



AL-SHAJARAH

JOURNAL OF ISLAMIC THOUGHT AND CIVILIZATION
OF
THE INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA (IIUM)

2019 Volume 24 Number 1

AL-SHAJARAH

EDITOR-IN-CHIEF

ABDELAZIZ BERGHOUT, IIUM, Malaysia

COPY EDITOR

SUZANA SUHAILAWATY MD. SIDEK, IIUM, Malaysia

LANGUAGE EDITOR

ADAM ABDULLAH, IIUM, Malaysia

EDITORIAL BOARD

THAMEEM USHAMA, IIUM, Malaysia

MOHAMED ASLAM BIN MOHAMED HANEEF, IIUM, Malaysia

AWANG SARIYAN, IIUM, Malaysia

HAZIZAN MD NOON, IIUM, Malaysia

HAFIZ ZAKARIYA, IIUM, Malaysia

DANIAL MOHD YUSOF, IIUM, Malaysia

ACADEMIC COMMITTEE

MD SALLEH YAAPAR, USM, Malaysia

MOHAMMAD ABDUL QUAYUM, IIUM, Malaysia

RAHMAH AHMAD H OSMAN, IIUM, Malaysia

RASHID MOTEN, IIUM, Malaysia

SPAHIC OMER, IIUM, Malaysia

INTERNATIONAL ADVISORY BOARD

SYED ARABI IDID (Malaysia)

OSMAN BAKAR (Malaysia/Brunei)

ANNABELLE TEH GALLOP (UK)

SERDAR DEMIREL (Turkey)

AZYUMARDI AZRA (Indonesia)

WAEEL B. HALLAQ (USA)

AFIFI AL-AKITI (Malaysia/UK)

IBRAHIM ZEIN (Qatar)

Al-Shajarah is a refereed international journal that publishes original scholarly articles in the area of Islamic thought, Islamic civilization, Islamic science, and Malay world issues. The journal is especially interested in studies that elaborate scientific and epistemological problems encountered by Muslims in the present age, scholarly works that provide fresh and insightful Islamic responses to the intellectual and cultural challenges of the modern world. *Al-Shajarah* will also consider articles written on various religions, schools of thought, ideologies and subjects that can contribute towards the formulation of an Islamic philosophy of science. Critical studies of translation of major works of major writers of the past and present. Original works on the subjects of Islamic architecture and art are welcomed. Book reviews and notes are also accepted.

The journal is published twice a year, June-July and November-December. Manuscripts and all correspondence should be sent to the Editor-in-Chief, *Al-Shajarah*, F4 Building, Research and Publication Unit, International Institute of Islamic Civilisation and Malay World (ISTAC), International Islamic University Malaysia (IIUM), No. 24, Persiaran Tuanku Syed Sirajuddin, Taman Duta, 50480 Kuala Lumpur, Malaysia. All enquiries on publications may also be e-mailed to alshajarah@iium.edu.my. For subscriptions, please address all queries to the postal or email address above.

Contributions: Submissions must be at least 5,500 words long. All submissions must be in English or Malay and be original work which has not been published elsewhere in any form (abridged or otherwise). In matters of style, *Al-Shajarah* uses the *University of Chicago Manual of Style* and follows the transliteration system shown on the inside back cover of the journal. The Editor-in-Chief reserves the right to return accepted manuscripts to the author for stylistic changes. Manuscripts must be submitted to the Editor-in-Chief in Microsoft Word. The font must be Times New Roman and its size 12. IIUM retains copyright to all published materials, but contributors may republish their articles elsewhere with due acknowledgement to *Al-Shajarah*.

©International Islamic University Malaysia
(IIUM)

ISSN 1394-6870



SOCIO-LEGAL IMPLICATIONS OF CROSS-BORDER MARRIAGE AMONG MUSLIMS IN MALAYSIA: AN EMPIRICAL STUDY

Muhamad Helmi Md Said¹

Noraini Md Hashim

Nora Abd. Hak

Saadah Wok

Roslina Che Soh

Abstract

Marriage is a sacred bond between a man and a woman. Such a relationship is blessed by Allah as is mentioned in the Qur'an and the traditions (Sunnah) of the Prophet (PBUH). The laws created by man are meant to streamline the conduct of marriage, apart from the already provided hukum laid down in Islam. There are people however who violate these laws due to their own ignorance and this violation affects the future of the marriage as well the people who are involved in it. A cross-border marriage is a marriage conducted without permission from the registrar of marriage in each State and its solemnisation can be contracted in Malaysia or outside Malaysia. The purpose of this study is to examine and analyse the differences in the demographic information respondents have with regard to the implications of cross-border marriage among Muslims in Malaysia. The sample consists of four hundred respondents from four regions in Malaysia. A survey using a questionnaire was the main method of collecting data. To support the empirical evidence, a semi-structured interview was also conducted in the study. The research reveals that even though the respondents were aware of the implications of cross-border marriage, a new mechanism is still required to control the occurrence of this type of marriage as it affects the people who are involved, especially the women and children.

¹ Correspondence author, mhelmisaid@ukm.edu.my

Keywords: awareness, cross-border marriage, court, implications

Introduction

The Islamic family law in Malaysia provides clear guidelines that are easily understood and observed by Muslims who wish to marry. This is so because the particular law articulates specific provisions that assist in the management of matters relating to the solemnization of a marriage. A key requirement under the law is to get permission to marry from the religious authority in the particular state where a couple wishes to marry. The religious authority authorised to grant the permission is the Registrar of Marriage, Divorce, and *Ruju*² of the Islamic Religious Department and such permission must be obtained before the wedding solemnisation. Despite the fact that the available laws relating to the solemnisation of marriage are reasonably clear, such laws are still violated, and this is primarily evident in the conduct of cross-border marriage. *Muhammad Naṣrān* explains that cross-border marriage refers to marriage solemnised by *Wālī Hākim* which contradicts the state Islamic Family Law as the parties to such a marriage have failed to get prior approval or permission to marry from the Registrar of Marriage.³ This issue is not new in today's society but it has become rampant and is widely covered by the local newspapers and electronic media.⁴ Other than publicising its rampant occurrence media reports also indirectly influence 'interested' members of society to go for this alternative way of getting married.

In view of the increasing occurrence of cross-border marriage, the research undertaken seeks to investigate the assumption that

² Section 2 of Islamic Family Law (Federal Territories) Act 1984 defines Registrar as the Assistant Registrar of Marriage, Divorce and *Ruju*^c for Muslims who is appointed by the YDP Agong under section 28 of IFLFTA 1984 and includes both the Registrar and Assistant Registrar.

³ Mohd Naṣrān (et al.) "*Perkahwinan Luar Negara Tanpa Kebenaran di Selatan Thailand*," (Fakulti Pengajian Islam, First edition, 2008), 28.

⁴ *BHOnline*, "Yang Pasti Kami Tidak Kahwin Lari Kata Alyah," (September 18, 2014), <http://www.bharian.com.my/node/6590>

cross-border marriage actually leads to problems in marriage. The problems involve uncertainties in determining the status of the marriage and the status of other claims related to the marriage, including matters pertaining to children and inheritance. There is therefore an urgent need for a study to propose solutions to these issues.

(i) Research Methodology

This research uses both the quantitative and qualitative approaches. A survey was conducted in selected states representing four regions namely the Northern, Central, East and South regions of Malaysia. A questionnaire was administered to collect data from 400 respondents. A semi-structured interview was also conducted with informants who have the experience directly or were indirectly involved in cross-border marriage. The data were analysed using SPSS version 22.

(ii) Research Objective

The purpose of this study is to examine and analyse the differences in demographic information of respondents with regard to the implications of cross-border marriage among Muslims in Malaysia.

Islamic Law Perspective

Islam is a perfect and complete religion in all aspects. In the construction of the family institution, Islam has set its own rules and regulations in preserving the quality of a marriage so that it will be a harmonious one and receive blessings from Allah (SWT). This specific area of family management is called *al-aḥwāl al-syakṣiyyah* (Islamic Family Law).

