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Harmonisation of Malaysian and Islamic Laws on Elimination of Child Labour Across the Nation

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Abstract: Some Malaysian children are working for different reasons. This study discusses harmonisation of Malaysian laws on child labour to protect children from hazardous labour. Child labour is a global problem due to poverty, culture, laziness, and corruption, among others. It is the parents' and government duty to provide adequate provisions for the citizens, particularly in childhood. This paper examines the harmonisation of Islamic law, Children and Young Person Employment Act 1966, Education Act 1996, Child Act and United Nations Convention in Malaysia. Many contemporary Muslim jurists strongly maintain their position that civil laws or common laws are un-Islamic while many contemporary jurists argue man- that Islamic *fiqh* is unsuitable for the contemporary life of Muslims and new issues globally. It is submitted that if man-made laws or the United Nations Conventions on the elimination of child labour are in line with the *Qur'an* and *hadith* as well not contravening the principles of the Islamic law, then the provisions are permissible.

Keywords: Malaysia, Harmonisation, Child Labour, Islamic Law, Children, and Young Person Employment Act UN Convention

I. INTRODUCTION

Child labour is rampant globally with many children engaged in hazardous and unhealthy jobs and services that can affect them physically, mentally, educationally, morally, socially, and spiritually. In many countries, adults benefit from the products produced by children such as shoes, bricks, clothing, food, and others. They are known as child workers because they work under abusive and exploitative conditions that are clearly dangerous to them (Alec and Jankahish, 1997). Child labour is a widespread social illness that exists

in all parts of the world directly or indirectly. Child labour is not peculiar to a particular country and is primarily the result of poverty. It is a despicable form of economic exploitation that exists even in industrialised countries. Some overlook the child labour predicament in industrialised countries because they have hidden agendas towards the developing countries (Rohimi, 1996).

In August 1990, the American Youth Work Centre and the National Consumers League reported that child labour violations in the United States soared from 8,731 in 1984 to an estimated 40,000 in 1990. A Government Accounting Office Study reported that 48 minors were killed and 128,000 injured in work-related accidents during 1987 and 1988. For 2000, 8,369,000 children between 16 and 19 were economically active. Moreover, in New York, it reported 20,000 children were on the streets.¹ Similarly, the Portuguese government reported that every year, 160,000 children leave school early, and 60% never complete the 6th grade. These children fund full-time jobs in the textile industry, in small businesses that manufacture shoes, ceramics, or any other number of inexpensive items that Portugal exports to European countries (Tijjani, 2002).

Child labour was also reported in other European countries such as Greece where some 35,000 to 40,000 children were estimated as child labourers. In Italy, there is an estimated 500,000 to 1.5 million working children. In the southern city of Naples, thousands of children work gluing shoes which are made for the fashionable stores of Northern Europe. Many are confronting financial challenges and cycle of poverty rather than working to earn pocket money to buy trendy clothes, make-up, or the latest CDs (Rohimi, 1996). In developing countries like the Philippines, India, Indonesia, and Thailand, child labour is everywhere the urban and rural areas due to the abject poverty. Thus, child labour is not the product of a particular culture or stage of development.

Child labour comes in different forms where children are working in different sectors hoping to generate income to provide for their personal and parental needs. In order to curb child labour globally, the Human Rights Commission called for high priority to be given to the elimination of child labour, including child-bonded labour. Child prostitution, child slavery, child pornography, child employment in dangerous industries, use of children in armed conflicts should also be eliminated (Tijjani, 2002, Yadudu, 1992).

Working children are prone to occupational accidents such as burns, electrical shocks, sprains, loss of limbs, and death. According to the World Health Organisation (WHO), injury is the first cause of death among children and one child in every five or 10 sustains an accident each year. They also suffer from occupational diseases and ergonomic hazards. The Malaysian government has to intensify its efforts to curb all forms of child labour (Alec 1997).

