

CHAPTER 2

DEFINING CHILDREN AND CYBER DELINQUENCIES IN MALAYSIA

2.1 INTRODUCTION

Digital platforms significantly affect the social life of human being including Muslim. The popularity of social media platforms in the Muslim majority countries has led some Muslim scholars to expect the impact of people's religiosity and piety.³² As some of social media has trading accusation and promoting lies, some Muslim scholars' voices condemn on its incompatibility with Shariah.³³

The first part of this chapter analyses the definition of children from International, Malaysian and Shariah perspectives. The related Malaysian legal framework which defined the term 'child' will be discussed thoroughly.

The second part of the chapter discusses the concept of cyber delinquency. As children are innocents and prone to do mistakes, excessive use of social media without proper guidance may expose them to violence and negative elements that may result to cyber delinquency.

³² Ibahrine, M. 2014. Islam and Social Media, In K. Harvey (Ed.), *Encyclopaedia of social media and politics*. Thousand Oaks, CA: SAGE Publications, Vol. 9, pp. 736

³³ *Ibid*, pp.737

Then, it explores the overview and scenario of the massive growth of social media among children nowadays which becomes a new norm and ubiquitous. This chapter describes the different ways in which social media is used other than simple communication.

While the final part of the chapter will be on the examination of the Shariah principles regarding social media usage. Apparently, Islam accommodates the social media usage with some limitations and guidance. The justification from Islamic jurists derived from Quranic verses, hadith and Islamic legal maxim is discussed briefly as a guideline for the readers.

2.2 THE MEANING OF CHILDREN CYBER-DELINQUENCY

Some children may use social media in an improper manner, which will lead to cyber delinquency. Now, there are tremendous types of delinquencies are taking parts on the internet, especially in social media. The criminal justice system always faced the dilemma when the offenders are minors who cannot be charged and, in many ways, they are not legally responsible for their acts.³⁴ Traditionally, delinquent actions could only happen in the real world, but conversely, today, they can even happen in the virtual world which now has become a major global contemporary issue.

For the definition of delinquent act, the Cambridge dictionary stated, “*a person, usually young, who behaves in a way that is illegal or not acceptable to most*

³⁴ Flower Ronald B. 1986. *Children and Criminality: The Children as Victim and Perpetrators*, Connecticut; Greenwood Press, pp. 117

people”³⁵ and Oxford dictionary refers delinquent act as “typically of a young person tending to commit crime, particularly minor crime”.³⁶

Basically, there is no legal definition of delinquent acts or delinquent children within the Malaysian legal framework.³⁷ As Malaysian Legal System simply uses the term ‘children beyond control’ in the Child Act 2001, it also refers to children who are naughty, disobedient, delinquent, ungovernable, deviant, or children who are involved in social problem.³⁸ The term delinquent is chosen for use in this thesis rather than the crime because the wrongful acts are carried out by the minor. Delinquency involves conduct that does not comply with the legal or moral norms of society; it usually applies only to acts that, if committed by an adult, would be termed criminal.³⁹

The act of delinquency can be divided into two categories that are delinquents which are prohibited and punishable by law under respective legal system and status

³⁵ ‘delinquent’, Cambridge Dictionary, <https://dictionary.cambridge.org/dictionary/english/delinquent>

³⁶ ‘delinquent’, English Oxford Living Dictionaries, <https://en.oxforddictionaries.com/definition/delinquent>

³⁷ Hendun ARS, Syahirah AS, Norfadhilah MA, Abidah AG, Nisar MA, Nabilah Y., & Nurul Atira, M. 2018. “Child Delinquency on the Internet”, *International Journal of Engineering and Technology*, 7(3.30), pp.321

³⁸ Mohammad Akram, "A Study on Some Recent Developments in the Rising Rate of Delinquent Behaviour in Malaysia", (2007) 7 *Malayan Law Journal* xxxvii; Azizi Yahaya, Noordin Yahaya and Juriah Juriah @ Daing Junaidah Bachok, "Perkaitan Antara Hubungan Kekeluargaan, Pengaruh Rakan Sebaya Dan Kecerdasan Emosi Dengan Tingkah Laku Delinkuen Pelajar Sekolah Bestari Di Daerah Pontian", (2010) *Journal of Science & Mathematics Education*, 12 Sept. 2014 <<http://eprints.utm.my/10118/>>; Hazlinda Hamzah, Jamsiah Mustafa and Mohamed Fadzil Che Din, *Masalah Sosial Remaja Masa Kini*, (Kuala Lumpur: Institut Sosial Malaysia, 2011), 26; Asmak Haji Ali, "Salah Laku Sosial Remaja Masa Kini: Cabaran Dan Penyelesaiannya", *Institusi Keluarga: Menghadapi Cabaran Alaf Baru*, Eds., Abd. Rahim Abd. Rashid, Sufean Hussin and Jamaludin Tubah, (Kuala Lumpur: Utusan Publications & Distributors, 2006), 89-115; Hairunnaja Najmuddin, *Memahami Dan Membimbing Remaja Nakal*, (Kuala Lumpur: PTS Professional Publishing, 2003), 30; Nong, S. N. A. S., & Yusoff, J. Z. M. (2019). *Rehabilitation of Children Beyond Control in Malaysia: Towards Deinstitutionalization*. *International Journal of Academic Research in Business and Social Sciences*, 9(3), p.p. 1. Available from: https://www.researchgate.net/publication/336639482_Jurisdiction_of_Court_For_Children_Relating_to_Children_Beyond_Control_in_Malaysia_A_Historical_Development[accessed Dec 23 2021].

³⁹ ‘Delinquency’, *Britannica*, <https://www.britannica.com/topic/delinquency>

offender.⁴⁰ In Malaysia, there are two recognizable forms of status offences⁴¹; i) being beyond the control of parents i.e., running away from home, rebellious and incorrigible.⁴² ii) being exposed to moral danger i.e., a girl's involvement in prostitution or in a job that promotes sexual intimacy.⁴³

Flowers in his book described US legislation, the definition of delinquency can be legal and non-legalistic where the legal definition was derived from legal cases decided and state statutes.⁴⁴ He refers delinquent acts as '*a child who had broken the law*' such as murder, assault and rape while status offender is '*a child who has broken the law that applicable only to juvenile*' such as truants and runaways.⁴⁵ He also puts the range of child delinquencies based on their seriousness from the most serious to the least serious.⁴⁶

Felonies have been identified as the most severe offenses among children and the least common among them.⁴⁷ This category may involve violent and non-violent offenses. Violent crimes such as murder, robbery, and rape and non-violent offences always entailed property crimes such as burglary, grand-larceny and auto-theft.⁴⁸ Then, petty offenses represent the less serious offenses compared to felony yet the

