



CHAPTER II

ENGAGEMENT AND WOMAN'S RIGHTS IN ISLAMIC PERSPECTIVE

A. Engagement in Islamic Law

1. Definition and Law of Engagement (*Khithbah*)

Engagement is the preliminary step toward a marriage. Often in the process of engagement is followed by the giving of dowry, whole or half of the amount of the dowry. A gift that serves is as a proof of the relationship to strengthen the bonds that have recently been built and agreed upon.¹⁵ Engagement in Malaysian society marked by a procession of exchange rings which indicates that someone has attached a fiancé with a man so just wait for a wedding

¹⁵Sayyid Sabiq, *Perkawinan dan Pertunangan Dalam Islam* (Al-Ramadhan: Sabang Jaya, 1996), p. 59

procession or *Ijab* and *Qabul*. With their engagement is basically not allowing all the relationship between a man and a woman.¹⁶

Process of engagement begins with a process of *peminangan*. *Peminangan* or in Arabic called is *Al-Khithbah*. *Al-Khithbah* (to read his *kasrahkha*) according to terminology is a person who proposes to a woman on a people, if he wants to marry her. *Khithbah* (the proposal) is a clear statement or a desire to marry. It is a step toward marriage though *khithbah* not in sequence with the following provisions, which are the basis of the designation, and therefore should be explained by the desire and willingness of vision.

According to islamic perspective, engagement is from the word the Arabic (الخطبة) meaning talking or engaged. The root word (الخطبة) is based word (خطب) or talk. From the meaning of (خطب) as talking, we could say that engagement is a verbally statement in the beginning of marriage it named engagement.

Etymologically the word *Khithbah* derives from the Arabic (الخطبة), is mean asked a woman to be a wife. It says that the word *khithbah* in the Malay language is called "*peminangan*" is the standard Arabic used in the Association in daily life, there are in the word of God and the Prophet's sayings in there as well as prescribed in a

¹⁶Karim Ilahi, *Jodoh, Perkahwinan dan Rumah Tangga Bahagia*, (Perniagaan Jahabersa: Johor Baru, 2000). p. 25

marriage that is time event held before the wedding.¹⁷ It is contained in the holy Qur'an, Surah Al-Baqarah verse 235 which reads:

وَلَا جُنَاحَ عَلَيْكُمْ فِيمَا عَرَّضْتُمْ بِهِ مِنْ خِطْبَةِ النِّسَاءِ أَوْ أَكْنَنْتُمْ فِي أَنْفُسِكُمْ ۚ عَلِمَ اللَّهُ أَنَّكُمْ سَتَذْكُرُونَهُنَّ وَلَكِنْ لَا تُؤَاعِدُوهُنَّ سِرًّا إِلَّا أَنْ تَقُولُوا قَوْلًا مَعْرُوفًا ۚ وَلَا تَعْزِمُوا عُقْدَةَ النِّكَاحِ حَتَّى يَبْلُغَ الْكِتَابُ أَجَلَهُ ۚ وَاعْلَمُوا أَنَّ اللَّهَ يَعْلَمُ مَا فِي أَنْفُسِكُمْ فَاحْذَرُوهُ ۚ وَاعْلَمُوا أَنَّ اللَّهَ غَفُورٌ حَلِيمٌ ﴿٢٣٥﴾

The Meaning:

There is no blame on you if ye make an offer of betrothal or hold it in your hearts. Allah knows that ye cherish them in your hearts: But do not make a secret contract with them except in terms Honorable, nor resolve on the tie of marriage till the term prescribed is fulfilled. And know that Allah Knoweth what is in your hearts, and take heed of Him; and know that Allah is Oft-forgiving, Most Forbearing.

In addition to the above paragraph, there is a *Hadith* of the Prophet which was narrated by Abu Dawood, which reads:

حَدَّثَنَا مُسَدَّدٌ حَدَّثَنَا عَبْدُ الْوَاحِدِ بْنُ زِيَادٍ حَدَّثَنَا مُحَمَّدُ بْنُ إِسْحَاقَ عَنْ دَاوُدَ بْنِ حُصَيْنٍ عَنْ وَاقِدِ بْنِ عَبْدِ الرَّحْمَنِ - يَعْنِي ابْنَ سَعْدِ بْنِ مُعَاذٍ - عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ قَالَ قَالَ رَسُولُ اللَّهِ -صلى الله عليه وسلم- « إِذَا خَطَبَ أَحَدُكُمْ الْمَرْأَةَ فَإِنْ

¹⁷ Amir Syarifuddin, *Garis- Garis Besar Fiqh*, (Jakarta: Kencana, 2003), h.82

اسْتَطَاعَ أَنْ يَنْظُرَ إِلَى مَا يَدْعُوهُ إِلَى نِكَاحِهَا فَلْيَفْعَلْ». قَالَ فَحَظَبْتُ جَارِيَةً فَكُنْتُ

أَتَخَبُّ لَهَا حَتَّى رَأَيْتُ مِنْهَا مَا دَعَانِي إِلَى نِكَاحِهَا وَتَرَوُّجَهَا فَتَزَوَّجْتُهَا (روه ابو داود)¹⁸

It means: "if one of you would like to apply for a woman, there is no sin on him see such women even without a third."

"*Khithbah*" is making propose or engaged, while. *Thalabi 'I-ma 'rati li 'zawaaj* is asking a woman for a hand in marriage. *Khatana 'Ima'atakhithbah*, mean propose a woman for marriage. In general, "*khithbah*" or engagement is a way to get to know closer about the woman so that the man will learn and understand more about the woman either physically or her behavior. Thus, can be concluded that engagement is an oral statement or speech that expresses the early bound of a marriage, which is an engagement. In order to achieve marital bliss and happiness, the man and woman must try to get to know each other, which includes the situation, character, manners, and others so that the solemnization that will be conducted later will have a strong basis in upholding the feeling of love and understanding.¹⁹

Engagement also brings the meaning of a certain waiting period since the acceptance of binding symbol until marriage is held. The waiting period for holiday the wedding ceremony usually is not bound to any conditions thus, it can be done any time with the agreement of the both parties. Sometimes, it takes a longer period of time, and sometimes

¹⁸ Abu Dawud, *Kitab an-Nikah*, Juz 2, Beirut: Dar al-Kutub al-Islamiyah, 1996, p.95

¹⁹ Zainal Azam, *Perkahwinan dan pertunangan Dalam Islam*, (Subang Jaya: Al-Ramadhan, 1996), p.45

shorter, based on the affordability and ability of the man. This actually gives the opportunity of the both parties to make preparations to choose the correct time, which are suitable, to hold the wedding ceremony.

A marriage proposal can be done directly or indirectly. This also means that the man can make the marriage proposal by himself or by using an in-between or a representative that can be trusted, whether from his own family member or friends.

According to Wahbah Al-Zuhaili in his book entitled *FiqhKitababd Islamic Law*, making a proposal means to express one's intention to get married. This intention must be expressed to the wanted woman or her guardians. Making a proposal can also be done through a matchmaker or middleman.²⁰

The agreement is tied up when the woman accepts the man and his couple will be bound to the laws and '*hukum syarak*'.

