

0000019422

**EFFECT OF ANNULLED MARRIAGE TO THE CHILDREN**

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## AUTHOR DECLARATION

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I hereby declare that this academic project is my own except for quotations and summaries which have been duly acknowledged.

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May Allah help us all to work together for His sake.

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## **ABSTRAK.**

Kajian ini membincangkan mengenai kesan perceraian terhadap kanak-kanak. Penulis telah menggunakan beberapa kaedah untuk mengumpul maklumat. Kajian ini secara amnya merujuk kepada penyelidikan perpustakaan. Kaedah yang digunakan ialah dokumentasi yang banyak memerlukan bahan-bahan dari perpustakaan. Bahan tersebut meliputi buku-buku hadith, Akta Keluarga Islam dan sebagainya. Objektif kajian ini bertujuan untuk mengkaji bagaimana kanak-kanak tersebut dilindungi selepas berlaku perceraian. Di dalam kajian ini penulis cuba menerangkan siapa yang layak untuk menjaga kanak-kanak tersebut. Akhir sekali penulis membuat rumusan dan kesimpulan daripada kajian ini.

## **ABSTRACT**

This research is focusing on discussing the effect of legal separation towards children. The writer had used several methods in gathering information. The research generally based on documentation study research at library. The method was involving the documentation material from library. The material is including hadith books, Muslims Family Law Act and etc. The main objective of this research is to acquiring knowledge and examinee how these unfortunate children future can be protected. In this research, the writer has to explain who is highly qualified to take care or get the custody right, and formulate and conclude from this research.

## MULAKHKHAS AL-BAHTH

البحث يتحدث عن آثار الطلاق على حياة الأولاد. ولجمع المعلومات المتعلقة بالبحث استخدمت الباحثة المنهج المكتبي وذلك بمراجعة المصادر والمراجع المتعددة مثل كتب التفاسير والأحاديث وكتب فقهية. ومراجعة قوانين الأسرة الإسلامية وغيرها. والهدف من هذا البحث هو دراسة أحوال الأولاد ورعايتهم بعد الطلاق. وذلك بالأشارة إلى قضية الحضانة ومن هو أكثر استحقاقا بها حسب شروطها المعينة. وفي النهاية قدمت الباحثة الخلاصة العامة من هذا البحث فضلا عن الاقتراحات المناسبة تتعلق به.

<b>CONTENT PAGE</b>	<b>Page no.</b>
AUTHOR DECLARATIONS	i
ACKNOWLEDGEMENTS	ii
ABSTRAK	iv
ABSTRACT	v
MULAKHKHAS AL-BAHTH	vi
CONTENT PAGE	vii
LIST OF CASES	ix
LIST OF STATUTES	x
GLOSARY	xi
TRANSLITERATION	xiii
ABBREVIATIONS	xiv
<b>CHAPTER 1: DEFINITION OF ANNULLED MARRIAGE (DIVORCE) AND CHILDREN</b>	
1.1 Definition and procedure for divorce	1
1.2 Definition of children	5
1.3 Divorce factor	6
1.3.1 The divorce because of the maintenance	9
1.3.2 One of them have relationship outside	10
1.3.3 The divorce because of handicapped	10
1.3.4 The divorce because of abusing	11
1.3.5 Not responsible	12
1.3.6 Marriage with other people that is not Muslim before	12
1.3.7 Run away marriage	12
<b>CHAPTER 2: CHILDREN NEEDS AND RIGHTS</b>	
2.1 Children's needs	13
2.1.1 Giving a good name	14
2.1.2 The need for love	18
2.1.3 The need for security	20
2.1.4 The need for new experiences	22
2.1.5 The legacy (Fortune Heritage)	24
2.2 Children right	25

2.2.1	Breastfeeding right	26
2.2.2	Hiring person to breastfeed	27
2.2.3	Good education right	28

### **CHAPTER 3: CUSTODY FOR CHILDREN AFTER DISSOLUTION OF MARRIAGE**

3.1	Custody after dissolution of marriage	30
3.2	Evidence in support of custody	31
3.3	Period of hadanah	32
3.4	Qualified guardian	34
3.5	Dismissal of custody right	36
3.6	Guardianship Of Infants Act 1961	37
3.7	Hadanah related issues	43
3.7.1	Hadanah rights for parents different dwell	43
3.7.2	The child choosing mother even mother remarried	44

### **CHAPTER 4: MAINTENANCE FOR CHILDREN**

4.1	Alimony for children	45
4.2	Maintenance of children under the Islamic Family Law (Federal Territories) Act 1984	47

<b>CHAPTER 5: CONCLUSION</b>	<b>53</b>
------------------------------	-----------

<b>LIST OF CASES</b>	<b>PAGE NO.</b>
Mohamad Salleh v Azizah	55
Myriam v Ariff	39
Nong Azman v Ahood Thamare Badli	43
Selamah v Mohamed	50
Wan Abdul Aziz v Siti Aishah	40
Wan Abdul hamid v Maimunah	51
Wan Khadijah v ismail	42
Zaleha bt. Zakaria v Rahmat	42
Zawiyah v Roslan	50

**LIST OF STATUTES****PAGE NO.**

Islamic Family Law (Federal Territories) Act 1984	1,2,3,4,33,35,36, 37,47,48,49,59.
Law Reform Act (Marriage and Divorce) Act 1976	5,50,59.
Guardianship Of Infants Act 1961	37,38,44.

