INTRODUCTION

Whoever works righteousness, man or woman, and has Faith, verily, to him will We give a new Life, a life that is good and pure and We will bestow on such their reward according to the best of their actions.

An-Nahl: 97

The above verse from al-Quran in Surah an-Nahl is a proclamation of equality between man and woman. Allah declares that both, man and woman, would be rewarded equally of their deeds. In other words, there is no difference in the outcome of any deed committed by any man or woman. There is no requirement for a woman to do something what a man can do in order to be rewarded by Allah. The measurement of equality is not of a man’s standard but whatever capacity and ability that is given by God to human being. Islam teaches mankind about equality between man and woman; not about gender equality.

In this new millennium, the notion of equality between man and woman has evolved into a term called ‘gender equality’. Gender equality is contained in the one of the Sustainable Development Goals or SDGs. The aim of Sustainable Development Goal No. 5 is to achieve gender equality and empower all women and girls. The United Nation has laid down several targets to achieve until 2020. They are,
End all forms of discrimination against all women and girls everywhere.

Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation.

Eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation.

Recognize and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies and the promotion of shared responsibility within the household and the family as nationally appropriate.

Ensure women’s full and effective participation and equal opportunities for leadership at all levels of decision making in political, economic and public life.

Ensure universal access to sexual and reproductive health and reproductive rights as agreed in accordance with the Programme of Action of the International Conference on Population and Development and the Beijing Platform for Action and the outcome documents of their review conferences.

Undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws.

Enhance the use of enabling technology, in particular information and communications technology, to promote the empowerment of women.

Adopt and strengthen sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels.

In the Malaysian Constitution, protection of women is a concurrent matter under the Ninth Schedule whereby the federal and the state governments have legislative and executive powers to enact law and policies. All states in Malaysia has an executive councilor or Exco in charge of women affairs. Kelantan, one of the states in Malaysia, has also strived, for the past almost three decades, to put women in equal standing with the men by drafting and implementing the Kelantan Women Policy.

Malaysian Government, through the Ministry of Women, Family and Community Development, has established measures to achieve gender equality. Steps have been taken to elevate women in various sectors. After more than 60 years of Independence, women in Malaysia have achieved a certain level of equality as compared to men. Women are appointed to various decision-making level either in the public or private sectors.

The latest development is the proposal mooted by the Ministry of Women Affairs and Family Development on Gender Equality Bill. This bill was proposed in line with Malaysia’s commitment to Convention on the Elimination of Discrimination Against Women (CEDAW). One of the proposals stated in the Bill is the establishment of the Gender Equality Commission.

This paper is an attempt to discuss and analyze the efforts made by the federal and state government towards achieving gender equality in Malaysia. The paper will also address the issue on whether Malaysian women need Gender Equality Bill and whether there are other ways to achieve gender equality in Malaysia.

The paper begins with a brief overview on the status of women in the Malaysian Constitution and its governance at the federal and state level. Then, gender equality will be explained from the Islamic perspective acknowledging Islam as the religion of the Malaysian Federation and the religion of majority of the population in Malaysia. The application of the
gender equality principle at the national and state level will be highlighted in the next part of the paper. The final part of the paper highlights main provisions of the Gender Equality Bill and provide same comments based on the Islamic principles and the current legal position in Malaysia.

**WOMEN IN THE MALAYSIAN CONSTITUTION**

This section will discuss on the governance of women affairs in Malaysia. Governance refers to the legal and administrative framework on women affairs in Malaysia. Numerous Malaysian legislations have impact upon women’s role and rights. The understanding regarding the governance of women affairs in Malaysia is essential so that the source of authority relating to women affairs can be identified. This would also create accountability to those whom are responsible for the matter. Relevant constitutional and statutory provisions including policies relating to women in Malaysia will be explained in this section. National policy relating to women that will be discussed briefly in this paper are the 11th Malaysia Plan, National Women Policy and the National Women Action Plan. Several federal and state government agencies in charge of women affairs will also be elaborated.

Malaysia’s federalism structure has impact on the governance of women affairs. Based on the Ninth Schedule of the Federal Constitution, ‘protection of women’ is included in the Concurrent List. This implies that both levels of government, federal and state, has legislative and executive powers in women affairs. However, the word ‘family’ cannot be found in any of the lists in the Ninth Schedule of the Federal Constitution. Since women development is usually conjoin with family development, the governance of women development and family are usually put under one roof. Nevertheless, family development is given less emphasis in the national development plan as compared to women development causing an imbalance between women and family affairs.