It is clear that engagement is the first step toward a marriage life. Before a marriage, the man and woman should know each other during their engagement period.

According to Mimi Kamariyah Majid in her book "Islamic Family Law in Malaysia", engagement is a contract or engagement before the marriage. Engagement is the time for man and woman to get to know each other.²¹

²⁰Wahbah Al Zuhaili, *FiqhPerundangan Islam*, (Kuala Lumpur :Dewan Bahasa dan Pustaka, 2000) p. 18

²¹Mimi Kamariyah Majid, *Undang- UndangKeluarga di Malaysia*. (Pulau Pinang: Butterworth, 1992), p. 18

Besides that, engagement is the duration for men and women to analyses his or her fiancé's characteristics or traits, which is eligible under the Islamic Law. Once they have understood and can tolerate with each other, than the marriage must take place. Marriage is an eternal knot whereby the couple will live harmoniously and will long for each other in their marriage.

While, the meaning of *Khithbah* in terminology is preliminary step towards matchmaking between a man and a woman.²² It understanding is same with SayyidSabiq opinions that tend to understand *khithbah* as the demand of a man to a woman to be his wife with through several stages that have already occurred in the middle of community.²³

In the books of Fiqh, *khithbah* is translated with a desire to get married to a woman who had obviously (*izhar al-rughbat fi al-zawaj bi imratinmu'ayyanat*) or a notice of intention to marry to the guardian. In Islamic jurisprudence *Khithbah* is called *peminangan*. These words can be seen in the Hadith of the Prophet that talks about *peminangan*. Need to be explained as well as *peminangan*, in community *khithbah* is known as engagement. Usually this engagement is time waiting between *meminang* and marriage.

Wirjono Prodjodikoro also mentions in his book the term engagement and not *peminangan*. According to the condition of

²² Abdul Azis Dahlan, *Ensiklopedi Hukum Islam*, (Jakarta: PT. Ichtiar Baru van Hoeve, 1999), h.927

²³ Sayyid Sabiq, "*Fiqh al-Sunnah*" Terjemah Mudzakkir AS, Fikih Sunnah, Jilid VI, (Bandung: PT. al-Ma'arif, 1980), p..30-31

engagement, if there has been agreement between the two sides to held marriage. And its agreement of course proceeded by approval of an application, that a request or an offer that is done by the male to the female.²⁴

In custom society it has known mating on a marriage that is preceded by an engagement and the presence of the application (*pinangan*) before the engagement.

According to the customary law, an agreement to do engagement will binding if both parties concerned exchanged signs as evidence of consent to it. With the exchange of a sign there was a great event engagement, which is an event of law.²⁵ In the holy Qur'an and *Hadith* have set up *khithbah* and some things that are closely related to *peminangan*. Nevertheless, clearly and not found any directional commands or prohibitions in doing *peminangan*.

Therefore, in determining the law is no scholars who require it, so that it can be ensured that the law is permissible reason. Contrast to the above opinion, Muhammad al-Khatib al-Syarbini follows Imam al-Ghazaly argues that the law of *Khithbah* is *Sunnah*.²⁶

Ibn Rusyidin *Bidayat al- Mujathid* with David's opinion retell al-Dhahiriyy said that with the mainstream that the deeds and the tradition of the Prophet Muhammad. In *peminangan*, then the law can be ensured

²⁴Wirjono Prodjodikoro, *Hukum Perkawinan di Indonesia*, (Bandung: Sumur, 1960), p.31

²⁵Amiur Nuruddin, Azhari Akmal Tarigan, *Hukum Perdata Islam di Indonesia Studi Kritis Perkembangan Hukum Islam dari Fikih, UU No 1/1974 dan KHI*, (Jakarta, Kencana, 2006) p. 86-87

²⁶Muhammad al-Khatib al-Syarbini, *Mughni al-Muhtaj*, Juz III, (Beirut: Dar al- Fikr.tt), p. 135

Khithbah is mandatory.²⁷ Similar to the last one is the opinion which says that inform *khithbah* equated with marital law, bearing in mind *khithbah* is one of the means toward accomplishing the wedding.²⁸ *Khithbah* in Islamic law is not a mandatory thing to do, at least is prevalent at every stage that will sustain a marriage.²⁹

Khithbah tradition does not only take place after the Islamic religion come, but existed before Islam come. And now the tradition *khithbah* is become a tradition that many carried out all over the place in this hemisphere, including our tradition, certainly in a different way for each place.

Engagement and proposal to be recommendatory (*sunat*) in Islam with aim that both parties are satisfies with each other before building their marriage. Ulama agree that a man can have a critical look the woman that will become his bride. This is only limited to her hands, which may represent her fertility and her face which many represent her beauty.³⁰

2. Requirements of Engagement

The requirements of Engagement can be divided into two, as follows:

a. *Mustahsinah* Requirement

²⁷ Abi al-Walid Muhammad, *Bidayat al-Mujtahid wa Nihayat al- Muqtasid*. (Beirut: Dar al-Kutb al-Islamiyah, 2004), p. 435-436

²⁸ Muhammad al-Khatib al-Syarbini, *Ensiklopedi Islam di Indonesia*, (Jakarta: CV. Anda Utama, 1992), p.624

²⁹ Muhammad al-Khatib al-Syarbini, *Ensiklopedi Islam di Indonesia*, p.624

³⁰ An-Najwa Ismail, *Mencari Calon Idaman*, (Selangor: Galeri Waticah, 1998), p.5

Mustahsinah requirement is provided in the form of advice a man proposes to woman's to examines woman who will proposed it is already in compliance with his wishes or yet, so that will can ensure survival preclude later

Terms of *mustahsinah* this is not a mandatory requirement that must be met before the *peminangan* done. But it was just a suggestion that has become a habit. In the absence of these terms *peminangan* and engagement are valid.

Included in the terms of *mustahsinah* are:

- 1) Woman and the man are *sekufu* or equivalent with the man in terms of the nature, science, also in terms of her religion and her wealth.

Hadist of The Prophet Muhammad:

حَدَّثَنَا مُسَدَّدٌ حَدَّثَنَا يَحْيَى - يَعْنِي ابْنَ سَعِيدٍ حَدَّثَنِي عُبَيْدُ اللَّهِ حَدَّثَنِي سَعِيدُ بْنُ

أَبِي سَعِيدٍ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - تُنْكَحُ

النِّسَاءُ لِأَرْبَعٍ لِمَالِهَا وَلِحَسَبِهَا وَلِجَمَالِهَا وَلِدِينِهَا فَاطْفَرُ بِذَاتِ الدِّينِ تَرَبَّتْ يَدَاكَ³¹

It means: "from AbiHuraitah Prophet said: marry the women's according to four issues, namely because of her wealth, because her offspring, because her beauty and her religion. But choose the religion that you survived."

- 2) Women have the nature of love and fertility that is expected can to give the offspring.