## GLOSSARY

<b>adil</b>	Virtuous.
<b>Al-Quran</b>	The Holy Book revealed by Allah SWT to prophet Muhammad SAW.
<b>ayah</b>	Signs.
<b>baligh</b>	Of the age of majority.
<b>dalil</b>	Authority.
<b>fasid</b>	Irregular.
<b>fasiq</b>	A person who habitually breaks religious prohibitions.
<b>fiqh</b>	Islamic jurisprudence.
<b>hadith</b>	Sayings form of punishment laid down in the <i>Qur'an</i> .
<b>'iddah</b>	The waiting period for a divorced wife or a widow before a remarriage is possible.
<b>isnad</b>	Inviolability.
<b>li'an</b>	Accusing one's wife of committing adultery or fornication by way Of imprecation.
<b>mukallaf</b>	Persons with full legal competence.
<b>mumayyiz</b>	Discreet ages
<b>nafaqah</b>	maintenance
<b>nasab</b>	Paternity or lineage.
<b>qadi</b>	Judge.
<b>r.a</b>	Abbreviation of "Radhi Allahu 'An Hu" meaning "Upon him the Blessing of Allah".
<b>rada</b>	Suckle the baby, include breast feeding and bottle feeding.
<b>s.a.w</b>	Abbreviation of "Sallallahu 'Alaihi Wa Sallam" meaning "Peace be upon him". It is compulsory for Muslim to utter this blessing whenever he hears the Prophet Muhammad's name

	mentioned.
<b>shafi'ie</b>	The disciples and followers of Imam Muhammad Ibn Idris Ash-Shafi'ie.
<b>sunnah</b>	All the traditions and practices of the Prophet(pbuh) that have become a model to be followed by Muslims.
<b>surah</b>	The <i>Qur'an</i> is divided into a hundred and fourteen chapters. Every chapter is referred to as a <i>surah</i> , but it has own name, such as, <i>Al-Fatihah</i> and <i>Al-Baqarah</i> .
<b>syariah</b>	The Islamic Law.
<b>s.w.t</b>	Abbreviation of " <i>Subhanahu Wa ta'ala</i> " meaning The Almighty God.
<b>talaq</b>	Divorce initiated by the husband.
<b>talaq ba'in</b>	An irrevocable divorce, the husband cannot take his wife back.
<b>talaq raj'ie</b>	A revocable divorce.
<b>wajib</b>	compulsory
<b>wali</b>	Legal guardian.
<b>yaqin</b>	Certain beyond any doubt.
<b>zimmi</b>	A non-Muslim subject under the protection of an Islam state.

## TRANSLITERATION

### 1.Vocal

<u>Arabic Vocal</u>	<u>Latin Vocal</u>	<u>Example</u>	<u>Tranliteration</u>
ا	a	أحد	ahad
ب	b	بليغ	baligh
ج	j	جميلة	jamilah
ح	h	حكم	hukum
د	d	دليل	dalil
ذ	z	ذمي	zimmi
ر	r	رضي الله	radhi Allah
ز	z	زنى	zina
س	s	سنة	sunnah
ش	sh	شريعة	syariah
ط	t	طلاق	talaq
ع	a	عادل	adil
ف	f	فقه	feqah
ق	q	قضى	qada'
ك	k	كعبة	kaabah
ل	l	لا إله إلا الله	Laa Ilaha Illa Allah
م	m	مسلم	muslim
ن	n	نكاح	nikah
و	w	وجب	wajib
ي	y	يقين	yaqin

**ABBREVIATIONS**

i.e	that is to say
LRA	Law Reform Act (Mariage and Divorce) Act 1976
n.a	no author
n.d	no date
n.pb.	no publisher
n.pl.	no place
no.	number
p.	page
pp.	pages
r.a.	Radhi Allahu ‘An Hu
S.A.W.	Sallallahu ‘Alaihi Wa Sallam
S.W.T.	Subhanahu Wa Ta’ala
Trans.	translated
Vol.	volume

# CHAPTER 1

## 1.1 DEFINITION AND PROCEDURE FOR DIVORCE.

In Islamic law, a husband is permitted to divorce his wife by pronouncing a *talaq* or repudiation against her. Although divorce is permitted, it is not encouraged and, in religious theory, at least, is frowned upon. According to the *Hanafi* school of Muslim law there are three forms of *talaq*, that is:-

- a) The *ahsan* ( best or most approved) form by the pronouncement of one *talaq* in a period of purity followed by abstinence from sexual intercourse for the period of the *iddah*,
- b) The *hasan* form by the pronouncement of the *talaq* three times in three consecutive periods of purity, that is between three successive menstruations; and
- c) The *bida'at* form by the pronouncement of the *talaq* three times at shorter intervals or even in immediate succession or by the pronouncement of the three *talaqs* at once.

The procedure for the *talaq* divorce is set out in the Islamic Family Law Act 1984 and Enactments. Thus section 47 of the Islamic Family Law (Federal Territory) Act 1984 provides:

- 1) A husband or wife who desires divorce shall present an application for divorce to the court in the prescribed form, accompanied by a declaration containing-
  - I. Particulars of the marriage and the names, ages and sex of the children, if any, of the marriage;
  - II. Particulars of the facts giving the court jurisdiction under section 45;
  - III. Particulars of any previous matrimonial proceedings between the parties, including the place of the proceedings;
  - IV. A statement as to the reasons for desiring divorce;
  - V. A statement as whether any, and if so, what steps has been taken to effect reconciliation;

