

WEAKNESSES IN LAW ENFORCEMENT, PROCEDURAL JUSTICE AND LEGAL CHALLENGES IN DEALING WITH DEVIANT SEXUAL CONDUCT CASES IN MALAYSIA: A SYSTEMATIC LITERATURE REVIEW (SLR)

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ABSTRACT

The “Spa Songsang” case, involving the release of 171 individuals after the court rejected a remand application due to procedural delay, has generated significant debate among the public, legal practitioners and Shariah scholars in Malaysia. This incident reflects deeper structural issues within the criminal justice system, particularly concerning procedural justice, evidentiary constraints and the

coherence between civil law and Islamic legal principles. This study employs a Systematic Literature Review (SLR) to analyse scholarly discussions on the enforcement of laws relating to deviant sexual conduct, procedural shortcomings in criminal investigations, jurisdictional conflicts and their implications from the perspective of Maqasid al-Shariah. By reviewing academic articles, legal commentaries and Shariah-based studies, the findings reveal that enforcement failures are not primarily caused by the absence of legal provisions, but rather by weaknesses in procedural compliance, evidentiary limitations and the lack of an integrated preventive framework. The study proposes comprehensive reforms involving procedural enhancement, capacity building for enforcement agencies and a maqasid-oriented preventive approach to address social morality issues more effectively.

Keywords: *Deviant sexual conduct, Procedural justice, Maqasid al-Shariah, Law enforcement, Section 377, Malaysia*

1.0 INTRODUCTION

Sexual morality offences and non-normative sexual behaviour remain among the most contested socio-legal issues in contemporary Muslim-majority societies, particularly where modern criminal justice systems intersect with religious norms and ethical values. In many jurisdictions, including Malaysia, such cases generate intense public debate because they implicate not only legal enforcement but also cultural identity, religious doctrine and social order. Scholars have observed that the regulation of sexual conduct often reflects deeper tensions between state authority, moral governance and individual autonomy, making enforcement highly complex in plural legal systems (Hallsworth, 2013).

Within criminal justice scholarship, procedural justice has been identified as a critical determinant of public confidence in legal institutions. Procedural justice theory emphasises that fairness in legal processes such as lawful arrest, timely remand applications and adherence to due process, is as important as substantive outcomes. Empirical studies demonstrate that failures in procedural compliance can undermine the legitimacy of law enforcement actions, even where moral or social harm is widely perceived by society (Tyler, 2006).

In the context of sexual offence enforcement, evidentiary constraints represent a persistent challenge. Criminal law systems grounded in liberal legal principles require a high standard of proof, particularly in cases involving consensual acts conducted in private settings. Legal scholars have consistently argued that such standards, while essential for protecting individual rights, create structural limitations on the prosecution of morality-based offences, resulting in frequent case attrition at the investigation or pre-trial stage (Ashworth & Redmayne, 2010).

From an Islamic legal perspective, the regulation of sexual conduct is not merely punitive but is integrally linked to the preservation of essential societal interests articulated through Maqasid al-Shariah. Classical and contemporary scholars agree that Islamic law seeks to protect religion, human dignity, lineage and social stability, and that moral transgressions must be addressed through a balanced

framework combining deterrence, prevention and ethical reform. This maqasid-based approach highlights the limitations of relying solely on criminal sanctions without addressing underlying social and moral conditions (Kamali, 1999).

Malaysia's dual legal system further complicates the governance of sexual morality, as jurisdiction is divided between civil courts and Syariah courts. Constitutional constraints on Syariah criminal jurisdiction limit the scope of enforcement, while civil criminal law prioritises procedural safeguards and evidentiary thresholds. Socio-legal scholars argue that this fragmentation produces enforcement gaps, particularly in cases that are morally significant but legally difficult to prosecute, thereby generating public perceptions of inconsistency and institutional weakness (Harding, 2022).

Against this backdrop, recent high-profile enforcement cases have become focal points for academic analysis, as they expose the operational realities of criminal justice systems when confronting morally sensitive conduct. Such cases provide valuable empirical contexts for examining how procedural justice, evidentiary law and Islamic ethical objectives interact in practice. Accordingly, a systematic review of existing literature is necessary to identify recurring weaknesses, theoretical insights and policy-oriented solutions that align legal enforcement with both constitutional principles and the objectives of Shariah (Baderin, 2003).