The federal ministry in charge of women affairs is the Ministry of Women, Family and Community Development. There are other ministries which are also indirectly involved in women development such as Ministry of Youth, Ministry of Education, Ministry of Health, Ministry of Human Resource and Ministry of Entrepreneurship. At the state level, all states have an Executive Councillor or Exco responsible for women and family development. To sum up, the governance of women affairs in Malaysia involves multiple ministries and agencies either at the federal or state level. The chart below demonstrates the relationship between federal and state in women governance in Malaysia:


From the human rights perspective, the Federal Constitution as the supreme law of the land provide equality for everyone and guarantees equal treatment before the law. Public
authority is responsible to ensure that there is no discrimination whatsoever including gender. Therefore, any government department cannot discriminate based on gender as decided in the case of Noorafidilla Ahmad Saikin v Chayed bin Basiron & Ors. In this case, the court held that the act of not appointing a woman as a temporary teacher based on her pregnancy is a discriminatory treatment contrary to the protection provided under Article 8(2) of the Federal Constitution.

When the courts interpreted Article 8(2) of the Federal Constitution by putting the obligation of non-discriminatory treatment upon public authority, private entities like companies are not subject to the same obligation. Therefore, a few decided cases held that companies are not bound by the same obligation as public authority. In other words, companies can discriminate based gender as held in Airasia Berhad v Rafizah Shima Mohamad Aris dan Beatrice a/p AT Fernandez v Sistem Penerbangan Malaysia & Ors. This situation brought about the effort to introduce gender equality law based on Malaysia’s ratification to the Convention on the Elimination of Discrimination Against Women (CEDAW).

EQUALITY BETWEEN MAN AND WOMAN IN ISLAM

The Prophet Muhammad SAW was sent as a blessing to the mankind. Therefore, the teachings of Islam regarding the concept of equality between man and woman is not a concept that is limited to Muslims but also a concept that is common to all humankind. Without the guiding light from Islam, man and woman would always be differentiated and discriminated in many ways to the extent that woman became the victim and giving rise to feminism.

When Allah created Adam, the first human being, the responsibility that is entrusted upon him and all his descendants is to be God’s vicegerent on earth as stated in al-Baqarah, verse 30:

*Behold, thy Lord said to the angels: "I will create a vicegerent on earth." They said: "Wilt Thou place therein one who will make mischief therein and shed blood? whilst we do celebrate Thy praises and glorify Thy holy (name)?" He said: "I know what ye know not."*

At the same time, al-Quran mentions in Adz-Dzariyat, verse 56 that Allah has created man and jinns that they may serve Him. In other words, man is created as God’s servant.

In surah an-Nahl, verse 125, Allah commands Muslims to invite people to Islam:

*Invite (all) to the Way of thy Lord with wisdom and beautiful preaching; and argue with them in ways that are best and most gracious: for thy Lord knoweth best, who have strayed from His Path, and who receive guidance.*

All the above-mentioned responsibilities as vicegerent on earth, as god’s servant and as a preacher, these are all entrusted to man and woman without any distinction. Whomever performed to their best would be rewarded accordingly and whomever failed to do so would be punished in the Hereafter. In other words, man and woman are equal in the eyes of Allah.

The Prophet Muhammad SAW taught Muslims that, in the context of having responsibilities, both man and woman, are going to be enquired upon their responsibilities in front of Allah in the Hereafter. The Prophet Muhammad said,
Each one of you is a leader and has responsibilities and each of you would be responsible upon what you have been entrusted. Man is the leader in the family and each of you is responsible upon your leadership. Woman is the head in her husband’s home and she is responsible upon what has been entrusted upon her. (Hadith narrated by Ahmad, Bukhari, Muslim, Abu Daud, Tirmidzi from IbnUmar)

The above hadith does not position woman’s leadership lower than man but elevated the position of woman in line with her nature and strength. The Prophet’s history has shown that Islam provided rights for women long before women emancipation took place in the West. Women in Islam are given economic rights, marital rights, right to learn, right to inherit, right to have a career and right to go to war. Any contradiction to the existing rights given to women in Islam is a cultural or local factor and not from Islam.

