

The Politicization of Women's Rights in Malaysia: The Drive

Behind the Impasse of Fatwa Obligating Female Circumcision¹

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Under the new premiership of Najib Razak in 2009, a fatwa obligating female circumcision for all Muslim women in Malaysia was issued. It was issued following the 2008 "Political Tsunami" despite the heightened promotion of global zero tolerance towards the practice. The dilemma between adhering to Malaysia's obligation under CEDAW and CRC and the need to regain control amidst domestic political upheaval has led the fatwa to be left on impasse, until date. Thus, this article aims to find the reason behind the Malaysian government's decision to leave the fatwa on the impasse focusing on two stages of public policy analysis. The analysis of cost and benefit in the policy formulation stage has resulted in equal cost and benefit to each policy option –to accept or reject the fatwa. The result of the equal cost and benefit analysis is also due to the variety of actors in the decision-making process with different positions, interests and bargaining positions. From using a rational model of the decision-making process, the reason why the Malaysian government leaves the fatwa on impasse was driven by the Malaysian goal under Najib Razak, which required not only domestic stability but also vast international support.

Keywords: *female circumcision; 2008 general election; public policy; women rights*

Introduction

The practice of female circumcision or female genital mutilation has become a prominent issue to discuss due to its vast practices despite it being a violation of women's and girls' rights. As stated by World Health Organization (WHO) that the practice of cutting women's genitalia for non-medical reasons "reflects deep-rooted inequality

between the sexes, and constitutes an extreme form of discrimination against women", as well as violating the rights of the child and "the rights to health, security and physical integrity of the person, the right to be free from torture and cruel, inhuman or degrading treatment, and the right to life when the procedure results in death (World Health Organization, 2008). Due to the rising awareness towards this practice,

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countries have started to issue legislation banning and even criminalizing the practice, such as Benin in 2003 (UNICEF Division of Policy and Strategy, 2014), Burkina Faso in 1996 (UNICEF Division of Policy and Strategy, 2014), and in 2008 Egypt passed national legislation criminalizing the practice (UNICEF Division of Policy and Strategy, 2014). This development, however, contradicts the recent situation in Malaysia. Although the basis of the practice is still debatable, many people believe that it is a religious-grounded practice making it *wajib* or obligatory to conform to. As the practice itself has grown more popular over the years, JAKIM or the Malaysian Fatwa Committee of the National Council on Islamic Religious Affairs finally issued a fatwa in May 2009 declaring that female circumcision is an obligatory practice for all Muslim women in Malaysia (Ainslie, 2015, p. 1).

The fatwa and the aftereffect of its imposition are of critical due to several factors, first, the increasing popularity of this practice despite proven to have no added health benefits. As shown in the research done by Isa, Shuib and Othman in Kelantan—one of the regions that vastly exercise this practice that from 262 participants in the research, all 262 women stated that the need for the continuity of the practice is to enhance husband's sexual pleasure, with 237 out of 262 women claimed that it aims in reducing sexual drive and only 4 out of 262 women stated that female circumcision contribute to facilitating childbirth and preventing diseases (Isa, Shuib & Othman, 1999, p. 141). They also stated that women who are proven not to be circumcised are usually patronized and frowned upon by

family elders and community as they are seen to be impure, resulting in the difficulties to get married in the latter age. This study has shown that the practice does not bring any advantage for women and in contrary, reflects the problem of deep-rooted gender inequality in the society. The second factor is the role of fatwa in Malaysia itself. By definition, fatwa functions as opinion or guidance for Muslims to direct them to proper practice in regard to the discourse of Islam. However, in Malaysia, due to its dual justice system that includes Islamic Law as state law, fatwa takes a prominent role as it increases the administration of justice and the Islamic Law in the country. Once the fatwa is published in the Gazette it serves as a state law that is binding and enforceable. Although the status of this fatwa has not been published in the Gazette, it is still considered concerning as the government did not immediately reject the fatwa despite Malaysian government's accession to Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and Convention on the Rights of Child (CRC).

In addition to the Malaysian government's accession to CEDAW and CRC, they have also ratified the action plans of two international conferences calling upon states to eliminate the practice—United Nations International Conference on Population and Development (ICPD) in 1994 and the Beijing Declaration in 1995. Through their accession and ratification, the Malaysian government seems to be committed to promoting global zero tolerance on the practice. However, the existence and Malaysian government's attitude towards the fatwa raised questions

on the Malaysian government's actual stance towards the practice. In 2012, the Malaysian Ministry of Health under Najib Razak's administration decided to propose guidelines in standardizing the practice to be available in all public health ("Malaysia storm over female circumcision", 2012). This action contradicts their supposed commitment to the international stage. Domestically, however, the Malaysian government decided not to publish the fatwa in Gazette, leaving the fatwa on the impasse. Reflecting on the Malaysian government's stance regarding the practice, this article aims to explain the reasoning on why the Malaysian Government leaves the fatwa obligating Female Circumcision on Impasse instead of rejecting it despite their accession to CEDAW and CRC.

This article comprised of three sections. The first one will discuss the relationship between the main actors and the fatwa. This section will also explain the background that triggers the behavior of the actors and the nature of the fatwa utilized to attain the actors' interest. The second section will analyze the role of rising opposition parties and Non-Governmental Organizations (NGOs) as pressure groups to the government, focusing on the interests and strategies used by the parties. The third section will be a combined elaboration from the previous section under the umbrella of the public policy framework. From this framework, the reasoning that leads to the state of fatwa will be discussed. The last section will be the conclusion.

Methodology

The article is conducted using a qualitative method, with prior publications

serving as the basis of the facts and arguments presented. The focus of this article is mainly on measuring the reason why the Malaysian government act or does not act. To understand that, the direction of domestic politics must be assessed. Due to its strong connection with the decision taken by the Malaysian government, public policy analysis underlines the big conceptual framework of this article.

