and was acquitted on the ground of insanity. According to the rulers, the defendant must show that he is suffering from a defect of reason arising out of "a disease of mind ". This would usually include most psychoses, paranoia, and schizophrenia disease, but psychopaths and those suffering from neuroses or sub normality would not normally fall within the terms of the rulers. The defendant must also show that, as a result of the defect of reason, he either did not know the "nature and quality" of his act.²

¹ Dr. Rajesh Gupta & Manzar Saeed. 2005. *Expert Evidence and Opinion Of Third Person (Medical And Non- Medical)*. New Delhi: Delhi Law House. p. 566.

² Elizabeth A. Martin. 2003. *Oxford Dictionary of Law*. London: Oxford University Press. p. 254.

In Islamic perspective the jurist did not give specifically definition of schizophrenia, but they clarified it as insanity because schizophrenia is mental disorder and part of insanity. According *A. Q. Qudah Shaheed* define insanity in the light of above statement as a loss of understanding, mental disorder or enervation of understanding. This definition includes insanity, idiocy and other conditions in which the faculty of understanding is lost on account of illness or some psychological condition.³

Helpful definitions in understanding schizophrenia include the following:

- **Psychosis:** Psychosis is defined as being out of touch with reality. During this phase, one can experience delusions or prominent hallucinations. People with psychoses are not aware that what they are experiencing or some of the things that they believe are not real. Psychosis is a prominent feature of schizophrenia but is not unique to this illness.⁴
- **Schizoid:** This term is often used to describe a personality disorder characterized by almost complete lack of interest in social relationships and a restricted range of expression of emotions in interpersonal settings, making a person with this disorder appear cold and aloof.⁵
- **Schizotypal:** This term defines a more severe personality disorder characterized by acute discomfort with close relationships as well as disturbances of perception and bizarre behaviors, making people with schizophrenia seem odd and eccentric because of unusual mannerisms.⁶
- **Hallucinations:** A person with schizophrenia may have strong sensations of objects or events that are real only to him or her. These may be in the form of things that they believe strongly that they see, hear, smell, taste, or touch.

³ A. Q. Qudah Shaheed, 2001. *Criminal Law of Islam*. New Delhi: International Islamic Publisher. Vol.2. p. 313.

⁴ Marlene M. Maheca, 2005. *The Mental illness and the New Technologies a Handbook for Practice Today*. London: Lawrence Erlbaum Associates Publisher. p. 326.

⁵ Ibid. p. 326.

⁶ Ibid. p. 326.

Hallucinations have no outside source, and are sometimes described as "the person's mind playing tricks" on him or her.⁷

- Illusion: An illusion is a mistaken perception for which there is an actual external stimulus. For example, a visual illusion might be seeing a shadow and misinterpreting it as a person. The words "illusion" and "hallucination" are sometimes confused with each other.⁸
- Delusion: A person with a delusion has a strong belief about something despite evidence that the belief is false. For instance, a person may listen to a radio and believe the radio is giving a coded message about an impending extraterrestrial invasion. All of the other people who listen to the same radio program would hear, for example, a feature story about road repair work taking place in the area.⁹

2.2. SCHIZOPHRENIA SYMPTOMS

Usually with schizophrenia, the person's inner world and behavior change notably. Behavior changes might include the social withdrawal, depersonalization (intense anxiety and a feeling of being unreal), loss of appetite, loss of hygiene, delusions, hallucinations (e.g., hearing things not actually present), the sense of being controlled by outside forces.¹⁰

A person with schizophrenia may not have any outward appearance of being ill. In other cases, the illness may be more apparent, causing bizarre behaviors. For example, a person with schizophrenia may wear aluminum foil in the belief that it will stop one's thoughts from being broadcasted and protect against malicious waves entering the brain.¹¹

⁷ Marlene M. Maheca. 2005. *The Mental illness and the New Technologies a Handbook for Practice Today*. London: Lawrence Erlbaum Associates Publisher. p. 327.

⁸ Ibid. p. 327.

⁹ Ibid. p. 327.

¹⁰ Norlaila Hamima. 2006. *Skizofrenia Kerap Serang Orang Muda*. *Metro Ahad*. 2 April. p. 50

¹¹ Ibid. p.50.

