

## **THE ETIQUETTE OF ATHLETE ATTIRE, VIOLATION TO DOMESTIC LAW AND A VIEW TOWARDS INTERNATIONAL PRACTICE**

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### **ABSTRACT**

Problems concerning the athletes' clothing Malaysia is a matter of looking desolated by all parties. However, recently the country awakened with the clothing of Farah Ann which is national gymnastic athlete says looking too sexy until it became viral in social media. The athletes' clothing is one of the main things that overstated by many parties either athlete itself, management, coaches and even sports bodies. If we are looking in terms of sportsmanship, this matter may be viewed as a rule the sport and should be obeyed, but at the same time it is a direct violation of the provisions of the existing law in Malaysia through the Act (Penal Code) or the State enactment. Although in both provisions this law has stated explicitly regarding the offence of indecent dress in public, but there are no parties who come forward to speak on this matter, either through comments or reminders. At the international level, the problems relating to the ethics of this athlete clothing already frequently thrown and is voiced by several countries which strongly adheres to the laws of their country. This writing will overview and analysis to the article and journal stated regarding to this issue including the opinion from several related person and organization. The writing is expected to open a community point of view, especially athletes, sports bodies, or the Ministry of Sports and Youth who is responsible in this area, so that all parties more caring and responsible in the case relate to the athletes' clothing.

**Keywords:** ethical attire, athletes, act, enactment, international practice, Malaysia

### ***ETIKA PEMAKAIAN ATLET, PELANGGARAN KEPADA UNDANG-UNDANG DOMESTIK DAN TINJAUAN TERHADAP AMALAN ANTARABANGSA***

#### **ABSTRAK**

*Permasalahan berhubung dengan pemakaian atlet Malaysia adalah suatu perkara yang dipandang sepi oleh semua pihak. Namun begitu, baru-baru ini negara telah dikejutkan dengan pemakaian atlet sukan gimnastik iaitu Farah Ann yang dikatakan terlalu seksi sehingga menjadi viral di media sosial. Pakaian atlet adalah antara perkara yang tidak dipandang berat oleh banyak pihak sama ada atlet itu sendiri, pengurusan, jurulatih malah badan sukan itu sendiri. Jika kita melihat kepada aspek kesukanan, perkara ini mungkin boleh dilihat sebagai peraturan sukan dan perlu dipatuhi, tetapi dalam masa yang sama ia adalah suatu pelanggaran secara langsung terhadap peruntukan undang-undang yang wujud di Malaysia melalui Kanun Keseksaan atau Enakmen negeri. Walaupun di dalam kedua-dua peruntukan tersebut telah menyatakan secara zahirnya berkenaan dengan kesalahan berpakaian tidak sopan di tempat awam, namun tiada mana-mana pihak yang tampil ke hadapan untuk memperkatakan tentang perkara ini, sama ada secara teguran atau peringatan. Di peringkat antarabangsa,*

*permasalahan berkaitan dengan etika pemakaian atlet sudah lama diselesaikan dan diperkatakan oleh sebilangan negara yang sangat patuh pada undang-undang negara mereka. Penulisan ini akan melakukan tinjauan dan analisis terhadap artikel dan jurnal yang memperkatakan tentang isu ini termasuk pendapat yang dilontarkan oleh sebilangan individu dan organisasi berkaitan. Penulisan ini dijangkakan akan membuka mata masyarakat, terutamanya atlet, badan sukan atau Kementerian Belia dan Sukan yang bertanggungjawab di dalam perkara ini, agar semua pihak lebih prihatin dan bertanggungjawab di dalam isu yang berkaitan dengan pemakaian atlet.*

**Kata Kunci:** *etika pemakaian, atlet, akta, enakmen, amalan antarabangsa.*

## **INTRODUCTION**

Problems concerning Malaysia's sport athlete's clothing/uniform/attire is a matter that often been ignored by everyone including the Malaysian Sports Council. When the incident related to the national gymnast on the last Sea Games at Singapore, its just opened the eyes of many parties and at the same time brought the negative perception towards religion and country. These cases finally got the attention from all parties related to the Malaysian sports industry and left the public questioning the matter and our policy on the matter. The incident can be said to be a bitter history to the athlete and squad eventhough they managed to take home a gold medal. The condition/rules in the past years requires the athletes, especially in the sport of gymnastics-artistic, skydiving, swimming requires certain type of attire to be worn by the athletes, not considering whether the athletes concerned is Muslim or not. Before this incident, there are no parties who appear upfront pertaining to this matter. Whereas if we go back to the provisions of our domestic laws, there are provisions under the morality chapter that made dressing innapropriately as an offence.