Public Policy Analysis

As stated by Thomas Dye (1976) that public policy analysis concerns with the driving factors on "what government do, why they do it and what difference does it make", Heidenheimer (1990) also stated that policy analysis is the "The study of 'how, why and to what effects governments pursue particular courses of action and inaction". Through public policy analysis, the driving force of the government's decision can be assessed, as the dynamic of domestic politics during the time the fatwa was issued affects greatly to the government decision.

There are five stages of public policy analysis; agenda setting, policy formulation, decision-making process, policy implementation, and policy evaluation. However, due to the current development of the fatwa that is still on the impasse, the stages that will be elaborated are focused mainly on two; the policy formulation and the decision-making process.

1. Policy Formulation

Policy formulation emphasizes on formulating a set of alternatives to produce possible solutions by judging on the costs,

benefits, and political acceptability. Through assessing the policy formulation stage, the questions on the goals, the options to achieve the goals, the costs, and benefits of the options and the externalities of each alternative can be answered. It is a critical phase that helps design the consideration for decisions, crafting alternatives and examines how and why certain policy alternatives do remain or not on the agenda. This stage will primarily discuss an in-depth analysis of the factors that influence the calculation on costs and benefits from the government's perspectives in regards to leaving the fatwa on the impasse.

2. Decision Making Process

In the decision-making process stage, two things must be elaborated, the first one concerns the analysis of the interests of the actors involved in the decision-making process with the problem. The approach that will be used to explain various actors behind the government is bureaucratic politics approach as introduced by Graham T. Allison. The foundation of bureaucratic politics theory itself concerns primarily on the internal bargaining between the actors. This approach will be used mainly to elaborate in a detailed manner, the role of each actor in which their interests, positions, perception on the problems and their power varied, and how this leads to the bargaining process to produce a decision regarding the fatwa on female circumcision.

The second elaboration will focus on all actors' decisions and explaining the consideration that resulted in the current development of the fatwa. The model that will be used in explaining the decision-making

process will be the rational model. This model emphasizes on selecting policy solutions with consequences aligned to the goals, highest level or problem-solving and providing the most benefits with the reasoning based on the most rational decision.

The Relationship of the Dominant Political Actors and the Fatwa

The 2008 "Political Tsunami" and UMNO's New Strategy

Pertubuhan Melayu Kebangsaan Melayu Bersatu or United Malays National Organization (UMNO) and its multiethnic coalition -Barisan Nasional (BN) coalition had centered Malaysian political sphere for a long time, with the coalition holding the dominant power by winning most elections and UMNO particularly with its long-standing premiership. The 12th general election that was held on 8 March 2008, however, has shown a turn of events, branded as Malaysian "political tsunami". Although BN coalition managed to win seats in the government, however, the fact that they only won 140 out of 222 seats has shattered its reputation as the ruling coalition government for more than five decades, raising questions about BN as a federal government in the country (Khuo, 2016, p. 418).

Several factors contributed to BN and UMNO's loss in 2008 general election. First, the ongoing internal conflict inside UMNO that is closely related to Abdullah Badawi as the Prime Minister and the President of UMNO. After ascending to the premiership in 2004, Abdullah Badawi pledged on eradicating corruption by establishing an independent Anti-Corruption

Agency (ACA) (Singh, 2009, p. 159). Despite his efforts, Abdullah was put in a dilemmatic position as it was met with resistance from UMNO politicians, and in addition to that, Abdullah's family members were revealed to have entered into deals over government contracts and privatization of assets resulting in citizens diminishing rightness on Abdullah's efforts (as cited in Case, 2010, p. 511).

Second, swing away from the non-Malays due to the dissatisfaction of Indian and Chinese communities, towards BN as a whole and to their respective community's party representatives –MIC and MCA (Singh, 2009, pp. 158-159). The Indian community was displeased with the government's demolition of several Hindu temples in 2007 on grounds of being illegally constructed, and it was met with little interest from MIC. The incident itself caused concern for the Chinese community, seeing themselves as minorities, they concluded that they will be treated as second-class citizens (Singh, 2009, p. 159). These incidents have contributed to the deterioration of positive votes from the non-Malays.

Third, the New Economic Policy (NEP)'s affirmative action policies that were first introduced in 1974 which implementation favors Malays, has reduced competitiveness in local businesses and in addition to that the reinstatement of wasteful mega-projects and rising inflation have contributed to draining the national resources that hurt the masses (Singh, 2009, p. 160). Due to the losses suffered, UMNO with its emphasis on Ketuanan Melayu or Malay supremacy (favoring Bumiputras) had to opt for another alternative to regain back their political legitimacy. Religions and cultures

are two prominent components of Bumiputra, and due to this, there is a need for UMNO to focus itself on cultural and religious issues. In terms of religious matters, Jabatan Kemajuan Islam Malaysia (JAKIM) has been entrusted to command.

1. UMNO's Emphasis on Religion through JAKIM

UMNO's identity has always focused on a more "moderate" Islam compared to its opponent –Partai Islam se-Malaysia (PAS). This can be seen from UMNO's construction of Islam Hadhari (civilizational Islam) that was first introduced during Badawi's administration. Islam Hadhari emphasized that groups such as non-Muslims, women, and environmentalists are no longer perceived as marginal groups, and their agenda is incorporated (Fauzi Abdul Hamid & Ismail, 2014, p. 162). Islam Hadhari, however, was considered a failure as it was portrayed to be patronizing civilizational ideals, supported by the poor implementation conducted by religious officials (Fauzi Abdul Hamid & Ismail, 2014, p. 171). Due to the failure of Islam Hadhari, UMNO under Najib Razak resorted on a different approach by utilizing the religious body –JAKIM.

JAKIM was established in 1968 under the Council of Rulers and previously known to be Majlis Kebangsaan Bagi Hal Ehwal Agama Islam Malaysia (MKI) ("Jabatan Kemajuan Islam Malaysia - History", 2015). JAKIM functions in bridging the needs and interests of the Muslim community with the current development both in terms of Islam and Malaysia itself. JAKIM persists as a central institution of Islamic modernization which functions in

the service of Malaysia and the UMNO, and remains to be a prominent institutional pillar of UMNO's objective in terms of defining and safeguarding the parameters of Islam, while also enhancing both the certain party and the government's Islamic credentials (Liow, 2009, p. 52).

