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## UNAUTHORISED POLYGAMY OFFENCES: A STUDY IN THE SYARIAH COURTS OF SELANGOR

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### Abstract:

Polygamy refers to a marital arrangement that allows a man to have more than one wife at any given time. Within the legal framework of Malaysia, Muslim men are permitted to practise polygamy in accordance with Islamic law. Nevertheless, the law requires that prior authorisation be obtained from the Syariah Court before entering into a polygamous marriage. Failure to comply with this requirement may result in prosecution for the offence of unauthorised polygamy. Statistics indicate that such offences are increasingly prevalent in the State of Selangor. This study aims to elucidate the concept of polygamy from an Islamic perspective and to analyse the legal framework governing polygamy in Selangor. The study also examines the factors contributing to the occurrence of unauthorised polygamy and the resulting implications, and subsequently proposes recommendations for addressing these issues. Methodologically, this research adopts a qualitative approach through document analysis involving books, journals, statutory provisions, and court records. In addition, semi-structured interviews with several syariah legal practitioners were conducted to obtain supplementary empirical insights. The findings reveal that the primary factors contributing to unauthorised polygamy include stringent legal procedures and the inability to obtain consent from the first wife. The study also finds that unauthorised polygamy may give rise to negative implications, such as the risk of unregistered or invalid marriages, infringement of wives' rights, and complications relating to the verification of lineage and the registration of children's births. Accordingly, the study recommends that penalties for unauthorised polygamy be strengthened up to the maximum statutory limit, alongside increased public awareness through education and

advocacy programmes to curb the rising number of such cases in Selangor.

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Family Institution, Islamic Family Law Enactment, Matrimonial Offences, Unauthorised Polygamy, Syariah Court



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## Introduction

Marriage is an act of worship that is strongly encouraged in Islam, to the extent that the Prophet Muhammad PBUH stated that when a person enters into marriage, they have completed half of their religion. It represents one of the religious injunctions that acknowledges and honours the natural disposition (*fitrah*) of human beings to live in companionship (Wan Ismail et al., 2018). From the perspective of Islamic jurisprudence (*fiqh*), marriage refers to a contractual agreement (*akad*) that lawfully permits intimacy and companionship (*istimta'*) between a man and a woman (Al-Zuhaili, 1997), subject to specific pillars (*arkan*) and conditions (*shurut*) (Al-Husaini, 1990), and effected through the use of prescribed expressions such as *inkah* or *tazwij*, or their valid equivalents (Al-Shatiri, 2020). The obligation and significance of marriage are clearly reflected in the Qur'anic injunction where Allah SWT said:

*O mankind! Fear your Lord, who created you from a single soul, and from it created its mate, and from them both spread many men and women. And fear Allah, through whom you ask one another, and [respect] the wombs. Indeed, Allah is ever, over you, an Observer.*

(Surah An-Nisa, 4:1)

This verse reminds humanity that they originate from a single soul, from which Allah created its spouse, and from the union of both came the proliferation of humankind. It underscores the obligation of *taqwa* (God-consciousness), the preservation of social and familial bonds, and the constant awareness that Allah observes all human conduct. The verse highlights the creation of human beings in pairs as both a divine blessing and a moral responsibility, forming the foundational basis for discussions on marriage in Islam (Suhaizad & Bernard, 2025).

The term *polygamy* originates from the Greek words *polus* (poly), meaning “many,” and *gamos*, meaning “marriage,” which together denote the concept of multiple marriages (Andi Intan, 2018). Some scholars also trace the concept linguistically to the Arabic terms *ta’addud* (multiplicity) and *az-zawjat* (wives), which collectively signify the practice of having multiple wives (M. Ichsán, 2018). From the perspective of *ijma* (scholarly consensus), the leading *mujtahid* scholars across the Muslim world have generally regarded polygamy as a permissible and legitimate practice under Islamic law, particularly given that it was practised by the Prophet Muhammad PBUH and his companions (Mahmud Yunus, 1996).

