A Study of Elopement among Muslims in Malaysia and Island of Lombok, Indonesia

(Kajian "Kahwin Lari" dalam Kalangan Muslim di Malaysia dan Pulau Lombok, Indonesia)

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ABSTRACT

The phenomenon of marriage by way of elopement captures the attention of many in Malaysia in recent years. The practice which is locally termed as 'kahwin lari' is known to cause serious problems to the couples and their families as it usually contracted between couples having difficulty to get consent from their families. In contrast, such marriages are customarily practiced in the Lombok Island of Indonesia. While such practice, locally known as 'merariq' is legal and approved by the custom of the inhabitants of the Island, the same practice is illegal and it entails legal consequences under the Malaysian criminal law. This prompts urgent needs to address such problems in order to come out with possible solutions in the form of policies. Thus it is important to look into and research the legal and customary practices of kahwin lari in the Island and in Malaysia as is the aim of this paper. This research is designed for socio-legal study and uses qualitative method. Data is obtained through informants consisting of the religious and customary leaders, officers from religious office as well as couples who practiced and experienced kahwin lari. This article is a preamble to a more detailed study of the cross border marriages where the result will be useful for further improvement of the existing legal provisions on kahwin lari in Malaysia.

Keyword: Elopement; Islamic family law; merariq

ABSTRAK

Fenomena perkahwinan merentasi sempadan telah menarik perhatian orang ramai di Malaysia sejak kebelakangan ini. Amalan yang lebih dikenali sebagai "kahwin lari" diketahui menyebabkan masalah yang serius kepada pasangan dan keluarga mereka kerana perkahwinan jenis ini dilangsungkan tanpa mendapatkan persetujuan daripada keluarga mereka. Sebaliknya, perkahwinan seperti ini lazimnya diamalkan secara adat di Pulau Lombok di Indonesia. Walaupun amalan sedemikian, secara tempatan dikenali sebagai "merariq" adalah sah dan diiktiraf oleh penduduk Pulau di Lombok, amalan yang sama tidak diiktiraf dan ia bercanggah dengan undang-undang jenayah di Malaysia. Oleh itu, hal ini menimbulkan keperluan mendesak untuk menangani masalah tersebut dengan mencari jalan penyelesaian yang berbentuk dasar. Oleh itu, artikel ini bertujuan melihat dan mengkaji amalan kahwin lari di Pulau Lombok dan di Malaysia. Kajian ini telah direka untuk kajian sosioperundangan dan telah menggunakan kaedah kualitatif. Data diperoleh melalui pemberi maklumat yang terdiri daripada pemimpin agama dan adat, pegawai dari pejabat agama serta pasangan yang berpengalaman dan mengamalkan kahwin lari. Artikel ini merupakan mukadimah untuk kajian yang lebih rinci tentang perkahwinan merentasi sempadan di mana hasilnya digunakan untuk memperbaik lagi peruntukan undang-undang yang berkaitan dengan aktiviti kahwin lari di Malaysia.

Kata kunci: Kahwin lari; undang-undang keluarga Islam; merariq

INTRODUCTION

Islam is a complete and comprehensive religion within each and every aspect of human life. In order to strengthen the family institution, Islam has laid down the guidelines and perfect rules so to ensure the family welfare and to keep them in harmony. In legal perspective, Islamic law has detailed out rules and regulations on marriages for the purpose of protecting its sanctity.

The Shariah laws as practiced in Malaysia recognize that a lawful marriage must abide by the pillars of marriage in Islam and comply with the requirements set out in the legal provisions enforced in each state in the country. Marriage is one of the Sunnah of Prophet Muhammad (p.b.u.h), but it has been violated by some people to accomplish their wishes and desires; such as to get married without the permission of the families or to get married because the female is found pregnant out of wedlock. Each of these 'wishes and desires' have led to new ways to contract marriage. One of the kinds is by eloping with future partners or popularly known among the Malaysians as kahwin lari. Kahwin Lari is prohibited among Malaysian Muslims and such practice entails serious legal consequences on the parties under the Penal Code for committing the crime of kidnapping, though not specifically dealt with in any of the Malaysian Shariah laws. Contrary to Malaysia, the practice or locally termed as merariq is regarded as a symbol of heroism among the people of Sasak¹ in Lombok Island. This issue of kahwin lari is not a new issue in Malavsia as it has become almost a 'favoured' practice among the Muslims in the states. This is due to the fact that there is no special provision or laws that address and explain the specific legal consequences of the practice.

