

# The Significance of Hukum Kanun Melaka's Fasal 44 in Regulating Crimes and Punishments

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## Abstract

This paper examines the historical legal system known as Hukum Kanun Melaka and compares it to the modern criminal justice system. Hukum Kanun Melaka, a comprehensive legal code developed during the 15th century, governed various aspects of society in the Malacca Empire. The analysis explores various aspects of crime and justice, including definitions of crimes, investigative methods, trial procedures, and sentencing practices. By comparing the two systems, we gain insights into the changes that have occurred over time, such as the emergence of legal protections, the influence of human rights principles, and the impact of technology on crime detection and punishment. The Hukum Kanun Melaka prioritized social stability and property rights protection, imposing severe punishments to deter criminal activities. In contrast, the modern criminal justice system emphasizes due process, the presumption of innocence, proportionality in punishment, and the protection of individual rights. Understanding the evolution of legal norms and practices contributes to discussions on making the contemporary criminal justice system more equitable and effective.

**Keywords:** Hukum Kanun Melaka, Crimes, Punishment, Criminal, Individual Right.

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## Introduction

Referring to Perpustakaan Negara Malaysia, Hukum Kanun Melaka, often known as the Malacca Laws or the Malacca system, is a comprehensive legal system created during the 15th-century rule of Sultan Muhammad Shah of the Malacca Sultanate. This manuscript, designated as 'MSS 23,' housed within the esteemed collection of the National Library of Malaysia. It offers a rare and invaluable glimpse into the intricacies of Malacca's legal framework. The code functioned as a legal foundation for the Sultanate and considerably impacted the region's legal system. It served as a comprehensive legal framework governing various aspects of society, including criminal offences, civil matters, and trade regulations.

Fasal 44, often known as Article 44, is an important clause in the Hukum Kanun Melaka. It covers a specific component of the legal code, offering instructions and regulations on a certain subject. The specifics and substance of Fasal 44 vary based on the individual edition and language of the code, although it usually addresses a significant topic within the legal

system. The Hukum Kanun Melaka is historically and culturally significant since it is one of Southeast Asia's first known written law codes. It represents the legal practices and social conventions of the period, offering light on the successful Malacca Sultanate's government and administration. This provision of the Kanun Melaka reflects the influence of Islamic law and Malay customary practices on the legal system of the Sultanate.

The study and analysis of the code, notably its provisions such as Fasal 44, gives unique insights into the period's legal and social frameworks. The following contains 44 Clauses related to Hukum Kanun Melaka for Table 1.

Table 1 Contains 44 Clauses

Category	Description
CRIME	Appropriate punishment for criminal offences such as murder, stabbing, and theft. Clause 5.1: Imposes the death penalty for killing another person without the knowledge of the sultan and nobles. Clause 4: Sentenced to death if disobeying instructions and falsifying the sultan's orders.
ROLE OF SULTANS AND NOBLES	The Sultan and nobles have a role in the administration. Clause 1: Explains the duties of the Sultan, Bendahara, Temenggung, and Penghulu Bendahari. The Sultan has the authority to appoint the Bendahara and Temenggung.
FAMILY	Establishing harmony within the family and resolving family or marriage problems. Clause 26: Declaring a marriage requires four witnesses; if not, two are sufficient. Servants and women cannot be wedding witnesses.
ECONOMY	Clear regulations to control trade that is not in conflict with Islamic teachings. Clause 30: Usury is prohibited. Those engaged in business must be mature, and aware, and must state the intention of buying and selling.

This study focuses on crimes, which are Fasal 4 and Fasal 5.1. The first one is Fasal 4 is sentenced to death if disobeying orders and falsifying the Sultan's orders. The second one is Fasal 5.1 is subject to the death penalty if kills another person without the knowledge of the sultan and dignitaries. We may obtain a clearer grasp of Fasal 44's influence on the legal environment of the Malacca Sultanate and its importance in the larger context of legal history as we dive further into its provisions.

