Examining the Policy of Mandatory Premarital HIV Screening Programme for Muslims in Malaysia


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ABSTRACT

One of the procedures introduced by the Government of Malaysia for Muslims before the solemnisation of their marriage is mandatory premarital HIV screening. The purpose of this procedure is to have an early detection of HIV infection which could reduce the possibility of sexually transmitted diseases to the offspring. This paper examines such a policy and reveals significant loopholes in the policy and its implementation. There are two types of methods employed in this study: library research and field research. Library research is used to examine the existing policy and its related issues such as social and medical issues. The finding is supported by field research in which semi-structured interviews were carried out with several respondents from the related institutions. The findings of the research revealed significant weaknesses in the current policy from both procedural and administrative aspects. These include a general lack of coordination in governing the screening programme, the absence of standard procedures in its implementation and the absence of guideline in maintaining confidentiality, among others.

Keywords: Mandatory, premarital, HIV Screening, weaknesses

INTRODUCTION

The mandatory premarital HIV testing especially when accompanied by a requirement that people are HIV negative in order to marry is highly controversial. The opponents of this mandatory test argue that the policy infringes the internationally
guaranteed human rights especially the right to marry and raise a family, as stated in Article 17 of the International Covenant on Civil and Political Rights (ICCPR) 1966 and Article 12 of the Universal Declaration of Human Rights (UDHR) 1948 (Mekonnen, D. R., 2011; Durojaye, E., 2013). Critics of this mandatory testing argue that it stigmatises the families of HIV-positive patients (Johnson J., 2006; French, H. 2015) and neglects the need for informed consent, confidentiality, adequate treatment and access to proper HIV counselling (Arulogun, O.S. & Adefioye, O. A., 2010; Chattu, V. K., 2011).

In contrast, a number of arguments have been put forward by proponents of mandatory premarital HIV testing. They favour mandatory testing as a way to identify serodiscordant couples in order to prohibit them from marrying. This promotes access to treatment as people get to know their status early and seek treatment which can prolong their lives (Uneke et al., 2007; Kassaye, T. (2011). According to Kassaye, T. (2011) and Chattu, V. K. (2014). Mandatory HIV screening, they argue, benefits individuals, women, children, and society because early detection and treatment of HIV have been medically proven to be a successful way to improve not only the survival but also the quality of life of HIV-positive patients. What is most important is that early detection and treatment leads to reduction in HIV transmission to partners and offspring (Marks, et al., 2005).

A growing number of national governments, states and religious communities have adopted mandatory premarital HIV screening policies. The countries of Bahrain, Guinea, United Arab Emirates, and Saudi Arabia for example, have enacted national laws and policies mandating premarital HIV testing. Local governments and legislatures in some states in India, districts in China, Ethiopia, and the Democratic Republic of the Congo have introduced similar laws or regulations. Churches in some African countries such as Kenya, Ghana and Nigeria have also adopted mandatory premarital HIV testing practices. (Open Society Foundation, 2010).

In Malaysia, the meeting of the Fatwa Committee National Council of Islamic Religious Affairs Malaysia held on 23rd to 25th June 2009, decided that the test is mandatory among Muslims to prevent greater harm to the spouse and descendants (National Fatwa, 2009). In consequence, a Cabinet meeting (AIDS and HIV Committee) chaired by Deputy Prime Minister agreed to make pre-marital screening a compulsory test for the prospective husband and wife. The fatwa (religious edict), however, has its share of critics, comments, and initial opposition from the Malaysian Ministry of Health (MOH) and Non-Governmental Organisations (NGOs) (Kamali, M. H., 2001; Mahathir, M., n.d).

In light of the above, this study examines this mandatory HIV screening policy for prospective Muslim couples.
since its implementation. The focus is on crucial issues relating to the weaknesses of the policy and its procedure and formality. This research also proposes recommendations to improve existing policy and its implementation.

METHODOLOGY
This is a qualitative research, in which the mandatory premarital HIV screening procedures and formalities for Muslim couples are studied and analysed. The study employs library research method to examine the existing pre-marital HIV screening policy and its related issues such as social and medical issues. Books, journal articles, procedures/guidelines and relevant websites were referred to and reviewed to provide insights and information relating to the research topic. This research also employs a semi-structured interview in which several important respondents from related institutions were selected. The selected respondents were registrars from selected States Islamic Religious Department (hereinafter called SIRD), and several medical and health officers from hospitals and the Ministry of Health. This interview method is important to examine the current practice and identify loopholes or weaknesses. This paper looked at four states in Malaysia namely the Federal Territories, Johor, Pahang and Kelantan. The justification for choosing these states is to highlight differences in certain rules and applications with regards to HIV screening. Additionally, laws relating to mandatory premarital HIV screening from other Islamic countries are analysed to determine whether their practices would be applicable in Malaysia.