In which they can actually be arrested and brought before the Court on such offences. However, what's more surprising is the comment from the arguably as related parties are very negative to the provisions of the law in Malaysia. Most of them do not observe the provisions of existing laws and emphasises individual rights and sports. The linking of women in sport and religion is tricky issue. The islamic religion prohibits women to expose their uncovered body to the male other than their mahrams. In modern sport where the attire of the women sport person being subjected to market demand and manipulation, women participation in sport especially from some muslim countries is seems to be attacking the norm in male dominated and Western authority (Paran Azizi & K.Hassan, 2014).

For all kind of problems and issues regarding to this case, the objective of this writing is to inform the public and community especially athletes, sports bodies, or the Ministry of Sports and Youth about the offence dressing inappropriately and the punishment for that offence. In addition, a view toward international practice in how they overcome with this issues will be made and assessed to serve as a guide to stakeholders solving this issue.

## **THE OFFENCES REGARDING PUBLIC NUISANCE IN ACT (PENAL CODE)**

Under conventional law, through the Penal Code Act 574 has explicitly stated under section 268 and read together with section 34. Where its clearly stated about the offence to cause public

annoyance (public nuisance). Generally know that Penal Code is applicable for each act of Malaysians and those in Malaysia regardless of race and religion. Therefore, it is an offence for any person who commits an offence as listed in the Penal Code.

Section 268 of the Penal Code provide that:

- (1) A person is guilty of a public nuisance, who does any act, or is guilty of an omission, which treat intractable causes any common injury, danger or annoyance to, the public, or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger, or annoyance to persons who may have occasion to use any public right
- (2) A common nuisance is not excused on the ground that it causes some convenience or advantage.

People are supposed to know that this provision means any person who commits acts that can or has caused annoyance to the public in General, it can be deemed guilty under this Act. Annoyance here must be something harmful or offensive (offend) members of the public in General.

**Punishment:**

Penal Code Section 290 provides punishment for anyone found guilty of the offence of a public nuisance under Section 268 of the same act.

Section 290 of the Penal Code stipulates that whoever commits a public nuisance in any case not otherwise punishable by this Code, shall be punished with fine which may extend to four hundred ringgit.

For the provisions mentioned above, there are some cases where the offender has been convicted through that provision. Among the cases is a two-person model that is How Jo Yee and Low Kah Wai who have been detained and tried in a magistrate's Court in Ipoh in 2014. Magistrate Haslinda Abdul Raof has stated that their actions both with only wearing half naked in public even for the purpose of photography is an offence and should not be done in public (Berita Harian, 2014).

Therefore, it can be said that the acts of conspicuous clothing or sexy which may lead public annoyance is an offence. No matter for any purpose including sports activities. This is because there are no provisions or no exception stated in any law that excludes sports activities are exempted from the provision under the offence (Ahmad Hidayat Buang, 2004).

## **PROVISION OF OFFENCES IN THE ENACTMENT**

Syariah criminal enforcement refers to the implementing regulations provided under any law for the time being in force as the provisions contained under the Syariah Criminal Offences Enactment States (Zulkifli Hassan, 2007). The syariah criminal offences can be considered as a crime without victims (victimless crime). The law created a crime without a victim be vested with this often provoke controversy (Siti Zubaidah Ismail, 2008). The syariah criminal that listed in the enactments also can be defined as offences that have assign it in the enactment

passed by the States either in Syariah Criminal Enactment or other enactments therein provisions offences punishment and have its sentences.(Abdul Halim el-Muhammady, 1998)

Under the Syariah Criminal Enactments in every State, had set out a specific provisions for offences relating to indecent acts in public. According to the provision under section 31 Syariah Criminal Enactment Selangor 1995 describes as follows: "any person who willfully acted or behaved politely not contrary to the Law (*Syara'*) in any public place is guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand ringgit or to imprisonment for a period not exceeding 6 months or to both" (Ahmad Hidayat Buang, 2004).

