

# “FOR THE BEST INTEREST OF A CHILD”: THE IMPLEMENTATION OF CHILD RELATED POLICIES AND LAWS IN MALAYSIA PERTAINING TO SUCKLING AND CHILD SUPPORT

Rojanah Kahar<sup>1</sup>  
Muslihah Hasbullah<sup>2</sup>  
Najibah Mohd Zin<sup>3</sup>

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## Abstract

Suckling, child support and other financial rights are part of the physical needs of children. These rights have been extensively discussed by Muslim jurists under the term *nafaqah* based on the premise to ensure their livelihood within the concept of *maslahah* and protect children from hardship. Thus, the concept of *maslahah* or best interests in Islamic law is always associated with parental responsibility as it inferred from the duty of an individual to protect his lineage that interrelates with the other significant rules and regulation governing children. Islamic law imposes the responsibility on father to provide child support regardless of whether the parents are still married or divorced. Through documentary research, this article examines the current implementation of Islamic Family law in Malaysia pertaining to child support from socio-legal perspectives. Content analysis technique is also utilized in analyzing reported cases with regard to child support from the Shariah Courts. Finally it offers a critical assessment related to the issues of non-payment of child support in the event of parental divorce. It is established that failure of receiving good treatment and financial support from parents would affects the national agenda of establishing human capital in the future. Non-compliance with the laws in providing child support to younger generation has posited some challenges in ensuring the smooth implementation of law and policy. Therefore the government made its major commitment to the area of child support by establishing e-maintenance, Family Support Unit and formulating two important child related policies i.e National Child Policy and National Family Policy which aim to prioritize children wellbeing from family perspectives. It is established that policy and law had promoted future justice and embody the highest standard of sustainability and respect human rights especially the right of the younger generation.

**Key words:** best interests of a child, social policy and law, child support

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<sup>1</sup> Faculty of Human Ecology, Universiti Putra Malaysia, 43400 Serdang, Selangor, Malaysia.

<sup>2</sup> Faculty of Human Ecology, Universiti Putra Malaysia, 43400 Serdang, Selangor, Malaysia.

<sup>3</sup> Ahmad Ibrahim Kulliah Of Laws, International Islamic University Malaysia.

## Understanding a Child

Since children are dependent upon adult, Islamic law provides diverse rules for the protection of their body and property. It is incumbent to understand the nature of a child before knowing his rights and interests. Principally, Islamic law determines that every child has to undergo three different stages of childhood which normally take 7 years at each stage (Ibn Nujaim, 1986; As Sayuti, 1983). The first stage starts since the child's birth until the age of seven and known as *saghir ghair mumayyiz*. The second stage resume when a child reaches the age of 7 years and he or she is known as *mumayyiz* and Islam imposes legal rights upon the child. Finally the third stage is referring to the child who is *baligh*.

The determination of the minimum age of discernment (7 years) is based on one *hadith* narrated by Abd Malik bin al Rabi' bin Sabrah from his father and grandfather which states: "Teach (or ask) your child to pray at the age of 7 and beat him (lightly) at the age of 10". This *hadith* indicates that at the age of 7, a child possess a cognitive thinking and therefore Islam commands parents to teach a child how to pray when he or she is at the age of 7 (Muhammad Salam Madhkur, 1976). From Islamic point of view, it is a religious duty and obligation of parents to ensure that a child will perform the prayer based on the premise that the child at this stage possess cognitive thinking and reasoning in understanding the nature of prayer. Accordingly, Islam differentiates between *mumayyiz* and non *mumayyizas* as provided under Article 943 of the Mejelle (n.d) as follows:

"*Saghir mumayyiz* is a young person not understanding selling or buying, that is to say not knowing that by a sale rights or ownership are lost, and that by purchase they are required, and not being able to distinguish from a small deceit and a deceit which is clear to be an excessive deceit. A young person can distinguish these is called *saghir mumayyiz*".

