

Children's Right to Education: Financial Neglect after Divorce in Muslim Marriage in Malaysia

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ABSTRACT

Divorce among Muslims married couples in Malaysia occurs every 15 minutes. The rate of divorce in among Muslims couples is twice of that of non-Muslims couples. Children are the most affected individuals from this separation not only in terms of social and emotional aspects but also financially. This paper adopted a qualitative approach by way of analysing the laws, international conventions and related cases to discuss the concept of right to education. Furthermore, it attempts to discuss the financial implications of divorce on children's right to education particularly when the father fails or unable to pay the maintenance to the children. Though the right to education is guaranteed in Malaysia and the government had abolished school fees, the cost of education is still high. . Therefore, the enforcement of judgment order by the court needs to be improved in order to protect the best interest of children i.e. for their right in respect of education.

Keywords: Children, neglect on maintenance, right to education, separated parents

INTRODUCTION

Malaysian Islamic Development Department (JAKIM) in 2009 reported that divorce among Muslim couples occurs every 15 minutes. In 2010, the statistics from JAKIM

suggested an increased number of divorces which was 28,000 cases compared to 13,000 cases in 2001. This is an alarming issue in Muslim family institutions nowadays and problems relating to divorce is relatively increasing particularly which involve former wives and children. Many of these problems associate with the lack of responsibility of former husband/father towards children of previous marriages especially in providing care, either emotionally or most importantly, financially. Children who are caught up in the conflict surrounding the divorce or

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separation of their parents are categorized as vulnerable children in need of special protection. Thus, their rights have to be given a high priority. This paper seeks to discuss the impact of neglect on children's right to education in Malaysia.

THE RIGHT TO EDUCATION IN MALAYSIA

Education is seen to be important element for the development of a child. The Malaysian Child Act 2001 recognizes that every child is entitled to protection and assistance in all circumstances without regard to distinction of any kind, such as race, colour, sex, language, religion, social origin or physical, mental or emotional disabilities or any other status. In addition to that, Article 3 of the Convention on Right of Child 1989 (CRC) provides that the best interests of the child shall be a primary consideration in all actions affecting children. The international community now recognizes the importance of education for the economic, social, and physical well-being of children, their family members, and society at large. Article 26 of the Universal Declaration of Human Rights states that the right to education should be available to everyone and that primary education should be made free and compulsory. The provision provides that everyone has the right to education, which should be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. A similar provision can also be found in Article 28 of the CRC, which Malaysia has acceded to in

1995, where it states that state parties shall recognized the right of a child to education by making education accessible to children. In Malaysia, Article 12 of Malaysian Federal Constitution provides for the right in respect to education to all citizens in Malaysia whereby the provision guarantees that no citizen shall be discriminated on the ground of religion, race, descent or place of birth in the admission to public schools or in the payment of fees. It is then codified in the Education Act 1996 which provides that the government may publish in the Gazette to prescribe for primary education to be a compulsory education. In 2003, Malaysian government had gazette for compulsory primary education in the Professional Circular No. 14/2002: Implementation of Compulsory Education in Primary Level in 2003, dated 27th November 2002. Thus, from the legislations, all citizens of Malaysia must send their children to school for the compulsory elementary education, ranging from age 7 to 12 years old. The Education Act 1996 also provides for criminal liability for parents who fail to send their children to school, though this provision is never utilized. As far as secondary and tertiary education is concerned, the Education Act 1996 makes these two levels of education as recommendable and optional. Though these two levels are recommended but higher education is seen to be the most important level of education as it would give opportunity for children to create a better future. This level is the most cost-consuming level of education especially when the children enroll in private institutions.

Without proper financial aid from the parents, the children would face great challenges to embark themselves in education and would opt for labour hood at the early age (Che Mohd Salleh, Muhammad, Mohd, & Nik Mahmood, 2016). In 2012, the Malaysian government had announced the abolishment of school fees in both elementary and secondary public schools with the aim of providing access to quality and affordable education to every child irrespective of their socio-economic background (Kementerian Pendidikan Malaysia, 2012). This announcement is perceived as a good development in Malaysia, following the recommendation of UDHR and CRC that promotes free and compulsory education, at least at the elementary level. Assessing that the cost of education in Malaysia is not simply by looking at the school fees, these announcements relieve less than half of financial problems faced by the parents. Other costs such as school uniforms, extra reading materials, pocket money for meals, transport fare are among other indirect costs that parents should bear when sending the children to schools. Thus, a financially constraint single parent may find this a heavy burden especially when their children are more than two, all at once are in schooling age.

