



CROSS-BORDER MARRIAGES IN MALAYSIA: A REFLECTION FROM SURVEY



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ABSTRACT

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The paper aims to discuss the application of the laws and the general understanding of cross-border marriages among Muslims in Malaysia. This socio-legal research used quantitative method and legal doctrinal research. The data have been obtained through the survey with 400 respondents, who have been practising cross-border marriage. The data have been analyzed using Statistical Packages Social Sciences (SPSS) version 22. Research shows that the practice of cross-border marriage among Muslims in Malaysia is caused by the lack of knowledge of those who have been practising cross-border marriages as well as the weaknesses of the implementation of the law. Apart from that, lack of enforcement agencies in Malaysia causes injustice for the parties especially women and children. This vulnerable parties will suffer in terms of social and legal effects. This article is a preamble to a more extensive study of the cross-border marriage which the findings will be useful for further enhancement of the current legal provisions in Malaysia.

Contribution/ Originality: This study contributes in the existing literature about the understanding and protection to related parties of marriage especially the wives and children born to the marriage. The understanding will help in protecting themselves when they are in or outside the situation; i.e. it could assist them to survive through or to evade it. Thus, it is believed that this study could assist in solving such problems and conflicts that had not been resolved until this day.

1. INTRODUCTION

The term 'cross-border marriage' is usually used to refer to marriages solemnised in the provinces of Southern Thailand, particularly the five provinces situated near the border of Malaysia as mentioned above. The reason why Malaysians prefer these places in the Southern Thailand is probably due to the close distance which takes only few hours for them to reach if compared to any other places bordering Malaysia. For example, getting to Songkhla from Perlis only requires one to cross a famous land route in Perlis; i.e., Padang Besar (Md & Siti, 1989). The entry to Satun is through Wang Kelian, Perlis and Dannork, another Southern Thailand province that can be accessed from Bukit Kayu Hitam in Kedah.¹ As for the state of Kelantan, Narathiwat can be entered from Sungai Golok, in Rantau Panjang.² Those who prefer to use the sea, there are boat and ferry services from Kuala Perlis to

¹ Ibid.

² Ibid.

Satun.³ Over the years, the Southern Thailand has been labelled by Malaysian medias as places that offer less hassle marriage packages in terms of registration of marriage and requirement of guardian. Basically, the five provinces in the Southern Thailand are the most popular places for Malaysians to solemnise their marriage.⁴ It is estimated that more than 1000 Malaysians of various age get married in Southern Thailand every month.⁵ Consulate General of Malaysia in Songkhla, Mr. Mohd Faizal Razali, said the number includes marriages between Malaysians with foreign citizens.⁶ However, he further added that there has been an increase in the number of marriages solemnised in the Southern Thailand between 2013 and 2014. It is recorded that in 2013, there were 3,485 Malaysian couples solemnised their marriage in the Southern Thailand. In 2014, the number increases to 3,831 couples.⁷ This shows an increase of 346 marriages. Therefore, this addresses an urgent need to study these locations and to identify the reasons why the increase of cross-border marriage in these places among Malaysians.

In view of the increasing occurrence of cross-border marriage, the research undertaken is based on the assumption that cross-border marriage actually leads to problems in marriage. The problems are like uncertainties in determining the status of the marriage and the status of other claims related to the marriage including matters involving children and inheritance. Therefore, there is an urgent need for a research to solve these issues.

1.1. Research Methodology

This article used a socio legal approach which combining legal doctrine and a survey. A survey was conducted in selected states in Malaysia representing four regions namely the Northern, Central, East and South regions of Malaysia. Questionnaire was administered and distributed to collect the data from 400 respondents. Semi structured interview was also conducted with the informants who have the experience directly and indirectly involved in cross-border marriage. The collected data were analysed using SPSS version 22.

1.2. Research Objective

The purpose of this study is to examine and analyse the general information of respondents of cross-border marriage in Malaysia.