Elopement or *kahwin lari* can be defined as a marriage without the consent of the authority such as the Islamic Religious Department in each state and the Syariah Court Judges in every state² Elopement has raised many issues and other major problems for Malaysians mainly the Muslims and Malays, particularly in matters relating to registration of marriage.

For Malaysians, marriages can be contracted in across borders but the places must firstly be endorsed and recognized by Malaysian authority, but it is always up to the choices made by couples who intend to marry. Thus, couples may choose to go for the authorized places across Malaysian border or they might as well go for places without such authorization. In Thailand for example, there are five provinces in its southern that provide easy access for parties who wish to get married and these provinces provide centers that are authorized and centers which are not. The provinces are Satun, Songkhla, Setul, Narathiwat and Pattani.3 This research also focuses on marriage contracted by way of elopement practiced by the Sasak society in Lombok Island; particularly the practice in three chosen districts in the East, the Central and the West of the Island. These locations were chosen because the majority of inhabitants are Muslims and they are most cooperative in channelling and sharing information about the issue.

OBJECTIVES OF THE RESEARCH

- 1. To analyze the legal framework for elopement marriage in Malaysia.
- 2. To identify the factors for elopement that has taken place in Malaysia and in Lombok Island of Indonesia;
- To gain information on the process of elopement as practiced in the Island of Lombok;

RESEARCH METHODOLOGY

This article is qualitative in nature and the researcher has used some forms of studies. Firstly is the library research, which is gathering all the information, related to the problem studied. Secondly is the field study, which is conducted through observation and interviews with authorities such as religious officers, Consulate General of Malaysia in Thailand, Officer of the court and customary leaders (*ketua adat*), especially in Lombok Island.

LOCATION OF STUDY

There are two main locations for the purpose of carrying out this study. Firstly, Lombok Island of Indonesia which located at the Nusa Tenggara archipelago. In the area of the region itself, there are two large islands which are Lombok Island and Sumbawa Island.⁴ The inhabitants of Lombok Island consists of Sasak, Bima, Sumbawa and Bali ethnics.⁵ But majority of the inhabitants on the island is Muslim Sasak.⁶ Most of them work as farmers since the location that they are living contains productive soil and suitable for agricultural activities. Second location is Southern Thailand. Malaysian Muslims who elope are found to conduct their marriages in these five provinces namely Satun, Songkhla, Yala, Narathiwat and Pattani due to the recognition of these provinces bythe Government of Malaysia.8 However for the purpose of conducting this research, only two provinces are selected; Satun and Songkhla.

The province of Satun⁹ is situated near neighboring provinces of Trang, Phattalung and Songkhla.¹⁰ The province is located on the Malay Peninsula, on the shore of the Andaman Sea.¹¹ Satun is one of the

four provinces of Thailand which has Muslim Majority. 12

The province of Songkhla is also known as Singgora. It is situated at the lake of Songkhla near the gulf of Thailand¹³ and the main activity here is fishery.¹⁴ Majority of the population here is Buddhist with a large population of Muslims, especially at the Malaysian border.¹⁵

LEGAL FRAMEWORK

Basically, Islamic Family Law in Malaysia does not recognize this kind of marriage because it violates the procedures of marriage under the Islamic Law in Malaysia. However, the particular law in each state does not have any specific provisions that explain and govern elopement or known as cross border marriages.

It is to be noted that any kind of marriage in Malaysia must observe the procedures as stipulated in the Islamic Family Law statutes. The Islamic Family Law statutes stipulated that marriage can only be solemnized by certain individuals like *wali mujbir*¹⁶ before the Registrar of marriage; by representative of *wali ijbar* in front of and with the permission of the Registrar of marriage; by the Registrar himself with the permission of *wali ijbar* and *wali raja who is* a Syarie Judge.¹⁷

The legal provisions state that *Wali Raja* or the judge, has the power to solemnize a woman who has no *wali nasab* or in cases of *wali enggan* whereby the *wali mujbir* refused to give permission to solemnize the woman. 19

Apart from that, according to section 34 of Islamic Family Law Act 1984, "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". Thus, marriage is still valid

according to the Syara' even without registering the marriage.

