

Title : The Influence of Morality, Activists and Holistic View behind
Current Laws and Policies, In the Effort to Design a Better
Guideline Governing Abortion in Malaysia

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**THE INFLUENCE OF MORALITY, ACTIVISTS AND HOLISTIC VIEW BEHIND CURRENT
LAWS AND POLICIES, IN THE EFFORT TO DESIGN A BETTER GUIDELINE
GOVERNING ABORTION IN MALAYSIA**

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ABSTRACT

Abortion has always been a thought-provoking topic to be frequently discussed and debated. Practically, it spins around the question of whether a woman should be given an absolute right to choose whether to continue or terminate her pregnancy, at any time she pleases. The laws governing abortion in Malaysia is a strict one, whereby only a pregnant married woman could apply for abortion in a licensed hospital, by reasons that would cause prejudice to her health or life. This gives rise to the question, what about pregnant, unmarried women who wished to do the same. The present laws are not enough to address the real and complicated issues found within this abortion matter. This paper is written to design a better guideline for abortion to be held so that it is accessible by those who need it calculated from the current day issues and not from the century-old issues. Therefore, many aspects of law and modern-day morals will be discussed to understand what society truly needs like this thoroughly. A better guideline can be adequately designated.

1.0 BACKGROUND OF THE PROBLEM

In medicine, abortion is a voluntary loss of pregnancy because of the premature exit of the products of conception from the uterus. An abortion may occur spontaneously or may medically do. Legally, abortion defined as spontaneous or artificially induced expulsion of an embryo or foetus and usually refers to induced abortion. In the book of Reproductive Rights and Wrongs: The Global Politics of Population Control, author Betsy Hartmann said, "denying women the right to abortion makes women bear all the hardship and blame for unwanted pregnancies, ignoring the fact that men assume responsibility too, and that many unwanted pregnancies result from unwanted intercourse.

In 1994, 179 governments signed the International Conference on Population and Development Programme of Action (ICPD), signalling their commitment to preventing unsafe abortion. In the 25 years since ICPD, nearly 50 countries worldwide have liberalised their abortion laws demonstrating considerable progress toward ensuring women and girls' reproductive autonomy. During this same period, only a small handful of states have reduced the grounds under which abortion is legal¹. English Common Law generally allowed abortion before the "quickening" of the foetus, which occurred between the sixteenth and eighteenth weeks of pregnancy. After quickening, however, common law was less clear as to whether abortion was considered a crime.

The World Health Organization (WHO) recognises that in countries with restrictive abortion laws, induced abortion rates are high, the majority of abortions are unsafe, and women's health and lives are at risk. Legal restrictions on abortion do not result in fewer abortions. Instead, they compel women to risk their lives and health by seeking out unsafe abortion services. According to the WHO, in countries where induced abortion is highly restricted or

¹ "The World's Abortion Laws" (*Center for Reproductive Rights*) <<https://reproductiverights.org/worldabortionlaws>> accessed June 20, 2020

unavailable, "safe abortion has become a privilege of the rich, while poor women have little choice but to resort to unsafe providers².

Malaysia has a less restrictive law, whereby the law permits abortion if the pregnancy poses a risk to the life of the pregnant woman or is injurious to the physical or the mental health of the pregnant woman which stated under Section 312 of the Penal Code. However, access to abortion services remains limited. Section 315 of the Penal Code said that causing the death of a quick unborn child by an act amounting to culpable homicide. The law under Penal Code clearly explained that abortion or causing miscarriage are forbidden in Malaysia and consider as culpable homicide.

Abortion is considered forbidden in Malaysia and only allowed for a medical reason. This study to explore the legality and morality of abortion in Malaysia. This research not only focusing on Malaysia perspective but also other Asian and Western countries' stance regarding abortion. This qualitative study aimed to explore the needs of women concerning abortion. We hope that the findings of this paper will help to understand the current situation about abortion in this country and benefit and promote the reproductive wellbeing and ultimately, the quality of life of women in this country.

1.1 PROBLEM STATEMENT

According to the World Health Organization, through access to safe and legal abortion services death from unsafe abortion can be prevented. The focus in this research paper is to find out the reason as to why abortion; although morally wrong, is still legally right in Malaysia. While it is true that such termination of pregnancy does come out as an offence against the state and punishable by the Penal Code, it is undeniable that it is legal, for the

² "Safe Abortion: Technical and Policy Guidance for Health Systems" (*World Health Organization* July 26, 2018) <https://www.who.int/reproductivehealth/publications/unsafe_abortion/9789241548434/en/> accessed June 20, 2020

production of Guideline proves this for Termination of Pregnancy by Malaysia Ministry of Health.

The Guideline passes after taking into consideration the legal and religious aspects. Thus, it gives rise to questions such as, what sort of justification was brought forth to the table that allows for that production of guidelines to be approved and released under the scrutiny of legal and religious bodies. Another question would be how the undertaking of those two aspects is enough to legalise abortion (though subject to a few considerations) when other countries with similar or different morality still struggle to legalise it.

This research paper will also address the weaknesses that could be found in the matter of abortion, be it real or theoretical weaknesses. Should this topic be searched on online websites, it would be easy to find many educational journals or papers continually stating that the Malaysian legal system's weakness would be suppressing or oppressed women from exercising their right to get an abortion undergoing surgeries or buying pills.

Almost all writers of this topic heavily lamented and condemned the current legal status of abortion. However, there is one stark weakness in their research and writings that this research paper would like to unveil and address. It is the fact that on every argument made to advocate the legalisation of abortion to girls and women, the writers focus so much on their freedom to do whatever they wish on their body, that they failed to notice the possible negative legal and moral side-effects that would befall the ladies or even the society in general.

Another weakness about abortion is, should it not be legalised, what would happen to the mother's fate whose health is perhaps jeopardised for maintaining the pregnancy. The issue here would be, whether this kind of situation falls under the circumstances authorised by the government to receive an abortion alternatively, whether this situation must be subjected to other qualifications before it could be allowed to receive the treatment.

It is in hopes of settling the problems at hand that by the end of this research paper, abortion could be justified to be legalised for the sake of not risking a mother's life, the misunderstandings relating to abortion be solved, and to suggest a better standard of procedure in receiving abortion treatment.

1.2 RESEARCH OBJECTIVES

This research aims to determine the legality and the morality of abortion. The current study's objective is to provide a comprehensive review of women's decision in making abortion. The objectives are as follows:

- I. To examine Malaysian law and policies related to abortion.
- II. To propose recommendations for a comprehensive legal framework governing abortion in Malaysia.

1.3 RESEARCH QUESTIONS

In light of the above discussion, this research paper aims to contribute to more accurately documenting the perspective of surrounding abortion. Broadly, this research paper questions will be organised to investigate two main areas:

1. What are the current law and policies that govern abortion in Malaysia?
2. What are relevant aspects of existing Malaysian law and policies governing abortion that require improvement and amendment?

1.4 LITERATURE REVIEW

The abortion issue has been many times discussed, either in the medical, social or political aspect. It is no longer a new topic that most people, especially women in Malaysia, are unfamiliar with. Instead, this matter has been practised since the old times as it can be proven that there are traditional methods in terminating a pregnancy. It prevails up to this day

to create pro-abortion NGOs such as The Reproductive Rights Advocacy Alliance Malaysia (RRAAM).

In the Journal of Law, Medicine and Ethics 1993, Boland observes that among the similarities to the problem of abortion around the world is that women resort to illegal methods in having an abortion. This is driven mostly due to economic duress, social and religion perspective over the sensitive issue of abortion. An interesting similarity between the countries is that the government only legalised abortion for under specific limitations, including when continuing the pregnancy harms the mother. ³

In the book of Abortion in Asia: Local Dilemmas, Global Politics by Andrea M. Whittaker, it explained that abortion practice is restricted in the public health care system, and while expensive-private sector service is available, it cannot be easily accessed by low-income women.⁴ With the Penal Code Amendment Act (1989) allowing abortion or 'termination of pregnancy' only when the medical practitioner sees fit, in which the continuance of pregnancy will risk the woman's life or injure her mental and physical health, this gives excellent disadvantages to women who probably have severe financial problems or will face social discrimination, if she is to give birth and care for a new life. ⁵

Therefore, the current issue that has yet to found an answer is the persuasive legalisation of abortion that could guarantee a woman's well-being while adhering to the morality that goes along the lives of Malaysian citizens.

1.5 RESEARCH DESIGN / METHODOLOGY

Nowadays, abortion issue is on the rise; frequently being debated. It begs the question, are the current laws on this matter not enough to have caused such rise of arguments. To find out about this, we must first look at the different aspects of considerations

³ Reed Boland, 'The Current Status of Abortion Laws in Latin America: Prospects and Strategies for Change' (1993) 21 JL Med & Ethics 67

⁴ Rashidah Abdullah, Yut-Lin Wong, 'Access to Abortion services in Malaysia: A rights-based approach' (2010)

⁵ Penal Code Act 574, S 312

the past has taken in creating abortion laws. ⁶ By researching to see the Malaysian consideration in the aspect of morality and scientific studies on legalising and limiting the medical treatment of abortion, it will help the law-making bodies widen the scope of availability of that medical service to the women of this country.

The method used in this project paper is called mixed methods research. It is the type which uses both qualitative and quantitative research, and therefore produce a holistic, combined and analysed data with deeper contextual insights. This method allows data verification from many different sources. ⁷

Qualitative research is one that collects data from living experiences, feelings or behaviours, and the meanings attached to them. It helps researchers get a better understanding of complex concepts, social interactions or cultural differences. Exploration on how-to, the reason behind occurrences, interpreting and describing situations are the usual purposes for the usage of qualitative research. Quantitative research finds data to make a statistical analysis, which then allows the findings to be ranked, measured or categorised. By this means, it helps uncover any patterns or relationships in the problem. ⁸ This will help better in designing a better solution.

