



MIXED-ORIENTATION MARRIAGES: AN ANALYSIS ON HETEROSEXUAL WIFE LEGAL REDRESS IN MALAYSIA




 Hanis Nabihah
Binti Hizamul-Din¹

^{1,2,3,4} *Fakulti Undang-Undang, Universiti Kebangsaan Malaysia*

⁵ *Fakultas Hukum, Universitas Sriwijaya, Indonesia*

 Rohani Abdul
Rahim²

 Fieza Fazlin Binti
Fandi³

 Mohd Fadhly Bin
Yacob⁴

 Annalisa Yahanan⁵



(+ Corresponding author)

ABSTRACT

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Mixed orientation marriages refers to marriages involving a partner who is gay or lesbian while the other partner may be heterosexuals or bi-sexual as well. Parties to such marriage are men and women who are gender fluid or transgender who wish to maintain their relationship that exist before or after the existing marriage commenced. In United States of America, there are as many as three million of such marriages – perhaps even more. Homosexuality or bisexuality is illegal in Malaysia and thus, the existence of mixed orientation marriage in Malaysia often hide behind a normal marriage. It has been difficult to quantify such marriage unless the courts that handle divorce matters identified such grounds to these divorces. Plus, mixed orientation marriage is an oppression towards the wives who are heterosexual. This paper will dwell on; (a) the definition of mixed-orientation marriage; (b) the factors that cause a bisexual husband to pursue a marriage with a heterosexual wife without her knowing of the fact ; (c) to find out the effects of such relationships to a heterosexual spouse in terms of her health, emotion and psychological impacts; (d) To identify the legal redress on heterosexual wife and her rights in such marriage; and (e) to analyse some strategies and the legal remedies available to deal with such kind of marriages, which denied the vary basis of contractual relationship acknowledged by civil and sharia marriages laws in Malaysia.

1. INTRODUCTION

Mixed orientation marriage is a marriage between partners with different sexual orientations. A mixed orientation marriage most commonly presents itself as a marriage where one partner is either bisexual, gay or lesbian and the other is heterosexual. Western countries, such as United States of America and United Kingdom, have a high level of awareness regarding mixed orientation marriages as this kind of marriages has existed since 1900s. In Asian countries, the term “mixed orientation marriages” is not familiar and seldom being discussed. This is because most countries in Asia does not accept homosexual and bisexual and Asian people more conservative than Western people. This applies to Malaysia as well. People seldom talks or heard about mixed orientation marriage as

it becomes a taboo to the society in Malaysia regarding homosexuals and bisexuals. Hence, this study is one of very few studies which have been investigated in Malaysia as well as Asia.

Literature review has been done by reviewing articles and books regarding mixed orientation marriage. Methodology that has been used is qualitative method through library research, internet research and interviews. Based on the research and interviews, the paper's primary contribution is finding that mixed orientation marriage happens and grows rapidly in Malaysia. It is hard to prevent as heterosexual wives only know their husband's sexual orientation after marriage. The problem starts with the homosexual or bisexual husband. It can be prevented if they are honest about their sexual orientation but consider that homosexuality is illegal in Malaysia, it will confuse them whether to be honest or not. If the marriage has happened and the husband refuses to change his sexual orientation, then the heterosexual wife can seek for divorce under Malaysian law.

2. SEXUAL ORIENTATION

Sexual orientation is a pattern of romantic or sexual attraction towards the same gender or opposite gender. It is about who you are attracted to and who you feel drawn to romantically, emotionally and sexually. Sexual orientation differs from gender identity. Gender identity is not about who you are attracted to but it is about who you are. There are several types of sexual orientation that are commonly described.

The first type is heterosexual. People who are heterosexual are romantically and physically attracted to the people of the opposite sex. For example, women are attracted to men and men are attracted to women. It is traditionally and conservatively accepted attraction around the world. Heterosexuals are sometimes called "straight". The second type of sexual orientation is homosexual. People who are homosexual are romantically and physically attracted to the people of the same sex. For example, women are attracted to other women and men are attracted to other men. Homosexuals, whether men (Kessler, 1996) or women, are often called "gay". Gay females are also called lesbian. The third type is bisexual. People who are bisexual are romantically and physically attracted to both sexes, that is, men and women. When they form opposite-sex relationships, they are presumed to be heterosexual. When they form same-sex relationships, they are presumed to be homosexual. The ability of bisexual people to form relationships with either confuses many people. This has led homosexual people to stereotype bisexuals as self-absorbed, shallow, untrustworthy, narcissistic and morally bankrupt (Stewart, 2001).

Other types of sexual orientation are not much well known as the three types mentioned above. One of the types is asexual (Baldwin and Baldwin, 2012). People who are asexual do not have any sexual attraction for anyone or any gender. They may think that other people are physically or romantically attractive but they do not have any desire of these in a sexual way. Asexuals sometimes use the word "ace" for short. Other than that, there are people who are unsure about their sexual orientation and they will be called questioning or curious.

Heterosexuality is enforced and accepted by everyone in the world. However, that situation is different for homosexuality. Homosexuality and bisexuality are not accepted in many countries and this led them to feel alienated and isolated. A number of options have been chosen by gay, lesbians and bisexuals who realize that they can have a sexual orientation different from cultural expectations. They can:

- (a) attempt to deceive themselves and others, which leads to devastating emotional consequences,
- (b) lead a double life by having same-sex relations in secret while living heterosexual public life,
- (c) attempt to change their affectionate desires and sexual fantasies through therapeutic techniques, or
- (d) live an honest life as an open lesbian, gay or bisexual lifestyle by "coming out" of the closet (Reitman, 2015).

