

**THE WOMEN'S CONVENTION (CEDAW) AND THE ISLAMIC  
FAMILY LAW (FEDERAL TERRITORIES) ACT 1984:  
CONSTRUCTING HARMONISATION ON GENDER EQUALITY**

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UNIVERSITI SAINS ISLAM MALAYSIA

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CONSTRUCTING HARMONISATION ON GENDER EQUALITY**

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UNIVERSITI SAINS ISLAM MALAYSIA  
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**AUTHOR DECLARATION**

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

I hereby declare that the work in this thesis is my own except for quotations and summaries which have been duly acknowledged.

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## ABSTRAK

Tesis ini mengkaji dengan kritis hak-hak wanita sebagaimana termaktub di dalam Akta Undang-Undang Keluarga Islam (Wilayah Persekutuan) 1984 (IFLA) sama ada ia harmoni dengan Konvensyen Mengenai Penghapusan Segala Bentuk Diskriminasi Terhadap Wanita (CEDAW). Penyelidikan ini menggunakan kaedah kualitatif berbentuk kajian perpustakaan dan perbandingan. Untuk menambahbaik undang-undang bagi melindungi hak wanita, tesis ini mengkaji sifat-sifat hak yang didokong oleh golongan feminisme samada ia selari dengan sifat-sifat hak dalam Islam. Selain itu, tesis ini mengkaji latarbelakang dan prinsip hak dalam peruntukan CEDAW dan IFLA untuk menunjukkan bahawa kedua-dua peruntukan mempunyai persamaan dalam memberi keadilan kepada golongan wanita. Untuk memastikan prinsip kesaksamaan gender di bawah peruntukan IFLA dan CEDAW boleh diharmonikan, tesis ini menganalisis prinsip keadilan dan kesaksamaan gender yang menjadi asas dalam kedua-dua peruntukan tersebut. Untuk menentukan sama ada dasar kelayakan hak dan tanggungjawab yang berbeza antara wanita dan lelaki di bawah peruntukan IFLA berpegang kepada prinsip-prinsip kesaksamaan dan bukan diskriminasi, peruntukan-peruntukan yang berkaitan hal tersebut dianalisa dengan kritis melalui pendekatan *fiqh*. Tesis ini menemui bahawa kedua-dua perundangan ini boleh diharmonikan melalui prinsip keadilan dan konsep perbezaan dalam kalangan manusia. Melalui analisa yang dibuat, didapati bahawa dasar kelayakan hak dan tanggungjawab yang berbeza dalam peruntukan IFLA tidak semestinya mendiskriminasi wanita malah adil dan bersesuaian dengan fitrah biologi wanita. Berdasarkan konsep kelayakan hak dan tanggungjawab tersebut, tesis ini menemui bahawa reservasi yang dibuat terhadap Perkara 16 (1) (a), (c), (f) dan (g) di dalam peruntukan CEDAW adalah munasabah untuk memelihara hak-hak wanita dalam perkahwinan daripada keadaan yang memudaratkan. Oleh itu, adalah penting bagi seluruh masyarakat di semua peringkat untuk memahami konsep kesaksamaan gender dalam konteks yang betul. Adalah dicadangkan bahawa maksud kesaksamaan gender dan kelayakan hak yang berbeza perlu ditakrif dan digunakan mengikut maksud undang-undang yang digubal untuk mencapai keadilan bagi semua pihak yang bertikai.

## ABSTRACT

This thesis critically examines women's rights under Islamic jurisprudence stipulated under Islamic Family Law (Federal Territories) Act 1984 (IFLA) to consider whether it harmonious with the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). This is a qualitative research in form of library based and comparative research. To reform the law on the rights of women, this thesis investigates the attributes of rights in accordance with feminist jurisprudence to consider whether it corresponds with the attributes of rights in Islam. Besides, this thesis examines the historical background and the principle of rights applied by CEDAW and IFLA to consider that both have the same objective to establish justice for women. To consider the concept of gender equality under CEDAW and IFLA are harmonious, the analysis is made on the principle of gender justice and gender equality of both jurisprudences. To consider whether the basis of different entitlements to rights and duties between women and men under IFLA upholds the principles of gender equality and non-discrimination, certain provisions of IFLA were critically analysed through methodological *fiqh*. The research found that both CEDAW and IFLA can be harmonised through the principle of justice and by acknowledging differences among human beings. From the analysis made, it is traced that different entitlements to rights and duties between women and men in the provisions of IFLA does not necessarily discriminate against women but it is just and suitable with women biological nature. Based on the analysis on the concept of difference under IFLA, the thesis considers the reservations made into Article 16 (1), (a), (c), (f) and (g) of CEDAW do not discriminate against women. It is found that the reservations are reasonable in preserving the rights of Muslim women in marriage and family relations from being placed in disadvantaged positions. Thus, it is crucial for the community at all levels to understand the notion of gender equality within its valid context. It is proposed that the meaning of gender equality and different entitlement to rights and duties should be duly defined and applied through enacted legislation to maintain justice for all parties.

