

**INTERNATIONAL CONFERENCE ON LAW AND SOCIAL OBLIGATIONS:  
“LAW AND SOCIAL OBLIGATIONS: THE WAY FORWARD”  
10<sup>TH</sup> – 11<sup>TH</sup> AUGUST, 2009  
FACULTY OF LAW, UNIVERSITY OF KASHMIR, SRINIGAR, INDIA**

**NON-REGISTRATION OF MUSLIM MARRIAGES IN MALAYSIA: SOCIO LEGAL  
IMPLICATIONS**

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**Abstract**

There are no single provisions found in the Al Qur'an or as Sunnah as relates to registration of marriage, but there are equally no prohibitory provisions as well. The purpose of the enforcement of registration is to remove the difficulty of proving the marriage. As such, the obligation to register marriage is important as it is for the benefit (*maslahah*) and protection of the society at large. The effect of unregistered marriage is not felt until and unless when the parties face matrimonial difficulties. The Sharī'ah court has no jurisdiction to entertain their cases until it is proven that their marriage is registered or deemed registered or valid according *hukum shara'*. Therefore, if the parties cannot prove the validity of their marriage by the assistance of the person solemnizing the marriage or by the witnesses of their marriage, the registration of the marriage will facilitate to prove the existence of their marriage. This article is to establish the importance of registration and the effect of non-registration that will lead to various socio-legal implications.

## Introduction

Proper registration is of extreme importance not only to the parties themselves but also to others (including government departments) who may wish to have evidence of their marriage. Registration as part of the legal formalities of marriage will ensure among others that the parties do not enter into marriage in an ill-considered or frivolous way, with the existence of a formal record of marriages, and that anyone who wishes to object to the marriage can do so.<sup>1</sup> It begins with the Universal Declaration of Human Rights<sup>2</sup> (herein after referred to as UDHR) in determining the legal rights of men and women particularly in matters of marriage.<sup>3</sup> To ensure equal rights for both spouses in connection with marriage, Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage (herein after referred to as the Convention) is established,<sup>4</sup> in respond to Article 16 of the UDHR.

UDHR, being an international instrument, supports the right of the State to legislate on formalities prior to marriage and in relation to the solemnisation of marriage, and recognises the right of the States to insist on registration of marriage. The Convention adds to Article 16 of the UDHR the importance of regulating minimum age of marriage;<sup>5</sup> free consent of both the contracting parties to marriage; that the marriage be solemnised by a competent authority and of witnesses.<sup>6</sup> The said marriage is also to be registered in an appropriate official register by a competent authority.<sup>7</sup> After solemnisation is completed, marriage is required to be registered in an official register for public record<sup>8</sup> but this has no effect on validity.<sup>9</sup> The requirement of registration would, in future, make it far easier to prove a marriage. No longer would the parties have to rely on the recollection of witnesses of events long gone, and the evidence of experts as to customs, both ancient and changing. However, attempts to introduce registration procedures have met with considerable opposition especially in Islamic states where there is no codified legislation.<sup>10</sup>

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<sup>1</sup> Jonathan Herring, *Family Law*, Longman, 2001 at 39.

<sup>2</sup> Other human rights instruments such as the European Convention on Human Rights, and the International Covenant on Civil and Political rights also recognized such rights above.

<sup>3</sup> The objective of Article 16 UDHR spells out that men and women of full age, without any limitation due to race, nationality or religion shall have the right to marry and start a family; that they are entitled to equal rights as to marriage, during marriage and as its dissolution.

<sup>4</sup> This Convention opened for signature and ratification by General Assembly Resolutions 1763 A (XVII) of November 7, 1962. Entered into force: December 9, 1964. It calls for States parties to establish a minimum age for marriage. It also stipulates that no marriage is to be legally entered into by any person below such minimum age, except where a competent authority has granted a dispensation, for serious reasons, in the interest of the spouses. The Convention also obliges States parties to register all marriages in an appropriate official register.

