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18–19 APRIL 2016

FATONI UNIVERSITY, PATTANI, THAILAND

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*PROCEEDINGS OF THE 5TH INTERNATIONAL CONFERENCE ON LAW AND
SOCIETY 2016 (ICLAS V)*

Fatoni Universiti, Pattani, Thailand

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**SOCIO LEGAL STUDY ON KNOWLEDGE OF RESPONDENTS IN
MALAYSIA: AN EMPIRICAL EVIDENCE FROM THE REGISTRATION
OF CROSS-BORDER MARRIAGE**

Md Said, M.H¹, Md Hashim, N.², Abdul Hak, N.³, Wok, S⁴. & Che Soh Yusoff, R.⁵

Abstract

Cross-border marriage is a marriage without the permission from the marriage registrar in each state and the solemnisation is either contracted in Malaysia or outside Malaysia. This type of marriage violates the purpose of marriage which is to obtain peace and tranquillity. The purpose of this study is to examine and analyse the level of knowledge among the respondents towards the registration of cross-border marriage among Muslims in Malaysia. The sample consists of 400 respondents from four regions in Malaysia. Questionnaire survey was the main data collection method employed in this study and further supported by semi structured interview. Based on the findings, the respondents are already aware of the opportunity to register the marriage at the court. Despite their acknowledgement, new regulation and policy to control cross-border marriage should be implemented in order to curb the issue from worsening in the future.

Keywords: cross border marriage, knowledge, registration, court

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1. Introduction

Islam is a complete and comprehensive religion covering each and every aspect of human life. In order to strengthen the family institution, Islam has set up the perfect guidelines and rules to ensure the welfare and harmony state of a family. In legal perspective, Islamic law has detailed out the rules and regulations regarding marriages to protect its sanctity. The Shariah law that is practiced in Malaysia recognizes a lawful marriage as abiding to the pillars of marriage in Islam and complies with the requirements set out in the legal provisions enforced in each state in the country. Marriage is one of the Sunnah of Prophet Muhammad (*p.b.u.h*), but it has been violated to accomplish one's wishes and desires; such as to get married without the families' permission or because the female is already pregnant out of wedlock. Each of these 'wishes and desires' have led to new types of marriage contracts. One of these emerged contracts is eloping with future partners or popularly known among the Malaysians as *kahwin lari*. It may also be termed as cross-border marriage. Cross-border marriage is defined as a marriage without the consent of the authority such as the Islamic Religious Department in each state and the Syariah Court Judges (Noraini, 2012, 100). Cross-border marriage has raised many issues and major problems for Malaysian mainly among the Muslims and Malays, particularly in matters related to marriage registration.

1.1. Research Methodology

This article uses both the quantitative and qualitative approaches. A survey was conducted in selected states in Malaysia representing four regions namely the Northern, Central, East and South regions of Malaysia. Questionnaire was used to collect the data from 400 respondents. Semi structured interview was also conducted with the informants who have the knowledge and experience in cross-border marriage. The collected data were analysed using SPSS version 22.

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1.2 Literature Review

1.2.1 Islamic Law Perspective

In Islam, cross-border marriage is not specifically mentioned. However the matter raises certain issues regarding the righteous guardian of the bride. Allah has mentioned in the Quran that a widow is entitled to choose a man if she wants to get married upon the completion of her *'iddah* period. Allah says;

If any of you die and leave widows behind, they shall wait concerning themselves for four months and ten days. When they have fulfilled their term, there is no blame on you if they dispose themselves in a just and reasonable manner. And Allah is well acquainted with what you do (Al Baqarah: 234).

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

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

A woman who has been previously married (thayyib) has 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 (Imam Muslim, Sahih Muslim translated by Abdul Hamid, 1999).

‘A’ishah reported the Apostle of Allah (peace be upon him) 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 (Sunan Abu Dawud translated by Ahmad Hasan, 1984).

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1.2.2 Malaysian Legal Perspective

According to Section 19 of Islamic Family Law (Federal Territories) Act 1984, no marriage shall be solemnised without the permission to marry—

- (a) by the Registrar under Section 17 or by the Syariah Judge under Section 18, where the marriage involves a female resident in the Federal Territory; or
- (b) by the proper authority of a State, where the marriage involves a female resident in that State.

