

THE STANDARD OF PROOF IN INQUESTS: LESSONS FROM MALAYSIA AND OTHER JURISDICTIONS

Syahrin Jeli Bohari*

Muhamad Helmi Md Said**

Ramalingam Rajamanickam***

ABSTRACT

An inquest, also known as inquiry of death in Malaysia, is governed by the Criminal Procedure Code (CPC). The main objective of an inquest is to investigate the cause of death. However, the lack of established procedures in Malaysia to guide coroners in conducting inquests has created many ambiguities. These ambiguities are demonstrated in numerous cases where decisions have been reviewed on a variety of grounds. One of the critical issues not addressed by the CPC is the standard of proof applicable in inquests. This article aims to study the correct standard of proof to be applied by the coroner at the end of an inquest proceeding. The focus is on the relevant standard of proof at the end of an inquest in Malaysia, the United Kingdom, and Australia. The research methodology is doctrinal legal research using comparative study. It is found that the standard of proof applied in Australia is settled, that is on the civil standard of balance of probabilities. The development of applicable standards of proof in inquests in Malaysia and the United Kingdom is observed in case law, which shows a shift from the criminal standard of proof to the civil standard of proof. The authors propose that specific legislation be enacted to govern the coroner's court in Malaysia, in order to provide a clear and definitive legislative framework as well as guidance in the practice and procedure for coroners, including the issue of standard of proof.

Keywords: Criminal Procedure Code, Inquest, Inquiry of Death, Standard of Proof, Malaysia, Other Jurisdictions.

* Deputy Registrar, Policy and Legislation Division, Office of the Chief Registrar, Federal Court of Malaysia. Email: syahrin@kehakiman.gov.my. (Corresponding author).

** Senior Lecturer, Faculty of Law, Universiti Kebangsaan Malaysia. Email: mhelmisaid@ukm.edu.my.

*** Associate Professor, Faculty of Law, Universiti Kebangsaan Malaysia. Email: rama@ukm.edu.my.

DARJAH PEMBUKTIAN DALAM INKUES: PENGAJARAN DARI MALAYSIA DAN BIDANG KUASA LAIN

ABSTRAK

Inkues, juga dikenali sebagai siasatan kematian di Malaysia dikawal oleh Kanun Prosedur Jenayah ('CPC'). Objektif utama inkues adalah untuk menyiasat punca kematian. Walau bagaimanapun, kekurangan prosedur yang ditetapkan di Malaysia untuk membimbing koroner dalam menjalankan inkues telah menimbulkan banyak kesamaran. Kekaburan ini ditunjukkan dalam banyak kes apabila keputusan telah disemak atas pelbagai alasan. Salah satu isu kritikal yang tidak ditangani dalam CPC ialah darjah pembuktian yang digunakan dalam inkues. Oleh itu, makalah ini bertujuan untuk mengkaji darjah pembuktian yang betul untuk digunakan oleh koroner pada akhir prosiding inkues. Tumpuan makalah ialah kepada darjah pembuktian yang relevan pada akhir inkues di Malaysia, United Kingdom dan Australia. Kajian ini menggunakan kajian perundangan doktrinal dan menggunakan kaedah kajian perbandingan. Makalah ini mendapati bahawa darjah pembuktian yang digunakan di Australia adalah muktamad iaitu pada darjah imbalan kebarangkalian. Perkembangan darjah pembuktian yang digunakan dalam inkues di Malaysia dan United Kingdom berdasarkan kes-kes mahkamah menunjukkan peralihan daripada darjah pembuktian jenayah kepada darjah pembuktian sivil di kedua-dua negara. Penulis mencadangkan agar undang-undang khusus digubal untuk mentadbir mahkamah koroner di Malaysia untuk menyediakan rangka kerja perundangan yang jelas dan muktamad, serta panduan dalam amalan dan prosedur untuk koroner, termasuk isu darjah pembuktian.

Kata Kunci: Kanun Prosedur Jenayah, Inkues, Siasatan Kematian, Darjah Pembuktian, Malaysia, Bidang Kuasa Lain.

INTRODUCTION

An inquest is essentially a proceeding under the Criminal Procedure Code (CPC).¹ It refers to a magistrate's investigation into the cause of death and any circumstances surrounding it. Chapter XXXII of the CPC describes the inquest's functions and the procedures to be followed in conducting the inquest, as set out in sections 328 to 341 of the CPC. In addition, the Chief Justice of the Federal Court of Malaysia

¹ Act 593.

issued Practice Direction No. 2 of 2019 outlining the procedures for conducting the death investigation and inquest proceedings in detail.

Different countries have varying procedures and practices regarding inquests. In some countries, an inquest is presided over by a medical officer acting as a coroner.² In some jurisdictions, the coroner is assisted by a jury panel in determining the cause of death.³ In Malaysia, the Coroner's Court was established to conduct inquests, and it must be presided over by a Sessions Court judge acting in the coroner's capacity.⁴ Regardless of the differences in practice and procedure, their primary responsibilities and role as a coroner remain the same, which is to determine the cause of death in cases that occur unexpectedly or in an unnatural manner. In the case of *PP v. Shanmugam & Ors*,⁵ the High Court emphasised that the magistrate's duty when conducting a death inquiry is to act as a coroner in order to determine the cause of death of the deceased person. Suriyadi J (as he then was) observed that:

“The magistrate court had assumed the powers and duties of a coroner's court. A coroner's inquest was a court of law, though not a court of justice, because it was essentially set up to investigate and ascertain the cause of death. Apart from being shackled by a limited mandate, a coroner was also not bound to follow the usual procedure of law courts. The position of the magistrate in the instant case was no different to that of a coroner when holding an inquiry of death, and thus, the magistrate was similarly not bound by the usual procedure of courts of law and the normal rules of evidence...”

² Cliona McGovern, “The Coroner Service in Ireland – Time to Implement Change,” *Medico-Legal Journal of Ireland* 13 (2007). Gregory, M.J. Managing the homicide-suicide inquest the practices of coroners in one region of England and Wales. *International Journal of Law, Crime and Justice* (2014) 1-14.

³ Aminuddin Mustafa and Siti Nurul Aziera Moharani, “Pengendalian Inkues Kematian di Bawah Undang-undang Malaysia,” *Kanun: Jurnal Undang-undang Malaysia* 24, no. 2 (2012): 193-212.

⁴ Chief Justice Federal Court Malaysia, Practice Direction No. 2 of 2019 – Pengendalian Laporan Mati Mengejut Dan Siasatan Kematian Oleh Mahkamah Sesyen Koroner, 8 March 2019 (“Practice Direction 2/2019”), 2.

⁵ [2002] 6 MLJ 563.

