

**CROSS BORDER MARRIAGE (CBM):
A COMPARATIVE STUDY ON THE PROFILES AND FACTORS
OF CBM AMONG MALAYS IN MALAYSIA**

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Abstract

Cross border marriage (CBM) is one of the solutions to legalise a marriage and is a common phenomenon involving both monogamous and polygamous eloped marriages. This polemic issue has occurred among the Malays (mainly among the followers of Shafie Mazhab) since a long time ago and still continues. This article examines the issue that CBM, which are rampant at present, will lead to uncertainty to the validity of marriages. This uncertainty will lead to problems in determining the status of the marriage and other claims in the marriages including matters involving children and inheritance. This article discusses factors that influence parties to contract CBM and violate the specified law and procedures. Qualitative and quantitative methods were employed in collecting information from the Shariah courts' files pertaining to the profiles of respondents to CBM in four selected states in Malaysia namely Kedah, Kelantan, Selangor and Johor. *Data were collected using questionnaires and analysed by using descriptive statistical technique which revealed the general pattern of all variables understudied..* This study implies that parties who wish to marry must be in accordance with the law and procedures provided under the Islamic Family Law in Malaysia. Apart from meeting social responsibilities, it also coincides with the Islamic law aim that requires men to protect women and children during and after marriage. The results of this study is expected to be used in assisting the government to formulate a more effective strategy in regulating muslim marriages as stated in the National Family Policy (NFP). In line with the objectives of the NFP-oriented family perspective, the study implies that the laws and procedures related to marriage is to protect family members, especially women and children.

PROFIL DAN FAKTOR-FAKTOR KAHWIN LUAR SEMPADAN (KLS) DALAM KALANGAN ORANG MELAYU DI MALAYSIA

Abstrak

Kahwin Luar Sempadan (KLS) telah berlaku sejak sekian lama di kalangan orang Melayu (terutamanya mereka dari Mazhab Syafie) dan berterusan sehingga kini. Kaedah ini digunapakai oleh pasangan bermasalah dalam perkahwinan monogami dan poligami. Isu KLS memberi kesan kepada masalah ketidakpastian status kesahan perkahwinan pasangan, kesukaran isteri dan anak-anak menuntut hak serta masalah pewarisan. Sehubungan dengan itu, kertas kerja ini memperihalkan profil pasangan yang terlibat dalam perkahwinan luar sempadan dalam kalangan orang Melayu di Malaysia. Selain itu, kertas kerja ini juga mengenalpasti faktor-faktor yang menyebabkan pasangan tersebut melibatkan diri dengan KLS dan melanggar undang-undang serta prosedur yang telah ditetapkan. Kaedah kualitatif dan kuantitatif telah digunakan untuk mengenalpasti profil responden kajian berdasarkan rekod mahkamah syariah di Malaysia. Empat buah negeri iaitu Kedah, Kelantan, Johor dan Selangor telah dipilih sebagai lokasi kajian. Maklumat telah dikumpul menggunakan borang soalselidik dan telah dianalisis secara deskriptif. Kajian ini memberi implikasi bahawa pasangan yang akan berkahwin wajib mengikut undang-undang dan prosedur yang telah ditetapkan di bawah Undang-undang Keluarga Islam di Malaysia. Selain memenuhi tanggungjawab sosial, ianya juga bertepatan dengan syariat Islam yang mengkehendaki kaum lelaki melindungi wanita dan kanak-kanak semasa dan selepas perkahwinan. Hasil kajian ini dijangka dapat digunapakai dalam membantu kerajaan dalam merangka strategi yang lebih berkesan dalam mengawalselia perkahwinan orang Islam seperti dinyatakan dalam Dasar Keluarga Negara. Selaras dengan objektif DKN yang berorientasikan perspektif keluarga, hasil kajian memberi implikasi bahawa peruntukan undang-undang dan prosedur berkaitan perkahwinan adalah untuk melindungi ahli keluarga terutamanya wanita dan kanak-kanak.

