UUM JOURNAL OF LEGAL STUDIES
http://e-journal.uum.edu.my/index.php/uumjls

How to cite this article:
Samuri, M. A. A., Awal, N. A. M., & Bakar, M. A. A. (2022). Curbing child marriage amongst Muslims in Malaysia: Towards legal reform, *UUM Journal of Legal Studies*, *13*(1), 1-20. https://doi.org/10.32890/uumjls2022.13.1.1

CURBING CHILD MARRIAGE AMONGST MUSLIMS IN MALAYSIA: TOWARDS LEGAL REFORM

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Received: 2/12/2020 Revised: 25/4/2021 Accepted: 21/6/2021 Published: 31/1/2022

ABSTRACT

Child marriage is considered by the international community to be a violation of human rights, particularly the right to education and sexual and reproductive healthcare. Unfortunately, there are some Muslim countries in the world, including Malaysia, that has legalised this practice**.** Laws such as the Islamic family laws in all Malaysian states stipulate legal avenues for underage children to get married, provided they obtain permission from the Sharia court. Therefore, in order to end this harmful practice in Malaysian Muslim society, this article will discuss child marriage under Malaysian Islamic family law and propose a legal reform for Islamic family law regarding marriageable age and court procedure. This article examined international law instruments related to child marriage, Malaysian civil and Islamic laws, and reported cases to understand the legal complexities of child marriage in Malaysia. This article found that there is an urgent need

for international agencies, Malaysian federal and state governments, religious authorities, and civil society movements to commence initiatives that address this issue to curb child marriage amongst Muslims in Malaysia, particularly through reforming Islamic family law in all states.

Keywords: Child marriage, Islamic family law, Malaysian Islam, Sharia court, Muslim children.

INTRODUCTION

One of the targets to achieve Sustainable Development Goals initiated by the United Nations Development Program, is to end child marriage by the year 2030. Having a cohesive domestic legal framework that is in line with international human rights standards is one of the keys to curb child marriage. Governments are required to adhere to key international human treaties that address the practice of child marriage such as the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of the Child (CRC) (Varia, 2015). Reformed legal frameworks by state governments include introducing the legal banning of child marriage, increasing the minimum marriage age to 18 years old, and improving marriage documentation process as well as prosecuting offenders and perpetrators.

Malaysia is unfortunately one of the countries that has a prevalence of child marriage. To date, the total number of Muslim child marriages recorded by the Department of Sharia Judiciary Malaysia (JKSM) from 2011 to October 2016 was 6,584 cases. Amongst all states, Sarawak (1,284) showed the highest number of accumulated cases reported, followed by Kelantan (1,010) and Sabah (955) (Awal & Samuri, 2018). In addition, there were cases of child marriages amongst other ethnic and religious groups. However, there has been no official data recorded by government agencies, except for *Bumiputera* Sarawak. This is due to the fact that the law only allows Muslims to marry the underage. Hence, non-Muslim children who marry according to customary rites is beyond the jurisdiction of civil law and the national marriage registration. Though the number of cases may not be as

high as other countries, such as in South Asian and African countries, the steadily increasing number throughout the years indicate the significance of addressing this harmful practice.

In Malaysia, the law defines 'child' as a person under the age of eighteen years, as described by section 2, Child Act 2001 (Amendment, 2016) (Act 611), Law Reforms (Marriage and Divorce) Act 1976 (Act 164) and Age of Majority Act 1971 (Act 21). The definition adopted in Act 611 and Act 21 are of general application throughout the nation, for Muslims and non-Muslims alike. Despite the legal definition of a child, Islamic family laws in all states in Malaysia have set the marriageable age at eighteen for Muslim boys and at sixteen for Muslim girls. Despite such provisions, marriage below the marriageable age amongst Muslims may be allowed provided that permission from the Sharia court is obtained beforehand. As there is no minimum age mentioned in this legal provision, the Sharia court may allow a girl as young as ten years old or even younger to get married. Therefore, this article will discuss issues relating to child marriage in the Malaysian Muslim context and propose legal reform of Islamic family law in Malaysia to address child marriage practices.

