

THE PROTECTION OF PREGNANT ADOLESCENTS IN
MALAYSIA: TOWARDS A LEGAL FRAMEWORK

BY

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degree of Doctor of Philosophy in Laws

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ABSTRACT

This study investigates the existing legal framework for the protection of adolescent pregnancies in the context of education, family law, criminal law and protection against sexual crimes in Malaysia with adherence to the international treaties of the United Nations Convention on the Rights of Children (UNCRC) and the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and within the principles of the Islamic law (*maqasid al-Shariah*). This study further examines the role of the government departments, non-government agencies as well as social activists in implementing the laws and policies as well as the effectiveness of the efforts in contemplating the contemporary needs of pregnant adolescents in Malaysia. This study utilises a mixed qualitative approach comprising of two methodologies; firstly, library research of the existing laws, treaties, reports, studies and other information pertaining to adolescent welfare and protection systems in the international treaties, also, analysing Malaysia's responses to the treaties within the purview of the Islamic laws. This data constitutes the primary data for this research. Secondly, fieldwork interviews with the government departments, non-government agencies as well as social activists as enforcement agents dealing directly with pregnant adolescents. Critical analysis was applied to understand the multitude problem on-the-ground and the consideration of the pregnant adolescent's best interests from the socio-legal approaches. This data constitutes the secondary data for this research. This study establishes the ongoing reforms in the domestic laws and policies in response to the ratification of UNCRC and CEDAW since 1995. The numerous efforts done by the government departments, non-government agencies and social activists prove the readiness and seriousness of the Malaysian authorities and society in strengthening the current protection and welfare system in Malaysia with regards to pregnant adolescents. Nonetheless, it was found that the absence of a legal framework which includes an adolescent pregnancy focused policy, a national strategic vision for the adolescent pregnancy welfare system and coordinated support services for pregnant adolescents; affects the smooth implementation of the currently existing laws and policies on this matter. Therefore, it is anticipated that a more legal framework and concerted services will help to promote a holistic approach to strengthen the welfare of pregnant adolescents and safeguard them from unnecessary harm.

ملخص البحث

هذه الدراسة تبحث في الإطار القانوني الحالي لحماية حمل المراهقات في سياق التعليم وقانون الأسرة والقانون الجنائي والحماية من الجرائم الجنسية في ماليزيا مع الالتزام بالمعاهدات الدولية لاتفاقية الأمم المتحدة لحقوق الأطفال (UNCRC) واتفاقية الأمم المتحدة للقضاء على جميع أشكال التمييز ضد النساء (CEDAW) وضمن مبادئ الشريعة الإسلامية (مقاصد الشريعة). كما تتناول هذه الدراسة دور الإدارة الحكومية والقطاع الخاص والوكالات غير الحكومية في تنفيذ القوانين والسياسات، وكذلك فعالية الجهود في التفكير في الاحتياجات المعاصرة للمراهقات الحوامل في ماليزيا. توظف هذه الدراسة طريقة مختلطة من البحث النوعي تتألف من منهجين. أولاً، البحث في المكتبات عن القوانين والمعاهدات والتقارير والدراسات القائمة وغير ذلك من المعلومات المتعلقة بنظم رعاية وحماية المراهقين في المعاهدات الدولية، وكذلك تحليل استجابة ماليزيا للمعاهدات التي تقع ضمن نطاق قوانين الشريعة الإسلامية. هذه البيانات تشكل المرجع الرئيس لهذا البحث. ثانياً، العمل الميداني عن طريق إجراء مقابلات مع الإدارة الحكومية والقطاع الخاص والوكالات غير الحكومية، وكذلك والناشطين الاجتماعيين بوصفهم ممثلي تنفيذ يتعاملون مباشرة مع المراهقات الحوامل. تم تطبيق التحليل النقدي لفهم مشكلة تعدد المشاكل على أرض الواقع والنظر في صالح المراهقات الحوامل اجتماعياً وقانونياً، وهذه البيانات تشكل بيانات ثانوية. تحدد هذه الدراسة الإصلاحات الجارية في القوانين والسياسات المحلية استجابة للتصديق على اتفاقية حقوق الأطفال واتفاقية القضاء على جميع أشكال التمييز ضد النساء منذ عام 1995. كانت الجهود العديدة التي بذلتها الإدارة الحكومية والقطاع الخاص والوكالات غير الحكومية والناشطين تثبت مدى استعداد وجدية السلطات والمجتمع الماليزي في تعزيز نظام الحماية والرعاية الاجتماعية الحالي في ماليزيا فيما يتعلق بالمراهقة الحامل. ومع ذلك، فقد تبين أن غياب إطار قانوني شامل يتضمن سياسة تركز على الحمل في مرحلة المراهقة، ورؤية استراتيجية وطنية لنظام رعاية الحمل لدى المراهقات، وخدمات الدعم المنسقة للمراهقات الحوامل تؤثر على التنفيذ السلس للقوانين والسياسات القائمة حالياً في هذا الشأن. ولذلك، من المتوقع أن وجود إطار قانوني أكثر شمولاً ووجود خدمات منسقة يساعد في تعزيز نهج شامل لدعم صالح المراهقات الحوامل وحمايتهن من ضرر لا لزوم له.

