

Hudud and white-collar crime

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Tiger has been reading about the controversial hudud law being implemented in Brunei, along with news of opposition party PAS wanting to implement the same law in Kelantan. But the fact of the matter is, hudud will not be that easy to apply to white collar crimes...or will it?

Tiger is not a big believer in sparing the rod and spoiling the child. Like most Tigers from an Asian country, she was raised on a diet of tough love and turned out sort-of-normal (even if she is a Vegemite-loving cat).

But the laws of the jungle do not apply to humans, it seems. No, tough love does not really work for humans — they either become victims or perpetrators. And it is this latter group that is being targeted with a controversial Islamic law called the hudud law.

For the uninitiated human, hudud is one of the four categories of punishment under Syariah law. This includes the infamous punishments of severing the hand of a thief and death by stoning of a person or persons caught for adultery. The tricky part is that these crimes require reliable witnesses.

This in turn brings up the question: can hudud be implemented to combat white collar crimes, which are far more insidious and prevalent these days than blue collar crimes such as stealing food from a stall?

In the case of a 'common thief' or burglar, there are likely to be witnesses to the crime. But what of more complex white collar crimes involving theft such as insider trading, hacking or phishing which are likely not to have witnesses (or worse, witnesses with an agenda)?

Bear in mind that when hudud was first introduced centuries ago, there was no Internet or computers, hence humans were easier to catch and convict for crimes such as murder, adultery and theft. Life was simpler then, so the punishment meted out was equally straightforward.

Times have changed and society in general (including the Malaysian Muslim Population) are believers that human beings are redeemable which is why conventional law is practiced here along with Islamic or Syariah law.

Questions however, remained unanswered on how punishments will be carried out for theft of the white collar variety mentioned above. There have also been questions by the Malaysian public on whether the hudud criminal code has been appropriately codified and if it will be made available to the general public to read and digest.

This Tiger set about asking local lawyers about how hudud will be applied to white collar crimes but was met with total silence. It seems that humans are a little more skittish around the topic than Tiger is, due to its 'sensitivity'.

One human however, was brave enough to speak to Tiger. This lawyer, who prefers to be unnamed, said that the lower income group will be oppressed by hudud as it applies to only blue collar crimes. "Insider trading is not classified as theft in the Penal Code, white collar crimes are not recognised by hudud, therefore the lower income group will be oppressed".

Faculty of Sharia and Law, Islamic Science University of Malaysia lecturer Dr Zulkifli Hasan seems to have a solution, but his views are also disturbing. He was quoted by The Malaysian Insider last week saying that hudud could be made a part of the country's Penal Code, or a second Penal Code could be created to include hudud offences, such as adultery, pre-marital sex, alcohol consumption and stealing.

However, again this only seems to apply to blue collar and not white collar crimes. For example, if the management of a company whose stock is Syariah-compliant flouts the rules, by say, insider trading, who will be held responsible? Unless there is a whistleblower from within the company, it will be tough to find a witness willing to testify against the culprits.

Another problem with implementing hudud is the irrevocable fact that it will scare away investors, particularly foreign investors who will likely not fathom the need for hudud in a modern society like Malaysia. Implementing hudud even in one state in Malaysia will trigger a chain reaction that will send investors fleeing to what they perceive as more tolerant shores.

This only goes to show that Malaysia is not ready to implement hudud, unless it is fastidiously modernised to suit the changing times (and crimes). Until then, Tiger will lurk in the shadows, watching how things pan out for PAS.

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