From this section, we can conclude that any marriage that was carried out without the permission of the marriage registrar will be charged and punished. The punishment is based on the Section 40(2) of Islamic Family Law Act (Federal Territories) 1984 which allocates fine of not more than one thousand Ringgit Malaysia and imprisonment of not more than 6 month or both for the misconduct.

According to Section 31(1) of the Islamic Family Law (Federal Territories) Act 1984, any person who is a resident of the Federal Territory has contracted a valid marriage according to Hukum Syarak abroad and not being in a marriage registered under the Section 24, the person shall, within six months after the date of the marriage, appear before the nearest or most conveniently available Registrar of Muslim Marriages, Divorces, and Ruju' abroad in order to register the marriage. The marriage, upon being registered, shall be deemed to be registered under this Act.

The 52nd Conference of the Fatwa Committee of the National Council of Islamic Religious Affairs Malaysia held on 1st July, 2002, had discussed issues pertaining cross-border marriage in Southern Thailand. The Committee had decided that marriage outside of the country is valid provided that;

- a) the marriage fulfils the essential validity of a marriage,
- b) the distance is more than two *marhalahs*, there is no court decision preventing the woman from getting married on legal reason and,

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c) such a marriage is solemnised by a *wali* that has been vested by the law in the country.

Thus, Fatwa Committee of the National Council of Islamic Religious Affairs Malaysia still consider such marriage as valid in Malaysia context, given the location exceeds two *marhalahs* and fulfils all conditions that have been prescribed by the laws and rulings.

In identifying issues related to Cross Border Marriages, a number of previous studies were used as reference by the researcher. However, this discussion will only focus on a few main writings related to the identification of potential literature reviews. To date, existing literatures on socio legal studies regarding cross border marriage are deemed as limited.

Noraini Md Hashim (2009) in her research entitled “Registration of Marriage in Malaysia: A Socio-Legal Study of Runaway Marriages among Muslims” has dealt specifically on cross border marriage by analysing the demographics profiles of those involved with cross border marriage. However, the data utilised in her research were only obtained through the applicants’ files in court and religious offices.

Raihanah (2007) in her writing “Polygamy without the Shariah Court’s Permission in Malaysia: A Socio-Legal Perspective” also covered the polygamy issue. She blamed the strict procedure in practicing polygamy has caused Muslim couples to commit cross border marriage. By employing the inferential statistical technique, the study tried to prove polygamy’s capability as the predictor of cross border marriage.

Cheng, Brenda, Rashidah (2012) in their writing claimed that foreigners especially the Indonesians often marry the Muslims in Malaysia in order to secure their economic positions and upgrade their social status. The authors interviewed both the Malaysian and Indonesian who are involved with such international marriages. However, their study did not conduct any quantitative research for data analysis purpose. Thus, the current study is believed to fill the gap by using quantitative research method in analysing the data

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1.4 Research Objective

The specific aim of this research is to examine and analyse the differences between demographic information and respondents' knowledge towards cross-border marriage.

2. Findings

2.1 Descriptive Analysis

Table 1.1 illustrates the respondents' knowledge regarding the registration process of cross marriage in court. Overall, 79.5% of the respondents acknowledge the marriage registration at the court. Specifically, more than three-quarters of the respondents (77.6%) know that many Muslim married couples registered their marriage. 78.2% of the respondents know that it is compulsory to register marriage for all Muslim couples and 78.7% of the respondents know that the court gives an appropriate judgement to all Muslim couples. In term of perquisites, 79.9% of the respondents know that the court gives appropriate benefits to all Muslim couples. Majority of the respondents (80.8%) know that the court gives appropriate judgement to the children involved in such marriage and majority of the respondents (80.2%) deem registering the marriage will make the involved family to become happier. From the data in Table 5.8, it is apparent that the court puts much emphasis on the children's welfare as well as the family itself.

79.5% of the respondents perceive Muslim couples who registered their marriage as adequately literate on the current law enforcement. Moreover, 78.1% of the respondents perceive Muslim couples who registered their marriage as abiding the law. In fact, majority of the respondents (82.6%) know that the authorities in Malaysia strongly encourage Muslim couples to register their marriage. From the religion context, 79.5% of the respondents perceive those who registered their marriage are obedient to the religion.