Apart from the Selangor, other States also have similar provisions in respect of the offence of indecent behavior in public among which section 57 Syariah Criminal Enactment (Perak) 1992, section 5 of the Shariah Criminal Code Enactment 1998 (Kedah), section 29 of the Syariah Criminal offences Enactment (Penang) 1996, section 5 Criminal Code Enactment of Shariah (Perlis) 1991, section 29 the Syariah Criminal Offences Act (Wilayah Persekutuan), 1997 , Enactmen Errors section 71 (Melaka) 1991, section 29 of the Syariah Criminal offences Enactment (Johor) 1997, section 67 Syariah Criminal Enactment (Negeri Sembilan) 1992, section 145 of the Syariah Criminal offences under Administrative Enactment Religious and Malay Customs (Pahang) 1982 (revised 1987), section 9 Syariah Criminal Code Enactment (Kelantan) 1985, section 34 Syariah Criminal Offences Enactment (Takzir) of Terengganu, 2001, section 83 of the Syariah Criminal offences Enactment (Sabah) 1995 , and section 26 of the Syariah Criminal Offences Ordinance.

All the existing offence provisions that mention above is applicable to all members of the public who is a Muslim in Malaysia. Then anyone Muslim who commits an offence in any indecent act of the State may be convicted guilty through a provision in that States. As conventional law, Islamic law also does not mention any exemption under the provisions of this enactment for sporting activities and so on. There are several cases involving offences under the provisions of this enactment. Among them, the case Fahyu Hanim and two others associated with the pageant. This case has received extensive coverage in the country. Judicial reviews made by the Syariah judge then stated that they were not an offences to participate in the beauty contest but filling the competition which requires participants to come forward in circumstances not polite with indecent dress was contrary to Islamic law and to cause annoyance to the public.

All Muslim must know that as a Muslim, they are bound by Islamic Law Firm based in al-Quran: (Al-Ahzab: 59) and (An-Nur: 31).

The meaning :

*And tell the believing women to lower their gaze (from looking at forbidden things), and protect their private parts (from illegal sexual acts, etc.) and not to show off their adornment except only that which is apparent (like palms of hands or one eye or both eyes for necessity to see the way, or outer dress like veil, gloves, head-cover, apron, etc.), and to draw their veils all over Juyubihinna (i.e. their bodies, faces, necks and bosoms, etc.) and not to reveal their adornment except to their husbands, their fathers, their husband's fathers, their sons, their husband's sons, their brothers or their brother's sons, or their sister's sons, or their (Muslim) women (i.e. their sisters in Islam), or the (female) slaves whom their right hands possess, or old male servants who lack vigour, or small children*

*who have no sense of the shame of sex. And let them not stamp their feet so as to reveal what they hide of their adornment. And all of you beg Allah to forgive you all, O believers, that you may be successful.*

Futhermore Allah S.W.T also has stated in the Quran (An-Nur:31):

The meaning:

*O Prophet! Tell your wives and your daughters and the women of the believers to draw their cloaks (veils) all over their bodies (i.e.screen themselves completely except the eyes or one eye to see the way). That will be better, that they should be known (as free respectable women) so as not to be annoyed. And Allah is Ever Oft-Forgiving, Most Merciful.*

The verses of the Quran as above clearly showed the instructions of Allah S.W.T to his slaves especially women in maintaining and preserving their dignity and honor in all respects whatsoever. The ban is not intended to restrict and prevent women from doing sporting activities but keep and preserve their duties. If it can be observed then no barriers to anyone to play sports or doing the initial activity does not contrary with Islamic law.

## **SOLUTON OF ISSUES THROUGH THE FATWA APPROACH**

In discussing the matter of indecent acts, it is not limited to the provisions of the law only, but Malaysia also very serious in addressing this problems by taking this through the national Fatwa Committee. Take the example of the previous mentioned case of the national gymnastics athletes, Farah Ann that became controversial through her indecent dress and violating the ethics of a Muslim Woman, the Fatwa Committee immediately thus has issued a Fatwa to describe relevant clothing and adoption for Muslim sports athletes.