INTERNATIONAL LAWS AND ITS LEGAL EFFECTS IN MALAYSIA: ENDING CHILD MARRIAGE

The United Nations Convention on the Elimination of All Forms of Discrimination Against Women 'CEDAW' was ratified by Malaysia in 1995. CEDAW sets out a definition of discrimination against women, outlines the obligations of the State, and the measures to be taken by the State to eliminate discrimination. CEDAW is based on three core interrelated principles *vis-à-vis* the principle of equality, the principle of non-discrimination, and the principle of State obligations. There were reservations made to Articles 5(a), 7(b), 9(2), 16(1)(a), (c), (f), (g) and 16(2), and a declaration was made on Article 11 upon the signing of the aforesaid convention in 1995. In relation to Article 11, Malaysia interprets the provisions of this article as a reference to the prohibition of discrimination on the basis of equality between men and women only. On 6 February 1998, the Government of Malaysia withdrew reservations in respect of Article 2(f), 9(1), 16(b), 16(d), 16(e) and 16(h). To date, Malaysia has retained its reservations on

9(2), 16(1)(a), 16(1)(f) and 16(1)(g). In retaining these reservations, the Government of Malaysia has declared that Malaysia's accession is subject to the understanding that the provisions of the Convention do not conflict with the provisions of the Islamic law and the Federal Constitution of Malaysia. In relation to child marriage, CEDAW provides for the prohibition of Child Marriage in Article 16 where it prescribes equally for men and women: (a) The same right to enter into marriage; (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent. Article 16 (2) states that betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage.

Despite the intention to ratify CEDAW at a domestic level, there has been no Act of Parliament passed to make CEDAW wholly applicable to Malaysians. However, it has been described that CEDAW has shown effect in piecemeal fashion, by incorporating its principles in some of the domestic legislations and Article 8(2) of the Federal Constitution (Ean, 2003). It has been noted that reservations to the CEDAW articles have resulted in criticism on an international level. It has been criticised that the remaining reservations by the Government of Malaysia on CEDAW will continue to inhibit the realization of women's equality, abandoning Malaysia's responsibility to modify social and cultural patterns of conduct that are based on customary practices of stereotype and inferiority, refusing women the right to formulate government policies and hold public office, and failing to enforce equal rights for women in marriage (Brems, 2001). Malaysia has also passed the National Women Policy in 2009 complete with its strategic plan (KPWKM, 2009). The policy focuses on promoting the empowerment of women's rights in leadership and management and also addressing the issue of gender equality as part of the strategic plan. 2018 had been declared as the Year of Women Empowerment.

Malaysia also ratified the United Nations Convention on Rights of Children (CRC) in 1995. The ratification of the CRC has brought significant changes to the development of the rights of children in Malaysia. However, the ratification of the CRC was made with 12 reservations. As of 2010, Malaysia had reserved eight articles namely, Articles 1, 2, 7, 13, 14,15, 28(1) and 37. On 6 July 2010 the Ministry of Women, Family and Community Development announced that the

government had decided to withdraw reservations on Articles 1, 13 and 15 of the CRC. In 2018, the remaining reservations were Articles 2, 7, 14, 28(1) and 37 (Awal, 2012). It must be pointed out that child marriage per se is not referred to in the CRC but related articles on child marriage are as follows:

> Article 1: A child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.
> Article 2: Freedom from discrimination on any grounds, including sex, religion, ethnic or social origin, birth or other status.
> Article 3: In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Despite the non-existence of child-focused policy in Malaysia at that point of time, a number of laws were amended as a result of the ratification of such conventions signed by Malaysia thereto. The reasons for the amendments were to strengthen the administrative process for better protection of children and to regulate more efficient implementation of laws. The reasons could be linked to changes in the micro-system of human life such as the increasing number of single families and a growing number of child abuse and neglect cases (Kahar & Mohd Zin, 2011). In response to the issue of ratification of the CRC, the Child Act 2001 was passed in 2001 but came into force in 2002. It repealed the Juvenile Courts Act 1947, Women and Girls Protection Act 1973 and Protection of Children Act 1991 and consolidated it into one statute. Amendments to the Child Act 2001 were tabled in Parliament in 2016 (Act 1511) and received Royal Assent on 20th July 2016. The Act came into force on 25 July 2016. Since the ratification of the CRC in 1995, there is no indication that the Islamic laws will also be reformed to adhere to the CRC.

