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THE PROTECTION OF CHILDREN'S WELFARE IN UNDERAGE MARRIAGE UNDER THE SYARIAH LAW IN MALAYSIA: AN APPRAISAL ANALYSIS

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ABSTRACT

This study examines the protection of children's rights in Malaysia by evaluating underage marriage within the framework of Islamic principles and Syariah Law. Between 2013 and 2018, the Malaysian Syariah Judicial Department recorded 5,823 applications for underage marriage, with 1,856 cases approved by the Syariah Courts. These statistics highlight weaknesses in the judicial system and legal provisions concerning underage marriage and the welfare of affected children. This research adopts a qualitative approach, utilizing library research and content analysis methods to analyze legal provisions, explore Islamic perspectives, and emphasize the need for comprehensive strategies aligned with Syariah principles. The findings stress the importance of strengthening child welfare protections through targeted education, healthcare initiatives, strict enforcement of existing laws, and awareness campaigns to combat child marriage in Malaysia.

Keywords: *Children welfare, underage marriage, Syariah law, Malaysia*

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Introduction

According to the fourth edition of the *Kamus Dewan* (2017), marriage is defined as a legal partnership between a man and a woman to form a husband-and-wife relationship. In a hadith narrated by Abdullah bin Mas'ud r.a, the Prophet Muhammad (PBUH) said:

Translation: “O youth! Whoever among you is able (financially) to get married, then get married. For marriage lowers the gaze and preserves chastity. But whoever is unable to do so should fast, as fasting serves as a shield (against desire)”.

(Riwayat al-Bukhari (5065) and Muslim (3466))

This hadith emphasizes that those who are capable of marriage should do so, while those who are not should safeguard themselves through fasting. According to Imam al-Nawawi, the concept of *al-Ba'ah* (الْبَاءَةُ) in Arabic refers to an intimate relationship. However, its broader meaning includes financial capability and the ability to provide for a spouse. Those who lack financial means are encouraged to fast as a form of self-discipline (Al-Nawawi, 1392).

Marriage in Islam embodies the values of *Maqasid al-Shariah*, particularly *sakinah* (tranquility), *mawaddah* (love), and *rahmah* (compassion) (Wan Ismail et al., 2022). From a Shariah perspective, marriage is a contract that legalizes relationships, defines rights and responsibilities, and establishes mutual support between a man and a woman who are not *mahram* (forbidden to marry). Only through marriage can individuals experience *sakinah*, *mawaddah*, and *rahmah*. After marriage, couples find inner peace (*sakinah*), which aligns with Fakhr al-Dīn al-Rāzī's interpretation of the verse (تَسْكُنُوا عَلَيْهَا), referring to both internal and external tranquility. He asserts that mental peace is the primary objective of marriage, while physical peace is the foundation of a wife's life. The emotion of *mawaddah* is fulfilled through marital intimacy, while *rahmah* emerges when a couple becomes parents (Mustaphar, 2020). Hence, the ultimate goal of marriage is to establish *sakinah*, ensuring both emotional and physical harmony. If happiness is only achieved by one party, the *maqasid* of marriage is not fully realized (Rachmadhani et al., 2024; Alias et al., 2024).

This study focuses on the protection of children's welfare in underage marriages under Syariah law in Malaysia. Specifically, it examines the legal and social implications of child marriage and highlights the necessity for comprehensive research on the definition of childhood, the relationship between sexual maturity and early marriage, and the consequences of underage marriage.

According to statistics from the Department of Statistics Malaysia (DOSM), the number of child marriages in Malaysia declined between 2016 and 2020. In 2016, there were 2,288 recorded cases, followed by 2,107 in 2017, 1,856 in 2018, 459 in 2019, and 1,124 in 2020. Despite this decline, concerns persist regarding potential violations of children's rights and welfare. Additionally, the Jabatan Kehakiman Syariah Malaysia (Department of Syariah Judiciary Malaysia) reported that Syariah Courts approved 1,856 cases of underage marriage between 2013 and 2018. Under Malaysia's Islamic family law enactments, any marriage involving a minor requires approval from the Syariah Court. However, questions remain regarding the adequacy of existing legal provisions, particularly concerning child welfare.

The absence of a fixed legal age for marriage in Malaysia creates legal ambiguity that may jeopardize the physical, emotional, and psychological well-being of minors (Yasin et al., 2024). Furthermore, the lack of comprehensive safeguards—such as mandatory counseling, educational programs, and social support—leaves young individuals vulnerable to exploitation and abuse within early marriages. These concerns are particularly significant as the persistence of underage marriage under Syariah law raises critical questions about the effectiveness of existing legal frameworks and societal norms.

Another pressing issue is the impact of child marriage on minors' health and education. Early marriage exposes young girls to increased health risks during pregnancy and childbirth while also disrupting their educational opportunities. Societal and cultural norms often perpetuate this issue, prioritizing tradition over the best interests of the child. Additionally, weak enforcement and oversight of existing laws enable individuals to circumvent regulations, further exacerbating the problem.

This study aims to analyze the legal, cultural, and sociological factors contributing to underage marriage under Syariah law in Malaysia. The research seeks to explore the implications of child marriage, assess the legal framework governing underage marriage in Malaysia's Syariah courts, and evaluate its position within an Islamic perspective. Ultimately, this study intends to propose comprehensive reforms prioritizing children's welfare, ensuring their rights and well-being are protected within the legal system.

