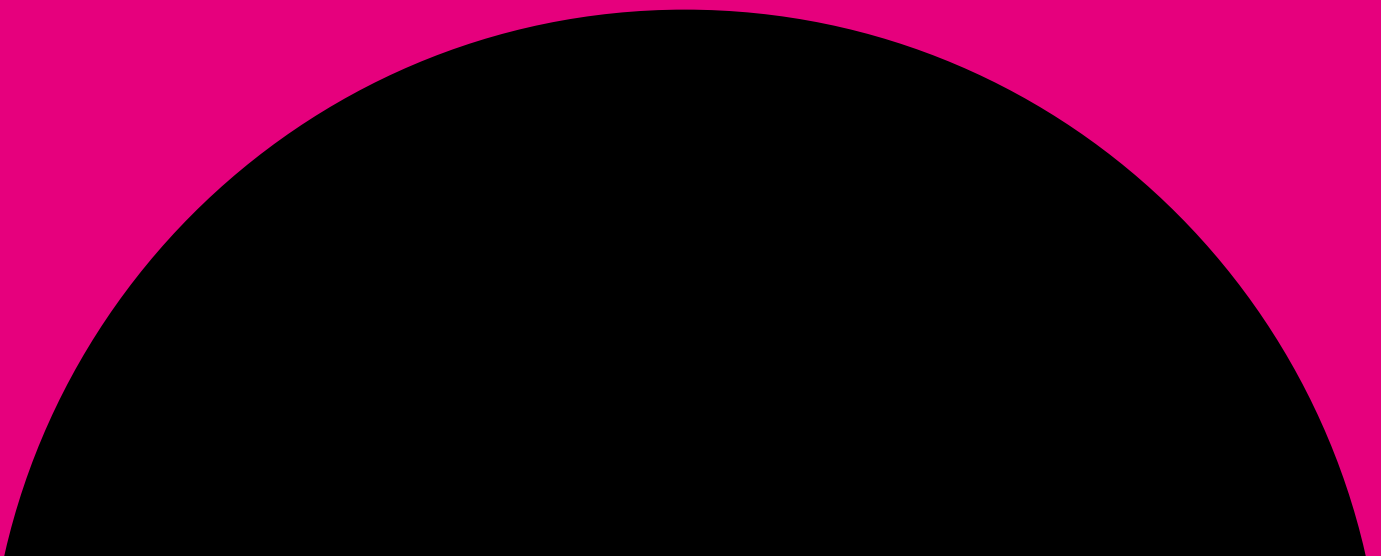


Analysis: Terengganu Syariah Criminal Offences Enactment



Contents

3	Acknowledgement
4	Introduction and Overview
7	Salient points from the Terengganu Syariah Criminal Offences Enactment amendments
10	What has been introduced?
19	What are the rights affected?
22	Freedom of thought, conscience, and religion or belief.
26	Freedom of expression, association and assembly
28	Right to health, including sexual reproductive health and rights
30	Discrimination based-based on gender and sexual orientation
33	Appendix 1: Sections under Part 2-5 of the Terengganu Syariah Criminal Offences Enactment
44	Appendix 2: New sections

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Justice for Sisters is a human rights group working on the rights of lesbian, gay, bisexual, transgender, intersex, queer (LGBTIQ) and gender diverse persons in Malaysia.

For more information, please visit:

<https://justiceforsisters.wordpress.com>

Sisters in Islam

Sisters in Islam is a non-governmental organisation working towards advancing the rights of Muslim women in Malaysia within the framework of Islam, universal human rights principles, constitutional guarantees, as well as the lived realities and experiences of women. For more information, please visit:

<https://sistersinislam.org/>



Legal Dignity is a queer-affirming feminist initiative that strives to advance and defend the human rights of gender diverse persons to ensure their meaningful access to justice.

For more information, please visit:

<https://www.legaldignity.org>

Introduction and Overview

The Terengganu state government introduced the Terengganu Syariah Criminal Offences (Takzir) in 2001. This was soon followed, in 2002, by the Terengganu Syariah Criminal Offences (Hudud & Qisas) Enactment, although not enforceable, as the state government is only allowed to mete out a maximum of RM 5,000, 3 years of imprisonment and 6 lashes for Shariah-related offences in accordance with Act 355.

In December 2022, the amendments to the Terengganu Syariah Criminal Offences (Takzir) were mooted, as some of the punishments were deemed outdated according to some Terengganu state legislators.

The analysis will remain confined to the sections to which the amendments were made:

- **Part 2: Offences relating to Aqidah**
- **Part 3: Offences Relating to the Sanctity of the Religion of Islam and Its Institution**
- **Part 4: Offences Relating Decency**

The amendments restrict already limited freedoms and rights guaranteed under the Federal Constitution and international human rights law, including equality and non-discrimination, right to the highest attainable standard of health, right to live with dignity, right to privacy, freedom of expression, freedom of religion and belief, freedom of movement, right to make informed about the decision, among others. The amendments have an overarching impact on non-Muslim persons, businesses and healthcare service providers.

The introduction of new sections and other amendments show that:

1. The **state's punitive and retributive approach to human rights and social issues** has a harmful cascading impact on access to information, services, and opportunities. Across the board, the state opts to deal with issues through the enforcement of punishment. For instance,
 - △ in the case of pregnancy out of wedlock, the state opts to punish pregnant couples for consensual sex, instead of promoting comprehensive sexuality education and contraceptives.
 - △ The state chooses to criminalise the consumption of intoxicating drinks instead of increasing educational campaigns to allow people to make informed decisions about their health.
 - △ Similarly, the state adopts a punitive measure against those who flout Ramadhan, instead of raising awareness and activities to promote the benefits of fasting and Ramadhan.

