



## MOOT PROBLEM

### A. Facts

1. Laila is an 18-year-old Malaysian woman. On 12 October 2022, she was in her 20<sup>th</sup> week of pregnancy.
2. Laila's pregnancy was the result of her sexual intercourse with a stranger during a one-night stand. The stranger and she were intoxicated during the sexual intercourse.
3. When Laila discovered that she was pregnant, she was shocked and worried. She communicated the news of her pregnancy to her parents. Even though they were angry, they did not want her to abort the pregnancy due to religious reasons and assured Laila that they will provide her with all the care and support that she will need during her pregnancy and to raise her child.
4. Initially, Laila felt assured by the support shown by her family and decided to continue with the pregnancy. However, when Laila obtained her A-Levels exam results, it was shown that she had excelled in all subjects and was accepted into a prestigious foreign university.
5. This development caused Laila to have a change of heart. Laila wanted to abort her pregnancy because she felt that having a child would hinder her from her tertiary studies and she would be occupied with caring for the child. Her parents offered to raise the child for her while she continues with her tertiary studies overseas, but Laila refused and felt that her attention and focus would still be divided between her studies and the child.

6. As a result, Laila decided to abort her pregnancy. She visited a government hospital for this purpose.
7. At the government hospital, Laila was subjected to an examination by two specialists. The first examination was with an Obstetrician and Gynecologist where it was found that her pregnancy was normal. The second examination was with a psychiatrist where it was found that Laila was neither depressed nor suicidal and showed no evidence of a tendency to self-harm.
8. Furthermore, Laila was asked to undergo mandatory counselling with the Negeri Sembilan State Health Officer as part of the assessment on whether Laila is allowed to abort her pregnancy. The Negeri Sembilan State Health Officer is a public servant under the employ of the Negeri Sembilan State Government. During the mandatory counselling with the Negeri Sembilan State Health Officer, Laila had to sit through lectures that abortion is immoral and goes against religious teachings. Additionally, Laila was asked to divulge sensitive information on her employment and her sex life during counselling sessions with the Negeri Sembilan State Health Officer. She was also dissuaded from abortion.
9. Having undergone the medical examination and mandatory counselling, the government hospital refused to abort Laila's pregnancy. The government hospital explained that their medical practitioners could not in good faith form the opinion that Laila's continuance of the pregnancy would involve a risk to Laila's life, or injury to the mental or physical health of Laila. If the medical practitioners at the government hospital had done so, they would be committing an offence under Section 312 of the Penal Code. Further, the government hospital explained that the Negeri Sembilan State Health Officer did not recommend Laila's case as a case that is appropriate for abortion.

10. Laila is dissatisfied with such refusal and applied to the High Court for:
  - 10.1. A declaration that Section 312 of the Penal Code is unconstitutional for being inconsistent with Articles 5(1) and 8(1) of the Federal Constitution.
  - 10.2. A declaration that Section 312 of the Penal Code is unconstitutional for being inconsistent with Article 8(2) of the Federal Constitution.
  - 10.3. A declaration that the Negeri Sembilan State Government directive that all patients seeking an abortion to undergo mandatory counselling with the Negeri Sembilan State Health Officer is unconstitutional for being inconsistent with Articles 5(1) and 8(1) of the Federal Constitution.
  - 10.4. A declaration that the Negeri Sembilan State Government directive is unconstitutional for being inconsistent with Article 8(2) of the Federal Constitution.
  - 10.5. A declaration that the Negeri Sembilan State Health Officer had acted in excess of its executive powers permitted under Article 80(1) of the Federal Constitution.

## **B. Proceedings at the High Court and the Court of Appeal**

11. On 14 October 2022, Laila filed a judicial review against the Government of Malaysia and the Negeri Sembilan State Government at the High Court with a certificate of urgency. On 20 October 2022, leave for judicial review was granted without any objections by the Attorney General's Chambers.