Research Question

- i What are the implications of underage marriage to children?
- ii What legal provisions are associated with underage marriage in the Syariah Law of Malaysia, and underage marriage's position in Islamic perspective?
- iii What recommendations can be proposed to address and mitigate the issue of underage marriage in Malaysia?

Research Objective

- i To identify the implications of underage marriage to children.
- ii To examine legal provisions relation to underage marriage in the Syariah Law of Malaysia and the position of underage marriage in Islamic Perspective.
- iii To propose recommendations to mitigate the issue of underage marriage in Malaysia.

Methodology

For this study, the researcher used a qualitative research method. For the theoretical part, the researcher collects the content analysis through primary and secondary data such as based on statutes, journal articles, books, and statistics. Next, the method used is library research in order to achieve the needed facts and knowledge used to obtain information about laws related to marriage and children, is it any crime involved and the effect of marriage to children. The data obtained will be analysed using the inductive method where the writer will make a comprehensive conclusion about this study in general so that it can have a positive impact on the understanding of the law about children and marriage to ensure their welfare as minors. The researcher is studying children's rights in the aspect of marriage. The data obtained will be analyzed using the inductive method where the writer will make a comprehensive conclusion about this study in general so that it can have a positive impact on the understanding of the law about children and marriage in order to ensure their welfare as minors.

Literature Review

A number of studies have been conducted in relation to this topic. The first article, written by Zanariah Noor (2013), discusses child marriage and the minimum age of marriage under Islamic family law. The issue of child marriage is closely linked to Islamic law's perspective on puberty, children's readiness for sexual relationships, and how Islamic nations, including Malaysia, have addressed the matter. This article examines these topics through the lens of Islamic law as found in canonical works of Fiqh and offers a comparative analysis of Islamic family laws across various nations. The author explores the definition of child marriage as perceived by Muslim scholars and examines how Sharia law is applied in Islamic nations regarding this issue. The article also discusses the legality of consummating a marriage with a wife who has not yet reached puberty. However, while it outlines the concept, it does not delve into the distressing repercussions that young individuals may experience due to the premature assumption of adult responsibilities.

Another relevant study is by Nurul Munirah (2019), which focuses on the protection of victims of child sexual abuse. The author primarily outlines the legal protections for children, as well as the causes and consequences of child abuse. Given that sexual crimes are often hidden, they may contribute to underage marriages, particularly when an individual approaches a minor with illicit intentions. The researcher aims to establish a connection between child abuse and underage marriage, recognizing a potential correlation where abuse may occur within such marriages, especially when the older spouse holds greater power over the child.

Othman (2018), in his article titled “*Sharia-Compliant Child Marriage*”, discusses the perception among certain parents that their daughters are burdens, which leads to early marriage. The study highlights the negative effects of child marriage and argues that causing harm contradicts Islamic principles. Although Islam does not specify a fixed minimum age for marriage, it does not grant parents unrestricted authority to marry off their children under the pretext of reducing their burden. However, the implications of underage marriage are not extensively covered in this article, necessitating further in-depth analysis by researchers, as the negative consequences outweigh any potential benefits.

Tatik Hidayat (2021) asserts that child marriage constitutes a form of violence against children, depriving them of their fundamental rights. The study classifies child marriage as a crime and aligns with the researcher’s aim to examine the legal implications of underage marriage. The researcher proposes legislative amendments to strengthen child protection measures and prevent the exploitation of minors.

Hanafi Yusuf (2016), in his article “*Controversial Marriage Age of Aisyah RA and Its Relationship with the Legality of Marriage of Minors in Islam*”, addresses historical debates regarding the marriage of Prophet Muhammad (PBUH) to Aisyah R.A. The study aims to refute accusations against the Prophet and provides a comparison between the definition of childhood during the Prophet’s era and in modern times. However, the article does not explore how historical contexts can inform contemporary policies and preventive measures against child marriage, an aspect that requires further examination.

Marina Plesons (2019) discusses challenges and lessons learned from implementing multi-sectoral policies and programs aimed at ending child marriage. The study emphasizes the importance of committed leadership, a shared understanding of the issue, and clarified roles and responsibilities in protecting children from early marriage. However, the researcher aims to align the proposed programs with the values of Malaysian society and Syariah law in Malaysia.

Mustaphar (2020) explores the Islamic principles of *sakinah* (tranquility), *mawaddah* (love), and *rahmah* (compassion) within marriage. According to the study, marriage aims to foster these three qualities in the lives of spouses and their children. However, underage marriages may not fulfill these objectives, as young couples may lack the maturity required to sustain a stable relationship. While numerous studies discuss these principles, the researcher intends to analyze their applicability in the context of underage marriage and its implications on family well-being.

The *Al-Kafi Fatwa* article by the Pejabat Mufti Wilayah Persekutuan (2019) addresses concerns regarding young men who wish to marry but lack financial stability. The article explains the Islamic perspective on financial readiness for marriage and the obligation to marry to protect oneself from sinful desires. However, it also emphasizes that both spouses must be capable of fulfilling their marital responsibilities, which becomes problematic when involving children who are still exploring the world but are burdened with significant responsibilities. The researcher will analyze the financial implications of underage marriage and its impact on the well-being of minors.

Malayandy (2021) explores international human rights regulations aimed at protecting minors from child marriage and evaluates the extent to which the practice violates these laws. The study highlights that child marriage constitutes a violation of children's rights. However, in Malaysia, the legal system permits underage marriages under certain conditions, which raises concerns about the protection of children's rights. This article requires further emphasis, as Malaysia’s relatively lenient stance on underage marriage suggests potential human rights violations.