This article will provide a concise overview of Malaysia's death inquiry parameters and objectives, and in particular, the standard of proof used at the end of inquiry of death proceedings.⁶

THE PROBLEM SO FAR

In Malaysia, the lack of established procedures to guide coroners in conducting inquests has resulted in a great deal of uncertainties. These uncertainties can be seen in many instances where verdicts have been reviewed and overturned on a number of grounds. Among the issues confronting coroners in Malaysia are in determining who is an interested party in the inquest, deciding who has a right of audience, and ensuring that no error is made when concluding the inquiry by indicating a person's civil liability or criminal guilt.⁷ Another significant issue not addressed in the CPC or any guidelines in Malaysia is the standard of proof to be applied by a coroner in reaching a verdict. Prior to 2009, the standard of proof to be applied by a coroner in reaching his verdict was never discussed or considered in any of the inquest proceedings. For the very first time in 2009, in *Re Inquest into the death of Sujatha Krishnan, Deceased*⁸ the coroner/magistrate commented that the law in Malaysia is still relatively new when it comes to inquest. The magistrate went on to say that Malaysian law is silent on the standard of proof to be adopted when dealing with the evidence submitted before him.⁹ Nonetheless, it cannot be said that there is no standard to be applied. In reaching the verdict the coroner must take cognisance, scrutinise and admit evidence which he thinks fit, including hearsay evidence.¹⁰ He is not required to follow the usual procedure of the courts, such as rules and procedure and rules of

⁶ Mohd. Akram Shair Mohamed, "The Conventional Restrictive and the Modern Liberal Interpretation of Section 30 of the Evidence Act (2013)," *IIUM Law Journal* 21, no. 1 (2013): 61, <https://doi.org/10.31436/iiumlj.v21i1.97>.

⁷ Noorfajri Ismail & Nurul 'Ain Abdul Rahim. 2022. "Managing Coroner's Court in Malaysia: Recent Development of Inquest Proceeding." *E-Journal of Economics, Entrepreneurship and Management Sciences* 1(1): 52-62.

⁸ [2009] 5 CLJ 783 at page 788.

⁹ [2009] 5 CLJ 783 at page 788

¹⁰ *In Re Inquest into the Death of Sujatha Krishnan, Deceased* [2009] 5 CLJ 783 at page 788-789.

evidence which are applicable in a criminal trial.¹¹ In *Sujatha*, the magistrate was of the view that the test is on the balance of probabilities sliding to beyond reasonable doubt. Applying the criminal standard of proof of beyond reasonable doubt, the magistrate came to the verdict that the deceased had committed suicide. An inquiry into a death is different from a criminal trial, though. Simply gathering information is what it is, and the coroner has no jurisdiction to decide a person's criminal or civil liability.¹² The Court of Appeal in *Teoh Meng Kee v Public Prosecutor*,¹³ established a definitive explanation of the standard of proof in a death inquiry proceeding. Hence, it is significant to address this problem to avoid miscarriage of justice.¹⁴

THE PARAMETERS OF DEATH INQUIRIES IN MALAYSIA

Under section 337 of the CPC, the five (5) primary questions that a coroner may inquire about are as follows:

“A Magistrate holding an inquiry shall inquire **when, where, how and after what manner the deceased came by his death and also whether any person is criminally concerned** in the cause of the death.”¹⁵

This provision's language is plain and free of ambiguity. The scope of an investigation conducted pursuant to section 337 of the CPC is limited to getting answers to the aforementioned questions. It must be emphasised that the specifics of who should be held accountable, who is guilty or may be guilty of any offence, are outside the scope and ambit of the procedures brought under the above-mentioned provision. The scope and role of a coroner in Malaysia have been explained by the Court in the following cases:

¹¹ [2009] 5 CLJ 783 at page 787-788

¹² Visvanathan, M. 2022. Does the Coroners Court System in Malaysia Need Urgent Reforms?. *Malayan Law Journal Articles* 2 MLJ ccxxx: 1-8.

¹³ [2014] 5 MLJ 741

¹⁴ Sheila Ramalingam, Johan Shamsuddin Sabaruddin, and Saroja Dhanapal, “The Language Of Justice In Malaysian Courts: The Law And The Reality,” *IJUM Law Journal*, 30, no. 2 (2022): 23–48, <https://doi.org/10.31436/ijumlj.v30i2.758>.

¹⁵ Section 337, Criminal Procedure Code (Act 593).

(1) *PP v. Shanmugam & 5 others*; ¹⁶

(2) *Inquiry Into the Death of Nora Anne Quoirin*; ¹⁷

(3) *In Re Anthony Chang Kim Fook, Deceased*; ¹⁸

(4) *In Re Inquest into The Death of Sujatha Krishnan, Deceased*; ¹⁹

In Re Anthony Chang Kim Fook, deceased ²⁰ Sulong Matjeraie J (as he then was) observed that:

“Section 337 of the CPC serves as the terms of reference within which the coroner conducts the inquest into the death of the deceased. As such the Coroner cannot act outside the perimeter of the said term of reference.” ²¹

Section 328 of the CPC provides a definition of “cause of death” which states “... all matters necessary to enable an opinion to be formed on how the deceased came by his death...” This means that the investigation into the cause of death is not limited to the cause of death determined through an autopsy, but also includes all matters and conditions surrounding how the deceased died, as well as whether there was any unlawful act or involvement of others in the deceased’s death.

It was held by Dzaidin J (as he then was) in *Re Loh Kah Kheng* ²² that:

“It must be remembered that the function of a magistrate holding an inquiry is to inquire when, where, how and after what manner the deceased came by his death and also whether any person is criminally concern in the cause of such that. The “cause of death” is defined under section 328 to include not only the apparent cause of death as ascertainable by inspection or post mortem examination of the body of the deceased, but also all matters necessary to enable an opinion to be formed as to the manner in which the deceased came by his death and so as to whether his death in any way from, or was

¹⁶ [2002] 1 LNS 160.

¹⁷ [2021] 1 LNS 6.

¹⁸ [2007] 2 CLJ 362.

¹⁹ [2009] 5 CLJ 783.

²⁰ [2007] 2 CLJ 362.

