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## **Child Marriage in Malaysia and the Proposed Legal Reform: Views of Muslim Stakeholders and Religious Officials**

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### **Abstract**

Child marriage is widely regarded as a violation of children's rights by the international community. The topic has generated significant public debate in Malaysia, especially following the federal government's 2018 proposal to raise the minimum marriage age to 18 for both genders. However, this proposal faced rejection and criticism from several Muslim groups and religious authorities, who hold substantial influence over policy and law-making. This article examines the perspectives of Malaysian Muslim stakeholders on child marriage and the legal reforms aimed at ending the practice. The study involved two focus group discussions with Muslim stakeholders (n=21) and in-depth interviews with religious officials (n=22) from various Islamic authorities. The findings reveal a polarised stance on child marriage: while some stakeholders and religious officers acknowledge the practice's harms and support legal reforms, others oppose such changes. The resistance from religious authorities and Muslim groups highlights the need for enhanced advocacy efforts on children's rights among these influential parties to ensure successful legal reform in Malaysia.

**Keywords:** Children's rights, best interest of the child, child marriage, Islamic authorities, legal reform

### *Abstrak*

*Pernikahan anak secara luas dianggap sebagai pelanggaran hak-hak anak oleh komunitas internasional. Di Malaysia, topik ini telah memicu perdebatan publik yang signifikan, terutama setelah pemerintah federal mengusulkan untuk menaikkan usia minimum pernikahan menjadi 18 tahun untuk kedua jenis kelamin pada tahun 2018. Namun, usulan ini ditolak dan dikritik oleh beberapa kelompok Muslim dan otoritas agama yang memiliki pengaruh besar dalam pembuatan kebijakan dan undang-undang. Artikel ini menganalisis perspektif para pemangku kepentingan Muslim di Malaysia mengenai pernikahan anak dan reformasi hukum untuk mengakhiri praktik tersebut. Studi ini melibatkan dua diskusi kelompok terfokus dengan para pemangku kepentingan Muslim (n=21) dan wawancara mendalam dengan pejabat agama (n=22) dari berbagai otoritas Islam. Temuan menunjukkan sikap yang terpolarisasi mengenai pernikahan anak: sementara beberapa pemangku kepentingan dan pejabat agama mengakui bahaya dari praktik tersebut dan mendukung reformasi hukum, yang lainnya menentang perubahan tersebut. Penolakan dari otoritas agama dan kelompok Muslim menyoroti kebutuhan akan upaya advokasi yang lebih besar terkait hak-hak anak di antara pihak-pihak yang berpengaruh ini untuk memastikan reformasi hukum yang berhasil di Malaysia.*

***Kata Kunci:*** Hak-hak anak, kepentingan terbaik anak, pernikahan anak, otoritas Islam, reformasi hukum

### **Introduction**

In Malaysia, child marriage occurs in Muslim and non-Muslim communities, regardless of ethnicity or nationality.<sup>1</sup> Various data show that child marriage is not only a problem in the Malay Muslim community, which is the majority religious group in Malaysia, but also among Indians, *Orang Asli*, and *Bumiputera*<sup>2</sup> in Sabah and Sarawak. It also occurs among the nomadic sea community and refugees such as the Rohingya.<sup>3</sup> Statistically speaking, the rate of child marriages among Muslim children in Malaysia is higher than in non-Muslim communities. Muslim children made a total of 11,424 marriage applications from 2008 to June 2018. In 2018, the Minister of Women, Family, and Community Development informed the Malaysian Parliament that 1,480 Muslim child marriage applications had been filed, as opposed to 62 cases from other religions or ethnicities.<sup>4</sup> Throughout the COVID-19 pandemic

<sup>1</sup> Samuri, M. A. A, *Pembendungan Perkahwinan Kanak-kanak* (Bangi: UKM Press, 2021).

<sup>2</sup> *Bumiputera* or *Bumiputra* is a term used in Malaysia to describe Malays, the *Orang Asli* of Peninsular Malaysia, and various indigenous peoples of East Malaysia.

<sup>3</sup> Mohd Awal, N. A. & Samuri, M. A. A., *Child Marriage in Malaysia (Working Paper for UNICEF Malaysia)*. (Kuala Lumpur, UNICEF Malaysia, 2018) <https://www.unicef.org/malaysia/reports/child-marriage-malaysia>

<sup>4</sup> Department of Sharia Judiciary Malaysia (JKSM), as cited in Written Answer by Wan Ismail, W. A., *Malaysian Parliament Hansard, Parliament Session 14<sup>th</sup>, First Term, Second Meeting*, p. 10-12, (November 15<sup>th</sup>, 2018).

of 2019 and 2020, data from all states in Malaysia was collected except for Melaka, Johor, Perlis, and Perak (the authorities in these states declined to release data). This gives 1,387 cases for 2019 and 1,246 cases for 2020.<sup>5</sup>

The Malaysian federal government introduced a 'National Strategic Plan in Handling the Causes of Child Marriage' in 2020, which mobilised all government agencies, including Islamic authorities, to reduce child marriage rates in accordance with the capacity and jurisdiction of their respective institutions.<sup>6</sup> After reviewing UNICEF's 2017 report, this plan aimed to ensure that it was implemented holistically to curb child marriage.<sup>7</sup> In its first action plan, the federal government under the Pakatan Harapan coalition sought to reform the Islamic Family Law Act/Enactment by raising the marriageable age to 18 years for both men and women as per international standards and reforming other legal provisions that have so far allowed for child marriage.<sup>8</sup> The Malaysian government was willing to join this global initiative since other countries had raised the marriageable age for men and women to achieve gender equality.<sup>9</sup>

Nonetheless, the Islamic authorities in Malaysia that administer Islamic law resisted and rejected the federal government's legal reform agenda. Since Malaysia practices federalism, matters relating to Islamic law fall under the state government's jurisdiction. The federal government cannot make legal reforms to address child marriage at the national level, as Islamic family law falls under the jurisdiction of the states.<sup>10</sup> It is the Islamic religious apparatus of the states exercised by *muftis*,<sup>11</sup> Sharia judges, and marriage registrars which presents a unique challenge with regard to deterring child marriage through legal means.

In this article, we will discuss the legal provisions relating to child marriage, debate the proposed legal reform to end child marriages, Islamic law reform, a discourse on the justification for raising the marriageable age in Malaysia, and the implications of legal reform.

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<sup>5</sup> State Islamic Religious Departments in Malaysia, Statistik Perkahwinan Bawah Umur Setiap Negeri 2019-2020, (Jabatan Agama Islam Negeri Seluruh Malaysia, 2021).

<sup>6</sup> Ministry of Women, Family & Community Development (KPWKM), (Putrajaya, 2020); Sulaiman, N. A., *Pelan Strategi Tangani Punca Perkahwinan Bawah Umur dilaksanakan*, (Berita Harian, 2020) <https://www.bharian.com.my/wanita/keluarga/2020/01/647182/pelan-strategi-tangani-punca-perkahwinan-bawah-umur-dilaksanakan>

<sup>7</sup> Mohd Awal, N. A. & Samuri, M. A. A., *Final Report: A Study of Child Marriage in Malaysia*, (Kuala Lumpur: UNICEF Malaysia, 2017).

<sup>8</sup> Berita Harian, *Tidak sokong perkahwinan bawah umur*, (Berita Harian, 2018) <https://www.bharian.com.my/berita/nasional/2018/09/476291/tidak-sokong-perkahwinan-bawah-umur-dr-wan-azizah>; Jiffar, N., *Syor had umur perkahwinan 18 tahun*, (Berita Harian, 2019) <https://www.bharian.com.my/berita/wilayah/2019/07/580668/syor-had-umur-perkahwinan-18-tahun>

<sup>9</sup> Wiedemann, D., *Legal Process and Socio-Economic Reflections on Child Marriage in Latin America, International Journal of Law, Policy and the Family*, (2021), p. 1-16.

<sup>10</sup> Ninth Schedule, List II (States List), Federal Constitution.

<sup>11</sup> In Malaysia context, the *mufti* is a state-appointed official who has Islamic legal authority

## Legal Provisions Related to Child Marriage

### 1. Marriageable Age According to Classical Islamic Family Law

Malaysia's Islamic law is based upon the Shafie<sup>12</sup> school of law, Southeast Asia's dominant school of law.<sup>13</sup> This is expressed in the Enactment of Administration of Islamic Law,<sup>14</sup> which allows Sharia courts and religious authorities to use Sharia law from the Hanafi,<sup>15</sup> Maliki,<sup>16</sup> Shafie, or Hanbali<sup>17</sup> schools of law, with preference given to the Shafie school. Suppose the mufti considers that following the opinion of the Shafie school will lead to a situation repugnant to the public interest.<sup>18</sup> In that case, the mufti may follow the opinion of the Hanafi, Maliki, or Hanbali schools. Islamic law in Malaysia also states that any gaps in written law should refer to classical Islamic law discussed by Islamic jurists in the Shafie School.<sup>19</sup> The implication is that the Muslim community in Malaysia is bound not only by written Islamic law but also by Islamic law written by classical scholars.

