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## Legal Framework for The Protection of Teenage Pregnancies in Malaysia

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### Abstract

This paper examines the existing legal framework for the protection of teenage pregnancies in Malaysia, with adherence to the international laws of the United Nation Convention on the Rights of Children (UNCRC) and the United Nation Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and within the principles of the Islamic laws (maqasid al-Shariah). This study was conducted primarily through a doctrinal study of existing literature such as articles, journals and reports related to the current issues encountered by pregnant teenagers. This study establishes the ongoing reforms in the domestic laws and policies in response to the ratification of UNCRC and CEDAW since 1995. Nonetheless, the absence of a comprehensive legal framework and coordinated support services for pregnant teenagers affects the smooth implementation of the currently existing laws and policies on this matter. Therefore, it is recommended that a more comprehensive legal framework and concerted services help to promote a holistic approach to strengthen the welfare of pregnant teenagers and safeguard them from unnecessary harm.

**Keywords:** Protection, Teenage Pregnancy, International Laws, Islamic Perspective, Malaysian Laws and Policies

### Introduction

Pregnancies among teenagers have become a common global issue. In Malaysia, a report from the Ministry of Health showed a number of 41,083 teen pregnancies between 2017 and 2022, of which 35% or 14,561 cases, were out-of-wedlock (CodeBlue, 2021). This number, however, only represents pregnancies registered in the public sectors, which exclude abortions, self-labours and private sectors. Thus, it may underestimate the real burden of teen pregnancies.

Teen pregnancy is defined as pregnancy occurring among teenagers aged 18 years old or younger (UNICEF Malaysia, 2020). Being young and pregnant, these teenagers are vulnerable to challenges such as less opportunity to complete education, leading to limited occupational choices and economic disadvantage. Lack of support can lead to serious consequences such as inability to cope with early pregnancy and early motherhood, financial constraint, social exclusion from families and friends. This also opens doors to abortion, infanticide and 'forced' early marriage. Furthermore, early pregnancy can be the result of sexual offences related to child abuse, child exploitation or child sexual grooming (Nor, 2020).

Protecting the rights of teenagers, including pregnant teenagers, is vital. This protection includes the right to life, food, shelter, maintenance, education, health, support and safeguarding from harm. These basic rights have been emphasized in the International Convention on the Rights of the Child (UNCRC) in 1989 and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1979. Although these Conventions addressed the rights and protection of children and women, nevertheless, they indirectly included the rights of teenage girls as children and young women. Islamic law, on the other hand, has become a great influence in determining the ratification of the above treaties. This paper attempts to examine the existing legal framework for the protection of teenage pregnancies in Malaysia, especially after the ratification of the UNCRC and CEDAW in 1995 and within the principles of Islamic law in the context of education, family law and child protection against sexual offences.

### **International Conventions and the Islamic Perspective**

#### **United Nation Convention on the Rights of the Child (UNCRC)**

The UNCRC stands as the most authoritative and comprehensive document on child's rights, covering the fundamental rights of children to survival, development, protection and participation. The 54 Articles in the UNCRC comprises of four general principles namely non-discrimination (Article 2), the best interests of the child (Article 3), the right to life, survival and development (Article 6, 27) and respect for the views of the child (Article 12).

The principle of the best interest of the child enshrined in the UNCRC became the guiding tool in addressing children's rights and welfare in most jurisdictions. It is said to be the leading principle for the implementation of all substantive Articles in the UNCRC (Kahar, 2010). Although the meaning of the principle is ambiguous, when reading it together with other Articles in the UNCRC, it can be assumed that the best interests of the child means undertaking all appropriate measures before deciding on a matter concerning the individual children in particular circumstances (Beshir, 2012).

While Article 3(1) of UNCRC is silent on the burden of responsibility to determine the best interest of the child, Article 18(1) of UNCRC requires the parents to be responsible for ensuring the best for the upbringing and development of their child. In instances where the best interest of the child conflicts and the decision is vital to the development of the child, the State has the obligation to take action to protect the child. The Convention requires an establishment of a standard of care and protection to be adhered to by the competent bodies including the people responsible for all institutions, services and facilities for children, and that these institutions are properly monitored by the State (Beshir, 2012).

#### **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**

The CEDAW is another international instrument describing rights for women and ending discrimination against women. Consisting of 30 Articles, it defines what constitutes discrimination against women and provides the basis for realizing equality between women and men (Article 1) by ensuring women's equal access to, and equal opportunities in, political and public life including the right to education (Article 10), health (Article 12) and employment (Article 11).

The signatory of the Conventions means that the States are legally obliged to undertake all appropriate measures, including legislation and temporary special measures, so that children and women can enjoy their fundamental rights to life, health, education and protection against any forms of abuse and exploitation.

### Malaysia's Response to UNCRC and CEDAW

Malaysia's ratification of UNCRC and CEDAW in 1995 was transparent evidence of the government's seriousness in ensuring the welfare of Malaysian children and women is protected through domestic laws and complies with the international Conventions (Kahar & Zin, 2011). Nevertheless, despite its ratification, Malaysia had made some reservations to a few Articles which conflicted with the Constitution and the Islamic Laws.

According to Kahar (2010), Malaysia's reservation to UNCRC, Article 2 (Non-discrimination), Article 7 (Name and nationality), Article 14 (Freedom of thought, conscience and religion), Article 28(1)(a) (Education) and Article 37 (Torture and deprivation of liberty) were because of its incompatibility with the policies, constitutional provisions and other laws of the land including the Islamic law. On the other hand, the Malaysian NGO CEDAW reported Malaysia's reservation to CEDAW, Article 9(2) (Nationality) was against the Constitution, whereas Articles 16(1)(a) (Marriage), 16(1)(c) (Responsibility upon dissolution), 16(1)(f) (Responsibility to the guardianship of children) and 16(1)(g) (Personal rights as husband and wife) were contradicting the Islamic laws (Women's Aid Organization, 2012).