Terengganu state government's lack of evidence and human rights-based approach in law-making deepens inequalities in Terengganu among all persons regardless of religious background.

2. Violation of rights and Federal-state jurisdiction provisions under the Federal Constitution, international human rights law, and Malaysia's global commitments. The criminalization of pregnancy, LGBT persons, gender and self-expressions, consensual sex, blanket ban on sorcery, witchcraft and medical practices and treatments that are deemed inconsistent with hukum syarak, among others violate human rights safeguarded under international human rights law and the Federal Constitution. The restriction of rights guaranteed by the Federal Constitution must adhere to the test of legality, proportionality, and necessity. Moreover, the Federal Constitution also clearly notes that matters related to health, and freedom of expression fall under the jurisdiction of the Federal government.

The trend of retributive and harmful laws calls for a guideline for state assemblies in making laws that are aligned with the Federal Constitution and international human rights law.

3. The dual impact of rising conservative and right-wing ideology in the suppression of rights and maintenance of conservative power. These laws, inspired by conservative ideology, reinforce binary gender roles and norms and suppress sexual and reproductive health and rights as well as the plurality of ideas, expressions, and identities. The increasingly punitive amendments to the Terengganu Syariah Criminal Offences Enactment, which come after similar amendments to the Kelantan Syariah Criminal Offences Enactment, is concerning. This trend is projected to continue in other conservative PAS-dominated states like Pahang and Kedah.

Salient points from the Terengganu Syariah Criminal Offences Enactment amendments

Some salient points in relation to the amendments to the Terengganu Syariah Criminal Offences Enactment:

- **Increased barriers on the right to health for already marginalised populations as a result of the amendments.** All 4 new sections¹ will further exacerbate the right to health for already marginalized populations, namely pregnant women, girls and persons, young people, gay, bisexual and queer men, and transgender and gender-diverse persons, among others. These populations already have limited access to healthcare, and their criminalization and social stigma have further marginalized them in society. Healthcare providers, and traditional healers, among others, are also affected by the introduction of the four new sections.

[1] 3A. **Perbomohan dan sihir / Witchcraft and sorcery**, 29A. **Hamil atau melahirkan anak di luar nikah / Pregnant or giving birth to a child out of wedlock**, 33.A. **Orang perempuan berlagak seperti lelaki / Female person posing as a man**, 36. **A Persediaan melakukan liwat / An act preparatory to liwat (sexual relations between men).**

- **Change of gendered language to gender-neutral language.** At least two gendered sections, which only penalized women, were amended to adopt gender-neutral language.
 - △ Section 68. Power to commit the offender to an approved home or rehabilitation centre, where the word female was removed and replaced with the offender (Part 4). This means that judges are allowed to commit an offender to an approved rehabilitation centre or home in addition or in lieu of the allowed punishment under Part 4 of the Enactment
 - △ Section 35, which penalized only women for exposure of their body parts in public places or for public view that could arouse passion, was amended to be gender neutral.
- **Increased use of the scale of punishment and punishment for a first offence and subsequent offences.** The three sections where this occurs include (please see Appendix)
 - △ 19. Disrespect for Ramadhan.
 - △ 33. A Male person posing as a woman.
 - △ 33. A. Orang perempuan berlagak seperti lelaki / A female person posing as a man
- The amendments have **increased punishments for ‘offences’ related to freedom of religion, the plurality of thoughts and beliefs, consensual sexual contact between adults** to the maximum punishment of RM 5,000 fine, 3 years of imprisonment and 6 lashes.

- **Expansion of 'alternative' punishments.**

- △ For offences under Part 2 (Section 3 - 7), Sections 8,9, 10, 38 and Part 4 (Section 24 - 36A) the courts are allowed to commit 'offenders' to an approved rehabilitation centre or home counselling punishments to undergo rehabilitation or counselling in addition or in lieu of the recommended punishments under the sections.

- △ For offences under Part 2 (Section 3 - 7), Sections 8,9, 10, 38, courts can order

- rehabilitation or counselling not exceeding 6 months in addition or in lieu of any punishment
- Where prison sentence is imposed together with rehabilitation and counselling, the punishments should not exceed 3 years

- △ For offences under Part 4 (Section 24 - 36A), courts are allowed to

- Commit a person to an approved rehabilitation centre or home for not more than 1 year
- Where prison sentence is imposed, the total duration of committal to such institutions should not exceed 3 years

What has been introduced?

Amendments to the new Terengganu Syariah Criminal Offences Enactment 2022 include:

- **4 new sections**

- △ **3A. *Perbomohan dan sihir / Witchcraft and sorcery.*** Section 3A broadly criminalises anyone or any medical treatment centre that provides medical treatment, practice or acts that involves shamanism, witchery, or anything inconsistent with hukum syarak. The broadly worded section that can be used against any form of medical practices, including indigenous, traditional or alternative medicine, can also create unnecessary misinformation and stigma against various forms of medical practices.

A 2018 report by the Independent Expert on the enjoyment of human rights by persons with albinism recommends that there should not be a blanket ban on 'witchcraft' and 'sorcery'. Instead guided by international human rights law, the state should focus only on harms caused by sorcery.²

Further, regulations of healthcare or medical practices fall under the jurisdiction of the Federal government, specifically the Ministry of Health.