- VI. The terms of any agreement regarding maintenance and habitation of the wife and the children of the marriage, if any, the care and custody of the children of the marriage, if any, and the division of any assets acquired through the joint effort of the parties, if any, or, where no such agreement has been reached, the applicant's proposals regarding those matters; and
- VII. Particulars of the order sought.
- 2) Upon receiving an application for divorce, the court shall cause a summons to be serve on the other party together with a copy of the application and the statutory declaration made by the applicant, and the summons shall direct the other party to appear before the court so as to enable it to inquire whether or not the other party consents to divorce.
  - 3) If the other party consents to divorce and the court is satisfied after due inquiry and investigation that the marriage has irretrievably broken down, the court shall advise the husband to pronounce one *talaq* before the court.
  - 4) The court shall record the fact of the pronouncement of one *talaq*, and shall send a certified copy of the record to the appropriate Registrar and to the Chief Registrar for registration.
  - 5) Where the other party does not consents to the divorce or it appear to the court that there is reasonable possibility of a reconciliation between the parties, the court shall, as soon as possible, appoint a conciliatory committee consisting of Religious officer as Chairman and two other persons, own to act for the husband and the other for the wife, and refer the case to the committee.
  - 6) In appointing the two persons under subsection (5), the court shall, where possible, give preference to close relatives of the parties having knowledge of the circumstances of the case.
  - 7) The court may give directions to the conciliatory committee as to the conduct of the conciliation and it shall conduct it in accordance with such direction.
  - 8) If the committee is unable to agree or if the court is not satisfied with is conduct of the conciliation, the court may remove the committee and appoint another committee in its place.

- 9) The committee shall endeavor to effect reconciliation within a period of six months for the date of it being constituted of the such further period as may be allowed by the court.
- 10) The committee shall require the attendance of the parties and shall give each of them an opportunity on being heard and may hear such other person and make such inquires as it thinks fit and may, if it considers it necessary, adjourn its proceeding from time to time.
- 11) If the conciliatory committee is unable to persuade the parties to resume their conjugal relationship, it shall issue a certificate to that effect and may append to the certificate such recommendations as it thinks fit regarding maintenance and custody of the minor children of the marriage, if any, regarding division of the property, and regarding other matters related to the marriage.
- 12) No *peguam syarie* (counsel) shall appear or act for any party in any proceeding before a conciliatory committee and no party shall be represented by any person, other than member of his or her family, without the leave of the conciliatory committee.
- 13) Where the committee reports to the court that reconciliation has been effected and the parties have resumed their conjugal relationship, the court shall dismiss the application for divorce.
- 14) Where the committee submits to the court a certificate that is unable to effect reconciliation and to persuade the parties to resume the conjugal relationship, the court shall advise the husband to pronounce one *talaq* before the court, and where the court is unable to procure the presence of the husband before the court to pronounce on *talaq*, or where the husband refuses to pronounce one *talaq*, the court shall refer the case to the *Hakam* for action according to section 48.
- 15) The requirement of subsection (5) as to reference to a conciliatory committee shall not apply in any case-
  - (a) Where the applicant alleges that he or she has been deserted by and does not know the whereabouts of the other party;
  - (b) Where the other party is residing outside West Malaysia and it is unlikely that he or she will be within six months after the date of the application;

- (c) Where the other party is imprisoned for a term of three years or more;
  - (d) Where the applicant alleges that the other party is suffering from incurable mental illness; or
  - (e) Where the court is satisfied that there are exceptional circumstances which make reference to a conciliatory committee impracticable;
- 16) A *talaq raji'i* pronounced by a husband unless revoked earlier, either expressly or constructively or by an order of the court, shall not operate to dissolve the marriage until the expiry of the *iddah* period.
- 17) If the wife is pregnant at the time the *talaq* is pronounced or the order is made, the *talaq* or the order shall not be effective to dissolve the marriage until the Pregnancy ends.

In the Islamic Family Law (Federal Territories) Act 1984 provided that if a man who divorced his wife by pronouncement a *talaq* outside the court, shall within seven days of the pronouncement of the report to the court. In section 124 of the State Enactments other than in *Kelantan* and *Malacca* provides that any man who divorced his wife by the pronouncement of *talaq* in any form outside the court and without the permission of the court commits an offense and shall be punished with a fine not exceeding RM1,000 or with imprisonment not exceeding six months or with both such fine and imprisonment.

## 1.2 DEFINITION OF CHILDREN.

A child means a young human being who is not yet an adult.<sup>1</sup> Under the common law, a child is considered legitimate if his parents are married at the time of his conception or at the time of his birth<sup>2</sup>.

In the usual case the child will conceive and born during lawful wedlock. There are instances where although the child is conceived prior to valid marriage but his father and mother have since separated through divorce, or his father has since died. In these instances, he will be legitimate. A child who is born illegitimate is considered as *filius nullius*, or the son of nobody.<sup>3</sup>

Part VIII of the LRA which is entitled 'Protection of Children' includes provisions for the custody of children. The term 'child' is defined in section 87 as follows:

*In this part, wherever so required, 'child' has the meaning of 'child of the marriage' as defined in section 2 who is under the age of eighteen years.*

In section 2, 'child of the marriage' is defined as:

*... a child of both parties to the marriage in question or a child of one party to the marriage accepted as one of the family by the other party; and 'child' in this context includes an illegitimate child of, and a child adopted by, either of the parties to the marriage in pursuance of an adoption order made under any written law relating to adoption.*

In the Islamic Family Law(Federal Territories) Act 1984 it is provided that where a child is born to a woman who is married to a man more than six *qamariah* months from the date of the marriage at within four *qamariah* years after dissolution of the marriage either by the death of the man or by divorce, the woman not having remarried, the *nasab* or

<sup>1</sup> A.S Hornby. 2000. Oxford Advanced Learner's Dictionary. p. 188.

<sup>2</sup> Blackstone's Commentaries on the laws of England, at pp 434, 442-445.