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Table 1.1: Respondents' Knowledge on Marriage Registration at the Court

No.	Knowledge towards Marriage	Level of Agreement					Mean*	SD	%
		1	2	3	4	5			
1	I know many Muslim married couples registered their marriage.	-	0.5	25.0	60.8	13.8	3.878	0.627	77.6
2	I know that it is compulsory to register marriage for all Muslim couples.	-	0.3	24.8	58.8	16.3	3.910	0.643	78.2
3	I know that the court gives appropriate judgement to all Muslim couples.	-	0.5	22.3	60.5	16.8	3.935	0.638	78.7
4	I know that the court gives appropriate benefit to all Muslim couples.	-	0.5	18.5	62.0	19.0	3.995	0.629	79.9
5	I know that the court gives appropriate judgement to the children involved.	-	1.0	17.0	59.3	22.8	4.038	0.661	80.8
6	I feel that by registering the marriage, the family will be happier.	-	0.5	21.3	55.0	23.3	4.010	0.683	80.2
7	I perceive that Muslim couples who registered their marriage know the law.	-	1.0	27.8	44.0	27.3	3.975	0.769	79.5
8	I perceive that Muslim couples who registered their marriage are those who								
9	I know that the authorities in Malaysia strongly encourage Muslim couples to								
10	I perceive that those Muslim couples who registered their marriage are								
	Total						3.974	0.478	79.5

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

80%), 5= strongly agree (81-100%)

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2.2 Inferential Analysis

There are ten items in respondents' knowledge that were analysed using the independent t-Test. The variable is tested according to the demographic information of the respondents. The purpose of the analysis is to differentiate between demographic information and respondents' knowledge regarding the registration process of cross-border marriage at court.

For the independent t-test, respondents' knowledge towards registration of cross-border marriage at court was tested according to gender (male-female), locality (rural-urban), and type of marriage (polygamy-monogamy) dichotomy.

2.2.1 Independent T-Test for Respondents' Knowledge towards Registration of Cross Border Marriage at Court by Gender

Table 1.2 shows the t-test results of respondents' knowledge by gender, in which no significant differences were found in the items. Overall, there are no significant differences between male and female in terms of respondents' attitudes towards marriage registration at court, given the result for male respondents was ($M=3.986$, $SD=0.488$) and the result for the female respondents was ($M=3.960$, $SD=0.467$). Direct comparison between these two gender classes found that male respondents' knowledge is slightly higher than female respondents in terms of acknowledging the registration process of the marriage at court. For overall gender, the t statistic value is 0.538 at 398 degrees of freedom and p value of .591.

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Table 1.2: Independent t-Test for Respondents' Knowledge by Gender

Variable	Gender	N	Mean	SD		df	p
I know many Muslim married couples registered their marriage	Male	220	3.886	0.634			
	Female	180	3.867	0.619			
I know that it is compulsory to register marriage for all Muslim couples	Male	220	3.909	0.642			
	Female	180	3.911	0.645			
I know that the court gives an appropriate judgement to all Muslim couples.	Male	220	3.923	0.640			
	Female	180	3.950	0.637			
I know that the court gives an appropriate benefit to all Muslim couples.	Male	220	4.027	0.626			
	Female	180	3.956	0.633			
I know that the court gives an appropriate judgement to the children	Male	220	4.073	0.651	1.179	398	.239
	Female	180	3.994	0.673			
I feel that by registering the marriage, the family will be happier.	Male	220	4.041	0.685			
	Female	180	3.972	0.680			
I believe that Muslim couples who registered their marriage know the law.	Male	220	3.986	0.767	0.327	398	.744
	Female	180	3.961	0.772			
I believe that Muslim couples who registered their marriage are those who	Male	220	3.932	0.734	0.870	398	.385
	Female	180	3.867	0.758			
I know that the authorities in Malaysia strongly encourage Muslim couples to register their marriage.	Male	220	4.109	0.757	-0.542	398	.588
	Female	180	4.150	0.744			
I perceive that those Muslim couples who registered their marriage are obedient to the religion.	Male	220	3.973	0.715	0.007	398	.994
	Female	180	3.973	0.715			
Overall knowledge of the respondents	Male	220	3.986	0.488			
	Female	180	3.973	0.715			

2.2.2 Independent T-Test for Knowledge of Respondents towards Registration of Marriage at Court by Locality

Data were further analysed on the differences of respondents' attitudes (Table 1.3) in terms of locality (rural and urban). The number of respondents in the rural area was 118 whereas the respondents in urban area were 282. Within the items, there are two significant items. The first item which is the respondents' perception towards the couples who registered their marriages as abiding the law was found as significant at ($t=2.144$, $p=.033$), while the second item which is the respondents' perception of those Muslim couples who registered their marriage as obedient to the religion was

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also found significant at ($t=1.969$, $p=.050$). In addition, the urban residences are found to be better informed than the rural people.