According to section 19 of Islamic Family Law Act 1984, No marriage shall be solemnized unless a permission to marry has been given;

- (a) by the Registrar under section 17 or by the Syariah Judge under section 18, where the marriage involves a woman resident in the Federal Territory; or
- (b) by the proper authority of a State, where the marriage involves a woman resident in that State.²¹

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

According to section 31(1) of the Islamic Family Law Act 1984, where any person who is a resident of the Federal Territory has contracted a valid marriage according to Hukum Syarak abroad, not being a marriage registered under section 24, the person shall, within six months after the date of the marriage, appear before the nearest or most conveniently available Registrar of Muslim Marriages, Divorces, and Ruju' abroad in order to register the marriage, and the marriage, upon being registered, shall be deemed to be registered under this Act.²² From this section, it can be inferred that marriage must be registered within 6 months after the marriage before the nearest Registrar as stated in Section 31 of the Islamic Family (Federal Territories 1984. Nevertheless, Law) Act unregistered marriage is still considered valid if the spouses fulfill all the conditions that have been prescribed by Hukum Syara'.

FINDINGS

REASONS FOR ELOPEMENT FROM THE MALAYSIAN MUSLIM COUPLES MARRIED AT SOUTHERN THAILAND

At least there were four couples who wanted to marry were queuing at the Islamic Religious Council of Songkhla when we arrived at that place waiting for the office to open. Three couples wanted to get marry due to polygamy and they said this is the way that they can be together. One couple refuses to get marry in Malaysia due to rigidity of laws and procedure of marriage. Furthermore, all of them said they did not want it to be like this, but it is a fate for them. The findings of this study describe the reasons of why Muslim couples tend to opt for elopement. This in a way determines the factors that led to such marriage. Most of the informants who were interviewed agreed that desire to commit polygamous marriage is one of the factors that influences most of them to opt for elopement.²³ The responses are as follow:

Informant 1: "....I want to do a good thing...polygamous marriage is one of the practices of our Prophet Muhammad...I told my first wife of my intention to get married with the second wife...at first, she asked me to let her go ...but I want relationship between us to be preserved, that is why we come here...marrying secretly without informing the first wife..."²⁴

Informant 2: "....We have discussed. I told my wife that I want to practice polygamy...She was reluctant to give her permission..."

Informant 3: "....I come here because I want to get married with my second wife...In Malaysia, there are many rigid procedures, and it takes a long time to approve polygamous marriage..."²⁶

Informant 4: "For me...solemnising a marriage in Malaysia or Thailand is the same...but in terms of procedure...the rigidity and strict procedures are in Malaysia...that is why we get married here...it is very easy..."

Thus, based on the responses by the informants, it is submitted that, most of the Muslim couples who go for elopement are due to the desire contract polygamous marriage. Moreover, rigidity of procedures of applying permission for such marriage is another influencing reason why couples opt for elopement.

REASONS FOR ELOPEMENT FROM THE SOUTHERN THAILAND AUTHORITIES' PERSPECTIVES

There are several views by the authorities from the Southern Thailand including the Islamic Religious Council of Satun and Songkhla, and as well the Office of General Consulate of Malaysia with regards to the influencing reasons among Malaysian Muslims who go for elopement. Coincidentally, most informants from the authority are agreeable that polygamous marriage is the main factor for couples who opt for elopement. The responses are as follow:

- "....among the reasons for elopement is due to refusal of guardian of the bride to give consent for the marriage...apart from that, they get married because the bride was found to be pregnant before marriage...Polygamous marriage is also one of the popular reasons for marrying in Southern Thailand...the fee for solemnisation of the marriage is very cheap...and another reason is due to our policy of not preventing any Muslim foreigner including Malaysians to get married in Southern Thailand....(Informant from Islamic Religious Council of Satun)."²⁸
- "....from my observation the main factor for Malaysians to get married here is due to the desire to practice polygamous marriage... (Informant from Islamic Religious Council of Songkhla)."²⁹
- "....If he wants to practice polygamous marriage, but he is reluctant to let everyone knows, he will get married here...and I think it is not a correct way to get married...we have rules.... (Informant from Office of General Consulate of Malaysia)."³⁰