Homosexuality and bisexuality has its own development that is called coming out phase. Coming out has been defined as a process of coming to realize and accept one's desires to seek affection and sex from persons of the same sex in ways not sanctioned by the heterosexual norm. Thus, the process of coming out is vital to this paper as it shows how homosexuality is being moulded and how they realize that their desire is of the same sex.

A number of coming out models have been proposed. One of it is from Vivienne Cass in 1979 and she suggested six stage in “coming out” model.

The first stage is identity confusion. During early and later adolescence, sexual attraction toward members of the same sex begins, often occurring with the absence of attraction toward the opposite sex. Teenagers in this developmental phase may try to deny or change their homosexual feelings. Some teenagers may display outward hostility toward persons who are gay, lesbian or bisexual and it can reach to the point of harassment or violence. This distancing from the acceptance of sexual orientation is termed dissociation, and acting "macho" to the level of antisocial behaviour is termed signification. Obviously, these actions are used as a way of hiding an individual's own feelings (Stewart, 2001). The second stage is identity comparison. This stage involving awareness of homosexual feelings, yet thinking that this may be just some phase or that the feelings are toward only one specific person. The third stage is identity tolerance. Stronger identity of being homosexuals has come out and starting to reach out to contact other homosexuals. The fourth stage is identity acceptance. Homosexual people will increased contact and affiliation with other homosexuals. The fifth stage is identity pride. This stage shows that homosexual individual comes out to more and more people and often starts to feel angers towards heterosexuals and devalues many of their institutions. The sixth stage is identity synthesis. This stage shows that the intense anger in stage 5 has diminishes and the homosexual individual comes to perceive “less of a dichotomy between heterosexual and homosexual worlds”, and yet retains their pride as gays and lesbians (Kooden *et al.*, 1979).

The coming out process is estimated to take between ten and fourteen years (Kooden *et al.*, 1979). Some people either stuck at some particular stages or even regress due to bad experiences. Gender influences in coming out process is different in men and women. Men seems to be aware of same-sex attractions at the age of thirteen or fourteen while women become aware later at the age of seventeen or eighteen.

3. MIXED ORIENTATION MARRIAGE

Mixed orientation marriage has been defined as marriage between partners of differing sexual orientations. A mixed orientation marriage most commonly presents itself as a marriage where one partner is either bisexual, gay or lesbian and the other is heterosexual. There are three types of mixed orientation marriage.

The first type is asexual-sexual marriage. The marriage of an asexual to a sexual is one in which the asexual partner either does not experience sexual desire or attraction, or experiences low desire or attraction (The Asexual Visibility & Education Network, 2017). The second type is bisexual-heterosexual marriages. Open communication both within and without the marriage are cited as factors which support marriage, as well as the presence of children. Bisexual-heterosexual marriages face external misunderstandings regarding the bisexual spouse's sexual orientation as either gay or straight (Buxton, 2004). The third type is homosexual-heterosexual marriages. This kind of marriage have high probability of failure when it involves unfaithful marriages between heterosexual woman and homosexual man where it is found that the homosexual man engages in homosexual activity. Moreover, research indicates that some people considered themselves as exclusively heterosexual before marriage but grow towards a more homosexual orientation during marriage (Buntzly, 1993). There is also 'lavender marriage' in which the sexual orientation of the partners is not compatible can serve to cover up one's sexual orientation, sometimes for purposes of maintaining or advancing one's career. Mixed orientation marriages may include variations in gender identity. Men and women who are gender fluid or transgender have many of the same challenges in maintaining a loving relationship with the person they love, especially when the gender variation emerges later in the relationship.

Western countries, such as United States of America and United Kingdom, have a high level of awareness regarding mixed orientation marriages as this kind of marriages has existed since 1900s. Various online forums, websites (<http://straightspouses.org/> *Straight Spouses*) and blogs have actively participated in helping the crisis in

mixed orientation marriages either for heterosexual spouse or homosexual spouse. The following are active online forums to assist problems in mixed orientation marriages:

- (a) Alternate Path: an affirming group for women seeking help with finding alternative solutions to divorcing their bisexual or gay husband. It provides positive discussions to help wives adjust to the news that their husband is gay or bisexual.
- (b) Making Mixed Orientation Marriages Work (MMOMW): it is for straight spouses who are married to gays or bisexuals, and also the married gays and bisexuals themselves. This forum welcomes all those in this situation regardless how they have decided to deal with this within their own marriage.
- (c) HUGS Couples (Hope Understanding Growth Support): A list for couples of mixed sexual orientation who are working to keep their relationship strong and growing. A positive environment where these couples can express their concerns, share their successes, and give and receive support and encouragement.
- (d) Monogamous Mixed Orientation Marriages (MMOM): support group for either or both members of a mixed orientation marriage or relationship working to remain monogamous. Mixed orientation” means that the sexual orientations of the two persons involved do not match. “Monogamous” means that the partners are sexually exclusive (Anon, 2014).