The only distinction that Allah put upon men is based on the extra physical strength and responsibility to care for the womenfolk. Allah stated in the Quran surah an-Nisa’ verse 34:

*Men are the protectors and maintainers of women, because Allah has given the one more (strength) than the other, and because they support them from their means.....*

In Islam, men must have the element of *qawwamah*. *Qawwamah* can be loosely translated as leadership as men are the head and leader in the family. The position as the head of the family does not put him in a better position as compared to the women or wife. It is a position with a huge responsibility and must be complemented by the women as the wife and mother.

The complementary nature of the relationship between man and woman is explained in surah at-Taubah, verse 71,

*The Believers, men and women, are protectors one of another: they enjoin what is just, and forbid what is evil: they observe regular prayers, practise regular charity, and obey Allah and His Messenger. On them will Allah pour His mercy: for Allah is Exalted in power, Wise.*

History of Islam, for example during the time of the Prophet Muhammad, has demonstrated the role that Muslim women played in the society. Women assist their husband in the household, educate their children, helped the injured in war and played an active role in the society. The Prophet Muhammad himself chose a woman with a career as his wife, Khadijah, who was a well-known and a successful businesswoman at that time. Women, during Prophet Muhammad’s time established charitable organizations, prison for women, health services and organized entertainment activities. This may be an indication that Islam does not hamper woman’s potential to be engage in the society.

**GENDER EQUALITY IN MALAYSIA – FEDERAL PERSPECTIVES**

Equal opportunities between man and woman can be seen long before Malaysian Independence 1957. Some girls are sent to school by their parents and the awareness on the importance of education for women made some parents sent their daughters abroad to further their studies like the elder of Tun Siti Hasmah, Dato’ Paduka Siti Saleha Mohd Ali. The peak of gender equality in Malaysia can be seen after the Independence 1957 when Tan Sri Fatimah
Hashim was appointed as a member of the Cabinet as the Minister for Welfare between year 1969 hingga 1973.

After Independence, women’s access education became much easier. The National Education Policy provides equal opportunity of education to boys and girls. This situation gave opportunity to women to have their own career and to be recognised as a professional in their own area of expertise. When a woman with a career is married and has children, there is a need to establish a support system that enable to women to fulfil her responsibility as a wife and mother. Support system for married career women implies policy and infrastructure that can assist women in handling their multiple as wife, mother and labour in the work force for example, flexible working hours, in-office nursery, breast-feeding friendly office environment and work from home policy.

In terms of women’s involvement in the work force, the Tenth Malaysia Plan Review (2011-2015) indicated that women’s participation in the workforce has increased from 46.4% in year 2009 to 55% in the said period. The position of women in high level management in the private sector increased from 30.5% in year 2010 to 32.5% in year 2014. In 2014, 10.2% of board of directors of listed companies are women compared to the targeted 30% in year 2016. These data show am increasing role and importance women in the country’s progress.

According to the United Nations Population Fund (UNFPA), the main issues relating to gender equality are reproductive health, economic empowerment, education empowerment and political empowerment. Gender equality in reproductive health refers to the woman’s ability to decide on the number of children she wants to have and to decide the gap between the childbirth. From education empowerment perspective, UNFPA data shows that 2/3 of the adult who are illiterate are women.

Gender equality is the fifth SDG to be achieved by UN member states. Malaysia, as one of the signatories to CEDAW, have been pressured ro delete its reservation to article 16 of CEDAW which partly touched on Islamic law. Originally, Malaysia has put reservations on articles 2 (f), 5 (a), 7 (b), 9 and 16. Malaysian government added that its ratification of CEDAW is subject to the Federal Constitution and Islamic law. On 6th February 1998, Malaysian government has changed its reservation to articles 2(f), 9(1), 16(b), 16(d), 16(e) and 16(h). The balance of the articles still under reservation by the Malaysian government are articles 9(2), 16(1)(a), (c), (f) dan (g) regarding family and citizenship.

Dr Nik Salida Suhaila, a SUHAKAM commissioner, is of the view that, from Islamic and CEDAW perspectives, law relating to gender equality, at the beginning, was aimed towards equal treatment between men and women. However, if the equal treatment brought about unequal results, law should play a role in ensuring equal outcomes and eliminate barriers that hamper men and women’s development. In other words, the equality that is to be attained does not require equal treatment between men and women. This approach is in line with Islamic teaching whereby men and women are recognized as different, but both obtained the same reward from Allah.

