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Challenges and Innovations in Harmonising *Sharīʿah* and Modern Family Law: Malaysia Experience

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ABSTRACT

Harmonisation of *Sharīʿah* and civil law particularly in Malaysia is not a new concept. It has existed and ongoing informally in Malaysian Legal system. As Malaysia is practicing dual legal system, i.e. Islamic and civil law, harmonisation of laws seems significant in the sense that both *Sharīʿah* and civil law are applicable to all Malaysians, Muslims and non-Muslims. This paper seeks to examine challenges and innovations in harmonising *Sharīʿah* and modern family law particularly in Malaysia being multi-racial country. The paper will address selected family law issues that is deemed harmonised as well as the main challenges and innovations in harmonising several related family law issues that are not deemed harmonised which include matters relating to remedy in breach of betrothal agreement, age of marriage, maintenance of wife and children, child adoption and custody, polygamous marriage, registration of marriage and divorce and one court solution in the case of conversion to Islam. The research adopts qualitative research methodology based in the library It is hoped that this study will provide a useful source of reference to all that seeks understanding and sampling on harmonisation of *Sharīʿah* and civil law particularly in modern family law.

Introduction

The concept of Harmonisation of *Sharīʿah* and civil law is not new in Malaysia. The reason is apparently because Malaysia is practicing dual legal system, Islamic law that is applicable to the Muslims and civil law that is applicable to non-Muslims. Matters relating to family and personal law of the Muslims are governed by state laws and enactments. While matters relating to family and personal law of non-Muslims are governed by Federal laws for example Law Reform Marriage and Divorce Act 1976 and Adoptions Act 1952. Nevertheless, there are also laws at Federal Level which are of general application and are applicable to both Muslims and non-Muslims especially the laws which are procedural in nature such as Registration of Adoptions Act 1952, Child Act 2006 and Domestic Violence Act 1994. Malaysia is a country consisting of 13 states altogether. Each state has its own Islamic Family Law enactment the pioneer in which is Islamic Family Law (Federal Territories) Act 1984 (IFLA) applicable to Muslims in Federal Territories. Other state enactments such as Islamic Family Law (state of Selangor) Enactment 2003 is applicable to Muslims in Selangor notwithstanding the fact that the provisions of the law in all states are almost similar and in harmony.

According to Abdul Hamid bin Haji Mohamad (Hamid, 2003) process of harmonisation has been ongoing for over two decades in Malaysia, except that the word "harmonisation" is not used. He aimed to demonstrate two key points: firstly, that

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"civil law" is not entirely incompatible with Islamic principles, only certain aspects require alignment with *Sharīʿah*; and secondly, that *Sharīʿah* can be effectively applied in the modern world with support of the "civil law" infrastructure. In "Harmonisation of Common Law and *Sharīʿah* in Malaysia: A Practical Approach" (2008), he highlighted the practical challenges faced by the judiciary in applying *Sharīʿah* within the Malaysian legal system for example in custodial disputes that involve the parties/parents who are Muslims and non-Muslims (Hamid, 2008). Additionally, he highlighted examples of Muslim countries endeavouring to harmonise Islamic law with civil law and proposed key points for this process. These include identifying parts of existing laws deemed un-Islamic and focusing on principles of Islamic law, not so much the way something was done centuries ago and applying them in the present context. He suggested prioritizing laws that are easily accepted by the public and choosing areas where Islamic law appears more just or beneficial than civil law. He proposed collaboration between *Sharīʿah* experts, civil law experts, and practicing lawyers, working together in groups to concentrate on specific areas. Their task would involve identifying laws considered un-Islamic and proposing Islamic alternatives (Hamid, 2004).

Meaning and Possibility of Harmonisation

Harmonisation of laws can be simply understood as a process of bringing in two different legal systems into harmony or into agreement, in line or compatible with one another. According to Akram Hussien Alarashi, harmonisation refers to a process to bring different components in harmony, which in general creates a relationship between different components (Alarasi, 2021). The main purpose is to facilitate consistencies and diminish barriers and such inconsistencies between the two legal systems whenever deemed possible (LexisNexis, 2024; Cambridge Dictionary, 2024). Malaysia is a muti-racial country practicing dual legal systems where harmonisation of laws is much suitable and relevant.

