



**Child Marriage in Malaysia: Reforming Law through the
Siyasa al Shar'iyah Framework**

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Abstract: The international community sees child marriage as a traditional practice affecting children's rights, self-development, and future. Academic literature worldwide records that child marriage harms children's rights to health, education, and growth. Muslim scholars must engage with Islamic law frameworks to advance children's rights in Muslim countries. Thus, Islamic law frameworks such as *Siyasa al-Shar'iyah* have the potential to end child marriage. Therefore, this article discusses classical and contemporary views on child marriage and focuses on *Siyasa al-Shar'iyah* as a framework to curb child marriage practices. This study uses a qualitative approach by applying the content analysis method to classic and contemporary Islamic legal texts. The study concluded that government could introduce legal reforms based on the framework of *Siyasa al-Shar'iyah* to curb child marriage. Several studies have shown that child marriage negatively impacts children's rights and well-being. Accordingly, this could be classified as *mafsada*, which the authorities should avoid protecting the children's interests. *Siyasa al-Shar'iyah* allows the government to prohibit any permissible act, such as child marriage, to protect the public interest. Children's rights groups can cite such arguments to advocate against child marriage in Muslim countries.

Keywords: Children's rights, child marriage, legal reform, the best interest of the child, *Siyasa al-Shar'iyah*

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Abstrak: Masyarakat internasional melihat pernikahan anak sebagai praktik tradisional yang mempengaruhi hak-hak anak, pengembangan diri dan masa depan mereka. Literatur akademis di seluruh dunia mencatat bahwa pernikahan anak merugikan hak anak dalam hal kesehatan, pendidikan, dan pertumbuhan. Cendekiawan Muslim perlu terlibat dalam perumusan kerangka hukum Islam untuk memajukan hak-hak anak di negara-negara Muslim. Dengan demikian, kerangka hukum Islam seperti *Siyasa al-Shar'iyah* dapat mengakhiri persoalan pernikahan anak. Artikel ini membahas pandangan fikih klasik dan kontemporer tentang pernikahan anak dan berfokus pada *Siyasa al-Shar'iyah* sebagai kerangka kerja untuk membendung praktik pernikahan anak. Dalam penelitian ini digunakan pendekatan kualitatif dengan menerapkan metode analisis isi terhadap teks-teks hukum Islam klasik dan kontemporer. Studi ini menyimpulkan bahwa pemerintah dapat memperkenalkan reformasi hukum berdasarkan kerangka *Siyasa al-Shar'iyah* untuk mengendalikan pernikahan anak. Beberapa penelitian menunjukkan bahwa pernikahan anak berdampak negatif terhadap hak dan kesejahteraan anak. Dengan demikian, hal ini dapat digolongkan sebagai mafsadah, yang harus dihindari oleh penguasa demi melindungi kepentingan anak. *Siyasa al-Shar'iyah* memungkinkan pemerintah untuk melarang tindakan apa pun yang diizinkan seperti pernikahan anak untuk melindungi kepentingan umum. Kelompok pembela hak anak dapat mengutip argumen tersebut untuk mengadvokasi penentangan pernikahan anak di negara-negara Muslim.

Kata kunci: Hak anak, pernikahan anak, reformasi hukum, kepentingan terbaik anak, *Siyasa al-Shar'iyah*

Introduction

The United Nations High Commissioner for Human Rights (UNHCHR) defines child marriage as the formal or informal marriage of any individual under 18.¹ Meanwhile, the United Nations Children's Fund (UNICEF) and the United Nations Fund for Population Analysis (UNFPA) define child marriage as a legal or religious and customary marriage, registered or not, in which one or both husbands the wife is a child under the age of 18, and they cannot give consent.² Based on the definition outlined by these international organizations, any child married under 18 in any Muslim country is also considered child marriage. Setting

¹ OHCHR, "Child and forced marriage, including in humanitarian settings", <https://www.ohchr.org/en/women/child-and-forced-marriage-including-humanitarian-settings>, accessed 31 March 2022.

² UNICEF, "Child Marriage", <https://www.unicef.org/protection/child-marriage>, accessed 31 March 2022; UNFPA, "Marrying Too Young: End Child Marriage", (United States: UNFPA New York, 2012), p. 11.

the age of 18 is accepted internationally as the age of marriage, based on the economic and cultural level of developed countries. Age in marriage is one of the most critical factors in population development worldwide. It considers factors of public health problems like fertility, mortality, and the health of women and children. Marital age limits impact various aspects of a country's population, including health, economics, and demographics.³

Child marriage or underage marriage is still practised across cultures, geography, religion, and race, including in Malaysia and other Muslim countries.⁴ The United Nations of Children's Funds (UNICEF) 2021 notes that around 100 million girls are expected to be married before their 18th birthday in the next decade, before the outbreak of COVID-19. In the past two years since this pandemic hit the world, UNICEF Data showed that 12 million girls were married annually. If the awareness to curb it is not implemented with a progressive capacity through the law reform agenda, more than 150 million more girls will marry by 2030.⁵ In Malaysia, statistics show that an average of 1,500 children get married yearly until 2018. It is estimated that 83 per cent of Muslim children marry, compared to 17 per cent of non-Muslim children, making this a serious issue from the standpoint of Islamic law.⁶ As of this writing, the Department of Shariah Judiciary Malaysian (JKSM), an Islamic institution responsible for the database that records Muslim child marriages, stated that as of 2018, a total of 5,362 cases of Muslim child marriages throughout Malaysia have been registered since January 2013 until December 2017.⁷ According to these statistics, child marriage is a serious issue in Malaysia, and stakeholders intend to take proactive measures to curb it by enacting laws to protect children from sexual exploitation and deprivation of education.⁸

Since child marriage has received serious attention at the international level, all States Parties to the international conventions related to this issue are urged to reform their domestic laws to curb the practice. Globally, studies consistently demonstrate that child marriage can negatively impact the health and

³ Kamal et al., "Child Marriage in Bangladesh: Trends and Determinants", *Journal of Biosocial Science*, vol. 47, no. 1 (2015), p. 120-139.

⁴ Samuri, M. A. A, *Pembendungan Perkahwinan Kanak-kanak*, (Malaysia: UKM Press, 2021), p. 18.

⁵ UNICEF Data, "Child Marriage", <https://data.unicef.org/topic/child-protection/child-marriage/>, accessed 01 April 2022.

⁶ UNICEF Malaysia, "Towards Ending Child Marriage in Malaysia: Advocacy Brief", <https://www.unicef.org/malaysia/reports/towards-ending-child-marriage-malaysia>, accessed 01 April 2022.

⁷ Jabatan Kehakiman Syariah Malaysia (JKSM), Putrajaya, (2018).