Based on the analysis of the above studies, it can be concluded that underage marriage has drawn significant public attention, prompting discussions on the need to curb this phenomenon. Various studies highlight its causes and effects, but there remains a gap in analyzing its specific impact on children. The researcher aims to fill this gap by examining the consequences of underage marriage on minors, particularly in terms of psychological, social, and legal aspects. Additionally, existing literature lacks specific references to legal provisions that should be emphasized, especially concerning the legitimacy of underage marriage. Therefore, this study aims to contribute to the discourse by proposing preventive measures and legal reforms to better protect children from early marriage and its associated risks.

Significance of Research

This research seeks to address the issue of child marriage by raising awareness among parents, children, and the government. Parents and other responsible parties, particularly the government, play a crucial role in supporting and protecting children. It is imperative for the government to recognize the challenges associated with underage marriage and take necessary measures to mitigate its consequences. This study aims to enhance awareness regarding the implications of underage marriage, academic perspectives on the issue, the legal minimum age for marriage, and potential solutions to address the problem.

Ensuring that children in Malaysia understand their rights under Syariah Law concerning underage marriage is essential, as it significantly impacts their well-being and future prospects. Underage marriage can have detrimental effects on a child's education, economic opportunities, and physical, emotional, and mental health. Awareness about their legal rights, including protection against coercion into marriage, is critical. In Malaysia, the legal age for marriage is 16 for Muslim girls and 18 for non-Muslims, subject to court approval. Educating children on the adverse effects of underage marriages such as increased vulnerability to poverty, domestic violence, and limited opportunities for personal development—empowers them to seek assistance and make informed decisions.

Parents play a crucial role in safeguarding their children's well-being, particularly in preventing underage marriage. It is essential for parents to be well-informed about the legal marriage age in Malaysia and the harmful consequences of child marriage. Understanding the negative impact on education, health, and economic opportunities, parents should recognize that Syariah Law provides protection against forced marriages. Encouraging children to express their concerns and seek support can help prevent coercion into marriage. By fostering awareness and informed decision-making, parents can actively contribute to the prevention of child marriages and the protection of their children's rights.

The Malaysian government also has a fundamental responsibility to uphold the welfare of children in underage marriages through the effective implementation of Syariah Law. Ensuring legal safeguards against forced or early marriages, along with community education initiatives, is crucial. The government should provide safe spaces, legal aid, and counseling services for children facing coercion into marriage. Collaborating with religious authorities and civil society organizations can further discourage underage marriage while promoting children's rights. Additionally, periodic reviews and amendments to existing laws and policies are necessary to strengthen protections for minors and prevent forced or early marriages. Through proactive interventions, the government can safeguard the welfare of children, enabling them to thrive and reach their full potential.

Scope and Limitations

This research specifically examines how Malaysia's Syariah Law protects the welfare of children in underage marriages, focusing exclusively on Malaysia's legal framework. The study does not extend to other legal systems or global perspectives on child marriage. A potential limitation of this research is the availability and accuracy of data regarding the impact of underage marriage on children's well-being in Malaysia. Additionally, subjective interpretations and biases from individuals involved in assessing the issue may influence the findings.

Furthermore, while this study provides recommendations to enhance child protection under Syariah Law, their implementation remains uncertain. The effectiveness of proposed legal reforms depends on political will, government commitment, and societal attitudes toward underage marriage. Addressing these challenges requires continued advocacy, policy development, and community engagement to ensure the protection and well-being of children affected by underage marriage in Malaysia.

Results and Findings

The Implications of Underage Marriage to Children

Underage marriage has far-reaching consequences that violate children's fundamental rights, particularly in the areas of health, education, and protection from domestic violence. This practice not only jeopardizes the physical and mental well-being of young brides but also perpetuates gender

inequality and imposes economic hardships (Nawal, 2009). This section explores the multifaceted impacts of underage marriage, focusing on its effects on children's health, denial of educational rights, heightened risk of domestic violence, reinforcement of gender inequality in Malaysia, and related economic repercussions. By examining these aspects, this study underscores the urgent need to address and mitigate this harmful practice through legal, policy, and social interventions.

Child marriage violates children's rights in terms of health.

Children also deserve to get their rights in life like adults. Children are put at risk when any of their rights are infringed. It is common for married couples to have large families when they start family life. States Parties acknowledge that children have a right to the best standard of health and access to facilities for disease treatment and health rehabilitation, as stated in Article 24 (1) of the Convention on the Rights of the Child. States Parties agree to make every effort to guarantee that no child is excluded from these medical treatments.

States Parties are also required by Article 24(3) to take all reasonable and effective steps to end customs that are detrimental to children's health. It is time to end the custom of child marriage and provide children with protection. In certain communities in the Middle East and Northeast Africa, marrying minors is regarded a cultural practice, with the goal of safeguarding the family's honour. To preserve their daughter's chastity and prevent unwed pregnancies, many households marry off their daughters when they are young (Council on Foreign Relations, 2021).

However, these kids may not get sufficient exposure to intimate relationship, and they are not ready physically for close relationships in marriage. Pregnancy and childbirth are very difficult experiences for a little child to go through alone. It impacts their well-being. According to the Ministry of Health in 2012, a pregnant woman's health can be affected by her unborn kid, increasing the risk of high blood pressure in the young child. This is frequently the case with the first pregnancy. Subsequently, challenges arising from narrow hips in adolescents (obstructive labour) and the utilization of instruments to facilitate the birthing process (instrumentation delivery) anaemia or low blood count. And lastly, potentially fatal birth complications.