The above discussion indicates how Islamic laws play a big influence in determining Malaysian legislation and policy. Whilst the two international instruments may be adequate, the ratification and implementation of the laws and policies are only made effective when it is suitable to the multicultural and social practices of the society, especially the Islamic law.

### Islamic Perspective on the Protection of Pregnant Teenagers

Islam views children as a trust (*amanah*) given by Allah. Therefore, parents are responsible to ensure children enjoy their rights under the *Shariah*. Fulfilling such responsibilities is closely associated with rewards and the failure to perform is a sin (Al-Azhar University & UNICEF, 2005). Children's rights are fulfilled based on their position at a certain continuum of developmental stages. Islam has divided children into three stages of life; firstly, a newborn until the age of seven, secondly, when a child reaches the age of seven until *mumayyiz* (capable of thinking; differentiating the good and bad; comprehending the consequences of action) and thirdly, a child who has reached puberty (*baligh*) (Sulaiman et al., 2015).

These stages are important as it implies different legal rights and responsibilities. This is because, under Islamic law, the responsibilities signify the capacity of man by which he can assume duties, execute them and be held accountable for the consequences of his actions (Haneef, 2005). Therefore, legal responsibilities are only imposed on those who have the legal capacity in terms of sanity and age. It is established that the Islamic jurisprudence had emphasized the concept of puberty as a benchmark in determining the starting point of adulthood. Thus, it is reasonable to conclude that childhood in Islam is characterized by the lack of formed reasoning ability; both mental maturity and physical development in determining the various stages of childhood (Kahar, 2010).

With regards to unmarried pregnant teenagers, the girl is deemed *baligh*, hence, if the act is done intentionally, she is accountable for all religious injunctions. Nevertheless, according to contemporary jurists, puberty itself does not relinquish her rights under the *Shariah* such as her needs for care and sustenance especially when teenagers today are dependent on their parents until they gain the ability to make a living (Al-Azhar University & UNICEF, 2005). This would mean that the parents have the responsibility to educate the child and train her to sustain herself independently while making sure that the teenager enjoys all rights reserved under the principles of Islam (*maqasid al-Shariah*), namely the preservation of religion, life, intellect, lineage, and property (Kamali, 1998).

The rights of children indicate the responsibilities of parents. Parental responsibilities carry moral and legal obligations in ensuring the physical needs (health, education, maintenance) and nurturance (love and affection, support and motivation) of the child. Society and State institutions have a role in this regard that is no less important. For all children to enjoy their rights without discrimination, it is a prerequisite for the State to establish the basic rights of children under the constitution such as the right to identity, health care, education and protection. Legislated laws are more authoritative, effective and easier to implement. For example, in the case of child exploitation, it would be immaterial to prevent such crime if it is only carried out by the family, child care institutions, schools, welfare houses or other individuals without the interference of the law and executive bodies appointed by the State (Al-Azhar University & UNICEF, 2005).

The contemporary Muslim jurists are of the opinion that parliamentary endorsement and ratification of the international conventions, treaties and agreements pertaining to the rights of children are also of great importance provided that it does not contravene the *Shariah*. These measures are necessary for the preservation and protection of the rights of children in the State itself, as well as coordinating and cooperating between States in combating international crimes that violate the rights of children and endanger their lives, and in retrieving children who might be trafficked across borders or seeking refuge in another because of armed conflicts and natural disasters (Al-Azhar University & UNICEF, 2005).

### **Legal Framework for The Protection of Pregnant Teenagers in Malaysia**

The landscape of the Malaysian laws on rights and protection of women and children has changed tremendously since 1995. The reformation of laws to integrate the UNCRC and CEDAW into the domestic laws is seen to have been done gradually to accommodate its multi-racial society. Although these fundamental rights and protection do not exclusively provide for the rights of teenagers, the implications of the laws apply to all individuals including teenagers below 18 years old.

### **Laws Governing Education for Pregnant Teenagers**

The right to education has been accepted as a universal norm as can be seen clearly under the Universal Declaration of Human Rights and other human rights treaties. Nearly all of the countries in the world have pledged to uphold the rights to education under Article 28 and 29 UNCRC, also Article 10 CEDAW. Article 12 of the Malaysian Federal Constitution provides the right to education with no discrimination against any citizen on the grounds only of religion, race, descent or place of birth.

In recent years, the government had enacted six regulatory frameworks to support the provision of education in Malaysia. These regulatory frameworks were formulated and revised in line with the government policy on education. The Education Act 1996 is the parent legislation that regulates primary and secondary education (Kamaruddin et al., 2005).

The Malaysian government is taking necessary measures to improve the education system. In 2002, the Education Act 1996 was revised to make primary school compulsory (Section 29A). However, this amendment was not enough. Since formal education in Malaysia is expected to complete at secondary school, which is until the age of 18, the amendment should include the secondary school, where the majority of dropout cases occur (UNESCO IBE, 2011).

In Malaysia, teenage pregnancy is among the reason for school dropouts. According to the National Population and Family Development Board (LPPKN) in a 2016 report, 79.4% of

pregnant teenagers dropped out of school in 2014 (Hasbullah, 2016). Zain (2016) found that 62.7% of them encountered study difficulties during pregnancy, 40.7% had to delay their studies, 17.3% stopped studying and 4.3% had to change to another school. This reflects how teenagers in Malaysia dealt with their situation of pregnancy, where they would prefer to delay or stop studying at all.

The government had initiated school programs for teenagers coping with pregnancy through the Department of Social Welfare (DSW) to ensure that they do not lose the opportunity to continue their education ("Taman Seri Puteri," 2021). One of them is the care institution for pregnant teenagers under the age of 18 known as *Taman Seri Puteri*.