²¹ [2007] 2 CLJ 368

²² [1990] 2 MLJ 126.

accelerated by any unlawful act or omission on the part of any other person.”²³

A common misconception is that inquests are similar to criminal trials. However, as compared to a criminal trial, an inquest does not involve any parties, charge, or trial. In other words, no accused is tried during an inquest. The coroner court may consider all factors connected to the death of the deceased and is not bound by the rules of evidence for the court to investigate and answer the five (5) questions referred to above as required by law.²⁴ This means that the hearsay evidence presented at the hearing can be considered by the court when making decisions about the deceased’s death. The court is not constrained by the standard procedures and laws used in regular trials. In *Re Anthony Chang Kim Fook*,²⁵ Sulong Matjeraie J (as he then was) observed that:

“It must be borne in mind that in an inquest, there are no parties, there is no indictment, there is no prosecution, there is no defence and there is no trial. It is simply an attempt to establish facts. It is an inquisitorial process, a process of investigation quite unlike a trial where the prosecutor accuses and the accused defends, the judge holding the balance or the ring, whichever metaphor one chooses to use, see *R v South London Coroner; ex parte Thompson* [1982] 126 SJ 625 DC.”²⁶

Suriyadi J (as he then was) in *PP v Shanmugam*²⁷ noted that:

“... I am, therefore of the opinion that so long as the learned magistrate was satisfied that there was evidence, in whatever form or manner elicited and whether admissible or not, which could assist her in establishing the cause of death of the deceased, she was perfectly entitled to know and take cognizance of it.”²⁸

Trials in the Malaysian courts ordinarily apply the adversarial system. However, under this system, the role of a magistrate or judge is limited whereas lawyers and prosecutors would play active roles

²³ [1990] 2 MLJ 159.

²⁴ Practice Direction of Chief Justice No 2, 2019

²⁵ [2007] 2 CLJ 362.

²⁶ [2007] 2 CLJ 365

²⁷ [2002] 1 LNS 160.

²⁸ [2002] 1 LNS 169.

including selecting how evidence should be presented, who should be called as witnesses, and what documents should be produced as evidence during trial. On the other hand, an inquest is an inquisitorial proceeding in which a magistrate or a session court judge sitting as coroner actively participates in the conduct of the proceedings. Other parties, such as the prosecutors and lawyers, simply assist the coroner in facilitating the smooth conduct of the death investigation. As such, the coroner's responsibility is to determine which witnesses should be called to testify. Additionally, the coroner may request that relevant documents be submitted by the relevant parties if he believes the document is necessary to assist in deciding on the cause of death. If the coroner determines throughout the course of proceedings that more evidence is necessary to help the court in reaching a conclusion, the coroner may direct the presentation to the court of any such individual or relevant document.²⁹

The coroner is required to assess the evidence presented during the death investigation and conclude the deceased's cause of death. According to the Chief Justice's Practice Direction No. 2 of 2019, the coroner must, after the inquiry, deliver the following verdict:

- a) An open verdict;
- b) Misadventure;
- c) Natural death;
- d) Homicide; and
- e) Suicide.³⁰

Notably, available legislation and Practice Direction in Malaysia does not provide for the standard of proof to be applied by a coroner when dealing with the evidence that has been submitted before the court. Prior to 2009, there was no discussion on what test to be applied by a coroner in any of the decided inquest proceedings. However, in *PP v. Shanmugam*,³¹ Suriyadi J (as he was then) stated that a magistrate must not rely on speculation or guesswork when conducting an inquiry.

²⁹ *Th' ng Hai Lam lwn PP* [2012] 7 MLJ 671.

³⁰ Paragraph H of Attachment A to the Practice Direction of the Chief Justice No. 2 of 2019.

³¹ [2002] 6 MLJ 562.

The magistrate is limited to the evidence presented, and the verdict must be based solely on facts, as specified in section 337 of the Criminal Procedure Code. However, the Court of Appeal eventually clarified in 2014 in the case of *Teoh Meng Kee v. Public Prosecutor*³² what standard of proof should be used in a death inquiry.

The following paragraphs will go into detail on the evolution of the standard of proof in inquest proceedings in Malaysia, as well as the standard of proof used by other jurisdictions in the conclusion of an inquest proceeding.

STANDARD OF PROOF IN THE INQUEST PROCEEDING

Malaysia

A standard of proof refers to the degree of certainty and evidence required in a criminal or civil action.³³ The provisions of the CPC and the Practice Direction governing the inquiry of death proceedings do not state explicitly what standard of proof would be required. As a result, it is necessary to examine some inquest cases and observe the standard used by the coroner in reaching a verdict. As previously stated, before 2009, there were no discussions about what standard of proof should be used in any inquest case. It was first raised in the case of *In Re Inquest into the Death of Sujatha Krishnan, deceased*³⁴ in which the magistrate observed that Malaysian law is silent on the standard of proof that a coroner must apply when dealing with evidence presented before him. The magistrate also noted that there was no discussion on the standard of proof applicable at the conclusion of an inquiry proceeding in any decided case.

In this case, a magistrate acting as coroner was notified of a case of sudden death pursuant to Section 329 of the CPC. The deceased was admitted to Hospital Tengku Ampuan Rahimah in Klang for five days following an unintentional consumption of paraquat and died there. Her body was released without a post-mortem examination at the

³² [2014] 5 MLJ 741.

³³ “Standard of proof,” Merriam Webster Dictionary, assessed June 24, 2021, <https://www.merriam-webster.com/legal/standard%20of%20proof>.

³⁴ [2009] 5 CLJ 783.

request of her family members. Due to the preponderance of evidence pointing to suicide, the coroner returned a suicide verdict.

At the end of the inquiry proceeding, the magistrate applied the test of balance of probabilities but nearing the standard of beyond reasonable doubt. The Magistrate held that:

“this is not a criminal trial, but an inquiry to make a finding of fact. To do that, the evidence adduced must be credible as to become the basis of the coroner’s finding. No one is on trial. Therefore, hearsay and secondary evidence is allowed but hearsay evidence must be scrutinised with caution. As the finding of the inquiry is legally binding, **the facts must be proven beyond reasonable doubt.**”³⁵

The standard of proof used in *Sujatha’s* case was followed in several subsequent cases. In the death inquiry of *Teoh Beng Hock, deceased*,³⁶ the deceased was discovered dead in a corridor on the fifth floor of the Plaza Masalam, Shah Alam, following a fall from the fourteenth floor of the office of the Malaysian Anti-Corruption Commission. The magistrate was notified of the sudden death report under section 339 of the CPC, hence an inquiry was conducted pursuant to section 337. The death theories included two possibilities: suicide and homicide. After a lengthy inquiry, the magistrate determined that both suicide and homicide were not proven beyond a reasonable doubt. It was observed by the magistrate that in the United Kingdom, the standard of proof for an inquest is based on a balance of probabilities, except for two (2) conclusions, namely suicide and homicide, in which the evidence must be proven beyond a reasonable doubt. Accordingly, considering the test used in *Sujatha* and the law in the United Kingdom regarding a finding of suicide or homicide, the magistrate returned an open verdict.

The Court of Appeal, in the case of *Teoh Meng Kee v Public Prosecutor*,³⁷ provided a definitive explanation of the standard of proof to be applied in an inquiry of death proceeding for the first time.

In this case, an application for an order of revision was filed by the appellant, who was the brother of Teoh Beng Hock (the deceased), seeking the High Court to set aside the open verdict rendered by a magistrate in the investigation into the deceased’s death and to order

³⁵ [2009] 5 CLJ 789.

³⁶ [2012] 1 SMC 19.