There is no direct evidence from the Qur'an and Hadith on child labour but there are many provisions from both sources of Islamic law on the proper and adequate provision and maintenance of children by biological parents, family, and the government. Children must be properly and adequately maintained and provided according to the parents' income. Inadequate provision, negligence, and poverty contribute to child labour if the biological, relatives, family, NGOs, and government fail to maintain the less privileged children adequately.

Less privileged children should be cared for mentally, physically, medically, spiritually, educationally, and psychologically. Failure to provide for the children will drive them to hazardous and unhealthy labour to survive.

Abandoning needy children subjects them to unhealthy labour where their lives are in danger despite the many Qur'anic and Sunnatic provisions for children's maintenance. It is the duty of parents and the Malaysian government to cement efforts to properly maintain needy children across the nation. The Holy Qur'an states that parents should not be overburdened beyond their income but basic provisions should be provided as necessities for children's survival. All citizens should have their basic needs seen to by the government if parents are unable to do so (Amuda, 2010).

1.2. Data Collection on Child Labour in Malaysia

The study applied qualitative and quantitative methods that include fieldwork that involved distribution of questionnaires to respondents in the Malaysian states of Johor, Selangor, Pahang, Kedah, Sabah, and Sarawak. Materials and data from books, statutes, articles from refereed journals, gazettes, newspapers, and relevant websites were consulted for analysis. Five hundred and fifty-seven (557) working children in the six states participated as targeted respondents. The questionnaires were distributed between June, 2014 and April 2015. In order to carry out the principal component analysis (PCA), a total number of 557 respondents participated in the first instrumental validation section where 557 questionnaires were distributed. The researchers collected 150 distributed questionnaires from the respondents. More than 90% of the questionnaires were returned, which is a good response. Babbie (1989) explained that achieving a 50% response can be considered adequate, 60% should be regarded as good, while 70% should be considered a very good response rate for the data analysis. Finally, all distributed questionnaires were collected and critically examined in line with the research hypotheses.

1.3. Analysis of Questionnaire on child labour in Malaysia

The total number of 557 questionnaires was distributed to the working children in six states in Malaysia to discover rate and causes of child labour across the nation. The data from the above table reveals that an overwhelming (n=343) 61.6% of respondents were male while (n=214) of 38.4% were female. Regarding race, the majority of participants (n=366) of 66.1%, Chinese were (n=64) 11.5%, Indian were (n=45) 8.1% while other participants were (n=82) 14.7%. As for religion, the majority of participants were Muslim (n=414) with 74.3%, Christians (n=67) 12%, Buddhist (n=45) 8.1%, Hindus (n=26) 4.7%, and others (n=5) 0.9%. The age of participants varied from 5-9 years (n=3) 0.5%, 10-15 years (n=106) 19%, and 15-17 years (n=448) 80.4%.

Regarding parental education, the majority of participants' mothers attended secondary school (n=240) 43.1%, (n=126) 22.6% had informal education, while (n=115) 20.6% attended primary school. The remaining (n=72) 12.9% attended university while (n=4) 0.7% had no educational records but are considered to have had informal education. Similarly, the majority of participants' biological fathers attended secondary school (n=258) 46.3%, (n=98), 17.6% had informal education, while (n=112) 20.1% attended primary school. The remaining (n=82) 14.7% attended university while (n=7) 1.3% of other participants had no educational records but are considered to have had informal education. Parental marital status of working children revealed that (n=445) 79.9% are married, (n=80), 14.4% were divorced, while (n=32) 5.7% passed away which contributed to involvement in child labour. The working children were asked about their guardians of which the majority of (n=419) 75.2% agreed that their mothers and fathers are their guardians, (n=25) 4.5% were cared for by their father only, (n=85) 15.3% cared for by their biological mother, and (n=28) 5.0% had different guardians.

As for the average number of working hours, (n=268) 48.1% work between 5-8 hours daily, while (n=151) 27.1 % work between 1-4 houses per day, (n=100), 18% work between 9-12 hours, and (n=38) 6.8% work for 12 hours.