According to the Shafie School, there is no age limitation for marriage because a father can marry off his daughter at an early age.<sup>20</sup> Islamic law allows marriage to children younger than 18; those who wish to marry do not need to reach puberty, as puberty or physical maturity are not legal requirements for marriage. According to these jurists, even young children can be married if there is a benefit (*maslaha*) for them, such as an orphaned baby girl without relatives to care for her.<sup>21</sup> A child can only be married off by her father or grandfather if the marriage benefits

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<sup>12</sup> Shafie School was named after Muhammad Idris al-Shafie (767-820 CE) in Medina, Saudi Arabia.

<sup>13</sup> Hussain, M. A., Megat Latif, H., Md Nor, M. Z., Md Desa, M. R., Mohd Khalid, A. H., & Mohd Akhir, M. A., Reference to Madhhab in Fatwa Deliberation: Analysis on the Administration of Islamic Law in Malaysia, *International Journal of Law, Government and Communication*, 3(13) (2018). P. 236-244.

<sup>14</sup> Section 39, Administration of Islamic Law (Federal Territories) Act 1993 (Act 505).

<sup>15</sup> Hanafi School was named after Abu Hanifah al-Nu'man Ibn Thabit ibn Zuta Ibn Marzuban (699-767 CE) in Kufa, Iraq.

<sup>16</sup> Maliki School was named after Malik Ibn Anas al-Asbahi (713-795 CE) in Medina, Saudi Arabia.

<sup>17</sup> Hanbali School was named after Ahmad Ibn Muhammad Ibn Hanbal (780-855 CE) in Baghdad, Iraq and Medina, Saudi Arabia.

<sup>18</sup> Taufiqur Rohman, Muhammad Mahsus, Muhammad Abduh, Gioia Arnone, "Preventing Violations of Religious and Social Norms: Judicial Interpretation of 'Urgent Reasons' in Marriage Dispensation at the Wonosari Religious Court, Indonesia", *Journal of Islamic Law* 4, No. 2 (2023), p. 218-236.

<sup>19</sup> Section 2(6) Islamic Family Law Enactment of Pahang 2005.

<sup>20</sup> al-Juwayni, A. A., *Nihaya al-Matlab fi Nihaya al-Madhhab* (Beirut: Dar al-Minhaj, 2007); al-Rafi'i, A. M., *Al-Aziz Sharh al-Wajiz* (Beirut: Dar al-Kutub al-'Ilmiyya, 1997).

<sup>21</sup> Imron, A., Muhsin, I., Tasfiq, M. S. & Tarmuji, R. Baby Engagement within the Traditional Ulama of the Madurese Ethnicity: a Maslaha Analysis. *Ijtihad : Jurnal Wacana Hukum Islam dan Kemanusiaan*, 23(2) (2024), p. 261-280.

her.<sup>22</sup> Jurists reasoned that those children could not manage themselves and required adults to look after their interests.<sup>23</sup> In that case, a child may only be married by a guardian (*waliy*) in the same way that a child has to seek permission from her guardian (*waliy*) before spending or managing her property because she is incapable of looking after herself.

In the jurists' opinion, a father or grandfather can marry his daughter off without her consent and knowledge, provided it does not harm the child.<sup>24</sup> Nevertheless, a wise father should seek his child's consent before making a decision regarding the marriage.<sup>25</sup> A father cannot marry his daughter to a man who is incompatible with his daughter, for instance, a man suffering from insanity or physical illness, since it can harm the child. When a father or grandfather marries his daughter to an incompatible man, the court considers the marriage invalid.<sup>26</sup> Girls who are married off by their father to a partner suffering from diseases such as mental and physical illnesses, etc., have the right to choose whether to remain in the marriage or not.<sup>27</sup> Nevertheless, if nothing is damaging to the child or her health, the marriage cannot be annulled once the child reaches puberty.

## 2. Malaysian Islamic Family Law

The provisions of the Islamic Family Law Act/Enactments in most states in Malaysia provide that the age limit for marriage is 18 years for men and 16 years for women<sup>28</sup> as follows:

*“No marriage may be solemnised under this Act where either the man is under the age of eighteen or the woman is under the age of sixteen, except where the Sharia judge has granted his permission in writing in certain circumstances.”*

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<sup>22</sup> al-Shafie, M. I., *al-'Umm* (Beirut: Dar al-Ma'rifa, 1990); al-Nawawi, *Rawda al-Talibin wa 'Umda al-Muftin* (Beirut: al-Maktab al-Islami, 1991); al-Juwayni, A. A., *Nihaya al-Matlab fi Nihaya al-Madhhab* (Beirut: Dar al-Minhaj, 2007).

<sup>23</sup> Andiko, T., Nurdin, Z. & Abdul Malik, A. Reactualization of Wali Mujbir in the Modern Era: Maqasid Sharia Analysis of Imam Shafi'i's Concept Regarding Wali's Ijbar Right. *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan*, 23(2) (2023), p. 274-291.

<sup>24</sup> al-Shafie, M. I., *al-'Umm* (Beirut: Dar al-Ma'rifa, 1990); al-Nawawi, *Rawda al-Talibin wa 'Umda al-Muftin* (Beirut: al-Maktab al-Islami, 1991); al-Juwayni, A. A., *Nihaya al-Matlab fi Nihaya al-Madhhab* (Beirut: Dar al-Minhaj, 2007).

<sup>25</sup> Nurwahidah, N. Usia Anak dan Remaja Dalam Pembuatan Perdata dan Pidana Menurut Hukum Islam dan Hukum Positif. *Syariah: Jurnal Hukum dan Pemikiran*, 17(2) (2017) p. 203-219.

<sup>26</sup> al-Shafie, M. I., *al-'Umm* (Beirut: Dar al-Ma'rifa, 1990); al-Nawawi, *Rawda al-Talibin wa 'Umda al-Muftin* (Beirut: al-Maktab al-Islami, 1991); al-Juwayni, A. A., *Nihaya al-Matlab fi Nihaya al-Madhhab* (Beirut: Dar al-Minhaj, 2007); al-Rafi'i, A. M., *Al-Aziz Sharh al-Wajiz* (Beirut: Dar al-Kutub al-'Ilmiyya, 1997).

<sup>27</sup> al-Shafie, M. I., *al-'Umm* (Beirut: Dar al-Ma'rifa, 1990); al-Nawawi, *Rawda al-Talibin wa 'Umda al-Muftin* (Beirut: al-Maktab al-Islami, 1991).

<sup>28</sup> Section 8, Islamic Family Law (Federal Territory) Act 1984 (Act 303).

This provision distinguishes men and women by gender and sets a lower age of marriage for women. This provision was introduced in Malaysian Islamic law around the 1980s,<sup>29</sup> in line with the CEDAW agenda, which urged state parties to set marriage age limits.<sup>30</sup> Before that, around the 1950s, efforts to raise the marriageable age limit in Malaysian states had received opposition from religious authorities, resulting in relevant laws not being included in written Islamic law.<sup>31</sup>

The above provision also gives discretionary power to the Sharia judge to hear applications and grant written permission for children to marry, subject to specific circumstances. No procedures or guidelines in the law explain this judge's discretionary power; hence, judges can decide without explanation, regardless of whether it is based on a child's best interests (*maslaha*) or their welfare. In addition, this provision does not detail what is meant by 'certain circumstances', which are open to interpretation and discretion.<sup>32</sup> As a result of the law's silence, most child marriage applications are approved in Sharia courts.

Mohd Awal and Samuri's study<sup>33</sup> proved that out of 2,143 cases, only ten application cases were rejected by Sharia courts in seven states across Malaysia from 2012 to 2016. By arguing that Sharia courts are bound only by Islamic law, which they claim permits these marriages, Sharia courts have swiftly processed the applications of children, or those made by their guardians, who wanted to get married. It has been alleged that the courts' actions lack clear procedures and considerations regarding child marriage applications, thus facilitating the high formal marriage rate in the Muslim community in Malaysia.<sup>34</sup> Until 2019, Sharia courts did not have policies or procedures for determining the best interests of children in processing underage marriages. Moreover, states' Islamic law specifies that all marriages must get permission from the Sharia court and the marriage registrar, and failure to do so is punishable by a fine not exceeding MYR1,000<sup>35</sup> or by imprisonment not exceeding six months or by a combination of both punishments.<sup>36</sup> Therefore, a guardian known as *waliy* (a father or grandfather) is not permitted to marry off his daughter/granddaughter without permission from the

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<sup>29</sup> The Act (Act 303) received royal assent on June 27<sup>th</sup>, 1984, was published in the Gazette on June 28<sup>th</sup>, 1984, and came into force on April 29<sup>th</sup>, 1987.

<sup>30</sup> Article 16(2), Convention on the Elimination of All Forms of Discrimination against Women.

<sup>31</sup> Stivens, M., Religion, Nation and Mother-love: The Malay Peninsula Past and Present. *Women's Studies International Forum*, 33(4) (2010), p. 390-401.

<sup>32</sup> Rohman, T., Mahsus, M. Abduh, M. & Arnone, G. Preventing Violations of Religious and Social Norms: Judicial Interpretation of 'Urgent Reasons' in Marriage Dispensation at the Wonosari Religious Court, Indonesia. *Journal of Islamic Law*, 4(2) (2023), p. 18-36.

