

Khitbah Marriage in the Malaysian Context: A Legal and Socio-Religious Analysis Through the Lens of Maqasid Al-Shariah

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ABSTRACT

Nikah khitbah, commonly called nikah gantung (suspended marriage), has become increasingly prevalent in Malaysian society, especially among youths and university students in modern globalisation. This form of marriage involves fulfilling the essential pillars and conditions of marriage, as outlined in the Shafi 'i school of Islamic jurisprudence, while delaying cohabitation for various personal or social reasons. Despite its religious validity, the absence of official registration raises significant legal and social concerns. This study adopts a qualitative approach through document analysis and case studies to investigate the legal status, underlying factors, and ramifications of nikah khitbah on the Islamic family system in Malaysia. The findings highlight the need to reinforce premarital education and streamline registration processes to ensure compliance with Shariah principles and national legislation. Anchored in the framework of Maqasid al-Shariah, particularly the preservation of lineage (ḥifẓ al-naṣl), protection of family stability (ḥifẓ al-'ird), and safeguarding social welfare (ḥifẓ al-maslaha), the study advocates for stronger regulatory oversight and enhanced social support mechanisms. These measures are essential to uphold the integrity and well-being of Muslim families in Malaysia amid evolving social dynamics.

Keywords: Nikah khitbah, suspended marriage, Islamic family law, Maqasid al-Shariah

INTRODUCTION

Marriage in Islam is regarded as a noble act of worship (ibadah), a lawful institution to fulfil the natural human disposition (fitrah), and the foundational platform for establishing a stable family and a virtuous society. Conceptually, marriage (nikah) is a legally binding contract ('aqd) that legitimises the conjugal relationship between a man and a woman, conferring mutual rights and responsibilities upon both parties. Beyond satisfying innate human desires, marriage is the cornerstone for nurturing familial harmony and promoting moral rectitude within society, thereby protecting individuals from engaging in illicit relationships and sinful behaviours.

Islamic teachings underscore the importance of preserving clear boundaries between non-mahram individuals to uphold societal ethics and individual dignity. This directive is firmly rooted in divine guidance, as articulated in the Qur'an. For instance, Allah SWT explicitly prohibits any conduct that leads to unlawful intimacy or relations outside the bonds of marriage, as emphasised in Surah al-Isra', verse 32:

وَلَا تَقْرَبُوا الزَّوْجَ إِنَّهُ كَانَ فَحِشَةً وَسَاءَ سَبِيلًا

"And do not approach unlawful sexual intercourse. Indeed, it is ever an immorality and is evil as a way." (Surah al-Isra', 17: 32)

This injunction safeguards the integrity of social and family structures per Shariah principles (Rosidi et al., 2022). Marriage in Islam encompasses various forms and modes of implementation, which may evolve according to temporal, geographical, and societal contexts. One form garnered increasing attention in Malaysia is nikah khitbah, commonly called "suspended marriage" (nikah gantung). Nikah khitbah is characterised by a

marriage contract that is legally valid under Islamic law, fulfilling all essential pillars such as the presence of a guardian (wali), witnesses, and the mutual consent of the parties (ijab and qabul). However, the practical aspects of marital life, particularly cohabitation, are deferred due to specific circumstances. According to Kamus Dewan Bahasa dan Pustaka, nikah gantung denotes a marriage solemnised legally but not yet accompanied by a wedding ceremony or cohabitation between husband and wife. In the Malaysian socio-legal context, this practice is predominantly observed among university students, young couples, and individuals facing economic or social constraints. The contract legalises the relationship, although couples often postpone official registration with the State Islamic Religious Department (Jabatan Agama Islam Negeri - JAIN)..

LITERATURE REVIEW

Concept and Definition of Nikah Khitbah

Nikah Khitbah has garnered increasing scholarly attention in contemporary fiqh discourse, especially within the Malaysian socio-legal context. Linguistically, khitbah in Arabic denotes betrothal or engagement, while nikah refers to the legally binding contract that formalises the marital relationship between a husband and wife. When combined, nikah khitbah signifies a valid Islamic marriage contract entered into during the engagement period, wherein the couple postpones cohabitation for various reasons such as academic commitments, financial limitations, or a lack of readiness to assume full marital responsibilities (Sitiris, Mat Jubri, & Awang Hamat, 2020).