1.6 RESEARCH SIGNIFICANCE

The general view on the matter of abortion is simple. Abortion is legalised if the woman is married, and the qualified medical practitioner finds in good faith, that continuing the pregnancy would harm the mother physically or mentally. However, despite the perfect

⁶ 'Research Guides: Organizing Your Social Sciences Research Paper: Types Of Research Designs' (*Libguides.usc.edu*, 2021) <<https://libguides.usc.edu/writingguide/researchdesigns>> accessed 28 January 2021

⁷ 'Libguides: Research Methods: What Are Research Methods?' (*Libguides.newcastle.edu.au*, 2020) <<https://libguides.newcastle.edu.au/researchmethods#:~:text=Research%20methods%20are%20the%20strategies,better%20understanding%20of%20a%20topic.>> accessed 28 January 2021

⁸ 'Libguides: Research Methods: What Are Research Methods?' (*Libguides.newcastle.edu.au*, 2020) <<https://libguides.newcastle.edu.au/researchmethods#:~:text=Research%20methods%20are%20the%20strategies,better%20understanding%20of%20a%20topic.>> accessed 28 January 2021

view on the abortion law, the shadow behind it looms as there are still many problems occurring due to the implementation of a current legal provision.

Among the looming problems are the fact that many abortions done in unqualified clinics, which later affect the health of women having its services. The cause for this uprising issue is that the law legalises abortion only to married women, and those whom the doctors find their health to be jeopardised by the pregnancy. This leaves unmarried yet sexually-active women and healthy women out of the picture in benefiting abortion legalisation. This is when the morality aspect kicks in and affecting the final verdict on abortion status. Debates on this matter has been going on for so long and is still prevailing, yet the correct answer does not seem to come to light.

In Malaysia, abortion is legalised for the sake of rescuing a mother's live and not too imperfect a perfect marriage institution, having the vital pillar element of wife a.k.a mother to disappear forever. Allowing pregnancy termination for unmarried women does not affect this kind of institution; this does not justify its legalisation request.

However, we cannot just jump into the water, claiming that the abortion law disregards or discriminate woman's rights. Instead, we must look at these matters through rational eyes. Abortion is not about giving women limitless rights to do whatever she wishes to her body, including flushing away unborn babies. Instead, abortion should be viewed as saving more lives from being sacrificed.

This is because there are cases where women died from the aftereffects of illegal abortion involving non-sanitised equipment. Aside from that, among the most despised crimes in Malaysia yet occurring every so often is infanticide and baby abandonment. These two are often related because most baby abandonments end up with the death of newly born babies. Women who could not access abortion give birth outside of the hospital, and dump the babies away, leaving them to their fate. In many cases, people found the baby too late after they have suffered enough to the point that the newly given life fades away.

Indeed in this sense, abortion would appear to be the alternative of saving this innocent life from suffering for being alive in this world in a short time. The consequences of limiting the service of abortion are too grave, as both play with human lives. One plays with the life of a pregnant woman, while the other plays with a new-born life.

In a nutshell, this research is significant to protect the lives well-being of Malaysian woman and children. In a narrow sense, this research aims to widen the scope of availability of abortion, making it not only for married women but also for others. This brought forth the very fundamental matter to be discussed in this research paper: the moral aspect and influence in the legalisation of abortion law, leading to amending the scope of application.

1.7 SCOPE OF THE STUDY

The scope of studies for this research is determined by the objective of finding the clash of morals and laws on abortion legalisation issue and the objective of finding out whether a foetus has the right to live. Thus, our studies' focus shall revolve around these two matters, with a look at a variety of moral values few religions uphold as well as few societies believe. We will also have a look at the growth of scientific research which affects the moral values.

As for the timeframe, we will look at the societal and medical aspects of abortion from the early period of the 60s, up to 2020. This is to look at the history of abortion and its development of acceptance and practice. We will be looking at Malaysia's primary and secondary legislation to determine the current application frame for medical treatment. However, this extends to other States' legislations to compare their acceptance on this matter and reflect the general level of acceptance of abortion by the various states involved.

With abortion statistics studies requiring an actual visit to the authorities, in which case Malaysian authorities and other states' authorities as well, thus, this research will depend on prior empirical research of abortion. Doctrinal research done by other writers will

also be analysed and compared to study their findings, opinions, similarities, and stark or small differences.

CHAPTER 2 : LEGAL FRAMEWORK THAT GOVERNS ABORTION

2.1 PROVISIONS ON ABORTION UNDER THE MALAYSIAN PENAL CODE

Malaysia does not have the specific legislation on termination of pregnancy or abortion. However, the position is governed by the Malaysian Penal Code. The Penal Code has not established the definition of abortion, but it addresses abortion. In the case of *Munah Binti Ali v Public Prosecutor* [1958] 1 MLJ 159, the word 'causes a woman with child to miscarry' was interpreted to mean causing a woman to lose the products of pregnancy prematurely from the womb and that there is no miscarriage if there was no product⁹. This case comes under the legal impossibility rules. Legal impossibility means that the criminal has done what he wishes to do, but what he has done, unknown to him, does not amount to a crime. There are situations where an individual may be convicted of an attempt to commit an offence even if it is impossible to commit the full offence, as can be seen in this case where the perpetrator inserted an instrument into the vagina of the woman causing a miscarriage, and that there was no conception. There was ample evidence that it was the appellant's concern to cause a miscarriage, and she would not have done so if she did not think the woman was pregnant.

Under Section 312 of the Penal Code, abortion is not permissible in women's cases and is deemed a felony under the Malaysian Penal Code. However, an exemption clause to be read per Section 312 was added by the Penal Code Amendment of 1989 (Act 727). The provision specified that if the pregnancy's continuation involves a danger to the pregnant woman's life or harm to the men, medical practitioners licensed under the Medical Act 1971 are authorised to terminate the pregnancy. To save the mother's life, Article 312 of the Malaysian Penal Code allows abortion, but it is known from that article that abortion is not permissible if the mother's life is not in danger.

⁹ *Munah Binti Ali v Public Prosecutor* [1958] 1 MLJ 159

Suppose it is considered a danger to life, detrimental to physical health or harmful to pregnant women's mental health. In that case, women are permitted to perform abortion rather than if the pregnancy has been terminated. The previous strict criterion to save the mother's life had given way to weighing arguments for and against the continuation of a pregnancy. The amendment also does not specify the definition of danger to life or harm to the pregnant woman's physical or mental health. This duty of proof is assigned solely to the medical practitioner who, by training and experience, is considered the best person to carry out this assessment and support the reasons for pregnancy termination. A psychologist or psychiatrist's opinion is not a prerequisite when evoking the mental health clause unless considered appropriate by the attending doctor in cases of extreme depression or suicidal risk. Essentially, it means that a mother-to-be cannot decide for herself in Malaysia whether or not she wants to abort her child; it is only the doctor's option.

As demonstrated in *Public Prosecutor v Nadason Kanagalingam* [1985], 2 MLJ 122, the good-faith provision is mandatory. The perpetrator, an obstetrician and gynaecologist, was found guilty of inducing a miscarriage that did not save the woman's life in good faith just 48 hours before she was scheduled for delivery¹⁰. The factor of good faith is a negative criterion that cannot be shown by proof of nature, but rather the lack of evidence to prove that abortion was not lawfully viewed by the accused as a last resort to save the pregnant lady's life. The Court was not persuaded that even with medical experts arguing in favour of the accused, the accused logically considered that inducing miscarriage was the only way to save the woman's life.

However, the exemption provision uses the medical concept of 'termination of pregnancy' and refers only to pregnancies less than 22 weeks of gestation or if pregnancy is not confirmed, where the fetus is estimated to be less than 500 grams. A criminal crime is still committed by a non-medical provider or the pregnant woman herself. Under Section 312 of the Malaysian Penal Code, any person who willingly causes the miscarriage of a woman with

¹⁰ *Public Prosecutor v Nadason Kanagalingam* [1985] 2 MLJ 122

a child or of a pregnant woman shall be punished by imprisonment for a period of up to three years, or by a fine, or both.

The Malaysian Penal Code, Section 313, deals with consent before an abortion. When consent is not received from the pregnant woman before the operation, it is considered a more severe crime. It is a professional and compulsory obligation that informed consent be obtained by the medical practitioner and reported accordingly. The consent required for each pregnant woman's situation is different. For Muslim women, however, their husbands' permission is essential and mandatory as per religious requirements. Under-aged girls under 18 require parental consent, legal guardians, child protectors, or the state to terminate the pregnancy process. To go through the procedure, unsound or mentally challenged pregnant women need parents, legal guardians, or the state's consent. An individual must not be in a state of fear or confusion concerning consent in the Malaysian Penal Code. A person must be entirely fair and not intoxicated and should know the facts and implications of his consent and be over twelve years of age.

The Malaysian Court took the crime of abortion seriously. Evidentiary, the court prepared to uphold the conviction even to the case where there is an attempt to abort a woman who is not pregnant. In the case of *Munah Binti Ali V Public Prosecutor* [1958] 1 MLJ 159, where the Court upheld the accused's conviction under Section 312 of the Malaysian Penal Code, read in conjunction with Section 511 of the same Act, the decision can be found¹¹. The critical factor in holding her guilty was that she intended to make women miscarry. Therefore, it could be said that the ground that the act of abortion is a crime under Malaysian law and the only exception permitting the abortion is in the case where the fully trained doctor of the view that the pregnancy can cause a risk to the health of the pregnant mother.

