



The Effectiveness of Islamic Law Implementation to Address Cyber Crime: Studies In Arab, Brunei Darussalam, and China

Uswatun Hasanah

Master Program of Defense Management in Universitas Pertahanan, Indonesia

uswatun-hasanah@riseup.net

Abstrak

Technology development cause crime in the world that keep fluctuating and changing. Cyber crime is one of crime activities which takes place in the internet and develop fast globally, even faster than the conventional crime. Cyber crime is not only about computer-crime, cyber-terrorist, cyber-narco-terrorist, but also capable to make impact toward state economy. This paper aims to understand the implementation of Islamic law or Islamic criminal law to see cyber crime. Islamic criminal law has been developed many years ago before arrival of information technology. This paper describes how Arab, Brunei Darussalam, and China reduce crime by adoption of islamic law. Islamic law what meant here is a law based on Islam, not a law made by Muslims then applied by Muslims. Islamic law can be practiced in every single country, although they don't declare explicitly or they think that what have they done is not islamic law. Islamic law contains general principles to respon and develop efficient ways to overcome cyber-crime.

Kata Kunci: *Islamic Law, Cyber Crime, Arab, Brunei Darussalam, China*

INTRODUCTION

Cyber crime is associated with computer crime which has definition as a crime accomplished through special knowledge of computer technology. Federal Bill introduced in the US Congress by Senator Ribikoff in 1977 about comprehensive pioneer proposal for computer crime legislation all around the world (Schjolberg, 2003).

Computer crimes like money theft, information theft, or betrayal need a new Islamic theory (Ahmad, 2001). Some researches believe that it is very important to see computer crime through Islamic law perspective. Islamic law can minimize computer crime by providing a worldly punishment as well as that in the hereafter (Afifi, 2003).

The rise of cyber crime has been taken seriously by most countries. This situation makes various countries develop technology to overcome fraud, money laundering, copyright infringement, harassment, and

Islamic website floated in cyberspace by the thousands. Cyberspace has a common place for Muslims to socialize and the most important is propagate their own beliefs. Islamic websites floating in cyberspace. This is despite the fact that some Muslim clerics issued a Fatwa, (a religious verdict), prohibiting Muslim Internet users from using chatting rooms (<http://www.syria-news.com>). Conversely, cyberspace has become a common place for Muslims to interact, socialise and, most importantly, to propagate their own beliefs. It is easy to find Islamic websites designed and optimised specifically to defend Islam from its enemies. For example, the website www.d-sunnah.net was established to defend Ahl al-Sunnah (the nation of Sunnah). Similarly, dozens of websites, such as <http://www.islamtoday.net/pbuh.htm> and many more were established to defend the Prophet of Islam, Mohammed, against European newspapers' publication of cartoons lampooning the Prophet. new aspects of crimes and criminals are being developed through the cyberspace (Maghaireh, 2008).

Islamic law is increasingly being used in several non Islamic state across the world. Legal professionals are required to have a degree of wider knowledge concerning the law. These case found in the USA: National Group for Communications and Computers Ltd v. Lucent Technologies International Inc. 331 F.Supp.2d 290 (D.N.J.2004). The case was brought in the Federal Courts after litigation commenced concerning a contract that required all disputes to be decided under Islamic law. The US judge used rules that contracts containing gharar (uncertainty or an element of risk) are generally unenforceable, giving the doctrine a wide scope. The judge concluded that Islamic law is fundamentally different from common law in USA, however many common law countries refuse to enforce contracts where there is a degree of uncertainty regarding the material terms of the contract, especially price (Hoorebeek and Gale, 2008). This paper use literature study from various journal, many resources, and use descriptive qualitative methods.

Islamic Law

Islam means submission to the will of Allah and obedience to His Law (Mukarrom & Muzaffar, 2005). Shariah is the pathway to fulfill the Allah's will. It is a comprehensive rules, principles, teachings and disciplines derived from the main sources of Islam, Qur'an and Sunnah. Muslim scholars using Fiqh knowledge 200 years after Prophet Muhammad's era (610-632) formulated and developed Shariah (Islamic Culture Board, 1941).

Islamic law is known as Shari'ah law, Shari'ah means the path to follow God's law. Shari'ah law guides individuals in most daily matters holistically as well as controls, rules and regulates all public and private behavior (Denis et al, 1994; Mancuso, 2007).

