

An Overview of Cyber Laws in Malaysia from Islamic Point of View

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Abstract - The paper presents a comparative study between the existing cyber laws in Malaysia and the Islamic perspective concerning four major issues in cyber space particularly concerning i. privacy, ii. trust, iii. theft and iv. contract. The study would use comparative approach from the main source of Islamic Shariah - Quran and Sunnah (tradition of the prophet s.aw.) and a thorough study of the existing law pertaining to cyber crime such as Communication and Multimedia Act 1998 and Computer Crime Act. The study prevails that the above concerns principally seems to be consistent with Islamic view. However more extensive study must be carried out when it comes to implementation of these issues in e-commerce. With more than one billion Muslim population, the research will serve as a baseline for establishing an alternative view from Islamic perspective and cyber laws that taken into account approach based on Shariah to meet new challenges for Muslim Ummah in cyberspace.

Index Terms – Cyber Laws, Malaysia, Islamic View

I. INTRODUCTION

The article seeks explanations based on the main source of Islamic jurisprudence (Shariah) – *Al Quran* and the *hadith* without overlooking the contemporary commentaries from scholars. New dimension of cyber crime requires Islamic scholars to extend the scope of Shariah beyond its traditional context. Before the existence of internet and cyber crime, the concept of *privacy*, *trust*, *theft* and *contract* occurred physically the prosecution of the offences can be easily determined directly based on physical evidence.

II. LITERATURE REVIEW

There are numerous Quranic sources and from the tradition (*Sunnah*) pertaining privacy, trust and theft can be referred from.

ALLAH (God) said: "O ye who believe! Enter not houses other than your own, until ye have asked permission and

saluted those in them: that is best for you, in order that ye may heed (what is seemly) (An-Nur 24 :27)

In this Ayah, Allah decides: If ones want to enter a house other than their own, the owner's permission beforehand is required. In this regard Islam recognize the rights of individual privacy in which nobody can access the properties of others without their permission

The conventions of propriety and privacy are essential to a refined life of goodness and purity [1]

"O ye who believe! Avoid suspicion as much, for suspicion in some cases is a sin: And spy not on each other, nor speak ill of each other. Would any of you like to eat the flesh of his dead brother? Nay, ye would abhor it. But fear Allah: For Allah is Oft-Returning, Most Merciful". (Al-Hujurat 49:12).

In this Ayah, ALLAH commands: Do not spy or sneak into one another. Therefore, from the Islamic principles you cannot spy on the secrets of others including those hidden or stored inside computers despite your suspicion. Prophet Mohammad (peace be upon him) said: "*It is better for a Muslim to mind his own business*" [12]

In this Hadith, the Prophet tells us that we are good Muslims if we leave other peoples' business alone. Therefore, from the Islamic ethics you cannot simply allow your curiosity on others' business to delve in their property including the information in their computers.

Prophet Mohammad (peace be upon him) said: "Permission is for having a look" [2] [8]. In this Hadith, the Prophet tells us that the main aim of permission is for having a look. Therefore, from the Islamic principles ones cannot simply have a look inside others' properties without their permission, and the computers are regarded as properties.

"Allah doth command you to render back your trusts to their rightful owners (to whom they are due)" (an-Nisa 4:58).

"O ye the believers! Betray not the trust of Allah and the Messenger, Nor misappropriate knowingly things entrusted to you" (Al-Anfal :27).

Trust may be of various kinds: 1. property, goods, credit, etc.; which we are expected to use for our fellow men. Men may betray the trust of Allah and His prophet by misusing property, or abusing the confidence reposed in them, or the knowledge or talents given to them [1].

Prophet Mohammad (peace be upon him) said: "The signs of a hypocrite are three: Whenever he speaks, he tells a lie. Whenever he makes a promise, he always breaks it. If you trust him, he proves to be dishonest. If you keep something as a trust with him, he will not return it." [2][8].

