

Child Marriage Discourse According to al-Qaradawi's Fiqh Methodology

Wacana Perkahwinan Kanak-kanak menurut Manhaj Fiqh al-Qaradawi

MUHAMMAD AL-GHAZALI ABDOL MALEK^{1,2}, MOHD AL ADIB SAMURI^{*1,3}, RAMADHITA⁴ &
MUHAMMAD NAJIH VARGHOLY⁵

¹Research Center for Sharia, Faculty of Islamic Studies, Universiti Kebangsaan Malaysia, 43600 UKM, Bangi, Selangor

²Universiti Teknologi MARA, Negeri Sembilan Branch, Rembau Campus, 71300 Rembau, Negeri Sembilan

³Institute of Islam Hadhari, Universiti Kebangsaan Malaysia, 43600 UKM Bangi, Selangor

⁴Faculty of Shariah, Universitas Islam Negeri Maulana Malik Ibrahim Malang, East Java, Indonesia

⁵Faculty of Law, Universitas Brawijaya, Malang, East Java, Indonesia

*Corresponding Author; al_adib@ukm.edu.my

Received: 13 January 2023/Revised: 25 July 2023/Accepted: 25 July 2023/

Publish: 1 June 2024

ABSTRACT

The polemic on the issue of child marriage has not only been debated among human rights groups in recent decades but has also been included in the discourse of contemporary Muslim scholars. Yusuf al-Qaradawi is a contemporary scholar who is responsive in discussing issues of women and girls that concern the international community, including child marriage. This article explores issue of child marriage from al-Qaradawi's fiqh methodology, which offers solutions to contemporary societal issues according to the Islamic legal framework. Qualitative methods through a content analysis were used in al-Qaradawi's work on Islamic law and child marriage. This article shows that al-Qaradawi's position on the issue of child marriage is centred on the priority of protecting children's rights from harmful traditional practices based on the Siyasah al-Shar'iyya. The government should adopt al-Qaradawi's point of view to reforming the Islamic Family Law Enactment to protect the child's best interest from this harmful practice.

Keywords: Child's rights; child marriage; maslaha; mafsada; Siyasah al-Shar'iyya

ABSTRAK

Polemik isu perkahwinan kanak-kanak bukan sahaja diperdebatkan dalam kalangan kumpulan hak asasi manusia sejak beberapa dekad kebelakangan ini, malah ia dimuatkan dalam wacana sarjana Muslim kontemporari. Yusuf al-Qaradawi adalah ulama Islam kontemporari yang responsif dalam mewacanakan isu-isu wanita dan gadis yang menjadi perhatian masyarakat antarabangsa, termasuklah perkahwinan kanak-kanak. Artikel ini bertujuan untuk meneroka isu perkahwinan kanak-kanak mengikut manhaj fiqh al-Qaradawi memandangkan ketokohan beliau yang sering menawarkan solusi isu masyarakat kontemporari menurut kerangka Islam. Kaedah kualitatif melalui analisis kandungan digunakan terhadap karya al-Qaradawi berkaitan isu perundangan Islam dan perkahwinan kanak-kanak. Artikel ini menunjukkan pendirian al-Qaradawi terhadap isu perkahwinan kanak-kanak adalah berpaksikan kepada keutamaan melindungi kepentingan terbaik dan hak kanak-kanak daripada amalan tradisional yang memudaratkan, berdasarkan pendekatan Siyasah al-Shar'iyyah. Sudut pandang al-Qaradawi wajar diadaptasi oleh kerajaan bagi memperbaharui undang-undang yang signifikan dalam Enakmen Undang-undang Keluarga Islam Negeri-negeri bagi memelihara kemaslahatan kanak-kanak daripada kemudaratkan amalan ini.

Kata kunci: Hak kanak-kanak; perkahwinan kanak-kanak; kemaslahatan; mafsadah; Siyasah al-Shar'iyyah

INTRODUCTION

Globally, child marriage received the international community's attention when it was included as one of the Sustainable Development Goals (SDG 2030). Child marriage happens in Muslim and other faith communities and is practised in various cultures and geographies (Al-Hakami & McLaughlin 2016; UNICEF 2022). The United Nations Children's Fund (UNICEF) records an average of one-fifth of children are married, and the number is increasing as the COVID-19 pandemic hits the world. It is estimated that 100 million child marriages were recorded before the pandemic, and the number is rising post-pandemic (UNICEF 2022). The pandemic has disrupted access to education for millions of children, particularly girls, which may increase the risk of child marriage. When girls are not in school, they may be more vulnerable to being married off at a young age. The pandemic has also had economic impacts that may increase the risk of child marriage. Many families have lost income and may see child marriage as a way to alleviate financial pressures.

