

Cross Boundary Marriage under Malaysian Family Law: Between a Dream of Life and Reality of Legal Requirements

Anis Shuhaiza Bt Md Salleh (Corresponding author)

Law Department, College of Law, Government and International Studies

Universiti Utara Malaysia, 06010 Sintok, Kedah, Malaysia

Tel: 60-9-298-4299 E-mail: shuhaiza@uum.edu.my

Noor 'Aza Bt Ahmad

Law Department, College of Law, Government and International Studies

Universiti Utara Malaysia, 06010 Sintok, Kedah, Malaysia

Tel: 60-9-298-4263 E-mail: nooraza@uum.edu.my

Abstract

The cross boundary marriage is not a new phenomenon particularly marriages involving Malaysians and Indonesians. It is not to question on happiness, love and affection but most importantly to highlight the reality when disputes arise. In this paper we will be highlighting the surrounding issues not only on the legality of the marriage itself but also on the issue of jurisdiction of the court and the rights of Malaysian wife in custody and maintenance. The discussion will be focusing on the provisions contained in the main statutes governing marriage and divorce matters in Malaysia, i.e. the Islamic Family Law (Federal Territories) Act 1984 (Act 303) and the Law Reform (Marriage and Divorce) Act 1976 (Act 164). At the end, authors will post suggestions for betterment and benefits of parties who might be thinking to have a cross boundary marriage.

Keywords: Cross boundary marriage, Family Law, Custody, Maintenance

1. Introduction

All civilized nations agree that marriage is more than a contract and regard it as an institution fundamental to the well-being of society, being its legitimate procreative unit. The contractual aspect of marriage recedes upon its solemnization; where it depends on the consent of the two parties to be husband and wife. Marriage, not only confers the status of legitimacy with all its consequential rights, duties and privileges, it also creates relations of consanguinity and affinity (Tan Yock Lin, 1993). Brett LJ in *Niboyet v Niboyet* stated that marriage “*is that relation between the parties and that status of each of themnot imposed or determined by contractbut by law.*” (Note 1)

Nowadays, the cross boundary marriage is increasingly common. Apart from that is marriage between Malaysian and Indonesian citizenships. To name a few, the marriage between Lombok (Note 2) men and Malaysian girls, Norzuliyani Alias who ran away on September 1998 at the aged of 17 and the most current is the case of Salsabila Yunan or Bella, 15 year old girl, are just two examples out of many more living unreported. This phenomenon appears to be driven by several factors including extended contact and broaden communication between people via carrier networking, studying abroad, business travelling, skilled and unskilled labour engagement for many reasons of international interactions (Note 3). The various modern modes of communication and mobility available as well as the change of social live of people who are looking for economic betterment seem to be contributing factors to increment of such marriage. According to a study conducted by a group of researchers (Note 4) including volunteers from Migrant Care which was one of the international non-governmental organisations revealed that as at 2008, one million of 4.5 million men in Lombok Island are working as labourers in Malaysia. From this figure only about half of them entered Malaysia legally according to official data. However, there is no official statistics or figures indicating Malaysian girls who have been spirited away or who had been lured by foreign men working in Malaysia to become their wives (Note 5)

As the term cross boundary marriage, it does not only matter of marriage between two different people or families from different background, culture or religion but it will involve different policy and laws of two different countries. Cases of Indonesian contract labour workers marrying Malaysians are quite common being reported, highlighting on the crisis, problems and bad effects of undergoing such kind of marriage, thus alerting government and public at large on this issue particularly on its consequences on the parties to the marriage,

children and government relations. There are cases of cross boundary marriage involving minor whose welfare has been ignored by foreign husband, unattended or abandoned wives and children whose rights have been denied and unheard by anybody or even worse the uncertainty on the validity of the marriage itself which affects the legal status of the child. Therefore, many countries including Malaysia have subscribed steadfastly to the traditional conception of the family based on the legal marriage between a man and a woman of whom resulting children (Note 6). Therefore, law on marriage and its procedure have to be clearly defined by government to safeguard the family institution sanctity especially when it involves international or cross country marriage.