In conclusion, in Malaysia, all forms of voluntary abortion are considered illegal. Unless a pregnant woman's life is at risk or her physical or mental health is at risk of injury, more significant than if the pregnancy is terminated. However, under the Penal Code, the

¹¹ *Munah Binti Ali V Public Prosecutor* [1958] 1 MLJ 159

probability and type of risk of injury have not been interpreted, which lead to uncertainty among practitioners and pregnant women. The medical practitioner can quickly misinterpret the exemption under section 312 of the Penal Code.

2.2 SHARIA LAW AND FATWA IN MALAYSIA ON THE TOPIC OF ABORTION

Abortion is referred to in Islamic jurisprudence as a condition in which a woman's pregnancy is dropped before or after embryogenesis after settling in her womb. According to the jurists, the literal definition of abortion refers to the action taken by someone who is not out of the literal sense. The life of a human being is sacred under Islamic rule, and as such, no one except by law is allowed to destroy or put an end to the life of another. Whether or not a foetus is entitled to enjoy this protection under Islamic law is a topic fiercely debated by Muslim scholars¹². Abortion has a strong relation to the child's right to life because it puts an end to the life of the human being in the womb in the course of creation when abortion is performed. Under Islamic law, abortion is usually forbidden because it is equivalent to killing a human being that has not fully grown.

Much of the lack of consensus over the abortion issue arises from the fundamental need to decide precisely when life begins. As many consider that the termination of pregnancy can be justified if the embryo or fetus is not yet regarded as a living human being, on the ground that only living human beings can have rights. Traditionally, birth has been held to mark the beginning of human life. At birth, the fetus is separated from its mother and is no longer physiologically dependent on her. Birth as a dividing line has the advantage of being objective and definite. Birth certificate marks the day, hour and even the minutes the baby is born. The holy Quran states that there are five stages of developing a human being in the mother's womb. The phrases from the Quran stated that the process of human creation as the offspring of Adam. There are five states of development of a human being in the womb of

¹² Century Welfare Organization, 'ABORTION IN ISLAMIC LAW : Beyond the pro-Life vs . pro-Choice Debate' 1.

a mother. The first stage is a sperm (nutfah), the second stage is congealed blood ('alaqah), third is a fetus (mudghah), fourth is bones ('izaama) and finally is the clot of the bones with the flesh. Al-Quran is silent about the moment when ensoulment occurs.

From the statement of hadith which is narrated by Abdullah, the jurist consensus is that the spirit is blown into the fetus within four months or at the end of one hundred and twenty days. To deliberate over an issue related to abortion, the jurist classified it into two stages, the first 120 days and the remaining period before childbirth. Imam Hanafi opined that abortion is allowed to take place principally until the 120 days of pregnancy. The Hanafi school of thought keeps four months' period as a genuine period for developing a fetus into a spirited being. For Imam Maliki School, abortion is permissible with both parents' consent up to 40 days of pregnancy, and it is not allowed after that. According to Imam Shafi'i, abortion is allowed to be performed up to 120 days after pregnancy. Imam Ahmad bin Hanbal has the same opinion with Imam Hanafi that abortion is allowed up to four-month or up to the 120 day of pregnancy, which is before the soul is breathed into it.

Qazi Mujahidul Islam Qasimi opined that if an unmarried girl became pregnant due to rape then her pregnancy would lead her to a life long social persecution and it would therefore be better for her to be permitted to abort within 120 days from the day of conception, as the concept has not yet become alive.

For Muslims in Malaysia, many fatwas relating to pregnancy termination have been released by the National Fatwa Committee of Malaysia. According to the 26th Conference of the Malaysian National Fatwa Committee of Islamic Religious Affairs of Malaysia, held from 7-8 March 1990, if there is a genetic or congenital deficiency in the fetus, Muslims are prohibited from terminating a pregnancy unless the defect is so severe that it can affect the life of the mother. In the meantime, at its 52nd Conference held on 1 July 2002, the other Fatwa issued by the National Fatwa Committee agreed that in cases where the fetus is found to have extreme thalassemia, the following are the options given to the couple if it is makruh to terminate the pregnancy before the pregnancy reaches 40 days if the pregnancy does not

harm the mother and both agree to it. Secondly, if the foetus is suffering from a defect that may affect the mother's life and if it is performed before 120 days after conception has been registered, termination of a pregnancy is allowable¹³. Finally, after 120 days, termination of a pregnancy is forbidden unless it is performed because of the fetus's extreme deformity to protect the mother's health. However, the law is silent if a doctor thinks that a mother's life is at risk if she continues to get pregnant, but she is 24 weeks pregnant.

It can be concluded that under the Syariah law, the Fatwa allows for abortion to be carried out for a fetus under 120 days of gestation if the mother's life is under threat or danger¹⁴.

2.3 2012 GUIDELINE ON THE TERMINATION OF PREGNANCY

In order to raise awareness among government health care practitioners of the complexities of the problems of induced abortion, the Guideline on the Termination of Pregnancy in Government Hospitals was created to be aware of the current provisions of professional ethics, law, religion and reproductive rights during a consultation with the female client. Every pregnancy termination case should be mishandled. This guidance is intended primarily to provide a brief update, including protocols and precautions, on clinical care for women seeking an abortion. The Guidelines' goal is to bring to the attention of health care practitioners the complexities of issues relating to induced abortion and the current provisions on pregnancy termination in terms of professional ethics, legislation, faith, and reproductive rights while offering clinical care for women who are having abortions. HCPs are specific on aspects of abortion management with the TOP Recommendations, including legalities, standard operating practices, management of pre-termination and post-termination, methods of termination, and even religious viewpoints¹⁵.

¹³ Sarah Thwaites, 'Abortion in Malaysia' (*Women's Aid Organisation*, 2011) 1 <http://www.wao.org.my/news_details.php?nid=86> accessed 28 November 2020.

¹⁴ Wah Yun Low and others, 'Access to Safe Legal Abortion in Malaysia: Women's Insights and Health Sector Response' (2015) *Asia-Pacific Journal of Public Health* page 33.

¹⁵ Datuk Dr Mohamad Farouk Abdullah, 'Legal and Professional Status of Termination of Pregnancy (TOP) in Malaysia' (2020) .

The Guidelines also allow for uniform pregnancy termination management, which can be used in private health facilities through HCPs. This will help discourage abortion providers from operating with exploitative payments in a clandestine and immoral manner, although a reasonable fee framework has yet to be included. It was also reported that medical methods such as mifepristone and misoprostol were used to terminate pregnancy for up to 22 weeks, but states that the former medication has yet to be registered and accepted in Malaysia. Under this Guideline, pregnancy termination is limited to procedures for extracting an embryo or foetus where pregnancy is less than 22 weeks of gestation or where pregnancy is uncertain, where it is estimated that the fetus is less than 500 gms. Only the foetus is allowed to go through the pregnancy termination process for less than 22 weeks and less than 500gms. If pregnant women do not obey the guidelines specified, it is considered a crime.

However, healthcare providers' role has been made very complicated by recommendations that are non-conducive for TOP after 120 days of pregnancy due to a delayed diagnosis. Before day 120 of pregnancy, the termination of a pregnancy due to an anomalous foetus constitutes a time of opportunity that a woman can use to protect her health and well-being. For the affected parents, and particularly the mother, a missed opportunity may result in prolonged suffering. If the duration of opportunity has been skipped, the pregnancy cannot be terminated, and the anomalous fetus must be carried to term. Under this Guideline, the top can only be done by the foetus from week 1 to week 22. While if action TOP for a fetus that above 22 weeks, it is considered a crime. This Guideline certainly offers an opposing argument for women who have delayed diagnosis. If women obtain a diagnosis after 22 weeks that carrying out their pregnancy will trigger risk and danger to their health, it would be a question mark.

2.4 HUMAN RIGHTS LAW

International human rights standards have grown to accept that denying abortion rights in various situations violates women's fundamental human rights. In general, the law is provided to prohibit globally-recognised harmful practices such as torture, slavery, summary

execution without trial, and arbitrary detention or exile. There are many international organisations which specifically influence the outtake of human rights law on abortion. Office of the High Commissioner for Human Rights (OHCHR) is the leading UN entity on human rights. They have the role in promoting and protecting all human rights, empowering people, assisting governments, and injecting a human rights perspective into all UN programmes. OHCHR has once released an article discussing abortion, or to be exact, it provided clear guidance on the need to decriminalise abortion. It advocates that States has the obligations to eliminate discrimination against women and ensure women's right to health by guaranteeing access to induced abortion services.

In 1988, the organisation formally adopted the all-inclusive name Human Rights Watch. It broadened and strengthened its work on the rights of women, children, refugees and migrant workers. HRW defends that abortion is first and foremost a human right. The justification for that is, when abortion is safe and legal, no one is forced to have one. Where abortion is illegal and unsafe, women are forced to carry unwanted pregnancies to term or suffer serious health consequences and even death. The organisation also stated that many international human rights legal instruments and authoritative interpretations of those instruments compel the conclusion that women have a right to decide independently in all matters related to reproduction, including abortion.

At the national level, the evolution of intense international and regional human rights standards that recognise abortion as a human rights imperative has greatly influenced jurisprudence and law reform. High courts have increasingly included international human rights standards to think about what will secure women's reproductive autonomy. These cases set the groundwork for numerous landmark justices who have affirmed women's right to abortion in various circumstances and cemented the state's obligation to ensure access to legal abortion services in practice.

2.5 WORLD HEALTH ORGANISATION

Unsafe abortion is the termination of pregnancy performed by unqualified persons lacking the necessary skills or suitable environment in conformity with minimal medical standards which outlined in the 1992 WHO Technical Consultation. World Health Organization (WHO) figures confirm that abortion's legal status does not correlate with the number of induced abortions. Women would seek abortion irrespective of their legal status and legal availability. WHO defines unsafe abortion from their intention to address the proper guidelines to manage the medical procedure complications. Thus, a correct interpretation of that definition is critical as it affects the technical aspects of conducting an abortion.