It can be understood from the article that *mumayyiz* shall be differentiated from *baligh* or puberty as it connotes different legal rights and responsibilities. Hence, the determination of child's puberty is based on a *hadith* narrated by Ali bin Abi Talib and Aishah r.a which means: "The pen is lifted in three instances, in the case of a child (minor) until he attains puberty, in the case of sleeping person until he wakes up and in the case of a lunatic until he recovers".

Commenting on a hadith, Abu Dawud explains that these three categories of person are not legally responsible for their action in the case of committing a crime, entering into a contract agreement or marriage. The above *hadith* also shows that a child is a person who is under the age of puberty which is commonly fixed at the age of fifteen years according to the majority of jurists (Abd Karim Zaidan, 1990) and in the absence of specific sign. Consequently

the word *baligh* is used to denote legal responsibility in modern practice of Islamic law. This can be seen for example under section 2(1) of Islamic Family (Federal Territories) Act 1984 which states that “the word *baligh* mean having attained the age of puberty according to Islamic law”. It is also regulated under section 88(4) of IFLA 1984 that a person shall be for the purpose of guardianship of person and property, be deemed to be a minor unless he or she has completed the age of eighteen years. Hence, it is clear that, before reaching majority, a minor is not legally recognised, does not have social responsibilities and is under the care of a parent or guardian.

Therefore, it can be said that the general concept of *baligh* and *mumayyiz* which is based on Hukum Syara’ has been incorporated in statutory forms under Islamic Family Law in Malaysia and it can be used as guideline. However, there is no prohibition to accept 18 years as the acceptable age of majority. This is reflected on matters pertaining to the age of marriage which is 18 for the boy and 16 for a girl unless with permission by Syariah Judge as stipulated under Islamic Family Law Act Federal Territories 1984.

The above discussion proves that childhood in Islam is characterized by the lack of reasoning ability. It is also proved that Islamic theory depends on both mental maturity and physical development in determining the various stages of childhood. If the above explanations signify that the term *baligh* or puberty carries an obligation of a person towards himself, the following discussion highlights the contribution of Islamic law in recognizing and protecting the financial children’s rights and interests of a child within a purview of family law as required by *Maqasid al Shari’ah*. The rationale of discussing the concept of childhood is to determine the definition of minor as this would entitle him for various rights and interests.

### **The Protection of Children’s Rights and Interests in Islamic law**

Both classical and contemporary Muslim jurists agreed that the basis of children’s rights in Islamic law is based on the legal injunctions and incorporates both moral and legal obligations. Al Qur’an and *Hadith* provide various rules and regulations to ensure the protection of children’s rights and interests as trust. Surah Al Furqan 25:74 states to the effect that:

“...Our Lord; Grant unto us wives and offspring who will be the comfort of our eyes and give us (the grace) to lead the righteous.”

It can be derived from the above verses that being a *khalifah*, a human being is to carry out the trust or *amanah* as entrusted by Allah for the benefit of other people. Since children are a trust given to their parents, the parents shall have duties and obligation for the nursing, upbringing of the children, imparting education, teaching of good manners and providing maintenance and spending for their comfort. Islam further elaborated that exercising the trust and fulfilling such responsibilities are closely associated with rewards as promised by Allah

and the failure to perform is considered a sin as mentioned the Qur'an in Surah Al Thur verse 21 which states:

"And those who believe and whose families follow then in faith, to them shall We join their families: Nor shall We deprive them (of the fruit) of aught of their works: (Yet) is each individual in pledge for his deeds".

Islamic law also indicates clearly that children shall have rights to receive good treatment, love, affection and protection from their parents. This parental-child relationship has an everlasting effect, even after death. This further supports the contention that parental responsibilities and protecting children carries moral and legal obligation at any stage of adulthood (Mohamad Abu Zahrah, 1993).