2. The Prominence of Fatwa on Female Circumcision and the Emergence of Religious Issues

Fatwa or religious verdict functions as a legal opinion issued by Islamic scholars, hence fatwa in its original meaning has no legal effect to a criminal offense if there are any violations. Malaysia, on the other hand, is rather special, because the concept of fatwa itself goes beyond a mere legal opinion, it is a binding piece of legislation that has legal effect and due to its bureaucratized and institutionalized making process, any verdict issued in the Gazette will become binding on all Malaysian Muslims and Shari'ah courts (Mehmood, 2015, p. 2).

Fatwa obligating the practice of female circumcision rose to prominence mainly due to the time it was issued, vast instability and the changes occurred in the country. Najib Razak, in its early year of taking the seat after the 2008 "Political Tsunami", was trying to balance out the failures caused by his predecessor, by introducing his 1Malaysia policy. The concept of 1Malaysia projected an attempt to "rewrite" the ethical bases of the state by reconstructing a form of legitimate authority, it can be seen that Najib attempted to ensue "mindset change" and channel its effects in a direction that aid in maintaining UMNO and BN political hegemony (O'Shannassy, 2013, p. 435).

1Malaysia that initially formed to project an equalization of all citizens despite racial and religious identity brought controversies in the following year, particularly in regards to religions. There were several occurrences, such as attacks on Catholic schools, churches and act of disrespecting Hindus by spitting on cow's head that is considered sacred (O'Shannassy, 2013, p. 439). Due to the tensions arose concerning religion, especially the Muslim majority, the fatwa that was first issued in 2009, was well received by the people. It showed that the government was walking on thin ice concerning racial and religious matters, hence if the UMNO-led government under Najib decided to reject the fatwa immediately, it might cause another chaos accumulating to the then disappointment of Islam Hadhari and the religious issues following Najib's 1Malaysia policy.

3. Direct Relation between UMNO, JAKIM and the Utilization of the Fatwa

The fatwa served as an important piece to play in UMNO's agenda due to the intimate connection of religion to Malay ethnicity. According to Ding and Surin in their article "Freedom of Expression in Malaysia", UMNO had a strategy of relying upon religion and race to gain votes, this was mainly done by its leaders who often call for Malay Muslims to 'unite' and position themselves as protector of the sanctity of Islam and the Malay agenda (Ding, Surin & Randhawa, 2011, p. 107). Issuing the fatwa on the female circumcision has positioned the practice as a part of state-led attempts to reinforce a religious and ethnic

identity that props up the legitimacy of UMNO and subsequently JAKIM (Ainslie, 2015, p. 5). It has then become an agenda designed to demonstrate that both UMNO and JAKIM still command the legitimacy and authority to define Islam that is both theologically demanding and politically relevant (Ainslie, 2015, p. 5).

In Malaysia, where female circumcision closely engaged to Islam, JAKIM harbored a sense of responsibility to be the sole body to guide in terms of the practice. That is, however, in relation to the increasing demand for the practice, doctors did not go to JAKIM for guidance and instead approached MoH in 2008 (Ainslie, 2015, p. 5). The occurrence has shown not only JAKIM's lack of centrality in this matter but also the degree of distance between physicians and the government body (Ainslie, 2015, p. 5). Hence, through issuing a fatwa, domestically, JAKIM was able to strategically reinvigorate its position and emphasize its function as a definite authority upon all Islamic matters in Malaysia, compared to as an example the MoH (Ainslie, 2015, p. 5).

The Dynamic of Malaysian Domestic Politics: Rising Power of Opposition Parties, The Role of Non-Governmental Organization in the Domestic Politics and Towards the *Fatwa*

The Rising Power of the Opposition: PAS's Pragmatic Approach

Various speculations were surrounding the downfall of BN and UMNO in the 12th general election. With general knowledge where Pakatan Rakyat (PR) and PAS were favored more with its rising influence in Malaysia. However, more factors contribute to

PR's victory and PAS's increasing popularity. To understand this, several election cases where PR and PAS consecutively gained victory in the past will be assessed. The first one was in 1969. The vote swing from the non-Malays to the opposition party determining opposition's win was due to the communal friction where PAS managed to outspread its influence when UMNO was lacking in it. During that time, UMNO was confronted with internal problems on how to balance the demands that arose from the non-Malays and the need to preserve Malay politic-economic prevalence (Liow, 2004, p. 363). While UMNO's leaders focus on its internal struggles, PAS enlarged its influence on the grassroots network, and this pragmatic approach proved to work (Liow, 2004, p. 363). Another shocking electoral result was the 1999 election where UMNO lost more than half the Malay votes, along with two states – Kelantan and Terengganu – to PAS. In 1999, PAS decided to introduce a new approach by portraying Islam to be friendly with principles of democracy, social justice, human rights, and multicultural harmony, and a solution for the bad governance, corruption, authoritarianism and money politics that were closely associated with UMNO at that time (Liow, 2004, p. 368). PAS's strategy to adapt to the broader concerns needed by society was proven successful in gaining votes. In addition to that, PAS decided on creating cooperation with NGOs and forming a direct alliance with non-Muslim parties for the first time. This was not easy for PAS who has its desire of emphasizing on Islamic courses, however, PAS was willing to downplay its idea of an Islamic state (Liow, 2004, p. 368).