The discussion in the chapter on *wālī* or guardian and problems relating to it by Islamic scholars is found to be relevant and related to the issue of cross-border marriage. Thus, it is relevant to address and highlight the issue of guardianship of marriage discussed by the Islamic scholars.

Al-Wilāyah or guardianship is derived from the word *wālī* which literally means helper or person who has the power to be a

protector.⁵ The literal definition of the word is explained in the Qur'an;

Say: "Who is it that can screen you from Allah if it be His wish to give you punishment or to give you mercy?" nor will they find for themselves, besides Allah, any Protector or Helper."⁶

There are four qualifications needed for a person to be eligible as a marriage guardian or *wālī*: firstly, authority due to fatherhood; secondly, authority due to *‘Aṣābah* characteristic (as a close relative in case of inheritance);⁷ thirdly, authority due to freeing a slave and lastly, authority due to empowerment as a king or ruler.⁸

Technically, guardianship in marriage means power or authority given under the Islamic Law to a male person to contract the marriage of a woman under his care and guardianship.⁹ As the consent of a *wālī* is an important factor that determine the validity of marriage, any marriage without such a consent is considered null and void.¹⁰

There are several verses in the Qur'an that highlight the importance of the presence of a *wālī* and getting his consent in a marriage. For example, in the case of a widow or divorcee, although she can represent herself and is capable of giving her consent for the marriage without her *wālī*'s, she nonetheless still needs her *wālī* to be present during the actual marriage ceremony. This is to avoid any mischief or harm from happening to her. In the Qur'an Allah states:

When you divorce women, and they fulfil the term of

⁵ Wahbah al-Zuhaili, *al-Fiqh al-Islāmī wa Adillatuhu*, (Damascus: Gema Insani Dar al-Fikir Vol. 9, 2011), 178.

⁶ *Surah al-Ahzab*: Verse 17.

⁷ N.a, "Wālī or Guardian in Islam," Retrieved www.islam.gov.my/sites/default/files/wali_in_Islam.pdf on 30 July 2015.

⁸ ‘Abd al-Rahman al-Jazīrī. *Kitāb al-Fiqh ‘alā al-Madhāhibi al-Arba‘ah*, (Al-Qāhirah: Dār Ihya’ al-Turāth al-‘Arabī, 7th edn, vol.4, 1986), 27.

⁹ Hasan Salleh "Asas Kekeluargaan Islam: Bahasan Empat Mazhab: Syaḥī‘i, Hanafi, Maliki dan Hanbali," (Kuala Lumpur: Dewan Bahasa dan Pustaka, 1989), 42.

¹⁰ ‘Abd al-Rahman al-Jazīrī. *Kitāb al-Fiqh ‘alā al-Madhāhibi al-Arba‘ah*, 27.

their ([‘]iddah), do not prevent them from marrying persons of their choice, if they mutually agree on equitable terms. This instruction is for all amongst you, who believe in Allah and the Last Day. That is (the course of making for) most virtue and purity amongst you. And Allah knows and you know not.¹¹

In another verse, Allah has mentioned in the Qur’an that a widow is entitled to choose a man should she want to get married after completing her period of [‘]iddah. Allah says;

If any of you die and leave widows behind, they shall wait concerning themselves four months and ten days. When they have fulfilled their term, there is no blame on you if they dispose of themselves in a just and reasonable manner. And Allah is well acquainted with what you do.¹²

This verse contains a command from Allah to the wives whose husbands die, that they should observe a period of [‘]iddah of four months and ten nights, including the cases where the marriage was consummated or otherwise, according to the consensus of Islamic scholars.¹³ In the case of a widow whose husband dies while she is pregnant, her term of [‘]iddah ends when she gives birth, even if it occurs after her husband dies.¹⁴ Thus, it is clear from these verses that a widow or a divorcee has a right to get married even without the consent of her *wālī* or guardian.

There are a few *hadith* that narrate the issue of guardianship in marriage;

Şufyān reported on the basis of the same chain of transmitters (and the right words are):

A woman who has been previously married (ṭayyib) has

¹¹ *Surah al-Baqarah*: Verse 232.

¹² *Surah al-Baqarah*: Verse 234.

¹³ Shaykh Şaff al-Rahman Al-Mubarakpuri, “*Tafsir Ibn Kathir: English Translation*,” Volume 1, (Riyadh: Darussalam Publishers and Distributor, Second edition, 2003), 656.

¹⁴ *Ibid.*, 657.

more right to her person than her guardian and the virgin father must ask her consent being her silence. At times he said: her silence is her affirmation.¹⁵

ʿAʿishah related that one asked the Prophet SAW (pbuh): In the case of a young girl whose parents marry her off, should her permission be sought or not? He replied: “yes” she must give her permission. She then said: “But a virgin would be shy, O Messenger of Allah! He replied: “her silence is considered as her permission.¹⁶

ʿAʿishah reported the Apostle of Allah (pbuh) as saying: The marriage of a woman who marries without the consent of her guardians is void. (He said these words three times). If there is cohabitation, she gets her dower for the intercourse her husband has had. If there is a dispute, the sultan is the guardian of one who has none.¹⁷

It was narrated from ʿAʿishah: “A girl came to her and said: ‘My father married me to his brother’s son so that he might raise his own status thereby, and I was unwilling.’ She said: ‘Sit here until the Prophet comes.’ Then the Messenger of Allah came, and I told him (what she had said) He sent word to her father, calling him, and he left the matter up to her. She said: ‘O Messenger of Allah, I accept what my father did, but I wanted to know whether women have any say in the matter.’¹⁸

From the above narration of *hadith*, it can be concluded that it is a

¹⁵ Imām Muslim, “*Saḥīḥ Muslim, Vol. 2 Rendered into English*,” (ʿAbd al-Ḥamīd Ṣiddiqī, Adam Publishers & Distributors, Revised Edition, 1999), 352.

¹⁶ *Ibid.*, 353.

¹⁷ Aḥmad Ḥasan, “*Sunan Abū Dāwūd: English Translation with Explanatory Notes*,” *hadith no 2078*, (Lahore: Sh Muhammad Ashraf Publishers 1sted, 1984), 557.

¹⁸ Imam Hafiz Abu ʿAbd al-Rahman and ʿAhmad Shuʿaib al-Nasāʿī, *hadith no.3271 in “English Translation of Sunan al-Nasāʿī,”* (Darussalam, 1st ed, Vol. 4, 2008), 124-125.

task of the guardian or *wālī* father to consult his daughter for her consent before he marries her off if she is a virgin. Her consent can be further deduced and understood from her silence. If a woman is a widow or divorcee, she is entitled to give her consent without any interference from her guardian. Since Islam is a naturally balanced and fair religion, the rights of women have been given due consideration in this.¹⁹ It prohibits a woman's marriage without her consent. Islam guaranteed upon women these rights at the time when they were treated like chattels where they were tied, untied and sold like animals during the period of ignorance (*jāhiliyyah*).²⁰

The majority of Muslim scholars have agreed that the consent of a *wālī* or guardian in a marriage is essential and forms one of the pillars in a valid marriage contract.²¹ This view is based on several evidences stipulated in the Qur'an and the Hadith;

A verse from the Qur'an states;

When you divorce women, and they fulfil the term of their (*ʿiddah*), do not prevent them from marrying persons of their choice, if they mutually agree on equitable terms. This instruction is for all amongst you, who believe in Allah and the Last Day. That is (the course making for) most virtue and purity amongst you. And Allah knows and you know not.²²

Related to the above verse is a *hadith* that explained the reason for the revelation of the verse. In this *hadith* one of the companions of the Prophet Muhammad (pbuh) Ma^cqil b Yasar said:

I had a sister and I was asked to give her hand in marriage. My cousin came to me and I married him. He then divorced her one revocable divorce. He abandoned her till her waiting period passed. When I was asked to give her in marriage, he again came to me and asked her in marriage. There upon I said to him: No,

¹⁹ Ibid., 125.