On the occupation and nature of work, (n=4) of 0.9% worked in boutiques, (n=10) 2.2% as bus conductors, (n=45) 9.9% in business, (n=2) 0.4% in cafeterias, (n=38) 8.4% in the car wash, (n=28) 6.17% as cashiers, (n=23) 5.1% in cyber cafés, (n=4) 0.9% as chefs, (n=4) 0.9% as cleaners, and (n=6) 1.3% as clerks. Some children are working in construction (n=4) 0.9%, technician (n=2) 0.4%, factory workers (n=5) 1.1%, farmers (n=2) 0.4% and fast-food (n=17) 3.7%, in hotels (n=3) 0.7%, as mechanics (n=18) 4.0%, in the night market (n=11) 2.4%, in petrol stations (n=4) 0.9%, restaurants (n=74) 16.3%, sales & promotion (n=24) 5.3%, salons (n=4) 0.9%, and as shop assistants (n=84) 18.5%.

The above data indicate that child labour exists in Malaysia despite the government efforts to provide adequate provisions, basic needs, and amenities to all citizens. Many children are still working and drop out from school. The aim of the present research is to attempt to harmonise the Malaysian laws on child rights with Islamic legal principles to find an effective solution to reduce the statistics of working children across the nation.

1.4. Malaysian Children and Young Persons legislation

The Malaysian government has taken many commendable efforts to tackle problems related to child labour and to achieve drastic and significant reduction of child labour. Child labour among Malaysians regardless of their gender, race, religion, and ethnicity have been reduced. Although the percentage of Malaysian child labour is relatively low compared to some other countries in Africa, Asia and South America Some children are working to assist their parents in peasant or smallholder agriculture, rice fields, rubber small holdings, plantation industry, oil palm holdings. Malaysian children also work in coffee stalls, restaurants, motor repair shops, factories, and in homes as domestic helpers (Jomo, 1992).

There are many provisions under the Malaysian law regulating child labour. The Children and Young Persons (Employment) Act 1966, Child Act 2001 (Act 611), Children Enactment, No.1 Of 1922, Child Protection Act 1991, Act 468, Child Protection (Place of Safety) Regulations 1992, Child Protection (Prescribed Forms) Regulations 1992 and other related laws ensure children's rights and protect them from exploitation, abuse, labour, and others. Section 2 of the Children and Young Persons (Employment) Act 1996 defines a child to be any person below 14 years and considers any person older than 14 and below 16 to be a young person. The section permits children to engage in light work under his or her family supervision. The section further provides that children can engage in public entertainment, be an apprentice under an apprenticeship written contract and also engage in employment approved by the government in any school, training centre, institution, or training vessel (Shildren, 1996). The expression "light work compatible with his capacity" is not clearly defined in the provision. For that reason, the Malaysian Department of Labour would have ample authority to determine the suitable light work for the child and in the interest of children

Similarly, section 3 of the Employment Act 1955 provides that a young person may be engaged and employed in suitable work within their capacity under their parents in an office, shop, hotel, bar, restaurant, stall, factory, workshop, theatre, and vessel under their parents (Employment Act 1955). It is important to note that it is duty of the Director General of Labour to opine and determine whether such employment

could be detrimental and interfere with the child and young person's health, education, and integrity. Therefore, the Minister has the authority to prohibit children from any detrimental work in the interest of the child.

Section 13 of the Employment Act also permits children and young persons who are competent to enter into contracts of employment as an employee and they are legally permitted to sue their employer for any breach of law. The provision also protects the child's interest from improper exploitation and abuse and the employer is not allowed to claim damages or indemnity from a child or a young person for his or her breach of contract or consented contract (Employment Act 1955).