Section 3A 1) unnecessarily stigmatises non-state approved medical practices such as witchcraft and sorcery 2) increases misinformation about diverse health practices 3) removes autonomy to make an informed decision about one's health

△ **29A. Hamil atau melahirkan anak di luar nikah / Pregnant or giving birth to a child out of wedlock** penalises both girls or women who are pregnant of wedlock and boys or men that cause the pregnancy out of wedlock. In addition, a child born to a girl or woman within 6 months of a marriage (without any corresponding health issues to warrant an premature birth) is legally categorised as a child born out of wedlock. In all contexts, they can be sentenced to a maximum of RM 5,000, 3 years of imprisonment and 6 lashes. The pregnancy is also used as prima facie evidence of her culpability and guilt of consensual sex out of wedlock.

[2] "Report of the Independent Expert on the Enjoyment of Human Rights by Persons with Albinism on the Expert Workshop on Witchcraft and Human Rights." A/HRC/37/57/Add.2, 2018, www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/37/57/Add.2.

[UNICEF's Situation Analysis of Adolescents](#) shows pregnant teenagers are denied access to education due to stigma and shame, resulting in them dropping out of school. Conversely, the study also cites a 2015 nationwide study that showed a very low knowledge of how to prevent unplanned pregnancies and a lack of awareness of contraceptive methods, aside from condoms and birth control pills of young people between 18 and 29 years old.

The study also shows Terengganu is one of three states with the highest cases of child marriage applications via the Syariah courts. Sisters in Islam (SIS) and ARROW's research show that sex and pregnancy out of wedlock are one of the main contributing factors to child marriage in Malaysia. Indeed, during a debate, a member of the state assembly suggested marriage as a harmonious alternative to the criminalisation of pregnancy out of wedlock. The same state assembly person also called for Section 29A to be reviewed due to its harmful impacts on youths and the adoption of awareness-raising measures to address pregnancy of wedlock.³

As such, the criminalization of pregnancy out of wedlock also has a reciprocal effect on child marriage, and contributes to an increase in child marriage, ultimately perpetuating long term inequality through the cycle of poverty and illiteracy among girls.

[3] Persidangan Dewan Undangan Negeri Terengganu Darul Iman, 2:48 https://youtu.be/rzOsV_IAXeQ?t=10093

△ **33. A. Orang perempuan berlagak seperti lelaki / Female person posing as a man** criminalises any female person who wears male attire and poses as a man in any place be it private or public. The section effectively restricts trans and gender-diverse persons from being and expressing themselves. In addition, it allows the state to intrude into trans and gender-diverse persons' private homes and spaces. Justice for Sisters' research has found the criminalisation of trans and gender diverse people based on their gender identity and gender expression, the non-recognition of trans and gender diverse persons, and the restriction of access to trans-specific healthcare services affects their decision to transition, expressing their gender identity, access to employment opportunities, among others.⁴

Sections 33 and 33A have a systemic impact on all areas of life for trans and gender-diverse people in Terengganu and beyond. They restrict the right to self-determination, the right to be free from gender-based discrimination, freedom of movement, the right to privacy, the right to employment and many other rights for trans and gender-diverse people.

Sections 33 and 33A criminalise persons based on the way that they express their gender identity through clothes, and mannerisms, among others in any space. Multiple offenders are subjected to the maximum punishment of RM 5,000 fine, 3 years of imprisonment and 6 lashes.

[4] Justice for Sisters. (2021). [Freedom of Expression and Transgender Women in Malaysia](#).

△ **36. A Persediaan melakukan liwat / An act preparatory to liwat (sexual relations between men).** In the constitutional review of Section 28 of the Selangor Syariah Criminal Offences Enactment which criminalises sex against the order of nature, the Federal Court found Section 28 to be ultra vires, as it violates Articles 73, 74, and 75 concerning Federal and state jurisdiction relating to law-making.

In their decision, the Federal Court affirmed that “[46] *If we were to adopt the rather simplistic approach advanced by the respondents that it is sufficient to simply satisfy ourselves that Section 28 of the 1995 Enactment is squarely encapsulated within the definition of ‘precepts of Islam’ without regard to the preclusion clause, that would render the preclusion clause otiose.*”

In addition, the criminalisation of the preparatory act to liwat (sodomy) fundamentally violates the right to live with dignity, the right to privacy, access to healthcare, the right to equality before the law, and freedom of expression, among others. Criminalization of preparatory act to liwat, defined as ‘any act in preparation to sexual relations between men that leads to homosexual relationship’ is not only arbitrary, but it will also encourage abuse of power and victimization under the law. In *Toonen v Australia* and *Navtej Johar v Union of India*, where the Human Rights Committee and India’s Supreme Court reviewed the national laws that criminalised consensual sex between men, both found the laws unconstitutional and in violation of multiple rights - right to privacy, right to live with dignity, being free from sex-based discrimination, right to personal autonomy and equality before the law.

The state intervention in private lives through such laws, fundamentally, among others, restricts persons from expressing and discovering themselves, making informed decisions for themselves without fear, and nurturing and building relationships with others.

In the context of HIV, according to the Global AIDS Monitoring 2020 report by the Ministry of Health, access to HIV prevention services for cisgender women, sex workers, and gay, bisexual, queer, and other men who have sex with men (MSM) 'have been poor probably because they are the most hard-to-reach and difficult to identify due to stigma and discrimination'.⁵ A CERiA research with 26 Muslim queer men shows a causal link between low health-seeking behaviour, lower self-esteem and poor mental health and fear of prosecution under federal and state Syariah laws, familial and societal pressure to marry and 'return to the right path, among others'.⁶

[5] Ministry of Health Malaysia. Global AIDS Monitoring 2020: Malaysia HIV/AIDS Progress Report. Ministry of Health Malaysia, 2020, www.moh.gov.my/moh/resources/Penerbitan/Laporan/Umum/Laporan_Global_AIDS_Monitoring_2020_new.pdf.

