

Cases Review: Judges Always Promote the Concept of Morality, Justice, and Equality in Every Decided Case

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ABSTRACT

Reaffirming the Malaysian judiciary's commitment to uphold the rule of law, it is vitally important for all judges to uphold morality, justice, and equality in deciding on court cases. There is a quote by Chief Justice Tun Tengku Maimun Tuan Mat, where she said that every judge must-have qualities of integrity, competency and efficiency, and be always mindful that they are "not beholden to anybody or anything but the law". "Without these key qualities, justice would not be truly served, and we would have failed in our duty. From the quote, we can clearly see that judges will decide on court cases based on the law and evidence and will not let fear or favour influence their rulings. However, a number of cases have come to light recently because of judges' decisions that appear to be unjust. For example, a single mother with nine children sentenced to death for meth possession and a man put to death for murdering a house intruder are two of the most high-profile examples. Arguments over whether judges' decisions are guided by morality, justice, and equality are common in these cases. The general discussion of the rule of the notion of morality, justice, and equality in resolving every case is the subject of this investigation. In the course of obtaining answers to our inquiries, we select two cases to determine whether the court has adopted and promoted the concepts of justice, equality, and morality before passing judgement. The findings of this article demonstrated that, while persons may have their own reasons for conducting an act, this does not exempt them from the requirement to abide by Malaysian law. When it came to making a decision in a case, judges always incorporated the concepts of morality, justice, and equality.

Keywords: Morality, Justice, Equality, Fairness, Judgement.

INTRODUCTION

Under the Malaysian Legal System, it is known to everyone that the legislative body is the one who has the authority to enact the law and the law will be codified under a statute. Once it is codified, the laws are considered as legally binding upon people in Malaysia. The judges will then follow all the laws provided in cases that are litigated before the courts (Noor Aziah 2017). The significance and effectiveness of any law depends upon the extent of popular knowledge of its existence, and acceptance of its consequences, by those to whom it applies or to whom it is directed. Malaysia has adopted a democratic form of government, where it is based on the principle that political power lies in the will of the majority, and that the elected representatives of the people can give effect to that will. In the light of the judicial decision, despite the fact that judges have to follow all the laws enacted in Malaysia in

deciding a case, judges are also bound to uphold the concept of justice, morality and equality set up under Jurisprudence.

CONCEPT OF JURISPRUDENCE

According to Roscoe Pound, jurisprudence is the body of principles recognised or enforced by public or regular tribunals in dispensing justice. Pound's perspective concentrates on judicial work as if reading or implementing present law is all that matters. Lloyd describes jurisprudence as the study of laws, legal systems, and the social aspects of the law (Cummings 1970). This requires knowledge of and application of philosophical and sociological theories to legislation. There are a lot of schools of thought in the world, however we will be focusing on three schools: positivist, naturalist, and sociologists.

A. Positive Law

Positive law, according to legal positivists, is created by the state. According to Olivecrona, all legislation is good since it expresses the ultimate authority's will. It is the law as it is that matters to the positivist (Spaak 2012). It does not distinguish between good and bad laws, as does ideal or just law. Positivism imposed legislation. Superior power, not good or evil, drives positivism. The division is between actual and desired law (Hari Chand 1994).

HLA Hart tabulated the term 'positivism' as follows. First, laws are commanded. Second, law and morality are not mutually exclusive. Third, legal notions should be studied, but not the same way as historical causes or origins of law, sociological relationships between law and other social phenomena, and moral appraisal of law's purpose and function. Fourth, a legal system is a closed logical system where correct legal decisions can be rationally based on established principles. Fifth, moral judgement cannot be established or defended using rational reasoning, facts, or proof. Bentham claims that instructions are simply one way the sovereign makes law. He distinguishes between mandatory laws (imperative laws) and permissive laws (tolerating laws). This includes wish, sanction, and political superior or sovereign (Payne 1978).

B. Natural Law

St. Thomas Aquinas describes the law as a guideline or standard of action that forces certain actions and restrains others. To be bound by the law is to be bound by a code of behaviour (Roniger 2017). Ordering affairs for the common benefit is the obligation of the entire community or a representative. The law is simply the rational organisation of concerns concerning the common good, diffused by those charged with the community's care (Goyette, Latkovic & Myers 2004).