⁴⁰ Flower Ronald B. 1986. *Children and Criminality: The Children as Victim and Perpetrators*, Connecticut; Greenwood Press, pp. 117; Nasimah Hussin .2007. "Juvenile Delinquency in Malaysia: Legal Framework and Prospects for Reforms", IIUM Law Journal, Vol. 15, No.2, p.p. 198

⁴¹ Abdul Hadi Zakaria, *Juvenile Delinquency: Its Relationship to the Family and Social Support, in Caring Society Emerging Issues and Future Directions*, (ed.) ISIS, Kuala Lumpur, 1990, p. 134; Nasimah Hussin .2007. "Juvenile Delinquency in Malaysia: Legal Framework and Prospects for Reforms", IIUM Law Journal, Vol. 15, No.2, p.p. 198

⁴² Section 46 of Child Act 2001 (Act 611)

⁴³ Section 38 of Child Act 2001 (Act 611)

⁴⁴ Flower Ronald B. 1986. *Children and Criminality: The Children as Victim and Perpetrators*, Connecticut; Greenwood Press, pp. 117.

⁴⁵ *Ibid*

⁴⁶ *Ibid*, pp. 120.

⁴⁷ Flower Ronald B. 1986. *Children and Criminality: The Children as Victim and Perpetrators*, Connecticut; Greenwood Press, pp. 120

⁴⁸ *Ibid*.

most frequent form of criminal law violations by children.⁴⁹ Included in this category are smoking marijuana, malicious mischief and shoplifting, where most of these offenses are went undetected, often resulted in non-arrest of the offender.⁵⁰ The least serious offense that falls under the category of delinquency is the juvenile status offense.⁵¹ Offenses that would fall under this category including truants, smoking and drinking alcohol and vandalism. It could not be any offenses if committed by adults as this kind of offences are only applicable to children.⁵²

Meanwhile, cybercrime is defined as “a criminal act (such as fraud, theft or distribution of child pornography) committed using a computer especially to illegal access, transmit or manipulate data”.⁵³ Whilst in the Burton’s Legal Thesaurus, it is stated as “a criminal offence on the Web, a criminal offense regarding the internet, a violation of law on the internet, an illegality committed with regard to the internet, breach of law on the internet, computer crime, contravention through the Web, corruption regarding internet, criminal activity on the Internet, disrupting operations through malevolent programs on the internet, electric crime, internet crime, sale of contraband on the internet, stalking victims on the Internet, theft of identity on the internet”.⁵⁴

Thus, when the cybercrime carried out by someone who is under the age of eighteen, it is called as juvenile cyber-delinquency. There are two types of cyber

⁴⁹ Flower Ronald B. 1986. *Children and Criminality: The Children as Victim and Perpetrators*, Connecticut; Greenwood Press, pp. 120

⁵⁰ Donald J. Black and Albert J. Reiss, Jr., 1970. “Police Control of Juveniles”, *American Sociology Review* 35, pp. 63-67

⁵¹ Flower Ronald B. 1986. *Children and Criminality: The Children as Victim and Perpetrators*, Connecticut; Greenwood Press, pp.120

⁵² *Ibid.*

⁵³ Merriam-Webster.com. "Cybercrime." Accessed August 30, 2018. <https://www.merriam-webster.com/dictionary/cybercrime>.

⁵⁴ Burton’s Legal Thesaurus, 4E. S.v. "cybercrime." Retrieved August 30, 2018 from <https://legal-dictionary.thefreedictionary.com/cybercrime>

delinquency, that are cyber-enabled and cyber-dependent delinquency.⁵⁵ Cyber-enabled delinquency is traditional offences that are committed through the means of Information and Communication Technology (ICT) such as cyberbullying, cyberpornography, cyberstalking, digital piracy and so on⁵⁶ where cyber-dependent delinquency refers to offences that can only be committed through the means of ICT and are primarily directed against computer or networked resources such as hacking, distributing viruses and so on.⁵⁷ According to Donner and other authors, online delinquents are often prone to do offline delinquency.⁵⁸ In order to distinguish the juvenile delinquents between cyber-enabled offences and cyber dependent offences, some scholars had referred it as digitised-delinquents and cyber-delinquents respectively.⁵⁹ Thus, to understand who is eligible to be considered a delinquent child, the next topic will be an in-depth discussion of the definition of children.

⁵⁵ Josja J. Rokven, Gijs Weijters, Marinus G.C.J. Beerthuisen & André M. van der Laan, 2018. "Juvenile Delinquency in the Virtual World: Similarities and Differences between Cyber-Enabled, Cyber-Dependent and Offline Delinquents in the Netherlands", *International Journal of Cyber Criminology*, v.12(1), pp. 28; Holt, T. J., & Bossler, A. M. 2016. *Cybercrime in progress. Theory and prevention of technology-enabled offenses*. London and New York: Routledge; McGuire, M., & Dowling, S. 2013. *Cybercrime: A review of the evidence*. London: Home Office.

⁵⁶ Josja J. Rokven, Gijs Weijters, Marinus G.C.J. Beerthuisen & André M. van der Laan, 2018. "Juvenile Delinquency in the Virtual World: Similarities and Differences between Cyber-Enabled, Cyber-Dependent and Offline Delinquents in the Netherlands", *International Journal of Cyber Criminology*, v.12(1), pp. 28; Holt, T. J., & Bossler, A. M. 2016. *Cybercrime in progress. Theory and prevention of technology-enabled offenses*. London and New York: Routledge; McGuire, M., & Dowling, S. 2013. *Cybercrime: A review of the evidence*. London: Home Office.

⁵⁷ *Ibid*

⁵⁸ Donner, C. M., Jennings, W. G., & Banfield, J. 2015. The general nature of online and offline offending among college students. *Social Science Computer Review*, 33(6)

⁵⁹ Josja J. Rokven, Gijs Weijters, Marinus G.C.J. Beerthuisen & André M. van der Laan, 2018. "Juvenile Delinquency in the Virtual World: Similarities and Differences between Cyber-Enabled, Cyber-Dependent and Offline Delinquents in the Netherlands", *International Journal of Cyber Criminology*, v.12(1), pp. 32

2.3 DEFINITION OF CHILD

Child is defined as a human's natural offspring and should be distinguished from a 'minor' who is under 18 years old in almost all states.⁶⁰ According to Article 1 of the Convention on the Right of the Child (CRC), the definition of children is someone who aged below 18 years old, unless any particular country set the lower age of adulthood.⁶¹ In any particular country that sets up the legal age of adulthood younger, CRC has encouraged the states to review the age to be below 18 years and enhance the protection of the children.