Islamic law is derived from for primary sources: Qur'an, Islam's holy book, the literal word from Allah; Hadith, saying, action of Prophet Muhammad; Ijma', consensus of Islamic scholars; and Qiyas, a method of reasoning that uses analogies to apply precedentes established by sources above texts to problems not covered by them (Hoorebeek and Gale, 2008).

Al-Omari and Al-Ani (2003) said that Islamic law is the most controversial segment of Shariah because of stringent corporal punishment, such as flogging, amputation, stoning, or beheading for certain crimes. Nevertheless, these corporal punishment as well as Shariah laws have ignited a controversy with international contemporary conceptions such as human rights, freedom religion, and capability in address emerging issues (Rudolph, 2005; Dalacoura, 2007).

مَنْ أَهْتَدَىٰ فَإِنَّمَا يَهْتَدِي لِنَفْسِهِ ۗ وَمَنْ ضَلَّ فَإِنَّمَا يَضِلُّ عَلَيْهَا ۗ وَلَا نُزِرُ وَأَزِرَ
وَزَرَ أُخْرَىٰ ۗ وَمَا كُنَّا مُعَذِّبِينَ حَتَّىٰ نَبْعَثَ رَسُولًا ﴿١٥﴾

SAHIH INTERNATIONAL

Whoever is guided is only guided for [the benefit of] his soul. And whoever errs only errs against it. And no bearer of burdens will bear the burden of another. And never would We punish until We sent a messenger.

From that ayah, stated that crimes and punishment should not be applied retroactively. If there is no response from Shariah, then Muslim hackers and cyber criminals who have committed cyber crime can escape conviction. There is opinion that argue that Shariah is not flexible. Contemporary Muslim scholars argue that principles of Shariah are applicable at any time and in any place. Secular Muslim Scholars and some of the orientalist such as Bernard Lewis, Elie Kedourie, Ignaz Goldziher, and Joseph Schacht describe it as being rigid, stagnant, and incapable of interacting with society developments (Al-Akhdar, 2007).

Imam Ibn Timia (1263-1328) stated that Shariah is full of benefits, full of purposes, and objectives, so anything unjust or harmful is not Shariah. Contradiction with that, Imam Ibn Al-Qiyam stated that fatwa (religious decision or Ijtihad concerning a contemporary matter issued by a religious council or scholar or cleric) is changeable. It is changeable depends on benefits, conditions, times, plaes, and individual's intentions. Nevertheles, most scholar added that Shariah has benefit and match with anything conditions. For instance, Omar Bin Khattab, the second Caliph applied the spiritual meaning of the Shariah through suspending a scripture command. He terminated Quranic command and a prophetic tradition when stopped paying alms to the non-believers who used to receive a share of assistance from the Prophet.. Omar suspended punishment theft during the famine year. Omar applied

Shariah and frame appropriate potential solution to problems and to exercise appropriate Ijtihad. But, Shariah scripted that developed by the four Sunni schools twelve centuries ago are quite rigid, sometimes inflexible and incapable of responding to changing and emerging issues (Maghaireh, 2008).

Basic of law in Islam is based on Qur'an (Islam Holy Book) and Hadith (Prophet sayings). Based on Al-A'ali (2007), there is three points of breach of the computer security such as An-Nur: 27, Al-Hujurot: 12, and An-Nisa': 58, and the three others ayat I got from many sources which is related with crime. Those ayat taken from Sahih International (<https://quran.com/>).

In this ayah "An-Nur (24): 27", Allah decides if ones want to enter a house other than their own with owner's permission beforehand. Based on this regard, Islam recognize the rights of individual privacy in which nobody can access the properties of others without permission.

- 1) In this ayah "Al-Hujurot (49): 12", Allah commands to not spy or sneak into one another. From Islamic principles, we cannot spy on the secrets of others including those hidden or stored inside computers despite your suspicion (Amboala et al.2010).

يٰۤاَيُّهَا الَّذِيْنَ ءَامَنُوْا لَا تَدْخُلُوْا بُيُوْتًا غَيْرَ بُيُوْتِكُمْ حَتّٰى تَسْتَأْنِسُوْا
وَتُسَلِّمُوْا عَلٰى اٰهْلِهَا ذٰلِكُمْ خَيْرٌ لَّكُمْ لَعَلَّكُمْ تَذَكَّرُوْنَ

SAHIH INTERNATIONAL

O you who have believed, do not enter houses other than your own houses until you ascertain welcome and greet their inhabitants. That is best for you; perhaps you will be reminded.

