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INTERNATIONAL CONFERENCE
FAMILY LAW, FAMILY JUSTICE & MADASID AL-SHARI'AH

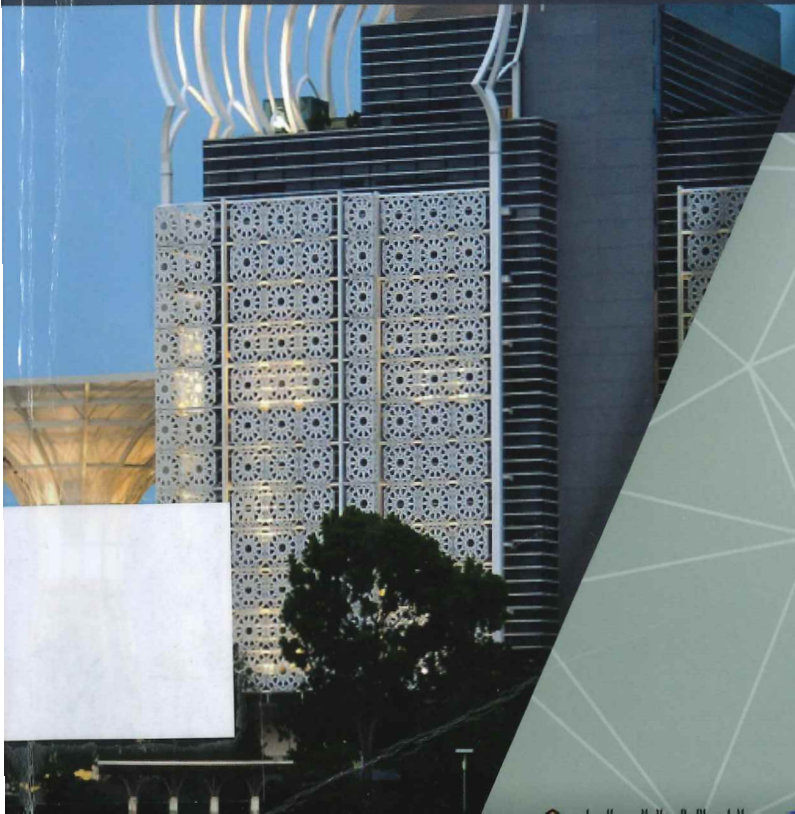


FAMILY LAW IN MALAYSIA AND BEYOND

TOWARDS SUSTAINABLE
FAMILY INSTITUTIONS

EDITORS

MAJDAH ZAWAWI
NORA ABDUL HAK
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Edited by
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Preface

The year 2020 has indeed been a memorable year. The onslaught of the COVID-19 pandemic and the decision of many countries around the world to lockdown has left an impact on the most sacred of institutions, the family institution. The lockdown impacted families in many ways. On one hand many families found solace in each other and the time spent during lockdown strengthened their relationships. For Muslim families in particular, the lockdown allowed congregational prayers, fasting, reciting the Qur'an and celebrating eids together to strengthen the familial bonds. Alas, on the other hand, for some families, the lockdown left devastating results. The increase in mental health problems, aggression against women and children as well as feuds between husband and wife that lead to divorces. Not only that the lockdown also highlighted the increased dependency on the use of technology in order to sustain communication with family members who are far away, friends and more importantly the workforce despite the inability to communicate on a face-to-face basis.

The issues facing the family during the COVID-19 pandemic calls for an examination of how the Maqasid al-Shari'ah or Objectives of the Shari'ah is reflected in legislations and initiatives that protect the family institutions. Legislations that aim at promoting and protecting the Maqasid of the Shari'ah will ensure the sustainability of the family institution, especially in the COVID-19 pandemic. The sustainability of the family institution depends on many factors. Hence, the Department of Syariah Judiciary, Malaysia (JKSM) has collaborated with the Islamic Law Department, the Family Law and Ethics Research Unit (FAME) and the Harmonisation Unit of the Ahmad Ibrahim Kulliyah of Laws, International Islamic University, Malaysia in organizing the International Conference on Family Law, Family Justice and the Maqasid Shari'ah (ICFL) 2021.

This collaboration is further strengthened with the participation of the Islamic Religious Council of the Federal Territories (MAIWP) and the Association of Malaysian Syariah Officers (PPSM).

Alhamdulillah, the Conference has received an encouraging number of participations in the form of English, Bahasa Malaysia and Arabic papers. This has necessitated the collection of 4 books which embodies the papers that were accepted for presentation and publication. The process of vetting through the papers were tasked upon 4 Chief Editors and their respective Editorial Teams. All the papers had undergone a single blind review process, which required the authors to comply with the suggestions made by the reviewers before the papers were accepted for presentation and publication.