<sup>33</sup> Mohd Awal, N. A. & Samuri, M. A. A., *Child Marriage in Malaysia (Working Paper for UNICEF Malaysia)*. (Kuala Lumpur, UNICEF Malaysia, 2018) <https://www.unicef.org/malaysia/reports/child-marriage-malaysia>

<sup>34</sup> *Ibid.*

<sup>35</sup> Equivalent sum in GB Sterling is £180 and in US Dollar is \$237.

<sup>36</sup> Section 40(1), Islamic Family Law (Federal Territory) Act 1984 (Act 303).

Sharia court and the marriage registrar. The states' Islamic law also stipulates that all marriages that meet the conditions set out in *fiqh*<sup>37</sup> are valid.<sup>38</sup>

If the conditions are not met, such as marrying without consent, marrying someone who is prohibited in Islam, or marrying while in the state of *ihram*<sup>39</sup> for *hajj*<sup>40</sup> or *umrah*<sup>41</sup> or in the period of *'iddah*,<sup>42</sup> then the marriage is considered invalid by the authority. Generally, the marriage will not be legally registered if a child gets married without the court's permission.<sup>43</sup> The law also stipulates that both parties, including the child's spouse, must consent to the marriage. In addition, the consent of the guardian (*waliy*) is required for the woman and not for the man as stipulated by Islamic law.<sup>44</sup> The marriage cannot be recognised and registered if consent is not obtained. This will significantly impact the couple as they will be unable to access the marriage rights provided by the law, such as alimony rights, child maintenance rights, and inheritance rights. Matrimonial rights apply only to marriages registered under the States' Islamic law. The public must notify the marriage registrar of any void or illegal marriage, including unauthorised child marriage and marriage solemnised by a guardian (*waliy*) without Islamic authority permission. According to the law, all Muslims have a duty to lodge a report of any alleged unauthorised marriage solemnised in contravention of the statute.<sup>45</sup> These provisions empower the public to assist Islamic authorities in curbing irregular marriage, such as marriage without consent, to protect the interests of women and children.

### 3. Application Procedures for Child Marriage (Underage Marriage) at Sharia Court

The young applicant must come to their local Islamic Religious Department and express their intention to marry. The registrar will prepare a letter to ask the applicant to refer to the Sharia court for judicial permission. By bringing that letter to the Sharia court, the young underage applicant must file an application to the court for permission to marry while underage. The application must be made in accordance with section 13(1) of the Sharia Court Civil Procedure Enactment and supported by an affidavit according to Section 122 of the same enactment. Upon registering the application, the applicant will be given a date to appear before the assistant registrar of the Sharia Court. The goal is to ensure that all documents used during the hearing are complete and accurate. The assistant registrar will schedule a hearing date with the Sharia judge. For confidentiality, the hearing will generally occur in the Sharia

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<sup>37</sup> Islamic jurisprudence.

<sup>38</sup> Section 11, Islamic Family Law (Federal Territory) Act 1984 (Act 303).

<sup>39</sup> Sacred state of purity before God while performing pilgrimage.

<sup>40</sup> Obligatory pilgrimage made to the Kaaba - House of God, and one of the five pillars of Islamic faith.

<sup>41</sup> The lesser pilgrimage.

<sup>42</sup> Period of mourning observed by a widow.

<sup>43</sup> Section 12, Islamic Family Law (Federal Territory) Act 1984 (Act 303).

<sup>44</sup> Section 13, Islamic Family Law (Federal Territory) Act 1984 (Act 303).

<sup>45</sup> Section 27, Islamic Family Law (Federal Territory) Act 1984 (Act 303).

judge's chambers. The guardian, the bride and groom, the groom's parents, and any other interested parties will be called at the hearing. The Sharia judge will ask brief questions to examine the relevant aspects before approving the child's marriage application. Most often, the Sharia judge will seek the opinion of the guardian, the parents of the groom, and others about the bride's readiness, their plans, etc. After the Sharia judge is satisfied with the information given, he will issue an order enabling the marriage to be performed under Section 18(2) Islamic Family Law (State of Selangor) Enactment 2003. The order will be brought to the marriage registrar in their locality for the following process.

Upon getting approval from the Sharia court, the female applicant must apply for permission to marry directly to the local marriage registrar at the Islamic Religious Department where she lives.<sup>46</sup> Both male and female applicants must fill out the prescribed forms and submit the application, which asks for information such as date of birth, age, education level, marital status, and parents' background. If the male applicant lives in a different district and state from the female applicant, the female's marriage application must be verified by her local registrar or the authorities of her state.<sup>47</sup> At least seven days before the wedding date, the marriage application must be served.<sup>48</sup> In some instances, the registrar may authorise a shorter period.

As soon as permission to marry has been granted, the marriage must be solemnised by a guardian (*waliy*) or a representative of the *waliy* in front of the marriage registrar. The marriage is solemnised when the groom accepts the '*aqad*'<sup>49</sup> during the ceremony or is represented for receiving the '*aqad*'. As soon as the '*aqad*' is done, the groom must read the *ta'liq*,<sup>50</sup> which, if violated, may thereby dissolve the union. The couple will receive their marriage certificate after completing this process. Thus, their marriage may be registered under the Islamic law of their respective states by recording their date of marriage solemnisation.<sup>51</sup> Upon registration, the marriage registrar shall issue marriage and *ta'liq* certificates in the prescribed form to both parties to the marriage.<sup>52</sup>

### **Debate On Legal Reform To Curb Child Marriage In The Malaysian Parliament**

Malaysia's federal government, civil society organisations (CSOs), and child rights activists have called for a more comprehensive legal reform to curb child

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<sup>46</sup> Section 16 and 19, Islamic Family Law (Federal Territory) Act 1984 (Act 303).

<sup>47</sup> Section 16(1) and 16(2), Islamic Family Law (Federal Territory) Act 1984 (Act 303).

<sup>48</sup> Section 16(3), Islamic Family Law (Federal Territory) Act 1984 (Act 303).

<sup>49</sup> In Islamic family and marriage law, the term '*aqad*' (Arabic: عقد) refers to the marriage contract or agreement. The word '*aqad*' literally means 'contract' or 'binding agreement.' In the context of marriage, it signifies the formal, legally binding union between a man and a woman under Islamic law.

<sup>50</sup> A set of marriage conditions.

<sup>51</sup> Section 25, Islamic Family Law (Federal Territory) Act 1984 (Act 303).

<sup>52</sup> Section 26, Islamic Family Law (Federal Territory) Act 1984 (Act 303).

marriage practices, as the law has been seen as enabling it.<sup>53</sup> The government has been urged on several occasions to take serious steps to stop child marriage under the pretext of protecting children's rights by enacting strict laws.<sup>54</sup> It is believed by Malaysian CSOs that legal reform is the best way to prevent children from being married off and that the government should criminalise such practices.

On April 1<sup>st</sup>, 2019, the Malaysian Parliament heard and discussed the annual report of the Malaysian Human Rights Commission (SUHAKAM) for the first time since Independence. Among the subjects discussed was the issue of child marriage, which had never been seriously addressed by Members of Parliament (MPs) in detail before. The Malaysian Parliament was informed that child marriage negatively affects children's rights, especially regarding health care, education, equal rights, and anti-discrimination. The argument made to MPs was that child marriage prevents children from living a life free from violence and exploitation.<sup>55</sup> At the time, neither party in the Malaysian Parliament challenged the call for banning child marriage.

Between 2018 and 2020, the Pakatan Harapan government's stance against child marriage was strong. Parliament also discussed the possibility of raising the marriageable age to curb child marriage. Since marriage matters fall under state government jurisdiction, no legislation was proposed at the Parliamentary level to amend the relevant laws. The federal government conducted several consultations with state governments to convince them of the need to amend their state legislation regarding child marriage. The Ministry of Women, Family and Community Development also elaborated on the Ministry's engagement with the Pre-Council Meeting, Council of Rulers Meeting, and States' Chief Ministers Meeting for consensus agreements to increase the marriageable age to 18 for both genders. According to the meeting, the state rulers agreed to cooperate in coordinating this reform in their respective states.<sup>56</sup> Parliament was also told that the curbing initiatives were developed after engagement with various groups, including faith-based groups and Islamic authorities.<sup>57</sup>

However, after consultations with state religious authorities and state governments, Parliament was informed that only seven states had agreed to raise the marriageable age limit for both genders to 18 years. The then Deputy Prime Minister,

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<sup>53</sup> Musawwamah, S., Taufiq, M., Haryanto, E., Supraptiningsih, U. & Maimum. Resistance to Child Marriage Prevention in Indonesia and Malaysia. *Ahkam: Jurnal Ilmu Syariah*, 23(1) (2023), p. 259-280; UNICEF Malaysia, *Advocacy Brief: Towards Ending Child Marriage in Malaysia*, (Putrajaya: UNICEF Malaysia, 2020).

