

# *Procedures Noncompliance in Muslim Marriage Application: A Case Study in Syariah Courts in Terengganu, Malaysia*

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**Abstract**— The Administration of Islamic Family Law Enactment in each state in Malaysia has laid down specific rules and procedures for the application of marriage. The Islamic Religious Affairs Department is the body to implement the rules and procedures. Despite of having the clear provisions on procedures, there are many cases of breach of those procedures. The objective of this article is to discuss the marriage procedures under the Administration of Islamic Family Law (Terengganu) Enactment 1985. Any noncompliance with the procedures will affect the registration of the marriage. Thus, the parties need to apply for confirmation of marriage in Syariah courts. This article will further highlight the cases that have been heard in Syariah Courts in Terengganu for confirmation of marriages. Lastly this article will discuss the implication of unregistered marriage to the married couple. The study was conducted based on the analysis of documents, namely the Administration of Islamic Family Law (Terengganu) Enactment 1985 (the Enactment) and data obtained from Terengganu Syariah courts.

**Keywords**—marriage; without permission; registration; court; Malaysia

## I. INTRODUCTION

Marriage is the first step to form a family. Islam prescribes certain procedures and requirements to conclude a marriage. In Malaysia, the Administration of Islamic Family Law Enactment enacted in each state provides regulations pertaining to procedures of marriage and other related matters. The Enactment lays down provisions relating to dowry (mas kahwin), the minimum age limit to marry and the religious authority that can solemnize a marriage[1]. In addition, the parties must also get permission to marry from the Registrar of

Marriages, Divorces and *Ruju'*. Despite the clear rules and procedures, many marriages have not complied with the procedures and provisions laid down by the Enactment. Among the noncompliance issues are related to permission, solemnization, domicile, false declaration, invalid contract of marriage and polygamous marriage without permission of court[2].

## II. LITERATURE REVIEW

In Malaysia, cases involving noncompliance of procedures in marriages are often covered in the local media. Numerous studies have been conducted on the issues of marriages which have not complied with the rules or procedures prescribed by law. Cross boarder marriages[3], marriages by noncitizens couples are among the causes of noncompliance of marriage procedures[4]. A study by Mohamad found that among the reasons the couples went to Southern Thailand for solemnisation was due to failure on their part to procure the consent of the legal guardian of the bride (29 cases), polygamy (17 cases), complex procedures to get married in the respective state (12 cases), excessive intimate relationship between parties where the women were pregnant outside wedlock (14 cases) and high wedding expenses in Malaysia (8 cases)[5]–[7].

Meanwhile, Ahmad Zakhi who conducted a study on the procedural noncompliance cases in the Federal Territory Syariah Court from 2006 to 2012 found that the overall number of cases of non-compliance is 2725. Among the procedures which were violated by the couples were polygamy without permission (731 cases), failure to appear

before the Registrar (74 cases), offences relating to marriage (56 cases), fake declaration to marry (6 cases) and solemnization without lawful authority (5 cases)[8].

### III. RESEARCH OBJECTIVES AND METHODOLOGY

This article discusses Muslim marriage procedures provided in the Administration of Islamic Family Law (Terengganu) Enactment 1985 (the Enactment) and the effects of noncompliance marriage to the prescribed procedures. Failure to follow the procedures in the application of marriage will affect the registration of marriage. Therefore the couples are required to apply to the Syariah courts for confirmation of their marriages. The article further investigates the cases of marriage without the Registrar's permission which subsequently lead the parties to file for an application in Syariah courts in Terengganu to confirm their marriage. The method used in this study was content analysis where the provisions in the Enactment regarding the procedures for the application of marriage were analyzed. Data from the Syariah courts in Terengganu were examined to gather the information pertaining to the noncompliance cases in marriage application.