²⁰ Ibid.

²¹ Ibn Qudāmah, *al-Mughni*, vol 9, Third edition. (Riyadh: Dar ʿAlam al-Kutub, 1998), 345.

²² *Surah Al-Baqarah*: Verse 232.

by Allah, I will never marry her to you. This case was referred to Prophet Muhammad (pbuh). Then the following verse was revealed in connection with my case.²³

With reference to the above *hadith*, Prof Ahmad Hasan opined that if a divorced woman wants to go back to her husband the guardian should not prevent her from marriage.²⁴ The husband can take her back (*ruju*⁶) in the case of revocable divorce during the waiting period, but if this period has lapsed he can take her back by re-solemnising the marriage.²⁵

The above *hadith* thus shows that the consent of the guardian is a vital element in a contract of marriage. The importance is indicated by the fact that the Prophet (pbuh) has specifically mentioned and elaborated on the matter in the afore-mentioned *hadith*.

‘A’ishah reported the Apostle of Allah (pbuh) as saying: The marriage of a woman who marries without the consent of her guardians is void. (He said these words) three times. If there is cohabitation, she gets her dower for the intercourse her husband has had. If there is a dispute, the sultan is the guardian of one who has none.²⁶

Abū Mūsā reported the Prophet Allah (pbuh) as saying: There is no marriage without the permission of a guardian.²⁷

The above *hadith* shows that the consent of the guardian is necessary for a marriage to be valid. If a woman marries without the consent of her guardian her marriage is considered as null and void.²⁸

²³ Aḥmad Ḥasan, “*Sunan Abū Dāwud: English Translation with Explanatory Notes*,” hadith no 2082, 558.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Aḥmad Ḥasan, “*Sunan Abū Dāwud: English Translation with Explanatory Notes*,” hadith no 2078, 557.

²⁷ Ibid., 558.

²⁸ Ibid., 557.

Imām Al-Nawāwī in his writing *Minhaj al-Tālibīn* mentioned that:

“A woman cannot give herself in marriage, even though her guardian should authorise her to do so. A father can dispose as he pleases the hand of his daughter without asking for her consent, whatever her age may be provided she is still a virgin.”²⁹

In contrast according to the School of Hanafi, a woman who has attained the age of puberty and is sane can solemnise the marriage by herself without the consent of *wālī*. In *Hidāya*, Shaykh Burhān al-Dīn Abī al-Ḥasan mentioned that:

“A woman who is an adult and of sound mind may be married by virtue of her own consent, although the contract may not have been made or acceded to by her guardians; and this whether she is a virgin or a woman previously married. This is the opinion of Imām Abū Ḥanīfah and Abū Yūsuf.”³⁰

The guardian or *wālī* can only object to the marriage when he finds that the husband-to-be is not of equal status to the woman. Shaykh Burhān al-Dīn Abī al-Ḥasan in *Hidāya* elaborated that:

“The marriage is illegal if there be an inequality between the parties and it is a duty of the guardian to object to the marriage. This is the view from Imām Abū Ḥanīfah and Imam Abū Yūsuf”.³¹

Therefore according to Abū Ḥanīfah and Abū Yūsuf, a woman can contract her own marriage without the consent of her *wālī* provided that she has attained the age of puberty and is sane whether she is still a virgin or not.³² Abū Ḥanīfah and Abū Yūsuf based their argument

²⁹ Al-Nawāwī, “*Minhaj al-Tālibīn, a Manual of Muhammadan Law According to the School of Shafī*,” 1914, 284.

³⁰ Burhān al-Dīn Abī al-Ḥasan ‘Alī Marghinani, “*The Hidāya*,” vol 1, (Pakistan: Darul Ishaat, first edition, 2005), 65.

³¹ Ibid.

³² Ibn al-Humam, *Fath al-Qādīr*, vol. 3 (Qāhirah: al Halabi, 1970), 225.

on several evidences found in the Qur'an and Hadith. These are as follows:

So if a husband divorces his wife irrevocably, he cannot, after that, re-marry her until after she has married another husband and he has divorced her. In that case, there is No blame on either of them if they reunite, provided they feel that they can keep the limits ordained by Allah. Such are the limits ordained by Allah, Which he makes plain to those who understand.³³

When you divorce women and they fulfil the term of their (^ḥiddah), do not prevent them from marrying persons of their choice, if they mutually agree on equitable terms. This instruction is for all amongst you, who believe in Allah and the Last Day. That is (the course making for) most virtue and purity amongst you. And Allah knows and you know not.³⁴

If any of you die and leave widows behind, they shall wait concerning themselves four months and ten days. When they have fulfilled their term, there is no blame on you if they dispose of themselves in a just and reasonable manner. And Allah is well acquainted with what you do.³⁵

Aḥmad al-Ghandur in his book *al-Aḥwāl al-Syakḥṣiyyah fī al-Tashrī^ḥ al-Islāmi ma^ḥa Bayāni Qānūn al-Aḥwāl li al-Qadā fī Maḥākimi al-Kuwait* opined that the above verses indicate that in marrying, the woman has performed an act that affects only her because she is fully competent and knows the consequences of a marriage. Therefore, she does not need a guardian to marry her off.³⁶

It was narrated from ibn ^ḥAbbās that the Messenger of

³³ *Surah al-Baqarah*: Verse 230.

³⁴ *Surah al-Baqarah*: Verse 232.

³⁵ *Surah al-Baqarah*: Verse 234.

³⁶ Aḥmad al-Ghandur, *al-Aḥwāl al-Syakḥṣiyyah fī tashrī^ḥ al-Islāmi ma^ḥa Bayāni Qānūn al-Aḥwāl li al-Qadā Fī Maḥākimi al-Kuwait* (Quwait: Maktabah al-Falāḥ, 2006), 153.

Allah said: “A previously married woman has more right to decide for herself (with regard to marriage) than her guardian, and a virgin should be asked for permission with regard to marriage, and her permission is her silence.”³⁷

The *hadith* shows that although the consent of the guardian is a prerequisite for the woman to get married, the consent of the woman herself is equally essential.³⁸ Thus, it is understood from the *hadith* that a woman is qualified to give consent in her marriage.

After careful analysis of the above verses and *hadith*, it becomes clear that the scholars’ view stating that a woman cannot get married without permission from her *wālī* is preferable because of the existence of strong and concrete evidence from the Qur’an and Hadith, compared to the other view. Furthermore, a marriage institution does not only involve a husband and a wife but also involves family members from both sides and also members of the society. Thus, the approval and permission from family members especially the *wālī* on the bride’s side is essential in maintaining and keeping the family relationships. The approval of the *wālī* is considered as *maṣlahah* for the woman’s marriage. Making the consent of the *wālī* essential in determining the validity of a woman’s marriage however, does not mean that the woman’s right in deciding her marital affairs is put aside as it is considered as a step in ensuring that her dignity is well respected and appreciated, especially by her husband-to-be. In carrying out his responsibilities, a *wali* cannot ignore the woman’s view and any decision relating to the marriage must be done by ensuring that all parties are agreeable and comfortable with it.

An old decided case of *Syed °Abdullah al-Shatiri v Shariffa Salmah*³⁹ set an example on the importance of seeking the views of a virgin daughter even though the father is bestowed with the power and authority to compel his daughter to get married. The facts of the

³⁷ Ḥāfīz Abū °Abd al-Raḥman and Aḥmad bin Shu°aib bin °Alī al-Nasā’ī, *hadith* no.3262 in “*English Translation of Sunan al-Nasā’ī*,” (Darussalam, 1sted, Vol. 4, 2008), 120.

³⁸ *Ibid.*, 121.

