

Unite to make a positive impact

Experts: Everyone needs to play part in raising legal age of marriage

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PETALING JAYA: The onus is on the Federal Government and all states to come together to review legislation needed to raise the legal age of marriage to 18 nationwide to curb underage marriage.

Legal experts said it takes more than just the Federal Government to push for the change.

Syariah lawyer Nizam Bashir said the government would need to do some groundwork to ensure the change and implementation could take off smoothly.

"I think states would likely take their cue from the Prime Minister.

"The Sultan of Selangor, for example, has expressed support for such an amendment as well," he said in an interview yesterday.

However, he noted that the Federal Government might not receive cooperation from the states, as they have the power to legislate on Islamic, personal, and family law under the 9th Schedule of the Federal Constitution.

"The cold hard truth is that statutory child marriage provisions subsist in civil and Islamic law.

"The issue may be perceived to be sensitive for the Federal Government from a religious perspective, but on the other hand, it may be equally troubling from a secular angle.

But he said this does not mean that the federal government should not act to address the underlying causes that allow men to marry underage girls for less salutary reasons.

When a child marriage takes place, Nizam said there are additional requirements imposed, by way of consent from the state chief minister or a Syariah Court judge, to ensure it happens for the right reasons.

"There are other issues that warrant our attention, such as the underlying causes of child marriage such as poverty and education," he said.

In Malaysia, Muslims' minimum legal marriage age is 16 for females and 18 for males, and 18 for non-Muslims of both gender.

However, girls below the legal marriage age can still get married with the approval of a Syariah court for Muslims and the approval of the state's chief minister for non-Muslims.

These provisions are spelt out under each state's Islamic Family Law enactments and the Law Reform (Marriage and Divorce) Act 1976.

Marital and Family law practitioner, Hana Lee Phyn Ping from Daljit Singh Partnership, said a standardisation of the legal minimum marriage age across all states would be the most significant measure to end underage marriage in Malaysia.

"The current setback of ending underage marriage is that the marriage law in Malaysia is not the same for Muslims and non-Muslims.

Lee said legal reform of the minimum age of marriage, other related laws that allow child marriage, and mandatory marriage registration are pivotal.

"The federal and state governments ought to recognise the long-term negative effects of legalising child marriage in terms of society's development and propose to the parliament to reform the relevant laws," she said.

A family lawyer who did not wish to be named said that as far as Islamic family law is concerned, the power is in the hands of the state's Sultan.

"If a total prohibition of underage marriage is what we are after, all states must come together.

"Otherwise, we will still be left with differ-

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Hana Lee Phyn Ping

ent laws in different states," he said.

For senior lawyer and writer Datuk Roger Tan, the laws governing underage marriage may differ for Muslims and non-Muslims, but those supporting underage marriage should consider a child's maturity.

"I always ask those who advocate child marriages to tell me this: How will you react if one day your underage daughter comes home and tells you she is in love with a middle-aged man?

"Will you give your blessing, or will you say, 'Darling, at your age, what do you know about love?'" he said.

In March 2022, the Women, Family and Community Development Ministry stated in a Parliamentary reply that it would not legislate against child marriages but would, however, curb and address underage marriages through the implementation of the National Strategic Plan for Addressing the Causes of Underage Marriage (2020-2025).

This National Strategic Plan has identified

six risk factors to child marriage: poverty, social acceptance of child marriage, lack of access to education, legislation that allows marriage under the age of 18, lack of legal status and rights for undocumented children, and lack of access to sexual and reproductive services.

On July 27, Women, Family and Community Development Minister Datuk Seri Rina Harun said in a parliamentary written reply that the Statistics Department reported 1,856 child marriages in 2018, which went down to 1,459 in 2019 and further reduced to 1,124 in 2020.

On Aug 26, Prime Minister Datuk Seri Ismail Sabri Yaakob said an action plan to address underage marriage is in the works, with policies and legislation also being formulated to make them more gender-sensitive.

He said all states should address child marriage issues, pointing out that Kedah had already gotten the ball rolling and that other states should follow suit.

He also said the federal government would do its part by continuing to improve legislation and spearheading more gender-sensitive programmes.

These included the review and renewal of the National Women's Policy and the drafting of gender-sensitive bills.

Among those who called for the legal marriage age to be raised to 18 were Wanita MCA, saying it was the only way to curb child marriages.

Its chairman Datuk Heng Seai Kie said the ministry's proposal to solve the issue of underage marriages through "indirect approaches" was not the solution.

She also called on the ministry to heed chief Syariah judge Datuk Dr Mohd Na'im Mckhtar's call for the legal marriage age to be increased to 18.