<sup>3</sup> *Ibid* at p 447.

paternity of the child is established in the man, but the man may, by way of *li'an* or imprecation, disavow or disclaim the child before the Court.<sup>4</sup>

Where the child is born more than four *qamariah* years after the dissolution of the marriage either by the death of the man or by divorce, the paternity of the child shall not be established in the man unless he or any of his heirs asserts that the child is his issue.<sup>5</sup>

Where a woman, not having remarried, makes a declaration that the period of *'iddah* has been completed, whether the period is for death or divorce, and she is subsequently delivered of a child, the paternity of the child shall not be ascribed to her husband unless the child was born less than four *qamariah* years from the date of the dissolution of the marriage either by the death of the husband or by divorce.<sup>6</sup>

### **1.3 DIVORCE FACTOR.**

The aim of marriage is to create human life that is more progressive and peaceful. It is not to ruin human life with any bad situation. Every couple that are getting married hope that they will always happy and live peacefully without any difficulties that can make their marriage break-up.

Actually, live happily or not does human create one thing. The person decides it. Marriage couple, husband and wife are responsible to build their own happy life, if they know their job using the method and the family guidelines, their family could live happily as well.

Sometimes, the happy life can be down because of crisis. As we know, marriage if not always in a good situation. It is just depend on how they could settle their problem.

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<sup>4</sup> Malaysia. 2002. Islamic Family Law (Federal Territories) Act 1984 (Act 303). Section 110

<sup>5</sup> *Ibid.* Section 111

<sup>6</sup> *Ibid.* Section 112

If the problems enlarge and can't be settle it is mean there is really a problem in the marriage. This is one of the problem that marriage couple worry for the impact or may be one of them making trouble by turning the guidelines or react like no self-control without thinking of the situation, try to escape from controlling their life as the marriage no meaning at all for them.

After make research, about why divorce happen, actually there is no co-operation between the husband and wife. *nusyuz*, divorce because of the husband, no maintenance, one of them has other relationship outside, divorce because of handicapped, abuse, no responsibility and run away marriage.

From the research, we know that the main factor of divorce is no co-operation between the husband and wife. Sometimes, small matter will become bigger until the marriage couple starts quarrelling. They do not know how to act wisely in the marriage. The wife working to help the husband but her husband says his wife just want to enjoy her life.

*Nusyuz* is one word using in the marriage life. The wife try to escape from their job and duty as a wife, try to challenge the husband, turning from the marriage guidelines and against the family rules and regulations, so this kind of wife is *Nusyuz*.

There is also quotation for the husband that is not responsible, acting without looking at the marriage guidelines until making the wife hate the husband, this kind of husband also we call *nusyuz*. In fact, we can say *nusyuz* can happen from both side. A wife that is *nusyuz* is a wife that is disloyal to her husband and a husband that is abusing his wife .

*Nusyuz* and marriage crisis is one of usual thing, that happen in the marriage life but if the crisis not settle as possible as they can, it can make the marriage ruin and divorce happen. Therefore, our religion looks this issue important; try to give tips and guidance to avoid the crisis happen.

When a husband leave his wife in a long period of time and his wife does not know where is her husband, what should the wife do?

According to the *Abu Hanifah* and *Syafi'i*, the wife is still in her husband responsibility until her husband comes back or the court say her husband die. They, themselves however not agree about when the husband dies but the *Hanafi* say the husband die when one of his friends also die. According to one opinion when someone is too old impossible be can lives for many years.

According to *Maliki* and *Ahmad* said that: “*We have to separate the wife from her husband.*” It is mean we have to separate them in a short time. A part of them say, they have to separate when it is almost four years the wife lives without her husband, but some of them say, for three years and some says one years only and six months.

Some of them say the six months are according to *Umar bin Khattab*. He does not agree and gives his army to live their wife more than six months. Actually, *Saidina Umar* has asking his daughter *Hafsah* how long a woman can live without her husband. *Hafsah* said: “*Just for six months*”.

When we use *Syafi'i* and *Abu Hanifah* in this problem, likely more to the woman. This is because; the wife should wait until her husband reach eighty years old. After that the wife will reach the time that we call *iddah* then the woman can get married with other man. Let's imagine, is it possible for one woman to wait? Usually, before the times come the woman will die or maybe nobody wants to marry her.

To make their life more easier, so the Egypt rules say that the wife that lives without the husband for three years, is legal to ask for divorce in the court. When the husband lives in the prison for three years, so the wife can ask for divorce even the maintenance is enough. This kind of divorce we call *raj'i*. It is mean in the time of *iddah* the husband come back from his journey or get out from the prison, he can try to be with his wife again.

However, the missing person leaves the wife because of suitable and reasonable is not ask to file for divorce. For example, someone that is go for study and towards Allah.

### 1.3.1 The divorce because of the maintenance.

The wife can ask for divorce in court when her husband not gives maintenance to her as the husband can. That is according to *Imam Maliki, Syafi'i* and *Ahmad*. As Allah S.W.T say :

*“ Whereupon the marriage must either be resumed in fairness or dissolved in a goodly manner ”.*<sup>7</sup>

And Allah reveals:

*“ But do not retain them against their will in order to hurt them for indeed against himself ”.*<sup>8</sup>

According to *Hanafi* the court can make sure the divorce because of the maintenance reason, because of the husband does not want to give the wife maintenance can be the reason to ask for divorce.

This Opinion also base on Allah S.W.T says in *Surah al-Talaq* : 7. They also give reason that *Rasulullah* S.A.W still not try to separate a husband and wife because of the maintenance.

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<sup>7</sup> Al-Baqarah 2: 229.

<sup>8</sup> *Ibid.*

### 1.3.2 One Of Them Have Relationship Outside.

One of the crisis is the wife and the husband still have other relationship with other people. This outside relation sometimes as a close friend. Sometimes the husband and the wife like to have other relation with many friends without thinking about the time and situation, ask by their friends to go out and usually invite their friends to come home. This kind of matter can avoid the husband and wife to get close at home.