Mufti of Perak, Tan Sri Dr Harussani Zakaria in commenting with respect to relevant state that any individual Muslim cannot arbitrarily disputing the law by shows the parts to non-muhrim that already clearly stated in the Quran and Hadith, include the prohibition of open their nakedness in sport. The issue should be obvious since long ago and every muslims supposed to not following the concept and the way of attire that introduced by the Western countries. Gymnastics not for Muslim women, showing the part and shape of body was clearly illegal for them. He also state that “if they were still want to join it, they need to find out the proper attire for them which necessarily closes their nakedness and might be incompatible with the sport” (Wan Syamsul Amly, 2015). Because of that, the Department of Islamic Development Malaysia (JAKIM) through the Fatwa Management Division has issued a fatwa in relation to sports guidelines according to Islam. However, the contents in the guidelines seems too general with just stating to the basic principles without touching as a whole with respect to the application of the athletes especially involving athletes such as gymnastics and others. (JAKIM, 2015).

## **OFFENCES ON VIOLATION TO THE FATWA**

A fatwa when enacted, it will become effective and binding each persons that domiciled in that State. All States have set aside punishments to Muslims who violate the fatwa.(Zaini Nasohah,

2010). But there are differences in terms of the amount of punishment in some States. In the Federal territory, any person acting by way of insulting religious authorities, violate or deny or dispute the orders or directions “Yang Di Pertuan Agong” as Islamic religious leader or Mufti Council, disclosed or provided through a verdict shall be guilty of an offence. On conviction, it can be fined not exceeding RM 3000 or imprisonment for a term not exceeding 2 years or to both (Syariah Criminal Offences Act, Federal Territories (Wilayah Persekutuan) of 1997, section 9).

In addition, any person who give, grow or spread opinion about the teachings of Islam, Islamic law or any issues involving any fatwa that is currently in effect in the Federal territory is deemed to have committed an offence. On conviction, it can be fined not exceeding RM 3000 or imprisonment not exceeding 2 years or to both (section 12). Selangor also provided similar penalty rates (Syariah Criminal Enactment (Selangor), section 12 (c)).

In relation of enforcement of the law relating to the violations of the fatwa, in the State of Selangor for instance, as of July 2000, there were 5 cases prosecutions were made to several individuals for violations of the fatwa. Among them are cases involving three Muslim girls entering Beauty competitions in 1997. According to prosecution papers, all three accused had entered a Beauty contest on June 13, 1997, 10 p.m. in stage Classic Ballroom Holiday Villa, Petaling Jaya. The offenders act was clearly breach of the Selangor State fatwa stating that it is illegal for Muslim women to participate in any kind of Beauty contest. (The Syarie Prosecutor vs Fahyu Hanim Ahmad, etc (Shariah Journal 8 (1), 137.2000).

The prosecution conducted among others by applying the provisions of section 12 (c) of the Selangor Syariah Criminal Enactment 1995 mentions: any person who acts in a way that contempt powers, or violate, breach or dispute the orders or directions:

- (a) his Royal Highness the Sultan on His properties as head of Islam;
- (b) the Council;
- (c) the Mufti, disclosed or provided through a fatwa, is guilty of an offence and shall on conviction be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or to both.

In the case above, the first accused (Fahyu Hanim) and second accused (Noni Mohamad) was sentenced to a fine of RM1400 or 4 months jail and required to perform the good behaviour for 6 months. Both the accused has to pay the fine. But the third accused (Sharina Shaari) never appear in court since the early days of the trial has been subject to a warrant of arrest. Based on what was discussed, we can says that any athletes that wearing the unpolite attire was subjected to the commit of fatwa. So they are convicted with the provision above and shall be fined or being prison.