⁸ Mohd Awal, N. A & Samuri, M. A. A., "Final Report: Child Marriage in Malaysia", (Selangor: UNICEF Malaysia, 2017).

development of children, particularly girls.⁹ Given the detrimental effects on children, the international community considers child marriage a violation of children's rights.¹⁰ As a State Party to several international conventions, such as the Convention on the Rights of the Child (CRC)¹¹ and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),¹² Malaysia is bound to fulfil the moral obligations as a signatory to the agreement. By establishing these conventions, all children and women will be guaranteed equal rights, and their vulnerability will be protected from exploitation by any party.¹³ Child marriage is now recognized as a significant global issue after the United Nations (UN) included it in the Sustainable Development Goals 2030 (SDG 2030) agenda.¹⁴ As part of the agenda, child marriage must be eliminated by 2030.¹⁵ According to these initiatives, the State Party must implement legal reform that ensures the best interests of children are preserved and not

⁹ Tomkins, A. et al., "Controversies in Faith and Health Care", *Elsevier: The Lancet*, vol. 386, no. 10005 (2015), p. 1776-1785; Raj, A., "When the Mother is A Child: The Impact of Child Marriage on the Health and Human Rights of Girls", *Arch Dis Child* (2010), p. 931-935; Nour, N. M. "Health Consequences of Child Marriage in Africa", *Perspective: Emerging Infectious Diseases*, vol. 12, no. 11 (2006), p. 1644-1649; Nasrullah, M., "Child Marriage and Its Impact on Maternal and Child Health in Pakistan", Ph.D. Dissertation (Germany: School of Public Health, University of Bielefeld, 2015); Anozie, M. C et al., "The Legal, Medical and Social Implications of Child Marriage in Nigeria", *International Journal of Law, Policy and the Family*, vol. 32 (2018), p. 119-139; Allen, A. A. & Adekola, P. O., "Health Implication of Child Marriage in North-East Nigeria", *Analele Universitatii din Oradea, Seria Geografie* (2017), p. 54-61.

¹⁰ UNFPA, "Child marriage", <https://www.unfpa.org/child-marriage>, accessed 04 April 2022; UNICEF Data, "Child Marriage", <https://data.unicef.org/topic/child-protection/child-marriage/>, accessed 01 April 2022; Arthura et al., "Child Marriage Laws around the World: Minimum Marriage Age, Legal Exceptions, and Gender Disparities", *Journal of Women, Politics, and Policy*, vol. 39, no. 1 (2018), p. 51-74; Karam, A., "Faith-inspired Initiatives to Tackle the Social Determinants of Child Marriage", *The Review of Faith & International Affairs*, vol. 13, no. 3 (2015), p. 59-68; Wodon, Q., "Islamic Law, Women's Rights and State Law: The Cases of Female Genital Cutting and Child Marriage", *The Review of Faith & International Affairs*, vol. 13, no. 3 (2015), p. 81-91; Nguyen, M. C. & Wodon, Q., "Global and Regional Trends in Child Marriage", *The Review of Faith & International Affairs*, vol. 13, no. 3 (2015), p. 6-11.

¹¹ Essentially, this convention focuses on the survival, protection, development, and participation of children around the world, and imposes a moral obligation on States Parties to meet related demands to ensure the rights of children are fulfilled.

¹² An international convention aimed at combating discrimination against women.

¹³ OHCHR, "Child and forced marriage, including in humanitarian settings", <https://www.ohchr.org/en/women/child-and-forced-marriage-including-humanitarian-settings>, accessed 31 March 2022.

¹⁴ UN, "Sustainable Development Goals (SDG) 2030", <https://sdgs.un.org/goals/goal5>, accessed 28 March 2022.

¹⁵ Mutyaba, R. "Early Marriage: A Violation of Girls' Fundamental Human Rights in Africa", *The International Journal of Children's Rights*, vol. 19, no. 2 (2011), p. 339-355.

manipulated by traditional practices such as underage or child marriage, by raising the minimum age for marriage to 18 for both genders. It is also possible to introduce new legal provisions that curb child marriage, improve the procedures and processes for marriage documentation, and prosecute those involved in child sexual exploitation.¹⁶

The international community has expressed concern about the context of child marriage today, and efforts to eradicate it become increasingly relevant if it is not proactively curbed as it harms children's rights. To curb child marriage, the legal reform agenda targets preserving the development of children and their best interests and achieving the five demands outlined by the *Maqasid al-Sharia* framework. A vital component of this framework is the *Siyasa al-Shar'iyya*, which emphasizes the government's role as a stakeholder in guaranteeing the welfare and best interest of its people, particularly children, and protecting them from discrimination and abuse of their rights as children.

Accordingly, this article discusses classical Islamic jurists' and contemporary Muslim scholars' views on child marriage, the concept of *Siyasa al-Shar'iyya*, and setting the marriageable age limit based on the *Siyasa al-Shar'iyya* framework.

Classical Islamic Jurists' Views on Child Marriage

The classical texts of Islamic law do not prohibit marriages with children. Historically, Asian and European civilizations, including pre-modern Muslim societies, did not set any specific age limit for marriage.¹⁷ Islamic jurists permit the marriage of children even if they have not yet reached puberty. In any case, the marriage should be judged regarding the children's interests and due to the consideration by their *waliy* (male guardian). Based on the following Quranic text (65:4), Muslim scholars discuss child marriage:¹⁸

“As for your women past the age of menstruation, in case you do not know, their waiting period is three months, and those who have not menstruated as well...”

¹⁶ Samuri, M. A. A. et al., “Curbing Child Marriage Amongst Muslims in Malaysia: Towards Legal Reform”, *UUM Journal of Legal Studies*, vol. 13, no. 1 (2022), p. 1-20.

¹⁷ Motzki, H., “Child Marriage in Seventeenth Century Palestine”, in *Islamic Legal Interpretation*, ed. by Masud, M. K. et al. (Cambridge: Harvard University Press, 1996).

¹⁸ al-Talaq (65), verse 4.

Based on the above verse, al-Suyuti and al-Mahalli,¹⁹ al-Baghawi,²⁰ al-Shawkani,²¹ and al-Maraghi²² explain that child marriage is indirectly mentioned. According to Islamic jurists, the three-month '*iddah*' period applies to women who have not menstruated after divorce, namely children.²³ According to al-Qurtubi,²⁴ al-Jassas²⁵ and Ibn Kathir,²⁶ when Ubay Ibn Ka'ab inquired about the period of '*iddah*' for certain groups of women that are not yet mentioned in the Qur'an, only '*iddah*' applies to women divorced from their husbands, and only the death of the husband is discussed in *Sura al-Baqarah*. Following that, the Prophet Muhammad received the fourth verse of *Sura al-Talaq* containing details about the period of '*iddah*' for children and pregnant women. Basically, '*iddah*' only applies to married women. Hence, the children mentioned in the Quran here are married children. Also, according to Ibn al-'Arabi, the group 'not menstruating' is children, and therefore children can be married off by their fathers.²⁷ In this interpretation, the father is permitted to marry off his daughter at a young age since the three-month '*iddah*' period outlined by Tafsir scholars also applies to married children.

Most Islamic jurists believe that child marriage is permissible if there is a compatible husband (*al-kafaah*).²⁸ Ibn al-Munzir,²⁹ al-'Asqalani,³⁰ and Ibn Abd al-Barr³¹ believe that Islamic jurists unanimously (*ijma'*) have permitted fathers to marry off their young daughters without their consent. Nonetheless, some contemporary Islamic scholars argue that child marriage should remain legal

¹⁹ al-Mahalli, M. A. & al-Suyuti, A. A., *Tafsir al-Jalalayn* (Cairo: Dar al-Hadith, n.d), p. 749.

²⁰ al-Baghawi, H. M., *Ma'alim al-Tanzil fi Tafsir al-Quran*, vol. 8 (Cairo: Dar el-Tayyiba li al-Nashr wa al-Tawzi', 1997), p. 152.

²¹ al-Shawkani, M. A., *Fath al-Qadir*, vol. 5 (Beirut: Dar Ibn Kathir, 1994), p. 292.

²² al-Maraghi, A. M., *Tafsir al-Maraghi*, vol. 28 (Cairo: Maktaba Mustafa al-Halabi, 1946), p. 142.

²³ Period of mourning observed by a widow.

²⁴ al-Qurtubi, M. A., *al-Jami' li Ahkam al-Quran*, vol. 18 (Cairo: Dar al-Kutub al-Misriyya, 1964), p. 162.