APPROVAL PAGE

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DECLARATION

I hereby declare that this thesis is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

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Dedicated to my beloved husband and our beautiful children

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In the name of Allah, the Most Gracious, the Most Merciful.

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Women and Girls Protection Act 1973(Act 106)(Repealed by the Child Act 2001(Act 611))

ABBREVIATIONS

AA	Adoption Act 1952
ARCSHS	Australian Research Centre for Sex, Health and Society
ARRCADE	Asian Research Centre for Child and Adolescent Development
Art	Article
ATIP 2007	Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007
AYPPN	Australian Young, Pregnant and Parenting Network
CA	Child Act 2001
CACY	Calgary Achievement Centre for Youth
CCA	Child Centre Act 1993
CCPC	Coordinating Council for the Protection of Children
CEDAW	Convention on the Elimination of All Forms of Discriminations against Women
CPU	Child Protection Unit
DPP	Deputy Public Prosecutor
FACE	Family, Adolescent and Child Excellent Centre
FNP	Family Nurse Partnership
HCP	Health Care Provider
IFLA	Islamic Family Law (Federal Territory Act) 1984
IKIM	Institut Kefahaman Islam Malaysia
ILKAP	Judicial and Legal Training Institute
JAKIM	Department of Islamic Development Malaysia
JET	Jobs Education and Training
JH	Jurnal Hukum
JKSM	<i>Shariah</i> Judiciary Department of Malaysia
LPPKN	National Population and Family Planning Development Board
LRA	Law Reform (Marriage and Divorce) Act 1976
MAIS	Selangor Islamic Religious Council
MAPO	National Anti-Trafficking in Persons and Anti-Smuggling of Migrants Council
MCCW	Malaysian Council for Children Welfare
MOE	Ministry of Education
MOH	Ministry of Health
MWFCD	Ministry of Women, Family and Community Department
MyCCAdh	Malaysian Clearinghouse Centre for Adolescent Health
NACC	National Advisory and Consultative Council for Children
NBOS	National Blue Ocean Strategy
NEP 1961	National Education Policy 1961
NEP	National Economic Policy

NPAC	National Plan of Action for Children
NPAM	National Plan of Action for Malaysia
OSCC	One Stop Crisis Centre
OSTPC	One Stop Teenage Pregnancy Centre
PAKK	Children Activity Centres
PDRM	Royal Police Malaysia
PHE	Public Health England
PPKK	Child Protection Team
RAA	Registration of Adoption Act 1952
SCAN	Suspected Child Abuse and Neglect
SOP	Standard of Procedure
STD	Sexual Transmitted Disease
SUHAKAM	Human Rights Commission of Malaysia
SWD	Social Welfare Department
TOP	Termination of Pregnancy
UK	United Kingdom
UNCRC	United Nations Convention on the Rights of the Child 1989
UNICEF	United Nations International Children's Emergency Fund
USA	United States of America

CHAPTER ONE

INTRODUCTION

1.0 INTRODUCTION

In Malaysia, adolescents comprise one fifth or five million of the population and the numbers are increasing over the years. It is estimated that by 2020, the number of adolescents in Malaysia will increase to six million.¹ Adolescents are the nation's valuable assets as they are the leaders of the future generations who will contribute towards the nation's future workforce and productivity.

As Malaysia undergoes rapid urbanisation and industrialisation, the adolescents not only have to face challenges of growing up but also need to be prepared to face the multitude of challenges and stresses from the environment. Due to their vulnerabilities and unique characteristics, adolescents are exposed to challenges such as juvenile delinquency, sexual exploitation, violence and abuse.

As adolescents experience the gradual transition of childhood to adulthood, they encounter significant and challenging changes in life biologically, physically, emotionally, socially and economically.² In this crucial phase of development, the adolescents learn and develop habits, behavioural patterns and lifestyles that will last a lifetime. These behaviours will affect the well-being of the future generation. The benefits which will accrue to every society that meets the challenge of promoting the development of adolescents far outweigh the cost of neglecting their needs. Therefore,

¹ Ministry of Health, *National Adolescent Health Plan of Action 2015-2020*, (Malaysia: Family Health Development Division, Ministry of Health, 2015).

² *Ibid.*, 13.

the needs of adolescents should be addressed to ensure the welfare of the future nation.³

Like young children, adolescents too have rights to protection and care as well as to essential commodities and services. They deserve a safe, healthy and conducive environment to grow up in including protection from all forms of abuse, violence and neglect, particularly with regards to protection of risks such as child marriage and sexual offences. Although adolescents have greater needs, it is precisely in these areas that the investment and assistance are often lacking due to political, cultural and societal insensitivities.