³¹Shohil abu dawud hadist no.1786

3) Women have far blood relationship with man. Because the religion bans a man married a woman who had a very close blood relationship with the man. Meanwhile in this case *Sayidina Umar bin Khatab* States that marriage between a man who has near blood relationship will decrease the weak physical and spiritual.³²

4) Man knows the condition of physical, manners etc. of the woman for engagement. Otherwise a woman needs to know all the condition of man.³³

b. *Lazimah* requirements

What is meant by the terms *lazimah* is a condition that must be met before committing to engagement, thus legitimately engagement depends on the existence of the terms *lazimah*. That includes terms *lazimah* is are follows:

1) Woman is not on another proposal of male or on engagement time with another man.³⁴ Hadith Of The Prophet Muhammad:

حَدَّثَنَا الْحَسَنُ بْنُ عَلِيٍّ حَدَّثَنَا عَبْدُ اللَّهِ بْنُ نُمَيْرٍ عَنْ عُبَيْدِ اللَّهِ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ قَالَ قَالَ رَسُولُ اللَّهِ -صلى الله عليه وسلم- « لَا يَخْطُبُ أَحَدُكُمْ عَلَى

خُطْبَةِ أَخِيهِ وَلَا يَبِيعُ عَلَى بَيْعِ أَخِيهِ إِلَّا بِإِذْنِهِ ³⁵

³² Djaman Nur, *Fiqh Munakahat*, (Semarang: Dina Utama, 1993), p. 15

³³ Kamal Mukhtar, *Asas- asas Hukum Islam Tentang Perkawinan*, (Jakarta: Bulan Bintang, 1993), p. 35

³⁴ Ahmad Azar Basyir, *Hukum Perkawinan Islam*, (Yogyakarta: UII Press, 2000), p. 19

³⁵ Ibnu Hajar al-Asqalani, *Bulug al-Maram*, edisi as-Sayyid Muhammad Amin (ttp.NurAsia,t.t), h,210, hadist nomor 9, "Kitab an-Nikah", Hadist dari Ibnu Umar r.a, Muttafaq'alahi, lafal hadis dari al-Bukhari

It means: "do not let someone among you propose a woman who proposes by his brother, so her suitors before leaving or have allow it."

2) Woman is not in *iddah* time. During *iddah* time, the woman forbidden to proposed with details as follows:

- a) Women who are undergoing *iddah* time *talakraj'I* (divorce which still allowed to back without new contract) is forbidden to proposed, whether directly or by innuendo because she still had ties with ex-husband, not off altogether from the ex-husband.
- b) Woman who is undergoing the *iddah* time of *talakbain* (divorce, a third time) is forbidden to propose directly.
- c) Woman who undergoing *iddah* time because of death is forbidden to proposed directly by man in a period of mourning.³⁶
- d) There are no *syara'* hindrance to married by a man because there has no *mahram* connection, woman is not under marriage ties with other man.

However, because its woman who already off altogether from the bonds of her husband, the Qur'an Al-Baqarah: 235 allow man to propose women by innuendo .There are no impediments of *syarak*, because there is no relationship of *mahram*, and not in a marriage relationship with another man.

³⁶ Ahmad Azar Basyir, *Hukum Perkawinan Islam*, (Yogyakarta: UII Press, 2000), p.20

3. The Propose of Engagement

The purposes of an engagement are:

- a. Engagement is like a token or engagement between the man and woman. Once a proposal is made, automatically an agreement is tied up.
- b. To strengthen the relationship between two families.³⁷ The member of the two families must have a good report during the engagement period. They also have to understand each other and co-operate in preparing the wedding.
- c. To decide the dowry and other matters. During engagement period the future bridegroom can have more time to prepare the dowry, food and beverages. During this time the couple will also learn to manage their financial wisely.
- d. To make an announcement. Engagement is made in order to announce the people surrounding that the woman belongs to somebody. This will warn other men not to take the woman as his wife.
- e. To decide a date and place of wedding. During the engagement period the couple can decide the date, and place of wedding. During the engagement period the couple can decide the date, and place of their wedding ceremony. They have to decide it well enough in order to have a smooth wedding ceremony.

³⁷Wanda Idris, "*Pertunangan –Hikmahnya Debarannya*". (Kuala Lumpur: RIAS. April 2003), p.136

- f. To inculcate a reasonable budget between the two families.³⁸ Once an engagement is done both parties must manage their financial matters well. They are only to spend their money on essential things. This is important in order to prevent from being over budget or wasting. On the couple's part, they also have to save money in order to use it for their wedding.

The acceptances of the couples are an agreement between both parties to choose the date of marriage. When condition and situation are acceptable, agreement and fulfillment of the promise between the parties becomes an obligation of the syara. Islam does not put the matter unless there are various benefits from betrothal:

- a. Psychologically, an engagement can give ease to the mind especially of the man because it will guarantee that the girl he wishes for will not fall into the hands of another.
- b. Engagement can build an agreement on both parties to further get acquainted with each other in order to build an understanding between them.
- c. Engagement can give an opportunity for the couple to see how too far they are compatible with each other in their relationships without encroaching on the limits provided.

³⁸Wazir Johan Karim, *Emotions of Culture A Malay Perspective*, (Singapore: Oxford University Press) p. 34

- d. Couples can use the engagement period to get toknow the family members to avoid any doubts later.
- e. To produce a stabile heart in which engagement ties will produce contentment to go through the marriage in the future, as there will be no intervention from the other suitors.

4. Engagement Process in Malaysian Melayu Society

Engagement in Malay Society is done by some step, every steps are consider as a good thing that should done by every couple who want to enter marriage life. The steps of engagement in malay society can explained as follow:

a. The *Merisik*

Merisik is done when man is attracted to a woman whom he is not familiar or no known to him. Malays consider *merisik* is important because with this step, the man will get a way to know whether the woman has someone else in her heart or not. This step also will let the man know about the girl behavior,³⁹ her manners to the old ones and Islamic education characteristics will be the scales to judge about the girls in overall view.

The one who act on behalf of the man usually will come from those who have any blood relation with the man's family directly.

³⁹Amran Kasim, *Perkawinan Melayu*, (Kuala Lumpur: BDP, 2001), p. 6

They will go to the woman's house informally to have a chat and discuss related manner with girls parent.

b. The *Merasi*

Merasi is the fortune telling practice to for cast destiny;⁴⁰ it has been forgotten owing to forbidden in Islam. Usually, it is done to the partner who has never dealing each other and for those who has difficulty to know heart filling. The custom will ascertain whether the partner is adequate or not. It is occasionally done by shaman and midwife. A long time ago noble people as a reign of their status, creed and custom practiced it.

c. The *Melamar*

After all matters *merisik* and *merasik*, were totally carried out and the partner was claimed as ideal couple propose will be done to ask women willingness. Obviously, the woman will be asked directly regarding her personal matter whether she has a partner or not. If the willingness is stated then an agreement to accept man presence will be decided. After the verification is made would be carried. The man will bring a propose ring to woman called as "inquire ring". Moreover, both of parties will discuss a few matters it is about: the formal engagement day, the number of man's delegation, *hantaran*, and also

⁴⁰Amran Kasim, *Perkawinan Melayu*, p. 6

the ‘burn payment’ (*belanja hangus*) will be decided or not in the period of the engagement.

d. The Engagement

When come the right time, the setup of propose will begin. In Malay, the word proposes (*meminang*) is base from areca (*pinang*). Probably this term “*meminang*” been applied, because arecanut (*bua hpinang*) is the major ingredient beside betel leaves and other material when this ceremony take place. Areca nut, is a sing of a man, it shows the man’s behavior and attitude which rougher and tougher compare to a woman, which has a grace and nice natural habit. Betel (*sireh*) is a symbol of a woman. For a dish, betel and areca cannot be detached. In addition, it is imperfect if munch a betel without areca. It is like man and woman, who cannot be separated and they need each other.