²⁵ al-Jassas, A. A., *Ahkam al-Quran*, vol. 3 (Beirut: Dar al-Kutub al-Ilmiyya, 1994), p. 610.

²⁶ Ibn Kathir, I. U., *Tafsir al-Quran al-'Azim*, vol. 8, (Cairo: Dar al-Tayyiba li al-Nashr wa al-Tawzi', 1999), p. 149.

²⁷ Ibn al-'Arabi, M. A., *Ahkam al-Quran*, vol. 4 (Beirut: Dar al-Kutub al-'Ilmiyya, 2003), p. 285.

²⁸ al-Zuhayli, W. M., *al-Fiqh al-Islam wa Adillatuh*, vol. 9 (Damascus: Dar al-Fikr, n.d), p. 6682.

²⁹ Ibn al-Munzir, M. I., *al-Ijma'* (Riyadh: Dar al-Muslim li al-Nashr wa al-Tawzi', 2004), p. 78.

³⁰ al-'Asqalani, A. H., *Fath al-Bari Sharh Sahih al-Bukhari*, vol. 9 (Beirut: Dar al-Ma'rifa, 2001), p. 124.

³¹ Ibn Abd al-Barr, Y. A., *al-Istizkar*, vol. 5 (Beirut: Dar al-Kutub al-'Ilmiyya, 2000), p. 390.

today due to this legal view. Other scholars have criticized scholars who allow child marriage, claiming it is not a consensus among scholars. According to some classical scholars, children who have not reached puberty should not be married. These scholars include Abdullah Ibn Shubruma, Abd al-Rahman Ibn Kisan al-Asam, and Uthman al-Batti.³² Their argument is based on the Quran (4:6):³³

“Test the competence of the orphans until they reach marriageable age. Then, if you feel they are capable of sound judgment (al-Rushd), return their wealth to them...”

Jurists in this group argue that children are deemed eligible for marriage when they reach puberty. Ibn Kathir interprets ‘reaching marriageable age’ as reaching puberty, while ‘finding his intelligence’ means being wise regarding managing wealth and good in religion.³⁴ Jurists believe that children with intellectual capacity and the ability to fulfil religious duties and manage property are eligible to marry. Additionally, they contend that child marriage is not viable since children cannot fulfil the desires of husband and wife, nor can they produce children.³⁵ The purpose of marriage is to achieve tranquillity (*sakina*), love (*mawadda*) and mercy (*rahma*). Still, children who get married at a young age lack the maturity necessary to handle life's challenges after marriage.³⁶

There is a difference between opinions among some Muslim scholars on the issue of child marriage today, as a result of the changing circumstances of society and culture that is transforming along with the advancements of today's world, compared to the Islamic law that classical Islamic jurists have highlighted.³⁷ Traditionally, people considered girls suitable for early marriages because their life opportunities are less diverse than those available to men, and they are tied to specific gender roles within society. In our modern society, children are on the verge of getting an education. They are not ready to get married

³² al-Zuhayli, W. M., *al-Fiqh al-Islam wa Adillatuh*, vol. 9 (Damascus: Dar al-Fikr, n.d), p. 6682.

³³ al-Nisa' (4), verse 6.

³⁴ Ibn Kathir, I. U., *Tafsir al-Quran al-'Azim*, vol. 2 (Cairo: Dar al-Tayyiba li al-Nashr wa al-Tawzi', 1999), p. 216.

³⁵ al-Zuhayli, W. M., *al-Fiqh al-Islam wa Adillatuh*, vol. 9 (Damascus: Dar al-Fikr, n.d), p. 6682.

³⁶ Amran, N. N., “Perkahwinan Kanak-kanak dari Perspektif Maqasid al-Quran”, in *Pembendungan Perkahwinan Kanak-kanak*, ed. by Samuri, M. A. A. (Bangi: UKM Press, 2021), p. 86.

³⁷ Abdol Malek, M. A. G. & Samuri, M. A. A., “Wacana Perkahwinan Kanak-kanak Menurut Perspektif Islam”, in *Pembendungan Perkahwinan Kanak-kanak*, ed. by Samuri, M. A. A. (Bangi: UKM Press, 2021), p. 70.

since they are not yet mature enough to handle the responsibilities of marriage and motherhood. Child marriage is detrimental to children's rights, health, education, and social development. Children are denied their rights when their parents force them to marry at a young age.³⁸

Many Muslim countries today have issued fatwas on child marriage in the contemporary context. In the first category, Muslim countries issue fatwas on child marriage by highlighting the importance of judicial exemptions for exceptional cases, such as Jordan, Palestine, and Malaysia. The *Dar al-Ifta'* in Jordan addressed child marriage issues in accordance with the fatwa issued by the Grand Mufti of Jordan, Nuh Ali Salman al-Qudah, who argues that child marriage is valid when the child's father or grandfather meets the requirements as a guardian before puberty. Still, the government may not approve the marriage application if the child is exposed to harm.³⁹ Although the government acknowledges that Islamic law permits child marriage, the Jordanian Parliament took legislative steps by amending the absolute minimum age with certain exceptions for children who wish to marry earlier than the country's minimum marriageable age. When this statement was released in Parliament, several human rights organizations and activists strongly criticized it due to the exception given. There are conditions imposed on the application, consisting of the application must prioritize children's rights and pass the judge's assessment in court, but it will be rejected if there is any harm to children.⁴⁰ Through his statement, the Grand Mufti of Palestine, Mohammad Hussein, also condemned child marriage. According to him, it was justified for the government to legislate a piece of legislation based on this problem, so he supported implementing the law by setting the minimum age for marriage to 18 years for both sexes, and he asserted that the law required setting of the marriageable age limit was permissible. If the children and their spouses meet the conditions for marriage, he agrees to make an exception, but it is necessary to obtain the approval of the authoritative judge only to ensure that the appropriate consideration has been carried out.⁴¹

³⁸ Ismail, M. H. et al., "Kahwin muda cabul hak asasi kanak-kanak", *Sinar Harian* (14 December 2018), <https://www.sinarharian.com.my/article/2567/BERITA/Nasional/Kahwin-muda-cabul-hak-asasi-kanak-kanak>, accessed 11 April 2022.

³⁹ al-Qudah, N. A. S., "Ma hukm 'aqd al-Zawaj qabl al-Bulugh", *al-Iftaa' al-Urdun* (25 July 2012), <https://aliftaa.jo/Question.aspx?QuestionId=2415#.YnRmehBzIU>, accessed 05 April 2022.

⁴⁰ al-Hurra, "Tahdid sinn al-Zawaj 'al-Halat al-Khassah' fi al-Urdun", *al-Hurra* (08 April 2019), <https://www.alhurra.com/latest/2019/04/08>, accessed 07 April 2022.

⁴¹ al-Jazeera, "Marsum riasi biraf'i sinn al-Zawaj yuthir jadalalan fi Falestin", *al-Jazeera* (12 November 2019), <https://www.aljazeera.net/news/women/2019/11/12/>, accessed 07 April 2022.