In Malaysia, the law applicable to Muslim on family matters is the Islamic Family Law Act or Enactment which is varying according to each state. As Muslim matrimonial matters are within the state affairs in Malaysia (Note 7), each state is governed by its respective family law enactment. The statute applicable to Federal Territory of Putrajaya, Labuan and Kuala Lumpur is the Islamic Family Law (Federal Territories) Act 1984 (Act 303) (Note 8) which considered as the main Act. Other state enactments are Kelantan Islamic Family Law Enactment, Negeri Sembilan Islamic Family Law Enactment and Malacca Islamic Family Law Enactment which were enacted in 1983. While for Selangor Islamic Family Law Enactment, Kedah Islamic Family Law Enactment and Perak Islamic Family Law Enactment were enacted in 1984. After one year, there were Penang Islamic Family Law Enactment, Pahang Islamic Family Law Enactment, Terengganu Islamic Family Law Enactment and Perlis Islamic Family Law Enactment. Sabah Islamic Family Law Enactment was then enacted in 1992 and Sarawak in 2001. In these Enactments, matters incidental to matrimonial proceedings like maintenance and custody of children are also put therein. Though different enactments governing different states with some amendments made by each state, but generally the same principles of law are used in so far it does not contrary to the Islamic law principle as contained in the Holy *Quran* and the *Sunnah*. (Note 9)

On the other hand, the law governing marriage and divorce matters for non Muslim is the Law Reform (Marriage and Divorce) Act 1976 (Act 164) (Note 10) which is applicable to all non Muslim persons domiciled in Malaysia. It is inapplicable to Muslim, any native of Sabah and Sarawak or any aborigine of West Malaysia whose marriage and divorce is governed by native customary law or aboriginal custom (Note 11). This Act has introduced social revolution for non-Muslim in the sense that it provides for monogamous marriage and consolidates the law relating to divorce and other related matters including maintenance and child protection in a single Act.

2. Capacity of parties to the marriage

Under Islamic Law, when marriage contract is made, both parties are committed to conditions agreed to at the time of contract. Before one gets married, he or she must have capacity to marry. As for Muslims, there are five essential elements to be fulfilled in order to have a valid marriage and recognised by the Malaysian law, which are male, female, consent from the '*wali*', the two witnesses and the '*akad nikah*' or the marriage vows. As such, parties to the marriage must be Muslim male and Muslim female. This means that marriage with a person of the same biological sex will not be recognised by Islam and will be considered as void. It was agreed (Note 12) that the reassignment of sex from male to female and vice versa through surgery was prohibited by Islam except in '*khunsa musykil*' (Note 13) where he or she is permitted for surgery.

Besides that, from the Islamic point of view, a good wife is the one who possesses religious spirit. This can be best illustrated by the words of the The Prophet Muhammad (Peace Be upon Him) when he addressed a young man saying, "*A woman is chosen in marriage for four reasons; her riches, her ancestry, her beauty and her religion. Get yourself a woman with religion, may God bless your hands.*" As procedurally concerned, the minimum age for the former is eighteen and sixteenth for the latter. If the female is still under the age of sixteen, she has to get the permission to marry in writing from the *Syariah* Judge. (Note 14) Even though, age does not constitute any of mandatory or pillars of a valid marriage in Islam, contravene with the IFLA will result the parties cannot register their marriage and hence may have difficulty in bringing any claim arising out of their marriage.

As for consent to marriage, it consists of consent of the parties themselves and consent of the bride's parent or '*wali*'. Section 13 of the IFLA requires the '*wali*' or guardian to give consent for marriage. In the case of *Ismail Abdul Majid v Aris Fadilah* (Note 15), where a marriage has been contracted with the bride's brother acting as '*wali*' was held invalid as the bride's paternal grandfather was still alive, not senile, sound mind and perfectly capable of acting as '*wali*' at the time of '*akad nikah*' was conducted. Meanwhile, if the bride has no '*wali*' from '*nasab*', one can ask consent from a '*Wali Raja*' (Note 16) whom authorised by the *Yang DiPertuan Agong* or the State Rulers. Therefore, if a Muslim female from Malaysia married without the consent of her '*wali*', her marriage could not be registered in Malaysia and may be declared invalid.

Moreover, parties to the marriage must not have any relationships prohibiting the marriage which involve consanguinity or blood relationships (Note 17), affinity or through marriage relationship (Note 18), and fosterage (Note 19). Furthermore, section 9(4) of the IFLA provides that no man shall have two wives at any one time who are related to each other by consanguinity, affinity or fosterage. Besides, it is illegal for a man to have more than four wives, to marry two sisters as wives at the same time, a woman who is already married and a woman during her 'iddah' (Note 20).