This phenomenon is widely recognised in Malaysia as nikah gantung (suspended marriage). It has notably increased among university students and young couples over the last two decades (Pejabat Mufti Wilayah Persekutuan, 2018). According to the Kamus Dewan Bahasa dan Pustaka (Fifth Edition), nikah gantung is defined as a legally valid marriage contract that has been solemnised but where the husband and wife have not commenced cohabitation or marital life, including the absence of a wedding celebration or faizatul.

Nikah khitbah often occurs among individuals facing socioeconomic challenges or those engaged in higher education. Hilal Asyraf (2015) elaborates that although nikah gantung fulfils the essential pillars and conditions of marriage namely, the presence of a wali (guardian), two trustworthy witnesses, and the offer and acceptance (ijab and qabul) its practical implementation is deferred concerning cohabitation, conjugal relations, and, occasionally, financial support (nafkah). This concept corresponds to the 'aqd al-qirān known in Arab jurisprudence, which remains valid under Islamic law provided the contractual prerequisites are satisfied (Sitiris et al., 2020).

From a Shariah perspective, fulfilling these essential elements ensures the marriage's legal validity. However, the religious legitimacy of nikah khitbah does not exempt the couple from the civil legal requirements, notably the official registration of marriage mandated by Malaysian law for formal recognition. This dual requirement underscores the need for harmonising Islamic jurisprudence with national legal frameworks to safeguard the rights and obligations of spouses within both religious and civil domains.

Views of Classical and Contemporary Scholars

While the specific term nikah khitbah does not explicitly appear in classical fiqh texts, the concept of marriage with delayed cohabitation is addressed indirectly in various Islamic legal sources. For instance, Imam Malik in al-Muwatta permits marriage during i'tikaf (spiritual retreat), provided there is no physical intimacy such as sexual intercourse, thereby implying that cohabitation may be postponed without invalidating the marriage contract (Sitiris et al., 2020). Similarly, classical scholars like Imam al-Nawawi and Ibn Qudamah underscore the essential pillars of a valid marriage announcement (i'lan), guardian (wali), witnesses, and the offer and acceptance (ijab and qabul), irrespective of immediate cohabitation.

The Federal Territories Mufti's Office affirms that nikah khitbah is valid from a syarak perspective, as long as it does not involve shurut fasidah (invalid conditions) or cause harm. According to the Al-Kafi li al-Fatawi series (No. 525), once ijab and qabul are pronounced, the marriage is legally binding, including the marital rights and

obligations, even if the couple agrees to delay cohabitation due to studies, financial constraints, or other valid reasons. This stance aligns with the hadith of the Prophet Muhammad (PBUH):

فَاتَّكُمْ أَخَذْتُمُوهُنَّ بِأَمَانِ اللَّهِ، وَاسْتَخْلَلْتُمْ فُرُوجَهُنَّ بِكَلِمَةِ اللَّهِ

"So indeed, you have taken them (your wives) with the trust of Allah, and you have made their private parts lawful for you with the word of Allah." (Narrated by Muslim, 1218)

This hadith emphasises that the validity of marriage hinges on fulfilling the conditions prescribed by Islamic law, rather than immediate physical cohabitation.

From a maqasid al-Shariah perspective, scholars in Selangor (Azahar, 2019) uphold the validity of *nikah gantung* as it aligns with key objectives such as the preservation of religion (*hifz al-din*) and lineage (*hifz al-nasl*). However, they caution against the lack of official registration, which may jeopardise spouses' legal rights concerning maintenance, divorce, and child custody, highlighting the intersection between religious legitimacy and civil legal protections.

The dominant Shafi 'i school in Malaysia permits marriage contracts without immediate conjugal relations, provided all essential pillars are met. Al-Zuhaili (1989) clarifies that delayed cohabitation is permissible if agreed upon mutually, which accommodates forms like *nikah khitbah* in exigent circumstances. Conversely, Ibn Taymiyyah warns that if conditions contravene the fundamental purpose of marriage, such contracts may be invalidated.