Numerous international research reports report that married children are at risk of adverse effects from marriage (Allen & Adekola 2017; Arthur et al. 2018; Mohd Awal & Samuri 2017; Naveed & Butt 2015). The impact has been classified as harm (*mafsada*) that violates children's rights (Abdol Malek & Samuri 2022; Alias et al. 2021). Indirectly, this harm violates the principle of *Maqasid al-Shariah*, which protects the child's best interests. Children who are married at a young age are often deprived of their right to education and personal development. It is common for girls who are married at a young age to be pulled out of school and not provided with the chance to continue their education. Child marriage can negatively impact their personal and economic development for a lifetime. Children, especially girls, are also at risk of physical and sexual abuse due to child marriage. Most young married girls are not mature enough to make decisions about their own lives, so they may be forced to have sex or have children before they are ready. As a result, pregnancy and childbirth can be complicated by severe health complications (Allen & Adekola 2017; Arthur et al. 2018; Mohd Awal & Samuri 2017; Naveed & Butt 2015). Many factors contribute to child marriage, including poverty, cultural and traditional practices, and a lack of awareness of the negative consequences of the practice (UNICEF Malaysia 2020). These underlying

issues must be addressed to eliminate child marriage effectively.

In Malaysia, the child marriage rate of Muslims is higher than that of non-Muslim children, 83 per cent compared to 17 per cent (UNICEF Malaysia 2020). Most applications for permission for underage marriage in the Sharia courts come from children whose families have low incomes and live in rural and urban areas (Mohd Awal & Samuri 2017; UNICEF Malaysia 2020). In addition, the legal system in most countries around the world allows child marriage to be practised freely according to the law (Arthur et al. 2018; Asli & Byoki 2016), including in Malaysia. Before implementing the Standard Operating Procedure (SOP) for child marriage in Malaysian Sharia Courts, the rate of Muslim child marriages was significantly contributed by the lenient attitude of Sharia judges in facilitating the approval of applications (Abdol Malek 2022; Hasnan 2021). Some conservative communities encourage its practice (Menon et al. 2018; Naveed & Butt 2015; Suleiman 2018), as do some religious groups who justify it using religious justifications (Ame 2013; Aye et al. 2018; Naveed & Butt 2015). In some cultures, child marriage has been a longstanding tradition and is seen as a way to protect a child, especially a girl, and to ensure that she is taken care of financially and socially. Some Muslims believe that marriage is a religious obligation and that it is important to marry and have children at a young age to fulfil this obligation.

Child marriage has prompted various responses in society, including from human rights groups, civil society organizations (CSO), and contemporary Muslim scholars highlighting the negative implication of such practice (Arthur et al. 2018; Mohd Awal & Samuri 2017; Mokhtar 2022). From time to time, the international community continues to pressure governments to curb child marriage at the grassroots (Ponnupillai & Shanmuganathan 2022; UNICEF Malaysia 2020). The international community has recognized the negative impacts of child marriage and has taken some steps to address the issue. This includes passing laws to raise the minimum age of marriage, providing education and economic opportunities to girls and their families, and promoting awareness about the negative impacts of child marriage (Abdol Malek 2022). By pressuring governments to curb child marriage, the international community is calling on governments to fulfil this responsibility and to take action to protect the rights and well-being of children within their borders.

The international community also has engaged with religious leaders and scholars in many ways to end child marriage. They can play an influential role in changing their communities' attitudes, behaviours, and perspectives. One way has been by working with religious leaders to raise awareness about the negative impacts of child marriage and the importance of respecting children's rights. Many religious leaders, including Muslim, Christian, and Hindu leaders, have spoken out against child marriage and have worked to promote children's rights within their communities. This can include providing education about the negative impacts of child marriage, encouraging families to delay marriage until their children are older, and advocating for implementing and enforcing laws that protect children's rights. In the Muslim context, the involvement of religious people such as imams and scholars are critical in advocating child marriage issues. Notably, it is crucial to change the perspective of Muslim society and Islamic institutions on this issue, as many Muslims still argue that it is permissible under Islamic law (Karam 2015; Hamidah 2019).