One characteristic that has been seen from PAS's past triumphs in gaining votes has always been its pragmatism. In the case of 2008, PAS were taking yet another strategy on downplaying its Islamic state agenda and instead emphasized on building a 'benevolent state', which then became one of the major factors contributing to Pakatan's success, while not setting aside the element of BN's issues (Saat, 2014, p. 52). PAS's benevolent state itself is defined as the state where the government must be responsible for citizens' basic needs, for instance, food, clothing, housing, healthcare, and education (Saat, 2014, p. 56)

From all the examples above, PAS has filled the space at UMNO and BN's expenses, showing their adaptability skills. It is however still premature to assume that PAS will always resort to this approach by changing its ideology to a more moderate Islam. Because that was not the case. PAS never abandoned its Islamist idea, it portrayed, however, a rather flexible ideology wherein most of its victory cases, PAS downplayed its desire for rigid Islamic State and instead adopt its Islamic idea.

Pressure Groups on Malaysian Politics' Fluctuations and the *Fatwa*

The main actors discussed have so far been focused on governmental bodies, however as Malaysia progresses, society has started to interfere in governments' acts through Civil Society Organizations (CSOs) including Non-Governmental Organization (NGOs). NGOs role as pressure groups plays a big part in the government's decision in augmenting its policies.

1. The Role of Malaysian NGOs in the Electoral Processes

Prior to the 2008 general election, Malaysia's Coalition for Clean and Fair Elections that is commonly known as Bersih organized a mass protest directed towards the ruling government. According to Hishammudin Rais who was the member of Bersih Steering Committee until 2012 in an interview conducted by Ying Hooi Khoo, the factors that triggered the emergence of Bersih movement was the election of 1999, that was considered to be a tainted electoral roll (Khoo, 2014, p. 113).

The first Bersih rally was organized back in 2007 and drew tens of thousands of citizens, with demands that tightly connect to public dissatisfaction for government's failure in ensuring democratic elections, protesting that Malaysia's electoral process was neither free nor fair and that it brought advantage only to the ruling coalition –BN (Smeltzer & Paré, 2015, pp. 122-123). It was done due to several issues such as gerrymandering, unequal access to government-controlled broadcast and print media among other things (Smeltzer & Paré, 2015, p. 123). As Malaysian domestic politics was stroked with turmoil over people's dissatisfaction of Abdullah Badawi and BN's failures, Bersih's first rally stepped in at the perfect timing, particularly as it relayed concerns that were relatable to the people.

2. The Role of NGOs on Fatwa obligating female circumcision

When the fatwa was first issued in 2009, there were several voices of dissidence coming from NGOs. One example is the involvement of Sisters in Islam (SIS). SIS was first assembled

in 1987 within the Association of the Women Lawyers (AWL), which comprised of lawyers, academics, journalists, analysts, activists and several women who were entangled with their marital problems and how they were facing difficulties in seeking legal redress from religious authorities (“Sisters in Islam: The SIS Story”, n.d.).

SIS was vocal when the fatwa on female circumcision was issued in 2009. It was stated in an online news article that Syarifatul Adibah –Senior Program Officer at SIS– insisted that female circumcision isn’t once mentioned in the Koran, and its popularity stems from the increasing conservative interpretation of Islam. She further stated that it was originally a cultural practice, but due to the wave of Islamisation, it was connected to Islam, and people practice it blindly when it is connected to religion (“Female circumcision on the rise in Malaysia - The Express Tribune”, 2015). According to Adibah, after the fatwa was first issued, some developments were being made despite the absence of clear-cut policy. The practice used to be accessible in clinics, making it possible to be performed only by mak bidan, the recent situation however showed that many private clinics and private hospitals are performing female circumcision upon the requests of the parents (Syarifatul Adibah, personal communication, February 16, 2017) Adibah further stated that SIS as an NGO aspires to stop the practice in the country, however they didn’t embark on a larger scale campaign against female circumcision, and instead resort to raising awareness or put an international pressure on Malaysian government to stop the practice (Syarifatul

Adibah, personal communication, February 16, 2017). The reasons why were not mentioned in detail, however, it is relatively hard as a secular NGO to challenge the, she stated that the most appropriate way to aid in taking down the fatwa would be a government-to-government negotiation. Due to the difficulties in pressuring the government on the fatwa, Adibah further stated that she didn’t see any significance in Islamist-traditionalist CSOs that explicitly stating that the fatwa should be taken down.

Another significant women NGO in Malaysia that concerns on the matter is Women’s Aid Organization (WAO). They published a report on April 2012, titled CEDAW & Malaysia, Malaysian Non-Government Organizations’ Alternative Report assessing the Government’s progress in implementing the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). It is stated in the report that although the Malaysian government’s reservation to article 5(a) has already been lifted, there are still breach of the concerned article, regarding the practice of polygamous marriages and the national fatwa decided in 2009 concerning female circumcision (Women’s Aid Organisation (WAO), 2012).

Due to the wide belief that Female Circumcision or Female Genital Mutilation (FGM/C) has low severity impact and knowledge imbalance on the issue itself, Joint Action Group for Gender Equality (JAG) which consists of 12 women NGOs do not work directly on the FGM/C issue, and instead putting it under the umbrella of gender-based violence (GBV) (Syarifatul Adibah, personal

communication, August 22, 2017). Adibah also voiced her concern as she stated that SIS' advocacy on Female Circumcision is nil although the organization has become the reference point for journalists who are interested to understand Malaysia's situation (Syarifatul Adibah, personal communication, August 22, 2017).

It can be seen that although several NGOs in Malaysia have voiced their concern on the fatwa, however, due to the lack of resources and its perception of triviality on the issue, the pressure towards the government gave less impact nationally. However, they resorted to raising awareness internationally under the idea that the fatwa breached the articles in CEDAW and CRC.

Public Policy Analysis on Malaysian Government's Stance on the Fatwa

As the current development has shown that the fatwa has been left on the impasse, the analysis will only focus on two stages: policy formulation and decision-making stage. The absence of a clear-cut policy on the fatwa making it impossible to analyze the implementation and evaluation stages. Through assessing these two stages the reason why the fatwa is in the state of the impasse will be explained.