- 2) An-Nisa' (4): 58

يٰۤاَيُّهَا الَّذِيْنَ ءَامَنُوْا اجْتَنِبُوْا كَثِيْرًا مِّنَ الظَّنِّ اِنَّ بَعْضَ الظَّنِّ اِثْمٌ وَّلَا تَجَسَّسُوْا وَّلَا
يَغْتَبِ بَّعْضُكُم بَعْضًا اِيْحِبُّ اَحَدُكُمْ اَنْ يَّأْكُلَ لَحْمَ اَخِيْهِ مَيِّتًا
فَكَرِهْتُمُوْهُ وَاَتَّقُوا اللّٰهَ اِنَّ اللّٰهَ تَوَّابٌ رَّحِيْمٌ

SAHIH INTERNATIONAL

O you who have believed, avoid much [negative] assumption. Indeed, some assumption is sin. And do not spy or backbite 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.

- 3) Al-Anfal (8) : 27

Trust here included various kinds such as property, good, 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.

﴿ إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ إِنَّ اللَّهَ نِعِمَّا يَعِظُكُمْ بِهِ ۗ إِنَّ اللَّهَ كَانَ سَمِيعًا بَصِيرًا ﴾ ٥٨

SAHIH INTERNATIONAL

Indeed, Allah commands you to render trusts to whom they are due and when you judge between people to judge with justice. Excellent is that which Allah instructs you. Indeed, Allah is ever Hearing and Seeing.

4) An-Nisa (4): 29

يَا أَيُّهَا الَّذِينَ ءَامَنُوا لَا تَخُونُوا اللَّهَ وَالرَّسُولَ وَتَخُونُوا أَمَانَاتِكُمْ وَأَنْتُمْ تَعْلَمُونَ ﴿٢٧﴾

SAHIH INTERNATIONAL

O you who have believed, do not betray Allah and the Messenger or betray your trusts while you know [the consequence].

5) Al-Maidah (5): 38

يَا أَيُّهَا الَّذِينَ ءَامَنُوا لَا تَأْكُلُوا أَمْوَالِكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِّنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا ﴿٢٩﴾

SAHIH INTERNATIONAL

O you who have believed, do not consume one another's wealth unjustly but only [in lawful] business by mutual consent. And do not kill yourselves [or one another]. Indeed, Allah is to you ever Merciful.

Cyber Crime

Cyber Crime is exist on cyberspace. The word 'cyberspace' comes from Greek "kybernetes", that means governor, pilot, or rudder. Cyberspace is the global domain of electromagnetics accessed through electronic technology and exploited through the modulation of electromagnetic energy to achieve a wide rooted in range of communication and control system capabilities. Jones (1997) called cyberspace as a new public space. There are some cyber threats in the cyberspace, such as cyber espionage, cyber warfare, cyber crime, and cyber terrorisme. This paper focuses to cyber crime.

Cybercrime is a crime related to technology, computers, and internet. The majority of publicized cybercrimes that concern governments, industry officials, and citizens worldwide include cracking, piracy, phreaking, cyberstalking, cyberpornography, and cyberterrosime (Schell and Martin, 2004). The term 'cyber crime' is used to describe a wide range of virtual illegal activities that take place in cyberspace, such as hacking and communications

systems sabotage. Unfortunately, the growing Muslim presence in cyberspace has spawned an increasing amount of what can be termed 'cyber-sectarian conflict'. For example, In September 2008, Sunni hackers attacked more than 300 Shia websites, including the main website of the Grand Ayatollah Ali al-Sistani (<http://news.bbc.co.uk/hi/arabic/news>). A group of Shia hackers called 'Shia Digital Security Team' responded by attacking more than 77 Sunni websites (<http://www.saudiyatnet.net>). In the Islamic world, the issue of hacktivism has hardly ever bothered the religious consciences. Indeed, religious leaders refrained from condemning hacktivism and even made it appear as if it were perpetrated to defend Islam. Therefore, extremism, fanaticism, and violence of the Islamists have sprung up on the web.