EDUCATIONAL NEGLECT DUE TO FINANCIAL CONSTRAINTS

Failure to meet the basic needs of a child is considered as neglect (Watson, 2005). The definition of neglect in previous literature which focused on physical neglect has

far extended to other multiple categories such as supervisory neglect, abandonment and desertion, medical neglect as well as educational neglect. Thus, failure to provide a child for his or her basic development needs is constructed as a social neglect and failure to enrol in school constitute as an educational neglect (Kelly, Barr, & Weatherby, 2005). Moran (2009) defines educational neglect as failure to provide a stimulating environment in education as well as failing to comply with the state requirements regarding school attendance. Educational neglect also occurs when parents fail to prepare children to school or fail to assist children in completing educational tasks (Wiehe, 1996). Educational neglect generally applies to children who are under parental control. Thus, situation involving older children comes under the meaning of truancy rather than educational neglect which can lead to underachievement in acquiring necessary basic skills, dropping out of school or having continually disruptive behaviour (Perry, Colwell, & Schick, 2002). Family structure has an important implication for children's ability to enrol and persist in school providing financial, cultural, and social resources where needed. The physical absence of one of the adults may be described as a structural deficiency in family social capital. Most importantly, if the absent adult is the sole breadwinner of the family, the family is seen as not only structurally and socially deficient but also financially lacking (Alivandi Vafa & Ismail, 2009). Parke (2003) reported that single parent families had a higher poverty rate

than the intact families and this causes a high risk for negative educational outcomes for children in single-parent families is due to living with a significantly reduced household income. The decline in income following divorce account for the risk for children dropping out of high school and places the children to grow up in a financially constraint environment. Thus, the children from single parent families are likely to achieve lower levels of education as compared to children from an intact family. Economic crises are a standing situation with most of single parent's families. It becomes difficult to meet the basic needs of children such as food, clothing, school fees, and maintaining the previous standard of living. Single mothers, especially who had never worked before the separation need to become the primary wage earner and are forced to shoulder huge financial responsibilities (Kotwal & Prabhakar, 2009). Child's education attainment is viewed as a commodity desired by the household and financial resources would allow parents to purchase goods and services important for the child's development. As a direct consequence of divorce, the economic status tends to decline and the limited family income may affect child educational attainment by reducing financial support for further schooling. Divorce is closely associated with the changes of family's socioeconomic status and exposes children to potential disadvantages in respect of education (Liu, 2008). Children of separated parents are at a risk of growing up in low income households, performing less well

in school and gaining fewer educational qualifications and leaving school at early age because the family cannot afford to send the children to school especially when there are many younger siblings present (Mooney, Oliver, & Smith, 2009). The ability of parental income to pay for education and the number of schooling children that they have to support may jeopardize the right of the older siblings in being educated. Hassan and Rasiah (2011) reported that schooling cost is a very heavy burden on parents even taking into account the subsidies received from the government. The household and family incomes do affect children's schooling performance due to constraints in financial resources as low income parents often have difficulty in participating in their children's education. The children from separated families are disadvantaged with respect to education and socioeconomic outcomes in childhood and adulthood compared to children of intact families as they are more likely to drop out from school especially in secondary level due to mostly, financial reasons. The report from Child Rights Coalition Malaysia (2012) shows that children from poor families (including those from families of separated parents) would drop out from schools especially at secondary level in order to help the family and younger siblings. For them, education is no longer an important element in life as the sustainability of the family is priority. Drop-out children would then suffer in the future when they enter adulthood where qualifications are needed in order to change their economic

status. Parental income affects children's educational attainment by affecting the quality of primary and secondary schooling, thereby affecting student's achievement and their expectation for post-secondary schooling. If parents think that they cannot afford to send their children to college they may discourage these aspirations (Mayer, 2002). Due to separation of parents, children may exhibit depression, behavioural and learning difficulties. Single mothers who are forced to work in order to finance the family would unintentionally neglect the children. Neglect can negatively affect a child's cognitive capacity, language development and academic performance. Neglected children are more prone to encounter different problems in their future life when their problems left unnoticed and would demonstrate a notable decline in academic (DePanfilis, 2006). Divorce may also subject children to emotional distress that may negatively affect their educational attainment. The children of single parent household have access to lower levels of economic and social resources necessary for human capital development. This impacts on the child's educational attainment through reduced financial resources for further and better schooling and through possible early entrance into the labour force (Xie, 2010).

CONCLUSION

Divorce among married couples could potentially harm the basic needs of children, especially when it involves something that requires financial aid. In Islamic Family Law in Malaysia, former wives may claim

for ancillary reliefs which would include children's maintenance especially when the wives obtain custodial order for the children. These claims however are not easy. It is a long cost-consuming process which requires much patience and money from the claimants. The procedure becomes harder if the former husband refuses to cooperate and take responsibility. The impact would be on children who are forced to enter labour force before they enter adulthood. Protecting the best interests of these children would be rather difficult when they have entered into 'adulthood' at the early age. Therefore, a proper enforcement of ancillary claims in the Syariah Court in Malaysia is needed in order for the children to be protected.

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