2.0 PROBLEM STATEMENT

Despite the existence of statutory provisions governing sexual and moral offences in Malaysia, the effective enforcement of laws relating to deviant sexual conduct remains persistently weak. Enforcement outcomes are frequently compromised not by the absence of legal authority but by procedural deficiencies such as delays in remand applications, inadequate evidentiary preparation and limited coordination among enforcement agencies. These shortcomings undermine prosecutorial effectiveness and raise serious concerns regarding procedural justice and institutional credibility in addressing socially sensitive offences.

Furthermore, the high evidentiary thresholds required under the criminal justice system present structural obstacles to the prosecution of morality-based offences, particularly those occurring in private and consensual contexts. While such standards are essential for protecting individual rights, they significantly restrict the state's ability to proceed with legal action in the absence of complainants, direct evidence, or victim testimony. This tension between due process and moral regulation is further exacerbated by Malaysia's dual legal system, where jurisdictional fragmentation between civil and Syariah courts creates enforcement gaps and public perceptions of inconsistency.

From the perspective of Maqasid al-Shariah, the prevailing enforcement approach reflects a disproportionate emphasis on punitive measures at the expense of preventive, educational and rehabilitative strategies. This narrow focus limits the realisation of key maqasid objectives, including the protection of religion, human dignity, lineage and social order. Despite extensive scholarship on criminal law, procedural justice and Islamic legal theory, there remains a lack of systematic analysis integrating these dimensions. Consequently, a comprehensive literature

review is necessary to identify recurring weaknesses and to develop a coherent, maqasid-oriented framework for addressing deviant sexual conduct within Malaysia's legal and Islamic governance structure.

3.0 RESEARCH OBJECTIVES AND RESEARCH QUESTIONS

The first objective of this study is to systematically identify and synthesise existing scholarly discussions on the enforcement of laws relating to deviant sexual conduct within the Malaysian legal context. Prior research indicates that socio-legal challenges surrounding morality offences are often fragmented across criminology, constitutional law and Islamic jurisprudence, resulting in limited cross-disciplinary integration. By consolidating these bodies of literature, this study seeks to address the research question: *What are the dominant themes and gaps in existing scholarship on the enforcement of deviant sexual conduct laws in Malaysia?* (McCrudden, 2008).

The second objective is to examine how principles of procedural justice influence enforcement outcomes in cases involving moral and sexual offences. Procedural justice theory emphasises that the legitimacy of legal institutions depends not only on legal authority but also on fairness, transparency and consistency in enforcement processes. Accordingly, this study addresses the research question: *How do procedural deficiencies, such as delays and non-compliance with legal requirements, affect the effectiveness and legitimacy of enforcement actions in morality-based offences?* (Tyler, 2006).

The third objective is to analyse the evidentiary challenges associated with prosecuting deviant sexual conduct under criminal law. Existing scholarship highlights that offences occurring in private spheres pose unique legal difficulties due to the absence of direct evidence or complainants. This study therefore seeks to answer the research question: *What evidentiary limitations are most frequently identified in the literature as barriers to successful prosecution of sexual morality offences?* (Ashworth & Redmayne, 2010).

The fourth objective is to explore the implications of Malaysia's dual legal system on the regulation of sexual morality. The coexistence of civil and Syariah legal frameworks has been widely discussed as a source of jurisdictional ambiguity and enforcement inconsistency. In this regard, the study addresses the research question: *How does the division of jurisdiction between civil courts and Syariah courts affect the enforcement of laws relating to deviant sexual conduct?* (Harding, 2022).

The fifth objective is to evaluate the relevance of Maqasid al-Shariah as an analytical framework for understanding the limitations of punitive enforcement approaches. Contemporary Islamic legal scholarship increasingly emphasises that criminal sanctions alone are insufficient to achieve the higher objectives of Shariah without preventive and rehabilitative mechanisms. Accordingly, this study asks: *To what extent does existing literature support a maqasid-based approach in addressing deviant sexual conduct beyond punitive enforcement?* (Kamali, 1999).