³⁹ *Syed °Abdullah al-Shatiri v Shariffa Salmah* [1959]1 MLJ 137.

case are; it was an appeal from an order made by the Syariah Court declaring a marriage solemnised by the appellant between his daughter, the respondent and her husband as null. The father appealed against the order contending that he has all the right to contract his daughter's marriage due to his position as *wālī mujbir*. In this case, the Syariah Court of Appeal accepted the argument of the appellant and declared the marriage to be valid. The daughter and her husband were later divorced by *khulu*^c.⁴⁰ It is thus submitted that, even though there is the father or anyone else with power as “*wālī mujbir*”, the view of the daughter must be considered in matters relating to marriage. Furthermore, the parents' act of asking the opinion of their daughter in this matter would encourage healthy communication between them and avoid unhealthy decisions.

Apart from that, a *wālī* must comply with the conditions as stipulated under Islamic Law regarding the capacity to act as a *wālī*, as well as any laws relating to matters in the conduct of marriage. Ignorance on the part of the couple and family members regarding the capacity to act as a *wālī* in a marriage could sometimes lead to emotional distress and family problems as reported in the media, where families have quarreled and separated due to such issues.⁴¹ Thus in tackling the problems related to cross-border marriage that are rampantly occurring in Malaysia, it is the duty of the court, Assistant Registrar and Registrar of Marriage in each state to investigate and scrutinise in detail the capacity of the *wālī* before declaring a marriage as valid and registrable in Malaysia. In the case of *Re Sharmyla bte Aziz*,⁴² the court used its power to determine the validity of a marriage solemnised in Songkhla, Thailand. In this case, the first and second applicant contracted their marriage at the Islamic Religious Council of Songkhla, Thailand by using the service of a *wālī ḥākim*. They resorted to *wālī ḥākim* because the father of the first applicant was unable to enter Thailand due to problems with his

⁴⁰ Section 49(1) of Islamic Family Law (Federal Territories) Act 1984 defines *Khulu*^c is a “divorce where the husband does not agree to voluntarily pronounce a *ṭalāq*, but the parties agree to a divorce by redemption.”

⁴¹ “Syariah court declared that marriage of Sham Kamikaze and his wife is null,” (2014, June 27), [http:// www2.bharian.com.my/articles](http://www2.bharian.com.my/articles).

⁴² *Re Sharmyla bte Aziz* [2006] 4, Shariah Law Reports, 146.

travel document. The issue before the court was whether the marriage was valid according to Islamic Law or not. The court held that the marriage was valid and allowed the parties to register it as the requirements of a valid marriage were fulfilled. It was concluded that the judge in this case had scrutinised and examined everything all documents including their travel documents. The judge basically had disposed his responsibility and played an important role in verifying the validity of the marriage.

Malaysian Legal Perspective

There are two effects entailed in cross-border marriage. First, such marriage contradicts the Islamic Family Law (Federal Territories) Act 1984 and thus is not registrable.⁴³ Second, if the said marriage contradicts any provisions in the Act but is valid according to the Islamic Law, it may still be registrable provided there is an order from the Court.⁴⁴ This gives Muslim couples the opportunity to still legalise and register their cross-border marriage. They will however be prosecuted and penalised before the marriage can be registered.⁴⁵

In the first effect where Muslim couples contracted their marriage outside Malaysia and their marriage is not in accordance with Islamic Law, the marriage is void. This basically illustrates the consequences of having cross-border marriage. In the case of *Re Zuraini Bt Mohamed & Anor*,⁴⁶ the first and second applicants filed an application to register their marriage that had been contracted in Thailand. They used the service of *wālī ḥākīm* in the Pattani District of Thailand. In this case however the officer whose service was used had the authority to act as a *wālī ḥākīm* in the Pattani District only, and his power did not extend to other provinces. The particular officer had travelled across the border in order to seek approval and consent from the bride as she was in the Rantau Panjang District of Kelantan. Only after obtaining her consent did the officer and the

⁴³ Section 12(1) of the Islamic Family Law (Federal Territories) Act 1984.

⁴⁴ Section 12(2) of the Islamic Family Law (Federal Territories) Act 1984.

⁴⁵ Noraini Md Hashim "Registration of Marriage in Malaysia: A Socio Legal Study of Runaway Marriages among Muslims," (Ph.d thesis, International Islamic University Malaysia (2009), 160.

⁴⁶ [2008], 3, SHLR, 97.

groom return to the Pattani District of Thailand. Subsequently, the marriage ceremony was carried out without the presence of the bride. The court in this case had to determine the validity of the marriage as the bride was not present at the marriage ceremony. The court held that the marriage between the applicants was invalid. The court's view was that the proper forum to solemnise the marriage was in Rantau Panjang, Kelantan and not in Pattani, Thailand as she was at that time domicile in Kelantan. This shows that even though the couples can choose to contract their marriage outside Malaysia and without the approval of the authorised body, they still have to register their marriage according to the laws in Malaysia. It is submitted that the judge in this case had exercised his power in determining the validity of the said marriage. He made a comparison and drew the effects of contracting a marriage in a Malaysian territory and a Thailand territory.

Subject to Section 18, if the Registrar of Marriage is satisfied with the truth of the matters stated in the applicants' application for the legality of the intended marriage, and where the man is already married and the permission required under Section 23 has been granted by the court, the Registrar of Marriage shall at any time after the application and upon payment of the prescribed fee, issue to the applicants their permission to marry in the prescribed form.⁴⁷ From this we can deduce that the permission to marry can only be issued by the Registrar of Marriage after all the conditions in Section 18 or 23 of Islamic Family Law Act or Enactments are satisfied.

The Registrar of Marriage shall refer the application to a Syariah Judge who has jurisdiction in the place where the bride resides if she is a minor below the age specified in Section 8; a divorcee (*janda*) on whom Section 14 (3) shall apply or a woman who has no *wālī* from *naṣab* according to Islamic Law.⁴⁸ If the Syariah Judge is satisfied with the truth of the matters stated in the application and the legality of the intended marriage such that the case merits the giving of permission for the purposes of Section 8, permission for the purposes of subsection 14 (3), or consent to the marriage being solemnised by *wālī Raja* for the purposes of Section

⁴⁷ Section 17 of the Islamic Family Law (Federal Territories) Act 1984.

⁴⁸ Section 18(1) of the Islamic Family Law (Federal Territories) Act 1984.

13 (b), he shall at any time after reference of the application to him and upon payment of the prescribed fee, issue to the applicants his permission to marry in the prescribed form.⁴⁹ Thus, any Muslim parties who intend to contract their marriage must get the permission to marry from a Registrar of Marriage or a Syariah Judge having jurisdiction in their place of residence. This is provided in Section 19 of the Islamic Family Law (Federal Territories) Act 1984.⁵⁰ It can be implied from the context of Section 19 that where a marriage is carried out without the permission of a Registrar of Marriage or a Syariah Judge, the parties will be subjected to the penalty provided by the same law.

The Yang di-Pertuan Agong may appoint any qualified public officer to be a Chief Registrar of Muslim Marriages, Divorces, and *Ruju*^c for the purposes of Islamic Family Law (Federal Territories) Act 1984.⁵¹ The person who has been appointed shall have general supervision and control over the Registrars and the registration of marriages, divorces, and *ruju*^c under this Act.⁵² In the case of *Khori Bte Ahmad v. Abu Samah Bin Abd Halim*,⁵³ the marriage between the parties was solemnised by an appointed *jurunikah*. In this case, the said *jurunikah* was also appointed as *wālī raja*. After the marriage, the certificate of marriage was issued by an Assistant Registrar of marriage. In this case the issue was whether the marriage contracted by the parties using *jurunikah* fulfilled requirements in the Administration of Islamic Family Law Enactment 1985. The court held that the marriage was voidable and could not be registered accordingly.

The Yang di-Pertuan Agong may also appoint qualified persons to be Senior Registrars, Registrars, or Assistant Registrars of

⁴⁹ Section 18(2) of the Islamic Family Law (Federal Territories) Act 1984.