Lastly, would be the dowry (Note 21) which is an obligatory marriage payment under *Hukum Syara'* from husband to wife (Note 22). The marriage vows or the pronouncement of an offer (ijab) and acceptance (qabul) is between an offer from the bride's father (wali) or his representatives and an acceptance from the bridegroom. In other words, the marriage shall be solemnized according to *Hukum Syara'* by 'wali' or his representatives or Registrar of Marriage or 'Wali Raja' (Note 23). The dowry has to be paid to the bride in the presence of at least two witnesses (Note 24) and the Registrar of Marriage shall record the value of it. The right of a married woman to the dowry or any gift (Note 25) will not be affected though on the dissolution of her marriage (Note 26). A marriage shall be valid unless all the conditions according to *Hukum Syarak* for the validity thereof are satisfied. (Note 27) Upon satisfying with all the conditions necessary for a valid marriage according to *Hukum Syara'*, the parties may proceed for registration of their marriage (Note 28).

As for non-Muslims, with the advancement of technology and development of medicine, transsexual is quite common nowadays. Therefore, for purpose of valid marriage under Malaysian law, the parties of the marriage must be persons of the opposite sex biologically – between male and female. By virtue of Section 69(d) of the LRA the marriage is void if parties are not male and female. This also shown in the case of *Corbett v Corbett* (otherwise *Ashley*) (Note 29)), the marriage of a person named Ashley, who lived as a woman after undergone a sex change operation was declared void. It was held that sex was biologically determined once and for all at birth and seems that both parties were male.

Furthermore, the minimum age of the parties to the marriage to be solemnised in Malaysia shall be void if at the date of the marriage either party is under the age of eighteen years unless (Note 30), for a female who has completed her sixteenth year, the solemnisation of such marriage was authorised by a licence granted by the Chief Minister under section 21(2) of the LRA. Consequently, a marriage which takes place without complying with the age requirement, it shall be void (Note 31), when the parties are within the prohibited degrees of relationship unless the Chief Minister grants a special license. This also means that a male who is below the age of eighteen could never contract a valid marriage in Malaysia.

While a person who has not yet completed his or her twenty-first year before marrying, consent in writing of parent or guardian (Note 32) or the person standing in '*loco parentis*' shall be obtained. This can be illustrated by the case of *Re CHS* (1997), where a girl at the aged below twenty-one had undergone a customary marriage tried to register her marriage under the LRA. The court held that her mother could give consent if the child's father is dead or it is impracticable to obtain the consent. If the consent is unreasonably withheld or refused, the parties must make an application for consent to a Judge in chambers of the High Court as provided under section 12 (3) of the LRA. However, if he or she is not a minor, consent from the parent is no longer necessary (Note 33). Importantly, it must be noted that an underage girl being trafficked out of the country by foreign man or although she is willingly following the man back to his home country, is still considered trafficking if no proper consent or license duly obtained. If the marriage is done after giving the girl a false identity, the marriage is invalid due to her vulnerability (Note 34).

Apart from that, under prohibited relationship for non Muslim, parties to the marriage in Malaysia must not have any relationships prohibiting the marriage which involve consanguinity or blood relationships, affinity or through marriage relationship (Note 35) except a person who is a Hindu from marrying under a Hindu law or custom his sister's daughter (niece) or his mother's brother (uncle). As for the 'dowry' there is no provision in the LRA and it depends more on the parties' religion or custom or usage.

3. Solemnisation of the marriage

Under Islamic law, a marriage solemnized by parties after complying with all requirements in accordance with the *hukum syara'*, it is a valid marriage regardless of whether or not the marriage has been registered. This is pursuant to a provision stated that a marriage shall be void unless all conditions are satisfied (Note 36). Consequently, non compliance with the provisions relating to the solemnization and registration of marriage, parties to the marriage commit offences and shall be punished with a fine or imprisonment or both by the *Syariah* Court. In pursuant to section 39 of the IFLA, it provides that any person who without authorization has

solemnised or purported to solemnize a marriage, commits an offence punishable with a fine not exceeding RM1,000.00 or imprisonment not exceeding six months or both.

With regards to a marriage solemnized abroad, section 24 of the IFLA provides that a marriage may be solemnised in accordance with *hukum syara'* in another country or abroad. However, the solemnization shall be performed by the Registrar of Marriage, who is appointed under section 28(3) of the IFLA according to *hukum syara'* at the Malaysian Embassies, High Commission, or Consulate in any country and it must be registered accordingly.

