Annex I: Laws Criminalizing Sexual Orientation and Gender Identity in Malaysia265

Federal Law
Section 377B of the Penal Code reads: “Whoever voluntarily commits carnal intercourse against the order of nature shall be punished with imprisonment for a term which may extend to twenty years, and shall also be punished with whipping.”

Summary of State Laws

- “Cross-dressing”
  - All 13 states and the Federal Territory (Kuala Lumpur, Putrajaya, and Labuan, governed under one law) prohibit “a man posing as a woman.”
  - In Johor, Pahang, Penang, Perak, Sarawak, Selangor, Terengganu, and the Federal Territory, the law only applies in case of “immoral purposes,” and in Malacca, if “without reasonable excuse.”
  - In Kedah, Kelantan, Negeri Sembilan, Perlis, and Sabah, the law applies regardless of the reason for cross-dressing.
  - Three states—Pahang, Perlis, and Sabah—prohibit “a woman posing as a man.”
- Liwat (anal sex)
  - 10 states and the Federal Territory criminalize liwat.
  - Terengganu passed a Sharia Criminal Offense (Hudud and Qisas) enactment in 2003 that would have punished married offenders with “the punishment of stoning the offender with stones of medium size to death” and unmarried offenders with “the punishment of whipping of one hundred lashes and in addition thereto to one year imprisonment.” However, the law has so far proven

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265 Human Rights Watch is indebted to Transgender Equality Europe (TGEU) for sharing a version of this table, from which we developed the table as presented here.
unenforceable because it violates limits on Sharia punishments prescribed by federal law.

- According to information available on Malaysian government websites, Pahang and Perak do not seem to criminalize liwat.
- Musahaqah (sexual relations between women)
- 12 Malaysian states and the Federal Territories criminalize musahaqah. Only Pahang does not.
- Pengkid (tomboy or tomboy-like behavior)
- Fatwa committees in Johor, Kedah, Kelantan, Malacca, Pahang, Perak, and Sarawak have issued fatwas against pengkid. The fatwas have been gazetted and therefore have legal status in Johor, Kedah, Malacca, and Perak.
- Other “sexual offenses” consisting of consensual sex between adults
  - Malacca criminalizes “sexual intercourse against the order of nature” (undefined) as well as “attempt to commit liwat.”
  - Sabah criminalizes “Intercourse Against the Order of Nature” (undefined).
  - Selangor criminalizes “Sexual relations between persons of the same gender” and “Sexual intercourse against the order of nature” (undefined).

The text of all laws in this chart comes directly from the English language version of the Malaysian government websites, E-Syariah Portal and E-Fatwa Portal, unless indicated otherwise. The text of all fatwas was translated to English from the original Malay by Human Rights Watch.

<table>
<thead>
<tr>
<th>JOHOR</th>
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<tbody>
<tr>
<td><strong>SOURCE OF STATE SHARIA LAWS:</strong></td>
</tr>
<tr>
<td><strong>LAWS ON GENDER IDENTITY:</strong></td>
</tr>
</tbody>
</table>
**LAWS ON SAME-SEX CONDUCT: Liwat.** Any male person who commits liwat shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to whipping not exceeding six strokes or to any combination thereof. (Section 25)

*Musahaqah.* Any female person who commits musahaqah shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to whipping not exceeding six strokes or to any combination thereof. (Section 26)

**FATWAS (GAZETTED OR NON-GAZETTED):** December 3, 2008 (gazetted): *Tomboy,* which is a woman with the appearance of a man and who conducts homosexual relations is forbidden in Islam.

**KEDAH**

**SOURCE OF STATE SHARIA LAWS:** Syariah Criminal Code Enactment 1988

**LAWS ON GENDER IDENTITY: Pondan.** Any male person who, in any public place, wears woman attire and poses as a woman shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding four months or to both. (Section 7)

**LAWS ON SAME-SEX CONDUCT: Liwat.** Any person who willfully commits an act of liwat shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both. (Section 14)

*Musahaqah.* Any woman who willfully commits musahaqah with another woman shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding five hundred ringgit or to imprisonment for a term not exceeding four months or to both. (Section 15)
**FATWAS (GAZETTED OR NON-GAZETTED):** April 26, 2010 (gazetted): Whereas, based on the decision made at the 83rd Conference of the Committee for the National Fatwa Council for the Islamic Religious Affairs of Malaysia, the Fatwa to be adopted in the state of Kedah Darul Aman is as follows:

Tomboy behavior, women with the image, appearance and characteristics of a man is forbidden in Islam.