1.3. Legal Perspective

Despite the fact that the Islamic Family Law in Malaysia has provided specific procedures for marriage to be solemnised elsewhere and procedures for the application for *Wali Hakim* at the Syariah court in the case where *wali* does not consent to the marriage; cross-border marriage is unfortunately still happening. Even though the parties know the consequences, they still practice such marriages as they know that their marriage can always be registered under the Islamic family law in Malaysia upon obtaining the order from the Syariah court.⁸

³ Ibid.

⁴ Interview session with Mr Mohd Faizal Razali, Consulate Malaysia at Songkhla Thailand 21 October 2014. According to him Malaysia only recognise Songkhla, Satun, Narathiwat, Yala and Pattani as the places for Malaysian to get married in Southern Thailand. As for Phattalung Provinces, before year 2014, it also has been recognised for Malaysians to get married, however due to overwhelming of fraud and scam marriages in that place, it has been removed by Malaysian Authority since year 2014.

⁵ <http://www.Utusanonline//dated> 19 September 2013, "Lebih 1000 rakyat Malaysia bernikah di Selatan Thailand setiap bulan"<< retrieved on 19 September 2013>>

⁶ Ibid.

⁷ <http://www.BHonline//dated> 16 Mac 2015, "Bilangan Pasangan Malaysia Bernikah di Selatan Thai Meningkat"<< retrieved on 16 March 2015>>

⁸ According to section 12(2) of the Islamic Family Law (Federal Territories) Act 1984, it provides ;

"Notwithstanding subsection (1) and without prejudice to section 40(2) a marriage which has been solemnised contrary to any provision of this Part but is otherwise valid according to the *Hukum Syara'* may be registered under this Act with an order from the Court."

Other than fulfilling the conditions under the *Hukum Syara'*, Muslim couples also have to adhere to the procedures as provided by the Islamic Family law Act or enactments in Malaysia. Thus, to understand the reasons why cross-border marriage have increased annually, relevant provisions on the offences and penalties relating to cross-border marriage need to be discussed below.

There are four offences relating to cross-border marriage activities. Firstly, an offence that relates to solemnisation of marriage (Noraini, 2009a). Any person who marries, or purports to marry, or goes through a form of marriage with, any person contrary to any of the provisions of Part II commits an offence and shall be punished with a fine not exceeding one thousand ringgit or with imprisonment not exceeding six months or with both such fine and imprisonment.⁹ Thus, the section speaks clearly that that fine and imprisonment are the punishments for couples who commit cross-border marriage.

Secondly, the offence that relates to the failure of the parties to appear before the Registrar of Marriage after their marriage in a prescribed time (Hashim, 2009). Any person who fails to appear before a Registrar of Marriage within the stipulated time commits an offence and shall be punished with a fine not exceeding one thousand ringgit or with imprisonment not exceeding six months or with both such fine and imprisonment.¹⁰ Thus, this section shows that fine and imprisonment are also the forms of punishments awaiting those who fail to appear before the Registrar within the stipulated time as provided in section 31 of the same Act.

Thirdly, the offence that relates to solemnising polygamous marriage without the court's permission (Noraini, 2009b). This offence awaits those who practice polygamous marriage without permission from the court. The desire to contract polygamous marriage is considered as one of the main reasons why parties go for cross-border marriage. According to a research conducted by Noraini and Zaleha, cross-border marriage is an alternative to avoid rigid regulations of applying for permission to contract polygamous marriage and it is a way to keep the secret from the present wife (Noraini, 2009b).

The law clearly provides that 'any man who, during the subsistence of a marriage, solemnises another marriage in any place without the prior permission in writing of the Court commits an offence and shall be punished with a fine not exceeding one thousand ringgit or with imprisonment not exceeding six months or with both such fine and imprisonment.'¹¹ It is submitted that the word "any place" in this section refers to the place of the solemnisation whether inside or outside Malaysia. In the case of *Syarie and Shafie (2009)* the accused was charged under Section 124 of the Islamic Family Law (Selangor) Enactment 2003 for contracting a polygamous marriage without permission from the court. He contracted the said marriage with Suhaila Bt Mat Salleh at the Pattani Province of Thailand. The court held that, the accused was guilty and he was sentenced with a fine of RM1000.00 or in default one month imprisonment, and three days imprisonment. From the above case, it is observable that the action of the accused who contracted polygamous marriage without the permission of the court is perceived as an act of ignoring and disrespecting the current Islamic family law enforced in Malaysia. Therefore, this kind of marriage must be prevented, and a proper and suitable punishment should be sentenced for the purpose of punishing wrongdoer so that it can serve as a reminder to all Muslims not to commit the same offence.