Based on the Children and Young Persons (Employment) Act 1966, Child Act, 2001 Act 611, Children Enactment, No. 1 of 1992, Child Protection Act 1991, Act 468, Child Protection (Place of Safety) Regulations 1992, Child Protection (Prescribed Forms) Regulations 1992 and other related laws, no child under 14 years is fit and capable to be employed as a driver, gardener, washer man and washer woman, and butler due to the child's physical unfitness. The concept of domestic help should only be restricted to cleaners, child's nurses, and grooms on limited hours for those for whom work is inevitable in order to survive. Therefore, children under 14 years of age are not eligible to drive and not qualified to get a driving licence. So, employing children under 14 years as drivers on the guise of domestic servants will be contrary to section 27 subsection 2 of the Malaysian Road Transport Act 1987 (Act 333) & Commercial Vehicles Licensing Board Act, 1987 (Act 334) which provides that under aged driving licence applicants shall be disqualified due to lack of physical fitness (Road Transport Act, 1987).

It is also an offence under the Malaysian Road Transport Act 1987 in sections 39, 46, 47, and 48 to allow and permit a child less than 14 years to drive a motor other than a motor cycle and also to allow a person under 21 years of age to drive a tractor, mobile machinery heavy, or light, heavy motor car, or public service car. It further states that the High Commissioner in the Council is to register classes of children or young persons employed as labourers. The provision also prohibits the employment of a child or young person to be an attendant, manager, or labourer of machinery in motion (Road Transport Act, 1987).

These provisions have the objective of prohibiting children below 18 years to drive, as it is also dangerous and hazardous. Children under 14 years should not be employed as drivers because it will affect the employer in terms of punishment and the child in terms of health and risk of life due to a sudden accident.

Sections 46, 47, and 48 provide for the registration and documentation of the names of employed children or young persons in order to monitor the condition and health of employed children. However, it is prohibited under the law to employ any child as a machinery attendant and manager. The Malaysian government has achieved significant progress in controlling child labour because of the government's justice in dealing with citizens. However, the number of child labour in the nation is increasing and the government has to do everything possible to curb its rise before it gets out of control. In order to safeguard and protect children from danger, fire, and harm, sections 49, 50, 51, 54, and 55 state that no child or young person should be employed as an electrical attendant, labourer, work under ground, or with electrical apparatus. The sections stipulate that no young person shall work more than four hours without 30 minutes rest as a period of leisure and not work more than seven hours per day. The provision also prohibits young

persons from working for more than six days consecutively without one day's rest (Road Transport Act, 1987). These provisions also retain and ensure sections 4 and 6 of the Children and Young Persons (Employment) Act 1966 and regulation 4 of the Children and Young Persons Employment Regulation 1966 (Children and Young Persons (Employment) 1966).

In some circumstances, a 12-year-old child may be employed. The child should not be employed until he or she is physically and mentally fit to be employed and also approved by the commissioner in charge. Sections 53 and 54 deal with the child's health and condition during his or her working hours. Children should not be allowed to work more than seven hours per day and six days per week. Section 53 also provides that a child should not be permitted to work and study in a day more than eight hours. This research finds it cumbersome and heavy on the child to study and work. If conditions require it, it is better for the child to study first and work for two hours per day after the school period. It would be irrational for the legislative council to pass any resolution prohibiting the employment of children and young persons as labourers when the government fails to fulfil its duties and responsibilities.

2. MALAYSIAN CHILD ACT 2001

The Malaysian Child Act 2001 was passed to amend and consolidate the laws relating to Malaysian children's care, protection, and rehabilitation. In any society, a child is not only an important component but also the key to society's survival, development, and prosperity. However, the physical, mental, and emotional immaturity of children needs safeguards, care, and assistance to enable the child to contribute substantially and positively to society. For the child to be at peace and have affection, happiness, love, and understanding, the family should provide the utmost support and assistance to the children (Malaysian Child Act 2001). In a situation where the biological parents are unable to provide adequate provisions for their children, the Malaysian government should provide for the basic needs of less privileged children regardless of the gender, tribe, religion, faith, and political affiliation.