Analysis on the Stage of Policy Formulation

1. Malaysia's Position and the Outlook of Female Circumcision Practice in International Stage

Due to the increasing international pressure and the growing awareness towards the abolishment of FGM/C, several states that

have been known to be practicing FGM/C have started to abandon the practice by either proposing legislation banning the practice or even criminalizing it on the national level. Arab countries such as Iraq has also passed national decree/legislation banning FGM/C in Kurdistan region in 2011 (UNICEF Division of Policy and Strategy, 2013, pp. 1-4), Yemen banned the practice in all private and public medical facilities by a government decree in 2001, although the Yemeni government did not enforce this decree yet (UNICEF Division of Policy and Strategy, 2016, pp. 1-4), and Iran with its Islamic Penalty Code has prohibited bodily mutilation, and issuing a fatwa stating that FGM/C is not an obligatory practice (UNICEF Division of Policy and Strategy, 2016, pp. 1-4). Indonesia, as one of Malaysian neighboring country also had similar situation with Malaysia regarding its status of FGM/C. In 2006, Indonesia's Ministry of Health issued a circular letter prohibiting female circumcision by medical professionals, in a follow up to this decision, in 2008 Majelis Ulama Indonesia (MUI) issued a fatwa against the prohibition on the grounds that it is part of Sharia (Islamic law) and thus should be provided by medical professionals (UNICEF Division of Policy and Strategy, 2016, pp. 1-4). In 2010, MUI urged the MoH to issue a decree that would allow female circumcision to be performed by medical professionals, which was then made into a regulation –PMK No. 1636/2010 which allows every hospital, private maternity clinics to continue with the practice under the idea that it will be safer and more hygienic (UNICEF Division of Policy and Strategy, 2016, pp. 1-4). This regulation was criticized by the Women's

Commission in Indonesia and together with the Committee on the Rights of the Child, they advocated against the regulation, which resulted in the regulation being revoked in February 2014 (UNICEF Division of Policy and Strategy, 2016, pp. 1-4).

In regards to the regulation abolishing the practice, Malaysia itself has been the party to CEDAW and CRC in 1995 in which it holds no reservations to the related articles regulating the eradication of female circumcision, which are art. 5(a) in CEDAW (CEDAW, 1979) and art. 24.3 in CRC (CRC, 1989). In addition to that, Malaysia has also been a party to ICPD 1994 and Beijing Declaration in 1995, where it is explicitly stated that governments are urged to prohibit female genital mutilation and eliminate such practices (United Nations Population Fund, 1994, p. 36). Any forms of coercion and discrimination in policies and practice regarding the practice should also be eliminated (United Nations Population Fund, 1994, p. 41).

2. Cost and Benefit Analysis

In the light of problems faced by the UMNO-led government, there are two contradictory options available for them in regards to the fatwa –they can either support or reject the fatwa. The fatwa itself concerns with a deep-rooted traditional and supported practice. A study in Kelantan conducted by Isa, Shuib, and Othman resulted in all respondents to the study agreeing with the desirability of female circumcision and were satisfied with their personal experiences of it, this was mainly due to the fact that there had been no negative side-effects from the practice, unlike

the claims in the international stage (Isa, Shuib & Othman, 1999, p. 140). The respondents also added that they would continue the ritual on their daughters, as it has been seen to not bring any harm at all (Isa, Shuib & Othman, 1999, p. 140). The popularity of the practice itself is also driven by the rejection of its homogenization with the commonly known FGM/C with several studies shown that the FGM practiced by the Malay community in north Malaysia is not the same as the FGM that are performed elsewhere (Khan, Patil & Valimalar, 2010, p. 6).

However, if the UMNO-led government were to fully support the fatwa, the cost will jeopardize Malaysia's position internationally. Being a state party to CEDAW, CRC, ICPD 1994 and also Beijing Declaration in 1995 means that it is obliged to criminalize the practice. Malaysia has had a reputation regarding its hardline rejection on the idea of human rights, during the first tenure of Mahathir Mohammad, he was criticized due to his legacy of heavy-handed authoritarianism and simultaneous deterioration of human rights (Zook, 2010, p. 1153). If the past attitudes were to be repeated, it will impede the Malaysian position in the international stage, which could also lessen the diplomatic relations between Malaysia and other countries. With the growing domestic problem, Malaysia did not need another problem internationally.

Reflecting on the popularity level of the practice, it might seem preferable to support the fatwa than rejecting it. The pressure against the fatwa coming from NGOs was also considered weak in gaining mass support, compared to, for example, the case of unfair election brought by Bersih. Most importantly, the fatwa aids the

interests of the dominant actors –UMNO, BN, and JAKIM in regaining their authority. Under this very notion, it might be more beneficial for the UMNO-led government to support the fatwa. However, the cost is not to be ignored. One important variable is Najib Razak's agenda that required vast international support. The cost-benefit analysis has not shown any clear answer that would balance the Malaysian position. The best option to resort to will depend on the decision-making process which serves as the next stage of public policy analysis.

Analysis on the Decision-Making Process of the Policy Options

The decision-making process is the stage where the policy options are being deliberated upon to produce an applicable decision. The decision-making process stage also shows the power relations of each actor and how their tangling interests affect one another. In regards to the fatwa, there are two opposite side, UMNO and JAKIM who utilize the fatwa as a tool to regain its authority and the pressure group (NGOs) who opposed the fatwa obligating female circumcision practice. Bureaucratic politics theory and the rationalist model will be used to analyze this stage.

1. Bureaucratic Politics Approach

Bureaucratic politics approach was first introduced in Graham T. Allison's "Conceptual Models and the Cuban Missile Crisis" in 1969 as one of the theoretical approaches to public policy. The characteristics of the bureaucratic politics model revolves around the distinction on the definition of actor, where it sees no unitary actor but rather various actors as players, in this

sense, the power between actors are shared, hence what the nation does is sometimes the result of the triumph of one group over others (Allison, 1969, p. 707).

