



## END OF PROJECT REPORT FORM

### I. RESEARCH DETAILS

TITLE OF RESEARCH: Access to Children in Custody Proceeding: Right or Responsibility?

TYPE OF GRANT: Research Endowment Fund A

PROJECT NO: EDW A10-570

PROJECT START DATE: 1<sup>st</sup> April 2010

PROJECT END DATE: 22<sup>nd</sup> May 2012.

### II. RESEARCHER DETAILS

PRINCIPAL RESEARCHER: Dr. Normi Binti Abdul Malek

DEPARTMENT/KULLIYAH/CENTRE: AIKOL

PROJECT MEMBERS:-

DEPARTMENT/KULLIYAH/CENTRE:-

### III. RESEARCH ALLOCATION

Vote	Total Approved budget (RM)	Supplementary Budget Approved (if any) (RM)	Total Cumulative Expenditure (RM)	Balance (RM)
V11000	2000		2500	
V21000	1500		1500	
V23000	300		51	
V27000	700		239	
V29000	500		710	
<b>TOTAL</b>			<b>5000</b>	

#### IV. EQUIPMENT/ASSET PURCHASED

No.	Item	Placement <i>(please state specific location)</i>
1.		

*(Machinery, books, software, IT equipments e.g. laptop, desktop, printer, scanner, digital camera, and others)*

#### V. PROJECT ACHIEVEMENT

1. **Publications** *(International, national, books, chapter in a book, citation, articles, seminar paper, proceedings, etc.) A thesis is considered as a publication*
  1. Part of chapter in a book – Family Law for Non-Muslim in Malaysia, 2011, IIUM Press (in the process of printing)
  2. Conference Paper –“Access to the Child: Right or Responsibility?”, presented at the 9<sup>th</sup> Asian Law Institute (ASLI) Annual Conference, 31<sup>st</sup> May -1<sup>st</sup> June 2012.
  3. The conference paper is expected to be published by Malayan Law Journal (MLJ).
  
2. **Intellectual Property Rights** *(Patent, Industrial Design, Trademark, Copyright, etc.)*
  
3. **Human Capital Development** *(PhD, Masters, Research staff with specialty, etc.)*
  
4. **Commercialization** *(Licensing royalty, spin-off, direct sale, etc.)*

**VI. VERIFIED/COMMENT BY: DEPUTY DEAN, RESEARCH MANAGEMENT CENTRE**

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**VII. RESEARCH OUTPUT RECOMMENDATION BY: DEPUTY DEAN, RESEARCH MANAGEMENT CENTRE**

- 1. Book
- 2. Journal
- 3. Prototype
- 4. Patent
- 5. Commercialization
- 6. Other (Please specify) \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

## VIII FULL VERSION OF RESEARCH REPORT

### Guidelines for writing the Research Report

- Report should be written in 'Times New Roman 12' Font, with 1.5 line spacing
- Report should be between 5- 10 pages (excluding references)
- Report must be in English (Applicable for Research in Arabic as well)
- The report must be in Microsoft Word file
- Any graphic must be in JPEG

➤ The arrangement of the of Research Report is as follow:

**Project Title: ACCESS TO CHILDREN IN CUSTODY PROCEEDING: RIGHT OR RESPONSIBILITY?**

**Author Name(s): Normi Abdul Malek**

**Department/Kulliyah/Institute/Centre: AIKOL**

**Abstract:** *Many a time, a divorce proceeding will usually be followed by a custody proceeding. If the custody of a child is given to one party, the other party will usually be given access or the opportunity to see or visit the child. A question arises as to whether this access is solely a right or at the same time a responsibility on the part of the parents. If it is a right, whether it is an absolute or limited right? Are there situations or circumstances where a parent might not be allowed to exercise his or her right? What if the children themselves refuse to see their parent? This paper will examine the above issues from both the civil and Islamic law perspectives. The emphasis will be on Malaysian law but comparison will be made to other jurisdictions such as English and Scottish.*

**Key words:** Access, Right, Responsibility, Child, Parent, Interests

**Introduction:** The law regarding access to the child pertaining to non Muslims is governed by the Law Reform (Marriage and Divorce) Act 1976 (LRA). With regard to Muslims, besides Islamic law in general, various states enactments are applicable. For the purpose of this research, Islamic Family Law (Federal Territories) Act 1984 (IFLA) will be used. This research attempts to highlight these two laws governing the law of access to the child in Malaysia. The

research also tries to answer the question as to whether access is regarded more as a right rather than a responsibility or otherwise.

**Background:** In most situations, access is considered as a right. Section 89(2) of the LRA provides the law with regard to this. Many cases establish that the one who is not given custody will be given the right of access. In the case of *Foo Kok Soon v Leony Rosalina*,<sup>1</sup> the court mentioned that access is a parental right and this right is essential to both the parent deprived of custody as well as the children.<sup>2</sup> This right will be upheld and promoted in most of the situations as illustrated in the case of *T v. T*.<sup>3</sup> The question arises as to whether access is an absolute right? Can a parent be denied access? Can access also be regarded as a responsibility and not merely a right? All these questions will be answered in this research.