In 1967, WHO first recognised unsafe abortion as a severe public health problem. The issue was reaffirmed in the 1994 Program of Action of the International Conference on Population and Development, which highlighted the need for States to resolve the health consequences of unsafe abortion and to provide safe abortion where it is not against the law acknowledging the public health challenge raised by unsafe abortion, which provided technical and policy guidance on safe abortion. The prevention of illegal abortion was recognised as a core component of the WHO Reproductive Health Policy to drive progress towards achieving international development goals and objectives. The strategy focuses on international human rights treaties and global consensus statements, such as the International Conference on Population and Development Programme of Action. The Member States of the WHO supported the policy in 2004¹⁶. In 2012, the WHO Secure Abortion Technical and Policy Guide for Health Systems was revised and included a list of findings on abortion laws and policies by international human rights bodies, in hopes of improving abortion law and eventually other progresses in achieving the international development goals and objectives.

2.6 CONCLUSION

¹⁶ Brooke Ronald Johnson and others, 'A Global Database of Abortion Laws, Policies, Health Standards and Guidelines' (2017) Bulletin of the World Health page 542.

Chapter 2 discusses the current Malaysian and International law on abortion. In Malaysia, abortion is considered a felony under Section 312 of the Penal Code with the exception that abortion could be done upon married women whose health deteriorates when continuing her pregnancy. There is no exact definition as to what sort of harm befalling the woman that could be accepted as endangering her health, thus recommendations for this operation usually depends on the licensed medical practitioner, whether they think abortion should be done or not. Other than licensed doctor-approved abortion, abortion is generally illegal in Malaysia.

As a country with Islam for the Federation's religion, Sharia law and Fatwa are especially referenced prior to the legalization of a certain matter including abortion. Generally, under Islamic law, abortion is considered as killing a human being that has not fully grown. Despite that, there are perspectives that allows abortion if the operation takes place within 120 days after conception. National Fatwa Committee of Malaysia released many fatwas on abortion such as, abortion can only take place if the defect of pregnancy is so severe that the mother's life will be affected, or if the fetus is found to have an extreme thalassemia.

Guideline on the Termination of Pregnancy in Government Hospitals was designed to raise awareness on abortion as well as provide simple explanation on the protocols and precautions on the service. This guideline also ensures a uniform abortion management throughout private health facilities.

Human rights law has a long history of not only securing the right to life, but the right of a woman over her body to terminate her pregnancy. In the past, illegal abortion was the main cause of death for pregnant women due to the operation done without complete or sterilized instruments. Human Rights Watch was established to secure among others; the rights of women. It believes that abortion is a human right that should be fought for and defended, because its illegalization would only result in dangerous pregnancy and higher death rate as women resort to backdoor abortion. Other international body such as WHO recognised

unsafe abortion as a severe health problem and suggests countries to create a municipal law providing safe abortion law

In conclusion, we can see that the current Malaysian law on abortion is too strict that it keeps bring forth unfortunate deaths of pregnant mothers. It could be observed that despite the illegalization of abortion, it failed to curb the abortion operation itself. Instead, mothers not fit for abortion would still go for that operation even if they have to entrust their lives to unlicensed medical practitioner and under non-sanitized operating instruments. For this very reason, in order to save more precious lives, international laws such has been supporting abortion, and argued the importance as well as the virtues of this operation.

CHAPTER 3 : AN ANALYZE ON THE MORALITY AND THE LEGALITY OF ABORTION

3.1 THE RIGHTS INVOLVED IN ABORTION

Under Article 3 of the Federal Constitution, Islam is the Federation's religion, while other religions could be practised in peace.¹⁷ Meanwhile, the National Principles of Malaysia begins with (1) Belief in God, followed by (2) Loyalty to the King and Country, (3) Supremacy of the Constitution, (4) Rules of Law and (5) Courtesy and Morality.¹⁸ Both Federal Constitution and National Principles prioritise religion more than anything. Therefore, the early conclusion that we could make regarding Malaysia is that it is not a country whereby its citizens are allowed to do anything they wish to the point that it would dishonour and tarnish the religion position. In Islam especially, an individual is always bound to possess a few rights such as right to live, inherit, and even burial. This chapter will be discussing on whether these given rights are applicable to an unborn fetus based on Islamic law, and other religions.

This will be followed by the discussion of morality, whether it lies within the applications of religions as well as social norms. It is common knowledge that society forms a standard morality acceptable to them, usually influenced by particular geography and racial differences. Thus, giving birth to various different moralities or social norms based on different societies and places.

3.1.1 Rights of an Unborn Child

All four Islamic School of Thoughts agreed that these rights are given to the fetus; the right to live, inherit heritage, and a proper burial.

3.1.1.1 Right to Live

¹⁷ Federal Constitution, Article 3

¹⁸ <https://www.malaysia.gov.my/portal/content/30110>

The Shafiite school of thought opined that an unborn child should be delivered in the effort to save a life. If a pregnant woman is sentenced to death, the punishment should only be carried out after giving birth and breastfeeding her baby.¹⁹ According to Article 6 of the Convention on the Rights of Child by UNICEF, states have an obligation to protect children's lives as they have, the right to live and to continue to live.²⁰ Article 3 of the Universal Declaration of Human Rights (UDHR) has given the right to live to an individual (Warren 1993, 131).²¹ The only debate left was that, whether an unborn child should be considered as an individual or this is not covered under the provision, what more under Article 5 of Malaysian Federal Constitution (Fortin 1998, 51 MLR 54), which states that only the law can take away a person's life. Thus, this signifies the right of an unborn child to be born and have its own life. Bible did not mention anything specific regarding the termination of pregnancy, yet many verses reflect God's view on life matters, including the life of unborn children. In Christian, life is a blessing that if someone intentionally causes a termination of pregnancy, such an act would be equivalent to murder.²² On a study conducted to explore Protestant religious leaders' opinions on abortion, the spectrum of answers goes from 'pro-life' to 'pro-choice', and some even gave contradictory views. However, these different answers' manipulating variable is the varying beliefs on when exactly does life begins. This eventually affects the 'suitable' timeline for abortion to be accepted.²³ Therefore, depending on which term of pregnancy, the abortion takes place and when a Christian thinks life begins, whether the operation of termination of pregnancy is allowed or not varies.

¹⁹Zainur Rashid Z, *Bilakah Pengguguran Dibenarkan* (JKNMelaka, n.d.) <<https://jknmelaka.moh.gov.my/userfiles/file/Pengguguran%20Bila%20Dibolehkan.pdf>> accessed 12 January 2021

²⁰ 'UNCRC Article 6 - I Should Be Supported To Live And Grow - The Children And Young People's Commissioner Scotland' (*The Children and Young People's Commissioner Scotland*, 2021) <<https://cypcs.org.uk/rights/uncrc/articles/article-6/#:~:text=Article%20of%20the%20UNCRC,of%20children%20and%20young%20people.>> accessed 12 January 2021

²¹ Siti Khatijah I, and Mohd. Badrol A, *Pengguguran Dan Justifikasi Perundangan Mengikut Undang-Undang Islam Dan Peruntukan Seksyen 312 Kanun Keseksaan* (6th edn, JURNAL ISLAM dan Masyarakat Kontemporari 2013) <<http://file:///C:/Users/User/Documents/LLB%20SEM%206/Project%20Paper/Article%20Journal/Galei%20Pruf%20UniSZA%20JOURNAL.pdf>> accessed 12 January 2021

²² <https://www.jw.org/ms/ajaran-bible/soalan/pengguguran-bayi-dalam-bible/>

²³ <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0235971>

3.1.1.2 Right to Inherit

Majority of Islamic scholars agreed that by Islamic law, the minimal age for a fetus to be considered a legal heir is within six months, counted from the date of marriage. If it is less than that period, the fetus will not be considered the father's heir but only as of the mother's heir. Therefore, in Sharia's eyes, an heir who is still within its mother's womb will have the right to inherit heritage under two conditions.²⁴ One, the fetus had genuinely existed within the womb when the heritage owner died. Two, the fetus was born alive.²⁵ While a point could be made that should the fetus is not delivered alive. It will not be entitled to this right. A fetus could inherit a property gives a strong indication that there is a complete and valid individual inside the womb, which only needs to be delivered to the world to make sufficient of its entitled right.

Kitab Undang-Undang Hukum Perdata (KUHPerdata) is an Indonesian authority taken from Dutch; *Burgerlijk Wetboek*. It is a codified law governing the rights and obligations for Indonesians.²⁶ According to it, an unborn child is considered a child delivered alive, thus possessing the right to heritage.²⁷ Article 2 of KUHPerdata stated that the consideration for the unborn being alive is irrespective of the gestational age. Even if the woman just recently gets pregnant for one month, her unborn baby has the right to the heritage.