Sections 17, 18, 19, 20, 27, 28, and 31 of the Malaysian Child Act 2001 defines a child who is in need as a child who is at substantial risk, physically, and mentally injured or sexually abused by a parent or guardian or by a member of her family. In a situation where the parents are unfit or unable to take care of their children due to a lack of adequate maintenance, the child would be taken into temporary custody. Similarly, the protector or police officer who will be the child's custodian has to give his or her particulars for the purpose of legal inspection. The provisions further state that the child must be brought to the court within 24 hours or before a magistrate in order to place the child in a safe place. In case of child illness where the child is in need of medical attention, the protector or police officer in charge of the child should bring the child to a registered medical practitioner rather than take the child to court or before a magistrate. It is also the duty of the medical officer to inform the protector after the medical examination that the child is physically or mentally injured, ill-treated, neglected, abandoned, or exposed to sexual abuse. The provision also permits any member of the family to inform the protector or police officer that the child was physically or mentally injured or sexually abused (Malaysian Child Act 2001).

Sections 17, 18, 19, 20, 27, 28, and 31 of the Malaysian Child Act 2001 provide that children should be properly and adequately taken care of by the biological parent or guardian. The child should be protected physically, mentally, and sexually. Unfortunately, many Malaysian children are at substantial risk due to smoking and engaging in dangerous activities while there is no or inadequate public intervention. The

public should be reoriented in order to take corrective action against any immoral children in society; public intervention will reduce the percentage of child immorality in society. These sections would be of benefit for children, if the adequate provision is given by the police officers and protectors. The protector should inform the authorities that he or she is in charge of the child by giving all his or her particulars for legal inspection. Section 19 of the Malaysian Child Act is mainly for the child's maintenance and protection where the person who takes the child into temporary custody is required to present the subject at the Court of Children to ensure adequate provision for the child. In order to protect the child's life and health, the protector and police officer in charge of the child are allowed and legally permitted to take the child to hospital for medical attention if the child's health demands it before presenting him or her in court. It is the duty of the registered medical practitioner to inform the protector of the condition of the child after he has carried out an examination or treatment. Failure to do so will make him liable for a fine of 5000 ringgit or two years' imprisonment or both. This is to help the authorities investigate the causes of the child's condition and punish the culprit as a deterrent to others. Rationally, a member of the family should be a housekeeper of another family member against any harm. In a situation where there is no interaction between members of the family, it would be difficult to know what is happening in another family. Despite the provision, some Malaysian female children have been sexually abused by their family members and the victim could not report her case to the police for legal action to be taken against the accused. Many children are not directly abandoned or neglected but some are abandoned and neglected due to divorce where the biological father fails to provide for his children and does not take care of the children live (Paduka Hajjah Zaleha, 1995).

Sections 32, 33, 38, 46, 47, 48, and 64 of the Malaysian Child Act 2001 state that no child under the care or custody of parents, guardians, or custodians shall allow the child to engage in begging, selling, receiving alms, carrying out illegal hawking, illegal lotteries, gambling, or other illegal activities. It also prohibits parents or custodians to abandon a child without making reasonable provision. The amounts of 5000 ringgit or two years' imprisonment or both are prescribed as a punishment for violators of the provision. The sections further permit a child to be sent for rehabilitation if he or she is induced to perform any sexual act. Similarly, children may be sent and detained in an approved school, place of refuge, probation hostel, or centre based on the parent or guardian's request and the court approval. The provision laid down 10000 ringgit or five years' imprisonment or both as a punishment for any person whose child is in his possession without lawful authority. The Act also ensures that anybody who removes or helps the child to escape from a probation hostel without lawful authority commits an offence liable to 10000 ringgit or five years' imprisonment or both for violating the sections (Malaysian Child Act 2001).