Contemporary scholars such as Dr. Zulkifli Mohamad al-Bakri (2021) emphasise that despite its validity under *syarak*, *nikah gantung* should be cautiously regulated to prevent neglect of spousal responsibilities and potential exploitation, especially of women. He advocates for a comprehensive evaluation rooted in maqasid al-shariah, ensuring that no harm (*darar*) arises from such arrangements and that the overarching objectives of justice, welfare, and family protection are upheld.

Fatwas and Local Studies on Nikah Khitbah in Malaysia

Fatwas, formal legal opinions issued by qualified Islamic scholars, are crucial in guiding the Muslim community on contemporary issues, including those arising from evolving marriage practices (Rosidi, 2025). In Malaysia, fatwas serve as religious guidance and influence the formulation and interpretation of Islamic family laws at the state level (Rosidi, 2024). Given the rising trend of *Nikah Khitbah* (suspended marriage) and its complex socio-legal implications, several fatwa bodies and Islamic authorities have issued statements to clarify its permissibility and regulatory requirements. These fatwas emphasise adherence to Shariah principles and underscore the necessity of official registration to protect the rights and welfare of the spouses and their potential offspring, in alignment with the objectives of Maqasid al-Shariah.

Building on these religious rulings, various local studies have examined the increasing prevalence and impact of *Nikah Khitbah* as a societal response to modern challenges related to morality, economic hardship, and family law. Mu'izz et al. (2021), in a study published in *Jurnal Fatwa*, identify *Nikah Khitbah* as a viable measure to prevent *zina* (fornication) and reduce illegitimate births. However, they caution that its practice must be strictly regulated and officially registered to ensure conformity with Maqasid al-Shariah and safeguard social interests.

Empirical evidence indicates the urgency of such regulation. Mariam et al. (2019) report over 79,000 illegitimate births recorded by the Malaysian Ministry of Health from 2012 to 2016, alongside 577 cases of infant abandonment from 2014 to 2018. These figures highlight shortcomings in current prevention strategies, which *Nikah Khitbah* might help address if managed adequately within a Shariah-compliant framework.

Ali @ Mat Zin (2021) observes that most *Nikah Khitbah* cases involve young couples, often university students, facing familial pressure and financial constraints, or motivated to avoid sinful behaviour. Despite the *akad nikah* being valid, delayed cohabitation and the lack of official registration often complicate maintenance, divorce, child custody, and lineage recognition.

Azahar (2019), reflecting on scholars' views in Selangor, acknowledges the validity of Nikah Gantung (Nikah Khitbah) in Islamic law but notes conflicts with the State Islamic Family Law Enactment due to the absence of registration. Scholars advise limiting its use to cases protecting religion and lineage, emphasising vigilant oversight to avoid legal confusion and community fitnah.

Sitiris et al. (2020) highlight legal difficulties when couples impose conditions delaying fundamental marital obligations such as nafkah and conjugal relations, which contravene the essential purpose of akad nikah. These conditions are legally null (mulgha) even if the marriage contract stands valid, posing serious consequences in marital disputes.

Together, these fatwas and studies illustrate the need for comprehensive regulation and community awareness to ensure Nikah Khitbah practices align with Maqasid al-Shariah, particularly in preserving religion (hifz al-din), lineage (hifz al-nasl), and societal welfare (maslahah).

Comparison with Practices in Other Countries

The practice of Nikah Khitbah, or similar forms of marriage, also exists in several other Muslim-majority countries such as Indonesia, Egypt, and the Gulf States, under different names and procedures. In Indonesia, Nikah Siri refers to an unofficially registered marriage. Although Nikah Siri is religiously valid, the state does not recognise it. As a result, the wife has no legal standing to claim marital rights such as maintenance (nafkah), divorce, or inheritance. Furthermore, children born from such marriages cannot be legally attributed (nasab) to their fathers, which leads to serious social and psychological consequences for the child (Mu'izz et al., 2021). In response, the Indonesian government has launched awareness campaigns and legal reforms to promote official marriage registration as a means to protect the fundamental rights of women and children.