3.1.1.3 Right to Proper Burial

A fetus has the right to have a proper burial, rather than disposal as if it is just another trash. By a hadith regarding the formation of a human within the womb cited by Muslim (6893) and Ahmad (3624), the scholars set that for a fetus less than 140 days which have no sign of life nor having the shape of a human, it is encouraged to have a burial. Nevertheless, suppose

²⁴ Ikhwan N, *Status Anak Dalam Kandungan Sebagai Ahli Waris (Perbandingan Fikih Mawaris Dan Kuhperdata)* (UIN Alauddin Makassar 2015) <<http://repositori.uin-alauddin.ac.id/5270/1/ikhwal%20nasrul.pdf>> accessed 12 January 2021

²⁵ Sha'būnī M, *Pembagian Waris Menurut Islam* (Gema Insani Press 1995)

²⁶ 'Pengertian Hukum Perdata Dan Contoh Pasalnya' (DSLALAW (Daud Silalahi & Lawencon Associates), 2021) <<https://www.dslalawfirm.com/hukum-perdata/>> accessed 12 January 2021/

²⁷ Ikhwan N, *Status Anak Dalam Kandungan Sebagai Ahli Waris (Perbandingan Fikih Mawaris Dan Kuhperdata)* (UIN Alauddin Makassar 2015) <<http://repositori.uin-alauddin.ac.id/5270/1/ikhwal%20nasrul.pdf>> accessed 12 January 2021f

the fetus has signs of life such as shivering and moving or has the physical appearance resembling a human, it is an obligation to give a proper Islamic burial to it omitting the prayer.

28

3.1.2 Rights of a Mother

Majority of Islamic scholars agree that termination of pregnancy after ensoulment without any concrete reason (or emergency) would be a forbidden act.²⁹ However, if the pregnancy poses a risk to the mother's life, then termination is allowed to be done. This decision was made based on Usul Fiqh's principle, which stated that, if you have to choose between two harms, choose lesser harm (Al-Asybah wa al-Nazair, pg 87; Al-Wajiz fi Usul al-Fiqh, pg 203).

³⁰ While the lives of the mother and the child are precious, when the situation to choose between the two comes, a sensible decision would be to preserve the mother's life compared to the unborn baby's life which is yet sure to last long and prosper.

3.1.3 Rights of a Father

The arguments on abortion have always painted men as uninvested in becoming a parent. This stereotype is so deeply ingrained in the legal analysis for abortion and assisted reproductive technologies (ART). Pro-choice perspective on abortion issue would even go to the male-excluding extreme, "my body, my choice" principle.³¹ It is recorded in the article of Expectant Fathers, Abortion and Embryos that some commentators state that just as much a

²⁸ Naqiuddin W, 'IRSYAD AL-FATWA SIRI KE-398: HUKUM MENGEBUMIKAN JENAZAH JANIN DI ATAS PUSARA WARISNYA YANG TELAH MENINGGAL DUNIA' (*Pejabat Mufti Wilayah Persekutuan*, 2020) <<https://muftiwp.gov.my/artikel/irsyad-fatwa/irsyad-fatwa-umum/4101-irsyad-al-fatwa-siri-ke-398-hukum-mengebumikan-jenazah-janin-di-atas-pusara-warisnya-yang-telah-meninggal-dunia>> accessed 12 January 2021

²⁹ Mazri M, 'AL-KAFI #1511: HUKUM MENGGUGURKAN JANIN KERANA FAKTOR KESIHATAN' (*Pejabat Mufti Wilayah Persekutuan*, 2020) <<https://muftiwp.gov.my/artikel/al-kafi-li-al-fatawi/3958-al-kafi-1511-hukum-menggugurkan-janin-kerana-faktor-kesihatan>> accessed 12 January 2021

³⁰ Mazri M, 'AL-KAFI #1511: HUKUM MENGGUGURKAN JANIN KERANA FAKTOR KESIHATAN' (*Pejabat Mufti Wilayah Persekutuan*, 2020) <<https://muftiwp.gov.my/artikel/al-kafi-li-al-fatawi/3958-al-kafi-1511-hukum-menggugurkan-janin-kerana-faktor-kesihatan>> accessed 12 January 2021

³¹ Purvis D, 'Expectant Fathers, Abortion and Embryos' (*Elibrary.law.psu.edu*, 2015) <https://elibrary.law.psu.edu/cgi/viewcontent.cgi?article=1268&context=fac_works> accessed 12 January 2021s

woman has the right to terminate her pregnancy, a man will also have the right not to be a parent evading legal parentage and the attending child support obligation.³²

In *Roe v. Wade*'s precedent case, the Court decided that a discussion over a father's right in an abortion issue is not required.³³ Even three years later, in *Planned Parenthood of Central Missouri v. Danforth*, Court stated that a married pregnant woman does not need to seek her spouse's consent for the pregnancy termination.³⁴ Justice Blackmun stated that the reason behind such decision is that, the law could not accurately measure the depth and proper concern and interest such expectant father would have over his wife's pregnancy and the growing fetus.³⁵ However, Justice White dissented, dissatisfied with such reasoning Justice Blackmun has arrived to. The prior approached the decision with the view that while comparing the interests between a wife and a husband over the child's potential life, it is found that a wife's interest would be much more significant, thus justifying for her decision to be of the most important and taken into consideration.

The commentaries on the abortion laws varied. Some wrote that the Supreme Court has degraded for allowing pregnancy termination, making women the lord of her procreative capabilities.³⁶ Some wrote that women have despotic power over reproduction, since the dominant response to unwed motherhood is driven by sympathy, and men lose any right to say anything over unplanned pregnancies.³⁷

³² See, e.g., C. Bruno, "A Right to Decide Not to Be a Legal Father: *Gonzales v. Carhart* and the Acceptance of Emotional Harm as a Constitutionally Protected Interest," *George Washington Law Review* 77, no. 1 (2008): 141-17. https://elibrary.law.psu.edu/cgi/viewcontent.cgi?article=1268&context=fac_works

³³ *Roe v. Wade*, 410 U.S. 113, 165 n.67 (1973).

³⁴ *Danforth*, 428 U.S. at 58.

³⁵ *Danforth*, 428 U.S. at 69.

³⁶ E. M. Hiester, "Child Support Statutes and the Father's Right Not to Procreate," *Ave Maria Law Review* 2 (2004): 213-241, at 214-215. From Purvis D, 'Expectant Fathers, Abortion And Embryos' (*Elibrary.law.psu.edu*, 2015) <https://elibrary.law.psu.edu/cgi/viewcontent.cgi?article=1268&context=fac_works> accessed 12 January 2021.

³⁷ See I. D. Lichtenberg and J. B. LeClair, "Advocating Equal Protection for Men in Reproductive Rights and Responsibilities," *Southern University Law Review* 38, no. 1 (2010): 53-78, at 63. From Purvis D, 'Expectant Fathers, Abortion and Embryos' (*Elibrary.law.psu.edu*, 2015) <https://elibrary.law.psu.edu/cgi/viewcontent.cgi?article=1268&context=fac_works> accessed 12 January 2021

3.2 ENSUED MORALITY ISSUES

In Malaysia, termination of pregnancy is against the Penal Code, except for under Section 312 of the statute which gives a leeway should there be a complication with the pregnancy that could cost the mother's life or damaging her physical or mental health. However, only a medical expert licensed under the Medical Act 1971 can do this operation for this purpose.³⁸ If the operation failed and the mother died during the process, this would account for a crime by Section 314 of the Penal Code.

However, what dictates the acceptance of abortion practice by moral depends on two factors; one, religion and two, social norm. Why people rely on these two? Religion influence in life. Social norm/culture in life.

3.2.1 Religion

By Alfred Denning, "without religion, there can be no morality, and without morality, there can be no law".³⁹ This shows how important the position of religion in life as it is the basis/core/foundation of laws that shape our lives.

In Islam, there are five principles which are carefully protected under Sharia governance; Maqasid Sharia. Maqasid Sharia can be considered as the hidden blessing or higher objective behind the rules legislated by Sharia. The observance of Maqasid Sharia will help society function better as it would promote public goodness and encourage people to avoid actions likely to cause harm to individuals or society.⁴⁰ The five principles protected under this are the protection of religion, life, mind, lineage and property. Under the first principle, it means to avoid anything that would be against or destroy the basis that upheld Islam as the Federation's religion. The second principle means to protect honour, relationship and social

³⁸ Section 312, Act 574 Penal Code 2018

³⁹ Eman Sulaeman, *Delik Perzinaan Dalam Pembaharuan Hukum Pidana Indonesia*, 2008, Semarang: Walisongo Press, hlm 10-11. Lihat pula Oemar Senoadji, *Mass Media dan Hukum*, 1977 Jakarta: Erlangga, hlm. 141. From Fanggi R, *Kebijakan Kriminalisasi Pengguguran Kandungan Dalam Pembaruan Hukum Pidana Indonesia* <<https://media.neliti.com/media/publications/109758-ID-kebijakan-kriminalisasi-pengguguran-kand.pdf>> accessed 12 January 2021

⁴⁰ 'Maqasid Al-Shari'ah | Islamic-Banking.Com' (*Islamic-banking.com*) <<https://www.islamic-banking.com/moral-oath/maqasid-al-shariah>> accessed 12 January 2021

equality, justice, the safety of life, marriage and stable family life, regress of criminal activities and much more. As a state ruler, he should be responsible for ensuring that no bloodshed is spilt unreasonably. If life is not protected, then the state will face destruction, which will cost its peace and harmony.⁴¹

If we mention the act of abortion per se, it does not constitute a mere sin since it is still allowed under several situations. However, it is despised when it accommodates or encourages the forbidden acts such as adultery, prostitution, human trafficking, and homicide, which are against the protected principles of religion and life under Maqasid Sharia.⁴²

3.2.2 Social Norm / Culture

Social norms are known as rules of behaviour. It poses social influence on the group members to react appropriately (Abrams, Wetherell, Cochrane, Hogg and Turner, 1990). Others opined that before coming to the meaning of norms, one must first know the meaning of moral value. Generally, moral value means a measure or a ruler to what is classified as good and evil, whether about treatment or other things. As a member of society, these moral values one is raised with, are shared with other society members. Thus, the prevalent or expected behaviour of a society is recognised as a norm.⁴³

As discussed above, the Malaysian Penal Code does legalise abortion, though subject to some restrictions. What makes the general people believe that it is wholly prohibited is the social norm outtake on this matter. Shame and stigma linger, which prevents them from fully