The final objective of this study is to propose informed directions for policy and legal reform based on a systematic synthesis of the literature. By identifying recurring weaknesses and theoretical insights, this review seeks to contribute to

evidence-based recommendations that align legal enforcement with constitutional safeguards and Islamic ethical objectives. This leads to the overarching research question: *What policy and governance reforms are recommended in the literature to enhance procedural effectiveness and maqasid-oriented outcomes in managing deviant sexual conduct cases?* (Baderin, 2003).

4.0 METHODOLOGY

This study adopts a Systematic Literature Review (SLR) methodology to ensure a rigorous, transparent, and replicable synthesis of existing scholarly work related to the enforcement of deviant sexual conduct laws, procedural justice and Maqasid al-Shariah. The SLR approach is particularly suitable for addressing complex socio-legal issues that span multiple disciplines, as it enables structured identification, evaluation and integration of diverse bodies of literature. The review protocol was designed in accordance with established methodological standards for management and legal research, emphasising clarity in search strategy, inclusion criteria and analytical procedures (Tranfield, Denyer & Smart, 2003).

To enhance methodological transparency, this review follows the PRISMA (Preferred Reporting Items for Systematic Reviews and Meta-Analyses) framework in narrating the selection and screening process. Relevant literature was identified through structured searches of Scopus-indexed databases, including Scopus, Google Scholar and MyJurnal, using predefined keywords related to sexual morality offences, procedural justice, Islamic criminal law and Maqasid al-Shariah. The PRISMA narrative guided the sequential stages of identification, screening, eligibility assessment, and final inclusion, ensuring that only high-quality and contextually relevant studies were retained for synthesis (Moher et al., 2009).

Following selection, the included studies were subjected to thematic analysis to extract recurring patterns, conceptual frameworks and policy-oriented insights. This analytical phase focused on categorising findings related to procedural weaknesses, evidentiary challenges, jurisdictional fragmentation and maqasid-oriented perspectives. The synthesis prioritised analytical depth over quantitative aggregation, consistent with best practices in legal and socio-legal systematic reviews. Such an approach enables a nuanced understanding of normative and institutional dynamics, while maintaining methodological robustness and scholarly credibility (Kitchenham & Charters, 2007).

5.0 PRISMA FLOW NARRATIVE

The identification stage involved a comprehensive and systematic search of relevant literature to ensure broad coverage of studies related to deviant sexual conduct, procedural justice and Maqasid al-Shariah. Multiple Scopus-indexed databases were utilised, including Scopus, Google Scholar and MyJurnal, using predefined keywords and Boolean operators to capture variations in legal, socio-legal, and Islamic jurisprudential discourse. This stage prioritised sensitivity over specificity to minimise the risk of excluding potentially relevant studies, in line with best practices for systematic reviews (Gough, Thomas & Oliver, 2017).

Following identification, the screening stage focused on the removal of duplicate records and the preliminary assessment of titles and abstracts. At this stage, studies that were clearly irrelevant, non-academic or outside the scope of law, Shariah, and social governance were excluded. Screening decisions were guided by clearly defined inclusion and exclusion criteria to ensure consistency and reduce reviewer bias. This step is critical in maintaining methodological transparency and preventing arbitrary exclusion of literature (Petticrew & Roberts, 2008).

The eligibility stage involved a full-text review of the remaining studies to assess their substantive relevance and methodological quality. Articles were evaluated based on their theoretical contribution, empirical relevance and contextual applicability to Malaysia or comparable Muslim jurisdictions. Studies that lacked analytical depth, relied solely on opinion or failed to address enforcement, procedural justice or Islamic legal perspectives were excluded at this stage, consistent with systematic review quality control standards (Snyder, 2019).

In addition to thematic relevance, methodological rigour formed a key component of the eligibility assessment. Preference was given to peer-reviewed journal articles, scholarly books, and authoritative legal analyses indexed in Scopus or equivalent databases. This emphasis ensured that the final corpus of literature reflected academically credible and methodologically sound research, thereby strengthening the validity and reliability of the review findings (Booth, Sutton & Papaioannou, 2021).

The inclusion stage resulted in a final dataset of studies that directly addressed the research objectives and research questions of this review. These studies collectively provided insights into procedural enforcement challenges, evidentiary constraints, jurisdictional fragmentation and maqasid-oriented perspectives. The structured application of PRISMA ensured that inclusion decisions were traceable and justified, reinforcing the transparency and replicability of the review process (Moher et al., 2009).