In Malaysia, in order for international conventions to have legal effect, such conventions shall be solidified in the form of statutes. If none of the international provisions are ever adopted into domestic legislation, such international provisions are deemed as persuasive

and not necessarily binding in nature. The cases below suggest that the Courts had multiple views on the issue.

In the case of *Lim Jen Hsian & Anor v. Ketua Pengarah Jabatan Pendaftaran Negara & Ors* [2016] 7 CLJ 590, the applicants filed this judicial review application to obtain certain reliefs in order for the second applicant to be recognised as a Malaysian citizen by operation of law under Art. 14(1)(b) of the Federal Constitution. The first applicant, a Malaysian citizen, was the father of the second applicant. The facts revealed that one Rai-Putta, a citizen of Thailand, gave birth to the second applicant in a hospital in Kuala Lumpur on 6 October 2010. Both the first applicant and Rai-Putta were never married and/or registered their marriage. They were separated in April 2011 and since that time, the first applicant claimed that Rai-Putta never returned to Malaysia from Thailand. *Vide* art. 15A of the Federal Constitution, the second applicant applied for citizenship. However, the Secretary-General dismissed the said application. Hence, this judicial review application was filed. The questions which arose for determination were (i) whether the applicants fulfilled the requirement to obtain citizenship by operation of law as specified under Art. 14(1) of the Federal Constitution; and (ii) whether the issue in this judicial review application involved a non-justiciable matter where this court did not have any jurisdiction to hear as stated under Part III, Second Schedule of the Federal Constitution. The applicants argued, *inter alia*, that (i) the second applicant was a stateless person; and (ii) since the second applicant was a child under the age of 18, the courts had a legal duty to abide with the provisions under the Universal Declaration of Human Rights ('UDHR'). In dismissing the judicial review application, Asmabi Mohamad JCA was of the view that the Federal Constitution of Malaysia does not oblige the courts in Malaysia to recognise international human rights laws. Furthermore, her lordship added that the international conventions were noted as they "*do not form part of the law"* in Malaysia. Her lordship, in delivering the majority judgement in the Court of Appeal had said "unlike some other constitutions in other jurisdictions, the Federal Constitution does not impose on the Malaysian courts to take cognisance of international human rights laws in any of its provisions. International treaties do not form part of the law in Malaysia unless such treaties have been incorporated into the local law. Insofar as citizenship is concerned, the only law which provides for citizenship is the Federal Constitution."
In *Subramaniyam Subakaran v. PP* [2007] 1 CLJ 470, the applicant,

a Sri Lankan national, was charged at the magistrate court under s. 6(1)(c) Immigration Act 1959/63. The applicant pleaded guilty to the charge and after his plea in mitigation, the magistrate sentenced the applicant to four months imprisonment and one stroke of the rattan. On 12 December 2005, the Bar Council Legal Aid Centre of the Kedah/ Perlis Bar Committee wrote to the High Court for revision under s. 323(1) of the Criminal Procedure Code on the grounds that the applicant was registered with the United Nations High Commissioner for refugees (UNCHR) as an asylum seeker under the 1951 Convention relating to the Status of Refugees and the 1967 Protocol relating to the Status of Refugees and also under Art. 22 of the Convention on the Rights of the Child, and therefore shall not be liable for any offence committed under the immigration laws. However, after hearing submissions and examining the record of proceedings by the magistrate, the court found that the magistrate had applied the correct principles of law to the facts of the case. The issue of the applicant being an asylum seeker registered with the UNHCR was not raised at that stage and not considered. Thus, the court refused to exercise its power of revision under s. 323 CPC and dismissed the application. Dissatisfied, the applicant filed an originating motion pursuant to s. 50 of the Courts of Judicature Act 1964 for leave to appeal against the decision of the High Court before the Court of Appeal. On 18 May 2006, the Court of Appeal granted leave to the applicant to appeal and to pose the following questions of law of public interest, namely: (1) whether the Immigration Act 1959/63 in general and in particular s. 6(1)(c) and s. 6(3) were applicable to asylum seekers and refugees; (2) the implication and effect of the legal principles in *Mohamed Ezam v. Ketua Polis Negara* on the CRC which was ratified by the Malaysian Government and Art. 22 required the government to provide protection and assistance to asylum seekers and refugees; (3) in consequence thereof, what was the implication of Art. 22 on immigration cases involving asylum seekers and refugees such as the applicant in question at the magistrates' court. In dismissing the application for revision, Mohd Sofian Abd Razak JC echoed the views expressed by Siti Norma Yaakob FCJ in the case of *Mohamad Ezam bin Mohd Noor v. Ketua Polis Negara,* when he said: "In any event, I am in agreement with the views expressed by Siti Norma Yaakob the then FCJ in the case of *Mohamad Ezam bin Mohd Noor v. Ketua Polis Negara* that the 1951 Convention and the 1967 Protocol and Article 22 of the CRC are not legally binding on the Malaysian