If the four main issues highlighted by UNFPA are the only issues regarding gender equality in Malaysia, these issues are not contrary to Islamic teachings. However, when gender equality issues are being expanded and transgressed the syariah boundary like allowing woman
to lead the prayer of men and the prohibition of polygamy, this sort of ideas cannot be accepted as they are against the teachings of Islam contained in the Quran and Sunnah.

**GENDER EQUALITY IN LAW AND POLICY – KELANTAN PERSPECTIVES**

This section discusses the status of women in Kelantan and efforts made by the state government to elevate the status of women in order equality. The state of Kelantan is chosen as it is a state that has its own policy regarding women and it is state ruled by the Islamic Party either in coalition with other parties and on its own since year 1990.

In year 2001, a committee on Kelantan Women Policy was formed by the state government chaired by the late Dato’ Haji Muhammad Daud Iraqi who was an exco at that time. The objective of the Kelantan Women Policy was,

*Develop and expand the dignity and potential of women towards progress and well-being of the Kelantan society based on Islamic way of life in line with god, values and racial belief and universal moral values.*

Kelantan Women Policy consists of 15 sectors: religion, education, law, economy, occupation, politics, wealth, family, health, recreation, media, support system, networking, basic needs and society. Out of the 15 women’s agenda for change, the agenda of women and religion is given the highest priority. This demonstrates the seriousness of the policy by making religion as the main priority as compared to other agenda in line with the preservation of religion as the highest *maqasid*.

The Kelantan Women Policy outlines 5 important role of women to ensure that the objective of the policy is achieved:

**Chart 1**: Role of Kelantanese Women as Envisaged in the Kelantan Women Policy

<table>
<thead>
<tr>
<th>Role of Kelantanese Women as Envisaged in the Kelantan Women Policy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Source of strength of family’s well-being</td>
</tr>
<tr>
<td>Educator of future generation</td>
</tr>
<tr>
<td>Generator of society’s productivity</td>
</tr>
<tr>
<td>Contributor to knowledge, science &amp; technology</td>
</tr>
<tr>
<td>Stimulator of social activism</td>
</tr>
</tbody>
</table>

In short, the Kelantan Women Policy intends to inculcate awareness in every Kelantanese women to play their role as an agent of society’s progress, development, enhancement and
well-being. The policy contains recognition of women’s contribution not only in the sphere of family life but also community and nation.

The following are the achievements made by the Kelantan state government for women. First, providing *Ih mad* leave or bereavement leave for women staff whose husband passed away beginning 23 October 2013. Before giving *Ih mad* leave, all civil servants are given 3 unrecorded leave if there is any death of close family members. Under the new *Ih mad* leave, women staff gets 30 days paid leave, i.e. 3 existing unrecorded leave plus 27 days. The *Ih mad* leave is given based on application made by the staff and it is not automatic. The leave is given to women staff who wants to comply to the bereavement needs according to *hukum syara’* as stated in surah al-Baqarah, verse 234. This demonstrates the state government’s care towards women staff who are going through a difficult phase after the death of her husband.

In terms of women leadership, the Kelantan state government has appointed women in numerous political posts as explained in the table below:

**Table 1: List of Political Appointments made by the Kelantan State Government for Women**

<table>
<thead>
<tr>
<th>No.</th>
<th>Posts</th>
<th>Name</th>
<th>Period</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Ustazah Hunaizah Mohd Nor</td>
<td>1997-2000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Ustazah Jamilah Ibrahim</td>
<td>1997-2000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Hajah Siti Zailah Mohd Yusoff</td>
<td>2000-2006</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Hajah Wan Ubaidah Omar</td>
<td>2003-2008</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Hajah Mumtaz Md Nawi</td>
<td>2006-2012</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Hajah Khairiah Mohamed</td>
<td>2012-2018</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Ustazah Asmak Husin</td>
<td>2018</td>
</tr>
<tr>
<td>2.</td>
<td>Member of Parliament</td>
<td>Hajah Siti Zailah Yusof</td>
<td>2008 until now</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Allabayarhamah Hajah Kalthom Othman</td>
<td>2008</td>
</tr>
<tr>
<td>3.</td>
<td>Member of the State Legislative Assembly</td>
<td>YB Puan Rohani Ibrahim (ADUN Tanjong Mas)</td>
<td>2004 until now</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Hajah Wan Ubaidah Omar</td>
<td>2008-2018</td>
</tr>
<tr>
<td></td>
<td></td>
<td>YB Hajah Mumtaz Md Nawi (ADUN Demit)</td>
<td>2013 until now</td>
</tr>
<tr>
<td>4.</td>
<td>State Executive Councillor (Exco)</td>
<td>YB Hajah Wan Ubaidah Omar</td>
<td>2008-2013</td>
</tr>
<tr>
<td></td>
<td></td>
<td>YB Hajah Mumtaz Md Nawi</td>
<td>2013 until now</td>
</tr>
<tr>
<td>5.</td>
<td>Deputy Exco</td>
<td>YB Puan Rohani Ibrahim</td>
<td>2008-2013</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Hajah Wan Ubaidah Omar</td>
<td>2013-2018</td>
</tr>
<tr>
<td></td>
<td></td>
<td>YB Puan Rohani Ibrahim</td>
<td>2018</td>
</tr>
</tbody>
</table>