ALLAH said: *"O believers! Never consume one another's wealth through unlawful means; instead, do business with mutual consent."* (An-Nisa'4:29)

ALLAH said: *"Male or female, whoever is guilty of theft, cut off their hand (that was used in theft) of either of them as a punishment for their crime. This is exemplary punishment ordained by Allah."* (Al-Maaidah 5:38)

Abdullah Yusuf Ali elaborates that the Canon Law jurists are not unanimous as to the value of the property stolen, which would involve the penalty of the cutting off of the hand. The majority hold that petty thefts are exempted from this punishment. In order to keep civil society together, and protect innocent people from crime, certain principles are laid down on which people can build up their criminal law. But we must always remember that Allah not only punishes but forgives, and forgiveness is the attribute which is more prominently placed before us [1].

Prophet Mohammad (peace be upon him) said: "It is prohibited to take the Muslim wealth without his complete permission." [3]

Based on the Islamic sources above analogically (*qiyas*) which is widely used by Islamic jurisprudence a person commits an offense if the person intentionally gives a password, identifying code, personal identification number, credit or debit card number, bank account number, or any confidential information about a computer security system to another person without the effective consent.

This dedicates the importance of trust. The computer resources such as passwords, personal identification number, and debit card number, bank account numbers and etc. that may be given on trust. To give any confidential information to another person without effective permission is a betrayal of trust (*amanah*).

III. CYBER LAWS – ISLAMIC POINT OF VIEW

In this article, we try to initiate a proposal for an Islamic computer crime law which will open a path towards further future research by computer security experts, academicians, law makers and Islamic theologians alike. The proposed computer crime law should generally serve as prevention rather than a cure in society in.

A. PRIVACY

A person should have permission before having a look.

"Oh ye who believe do not enter houses other than your own, until ye have asked permission and saluted those in them: that is best for you, in order that ye may heed (what is seemly)" (An-Nur: 27)

According to this ayah it is prohibited for any person to come (physically) into one's property without permission or logically into one's computers resources (data) for curiosity or to look at their contents without a prior permission of the owner and he should be aware of the limit of the given permission.[13]

Further, Windows Operating System defines permissions given to users based on 6 different standard policies that includes *Read, Read and Execute write* (change files) *modify* (write plus delete). Whilst UNIX Operating System allow only 3 types of permissions; *read* (only), *write* (change), and *execute* (run program). [14]

B. TRUST

A person should be trust worthy.

"Verily Allah doth command you to render back your trusts to those to whom they are due; And when ye judge between man and man, that ye judge with justice: Verily how excellent is the teaching which He giveth you! For Allah is He Who heareth and seeth all things" (an-Nisa': 58)

Trust in Arabic term is *amanah*. And being trustee, mankind should look after and protect those *amanah* (trusts), as Allah s.w.t says: *"Those who faithfully observed their trusts and their covenants"* (al-Mu'minun: 8).

Allah s.w.t says: *"...give them something yourselves out of the means which Allah has given to you..."* (an-Nur 24: 33). For that reason ownership of property by mankind is an *amanah* (trust) which leads to the concept of accountability that has much wider concept relates to the Hereafter.

Any person who receives some confidential information or a password to access a computer should not give them deliberately to any person without a prior permission from the owner. Muslims and non-Muslims are equal to be trust

worthy. It is interesting here that this item states that one cannot betray someone else. Further, Islam treats Muslim and non-Muslims in equal in terms of trust worthiness.

C. THEFT

Islam highly regards and recognizes personal belongings whether it's in a form of properties or intellectual properties. It is prohibited to have other person's properties illegally. It is unethical to get benefits of the contents of a computer or through it without prior permission. Any action like this could be considered as a theft and will be handled with very strict actions. In certain circumstances in which theft committed Islam prescribed *hadd* (ordained penalty).

This requires certain conditions to be met and not without very high level of proof. The conditions require the accused or defendant is a sane adult person, the property which is stolen exceed the minimum amount (*nisab*), with intention to steal, the property should be kept in a safe place and and so on.