*Taman Seri Puteri* is a place of refuge (Section 55, Child Act 2001) for care and rehabilitation of teenagers 'beyond control' or coping with misbehaviour problems (Section 40(3), 46 or 47(1), Child Act 2001). In this institution, teenagers are given a second chance to complete their formal education. Aside from that, the institution offers additional programs such as vocational training programs to expose them to the necessary skills for their future career as well as religious classes in giving them basic guidance in understanding religion and good moral values. The institution also works in partnership with other government agencies, non-government organizations (NGOs) and external volunteers such as GIATMARA, *Institut Latihan Perindustrian* and Community College in organizing programs that can benefit the teenagers as well as providing them with proper facilities and well-trained teachers for vocational training skills that might help them to reintegrate into the society ("Taman Seri Puteri," 2021; Saim et al., 2013).

*Taman Seri Puteri* is a good initiative by the government to ensure the continuation of education among pregnant teenagers. However, this institution is very limited. In 2018, there were only 4 governmental institutions for pregnant teenagers in Malaysia (Nor, 2020). Alternatively, pregnant teenagers would resort to institutions run by NGOs, where some have restricted facilities and resources to support the continuation of education. Another concern is the standard school curriculum used in *Taman Seri Puteri*. While the method is laudable, according to a UNICEF report, the teenagers have struggled to reintegrate into society and cope with the normal standard school system after being out of school for some time. The present curriculum does not provide the teenagers with a readiness program, motivation and support system to reintegrate into the community (MWFC & UNICEF Malaysia, 2013).

### **Criminal Laws Related to Teenage Pregnancies**

The Malaysian Penal Code is an Act relating to criminal offences in Malaysia. Under this Act, a child under the age of 10 will not be criminally responsible for their actions (Section 82). Meanwhile, for a child above 10 and less than 12 years of age, his or her actions will depend on the child's state of maturity to understand and judge the nature and consequences of the conduct (Section 83). This is known as a *doli incapax* provision. Where the Court for Children is in doubt as to the age of the child, an opinion should be sought from a medical officer (MWFC & UNICEF Malaysia, 2013).

Children under the age of 18 are protected under the Child Act 2001, which was enacted partially to fulfill Malaysia's obligations under the UNCRC. Thus, any offences, committed by a 'child' as defined by the Child Act 2001, must be read together with the Penal Code. This study focuses on several types of offences relevant to teenage pregnancies.

### **Abortion**

Abortion is a common alternative one would resort to when dealing with an unwanted pregnancy. Abortion is an offence punishable under Malaysian criminal law (Section 312-314, Penal Code). However, abortion is lawful if the pregnancy endangers the life of the mother (Section 91, Penal Code) including the physical and mental health of the mother (Section 312, Penal Code). It is also mentioned in the Code of Medical Ethics (Section 5), that the termination of pregnancy would not be an offence if a medical practitioner registered under the Medical Act 1971 undertakes the procedure and such practitioner is in good faith that continuation of the pregnancy involves the mental and physical health of the pregnant woman, exposing her life to greater risks (Termizi et al., 2014).

In Malaysian society, the issue of abortion is still very taboo and rarely discussed in the open due to the strong religious and cultural aversion to this matter. Therefore, not many are fully informed about the exception in the law that makes abortion legal. The lack of information makes it difficult for the women to make informed decisions about abortion as well as to locate abortion services because doctors providing such services keep a low profile. The profound perception that abortion is illegal makes them avoid seeking such services in the public health sector and alternately opt for private services which can be very expensive. However, in desperation, some women would prefer to pay whatever it cost to perform an abortion (Low et al., 2015).

Although abortion is not entirely illegal, however, the grounds permitting it are very restrictive. This restrictive ground leads to the illegal operation of abortion which is normally dangerous as it is performed below the minimum standard of a safe operation. Nevertheless, in despair to hide the humiliation from public shaming, one would choose the life-threatening procedure of unsafe or self-induced abortion than face the stigma of society (Low et al., 2015).

### **Infanticide**

Infanticide is terminating the life of a baby who is less than 12 months. Infanticide is normally done in the form of baby dumping or abandonment causing the death of a baby and it is an offence under the law (Section 309A, Penal Code). Infanticide happens as a result of depression and desperation, normally related to the unwanted illegitimate child (Azhar, 2013).

Initially, infanticide was made an offence under the law to curb the problems of baby dumping and abandonment by sentencing the person responsible for causing the death of such baby. Research has proven that the method of sentencing work and it had managed to reduce cases related to baby dumping in Malaysia (Termizi et al., 2014). Nevertheless, penalizing teenagers for infanticide may seem to contradict the international standards calling for increased protection for children. Being young and vulnerable, lacking support and afraid of being stigmatised by society, the capacity for sound decisions may have been impaired leading them to commit infanticide (EAPRO, 2015). Instead of punishing them, some are in the opinion that the laws and authorities should assist the young mothers in handling the scenario subtly through other methods such as creating awareness at all levels in school and society, encouraging monitoring actions from the parents, teachers and friends, building a strong support system and providing non-judgmental and constructive advice in helping the young mother to deal with the unwanted child such as suggesting for adoption (Termizi et al., 2014).

### **Sexual Offences (Rape & Incest)**

Rape is a man having sexual intercourse with a woman against her will or without her consent (Section 375, Penal Code). Incest, on the other hand, is when a person has sexual intercourse with another person whose relationship with him or her is such that he or she is not permitted, under the law, religion, custom or usage applicable to him or her, to marry that other person (Section 376A, Penal Code). A female under 16 is unable to consent, and therefore any sexual intercourse is considered a statutory offence under the law (Section 376, Penal Code).