Lastly is the offence of abetment and attempt to commit an offence. Section 133 provides that 'whoever attempts to commit, or abets the commission of, any offence under this Act commits an offence punishable with the same punishment provided for the offence.'¹² According to a research conducted by Noraini, in committing cross-border marriage, more than half (53.0%) of husbands and nearly three-quarters (74.0%) of wives are found to have committed the offence of abetment and attempt to commit (Noraini, 2009b). Moreover, it is found that the reason

⁹ Section 40(2) of the Islamic Family Law (Federal Territories) Act 1984.

¹⁰ Section 35 of the Islamic Family Law (Federal Territories) Act 1984.

¹¹ Section 123 of the Islamic Family Law (Federal Territories) Act 1984.

¹² Section 133 of the Islamic Family Law (Federal Territories) Act 1984.

why more wives are punished for attempted of cross-border marriage and abetment is because they usually abet husbands in committing such crimes in most cases (Noraini, 2009b). In the case of famous actor Aerial Zafrel and his wife Wawa Zainal, both of them were found to have committed an offence under section 40(2) of Islamic Family Law (Selangor) Enactment 2003 and were both punished with payment of fine RM 1000.00 and RM 800.00 respectively. Moreover, the adopted father of the male accused was also prosecuted for attempt and abetment and henceforth sentenced with payment of fine RM 800.00.¹³

2. RESULTS

2.1. General Understanding on Cross-Border Marriage

It is important to know respondents' understanding towards cross-border marriage. Therefore, in this study, it seeks to find information on respondents' general understanding toward cross-border marriage. Table 1 shows that, almost three-quarters of the respondents (74.8%) agreed with cross-border marriage in terms of its concept. Specifically, majority of the respondents (84.2%) strongly agreed that cross-border marriage should legalise the relationship between husband and wife, but it must be kept as a secret (80.6%). Moreover, more than three-quarters of the respondents (77.9%) agreed that it is an unlawful act, but more than three-quarters of the respondents (76.8%) agreed that cross-border marriage is in accordance with the law. Besides that, more than three-quarters of the respondents (76.5%) agreed that cross-border marriage was a sacred marriage while 76.4% of the respondents agreed that cross-border marriage was a sign of eternal love. Seven in ten of the respondents (70.5%) agreed that cross-border marriage was sacrifice of time and sacrifice of property (70.3%). Lastly, more than two-thirds of the respondents (69.0%) found that cross-border marriage was based on custom and local culture but, more than two-thirds of the respondents (66.2%) found that cross-border marriage was a forced marriage. Therefore, the data reflect that general understanding towards cross-border marriage among the respondents differ from one another.

Table-1. General understanding on respondents about cross-border marriage.

No.	Level of Understanding Regarding Cross-Border Marriage (N=400)	Level of Agreement (%)*					Mean	SD	%
		1	2	3	4	5			
1	Marriage is kept secret	1.0	2.3	18.3	49.8	28.7	4.030	0.807	80.6
2	Based on custom and local culture	0.3	10.8	36.5	49.0	3.5	3.448	0.741	69.0
3	According to Islamic Law	0.5	3.8	19.5	63.7	12.5	3.840	0.700	76.8
4	To legalise the relationship of husband and wife	-	-	17.8	43.8	38.5	4.208	0.722	84.2
5	Unlawful act	-	1.5	30.0	46.0	22.5	3.895	0.759	77.9
6	Sacrifice of property	-	8.5	38.3	46.8	6.5	3.513	0.742	70.3
7	A sign of eternal love		2.5	29.0	52.8	15.8	3.818	0.718	76.4
8	Sacrifice of time		5.8	43.3	44.0	7.0	3.523	0.711	70.5
9	Sacred marriage		2.3	27.3	56.3	14.2	3.825	0.690	76.5
10	Marriage by force	3.5	11.3	40.5	40.5	4.3	3.308	0.857	66.2
	Total						3.741	0.438	74.8