In Malay marriage custom betel (*sireh*) become, the customs head, in all steps from engagement until marriage, “*Tepak sireh*” must convey by the leader and must lead supplementary gift. As a tradition, the delegates must be welcome by “*tepak sireh*” and the head of *tepak sireh* must be ahead to the delegation leader. If the tail of “*tepak sireh*” be ahead first, this act will consider as rude.

Base on Malay custom “*tepak sireh*” must complete and be arrange follow the procedure. The incomplete of “*tepak sireh*” can raise anger from the woman side. For them it shows the virgin or not virgin.

In the perfect day, both family are ready to send and accept the propose delegation officiate. The man's delegation must consist a number of aged woman and man and have close relation with man's family. Among them, there must be an experience person to be a leader.

In most places present the "*passing goods*" there will be refreshment begin with '*doaselamat*'.⁴¹ Among the gifts (*hantaran*) commonly present by man's side

- *Sirih Junjung*
- *Sebentak cincin*
- *Satu set bahan persolekan*
- *Bunga rampai*
- *Kuih muih tradisional*
- *Buah-buahan*

In certain palaces, clothes, towels and *telekung* will include in gifts (*barang hantaran*).

Passing goods will be lead by *pahar*, which content betel,⁴² and commonly bring by the delegation leader and the other gifts (*barang hantaran*) will be put on *pahar*, which carried by other delegation. Always the '*pahar*' must in uneven number. There is no specific reason why they must be in uneven number. Certain people believe the even number will give a bad implication to the wedding. Today this

⁴¹ Amran Kasim, *Perkawinan Melayu*, p.20

⁴² Amar Kasim, *Perkawinan Melayu*, p.20

belief does not be practice anymore but the gifts (*barang hantaran*) is still in uneven number. Maybe 3, 5, 7, 9, and 11 and continues depend on men's ability. The usual number is 7 or 9.

1) The Engagement Process

After known between of both, representative from the woman will begin this ceremony by ask representative from the man about who own '*sireh*' in front of them. Man's representative will tell the name of the man. Then, woman's representative asks again for whom the man and man's representative will tell the name of the woman to make propose. It does begin with '*istiadat*', and the session of the dialogue will be proceeding. The voice of both parties will be loudly to make the others hear the discussion.

In certain place, the marriage proposal will begin the men's delegation, they will clarify their wish use with symbolic and implicit terms and language, an woman's delegations also give their feedback with the symbolic and implicit language. '*Sireh junjung*' still be use an open ceremony material. After start with 2 or 3 '*seloka*' then they used ordinary or standard language for ask question.⁴³ If both parties agreed with each other, steps to specifically deliver the proposal ring will follow.⁴⁴

⁴³Amran Kasim, *Perkawinan Melayu*, p.24

⁴⁴Rusnah Abu Bakar, *Perkahwinan Mengikat Adat*. Perkahwinan. Oktober, p.50

2) The Engagement Ring

After the end of the open ceremony, woman's entrust will return '*tepak sireh*' to man's side while give answer to the man's side, accept or not. Subsequent to the marriage proposal the man's entrust will meet the future bride in hers room to present a ring to her '*jari Manis*'. The ring will be present to hers finger by one of the future bridegroom closest family such his sister or own mother.

In several states, for this virtual the future bride will come out. After that she will shake hand (*bersalam*) with the future bridegroom representation, especially with a few women from man's delegation.

The propose ring has a sentimental value for a woman. It is a sign, for a woman who will move out from her family to be a wife to a man. She will give her soul and what she has to her husband. Usually the ring has uneven number of ruby.

After asking process the decision is making and woman parties received a ring from man parties and man parties also receive a ring from woman parties. So the engagements are occurred between them.

After see eye to eye, they will sit together and discuss about the wedding include gifts (*hantaran*), dowry (*mahar*), and date wedding, money expense (*wang belanja kahwin*) usually decide by woman's side. It base on her family's woman's usually higher than

unemployed and an educated woman, '*Wang hantaran*' usually reasonable and the future bridegroom can afford it. The discussion might be delay if the man's delegation cannot give their answer on the spot. Sometimes, the man's delegation bargain to reduce '*wang hantaran*'. If this happen, the negotiation will be end because the woman's side cannot give tolerate to the man's side.

About the engagement period, commonly there is no specific time for engagement period. All of that is depend on certain circumstance. Compare to today, engagement in previous time is shorter. Maybe today perceptions to spinster (*anak dara tua*) also change.

Actually, today's engagement period is depending on the individual who involve in it. Maybe, the couples only engage only in a month or will marry earlier than that, because the bridegroom will further his study a broad and want to bring his wife along or a soldier who transferred to Sabah or Sarawak. Since, the men want to further his study and want to concentrate on it and he also does not to jump in marriage world for a while, the engagement period may with 4 years.

5. Implication of Engagement

Principally, the engagement that held by the man to woman is not consequently included in law. It is different with sayyid sabiq who said

that engagement is only a kind of promise to marry and it is not a bounding contract.

In this case, we can see that actually a man who has already be a fiancé of another person or the opposite of it, the prohibition to solitude is still happen. The purpose of the prohibition is to avoid bad things that might happen to both the man and woman. In another hand, when it connected with the right of worrying other person. This marriage is aimed to be focus on moral value, and it could be one of the certainties that might avoid other people's right to have married.⁴⁵

A promise of marriage is not considered as good as a marriage contract, and is not valid in judging cases concerning marriage. Engagement is a promise of marriage and not a marriage contract. The same judgment applies to Fatiha recital and such customary things as exchanging gifts. Thus, a marriage contract is not considered by engagement pronounced *ijab and qabul*, and with promise. Thus, engagement, promise of marriage, Fatiha recital, receiving of dowry, money, and accepting gifts do not constitute a marriage. A marriage contract is not complete and has no consequences except in the case of *ijab and qabul* between the two parties.⁴⁶

Engagement helps in marriage a lasting contract by facilitating for each side come to know each other in a sound matter without deceptions

⁴⁵ H. Zaenuddin Ali, *Hukum Perdata Islam di Indonesia*, (Jakarta: Sinar Grafika, 2006), p. 11

⁴⁶ Ala'eddin Kharofa, *Islamic Family Law A Comparative Study with Other Religions*, (International Law Book Service, 2010), p. 32

and presences. Legalizing the institution of engagement on the parts of Islamic law shows the degree of importance and sanctity to be attached to marriage. The institution of marriage has this particular feature of being preceded by engagement.