<sup>5</sup> Principle 2 of the Convention states that State parties shall take legislative action to specify a minimum age of marriage and that no marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouse.

<sup>6</sup> Principle 1 of the Convention states that no marriage shall be legally entered into without the full and free consent of both parties, such consent to be expressed by them in person after due publicity and in the presence of the authority competent to solemnise the marriage and of witnesses, as prescribed by law.

<sup>7</sup> Principle 3 of the Convention states that all marriages shall be registered in an appropriate official register by the competent authority.

<sup>8</sup> Ibid.

<sup>9</sup> Section 11 of the Matrimonial Causes Act 1973; section 33 of the Women's Charter; and section 34 of the LRA.

<sup>10</sup> Jāmal J.Nāsir, *The Islamic Law of Personal Status*, 2nd Edition, Graham & Trotman, London, 1990, at 70.

## **Research Methodology**

The research employs socio-legal study. The legal approach proposes to adopt pure legalistic analysis i.e. analysis based on the relevant statutory provisions and case-laws relating to registration. Special references were made to the Islamic Family Law Selangor Enactment 1983 and Islamic Family Law Enactments of three other states<sup>11</sup> that were, Islamic Family Law Johor Enactment 1990, Islamic Family Law Kedah Enactment 1984, and Islamic Family Law Kelantan Enactment 1983.<sup>12</sup> The analytical and critical methodologies are used to identify the deficiencies and shortcomings in the application of the registration of marriage by referring to decisions upheld in decided cases, reported and unreported. A comparative analysis of materials from other states where registration is a requirement was also referred to in a comparative form in searching for the best practices in this area.

The quantitative method in this research will be the collection of the applicants' data from files which are relevant to the research questions. These files will be on the application for registration of marriage, and cases for failure to register marriage without the consent of the Registrar and Sharī'ah Court, from selected Religious Offices (Investigation and Prosecution Departments) and Sharī'ah Courts for the registration of Muslim marriage. The data from the files will be analyzed using the descriptive approach to support the quantitative analysis.

Four states in Malaysia namely, Selangor, Johor, Kedah and Kelantan (representing the central, south, north and east regions respectively) were selected by using the clustered technique while the Religious Offices and Sharī'ah Courts which are located in the urban and rural areas were selected according to stratified random technique (representing the districts). The choice of the locality was to analyze the relationship between the socio-economic background with the demographic profile of the applicants and also the decision of the Registrars in the Religious Offices, and judgments of the judges in Sharī'ah Courts in permitting the application of registration of marriage.

### **Registration of Marriage under Islamic Law**

Marriage in Islam is a civil contract. The validity of a Muslim marriage depends on the conclusion of the marriage contract. The law does not insist upon any particular form of marriage. If there's a proposal from one side and an acceptance on the other, a valid marriage will come into existence provided that the other conditions of marriage are fulfilled. In understanding the traditional concepts of a Muslim marriage and the simplicity and the informality of the contract do not take account of the need, especially in the complex and highly mobile societies today, to have definitive formal proof of existence of a legally valid marriage. While official registration is considered of paramount importance today, in traditional societies, instead of formal registration, the publicising of the marriage contract serves as an important

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<sup>11</sup> These three enactments are referred as to the three states chosen for the field work.

<sup>12</sup> It is to be noted that reference could not be made to the present Enactments of Islamic Family Law 2003 due to the cases chosen were from the period of 2000 to 2004. During this period, offences and decisions were based on the enactments of 1983 and 1984, respectively.

safeguard. Further, the public celebration of the marriage through feasting and other social rituals leads to public recognition of the married status of the individuals concerned. In this context, presumptions of marriage have developed in practice.