2.3.1 Definition of Children in Malaysian Laws.

In Malaysia, the definition of a child is governed under the relevant legislations in accordance with their respective purposes.⁶² There are various legislations that define the children directly or indirectly. Malaysia legislations regarding the interpretation of a child is consistent with Article 1 of the CRC except for the Adoption Act of 1952 which explains a child as a person below 21 years of age.⁶³

Some statutes directly stipulate that a child is a person under the age of 18, such as the Child Act⁶⁴, The Age of Majority Act 1971⁶⁵, the Armed Forces Act 1972⁶⁶ and the Law of Reform (Marriage and Divorce) Act 1976⁶⁷.

⁶⁰ child. n.d. *Collins Dictionary of Law*. (2006). Retrieved January 21, 2019 from <https://legal-dictionary.thefreedictionary.com/child>

⁶¹ Article 1. n.d. Guiding principles: general requirements for all rights, the Convention on the Rights of the Child.

⁶² Article 131. (2006). *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention: Malaysia*. p.p.35

⁶³ n.a. n.d. "Definition of the Child (Art. 1)". *ISPCAN Asian Online Resource Centre for prevention of Child Abuse and Neglect*. Available at: <http://www.iccwtnispcanarc.org/upload/pdf/4533309489Definition%20of%20the%20Child.pdf> (Accessed: 24 May 2018). pp.1.

⁶⁴ Section 2(a) Child Act 2001 [Act 611]:

Apart from that, the Children and Young Persons (Employment) Act 1966 (Amendment 2006) [Act 350], which governs the appointment of a child and young person interprets a child as anyone who has not reached the age of fifteen. Meanwhile, a young person is a person who is over fifteen years old and has yet to complete his/her eighteenth year of age.⁶⁸

However, there is no clear and specific age stated in the Evidence Act 1950. It just stipulates that the evidence of a child of tender years who does not understand the nature of an oath can only be received if, in the opinion of the Court, the child possesses sufficient intelligence to justify the reception of the evidence and understands the responsibility of speaking the truth.⁶⁹ As mentioned in the provision;

*133A. Where, in any proceedings against any person for any offence, any child of tender years...*⁷⁰

There is no definition given on the term ‘tender years’. It is left to the Court to use its discretion. The Child could be as old as 15 years old or as young as eight.⁷¹

“child”—means a person under the age of eighteen years.

⁶⁵ Section 2 The Age of Majority Act 1971.

Subject to section 4, the minority of all males and females shall cease and determine within Malaysia at the age of eighteen years and every such male and female attaining that age shall be of the age of majority.

⁶⁶ Section 10(2) the Armed Forces Act 1972:

A person under the age of seventeen and a half years shall not be appointed as a midshipman or officer cadet without written consent of his parents or of his guardian.

⁶⁷ Section 10 the Law of Reform (Marriage and Divorce) Act 1976:

Any marriage purported to be solemnized in Malaysia shall be void if at the date of the marriage either party is under the age of eighteen years...

⁶⁸ Section 1A(1) of the Children and Young Persons (Employment) Act (Amendment 2019) [Act 350]

“child” means a person under the age of fifteen years;

“young person” means a person who has attained the age of fifteen years and under the age of eighteen years.

⁶⁹ n.a. n.d. “Definition of the Child (Art. 1)”. ISPCAN Asian Online Resource Centre for prevention of Child Abuse and Neglect. Available at: <http://www.iccwtnispcanarc.org/upload/pdf/4533309489Definition%20of%20the%20Child.pdf>

⁷⁰ Section 133A, Evidence Act 1950 (Revised 1971)[Act56]

In the Penal Code, it is mentioned that children below ten 10 years old cannot be punished for an offence⁷² and children who are above 10 years old and below 12 years old are depends on their maturity and understanding.⁷³

Apart from that, it stated in the Sexual Offences Against Children 2017 in Part 1, Section 2:

“Any reference to a child shall include a person whom the accused for an offence under this Act believes is a person under the age of eighteen years”.

2.3.2 Definition of Children in Islamic Law

There are several children's terms used in Arabic. The use of these terms varies according to the physical categories of the child such as ‘*at-thifl*’, ‘*as-saghir*’, ‘*al-fataa*’, ‘*as-syaab*’, ‘*al-ghulam*’, ‘*al-walad*’, and ‘*as-sabiy*’. In fact, the phrases are used differently depending on the child's physical characteristics. Although there are many different terms, but it refers to the same meaning that refers to someone who is still young.

According to *Mu'jam* (Dictionary) *Al-Ghaniy*, the term *at-thifl* means children between the age of birth and his/her puberty.⁷⁴ While in *Mu'jam Al-Waseeth* it is stated that *at-thifl* is a baby or younger person who is still small and vulnerable.⁷⁵

⁷¹ Norbani Mohamed Nazari. n.d, *Development in Child Evidence in Malaysia*, Available at: <http://eprints.um.edu.my/13698/1/0001.pdf> (Accessed: 23 May 2018), page: 1

⁷² Section 82, Penal Code 2018

Nothing is an offence which is done by a child under ten years of age.

⁷³ Section 83, Penal Code 2018

Nothing is an offence which is done by a child above ten years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequence of his conduct on that occasion.

⁷⁴ *Mu'jam al-Ghaniy*. 2011. “At-thifl”.

The definition of child also can be found in many Islamic classic books. Ibn ‘Abidin in his book stated that child is a baby or a young person from the beginning of his born until his puberty.⁷⁶ In *Mukaddimat al- Mumahhidat*, Ibn Rushd defined that child is a young person until they experience a nocturnal emission or ‘wet dreams’ for boys and start their period for girls.⁷⁷

Term “*at-thifl*” has been mentioned four times in four different verses in the holy Quran. Allah says in *Surah Al-Hajj*;

(1) ﴿...فَإِنَّا خَلَقْنَاكُمْ مِّنْ تُرَابٍ ثُمَّ مِنْ نُطْفَةٍ ثُمَّ مِنْ عَلَقَةٍ ثُمَّ مِنْ مُّضْغَةٍ مُّخَلَّقَةٍ وَغَيْرِ مُّخَلَّقَةٍ

لِّنَبَيِّنَ لَّكُمْ ء وَنُقَرِّ فِي الْأَرْحَامِ مَا نَشَاءُ إِلَىٰ أَجَلٍ مُّسَمًّى ثُمَّ نُخْرِجُكُمْ طِفْلًا ثُمَّ لِنَبْلُغُوا

أَشُدَّكُمْ...﴾

“... We created you from dust, then from a drop of semen, then from a clot, then from a piece of flesh, either shaped or unshaped, so that We manifest (Our power) to you. We retain in the wombs whatever We will to a specified term. Then We bring you out as **babies (thiflaa)**, then (We nourish you) so that you reach your maturity...”⁷⁸

And the other verses in *Surah Ghafir* that mentioned child,

(2) ﴿هُوَ الَّذِي خَلَقَكُمْ مِّنْ تُرَابٍ ثُمَّ مِنْ نُطْفَةٍ ثُمَّ مِنْ عَلَقَةٍ ثُمَّ يُخْرِجُكُمْ طِفْلًا...﴾

⁷⁵ Mu'jam al-Waseeth. 2004. “At-thifl”. Vol. 1. Cairo: Maktabah As-Syurooq Ad-Dauliyah.