Tomboy behavior, by law, is forbidden in the Islamic religion because women who imitate men are condemned by Allah and Prophet Muhammad p.b.u.h because this behavior mimics and resembles (tasyabbuh) another sex which is contrary to their original sex or natural characteristics.

This behavior and aqidah must be restricted in Kedah Darul Aman if a female has/resembles a male in the aspects of physical characteristics, style, hairstyle, adornment, appearance, manner of speech, manner of dress and sensual desires or has homo-sexual instincts (lesbianism).

Therefore, Muslim parents and the community must pay serious attention to this social sickness and emphasize Islamic education and impart proper guidance to their daughters, especially in terms of dressing, behavior and appearance so that tomboy behavior phenomena can be avoided and eradicated because it is contrary to human nature and the laws of Allah.

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**KELANTAN**

**SOURCE OF STATE SHARIA LAWS:** Syariah Criminal Code 1985

**LAWS ON GENDER IDENTITY:** Pondan. Any male person who, in any public place, wears woman attire and poses as a woman shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding four months or to both. (Section 7)

**LAWS ON SAME-SEX CONDUCT:** Liwat. Any person who willfully commits an act of liwat, which is not liable to the punishment of hadd according to Hukum Syarak, shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both and to six strokes of whipping. (Section 14)

Musahaqah. Any woman who willfully commits musahakah with another woman shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding five hundred ringgit or to imprisonment for a term not exceeding four months or to both. (Section 15)
**FATWAS (GAZETTED OR NON-GAZETTED)** December 14, 2008 (not gazetted): The meeting of Kelantan Religious Scholars Council and Malay Customs convened on Dec 14, 2008, has discussed the fatwa on tomboy behavior. The meeting has decided to agree on the fatwa as follows:

Women having the appearance and behavior as well as sexual instinct of men are forbidden in Islam. Similarly, men who imitate women in behavior and appearance as well as sexual instinct are forbidden in Islam.

The meeting also urged parents and society to give serious attention to these symptoms and emphasize on education and guidance preferably to the younger generation, especially in terms of dressing, behavior and appearance that such symptoms can be avoided because it is contrary to human nature and the laws of Allah.

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**MALACCA**

**SOURCE OF STATE SHARIA LAWS:** Syariah Criminal Enactment 1991

**LAWS ON GENDER IDENTITY:** _Men posing as women._ Any male person who, in any public place, wears a woman’s attire and poses as a woman for immoral purposes shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding one year or to both. (Section 72)

**LAWS ON SAME-SEX CONDUCT:** _Liwat._ Any person who willfully commits an act of _liwat_ shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding thirty-six months or to both. (Section 56)

_Amount to commit liwat._ Any person who willfully attempts commits an act of _liwat_ shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding thirty-six months or to whipping not exceeding six strokes or to any combination thereof. (Section 57)

_Sexual intercourse against the order of nature._ Any person who performs sexual intercourse against the order of nature with any man, woman or animal has to be punished in accordance to takzīr and shall be liable on conviction to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding thirty-six months or to whipping not exceeding six strokes or to any combination thereof. (Section 58)

_Musahaqah._ Any female person who willfully commits musahaqah shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding six months or to both. (Section 59)
**FATWAS (GAZETTED OR NON-GAZETTED):** December 18, 2008 ( Gazette): The Fatwa Committee members unanimously agree on the decision on a few matters as follows:

a) Adopting the decision of the 83rd Conference of the Committee for the National Fatwa Council for the Islamic Religious Affairs of Malaysia held from 22 to 24 October 2008 that:

   i. Tomboy, which is women with the appearance and behavior as well as sexual instincts resembling men is forbidden in Islam.

   ii. Muslim parents and the community are urged to give serious attention to this phenomena and to focus on the best education and guidance for girls especially in terms of dressing, behavior and appearance so that these phenomena can be avoided as it is contrary to human nature and the laws of Allah.

b) Gazetting the fatwa decision in the Malacca State Government Gazette for the purpose of legal enforcement.