<sup>54</sup> Samuri, M. A. A., Mohd Awal, N. A. & Abu Bakar, M. A. Curbing Child Marriage amongst Muslims in Malaysia: Towards Legal Reform. *UUM Journal of Legal Studies*, 13(1) (2022), p. 1-20.

<sup>55</sup> Keong, L. V., *Malaysian Parliament Hansard, Parliament Session 14<sup>th</sup>, Second Term, Third Meeting*, p. 35, (December 5<sup>th</sup>, 2019).

<sup>56</sup> Wan Ismail, W. A., *Malaysian Parliament Hansard, Parliament Session 14<sup>th</sup>, First Term, Second Meeting*, p. 10-12, (November 15<sup>th</sup>, 2018).

<sup>57</sup> Yeoh, H., *Malaysian Parliament Hansard, Parliament Session 14<sup>th</sup>, Second Term, Third Meeting*, p. 118, (November 26<sup>th</sup>, 2019).

who was also Minister of Women, Family and Community Development, stated in Parliament that the federal government could not raise the marriageable age based on the negative responses from Islamic institutions from various states. In the case of non-Muslim children subject to civil law jurisdiction, the Ministry of Home Affairs informed Parliament that the provisions related to the age limit for marriage registration under the Law Reform (Marriage and Divorce) Act 1976 (Act 164) did not need amending. The existing civil law stipulates that the minimum age limit for marriage registration is 18 for both men and women. The exceptions are only made for marriage applications involving girls between 16 and 17, who require permission from their state's Chief Minister.<sup>58</sup>

The federal government's interests weakened after receiving strong opposition from Muslim groups and authorities. As a result of the pressure from these two factions, the federal government decided not to proceed with legal reform in 2019. Parliament was informed by the Ministry of Women, Family and Community Development that several developed countries have implemented total bans, as well as a few other countries that have not yet raised the age limit. Given Malaysia's different legal and social context, the Minister of Women suggested that Malaysia would not impose a total ban but rather take a holistic approach by improving laws relating to sexual offences against children. These include measures aimed at reducing the statistics of child marriages in Malaysia, such as developing measures related to sexual grooming, increased awareness among judges and social workers, and granting rights to education for vulnerable girls.<sup>59</sup>

According to the Minister of Women, the government does not only focus on legal reform over the constraints of power and jurisdiction of marriage-related laws. The federal government intends to raise the age limit for marriage to 18 years but recognises that other factors must be considered. The government then regarded legal reforms as the second most crucial issue after giving education rights to children. The Minister of Women argued that there were other significant drivers of child marriage in Malaysia, including a lack of sexual and reproductive health education among girls and parents and poverty.<sup>60</sup>

Lawmakers also pressured Parliament by pushing the federal government to use existing provisions related to sexual crimes against individuals who marry children in addition to legal reforms related to increasing the marriageable age. As part of the Domestic Violence Bill debate in 2017, opposition MPs questioned why children who had suffered statutory rape were allowed to marry their rapists.<sup>61</sup> She

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<sup>58</sup> Wan Ismail, W. A., *Malaysian Parliament Hansard, Parliament Session 14<sup>th</sup>, Second Term, Third Meeting*, p. 13, (November 19<sup>th</sup>, 2019).

<sup>59</sup> Wan Ismail, W. A., *Malaysian Parliament Hansard, Parliament Session 14<sup>th</sup>, First Term, Second Meeting*, p. 13-14, (November 15<sup>th</sup>, 2018).

<sup>60</sup> Wan Ismail, W. A., *Malaysian Parliament Hansard, Parliament Session 14<sup>th</sup>, First Term, First Meeting*, p. 9, (August 16<sup>th</sup>, 2018).

<sup>61</sup> Ching, T. N., *Malaysian Parliament Hansard, Parliament Session 13<sup>th</sup>, Fifth Term, Second Meeting*, p. 46-47, (July 24<sup>th</sup>, 2017).

also asked the then Ministry of Women, Family and Community Development's efforts in ending child marriages and protecting children against domestic violence. During the 2017 debate on the Sexual Offences Against Children Act 2017 (Act 792), an MP proposed adding a new clause:<sup>62</sup>

*“Clause 15A, which would prohibit marriages involving children irrespective of anything stated to the contrary in any other written law.”*

During that time, the federal government under the Barisan Nasional coalition rejected the proposal under the pretext that child marriage was allowed under Islamic law. In a defensive tone, the Minister of Religious Affairs from the Prime Minister's Department also reported that the Sharia court did not arbitrarily permit child marriages; instead, Sharia judges would look at several considerations before approving them.<sup>63</sup>

Parliament once again urged the federal government to use the Sexual Offences Against Children Act (Act 792) to convict people who marry children for sexual grooming offences after the Act was enacted and enforced in 2017. Ms Azalina Othman Said, former Minister of Women, proposed that adult men marrying girls be prosecuted for sexual grooming offences under Act 792. The federal government was urged to prosecute a 41-year-old man in Kelantan who married an 11-year-old girl, which became a viral news story at that time. According to the Minister of Women, the federal government intended to use the Act as a deterrent, but a discussion with the Attorney General's Chambers brought up the issue of evidence law, and the Ministry could not disclose further details in Parliament since the case was still under investigation. In response, Azalina Othman criticised the federal government for not resolving this case, as it is a case about sexual grooming against children, and they should act quickly on this issue. As it involved issues of Islamic family law, the Minister of Women argued that the case should be referred to the Attorney General.<sup>64</sup> Again, Islamic law became a justification for inaction made by the federal government.

As part of its efforts to curb child marriage, the Ministry of Women, Family and Community Development introduced a 'National Strategic Plan in Handling the Causes of Child Marriage' for 2020. The plan contains various programmes and actions implemented at the grassroots level to identify six factors of child marriage. These government actions are wide-ranging, including legislation, parenting empowerment, social support, and sexual health education.<sup>65</sup> The Minister shared

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<sup>62</sup> Ching, T. N., *Malaysian Parliament Hansard, Parliament Session 13<sup>th</sup>, Fifth Term, First Meeting*, p. 59, (April 04<sup>th</sup>, 2017).

<sup>63</sup> Yahaya, S., *Malaysian Parliament Hansard, Parliament Session 13<sup>th</sup>, Fifth Term, First Meeting*, p. 61-62, (April 04<sup>th</sup>, 2017).

<sup>64</sup> Wan Ismail, W. A., *Malaysian Parliament Hansard, Parliament Session 14<sup>th</sup>, First Term, First Meeting*, p. 57, (July 31<sup>st</sup>, 2018).

<sup>65</sup> Mohd Harun, R., Yeoh, H., *Malaysian Parliament Hansard, Parliament Session 14<sup>th</sup>, Second Term, Third Meeting*, p. 53, (August 04<sup>th</sup>, 2020).

some initiatives taken by several states to enforce assessments on children's well-being and marriage readiness conducted by the Department of Social Welfare. The Ministry also prioritised poverty eradication, parenting skills empowerment to high-risk families, sexual and reproductive health education, and promoting the idea that marriage can only be performed by those who are physically and mentally mature.<sup>66</sup> However, in February 2021, there was a change in government as the Pakatan Harapan coalition collapsed. Parliament was once again asked if the National Strategic Plan of the former Pakatan Harapan government would continue.<sup>67</sup> It has been stated by the Deputy Minister of the Ministry of Women, Family and Community Development from the Islamist party that the government will remain committed to addressing underage marriage through the implementation of the National Strategic Plan 2020-2025.

To reduce child marriage rates, the National Strategic Plan aims to tighten the standard operating procedures (SOPs) for the Sharia courts (for Muslim applicants) and the National Registration Department (JPN) (for non-Muslims). In the case of Muslim applicants, Parliament was informed that the Department of Sharia Judiciary Malaysia (JKSM) had introduced a new uniform procedure for handling child marriage applications in 2019. As part of this new procedure, the court needs to know about the child applicant, his or her spouse, and the applicant's family background, educational level, a report from the welfare department, health screening, consent to the marriage, and clearance from the police that there are no criminal offences involved.<sup>68</sup> The implementation and effectiveness of these SOPs were questioned in Parliament, particularly regarding physical and psychological health examinations. In response to the Minister's question, she said SOPs were designed to tighten the application process and to make it difficult for a court to approve them.<sup>69</sup> For non-Muslim applications, the Minister said that the Ministry, in collaboration with the Ministry of Home Affairs, monitors underage marriages through SOPs, which came into force on August 22<sup>nd</sup>, 2019.<sup>70</sup> Moreover, the MPs suggested that efforts to enhance advocacy should be made, mainly focusing on the risks of marriage and the harms that a child will experience when they are married at an early age. Parliament has encouraged these efforts to use specific deadlines to intensify consultation sessions between the government and indigenous communities bound by certain customs and to engage in advocacy efforts.<sup>71</sup>

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<sup>66</sup> Wan Ismail, W. A., *Malaysian Parliament Hansard, Parliament Session 14<sup>th</sup>, First Term, Second Meeting*, p. 10-12, (November 15<sup>th</sup>, 2018).

<sup>67</sup> Yeoh, H., *Malaysian Parliament Hansard, Parliament Session 14<sup>th</sup>, Third Term, Second Meeting*, pg. 72, (July 27<sup>th</sup>, 2020).