Realising this, Malaysia has pledged to address these rights by signing onto the international rights treaties on children and women and undertaking necessary measures to reform the national laws, formulate national and social policies as well as strengthening its institutional framework accordingly. Malaysia is also endorsing the need for more partnership and cooperation from all parties and agencies, internationally and nationally involving the government departments, private sectors and non-government organisations (NGOs). In managing the adolescents' problems and needs, one of the requirements is to pool together all knowledge and practices into a coherent framework to ensure active and meaningful engagement of all concerned in delivering effective and decent outcomes through a holistic and integrated manner. For that reason, a legal framework is necessary to govern issues of pregnant adolescents in Malaysia so as to protect their welfare and ensure that they achieve a better fulfilment in their adult life.

Therefore, the focus of this chapter is on the brief overview of the background of the study, focusing on pregnant adolescents and some description of the selected

³ Ibid., 14.

contemporary issues experienced by these adolescents. This explanation will lead to the problem statement, research questions and objectives of the study.

1.1 BACKGROUND OF THE STUDY

Pregnancies among adolescents have become a common social issue in today's global society. In Malaysia, the numbers of pregnant adolescents are increasing. Statistics from the Department of National Registration of Malaysia show that there were 4,992 illegitimate children born to adolescent mothers aged 18 years old and below in 2017 and 1,664 in 2018, until June.⁴ These figures, however, only represent registered live birth of pregnant adolescents which exclude abortions, stillbirth and baby dumping. Thus, it underestimates the real burden of pregnant adolescents.

Pregnant adolescent is defined as pregnancy occurring among adolescents aged 19 years or younger.⁵ It is perceived to be a problem in Malaysia when the pregnancy happens out of wedlock. An out of wedlock pregnancy is considered to be against the norms and brings shame and disgrace to the family.⁶ The unmarried mother is perceived as being an immoral and an ill-mannered person,⁷ sinful and unacceptable.⁸

The Malaysian authorities have made various efforts to help the adolescents to cope with the phenomenon of out of wedlock pregnancy such as organising campaigns through the mainstream media. The Social Welfare Department (hereinafter referred

⁴ Natasha Joibi, "5,000 babies born to under-18s", The Star Online, <<https://www.thestar.com.my/news/nation/2018/07/23/5000-babies-born-to-under18s-incest-and-child-abuse-among-factors-behind-such-cases-says-wan-azizah/>> (accessed 26 July, 2018).

⁵ *Young People and Family Planning: Teenage Pregnancy*, (Kuala Lumpur: UNICEF Malaysia, 2008).

⁶ Nor Jana Saim, "Social Support, Coping, Resilience and Mental Health in Malaysian Unwed Young Pregnant Women and Young Mothers: Their Experiences While Living in a Shelter Home," (Ph.D. thesis, Umea University, Sweden, 2013), 1.

⁷ Jay G Silverman, Anita Raj, Lorelei A Mucci, and Jeanne E Hathaway, "Dating violence against adolescent girls and associated substance use, unhealthy weight control, sexual risk behavior, pregnancy, and suicidality", *Jama*, vol. 286, no. 5 (2001): 572–579.

⁸ Beng Beng Ong and Michael Green, "Infanticide in Malaysia: Two case reports and a review of literature", *American Journal of Forensic Medicine and Pathology*, vol. 24, no. 1 (2003): 64–69.

to as “SWD”) and the Ministry of Health (hereinafter referred to as “MOH”) have launched campaigns in cooperation with the mainstream media with the concept *Masih Ada Yang Sayang* (There is Somebody Who Loves You), *Generasiku Sayang* (My Lovely Generation) and Say No to Baby Dumping. These campaigns are aimed to reduce the stigma, trigger awareness in the society and promote interventions that provide protection for the unmarried mothers and their babies such as the shelter homes. The NGOs, as well as religious authorities, also took part in these campaigns by establishing private shelter homes.⁹

However, these actions have met with considerable resistance and severe criticism from the Malaysian society because they believe that the actions will encourage pregnancy out of wedlock. Many Malaysians believe that out of wedlock pregnancies should be punished because of their consensual sexual activity. On the other hand, there are some people, especially professionals who work in direct contact with the pregnant adolescents, believe that they need help to go through the process of pregnancy, labour and motherhood at a very young age.¹⁰

Pregnancies among adolescents lead to various negative consequences. Among them are school dropouts, abortion, child marriage, child sexual grooming as well as lack of parenting knowledge and skills.

1.1.1 Education Policies

It has been a common practice in Malaysia for pregnant students to drop out of school to hide their pregnancies due to the negative perception of the society towards them, particularly from their teachers and peers. This causes disturbance to their education

⁹ Nor Jana, *Social Support...*, 4.

¹⁰ Ibid.