According to Allison, there are five organizing concepts of bureaucratic politics, first, to become players, they must occupy a critical position in an administration (Allison, 1969, p. 709). The second organizing concept is priorities, perceptions and the issue at hand. Allison elaborated that the factors which encourage organizational parochialism also influence the actors occupying positions on top of the organization, thus to motivate the members of the organization, the actors must be sensitive to the orientation and aims of the organization (Allison, 1969, p. 709). The third organizing concept relates to the interests, stakes, and power as the determinant factor. The fourth organizing concept concerns with problems. Each actor focuses not on the total strategic problem but rather on the decision that must be produced, where each decision has critical consequences that bring impact to each actors' organizational, reputational and their stakes (Allison, 1969, p. 710). Last organizing concept is 'Action politics', where the structure of the decision-making process is in the form of power shared by individuals with separate responsibilities, which establish the idea that 'other actors don't see the problem that I see', and thus 'other actors must be persuaded to look at the issue from a less parochial perspective' (Allison, 1969, p. 710).

Applying the five organizing concepts of bureaucratic politics by Allison to the decision-making process of the fatwa, the departure point is by decomposing the actors

involved. The position of each contributing actors varied, the Prime Minister placed at the highest position in this decision-making process, thus making both the ruling coalition and the ruling party lower than him. The ruling coalition, however, owns a higher position than the opposition and consequently, the opposition has a higher position than the interest groups. Positions in bureaucratic politics play a part to determine the advantages and handicaps in their respective positions. Each actors' interests and motivations influence the complementary or contradictory nature of each actor's personality. Their interests are different in the decision-making process of the related fatwa, the two most prominent actors –UMNO and JAKIM who serves directly to UMNO but formally placed under the deputy minister office of religious affairs have the same motivation. Under the rationality of both actors who suffered from the loss of authority after the 2008 general election, they see the existence of the fatwa obligating female circumcision as their exit from the current loss. UMNO who was facing declining authority needed the fatwa as a tool to gain votes from the people. On the other hand, JAKIM was facing an identity crisis in its role as the religious body that was expected to guide the Islamic discourse in the country. It was confirmed by the fact that doctors decided on approaching the MoH about the practice of female circumcision instead of JAKIM, in which it was seen as superseding and ignoring the role of JAKIM. Thus, by issuing a fatwa, JAKIM had the desire to emphasize its role domestically. Both actors engaging in an interdependence relationship seek to maximize their expected utility by utilizing the fatwa.

Both actors create a complementary nature despite being at a different level of position due to their same objectives. The contradiction nature that surfaced regarding the fatwa came from the interest groups –NGOs, however as elaborated earlier, their rejection against the fatwa was not strong enough, and looking at their relatively lower position, they face more handicaps in infiltrating directly to the decision making.

As bureaucratic politics emphasizes the internal bargaining between the actors, power plays a big part in the process. Power in this sense is translated as having bargaining advantages, skill, and will and the other actors' perception of the prior two elements. UMNO has formal authority in the decision-making process being the ruling coalition for a long time. UMNO has institutional backing in the matter of fatwa with JAKIM and no particular voice of contention from the other parties towards the fatwa despite the small percentage of NGOs. Another interest such as the need to secure Malaysia's position internationally is also of prominence. The action of blatantly supporting the fatwa will impede Malaysian bargaining advantages internationally due to its position as state parties to two human rights instruments –CEDAW and CRC. Malaysian position that is currently in the middle of weighing decision has found it hard to come up with the concrete decision to the problem as, if they go for option A –to put the fatwa in the Gazette thus creating a formal law they will be pressured internationally, making it harder to pursue their interests internationally. Option B –to reject the fatwa – on the other hand, can bring enmity from the public, seeing the rise in

the demands towards the practice accompanied with the rising religious controversies, their rejection can jeopardize the party's interests at stake amid the loss of authority and distrust from the public.

2. Rational Model of Decision-Making Process

According to Réjean Landry, the rationalist model of decision-making process comprises of several phases, which are, first, identifying the context, where the issues are identified and the objectives of the involved actors are being investigated, second, determining the possibilities of action that may assist in settling the problem, and third, estimation of the possible consequences, where costs and benefits of various possibilities from action are being calculated (Leoveanu, 2013, pp. 44-45). These phases must be further elaborated in regards to its effectiveness, efficiency and rationality while also taking into account the total cost and specifying clearly decision objectives that are concise and non-contradictory in its nature (Leoveanu, 2013, p. 45). In the rational model of the decision-making process, it is assumed that there is an order between the values established and the public decision-maker, or the actors involved are aware of the values on which it intends to be concentrated (Leoveanu, 2013, p. 45).

Incorporating the phases introduced by Landry, first, the issues in this stage are in regards to the position of fatwa obligating female circumcision, in which the actors involved have their respective objectives in taking appropriate measures regarding the fatwa. The second phase, appropriate actions that settle the

problem must be produced. The dilemma on the fatwa is in regards to the conflicting dominant actors' objectives and their future position. The UMNO-led government wishes on utilizing the fatwa to regain the authority however they also realize that it will impede the Malaysian position, especially as the government under Najib Razak was about to introduce Vision 2020. Vision 2020 itself concerned with Najib Razak and UMNO-led government's wish on creating a developed-country accreditation for Malaysia, and the means taken to accomplish this heavily depended on the global economy for its economic development (O'Shannassy, 2013, pp. 439-440). Under the idea of creating the accreditation for developed-country, Malaysia would need international support especially in terms of investment and thus they cannot jeopardize their position by visibly legalizing the fatwa obligating female circumcision.