### IV. MARRIAGE PROCEDURES UNDER THE ENACTMENT

In Terengganu, marriage of Muslims must abide by the rules and procedures established by the Enactment. Section 14 of the Enactment provides that the parties must procure the permission to marry which is to be issued by the Registrar for the *mukim* ie the place where the woman resides. The permission must be applied and delivered to the Registrar at least seven days before the date of marriage. This provision is not applicable in the case of polygamous marriage, marriage solemnized by person authorised by the Ruler or *wali Raja* and marriage below age.

The application for permission to marry can be made by completing the prescribed forms which are available at Islamic Religious Office in the respective districts. The Registrar will proceed to grant permission upon being satisfied with all the required particulars in the application in accordance with section 15 of the Enactment.

Section 17 provides for permission as a requirement prior to the solemnization ceremony. The section states that solemnization cannot take place unless the parties have obtained either the permission by the Registrar under section 15 or by the Syariah Judge under section 16 if the woman is residing in Terengganu. On the other hand, if she is not the residence of Terengganu, the permission from the proper authority of the respective state that she is residing must be obtained prior to the solemnization.

The next procedure is the solemnization ceremony. According to section 18, the ceremony can only be conducted upon permission to marry is approved and it can only be held in the *mukim* or place where the woman resides, or it can also be held outside the *mukim* as earlier stated or in a different state provided that the permission to marry and a permission for the marriage to be solemnized as such have been duly obtained by the proper authority of such state.

The law stipulates that only those who are duly authorized can solemnize a marriage. For this purpose, section 6 of the Enactment states that the authorized persons who can solemnize are the legal guardian or *wali*, with the permission of the Registrar, or a person duly certified or granted with *tauliah* ie permission by the State authority to be a *Jurunikah* as the representative of the *wali*.

Following the solemnization, the marriage has to be registered within seven days after the ceremony, if it is held in Terengganu. For marriages held abroad, if the ceremony is held at places other than the Embassy, the marriage registration shall be made within two months after one of the parties or both parties arrive in Malaysia. For marriages solemnized in Malaysian Embassies, the procedure for registration of such marriages shall be identical to the procedure of registration of marriage solemnized and registered in Terengganu, as if the Registrar appointed for that foreign country were a Registrar for Terengganu. After the registration is done, the Registrar will issue a certificate of marriage within a short time.

The Enactment prescribes different requirements applicable to marriage for the first time and polygamous marriage. In polygamous marriage, the approval to practise polygamy shall be in a written form and issued by the Syariah Judge in accordance with the provision of section 21 of the Enactment. This means that a man who intends to practise polygamy must first obtain such permission from the Terengganu Syariah Court before he applies for permission to marry at the Islamic Family Law Administration Division or District Administrator [5]. After an approval letter to exercise a polygamous marriage is obtained, the man must enclose the approval letter together with the form of application for permission to marry. Thus, besides the requirement of obtaining permission from the legal guardian and the requirement of age, the couples who want to get married are obliged to follow the prescribe procedures relating to the application from the Islamic Religious Office in the respective districts.

### V. RESEARCH FINDINGS

Data gathered from the Terengganu Syariah Court show that for the past ten years, there were 5,413 cases of marriage confirmation applications filed in the Syariah courts across the state of Terengganu (TABLE 1). The application for confirmation of marriage was done because the couple have failed to follow the procedures prescribed in the Enactment.

**Table 1: Number Of Cases Heard In Syariah Courts**

Year	Cases (N)
2006	358
2007	489
2008	483
2009	474
2010	552
2011	510

2012	605
2013	574
2014	661
2015	707
<b>Total</b>	<b>5,413</b>

It is to be noted that there is a possibility that the number of noncompliance cases is greater compared to the number of cases heard by the Syariah courts. This is based on the assumption that there are still other cases of noncompliance which have not or have yet to be referred to the Syariah courts for the purpose of confirmation application.