Additionally, Malaysia has the same position when the national Islamic body authority, the *Muzakarah* Fatwa Committee of the National Council for Islamic Religious Affairs by *Jabatan Kemajuan Islam Malaysia* (JAKIM), issued a statement saying that child marriage is neither obligatory nor recommended in this country.⁴² Furthermore, the committee agreed that a marriage involving a child must fulfil the child's best interest to be permitted. Considering the decision of this committee, Malaysia's children's rights experts have urged the authorities to tighten the restrictions on underage marriage in Sharia Courts. During a hearing, Sharia judges must adhere to strict procedures and follow special procedures to protect children's rights.⁴³

Secondly, there are countries such as Egypt that have issued fatwas banning child marriage. The leading authoritative fatwa body in Egypt, *Dar al-Ifta'*, issued a statement condemning child marriage because it harms society⁴⁴ and follows the arguments made by Ibn Shubruma and Abu Bakar al-Asam.⁴⁵ Although child marriage is not mandatory and encouraged, its implementation nonetheless depends on the government's decision to outline limitations if any harm is done to the child. Medical experts and activists in the country argued that marriage could negatively affect children's physical and psychological health. Therefore, stakeholders in Egypt decided to reform laws setting the marriageable age, were willing to revoke exemptions, and were not reluctant to punish anyone abusing marriage. This has led to an amendment of the law in Egypt relating to the minimum age of marriage for men and women to 18 years old.⁴⁶

Thirdly, there are Muslim countries that allow child marriage, such as Saudi Arabia. In the opinion of 'Abd al-'Aziz Ibn Abdullah Ali al-Sheikh, the Grand Mufti of Saudi Arabia, underage marriages or those involving children are

⁴² JAKIM, "Muzakarah Jawatankuasa Fatwa Majlis Kebangsaan Bagi Hal Ehwal Ugama Islam - Isu Perkahwinan Kanak-kanak: Kajian dari Aspek Agama, Kesihatan dan Psikologi", *e-Sumber Maklumat Fatwa* (21-22 October 2014) <http://e-smaf.islam.gov.my/e-smaf/index.php/main/mainv1/fatwa/pr/10319>, accessed 05 April 2022.

⁴³ Mohamad Yusof, N. A., "Need for JKM's Involvement, Uniformed SOP in Approving Underage Marriage", *New Straits Times* (23 July 2018), <https://www.nst.com.my/news/nation/2018/07/393680/need-jkms-involvement-uniformed-sop-approving-underage-marriage>, accessed 05 April 2022.

⁴⁴ Dar al-Ifta' Misriyya, "Musyen Jrafik jadid li Dar al-Ifta' yubayyin al-Hukm al-Syar'iyy li zawaj al-Qasirat", *Dar al-Iftaa' Misriyya* (14 March 2019), <https://dar-alifta.org/Home/ViewArticle?>, accessed 09 April 2022.

⁴⁵ al-Zuhayli, W. M., *al-Fiqh al-Islam wa Adillatuh*, vol. 9 (Damascus: Dar al-Fikr, n.d), p. 6682.

⁴⁶ al-Azhar University & UNICEF, "Peace. Love. Tolerance: Key Messages from Islam and Christianity on Protecting Children from Violence and Harmful Practices", (Cairo: al-Azhar University and UNICEF, 2016).

permissible under Sharia and should not be discussed as concerns.⁴⁷ According to him, there is no need to debate the minimum marriage age limit since such a reform violates Islamic law.

Contemporary Muslim Scholars' View on Child Marriage

Several scholars have given their views on the issue of child marriage. Compared to the view that supports child marriage, which is dogmatic and bound to literal interpretation, a view that denounces child marriage is more clearly defined in its understanding of child marriage in today's context and children's rights. First, some scholars denounce child marriage, considering the current situation. Among them is Muhammad 'Uqlah, a scholar in Jordan who holds that Islam discourages marriage between boys and older women and between girls and older men.⁴⁸ The purpose here is to protect both sides' interests from a conjugal relations perspective. The Egyptian scholar, al-Qardawi, also agreed with the government's decision to legislate a minimum marriageable age limit to prevent fathers from misusing it for personal or economic reasons.⁴⁹ In his warning, he urged the community not to put personal interests first. According to him, child marriage is harmful to the child and inappropriate because the parents should get the child's permission before getting married. It may be possible for parties to take unfair advantage if the child's consent is considered trivial. During the 21st Islamic Fiqh Academy Congress in Mecca, al-Qaradawi discussed child marriage as a contemporary legal issue since it concerns Islamic law principles.⁵⁰ Former Egyptian Grand Mufti, 'Ali Jum'ah, also said child marriage should be banned.⁵¹ He said it should be punished if children are arbitrarily married at a young age. It was agreeable to him that the government should implement a law reform that sets a minimum age for marriage. He believed the government's proposal on punishments reflected the area's culture (*'urf*) as well as the research findings of local scholars at the time. The cleric expressed regret and criticized a few parties

⁴⁷ al-Ghamidi, A., "al-'Adl tadha'u mashru' zawaj al-Qasirat amam hai'ah kibar al-'Ulama munzu 'amain", *al-Riyadh* (21 December 2014), <https://www.alriyadh.com/1005581>, accessed 09 April 2022.

⁴⁸ 'Uqlah, M. *Nizam al-Ushrah fi al-Islam*, (Amman: Maktabat al-Risala al-Haditha, 2002).

⁴⁹ al-Sharq, "al-Qaradawi: al-Quran wadih fi imkan zawaj al-Saghirah", *al-Sharq* (16 June 2016), <https://al-sharq.com/article/16/06/2016/>, accessed 10 April 2022.

⁵⁰ al-Qaradawi, Y., "al-Qaradawi: Tahdid sinn li zawaj al-Banat daruri li dhaman huquqihinn", *al-QaradawiNet*, (14 December 2012), <https://www.al-qaradawi.net/node/1057>, accessed 11 April 2022.

⁵¹ 'Ali Jum'ah, "Zawaj al-Qasirat haram syar'an wa jarimah yu'aqabu 'alaiha al-Syar'u wa al-Qanun", (01 August 2016), <https://www.youtube.com/watch?v=XIXlekYneKY>, accessed 10 April 2022.

who disputed the law because it is disobedient to Islamic law and should be viewed as an attempt to create doubt in the community.

In the second category, scholars who support child marriage stand out, such as Saudi Arabia's 'Abd al-Muhsin Ibn Hamd al-'Abbad, who believes children should be allowed to marry even if their partners are much older.⁵² There is no need to set a minimum marriageable age. To support his position, al-'Abbad provides evidence about the question the Prophet Muhammad asked his companion, Jabir, who married a widow rather than a virgin. Jabir refused to marry the child, fearing that the young mother would be unable to care for her younger siblings. Al-'Abbad understood this hadith as an argument that a child may marry a much older partner than he or she is. Additionally, al-'Abbad reinforced his stance on child marriage by telling the report of 'Uthman ibn 'Affan, who offered an old man, 'Abdullah Ibn Mas'ud, the chance to marry a young virgin to evoke his youthful marriage experience. He believes that child marriage law should be based on the consensus of scholars (*ijma'*), which permits a father to marry off his young daughter without her consent.⁵³

Salih al-Fawzan, a member of Saudi Arabia's fatwa committee, *Hai'a Kibar al-'Ulama* and *al-Lajna al-Daima li al-Ifta'*, claims that marriageable age limits are against Islamic law. He argued that it was permissible by referring to a hadith about the Prophet Muhammad marrying Aishah when she was only six years old. In addition, he quoted the views of the former Grand Mufti of Saudi Arabia, 'Abd al-'Aziz bin Baz, who believes that Islam does not set any specific age limit for marriage.⁵⁴ Salih al-Ghanim and Nazim al-Misbah, two Kuwaiti scholars, accept child marriage as a practice universally agreed upon by classical scholars.⁵⁵ Since the former culture of Arab society also married children early because it was accepted in their society,⁵⁶ this group does not see a problem with children getting married early today. The two scholars, however, insist that society respect the government's policy that sets the minimum age limit for marriage at 15 years of age, which reflects local customs. Ismail Shandi, a Palestinian academic, also supports child marriage, describing efforts to increase

⁵² al-'Abbad, M., "La tahdid fi Islam li bad'ie sinn al-zawaj wa la li intihai'e", (24 August 2009), <https://al-abbaad.com/articles/15-1430-09-03>, accessed 01 April 2022.