The same informant also added that "... despite polygamous marriage, refusal of guardian to give

consent for marriage and pregnancy before marriage are also among the factors for elopement....(Informant from Office of General Consulate of Malaysia)"³¹

Thus, it can be summed that most of the factors for couples who go for elopement are related to human attitude and their behaviour. If they can control their desires, could have been everything accordingly. For polygamous marriage, it must be highlighted that there are rules and procedures prescribed under the Islamic family law in Malaysia in getting permission to contract such marriage that need to be abided by the Muslim couples. So, for couples who refuse to go through the hassle, the easiest way for them is to have the marriage in the Southern Thailand.

ELOPEMENT: LOMBOK STYLE

One thing that is very unique and interesting about Sasak people is that they are very submissive to their customs despite the fact that they are living in the modern era. This is evident in the wedding ceremony which is initiated by a custom named *adat merarik*. Although, they have many types of wedding ceremonies, the most popular type is *merarik*.

Merarik can be defined as an act where a man abducts a woman who shall be the future wife of the man.³² In the Sasak culture, marriage symbolizes heroism and accountability of the man who has the courage to take the risks for the sake of the one woman who he loves.³³ The act of merarik or abducting the woman shall be carried out after sunset; the time between Maghrib and Isha prayers.³⁴ If merarik was done during the daylight, the man may be considered as coward or weak because that would not symbolize the qualities of a Sasak hero.³⁵

In implementing *merarik*, there are several processes that must be observed by

the couple before they are married. The *merarik* processes are:

A) INTRODUCTION³⁶

Place for meeting usually occurs in public places such as at the shopping centers and in gatherings such as during receptions or in parties. When a man and woman meet, then the next step that will take place is a process called *midang* in which the man will come to her house in order to get the consent and approval of the woman to do *merarik*.

B) MIDANG³⁷

In *midang* process, the man will go to the woman's house, preferably at night. Midang process can take place within a few days and it is not limited to a man only, but it is opened to other men who desire to marry the woman. The more beautiful the woman is, the more number of men who will be interested to ask for her hand in marriage by going to her house. Men are free to do anything so long as it does not conflict with the teachings of Islam which may include giving gifts³⁸ as well as providing help for the woman's parents doing household tasks. During the *midang* process, there are certain customs that must be observed by men and women and that include the requirement of maintaining order, decency and politeness towards each other. In addition, the man who arrives first at the woman's house, must leave earlier than those who come later. Apart from that, they must mind their words so as not to hurt and offend others³⁹.

C) SETTLING A PROMISE⁴⁰

To capture the woman's heart, usually the man would leave gifts and helped out the woman's parents to do their household tasks. A woman would not accept the gift, if she is not attracted to the man. When she is not willing to accept the gift, she will return

the gift through her parents. In this way, she can avoid any fights or disputes that may occur between families. When a woman accepts a gift from a man, it signifies her acceptance of his love. When this occurs, they will discuss and agree to perform *merarik* and it must be kept secret from the knowledge of the public.

D) MERARIK

The man will inform his parents of his intention to do *merarik* on the woman who he loves a day before that. However, if he knew that his parents would not agree with his intention to do merarik with the woman he chose, he will only inform his parents after *merarik* has taken place.⁴¹ explained above, merarik must be carried out after sunset and usually the time between magrib and isyak prayers.⁴² When merarik happens, the woman must be accompanied by a trusted woman to be with her in order to avoid any possible slander and suspicion among the public.⁴³ When abducted, the woman is usually placed at the man's family house accompanied by a woman who the man trusts. Upon arrival at the man's family house, the woman must rinse off her feet at the veranda and a ceremony called mangan merangkat⁴⁴ is held to celebrate the merarik. During the occasion, the sound of a rooster crowing will be made between Maghrib and Isyak prayers in order to indicate 45 and inform the villagers that there had been a merarik in the village.46 After mangan merangkat ceremony has ended and people returned to their houses, the groom himself is required to keep distant from the bride to avoid any unwanted things to happen. The bride will be accompanied by a woman trusted by her, as well as the host couple themselves. 47