Some scholars may advocate for child marriage in Muslim communities by interpreting religious texts in a way that allows for or even encourages the marriage of children. For example, they may cite the example of the Prophet Muhammad, who is believed to have married Aisha bint Abi Bakr RA when she was six, though the marriage was not consummated until she was nine (Samuri et al. 2022). They may also argue that early marriage is in the child's best interest, as it is believed to protect them from premarital sexual activity, which is considered sinful in Islam (Aye et al. 2018; Menon et al. 2018). However, it is worth noting that many experts and organisations view this practice as an abuse and rights violation. Some Muslim scholars and communities worldwide take a more progressive view, interpreting Islamic teachings as requiring that marriage not be entered into until both parties understand the responsibilities and consequences of marriage and can provide mutual consent (Amran 2021). Also, some countries where Muslims are the majority, such as Turkiye and Tunisia, have laws that prevent child marriage and consider it illegal.

Thus, this article will analyze the topic of child marriage in Islamic law and then discuss al-Qaradawi's view on child marriage to reform Islamic family law. There is no doubt that al-Qaradawi is one of the world's most influential Sunni religious

figures today, whose writings, teachings, and activism have been immensely influential (Gräf & Skovgaard-Petersen 2009). In addition to being one of the most respected and famous religious scholars in the Islamic world, al-Qaradawi represents the moderate voice within this community (Soage 2010).

CHILD MARRIAGE IN ISLAMIC LAW

The practice of child marriage has been prevalent in many ancient civilizations worldwide since previous centuries, including among traditional Muslim societies (Ali & Brown 2018; Khatir 1984; Motzki 2016). In many cultures, marriage was a way to strengthen social ties, build alliances, and increase a family's wealth and status. Marriage stability is the goal of family life (Ismail & Wan Ahmad 2004), but not all marriages are made for the proper reasons, such as child marriages. Child marriage was practised in other ancient civilizations, such as in Asia, the Middle East, and Africa (UNICEF 2022). The practice of child marriage has changed over time and is not as prevalent today as it once was. Since child marriage was a cultural and social norm in previous societies (Suleiman 2018), child marriage was not viewed negatively. In some traditional societies, patriarchy continues to influence its practice even today (Askari 1998; Naveed & Butt 2015). It is common for family leaders to marry their daughters at a young age for a variety of reasons.

Some groups argue that child marriage is permissible based on this historical background. To some traditionalist Muslims, perhaps the most compelling evidence for the existence of this practice in the early days of Islam is the marriage of the Prophet Muhammad and Aisha bint Abu Bakr RA (Ali & Brown 2018; Suleiman 2018). Several authoritative hadith narrators have recorded the Prophet's marriage in authentic hadith (al-Bukhari 2002; Muslim 2006; Abu Dawud 2009; al-Nasa'i 2001; Ibn Majah 1987). Prominent early Islamic historians have also recorded this fact in their writings, such as Ibn Hisham (1955), Ibn Ishaq (1976), Ibn Kathir (1990) and al-Dhahabi (1963). Others believe this practice has its cultural context and cannot be applied to modern times. To them, it is essential to note that the marriage of the Prophet Muhammad and Aisha RA took place in a different time and context and should not be used to justify child marriage in the present day (Samuri et al. 2022).

According to the traditionalist Muslim view, some classical tafsir scholars interpret some of the Qur'anic texts regarding the position of children who can be married (al-Baghawi 1997; al-Qurtubi 1964; al-Shawkani 1994; al-Suyuti & al-Mahalli n.d.; Ibn al-Arabi 2003). In addition, these facts are reported in the Qur'an and hadith and discussed by pre-modern scholars of fiqh and tafsir (al-Zuhayli n.d.). The issue of child marriages also pertains to the *wali mujbir*, those who allow the daughter or granddaughter of the family to marry without their consent (al-Asqalani 2001; al-Jaziri 1999).

The narrative regarding child marriage today has significantly changed since modern society puts a high value on women's rights and empowerment in various social contexts, including education, leadership, and family. Child marriage today is a topic that is not limited to the scope of matrimonial laws. It has been discussed in society based on the harmful effects marriage has on self-development and children's rights. It is also concerning that most marriages today are closely linked to issues such as sexual and reproductive health, controlling morality, and sexual exploitation (Aye et al. 2018; Menon et al. 2018; Mohd Awal & Samuri 2017).

It can be argued that such a marriage does not adhere to the principles of tranquillity (*sakina*), love (*mawadda*), and mercy (*rahma*) outlined in the Qur'an. As such, it contradicts the marriage objective (*Maqasid al-Zawaj*) outlined in Islam (Amran 2021). On this basis, some Muslim countries' *fatwa* (religious edicts) organizations, such as Dar al-Ifta' in Jordan (*al-Ifta' al-Urdun* 2012) and Egypt (*Dar al-Ifta' al-Misriyya* 2019) have issued *fatwas* against child marriage in today's context and considered it as unlawful due to its potential harm to children. Similarly, in Malaysia, the National Council for Islamic Religious Affairs (MKI) has stated that, in the current context, child marriage is not compulsory or recommended (JAKIM 2014). Some contemporary scholars express a similar *fatwa* against child marriage, such as Ali Jum'ah (Jum'ah 2016) and Muhammad 'Uqlah ('Uqlah 2002). They emphasize the need to protect children's best interests in their *fatwas*.