## **THE ISSUE OF SPORT ATTIRE FROM INTERNATIONAL VIEW**

At the international level with respect to the clothing issue sports athletes (sport attire) has long been addressed and discussed. Where there are several countries that are very outspoken in defending their athletes on their participation in sports tournaments internationally or domestically. Republic of Iran as an example which respect ethical application of their women athletes, the leaders and activists of Iran very actively and frequently come forward in fighting

for women's rights in Islam to dress perfectly included in sports activities.

The Iranian Penal Code follows the Shariah, according to the Quran and Hadith and coupled with the expectation of the public interest, culture and national law, it is necessary for Iranian Muslim women whether they are athletes, coach or manager to wear hijab. Consequently, any women who break the Islamic rules for example not wearing the hijab in public will be punished as an offender under criminal law (Khaleeli, 2012).

Iranian law for woman athletes stated that female athletes, including Muslim or non Muslim in Iran have to follow the Shari'ah rules on dressing/clothing (Thauqir, 2007). The female athletes have 2 ways to participate in sport events.

- i. Using private facilities and places
- ii. Using public facilities and places with hijab

The only article which is related to sport and sport's person (men and women) mentioned in the Iranian Penal Code is Article 59 (b) is very general (It however does not deal with hijab issue but more on the aggressiveness of sport). Some of the Iranian jurists commented that the articles (i) the penal code cannot be too general, as to let judges and lawyers to interpret the law as they wish (Shokri & Siroos, 2007).

The Iran Penal Code takes the stance with the Islamic position on sport. According to article 638, females athletes must cover their body (except hand and face) in any outdoor national or international games and they can only be shown in photos or film wearing the hijab. Violation of such provision carries criminal liability (Aghainia H, 2002). The consequent punishment for women without religious dresses and appears in public is an imprisonment from 10 days to 2 months or fine of 50 000 – 500 000 Rial (Shokri & Siroos, 2007).

Among the issues to be dealt with respect to this matter is the Iranian Football Federation in order to the championship tournament, their national football women team given the right to impose the full nakedness attire including the hejab at an International Tournament held in Singapore. In this respect, women's football team of Iran was disqualified from the qualification stage due to allegations the organizers stating that the Iranian team players not wearing football outfits as stipulated by FIFA. The Iranian Football Association in 2007 through their Chairman, Ali Kafashian have sent an application to FIFA to re-evaluate the decision of those who claim that with respect to religion, a team is allowed to join a tournament only if they are allowed to see to the application of the code (Pfister & Gertrud, 2003).

FIFA had ruling in March 2007 that the hejab is forbidden in matches. It came after a Canadian Muslim was expelled from a matches for impose a hijab. The desicion taken by the International Football Association Board (IFAB), the body which decide the law of the game and is made up of the four FA's from UK and FIFA, cited Law 4 which lists the basic equipment that players are allowed to wear and does not include headwear except for the goalkeeper.

Law 4 of the FIFA rule state:

“The basic compulsory equipment must not have any political, religious or personal statement..the team of a player whose basic compulsory equipment has political, religious or personal slogan or statement will be sanctioned by the competition organizer by the FIFA.”

However, on 3 January 2012, FIFA has released a statement regarding the permission to the Muslim women player to wear the hejab in the field. The Changes of the Rules was request from the Committee of Asian women's football Confederation (AFC) asking FIFA to consider the rules concerned. According to AFC hejab is "a culture of religious symbols". FIFA also added by stating that "the purpose of the removal of this prohibition is to eliminate all forms of discrimination, and FIFA will be responsible for it. However, the FIFA decision was getting protest from women's Rights Groups and international (LDIF) stating that the rules for accepting clothing specifically for women athletes has caused discrimination and contrary to the rules of the sports movement that set the rules of the same origin of clothing and confidence. This objection is sent directly to FIFA President Sepp Blatter.

In addition, Iran's assertiveness in the case relate to their athletes' clothes are also can be seen when Iran elected to organize Solidarity Sports Championships (countries) of Islam. In this tournament the organisers put provided all sports involving women required to use the fully close attire and held in the venue that are closed to prevent the man to see. Meanwhile, the State of Qatar is also a country that strongly adheres to the rules of their country. Which when the Asian Championships 2014 in Incheon, Qatar basketball team have been prevented to play because of the violent conflicts over their athletes that wear he jab. Which is alleged to be in contravention of the rules laid down by the International basketball Federation (FIBA) based on a rule item 4.2.2 which sets players cannot wear head coverings, hair accessories and jewellery (Jahromi & Maryam Koushkie, 2011).