Under these considerations, the third phase of the decision-making process concerns with estimating the consequences, does not differ with the elaboration on the cost-benefit analysis. The only element that differs in this phase and the policy formulation process lies in the addition of variable to be taken into account, which is the plan for Vision 2020. The consequences of supporting the fatwa will probably cause harm to Malaysia especially, it has been criticized highly in the past during the lost of UMNO and BN with many reports openly questioning the reality of Malaysia's image as a moderate, stable and democratic state (O'Shannassy, 2013, pp. 439-440). If the consequences were to be compared, there are definite options available for the government in regards to taking clear-cut action. The costs that

the UMNO-led government have to bear are big and both of the choices will impede their positions either domestic or internationally. Due to this situation, the UMNO-led government decided on putting the fatwa obligating female circumcision on the impasse. The meaning of impasse itself is interpreted as being left without a clear answer whether it is supported or rejected. However, as the domestic called for their need for the practice, the government decided on taking small steps, which is evident in the changing conditions of the availability of the practice. Before the fatwa was issued, the practice was available only in *ma' bidan* in which it was not performed by medical professionals, however after MoH decided on proposing guidelines on medicalizing the practice in 2012, as stated by Adibah from SIS that the practices are now available in private clinics upon parent's requests. The current state of the impasse is the reason why there is no further analysis in policy implementation and evaluation, due to the nonexistence of concrete policy regarding the fatwa obligating female circumcision until the current time.

Conclusion

In conclusion, this article aims at finding the causal factors of the Malaysian government's decision to leave the fatwa obligating female circumcision on the impasse. By using the framework of public policy analysis, three reasons drive Malaysian government's decision, first, the result of assessing the cost and benefit of each policy options shows that both solutions –to support or to reject, impede Malaysia's position. Second, the small percentage of dissidence towards the

fatwa and the vast implementation of female circumcision practice also contribute to the current state of impasse. Third, the Malaysian government's Vision 2020 which required vast international support and domestic stability led Malaysia to leave the fatwa on the impasse.

The initial motivation of UMNO by utilizing the fatwa obligating female circumcision was to aid the party in reinstating their position at the expense of the 12th general election results. The final verdict of the fatwa itself – supported or rejected does not guarantee a win for UMNO, which can be seen in the result of the general election in 2013, where UMNO suffered another loss. It is, however, factual to presume that putting the fatwa on impasse did not exacerbate the chaos that occurs within the period after the 2008 general election to the 2013 general election.

In the end, this article has shown that there are various variables, which lead to a certain decision made by the government, that somehow does not always show a clear-cut decision to the public. Malaysian relationship with human rights is also important to highlight, this is mainly due to the fact that despite Malaysia's accession to CEDAW, CRC, other human rights instruments and its active participation in joint programs related to human rights issues, it remains a strong stakeholder of its cultural heritage. This can be seen by their refusal to completely adhere to obligations implied in conventions and treaties when it contradicts with Malaysian culture and national interests. The current fatwa obligating female circumcision that is left on impasse reflected Malaysian tangible stance on human rights where it takes a safe position by conforming to

human rights treaties yet declining the idea of completely rejecting a fatwa, which is largely believed to be religiously and culturally rooted. Aside from analyzing the nature of the practice and Malaysian government action towards the fatwa, this article has also shown that the compliance to universal human rights, particularly women's rights can be hindered by the fluctuations of the domestic politics, showing a manifestation of a case where human rights are used as a tool for political gain.

References

Books

- Araral, Eduardo, Scott Fritzen, Michael Howlett, M Ramesh, and Wu Xun. (2013). *Routledge Handbook of Public Policy*. London: Routledge.
- Birkland, T.A. (2015). *Introduction to the Policy Process Theories, Concepts, and Models of Public Policy Making*. 3rd edn. New York: Routledge.
- Donnelly, J. (2013). *Universal Human Rights in Theory and Practice*. 4th edn. Ithaca: Cornell University.
- Fischer, F., Miller, G. & Sidney, M. S. (eds). (2007). *Handbook of Public Policy Analysis Theory, Politics, and Methods*. Boca Raton: CRC Press Taylor & Francis Group.
- Liow, Joseph Chinyong. (2009). *Piety and Politics*. New York, NY: Oxford University Press.

Journal Articles

(retrieved online, with DOI)

- Ainslie, M. (2015). The 2009 Malaysian

Female Circumcision Fatwa: State ownership of Islam and the current impasse. *Women's Studies International Forum*, 52, 1-9. <http://dx.doi.org/10.1016/j.wsif.2015.06.015>

Allison, G. (1969). Conceptual Models and the Cuban Missile Crisis. *American Political Science Review*, 63(03), 689-718. <http://dx.doi.org/10.1017/s000305540025853x>

Case, W. (2010). Political Legitimacy in Malaysia: Historical Roots and Contemporary Deficits. *Politics & Policy*, 38(3), 497-522. <http://dx.doi.org/10.1111/j.1747-1346.2010.00245.x>

Fauzi Abdul Hamid, A., & Ismail, M. (2014). Islamist Conservatism and the Demise of Islam Hadhari in Malaysia. *Islam and Christian-Muslim Relations*, 25(2), 159-180. <http://dx.doi.org/10.1080/09596410.2014.880549>

Isa, A., Shuib, R., & Othman, M. (1999). The practice of female circumcision among Muslims in Kelantan, Malaysia. *Reproductive Health Matters*, 7(13), 137-144. [http://dx.doi.org/10.1016/s0968-8080\(99\)90125-8](http://dx.doi.org/10.1016/s0968-8080(99)90125-8)

Khan, A., Patil, S., & Valimalar, A. (2010). The Practice of Female Genital Mutilation Among the Rural Malays in North Malaysia. *The Internet Journal of Third World Medicine*, 9(1), 1-8. <http://dx.doi.org/10.5580/a23>