Although there is no specific provision on registration found in al-Qur'ān or al-Sunnah, but there are equally no prohibitory provisions as well. Muslim jurists, however, are of the view that the writing down (recording) of marriage (*kitābat*) is desirable.<sup>13</sup> This is because everything in the religion of Islam points to clarity and certainty.<sup>14</sup> For that reason, Allah teaches us to write down and to record so that there may be no dispute in the future.<sup>15</sup>

## Registration of Marriage for Muslims in Malaysia

In Malaysia, the Islamic Family Law Act and Enactments provide for compulsory registration of marriage.<sup>16</sup> In all the states, it is made clear by law that neither would non-registration invalidate a valid marriage nor mere registration validate a marriage which is otherwise invalid under Islamic law; but the failure to register is an offence in most of the states.<sup>17</sup> This is because section 11 of the Islamic Family Law Federal Territories Act 1984 (herein after referred to as IFLFTA 1984), provides that in order for a marriage to be accepted valid under the Act, it must firstly be valid according to *hukum Shara'*. Therefore if a marriage is valid according to *hukum Shara'* the marriage is nonetheless valid.<sup>18</sup>

However, it is considered an offence to marry, or go through a form of marriage with, any person contrary relating to solemnization of marriages 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. But, if the marriage is invalid according to *hukum Shara'* but nonetheless registered, the person who registered the marriage may have committed an offence and the marriage remains invalid. Since the marriage are such, quite a few Muslims in Malaysia took the opportunity to marry without undergoing the proper procedure because of their understanding that if the marriage is valid under *hukum Shara'*, it is deemed valid under the law. This situation is commonly termed as *kahwin lari* (elope/ clandestine marriage). The most common reasons for *kahwin lari* are the refusal of the *wali* to give his consent to the marriage, and a husband who wishes to practice polygamy without the wife's knowledge. The effect of unregistered *kahwin lari* may lead to difficulties especially to the wife and child/children of the said marriage in claiming for their rights under the marriage, as the Sharī'ah Court has no

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<sup>13</sup> Al-Baqarah: 282, when Allah SWT says to the effect that: "When you contract a debt for a fixed period, write it down. Let a scribe write it down in justice between you. Let not the scribe refuses to write as Allah has taught him, so let him write."

<sup>14</sup> [http://www.concentrationinprayer.com/documents/Verse11\\_002.pdf](http://www.concentrationinprayer.com/documents/Verse11_002.pdf)

<sup>15</sup> Sheikh Muhammed Salih Al-Mūnājīd, "Marriage Contract: Verbal or Written," <http://www.Islamqa.com/en/ref/364>. According to the Sheikh, writing down the contracts and agreements that people make among them is a way of confirming and formalizing them but it is not a condition for the validity of the contract.

<sup>16</sup> See section 25 of the IFLFTA 1984 and similar provisions contained in the State Islamic Family Law Enactments.

<sup>17</sup> See sections 34 and 40 (2) of the IFLFTA 1984.

<sup>18</sup> Section 40 (2) states that the parties may later register their marriage (if they wished).

jurisdiction over them. As such, in this article the discussion on non-registration will mainly relate to cases of *kahwin lari* since it contributes to most of non-registration cases in Malaysia.

### **Relevant Provisions relating to Registration**

To understand the problem relating to the validity of marriage with the procedure and registration of marriage, relevant provisions relating to registration are crucial to be discussed as the requirement of registration does not conclusively determine the validity of a marriage but merely facilitate proof of a marriage.<sup>19</sup> Other provisions such as the legal effect of registration, the application of registration, voluntary registration of marriage previously solemnized etc. are also important matters to be discussed.

#### *Jurisdiction of the Court*

Before the court can proceed with any case relating to dissolutions of marriage or matrimonial relief, the first thing is by referring to Section 45 of IFLFTA 1984<sup>20</sup> as to decide whether it has the jurisdiction to deal with the case. The determination of the court's jurisdiction is made by looking at the registration of the marriage and the residence<sup>21</sup> of the parties. The above provision explains that the marriage must have been registered or deemed to be registered<sup>22</sup> under the IFLFTA 1984. As such, without registration no party can seek the assistance from the court of law in solving their matrimonial problems.