Among the rights of children that the Holy Qur'an gives particular attention to, are the right to religion, the right to life, right to sustenance, right to property and freedom of conscience. All these five essential interest for children have been discussed thoroughly by the jurists as determined by *Maqasid al Shari'ah* where the basis is *maslahah* or welfare of a child is given emphasis. The rights of children mean the obligations of parents towards them and the obligations of parents towards children are in fact the rights of children against parent. For the purpose of this article, it mainly focuses on the financial rights of a child in terms of suckling and child support within Islamic family law as practiced in Malaysia.

As mentioned earlier, a child needs protection from his or her parents. It is the responsibility of the mother to take care the child during infancy. The mother must breast feed the baby at least up to the age of 2 years. This rule is well embodied in the Qur'an Surah al Baqarah: 233 which states:

Mothers shall give suck their children for two whole years for him who wishes, the suckling to be completed. They must be maintained and clothed in a reasonable manner by the father of the child. None should be charged with more than one can bear. A mother should not be allowed to suffer on account of her child, nor should a father on account of his child. The same duties devolve upon the father's heir. But, if after consultation, they choose by mutual consent to wean the child, they shall incur no guilt. Nor shall it be any offence for you if you prefer to have a nurse for your children, provided that you pay her what you promise, according to your usage. Have fear of Allah and know that He is cognizant of all your actions.

It is clear, that the primary duty of a mother is to suck or feed the baby, while the father is to ensure that both the mother and child are well maintained. In relation to the duty of providing milk to a new born child, the Shafie states that it is obligatory (*wajib*) especially by giving the first milk from the mother. The word '*al laban*' is defined as the first milk which comes after giving birth. Modern medical researchers confirmed that at the late pregnancy, women's breasts produce 'colostrum' i.e a thin, yellowish liquid, high in protein and low in

fat. Islamic law really emphasized it in the divine text and according to Wahbah al Zuhayli (1989) a child can't live without taking the mother's milk.

The above verse also recommends that mother should suckle or breast feed her child for a period of two years, but if there are unavoidable reasons, the child can be weaned even earlier. According to Imam Nawawi in Minhaj el Talibin (n.d), a mother should nourish her child with the milk which is manifested immediately after parturition; she should even continue to suckle it afterwards when no other nurse can be found but a foreign woman. The majority of Muslim jurists were on the opinion that it is recommendable to breast feed the baby and the mother cannot be forced to do it. However, according to the Malikis, a mother can be compelled to suck the baby through judicial decree of court (al Syarbini, 1995). Meanwhile, according to the Abdullah Yusof Ali, as the verse comes in the midst of the regulation of divorce, it applies primarily to cases of divorce, where some definite rule is necessary, as the father and mother would not, on account of the divorce, probably be on good terms and the interests of the children must be safeguarded. This verse denotes that suckling after two years is not included and it established *tahrim* (prohibition i.e one cannot marry his mother or sister from suckling) is what occurs before the two years end (Al Mahalli, 1973).

It is clear that Islamic law imposes the responsibility on parents regardless of whether they are still married or divorced. Although the mother has the primary duty to breastfeed the infant, nonetheless in certain circumstances, the paternal father should pay the wages in the case when the mother cannot fulfill her duties. It is established that Islam promotes child health care policy for the infant through suckling and this is considered as the most important right of a new born child. This fact was further supported by child development theory that the activities of suckling proved to benefit mother-infant relationships in term of physical and emotional bonding (Seifert & Hoffnung (1997). Futhermore, according to World Health Organization (WHO, 2002) infants should be exclusively breastfed for the first six months of life and complementary food should be introduced at the age of six months. In line with the above policy, the National Breast feeding Policy was formulated in Malaysia in 1993 whereby an exclusive breastfeeding was recommended for the first four to six months of life and continued up to 2 years. Nonetheless this Malaysian Breast Feeding Policy was revised in 2005 in accordance with World Health Assembly Resolution 54.2 (2002) whereby exclusive breastfeeding was recommended for the first 6 months of life and continued up to two years. It is established that this recommendation was in line with Islamic principle on breast feeding as mentioned in Surah Al Baqarah verse 233.