### 1.3.3 The Divorce Because of handicapped.

Handicapped can create divorce between husband and wife. The wife can asks for *fasakh* in court when her husband is handicapped. A part of handicapped can make reason to ask for divorce. This is mean not all handicapped can be the reason to ask for divorce.

Among of the handicapped there is especially for man only or a woman only and some happen to the man and woman. This mean that the woman has close her virginal with meat and born.

Besides, some of the handicapped is legal. This disease not try to separate the husband and wife but this disease can make the couple life destroy such as insane and leprosy.

According to *Jumhur Ulama'* including *Syafi'ie*, *malik* and *Hambali* the husband can ask for *fasakh* for justice if his wife get one of the diseases. This is also for the wife.

The judge will investigate if the fact is right or not, or can be settle down or not, the judge can separate them.

According to *Hanafi*, the husband no need to ask for *fasakh* in court when his wife has a disease because the husband can settle down by using the divorce step. According to *Ibnu*

*Qayyim* just some of the disease can be the reason to ask for *fasakh* but it is not make the marriage life not happy at all.

Among the condition:-

1. The disease that is fact and cannot be change or no medicine but need a long time.
2. The wife is too suffer if she still together with his husband.
3. The wife does not want her husband that is handicapped. If the wife is still loyal and does not want to get divorce the court cannot ask the wife for divorce.

#### **1.3.4 The divorce because of abusing.**

The husband should brings the wife towards Allah, until his wife can be a good person, obey all the things that Allah S.W.T and *Rasul* S.A.W ask and also try to do this objective and aim, the husband towards this objective and aim, the husband and wife have given the power to do something act if the wife not obey his order.

Allah S.W.T said :

*“ And consent with your wives in a goodly manner”*.<sup>9</sup>

According to *Hanafi*, *Syafi'ie*, *Zahiriah* and *Syiah Imamiah*, the wife cannot ask for divorce even she is always scolded by her husband, abused and not happy. The court cannot separate them just only for that reason because it might be settle down using other way like ask the husband to change their attitude. This is totally different with *Maliki* and *Hambali*. They say that the wife can ask for divorce in court when been abused.

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<sup>9</sup> Surah an-Nisa': 19.

### **1.3.5 Not responsible.**

The husband or wife not doing what our religion like pray, fasting and others but one of them obey the rule of Islam. So this couple not comfortable with one another. There is also both of them not doing what Islam need us to do. From this, we know that without religion their life also not a happy one, they always worry and their soul is blank. So this kind of people can be easy flirt and seduce by others.

Actually, they are also do not know what is the obligatory and duty of husband and wife. This can make their view about marriage is easy and not as important as it could be.

### **1.3.6 Marriage with other people that is not Muslim before.**

This kind of marriage one of the crisis that can make divorce that just love each other not because of the religion. They have problem in their relationship with the family, some of them so stubborn not try to change their life to Islam, when they have problem, just the small one they try to escape from it using last step without thinking.

### **1.3.7 Run away marriage**

This kind of marriage is not get permission from the family especially their parents. This couple if not standing through together, they can ruin their marriage just because the family do not like them. They can get so many pressure and stress if they have a small problem. They will regret for their marriage and the wife will turning back.

# CHAPTER 2

## 2. 1 CHILDREN'S NEEDS.

Every child have theirs towards their own father even before them brought to the world by choosing an ideal wife. Thus, Islam had set a boundary to this matter with lucid and clearly perceptible. And same goes to the mother, child have their right toward their mother by choosing, good and responsible future husband. By stating this guidance, Islam had ensured to produce the good, healthy and excellent generation.

God(Allah) has created mankind with their own natural tendency or inborn ability. One of these inborn ability or natural tendency is piousness similar what has our Prophet said in his majesty hadith:-

*“No new born child brought to this world except, with theirs natural tendency (immaculate). The parents whose the ones who changing them into whether jewish, nasrani or Majusi”.*

What have the child had to done since born, is nurture their natural tendency and developing it as excellent as much as they grow up. The matter is based on one of narrative or story from *Abu Abdullah Al-Hakim* from *Abu Rafi'I*,said:-

*“I bear witness Rasulullah S.A.W say ‘azan’ (a prayer summons to Muslims) at Al-Hasan bin Ali R.A right after birth by Fatimah R.A”.*

This hadith also being narrated by *Abu Daud*, and *Al-Tarmizi* has declared this hadith is authentic. While *Al-Baihaqi* was narrate from a hadith carrier *Al-Hasan b. Ali R.A* heard the holy Prophet said:-

*“Whoever is blessing with a baby, then, baby is being say azan on right-ear and iqamah on left-ear it believe they will be refrain from disturbances”.*

Based on statement above, now we understand every father or every single man whoever oaths “*Laa Illaha Illa Allah*” need to nursed the innocent natural tendency to stay away

from devil influence and the effort to bring the child to sacred realm in order to avoiding from world cruelty and the evil lies or traps.

### **2.1.1 Giving a good name.**

Every borne child, they will be and must be named by their folks so that the child can be known by this name. Frankly, many parents already have picked a name they like sooner than that, even before the baby is born.

This naming process always seems as special privilege towards parents and nobody can ever deny it. But this kind of idea seems irrelevant to one married couple in new York who's about having incoming baby, they didn't to passionate to grab this opportunity to use this special privilege, but put this privilege on auction on open market, instead. The bidding is start at AS 500,0000.00 (RM 1.9 billion).