Based on TABLE 2, the highest number of confirmation application cases is filed at the Syariah High Court of Terengganu, while only one case is recorded to be filed at the Syariah Court of Appeal. All cases filed at the Syariah High Court are application for confirmation of polygamous marriage. It should be noted that such numbers of application, although filed in Terengganu Syariah High Court, the applicants were those from Terengganu as well as from outside Terengganu. This was due to the reason that the procedures in Terengganu only requires the man to obtain a permission from Syariah Court compared to some other states that require written consent from existing wives. Another reason for application of confirmation of polygamous marriage was done in Terengganu Syariah court is because in other states, the practice of polygamy is more complicated. For example, the man is required to submit two male witnesses to support the application for polygamy. In addition, his future wife together with her guardian or *wali* and his existing wife must be present during the trial held in the Syariah court.

**Table 2: Syariah Courts Hearing The Confirmation Application**

<b>Court</b>	<b>Cases (N)</b>
Syariah High Court	2199
Syariah Court of Appeal	1
Syariah Lower Court Besut	801
Syariah Lower Court Dungun	317
Syariah Lower Court Hulu Terengganu	220
Syariah Lower Court Kemaman	530
Syariah Lower Court Kuala Terengganu	785
Syariah Lower Court Marang	259
Syariah Lower Court Kuala Setiu	301
<b>Total</b>	<b>5,413</b>

Among the Syariah lower courts, the highest cases filed and tried are in the Besut Syariah Lower Court (801 cases), followed by Kuala Terengganu Syariah Lower Court (785

cases) (TABLE 2). Most of the cases filed in the Syariah lower courts were cases of marriages without the permission of the legal guardian, marriage syndicates and others. The Enactment set the procedures that the person who can give permission to marry is the legal guardian. In circumstances where the legal guardian does not agree, or in the absence of legal guardian, the permission from *wali Raja* or *wali Hakim* can be obtained by making an application to the Syariah court in advance. However there are cases where couples decided to marry outside district without obtaining prior permission from their legal guardian. This is a clear breach of procedure which has been set forth by the 1985 Enactment. Subsequently, this breach would later cause them to file an application for confirmation of their marriage.

Marriage syndicates occur where there are certain individuals who arrange marriages for couples. In the case of marriage syndicate, all marriage conditions are prospectively fulfilled. The couples nevertheless do not apply to the Islamic Council for permission to marry (Source Interviews). It is surprising when all conditions are met, still the parties deliberately refused to apply for permission to marry.

Among the cases that have been tried in Terengganu Syariah High Court is *Hasmah Shafie vs. Juhari Abdul Ghani* [6]. In this case the couples were resident in Kuala Berang, Terengganu and Kuantan, Pahang. They were married in Narathiwat, Thailand by way of *wali hakim*. However, the applicant had been divorced by her husband with three *talaq*. The applicant has made an application for divorce confirmation. Among the issues raised in the court was whether the marriage solemnised in Narathiwat was valid or not. The court ruled that their marriage was valid according to the Islamic law because it has fulfilled all the conditions of marriage. According to the oath taken by the respondent, he had pronounced the divorce against the applicant. The court therefore confirmed the divorce.

Meanwhile, in *Perkara Khori bt Ahmad & Another* [7], the applicant, a Cambodian woman, was married to a local man in Kg Banggol Chempedak, Serada, Terengganu. The marriage was solemnised by a certified marriage official or *jurunikah* with *Tauliah* as *wali Raja*. In this case, the applicant's brother who was from the same paternal and maternal lineages was in Cambodia and was not present during the ceremony. Permission for the couple to marry was granted by the Assistant Registrar of Marriages, Divorces and *Ruju'*, for Mukim Kepong / Serada. This case was brought to Syariah court to determine the legality of their marriage by Islamic law.

The court in its ruling to annul the marriage and to direct for a new marriage decided that the ceremony conducted by the *wali Raja* in that case was considered to be *fasid* or imperfect according to Islamic Law, and such marriage was not recognized and could not be registered under the 1985 Enactment. In this case, there was no reference made by the Registrar of Marriage, Divorce and *Ruju'* to the Syariah court. Therefore, the court decided that the marriage was invalid due to lack of permission by the Syariah court judge and directed that a fresh marriage comply with the procedures to be immediately solemnized.