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

2.2. General Information about the Registration Cross-Border Marriage

This section discusses the general information of the registration of cross-border marriage, and it includes registration status and registration process of cross-border marriage. The results in Table 2 show that almost all of the respondents (99.8%) registered their marriage, and only one person did not do so. It indicates that the respondents knew the importance of the registration.

The respondent registered their marriage mainly at Perlis (25.3%), followed by Federal Territories (Kuala Lumpur, Labuan, Putrajaya) (25.0%), Negeri Sembilan (24.0%), and Kelantan (19.5%).

¹³ Ibid.

Table-2. General information on registration of cross-border marriage.

General Information	Category	Frequency	Percentage
Registration Status	Registered	399	99.8
	Not Registered	1	0.3
	Total	400	100.0
State registered for cross-border marriage	Perlis	101	25.3
	Federal Territories (Kuala Lumpur, Labuan, Putrajaya)	100	25.0
	Negeri Sembilan	96	24.0
	Kelantan	78	19.5
	Terengganu	5	1.3
	Selangor	4	1.0
	Malacca	4	1.0
	Kedah	3	0.8
	Johore	3	0.8
	Perak	2	0.5
	Penang	2	0.5
	Pahang	1	0.3
	Total	399	99.8

Source: Survey(fieldwork).

2.3. Registration of Status of Cross-Border Marriage

Table 3 presents the decision to register their marriage. Both parties agreed to the decision to register the marriage (60.8%), followed by the husband only 21.3%, family members 11.0%, and wife only 7.0%. With regards to the time taken to register their marriage at court, only 332 of the respondents answered the question. Nearly half of the respondent (44.6%) registered their marriage within one year. Almost one-quarter of the respondents (23.5%) registered their marriage within two years of their marriage, 13% of the respondents registered their marriage within three years of their marriage and the rest of the respondents (19.0%) registered their marriage after four years of their marriage.

Table-3. Registration process of cross-border marriage.

Registration Process	Category	Frequency	Percentage
Decision made to register the marriage	Both	243	60.8
	Husband only	85	21.3
	Family members	44	11.0
	Wife only	28	7.0
	Total	400	100.0
Time taken to register the marriage (N=332)	Less than 1 year	148	44.6
	2 years	78	23.5
	3 years	43	13.0
	4 year and above	63	19.0
	Total	332	100.0

Source: Survey(fieldwork).

2.4. Reasons of Respondents for Not Registering Cross-Border Marriage

Table 4 shows the reasons of respondents for not registering the cross-border marriage. Overall, a total of 69.9% of the respondents agreed with their reasons for not registering the marriage. In terms of shameful items, among the top three answers are ashamed towards the existing wife or wives (72.9%), ashamed towards their siblings (70.0%) and ashamed towards parents-in-law (71.1%). In relations with the feared items, among the top three are fear of the penalty imposed by the court (73.1%), fear of being bashed by friends (66.9%), and fear of being bashed by colleagues (66.6%). For the others items, the highest is that they wanted to avoid the existing wives from knowing about the so-called marriage (78.7%) while the lowest is that they did not want to register the marriage because they are unable to pay the registration cost (70.6%).

Table-4. Reasons for non-registration of cross-border marriage.