<sup>68</sup> *Ibid.*

<sup>69</sup> Wan Ismail, W. A., *Malaysian Parliament Hansard, Parliament Session 14<sup>th</sup>, First Term, First Meeting*, p. 8, (August 16<sup>th</sup>, 2018).

<sup>70</sup> Yeoh, H., *Malaysian Parliament Hansard, Parliament Session 14<sup>th</sup>, Second Term, Third Meeting*, p. 118, (November 26<sup>th</sup>, 2019).

<sup>71</sup> Sauni, L. A., *Malaysian Parliament Hansard, Parliament Session 14<sup>th</sup>, Second Term, Third Meeting*, p. 62, (December 05<sup>th</sup>, 2019).

The debates in Parliament also saw opposition from various quarters who condoned this practice and did not see child marriage as a problem. During the parliamentary debate, Islamists attacked the federal government's efforts to end child marriages. To prove their premise, the MPs used several arguments, such as federalism, legal jurisdiction, and the strict judicial process, and disputed the accuracy and availability of data. According to the MP, child marriage is a matter of Islamic law, which is governed by state law, and the federal government has no power to push this legal reform. Taking a defensive stance, the Islamist MP emphasised that approving a marriage was not easy as long as the applicant met Sharia court requirements.<sup>72</sup> This meant that all approved cases must be aligned with Islamic law.

Additionally, the Islamists tended to play the racial card after seeing the mounting pressure as an attack on Muslims and Islamic authorities. Islamists have used this debate to call for the release of data about child marriage among non-Muslims due to the pressure placed on child marriage in the Muslim community. According to them, the government and international agencies deliberately ignored child marriage among non-Muslim children and emphasised the issue more to the Muslim community. There was a question from a leader of the Islamic party in Malaysia concerning the federal government's initiative to prevent child marriage in non-Muslim communities.<sup>73</sup> Islamist MPs also drew attention away from a proposal to implement a moratorium on marriages under the age of 18 for Sharia, civil, and customary courts<sup>74</sup> by trivialising a child marriage case in Kelantan that went viral on the internet. The diversion managed to avert MPs from discussing the moratorium proposal as they focused more on the viral case.<sup>75</sup>

### **Tightening The Marriage Procedures Through New SOPs**

As part of the governmental initiative to curb child marriage, the Department of Sharia Judiciary Malaysia adopted new standard operating procedures (SOPs) for marriage applications for people under the age of 18, effective on September 28<sup>th</sup>, 2018.<sup>76</sup> This procedure was drafted taking into account all aspects, including the background of the child and spouse, grounds of application, family background, consideration of benefits to children (covering financial and physical ability, educational status, personal characteristics and health), assessment of the level of

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<sup>72</sup> Aman Razali, M. K., *Malaysian Parliament Hansard, Parliament Session 14<sup>th</sup>, Second Term, First Meeting*, p. 42-43, (March 25<sup>th</sup>, 2019).

<sup>73</sup> Mohd Yusoff, S. Z., *Malaysian Parliament Hansard, Parliament Session 14<sup>th</sup>, Second Term, Third Meeting*, p. 82, (November 26<sup>th</sup>, 2019).

<sup>74</sup> Patto, K. 31 Julai 2018. *Malaysian Parliament Hansard, Parliament Session 14<sup>th</sup>, First Term, First Meeting*, p. 54-55, (July 31<sup>st</sup>, 2018).

<sup>75</sup> Wan Ismail, W. A., *Malaysian Parliament Hansard, Parliament Session 14<sup>th</sup>, First Term, First Meeting*, p. 54-55, (July 31<sup>st</sup>, 2018).

<sup>76</sup> Arfa Yunus. 2021. *Underage marriage among Muslims sees slight drop after new SOPs*. (New Straits Times, 2021) <https://www.nst.com.my/news/nation/2021/12/754831/underage-marriage-among-muslims-sees-slight-drop-after-new-sops-nsttv>

understanding of marriage, compatibility between spouses, a sexual and reproductive health report from a medical doctor, a social report from the Department of Social Welfare, and a criminal record report from the Royal Malaysia Police, if applicable. The assessment of all these aspects could assist Sharia judges in making a proper decision regarding an underage marriage application.

As the most developed state in Malaysia, Selangor has adopted the procedure into a statute,<sup>77</sup> but this effort has yet to be incorporated into other states' enactments. Due to the Sultan of Selangor's seriousness on this issue, a royal decree was issued to the state government, ordering them to implement the 18-year-old age limit and to publish the new application procedure in Section 8A(3), Islamic Family Law (State of Selangor) (Amendment) 2018. Additionally, the law requires the child and the spouse to appear in court for the Sharia judge to investigate the spouse's readiness before marriage.

Nonetheless, child rights groups and women's rights activists criticised this procedure as an insufficient government response to the problem of child marriage and voiced that judicial permission should have been abolished.<sup>78</sup> These groups see child marriage as a crime and that it should be punished harshly. Although the marriage application process has been tightened, it can still encourage this practice.<sup>79</sup> Despite this, the implementation of this SOP was seen as positive by the Muslim groups when the Minister of Religious Affairs from the Prime Minister's Department stated at a press conference on December 16<sup>th</sup>, 2021, that the decline in child marriage cases has been encouraging for three years, from September 1<sup>st</sup>, 2018 to October 31<sup>st</sup>, 2021. According to the Minister, the decrease in the number of such cases due to the implementation of these SOPs thus made it unnecessary to amend the age limit for marriage for females from 16 to 18.<sup>80</sup>

The data collection for this qualitative study involved two kinds of interviews, including in-depth semi-structured interviews with officials of several Islamic institutions that manage child marriages in Malaysia and group interviews with child rights experts and stakeholders.

The group interview is a method for collecting data through the simultaneous discussion of several parties with shared interests, and it focuses on the agreed objective of the discussion. As formulated by Payne and Payne,<sup>81</sup> the study included

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<sup>77</sup> Section 8A, Islamic Family Law (State of Selangor) (Amendment) Enactment 2018.

<sup>78</sup> Yuan, B. K. J., *Getting down to brass track: The ban on child marriage in Malaysia*. (UM Law Review, 2018) [https://www.umlawreview.com/lex-in-breve/getting-down-to-brass-tracks-the-ban-on-child-marriage-in-malaysia#\\_ftn2](https://www.umlawreview.com/lex-in-breve/getting-down-to-brass-tracks-the-ban-on-child-marriage-in-malaysia#_ftn2)

<sup>79</sup> Adilah, A., *Child marriage used to cover up rape*. (Malay Mail, 2016) <https://www.malaymail.com/news/malaysia/2016/04/23/child-marriage-used-to-cover-up-rape/1105455>

<sup>80</sup> Arfa Yunus. 2021. *Underage marriage among Muslims sees slight drop after new SOPs*. (New Straits Times, 2021) <https://www.nst.com.my/news/nation/2021/12/754831/underage-marriage-among-muslims-sees-slight-drop-after-new-sops-nsttv>

<sup>81</sup> Payne, G. & Payne, J., *Group Discussion/Focus Groups in Key Concepts in Social Research* (London: SAGE Publications Ltd, 2011).

eight to ten participants, and their perspectives were crucial because of their influence or position within society. On the other hand, O'Reilly<sup>82</sup> suggests that this approach takes the form of organised discussion among the participants, allowing them to present diverse opinions and think with opinions they have never considered before. This group interview was comprised of 21 people, divided into two groups based on their organisational backgrounds. In the first session, ten individuals participated in a discussion between medical experts, academic scholars, and child rights experts in Malaysia. Meanwhile, the second session gathered 11 individuals with backgrounds as stakeholders and government bodies related to children's rights such as the Ministry of Women, Family and Community Development (KPWKM), Attorney General's Chambers (AGC), Ministry of Health Malaysia (KKM), State Mufti Department, State Islamic Religious Council (MAIN), State Islamic Religious Department (JAIN), Malaysian Islamic Development Department (JAKIM), Department of Sharia Judiciary Malaysia (JKSM) and Malaysian Human Rights Commission (SUHAKAM).

Through these group interviews, the participants successfully gathered perspectives from a variety of government sectors, Islamic authorities, and experts on child marriage, including what drives child marriage, the impact of marriage on children, and how society views child marriage practices in Malaysia.

According to Chrzanowska,<sup>83</sup> the interview method involves a question-and-answer technique that allows the researcher and the study participants to adapt their abilities and understanding of an issue. A set of in-depth semi-structured interviews was conducted with 26 participants from Islamic institutions who are involved in child marriage management in Malaysia. Among them were the State Mufti Department, the Malaysian Sharia Judiciary Department (JKSM) and the State Islamic Religious Department (JAIN) in the states with the highest number of child marriage cases in Malaysia, namely Kelantan, Terengganu, Sarawak, Sabah, Selangor, Johor, and Pahang, as well as other states such as Penang and the Federal Territory. The interviews were conducted online via a video conferencing platform limited to one-hour sessions.