The situation in Egypt is somewhat different. The country has long allowed marriages under a civil and Shariah-based judicial legal system. For couples to claim their rights in court, Egyptian family law requires official marriage registration. Egyptian courts consistently maintain that registration is essential to uphold the objectives of Maqasid al-Shari'ah, particularly hifz al-nasl (protection of lineage) and hifz al-mal (protection of property/wealth). This emphasis on registration holds even though unregistered marriages are occurring outside the formal legal framework (Ali, 2019).

Gulf countries such as the United Arab Emirates (UAE) and Saudi Arabia also prohibit unregistered marriages. The Shariah courts and Marriage Registration Departments in these countries strictly monitor concepts like "aqd al-qiran" within their cultural and legal contexts. A marriage cannot be protected or recognised under national law unless it is formally registered, with the presence of a wali (guardian) and two witnesses as required by Islamic legal standards (Mahmoud, 2020).

This comparison highlights that, although the fundamental pillars and conditions of Islamic law permit various forms of valid marriages, most Muslim-majority countries have established legal marriage procedures through their national legal systems to ensure that such unions are just and to protect the rights of both spouses as well as the children born from the marriage.

METHODOLOGY

This study uses a qualitative approach to examine the issue of Nikah Khitbah in the Malaysian context. This approach was chosen because the topic under study is normative and sensitive and requires in-depth analysis of various sources, including legal texts, legal documents, fatwas, and case reports. Nikah Khitbah, as a form of marriage that is legal from a Sharia perspective but not necessarily registered according to national law, is often practised non-publicly. Therefore, empirical data such as questionnaires or interviews are less suitable because respondents may not want to disclose their personal information. Therefore, qualitative methods through document analysis and case studies are more suitable for this study.

Data was collected through three primary methods: document and text analysis, case studies based on articles, and references to previous studies. First, document analysis involved an assessment of the Islamic Family Law

Enactments for states in Malaysia, which stipulate the requirements for marriage registration and penalties for unregistered marriages. In addition, the study also referred to official fatwas issued by the National Fatwa Council and state fatwa committees relating to student marriages, foreign marriages, and unregistered marriages. The choice of this approach is based on several strong justifications. First, the unregistered nature of the Nikah Khitbah issue makes it difficult to obtain quantitative data. Therefore, document and secondary data analysis is the safest and most ethical option. It provides a deeper understanding of this issue from a legal perspective. It allows researchers to examine this practice's social and practical impacts on the local Muslim community.

RESEARCH FINDINGS

Implementation Process of Nikah Khitbah

Implementing a Nikah Khatibah begins with discussions between the couple and the family, especially obtaining the permission of the female guardian. The guardian's permission is the main requirement for making the marriage contract valid according to Islamic law (Abd Rahman, 2018). Once agreement is reached, a date will be set for the marriage contract ceremony. A certified marriage officer performs the marriage contract in the presence of at least two fair male witnesses (Yusoff & Salleh, 2020). The dowry will be handed over as agreed by both families. Most couples who choose a nikah khitbah do not immediately register their marriage at the religious office. This is because they are not yet financially ready or are still waiting for the right time to hold the reception (Jamil & Zain, 2021).

Several important parties are involved in the implementation of a Nikah Khatibah. The male and female couple are the main parties who intend to get married. The bride's guardian must permit because, without a guardian, the marriage is invalid according to syarak (Abd Rahman, 2018). Next, two male witnesses are required to confirm the ijab and qabul. Certified marriage officials ensure the marriage contract runs smoothly and is legally valid (Yusoff & Salleh, 2020). In some cases, only the immediate family knows the status of the marriage since the marriage has not yet been registered. This can potentially cause problems with the recognition of the marriage and the rights of the wife or children in the future if not managed well (Jamil & Zain, 2021).