⁷⁶ Muhammad Amin. 2003. *Radd al-Mukhtaar fi ad-Daar al-Mukhtaar*. Saudi: ‘Aalam al-kutoob. V.6. p.105

⁷⁷ Ibn Rushd al-Qurthubiy. 1998. *Al-Muqaddimat al-Mumahhidat*. Beirut: Dar al-Gharb al-Islamiyy. V. 2. p. 346; Ibn Rushd al-Hafeed. 1994. *Bidaayah a-Mujtaheed wa Nihayah al-Muqtasheed*. Cairo: Dar al-Hadeeth. V. 4. p.65

⁷⁸ Al-Quran. *Al-Hajj* 22:5

*He is the One who created you from dust, then from a drop of semen,
then from a clot. After that, He takes you out as an **infant**
(thiflaa) ...*⁷⁹

Other verses that contain the word of '*at-thifl*' in Surah An-Nuur;

(3) ﴿...وَلَا يُبْدِينَ زِينَتَهُنَّ إِلَّا مَا ظَهَرَ مِنْهَا ۚ وَلْيَضْرِبْنَ خُمُرَهُنَّ عَلَىٰ جُيُوبِهِنَّ ۚ وَلَا يُبْدِينَ زِينَتَهُنَّ إِلَّا لِبُعُولَتِهِنَّ أَوْ آبَائِهِنَّ أَوْ آبَاءِ بُعُولَتِهِنَّ أَوْ أَبْنَائِهِنَّ أَوْ أَبْنَاءِ بُعُولَتِهِنَّ أَوْ إِخْوَانِهِنَّ أَوْ بَنِي إِخْوَانِهِنَّ أَوْ بَنِي أَخَوَاتِهِنَّ أَوْ نِسَائِهِنَّ أَوْ مَا مَلَكَتْ أَيْمَانُهُنَّ أَوِ التَّابِعِينَ غَيْرَ أُولِي الإِرْبَةِ مِنَ الرِّجَالِ أَوِ الطِّفْلِ الَّذِينَ لَمْ يَظْهَرُوا عَلَىٰ عَوْرَاتِ النِّسَاءِ ۚ...﴾

*“...And must not expose their adornment, except to their husbands, or their fathers or the fathers of their husbands, or to their sons or the sons of their husbands, or to their brothers or the sons of their brothers or the sons of their sisters, or to their women, or to those owned by their right hands, or to the male attendants having no (sexual) urge, or to the **children (at-thifli)** who are not yet conscious of the shames of women...”*⁸⁰

(4) ﴿وَإِذَا بَلَغَ الْأَطْفَالُ مِنْكُمُ الْحُلُمَ فَلْيَسْتَأْذِنُوا كَمَا اسْتَأْذَنَ الَّذِينَ مِنْ قَبْلِهِمْ ۚ كَذَلِكَ يُبَيِّنُ اللَّهُ لَكُمْ آيَاتِهِ ۚ وَاللَّهُ عَلِيمٌ حَكِيمٌ﴾

*“When the **child (al-athfal)** from among you reach puberty, they must seek permission, as the permission is sought by those before them.*

⁷⁹ Al-Quran. Ghafir 40:67

⁸⁰ Al-Quran. An-Nur 24:31

This is how Allah explains His verses to you. Allah is All-Knowing,

All-Wise.”⁸¹

The term ‘*at-thifl*’ is referred to a child or baby instead of a fetus. Starting from their birth, they are separated completely from the womb until they attain their puberty. Instead of ‘*at-thifl*’, the other terms or phrases have also been used in Holy Quran such as ‘*al-walad*’, where it has been mentioned approximately 65 times; Generally, “*al-walad*” is defined as male or female child who born from his parents, whether mature or immature.⁸² It also means as a child who just born and still small since morphologically it can bring up the word *walada*, which means to give birth, or it can also mean *ansya'a* (to grow) and *rabba'* (to develop). Likewise, the word *walada* means *rahatha* which means to raise.⁸³ Here are some examples from the Quran:

(1) ﴿وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُنَتِّمَ الرِّضَاعَةَ ۖ وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ ۚ لَا تُكَلَّفُ نَفْسٌ إِلَّا وُسْعَهَا ۚ لَا تُضَارَّ وَالِدَةٌ بِوَلَدِهَا وَلَا مَوْلُودٌ لَهُ بِوَلَدِهِ ۚ وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ ۚ فَإِنْ أَرَادَا فِصَالًا عَنْ تَرَاضٍ مِنْهُمَا وَتَشَاوُرٍ فَلَا جُنَاحَ عَلَيْهِمَا ۚ وَإِنْ أَرَدْتُمْ أَنْ تَسْتَزِعُوا أَوْلَادَكُمْ فَلَا جُنَاحَ عَلَيْكُمْ إِذَا سَلَّمْتُمْ مَا آتَيْتُمْ بِالْمَعْرُوفِ ۚ وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ بِمَا تَعْمَلُونَ بَصِيرٌ﴾

⁸¹ Al-Quran. *An-Nur*, 24:59

⁸² Ma'luf, Louis. (1935). *Al-Munjid: Mu'jam Mudarrisi Li Lughah Al-'Arabiyah*, Beirut: *Mathba'ah Katholokiyah*, p.p. 1019; Wahab, R., & Mardyawati, Y. (2021). Term of Child in Analysis of Languages Various by The Quran. *Journal of Research and Multidisciplinary*, 4(1), 394.