courts. I am of the view that the court is not obliged or compelled to adhere to the 1951 Convention and the 1967 Protocol." This judicial pronouncement affirms the position that international conventions are not legally binding in Malaysia.

Despite the views of the Federal court that expressly declared that international conventions like CEDAW and UNCRC are not legally binding, nonetheless there are attempts by the High Court to give legal effect to international conventions. In referring to CEDAW, the High Court in the case of *Noorfadilla bte Ahmad Saikin v. Chayed Bin Basirun & Ors* [2012] 1 CLJ 769 had attempted to bring the contradictory views in favour of the application of CEDAW in the Malaysian legal system. In this case, the plaintiff's complaint was that the 'Guru Sandaran Tidak Terlatih' (GSTT), viz contractual temporary-based teacher post offered to her was revoked and withdrawn by the defendants on the sole grounds that the plaintiff was pregnant. The main issue for the court's determination was whether the action/directive of the defendant was gender discrimination in violation of Art. 8(2) of the Federal Constitution (Constitution). The defendants, on the other hand, raised the issue of the plaintiff's *locus standi* to bring this action and whether declaration was a proper remedy. The court, in determining the issue raised by the plaintiff, had to consider whether it could refer to the CEDAW on clarifying the term 'equality' and gender discrimination under Art. 8(2) of the Constitution. In allowing the application, Zaleha Yusof J in that case said that "… In Article 11(2)(A) of CEDAW, it provides that State Parties shall take appropriate measures to prohibit, subject to the imposition of sanctions, dismissal on the grounds *inter alia*, of pregnancy... CEDAW has the force of law and is binding on member states, including Malaysia."

The High Court's views in *Noorfadilla bte Ahmad Saikin v. Chayed Bin Basirun & Ors* [2012] 1 CLJ 769 was considered by the Court of Appeal in the case of *AirAsia Bhd v. Rafizah Shima Mohamed Aris* [2015] 2 CLJ 510. The respondent in this case was an employee of the appellant, upon being chosen to undergo an engineering training program on 19 October 2006, executed an agreement known as 'Training Agreement and Bond' ('the agreement'). A material term in the agreement was that the respondent must not get pregnant during the duration of the training period, which was approximately four