In addition, Wan Fadhilah (2012) states that as the child will be exposed to the baby's low birth weight of less than 2.5 kg, the expecting mother must also bear some of the responsibility for the child's delivery. The premature early birth comes next. Adolescent mothers frequently give birth before the scheduled 37 weeks or earlier than anticipated. Babies delivered to pregnant teenagers sometimes die from lack of access to proper medical treatment. This is a result of the expectant mother's youth and ongoing self-care education.

Child marriage violates children's rights in terms of education

The children's right to an education is the next right that is violated. States Parties acknowledge children's right to education under Article 28(1), and they strive to realize this right progressively and equally for all children (Convention on the Rights of the Child, 1989). These kids automatically become adults when they get married and start a small family with their spouses, in addition to having to take care of themselves. Consequently, male children should be in charge of providing for their families, while female children should be mothers to their children. They are unable to receive the same rights to a proper education as other children because of this heavy duty.

This school's education emphasizes the development of broader components of education in addition to academic development, such as soft skills, which include personality, talent, and mental and physical aptitude (Daily News, 2021). As such, it is appropriate for kids who only want to learn about the world and themselves in order to grow up to be decent people.

But because they were married off at an early age and had to learn how to grow up on their own, they were deprived of this right. For primary schools, the Malaysian government also provides free education. Still, some parents are unable to pay for their children's education. The family's economic situation is very dire, which contributes to their early marriage (Utusan Borneo Online, 2016). The reality is that, when young kids are unable to pursue their passions or careers in the adult world, the cycle of poverty will never end.

The Implications of Underage Marriage to the Child in Term of Domestic Violence

The risk of domestic abuse for the child involved is greatly increased by the destructive practice of underage marriage. Young children who are pushed into marriage frequently lack the emotional, mental, or physical maturity necessary for sexual engagement. Child brides, particularly girls, may not have the maturity or means to defend themselves, leaving them open to abuse on both a physical and emotional level.

The fact that minors may not have the maturity or agency to freely consent to sexual activity makes underage marriages extremely troubling since it leaves them more open to being coerced and taken advantage of by their older spouse. According to the report, women who married as minors experienced more physical and sexual assault in the past year (29%) than women who married as adults (20%) worldwide (Kidman R., & Palermo, T., 2016). Because of their lack of agency, children may find themselves in situations where they are unable to reject sexual advances or defend themselves against abuse. Children in underage marriages may also be less inclined to disclose cases of domestic abuse because of societal and cultural pressure to keep the marriage intact, fear, or a lack of knowledge of their legal rights.

In addition to the immediate risk of sexual assault, underage marriage may have longterm implications for the welfare of the kid. Young married children often have limited access to services and information; this can lead to physical and psychological distress as well as an increased risk of Sexual Transmitted Disease. According to the Joint United Nations Programme on HIV and AIDS, marriage by the age of 20 years is a risk factor for HIV infection in girls.

In conclusion, preventing underage marriage is crucial to safeguarding children's safety and wellbeing as well as shielding them from the higher danger of domestic abuse. Prioritizing the rights and welfare of children in legal, policy, and social measures is crucial in addressing the detrimental effects of underage marriage. The government may endeavor to create a world where all children are able to grow up free from the threat of sexual assault by addressing the underlying causes of underage marriage and provide support for children who are at-risk.

Revealing the Effects of Underage Marriage on Gender Inequality in Malaysia

Underage marriage is still a problem in Malaysia, which hinders the country's efforts to achieve gender equality. This practice contributes to the enslavement of women by perpetuating traditional gender roles and disproportionately harming adolescent girls (Delprato, M., et. al., 2015). This section explores the effects of underage marriage on gender inequality in Malaysia, emphasizing the various ways in which this detrimental practice prevents young girls from being empowered and from having equal chances.

It is essential to take into account the historical background of gender roles in Malaysia in order to comprehend the effects of underage marriage on gender disparity. Due to cultural expectations and traditional conventions, women are frequently placed in subservient roles that highlight their duties as mothers and wives (Naveed, S., et.al,2015). These conventional gender norms are sometimes reinforced by underage marriage, which limits young girls' access to school, personal development, and career advancement prospects.

For young girls, teenage marriage can result in early pregnancies that provide serious health risks to their reproductive systems. The risks of childbirth may increase if their bodies are not fully matured (Mohd Awal et al., 2018). These issues are made worse by limited access to reproductive health information and services, which feeds the myth that a woman's main function is reproduction and keeps a cycle of health disparities alive.

Underage marriage's effects on gender disparity in Malaysia are mostly determined by cultural norms, legal frameworks, and societal expectations. Additionally, child abuse and exploitation are facilitated by child marriage, which perpetuates power gaps and unequal gender roles. Traditional gender norms and behaviors that prioritize family or community needs before the welfare of children are often the cause of child marriage. This can result in a situation where the child is taken as possession (Harrison, A.,2023). Giving girls access to education, financial security, and the capacity to make their own

decisions is not only a matter of human rights but also a critical first step in tearing down the deeply ingrained systems of gender inequality that underage marriage perpetuates.

Analyzing the Financial Impact of Adolescent Marriage in Malaysia

Underage marriages in Malaysia create economic problems by limiting education, hindering careers, and impeding national growth (Nooraziah Mohd Awal et al., 2018). This discussion focuses on their impact on household finances and social welfare. To address these issues, strategies should include education initiatives, legal reforms, and community support for sustained national growth and individual prosperity.