People with schizophrenia vary widely in their behavior as they struggle with an illness beyond their control. In active stages, those affected may ramble in illogical sentences or react with uncontrolled anger or violence to a perceived threat. People with schizophrenia may also experience relatively passive phases of the illness in which they seem to lack personality, movement, and emotion (also called a flat affect). People with schizophrenia may alternate in these extremes. Their behavior may or may not be predictable.¹²

In order to better understand schizophrenia, the concept of clusters of symptoms is often used. Thus, people with schizophrenia can experience symptoms that may be grouped under the following categories:

- Positive symptoms - Hearing voices, suspiciousness, feeling under constant surveillance, delusions, or making up words without a meaning (neologisms).¹³
- Negative (or deficit) symptoms - Social withdrawal, difficulty in expressing emotions (in extreme cases called blunted affect), difficulty in taking care of themselves, inability to feel pleasure (These symptoms cause severe impairment and are often mistaken for laziness).¹⁴
- Cognitive symptoms - Difficulties attending to and processing of information, in understanding the environment, and in remembering simple tasks.¹⁵
- Affective (or mood) symptoms - Most notably depression, accounting for a very high rate of attempted suicide in people suffering from schizophrenia.¹⁶

¹² Norashikin Md. Nor. 2005. *Skizoprenia atau gila. I-Sihat*. Kuala Lumpur: Karangraf. Jun. p. 31

¹³ Jay C. Thomas Micheal Hersen. 2002. *Handbook of Mental Health in the Workplaces*. New Delhi: Sage Publication India Private. Ltd. p.250.

¹⁴ Ibid. p.250.

¹⁵ Ibid. p.251.

¹⁶ Ibid. p. 251.

2.3. TYPES OF SCHIZOPHRENIA

The types of schizophrenia are grouped under the following five categories:

- Paranoid-type schizophrenia is characterized by delusions and auditory hallucinations but relatively normal intellectual functioning and expression of affect. The delusions can often be about being persecuted unfairly or being some other person who is famous. People with paranoid-type schizophrenia can exhibit anger, aloofness, anxiety, and argumentativeness.¹⁷
- Disorganized-type schizophrenia is characterized by speech and behavior that are disorganized or difficult to understand, and flattening or inappropriate emotions. People with disorganized-type schizophrenia may laugh at the changing color of a traffic light or at something not closely related to what they are saying or doing. Their disorganized behavior may disrupt normal activities, such as showering, dressing, and preparing meals.¹⁸
- Catatonic-type schizophrenia is characterized by disturbances of movement. People with catatonic-type schizophrenia may keep themselves completely immobile or move all over the place. They may not say anything for hours, or they may repeat anything you say or do senselessly. Either way, the behavior is putting these people at high risk because it impairs their ability to take care of themselves.¹⁹
- Undifferentiated-type schizophrenia is characterized by some symptoms seen in all of the above types but not enough of any one of them to define it as another particular type of schizophrenia.²⁰
- Residual-type schizophrenia is characterized by a past history of at least one episode of schizophrenia, but the person currently has no positive symptoms

¹⁷ Heinz Katshnig et al. 2006. *Quality of Life in Mental Disorder*. England: John Wiley & sons. Ltd. p. 56.

¹⁸ Ibid. p. 57.

¹⁹ Ibid. p. 57.

²⁰ Ibid. p. 58.

(delusions, hallucinations, disorganized speech or behavior). It may represent a transition between a full-blown episode and complete remission, or it may continue for years without any further psychotic episodes.²¹

2.4. SCHIZOPHRENIA CAUSES

The causes of schizophrenia are not known. However, interplay of genetic, biological, environmental, and psychological factors are thought to be involved.

In biological models of schizophrenia, genetic (familial) predisposition, infectious agents, allergies, and disturbances in metabolism have all been investigated.²²

Schizophrenia is known to run in families. Thus, the risk of illness in an identical twin of a person with schizophrenia is 40-50%. A child of a parent suffering from schizophrenia has a 10% chance of developing the illness. The risk of schizophrenia in the general population is about 1%.²³

The current concept is that multiple genes are involved in the development of schizophrenia and those factors such as prenatal (intrauterine), prenatal, and nonspecific stressors are involved in creating a disposition or vulnerability to develop the illness. Neurotransmitters (chemicals allowing the communication between nerve cells) have also been implicated in the development of schizophrenia. The list of neurotransmitters under scrutiny is long, but special attention has been given to dopamine, serotonin, and glutamate.²⁴

²¹ Heinz Katshnig et al. 2006. *Quality of Life in Mental Disorder*. England: John Wiley & sons. Ltd. p. 58.

²² Norlaila Hamima. 2006. *Skizofrenia Kerap Serang Orang Muda*. *Metro Ahad*. 2 April. p. 51.