Cyber crime encompasses any criminal dealing with computers and networks (hacking) as well as includes traditional crimes conducted through the Internet. For instance, hate crimes, telemarketing and internet fraud, identity theft, and credit card account thefts. They are categorized be cyber crimes when the illegal activities are committed through the use of a computer and the Internet.

There is a lot of interest of cyber crime, not only causes materiil and financial lost but also causes social lost such as lost of reliance. Cyber crimes make threats for private sector's efficiency as well as national security and nation welfare in public sector.

Facing the new forth revolution era, cyber criminal changes their technologies. The old technologies, such as cafe wifi, school networks, guest networks, also airplane and airport wifi. Now, those ways be new but not disappeared at all, and modified to attack 3G and 4G networks, public WLANs, corporate tunnels, the cloud, WiFi, cell phone & tablet platforms, WLAN's, physical attack like botting-keyloggers-BIOS-firmware, and so forth (Sutedja K, 2015).

There is rarely studies which examine the response of Shariah and Islamic Criminal Law to cyber crime. In criminalization and punishment, the Shariah law objective is to protect five values: religion, human life, intellect, lineage, and property. Criminalization system in Islamic Law is divided into three categories to protect these five important values, Hudud¹, Qisas, and Ta'azir². Hudud addresses six forms of physical crimes: apostasy, drinking wine, adultery, theft, defamation, and high way robbery.

It protects all the five pillars mentioned above through a narrow approach that focuses only on God's rights (Quraishi, 2005). In other words, these actions are criminalised to meet the five objectives of the Lawgiver (Allah). The Qisas category is also specific, and it

1 Hudud means borders or anything that God forbids us from doing. Hudud offences that are mentioned in the Qur'an require corporal punishments. One kind of Hudud such as fasting (Maghaireh, 2008).

2 Ta'azir means punishment for the sake of Allah or for the sake of individuals for offences not considered Hudud.

protects human life against all forms of physical violence, such as murder and injury (Barak, 2000). Cybercrime cannot be criminalised under the Hudud or Qisas categories, because none of the cyber crimes can be portrayed as a physical action against anyone of the five elements. However, in case cyber-stalking gradually scales up from a remote threat to actual physical harm or injury and can be prosecuted under Qisas (Maghaireh, 2008)

Lastly, the Ta'azir category deals with the least serious crimes (Vogel, 2000, p. 247). It is unspecific and flexible, and, therefore, all sorts of crimes that are not addressed under the above two categories can be punished under Ta'azir, including incomplete Hudud crimes (Rudolph, 2005, p. 65). For example, Hudud punishment for theft is amputation, but the punishment must be decreased to Ta'azir if the proscribed amount of money stolen was not attained. The Prophet said 'The hand is not cut off for fruit or palm pith' (Tarjumana & Johnson, n.d.). Unlike in Hudud and Qisas, in Ta'azir the Judge's discretion is unrestricted and he can impose the appropriate punishment for offences committed against any of the five elements. Furthermore, in the Ta'azir category, Ijtihad (Reasoning), Maslahah Mursalah, (Considerations of public interest) and Qiyas (Juristic analogy) play critical roles in decision making. Nevertheless, cyber crime cannot be brought under this category unless the Shariah itself criminalises or otherwise prohibits such activities (Maghaireh, 2008).

Shariah does not explicitly criminalise any kind of cyber crime, but it does contain general rules of criminalisation. The earlier mentioned scholars, traditionalists and reformists approach criminalisation issues differently. According to the traditionalists, the second source of Shariah law, (the Prophet Tradition) provides significant support for the criminalisation of cyber crime. Scholars have quoted a number of Hadiths, for example, the Prophet said 'No harm shall be inflicted [on anyone] nor reciprocated [against anyone]' to criminalise emerging crimes. The Hadith provides a legal basis for criminalising cyber crime, because the latter causes harm, either directly to the computer systems, or indirectly to an individuals' property – one of the important five values (Maghaireh, 2008).

Implementation Islamic Law in Arab, Brunei Darussalam, and China

Arab

Arab what I mean here is Saudi Arabia. Saudi Arabia is different with United Arab Emirates (UAE). Saudi Arabia is a country governed by one royal family or known as monarch. It has two major include such as Ryhad and Jedda. Whereas, UAE is a federation of different monarchs that formed a country in 1971. Capital of these states known as Abu Dhabi and Dubai. Saudi Arabia is more conservative and religious, then UAE more driven by economics, also foreign trade and development.