Introduction

Cross border marriage(CBM) or *Kahwin Luar Sempadan* (KLS) or *Kahwin lari*¹ is a common phenomenon involving both monogamous and polygamous marriages. The most frequented place where the marriage takes place is in Southern Thailand that is Narathiwat, Patani, Satun, Songkhla and Yala. With the increasing number of the legal and illegal Indonesian immigrants who are married to Malaysians, Indonesia at present has also become a target place to marry. CBM is not only practised by the ordinary people, but by people coming from different backgrounds involving the rich² and the poor; politicians,³ professionals;⁴ the royals;⁵ educated and non-educated, businessman, students etc. The couples who commit this act can also be categorized as local couple (both who are Malays) and between a local (male or female Malay) with non local party (normally with female or male Indonesian or female Malay with a Bangladeshi man). The issue with CBM is the uncertainty of the marriage will lead to problems in determining the status of the marriage and other claims in the marriages including matters involving children and inheritance. Thus, in line with the brief overview above, this research was designed to examine the profiles of the parties involved, the reasons for their action and the places of CBM. Positive efforts to improve the current situation are placed at the end of the paper as a conclusion.

Definition

Generally, the term CBM or runaway marriage⁶ refers to an act of marriage that is not recognized by customs, law and religion. The layman normally term it as *kahwin luar sempadan* (KSL) or *kahwin lari* or *kahwin koboi*⁷ (cowboy marriage) as to the irregular nature of marriage solemnizes. As to the legal definition, it can be

¹ *Kahwin lari* is used interchangeably with the term cross border marriage or marriage without consent.

² Isma Ismail dan Azlan Hafeedz. "50 VVIP nikah express di Thailand." *Harian Metro*. 15 May, 2006, 1,5.

³ "Poligami: Speaker Kelantan terlepas hukuman penjara," *Utusan Malaysia*, 21 July, 1999, 4.

⁴ Amiruddin Harun, (2006). "Zaki Azmi mohon isytihar pernikahannya tak sah." <<http://www.utusan.com.my/utusan/archieve>> accessed 3 March, 2006.

⁵ Taib Azamudden Bin Md Taib (2006). Kenyataan Media.< http://www.freeanwar.net/jan_2000> 8 February, 2006.

⁶ The term can be used interchangeably.

⁷ Noraini Md Hashim (2003, February), *Kahwin lari: Tinjauan umum* (Runaway marriage: A general overview). Paper presented at the Seminar Isu-isu Mahkamah Shari'ah IV-Kahwin Lari: Masalah dan penyelesaiannya, Moot Court, International Islamic University Malaysia, at 1.

concluded from interviews carried out with the Sharī'ah Judges, Registrars and Assistant Registrar of several states religious offices as "a marriage without the consent of the Registrar of Marriage, Divorce and Rujuk (herein after referred to as MDR) and the Sharī'ah judge particularly in cases involving polygamy."⁸ Kamus Dewan Bahasa dan Pustaka⁹ defines it as a marriage between a man and a woman (who is deeply in love) that is solemnised without the consent of the family and witnesses elsewhere. The term runaway marriage denotes not only to marriage solemnised abroad without the permission of the state religious office or Sharī'ah court, but it also involves any marriage solemnise in any part of Malaysia too.¹⁰

Research methodology

Location and respondents of the study

This study was carried out specifically in eight (8) Religious Offices and seven (7) Sharī'ah Lower Courts and one (1) Sharī'ah High Court in Peninsular Malaysia selected according to stratified random technique. Four states namely, Selangor, Johor, Kedah and Kelantan (representing the central, south, north and east regions respectively) were selected by using the clustered technique. 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 CBM. Owing to time constraints and financial limitation, the number of cases examined in this survey involved only 680 cases. It revolved of 305 cases from the Religious Offices and 375 cases from the Sharī'ah Courts.

⁸Interview conducted by the author with Y. A.Ustāz Fauzi, Sharī'ah Judge of Sharī'ah Lower Court Gombak, Selangor, 17 April 2006; Y.A. Sheikh Amiruddin Putera Bin Zainol Abidin, Sharī'ah Judge of Sharī'ah Lower Court Pendang and Kota Setar, Kedah, 9 April 2006; Y.A. Ustāz Ghazali Bin Ahmad, Sharī'ah Judge of the Sharī'ah Lower Court of Petaling Jaya, Selangor, 24 Feb 2006; Y.A. Ustāz Khairul Azmi, Shariah Judge of Sharī'ah Lower Court of Kuala Kubu, Selangor, 23 January 2006; Ustāz Abdul Rahmān Abdullah, Registrar of the Sharī'ah High Court of Kota Setar, Kedah, 12 April 2006; Ustāz Che Hasim Bin Deraman Senior Registrar of the Sharī'ah High Court of Kota Bharu, Kelantan, 30 May 2006; Ustaz Md Mokhtar Bin Sulaiman, Deputy Registrar of Sharī'ah Lower Court of Pendang Kedah, on 9 April 2006.