Underage marriage has an immediate economic impact by diminishing educational opportunities. Young individuals compelled into early marriage often discontinue their education, reducing their prospects for academic success. The lack of formal education hampers their ability to acquire essential knowledge and skills, making it challenging to secure stable, well-paying jobs in the future (Wodon et., 2017). This restriction on educational attainment not only limits personal career advancement but also hinders overall economic growth and productivity, affecting the financial well-being of both individuals and the nation.

Child marriages not only have economic repercussions on households but also impact the combined income as those involved often face low earning capacity. According to Norhaslinda Jamaudin in the article of MalayMail on 4th April 2023, has briefly stated that young brides, with restricted access to education and professional opportunities, struggle to contribute significantly to household finances, placing a strain on overall financial stability. The financial strain extends to children of underage married couples, affecting their access to essential needs such as healthcare and education. This perpetuates an intergenerational cycle of poverty, negatively impacting the prospects and well-being of the next generation (Berkeley Economic Review, 2018).

Underage marriage creates financial challenges that strain social welfare programs as struggling families may require increased government assistance (Parsons, J., Et. Al., 2015). This place added pressure on the welfare state, emphasizing the need to address the root causes of financial vulnerability linked to early marriages. The long-term economic impact on a nation is significant, hindering its ability to innovate, compete globally, and adapt to economic changes due to a populace with limited education and economic prospects. Breaking the economic cycle associated with early marriages is crucial for sustained national growth and development.

In Malaysia, the economic fallout from underage marriage is deeply ingrained in both societal and personal well-being. By making investments in education, enabling people with economic skills, and removing obstacles to professional advancement, Malaysia may overcome the financial difficulties posed by child marriage and promote economic success for everybody.

Legal Provisions Relation to Underage Marriage under the Syariah Law in Malaysia and the Position of Underage Marriage in Islamic Perspective

The legal provisions related to underage marriage under Shariah law in Malaysia vary across states, with each state having its own Islamic Family Enactment specifying the minimum age for marriage for men and women. This section examines the legal provisions and explores the Islamic perspective on underage marriage, considering the opinions of Muslim scholars regarding the permissibility and appropriateness of such marriages in the context of Shariah law.

Muslim Scholar's Perspectives on Underage Marriage

Underage marriage within the framework of Islamic sharia can be interpreted in a variety of ways, depending on whose interpretation of the law is followed. In many Muslim nations, the custom of marrying minors has come up for debate and discussion.

Some opinions believe that marrying someone underage is improper. A few legal experts believe that juvenile marriage should never be permitted. For example, Both Abu Bakr al-Asam and Ibn Syubrumah shared this viewpoint.

Translation: "And test the orphans until they reach marriageable age. If you find their intelligence, then hand over the property to them".

(Surah An-Nisa, 4: 4-6)

Wajh al-dalalah, according to the verse above, signifies the end of infancy and the beginning of marriage. This goal would mean nothing if child marriage were legal.

Furthermore, this group believes that there are no advantages to this type of marriage in having kids. This is due to the fact that marriage seeks to bring about peace of mind, children, and *mu'asyarah* which is association. Child marriage is not the means to accomplish any of these. By pressuring the two to live a long life together without first determining whether they are compatible, it could even be a constant harm to him. Similarly, the jurists who support this viewpoint claim that one of the unique qualities' characteristics that only the Prophet SAW possesses is his marriage to A'ishah R. Anha (Hajar Al-Askoni, 1909).

The opinion that says child marriage is allowed is through the Qur'anic verse:

Translation: "And the women among you who have stopped menstruating (menopause), if you have doubts (about the period of their iddah) then their iddah is three months, and (so is) the iddah of women who do not menstruate".

(Surah At-Talāq, 65:4)

Imam Al-Syaukani said: (وَالَّذِينَ لَمْ يَحْضُنْ) "...women who do not menstruate.", that is, those who are still small and have not reached the age of menstruation. This verse clearly shows that Allah mentions the number of iddah for children as soon as he approves the child's marriage.

Ibn al-Arabi stated: "What is meant by the verse لَمْ يَحْضُنْ is small children. He said further: "This verse is proof that this little child can be married off by his father. This is because God made the iddah for those who do not menstruate for three months. And there is no iddah except after marriage (Ibnu Al-Arabi, 2003).

The Meaning of Children from A Legal Point of View in Malaysia and An Islamic Point of View

The Children's Act 2001 clarifies that children are under the age of 18. In Islam, there is no fixed age to define adulthood as it is influenced by biological factors, particularly the concept of *baligh* (puberty) signifying maturity. The fuqaha' (jurists) differ in their opinions regarding the age at which an individual becomes *mukallaf* (accountable) and marriages conducted at that point are not considered underage.

Firstly, the majority of Hanafi scholars argue that a person is not considered mature (baligh) until they reach the age of 18. From the Quran Surah Al-Isra' verse 17, that advises against taking the property of orphans except in the best manner until they reach maturity, Ibn 'Abbas highlighted in Kitab Al-Shabani, that the meaning of maturity in this context is at the age of 18, with the observation that girls tend to mature faster, estimated at around 17 years.

Another perspective, held by the Shafi'i and Hanbali schools, as well as certain Hanafi scholars like Abu Yusuf and Muhammad al-Shaybani, suggests that maturity is achieved around the age of 15. This interpretation is based on the narration of Hadith Bukahari from Ibn 'Umar, who at the age of 14 offered himself for battle, but the Prophet Muhammad SAW rejected the proposal, emphasizing that children should remain at home. However, at the age of 15, the Prophet allowed him to participate in the Battle of Khandaq (Bukhari, 1504)

Consequently, the definitions of adulthood and childhood in Malaysian law and Islamic perspective differ. The determination of the age of maturity is more influenced by cultural factors (Hanafi Y.,2020), and classical Fiqh (Islamic jurisprudence) does not set a minimum age for both males and females to enter into marriage. It is noteworthy that discussions on child marriages (nikah al-shaghirah) may have positive connotations if conducted considering moral and religious well-being.

