

Legal Procedure and Formalities of Marriage Application in the State of Selangor: A Way Forward

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Abstract

This paper considers the legal procedure and formalities of marriage application in the State of Selangor. While the Islamic Family Law (State of Selangor) Enactment 2003 has provided detail provisions on the marital related matters, it still needs clearer provisions and amendments on the security of marriage institution. The objective of this paper is to study whether the marriage requirements stated in the Enactment have upheld positive values and whether the marriage procedures have complicated the process of application. This is important to answer the issues of marriage syndicate which has created holistic challenges in Malaysia. The authors employed quantitative methods in searching for the answers by analysing the Enactment in understanding the legal procedures and formalities stated therein. This paper also proposed that amendment of the law is necessary to prevent issues related to procedure and formalities of marriage in the State of Selangor. The authors have found that the procedures and formalities upheld positive values and do not complicate the process. Family lineage can be well taken care of if things that are prohibited in marriage can be prevented legally.

Keywords: Legal Procedure; Formalities; Marriage.

Abstrak

Kertas kerja ini membahaskan prosedur hukum dan formalitas permohonan pernikahan di Negeri Selangor. Meskipun Undang-undang Keluarga Islam (Negeri Selangor) tahun 2003 telah memberikan ketentuan rinci mengenai hal-hal yang berkaitan dengan perkahwinan, namun masih memerlukan ketentuan yang lebih jelas dan pindaan mengenai keamanan lembaga perkahwinan. Tulisan ini bertujuan untuk mengkaji apakah syarat-syarat perkawinan yang tertera dalam undang-undang telah menjunjung nilai-nilai positif dan apakah prosedur perkawinan tersebut mempersulit proses lamarannya. Hal ini penting untuk menjawab permasalahan sindikat pernikahan yang telah menciptakan tantangan holistik di Malaysia. Penulis menggunakan metode kuantitatif dalam mencari jawabannya dengan menganalisis Enakmen dalam memahami prosedur hukum dan formalitas yang tercantum di dalamnya. Tulisan ini juga mengusulkan agar pindaan undang-undang tersebut diperlukan untuk mencegah permasalahan terkait prosedur dan formalitas pernikahan di Negeri Selangor. Para penulis menemukan bahwa prosedur dan formalitas menjunjung tinggi nilai-nilai positif dan tidak mempersulit proses. Silsilah keluarga dapat terpelihara dengan baik apabila hal-hal yang dilarang dalam perkawinan dapat dicegah melalui undang-undang.

Kata Kunci: Prosedur Perundangan; Formalitas; Perkahwinan.

INTRODUCTION

Marriage in terms of language is conjugation and duplication whereas terminologically is a relationship between two people of different sexes that legalises childbirth (Syeda et al., 2018). Besides that, marriage can also be defined as the legally recognised union of a man and a woman via mutual consent and it is a legal agreement that leads to the cohabitation and provision for one another within the parameters of their respective rights and obligations. A man and a woman enter into a mutual contract with the intention of enjoying each other, creating a devout family, and creating a moral society (Dogarawa, 2009). Furthermore, Imam Muslim in his book, Sahih Muslim (Al-Naisaburi, 1955), defines marriage as a relation between a man and a woman which is recognised by custom or law and involves certain rights and duties, both in the case of the parties entering the union, and in case of the children born of it.

In Islamic jurisprudence, marriage or the contract of marriage is called *nikah*. *Nikah* is an Arabic word whose original literal meaning is 'sexual intercourse' or 'intimate or close union of a husband and wife' or 'cohabitation.' In other words, marriage (*nikah*) is a legal contract between a male and a female. The marriage also should be based on the groom and the bride's verbal or written mutual consent, which is considered a religiously valid Islamic marriage and outlines the rights and duties of the husband and wife. According to Islamic jurisprudence, there should be two Muslim witnesses while the marriage contract is signed.

In Malaysia, marriage for Muslims is strictly regulated by different Shariah laws in each state. This paper considers the legal procedure and formalities of marriage application in the state of Selangor. It analyses the uniqueness and comprehensive provisions of the Islamic Family Law (State of Selangor) Enactment 2003. It is stated in Section 4 of the Enactment that, 'this Enactment shall apply to all Muslims living in the State of Selangor and to all Muslims resident in the State of Selangor who are living outside the State'.