⁹ Kamus Dewan Bahasa dan Pustaka Edisi Ketiga, Kuala Lumpur: DBP, 2002, at 558.

¹⁰ Noraini Md Hashim, Kahwin Lari: Satu tinjauan umum, at 1.

Data collection

This study employed data gathering method, structured in the form of a data collection form. It was designed to identify the profile of parties involved with CBM, the type of offences committed, the judgment imposed and matters incidental to it, as primary data.

Data analysis

Data were analyzed by using the Statistical Package for Social Science (SPSS) version 12. Descriptive statistics such as frequencies, percentage, mean and standard deviations were used to describe all the main variables.

Results (Descriptive findings)

This section highlights information related to respondents' background such as their ages, marital status, monthly income, nationality, numbers of marriage, level of education and occupation; type of marriage; reasons of marriage and the place of CBM.

Profile of husbands and wives

This is an analysis of the personal background of the applicants which includes their ages, marital status, monthly income, nationality, numbers of marriage, level of education and occupation. The analysis is viewed as in Table 1.0.

Table 1.0
Cross tabulation: State v Percentage distribution of applicants' background

Demographic characteristics	States							
	Johore		Kedah		Kelantan		Selangor	
	Husband	Wife	Husband	Wife	Husband	Wife	Husband	Wife
Age (years)								
<20	1.6	15.8	4.7	19.6	3.3	20.0	2.6	11.8
21 - 30	27.9	48.4	36.0	43.9	42.0	54.7	28.9	47.9
31 - 40	32.6	27.4	22.0	25.0	25.4	18.0	27.4	30.6
41 - 50	28.4	6.3	27.3	10.1	22.0	7.3	30.0	8.6
51 - 60	6.3	1.6	8.7	1.4	6.0	0.0	6.9	1.1
61 - 70	3.2	0.5	1.3	0.0	1.3	0.0	4.2	0.0
Total (N)	190	190	150	148	150	150	190	186
Mean	37.02	28.66	35.96	28.68	34.54	26.60	38.02	29.64
S.D.	10.55	8.68	11.13	9.00	10.29	7.77	11.08	8.13
Monthly income (RM)								
<1000	58.8	68.0	46.2	46.1	80.0	50.0	32.0	24.2
1001 - 2000	21.2	20.0	23.2	46.1	.0	0	23.9	40.3
2001 - 3000	10.6	4.0	11.5	0.0	20.0	50.0	11.2	12.9
3001 - 4000	4.7	4.0	3.8	7.8	0.0	0.0	7.5	8.1
4001 - 5000	1.2	0.0	11.5	0.0	0.0	0.0	5.2	9.7
5001 - 7000	0.0	4.0	0.0	0.0	0.0	0.0	9.0	3.2
7001 - 20000	3.5	0.0	3.8	0.0	0.0	0.0	11.2	1.6
Total (N)	85	25	26	13	5	2	134	62
Mean	1506.61	1158.32	2054.12	1241.85	820.00	1550.00	3406.58	2608.56
S.D.	1595.86	1282.49	2191.12	991.08	923.04	1343.50	3853.47	3464.34
Marital status								
Married	41.1	0.6	59.7	0.9	31.1	0.0	48.7	0.5
Never married	45.1	75.1	33.8	75.2	60.1	86.0	41.8	76.0
Divorced/separated	4.6	18.5	1.4	14.5	5.4	11.3	5.3	20.2
Widow/widower	9.1	5.8	5.0	9.4	3.4	2.7	4.2	3.3
Total (N)	175	173	139	117	148	150	189	183
No. of marriage								
1 st	46.0	74.6	35.3	75.4	60.8	86.8	40.7	74.9
2 nd	53.4	24.9	63.3	23.8	38.5	13.4	58.2	25.1
3 rd	0.6	0.6	0.7	0.0	0.0	0.0	1.1	0.0
4 th	0.0	0.0	0.7	0.8	0.7	0.0	0.0	0.0
Total (N)	176	173	139	118	148	149	189	183