Saudi Arabia applies the traditional form of Shariah Law, but has also enacted the modern Cybercrimes Act to punish cyber criminals appropriately, including cyber-sabotage (Konstantine, 2007). Saudi Arabia applies a very rigid of Shariah, known as Wahhabism. Saudi Arabia is governed by Islamic Law but for cybercrime, the Council of Ministers had approved the Anti-Cybercrime Act. This new act had been introduced to deal with a modern phenomenon, but it is mainly based on the basic principles of Islamic Law (Algami, 2010). The Anti-Cybercrime Act doesn't define Internet fraud specifically.

Tingkat Kejahatan Resmi di Arab Saudi 1966 - 1979

Tahun	Populasi	Angka Pembunuhan	Angka per-100.000	Angka Kejahatan terhadap Harta	Angka per-100.000	Angka Kejahatan Seksual	Angka per-100.000
1966	5.662.000	169	3	879	1.6	380	7
1967	5.815.000	154	3	905	1.6	459	8
1968	5.973.000	74	1	905	1.6	300	5
1969	6.135.000	40	1	791	1.3	321	5
1970	6.301.000	49	1	854	1.4	392	6
1971	6.472.000	41	1	791	1.2	345	5
1972	6.647.000	54	1	980	1.5	346	5
1973	6.827.000	39	1	973	1.4	323	5
1974	7.012.000	54	1	948	1.4	239	4
1975	7.201.000	70	1	873	1.2	328	5
1976	7.600.000	49	1	853	1.2	327	5
1977	8.011.000	58	1	726	1.1	330	5
1978	8.500.000	70	1	520	1.0	546	9
1979	8.940.000	46	1	671	1.1	346	5

Sumber: Ministry of Interior, Riyadh.

From table above that got from Santoso (2003), crimes in Saudi Arabia from several years obviously decrease. We can conclude that, implementation of Islamic Law in Saudi Arabia can decrease the criminalization incidents.

Brunei Darussalam

Islamic law was adopted in the 15th century in Brunei when a Malay Muslim became Head of State and responsible to uphold the Islam as a way of life. Since the 1930s, Heads of State have promoted Islam, including subsidizing the Hajj, building mosques, and expanding the Ministry of Religious Affairs. The sale and consumption of alcohol was restricted (prohibited for Muslims) in the 1990s. Brunei Darussalam is a conservative Islamic country. Islamic Law in Brunei Darussalam can be seen on Syariah Penal Code Order 2013 that applies to both Muslims and Non-Muslim. Somehow, many of the specific offences are applicable to Muslims only.

There are several informations about Penal Code (Brunei Syariah Penal Code Order, 2013) :

- The Penal Code lays out specific offences and punishments for crimes prescribed by Al-Qur'an and Sunnah (tradition of the prophet Muhammad).
- There are some offences and punishments that are not prescribed by Al-Qur'an and Sunnah yet have been included in the Penal Code. For instance, it is mandatory for Muslim men to attend Friday prayers and the offence of disrespecting Ramadhan.
- The Penal Code is being introduced in three phases:

Offences	Punishment and Penalty
<i>Sariqoh</i> (theft), <i>Hirabah</i> (robbery), <i>Zina</i> (adultery), <i>Zina Bil-Jabar</i> (rape), <i>Liwat</i> (sodomy), <i>Qazaf</i> (accusation of adultery, sodomy, and rape), drinking intoxicating drinks, <i>Irtidad</i> (apostasy).	Punishment as ordained by Qur'an and Hadith. Amputation of hand (theft), Death or amputation of hand/foot (robbery), Stoning to death or whipping (adultery or rape). Other – Fine, imprisonment,whipping
Offences against the human body, Qatl (causing death or causing hurt)	Qisas – Retaliation or similar punishment Diyat – Specified amount payable to heirs of victim of Qatl (restitution) Arsy – Compensation payable to victim of hurt Badal-al-suth – Mutually agreed compensation to be paid to a Wali-ad-dam/victim
- Offencec not expressly mentioned in Qur'an or Sunnah. - Offences that are other than those punishable with Hadd or Qisas. - Worship, non-payment of Zakat or Fitrah, failure to perform Friday prayer, consuming alcohol in public places, Khalwat (close proximity if committed with a Muslim), propagating other religion	Ta'zir – Fine, imprisonment, rehabilitation, supervision, whipping and death.