Despite this provision, many school aged Malaysian children are involved in selling drugs and pornography that is detrimental to their health. Such children should be specially handled in order not influence other students. Perhaps, the Malaysian police should make more effort to track down the sources of the drugs and pornographic items. Arresting the children reported is not helping the situation but arresting and punishing those responsible will drastically reduce the occurrence of such crimes. Biological parents should not deceive themselves and make a police report whenever they notice any strange behaviour from their children and positive action should be quickly implemented. It is the biological parents' and guardian's responsibility to be well acquainted with and aware of their children's movements at all times.

However, the rate of divorce and single motherhood in Malaysia may cause a lack of adequate maintenance and provision for the children. The Malaysian government should study in depth the causes of divorce in Malaysia and how to control the rate of divorce that leads to single motherhood and the causes of the lack of children's maintenance. Parents should allow their children to marry someone they love not someone the parents like because the parents will not have to live with them. It seems that many broken Malaysian marriages reported are caused by the initial process in which neither the husband nor the wife were able to control and manage the crisis and conflict between them. In the best interests of the nation, the Malaysian government needs to arrest the public nuisances among the children and young persons that give a bad name to the Malaysian community due to their bad conduct. If the nuisances could be rehabilitated, their lives could be reshaped and restructured in the best interests of the children concerned, their family, and the nation at large.

It is possible that a child may be beyond the control of his or her parents but the question is what were the efforts and roles of parents before he or she plays truant or become a notorious criminal? If the biological parents or guardian are blind to the small mistakes their child commits, the child will not consider it a mistake or crime. But if prompt action had been taken on the children when they made the mistake, the child's criminal involvement would decline. Mothers should not be allowed too many hours in the office or private sector in order to have enough time for their children in the best interests of the nation.

In the best interests of the child, any offending children should be placed in an approved school, centre, and any suitable place to reshape their mind-set and restructure their lives without harm or corporal punishment. It is good to allow trained religious leaders to talk to them according to the child's faith which may play fruitful roles in inculcating the word of God in the child.

This section can be examined in two ways. First, some parents use the opportunity to take their children from the legal custodian without the knowledge of the main custodian. In addition, the rate of missing children in Malaysia is increasing. In 2004, more than 6,270 teenagers were reported missing and 4,620 were children and teenage girls. In 2005, police statistics revealed that 71 girls who ran away from their homes were found dead. In 2006, 71 reported missing girls were also found dead. In 2007, 3,246 girls were reported missing. In addition, in 2008, between January 1 and April 13, 303 under 18-year-old teenagers were reported missing in Malaysia according to the Deputy Internal Security Minister of Malaysia (Statistics of Missing Children In Malaysia, 2009). The biological parents should try to save their marriage and if divorce is the last alternative, they should separate amicably in the interests of their children.

In the case of children beyond control or in need of rehabilitation, sections 65,66,67,71,72,73,73, and 75 states that the Minister is allowed to appoint an approved school for the child for education, training, and detention while a religious programme should be included. Children of 10 years shall not be sent to an approved school and a child can only be sent to an approved school on the grounds that the child is found guilty of any offence or the parent can no longer exercise or is incapable of exercising any proper control over their child or the child is in need of institutional rehabilitation. However, if the child runs away from an approved school and fails to return, the child may be arrested without a warrant and brought before the court for Children. The court may add to the period of detention that may not exceed six months (Malaysian Child Act 2001).

Religious programmes should be included in the approved school curriculum for the children's rehabilitation in order to prepare the child religiously. With the level of modern technology and exposure

of children to Information Technology (IT), a 10 year old child is capable of committing what a 20 year old person could not commit in previous times. It is better for the parents, whenever they notice strange and immoral habits from their children, to quickly alert and inform the authorities in order to take necessary and useful action with the reported child. Parents should not deceive themselves and destroy the futures of their children in the name of love or affection by protecting the child from an approved school and rehabilitation.