²³ *Ibid.* p. 51.

²⁴ *Ibid.* p. 51.

Also, recent studies have identified subtle changes in brain structure and function, indicating that, at least in part, schizophrenia could be a disorder of the development of the brain.²⁵

It is important for doctors to investigate all reasonable medical causes for any acute change in someone's mental health or behavior. Sometimes a medical condition that might be treated easily, if diagnosed, is responsible for symptoms that resemble those of schizophrenia.

²⁵ Norlaila Hamima. 2006. *Skizofrenia Kerap Serang Orang Muda*. *Metro Ahad*. 2 April. p. 51.

CHAPTER 3

SCHIZOPHRENIA AS A DEFENCE UNDER ISLAMIC LAW

3.1. CONCEPT & CLASSIFICATION OF CRIMES

3.1.1. Definition of *jarimah*

The Arabic word crime "*jarimah*" is derived from the root "*jarm*" which has two meanings: severance and profit. It seems that in the old days this word was used for a profit from a detested deed. Later it meant committing something wrong and sinful.²⁶

Therefore the word "*jarimah*" may be used for any deed contrary to right and justice. The word "*ijram*" and "*ajrama*" are derived from the same root. The first word means the very act of committing crime".²⁷

So the semantic origin of the Arabic word "*jarimah*" is any deed that is detested. Now as all the laws of Islam are approved by the legislator any disobedience to God's commandments is considered a crime. In other words, "crime" is a prohibited deed that could be punished if committed. A person refrains from getting in consistency with what God has decreed may be punished as committing a criminal act. However, this definition of crime is rather general for both this word and 'sin' and 'wrongdoing' imply the meaning i.e. disobedience God's commandments irrespective of the fact whether the punishment is meted out in this world or later after death. According to some jurists there is a further difference between crimes, sin and wrongdoing. Crime is punishable in this world by the legislator.²⁸

²⁶ Tahir Mahmood et al. 1996. *Criminal Law In Islam And The Muslim World A Comparative Perspective*. New Delhi: Qazi Publisher & Distributors. p. 52.

²⁷ Ibid. p. 52.

²⁸ Ibid. p. 52.

The well-known jurist, Abu Ya'ala, considered crimes as acts prohibited by God and punishable by fixed punishments [*hudud*] or discretionary [*ta'zir*] punishment. Fixed punishments, *hudud*, are divine punishment: a *hadd* is a fixed punishment without a minimum or maximum limit. God cannot tolerate shortfalls on the part of single individuals or groups of people. According to Islamic Legislation meting out punishment is one of God's prerogatives in order to protect humanity from evil and attain peace and security for them.²⁹

Discretionary punishment, *ta'zir* is the right punishment to be meted out for offences not punishable by fixed punishments [*hudud*] or retaliation [*Qisas*]. We have already mentioned that fixed punishments, *hudud* are God's prerogative. Instead, discretionary punishment, *ta'zir* is meted out by the state's competent authority. The word *ta'zir* originally meant the consolidation of social ties. It is derived from the word "azzara" meaning "to strengthen" or "to support"³⁰. "Ta'zir" in this sense is mentioned in the Al-Quran:

"لَنْ أَقْمِتُمْ الصَّلَاةَ وَآتَيْتُمُ الزَّكَاةَ وَآمَنْتُمْ بِرُسُلِي وَعَزَّرْتُمُوهُمْ وَأَقْرَضْتُمُ اللَّهَ قَرْضًا حَسَنًا لَأُكَفِّرَنَّ عَنْكُمْ سَيِّئَاتِكُمْ وَلَأُدْخِلَنَّكُمْ جَنَّاتٍ تَجْرِي مِنْ تَحْتِهَا الْأَنْهَارُ.." ³¹

Meaning: 'If you (but) establish regular prayers practice regular charity believe in Our apostles honor and support them and loan to God a beautiful loan verily We wipe out from you your evils, and admit you to gardens with rivers flowing beneath'.

It would be incorrect to think that *ta'zir* punishments were not expressly mentioned in the sources of Islamic legislation, for all such punishments are meted out to

²⁹ Tahir Mahmool et al. 1996. *Criminal Law In Islam And The Muslim World A Comparative Perspective*. New Delhi: Qazi Publisher & Distributors, p. 53.

³⁰ Ibid. p. 53.

³¹ Al-Quran. Al-Maidah 5: 12.

prevent evil deeds and foul practices as recommended in the Holy Qur'an and the prophetic teachings, *sunnah*.³² To quote the Al-Quran:

"و لا تعثوا في الأرض مفسدين"³³

Meaning: 'Nor do evil in the land working mischief'.