Legal Provision about underage marriages In Syariah Law in Malaysia

This table shows the marriage age limit for each state in Malaysia.

Table 1. Section of Minimum Age for Marriage of the states in Malaysia.

| State | Minimum Age for Marriage |
|-----------------|--|
| Selangor | Section 8 of Islamic Family Law of Selangor (Amendment) Enactment 2018 No marriage can be solemnized under this Enactment if the man or woman is less than eighteen years of age unless the Syarie Judge has given his permission in writing in certain circumstances. |
| Kedah | Section 8 of the Islamic Family Law (Kedah Darul Aman) Enactment 2008 No marriage can be solemnized under this Enactment if the man is over eighteen years of age, or the woman is under sixteen years of age unless the Syarie Judge has given his permission in writing in certain circumstances. |
| Perak | Section 8 of the Islamic Family Law Perak Enactment 2004 No marriage can be solemnized under this Enactment if the man is over eighteen years of age, or the woman is under sixteen years of age unless the Syarie Judge has given his permission in writing in certain circumstances. |
| Perlis | Section 8 of the Islamic Family Law Perlis Enactment 2006 No marriage can be solemnized under this Enactment if the man is over eighteen years of age, or the woman is under sixteen years of age unless the Syarie Judge has given his permission in writing in certain circumstances. |
| Penang | Section 8 of the Islamic Family Law (Penang State) Enactment 2004 No marriage can be solemnized under this Enactment if the man is over eighteen years of age or the woman is under sixteen years of age unless the Syarie Judge has given his permission in writing in certain circumstances. |
| Johor | Section 8 of the Islamic Family Law Johor Enactment 2003 No marriage can be solemnized under this Enactment if the man is over eighteen years of age, or the woman is under sixteen years of age unless the Syarie Judge has given his permission in writing in certain circumstances. |
| Negeri Sembilan | Section 8 of the Islamic Family Law Negeri Sembilan Enactment 2003 No marriage can be solemnized under this Enactment if the man is over eighteen years of age, or the woman is under sixteen years of age unless the Syarie Judge has given his permission in writing in certain circumstances. |
| Melaka | Section 8 of Islamic Family Law (State of Melaka) Enactment 2002 No marriage can be solemnized under this Enactment if the man is over eighteen years of age, or the woman is under sixteen years of age unless the Syarie Judge has given his permission in writing in certain circumstances. |
| Terengganu | Section 8 of the Islamic Family Law (Terengganu) Enactment 2017 No marriage can be solemnized under this Enactment if the man is over eighteen years of age, or the woman is under sixteen years of age unless the Syarie Judge has given his permission in writing in certain circumstances. |
| Kelantan | Section 8 of the of the Islamic Family Law (Kelantan) Enactment 2002 No marriage can be solemnized under this Enactment if the man is over eighteen years of age, or the woman is under sixteen years of age unless the Syarie Judge has given his permission in writing in certain circumstances. |
| Pahang | Section 8 of the Islamic Family Law Pahang Enactment 2005 No marriage can be solemnized under this Enactment if the man is over eighteen years of age, or the woman is under sixteen years of age unless the Syarie Judge has given his permission in writing in certain circumstances. |

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| Sabah | Section 8 of Islamic Family Law Sabah Enactment 1992 No marriage can be solemnized under this Enactment if the man is over eighteen years of age, or the woman is under sixteen years of age unless the Syarie Judge has given his permission in writing in certain circumstances. |
| Sarawak | Section 7 of the Islamic Family Law (Sarawak) Ordinance 2001 (Ordinance 43 of 2001) No marriage can be solemnized under this Ordinance if the man is over eighteen years of age, or the woman is under sixteen years of age unless the Syarie Judge has given his permission in writing in certain circumstances. |
| Wilayah Persekutuan | Islamic Family Law (Federal Territories) Act 1984 (Act 303) No marriage can be solemnized under this Act if the man is over eighteen years of age, or the woman is under sixteen years of age unless the Syarie Judge has given his permission in writing in certain circumstances. |

From the table above, it can be concluded that all Islamic Family Enactments for each state set the minimum age for marriage for men at 18 years and for women at 16 years, except for the state of Selangor, which made an amendment under Section 8 of the Family Law Enactment of Selangor (Amendment) 2018 by raising the minimum age for marriage for both men and women to 18 years.

According to an article from *Benar News Malaysia* written by Ali Nufael in 2018, it was found that seven states disagreed with raising the minimum age for marriage for women to 18 years. The states that disagreed are Perlis, Negeri Sembilan, Terengganu, Kelantan, Pahang, and Sarawak, as presented by Wan Azizah Wan Ismail, who is also the Minister of Women, Family, and Community Development Malaysia, in the Dewan Rakyat session.

There are also states that agree to raise the age of marriage for men and women from sixteen to eighteen. Such as the states of Selangor, Kedah, Perak, Penang, Johor, Melaka, and Sabah (Ali Nufael & Noah, 2019). Next, the amendment to meet the circumstances should also be done for each state to adjust the rulings to decide the validity of marriage underage. For example, Selangor took a progressive step by amending the Islamic Family Law to include an additional section, namely Section 8A of the Family Law Enactment of Selangor (Amendment) 2018. This section clarifies the scope and criteria that must be met by applicants seeking to marry under the legal age. These criteria assist judges in making decisions that are consistent and address the social issues related to underage marriage in Malaysia. This section covers criteria such as the identity of the couple, guardian consent, health, and criminal records, aiming to reduce the negative impact of underage marriages.