After the marriage contract, the couple usually does not live together to avoid public slander. According to Ustaz Azhar Idrus (2022), a nikah khitbah is considered complete when the husband brings the wife to live together, provides physical and mental support, and fully fulfils his responsibilities as the head of the family. At this stage, the couple will register the marriage at the religious office to ensure their status is recognised by law (Zulkifli, 2019). However, most young couples who want a nikah khitbah without their parents' knowledge will have to do it abroad, such as getting married in Thailand. This is because the laws of the Malaysian Religious Office do not permit marriage without the permission of a guardian or court. Meanwhile, the use of Thailand's "wali hakim" in the marriage process is against Malaysian law. The government of the Religious Office where the marriage is taking place must appoint a wali hakim.

Differences between Khitbah and Conventional Marriage

Nikah khitbah and conventional nikah are legal in Islam because both fulfil the pillars of marriage (Ismail, 2021). However, the difference lies in the method of implementation and announcement to the community. Conventional nikah is implemented openly with official registration at the religious office and a reception to announce the marriage to the public (Zulkifli, 2019). The couple will continue living together, and the husband is responsible for full support. On the other hand, in nikah khitbah, announcement and registration are often delayed. The couple only lives separately or meets on a limited basis until they are ready to start a family life officially. Although legal in Islamic law, implementing nikah khitbah without careful management can cause conflicts in terms of law and protection of the rights of the wife and children (Mamat & Zakaria, 2019).

Social Reality and Related Statistics

In today's Malaysian society, issues like premarital relationships, marriages without official consent, and the birth of illegitimate children remain ongoing concerns. Current statistics underscore the seriousness of this situation and show the urgent need for legally and religiously appropriate solutions.

A report from Kosmo Online (2024, December 9) recorded a total of 69,628 illegitimate children of Malaysian citizens over five years from around 2020 to 31 October 2024. This shows that cases of out-of-wedlock pregnancies are still happening at an alarming rate. Additionally, a report by Utusan Malaysia (2024, January 2) noted that there were 30,279 applications for marriage validation filed in the Syariah Court over the same five-year period. These involved couples who married without official permission, often called 'runaway marriages.'

Marriages like nikah khitbah offer a good alternative to avoid issues with marriage registration and the legal status of children. Abdullah M. (2021) suggested nikah khitbah as a helpful way to lower social problems like zina and illegitimate births, especially among young people. He also recommended clear guidelines for this type of marriage. This situation is closely linked to the issue of marriages performed abroad or without permission. These scenarios arise when couples wanting to enter into marriage act hastily without understanding the laws concerning marriage registration and the status of any children born to such a marriage (Abdullah & Ismail, 2021). For example, in the case of Hasmah Shafie v. Juhari Abdul Ghani, the couple got married in Narathiwat, Thailand by means of a wali hakim without registering the marriage in Malaysia. Subsequently, the husband pronounced the talaq threefold upon the wife, whereby the Terengganu Syariah High Court confirmed the validity of both the marriage and divorce. Although the religious rituals were complied with, the case demonstrates the complexities both legally and emotionally occasioned by unregistered transnational marriages (Samah et al., 2019). In this respect, lawful options such as nikah khitbah will significantly restrict social issues and give young couples a legitimate way of responsibly entering marital relationships (Sitiris & Shamsuddin, 2018).

Relevant Law

The study results found that nikah khitbah is not explicitly provided for in any Islamic family law in Malaysia. However, the implementation of nikah khitbah remains subject to existing Islamic marriage regulations as stated in each state's Islamic Family Law Act or Enactment.

Section 11 of the Islamic Family Law (Federal Territories) Act 1984 [Act 303], the provisions are as follows:

"No person shall solemnise or marry any person, and no person shall marry, unless the Registrar has given a written permission by this section." (Laws of Malaysia, 2006, s. 11)

The same provision is also found in the Islamic Family Law Enactment at the state level, for example, the Islamic Family Law Enactment (State of Selangor) 2003 [Enactment No. 2 of 2003], Section 11.

In addition, regarding the requirements for the presence of a guardian, Section 13 of Act 303 provides:

"Subject to section 8, the wali of the woman must solemnise a marriage by Islamic Law or, if there is no legal wali or in a situation where the wali refuses, then the Syariah Judge may act as the wali of the judge." (Laws of Malaysia, 2006, s. 13)

Similar provisions also exist in state enactments, such as the Islamic Family Law Enactment (State of Selangor) 2003, Section 13:

"Subject to section 8, a marriage shall be solemnised by the guardian of the female party by Islamic law or by the guardian of a judge."