The offences of rape and incest have become more rampant, especially involving children as victims. Nevertheless, it is among the most under-reported forms of crime in Malaysia. According to the Report on Children's Rights in Malaysia, the reluctance to report sexual abuse cases can be due to several factors including the fear of being discriminated against and stigmatised by society. This fear has led the victims to remain silent and refuses to seek justice or cry for help by reporting the abuse to the authorities. A study in Malaysia demonstrates that in sexual cases, there is a tendency for society to put more blame on a woman rather than the abusive man. A woman will always be perceived as wronged in any other ways and even if she gets pregnant from the abusive acts, the stigma continues with the child described as illegitimate and unaccepted by society. She may also be disowned and denied moral support from the family members. Hence, this kind of perception creates a culture of silence within the communities, where the victims continue to suffer from the traumatic experience in silence for a lifetime, while the abuser often goes free and unpunished (Yusof et al., 2015).

Incest, among children, is more difficult to be discovered due to their young age and their dependency on the abuser for food and shelter, care and custody, love and attention (Yusof et al., 2015).

### **Marital Rape**

Marital rape is sexual intercourse whether consensual or not "by a man with his own wife, the wife not being under thirteen years of age." It is not rape and hence not an offence under the Penal Code (Section 375). This section is said to give an exception to the criminal offence of rape. Where married men are concerned, they are allowed, under the law, to force the wife of 13 years old and above to have sexual intercourse. According to UNICEF Malaysia, this section contradicts the laws to protect women and children from the offence of rape. Instead, the marriage gives a license for the husband to force the unwilling wife into sexual intercourse and it is clearly against international human rights. Although Malaysia had made amendments to comply with CEDAW by introducing Section 375A of the Penal Code which is punishing the husband for causing hurt or fear of death or hurt to his wife to have sexual intercourse with her, nonetheless, marital rape remains legal, thus giving an exception to rape (EAPRO, 2015).

The concern regarding this law is when a teenager becomes pregnant, for many reasons including rape or incest, many of the parents would force or convince the teenager into a marriage to hide the pregnancy in fear of shame and disgrace. The marriage is unlikely for the best interest of the child, but rather to safeguard the parents or the child from humiliation and social stigma. Early marriages against the best interest of the child can open doors to more harm than good for the teenage girl, especially if she is forced to marry the abuser himself. Although forced marriage is a crime under the law (Section 37, the Law Reform (Marriage and Divorce) Act 1976), however, being young and still reliant on parental love and



attention, teenagers may be emotionally pressured to agree to early marriages (EAPRO, 2015).

### **Neglect**

Neglect under the Penal Code is defined as exposure and abandonment of a child under 12 years old by the parent or a guardian (Section 317, Penal Code). This provision is laterally discussed in the Child Act 2001 (Section 17) which extends the matter to teenagers below the age of 18.

Neglect can also be defined as the persistent and serious failure to provide basic physical, emotional and development needs in terms of health, education, emotional development, nutrition, shelter and safe life for children. Neglect occurs when caretakers fail to provide children with essential food, clothing, shelter, medical care, education, nurturance or love ("National Child Policy," 2016).

In Malaysia, pregnant teenagers are normally isolated by society, including their family members, friends, teachers and neighbours. Due to the feeling of guilt and embarrassment, these teenagers would stop going to school and many would be sent to shelter homes to hide their pregnancies. Afraid of being stigmatised by health practitioners, they are also reluctant to seek medical help from public hospitals, leading some to resort to self-labour. In general, most pregnant teenagers are left to face their struggles alone.

The above are serious yet common types of abandonment in Malaysia. Parents fail to provide a safe environment, medical care, education, love and nurture for the teenager due to her out-of-wedlock pregnancy. However, to date, there has been no case reported on such neglect due to the reason that young teenagers are still reliant on their family for love and support. Thus, they may be reluctant to come forward if they understand that their parents may be prosecuted and face criminal sanctions for their act of neglect. They may also be unwilling to give evidence during criminal proceedings (EAPRO, 2015).

### **Laws Governing Care and Protection for Teenage Pregnancies**

The Malaysia law on care and protection of children is mainly guided by the Child Act 2001 (CA). The CA was enacted to fulfill its obligation under the UNCRC, to promote the best interest of the children. The Act repealed the Juvenile Courts Act 1947, the Women and Girls Protection Act 1973 and the Child Protection Act 1991.

The CA governs four main categories of children; children in need of care and protection (abused), children in need of protection and rehabilitation, children 'beyond control' and children in conflict with the law.

Children in need of special protection are generally defined as children who are at the risk of being abused or neglected whether physically, emotionally or sexually by their parents or guardians (Section 17). By virtue of this Act, children under this category can be removed from the custody of the parents or guardians to eliminate continuous harm to the children and be placed in a place of safety for care and protection (Section 54). The child abuser will also be punished accordingly under this Act (Section 31).

On the other hand, children in need of care and rehabilitation are generally children being induced to perform any kind of sexually related act or any physical or social environment which may lead to the performance of such act (Section 38). The abused children include those exploited for prostitution and hence, need care and protection. A female child and pregnant out-of-wedlock is considered in urgent need of protection (Section 41(2)(d)) and should be placed under care and rehabilitation under this Act (Section 55).

Another part of the CA speaks about children 'beyond control'. Although it was not defined under the Act, children 'beyond control' simply mean that in the event the parent or guardian is unable to exercise proper control over the child, he or she may make a written request to the Court for Children to detain the child in an institution (Section 46(1)). No elaboration was made to clarify the meaning of out-of-control behaviour or the proper control over the child by the parent. Hence, the meaning remains vague and ambiguous. The Child Rights Coalition Malaysia labeled the children as those who are having behavioural problems while the DSW defines it as conduct that may lead to crime or moral danger (EAPRO, 2015).