However, if the marriage has been contracted in accordance with the *hukum syara'* but not at the places mentioned in section 24 of the IFLA, the parties shall appear within six months after the date of marriage before the nearest or most conveniently available Registrar of Muslim Marriage, Divorces and *Ruju'* abroad to register it (Note 37). Besides, the parties may also register the marriage solemnised abroad on the return of either or both parties to Malaysia, within six months of the first arrival here (Note 38), by furnishing certain documents and particulars as may required by the Registrar for the purpose of registration. Later, a certified copy of the entry shall be given to the husband, wife and chief Registrar of the Muslim marriage.

In the case of *Mohd Azam Shariff v Che Norina Long* (Note 39), where parties solemnised their marriage in Songkla, Thailand and applied for registration in Syariah Court Penang. The issue before the *Syariah* Court was whether the solemnisation was valid? The *Syariah* High Court then held that by referring to the evidence produced by the respondent and the two witnesses together with a marriage certificate certified by the Islamic office in Songkla, Thailand, the learned judge had declared that the marriage was solemnised in accordance with *hukum syara'*. Therefore, it was valid and deemed to be registered.

However, if parties failed to appear before the Registrar of Marriage within the specific period, there will be a penalty upon registration (Note 40). Section 125 of the IFLA provides that whoever, wilfully neglects or fails to report and submit application for registration of marriage, commits an offence and shall be punished with a fine not exceeding RM1,000.00 or imprisonment not exceeding six months or both. Nevertheless, nothing in this Act or Rules made under this IFLA 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 (Note 41).

As for non Muslims, basically the same procedures are applicable where the LRA provides that every marriage of a person ordinarily resident in Malaysia or every Malaysian citizen shall be solemnised and registered before a Registrar or Assistant Registrar of marriages appointed by the Minister (Note 42). The parties may also solemnise the marriage abroad or under the laws of another country in the Malaysian Embassy, High Commission or Consulate abroad (Note 43). By virtue of section 31 of the LRA, where both parties to a marriage are Malaysians or one party is a Malaysian and the marriage takes place abroad under the laws of another country, then the parties must appear and register the marriage at any Malaysian Registrar of Marriage abroad within six months after the date of marriage. Subsection (1A) further provides that before the expiry of six months from the date of the marriage, if either one or both parties return to Malaysia, within six months upon arrival in Malaysia, the parties must appear before the registrar of marriage and register the marriage. Failure to do so (Note 44) within the prescribed time, the parties shall be liable on conviction to imprisonment for a term of not exceeding one year or to a fine not exceeding RM1,000 or both.

In short, according to section 104 of the LRA, a marriage contracted outside Malaysia other than a marriage solemnised in Malaysian Embassy, High Commission or Consulate abroad, shall be recognised as valid for all purposes of the law of Malaysia provided that the marriage is contracted in a form required or permitted by the law of the country where it was contracted, each party at the time of the marriage has capacity to marry under the law of the country of his or her domicile and either of the parties is a citizen or is domiciled in Malaysia.

4. Jurisdiction of Malaysian Court in matrimonial proceedings

Generally accepted, marriage is a tie between male and female whose domicile might initially different to each other. According to the law of domicile applicable in Malaysia, a wife's domicile will depend on her husband's domicile. It means that the wife does not acquire a separate domicile as she may have in England (Note 45). However, for Muslim marriage which the matter is under the *Syariah* court's jurisdiction, law of domicile has least important role in determining the *Syariah* court's jurisdiction in Malaysia. The court will only have power to make an order of divorce or to permit the husband to pronounce a *talaq* when the marriage has been registered or deemed to be registered under the respective Act or Enactment or where the marriage was contracted in accordance with *Hukum Syara'* and either party to the marriage must be Malaysian residence (Note 46) at the time of application (Note 47).

With regards to cross boundary marriage between Malaysian woman and Indonesian man as currently publicized, doubt may arise as to whether parties to the marriage are really aware of such legal requirement especially as to their marriage registration in order to enable them to seek for the court's assistance in case of any dispute. Among reported cases, the wives are brought back or they themselves come back to Malaysia without claiming anything from their husband or former husband. They are left with no remedy as they do not really know their legal rights and liabilities.