If the child violates or flouts sections 71 and 72, the days of his or service should be increased based on the multiple days of his or her absence from the approved school. The parents or guardian who allowed him or her to escape should be punished for the violation of sections 71 and 72 of the Malaysian Child Act 2001 as a lesson for others. If the Henry Gurney School is the best place to rehabilitate and reshape the child's future, there is nothing wrong with placing children in such a school provided that the aims and objectives are achieved. Otherwise, children can be placed in another place for rehabilitation. With the rate and percentage of child crime, age should not be the condition for sending children into Henry Gurney Schools but the gravity and the nature of the committed crime should also be taken into consideration. If a 10 year old boy could maim and injure many victims, they child should be placed in a Henry Gurney School for the public and society's protection and safety. Such a case is that of Lewis Green a 10 year old boy who was involved in cannabis, cigarettes, alcohol, theft, threatening children with a knife, and vandalising a community centre (New Straits Times, 2007). If a 10 year old boy could commit such crimes and is left unpunished, it endangers others' lives. Thus, the gravity of the crime should be taken into consideration. The authority should not allow immunity for any accused child who is liable to be sent to a Henry Gurney School for his or her bad character and behaviour in the community. If the child is found guilty, he or she should be promptly sent to a Henry Gurney School for the rehabilitation of his or her bad conduct.

3. CONCEPTUALISATION OF HARMONISATION

Harmonisation is defined as a method of bringing one thing into harmony or agreement with another such as brings Islamic law in harmony with civil law or Customary Law in harmony with Convention in the interest of purpose and aims of harmonisation (Hornby, 1983).

Kamali argued that harmonisation can be effective and applicable in non-identical and different types of things, ideas, observations, opinion, and views. He argued that it is baseless and inadmissible to harmonise two identical things because there is basis for comparison between the two. Therefore, two different laws can be harmonised in the interest of the community (Kamali, 2003) Similarly, Bakar opined that Shari'ah and civil law are on equal footing for harmonisation (Bakar, 2003). The researchers disagreed with stance of Bakar in equalising Shari'ah with civil on the ground that former is divine, unchangeable, and implementable at any time and later contradict with the principles of Qur'an and Hadith. The reason is that civil law is susceptible to amendment compared to the Shari'ah. Therefore, harmonisation can be applied where Qur'an and Hadith are silent and with the opinion of classical jurists.

It is not permitted to harmonise civil law with definite evidence in Holy Qur'an and Hadith but permissible to harmonise *fiqh* or speculative evidence with civil laws on elimination of child labour in Malaysia. The views of classical jurists can be harmonised with civil law on elimination of child labour.

The views and opinions of jurists are subject to the change since their stance is based on speculative evidence from sources of Islamic law. Thus, Islamic law can be harmonised with Malaysian laws in the

interest of children and the nation. The harmonisation will pave way for Islamic jurist to draw similarities and differences between the two laws in order to base laws and rulings for the elimination of child labour on Islamic principles. The reason is that Muslims should not seek legal judgement from any law except the *Shari'ah* which means the *Shari'ah* should not be harmonised. Rather, the jurists' views could only be harmonised with civil laws on child labour provided that the principles are followed and maintained. This is based on the verse which states to the effect:

“Do they then seek the judgement of (the days of) ignorance. And who is better in judgement than Allah for a people who have firm faith.” (Surat Al-Ma'idah, 50).

4. CONCLUSION AND RECOMMENDATIONS

It can be concluded that Islamic law, Malaysian civil laws, child law, and United Nations Convention focuses on the maintenance of children. For Muslims there is a possibility to harmonise man-made law and Islamic law if the end product is consistent with Islamic principles. Any provision, Act, legislation and law on child rights in line with Islamic principles can be harmonised in the interest of children. If both man-made law and Islamic *fiqh* are in harmony on the elimination of child labour in Malaysia, the law will be applicable to Muslims. Islamic *fiqh* recognises the right of children and advocates the liberation of children from any hazards and unhealthy work. The conditions of harmonisation and precautions should dominate the minds of Islamic jurists during the harmonisation process in order to maintain the sanctity of the Islamic law.

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