In education, there are several Islamic religious schools dedicated for girls in Kelantan like Maahad Muhammadi (P) Kota Bharu and Pasir Pekan and Maahad Tahfiz Sains Tanah Merah. Women are also held high positions such as principal and deputy principal for 89 schools administered under the Yayasan Islam Kelantan. Women are also appointed to other important administrative posts such as member of local council, state administrative officer and Religious Officer.
In community leadership, Kelantan state government has appointed women as local chieftain (Penghulu Wanita Tanpa Mukim), Officer and Assistant officer of Dakwah Halaqat dan Single Mother’s Development Officer (Penyelaras Pembangunan Armalah DUN).

All the above achievements demonstrates a number of important points; first, the state of Kelantan which ruled by the Islamic Party for almost 30 years, has taken serious efforts, within its constitutional powers, to elevate the status of women in numerous fields; secondly, all the developments on the status of women in Kelantan are in line with the commandments in the Quran and Sunnah and third, the positive attitude of Kelantanese men in providing opportunities for Kelantanese women and coupled with the determination of Kelantanese women to be involved in the development of the state enable the Kelantanese women to be in a higher standing as compared to women in other states in Malaysia. In other words, Kelantan has shown to the world that gender equality is not impossible to achieve within the Islamic framework of governance.

**GENDER EQUALITY BILL – CONTENTS AND ANALYSIS**

This section will briefly discuss and comment on the Gender Equality Bill 2017. A workshop discussing on Gender Equality Bill was held in August 2017, organized by the Ministry of Women, Family and Community Development with the cooperation of UNDP Malaysia. The Bill was drafted by Ms Zarizana Abd Aziz, consultant for the Joint Action Group for Gender Equality. The main rationale for the need to have a gender equality law are,

i) There is evidence that women in Malaysia do not enjoy equal status to that of men, under- represented in many fields and there many violations of women’s right;
ii) The law will impose positive duties on the state to accommodate difference and disadvantage experienced by women and to bring equality of results or substantive equality;
iii) The law will fulfill Malaysia’s obligation under CEDAW whereby the accession was made on 5th July 1992. Art.2(a) of CEDAW provides the need to embody the principles of equality of men and women in their national constitutions or other appropriate legislation and the requirement to incorporate principles of CEDAW into domestic law and policy.

Gender Equality Bill 2017 contains 70 sections and XI parts: Preliminary, Gender Discrimination, Gender Equality Commission, Officers and Employees of the Commission, Gender Based Violence, Responsibilities of Different Sectors, Victimization and Vicarious Liability, Inquiry, Conciliation, Gender Equality Tribunal and General provisions. The preamble of the bill enumerates the aims of the Bill:

- To prohibit discrimination of persons based on gender
- To establish Gender Equality Commission
- To establish Gender Equality Tribunal
- To implement CEDAW
- To provide for other matters connected thereto

The principal objects of the Bill, as stated in section 2, are to prohibit unlawful gender discrimination and to facilitate the promotion of gender equality.
Section 4 of the Bill provides interpretation of some salient words, such as;

“discrimination” means any act or omission including a policy, rule, law, practice, condition or situation that directly or indirectly –

(a) Imposes a burden obligation or disadvantage on; or
(b) Withholds a benefit advantage or opportunities from;

Any person on one or more of the prohibited grounds or protected characteristics.