The offence of polygamy without the permission of the Syariah Court constitutes a form of syariah matrimonial crime that arises when a second marriage is contracted without complying with the legal procedures stipulated under the Islamic Family Law Enactments of the Malaysian states. Matrimonial offences under Malaysian syariah law refer to legal provisions that regulate and enforce offences related to marriage among Muslims, including polygamy without court permission, marriage without authorisation from the relevant authority, divorce without lawful procedure, as well as offences relating to the marriage contract and registration of marriage (Suhaizad et al., 2025). These matrimonial offences are categorised as criminal cases under the jurisdiction of the Syariah Courts, where such offences may be prosecuted without the issuance of an arrest warrant and are punishable through court proceedings, typically by the imposition of penalties such as fines or imprisonment.

## Literature Review

### *Polygamy in Islam*

From a historical perspective, polygamy had been practised for thousands of years prior to the advent of Islam (Andi Intan, 2018). Historical evidence demonstrates that polygamy is not an institution exclusive to Islam; rather, it had been practised by various civilisations and societies, including those in ancient Russia, Germany, India, China, Japan, as well as among the Hebrew and Arab communities. Within the Christian tradition itself, there was initially no explicit prohibition against polygamy in the Bible, and it was only after the influence of Greek and Roman cultural norms that monogamy became the dominant marital practice (Abdul Haseeb & Kyaw Hla Win, 2011).

In Islam, the permissibility of polygamy is explicitly addressed through divine revelation. Allah SWT said:

*And if you fear that you will not deal justly with the orphan girls, then marry those that please you of [other] women, two, three, or four. But if you fear that you will not be just, then [marry] only one, or those your right hands possess. That is more suitable that you may not incline to injustice.*  
(Surah An-Nisa, 4:3)

This verse provides clear guidance to men regarding polygamy, with justice towards wives and vulnerable parties particularly orphans as its central condition. If a man fears that he will be unable to uphold justice when marrying more than one wife, he is instructed to limit himself to a single marriage. The overarching objective of this provision is to prevent oppression and ensure the protection of rights for all parties involved.

With regard to its practical implementation, the polygamous marriages of the Prophet Muhammad PBUH were not motivated by sexual desire, but rather by social, humanitarian, and da'wah-related objectives (Andi Intan, 2018). Among the primary reasons for the Prophet's polygamy were to provide protection and dignity to widows, to elevate the status of women, and to care for women who offered themselves in marriage. Notably, the majority of the Prophet's wives were widows and of advanced age, with the exception of Sayyidah 'Aishah (RA). His marriages also occurred within specific historical contexts, such as in the aftermath of warfare, to safeguard the welfare of women who had lost their husbands (Yayasan Dakwah Islamiah Malaysia, 2018). Although the number of the Prophet's wives exceeded four, these marriages did not occur concurrently and therefore do not contradict the legal limit imposed upon his ummah.

Due to its historical and social dimensions, polygamy has frequently generated controversy and debate from both religious and sociological perspectives. Some scholars and activists reject polygamy on normative, psychological, and gender justice grounds, viewing it as a form of discrimination against women (Umi Salamah, 2019). Conversely, others regard polygamy as a potential solution to certain social problems, such as adultery and prostitution. Within the Islamic framework, polygamy is neither an obligation nor an unrestricted licence; rather, it is a conditional concession (*rukhsah*) subject to stringent requirements aimed at preserving justice and family welfare. A sound understanding of the historical background and underlying objectives of polygamy in Islam is therefore essential to prevent its misuse as a means of merely satisfying personal desires, and instead to ensure its implementation based on responsibility, justice, and wisdom, as exemplified by the Prophet Muhammad PBUH.

Nevertheless, the foundation of polygamy lies in its legal ruling. Sayyid Muhammad Rashid Rida categorised polygamy as *mubah* (permissible), meaning that there is no sin in refraining from it and no inherent reward in practising it (Solahuddin, 2018). However, acts classified as *mubah* may assume a recommended (*sunnah*) status and merit reward if they are undertaken with sincere intention and fulfilled in a manner pleasing to Allah, as may be the case with polygamy. In Islamic law, polygamy is neither prohibited nor encouraged indiscriminately; rather, its permissibility depends heavily on the personal capacity and character of the husband, particularly his ability to manage a marital relationship involving more than one wife an arrangement that inherently requires heightened levels of cooperation, emotional intelligence, and fairness. More importantly, careful consideration must be given to whether such a marriage may result in harm (*mudharat*) to the wives involved.