### **Children's Financial Rights and Interests**

As the child grows, the physical needs will change in which the Muslim jurists provides detailed discussion under the term *nafaqah* that include basic items such as shelter, food, drink and extendable to medication and education

for upbringing of the child. These rights basically based on the premise that to ensure livelihood and protect children from hardship. Nonetheless, the Muslim jurists differ as to what constitute as the basic needs of a child. To some extent, it shall include food, clothing and a residence, some other essential services and medicine, even if the wife happens to be a rich lady.

According to the Hanafi's, maintenance or *nafka* in the language of law signifies all those things which are necessary to the support of life, such as food, clothes and lodging; many confine solely to food (Al Marginani, 1975), while the Shafie school of law holds the view that providing maintenance does not only cover nourishment but also other things (Al Sharbini, 1995). However, the above views mainly serve as a guideline in case of a dispute. The duty of providing maintenance rests basically upon the father which is based on the following verse from Al Qur'an surah al Baqarah: 233 which states: "The maintenance of the woman who suckles an infant rests upon him to whom the infant is born".

The verse indicates that the responsibility of providing maintenance is on the husband (father). This was further elaborated in Qalyubi wa Umairah, by using an analogy of suckling. If the suckling fees are put on the shoulder of the father, hence logically the father is also bounded to provide the maintenance to his children. If the child's father has an obligation to provide the maintenance to his wife because of the birth of children, automatically the father is responsible to pay the child's maintenance (Wahbah al Zuhayli, 1989). It has been noted by Ibn Kathir that the affairs of divorced couple should be managed in just a way without causing harm to either one of them. In this regard, there is no person who can be his associate or partner in furnishing it in the same manner as no person is admitted to be associated with a husband in providing for the maintenance of his wife. According to the Shafi'i, a father and grandfather are obliged to pay the maintenance to the child. In the event if the father is unable to provide the maintenance, the obligation will be transferred to the grandfather (Abd Aziz Amir, 1961). The necessity of providing maintenance is emphasized in the address the Prophet made during the farewell Pilgrimage [Hajj al Wida']: "Beware of your treatment of women. You have accented them with the word of Allah and you have a duty to provide them with reasonable maintenance and clothing". Furthermore, in a *hadith* narrated by Aishah, Hind bint Utbah once said to the Prophet:

"O Messenger of Allah, Abu Sufyan is miserly person. He does not provide for me and my son except whatever I take away myself secretly about which he does not know." The Prophet advised, "Take whatever is sufficient for you and your son in a reasonable manner."

In light of the above *hadith*, Islam allows a wife to take the husband's property in a reasonable manner to feed her and the child. The husband's responsibility for the maintenance of his wife and his children by her pertains not only when they are living with him but continues in the event of divorce. A divorced woman with children is not left unsupported even after the *iddah*

period, for the divorcing husband is required to pay her wages for two years for feeding her children. The rule of providing maintenance of the child has been extended to the State authority in the event that the mother fails to provide any means which is based on a *hadith* that provides: "The sultan is the guardian for those who have no guardian". It is clear that the responsibility of providing maintenance lies upon the father and relatives based on the premise that preserving the life and lineage of a child are essentials in Islam.

### **Child Support and Islamic Law in Malaysia**

The responsibility of a man or father to maintain his family is further regulated under the Malaysian law both for Muslim and non-Muslim. Nonetheless, this paper will focus on Islamic law. The Shariah Courts of each state in Malaysia are guided by their Islamic Family Law Enactments where provisions of maintenance existed. Section 72(1) of Islamic Family Law Act 1984 clearly stipulates the paternal duty of providing maintenance to his children:

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

The word 'man' in the above provision connotes the role of 'father'. Furthermore, if the father is dead or unable to provide the child support, any other person as liable according to *Hukum Syara'* has a duty to maintain although there exist different views among the Muslim jurists (Wahbah Zuhayli, 1989). Although the provision in Section 72(2), IFLA 1984 is silent as regards to the person liable to pay, however it will include paternal grandfather, uncle and relatives as discussed in Islamic law. It has been suggested that this provision should be amended to make it more definite on the responsibilities of providing maintenance to children in the event the father is unable to pay (Nora Abd Haq, 2007).