#### *Section 25 of the IFLFTA 1984<sup>23</sup> – Registration*

This provision states that after the appointed date, any person ordinarily resident in the Federal Territories and the marriage of every person living abroad who is a resident in the Federal Territories shall be registered in pursuant to the Act.

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<sup>19</sup> Registration is important in determining the legality of a marriage as the Registrar has the duty to enter the prescribed particulars of the marriage in the marriage register immediately after the solemnisation. See also section 22 of the IFLFTA 1984, section 22 of the IFLSE 1984, section 26 of the IFLJE 1990, section 21 of the IFLKE 1984, section 22 of the IFLKE 2003.

<sup>20</sup> See also section 45 of the IFLSE 1984 (for state of Selangor), section 44 of the IFLJE 1990 (for state of Johore), section 37 of the IFLKE 1984 (for state of Kedah) and section 45 of the IFLKE 2003 (for state of Kelantan).

<sup>21</sup> According to Ustaz Hairun Nizan, Assistant Registrar of the Kuala Kubu Religious Office, the residence is the place where the person resides for a minimum period of three months.

<sup>22</sup> It refers to any valid Muslim marriage solemnised under any law wheresoever prior to the appointed date. If such marriage is valid under the law under which it was solemnized, it shall be deemed registered under this Act. See also Section 6 of the IFLFTA 1984, section 6 of the IFLSE 1984, section 6 of the IFLJE 1990, section 4 of the IFLKE 1984, section 6 of the IFLKE 2003.

<sup>23</sup> Section 25 of the IFLFTA 1984, section 25 of the IFLSE 1984, section 25 of the IFLJE 1990, section 19 of the IFLKE 1984, section 25 of IFLKE 2003.

*Section 6 of the IFLFTA 1984<sup>24</sup> – Subsisting valid marriage deemed to be registered under the Act*

This provision spells out that any marriage if valid under the law which it was solemnised, shall be deemed to be registered under this Act wheresoever prior to the appointed date.

*Section 12 of the IFLFTA 1984<sup>25</sup> - Non-registrable marriages*

A Muslim marriage that contravenes with the IFLFTA 1984 shall not be registered. Nevertheless, if the marriage which has been solemnized contradicts with any provision under Part III (Marriage) but is otherwise valid according to *hukum shara'* may be registered under this IFLFTA 1984 with an order from the court. The parties, however, are subjected to be penalized before the marriage can be registered.

In relation to consent, a marriage shall not be recognized and shall not be registered unless both the parties to the marriage have consented to it, and either the *wali* of the woman consented to it in accordance to *hukum shara'*; or the Sharī'ah Judge having jurisdiction in the place where the woman resides; or any person generally or specifically authorized in that behalf by the Sharī'ah Judge has, after due inquiry in the presence of all parties concerned, granted his consent to the *Wali Hakim* to solemnize in accordance with *hukum shara'*; such consent may be given wherever there is no *wali nasab* in accordance with *hukum shara'* available to act, or if the *wali* cannot be found, or where the *wali* refuses his consent without sufficient reason.

*Section 28 of the IFLFTA<sup>26</sup> - Appointment of Chief Registrar, Registrars, Deputy Registrars, and Assistants Registrars of Muslims Marriages, Divorces and Ruju'*

Only qualified public officers appointed by The Yang di-Pertuan Agong or His Royal Majesty (herein after referred to as YDPA) may act as the above said officers for Muslim Marriages, Divorces and Ruju' herein after referred to as MDR) for the purposes of IFLFTA 1984. The above provisions clearly sanction that only appointed persons can solemnize or purport to solemnize marriage under the IFLFTA 1984. However, failure to adhere to the provisions does not make the marriage void per se.<sup>27</sup> This is especially so if the person solemnizing the marriage is the *Wali Mujbir* to the bride.

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<sup>24</sup> Section 6 of the IFLFTA 1984, section 6 of the IFLSE 1984, section 6 of the IFLJE 1990, section 4 of the IFLKE 1984, section 6 of the IFLKE 2003.