years from the date the respondent first attended the training course. However, when the respondent furnished the medical report confirming her pregnancy sometime in June 2010, the agreement, as well as the employment of the respondent, was terminated. The appellant then filed a civil suit at the Sessions Court for breach of the agreement and a summary judgement was entered against the respondent. Dissatisfied, the respondent appealed against the decision and the High Court allowed her appeal. Meanwhile, the respondent filed an originating summons ('OS') in the High Court, seeking that Clause 5.1(4) of the agreement was illegal, null and void as the said clause had the effect of discriminating against the respondent's rights as a married woman and contravened Art. 8 of the Federal Constitution ('the Constitution') and CEDAW. The High Court granted the respondent's originating summons and dismissed the appellant's application to strike out the OS. Hence, the appellant appealed against both decisions. However, at the beginning of the hearing, the second appeal, pertaining to the dismissal of the appellant's application to strike out the respondent's OS, was struck out on the appellant's application. The appellant submitted that the trial judge had erred in failing to apply the principle in *Beatrice AT Fernandez v. Sistem Penerbangan Malaysia & Anor* ('*Beatrice* case') [2005] 2 CLJ 713 to the respondent's OS. It was the appellant's contention that the parties in the respondent's OS were private parties and as such the provisions of the Constitution had no application. The appellant also submitted that the trial judge had erred in relying on the case of *Noorfadilla Ahmad Saikin v. Chayed Basirun & Ors* ('*Noorfadilla*'s case'). The Court of Appeal, in allowing the appeal further clarified the position of CEDAW in the Malaysian legal context and subsequently rejected the views expressed by the High Court. Mohd Zawawi Salleh JCA when delivering the judgment in the Court of Appeal, said: "CEDAW does not have the force of law in Malaysia because it is not enacted into any local legislation." Mohd Zawawi Salleh JCA further added that "the Constitution contains no express provision with regards to the status of international law, or indeed any mention of international law at all. For a treaty to be operative in Malaysia, it requires legislation by the Parliament. Therefore, without express incorporation into domestic law by an Act of Parliament following ratification of CEDAW, the provisions of international obligations in the said convention do not have any binding effect. In Malaysia, the Constitution is silent as to the primacy of international law or domestic law or *vice versa*. If there is such a

conflict, the general rule is that the statute shall prevail." Therefore, the Court of Appeal reaffirmed the position of international conventions of having no legal effect in Malaysia unless it is solidified in the form of local legislation.

These cases suggested that the application of international human rights conventions is not binding in Malaysia. It is acknowledged that the Government of Malaysia had acquiesced to ratify those conventions. However, since there has been no crystallization of those provisions into statutory form, such application remains persuasive in nature. In the event of conflict between international convention and domestic laws, the Courts in Malaysia lean towards upholding the provisions in the local legislation even though it may directly contravene the provisions in international conventions. It can be seen that there have been attempts to enforce and apply CEDAW and CRC directly by the High Court. Such incidents are seen as an indicator to push Parliament to legislate a statute to endorse these conventions. Therefore, the international conventions on human rights should no longer exist as soft laws which are merely persuasive in nature with little or no effective enforcement methods (Atoyan, 2012. There are also situations where the courts refuse to take cognisance of international human rights conventions, *ipso facto*, creating uncertainties as to the enforcement of conventional human rights protection. These uncertainties in the enforcement of international human rights conventions in Malaysian courts may render human rights protection in this country of no assurance. It must be pointed out that Malaysia has never signed or ratified the Universal Declaration of Human Rights.

MARRIAGEABLE AGE FOR MUSLIMS IN MALAYSIA

In Malaysia there are two sets of family laws for Muslims and non-Muslims. The Law Reform (Marriage and Divorce) Act 1976 (LRA) applies to non-Muslims only in West Malaysia. It does not apply to Muslims, whose marriages are governed under the respective state Islamic laws. LRA is not applicable to the aboriginal people of West Malaysia as well as natives of Sabah and Sarawak. Under LRA, the marriageable age is 18 years for males and female. For anyone marrying under that age, the marriage shall be void. Any female who is 16 years old but below 18 years, must apply for permission from

the Chief Minister of the state that she is residing. For Muslims, all states' Islamic laws in Malaysia have set the marriageable age at 18 for boys and at 16 for girls. However, marriage below the minimum age amongst Muslims may be allowed provided permission from the Sharia court is obtained beforehand, and this has formed part of the requirement for child marriage in all states' Islamic law enactments, as seen for example in Section 8 of the Islamic Family Law (State of Selangor) Enactment 2003 (IFLE):

> Section 8. Minimum age for marriage.
> No marriage may be solemnized under this Enactment where either the man is under the age of 18 or the woman is under the age of 16 except where the Sharia Judge has granted his permission in writing in certain circumstances.

For Muslims, there is no limitation as to a younger age to marry, in which theoretically, the Sharia court may allow a girl as young as 11 years old or younger to get married after having interviewed her and being satisfied that she understands what she is doing and has attained puberty (*baligh)* in accordance to Islamic law.