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**NEGERI SEMBILAN**

**SOURCE OF STATE SHARIA LAWS:** Syariah Criminal Enactment 1992

**LAWS ON GENDER IDENTITY:** Male person posing as a woman. Any male person who, in any public place wears a woman’s attire and poses as a woman shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding six months or to both. (Section 66)

**LAWS ON SAME-SEX CONDUCT:** Liwat. Any male person who commits an act of liwat with another male person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or to both. (Section 63)

Musahaqah. Any female person who commits musahakah with another woman shall be guilty of an offence and shall be liable on conviction to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or to both. (Section 64)

Sexual intercourse against the order of nature. Any person who performs sexual intercourse against the order of nature with any man, woman or animal is guilty of an offence and shall be liable on conviction to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding two years or to both. (Section 65)
PAHANG

SOURCE OF STATE SHARIA LAWS: Syariah Criminal Enactment 2013

LAWS ON GENDER IDENTITY: Pahang criminalizes “men posing as woman” (Section 33) and “women posing as men” (Section 34), with sentences of a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding one year or to both, according to the Pahang Islamic Religious Department website. Human Rights Watch has been unable to obtain the full text of the law.

LAWS ON SAME-SEX CONDUCT: Sexual relations between women. Any Muslim female person found having carnal relations with another Muslim or non-Muslim female person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding five hundred ringgit or to imprisonment for a term not exceeding three months or to both.

FATWAS (GAZETTED OR NON-GAZETTED): (Not gazetted) The Pahang State Islamic Law Consultative Committee Meeting Bill 4/2008 convened on December 26, 2008 discussed the ruling on women imitating men (tomboy) and the meeting decided that tomboy behavior is illegal and the practitioners must repent and return to the original nature of creation. Same-sex relations are illegal because they are contrary to the laws of Allah S.W.T.

PENANG

SOURCE OF STATE SHARIA LAWS: Syariah Criminal Offences Enactment 1996

LAWS ON GENDER IDENTITY: Male person posing as a woman. Any male person who, in any public place, wears a woman’s attire and poses as a woman for immoral purposes shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding one year or to both. (Section 28)

LAWS ON SAME-SEX CONDUCT: Liwat. Any male person who commits liwat shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to whipping not exceeding six strokes or to any combination thereof. (Section 25)

Musahaqah. Any female person who commits musahaqah shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to whipping not exceeding six strokes or to any combination thereof. (Section 26)
FATWAS (GAZETTED OR NON-GAZETTED):

PERAK

SOURCE OF STATE SHARIA LAWS: Crimes [Syariah] Enactment 1992

LAWS ON GENDER IDENTITY: Man posing as woman. A man who wears a woman's attire and in any public place poses as a woman for immoral purposes is guilty of an offence and shall, on conviction, be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding six months or to both. (Section 55)

LAWS ON SAME-SEX CONDUCT: Musahaqah. Any female person who wilfully commits musahaqah shall be guilty of an offence and shall on conviction be liable to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding one year or to both. (Section 53)

FATWAS (GAZETTED OR NON-GAZETTED): December 18, 2008 (gazetted): WHEREAS the Fatwa Committee, in exercise of its powers under Section 36 and Section 37 of the Administration of the Religion of Islam (Perak) 2004 (Enactment 4 of 2004), has provided the fatwa contained herein: Whereas pursuant to Section 37 of the same Enactment, His Majesty the Sultan of Perak has consented to the publication of this fatwa in the Gazette and the State Government has been informed about this fatwa: Therefore, as such, in exercise of the powers conferred by Section 37 of the Administration of the Religion of Islam (Perak) 2004 Fatwa Committee, with the consent of His Majesty the Sultan, to make and publish the following fatwa: "tomboys, i.e. women who have the behavior and sexual instincts like men, and men who imitate women (transsexuals/transvestite) either in terms of dressing, appearance and behavior as well as having female sexual instinct is FORBIDDEN in Islam. Parents and the Muslim community should give serious attention to this phenomena and emphasize on the best education and guidance for their children particularly in terms of dressing, behavior and appearance so that such phenomena can be avoided because it is contrary to human nature and the laws of Allah."