12. On 24 October 2022, the High Court heard arguments on the substantive judicial review. The Government of Malaysia and the Negeri Sembilan State Government were both represented by the Attorney General's Chambers.
13. Laila argued that:
  - 13.1. Section 312 of the Penal Code is inconsistent with Articles 5(1) and 8(1) of the Federal Constitution because it arbitrarily and disproportionately violates the rights of a woman or girl to make autonomous decisions about her own body where reproductive functions is at the very core of her fundamental right to equality and privacy, involving intimate matters of physical and psychological integrity, and is a precondition for the enjoyment of other right.
  - 13.2. For the same reason, the Negeri Sembilan State Government directive that all patients seeking abortion to undergo mandatory counseling with the Negeri Sembilan State Health Officer is also unconstitutional for being inconsistent with Articles 5(1) and 8(1) of the Federal Constitution.
  - 13.3. Additionally, both Section 312 of the Penal Code and the Negeri Sembilan State Government directive are unconstitutional for being inconsistent with Articles 8(2) of the Federal Constitution because it discriminates against Malaysian women based only on their gender.
  - 13.4. Lastly, the Negeri Sembilan State Government directive is ultra vires of Article 80(1) of the Federal Constitution because it relates to a matter of health that falls under the Federal List.

14. The Senior Federal Counsel argued:

- 14.1. Section 312 of the Penal Code is consistent with Articles 5(1) and 8(1) of the Federal Constitution because the state needs to protect the life of the unborn child.
- 14.2. Section 312 of the Penal Code is neither arbitrary nor disproportionate because it provides exceptions where the women's life is threatened.
- 14.3. Section 312 of the Penal Code and the Negeri Sembilan State Government directive are not inconsistent with Article 8(2) of the Federal Constitution because the regulation of a medical procedure that only one sex can undergo does not constitute discrimination against women.
- 14.4. The Negeri Sembilan State Government directive is not ultra vires of Article 80(1) of the Federal Constitution because it falls under the category of “Public Health” contained in the Concurrent List.

15. The High Court decided on the same day that:

- 15.1. Section 312 of the Penal Code and the Negeri Sembilan State Government directive are not inconsistent with Articles 5(1) and 8(1) of the Federal Constitution.
- 15.2. Section 312 of the Penal Code the Negeri Sembilan State Government directive are not inconsistent with Article 8(2) of the Federal Constitution.

- 15.3. The Negeri Sembilan State Government directive is not inconsistent with Article 80(1) of the Federal Constitution.
16. Dissatisfied, Laila appealed to the Court of Appeal.
17. On 31 October 2022, the Court of Appeal dismissed Laila’s appeal and affirmed the High Court’s decision.

### **C. Proceedings at the Federal Court**

18. Laila applied to the Federal Court for leave to appeal on the following questions of law:
  - 18.1. Whether Section 312 of the Penal Code is unconstitutional for being inconsistent with Articles 5(1) and 8(1) of the Federal Constitution.
  - 18.2. Whether Section 312 of the Penal Code is unconstitutional for being inconsistent with Article 8(2) of the Federal Constitution.
  - 18.3. Whether the Negeri Sembilan State Government directive that all patients seeking abortion to undergo mandatory counseling with the Negeri Sembilan State Health Officer is unconstitutional for being inconsistent with Articles 5(1) and 8(1) of the Federal Constitution.
  - 18.4. Whether the Negeri Sembilan State Government directive is unconstitutional for being inconsistent with Article 8(2) of the Federal Constitution.
  - 18.5. Whether the Negeri Sembilan State Health Officer had acted in excess of its executive powers permitted under Article 80(1) of the Federal Constitution.

19. On 4 November 2022, the Federal Court granted Laila leave to appeal on the above questions.

## **D. The Moot**

20. Counsel for Laila will have to argue that all questions be answered in the affirmative.
21. Counsel for the Government of Malaysia and the Negeri Sembilan State Government will have to argue that all questions be answered in the negative.
22. Laila is now into her 24<sup>th</sup> week of pregnancy. For the purposes of this moot, it is an undisputed medical fact that termination before 24 weeks of pregnancy will have no harm on a woman's health.