Continued – Table 1.0

Level of education	Johore		Kedah		Kelantan		Selangor	
	Husband	Wife	Husband	Wife	Husband	Wife	Husband	Wife
Primary	23.7	26.8	17.6	10.0	15.0	6.3	10.0	14.8
Lower secondary: LCE or SRP or PMR	15.3	17.1	26.5	20.0	30.0	31.3	13.3	14.8
Upper secondary: MCE and SPM	35.6	36.6	29.4	55.0	30.0	37.5	20.0	22.2
Diploma or certificate or HSC or STPM	10.2	9.8	5.9	0.0	5.0	6.3	3.3	3.7
Bachelor degree	15.3	7.3	20.6	15.0	20.0	18.8	43.3	40.7
Master	0.0	2.4	0.0	0.0	0.0	0.0	6.7	3.7
Ph.D	0.0	0.0	0.0	0.0	0.0	0.0	3.3	0.0
Total (N)	59	41	34	20	20	16	30	27
Occupation*								
Housewife	0.0	59.2	0.0	42.8	0.0	46.7	0.0	39.4
Business and self-employed	24.0	4.9	30.1	10.4	38.0	1.6	27.2	5.5
Services workers, shop assistants and salespersons ¹	8.6	2.5	15.0	2.9	11.3	8.0	10.0	1.6
Senior officers and managers ²	6.8	0.0	8.3	0.9	5.6	1.6	17.7	11.8
Elementary occupations ³	11.5	3.7	7.5	4.8	9.9	4.8	9.5	1.6
Technicians and associated professionals ⁴	13.5	4.9	2.3	6.7	9.9	11.2	3.2	1.6
Professionals ⁵	3.8	2.5	2.3	1.9	2.8	0.0	8.9	9.4
Plant and machinery operators and assemblers ⁶	6.8	6.2	3.7	3.8	4.2	4.8	0.0	5.5
Skilled agricultural and fisheries	2.9	2.5	9.8	0.9	7.1	0.0	0.6	0.0
Armed forces ⁷	2.9	0.0	4.5	0.9	8.4	1.6	2.5	0.8
Clerical workers ⁸	1.9	1.2	3.7	12.5	2.8	6.5	5.1	8.7
Craft and related trade workers ⁹	8.6	3.7	5.3	4.8	0.0	3.2	7.6	4.7
Others ¹⁰	9.6	8.7	7.5	6.7	0.0	10.0	7.6	9.4
Total (N)	104	81	133	105	71	62	158	127

Source: Economic Planning unit

Note

*Classification according to Malaysia Standard Classification of Occupation 1998

¹ Includes cook, driver and waiter.² Includes general manager, divisional manager and senior government servant.³ Includes street vendor, domestic helpers, cleaner, construction and maintenance labourer.⁴ Includes non-graduate teacher, supervisor, engineering and computer support technician⁵ Includes graduate teacher, accountant, auditors and computer system designer.⁶ Includes equipment assembler, driver and machine operator⁷ Includes army, police, fireman, custom officer and immigration officer.⁸ Includes administration, financial and account clerk, and telephone operator.⁹ Includes mechanic, carpenter and tailor.¹⁰ Includes politician, students, pensioner, security, community social and personal service, rubber-tapper, receptionist etc

Percentage distribution of husbands and wives by age

Table 1.0 reveals the percentage of husbands' and wives' age group according to states -Johor, Kedah, Kelantan and Selangor. It was discovered in Johore that nearly one third (33.0%) of the husbands were from the age range of 31-40 years old, followed by 41-50 years and 21-30 years with the percentage of 28.4% and 27.9% each. Meanwhile, average husbands' age was 37 years old.

On the other hand, in Kedah, more than one third (36.0%) of the husbands were from the younger age group of 21-30 years old, followed by age groups of 41-50 years and 31-40 years at 27.3% and 22% each. The average percentage husbands' age was lower than Johore that was 36 years old. An interview conducted with Y.A. Sheikh Amiruddin Putera Bin Zainol Abidin,¹¹ confirmed the position above that majority of those contracting marriages without the permission of the court were below thirties, acting on the advice of their friends who have committed the same act.

Apparently in Kelantan, nearly half (42.0%) of the applicants were the younger age group of 21-30 years old, followed by age ranges of 31-40 years and 41-50 years at 25.4% and 22.0% each. An interview with the Registrar of the Kota Bharu Shari'ah High Court, Ustaz Hasim Bin Deraman on 27 May 2006, majority of the applicants below 30 years represented those who married for the first time without the court's permission. According to him, the young people here were accustomed to marry in Southern Thailand as to solve any problems relating to their going to be marriage. The average age for male in Kelantan was also the lowest among the states that was 35 years old.