<sup>25</sup> Section 12 (2) of the IFLFTA 1984, section 12 (2) of the IFLSE 1984, section 12 (2) of the IFLJE 1990, section 12 (2) of the IFLKE 2003.

<sup>26</sup> Section 28 of the IFLSE 1984, section 27 of the IFLJE 1990, section 20 of the IFLKE 1984, section 28 of the IFLKE 2003.

<sup>27</sup> It only makes the unauthorised person guilty of an offence and he is liable on conviction to imprisonment for a term not exceeding six months and to a fine not exceeding one ringgit or with both. See also section 39 of the IFLFTA 1984, section 39 of the IFLSE 1984, section 38 of the IFLJE 1990, section 31 of the IFLKE 1984, section 39 of the IFLKE 2003.

### *Section 33 of the IFLFTA<sup>28</sup> – Voluntary registration*

This section is the answer to the status of marriages according to *hukum shara'* that were solemnised under any law prior to or after the appointed date and have not been registered. The parties are required to produce evidence of the marriage either oral or documentary, and to furnish such particulars as may be required by him.<sup>29</sup>

### *Section 35 of the IFLFTA 1984<sup>30</sup> – Legal effect*

Failure to register a marriage is an offence<sup>31</sup> but it is expressly stated that nothing in the Act made thereunder shall be construed to render valid or invalid any marriage which otherwise is invalid or valid merely by reason of its having been or not having been registered. Hence, if concerned parties doubt on the status of a marriage, they could seek declaration from a court of law despite the marriage having been registered elsewhere as the validity is determined by the fulfillment of the conditions under *hukum shara'*.

### *Section 44 of the IFLFTA<sup>32</sup> - Proof*

This section provides that every marriage register kept under the IFLFTA 1984 and any copy of such entry certified by the Registrar shall be prima facie evidence of the dates and acts contained in such marriage register. Therefore, if there is a possibility of disputes pertaining to the dates and acts contained in the marriage register, these disputes may be adjudged in a court of law.

## **Penalty**

There is no specific penalty for the offence of non-registration. Nevertheless, the parties will be penalized for late registration of marriage. This is because the parties involved in *kahwin lari* will only register their marriage when they face matrimonial difficulties. Yet, before the parties can register their marriage, they are firstly penalized for the offences relating to *kahwin lari* including for late registration.

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<sup>28</sup> Section 33 of the IFLSE 1984, section 32 of the IFLJE 1990, section 25 of the IFLKE 1984, section 33 of the IFLKE 2003.

<sup>29</sup> The Registrar may on being satisfied of the truth of the statements contained in the application register the marriage by entering the particulars thereof in the marriage register prescribed for this purpose. The Registrar must not register a marriage if he is satisfied that the marriage is void under the IFLFTA 1984.

<sup>30</sup> Section 34 of the IFLSE 1984, section 33 of the IFLJE 1990, section 26 of the IFLKE 1984, section 34 of the IFLKE 2003.

<sup>31</sup> Section 35 of the IFLFTA 1984, section 35 of the IFLSE 1984, section 34 of the IFLJE 1990, section 27 of the IFLKE 1984, section 35 of the IFLKE 2003.

<sup>32</sup> Section 44 of the IFLSE 1984, section 43 of the IFLJE 1990, section 36 of the IFLKE 1984, section 44 of the IFLKE 2003.

Table 1.0 shows the penalty for late registration in five selected states in Malaysia.