This book consists of a collection of the English papers presented at the Conference. This book concentrates primarily on the following Conference sub-themes:

1. Spousal Rights and Responsibilities;
2. Financial and Property Rights;
3. Children's Rights and Protection;
4. Parenting and Parental Rights;
5. Social Media and the Family;
6. Violence and Family;
7. Family Court;
8. Enforcement of Court Orders;
9. Judicial Creativity in Family Proceedings;
10. Family Law and International Conventions; and
11. Harmonization of Shari'ah and Civil Law.

In view of these sub-themes, this book is divided into 6 parts. Part I of this book deals with spousal rights and responsibilities which include financial and property rights as well as how these rights are affected when there is a breakdown of the family institution. This

part is made up of 4 chapters. Chapter 1 examines the status of international marriages and issues of citizenship laws in Malaysia. Meanwhile, Chapter 2 highlights the necessity of obtaining spousal consent in cases of medical emergency. The author highlights the position both under the Shari'ah and the Malaysian law. This brings us to Chapter 3 which extrapolates the legal dilemma faced by married couples in cases where there is a joint ownership for a house under the private lease schemes in Malaysia. This part is rounded off with Chapter 4 which brings out the challenges faced by couples who are undergoing the reconciliatory process.

Part II of the book proceeds with the issues surrounding children's rights and protection. This part starts with Chapter 5 which analyzes the protection of children's health under environmental and child laws. The discussion then concentrates on the issue surrounding childhood immunization programs in Malaysia which is the subject matter of Chapter 6. Chapter 7 brings to the fore child protection and how it is dealt with in Bangladesh. This is final leg of Part II and the next part of the book deals with issues relating to parental rights and children's duties.

The next part of the book is Part III is an intriguing part which consists of only chapters that are very significant because they deal with a core aspect of the family which is often neglected. This part looks at parenting and parental rights whereby Chapter 8 concentrates on the need to protect the rights and well being of the elderly in the family and society. This issue is carried through to Chapter 9 which focuses on the protection of parents and the elderly in several jurisdictions, other than Malaysia.

Part IV brings the discussion outside the realm of rights and responsibilities owed to each other amongst family members and shifts the concentration of the discussion to examine the effects of using social media on the family. This part begins with Chapter 10

where an analysis is made on the need for anti-cyber bullying laws to be put in place in order to cater to the serious repercussions on children when they are subjected to attacks while surfing the internet. Subsequent to this, Chapter 11 further highlights the responsibilities of internet users when sharing information on the net.

The book continues with Part V which features family law and the interface with international law. In this regard, Chapter 12 addresses the crucial problem plaguing many countries in relation to the status of refugees and their children. Chapter 13 then continues with the rights of women in the United States of America and Chapter 14 further relates to human rights issues in situations where there is an incoherence in contracts.

The book is ended with Part VI which addresses the efforts of harmonization Shari'ah and civil law. Chapter 15 thus provides an overview on the Islamic principles relating to religious diversity in the workplace and Chapter 16 then underlines the rights of parties in force majeure cases and there is a frustration of a contract.

The chapters in this book clearly draw the attention of the readers to areas that allow the family to grow in a sustainable manner. On behalf of the contributors, we hope and pray that this collection can make a substantial contribution to this development. We wish to thank Dr. Nadhilah A. Kadir and Dr. Siti Zainab Abdul Rashid for the typesetting of the papers. And a special mention to Assoc. Prof. Dr Azizah Mohd, the Director of ICFL (AIKOL) for coordinating and effectively ensuring that all the books are published in record time. *Jazakumullahu khairan kathira!*

Editors

FAMILY LAW IN MALAYSIA AND BEYOND: TOWARDS SUSTAINABLE FAMILY INSTITUTIONS

This book consists of a collection of works written by reputable authors who had initially presented their work at the International Conference on Family Law, Family Justice and the *Maqasid al-Shari'ah* 2021. The chapters in this book clearly draw the attention of the readers to areas that allow the family to grow in a sustainable manner. The book has been divided into six parts for ease reference. Part I of this book deals with spousal rights and responsibilities which include financial and property rights as well as how these rights are affected when there is a breakdown of the family institution. Part II of the book proceeds with the issues surrounding children's rights and protection. The next part of the book is Part III is an intriguing part which consists of only chapters that are very significant because they deal with a core aspect of the family which is often neglected. Part IV brings the discussion outside the realm of rights and responsibilities owed to each other amongst family members and shifts the concentration of the discussion to examine the effects of using social media on the family. The book continues with Part V which features family law and the interface with international law. The book is ended with Part VI which addresses the efforts of harmonization Shari'ah and civil law in Malaysia. This book would be of interest to judges, legal and Shari'ah practitioners, academicians, students and anyone who wishes to examine a comprehensive and updated approaches to family law in Malaysia and beyond so as to ensure sustainability of the family institution in the future.

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