Finally in Selangor, a noticeable distinction was discovered between the states where the middle age group (41-50 years old) dominated nearly one third of the husband's age groups. This was followed by the age group of 21-30 years and 31-40 years at 28.9% and 27.4% respectively. The finding contributed to the fact that the age group of 41-50 years old represented by those who had partially or completely attained financially stable status and practicing polygamy without the permission of the Shari'ah court. The applicants in this category claimed that the CBM was pursued

¹¹ The learned Sharīe judge of Lower Sharī'ah Court of Kedah. Interview conducted on 10 April 2006 at 3.00pm.

to avoid the stringent rules and time-consuming procedures for polygamous marriage and to keep the marriage in secrecy from their present wife.

As for the wives, the same Table 1.0 discloses that Kelantan led the highest percentage of marriage at below 20 years old (20.0%), followed by Kedah, Johore and Selangor at 19.6%, 15.8% and 11.8% each. This implies that in Kelantan it was common for a female to be married at a very early age in comparison to other states. The reason to this phenomenon was not only that it was a normal practice there but since most of them were only with LCE/SRP/PMR and MCE/SPM educational background, marriage was the best answer to them rather than staying at home and be a burden to them. Another noteworthy point to stress, there was no respondent from the age group of above 50 years compared to other states. This data indicated that women at this age were no longer concerned if they were not married at this time period. This was because most of the Kelantanese women were self-sufficient and the sole breadwinner of the family.

Percentage distribution of husbands and wives by marital status

In the states of Johore and Selangor, the percentage of never married and married status husband was almost the same at 41.1% and 45.1% and 48.7% and 41.8% each, whereas in Kedah the never married status husband was half of married status husband at 33.8% to 59.7%. In contrast with Kedah, it was found that Kelantan has the married status husbands half of the never married status husbands that were 31.1% to 60.1%. These discoveries point out that in Kelantan, cases of CBM were contracted by bachelors in contrast with Kedah where majority of cases were those who contracted polygamous marriage.

As for the wives, majority were with never married status with Kelantan having the highest frequency of 86.0%. This was followed by divorced, widow and married status. The finding pointed out that the never married wives were actually from the young age category that followed their emotion more than rational thinking. Although they can anticipate the negative consequence of their act, alas! Love is blind as in the *Malay pantun*,¹²

¹² *Pantun* is Malay metrical prose. The pantun above explains that a person may it be a son or a daughter is willing to be disowned by their own family for the sake of love to his/her partner. This *pantun* is normally used to refer to case of *kahwin lari*.

*Nasi lemak buah bidara,
Sayang selasih hamba lurutkan,
Buang emak buang saudara
Kerana kekasih hamba turutkan*

As for divorced woman and widow, it was a well known fact that these categories of women hardly ever re-married unless necessary. The bad and difficult experiences during marriage for the divorced women, whereas, the memories of their late husband for the widows, contributed to the small percentage of wife under this category. However it should be noted that in no circumstances that married woman can marry another man while her marriage still subsisting as the act is *haram* (forbidden). Still there was small number of cases under this category and there is tendency that the number will grow from time to time. The result of such an extreme action taken by this married woman was due to the factors where lust and emotion control over the mind and to unattached one self to religion. Severe punishment must be taken to this category of wife as a deterrent to others from committing the same offence.

Percentage distribution of husbands and wives by monthly income

From Table 1.0, it was discovered that majority for both husbands and wives were with monthly income below RM1000. This was followed by the RM1001-RM2000 in all states except for Kelantan where the second highest frequency for husbands and wives monthly income was RM2001-RM3000. Important point to note that in all states, the highest and subsequent frequency for wives was nearly half of the first except in both Kedah and Kelantan where the percentage was quite the same. On the other hand, the percentage of husbands' monthly income for Kelantan was distinctively 80% for below RM1000 and 20% for RM2001-RM3000.

In conclusion it was established that the monthly income for both husbands and wives was dominated by the low income group. The reason was due not only that the parties may not obtain the permission from the *wali* to marry but contributed to the large amount of *hantaran* (wedding gifts) fixed by the bride's family and the high cost in the preparation of the wedding reception. As such, by CBM, the couple can easily contract the marriage with a minimum payment without thinking that their action had disgrace and broken the heart of the parents and family.

Percentage distribution on number of marriage

Table 1.0 indicates that in Johore, Kedah and Selangor, more than half of the husband were 2nd marriage husband followed by 1st marriage husband at 46.0%, 35.3% and 40.7% each. However the situation in Kelantan was totally different where nearly two third (61.0%) of the husbands were 1st marriage husband and more than one third (39.0%) were from 2nd marriage. Consistent with the observations made above, the percentage of 1st married husbands was the highest in Kelantan followed by Johore, while the highest percentage for 2nd married husbands was Kedah followed by Selangor. In conclusion, it was common for people in the bordering states in the east and north Malaysia that to resolve problems pertaining to first time marriage was by way of CBM and to register it (if they wished) later. In contrast, the highest percentage for CBM was by 2nd married husbands who majority came from the states located in central and south region indicating that CBM was an alternative to escape the stringent rules of polygamy as claimed by them and to hide the marriage from the present wife knowledge.