⁴¹ 'Pertemuan MABIMS Ke-17: Sepakat Dengan Pelaksanaan Pelan Strategik Tahun 2016 – 2020' (*Islam.gov.my*, 2016) <<http://www.islam.gov.my/en/bahagian-maqasid-syariah/1181-prinsip-maqasid-syariah>> accessed 12 January 2021

⁴²Fanggi R, *Kebijakan Kriminalisasi Pengguguran Kandungan Dalam Pembaruan Hukum Pidana Indonesia* <<https://media.neliti.com/media/publications/109758-ID-kebijakan-kriminalisasi-pengguguran-kand.pdf>> accessed 12 January 2021

⁴³ 'Nilai Dan Norma Melayu' (*MENDAULATKAN MARTABAT BANGSA*, 2021) <<https://zanas.wordpress.com/nilai-dan-norma-melayu/>> accessed 12 January 2021

understanding the actual status of that medical operation.⁴⁴ This could easily be overcome if these women and men easily access such information. However, another factor contributing to the misleading society perceptions on pregnancy termination is that medical practitioners in Malaysia prefer a conservative view. This is mostly due to law if the operation took a wrong turn, and the mother's life is harmed, the medic will be liable for the conduct that has become a criminal offence.⁴⁵

Morality does not influence the legislation on abortion, both in the eastern and western countries. While in the west, the morals possessed by younger generations have gotten more liberal. Still, the law can be described as restrictive upon the termination of pregnancy. With the tight conditions governing the operation such as it is accessible only when there are life and death situation, rape cases or the one operating must be a certified surgeon, the law is not quite there to make the service more available or easily accessible to the public.

3.3 CONCLUSION

Malaysia is a country with religion. Therefore, in the abortion issue, constant squabbles between the unborn child, mother, and father's rights. Reference has also been made to religions such as Islam and Christian. The principles of religions should not be blatantly waived in legalizing a particular subject.

For the unborn child, Islam listed that it may be entitled to the rights to live, inheritance and burial. Islam prioritizes this perseverance of life to the point that, suppose the pregnant mother is punished with the death penalty, the punishment must wait until the child is born. The Christian abhors abortion because life is considered a blessing and termination would be the same as murder. Islamic inheritance, if the fetus has already existed when its blood relation dies, then once the fetus is born, it will be entitled to inheritance. Despite the

⁴⁴ 'Aspek Undang-Undang, Keagamaan Dan Etika Pengguguran Di Malaysia' (*ACE Accurate | Comprehensive | Effective*, 2021) <<http://acemodule.weebly.com/aspek-undang-undang-keagamaan-dan-etika-pengguguran-di-malaysia.html>> accessed 12 January 2021

⁴⁵ 'Undang-Undang Pengguguran Di Malaysia' (*Pengguguran*, 2021) <<https://pengguguran.org/undang-undang-pengguguran-di-malaysia/>> accessed 12 January 2021

requirement of being alive to inherit, Islamic law on inheritance shows that unborn child is spared/booked the right to inheritance in favorable circumstances. If the fetus failed to be born alive, then depending on its age, it would be entitled to a proper Islamic burial minus the prayer.

For a mother's right, Islamic law prioritizes the mother's life if hers is truly harmed when continuing the pregnancy. Thus, although an unborn child's life should be preserved, under the Usul Fiqh of choosing between two harms, most scholars agreed that the mother's life would be saved. As to the right of a father in the abortion issue, this is usually not discussed in the religions, and even in some English cases, the focus was always given to the mother and child and not the father.

Chapter 3 also touched on the effect of morality over abortion issues. However, since morality is shaped by religion and social norms, religion topic is again touched. The general overview of morality held by a religion, especially Islam, is that protecting life is necessary. The morality derived from religious practice is that life must be protected and preserved, leading to the sceptic view over abortion. As to social norm-derived morality, a group of people have the same opinion regarding one particular matter. This is usually influenced by geography and race factors, causing various social norms or morals coming from different societies. In Malaysia, the social norms took abortion in a conservative view which often rejects abortion, although this view is slowly changing over time.

In conclusion, when discussing the rights involved in abortion, despite most religions oppose it, if critical situation demands it; abortion is allowed to occur as the right of life of a mother outweighs other possible rights. In discussing the ensued morality issues, emphasize is always on the perseverance and protection of life. Even the social norm is hardwired to protect life, although the social norm does not become a big influence in the construction of legislation compared to religion.

CHAPTER 4: CONCLUSION AND RECOMMENDATION

4.1 SUGGESTED LEGAL FRAMEWORK

The stricter the excuse for allowing abortions, the more likely it is to deny women a legal abortion service. The inaccessibility of safe, legal abortion causes women to seek out clandestine providers of abortion care that do not comply with minimum requirements for safe abortion. Moreover, there is a strong religious and cultural opposition to abortion in most Asian cultures, and it is seldom addressed in the open. Other factors that affect abortion include the equivocal language used in abortion laws and policies. Some HCPs are reluctant to widely view the laws and policies for fear of to prosecute⁴⁶. One such nation is Malaysia, which suffers from a lack of proper perception and understanding of these laws and policies. This has led to a widespread misunderstanding, resulting in inferior regulation of Malaysian abortion laws and very restricted women-accessible facilities.

Women can easily misinterpret the exemption for abortion under the Penal Code due to insufficient awareness and lack of clarity. Section 312 of the penal code should explain the degree to which abortion can be carried out if the pregnancy poses a danger to a pregnant woman's life or harm to a pregnant woman's mental or physical health, more generous than if the pregnancy has been terminated. The risk level for a pregnant woman's life should be assessed to a degree of Guideline. Other than that, under Malaysia's laws, the word "abortion" is not specified. Instead, the Penal Code refers to the operation as "causing miscarriage," which is still undefined under the code. In a 1955 Indian court case, *in re Malayara Seethu*, Malaysia accepts the legal definition of miscarriage as the "premature expulsion from the uterus of the result of pregnancy, an ovum or a foetus, at any time before

⁴⁶ Center for Reproductive Rights. *Women of the World: Laws and Policies Affecting their Reproductive Lives South Asia*. New York, NY: Center for Reproductive Rights; 2004

the full term is reached. The code should be read along with the Termination of Pregnancy (TOP) due to lack of clarity under the penal code.

Due to the unavailability of the Ministry of Health's policy guidance on the definition of abortion as well as a clear guideline to conduct abortion, the practice of abortion relies on the opinions of individual practitioners at public health institutions. As a result, women are often forced to follow non-uniform protocols, such as psychological examinations, the need for a second medical opinion, and even seek approval from the husband where such a burden is not placed by the statute. The government must urgently review its obligation to provide affordable abortion services within the law framework and investigate the policy regulatory such as the Guideline for safe abortion in Malaysia.

While some justifications for undergoing abortion are provided for the exception, the exception does not explicitly state whether victims of rape are eligible to undergo an abortion. In Malaysia if the woman was raped and impregnated or if, in terms of mental or physical incapacity, the infant would not be able to live a good life if he or she was born, the mother does not have the right to determine what happens next. As far back as 1974, a national fertility and family survey under the UN Population Division found that 71% of women endorsed abortion based on rape or incest 54.3% of single women endorsed abortion 52.2% endorsed abortion for health 34.5% endorsed abortion for economic and social reasons⁴⁷. Section 315 of the penal code states that "an act is done to prevent or cause the child to die after birth from being born alive" is a crime "unless it is to save the mother's life." In Malaysia, abortion is still legally forbidden even if the pregnancy resulted from incest, in cases of fetal impairment, or for other socio-economic reasons. Therefore, a woman does or does not have the luxury of choosing to have an abortion for any other exceptional circumstances in Malaysia, unless the mother's life is in danger. In this context, it is urged that Malaysia's criminal law position on abortion should be re-evaluated to decide whether it is appropriate for Parliament to allow victims of abortion to be subjected to abortion to protect victims' rights

⁴⁷ Thwaites (n 12).

to support society. This is particularly relevant as statutory rape in Malaysian culture is becoming more extreme and leads to illegal abortion or even the abandonment of a newborn child. Therefore, considering the psychological issues and the emotional distress involved, a pregnant rape survivor should be allowed by law to undergo an abortion. The victim of sexual assault should have the right to decide the pregnancy and keep the baby.

Moreover, if the rape survivor decides to continue the pregnancy, there should be a detailed recommendation. Other than abortion, governments and NGOs should find alternative ways to hold the baby. To retain their right to live, the child born of rape should be remembered as a survivor. Suppose the mother does not want to keep the baby because of the psychologically and physically unstable. In that case, the alternative way to secure the baby's right is by placing it on adoption. However, it is necessary to get legal advice about giving up a child for adoption, especially if the mother and her spouse do not want the child to be involved. Whether or not women willingly give their consent is a crucial issue to be considered here. Under a new shelter, the government and NGO should also protect the child of the victim. The infant born due to sexual abuse should have a 'Shelter House' for the child. The child will have a safe life from the perpetrator by having this protection.

In offering a detailed guide for safe abortion, the government should play a crucial role. Growing abortion services and availability does not mean that we support abortion. However, this thorough reform of the law is meant to ensure that the definition of illegal abortion is changed to legal and safe abortion. The main note here is that abortion should be open to married women and be available in particular circumstances, such as rape victims and sexual harassment.

4.2 FAMILY PLANNING POLICY

Public policies that specifically impact families with children are family policies. The essence of family policies has changed since their early inception in their current form at industrialisation. The conceptions of what constitutes a family are continually evolving and changing government priorities. Family planning is a series of actions that help men and women prepare and avoid unintended pregnancies for their children's birth. It is a mission for couples to have offspring according to their intentions and a decline in the world population's growth that worries everybody. Promoting family planning significantly contributes to improving maternal health, reducing infant mortality, and empowering women. This needs women to have access to contraceptive options that are safe and reliable.

