

ISLAMIC FAMILY LAW

DEMYSTIFYING SHARIAH IN THE PROTECTION OF CHILDREN'S RIGHTS

VOLUME III

ZALEHA KAMARUDDIN

IIUM Press
INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA



ISLAMIC FAMILY LAW: DEMYSTIFYING SHARI'AH IN THE PROTECTION OF CHILDREN'S RIGHTS

VOLUME III

Editor
Zaleha Kamaruddin



IIUM Press
International Islamic University Malaysia

Published by:
IIUM Press
International Islamic University Malaysia

First Edition, 2011
©IIUM Press, IIUM

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without any prior written permission of the publisher.

Perpustakaan Negara Malaysia
Cataloguing-in-Publication Data

Zaleha Kamaruddin
Islamic Family Law: Demystifying Shariah in the
protection of children right/ Zaleha Kamaruddin

ISBN: 978-967-418-024-9

Member of Majlis Penerbitan Ilmiah Malaysia – MAPIM
(Malaysian Scholarly Publishing Council)

IIUM PRINTING SDN.BHD.
No. 1, Jalan Industri Batu Caves 1/3
Taman Perindustrian Batu Caves
Batu Caves Centre Point
68100 Batu Caves
Selangor Darul Ehsan

TABLE OF CONTENTS

Preface	ix
An Insight to Legal Protection of Children: Demystifying <i>Shari'ah</i> in the Protection of Children's Rights	xi
1. The Legal Rights of Muslim Children in Polygamous Marriages <i>Mazbah Termizi and Prof. Dato' Sri Dr. Zaleha Kamaruddin</i>	1
2. Maintenance of Illegitimate Child by Biological Father in Islamic Law: An Analysis <i>Tam Peck Shen and Assoc. Prof. Dr. Azizah Mohamad</i>	31
3. Sterilisation of Mentally Disabled Children: Justice or Violation of Individual's Right? <i>Nasiibah Ramli and Prof. Dr. Puteri Nemie Jahn Kassim</i>	61
4. The Right to Abortion with Special Reference to Rape Victim: An Islamic Perspective <i>Win Syuhada and Assistant Prof. Dr. Mohammad Ismail Mohd. Yunus</i>	99
5. Incest: A Threat to Children and Selected Solutions <i>Khairul Nizam Che Yassin and Assistant Prof. Dr. Badrudin Ibrahim</i>	121

6. **Protecting Children from Procedural Difficulties
Relating to Children's Evidence in Child Abuse
Cases in Malaysian Courts**

161

*Mutiah Hud and Prof. Dr. Mohd Akram Shair
Mohamed*

INCEST: A THREAT TO CHILDREN AND SELECTED SOLUTIONS

Khairul Nizam Che Yassin and Assistant Prof. Dr. Badruddin Ibrahim

Introduction

The family institution has been long threatened by divorces¹ of marital couples with significant impact on the children of the family. Since children are the leader of the future, they therefore need protection, love and care. Divorces do not help in shaping the leaders of the future. Divorces, are however better than child abuse² and incest.³

The occurrence of incest in Malaysia is alarming and the statistics from the Royal Malaysian Police Force shows that incest cases are high and they institute almost 20% of the total rape cases in peninsular Malaysia.⁴ *“Fathers no longer have the shame to rape their own daughters; stepfathers are no longer having respects for their stepdaughters, and so are uncles; they no longer protect the honor and dignity of their nieces.”*⁵

Background

Incest is one of the oldest crimes in the world and the number of the cases involving incest cannot be properly estimates in a given society, because the act is done in secrecy and in circumstances that