RESULTS AND DISCUSSION
This research found a number of significant issues related to the policy of mandatory premarital HIV screening for Muslim couples in Malaysia that reflects weaknesses in the policy and its implementation. The following section will analyse these in depth.

Lack of Coordination
Mandatory premarital HIV screening among Muslims has been made a national policy by the Malaysian government. According to the policy, the prospective husband and wife are required to undergo premarital HIV screening in any government hospitals/clinics that are directly under the Ministry of Health (hereinafter called MOH) and respective State Health Department (hereinafter called SHD) (Practice Direction of Marriage, Divorce and Rujuk, n.d; Circular Note of Ministry of Health (MOH), 2007). Couples are required to fill and submit the HIV screening form which is available at the Islamic Religious Department. Upon screening, the couples have to submit the form/certificate disclosing their HIV status to the Marriage Registrar in the respective State Islamic Religious Department (hereinafter called SIRD). Before granting permission to marry, the Marriage Registrar informs the HIV status of the applicant
to his/her partner and parents (the extent of disclosure varies from state to state) (JAKIM's Practice Note of Marriage, Divorce and Rujuk, n.d).

Interestingly, this mandatory programme is supported by fatwa (religious edict) from both the National and the State Fatwa Council (Johor’s Fatwa, 2001; National Fatwa, 2009; Perlis’s Fatwa, n.d.). The Johor State Fatwa Council was the first in Malaysia to have issued HIV mandatory screening followed by three other states of Malacca, Perlis and Selangor.

The issue is there are several bodies involved in the implementation of this policy namely JAKIM/ SIRD, MOH and SHD. This research found that there is lack of coordination among these agencies and most State Health Department in Malaysia oppose the idea of disclosing the HIV status of the couples to the marriage Registrar on the grounds of confidentiality. Thus, there is no standard procedure applied throughout Malaysia in the implementation of the programme. The three states of Pahang, Kelantan and Johor require the consent of the applicant to undergo HIV screening and the consent to submit the result to the Qadhi (for the state of Pahang), Religious Officer or Marriage Registrar (for the state of Kelantan) (Idris, M. N., personal Communication, 21st of May 2012, Mohd Noor, M. A. A., personal communication, 2nd of May 2012). On the other hand, in the other states, the medical officer is only required to state that the applicant has undergone the HIV screening without revealing the result. This means that the result will not be disclosed to the Qadhi or Marriage Registrar.

Therefore, it is suggested that an immediate solution should be reached to improve coordination between the agencies involved to ensure standard implementation of such policy. The MOH and JAKIM should take the lead in promoting coordination by having regular discussions and cooperative agreement. Through discussions, exchange of ideas takes place which also promote coordination among different agencies. The authority and responsibility of each agency should also be clearly defined to avoid confusion.

**Disclosure of HIV Status and the Issue of Confidentiality**

Disclosure is crucial in the HIV debate because of its links to confidentiality and privacy as human right issues and its potential role in prevention of the disease. Disclosure is also considered a crucial step toward ending the stigma and discrimination against people living with HIV and AIDS. Much has been written about the stigma associated with disclosure of HIV-positive status (Stutterheim SE et al., 2011; Mutumba, M., et al., 2015). Fear of stigma is thought to discourage disclosure and disclosure has often been considered a proxy measure for stigma (Obemeyer, C. M. et al., 2011).

In the case of premarital HIV screening in Malaysia, at present only the Islamic Religious Department of Pahang, Johor and Kelantan require such disclosure and not
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other states (Zainal Abidin, M.Y., personal communication, 17 April 2012). However, for these states, there are slight differences in the requirements. For example, in the state of Kelantan, HIV status can be disclosed to Islamic Religious Affairs officers or a marriage registrar namely the Head of Registrar, Senior Registrar, Registrar and Assistant Registrar while in the state of Pahang, the disclosure can only be made to the District Qadhi.

The other issue is the different way of submitting the result to the Registrar/Qadhi. In normal practice, the couple will present it to the Registrar after getting the result from the medical officer. However, in cases when the result is positive, the doctor or the staff submits it directly to the Registrar (Salehuddin, N. Z., personal communication, 11 May 2012).

This research found that there was no standard procedure or guideline on how to maintain the confidentiality of all HIV related information. One of the issues concerns if the Registrar/Qadhi reveal the HIV result to others, such as to other officers, wali (guardian) of the bride-to-be or parents of both parties. If one of the partners turns out to be HIV positive and the marriage is cancelled on that account, there is a high possibility that it may result in the breach of confidentiality as it may no longer be possible to maintain such secrecy. Since the process of marriage in the Malay culture is initiated at the family level, it is difficult not to inform the concerned families regarding such an issue. Another overlooked fact is that for Muslim marriages, the women must obtain consent from their wali (guardian) to marry, who will almost certainly want to know the results of the HIV test. The result will then definitely be shared and known among family members. Thus, the issue at hand is ensuring confidentiality is maintained.