According to Wahbah Zuhaili the Islamic deeds claim to be responsibility in an action. However, in the form of the promise that was made by him. In Qur'an Surah Al-Isra' verse: 34

وَلَا تَقْرَبُوا مَالَ الْيَتِيمِ إِلَّا بِالَّتِي هِيَ أَحْسَنُ حَتَّىٰ يَبْلُغَ أَشُدَّهُ
وَأَوْفُوا بِالْعَهْدِ إِنَّ الْعَهْدَ كَانَ مَسْئُولًا ﴿٣٤﴾

The Meaning: "Come not nigh to the orphan's property except to improve it, until he attains the age of full strength, and fulfill (every) engagement, for (every) engagement will be enquired into (on the Day of Reckoning)".

Verse above sign that people must fulfill their promise they spoke in very high responsibility. Even though the law engagement is not bonded just like what marriage is, and there is nothing obligation that must be done by one of the man and woman's side. So that he might not cancel the engagement without any reasonable reason and it must be done in a good way just like what cannot law taught.

In the development of the tradition that exist in Malaysian society itself can be found a kind of custom in engagement society, the man give a gift like jewelry or another souvenir which is aimed to make sure that the man is seriously intend to continue the marriage progress.

a. Engagement cancellation in Islamic Law.⁴⁷

When the man's proposal submitted has received by woman, promise to marriage is exist between the man and the woman. That bounded period is called *khithbah* period, or it is commonly consider as engagement phase.

Though Muslim taught complying a promise is an obligation. Sometime discontinue the marriage with reasonable reason happen and it is right depend on the Islamic law for example, the male found physical or mental defect to the woman after the engagement process, and the man suppose that this matter would disturb their future. It is not consider as a law infraction but it is included into *khîyar*.

It is different with the engagement cancellation which is happen without any reasonable reason in terms of Islamic Law. For example, they want to marry because of the secular aspect. If it is contemplate from the Islamic moral, this kind of engagement cancellation cannot be truthful receive.⁴⁸

As what SayyidSabiq said in his book under the tittle Engagement and Marriage in terms of Muslim, he explained that engagement is only a promise to commit an engagement. It is not a contract that bond both of the man and woman. So, every single couple that has already engaged is having the right to cancel their engagement. *Al- Shar'I* does not determine the (physical) or maddi

⁴⁷Sayyid Savbiq, *Perkawinan dan Pertunangan dalam Islam*, (Subang Jaya: Al-Ramadhan, 1996), p. 59

⁴⁸Ahmad Azhar Basyir, *Hukum Perkawinan Islam*, (Yogyakarta: UII Press, 2007), p. 24

punishment that hypocrite one demeanor is a contemptible behavior and become one of the hypocrite character, as long as there is a strong reason that force to break the promise or something that cannot be deny.

A broken engagement does not cause an obligation or something else, and the doer doesn't need to return back the thing given, this case specify to the one who has bad moral or this kind of bad attitude belonging to hypocrite people.⁴⁹

In a Hadith of the Prophet he said,

حَدَّثَنَا أَبُو حَفْصٍ عَمْرُو بْنُ عَلِيٍّ حَدَّثَنَا يَحْيَى بْنُ مُحَمَّدٍ بْنِ قَيْسٍ عَنِ الْغُلَاءِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِيهِ عَنْ أَبِي هُرَيْرَةَ : قَالَ : قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ : آيَةُ الْمُنَافِقِ ثَلَاثٌ : إِذَا حَدَّثَ كَذَبَ وَإِذَا وَعَدَ أَخْلَفَ وَإِذَا أُؤْتِمِنَ خَانَ

*It means: "the requirements of hypocrites there are three: If the talk he lied, if he promise he fail, and if he is believed he defected."*⁵⁰

Before passed away, he said: "look at him (while pointing to one of the man from Quraish community). I have told him about my daughter whom consider as a promise, I will not meet my God with hypocritical. And I have you all as the witness of my daughter's marriage."

⁴⁹ Abdul Majid Haaji Jaafar, (Kuala Lumpur: Pustaka Haji Abdul Majid, 1993), p. 165-166

⁵⁰Abi 'Isa Muhammad bin Isa bin Saurah, Sunan al-Tirmizi, edisi. Kamal Yusuf al-Hut (Beirut: Dar al-Fikr, t.t), hadistnomor 2631, "Bab Ma Ja a fi 'alamah al-Munafiq." Hadisdari Abu Hafs, 'Amr bin 'Ali dariYahya bin Muhammad bin Qaisdari 'Alla' bin 'Abd. Rahman dari Bpaknya dari Abi Gurairah. Abu 'Isa berkata:"Ini hadis hasan garib dari hadis al-Alla'."

All things that give by the man to woman are considered as a grant. And in its law, the grant things might not be asked still if this candidness gifts is not aimed to get it back. It is because when things have already given to other people, they have the right to own the things and do everything by the thing. It is because the things are belong to the receiver of it.

When the one who gave the things is ask it back, it means he carry away other peoples thing without any permission. In another hand, when he gave things with the purpose to get the things back, from the receiver, and the receiver doesn't give it back, the one who give has the right to get back the things that he gave. Because a grant here is functioned as a change. When the marriage is cancelled he has the right to get everything back.

Engagement cancellation according to some scholars are as follow:

Hanafi concerned that the man might get back about all things that he gave to the woman as long as there's nothing change on those things. But if the things have changed from the start, he has no right to get back for all things that he gave to the woman, and he might not prosecute it as the change.

The lower court of Sharia law has already made decisions on 13/07/1993 and to affirm the principal.

- 1) When the thing given is out of the main object of marriage gift, it is consider as common gift.
- 2) According to the concept and law, gift is as same as a grant

- 3) A grant is an contract which is make an owner right if the grant thing had received the gift.
- 4) The destroyed or the loss of the gift will be backstop for the gift to be asked by the giver.
- 5) The giver only has right to receive the gift as long as the gift is still exist.

Maliki concerned to make a subsection by seeing the one who the break the engagement, for both the man and woman. When the destroyer is the man, he has no right to get back all things that he gave. Otherwise, when the destroyer is the woman, the man has the right to get back all things he gave at the same condition, but when the things are already broken, he has the right to get the change by following the '*urf*' and '*syarat*' that is exist as law exactly.