## Islamic Laws Incorporated into The Malacca Code of Law

According to Penang State Syariah Judiciary. (n.d.), Islamic law in Malacca primarily governs matters related to family law, personal status, and certain aspects of criminal law for Muslims. Non-Muslims in Malacca are not subject to Islamic law and have their matters governed by civil law. It is important to note that while Islamic law is an integral part of the legal system in

Malacca and Malaysia, it operates alongside civil law. The civil law system, derived from British common law, governs matters such as contracts, torts, and commercial transactions for both Muslims and non-Muslims.

Furthermore, it is worth mentioning that the interpretation and implementation of Islamic law may vary in different regions or states within Malaysia. Based on the article (Yusof, 2014), some states may have specific enactments and regulations that complement or differ from federal laws. Therefore, it is essential to refer to the specific legislation and legal authorities in Melaka to obtain accurate and up-to-date information on Islamic law in the state. There are several Islamic laws incorporated into the Hukum Kanun Melaka, including “*qisas law*”, “*hudud law*”, and “*ta'zir law*”, particularly in criminal matters.

## Qisas Law

As mentioned by (Nor et al., 2016), it is stated that those who take lives (kill) people will be retaliated by killing. Muslims who kill infidels are not punished. The matter of injuring a member will also be reciprocated in the same and appropriate way. This is in line with “*surah al-Maidah*” verse 45. “*Hukum Diat*” Clause 17 Hukum Kanun Melaka states intentional murder if forgiven by the heirs, will be subject to “*Diyat*” (fine).

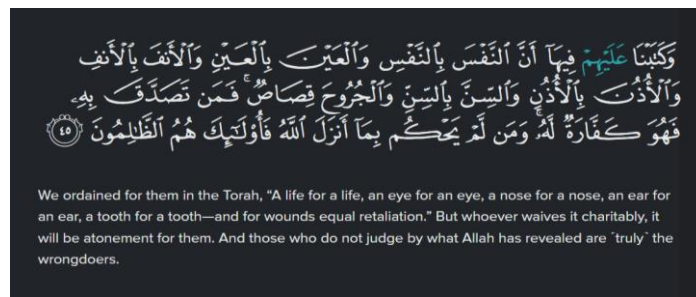


Figure 1 Surah al-Maidah verse 45

## Hudud Law

In connection with the offence of adultery, “*qazaf*”, stealing, drinking alcohol and apostates (Bakhori et al., 2012). For example, the offence of adultery will be stoned to death for those who are married and flogged 100 times for those who are not married. This is in line with “*surah an-Nur*” verse 2 and Hadith. For the offense “*Qazaf*” will be whipped 80 times. The offence of drinking alcohol will be whipped 40 times.

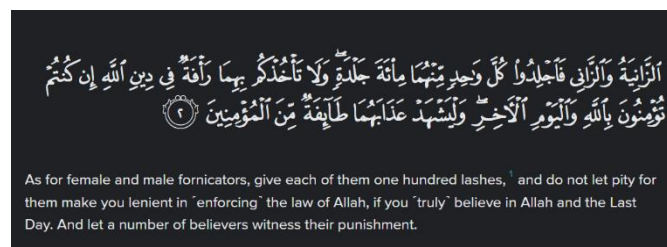


Figure 2 Surah an-Nur verse 2

## Law of Ta'zir

“*Ta'zir*” in terms of language means to reject or prevent (Muda, 2010). In terms of terms, it is the punishment imposed on people who commit crimes and vices or people who neglect their obligations whose punishments are not set in the Qur'an and Hadith or the punishments imposed on people who commit crimes for which the punishments have been set but not sufficient conditions to impose the punishment. A deliberate killer who is forgiven by the heirs will be charged “*Diat*”. In line with the opinion found in the Shafiee Sect offences that are not subject to “*hudud*” and “*qisas*” such as theft of insufficient *nisab* will be subject to “*ta'zir*”. For example, they will be asked to return items that were stolen or hung around their necks and paraded around the village as a lesson.

## Law of Diat

“*Diat*” in terms of language means punishment. In the context of the Hukum Kanun Melaka, which was the legal code of the Malacca Sultanate, the Law of Diat was one of the principles that governed the division of property among heirs. According to this law (Latif, 2009), the estate of a deceased person was to be divided among the heirs in proportion to their respective entitlements. The entitlements of each heir were determined based on a set of rules that considered factors such as gender, marital status, and the number of surviving children.