Aquinas' principles must be applied to know right and wrong. "Good is to be sought, evil avoided," the fundamental principle says (Devi & Huizen 2017). Natural moral law is concerned with action and motive. To be fully moral, one must have good motivation and perform the right thing. The motive must be a cardinal or theological virtue: The Cardinal Virtues are Prudence, Justice, Temperance, and Fortitude. Moral judgement is lacking if any of these attributes are lacking.

CASE REVIEW 1: A SINGLE MOTHER WITH NINE CHILDREN WAS SENTENCED TO DEATH FOR METH POSSESSION

Recently, there was a heated discussion on social media when a single mother, 55 years old, with nine children was sentenced to a mandatory death by a Judge in Tawau High Court for possession and distribution of drugs.¹ The sentence was handed down after the judge found that the prosecution had succeeded in proving the case beyond the reasonable doubt while the defense had failed to raise a reasonable doubt.

The accused, who is also a fish seller, was charged with possessing drugs weighing 113.9 grams in an unnumbered house in Kampung Pangkalan Wakuba, Batu 15, Jalan Apas, Tawau in 2018. The judge held that according to Section 39B of Dangerous Drugs Act 1952², offenders can face the death penalty and life imprisonment for possession of 15gm of heroin and 50gm of methamphetamine (meth). The decision made by the judge has caused a sense of public dissatisfaction because people condemned that such punishment is an exaggeration to be given on an elderly single mother.

The sentence handed down by the judge in this case shows that the Malaysian legal system applies the theory of positivism. John Austin, the founder of the Positivism school of thought argued that every order issued by an authoritative party must be complied with by the community

and the failure to comply with the law allows for appropriate punishment to be imposed on them. He also argued that punishment should indeed be of a giving nature threat of danger so that society can be planted with fear in order to obey the laws (Hari Chand 1994).

Under the theory of positivist, the act of the judge imposing a mandatory death sentence to the mother is consistent with an offence made under Section 39B Dangerous Drugs Act 1952. It is undeniable that society will be plagued by feelings of sympathy remembering the fate of a mother with nine children will end her story by death penalty. Yet if it is not the mandatory death penalty imposed on the elderly mother, then the enactment of legal provisions for the prevention of drug crime offences are futile.

Undoubtedly, the situation and fate of the single mother will be different if the Malaysian legal system applies the theory of naturalism which emphasizes the element of morality in setting a law. According to the philosopher of naturalist school of thought, John Finnis, the law imposed is said to be fair and comprehensive as a whole if it is made after examining the cause of one's actions (Finnis 2007). But if a comparison is made between the theory of naturalism with the decision of the court in this case, it is clear that the judge did not evaluate the sentence imposed as fair simply by looking at the cause of the act committed by the mother. Nevertheless, the principle of fairness practiced by the judge in this case leads to equality in sentencing for every drug's offender regardless of their age and living conditions.

RELEVANCE OF JUDGEMENT WITH THE CONCEPT OF MORALITY, JUSTICE, AND EQUALITY

A. Morality

According to utilitarianism's architects Jeremy Bentham and John Stuart Mill, an act is moral if it is useful in bringing about

desirable good or end. It has been more characteristically stated, however, as "everyone should perform that act or follow that moral rule that will bring about the greatest good or happiness for everyone concerned. There are judges who claim that their function is to uphold morality. But the truth is not all laws reflect good morals. This is due to the fact that laws are drafted with a certain aim and objective not necessarily with morality in mind (Thiroux Jacques 2007).

Positivists, plainly being secular, assert that law is what the state requires of society as a whole whilst morality is what each individual perceives to be right or wrong. For legal positivism, there is no duty on the sovereign to make laws which are morally good, or which promote the welfare of the people as such consideration is kept out of the pale of theory (Hari Chand 1994). On the other hand, St Thomas Aquinas, a naturalist, clarifies that law furnishes principles rather than rules and there is a relation between means and end and what is against the end of natural law is morally wrong.

In order to resolve the question of whether the judge in this case upheld the concept of morality in deciding the case, the court had resorted to the principle of relevance of morality in law by positivism. Although the mother might have her own reasons for committing the crime which is to support her family finances as a single mother, the act of the judge imposing a mandatory death sentence to the mother is not to be considered as immoral. This is because a law is what its maker thought it ought to be, whether it be moral or immoral and the aim of the law being inserted into Malaysian statute is to avoid people from possessing drugs.