⁵³ Ibn 'Abd al-Barr, Y. A., *al-Istizkar*, vol. 5 (Beirut: Dar al-Kutub al-'Ilmiyya, 2000), p. 390.

⁵⁴ al-Muslim, "al-Syaikh al-Fawzan: Tahdid sinn al-Zawaj mukhalafah li syar'illah", *al-MuslimNet* (11 July 2021), <https://almoslim.net/node/149575>, accessed 09 April 2022.

⁵⁵ al-Anbaa', "Ulama' al-Kuwait yattafiqun ma'a al-Fawzan fi jawaz tazwij al-Fatah ghaira al-Balighah", *al-Anbaa'* (14 July 2011), <https://www.alanba.com.kw/ar/kuwait-news/212074/14-07-2011-%>, accessed 09 April 2022.

⁵⁶ Suleiman, O., "Ending the Debate on Aisha (ra)'s Age", Yaqeen Institute Channel (2018), <https://www.youtube.com/watch?v=5gDTh-6X9vo>, accessed 05 May 2022.

marriage minimum age limits to 18 as risking violating traditions, customs, and religion in society.⁵⁷ According to him, 15 is already the age at which someone can manage religious and financial affairs. Aside from that, he urged the authorities to review the decision to amend the minimum marriageable age to 18 years and not simply give in to external demands and pressures. According to him, some of the country's divorce cases are due to adult couples having difficulty defending their marriage, not child marriages.

Legal Reform based on the *Siyasa al-Shar'iyya* Framework

Leaders in Islam are responsible for prioritizing the welfare of their people, especially those related to the social system, to curb social problems. The problem will be exacerbated if government involvement is not taken. The government must use the *Siyasa al-Shar'iyya* framework to preserve the welfare of the people. In addition to legislating new laws, *Siyasa al-Shar'iyya* can also be used to reform existing laws if they do not meet their original objective when implemented in practice. Many important events during the time of the Companions suggest that they created new rules based on public interest, which is in line with the principles highlighted by the concept of *Maqasid al-Sharia*. In one example, 'Uyaynah Ibn Hisn and Aqra' Ibn Habis met Abu Bakr al-Siddiq, who was the caliph at the time and requested a plot of empty land near their village, and their request was granted. Upon seeing the land grant letter, Umar Ibn al-Khattab erased its contents. Afterwards, he argued that his actions were similar to those of the Prophet Muhammad, who gave zakat to Muslim converts when the Muslims were at a disadvantage. Umar ibn al-Khattab, however, insisted that Islam is becoming stronger, which means that converts are no longer entitled to receive any distribution from the sources of zakat collection because people's hardships are not comparable to those in Abu Bakr's time.⁵⁸

In this action, Umar demonstrates the concept of *Maqasid al-Sharia*, in which he acts for the public interest.⁵⁹ Islamic law celebrates the local context and culture, and certain laws are subject to change based on time, social factors, and location. In his justification, Umar considered various aspects before cancelling

⁵⁷ al-Jazeera, "Marsum riasi biraf'i sinn al-Zawaj yuthir jadalan fi Falestin", *al-Jazeera* (12 November 2019), <https://www.aljazeera.net/news/women/2019/11/12/>, accessed 07 April 2022.

⁵⁸ al-Bayhaqi, A., *al-Sunan al-Kubra*, vol. 7 (Beirut: Dar al-Kutub al-'Ilmiyya, 2003), p. 32.

⁵⁹ Auda, J., "Maqasid al-Ahkam al-Shar'iyya wa 'ilaluha", in *Maqasid al-Sharia al-Islamiyya: Dirasat fi Qadaya al-Manhaj wa majalat al-Tatbiq*, ed. by Yamani, A. (United Kingdom: al-Furqan Islamic Heritage Foundation, 2006), p. 277.

the giving of zakat to the Muslim converts group during the time of Abu Bakr, despite Quran's (9:60) command:⁶⁰

“Alms-tax is only for the poor and the needy, for those employed to administer it, for those whose hearts are attracted to the faith, for freeing enslaved people, for those in debt, for Allah's cause, and needy travellers. This is an obligation from Allah. And Allah is All-Knowing, All-Wise”.

As shown in this report, Companions agreed to establish new rules based on public interest at the time. Moreover, this action is considered a consensus (*ijma'*) among the Companions, which is considered a strong argument according to Islamic law.⁶¹

In another example, al-Bukhari reported that the Prophet Muhammad said:

*“He who cultivates land that does not belong to anybody is more rightful (to own it).”*⁶²

According to the hadith, a person working on abandoned land that does not belong to anyone may own the land he worked on. Umar observed, however, that a few communities had built fences on abandoned lands but had not cultivated them. In the next step, Umar enacted a rule that gave farmers a maximum of three years to cultivate fenced areas. Land not cultivated during that period will lose its ownership and become vacant.⁶³ It appears that Umar's actions contradict the hadith above, but they were justified by the public interest of the time and by the Islamic legal maxim 'the public interest comes before the individual interest'.⁶⁴

Additionally, the Companions have set rules in accordance with the *Siyasa al-Shar'iyya* framework, for instance, on the distribution of war booty. During the opening of Iraq, Sham, and Egypt, Muslim armies claimed land that became spoils of war (*ghanima*) to Umar. Umar met with several senior Companions, among the earliest Muslims, to consider the request. They were unable to reach an agreement after three days of discussion. Umar then decided not to exclusively distribute all lands in those countries to the Muslim army. For public interest, he proposed

⁶⁰ al-Tawbah (9): verse 60.

⁶¹ Shalabi, M., *Ta'lim al-Ahkam* (Beirut: Dar al-Nahda al-'Arabiyya, 1981), p. 38.

⁶² al-Bukhari, M., *Sahih al-Bukhari*, vol. 2 (Damascus: Dar al-Yamama, 1997), p. 823.

⁶³ Abu Yusuf, Y., *al-Kharaj* (Cairo: al-Maktabat al-Azhariyya li al-Turath, nd), p. 77.

⁶⁴ Ibn Nujaym, Z., *al-Ashba wa al-Nazair* (Beirut: Dar al-Kutub al-'Ilmiyya), p. 74.

taxing the lands' revenue and depositing it into the state's treasury.⁶⁵ His action was intended to prevent land ownership in the country from being restricted to only Muslim soldiers and their descendants. The motivation behind his action is a fear of harm to the Muslim community in general, especially the next generation, as a result of unequal wealth distribution in Muslim countries.⁶⁶ The cost of military expeditions and warfare could be supported through the funds obtained from these lands.⁶⁷ This practice seems to differ from that of Prophet Muhammad and Abu Bakr during their rule, who distributed all war spoils to the Muslim army. However, Umar's decision was in the public interest at the time and for generations to come.