## Classification of Crimes and Punishments

As stated by Segu Alavudin & Mohd Yusoff (2014), Hukum Kanun Melaka consists of 44 clauses, all of which are relevant to the types of offences and crimes committed, such as theft, assault, and murder. The law applies to all categories of Malacca society, including common citizens, dignitaries, kings or sultans. Among the 44 clauses, only two clauses will be examined, namely clause 4 and clause 5.1. These two clauses are the most known punishments for criminal offences like murder, stabbing, and stealing and they are the clauses that most directly affect the people of Malacca. Furthermore, as mentioned by Huda, 2011, the law is not only used in the state of Malacca but also when visiting the colony state of Malacca.

Clause 4 is the death sentence if disobeying orders and falsifying the sultan's order. Huda, 2011 mentioned that, in the case of Hang Kasturi, who was sentenced to death not only for the crime of killing the king's concubine in the palace but also for opposing the law. Despite his opposition to the law, his body was preserved in Malacca. The punishment was not only imposed on Hang Kasturi but also on his wife and children, who were murdered and thrown into the sea. This sentence can also be applied to other cases in which Sang Rajuna Tapa was punished. According to the same article, in exchange for rejecting the sultan's order, Allah S.W.T used His divine power to demolish his house, turn rice into soil, and turn his wife into stone. Based on the events, every law created and the sultan's decree, no matter how strict it is, must be accepted and respected by all people including Malacca's warriors. This is to preserve the sultan's position and status as a person of immense power in the state, as well as the people

of Malacca's responsibility to worship, obey, and respect all of the sultan's orders. Furthermore, the event demonstrated that the punishment was administered not just to the criminal but also to those close to the criminal. In this case, it demonstrates that the sultan has no sympathy for the offender's family, but it is a fair thing to be used as a lesson to the people to never disrespect the sultan's law.

Next is the clause 5.1. This clause imposes the death sentence if you kill someone without the knowledge of the sultan and the magistrate. This punishment may be observed in the article (Huda, 2011) about Seri Akar Raja being found guilty of murdering Telenai Terengganu without the knowledge of the King of Malacca. The murderous act has been claimed to have been carried out on the orders of Sultan Muhammad of Pahang. Because the act broke Malacca law, Sultan Alauddin Riayat Shah ordered Admiral Hang Tuah and his troops to Pahang to deliver the punishment. Admiral Hang Tuah had given one of his followers the command to carry out the murder. The murder was carried out on Seri Akar Raja's cousin as punishment for the crime and to teach Seri Akar Raja a lesson for killing Telenai without the knowledge of the King of Melaka. The same punishment can also be seen in the case of Sultan Ibrahim ordering Tun Jana Pakibul to carry out the murder of a guilty citizen in Siak. As a result, Admiral Hang Tuah, who had been summoned by the King of Melaka, scolded Tun Jana Melaka for his actions. Based on the two instances, it is reasonable to conclude that all punishments should be administered with the king's knowledge. High-ranking nobles are also involved in this situation. If the punishment is carried out without the sultan's order or knowledge, it might provoke conflict among the people of Malacca, giving them the impression that the king does not love his people and that they are in danger. This will also bring into question the king's status and position as a great ruler.

As a result, these two clauses have had a very major impact, revealing that the Hukum Kanun Melaka is a highly strict law that cannot be challenged and must be always respected by every community. Based on the four incidents, punishment was carried out to both the criminal and the criminal's family as a lesson to the community and to demonstrate that the king was an exemplar of fairness. Furthermore, the purpose of this law is not just to punish criminals, but also to safeguard the people and keep the country in order and peace.

## **Comparing Hukum Kanun Melaka to The Modern Criminal Justice System**

This paper will explore various aspects of crime and justice, including the definition of crimes, investigative methods, trial procedures, and sentencing practices in both Hukum Kanun Melaka and the modern criminal justice system. To comprehend the changes that have taken place over time, such as the emergence of legal protections, the influence of human rights principles, and the impact of technology on crime detection and punishment, it is helpful to compare this historical legal system and Hukum Kanun Melaka to the contemporary criminal justice system (Kamal & Mohd, 2019).