(Islamic Family Law Enactment (Selangor) 2003, s. 13)

For marriages conducted without permission, Section 40 of Act 303 stipulates that:

"A person who solemnises or marries without the permission of the Registrar commits an offence and shall, on conviction, be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding six months or to both." (Laws of Malaysia, 2006, s. 40)

This matter is also provided for in other states' Islamic Family Law Enactments with the same section. Overall, this study found that although *nikah khitbah* is not explicitly mentioned, its implementation is still mandatory to comply with the requirements of Islamic family law in Malaysia, particularly regarding written consent, the presence of a legal guardian, and registration procedures at the Religious Office. Violating these requirements can affect the validity of the marriage and may result in penal action according to state syariah laws.

IMPLICATIONS, CRITICISMS, AND RECOMMENDATIONS

Conflict Between Islamic Law and National Legislation

Marriages that are valid according to Islamic law but not registered under the country's legislation often give rise to various conflicts within the Muslim community in Malaysia. Such marriages fall under unregistered marriages, such as *nikah khitbah*, which are usually conducted secretly, without the knowledge of the wali (guardian) or official approval from the state religious authorities. According to Section 25 of the Islamic Family Law Enactment (of the respective States), any Muslim intending to marry must obtain written permission from the Registrar of Marriage, Divorce, and Reconciliation. If the marriage is conducted without such permission, the couple may be fined up to RM1,000 or imprisoned for a term not exceeding six months, or both (EUKIN Selangor, 2003). This indicates that Malaysia applies a combination of Islamic law and civil legislation in family affairs, and any inconsistency between these systems can lead to practical and legal challenges.

Although invalid in Islamic terms, unregistered marriages can have significant legal implications. Wives and children from such marriages are not recognised as legal spouses or legitimate children under civil law, resulting in the inability to claim certain rights such as maintenance, inheritance, or child custody in the event of divorce. In the *Latifah Mat Zin v. Rosmawati Sharibun & Anor* [2007] 5 MLJ 101, the Federal Court ruled that although a marriage may be valid under Islamic law, it must be proven with legal documentation to be recognised under civil law. This means that religious validity alone is insufficient for legal protection. This situation often places women who are religiously married in a dilemma, as they may be unable to assert their rights in the Syariah courts due to the lack of legal proof of their marriage.

More concerning is the impact of this confusion on public perception of Islamic law. When a marriage that is valid religiously but not recognised legally results in women and children being denied their rights, it may lead to accusations that Islamic law fails to protect the vulnerable. In reality, the root problem lies in the failure to register the marriage officially. This creates a negative image of the Islamic religious administrative system and can undermine public confidence in the effectiveness of religious institutions such as the State Islamic Religious Departments and Syariah courts (Abdullah & Ismail, 2021). Therefore, it is crucial to strengthen marriage education and promote awareness about marriage registration to achieve harmony between Islamic law and national legislation.

Social Risks and Legal Implications

Social and legal aspects are among the most evident implications of *nikah khitbah*. The absence of official registration results in children born from such marriages not being recognised as legitimate. This leads to various issues related to identity documents such as birth certificates, MyKad, and educational and health records (Ismail & Rahim, 2021). Without a valid birth certificate, these children face difficulties enrolling in primary school, reducing their chances of receiving formal education like their peers (JAKIM, 2019). It also impacts their immunisation records and access to basic healthcare, as their citizenship status is difficult to verify (Ibrahim & Muda, 2015).

Even more concerning, wives in unofficial marriages are unable to claim their rights, such as maintenance, *muta'ah* (consolatory gift), or matrimonial property, due to the absence of legally recognised marriage documentation in the Syariah court (Hashim & Hamid, 2017). This leaves such women highly vulnerable to injustice, especially when the husband neglects his responsibilities or in cases of domestic violence. Research by Azman and Nor (2020) found that women in unregistered marriages often feel powerless to report abuse to the authorities because their marital status is difficult to prove, which in turn hinders the enforcement of protective laws such as the Domestic Violence Act 1994.