CHILD MARRIAGE APPLICATION PROCESS FOR MUSLIMS

Generally, all Muslims who wish to marry must make an application, for example, under section 16(1) of the Islamic Family Law Enactment of Selangor (IFLE) 2003, which provides that in order for the marriage to be carried out, a permit must be issued by the Registrar of Marriage for the local mosque where the bride resides. The application must be made by both the groom and bride, where they have to fill in prescribed forms. If the groom resides in a different local mosque or in another state, he must obtain permission from the Registrar of marriage of his place of residence and this document will be attached with the bride's application for marriage. The marriage application shall be served at least seven days before the wedding date. However, the Registrar has the discretion to authorize a shorter period in certain cases.

When the permission to marry is given, the wedding ceremony must be performed either by a *wali* or representative of the *wali* in front of the Registrar. The marriage is solemnized when the groom accepts the

aqad during the ceremony or delegates someone to receive the *aqad*. After the *aqad* the marriage ceremony is completed, and the groom is required to read the pronouncement of *taklik,* which is a conditional divorce, whereby the husband declares not to do certain things; if he did, and his wife files a report to the Sharia Court, the marriage shall be dissolved. Having completed this process, a marriage certificate shall be issued by the Registrar and shall be registered under the state's Islamic Law.

For a child applicant, the procedure in all states is basically the same. In order for a child to marry, he/she must obtain a marriage application from the district's Islamic Religious Department and later the application will be referred to the district Sharia court for hearing as only the court can grant permission for underage marriage. This application will be filed by the child applicant or in some states, along with the parent or guardian as the second applicant. While waiting to be given a date for a trial in a Sharia court, the child applicant usually attends a pre-marriage course. In Malaysia, the certificate for attending a pre-marriage course is compulsory for any marriage amongst Muslims, including underage applicants, even though the content of the course does not address the children's rights, needs and context. In some states, the certificate must be attached together with the marriage application form. To obtain the certificate, all applicants, including child applicants, have to attend a two-day pre-marriage course organised by their respective State Islamic Department.

The applicants must prepare beforehand pleading documents that comprise an application notice and supporting affidavit, a marriage application form for both male and female applicants, a referral letter from the respective district's Islamic Religious Department, a copy of the applicant's birth certificate and identification card, a copy of two witnesses' identification cards or passports (if the witness is a foreigner), pre-marriage course certificate, certificate of divorce (if applicable), certificate of death (if applicable) and other relevant exhibits such as a copy of the applicant's certificate of conversion to Islam (for Muslim converts). Since most of them are not represented by counsel, the officer at the court counter will provide the applicants with a template of an affidavit to be copied and filled out. Once the pleading documents are prepared and a fee of RM50 has been paid, only then is the application registered at the court counter and a date for trial is given. The applicants (the child and his or her parents) must

then return to court on a specified date for the trial proceedings. The assistant registrar will then grant a date for hearing before the judge which will normally be conducted in the judge's chambers.

On the day of the trial, the judge will ensure that the applicant is present with or without counsel and inquire about the applicant's background in thorough detail. A process of investigation will be conducted by the judge to analyse every aspect of why the marriage should be approved. After the court grants permission for underage marriage to the applicant, the court will issue a court order to the District Islamic Religious Office. Then, the applicant will have to undergo a mandatory rapid HIV screening test. The test results will have to be submitted along with the marriage application to the District Islamic Religious Office. If the HIV test result is positive, the applicants are required to undergo a confirmation test for further examination and attend counselling sessions on the exposure of HIV implications and for decision-making either to proceed or discontinue the marriage. With the court order and clearance on HIV test, the child applicant may finally proceed to solemnize the marriage.

MOTIVATION BEHIND UNDERAGE MARRIAGE APPLICATION IN THE SHARIA COURT

Islamic law protects Muslims, including children, as individuals who have entered into a binding contract of marriage and consequently confers upon them, rights and duties. The underage children will receive 'legal protection' through marriage and this motivates the parents and the child applicants to apply for permission to marry at the Sharia court. The main legal protection is the opportunity to legitimise the child. If the female child is pregnant, the unborn foetus can be legitimized if it is born after 6 lunar months (180 days) after the date of the marriage. This is because in Islam, the minimum period of gestation is 180 days (Awal 2009; Sujimon 2002; Sujimon 2010). The question of legitimacy is extremely important within the Malaysian Muslims' legal context because illegitimate offspring cannot enjoy the rights to lineage, inheritance or financial support, in addition to having to endure social stigma and discrimination from society. This contrasts significantly with non-Muslim communities, where children who are born out of wedlock are legitimised by law through the subsequent marriage of their parents after they are born.