And the Holy Prophet has said:

"Do not do others any harm nor cause any harm to be done to others"

These punishments are left to the exclusive discretion of the ruler of the country. He enacts the law for such punishments as he deems appropriate. This is not inconsistent with the famous norm that there are no crimes or punishments without a law defining them. The penal code was basically enacted for unspecified crimes. Muslim jurist agree that *ta'zir* punishments are not meted out to other defined punishment. For example, theft is punishable with the amputation of the culprit's hand but offences connected with money are not punishable in the same way. Deformation is punishable with eighty lashes, cursing is not punishable in the same manner.³⁴ All this is in conformity with the principle mentioned in the Prophetic Hadith to the effect:

"He who transgresses the limits of punishment is himself an offender"

Hence, giving the right to the rulers to mete out *ta'zir* punishments does not conflict with the norm "no punishments without a law".

³² Tahir Mahmool et al. 1996. *Criminal Law In Islam And The Muslim World A Comparative Perspective*. New Delhi: Qazi Publisher & Distributors. p. 54.

³³ Al-Quran. As-Syura' 26: 183.

³⁴ Tahir Mahmool et al. 1996. *Criminal Law In Islam And The Muslim World A Comparative Perspective*. p. 54.

A crime originally meant violation of concerned interest as indicated in the Qur'an, Traditions, Analogy or Equity. According to the Islamic legislation concerned interest includes the protection of religion, life, intellect, offspring, and property. Therefore the offenses are classified into: offense against religion, life, intellect, offspring and property.³⁵

3.1.1. Crime's classifications in Islam

Crime is divided into three classifications as follow:

(1) Crimes punishable by fixed punishments.

Those crimes are punishable by "*hudud*" as revealed in the Holy Qur'an. The punishment cannot be modified or altered. It is God's prerogative not to tolerate shortfalls from man. These crimes are: apostasy, attempted *coup d'etat*, adultery, defamation, theft, highway robbery, alcohol-drinking.³⁶

(2) Crimes punishable by retaliations and/ blood money.

Such as assault and causing physically injuries. As the punishment for this crimes are laid down in the Qur'an by the Almighty Legislator they cannot be modified or altered. However the victims or his caretaker may pardon the offender. In this case the culprit has to pay blood money and liable to *ta'zir* punishments. These crimes are: premeditated offence against human life short of murder. The last two offences are offences that do not cause death, such as beating up a person and causing him injury.³⁷

(3) Crimes are punishable by *ta'zir*.

These crimes are not specially quoted in the Holy Qur'an or in the Prophet's Sunnah. However they are punishable because they represent acts of disobedience

³⁵ Tahir Mahmool et al. 1996. *Criminal Law In Islam And The Muslim World A Comparative Perspective*. New Delhi: Qazi Publisher & Distributors. p. 54.

³⁶ Ibid. p. 54.

³⁷ Ibid. p. 55.

to God's commandments and lead to wrongdoing. Though they are not specified, Islamic Legislative sources have mentioned some of them, such as usury, treason and cursing. In the interest of the community the competent authority may pardon the culprit from *ta'zir* punishments, provided that this act does not prejudice the individual victim's right. The victim may forgive the culprit as far as his own right is concerned without prejudicing the public rights exercised by the competent authority of the country.³⁸

3.2. DALIL FROM AL-QURAN AND AS-SUNNAH THAT RELATED TO INSANITY AS A DEFENSE.

As Allah command in the al-Quran³⁹:

"لا يكلف الله نفسا إلا وسعها ما كسبت وعليها ما اكتسبت ربنا لا يؤاخذنا إن نسينا أو أخطأنا ربنا ولا تحمل علينا إصرا كما حملته على الذين من قبلنا ربنا ولا تحملنا ما لا طاقة لنا به واعف عنا واغفر لنا وارحمنا أنت مولنا فانصرنا على القوم الكافرين"⁴⁰

Meaning: On no soul doth Allah Place a burden greater than it can bear. It gets every good that it earns, and it suffers every ill that it earns. (Pray:) "Our Lord! Condemn us not if we forget or fall into error; our Lord! Lay not on us a burden Like that which Thou didst lay on those before us; Our Lord! Lay not on us a burden greater than we have strength to bear. Blot out our sins, and grant us forgiveness. Have mercy on us. Thou art our Protector; Help us against those who stand against faith."