In divorce cases, the situation becomes even more complicated. Without official marriage documents, the divorce cannot be registered or legally validated in the Syariah court, leaving women with uncertain marital status (Mohd Yusri, 2019). They are unable to remarry legally and risk being accused of *khalwat* (proximity) or *zina* (adultery) if they remarry without a recognised divorce. Furthermore, children born after such circumstances risk being deemed illegitimate under the law, even though they are religiously considered legitimate (Norani, 2018). This creates a domino effect on the family structure, including social stigma, identity crises, and emotional stress on children (Abdullah & Ismail, 2021).

This phenomenon contributes to the rise in social issues within society, including cases of out-of-wedlock pregnancies, unofficial divorces, and unreported domestic violence. Statistics from the Malaysian Syariah Judiciary Department (JKSM) show an increase in marriage and divorce validation applications made late, only after domestic conflicts arise. This indicates that many couples do not register their marriages until they face a crisis (JKSM, 2020). This situation clearly shows that unregistered marriages, such as *nikah khitbah*, which bypass official procedures, bring harmful consequences not only to individuals but to the national social system as a whole.

Gendered Impact of Nikah Khitbah

While *nikah khitbah* is legally valid under Islamic jurisprudence, its unregistered nature can disproportionately impact women. The lack of legal documentation leaves women vulnerable to neglect in key areas such as financial support (*nafkah*), marital dispute resolution, divorce procedures, and child custody claims. Although Islamic law obliges the husband to fulfil spousal responsibilities upon the conclusion of a valid marriage contract, civil courts require official registration to enforce these rights. Women in such marriages often cannot claim maintenance or alimony in Syariah courts due to the absence of formal proof of marriage. This places them at a legal disadvantage, particularly in separation or abandonment (Azman & Nor, 2020).

Research shows that women in unregistered marriages also face increased risk of domestic abuse without access to legal protection under the Domestic Violence Act 1994 (Hashim & Hamid, 2017). The stigma of secrecy and the informal nature of the marriage may also isolate them socially, emotionally, and financially. Furthermore, in cases involving children, women may struggle to register their child's birth under the father's name. This results in complications concerning *nasab* (lineage), identity documents, and access to public services (Ismail & Rahim, 2021). The lack of registration not only jeopardises the child's rights but exacerbates emotional stress on the mother and child, reinforcing the gendered consequences of the unregistered *nikah khitbah*.

Role of Religious Institutions and Society

Religious institutions such as the Department of Islamic Development Malaysia (JAKIM), State Islamic Religious Departments (such as JAIS, JAWI), the Syariah Judiciary Department of Malaysia (JKSM), and District Religious Offices play an important role in addressing the issue of *nikah khitbah*. They not only act as enforcers of regulations but also play a significant role in educating the public on the importance of registering marriages legally under the law (Mohd Yusri, 2019). Among the steps that can be taken are conducting regular awareness and advocacy programs at mosques and community centres so that the public better understands the implications of unregistered marriages (JAKIM, 2020).

In addition, these agencies need to tighten the marriage approval process and monitor marriage activities abroad or by unauthorised individuals. This aims to prevent secret marriages from being carried out without the knowledge of the state religious office (Ibrahim & Muda, 2015). Stricter legal action should also be enforced against guardians, imams, or individuals who officiate marriages without authorisation, to serve as a deterrent to the community (JKSM, 2021).

At the grassroots level, schools and higher education institutions must play a role in strengthening marriage education. The Islamic Studies syllabus in secondary schools should be updated to emphasise religious rulings and the current realities and legal aspects of marriage in Malaysia (Yusoff, 2021). Pre-marriage courses conducted by JAKIM and State Islamic Religious Departments should also be included in co-curricular programmes in higher education institutions or family education modules at the university level (Rahman &

Aziz, 2022). This initiative will help young people understand their rights and responsibilities in marriage and the importance of registration from legal and social perspectives.