Furthermore, it is an established rule that the Muslim children's right for maintenance was dependent on his status of legitimacy. Therefore in the case of *Roslan bte Abdul Ghani v Zulkifli*, (1986) 6JH 287 the claim for maintenance of a child who was born outside the wedlock was dismissed by the Federal Territory Shariah Court. In another situation of Trengganu Case of *Ismail v. Kalam*, (1995) 6 JH 41 the plaintiff applied for a declaration that the child born to his former wife (the defendant) was not his child and he was not liable for the maintenance of the child. The facts were that the plaintiff divorced the wife on 28 September 1985 and the child was born on 23<sup>rd</sup> September 1989. Although the defendant alleged that there had been a revocation of divorce, the plaintiff denied. The Shariah High Court held that the child was not plaintiff's child and he was not liable for its maintenance. In this case, there was non-recognition of

intercourse as the mode of resuming conjugal relationship and the court should apply DNA in order to determine the paternity since there was an allegation on revocation of divorce. Thus the child was deprived of his paternity status and his right for maintenance was not entertained by the Shariah court.

Initially, the payment of maintenance to a child was seized upon him reaching the age of 18 years old. Therefore, if the child is above the age of 18, the Shariah Court will not entertain the claim for maintenance as decided in *Jinah v. Abdul Aziz* (1987) 6JH 344. In the case of *Rokiah v Mohamed Idris*, (1986) 6 JH 272 the Kadhi dismissed the claim by the plaintiff for the maintenance for a son who had already reached the age of 22 years and for another son who was adopted.

Selangor Islamic Family Law Enactment 2003 also makes a move to regulate that children's right for maintenance extended after the age of 18. Currently, section 80 of the Islamic Family Law (State of Selangor) Enactment 2005 which has been adopted by the State legislatures for application in the States has provision to provide maintenance to a child beyond 18 for further education and training. Similar provisions can also be found in other Islamic Family law Enactments in other states in Malaysia. It is stipulated under section 79 of Islamic Family Law (Federal Territories) Act 1984, that the Shariah court has power to extend the financial support until the child completed his or her tertiary education.

It has been an established rule that the husband's responsibility for the maintenance of his wife and his children by her pertains not only when they are living with him but continues in the event of divorce. Therefore, the claim for child support after the divorce shall be made in the Shariah High Court (Zainur Rashid, 2009). In the case of *Zawiyah v. Roslan* (1980) 1 JH (2) 102, the divorced wife claimed maintenance for her daughter aged 3 years. She claimed RM 100 per month. The Chief Kadi held that it was the duty of the father to maintain his child and referred to the *hadith* regarding the wife of Abu Sufyan in which the Prophet said to her "Take from his property what is enough for your maintenance and the maintenance of your children". Furthermore the Shariah Court will order the father (the default party) and the payment has to be made through deduction from his salary as decided in the case of *Wan Junaidah v. Latiff* (1989) 8 JH 122.

Although Islamic law considered accommodation, clothing, food, medical attention and education as maintenance (*nafaqah*), but there is no specific formula being regulated by law in assessing the amount of maintenance having regards to the means of father (IFLA 1984, section 72(1)). In practice, the Shariah Court has discretion to decide reasonably based on the financial means of the father as can be seen in the case of *Norazian v. Khairul Azmi* (2002) 15 JH 65. In this case, the plaintiff during the divorce proceedings had claimed a sum of RM400 for the maintenance of the two children. The learned Shariah High Court Judge of Negeri Sembilan in assessing the ability of the respondent who earned RM1,340 a month, viewed that the amount provided by



the defendant to his older parents was higher than the amount claimed by the plaintiff wife. It is interesting to note that the judge stressed on the paternal obligation towards his children is more arduous than his obligation as a son. Subsequently, the defendant was ordered to pay RM300 a month for the two children and another RM50 a month for the nursery fee.

