



Pertanika Journal of  
**SOCIAL SCIENCES  
& HUMANITIES**

**JSSH**

**VOL. 25 (S) OCT. 2017**

*A special issue devoted to*  
**Visions of Law and Social Change**

Guest Editors  
**Zuhairah Ariff Abdul Ghadas & Ida Madieha Abdul Ghani Azmi**



A scientific journal published by Universiti Putra Malaysia Press

Pertanika Journal of  
**SOCIAL SCIENCES  
& HUMANITIES**

*A special issue devoted to*  
Visions of Law and Social Change

**Vol. 25 (S) Oct. 2017**  
(Special Edition)

Guest Editors  
**Zuhairah Ariff Abdul Ghadas & Ida Madiha Abdul Ghani Azmi**

A scientific journal published by Universiti Putra Malaysia Press

## EDITOR-IN-CHIEF

**Mohd. Shahwahid Hj. Othman**

*Economics, Natural Resource & Environmental Economics, Economics Valuation*

## CHIEF EXECUTIVE EDITOR

**Nayan Deep S. Kanwal**

*Environmental Issues – Landscape Plant Modelling Applications*

## UNIVERSITY PUBLICATIONS COMMITTEE

**Husaini Omar, Chair**

## EDITORIAL STAFF

### Journal Officers:

Kanagamalar Silvarajoo, *ScholarOne*

Tee Syin-Ying, *ScholarOne*

### Editorial Assistants:

Zulinaardawati Kamarudin

Florence Jiyom

Umami Fairuz Hanapi

Rahimah Razali

### COPY EDITORS

Doreen Dillah

Crescentia Morais

Pooja Terasha Stanslas

### PRODUCTION STAFF

#### Pre-press Officer:

Nur Farrah Dila Ismail

Wong Lih Jiu

#### Layout & Typeset:

Nur Farrah Dila Ismail

### WEBMASTER

Mohd Nazri Othman

### PUBLICITY & PRESS RELEASE

Magdalene Pokar (*ResearchSEA*)

Florence Jiyom

### EDITORIAL OFFICE

#### JOURNAL DIVISION

Office of the Deputy Vice Chancellor (R&I)

1<sup>st</sup> Floor, IDEA Tower II

UPM-MTDC Technology Centre

Universiti Putra Malaysia

43400 Serdang, Selangor Malaysia.

Gen Enq.: +603 8947 1622 | 1616

E-mail: [executive\\_editor.pertanika@upm.my](mailto:executive_editor.pertanika@upm.my)

URL: [www.journals-ij.upm.edu.my](http://www.journals-ij.upm.edu.my)

### PUBLISHER

**Kamariah Mohd Saidin**

UPM Press

Universiti Putra Malaysia

43400 UPM, Serdang, Selangor, Malaysia.

Tel: +603 8946 8855, 8946 8854

Fax: +603 8941 6172

E-mail: [penerbit@upm.edu.my](mailto:penerbit@upm.edu.my)

URL: <http://penerbit.upm.edu.my>

## EDITORIAL BOARD

2015-2017

### Abdul Mansur M. Masih

*Economics, Econometrics, Finance, King Fahd University of Petroleum and Minerals, Saudi Arabia.*

### Alan Maley

*English Language Studies, Teaching of English Language and Literature, Leeds Metropolitan University, UK.*

### Ali Reza Kaldi

*Medical Sociology, Sociology of Development Ageing, Gerontology, University of Social Welfare and Rehabilitation, Tehran, Iran.*

### Aminah Ahmad

*Sociology, Gender and Development, Universiti Putra Malaysia, Malaysia.*

### Bee-Hoon Tan

*Faculty of Social Sciences and Liberal Arts, UCSI University, Malaysia.*

### Brian Tomlinson

*English Language Studies, The Evaluation, Adaptation and Development, Leeds Metropolitan University, UK.*

### Deanna L. Sharpe

*Economics, Consumer and Family Economics, Personal Finance, The University of Missouri, Columbia, USA.*

### Dessy Irawati

*International Business Management, Strategic Management, Economic Geography, Globalization and Development Studies, Industrial Dynamics and Knowledge Transfer, Radboud University, the Netherlands and EduPRIME the consulting, the Netherlands.*

### Elias @ Ilias Salleh

*Kuliyah of Architecture and Environmental Design (KAED), Universiti Islam Antarabangsa Malaysia, Malaysia.*

### Gong-Soog Hong

*Economics, Consumer and Family Sciences, The Ohio State University, USA.*

### Jacqueline Pugh-Kitingan

*Music, Ethnomusicology, Borneo and Papua New Guinea Studies, Universiti Malaysia Sabah, Malaysia.*