## ملخص البحث

فإن هذا البحث يبحث عما إذا كانت حقوق المرأة المنصوصة عليها في قانون الأسرة الإسلامية (الولاية) لا تتميز ضد المرأة؛ وأنها تتوافق مع أهداف اتفاقية القضاء على جميع أشكال IFLA الفيدرالية لعام 1984 (ومن أجل فهم حقوق المرأة ينبغي أن يفهم الناس خصائص الحقوق). لذلك، فإن CEDAW (التمييز ضد المرأة) هذه الدراسة تبحث عن سمات الحقوق في الفقه الإسلامي والنسوي. تسلط مناقشة الضوء على أن الفقه الإسلامي والانتقادات النسوية بشأن خصائص الحقوق تمكن مواءمتها في إطار مبادئ العدالة الاجتماعية، وذلك من خلال استكشفت دراسة المعنى CEDAW وIFLA تفسير هذه الحقوق. ولتحديد مبدأ العدالة بين الجنسين في إطار CEDAW و IFLA وأشارت النتائج إلى أن كلا من مفهوم "الاختلاف" في الفقهيات الإسلامية والنسوية بإجراء المقارنة إذا كان أساس الاستحقاقات أيضا يقوم البحث. يعترفان بالاختلافات الجنسية والثقافية بين البشر بدعم مبادئ المساواة وعدم التمييز. فقد تم IFLA المختلفة للحقوق والواجبات بين المرأة والرجال في إطار لا تتميز بالضرورة ضد المرأة. ونظر البحث أيضا فيما IFLA تحليلا نقديا. وقيل أن IFLA تحليل بعض أحكام لا تتميز ضد المرأة. CEDAW إذا كانت التحفظات الواردة في المادة 16 (1)، (أ)، (ج)، (و)، (ز) في وتبين أن التحفظات معقولة في الحفاظ على حقوق المرأة المسلمة في الزواج والعلاقات الأسرية من وضعها في تمكن CEDAW وIFLA مواقع محرومة. وتنص هذه الأطروحة على أن معنى المساواة بين الجنسين في إطار ولذلك من الضروري أن يفهم المجمع مع على جميع مستويات مفهوم. التوافق من خلال فهم مفهوم "الاختلاف" المساواة بين الجنسين في سياقها الصحيحة. ويقترح هذا البحث سن تشريع قانوني يتعلق بالمساواة بين الجنسين. وذلك لتحديد مفهوم المساواة في سياقها الصحيحة. وفي الوقت نفسه، لتجنب أي نوع من التمييز ضد المرأة والرجال.

## CONTENT PAGE

Contents	Page
AUTHOR DECLARATION.....	i
BIODATA OF AUTHOR.....	ii
ACKNOWLEDGEMENTS.....	iii
ABSTRAK.....	iv
ABSTRACT.....	v
<i>MULAKHKHAS AL-BAHTH</i> .....	vi
CONTENT PAGE.....	vii
LIST OF TABLES.....	xi
LIST OF CASES.....	xii
LIST OF STATUTES.....	xiii
GLOSSARY.....	xiv
TRANSLITERATION.....	xvi
ABBREVIATIONS.....	xix
CHAPTER ONE: INTRODUCTION AND BACKGROUND OF THE STUDY.....	1
1.1 Introduction .....	1
1.2 Background and Conceptual Framework of Research.....	2
1.2.1 Malaysian Dual Legal System and the Reservation into CEDAW.....	2
1.2.2 A Conflict of Understanding between CEDAW and IFLA on the Meaning of Gender Equality.....	6
1.3 Research Objectives.....	12
1.4 Research Questions.....	13
1.5 Harmonisation of CEDAW and IFLA from the Perspective of Human Rights: A Literature Review.....	15
1.6 Research Methodology .....	28
1.7 Chapter Outline.....	31
1.8 Significant of Research.....	37