In another case of *Maimunah v. Mohammad* (2005) 20 JH (2) 270, the learned Shariah Court of Kuala Terengganu had determined the amount of maintenance of two children aged 15 years old and 4 years old on a daily basis, besides considering the father's financial standing. Since the father did not provide accurate information on his monthly income, the Shariah court had to determine the reasonable amount of maintenance for each child based on the children's daily needs in terms of food, clothes, accommodation, medical care and education. Thus, the 15 years old son needed about RM12 per day for his food and domestic expenses while the 4 year old daughter needed about RM8 a day for similar expenses. The Shariah court decided that the father should pay not less than RM350 and RM 200 a month for the children respectively. The non-custodial father has to provide the educational expenses when the children needed it.

Comparatively, the Shariah Court of Federal Territory in the case of *Faridah v. Mohd Noh*<sup>1</sup> (2005) 19 JH 124 ordered the non-custodial father who earned RM10,000 per month to pay his 2 children a sum of RM1,500 per month. These two cases provide an indication that standard of living between two different geographical areas have influenced the Shariah Courts decision in assessing the amount of maintenance claim by the custodial mother on behalf of her children. It has been noted by Muslihah (2009) that the existence of disparity in the amount awarded by the Shariah Courts is undeniable as every man –the poor, the middle class and the affluent – is obliged to provide according to his means although in some cases the learned judges had gone further by considering the cost of current living conditions and demands.

Furthermore, section 76, IFLA 1984 provides that the Shariah Court may at any time and from time to time vary the terms of any agreement relating to the custody or maintenance of a child, whether such agreement was made before or after the appointed date, notwithstanding any provisions to the contrary in the agreement where it is satisfied that it is reasonable and for the welfare of the child. Therefore, in the case of *Norzaini binti Alias v. Mohamad Sharif bin Mohamad Taib* (2003) 16 JH 101 had discussed the application of section 76 of IFLA. The plaintiff made an agreement with the defendant not to claim any maintenance from him. The issue before the court in Negeri Sembilan (which is similar with IFLA 1984) is whether the plaintiff has the rights to claim. The Shariah Court satisfied that the claim was reasonable although it is contradict with the previous agreement between the parties. The agreement can be changed for the sake of the child best interests in terms of education and it was consistent with Islamic principle.

The above assessment established that children's financial rights and interests have been tackled by Islamic Family Law Act/ Enactments through legal provisions. As the paternal father has an obligation to pay the child support, the Shariah court will order him to pay according to his means. However, it is evident through documentary research that the refusal of father to comply with the court's order in paying child support has caused financial problems to the single mothers who are always given the right of custody (Mohd Ismail, 2006; Rozumah et. al, 2001; Norasyikin, 2006). These findings support the contention made by Nora Abd Haq (2007) that the implementation and enforcement of law is not effective as regard to children's financial wellbeing and this issue is associated with the non-payment of child support by the paternal father. On top of that, in the case of *Mohd Hasssan bin M Ghazali v. Siti Sharidza binti Mohd Sidque*. (2004) 18 JH 269, the Shariah Court permits the respondent wife to take a debt while waiting the husband to pay the child support. This consideration explains the provision with regards to recovery of arrears of maintenance of a child as stipulated under section 77 of IFLA 1984.