⁵⁰ According to section 19 of the Islamic Family Law (Federal Territories) Act 1984, provides: no marriage shall be solemnised unless a permission to marry has been given: (a) by the Registrar under section 17 or by the Syariah Judge under section 18, where the marriage involves a woman resident in the Federal Territory; or (b) by the proper authority of a State, where the marriage involves a woman resident in that State.

⁵¹ Section 28(1) of the Islamic Family Law (Federal Territories) Act 1984.

⁵² *Ibid.*

⁵³ [2005] 2 SHLR 127.

Muslim Marriages, Divorces, and *Ruju*^c for *kariah masjid*⁵⁴ in the Federal Territories as may be specified in the appointments.⁵⁵ For the purposes of granting permission for marriages to be contracted in a foreign country, the Yang Di Pertuan Agong may appoint any member of the diplomatic staff to be a Registrar of Marriages, Divorces and *Ruju*^c in that country.⁵⁶ It is submitted that failure to comply with this provision does not render a marriage as invalid, but the parties involved will face prosecution and will be penalised by the court.⁵⁷

Fatwa in Malaysia

In Malaysia, the laws and the Fatwa Committee of the National Council of Islamic Religious Affairs Malaysia still consider cross-border marriage as valid if the location exceeds two *marhalah* and such marriage fulfils the conditions as prescribed by the laws and Shariah rulings. The 52nd Conference of Fatwa Committee of the National Council of Islamic Religious Affairs Malaysia held on 1 July 2002 deliberated on the status of cross-border marriage in the Southern Thailand. The Conference resolved that a marriage contracted outside the country is valid so long as it complies with requirements imposed by Islamic Law. Furthermore, the conference found that there was no court decision preventing a woman from marrying on legal grounds when the place of marriage is more than two *marhalah* and if such marriage is solemnised by a *wali* legally

⁵⁴ *Kariah Masjid* as defined in section 2 of the Islamic Family Law (Federal Territories) Act 1984 denotes ‘in relation to a mosque, means the area, the boundaries of which are determined under section 75 of the Administration Act.’

⁵⁵ Section 28(2) of Islamic Family Law (Federal Territories) Act 1984.

⁵⁶ Section 28(3) of Islamic Family Law (Federal Territories) Act 1984.

⁵⁷ Noraini Md Hashim “Registration of Marriage in Malaysia: A Socio Legal Study of Runaway Marriages among Muslims,” (Ph.d thesis, International Islamic University Malaysia (2009), 161. According to section 39 of the Islamic Family Law (Federal Territories) Act 1984, provides “Any person who, not being authorised thereto under this Act, solemnises or purports to solemnise any marriage, commits an offence and shall be punished with a fine not exceeding one thousand ringgit or with imprisonment not exceeding six months or with both such fine and imprisonment”.

authorised under a valid law of that country.⁵⁸

Apart from that, the conference had also discussed the issue where parties in cross-border marriage intentionally choose a place situated more than two *marhalah* from the place of residence of the *wali* or guardian according to the *Mazhab Shafie*. The conference ruled that such marriage is valid under the *Mazhab Shafie* so long as it is solemnised by an authorised religious officer of the place of marriage.⁵⁹

Therefore, it is submitted that cross-border marriage in Malaysia is still recognised as a valid marriage legally if all the conditions are satisfied by Muslim couples.

Results

(i) *Descriptive Analysis*

(a) **Implications for Practising Cross-Border Marriage**

The questionnaire asked respondents about the implications of practising cross-border marriage (Table 2.1). Eleven items on the questionnaire have been answered. The highest items are: difficulty of registering their children in school (80.2%); difficulty of registering the birth of their children (80.1%); and difficulty in applying for divorce from the court (78.7%). Additionally more than three-quarters of the respondents (77.6%) have been charged and

⁵⁸ The 52nd Conference (exchanging views) of the Fatwa Committee of the National Council of Islamic Religious Affairs Malaysia accessed via [http: E.fatwa.gov.my](http://E.fatwa.gov.my). Accessed on 21st May 2013.

⁵⁹ The 52nd Conference (exchanging views) of the Fatwa Committee of the National Council of Islamic Religious Affairs Malaysia accessed via [http: E.fatwa.gov.my](http://E.fatwa.gov.my). Accessed on 21st May 2013. In the case of *Jaafar Bin Sidek V. Fatimah Bt Abdullah*, the court held that the marriage between parties was valid and the marriage can be registered accordingly. See [2012] 4 SHLR 20. However in my view, the concept of two *marhalah* for the purpose of such a marriage only suitable for a marriage held abroad and does not make it possible for the parties to the marriage to return to the homeland in a given period as provided in section 31 of the Act of Islamic family law. In this situation, if the marriage is solemnised that does not fulfill marriage requirement, that is the absence of *wali*, only then *wali Am* will replace *wali mujbir* to solemnise the marriage. Therefore, the fatwa on this issue should be revised as it is not really suitable in the current situation.

penalised by the court and 73.6% found that it was very difficult to register their marriage and have the marriage acknowledged by the authority. The lowest item is that after getting married they were involved in illegal activities at the border (61.3%). Overall, the results indicate that 71.2% of the respondents agreed with all the implications of practising cross-border marriage.

Table 2.1 Implications for Practising Cross-Border Marriage

No.	Implications from Cross-border Marriage	Level of Agreement (%)*					Mean	SD	%
		1	2	3	4	5			
1	I find it difficult to register my marriage.	-	9.0	31.3	42.8	17.0	3.678	0.860	73.6
2	I find it difficult for my marriage to be acknowledged by the authority.	0.3	6.3	31.5	49.5	12.5	3.678	0.781	73.6
3	I find it difficult to register the birth of my children.	-	2.0	25.5	42.8	29.8	4.003	0.796	80.1
4	I find it difficult to register my children in school.	-	2.8	24.8	41.5	31.0	4.008	0.818	80.2
5	I have been charged and penalised by the court.	0.3	1.5	27.3	52.0	19.0	3.880	0.729	77.6
6	I find it difficult to apply for a divorce from the court.	0.3	2.3	28.2	42.5	26.8	3.933	0.812	78.7
7	This cross-border marriage leads to the destruction of my family.	2.3	14.5	35.5	38.3	9.5	3.383	0.924	67.7
8	I am the one who has caused a gap in the relationship among the family members.	2.0	11.8	46.3	32.8	7.2	3.315	0.847	66.3
9	I have been involved in bad activities after getting married at the border.	6.0	21.3	40.3	25.5	7.0	3.063	0.993	61.3
10	I am the one who has caused disunity in my family.	3.0	19.5	42.5	28.7	6.3	3.158	0.911	63.2
11	I have destroyed my future.	4.3	26.0	33.3	29.5	7.0	3.090	0.999	61.8
Total							3.562	0.643	71.2

*1=strongly disagree (1-20%), 2=disagree (21-40%), 3=somewhat agree (41-60%), 4=agree (61-80%), 5=strongly agree (81-100%)

(ii) Inferential Analysis

(a) Independent t-Test for Implications of Cross-Border Marriage with Demographic Information

For the independent t-Test, implications of cross-border marriage were tested with gender (male-female) and residence (rural-urban) dichotomy.

Independent t-Test for Implications of Cross-Border Marriage by Gender

The study looks at the differences between implications of cross-border marriage according to gender (Table 2.2). None of the items are found statistically significant.

Generally, results of the study show that there are no significant differences between male and female in terms of the implications of cross-border marriage ($t=-0.393$, $df =398$, $p=.694$). However there is a tendency for females ($M=3.576$, $SD=0.620$) to be higher than males ($M=3.550$, $SD=0.661$) in terms of awareness of the implications of cross-border marriage.