In another instance, when Umar discovered that Abu Ya'la owned many horses, he imposed zakat on him, which amounted to one dinar per horse.⁶⁸ The decision has been made to protect the rights of the poor since horse owners are among the rich who must pay zakat. As the Prophet Muhammad had never done before, the decision was new and unprecedented. A triple *talaq*⁶⁹ pronounced at once was also recognized by Umar as triple *talaq*, as the practice was widespread. Previously, triple *talaq*, pronounced at one time, was considered one *talaq*, just as the Prophet Muhammad, Abu Bakr, and his early reign did. He wanted to educate the community and prevent it from pronouncing divorce arbitrarily. Ibn 'Abbas narrates the following hadith:

*"In the time of Allah's Messenger, Abu Bakr and the first two years of the caliphate of Umar, the three pronouncements of divorce were regarded as one. So, Umar said, "People have made haste in an affair which they are required to take slowly. What if we execute it on them? So, he executed it on them."*⁷⁰

⁶⁵ Abu Yusuf, Y., *al-Kharaj* (Cairo: al-Maktabat al-Azhariyya li al-Turath, nd), p. 35; al-Mawardi, A., *al-Hawi al-Kabir fi fiqh Mazhab al-Imam al-Shafi'i wa huwa sharh mukhtasar al-Muzani*, vol. 14 (Beirut: Dar al-Kutub al-'Ilmiyya, 1999), p. 259.

⁶⁶ Auda, J., *Fiqh al-Maqasid: Inaya al-Ahkam al-Shar'iyya bi maqasidiha* (United States: International Institute of Islamic Thought, 2006), p. 37; Shalabi, M., *Ta'lil al-Ahkam* (Beirut: Dar al-Nahda al-'Arabiyya, 1981), p. 52.

⁶⁷ Abu Yusuf, Y., *al-Kharaj*. (Cairo: al-Maktabat al-Azhariyya li al-Turath, nd), p. 36.

⁶⁸ al-Qurtubi, Y., *al-Istizkar*, vol. 3 (Beirut: Dar al-Kutub al-'Ilmiyya, 2000), p. 238.

⁶⁹ In Islamic law, divorce effected by the husband's enunciation of the word '*talaq*', this constituting a formal repudiation of his wife.

⁷⁰ Muslim, H., *Sahih Muslim*, vol. 2 (Cairo: Matba'a Isa al-Halabi, 2006), p. 1099.

It is evident from Umar's justification that he executed his sentence with the public interest in mind at that time by preventing the marriage from dissolving. Thus, Umar's action in this regard as a ruler does not contradict Islamic law.⁷¹

Likewise, Umar did not allow Muslim women to marry women from People of the Book (*Ahl al-Kitab*), such as Hudhayfa and a Jewish woman whose marriage Umar annulled.⁷² It seems that his decision was contradicted by the Quran (5:5). The intention was to prevent Muslim men from abandoning Muslim women whom they considered superior religiously to those of the People of the Book.⁷³ As well as that, Umar also increased the number of lashes that could be flogged to 80 for those who consume alcohol.⁷⁴ During that time, alcohol consumption was prevalent, and the existing punishment of 40 lashes was no longer an effective deterrent.

Uthman Ibn al-'Affan also applied the *Siyasa al-Shar'iyya* framework during his reign. He has instructed that any camel wandering in the desert must be caught and sold if it is unclaimed. The money was then stored in *Bayt al-Mal* until the camel master demanded it.⁷⁵ Uthman's action appears to contradict the hadith of the Prophet Muhammad, who forbade his Companions to catch a stray camel since a camel can survive in the desert until its owner finds it. al-Bukhari reported:

*"A Bedouin went to the Prophet and asked him about picking up a lost thing. The Prophet said, "Make public announcement about it for one year. Remember the description of its container and the string with which it is tied; and if somebody comes and claims it and describes it correctly, (give it to him); otherwise, utilize it." He said, "O Allah's Messenger! What about a lost sheep?" The Prophet said, "It is for you, your brother (i.e., its owner), or the wolf." He further asked, "What about a lost camel?" On that, the face of the Prophet became red (with anger) and said, "You have nothing to do with it, as it has its feet, its water reserve and can reach places of water and drink, and eat trees.""*⁷⁶

⁷¹ Shalabi, M., *Ta'lil al-Ahkam* (Beirut: Dar al-Nahda al-'Arabiyya, 1981), p. 38.

⁷² al-San'ani, A., *al-Musannaf* (Beirut: al-Maktab al-Islamiy, 1982), p. 1982.

⁷³ Shalabi, M., *Ta'lil al-Ahkam* (Beirut: Dar al-Nahda al-'Arabiyya, 1981), p. 60.

⁷⁴ *Ibid.*

⁷⁵ al-Qurtubi, Y., *al-Istizkar*, vol. 7 (Beirut: Dar al-Kutub al-'Ilmiyya, 2000), p. 255.

⁷⁶ Al-Bukhari, M., *Sahih al-Bukhari*, vol. 2 (Damascus: Dar al-Yamama, 1993), p. 855.

The Companions approved the action then, citing the inherent public interest in preventing theft. It is justifiable because if the lost camel is not caught, it can be stolen due to the presence of many groups that steal property at that time.⁷⁷

According to all the legal opinions mentioned above, the companions did not hesitate for the sake of the public interest to establish new rules according to the situation of their society at that time. These rules do not conform to existing legal rulings in Sharia, and neither the Prophet Muhammad nor the earliest caliphs enacted them.⁷⁸ This means that all kinds of *Siyasa al-Shar'iyya* based on needs and public interest need to be regulated by the government to avoid contradictions with conclusive law (*qat'i*).

Hence, legal reform that sets the marriageable age at 18 is permissible under the *Siyasa al-Shar'iyya* framework to protect children's rights. It is necessary to assess the government's efforts to curb child marriages through the Islamic law review process and the suitability of local communities while also considering the children's best interests. Although they have complied with international pressures, the new law should not be created arbitrarily. Additionally, based on *Siyasa al-Shar'iyya*, the government is obliged to protect children's best interests against any negative effects of child marriage on them.

Setting the Marriageable Age Limit based on the *Siyasa al-Shar'iyya* Framework

Muslim scholars have differing opinions on child marriage and vice versa, influencing the narrative for setting the marriageable age in Malaysian Islamic law. Scholars who believe child marriage should be permitted tend to disagree with any discussion of setting the minimum marriage age limit. In contrast, scholars who do not believe child marriage should be allowed will agree to determine the marriageable age. According to scholars who oppose child marriage, countries are accountable for ensuring children's best interests. Therefore, their call for setting the marriageable age limit is in accordance with the *Siyasa al-Shar'iyya* framework. As a matter of public interest, it is subject to a country's legislation and was even practised during *Khulafa al-Rashidin's* rule.⁷⁹ The government must prioritize the best interest of the people.⁸⁰

⁷⁷ Shalabi, M., *Ta'lil al-Ahkam* (Beirut: Dar al-Nahda al-'Arabiyya, 1981), p. 41.

⁷⁸ Ibn Bayyah, A., *Mashahid min al-Maqasid* (Dubai: Al Muwatta' Center, 2018), p. 35.

⁷⁹ al-Khadimi, N., *al-Ijtihad al-Maqasidi: Hujjiyyatuh, dawabituh, majalatuh*, vol. 1 (Qatar: Wizara al-Awqaf wa al-Shuun al-Islamiyya, 1998), p. 42.

⁸⁰ al-Azhari, M. A., *Tahzib al-Lughah*, vol. 3 (Beirut: Dar Ihya' al-Turath al-'Arabiyy, 2001), p. 56; al-Razi, M. A., *Mukhtar al-Sihhah*. (Lubnan: al-Maktabat al-'Asriyya, 1999), p. 157; Ibn Manzur, M. M., *Lisan al-'Arab*, vol. 6 (Beirut: Dar Sadir, 1993), p. 108.