Headline news "Parents Auction for Naming A Child Online"<sup>10</sup>. These folks are waiting for their next or incoming 3<sup>rd</sup> birth of their child, wishing there will be a corporate company name, means, this child will be named and knows as these giant company name, like 'Heinz', 'Microsoft', 'Coke', or 'Kraft'.

The only reason this folks took such action is so they can live their life at fullest. And also, had enough money to cater their child study expenses. Although this such an action seems to violate parenting dignity, but they were still like other parents whom wants to see their child to get good educations. This auction idea seems like to be great opportunity toward this giant company to obtain publicity when those name announce. But until these news published, there no single company were interested on it.

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<sup>10</sup> Utusan Malaysia, 28 July 2001. pg 17.

Hence, happened when human has no more blow away guidance and gasp on faith. Giving a child name should be a special privilege, now become a relic stuff that can bid for. Thus, it becomes an asset to gain profit larger than life.

Different with Muslims, the people is been leads by Holy Koran and what our majesty Rasulullah S.A.W left. The Muslims usually manipulate this privilege as good as they possible.

Islam is the way of life, it set a guideline to their entire follower about everything including in naming their descendent. In Islam this right will be their pride and use it very well, cause these name will trail the child for their life. Thus, this process has to follow guideline that has been set by Islam rules.

One of those guideline is how should be and when to named the child. There are several narratives or source has their point of views on this matters. One of them said, the newly born baby should be named on the day of their birth. This opinion based on the incident where our majesty Prophet, giving a name to child of Abu Usaid with name "Al-Munzir" on the day that baby were born.

Other source said, the baby should be named on the 7th day after their born. This point of view based on one hadith:

*"Every child hovering to sacrifice, and sacrificing for it on 7<sup>th</sup> day, being named, and shave their head".*

Thus based on this Prophet hadith, there are freedom on time limit to name the child. In naming a child's process, parents can pick one of those days, the day right after birth or on 3<sup>rd</sup> day, it very encouraging to naming the baby on the day do sacrifice that is on 7<sup>th</sup> day.

Besides setting guideline about how and when to name a child, Islam also had set the guideline in what the name should be choose. Muslim are demanded to give a good name and beautiful name to their child, parallel to what our Prophet suggested in his hadith:

*“Everyone of you on the judgement Day will be summons by your and father’s name, therefore you should beautify your name” .*

Now, what is a good or excellent name and what is a worst or bad name? In this matter, Rasulullah S.A.W had said in his hadith means:

*“Named (your child) with God messenger’s names. The very excellent name are Haris and Hammam and the worst name of all were Harb and Murrah”.*

Now we were clarify the best of names is similar with God messenger names, like *Abdurrahman* and *Abdullah* even like *Haris* and *Hammam*. Otherwise the worst names of all Harb and Murrah. Parents were also forbid to named their child with worst names that can degrading or aggravating child honor and been the thing that makes fun or tease by other people.

*Rasulullah S.A.W* by himself has changes Umar Al-Khattab’s daughter from “*Ashiyah*” (means, traitor) to “*Jamilah*”(means, the beautiful one). Parents ought to avoid from giving names that carried out the meaning “unlucky or unfortunate or bastard”, so that the child were reared from the meaning that name carried out.

There’s story were *Rasuluulah* had bumped into a guy’s name *Hazan* (means, sorrowfulness), then *Rasulullah S.A.W* had order the young guy to change the name that his father gave him. But ironically he admitted that his never feel happy in his life, the sorrow ness never lives him alone.

Islam also demands all parents to naming their child from name of God, for example; *Al-Ahad* (means, The Only One), *Ar-Razzaq* (means, The One Whom Livelihood), *Al-Khaliq* (means, The Creator), *Ash-Shamad* (means, The One To Whom we Depend On) and etc.

Names such as these were totally not very encouraged by Rasulullah, he even had changed a person name, named “hani” but known “Abul hakam” as his nick name among his tribe to “abu Syuraih” cause “Abul Hakam” is similar to God name “Al-Hakam” (means, To Whom Punishment Depend On). Despite of that, Rasulullah S.A.W changed it to Abu Syuraih (means, Syuraih father) commemorate his first child.

In Islam also restricted parents to name their child with names that reflection from luxurious characteristics or element of good fate. This is to avert deceptive when it become contrary with their name meaning. For example, name Aflah (means, very successful ones), Nafi (means, very usefulness ones), Rabah (means, very fortunate ones) and Yasar (means, very wealthy ones).

This refer on Rasulullah hadith:

*“The phrase that God delighted has 4: Subhana Allah, Alhamdulillah, Laa Illaha IllaAllah and Allahu Akbar. Don’t named your child with name, Yasar, or Rabah or Najihan or Aflah, it is because u will will say: Is it true”, If not you will say, No.”*

Parents also should avoiding from naming the child similar to the slave to another beside than Allah, like Abdul Uzza (means, god stone or statue slave), Abdul Kaabah (means, Kaabah slave) Muslims scholars agreed that these names are forbidden.

Then, finally parents always should reared named similar to non-Muslims, so that Mulims can be recognize by names that special and suit with Islam personality indeed.

Thus this special privilege for parents in process to named theirs child should manipulate this opportunity with real good. Clearly in naming the our child it cannot be take for granted on it. It’s responsibilities to lies on parents shoulder to avoid naming the child with names seems nice to hear but did not meaningful. Wishing by named a child with good name, there will good behavior or good fortune possessed by the child as good as the name.