Table 2.2 Independent t-Test for Implications of Cross-Border Marriage by Gender

Variable	Gender	N	Mean	SD	t	df	p																																																																
I find it difficult to register my marriage.	Male	220	3.705	0.860	0.695	398	.488																																																																
	Female	180	3.644	0.863				I find it difficult for my marriage to be acknowledged by the authority.	Male	220	3.705	0.799	0.765	398	.445	Female	180	3.644	0.759	I find it difficult to register the birth of my children.	Male	220	4.023	0.791	0.561	398	.575	Female	180	3.978	0.805	I find it difficult to register my children in school.	Male	220	4.027	0.822	0.534	398	.594	Female	180	3.983	0.815	I have been charged and penalised by the court.	Male	220	3.886	0.747	0.193	398	.847	Female	180	3.872	0.709	I find it difficult to apply for a divorce from the court.	Male	220	3.896	0.840	-1.009	398	.314	Female	180	3.978	0.776	This cross-border marriage leads	Male	220	3.341
I find it difficult for my marriage to be acknowledged by the authority.	Male	220	3.705	0.799	0.765	398	.445																																																																
	Female	180	3.644	0.759				I find it difficult to register the birth of my children.	Male	220	4.023	0.791	0.561	398	.575	Female	180	3.978	0.805	I find it difficult to register my children in school.	Male	220	4.027	0.822	0.534	398	.594	Female	180	3.983	0.815	I have been charged and penalised by the court.	Male	220	3.886	0.747	0.193	398	.847	Female	180	3.872	0.709	I find it difficult to apply for a divorce from the court.	Male	220	3.896	0.840	-1.009	398	.314	Female	180	3.978	0.776	This cross-border marriage leads	Male	220	3.341	0.945	-0.995	398	.320								
I find it difficult to register the birth of my children.	Male	220	4.023	0.791	0.561	398	.575																																																																
	Female	180	3.978	0.805				I find it difficult to register my children in school.	Male	220	4.027	0.822	0.534	398	.594	Female	180	3.983	0.815	I have been charged and penalised by the court.	Male	220	3.886	0.747	0.193	398	.847	Female	180	3.872	0.709	I find it difficult to apply for a divorce from the court.	Male	220	3.896	0.840	-1.009	398	.314	Female	180	3.978	0.776	This cross-border marriage leads	Male	220	3.341	0.945	-0.995	398	.320																				
I find it difficult to register my children in school.	Male	220	4.027	0.822	0.534	398	.594																																																																
	Female	180	3.983	0.815				I have been charged and penalised by the court.	Male	220	3.886	0.747	0.193	398	.847	Female	180	3.872	0.709	I find it difficult to apply for a divorce from the court.	Male	220	3.896	0.840	-1.009	398	.314	Female	180	3.978	0.776	This cross-border marriage leads	Male	220	3.341	0.945	-0.995	398	.320																																
I have been charged and penalised by the court.	Male	220	3.886	0.747	0.193	398	.847																																																																
	Female	180	3.872	0.709				I find it difficult to apply for a divorce from the court.	Male	220	3.896	0.840	-1.009	398	.314	Female	180	3.978	0.776	This cross-border marriage leads	Male	220	3.341	0.945	-0.995	398	.320																																												
I find it difficult to apply for a divorce from the court.	Male	220	3.896	0.840	-1.009	398	.314																																																																
	Female	180	3.978	0.776				This cross-border marriage leads	Male	220	3.341	0.945	-0.995	398	.320																																																								
This cross-border marriage leads	Male	220	3.341	0.945	-0.995	398	.320																																																																

to the destruction of my family.	Female	180	3.433	0.898			
I am the one who has caused a gap in the relationship among the family members.	Male	220	3.259	0.866			
	Female	180	3.383	0.821	-1.461	398	.145
I have been involved in bad activities after getting married at the border.	Male	220	3.027	1.029			
	Female	180	3.106	0.948	-0.784	398	.433
I am the one who has caused disunity in my family.	Male	220	3.141	0.938			
	Female	180	3.178	0.879	-0.402	398	.688
I have destroyed my future.	Male	220	3.050	1.030			
	Female	180	3.139	0.962	-0.884	398	.377
Overall implications for practising cross-border marriage	Male	220	3.550	.661			
	Female	180	3.576	.620	-0.393	398	.694

Independent t-Test for Implications of Cross-Border Marriage by Residence

Data were further analysed on differences between implications of cross-border marriage (Table 2.3) in terms of residence (rural and urban). Within the items there is one item that is found to be not significant, that is, respondents have been charged and penalised by the court after practising cross-border marriage. In this item respondents from urban residence (M=3.911, SD=0.708) and rural residence (M=3.805, SD=0.776) received similar punishment in terms of implications for practising cross-border marriage.

Overall urban residents (M=3.671, SD=0.636) are higher in terms of implications for practising cross-border marriage compared to rural residents (M=3.302, SD=0.582), and the difference is significant with $t=5.424$, $df=398$, $p=.000$. It shows that urban people are more aware of the implications of cross-border marriage compared to rural people.

Table 2.3 Independent t-Test for Implications of Cross-Border Marriage by Residence

Variable	Residence	N	Mean	SD	t	Df	P
I find it difficult to register my marriage.	Urban	282	3.794	0.873	4.288	398	.000
	Rural	118	3.398	0.764			
I find it difficult for my marriage	Urban	282	3.770	0.809	3.700	398	.000

to be acknowledged by the authority.	Rural	118	3.458	0.662			
I find it difficult to register the birth of my children.	Urban	282	4.071	0.806	2.677	398	.008
	Rural	118	3.839	0.751			
I find it difficult to register my children in school.	Urban	282	4.082	0.816	2.824	398	.005
	Rural	118	3.831	0.799			
I have been charged and penalised by the court.	Urban	282	3.911	0.708	1.330	398	.184
	Rural	118	3.805	0.776			
I find it difficult to apply for a divorce from the court.	Urban	282	4.011	0.829	3.004	398	.003
	Rural	118	3.746	0.742			
This cross-border marriage leads to the destruction of my family.	Urban	282	3.514	0.878	4.513	398	.000
	Rural	118	3.068	0.958			
I am the one who has caused a gap in the relationship among the family members.	Urban	282	3.447	0.822	4.951	398	.000
	Rural	118	3.000	0.827			
I have been involved in bad activities after getting married at the border.	Urban	282	3.216	0.998	4.927	398	.000
	Rural	118	2.695	0.882			
I am the one who has caused disunity in my family.	Urban	282	3.305	0.864	5.164	398	.000
	Rural	118	2.805	0.927			
I have destroyed my future.	Urban	282	3.262	0.992	5.526	398	.000
	Rural	118	2.678	0.895			
Overall implications for practising cross-border marriage	Urban	282	3.671	0.636	5.424	398	.000
	Rural	118	3.302	0.582			

(b) ONEWAY ANOVA for Implications of Cross-Border Marriage with Demographic Information

For the ONEWAY ANOVA, implications of cross-border marriage were tested with the marital status and level of education dichotomy.

ONEWAY ANOVA for Implications of Cross-Border Marriage by Marital Status

The implications of cross-border marriage are tested with marital status (Table 2.4). Four items are found to be statistically significant. The first item is the difficulty of the respondents to register the birth of their children ($F=4.807$, $df =2,397$, $p=.009$). For this item, there is

a significant difference between married respondents (M=4.038, SD=0.803), divorced (M=3.588, SD=0.618), and widowed respondents (M=3.571, SD=0.514). It shows that married respondents are more aware of this difficulty compared to divorced and widowed respondents. The second item which is statistically significant is the difficulty of the respondents to register their children in school (F=6.337, df=2,397, p=.002). This clearly shows that married respondents (M=4.049, SD=0.819) are more aware of the importance of putting their children in school compared to divorced (M=3.588, SD=0.712) and widowed respondents (M=3.429, SD=0.514). The third item tests respondents that have been charged and penalised by the court. This item is found to be statistically significant (F=10.581, df=2,397, p=.000) where married respondents scored (M=3.927, SD=0.717) higher compared to divorced (M=3.412, SD=0.712) and widowed respondents (M=3.214, SD=0.579). The fourth item which tests respondents facing difficulty in applying for divorce from the court was found to be statistically significant (F=5.241, df=2,397, p=.006) where the score of the mean for married respondents (M=3.970, SD=0.815) is higher than that for divorced (M=3.471, SD=0.717) and widowed respondents (M=3.500, SD=0.519). This shows that married respondents are more aware of the consequences of the marriage compared to divorced and widowed respondents. Overall, the results show that the score for married respondents (M=3.580, SD=0.654) is higher than for divorced (M=3.364, SD=0.519) and widowed respondents (M=3.344, SD=0.337). However the differences are not statistically significant (F=1.762, df=2,397, p=.173).