Syafi'I told that the gift should be return back while it's still in a good condition or even in a broken condition. The point thing is the woman should return back the gifts, if it is lost, she could change by giving the price of the gift. This moslem law is commonly followed by our society's custom.⁵¹

⁵¹Sayyid Sabiq, *Perkawinan dan Pertunangan dalam Islam*, (Al-Ramadha: Subang Jaya, 1996), p. 60-64

B. Woman's right in Islamic Family

Marital right is one of important indicator in woman's society status. In our society and religious system, woman do not get the independent right to come to marriage live depend on their own free desire. A woman is usually considered incapable to choose her own couple because of their mental ability which is lower than man. However, the holy Qur'an has its own view. Qur'an consider that woman are equal with man in terms of mental ability even the moral value. Both the men and woman are given reward and punishment to the good thing and bad thing they do. That what mentioned in holy Qur'an.⁵²

In islamic perspective, marriage is a contract between two people couple consist of a man and a woman in a position of equals. A woman as equal with man can establish the desired conditions as men. Thus the relationship between the husband and wife relationship is horizontal instead of vertikal relations,⁵³ so that there are no conditions that dominate and dominated. All parties are equal and equivalent to each other working together in a bond of love and compassion.⁵⁴

As a logical consequence of the existence of a marriage, it will birth of some of the rights and obligations that must be met by each spouse. The

⁵²Asghar Ali Engineer, *Hak-Hak Perempuan dalam Islam*, Terj. Farij Wajidi dan Cici Farkha Assegaf, (Cet.I; Yogyakarta: Yayasan Bentang Budaya, 1994), p.137

⁵³Rustam Dahar Karnadi Apollo Harahap, "*Pola Emansipasi Wanita di Mesir (Pemikiran Qasim Amin)*", dalam *Bias Jender dalam Pemahaman Islam*, ed. Sri Suhandjati Sukri, (Yogyakarta: Gama Media, 2002), p 199

⁵⁴Dalam KHI, definisi perkawinan menurut hukum Islam, pernikahan adalah akad yang sangat kuat atau mitshaqan ghalidzan untuk mentaati perintah Allah dan melaksanakannya merupakan ibadah. Perkawinan bertujuan untuk mewujudkan kehidupan rumah tangga yang sakinah, mawaddah, dan rahmah. (KHI, Pasal 2 dan 3).

fulfillment of the rights by men and women are equal and proportional with the burden of the obligations that should be met by both men and women (husband and wife). Thus, in fact, each spouse no more and less in the levels of compliance implementation of rights and obligations. Balance and equality in a marriage, indeed already begun during the pre-wedding, which by Islam are referred as "sekufu".

Set up of "sekufu" which means balanced and equal as one of the conditions to make a marriage indicates that the real is important thing in realizing the ideal of marriage patterns with the reality of marriage living by the husband and wife (male and female) is base on the existence of equality. The following discussion will be explained the critical studies of the equality of rights and duties between husband and wife.

“in truth, the Muslim of man and woman, the truthful of man and woman, the man and woman who are keeping their obediently, the men and women who are devoted, the man and women who do alms, the men and women who do fasting, the man and women who keep their honor and the men and women who keep mentioning their God often. Allah will obviously supply them forgiveness and very big men.

Such was the case, it will be seen that the holy Qur'an treat the man and woman in the same treatment in terms of keeping the moral responsibility and about the reward and also the response. This matter is logically spreading to the marriage range. A woman as the equal side with the man is able to decide the requisite she wants and so is the man. In this

case, the man's position is not higher than the man. *Qâdî*, or we can say the marriage executor, is not able to do his order without the woman's agreement and all requisites she had decided. Including the marriage gift that she wants to get from her husband. These requisite is decided right in front of two witnesses who are testify in front the *Qâdî*. After that they come to the male to be the witness, is the male will receive the requisite she estimated.⁵⁵

A marriage will never happen without woman's agreement and all the requirements she asked. It is obviously happen because the woman has the same position as the man. In Islamic law there is nothing a marriage concept which is considers as the sacred law. By those matters, to broke the marriage is a possible thing just like other contract which has agreed by both the man and woman. In such, a divorce is legally even though it is hateful by our prophet exactly.⁵⁶

According to holy Qur'an itself, husband and wife are aimed to cover each other (2:17). So, a marriage is not only a sexual urging which bring both the husband and the wife into one. A marriage has the higher purpose and impressive motive. Or it is consider as a love relation that aimed to respect each other.⁵⁷

Concerning about the verse that allows to do polygamy, is a husband who has more than one wife. Asghar Ali Engineer told in his own book that this verse could not be read as the only verse, yet it must be read

⁵⁵ Asghar Ali Engineer, *Hak-Hak Perempuan dalam Islam*, p.138

⁵⁶ Asghar Ali Engineer, *Hak-Hak Perempuan dalam Islam*, p.138

⁵⁷ Asghar Ali Engineer, *Hak-Hak Perempuan dalam Islam*, p.141

according to the previous verses. Those are first and second from four verses. For those who read the verse has to remember about 4 divine revelations wrote.

The first verse of this Surah is talking about the creation of men and women from the same source that emphasizes equality between two sexes. The second verse urged Muslims to give orphaned children what is the inheritance and not disturb it for the benefit of his guardian. The third verse which deals with polygamy also begins with the phrase "If you worry about not able to do justice to the children (woman) are orphaned,..." Firstly we must note that the earliest verse explains that men and women have been created from the *Nafsin Wâhidati* (the living being one) that they have a dank arena the equivalent status.⁵⁸

The second verse talks about doing justice to the orphans. The third verse, about polygamy, starting with do justice to orphans and continued with that if you can't do justice then that marry that kind of woman how well do you think, two or three or four. Thus it can be seen that the emphasis is not to marry more than one woman, but to do justice to the orphans. Here it should be remembered that at that time they were tasked with maintaining the wealth of orphans often do not properly and sometimes doing that with their marrieds' dowry was without pay. Qur'an wants to fix the wrong deeds. This is according to Sahih Muslim, the Prophet's wife Aisha understood this verse with the understanding that if

⁵⁸ Asghar Ali Engineer, *Hak-Hak Perempuan dalam Islam*, p.142

the keepers of the orphans were concerned with married them, and they wouldn't be able to do justice to other women. Thus, this verse is not the permissibility of impersonal but refers to a clear context where justice against children orphaned women more central than to marry more than one wife at the same time. This context should not be ignored.⁵⁹

Comment on marry more than one, an interpreter Parves Qur'an leading, said: "it would seem that the permissibility of marry with more than one wife are subject to two conditions: (1) if there is an access of women are single or no husband in the community and there is no other reasonable solution, then the exceptions made to the rules of monogamy and a man can marry a woman (woman who no husband). 2) This Allowance as well as with requirements that justice is given to all in the family. It is also should allow it to bear the burden of all the children born to the wife. He should not become the burden of not burden for him."⁶⁰

1. Marriage and The Role of Guardian

In Islam, marriage is contractual. In other words, either the groom as well as women can decide the terms of the marriage. It shows that women are free to decide whether she wants to do the marriage contract or not.

In the matter of marriage, the *fuqahâ* differentiate between a *bakirah* (young girl who has never been married) and a *Thayyiban* (widowed, divorced or dead). A *bakirah* sued the Mayor appoints a

⁵⁹ Asghar Ali Engineer, *Hak-Hak Perempuan dalam Islam*, p.143

⁶⁰ Asghar Ali Engineer, *Hak-Hak Perempuan dalam Islam*, Terj. Farij Wajidi dan Cici Farkha Assegaf, (Cet.I; Yogyakarta: Yayasan Bentang Budaya, 1994), p. 137-147

wedding that is not needed in a wedding *thayyibah*. The reason for this distinction is probably due to a young girl who has never been married is not enough experiences on marriage is the best way for her was handed over to her elder relatives who can make the right decision, though ultimately she herself will approve or not approve it.⁶¹

Widow has the experience in marriage problem and she can base herself according to her consideration. However, we find a Hadith which States that although a *bakirah* cannot be married without her approval, silence when asked can be regarded as her approval.