Concerning matters relating to out-of-wedlock pregnant teenagers (Section 41(2)), the Act empowers the Magistrate to hear cases of children considered 'beyond control' and make orders for either detention in a place of refuge or other private rehabilitation institutions for an appropriate period of time, to what the court thinks necessary (Section 46, 47). The order is made after considering the report prepared by the Child Protector and upon satisfaction that the parent or guardian understands the results of the order and consents to it (EAPRO, 2015).

These pregnant teenagers detained in the rehabilitation institutions are not offenders, nonetheless, being detained under the law makes them perceive it as punishment. The period of detention can sometimes be too long and arguably unnecessary, costly to the state, and does little to heal the parent-child relationship or to build the child's cognitive and social skills. The international experience suggests that teenager behaviour problems are best addressed through non-punitive, social welfare responses targeting both the child and her family, rather than the costly and ineffective institution-based rehabilitation programs (EAPRO, 2015).

### **Child Care Centres**

Two important laws governed the children's care centre are namely the Child Care Centre Act 1984 (CCCA 1984) and Child Care Act 1993 (CCA 1993). The CCCA 1984 monitors the quality of alternative childcare for children below the age of four and therefore, the details are beyond this scope of research.

The CCA 1993, on the other hand, provides for the registration, control and inspection of care centres. The CCA 1993 has been amended in 2006 requiring all care centres to be registered with the DSW and the DSW is given the power to monitor the operation of the centres including penalizing those who are non-compliance with the law.

Shelter homes for pregnant teenagers fall within the definition of "care centres" (Section 2, Child Act 2001) that need to be registered under the CCA 1993 (Section 4, Child Act 2001). Shelter homes are expected to serve as places for care and rehabilitation for pregnant teenagers by giving protection, supervision, rehabilitation and training (Section 55, Child Act 2001) within the framework of the CCA, which should be in line with the standard of UNCRC. Nevertheless, many studies describe that the operations are not entirely consistent with the standard of the UNCRC. Most shelter homes have strict rules and regulations, especially concerning contact with their families, either through face-to-face visits or other mediums such as phone calls or letters. The social exclusion makes them feel isolated and rejected by their family and society, leading them to feel lonely and depressed. Despite having social workers appointed as their guardians, the teenagers feel emotionally insecure to share their feelings and problems, afraid that the guardian would judge them or talk about them behind their backs (Saim et al., 2013).

Due to the stringent laws and tedious bureaucracy, there have been concerns regarding the illegal operation of shelter homes in Malaysia. These illegal shelter homes normally operate below the standard of care required by this Act and for some fair reason, there are concerns pertaining to illegal transactions done secretly in these centres such as baby trafficking ("Malaysia: Babies for Sale," 2016) or adoption of the newborn baby without the mother's consent (Saim et al., 2013).

## **Family Laws and Teenage Pregnancies**

### **Early Marriage**

With regards to the Malaysian family law, the two important Acts that need to be discussed are the Law Reform (Marriage and Divorce) Act 1976 (LRA) governing the non-Muslims and the Islamic Family Law (Federal Territories) Act 1984 (IFLA) governing the Muslims.

Under LRA, early marriages for girls are not allowed if she is below 16 years old. However, if she is between 16 to 18, she is allowed to marry with the consent of the Chief Minister and if she is between 18 to 21, the parents must consent to the marriage. Only at the age of 21 and above, can she have her prerogative consent (Section 10, Law Reform (Marriage and Divorce) Act 1976).

Under the Islamic Family Law Act (Section 8, Islamic Family Law (Federal Territories) Act 1984), the minimum age for marriage is 16 years old for a girl. Nonetheless, it gives exceptions to marrying below the age of 16 with the permission of the *Shariah* judge. There may be a wide range of reasons to consent to the marriage but generally are based on the grounds of religion, ethnicity or custom, physical signs of puberty, parental consent, pregnancy, or for other broadly defined or undefined reasons related to the personal circumstances of children, couples and families.

There are various issues concerning early marriages. One of them is the issue of the best interest of the child. When a teenager becomes pregnant in a community where sexual relationship outside marriage is heavily sanctioned, marriage may seem to be for the 'best interest of the child' at that spur moment to hide the humiliation and disgrace of the girl from the social stigma. However, it is temporary as the circumstances change after the marriage with the burden of responsibilities that comes along. Thus, it is insufficient to satisfy the 'best interest' principle and ensure the protection of the child based on temporary circumstances to agree to early marriages (EAPRO, 2015). There are many more underlying reasons that must be looked into before approving the marriage.

Often early marriages occur as a result of parental strong persuasion to hide the pregnancies. In other words, marriage is 'forced' by parents (EAPRO, 2015). Under the LRA, it is an offence to force or threaten someone to compel him or her to marry against his or her will (Section 37, Law Reform (Marriage and Divorce) Act 1976). Whilst the Islamic Family Law does not provide punishment for forced marriage, nevertheless, the parties are still subject to the Penal Code criminalizing forced marriage of a woman through kidnapping and abduction (Section 366, Penal Code). Forced marriage also is unacceptable and a serious breach of an individual's rights, including a child's right.

Nonetheless, in the issue of early marriages, the perpetrators of forced marriage are usually the parents or close family members of the teenager. The teenager may have to agree to the marriage as they are emotionally and psychologically pressured to consent, due to their age, maturity and full reliance on the family, their decisions may have been impaired by all the surrounding circumstances. And yet, even if they knew of their rights and are fully aware

of the consequences, they may still be reluctant to come forward afraid that the parents may be prosecuted and face criminal sanctions (EAPRO, 2015).

Early marriage additionally seems to contradict the rules of statutory rape, under the Penal Code. Early marriage can be a license for adults to have sexual relationships with children. From the human rights perspective, the law appears to condone the act of having a sexual relationship with children within the context of marriage, rather than protecting them (EAPRO, 2015).

Malaysia had lifted its reservation on Article 16(2) of CEDAW regarding the minimum age of child marriage in 2010, nonetheless, there has not been any amendment made as to the law to date. Hence, child marriage remains legal under Malaysian law (Women's Aid Organisation, 2012).