⁸³ Abu Al-Fadhl Muhammad ibn Mukrim ibn Manzoor, n.d. *Lisan al-Arab*, “*at-walad*”, Dar as-Sadir: Beirut. V.3, p. 467; Ibrahim Mustafa, Ahmad Hussien Az-Ziyat. 1985. *Al-Mu'jam al-Waseeth*. “*al-walad*”. *Majma' al-Lughat al-Arabiyah*. V.2, p. 1056; Wahab, R., & Mardyawati, Y. (2021). Term of Child in Analysis of Languages Various by The Quran. *Journal of Research and Multidisciplinary*, 4(1), p.p. 395

“Mothers may breastfeed their **children (aulaad)** two complete years for whoever wishes to complete the nursing [period]. Upon the father is the mothers' provision and their clothing according to what is acceptable. No person is charged with more than his capacity. No mother should be harmed through her child, and no father through his child. And upon the [father's] heir is [a duty] like that [of the father]. And if they both desire weaning through mutual consent from both of them and consultation, there is no blame upon either of them. And if you wish to have your children nursed by a substitute, there is no blame upon you as long as you give payment according to what is acceptable. And fear Allah and know that Allah is Seeing of what you do”.⁸⁴

(2) ﴿قَالَ أَلَمْ نُرَبِّكَ فِينَا وَلِيدًا وَلَبِثْتَ فِينَا مِنْ عُمُرِكَ سِنِينَ﴾

“He (Pharaoh) said, “Did we not nourish you among us as a **child (waleeda)**? And you remained amidst us for years,”⁸⁵

(3) ﴿فَكَيْفَ تَتَّقُونَ إِنْ كَفَرْتُمْ يَوْمًا يَجْعَلُ الْوِلْدَانَ شِيبًا﴾

“Then how can you fear, if you disbelieve, a Day that will make the **children (al-wildaan)** white- haired?”⁸⁶

Besides that, ‘as-sabiyy’; Ibn Manzoor in his dictionary, *Lisan Al-Arab* defined ‘as-sabiyy’ as a baby starting from the day he was born until he weaned from

⁸⁴ Al-Quran. Al- Baqarah 2:233

⁸⁵ Al-Quran. Ash-Shu'ara 26:18

⁸⁶ Al-Quran. Al- Muzzammil 73:17

breastfeeding⁸⁷ while Ahmad Al-Muqri' stated it as a baby until he can distinguish between right and wrong.⁸⁸

﴿يَا يَحْيَىٰ خُذِ الْكِتَابَ بِقُوَّةٍ ۖ وَآتَيْنَاهُ الْحُكْمَ صَبِيًّا﴾

*“(When the child was born, Allah said to him,) “O Yahya, hold on to the Book firmly.” And We gave him wisdom, while he was still a **child (sabiyya)**, ”*⁸⁹

‘As-saghir’ means small, is an antonym to big. It means a child who is small in size and still at his early age (started from complete separation from the womb) until he or she attains his or her puberty.⁹⁰

﴿وَاحْفَظْهُمَا جَنَّاتِ الدُّلِّ مِنَ الرَّحْمَةِ وَقُلْ رَبِّ ارْحَمْهُمَا كَمَا رَبَّيَانِي صَغِيرًا﴾

*“and submit yourself before them in humility out of compassion, and say, “My Lord, be merciful to them as they have brought me up in my childhood.”*⁹¹

‘al-ghulam’;

﴿وَجَاءَتْ سَيَّارَةٌ فَأَرْسَلُوا وَارِدَهُمْ فَأَدْلَىٰ دَلْوَهُ ۖ قَالَ يَا بُشْرَىٰ هَٰذَا غُلَامٌ ۖ وَأَسْرُوهُ بَضَآءَةً ۖ وَاللَّهُ عَلِيمٌ
بِمَا يَعْمَلُونَ﴾

“And some wayfarers came (near the pit in which Yusuf was thrown) and sent their water-drawer (to bring water

⁸⁷ Lisan al-Arab, “al-walad”, <https://bit.ly/329uI43>

⁸⁸ Al-Misbah al- Munir fi Ghariib as-Syarh al-Kabiir. 1987. “At-thifl”. Vol. 1. Maktabah Lubnan.

⁸⁹ Al-Quran. Maryam 19:12

⁹⁰ Ibrahim Fakhhar, H. 2015. Al-Himayah Al-Jinai’yyah li At-Tifl fi At-Tashrii’ Al-Jazaairi wa Al-Qanun Al-Muqaaran. Thesis. Muhammad Khaidhar University. p.p.16

⁹¹ Al-Quran. Al-Isra’ 17:24

for them). So, he let down his bucket. He said, “What a good news! Here is a boy!” And they kept him hidden as merchandise, while Allah was aware of what they were doing”⁹²

‘Al-fataa’, the Islamic scholars agreed that a young person who age between fifteen until 33 years old is considered as *al-fataa*;

﴿تَحْنُ نَفْصُ عَلَيْنِكَ نَبَأُهُم بِالْحَقِّ ۖ إِنَّهُمْ فِتْيَةٌ آمَنُوا بِرَبِّهِمْ وَزِدْنَاهُمْ هُدًى﴾

“We narrate to you their story with truth. They were young men who believed in their Lord and We gave them more guidance.”⁹³

Thus, based on the terms above, it shows that every single term has their own definition. These terms are more detail, and it elaborates the stages of children’s growth until they reach their age of puberty. The illustration below shows the summary of terms usage from Islamic perspectives.

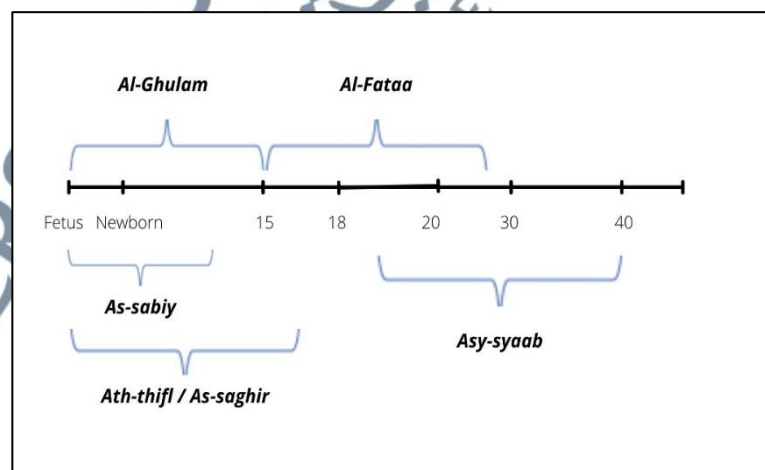


Figure 1: The summary of child terms

⁹² Al-Quran. Yusuf 12:19

⁹³ Al-Quran. Al-Kahf 18:13

In a nutshell, this topic clearly shows the usage of term in categorizing child in Islam is more comprehensive than the use in Malaysian law. The various terms used such as *al-fataa*, *al-sabiy*, *al-ghulam*, *at-thifl*, *as-saghir* and *asy-syaab* show the different stage of intellectual development of a child that may differ in the approach of educating them. It also signifies their level of responsibility and liability, according to the differences of their age category.

2.4 THE GROWTH OF SOCIAL MEDIA

A report from Digital 2020 January Global Statshot shows that 26.0 million Malaysian citizens are active social media users.⁹⁴ It seems as if people, especially children and adolescents, cannot live without it. The purpose of social media today is about more than simply communicating on the website. Online games, food ordering sites, online shopping apps and traffic apps are also part of social media where the users can communicate through it easily using their smartphone. This phenomenon was totally different in the past two decades when people had to use the personal computer where it was impossible to take them anywhere.