### James R. Stock

*Management Studies, Marketing, Logistics and Supply Chain Management, Quantitative Method, University of South Florida, USA.*

### Jayakaran Mukundan

*English Language Studies, Teaching English as a Second Language (TESL), English Language Studies, Universiti Putra Malaysia, Malaysia.*

### Jayum A. Jawan

*Sociology, Politics and Government, Civilization Studies, Universiti Putra Malaysia, Malaysia.*

### Jonathan Newton

*Classroom-based Second Language Acquisition, Language Teaching Methodology, the Interface of Culture and Language in Language Teaching and Learning, and Language/Communication Training and Material Design for the Multicultural Workplace, Victoria University of Wellington, New Zealand.*

### Marcus Bion GRIFFIN

*Human Ecology, Anthropology, Tropical Agriculture, Fisheries, Cultural Learning Solutions, USA.*

### Mary Susan Philip

*English Language Theatre in Malaysia and Singapore; Postcolonial Theatre, University of Malaya, Malaysia.*

### Muzafar Shah Habibullah

*Economics, Monetary Economics, Banking, Macroeconomics, Universiti Putra Malaysia, Malaysia.*

### Patricia Matusky

*Music, Ethnomusicology, Malay and Indonesian language, Literature and Culture, Grand Valley State University, USA.*

### Rohany Nasir

*Psychology-Career counseling, Counseling for Adolescents and Adults, Marriage and Family counseling, Counseling Industry and Organization, Universiti Kebangsaan Malaysia, Malaysia.*

### Samsinar Md. Sidin

*Management Studies, Marketing, Consumer Behaviour, Universiti Putra Malaysia, Malaysia.*

### Shameem Rafik-Galea

*English Language Studies, Linguistics, Applied Linguistics, Language and Communication, Universiti Putra Malaysia, Malaysia.*

### Shamsher Mohamad

#### Ramadii Mohd

*Finance, Corporate Governance, The Global University of Islamic Finance (INCEIF) Malaysia.*

### Stephen J. Hall

*English Language Studies, Linguist, Teacher Educator, TESOL, Sunway University College, Malaysia.*

### Stephen J. Thoma

*Psychology, Educational Psychology, The University of Alabama, USA.*

### Swee-Heng Chan

*Malaysia.*

### Turiman Suandi

*Psychology, Youth Development and Volunteerism, Universiti Putra Malaysia, Malaysia.*

### Victor T. King

*Anthropology / Southeast Asian Studies White Rose East Asia Centre, University of Leeds, UK.*

## INTERNATIONAL ADVISORY BOARD

2017-2019

### Barbara Wejnert

*Political Sociologist: Gender Studies, Macro Political and Social Changes, University at Buffalo, SUNY, USA.*

### Carolyn Graham

*Music, Jazz Chants, Harvard University, USA.*

### David Nunan

*Vice-President: Academic, Anaheim University, California, English Language Studies, Linguist, TESOL, University of Hong Kong, Hong Kong.*

### Faith Trent AM FACE

*Education: Curriculum development, Flinders University, Adelaide, Australia.*

### Gary N. Mclean

*Executive Director, International Human Resource Development Programs, EAHR, Human Resource Development for National, Community and Social Development, International Human Resource Development, Organizational Development, Texas A&M University, USA.*

### Graham Thurgood

*English Language Studies, General Linguistics, Discourse and Syntax, California State University, Chico., USA.*

### Handoyo Puji Widodo

*English Language Center, Shantou University, China.*

### John R. Schermerhorn Jr.

*Management Studies, Management and Organizational Behaviour, International Business, Ohio University, USA.*

### Kent Matthews

*Economics, Banking and Finance, Modelling and Forecasting the Macro Economy, Cardiff Business School, UK.*

### Lehman B. Fletcher

*Economics, Agricultural Development, Policy Analysis and Planning, Iowa State University, USA.*

### Mark P. Orbe

*Communication, Interpersonal Communication, Communication and Diversity, Intercultural Communication, Western Michigan University, USA.*

### Mohamed Ariff

*Department of Economics and Finance, Sunway University, Malaysia.*

### Pal Ahluwalia

*Pro Vice-Chancellor (Research and Innovation), African Studies, Social and Cultural Theory, Post-colonial Theory, Division of Education, Arts & Social Sciences, University of Portsmouth, United Kingdom.*

### Phillip Jones

*Architectural Science, Sustainability in the Built Environment, Welsh School of Architecture, Cardiff University, UK.*

### Rance P. L. Lee

*Sociology, The Chinese University of Hong Kong.*

### Royal D. Colle

*Communication, Cornell University, USA.*

### Shonda Buchanan

*Interim Chair, American Literature, Hampton University, USA.*

### Vijay K. Bhatia

*Education: Genre Analysis and Professional Communication, City University of Hong Kong*