### **Illegitimate Child Under the Law**

According to Zin et al (2016), the protection of lineage is one of the purposes of Islamic law (*maqasid al-Shariah*). Once a child is born, he or she is entitled to the right of paternity, which establishes his or her legal rights to financial support, inheritance and lineage from the father. Meanwhile, an illegitimate child is ascribed to his or her mother based on the premise that Islamic law only regards the doctrine of '*al walad lil al-farasy*' (the child belongs to the bed). The doctrine means that a child is presumed legitimate if he or she is born to a married woman whose paternity is certain (Sujimon, 2014).

The Islamic Family Law (Federal Territories) Act 1984 (Section 112-119) provides a legal mechanism for determining the legitimacy of a Muslim child. The law stipulates that the child will only be considered legitimate if he is born after six months of pregnancy within a subsisting marriage or in accordance with Islamic law (Section 2,110, Islamic Family Law (Federal Territories) Act 1984). Consequently, the issue of paternity was discussed in the case of *Haji Ghazali v Asmah* (1977) 1 JH 81 where the court ruled that a child was a legitimate child since the child was born during a valid marriage and more than six months after the marriage.

Parentage is considered one of the most crucial rights of a child under Islamic law in Malaysia as it carries parental responsibilities towards children, which are considered a religious duty. An illegitimate child has no rights from the biological father which include the rights to care and custody, guardianship, maintenance and inheritance. Instead, the mother or maternal relatives are fully responsible for the living expenses, care and custody. This was also described in the Legitimacy Act 1961 (Revised 1971) that an illegitimate Muslim child can only inherit from the maternal side, but not from the paternal side (Saim et al., 2013). In this matter, it is the sole responsibility of the mother to maintain the illegitimate child without any financial assistance from the biological father or his family. This seems to be a burden to the young mother coping with the new responsibility of taking care of the child including maintaining the child alone without assistance from the father or his family.

The issue of illegitimacy does not arise in the case of a non-Muslim child since the law acknowledges a child as legitimate from a void or voidable marriage. The Legitimacy Act 1961 provides the process of legitimating a person by the subsequent marriage of his or her parents. It was enacted to give a new status to an illegitimate child and protect his or her interest. The LRA 1976 (Section 93) and the Married Women and Children Maintenance Act 1950 (Section 3(2)) allow the court to force the father of an illegitimate non-Muslim child to take responsibility for the child's living expenses if he is proven to be the father of the child. If the father disregards the court order, he could be sentenced to one month in prison for

each month he owes the expenses. Nonetheless, the level of living expenses for illegitimate children is lower than for legitimate children as there is no such limitation on living expenses for the latter (Hak & Hashim, 2009). Moreover, the Married Women and Children (Enforcement of Maintenance) Act 1968 gave power to the court to make an attachment of earnings order. The law facilitated the payment of child support through the deduction of the father's salary and protected the child's interest especially when the father failed to make the monthly payment to his dependent children (Kahar, 2010).

### **Adoption**

The child adoption laws in Malaysia recognize two methods of legal adoption, namely adoption through Court order as provided for by the Adoption Act 1952 (AA) which applies only to non-Muslims and adoption under the Registration of Adoption Act 1952 (RAA) which applies to both Muslims and non-Muslims. Both the RAA and AA are only applicable in Peninsular Malaysia.

Children adopted under the AA assume all rights of biological children of the adoptive parents. Under the AA, the child is treated as a birth child where he or she will be entitled to custody, maintenance, education and inheritance of the adoptive parent's property (Section 9, Adoption Act 1952). The adoptive parents can also change the child's name following their family's name. In this circumstance, the bloodline of the adopted child with his natural parent is cut off (*Re TSY (An Infant)* [1988] 3 MLJ; 44, *Hitchcock v W.B and F.E.B* [1952] 2 QB; 568-569).

However, children adopted under the RAA do not assume the name or inherit the property of the adoptive parents, although they do get identity documents (including passports) through the adoption certificate. Adoption under the RAA will not affect the adopted child's biological parentage. It is a mere registration in acknowledging that the child has now been legally adopted and that the adoptive parents will have custody of the child. There will be no transfer of parentage and the adopted child will not stand on equal footing with the adoptive family. Regardless of the registration, the adopted child's bloodline with the natural parents is preserved. The registration of adoption will provide a family environment for the adopted child, secure the adopted child's welfare, exempt from income tax, assist the process to include the adoptee in his or her adopter's passport or travel document, the adoptee's identification card and administration for educational purposes (Mohd & Kadir, 2012).

In Sabah and Sarawak, Sabah Adoption Ordinance 1960 and Sarawak Adoption Ordinance 1958 apply to Muslims and non-Muslims. It provides that an adopted child is treated as legitimate for all purposes and can inherit based on the best interest of the child regardless of its contravention with the Islamic principles (Mohd & Kadir, 2012).

Although the Adoption Acts are not directly related to the topic of research on the protection of pregnant teenagers, however, there has been a concern on the issue of consent from the teenager's parents to adoption. Often the young mothers agree to give up their baby for adoption as a prerequisite agreement before entering the shelter homes. In such desperation and being uninformed of the rights and consequences of the adoption, they would easily agree to such adoption. Some would later regret or retract the consent after labour, but the retraction is deemed too late. In other words, they may be under undue influence when giving consent or under pressure to execute the agreement of adoption (Saim et al., 2013).

Another issue concerned is illegal adoption due to the slow and extensive process of legal adoption. It has been reported that there are two years waiting period under the RAA for the initial adoption application to be approved, and this is considered by many social workers and adoptive couples to be too long. As a result, desperate couples may turn to less-credible sources involving exchanging money for infants. Some couples chose to buy babies instead of legally adopting them because they want to look for a specific infant amid the stigma against adoption (Su-Lyn, 2016). This is an alarming issue in Malaysia as it opens doors for baby trafficking involving teenage mothers with unwanted pregnancies.