In overall, the mean value for the rural area respondents in rural area is 3.953 while the mean value for the respondents in urban area is 3.983. Meanwhile, the standard deviation for rural group is 0.425 and for urban group is 0.499. In this case, the t statistic is 0.564 at 398 degrees of freedom. The independent test p -value is .573 which is greater than .05. Thus, it shows that there is no statistically significant difference between the respondents in rural and urban areas in term of knowledge towards marriage registration at court even though the mean value for urban area is higher than that of the rural area.

Table 1.3: Independent t-Test for Respondents' Knowledge by Locality

Variable	Residence	N	Mean	SD	t	df	p
I know many Muslim married couples registered their marriage.	Urban	282	3.894	0.605			
	Rural	118	3.840	0.679			
I know that it is compulsory to register marriage for all Muslim couples.	Urban	282	3.911	0.622			
	Rural	118	3.907	0.692			
I know that the court gives an appropriate judgement to all Muslim couples.	Urban	282	3.904	0.644			
	Rural	118	4.010	0.620			
I know that the court gives an appropriate benefit to all Muslim couples.	Urban	282	3.965	0.653			
	Rural	118	4.068	0.566			
I know that the court gives an appropriate judgement to the children	Urban	282	4.007	0.696	-1.424	398	.155
	Rural	118	4.110	0.567			
I feel that by registering the marriage, the family will be happier.	Urban	282	4.004	0.703			
	Rural	118	4.025	0.633			
I believe that Muslim couples who registered their marriage know the	Urban	282	4.014	0.773	1.579	398	.115
	Rural	118	3.881	0.753			
I believe that Muslim couples who registered their marriage are those	Urban	282	3.954	0.751	2.144	398	.033
	Rural	118	3.780	0.718			
I know that the authorities in Malaysia strongly encourage Muslim couples to register their marriage.	Urban	282	4.160	0.754	1.323	398	.186
	Rural	118	4.051	0.738			
I perceive that those Muslim couples who registered their marriage are obedient to the religion.	Urban	282	4.018	0.738	1.969	398	.050
	Rural	118	3.953	0.425			
Overall knowledge of the respondents towards marriage registration at court	Urban	282	3.983	0.499			
	Rural	118	3.953	0.425			

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2.2.3 Independent t-Test for Knowledge of Respondents towards Registration of Marriage at Court by Type of Marriage

Table 1.4 shows the results of the independent t-test on the respondents' knowledge according to type of marriages, in which four items show statistically significant differences. Firstly, the respondents know that the court provides appropriate judgement to all Muslim couples. ($t=-3.214$, $p=.001$). For monogamous marriage, the mean is 3.832 and the standard deviation is 0.670. While the mean for polygamous marriage is 4.034 and the standard deviation is 0.590. The figures illustrate the lesser knowledge towards registration of cross-border marriage among respondents who practise monogamous marriage compared to those in polygamous marriage. Secondly, the respondents know that the court gives appropriate benefit to all Muslim couples ($t=-2.042$, $p=.017$). The mean value for respondents in monogamous marriage is 3.918 and the standard deviation is 0.602. Meanwhile, the mean value for those in polygamous marriage is 4.069 and the standard deviation is 0.647. From the figure, it can be concluded that the respondents who practise monogamous marriage are having less knowledge in regards to the benefits of registering cross-border marriage compared to respondents involved in polygamous marriage. Thirdly, the respondents know that the court gives appropriate judgement to the children involved in such marriage ($t=-2.489$, $p=.013$). The mean value for monogamous marriage 3.954 and the standard deviation is 0.651, while the mean value for polygamous marriage is 4.118 and the standard deviation is 0.663. With this, it shows that the respondents who practise monogamous marriage are less knowledgeable in terms of the appropriate judgement to the children involved with cross border marriage compared to respondents who practise polygamous marriage. Fourthly, it is found that the respondents know that the authorities in Malaysia strongly encourage Muslim couples to register their marriage ($t=-2.142$, $p=.033$). The mean value for monogamous marriage is 4.046 and the standard deviation is 0.767. Comparatively, the mean value for polygamous marriage is 4.206 and the standard deviation is 0.727, indicating respondents in monogamous marriage are having less knowledge with regards to the encouragement by the Malaysian Authorities for Muslim couples

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to register their marriage as compared to the respondents in polygamous marriage. In overall, there is significant difference between the respondents in monogamous marriage ($M=3.921$, $SD=0.496$) and polygamous marriage ($M=4.025$, $SD=0.456$) in terms of respondents' knowledge on marriage registration at court with t-statistic value at -2.175 and p of .030 which is less than .05 acceptance threshold.