CHAPTER TWO: THE ATTRIBUTES OF RIGHTS AND PRINCIPLE OF GENDER EQUALITY IN FEMINIST JURISPRUDENCE.....	41
2.1 Introduction.....	41
2.2 The Historical Background and Evolution of International Human Rights Law.....	43
2.3 The Emergence of CEDAW: It's Object and Procedure .....	47
2.4 Feminist Critiques on Rights: A Comparative View with Islam.....	51
2.4.1. Collective Rights versus Individual Rights.....	52
2.4.2. Cultural Rights versus Universal Rights.....	59
2.4.3 Rights and Duties versus Rights Only.....	70
2.4.4 Private and Public Spheres versus Private or Public Sphere Only.....	79
2.4.5 Nature and Nurture versus Only Nature or Nurture .....	86
2.5. The Interpretation of Justice, Equality and Non-Discrimination.....	94
2.6. Gender Equality in CEDAW's Perspective.....	105
2.7. Concluding Remarks.....	113
CHAPTER THREE: THE PHILOSOPHY OF DIFFERENT RIGHTS AND DUTIES BETWEEN WOMEN AND MEN IN ISLAMIC PERSPECTIVE OF HUMAN'S RIGHTS.....	115
3.1. Introduction.....	115
3.2 The Concept of Difference in Islamic Perspective.....	117
3.3 Women Nature in the Quran and Science.....	121
3.3.1 Biological Nature of Women.....	122
3.3.2 Psychological, Emotional and Physiological Nature of Women.....	126
3.3.3 Physical Nature of Women.....	129
3.3.4 Women, Religion and Culture.....	130
3.4 The Principle of Social Justice in Islam.....	133
3.4.1 Freedom of Individual Conscience.....	137
3.4.2 Formal and Substantive Equality of Human Beings.....	141
3.4.3 Collective Rights and Duties to Society.....	144
3.5 Correlativity between Rights, Duties and Moralities in Islam.....	147
3.6 The Philosophy of Equal Rights and Duties between Sexes.....	151
3.7 Human's Rights in Islam.....	160
3.8 Concluding Remarks.....	169

CHAPTER FOUR: DIFFERENT ENTITLEMENTS TO RIGHTS AND DUTIES BETWEEN WOMEN AND MEN UNDER ISLAMIC FAMILY LAW (FEDERAL TERRITORIES) ACT 1984: DISCRIMINATORY OR JUSTICE?.....	172
4.1. Introduction.....	172
4.2. An Overview on the Status of Women before and after Coming of Islam.....	175
4.3. The Customary Practice of Malay Muslim Women in Marriage.....	179
4.4. The Concerns of Women’s Rights Movement on Gender Equality.....	186
4.5. The Appraisal of Islamic Family Law (Federal Territories) Act 1984.....	191
4.6. Critical Analysis on the Issues of Substantive Equality under the Provisions of IFLA .....	199
4.6.1. The Issue of Minimum Age of Marriage.....	199
4.6.2. The Issue of Person of Other Religion.....	204
4.6.3. The Issue of Consent of <i>Wali</i> .....	207
4.6.4. The Issue of Polygamy.....	214
4.6.5. The Issue of Divorce.....	225
4.6.6. The Issue of Maintenance.....	236
4.6.7. The Issue of Custody and Guardianship.....	245
4.7. Concluding Remarks.....	253
CHAPTER FIVE: A COMPARATIVE ANALYSIS ON THE IMPLEMENTATION OF CEDAW IN MUSLIM COUNTRIES: MALAYSIA AND MOROCCO.....	258
5.1. Introduction.....	258
5.2. International Human Rights Instruments: A Comparative View on the Rights of Women in Islam and Western Jurisprudence.....	260
5.3. The Application of CEDAW in Muslim States and Its Monitoring Procedure.....	269
5.4. <i>Bona Fide</i> Intention of Malaysian Government in Entering Reservations to CEDAW.....	276
5.5. Reformation of Muslim Women’s Rights Law: The Example of Morocco.....	291
5.6. The Reformed Mudawana Law of Morocco.....	294
5.7. Concluding Remarks.....	297