China

Sharia developed several hundred years after the Prophet Muhammad's death in 632 CE as the Islamic empire expanded to the edge of North Africa in the West and to China in the East. There are many famous schools in Islam, such as the Sunni schools (Hanbali, Maliki, Shafi'i, Hanafi), and the Shiite school (Ja'fari). Hanbali school known for being the most liberal and the most focused on reason and analogy, is dominant among Sunnis in Central Asia, Egypt, Pakistan, India, China, Turkey, the Balkans, and the Caucasus (Johnson and Sergie, 2014).

In fact, Chinese laws and regulations don't recognize Islamic Law. The preferred term of Chinese legal lexicon is *xiguanfa* or 'customary law'. Customary law is defined as premodern and predisposed to reproduced a set of behaviors tied to the past and to a specific group or locality (Yang 2003; Jiang 2007, 2010).

In China, all Internet Service Providers (ISPs) have to register with the police and all internet users must sign a declaration which they will not visit forbidden sites (among those routinely blocked are news, health, and education sites, despite of pornography sites are virtually unregulated). Department of Defense through a 2007 report indicated that the People's Liberation Army (PLA) of China had established information warfare units to develop viruses to attack enemy computer systems and networks, and tactics and measures to protect friendly computer systems and networks (Ghosh and Turrini, 2010).

China has a 1997 Penal Law (translated as Criminal Law) which provided fundamental criteria and guidelines for convicting and sentencing cyber criminals. Cybercrime in China has many terms, such as *jisuanji fazui* (computer crime), and *wangluo fazui* (network crime). The traditional Penal Law of China could be interpreted and adjusted to punish cyber criminal offences according to different existing clauses. According to China's law, the provisions presented the determination of the Chinese government to punish the criminal activities on the Internet. As long as cyber security was concerned in the Chinese context, it has frequently been understood as a critical part of state security (Li, 2015).

China has seemingly greater ability to engage in cyberwar because it leads the way in terms of potential adversaries with a significant cyber capability. There are some cases related with China about the cybercrime (Hill and Marion, 2016) :

1. On August 1996: Eric Jennot, a paratrooper based in Fort Bragg, North Carolina, is accused of hacking US Army computers to provide passwords to someone from China. Jennot is cleared of charges of spying but guilty of computer fraud and damaging government property.
2. On December 1998: Twin brothers from China, Hao Jinglong and Hao Jingwen, are sentenced to death after breaking into the network of the Industrial and Commercial Bank of China. They steal 720.000 yuan (about \$87000).
3. On September 2007: British authorities report that hackers, maybe from China's People's Liberation Army, have attacked the network of the Foreign Office and other key departments.
4. On October 2007: Ministry of State Security of China says foreign hackers from Taiwan and US stole information from the Chinese. The spyware was found in the computers of classified departments of China's Aerospace Science and Industry Corporation.
5. On February 2012: The media reports that Chinese Hackers have stolen classified information about the technologies onboard F-35 Joint Strike Fighters.

LITERATURE REVIEW

Al-A'ali (2007) said that computer crime with high technology is not a new type of crime which needs a new Islamic theory and thus is already covered by the general Islamic laws.

Maghaireh (2008) stated that Shariah response to the cyberspace phenomena since muslims hackers consider Shariah to be the ultimate law system. In Addition, cyber crime is a new development of technology so Shariah Law is widely understood as a collection of ancient religious dogma that belongs to a time other than ours. Maghaireh studies traditionalist and reformist approaches to the criminalization of cyber crime.

The Islamic world is not homogeneous in terms of religious perspective; rather it is heterogeneous, consisting typically of traditionalists, and reformists. The key difference between them is their understanding and interpretation of the Holy Scripture, and the Prophet's traditions (Parrillo, 2008). Traditionalists view is held by those scholars who believe that Allah's commands and the Prophet's traditions (Sunnah) are infallible sources of law and, therefore, should be applied without modification or re-interpretation. Thus, they consider the Qura'n and Sunnah to be the ultimate sources of Shariah law. They argue that the four great Sunni scholars (Maliki, Hanbali, Hanafi, and Shafi) and their followers enlightened Shariah principles and purposes, and thereby the four Fiqh schools, which were established by the four Sunni scholars, are sufficient and that no further research in the jurisprudence is needed. They maintain and claim that the methods of Fiqh, such as *Ijtihad* (Reasoning), *Maslahah Mursalah*, (Considerations of public interest), *Qiyas* (Juristic analogy) and *Fatwa* (Religious decision) are sufficient to solve contemporary issues (al-Akhdar, 2002).