Sometimes in process to choose the good name, both parents did not had consensus in it. On mother side, she would like named the child with name 'A' but on father side is otherwise. If both of them didn't had agreement on this, Islam had decided that the father is more rightful position to named their newly born baby. This clearly stated in Holy Koran that the children will heritage the father generation descendent not the mother. As stated in Holy Koran in fifth phrase:

*"Called theirs name with theirs father, that is more fair to God edge".*

Islam also prohibits the parents from calling their child with bad nickname, for example Shortly, Grubby, Dirty, Moron and etc. This runs with Allah command "... and don't you call out each other by bad nickname..." . Cause these bad nickname can bring out bad habit and negative influence in the child soul.

In our society, is normal when call name or nickname is difference with their real name. Usually the nicknames are simpler than the real name. It seldom we bumped with this situation, where a child whose has good name meaning being call with short and meaningless meaning. For example, child with name Muhammad has called with "Boboy". The name that similar with our majesty Prophet, now been called with English name with meaningless in Islam.

This such matters should avoided by parents cause in Islam the name that lies on our shoulder is like a prayer, by calling the good name, seems we prayer to God, hoping that God will merged the a good behavior personality in our child personality. So keep a good effort to stay call a good name and nice name to our child.

### **2.1.2 The need for love.**

This need is met by the child experience from birth onwards a stable, continuous, dependable and loving relationship with his parents, who themselves enjoy a rewarding relationship with one another. Trough, this relationship-first with his mother, then his

father and gradually an ever-widening circle of other people- the Childs comes to a realization of personal identity and worthwhile ness. It forms the basis of all later relationships, not only with the family, but with friends, colleagues and eventually his own family. On it depend the healthy development of the personality, the ability to respond to affection and, in time, to become a loving and caring parents.

The greatest impact of such love is on the self. Approval and acceptance by others are essential for the development of self-approval and self-acceptance. Whether a child will develop a constructive or destructive attitude, first to himself and then to other people, depends in the first place on his parent's attitude to him. During the earliest months on infancy and biological the baby from the impact of his new environment. For example, a loud noise startles a baby far less, or a mild digestive upset will be endured more easily, when he is in his mother or father's arms. Throughout the early years, close physical contact continues to be protectively reassuring, as well as an expression of parental affection. This is probably why, during the war, children who remained with their parents during bombing attacks coped better with anxiety than those who were evacuated to safer areas.

Though able to respond sight and sounds within first forty-eight hours of life, the first truly social step is the infant's smile responding to a smiling face. This happens in about the second month of life, only several months later does he become able to identify and differentiate his mother's face from that of others. This is an important milestone: it marks the emergence of his awareness of his mother as a separate person, out-side himself as it were and thus the beginning of his identity or self-concept, it also marks the growth of his first and vital emotional attachment or bond. To reach this stage, he has had to accomplish a vast amount of learning so as to be able to distinguish between a host of sensory impressions.

From this first reciprocal love relationship flow three further consequences of vital importance to development: first, the baby enjoys the mother's presence, even if he can only hear her moving about, and he becomes concerned when she disappears. Secondly,

the loving mother who wasted and encourages each step forward is likely to accelerate progress by her anticipatory interest and delight in the earlier than a child whose mother has not the time or inclination for such close involvement in his progress. Conversely, she conveys disappointment and disapproval of behavior that she wishes to discourage.

The third consequence is that the child is enabled through mutually rewarding relationships, first with his mother and then with others who become significant to him, to learn self-control and to acquire moral values. This he accomplishes by imitation or 'modeling'. Mothering mediates between the child's inner subjective and the outside 'real' world; it recognizes and establishes his personal identity and individuality; and her loving care is unique in the sense that it is adapted to his very special, individual needs which are recognized as being different from those of any other child.

### **2.1.3 The need for security.**

First and foremost, this need is met by giving the child the security of stable family relationships where attitudes and behavior are consistent and dependable; the security of familiar place; and the security of a known routine. All these make for continuity and predictability in a world in which the child has to meet and come to terms with so much that is new so much that is new and changing.

Because he is so small and so ignorant, much that is later taken for granted is seen as threatening, such as glass breaking when dropped. Perhaps most of all, the nature and strength of his own feelings threaten his secure, it provides him with the needed reassurance to venture out, knowing that he can return to its comforting safety.

It is the quality of family relationships, which is of basic importance to the child's psychological development. This applies not only to the mother's and father's relations with him, but also to those between the parents themselves, as well as to the child's with

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his siblings and other close relatives. Parental expectation and discipline that are consistent- whether tending to be strict or lenient- enhance his sense of security, providing a dependable predictable framework. So does a familiar place, as is clearly shown by the contrast between a young child's usual behaviour in his own home and in a strange place. Keeping close to his mother or a familiar person, refusing to speak or eat, are all signs of insecurity. A familiar object gives reassurance, as witnessed by a cherished possession- often something cuddly such as a rag or blanket- from which he will not be parted at bedtime or in a stressful situation.

The extent to which a known routine helps the growing child is shown by his insistence that certain everyday events followed in exactly the same manner and sequence; bedtime rituals and the way stories must be told in the self-same words are just two examples. Parents are in a unique position to know about the particular object, rituals and situations which foster a particular child's sense of security. By allowing them expression (and time where need be), his right to individuality and to a measure of self-determination is acknowledged, which contributes towards building up his feeling of worth.

There are two further aspects to allowing him the right to certain idiosyncrasies within the home; first, the fact that the child can revert to more immature behaviour becomes a valuable safety valve in the face of the constant and increasing demands on him for greater maturity and control; and secondly, he begins to learn that different standards of behaviour are permitted within the privacy of his family, which will help him later to understand and cope with this fact in relation to school and other social settings.