Public awareness also needs to be enhanced through mass media, social media, and digital platforms so that educational messages can reach a wider audience, especially the younger generation. Religious talks, television dramas, and content on platforms like TikTok or Instagram can be utilised to convey the message that marriage is not merely a solemnisation but also a legal and social responsibility (Aziz & Latiff, 2020).

Recommendations

To comprehensively address the issue of *nikah khitbah*, several improvement measures can be proposed for coordinated implementation by government agencies, educational institutions, NGOs, and the community.

Firstly, the government is encouraged to introduce a budget marriage scheme or financial assistance for young couples from the B40 group and *asnaf* (eligible zakat recipients). This initiative can help reduce the financial burden, often the main reason couples marry secretly without going through the proper legal channels (Kamarudin & Hashim, 2021). For example, the Federal Territories Islamic Religious Council (MAIWP) has previously provided marriage grants, but this initiative needs to be expanded nationwide for more comprehensive benefits (MAIWP, 2020). In addition, such assistance schemes should be extended explicitly to student couples and low-income earners through collaboration with State Zakat Boards and religious agencies.

Secondly, the digitisation of the marriage registration system should be strengthened and expanded across all states. Systems like *e-Munakahat*, implemented by JAWI and several other states, have expedited the marriage approval and reduced bureaucracy. This step can help address the issue of unregistered marriages by making the process more accessible, especially for the younger generation (JAKIM, 2020). To further resolve cases of *nikah khitbah* that are conducted in secrecy, a conditional marriage registration framework could be introduced, allowing for a registration grace period of three to six months after the *akad* before legal action is taken. This encourages legal compliance while giving couples time to fulfil procedural requirements.

Thirdly, marriage and family law education should be a core subject in secondary and higher education curricula. The content must include Islamic legal rulings, Islamic family law, the rights and responsibilities of spouses, and the social implications of marriage. This knowledge will help teenagers make informed decisions before marriage, reducing unregistered marriages (Yusoff, 2021; Rahman & Aziz, 2022). Additionally, mandatory premarital counselling modules emphasising financial literacy and legal rights should be implemented in institutions of higher learning, supported jointly by the Ministry of Higher Education and state religious departments.

Moreover, to prevent confusion surrounding the legal status of *nikah khitbah*, it is vital to enforce harmonisation between *syariah* and civil laws, particularly in documentation, spousal rights, and enforcement (Rahman & Aziz, 2022). A clear and unified legal framework will reduce ambiguity and strengthen institutional accountability in such cases.

Finally, collaboration between religious institutions, schools, universities, NGOs, and the mass media must be intensified to launch comprehensive awareness campaigns. Messages regarding the importance of marriage registration, the dangers of secret marriages, and the rights and responsibilities of spouses must be conveyed through platforms close to the community, including social media, community talks, Islamic studies syllabi, and reality programs (Aziz & Latiff, 2020). These campaigns can enhance public literacy on the legal and social risks of *nikah khitbah* while promoting a culture of transparency and responsibility in marital practices.

CONCLUSION

In Islamic jurisprudence, *nikah khitbah* is deemed valid if it fulfils the essential pillars and conditions prescribed by *Shariah*. However, in the Malaysian context, the coexistence of *Shariah* law and civil legal frameworks necessitates the official documentation and registration of such marriages to safeguard the rights and protections of all parties involved, namely the husband, wife, and any offspring.

Harmonising Islamic legal principles with the civil legal system is imperative to uphold justice within the Muslim family institution and to mitigate prevalent social challenges such as illegitimate births, disenfranchisement of women, and unrecognised marital dissolutions. The foundation of Islamic family law policy in Malaysia should be firmly rooted in the objectives of Maqasid al-Shariah, which emphasise the preservation of religion (hifz al-din), life (hifz al-nafs), intellect (hifz al-‘aql), lineage (hifz al-nasl), and property (hifz al-mal).

To effectively address the complexities surrounding nikah khitbah, a comprehensive, integrative, and evidence-based approach is essential. Empowering the Muslim community through enhanced education, robust support systems, and heightened legal awareness will foster marriages that are both spiritually valid and socially legitimate. This alignment promises fortifying family structures and realising societal harmony underpinned by sound Islamic legal governance.

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