[6] Lim, Sin How, et al. "You Have to Keep Yourself Hidden": Perspectives From Malaysian Malay-Muslim Men Who Have Sex With Men on Policy, Network, Community, and Individual Influences on HIV Risk." *Journal of Homosexuality*, vol. 67, no. 1, 2018, pp. 104–26. Crossref, doi:10.1080/00918369.2018.1525946.

- **2 new sub-sections**

- △ **34. Indecent acts in a public place.** The new subsection criminalises indecent attire in public places

- △ **36. *Watie*.** Section 36(2) explains that mewatie (sexual intercourse) is understood as sexual intercourse between a husband and wife that does not involve vaginal and anal sex, excluding musahaqah, liwat and zina. As such, Section 36 broadly criminalises any form of consensual sexual intercourse between any unwed person of any gender that does not fall under other sections of the Enactment.

- **Punishments related to amendments to 14 existing sections**

- △ Of the 14 sections that were amended, 9 sections impose the maximum punishment (RM 5,000 fine, 3 years of imprisonment and 6 lashes)

- 3. Wrongful worship.
 - 5. Propagation of religious doctrines, etc.
 - 6. False claim.
 - 7. Declaring to be non-Muslim.
 - 9. Deriding, etc. Quranic verses or Hadith.
 - 23. Intoxicating drink.
 - 29. An act preparatory to sexual intercourse out of wedlock.
 - 31. *Khalwat*.
 - 36. *Watie*.

△ Use of punishments for first and subsequent offences for 2 sections

- 19. Disrespect for Ramadhan.
- 33. Male person posing as woman. Subsequent offences impose maximum punishment, including 6 lashes.

△ Increased fine and prison sentence

- 20. Non-payment of zakat or fitrah.
- 21. Instigating neglect of religious duty.
- 35. Exposing body in public.

- **Language-related amendments to 7 sections.** These amendments include the addition or deletion of words to expand the scope of criminalization of the section.

△ 6. False claim.

△ 13. Issuing of fatwa.

△ 19. Disrespect for Ramadhan.

△ 23. Intoxicating drink.

△ **33. Male person posing as woman.**

The removal of the words 'public space' and 'immoral purpose' expands the scope of criminalization of trans and gender diverse persons based on their gender expression and gender identity in all spaces. This means a trans or gender-diverse person can be arrested for expressing themselves in any space, be it in public or private. This not only has a severe impact on the right to self-determination, privacy and freedom of expression, but also their access to employment, healthcare, housing, redress and all aspects of their lives.

△ 34. Indecent acts in public place.

△ 35. Exposing body in public.

- **Expansion of court order**

- △ 4.False doctrine.

- The court is allowed to order that any document, device, object or thing related to the commission of 'false doctrine' to be forfeited and destroyed

- Three new **definitions** were included under Section 2. Interpretations. They include

- △ **Person** is defined as groups of people, whether incorporated or not

- △ **Preparatory act to *liwat*** as acts between men that leads to homosexual relations

- △ **Witchcraft and sorcery** defined as out-of-the-ordinary acts contrary to Syariah laws involving the use of jin and devils not limited to worship, spells or charms

What are the rights affected?

While the Enactment directly targets Muslim persons, the Enactment affects all persons and businesses in Terengganu regardless of their religious background. The Enactment exacerbates a rigid environment in the name of 'shariah-compliance' and sets the foundation for state-level policies, regulations, and practices in Terengganu.

Before the passing of the amendments, the Terengganu state government noted that the licensing regulation by the state government for hair salons and barbershops by Muslim and non-Muslim operators will not be approved if it provides haircut services for men and women on the same premises. Those who do not comply with this gender-segregation practice will be fined between RM 500 and RM 1,000. According to Datuk Dr Alias Razak, state executive councillor, *“There are no exemptions for hair salons or barber shops that are operated by non-Muslims. This is because if we were to allow non-Muslim female hairdressers to provide haircuts for male customers, there is a possibility that Muslim men will go and patronise them too”*.⁷

[7] Terengganu govt to enforce unisex hair salon ban, warns offenders of fines, licence revocation <https://www.nst.com.my/news/nation/2022/12/856735/terengganu-govt-enforce-unisex-hair-salon-ban-warns-offenders-fines>

It is also important to note that many of the Sections under the Terengganu Syariah Criminal Offences Enactment have harmful impacts and are inconsistent with the Federal Constitution. The Enactment allows increased state intrusion into all aspects of lives - self-expression, thought and decision-making, and access to information and services, among others. The right to privacy is safeguarded under Article 5(1) of the Federal Constitution.⁸

The amendments to the Terengganu Syariah Criminal Offences Enactment deepen the inequalities and discrimination based on religion, gender, sexual orientation, thought, conscience, belief, and geographical area, among others. Equality and non-discrimination are core principles of human rights, and violations of these principles have a systemic impact on all areas of life.

The introduction of new laws, expansion of existing laws and increased punishments further increase discriminatory laws contrary to the 2030 Agenda for Sustainable Development to reduce discriminatory laws, policies and practices.

[8] In *Sivarasa v Badan Peguam Malaysia & Anor*, the Federal Court of Malaysia held that Article 5(1) of the Federal Constitution, which protects the right to life and personal liberties, includes the right to privacy.

(CEDAW) and Convention on the Rights of the Child (CRC), is obligated to take measures to increase the enjoyment, protection and fulfilment of women and child rights in Malaysia. In Malaysia's previous CEDAW and CRC review, where Malaysia presented its progress in complying with the two conventions, both Committees raised concerns over the parallel legal system and multiple versions of Syariah laws that have yet to be harmonized with the convention, which have an impact concerning the protection of rights of women and children. They noted that Malaysia must ensure that all laws in Malaysia, be it civil or Syariah laws, must be in full compliance with the Conventions.