In contrast, some traditionalist Muslim groups have issued *fatwas* favouring child marriage. For them, child marriage is allowed in religion (*al-Ghamidi* 2014), despite a long age gap between the child and her spouse (al-'Abbad 2009). Therefore, any effort to stop this practice, such as setting the marriage age limit to 18 years old, is considered

contrary to Islamic law (*al-Muslim.Net* 2021) because Islamic law does not specify any specific age limit to permit someone to marry. In addition, some scholars argue that child marriage is allowed because it has been agreed upon by the consensus of Islamic jurists (*al-Anba'* 2011).

AL-QARADAWI'S SCHOLARSHIP AND HIS VIEW ON WOMEN'S ISSUE

al-Qaradawi is also known for his influential interpretations of Islamic law and teachings, and his work has been widely read and studied by Muslims worldwide. In addition to his scholarly contributions, al-Qaradawi has been involved in many social and political issues and has been an outspoken advocate for reform and change in the Muslim world. al-Qaradawi's influence may have started to grow significantly in the latter part of the 20th century, as he became more well-known, and his ideas and teachings began to reach a wider audience. al-Qaradawi's legacy is likely to be felt for many years, as his thoughts and teachings continue to shape the way Muslims think about and practice their faith (Gräf & Skovgaard-Peterson 2009; Nor Muhamad 2004; Soage 2010).

al-Qaradawi has constructed his image as a highly influential scholar through his extensive knowledge of Islam, his ability to address contemporary issues from an Islamic perspective, and his extensive writing and lecturing on various topics related to Islam (Gräf 2007). al-Qaradawi has written many books on Islam and has lectured extensively on a wide range of topics related to Islam, including Islamic law and jurisprudence, Muslim belief and practice, contemporary issues, interfaith relations, and the role of Islam in modern society. In addition, al-Qaradawi had a popular Islamic television program, 'Sharia and Life', which was broadcasted on *al-Jazeera* and other networks and had a large following among Sunni Muslims. All these factors have contributed to al-Qaradawi's reputation as a highly influential and respected Islamic scholar.

Even those who disagree with some of his ideas appreciate the significance of his thoughts. Throughout the transnational, predominantly Arabic-speaking mediascape, al-Qaradawi has been a prominent speaker challenging traditional Muslim authorities since the 1950s. His *fatwas* are well suited to reception and adaptation by a wide range of people from different Islamic currents in many regions.

Some of the main themes of his books and lectures include:

1. Islamic law and jurisprudence: al-Qaradawi has written extensively on the principles of Islamic law and the application of Islamic principles in modern society.
2. Muslim belief and practice: al-Qaradawi has addressed issues related to the fundamental beliefs of Islam and the practical application of those beliefs in daily life.
3. Contemporary issues: al-Qaradawi has addressed a wide range of contemporary issues from an Islamic perspective, including political and social issues, the role of women in society, and relations between Muslims and non-Muslims.
4. Interfaith relations: al-Qaradawi has written and lectured extensively on the importance of interfaith dialogue and cooperation among people of different sects and religions.
5. The role of Islam in modern society: al-Qaradawi has addressed the role of Islam in contemporary society and the challenges and opportunities facing Muslims in the modern world.

In the context of Islamic law, al-Qaradawi has made a considerable effort to exercise *ijtihad* corresponding to the current problems that is beneficial to Muslims worldwide. He has called for a renewal in the *ijtihad* process and an abandonment of religious extremism, religious negligence, and blind imitation in legal rulings (Mohd Safian 2016). al-Qaradawi's orientation of developing Islamic legal thought tends to be moderate between the two extremes (Khaeruman 2016). He also intended to create a 'wise political fiqh (understanding)' concerning current time, environment, and circumstances in the light of the overall text toward an objective of flexible Islamic Sharia (Rahman 2020).