Islam permits polygamy with the strict limitation that a man may not have more than four wives at any one time (M. Ichsan, 2018). The original legal ruling of polygamy is permissibility (*harus*), not obligation. However, this permissibility is contingent upon the husband's ability to uphold justice among his wives. Polygamy may not be undertaken solely to fulfil lustful desires without sincere intention and moral responsibility. In certain jurisdictions, such as Malaysia, a husband is legally required to obtain prior permission from the Syariah Court before entering into a polygamous marriage, ensuring that all syariah conditions are satisfied. The question of whether polygamy constitutes a *sunnah* has been clarified by religious authorities, who affirm that polygamy in Islam is a permitted practice subject to specific conditions and justifiable reasons (Mufti of Federal Territory Office, 2016). Although *sunnah* encompasses the words, actions, approvals, and attributes of the Prophet Muhammad PBUH, legal rulings must be assessed in light of their underlying causes (*asbab*) and benefits (*maslahah*), rather than merely the Prophet's actions in isolation.

In the context of social necessity, polygamy may serve as a means of protecting women who require care and security. Conversely, it may become unnecessary or even oppressive if the husband is unable to uphold justice in matters of financial maintenance, emotional support, and physical capability. Allah the SWT further said:

*And among His signs is that He created for you spouses from among yourselves, so that you may find tranquillity in them; and He placed between you affection and mercy. Indeed, in that are signs for a people who reflect.*

(Surah Ar-Rum, 30:21)

This verse emphasises that marriage is not merely a social or reproductive institution, but also a profound source of emotional and spiritual tranquillity. *Mawaddah* signifies love and attraction that foster harmony, while *rahmah* denotes compassion that nurtures forgiveness, understanding, and mutual care. Consequently, polygamy must likewise be practised with these objectives in mind. Given the difficulty of achieving absolute justice, even as exemplified by the Prophet Muhammad PBUH, the legal ruling on polygamy may shift if its practice results in harm or injustice.

## **Methodology**

This study adopts a qualitative research approach. Primary data were collected through interviews with syariah legal experts, aimed at obtaining in-depth insights relevant to the scope of the study. In addition, secondary data were gathered through library-based research, involving an examination of authoritative sources such as academic books, classical Islamic legal texts, statutory provisions, and other relevant scholarly writings. These include, among others, the Islamic Family Law Enactment (State of Selangor) 2003 and reported Syariah court cases. Various texts on polygamy were reviewed from multiple perspectives, particularly from Islamic jurisprudence, legal frameworks, as well as the factors and implications of polygamy conducted without court authorisation. The data obtained from both primary and secondary sources were subsequently analysed using content analysis and descriptive analysis methods. This study also employed a semi-structured interview method. A total of three syariah legal experts serving in the State of Selangor were interviewed to provide professional and practical perspectives on the issues under investigation.

## **Discussion and Finding**

### ***Polygamy Applications under Islamic Family Law***

The Islamic Family Law Enactment (State of Selangor) 2003 (EUUKIS) mandates that a husband must obtain prior authorisation from the Syariah Court before entering into a polygamous marriage. The application process begins with a formal filing at the State Islamic Religious Department and the Syariah High Court. The applicant is required to submit essential documents, including personal particulars, information regarding the existing wife or wives, reasons for the application, evidence of financial capability, as well as proposed arrangements for maintenance and the rotation of marital rights among wives. Applicants are also obliged to disclose income statements, assets, and liabilities to demonstrate their ability to provide fair and adequate maintenance for more than one wife (Ana Faiza, 2018).

Upon receipt of the application, the Court issues a notice to the existing wife, requiring her attendance to provide testimony or raise objections. Proceedings are conducted in camera, during which the judge evaluates the submitted documents, testimonies of the applicant, the existing wife, and any relevant witnesses. Evidence plays a highly significant role in court proceedings, particularly in applications of this nature (Suhaizad et al., 2024). Moreover, evidentiary rules ensure consistency in procedural standards, prevent procedural ambiguity, and safeguard justice for all parties involved. Robust and structured proof strengthens the Court's confidence in the veracity of the facts presented. Conversely, the absence of clear and systematic evidence exposes judicial decisions to the risk of being influenced by assumptions, weak evidence, or subjective evaluation, thereby undermining the integrity of the proceedings (Suhaizad et al., 2025).