As of now, there is tremendous type of social networking sites existed. These include Relationship Networks (*Facebook*, *Twitter*, *Snapchat*, blogs (personal online diaries), video- and photo-sharing (*YouTube*, *Flickr*, *Instagram*), social bookmarking (*StumbleUpon*, *Pinterest*, *Flipboard*), online reviews (*TripAdvisor*, *Zomato*), E-Commerce (*Shopee*, *Mudah.my*), online gaming (*PUBG*, *Scrabble Go*) and many more. People also very dependent on social media to purchase their products, search information, pay bills, news, and thousands of things to engage with social media.

⁹⁴ Kemp, S. 2020. Digital 2020: Malaysia, *Data Reportal*. <https://datareportal.com/reports/digital-2020-malaysia>

Indeed, this has changed the way people live, communicate and retrieve information faster with low cost.⁹⁵

Children also cannot be spared because social media is one of the most important ways to learn. It provides a new classroom and new playground for them.

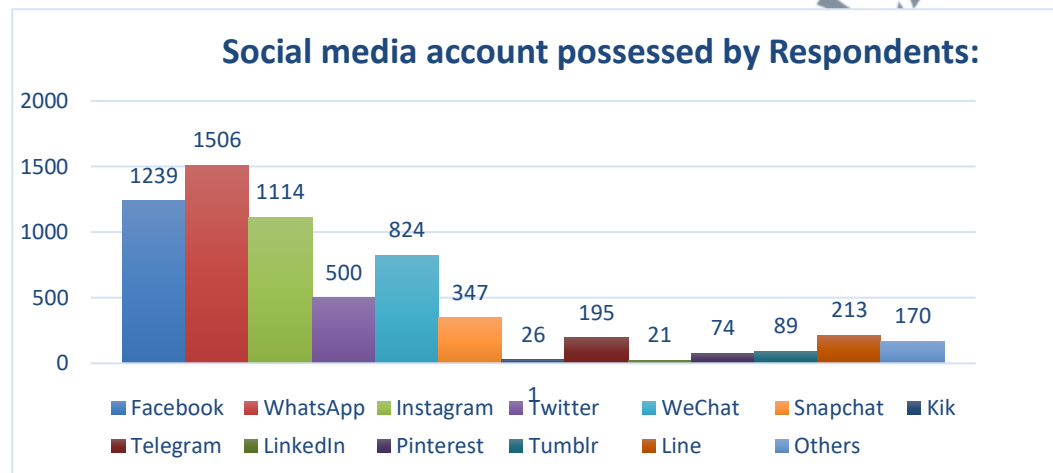


Figure 2: The Most Popular Social Media Application Possessed by Respondents⁹⁶

From the Chart above, it is clearly shows that most of the children from 1900 respondents possessed their own social media account. The question on “What is the most popular social media application used by the respondent?” shows that 78 percent of respondents use WhatsApp application, 65 percent use Facebook and 58 percent of them are Instagram users. 43 percent of the students use WeChat, 26 percent have Twitter account. Meanwhile the least used application among them are Snapchat, Line and Telegram, Tumblr and others.

However, there are many other social media accounts which are not listed in the questionnaire, yet possessed by them such as Ask.fm, Beetalk, Bigo Live,

⁹⁵ Harvey, K. (ed.). 2014. *Encyclopaedia of social media and politics*. Los Angeles: SAGE Publications, Vol. I., Inc. pp. 4

⁹⁶ Hendun ARS, et.al. 2018. *Developing a Social Media Legal Guide for Children*, FRGS Grant, Ministry of Higher Education.

Blogspot, Disqus, Dota 2, Dubsmash, Fresh Hotel, Frogvle, Google+, Hangout, Imo, KakaoTalk, Musical.ly, Myspace, Roblox, Skype, Triller, Smule, Snow, Steam, V App, Viber, Vine, Viva Video, Wattpad. We Heart It, Weibo, Xbox Live, Yes, YouTube, Netflix and Zello. All these applications were stated by themselves and most of them have more than one social media account.

Currently, there are many new social media apps evolved and have known by the children. From this finding, it can be concluded that social media now is beyond the edge. It is not limited to chatting applications only, but to some extents, the music/ video-sharing applications such as (YouTube, Vines, Musical.ly, Smule, TikTok) and online video games such as (Frogvle, Xbox Live, Roblox) could be the social media to where they can communicate with other users too.

This study also reveals that most of the children learn about the social media through people surroundings.

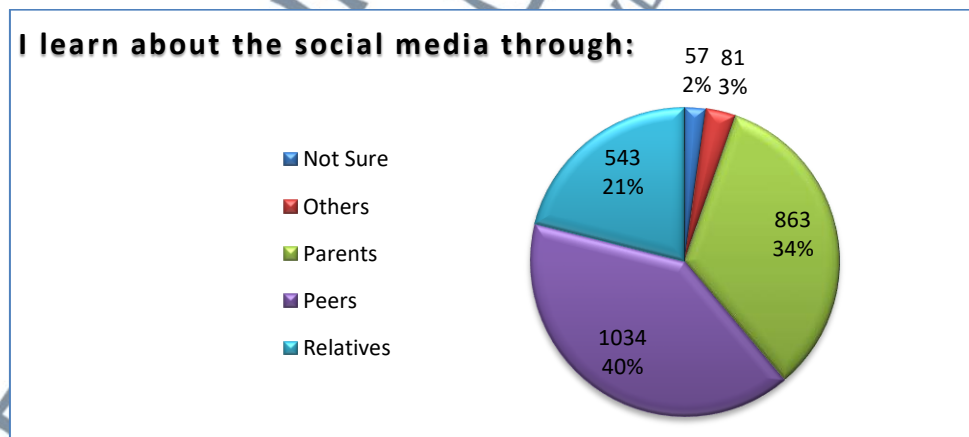


Figure 3: Where Children Learn about Social Media?⁹⁷

As shown in the chart, 40 percent of respondents learnt about social media through their peers, 34 percent learnt from their parents, 21 percent learnt from their

⁹⁷ Hendun ARS, *et.al.* 2018. *Developing a Social Media Legal Guide for Children*, FRGS Grant, Ministry of Higher Education.

relatives, 3 percent from others which is not stated in the questionnaire and 2 percent of respondents are not sure where they learnt about it.

81 respondents who represent 3 percent of others learnt about social media from advertisement on TV, artist, course, internet, neighbors, new trends, news, newspaper, their own self, teachers, video games, Wattpad and YouTube.