As for the wives, in all the states majority of the marriage were 1st marriage followed by 2nd marriage. Based on the observations made above, 1st marriage has the highest percentage for number of marriage for wife followed by 2nd marriage. Therefore it is concluded that majority of cases was entered for the first time by wife in comparison with husband where high percentage of marriage was entered for the second time.

Percentage distribution of educational background of husbands and wives

From Table 1.0, it was discovered in Selangor that nearly half of the husbands (43.3%) and wives (40.7%) were with bachelor degree. The bachelor degree qualification in Selangor was also the highest qualification in its category between states. Next was the MCE/SPM followed by LCE/SRP/PMR and primary school leavers at 20%, 13.3%, 10.0% each for husbands and 22.2% and both 14.8% each for wives. Selangor also champion the rest of the states for having 2 husbands and 1 wife with Master degree respectively and the only husband with Ph.D degree compared to the rest of the states which has none. It is also discovered that most of the wives were

more educated than the husband. Although the applicants were mostly educated and knew the consequence of their act, their emotion got hold over their intellectual capacity that led them to commit the act of CBM.

The rest of the states also show the same pattern of husband's and wife's education level. In Johore, Kedah and Kelantan, the highest education level for both husband and wife was MCE/SPM. In Johore and Kelantan more than one third of the husband and wife were with MCE/SPM whereas in Kedah the percentage of husband with MCE/SPM was half of the wives.

In Johore about a quarter of both husbands and wives were with primary education followed by small percentages of LCE/SRP/PMR, bachelor degree and diploma holder. The same level of education pattern was observed for both husbands and wives in Kedah and Kelantan. The second highest percentage for both states was LCE/SRP/PMR followed by bachelor degree, primary school and diploma holders with almost the same percentage. On the other, in Kelantan the percentage of husbands with primary education was much higher than the wives at 15.0% to 6.3%.

In conclusion, it explains that majority of the parties involved with *kahwin lari* were those with basic education which was MCE/SPM. It was presumed that with the background of MCE/SPM, the applicants qualify for a lower income jobs only. Their position has contributed to the situation why the bride's *wali* refused to give consent to the marriage. In consequence, CBM will be the best solution for them to resolve their problems. However, different situation took place in Selangor, which was with the highest percentage of those with bachelor degree. Although the parties can be considered as being educated and with a good job, but their position do not help much. Due to the urban locality and with high cost of living, plus the large amount of *hantaran* (wedding gift) and the lavish *kenduri kahwin* (wedding reception) requested by the bride's family, CBM was therefore the best solution for them to cut down expenses for marriage plus to unite their undying love according to hukum *sharā'*.

Percentage distribution of husbands and wives occupational status

In Kelantan, more than one third of the husbands were with business and self employed profession whereas for the rest of the states, the profession contributed

more than a quarter each from the total number of applicants. In Kedah, Kelantan and Selangor, the second highest percentage of husbands' profession were services worker, shop assistant and salesperson whereas in Johore it was the technician and associated professionals. In conclusion, most of the husbands were with business and self employed profession who were also found practising polygamous marriage. It was also discovered that majority of the monogamous CBM incidences were contracted by the younger age low income profession group and the polygamous marriage were contracted by the middle age group with a stable income but wished to hide their subsequent marriage from the knowledge of the present wife.¹³

Meanwhile, housewife has the highest percentage of occupation in all states with Johore led the list with half of its total applicants. The second highest percentage occupation in all the states varied compared to husbands'. For Johore and Kelantan, they have plant and machinery operators and technician and associated professionals respectively whereas in Kedah it was clerical worker. Meanwhile the occupations of wives in Selangor were reflected according to the level of their education. Since nearly half of the wives have bachelor degree, it was starkly clear that Selangor has the highest percentage of professional and senior officers and manager compared to other states. This situation reflected that women with this profession were desperate to get married since it was difficult for them to find partner due to their high professional status. There were also many cases where the women chose to marry middle aged men with a good profession and stable income as an assurance that they can have a secured marriage life.