B. Justice

Justice according to law is justice which is done or meted out as a result of the application of law. It is also known as Legal Justice. According to Hans Kelsen in his

book *Introduction to the Problems of Legal theory* (1934), the word justice is also used in a legal sense, in terms of conformity to positive law, in particular, conformity to statute. There is a close connection between justice and the administration of the law. That is why some jurists identify justice with conformity to law. The pursuit of justice requires judges to administer the law conscientiously, and with careful regard for its purpose and aims. Mere conformity with legal forms is one of the methods that proves judges always uphold justice.

Justice was being upheld by judges in this case, as the principle of fairness practised by the judge in this case leads to equality in sentencing for every drug's offender regardless of their age and living conditions. The judgement was made in accordance with the offence made under Section 39B Dangerous Drugs Act 1952 where any people who committed crime under the exact provision will be sentence with death penalty.

C. Equality

This basic doctrine of equality is that the promise of equality before the law and equal protection under the law does not necessitate that all persons be treated equally, but rather that only those in similar situations be treated similarly. According to Aristotle, justice is considered to be equality, which it is, though not for everyone, but for those who are equals; and it is thought to be inequality, which it is, though not for everyone, but for those who are unequal. According to Sadurski, equality before the law requires equal treatment of relevant equal people. It is not that we feel the law is just because it is equal; rather, we believe it is just because it is equal.

A Theory of Justice by John Rawls mentioned that to treat all individuals equally and to provide genuine equality of opportunity, society must prioritise those with fewer possessions and those born into less advantageous social situations. The

goal is to rebalance situations in favour of equality.

By virtue of the principle of equality before the law, it is clear that the judge in this case has adopted the concept of law being considered to be equal if each person in like circumstances is to be treated alike. In this case, it is seen that the judge has upheld the concept of equality in deciding the case as the act of the judge imposing a mandatory death sentence to the mother is consistent with an offence made under Section 39B Dangerous Drugs Act 1952. What was abundantly clear is that "preferential treatment" to an elderly mother who possessed drugs does not cure causes, but it simply causes disadvantages to the society as a whole.

CASE REVIEW 2: MAN SENT TO THE GALLOWES FOR KILLING A HOME INTRUDER

According to the evidence presented in the case of *Mohamad Zulkifli Ismail v Public Prosecutor*.³ The accused was charged with two offences in total. First and foremost, the accused committed murder by causing the death of Zulkefle bin Abdullah, as defined by Section 302 of the Penal Code.⁴

Second, the accused has caused significant harm to Faizul bin Awang by employing a machete, which is a weapon that, if used incorrectly, has the potential to inflict death when employed in the improper situation. As a result, the accused committed an offence in violation of Section 326 of the Criminal Code. The two charges were tried together in front of a judge from the High Court. Following a thorough trial, the judge found the appellant guilty of both accusations, convicted him, and sentenced him to death for the first charge and 14 years imprisonment for the second charge. During this trial, the issue that arose was whether or not the appellant had filed an appeal with the Court of Appeal against his conviction and sentence for both crimes because he was dissatisfied with the judgement.

Ultimately, the judge determined that the prosecution had successfully established a prima facie case against the appellant on both counts. Thus, the appellant was summoned to appear in court to defend himself against the charges. Following a thorough examination of both sides' arguments and the entire prosecution case following a lengthy hearing on both sides' arguments, the judge determined that the appellant had failed to raise any reasonable doubt about the prosecution's case on both charges. Because of this finding and conviction, the appellant was sentenced to death for the charge under Section 302 of the Penal Code and 14 years imprisonment for the charge under Section 326 of the Penal Code. The decision was reached because the appellant failed to demonstrate that his actions against the first victim were both a private defence and an accident. In reality, the appellant failed to establish that he used his right to private defence in the case of the second victim. According to the appellant's defence, this is due to the fact that the judge found no basis or support for his decision based on the testimony of the trial witnesses. The judge further remarked that the appellant had used force on the deceased, demonstrating that the appellant possessed mens rea in order to murder the deceased.