In Asian countries, the term “mixed orientation marriages” is not familiar and seldom being discussed. This is because most countries in Asia do not accept homosexual and bisexual and Asian people more conservative than Western people. However, in China, mixed orientation marriage have been widely known nowadays and people starts to care about this type of marriage. In China, heterosexual women marrying gay or bisexual men is called as *tongqi* where “*tong*” refers to homosexual and “*qi*” refers to wife (Bram, 2016). Even China has decriminalized homosexuality in 1997; it remained classified as a mental illness until 2001. A Pew research conducted in 2013 stated that only 21 percent of Chinese population in China approved homosexuality and it makes it difficult for gay men and lesbian women to coming out their sexual orientation. A research by Yale anthropologist, Tiantian Zhang, in 2015, estimated that, at least 19 million heterosexual or straight women marrying to gay men. Due to the rising numbers of *tongqi*, a programmer and student in Qingdao Agricultural University in China, Liu Tengyang, has started a WeChat account and a QQ group for *tongqi*, called Tongqi’s Family. QQ is a Chinese social media application optimized for group messages, with administrators can control the environment. Tongqi’s Family helps heterosexual women who involves in *tongqi* to share their predicament and seeks advice.

4. FACTORS FOR MARRYING HETEROSEXUAL WOMEN

Gay and bisexual men would not enter into mixed orientation marriage without a reason. Thus, in this section, we will analyse the reasons and factors of why gay and bisexual men choose to marry a straight or heterosexual women.

(a) Religion

Religion has played an important role which implicated the religious values and perspectives in various social strata. Religion and sexual orientation have appeared to clash as the religious condemnation of homosexual acts, and even homosexual persons, was unquestioned. The relationship between religions and homosexuality is complex and fluctuated immensely throughout time. Every faith holds a unique view on sexuality that has come to shape how we perceive sex. There are three primary instances on how religion approaches homosexuality.

The first primary is rejectionism. Rejectionism is a system of belief that entirely objects to the idea that homosexuals deserve equal rights and it is a conservative approach. This belief is held by Judeo-Christian that embrace more fundamental Biblical interpretation of sexuality as well as predominantly Islamic nations. Some countries and belief systems punish homosexuality by sentencing those caught engaging in homosexual practices to

death or torture. These states of Yemen, Iran, Mauritania, Nigeria, Qatar, Saudi Arabia, Afghanistan, Somalia, Sudan, and the United Arab Emirates all have legislation that criminalizes homosexuality (Bearak and Cameron, 2016). The religious preachers and individuals believe that by prayer-based conversion, it can cure gay people of their affliction and believe that homosexuality is a choice and with enough guidance, it can be reversed back to heterosexuality. The rejectionist philosophy asserts that homosexuals can be forgiven by God only after sincere efforts to repent for the sin of their sexual orientation.

The second primary is “love the sinner, hate the sin”. This primary holds that gay people should be regarded with the same amount of respect as others however, homosexual behaviours cannot be tolerated. Homosexual behaviours which is sodomy is criminalized in many countries such as Malaysia. This modified rejectionism perspective accepts that sexuality cannot be changed as long as they abstain from acting on their desires.

The third primary is full acceptance. The full acceptance approach asserts that gay people are entitled to all of the same civil and social rights as their heterosexual counterparts and this shows liberal approach of religion. This ideology asserts that homosexuality is not a sin and that homosexual and bisexual people are accepted by God just as their heterosexual counterparts are. The full acceptance primary is practiced by the Unitarians, Judaism and Classic Greek Philosophy.

Gay and bisexual people tend to marry heterosexual women because of first primary and second primary. Conservative religion such as Islam and Christian, mostly, do not condone to the view of same-sex marriage and homosexuality is a sin. Thus, to avoid sin, gay people choose to marry heterosexual women without thinking the emotional of their heterosexual wife if they know their husband is gay (American Psychological Association, 2009).

(b) Morality

Law reflects the moral values of a society on a very simple level. It sets forth the permissible and the forbidden, the desirable and the not so desirable, in all aspects of a society functions such as business, political structure and sexual behaviour. English society in the early years defined homosexuality as an abominable crime against nature. (Walzer, 2002). According to objectivism, homosexuality can be a moral issue as homosexuality is a manifestation of psychological of flaws, corruptions, errors and unfortunate premises. Objectivism believes that heterosexuality was a universal fact of human nature. However, psychobiological research indicates that the moral theory of objectivism is partly mistaken because homosexuality is not the one that is morally wrong; it is the homosexual behaviour that is immoral (Moskovitz, 2010). As the sexual activity in homosexuality is immoral, thus gay and bisexual people will choose to marry heterosexual women. It can be said that having a sex with straight women is morally right rather than homosexuality activity.

(c) Discrimination

Discrimination is any act of exclusion or violence based upon some characteristics. Discrimination against gay, lesbian and bisexual people goes seriously underreported. According to studies by the National Gay and Lesbian Taskforce (NGLTF), over 90 percent of gays and lesbians have been victimized in some way on the basis of their sexual orientation (Stewart, 2001). Due to the discrimination, young gay and lesbian people are four times more likely to contemplate or attempt suicide (Radcliffe, 2016). This paper contributes the first logical analysis that due to the discrimination faced by gay and bisexual men, they choose to marry heterosexual women.