Harmonisation is a noun from the root word harmonise. According to Oxford English dictionary, harmonisation means adjustment of differences and inconsistencies among different things to make them uniform or mutually compatible. It is the process of bringing about harmony, implies a state of consonance or accord; the combination or adaptation of parts, elements or related things, so as to form a consistent and orderly whole (Murray, Bradley, Craigie, et al., 1961, p. 98).

It is apparent that *Sharīʿah* and civil law is distinct in the sense that *Sharīʿah* has been divine in nature. *Sharīʿah* law is derived, envisaged and based mainly on the Quran and Prophetic Sunnah. The *Sharīʿah* is further elaborated and expanded by the Muslim scholars classical and contemporary. The development of Islamic law is witnessed in the four periods of evolution of Fiqh since the Prophets period, Companions period, Successor's period and followers of the Successor's period till the modern period. While civil law is man-made law which is mainly based on rational and thinking of legislators who enacted the laws.

It goes without saying that the objectives of both *Sharīʿah* and man-made law is to establish justice on earth and to regulate the affairs of the people so that they may live in happiness, peaceful and civilised manner. The *Sharīʿah* is manifested with main general objectives which are to secure

benefit and interests to people and to remove harm and evil that might occur in their life. It is undeniable that man-made law is also aligned with the same purpose and objectives. Therefore, having the same spirit and objectivities, harmonisation of *Sharīʿah* and law seems possible especially in certain areas an aspect of the laws despite certain challenges especially whenever the laws are inconsistent and fail to comply with *Sharīʿah* rulings. This paper will identify certain Malaysian experience in the aspects of the laws which are in harmony with the *Sharīʿah* or *Sharīʿah* compliance and certain aspects where the laws are not in harmony due to inconsistencies with *Sharīʿah* provisions or non-Sharīʿah compliance.

Several Aspects of Malaysian Law that are in Harmony

Family Law in Malaysia that governs the non-Muslims are based on the common law that is applicable in England. (sect 3 of Civil law Act 1956). Therefore, even though the law is only applicable to Malaysia, the contents and substance of the law might be similar to family law in this contemporary modern world. Therefore, harmonisation of the laws that are manifested in Malaysia is also relevant and evident globally.

As stated earlier, the laws that are of general application is applicable to both Muslims and non-Muslims. These laws seem to indicate an ongoing process of harmonisation of laws and in practice in Malaysia even though it is indirect. Apart from that, there are many provisions under Islamic enactments (with special reference to the IFLA as a pioneer Act) which are similar to provisions of the civil law that is applicable to non-Muslims. This also reflects (to a certain extent) the intention of the law to provide a harmonised principles between both laws to govern the Malaysians both Muslims and non-Muslims.

Child Adoption under Registration of Adoptions Act 1952 (statute of general application)

Legal Adoption in Malaysia is known by two laws namely Adoptions Act 1952 (Act 257, Adoptions Act 1952) that governs non-Muslims and Registration of Adoptions Act 1952 ((Act 253, Adoptions Act 1952) that governs both Muslims and non-Muslims. Adoption under AA is through court order whereby upon an order of the court, the adopted child will be ascribed to adoptive parents and will stand on the same footing with other family members as if he is newly born to the adoptive family. Meanwhile adoption under RAA is through registration of adoption and it does not render any status of blood relationship between the adopted child and adoptive family (Zain et al., 2016, pp. 319-330). This law is in line with the *Sharīʿah* and seems to indicate an idea of harmonisation of laws between civil and *Sharīʿah*. Therefore, by virtue of Registration of Adoptions Act 1952, both Muslims and non-Muslims are governed by the same law simply because there is not a problem for the non-Muslims to adapt to the Islamic principles due to a religious taboo and practices (Mohd, Mohd Zin, Kadir, & Abdul Manaf, 2023, pp. 155-176). Furthermore, some opt adoption under the RAA especially to preserve lineage status of their children as well as their rights to inheritance (*Re Loh Toh Met,* 1961, p. 235). Essentially, the registration under the RAA is merely to safeguard the right of custody to the adoptive parents (Chia, Lee & Associates 2024).