³⁸ Tahir Mahmood et al. 1996. *Criminal Law In Islam And The Muslim World A Comparative Perspective*. New Delhi: Qazi Publisher & Distributors. p. 55.

³⁹ Mohamed Hatta Shaharom. 2001. *Psikiatri Perubatan Undang-Undang dan Masyarakat*. Kuala Lumpur: Penerbit Fajar Bakti. p. 224.

⁴⁰ Al-Quran. Al-Baqarah 2:286.

The Holy Prophet has said⁴¹:

رفع القلم عن ثلاثة : عن الصبي حتى يبلغ، وعن النائم حتى يستيقظ، وعن المجنون حتى يفيق.

Meaning: “The pen has been raised from the juvenile until he reaches puberty, the sleeping person until he awakes and the lunatic until he recovers his mental faculties”.

And the Holy Prophet has said⁴²:

عندما أقر ماعز بالزنا : أجنون هو؟ قالوا : ليس به بأس. وروى أن النبي صلى الله عليه وسلم قال له حين أقر عنده : (أبك جنون ؟) وروى أبو داود بإسناده قال : (أتى عمر بمجنونة قد زنت فاستشار فيها أناسا فأمر بها عمر أن ترجم فمر بها علي بن أبي طالب رضي الله عنه فقال : ما شأن هذه ؟ قالو: مجنونة آل فلان زنت فأمر بها عمر ان ترجم، فقال أرجعوا بها ثم أتاه فقال يا أمير المؤمنين أما علمت أن القلم قد رفع عن ثلاثة ؟ عن المجنون حتى يبرأ ، وعن النائم حتى يستيقظ ، وعن الصبي حتى يحتلم. قال : بلى. قال : فما بال هذه ؟ قال : لا شيء. قال فأرسلها. قال : فجعل عمر يكبر)

⁴¹ Aurah, Abdul Qadier. 2001. *Al-Tasfi' al-Jina'i al-Islami Mukaranan Bil Qanun al-Wad'i*. Lubnan: Mu'asasat al-Risalah. p. 397

⁴² Yasin, Dr. Mohd Naim. 1973. *Al-Wajiz Fi al-Fiqh al-Jina'i al-Islami*. Umman: Darul Furqan. p. 110.

3.3. INSANITY AS A DEFENSE IN CRIME IN ISLAM.

3.3.1. Injunction relating to insanity:

The injunction relating to insanity varies with the time of the development of insanity. It depends on the question whether the state of insanity synchronizes with the time of commitment of adultery or whether the offender develops it subsequent to the commitment of the offence.⁴³

3.3.2. Injunction Relating to Insanity Develop Simultaneously with the Commitment of Offence:

If the development of insanity synchronizes with the commitment of crimes, punishment stands invalidated in-as-much as the understanding of the agent is suspended at the time of committing the offence. Insanity does not warrant a forbidden act but simply invalidates punishment. The entire jurist is in agreement on this point. The position of the modern laws in force is also identical with that of the Shariah.⁴⁴

3.3.3. Limitations of Insane Person's Civil Accountability:

The jurist agreed that a person of unsound mind is responsible for his actions i.e. he is accountable on civil grounds. That is why it is incumbent upon him to fully recompense the damage caused by his offence. Although this is an established principle, yet the jurist's difference on the question of the extent to which an insane person is accountable on civil grounds for the offences of homicide and infliction of injury. The difference of opinion on this point arises out of the difference between the kinds of offence committed by an insane person. Thus the three Imam Malik, Hanifa and Ahmed

⁴³ A. Q. Qudah Shaheed. 2001. *Criminal Law of Islam*. New Delhi: International Islamic Publisher. Vol.2, p. 321.

⁴⁴ Ibid. p. 321.

treat an offence willfully committed by him as a mistake inasmuch as an insane person cannot deliberately intend any act, and it so being the case his act can only be a mistake and not an intended offence. Imam Shafi'ee on the contrary, maintains that an intended offence of an insane person is nothing but willful offence. It can never be treated as a mistake but he may be exempted from punishment on grounds of his insanity. However, his insanity has no bearing on the nature of his act, because he commits it willfully although he does not properly understand what he does.⁴⁵