Muslims highly appreciate al-Qaradawi's views since he considers the *Maqasid al-Shariah* (the higher objective of Islamic law), which is an essential element in Islamic jurisprudence (Ibrahim & Wan Chik 2011). He has exerted considerable effort to exercise *ijtihad* corresponding to the current problems that benefit Muslims worldwide (Mohd Safian 2016). *Ijtihad* is an effort to boost one capacity to discover Sharia ruling about a new situation in the light of the Qur'an and Sunna (Falak 2020). *Ijtihad* is a means for achieving a viable methodology for legal reforms in the Muslim world (Codd 1999) and

is essential for sustainable development in Islam (Javed & Javed 2012). Muslim scholars often refer to the notion of *ijtihad* as the only way to take up these modern challenges (Ramadan 2008). There are a number of factors that have led to the need for reinterpretation of Islamic law in recent times. These include the challenges posed by modernity and globalization, the need to address human rights and social justice issues, and the desire to reconcile traditional Islamic legal principles with the requirements of modern legal systems. By engaging in *ijtihad* and reinterpreting Islamic law, Muslim scholars such as al-Qaradawi can help to ensure that Islamic law remains a vibrant and relevant source of guidance for Muslims in the modern world.

al-Qaradawi has used *ijtihad* in issuing *fatwas* on a wide range of issues, including the permissibility of organ donation, the use of birth control, and women's rights in Islam. In many cases, his *fatwas* have been controversial and have sparked debate within the Muslim community. Like many other Islamic scholars, al-Qaradawi believes that the principles and teachings of Islam are eternal and applicable to all times and places but that the specific legal rules and regulations contained in Islamic law should be adapted and interpreted in light of changing circumstances and contemporary needs. In this sense, al-Qaradawi's proposals for reform may be seen as an attempt to ensure that Islamic law remains relevant and meaningful in the modern world.

It is difficult to say how Muslims, in general, have responded to the *fatwas* issued by al-Qaradawi, as Muslims are a diverse group with a wide range of views on many topics. Some Muslims may view al-Qaradawi as a respected and influential Islamic scholar whose *fatwas* carry a great deal of weight. In contrast, others may disagree with his interpretations of Islamic law and teachings. In general, it is essential to remember that Sunni Muslims do not have a centralized authority or hierarchy, and different Muslims may follow various scholars or interpret Islamic teachings differently.

In the context of women's rights discourse, al-Qaradawi believes that Islam grants women a number of rights and protections, including the right to education, the right to work, and the right to inherit property. However, he also believes that Islam imposes certain moral and legal obligations on women, such as the requirement to dress modestly and the commitment to follow specific rules of behaviour in public and private. al-Qaradawi has

been known to express controversial opinions on particular issues, such as the role of women in society and the permissibility of wife-beating in certain circumstances. These views have been met with criticism from some quarters.

Many reasons make women's rights an essential discourse in the contemporary Muslim world, which has prompted many Muslim scholars to engage in public debate and intellectual discourse on the matter. Some of the critical issues that have been the focus of discussion and debate in the Muslim world include the role of women in society, their rights and responsibilities within the family, and their rights and protections under Islamic law. In some Muslim-majority countries, women have made significant progress in education, employment, and political representation, but women still face substantial challenges and discrimination in other countries. Cultural, political, and religious factors often influence the Muslim world's discourse around women's rights. It is a topic that continues to generate a great deal of discussion and debate.

As an Islamist, many aspects of al-Qaradawi's perspective on women's rights represent the Islamist's idea of women's empowerment. Notably, women's rights are not the same for all Islamist groups. Despite some Islamist groups believing in gender equality and women's rights, others believe in strict gender roles and limited rights for women. In contrast, some belief in gender equality and women's rights. Furthermore, it is critical to recognize that Islam contains a wide range of viewpoints, including those that are progressive and egalitarian. Generalizing the views of all Islamic groups or all Muslims on women's rights is neither accurate nor fair.

For many other Islamist groups, empowering women's rights based on Islamic sources is possible, and they, therefore, conduct a project of reinterpretation and recontextualization of the sacred texts (Yafout 2016). In light of this, it is critical to discuss issues like child marriage from the perspective of outstanding Muslim scholars like al-Qaradawi, which need to be reinterpreted in the light of Islamic legal history.

AL-QARADAWI & CHILD MARRIAGE

Contemporary Islamic scholars do not ignore the issue of child marriage (Rusli 2018). Besides being permitted by religion, some allow child marriage to prevent society's moral values from being

compromised by promiscuity and extramarital relationships (Asli & Byoki 2016; Mohamad Adil et al. 2021). Some scholars categorize the current context of child marriage differently from those experienced by past societies, arguing that it is irrelevant to practice (Abdol Malek & Samuri 2021). According to this group of scholars, the previous context cannot be justified as a basis for allowing its practice in contemporary society because marriages no longer protect children's interests (Ali & Brown 2018; Mohamad Adil et al. 2021; Suleiman 2018).