The organizers, however, have submitted applications but are still not allowed. Officials from Qatar, Ahlam Al-Mana' which at that time ruled that the action does not allow athletes to wear the hijab altogether contrary to the principles of the Olympic Games and the goals of the International Olympic Committee (IOC) to have the involvement of countries from different cultures (Berita Harian, 2011).

Meanwhile, the Badminton World Federation (BWF) in 2011 has issued a statement in connection with the adoption of the skirt for the player obliges women starting from the Super Series open India is desperately irrelevant. This is because the reason given by the International sport body of the badminton is simply to attract more viewers to watch the badminton tournament. This is totally a matter of exploiting the women. Where there are few female Muslim or Islamic countries that represent in that tournament such as Indonesia and Malaysia already necessarily will feel disturbed and denied their rights. Malaysia itself, even most of the badminton athletes are Chinese or non-Muslims, yet they carry the name of the country is known as one of the world's Muslim countries (Gertrud Pfister, 2008).

Countries that compete in the Olympics view their athletes as ambassador, and Islamic countries such as Iran, Saudi Arabian and others is no exception. Writing about the situation of female athletes (i) the Islamic Republic, Leila Mouri and Kristin Soraya Batmanghelichi (2011)



(forthcoming) state:

*“From the moment the Iranian state referred to these female athletes as its “ambassadors”, what has resulted is a subject that is not merely a footballer playing a match in an international competition. It is a representative who act on behalf of an ideological identity called the Islamic Republic.”*

The use of full nakedness clothes or attire is not the barrier to an athlete to success. This has been proved by many athletes from Islamic countries such as Bahrain which their women Sprint athletes Ruqayah Al-Ghasari who won the gold medal at the Asian Games when played in Doha, Qatar in 2006. Then Malaysian athletes themselves never defeated by the Iranian team in the hockey tournament held in Malaysia despite the Iranian team play with the full close nakedness. Recently Iran futsal team also appearing with the fully close clothes managed to defeat many of the parts other teams including Malaysia, and they finally became the champion in the AFC futsal championship held in Malaysia in September.

To be clear that, with respect to its athletes' clothing are discussed and debated by numerous international countries. With respect to the uniform dress or an athlete that mostly is determined and set by the sports bodies themselves. Then it is a rule that is not fixed and can change. This is because, the rule set by a group of individuals in a sports body they do not represent all levels of athletes that includes a variety of religions, races and Nations (Al- Ansari, 1999).

In the meantime, some countries like Iran as for example has shown that a rule set by international sports bodies that can be transformed for defending their country's athletes. But they've necessarily must go through some specific processes as well as sacrifice them to unveil their stance in terms of ethics application this includes the activities of the boycott and so on. Finally all their efforts was successful and they have proven that the regulations created by a sports body not a rule that cannot be changed in order to defend the rights of the athletes themselves.

## **CONCLUSION**

The debate around muslim women athlete's clothing is far from over. Those in favour of banning the hejab remain skeptics, disbelieving that this fabric can signify more than a political or ideological struggle. These detractors cannot accept that the hejab can be a woman's choice, despite the fact that many muslim women themselves proudly defend their right to wear it. The right to veil should go hand with the right to unveil.

Based on the above mentioned writing, is clearly showed that indeed in Malaysia has drawn up specific provisions for offences of indecent acts or to cause public annoyance. However, to putting athletes act with conspicuous clothing or sexy in open and public was equal fault with provisions of the law, that shall be the duties and responsibilities of the judges.

If such acts are allowed on the ground that it is in sports, then the case will open up a large space to society and the parties certain to commit the same offence and stating their rights

as with sporting activities. Therefore, should be examined and understood that the existence and the creation of the law is intended to protect, educate and regulate society in all circumstances regardless of race, ethnicity and religion (Hasyim Bedu, 2008). If the law is applicable to at least a situation and be exempted for a situation to another solely for a particular purpose, then it is deemed to violate the law and do not put justice served.

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