Thus, it is submitted that related agencies, particularly SIRD and JAKIM, should improve the policy by providing specific guidelines and standard procedures to ensure confidentiality of information in the interest of the bride and bridegroom. They should also provide courses or training for relevant religious officers to understand and respect individual right and privacy. Parents and families involved should also be informed on the importance of maintaining confidentiality to safeguard the reputation of the bride and bridegroom. The authors also suggest direct submission of the result to the Registrar is preferable, particularly when the result is reactive or positive. This is important to avoid fake results.

Statutory Requirement

At present, the requirement of pre-marital HIV screening programme is only a part of the procedures for the application of marriage and not a statutory requirement. Even though this mandatory programme is supported by fatwa (religious edict) from both the National and State Fatwa Council, it can still be questioned, reviewed, and challenged as those fatwa have not been gazetted (Tapah., S., 2004; Mohamed Adil, M. A., 2010).
According to Idris, M. N., Assistant Director, Islamic Family Law Division, Islamic Religious Department of Pahang, there was a case in Pahang whereby this mandatory screening programme was challenged by the applicant. The case however, was successfully settled outside the court after having discussed with the State Health Department and Islamic Religious Department of Pahang (Idris, M. N., personal communication, 1st of May 2012 at 12.30 pm).

Hence, in order to avoid the pre-marital HIV test from being legally challenged in court, this research proposes that the test should be made a statutory requirement to ensure that every person respects and abides by the law. Good examples can be seen in some of the Arab countries in which the requirement of submitting medical certificates for registration of marriages is made part of their law. In article 10(2) of the Iraqi Personal Status for example, it is stated that the document to be submitted for registration must be supplemented by a medical report confirming that the couple are free from communicable diseases and health impediments.

The Bahrain, Qatar, and UAE Codes of Personal Status include the requirement that the couples intending to marry must submit medical certificates for the registration. The medical test covers both physical and mental diseases and disorders and be regulated by detailed directives under the authority of government health agencies (Welchman, L., 2010). The UAE Law of Personal Status requires attestation from the “appropriate committee established by the Ministry of Health” that the parties are free of “conditions on the basis of which this law allows a petition for judicial divorce”. Interestingly, in Bahrain, a fine is stipulated for those violating the requirement on medical tests for certain “hereditary and contagious diseases”. Another good example is the Tunisian Code of Personal Status which requires a pre-marriage medical certificate, as it is a guarantee against any venereal disease in order to protect the physical and mental health of the woman, her children and her husband (Tunisian Code of Personal Status, 1956).

Effectiveness of the Screening Programme

The effectiveness of the screening programme, especially during the “window period” is questionable. The “window period” refers to the early months of infection when the disease cannot be detected by using standard HIV tests. This is considered as one of the potential pitfalls of the mandatory HIV testing. Although the most frequently employed HIV tests detect HIV antibodies as well as the antigen, they cannot detect a more recent infection within three weeks of exposure. In consequence, false positive antibody results or false negatives are possible in this screening. If the result is negative, the infected person is still able to pass on the virus to his or her partner (Ganczak, M., 2009).

A good example is the high-risk group. Even though the result will turn non-reactive, it cannot be relied on as the HIV
virus fully develops only after six months (Saidon, F. (Dr), personal communication, April 11th 2012; Abdul Manan, L., personal communication, 10 April 2012, Mat Ail, M., personal communication, 2 May 2012).

The issue here is that the Islamic Family Law Enactment/Act in Malaysia provides at least seven days before the date of marriage for the application of marriage to be submitted together with the HIV result and other requirements. This is stated in Section 16(3) of Islamic Family Law Federal Territories Act, 1984, which is equivalent to other State enactments. Thus, the question is if the HIV result turns out to be reactive/positive, will it be possible to postpone the marriage ceremony as marriage preparations have been completed?

Moreover, the mandatory testing for HIV before marriage does not really serve the purpose of preventing the spread of the disease because it does not consider extramarital relations. As the compulsory HIV test for Muslims aims to prevent the transmission from spouse to spouse or to future offspring, unfortunately it will only useful at that time and does not guarantee one or both parties will not be exposed to future risks of HIV.

Thus, it is suggested that to ensure the effectiveness of this screening programme, Section 16(3) of Islamic Family Law Enactments should be revised to avoid such “window period.” Another recommendation is to emphasise not only the pre-marital HIV test, but also periodical marital HIV tests, especially for high-risk groups.

Research on Cost Effectiveness

The study found that since the implementation of this programme in Malaysia, its cost-effectiveness is not proven as no analysis to the effect has been performed. A research by Khabir, B. V., et al., in 2007 evaluated a pre-marital screening programme in Johor over three years. However, the authors focused on the effect of the screening programme vis-a-vis the number of marriage applications and public awareness of HIV. The financial costs of the programme as well as the negative events related to the screening were not discussed.