The discussion of child marriage should be examined comprehensively using this perspective, considering the contemporary socio-cultural context, protecting the welfare of children, as well as empowering women's rights against discrimination in every way. Social issues often refer to contemporary religious leaders, particularly al-Qaradawi. In addition to being an intellectual, scholar, and Islamic preacher, he is also a figure of a political and social activist who is well-known around the world.

He has acquired a wide array of Islamic knowledge, and it is safe to say that the extent and talent of his understanding are pretty impressive. Therefore, he is a distinguished contemporary scholar with solid connections to the public and is highly influential in society. Thus, al-Qaradawi's perspective on the discourse of child marriage can be seen through the following aspects:

SOCIAL ISSUES IN CONTEMPORARY SOCIETY: THE NEED FOR *IJTIHAD*

Islamic law approaches can deal with many challenges and problems in contemporary society. These social issues must be resolved based on Sharia while protecting public interests. The Sharia has been proven to be an alternative and a way out for achieving justice and eliminating harm in society throughout the ages (al-Qaradawi 2013). However, Islamic law exhibits elements of moderation (*wasatiyya*) and balance (*al-Tawazun*) without drifting to extremes (*al-Ifrat*) or negligence (*al-Tafrīt*). As well as being dynamic, it celebrates its capacity to grow, be flexible, confront concerns, solve problems, and be renewed based on the context (al-Qaradawi 2009). According to al-Qaradawi, the era of modernization, along with changes in life affairs, behaviours, and relationships, has prompted a need for *ijtihad* in issuing revised Islamic legal rulings that are holistic and relevant (al-Qaradawi 2011b). Among these issues are medicine, sociology,

economics, and international relations, which previous societies may have neglected or lacked knowledge of (al-Qaradawi 2001).

Accordingly, al-Qaradawi has divided the need for *ijtihad* into two main aspects, namely *al-Ijtihad al-Bina'ie*, and *al-Ijtihad al-Intiqaiie*. First, *al-Ijtihad al-Bin* is the process of *ijtihad* that reformulates the new legal rulings of contemporary society by allowing jurists to issue *ijtihad* that has not been given by previous jurists (al-Qaradawi 2001). *Ijtihads* are generally limited to those situations described by jurists in their time and are not suitable for all conditions. The Sharia gives Muslim scholars the flexibility and breadth to conduct *ijtihad* according to the prevailing circumstances, just as the classical jurists did in their time (al-Qaradawi 2008). Meanwhile, *al-Ijtihad al-Intiqai'ie* is a selective *ijtihad* by choosing the most accurate opinion (*al-Qawl al-Rajih*) from several previous scholars' views, which is more in line with the objectives of the Sharia (*Maqasid al-Shariah*), and public interest based on the local situation at the time. In this context, the selection of views takes place not only by choosing opinions among the jurists (*fuqaha'*) but also by the opinions of scholars other than them. Hence, it is permissible to select the most reasonable opinion among the views of different jurists to revitalize *ijtihad* (al-Qaradawi 2011a). The kind of *ijtihad* needed by society is collective *ijtihad* (*al-Ijtihad al-Jamaie*), a gathered body of scholars from around the world (*majma' fiqh 'alami*), who have the competence issue relevant legal rulings based on comprehensive research and study, without government prescriptive pressure, and in a free and independent manner. In addition, al-Qaradawi (2001) declares that individual *ijtihad* must be emphasized through systematic and intensive research, which can strengthen *ijtihad* collectively.

al-Qaradawi's concern about the reality of the Muslim community today is the lack of understanding of how to address social issues, narrowing the space for *ijtihad* (al-Qaradawi 2001) to solve the issue. Due to their overreliance on the knowledge of earlier scholars, many communities feel inferior in the ability to engage in *ijtihad* and worry about any reform (*tajdid*). They are worried that engaging in *ijtihad* will likely alter Sharia, forcing them to remain with traditional and conservative stances (al-Qaradawi 2013). Therefore, this creates limitations in developing practical solutions to the community's problems (al-Qaradawi 2009). A further source of

damage to society is the stagnation (*jumud*) of not adjusting to changing times, current needs, and new cultural norms. In contrast, Prophet companions and jurists have applied the concept of *ijtihad* in allowing changes in *fatwas* to occur along with the development of society for the purpose of public interest (al-Qaradawi 2001; al-Qaradawi 2008). In addition to the passage of time and the progression of a place, they also experienced a change in their *ijtihad* after reaching a certain age (al-Qaradawi 2012). Accordingly, the process of *ijtihad* in today's era should not be regarded as foreign, provided that *ijtihad* must be based on the Islamic law text (*nass*) and the *Maqasid al-Shariah* (al-Qaradawi 2001).