RESEARCH METHODS

In this paper, the authors employ a systematic investigation towards increasing the knowledge of law by looking for legal statutes. It is a wholly separate discipline which can yield knowledge that is beneficial to the legal framework of society to inform government policy and to be used in developing the new law. The specific methodology in this paper is utilising doctrinal analysis by analyzing existing legal texts, which is Islamic Family Law (State of Selangor) Enactment 2003 and legal scholarship to interpret and explain legal rules, often focusing on logic and precedent. The Enactment has provided detail provisions on the marital related matters which is the main consideration of this paper.

RESULTS AND DISCUSSION

Marriage Requirement: Upholding Positive Values

As stated earlier, the Islamic Family Law (State of Selangor) Enactment 2003 is applicable only to all Muslims living or resident in Selangor, indicating that a person who was born in Selangor but currently resides outside of the state may apply for marriage in Selangor. According to the Enactment, a marriage cannot be recognised or registered without the consent and authorization of the *wali* from woman. The woman's residence is under the authority of the Shariah Judge or someone who, following a thorough inquiry and in front of all parties involved, is granted general or particular authority on behalf of the guardian by the Sharie Judge. For instance, under Section 7, *wali raja* or *wali hakim*

or *wali tahkim* may replace inherited *wali* or *wali nasab*, with a condition that the *wali* cannot be located, or if the *wali* refuses permission without any reasonable reason.

In Section 14, woman who holds the status of wife to her husband cannot marry any man. The woman is a widow whose *'iddah* period has not yet expired according to Shariah law and a widow divorced while pregnant cannot marry unless she has given birth, and a divorce certificate has been legally issued under the law in force. The term *'iddah* linguistically comes from the Arabic root word for counting or numbering. In this context, it refers to the period of waiting a woman observes after her husband's death or divorce. The linguistic meaning emphasizes counting or enumeration, making it clear that the term pertains to the period following either the demise of the spouse or a divorce (Sarhan, 2023: 699).

She cannot remarry her ex-husband if the divorce was granted through *bain kubra*, or triple talaq, unless he has been lawfully married to someone else and the marriage has been consummated before being formally dissolved and the month of *'iddah* is over. *Bain kubra* is defined by Omar (2007: 94) as irrevocable divorce in which the husband cannot re-enter the marriage contract with his divorced wife unless she, after having married and establishing conjugal relations with her new husband, is divorced for some reason and is willing to re-enter into a marriage contract with her former husband. If the woman says she was divorced before the marriage was finalised, she cannot marry anyone else during the typical *'iddah* time for divorce unless the Shariah Judge, who has authority over the former husband's residence, grants her permission.

The widow whose spouse passed away is prohibited from being married to anyone until the conclusion of the *'iddah* period, which is determined by *Hukum Syarak* and also prohibited from getting married until she has produced her husband's death certificate or other documentation attesting to his passing.

Certain relationships are prohibited, as stated in Section 9 of the State of Selangor. This means that no man or woman shall marry on the ground of consanguinity, affinity, fosterage or marry two wives at any one time. On the ground of consanguinity, no man or woman shall marry his mother or father, his grandmother or upwards, whether on the side of his father or his mother, and his or her ascendants, how-high-soever, his daughter or her son and his granddaughter or her grandson and his or her descendants, how-low-soever, his sister or her brother of the same parents, his sister or her brother of the same father, and his sister or her brother of the same mother, the daughter of his brother or sister, or the son of her brother or sister and the descendants, how-low-soever, of the brother or sister, his aunt or her uncle on his father's side and her or his ascendants, his aunt or her uncle on his mother's side and her or his ascendants.

On the ground of affinity, no man or woman shall marry his mother-in-law or father-in-law and the ascendants of his wife, how-high-soever, his stepmother or her stepfather, being his father's wife or her mother's husband, his step grandmother, being the wife of his grandfather or the husband of her grandmother, whether on the side of the father or the mother, his daughter-in-law or her son-in-law, his stepdaughter or her stepson and her or his descendants, how-low-soever from a wife or a husband with whom the marriage has been consummated. Additionally, on the ground of fosterage, no man or woman shall marry any woman or any man connected with him or her through some act of suckling where, if it had been instead an act of procreation, the woman or man would have been within the prohibited degrees of consanguinity or affinity. Moreover, no man shall have two wives at any one time who are so related to each other by consanguinity,

affinity, or fosterage that if either of them had been a male a marriage between them would have been illegal in *Hukum Syarak*.