The difference in the nature of the insane person's offence would affect the compensation he has to pay for the damage caused by him, for the *diyat* for intentional offence is very heavy which has to be paid out of the personal assets of the agent. The *diyat* for mistakes is very light which is paid by the family members of the agent or he is helped by them to pay it. The same injunction is applicable in the case of offences comprising homicide and infliction of injury, as compensation for such offences is paid in the form of *diyat*. For this reason Imam Shafi'ee holds that the compensation should be paid out of the personal assets of one willfully guilty. The other Imams, on the other hand maintain that the family members of the insane person will be under the obligation to pay the compensation for any offence by him because he is treated by those Imams as one erroneously and not deliberately guilty. Had they treated him as guilty of mistake and made the compensation payable out of his personal assets as an obligation, then an insane person would occupy a position lower than of a sane person guilty of error in the case of homicide and infliction of injury, inasmuch as *diyat* payable by the latter is shared by his community.⁴⁶

3.3.4. Injunction Relating to Insanity Developed After Commission of Offence:

There are two cases of insanity that develop after the commission of offence. In the first place, insanity may emerge prior to the verdict of the court. Secondly, it may

⁴⁵ A. Q. Qudah Shaheed. 2001. *Criminal Law of Islam*. New Delhi: International Islamic Publisher. Vol.2. p. 323.

⁴⁶ Ibid. p. 325.

develop after the verdict is passed. Insanity developing before the court's verdict:- according to the Shafi'ites and Hambalites insanity that develops before the court passes judgment does not stand in the way of carrying the legal proceeding, for the agent's responsibility is essential only at the time of the commitment of offence. Moreover, the legal proceeding does not prejudice the position of the insane person, since the Shariah provides for strong guarantees for proceeding against offender. The advocates of this view attach more importance to logic and actuality than anything else. What is paramount importance to them is that the agent commits an offence, and is consequently liable to punishment. Now if he goes mad, it would not prejudice the legal proceeding, provided that such means are available as would help in ascertaining the reality, for as result of insanity the offender's would be unable to defend himself whereas the rule, is that offender's inability to defend himself will not stand in the way of legal proceeding. Thus a dumb person or one who becomes speechless after the commission of crime or cannot express himself clearly are all incapable of defending themselves but their inability is no obstacle to legal proceedings. Hence an insane person cannot be treated apart from the above handicapped and because his inability to defend himself cannot obstruct legal proceeding against him. At any rate the handicapped persons referred to above are also unable to defend themselves but nobody believes in stopping or abandoning legal proceeding against them.⁴⁷

The Malikites and Hanafites, however are of the view that madness developed prior to the institution of legal proceedings suspends the proceeding till the agents mental health is restored. The basis of this view is that punishment presupposes the offender's being a responsible agent as an essential condition and this condition should be present at the time of the institution of such proceeding. In other words, the offender should be an obligated person when a legal action is brought up against him. If he is not, then the action will be put off.⁴⁸

⁴⁷ A. Q. Qudah Shaheed. 2001. *Criminal Law of Islam*. New Delhi: International Islamic Publisher. Vol.2. p. 326.

⁴⁸ Ibid. p. 326.

With the jurists of Islam who are in favors of suspending the legal proceedings the reason for such measures is not the inability of the insane offender to defend himself, but the absence of the condition of punishment.⁴⁹

Injunction relating to insanity developed after judgments is passed by the court: - According to the Imam Shafi'ee and Imam Ahmed insanity of the offender developed after the court's judgment does not warrant postponement of the execution of injunction. However, if the offences entail *hud* punishment and the only proof thereof is the confession of the offender, passing of sentence will be withheld, for in the case of *hud* offence the offender has the option to go back on his confession at the time of the execution of sentence. He can do so even at the beginning of the execution thereof. If the offender backs out, execution of sentence passed against him would be withheld as it possible that his denial or confession, which he can do right, action on the sentence passed against him will be put off till he recovers from insanity.⁵⁰

But if the verdict of the court is not based on the confession of the offender, then the verdict will not be suspended by his going back on his confession. This opinion is grounded in the fact that it is the punishment of the offence which the offender commits when he is accountable for the act. Validity of sentence and the execution thereof rest on the condition of the obligated person at the time of the commitment of the offence and not before or after it.⁵¹

One possible explanation to this opinion is that punishment under the Shariah is designed to chastise and admonish the culprit. If the aspect of chastisement is suspended by his loss of mental proportion, the admonitory aspect should not be neutralized: for in the enforcement of punishment admonition is associated with interest of the community as a whole.⁵²

⁴⁹ A. Q. Qudah Shaheed. 2001. *Criminal Law of Islam*. New Delhi: International Islamic Publisher. Vol.2. p. 326.

⁵⁰ Ibid. p 327.

⁵¹ Ibid. p. 327.

⁵² Ibid. p. 327.