It is estimated that 90% of abortion-related and 20% of morbidity and mortality associated with pregnancy, along with 32% of maternal deaths, may be prevented by successful contraceptive practices. Around one in six married women faces an unmet need for family planning in developing countries. The Demographic Health Survey (DHS) described a woman as having an unmet need for contraception if she is pregnant, sexually active, does not use any contraception, does not want a child for at least two years (spacers) or does not want more children (limiters)⁴⁸. Promoting family planning among reproductive women may help prevent unintended pregnancies. Thus, the secret to achieving the Millennium Development Goal is to improve maternal health (MDG)⁴⁹. For this reason, birth control is the tool suggested for avoiding pregnancy. Abortion can only be prescribed if a woman is unable to give birth to a child or a failure of the procedure used to regulate pregnancy.

Family planning facilities do not apply to single people in Malaysia. Themes such as teenage sexuality, unwanted births and baby abandonment have become serious social issues with the trend of delayed marriage, with more and more teens becoming sexually involved. In Malaysia, Family Planning services are carried out between implementing agencies, where LPPKN acts as coordinator, through a multi-sectoral approach. The use of modern

⁴⁸ Hossain SM, Khan ME, Rahman M, Sebastian MP. New Delhi, India; 2005. South East Asia Regional Training Manual.

⁴⁹ World Health Organisation, Making Pregnancy Safer: Annual Report 2007 Geneva. 2008

contraceptive methods among married women lacks in Malaysia. The contraceptive prevalence rate (CPR) for either method has been steady at about 50 per cent over the past three decades. These approaches are practised by just 34 per cent of women in terms of modern contraception⁵⁰. The Reproductive Rights Advocacy Alliance Malaysia (RRAAM) stated that unintended pregnancies are growing due to low contraceptive practice among Malaysian women⁵¹. Reports from Confidential Maternal Death Enquiries (CEMD) Malaysia, 2001-2005, reported that any form of family planning was not followed up to 70% of maternal deaths. Maternal mortality due to postpartum haemorrhage (PPH) was higher among mothers with high parity, short birth periods, lack of antenatal care, and higher maternal age. A successful way to encourage men to endorse and use contraceptives would be spousal communication concerning family planning. Family planning education programs should target both men and women to encourage safe timing and spacing of pregnancies, particularly in high-risk situations. In planning reproductive health services, racial inequalities need to be addressed. There is a need to revitalise family planning to avoid unplanned or unwanted births and induced abortion.

4.3 SAFEST GUIDELINE FOR ABORTION

4.3.1 Counselling

The increasing concern regarding sexual activity contributed to the implementation in 2001 of the National Adolescent Health Policy and 2010 of the National Reproductive Health and Social Education Policy. In different forums, the stagnation of contraceptive prevalence and the high level of unmet need has also been highlighted. Any woman seeking an abortion should receive positive and compassionate guidance on all available choices, including continuing pregnancy and foster or seeking assistance from the child should she choose to have parents. If the woman decides to end the pregnancy, therapy should occur early

⁵⁰ United Nations Population Fund, Country Profile for Population and Reproductive Health: Policy Developments and Indicators. 2004

⁵¹ Asian Pacific Resource and Research Center, Women's gender and rights perspectives in health policies and programmes. ARROW 2006.

enough to prevent any delays. The advisor should be free from personal prejudice and attentive to the circumstances of the woman. The patient needs to realise that her treatment is fully confidential if she is under the consent age. The doctor must inform the patient that post-abortion therapy is available for the women.

4.3.2 Consent

All medical and surgical methods of pregnancy termination need to obtain the patient's informed consent. The doctor must ensure that the woman knows the essence and possible risks of the procedure and has the knowledge required to create an operation.

If a parent for an abortion accompanies a minor, it is necessary to ensure that the youth has not been manipulated and that the decision is voluntary. The "mature minor" rule follows the "age of consent" in Malaysian common law. In some provinces, the legal right to make health care decisions relies on decision-making capacity rather than age. The age of consent is compatible with the age of the majority in some provinces. The main factor is the minor's maturity and willingness to consider the operation's ramifications and the potential for complications, not her chronological age. Health care providers may handle minors when necessary without parental interference in provinces that have not implemented the mature minor regulation, as common law invariably overrides municipal legislation. However, there should be evidence that the health care provider addressed the importance of including parents in health decisions. There must also be a fair feeling that the action is in the minor's best interest. Health care providers need to be aware of the laws of the province they operate in.

4.3.3 Health Facility

While abortion is legal in Malaysia, even among healthcare providers, the prevalent negative view of the termination of pregnancies has led to the widespread belief that it is illegal. Although a selected number of private clinics offers safe abortions, these options are costly and may be unaffordable for low-wage women. Therefore, women choose to perform unlawful, self-induced abortions, which are likely to be dangerous. In private facilities, the cost of abortion leads women to seek an unsafe abortion, even when women are conscious that the procedure will endanger their lives. A fixed price range policy should be in place which governs abortion in Malaysia. If the price of abortion is affordable for them, women will choose a standard method for abortion.

Many general practitioners (GPs) lack the appropriate equipment to confirm the gestation period of pregnancy and to perform an abortion. The medical practitioner also lacks the equipment and systematic system of performing an abortion in Malaysia. It can be seen clearly when women want to ask another doctor for a second opinion. Some women were unable to terminate even though they could be affected by caring for the pregnancy. This is because women got the doctor's delayed diagnosis. After all, the doctor was unable to identify the damage sooner.

Malaysia's abortion facility and facilities should be upgraded to a better and more sophisticated facility. The medical practitioner should also update himself with the new safe abortion form. In doing so, since the damage to health can be identified sooner, the number of women dying due to pregnancy can be minimised. When the abortion facility is improved, pregnant women will be more positive in using the legal process rather than using the unsafe method.

4.1 CONCLUSION

Over three-fourths of abortion in South Asia and nearly two-thirds of the abortions in South-East Asia are illegal. Most abortions involved within these States are medically unsafe,

proven when there is a death recorded for over one in ten maternal deaths. The legal policies for each States are different from each other, ranging from very liberal to overly restrictive. It is observed that even though laws are ensuring safe services of abortion, health system barriers remain such as outdated technology and a shortage of trained personnel. Additional barriers to women seeking access to early and safe abortion are an increasingly widespread ban on sex-selective abortions and the social stigma on the out-of-wedlock pregnancy.

Abortion is an intensely emotional subject and one that excites views that are firmly held. Equitable access to legal abortion care, however, is a human right first and foremost. No one is required to have one because abortion is safe and legal. Where abortion is illegal and unhealthy, women are forced to terminate or suffer serious health effects and even death from bearing unwanted pregnancies. About 68,000 and 78,000 deaths annually are due to unsafe abortion, about 13 per cent of maternal deaths worldwide⁵². For decades, women's groups worldwide have campaigned for the right to have access to safe and legal abortion, and their claims are increasingly backed by international human rights law.

While abortion is permitted in Malaysia, with some exceptions, many face difficulties accessing abortion information and services because of a lack of clear interpretation and understanding of the law. Due to Malaysia's inadequate sex education, the stigma surrounding safe-sex conversations, cold treatment of women with unwanted pregnancies, and the lack of help for children without a parent, many mothers, mostly young women unable to care for a child, option for unsafe or illegal abortions.

It should be clear that the range makes no legal or public health sense of complex laws and abortion restrictions. What makes abortion safe is easy and irrefutable when it is available and widely affordable and accessible at the woman's request. From this viewpoint, few current laws are fit for purpose but merely replicate the self-same constraints with any possible permutation. There is an immediate need for educational campaigns to ensure

⁵² Who.int. 2020. *Abortion*. [online] Retrieved from: <https://www.who.int/health-topics/abortion#tab=tab_1> [Accessed 24 December 2020].

women are aware of their reproductive rights and available abortion services. The government needs to review its responsibility for making abortion available in and around the law and the legislative standards for making abortion accessible.

REFERENCES

1. "Safe Abortion: Technical and Policy Guidance for Health Systems" (*World Health Organization* July 26, 2018) <https://www.who.int/reproductivehealth/publications/unsafe_abortion/9789241548434/en/> accessed June 20, 2020
2. "The World's Abortion Laws" (*Center for Reproductive Rights*) <<https://reproductiverights.org/worldabortionlaws>> accessed June 20, 2020
3. Ahmad bin Mohd Ibrahim, 'The Status of Women in Family Law in Malaysia, Singapore and Brunei' (1966) 8 *Malaya L Rev* 233
4. 'Apakah Yang Dinyatakan Dalam Bible Tentang Pengguguran Bayi?' (*JW.ORG*) <<https://www.jw.org/ms/ajaran-bible/soalan/pengguguran-bayi-dalam-bible/>> accessed 24 January 2021
5. Article 3, Federal Constitution
6. Asian Pacific Resource and Research Center, Women's gender and rights perspectives in health policies and programmes. *ARROW*. 2006;12(3):7
7. 'Aspek Undang-Undang, Keagamaan Dan Etika Pengguguran Di Malaysia' (*ACE Accurate | Comprehensive | Effective*, 2021) <<http://acemodule.weebly.com/aspek-undang-undang-keagamaan-dan-etika-pengguguran-di-malaysia.html>> accessed 12 January 2021