**Table 1.0**  
**Penalties for Offences of late registration (in Relation to *Kahwin lari*/Elope)**

	<b>IFLFTA 1984 Federal Territories</b>	<b>IFLSE 1984 Selangor</b>	<b>IFLJE 1990 Johore</b>	<b>IFLKE 1984 Kedah</b>	<b>IFLKE 2003 Kelantan</b>	<b>Present standardize provision applicable to all states</b>
<b>Late registration</b>	<b>S35</b> Fine not exceeding RM1000 or imprisonment not exceeding six months or with both	<b>S35</b> Fine not exceeding RM1000 or imprisonment not exceeding six months or with both	<b>S34</b> Fine not exceeding RM1000 or imprisonment not exceeding six months or with both	<b>S27</b> Fine not exceeding RM150 or imprisonment not exceeding 1 month or with both	<b>S35</b> Fine not exceeding RM1000 or imprisonment not exceeding six months or with both	Fine not exceeding RM2000 or imprisonment not exceeding 1 year or with both

It is without doubt that the punishment for offences relating to late registration is relatively low. As such it does not stop the parties from contracting marriage without the consent of the authorities. In Kedah, not only is the penalty the lowest among the states, the parties can even pay the fine in installments<sup>33</sup> with the discretion of the judge. This is because most of the offenders are either jobless or come from the low income working group such as fisherman, farmer, taxi driver and others. In Johor, there are cases where the parties are only given strict warning not to commit the same offence.<sup>34</sup> This ‘privilege’ is normally given to old aged couples who commit the act of *kahwin lari* in the case where their children do not agree to their decision to marry.

The overall penalty sentence for *kahwin lari* is mostly fine only, or fine or imprisonment. From the files of cases examined and interviews conducted with the relevant officials,<sup>35</sup> incidences of sentencing imprisonment is very low as the act is less serious or severe compared to the offence of *khalwat* (close proximity). This is because the parties contracted the marriage to legalise their relationship. The only set back, is that, the marriage is carried out without fulfilling the required procedure including failure to register their marriage. As such, most of the Shari‘e Judges are reluctant to sentence imprisonment on the offenders. Furthermore, more problems will occur if the husband who is the bread winner is imprisoned as the consequence

<sup>33</sup> Y.A. Sheikh Amiruddin Putera Bin Zainol Abidin, Shariah Judge of Shariah Lower Court Pendang and Kota Setar, Kedah, Interviewed by author, Pendang, Kedah, 9 April 2006.

<sup>34</sup> Puan Rohani, Deputy Registrar, Shariah Lower Court of Batu Pahat, Johor. Interviewed by author, Batu Pahat, Johor, 23 May 2006.

<sup>35</sup> Mohd Razlan,;Sanggup kahwin nenek demi PR (Willing to marry a Granny for sake of Permanent Resident status),” *Harian Metro*, 24 April,2006,c21.

will lead them to being dismissed from their job and tarnish their image. The table below shows the fine and imprisonment imposed on husband and wife for the offence of late registration.

**Table 2.0**  
**Fine and imprisonment on Husband and Wife on late registration**

Type of offence	Husband		Wife	
	Frequency	Percentage	Frequency	Percentage
<b>Offences relating solemnization of marriage</b>				
<b>Fine (RM)</b>				
<b>Late Registration (RM)</b>				
<b>&lt;100</b>	24	88.9	1	20.0
<b>101 - 200</b>	0	0.0	0	0.0
<b>201 - 300</b>	2	7.4	1	20.0
<b>301 - 400</b>	1	3.7	2	40.0
<b>401 - 500</b>	0	0.0	0	0.0
<b>501 - 600</b>	0	0.0	0	0.0
<b>601 - 700</b>	0	0.0	0	0.0
<b>701 - 800</b>	0	0.0	1	20.0
<b>Total</b>	<b>27</b>	<b>100.0</b>	<b>5</b>	<b>100.0</b>
<b>Mean</b>	<b>400.00</b>		<b>103.70</b>	
<b>S.D.</b>	<b>87.63</b>		<b>254.95</b>	
<b>Imprisonment days</b>				
<b>Late registration (days)</b>				
<b>&lt;30</b>	9	100.0	3	100.0
<b>Total</b>	<b>9</b>	<b>100.0</b>	<b>3</b>	<b>100.0</b>
<b>Mean</b>	<b>12.89</b>		<b>10.33</b>	
<b>S.D.</b>	<b>7.85</b>		<b>3.51</b>	

The fine for late registration imposed was the lowest among other offences related to *kahwin lari* offence. Out of 27 applicants, majority (89.0%) of the husbands were fined less than RM100.00. As for the wives, 40.0% were fined between RM301-400 while the rest of the fines were from less than RM100, RM201-RM300 and RM601-RM700, each at 20%. The average percentage is RM103.70. The lower fine imposed on the husband is because the offence is only procedural and not on the substance. However, it is discovered that the fine imposed on the wives is relatively higher than their husbands because the wives are normally sentenced for one offence only as compared to the husbands.