## ABSTRACTING/INDEXING

*Pertanika is now over 40 years old; this accumulated knowledge has resulted the journals being indexed in abstracted in SCOPUS (Elsevier), Thomson (ISI) Web of Knowledge [ESCI, BIOSIS & CAB Abstracts], EBSCO & EBSCOhost, ERA, DOAJ, AGRICOLA (National Agric. Library, USA), Cabell's Directories, Google Scholar, MyAIS, Islamic World Science Citation Center (ISC), ASEAN Citation Index (ACI) & Rubriq (Journal Guide).*



The publisher of Pertanika will not be responsible for the statements made by the authors in any articles published in the journal. Under no circumstances will the publisher of this publication be liable for any loss or damage caused by your reliance on the advice, opinion or information obtained either explicitly or implied through the contents of this publication.

All rights of reproduction are reserved in respect of all papers, articles, illustrations, etc., published in Pertanika. Pertanika provides free access to the full text of research articles for anyone, web-wide. It does not charge either its authors or author-institution for refereeing/publishing outgoing articles or user-institution for accessing incoming articles.

No material published in Pertanika may be reproduced or stored on microfilm or in electronic, optical or magnetic form without the written authorization of the Publisher.

Copyright © 2017-18 Universiti Putra Malaysia Press. All Rights Reserved.

## Preface

In 1927, Roscoe Pound from Harvard Law School, in his address before the Indiana Conference on Social Work, titled Law and Social Change, discussed the need to bridge the gap between what the law is and what the law ought to be due to social changes. What Poscoe was propounding is the need to train lawyers to be social fighters, seeking to advance social justice and not just legal justice.

What Poscoe propagated is not something new. The law must constantly evolve to be relevant to the society, otherwise it runs into the danger of being obsolete. The alignment of legal position with social reality must not take place at the Parliament alone but also at the courts as well as legal firms. That was the core thesis of Poscoe, i.e. even lawyers must be sensitive of changes in cultural symbols, rules of behaviour, social organisations or even value systems.

This special issue is a culmination of a two-day discussion at the 5<sup>th</sup> International Conference on Law and Society 2016. The conference which was organised by four faculties from 3 different countries within the ASEAN region i.e. Faculty of Law and International Relations, University Zainal Abidin, Ahmad Ibrahim Kulliyah of Laws and Universitas Muhammadiyah Yogyakarta, hosted more than 60 academics to examine the broad theme of the conference titled Visions of Law and Social Change. The theme aptly describes the challenges currently confronting legislators and policy makers to keep national countries law up to date with social changes. The Conference which took place on the 18<sup>th</sup> and 19<sup>th</sup> April 2016 at the beautiful campus of Fatoni University, Pattani, Thailand, was a convergence of like-minded academics discussing the impact of social change on legal framework with heated passion and enthusiasm.

The specially selected 26 papers in this Special Issue examines the linkage between law and social change from a wide variety of angles including family, medical, company, international, contract, constitutional, human rights and land law. Readers may find that although the term 'social' appears only in three titles, the majority of the papers focus on contemporary social issues that necessitate a fresh look into the existing legal framework. In the context of human rights, for example, one cannot overlook the many social values that drive norm setting or mull over the social benefit of equal opportunity rule in take over and mergers. In other areas, the social need is even more wanting such as children's right to education, religious freedom, constitutional democracy, refugee crisis, shareholders activism and shareholders' power, internet policing, apology as a mode of resolution of medical disputes or even philanthropy and social justice in *waqf* administration.

In the context of Shariah, social changes may also challenge the existing legal norms that have become *sine qua non* to many Muslim scholars. In this issue, one paper seeks to

revisit the understanding of the concept of punishment and propose for the imposition of community service as an alternative punishment in *Shariah*.

Not to be forgotten are proposition of new technologies that have revolutionised business practices. Two papers in this special issue address how information technology can be used to the advantage of small businesses, such as the usage of mobile apps for enhancing legal knowledge or e-accounting system information system for small legal firms.

So intimate is the relationship between law and social changes that socio legal study has become one of the entrenched research methodologies. Law in its black letter alone is no longer sufficient, instead it must be understood in its context; hence, the socio-legal approach. In this Special Issue, two papers adopt this socio-legal approach in examining family law i.e. claims of intangible interest as matrimonial property and cross border marriages.

As final words, it is hoped this collection of papers would provide a better understanding of how social change could contribute to a better vision of law in Malaysia.

Happy reading!

**Guest Editors:**

Zuhairah Ariff Abdul Ghadas (*Prof. Dr.*)

Ida Madieha Abdul Ghani Azmi (*Prof. Dr.*)

**October 2017**