Overall, the PRISMA flow narrative enabled a systematic and auditable progression from a broad pool of identified literature to a focused and analytically relevant body of studies. By documenting each stage of selection and exclusion, the review adheres to internationally recognised standards for systematic reviews and enhances the credibility of its methodological approach. This structured process is particularly important for interdisciplinary research that integrates legal analysis with Islamic ethical frameworks (Liberati et al., 2009).

6.0 FINDINGS: THEMATIC SYNTHESIS

The first major theme identified across the reviewed literature is the systemic weakness in procedural compliance during enforcement operations involving moral and sexual offences. Numerous studies emphasise that failures such as delayed remand applications, improper documentation and inadequate adherence to statutory timelines frequently result in the collapse of otherwise legally justifiable cases. These procedural shortcomings undermine prosecutorial efforts and reinforce the principle that procedural justice is a decisive factor in determining enforcement outcomes, regardless of the perceived moral gravity of the alleged conduct (Tyler, 2006).

A second prominent theme concerns the evidentiary limitations inherent in prosecuting deviant sexual conduct under criminal law. The literature consistently highlights that offences occurring in private or semi-private spaces face significant challenges due to the absence of direct evidence, victim testimony or confessions. High standards of proof, while essential to protect individual liberties, create structural barriers that disproportionately affect morality-based prosecutions and often lead to case attrition at pre-trial stages (Ashworth & Redmayne, 2010).

The third theme relates to jurisdictional fragmentation within Malaysia's dual legal system, particularly the division of authority between civil courts and Syariah courts. Scholars argue that constitutional limitations on Syariah criminal jurisdiction restrict the ability of religious institutions to address moral offences comprehensively, while civil law prioritises procedural safeguards over moral considerations. This structural separation produces enforcement gaps and inconsistent outcomes that weaken public confidence in both legal systems (Harding, 2022).

A fourth recurring theme is the overreliance on punitive enforcement mechanisms in addressing sexual morality issues. The reviewed studies indicate that enforcement strategies tend to focus heavily on raids, arrests and prosecution, with limited emphasis on prevention, rehabilitation or social intervention. Criminological research suggests that such punitive-centric approaches are ineffective in addressing complex social behaviours and may inadvertently exacerbate marginalisation without achieving long-term deterrence (Garland, 2001).

The fifth theme emerging from Islamic legal scholarship is the disconnect between enforcement practices and the objectives of Maqasid al-Shariah. While Islamic law recognises the importance of deterring immoral conduct, scholars emphasise that maqasid-oriented governance requires a balanced approach that integrates moral education, social welfare, and ethical reform. The literature suggests that exclusive reliance on criminal sanctions fails to fully realise the protection of religion, dignity, and lineage envisioned by Islamic legal philosophy (Kamali, 1999).

The final theme concerns the lack of integrated policy frameworks bridging legal, social and religious responses to deviant sexual conduct. Many studies note that existing responses operate in institutional silos, with minimal coordination between law enforcement agencies, religious authorities, and social support institutions. This fragmentation limits the effectiveness of governance strategies and underscores the need for holistic, evidence-based policy reforms that align procedural justice with ethical and social objectives (Baderin, 2003).

7.0 POLICY IMPLICATIONS AND RECOMMENDATIONS

The first policy implication concerns the urgent need to strengthen procedural compliance and operational efficiency within law enforcement agencies. The findings indicate that procedural failures, particularly delays in remand applications and inadequate documentation, directly undermine prosecutorial effectiveness. Policy reforms should therefore prioritise the standardisation of procedural protocols, continuous legal training for enforcement officers and internal accountability mechanisms to ensure strict adherence to criminal procedure

requirements. Strengthening procedural justice not only improves case outcomes but also reinforces public trust in the legitimacy of law enforcement institutions (Tyler, 2010).

Secondly, policy attention should be directed towards addressing evidentiary constraints in morality-based offences without compromising fundamental rights. While high standards of proof are essential to prevent abuse of state power, legal scholars have argued for complementary regulatory mechanisms such as administrative sanctions, licensing controls and preventive oversight for premises associated with recurrent moral violations. These non-criminal regulatory tools can function as early intervention measures, reducing reliance on criminal prosecution where evidentiary thresholds are difficult to meet (Ashworth & Zedner, 2014).