PERLIS

SOURCE OF STATE SHARIA LAWS: Criminal Offences in the Syarik Enactment 1991
**LAWS ON GENDER IDENTITY:** Pondan. (1) Any male person who poses (tasyyubah) as a woman in any public place shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both. (2) Any female person who poses (tasyabah) as a man in any public place shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both. (Section 7)

**LAWS ON SAME-SEX CONDUCT:** Liwat. Any person who willfully commits an act of liwat shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both. (Section 13)

Musahaqah. Any woman who willfully commits musahaqah with another woman shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both. (Section 14)

**FATWAS (GAZETTED OR NON-GAZETTED):**

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**SABAH**

**SOURCE OF STATE SHARIA LAWS:** Syariah Criminal Offences Enactment 1995

**LAWS ON GENDER IDENTITY:** Male posing as woman or vice versa. Any male person who, in any public place, wears a woman’s attire and poses as a woman or vice versa shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding six months or to both. (Section 92)

**LAWS ON SAME-SEX CONDUCT:** Intercourse Against the Order of Nature. Whoever has sexual intercourse against the order of nature with any man, woman or animal, shall be liable to takzir and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to caning not exceeding six strokes or to any combination of such punishment. (Section 76)

Musahaqah. Any woman who willfully commits musahaqah with another woman shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding six months or to both. (Section 77)

Liwat. Any male person who willfully commits an act of liwat shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both. (Section 82)
FATWAS (GAZETTED OR NON-GAZETTED):

SARAWAK

SOURCE OF STATE SHARIA LAWS: Syariah Criminal Offences Ordinance 2001

LAWS ON GENDER IDENTITY: Man posing as woman. Any man who, in any public place, wears a woman’s attire and poses as a woman for immoral purposes shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding one year or to both. (Section 25)

LAWS ON SAME-SEX CONDUCT: Liwat. Any man who commits liwat shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to whipping not exceeding six strokes or to any combination thereof (Section 22)

Musahaqah. Any woman who commits musahaqah shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to whipping not exceeding six strokes or to any combination thereof. (Section 23)

FATWAS (GAZETTED OR NON-GAZETTED): December 17, 2008 (not gazetted): The meeting decided that tomboy behavior, i.e. women who have the appearance and behavior as well as the sexual instincts of men is forbidden in Islam. Muslim parents and the community are also urged to give serious attention to this problem and emphasize education and guidance especially to girls, especially in terms of dressing, behavior and appearance so that such symptoms can be avoided because it is contrary to human nature and the laws of Allah.

SELANGOR

SOURCE OF STATE SHARIA LAWS: Syariah Criminal Offences Enactment 1995

LAWS ON GENDER IDENTITY: Male person posing as a woman. Any male person who, in any public place, wears a woman’s attire or poses as a woman for immoral purposes shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding six months or to both. (Section 30)
**LAWS ON SAME-SEX CONDUCT:** Sexual relations between persons of the same gender. Any person who engages in a sexual act with another person of the same gender shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding one year or to both. (Section 27)

*Sexual intercourse against the order of nature.* Any person who performs sexual intercourse against the order of nature with any man, woman or animal is guilty of an offence and shall be liable on conviction to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to whipping not exceeding six strokes or to any combination thereof. (Section 28)

**FATWAS (GAZETTED OR NON-GAZETTED):**

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**TERENGGANU**

**SOURCE OF STATE SHARIA LAWS:** Syariah Criminal Offences Enactment 2001

**LAWS ON GENDER IDENTITY:** Male person posing as a woman. Any male person who, in any public place, wears a woman’s attire and poses as a woman for immoral purposes shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding one year or to both. (Section 33)

**LAWS ON SAME-SEX CONDUCT:** Musahaqah. Any female person who commits musahaqah shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to whipping not exceeding six strokes or to any combination thereof. (Section 30)

*Liwat.* Punishments are prescribed by Sections 13-15 of the (Syariah Criminal Offence [Hudud and Qisas] Enactment 2002), but are not enforced. See summary, above.

**FATWAS (GAZETTED OR NON-GAZETTED):**

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**FEDERAL TERRITORIES**

**SOURCE OF STATE SHARIA LAWS:** Syariah Criminal Offences Act 1997
<table>
<thead>
<tr>
<th><strong>LAWS ON GENDER IDENTITY:</strong> Male person posing as woman. Any male person who, in any public place, wears a woman’s attire and poses as a woman for immoral purposes shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding one year or to both. (Section 28)</th>
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