**Objectives:**

1. To observe what is the position of the law in Malaysia with regard to access.
2. To find out what are the position of access in other jurisdictions especially English and Scottish.
3. To discover what Islam provides with regard to law of access
4. To make comparison among the laws and jurisdictions and to suggest improvement to the Malaysian law applicable both to Muslims and non-Muslims.

**Methodology:** This research is mainly library research. The statutes relevant to the law of access are the main reference supported by decided cases reported in various journals in Malaysia. Some comparisons with other jurisdictions such as English and Scottish are also made in order to improve the law in Malaysia. With regard to Islamic Law, classical Islamic books are the main source of reference. Besides, reported cases from Shariah Court are the second main reference.

**Findings:** Access can be both; responsibility and right. It can be a right from the view point of a parent who wants to exercise his right to see and visit the child. On the other

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<sup>1</sup> [1998] 4 CLJ Supp 289.

<sup>2</sup> See also *Chang Ah May* [1991] 1 CLJ 309; *In Re Sim and Chia* [1993] 3 CLJ 254; *Re T (A Minor)* [1993] 1 AMR 21; *Kali a/p Kuppusamy v Tharmalingam a/l Maniam* [2008] 7 MLJ 24.

<sup>3</sup> [1966] 2 MLJ 302.

hand, it can be considered as an obligation on the part of the parent to see and visit the child in order to ensure the development of the child. This sense of responsibility is especially important in the case of some parents who seem to forget the fact that he or she has a child or children who is or is living with other person who also need his or her attention. This is in line with Article 9(3) of the United Nation Convention on the Rights of the Child.

**Conclusion:** It seems that the legal provisions in Malaysia with regard to access are focusing more on its ‘right’ perspective rather than ‘obligation’ perspective. Nevertheless, from the discussion, it can be seen that other jurisdictions, such as English and Scottish, consider access not only as a right but more importantly also as an obligation on the part of the parent. This is important in order to ensure the fact that the child’s need to be cherished regardless of whether their parents are living together or separately is not taken lightly by the parents. This is especially true in the case of some parents who seem to forget the fact that they actually have children who are living with other person and these children are waiting and longing for their attention, supervision and love. Thus, it is suggested that, the fact that access should also be considered as obligation and not merely right should be embodied in the current legislations for both Muslims and non-Muslims.

From the Islamic perspective, we may conclude that access is a right as well as an obligation on the part of the parent. It is considered as a right in the sense that the one who is not given custody will have the opportunity to see and visit the child as a way to release his or her longing to the child. It is considered as an obligation in the sense that, especially in the case of a father, it is his responsibility to make sure that the child is brought up as a good person. Thus, his responsibility towards the child in terms of general upbringing, education, discipline, future career etc will never diminish even though the child is living with the other parent.

**Future Plan of the research:** To what extent other persons (other than parents such as paternal grandparents, maternal grandparents, aunt, uncle) will have right/responsibility to access?

**References:** The Law Reform (Marriage and Divorce) Act 1976 (LRA), Islamic Family Law (Federal Territories) Act 1984 (IFLA), *The United Nations Convention on the Rights of the Child*, various classical books on Islamic Law, reported cases in and outside Malaysia from various journals, English and Scottish Law Commissions, textbooks on family law.

**Summary of Research Report:** Access can be both; responsibility and right. It can be a right from the view point of a parent who wants to exercise his right to see and visit the child. On the other hand, it can be considered as an obligation on the part of the parent to see and visit the child in order to ensure the development of the child. This sense of responsibility is especially important in the case of some parents who seem to forget the fact that he or she has a child or children who is or is living with other person who also need his or her attention. This is in line with Article 9(3) of the United Nation Convention on the Rights of the Child.

It seems that the legal provisions in Malaysia with regard to access are focusing more on its ‘right’ perspective rather than ‘obligation’ perspective. Nevertheless, from the discussion, it can be seen that other jurisdictions, such as English and Scottish, consider access not only as a right but more importantly also as an obligation on the part of the parent. This is important in order to ensure the fact that the child’s need to be cherished regardless of whether their parents are living together or separately is not taken lightly by the parents. This is especially true in the case of some parents who seem to forget the fact that they actually have children who are living with other person and these children are waiting and longing for their attention, supervision and love. Thus, it is suggested that, the fact that access should also be considered as obligation and not merely right should be embodied in the current legislations for both Muslims and non-Muslims. From the Islamic perspective, we may conclude that access is a right as well as an obligation on the part of the parent. It is considered as a right in the sense that the one who is not given custody will have the opportunity to see and visit the child as a way to release his or her longing to the child. It is considered as an obligation in the sense that, especially in the case of a father, it is his responsibility to make sure that the child is brought up as a good person. Thus, his responsibility towards the child in terms of general upbringing, education, discipline, future career etc will never diminish even though the child is living with the other parent.