As for non Muslim in case of cross boundary marriage where the husband is not Malaysian domicile, Malaysian wife has no right to make any application to Malaysian court. By virtue of section 48(1) of the LRA, it states that the Malaysian court is only has jurisdiction to make a decree of dissolution of marriage where (a) the marriage between parties was contracted under a law providing that or in contemplation of which the marriage was monogamous; and (b) parties to the marriage at the time when the petition was presented were domiciled in the Federation.

Importantly to note that both conditions must be satisfied before the court may proceed to hear any petition. It means that the court can only pronounce a decree of divorce only if the husband was domiciled in Malaysia when the petition was presented (Note 48). This includes the domicile of origin and domicile of choice of the husband. As far as general jurisdiction of the court under section 48 (1) of the LRA is concerned, there are conditions stated therein that must be both fulfilled by the applicant before the court may proceed to hear the case. However, difficulty will be faced by applicant especially the wife as to the 2nd requirement mainly because according to law of domicile in Malaysia, a wife will not acquire independent domicile other than her husband. Therefore, in case of dispute between Malaysian wife and foreign husband, she may have difficulty to get court's assistance.

Interestingly, section 49 of the LRA provides additional jurisdiction for the court to hear wife's application regardless of not having domicile in Malaysia as long as the requirements stated therein are fulfilled. These are when the wife is able to satisfy that she had been deserted by her husband or her husband had been banished or excluded from the Federation from any written law relating to banishment or exclusion and the husband immediately before that has domicile in the Federation. Besides, if the wife is able to satisfy that she was resident in the Federation and had been ordinarily resident herein for a period of two years immediately preceding the commencement of the proceedings, the court will have jurisdiction to hear her case.

These provisions have been further discussed by the court in cases like *Melvin Lee Campbell v Amy Anak Edward Sumek* (Note 49) and *Jayasakthy Kumaranayagam v Kandiah Chandiakumaran* (Note 50). In these two cases the court emphasized that at the time of petition, the petitioner husband must show that his domicile is in Malaysia either domicile of origin or domicile of choice or if the petitioner is a wife, her husband's domicile is in Malaysia or if she can bring herself within one of the statutory exceptions under section 49 of the Act in order to invoke the court's jurisdiction. Failure to comply with either of this may result the Malaysian civil court has no power to hear the application.

Furthermore, another problem that can possibly be seen is right of custody on children for fail marriage. In failure of cross boundary marriage, tendency for occurrence of parental child abduction is high. The complex legal issues surrounding child abduction out of cross boundary marriage and custody issue can be seen in the most celebrated case of *In the Marriage of Y and K Raja Bahrin* (Note 51) involving Australian and Malaysian citizenships. In this case the important principle deduced by the court in custody issue is welfare of the child as being paramount which might be varying from one authority than others. Such contradictory is largely due to outcome of each authority's judgment of what is important to constitute welfare of the child.

As regards to custody order for cross boundary marriage, the applicant must prove to the court that the child is a legitimate child of him or her to a valid marriage. This can be done by proving the registration of the marriage as stipulated in the Act. If the applicant has produced the foreign marriage document other than those issued by stipulated persons under the Act, another proceeding to verify such documents shall be undergone before the court can proceed to hear the custody application (Note 52). As far as LRA is concerned, the custody issue is provided for under Part VIII of the Act. Section 88 gives the power to the civil court to make custody order at any time by emphasizing on welfare of the child as it does in the *Syariah* Court as well (Note 53). This can be illustrated by the case of *In Re McGrath* (Note 54) where Lindley LJ stated that

[T]he welfare of the child is not to be measured by money only, nor by physical comfort only. The word welfare must be taken in its widest sense. The moral and religious welfare of the child must be considered as well as its physical well-being, nor can the ties affection be disregarded.

In addition, as for maintenance, a wife is entitled to claim it both under the IFLA and LRA. There are provisions in these statutes as regards to the right of maintenance and unpaid maintenance for the wife and children. In the

case of *Noor Bee v Ahmad Shanusi* (Note 55), the learned Chief Kadi said that according to the ruling of *Imam Shafie*, the maintenance for a wife does not lapse but if not claimed it becomes a debt due from the husband to the wife.