According to Ibn 'Abidin, the word '*siyasa*' refers to the responsibility of managing human affairs in a way that leads to success in this world and the hereafter, which is the role of Prophets, rulers, and scholars. To the Prophet, the concept of *siyasa* includes external affairs, such as relationships between people and inner affairs, such as their relationship with Allah SWT. Meanwhile, the government's concept of *siyasa* involves the outward affairs of the people only. In contrast, to scholars, *siyasa* involves only internal human affairs.⁸¹

Ibn Nujaym described *Siyasa al-Shar'iyya* as the government's power to regulate morality and prioritise public interest, managing fiscal, which aims to uphold the truth and eliminate tyranny.⁸² Meanwhile, Ibn 'Uqayl formulated *Siyasa al-Shar'iyya* as all forms of action that bring people closer to goodness and distance them from evil, even if it was never done by the Prophet Muhammad and is not contained in the revelation, as long as it does not conflict with the general principles and rules of Sharia.⁸³ Therefore, all government actions that aim to provide good and protect the public interest are included in the concept of *Siyasa al-Shar'iyya*. The government can implement any administrative decision to achieve that goal.

In the opinion of 'Abd al-Wahhab Khallaf, *Siyasa al-Shar'iyya* refers to the administration of the state's affairs to protect the public interests and prevent harm, even when it does not comply with the views of qualified scholars as *mujtahids*, such as the four imams of the school of law.⁸⁴ 'Abd al-Rahman Taj⁸⁵ and Wahbah al-Zuhayli⁸⁶ defined it as the law that governs government affairs, including the Muslim community and public affairs while adhering to Sharia and general rules regardless of their lack of specificity in the Qur'an and al-Sunnah. It implies that actions determined by a leader do not have to be based on specific Sharia injunctions but can be linked to general Sharia objectives and methods.

As an example, Umar Ibn al-Khattab established ministries and prisons⁸⁷ that the Prophet Muhammad and Abu Bakr al-Siddiq never established; he even

⁸¹ Ibn 'Abidin, M. A., *Radd al-Mukhtar 'ala al-Durr al-Mukhtar*, vol. 4 (Cairo: Matba'a Mustafa al-Halabi, 1966), p. 15.

⁸² Ibn Nujaym, Z. I., *al-Bahr al-Raiq sharh kanz al-Daqaiq*, vol. 5 (Cairo: Dar al-Kitab al-Islami, nd), p. 76.

⁸³ Ibn al-Qayyim, M. A., *I'lam al-Muwaqqi'in 'an Rabb al-'Alamin*, vol. 4 (Beirut: Dar al-Kutub al-'Ilmiyya, 1991), p. 283.

⁸⁴ Khallaf, A., *al-Siyasa al-Shar'iyya* (Beirut: Muassasa al-Risala, 1997), p. 17.

⁸⁵ Taj, A., *al-Siyasa al-Shar'iyya wa al-Fiqh al-Islamiy* (Cairo: Majalla al-Azhar, 1994), p. 12.

⁸⁶ al-Zuhayli, W., *al-Zara'i fi al-Siyasa al-Shar'iyya wa al-Fiqh al-Islamiy* (Damascus: Dar al-Maktabi, 1999), p. 9.

⁸⁷ Taj, A., *al-Siyasa al-Shar'iyya wa al-Fiqh al-Islamiy* (Cairo: Majalla al-Azhar, 1994), p. 17.

instructed Muslims only to perform *hajj ifrad*⁸⁸ during the *hajj* season⁸⁹ to ensure that Muslims always visit the *Masjid al-Haram*, even if it is not during the *hajj* season. Additionally, Uthman once decreed that al-Quran *mushaf* should only be written using one type of reading (*qiraat*). However, the al-Quran contains multiple forms of reading (*awjat al-Qiraat*). To prevent Muslims from misunderstanding the various recitations of the Qur'an that might cause a division among the Muslim community, *mushafs* containing other types of recitations were ordered to be burned.⁹⁰ Additionally, it has been ordered that the Friday prayer call be sounded in the market area before it is in the mosque to alert the audience of the time for Friday prayers.⁹¹

According to al-Qaradawi, the *Siyasa al-Shar'iyah* framework covers the relationship between individuals and the state involving leaders and people and is divided into two categories. The first category is the administration of all worldly affairs related to religious rules. Generally speaking, this category includes all acts that provide benefits and comply with the rules of Islamic teachings, as outlined in the definitions above. As such, the second category defines a framework as actions and decisions undertaken by the government to reduce the damage currently being done to society, prevent future damage from occurring, or improve specific conditions within that society. Second, it refers to a specific approach taken by the government to resolve the problems faced by Muslims.⁹² A government should act when a situation threatens the stability of the Muslim community to prevent it from continuing and causing further harm.

In light of the scholarly debate above, the concept of *Siyasa al-Shar'iyah* can be utilised by the government, despite never having existed or contradicting fatwas issued by Muslim scholars in the past, provided that it does not conflict with the conclusive evidence (*qat'i*) and Sharia's objective. In addition, this framework echoes the fiqh legal maxim, "The government should govern over the

⁸⁸ According to some scholars such as the Shafi'is, *ifrad* is performing *hajj* before *'umrah* by entering *ihram* for *hajj* first from the designated *miqat*, finishing the rites of *hajj*, leaving Mecca for al-Hill to assume *ihram* for *'umrah* and then performing its rites. For *hajj ifrad*, some scholars do not stipulate making *'umrah* after *hajj* and consider that *hajj ifrad* is accomplished by performing the rites of *hajj* alone (without subsequently performing *'umrah*).

⁸⁹ Ibn al-Qayyim, M. A., *I'lam al-Muwaqqi'in 'an Rabb al-'Alamin* (Beirut: Dar al-Kutub al-'Ilmiyya, 1991), p. 11.

⁹⁰ al-Bukhari, M., *Sahih al-Bukhari*, vol. 4 (Damascus: Dar al-Yamama, 1993), p. 1908.

⁹¹ *Ibid*, Vol. 1, p. 309.

⁹² al-Qaradawi, Y., *al-Siyasa al-Shar'iyah fi Daw'i Nusus al-Sharia wa maqasiduha* (Cairo: Maktaba Wahbah 1998), p. 32.

people based on the public's interests".⁹³ As such, the government has the authority to limit the age of marriage to a reasonable minimum to protect the best interests of children and their rights under *Siyasa al-Shar'iyah*. In this framework, the government can enact laws to curb child marriages under 18, even though some jurists permit them.

Researchers from various countries have found that children will suffer negative effects on various levels. It is difficult for children to get reproductive health counselling services when they get married and have the income needed to provide health support services.⁹⁴ Furthermore, an unplanned pregnancy can cause health complications in children,⁹⁵ resulting in permanent scarring.⁹⁶ Due to the husband's total control over decisions, girls will be at risk of unplanned pregnancies that may result in premature births, poor nutrition, and maternal and infant deaths.⁹⁷ Children who undergo pregnancy experience double stress due to the burden of pregnancy. Some may even face domestic violence from spouses and parents-in-law, which affects their psychological well-being.⁹⁸ Often, girls are affected by anxiety and depression, as well as suicide attempts.⁹⁹ Without

⁹³ al-Suyuti, J. A., *al-Ashba wa al-Nazair fi Qawaid wa furu' Fiqh al-Shafi'iyya* (Beirut: Dar al-Kutub al-'Ilmiyya, 1983), p. 121; Ibn Nujaym, Z. I., *al-Ashba wa al-Nazair 'ala mazhab Abi Hanifa al-Nu'man* (Beirut: Dar al-Kutub al-'Ilmiyya, 1999), p. 104.