The Court's assessment encompasses the applicant's financial capability, his ability to administer justice among wives, and the grounds advanced for the polygamous marriage. The attendance and cooperation of the existing wife significantly influence the Court's determination. Where the prescribed conditions are fulfilled and the judge is satisfied, authorisation for polygamy is granted, enabling the applicant to proceed with the solemnisation and official registration of the marriage (Basri, 2022). The process generally takes less than three months, subject to the cooperation of the parties involved and the completeness of documentation. Delays often arise due to the applicant's failure to satisfy statutory requirements, difficulties in serving notices, or reluctance on the part of the existing wife to cooperate (Ana Faiza, 2018). Legislative amendments introduced since 2003 have further strengthened women's rights, particularly in relation to matrimonial property, maintenance, and the equitable allocation of marital turns, in order to safeguard family welfare (Basri, 2022).

In Malaysia, although each state enacts its own Islamic family law legislation, the fundamental principle remains uniform: written authorisation from the Syariah Court is required prior to the solemnisation of a polygamous marriage. Section 23 of the Islamic Family Law (Federal Territories) Act 1984 and analogous provisions under the EUUKIS stipulate that no man may marry more than one wife without the Court's approval (Basri, 2022). Applications must be supported by reasonable grounds justifying the necessity or appropriateness of polygamy, alongside comprehensive disclosure of financial capacity, existing commitments, dependants, and the views or consent of the existing wife, where available. While the wife's consent is not an absolute requirement, her views are taken into consideration in the Court's assessment of justice and financial capability (Ana Faiza, Rafeah, & Azri, 2021). This demonstrates that Islamic family law in Malaysia rigorously regulates polygamy to ensure syariah-compliant justice, prevent abuse, and protect the rights of wives and children. Breaches of these provisions, including polygamy without authorisation, may result in penalties of up to RM1,000 or imprisonment for a term not exceeding six months.

Notification to the existing wife is a critical procedural requirement and is expressly mandated under Practice Direction No. 7 of 2021, which ensures that the wife is afforded the opportunity to attend proceedings and express her views or objections. This requirement enhances transparency and procedural fairness in polygamy applications. The importance of notification and spousal participation is illustrated in the case of *Nor Erman bin Mohd Rusli v Hasnah binti Ismail* [Syariah Court of Appeal of Selangor, Appeal Case No. 2301-A0010-001-0001], where the application for polygamy was rejected partly due to the non-attendance of the existing wife, despite proper service of notice. The Court emphasised that the absence of the wife does not result in automatic approval of the application.

An analysis of cases before the Selangor Syariah High Court between 2009 and 2013 further indicates that objections from interested parties accounted for approximately 4% of the grounds for rejection of polygamy applications (Ana Faiza et al., 2021). This underscores the Court's holistic evaluation of an applicant's capability and justifications prior to granting approval. Empirical findings also reveal that many husbands in Selangor avoid seeking court authorisation due to fear of their wives' reactions, contributing to an increase in unauthorised polygamous marriages. Such practices contravene the law and have led to cross-border marriages in Thailand and Indonesia as a means of circumventing court procedures (Ana Faiza, 2018). This trend reflects not only a lack of legal compliance but also highlights systemic challenges in enforcing polygamy regulations, which ultimately jeopardise the protection of women's rights and the welfare of children within the syariah family law framework.

Although the application process is often perceived as time-consuming, it plays a vital role in safeguarding justice and the welfare of all parties concerned. Statutory provisions and judicial authorisation mechanisms serve to strengthen the protection of women's and children's rights within polygamous institutions (Basri, 2022). The EUUKIS and relevant Practice Directions highlight the necessity of strict compliance with procedural requirements to ensure fairness, financial capability, and family welfare. Cooperation from the existing wife and adherence to procedural obligations remain key determinants in the approval of polygamy applications. Despite the challenges associated with implementation, these regulatory frameworks are essential for governing polygamy in a just and responsible manner (Ana Faiza et al., 2021). Ultimately, effective enforcement and continuous legal refinement are crucial to prevent the misuse of polygamy provisions and to uphold the integrity of the syariah family justice system. In *HI v MA* [Syariah Court of Appeal of Selangor, Appeal Case No. 10000-011-0051-2018], the appellant filed a polygamy application on 13 October 2017, citing a longstanding relationship and a monthly income of RM9,975. The respondent, being the existing wife, objected to the application on the grounds of potential damage to her dignity, financial concerns, and issues relating to the appellant's sexual conduct. The Syariah Court of Appeal dismissed the appeal and upheld the decision of the Syariah High Court, relying on Section 23 of the EUUKIS, which imposes stringent requirements for polygamy applications, including the obligation to prove justice and the absence of *darar syarie*.