The participants also gave their consent to participate in this study, which included allowing the researchers to record their conversations to facilitate data analysis. A set of questions was provided to them three weeks before the interview to prepare them for the day and guarantee a smooth and informative experience. After the interviews were transcribed verbatim, their analysis was analysed and categorised according to specific themes to assess their level of perspective and administrative background throughout the child marriage application process. To

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<sup>82</sup> O'Reilly, K., *Focus Groups and Group Discussion in Key Concepts in Ethnography* (London: SAGE Publications Ltd, 2012).

<sup>83</sup> Chrzanowska, J., *Planning an Interview or Group Discussion* (London: SAGE Publications Ltd, 2011).

protect the confidentiality of all research participants, their identities have been identified using pseudonyms for this publication.

### **Justification for Increasing Marriageable Age**

Although preventing child marriage requires advocacy and extensive community engagement, the state government has the authority to introduce legal reforms. Nevertheless, the proposed legal reform was met with mixed reactions among the study participants, including government stakeholders, religious officials, civil society organisations (CSOs), and child rights activists. The findings of this study suggest that their perspectives can be divided into three main themes, namely that child marriage violates children's rights, that it has adverse effects on children, and that it should be curbed to prioritise children's best interests.

#### **1. Violation of Child's Rights**

Among the main reasons why some stakeholders in Malaysia support legal reform by raising the marriageable age is the adverse impact child marriage has on children's rights. Due to the risks involved, child marriage can pose a threat to the human rights of vulnerable children.<sup>84</sup> The Convention on the Rights of the Child (CRC) states that this practice violates the rights of children,<sup>85</sup> including their right to protection from exploitation and abuse, their right to express their views freely, and their right to be protected from harmful traditional practices that impede their development.<sup>86</sup> There is a risk that child marriage can affect a child's self-potential, thus affecting their future development. Child marriage also affects children's rights as they are deprived of their childhood phase. Some stakeholders argued:

*"In our view, child marriage will inevitably impact the child's ability to reach their full potential, affecting them physically, mentally, and emotionally."* (Dr. Melati, Government Agency Officer)."

*"When a young girl gets married, she takes on the responsibilities of being a wife and, eventually, a parent. This situation puts the rights and well-being of the children themselves at risk."* (Ms. Faridah, Ministry Officer)"

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<sup>84</sup> Barkah, Q., Huzaimah, A., Rochmiyatun, S., Andriyani & Ramdani, Z., "Abandonment of Women's Rights in Child Marriage; An Islamic Law Perspective," *al-Ihkam: Jurnal Hukum dan Pranata Sosial* 17, No. 2 (2022), p. 383-411.

<sup>85</sup> Suwardiyati, R., Rohmah, S., Galib, A. M. & Abdul Halim. Sharia and Human Rights, "Compatibility in Determining the Age of Marriage in Indonesia", *Nurani: Jurnal Kajian Syari'ah dan Masyarakat* 21, No. 2 (2021), p. 263-274.

<sup>86</sup> Scolaro, E., Blagojevic, A., Filion, B., Chandra-Mouli, V., Say, L., Svanemyr, J. & Temmerman, M. 2015. Child Marriage Legislation in the Asia-Pacific Region. *The Review of Faith & International Affairs*. 13 (3) 23-31 (2015); Ismail, M. H., Daud, R. & Nazaraly, M. Z. *Kahwin muda cabul hak asasi kanak-kanak*. (Sinar Harian, 2018) <https://www.sinarharian.com.my/article/2567/BERITA/Nasional/Kahwin-muda-cabul-hak-asasi-kanak-kanak>

## 2. Prioritising the Best Interest of the Child

It is necessary to raise the legal age of marriage to protect the interests of children. The priority should be given to more important matters, such as legislation, because marriage is detrimental to children. Children shouldn't be married solely to maintain societal moral values without considering their interests. A child who is pregnant or sexually active before marriage should not be married to preserve family dignity. Child rights advocates argued:

*“When teens become pregnant or are sexually active, it often indicates underlying social-emotional problems within the family. It’s not a simple case of them being in love and everything being perfect. These other issues contribute to their sexual activity or pregnancy. Therefore, I believe that forcing them to get married because of their sexual activity or pregnancy is not appropriate.”* (Dr. Hayati, Paediatrician)

Considering that the law and societal values prohibit premarital sex in Malaysia, many parents choose to marry off their sexually active children. Stakeholders disagree with these parents since the best interests of the child must be considered, and children should not be forced into marriage just because they are having illicit relations. Marriage should not be used to cover up family embarrassment following a son's or daughter's involvement in extramarital sexual relations. A female Islamic officer expressed her view:

*“I never believed it was right to force a pregnant teenager into marriage. Instead, we should focus on what’s in her best interest rather than just the pregnancy. There are other options available for these teens.”* (Ms Sa'adah, Religious Officer)

*“When we talk to the children themselves, most of them regret getting married, including girls and boys. In some cases, the boy was also forced into marriage, having only met the girl maybe once and not knowing if the child she was carrying was even his. We're often too hasty in allowing these marriages, trying to cover up the embarrassment, but in reality, we don't address the root of the problem.”* (Dr. Suhana, Children's Rights Expert)

In some cases, child marriages are also a consequence of criminal acts committed by a male partner, such as statutory rape. Marriage is often used by perpetrators as a way to avoid criminal prosecution in court. In exchange for not reporting the perpetrators' actions to the police, they offer to marry the victim. A female Sharia officer stated:

*“Parents whose daughter was raped contacted me. The girl is brilliant. The girl got straight A's in Form 3. My response was, why not go ahead and report it to the police? The girl's father said the male perpetrator's family offered to pay for the girl's education. The girl was raped, and marrying her would leave her dependent on him.”* (Ms. Mariam, Sharia Court Officer)

In the opinion of these stakeholders, children's interests should take precedence over the social tradition that seeks to cover up the shame and avoid societal stigmas with marriage. If these two things do not align, such as in the instance of child marriage, then the interests of the child must take precedence. Hence, increasing the legal marriageable age will prevent all parents from marrying off their underage children.<sup>87</sup>

### 3. Negative Implication

Age limits for marriage must be increased due to the adverse effects it will have on married children. There is consistent evidence that child marriage harms children, especially girls.<sup>88</sup> In previous studies, child marriage has been associated with adverse effects on children's sexual and reproductive health, including complications during pregnancy and childbirth, sexually transmitted infections, repeated pregnancies, trauma associated with fertility stress, complications following premature birth, and maternal and infant mortality.<sup>89</sup> Experts from Malaysia

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<sup>87</sup> Abdol Malek, M. A. G., Samuri, M. A. A. & Alias, M. N. "Child Marriage in Malaysia: Reforming Law through the Siyasa al-Shar'iyya Framework", *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7, No. 1 (2023), p. 58-83.

<sup>88</sup> Mohd Awal, N. A. & Samuri, M. A. A., *Final Report: A Study of Child Marriage in Malaysia*, (Kuala Lumpur: UNICEF Malaysia, 2017); Child Rights Coalition Malaysia, *Status Report on Child Rights in Malaysia 2019* (Selangor: Child Rights Coalition Malaysia, 2020); Hashim, H. et al., Perkahwinan Bawah Umur Menurut Perspektif Undang-undang Jenayah Islam dan Undang-undang Sivil di Malaysia, *5<sup>th</sup> Muzakarah Fiqh & International Fiqh Conference 2019*, p. 100-114 (2019); Kohno, A. et al., In-depth Examination of Issues Surrounding the Reasons for Child Marriage in Kelantan, Malaysia: A Qualitative Study, *BMJ Open* 2019 (2019); Kohno, A. et al., Why Girls Get Married Early in Sarawak, Malaysia: An Exploratory Qualitative Study, *BMC Women's Health* (2020); Mohd, A. & Kadir, N. A., Minimum Age of Marriage under Islamic Law and the Islamic Family Law (Federal Territories) Act 1984: A Preliminary Study on the Ideal Age of Marriage in Malaysia, *Al-Shajarah: Journal of Islamic Thought and Civilization of the International Islamic University Malaysia*, p. 239-266 (2019); Nik Wajis, N. R. et al., Perkahwinan Kanak-kanak di Malaysia: Had Umur Minimum dan Implikasinya, *Malaysian Journal of Syariah and Law*, p. 15-30 (2020); Saidon, R. et al., Developing A New Model of Underage Marriage Governance for Muslim in Malaysia, *Middle-East Journal of Scientific Research*, p. 638-646 (2015); Noor., Z., Perkahwinan Kanak-kanak dan Tahap Minima Umur Perkahwinan dalam Undang-undang Keluarga Islam, *Jurnal Syariah*, p. 165-190 (2013); BERNAMA, *Perkahwinan kanak-kanak pelanggaran hak asasi manusia*, (BERNAMA, 2018) <https://www.bernama.com/bm/news.php?id=1644033>; BERNAMA, *Perkahwinan bawah umur dalam kalangan kanak-kanak lelaki berleluasa di seluruh dunia – PBB*, (BERNAMA, 2019) <https://www.astroawani.com/berita-dunia/perkahwinan-bawah-umur-dalam-kalangan-kanakkanak-lelaki-berleluasa-di-seluruh-dunia-pbb-209593>; Ismail, M. H., Daud, R. & Nazaraly, M. Z., *Kahwin muda cabul hak asasi kanak-kanak*, (Sinar Harian, 2018) <https://www.sinarharian.com.my/article/2567/BERITA/Nasional/Kahwin-muda-cabul-hak-asasi-kanak-kanak>