³⁷ [2014] 5 MLJ 741.

for unlawful killing. In his ruling, the High Court judge concurred with the magistrate's finding and denied the criminal revision application after carefully scrutinising the record. Given the criminal element involved, the magistrate's conclusions and his evaluation of the facts and evidence, in the judge's opinion, were accurate, as well as that he had applied the beyond reasonable doubt standard properly. The appellant then appealed to the Court of Appeal against the High Court's decision.

The primary issue to be decided by the Court of Appeal in this case was the standard of proof applicable in reaching a verdict at an inquiry of death proceeding. Coroners who are conducting inquests now have clearer guidance as a result of this decision.

As a response to the question of the applicable standard of proof during an inquest proceeding, the Court of Appeal found that the magistrate in *Teoh Beng Hock*'s inquest, and also the High Court judge in the appellant's revision application, both misinterpreted the "sliding scale" derived from the Australian case of *Birginshaw v Birginshaw*.³⁸ *Sliding Scale* means the judge and the Magistrate had misdirected themselves on the law by misinterpreting the standard of the Birginshaw sliding scale, and ultimately applying the standard of proof beyond reasonable doubt when considering the allegations of death by suicide and death as a result of homicide, whereas the scheme and structure of the interlocking provisions under Chapter XXXII of the Criminal Procedure Code (CPC) mandate a lower standard. The applicable standard should be the civil standard of proof on a balance of probabilities.³⁹

According to Mohammad Ariff JCA, the term "Birginshaw sliding scale" does not relate to a scale where the top end of the scale glides to proof beyond a reasonable doubt from proof on the balance of probabilities. It actually depends on how significant or serious the purported allegations are. Instead of the standard of proof, the sliding scale is based on the weight and evaluation of the relevant evidence. The Court of Appeal ruled that in cases of homicide or suicide, the civil test of balance of probability still applies. Applying that high standard of proof while professing to utilise a "sliding scale" has led to the conclusion of an open verdict. The issue is whether the law should

³⁸ [1938] 60 CLR 336.

³⁹ [2014] 7 CLJ 1036

require such a high standard of proof since an inquest is not a trial. The Court of Appeal noted that the magistrate/coroner is not required by the CPC to gain a conviction or even to put a person or individuals to trial for a recognised criminal act; rather, they are simply obligated to determine the “cause of death.”

The Court of Appeal also pointed out that while the interpretation of the term “sliding scale” in *Teoh Beng Hock* case is explained, the coroners court also must ensure that justice is prevailed throughout the inquest proceeding. According to the Court of Appeal, the CPC requires simply that the coroner determines the cause of death. The panel of the Court of Appeal agreed that in an inquest proceeding, a lower standard of proof is to be applied. The law does not require the coroner to find a person’s criminal or civil responsibility. As a result, the civil standard of proof on the balance of probabilities based on the weight of the evidence should be used in any death inquiry conducted under Chapter XXXII of the CPC. Once investigations have been conducted and a thorough criminal trial has been held, it could be required to utilise the criminal standard of proof of beyond a reasonable doubt.

The Court of Appeal concluded that there is sufficient evidence and facts before the coroner for the court to overturn the High Court’s decision and the coroner’s verdict, based on the correct standard of proof, which is the balance of probabilities. Accordingly, the reasonable judgment would be that the deceased’s death was caused by various injuries sustained due to a fall from the 14th Floor of Plaza Masalam as a result of or accelerated by unlawful conduct or acts committed by an unknown individual.

The principle expressed by the Court of Appeal in *Teoh Meng Kee*’s case has been followed in subsequent cases where the coroner at the conclusion of an inquiry applied the civil standard of proof on a balance of probabilities. This can be seen in the case of *In Re Inquest into the Death of Chandran a/l Perumal*⁴⁰ and *Inquiry into the Death of Nora Anne Quoirin*⁴¹ where in both cases the coroners applied the civil standard of proof.

⁴⁰ [2015] 5 LNS 108.

⁴¹ [2021] 1 LNS 6.

United Kingdom

The Coroners and Justice Act 2009 (2009 Act) and the Coroners (Inquests) Rules 2013 (2013 Rules) are the primary pieces of law that govern the duty of the coroner and the conduct of inquests in the United Kingdom (UK) today. Since the office of coroner was established eight centuries ago in 1164, primarily as a revenue-generating initiative, the scope of coronial proceedings has evolved over time. Coroners are now in charge of investigating violent and unnatural deaths, as well as those where the cause of death is uncertain or the deceased died in custody. Coroner's investigation seeks to determine who died, as well as how, when, and where they died. While these are critical questions for comprehending how deaths occur and implementing measures to prevent future deaths, the answers must be distinguished from the imposition of criminal or civil liability on a named person; a coroner (or jury) is expressly prohibited from framing a determination at the inquest's conclusion in such a way that appears to determine these issues.⁴²

In *R v South London Coroner, ex p Thompson*,⁴³ Lane LCJ stated:

“An inquest is a fact-finding exercise and not a method of apportioning guilt...In an inquest it should never be forgotten that there are no parties, there is no indictment, there is no prosecution, there is no defence, there is no trial, simply an attempt to establish facts. It is an inquisitorial process, a process of investigation....”⁴⁴

The 2009 Act replaces the term “verdict” with “conclusion”. Therefore, the finding of a coroner is now called a conclusion. The objective of a coroner's investigation is to determine “who, how, when, and where” the deceased came to die, so that the Record of Inquest (Form 2) can be prepared and sent to the appropriate authorities for the purpose of registering the death. The medical cause of death and the conclusion reached by the coroner or jury whether it is a short form or a narrative conclusion are all included in the Record of the Inquest, which is included in the Schedule to the 2013 Rules. Short-form conclusions of inquests should be one from the list of short-form

⁴² Report on prevent future death, Chief Coroner, No 5, at page 3, <https://www.judiciary.uk/wp-content/uploads/2013/09/guidance-no-5-reports-to-prevent-future-deaths.pdf>

⁴³ (1982) 126 SJ 625.

⁴⁴ (1982) 126 SJ 628.

conclusions provided for in Note (i) of Form 2.⁴⁵ It can be expressed in nine different ways, such as “accident,” “open,” “suicide,” or “unlawful killing.” It is often composed of a single word or phrase that summarises the outcome of an inquest. A narrative conclusion, on the other hand, is a lengthy narrative statement that explains how the deceased died. Note (ii) of Form 2 specifies that in addition to a short form conclusion, a narrative conclusion may be included.⁴⁶

Prior to 2018, all short-form findings were subjected to the civil standard of proof, which is the balance of probabilities, with the exception of cases involving suicide and illegal killing. This has been established by case law as well as the Record of Inquest form,⁴⁷ which a coroner must complete at the conclusion of the investigation. In *R v West London Coroner, ex-parte Gray and others*,⁴⁸ Watkins LJ noted that in the United Kingdom, the standard of proof in an inquest is the balance of probabilities. However, beyond a reasonable doubt standard is applied where a finding of a criminal offence such as suicide or unlawful killing is made. The decision by Lord Widgery CJ in *R (Barber) v. City of London Coroner*⁴⁹ was referred to by Watkins LJ where he observed that the proof of suicide must not be anything less than beyond reasonable doubt, as anything less is unthinkable.