Islam gives women the new status. This religion wants to create a new woman as she also wants to create a new man. A serious study of the Qur'an will reveal that women are given full autonomy in terms of marriage. Marriage depends on the approval given by the terms of which she asked for.⁶²

In the matter of Ijbar Rights, in Islam should not exist, because it is contrary to the principle of 'freedom' that is underscored by Islam, also in terms of choosing a partner. The right *ijbâr* gives opportunities to parents to do arbitrarily to girls who are going to get married. Although it is not uncommon parents use their rights in order to provide the best for her daughter.

Imam Syaff'i is one of scholar who holds the rights to *ijbâr* for guardian (parents). However, the existence of such rights is intended to

⁶¹ Asghar Ali Engineer, *Hak-Hak Perempuan dalam Islam*, p.151

⁶² Asghar Ali Engineer, *Hak-Hak Perempuan dalam Islam*, Terj. Farij Wajidi dan Cici Farkha Assegaf, (Cet.I; Yogyakarta: Yayasan Bentang Budaya, 1994), p.151-156

give the chance to guardian do, care about his daughter's future, including by choosing her soul mate. Though Syafi'i gives the signs are quite explicit in this matter.

Ibn Taymiyyah, confirming the opinion of scholars who did not allow father to force his daughter who was grown (Abu haneefah and others). While there are other opinion that allow the father to force his daughter in marriage, as well as the opinions shared by the schools of Maliki, Syafi'i and al-Kharqi.⁶³

The opinion of Ibn Taymiyyah is supported by Asghar Ali Engineer who said that in al-Quran women equal to men in mental and moral abilities, so that each has the same independent rights in determining the spouse.⁶⁴ Verses of the Qur'an to be the reference by Asghar is Surat al-Ahzâb (33): 35,

From the above verse Asghar opinion, that the equality of men and women mentioned in the Qur'an includes also the equality of men and women in the marriage contract. A woman as the equal of men, which may set the terms it wants as it is also man. Men are not the higher its position in this matter. This is very relevant to the provisions of the regulation that contained in the compilation of the Islamic law as follows: "the rights and position of the wife is in balance with the rights

⁶³ Ibnu Taimiyah, *Hukum- Hukum Perkawinan*, Alih bahasa oleh Rusnan Yahya, Cet.I, (Jakarta: Pustaka al-Kautsar. 1997), p.124

⁶⁴ Asghar Ali Engineer, *Hak-Hak Perempuan dalam Islam*, terjemahan Farid Wajidi dan Cici Farkha Assegaf, (Yogyakarta: Yayasan Bentang Budaya, 1994), p. 138

and position of husbands in domestic life and social reasons to live together in society. Each party reserves the right to perform legal acts.⁶⁵

2. The filing Requirement in marriage

Because marriage in Islam is contractual, both parties have the right to set certain conditions. This is what is called technical *Khayar al-Syarth* (option to set terms). However, the option to cancel a wedding is not mentioned as one of the requirements in the contract.

There is a difference of opinion regarding the Conference a marriage contract if these requirements are not met. Maliki, Shaafa'I, Hanbali. And Imamiyah schools, says: "his condition is legitimate and if the result is not satisfying the requirements of who put her partner has the choice of the negotiated or cancel the contract."⁶⁶

C. Islamic Family Law in Malaysia and Act 303 Islamic Family Law Federal Territory 1984

Malaysia is a Federation which consists of thirteen States and three federal territories in Southeast Asia with an area of 329.874 kilometers. The capital city is Kuala Lumpur, while Putrajaya is the Federal Administration Center. The country's population exceeds 27 million inhabitants. The country is separated into two regions, namely Eastern Malaysia by Natuna Peninsular and Indonesia in the South China Sea.

⁶⁵ Asghar Ali Engineer, *Hak-Hak Perempuan dalam Islam*, p. 138

⁶⁶ Asghar Ali Engineer, *Hak-Hak Perempuan dalam Islam*, Terj. Fariz Wajidi dan Cici Farkha Assegaf, (Cet.I; Yogyakarta: Yayasan Bentang Budaya, 1994), p.158-162

Malaysia borders with Thailand, Indonesia, Singapore, Brunei, and the Philippines. It is located in Southeast Asia with the Malay language and English as the official language of the State. At time of Government of United Kingdom in the late 19th century, the Malacca peninsula is made up of small kingdoms and Islamic culture prevails throughout the country, such as the law of marriage, divorce law and the laws of inheritance.⁶⁷ Malaysia's head of State is the yang di-PertuanAgung, and his Government headed by a Prime Minister. Malaysia's Government model is similar to the Westminster parliamentary system.

Malaysia as federal state never existed until 1963. Previously, a set of colonies were established by the British in the late 18th century, and half of West Malaysia consists of some separate kingdoms. Group of colonies was known as British Malaya until its dissolution in 1946, when the Group was reconstituted as the Malayan Union. Due to widespread opposition, it was again reconstituted as the Federation of Malaya in 1948 and later gained independence on 31 August 1957.

On September 16, 1963 in accordance with UN General Assembly resolution 1514 in the process of decolonialization, Singapore, Serawak, North Borneo or now more commonly known as Sabah turned into the State from the Federation new creations that are named Malaysia is included with the Federation of Malaya, and on August 9, 1965, Singapore was expelled from Malaysia and became an independent nation called the Republic of Singapore,

⁶⁷Thahir Mahmood, *Personal Law in Islamic Countries, Text and Comparative Analysis* (New Delhi: Academi of Law and Religion, 1987), p. 219

during the early years of the formation of the new Federation there was also opposition from the Philippines and Indonesia with military conflict.⁶⁸

The Nations of Southeast Asia is experiencing an economic boom and underwent rapid development in the late 20th century. The rapid growth in the 1980 and 1990, averaging 8% from 1991 to 1997, Malaysia has transformed into a new industriy country. Malaysia is one of three countries that control the Strait of Malacca, international trade plays an important role in its economy.⁶⁹

At one time, Malaysia had been a producer of Tin, rubber, and palm oil in the world. The manufacturing industry has a major influence for the economy. Malaysia is also seen as one of the rich biological diversity of 18 countries in the world. Malaysia being the biggest part of the population of this country. There is also many of Chinese and indian community. Malay and Islam respectively became the official State religion and language. Malaysia is a member country of ASEAN and take part in various international organizations, such as the United Nations. As former colonies of the United Kingdom, Malaysia is also a member of the Commonwealth countries and members of the D-8.⁷⁰

In Southeast Asia, Malaysia is recorded as the first country that makes reform of Islamic law, particularly matters relating to family law. This can be seen in the Muhammadan Marriage Ordinance Number V year 1880 the area

⁶⁸Mardani, *Hukum Perkawinan Islam di Dunia Islam Modern*, (Yogyakarta: Graha Ilmu, 2011), p. 55