A fatwa by Mufti Dr. Rajab Abu Maleeh a Shariah consultant [4] pertaining theft via the Internet and its applications divided theft based on theft of information or plagiarism and secondly, theft of cash money by way of credit card either through hacking or stealing the card itself along with the password and transferring amounts of money to one's personal account or withdrawing cash from the ATM.

However for the first type of offence the preponderant opinion is that the *hadd* is not applied in this case which is considered lesser offence than stealing money or properties. Moreover, some quarter of scholars view it permissible being means of spreading knowledge, or on the grounds that intellectual rights are not property. It however that offence should be treated with disciplinary punishment.

For the second type of offence depending on if the aforementioned situations and conditions met, the *hadd* must be applied based on the Quranic verse in which Allah says, "As for the thief, both male and female, cut off their hands; a punishment by way of example from Allah. And Allah is Mighty, Wise." (Al-Maidah 5:38)

A hadith reported by Al-Bukhari says [2][8] : "fornicator does not commit fornication while he is a believer, and the one who drinks does not drink wine while he is a believer, and the one who steals does not steal while he is a believer".

Prior to Computer Crime Act 1997 in Malaysia, traditionally theft cases was governed under the Malaysia Penal code, the criminal law provides sanctions in the form of section 378 of the Penal Code dealing with theft, sections 402 to 404 dealing with criminal misappropriation of

property, and sections 405 to 409 dealing with criminal breach of trust and sections 421 to 424 dealing with fraudulent deeds and dispositions of property. The Court is empowered under the Criminal Procedure Code in criminal proceedings to make restitution orders.

- i) Theft Crime allocated under Section 378 Panel Code
- ii) Fraud Crime allocated under Section 415 Panel Code
- iii) Betrayal Crime allocated under Section 425 Panel Code

Although Criminal Procedure Code has existed long before the ICT era the implementation can be extended into crime associated with cyber crime. Anyhow the application of the Criminal Procedure Code in cyber crime theft in Malaysia is insufficient due to lack of existence of precedence.

Table below shows difference between protecting users' information and physical assets or money [5].

TABLE 1
THE DIFFERENCE BETWEEN PROTECTING USERS' INFORMATION AND PHYSICAL ASSETS OR MONEY

Characteristic	Protecting Money	Protecting Information
Sites and portability	Sites storing money are large, unwieldy, and not at all portable. Buildings require guards vault, many levels of physical security to protect money	Items storing valuable assets are very small and portable. The physical devices in computing can be so small that thousands of dollars' worth of computing gear can fit comfortably in a briefcase
Ability to avoid physical contact	Difficult. When banks deal with physical currency, a criminal must physical demand the money and carry it away from the bank's premises	Simple. When information is handled electronically, no physical contact is necessary. Indeed, when banks handle money electronically, almost all transactions can be done without any physical contact. Money can be transferred through computers, mail or telephone.
Value of assets	Very high	Variable, from very high to very low. Some information such as medical history, tax payments, investments and educational back-ground are confidential. Other information such as sales strategies, buying patterns can be very sensitive. Still other information such as address and phone numbers may be of no consequence and easily accessible by other means.

D. CONTRACT

The traditional contract law assumes that most contracts will take the form of a written offer and a written acceptance [6] and the issue of formation of contract is often resolved by

distinguishing between instantaneous or non-instantaneous mode of communications. Technological advancement brings along devices such as fax, telex machines and the internet that pose a new challenge to the traditional notion. More often than not, the conventional law and principles are stretched to fit new and prevailing situations [6].

"*Muslims should respect their terms*". This condition states that it is prohibited to use other person's computers or get what is recorded on them of worthy programs or information without a prior permission. As noted earlier that Muslims and non-Moslems are treated equally at that condition.

The formation of contract requires two parties: one offers the contract then another party who will accept the offer. The offer is the proposal which is made to show his or her willingness to form a contract and in turn, the later response from the other party to prove his or her willingness to the offer.