## **Laws Safeguarding Crimes Related to Teenage Pregnancies**

### **Baby Trafficking**

The issue of baby trafficking in Malaysia had recently become public after the discovery of the journalist from Al-Jazeera (Malaysia: Babes for Sale, 2016). It has been reported that a baby is sold between RM10,000 (US\$2,248) and RM20,000 (US\$4,496) to childless couples or to different syndicates for various reasons in the black market for business purposes (Michael, 2013). Baby trafficking happens when there is a demand for babies and this demand comes with the consensus of both parties. Hence, it is unlikely to be reported and therefore, difficult to get information due to the nature of the illicit activity.

Malaysia has reported 119 trafficking victims (72 women and 47 men or children) from April 2020 to March 2021. In spite of the global pandemic lockdown, Malaysia has failed to meet the minimum standard of the elimination of trafficking, hence has been downgraded from Tier 2 to Tier 3 by the United States Department, Trafficking in Persons Report. Despite being a party to the 2000 UN Trafficking in Persons Protocol, enacting the 2007 Anti-Trafficking in Persons and Smuggling of Migrants (ATIPSOM) Act which was amended in 2010 and 2015, and establishing Anti-trafficking Council (MAPO), Malaysia is still lacking significant efforts in its anti-trafficking capacity. It has been suggested that corruption and official complicity facilitated trafficking and impeded anti-trafficking efforts ("2021 Trafficking in Persons Report – Malaysia," 2021).

Baby trafficking is not directly related to teenage pregnancy, nonetheless, it has become a social concern today, especially for teenagers with unwanted pregnancies. Being young and vulnerable, under desperate circumstances, they can become an easy target for the perpetrators to convince them to engage in such illegal activity.

### **Sexual Offences Against Children**

The statistics from the Royal Malaysia Police Department (PDRM) revealed a total of 1,721 cases of sexual crimes against children were recorded in the first six months of 2020. This includes 651 rape cases, 344 molest cases, 106 incest cases, 106 unnatural sex cases and 514 cases for offences under Sexual Offences Against Children 2017 (Act 792) ("1,721 Cases of Sexual Crimes Against Children Recorded as of June 30," 2020). This is equivalent to 1 in 10 children in Malaysia being likely to be a victim of emotional, physical or sexual abuse, according to a child rights activist (Kwan, 2021).

In light of the above, the Sexual Offences Against Children Act 2017 was passed by the Malaysian Parliament on 4 April 2017 and enforced on 10 July 2017. The Act aims to protect children under the age of 18 years old against any sexual offences. There are 26 sections in the Act, all categorised into seven main elements including child pornography, sexual grooming, physical and non-physical sexual assaults, abuse of the position of trust, credibility and evidence of children.

The Act includes a section on child grooming, making it an offence to sexually communicate, meet a child for sexual purposes or be involved in physical sexual assault. Under the provisions, those who abuse their positions of trust, where children are placed under their care including supervisors, trainers and healthcare service providers or those withholding information will be punished under the law. This includes punishing any male offender above 50 years old with whipping (Yunus & Carvalho, 2017).

This Act is necessary for protecting vulnerable children. Along with this Act, several sections in the Penal Code, Child Act 2001 and Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 are reported to be amended accordingly. The Ministry of Women, Family and Child Development (MWFCD) is expected to provide legal literacy on the ground especially for the children to create stronger and wider awareness (Abdullah et al., 2017).

### **Teenage Pregnancy-Related Policies in Malaysia**

In complementing and strengthening the existing laws, social policies relating to social intervention have been formulated to improve the implementation of the process. Though some of the formulated policies do not directly focus on pregnant teenagers, the status of children and young women's well-being in Malaysia has been improved.

Before 2009, the policies relating to children were scattered and largely incorporated into social policies such as the National Education Policy 1961, National Population Policy 1984, National Social Welfare Policy 1990, National Policy on Women 1989 and National Social Policy 2003. Among the established objectives under those policies are that all efforts shall be directed towards fostering the physical, social, emotional and mental development of children. Thereby, children's rights and welfare or the best interest became the focal point in promoting children's interests in Malaysia (Kahar, 2010).

In 2009, the government took a positive move in formulating the first child-focused policy, known as the National Policy on Children and the National Child Protection Policy. These two policies were based on the 1991-2000 National Plan of Action for Children that were linked to the objectives and strategic visions of the National Vision 2020. The National Child Policy specifically, aims to create healthy, energetic, knowledgeable, innovative, creative, competitive, progressive and good values for the children. Whereas the National Child Protection Policy, on the other hand, aims to ensure that every child is protected from neglect, abuse, violence and exploitation ("National Child Policy," 2016 & "National Child Protection Policy," 2016).

The implementation of the National Child Policy and the National Child Protection Policy mobilize the efforts and roles of the private sector, media and civil society to address the needs of children and the community. The policies additionally encourage a systematic approach to advocacy and building an effective operational system through interventions that would help to promote children's well-being. Based on the Child and Family Welfare national assessment, there is a range of child protection services that promote children's well-being and protection covering primary prevention initiatives, secondary prevention or early intervention services and tertiary interventions (MWFCD & UNICEF, 2013).

The primary preventions are directed at the community to strengthen the overall capacity of the society in caring for the children and keeping them safe such as through advocacy and awareness campaigns and strengthening parenting skills (MWFCD & UNICEF, 2013).