### **The Offence of Polygamy without Court Authorisation under the Law**

The offence of polygamy constitutes a matrimonial crime under Islamic family law. Sanctions imposed for such offences encompass various forms of matrimonial misconduct, including incitement of a spouse to divorce, obstruction of spouses from cohabiting, and polygamy contracted without the authorisation of the Syariah Court (Ariyall Hikam, 2019). Within the framework of Islamic family law, matrimonial offences include the solemnisation of marriage without court approval, polygamy without the consent of the relevant authority, and spousal abuse (Kamus Undang-undang, 1995). These offences are categorised as non-arrestable offences, whereby the accused must be summoned to court, and the offence must be clearly established before prosecution may proceed (Shadli, 2017).

Section 23(1) of the Islamic Family Law Enactment (State of Selangor) 2003 (EUUKIS) expressly provides that a husband shall not enter into a polygamous marriage without prior written permission from the Syariah Court. In addition, Section 124 of the EUUKIS stipulates that polygamy without such authorisation constitutes an offence punishable by a fine not exceeding RM1,000, or imprisonment for a term not exceeding six months, or both.

This offence falls within the category of syariah matrimonial crimes and is classified as a non-arrestable offence (Shadli, 2017). Before criminal proceedings for polygamy without authorisation may be initiated, the parties are required to apply for judicial confirmation of the polygamous marriage. Subsequently, where the marriage has been confirmed by the Court, the accused must first be served with a summons, and the prosecution is required to establish a prima facie case demonstrating a violation of Section 23(1) of the EUUKIS before enforcement under Section 124 may proceed. Accordingly, the Syariah High Court of Selangor has jurisdiction over individuals who commit the offence of polygamy without court authorisation. Furthermore, Section 129 of the EUUKIS provides for offences committed by a husband who fails to administer equitable treatment to his wife or wives, including matters related to polygamy such as maintenance, rotation of conjugal nights, and other responsibilities arising from a polygamous marriage. This provision reinforces the principle that justice and fairness are central to the lawful practice of polygamy under Islamic law.

A case that clearly illustrates the offence of polygamy without authorisation is *Pendakwa Syarie v AAB & RMI* [Syariah Subordinate Court of Hulu Langat, Selangor, Criminal Case Nos. 10005-166-0036-2021 and 10005-147-0037-2021]. This case involved two accused persons charged with contracting a polygamous marriage without prior permission from the Syariah Court under Sections 124 and 134 of the EUUKIS. On 5 February 2020, the first accused contracted a marriage in Thailand while still lawfully married to an existing wife. Both accused pleaded guilty and sought mitigation of sentence on personal grounds. The Syariah Subordinate Court of Hulu Langat imposed a sentence of a RM1,000 fine and seven days' imprisonment commencing on 14 December 2021, taking into account the mitigation pleas and submissions by the prosecution. The decision was grounded on the Court's proper jurisdiction, the voluntary admission of guilt, and the application of *ta'zir* principles under Islamic law. The Court rejected the request for a reduction of sentence, emphasising the punitive and deterrent objectives of the punishment.

### **Factors Contributing to Polygamy without Court Authorisation**

Polygamy constitutes a conditional concession permitted in Islam, subject to strict requirements. However, its implementation in Malaysia is governed by state Islamic family law enactments, which require prior authorisation from the Syariah Court before a polygamous marriage may be solemnised. One of the principal factors contributing to polygamy without court approval is the perception that the polygamy application procedure is excessively stringent and burdensome (Norain & Khairul, 2021). Based on interviews conducted, Informant 1 acknowledged the complexity of the application process and the prolonged waiting period for approval. The requirement to submit extensive documentation, attend pre-marital courses, and undergo interviews is often perceived as inconvenient by certain individuals. All three informants agreed that, in order to avoid formal court procedures, familial resistance, and the desire to conceal the marriage from the first wife, many couples opt to marry abroad particularly in Thailand or Indonesia where the procedures are perceived to be simpler and faster.