The terms and conditions of the contract can be easily communicated on line but issues arise pertaining to the meeting place. Traditionally with off-line communication where both parties met face-to-face issues of anonymity is never arise.

From the tradition attributed to the Prophet emphasized the importance of the concept of meeting place can be understood from the following hadith [7]:

"When two persons enter into a transaction, each of them has the right to annul it so long as they are not separated and are together (at the place of transaction); or if one gives the other the right to annul the transaction. But if one gives the other the option, the transaction is made on this condition it becomes binding. And if they are separated after they have made the bargain and none of them annulled it, even then the transaction is binding"

The above hadith covers both the concept of meeting place and time to conclude the offer. The idea of setting place in Islamic commercial legal system is required to extend the validity of the offer over a certain period of time in which the acceptance must be made within the designated period.

A part from giving an option for annulling the sale at any time before separation the meeting place alleviate anonymity that will lead to uncertainty (*gharar*) concern. Failure in addressing the issue of anonymity will bring other consequences of validity and issues of security of the transaction itself.

Although electronic contract is a relatively not very new phenomenon that came along with e-commerce Malaysia has not yet taken any initiative to incorporate it into the existing Contracts Act. So any provision of electronic

contract the old statute pertaining to it in Malaysia is governed by the Contract Act 1950 which was replicated from the common law [9].

Unlike the traditional paper based contract the legal issues surrounding contract over the internet starts from communicating the contract, offer and acceptance including the localization of law and the enforceability of the contract. Offer and acceptance is conducted via e-mail, electronic data interchange (EDI) or e-commerce websites.

An offer in the in the contacts which commonly known as "proposal" is defined under section 2(a). The offer should be definite intention from the offeror and not merely an invitation to treat or to invite the potential buyers. Consumers should not conclude that such e-commerce websites constitute offers but mere invitations to treat and when a response has been made via e-commerce systems by clicking the "agree" button or via e-mail, that response constitutes an acceptance of an offer that has legal binding.

Ethically merchants or companies advertising its products on the internet should include a clear statement stating whether it is an offer or whether the buyer's response constitutes the legal offer to avoid uncertainty (*gharar*) which will lead to fraud.

In terms of contract offer acceptance, in section 4(2) the old statute defines in two alternatives rules for this:

- i. the postal rule for non-instantaneous communications
- ii. the telex rule for instantaneous communications

As for the first rule, the communication of a proposal is complete when it comes to the knowledge of the person to whom it is made. The illustration of the Act provides:

1. A proposes by letter, to sell a property to B at a certain price. The communication of the acceptance is complete when B receives the letter.
2. B accepts A's proposal by a letter sent by post. The communication of the acceptance is complete:
As against A, when the letter is posted:
As against B, when the letter is received by A.

As for the instantaneous communication over the internet, Contract Act in Malaysia may suffer severe consequences due to the absence of comprehensive definition of contract completion. When the acceptance is communicated using e-mail, chat services or any e-commerce application, the receipt rule is applicable. In other words the acceptance must be communicated to the offeror using the digital means and only effective and valid when the acceptance comes to the knowledge of the offeror. Both Shariah and conventional contract unanimously require the mutual consent.

There are two issues that must be addressed. The first issues arise since the current contract act does not specifically recognize or define the data message in e-commerce to validate the contract [9]. Secondly even if it does, how does one determine the time when an acceptance comes to the knowledge of the offeror on the internet? If an acceptance is communicated by this means, the acceptance message enters an information system of the offeror no matter when the offeror opens the information system and read the message.

The electronic contract may be created without any party is aware the receipt of the acceptance. So human interaction may not required to create an electronic contract. Electronic data exchanged in e-commerce transactions could be effective when received at a location and in a form capable of processing the data without individual awareness.

One solution is for a company selling its products on line to explicitly state on its site the precise time and means by which acceptance will take place. For instance, the company acknowledges the receipt of the email acceptance, or when the product is delivered, or if it is in digital product, when it is downloaded or by responding to any available on line tools. This article purposely arises and highlighted the issues for the regulators and the scholars alike to scrutinize for amendment in the future.