However, procedurally, the applicant has to satisfy the court that she is a legal wife of the respondent by establishing that the marriage is a valid marriage and deemed to be registered under the Malaysian law. Failure to establish it will render the court shall have no jurisdiction to impose any liability on the respondent. If she managed to establish that and the order has duly been granted, but yet practically, it is difficult to be enforced if the husband is no longer in Malaysia.

Similar position can be seen in the LRA for maintenance of wife and children. By making an application to the court, a man may be ordered to pay maintenance to his wife or former wife (Note 56) or to his children (Note 57) according to the means and needs of the parties. Besides, the wife is also entitled to claim for an unpaid maintenance which shall be recoverable as a debt from the defaulter (Note 58). For this purpose, the law provides for three years time limit for the party to claim. It means that no arrears of maintenance shall be recoverable in any suit if it accrued due more than that time frame before the institution of the suit.

Previously, the law only allowed for a period not more than one year. The rationale for having such a time frame had been illustrated in the case of *Gangagharan v Sathiahbama* (Note 59) whereby Abdul Razak Judge in this case viewed that the court treats the payment as fund for maintenance and not as property.

5. Conclusion

In a nutshell, undoubtedly marriage is a way to preserve dignity, family institution and descendent of both husband and wife. Thus, it shall be contracted in a harmonious, happy and legally recognised. Unauthorized parental removal of children for marriage or runaway marriage couple is strongly condemned as these acts may invite problems especially in hard times like incidence of marriage breakdown and other marital disputes. Many reported cases involving cross boundary marriages may have problems caused either by the parties' or parents' ignorance of law. It is worth noting that under Malaysian law, both under the provision of the LRA and the IFLA, marriage registration is crucial. Failure of which may render the parties fail to get court's remedies and hence, commit the offence punishable under the law.

Besides, on part of government, the law on cross boundary marriage shall be strengthened especially when it involves controversial issues like runaway marriage, refusal of consent and also under age parties. A bill drafted by Indonesian government on making a condition for a foreign man who is going to marry an Indonesian woman to deposit money amounting to 500 million rupiah (Ringgit Malaysia 170 000) to local bank as a guarantee for wife's maintenance if the marriage is end up with a divorce, is a good effort to be taken up by Malaysian government as well (Note 60). By having such law, the divorced woman will have a guaranteed sum of money to be obtained without which she will have to "beg" or "chase for it" from her former husband.

In short, the Non Governmental Organisations (NGOs) must also work hand to hand with government agencies to give awareness, impart legal knowledge and disseminate clear information on the nature and consequences of cross boundary marriage. It is not a matter of emotional and feeling between two loving couples but indeed it involves law and policy of two different countries.

References

- Borhan Abu Samah, *Denda Nikah Wanita Indonesia Tanpa Daftar*. Retrieved May 15, 2010 from http://utusan.com.my/keyword_search.asp?NewString=Borhan.samah@utusan.com.my&pg=2
- Lyons, L. T., Ford, M. (2008). Love, Sex and the Spaces In-between: Kepri Wives and their Cross-border. Husbands [Online] Available: <http://ro.uow.edu.au/cgi/viewcontent.cgi?article=1176&context=artspapers>.
- Islamic Family Law (Federal Territories) Act 1984 (Act 303)
- Kamala M. Pillai. (2009). *Family Law in Malaysia*. Petaling Jaya: Lexis Nexis.
- Law Reform (Marriage and Divorce) Act 1976 (Act 164).
- Noor Aziah Awal. (2006). *Wanita dan Undang-undang*. Petaling Jaya: International Law Book Services.
- Nuraisyah Chua Abdullah. (2006). *Family Law for Non- Muslims in Malaysia*. Petaling Jaya: International Law Book Services.
- Qiongyuan, Z. (n.d.). *Patriarchal Bargains, Foreign Brides*. Retrieved May 25, 2010, from <http://sc6214.wetpaint.com/page/Qiongyuan%27s+Pages>.

Tan Yock Lin. (1993). Conflicts Issues in Family and Succession Law, Kuala Lumpur: *Malayan Law Journal*.

Zaleha Kamaruddin. (2005). Divorce Laws in Malaysia (Civil & Syariah). Kelana Jaya: *Malayan Law Journal*.

Notes

Note 1. (1878) 4 PD 1, 11.

Note 2. Lombok Island located in the east of Bali, Indonesia with its Population about 2,5 million people. It has three main districts with three capital cities: Mataram in the west, Praya in central and Selong in east Lombok.