The decision in *Ex-parte Gray* was subsequently affirmed by the Court of Appeal in the case of *R v. Wolverhampton Coroner, ex-parte McCurnbin*.⁵⁰ The judgment makes it clear that in cases of homicide (which is criminal in character), the coroner must be satisfied beyond a reasonable doubt.

In *R (Duggan) v HM Assistant Deputy Coroner for the Northern District of Greater London*,⁵¹ Mark Wayne Duggan was fatally shot by a police officer on 4 August 2011. The jury reached the conclusion that the killing was lawful, meaning that it was more likely than not that Mr Duggan’s death was the consequence of the use of authorised force.

⁴⁵ Chief Coroner, Guidance No. 17, Conclusions: Short Form and Narrative, Paragraph 26, accessed July 5, 2021, <https://www.judiciary.uk/wp-content/uploads/2013/09/guidance-no-17-conclusions.pdf>.

⁴⁶ Chief Coroner, Guidance No. 17, Paragraph 32.

⁴⁷ See Note (iii), Form 2, Schedule to the Coroners (Inquests) Rules 2013.

⁴⁸ [1987] 2 WLR 1020.

⁴⁹ [1975] 1 WLR 1310 at 1313.

⁵⁰ [1990] 1 WLR 719.

⁵¹ [2014] EWHC 3343 (Admin).

None of them were convinced that the killing was unlawful. As required by established precedent, the coroner instructed the jury that in order to issue a verdict of unlawful killing, they must be satisfied with the criminal standard of proof, which is to say that they must be certain. After hearing evidence and responding to questions from the coroner the jury reached the conclusion that Duggan had been lawfully killed. The coroner recorded their conclusion that he had been lawfully killed.

However, in the year 2020, in a landmark decision that divided the Supreme Court's judges by a majority of 3 to 2, it was determined that the standard of proof for all conclusions, including suicide and unlawful killing, should be the civil standard. This important case has now changed the position of inquest's standard of proof. It was concluded by the Supreme Court in *R (on the application of Maughan) v Her Majesty's Senior Coroner for Oxfordshire (Respondent)*⁵² that the standard of proof required to establish suicide and unlawful killing in inquests is the balance of probabilities, not beyond reasonable doubt. All inquest findings must now meet the civil standard of proof.

In this case, Mr. James Maughan was discovered hanging in his jail cell at HMP Bullingdon on 11 July 2016. In October 2017, the Senior Coroner for Oxfordshire, presided over an inquest with a jury. The inquest's primary focus was on whether Mr. James Maughan intended to commit suicide and whether prison authorities contributed to his death. Following the conclusion of the evidence, the Senior Coroner found that there was a lack of evidence to allow a jury to safely reach a short form conclusion of suicide under the criminal standard. Instead, the coroner urged the jury to record a narrative finding that addressed five issues, including whether Mr. James Maughan purposefully tied a rope around his neck and if he meant for the result to be death. By order of the coroner, the jury was instructed to evaluate whether the deceased was unable to establish a particular purpose to commit suicide due to his mental illness. The jury was also instructed to base their conclusions on a balance of probabilities (the civil standard).

The jury recorded a narrative conclusion that:

“We believe James deliberately tied a ligature made of sheets around his neck and suspended himself from the bedframe. James Maughan had a history of mental health challenges and on the night

⁵² [2020] UKSC 46.

of 10 July 2016, James was visibly agitated. We find that on the **balance of probabilities**, it is more likely than not that James intended to fatally hang himself that night.”⁵³

The deceased’s brother sought a judicial review of the coronial inquest’s conclusion. In summary, the appellant argued that the Senior Coroner directed the jury wrongly regarding the applicable standard of proof for suicide: only a criminal standard of proof can lead to a suicide finding (or even a narrative conclusion of suicide). The appellant specifically highlighted note (iii) to Form 2 in the schedule appended in the 2013 Rules, which states that the criminal standard is the burden of proof for a short form judgement of suicide and illegal killing. The Divisional Court rejected the application for judicial review, ruling that the standard of proof for suicide is the balance of probability, whether in short-form or as a narrative conclusion. In establishing this conclusion, an additional issue arose about unlawful killing, which remained the sole inquest conclusion that required the criminal standard of proof.

Leggatt LJ concluded:

“We are unable to accept the claimant’s contention that a conclusion of suicide at an inquest requires proof to the criminal standard. We are satisfied that the authorities relied on to support that contention either on analysis do not support it or do not correctly state the law. We consider the true position to be that the standard of proof required for a conclusion of suicide, whether recorded in short-form or as a narrative statement, is the balance of probabilities, bearing in mind that such a conclusion should only be reached if there is sufficient evidence to justify it.”⁵⁴

The appellant appealed against the decision of the Divisional Court to the Court of Appeal.⁵⁵ The two (2) main questions to be addressed at the Court of Appeal were:

- (1) Is the criminal standard of proof (satisfied to be certain) or the civil standard of proof (certain that it is more probable than not) to be utilised in determining whether the deceased wilfully committed suicide intending to kill himself?

⁵³ [2020] UKSC 50.

⁵⁴ [2018] EWHC 1955 (Admin).

⁵⁵ [2019] QB 1218].

- (2) Is the answer dependent on whether the determination is conveyed in short form or narrative form?

While recognising that the Divisional Court had taken a “bold approach” in disembarking from what had been established law and practice for more than 35 years, the Court of Appeal agreed with its conclusion that the civil standard should be applied when determining whether someone committed suicide whether as part of a short form conclusion or as part of a narrative. The Court of Appeal grounds are as follows:

- (1) The proceedings are inquisitorial, with no findings of guilt;
- (2) Suicide has been decriminalised for nearly 50 years;
- (3) In disputes over life insurance, the civil courts have applied the civil standard of proof even when the subject matter relates to suicide;⁵⁶
- (4) In cases protected by Article 2 of the European Convention on Human Rights, which demand a thorough investigation of the circumstances surrounding the death, the civil standard permits a wider scope of inquiry, which enhances the likelihood of future lessons; and
- (5) The application of the civil standard of proof allows for a single standard to be applied to a narrative conclusion even when suicide is involved.

Therefore, in response to the first question, after considering the relevant case law, the Court of Appeal comes to the conclusion that none of the authorities clearly said that the criminal standard of proof should be applied in suicides cases. Hence, the civil standard of proof applies to a determination of suicide. In replying to the second question, the Court of Appeal stated that the civil standard applied regardless of whether the conclusion was short form or narrative.