Remedy In Breach of Betrothal Agreement

A betrothal is an agreement or a promise to marry. Its process may witness the exchange of dowry and gifts. It is preliminary to a marriage and morally binds the parties to stick to the promise. Based on juristic discourse, any gift given for the purpose of betrothal is recoverable upon breach or cancellation especially by the parties who are not at fault. Remedies may include any compensation for the money spent in good faith for the purpose of marriage preparation (Shalabi, 1977/1397, pp. 65-75). The IFLA provides for remedies in breach of betrothal agreement that states;

If any person has either orally or in writing, and either personally or through an intermediary, entered into a betrothal in accordance with Hukum Syarak, and subsequently refuses without lawful reason to marry the other party, the other party being willing to marry, the party in default shall be liable to return the betrothal gifts, if any, or the value thereof and to pay whatever money have been expended in good faith by or for the other party in preparation for the marriage, and the same may be recovered by action in the Court (Islamic Family Law (Federal Territories) Act 1984, s. 15).

The above principle is in harmony with the civil law that guarantees the same remedies if there are gift exchanged during the betrothal as well as for any loss incurred for marriage preparation (Chua Abdullah, 2013, p. 8).

Maintenance of wife and children

Another aspect where both laws are in harmony is the obligation to support wife and children. Both *Sharīʿah* and civil law are generally in agreement that the husband and the father owe the duty to maintain the wife and children (*Qur'ān*, 2:233). Both laws are in harmony on the principle that a husband is duty bound to maintain a wife during the subsistence of marital relationship and that a father is to maintain children until certain age of puberty or independent (Mohd, Abd Malek, Ibrahim, & Najid, 2023, pp. 123-153). As regards *Sharīʿah* law on maintenance of wife, it is applied in the IFLA which provides; *"The Court may, subject to Hukum Syarak* (Islamic Family Law (Federal Territories) Act 1984, Act A1261, s. 2), *order a man to pay maintenance to his wife or former wife* (Islamic Family Law (Federal Territories) Act 1984, s. 59(1))" As for children, the IFLA states.

Except where an agreement or order of the *Court otherwise provides, it shall be the duty of a man to maintain his children, whether they are in his custody or the custody of any other person, either by providing them with such accommodation, clothing, food, medical attention, and education as are reasonable having regard to his means and station in life or by paying the cost thereof* (Islamic Family Law (Federal Territories) Act 1984, s. 72(1))

The laws that govern maintenance of a non-Muslim wife in Malaysia are the Married Women and Children (Maintenance) Act 1950 (MWCA)(Act 263) and Law Reform (Marriage and Divorce) Act 1976 (LRA) (164). While marriage is still subsisting, MWCA is applicable. Section 3 of the Act provides:

If any person neglects or refuses to maintain his wife or a legitimate child of his which is unable to maintain itself, a court upon due proof thereof, may order such person to make a monthly allowance for the

maintenance of his wife or such child, in proportion to the means of such person, as the court seems reasonable.

In 2017, section 95 of the LRA was amended in order to expand the father's duty to maintain his child until tertiary education or until the child completed his first degree of education (Ibrahim et al., 2021, p. 295; Zin et al., 2021, p. 8). It follows that section 95 of the LRA after the amendment is in line and is in harmony with section 79 on duration of maintenance of a Muslim child under the IFLA 1984 (Islamic Family Law (Federal Territories) Act 1984, s. 79).

Whereby the provision for duty to maintain a child accepted as member of family in the IFLA (Islamic Family Law (Federal Territories) Act 1984, s. 78) is verbatim similar to provision of the LRA that states.

"(1) Where a man has accepted a child who is not his child as a member of his family, it shall be his duty to maintain such child while he or she remains a child." (Law Reform (Marriage and Divorce) Act 1976, s. 99)

Custody of Children

As regards custody of children, both *Sharīʿah* and civil law work on the best interest of the child as paramount consideration where there is a dispute on the right to custody of the child. The IFLA that adopts the Islamic principle states;

"In deciding in whose custody a child should be placed, the paramount consideration shall be the welfare of the child…" (Islamic Family Law (Federal Territories) Act 1984, s. 86(2)). This provision is also verbatim like the provision of the LRA 1976, section 88(2). (see: Islamic Family Law (Federal Territories) Act 1984, s. 78)

Division of Matrimonial Asset

Previously, the provisions of the IFLA on division of Matrimonial Property (Harta Sepencarian) is also words to words similar to the LRA 1976 (see: Islamic Family Law (Federal Territories) Act 1984, s. 76; Law Reform (Marriage and Divorce) Act 1976, s. 76, before Amendment 2017). Nevertheless, in 2017, section 76 of the LRA was amended especially to take into account the contribution by a working wife in taking care of the household even though she might not contribute jointly to the acquisition of the matrimonial asset (Zin et al., 2021, p. 9).