Nevertheless, Informants 2 and 3 emphasised that these stringent procedures are fundamentally intended to ensure justice and to assess the husband's eligibility before permitting polygamy, rather than to impose unnecessary hardship. There exists a perception among some parties that strict court procedures contradict Islamic law, given that polygamy is fundamentally permissible in Islam. However, this view is misconceived, as the purpose of legal regulation is

to prevent the abuse of polygamy that may lead to injustice against wives and children. Judicial intervention is therefore essential to ensure that polygamous marriages are conducted fairly, systematically, and in compliance with both syariah principles and statutory requirements.

In addition, Informant 1 supported the factors highlighted by Informant 2 and further noted that legal costs constitute a major incentive for couples to pursue polygamy without authorisation in Thailand. This is evident from the prevalence of marriage packages advertised on social media in southern Thailand, particularly in Songkhla and Pattani, which typically cost less than RM2,000 and include transportation, accommodation, and marriage certificates. In contrast, the Malaysian process is often perceived as requiring prolonged court proceedings lasting several months. However, this assertion regarding delayed approval was refuted by Informant 3, who considered it outdated. According to Informant 3, nine out of ten polygamy applications generally receive approval within approximately one month, provided that the Court finds the applicant eligible. Informant 3 further observed that most individuals who commit matrimonial offences are, in fact, aware of the risks associated with failing to obtain court permission for polygamy.

Moreover, polygamy without court authorisation is also attributable to weaknesses in the marriage registration system, non-compliance with legal procedures, and socio-economic pressures (Ana Faiza, Rafeah & Azri, 2021). This view was reinforced by Informant 2, who highlighted public non-compliance with the law due to the perception that the penalties imposed are relatively low. Such attitudes contribute to indifference towards legal obligations and result in continued violations of the law, particularly polygamy without court approval. This is substantiated by statistics from the Selangor Islamic Religious Department (JAIS), which reported 1,617 cases of polygamy without authorisation between 2019 and 2023 exceeding the number of formal polygamy applications submitted to the Syariah Court, which totalled only 859 cases (Mohd Yunus, 2023). This phenomenon is closely linked to the use of syndicate marriages across the Thai and Indonesian borders, as well as the disregard of economic capacity and justice requirements stipulated under the EUUKIS 2003 (Norain & Khairul, 2021).

Furthermore, the failure to obtain the consent of the first wife remains a significant factor contributing to polygamy without court authorisation (Norain & Khairul, 2021). Informant 3 emphasised that this issue aligns with Practice Direction No. 7 of 2021, which underscores the importance of notifying existing wives in polygamy authorisation proceedings. Although a wife's consent is not an absolute requirement, the Court nevertheless takes into account her views and testimony when assessing the husband's eligibility for polygamy. Informant 3 further agreed that some husbands choose to marry abroad as an easier alternative due to fear of opposition from existing wives, resistance during court proceedings, and lack of family approval. Such actions are often driven by the desire to avoid domestic conflict or by the perceived need to have offspring.

All three informants also concurred that rejected polygamy applications constitute a further factor prompting couples to contract marriages without authorisation (Norain & Khairul, 2021). The Syariah Court typically rejects applications where the husband fails to demonstrate financial capability, responsibility towards existing family members, or compliance with other prescribed conditions. Following rejection, some couples resort to marrying abroad as a shortcut, without due consideration of the legal implications and long-term consequences for the family. Case studies from the Selangor Syariah High Court between 2009 and 2013 further

identify several key factors contributing to the rejection of polygamy applications (Ana Faiza et al., 2021).

### **Implications of Polygamy without Court Authorisation**

The implications faced by couples who practise polygamy without obtaining authorisation from the Syariah Court may arise in two primary situations. The first situation occurs when the couple does not approach the Court at all to seek confirmation of the unauthorised polygamous marriage. According to all three informants, this scenario results in more severe harm, particularly with respect to the legal rights and protections of the subsequent wife and children born from the marriage. The second situation involves couples who apply for judicial confirmation of a polygamous marriage contracted without prior court permission, whereby the Judge will determine whether the marriage is valid or otherwise. This process is staged and exclusive in nature; once the marriage is confirmed as valid, the couple will subsequently be prosecuted in the Syariah Subordinate Court under Section 124, and any imposed fine and/or term of imprisonment must be satisfied before official registration at the Religious Affairs Office can be completed.