Apart from that, there are numerous factors that encouraged them to surf the social media other than simple communication. With the current situation where the pandemic of Covid-19 hits the world, the technology of communication using various social media applications is inevitable. The practice of new norm makes the mobile devices and social media to be very important in their daily lives and academic performance.⁹⁸ It also help the continuation of teaching and learning through online medium to access their subject contents and continuous assessment despite the physical boundary.⁹⁹

⁹⁸ Ansary J.A.N, Khan, N.A. 2020. "Exploring the role of social media in collaborative learning the new domain of learning", Springer Open, Exploring the role of social media in collaborative learning the new domain of learning. *Smart Learn. Environ.* V. 7(9); Gikas, J., & Grant, M. M. (2013). Mobile computing devices in higher education: Student perspectives on learning with cellphones, smartphones & social media. *Internet and Higher Education Mobile*, 19, 18–26.

⁹⁹ *Ibid*

Factors That Encouraged Respondents to Access Social Media

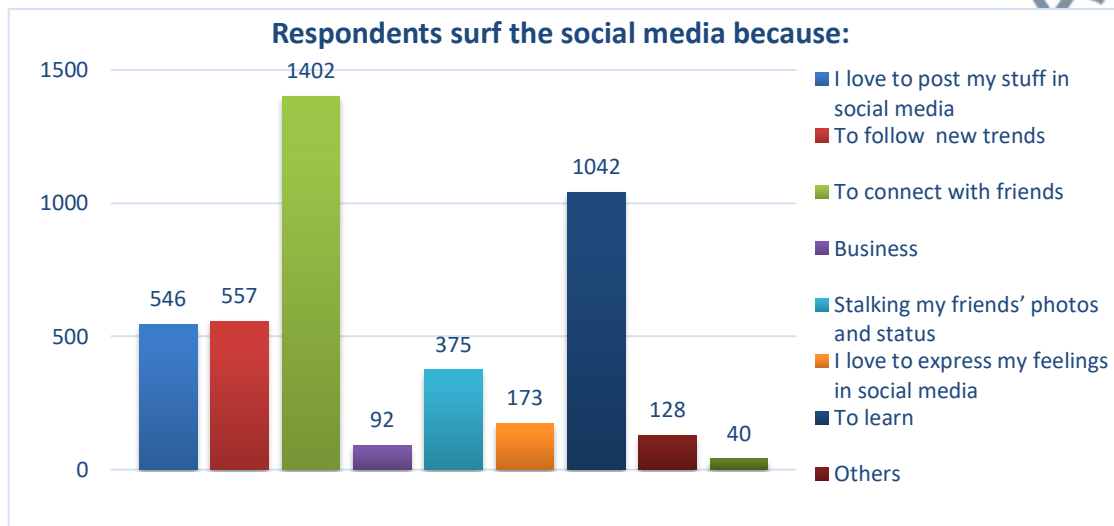


Chart 4: Factors that Encouraged Respondents to Access Social Media¹⁰⁰

The above chart shows 73 percent of respondents surf the social media with the purpose to connect with their friends, followed by 54 percent to learn, 29 percent to follow new trends and 28 percent of them who love to post their stuff in social media. Besides that, about 19 percent of respondents surfing the social media because they want to stalk their friends' photos and status while 9 percent love to express their feelings in social media, 5 percent doing online business in social media and 7 percent surfing the social media for other reasons. Nevertheless, 2 percent of respondents are not sure why they surf the internet.

The other factors that encourage respondents to use the social media as stated by them are playing games, searching for new friends, watching videos and movies, for class information, downloading music and latest games, online shopping, to connect with their parents and for online storage. What is appalling from the result, there is a respondent who surfs the social media for watching the RedTube (RedTube is a pornographic video sharing site) and this situation is threatening.

¹⁰⁰ Hendun ARS, *et.al.* 2018. *Developing a Social Media Legal Guide for Children*, FRGS Grant, Ministry of Higher Education.

From these points, it starting to show the alarming situation when some children stated that they are accessing some harmful contents and websites. Indeed, peers influence also could be the factor that triggered children to involve delinquencies in social media.¹⁰¹ Through the internet, they have acquired another entryway into the lives of impressionable children, using the medium of information, entertainment, and social connection to manipulate and deceive.¹⁰² The researcher believes this serious problem is due to poor understanding, particularly in law and religious knowledge.

Thus, in the chapter 3 and 4, it will be a discussion on the Malaysian legal governance and Shariah principle to help to reduce the issue of cyber delinquency.

2.5 SHARIAH PRINCIPLES ON SOCIAL MEDIA

Islam welcomes and accommodates the usage of social media. Although social media are known as the most unregulated arena,¹⁰³ but being a complete religion, Islam is dynamic in the sense of what has already envisaged and contained all that may come with changing times.¹⁰⁴ It has also made vivid provisions from the inceptions providing *halal* (permitted) and *haram* (prohibited).¹⁰⁵ Through the provisions, it protects the privacy, decency, integrity, respect and humility and instructs Muslims from all acts against the Sharia.¹⁰⁶ Verily The Almighty Allah has permitted and prohibited numerous things and we as His slaves need to obey His

¹⁰¹ Warren County Sheriff's Office Bowling Green, Kentucky, *Campaign for Child Internet Safety*, <http://www.warrencountykysheriff.com/crime-prevention-programs/campaign-for-child-internet-safety/>

¹⁰² *Ibid*

¹⁰³ Schmidt, E., Cohen, J. 2013. The new digital age: Reshaping the future of people, nations and business, New York: Alfred A. Knopf.

¹⁰⁴ Isah Shehu, Mohammed, Muhammad Fuad Othman & Nazariah Osman. 2017. The Social Media and Islam. *Sahel Analyst: Journal of Management Sciences*, v.15:4, pp.73

¹⁰⁵ *Ibid*

¹⁰⁶ *Ibid*, pp.67

command thereupon. However, in cases of social media usage, it is silent and there is no legal text that neither permits nor prohibits it. This maxim is grounded from Prophet Muhammad (PBUH):

*“The Halal is that which Allah has made lawful in His Book and haram is that which He has forbidden, and that concerning which He is silent He has permitted as a favour to you”.*¹⁰⁷

“Al-Tirmidhi and Ibn Majah have narrated on the authority of Salman and the Prophet Muhammad (PBUH) was asked about cheese, ghee and the wild ass. He replied:

*“Lawful is that what has been permitted by Allah in His Book’ prohibited is that what has forbidden by Allah in His Book; where His silent it is excusable”.*¹⁰⁸

Furthermore, there is no indication in any Islamic Intellectual tradition of a Muslim Scholar ever holding an alternative view on the impermissibility of social media. On the contrary, there is, in fact, an Islamic legal maxim ‘*A default ruling of things is permissibility until there is proof on its prohibition*’ which shows that it is *halal* for us to enjoy the social media if the purpose is for good intentions and it becomes *haram* when the purpose and intention tend to do sins (*ma’siah*).