It also appears that many provisions relating to maintenance of wife and custody of children are following the provisions of civil law as those provisions do not contradict the Islamic principles and relate more to the procedural matters (For example sections 83 – 86 of the LRA 1976 relating to power of court to vary orders of maintenance and recovery arrears of maintenance are in pari materia with the provisions of the IFLA 1984 sections 66-69)

Challenges and Innovations

The above are several examples where the provisions of *Sharīʿah* as applied in Malaysia and the Civil laws are in harmony even though they are applicable to two different communities i.e. the Muslims and non-Muslims.

The challenges to harmonisation of *Sharīʿah* and law are obvious especially in the aspects where the principles applicable under civil law contradicts *Sharīʿah*

principles. In Malaysia there are several laws and provisions of the civil law that are inconsistence with *Sharīʿah* principles and therefore led to difficulties to be harmonised with the *Sharīʿah* and Islamic law enactments.

Adoptions Act 1952 (the AA) (Act 257)

Legally, adoption denotes the process of transferring the entire legal parentage of a child from his natural parents to the adoptive parents (Lowe & Douglas, 1998, p. 611). The adopted child will bear the same status of lineage as other children as if they are born through blood relation. Under *Sharīʿah*, this kind of adoption is known as tabanni and is strictly prohibited (Shaltut, 2001/1421, p. 322; Saqar, n.d., p. 246; *Qur'ān*, 33:4-5). In other words, *Sharīʿah* does not recognize adoption and does not acknowledge a relationship that arises out of adoption. Adoption is prohibited as it destroys the Islamic family system. This includes, for example, contradicting many rules in the Quran such as those relating to the prohibited degrees of marriage (*Qur'ān*, 4:23; 5:87).

It also contradicts the truth (Al-Zuhayli, 1998, p. 240), since adoption changes the status of the adopted child from being the child of his natural parents to the child of the adopter, whilst the truth is that he is not the child of anybody except his natural father and mother. Adoption also severs the relationship among the adoptee and his natural parents and families. This clearly contradicts the teaching of Islam, which forbids Muslims from severing relationships among them. The Qur'an states, 'Would you then, if you were given the authority, do mischief in the land, and sever your ties of kinship?' (*Qur'ān*, 47:22).

The above definition of English adoption is adopted and applied by the AA 1952. Therefore, it is only applicable to the non-Muslims as it is against *Sharīʿah* principle. A child is adopted through the court's order. Upon an adoption order being made, all rights, duties, obligations and liabilities of the parent, guardian of the adopted child, in relation to the future custody, maintenance and education of the adopted child, including all rights to appoint a guardian or to consent or give notice of dissent to marriage shall be extinguished, and all such rights, duties, obligations and liabilities shall vest in and be exercisable by and enforceable against the adopter as though the adopted child was a child born to the adopter in lawful wedlock (Adoption Act 1952, s. 9(1)). The adopted child is also entitled to inheritance testate or intestate (Adoption Act 1952, ss. 9(2-5); Mohd, 2012, pp. 79-89).

It appears that the AA is hard to harmonise with the *Sharīʿah* or Islamic Enactments in Malaysia. Nevertheless, the law corresponds the wishes and interest of the non-Muslim parents who wish to adopt a child making them as their own child. Furthermore, adoption involving Muslims are catered by RAA (Mohd, 2012, pp. 79-89).

Legitimation Through Adoption and Subsequent Marriages

As adoption under AA establishes child and parent relationship, an illegitimate child who is born outside marriage may also be legitimised through adoption (Adoption Act 1952, s. 9(1)). In this case, the biological father or parent will adopt their legitimate child under AA. The civil law also recognises legitimation of an illegitimate child by subsequent marriage of its parents Legitimacy Act 1961, Act 60, s. 4 (1961).

These principles contradict the *Sharīʿah* principles as well as Islamic law provisions in Malaysia.

Polygamy

Sharīʿah recognised polygamy i.e. marriage of a man to more than one up to a maximum of four wives (*Qur'ān*, 4:3). The *Sharīʿah* principle has been applied in the IFLA where a Muslim man is allowed to contract a polygamous marriage after obtaining permission in writing by the Syarie judge (Islamic Family Law (Federal Territories) Act 1984, s. 23(1)). On the other hand, the civil law does not recognise polygamy and penalises those who contract a polygamous marriage (Law Reform (Marriage and Divorce) Act 1976, ss. 5-7; *Penal Code* (Cap 45), s. 494). Therefore, it seems difficult and impossible to harmonise principles relating to polygamy under the *Sharīʿah* and Civil law.

