

Statement on Article by FMT on 12/3/2017 "Marriage isn't the worst thing for a rape victim".

### **"Stop mitigating rape."**

The Join Action Group for Gender Equality (JAG) express our concern at the statement made by Syariah lawyer Faiz Fadzil in a recent [article](#)<sup>1</sup>, suggesting that it is in the best interest for an underage girl to marry, if she has committed illicit sex and has gotten pregnant as a result, so long as both parties agree to the marriage.

This statement is damaging as it misrepresents the term 'consent', disregards the law on statutory rape and dismisses the reality of power imbalance that exists in cases of underage marriages.

Statutory rape in the Penal Code is defined as any sexual activity with a girl under the age of 16, as she is unable to understand the nature and consequence of giving 'consent'. We should not mitigate the crime of statutory rape by allowing or encouraging marriage to the perpetrator. This is a grave abuse of the law, which was put in place to protect children.

In addition, Faiz Fadzil's statement that "marriage is a form of repentance for Muslims who have committed sex outside of marriage," is an insult to the institution of marriage, as promoted by Islam. The Qur'an talks about marriage as a union of love and mutual respect, it does not talk about marriage as a form of repentance for illicit sex or rape.

The reality in Malaysia is that most cases of underage marriage where the underage party supposedly consented to the marriage, has shown that the marriage was actually used as a way for rapists to avoid prosecution. More than often, parents of the rape victim also contribute to influencing the underage girl to marry her rapist for the purposes of 'covering shame'.

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<sup>1</sup> <http://www.freemalaysiatoday.com/category/nation/2017/03/12/marriage-isnt-the-worst-thing-for-rape-victims/>

Finally, the notion that a child out of wedlock will become more 'secure' if the underage mother marries her rapist narrows the burden of responsibility only to the mother. It is due time that the state and society, develop a system of compulsory and accessible birth registration of all children. Marriage should not be viewed as the only solution for rape survivors and for the child out of wedlock to gain rights.

Islamic Family Law in Malaysia currently only places responsibility of the child on the mother. The father does not have any parental rights or obligation over the child. It is timely for the law to be reviewed considering the scientific advances in determining the biological father. If rape survivors were able to secure financial assistance from the father – then the argument of obtaining security by marriage would be irrelevant.

JAG reiterates that Malaysia, as a party to CEDAW and CRC has an obligation to uphold article 16(2), which prohibits child marriage. One of the ways to do this is to end the mindset which views marriage as a way to dissolve the crime of rape.

**Endorsed by the Joint Action Group for Gender Equality (JAG):**

1. Sisters in Islam (SIS)
2. All Women's Action Society (AWAM)
3. Association of Women Lawyers (AWL)
4. EMPOWER
5. Perak Women for Women (PWW)
6. Sabah Women's Action Resource Group (SAWO)
7. Women's Aid Organisation (WAO)
8. Women Centre for Change (WCC)