(c) Desire to have Children

Gay and bisexual men are human being that have desire to produce their own offspring. They still a man that have an ego to show that they can produce children. Due to this desire, they will find straight women fulfil their needs. In western countries, mixed orientation marriage between gay and bisexual men with heterosexual women often occurs between friends (Derbyshire and Bramall, 2015). To have children, it takes two to tango and they

married just for the sole reason: children. Some gay people coming out late and they only realized that they are gay after several years of marriage (Clemons, 2016). They pretend to be a straight guy just to show that they can have children too.

(d) Family

Gay and bisexual men always facing a dilemma when it comes to family no matter it is in western countries or eastern countries. Many gay and bisexual men are raised in a family that there is no acceptable alternative to traditional heterosexual marriage. Not all family is the family that “we-accept-who-you-are” type regardless of their son sexual orientation. When the family knew that their son is not straight, they choose an easy way – marry him to a straight wife! In order to fulfil the parents and family instructions, gay and bisexual men opt to marry heterosexual wife. This is evidenced through a research conducted by Zhang Beichuan, a professor at Qingdao University Medical School, who is a leading scholar of *tongqi*. In his research, 80 percent of gay men in China have entered traditional marriages due to family pressure. Social security in China is notoriously basic, and children still carry the burden of supporting their elders. For gay and bisexual men, these family obligations ratchet up the pressure to remain closeted and it goes some way to explain why gay men feel compelled to marry heterosexual women.

The *tongqi* phenomenon in China does not just highlight the family pressures felt by gay and bisexual men, it also pressures the straight women to get married to avoid being a *shengnu* or leftover women (Bram, 2016). *Shengnu* is used to describe any woman over 30 years old who has yet to settle down and find a man. In Malaysia, the leftover women is called *anak dara tua (andartu)* or *anak dara lanjut usia (andalusia)* who always felt the pressure by the family and society and often being asked when to get married (Faudziah and Farrah, 2017). The family pressure felt by straight women does not occur only in China and Malaysia, this situation occurs around the world especially in the countries that traditionally strong about the idea that women must get married before they turns the age of 30. This pressure brought them to hastily entering mixed orientation marriage without knowing their husband's sexual orientation.

(e) Society

We are now living in a society that everything can be known what happen in our society just at the tip of the finger called internet. The internet brought social media to the highlight such as Facebook, Instagram, Twitter and much more. People in the society will judge someone based on their updates in social media. The most likely thing to judge is one's personal life especially marriage. To cover up gay and bisexual sexual orientation, they involve with mixed orientation marriage. It is a taboo for same sex marriage in major countries (M, 2012) but not for opposite sex marriage where all society in the world celebrate it regardless race and religions. These societal pressures not only felt by gay and bisexual men, it also felt by straight women. People in the society are busy to know when the women will get married and this question will keep being asked either in social media or social events. The pressure felt by the straight women make them agree to marry their gay or bisexual husbands without have any clue of their sexual orientation.

5. IMPACTS ON HETEROSEXUAL WIFE

Heterosexual or straight wife that involves in mixed orientation marriage have affected medically and psychologically.

(a) Health

Gay men have specific sexual practices among them such as mutual masturbation, oral sex, anal sex and condom use (Reitman, 2015). They also have insertive (top) or receptive (bottom) partner in oral and anal sex thus

it important in determining infectious disease risks based on the sexual practices. Heterosexual or straight wives must know the health of their husband after knowing their husband's sexual orientation. This is because all sexual practices mention above is highly infectious disease and it is worrisome if the disease will be infected to the wives when doing sex with their husbands. In China, over 30 percent of straight wife in *tongqi* or mixed orientation marriage will contract a sexually transmitted disease and this is how they discover that their husbands sleep with other men (Bram, 2016). There are several types of disease that usually occur for gay and bisexual men.

One of the diseases is sexually transmitted diseases (STDs). These diseases are diseases that are passed on from one person to another through sexual contact, and sometimes by genital contact - the infection can be passed on via vaginal intercourse, oral sex, and anal sex. Other disease is enteric disease. Its common route of infection is through mouth-to-mouth anus contact. Viral infections include hepatitis A, hepatitis B, hepatitis C, and hepatitis D. Hepatitis A is transmitted via faecal-oral route, whereas hepatitis B, hepatitis C, and hepatitis D is acquired through sexual penetration intercourse. The most famous disease when it comes to homosexual sexual intercourse is AIDS (Acquired Immune Deficiency Syndrome) (Stewart, 2001). This disease is caused by retrovirus known as the human immunodeficiency virus (HIV). The first case was reported in 1981 in the United States, primarily among gay men. HIV infects and kills white blood cells that without these cells, the immune system is weakened and opportunistic infections take hold, causing illness and death. HIV virus primarily transmitted through blood and semen. The virus is transmitted through three principle ways that are:

- i. Sexual contact that includes vaginal and anal intercourse.
- ii. Direct exposure to infected blood through contaminated needles, any kind of piercing in which blood may be transferred from on individual to another on unsterile tools or through tainted blood transfusion.
- iii. From mother to child during pregnancy, delivery or through breast-feeding.

A survey conducted by a group of researchers in China stated that *tongqi* are more often infected with HIV because of engaging in unprotected sex with their husbands or ignorance of their husbands' sexual activities with men. This study documents that one-tenth of participants were abused during sexual intercourse. During sexual intercourse with their husbands, some *tongqi* had had oral sex and anal sex with little or no condom use. The researchers also analyses that women who have regular sexual relations with their gay or bisexual husbands are often ignored for long periods; they therefore face adverse sexual health issues and are susceptible to HIV and STDs (Xiufang *et al.*, 2017).