CHAPTER SIX: CONCLUSION AND RECOMMENDATIONS.....	300
6.1. Reasearch Findings.....	300
6.1.1 The Harmonious Attributes of Rights in Islamic and Feminist Jurisprudences.....	302
6.1.2 The Harmonious Principle of Substantive Equality under IFLA and CEDAW.....	306
6.1.3 The Divergences and Convergences between IFLA and CEDAW on the Rights of Women.....	311
6.1.4 Reviewing Reservations into Article 16 (1) (a), (c), (f) and (g) of CEDAW.....	319
6.2 Proposed Solutions for Constructive Harmonisation of IFLA and CEDAW.....	321
6.2.1 The Need for Amendment of Certain Provisions of IFLA.....	322
6.2.2 The Need to Strengthen Women Policy for Social Reconstruction.....	331
6.2.3 The Need for New Law on Substantive Equality.....	335
6.2.4 The Need to Rebrand Muslim Feminism in Malaysia.....	337
BIBLIOGRAPHY.....	340
APPENDICES.....	362

## LIST OF TABLE

Table 1: Classification of <i>Iddah</i> Period	Page 241
--	-------------

UNIVERSITI SAINS ISLAM M  
الجامعة الإسلامية  
ISLAMIC SCIENCE UNIVERSITY

**LIST OF CASES**

	Page
Ahin v Turkey [2005] Eur. Court H.R. 173	103
Aishah Abdul Rauf v Wan Mohd Yusof Wan Othman [1990] Selangor Shari'ah Appeal Court	187
Beatrice a/p A.T. Fernandez v Sistem Penerbangan Malaysia [2004] CA	102
Exchange of Greek and Turkish Population [1925] PCLJ Reports Series B, No.10,20	281
Genocide Case, ICJ	272, 281
Noorfadilla v Government of Malaysia [2014] HC	102
Mohd Izudin bin Mohd Ilias v Rozeta bt Hasan [2013]	221
Khairul Anuar bin Kamaruddin v. Aida Melly Tan Mutalib [2008] 1 ShLR	236
Noor Bee v Ahmad Shanusi [1980] JH 63	244
Subashini Rajasingam v Saravanan Thangathoray & other Appeals	206
Syed Abdullah al-Shatiri v Syarifah Salmah [1959] 1 MLJ 137	209

UNIVERSITI SAINS ISLAM  
 الجامعة الإسلامية  
 ISLAMIC SCIENCE UNIVERSITY

**LIST OF STATUTES**

Domestic Violence (Amendment) Act 2017 (Act 521)  
Employment (Amendment) Act 2012 (Act 265)  
Federal Constitution of Malaysia 1957  
Human Rights Commission of Malaysia Act 1999 (Act 597)  
Islamic Family Law (Federal Territories) Act 1984 (Act 303)  
Law Reform (Marriage and Divorce) (Amendment) Act 2017  
Married Women Act and the Islamic Family Law Order of Brunei  
Malaysian Penal Code as at June 2015 (Act 574)  
Moroccan Code of Personal Status of 1957  
Mudawana Law of Morocco  
Women and Girls Protection Act 1973 (Act 106) (Repealed by the Child Act 2001 [Act 611])  
Workmen's Compensation Act 1952  
Guardianship of Infants Act 1961  
Code of Practice on the Prevention and Eradication of Sexual Harrasment in the Workplace  
Industrial Relation Act 1967  
Occupational Safety and Health Act 1994  
The Anti-Trafficking in Persons Act 2007