Additionally, for the state of Kedah, The Kedah State Islamic Family Enactment Bill 2022 has been approved to raise the minimum age for marriage for both men and women to 18 years (Bernama, 2022). However, this amendment has not been gazetted by the state government yet. As for other states that agreed to raise the minimum age for marriage, they express their consent to further discuss the matter in depth in their respective State Assemblies.

The researcher agrees with what has been done by the state of Selangor under its legal amendments. The absence of similar measures taken by other states further delays the process of addressing the issue of underage marriages in Malaysia. Enforcement of these laws needs to be more stringent to protect the rights of children.

Recommendation of Remedial Proposal for Underage Marriages

The Malaysian government has launched a comprehensive five-year National Strategic Plan in 2020 to address the causes of underage marriage (KPWKM, 2020). This strategic initiative aims to tackle the root causes of child marriage through policy and legal reforms, focusing on amendments to relevant laws. The plan includes the implementation of awareness programs and activities, the strengthening of existing socio-economic initiatives, and the provision of friendly reproductive health services for children and teenagers. However, this research recommends in detail recommendation about underage marriage in Malaysia requires a multifaceted approach. The proposed remedial measures outlined in this plan encompass raising awareness, education initiatives, economic empowerment, child protection

within the Syariah legal framework, and robust support in healthcare, mental health, and education domains, collectively forming a holistic strategy to combat the complexities associated with underage marriages.

Raising Awareness and Education to Combat Underage Marriage in Malaysia

One of the most important steps in addressing this issue in Malaysia is to launch national education campaigns. These efforts ought to focus on the value of education, personal growth, and the general wellbeing of youngsters while also drawing attention to the detrimental effects of underage marriage. This all-inclusive strategy targets communities, parents, and young people directly in an effort to address the underlying reasons of underage marriage.

According to a 2015 report submitted to UNESCO, comprehensive sex education is described as an age-appropriate, culturally relevant approach that provides scientifically accurate, realistic, and non-judgmental information about sexuality and relationships. Recognizing the current need, it is imperative that children receive such comprehensive and age-appropriate sex education, including guidance on managing peer pressure related to early sexual relationships. This education can enhance awareness of the repercussions of unsafe sexual practices and the potential consequences.

Educational initiatives are crucial in achieving this goal, with a focus on integrating age-appropriate teachings about the implications of underage marriage into school curricula. Such courses should encompass social and emotional development, along with academic aspects, and include workshops on decision-making, interpersonal skills, and communication techniques (World Health Organisation, 2020). These efforts aim to empower students to make informed decisions, including delaying marriage until they are both financially and emotionally prepared.

Parents are frequently the main decision-makers when it comes to marriage (Yakub. H., 2020). Parents should be the objective of educational programs that tell them of the longterm effects, health hazards, and legal ramifications of child marriage. Workshops can provide a forum for parents to discuss issues and experiences, establishing a caring community that puts their kids' futures and well-being first.

Economic Empowerment: A Deterrent to Underage Marriage in Malaysia

Malaysian underage marriage is a complex issue that calls for a multipronged response, one of which is economic empowerment, especially for young women. A deterrent to underage marriage is intended to be created by the implementation of initiatives that promote economic independence. In order to improve young people's socioeconomic standing and lessen the circumstances that frequently lead to early marriages (Yafi. A., 2018). This entails offering financial literacy initiatives, business chances, and skill development courses.

In addition to dispelling this myth, empowering women economically gives youth the freedom to make decisions based more on their own growth than on their immediate needs (Fikree F. F., et. al., 2017). Programs for economic empowerment are also essential in transforming society views on women's roles (Akhtar R., 2023). These programs question conventional gender standards by presenting the inspiring tales of economically empowered women who have sought education, had successful careers, and given back to their communities. This mindset change is essential to fostering an atmosphere in which young women are motivated to pursue financial independence before thinking about getting married.

Putting in place programs for skill development is essential to achieving economic empowerment. The goal of these programs ought to be to give young people, women in particular real-world experience and employability skills. Vocational training can lead to career opportunities in fields like hospitality, information technology, and tailoring. It can also encourage financial independence and lessen the financial strain that frequently results in teenage marriages.

Remedial Proposals on Underage Marriage of Wellbeing Care of Children

Underage marriage has profound effects on mental, emotional, and physical health (Ponnupillai et al., 2022). Recognizing this, it is crucial to establish tailored mental health support networks and counselling programs for individuals who have experienced underage marriages. This comprehensive approach not only tackles immediate psychological effects but also aims to foster resilience and long-

term healing. Embracing a multifaceted strategy is imperative to tackle underage marriage, ensuring the well-being of children. These measures target the health and welfare of minors affected by early marriages, emphasizing the importance of a holistic approach to address this complex issue.