E) MESEJATI

Mesejati is where the parents of the bride-tobe notify the leader of the village that their daughter has gone missing. Such notification is also done by the family of the groom to notify the leader of the village that the particular man who has carried out the act of abducting the woman and she is hidden at a safe place.⁴⁸

F) NYELABAR

Nyelabar or selabar is a notification by the groom's family to the family of the abducted woman, through a representative. This is to tell them about their daughter's abduction. All personal information about the groom will be conversed to the family of the woman. Sometimes selabar is not only done within the area of the woman's family house, but it could also take place in public places such as at markets or at main roads. 50

G) MITA WALI

Mita wali or nuntut wali means a request for the wali to solemnize the marriage as required by the Islamic teachings. Normally, the leader of the village or representative of the groom will be sent to discuss with the wali of the bride. If it runs smoothly, and the wali of the bride agrees, hence solemnization will take place. However, if the wali refuses to solemnize the marriage, the case will then be referred to the religious office within their area.

H) SORONG SERAH AJI KRAMA

Aji means value and Krama means customs or ceremony. When the words are read together, it means the value of customs. This stage is the most crucial part in a wedding ceremony of Sasak people. Aji karma is also known as sorong serah or a form of agreement between the bride family and the groom family to celebrate both the bride and the groom. Sorong serah aji

karma ritual usually takes place during the daylight; the time between after zohor prayer until the asar prayer. ⁵⁶ During sorong serah aji karma, the groom's entourage of about 30 people will be present at the bride's house along with gifts and valuable things meant for the bride. This ceremony must be witnessed by family members of both sides and is intended to avoid any unintentional mishaps from happening. ⁵⁷

I) NYONGKOLAN

Nyongkolan is a process whereby family members of the groom together with both the bride and the groom pay visit to the bride's house to strengthen the relationship between both families accompanied by several type of music instruments like gamelan. Nyongkolan is a way to strengthen the ties between the two families who previously has not interacted directly with each other. 9

DISCUSSION

After collecting data. the researcher discovers that there are several distinctive features between elopement in Malaysia and in Lombok Island. Firstly, in Malaysia, elopement is generally known as cross border marriages. Cross border marriages can be defined as marriage without permission from the Registrar of marriage, divorce and ruju' or marriage without permission from the Syarie judge. 60 On the other hand, in Lombok Island, elopement is known as Merarik which is defined as process that involves an act of Sasak man to abduct a woman for the purpose of marriage. 61 Secondly, in Malaysia, the act of cross border marriages always being committed by Muslim couples from various background including student, artist. businessman, politician and so on.⁶² Meanwhile, *merarik* originally performed by

majority of people who are from noble ancestor or *bangsawan*. Basically in Malaysia, cross-border marriages can be performed at any time and there is no specific time provided and usually Muslim couples go to Thailand or Indonesia to get married. In contrast, in Lombok Island, there is a specific time for man to abduct the girl which is between *Maghrib* until *Isya prayer*. If *merarik* is carried out other than that specific time, it will be considered as illegal and doer shall be subject to a certain amount of fine. 66

Apart from that, for Muslim couples in Malaysia, the majority of them committed the cross border marriages due to a desire to contract polygamous marriage⁶⁷, refusal of wali to solemnize the marriage⁶⁸, pregnancy before marriage⁶⁹ and so on. However, for Sasak people in Lombok Island, the only reason they perform *merarik* is due to their customary practice or *adat*.⁷⁰ For them it is an act of a warrior signifying bravery and heroism.⁷¹

CONCLUSION

conclusion, the phenomenon elopement that occurs in Malaysia is a reaction against the rigid and complicated procedures set out in the Islamic family law in Malaysia that restrict the freedom of Muslims couples to get marry given the conditions that they are in. However, it is to be understood that marriage in Islam is a sacred bond between two souls and it should be in accordance with the laws and regulations being enforced. Hence the phenomena of elopement in Malaysia are contrary to the marriage absolutely philosophy and it can be regarded as one of the infectious diseases that could eventually undermine the Islamic family institution in Malaysia. Nevertheless, it should distinguished from merarik custom or elopement in Lombok Island since it has its own features in order to meet the philosophy of marriage in Islam and in Sasak society which is in accordance with their laws and regulations.

NOTES

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