## Hukum Kanun Melaka

1. **Preservation of Order:** The Hukum Kanun Melaka emphasised the necessity to uphold social stability and order within the Sultanate of Malacca. To discourage people from committing crimes like theft and robbery, for instance, the code imposed severe penalties on those who committed these offences. Someone who is convicted of theft could suffer harsh repercussions like having their hand severed. To deter stealing and uphold social order, this severe punishment was used (Husain et al., 2018).
2. **Property Rights Protection:** The Hukum Kanun Melaka placed a lot of focus on preserving property rights. For example, someone who was caught stealing animals could be subject to harsh punishments including public flogging or even death. The code's stringent penalties were meant to discourage people from committing crimes against property and protect the Sultanate's economic stability (Kamal & Mohd, 2019).
3. **Punishment for Offences:** The Hukum Kanun Melaka placed a strong emphasis on punishment to preserve societal peace and discourage criminal activity. For instance, significant offences like murder, adultery, and rape carried harsh punishments including public whipping or even death by hanging, according to the code. These penalties were designed to spread terror and deter people from committing crimes, maintaining order in the community (Husain et al., 2018).

## Modern Criminal Laws

1. **Due Process:** Under modern criminal law, due process ensures that individuals accused of crimes are treated fairly and their rights are protected. Among the rights of suspects are to be informed of their charges, to be represented by a lawyer, and to receive a fair trial. As a result of these procedural safeguards, individuals will not be arbitrarily punished and will be able to defend themselves fairly (Hussin, 2011).
2. **Presumption of Innocence:** According to contemporary criminal rules, a person accused of a crime is deemed innocent unless proven guilty. This indicates that it is the prosecution's responsibility to prove guilt beyond a reasonable doubt. For instance, if someone is accused of stealing, the prosecution must provide enough proof to persuade the court of the defendant's guilt (Hussin, 2011).
3. **Proportionality:** The punishment for a crime should be appropriate to the seriousness of the offence committed, according to the principle of proportionality, which is upheld by modern criminal legislation. For instance, a small theft conviction may result in a fine or community service requirement, whereas a murder conviction could result in a lengthy prison term or, in some states, the death penalty. The punishment must be appropriate for the seriousness of the offence (Antolak-Saper et al., 2020).
4. **Individual Rights Protection:** The protection of the rights of people who are subject to the criminal justice system is a top priority in contemporary criminal law. This includes protection from torture and other brutal treatment, as well as rights to privacy and a fair trial. With the protection of these rights, defendants are guaranteed respect and an equal opportunity to state their case (Antolak-Saper et al., 2020).

In conclusion, comparing the Hukum Kanun Melaka with today's criminal justice system provides a valuable perspective on the evolution of legal norms and practices over time. This comparison can enhance our understanding of justice and inform current debates on how to improve the fairness and effectiveness of the modern criminal justice system by analysing the differences and similarities between various legal frameworks and the insights they offer.

## Conclusion

The Hukum Kanun Melaka, particularly its intriguing Fasal 44, holds immense historical and cultural significance in the legal tapestry of Southeast Asia. Crafted during the reign of Sultan Muhammad Shah in the 15th century, this comprehensive legal code unveils the intricate governance and legal practices of the prosperous Malacca Sultanate. Fasal 44, alongside its counterparts within the code, forms a crucial pillar of the legal architecture from that era. While the specific details of Fasal 44 may vary, it addresses a distinct area of concern, enriching our understanding of the legal system in Malacca. By delving into Fasal 44 and the wider Hukum Kanun Melaka, we can trace the historical evolution of legal ideas and the cultural norms that shaped law during that dynamic period. This exploration provides a captivating glimpse into the administration and governance of one of Southeast Asia's most influential dynasties.

The legacy of the Hukum Kanun Melaka and its provisions continues to resonate today. Scholars, historians, and legal experts alike acknowledge its pivotal role in unravelling the development of legal systems in the region and understanding the broader historical narrative. Through the study of Fasal 44 and its fellow regulations, we uncover the rich legal heritage of the Malacca Sultanate. Ultimately, the Hukum Kanun Melaka and Fasal 44 serve as enduring symbols of the vibrant legal traditions and cultural legacies that define Southeast Asia's legal landscape, offering a fascinating lens into the legal practices and societal structures of a remarkable era.

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