The responsibilities associated with early marriage, disrupted education, and strained interpersonal relationships can impose significant pressures leading to anxiety, despair, and low self-esteem, contributing to various mental health issues (Sezgin et al., 2020). Establishing easily accessible counselling services is crucial for providing mental health support, offering a safe space for individuals to express their feelings and challenges. It is imperative that counselling services are age-appropriate to address the unique needs of both adults and children affected by underage marriages. For children, interventions like play therapy and creative expression can aid in conveying their experiences, while adult-focused treatments may utilize cognitive-behavioural therapy to address coping strategies and deeply ingrained beliefs stemming from early marriage experiences (Nihit Gupta et al., 2023). Trained counsellors, particularly those versed in trauma-informed care, play a pivotal role in creating a supportive environment for individuals to navigate the mental health challenges associated with early marriages (Angela Sweeney et al., 2018).

Ensuring unrestricted access to healthcare services for children of underage marriages is imperative. Implementing outreach initiatives or mobile clinics in areas with high rates of underage marriage is vital to guarantee that children receive essential medical care, immunizations, and routine checkups. Additionally, specialized initiatives within the healthcare system should be established to address the health concerns of both child and maternal health in the context of underage marriages. These programs should encompass comprehensive prenatal care, safe delivery alternatives, and post-natal support for both the young mother and the infant, emphasizing a comprehensive approach to healthcare for those affected by early marriages (Catherine P. Corrigan et al., 2015).

Comprehensive health education initiatives should be launched in communities where underage marriage is prevalent. These programs must cover family planning, reproductive health, and the potential risks of early pregnancy, empowering individuals with the knowledge needed to make informed decisions about their health and the well-being of their children (Khekade et al., 2023). Concurrently, implementing nutritional support programs is essential to address the specific dietary needs of young brides and their children, considering the increased nutritional demands associated with early pregnancies. By combining these initiatives, a holistic approach can be taken to enhance the overall health and well-being of individuals affected by underage marriages.

Strengthening Child Protection in Underage Marriages under Syariah Law in Malaysia

One of the key principles of Syariah law is the protection of children, which emphasizes the rights and welfare of the youngest members of society. Strengthening current rules within Malaysia's Syariah legal system is crucial to tackling the problem of underage marriages. This entails making certain that laws prohibiting human trafficking, and exploitation are effectively enforced, with an emphasis on enforcing severe penalties for those who assist in arranging underage marriages.

Despite syariah court judges having the authority to grant permission for boys under 18 and girls under 16 to marry, there is a lack of a standardized procedure to guide them through the child marriage application process. This absence of a clear framework leaves judges to exercise their own discretion and rely on their individual interpretations of Islamic legal perspectives when evaluating each case (Mohd Awal et al., 2018).

A standardized procedure that must be followed by applicants seeking to marry below the legal age in all states should encompass several key criteria. Firstly, there should be a reasonable age gap between the prospective partners to avoid confusion for the underage individual about the nature of love and the need for protection as a child, rather than fulfilling solely sexual desires. This ensures that marriage is entered into with a proper understanding of emotional and physical well-being (Drefahl et al., 2010). Secondly, the applicant must commit to completing their secondary education even after marriage. This requirement aims to foster the development of educated young individuals and emphasizes the importance of continued learning despite marital status.

Next, the male applicant should demonstrate financial capability to support the family. In this regard, the male applicant is required to provide a financial statement indicating his ability to financially support his own family. This criterion ensures that the applicant is prepared for the responsibilities that come with marriage, promoting the well-being and stability of the family unit (Tapah S., 2023). Furthermore, a crucial aspect that needs emphasis is the criminal history of the individuals involved. This is to ensure that children are not exposed to potential criminals and are safeguarded against domestic abuse (Mohd Ali et al., 2018). By prioritizing a thorough examination of the criminal background of the parties seeking marriage, it aims to create a protective environment for the children involved, minimizing the risk of exposure to criminal activities and domestic violence. This measure contributes to the overall safety and well-being of the underage individuals entering marriage.

Besides court-sanctioned underage marriages, there are instances of underage marriages occurring without court approval. For example, in a case in Kelantan, a 41-year-old man married an 11-year-old girl in Thailand, a clear violation of Article 8 of the Enactment of Islamic Family Law Kelantan 2002 (Astro Awani, 2018). However, the man proudly stated that he would take responsibility for the offense as the fine imposed was only RM1800 for two charges, amounting to RM900 for each charge. This notably low penalty serves as a contributing factor to the rise in unauthorized underage marriages.

Therefore, the researcher proposes an amendment to Section 8 of the Islamic Family Law in every state in Malaysia by increasing the fine to RM3000 for such charges. This adjustment aligns with the aim of deterring individuals from engaging in underage marriages without court approval and serves as a more substantial penalty to discourage such practices. The higher fine aims to function as a deterrent and underscores the seriousness of the offense, potentially reducing the incidence of unauthorized underage marriages and promoting greater compliance with legal requirements.

Conclusion

In conclusion, the evaluation of the remedial proposals under underage marriages in Malaysia emphasizes the need for a comprehensive approach to address this issue. The study underscores the importance of legislative reforms, community involvement, education campaigns, and economic empowerment to prevent underage marriage and protect the rights and well-being of children. By addressing the underlying causes of underage marriage, such as gender inequality, poverty, and limited access to education and healthcare, Malaysia can work towards creating a society where all children can grow up free from the threat of underage marriage and its detrimental effects. An evaluation of the strict eligibility to obtain the court's permission in allowing the application of underage marriage. Malaysia has the potential to create lasting societal change, prioritizing the well-being and rights of its children within the cultural and legal frameworks. This holistic approach is crucial to safeguarding the safety and well-being of children and ensuring that their rights are protected within the framework of Islamic principles. The researcher would like to recommend some amendments related to the issue of child marriage, more careful care about the welfare of children, solving financial issues involving children, and raising awareness and education related to underage marriage.

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