Contemporary scholars need to understand that Islamic law is formed in legal rulings that have been finalized and cannot be changed (*al-Thawabit*), and also legal rulings that can be changed (*al-Mutaghayyirat*) that are flexible according to the current situation (al-Qaradawi 2001). al-Qaradawi asserted that one factor that encourages the flexibility of Islamic law is the change of *fatwas* or legal rulings along with changes in the context of time, place, and culture of the surrounding community. This means he raised the need to examine the connection between aspects of the initial legal rulings and its ability to be flexible as a solution to dealing with contemporary social issues (al-Qaradawi 2009). Instead, scholars in an area need to be brave enough to exercise *ijtihad* and adopt updated legal rulings based on the present reality rather than taking a static approach based on specific schools of law (*madhhab*). In formulating legal rulings, the rationale for changing the traditional practices of the community must be considered. This is because the community is facing a social issue that, if not addressed, will cause harm to it. If the initial legal rulings are upheld, it will cause damage to society (al-Qaradawi 2013). It is possible to demonstrate the *ijtihad* by examining the initial legal rulings and determining whether they only apply at that time and are not relevant or practical in the present time. Furthermore, the contemporary problems discussed have never been considered by earlier scholars (al-Qaradawi 2012). *Ijtihad* is a process that requires deliberation while analyzing the text of Sharia (*nass*) and the initial legal rulings in depth. Nonetheless, it cannot be arbitrarily used to escape legal rulings or to take things easily (*tasahhul*) (Jamaludin et al. 2022). A competent *mujtahid* needs to master numerous of knowledges (Abdul Rahim & Abdul Rahim 2014) such as al-Quran, hadith, Arabic language, *Usul*

al-Fiqh and *Maqasid al-Shariah* with excellence and skills in understanding the context and socio-cultural background.

Therefore, al-Qaradawi's argument for the need for *ijtihad* to solve social problems applies to the discourse on child marriage, even though child marriage is not a recently occurring issue within the social system. Nevertheless, the context is different compared to the previous period of society, which is why many parties, especially human rights groups, have taken up this issue at the highest level.

FIQH AL-MUWAZANAT: BETWEEN MASLAHA AND MAFSADA

It is important to note that the discourse of child marriage is closely related to the doctrine of Comparative Jurisprudence (*Fiqh al-Muwazanat*) developed by al-Qaradawi. In his view, *Fiqh al-Muwazanat* can be divided into three components. First, it is necessary to consider which benefits will be maintained and which ones will be eliminated or postponed. Secondly, a choice may be made between a lesser harm and a more significant harm, thereby Muslim can tolerate the lesser harm and reject the more substantial harm. Lastly, it is necessary to consider conflicting benefits and harm. This can be achieved by eliminating harm and choosing benefits (*maslaha*) for the public interest (al-Qaradawi 2010a).

He emphasizes the community's need to understand Islamic jurisprudence through a thorough understanding of the text of jurisprudence and the purpose of Sharia that exists behind it, as well as to master reasoning for investigating all legal rulings and understanding the wisdom and purpose of Sharia, which is aimed at achieving human benefits in this world and the hereafter. Furthermore, al-Qaradawi reiterated the same principles for scholars today when they interact with social issues based on Reality-Based Fiqh (*Fiqh al-Waqi'*) (al-Qaradawi 2008), considering all the interesting facts and figures related to the social issue, but remaining mindful of the influence of false data and shallow research findings that may come from propaganda and hinder advocacy. al-Qaradawi said that the two categories of fiqh above need to be mastered by jurist scholars, so they can solve society's problems with an understanding of reality and protect society from the elements of extremism (*al-Ifrat*) and negligence (*al-Tafrit*) (Ismail & Mujani 2023). Scholars of classical fiqh apply this methodology to eliminate harm in society as much as possible or tolerate minor

harm by eliminating significant harm (al-Qaradawi 2010a).

Hence, the ability of *Fiqh al-Muwazanat* to consider the benefits and harms of child marriage needs to be adequately researched. The perspective of classical scholars on the subject of child marriage is aimed at the benefits. However, today's reality indicates that children who marry are more likely to suffer significant harm than in the past when child marriage was prevalent. The best interests of children should therefore be prioritized as a top priority by contemporary scholars, as an extensive body of literature has demonstrated the adverse effects of child marriages around the world. All empirical data should be considered to advocate on behalf of the community and understand the harm caused by child marriage today.