(b) **Mentally and Psychological**

The wife's awareness of her husband's sexuality is an important part of mixed orientation marriage and honesty is an essential component (Ben-Ari and Adler, 2010). According to the survey conducted by Dorothea Hays and Aurele Samuels on twenty one heterosexual women who were or had been married to bisexual or homosexual men, stated that all of the women expected a lasting and happy monogamous marriage. This study documents that most of the heterosexual women went through a painful grief after knew their husband's sexual orientation. Heterosexual wife who did not know of their husband's sexual orientation before married may feel deceived or blame themselves (Hays and Samuels, 1989). Heterosexual wife fear of encountering social disapproval or ostracism that often makes her difficult to seek support from family. Heterosexual wife thinks that her husband cheated her with another woman is better that her husband cheated her with another man. In China, *tongqi* are psychologically tortured, often without knowing the reason, by means of indifference and cold violence such as emotional abuse and even domestic violence. Their self-esteem drops heavily when they know that the attraction their husbands have for them is null, and their competitors are men, which pours salt in their wound (Cheng, 2016).

However, according to the same research conducted by Dorothea Hays and Aurele Samuels, there are people interviewed by them felt sympathy towards the bisexual or homosexual husband rather than heterosexual wife.

They sympathy because homosexual or bisexual husband have to struggle with isolation, loss, cognitive confusion and dissonance. That is why honesty is an essential part in this kind of marriage. Honesty can be valued as an ethical principle, but instead of seeing it as a voluntary choice, it can be took as a luxurious privilege that is contingent on socio-cultural environments. Therefore, if the husbands are privileged enough to be honest in their homosexual life, they may do that with less complacency (Zhu, 2018).

6. MIXED ORIENTATION MARRIAGE IN MALAYSIA

(a) Positions of LGBT in Malaysia

The early existence of lesbian, gay, bisexual and transgender or LGBT began with the existence of transvestite during 1980s (Mahfudzah, 2015). Human Rights Watch stated that discrimination against LGBT people is pervasive and largely unrecognised in Malaysia (World Report, 2015). Malaysian Islamic Affairs Department describes homosexuals as “shameless people” and homosexuality is worse than murder. Malaysia stands under heavy influence of Islam thus homosexuality is technically illegal. It is said technically illegal as sexual activity of homosexual people called sodomy is a crime under the Penal Code. Sodomy was highlighted during the trial of the former Deputy Prime Minister, Datuk Seri Anwar Ibrahim in September 1998. Sodomy or carnal intercourse under section 377A and section 377B of the Penal Code prohibits same-sex sexual activity with a penalty up to 20 years’ imprisonment and whipping.

Constitutional experts, Assoc. Prof. Dr. Shamrahayu Abdul Aziz, stated that homosexuality is more immoral than it is a right. She further added that,

“To protect the rights of homosexuals isn’t within the philosophy of the country. From the legal point of view, the constitutional framework can’t sustain homosexuality as a right. There is no place in the [Federal] Constitution which allows homosexuality to flourish.”

She cited that article 10 and article 11 of the Federal Constitution, saying that certain rights cannot be allowed if they interfere with public morality. She explained that the whole structure of Federal Constitution does not provide a platform for homosexuality which immoral to become a right. She further added that,

“Even if we separate religion from country, we cannot separate individuality from morality. It’s natural for humans to have ethics within themselves. If we don’t have a touchstone, we will follow human whims and fancies”(Alphonsus, 2002).

Pew Research Centre has made an opinion survey regarding acceptance of homosexuality in 2013 and Malaysia is included in the survey. The result of the opinion survey shows that only 9 per cent of Malaysian population believed homosexuality should be accepted by society while 86 per cent of Malaysian population believed homosexuality should not be accepted.

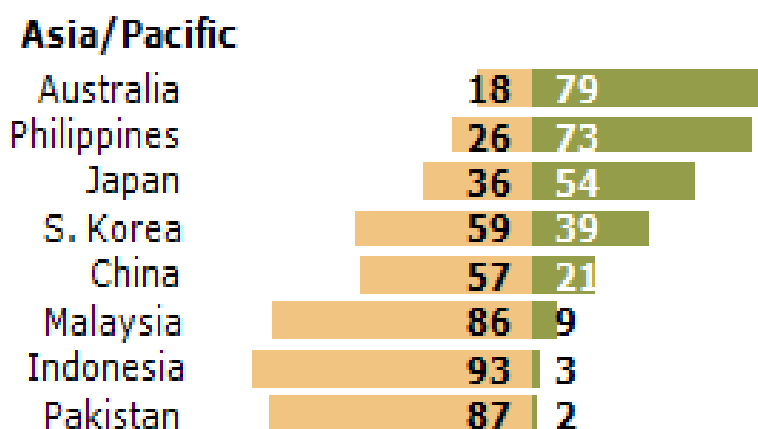


Figure-1. Acceptance and Non-Acceptance of Homosexuality in Asia Pacific

Sources: Pew Research Centre (Anon, 2013)

Despite the low acceptance of Malaysian towards homosexuality, there are few organizations that support LGBT in Malaysia. This organization has vocally campaign for the needs of right for LGBT people. The following is organizations with its own purposes:

- i. Justice for Sisters: It aims to end violence and discrimination against transgender women. The group provides resources, legal advice and aims to raise funds to support transgender women who face prosecution in Shariah court.
- ii. LPG (Leadership Program for Gays): It aims to build a network for LGBT business people. Activities organised by the group include gatherings and sports events.
- iii. PLU Penang: It is an LGBT organisation based in Penang State. The group is designed to support, empower and foster friendship between its members. The group arranges recreational events and provides a safe space for LGBT people to express themselves.
- iv. Pink Triangle Foundation Malaysia: This organization works with gay men and other men who have sex with men in Malaysia to provide support and care services related to HIV and sexuality. The organisation offers group seminars, operates a telephone counselling line and offers outreach programmes at third-party venues.
- v. Seksualiti Merdeka: It works to empower Malaysians that have been marginalised for their sexual orientation and gender identity. The group also aims to champion sexuality rights as human rights, and provide a platform for LGBT human rights issues.
- vi. Queer Malaysians: A blog hosted by Live Journal. While it does not represent an organisation in its own right, the blog addresses LGBT concerns in Malaysia and signposts events, groups and legal developments related to the country's LGBT community (Anon, 2016).

(b) Mixed Orientation Marriage In Malaysia: Does It Exist?

The term of mixed orientation marriage is not familiar among the Malaysian society. As most of Malaysian society regardless race or religion loath and taboo of the word of 'homosexuality' and 'bisexuality', they tend to ignore anything regarding to that sexual orientation. Malaysian society celebrates and enjoys any marriage occasion as long as the marriage is between a man and a woman. However, do they know whether that marriage fulfil the needs of the man and woman sexual orientation? The answer is no.

The fulfilment of sexual needs and desire of husband and wife is important as it is one of the reasons why marriage happens. However, what if the husband could not fulfil that desire of a wife because the husband is gay? The problems begin here. Recently, around 2 to 3 years, there are lot of news, confessions, counselling and blogs (Azza, 2016) that tells story of the disappointment of a straight wife when she found out her husband is a gay or bisexual. Many heterosexual or straight wives come forward to speak out regarding this issue. In Malaysia, most of the cases of mixed orientation marriage occur because the gay or bisexual husband deceived their wives by claiming they are straight. The marriage started with deceive and lies however, the husbands' sexual orientation cannot lie. Some of the straight wives feels that they can change their husbands from gay or bisexual to straight after the marriage. Unluckily, their husbands did not intend to change their sexual orientation. One of the news that cover about heterosexual wife that feels that she can change her husband's sexual orientation was covered in *Sinar Harian* newspaper. In this news, a wife already knows about her husband being gay from husband's friends. The wife determined that she can changed her husband but after four years, she never had sex with her husband. She voiced her desire to have children but being ignored by her gay husband. All the relatives and family from both sides of the family do not know about her predicament because her gay husband treat them well and always acted lovingly with her in from of family members. Due to her disappointment and frustration, she filed for divorce after 4 years of marriage (Amran, 2014). Counsellors have shared the story of this problems in blogs (Anon, 2013) online confessions (Anon, 2016) and newspaper due to many straight wives came to the counselling session to express

their anger and frustration. The counsellors will name the heterosexual wife as anonymous due to secrecy and confidentiality. One of the counsellor shared a story about a straight wife who has been deceived by her husband as he hid the truth that he is a gay (Anon, 2017). After four months of marriage, the wife filed for divorce to prevent other big problems ahead from occur to her such as getting sexual transmitted disease or AIDS.

(c) Stages to Fix Mixed Orientation Marriages

At this point, heterosexual wives must have mixed feelings that range from wanting to be accepting, to totally being caught off-guard, to complete denial. Heterosexual wives must handle the problems with care and must not let the emotion engulf themselves. There are three stages of solution to fix the predicament.

Firstly, negotiation and discussion with husband. Heterosexual or straight wives must calm themselves before discussion happen and think rationally. Approach the husbands as friends and partners and not as enemies (Rheault, 2012). Ask the husbands regarding their past on why they choose to be gay or bisexual. Heterosexual wives must listen to them and support them if they intend to change even a slight intention. Second stage is to refers to psychologist, private counsellor or counsellor at Marriage Complaints and Consultation (*Aduan Rumah tangga dan Runding Cara*) (Jais, 2017) that available at every Islamic Department in every states. The counsellor will help and calm the situation in the marriage of heterosexual wives and gay or bisexual husbands. Letting other person to know the problem, other than family members or friends, can be soothing. Psychologist also can help to change the sexual orientation of the husbands. According to Dr Mohd Izwan Yusof, an assistant senior director of the Islamic Development Department Malaysia's (JAKIM) family, social and community department stated that conversion therapy which consists of psychological treatment or spiritual counselling to change a person's sexual orientation from homosexual or bisexual to heterosexual can be done. (Roberts, 2017). However, it is not guaranteed that the therapy is 100 per cent success. Thus, the next stage is the final stage after the two stages do not went well. The third stage is divorce. In Malaysia, there are civil law and Islamic law. Muslim heterosexual wives will go for divorce under Islamic law while non-Muslim heterosexual wives will go for divorce under civil law (Siti, 2017). Islamic law in Malaysia is govern by Syariah Court in every states, thus pertaining to divorce, the statute in Federal Territory of Kuala Lumpur has been referred. If both of heterosexual wife and gay or bisexual husband agree to divorce, they have to apply for that divorce under Section 47 of Muslim Family Law Act (Wilayah-Wilayah Persekutuan) 1984 (Act 303). In the application, they must state the reason as why they want to divorce. Most of the cases will state the reason for divorce there is no understanding between husband and wife anymore. This reason is being written because the heterosexual wife still wants to cover the husband's disgrace or shame. However, if the husband is not willing to divorce and seek for peace, the Court will appoint Peacemaker Committee or *Jawatankuasa Pendamai* under section 47 (5) of Act 303 and the *Jawatankuasa Pendamai* can be chosen from relatives or friends of both parties. If there is no way that the marriage can be save, the Court will advise the husband to pronounce the *talaq* under section 47 (14) of the same Act. If the husband refused to pronounce *talaq*, then the Court will appoint *Hakam* under section 48 to pronounce the *talaq*.