The most significant implication of contracting a marriage without court authorisation is the substantial risk to the wife's rights, which would ordinarily arise from a legally recognised marriage, but are obstructed due to the absence of valid documentation (Fhirhad & Azizah, 2023). These include the right to *mut'ah* (a form of monetary or property compensation), matrimonial property, maintenance, and child custody. The lack of official registration renders the marriage unrecognised under Islamic family law in Malaysia. Informant 3 emphasised that the subsequent wife faces a heightened risk of losing her entitlement to maintenance and matrimonial property during the subsistence of the marriage, and upon the husband's death, the wife and children may be deprived of their rights to inheritance (*faraid*). Where the couple fails to seek confirmation and divorce subsequently occurs, the wife's entitlements—such as spousal maintenance, *mut'ah*, and *'iddah* maintenance—cannot be legally enforced. This demonstrates that marriages contracted without court authorisation not only undermine the wife's rights but also entail serious legal consequences.

From the perspective of the family institution, the implications of polygamy without authorisation closely resemble those arising from marriages contracted without legal permission, as both forms of legal non-compliance have the potential to disrupt family harmony and stability. Children born from such marriages may face issues of identity and social acceptance, which can adversely affect their psychological development. Informants 1 and 3 elaborated on this issue by highlighting differences in birth certificates for children whose paternal lineage is not legally established. In such cases, the child's birth is registered under Section 13 of the Births and Deaths Registration Act 1957 (Act 299). Specifically, this provision governs cases involving children of illegitimate status, where the father's name may only be recorded upon a joint request by the mother and the individual claiming paternity, with both parties signing the registration record.

In the absence of paternal information or valid marriage documentation, the birth is registered with a Section 13 annotation or without any paternal details, resulting in the child being affiliated solely to the mother's name, "Abdullah," or *Asmaul Husna*, in accordance with the practice of the National Registration Department (NRD) (Adibah et.al., 2023). While this provision ensures that birth registration can proceed regardless of the parents' marital status

and safeguards the integrity of civil records, all three informants agreed that it carries long-term consequences. These include societal stigma during school registration, future marriage procedures, and barriers to inheriting the biological father's estate. This underscores the underlying wisdom and objectives of lawful marriage in Islamnamely, the establishment of legitimate lineage, the formation of a stable family unit, and the preservation of dignity. Non-compliance with Syariah principles and statutory law risks exacerbating social problems and undermining the harmony of societal structures.

From a legal perspective, polygamy without court authorisation is neither recognised nor deemed valid, even if it fulfils certain syariah requirements (Norain & Khairul, 2021). Couples engaging in unauthorised polygamy are unable to produce official documentation to validate their marriage. Informant 1 further opined that marriages deemed valid solely from a syariah standpoint but lacking official registration result in the absence of legal protection. Consequently, such couples are exposed to risks of other legal offences, including domestic violence and offences related to *khalwat* or *zina*. All three informants also highlighted the risk of *faraq nikah* (judicial separation) where marriages contracted without court authorisation are rendered invalid due to the appointment of an unqualified guardian (*wali*) or because the marriage was solemnised outside the proper jurisdiction as stipulated under the EUUKIS. In such circumstances, the Court may order the immediate separation of the couple and require the observance of three menstrual cycles of *'iddah* before a lawful remarriage may be conducted in accordance with proper legal procedures.

These circumstances clearly demonstrate the grave implications that arise when the matrimonial offence of polygamy without court authorisation is treated lightly by certain segments of society. Overall, the consequences of unauthorised polygamy most significantly affect the subsequent wife, particularly in cases of divorce or the husband's death. In such situations, the wife lacks a legal foundation to claim her rightful entitlements, notwithstanding the fact that these rights are guaranteed under the EUUKIS through the registration of a valid marriage (Norain & Khairul, 2021).