At the request of the intervening Chief Coroner of England and INQUEST (a UK-based charity organisation) the Court of Appeal also considered the proper standard of proof for unlawful killing. The Court found that in order for a jury to return a verdict of unlawful killing, they must be certain, according to the criminal standard, that the key elements of this determination were proven. The Court’s reasoning for keeping unlawful killing as the criminal standard was that, while

⁵⁶ See *Braganza v BP Shipping Ltd* [2015] UKSC 17.

inquests are not criminal proceedings, unlawful killing is a crime and hence deserves its own special status. Conclusions of unlawful killing are limited to a specific class of situations (homicide) and can identify a perpetrator; thus, the criminal standard should be applied to be more impartial to such individuals. As a result, when there is an issue of unlawful killing, coroners should advise juries to apply the criminal standard of proof.

The matter went up to the Supreme Court. The focus of the appeal at the Supreme Court was on the standard of proof to be adopted in an inquest when considering the short-form conclusion of suicide and whether that standard is different if the relevant facts are reflected in a narrative conclusion.⁵⁷ Additionally, the Supreme Court also has to decide whether or not the standard of proof for conclusions of unlawful killing should be reduced to the civil standard of proof. On 13 November 2020, by a majority of 3 to 2, the Supreme Court decided that the standard of proof for suicide and unlawful killing should be reduced to the lower civil threshold. All inquest conclusions will now be subjected to the civil standard of proof on the balance of probabilities. *Lady Arden* in delivering the majority judgement stated the following grounds:

- (1) The 2009 Act, the 2013 Rules and the European Convention on Human Rights (ECHR) make no reference to the standard of proof for inquest conclusions. The 2009 Act does not imply that the civil standard of proof cannot apply to a determination of suicide.
- (2) Before suicide can be proven, two elements must be established: it must be demonstrated that the deceased took his own life and that he planned to kill himself.⁵⁸ There is a body of case law indicating that suicide and unlawful killing should be determined using the criminal standard. However, coroner's court proceedings are not the same as criminal proceedings.
- (3) The only instance the criminal standard of proof was mentioned in connection with suicide and illegal killing conclusions was in Form 2 'Record of Inquest'. Note (iii) of the form specified that "the standard of proof required for the short form conclusions of unlawful killing and suicide is the criminal standard of proof. The standard of proof for all other short-form conclusions and

⁵⁷ [2020] UKSC 46.

⁵⁸ Paul Matthews, *Jervis on Coroners*, 14th ed. (London: Sweet & Maxwell, 2019), para 13.67.

narrative conclusion is the civil standard of proof.” It was decided that Note (iii) of Form 2 should only be construed as a guide to the status of the law at the time Form 2 was formed; it cannot be construed as setting a particular standard and has not precluded courts from developing the common law.

- (4) Reasons for suicide were often complex, therefore adopting criminal standard of proof may cause unrecorded suicide and lessons may not be obtained. The public must recognize the elements that contribute to suicide and work to prevent it.
- (5) Suicide is no longer considered a crime, and as a result, it is no longer penalised by law.
- (6) Other commonwealth jurisdictions like Australia, New Zealand and Canada have applied the civil standard.
- (7) A uniform standard of proof applying to both conclusions would be compatible with principle, would eliminate inherent inconsistency, and would reflect the established rule that the civil standard of proof applies in civil proceedings.
- (8) The role of inquest has changed and developed with the investigation and inquiry of death and not to find guilt of anyone.
- (9) That the civil standard of proof also applies in conclusion of unlawful killing conclusion. There is then uniformity between the conclusions reached at an inquest.

The minority judgment maintains that the criminal standard of proof applies to short form suicide and unlawful killing conclusions. It was stated by the majority decision that there is no conflict created by the fact that the short form and narrative conclusion apply distinct standards of proof. The minority held that there is nothing wrong with classifying suicide and unlawful killing as specific types of conclusions that require proof of the criminal standard. The form’s note (iii) made no attempt to amend the law, but rather to confirm what was already in place. It can only be repealed or amended if a statutory provision is enacted by Parliament to that effect. Without a doubt, the Rules created a statutory foundation for the application of the criminal standard of proof to short form suicide and unlawful killing conclusions.

The gist of the Supreme Court’s decision is that because coronial proceedings are inquisitorial civil proceedings to establish facts about death, there must be internal uniformity in the standard of proof applied between all the conclusions, be it short-form or narrative. Thus, the

judgement overturns a substantial corpus of case law and establishes the civil standard of proof for all causes of death and conclusion types. As Lord Lane pointed out in *R v South London Coroner, Ex P Thompson*,⁵⁹ there is no concern of burden of proof at an inquest because there are no parties, no charge, and no trial, as there are at a criminal trial. The procedures are inquisitorial and are not adversarial in nature. The majority decision felt compelled to state that the principle is clear: in civil proceedings, the civil standard of proof should apply and holding that a criminal standard applies is unsuitable not only with narrative conclusions but also with the principle applicable to civil proceedings in general.

With the decision of the Supreme Court, as a matter of common law principle, the criminal standard should not apply to any finding in coronial proceedings, thus the Supreme Court placed coronial law in line with many other areas of civil law.

In the UK, following an important case, the Chief Coroner may provide direction to coroners on a variety of issues, including the law. These are written to help coroners understand the law and their legal responsibilities, as well as to provide comments and advice on policy and practice. Pursuant to *Maughan's* case, on 13 January 2021, the Chief Coroner of England, published a legal guidance in the form of "Law Sheet 6," which addresses the impact of the case of *R (on the application of Maughan) v Her Majesty's Senior Coroner for Oxfordshire* on coronial practice. Law Sheet 6 emphasises the notion that a coroner's inquest is not a criminal proceeding: an inquest is a fact-finding process, not a means of finding guilt. The Chief Coroner highlights that where a coroner or jury finds unlawful killing, it is now especially crucial for the coroner to explain the contrast between criminal proceedings and inquests.

⁵⁹ [1982] 126 SJ 625.