The wisdom behind the prohibition of marital relationship in this context is to preserve genealogy and culture to maintain peace in the family, uphold positive values in society, ensure legal and administrative order, and protect genetic health by reducing risk of inherited disease. Family lineage can be well taken care of if things that are prohibited in marriage can be practiced well. This matter aims to protect people, families and society by prioritizing the welfare of the next generation while at the same time it can guarantee a perfect life for the descendants of a family, promote social cohesion, preserve cultural values, defend the weak and maintain the legal and sociological framework.

Marriage Procedures: To Complicate The Application?

The marriage procedure is one of the important aspects of community life that requires careful consideration especially in the context of law. In this section, we will explain about the detailed marriage procedure that is enshrined in Selangor. In addition to regulating the marriage procedure, this Enactment attempts to guarantee that all components of marriage such as the authorization, contract and registration processes are completed in compliance with Shariah law.

Section 16 addresses the need for consent prior to marriage contract. This Section describes that prospective spouses must secure approval from the Registrar for the *kariah masjid* whenever that marriage is requested to be solemnized in the State of Selangor in which the woman is resident, and they shall apply for permission to marry to proceed with their marriage. Both parties must submit the application by completing the form prescribed. However, if the man resides at a different state or a different *kariah masjid* of the woman, a letter of confirmation from the registrar of his *kariah masjid* or the proper authority of his state is required to be submitted with his application. The application must be submitted at least seven days before the date of marriage, but the registrar may shorten the dateline based on the specific circumstances of that case.

As stated in Section 17, if the Registrar has satisfied with the application, and the man wishes to contract a polygamous marriage and the man has secured Section 23 (application for polygamous marriage) authorization, after the man make a payment of the prescribed fee that has mentioned in the Section 17, then permission to marry will be granted. Based on Section 26, after paying the required payments, the Registrar will provide a marriage and *ta'liq* certificate to each married party. *Ta'lik* in Arabic means 'condition or promise'. Divorce applies as soon as it is pronounced by the husband. However, in the case of *ta'liq talak*, the divorce does not apply when it is pronounced, but when the conditions previously set are fulfilled (Nurhadi, 2019: 759). For example, if the husband tells his wife, 'You are talak tomorrow night', then divorce will only effective the following night. Both certificates are important to show legal confirmation and official proof that the marriage has been solemnized according to Shariah law and the regulations set by the state.

Marriages allowed by the Registrar only after obtaining written permission from the Shariah Court Judge. According to Section 18, situations that require permission from the court are to be considered if the marriage to be performed is under the age specified in Section 8, which is the man and woman are under the age of eighteen or the divorced woman before the marriage had been consummated based on Section 14 (3) or the woman who does not have *wali* from *nasab*. The application in this case will be referred to the Syariah Judge in the woman's residence. After the Shariah Judge satisfied and granted authorization for the purposes of Section 14 (3) and Section 8 or gave his approval for the

marriage to be performed by *wali hakim* in accordance with Section 13 (b), after receiving their application and the prescribed fee, grant the applicants permission to get married using the prescribed form. On the authority of Section 19, the marriage will be solemnized, after the permission to marry has been given by the Registrar, when the woman is a resident of the State of Selangor or by the proper authority of the state that involves a woman resides in that State.

Based on Section 21, during the solemnization, the *mas kahwin* or dowry must be paid by the man or his representative to the woman or her representative in front of the *Tok Kadi* and two other witnesses. The Registrar has the duty to record the value and other particulars of the *mas kahwin* and *pemberian* (gift), the value and other particulars of any part of the *mas kahwin* or *pemberian* or both that was promised but not paid at the marriage solemnization and the promised date of payment. Lastly, the Registrar also has to record the details of collateral provided said by the man to pay the *mas kahwin* or *pemberian* to the woman.

After the marriage has been solemnized, it is important for the Registrar to record all the specified particulars and the prescribed *ta'liq* or other *ta'liq* for the marriage in the Marriage Register. The record shall be witnessed by the parties to the marriage, the bride and groom, by the *wali*, and two witnesses who were present at the marriage solemnization excluding the Registrar. After completed the records, it must be signed by the said Registrar.

According to the Section 23, a married man cannot make any contract to marry another woman unless he gets permission in the form of writing of the Court. When there is a marriage that has solemnized without the permission of the court, the said marriage cannot be registered under this Enactment unless the court is satisfied that the marriage is valid by referring to the *Hukum Syarak* and that marriage will be registered subject to Section 124 (polygamy without court's permission). A man who gets married without the permission of the court must pay the whole amount of the *mas kahwin* and *pemberian* to the existing wife or wives. If the said amount did not be paid by the man, then the amount must be recoverable as a debt.