The above discussion proved that the legal status of Muslim children had been established in statutory forms. The Shariah Courts in Malaysia tried to uphold the concept of best interest principle in dealing with children. Currently, attachment of earning order is one of the methods of enforcement of payment for child support as practiced by the Shariah Courts in Malaysia. This power is vested under the Married Women and Children (Enforcement of Maintenance) Act 1968 (herein after referred to as MWCEMA 1968] where the Act is a statute of general application and the expression court would include Shariah Court and maintenance order will include a maintenance order made by the Shariah Courts. Under section 5(2) of MWCEMA 1968, the law provides that the court will determine the reasonable amount to be attached after taking into account the resources and needs of the defendant as well as the needs of the person whom should he provide. It is clear that the employer and the defendant husband are obliged to comply with the order as provided for under section 7 of MWCEMA 1968.

Nonetheless the Shariah Appeal Court in the case of *Ahmad Shah v Norhayati Yusoff* (2004) JH 18(1) 33 did not make an order for attachment of earnings of the ex-husband although there was evidence that he was a salaried consultant engineer with a basis income of RM 9,000 per month. The court instead ordered the appellant to pay *mut'ah* by monthly instalment of RM 1,000 per month. Section 13 of MWCEMA 1968 also states that if the husband is self-employed the court will order the husband to pay directly to the court as decided in the case of *Ismadi v. Zainab* (2005) JH 20(1) 87.

On top of that imprisonment has been used as a method to penalize the default party (husband) as provided under section 13 of MWCEMA 1968. From Islamic point of view, imprisonment in the cases of debts is permissible when the defendant has ability to pay but neglects to do so (Wahbah al Zuhayli, 1989). Hence section 13 of IFLA 1984 also provides an avenue for imprisonment. However, if the defendant is financially unable to pay and does

not possess any property imprisonment is not the best solution as it would cause more hardship and injustice to him (Muslihah, 2009).

### **Issues and Challenges**

It is wise to mention that it has been a practice of the Shariah Courts in Malaysia to order the non-custodial father to visit the child or children who is in the custody of the mother. However according to an empirical study by Zaleha, Roziana and Norfaizah (2005), the non-custodial fathers have been quite reluctant to have good contact with children and this have caused negative results in terms of payment of child support. In the absence of the tougher action and the existence of stubborn father, it is observed that the enforcement of maintenance order is yet to be effective and cause instability in the financial wellbeing of single mother and her children.

Despite the existence of reckless father who disobey the court's orders, it has been proposed that the role of the grandfather or the paternal uncle to be strengthened and they can be ordered to pay the child support in the event of non-compliance from the biological father (Nora Abd Haq, 2007). Although the law provides the provision "that if the father is unable, other related person with the child as recognised by *Hukum Syara'* this is rarely use by the Shariah Court. In other situation, although the law stipulates that under *Hukum Syara'* the duty to maintain or contribute to the maintenance is given to the male figures, the role has been transferred to Baitul Mal.

It can be seen that the issue of non-compliance with the law in providing child support to children in the event of divorce has posited some challenges in ensuring the smooth implementation of law and policy. Consequently, the issue of child support within Muslim has been addressed by the Malaysia Government through many round table discussions and conferences. Bar Council (2007) during the Malaysian Law Conference was on the opinion that the current practice failed to respond or cater the needs of the society's changing needs especially involving children. According to Zainur Rashid Husin (2009) during his presentation in *Siri Isu-isu Mahkamah Syariah* noted that although the child might succeed in getting the maintenance order from the court, it does not guarantee that she or he will receive the actual payment from their father. It was revealed that the amount paid by the non-custodial father also was not enough. This was due to the lack of monitoring mechanism and enforcement procedure whereby the ex-husband refused to pay and it causes hardship to many single mothers.

As the implementation of laws which pertains to maintenance of children in the event of parental divorce is a major challenge in Malaysia, Family Support Unit was established by the government using models from other Muslim countries (Mohd Naim, 2010). It is anticipated that problems on child maintenance could be overcome through the establishment of Family Support Unit. It should be noted that Malaysia was among the first few countries in the world besides Morocco, Egypt, Britain and Canada to have Family Support Unit

under the Shariah Court. This unit serves as one-stop centre to handle issues on family and divorce cases and at the same time will expedite the court procedures when it involves the issue of unpaid maintenance (Muslihah, 2009).

