

**A LEGAL STUDY OF THE CRIMINAL TRIAL PROCESS UNDER THE  
ADVERSARIAL SYSTEM IN MALAYSIA**

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## **ABSTRACT**

This research was conducted to examine the weaknesses in the criminal trial process under the adversarial system in Malaysia. In particular, the failure to provide for a fair and speedy trial in the criminal trial has been discovered throughout the research. The weakness of the criminal trial process as mentioned above is insistence upon procedure and technical error, the judge inactive role either during pre-trial or trial process, lacking the competent judge in the judiciary, the practice of the general court and also the court's conventional system which mostly based on the manual system and involving papers and handwriting. The reforms had been made to the legislative and judicial practices, specifically the amendments to Criminal Procedure Code in 2006 and 2010 as well as the establishment of a 'special court' and new management system called E-court. Based on the present weaknesses of the criminal trial process under the adversarial system in Malaysia, the study evaluates the effectiveness and efficacy of the changes introduced to the criminal trial process. It is the conclusion of this research that there are some advantages of the reforms to the criminal trial process. However, there are also disadvantages and limitation of the reformed criminal trial process. This is due to the lacking in the enforcement and implementation of the reforms. Even though there are still many issues pertaining to the efficiency of the criminal trial process, the reform to the system is applauded and should be continued to strive for betterment of the system.

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## CHAPTER ONE: INTRODUCTION

### 1.0 RESEARCH BACKGROUND

The basis of criminal law is to protect the public from the wrong doings of the offender. Offenders pose a threat to society. State machinery is operated to prevent crime and punish the offender, but it is a matter of concern for all that innocent must not suffer in the name of justice.<sup>1</sup> One of the two models that provide measures to deal with the offender is the adversary system of justice. Malaysia is one of the countries that are currently practising the adversarial system in its court proceeding.

The Malaysian legal system is built on the foundation of the common law tradition thus led to use of the adversarial system of justice. Thus, Malaysian criminal trial is an adversarial as in England.<sup>2</sup> The process of trying a criminal case starts after an offence occurs and a report has been made to the law enforcement about the crime. Law enforcement officers (usually the police) will collect information and investigate the offence. At the end of the investigation, a report will be forwarded to the Public Prosecutor who will decide whether the suspect should be put on trial. If the prosecutor believes that there is sufficient evidence, then they will file a charge against the accused in court.<sup>3</sup>

The judge hears and determines the case in open court, take down the evidence, makes a decision in the open court, in the presence of the accused and explain the judgment to the accused. Parties may call their own witnesses and the right to examine and question the witnesses. There is a formal structure of evidence in chief, cross examination and re-examination.<sup>4</sup> The prosecution has to establish a prima facie case

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<sup>1</sup>Acharya, P. M. (n.d.). The Adversarial v. Inquisitorial Models of Justice. KSL Journal.

<sup>2</sup>Abdul Rani Kamarudin, (2006) *Is the adversarial trial under the Malaysian Criminal Procedure Code compatible with Islamic Law?* In: The 3rd ASLI Conference , 25-26 May 2006, Shanghai, China.

<sup>3</sup>Goodpaster, G. (n.d.). *The Adversary System, Advocacy, and Effective Assistance Of Counsel in Criminal Cases. Review of Law & Social Change*, 68.

<sup>4</sup>Ibid