## GLOSSARY

<i>Abul Basyar</i>	The father of all mankind-Prophet Adam
<i>Al-Haqq</i>	The truth
<i>Al-Khayr Wa Al-Maslahah</i>	Goodness and benefit
<i>Al-Mawjud Al-Thabit</i>	Reality
<i>Al-Mushrikat</i>	Non-muslim (women)
<i>Al-Mushrikin</i>	Non-muslim (men)
<i>As-Sunnah</i>	The word and the act of the Prophet Muhammad
<i>Aurah</i>	Part of the body that has to be covered
<i>Baligh</i>	Puberty
<i>Bashariyyah</i>	Human being
<i>Bi Al-Haqq</i>	With justice
<i>°Adl</i>	Justice
<i>°Adl Wa Ihsan</i>	Justice and benevolence
<i>°Aqd</i>	Contract
<i>°Iddah</i>	Certain period provided for women whenever the contract of marriage is over
<i>Darar Shar°iyy</i>	Harm under the interpretation of Shari'ah law
<i>Ihsan</i>	Kindness
<i>Fasakh</i>	A type of divorce for women in Shari'ah law
<i>Fiqh</i>	Islamic jurisprudence
<i>Fitrah</i>	Nature
<i>Fur°u</i>	Branch
<i>Hadannah</i>	Child custody
<i>Hadith</i>	The narration comes from the Prophet Muhammad
<i>Haqq Allah</i>	Rights of God
<i>Haqq °Abd</i>	Rights of human beings
<i>Haram</i>	Forbidden in Shariah
<i>Hata Yūminū</i>	Until they believe
<i>Hawa</i>	Eve or wife of Adam
<i>Hukm</i>	Islamic legal ruling
<i>Hukm Taklifi</i>	The defining rule that determines rights and duties of individuals by requiring the commission or omission of an act, or giving an option to do or refrain therefrom
<i>°Ibādah</i>	Worship
<i>Ibn Maryam</i>	Prophet Isa
<i>Ijma'</i>	Consensus
<i>Ijtihad</i>	Strive to understand
<i>Iman</i>	Faith
<i>Istim°a</i>	Sexual transaction
<i>Kasb Iktisab</i>	Acquire
<i>Khul'</i>	A type of divorce
<i>Khusmah</i>	Battle
<i>Khutbah Hijjatul Wad°a</i>	The Last Sermon of the Prophet Muhammad
<i>Kitābiyah</i>	A non-muslim (woman) who believes in Allah as the only God
<i>Ma Yastahiqquhu Al-Insan</i>	To which a person is entitled

<i>Mahar</i>	The right of women solely in marriage
<i>Mal</i>	Property
<i>Maqāsid Shar‘īyyah</i>	<i>Maqāsid</i> is an Arabic word for goals or purposes. In terms of Shari’ah, there are five foundational goals ( <i>Maqāsid al Shari’ah</i> )
<i>Mashalih Al-Mursalah</i>	For the benefit of the society
<i>Maslahah</i>	Benefit
<i>Maslahah ‘Ammah</i>	General benefit
<i>Maslahah Thabitah</i>	Specific benefit
<i>Milkīyyah</i>	Possession
<i>Mubah</i>	Not forbidden and not recommendation under Shariah legal ruling
<i>Mu‘āmalah</i>	Transactions
<i>Mujtahid</i>	A person who strive to understanding
<i>Mukallaf</i>	A competent person in Shari’ah
<i>Mushāwarah</i>	Discussions
<i>Mu‘ah</i>	Type of marriage in Syi’ah
<i>Naḥkah</i>	Maintenance
<i>Nikah</i>	Marriage
<i>Nushuz</i>	Disobedience
<i>Nuḥfah Amshaj</i>	The Mixture of women and men semen
<i>Qiwamah</i>	Power
<i>Qiyas</i>	Analogical reasoning
<i>Shari’ah</i>	Islamic law
<i>Siḥāsah Shar‘īyyah</i>	Islamic political
<i>Sunnatullah</i>	Law of nature
<i>Ta‘liq</i>	Agreement upon marriage
<i>Takhayyur</i>	Choices
<i>Taqlid</i>	Follow the rules without the right knowledge
<i>Taqwa</i>	Fear of One God
<i>Tazwij</i>	Marriage
<i>Ummah</i>	Society
<i>Usul Al-Fiqh</i>	Sources of Fiqh
<i>Wajib</i>	Compulsory
<i>Walī</i>	Guardian or protector
<i>Walī Hakim</i>	A person appointed by Head of State to solemnize marriage of women who does not have guardian from blood relationship
<i>Walī Mujbir</i>	A male from blood relationship of father
<i>Walī Raja</i>	A person appointed by Head of State to solemnize marriage of women who does not have guardian from blood relationship
<i>Wilayat</i>	Power