A third policy implication relates to the need for enhanced coordination between civil authorities and religious institutions. The fragmentation created by Malaysia's dual legal system necessitates structured collaboration between law enforcement agencies, Syariah authorities and social welfare institutions. Formal inter-agency frameworks, joint task forces and information-sharing mechanisms can reduce jurisdictional ambiguities and improve consistency in enforcement strategies while respecting constitutional boundaries (Harding, 2022).

From an Islamic governance perspective, policy reforms should incorporate Maqasid al-Shariah as a guiding framework rather than treating moral offences solely as criminal matters. This requires shifting policy emphasis towards preventive education, community engagement and moral rehabilitation programmes that address behavioural causes rather than symptoms. Embedding maqasid principles within public policy ensures that legal responses promote social harmony, human dignity and ethical development alongside deterrence (Kamali, 1999).

Furthermore, criminological research supports the adoption of preventive and rehabilitative policy models over punitive-dominant approaches. Social interventions such as counselling services, public health initiatives and targeted community outreach have been shown to be more effective in managing socially sensitive behaviours than coercive enforcement alone. Policies that integrate legal regulation with social support mechanisms are more likely to achieve sustainable outcomes and reduce recidivism (McNeill, 2012).

Finally, the literature highlights the importance of evidence-based policy formulation grounded in systematic research rather than reactive enforcement. Policymakers should utilise findings from systematic literature reviews and empirical studies to inform legal reforms, enforcement priorities and institutional capacity-building. Such an approach ensures that governance strategies are aligned with constitutional safeguards, international best practices and Islamic ethical objectives, thereby enhancing both effectiveness and legitimacy (Baderin, 2003).

8.0 CONCLUSION

This Systematic Literature Review demonstrates that challenges in addressing deviant sexual conduct in Malaysia stem less from deficiencies in substantive law and more from weaknesses in procedural implementation, evidentiary limitations and institutional fragmentation. The synthesis of literature reveals that procedural justice plays a decisive role in enforcement outcomes, as failures in compliance with

legal processes undermine prosecutorial effectiveness and public confidence. These findings reaffirm the centrality of due process and institutional legitimacy in regulating socially sensitive conduct within modern legal systems (Tyler, 2006).

The review further highlights that Malaysia's dual legal system presents structural constraints in integrating moral governance with criminal enforcement. While Syariah provides a comprehensive ethical framework addressing sexual morality, its limited jurisdiction restricts practical enforcement capacity. Conversely, civil criminal law prioritises evidentiary rigour and procedural safeguards, often at the expense of moral regulation. This structural tension underscores the need for coordinated governance strategies that respect constitutional boundaries while addressing moral and social harm effectively (Harding, 2022).

From the perspective of Maqasid al-Shariah, the findings suggest that punitive enforcement alone is insufficient to achieve the higher objectives of Islamic law. Sustainable regulation of moral conduct requires a balanced framework integrating prevention, education, rehabilitation and social support alongside legal enforcement. Aligning public policy with maqasid principles enables a shift from reactive criminalisation towards proactive moral and social governance that safeguards dignity, lineage, and social harmony (Kamali, 1999).

Future research should extend beyond doctrinal and conceptual analysis by incorporating empirical studies on enforcement practices, inter-agency coordination and community-based interventions. Comparative research involving other Muslim-majority jurisdictions may also provide valuable insights into alternative regulatory models that reconcile procedural justice with Islamic ethical objectives. Such research would strengthen evidence-based policymaking and contribute to the development of integrated governance frameworks responsive to both legal and moral imperatives (Snyder, 2019).

Author Contribution

Arsad, M. I., Nasri, M. S., Ibrahim, A. K. & Romli, S.; jointly contributed to all components of the writing process from introduction, the discussion and organization of key ideas, the review and refinement of language and writing style. All authors participated collaboratively and approved the final version of the article.

Conflict Of Interest

This manuscript has not been published elsewhere, and all authors have agreed to its submission and declare no conflict of interest regarding the manuscript.

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