Next, if the court satisfied that the applicant has the ability to enable him to support all his wives and dependents, and the person who will be his dependents following the proposed marriage as required by *Hukum Syarak*, the applicant will be able to provide fair treatment to all his wives in accordance with *Hukum Syarak* and that the proposed marriage will not cause *darar syari'e* (harm) to the existing wife or wives. Subsequently however, if there is any party dissatisfied with the decision of the court, he or she may appeal the case.

Based on Section 24 for marriage registered abroad, it can be solemnized according to Shariah law by a registrar appointed under Section 28 (3) at Malaysian embassies, high commissions or consulate offices in any country that has not informed the Malaysian government of its objection to the solemnization of marriages at those embassies, high commissions, or consulate offices. Before solemnizing a marriage under this Section, the registrar must ensure that both parties to the marriage are residents of Selangor each party has the capacity to marry according to Shariah law and this Enactment and if one party is not a resident of Selangor, the proposed marriage, if solemnized, will be considered valid in the place where that party resides.

The Standard Operating Procedure (SOP) Of Marriage Application: More Amendments?

Before entering the marriage contract, the important thing that the bride and groom must know is the procedures according to the State of Selangor. Generally, the marriage procedure is not difficult and complicated as everyone think it is. There are certain procedures that the contracting parties must follow. First, the man and the woman must attend a pre-wedding course as it is the most important commitment before one's got married. After attending the course, they must perform *human immunodeficiency virus* (HIV) test at any government clinic or hospital for both spouses within 6 months before the wedding ceremony takes place. Upon completion of the above, both man and woman must fill in the marriage application online form within 3 months before the date of the solemnization. Subsequently, when the marriage application form is completed, the supporting documents must be attached with it. The next step is, they shall obtain the confirmation from the Registrar or *kariah masjid*. Upon approval, they must obtain permission to marry from the District Islamic Religious Office. Next, after all the requirements is completed, only then the marriage will take place and the marriage certificate can be taken at the District Islamic Religious Office.

To understand the standard operating procedure for application, I will divide the procedures into two ways, the procedure of application to marriage for man, and the procedure of application to marriage for woman. Firstly, the man must fill in the application form, known as 'form 2A'. Then, he must obtain a blood or HIV's test examination form from a nearby government clinic or hospital. After that, he must attach a few of the supporting documents which are a copy of identification card or passport (if the applicant is a foreigner), a copy of identification card of two witnesses or passport (if witness is a foreigner), a copy of pre-marriage course's certificate that recognized by *Jabatan Kemajuan Islam Malaysia* (JAKIM), *Jabatan Agama Islam Selangor* (JAIS,) *Jabatan Agama Islam Wilayah Persekutuan* (JAWI) or *Jabatan Agama Islam Negeri* (JAIN), HIV's test result, a copy of application form of 'form 2A' (if the marriage applicant is outside the district/state/country), the confirmation letter of the applicant residents from the principal or village chief, or *nazir masjid* or chairman of the *Jawatankuasa Kemajuan dan Keselamatan Kampung* (JKKK) or the chairman of the residential area (for applicants who have a different of residence address with the address in the identity card), the letter of certificate of divorce or death of spouse and its copy (if the applicant is a widower), a letter or card of Islamic certificate and its copy (if the applicant is *muallaf*), an approval letter from *Kor Agama Angkatan Tentera* (KAGAT) or *Polis Diraja Malaysia* (PDRM) (if the applicant is a member of the Army/Police) and lastly, a letter of permission for marriage from consulate or embassy and immigration (if the applicant is a foreign national).

Thereafter, when the process is completed, the man can start getting confirmation from the Registrar or the *kariah masjid* and bring along the two witnesses. Office. Upon completion the form and the supporting documents, the applicant must get permission to marry from the District Islamic Religious Office. He must ensure that the forms have been officially stamped and dated by the Assistant Registrar of marriages or officers at the District Islamic Religious Office. But marriage applications that have been approved by the District Islamic Religious Office can only be used for 3 months only. Once all the matters by the man have been completed, all these forms can be submitted to the women (female party) for further perusal.