Australia

State and Territory legislation (“the Coroners Acts”) regulates the coronial system in Australia.⁶⁰ Like in any other jurisdiction, the coroners in Australia conduct investigations into specific types of fatalities to ascertain the deceased’s identification, as well as the date, location, circumstances, and medical cause of death. An inquest is not a civil or criminal trial. Therefore, it is not the job of a coroner to decide whether someone is liable or entitled to a legal remedy⁶¹ or guilty of an offence.⁶² However, if a coroner believes that an unlawful offence has been committed in connection with a death, the Director of Public Prosecutor may be referred.⁶³ At the conclusion of an inquest proceeding, legislation in Australia gives coroners the authority to make recommendations to government and agencies with the purpose of improving public health.⁶⁴

The rules of evidence do not apply to a coroner conducting an inquest.⁶⁵ The power of a coroner to review evidence is not as restricted as it may be in adversarial proceedings. This allows a coroner to hear evidence that may not be admissible in other procedures and to consider the source of the information when evaluating how much weight should be given to the information. The flexibility is justified by the fact that an inquest is a fact-finding exercise rather than a method of finding guilt of someone. While a coroner is not bound by evidentiary rules, they are required to operate independently and in accordance with relevant evidence.⁶⁶ Coroners must also exercise their authorities and carry out their duties in a fair and efficient way, ensuring that natural justice norms are followed.⁶⁷

⁶⁰ Coroners Act 1997 (ACT), Coroners Act 2009 (NSW), Coroners Act 2008 (Vic), Coroners Act 2003 (Qld), Coroners Act 2003 (SA), Coroners Act 1995 (Tas), Coroners Act 1996 (WA).

⁶¹ *R v Doogan* [2005] ACTSC 74, 12.

⁶² Section 69, Coroners Act 2008 (Vic).

⁶³ Section 49, Coroners Act 2008 (Vic), Section 48(2), Coroners Act 2003 (SA).

⁶⁴ Section 52(4), Coroners Act 1997 (ACT), Section 82(1), Coroners Act 2009 (NSW), Section 72(2), Coroners Act 2008 (Vic).

⁶⁵ Section 37(1), Coroners Act 2003 (SA), Section 62, Coroners Act 2008 (Vic).

⁶⁶ Practice Direction of Chief Justice No 2, 2019

⁶⁷ *Annets v McCann* (1990) 170 CLR 596 at page 598.

The standard of proof to be applied in an inquest proceeding in Australia is settled, that is the standard of balance of probabilities.⁶⁸ When evaluating whether a subject has been proved to that standard, the court must consider the nature of the facts in question⁶⁹ and apply the sliding-scale principles as explained by Dixon CJ in *Briginshaw v Briginshaw*.⁷⁰ It is interesting to note that the case of *Briginshaw* did not involve the authority of a coroner since it was a petition for divorce upon adultery. During the trial, the Tribunal found it difficult to decide who to believe. The Tribunal eventually stated that it could not prove beyond reasonable doubt that the alleged conduct occurred. Mr Briginshaw appealed to the High Court where it was decided that proof of adultery is not beyond a reasonable doubt. McTiernan J held that the balance of probabilities applies, and the tribunal must:

“... feel an actual persuasion of its occurrence or existence before it can be found. It cannot be found as a result of a mere mechanical comparison of probabilities independently of any belief in its reality... [A]t common law...it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal.”⁷¹

This case is significant because it is the basis for the *Briginshaw*'s principle which indicates that the standard of proof required will be determined by the gravity of the situation. So, even if the case is civil, if the consequences are severe, the decision maker may necessitate a higher and stricter standard of proof than if the matter is insignificant. The principles derived from *Briginshaw v Briginshaw* do not establish a new standard of proof, nor do they imply that coroners apply the criminal standard when allegations of criminal conduct are made. Instead, a coroner must consider the gravity of the allegations and may consider the implications of an adverse finding for a specific witness. Hence, the phrase “*Briginshaw* sliding scale” is not related to a scale that changes to proof beyond a reasonable doubt from proof on the balance of probabilities. The amount of persuasion necessary to convince the court varies depending on the nature or intensity of the claims presented, however it is based on the civil standard of weight of evidence. Instead of the standard of proof, the sliding scale is based on

⁶⁸ *Re State Coroner; ex parte Minister for Health* (2009) 261 ALR 152.

⁶⁹ *Anderson v Blashki* [1993] 2 VR 89 at page 95.

⁷⁰ [1938] 60 CLR 336 at pages 362–363.

⁷¹ [1938] 60 CLR 336 at pages 363.

the weight and assessment of the required evidence. For suicide or homicide, the civil standard of balance of probabilities still applies.⁷²

The principle in *Birginshaw* has been the basis for the standard of proof in inquest's conclusion. The position of the standard of proof was made clear in *Anderson v Blashki*,⁷³ where the court held that even the allegation of assault in civil proceedings needs to be proved only on the balance of probabilities even though the allegation is of a criminal nature. However, "because of the gravity of the allegation, proof of the criminal act must be clear, cogent and exact and when considering such proof, weight must be given to the presumption of innocence."

In *Inquest into the death of Azaria Chantel Loren Chamberlain*,⁷⁴ it was held that the test of balance of probabilities is used in coronial jurisdiction. The standard of reasonable satisfaction "increases with the seriousness of the allegation," as highlight in *Briginshaw v. Briginshaw*.

In *Inquest into the death of Liam Richard Vidler-Cumming*,⁷⁵ the coroner noted that:

"Proceeding in a coroner's court are not bound by the rules of evidence... A coroner should apply the civil standard of proof, namely the balance of probabilities, but the approach referred to as the *Birginshaw* sliding scale is applicable. This means that the more significant the issue to be determined, the more serious an allegation or the more inherently unlikely an occurrence, the clearer and more persuasive the evidence needed for the trier of fact to be sufficiently satisfied that it has been proven to the civil standard."⁷⁶

In *An Inquest into the Death of Ben Catanzariti*,⁷⁷ Mr Ben Catanzariti died on 21 July 2012, as a consequence of head injuries sustained when he was struck by a concrete pouring boom while working at the Dockside Apartment Complex, Eastlake Parade, Kingston, ACT. The coroner commented that a finding that favours one hypothesis over another would have the consequence of assigning guilt

⁷² *R (on the application of Maughan) Vs Her Majesty's Senior Coroner for Oxfordshire* [2020] UKSC 41

⁷³ [1993] 2 VR 89.

⁷⁴ [2012] NTMC 20.

⁷⁵ Coroner's Court Brisbane, File No Bris-Cor 175/01.

⁷⁶ Coroner's Court Brisbane, File No Bris-Cor 175/01 at page 2

⁷⁷ [2019] ACTCD 1.

for the boom's collapse (and consequently for Ben's death). Because of the seriousness of the allegation and the potential repercussions of such a finding, the level of satisfaction required to make such a finding would be high. In such a case, the coroner contends that the test advocated by the High Court in *Briginshaw v Briginshaw* (1938) 60 CLR 336 is the appropriate standard to be applied: the more serious the allegation and its consequences, the higher the level of proof required for a matter to be demonstrated. The standard of proof in an inquest is not the criminal onus of "beyond a reasonable doubt," but where substantial allegations are made, the proof must be "reasonably persuasive." As a result, conclusions should be based on more than the balance of probabilities, but the coroner should have "comfortable satisfaction that a reasonable and accurate conclusion has been reached," as stated by Rich J in *Briginshaw* at page 350.