Table 2.4 ONEWAY ANOVA for Implications of Cross-Border Marriage by Marital Status

Variable	Marriage Status	N	Mean	SD	F	df	p	Comparison t
I find it difficult to register my marriage.	Married	369	3.702	0.877	2.446	2, 397	.088	Not Sig.
	Divorced	17	3.529	0.515				
	Widow	14	3.214	0.579				
I find it difficult for	Married	369	3.699	0.793	2.223	2, 397	.110	Not Sig.
	Divorced	17	3.529	0.515				

SOCIO-LEGAL IMPLICATIONS OF CROSS-BORDER MARRIAGE
AMONG MUSLIMS IN MALAYSIA: AN EMPIRICAL STUDY?

my marriage to be acknowledged by the authority.	Widow	14	3.286	0.611				
I find it difficult to register the birth of my children.	Married	369	4.038	0.803				
	Divorced	17	3.588	0.618	4.807	2, 397	.009	Sig.
	Widow	14	3.571	0.514				
I find it difficult to register my children in school.	Married	369	4.049	0.819				
	Divorced	17	3.588	0.712	6.377	2, 397	.002	Sig.
	Widow	14	3.429	0.514				
I have been charged and penalised by the court.	Married	369	3.927	0.717				
	Divorced	17	3.412	0.712	10.581	2, 397	.000	Sig.
	Widow	14	3.214	0.579				
I find it difficult to apply for a divorce from the court.	Married	369	3.970	0.815				
	Divorced	17	3.471	0.717	5.241	2, 397	.006	Sig.
	Widow	14	3.500	0.519				
This cross-border marriage leads to the destruction of my family.	Married	369	3.401	0.939				
	Divorced	17	3.177	0.636	.968	2, 397	.381	Not Sig.
	Widow	14	3.143	0.770				
I am the one who has caused a gap in the relationship among the family members.	Married	369	3.309	0.855				
	Divorced	17	3.294	0.772	.347	2, 397	.707	Not Sig.
	Widow	14	3.500	0.760				
I have been involved in bad activities after getting married at the border.	Married	369	3.046	1.000				
	Divorced	17	3.059	0.899	1.412	2, 397	.245	Not Sig.
	Widow	14	3.500	0.855				
I am the one who has	Married	369	3.152	0.920				
	Divorced	17	3.177	0.951	.149	2, 397	.862	Not Sig.

caused disunity in my family.	Widow	14	3.286	0.726				
I have destroyed my future.	Married	369	3.084	1.017				
	Divorced	17	3.177	0.809	.089	2, 397	.915	Not Sig.
	Widow	14	3.143	0.770				
Overall implications for practising cross-border marriage	Married	369	3.580	0.654				
	Divorced	17	3.364	0.519				
	Widow	14	3.344	0.337	1.762	2, 397	.173	Not Sig.

ONEWAY ANOVA for Implications of Cross-Border Marriage by Level of Education

Results in Table 2.5a show the test of ONEWAY ANOVA for implications of cross-border marriage by level of education. It is found that there are five significant differences between the items.

The first item is difficulty of respondents in registering the birth of their children with $F=3.613$, $df = 2,397$, $p=.028$. For this item, respondents with primary education have the highest mean score ($M=4.220$, $SD=0.864$) compared to those with secondary ($M=4.028$, $SD=0.768$) and tertiary education ($M=3.879$, $SD=0.801$). It indicates that respondents who have education up to primary level only are more cautious about registering the birth of their children compared to respondents who have undergone secondary and tertiary education.

The second item is difficulty in registering their children in school with $F= 3.756$, $df = 2,397$, $p=.024$. For this item, respondents with only primary education ($M=4.220$, $SD=0.932$) are more aware of the difficulties of school registration for their children compared to respondents with education up to secondary level ($M=4.041$, $SD=0.770$) and tertiary education ($M=3.871$, $SD=0.833$).

The third item concerns respondents who have been charged and penalised by the court with $F=3.559$, $df=2,397$, $p=.029$. For this item those with primary education have the highest mean score ($M=3.960$, $SD=0.755$) compared to those with secondary ($M=3.945$, $SD=0.716$) and tertiary education ($M=3.742$, $SD=0.727$). It shows that respondents who have primary education only are more aware of

the penalty imposed by the court compared to respondents who have secondary and tertiary education.

The fourth item is difficulty of respondents in applying for divorce with $F= 4.439$, $df= 2,397$, $p=.012$. For this item respondents who have primary education only ($M=4.120$, $SD=0.872$) are more responsive to the difficulties of applying for divorce compared to those who have education up to secondary ($M=3.986$, $SD=0.759$) and tertiary levels ($M=3.773$, $SD=0.852$).

The fifth item that is statistically significant is cross-border marriage has destroyed the future of the respondents ($F=3.557$, $df= 2,397$, $p=.029$), where those with primary education have a higher mean score ($M=3.440$, $SD=1.033$) compared to those with secondary level ($M=3.046$, $SD=0.944$) and tertiary level ($M=3.030$, $SD=1.055$) education.

Overall there is also a significant difference between the levels of education (primary, secondary, and tertiary) in implications of practising cross-border marriage, where primary education ($M=3.778$, $SD=0.700$) respondents have higher perceptions than respondents with secondary education ($M=3.563$, $SD=0.614$) and tertiary education ($M=3.480$, $SD=0.651$) with $F=3.963$, $df=2,397$, $p=.020$. It shows that level of education does influence the different responses given by respondents with regard to the implications of cross-border marriage.

Post-hoc comparisons applying the Tukey HSD show that the mean score for the primary education group ($M=3.778$, $SD=0.700$) is significantly different from the tertiary education group ($M=3.480$, $SD=0.651$) (Table 2.5b). However, the secondary education group ($M=3.563$, $SD=0.614$) does not differ significantly from the primary or tertiary education groups.

Table 2.5a ONEWAY ANOVA for Implications of Cross-Border Marriage by Level of Education

Variable	Level of Education	N	Mean	SD	F	df	p	Comparison t
I find it difficult to register my marriage.	Primary	50	3.920	0.986	2.409	2, 397	0.91	Not Sig.
	Secondary	218	3.661	0.845				

	Tertiary	13 2	3.614	0.826				
I find it difficult for my marriage to be acknowledged by the authority.	Primary	50	3.860	0.904				
	Secondary	21 8	3.670	0.744	1.72 5	2, 397	.18 0	Not Sig.
	Tertiary	13 2	3.621	0.787				
I find it difficult to register the birth of my children.	Primary	50	4.220	0.864				
	Secondary	21 8	4.028	0.768	3.61 3	2, 397	.02 8	Sig.
	Tertiary	13 2	3.879	0.801				
I find it difficult to register my children in school.	Primary	50	4.220	0.932				
	Secondary	21 8	4.041	0.770	3.75 6	2, 397	0.2 4	Sig.
	Tertiary	13 2	3.871	0.833				
I have been charged and penalised by the court.	Primary	50	3.960	0.755				
	Secondary	21 8	3.945	0.716	3.55 9	2, 397	0.2 9	Sig.
	Tertiary	13 2	3.742	0.727				
I find it difficult to apply for a divorce from the court.	Primary	50	4.120	0.872				
	Secondary	21 8	3.986	0.759	4.43 9	2, 397	.01 2	Sig.
	Tertiary	13 2	3.773	0.852				
This cross-border marriage leads to the destruction of my family.	Primary	50	3.560	0.812				
	Secondary	21 8	3.358	0.921	1.05 5	2, 397	.34 9	Not Sig.
	Tertiary	13 2	3.356	0.966				
I am the one who has caused a gap in the relationship among the family members.	Primary	50	3.540	0.788				
	Secondary	21 8	3.284	0.832	2.02 7	2, 397	.13 3	Not Sig.
	Tertiary	13 2	3.280	0.885				
I have been involved in bad activities after getting married at the border.	Primary	50	3.320	0.891				
	Secondary	21 8	3.041	0.937	2.00 2	2, 397	.13 6	Not Sig.
	Tertiary	13 2	3.000	1.105				