The secondary prevention or early intervention services are directed at children and families who have been identified as vulnerable or at risk of neglect. Early interventions target

families that are already at risk of engaging in abusive behaviours to change those circumstances before they create actual harm to a child. For example, families might seek help for separation, mediating or dealing with disputes, alcohol or drug problems, domestic violence, mental health problems or difficulties in caring for children. Given this range of problems, a variety of actors are required to provide services at the secondary level both government and civil society organizations. The government has initiated telephone hotlines such as *Talian Nur* 15999, established Children Activity Centres (PAKK), created and mobilized Child Protection Teams, set up Community Care Centres, provided financial assistance for children, women and families, and made available courses for strengthening the family institution, family counselling services and established Family Centres. Furthermore, in 2010, the DSW developed minimum standards of care for children in care centres managed by NGOs to ensure the child is protected and cared for in an institutional setting (MWFC & UNICEF, 2013).

The tertiary interventions are to respond to circumstances where a child is at serious risk of or is being abused, exploited, neglected or harmed in any way. This requires a continuum of interventions, including both voluntary and community-initiated interventions in less serious cases such as mediation, counselling, advice-giving and community monitoring. In a more serious case, mandatory State interventions are necessary for children experiencing or at risk of serious harm such as providing supervision and family support services, arranging parenting programs, family and individual counselling, treatment programs and in critical cases, temporary or permanent removal of the child and placement in alternative care. Various initiatives and resources have been put forward in the form of care homes and institutions, emergency medical services including One Stop Crisis Centres and the Suspected Child Abuse and Neglect (SCAN) teams under the Ministry of Health and the establishment of the Child Protection Unit in 2001 under the Royal Malaysian Police Department (MWFC & UNICEF, 2013).

Another policy with regards to young teenagers is the National Policy on Women which was formulated in 1989. The policy comes with a specific plan of action for women concerning matters relating to family, health, education and training, employment, politic, media, religion and culture objectively to ensure women enjoy equal rights to the acquisition of resources, opportunities for advancements and the benefits of the development as well as removing discrimination and obstacles for women to progress (Jabatan Hal Ehwal Wanita, 1997). The implementation of the policy has been delegated to the Women's Affairs Secretariat (HAWA) but is currently under the purview of the MWFC.

The idea of protecting women is because women's well-being is always related to children. Hence, the advancements made in the promotion and protection of the rights of women will benefit the children as well (Fatimah, 1999). Therefore, the government has taken serious efforts in ensuring that Malaysian women and their children are better protected in which this policy addressed and highlighted issues on child abuse, childcare, children abandonment and gender preference (Jabatan Hal Ehwal Wanita, 1997).

### **Institutional Framework for Teenager's Welfare**

The implementation of the legislation and policies in Malaysia has strongly been supported by an institutional framework at the federal and state level. The implementation of different policies has been assigned to different ministries simply to give more focus in ensuring the effectiveness of the policies. Below are a few institutions governing the issue of children, including teenagers in Malaysia.



### **Ministry of Women, Family and Community Development**

The establishment of the Ministry of Women, Family and Child Development (MWFC) in 2001 is to promote women, children and the community's well-being. The MWFC is supported by the DSW in the implementation of children's rights and welfare. The DSW has been given the role to monitor the implementation of the children's best interests within the social welfare system including the implementation of several legislative Acts namely the Child Act 2001 and the Child Care Act 1993 through rehabilitative programs and preventive measures. These Acts are related to guidelines and regulations to ensure the children's rights in the area of survival, protection, participation is met. When the Child Act 2001 was passed, a Special Child Division was set up and attached under the DSW to implement and adopt the child protection law (Kahar, 2010).

The government, in its Action Plan, also calls for initiatives to promote awareness of the importance of protecting children at every level of society. In this respect, the MWFC has developed a smart partnership with the media and NGOs in organizing various community awareness programs to give concentration on raising the public's consciousness about child protection (MWFC & UNICEF, 2013). The NGOs in Malaysia had been consulted to support the government's effort in promoting the best interest principle of children. Below are some NGOs that deal with children;

### **Malaysian Council for Child Welfare**

The establishment of the Malaysian Council for Child Welfare (MCCW) in 1978 is to complement the government's efforts in the welfare and development of children and promotes the general principles embodied in the UNCRC. The MCCW plays an important role in advocating the rights of the child as well as creating awareness in Malaysia about children. Many conferences and workshops have been organized by the MCCW since its establishment in disseminating knowledge and information relating to children's issues and welfare ("Malaysian Council for Child Welfare," 2022).

### **Suhakam**

Another important agency that directly involves children's rights is the Human Commission of Malaysia or SUHAKAM. This NGO has retained the government policy in supporting the children's rights movement. SUHAKAM has been organizing programs relating to children's rights involving the government ministries, agencies and NGOs objectively to discuss matters related to the UNCRC such as reviewing the implementation of the UNCRC into the Child Act 2001 and other domestic laws and giving recommendations to the government on the withdrawal of reservations to the UNCRC ("Human Rights Commission of Malaysia," 2022).

The collaboration between government ministries, agencies and NGOs in understanding the needs of Malaysian children, including teenagers, plays an important role in achieving the target to promote the best interest of pregnant teenagers throughout Malaysia.

### **Conclusion**

The above study reveals the development of laws and policies in Malaysia in upholding the rights of children and women, in response to the ratification of the UNCRC and CEDAW after 1995. Despite a few reservations, the two international treaties were gradually incorporated into the domestic laws accordingly to suit the multi-racial society and within the principle of Islamic law.

The Malaysian government went further to improve and strengthen the existing laws through its policies and institutional services. Nonetheless, the current laws and policies do not exclusively provide rights and protection for pregnant teenagers. The existing legal framework is scattered and mostly under the rights of children in general.

Therefore, this study recommends that it is necessary for a comprehensive legal framework and collaborative support services in addressing the rights and protection of teenage pregnancies in Malaysia. A comprehensive framework would bring better changes to pregnant teenagers in Malaysia in a holistic manner and would ensure their rights are well served.

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