IV. PERSONAL DATA PROTECTION – PRIVACY LAW IN MALAYSIA

Personal Data Protection Bill was introduced way back since 2001 anyhow the Malaysian lawmakers have yet to legislate the law. [10] Data protection law is deemed necessary to create confidence among consumers and e-commerce users of the electronic transactions and finally promote a secure electronic environment in line of secure electronic in line with the objectives of Multimedia Super Corridor. For instance if someone that we do not know is trying to sell us something, or an email from a company that we do not even know may only a tip of the iceberg. Those who sent us message have our contact number; they might even have our personal information, such as credit card numbers, home address and etc. This will allow even greater abuse of the information to occur.

If implemented the bill would regulate the collection, holding, processing and use of personal data by any person to provide protection to an individual's personal data as well as to safeguard personal privacy. A part from to safeguard and secure electronic environment the bill would create confidence among consumers and users hence will accelerate the uptake of e-commerce transactions.

Islam regards and recognizes personal data ownership by individuals based on the aforementioned verse from the Quran; *“O you who have believed, avoid much [negative] assumption. Indeed, some assumption is sin. And do not spy*

nor speak ill of each other. Would one of you like to eat the flesh of his brother when dead? You would detest it. And fear Allah; indeed, Allah is accepting of repentance and Merciful.” (Al-Hujurat 49:12)

[11] writes in his tafsir, *“Allah the Exalted forbids His faithful servants from being suspicious, which includes having doubts and suspicions about the conduct of one’s family, relatives and other people in general. Therefore, Muslims are to avoid baseless suspicion. ‘Umar bin Al-Khattab said, “Never think ill of the word that comes out of your believing brother’s mouth, as long as you can find a good excuse for it.”*

In this regard Islam somehow recognizes what is commonly known as benefit of doubt. Allah also warns them that, they must not laugh at others, backbite them or spy them to find faults and create disorder and disputes, because this would be a grievous thing.

However Malaysia is not lack of provision relating to privacy protection. Under Section 234 Communication and Multimedia Act 1998 prohibits unlawful interception of communications. Unlawful interception which is commonly known as cracking or hacking is defined under the act.

In addition, under Computer Crime Act 1997 which come into enforcement in 1999 prevented any unauthorized access to computers, programs, data and other IT information. The unauthorized access is further clarified as i) unauthorized access with intent to commit or facilitate further offence ii) unauthorized modification of the contents of any computer and iii) Wrongful communication of the means of access.

Despite the fact that the underlying point of having such the above law is to supply security over the internet they do not address sufficient protection of consumers’ personal data conducted over e-commerce transaction. Personal Data Protection Act is deemed necessary in order to create confidence among consumers and users of both networked and non networked environment and to accelerate faster e-commerce uptake in this country which is in line with the objectives of the Malaysia Multimedia Super Corridor.

The said act will address misuse of consumers data such cases as consumers are receiving a text message from someone they may not know who is trying to sell or advertise something, or an email from a company they never recognize. This could be only the tip of the iceberg in which if they have the contact data or email they might even have office or home address, identification numbers or even credit card number which further allows the process of social engineering is even simplified.

Imagine if these personal data travels freely from one organization or companies (banks, insurance companies,

social networking sites and etc.) and shared among themselves without regulations and law to limit the misuse consumers are all at risk of having the information being abused.

V. CONCLUSION

This article has attempted to draw considerable attention of scholars, regulators and policy makers alike of the current overview of Malaysian cyber law from the three aspects mentioned both from the Islamic and conventional point of view.

As for the Muslim Ummah (nation) the article is trying to shine new lights of the new challenges in safeguarding them from borderless crimes that hardly traced. Faith (*iman*) and God fearing (*taqwa*) characters of Muslims does not spare activities in the cyber space which tend to adhere them to Islamic teachings in order shapes their daily practice as Muslims in the cyber era.

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