In contrast to the traditionalists, the second group is recently formulated by a group of scholars known as 'the Quranic people'. They argue that God's commands revealed in the sacred Qur'an are the only infallible source of Shariah because, as they argue, the Qur'an established unequivocal and comprehensive principles and, therefore, there is no need for any other sources other than the Qur'an to deduce the rules of Shariah. They reject the approaches formulated and applied by the four Sunni schools. Furthermore, they deny the Sunnah tradition as the second source of Shariah. They sustain their standpoint upon the following reasons (Mansour, 2008):

- First, the Prophet Muhammad prohibited his followers from writing his traditions.
- Second, the Qur'an has completed the divine religion.
- Third, the credibility of Sunnah tradition is weak, because Muslim started to collect it two centuries after the Prophet era when the Muslims began conjuring fake traditions for political reasons.

- Fourth, the contradiction between the Qur'an (the first source) and the Sunnah tradition makes the latter unauthentic, because God promised to keep his words (the Qur'an) uncorrupted.

Although, the Quranic people have been labelled by the Sunni scholars as apostates (Ismael, 2008), they were able to re-interpret the Quranic verses to come into harmony with contemporary international human rights, such as declaring freedom of religion and denying the punishment of stoning (Mansour, 1998).

In this new development era, the Islamic criminal policy is which has a responsive approach to face internet fraud and other forms of information technology-related crime. Ibn Al-Qayyim (a prominent Muslim jurist and philosopher) has expressed that pertinent policy must be commensurate to the exigencies of changing time. He added that we don't allowed to assume the general laws are rigid invariably for this nation until the day of Judgment. Algami (2010) added that:

“The textual substantiation needed for the application of Al-Tazir penalty is provided the Qur'anic verses and Hadith prohibiting fraud and deception and criminalizing the acquisition of wealth through unlawful means. Theft is an offence liable for application of the Had (singular form of Hudud) penalty of hand amputation. The punishment is prescribed in the following Qur'an text: “Male or female, whoever is guilty of theft, cut off their hand (that was used in theft): A retribution for their deed and exemplary punishment ordained by Allah, and Allah is Exalted in Power, Full of Wisdom” (Surah Al-Ma'aeda: verse 38). From the perspective of Islamic criminal law, as thieves, in the legal sense of the term, eligible for the penalty of hand amputation. The reason for this is that some of the above listed conditions can never be met in Internet fraud cases. For instance, it is required that the stealing action is performed without the prior knowledge and the prior consent of the owner of stolen assets. In Internet fraud, however, the stealing act is carried out with the victim being aware of, and in some cases agreeing to, the process leading to the loss of their money. Moreover, Internet fraud does not involve the physical action of stealing a property from its safe; instead, the fraudster utilises tricks and deceptive methods to falsely persuade the victim to part with their money. This takes Internet fraud out of the boundaries of theft Had and renders it, in Shariah law, an offence punishable only by an Al-Tazir penalty, which is, as has been previously explained, determined through a process based on juristic-judicial Ijtihad (the striving of a legitimate scholar to reach a religious verdict) of the pertinent scholars and specialists”

CONCLUSION

Arab and Brunei implemented Islamic Law in their constitution clearly. Then China has many pros and cons implemented Islamic Law or not. Basically China is a socialist country, not a country based on Islam, because the population of Islam over there is minority. Saudi

Arabia and Brunei since the beginning using Islamic Law already, and coupled with the rules of cyber law. If China, even Muslims are more using modified customary law. Islamic law is considered effective in Saudi Arabia, Brunei, and China because it has succeeded in reducing crime. China is a socialist country but implement some of rules which is contained from Islamic Law, like a punishment to a corruptor. However this paper is only a literature study that is still very lacking the source, hopefully future research can obtain comprehensive results from the eligible informants of each country.

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