The CRC Committee recommended Malaysia 'conduct an international comparative study on the implications of the dual legal system of civil law and Syariah law and, based on the results of this assessment, take necessary measures to reform the dual legal system to remove inconsistencies between these systems to create a more harmonious legal framework which can provide consistent solutions.'⁹

Among other rights affected are

- **Freedom of thought, conscience, and religion or belief**
- **Freedom of expression**
- **Right to health, including sexual reproductive health and rights.**
- **Discrimination based-based on gender and sexual orientation**

[9] Ibid, para 16

Freedom of thought, conscience, and religion or belief.

The Federal Constitution safeguards the right to profess and practice a person's religion as guaranteed under Article 11, although with limitations to the propagation of religion. At the same time, discrimination on the ground of religion is prohibited under article 8(2).

Article 18 of the UDHR is on freedom of thought, conscience and religion or belief. The right includes the right to hold or change a person's religion or belief and the right to manifest their religion or belief in teaching, practice, worship and observance individually or in community with others^{10 11} under international human rights law.

[10] "Gender-Based Violence and Discrimination in the Name of Religion or Belief." A/HRC/43/48, 2020, page 14 documents-dds-ny.un.org/doc/UNDOC/GEN/G20/217/76/PDF/G2021776.pdf?OpenElement.

[11] "Article 18: The Importance of FoRB in International Law." University of Birmingham, www.birmingham.ac.uk/schools/ptr/departments/theologyandreligion/research/ciforb/news/2017/forb-in-international-law.aspx.

In a 2021 report by the special Rapporteur of Freedom of Religion or Belief Report on the Freedom of Thought, the Special Rapporteur notes that

*“religious and non-religious alike may cherish freedom of thought as a vehicle for reason, the search for truth, and individual agency, engaging both freedom of religious choice (namely, the right to have, adopt or change religion or belief, and to interpret one’s religion or belief) and “freedom from religion” to think freely on all matters without the influence of religion or belief systems. **The Beirut Declaration on “Faith for Rights” further stresses that freedom of religion or belief cannot not exist without freedom of thought.** Within religion, people may think critically, about what religion calls for in how we live life and in giving full effect to religious practice, including worship, observance and teaching.”*

Under international human rights law as well, freedoms and rights can only be restricted in a limited context. Article 29(2) of the UDHR states a person can be subjected to such limitations as are determined by law solely to secure due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

In addition, the Beirut Declaration and its 18 commitments on “Faith for Rights” refer to preventing the use of the notion of “State religion” or “doctrinal secularism” to discriminate against individuals or groups, and to “reducing the space for religious or belief pluralism in practice”.

The imposition of maximum punishments for wrongful worship, propagation of religious doctrines, false claims, issuing of the fatwa, and deriding Quranic verse or Hadith, have an impact on the flourishing of the plurality of ideas as well as minority and diverse sects in Islam. As such, it is important to review such Sections in line with the Beirut Declaration to ensure the freedom of religion and belief as well as freedom of expression of minority sects in Islam, feminists, intellectuals and scholars, among others. Likewise, consistent with the Article 18 of the UDHR, Section 7 on apostasy or declaring to be non-Muslim should be reviewed to ensure that no one is forced to practice a religion and the freedom to choose their religion and belief.

Moreover, in line with Section 29(2) of UDHR and international human rights law, the Terengganu state government must provide reasons for limiting the freedom of religion and belief of certain populations, and if they indeed, impact morality, public order and the general welfare in a democratic society.

Further, the Special Rapporteur on freedom of religion and belief stresses that the state has a duty ‘to promote and protect the right to freedom of religion or belief must be understood within a wider human rights-based framework that stresses the principles of universality, equality and freedom.’¹²

[12] A/HRC/37/49 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/052/15/PDF/G1805215.pdf?OpenElement> “Report of the Special Rapporteur on Freedom of Religion and Belief A/HRC/34/50.” para 31, OHCHR, 2017, documents-dds-ny.un.org/doc/UNDOC/GEN/G17/008/79/PDF/G1700879.pdf?OpenElement.

The Special Rapporteur on Freedom of Religion and Belief, in their 2017 report, emphasized that freedom of religion or belief and the right to equality (and non-discrimination) are inextricably linked. Freedom of religion or belief should be seen as constituting a right to equality, which prohibits discrimination based on religion or belief. He added that this right, however, does not give the power to marginalise, suppress or carry out violent acts against others and those in vulnerable situations, including women or LGBTI persons under the guise of manifesting their religion.¹³

Relevant sections

3. Wrongful worship.
5. Propagation of religious doctrines, etc.
6. False claim.
7. Declaring to be non-Muslim.
9. Deriding, etc. Quranic verses or Hadith.
13. Issuing of fatwa.
19. Disrespect for Ramadhan.

[13] "Report of the Special Rapporteur on Freedom of Religion and Belief A/HRC/34/50." para 31, OHCHR, 2017, documents-dds-ny.un.org/doc/UNDOC/GEN/G17/008/79/PDF/G1700879.pdf?OpenElement.

Freedom of expression, association and assembly

Freedom of expression, association and assembly is protected under Article 10 of the Federal Constitution. Under international law, freedom of expression includes the freedom to hold opinions without interference; to seek, receive and impart information and ideas through any media and regardless of frontiers;¹⁴ and to express identity or personhood through various means,¹⁵ among others. Meanwhile, Article 20 of the Universal Declaration on Human Rights (UDHR) safeguards freedom of association and assembly.