Innovations in the Aspects of Laws that May/ Open to Harmonisation or Reconciliation

There are several principles under civil law which is silent under the *Sharīʿah* and the IFLA. Nevertheless, such a provision if implemented will not incur any harm or injustice. Instead, the implementation of such law is in the course of justice and further fulfil certain objectives of the *Sharīʿah* for example protection of five values of necessity (daruriyyat) i.e. religion, life, lineage, intellect and property, as well the embellishment (tahsiniyyat) for the benefit of the people. The discussion is highlighted below.

Registration of Marriages and Divorces

Registration of marriages and divorces is not a clear-cut *Sharīʿah* principle or rule to be adopted by the Muslims. It seems to be a kind of innovation and is significant to protect the sanctity of marriages and lineage.

It is obvious that both Islamic and civil laws require registration of marriages and divorces (Islamic Family Law (Federal Territories) Act 1984, s. 25 & ss. 55 & 55A; Law Reform (Marriage and Divorce) Act 1976, ss. 27 & 107). It has been practiced quite some time ago especially after regulations on marriage and divorce begin. Nevertheless, these provisions are rather procedural in nature. Thus, there is no issue of dichotomy or disharmony between the two laws. Procedural aspects seem to reflect an area that open for harmonisation as the procedural law does not involve certain substance or principles that might contradict one another.

Amendment of Section 51 of the LRA in the case of Conversion to Islam

As mentioned earlier, the LRA is basically applicable to non-Muslims especially on matters relating to marriage and divorce. One of the grounds of divorce is conversion to, whereby in such case, the party who does not convert will have the right to file for a divorce based on that ground (Law Reform (Marriage and Divorce) Act 1976, s. 51, before amendment 2017). The problem arises in the case if the non-converting spouse did not file for a divorce. On the other hand, under the IFLA, conversion to Islam shall not by itself operate to dissolve the marriage unless and until so confirmed by the Court (Islamic Family Law (Federal Territories) Act 1984, s. 46(2)). In the case of Pedley v Majlis Ugama Islam Pulau Pinang & Anor ([1990] 2 MLJ 307), the wife converted to Islam without her husband's knowledge after 20 years of marriage and assumed a Muslim name Mahani Newman bte Abdullah. The Chief

Kadi of Pulau Pinang confirmed the conversion and made the necessary arrangement to inform the husband about the proceedings that if he failed to convert within 90 days, the marriage would be dissolved. Nevertheless, the plaintiff's husband filed the case at High Court of Pulau Pinang, seeking a declaration that the letter issued by the Chief Kadi did not apply to him and had no effect on their marriage. The High Court decided that under the Civil law, a non-Muslim marriage is not dissolved upon one of the parties converting to Islam as section 51 merely provided a ground for divorce Ng Siew Pian v Abdul Wahid b Abu Hassan, [1992] 2 MLJ 425).

The above reflects conflict of laws between *Sharīʿah* and Civil Law and requires certain resolution and reconciliation. It appears that harmonisation of *Sharīʿah* and Civil Law plays a very significant role in resolving such a conflict. By virtue of the amendment Act in 2017, section 3 and section 51 of the LRA was amended to provide one court solution (Ibrahim et al., n.d., pp. 244-247). Section 3 LRA was amended to widen the scope to the converting spouse (new Muslim convert). While section 51 states:

(1) Where one party to a marriage has converted to Islam.

a) Either party may petition for a divorce under this section or section 53

It follows that the above amendment provides an option for both parties to resolving their marital conflict in Civil court. This is another innovation that involves harmonisation of *Sharīʿah* and Civil Law as the principle does not contradict the *Sharīʿah*. Resolution of marital conflicts in Civil Court in the case of conversion to Islam seems procedural but it is in line with the objectives of *Sharīʿah* in preserving the family institution. This amendment further reflects that *Sharīʿah* to a certain extent may be harmonised with the Civil law so long as it does not contradict *Sharīʿah* principles as well as to achieve the *maqasid al-Sharīʿah*.