According to the positive school of thinking, positive law is defined as the expression of the will of the law-giving authority, as opposed to negative law. Because of this, legality and morality are maintained distinctly. As previously stated on the previous page, Roscoe Pound illustrates five aspects that make up the texture of legal institutes, with an emphasis on the application of codified law under the statutes to control legal institutes as the most important of these aspects. Because we shall be brought to court if we defy the man-made law, this demonstrates that humans are obligated to abide by the rules and regulations of society.

Similarly to the case of Mohamad Zulkifli Ismail, when the matter was

brought to the attention of social media users, they overwhelmingly applauded the accused's acts without being aware of the reasons behind the accused's actions. The majority of them disagreed with the court's ruling, arguing that it did not follow fair-sentencing criteria in sentencing the accused. People should be aware that laws control the acts of every human being. Laws have been utilised to keep society from devolving into anarchy to maintain order and stability. Because of this, the court in the case of Mohamad Zulkifli Ismail ruled that the accused was guilty of the first charge of murder under Section 302 of the Penal Code based on the elements necessary to show murder in Section 302 of the Penal Code. For Section 300 (c), a person is killed if an act is committed with intent to cause bodily injury to another person, and such physical harm is of sufficient magnitude to result in death in most cases, as defined by the statute.

As a result, it can be observed that the court relies on the provisions of the current legislation in order to determine the action of an accused. This is due to the fact that the existence of this law will ensure that all criminals accused under this provision will receive equal treatment under the law. The defendants will be found guilty under Section 302 if they satisfy this element of the Section 300 crime. Consider the scenario in which there is no positive law distinguishing between morality and the rule of law. In that situation, the facts of the case, in which the accused argues that he wants the private defence to prevent the victim from plundering his house, will most likely impact the judges. However, it can be viewed from the perspective of the victim's physical injuries. There is a driving force behind the accused's desire to commit bodily damage to the defendant. Finally, positive laws can be used to regulate laws and regulations such that they are not overly emotional and that justice is prioritised.

According to Aristotle, natural law is synonymous with reasonableness. Human acts are always related to natural

law because the basis of natural law is human conduct based on what God asked or forbade. We also have to look at the conduct based on the naturalist view. Under natural law, a rational man acts, whereas an unreasonable man acts in contravention of natural law. As a result, reasonableness falls under the same category of rightness as does natural law. As he did in his earlier writing, he has established a principle for determining right and wrong: the principle of reasons. When determining whether or not a particular action is right or bad, we must consider the motivation behind the action. For example, did the individual act in good faith, or did he act in accordance with his stated intentions?

According to the accused in Mohamad Zulkifli Ismail, he beat and injured the victim because he wished to defend himself against the accuser's allegations. Moreover, because self-defence is also one of God's commandments, the accused's action is right in the eyes of natural justice.

However, let's consider the acts of the accused, who also stabbed one of the incapacitated victims and chased the victim who had run away from him to damage the victim. It shows that the accused had other motives. Consequently, after careful consideration by the judge, the court determined that the accused had mens rea in causing the injuries to the victims and that the court did not accept the accused's defence of self-defence and accidental injury.

Although it appears that the accused's objectives were decent at first glance, it becomes obvious that the accused had different intentions outside of the context of self-defence in the end. As stated by St. Thomas Aquinas, this is incorporated in the context of the explanation for which he gave. A reason, according to him, could be judged good or harmful based on whether or not it aids humanity in adhering to the fundamental or subsidiary precepts. As a result, killing another human being without a logical and just reason is

considered immoral in this situation. In contrast to killing people in order to defend the country during a war, it causes social disruption and disorder. As a result, it has been demonstrated that the law of reason is extremely important when evaluating and monitoring a person's behaviour in order to evaluate whether they are good or bad.