Concerning freedom of expression, the amendments further restrict freedom of expression

- Expression of speech and ideas concerning religion. The criminalization of propagation of religious doctrines and false claims also limit documentation of knowledge and access to information
- Gender expression or the ability to express a person's identity and individuality through clothes, mannerism and such.

[14] "Universal Declaration of Human Rights." OHCHR, www.ohchr.org/en/udhr/pages/Language.aspx?LangID=eng.

[15] "Principle 19 – Yogyakarta Principles." Yogyakarta Principles, yogyakartaprinciples.org/principle-19.

On the other hand, freedom of assembly and association are also restricted through the criminalization of the propagation of religious doctrine, false claims, and apostasy among others. Such criminalization further increases fear of expressing themselves or gathering with others who share similar identities, beliefs, or thoughts.

Overall, the new sections, amendments and increased punishments have a chilling effect on freedom of expression.

Relevant sections

- 3.A. Perbomohan dan sihir / Witchcraft and sorcery**
- 5. Propagation of religious doctrines, etc.**
- 6. False claim.**
- 7. Declaring to be non-Muslim.**
- 29.A. Hamil atau melahirkan anak di luar nikah / Pregnant or giving birth to a child out of wedlock,**
- 33.A. Orang perempuan berlagak seperti lelaki / Female person posing as a man,**
- 36.A. Persediaan melakukan liwat / An act preparatory to liwat (sexual relations between men).**

Right to health, including sexual reproductive health and rights

International human rights law identifies three key state obligations concerning the rights to health, which include

- ◇ The obligation to **respect** the right to health, which, among others, includes refraining from denying or limiting equal access for all persons, **abstaining from enforcing discriminatory practices in state policies and abstaining from imposing discriminatory practices relating to women's health and needs.**
- ◇ The obligation to **protect** includes the adoption of legal and other measures to ensure equal access to health care and related services by third parties.
- ◇ The obligation to **fulfil** requires the state to take positive measures to enable the right to health and provide adequate attention to the right to health in the national political and legal systems.¹⁶

[16] <https://www.ohchr.org/en/special-procedures/sr-health/about-right-health-and-human-rights>

The 4 new sections¹⁷ directly violate the state's obligation to respect, protect and fulfil the right to health of persons of diverse ages, gender identities and sexual orientations.

Relevant sections

- 3.A. Perbomohan dan sihir / Witchcraft and sorcery**
- 29.A. Hamil atau melahirkan anak di luar nikah / Pregnant or giving birth to a child out of wedlock,**
- 33.A. Orang perempuan berlagak seperti lelaki / Female person posing as a man,**
- 36.A. Persediaan melakukan liwat / An act preparatory to liwat (sexual relations between men).**

[17] 3A. Perbomohan dan sihir / Witchcraft and sorcery, 29A. Hamil atau melahirkan anak di luar nikah / Pregnant or giving birth to a child out of wedlock, 33.A. Orang perempuan berlagak seperti lelaki / Female person posing as a man, 36. A Persediaan melakukan liwat / An act preparatory to liwat (sexual relations between men).

Discrimination based- based on gender and sexual orientation

Discrimination based-based on gender and sexual orientation can be seen in the following sections

- While Section 29A criminalises girls, women, boys and men for pregnancy out of wedlock, girls and women face additional gendered impacts concerning access to healthcare, and education, among others. Boys and men face the burden of falling into gendered roles of being providers
- Criminalization of people of diverse gender identities, which reinforces harmful binary gender stereotypes, roles and norms
- Criminalization of gay, bisexual and queer men. Similar provisions to Section 36A have also been used against trans women, as they are misgendered and perceived as men.

In addition, many of the amendments have a gendered impact on women and LGBTQ persons. Their economic marginalization, dependency on their family members, shame and bias against them, and the nature of 'offence' by family members, state actors, and others increase their vulnerability to imprisonment, rehabilitation and counseling. Sisters in Islam and Justice for Sisters have supported cases, in which women, including trans women end up serving prison sentences due to restrictive bail conditions by courts coupled with fear of seeking support from family members and/or refusal of family members to post bail.

According to the Household Income Estimates and Incidence of Poverty Report, Malaysia, 2020 by the Department of Statistics Malaysia, Terengganu saw an increase in the number of poor households in 2020 from 6.1% in 2019 to 12% in 2020, due to Covid-19 among other factors.¹⁸ Following the revision of the Terengganu poverty rate from RM 980 to RM 2,502 in 2020, the number of households living in poverty was expected to further rise.¹⁹ Terengganu is one of the six priority states for poverty alleviation

programmes by the Federal government.²⁰ While there is no gender-disaggregated data on poverty in Terengganu, unemployment rates among female youth are significantly higher than male youth.^{21 22}

Relevant sections

29.A. Hamil atau melahirkan anak di luar nikah / Pregnant or giving birth to a child out of wedlock,

33.A. Orang perempuan berlagak seperti lelaki / Female person posing as a man,

36.A. Persediaan melakukan liwat / An act preparatory to liwat (sexual relations between men).