However, the reality, is that female children have come to the Sharia court in various stages of pregnancy, with their parents trying hard to get their daughters married quickly so that the unborn child can be legitimized. These parents are sadly unaware that the process of marriage can take weeks or even months, depending on the religious department and court's management of the case, to the point where some of the applicants have to come to the court twice or more times during the process. In fact, some children believe pregnancy will expedite the proceedings and to avail themselves of the legal protection provided by the law for the unborn child. Based on the existing legal provisions, female adolescents who are in the early stages of pregnancy have a chance to gain legal protection for their unborn children. If the baby is born before the 180-day period is over after the date of marriage, the baby will become a source of stress and a burden to its mother.

Furthermore, children who marry will gain spousal rights from the marriage such as dowry and financial support. Even if the marriage ends in divorce, the law will ensure them of their rights such as dowry and financial support arrears, financial support during *iddah* (compulsory waiting period in event of divorce), *mut'ah* rights, custody rights, and joint matrimonial property. All these rights are exercisable and achievable, if marriage is solemnised in accordance with the procedure and Islamic Law.

Also, the children in question will be protected from legal action under Sharia criminal law for offences of *khalwat* (close proximity), pregnancy out of wedlock, illegal cohabitation and attempted premarital sexual intercourse. Since these children were sexually active before marriage, their parents would not want them to be exposed to the risk of being arrested or charged by the state religious authorities who regularly conduct moral-control operations. Yet, just by getting married, these children are shielded from Sharia prosecution. However, it is important to note that children under 15 years old (in some states it is 16) do not have criminal liability under Sharia jurisdiction and will not be processed by the Sharia court if they are found guilty of a Sharia offence, but instead will be given counselling and advice at the Islamic Religious Department.

LEGAL REFORM: POSSIBILITY OF AMENDING MARRIAGEABLE AGE IN MALAYSIA

Since a child is defined as a person below the age of 18 years old by CRC and CEDAW, there has been numerous suggestions made by some civil society organizations such as Sisters in Islam to reform the legal marriageable age from 16 years to 18 years old for both male and female applicants, for both civil and Islamic marriages and to abolish the provision for the Sharia court to process the marriage application for underage applicants (Sisters in Islam, 2015). There are several consequences and legal implications that need to be considered before this reform is to be introduced. Setting the marriageable age to 18 for both genders may not be effective as Muslim parents may choose to marry off their children secretly according to classical *fiqh* and only after their children reach 18 years old would they file for Sharia Court validation of their children's marriage. There are clear legal provisions that accommodate those unregistered marriages that are deemed valid according to fiqh law to be registered in every state.

Moving the marriageable age to 18 would also mean that there will be many Muslim marriages that will not be registered but valid in accordance with fiqh Islamic law. Whether a marriage solemnised by a wali should be declared void because parties are underage is something worth thinking about. If all agree that harm is more than good if the marriage is allowed, then Malaysia should have a mechanism to check whether such a marriage has taken place and how it should be stopped. Changing the law could be an easy matter but changing peoples' mindset is not so easy.

Secondly, in Malaysia, Islam is the religion of the Federation but administered at the state level by the respective state religious authorities. Any legal amendments or reforms will have to go through the states' legislative bodies and Islamic authorities. Nonetheless, the Sultan, state government, and state Islamic authorities may perceive Federal intervention on religious matters as interfering in state affairs which is safeguarded by the Federal Constitution; therefore, approaching and convincing 14 states for legal reform is another challenge. This proposed amendment may also prompt some Muslim conservatives to react against this reform as they perceive this as foreign interference in Islamic matters and Islam's standing in Malaysia. To them, as classical fiqh does not restrict any age for

marriage, hence the new reform will be interpretated as a derailment from the Islamic law framework. This kind of resentment from religious groups is expected. Hence, it is important for child rights advocates and policymakers to discuss Islamic legal reform on child marriage based on the Islamic legal framework as argued by Wodon (2015): "...by making the case for reform within the realm of Sharia and Sharia discourse, is needed for reforms to succeed."