⁶⁹Mardani, *Hukum Perkawinan Islam di Dunia Islam Modern*, p.55

⁷⁰Mardani, *Hukum Perkawinan Islam di Dunia Islam Modern*, p 56

intended for the island of Penang, Malacca, and Singapore. The principal contents of this Law are: first, requiring the registration of marriage and divorce for Muslims. Second, the employee has the right to perform the recording of marriage is Qadi. While for the Malay Union (Perak, Selangor, Negeri Sembilan and Pahang) enforced Registration of Muhammadan Marriage and Divorces Enactment 1885. As for the region of Malay countries not allied (Kelantan, Perlis, Trengganu and Johore) enacted The Divorces Regulation 1907.⁷¹

After Malaysia proclaimed its independence, law regulation that concern Muslims still strewn in the establishment of prerogative State that has the right to make regulations. Consider the plurality of the population regarding racial, ethnic and religious in Malaysia, it is also diverse culture in the lives of its citizens. Although the country's official religion i.e Islam, but there is freedom for its citizens to embrace religion.

Different ethnicities have resulted in different styles of life, so for citizens who are non-Muslims who originally imposed Christian Marriage Ordinance 1952 in law of marriage and reformed by Marriage and Divorce Act 1976. As for a Muslim, published the Law Reform (Marriage and Divorce Act 1976) that a lot of the new issues are about how the breakdown in the marriage and its implication. However, this rule is not so effective because the role of the State is still considerable in making a rule imposed to its citizens.

⁷¹M. Atho' Muzhar, *Hukum Keluarga di Dunia Islam Modern*, (Jakarta: Ciputat Press, 2003). Cet ke-I, p. 20

Aware of the need for the renewal of Islamic law which implemented in order to adapt Islamic law with the times in modern life, Malaysia's Islamic law experts begin drafting new studies to carry out the renewal of Islamic law. In 1982 the Government of the State of Melaka, Kelantan, and negeri Sembilan held changes in family law covering various aspects of life, especially in the areas of marriage, inheritance and endowments as well as some other aspects of Islamic law.

All States in Malaysia had its own legislation in the field of the family commonly known as enactment or statute (the Statute in English). The enactments are namely:⁷²

- a) Enactment Islamic family laws, Kedah, 1979 (1964)
- b) Enactment Islamic family laws, Kelantan, 1983
- c) Enactment Islamic family laws, Melaka, 1983
- d) Enactment Islamic Family laws, Negeri Sembilan, 1983
- e) Enactment Islamic family laws, Federal territory, 1984
- f) Enactment Islamic family laws, Selangor, 1984
- g) Enactment Islamic family laws, silver, 1984
- h) Enactment Islamic family laws, Pulau Pinang, 1985
- i) Enactment Islamic family laws, Trengganu, 1985
- j) Enactment Islamic family laws, Pahang, 1987
- k) Enactment Islamic family laws, Perlis (draft)
- l) Enactment Islamic family laws, Kelantan (Emendation), 1985

⁷²Mardani, *Hukum Perkawinan Islam di Dunia Islam Modern*, (Yogyakarta: Graha Ilmu, 2011), p. 56

- m) Enactment Islamic family laws, Kelantan (Emendation), 1987
- n) Enactment of Islamic family law, (Emendation) Selangor, 1988
- o) Enactment Islamic family laws, Johor, 1990
- p) Islamic Family Ordinances, some parts of Borneo, 1991
- q) Enactment Islamic family laws, sabah.⁷³

Look at that condition, can known that Malaysia is a federal State, until now haven't had a family act that apply nationally. Family laws enacted different between one State and another State. Effort to unite the Islamic family law has ever done, but not all State can accept its effort.⁷⁴

a. Substantive Shari'ah legislation 1983-1985

During 1983- 1985 there has been fresh legislation in Malaysia in the area of Islamic Personal Law. Titled Islamic Family Law Act (or Enactment), the new laws came in force in 1983 in Kelantan, Negeri Sembilan dan Malacca, in 1984 in kedah, Selangor and Wilayah Persekutuan (Federal Territory) and in 1985 in Penang.⁷⁵

The Islamic Family Law (Federal Territory) Act 1984 is a bulky enactment containing 135 articles arranged into ten parts and a schedule as follows:

I.	Preliminary	1-6
II.	Marriage	7-24
III.	Registration of Marriage	25-34

⁷³Mukhtar Zarkasyi, *Hukum Keluarga Islam di Malaysia*, makalah, (dirbinbapera:depag, 19 september 2002), p.1-2

⁷⁴Mardani, *Hukum Perkawinan Islam di Dunia Islam Modern*, p. 57

⁷⁵Tahir Mahmood, *Personal Law in Islamic Countries- History, Taxes and Comparative Analysis*, (New Delhi: Academy of Law and Religion, 1987), p.221

IV.	Penalties and Miscellaneous Provision relating to the Solemnization and Registration of Marriage	35-44
V.	Dissolution of Marriage	45-58
VI.	Maintenance of Wife, Children and Others	59-80
VII.	Guardianship	81-107
VIII.	Miscellaneous	108-122
IX.	Penalties	123-133
X.	General (Rule-Making Power and Repeal)	134-135
	Schedule (Glossary of Terms)	

The Act has repealed the corresponding law under the Selangor Enactment of 1952 its applications to the Federal Territory. Similar laws in the six foretasted states enacted during 1983-1985 reportedly share many provisions of the Federal Territory Act of 1984.

Notable Provisions:

Notable provisions of the Malaysian Federal Territory Act of 1984 referred to above relate to the following:

- (i) Raised age of marriage for males and females
- (ii) Court's power to play the role of marriage-guardian in suitable cases
- (iii) Enforcement of the Shari'ah rule of halalah
- (iv) Payment of expenses, etc. in case of breach of promise of marriage

- (v) Requirement of Shari'ah court's prior permission for bigamy which can be given subject to specified conditions
- (vi) Compulsory registration of marriage
- (vii) Registration of of delegated-divorce clause in marriage contracts
- (viii) Punishment for forcing any person to marry or prevent him for getting married according to law
- (ix) Requirement of court's order to confirm dissolution of marriage resulting from convention
- (x) Intervention of court to effect a single talaq and khuluk
- (xi) Registration of revocation divorce and punishment for restoration of marital-ties without such registration
- (xii) Availability of judicial divorce at the instance of wife on a large number of specified grounds
- (xiii) Provision for maintenance, accommodation and mut'ah in respect of divorced wife
- (xiv) Provision for security and maintenance of children
- (xv) Raise age of custody for male and female children
- (xvi) Restriction on the power of guardians of property
- (xvii) Retention of the established shafi'I law on the maximum period of gestation
- (xviii) Punishment for desertion and ill-treatment of wife and for disobedience by wife

- (xix) Punishment for pretended or bogus apostasy assumed for the sake of annulment of marriage, and
- (xx) Punishment for failure to comply with a maintenance order.⁷⁶



⁷⁶Tahir Mahmood, *Personal Law in Islamic Countries- History, Taxes and Comparative Analysis*, p.222