All of the above cases indicate that the standard of proof applicable in an inquest in Australia is a civil standard of the balance of probability based on the *Birginshaw* sliding scale. Although the legislation does not provide for the applicable standard of proof, it is well detailed in the guidelines and handbooks published by the Coroners Court in Australia, such as the Coroners Court of Victoria, Practice Handbook, and State Coroner's Guidelines, 2013.⁷⁸

⁷⁸ "Publications," Coroner Courts of Victoria, accessed June 26, 2021, <https://www.coronerscourt.vic.gov.au/forms-resources/publications?page=1>.

RECOMMENDATIONS

As discussed in the foregoing paragraphs, the provisions of the CPC governing the inquiry of death proceedings do not state explicitly what standard of proof is needed. Malaysian case laws have demonstrated that as a result of this uncertainty, coroners in different inquests have applied varying standards of proof, as seen in the above case law discussions in *In Re Inquest into the Death of Sujatha Krishnan, deceased*⁷⁹ and *Teoh Beng Hock*.⁸⁰ Even the High Court in *Teoh Beng Hock* was satisfied that the magistrate's findings were correct, where the applicable standard of proof in such circumstances should be beyond a reasonable doubt, i.e. the highest end of the so-called "sliding scale". Also, as discussed, the Court of Appeal found that the magistrate in *Teoh Beng Hock's* inquest and the High Court judge in the appellant's revision application misinterpreted the "sliding scale" derived from the Australian case of *Birginshaw v Birginshaw*.⁸¹ Notwithstanding the Court of Appeal's decision, there has not been a determination on the applicable standard of proof in inquest proceedings by the Federal Court, which may decide to apply a different standard of proof in inquests.

Given this uncertainty, it is proposed that Malaysia should consider enacting specific legislation to govern the coroner's court in Malaysia providing a clear and definitive legislative framework and guidance in the practice and procedure for the coroners, including the issue of standard of proof. As an alternative, the Office of the Chief Justice of the Federal Court of Malaysia may consider issuing a Practice Direction on the applicable standard of proof in inquest proceedings in Malaysia. It is also suggested that coroners undergo continued legal training in the conduct of inquests.

Apart from the standard of proof in inquest proceedings, another recommendation is that the coroner's role is expanded to include not only determining the cause of death and responding to the questions set out in section 337 of the CPC but also making recommendations to avoid future fatalities. The proposed legislation should recognise coroners' preventative role as one of the purposes of inquests under

⁷⁹ [2009] 5 CLJ 783.

⁸⁰ [2012] 1 SMC 19.

⁸¹ [1938] 60 CLR 336.

current law.⁸² Examples include the New Zealand Coroners Act 2006, which specifies that the statute's goal is to "assist in the prevention of deaths and the promotion of justice" by (a) investigating and determining the cause of death and (b) providing suggestions or comments. Similar to this, Section 3 of the Coroners Act 2009 (New South Wales) states that the purpose of the Act is, among other things, to enable coroners to make recommendations concerning matters arising out of or in conjunction with an inquest or investigation. Because of this, it should be up to the coroner to make a recommendation if the evidence indicates that there is a high likelihood of further deaths occurring in the future.

It is also necessary to have a reliable mechanism for disseminating the findings among the proper authorities and parties. It is vital to ensure that the relevant authorities are aware of any issues that have arisen during an inquest and any recommendations made by the coroners so that they can respond adequately. A required response clause is proposed to be incorporated into any new legislation enacted in the future. Requiring that agencies and organisations to which suggestions are directed must reply within a specific time would be one method of ensuring that recommendations are not lost or ignored. For example, in 2009, Victoria became the first jurisdiction in Australia, and one of the first jurisdictions in the world, to pass legislation requiring organisations that receive such recommendations to respond to them.⁸³ A response must be made within three months of receiving the advice, indicating what action has been taken, is being done, or will be taken in response to the recommendation, according to Section 72(3) of the Coroners Act (Victoria). The proposed legislation will be based on the jurisdiction of coroners in the United Kingdom, Australia, and New Zealand, as a result of which the presiding coroner will have an easier time carrying out his duties when an investigation is conducted. In Malaysia's coronial system, it is high time to formally acknowledge coronial recommendations as a coroner's responsibility.

⁸² Zulfakar Ramlee and Normi Ab Malek, "Methods of Proof and Evidentiary Requirements in Divorce Cases: An Islamic Perspective," *IIUM Law Journal* 16, no. 2 (2008): 227, <https://doi.org/10.31436/iiumlj.v16i2.52>.

⁸³ Section 72 of Victoria Coroners Act 2008

CONCLUSION

In essence, the standard of proof is the extent to which a party must establish its case in order to succeed. The burden of proof, often known as the “onus,” is the standard to be achieved in deciding a case. There are two separate applicable standards of proof. In criminal cases, the burden of proof is on the prosecutor to prove his case beyond reasonable doubt. In civil cases, it is the plaintiff’s responsibility to prove their case in court, and the standard demanded of them is that the case against the defendant must be proven on the balance of probabilities.

Inquests are distinct from criminal or civil proceedings in that they are solely investigations of the facts. In contrast to a criminal trial, less strict rules apply to the method and admission of evidence in a death inquiry.⁸⁴ Even hearsay evidence might be taken into consideration by the coroner as part of his fact-finding mission.⁸⁵ The deputy public prosecutor is not present in a death inquiry to bring charges against anybody, but rather to help the court in questioning witnesses to gather evidence. Section 337 of the CPC provides for an inquiry into whether any person was criminally involved in the cause of death. Thus, finding out if somebody is criminally to blame for the death is the only goal of an inquiry.

In Malaysia, the CPC does not provide for the standard of proof in a death inquiry. Nevertheless, one cannot argue that no standard should be applied. At the conclusion of the inquiry, no one is convicted or acquitted. It would be illogical to demand that a coroner issue a verdict following an inquiry based on a standard of beyond a reasonable doubt when the rules controlling evidence and process are lax. Based on the above discussion all that is required of the coroner is that he or she reach a decision based on the ordinary balance of probabilities test. There must be sufficient evidence to support a view, including whether the death was directly or indirectly caused by any other person’s criminal act or omission. A magistrate conducting an inquiry must confine himself to the facts produced to him and must ultimately

⁸⁴ See *Re Loh Kah Keng (deceased)* [1990] 2 MLJ 126.

⁸⁵ Practice Direction of Chief Justice No 2, 2019

determine only on that evidence.⁸⁶ The conclusion must be founded on established facts, not on speculations and guesswork.⁸⁷

⁸⁶ See *Public Prosecutor v Shanmugam & Ors* [2002] 6 MLJ 562.

⁸⁷ See *Re Derek Selby, Deceased* [1971] 2 MLJ 277 and *Inquest into the Death of Rumie bin Mahlie* [2007] MLJU 280.