## Recommendations

Several recommendations should be given due consideration in addressing the issues arising from polygamy without court authorisation. All three informants agreed that the existing penalties for the offence of unauthorised polygamy should be enhanced to ensure more effective deterrence. Accordingly, legislative amendments are necessary to increase both the quantum of fines and the duration of imprisonment as a firm response to the harm caused by this form of matrimonial offence. Informant 2 opined that, in order to cultivate greater respect for the law and instil a sense of deterrence within society, the current maximum fine of RM1,000 should be revised upwards to RM5,000. In contrast, Informant 3 suggested that a higher and more proportionate maximum fine of RM20,000 would be more effective in curbing such syariah offences. Nevertheless, any increase in financial penalties must be assessed holistically, taking into account the offender's social standing, monthly income, and prior record of syariah offences, so as to ensure that the punishment serves a corrective purpose rather than constituting undue oppression.

In addition, stricter border controls should be implemented to prevent individuals at risk of engaging in unauthorised polygamy from unlawfully exiting the country. Informant 1 proposed that the Malaysian government strengthen diplomatic relations and inter-agency cooperation

involving religious authorities, immigration departments, and enforcement agencies of neighbouring countries to monitor suspicious movements. Such measures include restricting solemnisation authority to designated officiants, ensuring that only authorised *jurunikah* are permitted to solemnise marriages involving Malaysian citizens abroad, and mandating notification to the Malaysian Consulate following the conclusion of any such marriage. These measures would serve to curb the practice of unauthorised polygamy conducted overseas. Informant 1 further emphasised the need to regulate and restrict the promotion of “two-in-one” packages combining tourism and marriage, which are increasingly advertised on social media platforms. Collaboration among the Media and Corporate Communications Division under the Department of Information Malaysia, the Ministry of Communications, and the Ministry of Tourism, Arts and Culture (MOTAC) is crucial in addressing the growing phenomenon of cross-border marriages and syndicate-facilitated marriages.

Finally, improvements to the premarital course modules should be prioritised as a means of enhancing public awareness of the legal framework and procedural requirements governing polygamy. The premarital course platform is particularly appropriate for this purpose, as attendance at such courses constitutes a legal prerequisite for marriage under Malaysian law. Informants 2 and 3 suggested that prosecutorial authorities should be actively involved in delivering educational content, particularly in relation to the legal procedures for polygamy prescribed under state legislation, to ensure the long-term effectiveness of these courses. Both informants concurred that the existing premarital course framework requires further review and enhancement to strengthen its impact. Through such reforms, the public would gain clearer understanding of the invalidity of unauthorised marriage documentation, the challenges associated with child registration, and the broader legal implications that may undermine the stability and integrity of the family institution.

## Conclusion

Unauthorised polygamous marriages primarily stem from the perception that court application procedures are overly strict, complex, and document intensive. Consequently, many couples resort to informal or syndicate marriages abroad, particularly in countries such as Thailand and Indonesia, where the processes are perceived to be simpler, faster, and less costly. This tendency is further driven by the desire to conceal the marriage from the first wife and family members in order to avoid domestic conflict. Other contributing factors include weaknesses in the marriage registration system, public non-compliance due to relatively lenient penalties, and the rejection of court applications arising from the failure to demonstrate financial capability and the ability to act justly towards existing wives. Overall, the implications of this matrimonial offence are most severely felt by the subsequent wife, who is deprived of legal protection, including rights to maintenance, *mut'ah*, matrimonial property, and inheritance (*faraid*) when the marriage is not legally registered. Children born from such marriages are also exposed to significant risks, including the issuance of birth certificates without the father's name, which may result in long-term social stigma. These circumstances may give rise to identity-related issues that adversely affect inheritance rights and future marriage processes. Unauthorised polygamy is further regarded as legally invalid and may lead to serious legal consequences, including the risk of judicial separation (*faraq nikah*), exposure to domestic violence offences, as well as potential charges of *khalwat* or *zina*. The absence of official documentation undermines legal recognition and threatens the overall stability of the family institution. To curb the persistence of this issue, several measures are proposed. These include increasing fines and custodial sentences for matrimonial offences, strengthening cooperation between domestic

authorities and border enforcement agencies to curb syndicate marriages promoted through social media, and enhancing premarital course modules through the involvement of syariah prosecution authorities. Such initiatives are crucial to raising public awareness of polygamy procedures, the invalidity of foreign marriage documents, and the long-term legal and social implications for families. Collectively, these measures may contribute to more effective regulation and prevention of unauthorised polygamous marriages in the future.

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