## TRANSLITERATION

### 1) TRANSLITERATION

Arabic	Latin	Example	Transliteration
ء	'	فأر	fa'r
ب	B	برد	Burd
ت	T	تال	Tall
ث	Th	ثوب	Thawb
ج	J	جدار	Jidār
ح	H	حليب	ḥalib
خ	Kh	خادم	Khādim
د	D	ديك	Dik
ذ	Dh	ذهب	Dhahab
ر	R	رفيق	Rafiq
ز	Z	زميل	Zamil
س	S	سلام	Salām
ش	Sh	شعب	sha'b
ص	ṣ	سخو	ṣakhr
ض	ḍ	ضيق	dayq
ط	ṭ	طلب	tālib
ظ	z	ظالم	zālim
ع	ʿ	عين	ʿaql
غ	Gh	غلام	Ghulām
ف	F	فيل	Fil
ق	Q	قلب	Qalb
ك	K	كلام	Kalām
ل	L	لب	Hubb
م	M	مال	Mal
ن	N	نجم	Najm
هـ	H	هول	Hawl
و	W	ورق	Waraq
ي	Y	يم	Yamm

## 2) SHORT VOWEL

Arabic	Latin	Example	Transliteration
اَ	A	كتب	Kataba
اِ	I	علم	‘alima
اُ	U	غلب	Ghuliba

## 3) LONG VOWEL

Arabic	Latin	Example	Transliteration
ي ، اَ	Ā	علم ، فتى	‘ālim , fatā
ي	I	علم ، داعي	‘ālim , dā‘i
و	Ū	علوم ، أدعو	‘ulūm , Ad‘ū

## 4) DIPHTHONG

Arabic	Latin	Example	Transliteration
و	Aw	نوم	Nawn
ي	Ay	ليل	Layl
ي	Iyy	شافعي	shāfi‘yy (ending)
و	Uww	علو	‘uluww (ending)

## 5) EXAMPTIONS

- a) Arabic letter ؤ (hamzah) found at the beginning of a word is transliterated to the letter " a " and not to '.

Example: أكبر transliterated to: Akbar (not 'akbar)

- b) Arabic letter ة (ta' marbutah) found in a word without ال (al) which is coupled with another word that consist ال (al) at the beginning of it is transliterated to the letter "t".

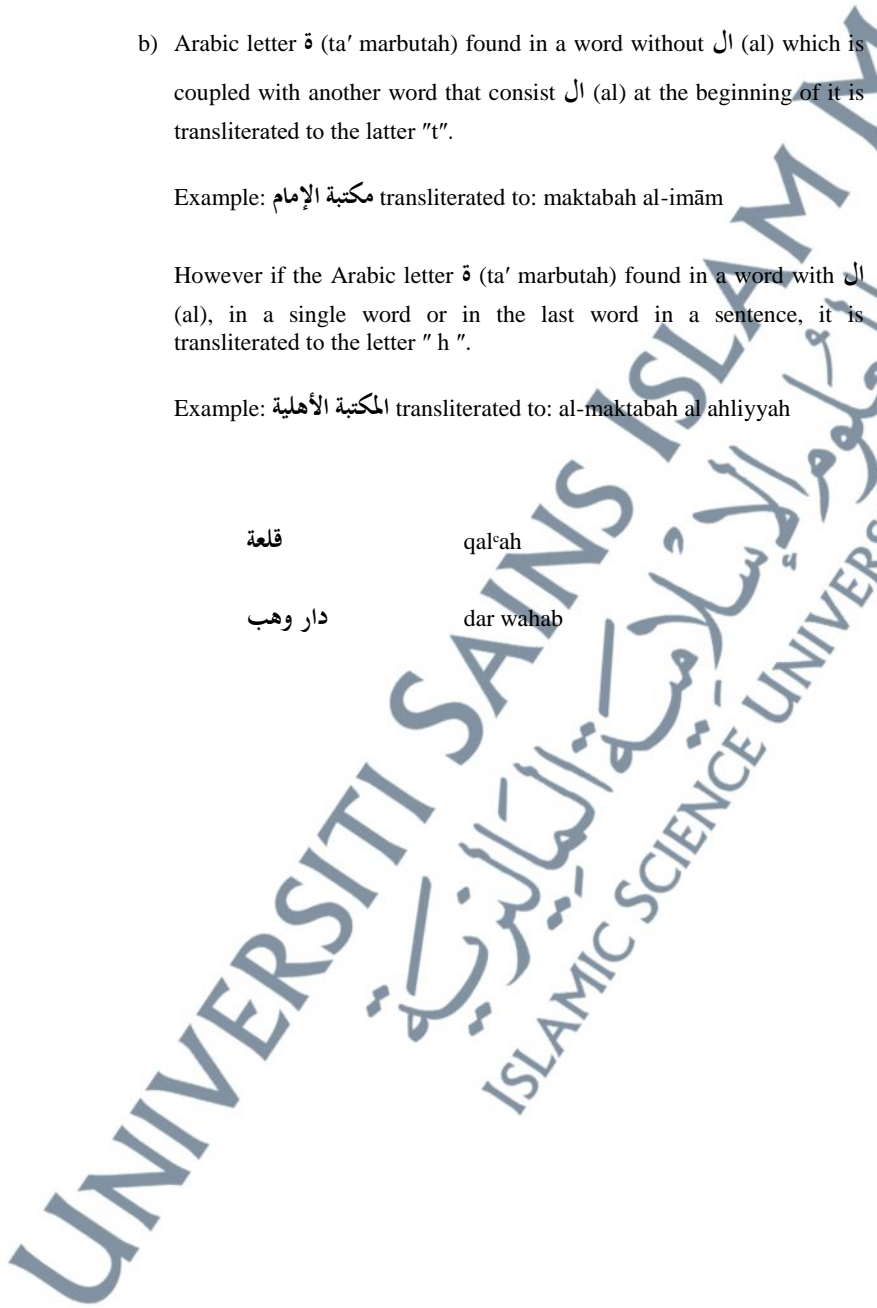
Example: مكتبة الإمام transliterated to: maktabah al-imām