8. Center for Reproductive Rights. *Women of the World: Laws and Policies Affecting their Reproductive Lives South Asia*. New York, NY: Center for Reproductive Rights; 2004
9. Century Welfare Organization, 'ABORTION IN ISLAMIC LAW : Beyond the pro-Life vs . pro-Choice Debate'
10. Danforth, [1973] 410 U.S 113
11. Datuk Dr Mohamad Farouk Abdullah, 'Legal and Professional Status of Termination of Pregnancy (TOP) in Malaysia' (2020) <https://www.bernama.com/en/thoughts/news.php?id=1857475>
12. E. M. Hiester, "Child Support Statutes and the Father's Right Not to Procreate," *Ave Maria Law Review* 2 (2004): 213-241, at 214-215. From Purvis D, 'Expectant Fathers, Abortion And Embryos' (*Elibrary.law.psu.edu*, 2015) <https://elibrary.law.psu.edu/cgi/viewcontent.cgi?article=1268&context=fac_works> accessed 12 January 2021.
13. Eman Sulaeman, *Delik Perzinaan Dalam Pembaharuan Hukum Pidana Indonesia*, 2008, Semarang: Walisongo Press, hlm 10-11. Lihat pula Oemar Senoadji, *Mass Media dan Hukum*, 1977 Jakarta: Erlangga, hlm. 141. From Fanggi R, *Kebijakan Kriminalisasi Pengguguran Kandungan Dalam Pembaruan Hukum Pidana Indonesia* <<https://media.neliti.com/media/publications/109758-ID-kebijakan-kriminalisasi-pengguguran-kand.pdf>> accessed 12 January 2021
14. Fanggi R, *Kebijakan Kriminalisasi Pengguguran Kandungan Dalam Pembaruan Hukum Pidana Indonesia* <<https://media.neliti.com/media/publications/109758-ID-kebijakan-kriminalisasi-pengguguran-kand.pdf>> accessed 12 January 2021
15. Hossain SM, Khan ME, Rahman M, Sebastian MP. New Delhi, India; 2005. *South East Asia Regional Training Manual*.
16. Ikhwan N, *Status Anak Dalam Kandungan Sebagai Ahli Waris (Perbandingan Fikih Mawaris Dan Kuhperdata)* (UIN Alauddin Makassar 2015) <<http://repositori.uin-alauddin.ac.id/5270/1/ikhwal%20nasrul.pdf>> accessed 12 January 2021

17. Ippf A and Every CO, 'Access to Safe Abortion Protects Women's and Girls' Health and Human Rights 1/4' 4

18. Jessica L. Dozier, Monique Hennink, Elizabeth Mosley, Subasri Narasimhan, Johanna Pringle, Lasha Clarke, John Blevins, Latishia James-Portis, Rob Keithan, Kelli Stidham Hall, Whitney S. Rice. Abortion attitudes, religious and moral beliefs, and pastoral care among Protestant religious leaders in Georgia. <<https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0235971>> Plos One.

19. Johnson BR and others, 'A Global Database of Abortion Laws, Policies, Health Standards and Guidelines' (2017) 95 Bulletin of the World Health Organization 542

20. 'Libguides: Research Methods: What Are Research Methods?' (*Libguides.newcastle.edu.au*, 2020) <<https://libguides.newcastle.edu.au/researchmethods#:~:text=Research%20methods%20are%20the%20strategies,better%20understanding%20of%20a%20topic.>>> accessed 28 January 2021

21. Low WY and others, 'Access to Safe Legal Abortion in Malaysia: Women's Insights and Health Sector Response' (2015) 27 Asia-Pacific Journal of Public Health 33

22. 'Maqasid Al-Shari'ah | Islamic-Banking.Com' (*Islamic-banking.com*) <<https://www.islamic-banking.com/moral-oath/maqasid-al-shariah>> accessed 12 January 2021

23. Mazri M, 'AL-KAFI #1511: HUKUM MENGGUGURKAN JANIN KERANA FAKTOR KESIHATAN' (*Pejabat Mufti Wilayah Persekutuan*, 2020) <<https://muftiwp.gov.my/artikel/al-kafi-li-al-fatawi/3958-al-kafi-1511-hukum-menggugurkan-janin-kerana-faktor-kesihatan>> accessed 12 January 2021

24. Mehrun Siraj, 'Women and the Law: Significant Developments in Malaysia' (1994) 28 Law & Soc'y Rev 561

25. Millennium Development Goals (MDGs). (n.d.). Retrieved from [https://www.who.int/news-room/fact-sheets/detail/millennium-development-goals-\(mdgs\)](https://www.who.int/news-room/fact-sheets/detail/millennium-development-goals-(mdgs))
26. Munah Binti Ali V Public Prosecutor [1958] 1 MLJ 159
27. Naquiddin W, 'IRSYAD AL-FATWA SIRI KE-398: HUKUM MENGEBUMIKAN JENAZAH JANIN DI ATAS PUSARA WARISNYA YANG TELAH MENINGGAL DUNIA' (*Pejabat Mufti Wilayah Persekutuan*, 2020) <<https://muftiwp.gov.my/artikel/irsyad-fatwa/irsyad-fatwa-umum/4101-irsyad-al-fatwa-siri-ke-398-hukum-mengebumikan-jenazah-janin-di-atas-pusara-warisnya-yang-telah-meninggal-dunia>> accessed 12 January 2021
28. 'Nilai Dan Norma Melayu' (*MENDAULATKAN MARTABAT BANGSA*, 2021) <<https://zanas.wordpress.com/nilai-dan-norma-melayu/>> accessed 12 January 2021
29. 'Pengertian Hukum Perdata Dan Contoh Pasalnya' (*DSLALAWFIRM (Daud Silalahi & Lawencon Associates)*, 2021) <<https://www.dslalawfirm.com/hukum-perdata/>> accessed 12 January 2021
30. 'Pertemuan MABIMS Ke-17: Sepakat Dengan Pelaksanaan Pelan Strategik Tahun 2016 – 2020' (*Islam.gov.my*, 2016) <<http://www.islam.gov.my/en/bahagian-maqasid-syariah/1181-prinsip-maqasid-syariah>> accessed 12 January 2021
31. Public Prosecutor v Nadason Kanagalingam [1985] 2 MLJ 122
32. Purvis D, 'Expectant Fathers, Abortion and Embryos' (*Elibrary.law.psu.edu*, 2015) <https://elibrary.law.psu.edu/cgi/viewcontent.cgi?article=1268&context=fac_works> accessed 12 January 2021
33. 'Research Guides: Organizing Your Social Sciences Research Paper: Types Of Research Designs' (*Libguides.usc.edu*, 2021) <<https://libguides.usc.edu/writingguide/researchdesigns>> accessed 28 January 2021
34. Roe v. Wade, 410 U.S. 113 , 165 n.67 (1973).

35. Section 312, Penal Code 2018 Act 574
36. Section 312, Penal Code Act 574
37. See I. D. Lichtenberg and J. B. LeClair, "Advocating Equal Protection for Men in Reproductive Rights and Responsibilities," *Southern University Law Review* 38, no. 1 (2010): 53-78, at 63. From Purvis D, 'Expectant Fathers, Abortion and Embryos' (*Elibrary.law.psu.edu*, 2015) <https://elibrary.law.psu.edu/cgi/viewcontent.cgi?article=1268&context=fac_works> accessed 12 January 2021
38. See, e.g., C. Bruno, "A Right to Decide Not to Be a Legal Father: Gonzales v. Carhart and the Acceptance of Emotional Harm as a Constitutionally Protected Interest," *George Washington Law Review* 77, no. 1 (2008): 141-17. https://elibrary.law.psu.edu/cgi/viewcontent.cgi?article=1268&context=fac_works
39. Sha'būnī M, *Pembagian Waris Menurut Islam* (Gema Insani Press 1995)
40. Siti Khatijah I, and Mohd. Badrol A, *Pengguguran Dan Justifikasi Perundangan Mengikut Undang-Undang Islam Dan Peruntukan Seksyen 312 Kanun Keseksaan* (6th edn, *JURNAL ISLAM dan Masyarakat Kontemporari* 2013) <<http://file:///C:/Users/User/Documents/LLB%20SEM%206/Project%20Paper/Article%20Journal/Galei%20Pruf%20UniSZA%20jOURNAL.pdf>> accessed 12 January 2021
41. Thwaites S, 'Abortion in Malaysia' (*Women's Aid Organisation*, 2011) 1 <http://www.wao.org.my/news_details.php?nid=86> accessed 28 November 2020
42. 'UNCRC Article 6 - I Should Be Supported To Live And Grow - The Children And Young People's Commissioner Scotland' (*The Children and Young People's Commissioner Scotland*, 2021) <<https://cypcs.org.uk/rights/uncrc/articles/article-6/#:~:text=Article%206%20of%20the%20UNCRC,of%20children%20and%20young%20people.>> accessed 12 January 2021
43. 'Undang-Undang Pengguguran Di Malaysia' (*Pengguguran*, 2021) <<https://pengguguran.org/undang-undang-pengguguran-di-malaysia/>> accessed 12 January 2021

44. United Nations Population Fund, Country Profile for Population and Reproductive Health: Policy Developments and Indicators. 2004
45. Wah Yun Low, Wong Yut Lin, Wen Ting Tong, Sim-Poey Choong (2014) 'Access to Safe Legal Abortion in Malaysia.' *Asia-Pacific Journal of Public Health* 27 (1), p.2
46. Who.int. 2020. *Abortion*. [online] Retrieved from: <https://www.who.int/health-topics/abortion#tab=tab_1> [Accessed 24 December 2020].
47. World Health Organisation, Making Pregnancy Safer: Annual Report 2007 Geneva. 2008
48. Zainur Rashid Z, *Bilakah Pengguguran Dibenarkan* (JKNMelaka, n.d.) <<https://jknmelaka.moh.gov.my/userfiles/file/Pengguguran%20Bila%20Dibolehkan.pdf>> accessed 12 January 2021