General Damages for Humiliation in Breach of Betrothal agreement

Despite similarities and harmonisation of laws in remedy for breach of betrothal agreement i.e. in the case of the return of gifts and compensation, the civil law differs with the IFLA on general damages for humiliation. Under civil law, general damages, however, can be sought in cases of breach of promise to marry to compensate the plaintiff for various injuries, such as humiliation or embarrassment, mental distress, loss of reputation or marriage prospects, and more. The amount of damages in such cases is determined at the Court's discretion. Since breach of promise to marry is based on common law (Holcroft v Dickenson, 3 Keble 148; 84 ER 645; Lettmaier, 2010, p. 25), it is necessary to refer to old English and Malaysian cases for guidance on awarding damages, using established precedents to determine appropriate general damages for these emotional injuries. For example, In the case of Berry v Da Costa ((1866) LR 1 CP), the defendant had convinced the plaintiff to leave her home and live with him in anticipation of their upcoming marriage. However, he later abandoned the plaintiff and married another woman. The judge in this case awarded £2,500 in damages to the plaintiff. This compensation included an amount to address the degradation and misery that the plaintiff had endured as a result of the defendant's actions. Willes J observed that in an action for a breach of promise of marriage, the jury

is not restricted to considering only the financial losses suffered by the plaintiff. They are also allowed to take into account the plaintiff's injured feelings and wounded pride. In a Malaysian case, Dennis v Senayah ([1963] MLJ 95), the plaintiff alleged that as the result of the defendant's breach of promise to marry, she had to endure humiliation and mental suffering. Various factors are considered in assessing damages, including the emotional distress experienced by the plaintiff, the impact on the future life and marriage prospects, the social status, and financial means of the defendant. In this case, general damages amounting to RM1,500 were awarded to the plaintiff.

On the other hand, the IFLA does not provide such provision on general damages for humiliation (Islamic Family Law (Federal Territories) Act 1984, s. 15). Therefore, in the case where the injured party files a claim for general damages for humiliation, the Syariah court will not entertain (Salbiah Othman v Hj Ahmad Abdul Ghani, 2006, JH 114). One of the reasons given is because humiliation is something hidden and cannot be measured. The Syariah judge also referred to the tradition of the Prophet (s.a.w) that stated to the effect: "*We judge something based on what is apparent (zahir) and Allah knows what is hidden or secret*." (Mohd Azla bin Hj Kamaruddin v Mokhtar bin Hashim & Anor, 2007, 3 ShLR 128)

Despite some views from contemporary Muslim scholars for example Zaki al-Din Sha'aban who discussed the view of Sanhuri, asserted that in principle, there is no liability to pay compensation in the event of breach because the parties have the right to withdraw from betrothal. The default party is liable to pay compensation to the aggrieved party if he contributes to the financial loss incurred by the aggrieved party. He further asserts that if we observe this issue under the principle that governs the issue of damage i.e., the principle 'there is no harm and reciprocal of harm'; and the prohibition of deceit under the *Sharīʿah* , the default party is liable to pay compensation as he contributes to the loss and deceitful to another party when he withdraws from the engagement (Sha'ban, 1993, pp. 79-81).

The above discussion further reflects that under Islamic law, remedy for humiliation is not highlighted or clearly discussed. Nevertheless, the discussion by contemporary Muslim scholars may be taken as a guideline if the law is to consider general remedy for humiliation subject to certain conditions and criteria. In other words, there must be certain standard of procedure in payment of remedy or general damages for humiliation. Therefore, further opinions and fatwas are required if the provisions on remedy for humiliation is to be applied under the IFLA so that harmonisation between the two laws is possible.

Age of Marriage

Under the *Sharīʿah*, there is no limitation as regards to the age of marriage even though the Muslim jurists are in agreement that a child is recommended to marry at the age of puberty based on the Qur'anic principle (Qur'ān, al-Nisa: 6). Furthermore, the Qur'anic provision indicates that a child is to observe 'iddah period after a divorce, which indirectly shows that the *Sharīʿah* did not prohibit marriage at the young age (Qur'ān, surah al-Talaq: 4). Based on this view, Islamic Family law (Federal Territories) Act 1984 provides that the age of marriage for a boy is eighteen years old and for a girl is sixteen years old. This provision seems to be in line with the age of puberty under the Hanafi school of law where there is no natural