Through this concept of *Fiqh al-Muwazanat*, al-Qaradawi's response to child marriage differs from that of Muslim traditionalist groups that continue to allow for it (al-Qaradawi 2012; *al-Sharq* 2016). However, he also stressed that a father should not use his authority as a guardian to decide the marriage of his daughter without her consent. It is recommended that the father seeks his daughter's opinion and consent before deciding on her marriage (al-Qaradawi 2010c). Therefore, the child's consent is very relevant in the discourse of child marriage since it is closely related to the choice of a future husband, the impact on the child's future, and the later family relationship. As a result, any disagreement or revenge will be avoided, whereas marriage is based on love and compassion. This foundation is essential to developing girls' character as women and wives capable of fulfilling their family responsibilities (al-Qaradawi 2010c).

In addition to recognizing the human value of the individual, Islam provides the right to protect honour against abuse and determine what rights and freedoms are relevant to a human component, known as human rights in contemporary society (al-Qaradawi 2009). The child should be allowed to express her opinion in this context, regardless of whether she accepts or rejects her father's decision regarding marriage, particularly considering her immaturity level in the face of challenges in family life.

SIYASA AL-SHAR'IYYA AS THE BASIS FOR CURBING CHILD MARRIAGE

According to *Siyasa al-Shar'iyya*, the government has full authority to establish laws that promote

the interest and well-being of the people. The government can use this concept to end child marriage by enacting relevant laws such as increasing the marriageable age. al-Qaradawi was vocal when he raised the issue of child marriage during the 21st Islamic Fiqh Academy Congress held in Mecca (al-Qaradawi 2012). In line with protecting children's rights, he agreed with the government's authority in setting a significant marriageable age limit in national legislation to prevent children from being exploited by their fathers for specific interests (*al-Sharq* 2016). He criticized some fathers who do not prioritize their children's welfare and personal development, just simply wanting to escape from the responsibility of raising their children. Because of the inappropriate context and adverse societal effects, he believes child marriage is unnecessary.

As a solution to current problems, this legal restriction is also consistent with public interests (*Masalih al-Mursala*), which does not appear in the pre-modern Islamic text (al-Qaradawi 2008). This facilitates the process of reformation (*islah*) in society and promotes the well-being of the people (al-Qaradawi 2011a). According to Islamic legal texts, the application of this concept is intended primarily to protect the *Maqasid al-Shariah* of the child. Children have been saved through this concept from being abused and exploited through traditional practices such as marriage at an early and immature age. For girls who will grow up as women, the same educational opportunities are necessary as for men, so they can find employment opportunities that match their education level (al-Qaradawi 2010b).

CONCLUSION

Islamic law legal reform can help end child marriage by setting a minimum age for marriage and making it illegal for individuals under that age to marry. Additionally, as discussed in this article, Islamic legal scholars and leaders, including al-Qaradawi, can work to educate communities on the harms of child marriage and advocate for change using Islamic legal methodology. In some countries, Islamic law has been used to justify the practice of child marriage, but this is not an unchallenged interpretation of Islamic legal text and other Islamic legal scholars, like al-Qaradawi, disagree with this interpretation. By promoting a more progressive understanding of Islamic law, legal reform can help to end the practice of child marriage among Muslim communities. It is worth noting that in

many cases, child marriage is not only an issue of religious interpretation but also deeply rooted in cultural norms and economic reasons. So, it will require a holistic approach where laws, education, social awareness, economic empowerment, and cultural shift must work together to make it happen. The application of *Siyasa al-Shar'iyya* to curb child marriage, as proposed by al-Qaradawi, will therefore assist the stakeholder in protecting the rights of children. Reforming the law is in line with the *Maqasid al-Shariah* principle of safeguarding the *maslaha* of children and preventing them from harm. It is also pertinent for societies to recognize that child marriage today is a different context than child marriages of generations past and to accept that child marriage has adverse effects.

ACKNOWLEDGEMENT

The authors would like to express their highest gratitude towards Universiti Kebangsaan Malaysia (UKM) and the Ministry of Higher Education (MOHE) for the research grant, which enabled the research project (FRGS/1/2019/SSI10/UKM/02/4) entitled '*Drafting of Training Modules on Child Marriage for Religious and Shariah Officers According to Human Rights and Siyasa al-Shar'iyya*'.

AUTHOR'S CONTRIBUTIONS

Conceptualization, all authors; methodology, all authors; analysis, all authors; writing-original draft preparation, M. A. G; writing-review and editing, M. A. A. All authors have read and agreed to the published version of the manuscript.

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