“equality” means substantive equality, that is the full enjoyment of rights and liberties and includes de jure and de facto equality of opportunities, access and outcomes for men and women;

“gender” refers to special meanings given to biological sex differences including social construct, whether or not, reproduced in material practice;

A perusal over the draft bill indicates a few things. First, the wording of the Bill does not have a legislative tone and more of a policy tone. There are several obligations created without any sanction as to the failure to comply to the provisions. No remedy is provided when a gender inequality situation arises. Secondly, the aims and principals of the Bill cannot ignore and must consider the basic structure of the Malaysian Constitution such as the position of Islam as the religion of the Federation. Islam is recognized source of unwritten law in Malaysia and most of the Malaysian population are Muslims. Therefore, any law and policy enacted, either in the federal or state legislative assembly or drafted by the federal or state executive must not contrary to the teachings of Islam and not the other way around. Islam has been part of the Malaysian legal system for so long that it is impossible to separate the practice of Muslims in the governing of the state.

Thirdly, empowering women towards achieving gender equality begins with educating men. Gender equality requires a total overhaul of the way men and women understand their role in the society. The Prophet Muhammad is the best example to see how he provides opportunities for women in his life. He said: The best of you is the one who treats his family members well and I am the best among you (in treating my family well). This hadith indicates that good manners and respect begin at home with the family members. In another hadith, the Prophet Muhammad emphasizes on the importance of love and respect to mother, three times more than father. The Prophet Muhammad’s conduct as a husband and father demonstrates that he acknowledged this wives and daughters’ potential and strength, and he did not, in anyway, hamper their development and moreover, he is always supportive of whatever decision that they made. This can be seen in the story of his first wife, Saiyidatina Khadijah, who was a successful businesswoman. Their marriage did not stop her from continuing her business and the Prophet Muhammad assisted her in managing the business. He could be egoistic and command her to stay at home and take over the business but that did not happen. An overhaul of the way men and women understand their role should begin with understanding the nuances in Prophet Muhammad’s life as a husband and father whom provide equal opportunity of development to all. God has created men and women with specific physical characteristics to commensurate with their specified role in the family and society. The sky is the limit as long as the syariah boundary is not transgressed.
The fourth argument for the need to have Gender Equality Bill is based on the court’s decision in the Airasia Berhad v Rafizah Shima Mohamad Aris and Beatrice a/p AT Fernandez v Sistem Penerbangan Malaysia & Ors. The decision of these two cases are actually stemmed from the constitutional interpretation of Art. 8(2) of the Federal Constitution. Article 8(2) reads,

*Except as expressly authorized by this Constitution, there shall be no discrimination against citizens on the ground only of religion, race, descent, place of birth or gender in any law or in the appointment to any office or employment under a public authority or in the administration of law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.*

The argument that there is a need for gender equality law can be negated if the above constitutional provision is interpreted correctly. In Beatrice Fernandez case, the court decided that, since Malaysian Airlines, is a company, therefore, the company is not required to comply with Art. 8(2) because the particular provision creates obligation for public authority and does not cover private companies. This paper argues that the court had erred in its decision because Art. 8(2) also creates non-discriminatory obligation for any trade, business, profession, vocation or employment. The non-discriminatory obligation is not imposed only on public authority but also private entities when the whole provisions is read conjunctively.

Nevertheless, this paper agrees that there is a need to regulate certain aspects of employment so that discriminatory treatment can be reported and monitored. In the employment context, equality and discrimination are not just about gender. It can also manifest as religious discrimination or racial discrimination. Article 8(1) of the Federal Constitution provides that everyone is equal before the law and everyone is entitled to equal treatment before the law. Currently, the remedy available whenever there is a discriminatory treatment is any remedy available under administrative law. Therefore, establishing an Equality Commission for Workplace is more viable and suitable in the Malaysian context.

The aim of gender equality in the workplace is to achieve broadly equal outcomes for women and men, not necessarily outcomes that are the same for all. According to the Australian Workplace Gender equality Agency, to achieve this requires:

- Workplaces to provide equal pay for work of equal or comparable value
- Removal of barriers to the full and equal participation of women in the workforce
- Access to all occupations and industries, including leadership roles, regardless of gender; and
- Elimination of discrimination based on gender, particularly in relation to family and caring responsibilities.

**CONCLUSION**

Gender equality is recognized in Islam and in the Malaysian Constitution. In order to achieve equality, a comprehensive plan of action involving multiple players at all levels must be made. Nevertheless, efforts towards gender equality must acknowledge and respect the basic structures of the Malaysian constitution and the make-up of the Malaysian society.
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Al-Quran

dan

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Brosur Membangun Bersama Islam. UPKN.

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Dasar Wanita Kelantan

Dasar Wanita Negara:

Federal Constitution

Gender Equality Bill

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