No.	Reasons for not Registering the Marriage	Level of Agreement (%)*					Mean	SD	%
		1	2	3	4	5			
1	Ashamed towards the existing wife (or wives)	5.5	13.5	21.8	29.8	29.5	3.643	1.193	72.9
2	Ashamed towards siblings	4.3	5.8	33.8	48.8	7.5	3.495	0.879	70.0
3	Ashamed towards parents-in-law	4.8	4.3	32.0	49.0	10.0	3.553	0.905	71.1
4	Ashamed towards the society	4.8	6.8	45.5	38.8	4.3	3.310	0.849	66.2
5	Ashamed towards neighbours	3.8	6.0	49.3	36.8	4.3	3.318	0.805	66.4
6	Ashamed towards workmates	3.5	5.8	44.8	41.5	4.5	3.378	0.807	67.6
7	Ashamed towards friends	3.8	5.8	41.8	43.3	5.5	3.410	0.833	68.2
8	To avoid the existing wives from knowing about the marriage	3.0	7.8	18.8	34.0	36.5	3.933	1.063	78.7
9	Not wanting to be bound by the law	1.5	5.0	32.5	50.5	10.5	3.635	0.796	72.7
10	Not financially able to pay the registration cost	0.3	6.8	38.5	48.8	5.8	3.530	0.718	70.6
11	Fear of the penalty imposed by the court	0.3	4.8	34.0	51.5	9.5	3.653	0.727	73.1
12	Fear of being criticised by the society	1.3	13.8	42.3	40.5	2.3	3.288	0.775	65.8
13	Fear of being bashed by neighbours	1.5	15.0	42.8	37.3	3.5	3.263	0.809	65.3
14	Fear of being bashed by colleagues	1.8	13.3	39.5	41.3	4.3	3.330	0.823	66.6
15	Fear of being bashed by friends	1.8	11.8	39.0	45.3	2.3	3.345	0.783	66.9
16	Spouse is not ready to register the marriage	-	5.3	35.0	34.3	25.5	3.800	0.881	76.0
	Total						3.493	0.619	69.9

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

2.5. Perception of the Respondents about the Registration of Cross-Border Marriage

It is important for the study to know respondents' perceptions towards the registration of cross-border marriage.

Table-5. Perception of registration of cross-border marriage.

No.	By registering the marriage...	Level of Agreement (%)*					Mean	SD	%
		1	2	3	4	5			
A	Positive								
1	My future is secured.	-	0.5	14.0	65.5	20.0	4.050	0.599	81.0
2	My life is always peaceful.	-	0.3	15.5	68.5	15.8	3.998	0.569	80.0
3	My life is always calm.	-	0.5	19.3	62.5	17.8	3.975	0.625	79.5
4	My spouse fulfils his/her responsibilities accordingly.	-	1.3	15.0	66.0	17.8	4.003	0.615	80.1
5	I feel proud because it has a place, legally speaking.	-	-	18.5	49.0	32.5	4.140	0.701	82.8
	Total						4.033	0.489	80.7
B	Negative								
1	I feel embarrassed.	3.0	16.3	19.3	40.5	21.0	3.603	1.080	72.1
2	I am always criticised.	6.0	16.3	18.0	40.8	19.0	3.505	1.148	70.1
3	I am living in pain	8.0	15.8	22.0	42.0	12.3	3.348	1.127	67.0
4	My life has gone haywire.	9.0	14.2	24.0	43.3	9.5	3.300	1.108	66.0
5	My life has become a turmoil.	9.8	12.8	24.0	43.5	10.0	3.313	1.122	66.3
	Total						3.414	1.022	68.3

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

Table 5(A) shows the positive perceptions of the respondents towards cross-border marriage. Majority of the respondents (82.8%) strongly agreed that the marriage has a value in the eyes of law and 81.0% strongly agreed that by registering the marriage their future will be secured. On top of that, 80.1% strongly agreed that when

registering the marriage, their spouse will fulfill his/her responsibilities accordingly. Overall, 80.7% of the respondents indicated that the respondents strongly agreed with the positive perception of the registration for cross-border marriage.

Table 5(B) displays the negative perceptions of the respondents towards registration for cross-border marriage. The top three negative perceptions are they agreed that by registering the marriage, they will be embarrassed (72.1%), they will always be criticised (70.1%), and they will live in pain (67.0%). Overall, 68.3% of the respondents showed that they are agreed with the negative perceptions of the registration of cross-border marriage.

3. DISCUSSIONS

As mentioned in several literatures such as those by Noraini (2009b) and Jones (1981) the most popular countries for Malaysians to get married across the border are the Southern Thailand and Indonesia. The current study finds that there are several contributing factors that influence Muslims couples to get married in both countries.