¹³ Isma Ismail and Azlan Hafeez, "50 VVIP nikah ekspres di Thailand," *Harian Metro*, 15 May, 2006,1.

CBM Solemnization without Permission of Registrar's and Shariah Court

Table 2.0 shows the percentage distribution of type of marriage and reasons of marriage.

Table 2.0
Marriage: Types and Reasons

Marriage type	Frequency	Percentage
Monogamous	384	56.5
Polygamous	296	43.5
Total	680	100.0
Reasons of marriage (N: 680)		
Faster and cheaper service	265	39.0
Polygamy	261	38.4
Married in husband's or wife's or both homeland	178	26.1
Refusal <i>wali</i> to give consent	138	20.3
Lack understanding Islamic law and provisions	104	15.3
Avoiding <i>zina</i>	15	2.2
Syndicate	14	2.1
Pregnant before marriage	7	1.0
Others		
-advice of friends, children disagree with parents' marriage, companionship, application for polygamy rejected etc.	31	3.9
-husband or wife studying abroad	10	1.7
-husband or wife working abroad	9	1.1

Type of CBM

It was revealed that more than half (57.0%) of CBM was contracted by way of monogamous marriage and the balance was by way of polygamous marriage. This confirmed the position that first time marriage was the main type of CBM contracted by parties as compared to polygamous marriage in Malaysia. The reason behind it was in a monogamous marriage the effect was much felt on the parties themselves whereas in a polygamous marriage not only it affected the parties but also the existing wife and children.

Reasons of CBM

The list of reasons consisted of faster and cheaper service, contracting polygamous marriage in secrecy, refusal of *wali* to give consent, lack of understanding on the Islamic law and the availability of relevant provisions on marriage avoiding *zina*, marriage through syndicate, pregnant without marriage and other reasons.

From the total of 680 applicants, more than one third (39.0%) was faster and cheaper service provided by the Islamic Council and Committee in other place than Malaysia.¹⁴ Faster and cheaper service has been chosen by most of the parties as a reason to contract monogamous or polygamous marriage without permission. This was because by marrying elsewhere, the parties do not have to undergo any procedures of marriage or to undergo marriage course or HIV screening test. What was important they fulfilled the requirement of *hukum sharā'* for valid marriage plus paying the *mahar* (dower) which was normally small in value. The procedure of marriage for example in Narathiwat took only a few hours to settle and the parties were given the marriage certificate immediately after the marriage. As for those with restricted resources, this was the kind of marriage that helped them from spending a large amount of money for the *hantaran* (marriage gift)¹⁵ and to prepare with at least RM10000 for a small scale wedding reception.¹⁶

Contracting polygamous marriage¹⁷ also contributed more than one third (39.0%) out of 680. The reason was simply to ensure that the marriage was solemnised without the knowledge of the present wife or wives. If the polygamous marriage was contracted according to normal procedure, the present wife will be

¹⁴ <http://www.bharian.com.my/BHarian/Friday/Nasional/20050311012626/Article>.

¹⁵ At present, the minimum amount of *hantaran* is around RM5000. The more educated the woman and the

more higher social status she comes, the higher the *hantaran* will be.

¹⁶ The information is obtained through phone interview conducted by the writer with Hj. Izani on 15 June

2006. Hj Izani is a Kelantanese businessman cum *orang tengah* (mediator), staying in Rantau Panjang. He is one of the *orang tengah* that assisted parties having problem to marry at the Islamic Council of Narathiwat. He claimed that he will make sure that the parties being assisted by him fulfilled all the requirement of *hukum sharā'* and basic procedures. This is vital in order that the parties can easily register their marriage upon returning to Malaysia. As for the fees charged, RM500 must be paid if the parties were equipped with documents such as I.C., passport or divorced or death certificate if necessary. This fee inclusive food, lodging, transportation, petrol and labour's charge. As for those without documents the fees rose up to RM1000. However, he did mention that there are *orang tengah* that charges up to RM3000 or more.