These challenges will take some years of effort to convince the related authorities and Muslim public to change the law. Walker (2015) has highlighted these ambitious tasks by stating that, "more work must be done to map out clear and accurate guidelines for scholars to communicate to the *Ummah* from within the context of Islam." Therefore, fostering dialogues between state religious officials, Sharia court judges, Muslim legislators, and civil society movements on this proposed reform will enlighten all parties, particularly in promoting alternative interpretations on child marriage in Islam.

LEGAL REFORM: DEVELOPING A STANDARD OPERATING PROCEDURE (SOP) FOR CHILD MARRIAGE APPLICATION IN SHARIA COURT

A standardised SOP to be used in all Sharia courts across the country is essential to reduce the occurrence of child marriage. By having the SOP, it will guide judges to exercise their discretion which serves the best interest of the child.

1. The applicants should be required to go for a general medical check-up at the district health clinic as well as consultation on sexual and reproductive health with a medical officer. The applicants should be informed of the health implications that could arise as a result of getting married at an early age and also the medical services that are provided should any health issues emerge after the marriage. The medical officer will then have to certify whether the child is psychologically and physically ready for marriage from the medical point of view. If the medical officer finds that there is foreseen risk, they should not recommend the marriage and the Sharia court judge should consider this assessment.

2. Applicants must attend a compulsory pre-marriage course organized by the state religious authorities for Muslims. Despite the effort of organising compulsory pre-marriage courses, the course module is currently insufficient to cater to child marriage applicants. Henceforth, on top of the existing pre-marriage course module, the Islamic authorities should incorporate extended hours that are specifically created for child marriage applicants which include focused content and modules that address matters specifically on child marriage. During the extended hours, instructors should also inform child applicants about the existing support system offered by National Population And Family Development Board (LPPKN) and the Ministry of Health which they can go to should problems arise in their marriage.
3. During the court hearing, the judges will assess the applicants' health report and medical recommendation, proof of income (if required), and report from the Social Welfare Department. Child applicants must be accompanied by their parents or guardian, particularly their father, and future spouse during the hearing. Below are some questions that could be asked in court for further evaluation whether a child marriage should be allowed or disallowed:

Table 1

Questions for the Sharia Court.

Item	Question
Justification of the application	1. Reason for the application. 2. Consent to marriage.
Family background and family background of spouse	1. Current marital status of the parents. 2. If they are divorced or staying separately, with whom is the applicant staying with. 3. Parents' occupation. 4. Household income. 5. Number of siblings.
Best interest of the child (*maslahah*)	1. Availability of financial and moral support from both families. 2. Housing for the applicant after marriage. 3. Current schooling status.

(continued)

Item	Question
	4. If applicant has already stopped schooling, when and why did the applicant leave school. 5. If the applicant is still schooling, will the applicant continue schooling if given permission to marry. 6. Basic religious knowledge. 7. Health background. 8. Physical and psychological maturity.
Basic understanding on the concept of marriage	1. Understanding of marital responsibility. 2. Understanding the impact of marriage on cost of living, and own responsibility as a father or mother.
Reproductive background	1. Age of puberty. 2. Preparedness to have sexual intercourse. 3. Preparedness to get pregnant. 4. Understanding of spousal sexual intercourse.

CONCLUSION

This article spells an urgent need for international agencies, Malaysian federal and state governments, religious authorities, and civil society movements to commence initiatives to curb child marriage in Malaysia, particularly by reforming state Islamic family law. Even though amending the marriageable age from 16 years to 18 years in the country will take time and may cause an uproar amongst state religious authorities, conservative Muslim groups and certain segments of society, fostering a series of dialogues and engagements may convince these parties on the importance of legal reform on this issue. For the time being, Islamic family law reform can also be promoted by introducing a uniform SOP complete with specific guidelines and criteria for processing child marriage applications in the Sharia court.

ACKNOWLEDGMENT

This research is co-funded by FRGS, Ministry of Education (FRGS/1/2019/SSI10/UKM/02/4) and University Kebangsaan Malaysia (GUP-2019-068).

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