<sup>89</sup> Ahmed, T., Child Marriage: A Discussion Paper, *Bangladesh Journal of Bioethics*, 6 (2) (2015) p. 8-14; Allen, A. A. & Adekola, P. O., Health Implication of Child Marriage in North-East Nigeria, *Analele Universitatii din Oradea, Seria Geografi*, (2017) p. 54-61; Anozie, M. C., Ele, M. & Anika, E. I. The Legal, Medical and Social Implications of Child Marriage in Nigeria, *International Journal of Law, Policy and The Family*, 32 (2018) p. 119-139; Avalos, L., Farrell, N., Stellato, R. &

expressed similar concerns in these interviews. A female healthcare professional was of the view:

*“Child marriage negatively impacts a child’s physical, mental, and emotional development. Girls under the age of 18 can become pregnant, and we know that both they and their children face higher risks. The baby may be born prematurely, with low birth weight, and the mother, being still young herself, may face health risks due to her physical immaturity.”* (Dr. Hayati, Paediatrician)

The other significant impact is on the educational rights of married children who have left school or have been forced to do so due to pregnancy. In addition, child marriages are detrimental to the development of children, as it limits their access to education.<sup>90</sup>

*“Education is severely disrupted because she can no longer attend school and misses out on the experiences and opportunities that her friends have.”* (Ms. Mariam, Sharia Court Officer 1)

Young girls are still too immature to assume responsibilities as wives and mothers. Children are seen as unprepared for married life, unable to shoulder responsibilities, and lacking parenting skills and a general understanding of the concept of marriage. Married children are also at risk of domestic violence because girls cannot defend themselves and have no power to make decisions in the family. According to a participant:

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Werner, M., Ending Female Genital Mutilation & Child Marriage in Tanzania, *Fordham International Law Journal*, 38 (2015), p. 639-699; Bahgam, S. & Mukhatari, W., Study on Child Marriage in Afghanistan, *Medica Mondiale* (2004); 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 (2010), p. 931-935; Nasrullah, M., *Child Marriage and its Impact on Maternal and Child Health in Pakistan*, Ph.D Dissertation at the School of Public Health, University of Bielefeld, Germany (2015); Naveed, S. & Butt, K. M., Causes and Consequences of Child Marriages in South Asia: Pakistan’s Perspective. *A Research Journal of South Asian Studies*, 30 (2) (2015), p. 161-175; Nour, N. M., Health Consequences of Child Marriage in Africa, *Perspective: Emerging Infectious Diseases*, 12 (11) (2006) p. 1644-1649; Parsons, J., Edmeades, J., Kes, A., Petroni, S., Sexton, M. & Wodon, Q., Economic Impacts of Child Marriage: A Review of the Literature, *The Review of Faith & International Affairs*, 13 (3) (2015) p. 12-22; Petroni, S., Steinhaus, M., Fenn, N. S., Stoebenau, K. & Gregowski, A., New Findings on Child Marriage in Sub-Saharan Africa, *Annals of Global Health*, (2017), p. 1-10.

<sup>90</sup> Anozie, M. C., Ele, M. & Anika, E. I. The Legal, Medical and Social Implications of Child Marriage in Nigeria, *International Journal of Law, Policy and The Family*, 32 (2018) p.119-139; Gunawan, S. O. & Bahri, S. Impacts of Early Childhood Marriage in Indonesia Viewed from Child Protection Laws Perspectives, *El-Usrah: Jurnal Hukum Keluarga*, 6 (2) (2023) p. 362-380; Kohnno, A. et al., In-depth Examination of Issues Surrounding the Reasons for Child Marriage in Kelantan, Malaysia: A Qualitative Study, *BMJ Open* 2019 (2019).

*“If a minor girl is married before reaching maturity, she likely lacks the skills to manage a household and has no parenting experience. So, how can she effectively manage a family?”* (Ms Sa’adah, Religious Officer)

*“If domestic violence occurs, children may not know how to respond. A young girl, still a child herself, may not understand her rights as a woman. If she is beaten, she likely won’t be able to defend herself.”* (Ms Mariam, Sharia Court Officer)

The situation is even more concerning as children who marry are also at risk of being divorced by their spouses. Following a divorce, they are left without support system to continue their lives which may lead to a state of instability. This scenario highlights the failure to protect the best interest of a child post-divorce, and more regrettably, it exacerbates their difficulty in accessing a better social system.<sup>91</sup>

### **Religious Authorities’ Views on Legal Reform**

Despite the legal reforms aimed at curbing child marriage, some Islamic officials have not welcomed them. This is an essential question since these religious authorities are directly involved in all aspects of Islamic law, including family law. In their respective states, these religious groups have the authority to enact or amend Islamic law statutes, and has an authoritative function to foster awareness in society regarding this issue.<sup>92</sup> In the study, we found three groups of religious officials with different perspectives: those who agreed, those who agreed conditionally, and those who did not agree with the amendment of the Islamic Family Law Act/Enactment to end child marriage.

#### **1. Agreed to the Proposed Legal Reform**

The first group is the religious officials who accept and agree to the proposal to increase the marriageable age to 18. Their position is based on several essential aspects, namely, the fact that child marriage jeopardises the best interests of the child, child marriage is no longer appropriate in the contemporary context, and the government has the authority to determine national policy.<sup>93</sup> According to this religious group, child marriage violates children’s rights, and the government must protect their rights. As a progressive mufti stipulated, the government might consider raising the marriageable age limit nowadays to protect the best interest of the child:

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<sup>91</sup> Syukrawati, S., Sidqi, I., Nisa, S. M., Zufriani, Z. & Witro, D. Post-Divorce Rights of Women and Children in Pekalongan City, Central Java: Challenges in Islamic Law Analysis. *Al-Ahkam*, 34 (1) (2024), p. 121-146.

<sup>92</sup> Nur, D. U. H., Sadik, M., Nuzha, N., Abbas, A. & Ardiansyah, A. Addressing Child Marriage in West Sulawesi: The Role of Islamic Institutions in Public Legal Awareness. *De jure: Jurnal Hukum dan Syar’iah*, 17(1) (2025), p. 149-174.

<sup>93</sup> Faiz, M. F., Zainul Ali, Z. & Taufiq, M. Underage Widows and Widowers before the Law: Problem, Contestation and Legal Certainty in Marriage Dispensation. *Juris: Jurnal Ilmiah Syariah*, 22(2) (2023), p. 223-234.

*“The government sees child marriage as an issue that needs to be legally restricted to protect the best interests of the child (maslaha). In my opinion on underage marriages, it would be beneficial to align the conflicting laws and set the marriageable age at 18 years old.” (Dato’ Zakaria, Deputy Mufti 1)*

*“In Islam, the government can establish a marriageable age limit under the concept of Siyasa al-Shar’iyya. Efforts to raise this age limit fall under ijihad (juristic legal opinion). They should be decided by the government, considering the maturity levels of today’s teenagers and the impact of marriage at different ages.” (Dato’ Ibrahim, Mufti 4)*

Their views justified the government’s decision to curb child marriage through legislation to prioritise the best interests of the child and avoid harm. This shows the flexibility of the Islamic authorities in using the principles of Islamic law to justify the government’s actions so that they are in line with Islamic law, as argued by Abdol Malek et al.<sup>94</sup> Given the current global context of modernity, they believe there is no reason for a child to get married, where children deserve the right to education as a means to survive. Also, they concluded that setting this age limit is in line with the Islamic legal maxim known as *Taqyid al-Mubah*, which means the government has the authority to prohibit and limit anything permissible in Islamic law, such as marriage. To them, in a child marriage relationship, there is no mutual love and spousal complimentary as outlined in Islam, so they are unlikely to last long as a couple, thus negatively impacting the individuals involved.

## **2. Agree with Conditions**

The second group of religious authorities agreed conditionally to the proposal to increase the marriageable age limit to 18 for both genders, provided that the law still permits the Sharia court to process child marriage applications for underage applicants. To them, the law must give some flexibility for specific circumstances or exemptions to allow children to marry under the law, provided they meet the conditions and the new procedures set by the Sharia court. Sharia judges will decide based on the children’s best interest and well-being. A religious official argued that:

*“A Sharia judge’s discretion and authority should be maintained, and anyone under 18 must receive written permission to marry. Sharia judges play a crucial role in evaluating the cases of minors in different situations, considering both the benefits (maslaha) and potential harm (mafsada) they might encounter in marriage later on.” (Ms. Balqis, Religious Officer)*

They rationalised that the right of the guardian (*waliy*) to marry off a child cannot be restricted, and child marriage can also benefit the children involved. To

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<sup>94</sup> Abdol Malek, M. A. G., Samuri, M. A. A. & Alias, M. N. Child Marriage in Malaysia: Reforming Law through the Siyasa al-Shar’iyya Framework, *Samarah: Jurnal Hukum Keluarga dan Hukum Islam*, 7(1) (2023) p. 58-83.

them, mature and qualified children should be allowed to marry despite being below the newly set marriageable age limit. According to a *mufti*, the guardian of a child must not be deprived of his right to decide whether his child should marry and must scrutinise the criteria for finding a compatible spouse.