## VI. DISCUSSION

Noncompliance with the rules and procedures prescribed by the Enactment would result to a substantial effect on the validity of marriage. The validity of marriage is very crucial in Islam because it affects other pertinent matters such as registration of child births, alimony, child custody, matrimonial property and inheritance, if the couple divorced or one of them died. The marriage which have not fulfilled the legal requirement set by the Enactment cannot be registered.

### *Effects of unregistered marriages*

Failure to register the marriage will give affect the validity of the marriage. The couple has to apply to syariah court in order to confirm the registration.

#### *1) Problems to register child birth*

Couples who do not obtain the permission to marry and do not register their marriages are at risk of encountering certain predicaments when they have children. Even if the child is legitimate in terms of Islamic law, it is difficult to register their birth before their marriage is legally registered. In other words, it is difficult to obtain a birth certificate if the parents could not produce evidence of their legal marriage.

According to the new regulations issued by the National Registration Department (NRD), each couple who wish to register their child birth should bring a valid marriage certificate which was issued by the Islamic Religious Council of the respective states in Malaysia. If the couple was married outside the *mukim* and bring a marriage certificate which is not legally recognized, the NRD will not register the child birth.

#### *2) After divorce effects*

Another problem caused by the noncompliance marriage procedures is when there is a divorce between the spouses; the one who are typically victimized and abused under this circumstance is the woman. Among the repercussions to be encountered are:

##### *a) Not entitled to claim for rights*

If a marriage is not registered and no confirmation of such marriage is ever applied, the wife will not be able to initiate a divorce application to be heard in court if she intends to end her marriage. This is because before the divorce is confirmed, they should confirm their marriage in the first place. Since the marriage had never been confirmed, it is impossible to confirm a divorce. Consequently, all complaints they filed cannot be attended and considered by the authorities.

Therefore, the failure to register a marriage will cause the wife to lose her absolute rights as a legal wife in the eyes of the law. Consequently they cannot claim any rights as a divorced wife such as *mut'ah*, jointly acquired matrimonial property, alimony or child custody as earned and enjoyed by other women who were legally married in accordance with the prescribed legal procedures in this country.

##### *b) Restriction to a subsequent marriage*

Worse yet, many women are victims of the consequences of being abandoned or neglected by their husbands in cases of unregistered marriages. They may be left unattended without a legal confirmation of their marriage status. In this case, when the wife wants to complain that they are left by her husband or wishes to apply for a legal divorce, the court cannot attend to their application because they could not produce a valid marriage certificate. Without a legal divorce, the woman is restricted from getting married with other man even if he is willing to take her as his wife.

##### *3) Effect upon death of spouse*

Problems will arise upon the death of any of the spouses. Since there is no evidence of a legal and valid marriage, any party whether the wife or the husband shall not be entitled to claim from the estate of the deceased. Not only the spouse is restricted from being entitled for inheritance, their children will also suffer the same fate. Further, problems relating to estate distribution will arise if the marriage was not confirmed and registered, especially if the marriage is polygamous. If the husband dies, the wife who married without the permission of the court has no *locus standi* to file a claim of inheritance in the Syariah courts as there is no evidence that they were legally married.

## VII. CONCLUSION

In view of the impacts and implications of the consequences of not complying with the procedures laid down by the respective Islamic family law enactment of each states, it is hoped that all parties concerned must take heed of their respective roles. Everyone should know their rights and duties before they even involve in any marriage arrangements. Those who are more learned and conversant should play their roles by providing information and guidance to couples who are getting married. For couples who eloped, heavy and appropriate penalties should be imposed as a lesson to them on the offences they committed against the written laws written of this country. They are expected to know the existence of the laws with regard to the procedure of marriage, thus their act of violating the law by getting married without permission and not in compliance with the law in Malaysia is indeed rigorous.

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