RELEVANCE OF JUDGEMENT WITH THE CONCEPT OF MORALITY, JUSTICE, AND EQUALITY

A. Morality

Law and morality are fundamentally about a canon of conduct that controls human behaviour. The distinctions could be based on punishment, enforcement, and default. Morality imposes strict restrictions on us, requiring us to suppress our natural inclinations. It can also relate to a society's acceptable and unacceptable norms. Others use the phrases ethical and unethical instead of moral when discussing how business and professional communities should treat their members or the general public. Morality includes philosophies, beliefs, and societal values. A society's moral code is a set of shared beliefs, values, principles, and standards of conduct (HLA Hart 1965)

Nevertheless, in the case of Mohamad Zulkifli Ismail, it can be seen that the concept of morality has been utilized in the context of the law. This is based on the judge's ruling when the accused was found guilty of both murders and hurting another person. Following this conviction, the accused or the surrounding community will be more cautious and moral in their actions going forward. To teach the community to conduct immoral activities in the future or punish those who do not comply with the law, they can be subject to criminal prosecution for the offences outlined in the law.

B. Justice

There is also a link between the principles of law and justice. The administration of justice is critical in ensuring that a country's legal system operates equitably. Nevertheless, regardless of how it was formed, it was always believed that justice and society are inextricably linked: *ubi societas, ibi jus* (Anghel 2017). "Do good and shun evil", according to Hans Kelsen. For this reason, evaluating the term's usage is believed to be the best method. Many legal and political terms have many meanings. It could be punishment or proportionality. Though typically linked to morality or brotherly affection (Muhammad Harun 2019).

As seen in the case of Mohamad Zulkifli Ismail, the court upholds the principle of justice when it considers all relevant information pertaining to the facts of that case from numerous witnesses and expert opinions before reaching a conclusion. A legal institution's foundation is built on the principle of fairness. As a result, justice will be served when a legal institution utilises its authority appropriately, as was the case in this instance. When the case was heard at the Court of Appeal, the court received a great deal of negative feedback from the public about the outcome of the case. However, it was eventually determined that the High Court judge did not make a mistake in reaching a decision. People become more trusting of legal institutions as a result of this.

C. Equality

Last but not least, the law is concerned with the question of equality. Equality is a state of being that everyone should be able to experience for themselves. Although equality has been applied historically, its application now is limited due to the nature of the parties involved. Equality and liberty also are inextricably interwoven, since human rights history has been defined by a

perpetual struggle between individual rights and social justice. Freedom has always been and will continue to be a fundamental human right. Without equality, however, liberty becomes a privilege reserved for the few and an instrument of abuse. A hungry man makes scant use of his liberty (Steiner 1981).

In the case of Mohamad Zulkifli Ismail, the court exemplifies this principle by treating everyone equally when it comes to punishment. According to the law, the accused of the first offence faced the death penalty, while the accused of the second offence faced a sentence of 14 years in prison. It is equally applicable to apply the death penalty when the perpetrator's actions are meant to end another person's life when it comes to the death penalty. As a result, his life will be taken from him as well. Additionally, if the injury caused by the accused results in the death of a second victim, he will be sentenced to 14 years in jail as compensation.

Finally, in this instance, the court makes decisions based on the three values of morality, justice, and equality that are recognised by the law. As a result, this judgement is likewise seen as a highly appropriate decision that serves the interests of both parties.

CONCLUSION

To conclude, every judge will never make any decision without making full considerations of their judgement to a person. Judges will only make decisions and judgements after hearing of the submissions from both of the prosecution and the defence with the critical evaluation of the evidence, before the court comes out with the decision for each case. Those cases had been successfully proved beyond reasonable doubt by the prosecution against the accused and the defence failed to raise any reasonable doubt in favour of the accused, thus, the court found that the accused persons were guilty for each of the

offences charged and convicted them on the specific charges.

Despite that people may have their own reasons for committing an act, it does not make them to be excluded from the need to be bound by the law in Malaysia. Judges always applied the concept of morality, justice, and equality when it is time to decide a case. There is a need for society to understand that judgement was made to comply with the concept of morality, justice and equality. Although we want the accused to receive a lighter sentence taking into consideration their age and their burden of life, those feelings of sympathy will not be able to prevent the crimes they committed in the country. As such, the judge's decision in both cases is very accurate as it opens the eyes of many parties that the law exists for us to abide by. If we fail to comply, then be prepared to be punished as prescribed.

NOTES

¹ *PP v Hairun Jalmani* (High Court of Tawau, 15 October 2021).

² Section 39B Dangerous Drugs Act 1952.

³ *Mohamad Zulkifli Ismail v Public Prosecutor* [2020] 1 LNS 1679.

⁴ Penal Code 1950 (Act 574)

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