Table 1.4: Independent t-Test for Respondents' knowledge by Type of Marriages

	Type of						
know many Muslim married couples registered their marriage.	Monogamy	196	3.827	0.616			
	Polygamy	204	3.927	0.635			
at it is compulsory to register marriage for all Muslim couples.	Monogamy	196	3.883	0.617			
	Polygamy	204	3.936	0.666			
know that the court gives an appropriate judgement to all Muslim couples.	Monogamy	196	3.832	0.670			
	Polygamy	204	4.034	0.590			
that the court gives an appropriate benefit to all Muslim couples.	Monogamy	196	3.918	0.602			
	Polygamy	204	4.069	0.647			
now that the court gives an appropriate judgement to the	Monogamy	196	3.954	0.651	-2.489	398	.013
	Polygamy	204	4.118	0.663			
feel that by registering the marriage, the family will be happier.	Monogamy	196	3.980	0.687			
	Polygamy	204	4.040	0.679			
ive that Muslim couples who registered their marriage know	Monogamy	196	3.959	0.743	-0.403	398	.687
	Polygamy	204	3.990	0.794			
rceive that Muslim couples who registered their marriage are	Monogamy	196	3.837	0.760	-1.736	398	.083
	Polygamy	204	3.966	0.725			
I know that the authorities in Malaysia strongly encourage Muslim couples to register their marriage.	Monogamy	196	4.046	0.767	-2.142	398	.033
	Polygamy	204	4.206	0.727			
I perceive that those Muslim couples who registered their marriage are obedient to the religion..	Monogamy	196	3.980	0.709	0.195	398	.846
Overall knowledge of the respondents	Monogamy	196	3.921	0.496			
	Polygamy	204	4.025	0.456			

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3. Discussion

With regards to the differences between demographic information and the respondents' knowledge on cross-border marriage registration, there are several differences that can be listed. Generally, it is found that majority of the respondents agree with the overall knowledge towards marriage registration at the court. However, according to the independent t-test, respondents' knowledge towards the registration of the cross-border marriage according to gender shows that female respondents are less knowledgeable than the male respondents in terms of the overall knowledge on marriage registration even though it is not statistically significant. The imbalance knowledge spread illustrates, the female respondents generally receive less information than the male respondents in terms of marriage registration. Furthermore, when a male informant from Johor was asked regarding his decision to opt for cross border marriage, he answered;

....This marriage must be registered, if this marriage is
unregistered, our life will be affected.... (Personal
Communication with Informant No.1, on 23 October 2014,
Songkhla)

The study also discovers statistically significant difference between the urban and rural residents in terms of perception on Muslim couples who registered their marriage are those who abide to the law. Therefore, this study recommends for wider circulation of the information on the importance of marriage registration especially among the community in the rural areas.

This study also finds that respondents who practice polygamous marriage receive more knowledge compared to those who practice monogamous cross-border marriage, either in terms of knowing that the court provides appropriate judgement to all Muslim couples or in regard to the knowledge that the court gives appropriate benefit to all Muslim couples.

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4. Conclusion

Several recommendations can be suggested to curb this phenomenon as it affects the family institution. The recommendations are as follow;

1. Government agency such as the Legal Aid Department and Religious Office must have a one stop center or branch in every district as reference for the people in the rural area without having to travel to town.
2. To better promote the importance of marriage registration through mosque or seminar especially in rural area;
3. The government should amend the laws regarding cross-border marriage;
4. Legal education must be instilled since in school hood.

In conclusion, it has become a general knowledge that some previous studies show that the legal factors play an important roles in cross-border marriage. However, in this study, we discover that the respondents' knowledge also plays an important factor in committing cross-border marriage. Therefore, it is proposed that more research must be done in order to prevent the cross-border marriage as it affects the family institution especially the future of the women and children involved.

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