I am the one who has caused disunity in my family.	Primary	50	3.400	0.926	2,397	.13	Not Sig.
	Secondary	218	3.128	0.870			
	Tertiary	132	3.114	0.962			
I have destroyed my future.	Primary	50	3.440	1.033	2,397	.029	Sig.
	Secondary	218	3.046	0.944			
	Tertiary	132	3.030	1.055			
Overall implications for practising cross-border marriage	Primary	50	3.778	0.700	2,397	.020	Sig.
	Secondary	218	3.563	0.614			
	Tertiary	132	3.480	0.651			

Table 2.5b ONEWAY ANOVA for Implications of Cross-Border Marriage by Level of Education (Post Hoc Tests)

Level of Education (1)	Level of Education (2)	Mean Difference	Sig.
Primary	Secondary	0.216	.080
	Tertiary	0.298	.014
Secondary	Primary	-0.216	.080
	Tertiary	0.083	.470
Tertiary	Primary	-0.298	.014
	Secondary	-0.083	.470

Discussions

This discussion highlights important findings in the implications of cross-border marriage. One interesting finding is that the majority of the respondents are found to have difficulties in registering their children in school. This finding confirms Noraini's study where she discovered that the most affected party in a cross-border marriage is children, especially when it comes to fulfilling their welfare such as

the right to education.⁶⁰ The finding is supported by an interview session with an informant.⁶¹

...yes, we agree that if our marriage is not registered, our children's fate is going to be affected...we do not want our children's right to be denied...that's why we want to register...(Informant No. 2, Songkhla)

Another important finding is that the majority of the respondents are also found to have difficulties in registering the birth of their children. This affects other matters relating to the welfare of the children. For instance if a child is born in a marriage contracted across borders, proper documents that prove the existence and legality of the marriage between the parents must be produced in order for the child to be recognised as legitimate. If there is a problem in producing such documents, the child's birth certificate cannot be issued under the name of his father and will only bear the name of the mother. This finding is in agreement with Nasran's study where he found that improper cross-border marriage documentation and certification would result in difficulties in registering children who are born into the marriage.⁶²

With regard to the differences between the demographic information on the implications of cross-border marriage, there are several differences that can be highlighted. The current study finds that the female respondents are more aware than the males in terms of the implications of cross-border marriage even though it is not statistically significant. This finding is also supported by an interview with the Registrar of the Marriage, Divorce and *Ruju*^c of the State of Perlis where she claimed that females are aware of their rights and there are many of them who come to her office to register the marriage compared to their male counterparts.⁶³

⁶⁰ Noraini Md Hashim, "Non Registration of Muslim Marriages in Malaysia: Socio-Legal Implications," Paper Proceeding presented at International Conference on Law and Social Obligations: The way Forward at Faculty of Law, University of Kashmir, Srinagar India on 10th -11th August 2009, 10.

⁶¹ Interview session with informant on 21 October 2014.

⁶² Mohd. Nasran et.al, "Perkahwinan Luar Negara...", 41.

⁶³ Interview session with Ustazah Rohainizam at Registrar General Office in Kangar, Perlis on 20 Mac 2015.

It is found that respondents from urban areas are more aware of the overall implications of the cross-border marriage compared with respondents from rural areas, and the differences between them are significant. This result may be clarified by the fact that the urban people have easier access to transportation and communication thus making it easier for them to get information about cross-border marriage. Another possible explanation for this is that religious offices, courts and other government agencies are situated in urban areas with facilities for people who want to register their marriage. Specifically, it is discovered that those who practice polygamous marriage are more aware of the punishment imposed by the court as a result of marrying across border and without the permission of the court, compared with those who practice monogamous marriage. This therefore indicates that the respondents who practice polygamous marriage are more experienced in dealing with the consequences of cross-border marriage.

Conclusion

A marriage which does not take into consideration the sensitivities of family members and members of society such as cross-border marriage, is clearly against the norms of marriage in Islam. This type of marriage is valueless in the eyes of Islam simply because it does more harm than good. One clear example of such harm is the victimisation of women and children in the marriage. It can therefore be concluded that cross-border marriage goes against family philosophy and the norms of Malay society, especially in its appreciation of the values of the family institution. Several recommendations are proposed to curb this phenomenon as it affects the family institution. The recommendations are as follow:

1. The Religious Office must have a one stop center (OSC) or branch in every district as reference for the people in the rural areas without having to travel to town. The OSC can promote the importance of marriage registration through the mosque or seminars organised in rural areas;
2. Clear information on matters relating to Islamic family laws should be disseminated to the public, especially to young Muslims. This can be done using a variety of media channels that can reach

them. The availability of such media supports the findings of this study that urban people are more aware of the implications of cross-border marriage when compared to rural people. The study therefore suggests that the Legal Aid Department should organise more field campaigns on the illegality of this kind of marriage and the importance of registering a marriage. These campaigns will be effective in ensuring that relevant information is disseminated to members of public in the urban as well as the rural areas.



AL-SHAJARAH
Vol. 24, No. 1, 2019

Contents

ARTICLES IN VOL. 24 No. 1, 2019

JURISDICTIONAL CONFLICT IN INTERFAITH CHILD CUSTODY DISPUTES: A LEGAL DISCOURSE IN MALAYSIAN COURTS <i>Najibah Mohd Zin, Hidayati Mohamed Jani, Abdul Ghafur Hamid & Nora Abdul Hak</i>	1
UNDERSTANDING “THE OTHERS”: BUDDHIST-ISLAMIC DIALOGUE FOR PEACE WITH PARTICULAR REFERENCE TO ‘MODERATION’ <i>Golam Dastagir & Mohammad Ismath Ramzy</i>	25
MODERN APPLICATIONS OF PROFIT-SALE (<i>BAY’ MURĀBAHAH</i>) FROM A <i>MAQĀSID SHARĪ’AH</i> PERSPECTIVE <i>Mohammed Farid Ali al-Fijawi & Saidatolakma Mohd Yunus</i>	49
SOCIO-LEGAL IMPLICATIONS OF CROSS-BORDER MARRIAGE AMONG MUSLIMS IN MALAYSIA: AN EMPIRICAL STUDY <i>Muhamad Helmi Md Said, Noraini Md Hashim, Nora Abd. Hak, Saodah Wok & Roslina Che Soh</i>	67
SUSTAINING THE ISLAMIC MARRIAGE INSTITUTION IN MALAYSIA: LESSONS FROM QUR’ĀNIC STORIES <i>Nor Zatu Amni binti Mohamad, Normi Abdul Malek, Sofiah Samsudin & Nazrul Affandi Jani</i>	97
MANAGING END-OF-LIFE CARE IN MALAYSIA: THE ECONOMIC CONSIDERATIONS FROM THE ETHICAL AND ISLAMIC PERSPECTIVES <i>Fadhlina Alias, Puteri Nemie Jahn Kassim & Mazlena Mohamad Hussain</i>	131
NOTES ON CONTRIBUTORS	159