- Khoo, Y. (2016). Malaysia's 13th General Elections and the Rise of Electoral Reform Movement. *Asian Politics & Policy*, 8(3), 418-435. <http://dx.doi.org/10.1111/aspp.12273>
- O'Shannassy, M. (2013). More Talk than Walk? UMNO, "New Politics" and Legitimation in Contemporary Malaysia. *Journal of Contemporary Asia*, 43(3), 428-451. <http://dx.doi.org/10.1080/00472336.2013.783966>
- Saat, N. (2014). The Ulama, Thought-styles, and the Islamic State Debate in Contemporary Malaysia. *Studia Islamika*, 21(1), 47-79. <http://dx.doi.org/10.15408/sdi.v21i1.878>
- Singh, B. (2009). Malaysia in 2008: The Elections That Broke the Tiger's Back. *Asian Survey*, 49(1), 156-165. <http://dx.doi.org/10.1525/as.2009.49.1.156>
- Yong Liow, J. (2004). Exigency or expediency? Contextualising political Islam and the pas challenge in Malaysian politics. *Third World Quarterly*, 25(2), 359-372. <http://dx.doi.org/10.1080/0143659042000174851>
- Zook, D. (2010). Making Space for Islam: Religion, Science, and Politics in Contemporary Malaysia. *The Journal of Asian Studies*, 69(04), 1143-1166. <http://dx.doi.org/10.1017/s0021911810002925>
- Democratization Processes of the Coalition for clean and Fair Elections (Bersih) in Malaysia: An Interview with Hishamuddin Rais. *ASEAS -Austrian Journal of South-East Asian Studies*, 7(1), 111-120. https://www.ssoar.info/ssoar/bitstream/handle/document/40171/ssoar-aseas-2014-1-khoo-Mobilization_potential_and_democratization_processes.pdf?sequence=1
- Leoveanu, Andy Constantin. (2013). "Rationalist Model of Decision Making". *Journal of Public Administration, Finance and Law*, no. 4: 43-54. Retrieved from: http://www.jopaf.com/uploads/issue4/RATIONALIST_MODEL_IN_PUBLIC_DECISION_MAKING.pdf
- Smeltzer, S., & Paré, D. (2015). Challenging Electoral Authoritarianism in Malaysia: The Embodied Politics of the Bersih Movement. *A Journal for and About Social Movements*, 7(2), 120-144. Retrieved from: <http://www.interfacejournal.net/wordpress/wp-content/uploads/2015/12/Issue-7-2-Smeltzer-and-Pare.pdf>

Secondary source (Journal Article)

- Ding, J., Surin, J., & Randhawa, S. (2011). Freedom of Expression in Malaysia. *Centre of Independent Journalism*, 107. Quoted in: Ainslie, M. (2015). The 2009

Journal Articles

(retrieved online, without DOI)

- Khoo, Y. (2014). Mobilization Potential and

Malaysian Female Circumcision Fatwa: State ownership of Islam and the current impasse. *Women's Studies International Forum*, 52, 1-9. <http://dx.doi.org/10.1016/j.wsif.2015.06.015>

Official Documents and Treaties

United Nations Population Fund. (1994) (pp. 2-201). Cairo.

UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 7, Retrieved from: <http://www.refworld.org/docid/3ae6b38f0.html>

UN General Assembly. Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979. United Nations. Treaty Series. vol. 1249. p. 3. Retrieved from: <http://www.refworld.org/docid/3ae6b3970.html>

UNICEF Division of Policy and Strategy. (2014). Benin (pp. pp. 1-4). UNICEF.

UNICEF Division of Policy and Strategy. (2013). Burkina Faso (pp. pp. 1-4). UNICEF.

UNICEF Division of Policy and Strategy. (2016). Egypt (pp. pp. 1-4). UNICEF.

UNICEF Division of Policy and Strategy. (2016). Indonesia (pp. pp. 1-4). UNICEF.

UNICEF Division of Policy and Strategy. (2016). Benin (pp. pp. 1-4).

UNICEF.

UNICEF Division of Policy and Strategy. (2013). Iraq (pp. pp. 1-4). UNICEF.

UNICEF Division of Policy and Strategy. (2016). Yemen (pp. pp. 1-4). UNICEF.

Women's Aid Organisation (WAO). (2012). Malaysian Non-Governmental Organisations' Alternative Report assessing the Government's progress in implementing CEDAW (p. 27). Petaling Jaya: Women's Aid Organisation.

World Health Organization. (2008). Eliminating female genital mutilation: an interagency statement. OHCHR, UNAIDS, UNDP, UNESCO, UNFPA, UNHCR, UNICEF, UNIFEM (pp. 2-36). Geneva: Geneva.

Websites

Female circumcision on the rise in Malaysia - The Express Tribune. (2015). The Express Tribune. Retrieved 26 August 2017, Retrieved from: <https://tribune.com.pk/story/841392/female-circumcision-on-the-rise-in-malaysia/>

Female genital mutilation (FGM) frequently asked questions | UNFPA - United Nations Population Fund. (2017). [unfpa.org](http://www.unfpa.org/resources/female-genital-mutilation-fgm-frequently-asked-questions#unfpa_approach). Retrieved from :http://www.unfpa.org/resources/female-genital-mutilation-fgm-frequently-asked-questions#unfpa_approach

Female genital mutilation (FGM) frequently

- asked questions | UNFPA - United Nations Population Fund. (2017). unfpa.org. Retrieved from: http://www.unfpa.org/resources/female-genital-mutilation-fgm-frequently-asked-questions#unfpa_approach
- Female genital mutilation. (2017). World Health Organization. Retrieved from: <http://www.who.int/mediacentre/factsheets/fs241/en/>
- Jabatan Kemajuan Islam Malaysia - History. (2015). Islam.gov.my. Retrieved from: <http://www.islam.gov.my/en/about-jakim/jakim-s-profile/history>
- Jabatan Kemajuan Islam Malaysia - Vision | Mission | Objectives | Functions. (2016). Islam.gov.my. Retrieved from: <http://www.islam.gov.my/en/about-jakim/vision-mission-objectives-functions>
- Misi, Dasar, Seruan. (2011). Pas.org.my. Retrieved from : <https://www.pas.org.my/info/parti/misi-dasar-seruan>
- Sisters in Islam: Mission Statement and Objectives. Sistersinislam.org.my. Retrieved from: <http://www.sistersinislam.org.my/page.php?36>
- Sisters in Islam: The SIS Story. Sistersinislam.org.my. Retrieved from: <http://www.sistersinislam.org.my/page.php?35>
- Malaysia storm over female circumcision. (2012). abc.net.au. Retrieved from: <https://www.abc.net.au/news/2012-12-07/a-malaysia-debate-over-female-circumcision/4416298>.