symptom appears that indicates puberty in a child (Annotated Statutes of Islamic Federal Territories Act 1984, p. 106). On the other hand, a person below eighteen or sixteen can still contract a marriage if the Hakim Syarie has given permission based on certain valid reasons (Islamic Family Law (Federal Territories) Act 1984, s. 8) One example of a valid reason is in the case of Kamariah bt Ahmad v Nur Asmira bte Abdullah (Kamariah bt Ahmad v Nur Asmira bte Abdullah, 2015, 3 SHLR 21) where the mother and her daughter (aged fifteen years and two months) made an application to marry to the Malacca Syariah Subordinate Court on the ground to avoid "evil acts" as the daughter and future groom were often out together. In this case, the Syariah Court allowed marriage as it is in line with Islamic law. Furthermore, the child has reached the age of puberty based on Islamic law and is ready to get married with the approval of both families. The girl who is still in school also plans to continue with her studies. According to the recent study done by Noor Aziah Mohd Awal, other reasons include the child's ability to support a family and manage a household, child's memorization of basic Islamic teachings and availability of family support after marriage (Awal, 2018, p. 3)

Despite the age of sixteen for marriage of a female in the IFLA, the Age of Majority Act 1971 (Act 21) prescribes the age of eighteen as the age of majority for all males and females in Malaysia (Age of Majority Act 1971, sec. 2) though this provision does not affect the provisions in the IFLA (Age of Majority Act 1971, sec. 4) The Child Act 2001 (Act 611) also provides that a child refers to those below the age of eighteen years (Child Act 2001, sec. 2(1)). While the LRA provides the same age of marriage of eighteen for both male and female person for the non-Muslims with the exception that a female at the age of sixteen may also marry if authorised by a license granted by the Chief Minister under section 21 (2) (Law Reform (Marriage and Divorce) Act 1976, s. 10).

Based on the majority age as fixed by these statutes, a marriage with a child under the age of eighteen years is considered as a child marriage, a practice that is prohibited under international law (Saidon et al., 2009, pp. 108-109). In contrast to Islamic law as has been discussed previously, the determination of the age of majority is based on reaching puberty and not defined by age. Due to these conflicts however, there is pressure from the international level and stakeholders in Malaysia to increase the minimum age of marriage in Malaysia to eighteen years (Mohd & Kadir, 2019, pp. 239-266). Realising the negative impact of marriage at young age, few states in Malaysia including Selangor (Islamic Family Law (Selangor) Enactment 2003, Amendment 2018, s. 8) have amended their enactments to increase the age of marriage of a female child from sixteen to eighteen years old. Nevertheless, a person under the age of eighteen may still contract a marriage based on a stricter procedure (Islamic Family Law (Selangor) Enactment 2003, Amendment 2018, s. 8A).

This is the latest innovation that sparked the idea of harmonisation between *Sharīʿah* and civil law. The new provision on age of marriage in Selangor reflects a possibility and reconciliation of civil and *Sharīʿah* laws where the provisions do not contradict *Sharīʿah* principle.

Conclusion

The concept of harmonisation seems manifest in several family law subjects which

include matters of adoption under the RAA, compensation in breach of betrothal agreement, obligation to maintain wife and children, best interest of the child and welfare of the child as paramount consideration in the matters of custody as well as division of matrimonial property after divorce. Despite similar spirits and objectives in administration of justice, challenges in harmonising *Sharīʿah* and civil laws are undeniable especially whenever the provision of civil law contradicts or inconsistent with the *Sharīʿah* principles. These are in certain aspects of the family law which include child adoption (tabanni) under the AA, polygamous marriage and legitimation of illegitimate children. On the other hand, several family law aspects which are applicable under civil law might be reconciled and do not against the spirits of *Sharīʿah* but the provision is silent under the *Sharīʿah* or Islamic law enactment. Part of them is rather procedural in nature like registration of marriage and divorce. Others involve both substantive and procedural like general damages for humiliation in the case of breach of betrothal agreement and age of marriage. Finally, conflicts of laws require resolution through one court solution in the case of conversion of one spouse to Islam indicate the obvious need for harmonisation of *Sharīʿah* and civil law and this was done in Malaysia.

Further aspects that indicate possible reconciliation and harmonisation for future discussion and research include prohibited degrees of marriage, consent of marriage, gifts and pemberian for marriage purposes, mutual spousal rights and obligations, guardianship of children, grounds for divorce and ancillary rights after divorce.

Further challenges to modern family law which is apparent nowadays are legalities of same sex marriages and transgender issues despite inconsistencies with many religious practices, traditions, cultures and civilisation.

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