It is wise to mention that we can learn from other experiences and practice from other jurisdictions such as Egypt. The Egyptian government had created a Family Fund system in addressing the child support issue after divorce. In Egypt, Family Security Fund [FSF] which is affiliated to Nasser Social Bank was established by virtue of Law 11 of 2004. The FSF obliges the family to pay child support. The establishment of FSF is to facilitate the implementation of courts orders for alimony and child maintenance. The Family Courts in Egypt will include alimony fund to quickly provide women and children with much needed alimony until the money is collected from the husband. It is also stipulated under Law 10 of 2004, articles 18 law in Egypt that the alimony for children shall be provided by the father until the daughter gets married, or is able to earn an income sufficient for her expenses and until the son attains fifteen years of age and able to earn a suitable income. If the sons attains the prescribed age without being able to earn for a living, due to the physical and mental illness or continuation of his education as suitable for other children like his age, his father shall continue to provide for alimony (Law 10 2004 of Egypt, article 74).

On top of that, the Malaysian government made its major commitment in formulating two important child related policies i.e National Child Policy and National Family Policy which aim to prioritize children wellbeing from family perspectives. Previously, Malaysian policies related to children are scattered and largely incorporated into diverse social policies such as National Social Policy and National Policy on Women. The National Family Policy (NFP) act as a shield to protect the family institution which is facing numerous challenges (Shahrizat, 2011). The NFP was approved by the Cabinet in December 2010 would further promote government-private sector collaboration in giving priority to the family perspective in the chase for development. It would also ensure all laws, procedures, enforcement of laws and rules would emphasise from family perspective.

It is stated under the Core Strategy II that the NFP will ensure that laws, policies, procedures and enforcement of laws and regulations give priority to the perspective of the family. Furthermore, the NFP laid down 6 domains which inclusive of strengthen core family value, make family a corporate value, strengthen the institution of marriage, meet parenting needs and family, build strong foundation for young people and finally family support services (Aminah, 2011). It is wise to acknowledge that the NFP has strengthened the National Child Policy which was launched in 2009 where among the strategies as stipulated under NCP was pertaining to survival of a child. In deed the fifth objective of the NCP emphasized on children's right for development which inclusive of the right to maintenance or child support. It is anticipated that the introduction of National Child Policy can address many social problems related to Malaysian children. Though it is at the infancy stage, this policy offers

comprehensive protection and at the same time provides remedies for any loopholes in the previous social policies.

Meanwhile the role of Family Support Unit was found to be significant in addressing the child support issues among Muslim in Malaysia (Mohd Naim, 2012). The government also introduced e-maintenance or "e-*nafkah*" in January 2012 in order to provide more effective delivery services to Shariah courts clients especially with regards to child support. It is anticipated that this strategy could assist the government in achieving the objective as stated under National Family Policy and National Child Policy.

## **Conclusion**

Law is an essential tool for social engineering and it must go together with development. The current Malaysian Islamic Family Law Act/Enactments creates sufficient remedies to protect the economic welfare of the children after divorce. Despite the existence of stubborn father to fulfil his obligation in providing child support, it is anticipated that economic welfare of children in the event of parental divorce can be improved by virtue of the introduction of National Family Policy and National Child Policy. The establishment of Social Support Unit by Malaysian Department of Islamic Judiciary and e-maintenance can be seen as the best methods in combatting the issue of non-compliance of child support amongst ex-husband. Within the spirit of the National Child Policy and National Family Policy, more efforts can be done by family members, inclusive of the extended families, to cultivate the sense of social, legal and religious obligations towards children.

The policy and the law had promoted future justice and embody the highest standard of sustainability and respect human rights especially the right of the younger generation. This article established that child related policies and laws in Malaysia had promoted children's best interests for Muslim children. The Islamic theory of *maqasid al shariah* in protecting the five elements does present powerful principles for its realization.

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