CRIMINAL LAW CODIFICATION AND REFORM IN MALAYSIA: AN OVERVIEW

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This comment describes several of the most significant amendments to the Malaysian Penal Code in the past two decades. Sexual offences have featured prominently with changes made to the definition of rape and its penalty in order to afford greater protection to girls and women against sexual violence; a widening of the scope of unnatural offences; the creation of a version of the offence of marital rape; and new offences against the exploitation of persons for the purpose of prostitution. The offence of incest was also introduced into the Penal Code with resulting jurisdictional conflicts between the civil and Shariah courts, which the author contends should be resolved by the Penal Code taking precedent. Other amendments discussed in this comment are a reverse onus presumption provision for the offences of criminal misappropriation and criminal breach of trust; anti-terrorism legislation in the aftermath of 9/11; and an increased maximum penalty structure for serious offences.

I. INTRODUCTION

The introduction of the Penal Code\(^1\) in Malaysia\(^2\) went through several stages during British colonization as the British influence swept throughout Malaysia.\(^3\) The first Penal Code, the Straits Settlement Penal Code,\(^4\) was introduced in 1871 into Penang and Malacca, the two states comprising the Straits Settlement. Before the Penal Code, the law which applied in most states was Islamic law. The position was best described by Suffian L.P. in the case of \textit{Che Omar bin Che Soh v. Public Prosecutor}.\(^5\) According to His Lordship,\(^6\)

Before the British came to Malaya ... the sultans in each of their respective states were the heads not only of the religion of Islam but also as the political leaders in their states, which were Islamic in the true sense of the word, because, not only were they themselves Muslims, their subjects were also Muslims and

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\(^2\) Malaysia is a Federation of 13 states and 3 federal territories.


\(^4\) No. 4 of 1871 (S.S.).


\(^6\) \textit{Ibid.} at 56.