For solemnisation of marriage in the Southern Thailand, the study reveals that the contributing factors leading Muslims in Malaysia to contract their marriage are satisfaction of the respondents towards cross-border marriage, followed by attitudes of the respondents towards marriage registration at the court, level of understanding of the respondents about cross-border marriage, positive perceptions towards cross-border marriage, and knowledge of the respondents towards registration of marriage at the court. A possible explanation for this might be that Muslims in Malaysia are more selective in searching the place to get married and also the facilities provided by the religious office at the provinces in the Southern Thailand. Another possible explanation is that the procedure in the Southern Thailand is easier compared to Indonesia. It is supported by an interview with a Syariah High Court Judge¹⁴ and Head of Religious Officer from Satun Thailand.¹⁵

...it is interesting to say that marriage process in Southern Thailand is easy and simple. Investigation for wali of the girl only takes a few minutes....(Syariah High Court Judge, Kedah).

...the marriage is so simple, and we must follow Islamic law...our government does not interfere in the family matters... (Religious Officer, Satun Province).

The study finds that the contributing factors leading to Muslims in Malaysia to contract their marriage in Indonesia are attitudes of the respondents during registration process of cross-border marriage, followed by pre-registration process of marriage registration at the court, factors leading to cross-border marriage, level of understanding of the respondents about cross-border marriage, knowledge of respondents towards registration of marriage, and negative perceptions towards the cross-border marriage. These results can be explained by the fact that Indonesia is a Muslim country, and they are sharing the same culture and language which more or less the same with Malaysia. So, it is easier to contract cross-border marriage in Indonesia. Another possible explanation is that the route to Indonesia can be accessed using sea and air transportations. So, with these transportation facilities, it will assist the Malaysian couples to get married there.

4. CONCLUSIONS

The current study has elaborated and confirmed that even though there are general provisions in the Islamic Laws regarding marriage, for instance, those relating to permission to marry; Muslim couples still tend to choose to commit cross-border marriage. On top of that, despite of the availability of laws and regulations that are meant to control and limit the occurrence of such marriage in Malaysia, the study proves that it continues to happen up till now. Second, cross-border marriage still is an issue that cannot be solved until today. It happens because the

¹⁴ Interview session with Yang Arif Sheikh Mohd Roze Syariah High Court Judge of Kedah in Alor Setar, Kedah on 19 Mac 2015.

¹⁵ Interview session with Ustaz Hj Usman, Head of Islamic Religious Council Satun, on 20 October 2014.

provisions which control this type of marriage exist in the Enactments and Act are still lenient and its penalties are relatively low. It happens because it does not affect the validity of the marriage as stated in Section 12(2)¹⁶ and Section 34¹⁷ of *Islamic Family Law (Federal Territories) Act (1984)*. Moreover, our National Fatwa Council has provided guidelines in recognising such marriage. Therefore, with the flexibilities of the current laws, it makes people want to practise cross-border marriage even though it is not widely practised. In most cases of marriage without permission, which are inclusive of cross-border marriage, the court would try to avoid sentencing the offenders with imprisonment unless it is necessary to do so. This is considering the fact that the consequences of imprisonment which would affect the offenders' jobs and their personal status (Noraini, 2009b). Realistically and practically, imprisonment is not viewed as a solution in preventing cases of cross-border marriage simply because such punishment is in no way educational towards the members of the public in a way that it does not provide any insights as to the consequences that follow couples who chose cross-border marriage.

Thus, it is suggested that all penalties of such offence should be revised and more relevant set of punishments should be in placed to prevent this type of marriage from happening in the future.

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¹⁶ According to Section 12(2) "...a marriage which has been solemnised contrary to any provision of this part but is otherwise valid according to Hukum Syarak may be registered under this Act with an order from Court."

¹⁷ According to Section 34 " Nothing in this Act or rules made under this Act shall be construed to render valid or invalid any marriage that otherwise is invalid or valid, merely by reason of its having been or not having been registered."