⁹⁴ Nasrullah, M., "Child Marriage and Its Impact on Maternal and Child Health in Pakistan", Ph.D. Dissertation (Germany: School of Public Health, University of Bielefeld, 2015).

⁹⁵ Avalos, L. et al., "Ending Female Genital Mutilation & Child Marriage in Tanzania", *Fordham International Law Journal*, Vol. 38 (2015), p. 639-699.

⁹⁶ Nour, N. M. "Health Consequences of Child Marriage in Africa", *Perspective: Emerging Infectious Diseases*, Vol. 12, No. 11 (2006), p. 1644-1649; Raj, A., "When the Mother is A Child: The Impact of Child Marriage on the Health and Human Rights of Girls", *Arch Dis Child* (2010), p. 931-935; Anozie, M. C et al., "The Legal, Medical and Social Implications of Child Marriage in Nigeria", *International Journal of Law, Policy and the Family*, Vol. 32 (2018), p. 119-139.

⁹⁷ Nour, N. M. "Health Consequences of Child Marriage in Africa", *Perspective: Emerging Infectious Diseases*, Vol. 12, No. 11 (2006), p. 1644-1649; ; Raj, A., "When the Mother is A Child: The Impact of Child Marriage on the Health and Human Rights of Girls", *Arch Dis Child* (2010), p. 931-935; Nasrullah, M., "Child Marriage and Its Impact on Maternal and Child Health in Pakistan", Ph.D. Dissertation (Germany: School of Public Health, University of Bielefeld, 2015); Allen, A. A. & Adekola, P. O., "Health Implication of Child Marriage in North-East Nigeria", *Analele Universitatii din Oradea, Seria Geografie* (2017), p. 54-61; Anozie, M. C et al., "The Legal, Medical and Social Implications of Child Marriage in Nigeria", *International Journal of Law, Policy and the Family*, Vol. 32 (2018), p. 119-139; Mohd Awal, N. A & Samuri, M. A. A., "Child Marriage in Malaysia", (Selangor: UNICEF Malaysia, 2017).

⁹⁸ Ame, K. R., "Overcoming the Curse of Early Marriage in Bangladesh", *Asian Journal of Women's Studies*, Vol. 19, No. 4 (2013), p. 150-163.

⁹⁹ Anozie, M. C. et al., "The Legal, Medical and Social Implications of Child Marriage in Nigeria", *International Journal of Law, Policy and the Family*, Vol. 32 (2018), p. 119-139;

sufficient financial resources, they cannot think rationally and tend to act without consideration.

A significant effect children experience when they marry early is dropping out of school.¹⁰⁰ Children who do not receive an education will have difficulty getting a job, causing them to remain poor.¹⁰¹ Consequently, they will lose out on the opportunity to improve their lives. Children will be forced to manage their spouse's household, causing their social status to be affected and limiting their opportunities to participate in public life.¹⁰² They have limited bargaining power because they must comply with every decision their partner makes without being allowed to determine any options;¹⁰³ their partner often looks down upon them.¹⁰⁴ Children are often exposed to sexual exploitation due to their naivete and physical vulnerability.¹⁰⁵ In the long run, this will negatively affect their health and make it easier for them to fall ill and become incapable of living an ordinary life. To survive, they had to rely on their respective partners. The risk of divorce by a spouse is particularly high¹⁰⁶ when he or she no longer wants to provide for the children and does not care about them anymore.

In light of child marriage's negative impacts on society, as discussed above in many academic studies, legal measures should be taken to curb the practice of child marriage and amend existing provisions that could encourage individuals to marry children to exploit them. Some scholars have discussed

Samuri, M. A. A., *Pembendungan Perkahwinan Kanak-kanak*, (Malaysia: UKM Press, 2021), p. 32.

¹⁰⁰ Ame, K. R., "Overcoming the Curse of Early Marriage in Bangladesh", *Asian Journal of Women's Studies*, Vol. 19, No. 4 (2013), p. 150-163.

¹⁰¹ Allen, A. A. & Adekola, P. O., "Health Implication of Child Marriage in North-East Nigeria", *Analele Universitatii din Oradea, Seria Geografie* (2017), p. 54-61; Anozie, M. C et al., "The Legal, Medical and Social Implications of Child Marriage in Nigeria", *International Journal of Law, Policy and the Family*, Vol. 32 (2018), p. 119-139.

¹⁰² Ame, K. R., "Overcoming the Curse of Early Marriage in Bangladesh", *Asian Journal of Women's Studies*, Vol. 19, No. 4 (2013), p. 150-163; Anozie, M. C et al., "The Legal, Medical and Social Implications of Child Marriage in Nigeria", *International Journal of Law, Policy and the Family*, Vol. 32 (2018).

¹⁰³ Nasrullah, M., "Child Marriage and Its Impact on Maternal and Child Health in Pakistan", Ph.D. Dissertation (Germany: School of Public Health, University of Bielefeld, 2015); Samuri, M. A. A., *Pembendungan Perkahwinan Kanak-kanak*, (Malaysia: UKM Press, 2021), p. 35.

¹⁰⁴ Mohd Awal, N. A & Samuri, M. A. A., "Child Marriage in Malaysia", (Selangor: UNICEF Malaysia, 2017).

¹⁰⁵ Nasrullah, M., "Child Marriage and Its Impact on Maternal and Child Health in Pakistan", Ph.D. Dissertation (Germany: School of Public Health, University of Bielefeld, 2015).

¹⁰⁶ Avalos, L. et al., "Ending Female Genital Mutilation & Child Marriage in Tanzania", *Fordham International Law Journal*, Vol. 38 (2015), p. 639-699; Mohd Awal, N. A & Samuri, M. A. A., "Child Marriage in Malaysia", (Selangor: UNICEF Malaysia, 2017).

various reasons for setting an age limit for marriage based on the current merits. Al-Hamuwandi,¹⁰⁷ Khalid Ali Dahmah, Basri Ibrahim, and Muhammad Fathi al-Jalil,¹⁰⁸ among others, believe that this containment effort can prevent excessive pressure on children at risk. By reforming the law on marriageable age, parents will be able to give their children the attention, love, and education they deserve. By not getting married and getting enough education rights, they can increase their self-confidence, penetrate various brighter life opportunities, and participate in public life in the future.

Conclusion

As a State Party of the international conventions, Malaysia is responsible for fulfilling its moral obligation to curb child marriage in this country. Reforming the laws and bringing about changes in the community took many years to achieve. The Islamic authorities must be engaged by utilizing *Siyasa al-Shar'iyya* to get their approval when setting the new marriageable age in Islamic family law. To ensure this agenda is implemented progressively, it will require the collaboration of all sectors, including religious leaders, stakeholders, human rights activists, non-governmental organizations, and the community. The government should not hesitate to take legal measures to protect children from being sexually exploited and their best interests from being violated, considering the negative effects of child marriage on children. There must be a strong emphasis placed on consultations, discourses, and dialogues in Malaysian society to establish a new narrative landscape in which child marriages are no longer relevant to today's circumstances.

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¹⁰⁷ Al-Hamuwandi, N., "Tazwij al-Qasirat bayn al-Fiqh al-Islami wa qanun al-Ahwal al-Shakhsiiyya al-Iraqiy: Dirasa muqarana", *The Scientific Journal of Cihan University - Sulaimanyia*, Vol. 1, No. 4 (2017), p. 135.

¹⁰⁸ Dahmah, K. A. et al., "Zawaj al-Sighar wa athar al-Taghayyurat al-Ijtima'iyya 'alayh", *Jurnal Islam dan Masyarakat Kontemporari*, Vol. 17 (2018), p. 120.

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