By looking at today’s scenario, social media has become almost ubiquitous, Muslims can use the social media in a good manner as long as it is not contradicted to

¹⁰⁷ Narrated by al-Bajjar, al-Tabrani, and al-Baihaqi on the authority of Abu al-Darda’ through a sound chain of narration

¹⁰⁸ Mubarak Furi. n.d. *Tuhfat al-Ahwadhi li Jami’ al-Tirmidhi*, Beirut: Dar al-Fikr. v.5, pp. 396; Ibn Majah, Muhammad bin Yazid. n.d. *Sunan Ibn Majah*, Beirut: Dar al Hayaa’ al Kutoob al ‘Arabiyyah, v.2, pp. 1117.

Shariah. For example, we are permitted to surf the social media for communicating with other Muslims in the world in terms of spreading *da'wah* and to know each other, but it becomes prohibited when we use the social media to look at *ajnabi* (someone who are opposed to our gender and non-mahram) and interact with them without limitations.

It is very important to us to set our intention prior to taking any actions because Shariah rulings on the acts are based on people's intention.¹⁰⁹ Imam Al-Subki, in his book *Al-Ashbah wa an-Nazair* stated "*The purpose of intentions is to distinguish between the acts of worshipping Allah and habits as well as to differentiate between the different types of acts in worshipping Allah*".¹¹⁰ Thus, utilizing the social media can be considered as a form of worshipping of Allah when it is done with the correct intention and would be rewarded accordingly.

This is consistent with another establish maxim, '*A means takes the same ruling of its objective*', which clearly explains if the objective is impermissible, the means used to achieve it becomes impermissible as well. For instance, it is permissible for a person to use Facebook, however, if the intention to harass people, the usage of the application is considered impermissible.

When the Malaysian Government decided not to censor the use of the internet as a freedom of access, this shows that people are allowed and guaranteed to access to any websites.¹¹¹ Muslims necessarily must consider how they access the social media as long as it must be done within the limit and in compliance with Sharia and ethics.

¹⁰⁹ Azman Ismail & Md. Habibur Rahman, 2013, *Islamic Legal Maxims: Essentials and Applications*, Kuala Lumpur: IBFIM, pp. 6; Al-Zarqa, *Al-Madkhal al- Fiqhi al- 'Am*, pp.966

¹¹⁰ Al-Subki, 2008. *Al-Ashbah wa an-Nazair*, Beirut: Dar al-Kutoob al 'Ilmiyah, v.1 pp. 57

¹¹¹ MSC Malaysia 10 Point Bill of Guarantees at <http://www.msomalaysia.my/topic/MSOM+Malaysia+Bill+of+Guarantees> viewed on 20th August 2011

In the meantime, they can grab the opportunity to disseminate Islamic teachings on social media.

Although the social media seems to be double-edged sword that may risk such freedom, Islam did not totally prohibit people from using it. As we can refer to the Islamic legal maxim, *'When there is conflict between two harms, the greater harm is avoided by the commission of the lesser.'*¹¹² Although social media might bring many negative things to children, we cannot stop them from using it as it can bring them, especially Muslim children, to greater losses and being less competent. Hence, the lesser harm is tolerated in order to remove the severity of greater harm.¹¹³ Essentially, both of these harms are not equal as one may be private harm and the other may be public harm.¹¹⁴ Allah says in the Holy Quran:

﴿وَابْتَغِ فِيمَا آتَاكَ اللَّهُ الدَّارَ الْآخِرَةَ وَلَا تَنْسَ نَصِيبَكَ مِنَ الدُّنْيَا وَأَحْسِنَ كَمَا أَحْسَنَ اللَّهُ إِلَيْكَ وَلَا تَبْغِ﴾

الْفَسَادَ فِي الْأَرْضِ إِنَّ اللَّهَ لَا يُحِبُّ الْمُفْسِدِينَ﴾

*"But seek, through that which Allah has given you, the home of the Hereafter; and [yet], do not forget your share of the world. And do good as Allah has done good to you. And desire not corruption in the land. Indeed, Allah does not like corrupters."*¹¹⁵

Thus, Islam has encouraged Muslims to seek knowledge and learn new things. We should fully utilise the social media to prevent them from just being mere

¹¹² Azman Ismail & Md. Habibur Rahman, 2013, *Islamic Legal Maxims: Essentials and Applications*, Kuala Lumpur: IBFIM, pp. 181; Al-Burnu. 1996. *Al-Wajiz fi Idah al Qawa'id al Fiqhiyyah al Kulliyah*, Beirut: Muassasah ar Risalah, pp.260

¹¹³ Azman Ismail & Md. Habibur Rahman, 2013, *Islamic Legal Maxims: Essentials and Applications*, Kuala Lumpur: IBFIM, pp. 181; Al-Burnu. 1996. *Al-Wajiz fi Idah al Qawa'id al Fiqhiyyah al Kulliyah*, Beirut: Muassasah ar Risalah, pp.260

¹¹⁴ *Ibid*; Zaydan, n.d. *Al Wajiz fi Syarh al Qawaid al Fiqhiyyah*, pp.94

¹¹⁵ Surah Al-Qasas, 28:77

followers, instead, to develop them to be a good leader and thinker who cannot be manipulated easily.

2.6 CONCLUDING REMARKS

It can be concluded that children are classified as a person under the age of eighteen according to Malaysian legislation and those who are not attained puberty from Islamic perspectives. Adult earnest paid attention to children, children can be a good and holistic person.

Based on topic, we can conclude that it is crucial to have a legal definition of "child" in order to avoid confusion or abuse of the system. A conclusive definition is vital to attract a clean line on who the kids are and whilst the concept of childhood begins and ends which to ensure all the rules, regulations, guidelines and policies relating to children can be effectively implemented.¹¹⁶

Generally, it is permissible to use social media as it may bring great and positive effects to Muslim's development. The judgment of the permissibility is according to the intention and condition. If social media usage may cause harmful effects to the user, it may bring to the prohibition of the usage. The prohibition protects human being, namely religion, life, lineage, dignity, mind and property.

Thus, as a Muslim, we must ensure that our children are constantly evolving in the light of today's technological advances. Islamic values also need to be firmly nurtured as a stronghold against the negative elements of social media. Thus, it can

¹¹⁶ Aminuddin Mustafa. 2016. *Rights of Children in Criminal Proceedings: A Comparative Analysis on the Compatibility of the Standards of the Convention on the Rights of Children (CRC)*. Lancaster University, pp.74

help generating young Muslim technologists who understand the integration of *'aqli* and *naqli* and may contribute to the benefits to Islam.

In the next chapter, the cyber delinquencies among children will be discussed thoroughly starting from online potential risk on children, instance of cyber delinquencies occurred and the Shariah views regarding this issue.