[18] <https://www.dosm.gov.my/v1/index.php?r=column/cthemeByCat&cat=493&bulid=VTNHRkdiZkFzenBNd1Y1dmg2UUlrZz09&menuid=amVoWU54UTI0a21NWmdhMjFMMWcyZz09>

[19] https://www.ecerdc.com.my/media_releases/poverty-eradication-a-key-priority-in-terengganu/

[20] East Malaysian states, Kedah, Perlis still have higher poverty level <https://themalaysianreserve.com/2022/06/16/east-malaysian-states-kedah-perlis-still-have-higher-poverty-level/>

[21] Unemployment among Malaysia's Youth: Structural Trends and Current Challenges (2020) https://www.iseas.edu.sg/wp-content/uploads/2020/05/ISEAS_Perspective_2020_65.pdf

[22] Women face higher unemployment rates than their male counterparts <https://www.thestar.com.my/news/nation/2021/05/09/women-face-higher-unemployment-rates-than-their-male-counterparts>

Recommendations

Minister at the Prime Minister's Department (Minister of Law and Institutional Reforms & Minister of Religious Affairs), Ministry of Women, Family and Community Development and Suhakam

As similar laws are anticipated to be introduced in other conservative states, like Pahang and Kedah, we recommend the development of a guideline for state governments to

- △ Assess the compatibility of existing state Syariah laws with the Federal Constitution and international human rights law, as many of the provisions under the state syariah criminal offences enactments fail the constitutionality test - compatibility with Federal-state jurisdiction as demarcated under Article 73 - 77 and Ninth schedule & compatibility with Article 5 - 13 that safeguards fundamental liberties
- △ Integrate or harmonise UN conventions and international human rights law in the enactment of new state Syariah laws
- △ safeguards fundamental liberties
- △ Integrate or harmonise UN conventions and international human rights law in the enactment of new state Syariah laws

Appendix 1: Sections under Part 2-5 of the Terengganu Syariah Criminal Offences Enactment

Terengganu Syariah Criminal Offences
Enactment 2022

- **Part 2: Offences relating to Aqidah**
- **Part 3: Offences Relating to the Sanctity of the Religion of Islam and Its Institution**
- **Part 4: Offences Relating Decency**
- **Part 5: Offences Relating to Public Justice and Security**

**pink - new section and new punishment*

**bold & italic - language amendment*

Section	Fine (RM)	Prison sentence	Lashes	Others
Part 2: Offences relating to Aqidah				
3. Wrongful worship.	5,000	3 years	6	Court can order that any related device, object or thing used in the commission to be forfeited and destroyed, notwithstanding conviction
3A. Perbomohan dan sihir	5,000	3 years		Court can order that any related device, object or thing used in the commission to be forfeited and destroyed, notwithstanding conviction
4. False doctrine.	5,000	3 years	6	Court can order that any related document, device, object or thing used in the commission to the offence to be forfeited and destroyed, notwithstanding conviction

5. Propagation of religious doctrines, etc.	5,000	3 years	6	
6. False claim.	5,000	3 years	6	
7. Declaring to be non-Muslim.	5,000	3 years	6	

Part 3: Offences Relating to the Sanctity of the Religion of Islam and Its Institution

8. Insulting, or bringing into contempt, etc. the religion of Islam.	3,000	2 years		Can be sentenced to rehabilitation or counseling
9. Deriding, etc. Quranic verses or Hadith.	5,000	3 years	6	
10. Contempt or defiance of religious authorities.	3,000	2 years		
11. Defiance of Court order.	3,000	2 years		

12. Opinion contrary to fatwa.	3,000	2 years		
13. Issuing of fatwa.	3,000	2 years		
14. Religious publication contrary to Hukum Syarak.	3,000	2 years		Court can order that any related book, pamphlet, document or recording referred to be forfeited and destroyed, notwithstanding conviction
15. Manipulating the teaching of Islam or the Islamic Law.	5,000	3 years		
16. Failure to perform Friday prayers.	1,000	6 months		
17. Friday prayers in unauthorized places.	2,000	1 year		
18. Failure to perform fardhu prayers.	5,000	3 years		

19. Disrespect for Ramadhan.	1,000 (1st time) 3,000 (subsequent time)	6 months (1st time), 1 year (subsequent time)		
20. Non-payment of zakat or fitrah.	5,000	3 years		
21. Instigating neglect of religious duty.				
21(1) instigating or inducing muslim person not to attend mosque or religious teachings or ceremony	3,000	1 year		
21(2) preventing someone from paying zakat	3,000	1 year		
22. Gambling.	3,000	2 years		
23. Intoxicating drink.				

23(1) consumption of drinks that can be intoxicating, including soft drinks	5,000	3 years	6	
23(2) making, selling, offering, exhibiting, keeping, buying intoxicating drink or making others consume such drinks	5,000	3 years	6	

Part 4: Offences Relating Decency

24. Incest.	5,000	3 years	6	
25. An act preparatory to prostitute.	5,000	3 years	6	
27. Prostituting wife or child.	5,000	3 years	6	

28. Muncikari.	5,000	3 years	6	
29. An act preparatory to sexual intercourse out of wedlock.	5,000	3 years	6	
29A. Hamil atau melahirkan anak di luar nikah	5,000	3 years	6	
30. Musahaqah.	5,000	3 years	6	
31. Khalwat.	5,000	3 years	6	
32. Sexual intercourse with other than human.	3,000	2 years		
33. Male person posing as woman.	1,000 - 3,000 (1st time) 5,000 (subsequent time)	2 years (1st time), 3 years (subsequent time)	6 (subsequent time)	

33.A. Orang perempuan berlagak seperti lelaki	1,000 - 2,000 (1st time) 5,000 (subsequent time)	2 years (1st time), 3 years (subsequent time)	6 (subsequent time)	
34. <i>Indecent acts in public place.</i>	1,000	6 months		
35. <i>Exposing body in public.</i>	3,000	2 years		
36. <i>Watie.</i>	5,000	3 years	6	
36. A Persediaan melakukan liwat	5,000	3 years	6	

Part 5: Offences Relating to Public Justice and Security

37. Giving false evidence, information or statement.				
37 (1) giving false or fabricated evidence for court proceedings	3,000	2 years		

37 (2) gives false information knowingly in relation to an offence under the Enactment	3,000	2 years		
38. Takfir.	5,000	3 years		Can be sentenced to rehabilitation or counseling
39. Destroying of defiling mosque, surau, etc.	3,000	2 years		
40. Collection of zakat or fitrah without authority.	3,000	2 years		Court can order that such collection be confiscated and paid into the Fund established under section 58 of the Administration Enactment.
41. Illegal payment of zakat or fitrah.	1,000	6 months		
42. Encouraging vice.	5,000	3 years		
43. Enticing a married woman.	5,000	3 years		Court can order the said woman to return to her husband.