Note 3. Zhou Qiongyuan on his research entitled Patriarchal Bargains, Foreign Brides accessible via <http://sc6214.wetpaint.com/page/Qiongyuan%27s+Pages+on+2/5/2010>

Note 4. A five year study conducted by a group of researchers from universities in France, the US, Australia, Scandinavia and Spain in collaboration with three universities in Indonesia

Note 5. Spotlight: Lure of Foreign Husbands accessed via <http://www.malaysianbar.org.my> on 12/3/2010

Note 6. *Supra*, n4

Note 7. Refer to Article 74(2) and List II Schedule 9th of the Federal Constitution of Malaysia.

Note 8. Hereinafter referred to as the IFLA

Note 9. The words and the actions of the Holy Prophet Muhammad (Peace Be Upon Him)

Note 10. Hereinafter referred to as the LRA

Note 11. See section 3 of the LRA for further exception.

Note 12. 4th Malaysian National Fatwa Committee Conference 1982

Note 13. Person who possess both male and female genitalia.

Note 14. Section 8 of the IFLA.

Note 15. (1980) 5 JH 326.

Note 16. Section 2 of the IFLA

Note 17. Section 9 (1) of the IFLA

Note 18. Section 9 (2) of the IFLA

Note 19. Section 9 (3) of the IFLA

Note 20. Section 9 (4) of the IFLA

Note 21. Also known as 'mahr' or 'mas kahwin'

Note 22. Section 14 of the IFLA

Note 23. Section 7 of the IFLA

Note 24. Section 21(1) of the IFLA

Note 25. Section 2 of the IFLA

Note 26. Section 57 of the IFLA.

Note 27. Section 11 of the IFLA

Note 28. Section 25 of the IFLA

Note 29. 1970 2 AER 33.

Note 30. Section 10 of the LRA.

Note 31. See section 69(b)

Note 32. Section 12 of the LRA.

Note 33. Section 2 of the LRA - a minor means a person who is under the age of twenty-one and who is not a widow or widower

Note 34. New Straits Times (09 August 2008)

Note 35. Section 11 of the LRA

Note 36. Section 11 of the IFLA.

Note 37. Section 31(1) of the IFLA

Note 38. Section 31(2) of the IFLA

Note 39. (1999) JH XVIII

Note 40. Section 31(5) of the IFLA

Note 41. Section 34 of the IFLA

Note 42. Sections 9, 24 & 28 of the LRA

Note 43. Section 26 of the LRA

Note 44. Section 35 of the LRA

Note 45. s.1 of the Domicile & Matrimonial Proceedings Act 1973 – The Act has abolished the Common law rule that a woman acquires the domicile of her husband on her marriage

Note 46. The term domicile and resident have different meaning and significance in law. See section 3(1) LRA and cases like *Long Yan Fei v Pauls Baya* [2001] 4 MLJ 373, *Udny v Udny* (1869) LRI Sc & Div 441, *Fox v Strik & Anor* [1970] 3 All ER 7, *Mahon v Mahon* [1971] 2 MLJ 266, *Levene v Commissioners of Inland Revenue* [1928] AC 217 (HL)

Note 47. Section 45 of the Islamic Family Law (Federal Territories) Act 1984 (Act 303) – states that either applicant must be the residence of Federal Territory at the time of application.

Note 48. Section 48(c) of 164 Act.

Note 49. [1988] 2 MLJ 338

Note 50. [1996] 5 MLJ 612

Note 51. (1986) 11 Fam LR 233

Note 52. Clarification obtained from the learned judge of the Syariah Subordinate Court of Penang, Mr. Zaini B. Abd Rahim through a telephone interview conducted on 6/5/2010.

Note 53. Refer section 86 of the Act 303

Note 54. [1893] 1 Ch 143 at 148, CA (Eng)

Note 55. (1978) 1 JH (2) 63

Note 56. See sections 77 and 78 of the LRA. Refer also to the case of *Koay Cheng Eng v Linda Herawati Santoso* [2004] 6 MLJ 395

Note 57. See section 93 of the LRA

Note 58. See section 86 of the LRA

Note 59. [1979] 2 MLJ 77

Note 60. Borhan Abu Samah, *Denda Nikah Wanita Indonesia Tanpa Daftar*, accessed on 15/5/2010 via http://utusan.com.my/keyword_search.asp?NewString=Borhan.samah@utusan.com.my&pg=2