As for the imprisonment for the late registration offence, it is observed that 100.0% of the husbands and wives were imprisoned for less than 30 days with the average of 12.89 days and 10.33 days, respectively. The findings indicate that the court is reluctant to sentence imprisonment for a longer period as the offence committed is not severe.

## **Implication of Non-Registration**

- a. Relating to the effect of unregistered marriage, the parties that will be most affected by the non-registration of the '*kahwin lari*' will be the wife and the children. This is because although the marriage may be valid under hukum syara', if any problems occur the wife could not exercise her rights as the marriage is not solemnize nor register under the law. As such the Shariah Court has no jurisdiction to entertain her case.<sup>36</sup>
- b. Failure to register marriage, parties will not be conferred with a valid marriage certificate. Without this document, the registration department will not register the birth of the child of the marriage. This will also involve the complexity in ascribing the paternity of the child of the said unregistered marriage. In some cases, the birth will be registered. However the father's name will not be stated in the birth certificate. This is will be a disturbing situation to the child when he/she discovers his/her position in later years.
- c. The problem in registering the child's birth will lead to the difficulty in registering the child's enrolment to school especially in government sponsored school. This is because without the marriage and the birth certificates, the parties are not allowed to register for school.
- d. As for the wife, she will face difficulty to apply for a divorce as she must firstly prove that her marriage is valid under *hukum syara'* and this can be done by the proof of a marriage certificate upon registration. If not, she has to furnish the court with other evidences as to prove the validity of her marriage. If the court cannot grant divorce to her, this will result to her inability to claim any ancillary relief including *mutaah* (consolatory gift), *harta sepencarian* (division of matrimonial property), *nafkah iddah* (maintenance during iddah), *deferred mahar* and others.
- e. The same applies if the wife is claiming for maintenance or applying for court assistance in any matrimonial difficulty during the subsistence of the so called 'unregistered marriage'. The court would not entertain the application until she can prove the validity of her marriage first.
- f. The above situation also applies when death occurs in an unregistered marriage. Parties to the marriage will also face similar problems in exercising their rights especially in claiming their property right such as rights under *faraid* and division of matrimonial property.

## **Suggestions and Recommendations**

1. Educating the public on the importance of the registration of marriage

It has been established that the profiles of most of the parties concerned were young age couples with low income due to their low educational background. This study therefore, suggests that Family and Parenting Management skills must be introduced to every youth during the Program Latihan Khidmat Negara (National Service Programme). This is to ensure that everyone is exposed to the accurate knowledge on the importance of marriage and its establishment, the importance of registration that confers legal protection to them, the rights and responsibilities of being a husband and wife and matters related to it.

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<sup>36</sup> See n.18.

## 2. Family and Legal Awareness

a. It is established that the main factor of non-registration of marriage relates much to the attitude of the parties involved. The mindset that marriage is valid in accordance of *hukum shara'* resulted the parties to ignore the importance to adhere to the procedure of marriage. Hence, it is essential to impart to the couples, families and society at large the accurate understanding of the concept of marriage and family values and behaviours according to the teaching of Islam. Marriage involves everyone in the families especially the consent and blessing of the parents in order to live in harmony. Without these, when marital problems occur not only the law cannot assist them, the families also will not lend a hand in their crisis.

b. Since women are the potential victims in *kahwin lari* (which normally not registered), legal awareness must be extended to them especially relating to rights and responsibilities as a wife be it a monogamous or a polygamous marriage. They must be exposed to the information on the legal implication of marriage without the permission from the relevant authorities and the procedures they have to abide when problems crop up. Especially to women who are either the existing wife or the subsequent wife in a polygamous marriage, the procedure of seeking the court's orders pertaining to the rights of a wife, the steps to resolve abuse from the husband and also her rights to have equal justice must be made known.