*“I support the amendment to the Islamic Family Law 2003, as long as it doesn’t restrict the guardian (waliy) and Sharia Court judges from granting permission to marriages that meet the permitted criteria.” (Dato’ Ibrahim, Mufti 4).*

### 3. Against Proposed Legal Reform

A third group consists of religious officials who oppose the government’s plan to increase the marriageable age limit to 18 years old. According to them, child marriage is an accepted practice in Islam, and there is no viable religious justification against it.<sup>95</sup> Age is also not a condition for a legally valid marriage as long as the couple is prepared to handle the marriage responsibilities. According to a religious official, the current guidelines for Sharia judges have already tightened marriage applications in Sharia courts, and the proposed legal amendment is therefore irrelevant:

*“I think the provision doesn’t need any amendment because the Sharia court has already tightened the SOPs for underage marriage applications.” (Mr Firdaus, Religious Officer)*

This amendment would restrict a person’s right to marry in the eyes of religious officials. According to them, children also have the right to sexual life, but must be within a marriage:

*“Raising the age limit to 18 won’t significantly affect marriage applications. Children wanting to marry will face restrictions and have to wait another two years if we implement the change. Moreover, raising the age limit to 18 will involve court proceedings, leading to more applications and potentially disrupting the court process to some extent.” (Dato’ Shahid, Deputy Mufti 2)*

*“Maybe she already has a close friend from school, and it’s assumed her future husband is responsible. He might not have advanced in his studies, so his goal is to marry, and the wife will take care of him. However, this law prohibits them from doing so.” (J. Abdul Razak, Sharia Judge 5)*

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<sup>95</sup> Aprilianto, D., Na’imah, F. U., Fauzi, A., & Maknuun, L. The Controversy of Child Marriage Culture in The Perspective of Maqāṣid al-Uṣrah: A Case Study of The Authority of Lebe’ in Brebes. *Al-Manahij: Jurnal Kajian Hukum Islam*, 18(2) (2024) p. 199-218; Samuri, M. A. A., Abdol Malek, M. A. G., Alias, M. N. & Hopkins, P. Hadith of Aisha’s Marriage to Prophet Muhammad: Islamic Discourse on Child Marriage. *International Journal of Islamic Thought*, 21 (2022) p. 93-105.

Based on their morality standard, religious officials maintained that it is better to allow marriage,<sup>96</sup> than to enable young children and teenagers to engage in premarital sexual intercourse, something that religion forbids.<sup>97</sup> In their view, restraining children from marrying is against Islamic law and opens the door to fornication and illicit relationships.<sup>98</sup> They figured that the proposed law could not solve social problems such as premarital sex and fornication among children, which may later result in the prevalence of illegitimate children being born. One of them argued:

*“If an adolescent girl has a child out of wedlock, that child will be stigmatised as unwanted and can’t be recognised as belonging to the biological father. In the community’s eyes, the biological father can’t act as the child’s guardian.”* (Mr. Fathullah, Religious Officer)

Religious officials also expressed concern that raising the marriageable age limit would result in some young couples getting married without court permission or doing it outside Malaysia’s jurisdiction, which could cause the marriage difficulty in getting legally registered. Due to legal restrictions, some families might attempt to solemnise their marriages illegally, including by obtaining the services of an unlicensed marriage officer. Some of the participants in this study contested:

*“If we raise the age limit to 18, we might see more and more people crossing the border to get married. In many cases, they won’t seek permission from their guardians before tying the knot.”* (Dato’ Kamal, Mufti 6)

*“It’s even more concerning when a couple elopes to another country and ends up in a syndicate marriage or marries without the approval of the religious authorities. As a result, they can’t register their marriage in this country.”* (Ms Balqis, Religious Officer)

*“Still, issues can crop up in the community, like elopements, especially in states bordering other countries. It’s something we can’t fully control because people who violate Islamic law might use unlicensed marriage officers. If these things can happen now, imagine what it could be like if the age limit is raised.”* (J. Azri, Sharia Judge 3)

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<sup>96</sup> Arbanur Rasyid, Jarudin Jarudin, Idris Saleh, Rayendriani Fahmei Lubis, “Dynamics of Childless Marriage Through the Lens of Maqasid Al-Shari’a, *Jurnal Ilmiah Peuradeun: The Indonesian Journal of the Social Sciences* 12, No. 2 (2024), p. 763-786.

<sup>97</sup> Naimah, F. U., Rokhman, M., Hali, A. U., Maarif, M. A. & Sirojuddin, A. Internalization of Local Traditions in Child Marriage from the Perspective of Maqasid Al-Usrah. *El-Mashlahah*, 14(2) (2024), p. 237-258.

<sup>98</sup> Adawiyah, R., Mukhlisa, D., Yuliatin & Ali Putra, D. The Reconstruction of Aisyah’s Marriage Age as a Resolution for Child Marriage Practices Phenomenon. *Al-’Adalah*, 19(1) (2022), p. 69-98; Amarudin, S. K., *Harussani tak setuju usia 18 tahun baru boleh kahwin* (Berita Harian, 2018) <https://www.bharian.com.my/berita/nasional/2018/09/476458/harussani-tak-setuju-usia-18-tahun-baru-boleh-kahwin>

In addition, a *mufti* in East Malaysia argued that the marriageable age should be lowered to 14 years for males and 16 years for females. For him, children can get married because some children are already exposed to sexually charged content. According to him, there is no notion of ‘child marriage’ as those children are considered ‘mature’.

## Conclusion

Child marriage in Malaysia is primarily prevalent in the Muslim community. The Islamic law reform is therefore seen as a significant key and strategic approach to ending child marriage. Legal reforms will increase the marriageable age limit to 18 years old to prevent children from being married at such a young age. Malaysia’s discourse saw several legal reform proposals from various political parties, including the federal government, such as prohibiting marriages under 18 or allowing exemptions through judicial permission. However, the proposal received both support and opposition from various parties, who viewed child marriage from different perspectives. Government and civil society organisations (CSOs) initiatives to prevent child marriage have been supported by groups that denounce child marriage. However, groups such as those who believe that child marriage is not a problem at all within the meaning of Islamic law see no need to increase age limits for child marriage, nor even to ban it outright. The latter group, namely some Islamists and Islamic authorities, use various arguments from the perspective of Islamic law to convince the Malaysian Muslim society to reject the proposed legal reform. These arguments were evident in the parliamentary debate and this study. Following the pressure exerted by Muslim groups and Islamic authorities, the state and federal governments have no longer considered legal reform a priority. Many children’s rights activists and stakeholders have been frustrated by this setback, which also leaves Malaysia behind in the global initiative to end child marriage. Furthermore, Malaysia’s international commitment to the Convention on the Rights of the Child (CRC) remains unfulfilled. The findings of this study show how important it is to engage the Islamic authorities and Muslim groups so that they can better understand the issue of child marriage in the modern context. It is vital to focus on the harmful impact of child marriage in the debate as this can be viewed as a significant reason for supporting the global initiative. This harm is termed *mafsada* in Islamic legal theory and should be avoided for the public’s benefit. By understanding *mafsada*, the religious authorities’ perspective on the permissibility of child marriage will change. This study should show that Muslim stakeholders and religious officials who denounce child marriage mainly base their argument on the well-documented negative implications of child marriage, which causes them to understand the legal ruling differently. To further engage religious authorities, local data and in-depth studies are needed to foster better understanding among them so that they can assess the adverse effects that married children experience. It is vital to focus on the harmful impact of child marriage in the debate as this can be viewed as a significant reason for supporting the global initiative. This harm is termed *mafsada*

in Islamic legal theory and should be avoided for the public's benefit. By understanding *mafsada*, the religious authorities' perspective on the permissibility of child marriage will change. This study shows that Muslim stakeholders and religious officials who denounce child marriage mainly base their argument on the well-documented negative implications of child marriage, which causes them to understand the legal ruling in a different way. To further engage religious authorities, local data and in-depth studies are needed to foster better understanding among them so that they can assess the adverse effects that married children experience. Additionally, the study indicates that Muslim communities and public opinion on this issue are diverse and not exclusively shaped by religious authorities. The study demonstrates that by gaining a better understanding of child marriage, Muslim communities can see how imperative it is to stop this harmful practice and support legal reform. To do so, they must also construct their argument according to the Islamic legal framework. This legal reform initiative needs to be revisited by the federal and state governments to hold a public consultation with religious authorities and Muslim groups to discuss the negative implications of child marriage. Likewise, the religious authorities' argument that child marriage is morally acceptable must be addressed. Rather than protecting the morality of society, they must put children's best interests first. In most cases, the pregnant or sexually active children were clearly in need of other alternatives to marriage, such as health care and financial support to ensure that they completed their education. Quality education and legal reform are among the best ways to end child marriage in Malaysia.

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