The need for security is closely related to the standards of behaviour being set by the parents. Knowing what is expected of him and, as soon as he can understand, the reasons why, makes growing up a less difficult business. Inevitably the child will transgress, will be disobedient- partly because he needs to test the consequences of doing so, partly because he is liable to forget rules- but knowing the limits of what is permitted provides the reassurance of both reasonableness and predictability. In contrast, when the same behaviour gives rise to widely different reactions, with the same parent at different times

or in either parent, then the child's concept of acceptable conduct becomes linked to individual whim rather than to general principles.

Lastly, but perhaps most important, stable family life also provide sthe child with a sense of personal continuity, of having a past as well as a future. By relating to him events of his early life, backed up by photos and other evidence, and by looking ahead to likely developments in his life, he acquires a coherent self-image, which is essential about their own doings. These together with comments made casually in conversation about other members of the family all serve to accumulate a store of memories that put his own life into long-term perspective. 'When you were younger' and 'when you are older' are phrases which may well at times irritate children by the very frequency with which they are used; yet they contribute to building up a mental concept of his continuing self within the larger family context. It is through human ties that personal identity comes to be established.

#### **2.1.4 The need for new experiences.**

New experiences are a prerequisite for mental growth as essential to the mind's development as food is for the body. From birth onwards, tasks appropriate to each particular stage of growth are presented to the child, and their mastery provides in turn the stepping stone towards more difficult achievements: for example, from having learned to grasp and hold an object, he proceeds to learn to feed himself. If denied the opportunity of new experiences, no learning can take place. For example, in a non-speech even though his hearing and speech organs are quite normal.

The small child has strong urge to explore, and everything that goes on around him becomes an absorbing new experience as soon as he is able to perceive it; his limbs at will or to examine the texture, taste and shape of materials and objects. Similarly, learning to crawl, walk, run, and climb are new experiences in themselves, in addition to opening up an increasingly wider world for first-hand exploration. Later still, the

challenge will be the mastery of reading, riding a bicycle or climbing a mountain. All these, and many more, provide new fields to be conquered, making life for the normal active child a series of rewarding adventures.

Once interest in novelty appears, then it becomes increasingly important as a source of motivation for further exploration and thus for learning. In Piaget's words, 'the more an infant has seen and heard, the more he wants to see and hear'. At the same time, there can be too much or too little stimulation or 'input'; the former gives rise to withdrawal and fear, the latter to boredom and apathy. It is one of the skills of child-rearing to be able to judge accurately the optimal level which will foster the cognitive development of a particular child at any particular stage of his growth.

New experiences enable the child to learn one of most important, because basic, lessons of early life: learning how to learn; and learning that mastery brings joy and a sense of achievement. This is demonstrated by the exultant cry of 'I can do it myself', which also illustrates the link between emotion and learning, between cognitive and effective experiences. Competence brings its own reward while the mother's or other adults pleasure in the child's newly acquired skill further reinforces his willingness to seek new fields to conquer.

In contrast, the child whose exploratory activities are disapproved of, discouraged or punished – whether this is because they disorganize a tidy, smooth-running, adult-centered household, or because the potential hazards worry an anxious mother, or because in over-crowded conditions a harassed, over-burdened mother cannot provide either the time or space. Such a child will develop quite another attitude to learning; its likely features will be passivity, fearfulness, frustration or irritability, and there will be little joy or satisfaction.

### 2.1.5 The legacy (Fortune Heritage)

Globaly, the right of obtaining legacy is fair and square, even the division of amount is not same, cause splitting calculation is difference one each other. Islam has put this phenomena is it eyes, parallel to decree and means that:

*“From what is left by parents and those nearest related there is a share for men and a share for women, whether the property be small or large,- A determined share”<sup>11</sup>.*

In ignoramus age, the no legacy to daughter, all the legacy is totally heritage by son. They're no legacy for women and child.

When Islam come, Islam has changed this all way around, Islamic laws has determine the portion between son and daughter, it not a cruelty, cause division of legacy is difference with affection and love, which that acquire similarity fairness.

But in dividing the portion of legacy is termination by Islamic law. Dividing such of this not decreasing the women portion, but good for both sides actually.

The daughter when married and after give birth, will changing her perception toward her belongings from her late father. This difference with son where before and after they married they still have right higher than daughter.

Conclusion is, the legacy has no lay down to them even the parents is divorced and even the come to death. Divorced wife is no longer in position to obtain the legacy. But it difference with the child, even their folks is divorced, family bonding between them is unbreakable forever. This not even effected the division of legacy heritage fortune.

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<sup>11</sup> Urah An-Nisa':7.

## 2.2 CHILDREN RIGHTS

Few courts would concede that they consider the children involved in a divorce action to be mere chattels or possessions of the parties, to be disposed of along with the hi-fi and the family automobile. However, where state law requires or court policy as binding upon the court, this is the exact result. Custody placement and financial arrangements for support of the children become matters of bargaining and agreement between the parties, with the court, pressed for time or reluctant to become involved, rubber-stamping the advance agreement of the litigants.

Most courts would content that they view and treat the children of divorcing parents as proper subjects of court concern. Trial and appellate courts alike favor the phrase, "concerns for the welfare of the children," to describe the role of the court in this twilight zone where children are not strangers to the action, yet not parties to it. In practice, with over ninety per cent of divorce actions ending up as default or uncontested case, the court routinely accepts the recommendations of the parties and being a proper subject of court concerns becomes a matter of words, not deeds. The pious phrase, "concern for the welfare of the children," becomes a thin cloak for a massive indifference to the impact of the divorce decree upon the future lives of the children.

The children involved, while not named as parties plaintiff or parties defendant in the pleadings, actually are parties to the action, with definite rights that are to be determined and protected by the trial court. The children are entitled to be represented at the trial of the action by a legal representative or guardian *ad litem* who is to represent their interests and protect their rights.