In this regard, according to the recommendation of Centres for Disease Control and Prevention (CDC) of The United States (1993), for the hospital to adopt a policy of offering voluntary HIV counselling and testing, the HIV prevalence in the general population rate must be 1% or AIDS diagnosis rates of 1 per 1000. However, in Malaysia, based on the research done in 2009, a total of 179,268 Muslim men and women were screened through this programme out of which 67 were confirmed to be HIV-positive. This means the HIV prevalence was only 0.04% (Malaysia UNGASS Country Report, 2010). Moreover, pre-marital screening in Johor between 2000 and 2004 reported HIV prevalence of only 0.17% (Khabir, B.V., et al., 2007). This low prevalence of HIV among Malaysia’s general population raises sufficient doubt about the cost-effectiveness of the current pre-marital HIV screening programme for Muslim couples.
A research conducted in eight areas of the USA also concluded that mandatory pre-marital HIV screening would be more expensive than other HIV prevention programmes and has a limited impact on the disease. The authors proposed alternatives which are more effective and economical such as HIV screening for pregnant women or treating the HIV affected foetus (Petersen, L., R., et al., 1990).

Thus, it is suggested that as mandatory screening is done in a low prevalence population, a thorough study should be undertaken to assess its cost-effectiveness. As healthcare funds are limited, it may be better used for screening target populations with high risks as well as having a more effective health education. Additionally, the funds should be channelled to other programmes proven to be effective.

**Professional Counsellor**

Counselling can be a powerful means of helping people if accompanied with appropriate strategies. In this regard, professional counsellors are important as they are well-trained in counselling strategies and ethics in dealing with patients, especially when confronted with such a dangerous and infectious disease. Unfortunately, this research found that the implementation of the counselling programme at State Islamic Religious Department (SIRD) does not follow the procedures prescribed under the Malaysian Counsellors Act 1998. The main loophole is the absence of professional counsellors registered under the Malaysian Counsellors Act 1998, especially those trained in dealing with HIV patients.

The officers in charge of counselling at SIRD are religious officers who have no qualifications as professional counsellors which is a violation of the Malaysian Counsellors Act 1998. The Act defines counselling as “a systematic process of helping relationships based on psychological principles performed by a registered counsellor in accordance with the counselling codes of ethics to achieve a voluntary favourable holistic change”.

The above provision clearly states that counselling is a systematic process based on a psychological approach and counselling codes of ethics. This brings into question the qualifications of the SIRD religious officers to serve as counsellors. The Act also requires that counselling should be performed by a counsellor registered under Section 26 and 27 of the Malaysian Counsellors Act 1998. In addition, Section 24 of the Act further states that any person who does not hold a valid practicing certificate is not allowed to practise as a counsellor.

To overcome this problem, the state government should create the post of counsellor at every State Islamic Religious Department (SIRD). This professional counsellor will be responsible in dealing with couples who are HIV positive (either both or one of them) but still want to proceed with their marriage. However, since it involves Muslim marriage, counsellors should be well-versed in the
Islamic perspective of counselling. In this regard, it is suggested that the local Islamic Universities such as the International Islamic University of Malaysia (IIUM), Islamic Science University of Malaysia (USIM) and University of Sultan Zainal Abidin (UniSZA) should introduce a Master’s Programme in Islamic counselling. Candidates should already possess a Bachelor of Islamic Studies degree and must complete two years of counselling for their Master’s programme. Graduates of this Master of Islamic Counselling can take up the post of counsellor at SIRD.

Other suggestions include increasing capacity and skills in counselling. For this, regular courses on counselling should be provided for the officer in charge so that they can develop their counselling and psychological skills because dealing with patients with such a dangerous disease is not easy. They should know, for example, how to approach the HIV issue in order to reduce tension and restore hope among the patients.

CONCLUSION
Given the significant loopholes in mandatory premarital HIV screening programme among Muslims in Malaysia especially its medical and social consequences, governments and HIV programme implementers should take immediate steps to resolve the issues. The most important recommendation is to have a good coordination and collaboration between Islamic agencies involved namely JAKIM, SIRD & National/State Fatwa and MOH & SHD as well as a standard policy and procedure in terms of implementation. Furthermore, this mandatory HIV screening should conform to the “Three Cs” as suggested by United Nations: consent, confidentiality and counselling. The agencies involved should also adhere to international human rights standards. An individual’s right to privacy and individual security for example must not be compromised. The issue of cost-effectiveness is another important thing that should be emphasised to ensure that this mandatory testing will guarantee a sustainable reduction in HIV transmissions. Thus, it is a duty of the government and relevant agencies to ensure that this mandatory testing does more good than harm.

REFERENCES


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