## 3. Application of *Wali Hakim*

The public should be made known about the function of *Wali Hakim* in cases where the *Wali Mujbir* refused to consent to the marriage and not to resolve it by *kahwin lari*. It is discovered that only a few people knew about the application of *Wali Hakim*, which is made available in the Shari'ah Court. In many cases, the misunderstanding between the parents and child regarding the marriage can be resolved after the *wali* was summoned to the court and was advised to find the best solution to resolve their problems. A more pro-active action should be taken by the relevant authorities to expose the function of *Wali Hakim* for the public awareness such as publishing of pamphlets and brochures, displaying posters and advertisement at auspicious places such as at the Shariah court, the religious office, mosque, community hall etc. It can also be done by organizing seminars, talks, workshops etc.

## 4. Punishments imposed

The study shows that the punishments imposed for all offences relating to *kahwin lari* especially on late registration were mostly relatively low. The judges were seen reluctant to impose the sentence of imprisonment. Therefore, it is proven that the sentences have no deterrent force for these offences under *kahwin lari*. This is supported by the unofficial statistics show increase in the number of offenders annually. However, the latest amendment to the present Islamic Family Law Act and Enactments in all the states have seen an the increased amount in the maximum sentence from RM1000 to RM2000 and imprisonment from 6 months to a year or both. The sentences for all the offences in which the fine has increased would not be effective if the court itself is not determined to lay down a sentence that is higher and more severe to those who have

committed the offence. Therefore, with the availability of these more severe sentences, as provided under the amended provisions, there must be willingness on the part of the judges to impose punishment appropriate with the new provisions. Judges must be more positive with the good intended outcome of imprisonment sentences to minimize the number of *kahwin lari* incidences. Considering that a jail sentence should protect public interest it should be imposed, as the number of marriages that do not follow procedures are very high.

#### 5. Updating the data system on profiles of applicants

A common computerized system should be established between the Sharī'ah court and the Religious Department with the Registration and the Immigration Departments. This is to prevent false declarations being made by either the husband or the wife on the status of his/her marriage, also the mode chosen by the parties when travelling to the place of marriage. This information is important, especially if marriage is solemnised outside Malaysia or with non-Malaysians. By referring to the updated computerized personal data of the parties to the marriage, will ease the task of the Sharī'ah court and the Religious Office in determining whether the parties had fulfilled the procedural requirement of the marriage

#### 6. Moderation in marriage preparation

The present trend of setting a large amount of money for *hantaran* (marriage gift) and to prepare a big scale wedding reception should be put to a halt especially if it involves parties who are with restricted resources. This trend will indeed trigger the parties involved to consider *kahwin lari* as an alternative to their problem. Marriage ceremonies should be prepared in moderation according to the economic status of the bridegroom. Islam, as a way of life, encourages its people to be moderate in all aspects of life. With the current situation of the ever-increasing cost of living, if no action is taken to change the present position, the number of cases of *kahwin lari* will continue to increase and this will create more problems to the society.

#### 7. Procedure of Marriage

It is suggested that the relevant authorities should expedite the duration to process application of marriage (especially polygamous marriage) to prevent the parties from elope which resulting them not registering their marriage.

### **Conclusion**

To reduce the number of unregistered marriage especially in cases of *kahwin lari*/ eloped marriage, all parties involved including individuals, families, societies, non-governmental organizations should work closely with the government. This is to ensure that the programmes carried out by the government such as imparting exact knowledge on the significance of marriage and its establishment, the importance of registration that confers legal protection to

them, the rights and responsibilities of being a husband and wife and matters related to it will reach the targeted outcome.