44. Preventing married couple from cohabiting.	3,000	1 year		Court can order the couple to cohabit as a legally married couple.
45. Instigating husband or wife to divorce or to neglect duties.	5,000	3 years		
46. Enticing a female person.	3,000	2 years		Court may make such order as it deems appropriate in respect of the female person.
47. Selling or giving away child to non-Muslim.	3,000	2 years		Court may make such orders as it deems appropriate in respect of the child.
48. <i>Anak dara</i> absconding from custody.	2,000	1 year		Court may make any order which is appropriate regarding such <i>anak dara</i> or <i>thayyib</i> .
49. Abuses of halal sign.	5,000	3 years		
50. Disturbing a religious assembly or ceremony.	3,000	2 years		

51. Degrading the law or bringing it into contempt.	3,000	2 years		
52. Words that may cause breach of peace.	3,000	2 years		
53. Disturbing female in public place.	1,000	6 months		
54. Secrecy.	3,000	2 years		

Appendix 2: New sections

3A. Perbomohan dan sihir / Witchcraft and sorcery,

Mana-mana orang atau mana-mana pusat rawatan yang melakukan atau memberikan apa-apa pengubatan, amalan atau menjalankan upacara perbomohan atau aamalan sihir atau apa-apa perbuatan yang bercanggah dengan Hukum Syarak adalah melakukan suatu kesalahan dan hendaklah apabila disabitkan dikenakan hukuman dengan tidak melebihi lima ribu ringgit atau penjara selama tempoh tidak melebihi tiga tahun atau kedua-duanya.

29A. Hamil atau melahirkan anak di luar nikah / Pregnant or giving birth to a child out of wedlock

- (1) Mana-mana perempuan yang hamil atau melahirkan anak di luar nikah melakukan suatu kesalahan dan boleh, apabila disabitkan, didenda tidak melebihi lima ribu ringgit atau penjara selama tempoh tidak melebihi tiga tahun atau disebat tidak melebihi enam sebatan atau dihukum dengan mana-mana kombinasi hukuman itu.
- (2) Mana-mana lelaki yang menyebabkan mana-mana perempuan hamil luar nikah atau melahirkan anak di luar nikah melakukan suatu kesalahan dan boleh, apabila disabitkan, dihukum menurut peruntukan subseksyen (1)
- (3) Hakikat bahawa seorang perempuan hamil luar nikah akibat daripada persetubuhan yang dilakukan dengan kerelaannya adalah keterangan prima facie tentang pelakuan kesalahan di bawah subseksyen (1) oleh orang perempuan itu
- (4) Bagi maksud subseksyen (3), mana-mana orang perempuan yang melahirkan anak yang sempurna sifatnya dalam tempoh yang kurang daripada enam bulan qamariah dari tarik pernikahannya hendaklah disifatkan telah hamil luar nikah

33.A. Orang perempuan berlagak seperti lelaki

Mana-mana orang perempuan yang memakai pakaian lelaki dan berlagak seperti lelaki di mana-mana tempat adalah melakukan suatu kesalahan dan apabila disabitkan boleh didenda tidak kurang satu ribu ringgit dan tidak melebihi dua ribu ringgit atau dipenjarakan selama tempoh tidak melebihi satu tahun atau kedua-duanya dan bagi kesalahan yang kedua atau berikutnya, boleh dikenakan sebatan tidak lebih enam kali sebatan atau dipenjarakan selama tempoh tidak melebihi tiga tahun atau kedua-duanya dan boleh dikenakan denda tidak melebihi lima ribu ringgit.

34. Indecent acts in public place.

- (1) Any person who, contrary to Hukum Sarawak, acts or behaves (or dress/atau berpakaian) in an indecent manner in any public place shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding six months or to both.
- (2) Mana-mana orang yang berpakaian tidak sopan di tempat awam melakukan suatu kesalah dan boleh, apabila disabitkan, boleh didenda tidak melebihi satu ribu ringgit atau dipenjarakan selama tempoh tidak melebihi enam bulan atau kedua-duanya

(3)36. **Watie.**

Any person who commits watie (sex) other than qubul (genitalia/genital hadapan) and dubur with any man or woman except between husband and wife

[NEW] (2) bagi maksud mewatie dalam subseksyen (1) apa-apa perbuatan seksual yang tidak melibatkan kemasukan ke dalam qubul atau dubur yang tidak termasuk zina atau liwat atau musahaqah

36. **A Persediaan melakukan liwat**

Mana-mana orang lelaki melakukan apa-apa perbuatan sebagai persediaan melakukan liwat adalah suatu kesalahan dan apabila disabitkan kesalahan boleh dikenakan hukuman denda tidak melebihi lima ribu ringgit atau dipenjarakan selama tempoh tidak melebihi tiga tahun atau disebat tidak melebihi enam sebatan atau hukuman dengan mana-mana kombinasi hukuman itu