Secondly, the procedure of application to marriage for women, which basically similar to male party. Firstly, the woman must fill in 'form 2C and 2D'. Then, she must obtain a blood or HIV's test examination form from a nearby government clinic or

hospital. After that, she must attach a few of the supporting documents which are a copy of identification card or passport (if the applicant is a foreigner), a copy of identification card of two witnesses or passport (if witness is a foreigner), a copy of pre-marriage course's certificate that recognized by JAKIM, JAIS, JAWI or JAIN, HIV's test result, a copy of application of 'form 2C' (if the marriage applicant is outside the district/state/country), the confirmation letter of the applicant residents from the principal or village chief, or *nazir masjid* or chairman of the JKKK or the chairman of the residential area, a marriage approval form or marriage permission for men, a letter of certificate or confirmation or declaration of parent oath (if the daughter of the eldest son or guardian is the eldest brother), *wakalah* letter (if the *wali* is unable to attend during the marriage contract), a letter of certificate or declaration of death (father), a letter or card of Islamic Certificate and its copy (if the applicant is *muallaf*), letter of approval from KAGAT or PDRM, (if the applicant is a member of the Army/Police), a letter of certificate of divorce or death of spouse and copy (if the applicant is a widow), and lastly, a letter of permission of marriage from consulate or embassy and immigration (if a foreigner).

Even though the Enactment has provided detailed provisions pertaining to the procedure and formalities of marriage application, there are possibilities that people refuse to obey the law, such as polygamy without court's permission, divorce outside court and without court's permission and neglects or fails to report or to comply with the requirement stated earlier. Amendments to the Selangor Islamic Family Law Enactment 2003, to include provisions for people promoting marriages outside the state's Islamic laws, are expected to be tabled in 2026. The principal provision of the amendment is to add clear provisions and propose increased penalties for offences, including abetting marriage syndicates. A marriage syndicate refers to a marriage that takes place abroad but is not registered at a Malaysian embassy, resulting in the absence of a recognised marriage certificate. At present, there are no specific provisions regarding marriage syndicates in the Enactment.

Even though the legal provisions and enforcement under Section 124 of Polygamy Without Court Permission and Section 40 (2) of Offences Related to Marriage Contracts of the Selangor Islamic Family Law Enactment 2003 have been applied to curb offences in these marriage syndicate activities, it is still unable to resolve the existing issues.

Offences

There are few offences which is relating to the procedure and formalities of marriages in Selangor. According to Section 40 offences relating to solemnization of marriage. Subsection (1), if both parties' marriage without the permission under Section 19, as required under Section 19, no marriage shall be solemnized unless a marriage permission has been given by the Registrar under Section 17 or by the Shariah Judge under Section 18, and the marriage involves a woman resident in the State of Selangor by this act shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term not exceeding six month or to a fine not exceeding one thousand ringgit or to both.

According to Section 38 for procuring marriage, any person who, for the purpose of procuring any marriage under the Enactment intentionally makes any false declaration or signs any false notice or certificate required such as falsify the pre-marriage course certificate shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term not exceeding one years or to a fine not exceeding two thousand ringgit or to both.

Furthermore, Section 37 stated that any person who uses any force or threat to compel a person to marry against his will or to prevent a person who has attained the age of 18 years for man and woman from contracting a valid marriage, shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term not exceeding six month or to a fine not exceeding one thousand ringgit or to both. Omission to appear before Registrar within prescribed time according to the Section 35 is also an offence. Any person who, being required by Section 31 to appear before a Registrar, omits to do so within the prescribed time which is 6 months starting from the date after their marriage if not shall, on conviction, be liable to imprisonment for a term not exceeding six month or to a fine not exceeding one thousand ringgit or to both.

CONCLUSION

Marriage is a matter that is considered very seriously in Islam. Marriage is a crucial social and religious institution because it creates a social contract that establishes a person's legal, financial, and familial relationships. The Selangor state government has laid down very detailed procedures to perform marriages in the State of Selangor. These procedures must be followed by all Muslims who wish to perform their marriage in this state. Various offences relating to marriage have been mentioned in great detail in Part IV of Islamic Family Law (State of Selangor) Enactment 2003. Whoever commits the offences will be subject to a corresponding punishment as stated in Part IV in the Enactment as well.

It should be informed that the procedures of marriage that have been made by the Selangor government are not to make it complicated for Muslims to get married, but to protect the welfare of the groom and the bride so that undesirable things do not happen in the future. All undesirable things such as disputes in the future can be avoided if these procedures of marriage are followed. All Muslims who want to get married must comply with the rules of marriage and the conditions of marriage that have been outlined by Shariah. Those who want to get married in the State of Selangor also need to comply with the marriage rules and conditions that have been stipulated in the Islamic Family Law (State of Selangor) Enactment 2003.

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