However if the Arabic letter ة (ta' marbutah) found in a word with ال (al), in a single word or in the last word in a sentence, it is transliterated to the letter " h ".

Example: المكتبة الأهلية transliterated to: al-maktabah al ahliyyah

قلعة qal'ah

دار وهب dar wahab



## ABBREVIATIONS

AWAM	All Women Action Malaysia
AWL	Association of Women Lawyers
ASEAN	Association of South East Asean Nation
BRIDEX	Brunei International Defence Exhibition Centre
CDHRI	Cairo Declaration of Human Rights in Islam
	Convention on the Elimination of All Forms of Discrimination
CEDAW	Against Women
CLJ	Current Law Journal
CSW	Commission on Status of Women
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
IFLA	Islamic Family Law (Federal Territories) Act 1984
JAG	Joint Action Group
JAKIM	Department of Islamic Development Malaysia
JKSM	Department of Syariah Judiciary Malaysia
JKMM	Social Welfare Department of Malaysia
ISM	Social Institute of Malaysia
JAG-VAW	Joint Action Group against Violence Against Women
JPW	Department for Women Development
LPPKN	National Population and Family Development Board
MTUC	Malaysian Trades Union Congress
MLJ	Malaysian Law Journal
MWFCD	Ministry of Women, Family and Community Development
MWFD	Ministry of Women and Family Development
NIEW	NAM Institute for the Empowerment of Women
NCWO	National Council of Women Organisations
WAO	Women Aid Organisation
NGOs	Non-Governmental Organisation
NPW	National Policy on Women
OIC	Organisation of Islamic Cooperation
JPW	Department for Women Development
SiS	Sisters in Islam
SUHAKAM	Human Rights Commission of Malaysia
S.W.T	Subhānahu wa tā‘alā
P.B.U.H	Peace Be Upon Him
UDHR	Universal Declaration of Human Rights
UIDHR	Universal Islamic Declaration of Human Rights
UN	United Nations
UNCHR	United Nations Commission on Human Rights
UNITEN	National Energy University of Malaysia
UKM	National University of Malaysia
UM	Malaya University
US	United State
USIM	Islamic Science University of Malaysia
WCC	Women Crisis Centre

WAO	Women's Aid Organisation
ed.	editor/edition/edited by
et. Al	et-alias (and others)
n.a	no author
n.d	no date
H	Hijriyyah
etc.	et cetera
p.	Page
Trans	Translation
Vol.	Volume

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