Other than that, there are other ways that can be used by the heterosexual wives if the gay or bisexual husbands refuse to divorce. The first way is through *fasakh* under section 52 of Act 303. There are few paragraphs in section 52 (1) that enable the wives to seek for *fasakh* and the paragraphs stated:

"(1) A woman or man, that married based on Hukum Syarak is entitled to get an Order to dissolved the marriage or to fasakh based on one or more of the following reasons that is:-

.....(d) a husband or wife have not perform, without a reasonable reason, duty of marriage (sexual needs) to that particular husband or wife for the period of one year;

.....(i) even after four months, the marriage not yet unified as a husband or wife, intentionally refuse to consummate;"

Based on paragraphs (d), the heterosexual wife can state the reason that she does not having sexual intercourse with her husband in a duration of one year. This reason can be used against either gay or bisexual husbands. While paragraphs (i), the heterosexual wife can state the reason that she is still a virgin even after four months of marriage because her husband refuse to have a sex with her. This reason can be used against gay husband. As a proof, the heterosexual wife can bring a medical report from a certified Hospital or Clinic that proven she still a virgin. However, according to an interview with a *Syarie* lawyer from Hisham, Sobri & Kadir, the rate of success of *fasakh* is low in Syariah Court (Nur, 2017).ⁱ This is because the burden of proof is high on the part of the wife thus the Court will not easily grant *fasakh*. Furthermore, if the heterosexual wife chose to go for *fasakh*, all the disgrace and embarrassment will be open and out of closet and the public will know that the husband is a gay or bisexual.

Other than *fasakh*, heterosexual or straight wives can opt to file for divorce under *khulu'* or *tebus talak* under section 49 of Act 303. *Khulu'* or *tebus talak* is one type of divorce where the husband disagrees to pronounce *talaq*, but the wife and husband agree to divorce after the wife paid a certain amount to the husband. This type of divorce is enunciated in Al-Quran under Surah Al-Baqarah, verse 229, which stated that;

“... Then, either keep [her] in an acceptable manner or release [her] with good treatment. And it is not lawful for you to take anything of what you have given them unless both fear that they will not be able to keep [within] the limits of Allah. But if you fear that they will not keep [within] the limits of Allah, then there is no blame upon either of them concerning that by which she ransoms herself...”. (Surah Al-Baqarah, verse 229, Al-Quran)

However, if the heterosexual wife chooses to divorce through *khulu'* or *tebus talaq*, the disgrace will go to the wife as the wife willingly to pay her gay or bisexual husband in order to break the tie between them. Regardless of the embarrassment, the most important thing is the wife is free from her gay or bisexual husband. The remedy for Muslim heterosexual wife after divorce is various. One of the remedy a heterosexual wife can claim for matrimonial property or *harta sepencarian* under section 46 (2) (iv) of *Akta Pentadbiran Undang-Undang Islam (Wilayah-Wilayah Persekutuan) 1993 (Act 505)*.

Other than that, heterosexual wife can claim for *mutaah* under section 56 of Act 303. *Mutaah* is a gift that given by ex-husband to ex-wife after being divorce unreasonably. However, if the wife filed divorce through *khulu'* or *tebus talaq*, she is not entitled to claim for *mutaah*. Besides, heterosexual wife can claim for *nafkah* during *iddah* according to section 65 (1) of Act 303 and *nafkah* that has not been settled by the husband, if any, under section 69 of Act 303. *Nafkah* or living expenses is a maintenance that must be given by the husband to the wife and child or children.

There are four components of *nafkah* that is;

- i. Provide shelter or accommodation.
- ii. Provide food and drinks.
- iii. Provide clothes for daily use, and
- iv. Provide medical expenses.

Even if the divorce is pronounced by the Court, the husband has to give *nafkah* during *iddah*. *Iddah* is a period in which a woman waits after the death of her husband or divorce, and she is not allowed to marry during this period (Iddah and Types of Iddah in Islam, 2017). Its purpose is to ensure that the male parent of any offspring produced after the cessation of a marriage would be known. Usually, the period of *iddah* after 3 times of menses or approximately 3 months and this is for divorce after being consummate. If the heterosexual wife is yet to be consummate or having sex with her gay husband, then she is not entitled to claim for *nafkah* during *iddah*. This is because there is no *iddah* for a wife that is yet being consummate (Mustofa *et al.*, 2009). In civil law, High Court of Malaya, High Court of Sabah and High Court of Sarawak has exclusive jurisdiction to hear matters relating to divorce and matrimonial causes. Non-Muslim heterosexual wife can file for divorce under section 48 of Law Reform Act (Marriage & Divorce) Act 1976 (LRA). The following criteria must be fulfilled before a decree of divorce can be made by the Court:

- i. where the marriage has been registered or deemed to be registered under the LRA; or
- ii. where the marriage between the parties was contracted under a law providing that, or in contemplation of which, marriage is monogamous; and
- iii. where the domicile of the parties to the marriage at the time when the petition is presented is in Malaysia (Goh, 2014).