¹⁷ Safuri Kamaruddin, "Padah nikah di Thailand: 868 pasangan guna ejen nikah tak bertauliah hadapi masalah selepas sijil nikah disyaki palsu," *Harian Metro*, 26 November, 2007, 5. See also Noor Jaafar, "Sia-sia VVIP Nikah tak tak diiktiraf," *Harian Metro*, 16 May, 2006, 8.

summoned to the court which what the husband was trying to avoid. At the same time, there were few number of cases where the husbands claimed that their action of CBM were triggered due to the extensive time period of processing the application of polygamous marriage

As for refusal of *wali* to give consent, it contributed one fifth (20.0%) out of the total numbers. This reason has been in used ever since when both parties namely the *wali* and the children cannot see eye to eye on certain matters especially with the daughter's choice of husband. Meanwhile, lack of understanding on the Islamic law and the availability of relevant provisions on marriage¹⁸ have the distribution of 15.3%. On the other hand, avoiding *zina*,¹⁹ marriage through syndicate²⁰ and pregnant before marriage²¹ represented very low percentage

Percentage Distribution of Place of Marriage

Table 3.0 shows percentage distribution of place of marriage.

Table 3.0
Place of marriage

Place	Frequency	Percentage
Thailand:		
Narathiwat	236	34.7
Songkhla	159	23.4
Pattani	45	6.6
Yala	25	3.7
Satun	10	1.5
Indonesia	129	19.0
India	27	4.0
Malaysia	18	2.5
Others (USA, Europe, Arab States, Australia, Vietnam, New Zealand)	31	4.6
Total	680	100.0

¹⁸ "Kurang Kefahaman Agama dan Peruntukan Undang-undang sedia sebab Kahwin Lari," *Berita Harian*, 9 February, 2006, 8.

¹⁹ Norila Daud, "77% berpoligami kerana takutkan berzina," *Mingguan Malaysia*, 7 January, 2007, 3.

²⁰ Safuri Kamaruddin, "Padah nikah di Thailand: 868 pasangan guna ejen nikah tak bertauliah hadapi masalah selepas sijil nikah disyaki palsu," *Harian Metro*, 26 November, 2007, 5. Also "Pasangan nikah tepi jalan, longkang," *Harian Metro*, 16 May, 2006, 8.

²¹ "Ada pelajar IPT datang nikah selepas hamil," *Harian Metro*, 8 May, 2006, 6.

At present, the places frequented by couple to marry are not solely targeted in Southern Thailand namely Narathiwat, Songkhla, Pattani, Yala and Satun but of different parts of the world. With the tendency of marrying the foreign workers, the marriage was normally solemnised at the place of wife's or husband's homeland. It is commonly known that the procedures of solemnization of marriage in these countries are less stringent compared to in Malaysia. Among the most frequented place of marriage besides southern Thailand are Sumatera, Aceh, Jawa, Riau, Jambi, Tanjung Balai, Bangladesh, Lombok, Vietnam and so on and so forth.

Narathiwat, which is the nearest province bordering Kelantan, top the list as the most frequented place with percentage of 34.7%, followed by Songkhla which is nearest province bordering Kedah (23.4%) and Indonesia (19.0). The rest of the places were of low percentage.

In conclusion, Southern Thailand was still on the top of the list for place to solemnize marriage without permission. Stories from friends and relatives, who have committed the act, incidences of CBM published in magazines or newspapers or on-line in this country ever-since, prompted couples with problems to solemnize their marriage there too. As for states in the east coast, many couples traveled to Narathiwat as it was the nearest place to go. Conversely, couples from northern states, chose Songkhla and Yala as a suitable place to contract their marriages. It was also found that the choice of Southern Thailand for the purpose of CBM depended on the distance of their home relative to the border of Southern Thailand. For instance for those who reside in Kedah, Songkhla offered the best choice because it was nearest to the Kedah border. Whereas for those in Kelantan and Terengganu, Narathiwat will be the best place to marry. On the other hand, although Selangor has no relation to the proximity of its boundary, Narathiwat was the place chosen by the couple here to solemnize their marriages. At present, Indonesia has become the second targeted place to solemnize this type of marriage. Among the districts are Sumatera, Jawa, Jambi, Jakarta, Tanjung Balai and Bengkalis. This was because most of the local male and female have chosen the opposite sexes of Indonesian nationalities as their spouse as explained earlier. This was especially so if the wife was an Indonesian because their marriage will be solemnised by their own *wali* back at home. However

the rest of the place chosen were of low percentage compared to the two above mentioned states.

Conclusion

In relation to the findings, the following suggestions are for the purpose of reducing the incidences of CBM. These suggestions are not meant to tighten or loosen the procedures of marriage or the legal effect of registration but to encourage the public to marry according to the procedures that have been laid down and to support the National Family Policy . As a result, the appropriate protection provided under the law can be extended, especially to women and children whenever matrimonial problems arise. The suggestions are as follows:

a. Since women are the potential victims in CBM, 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.

b. 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 Shariah 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.

c. 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 (PLKN). 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.

e. 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.