General rule stated that no petition for divorce can be filed within 2 years of marriage unless it can be proven that the case is one of the exceptional circumstances or hardship suffered by the petitioner according to section 52 of LRA. In the same provision, both heterosexual wife and gay or bisexual husband can file for joint petition that they mutually agree that the marriage should be dissolved after 2 years of marriage. The rationale of a divorce by mutual consent is that both parties agree that divorce is for their best interest, thus the Court will grant the divorce (Gervenne, 2013). If the gay or bisexual husbands refuses to divorce, the heterosexual wives can opt for unilateral petition under section 53 (1) of LRA on the ground that the marriage has irretrievably broken down. Before the presentation of the petition, the heterosexual wives must recourse to the assistance and advice of a conciliatory body required under section 106 of the LRA and get the certificate issued by such conciliatory body that it has failed to reconcile the parties. Section 53(2) of the LRA states that it is the duty of the Court to inquire into the facts alleged as causing or leading to the breakdown of the marriage and, if satisfied that the circumstances is just and reasonable to do so, make a decree of divorce (Gervenne, 2013). The remedies for non-Muslim heterosexual wives are matrimonial property under section 76 of LRA and alimony. Alimony is a regular amount of money that a court orders a person to pay for his or her partner after a divorce. It can also be said as a gift to ex-spouse. Heterosexual wives usually entitled to right to take care of the child or custody either in civil law or Shari'ah law. In Section 81 of *Akta Undang-Undang Keluarga Islam (Wilayah-Wilayah Persekutuan) 1984* (Act 303), the mother of the child is the first in line to deserve the right of custody. The Court will give visitation rights of the child to the father. But how about if the father is gay or homosexual? In United States of America, the Courts in some states have denied gay father the same custody or visitation rights as given to heterosexual mother. In some states, courts have made that gay fathers will be harmful to the child. Other states require gay fathers to prove that their sexual orientation will not harm the child. States like New Jersey, have rejected the belief that sexual orientation should be a factor in child custody and visitation rights (Stewart, 2001). How about Malaysia? It is important for the child to know and love his or her father, however, the harm that the father may give should not be ignored.

7. RECOMMENDATIONS

This paper's primary contribution is finding that heterosexual wife needs to speak up and find solution when they know their husband's sexual orientation. The stages given above is crucial and important if the wife wants to save the marriage. After following the stages of discussion and consultation, the marriage can be saved as the husband willing to change his sexual orientation (Anon, 2016). The gay husband changed his sexual orientation after undergoing conversion therapy and support from the wife must be strong. The mixed orientation marriage is no longer a mixed orientation one. Nowadays, it is vital for the single women to not hastily marrying a guy without checking his background. The single women have to check his sexual orientation and single woman must ask future husband's friends and relatives about his sexual orientation. Even after knowing his sexual orientation that inclining to like his same sex, single women must seek his intention and sincerity. If he sincere and intends the heterosexual single woman, then he must seek advise from counsellor and psychologist. It is advisable to not marry him if he does not intend to change his sexual orientation. HIV Test is a requirement nowadays for marriage however; the HIV Test itself is not thoroughly being done. The test must include the examination of anus and vagina of a person to determine whether the person is gay or lesbian. The family of homosexual man must help him to change and by marrying their son to an innocent straight woman would not make him better. Instead, the family

is not ruining just his son's life, they also ruining an innocent straight woman's life. The family must not expect that the wife to change him as she only knew him. The family is a strong support that can make him change his sexual orientation not his future wife or friends. Government must assist and help to cure LGBT and heterosexual wife who suffer in a mixed orientation marriage. Islamic Development Department Malaysia's (JAKIM) has introduced conversion therapy which consists of psychological treatment or spiritual counselling to change a person's sexual orientation from homosexual or bisexual to heterosexual. However, the statement from JAKIM that encourage marriage as a way to 'fix' the LGBT person (JAKIM, 2017) is not a good cure as it only bring disaster towards straight wife and children that they may bear. Ministry Of Women, Family and Community Development must help heterosexual wife after being divorce and help single women to identify sexual orientation of their future husbands. Finally, nowadays, there are lots of Matchmaking Agency either it is according to Islamic way or not. The agency must tighten the criteria selection of men and ensure that the men are not gay or bisexual. This is because many men use matchmaking agency to find instant wife that can cover his sexual orientation like lavender marriage.

8. CONCLUSION

Mixed orientation marriage may be legal in other countries, but in Malaysia, it is not acceptable. Mixed orientation marriage is unfamiliar in Malaysia as this study is one of very few studies which have been investigated. This is because mixed orientation marriage has been done discreetly in Malaysia without the knowledge of heterosexual wife. Thus, heterosexual wife has to act and speak out if there is something wrong with her husband sexual orientation. Gay husband must not marry an innocent straight woman due to pressure from surrounding such as family, relatives, society or workplace. Woman is not a tool that can be exhibit as a mannequin in front of others. She has emotion too and this needs to be taken care by a husband that loves her, not by a husband that treats her like a doll.

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